

**BLACK ROCK UTILITIES, INC.  
ANNEXATION AND UTILITIES SERVICES AGREEMENT**

**ADDENDUM NO. 1**

**THIS ADDENDUM** is to the Annexation and Utilities Services Agreement dated effective March 10, 2015, a Memorandum of which was recorded March 11, 2015 in the real property records for Kootenai County, Idaho as Instrument No. 2489515000 (the “Agreement”), by and between BLACK ROCK UTILITIES, INC., an Idaho corporation (“BRU”), and ROCK CREEK IDAHO HOLDINGS, LLC, an Idaho limited liability company (“RCI”), is made and entered into effective as of the date of the latest signature hereto (the “Effective Date”). Capitalized terms not otherwise defined herein shall have the meanings provided in the Agreement.

**WHEREAS:**

A. Pursuant to the terms of the Agreement, BRU agreed to provide water and sewer utility services to the Project, consisting of three hundred twenty one (321) residential units and thirty three (33) equivalent residential units for the clubhouse, commercial facilities and related uses at Rock Creek, for a total of three hundred fifty four (354) equivalent residential units (“ERU’s”), and three hundred thirty (330) acres of irrigation.

B. The planned unit development (“PUD”) of which the Project is a part has been approved by Kootenai County to be amended to add an additional ninety two (92) residential units on the Property. Approval of the final PUD plan and constituent subdivisions is contingent upon water and sewer utility services being provided by BRU.

C. The Agreement requires BRU’s approval to increase the Project’s density.

D. By this Addendum, the parties desire to confirm BRU’s approval of the increase in the Project’s density, and its agreement to provide water and sewer utility services to the Project, including the new density, for a total of four hundred forty six (446) ERU’s, on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration for the mutual covenants, conditions and agreements set forth herein, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Property. The Property is hereby amended to reflect the additions and deletions from the PUD boundaries approved by Kootenai County under Case No. PUD16-0001, and more particularly described on Exhibit “A” attached hereto and by this reference incorporated herein.

2. The Project. The Project is hereby amended to add ninety two (92) additional residential units (the “New Density”), such that the Project to be served by BRU shall include up to four hundred thirteen (413) residential units, plus thirty three (33) equivalent residential units for the golf course, clubhouse, commercial improvements, recreational amenities, and related infrastructure and improvements, for a total of four hundred forty six (446) ERU’s.

3. New Density Reserve Fee. RCI shall pay the sum of One Hundred Seventy Four Thousand Dollars (\$174,000.00) as the Reserve Fee for the New Density. Such sum shall be paid, without interest, in three (3) equal annual installments of Fifty Eight Thousand Dollars (\$58,000.00) each, commencing @ April 1, 2018, one (1) year following the final Reserve Fee payment under the Agreement.

4. Standby Fees. Commencing thirty (30) days after the Effective Date, unplatted lots for the New Density will pay the same Standby Fee as other unimproved lots or parcels to which service lines have not yet been extended in accordance with Section III.B. of the Agreement.

5. Special Provisions regarding Irrigation Pond Liner. BRU is responsible for the maintenance and repair of the Utilities Infrastructure, including the irrigation ponds and liners, following BRU’s acceptance thereof and subject to the warranties and guarantees of RCI set forth in the Agreement. However, it is expressly understood and agreed that in the event repairs or improvements are necessary to an irrigation pond liner due to the negligent or intentional acts of RCI, its agents or invitees, RCI shall bear the responsibility for the cost of any resulting corrective action necessary to ensure that the pond liner performs for its intended water storage purposes. In the event of co-existent causes of damage to a pond liner, between RCI and its agents or invitees, on the one hand and BRU and its agents or invitees on the other hand, the parties shall exercise their best efforts to allocate the cost of repair in an equitable manner that fairly reflects each parties’ contribution to the damage that necessitated the repairs. In the event BRU and RCI are unable to reach mutual agreement on an equitable and fair allocation of responsibility for the costs of corrective action to the pond liner, then the dispute shall be resolved through binding arbitration in accordance with the Uniform Arbitration Act, Idaho Code §§ 7-901, *et.seq.* Venue for any such arbitration shall lie in Kootenai County, Idaho. The arbitrator shall be entitled to award the prevailing party its reasonable attorney fees and costs in addition to any other relief deemed appropriate by the arbitrator.

6. Pump House Maintenance. Anything in the Agreement to the contrary notwithstanding, RCI shall be solely responsible for the costs associated with the maintenance of the exterior of the pump houses on the Property, for aesthetic purposes, in the manner desired by RCI.

7. Continued Force and Effect. Except as expressly amended or provided for herein, all other terms, covenants and conditions set forth in the Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have executed this Agreement effective as of the date of the latest signature hereto.

ROCK CREEK IDAHO HOLDINGS, LLC

BLACK ROCK UTILITIES, INC.

\_\_\_\_\_  
By:  
Its:  
Date: \_\_\_\_\_

\_\_\_\_\_  
By:  
Its:  
Date: \_\_\_\_\_

STATE OF \_\_\_\_\_)  
: ss.  
County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, known or identified to me to be the Manager of Rock Creek Idaho Holdings, LLC, the limited liability company that executed the instrument or the person who executed the instrument on behalf of said limited liability company, and acknowledged to me that such limited liability company executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_)  
: ss.  
County of \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2017, before me \_\_\_\_\_, the undersigned Notary Public, personally appeared \_\_\_\_\_, known or identified to me to be the president of Black Rock Utilities, Inc., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)

\_\_\_\_\_  
Notary Public for \_\_\_\_\_  
Residing at \_\_\_\_\_  
Commission Expires: \_\_\_\_\_