

**Subject:** Cherokee Meeting  
**Date:** Thursday, February 10, 2022 at 10:17:50 AM Mountain Standard Time  
**From:** Jason Kvols  
**To:** Williams - DNR, Joanna, Lisa Thompson  
**BCC:** John Mick  
**Attachments:** 27.97 AF Water Service Agreement CMD and EUC.pdf, EUC 54.03 AF Water Service Agreement-Fully Executed.pdf, First Amendment to MBC Service Agreement.pdf, image001.jpg, Resolution and Termination of PG Service Agreement.pdf

Good morning, Joanna and Lisa,

We had the meeting with Cherokee Metro yesterday afternoon! I have attached the documents that clear up the commitment issues with the Tipton Well:

- First Amendment to MBC Service Agreement- this reduces the amount committed to Marksheffel Business Center by 27.97AF signed by both CMD District and Marksheffel Business Center
- 27.97 AF Water Service Agreement CMD and EUC- this is the service agreement we signed with Cherokee Metro that is valid and recommits the 27.97 AF
- Resolution and Termination of PG Service Agreement- Here is the resolution and termination for the Powers and Galley Water LLC service agreement for the 54.03 AF Signed by the Board and us
- EUC 54.03 AF Water Service Agreement.- this is the service agreement we signed with Cherokee Metro that is valid and recommits the 54.03 AF

These should be all the documents that are needed to issue a finding of sufficiency. I would like to have a quick call to discuss anything else you both would need and see what the best process for you to send updated letters to the county.

Does today or tomorrow work?

Thanks!

Jason Kvols  
Development Manager



Mayberry Communities  
Cell: 719-426-7810

**FIRST AMENDMENT TO THE WATER AND SEWER SERVICE AGREEMENT  
BETWEEN  
CHEROKEE METROPOLITAN DISTRICT  
AND  
MARKSHEFFEL BUSINESS CENTER, LLC**

This agreement is effective February 9, 2022 between Cherokee Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 6250 Palmer Park Blvd, Colorado Springs, CO 80915. (the "District") and Marksheffel Business Center, LLC located at 454 Riverview Cr., Coquitlam, BC V3C 4X9, PO Box 38939, Colorado Springs, CO 80937 ("MBC").

**RECITALS**

**WHEREAS**, MBC entered into a Water and Sewer Service Agreement with the District on December 4, 2006 which was recorded on December 15, 2006 at Reception #206182337 in the property records of El Paso County, Colorado ("MBC Service Agreement"), pursuant to which the District agreed to provide water service to the "Development" described therein, in an amount of up to 68.29 ac-feet per year.

**WHEREAS**, Cherokee Water, LLC ("CW LLC") is a limited liability company formed in 2006 under the laws of the State of Colorado.

**WHEREAS**, CW LLC is managed and governed pursuant to an Operating Agreement originally executed by its Members and representatives of the District on December 4, 2006 and recorded on December 15, 2006 at Reception #206182330 in the property records of El Paso County, Colorado, and as amended by the First Amended Operating Agreement of Cherokee Water, LLC executed on February 9, 2022 (the 2006 Operating Agreement and the First Amended Operating Agreement shall collectively be referred to as the "CW LLC Operating Agreement").

**WHEREAS**, Section 5.1 of the CW LLC Operating Agreement provides that MBC is the owner of a Member interest in CW LLC that entitles MBC to water service in the amount of 68.29 acre-feet per year, based on a proportionate Member interest in the Water Rights as described in the CW LLC Operating Agreement ("Water Rights").

**WHEREAS**, by letter to Grant Langdon as Owner/Manager of MBC, the District has confirmed that the District has sufficient water and sewer capacity for the remainder of the Wilshire and Marksheffel Business Center developments, and that MBC's Member interest in CW LLC entitled MBC to an additional 27.97 acre-feet per year of excess water beyond the amount that would be required for the Wilshire and Marksheffel Business Center developments (the "Excess Water Interest").

**WHEREAS**, on October 1, 2021, MBC assigned 40.958% of its Member interest in CW LLC to EUC, such percentage being commensurate with a corresponding interest in 27.97 acre-feet per year in the Water Rights and therefore commensurate with the Excess Water Interest.

**WHEREAS**, the District and MBC desire to amend the MBC Service Agreement to reduce the amount of the water service commitment therein to exclude any entitlement to water service based on the Excess Water Interest.

**AGREEMENT**

1. The Recitals above are hereby incorporated into this Agreement.
2. The MBC Service Agreement is hereby amended to reduce any and all commitment(s) by the District to provide water service to a maximum amount of 40.32 acre-feet per year. The District shall have no obligation to provide water service to MBC in excess of 40.32 acre-feet per year pursuant to the MBC Service Agreement, as amended herein.

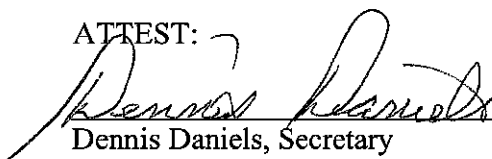
**AGREED AND ACCEPTED:**

CHEROKEE METROPOLITAN DISTRICT

By: 

Steve Hasbrouck, President

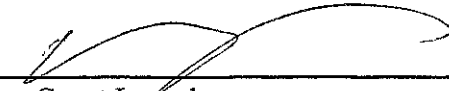
ATTEST:

 9 FEB 22  
Dennis Daniels, Secretary

(SEAL)

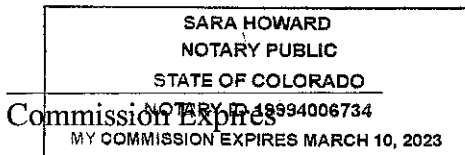
**AGREED AND ACCEPTED:**

MARKSHEFFEL BUSINESS CENTER, LLC

By:   
Grant Langdon

The forgoing Amendment to Water and Sewer Service Agreement was executed before me this  
*9<sup>th</sup>* day of *February* 2022 by Grant Langdon of Marksheffel Business Center,  
LLC.

*Sara Howard*  
Notary Public  
*6250 Palmer Park Blvd*  
*Colorado Springs, CO*  
Address





WATER SERVICE AGREEMENT BETWEEN  
CHEROKEE METROPOLITAN DISTRICT AND  
ELLCOTT UTILITIES COMPANY, LLC

This Agreement is effective September 21, 2021 between Cherokee Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 6250 Palmer Park Blvd., Colorado Springs, Colorado 80915 ("Cherokee"); and, Ellicott Utilities Company, LLC, a California Limited Liability Company having an address of P.O. Box 231961, Encinitas, CA 92023 ("EUC").

RECITALS

WHEREAS, EUC is a water supply utility for a development of approximately 553 acres of real property located in El Paso County Colorado ("the Development"). A location map and the legal description of Development are attached as **Exhibit A**.

WHEREAS, Cherokee Water LLC was created in order to hold title to a certain water right and to provide water service commitments to Members of Cherokee Water, LLC's proposed new developments within Cherokee in order to satisfy water supply sufficiency requirements from El Paso County and the State of Colorado for those developments;

WHEREAS, in order to establish the framework for the holding of title to the Water Rights by Cherokee Water, LLC and for the treatment and delivery of the water right by Cherokee, Cherokee Water, LLC and Cherokee have entered into two agreements: the Cherokee Water, LLC Operating Agreement (the "LLC Operating Agreement") and the Water Service Agreement between Cherokee and Cherokee Water, LLC (the "Water Service Agreement");

WHEREAS, EUC has obtained the outstanding portion of a membership interest in Cherokee Water, LLC that was formerly owned by Marksheffel Business Center (Marksheffel). This membership interest includes an interest in 27.97 acre-feet per year derived from a certain water right (the "Water Right"), as more fully described in the Certificate of Ownership of Cherokee Water, LLC attached as **Exhibit B**; and

WHEREAS, EUC now desires to obtain a commitment from Cherokee to provide water from the Water Right to the Development.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### **AGREEMENT**

