

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN  
THE TOWN OF SEVERANCE, COLORADO AND  
SEVERANCE SHORES METROPOLITAN DISTRICT NOS. 1-4**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into to be effective as of the 15th day of November, 2019 by and between the TOWN OF SEVERANCE, COLORADO, a municipal corporation of the State of Colorado (the “Town”), and SEVERANCE SHORES METROPOLITAN DISTRICT NOS. 1-4, quasi-municipal corporations and political subdivisions of the State of Colorado (individually “District”, collectively the “Districts”). The Town and the Districts are collectively referred to as the Parties.

**RECITALS**

WHEREAS, pursuant to Article XIV, Section 18(2)(a) of the Colorado Constitution, and Section 29-1-201, *et seq.*, C.R.S., the Parties may cooperate or contract with each other to provide any function, service or facility each is lawfully authorized to provide; and

WHEREAS, the Districts were organized and authorized to provide certain capital facilities and services and to exercise powers as are more specifically set forth in the Service Plan of Severance Shores Metropolitan Districts No. 1, No. 2, No. 3 and No. 4 approved by the Town on August 31, 2015 (“Service Plan”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the Town and the Districts; and

WHEREAS, the Service Plan was amended and execution of an Amended and Restated Intergovernmental Agreement between the Town and the Districts was authorized and approved by the Town on November 5, 2019 in order to update the current Intergovernmental Agreement with the Town to adopt the current Town policies and procedures and to conform to the current structure for other metropolitan district agreements with the Town (the “Town IGA”); and

WHEREAS, the Parties have determined that any capitalized term not specifically defined in this Agreement shall have that meaning as set forth in the Service Plan, as amended; and

WHEREAS, the boundaries of the Districts generally encompass the property and development of property annexed to the Town under an annexation agreement and proposed to be developed into a community to be known as Severance Shores, located within the Town; and

WHEREAS, in accordance with its Service Plan, the Districts are authorized to provide for the design, financing, acquisition, installation, construction, relocation, redevelopment, operation, and maintenance of the Public Improvements and services needed for the development, including but not limited to, potable and non-potable water, sanitary and storm sewer, streets and roadways, transportation, and park and recreation facilities and other related improvements and appurtenances (collectively the “Public Improvements”) for the proposed development; and

WHEREAS, the developer or developers of the property within the Districts (“Developer”) shall cooperate with the Districts in order to undertake that portion of the design, construction, installation, acquisition, funding, operations and maintenance of public improvements contemplated in the annexation agreement(s) and/or subdivision improvements agreement(s) with the Town which the Districts are allowed to perform under Title 32 of the Colorado Revised Statutes and under the Service Plan; and

WHEREAS, the Districts are expected to acquire certain Public Improvements by separate infrastructure acquisition agreement between the Districts and Developer, and retain ownership and responsibility for certain of those Public Improvements, and is expected to convey or dedicate certain other of those Public Improvements to other public entities including the Town, North Weld County Water District, Weld County, the State of Colorado, and other jurisdictional authorities; and

WHEREAS, the Town and the Districts have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement to set forth their agreements and understandings specifically regarding the Public Improvements as set forth herein.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### COVENANTS AND AGREEMENTS

1. Ownership, Operations and Maintenance of Facilities. The Districts shall dedicate the required Public Improvements under the Subdivision Improvement Agreements for Severance Shores between the Developer, the Town, the Districts or other appropriate jurisdictional authority. The Districts shall undertake ownership, operation and maintenance of those public facilities, and shall furnish related services, or shall dedicate and convey to the Town or other appropriate jurisdictional authority those facilities shown for such dedication and conveyance as set forth in the schedule of disposition of facilities attached hereto as **Schedule 1** and incorporated herein by reference. Except for those Public Improvements required to be dedicated to another public entity or its designee in accordance with the final approved plat for any phase of development or this Agreement, the Districts shall be authorized to operate and maintain any part or all of the Public Improvements provided for in the Service Plan.

2. Landscaped Areas. The Districts shall maintain all landscaped areas in and around the reservoir, irrigation water storage and distribution areas, storm water and drainage facilities and improvements unless otherwise agreed upon by the Town. Delineation of responsibilities to maintain said facilities and improvements shall be identified with each plat.

3. Parks and facilities. The Districts shall build and maintain all park areas and facilities within the designated areas in accordance to the approved construction documents. In addition, the Districts will provide the appropriate amenities identified in the construction documents to allow for proper use of any proposed athletic fields until which time the Town has established a Parks and Recreation Department and agrees to furnish said items.

4. Construction Standards. The Districts will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of other governmental entities having proper jurisdiction, and of those special districts that qualify as “interested parties” under Section 32-1-204(1), C.R.S., as applicable. The Districts will obtain the Town’s approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work.

