

MAYBERRY COLORADO SPRINGS

WATER RESOURCES REPORT FOR PUD AMMENDMENT:
240 HOMES
3 INDUSTRIAL LOTS (FILING 2 PREVIOUSLY APPROVED)
ALL LANDSCAPING PERTAINING TO THE PUD AMENDMENT

Prepared for:

Ellicott Utilities Company, LLC
3296 Divine Heights #207
Colorado Springs, CO 80922

2022 Revisions:

1-12-22
2-14-22

Prepared By:



Bradley A. Simons, P.E.
Principal

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INTRODUCTION

This Water Resources Report is prepared for Ellicott Utilities Company, LLC (EUC) a private utility company in El Paso County, Colorado. The purpose is to provide a summary of water resources planning issues in support of the development of Mayberry, Colorado Springs. This PUD Amendment addresses 240 Homes, 3 industrial lots, and all landscaping pertaining to the subject development. The report will identify water demands, plans for central water service, and fire flow requirements for the proposed development. This report is intended to fulfill the requirements set forth to satisfy the ultimate demand of water projected by the development as well as speak to owned water rights and commitments in place to fulfill the demand of the development.

Mayberry Communities, LLC currently has the following plats recorded for Mayberry, Colorado Springs that are in the development. Mayberry, Colorado Springs Filing No. 1 consisting of 98 residential lots, and Mayberry, Colorado Springs Filing No. 2 consisting of 3 industrial lots. Filing No. 2 will also be amended in the near future to increase the size of the industrial lots. Subsequent filings are under way to plat and record the remaining 142 homes that would build out the amended PUD.

SUMMARY OF WATER RIGHTS OWNED AND PERMANENTLY CONTROLLED BY THE COMPANY

ELLCOTT UTILITIES COMPANY OWNED WATER RIGHTS SUMMRY

<u>Water Right</u>	<u>100 Year Supply</u>	<u>300 Year Supply</u>	<u>AF After 5% System Loss</u>	<u>Previous Commitments</u>	<u>AF to Commit to Mayberry, Colorado Springs</u>
Determination 598-BD	161 AF	53.67 AF	50.98 AF	0 AF	50.98 AF
Determination 599-BD *fn 1	78.7 AF	26.23 AF	24.92 AF	0 AF	24.92 AF
Benton Well No. 2 *fn 2		119 AF	113 AF	0 AF	113 AF
TOTAL					188.90 AF

fn 1: This determination is out of the Arapahoe Aquifer and requires a replacement plan approved by the Ground Water Commission, including dedication of return flows.

fn 2: This is an alluvial water source. The change of use and change of location is pending, quantity available will be a function of outcome pending application process.

note The above water sources are not subject to annual variation of precipitation therefore anticipated yield of these rights in both average and dry years is not contemplated.

SUMMARY OF WATER SERVICE AGREEMENTS (PERPETUAL IN NATURE)

ELLCOTT UTILITIES COMPANY WATER SERVICE AGREEMENTS SUMMRY

<u>Water Source</u>	<u>AF Committed in Service Agreement</u>	<u>AF After 5% System Loss</u>	<u>Place of Use</u>	<u>AF to Commit to Mayberry, Colorado Springs</u>
Tipton Well Water Interest	82.00 AF	77.90 AF	Mayberry, Colorado Springs	77.90 AF
TOTAL				77.90 AF

note Supporting documentation for the Tipton Well Water Interest is in the Appendices to this document.

ELLCOTT UTILITIES COMPANY TOTAL WATER AVAILABLE TO BE COMMITTED

<u>Water Right/ Source</u>	<u>AF to Commit to Mayberry, Colorado Springs</u>
Determination 598- BD	50.98 AF
Determination 599-BD	24.92 AF
Benton Well No. 2	113 AF
Tipton Well Water Interest	77.90 AF
TOTAL	266.80 AF

ESTABLISH DEMAND PER HOME (MAYBERRY, COLORADO SPRINGS)

On behalf of Ellicott Utilities Company, this report establishes a projected demand of 0.26 AFY per home (less than the presumptive value) is required to meet the potable water needs of the Mayberry, Colorado Springs development.

Chapter 8 (Subdivision Design, Improvements, and Dedications) of The El Paso County Land Development Code references values typically used to calculate annual water demands. Section 8.4.7(B)(7)(d) of the El Paso County Land Development Code indicates:

8.4.7(B)(7)(d) – In the absence of data on water use to the contrary or other minimum values established as acceptable by the State Engineer, the following presumptive values will be used to calculate the annual water demand:

- Residential inside use of 0.26 acre feet per year for single family residences and 0.20 acre feet per year for each occupancy unit in multiple family residences other than single family. A duplex contains 2 occupancy units, a triplex contains 3 occupancy units, etc.
- Residential and commercial landscaping use of 0.0566 acre per 1,000 square feet of landscaping.
- Commercial and industrial inside use of 0.1 gallon per day for each square foot of developed space; and

Although the calculations contained within this report do provide contrary information on residential consumption ultimately showing a Residential Demand of less than 0.26 AFY per home, we are using the 0.26 AFY per home to calculate the projected water demand of single-family residential housing for the development.

These calculations were determined by assessing actual water usage of two different developments (Viewpoint Estates/Antelope Park Ranchettes, and Sunset Village). Both developments are in proximity of Mayberry, Colorado Springs. The lot sizes in these developments exceed the lot sizes proposed by Mayberry. The lot sizes of Viewpoint Estates/Antelope Park Ranchettes range from 2.5 acres – 5 acres, Sunset Village lot sizes range from 8,600 square feet to 16,000 square feet. Whereas Mayberry, Colorado Springs lot is an average 7,000 square feet. Research of calculations and determinations are detailed below.

Viewpoint Estates/ Antelope Park Ranchettes lot sizes from 2.5 acres to 5 acres.

Water usage calculations from the above referenced developments are from the existing contractual commitment from Cherokee Metropolitan District to serve Viewpoint Estates/Antelope Park Ranchettes 50 Acre Feet Per Year.

Under the terms of the 1988 water agreement between the Cherokee Metropolitan District and R. W. Case and C.H. McAllister, there is 50 acre feet of water available annually. The 1988 water

agreement also includes a storage right of 200,000 gallons in the tank owned and operated by the Cherokee Metropolitan District.

In 2020, MMI Water Engineers conducted an analysis of the 50 AF per year contractual commitment and the status of annual usage. The analysis reviewed water usage in Viewpoint Estates/Antelope Park Ranchettes over two 12-month periods spanning 2019 and 2020 and projected the domestic and irrigation water usage for 114 homes to be 8,858,500 gallons annually (0.238 acre feet per year per tap).

The ultimate water demand for a total of 121 taps in Viewpoint Estates/Antelope Park Ranchettes allowing for the replating of Lots 71 and 72 therefore computes to be 31.46 acre feet per year.

- $0.238 \text{ AFY} \times 1.10 \text{ (10\% system loss)} = 0.26 \times 121 = 31.46 \text{ AF}$

In anticipation of low central distribution system losses on the new Mayberry, Colorado Springs properties, the water loss percentage is five percent (5%), resulting in an average use per tap of less than 0.26 acre feet per year.

Sunset Village Lot sizes from 8,600 square feet to 16,000 square feet

Water usage calculations from the above referenced development is from the existing contractual commitment from Cherokee Metropolitan District to serve Sunset Village 60 Acre Feet Per Year.

Cherokee Metropolitan District’s annual water usage as metered and billed to the customers in Sunset Village is tabulated below.

Year	Acre-Feet Billed	Accounts	Acre Feet/ Account
2011	16.03	90	0.178
2012	14.94	91	0.164
2013	13.79	89	0.155
2014	12.06	88	0.137
2015	11.13	87	0.128
2016	12.05	90	0.134
2017	13.91	91	0.153
2018	14.80	92	0.161
2019	16.22	92	0.176
2020	13.48	92	0.147

The two highest average water usages per account occurred in 2011 and 2019 at 0.178 and 0.176 acre feet annually per tap, respectively.

Allowing for a 10 percent loss in the distribution system, the average use per tap in Sunset Village computes to be 0.20 acre feet per year.

The ultimate water demand for the platted total of 143 taps in Sunset Village computes to be 28.60 acre feet per year.

- $0.178 \text{ AFY} \times 1.10 \text{ (10\% system loss)} = 0.20 \times 143 = 28.60 \text{ AF}$

Based on the proposed 240 single family homes with proposed average lot size of 7,000 square feet, the historical data also supports demands of less than 0.26 acre feet per home.

PROJECTED WATER DEMAND

The PUD Amendment consists of 240 residential homes, 3 industrial lots, and associated parks and street landscaping.

The demands of the 240 residential homes with the use of 0.26 acre feet per year per home, there is an ultimate demand of 62.40 AF.

The demands of the 3 industrial lots are as follows:

- Lot 1 (Intelifab of Colorado, LLC) - The Intelifab facility will be located on 1.5 acres of industrial property and have 24,000 square feet of developed space. Based upon the presumed value of 0.1 gallon per day for each square foot of developed space, the inside use computes to 2.68-acre feet per year. Based upon the actual landscape plans for Intelifab, 4,115 square feet of the lot will be irrigated landscaping and based upon the presumed value of 0.0566-acre feet per 1,000 square feet of landscaping, the landscape use computes to 0.23 acre feet per year. The projected water demand for the Intelifab Facility is 2.91-acre feet per year.
- Lot 2 - A storage warehouse will be located on 1.48 acres of industrial property and have 35,000 square feet of developed space. Based upon the presumed value of 0.1 gallon per day for each square foot of developed space, the inside use computes to 3.92-acre feet per year. Based upon the assumption fifteen percent (15%) of the 1.48 acres will be landscaped and based upon the presumed value of 0.0566-acre feet per 1,000 square feet of landscaping, the landscape use computes to 0.55-acre feet per year. The projected water demand for the storage warehouse is 4.47-acre feet per year.
- Lot 3 (Mayberry RV Storage, LLC) - An RV storage facility will be located on 0.83 acres of industrial property and have 25,500 square feet of canopy style covered parking which will not have any indoor water demand. The inside use computes to 0.00-acre feet per year. Based upon the assumption fifteen percent (15%) of the 0.83 acres will be landscaped and based upon the presumed value of 0.0566-acre feet per 1,000 square feet of landscaping, the landscape use computes to 0.31-acre feet per year. The projected water demand for Industrial Lot 3 is 0.31-acre feet per year.

The water demands of the proposed parks and street landscaping are determined using the guidance in the El Paso County Land Development Code.

The landscape area for the Log Road/Village Main open space is 100,166 square feet. Based upon the presumed value of 2.46-acre feet per acre of landscaping, the landscape use computes to 5.66-acre feet per year.

The landscape area for the Tract O Park open space is 109,427 square feet. Based upon the presumed value of 2.46-acre feet per acre of landscaping, the landscape use computes to 6.18-acre feet per year.

The projected water demands for the development are summarized in the following table.

MAYBERRY, COLORADO SPRINGS PROJECT WATER DEMAND SUMMARY

<u>USE</u>	<u>DEMAND</u>
240 Single Family Residential Homes at 0.26 AFY	62.40 AF
3 industrial Lots	7.7 AF
Parks and Street Landscaping	11.84
<i>Total Demand</i>	<i>81.94</i>

WATER SOURCES

Ellicott Utilities Company, LLC owns several water supply sources as detailed in the summaries above. EUC proposes to utilize Denver Basin groundwater wells determination number 598-BD, and a portion of the water interest from the Tipton Well Water Interest that is also owned by EUC and further detailed in the appendices attached to this document.

DENVER BASIN WATER DETERMINATION 598-BD WATER ALLOCATION 50.98 AFY

Determination No. 598-BD	Acre Feet Allocation to The Development
<i>Total AF available to commit to Mayberry, Colorado Springs</i>	50.98 AFY
<i>Demand from Mayberry, Colorado Springs</i>	
3 Industrial Lots	7.7 AFY
Parks and Street Landscaping	11.84 AFY
120.92 Single Family Residential at 0.26 AFY	31.44 AFY
<i>Total AFY Demand</i>	<i>50.98</i>
Remaining AF from Determination No. 598-BD	0.00 AF

**note* Commitment letters from Ellicott Utilities Company are in the appendices attached to this report.*

A PORTION OF THE 82 AFY TIPTON WELL WATER INTEREST

Tipton Well 91-GW-01	Acre Feet Allocation to the Development
<i>Total AF available to commit to Mayberry, Colorado Springs</i>	77.90 AFY
<i>Remaining Demand from Mayberry, Colorado Springs</i>	
119.08 Single Family Residential at 0.26 AFY	30.96 AFY
Total AFY Demand	30.96
Remaining AF from Tipton Well Water Interest	46.94 AFY

**note* Commitment letters from Ellicott Utilities Company are in the appendices attached to this report.*

These two sources combined will satisfy the demand of 81.94 AFY that is created by the PUD Amendment containing 240 homes 3 industrial lots and the associated street and park landscaping.

WATER SYSTEM PLAN

Water Service

The water service plan for the proposed development is to connect to the existing central public water system of Ellicott Utilities Company, LLC. EUC currently owns and operates the public water system serving the Viewpoint Estates and Antelope Park Ranchettes Subdivisions under PWSID No. 121245. EUC will serve the Mayberry, Colorado Springs Subdivision as an extension of the existing central water system.

EUC has the system capacity to meet the anticipated demands for the proposed development. Builders will purchase water taps from EUC for each home and commercial building.

Fire Flow Requirements

Based on a report provided to El Paso County and Pikes Peak Regional Building Department by JPS Engineering for Filing 1 and Filing 2, fire flow requirements are typically based on the largest building area and classification within the development. Within residential areas, assuming maximum home sizes of 4,800 square feet and Type V-N (wood frame) construction, the International Fire Code (IFC) requires a fire flow of 1,750-gpm for a duration of 2 hours. Fire hydrants will be installed to provide an average hydrant spacing of 500 feet in typical residential areas, consistent with IFC recommendations.

Within commercial areas, assuming a maximum building size of 12,600 square feet and Type II-B construction, the International Fire Code (IFC) requires a fire flow of 2,250-gpm and an average fire hydrant spacing of 450 feet. Fire protection requirements for commercial areas may also

include sprinkler systems serving individual buildings depending on the building size and construction type.

EUC owns the existing 500,000-gallon Viewpoint Water Storage Tank located at the northwest corner of the Ellicott Town Center subdivision, and EUC also has the contractual water storage right of 200,000 gallons within the existing 500,000-gallon Cherokee Metropolitan District tank adjacent to the property.

SUMMARY

The PUD Amendment of Mayberry, Colorado Springs including 240 homes, 3 industrial lots, and respective landscaping, will connect to the existing central water systems currently owned and operated by Ellicott Utilities Company, LLC. EUC currently has adequate water rights and water system infrastructure to serve 240 single family residential homes, three industrial lots, and all parks and street landscaping in the development.

Water system improvements will be designed and constructed in accordance with Ellicott Utilities Company Standard Specifications for provision of municipal water and domestic wastewater treatment, and these facilities will ultimately be dedicated to EUC.

APPENDIX A

WATER/ WASTEWATER COMMITMENT LETTERS



Ellicott Utilities Company, LLC
P.O. Box 86
Rancho Santa Fe, CA 92067

May 14, 2021
Revised June 2, 2021

Mayberry Communities, LLC
3296 Divine Heights No. 207
Colorado Springs, CO 80922

**Re: Mayberry, Colorado Springs
PUD Amendment
Water and Wastewater Service Commitment (240 Homes 3 industrial Lots and
associated landscaping)**

Gentlemen:

It is our understanding that Mayberry Communities, LLC (the “Developer”) is interested in obtaining water and sewer service from Ellicott Utilities Company, LLC (the “Company”) for that property known as Mayberry, Colorado Springs for the Amended PUD. (the “Development”). It is our understanding that the El Paso County has previously approved Filing No. 1 and No. 2 and that the property is undergoing a PUD Amendment for 240 single family residential homes, 3 industrial lots and associated landscaping.

Ellicott Utilities Company further recognizes that we have issued two prior commitments, one for Filing No. 1 and one for Filing No. 2 both attached hereto. *This commitment is intended to replace the prior two commitments and to further commit to provide water and wastewater service to the remaining 142 homes.*

Ellicott Utilities Company, LLC will provide water and sewer service to the Development in accordance with the Company Rules and Regulations. Ellicott Utilities Company, LLC understands that the Developer has committed to construct water and sewer facilities as required to serve the Development in accordance with the subdivision construction drawings, and the Developer has provided for dedication of necessary easements and rights of way for the water and sewer improvements through the subdivision plans and related plat documents.

The proposed development will be served by the Ellicott Utilities Company’s central water and sewer system. Ellicott Utilities Company, LLC hereby provides an unconditional commitment to serve this PUD amendment of 240 single family residential homes, 3 Industrial lots and associated landscaping within Mayberry, Colorado Springs. There is a projected water demand of 81.94 AFY.

This commitment is based on the following water sources owned and controlled by the Company:

- Determination No. 598-BD (Laramie Fox Hills Wells) 50.98 AFY
- A portion of the Tipton Well Water Interest 30.96 AFY



Ellicott Utilities Company, LLC commits to providing the water supply to meet the El Paso County 300-year water supply requirement for this subdivision.

Ellicott Utilities Company anticipates that this PUD Amendment for 240 homes and 3 industrial lots will generate 263.1 SFE of wastewater. This is equivalent to an average daily wastewater flow of 52,620 gallons. Under Permit No CO0047252, Ellicott Utilities Company has the capacity for 250,000 gallons per day. With the current flows and the addition of this PUD amendment the wastewater treatment plant will be operating at 45.88% capacity.

Ellicott Utilities Company commits to provide wastewater services to the Development.

ELLICOTT UTILITIES COMPANY, LLC

John Mick

John Mick (Jun 2, 2021 09:40 MDT)

Signature

John Mick

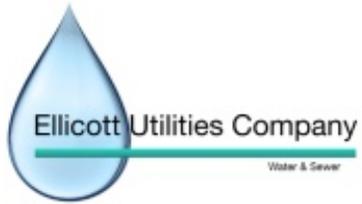
Jun 2, 2021

Name

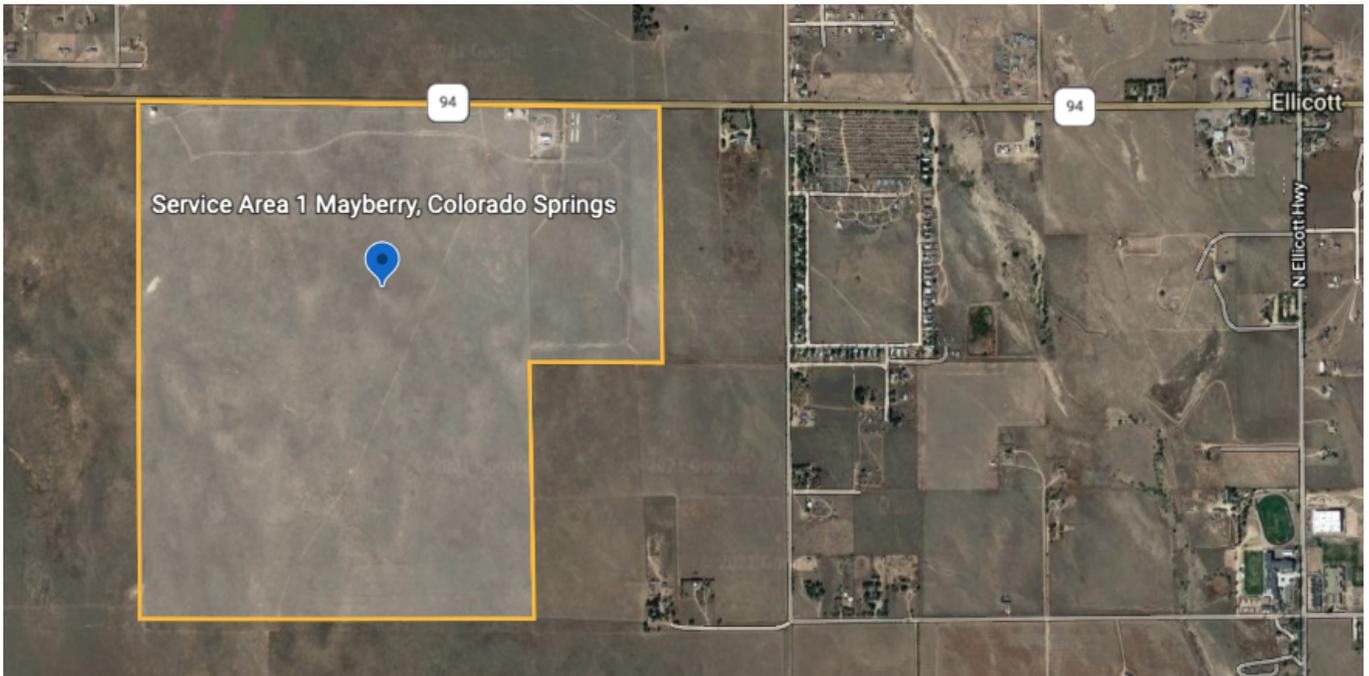
Date

APPENDIX B

WATER SERVICE AREA MAP



Water Service Area Map



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 of 1
Drawn: DD	
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

APPENDIX C

WATER QUALITY REPORT

ELLCOTT UTILITIES COMPANY LLC 2021 Drinking Water Quality Report Covering Data For Calendar Year 2020

Public Water System ID: CO0121245

Esta es información importante. Si no la pueden leer, necesitan que alguien se la traduzca.

We are pleased to present to you this year's water quality report. Our constant goal is to provide you with a safe and dependable supply of drinking water. Please contact PHILLIP W CROMWELL at 719-499-9993 with any questions or for public participation opportunities that may affect water quality. **Please see the water quality data from our wholesale system(s) (either attached or included in this report) for additional information about your drinking water.**

General Information

All drinking water, including bottled water, may reasonably be expected to contain at least small amounts of some contaminants. The presence of contaminants does not necessarily indicate that the water poses a health risk. More information about contaminants and potential health effects can be obtained by calling the Environmental Protection Agency's Safe Drinking Water Hotline (1-800-426-4791) or by visiting epa.gov/ground-water-and-drinking-water.