- I. Conditions Precedent: This Agreement, and all of Cherokee's obligations to deliver the Water Right as provided herein, including the obligations to accept the Water Right as a valid legal and physical supply of water for the Development, are expressly contingent upon: (1) EUC's compliance with the LLC Operating Agreement and the Water Service Agreement; (2) the acceptance by the State Engineer, the Upper Black Squirrel Creek Ground Water Management, and El Paso County of the Water Right as a valid and sufficient legal and physical supply of water for The Development; and, (3) full compliance by EUC and the Development owners with all of Cherokee's policies, rules and regulations, as they now exist, and as may be amended or adopted from time to time.
- II. Water Service to the Development to be Provided by Cherokee Water, LLC through its Water Service Agreement with Cherokee.
  - A. Delivery. Subject to the terms and conditions of this Agreement, the LLC Operating Agreement and the Water Service Agreement, Cherokee agrees to deliver to the Development up to 27.97 acre-feet per year of the water obtained from the Water Right (the "Subject Water"). Cherokee shall have no obligation to supply water service to the Development in excess of 27.97 acre-feet per year.
  - B. Delivery Location. The point of delivery to EUC shall be at a meter ("Meter") installed within the existing building located approximately at a point 80 feet South of a point 1300 feet east along the section line between sections 10 and 15 from the corner of sections 10, 11, 14, and 15 in Township 14 South, Range 63 West of the 6th Prime Meridian, as depicted in Exhibit A (the "Delivery Location").
  - C. Delivery Measurement and Accounting. EUC shall provide Cherokee with an accounting of all Subject Water delivered under this Agreement to Cherokee on a monthly basis, including readings from the Meter.
  - D. Place of Use. The Subject Water shall be used by EUC within the Development.
  - E. Cherokee agrees that the Subject Water will be dedicated solely for the purpose of delivery to the Development. The Parties understand and acknowledge that the



Subject Water is and will be commingled with other Cherokee water sources and that the water service actually delivered to the Development will not consist 100% of the actual physical water withdrawn from the Water Right.

- F. Price. The Price for the Subject Water shall not exceed four thousand dollars (\$4,000.00) per acre foot of Subject Water which rate is based on Cherokee's standard rate for bulk water deliveries to out-of-district customers. Every five (5) years, the Price will be adjusted based on the total change in the Consumer Price Index (CPI) for Denver-Boulder since the previous adjustment.
- G. Water Quality. The water provided pursuant to this Agreement shall be raw, untreated water. Cherokee does not guarantee the quality of the Subject Water, and EUC is solely responsible for meeting and maintaining compliance with all state and federal safe drinking water regulatory requirements or other applicable laws and regulations that may exist now or in the future. EUC is solely responsible for treating, disinfecting, or otherwise making the Subject Water suitable for its intended use.
- H. Delivery Infrastructure.
1. Connection to Cherokee System. The parties acknowledge that the Subject Water will be delivered to the Delivery Location from a pre-existing connection to Cherokee's water supply pipeline ("Connection Point"). EUC shall be solely responsible for all costs related to the infrastructure beyond the Connection Point, including but not limited to any pipelines, meters, valves, and backflow prevention devices.
  2. Installation of Meter. EUC shall provide Cherokee with plans for the specifications and design of the Meter, and the Meter shall not be installed until the plans have been approved by Cherokee in writing. EUC shall notify Cherokee upon completion of the Meter installation. Cherokee shall inspect the Meter within ten (10) days of such notice. Cherokee will not deliver any Subject Water hereunder until it has approved the Meter in writing. Subject to the warranty obligations as set forth in Cherokee's Rules and Regulations, and subject to EUC's maintenance and other obligations during the warranty period, EUC shall dedicate and Cherokee will accept the Meter. At such time as the warranty period expires, and Cherokee accepts the Meter, EUC shall convey the Meter to Cherokee, free and clear of all liens and encumbrances.

Once the Meter has been accepted by Cherokee and conveyed to Cherokee by EUC, the Meter shall become the property of Cherokee and shall be maintained and operated by Cherokee.

3. Security and Access. EUC shall timely provide Cherokee access to the Delivery Location as reasonably requested by Cherokee, for the purpose of inspecting infrastructure, confirming meter readings, or any other purposes related to this Agreement. EUC shall comply with all security requirements for public water supply infrastructure as required by law.
4. Infrastructure and Condition. Cherokee is not responsible for delivery of the Subject Water beyond the Delivery Location, including the construction of any infrastructure, as necessary. EUC is solely responsible for the development, operation, maintenance, and all other aspects of delivery and provision of water beyond the Delivery Location, including but not limited to the construction of water infrastructure, including final water treatment and water connections, procurement of a Public Water System ID (PWSID) number from the Colorado Department of Public Health & Environment, compliance with all public water system requirements, and any other actions necessary to take delivery from the Delivery Location and deliver the Subject Water to its customers. EUC shall remain responsible for the operation, maintenance, repair, and replacement of the infrastructure needed to deliver the Subject Water to its customers, absent express written agreement to the contrary. Cherokee expressly disclaims liability of any kind resulting from or arising out of the delivery of water beyond the Delivery Location.
5. Firefighting Capability. EUC shall be solely responsible for procuring, constructing, operating, and maintaining any water supply infrastructure and/or water necessary to supply water for firefighting purposes, including but not limited to the maintenance of storage reserves and system capacity sufficient to provide water at the rates and amounts required for such purposes. Cherokee shall have no obligation to provide Subject Water above the rates and amounts set forth herein, even in emergency situations.
6. No Retail Service by Cherokee. Cherokee shall have no obligation with respect to the retail services associated with the delivery of Water to EUC's customers. It will be the sole obligation of EUC to respond to the individual water demands of its users, including but not limited to billing and collecting payments for water service in a manner that ensures it meets its obligations under this Agreement.



### III. General Provisions

- A. Billing and Payment. Cherokee shall bill EUC each month for any Subject Water delivered under this Agreement during the preceding month. EUC shall pay such invoices within thirty (30) days of receipt.
- B. Rules and Regulations. Cherokee's provision of the Subject Water pursuant to this Agreement shall be subject to the rules, regulations, policies and resolutions promulgated by Cherokee from time to time. Cherokee shall not be obligated to provide the Subject Water if EUC or its successors in interest to all or any part of the Development property are not in compliance with this Agreement.
- C. Remedies for Breach. In the event a Party deems the other Party to be in default, it shall provide written notice indicating the event of default. The defaulting party shall have thirty (30) days from the date of the notice to cure the stated default. In the event of a default which is not cured within the Cure Period or otherwise not subject to these cure provisions, the non-breaching Party shall be entitled to the following remedies, in addition to those otherwise provided at law or equity:
  - 1. If EUC remains in breach of this Agreement following the Cure Period, Cherokee may suspend deliveries of the Subject Water to EUC until the default is cured following advance written notice to EUC of the forthcoming suspension. Once the default is cured, however, Cherokee agrees to resume delivery of the Subject Water pursuant to this Agreement.
  - 2. If the breach is EUC's failure to meet its monthly obligation to pay for the Subject Water delivered, Cherokee shall be entitled, in addition to any other remedies available at law, to collect a late fee of five percent (5%) of the amount not paid prior to expiration of the Cure Period, and interest shall accrue on all amounts past-due at an annual rate equal to the prime rate of interest announced by Wells Fargo Bank, Colorado Springs, Colorado, as of the expiration of the Cure Period, plus five percent (5%). Cherokee shall also be entitled to reimbursement for the costs of collection, including reasonable attorney fees.
  - 3. The non-breaching Party may file suit to recover amounts due and seek damages for breach of this Agreement by the other Party.
- D. Notices. Whenever notice is required to be given hereunder, it shall be in writing and may be sent by email or delivered or mailed to the Party entitled thereto by

registered or certified U.S. mail, return receipt requested. If delivered or sent by email, said notice shall be effective and complete upon delivery or transmission of the email. If mailed, said notice shall be effective and complete as of the date of mailing. Until changed by notice in writing, notice shall be given as follows:

To Cherokee:       General Manager  
                          Cherokee Metropolitan District  
                          6250 Palmer Park Blvd.  
                          Colorado Springs, CO 80915

To EUC:               Jason Kvols, Development Manager  
                          Ellicott Utilities Company, LLC  
                          P.O. Box 231961  
                          Encinitas, CA 92023

- E. No Operating Obligation. Nothing in this Agreement shall be deemed or construed as creating any obligation on Cherokee to operate its facilities in any particular manner, so long as Cherokee complies with the express terms of this Agreement.
- F. Indemnification. Subject to the provisions of the Colorado Governmental Immunity Act, and without waiving the provisions of same, EUC, to the fullest extent permitted by law, shall indemnify and hold harmless Cherokee and its directors, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees and court costs, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or related to this Agreement, except to the extent they result from Cherokee's reckless or willful acts. This includes, but is not limited to, any damages which may arise from Cherokee's delivery of water and the transportation of water under this Agreement by means of any water carriage facilities beyond the Connection Point.
- G. No Waiver of Governmental Immunity Act. By entering into this Agreement, the Parties and their directors, agents and employees are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and other rights, immunities and protections provided by the Colorado



Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the Parties.

