

**CITY OF AURORA
ROCKINGHORSE METROPOLITAN DISTRICT
WATER TRANSMISSION CONSTRUCTION AND COST REIMBURSEMENT AGREEMENT**

THIS WATER TRANSMISSION REIMBURSEMENT AGREEMENT ("Agreement"), dated and effective as of the 35th day of August 2008, is by and among ROCKINGHORSE METROPOLITAN DISTRICT No. 1, a political subdivision in the State of Colorado ("DEVELOPER"), and the CITY OF AURORA, a municipal corporation of the Counties of Adams, Arapahoe and Douglas, State of Colorado, acting by and through its UTILITY ENTERPRISE ("CITY").

RECITALS

This Agreement is made on the basis of the following facts:

A. WHEREAS, the Parties mutually agree that pursuant to City Code §146-301, the annexation of property to the City shall not create any additional cost or impose any additional burden on the existing residents of the City for the provision of public facilities and services to the property after annexation; and

B. WHEREAS, the Parties agree that any proposed development that results in new burdens on the City's existing public facilities and services, that DEVELOPER shall be responsible for mitigating such impacts through compliance with standards adopted by City Council. Such standards shall include fees calculated and imposed to provide adequate public facilities and service based on objective criteria.

C. DEVELOPER is the owner of a parcel of real property (the "DEVELOPER Property") located within the City of Aurora, Colorado, consisting of approximately 1031.761 acres, and which was annexed into the City of Aurora pursuant to that certain Annexation Agreement dated September 1, 2000, recorded in the office of the Recorder on September 22, 2000, under Book 1898, page 913.

D. The development plans for the Properties contemplate connection to the CITY's water and sewer facilities by construction of water, sewer and storm drainage improvements (the "Improvements") substantially in accordance with the development master utility plan, the CITY's master plans and the Capital Improvement Plan (CIP).

E. To facilitate installation of the Improvements in advance of the time that the CITY is prepared or obligated to do so, DEVELOPER is willing to undertake the installation of the Improvements and to advance 100 percent of the cost thereof, subject to reimbursement by the CITY from Fees as set forth herein.

F. The CITY shall not be required to pay any installation costs, fees, or incentives for acceleration of the improvements.

G. The CITY is willing to reimburse the District only for those pre-approved costs identified in Section 4 and Exhibit A, hereinafter referred to as the "Reimbursement Costs."

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing facts and for good and valuable consideration, the receipt and sufficiency of which are hereby confessed and acknowledged, DEVELOPER, and the CITY agree as follows:

1. Project Engineer, and District Engineer. DEVELOPER, with consent of the CITY, has selected Nolte Associates ("Project Engineer") to undertake and supervise the design, engineering. DEVELOPER, with the consent of the City has selected IDES LLC ("District Engineer") to undertake and supervise the construction of the improvements and to provide cost estimation for construction. The Project Engineer and District Engineer Contracts will provide for the following:

(a) Engineering and Design. Project Engineer has already completed the necessary design work for the Improvements. The Project Engineer secured the water easements within the Rights-of-Way (the "Easements") for the construction and operation of the Improvements. The Improvements were built and designed in accordance with all applicable CITY standards and subject to all applicable ordinances, rules, and regulations of the CITY.

(b) Bids. District Engineer submitted proposed bid documents to the CITY for approval before submitting to qualified contractors. Bid documents included all work to be performed for complete construction of the Improvements within preferred time periods, and at least three bids from qualified contractors (who shall disclose all subcontractors it intends to use) were obtained for all principal trades. District Engineer recommended the contractor, the DEVELOPER executed contracts for performance of the work. The work has been completed and accepted by the City.

(c) Opinion of Probable Cost. District Engineer determined its opinion of probable cost of all materials, fees, design, surveying, grading, engineering and construction work associated with the Improvements ("Improvement Costs"). This agreement is based on actual contract costs.

(d) Supervision. District Engineer will supervise all design, bidding processes and construction of the improvements through and including completion of construction, dedication to and acceptance by the CITY ("Project Completion"). The CITY will only pay management costs for the District Engineer. Administration costs from general contractors, master developer, contract administrators, and others working on the project will not be included for reimbursement.

(e) Payment Administration. District Engineer has reviewed contractor pay requests and submit pay requests to the DEVELOPER for payment of the Improvement Cost.

Change Order Management. The Contractor, DEVELOPER or the CITY can request change orders. District Engineer will prepare, review, and make a recommendation on change orders. Project Engineer has no authority to approve change orders. Only those change orders approved by the CITY prior to the work being performed will be included for reimbursement.

2. Rights of Way. Developer agrees to dedicate, at no cost to the City, Easements within the Developer Property. The parties acknowledge that the City shall have the right in the future to abandon Easements in the City's discretion.

3. Initial Payment of Improvement Costs. DEVELOPER shall pay (subject to partial reimbursement by the CITY pursuant to **Section 4**) 100 percent of the Improvement Costs in the manner set forth in **subsections 4(a), (b) and (c).**

4. Reimbursement by CITY. The CITY will reimburse DEVELOPER for the Improvement Costs, less the per acre Water Transmission Development Fee established by City Council, which would have been payable by DEVELOPER to the CITY pursuant to the Annexation Agreements described in the recitals to the Agreement. The CITY's obligation to DEVELOPER for the Reimbursement amounts shall be limited to the future development fees collected from Water Transmission Development fees collected from adjacent development and connecting development.

(a) The reimbursement to the DEVELOPER will be paid quarterly, commencing after initial acceptance of the Work. The due date for payment of the quarterly installment shall be 45 days after the end of each quarter.

(b) The CITY or DEVELOPER may, from time to time, consider changes in the scope of the services of the Construction/Design of the projects subject to the reimbursements of this Agreement. Such changes, including any increase or decrease in the amount of the compensation, which are mutually agreed upon by and between the CITY and the DEVELOPER, shall be incorporated in written addendum. Any increase in cost that would cause the CITY's reimbursement to increase is subject to City Council approval by Aurora.

A claim is any demand, contention, or assertion by the DEVELOPER seeking additional reimbursement resulting from approved changes in the scope of services. Claims by the DEVELOPER must be made in writing as specified herein. Claims from the DEVELOPER must contain all of the following:

- i) A narrative statement referencing and attaching the supporting documentation and specifically describing the legal, factual and contractual basis of the claim;
- ii) If the claim alleges delay to the work, the claim must include the precise number of days claimed, all alleged impacts, financial or otherwise, on the work, and the specific amount of money, if any, claimed as a result of the delay as well as a detailed critical path schedule analysis illustrating that the delays claimed were on the critical path of the project;

- iii) The CITY shall not pay any costs for acceleration.
- iv) If the claim is for additional compensation, the claim must include a detailed calculation of the precise amount claimed with all supporting documentation. All claims must reference the specific contract provisions relied upon to support the claim. All claims must specifically reference, by name, this Section and the fact that the claim is being submitted under this Section. Any writing or other form of notice, however designated, which fails to specifically reference this Section, by name, shall not be deemed to constitute a valid claim hereunder.

Items i, ii, iii, and iv above shall hereinafter be referred to as the "Final Accounting." A claim notice must be made in writing within three (3) business days after the occurrence of the event. Within six days a complete claim request shall be submitted in writing to the CITY giving rise to the claim, or the right to submit a claim is waived. The DEVELOPER shall submit all information reasonably available that is otherwise required in the Final Accounting at the time of the claim. Failure to timely provide the Final Accounting shall constitute a waiver of the claim.

All requests for additional reimbursement by the DEVELOPER shall be considered a separate claim and shall follow the claim procedures specified above. All information required in the Final Accounting must be submitted within the time limits established herein, and no supplementation of the information shall be permitted. Any attempted reservation of the right to submit or supplement an earlier-made claim shall be void. Any increase in the Reimbursable Costs is subject to annual appropriations and shall be subject to approval by City Council.

After review of the claim, the CITY shall make a decision whether the DEVELOPER is entitled to a Change Order. If in the opinion of the CITY, the DEVELOPER is entitled to a Change Order, the Project Manager shall initiate a written Change Order. DEVELOPER shall not proceed with the work pursuant to such claim until receipt of written approval from the Project Manager. If in the opinion of the CITY, the DEVELOPER is not entitled to a Change Order, the DEVELOPER shall receive notice of the decision in writing from the Project Manager within five (5) business days of receipt of the claim by the CITY. The DEVELOPER may submit an appeal of the decision in writing to the Director of Utilities within five (5) days of receipt of the decision from the Project Manager.

Claims shall be faxed with return acknowledgement or hand delivered to the following:

Joseph E. Wingert, P.E. Project Manager
City of Aurora
Water Department
15151 E Alameda Parkway, 3rd Floor
Aurora, CO 80012
Fax: (303) 739-7641

Rocking Horse Metropolitan District
9990 Park Meadows Drive

Lone Tree, Colorado 80124

District Engineer

IDES, LLC

7200 South Alton Way, # B140

Centennial, Colorado 80112

(c) For each phase of construction of Improvements applicable to this Agreement, the DEVELOPER, and the CITY will execute a written addendum to this Agreement, outlining the actual approved Improvements, the actual costs for those Improvements, and the methodology of reimbursement shall be pursuant to section 4 of this Agreement. All addenda are subject to approval by the Aurora City Council.

5. Term. The term of this Agreement shall cease twenty years after the approved date of this Agreement. The term of the agreement may be extended by five year intervals if DEVELOPER has not been reimbursed for improvement costs, and adjacent or connecting developments are planned or anticipated.

6. Water Transmission Fees. The CITY acknowledges and agrees that execution of and performance under this Agreement by DEVELOPER shall constitute full and complete satisfaction of DEVELOPER's obligations under its respective Annexation Agreements to pay Water Transmission Fees, until such time as DEVELOPER has been reimbursed for costs due under this Agreement.

7. Dedication to and Acceptance of Improvements by CITY. Upon completion of construction of the Improvements, DEVELOPER shall dedicate the Improvements to the CITY and warrant that the Improvements are constructed in substantial accordance with approved plans. The CITY shall process any such conveyance or dedication and shall issue any necessary acceptance of the Improvements as quickly as possible. Upon acceptance of the Improvements by the CITY ("Initial Acceptance") the Improvements shall become the property of the CITY. DEVELOPER shall indemnify and hold harmless the CITY for the costs of non-routine repair to the extent such repair is required due to faulty construction for a period of one year following Initial Acceptance. The period of indemnification shall begin upon issuance of the Notice of Initial Acceptance, which notice shall not be issued until DEVELOPER's contractor(s) have executed a lien release to the City of Aurora. The responsibility for the operation of the Improvements shall be that of the CITY. Upon expiration of said one-year period, the CITY shall be liable for all repair and maintenance of the Improvements.

8. Obligation of the CITY. Any and all obligations of the City under this Agreement will be the sole obligation of the Utility Enterprise and, as such, will not constitute a general obligation or other indebtedness of the City or a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the City, within the meaning of any constitutional, statutory or other Charter limitation. In the event of a default by the City on any of its obligations under the terms of this Agreement, the Developer will have no recourse against any of the funds of the City except for the unencumbered and unrestricted funds of the Utility

Enterprise Wastewater Fund; provided, however, that the non-Defaulting party's recourse against said fund will be on a basis subordinate and junior to that of the holders of any bonds, notes, or other financial obligations issued by the City or the Utility Enterprise and payable from the remains of the fund, after the payment of said bonds, notes, or other obligations.

9. Non-Appropriation. The Parties acknowledge and understand that any financial obligations of the CITY payable after the current fiscal year are contingent upon funds for that purpose being budgeted and appropriated by the CITY's governing body. Accordingly, should the CITY's governing body exercise its right not to appropriate funds for any fiscal year sufficient for the continued performance by the CITY of its obligations under this Agreement, this Agreement shall terminate at the close of the fiscal year for which funds were last appropriated without penalty or recourse to the CITY.