5. Nature of Operating District. Severance Shores Metropolitan District No. 1, the “Operating District,” agrees that it is organized for the purpose of coordinating the construction, installation, acquisition, operations and maintenance, and financing of certain public improvements for the service area designated as the Severance Shores development in accordance with the Service Plan for the Districts and this Agreement.

6. Non-Potable Irrigation System – Ownership. The Operating District shall own and operate a Non-potable Irrigation System either directly or through a District “Water Enterprise” for the purposes of irrigating parks, common areas, greenbelts, parkways, lots, tracts, out lots or other irrigated areas. On any parcel that includes a dwelling, multi-family building(s), commercial building(s) or other improvement that requires a potable water supply provided by the Town, and the Operating District provides non-potable water for irrigation, the Raw Water payment in lieu of dedication of water to the Town that is typically attributable to said improvement shall be reduced to 30% of the then applicable Raw Water fee. The owner of the developed parcel shall pay the Town’s reduced Raw Water fee at the time an application for a building permit is submitted to the Town. The District may also charge a Raw Water fee for the irrigation water and facilities supplied by the District.

a. Ownership of Surface Water Rights. Because the Operating District or the Water Enterprise will own and operate all non-potable system infrastructure, the requirement that all surface rights be dedicated to the Town is waived for this development, subject to the following specific limitations:

- i. All such water rights shall be conveyed to the Operating Districts or Water Enterprise prior to the start of any phase of development requiring access and availability of non-potable irrigation water;
- ii. Should dedication or reservation of water be required prior to the creation of an Operating District or Water Enterprise, the raw water for irrigation may be held by the Town and leased back to the Operating District for \$1 per year until such time as the District or Water Enterprise is formed and the raw water needed can be dedicated to the District or Water Enterprise for the Districts non-potable irrigation purposes. The lease shall have an annually renewable one-year term;
- iii. The Operating District shall pledge that:
  1. It owns, has acquired, leased or is in the process of acquiring water sufficient to fully supply the requirements of the non-potable system for each phase to be developed, prior to beginning construction of such phase, including drought years;
  2. The water to be owned by the District or Water Enterprise cannot be transferred or encumbered by any creditor other than the Town without the express written approval of the Town;
  3. Upon default by the District or Water Enterprise in any of its obligations under this Agreement, Town shall have the right to require either transfer of the water owned by the District or Water Enterprise to the Town or dedication of additional water sufficient to make up the credit granted Developer against normal water dedications as set forth above.

b. The Operating District or Water Enterprise shall develop and operate a reservoir or other water storage facilities and improvements and shall operate and maintain, upon completion certain pump and pressurization, and distribution systems and other facilities and improvements within and outside the boundaries of the Districts, for the purposes of providing non-potable irrigation water to each of the properties within the Districts subject to approved development plans of the Town.

c. Pursuant to any executed Subdivision Improvements Agreement between the Town, District and a Developer in conjunction with any final plan approval, the Developer agrees to provide an improvements guarantee and to warrant the Improvements. If the Developer actually constructs and/or installs or causes to be installed the Improvements, security shall be required pursuant to the terms of the Town Development Code. If the Developer cannot or wishes not to perform and/or construct some or all of the Subdivision Improvements, then the Parties agree that the District shall be permitted to construct and complete the proposed Improvements in place of the Developer if: (1) the District is legally permitted to construct such Improvements, (2) is ready, willing and able to construct those Improvements, and (3) can demonstrate the financial ability to complete the construction in a manner deemed to be sufficient to meet the improvements guarantee requirements for such portion of the project. If the District has issued and sold the bonds needed to construct and/or install such Improvements and furnishes evidence of the placement of such bonds, then the District will be automatically deemed to have the financial ability needed to construct and/or install such Improvements, and will not be required to provide any evidence required under Subsections (B)(i)-(iv), below. Otherwise, if the District provides evidence of its financial ability to construct and/or install the Improvements and the Town is satisfied with the same, then the improvements guarantee requirements for this project shall be met. In order to demonstrate its ability to construct and/or install the Improvements, the District shall submit the following materials to the Town in connection with each phase of the development:

- (i) Most-recent monthly financial statement of the District;
- (ii) Most-recent annual audit of the District;
- (iii) A letter bearing the signature of the District's financial advisor containing the advisor's statement that the funds for this project are available and that the District is financially viable, is reasonably implementing its general plan of finance contained in its service plan, and is reasonably capable of constructing and/or installing the Improvements for which the waiver of security is sought;
- (iv) Monthly draw statements on the project showing the Developer's request for payment and what the Metro District actually paid.

e. Upon completion of each phase of any Development, the Developer or the District shall provide a 25% warranty guarantee by letter of credit for all items required under the Subdivision Improvements Agreement to be dedicated to the Town.