- H. Entire Agreement. This Agreement contains the entire agreement between the Parties. The Parties agree there have been no representations made other than those contained herein; that this Agreement constitutes their entire Agreement; and further agree that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.
- I. Amendment. Amendments to this Agreement shall only be effective if entered into in writing with the same formality as this Agreement and mutually approved by the Parties.
- J. No Third Party Beneficiaries. There are no express or implied third party beneficiaries of this Agreement. No third party has the right to enforce this Agreement.
- K. No Assignment. No right hereunder shall be assigned by any of the Parties, except as mutually agreed to in writing.
- L. Governing Law and Venue. This Agreement shall be interpreted pursuant to the laws of the State of Colorado and venue for any disputes shall be in El Paso County, Colorado.
- M. Waiver of Rights. The failure of any Party to exercise any right under this Agreement shall not be deemed a waiver of such Party's right and shall not affect the right of such Party to exercise at some future time the right or rights or any other right it may have under this Agreement.
- N. Force Majeure. No Party to this Agreement shall be liable for any delay or failure to perform due solely to conditions or events of force majeure, as that term is defined in this paragraph; provided that: (i) the non-performing Party gives each other Party prompt written notice describing the particulars of the force majeure based upon satisfactory evidence; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used in this paragraph, force majeure shall mean any delay or failure of a Party to perform its obligations under this Agreement caused by events beyond the Party's reasonable control and without the fault or negligence of the Party, including, without limitation (a) acts of God; (b) sudden actions of the elements such as floods, earthquakes, hurricanes,

or tornadoes; (c) sabotage; (d) vandalism beyond that which can be reasonably prevented by the Party; (e) terrorism; (f) climate variability; (g) war; (h) riots; (i) fire; (j) explosion; (k) blockades; (l) insurrection; (m) strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); (n) action of the government (except the parties hereto); (o) commandeering of material, products, plants or facilities by the federal, state or local government (except the parties hereto); and (p) national fuel shortage.

1. Subordination Clause. In the event of a force majeure event or condition as described above in this paragraph 25, until the event or condition is resolved, this Agreement shall be made expressly subordinate to any present or future use of water supply for municipal purposes within the service territory of Cherokee or to meet contracted water delivery obligations of Cherokee existing prior to the execution of this Agreement.
  2. Cooperation. Should there be evidence of force majeure that may affect, or has affected, the ability of any of the Parties to meet its obligations under this Agreement, the Parties agree to meet and negotiate in good faith any modifications to this Agreement to ensure a reasonable and coordinated response to such force majeure with the goal of forestalling the need for a force majeure declaration.
- O. Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective.
- P. Authority. The Parties each affirm and represent that they have the full power and authority to execute this Agreement and thereafter perform all of the terms and conditions set forth herein.
- Q. No Agency. This Agreement is not intended and shall not be construed to create any joint venture, agency relationship or partnership between the Parties. None of the Parties shall have any right or authority to act on behalf of or bind any other Party.



R. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one agreement.

THEREFORE, IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year above written.

**CHEROKEE METROPOLITAN DISTRICT**

By: [Signature]  
Steven Hasbrouck, President  
9/21/21  
Date

By: [Signature]  
Director  
9-21-21  
Date

By: [Signature]  
Director  
9-21-21  
Date

By: [Signature]  
General Manager  
9-21-21  
Date

**ELLCOTT UTILITIES COMPANY, LLC**

By: [Signature]  
Signature  
John Mide  
Name  
CFO 10/12/2021  
Title Date

**EXHIBIT A**  
**Map and Legal Description of Development Property**

# **EXHIBIT** Water Use Description

## **WATER USE DESCRIPTION**

A Tract of land established for the purpose of water use, being part of the Northeast 1/4, all of the Northwest 1/4 and all of the Southwest 1/4 of Section 14, and part of the Northeast 1/4 and part of the Southeast 1/4 of Section 15, all in Township 14 South, Range 63 West of the 6th Principal Meridian, in the county of El Paso, state of Colorado, said Tract also encompassing all of the lands platted as MAYBERRY, COLORADO SPRINGS FILING NO. 1 and MAYBERRY, COLORADO SPRINGS FILING NO. 2, subdivisions of land in said county and state, the plats of said subdivisions recorded as Reception Numbers 220714655 and 221714698, respectively, in the office of the Clerk and Recorder of El Paso County, Colorado, said Tract more particularly described as follows:

BEGINNING at a 2 inch aluminum cap marked "U.P. & E. PLS 11624 1999" found at the Northwest corner of said Section 14, Thence South 89° 44' 49" East 2606.52 feet on the North line of said Northwest 1/4 of Section 14 to a 2 inch aluminum cap marked "U.P. & E. PLS 11624 1999" found at the North 1/4 corner of said Section 14, said North line being the basis of bearings of the land described herein and the record bearing as shown on the plat of said MAYBERRY, COLORADO SPRINGS FILING NO. 1, and all bearings herein are relative thereto; Thence South 89° 44' 50" East 1303.29 feet on the North line of said Northeast 1/4 of Section 14; Thence South 00° 21' 12" East 2633.63 feet on the East line of the West 1/2 of said Northeast 1/4 of Section 14 to the South line of said Northeast 1/4 of Section 14; Thence North 89° 36' 00" West 1308.58 on said South line to the Center corner of said Section 14; Thence South 00° 14' 15" East 2631.90 feet on the East line of said Southwest 1/4 of Section 14 to the South 1/4 corner of said Section 14; Thence North 89° 24' 37" West 2630.66 feet on the South line of said Southwest 1/4 of Section 14 to a 2 inch aluminum cap marked "U.P. & E. PLS 11624 1999" found at the Southwest corner of said Section 14, also being the Southeast corner of said Section 15; Thence North 89° 25' 53" West 1313.35 feet on the South line of the East 1/2 of the Southeast 1/4 of said Section 15 to a 2-1/2 inch aluminum cap marked "RAMPART PLS 38560 2019" found at the East 1/16th corner common to Sections 15 and 22; Thence North 00° 05' 20" East 5253.60 feet on the West line of the East 1/2 of the East 1/2 of said Section 15 to the North line of the Northeast 1/4 of said Section 15; Thence South 89° 07' 06" East 1307.43 feet on said North line to the POINT OF BEGINNING, said Tract containing 24,074,435 square feet or 552.673 acres.



## **EXHIBIT - WATER USE DESCRIPTION**

Date:	8/17/2021	Sheet	1
Drawn:	OO	of	1
Checked:	MAG		
Job No.:	MC21194		



**R&R ENGINEERS-SURVEYORS, INC.**  
1635 W. 13TH AVENUE, SUITE 310  
DENVER, COLORADO 80204  
PH: 303-753-6730  
WWW.RRENGINEERS.COM

**EXHIBIT B**

Certificate of Ownership – Marksheffel Business Center Water Interest

## **ASSIGNMENT OF MEMBERSHIP INTEREST**

This Assignment of Membership Interest (the "Assignment") is entered into and effective as of October 1, 2021 (the "Effective Date"), by and between **MARKSHEFFEL BUSINESS CENTER, LLC**, a Colorado limited liability company ("Assignor") and **ELLCOTT UTILITIES COMPANY, LLC**, a Colorado limited liability company ("Assignee").

### **RECITALS**

WHEREAS, Assignor is a Member of Cherokee Water, LLC, a Colorado limited liability company (the "Company"), and as a Member of the Company has the exclusive rights to and interest in 68.29 acre feet of water ("MBC's Tipton Water Rights") as legally described on Exhibit A to the Operating Agreement for the Company dated November 30, 2006, as amended.

