

AGREEMENT REGARDING TAP FEE REAPPROPRIATION

This AGREEMENT REGARDING TAP FEE REAPPROPRIATION (“Agreement”) is made and entered into to be effective as of the ___ day of October, 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"), a Seventh Amendment to Intergovernmental Agreement, dated August 15, 2023 ("Seventh Amendment") and an Eighth Amendment to Intergovernmental Agreement, dated effective September 28, 2024 ("Eighth 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 in September 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 Agreement, the District has already acquired 355 EQRs of the 1,427 EQRs from the Town. An additional 50 EQRs will be permitted to be acquired pursuant to the Eighth Amendment upon execution.

- F. Pursuant to the Eighth 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 thirty-nine (39) additional water taps for existing homes that are near completion; the District needs these water taps prior to the approval of the Amended and Restated IGA;
- G. The District and the Town have finalized the Eighth Amendment pursuant to paragraphs 2 and 10 of the 2008 IGA, to provide for the Town agreeing to sell to the District fifty (50) Water Taps, which is equivalent to fifty (50) EQRs. This Agreement is in addition to the Eighth Amendment and any of the 39 additional taps are in addition to the 50 Water Taps addressed in the Eighth Amendment.
- H. Within this Agreement, Lennar Colorado, LLC (“Lennar”) and District have proposed turning in two 2” irrigation meters that equate to 39 physical EQR’s that have been purchased and owned and are currently used for irrigation water. The District and Lennar have turned off the irrigation system and have requested that the Town re-appropriate the irrigation EQR’s to residential meters to start moving in homebuyers as soon as the Town approves all requirements of the Town to repurpose or reallocate those 39 EQRs for residential purposes (“39 Additional Water Taps”), due to the immediate nature of the need.
- I. The District and the Town will separately and through the proposed Eighth Amendment amend the IGA to provide for terms and conditions upon which an additional 50 EQRs can 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. 39 EQRs can be re-allocated and take the place of the irrigation taps referenced herein and issue new certificates to the District for the interim period prior to completion of the Amended and Restated IGA and completion of the WTP.

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 Agreement as if fully stated herein.
2. Re-Appropriation of 39 EQRs for Residential Water Taps. Only upon the execution of this Agreement and after payment of any applicable Town fees attributable to the re-appropriation of the 39 Additional Water Taps pursuant to the terms and conditions of this Agreement and policies and procedures of the Town, the Town shall re-appropriate the 39 EQRs for the purchased, issued and installed irrigation taps provided and verified by the District as 39 EQRs for residential purposes pursuant to the following terms:

- a. The District will turn in the two (2) 2” irrigation meters that equate to 39 EQRs that have been issued tap certifications and are currently installed for irrigation water and the Town will re-appropriate the irrigation EQRs to residential domestic meters. One (1) irrigation EQR is equivalent to one (1) domestic EQR.
- b. The two irrigation taps shall be completely removed and returned to the Town at the District’s sole cost and expense to prevent unauthorized use.
- c. The 39 irrigation EQRs shall be transferred to domestic EQRs and assigned to the specific homesites listed in **Exhibit A** attached hereto.
- d. The District shall provide to the Town the 39 tap certificates attributable to the irrigation water taps purchased, issued and installed.
- e. The District shall pay to the Town any and all reasonable administrative and actual costs related to the decommission and removal of irrigation taps related to the re-assignment of the 39 Additional Water Taps.
- f. The Parties agree that these 39 Additional Water Taps shall only be used for domestic purposes and shall not be switched back for irrigation, construction, or any other purpose.
- g. 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 including the installation, at the District’s sole cost and expense, a Supervisory Control and Data Acquisition ("SCADA") system improvements at the District water tank prior to the tank becoming fully operational. 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)).
- h. The District agrees to pay for, provide and install when available, a total of eight (8) chemical pumps at the New WTP which are not required for the New WTP to be considered operational, but are necessary for the New WTP to become “fully operational.” This includes two (2) pumps each for Aluminum Chloride, Caustic, and Sodium Hypochlorite, and two (2) backup pumps for Citric, Sulfuric Acid, and Bisulfite. The District shall be allowed to transfer pumps from the existing facility and connect into the New WTP for operational purposes until the new pumps are available. Once the new pumps become available, the District shall immediately replace the old pumps from the existing facility with the new pumps.

- i. The District agrees that the Town, in its reasonable discretion, has the ability to determine when the New WTP is both operational and fully operational and the District shall not place undue pressure on the Town to make a determination.
 - j. The District agrees to provide new fiber internet service to the New WTP at its reasonable cost and expense, not to exceed \$50,000. The Town agrees it shall, in good faith, diligently pursue a more cost-effective fiber internet service alternative. If the Town finds a more cost-effective alternative, the Town shall choose such alternative. The Town shall select the internet service provider. The provider must have internet service currently available to the site such that there is existing network infrastructure to serve the New WTP (wired or wireless), and all that is required are the appropriate connection devices in the New WTP.
 - k. The District agrees that any costs or expenses that are incurred related to the New WTP becoming operational and fully operational that are not specifically listed in any agreements between the Parties shall be borne by the District, not to exceed \$100,000. The Town agrees that this amount shall be placed in escrow. The Town shall provide work orders and/or invoices as verification of all expenses related to the use of this \$100,000.
 - l. If the Town receives evidence or has actual knowledge that either the District or any of its service providers are straight piping, bypassing a meter, tying irrigation lines to the hydrant, or stealing water (in each case without the use of any meter), the Town shall have all rights and remedies under law, including without limitation the Morrison Municipal Code, and the party that is found to be in violation under law for these offenses shall be charged \$2,500 per violation. Any violations where it cannot be determined who is at fault, the Town may charge the District for the violations.
3. Water Use Limitations. The Parties agree to the following volumetric limitations for all 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 re-appropriation of the 39 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 re-appropriated 39 Additional Water Taps referenced in this Agreement, 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 Agreement 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 without the consent and approval of the Town.

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 Agreement and the 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.

4. 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 Agreement. 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.
5. Restated IGA. The Parties will make best efforts to timely pursue and execute the restated and amended IGA (“Restated IGA”) reflecting the current agreement of the Parties. The Parties understand and agree that this Agreement shall be incorporated into the Restated IGA.
6. Effect. Except as specifically modified by this Agreement, 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.
7. Governing Law and Venue. This Agreement 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.
8. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town or the District shall not constitute a waiver of any of the other terms or obligations of this Agreement.
9. Third Parties. There are no intended third-party beneficiaries to this Agreement.

10. Notice. Any notice under this Agreement 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.
11. Severability. If any provision of this Agreement 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.
12. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.
13. Rights and Remedies. The rights and remedies of the Town under this Agreement 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.
14. 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 Agreement, 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.
15. 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.
16. Force Majeure. No Party shall be in breach of this Agreement 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.
17. Effective Date. This Agreement shall take effect as of the approval of the Town Board of Trustees on October ____, 2024 after review and approval of the City Council. Each of the Parties shall execute and return signature copies of this Agreement as soon as possible after Town.

[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have executed this to Agreement Regarding Reappropriation of Water Taps 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