

**ROUND MOUNTAIN WATER AND SANITATION DISTRICT
RESOLUTION NUMBER 2020-15**

**A RESOLUTION APPROVING UPDATED DOCUMENTS RELATED TO
FUTURE DEVELOPMENT OF DISTRICT INFRASTRUCTURE**

WHEREAS, The Round Mountain Water and Sanitation District has completed and approved a major revision and update of its existing Rules and Regulations, Fee Structures and Technical Specifications, and

WHEREAS, existing contracts and agreements related to these revised documents need to be revised to reflect the approved changes, and

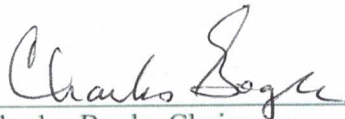
WHEREAS, the District has received updated and revised documents from its legal counsel attorney.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF
THE ROUND MOUNTAIN WATER AND SANITATION DISTRICT, COLORADO
THAT:**

The Board of Directors approve and accept the following updated and revised documents (See attached):

- Water and/or Sewer Main Improvement Agreement
- Agreement to Pay All Costs of Inclusion
- Special Warranty Deed (Water Rights)
- Bargain and Sale Deed (Water Rights)

ADOPTED, this 7th day of May 2020.



Charles Bogle, Chairman

ATTEST:



Steve Lasswell, Secretary



WATER AND/OR SEWER MAIN IMPROVEMENT AGREEMENT FOR

(NAME OF DEVELOPMENT)

THIS WATER AND/OR SEWER MAIN IMPROVEMENT AGREEMENT is made and executed this _____ day of _____, 20____, by and between the **ROUND MOUNTAIN WATER AND SANITATION DISTRICT**, a quasi-municipal corporation, organized pursuant to the laws relating to special districts within the state of Colorado with an address of P.O. Box 86 - 59000 Highway 69N Westcliffe, CO 81252 (hereinafter referred to as the "District") and _____ with _____ an _____ address _____ a _____ (hereinafter referred to as "Owner").

WHEREAS, Owner is the owner of certain real property located within the boundaries of the District, which real property is more particularly described in **Exhibit A**; which is attached hereto and incorporated herein;

WHEREAS, Owner wishes to develop all or a portion of said real property, which development shall include the installation of water and/or sanitary sewer mains and related facilities pursuant to the plan which is attached hereto as **Exhibit B**; and

WHEREAS, the District wishes to grant permission to Owner to develop such improvements pursuant to the Rules and Regulations of the District and the terms and provisions of this Agreement.

NOW THEREFORE, in and for consideration of the performance of the covenants and promises set forth herein, the sufficiency of which is agreed upon, the parties agree as follows:

1. The District hereby approves the plan attached hereto as **Exhibit B** and authorizes the Owner to construct said improvements in accordance therewith. All such improvements shall be constructed, completed and maintained in conformity both with said plan and the Rules and Regulations of the District. The parties agree that the improvements shall be completed in accordance with the time schedule attached hereto as **Exhibit C**.

2. At the time of commencement of construction of the improvements identified in **Exhibit B**, the Owner, or his agent/contractor, shall comply with the provisions of the Rules and Regulations of the District. Specifically, the Owner, or his agent/contractor shall deposit with the District security in the form of cash or an irrevocable Letter of Credit in a form and drawn on a financial institution acceptable to the District, in the amount of 120% of the estimated cost of the construction identified in **Exhibit D**, a copy of which is attached hereto. All costs set forth in said **Exhibit D** shall be approved by the District's Engineer. The purpose of such security is to enable the District to undertake or complete such construction utilizing the District's own forces or contractors in the event the Owner or his agent/contractor fails to complete the construction in either a timely or workmanlike manner. Any Letters of Credit, which are delivered to the District as the required security provided for herein, shall remain in full force and effect, until

probationary acceptance by the District of the improvements. At the time of such probationary acceptance of such construction, and upon presentation of evidence of full payment therefore by the Owner or his agent/contractor, 100% of the actual costs of construction of the improvements shall be reduced to the Owner, with the District retaining the remaining 20% until the expiration of the two-year warranty period described herein. At the completion of such two-year warranty period, the Owner shall convey to the District by bill of sale the improvements constructed by Owner and/or his contractor and identified in **Exhibit B**. At the time of receipt of the above described bill of sale, District shall return to the Owner or his agent/contractor all amounts remaining in possession of the District which have not been required to be expended by the District in repair or maintenance of said construction.

3. In the event that Owner shall at any time prior to final acceptance by the District of the construction of the improvements specified in **Exhibit B** allow any Letter of Credit to lapse or otherwise become not valid, enforceable, and in the possession of the District, the District shall withhold the provision of water and/or sewer service to any and all properties which are contemplated to be served by the improvements identified in **Exhibit B** to this Water and/or Sewer Main Improvement Agreement.

4. The Owner shall warrant any and all improvements identified in **Exhibit B** for a period of two years following completion of construction by the Owner or his agent/contractor, and preliminary acceptance of such improvements by the General Manager of the District, subject to the prior occurrence of the following:

a) Installation of all water/or sewer mains or other improvements identified in **Exhibit B** has been approved in writing by the District's Engineer, and the District has received two full sets of "reproducible as-builts;" and

b) The District has received a bill of sale conveying to it said water/sewer mains or other improvements identified in **Exhibit B** free and clear of all liens, restrictions, reservations and encumbrances whatsoever; and

c) The District has received from the Owner a written agreement, or has been presented with evidence of reservation of an easement within any approved right-of-way on any plat approved by applicable governmental entity, granting the District the right to use, together with possession and control of, such water/sewer mains and other improvements during any period of time commencing with completion of construction and extending to the date of actual acceptance of and conveyance of bill of sale evidencing title to such mains by the District.

At the conclusion of such two-year warranty period, Owner's warranty shall expire, and all such improvements shall be accepted for maintenance by the District.

5. The District shall have the right, but not the duty, to make reasonable engineering observations at the Owner's expense as the District may reasonably request. Observation, acquiescence in, or approval by any engineering observer of the construction of improvements at any time shall not constitute approval by the District of any portion of the construction of such

improvements. Such approval shall be made by the District only after completion of construction and in the manner set forth in the District's Rules and Regulations.

6. For the period commencing with construction and ending upon termination of the Owner's warranty period, Owner does hereby indemnify and hold the District, its employees, agents, contractors and consultants, harmless for or on account of any act or omission, including the design and/or construction of the improvements identified in **Exhibit B**, of the Owner, his employees, contractors and/or agents, with respect to the design and construction of the improvements identified in said **Exhibit B**, and the Owner shall pay any and all claims asserted or judgments rendered against the District as the result of any suit, action, or claim together with all reasonable expenses and attorney fees incurred by the District or its agents or employees or contractors in defending any such suit, action, or claim.

7. In the event Owner shall convey all or any portion of the real property described in **Exhibit A** at any time prior to the date of final acceptance by the District of the improvements identified in **Exhibit B**, the grantee or successor of Owner shall become and shall be bound by all the provisions hereof, and shall in addition: continue in full force and effect the security required in paragraph 2 hereof, or shall cause to be put in place replacement security in the same required amount, subject to acceptance by the District as to the amount and the form of the security and the identity of the institution issuing the same; and shall honor and adhere to all warranties and promises made and covenanted to by Owner herein.

8. The District agrees to cooperate with the Owner, and the Owner agrees to cooperate with the District, in the timely filing and approval of all plans and requests made of one party to the other.

9. This Agreement constitutes the entire agreement between the parties, and supersedes all other agreements, whether written or verbal, which may exist between the parties, except as specified in paragraph 10 hereof.

10. In the event of a dispute between the parties regarding the terms hereof, which terms shall be construed pursuant to Colorado law, the same shall be resolved in the courts of Custer County, Colorado, which courts shall have exclusive jurisdiction.

11. Notwithstanding the provisions of this Agreement, all of the provisions of the Rules and Regulations of the District, as the same presently exist or as they may in the future be amended, are applicable to Owner and/or his agent/contractor in construction and completion of the improvements identified in **Exhibit B**. To the extent there should be a discrepancy between any provision of this Agreement and any of the provisions of the District's then-current Rules and Regulations, the provision which imposes the greater restriction or the higher duty or standard of performance on the Owner or his agent/contractor shall apply.

12. Remedies/Cure Period. In the event of a material breach of a provision of this Agreement by Owner, in addition to any other remedy available at law or equity, the District shall have the following rights:

a) Withhold the provision of water and/or sewer service to any and all properties which are contemplated to be served by the improvements identified in **Exhibit B** to this Water and/or Sewer Main Improvement Agreement.

b) Require Owner, at Owner's expense, to cure the breach.

c) If Owner has failed to complete or if the District reasonably believes Owner will fail to complete the improvements set forth in **Exhibit B** in accordance with the time schedule set forth in **Exhibit C**, the District shall have the right to draw on the letter of credit.

Unless the deadline for exercising any remedy set forth above would render such remedy unavailable, prior to seeking any such remedy, the District shall notify the Owner in writing of the nature of the breach and the measures that must be taken to cure the breach, and give the owner an opportunity to cure the breach as set forth herein. Owner shall have fifteen (15) days to cure the breach or if the breach cannot be cured within fifteen (15) days, exercise reasonable and continued diligence to cure the breach as rapidly as possible, but in no event shall Owner have more than ninety (90) days to cure the breach.

OWNER

(Company Name)

(Address)

(Signed)

(Printed Name and Title)

**ROUND MOUNTAIN WATER AND SANITATION
DISTRICT**

PO Box 86
59000 Highway 69N
Westcliffe, CO 81252

District Manager

ATTEST: _____

AGREEMENT TO PAY ALL COSTS OF INCLUSION

THIS AGREEMENT TO PAY ALL COSTS OF INCLUSION is made and executed this _____ day of _____, 20____, by and between the **ROUND MOUNTAIN WATER AND SANITATION DISTRICT**, a quasi-municipal corporation, organized pursuant to the laws relating to special districts within the state of Colorado with an address of P.O. Box 86 - 59000 Highway 69N Westcliffe, CO 81252 (hereinafter referred to as the "District") and _____ a _____, with an address of _____ (hereinafter referred to as "Applicant").