WHEREAS, as of the date hereof, Assignor has consumed 40.32 acre-feet of MBC's Tipton Water Rights resulting in 27.97 acre-feet of excess water rights (or 40.958 % of the total MBC Tipton Water Rights) currently available for transfer to Assignee pursuant to the terms of Section 6.2 of the Company's Operating Agreement.

WHEREAS, Assignor desires to assign and transfer to Assignee 40.958% of Assignor's Membership Interest in the Company (the "Transferred Interests"), representing the right and interest in and to 27.97 acre feet of water from the water rights legally described on Exhibit A to the Operating Agreement for the Company (the "Excess Water Interests").

WHEREAS, this Assignment is being entered into in furtherance of that certain Purchase and Sales Agreement, dated as of May 6, 2021 (the "Purchase Agreement"), by and between Assignor and Assignee to effectuate the transfer and assignment by Assignor to Assignee of the Excess Water Interests.

NOW, THEREFORE, the parties, for good and valuable consideration, hereby agree as follows:

1. Assignment and Assumption. Assignor hereby assigns to Assignee and Assignee hereby assumes from Assignor, all of Assignor's right and interest in the Transferred Interests and the underlying Excess Water Interests.

2. Indemnification. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any obligations or liabilities with respect to the Transferred Interests and/or the Excess Water Interests which may occur after the date of this Assignment. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any obligations or liabilities with respect to the Transferred Interests and/or the Excess Water Interests which have occurred prior to the date of this Assignment.

3. Representations and Warranties.

a. By Assignor. As of the Effective Date, Assignor represents and warrants to Assignee the following:

i. Authority. Assignor has the full right, authority and power to enter into this Agreement, to consummate the transaction contemplated herein and to perform its obligations hereunder and under those documents and instruments to be executed by it, and the individual executing this Agreement on behalf of Assignor is authorized to do so, and this Assignment constitutes a valid and legally binding obligation of Assignor enforceable against Assignor in accordance with its terms.

ii. No Litigation. To the best of Assignor's knowledge, Assignor has not received written notice of any complaint, litigation, investigation or proceeding that is pending or threatened against Assignor, the Transferred Interests, the Excess Water Interests, or the Company.

iii. Company Documents. To the best of Assignor's knowledge, Assignor has provided Assignee with all material documentation and information in Assignor's possession relating to the Company, the Transferred Interests and/or the Excess Water Interests preceding the Effective Date of this Assignment. Assignor further agrees to reasonably cooperate with Assignee to provide such further information relating to the Company, the Transferred Interests, and/or the Excess Water Interests as may be reasonably requested by Assignee, to the extent in Assignor's actual possession or reasonable control.

iv. No Third-Party Rights. To the best of Assignor's knowledge, without duty of inquiry or investigation, and except as previously disclosed in any materials or other information provided to Assignee, there are no leases, occupancy agreements, licenses, or other agreements that grant third-parties any possessory or usage rights to all or any of the part of any Company property, including the Transferred Interests and/or the Excess Water Interests.

v. Bankruptcy. To Assignor's knowledge, there are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy, or any other debtor relief actions pending against the Company in any current judicial or administrative proceeding.

vi. No Violations. To the best of Assignor's knowledge, Assignor has not received written notice of any current violations of any laws, statutes, ordinances, regulations or other requirements of any governmental agency in connection with or related to the Company.

b. By Assignee. Assignee represents and warrants to Sellers as follows:

i. Formation. Assignee is a duly formed and validly existing limited liability company in good standing under the laws of Colorado.

ii. Authorization. Assignee has the full right, authority and power to enter into this Agreement, to consummate the transaction contemplated herein and perform its obligations hereunder. The individual executing this Assignment on behalf of the Assignee is authorized to do so and this Assignment constitutes a valid and legally binding obligation of Assignee enforceable against Assignee in accordance with its terms. Assignee has taken all necessary action to authorize the transaction contemplated by this Assignment and Assignee's execution and delivery of this Assignment and all documents required herein, and its performance hereunder. Assignee's execution and delivery of this Assignment, and the consummation of the transactions contemplated and required hereby, will not result in any violation of, or default under, any term or provision of any agreement to which Assignee is a party or by which Assignee is bound.

iii. No Litigation. To the best of Assignee's knowledge, there is no complaint, litigation, investigation or proceeding pending or, to Assignee's actual knowledge, contemplated or threatened against Assignee which would prevent Assignee from performing its obligations under this Assignment or any other instrument or document related hereto.

c. Survival. The representations, warranties and covenants of Assignor and Assignee above shall survive this Assignment following the Effective Date.

d. Assignors' Knowledge. For purposes hereof, any reference to "Assignor's knowledge" or any derivatives thereof as used in this Assignment means the current actual knowledge of Grant Langdon, without any duty of inquiry or investigation, and shall not be deemed to include any implied, imputed or constructive knowledge of Assignor or any other person or entity.

4. Successors and Assigns. This Assignment shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of the parties hereto.

5. Further Assurances. Assignor shall execute and deliver to Assignee, upon demand, such further documents, instruments and conveyances, including any necessary deeds to convey the Excess Water Interests if necessary, and shall take such further actions as Assignee may from time-to-time reasonably request, to vest fully in Assignee, the right, title and interest herein intended to be assigned.

6. Continuation of the Company. The parties acknowledge and agree that the assignment of the Transferred Interests and/or the Excess Water Interests by Assignor to Assignee shall in no way cause the dissolution of the Company, nor shall such assignment and transfer be deemed or construed to terminate the Company.

7. Counterparts. This Assignment may be executed in counterparts, each of which shall constitute an original, but all of which together, shall constitute one and the same agreement. digital signatures, including digital counterparts, shall be recognized and deemed as

an original signature to this Assignment.

8. Binding Effect; Entire Agreement. This Assignment shall be binding upon and inure to the benefit of Assignor's and Assignee, and their respective successors and assigns. This Assignment contains the entire agreement between Assignor and Assignee concerning the transfer of the Transferred Interests and supersedes all understandings or assignments in regard thereto.

9. Attorneys' Fees. If a suit, action or other proceeding of any nature whatsoever is instituted in connection with this Assignment, or to interpret or enforce any rights or remedies hereunder, the prevailing party shall be entitled to recover its attorneys' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith.

10. Governing Law. This Assignment shall be governed by, and interpreted in accordance with, the laws of the State of Colorado, all rights and remedies being governed by such laws.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first written above.

**"ASSIGNOR"**

**"ASSIGNEE"**


MARKSHEFFEL BUSINESS CENTER, LLC,  
a Colorado limited liability company

ELLICOTT UTILITIES COMPANY, LLC,  
a Colorado limited liability company

By:

  
Grant Langdon, Member

By:

  
Randy Goodson, President



**RESOLUTION #2022- 05**

**CHEROKEE METROPOLITAN DISTRICT**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CHEROKEE  
METROPOLITAN DISTRICT TO TERMINATE THE 2006 WATER AND SEWER  
SERVICE AGREEMENT BETWEEN CHEROKEE METROPOLITAN DISTRICT AND  
POWERS & GALLEY WATER LLC**

WHEREAS, Cherokee Metropolitan District (the "District") entered into a Water and Sewer Service Agreement with Powers & Galley Water LLC on December 4, 2006 ("2006 P&G Agreement") pursuant to which agreement the District agreed to provide water and wastewater service to a proposed development described in the 2006 P&G Agreement as the "Development"; and

WHEREAS, the 2006 P&G Agreement provided that the District would provide water service to Powers & Galley Water LLC in the amount of up to 54.03 acre-feet per year, which amount was based on an interest in the "Water Rights" as described in the 2006 P&G Agreement, which Water Rights were to be owned by Cherokee Water, LLC ("CW LLC"); and

WHEREAS, pursuant to the December 4, 2006 Operating Agreement of CW LLC ("CWLLC Operating Agreement"), Powers & Galley Water LLC, is a Member of CW LLC; and

WHEREAS, Powers & Galley Water LLC, is now owned and managed solely by Ellicott Utilities Company, LLC ("EUC"); and

WHEREAS, on August 17, 2021, the District entered into a Water Service Agreement with EUC ("2021 EUC-CMD Agreement"), pursuant to which agreement the District agreed to provide water service to EUC in the amount of up to 54.03 acre-feet per year, which amount is based on EUC's ownership interest in Powers & Galley Water LLC and the corresponding interest of Powers & Galley Water LLC, as a Member of CW LLC; and

WHEREAS, the District's provision of service to EUC is expressly conditioned on several prerequisites related to CW LLC as provided under the 2021 EUC-CMD Agreement, including the termination of the 2006 P&G Agreement as appropriate; and

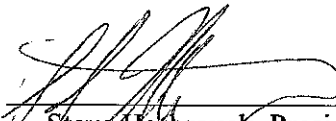
WHEREAS, Powers & Galley Water LLC, has requested that the District terminate the 2006 P&G Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CHEROKEE METROPOLITAN DISTRICT OF EL PASO COUNTY, COLORADO, AS FOLLOWS:

Cherokee Metropolitan District hereby agrees to terminate the 2006 P&G Agreement, pursuant to the Termination of Water and Sewer Service Agreement attached to this Resolution as Exhibit A.

ADOPTED AND APPROVED this 9<sup>th</sup> day of February 2022.

CHEROKEE METROPOLITAN DISTRICT

By:   
Steve Hasbrouck, President

ATTEST:

 9 FEB 22  
Dennis Daniels, Secretary

**TERMINATION OF THE WATER AND SEWER SERVICE AGREEMENT BETWEEN  
CHEROKEE METROPOLITAN DISTRICT  
AND  
POWERS & GALLEY WATER LLC**

This Termination of Water and Sewer Service Agreement ("Termination"), effective February 9<sup>th</sup>, 2022, is made between Cherokee Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 6250 Palmer Park Blvd, Colorado Springs, CO 80915 ("Cherokee"), and Powers & Galley Water LLC whose address is 3296 Divine Heights #207, Colorado Springs, CO 80922 (collectively, the "Parties").

**RECITALS**

WHEREAS, Powers & Galley Water LLC entered into a Water and Sewer Service Agreement with Cherokee on December 4, 2006, which agreement was recorded on December 15, 2006 under Reception # 206182335 in the property records of El Paso County, Colorado ("2006 P&G Agreement").

WHEREAS, Powers & Galley Water LLC has requested that Cherokee agree to terminate the 2006 P&G Agreement.

WHEREFORE, Cherokee and Powers & Galley Water LLC hereby agree as follows:

**AGREEMENT**

1. The Recitals above are hereby incorporated into this Agreement.
2. The 2006 P&G Agreement is hereby terminated and of no further force or effect.
3. Within 30 days of the effective date above, Powers & Galley Water LLC, shall cause this Termination to be recorded in the property records of El Paso County, Colorado.

*[signature pages follow]*

**CHEROKEE METROPOLITAN DISTRICT**

By: [Signature]  
Steven Hasbrouck, President

ATTEST:

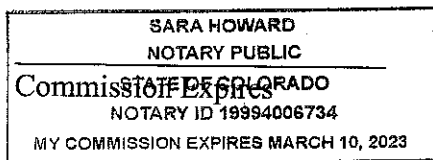
By: [Signature] 9 FEB 22  
Dennis Daniels, Secretary

**POWERS & GALLEY WATER LLC**

By: [Signature] Jason Kvols, Vice President  
~~R. Randy Goodson, President, Ellicott Utilities Company, LLC~~  
Owner/Manager of Powers & Galley Water LLC

The foregoing Termination of Water and Sewer Service Agreement was executed before me this 9th day of February 2022 by ~~R. Randy Goodson~~, President of Ellicott Utilities Company, LLC.  
Jason Kvols vice.

Sara Howard  
Notary Public  
6250 Palmer Park Blvd  
Colorado Springs, CO  
Address



WATER SERVICE AGREEMENT BETWEEN  
CHEROKEE METROPOLITAN DISTRICT AND  
ELLCOTT UTILITIES COMPANY, LLC

This Agreement is effective August 17, 2021 between Cherokee Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado whose address is 6250 Palmer Park Blvd., Colorado Springs, Colorado 80915 ("Cherokee"); and, Ellicott Utilities Company, LLC, a California Limited Liability Company having an address of P.O. Box 231961, Encinitas, CA 92023 ("EUC").

RECITALS

WHEREAS, EUC is a water supply utility for a development of approximately 553 acres of real property located in El Paso County Colorado ("the Development"). A location map and the legal description of Development are attached as **Exhibit A**.

WHEREAS, Cherokee Water LLC was created in order to hold title to a certain water right and to provide water service commitments to Members of Cherokee Water, LLC's proposed new developments within Cherokee in order to satisfy water supply sufficiency requirements from El Paso County and the State of Colorado for those developments ;

WHEREAS, in order to establish the framework for the holding of title to the Water Rights by Cherokee Water, LLC and for the treatment and delivery of the water right by Cherokee, Cherokee Water, LLC and Cherokee have entered into two agreements: the Cherokee Water, LLC Operating Agreement (the "LLC Operating Agreement") and the Water Service Agreement between Cherokee and Cherokee Water, LLC (the "Water Service Agreement").

WHEREAS, EUC has obtained a membership interest in Cherokee Water, LLC that was formerly owned by Powers and Galley, LLC ("Powers and Galley"). This membership interest includes an interest in 54.03 acre-feet per year derived from a certain water right (the "Water Right"), as more fully described in the Certificate of Ownership of Cherokee Water, LLC attached as **Exhibit B**.

WHEREAS, EUC now desires to obtain a commitment from Cherokee to provide water from the Water Right to the Development.

NOW THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### AGREEMENT

- I. Conditions Precedent: This Agreement, and all of Cherokee's obligations to deliver the Water Right as provided herein, including the obligations to accept the Water Right as a valid legal and physical supply of water for the Development, are expressly contingent upon: (1) EUC's compliance with the LLC Operating Agreement and the Water Service Agreement; (2) the acceptance by the State Engineer, the Upper Black Squirrel Creek Ground Water Management, and El Paso County of the Water Right as a valid and sufficient legal and physical supply of water for The Development; and, (3) full compliance by EUC and the Development owners with all of Cherokee's policies, rules and regulations, as they now exist, and as may be amended or adopted from time to time.
- II. Water Service to the Development to be Provided by Cherokee Water, LLC through its Water Service Agreement with Cherokee.
  - A. Delivery. Subject to the terms and conditions of this Agreement, the LLC Operating Agreement and the Water Service Agreement, Cherokee agrees to deliver to the Development up to 54.03 acre-feet per year of the water obtained from the Water Right (the "Subject Water"). Cherokee shall have no obligation to supply water service to the Development in excess of 54.03 acre-feet per year.
  - B. Delivery Location. The point of delivery to EUC shall be at a meter ("Meter") installed within the existing building located approximately at a point 80 feet South of a point 1300 feet east along the section line between sections 10 and 15 from the corner of sections 10, 11, 14, and 15 in Township 14 South, Range 63 West of the 6th Prime Meridian, as depicted in Exhibit A (the "Delivery Location").
  - C. Delivery Measurement and Accounting. EUC shall provide Cherokee with an accounting of all Subject Water delivered under this Agreement to Cherokee on a monthly basis, including readings from the Meter.
  - D. Place of Use. The Subject Water shall be used by EUC within the Development.
  - E. Cherokee agrees that the Subject Water will be dedicated solely for the purpose of delivery to the Development. The Parties understand and acknowledge that the



Subject Water is and will be commingled with other Cherokee water sources and that the water service actually delivered to the Development will not consist 100% of the actual physical water withdrawn from the Water Right.

F. Price. The Price for the Subject Water shall not exceed four thousand dollars (\$4,000.00) per acre foot of Subject Water which rate is based on Cherokee's standard rate for bulk water deliveries to out-of-district customers. Every five (5) years, the Price will be adjusted based on the total change in the Consumer Price Index (CPI) for Denver-Boulder since the previous adjustment.

G. Water Quality. The water provided pursuant to this Agreement shall be raw, untreated water. Cherokee does not guarantee the quality of the Subject Water, and EUC is solely responsible for meeting and maintaining compliance with all state and federal safe drinking water regulatory requirements or other applicable laws and regulations that may exist now or in the future. EUC is solely responsible for treating, disinfecting, or otherwise making the Subject Water suitable for its intended use.

