



**APPENDIX "B"**  
**AGREEMENT**  
**RESPECTING THE PROVISION OF WATER AND**  
**THE SALE OF BESSEMER IRRIGATING DITCH COMPANY STOCK**

*(This Contract must be signed and returned to the St. Charles Mesa Water District office before a final letter of commitment is sent to Pueblo County Planning and Development for water service to the subdivision.)*

---

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by and between \_\_\_\_\_, hereafter referred to as "Applicant," and the St. Charles Mesa Water District, hereafter referred to as "District."

WHEREAS, Applicant is the owner of a certain parcel of land situated in Pueblo County, Colorado, legally described as:

hereafter referred to as the "Subject Property" or "Plan Area." and;

WHEREAS, Applicant desires to subdivide or otherwise partition the Subject Property to create a greater number of parcels or lots out of the Subject Property, and has an application to do so presently pending before the Pueblo County Planning Commission called the \_\_\_\_\_("Subdivision"); and,

WHEREAS, Applicant's actions will create the need for additional water service to the Subject Property; and

WHEREAS, Applicant seeks a commitment from the District that it will in fact provide \_\_\_\_\_ domestic water service taps to the new parcels or lots being created by the Subdivision; and,

WHEREAS, the Rules and Regulations of the District provide in pertinent part that:

10.01 F (1) In light of the finite and variable quantities of water represented by the water rights owned by the District, the semi-arid environment, and the District's obligations to its current patrons, in the event an applicant requests new or increased water service to any lot or parcel of property ("Plan Area"), the applicant shall, as a condition precedent to the District's provision of water service to the Plan Area, provide to the District sufficient shares of stock in the Bessemer Irrigating Ditch Company ("Ditch Company") to serve the Plan Area. No new taps or water service is available to Zone 2 of the District.

10.01 F (2) The number of shares of Ditch Company stock that must be provided to the District is dependent upon the size and the number of taps being requested, as set forth below.



<u>Size</u> <u>Water Service</u>	<u>Bessemer Ditch Shares</u> <u>Required Per Tap</u>
5/8" x 3/4"	1
1"	2
1 1/2"	7
2"	10
3"	25
4"	40

10.01 F (6) The applicant shall enter into a written contract with the District under which the District agrees to provide water service to a specified number of taps and the applicant agrees to provide the required number of Ditch Company shares to the District. The contract shall require the applicant to obtain the transfer of the water represented by such Ditch Company shares to the Bessemer Ditch lateral designated by the District, in accordance with the Ditch Company By-Laws, at applicant's sole cost and expense. The contract shall include an affidavit on the applicant's historical use of the Ditch Company shares, unless such water shares were purchased by applicant from the Water Bank. The District, in its sole discretion, may decline to accept Ditch Company shares for which historical use cannot be documented.

10.01 F (7) If applicant's Plan requires review by the Pueblo County Planning Commission, the applicant must, on or before the time of applicant's submission of the Plan to the Planning Commission, regardless of whether the Plan is for subdivision or other property partition plan, enter into the contract described in Section 10.01 (F) 6 above to provide the required number of Ditch Company shares to the District. The District will provide a commitment letter to Pueblo County upon: (1) applicant's entry into such contract and (2) applicant's provision to the District of written confirmation from the Ditch Company that the required number of Ditch Company shares are available to the applicant and identifying the certificate number(s) of such shares. The commitment letter shall provide that the District's obligation to provide a water supply shall be conditioned upon the completion of transfer of the required number of Ditch Company shares prior to recordation of any final plat. If applicant's Plan does not require the review by the Pueblo County Planning Commission, applicant shall provide the required number of Ditch Company shares to the District upon or before applicant's request for connection to the District's water distribution system. In any event, no connection will be allowed to the District's water distribution system prior to transfer of the required number of Ditch Company shares to the District.

10.01 F (8) Upon receiving the Ditch Company shares as provided above, the District will provide water taps for the Plan Area. The tap fees for such taps shall be paid when application for service to each lot or parcel in the Plan Area is made, and shall be in the amount of the District's tap fee in effect at the time as specified in Sections 7.00 and 7.01 above.



10.01 G. In the event applicant's subdivision or other property partition plan requires the review by the Pueblo County Planning Commission and is not finally approved by that Commission within two years of the date of applicant's submission of the application under Section 10.01 D, or any additional time mutually agreed to in writing by applicant and District, District may withdraw its commitment for water service to the Plan property and declare any contract relative to the purchase of the Ditch Company stock to be null and void.

WHEREAS, the District will, subject to Applicant's compliance with the terms and conditions of this Agreement and any other written agreements between the parties, provide the requested water service;

NOW THEREFORE, THE PARTIES PROMISE AND AGREE AS FOLLOWS:

1. District agrees to provide domestic water service, at one tap per lot, up to \_\_\_\_\_ lots in the Subject Property, upon Applicant or Applicant's successor in interest paying to the District the tap fees and any other applicable fees in force and effect when the request for water service is made;
2. If Applicant's proposed subdivision is such that approval by the Pueblo County Planning Commission is required, Applicant shall, with the submission of this Application, deliver to the District the sum of \$500.00 together with \_\_\_\_\_ shares of stock in the Bessemer Irrigating Ditch Company ("Shares"), and a special warranty deed in a form acceptable to the District, conveying those shares to the district, which money, stock certificate(s) and special warranty deed will be held by the District in escrow until final approval of the Subdivision by the Pueblo County Planning Commission, at which time the district shall be free to use the funds and effect the transfer of the \_\_\_\_\_ shares into its name. In the event Applicant withdraws this request for service, or Applicant's subdivision application from the Pueblo County Planning Commission, or in the event the subdivision application is denied by the Pueblo County Planning Commission, District will return the funds, stock certificate(s) and special warranty deed to Applicant within 10 business days of District being notified of the withdrawal or denial by Applicant. Applicant understands that the \$500.00 fee is solely to cover the cost of the District's obtaining the approval of the Bessemer Irrigating Ditch company for the transfer of the water represented by the shares to a Bessemer Ditch lateral designated by the District.
3. If Applicant's Plan does not require review by the Pueblo county Planning Commission, Applicant shall deliver to the District the same funds, stock certificate(s) and special warranty deed as set forth in Paragraph 2 above, and the District shall forthwith transfer the stock into its name and deposit the \$500.00 fee into its general fund.
4. In the event Applicant is eligible to obtain all or a portion of the requisite shares of Bessemer Irrigating Ditch Company stock from the District's Water Bank program, then Applicant shall, within fifteen (15) days of the date of this Agreement, either pay to the district the sum of \$5,028.00 per share, to cover the cost of the Water Bank shares, or provide District with an Irrevocable Commercial Letter of Credit in



favor of the District, from a financial institution acceptable to the District, in a sum equal to 100% of the current total cost of water bank shares Applicant will be acquiring from the District, guaranteeing Applicant's payment for the shares of the Bessemer Irrigating Ditch Company shares Applicant purchases from the Water Bank. In the event Applicant fails to timely provide District with the funds mentioned in the Paragraph or the requisite letter of credit, this Agreement shall be null and void and District shall have no obligation to provide water service to the Subject Property.

5. If Applicant is providing shares of the Bessemer Irrigating Ditch Company stock to the District, Applicant shall execute an affidavit, in substantially the form attached hereto, concerning the historical use of those shares.
6. The District's obligations under this Agreement are specifically conditioned upon there being no changes in the plan or plat for the Subdivision from that provided to the District by the Applicant as of the date of this Agreement, to which the District has not consented in writing.
7. In the event Applicant does not immediately request water service to all the various lots of the Subject Property as subdivided or partitioned, or Applicant is not intending to immediately sell such lots, District agrees to lease back to Applicant the use of the shares of the Bessemer Irrigating Ditch Company stock provided to District by Applicant, on an annual basis at a per share rental fee equal to the annual assessment on the stock imposed by the Bessemer Irrigating Ditch Company plus \$8.00 per share, payable one-half April 1 and one-half December 1 of each one-year term of the lease. The lease of any such shares of stock shall terminate, one share at a time, upon the Applicant or Applicant's successor in interest requesting water service for a given lot or parcel, i.e., if water service is requested for two lots, the lease of water represented by two shares of the Bessemer Irrigating Ditch Company shall then cease.
8. Applicant understands and agrees that in the event Applicant's Subdivision or other property partition plan is not finally approved by the Pueblo County Planning Commission within two years of the date of this Agreement, or any additional time mutually agreed to in writing by Applicant and District, District may withdraw its commitment for water service to the Subject Property and declare this Agreement to be null and void.
9. In the event Applicant's Plan does not require the approval of the Pueblo County Planning Commission and Applicant gives the District written notice of Applicant's abandonment of Applicant's Plan, then District may withdraw its commitment for water service to the Subject Property and declare this Agreement null and void.
10. In the event this Agreement shall become null and void, any sums paid by applicant to District shall be returned to Applicant, without interest.
11. It is specifically understood and agreed to between the parties that no water service will be provided to any of Applicant's lots until the water represented by the shares of Bessemer Irrigating Ditch Company



stock provided to District by Applicant which are not under lease to Applicant is transferred into the Ditch lateral designated by District, and all sums owing from Applicant to District under this Agreement are paid in full.

- 12. The Applicant also agrees to pay any line extension cost made necessary by the Subdivision and to help pay any costs of upgrading the existing distribution system deemed necessary by the District. These upgrades will be based on the District’s Hydraulic Model.
- 13. Applicant agrees that after the Shares have been transferred and conveyed to the District, the land formerly irrigated by the Shares (“Dry-Up Lands”) may only be returned to irrigation if Applicant:
  - (a) Owns or controls other Bessemer shares or acquires other Bessemer shares from persons or entities other than the District, and transfers such water to the Dry-Up Lands; and
  - (b) Dries up irrigated acreage in an amount equal to the number of acres in the Dry-Up Lands; and
  - (c) Provides to the District a map and other documentation concerning the location of the specific acreage to be removed from irrigation in substitution evidence of the actual dry-up of such acreage, and a legally enforceable agreement for continued dry-up of such acreage.
- 14. Applicant agrees that the re-irrigation of the Dry-Up Lands with other Bessemer Ditch shares may only occur pursuant to the procedures set forth above and if the Division Engineer for Water Division 2 determines if sufficient acreage has been dried up in substitution of the Dry-Up Lands to be re-irrigated or, if the Division Engineer’s determination is appealed, the Water Court for Water Division 2 so determines.
- 15. Applicant’s obligations under this Agreement which postdate the conveyance of Applicant’s stock to the District shall be deemed to survive such closing.
- 16. The parties agree that this Agreement or a copy of it may be recorded for record in the books and records of the Pueblo County Clerk and Recorder.
- 17. This Agreement shall be binding upon the parties, their heirs, successors and assigns, including the purchasers of the Subject Property or any lot or parcel in the Subdivision.  
In witness of this Agreement, the parties have signed it the day and year first written above.

APPLICANT(S)

ST. CHARLES MESA WATER DISTRICT

\_\_\_\_\_

By \_\_\_\_\_

David K. Simpson, District Manager

\_\_\_\_\_  
APPLICANT ADDRESS: