

**INTERGOVERNMENTAL AGREEMENT REGARDING
WASTEWATER COLLECTION AND TREATMENT**

THIS INTERGOVERNMENTAL AGREEMENT REGARDING WASTEWATER COLLECTION AND TREATMENT (the "Agreement") is made and entered into this ___ day of _____, 200__, by and between the CITY OF CREEDE, a statutory city of the State of Colorado (hereinafter referred to as the "City"), and the DEEP CREEK WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Parties are authorized to contract with one another pursuant to Section 29-1-201, *et seq.*, C.R.S., and Article XIV, Section 18(2)(a) of the Colorado Constitution; and

WHEREAS, the District was formed to provide sanitary sewer services to properties located within and without its boundaries; and

WHEREAS, the City owns and operates the City WWTP; and

WHEREAS, the City WWTP has a current design capacity of 560,000 GPD; and

WHEREAS, at full build out of its Service Area, the District is projected to send approximately 203,760 GPD to the City WWTP based upon current available wastewater engineering estimates; and

WHEREAS, 203,760 GPD is equivalent to 708.7 EQRs based on the City's current EQR calculation; and

WHEREAS, the Parties entered into that certain agreement and addendum to agreement covering wastewater treatment dated May 22, 1989 (the "1989 Agreement"); and

WHEREAS, the 1989 Agreement permitted the District to send up to 300 EQRs to the City WWTP for treatment and discharge and obligated the City to treat and discharge the same; and

WHEREAS, the District desires to secure the right to deliver up to 708.7 EQRs to the City WWTP for treatment and discharge; and

WHEREAS, the City WWTP is currently operating at approximately 18% of hydraulic capacity and 36% of organic capacity; and

WHEREAS, the City desires to accept up to 708.7 EQRs from the District for treatment and discharge; and

WHEREAS, the twenty-year term of the 1989 Agreement is set to expire on May 21, 2009; and

WHEREAS, the Parties desire to enter into a new agreement under which the District will continue to collect wastewater within its Service Area and transport the same to the City WWTP for treatment and discharge by the City; and

WHEREAS, the Parties have entered into this Agreement in order to ensure that the City continues to treat and discharge wastewater delivered by the District to the City and to ensure that the District and City participate equitably in the future expansion or replacement of the City WWTP; and

WHEREAS, this Agreement sets forth that to the extent that the City's treatment of 708.7 EQRs from the District requires the City WWTP to be expanded, based on the City WWTP exceeding 80% of its current hydraulic or organic capacity, the District agrees to finance such

expansion, consisting of the addition of one (1) additional pond or lagoon, as more fully set forth herein; and

WHEREAS, this Agreement further sets forth that to the extent that the City WWTP is required to be replaced, either through a State requirement for nitrogen removal, any other change in State or federal law, or functional obsolescence of the City WWTP, then the City shall finance a New WWTP and District Users shall participate in the funding of the same to the same extent as City Users; and

WHEREAS, the Parties have determined that this Agreement serves a public use and promotes the health, safety and general welfare of both the City and the District.

COVENANTS:

NOW, THEREFORE, in consideration of the premises, the mutual advantages accruing to the parties, the performance of promises contained herein, and other good and valuable consideration, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. The following terms, as used in this Agreement, shall have the meanings set forth below:

"Capital Expansion Fund". Shall have the meaning set forth in Section 5.1 a).

"CDPHE". The Colorado Department of Public Health and Environment.

"City". Shall mean the City of Creede, Colorado.

"City Tap Fee". Shall have the meaning set forth in Section 5.1 a) hereof, equal to the City's then-current sewer tap fee.

"City User". Any property, regardless of use, that is connected to the Creede wastewater collection system, other than a property classified as a District User.

"City WWTP". The City of Creede Wastewater Treatment Plant, as the same now exists (consisting of a lagoon system which discharges to a tributary of Willow Creek, having a current design capacity of 560,000 GPD, and having State permit no. CO-0040533) or as modified or altered in the future.

- a) "Expanded WWTP" has the meaning set forth in Section 8.2.
- b) "New WWTP" has the meaning set forth in Section 9.1.

"District". Shall mean the Deep Creek Water and Sanitation District.

"District User". Any property, regardless of use, that is connected to the District's wastewater collection system, whether within or without the District's then-current boundaries. No City User may be a District User, and no District User may be a City User.

"EQR". The abbreviation for Equivalent Residential Unit, which is an average single family detached residence or the equivalent, from a system development standpoint. For purposes of this Agreement, EQR shall mean that amount and concentration of sewage that would normally be produced by an average residence, being an average 287.5 GPD with an organic concentration of 0.46 pounds of standard 5-day biochemical oxygen demand (BOD5). If the City changes its definition of EQR or hereafter uses a different figure with respect to the average amount of sewage generated by an EQR, the new definition or figure will be considered applicable to this Agreement and controlling. However, no change of definition of EQR will reduce the District's right to discharge up to and including 203,760 GPD to the City WWTP under this Agreement.

"GPD". Gallons per day.

"Ordinance 334". The City's Water, Wastewater, and Drainage Regulations, adopted on April 12, 2005.

