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Jefferson County, Colorado

SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

THIS SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

("Second Amendment") is made and entered into this 18th day of April, 2012 between the Town of Morrison ("Town") and the Mount Carbon Metropolitan District ("District"), collectively, the "Parties."

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RECITALS

WHEREAS, the Town and the District entered into an Intergovernmental Agreement as of October 27, 2008, recorded at Reception No. 2008106037 of the Jefferson County Records ("IGA") and a First Amendment to Intergovernmental Agreement dated April 21, 2009, recorded at Reception No. 2009035826 (collectively, the IGA and the First Amendment are the "Original Agreement"); and

WHEREAS, the Parties desire to further amend the Original Agreement as provided herein and their respective governing bodies have determined that it is in their respective best interests to enter into this Second Amendment.

COVENANTS

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

1. Capitalized terms not defined herein shall have the meanings set forth in the Original Agreement.

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2. The Down Payment required by Section 9 of the IGA was timely made. The Parties agree that the "Commencement Date" (see Section 44 of the IGA) is November 14, 2008.

3. If a design-build contract for the New WWTP acceptable to the Town is entered into by the District on or before April 30, 2012, then Paragraph 16 of the IGA shall be automatically superseded and replaced by the following:

16. The Town currently has capacity to serve 630 EQRs; 285 of those EQRs are in service to the Town and 102 of those EQRs are the Aggregate Taps that were purchased by the District in a timely manner as required by Paragraph 15 of the IGA, leaving a surplus of 243 EQRs ("Existing Town Taps"). The District shall purchase 143 Existing Town Taps at a price of \$14,000 each (\$2,002,000.00), minus the credit applicable pursuant to Section 9 of this Second Amendment (adding Paragraph 49 to the IGA) within eighteen (18) months after final completion of construction of the New WWTP, as described in paragraph 25 below; however, the District shall have five (5) one-year options to extend the time period for the purchase of such Existing Town Taps. The first such option may be exercised no later than thirty (30) days prior to the end of said eighteen (18) month period by notice to the Town and payment to the Town of \$50,000 ("the end of the 18 month period"). The second option may be exercised by notice and the payment by the District to the Town of \$50,000 no later than thirty

(30) days prior to the one year anniversary of the end of the 18 month period. The third option may be exercised by notice and payment of \$50,000 no later than thirty (30) days prior to the second anniversary of the end of the 18 month period. The fourth option may be exercised by notice and the payment of \$50,000 no later than thirty (30) days prior to the third anniversary of the end of the 18 month period. The fifth option may be exercised by notice and the payment of \$50,000 no later than thirty (30) days prior to the fourth anniversary of the end of the 18 month period. Unless the District previously purchases the Existing Town Taps, upon the later of: (a) the end of the eighteen (18) month period, or (b) the expiration of all options, if any, that were timely purchased by the District, then the remedies allowed in paragraph 38 shall apply.

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Unless otherwise approved by the Town, failure to pay for an option terminates that option plus future options.

4. Section 25 of the Original Agreement shall be superseded and replaced by the following:

25. Design Build.

a. The New WWTP (as defined in the Original Agreement) may be designed and constructed by the District by using the “design-build” procedure substantially as provided in C.R.S. § 32-1-1806.

b. The District engineer shall obtain such approval as may be needed from CDPHE for use of a design-build process.

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c. The District has advertised for and has received design-build bids. By letter dated November 23, 2011, the Town requested that the contractor selection process be delayed for the reasons stated in such letter, and for “acceptable opportunity for the Town’s participation in the prequalification and contractor selection, preliminary and ongoing design process and construction phase, with an adequate dispute resolution mechanism as disagreements arise, etc.)” The following subsections address these items:

I. The delay has been taken into account in setting the schedule provided in the bidding process and the proposed design-build schedule.

II. There has been no prequalification process, and the Parties agree that it was not needed.

III. Representatives of the Town have attended meetings of the District Board and participated as members of the bid review “Super Committee” and have had and exercised the opportunity to comment at such meetings.

IV. The District has provided copies of all proposals received from bidders to the Town's Utilities Director and the Town's Utilities Director and Town's Engineer have commented thereon.

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V. The Town acknowledges that it has adequately participated in the preliminary design and bidding process and agrees that the process has been satisfactory and has addressed all concerns as described in the aforementioned November 23, 2011 letter.