Some people may be more vulnerable to contaminants in drinking water than the general population. Immunocompromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV-AIDS or other immune system disorders, some elderly, and infants can be particularly at risk of infections. These people should seek advice about drinking water from their health care providers. For more information about contaminants and potential health effects, or to receive a copy of the U.S. Environmental Protection Agency (EPA) and the U.S. Centers for Disease Control (CDC) guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and microbiological contaminants call the EPA Safe Drinking Water Hotline at (1-800-426-4791).

The sources of drinking water (both tap water and bottled water) include rivers, lakes, streams, ponds, reservoirs, springs, and wells. As water travels over the surface of the land or through the ground, it dissolves naturally occurring minerals and, in some cases, radioactive material, and can pick up substances resulting from the presence of animals or from human activity. Contaminants that may be present in source water include:

- **Microbial contaminants:** viruses and bacteria that may come from sewage treatment plants, septic systems, agricultural livestock operations, and wildlife.
- **Inorganic contaminants:** salts and metals, which can be naturally-occurring or result from urban storm water runoff, industrial or domestic wastewater discharges, oil and gas production, mining, or farming.
- **Pesticides and herbicides:** may come from a variety of sources, such as agriculture, urban storm water runoff, and residential uses.
- **Radioactive contaminants:** can be naturally occurring or be the result of oil and gas production and mining activities.
- **Organic chemical contaminants:** including synthetic and volatile organic chemicals, which are byproducts of industrial processes and petroleum production, and also may come from gas stations, urban storm water runoff, and septic systems.

In order to ensure that tap water is safe to drink, the Colorado Department of Public Health and Environment prescribes regulations limiting the amount of certain contaminants in water provided by public water systems. The Food and Drug Administration regulations establish limits for contaminants in bottled water that must provide the same protection for public health.

Lead in Drinking Water

If present, elevated levels of lead can cause serious health problems (especially for pregnant women and young children). It is possible that lead levels at your home may be higher than other homes in the community as a result of materials used in your home's plumbing. If you are concerned about lead in your water, you may wish to have your water tested. When your water has been sitting for several hours, you can minimize the potential for lead exposure by flushing your tap for 30 seconds to 2 minutes before using water

for drinking or cooking. Additional information on lead in drinking water, testing methods, and steps you can take to minimize exposure is available from the Safe Drinking Water Hotline (1-800-426-4791) or at epa.gov/safewater/lead.

Source Water Assessment and Protection (SWAP)

The Colorado Department of Public Health and Environment may have provided us with a Source Water Assessment Report for our water supply. For general information or to obtain a copy of the report please visit wqcdcompliance.com/ccr. The report is located under “Guidance: Source Water Assessment Reports”. Search the table using 121245, ELLICOTT UTILITIES COMPANY LLC, or by contacting PHILLIP W CROMWELL at 719-499-9993. The Source Water Assessment Report provides a screening-level evaluation of potential contamination that **could** occur. It **does not** mean that the contamination **has or will** occur. We can use this information to evaluate the need to improve our current water treatment capabilities and prepare for future contamination threats. This can help us ensure that quality finished water is delivered to your homes. In addition, the source water assessment results provide a starting point for developing a source water protection plan. Potential sources of contamination in our source water area are listed on the next page.

Please contact us to learn more about what you can do to help protect your drinking water sources, any questions about the Drinking Water Quality Report, to learn more about our system, or to attend scheduled public meetings. We want you, our valued customers, to be informed about the services we provide and the quality water we deliver to you every day.

Our Water Sources

<u>Sources (Water Type - Source Type)</u>	<u>Potential Source(s) of Contamination</u>
PURCHASED WATER FROM CO0121125 (Groundwater-Consecutive Connection)	There is no SWAP report, please contact PHILLIP W CROMWELL at 719-499-9993 with questions regarding potential sources of contamination.

Terms and Abbreviations

- **Maximum Contaminant Level (MCL)** – The highest level of a contaminant allowed in drinking water.
- **Treatment Technique (TT)** – A required process intended to reduce the level of a contaminant in drinking water.
- **Health-Based** – A violation of either a MCL or TT.
- **Non-Health-Based** – A violation that is not a MCL or TT.
- **Action Level (AL)** – The concentration of a contaminant which, if exceeded, triggers treatment and other regulatory requirements.
- **Maximum Residual Disinfectant Level (MRDL)** – The highest level of a disinfectant allowed in drinking water. There is convincing evidence that addition of a disinfectant is necessary for control of microbial contaminants.
- **Maximum Contaminant Level Goal (MCLG)** – The level of a contaminant in drinking water below which there is no known or expected risk to health. MCLGs allow for a margin of safety.
- **Maximum Residual Disinfectant Level Goal (MRDLG)** – The level of a drinking water disinfectant, below which there is no known or expected risk to health. MRDLGs do not reflect the benefits of the use of disinfectants to control microbial contaminants.
- **Violation (No Abbreviation)** – Failure to meet a Colorado Primary Drinking Water Regulation.
- **Formal Enforcement Action (No Abbreviation)** – Escalated action taken by the State (due to the risk to public health, or number or severity of violations) to bring a non-compliant water system back into compliance.
- **Variance and Exemptions (V/E)** – Department permission not to meet a MCL or treatment technique under certain conditions.

- **Gross Alpha (No Abbreviation)** – Gross alpha particle activity compliance value. It includes radium-226, but excludes radon 222, and uranium.
- **Picocuries per liter (pCi/L)** – Measure of the radioactivity in water.
- **Nephelometric Turbidity Unit (NTU)** – Measure of the clarity or cloudiness of water. Turbidity in excess of 5 NTU is just noticeable to the typical person.
- **Compliance Value (No Abbreviation)** – Single or calculated value used to determine if regulatory contaminant level (e.g. MCL) is met. Examples of calculated values are the 90th Percentile, Running Annual Average (RAA) and Locational Running Annual Average (LRAA).
- **Average (x-bar)** – Typical value.
- **Range (R)** – Lowest value to the highest value.
- **Sample Size (n)** – Number or count of values (i.e. number of water samples collected).
- **Parts per million = Milligrams per liter (ppm = mg/L)** – One part per million corresponds to one minute in two years or a single penny in \$10,000.
- **Parts per billion = Micrograms per liter (ppb = ug/L)** – One part per billion corresponds to one minute in 2,000 years, or a single penny in \$10,000,000.
- **Not Applicable (N/A)** – Does not apply or not available.
- **Level 1 Assessment** – A study of the water system to identify potential problems and determine (if possible) why total coliform bacteria have been found in our water system.
- **Level 2 Assessment** – A very detailed study of the water system to identify potential problems and determine (if possible) why an E. coli MCL violation has occurred and/or why total coliform bacteria have been found in our water system on multiple occasions.

Detected Contaminants

ELLCOTT UTILITIES COMPANY LLC routinely monitors for contaminants in your drinking water according to Federal and State laws. The following table(s) show all detections found in the period of January 1 to December 31, 2020 unless otherwise noted. The State of Colorado requires us to monitor for certain contaminants less than once per year because the concentrations of these contaminants are not expected to vary significantly from year to year, or the system is not considered vulnerable to this type of contamination. Therefore, some of our data, though representative, may be more than one year old. Violations and Formal Enforcement Actions, if any, are reported in the next section of this report.

Note: Only detected contaminants sampled within the last 5 years appear in this report. If no tables appear in this section then no contaminants were detected in the last round of monitoring.

Disinfectants Sampled in the Distribution System TT Requirement: At least 95% of samples per period (month or quarter) must be at least 0.2 ppm <u>OR</u> If sample size is less than 40 no more than 1 sample is below 0.2 ppm Typical Sources: Water additive used to control microbes						
Disinfectant Name	Time Period	Results	Number of Samples Below Level	Sample Size	TT Violation	MRDL

Chlorine	December, 2020	<u>Lowest period</u> percentage of samples meeting TT requirement: 100%	0	1	No	4.0 ppm
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Lead and Copper Sampled in the Distribution System								
Contaminant Name	Time Period	90 th Percentile	Sample Size	Unit of Measure	90 th Percentile AL	Sample Sites Above AL	90 th Percentile AL Exceedance	Typical Sources
Copper	09/23/2020 to 09/23/2020	0.24	5	ppm	1.3	0	No	Corrosion of household plumbing systems; Erosion of natural deposits
Lead	09/23/2020 to 09/23/2020	7.5	5	ppb	15	0	No	Corrosion of household plumbing systems; Erosion of natural deposits

Disinfection Byproducts Sampled in the Distribution System									
Name	Year	Average	Range Low – High	Sample Size	Unit of Measure	MCL	MCLG	MCL Violation	Typical Sources
Total Haloacetic Acids (HAA5)	2020	8.3	8.3 to 8.3	1	ppb	60	N/A	No	Byproduct of drinking water disinfection
Total Trihalomethanes (TTHM)	2020	38.9	38.9 to 38.9	1	ppb	80	N/A	No	Byproduct of drinking water disinfection



Violations, Significant Deficiencies, and Formal Enforcement Actions

No Violations or Formal Enforcement Actions

APPENDIX D

OWNED WATER RIGHTS AND COMMITMENT RIGHTS

D.1 SERVICE AGREEMENT 54.03 AFY OF THE TIPTON WELL WATER INTEREST

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.

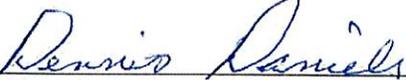
1. Subordination Clause. In the event of a force majeure event or condition as described above in this paragraph 25, until the event or condition is resolved, this Agreement shall be made expressly subordinate to any present or future use of water supply for municipal purposes within the service territory 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.

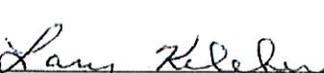
R. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original but all of which together shall constitute one agreement.

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

CHEROKEE METROPOLITAN DISTRICT

By: 
Steven Hasbrouck, President
August 26, 2021
Date

By: 
Director
26 Aug 21
Date

By: 
Director
8-26-2021
Date

By: 
General Manager
8-26-21
Date

ELLCOTT UTILITIES COMPANY, LLC

By: 
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			R&R ENGINEERS-SURVEYORS, INC	
Date: 8/17/2021	Sheet		1635 W. 13TH AVENUE, SUITE 310	
Drawn: DD	1		DENVER, COLORADO 80204	
Checked: MAG	of		PH. 303-753-6730	
Job No.: MC21194	1	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.

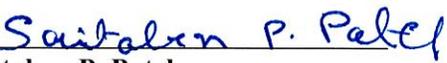
[Signature Pages to Follow]

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**

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

Sep 8, 2021

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

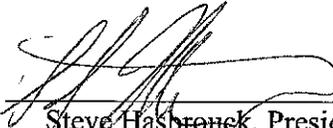
WHEREAS, Powers & Galley Water LLC, has requested that the District terminate the 2006 P&G Agreement.