H. Delivery Infrastructure.

1. Connection to Cherokee System. The parties acknowledge that the Subject Water will be delivered to the Delivery Location from a pre-existing connection to Cherokee's water supply pipeline ("Connection Point"). EUC shall be solely responsible for all costs related to the infrastructure beyond the Connection Point, including but not limited to any pipelines, meters, valves, and backflow prevention devices.

2. Installation of Meter. EUC shall provide Cherokee with plans for the specifications and design of the Meter, and the Meter shall not be installed until the plans have been approved by Cherokee in writing. EUC shall notify Cherokee upon completion of the Meter installation. Cherokee shall inspect the Meter within ten (10) days of such notice. Cherokee will not deliver any Subject Water hereunder until it has approved the Meter in writing. Subject to the warranty obligations as set forth in Cherokee's Rules and Regulations, and subject to EUC's maintenance and other obligations during the warranty period, EUC shall dedicate and Cherokee will accept the Meter. At such time as the warranty period expires, and Cherokee accepts the Meter, EUC shall convey the Meter to Cherokee, free and clear of all liens and encumbrances.

Once the Meter has been accepted by Cherokee and conveyed to Cherokee by EUC, the Meter shall become the property of Cherokee and shall be maintained and operated by Cherokee.

3. Security and Access. EUC shall timely provide Cherokee access to the Delivery Location as reasonably requested by Cherokee, for the purpose of inspecting infrastructure, confirming meter readings, or any other purposes related to this Agreement. EUC shall comply with all security requirements for public water supply infrastructure as required by law.
4. Infrastructure and Condition. Cherokee is not responsible for delivery of the Subject Water beyond the Delivery Location, including the construction of any infrastructure, as necessary. EUC is solely responsible for the development, operation, maintenance, and all other aspects of delivery and provision of water beyond the Delivery Location, including but not limited to the construction of water infrastructure, including final water treatment and water connections, procurement of a Public Water System ID (PWSID) number from the Colorado Department of Public Health & Environment, compliance with all public water system requirements, and any other actions necessary to take delivery from the Delivery Location and deliver the Subject Water to its customers. EUC shall remain responsible for the operation, maintenance, repair, and replacement of the infrastructure needed to deliver the Subject Water to its customers, absent express written agreement to the contrary. Cherokee expressly disclaims liability of any kind resulting from or arising out of the delivery of water beyond the Delivery Location.
5. Firefighting Capability. EUC shall be solely responsible for procuring, constructing, operating, and maintaining any water supply infrastructure and/or water necessary to supply water for firefighting purposes, including but not limited to the maintenance of storage reserves and system capacity sufficient to provide water at the rates and amounts required for such purposes. Cherokee shall have no obligation to provide Subject Water above the rates and amounts set forth herein, even in emergency situations.
6. No Retail Service by Cherokee. Cherokee shall have no obligation with respect to the retail services associated with the delivery of Water to EUC's customers. It will be the sole obligation of EUC to respond to the individual water demands of its users, including but not limited to billing and collecting payments for water service in a manner that ensures it meets its obligations under this Agreement.



### III. General Provisions

- A. Billing and Payment. Cherokee shall bill EUC each month for any Subject Water delivered under this Agreement during the preceding month. EUC shall pay such invoices within thirty (30) days of receipt.
- B. Rules and Regulations. Cherokee's provision of the Subject Water pursuant to this Agreement shall be subject to the rules, regulations, policies and resolutions promulgated by Cherokee from time to time. Cherokee shall not be obligated to provide the Subject Water if EUC or its successors in interest to all or any part of the Development property are not in compliance with this Agreement.
- C. Remedies for Breach. In the event a Party deems the other Party to be in default, it shall provide written notice indicating the event of default. The defaulting party shall have thirty (30) days from the date of the notice to cure the stated default. In the event of a default which is not cured within the Cure Period or otherwise not subject to these cure provisions, the non-breaching Party shall be entitled to the following remedies, in addition to those otherwise provided at law or equity:
  - 1. If EUC remains in breach of this Agreement following the Cure Period, Cherokee may suspend deliveries of the Subject Water to EUC until the default is cured following advance written notice to EUC of the forthcoming suspension. Once the default is cured, however, Cherokee agrees to resume delivery of the Subject Water pursuant to this Agreement.
  - 2. If the breach is EUC's failure to meet its monthly obligation to pay for the Subject Water delivered, Cherokee shall be entitled, in addition to any other remedies available at law, to collect a late fee of five percent (5%) of the amount not paid prior to expiration of the Cure Period, and interest shall accrue on all amounts past-due at an annual rate equal to the prime rate of interest announced by Wells Fargo Bank, Colorado Springs, Colorado, as of the expiration of the Cure Period, plus five percent (5%). Cherokee shall also be entitled to reimbursement for the costs of collection, including reasonable attorney fees.
  - 3. The non-breaching Party may file suit to recover amounts due and seek damages for breach of this Agreement by the other Party.
- D. Notices. Whenever notice is required to be given hereunder, it shall be in writing and may be sent by email or delivered or mailed to the Party entitled thereto by

registered or certified U.S. mail, return receipt requested. If delivered or sent by email, said notice shall be effective and complete upon delivery or transmission of the email. If mailed, said notice shall be effective and complete as of the date of mailing. Until changed by notice in writing, notice shall be given as follows:

To Cherokee:        General Manager  
                         Cherokee Metropolitan District  
                         6250 Palmer Park Blvd.  
                         Colorado Springs, CO 80915

To EUC:                Jason Kvols, Development Manager  
                         Ellicott Utilities Company, LLC  
                         P.O. Box 231961  
                         Encinitas, CA 92023

- E. No Operating Obligation. Nothing in this Agreement shall be deemed or construed as creating any obligation on Cherokee to operate its facilities in any particular manner, so long as Cherokee complies with the express terms of this Agreement.
- F. Indemnification. Subject to the provisions of the Colorado Governmental Immunity Act, and without waiving the provisions of same, EUC, to the fullest extent permitted by law, shall indemnify and hold harmless Cherokee and its directors, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees and court costs, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever arising out of or related to this Agreement, except to the extent they result from Cherokee's reckless or willful acts. This includes, but is not limited to, any damages which may arise from Cherokee's delivery of water and the transportation of water under this Agreement by means of any water carriage facilities beyond the Connection Point.
- G. No Waiver of Governmental Immunity Act. By entering into this Agreement, the Parties and their directors, agents and employees are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations and other rights, immunities and protections provided by the Colorado



Governmental Immunity Act, C.R.S. §§ 24-10-101 to 120, or otherwise available to the Parties.

- H. Entire Agreement. This Agreement contains the entire agreement between the Parties. The Parties agree there have been no representations made other than those contained herein; that this Agreement constitutes their entire Agreement; and further agree that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.
- I. Amendment. Amendments to this Agreement shall only be effective if entered into in writing with the same formality as this Agreement and mutually approved by the Parties.
- J. No Third Party Beneficiaries. There are no express or implied third party beneficiaries of this Agreement. No third party has the right to enforce this Agreement.
- K. No Assignment. No right hereunder shall be assigned by any of the Parties, except as mutually agreed to in writing.
- L. Governing Law and Venue. This Agreement shall be interpreted pursuant to the laws of the State of Colorado and venue for any disputes shall be in El Paso County, Colorado.
- M. Waiver of Rights. The failure of any Party to exercise any right under this Agreement shall not be deemed a waiver of such Party's right and shall not affect the right of such Party to exercise at some future time the right or rights or any other right it may have under this Agreement.
- N. Force Majeure. No Party to this Agreement shall be liable for any delay or failure to perform due solely to conditions or events of force majeure, as that term is defined in this paragraph; provided that: (i) the non-performing Party gives each other Party prompt written notice describing the particulars of the force majeure based upon satisfactory evidence; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used in this paragraph, force majeure shall mean any delay or failure of a Party to perform its obligations under this Agreement caused by events beyond the Party's reasonable control and without the fault or negligence of the Party, including, without limitation (a) acts of God; (b) sudden actions of the elements such as floods, earthquakes, hurricanes,

or tornadoes; (c) sabotage; (d) vandalism beyond that which can be reasonably prevented by the Party; (e) terrorism; (f) climate variability; (g) war; (h) riots; (i) fire; (j) explosion; (k) blockades; (l) insurrection; (m) strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); (n) action of the government (except the parties hereto); (o) commandeering of material, products, plants or facilities by the federal, state or local government (except the parties hereto); and (p) national fuel shortage.

