

RESOLUTION NO. 14-18

A RESOLUTION DIRECTING COLORADO SPRINGS UTILITIES TO ENTER INTO AN AMENDMENT FOR PURCHASE OF RETURN FLOWS

WHEREAS, Forest Lakes Metropolitan District (FLMD) is the successor-in-interest to Agreement for Purchase of Return Flows (Agreement) dated April 23, 1984, whereby FLMD is entitled to 660 acre-feet of Colorado Springs' fully consumable return flows annually for augmentation of depletions associated with tributary well water withdrawn for water service and lake/reservoir water level maintenance on a 1,600 acre development in northern El Paso County;

WHEREAS, the Agreement required covenants for the development that prohibit the use of septic systems and stated that Colorado Springs would have no responsibility for contamination caused by sewage treatment systems installed by the developer or future owners of the land;

WHEREAS, the Agreement also provided that any amendments to it must be approved by City Council;

WHEREAS, Visum I Investment Partnership, LTD, (Visum) is the owner of an approximately 181 acre tract (Village Tract) that is part of the 1,600 acre development. Colorado Springs Utilities received a request from Visum to amend the Agreement to remove the Village Tract from the obligations of the Agreement since Visum no longer plans to plat, subdivide or develop the tract as anticipated. Rather, Visum plans to maintain the property primarily as undeveloped open space with up to six residences on the Property, and to utilize septic systems and exempt domestic wells available under Case No. 07CW120 as the source of water supply and wastewater disposal for those residences;

WHEREAS, Colorado Springs Utilities' Water Resources staff have negotiated the amendment to the Agreement attached hereto as Exhibit A with Visum and FLMD releasing the Village Tract from the Agreement;

WHEREAS, the amendment to the Agreement provides that Visum: is released from the obligation to utilize a central sewage collection and treatment system for homes built on the Village Tract and may instead use septic systems; may not use more than 12 acre-feet of well water available per the terms of Division 2, Water Court Case No. 07CW20; must promptly mitigate any degradation to the water quality on Monument

Creek caused by its use of wells and septic systems on the Village Tract; and must record covenants which ensure that no more than six residences may be constructed on the Village Tract;

WHEREAS, the proposed amendment does not change the amount of water available to FLMD nor any other obligations of FMLD or Colorado Springs Utilities under the Agreement; and


WHEREAS, Colorado Springs Utilities requests that City Council authorize and direct the proper official of Colorado Springs Utilities to execute the proposed amendment to the Agreement.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The proper official of Colorado Springs Utilities is authorized and directed to execute the amendment to the Agreement in substantially similar form to that attached hereto as Exhibit A.


Section 2. This Resolution shall be in full force and effect immediately upon its adoption.

DATED at Colorado Springs, Colorado, this 13th day of March, 2018




Council President

ATTEST:



Sarah B. Johnson, City Clerk



AMENDMENT TO AGREEMENT FOR PURCHASE OF RETURN FLOWS

This Amendment to Agreement for Purchase of Return Flows (this "Amendment") is made and entered into on the date set forth below, by and between the City of Colorado Springs, a Colorado home-rule city and municipal corporation, acting by and through its enterprise Colorado Springs Utilities (the "City"), Forest Lakes Metropolitan District, a Colorado special district ("FLMD"), and Visum I Investment Partnership, LTD, a Texas limited partnership ("Visum").

WHEREAS, the City entered into that certain Agreement for Purchase of Return Flows ("Agreement") with C. H. Company ("Developer") dated April 23, 1984; and

WHEREAS, FLMD is the successor-in-interest of the Developer with respect to the rights and obligations associated with the Agreement; and

WHEREAS, Visum's interest in the Agreement is as the owner of the land consisting of approximately 181 acres described in **Exhibit A** attached hereto (the "Property"), which was a portion of the approximately 1,600 acres of land associated with and bound by the Agreement; and

WHEREAS, in Case No. 83CW143, the Denver Basin ground water rights underlying the Property were quantified and adjudicated, and in Case No. 95CW229, FLMD adjudicated a plan for augmentation to allow the withdrawal of portions of said ground water. Subsequently, in Case No. 07CW20, FLMD adjudicated the withdrawal of 12.0 acre-feet of Denver Aquifer ground water from the conditions of the decrees in Case Nos. 83CW143 and 95CW229 in order to allow the owner of the Property to obtain exempt well permits for use on the Property.