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

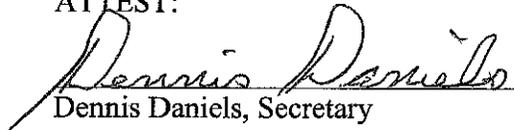
Cherokee Metropolitan District hereby agrees to terminate the 2006 P&G Agreement, pursuant to the Termination of Water and Sewer Service Agreement attached to this Resolution as Exhibit A.

ADOPTED AND APPROVED this 9th day of February 2022.

CHEROKEE METROPOLITAN DISTRICT

By: 
Steve Hasbrouek, 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 9th, 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:

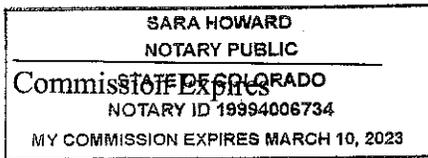
By: [Signature] 9 FEB 22
Dennis Daniels, Secretary

POWERS & GALLEY WATER LLC

By: [Signature] Jason Koels, 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 Koels vice.

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



D.2 SERVICE AGREEMENT 27.97 AFY OF THE TIPTON WELL WATER INTEREST

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			R&R ENGINEERS-SURVEYORS, INC 1635 W. 13TH AVENUE, SUITE 310 DENVER, COLORADO 80204 PH: 303-753-6730 WWW.RRENGINEERS.COM
Date: 8/17/2021 Drawn: 00 Checked: MAG Job No.: MC21194	Sheet 1 of 1		

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").

R E C I T A L S

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.

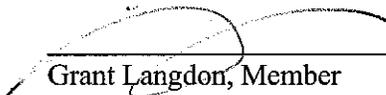
"ASSIGNOR"

"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

**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.

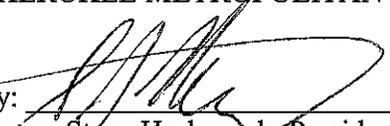
WHEREAS, the District and MBC desire to amend the MBC Service Agreement to reduce the amount of the water service commitment therein to exclude any entitlement to water service based on the Excess Water Interest.

AGREEMENT

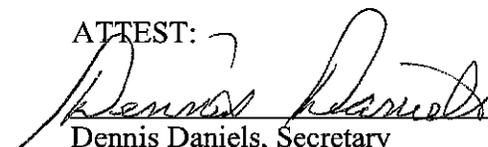
1. The Recitals above are hereby incorporated into this Agreement.
2. The MBC Service Agreement is hereby amended to reduce any and all commitment(s) by the District to provide water service to a maximum amount of 40.32 acre-feet per year. The District shall have no obligation to provide water service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

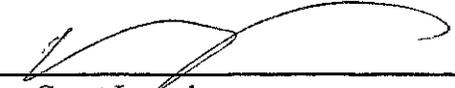

Dennis Daniels, Secretary

9 FEB 22

(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 9th day of February 2022 by Grant Langdon of Marksheffel Business Center, LLC.

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

Address

SARA HOWARD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID: 18994006734
MY COMMISSION EXPIRES MARCH 10, 2023

Commission Expires

D.3 BENTON WELL NO. 2 CHANGE OF WATER RIGHT APPLICATION



**HISTORICAL CONSUMPTIVE USE ANALYSIS
FOR WELL 17075-FP-R**

Prepared for

Ellicott Utilities Company, LLC

March 24, 2021

2103.00

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LIST OF ACRONYMS AND ABBREVIATIONS

AF	acre-feet
af/yr	acre-feet per year
CDSS	Colorado's Decision Support Systems
DWR	Colorado Division of Water Resources
FSA	Farm Service Agency
gpm	gallons per minute
NAIP	National Agriculture Imagery Program
NOAA	National Oceanic and Atmospheric Administration
NRCS	Natural Resources Conservation Service
USDA	United States Department of Agriculture

HISTORICAL CONSUMPTIVE USE ANALYSIS FOR WELL 17075-FP-R

SECTION 1 – INTRODUCTION

This report provides technical information in support of Ellicott Utilities Company, LLC’s (“EUC”) application to the Colorado Ground Water Commission (“Commission”) for a Change of Water Rights for an alluvial water supply well filed together with this report. Well 17075-FP-R (the “Well”) is located in the Upper Black Squirrel Creek Designated Basin (“UBS Basin”) near Ellicott, Colorado. The application seeks a change in place and type of use of the ground water right associated with the Well.

1.1 Background and Farm Description

The area historically irrigated by the Well comprises approximately 280 acres located south of Ellicott, Colorado entirely within the west half of Section 14, Township 15 South, Range 63 West, as shown in Figure 1. The Well is located within the UBS Basin and is subject to the state rules governing the management and control of designated basin groundwater, as well as the rules specific to the UBS Basin¹. Well permit information for the Well is summarized in Table 1.

The Well is located on land owned by Dean Goss. Based on documents provided to us by EUC, Ellicott Springs Resources, LLC acquired the Well in 1999 and EUC acquired the Well in early 2013. It appears that the land irrigated by the Well was primarily farmed by Rodney Preisser and Mr. Goss until at least 2013. Well pumping data and crop history records were poorly maintained throughout the study period, as discussed in Section 3.

EUC is filing an application to the Commission to quantify the historical consumptive use (“HCU”) for the Well and for approval of a change in the type and place of use. Changed uses include municipal, irrigation (including irrigation at the historical place of use), commercial, industrial, domestic, stock watering, recreation, fish and wildlife purposes, residential, fire protection, replacement and augmentation, either through direct use or following storage (the

¹ *Upper Black Squirrel Creek Ground Water Management District Rules and Regulations and Statement of Policy As Amended through February 3, 2009.*

“Changed Uses”). The new place of use will be within Mayberry Colorado Springs Metropolitan District.

We completed an HCU analysis to determine the amount of water attributable to the Well that will be available for the Change Uses. This report summarizes the methodology and results of that analysis.

EUC is filing an application to the Commission to quantify the historical consumptive use (“HCU”) for the Well and for approval of a change in the type and place of use. The changed uses will be for municipal, irrigation (including irrigation at the historical place of use), commercial, industrial, domestic, stock watering, recreation, fish and wildlife purposes, residential, fire protection, replacement and augmentation, either through direct use or following storage purposes within Mayberry Colorado Springs Metropolitan District (the “Changed Uses”).

We completed an HCU analysis to determine the amount of water attributable to the Well that will be available for the Changed Uses. This report summarizes the methodology and results of that analysis.

SECTION 2 – GENERAL OVERVIEW OF METHODOLOGY FOR THE HCU ANALYSIS

To complete the HCU analysis for the Well, the historical operation of the Well and irrigation operations were investigated, including historical use, irrigated areas, crops grown and corresponding irrigation requirements, historical pumping, soil characteristics, and on-farm irrigation efficiencies. The elements above are described in further detail in Section 3.

2.1 Modified Blaney-Criddle Method

The HCU for the Well was quantified by conducting a site-specific water budget analysis based on the modified Blaney-Criddle method in Colorado State University’s Integrated Decision Support Consumptive Use (“IDSCU”) modeling software (version 3.3.162). Potential crop consumptive use (“PCU”) equals the maximum amount of water that may be consumed by a crop given a full water supply. The modified Blaney-Criddle method calculates PCU using monthly temperature data and empirically developed crop coefficients established in USDA Technical Release No. 21.

The crop irrigation requirement (“CIR”) is the amount of irrigation water that a crop will consume after accounting for effective precipitation. CIR is calculated in IDSCU using monthly precipitation data from a nearby climate station as described in Section 2.3. A water budget analysis was completed using historical pumping records and CIR to determine the amount of HCU attributable to the Well that was historically consumed by crops.

2.2 Study Period

According to the Rules and Regulations for the Management and Control of Designated Ground Water (the “Commission Rules”), consumptive use should be determined for at least the ten most recent years of irrigation. A study period of 2006 – 2020 (the “Study Period”) was chosen based on availability of pumping and crop data and years for which the Well owner submitted Requests to Register in a Water Conservation Program (“Conservation Program Requests”), as shown in Table 2. EUC submitted Conservation Program Requests to the DWR in 2012 – 2014 and 2017 - 2018 to exclude those years from any future consumptive use analysis. The stamped waivers are attached to this report as Appendix A.

2.3 Climate Data

As described in Section 2.1, use of the modified Blaney-Criddle methodology and calculation of HCU requires monthly inputs of air temperature and precipitation. The NOAA Ellicott station (USC00052668) (“Ellicott Station”) is the closest climate station that measured all necessary parameters over the study period. Where data for the Ellicott Station were not available, we used data from the Colorado Springs Municipal Airport climate station (USC00093037). Data for all climate parameters are publicly available through the DWR website.

SECTION 3 – HISTORICAL USE OF WELL 17075-FP-R

3.1 Final Well Permit No. 17075-FP-R

The Well is located in the SE ¼ of the SW ¼ of Section 14, Township 15 South, Range 63 West and diverts ground water from the alluvial aquifer of UBS Basin as shown in Figure 1. The Well was permitted for a maximum pumping rate of 1,300 gpm, with an annual pumping limit of 850 AF. Well No. 11197-FP irrigates the E ½ of Section 14, Township 15 South, Range 63 West which

is immediately adjacent to the area historically irrigated by the Well. Based on our review of the well permit files for both wells, the Well is not commingled with Well No. 11197-FP.

3.2 Description of Historical Farming Practices

Based on review of aerial imagery, the area historically irrigated by the Well has been irrigated by two center-pivot sprinklers throughout the Study Period. As shown in Figures 2 - 8, approximately 122 acres were irrigated by the center-pivot sprinkler in the NW ¼ of Section 14 and approximately 124 acres were irrigated by the center-pivot sprinkler in the SW ¼ of Section 14. We understand that both center-pivots are supplied by the Well. We understand that the former irrigator and Mr. Goss have not provided information regarding the sprinkler configuration.

3.3 HCU Analysis

The following section summarizes the HCU analysis inputs and results for the Well.

3.3.1 Irrigated Area and Crop History

We were unable to access FSA reports or conduct an interview with Mr. Goss regarding the area historically irrigated by the Well. We also reviewed historical aerial imagery from 2006 - 2016 to confirm the irrigated areas used in our HCU analysis and to confirm that no irrigation occurred in years in which the operator submitted Conservation Program Requests. We acquired NAIP and Google Earth images for 2006, 2009, 2011, and 2015. We used Landsat images in 2008, 2010, and 2016 due to lack of NAIP and Google Earth images in those years. Areas of green vegetation appear red in the false-color Landsat 5 images. As shown in Table 2, the average historical irrigated area equals 148.2 acres. Historical irrigated areas are shown in Figures 2 – 8.

Crop history was determined from CDSS records and historical records provided by EUC where available. We reviewed a change of use application submitted to the DWR in 2006 by Rodney Preisser. This application was ultimately withdrawn but included crop history information through 2006. The application states that 140 acres of oats and 140 acres of “mill/peas” were irrigated in 2006. The 280 acres of crops reported for 2006 appears overstated because the maximum area of the center-pivots is approximately 250 acres. Therefore, we have reduced the 2006 crop extents to the areas measured from aerial imagery, as shown in Figure 2. An excerpt of the 2006 change of

use application is included as Appendix B. Where CDSS data and historical records were not available, we assumed that pasture grass was irrigated.