WHEREAS, the District operates and maintains a water and sanitation system within the boundaries of the District as established by Order of the District Court in and for the County of Custer, State of Colorado;

WHEREAS, Applicant is the owner of certain real property, which real property Applicant seeks to have included within the boundaries of the District pursuant to applicable Colorado law;

WHEREAS, upon inclusion of said real property by the District into the boundaries of the District, said property will become subject to all rules and regulations of the District;

WHEREAS, said rules and regulations provide that all costs of inclusion shall be paid to the District by Applicant; and

WHEREAS, the parties wish to set forth their agreement as to the payment of said costs in this Agreement.

NOW THEREFORE, for good and valuable consideration as set forth in this Agreement, the parties do hereby agree as follows:

1. Pursuant to the rules and regulations of the District, Applicant does hereby agree to pay to the District all costs incurred by the District in connection with the inclusion of Applicant's real property into the District, said costs to include, but not necessarily be limited to, all costs of application fees, notice and publication, attorneys' fees connected with preparation of petitions, court orders, inclusion agreements, as well as court appearances to obtain orders of inclusion, and any and all hydrologists' or engineers' fees incurred by the District in reviewing water development plans or applications or other submittals of Applicant.

2. Applicant agrees to pay a deposit in the amount of \$3,000.00 towards legal and engineering fees associated with the inclusion process, with any unused portion to be returned to Applicant.

3. In the event of breach of this Agreement by Applicant's failure to pay the sums due within the time specified in paragraph 2 hereof, Applicant does specifically empower District to record against the Applicant's property a statement of costs incurred, which statement, when recorded, shall become a lien upon said property. In addition, in the event Applicant fails to pay

said sums due within the agreed time period, the District may commence legal action to recover said sums, and may seek, in addition to said sums, interest at the rate of twelve percent (12%) per annum from the due date of said sums, and attorneys' fees at the hourly rate incurred by the District, together with any and all Court costs or other costs incurred by the District.

APPLICANT

(Company Name)

(Address)

(Signed)

(Printed Name and Title)

**ROUND MOUNTAIN WATER AND SANITATION
DISTRICT**

PO Box 86
59000 Highway 69N
Westcliffe, CO 81252

District Manager

ATTEST:

**SPECIAL WARRANTY DEED
(Water Rights)**

KNOW ALL MEN BY THESE PRESENTS, that [ENTER NAME, TYPE OF ENTITY], of the County of [ENTER COUNTY WHERE LOCATED] and State of Colorado with an address of [ENTER ADDRESS] ("Grantor"), for the consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, hereby sells and conveys to THE ROUND MOUNTAIN WATER AND SANITATION DISTRICT of the County of Custer and State of Colorado, with an address of P.O. Box 86 - 59000 Highway 69N, Westcliffe, Colorado 81252, its successors and assigns forever, the following property located in the County of Custer and State of Colorado, to-wit:

[INSERT LEGAL DESCRIPTION OF WATER RIGHTS. PLEASE PROVIDE A DRAFT OF THIS DEED WITH COPIES OF THE DECREES FOR THE WATER RIGHTS AND ANY WELL PERMITS FOR REVIEW BY ROUND MOUNTAIN BEFORE FINALIZING THIS DEED.]

with all its appurtenances and warrants the title against all persons claiming under Grantor, and further warrants that said water rights are free and clear of all liens and encumbrances.

Signed and delivered this ____ day of _____, 20__.

[NAME AND TYPE OF ENTITY]

By: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF [COUNTY WHERE SIGNED])

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

Witness my hand and official seal.

My Commission Expires: _____

Notary Public

**BARGAIN AND SALE DEED
(Water Rights)**

[ENTER NAME, TYPE OF ENTITY], of the County of [ENTER COUNTY WHERE LOCATED] and State of Colorado with an address of [ENTER ADDRESS], for the consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable consideration in hand paid, hereby sells and conveys to THE ROUND MOUNTAIN WATER AND SANITATION DISTRICT of the County of Custer and State of Colorado, with an address of P.O. Box 86 - 59000 Highway 69N, Westcliffe, Colorado 81252, the following property located in the County of Custer and State of Colorado, to-wit:

[INSERT LEGAL DESCRIPTION OF WATER RIGHTS. PLEASE PROVIDE A DRAFT OF THIS DEED WITH COPIES OF THE DECREES FOR THE WATER RIGHTS AND ANY WELL PERMITS FOR REVIEW BY ROUND MOUNTAIN BEFORE FINALIZING THIS DEED]

Signed and delivered this ____ day of _____, 20__.

[NAME AND TYPE OF ENTITY]

By: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF [COUNTY WHERE SIGNED])

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

Witness my hand and official seal.

My Commission Expires: _____

Notary Public