

AGREEMENT FOR OPERATION AND MAINTENANCE OF SEWER FACILITIES

1. **PARTIES.** The Parties to this Agreement to Provide Residential Sewer Service ("Agreement") are: the TOWN OF BERTHOUD, a Colorado municipal government, ("Town"); and RIVER GLEN HOMEOWNERS ASSOCIATION, a Colorado non-profit corporation, and RIVERSIDE FARM HOMEOWNERS ASSOCIATION, a Colorado non-profit corporation (the latter two parties collectively referred to as the "HOAs").

2. **RECITALS AND PURPOSES.** The HOAs and Larimer County have entered into an Agreement For Sanitary Sewer Facility Financing ("County Agreement"), the terms of which provide for the establishment of a local improvement District ("District") by Larimer County to finance the construction and installation of certain sanitary sewer facilities: a lift station ("Lift Station") on the River Glen HOA property located generally in the NE ¼ of Section 34 and the SE ¼ of Section 27, generally west of County Road 17, north of County Road 2E, and east of US Highway 287, together with a new sewer line extending from the Lift Station to the public right-of-way of County Road 17, then north from the HOA property and within the public right-of-way of County Road 17 ("New Sewer Line") to connect with the Town's existing Dry Creek Interceptor. The Lift Station and the New Sewer Line are collectively referred to as "The Facilities."

Under the terms of the County Agreement, the Improvement District will finance, construct, and own the Facilities and the County Agreement further requires that the HOAs shall be responsible for the operation and maintenance of the Facilities at all times, such operation and maintenance to be "in complete accord with the rules and regulations of the Larimer County Health Department and the Colorado Department of Health and Environment. The County Agreement further provides that the HOAs may transfer operation and maintenance to the Town.

Accordingly, the purpose of this Agreement is to set forth the terms and conditions whereby the Town will operate and maintain the Facilities. Therefore, the Parties covenant, acknowledge and agree as follows:

3. **DESCRIPTION OF FACILITIES.** The Facilities are as described on the attached Exhibit A which is incorporated herein.

4. **OPERATION AND MAINTENANCE.** In consideration of fees paid to the Town by the HOA under separate agreement, upon completion of the construction of the Facilities and acceptance by the District of such completed Facilities, the Town will assume responsibility for the operation and maintenance of the Facilities but the Town will not be responsible for any maintenance and repairs within the subdivisions and will not be responsible for any backups or problems within the River Glen or Riverside Farm subdivisions themselves except as a result of direct action or inaction by the Town. The Town will continue to operate and maintain the Facilities after ownership of the Facilities is transferred to the Town and will be solely responsible for all costs of operation, maintenance, replacement repair of the Facilities. Town shall not discriminate with respect to such maintenance and fees charged to the HOAs as more fully set forth in the Agreement to Provide Residential Sewer Service.

5. **COVENANT.** For purposes of representation to the District for use in conjunction with the District's financing of the Facilities, and only for such purpose, the Parties hereby covenant and agree that they shall, in accordance with prudent wastewater utility practices: (i) at all times operate or cause the Facilities to be operated in an efficient manner; (ii) maintain or cause to maintain the Facilities in good repair, working order and operating condition; (iii) from time to time, make or cause

to make all necessary and proper repairs, renewals, replacements, additions, betterments, and improvements with respect to the Facilities so that the HOAs and the Town's sanitary sewage business carried on in conjunction therewith shall be properly and advantageously conducted; requiring the Town to expend any funds that are derived from sources other than this Agreement or other receipts of the operation of the Facilities that are not pledged by the HOAs to the District under any loan agreement, and provided further that nothing herein shall be construed as preventing the Parties from doing so at their individual discretion.

6. ASSIGNMENT. The HOAs shall not assign this Agreement to any third party except with the prior written consent of the Town.

7. PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

8. ADDITIONAL DOCUMENTS OR ACTION. The Parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.

9. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings with respect to the funding of said Line Extension. Only an instrument in writing signed by all Parties may amend this Agreement. If any provision of this Agreement is held to be invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

10. ALTERNATIVE DISPUTE RESOLUTION. In the event of any dispute or claim arising under or related to this Agreement, the Parties shall use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within twenty-eight (28) days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the Parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of the Judicial Arbitrator Group (JAG) of Denver, Colorado or, if JAG is no longer in existence, or if the Parties agree otherwise, then under the auspices of a recognized established mediation service within the State of Colorado. Such mediation shall be conducted within sixty (60) days following either party's written request therefore. If such dispute or claim is not settled through mediation, then either party may initiate a civil action in the District Court for Larimer County.

11. GOVERNING LAW. The laws of the state of Colorado shall govern this Agreement.

12. BINDING EFFECT. This Agreement shall accrue to the benefit of, and be binding upon, the Parties, and their respective legal representatives, successors, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise specifically authorized in this Agreement.

RIVER GLEN HOMEOWNERS' ASSOCIATION

BY: Tye Riley
Title: HOA President

RIVERSIDE FARM HOMEOWNERS' ASSOCIATION

BY: Richard Gulley
Title: HOA President

TOWN OF BERTHOUD

BY: [Signature]
Title: Town Administrator

ATTEST:

Mary K. Cowdin
Mary K. Cowdin, Town Clerk

Acknowledged and agreed to by the Board of County Commissioners of Larimer County, acting as the Board of Directors of the Larimer County Improvement District No.2012-1 (River Glen).

LARIMER COUNTY IMPROVEMENT DISTRICT NO.2012-1

By: [Signature]
Chair

DATE: 6 H 13
APPROVED AS TO FORM:
[Signature]
COUNTY ATTORNEY

EXHIBIT A

The lift station includes an alternating dual submersible pump system each with a capacity of 80 gallons per minute (gpm) or 115,200 gallons per day (gpd), automated controls for operation, automated flow meter to measure and record effluent flow from the lift station. The lift station building will house controls and ancillary equipment associated with the operation of the lift station.

The force main and gravity sanitary sewer main transfers effluent from the River Glen HOA lift station to the Town of Berthoud collection system at the Dry Creek Interceptor's intersection with South County Road 17. The force main is approximately 5,150 feet of 4-inch high density polyethylene (HDPE). The gravity sanitary sewer main is approximately 1,000 feet of 8-inch polyvinyl chloride (PVC). The force main transitions to a gravity sanitary sewer main at a manhole located within the Weld County Road 17 right of way.