3.3.2 Well Pumping

We used meter data and prorated annual pumping totals to estimate historical well pumping. We understand that the Well is equipped with a totalizing flow meter, but monthly pumping data were available for only a limited portion of the Study Period. We obtained meter data for the Well for 2008 – 2011 from EUC which are included as Appendix C. Meter readings were distributed daily and summed monthly when meter readings were recorded in the middle of a month. We also obtained annual pumping data for 2006 that was included in a collection of documents provided by UBS Ground Water Management District in response to a 2011 Colorado Open Records Act request made Ellicott Springs Resources, LLC and obtained by EUC. These data were distributed monthly based on the pumping volume distribution from 2008 to 2011 and are included as Appendix D.

No meter data were available for 2015 or 2016, as discussed in Section 3.3. The Well is operated using a diesel pump rather than a connection to an electrical provider and therefore electrical records cannot be used to estimate historical pumping volume for the periods without meter data. Based on available data, pumping from the Well averaged 110.46 AF, as shown in Table 3 including zeros for years in which no pumping data were available.

3.3.3 Ditch Loss and Farm Deliveries

The Well is located on the southern portion of the historically irrigated area shown in Figure 1. We understand that water is piped from the Well to the center-pivot sprinklers located in the center of each field. Based on this assumption, we assumed no transit loss from the Well to the two center-pivots.

3.3.4 Modeling of Historical Use of The Well

The following subsections describe inputs used to model the historical farming practices, including the crops grown, irrigated areas, irrigation practices, maximum farm efficiency, available water capacity of the soils, and potential consumptive use of the crops.

3.3.4.1 *Irrigation Methods and Farm Efficiency*

Maximum farm irrigation efficiency represents the maximum percentage of the sprinkler delivery that is available to meet the crop demands, either directly or after delivery to the soil moisture reservoir. Based on review of aerial imagery, the farm was irrigated by two center-pivot sprinklers for the duration of the study period. The Well is located on the southern center-pivot and we assumed no transit loss from the Well to the sprinklers. The maximum sprinkler efficiency was estimated to be 80% for this analysis, a commonly accepted value for sprinkler irrigation.

3.3.4.2 *Soils Data*

The available water capacity (“AWC”) of the soils underlying the historically irrigated area were determined using the NRCS soil survey data obtained from the NRCS Web Soil Survey. Using a soil profile depth of approximately 5 feet, a representative AWC for each soil type was weighted based on the AWC reported for each component within the soil profile. A composite AWC value was then determined by using an area-weighted average from the individual AWC values for each soil type and the percent of the irrigated area represented by each soil type. We calculated a composite AWC of 1.13 in/ft for the historically irrigated area.

3.3.5 PCU and Crop Irrigation Requirement

PCU was calculated using the modified Blaney-Criddle method implemented in IDSCU modeling software, as described in Section 2. The crop irrigation requirement (“CIR”) is the amount of water that can be consumed by a crop given a full irrigation water supply after accounting for effective precipitation. The total CIR for the crops grown on the lands historically irrigated by the Well was calculated for the Study Period using the IDSCU model and is equal to monthly PCU less effective precipitation. Effective precipitation was calculated in IDSCU using the Soil Conservation Service method. A summary of the average monthly CIR for the area historically irrigated by the Well is provided in Table 4. The CIR for the crops grown on the historically irrigated area averaged 257.32 af/yr. Based on comparison of average annual pumping and net CIR, it appears that the historically irrigated area was water short in most years if the Well was the only irrigation sourced utilized. We are unaware of any other water sources used to irrigate the historically irrigated area.

3.3.6 On-Farm Depletion of Water Supply

The on-farm depletion of water supply is equal to HCU and represents the amount of water delivered to the historically irrigated lands that was consumed by crops. The on-farm depletion occurs by both direct consumption by the crop of irrigation water and consumption of water in the soil moisture reservoir that was filled by the irrigation supply. For 2006 and 2008 – 2011, the on-farm depletion is equal to the amount of well pumping (either stored or applied) used to meet CIR in each month.

Because no pumping data are available for 2015 and 2016, on-farm depletion of irrigation supply is estimated by dividing CIR by the maximum irrigation efficiency of 80%, as described in the Commission Rules. This method resulted in consumptive use totals which exceeded any other year in the study period as shown in Table 5a. To estimate historical consumption of irrigation more accurately, we limited monthly consumptive use in 2015 and 2016 to the lesser of estimated consumptive use in 2015 and 2016 in Table 5a and average monthly consumptive use in 2008 – 2011.

On-farm depletion of water supplies from the Well averaged 113.00 af/yr as shown in Table 5b. This amount is claimed as the HCU credit.

SECTION 4 – OPINION OF HCU

It is our expert opinion that the average HCU of the water supplied by the Well is 113.00 af/yr. To the extent that irrigation water is no longer provided by the Well, this quantity of water can be changed to a new use, including uses off the farm and outside of the UBS Basin, without causing injury to other water rights and well users under the terms and conditions provided below.

SECTION 5 – TERMS AND CONDITIONS

It is our opinion that the following terms and conditions are adequate to prevent injury to other water users and to prevent expansion of use of the water rights associated with the Well.

1. Pumping amounts from the Well and any water delivered off the property shall be measured using certified totalizing flow meters in accordance with State requirements.

2. Before the Well is put to a changed use, continued irrigation use shall be limited to an annual pumping volume of 850 acre-feet per year in accordance with the existing well permit.
3. Pumping of the Well for the Changed Uses will be limited to 113.00 af/yr plus allowable withdrawals resulting from banking.

SECTION 6 – DOCUMENTS RELIED UPON

State of Colorado Ground Water Commission. Rules and Regulations for the Management and Control of Designated Ground Water. As amended January 14, 2020.

Upper Black Squirrel Ground Water Management District Rules and Regulations and Statement of Policy. As amended February 3, 2009.

Soil Survey Staff, Natural Resources Conservation Service, United States Department of Agriculture. Soil Survey Geographic (SSURGO) Database. Available online at <https://sdmdataaccess.sc.egov.usda.gov>.

USDA Soil Conservation Service. Colorado Irrigation Guide. Revised December 1988.

August 2020 BBA field visit.

Integrated Decision Support Consumptive Use (IDSCU) Model (v3.3.162) [Software]. Fort Collins, CO: Colorado State University. November 2019.

Irrigation Water Requirements, Technical Release No. 21, U.S. Department of Agriculture, Soil Conservation Service: April 1967, Revised September 1970.

Monthly climate data from the NOAA Ellicott and Colorado Springs Municipal Airport climate stations.

Division of Water Resources permit file for Well Permit Nos. 17075-FP and 17075-FP-R, including Conservation Program Requests in the well permit file.

Aerial photos of the lands historically irrigated by the Well for the following years: 2006, 2009, 2011, and 2015.

Landsat images of the lands historically irrigated by the Well for the following years: 2008, 2010, and 2016.

APPENDIX E

TIPTON WELL SUPPORTING DOCUMENTS

E.1 CHEROKEE METRO LETTER PERTAINING TO P.B. AND SONS' PARTNERSHIP



CHEROKEE METROPOLITAN DISTRICT
6250 Palmer Park Blvd., Colorado Springs, CO 80915-2842
Telephone: (719) 597-5080 Fax: (719) 597-5145

November 15, 2016

Mr. P.B. Patel
c/o PB & Sons Partnership
4308 Meadowview Court
Colorado Springs, CO 80918

Mr. Patel,

The purpose of this letter is to acknowledge and recognize the following:

Powers & Galley Water was organized in November 2006 and its initial members were REA Development Corporation (REA) and Butler, Patel, & Peetz, LLC (BPP), according to an operating agreement for Powers & Galley dated December 4, 2006.

On December 4, 2006, Powers & Galley Water, LLC and the Cherokee Metropolitan District entered into a Water and Sewer Service Agreement that established the Cherokee Water, LLC. The purpose of this agreement was to provide the framework, terms, and conditions for the District to provide water to certain property owned by Powers & Galley. As part of this agreement Powers & Galley provided funds for Cherokee Water, LLC to purchase water rights in the amount of 54.03 acre feet in exchange for a membership in the Cherokee Water, LLC.

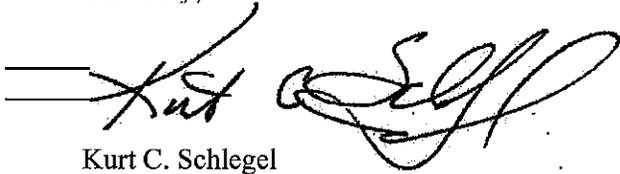
On December 3, 2008, REA and BPP entered into a purchase agreement for BPP to purchase all of REA's interest in Powers & Galley and the parties eventually closed on that purchase although no conveyance documentation was created at closing. As of the date of that closing, BPP became the sole member and owner of Powers & Galley Water, LLC.

On August 18, 2015, BPP assigned all of its interest in Cherokee Water to PB & Sons Partnership. The Cherokee Water LLC's Operating Agreement governs the process for any transfer of a member's interest in Cherokee Water, LLC or any water rights subject to the Operating Agreement. As stated under Section 6.2 of the Operating Agreement, a transfer of a member's interest in Cherokee Water, LLC must be authorized by the District's General Manager, or else the transfer is null and void and unenforceable. Powers & Galley and BPP failed to comply with Section 6.2 prior to transferring the interest in Cherokee Water, LLC.

As the current General Manager of the Cherokee Metropolitan District, I wish to acknowledge and recognize the previous transfers of the interest in Cherokee Water, LLC from Powers & Galley to BPP, and BPP to P.B. & Sons Partnership.

P.B. & Sons Partnership is currently seeking a buyer for its 54.03 acre feet of water rights. Upon being presented a contract of sale for this water right, the General Manager will ensure that the property to be serviced by these water rights lies within the Cherokee Metropolitan District's boundaries. Once all of the requirements set forth in the Cherokee Water, LLC Operating Agreement are met the General Manager may approve the transfer of membership interest in Cherokee Water, LLC to the new owner.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt C. Schlegel". The signature is written in a cursive style with a large, stylized initial "K".

Kurt C. Schlegel
General Manager

E.2 CHEROKEE METRO LETTER TO GRANT LANGDON SUPPORTING 27.97 AFY OF
UNCOMMITTED WATER INTEREST



CHEROKEE METROPOLITAN DISTRICT

6250 Palmer Park Blvd., Colorado Springs, CO 80915-2842

Telephone: (719) 597-5080 Fax: (719) 597-5145

**Grant Langdon
PO Box 38939
Colorado Springs, CO 80937-8939**

Sent via email: gl@glangdon.com

Re: Sufficient Capacity Statement for Wilshire Development and Marksheffel Business Center

Dear Grant Langdon,

As requested, this document will serve as a sufficiency statement from the Cherokee Metropolitan District that it will have sufficient water and sewer capacity for the remainder of the Wilshire and Marksheffel Business Center developments generally located on undeveloped land south of Sioux Circle and west of Marksheffel Road. An initial water interest from Cherokee Water L.L.C. of 68.29 Acre-Feet per Year (AFY) was reserved for this set of developments in 2006. Commitments have been made against the interest to provide for development on the property, leaving a remaining water interest of 27.97 AFY.

The District has capacity at this time to meet this water demand from its general portfolio. However, the District will not officially commit water and wastewater capacity to any components of the development until more detailed information on each component is available. Once more detailed information allowing for the estimation of water demand is available, the District will issue a formal commitment letter if it still has capacity to meet the water demand for this development.

Regarding wastewater demand and capacity, the District is conservatively assuming a 0% consumption from domestic use. Using that assumption, the District estimates that the development will contribute 25,000 gallons per day of wastewater to the District's Water Reclamation Facility (WRF), constituting 1.0% of treatment capacity. This usage rate is in line with the District's buildout plan for this area and will not impact the District's provision of wastewater treatment to the other unbuilt areas within its current boundaries.

If I may be of further assistance, please contact me at your convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Amy Lathen", is written over a horizontal line.

Amy Lathen
General Manager

Cc: Peter Johnson; Water Counsel w/ encl: sent via email
Steve Hasbrouck; Board President w/ encl: sent via email
Jeff Munger; Water Resource Engineer w/ encl: sent via email
Kevin Brown; Jr. Water Resource Engineer w/ encl

E.3 CHEROKEE BOARD MEETING MINUTES APPROVING PLACE OF USE AND WATER
SERVICE AGREEMENT FOR EUC INTERST IN THE TIPTON WELL



CHEROKEE METROPOLITAN DISTRICT

6250 Palmer Park Blvd., Colorado Springs, CO 80915-2842

Telephone: (719) 597-5080 Fax: (719) 597-5145

Our mission is to exceed our customer's needs by providing safe and uninterrupted water and sewer services, high quality water supply, well-maintained parks and open spaces, and well-lit streets. We are committed in continually striving to attain the highest quality services at the lowest reasonable costs and to prepare for the anticipated needs and requirements of current and future customers through the allocation of technical, financial, operational, planning, and managerial resources necessary to ensure our service goals and expectations are met in a safe, responsible, and professional manner.

REGULAR MEETING OF THE BOARD OF DIRECTORS

AGENDA

Board of Directors

Term Expires

Steve Hasbrouck, President	May 2022
Walt Herrley, Vice President	May 2023
Dennis Daniels, Secretary	May 2023
Larry Keleher, Treasurer	May 2022
Rene Sintas, Director	May 2022

DATE: September 21, 2021

TIME: 5:30 p.m.

LOCATION: Cherokee Metropolitan District – Board Room
6250 Palmer Park Blvd., Colorado Springs, Colorado 80915

1. Call to Order

- A. Roll Call of the Board of Directors/Declaration of a Quorum
- B. Director Qualifications and Disclosures
- C. Pledge of Allegiance

2. Review and Approval of the Agenda

- A. Addendums
- B. Amendments
- C. Approval Motion

3. **Public Comments on items NOT on the agenda**

The Board and District staff value the public's input. Please respect the following when making formal comments to the Board of Directors:

- Please sign in when you arrive prior to making public comment or at the time of making your comments.
- **Please keep comments restricted to the topics of the District and its business, and limit time to a maximum of three (3) minutes.**
- Please keep comments respectful of others and organized for understanding. It is further requested that civility is maintained when addressing the Board, District staff, news media, law enforcement, and the public.

4. **Consent Agenda**

The Consent Agenda consists of matters that occur in the normal course of business. The following items are summarized and are approved and enacted at this time by the Board of Directors in one motion.

- A. Approval of Minutes for the August 17, 2021 Regular Board Meeting
- B. Directors Signatures

5. **Finance and Accounting-Cathy Fromm**

- A. August Monthly Financials
- B. Presentation and Approval of 2020 Audit Report -Stockman Kast Ryan & Company, LLP

6. **Staff Reports**

- A. Master Service Agreement – Velocity Plant Services
- B. Master Service Agreement – Colorado Standby LLC
- C. Water Service Agreement – Mayberry Development
- D. Tap Fee Schedule Presentation, Discussion – Kevin Brown
- E. Construction Update – Jeff Munger
- F. 2021 Planning Discussion
- G. Questions of Staff Reports

7. **Executive Session**

- A. In accordance with the Colorado Open Meetings Act, the Board, in Open Session, is to determine whether it will hold an Executive Session pursuant to 1.) §24-6-402(4)(f), C.R.S., Personnel matters; 2.) §24-6-402(4)(b), C.R.S., Conferences with the District's attorney regarding legal advice on specific legal questions and 3.) §24-6-402(4)(a) Purchase, acquisition, lease, transfer, or sale of any property interest. (Note: Not available where a member of the Board has a personal interest in the transaction.). The Chair shall poll the Board members, and upon affirmative vote of two-thirds of the members present, may

hold a Closed Executive Session. If a two-thirds affirmative vote for the Executive Session is not received, the item may be discussed in Open Session or withdrawn from consideration. No formal action or voting will take place in Executive Session.

1. Past Inclusion Agreements, Resolutions 2018-05 and 06
2. CHFD proposed lease
3. Employment Contract

8. Other Business

9. Directors' Items/Comments

10. Other Meetings of Importance to the Cherokee Metropolitan District

Cimarron Hills Fire Department Board Meeting, September 22, 2021, at 5:30 p.m.
Woodmen Hills Metropolitan District Board Meeting, September 23, 2021, at 5:30 p.m.
UBSGW Meeting, October 5, 2021 at 6 p.m.
CMD-Sponsored Vitalant Blood Drive, Thursday, October 14, 2021

11. Adjournment

CHEROKEE METROPOLITAN DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS

September 21, 2021

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, September 21, 2021, at 5:30 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Steve Hasbrouck	Dennis Daniels
Larry Keleher	Walt Herrley

CMD STAFF IN ATTENDANCE

Amy Lathen	Jeff Munger	Kevin Brown
Brian Beaudette	Cathy Fromm	Todd Laxson
Joshua Watkins	Julie Wells	Shawn Puente

OTHERS PRESENT

Paul Rufien	Roger Stolz	Lauren Casto
Nathaniel Williams	Jason K vols	John Mick
Norma Jeanne Walker Gray		
Michelle Marie Kinney		

ITEM 1:

⇒ Call to Order

The meeting was called to order by President Steve Hasbrouck at 5:30 p.m. All Directors were present except for Director Sintas who was unable to attend due to medical reasons.

*****MOTION*****

MR. KELEHER MOVED, SECONDED BY MR. DANIELS, TO EXCUSE RENE SINTAS. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

There were no Director qualifications and disclosures. All those present were asked to stand and recite the Pledge of Allegiance.

ITEM 2:

⇒ Review and Approval of the Agenda

Mr. Hasbrouck asked if there were changes or amendments that needed to be made to the Agenda. There were no changes or amendments. Amy Lathen stated the order of some staff reports might need to be switched due to time constraints.

*****MOTION*****

MR. DANIELS MOVED, SECONDED BY MR. HERRLEY, TO APPROVE THE AGENDA. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

ITEM 3:

⇒ Public Comments on Items NOT on the Agenda

President Hasbrouck asked if there were any public comments from the audience. A three-minute time limit would be enforced.

Lauren Casto, 2219 Jeanette Way, discussed concerns regarding a crumbling concrete wall at Pinyon Jay Park. She requested the District replace some of the panels that are deteriorating. Discussion commenced on whether or not the wall was, in fact, District property and whose responsibility it is to replace.

Paul Rufien and Mrs. Lathen discussed the need to determine the options available since it is not known if the wall is Cherokee property.

Michelle Marie Kinney, 1973 Dewhirst Dr., also discussed her concerns regarding the concrete wall at Pinyon Jay Park.

The Auditors called at 5:45 p.m. to discuss the 2020 Audit findings. The call was placed on hold briefly to wait for one of the Auditors to join the call.

Ms. Kinney continued her discussion and urged the Board to replace the deteriorating panels.

Public Comment was paused to continue the call with the Auditors.

After the Auditors' Report was complete, President Hasbrouck addressed Mrs. Casto and Ms. Kinney to let them know the Board will look into options for resolving the issues with the concrete wall at Pinyon Jay.

ITEM 4:

⇒ Consent Agenda

The following were reviewed for approval: Minutes for the August 17, 2021 Regular Board Meeting.

*****MOTION*****

MR. KELEHER MOVED, SECONDED BY MR. DANIELS, TO APPROVE THE REGULAR BOARD MEETING MINUTES FOR AUGUST 17, 2021. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

ITEM 5:

⇒ Finance and Accounting

Steve Hochstetter and Courtney Vance of Stockman, Kast, Ryan & Company, LLP reported their findings from the 2020 Audit. There were no questions from the Board.

*****MOTION*****

MR. DANIELS MOVED, SECONDED BY MR. KELEHER, TO APPROVE THE AUDITOR'S REPORT PENDING ANY UNFORESEEN REVISIONS OR CORRECTIONS. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

Cathy Fromm provided a report on the August Monthly Financials and answered questions from the Board

ITEM 6:

⇒ Staff Reports

Tap Fee Schedule Presentation - Kevin Brown

Kevin Brown presented information on the current Tap Fee Schedule and the proposed updates.

*****MOTION*****

MR. DANIELS MOVED, SECONDED BY MR. HERRLEY, TO ADOPT THE PROPOSED TAP FEE SCHEDULE TO BE APPLIED TO NEW CONSTRUCTION DEVELOPMENT EFFECTIVE OCTOBER 1, 2021. MR. HERRLEY-YES. MR. KELEHER-YES. MR. DANIELS-YES. MR. HASBROUCK-YES. MOTION CARRIED (4-0).

Water Service Agreement – Mayberry Development

Mrs. Lathen and Pete Johnson, CMD Legal Counsel, discussed the transfer of the remainder of the 27.97 acre feet of water from Grant Langdon (Marksheffel Business Center) to the Mayberry Development, subject to affirmation from Mayberry of the appropriately transferred water interest, pursuant to the terms of the 2006 Cherokee Water, LLC Operating Agreement.

*****MOTION*****

MR. DANIELS MOVED, SECONDED BY MR. HERRLEY, TO APPROVE THE TRANSFER OF MEMBERSHIP REGARDING THE 27.97 ACRE FEET OF WATER AS OUTLINED IN THE WATER SERVICE AGREEMENT BETWEEN CHEROKEE METROPOLITAN DISTRICT AND ELLICOTT UTILITIES. MR. HERRLEY-YES. MR. KELEHER-YES. MR. DANIELS-YES. MR. HASBROUCK-YES. MOTION CARRIED (4-0).

Master Service Agreement – Velocity Plant Services

Jeff Munger discussed the need to have an MSA with this company.

*****MOTION*****

MR. KELEHER MOVED, SECONDED BY MR. DANIELS, TO APPROVE THE MASTER SERVICE AGREEMENT FOR VELOCITY PLANT SERVICES. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

Master Service Agreement – Colorado Standby LLC

Mrs. Lathen discussed the reasons for an MSA with this company as an additional contractor for repairing and replacing major electrical components at Cherokee facilities when necessary.