WHEREAS, Visum no longer plans to plat, subdivide or develop the Property. Rather, Visum plans on constructing up to six residences on the Property and utilizing exempt wells as the source of water supply for those residences.

WHEREAS, as a result of the Decree entered in Case No. 07CW20 and the use of exempt wells on the Property resulting from that Decree, the parties wish to exclude the Property from the Agreement, subject to the terms of this Amendment.

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Property is hereby excluded from the Agreement. The return flows and other rights, terms, and conditions set forth in the Agreement will remain in full force and effect with respect to the City and FLMD, and Visum and the Property shall not have any benefits or obligations of the Agreement except for the obligation as set forth herein.
2. Visum may use no more than the 12 acre-feet of Denver Aquifer ground water that is the subject of Case No. 07CW20 upon the Property through the construction and use of exempt

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wells and septic systems or other individual wastewater treatment systems acceptable to El Paso County and the State of Colorado, subject to all laws relating to the use of wells and septic systems. Visum will be responsible for promptly mitigating any degradation to the water quality of Monument Creek directly caused by the use of septic systems or other individual wastewater treatment systems upon the Property ("Water Quality Obligations"). The Water Quality Obligations shall be solely the obligations of Visum, and FLMD and the City shall not have any obligations to Visum, or any other party related to the Water Quality Obligations or Visum's use of ground water or wastewater treatment upon the Property.

3. Visum shall record restrictive covenants on the Property providing that no more than six residences may be constructed on the Property, that the water supply for those residences shall be provided by exempt wells, and that only septic systems or other individual wastewater treatment systems may be used for wastewater treatment on the Property.

4. FLMD's rights, benefits, and obligations under the Agreement including, without limitation, its right to receive 660 annual acre feet of fully useable return flows from the City, shall not in any way be impaired, reduced, or adversely impacted by this Amendment, by any violation or failure of Visum to comply with the Water Quality Obligations, or Visum's use of ground water or wastewater treatment upon the Property. The City's rights, benefits, or obligations under the Agreement shall not in any way be impaired, reduced, or adversely impacted by this Amendment, by any violation or failure of Visum to comply with the Water Quality Obligations, or Visum's use of ground water or wastewater treatment upon the Property.

5. This Amendment will inure to the benefit of and will be binding on the successors and assigns of the City, FLMD, and Visum, and will not be amended except in writing executed by all parties and approved by the Council of the City of Colorado Springs.

6. The City and FLMD shall have no responsibility directly or indirectly to any purchasers, assignees, or transferees of Visum or to any third party for failure of Visum to construct exempt wells or adequate wastewater treatment systems for the Property, or due to the inability of exempt wells to supply water of sufficient quantity or quality to the Property, or due to any inadequacy in the quality or quantity of sewage treatment.

7. In the event of a conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall prevail.

8. Except to the extent as amended hereby, all other terms of the Agreement shall remain the same and are hereby ratified and affirmed by the parties.

Dated this 17th day of Apr. 1, 2018.

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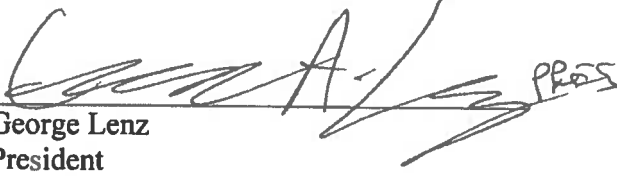
CITY OF COLORADO SPRINGS, acting by and
through its enterprise, COLORADO SPRINGS
UTILITIES

By: Earl Wilkinson, III
Earl Wilkinson, III
Chief Water Services Officer

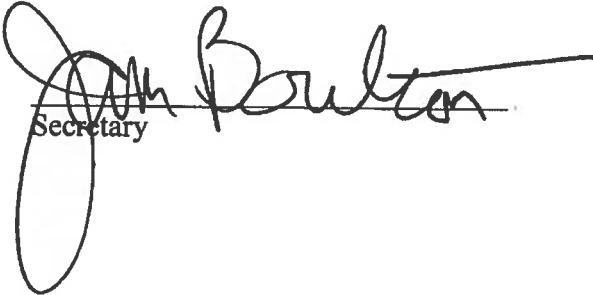
APPROVED AS TO FORM:
[Signature]
CITY ATTORNEYS OFFICE
UTILITIES DIVISION

