



Silverthorne/Dillon Joint Authority

P.O. Box 1309/26452 N. Hwy. 9
Silverthorne Colorado 80498

**FIRST AMENDMENT TO
THE REVISED
INTERGOVERNMENTAL AGREEMENT
FOR THE JOINT SEWER AUTHORITY**

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THIS AMENDMENT is entered into as of the 1st day of July 2012, by and among the **TOWN OF SILVERTHORNE, COLORADO** (hereinafter, "Silverthorne"), the **TOWN OF DILLON, COLORADO** (hereinafter, "Dillon"), the **DILLON VALLEY DISTRICT**, a quasi-municipal corporation of the State of Colorado (hereinafter, "Dillon Valley"), the **BUFFALO MOUNTAIN METROPOLITAN DISTRICT**, a quasi-municipal corporation of the State of Colorado (hereinafter, "Buffalo Mountain"), and the **MESA CORTINA WATER AND SANITATION DISTRICT**, a quasi-municipal corporation of the State of Colorado (hereinafter "Mesa Cortina"), all of whom are collectively referred to herein as the "Participants."

RECITALS

A. WHEREAS, the Participants, as governmental or quasi-governmental bodies, have the power and authority to enter into an Intergovernmental Agreement to undertake jointly functions which are lawfully authorized to each by the terms of Article XIV, Section 18(2) of the Colorado Constitution and Section 29-1-201, *et seq.*, Colorado Revised Statutes ("C.R.S.") and Section 31-35-402(1)(h), C.R.S.; and

B. WHEREAS, as of January 1st 2002 the Participants consolidated various prior agreements into a single Intergovernmental Agreement among the Participants, which consolidated agreement ("**INTERGOVERNMENTAL AGREEMENT FOR THE JOINT SEWER AUTHORITY**" hereinafter the "**JSA-IGA**") superseded all such prior agreements, as amended; and

C. WHEREAS, effective January 1, 2010, the Participants entered into the **REVISED INTERGOVERNMENTAL AGREEMENT FOR THE JOINT SEWER AUTHORITY** (hereinafter the "**REVISED JSA-IGA**") which amended the JSA-IGA in several respects and;

D. WHEREAS, the rights of the Participants to use various portions of the capacity of the Joint Authority Interceptors, do not in every case match the needs of the Participants to use portions of the capacity of the BRWWTP, constituting a system imbalance (hereinafter the "**System Imbalance**"); and

E. WHEREAS, the Participants having Unconnected Constructed EQR are willing to authorize and direct the JSA to waive some of the Excess Capital I&I compensation payments required by the Revised JSA-IGA, upon receipt by the JSA of reasonable evidence that the Participants having Excess Capital I&I have spent at least the amount of such Excess Capital I&I compensation payments toward eliminating the Excess Capital I&I and Excess Operating I&I, by a date certain; and

F. **WHEREAS**, the Participants desire to correct and eliminate the current System Imbalance, in the context of the Paper Expansion of the BRWWTP provided for in Section 4.C. of the Revised JSA-IGA; to acknowledge their desire and intent to avoid all future system imbalances by the assignment of rights to use sufficient EQRs in the relevant Joint Authority Interceptors simultaneously with the assignment of rights to use EQRs in the BRWWTP; and to provide for the possible waiver of portions of the Excess Capital I&I compensation payments;

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Participants agree as follows:

Section 1. Definitions. All defined terms in the Revised JSA-IGA, when used herein, shall have the same meanings as they have in the Revised JSA-IGA.

Section 2. Dillon Valley. Dillon Valley has the right to use 1900 Constructed EQRs in the East Bank Interceptor, but needs only 1183 of such EQRs to balance its part of the system.

- (a) Dillon Valley hereby transfers and assigns to Dillon the rights to use 303 Constructed EQRs in all three segments of the East Bank Interceptor.
- (b) Dillon Valley hereby transfers and assigns to Silverthorne the rights to use 26 EQRs in the Joint Interceptor.
- (c) Dillon Valley hereby relinquishes any and all rights to use any of the remainder of the capacity of the East Bank Interceptor (now calculated at 414 EQRs). Accordingly, the nominal capacities of all three segments of the East Bank Interceptor are hereby reduced by 414 EQRs. The relinquished EQRs will become unallocated, but available for use in possible paper expansions after the January 1, 2013 Paper Expansion, any such additional paper expansions to be in accordance with Section 4F of the Revised JSA-IGA.
- (d) These East Bank Interceptor transfers and relinquishments will also reduce the capital payments otherwise due from Dillon Valley when the East Bank Interceptor is upgraded in 2013.
- (e) For the years 2012, 2013, and 2014, Dillon Valley will authorize and direct the JSA to waive, upon receipt of reasonable evidence that a Participant having Excess Capital I&I has spent toward eliminating its Excess Capital I&I and Excess Operating, I&I, before January 1, 2015, that portion, if any, of Excess Capital I&I compensation amounts owed by such Participant which, if not waived, would have been collected by the JSA and distributed to Dillon Valley.
- (f) Under Section 6(I) of the Revised JSA-IGA, Dillon Valley is obligated to pay to the JSA compensation for its use of Unused Constructed EQRs the use of which capacity is

reserved to other Participants (“Excess Capital I&I compensation.”) in the amounts of \$20,252, \$13,871, and \$32,996, for the years 2009, 2010, and 2011 respectively. All such amounts, are being conditionally waived by the JSA at the request of Silverthorne, Dillon (but as to Dillon, on a limited basis—see Section 3(a), below), and Buffalo Mountain

- (g) Under Section 6(I) of the Revised JSA-IGA, Dillon Valley may be obligated to pay to the JSA compensation for its use of Unused Constructed EQRs the use of which capacity is reserved to other Participants relating to years 2012, 2013, and 2014 (the “Dillon Valley Excess Capital I&I Compensation Amounts”). Any amounts which might become due Dillon, Buffalo Mountain, or Mesa Cortina are being conditionally waived by the JSA at the request of Dillon (but as to Dillon, on a limited basis—see Section 3(a), below), Buffalo Mountain, and Mesa Cortina (some of the Participants to which such amounts would be distributed when collected by the JSA). See Sections 3, 4 and 5 herein.
- (h) If Dillon Valley elects not to acquire the right to use additional BRWWTP capacity in the January 1, 2013 Paper Expansion, it will nevertheless receive a capital payment calculated by application of the formula contained in Exhibit B of the Revised JSA-IGA, now estimated to be in the amount of \$319,618, assuming the value of the BRWWTP is calculated to be \$22,000,000 (the (“Dillon Valley Paper Expansion Capital Payment”). Dillon Valley hereby commits and promises that it will spend, before January 1, 2015, the entire Dillon Valley Paper Expansion Capital Payment and the entire waived Dillon Valley Excess Capital I&I compensation amounts, toward eliminating its Excess Capital I&I and its Excess Operating I&I, pursuant to a written plan of correction delivered in advance to the JSA Plant Superintendent, and will, on or before January 1, 2015, deliver a written certification from Dillon Valley Board of Directors to Silverthorne, as the Lead Agency of the JSA, as to all amounts so spent, whether more or less than the committed amount.

Section 3. Dillon.

- (a) Upon complete performance of the commitments and promises of Dillon Valley contained in Section 2(c) herein, Dillon hereby authorizes and directs the JSA to waive: For the years 2009, 2010, and 2011, respectively, those portions of Dillon Valley Excess Capital I&I compensation amounts, which would, if not waived, be collected by the JSA and distributed to Dillon: \$5,288, \$3,468, and \$8,777.
- (b) Upon complete performance of the commitments and promises of Buffalo Mountain contained in Section 4, herein, Dillon hereby authorizes and directs the JSA to waive: for the years 2009 and 2011 respectively, that portion of Buffalo Mountain Excess Capital I&I compensation amounts which would, if not waived, be collected by the JSA and distributed to Dillon: \$583 and \$3,359.
- (c) Upon complete performance of the commitments and promises of Mesa Cortina

contained in Section 5(b) herein, Dillon hereby authorizes and directs the JSA to waive: for the years 2009, 2010, and 2011, respectively, that portion of Mesa Cortina Excess Capital I&I compensation amounts which would, if not waived, be collected by the JSA and distributed to Dillon: \$3,863, \$1,326, and \$1,644.

- (d) For the years 2012, 2013, and 2014, Dillon will authorize and direct the JSA to waive, upon receipt of reasonable evidence that a Participant having Excess Capital I&I has spent, toward eliminating its Excess Capital I&I and Excess Operating, I&I, before January 1, 2015, that portion, if any, of Excess Capital I&I compensation amounts owed by any such Participant which, if not waived, would have been collected by the JSA and distributed to Dillon; provided, however, that with respect to waivers benefitting Dillon Valley, such waivers shall only be effective to the extent the cumulative waived amounts for all years 2009 through 2014, reach \$70,000.
- (e) Dillon agrees that due to its increased share of capacity use rights in the East Bank Interceptor, it will pay an increased share of the capital expense for upgrades to such interceptor in 2013.

Section 4. Buffalo Mountain.

