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AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2017, by and between the CITY OF LOVELAND, COLORADO, a home-rule municipality, whose address is 500 East Third Street, Loveland, Colorado 80537 (“the City”), and SYLVAN DALE RANCH, LLLP, a Colorado corporation, whose address is 2939 North County Road 31D, Loveland, CO 80538 (“SDR”).

RECITALS:

WHEREAS, the City is the owner of certain fully consumable water supplies decreed for augmentation and replacement which are available for delivery from storage in Green Ridge Glade Reservoir, from the City’s waste water treatment plant (“WWTP”), or from other locations which may be agreed to by the parties (the “Augmentation Water”); and

WHEREAS, SDR owns units in the Colorado-Big Thompson Project (“C-BT units”) and is willing to convey twelve (12) of its C-BT units to the City in exchange for a permanent annual supply from the City of no more than six (6) acre-feet of Augmentation Water suitable for use in SDR’s proposed augmentation plan for replacement of evaporative losses associated with the Sylvan Dale Water Way shown on **Exhibit A** hereto, the irrigation ponds shown on **Exhibit B** hereto, and replacement of return flow obligations associated with SDR’s change of 2.5 shares in the Handy Ditch Company, an application for which was filed in Case No. 2014CW3016, Water Division No. 1 (“Augmentation Plan”).

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

AGREEMENT:

1. Recitals. The recitals set forth above are incorporated as part of this Agreement.
2. Transfer of C-BT Units to the City. Within sixty (60) days of the date of the decree issued in Case No. 14CW3016, SDR will transfer to the City twelve (12) C-BT units. SDR shall take all necessary steps required by Northern Colorado Water Conservancy District (“District”) to convey said C-BT units to the City . The City agrees to assist and cooperate with SDR and the District, as necessary, to effectuate such transfer.
3. City Supply of Augmentation Water to SDR. Upon receipt of the C-BT units from SDR, the City agrees to provide to SDR its required weekly and monthly amounts of Augmentation Water in an annual amount not to exceed six (6) acre-feet. The City understands and agrees that SDR will include the Augmentation Water in SDR’s Augmentation Plan, and that the Augmentation Plan will likely require that the Augmentation Water be released to the Big Thompson River from Green Ridge Glade Reservoir, the City’s WWTP, or at other locations mutually acceptable to the parties and the water commissioner for Water District No. 4. The City hereby shall make the Augmentation Water available to SDR in accordance with SDR’s

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decreed Augmentation Plan. The approximate weekly and monthly augmentation water release schedule is shown on **Exhibit C** hereto. Notwithstanding anything herein to the contrary, in the event that the annual quota issued by the District is less than 50% in any given year, and the water available to the City in such given year from the C-BT units transferred from SDR yields less water than the quantity required under the terms of SDR's Augmentation Plan, then SDR will convey an amount of water to the City for that given year equivalent to such shortage upon the City's sixty (60) days' notice to SDR. If SDR is unable to provide the equivalent amount of water to the City for a year in which such a shortage exists, then the City shall not deliver the Augmentation Water for that particular year.

4. Measuring and Accounting. The City shall be responsible for installing and maintaining the measuring devices required by the Division Engineer and reporting releases to SDR and/or the Division Engineer as required by SDR's decreed Augmentation Plan. However, the cost of installing any measuring devices required solely for the purpose of properly measuring and accounting for the release of water from Green Ridge Glade Reservoir pursuant to this Agreement shall be paid by SDR. It is anticipated that SDR's decreed Augmentation Plan will require SDR to replace during the October 1 through April 30 period a maximum of 6 acre-feet of water which includes transit losses associated with the delivery of water from the Green Ridge Glade Reservoir outlet to the point of depletion for SDR's Big Pump Lake and Little Pump Lake as well as other operational losses. In view of the relatively small amount of water to be released, SDR will endeavor to obtain a decree that requires that water be released as infrequently as possible, and at most once a month.

5. Administration Fee. Commencing two years after entry of a decree in SDR's Case No. 14CW3016, SDR agrees that it shall pay to the City's Water & Power Department, 200 N. Wilson Ave., Loveland CO 80537, an annual augmentation release administration fee ("Annual Administration Fee"). For the seven years immediately following the entry of a decree in SDR's Case No. 14CW3016, the Annual Administration Fee shall be \$1200.00 per year, with the first two years after entry of decree exempt from such Fee. The City reserves the right to increase such Annual Administration Fee based on the actual costs of administering, accounting, and releasing such Augmentation Water each year. The Annual Administration Fee shall only increase if the City provides a notice to SDR of an increase in the fee, and the justification thereof, prior to December 31 of the year prior to the increased fee. The City shall submit an invoice to SDR for the Administration Fee once per year in the spring. SDR shall pay the invoiced amount to the City within thirty (30) days of receiving the City's invoice.

6. Termination or Abandonment of Augmentation Plan. In the event that operation SDR's Augmentation Plan is terminated by actions of SDR or the Office of the State Engineer, or is abandoned by SDR, then the City's obligation to supply the Augmentation Water under this Agreement shall immediately cease.

7. Event of Force Majeure. In the event of Force Majeure ("Event"), defined as an event beyond the control of the City, SDR, or the District that prevents the City from complying with its obligations under this Agreement, including but not limited to an act of nature (fire, flood, catastrophic drought) or a Colorado River Compact Call or drought that reduces the quota

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or yield from C-BT units lower than 30% for two consecutive years or more, or any event or occurrence that results in the City’s urgent need for water, then the City shall have no obligation to supply the Augmentation Water to SDR’s benefit. The City shall have the sole authority to determine the existence or occurrence of an Event, and shall provide SDR with thirty (30) days notice of its determination. If such an Event occurs within ten (10) years of the date of the entry of SDR’s decree in Case No. 14CW3016, then the City shall re-convey to SDR twelve (12) C-BT units. If such an Event occurs within twenty (20) years of the date of the entry of SDR’s decree in Case No. 14CW3016, then the City shall re-convey to SDR six (6) C-BT units. The City shall have no obligation to re-convey to SDR any C-BT units if such an Event occurs more than twenty (20) years from the date of the entry of SDR’s decree in Case No. 14CW3016.

8. Remedies. In the event SDR is in default of any obligation hereunder, the City shall be entitled to discontinue its supply of Augmentation Water to SDR or to seek specific performance in addition to any other rights or remedies it may have under applicable law.

9. Notices. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City: City of Loveland Water & Power Department
Attn: Director
200 North Wilson Avenue
Loveland, Colorado 80537

If to SDR: Sylvan Dale Ranch
Attn: David Jessup, Susan Jessup
2939 North County Road 31D
Loveland, Colorado 80538

10. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

11. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.

12. Assignability. The rights and obligations of the parties under this Agreement may not be conveyed or assigned with out the prior written consent of the other party.

13. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their successors and assigns.

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14. Entire Agreement. This Agreement is the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.

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

CITY OF LOVELAND, COLORADO

By: _____

Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

SYLVAN DALE RANCH, LLLP.

By: _____

Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2017 by _____ as _____ of the Sylvan Dale Ranch, LLLP.

Witness my hand and official seal.

My commission expires _____.

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Notary Public