

MAINTENANCE AGREEMENT

THIS AGREEMENT is made this 21st day of November, 2005, by and between the CITY OF LOVELAND, COLORADO, a home rule municipality ("City"), and VDW METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ("District").

WITNESSETH:

WHEREAS, the City is the owner of the following described real property situated in the City of Loveland, County of Larimer, State of Colorado ("Property"):

Tract 1, Millennium SW First Subdivision, City of Loveland, County of Larimer, State of Colorado

WHEREAS, the City has submitted public improvements construction plans for the Property, including plans for the construction of a building and related improvements known as the East Side Lift Station ("Lift Station Building"); and

WHEREAS, the District is or will be the owner of a non-exclusive easement for (i) the installation, construction, maintenance, inspection, operation, repair, replacement, relocation and removal of grass, shrubs, trees, groundcover, flowers, plant material, irrigation/sprinkler systems and other landscaping located upon the Property; and (ii) the maintenance, inspection, and repair of the exterior of the Lift Station Building located upon the Property; and

WHEREAS, as a condition of development approval, the District is required to perform all necessary landscape service and maintenance of the exterior of the Lift Station Building following the installation or construction thereof; and

WHEREAS, the City and the District desire to define the terms, conditions, agreements, and technical specifications to be followed in connection with the installation and maintenance of the required landscaping and exterior maintenance of the Lift Station Building.

NOW, THEREFORE in consideration of the promises and mutual covenants herein contained, the parties agree as follows:

1. LANDSCAPE INSTALLATION: The City shall, at its sole cost and expense, install all landscaping and irrigation systems required for the Property in accordance with the approved landscape and irrigation plans (Sheets L1, IR-1, and IR-2), attached hereto and incorporated herein as Exhibit A.
2. LANDSCAPE WARRANTY: The City warrants the survival of the landscaping for a period of two (2) years following the later of (i) the date of this Agreement, and (ii) the date of the installation of the landscaping ("Warranty Period"). The City shall be responsible for replacement of dead or dying landscaping during the Warranty Period and the District shall be responsible for replacement of dead or dying landscaping thereafter.
3. WATER SUPPLY TO PROPERTY: The parties acknowledge and agree that the District is the owner of an existing water tap furnished by Little Thompson Water District ("Existing Water Tap") which is capable of providing (i) water to be used by the City for maintenance operations within the Lift Station Building ("Interior Water Use"); and (ii) irrigation of landscaping on the Property by the District ("Exterior Water Use"). Notwithstanding the City's use of the Existing Water Tap for Interior Water Use, the District shall be responsible for payment of all monthly water service bills owing to the Little Thompson Water District in connection with the Existing Water Tap.

At such time as a twelve (12) inch water line is installed in Sculptor Drive adjacent to the Property and such water line has been dedicated to the City ("City-Owned Water Line"), the City shall (i) tap into the City-Owned Water Line and pay for any monthly service fees arising as a result thereof; (ii) pay for or dedicate any raw water requirements required in connection with such water tap into the City-Owned Water Line; (iii) install a service line from the City-Owned Water Line to the Lift Station Building; and (iv) terminate use of water by the City from the Existing Water Tap. Thereafter, the City shall obtain all water required for maintenance operations within the Lift Station Building from the City-Owned Water Line and the District shall thereafter be entitled to the exclusive use of the Existing Water Tap for Exterior Water Use.

4. LANDSCAPE AND BUILDING MAINTENANCE: Following installation of the landscaping by the City and subject to the City's obligations to repair

or replace damaged or defective landscaping during the Warranty Period, the District shall furnish all water, labor, materials, and equipment necessary to provide quality professional landscape maintenance services on the Property including, but not limited to, grass mowing, shrub and tree pruning and replacement, irrigation system maintenance, and fertilizing. Such maintenance shall be obtained through the use of qualified, trained personnel using landscape practices and methods recognized and accepted as standards in the industry.

5. EXTERIOR BUILDING MAINTENANCE: The District shall furnish all labor, materials, and equipment necessary to provide quality professional building maintenance of the exterior of the Lift Station Building, including, but not limited to, surface cleaning, painting/staining, non-structural roof repairs and replacements (e.g., roof membrane and shingles), glass replacement, and graffiti removal. To the extent required to perform the foregoing duties, the City shall allow access within the Lift Station Building as reasonably requested by the District. Such exterior maintenance shall be obtained through the use of qualified, trained personnel using building practices and methods recognized and accepted as standards in the industry. In no event shall the District have any obligation to maintain the interior of the Lift Station Building or any equipment contained therein.
6. SCHEDULING: All exterior work and maintenance scheduling shall be at the discretion of the District as to day, time of day, and month unless required otherwise by the City in order to accommodate the City's operational requirements for the Lift Station Building.
7. GENERAL PROVISIONS:
 - A. Nothing herein contained shall be construed as a waiver of any requirements of the Loveland Municipal Code, and the District agrees that it shall be subject to the same.
 - B. In the event the City waives any breach of this Agreement, no such waiver shall be held or construed to be a waiver of any subsequent breach hereof.
 - C. This Agreement shall run with the Property and shall be binding upon and inure to the benefit of the parties hereto, their respective

personal representatives, heirs, successors, grantees, and assigns. It is agreed that all improvements required pursuant to this Agreement relate to and concern the Property regardless of whether such improvements are located on the Property. This Agreement shall be recorded in the real property records of the Larimer County, Colorado Clerk and Recorder by the District at its sole cost and expense.

- D. Each and every term of this Agreement shall be deemed to be a material element hereof. In the event that either party shall fail to perform according to the terms of this Agreement, such party may be declared in default. In the event that a party has been declared in default hereof, such defaulting party shall be given written notice specifying such default and shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to: (a) continue this Agreement and seek recovery of actual damages suffered; (b) continue this Agreement and enforce this Agreement by specific performance; or (c) avail itself of any other remedy at law or equity.
- E. This Agreement shall not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action hereunder for any cause whatsoever.
- F. It is expressly understood and agreed by and between the parties hereto that this Agreement shall be governed by and its terms construed under the laws of the State of Colorado and the City of Loveland, Colorado.
- G. When used in this Agreement, words of the masculine gender shall include the feminine and neuter gender, and when the sentence so indicates, words of the neuter gender shall refer to any gender; and words in the singular shall include the plural and vice versa. This Agreement shall be construed according to its fair meaning, and as if prepared by all parties hereto, and shall be deemed to be and contain the entire understanding and agreement between the parties hereto pertaining to the matters addressed in this Agreement. There shall be deemed to be no other terms, conditions, promises,

understandings, statements, representations, expressed or implied, concerning this Agreement, unless set forth in writing signed by all of the parties hereto. Further, paragraph headings used herein are for convenience of reference and shall in no way define, limit, or prescribe the scope or intent of any provision under this Agreement.

- H. Any notice or other communication given by any party hereto to any other party relating to this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified below; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at the address specified below; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified below:

If to the District: VDW Metropolitan District No. 1
Attention: President
2725 Rocky Mountain Ave. #200
Loveland, CO 80538
Telephone: (970) 962-9990

With a copy to: Alan D. Pogue
White Bear Ankele
1805 Shea Center Drive, Suite 100
Highlands Ranch, CO 80129
Telephone: 303-858-1800

If to the City: Director of Water & Power
City of Loveland
200 North Wilson
Loveland, CO 80537
Telephone: (970) 962-3000

