

AGREEMENT TO PROVIDE RESIDENTIAL SEWER SERVICE

1. PARTIES. The Parties to this Agreement to Provide Residential Sewer Service ("Agreement") are: the **TOWN OF BERTHOUD**, a Colorado municipal government ("Town"); **RIVER GLEN HOMEOWNERS ASSOCIATION**, a Colorado non-profit corporation ("RGHOA"); and **RIVERSIDE FARM HOMEOWNERS ASSOCIATION** for Filing 1, a Colorado non-profit corporation ("RFHOA"), collectively the "HOAs", and shall specifically apply to the River Glen Subdivision and the Riverside Farm Subdivision, Phase 1.

2. RECITALS AND PURPOSES. The RGHOA owns and operates a sanitary sewer system and serves RFHOA's development by contractual agreement. This system is in need of future upgrades in order to meet federal and state health standards. In lieu of such system improvements, the HOAs desire to connect the existing private system to the Town's sanitary sewer system, which connection will require the installation of a line extension to the Town's existing facilities. 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 on RGHOA 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, including a new lift station ("Lift Station") and a new sanitary sewer line ("New Sewer Line") extending north from HOA property and within the public right-of-way of County Road 17 to connect with the existing sewer line, known as the "Dry Creek Interceptor" (such Lift Station and New Line collectively referred to as the "Facilities"). Under the terms of the County Agreement, the District will finance, construct, and own the Facilities until conveyed after repayment of the financing; provided, however, that the District shall not be responsible for the operation and maintenance of the Facilities. Upon retirement of the District's incurred debt through assessments to the HOAs (and by Line Reimbursement Fees charged to other potential users of the Facilities), the District shall transfer ownership of the Facilities to the HOAs which shall immediately transfer the Facilities to the Town. Accordingly, the purpose of this Agreement is to set forth the terms and conditions whereby the Town will process the sewage from the HOAs delivered to the Town's existing Dry Creek Interceptor and for the maintenance of such Facilities. The Parties covenant and acknowledge that the Recitals and Purposes are incorporated herein, and they further agree as follows:

3. SALE OF TAPS TO HOAs.

3.1 SEWER TAPS. The Town will provide eighty-six (86) sewer taps (sixty-five [65] sewer taps to RGHOA and twenty-one [21] sewer taps to RFHOA), upon payment to the Town of the fees for eighty-six (86) taps in the amount of \$6,285 per tap or the Town's then current tap fee, whichever amount is less as of the date of payment, such payment to be made on or before December 31, 2014. After such date, the price of the taps will be charged at the Town's then current rate for single family residences. Any taps beyond these eighty-six (86) taps will not be issued and no connections will be made to the District's system until both the District and Town are paid their respective fees. All parties shall give written notice to the other parties as to issuance of any taps or connections to the other party's Facilities.

3.2 MAINTENANCE OF FACILITIES. The Town agrees to maintain the Facilities from the time of connection to the Town's Dry Creek Interceptor and Town will continue to operate and maintain the Facilities after ownership of the Facilities is transferred to the Town. The Town shall be responsible for all of the costs and expenses of the operation, maintenance, replacement and repairs to the Facilities from date of connection to the Dry Creek Interceptor

as more fully described in the initial Operation and Maintenance Agreement that may be attached to this Agreement for informational purposes.

4. DESCRIPTION OF FACILITIES. See attached Exhibit A which is incorporated herein.

5. EASEMENTS.

5.1 County Road 4 - In the event that the Town annexes County Road 4, or any portion thereof in which the Facilities may be constructed and located, the Town agrees to grant the County and/or District, as the case may be, a license, easement or permit for the utilization of the right-of-way associated with County Road 4. Such license, easement or permit will expire upon transfer of the Facilities to the Town pursuant to this Agreement.

5.2 County Road 17 - The New Sewer Line shall be installed within the County Road 17 right-of-way. In the event that the Town annexes County Road 17, or any portion thereof in which the New Sewer Line may be constructed and located, the Town agrees to grant the County and/or District, as the case may be, a license, easement or other permits for the utilization of the right-of-way and new sewer line within the County Road 17 right-of-way. Such license, easement or permit relating to the New Sewer Line will expire upon the transfer of the new sewer line to the Town pursuant to this Agreement.

6. CONSTRUCTION. The HOAs agree that they will cooperate and coordinate, to the extent that the HOAs are permitted, in the engineering and design of the Facilities with the Town to ensure that the Facilities will conform to the Town's then existing standards and requirements; provided, however, that the parties acknowledge that final design and construction of the Facilities are subject to approval and inspection by Larimer County. The Town agrees to review all submitted plans within ten (10) working days of submittal. Construction of the Facilities shall not commence until the Town has approved the final design and construction plans, such approval to not be unreasonably withheld. Prior to construction by the District, the HOAs will convey to the Town perpetual, non-exclusive easements for access to the lift system, flow meter and pipeline that are acceptable to the Town and the HOAs. The Town, at its own cost and expense, will install a flow ("master") meter in the line leading from the Lift Station into the New Sewer Line connecting to the Town's sanitary sewer system.

7. ACCEPTANCE OF WASTEWATER. Upon completion of construction and connection of the Facilities to the Town's sanitary sewer system, the Town shall accept all residential sanitary waste water from the Facilities into the Town's sanitary sewer system. The Town shall charge the HOAs all applicable service fees that are charged to other in-Town users on a non-discriminatory basis and at the same rates that are charged to other in-Town users.