- (a) Upon complete performance of the commitments and promises of Dillon Valley set forth in Section 2(c), herein, Buffalo Mountain hereby authorizes and directs the JSA to waive: for the year 2010, that portion of the 2010 Dillon Valley Excess Capital I&I compensation amounts which, if not waived, would have been collected by the JSA and distributed to Buffalo Mountain: \$971.
- (b) Upon complete performance of the commitments and promises of Mesa Cortina set forth in Section 5(b) herein, Buffalo Mountain hereby authorizes and directs the JSA to waive: for the year 2010, that portion of the 2010 Mesa Cortina Excess Capital I&I compensation amounts which, if not waived, would have been collected by the JSA and distributed to Buffalo Mountain: \$371.
- (c) For the years 2012, 2013, and 2014, Buffalo Mountain will authorize and direct the JSA to waive, upon receipt of reasonable evidence that a Participant having Excess Capital I&I has spent toward eliminating its Excess Capital I&I and Excess Operating, I&I, before January 1, 2015, that portion, if any, of Excess Capital I&I compensation amounts owed by such Participant which, if not waived, would have been collected by the JSA and distributed to Buffalo Mountain.
- (d) Buffalo Mountain hereby commits and promises that it will spend, before January 1, 2015, the entire waived Buffalo Mountain Excess Capital I&I compensation Amounts, toward eliminating its Excess Capital I&I and its Excess Operating I&I, pursuant to a written plan of correction delivered in advance to the JSA Plant Superintendent, and will, on or before January 1, 2015 deliver a written certification from the Buffalo Mountain Board of Directors to Silverthorne, as the Lead Agency of the JSA, as to all

amounts so spent, whether more or less than the committed amount.

Section 5. Mesa Cortina.

- (a) For the years 2012, 2013, and 2014, Mesa Cortina will authorize and direct the JSA to waive, upon receipt of reasonable evidence that a Participant having Excess Capital I&I has spent, toward eliminating its Excess Capital I&I, and its Excess Operating I&I, that portion, if any, of Excess Capital I&I compensation amounts owed by such Participant which, if not waived, would have been collected by the JSA and distributed to Mesa Cortina.
- (b) Mesa Cortina hereby commits and promises that it will spend, before January 1, 2015, the entire waived Mesa Cortina Excess Capital I&I compensation Amounts, toward eliminating its Excess Capital I&I and its Excess Operating I&I, pursuant to a written plan of correction delivered in advance to the JSA Plant Superintendent, and will, on or before January 1, 2015 deliver a written certification from the Mesa Cortina Board of Directors to Silverthorne, as the Lead Agency of the JSA, as to all amounts so spent, whether more or less than the committed amount.

Section 6. Silverthorne.

- (a) Silverthorne hereby transfers and assigns rights to use portions of the capacity of the Joint Interceptor to balance BRWWTP EQRs and Interceptor EQRs, following the Paper Expansion, in the following amounts:
 - i. Dillon: _____ 565 _____ EQRs
 - ii. Mesa Cortina: _____ 15 _____ EQRs
- (b) Silverthorne hereby transfers and assigns to Buffalo Mountain the rights to use 636 EQRs in the West Bank Interceptor.
- (c) Silverthorne hereby transfers and assigns to Mesa Cortina the rights to use 15 EQRs in the West Bank Interceptor.
- (d) Upon the complete performance of the commitments and promises of Dillon Valley contained in Section 2(c) herein, Silverthorne hereby authorizes and directs the JSA to waive: For the years 2009, 2010, and 2011, respectively, those portions of Dillon Valley Excess Capital I&I compensation amounts, which would, if not waived, be collected by the JSA and distributed to Silverthorne: \$14,964, \$9,432, and \$22,437.
- (e) Upon complete performance of the commitments and promises of Buffalo Mountain contained in Section 4(d), herein, Silverthorne hereby authorizes and directs the JSA to waive: for the years 2009 and 2011 respectively, that portion of Buffalo Mountain Excess Capital I&I compensation amounts which would, if not waived, be collected by the JSA and distributed to Silverthorne: \$1,650 and \$9,270, together with other amounts

relating to years 2012, 2013, and 2014.

- (f) Upon complete performance of the commitments and promises of Mesa Cortina contained in Section 5(b) herein, Silverthorne hereby authorizes and directs the JSA to waive: for the years 2009, 2010, and 2011, respectively, that portion of Mesa Cortina Excess Capital I&I compensation amounts which would, if not waived, be collected by the JSA and distributed to Silverthorne: \$10,933, \$3,607, and \$4,537, together with other amounts relating to years 2012, 2013, and 2014.
- (g) Silverthorne agrees that due to its increased share of capacity use rights in the East Bank Interceptor it will pay an increased share of the capital expense for upgrades to such interceptor in 2013.