AMENDMENT TO AGREEMENT FOR
PURCHASE OF RETURN FLOWS

FOREST LAKES METROPOLITAN DISTRICT

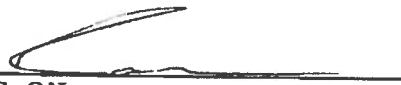
By:  PRES
George Lenz
President

Attest:


Secretary

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VISUM I INVESTMENT PARTNERSHIP, LTD, a
Texas limited partnership

By: 
Randal S. O'Leary
General Partner

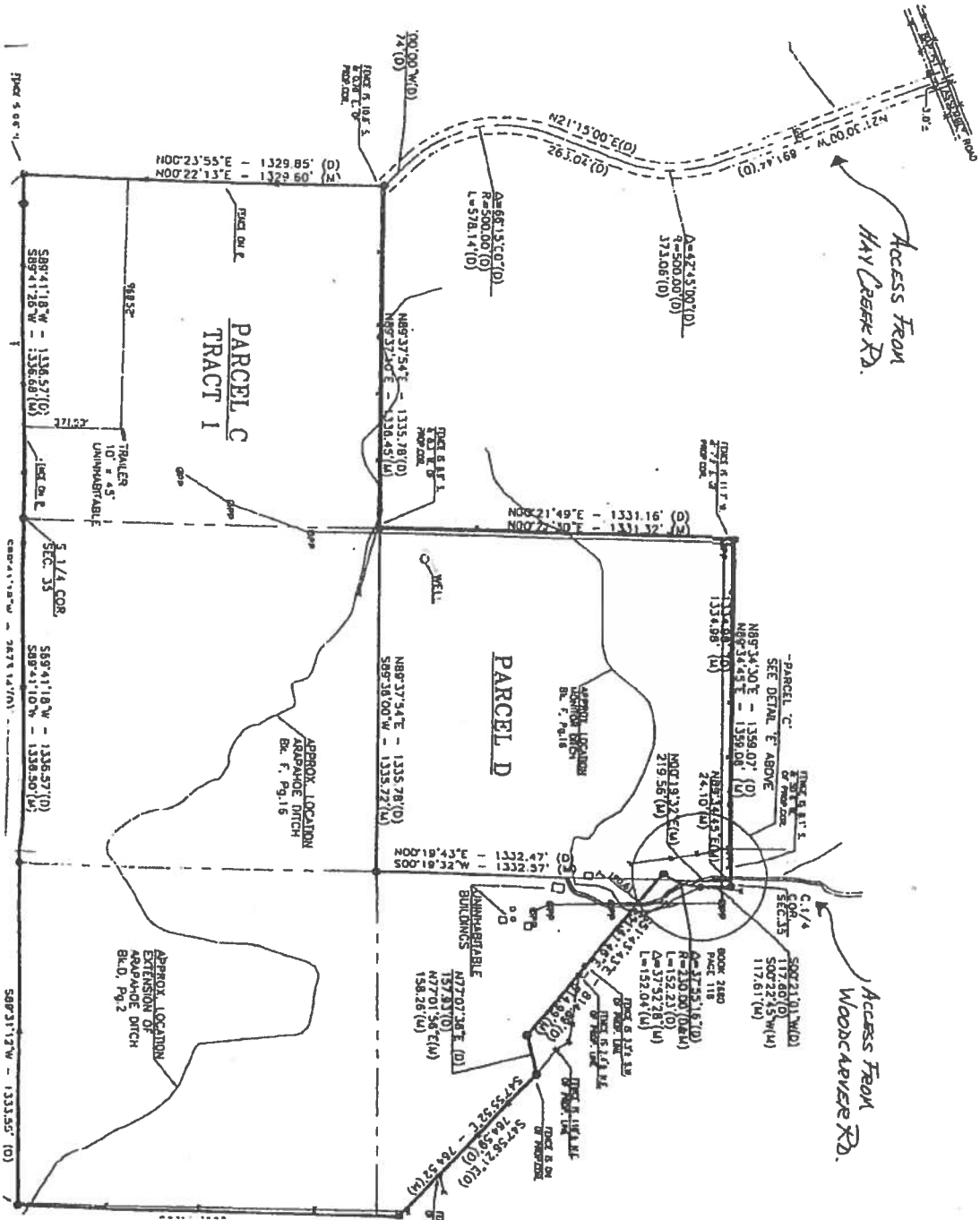


EXHIBIT
A

FOREST LAKES
 VILLAGE PARCEL - SURVEY MAP