

**AGREEMENT
FOR DISTRICT-BUILT FACILITIES FUNDED BY DEVELOPER**

THIS AGREEMENT FOR DISTRICT-BUILT FACILITIES FUNDED BY DEVELOPER (the "Agreement") is made and entered into as of the date of mutual execution of this Agreement as set forth below, by and between Widefield Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), whose mailing address is 8495 Fontaine Blvd., Colorado Springs, Colorado 80925, and The Lorson, LLC (the "Developer"), whose mailing address is 212 N. Wahsatch Ave, Suite 301, Colorado Springs, CO 80903 (the District and the Developer are sometimes referred to herein individually as a "Party" and collectively as the "Parties").

WHEREAS, Developer has acquired, owns, or has an interest in certain tract(s) in El Paso County, Colorado, more particularly described as: Lorson Ranch (the "Property"); and

WHEREAS, the Property is subject to the terms and conditions of the Service Agreement, dated May 11, 2005, and recorded in the real property records for El Paso County, Colorado under Reception No. 205078708 (the "Service Agreement"), whereby the Developer is responsible for construction and financing of the water and wastewater facilities necessary for the District to provide service to the Property; and

WHEREAS, Developer desires to fund the District's design and construction of water facilities identified and known by the parties as the Rolling Hills Tank (the "Facilities"), and to have those facilities, main lines, and related appurtenances become a part of the District's public water and wastewater utility system; and

WHEREAS, Section 6.2 of the District's Rules and Regulations authorizes the District to design and construct the Facilities in cases where the Developer funds all costs of the Facilities, including design and construction costs, and upon terms and conditions acceptable to the District in compliance with its Rules and Regulations, policies, and resolutions, and

WHEREAS, the District desires that the construction of the Facilities conform to its Rules and Regulations and engineering and construction standards, and that all construction contracts for the Facilities shall be subject to public bidding as required by Colorado law; and

WHEREAS, the Parties desire to fund, design, and construct the Facilities in accordance with the term hereinafter set forth.

WITNESSETH:

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the Parties as follows:

1. Recitals Incorporated. The foregoing recitals are hereby incorporated into this Agreement as if fully set forth herein.
2. Purpose/Intent. The purpose of this Agreement is to set forth the terms and conditions upon which the Developer will cooperate and fund the design and construction of the

Facilities by the District. Any and all costs associated with the Facilities shall be the sole responsibility of the Developer. It is the express intent of the Parties that this Agreement shall not alter or amend the terms of the Service Agreement and is intended to provide an alternative means for construction of the Facilities to serve the Property, as authorized by the District's Rules and Regulations.

3. Facilities. The Facilities shall generally consist of the design and construction of a 2 to 4 million gallon above ground storage tank, along with any necessary infrastructure, main lines, and related appurtenances. The Facilities shall be designed and constructed in accordance with the District's standards and specifications, and in accordance with the District's approved engineering plans for said Facilities.

4. Easements/Rights-of-Way. Any property, easements, and rights-of-way required for the Facilities, as determined by the District, shall be secured and provided by the Developer at its sole expense. Developer shall be responsible for any costs associated with land use approvals, title review, transfer of title, or any other costs associated with securing the necessary property rights for construction of and continued operation and maintenance of the Facilities by the District.

5. Design. The District will design the Facilities in accordance with the District's Rules and Regulations and engineering and construction standards. The District and Developer will cooperate in the siting, location, and design of said Facilities in order to coordinate the location of the Facilities in relation to the Developer's planned use of the Property. Developer is responsible for all pre-construction, permit, bid and bid-review, and design costs associated with the Facilities ("Design Costs"). As of the date of this Agreement, the Design Costs are anticipated to be approximately \$124,950, including the cost of District Engineer and consultant engineer time, which shall be paid by the Developer to the District upon execution of this Agreement as a deposit. Any unused funds deposited with the District will be, at the election of Developer, either returned to the Developer or applied to construction costs as described below. If Design Costs exceed the initial deposit listed above, Developer shall pay for all Design Costs within thirty-days of receipt of invoices substantiating additional Design Costs provided by the District. Upon request, the District shall provide to Developer invoices of third-party consultants or engineers and an accounting of District Engineer time associated with the Facilities billed at a cost of \$82.40 per hour. When the design of the Facilities is completed to a degree sufficient to allow for solicitation of bids, and upon approval of the design by both Parties, the District will solicit public bids for a contractor to construct the Facilities.

6. Construction. The District will be responsible for construction and completion of the Facilities, which are expected to be completed by January 1, 2022. The District will be responsible for soliciting public bids for completion of the Facilities as described above and will accept the lowest, responsive, responsible bid, in the sole discretion of the District, to complete the Facilities. Upon the District's selection of the lowest, responsive, responsible bidder, the District will notify and provide a copy of the winning bid to Developer. If the Developer elects to proceed with construction of the Facilities, it shall deposit with the District 100% of the total contract price plus contingency, engineer's construction services and material testing for the proposed construction contract between the District and contractor for construction of the Facilities (collectively, the "Construction Costs"). If additional change orders or increases to the

Construction Costs are required for completion of the Facilities, Developer shall deposit the full amount thereof prior to the District's approval or execution of any change order increasing the Construction Costs.

(a) Developer is also subject to the Water and Sewer Offsite Improvements Participation and Cost Recovery Agreement, dated June 10, 2008, as amended by the Addendum thereto, dated July 10, 2018 (the "Cost Recovery Agreement"). Any proportional costs of upsizing of the Facilities to benefit other property, as specified in the Cost Recovery Agreement, may be eligible and subject to reimbursement and cost recovery pursuant to the terms of the Cost Recovery Agreement.

7. Accounting/Annual Appropriation. Within sixty (60) days following final completion of the Facilities and final payment made to the contractor, the District will complete an accounting of the actual Design Costs and actual Construction Costs and submit the same to Developer. Any amounts owing to Developer or to the District shall be paid by the appropriate party within thirty (30) days of such notice, unless the Parties dispute any aspect of the accounting. It is the intent of the Parties that Developer deposit in advance and pre-pay for any estimated costs associated with the Facilities, but the Parties recognize that timing of payment and expected costs may vary. The District's obligations hereunder are expressly made subject to the appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the District's Board of Directors.

8. Term. The term of this Agreement shall extend from the date hereof through and including 1 day of July 2022, unless terminated earlier or extended by the mutual agreement of the Parties.

9. Lien. Developer agrees that the District may and shall record a lien against the Property for any Design Costs or Construction Costs that remain unpaid by Developer, which lien shall be binding upon any successors or assigns of the Developer.

10. Assignment. The Developer shall not assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the District, which may approve or reject such assignment in its sole and absolute discretion.

11. Amendment or Modification. This Agreement shall only be amended or modified by a mutually executed written document.

12. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

13. Binding Effect. This Agreement constitutes the entire agreement between the Parties and shall be binding upon the Parties, their officers, employees, agents and assigns and

shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of the Parties.

14. Recording. This Agreement, or a memorandum thereof, may be recorded by the District against the Property.

15. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and Developer any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and Developer shall be for the sole and exclusive benefit of the District and Developer.

16. Law; Venue. The laws of the State of Colorado shall govern the construction, interpretation, execution and enforcement of this Agreement. Venue for any dispute between the Parties arising out of or relating to this Agreement shall be in the State of Colorado District Court for the county in which the Principal's mailing address is located.

17. Severability. If any provision of this Agreement is held to be unenforceable or invalid by a court of competent jurisdiction, such provision shall be reformed to the minimum extent necessary to cause such provision to be valid, enforceable and legal while preserving the intent of the parties as expressed in, and the benefits to the parties provided by, this Agreement. In the event that any provision cannot be so reformed, such provision shall be severed from this Agreement and an equitable adjustment shall be made to this Agreement (including, without limitation, addition of necessary further provisions to this Agreement) so as to give effect to the intent so expressed and the benefits so provided.

18. Counterparts, Electronic Signatures and Electronic Records. This Agreement may be executed in two counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, § 24-71.3-101, et seq., C.R.S. The Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of the Agreement, solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature on the grounds that it is an electronic record or an electronic signature or that it is not in its original form or is not an original.

19. Representation. The undersigned hereby represents and warrants to and for the benefit of the District that he/she individually has the full power and legal authority to enter into this Agreement on behalf of the Developer, and it has taken or performed all requisite acts or actions that may be required by the organizational or operational documents of Developer to confirm its authority to execute, deliver and perform its obligations under this Agreement.

20. Conditions Precedent. The performance by Developer of its obligations set forth herein shall constitute conditions precedent to the performance of the obligations of the District as set forth herein.

[signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement for District-Built Facilities Funded by Developer as of the day and year first set forth above.

DEVELOPER:

Lorson, LLC, a Colorado limited liability company

By: 

Its: President


DISTRICT:

WIDEFIELD WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: 

District Manager

Attest:


Secretary