

EIGHTH AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

This EIGHTH AMENDMENT TO INTERGOVERNMENTAL AGREEMENT (“Amendment”) is made and entered into to be effective as of the 20th day of September, 2024 between MOUNT CARBON METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”) with an address c/o Spencer Fane, LLP, 1700 Lincoln Street, Suite 2000; Denver, CO 80203, and the TOWN OF MORRISON, a Colorado municipal corporation (the “Town”) located at 321 Highway 8, Morrison, CO 80465. The District and the Town are collectively referred to as the “Parties” herein.

RECITALS

- A. The District and the Town entered into an Intergovernmental Agreement, dated October 27, 2008 (“Original IGA”), a First Amendment to Intergovernmental Agreement, dated April 21, 2009 (“First Amendment”), a Second Amendment to Intergovernmental Agreement, dated April 18, 2012 (“Second Amendment”), a Third Amendment to Intergovernmental Agreement, dated December 4, 2012 (“Third Amendment”), a Fourth Amendment to Intergovernmental Agreement, dated January 3, 2019 (“Fourth Amendment”), a Fifth Amendment to Intergovernmental Agreement, dated December 17, 2019 (“Fifth Amendment”), a Sixth Amendment to Intergovernmental Agreement, dated February 6, 2021 (“Sixth Amendment”), and a Seventh Amendment to Intergovernmental Agreement, dated August 15, 2023 (“Seventh Amendment”) (collectively, the “IGA”).
- B. Pursuant to the IGA and understandings with the Town and as required by Exhibit B to the Original IGA, the District is currently in the process of completing rehabilitation and improvements to the District water storage tank that will be conveyed to the Town for ownership, operation and maintenance, construction of the new water treatment plant, and the improvements to the ancillary distribution facility with the necessary pumps, pressurization and distribution of water to the end users within the service area of the District that is estimated to be operational by October of 2024 (“New WTP”).
- C. The IGA quantifies the amount of water and sewer taps the parties agree the District is entitled to purchase for service within the District’s service area, and in particular, to serve the Red Rocks Ranch project (the “Property”). The IGA also describes the capacities and cost allocations for water infrastructure that the District agrees to fund and build.
- D. Pursuant to the IGA, 1,427 EQRs are reserved by the Town for purchase by the District in exchange for the District to provide water and sewer infrastructure improvements, reduced by the number of EQRs previously purchased by the District.
- E. As of the date of this Amendment, the District has already acquired 355 EQRs of the 1,427 EQRs from the Town, but the District has not paid for 10 of those 355 EQRs.
- F. Pursuant to the Seventh Amendment, the District and the Town are in the process of negotiating an Amended and Restated IGA and have exchanged drafts and initial

comments for Town consideration, but the District has an immediate need to process a release of fifty (50) additional water taps for existing homes that are near completion, and the District needs these water taps prior to the approval of the Amended and Restated IGA;

- G. Through this Eighth Amendment and pursuant to paragraphs 2 and 10 of the 2008 IGA, the Town agrees to sell to the District an additional fifty (50) Water Taps, which is equivalent to fifty (50) EQRs.
- H. The District and the Town now desire to amend the IGA to provide for terms and conditions upon which an additional 50 EQRs will be issued to the District for the interim period prior to completion of the Amended and Restated IGA, taking into consideration that the Parties are working diligently and in good faith upon the completion and recertification of the New WTP by the State of Colorado and its dedication as well as the updating and completion of the Amended and Restated IGA.
- I. Through this Eighth Amendment, the District agrees to pay the applicable System Development Fee for the 50 water taps issued that will not be credited to the District as an offset for reimbursable expenses for future water infrastructure improvements. However, the Parties agree that this shall only apply to the issuance of the 50 Additional Water Taps, and that any credit or consideration for the payment of the System Development Fee for future water taps shall be set forth in the Amended and Restated IGA. The funds paid by the District for the System Development Fees for the 50 Additional Water Taps issued will be used by the Town for water infrastructure improvements that may directly or indirectly benefit the District.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, the parties agree as follows:

AGREEMENT

1. The District and the Town incorporate the above-stated recitals into this Amendment as if fully stated herein.
2. Previous 10 Water Taps. On or about May 30, 2024, 10 water taps ("10 Additional Water Taps") were issued to the District without the Parties entering into an agreement. At the time these 10 water taps were issued, the District did not pay the Water Resource Fee attributable to such taps. The District agrees that it shall pay for any of these 10 Additional Water Taps that are new tap certificates issued in 2024. The Parties also agree that pursuant to paragraphs 2 and 10 of the Original IGA, the Town is entitled to use the March 2024 monthly CPI Index amount of 325.485 as the Comparison Index to calculate the applicable Water Resource Fee. The relevant and applicable monthly CPI Index values are attached hereto as **Exhibit A**. Using the March 2024 monthly CPI Index amount as the Comparison Index to calculate the Water Resource Fee, the cost of each of the 10 Additional Water Taps shall be the sum of twenty-two thousand, five hundred seventy-nine dollars and nineteen cents (\$22,579.19) (\$12,500 (System Development Fee) + \$10,079.19 (Water

Resource Fee)). The Town and the District further agree that the use of the March 2024 monthly CPI Index amount of 325.485 as the Comparison Index to calculate the Water Resource Fee applies solely and exclusively to the 10 Additional Water Taps. The District shall either provide proof of tap certificates issued and paid for, with regard to any of 10 Additional Water Taps that were paid for and issued but not assigned until 2024 or pay for the Water Resource Fee attributable to the 10 Additional Water Taps. Once the District provides payment for the 10 Additional Water Taps, the Town shall issue tap certificates for the 10 Additional Water Taps. The total amount of the offset by the Town for the System Development Fee portion of the cost of the 10 Additional Water Taps shall be \$125,000 (\$12,500 (System Development Fee) (10 EQRs)).

3. Sale of 50 Additional Water Taps. Only upon the execution of this Amendment and after the New WTP is online and operational, the Town shall make available to the District for sale fifty (50) additional water taps as further described herein, which is equivalent to fifty (50) EQRs ("50 Additional Water Taps"). The sale of the 50 Additional Water Taps serves as a bridge to facilitate needed taps to serve the community while the New WTP is not fully functional with an operational fire suppression system. The Town shall receive payment as outlined below prior to releasing any of the 50 Additional Water Taps. The following additional conditions apply to the Town's sale of the 50 Additional Water Taps to the District:

a. The 50 Additional Water Taps shall count as 50 EQRs towards the total 1,427 EQRs reserved by the Town for the District per paragraph 1 of the Original IGA, as amended by paragraph 2 of the Seventh Amendment of the IGA. Upon issuance of the 50 Additional Water Taps, the District shall have acquired 405 EQRs from the Town, and there shall be 1,022 EQRs remaining for purchase by the District.

b. The Town and the District agree that pursuant to paragraphs 2 and 10 of the Original IGA, the Town is entitled to use the July 2024 monthly CPI Index amount of 329.418 as the Comparison Index to calculate the applicable Water Resource Fee. Using the July 2024 monthly CPI Index amount as the Comparison Index to calculate the Water Resource Fee, the cost of each of the 50 Additional Water Taps shall be the sum of twenty-two thousand, seven hundred dollars and ninety-eight cents (\$22,700.98), which is (\$12,500.00 (System Development Fee) + \$10,200.98 (Water Resource Fee)). The District shall compensate the Town a total of \$1,135,049 prior to issuance of the 50 Additional Water Taps. Should payment be made for the 50 Additional Taps after October 2024, the price of the Water Resource Fee shall be modified pursuant to paragraphs 2 and 10 of the Original IGA. The Town and the District further agree that the use of the July 2024 monthly CPI Index amount of 329.418 as the Comparison Index to calculate the Water Resource Fee applies solely and exclusively to the 50 Additional Water Taps.

c. The Parties further agree that the District shall pay to the Town the required Water Resource and System Development Fees for each of the 50 Additional Water Taps acquired pursuant to this Agreement, and the System Development Fees shall not be credited to the District as an offset for an equivalent amount of reimbursable expenses for any water infrastructure improvements. However, the Parties agree that this shall only apply to the

issuance of the 50 Additional Water Taps, and that any credit or consideration for the payment of the System Development Fee for future water taps shall be set forth in the Amended and Restated IGA. The funds paid by the District for the System Development Fees for the 50 water taps issued will be used by the Town for water infrastructure improvements that may directly or indirectly benefit the District.

