

PARKER WATER AND SANITATION DISTRICT

REAL PROPERTY INCLUSION AGREEMENT

THIS AGREEMENT, is made and entered into and shall be effective this ___ day of _____, 20_, by and between the PARKER WATER AND SANITATION DISTRICT, with an address of 18100 E. Woodman Drive, Parker, Colorado 80134 (the “District”) and Douglas County School District, with an address of 620 Wilcox St. Castle Rock CO 80104, (“Petitioner”).

WHEREAS, Petitioner has filed a Petition for Inclusion of certain real property being known as Pine Drive and more specifically described in **Exhibit A**, attached hereto (the "Property");

WHEREAS, Petitioner desires to proceed with the inclusion of the Property and requests the District to cause said Property to be included in the District pursuant to the Colorado Special District Act, the terms and conditions of the District’s Rules and Regulations, and the terms and conditions of this Agreement;

WHEREAS, the District is willing to include the Property into the District on the terms and conditions contained in this Agreement;

WHEREAS, Petitioner, by ownership of the above-described Property, owns certain rights to nontributary, and/or not nontributary groundwater underlying said Property, and to the extent historically used on or associated with, tributary water, which rights Petitioner is obligated to and agrees to convey to the District in accordance with the terms and conditions of this Agreement and the Rules and Regulations of the District;

WHEREAS, the District imposes certain fees and charges, including, without limitation, an inclusion fee, water and sewer system development fees, a water resources system development fee, a water resource toll fee in lieu of water dedications (if required and permitted by the District), water and sewer standby fees, among other fees, all of which may be amended from time-to-time and all of which applicable fees and charges Petitioner agrees to pay or cause to be paid in accordance with the Rules and Regulations of the District in effect at the time such fees are due;

WHEREAS, Petitioner acknowledges that the District’s policy is that development pays for development, which requires that the costs of all infrastructure and facilities needed to serve the Property shall be paid for by Petitioner except if a facility serves multiple unrelated developments, in which case Petitioner shall be responsible for the portion of the infrastructure and/or facilities serving the Property unless the District, in its sole discretion, determines in writing to assume some or all of the costs of the facility; and

WHEREAS, execution of this Agreement sets forth the terms and conditions of the District’s inclusion of the Property if the District’s Board of Directors, in the exercise of its sole discretion, approves the Petition for Inclusion, and this Agreement does not itself constitute approval of the Petitioner’s Petition for Inclusion.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, it is agreed as follows:

- I. **PRECEDENCE OF RULES AND REGULATIONS.** The Property shall be subject to the Rules and Regulations of the District as they may from time to time be amended. In the event of an inconsistency between the terms and conditions of this Inclusion Agreement and the Rules and Regulations, the provision of the Rules and Regulations shall control.

- II. **PETITIONER OBLIGATIONS.** On or before approval of a resolution including the Property in the District by the District's Board of Directors, Petitioner shall comply with the following:
 - A. **Payment and Document Delivery.** Deliver to the District the following:
 1. Inclusion Fee. Payment of an inclusion fee of one hundred thousand dollars (\$ 100,000 .00) representing a payment of Five thousand dollars (\$ 5,000 .00) per acre for the 20 acres that make up the Property.
 2. Special Warranty Deed. An executed special warranty deed, free and clear of all liens and encumbrances, conveying to the District all not nontributary and nontributary water and water rights appurtenant to the Property, and all tributary water rights used on or associated with the Property, which water and water rights are identified in **Exhibit B**. The conveyance shall meet the standards set forth in **Exhibit C**.
 3. Water Rights Fee-In-Lieu and Surcharge. Payment of a fee-in-lieu of water rights in the amount of _____ dollars (\$ _____ .00) representing a payment of _____ dollars (\$ _____ .00) per Water Resource Credit and a surcharge of _____ dollars (\$ _____ .00) for the first ten (10) Water Resource Credits for a total of _____ dollars (\$ _____ .00) for _____ () Water Resource Credits.
 4. Groundwater Consent Forms. Executed Colorado State Engineer GWS-3B Consent Forms for each aquifer associated with the water and water rights.
 5. Title Commitment. A current title commitment for the Property from a title insurance company acceptable to the District, which shall be updated at the District's request any time until issuance of an order of district court approving the inclusion resolution by the District's Board of Directors.

6. Property Owner Releases. As the District may require, fully executed releases of the water and water rights to be conveyed, from each person, as defined at C.R.S. § 37-90-137(4)(b.5)(II), with a recorded interest in the Property overlying any groundwater to be conveyed.
7. Additional Documentation. Any additional documentation required by the District.

