

## 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 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 \_\_\_\_ day of \_\_\_\_\_, 2018.

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

By: \_\_\_\_\_

FOREST LAKES METROPOLITAN DISTRICT

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

VISUM I INVESTMENT PARTNERSHIP, LTD, a  
Texas limited partnership

By: \_\_\_\_\_  
General Partner