7. Changes in Boundaries or Service Area. Except as provided in the Service Plan, internal boundary adjustments between the Districts, the inclusion of property located within the Town into, and the exclusion of property from each District, and the furnishing of services outside the Service Area (as defined in the Service Plan) of the Districts, shall be subject to the approval of the Town. No inclusion or exclusion of property conforming to this Section 7 shall constitute a material modification of the Service Plan.

8. Total Debt Issuance. Unless otherwise approved by the Town Board of Trustees, the Districts shall not issue Debt, in excess of Seven Million, Seven Hundred Thousand Dollars (\$7,700,000).

8. Disclosure to Purchasers. The Districts will work with the Developer to record the Order of the District Court organizing the Districts in the real property records of the Clerk and Recorder of Weld County, Colorado so that all future property owners will have notice regarding the existence of the Districts.

9. Annual Report. The Districts shall be responsible for submitting an annual report to the Town Administrator's Office no later than September 1<sup>st</sup> of each year following the year in which the Order and Decree creating the District has been issued, in accordance with applicable Town policies and pursuant to the Town Code and containing the information set forth in the Service Plan.

10. Maximum Mill Levies. The Districts may impose a "Maximum Debt Mill Levy," which shall be the maximum mill levy the Districts are permitted to impose upon the taxable property within the Districts for payment of pay the costs of Public Improvements and related Debt. With respect to each District, the "Maximum Debt Mill Levy" shall be the maximum mill levy a District is permitted to impose upon the taxable property within such District for payment of Debt. The Maximum Debt Mill Levy, shall be fifty (50.0) mills as provided in the Service Plan; provided that, on or after January 1, 2015, the mill tax rate for debt may be increased to compensate for any decreases in the assessed valuation of the property within the District necessitated by state law pursuant to Article X, Section 3 of the Colorado Constitution commonly referred to as the Gallagher Amendment or any other legislation causing a reduction in the assessed valuation of residential properties. In the event of legislation implementing changes in the ratio of actual valuation to assessed valuation for residential real property, pursuant to Article X, Section 3(1)(b) of the Colorado Constitution, the mill levy limitation provided herein will be increased or decreased as to all taxable property in the District to reflect such changes; so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation. All Debt issued by the Districts must be issued in compliance with the requirements of Section 32-1-1101, C.R.S. and all other requirements of State or Federal law.

Obligations of the Districts in the intergovernmental agreements discussed herein will not count against the debt limitation, but will be subject to the Maximum Debt Mill Levy set forth herein. Any change in the debt limitation shall be considered a material modification of the Service Plan. The debt limitation shall not otherwise be increased unless approved by the Town and as permitted by statute.

To the extent that the District is composed of or subsequently organized into one or more sub-districts as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to the District and to each such sub-district separately, so that each of the sub-districts shall be treated as a separate, independent district for purposes of the application of this definition.

An "Operations and Maintenance Mill Levy" may be imposed upon the taxable property within the Districts for payment of administration, operations, and maintenance costs and to fund basic District administrative, operations, and maintenance costs. The Operations and Maintenance Mill Levy is permitted to be up to ten (10) mills, however, if it is anticipated that the Districts may need additional operations and maintenance mill levy for operating and maintaining the non-potable water system, the District parks and open spaces, offsite improvements and the reservoir and water storage and distribution system facilities, land and improvements for the benefit of the Districts, it shall be permitted to be up to fifteen (15) mills with approval of the Town. If there are changes in the method of calculating assessed valuation or any constitutionally mandated or statutorily authorized tax credit, cut or abatement, then the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2015, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation.

The “Maximum Aggregate Mill Levy” shall be the maximum mill levy the District or any combination of Districts is permitted to impose upon taxable property for any purpose, including payment of Debt, capital improvements costs, administration, operations, and maintenance costs. The Maximum Aggregate Mill Levy shall be sixty-five (65) mills. However, if, on or after January 1, 2015, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, then the preceding mill levy limitations may be increased or decreased to reflect such changes, with such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2015, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation to assessed valuation shall be deemed to be a change in the method of calculating assessed valuation. By way of example, if a District has imposed a Debt Mill Levy of 50 mills, the maximum Operations and Maintenance Mill Levy that it can simultaneously impose is 15 mills.

11. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the Districts: Severance Shores Metropolitan District Nos. 1 - 4  
c/o Larry Buckendorf, President  
7251 W. 20th Street, L-200  
Greeley, CO 80634  
Phone: (970) 352-7072  
Fax: (970) 330-5357

With copy to: Spencer Fane LLP  
Attn: David S. O’Leary  
1700 Lincoln Street, Suite 2000  
Denver, Colorado 80203  
Phone: (303) 839-3800  
Fax: (303) 839-3838

To the Town: Town of Severance  
Attn: Town Administrator  
Severance Town Hall  
3 South Timber Ridge Parkway,  
P.O. Box 339  
Severance, Colorado 80546  
Phone: (970) 686-1218  
Fax: (970) 686-6250

With copy to: Bell, Gould, Linder & Scott, P.C.  
Attn: Gregory S. Bell, Esq.  
322 E. Oak Street  
Fort Collins, Colorado 80524-2915  
Phone: (970) 493-8999  
Fax: (970) 224-9188

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

12. Precedence. Recognizing that full development of The Overlook property may take up to twenty (20) years or more, the Town approved the Service Plan with sufficient flexibility to accommodate and enable the Districts to respond to changed conditions over time, while still relying upon the provisions of this Agreement to enable it to exercise appropriate control and supervision of the Districts as provided by state law. Accordingly, any conflict or inconsistency between the Service Plan and this Agreement shall be resolved in favor of the provisions of this Agreement.

13. Effective Date. This Agreement shall be in full force and effect and be legally binding upon final approval of the governing bodies of the Parties and the final execution of Subdivision Improvements Agreements for both Hunters Crossing and The Overlook.

14. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Service Plan.

15. Assignment. No Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of all other Parties, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

16. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Parties shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages.

17. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado, and any legal action hereunder shall be decided in Weld County District Court.

18. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver by the Water Enterprise, express or implied, of any of the notice requirements, immunities, limitations to liability, rights, benefits, protections, or other provisions under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq. or under any other law as applicable.

19. District Board Meetings and District Board Representation. All metropolitan district meetings shall be held within the Town limits or with reasonable access to residents to participate within the Town limits. To that end, the Town shall make Town hall available for an alternate location should there not be a location available within the boundaries of the District for meetings. Residents of each metropolitan District shall also have the right to be representatives on the District Board. The Board of Directors of each District shall provide notice and publication of any vacancies and invitations to the District residents to encourage or invite resident participation on the Board of Directors of the District in which they reside. All appointments and elections shall be held in accordance with statutory requirements with proper notice, publication and mailing regarding any vacancies, election and potential for residents to serve on the Board of Directors. Once the project is completed, residents shall have the right to represent the Board in its entirety.

20. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

21. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Districts and the Town any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Districts and the Town shall be for the sole and exclusive benefit of the Districts and the Town.

21. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

22. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

23. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

23. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

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IN WITNESS WHEREOF, the Districts and the Town have caused this Agreement to be duly executed to be effective as of the day first above written.

SEVERANCE SHORES  
METROPOLITAN DISTRICT NOS. 1-4

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

Attest:

\_\_\_\_\_  
Secretary

IN WITNESS WHEREOF, the Districts and the Town have caused this Agreement to be duly executed to be effective as of the day first above written.

TOWN OF SEVERANCE, COLORADO

By: \_\_\_\_\_  
\_\_\_\_\_, Mayor

Attest:

By: \_\_\_\_\_  
\_\_\_\_\_, Town Clerk

**SCHEDULE 1**

**SCHEDULE OF FACILITIES DISPOSITION**

**1. Streets and Roadways.**

Upon acceptance, conveyed to the Town for ownership, operation and maintenance as appropriate unless otherwise addressed in a final development plan

**2. Traffic and Safety Protection.**

Unless otherwise agreed to between Town and Districts, upon acceptance, conveyed to the Town for ownership, operation and maintenance.

**3. Drainage/Stormwater Facilities.**

Hard surface Drainage/Stormwater facilities, owned operated and maintained by the Town upon acceptance. All other Drainage/Stormwater facilities, owned operated and maintained by the District.

**4. Sanitation.**

Upon acceptance, conveyed to Town for ownership, operation and maintenance.

**5. Water.**

**a. Potable water facilities:** Upon acceptance, conveyed to the Town of Severance for ownership, operation and maintenance pursuant to service agreements complying with all of their applicable rules and regulations.

**b. Non-potable water facilities:** Owned, operated and maintained by District or Water Enterprise.

**6. Parks and Recreation and Open Areas.**

Owned, operated and maintained by Districts in accordance with the Approved Development Plan or otherwise agreed to by the Parties.

**7. Transportation.**

(If applicable) Owned, operated and maintained by District unless accepted and conveyed to the Town for ownership, operation and maintenance.

**8. Mosquito Control; Miscellaneous**

Owned, operated and maintained by Town, unless otherwise agreed by both parties.