B. Dismissal of Oppositions. Petitioner shall dismiss with prejudice, or withdraw, any statements of opposition to any District water case or proceeding, whether said case or proceeding is pending before the Colorado Water Court, any appellate court, or any administrative body or agency.

C. Well Conveyance and Abandonment. There are certain existing wells on the Property identified by Permit Numbers _____ (“Existing Wells”). All Existing Wells, upon direction by PWSO, shall be abandoned in accordance with the State of Colorado Rules and Regulations for Water Well Construction, Pump Installation, Cistern Installation, and Monitoring and Observation Well/Hole Construction (Colorado Water Well Contractor Rules, 2 CCR 402-2, September 1, 2016), as they may be amended from time-to-time at the sole cost of Petitioner; provided that if Petitioner desires to continue to use one or more of the Existing Wells until the Property is connected to District water service, the District may, at the District’s sole discretion, permit Petitioner to delay abandoning one or more of the Existing Wells and use the water from such wells via a license agreement between the District and Petitioner. Upon inclusion, the permits for any Existing Wells not abandoned and all associated water rights shall be conveyed to the District via special warranty deed free and clear of all liens and encumbrances. Any other wells subsequently discovered on the property at any time shall be abandoned at Petitioner’s sole cost in the same manner as set forth herein for Existing Wells.

D. Consent to Wellfield Inclusion. Be deemed to have irrevocably granted permission to the District to include the Property into the District’s adjudicated well field.

III. WELL SITE CONVEYANCE.

A. General Warranty Deed. By general warranty deed and in fee, pursuant to the standards set forth in **Exhibit C**, Petitioner shall convey to the District one well site, of five acres minimum, for each 300 single family residences or equivalent thereto, provided that if the development will serve less than the equivalent of 300 single family residences, the District may, in its sole discretion, permit well sites of lesser acreage. The well sites to be conveyed shall be identified as a part of the final platting process of all, or any phase of the development of the Property, and shall be subject to acceptance by the District or its engineers prior to, and as a condition of, final plat approval. Sites acceptable to the District must be easily accessible to and usable by drilling and repair equipment. Well sites must be

generally flat and rectangular to accommodate drill rigs, pump rigs, and related operation and maintenance equipment. The District shall cooperate with Petitioner in the selection and approval of well sites so as not to unreasonably interfere with Petitioner's platting and development plans and concepts, provided that the District shall have the final right, in its sole discretion, to determine whether a proposed well site is acceptable.

- B. Fee in lieu.** The District may, in its sole discretion, accept a fee in lieu of dedication of well sites, which shall be calculated by determining the fair market value of the property that would otherwise need to be dedicated to the District under Subsection A, above, prorated as appropriate based on the number of SFEs to be served. By way of example only, if the development required service equivalent to 150 SFEs, Petitioner would be required to pay the fair market value of 2.5 acres of property meeting the specifications set forth in Subsection A, above. The fee in lieu shall be paid prior to, and as a condition of, final plat approval for the phase of development of the Property subject to the wellsite conveyance obligation set forth herein.

- IV. AWARD OF WATER RESOURCE CREDITS.** In return for Petitioner's compliance with all obligations set forth in this Agreement, the District shall issue to Petitioner SFEs of Water Resource Credits, as that term is defined in the District's Rules and Regulations (the "Awarded Water Resource Credits"), for use on the Property in accordance with the District's Rules and Regulations, or on other property in the District to the extent, if at all, permitted by the District's Rules and Regulations, as they may be amended from time-to-time. Petitioner acknowledges that its rights to use the Awarded Water Resource Credits on property in the District other than the Property is subject to change at any time as the District's Rules and Regulations are amended, and that Petitioner has no vested right to use the Awarded Water Resource Credits on other property.

- V. INFRASTRUCTURE.** Except for wells (which the District will construct at its own expense), Petitioner shall be responsible for the design and construction and associated costs of all infrastructure required to serve the Property, including without limitation, all water and sewer lines, pump stations, related facilities and required easements (the "Infrastructure"). If any Infrastructure serving the Property will serve other property, Petitioner shall be responsible for the portion of the Infrastructure serving the Property, unless the District in its sole discretion determines to assume a portion or all such costs. Petitioner shall be responsible for any cost-sharing arrangements with third parties for shared Infrastructure; provided that the District may, in its sole discretion, participate in impact area cost-sharing agreements for oversized Infrastructure. The design and construction of the Infrastructure shall be subject to approval of the District. Petitioner acknowledges that the District shall have full and absolute authority, in the District's sole discretion, to mandate the design (including the location and route of infrastructure and whether Infrastructure must be oversized and shared with third parties) of all Infrastructure serving the Property, provided any such requirements are consistent with the District's then-applicable standards and specifications. All Infrastructure to be

conveyed to the District shall be located on property free and clear of all liens and encumbrances, and shall meet the standards set forth in **Exhibit C**.