1. Subordination Clause. In the event of a force majeure event or condition as described above in this paragraph 25, until the event or condition is resolved, this Agreement shall be made expressly subordinate to any present or future use of water supply for municipal purposes within the service territory of Cherokee or to meet contracted water delivery obligations of Cherokee existing prior to the execution of this Agreement.
  2. Cooperation. Should there be evidence of force majeure that may affect, or has affected, the ability of any of the Parties to meet its obligations under this Agreement, the Parties agree to meet and negotiate in good faith any modifications to this Agreement to ensure a reasonable and coordinated response to such force majeure with the goal of forestalling the need for a force majeure declaration.
- O. Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective.
- P. Authority. The Parties each affirm and represent that they have the full power and authority to execute this Agreement and thereafter perform all of the terms and conditions set forth herein.
- Q. No Agency. This Agreement is not intended and shall not be construed to create any joint venture, agency relationship or partnership between the Parties. None of the Parties shall have any right or authority to act on behalf of or bind any other Party.

R. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one agreement.

THEREFORE, IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year above written.

**CHEROKEE METROPOLITAN DISTRICT**

By: [Signature]  
Steven Hasbrouck, President  
August 26, 2021  
Date

By: [Signature]  
Director  
26 Aug 21  
Date

By: [Signature]  
Director  
8-26-2021  
Date

By: [Signature]  
General Manager  
8-26-21  
Date

**ELLCOTT UTILITIES COMPANY, LLC**

By: [Signature]  
Signature

John Mick  
Name  
Chief Financial Officer 9/22/2021  
Title Date

**EXHIBIT A**  
Map and Legal Description of Development Property



**EXHIBIT**  
**Water Use Description**

**WATER USE DESCRIPTION**

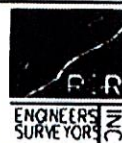
A Tract of land established for the purpose of water use, being part of the Northeast 1/4, all of the Northwest 1/4 and all of the Southwest 1/4 of Section 14, and part of the Northeast 1/4 and part of the Southeast 1/4 of Section 15, all in Township 14 South, Range 63 West of the 6th Principal Meridian, in the county of El Paso, state of Colorado, said Tract also encompassing all of the lands platted as MAYBERRY, COLORADO SPRINGS FILING NO. 1 and MAYBERRY, COLORADO SPRINGS FILING NO. 2, subdivisions of land in said county and state, the plats of said subdivisions recorded as Reception Numbers 220714655 and 221714698, respectively, in the office of the Clerk and Recorder of El Paso County, Colorado, said Tract more particularly described as follows:

BEGINNING at a 2 inch aluminum cap marked "U.P. & E. PLS 11624 1999" found at the Northwest corner of said Section 14, Thence South 89° 44' 49" East 2606.52 feet on the North line of said Northwest 1/4 of Section 14 to a 2 inch aluminum cap marked "U.P. & E. PLS 11624 1999" found at the North 1/4 corner of said Section 14, said North line being the basis of bearings of the land described herein and the record bearing as shown on the plat of said MAYBERRY, COLORADO SPRINGS FILING NO. 1, and all bearings herein are relative thereto; Thence South 89° 44' 50" East 1303.29 feet on the North line of said Northeast 1/4 of Section 14; Thence South 00° 21' 12" East 2633.63 feet on the East line of the West 1/2 of said Northeast 1/4 of Section 14 to the South line of said Northeast 1/4 of Section 14; Thence North 89° 36' 00" West 1308.58 on said South line to the Center corner of said Section 14; Thence South 00° 14' 15" East 2631.90 feet on the East line of said Southwest 1/4 of Section 14 to the South 1/4 corner of said Section 14; Thence North 89° 24' 37" West 2630.66 feet on the South line of said Southwest 1/4 of Section 14 to a 2 inch aluminum cap marked "U.P. & E. PLS 11624 1999" found at the Southwest corner of said Section 14, also being the Southeast corner of said Section 15; Thence North 89° 25' 53" West 1313.35 feet on the South line of the East 1/2 of the Southeast 1/4 of said Section 15 to a 2-1/2 inch aluminum cap marked "RAMPART PLS 38560 2019" found at the East 1/16th corner common to Sections 15 and 22; Thence North 00° 05' 20" East 5253.60 feet on the West line of the East 1/2 of the East 1/2 of said Section 15 to the North line of the Northeast 1/4 of said Section 15; Thence South 89° 07' 06" East 1307.43 feet on said North line to the POINT OF BEGINNING, said Tract containing 24,074,435 square feet or 552.673 acres.



**EXHIBIT - WATER USE DESCRIPTION**

	Date: 8/17/2021	Sheet
	Drawn: DD	1
	Checked: MAC	of
	Job No.: MC21194	1



R&R ENGINEERS-SURVEYORS, INC  
1635 W. 13TH AVENUE, SUITE 310  
DENVER, COLORADO 80204  
PH. 303-753-6730  
WWW.RRENGINEERS.COM

**EXHIBIT B**

Certificate of Ownership – Powers and Galley, LLC



**ASSIGNMENT AND ASSUMPTION OF PARTNERSHIP INTERESTS**

*(PB & Sons Partnership*

*EIN: 59-3073655)*

THIS ASSIGNMENT AND ASSUMPTION OF PARTNERSHIP INTERESTS ("Assignment") is entered into and is to be made effective as of September 9, 2021 ("Effective Date"), by and among P.B. Patel and Savitaben P. Patel (together, the "Assignors"), and Ellicott Utilities Company, LLC, a Colorado limited liability company ("Assignee").

**RECITALS**

A. Assignors are the sole partners of PB & Sons, a Colorado General Partnership (the "Partnership") and hold 100% and not less of the partnership interests in and to the Partnership (collectively, the "Partnership Interests"). The Partnership was formed pursuant to that certain Partnership Agreement dated and executed on June 27, 1991 attached as exhibit "1".

B. The Partnership Agreement was amended subsequent to formation on August 3, 2017 that resulted in removing Hitesh P Patel and Sandhya H Patel as members, attached as exhibit "2".

C. The Partnership Agreement was subsequently amended on July 17, 2019 that resulted in removing Rajesh P Patel as a member attached as exhibit "3".

D. Assignors desire to transfer, assign and convey to Assignee, and Assignee desires to acquire, all of Assignors' right, title and interest in the Partnership Interests, subject to and in accordance with the terms and provisions of this Assignment.

E. This Assignment is being entered in furtherance of that certain Purchase and Sales Agreement, dated as of May 6, 2021 (the "Purchase Agreement"), by and between PB & Sons Partnership, and Assignee to effectuate the transfer, assignment and conveyance by Assignor to Assignee of all of the Assignors' Partnership Interests in the Partnership.

FOR VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignment. Effective as of the Effective Date, Assignor hereby distributes, transfers, assigns and conveys to Assignee all of Assignors' Partnership Interests in the Partnership, together with all of Assignors' right, title and interest in and to the Partnership and its assets, including but not limited to, 54.03 AF interest in the Tipton Well Water Rights as defined in the Cherokee Water, LLC Operating Agreement, but specifically excluding the Stetson Hills Property as such real property is defined in the Purchase Agreement (collectively, the "Partnership Assets"), subject to the terms and conditions of this Assignment.

2. Acknowledgment and Acceptance of Assignment. Effective as of the Effective Date, Assignee hereby accepts Assignors' assignment of the Partnership Interests from Assignor and agrees to assume all of Assignors' rights and obligations with respect to the Partnership Interests to the extent accruing from and after the Effective Date.

3. Withdrawal as Partner; Resignation as Officer/Agent. Effective as of the Effective Date, Assignors hereby withdraw as partners of the Partnership and hereby resign as any and all officers, agents, and/or any other form of representative of the Partnership. By execution of this Assignment, Assignor acknowledges and agrees that it no longer has any right, title or interest in, to or under its former Partnership Interests in the Partnership and/or in or to the Partnership Assets. Simultaneously with the withdrawal of these Assignors as the sole partners of the Partnership pursuant to this Section 3, Assignee is admitted to the Company as the sole partners and all references to the "Partners" in the organizational documents for the Partnership shall mean and refer to Assignee.

4. Representations, Warranties and Disclaimer.

(a) Assignors. As of the Effective Date, Assignors represents and warrants to Assignee the following:

(i) Authority. Assignors have the full right, authority and power to enter into this Agreement, to consummate the transaction contemplated herein and to perform its obligations hereunder and under those documents and instruments to be executed by it, and each of the individuals executing this Agreement on behalf of each Assignor is authorized to do so, and this Assignment constitutes a valid and legally binding obligation of Assignor enforceable against Assignor in accordance with its terms.

(ii) Sole Partners. Assignors are the sole owners of the Partnership Interest as designated herein. Assignors have not alienated, encumbered, transferred, leased, assigned or otherwise conveyed the Partnership Interest or any portion thereof, nor entered into any agreement to do so, except for the Purchase Agreement.

(iii) No Litigation. To the best of Assignors' knowledge, Assignors' have not received written notice of any complaint, litigation, investigation or proceeding that is pending or threatened against Assignors', the Partnership Interest or the Partnership.

(iv) Partnership Documents. To the best of Assignors' knowledge, Assignors' have provided Assignee with all material documentation and information in Assignors' possession relating to the Partnership and its operations preceding the Effective Date of this Assignment. Assignors' further agrees to reasonably cooperate with Assignee to provide such further information relating to the Partnership as may be reasonably requested by Assignee, to the extent in Assignors' actual possession or reasonable control.

(v) No Third-Party Rights. To the best of Assignors' knowledge, without duty of inquiry or investigation, and except as previously disclosed in any materials or other information provided to Assignee, there are no leases, occupancy agreements, licenses, or other agreements that grant third-parties any possessory or usage rights to all or any of the part of any Partnership property.



(vi) Bankruptcy. To Assignors' knowledge, there are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy, or any other debtor relief actions pending against the Partnership in any current judicial or administrative proceeding.

(vii) No Violations. To the best of Assignors' knowledge, Assignor's have not received written notice of any current violations of any laws, statutes, ordinances, regulations or other requirements of any governmental agency in connection with or related to the Partnership.

(viii) Conveyance and Condition of Stetson Hills Property. Assignors have caused the Partnership to convey the Stetson Hills Property to a yet-to-be-formed entity owned or otherwise controlled by Assignors prior to the Effective Date of this Assignment. To the best of Assignors' knowledge, Assignors represent and warrant to Assignee that: (i) the Stetson Hills Property is not contaminated with any hazardous substance; (ii) Assignors nor the Partnership have not caused, will not cause, and there never has occurred, the release of any hazardous substance on the Powers Property; (iii) the Stetson Hills Property is not subject to any federal, state or local "superfund" lien, proceeding, claim, liability or action or the threat of likelihood thereof for the cleanup, removal, or remediation of any such hazardous substance in the Stetson Hills Property; (iv) there are no underground storage tanks on the Stetson Hills Property; (v) the Stetson Hills Property is not in violation of any Environmental Laws; and (vi) by acquiring the Partnership Interests, Assignee will not incur or be subjected to any "superfund" liability for the cleanup, removal or remediation of any hazardous substance from the Stetson Hills Property or any liability, cost or expense for the removal of underground storage tanks on the Stetson Hills Property. The terms "hazardous substance," "release" and "removal" as used herein shall have the same meaning and definitions as set forth in paragraphs 14, 22 and 23 respectively of Title 42 USC, §9601 and in the Colorado Statutes. PROVIDED, HOWEVER, that the term "hazardous substance" as used herein also shall include hazardous waste as defined in paragraph 5 of 42 USC, §6903, and "petroleum" as defined in paragraph 6 of 42 USC §6991, and as further defined in Colorado Statutes. The term "superfund" as used herein means the comprehensive environmental response compensation and liability act as Amended in Title 42 USC §6901, et seq. as amended in any similar state, or local statute or ordinance applicable to the Powers Property, including without limitation the applicable Colorado Statutes and all rules and regulations promulgated, administered and enforced by any governmental agency or authority pursuant thereto. The term "underground storage tank" as used herein shall have the same meaning and definition as set forth in paragraph (1) of 42 USC, §6991.

(b) By Assignee. Assignee represents and warrants to Sellers as follows:

(i) Formation. Assignee is a duly formed and validly existing limited liability company in good standing under the laws of Colorado.

(ii) Authorization. Assignee has the full right, authority and power to enter into this Agreement, to consummate the transaction contemplated herein and perform its obligations hereunder. Each individual executing this Assignment on behalf of the Assignee is authorized to do so and this Assignment constitutes a valid and legally binding obligation of Assignee enforceable against Assignee in accordance with its terms. Assignee has taken all

necessary action to authorize the transaction contemplated by this Assignment and Assignee's execution and delivery of this Assignment and all documents required herein, and its performance hereunder. Assignee's execution and delivery of this Assignment, and the consummation of the transactions contemplated and required hereby, will not result in any violation of, or default under, any term or provision of any agreement to which Assignee is a party or by which Assignee is bound.

(iii) No Litigation. To the best of Assignee's knowledge, there is no complaint, litigation, investigation or proceeding pending or, to Assignee's actual knowledge, contemplated or threatened against Assignee which would prevent Assignee from performing its obligations under this Assignment or any other instrument or document related hereto.

(c) Survival. The representations, warranties and covenants of Assignor and Assignee above shall survive this Assignment following the Effective Date.

(d) Assignors' Knowledge. For purposes hereof, any reference to "Assignors' knowledge" or any derivatives thereof as used in this Assignment means the current actual knowledge of PB Patel and Savitaben P. Patel, without any duty of inquiry or investigation, and shall not be deemed to include any implied, imputed or constructive knowledge of Assignor or any other person or entity.

5. Indemnity. Assignee agrees to indemnify, defend and hold Assignor harmless from and against any obligations or liabilities with respect to the Partnership and/or the Partnership Interest which may occur after the date of this Assignment. Assignor agrees to indemnify, defend and hold Assignee harmless from and against any obligations or liabilities with respect to the Partnership and/or the Partnership Interest which have occurred prior to the date of this Assignment.

6. Successors and Assigns. This Assignment shall inure to the benefit of, and be binding upon, the successors, executors, administrators, legal representatives and assigns of the parties hereto.

7. - Further Assurances. Assignor shall execute and deliver to Assignee, upon demand, such further documents, instruments and conveyances, and shall take such further actions as Assignee may from time to time reasonably request, to vest fully in Assignee, the right, title and interest herein intended to be assigned.

8. Continuation of the Partnership. The parties acknowledge and agree that the assignment of the Partnership Interests and/or Partnership Interests by Assignor to Assignee shall in no way cause the dissolution of the Partnership, nor shall such assignment and transfer be deemed or construed to terminate the Partnership.

9. Counterparts. This Assignment may be executed in counterparts, each of which shall constitute an original, but all of which together, shall constitute one and the same agreement. digital signatures, including digital counterparts, shall be recognized and deemed as



an original signature to this Assignment.

10. Binding Effect. This Assignment shall be binding upon and inure to the benefit of Assignor's and Assignee, and their respective successors and assigns. This Assignment contains the entire agreement between Assignor and Assignee concerning the transfer of the Partnership Interests and supersedes all understandings or assignments in regard thereto.

11. Attorneys' Fees. If a suit, action or other proceeding of any nature whatsoever is instituted in connection with this Assignment, or to interpret or enforce any rights or remedies hereunder, the prevailing party shall be entitled to recover its attorneys' fees and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith.

12. Governing Law. This Assignment shall be governed by, and interpreted in accordance with, the laws of the State of Colorado, all rights and remedies being governed by such laws.

*[Signature Pages to Follow]*



This Assignment has been executed as of the day first written above and shall be made effective as of the Effective Date.

**"ASSIGNORS"**

  
PB Patel

  
Savitaben P. Patel

**ASSIGNEE:**

**Ellicott Utilities Company, LLC  
A Colorado Limited Liability Company**

*R. Randy Goodson*  
By: R. Randy Goodson (Sep 8, 2021 17:16 PDT)  
Randy Goodson, President

Sep 8, 2021