

WATER INFRASTRUCTURE AND SERVICE AGREEMENT

THIS WATER INFRASTRUCTURE AND SERVICE AGREEMENT ("Service Agreement") is entered into as of the 14th day of June, 2012, by and between **HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION**, a Utah nonprofit corporation ("Hi-Country"), and **HERRIMAN CITY**, a Utah municipality ("City"). Hi-Country and City may also be referred to as a Party or collectively as the Parties.

RECITALS

1. Hi-Country is responsible for providing water service to its members and a few neighboring landowners ("Customers"). Hi-Country owns and maintains a water system including, but not limited to, an underground water well and facilities, pumps, water storage tanks, and water pipelines as shown on Exhibit A hereto ("Water System").
2. City is a municipality organized under Utah law that provides water service to its customers.
3. Hi-Country desires to contract with the City to provide water service to its Customers and to operate and maintain the Water System.
4. City is willing to accept responsibility for providing water service to Hi-Country Customers and responsibility for the operation of maintenance of the Water System in accordance with the terms and conditions of this Service Agreement.
5. Hi-Country has sufficient water rights to supply water to current and future Customers to which it has committed water service. Hi-Country also has sufficient water source to provide water to those current and future Customers.

AGREEMENT

I. WATER SERVICE AGREEMENT

A. **Service Obligation.** To the extent that the water system has capacity and is feasible as determined by the City, the City shall be responsible for providing water service to existing and future Hi-Country Customers. For purposes of this Agreement, future Hi-Country Customers include only lots within Hi-Country Estates that are not currently receiving water service subject to the limitation described above. Upon execution of this Agreement, City shall be responsible for providing water service to all members of Hi-Country who are currently receiving water service from Hi-County Water System as well as other customers who are currently receiving water from the Water System. City also agrees to provide, subject to appropriate fees, water service to all other members of Hi-Country as build-out occurs within the service area of Hi-Country, as identified in Exhibit "A" attached hereto. For example, as members of Hi-Country that currently hold undeveloped lots choose to build upon those lots, City shall be obligated to provide water service to their lots. City's obligation shall be to provide reasonable and customary water service consistent with what it provides to its citizens. Hi-Country agrees not to interfere with or contest any action by Herriman to require that Hi-Country Customers outside of Hi-Country Estates Phase 1 and within the boundaries of Herriman City connect to the Herriman City water system.

B. **Public Service Commission.** The Public Service Commission of Utah ("PSC") is currently reviewing whether Hi-Country is subject to its jurisdiction for ratemaking purposes. If the PSC asserts jurisdiction, then the water service rate described in subparagraph C below, the connection fee described in subparagraph D below, the standby fees described in subparagraph E below, and the other fees described in subparagraph F below shall all conform to the Hi-Country

Water Tariff as it is duly approved and adopted by the PSC. Where a change in service rates or fees is necessary, City will work with Hi-Country to obtain all necessary approvals from the PSC. Hi-Country shall have sole responsibility to seek PSC approval and shall bear all costs of doing so. City will cooperate in providing to Hi-Country any information within its control necessary or helpful in seeking modification of its Tariff before the PSC.

C. Water Service Rate. City may charge the customers of Hi-Country for water service at a rate to be determined by the PSC, if applicable, or by an independent rate evaluation. Water service charges shall be billed to individual water users by means of a monthly water usage bill. The water service rate the City charges to the customers of Hi-Country may increase over time as necessary to upgrade, operate, and maintain the Hi-Country water system. Any increases to the water service rate charged to the customers of Hi-Country shall be subject to prior notice and hearing. Prior to any rate increase, City shall include notice of a public hearing regarding its intention to raise the water service rates in the monthly billing sent to the individual customers of Hi-Country prior to the 30-day period set forth below and City shall hold a public hearing addressing the rate increase at least 30 days before the implementation of any rate increase. If the PSC asserts jurisdiction over Hi-Country water rates, then the process for adjusting water rates shall be in accordance with the laws and regulations governing rate proceedings before the PSC, and those laws and regulations shall be deemed to supersede the requirements of this paragraph.