Section 7. Notices. Any notices required or permitted to be given under this Amendment shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), sent by tele-facsimile transmission by telecopy machine with written confirmation (sent by tele-facsimile transmission) of receipt, or mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows:

Town of Dillon
Attn: Town Manager
P.O. Box 8
275 Lake Dillon Drive
Dillon, CO 80435

Facsimile No. 970-262-3410

With Copies to:

Town of Silverthorne
Attn: Town Manager
601 Center Circle
P.O. Box 1309
Silverthorne, CO 80498

Facsimile No. 970-262-7312

With Copies to:

Buffalo Mountain Metropolitan District
Gary A. Drescher, Manager
Buffalo Mountain Metropolitan District
106 Adams Avenue
P.O. Box 2430
Silverthorne, CO 80498-2430

Facsimile No. 970-513-1301

With Copies to:

Matthew R. Dalton, Esq.
Grimshaw & Harring, P.C.
1700 Lincoln Street, Suite 3800
Denver, CO 80203

Facsimile No. 303-839-3838

Dillon Valley District
P.O. Box 669
Dillon, CO 80435

Facsimile No. 970-513-4150

With Copies to:

Felice F. Huntley
West Brown Huntley & Hunter
100 South Ridge Street, Suite 204
Breckenridge, CO 80424

Facsimile No. 970-453-2901

Mesa Cortina Water and Sanitation District
P.O. Box 627
Frisco, CO 80443

Facsimile No. 970-668-5534

With a copy to:

Tim Flynn
Collins Cockrel & Cole
390 Union Boulevard
Lakewood, CO 80228-1566

Facsimile No. 303-986-1755

Notices personally delivered or sent by overnight courier shall be deemed given on the date of delivery, notices sent by tele-facsimile transmission shall be deemed given when received and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. Postal Service mail. All Participants agree to cooperate with each other in the prompt transmission of confirmation of notices sent by tele-facsimile transmission. Each Participant can change its address for notices by notice to all other Participants given in accordance with this Subsection.

SECTION 8. GENERAL.

B. Severability. In the event that any provision of this Amendment is held to be of no effect by a court of competent jurisdiction, such finding, order or judgment shall not affect any other provision. This Amendment is hereby declared to be severable for that purpose.

C. Effective Date. The effective date of this Amendment shall be the 1st day of July, 2012. This Amendment shall be binding upon the successors and assigns of the Participants. This

D. **Sole Agreement.** Except with respect to the Revised JSA-IGA, of which this Amendment is a part, the Participants acknowledge that this Amendment constitutes the sole agreement between them as to the subject matter hereof and that no party is relying upon any oral representation made by a party or an agent or officer of a party. This Amendment may be amended only by written agreement, signed by all of the Participants hereto. Headings in this Amendment are for convenience only and shall not affect or modify the meaning of the text.

E. **Compliance With Law; Construction.** This Amendment shall not be construed to be in violation of the laws of the United States or the State of Colorado, or in any manner that will adversely affect or diminish the bonding capacity of any Participant with reference to either sewer improvement revenue bonds or general obligation sewer bonds.

F. **Arbitration.** To the extent allowed by law, any controversy or claim arising out of this Amendment, including whether any of the Participants has complied with any of the provisions hereof applicable to such Participant, which cannot be resolved by agreement among the Participants will be settled by arbitration in accordance with the Rules and regulations of the American Arbitration Association, provided the full settlement of the controversy does not require the participation in such proceedings by persons or entities not bound by this Amendment.

IN WITNESS WHEREOF, the Participants have executed this Amendment with effective date of July 1, 2012.

TOWN OF SILVERTHORNE

[SEAL]

ATTEST:



By: Dave Koop
Mayor

Date: 8/22/12

Michelle Mills
Town Clerk

TOWN OF DILLON

[SEAL]

ATTEST:



By: Ronald J. Holland
Mayor


Date: 8/28/2012

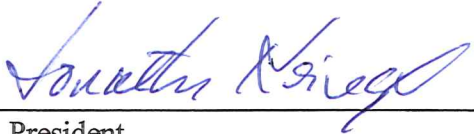
Jan Thomas
Town Clerk

BUFFALO MOUNTAIN METROPOLITAN DISTRICT

[SEAL]

ATTEST:


Secretary

By: 
President

Date: 8-31-12

DILLON VALLEY DISTRICT

[SEAL]

ATTEST:


Secretary

By: 
President

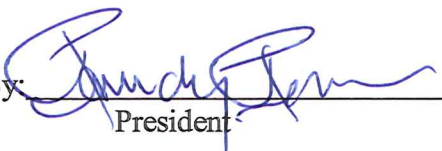
Date: 8-30-12

MESA CORTINA WATER AND SANITATION DISTRICT

[SEAL]

ATTEST:


Secretary

By: 
President

Date: 9-18-12