VI. The District shall cause the design-build contractor or the District Engineer to provide copies of design documents to the Town's Utilities Director for him to provide comments to the District Engineer. Reasonable delays arising from such comments by the Town shall be deemed a force majeure event pursuant to Section 5(c) of this Second Amendment, and shall not be cause for damages under Section 5(d) or 5(e); provided that unreasonable delays may be cause for damages under Section 5(e). A delay of less than three (3) business days arising from comments by the Town shall be presumed to be reasonable for purposes of this Subsection (VI), but no such presumption shall apply to a delay of over three (3) business days, however, reasonableness shall be based on the circumstances at the time of the delay.

VII. With proper identification and following reasonable notice to the District's Project Manager, the Town Utilities Director, Town Engineer,

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and Town wastewater operating staff shall have reasonable access to the construction site during construction and may comment to the District Project Manager concerning any aspect of the construction. The Town may request that other persons have access to the construction site, which access may be allowed or denied for cause by the District Project Manager or the design-build contractor. In the event of an injury or death to Town personnel, the Town shall have workers compensation insurance in an amount sufficient to cover the potential claims. The Town shall have adequate general liability insurance and shall name the District as an additional insured to the extent allowed by law. The Town shall defend, indemnify and hold harmless the District for damages to Town personnel or invitees on the Site not arising out of the negligent acts of the District or its personnel.

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VIII. The Town's comments on design and construction of the New WWTP are to be made exclusively to the District Project Manager and not to the contractor unless otherwise approved in advance by the District Project Manager; provided, however, that if the Town observes safety violations on the construction site, such violations shall be communicated immediately to an on-site supervisor.

IX. The following dispute resolution procedure will apply if a dispute arises concerning issues relating to the New WWTP field conditions, design documents, costs, change orders, or construction:

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- (i) The complaining party shall provide a written "Notice of Disagreement" to the other party explaining the dispute and at least one reasonable alternative for a solution. The "Notice of Disagreement" shall be sent to the District Engineer, District Project Manager, District Board President, Town Mayor, Town Engineer and Town Utilities Manager.
 - (ii) If direct negotiation between the Parties fails to resolve the dispute within 30 days of receipt of the "Notice of Disagreement," and one party requests the organization of a "Resolution Committee" (as defined below); then
 - (iii) The President of the Board (representing the District) or one designee thereof and the Mayor (representing the Town) or one designee thereof shall appoint a Colorado Registered Professional Engineer with knowledge of the subject matter of the dispute (i.e., if a pipeline facility is the subject of the dispute, the engineer shall have some knowledge of sewer systems pipeline engineering) acceptable to both, thereby forming the "Resolution

Committee" consisting of such representatives or designees and such engineer;

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(iv) Forthwith, the Resolution Committee shall meet to review such information as may be presented to the Resolution Committee, make independent investigations if needed, and decide the dispute by majority vote of the Resolution Committee at a meeting following reasonable notice at which all Resolution Committee members are present in person or by conference phone;

(v) In its review of the dispute, the Resolution Committee shall review the facts, the reasonable alternative presented pursuant to subsection (i) of this Section, the technical objections, and any other materials deemed appropriate by the Resolution Committee, and shall make a determination that shall resolve all of the issues concerning the dispute. The standards that the Resolution Committee shall use in the determination of any dispute shall include (1) whether the technical operation and maintenance characteristics of the Facilities conform to the Original Agreement as amended, (2) whether the Facilities may result in a

violation of any permit or law, (3) the reasonableness of the party's position, (4) the cost and the fair allocation of the cost among the Parties, and (5) the language of and goals that the parties sought to achieve in the Original Agreement as amended;

- (vi) If the Resolution Committee determines that legal counsel should be consulted or should review any proposed documents or agreement prepared by the Resolution Committee, the Resolution Committee is authorized to initiate the same with legal counsel for both Parties.
- (vii) The Resolution Committee shall, promptly upon making its decision, inform the governing bodies of the Parties in writing of such decision.
- (viii) The decision of the Resolution Committee may be appealed to the Courts or, if the Resolution Committee fails to render a decision within 30 days of its organization, then either Party may seek such other remedies as may be allowed by law. The Resolution Committee decision is not to be deemed a final decision by arbitration.

(ix) Each Party shall bear its own costs of the Resolution Committee.

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d. Maintenance of Existing WWTP. The Town shall be responsible for the cost of all operation, maintenance, and repairs to the Existing WWTP that may be required before the changeover to the New WWTP and closure of the Existing WWTP. This paragraph does not release, and does not create obligations of, the District from payment of any valid rate, fee, or charge of the Town for service.

e. Escrow Account.