d. Once the New WTP is online and fully operational, the District agrees to dedicate the New WTP fully to the Town, including completing all necessary documents and procedures so that the Parties can complete final acceptance of the New WTP to the Town. The District agrees that it shall not withhold final dedication of the New WTP to the Town and anticipates the timing of full completion of the WTP including fire suppression system to be prior to year-end (but shall dedicate upon receipt of any and all certificates and requirements of the Town for issuance of a final Certificate of Occupancy and shall diligently pursue and accomplish any and all punch list items required by the Town to receive final acceptance from the Town prior to December 31, 2024 (or sooner if possible).

e. Due to delays in the installation of the fire suppression system at the New WTP, storage of chemicals necessary for the operation of the New WTP cannot occur at the New WTP. Therefore, the District agrees to provide for temporary storage of these chemicals within reasonable proximity to the New WTP within a reasonable time to the satisfaction of the Town until the fire suppression system has been successfully installed at the New WTP. The District shall also provide the equipment necessary for hauling chemical totes and drums from the temporary storage area to the New WTP. If hauling of chemicals from the temporary storage site to the New WTP is necessary, the District shall provide or coordinate a means of hauling such chemicals to the New WTP.

f. The District agrees to install, at its sole cost and expense, a Supervisory Control and Data Acquisition ("SCADA") system improvements at the District water prior to the tank becoming fully operational. Said improvements shall allow for monitoring and trending of the tank level and communicating such data into the Town's SCADA system.

g. The Parties agree that the \$200,000 credit discussed in paragraph 5(d) of the Seventh Amendment has been fully satisfied as of August 22, 2023.

h. The Parties understand that in order for the New WTP to become operational and to provide Memcore with the offsite access it requires, installation of the New WTP firewall, network, equipment and hardware is necessary. The total cost for this installation is \$13,837.84. The Parties agree that the costs for this installation shall be split evenly between the Parties.

4. Accounting of Remaining Available EQRs. The 1,427 EQRs reserved by the Town for purchase by the District under the terms of the IGA, reduced by the number of EQRs previously acquired by the District together with the 50 Additional Water Taps and the 10 Additional Water Taps, are hereinafter referred to as the "Remaining Available EQRs." The Parties agree that upon the Town's sale of the 50 Additional Water Taps to the District pursuant to this Amendment, the Remaining Available EQRs that the Town is obligated to

sell to the District under the Original IGA will be 1,022 EQRs, which is calculated as follows:

- a. 1,022 Remaining Available EQRs (1,427 EQRs less 405 EQRs, or Water Taps, previously sold by the Town to the District pursuant to the IGA and this Amendment):
 - i. (-245 EQRs) (The Town sold to the District 245 Water Taps through 2022 (102 Aggregate Taps + 143 Existing Town Taps));
 - ii. (-50 EQRs) (Pursuant to the Fifth Amendment of the Original IGA, on, or about April 20, 2023, the Town sold to the District fifty (50) Water Taps);
 - iii. (-50 EQRs) (Pursuant to the Seventh Amendment of the Original IGA, on or about August 25, 2023, the Town sold the District fifty (50) additional water taps);
 - iv. (-10 EQRs) (On or about May 30, 2024, the Town issued to the District 10 Additional Water Taps); and
 - v. (-50 EQRs) (Pursuant to this Amendment, the Town agrees to sell to the District 50 Additional Water Taps).

5. Water Use Limitations. The Parties agree to the following volumetric limitations for all 405 EQRs:

a. A maximum volumetric limit of 0.442 acre-feet per year per EQR at the point of raw water diversion and a maximum volumetric limit of 0.37 acre-feet per year per EQR for treated water delivered at water meter;

b. The Parties agree that issuance of the 50 Additional Water Taps does not restrict or limit the Town from serving any future customers;

c. The Parties agree that any water taps already issued, including the 50 Additional Water Taps and the 10 Additional Water Taps, shall be restricted to the maximum volumetric limit of 0.37 acre-feet per water year per EQR for treated water delivered at water meter.

d. All EQRs purchased pursuant to this Amendment may only be used to provide water service to the Property; the EQRs may not be sold, transferred or assigned for use outside of the Property. Once a Water Tap has been issued to a specific parcel, the Water Tap may only be used on the premises for which it was issued and may not be transferred to another lot or address. Once a Water Tap has been assigned to a specific lot or address within the Property and connection of that Water Tap has been made to the identified lot or address within the Property, the Water Tap may only be used to serve the identified lot or address to which it was assigned and may not be transferred to another lot or address.