D. Connection Fees. The Parties agree that the customers of Hi-Country currently receiving metered water service from Hi-Country have paid any and all required connection fees and that the City shall not charge any additional connection fees or impact fees to those customers of Hi-Country already connected to the Water System and currently receiving water service from Hi-

Country. The Parties agree that the City may charge those seeking a new water connection to the Water System a connection fee. The amount of the connection fee shall be determined either by an independent rate evaluation, or, if the PSC asserts jurisdiction over Hi-Country, by the PSC. The parties further agree that members who have previously paid a connection fee to connect to the Water System but have since disconnected from the system for any reason shall not be required to pay the connection fee. The City may, however, charge a reconnection fee roughly equal to the actual cost of connecting to the Water System.

E. Standby Fees. Hi-Country has commitments to serve water in the future to certain parcels within its service area, and the Water System has been designed and maintained to allow for those additional connections. To meet the cost of maintaining this capacity for future connections, the owners of those parcels are responsible to pay a monthly standby fee. The amount of the standby fee shall be determined either by an independent rate evaluation, or, if the PSC asserts jurisdiction over Hi-Country, by the PSC.

F. Other Fees. Hi-Country currently charges reconnection fees, temporary service suspension fees, and other fees. Additionally, the City may work with Hi-Country to assess whether an impact or improvement fee may also be necessary to meet future requirements of the system. If Hi-Country seeks to impose an impact or improvement fee, it shall be solely responsible for compliance with the Impact Fees Act. The amount of any other fees charged shall be determined either by an independent rate evaluation, or, if the PSC asserts jurisdiction over Hi-Country, by the PSC.

III. WATER SYSTEM IMPROVEMENTS

The Parties acknowledge that infrastructure improvements are necessary to keep the Hi-Country water system compliant with current state drinking water standards and to allow for the

expansion of the Hi-Country water system. City shall be solely responsible for the design and construction of the Water System improvements. City shall be solely responsible for capitalizing the cost of the Water System improvements. The Parties agree that the cost of the system improvements shall be paid for by the customers of Hi-Country through connection fees, impact fees, and water service rates. The Parties agree that the priorities for the Water System improvements and capital investment shall include meter replacement and other improvements.

IV. WATER SYSTEM OPERATION AND MAINTENANCE

Upon execution of this Service Agreement, City shall have sole responsibility for the operation and maintenance of the Water System as identified on Exhibit A hereto and as it may be expanded after the execution of this Service Agreement. This shall include, but is not limited to, regular system maintenance and repair, emergency repairs, construction costs, engineer fees, water quality testing and maintenance, and all operating costs. To facilitate the City's ability to operate and maintain the Water System, Hi-Country agrees that City may access property owned or leased by Hi-Country and all of Hi-Country's existing easements and/or rights of way. City may also lock any portion of the Water System so long as it provides Hi-Country with a key to any such lock.

Before November 15 each year, City will submit a budget to Hi-Country for operating the Water System for the following year. Within four weeks after receiving the proposed budget, Hi-Country shall submit to City in writing any concerns with the budget. If Hi-Country fails to submit any concerns within that period, then the budget shall be deemed approved by Hi-Country. Except where required to address an emergency related to the Water System, the City shall not make any single expenditure of more than \$10,000 that is not specifically identified in

and approved under the annual budget unless the City receives prior written approval of the board of directors of Hi-Country.