*****MOTION*****

MR. HERRLEY MOVED, SECONDED BY MR. DANIELS, TO APPROVE THE MASTER SERVICE AGREEMENT FOR COLORADO STANDBY LLC. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

Construction Update – Jeff Munger

Jeff Munger provided a project update complemented by a variety of slides and pictures of filter buildings, splitter structure, and aerial photographs and presented key dates for the project to stay on schedule.

Parks Capital Items -Todd Laxson

Todd Laxson provided some quotes for shade structures at certain parks and asked the Board to consider the best alternative.

Backflow Device Theft – Shawn Puente

Shawn reported that one of Cherokee's backflow devices near Constitution and Marksheffel was stolen. His team replaced the device and put a cage over it to prevent future theft. They are in the process of fabricating cages for Cherokee's other backflow devices.

2021 Planning Discussion – Amy Lathen

Mrs. Lathen reported that she is vetting and going through possible water and well acquisitions.

The Grandview (fka Four Way Ranch) draft wastewater agreement is nearing completion.

Discussions for water/wastewater agreements with other developers near the Sundance wellfield are in progress.

Mrs. Lathen provided an update on the status of the Loop Project.

Sewer line cleaning continues and is projected to be completed by the end of the year.

On-call rotations have been streamlined and staff over-time has been reduced. Employee training is ongoing. There are a couple of conferences in the coming months that operators will be attending.

The Feathergrass lawsuit has been dismissed.

The Colorado Springs Airport has come back with a pretty favorable response to our last response to the mutual release.

Discussions on bond issuance costs continue between Mrs. Lathen, Cherokee’s Legal counsel, Meridian Service Metro District’s General Manager and Meridian’s legal counsel.

The 2022 budget process is underway. Discussions with division managers will begin next month. Mrs. Lathen asked the Board to provide input on the changes and improvements they’d like to see in the next five years.

ITEM 7:

⇒ Executive Session

MR. KELEHER RECUSED HIMSELF FROM THE PORTION OF THE EXECUTIVE SESSION INVOLVING §24-6-402(4)(a), C.R.S., PURCHASE, ACQUISITION, LEASE, TRANSFER, OR SALE OF ANY PROPERTY INTEREST. (NOTE: NOT AVAILABLE WHERE A MEMBER OF THE BOARD HAS A PERSONAL INTEREST IN THE TRANSACTION).

*****MOTION*****

MR. DANIELS MOVED, SECONDED BY MR. HERRLEY, THAT THE BOARD GO INTO EXECUTIVE SESSION CITING §24-6-402(4)(f), C.R.S., PERSONNEL MATTERS; §24-6-402(4)(b), C.R.S., CONFERENCES WITH THE DISTRICT’S ATTORNEY REGARDING LEGAL ADVICE ON SPECIFIC LEGAL QUESTIONS; AND §24-6-402(4)(a), C.R.S., PURCHASE, ACQUISITION, LEASE, TRANSFER, OR SALE OF ANY PROPERTY INTEREST. (NOTE: NOT AVAILABLE WHERE A MEMBER OF THE BOARD HAS A PERSONAL INTEREST IN THE TRANSACTION). ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

After a short break, Executive Session was entered in to at 8:04 p.m.

*****MOTION*****

MR. DANIELS MOVED, SECONDED BY MR. HERRLEY, TO COME OUT OF EXECUTIVE SESSION. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

Board Members Hasbrouck, Daniels and Herrley were present in Executive Session pursuant to §24-6-402(4)(a), citing purchase, acquisition, lease, transfer or sale of any property interest. All Board members were present in Executive Session pursuant to §24-6-402(4)(f), citing personnel matters and §24-6-402(4)(b), citing conferences with District’s attorney regarding legal advice on specific legal questions. All Board Members returned to the regular session. No votes were taken and no decisions were made.

Regular Session resumed at 8:56 p.m.

*****MOTION*****

MR. DANIELS MOVED, SECONDED BY MR. KELEHER, TO ACCEPT CHEROKEE'S GENERAL MANAGER CONTRACT RENEWAL-OPTION A1. MR. HERRLEY-YES. MR. KELEHER-YES. MR. DANIELS-YES. MR. HASBROUCK-YES. MOTION CARRIED (4-0).

ITEM 8:

⇒ Other Business

There was no other business.

ITEM 9:

⇒ Directors' Items/Comments

Mr. Keleher stated he enjoyed the SDA conference earlier in the month.

ITEM 10:

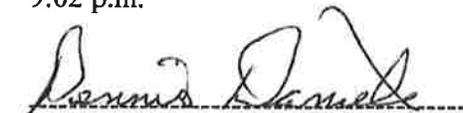
⇒ Other Meetings of Importance to the Cherokee Metropolitan District

1. Cimarron Hills Fire Department Board Meeting, September 22, 2021 at 5:30 p.m.
2. Woodmen Hills Metropolitan District Board Meeting, September 23, 2021 at 5:30 p.m.
3. UBSGW Meeting, October 5, 2021 at 6 p.m.
4. CMD-Sponsored Vitalant Blood Drive, Thursday, October 14, 2021

ITEM 11:

⇒ Adjournment

There being no further business to come before the Board at this time, the meeting adjourned at 9:02 p.m.



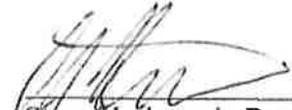
Dennis Daniels, Secretary

Board Members

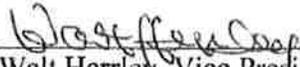
Term Expires

Steve Hasbrouck, President
Walt Herrley, Vice President
Dennis Daniels, Secretary
Larry Keleher, Treasurer
Rene Sintas, Director

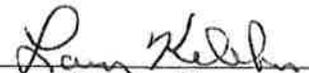
May 2022
May 2023
May 2023
May 2022
May 2022



Steve Hasbrouck, President



Walt Herrley, Vice President



Larry Keleher, Treasurer

Julie Wells, Transcriber



CHEROKEE METROPOLITAN DISTRICT

6250 Palmer Park Blvd., Colorado Springs, CO 80915-2842

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REGULAR MEETING OF THE BOARD OF DIRECTORS

AGENDA

Board of Directors

Term Expires

Steve Hasbrouck, President	May 2022
Walt Herrley, Vice President	May 2023
Dennis Daniels, Secretary	May 2023
Larry Keleher, Treasurer	May 2022
Rene Sintas, Director	May 2022

DATE: August 17, 2021

TIME: 5:30 p.m.

LOCATION: Cherokee Metropolitan District – Board Room
6250 Palmer Park Blvd., Colorado Springs, Colorado 80915

1. Call to Order

- A. Roll Call of the Board of Directors/Declaration of a Quorum
- B. Director Qualifications and Disclosures
- C. Pledge of Allegiance

2. Review and Approval of the Agenda

- A. Addendums
- B. Amendments
- C. Approval Motion

3. **Public Comments on items NOT on the agenda**

The Board and District staff value the public's input. Please respect the following when making formal comments to the Board of Directors:

- Please sign in when you arrive prior to making public comment or at the time of making your comments.
- Please keep comments restricted to the topics of the District and its business, and limit time to a maximum of three (3) minutes.
- Please keep comments respectful of others and organized for understanding. It is further requested that civility is maintained when addressing the Board, District staff, news media, law enforcement, and the public.

4. **Consent Agenda**

The Consent Agenda consists of matters that occur in the normal course of business. The following items are summarized and are approved and enacted at this time by the Board of Directors in one motion.

- A. Approval of Minutes for the July 20th Regular Board Meeting
- B. Approval of Minutes for the August 4th Special Board Meeting
- C. Directors Signatures

5. **Staff Reports**

- A. Water/Wastewater Projects Status Report
- B. CHFD Water Use Discussion
- C. Colorado Springs Airport, Pipeline Removal Status
- D. Mayberry Service Agreement/Cherokee Water LLC
- E. Construction Update – Jeff Munger
- F. Questions of Staff Reports

6. **Finance and Accounting-Cathy Fromm**

- A. July Monthly Financials

7. **Executive Session**

- A. In accordance with the Colorado Open Meetings Act, the Board, in Open Session, is to determine whether it will hold an Executive Session pursuant to 1.) §24-6-402(4)(f), C.R.S., Personnel matters; 2.) §24-6-402(4)(b), C.R.S., Conferences with the District's attorney regarding legal advice on specific legal questions and 3.) §24-6-402(4)(a) Purchase, acquisition, lease, transfer, or sale of any property interest. (Note: Not available where a member of the Board has a personal interest in the transaction.). The Chair shall poll the Board members, and upon affirmative vote of two-thirds of the members present, may hold a Closed Executive Session. If a two-thirds affirmative vote for the Executive Session is not received, the item may be discussed in Open Session or

withdrawn from consideration. No formal action or voting will take place in Executive Session.

1. Personnel Evaluation of Direct Report Employee
2. CHFD Conflict of Interest
3. Potential New Water/Wells Acquisition

8. **Other Business**

9. **Directors' Items/Comments**

10. **Other Meetings of Importance to the Cherokee Metropolitan District**

Cimarron Hills Fire Department Board Meeting, August 18, 2021, at 5:30 p.m.
CMD Board On-Site Work Session at the WRF – Construction Progress, August 19, 2021 at 8:30 am
Woodmen Hills Metropolitan District Board Meeting, August 26, 2021, at 5:30 p.m.
Upper Black Squirrel Board Meeting, September 7, 2021 at 6:00 p.m.
SDA Annual Conference, Keystone, September 14-16, 2021

11. **Adjournment**

CHEROKEE METROPOLITAN DISTRICT
REGULAR MEETING OF THE BOARD OF DIRECTORS

August 17, 2021

MINUTES

The Regular Meeting of the Board of Directors of the Cherokee Metropolitan District was held on Tuesday, August 17, 2021 at 5:30 p.m. at 6250 Palmer Park Blvd., Colorado Springs, Colorado.

BOARD OF DIRECTORS PRESENT

Steve Hasbrouck	Larry Keleher	Dennis Daniels
Walt Herrley	Rene Sintas	

CMD STAFF IN ATTENDANCE

Amy Lathen	Cathy Fromm	Julie Wells
Brian Beaudette	Shawn Puente	Connie Hughes
Joshua Watkins	Jeff Munger	Sara Howard

OTHERS PRESENT

Roger Stolz	Jason Kvols
-------------	-------------

ITEM 1:

⇒ Call to Order

The meeting was called to order by President Steve Hasbrouck at 5:30 p.m. All Directors were present. There were no Directors' qualifications and disclosures. All were asked to stand and recite the Pledge of Allegiance.

ITEM 2:

⇒ Review and Approval of the Agenda

Mr. Hasbrouck asked if there were changes or amendments that needed to be made to the Agenda. There were no amendments to the Agenda.

*****MOTION*****

MR. KELEHER MOVED, SECONDED BY MR. HERRLEY, TO APPROVE THE EVENING'S AGENDA. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

ITEM 3:

⇒ Public Comments on Items NOT on the Agenda

President Hasbrouck asked if there were any public comments from the audience. A three-minute time limit would be enforced. There were no public comments.

ITEM 4:

⇒ Consent Agenda

The following was reviewed for approval: Minutes of the Regular Board Meeting of July 20, 2021 and Minutes of the Special Meeting/Joint Work Session of August 4, 2021. Mrs. Sintas requested an amendment showing where she and Mr. Keleher recused themselves from the Executive Session noted on Page 4.