e. The Parties agree that no tap already issued to the District may be used for construction purposes, for irrigation purposes beyond the boundaries of the specific parcels to which the taps have been issued, or for any uses other than those specifically authorized by the IGAs. The District acknowledges that it must seek specific additional authorization and approval from the Town for any such additional uses.

f. All Town rates and regulations pertaining to water service shall be applicable to EQRs purchased and taps issued pursuant to this Eighth Amendment. Notwithstanding any provision herein to the contrary, if the Town, in the exercise of its reasonable discretion, determines that it is necessary to impose conditions, restrictions or limitations on the use or consumption of water within the Town (such as, by way of example and not limitation, restrictions on outside irrigation) due to system failure, drought, natural disaster, raw or treated water shortages, or some other reason outside the control of the Town any such conditions, restrictions or limitations shall apply equally to the Property as to any other areas receiving treated water service within the Town.

6. Further Assurances and Additional Documents. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Amendment. The District and the Town shall use best efforts to identify any matters outstanding regarding capital infrastructure, raw water, construction compliance and related matters outstanding from the IGA, including any amendments or raw water infrastructure construction agreements identified and agreed to by the Parties.
7. Restated IGA. The Parties will make best efforts to timely pursue and execute a fully restated and amended IGA ("Restated IGA") reflecting the current agreement of the Parties. The Parties understand and agree that this Amendment shall be incorporated into the Restated IGA. Until such a time as the Town and District have completed and mutually executed the Restated IGA, the Town has no obligation to sell the District any additional EQRs or Water Taps other than the 50 Additional Water Taps provided herein.
8. Effect. Except as specifically modified by this Amendment, all provisions of the IGA shall remain in full force and effect and all of the terms defined therein shall retain the definitions set forth in the IGA.
9. Governing Law and Venue. This Amendment shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Jefferson County, Colorado.
10. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Amendment by the Town or the District shall not constitute a waiver of any of the other terms or obligations of this Amendment.
11. Third Parties. There are no intended third-party beneficiaries to this Amendment.
12. Notice. Any notice under this Amendment shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first-class U.S. Mail to the Party at the address set forth on the first page of this Amendment.
13. Severability. If any provision of this Amendment is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

14. **Assignment.** Neither this Amendment nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.
15. **Rights and Remedies.** The rights and remedies of the Town under this Amendment are in addition to any other rights and remedies provided by law. The expiration of this Amendment shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.
16. **Governmental Immunity.** Both Parties and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Amendment, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.
17. **Subject to Annual Appropriation.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.
18. **Force Majeure.** No Party shall be in breach of this Amendment if such Party's failure to perform any of the duties under this Amendment is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Amendment due to acts of God, floods, fires, drought, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.
19. **Effective Date.** This Amendment shall take effect as of the approval of the Town Board of Trustees on September 30th, 2024. Each of the Parties shall execute and return signature copies of this Amendment as soon as possible after Town approval.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this Eighth Amendment to Intergovernmental Agreement as of the date first written above.



TOWN OF MORRISON

Chris Wolfe, Mayor

ATTEST:

Ariana Neverdahl, Town Clerk

MOUNT CARBON METROPOLITAN DISTRICT

President

ATTEST:

Secretary

EXHIBIT A

CPI INDEX VALUES

Exhibit A

CPI

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2008													209.903	208.741	211.066
2009													208.548	207.444	209.652
2010													212.447	210.978	213.916
2011													220.288	219.055	221.521
2012													224.568	222.960	226.177
2013													230.791	229.142	232.439
2014													237.200	235.736	238.664
2015													239.990	238.086	241.895
2016													246.643	245.191	248.095
2017											258.614		254.995	252.760	257.230
2018	259.907		260.595		262.150		261.707		263.723		263.679		261.958	260.790	263.127
2019	260.942		264.332		266.280		267.285		270.974		271.142		266.999	264.147	269.850
2020	270.952		270.120		271.379		275.589		273.860		271.837		272.207	271.264	273.149
2021	272.156		274.430		280.154		285.268		286.186		289.621		281.845	276.290	287.400
2022	293.580		299.529		303.510		308.728		308.211		309.655		304.424	300.002	308.847
2023	312.392		316.566		319.132		323.298		324.704		323.598		320.300	316.758	323.842
2024	323.278		325.485		327.403		329.418							325.308	