VI. ADDITIONAL PROVISIONS

A. Term. This Service Agreement shall continue for a term of ninety-nine years unless earlier terminated by the Parties pursuant to this paragraph. Either party may terminate this agreement for any reason or no reason with eighteen months advanced written notice to the other Party. The City may terminate this agreement on sixty days' notice only if one of the following conditions is satisfied: (1) If Hi-Country seeks a rate increase from the PSC pursuant to paragraph I.B. above to accommodate the City's proposed budget, and the PSC does not substantially approve that rate increase, or (2) the City and Hi-Country fail to agree on a budget for the following year pursuant to Part IV above on or before January 31st. Notwithstanding the foregoing, if Hi-Country pays out of its general fund the difference between the revenue from PSC-approved rates and the City's budgeted and emergency costs to operate the Hi-Country System, then the City shall continue under this Agreement for the period that Hi-Country pays those costs. But in no event shall City be required to continue under this Agreement beyond eighteen (18) months after the initial notice of termination is served on Hi-Country.

B. System Ownership. Hi-Country owns the Water System and the water right used in that system. Nothing in this Service Agreement affects that ownership.

C. Accounting. City shall maintain a separate accounting ledger for all revenue and expenses related to operating the Water System under this Service Agreement. Hi-Country, or its authorized agents or representatives, on not less than two (2) days' notice to City, may inspect and copy all records and data, including without limitation such records and data which are

maintained electronically, pertaining to the Water System. City shall send an accounting report monthly to Hi-Country.

D. Notices. Any and all notices, demands, or other communications required or desired to be given hereunder by Parties shall be in writing and shall be validly given or made if served either personally or if deposited in the United States mail addressed to the address below. If such notice, demand or other communications are served personally, service shall be conclusively deemed at the time of such personal service. If such notice, demand or other communications are served by mail, such notice shall be conclusively deemed given two business days after the deposit thereof in the United States mail addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth:

To Hi-Country:

Hi-Country Estates Homeowners Association
124 Hi-Country Road
Herriman, UT 84096

With a copy to:

Matthew E. Jensen
SMITH HARTVIGSEN, PLLC
175 S. Main St., Suite 300
Salt Lake City, UT 84111

To City:

City of Herriman
13011 South Pioneer Street
Herriman, Utah 84065

With copy to:

John N. Brems
PARSONS KINGHORN HARRIS, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111

Any Party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner aforesaid.

E. Further Assurances. Each of the Parties shall execute and deliver any and all additional papers, documents, and other assurances, and shall do any and all acts and things reasonably necessary in connection with the performance of their obligations hereunder and to carry out the intent of the Parties.

F. Attorneys' Fees. In the event any action shall be instituted by a Party concerning this Agreement, the prevailing Party shall be entitled to its attorneys' fees, costs and expenses, whether such sums are expended with or without suit, at trial, on appeal or in any bankruptcy or insolvency proceeding.

G. Modification or Amendments. No amendment, change or modification of this Agreement shall be valid unless in writing and signed by the Parties.

H. Exhibits. All exhibits attached hereto and referred herein are hereby incorporated as though set forth at length.

I. Captions. The captions appearing at the commencement of the paragraphs are descriptive only and for convenience in reference. Should there be any conflict between any such caption and the section at the head of which it appears, the section and not the caption shall control and govern in the construction of this Agreement.

J. Integration. This Agreement and the attachments hereto constitute the entire understanding and agreement of the Parties and any and all prior agreements, understandings or representations are hereby terminated and canceled in their entirety and are of no force and effect.

K. No Obligation to the Third Parties. The execution and delivery of this Agreement shall not be deemed to confer any rights upon, nor obligate either of the Parties to any person or entity other than each other.

L. Number and Gender. In this Agreement, wherever the context so requires, the masculine gender includes the feminine and/or neuter, and vice versa, and the singular number includes the plural.

M. Waiver. The waiver by any Party to this Agreement of a breach of any provision of this Agreement shall not be deemed a continuing waiver or waiver of any subsequent breach whether of the same or another provision of this Agreement.

