

**RESOLUTION #2022-09**

**CHEROKEE METROPOLITAN DISTRICT**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE CHEROKEE METROPOLITAN DISTRICT TO APPROVE THE TRANSFER OF CHEROKEE WATER, LLC MEMBER INTEREST OF MARKSHEFFEL BUSINESS CENTER, LLC**

**WHEREAS**, Cherokee Water, LLC (“CW LLC”) is a limited liability company formed in 2006 under the laws of the State of Colorado; and

**WHEREAS**, CW LLC is managed and governed pursuant to an Operating Agreement originally executed by its Members and representatives of the Cherokee Metropolitan District (the “District”) on December 4, 2006 and recorded on December 15, 2006 at Reception #206182330 in the real property records of El Paso County, Colorado, and as amended by the First Amended Operating Agreement of Cherokee Water LLC executed on February 9, 2022 (the 2006 Operating Agreement and the First Amended Operating Agreement shall collectively be referred to as the “CW LLC Operating Agreement”); and

**WHEREAS**, Section 6.2 of the CW LLC Operating Agreement provides as follows:

In the event that a development proposed by a Member is not approved, or is approved for less density and water demand than is needed for the number of acre feet of the Water Rights allocated to the Member's Serviced Property as provided in 5.1 above, then (1) the Membership Interest may be transferred to the Owner of the Serviced Property if the Member is not the owner of the Serviced Property, or (2) with Cherokee Metro's approval and upon such terms as Cherokee Metro deems reasonably necessary, the Member may assign said excess water to other property.

and

**WHEREAS**, Section 5.1 of the CW LLC Operating Agreement provides that Marksheffel Business Center, LLC (“MBC”) is the owner of a Member interest in CW LLC that entitles MBC to water service in the amount of 68.29 acre-feet per year, based on a proportionate Member interest in the Water Rights as described in the CW LLC Operating Agreement (“Water Rights”); and

**WHEREAS**, pursuant to a letter to Grant Langdon as Owner/Manager of MBC, the District has confirmed that the District has sufficient water and sewer capacity for the remainder of the Wilshire and Marksheffel Business Center developments, which developments are the Serviced Property for MBC described in Exhibit E to the CW LLC Operating Agreement. The District’s letter also acknowledged that MBC was entitled to an additional 27.97 acre-feet per year of excess water beyond the amount that would be required for the Wilshire and Marksheffel Business Center developments (the “Excess Water Interest”); and

**WHEREAS**, on October 1, 2021, MBC assigned 40.958% of its Member interest in CW LLC to Ellicott Utilities Company, LLC (“EUC”), such percentage being commensurate with a corresponding interest in 27.97 acre-feet per year in the Water Rights; and

**WHEREAS**, on September 21, 2021, the District entered into a Water Service Agreement with EUC (“CMD-EUC Agreement”), pursuant to which agreement the District agreed to provide water service to EUC in the amount of up to 27.97 acre-feet per year, which amount is based on the Excess Water Interest; and


**WHEREAS**, the District desires to provide all approvals required of the District for transfer of the Excess Water Interest from MBC to EUC.

**NOW, THEREFORE**, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CHEROKEE METROPOLITAN DISTRICT OF EL PASO COUNTY, COLORADO, AS FOLLOWS:

1. The transfer of the Excess Water Interest from MBC to EUC, is hereby approved. The District specifically approves the serviced property to be serviced with the Member interest of Assignee EUC, subject to the terms and conditions of the September 21, 2021 CMD-EUC Agreement.

ADOPTED AND APPROVED this 15<sup>th</sup> day of February 2022.

CHEROKEE METROPOLITAN DISTRICT

By:   
Steve Hasbrouck, President

ATTEST:

  
Dennis Daniels, Secretary

(SEAL)