VI. CONNECTION TO WATER SYSTEM.

A. Adequacy of Awarded Water Resource Credits.

1. For the entire development, or if the Property is to be developed in phases, for each phase of development, or for any plat amendment, rezoning, or similar modification, Petitioner shall submit to the District such information as the District requires to determine the water demand of the development or the phase being developed (which may include without limitation, water demand studies prepared by a qualified professional engineer or fixture counts of proposed development). The District may require such information at any time the District, in its sole discretion, determines it is necessary to determine the water demands of the proposed development, which may be without limitation prior to final platting, replatting, or issuance of a building permit. The District shall then determine the water demand, which Petitioner shall satisfy with the Awarded Water Resource Credits.
2. If insufficient Awarded Water Resource Credits exist to serve the Property as a whole, any phase thereof, or any modification to the development, Petitioner shall provide additional water supplies to the District, which at the District's sole discretion, may include surplus supplies from Petitioner's other properties within the District, or if the District determines that the District has water available for such purpose and that it is in the District's best interest, supplies acquired by payment to the District of a fee-in-lieu of a water dedication as specified in the Rules and Regulations of the District, in order to allow connection of that project or phase of development to the water supply system of the District. A surcharge in an amount determined from time to time by the Board of Directors, shall be assessed upon any payment by Petitioner of a fee-in-lieu in excess of ten (10) SFEs to satisfy the water requirements set forth herein. If neither the District nor Petitioner has sufficient water available, Petitioner shall revise its development plan for that project or phase so that its demand will not exceed the amount of water available.
3. If the water credits allocated to a particular phase of development are more than adequate to serve that phase, then Petitioner may apply such excess credits to subsequent phases of development, but the determination that there are excess credits in a particular phase of development shall be made solely by the District and shall be made at the time that development of such subsequent phase is approved. The requirement that Petitioner provide sufficient water to serve the demand on the Property shall be a continuing and perpetual obligation. If the need for additional water to serve the

Property arises in the future due to changed development plans or water demands on the Property, Petitioner and its successors-in-interest shall be solely responsible for satisfying such deficiency as permitted herein.

- B. Hold Harmless.** Petitioner acknowledges that the Water Resource Toll required of Petitioner (either via conveyance of Petitioners' water rights or by payment of a fee-in-lieu, as permitted by the District) shall be based on the District's water demand criteria for the uses located on the Property, provided that any water demand in excess of the amount determined by the District shall require Petitioner to convey additional water rights or pay a fee-in-lieu as permitted by the District. The District assumes no responsibility for, and Petitioner holds the District harmless from, the eventuality that there may not be sufficient water to support the development of the entire Property.

VII. DISCLAIMER AND WAIVER OF CLAIMS. The District hereby expressly disclaims any liability for and Petitioner does hereby waive and forego any claims or demands against the District for any cause or circumstances whatsoever arising from or in relation to the District's inability to provide water and sewer service to the subject Property as contemplated by this Agreement.

VIII. REJECTION OF INCLUSION. Nothing set forth in this Agreement shall be deemed to require the District to approve Petitioner's Petition for Inclusion. If the Petition for Inclusion is not approved by the District, the District shall return uncashed instruments for any fees required to be paid to the District under this Agreement and shall refund Petitioner for any amounts already paid to the District under this Agreement; provided that Petitioner shall not be entitled to a refund of fees paid by Petitioner for the District's legal and consultant costs incurred in reviewing the Petition for Inclusion and advising the District. The District shall have no liability for any other expenses or costs incurred by Petitioner.

IX. MISCELLANEOUS.

- A. Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Douglas County, Colorado.
- B. No Waiver.** Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the District shall not constitute a waiver of any of the other terms or obligation of this Agreement.
- C. Integration.** This Agreement and the following attached exhibits, which are incorporated into and made a part of this Agreement by this reference, constitute the entire Agreement between Consultant and the District, superseding all prior oral or written communications:

Exhibit A – Property Legal Description

Exhibit B – Water and Water Rights

Exhibit C – Real Property and Water Conveyance Standards

Exhibit D - Water Demand Study

Exhibit E - Addendum

Exhibit F - Well License Agreement

- D. Third Parties.** There are no intended third-party beneficiaries to this Agreement.
- E. Notice.** Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.
- F. Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.
- G. Modification.** This Agreement may only be modified upon written agreement of the Parties.
- H. Governmental Immunity.** The District and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the District and its officers, attorneys or employees.
- I. Runs with Land.** It is mutually agreed that all the covenants and agreements contained herein shall run with the Property and shall extend to and be binding upon the successors and assigns of the respective parties. Petitioner consents to this Agreement being recorded against the Property in the office of the Clerk and Recorder of Douglas County, Colorado.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first set forth above.