N. Applicable Law and Severability. This Agreement shall, in all respects, be governed by the laws of the State of Utah. Nothing contained herein shall be construed so as to require the commission of any act contrary to law, and wherever there is any conflict between any provision contained herein and any present or future statute, law, ordinance or regulation, the latter shall prevail and the provision of this document which is affected shall be curtailed and limited to the extent necessary to bring it within the requirements of the law.

O. Performance of Acts on Business Days. In the event that the performance of any act hereunder falls on a Saturday, Sunday or holiday, such act may be performed on the next succeeding business day.

P. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, and to their respective administrators, successors and assigns. This Agreement shall not be assigned by either party without prior written consent of the other party.

Q. Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

R. Waiver, Release, and Indemnification. Subject to the exception set forth below in this paragraph, Hi-Country shall indemnify, hold harmless, and defend the City and its agents, elected officials, appointed officials, officers, volunteers, and employees from and against any and all claims, damages, losses, and expenses, direct, indirect, or consequential (including, but not limited to, fees and charges of engineers, attorneys, and other professionals and court costs) arising out of or resulting from the performance of this Agreement, regardless of whether or not the claim, damage, loss, etc., arising from the act or omission is caused in part by a party indemnified hereunder or arises by or is imposed by law and regulations regardless of the negligence of any such party. Nothing herein shall be construed to require Hi-Country to indemnify the City or its agents or employees for any damages that are caused by or result from the negligent or intentional wrongful conduct of the City or its agents or employees. Hi-Country forever releases, discharges, covenants not to sue, and waives any and all rights and claims for damages and causes a suit or action known or unknown that it may have against the City, its agents, elected officials, appointed officials, officers, volunteers, and employees arising out of the quantity or quality of water provided to Hi-Country pursuant to this Agreement.


S. Special Provisions Regarding Nonfunding. The Parties intend that the City's costs of performing under this Agreement will be covered by the fees described in paragraphs I.C. through I.F. above. Accordingly, under normal circumstances, the City need not make any specific appropriation to perform its obligations under this Agreement. Nevertheless, Hi-Country specifically understands and agrees that funds have not been appropriated by the City

for performance of this Agreement beyond the end of City's fiscal year, which is June 30, 2012. Each party's obligation for performance of this Agreement is contingent upon funds being budgeted and appropriated for that purpose. If no such funds or insufficient funds are appropriated and budgeted in any fiscal year, or if there is a reduction in appropriation due to insufficient revenues, resulting in insufficient funds for performance under this Agreement, then this Agreement shall create no obligation on the parties as to such fiscal years (or any succeeding fiscal year), and all obligations thereunder shall terminate and become null and void on the first day of the fiscal year on which necessary funds were not budgeted or appropriated or in the event of reduction in appropriation on the last day before the reduction became effective (except as those portions of payments herein then agreed upon for which funds are appropriated and budgeted.) Any such termination under this paragraph shall (1) not be construed as a breach of or a default under this Agreement; (2) be without penalty, additional payment, or other charges of any kind whatsoever to Hi-Country; (3) accrue to the benefit of the Hi-Country no right of action or damage or other relation as to this Agreement, or any portion thereof; and (4) cause this Agreement to become null and void. To give Hi-Country the maximum possible time to make alternate water service arrangements in the event of termination under this paragraph, if City has reason to believe that termination of the Agreement because of lack of funding is reasonably likely, City shall give written notice of that likelihood within three business days of realizing that likelihood.

T. **Third-party Beneficiaries.** This Agreement is not intended to create any third party beneficiary rights in anyone not a party to this agreement. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third-party against the City or Hi-Country.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

HI-COUNTRY ESTATES HOMEOWNERS ASSOCIATION




By: Noel Williams, President

HERRIMAN CITY, a Utah municipality



By: Joshua E Mills, Mayor

ATTEST:



By: Kristi Peterson, City Recorder



HI COUNTRY ESTATES PH I
WATER LINE SIZE AND VALVE LOCATION