I. The District shall enter into an escrow agreement and deposit \$4,100,000 into a Construction Escrow Account (“CEA”) at UMB Bank, n.a., or an affiliate thereof (“Escrow Agent”) to be administered in substantially the same manner as a “construction account” that is opened for the deposit and expenditure of special district bond proceeds. Draws on the CEA shall only be used for design, engineering, permitting, construction, project management, and all other reasonable and necessary invoices and costs of the WWTP (“Project Costs”) as certified in writing to the Escrow Agent by the District Project Manager with a copy to the Town’s Utility Director. Applicable invoices and costs of the District Project Manager will be reviewed and approved by the District Engineer prior to certification in writing to the Escrow Agent.

II. The District may replace the Escrow Agent with another bank with trust powers in a manner similar to replacing an Escrow Agent for a special district bond construction account. If a replacement Escrow Agent is needed but cannot be obtained at an acceptable cost, then the District Board President and the Mayor shall confer and decide on a suitable competent escrow agent.

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III. The cost of the Escrow Account shall be paid from interest earnings or other funds in the Escrow Account.

IV. If there are unexpected site conditions that trigger a change order (such as hazardous materials or underground structures not including rock or water), and there are insufficient funds in the Escrow Account to pay for the change order and the remaining Project Costs ("Shortfall"), the Town will, subject to budget and appropriations, deposit sufficient funds into the Escrow Account to alleviate the Shortfall.

V. If the Shortfall arises from change orders, acts or omissions of the District, then, subject to annual budget and appropriations, the District shall deposit sufficient funds into the Escrow Account to alleviate so much of the Shortfall as arose from the District's change orders, acts or omissions.

VI. If the Shortfall arises from change orders, acts or omissions of the Town, then, subject to annual budget and appropriations, the Town shall

deposit sufficient funds into the Escrow Account to alleviate so much of the Shortfall as arose from the Town's change orders, acts or omissions.

VII. Other than as provided in Subsection 4.e.IV, if neither the Town or the District caused a change order that increases the cost of the New WWTP, and neither the Town or the District has funds to pay for the change order, then the Town and the District shall cooperate to raise the needed funds. To the extent that either the Town or the District is more successful than the other at raising the needed funds, the Parties shall pay the funds they raise into the Escrow Account to cover the Shortfall and shall equitably reallocate capacity in the New WWTP in proportion to their additional payments. If and as needed, the Town and the District agree to discuss reductions or changes in the scope or features of the New WWTP, if necessary, to cover a Shortfall.

5. If a design-build contract for the New WWTP acceptable to the Town is entered into by the District on or before April 30, 2012, then the Original Agreement is hereby further amended as follows to add a new Section 37.1 concerning Milestones and Liquidated Damages.

a. Previous defaults and alleged defaults occurring or alleged to have occurred in the Town's and District's performances of the Original Agreement as amended are hereby waived.

b. All references to timetables or deadlines and penalties, damages or consequences (such as termination of the Agreement) for failure to meet the same

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in the Original Agreement as amended are hereby superseded and replaced by the following "Milestones":

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I. The commencement of construction (as required by Section 25 of the Original Agreement) will occur on or before January 15, 2013, unless the District obtains an extension of the expiration date for the Site Location Approval to at least May 31, 2013, in which case commencement of construction will occur on or before March 4, 2013.

II. The New WWTP will be substantially complete and operating by thirty (30) days after the date specified in the approved Design-Build contract.

c. All of the Milestone dates specified in this Section shall be extended by the addition of a reasonable number of days based on force majeure as defined in Section 43 of the IGA plus certain delays described in Paragraph 25(c)(VI) in this Second Amendment, and any event that allows a delay by the design-build contractor team that is not within the control of the District or the Town.

d. In the absence of a force majeure event, if the performance that is required on or before a Milestone date specified in this Section is not achieved due to the acts or omissions of the District (including its design-build contractor),



then, following notice to the District Board and an opportunity for hearing before the Town Trustees, as liquidated damages and not as a penalty, the Town Trustees may increase the sewer tap fee to be paid to the Town upon each sewer tap sold for use by or through the District by an amount of \$10.00 (Ten Dollars) for each day of delay. Failure to hold the hearing within thirty (30) days following a Milestone shall be deemed a waiver of the liquidated damages that may be associated with such Milestone.