8. FEES AND BILLING.

8.1 Fees. The Town shall charge and invoice the HOAs as follows:

- (a) a monthly **processing fee** based upon the sanitary sewer flow measured by the master meter in accordance with the Town's established fee for the processing and treatment of bulk sewage (currently \$6.53 per thousand gallons);
- (b) a monthly **service charge** (currently \$27.06) per single family residential tap for only those households that are connected to the Town's sanitary sewer system; and

- (c) a monthly **lift station fee** for the operation and maintenance of the Lift Station (currently \$4.00 per single family residence) for those that are connected to the Town's sanitary sewer system.

These obligations of the HOAs shall continue after conveyance of the Facilities pursuant to paragraph 10 herein.

Such invoices shall be issued no more frequently than monthly, and no less frequently than quarterly at the mutual agreement of the Town and the HOAs. For the duration of this Agreement, the monthly processing fee plus the monthly service charge and monthly lift station fee shall not exceed the fees for the same services paid by in-town Berthoud residents; provided, however, that during the term of this Agreement, the Town reserves the right to individually bill each user of the Facilities in accordance with its then applicable policies.

8.2 Possible Surcharge. In addition, the Town will impose a surcharge for any hazardous waste not typically generated from residential usage, as that term is defined by the Colorado Department of Health. The HOAs will be responsible for all charges including, but not limited to, payment of additional fees and/or any fines levied because of hazardous wastes dumped into the Town's system through the pipelines of the subdivisions.

8.3 Use. The Lift Station and all pipelines are for transport only, and not for processing or sanitizing.

8.4 Additional Remedy. The parties agree that although each HOA is responsible for their payments to the Town for their respective subdivisions, if either or both of the HOAs become delinquent the Town may bill each property owner based upon the Town's established billing practices and each property owner shall be subject to the rights of the Town to place a lien and/or certify to Larimer County, the assessment lien for delinquent payments under this Agreement.

9. CONNECTION TO DRY CREEK INTERCEPTOR. The Town will pay the fee for connection of the New Sewer Line to be constructed by the District to the existing sewer main known as the Dry Creek Interceptor. This fee will not be an obligation of the HOAs or the District.

10. LINE REIMBURSEMENT FEE. The HOAs will charge a fee (herein, the "Line Reimbursement Fee") to any properties or parties other than those within the River Glen Subdivision and the Riverside Farm Phase I Subdivision for use of the Facilities or any portion thereof. At the time of issuance of all sewer tap connections by the Town of Berthoud for the Town's sanitation system to properties or parties other than the River Glen and Riverside Farm Filing 1 Subdivisions, the Town agrees that it will remit a Line Reimbursement Fee, when and if paid, as established by the HOAs from such new connector in addition to its regular fees and charges. If the amount of the Reimbursement Fee established by the HOAs is legally challenged or payment is not made, the Town is under no obligation to initiate or respond to litigation or collect the Line Reimbursement Fee.

10.1 All Collected Line Reimbursement Fees shall be paid to the HOAs within twenty-eight (28) days of collection by the Town to be utilized by the HOAs for repayment of the loan under the County Agreement. Pursuant to Paragraph 10, the HOAs will transfer ownership of the Facilities to the Town after the loan created by the District is paid in full. After such transfer of ownership, this Line Reimbursement Fee may continue to be assessed, and retained by, the Town against all new connectors to the Facilities.

10.2 The HOAs acknowledge there may be certain properties within the serviceable area that may be best served by other infrastructure and nothing herein shall be construed as imposing a requirement on the Town to require all properties in the area to utilize this New Sewer Line.

10.3 The HOAs understand and agree that, by entering into this Agreement, the Town makes no representations or warranties that any or all of the possible future tap connections to the Line Reimbursement Fee will be issued by the Town.

11. CONVEYANCE OF FACILITIES. Upon payment in full of the loan created by the District and the HOAs, the District will transfer ownership of the Facilities to the HOAs for the consideration of \$10. Immediately thereafter, the HOAs will transfer ownership of the Facilities to the Town, along with sufficient property rights to access and operate the same. Because it is anticipated this transfer will occur in the future, perhaps twenty (20) years into the future, the HOAs and the Town will, within ninety (90) days of execution of this Agreement, put into place documents and instruments which will facilitate this transfer.

12. NON-CONSENT TO ANNEXATION. Nothing herein shall be construed as consent to annexation to the Town, or a waiver by any property owner or member of the HOA to any objections to annexation of such properties into the Town. The Town agrees that after conveyance of the Facilities it shall not condition continued service upon annexation of the properties served under this Agreement.

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

14. 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.

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

16. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties as to the provision of sanitary sewer service and there are no oral or collateral agreements or understandings with respect to the funding of said Line Reimbursement Fee. 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.

17. 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.

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

19. 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.

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RIVER GLEN HOMEOWNERS' ASSOCIATION

Tye Riley
By:
Title: River Glen HOA President

5-23-2013
Date

RIVERSIDE FARM HOMEOWNERS' ASSOCIATION

Richard V. Johnson
By:
Title:

5-23-13
Date

TOWN OF BERTHOUD

Paul
By:
Title: Mayor

5-21-13
Date

ATTEST:

Mary K. Cowdin
Mary K. Cowdin, Town Clerk

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.