10. Relationship of Parties. Nothing contained herein will be construed or interpreted as (a) creating a joint venture, partnership, or other similar relationship between DEVELOPER or the parties; (b) obligating any Party to perform any of the terms, covenants or provisions of the other Party's Annexation Agreements; (c) entitling any person or entity not a Party to this Agreement to any of the benefits of this Agreement; (d) appointing a Party to this Agreement as agent of the others or authorizing a Party to this Agreement to make contracts in the name of the others; or (e) creating, establishing or imposing a fiduciary duty owned by one Party to the other hereunder or in any way creating a fiduciary relationship between the Parties.

11. Notices. Any notice provided for or required to be given hereunder will be in writing and will be deemed given (a) the date personally delivered or transmitted by facsimile transmission to the recipient of such notice at the facsimile numbers hereinafter identified; or (b) three (3) days after the date deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the recipient of such notice at such place as a Party may designate in writing for such purpose or, in the absence of such designation:

12. Captions. Captions to paragraphs are for convenience and reference purposes only and will not affect the construction of the meaning of the terms and provisions of this Agreement.

13. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties hereto, their representatives, successors, and assigns. This Agreement is intended by the Parties hereto to be of use and benefit of the Parties and no person or entity not a Party to this Agreement will be authorized or entitled to rely on the benefits of this Agreement or seek to enforce any of the terms, provisions or covenants contained herein as a third Party beneficiary hereof.

14. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which will constitute an original agreement, but all of which together will constitute a single agreement. A facsimile transmitted copy of this Agreement executed by one of the Parties hereto will be accepted as an originally executed copy of this Agreement.

THIS AGREEMENT has been executed by the Parties effective as of the date set forth above.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

DEVELOPER

By: _____

Its: Vice President

ATTEST:



THE CITY OF AURORA


Edward J. Tavel, Mayor

ATTEST:


Debra Johnson, City Clerk

APPROVED AS TO FORM:

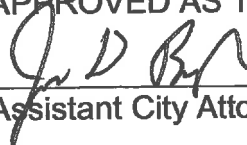

Assistant City Attorney

EXHIBIT B

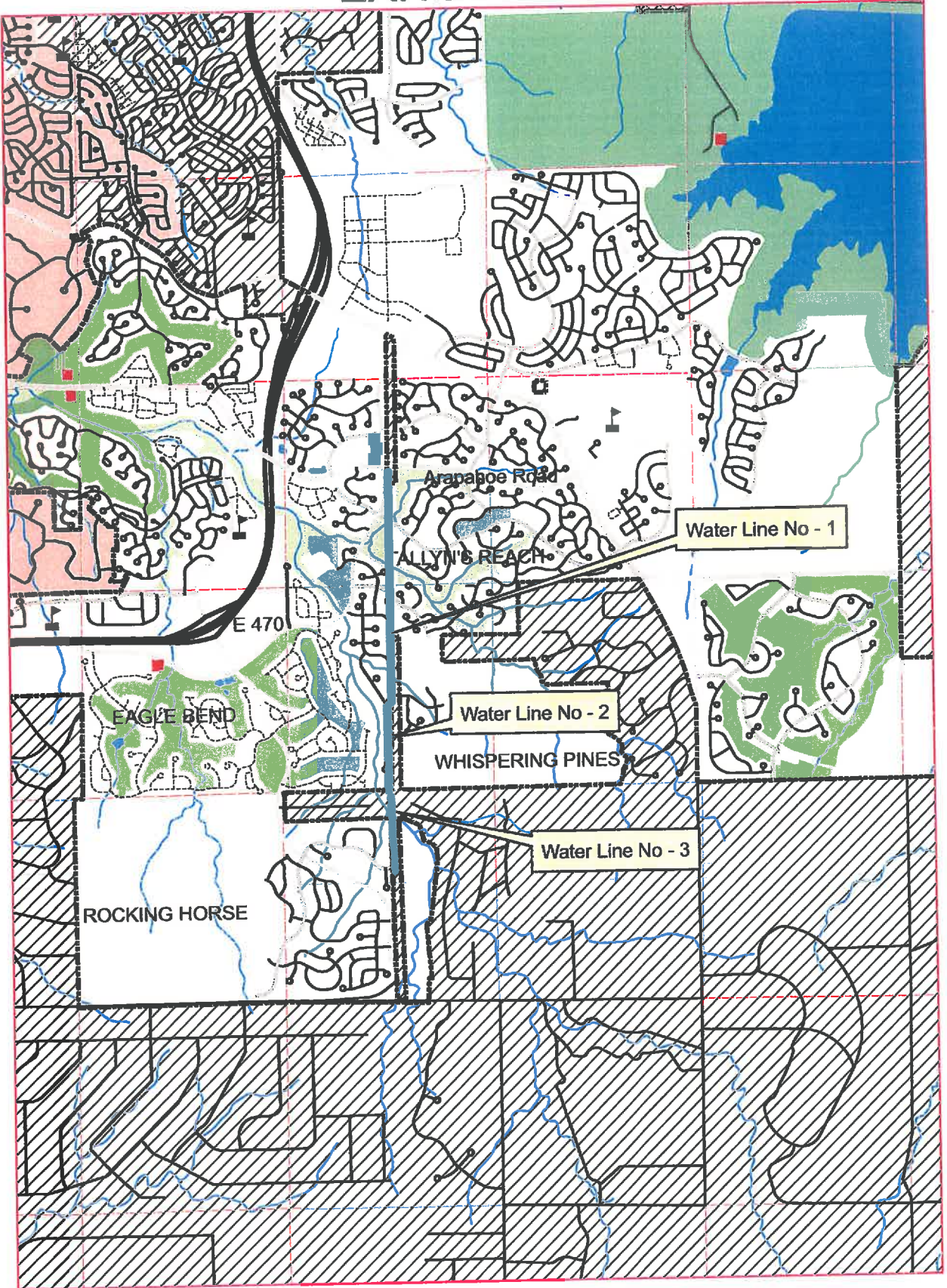


Exhibit A					Date: June 5, 2008
Rocking Horse Metropolitan District - Cost Reimbursement Agreement					
I Project Costs					
NO.	ITEM	Proposed Cost	Percent Reimbursement	Eligible Reimbursement	Notes
Water Lines					
1	Off Site Water Transmission Main	\$ 1,133,291.56	81.00%	\$ 917,966.16	
2	On Site Water Transmission Main	\$ 376,111.01	43.00%	\$ 161,727.73	
3	On Site Water Transmission Main	\$ 722,119.09	19.00%	\$ 137,202.63	
4				\$ -	
5				\$ -	
6				\$ -	
7				\$ -	
8	Water Sub Total (SUM LINES 1-7)	\$ 2,231,521.66		\$ 1,216,896.52	
II Development Fees					
Water Transmission Development Fee					
		Acres	Fee Per Acre	Fee Amount	
9	Annexation areas Per Frame Work Development Plan	1031.761	\$ 1,100.00	\$ 1,134,937.10	Credited per Annexation
10		0	\$ 1,100.00	\$ -	
11	Sub Total Water Transmission Fee (SUM LINES 9-10)			\$ 1,134,937.10	
*Fee Reimbursement is the \$1,100 water transmission Fee This is credited at the time of subdivision.					
III Capital Improvement Project Budgets					
Water CIP					
		ORG Number	Year	Amount	
12	NONE			\$ -	
13	Water CIP Sub-Total (LINE 38+39+40)			\$ -	
IV Reimbursement					
Water Line Reimbursement					
14	Amount to be reimbursed by adjacent developments			\$ 81,959.42	
Future Water Transmission Development Fees For Reimbursement					
15	Whispering Pines acres per Frame Work Development Plan	269 Acres		\$ 295,900.00	
16	Timber Ridge Filing No. 1 (proposed - not recorded)	33.577 Acres		\$ 36,934.70	
17	Sub Total Future Development Fees For Reimbursement (Line 15 + 16) **			\$ 332,834.70	
** Only the first \$81,959.42 (line 14) eligible for reimbursement will be reimbursed by this agreement					