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e. In the absence of a force majeure event, if the performance that is required on or before a date specified in this Section is not achieved due to the acts or omissions of the Town (including any consultant or contractor thereof), then, following notice to the Town Trustees and an opportunity for hearing before the District Board, as liquidated damages and not as a penalty, the District Board shall receive a credit to be applied to the tap fee for purchase of future sewer taps sold for use by or through the District by an amount of \$10.00 (Ten Dollars) for each day of delay. Failure to hold the hearing within thirty (30) days following a Milestone shall be deemed a waiver of the liquidated damages that may be associated with such Milestone.

6. Section 29 of the Original Agreement is superseded and replaced by the following:

29. Town Review and Oversight of New WWTP. The Director of Utilities of the Town and consulting engineers engaged by the Town have reviewed, provided input on and approved as necessary the Wastewater Utility Plan, the design-build process for the New WWTP, and the bids therefor, and will have the opportunity to review and provide input on the construction of the New WWTP. It is contemplated that the Director of Utilities and the Town's consulting engineers have been and will continue to be consulted regarding the permitting process for the New WWTP. The cost and expense of the Town's Utility Director and any other municipal employees who may be involved shall be borne by the Town. The reasonable cost of the Town's consulting engineers for work described in the TST proposal dated _____, 2012 for \$38,000 shall be paid 25% by the Town and 75% by the District, with the District's portion to be paid from the Escrow Account or other District funds. The Town's Utility Director shall review the invoices of the Town's Engineer and shall certify that the invoice is reasonable, accurate, and only for work authorized by said TST proposal. The District shall have no obligation to pay for work of the Town's consulting engineers that "gets them up to speed" or substantially duplicates work previously done by the District Engineer or the design-build contractor team.

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7. Section 31(e) of the Original Agreement shall be superseded and replaced by the following:

e) The Town approves the competitive bidding process used by the District for the design-build of the New WWTP. Each WWTP Expansion shall be



contracted for by design-build or any other procedure pursuant to a competitive bidding process in which a minimum of three (3) potential bidders designated by the Notifying Party and approved by the other party, with approval not to be unreasonably withheld, are solicited for bids. Upon completion of the bidding process, the Notifying or Receiving Party, as applicable shall enter into a contract acceptable to the Town with one of the bidding contractor-engineer teams or contractors, which, in the contracting party's discretion, may or may not be the low responsive bidder. The contracting party may reject all bids and rebid the work if it is in the best interest of the District or the Town and is reasonable to do so. The non-contracting party shall be an express and intended third party beneficiary of the New WWTP and WWTP Expansion contracts for construction.

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8. The reference in Paragraph 44 of the IGA to “paragraph 10, above” shall be replaced by “Paragraph 11, above.”

9. A new Paragraph 49 shall be added to the Original Agreement as follows:

49. Additional Cost Credit. The District and the Town agree that the District is not required to select the low bidder for the New WWTP, that there are benefits that will accrue to the Town from not selecting the low bidder, that there have been design changes requested by the Town and design features in the plans that the District is not required to install (under the terms of the process design report or PDR and IGA), but that such selection, design features, and design changes

will increase the cost of the New WWTP to be paid by the District. The District believes that these costs run to several hundreds of thousands of dollars. The Town agrees that the amounts of these increases in the cost of the New WWTP are no less than \$200,000, and are of material benefit to the Town. In order to reimburse the District for these increased costs, the Town shall discount the systems development fee (or capital component) of the EQR fee by 50% until such time as the \$200,000 is credited to the District's benefit in full. (For example, with the systems development fee of \$7,500 per EQR as provided in Section 2 of the IGA, and \$200,000 in credits, and a decrease in the systems development fee by 50% (to \$3,750), the discount would be applied to the first 53.33 EQRs to be purchased by the District).

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10. A new Paragraph 50 shall be added to the Original Agreement as follows:

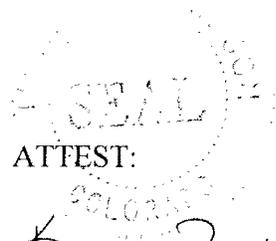
50. Design-Build. Notwithstanding any provision herein to the contrary, the Town or District may furnish Water Utility Infrastructure or WWTP Expansions by use of a design-build process as allowed by applicable provisions of the statutes, charter, or ordinances.

[signature page follows]

IN WITNESS WHEREOF the Parties hereto have executed this Amendment to IGA this 18th day of April, 2012.

TOWN OF MORRISON

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ATTEST:

Dana Zablanusky
Town Clerk

By [Signature]
Name: ERRI GUKKAD
Title: MAYOR



MOUNT CARBON METROPOLITAN DISTRICT

ATTEST:

[Signature]
Secretary

By [Signature]
Name: Chris Fellows
Title: President & Chairman