*****MOTION*****

MR. KELEHER MOTIONED, SECONDED BY MR. DANIELS, TO APPROVE THE CONSENT AGENDA AS AMENDED. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

ITEM 5:

⇒ General Manager's Report

Mrs. Lathen provided her monthly report to the Board identifying key projects of importance including a Water/Wastewater Projects Status Report, CHFD water use discussion, Colorado Springs Airport Pipeline Removal Status, and Mayberry Service Agreement/Cherokee Water LLC.

Legal counsel and staff are continuing to negotiate and draft several wastewater agreements for accuracy and are continuing to draft water agreements. Letters of intent are being processed.

She provided a report on the work session with the Board of County Commissioners regarding the LOOP, which is a regional water resources and opportunities project being coordinated with several other special districts.

The District's policy requires all water user customers in and out of District to have a backflow prevention device hooked up to the District's hydrants when using a hydrant meter. The

Cimarron Hills Fire Department occasionally uses Cherokee's hydrants for training purposes and, of course, fire emergencies.

The Board discussed waiving the water usage fee for the Fire Department for the first three months to determine how much they are using, then deciding whether to charge a fee.

*****MOTION*****

MR. DANIELS MOTIONED, SECONDED BY MR. HERRLEY, TO DETERMINE THE FIRST THREE MONTHS OF CIMARRON HILLS FIRE DEPARTMENT HYDRANT WATER USE BEFORE DETERMINING WHETHER OR NOT TO CHARGE A WATER FEE. MR. HERRLEY-YES. MR. DANIELS-YES. MR. KELEHER-ABSTAIN. MRS. SINTAS-ABSTAIN. MR. HASBROUCK-YES. MOTION PASSED (3-2-0).

Several years ago, Colorado Springs Utilities had asked the District to remove an old and unused pipeline at the Colorado Springs Airport. The request has again resurfaced. Some of the pipeline is buried between five and 20 feet. The District agreed to pay the City \$97,568.51 for part of the removal cost along with a signed release. An Amazon-constructed facility is projected to be built on part of the property where the pipeline was removed, and the City has modified a release to Cherokee stating the District could be responsible for any future modifications and costs. Board discussion was tabled to the evening's Executive Session.

The Mayberry Service Agreement has been drafted by legal counsel Pete Johnson. The amount of water the District has committed to provide is 54.03-acre feet. The Ellicott Utility Company shall be solely responsible for all costs related to the infrastructure beyond the connect point including, but not limited to, any pipelines, meters, valves and backflow prevention devices. Approving the lease without quoting a commercial fee is acceptable.

*****MOTION*****

MR. KELEHER MOTIONED, SECONDED BY MR. HERRLEY, TO APPROVE THE MAYBERRY SERVICE AGREEMENT SUBJECT TO THE PROVISIONS IN PARAGRAPH II. F., NOT TO EXCEED FOUR THOUSAND DOLLARS (\$4,000.00), IN ADDITION TO THE PROVISIONS SET FORTH IN PARAGRAPH 7.2 OF THE OPERATING AGREEMENT AND SUBJECT TO THE LEGAL DESCRIPTION IN EXHIBIT A. MR. HERRLEY-YES. MR. DANIELS-YES. MR. KELEHER-YES. MRS. SINTAS-YES. MR. HASBROUCK-YES. MOTIONED PASSED (5-0).

Mrs. Lathen advised the Board the District has received all required payments from the Meridian Service Metropolitan District through June 30, 2021.

A tour of the Wastewater Reclamation Facility's construction progress is slated for Thursday, August 19, 2021 beginning at 9 a.m. The public is invited, and most of the members of the Board are planning to attend.

TDS Project -Construction Update – Jeff Munger

Jeff Munger provided a project update complemented by a variety of slides and pictures of filter buildings, and aerial photographs and presented key dates for the project to stay on schedule.

ITEM 6:

⇒ Finance and Accounting

Cathy Fromm provided a report on the July Monthly Financials and answered questions from the Board.

ITEM 7:

⇒ Executive Session

MR. DANIELS MOVED, SECONDED BY MR. KELEHER, THAT THE BOARD GO INTO EXECUTIVE SESSION CITING §24-6-402(4)(f), C.R.S., PERSONNEL MATTERS; §24-6-402(4)(b) C.R.S. CONFERENCES WITH THE DISTRICT'S ATTORNEY REGARDING LEGAL ADVICE ON SPECIFIC LEGAL QUESTIONS, AND §24-6-402(4)(a), C.R.S., PURCHASE, ACQUISITION, LEASE, TRANSFER, OR SALE OF ANY PROPERTY INTEREST. (NOTE: NOT AVAILABLE WHERE A MEMBER OF THE BOARD HAS A PERSONAL INTEREST IN THE TRANSACTION.) ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

Executive Session was entered into at 7:23 p.m.

*****MOTION*****

MR. KELEHER MOVED, SECONDED BY MR. DANIELS, TO COME OUT OF EXECUTIVE SESSION. ALL IN FAVOR. MOTION PASSED BY GENERAL CONSENT.

Board Members came out of Executive Session. All were present in Executive Session, pursuant to §24-6-402(4)(f), §24-6-402(4)(b), §24-6-402(4)(a). No votes were taken and no decisions were made.

Regular Session resumed at 9:54 p.m.

ITEM 8:

⇒ Other Business

There was no other business to report.

ITEM 9:

⇒ Directors' Items/Comments

There were no Directors' comments.

ITEM 10:

⇒ Other Meetings of Importance to the Cherokee Metropolitan District

1. Woodmen Hills Metropolitan District Meeting, 5:30 p.m. July 22, 2021
2. UBSCGW Monthly Meeting, 5:30 p.m. July 22, 2021
3. El Paso County Board of Commissions Work Session Re: The Loop, 10 a.m., August 10, 2021
4. Annual SDA Conference, September 14-16, 2021, Keystone, Colorado

ITEM 11:

⇒ Adjournment

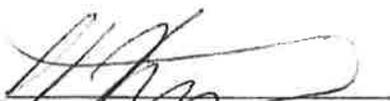
There being no further business to come before the Board at this time, the meeting was adjourned at 10:05 p.m.

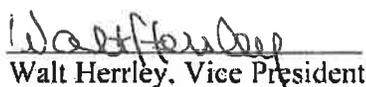

 Dennis Daniels, Secretary

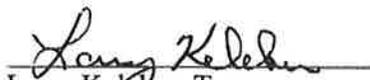
Board Members

Term Expires

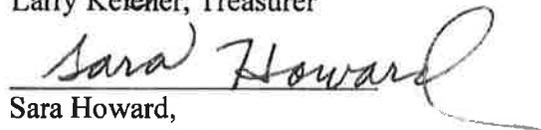
Steve Hasbrouck, President	May, 2022
Walt Herrley, Vice-President	May, 2023
Dennis Daniels, Secretary	May, 2023
Larry Keleher, Treasurer	May, 2022
Rene Sintas, Director	May, 2022


 Steve Hasbrouck, President


 Walt Herrley, Vice President


 Larry Keleher, Treasurer

 Rene Sintas, Director


 Sara Howard,
 Executive Administrator
 and Clerk to the Board

E.4 LETTER FROM CHEROKEE METRO CONFIRMING THE WATER SERVICE
AGREEMENT FOR 54.03 AFY



CHEROKEE METROPOLITAN DISTRICT

6250 Palmer Park Blvd., Colorado Springs, CO 80915-2842

Telephone: (719) 597-5080 Fax: (719) 597-5145

September 7, 2021

RE: CHEROKEE WATER, LLC: CONFIRMATION OF WATER SERVICE AGREEMENT

Cherokee Metropolitan District, along with the manager of the Cherokee Water, LLC affirm the terms of the Water Service Agreement between Cherokee Metropolitan District and Ellicott Utilities Company, LLC, approved by the Board of Directors of Cherokee Metropolitan District during their public meeting on August 17th, 2021. Upon execution of all terms and conditions of the Water Service Agreement, Cherokee Metropolitan District agrees to deliver up to 54.03 acre-feet per year of water from a certain water right, as fully described in the Certificate of Ownership of Cherokee Water, LLC, which shall be used by Ellicott Utilities Company, LLC within the Development.

A handwritten signature in cursive script, appearing to read "Amy Lathen", is written over a horizontal line.

Amy Lathen
General Manger Cherokee Metropolitan District
General Manager Cherokee Water, LLC

E.5 EMAIL AND TIPTON WELL COMMITMENTS FROM CHEROKEE METRO AS OF
2021

Cherokee Metro LLC Water Status 2021

From: Kevin Brown <kbrown@cherokeemetro.org>
Date: Friday, January 29, 2021 at 8:29 AM
To: Jason Kvols <jasonkvols@mayberrycoloradosprings.com>
Cc: Randy Goodson <randy@foleydevelopment.net>, Jeff Munger <jmunger@cherokeemetro.org>
Subject: RE: Kane Water Right

Jason,

I've attached the current accounting of the LLC water.

Thanks,
 Kevin Brown

Development Name	Location	Type	Date	Allocated	Used (2011)	Used (2019)
Marksheffel Business Center (Wilshire Filing 2/3)	Sioux Circle	Residential	12/4/06	68.29	40.32	40.32
Morley Companies (Claremont Ranch Filing 8A)	Northwest Claremont Ranch	Residential	12/4/06	22.68	22.68	22.68
Powers and Galley Plaza Filing 1 (for Home Depot, which has been cancelled)	NE Corner of Gale & Powers	Commercial	12/4/06	54.03	0	0
Sand Creek Investments (Hanna Ridge at Feathergrass Filing 1/2, includes Shops at Feathergrass)		Residential	12/4/06	76	0	76
Randy Case			12/4/06	4	0	0
Formula Bar						
Total				225	63	139 AF
					Outstanding	86 AF

E.6 EMAIL TO CHEROKEE REQUESTING THEM TO UPDATE THE COMMITMENTS OF
THE TIPTON WELL

Subject: Re: Water Service Agreements
Date: Wednesday, January 12, 2022 at 11:18:15 AM Mountain Standard Time
From: Jason Kvols
To: Amy Lathen
CC: Jeff Munger, Kevin Brown, Peter C. Johnson, Brad Simons, John Mick, Randy Goodson
Attachments: image001.jpg, image002.jpg

Cherokee Team,

We just finished a call with Lisa from UBS Council and Joanna from the Division of water resources concerning our finding of sufficiency for Mayberry.

One of the main sticking points is the Tipton Well

In order to resolve this, UBS and Division of Water Resources has requested the following:

- An updated commitment in writing from you guys that 82.00 AF of Water Interest from the Tipton Well is committed to Mayberry and no other properties.

Would you guys be willing to prepare this letter and send it to me as a conformation of recent board actions and copy Joanna from the state and Lisa with Trout Raley? Time is of the essence.

THIS IS THE ONLY ACTION NEEDED FROM CHEROKEE FOR MAYBERRY TO OBTAIN SUFFICIENCY.

Amy, hope you are feeling better.

Jason Kvols
Development Manager



Mayberry Communities
Cell: 719-426-7810