[Signatures on Following Page]

PETITIONER:

PARKER WATER & SANITATION DISTRICT

(Company Name)

18100 E. Woodman Drive
Parker, Colorado 80134

(Address)

(Signed)

Ron R. Redd, P.E., District Manager

(Printed Name, Printed Title)

Attest: _____

Attest: _____

STATE OF COLORADO)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, as _____ of _____.

Witness my hand and official seal.
My commission expires: _____

Notary Public

STATE OF COLORADO)
) SS.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by Ron R. Redd, as District Manager of the Parker Water and Sanitation District.

Witness my hand and official seal.
My commission expires: _____

Notary Public

EXHIBIT A

LEGAL DESCRIPTION - PER DEED (REC. NO. 2013073297)

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 6 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF DOUGLAS, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 15 WHENCE THE NORTHEAST CORNER OF SAID SECTION 15 BEARS N00°30'58"W, A DISTANCE OF 5349.66 FEET; THENCE S89°53'49"W, ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 15, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S89°53'49"W, ALONG SAID SOUTH LINE, A DISTANCE OF 660.00 FEET TO THE SOUTHEAST CORNER OF BLOCK 12 OF PARKER NORTH AS RECORDED AT RECEPTION NO. 247647; THENCE N00°30'59"W, ALONG THE EAST LINE OF SAID BLOCK 12, A DISTANCE OF 1187.73 FEET TO THE SOUTHEAST CORNER OF TRACT H OF SAID PARKER NORTH; THENCE N89°54'12"E, ALONG THE SOUTH LINE OF SAID TRACT H, A DISTANCE OF 660.00 FEET TO THE SOUTHEAST CORNER OF SAID TRACT H, BEING ON THE WEST RIGHT OF WAY LINE OF PINE DRIVE; THENCE S00°30'58"E, ALONG SAID WEST RIGHT OF WAY LINE, A DISTANCE OF 1187.66 FEET TO THE POINT OF BEGINNING.

EXHIBIT B

[Water and Water Rights]

EXHIBIT C

[Real Property and Water Conveyance Standards]

The conveyance to the District of interests in real property, including without limitation well sites, water, and water rights, wells, and permits, shall satisfy, at a minimum, the following standards, which may be modified at the District's sole discretion:

1. The conveyance is via special warranty deed for water interests and general warranty deed for well sites and other real property, subject only to exceptions deemed acceptable to the District in its sole discretion.

2. Free and clear of all liens and encumbrances, provided that with respect to non-water related conveyances, the District may in its sole discretion accept releases and/or subordinations of interests that are intended to burden the subject property being conveyed, such as mortgages. With respect to water and water rights, the District may accept partial releases of water and water rights from lenders who are secured by deeds of trust or mortgages, and may accept deeds or releases from all other persons as defined in C.R.S. § 37-90-137(4)(b.5)(III) shown on the title commitment to have a recorded interest in the property overlying any groundwater to be conveyed.

3. Prior to any conveyance, a title commitment deemed acceptable to the District in its sole discretion shall be provided by Petitioner. An updated title commitment may be required by the District up to approval of the inclusion by the district court. The District may require Petitioner to provide a title insurance policy at the Petitioner's cost.

4. All conveyance deeds and related documents must be fully executed by Petitioner (and any third-parties, as applicable), notarized, and delivered to the District before District approval of the inclusion petition. The District shall have sole discretion to establish the date of execution of such documents.

5. The District shall execute and immediately record deeds and any other related recordable documentation upon approval of the inclusion by the District, or return such documentation should the District not approve the petition for inclusion. In the event the district court with jurisdiction over the Parker Water and Sanitation District (Douglas County District Court, Colorado in Case Number 1961CV3121) does not approve the inclusion or a court of competent jurisdiction voids the inclusion, the District shall re-convey the subject property to Petitioner via quit claim deed.

6. Petitioner shall not, without written authorization from the District, convey the Property to a third-party until the District has recorded all deeds and related documentation conveying water, water rights, and related water assets.

EXHIBIT D

[Insert any current Water Demand Study]

EXHIBIT E

[Insert any Addendum]

EXHIBIT F

[Insert any Well License Agreement]