"Service Area". All properties served by the District, whether located within or

without the District's then-current boundaries. The "Outside Service Area" shall include all properties served by the District outside the District's then-current boundaries. The "Inside Service Area" shall include all properties served by the District within the District's then-current boundaries.

"SSDF". Shall have the meaning set forth in Section 5.1 a) hereof, equal to the City's then-current sewer system development fee.

"State". Unless the context requires otherwise, shall mean the State of Colorado.

ARTICLE II

TERM AND PURPOSE OF AGREEMENT

2.1 Term. This Agreement shall supersede in its entirety the 1989 Agreement, and shall become effective on and as of May 21, 2009. This Agreement shall remain in full force and effect thereafter unless and until terminated through mutual consent of the Parties, or until the City WWTP ceases to exist (as reasonably determined by the Parties). Notwithstanding Section 3.3 of Ordinance 334, the City may not terminate this Agreement without the prior written consent of the District.

2.2 Purpose. The purpose of this Agreement is to permit the District to deliver up to and including 708.7 EQRs to the City WWTP for treatment and discharge as measured by the existing flow meter that has been installed by the District or future flow meters installed by the District, and to establish a fair and equitable cost sharing arrangement with respect to any future expansion or replacement of the City WWTP.

ARTICLE III

DISTRICT SERVICE AREA

3.1 Service Area. The Service Area consists of the Inside Service Area and the Outside Service Area. The Service Area is the property described on Exhibit A, attached hereto and made a part hereof by reference. The Outside Service Area is the property platted and known as the

Creede Haven No. 1 subdivision, Mineral County, Colorado. The District may not expand the Service Area without the prior written consent of the City. The exclusion of any property from the Service Area shall create no automatic right to include other property into the Service Area. The City will deal exclusively with the District with respect to this Agreement and the Parties agree that no third party shall have any rights hereunder.

3.2 District's Compliance Obligation. Each and every provision of this Agreement that compels the District to take any action or directs the District to refrain from taking any action shall be imposed upon all District Users, developers of property within the Service Area, and all other parties having an interest in property within the Service Area.

ARTICLE IV

DISTRICT CONNECTION TO CITY SYSTEM

4.1 Connection. As set forth in the 1989 Agreement, the District has connected collection and transportation lines for the District Users to the City's main trunk line. If the construction of a New WWTP or Expanded WWTP requires the relocation of the existing point or points of connection, the District will submit suitable plans and specifications showing the proposed relocation of its collection and transportation lines to the City engineer, for his or her review and approval. Any alternative point of connection of the District's collection and transportation lines to the City's main trunk line will be made in accordance with the City's applicable regulations pertaining thereto, including but not limited to Ordinance 334. All costs of design, construction, and connection, including standard review fees of the City's engineer, will be borne by the District.

4.2 City Wastewater Obligation. The City, by this Agreement, is obligated to accept up to but never exceeding 708.7 EQRs of the District's wastewater, delivered by the District to the point or points of connection, and is further obligated to provide sanitary sewage treatment and disposal services for such connections, upon the terms and conditions set forth in this Agreement.

ARTICLE V

CITY FEES FOR SEWER CONNECTION AND SERVICE

5.1 District Fees. As payment for provision of sewage treatment and disposal service by the City, the District shall pay a fee, monthly, in arrears, as follows:

a) Connection Fee. The District shall collect, from each new District User within the Service Area, a one-time connection fee of four hundred dollars (\$400.00) (the "Connection Fee"). The Connection Fee shall be in addition to the City's standard sewer tap fee ("City Tap Fee") (currently \$500.00) and the City's standard sewer system development fee ("SSDF") (currently \$2,500.00), which shall be collected by the City. Prior to the District allowing any party to tap into the District's sanitary sewer collection system, the District: (1) shall receive notification from the City that the City Tap Fee and SSDF have been paid in full; (2) shall receive notification from the City that the waiver and release of liability form, in the form attached as Exhibit B hereto, has been executed; and (3) shall verify that the Connection Fee has been received by the District. The City shall notify the District that (1) and (2), above, have been completed by completing and delivering written notification to the District (or by email, with email delivery preferred) is substantially the form attached hereto as Exhibit C. The City shall deposit all City Tap Fees and SSDFs received from District Users into a separate interest bearing account (the "Capital Expansion Fund"), and shall notify the District in writing on or before November 30th of each year of the current balance in the Capital Expansion Fund. The Parties agree that the current balance of the Capital Expansion Fund, as of September 30, 2008, is Thirty One Thousand Two Hundred Three Dollars and 75/100 (\$31,203.75). All interest earnings on the funds deposited in the Capital Expansion Fund shall be retained therein and shall be used solely for the purposes and pursuant to the provisions of this Agreement.

b) Monthly User Fee. Each user within the Service Area shall pay to the District, at minimum, a monthly user fee equal to the amount paid by a City User for a detached single family dwelling on a single sewer connection (the "City Sewer Fee").

Nothing in this Agreement shall prohibit the District from charging District Users a monthly service fee for sanitary sewer service in excess of the City Sewer Fee. However, any fee imposed by the District on District Users shall be rational, reasonable, and related to the costs of providing the facilities and services, consistent with the guidance of *Krupp v. Breckenridge Sanitation District*, 19 P.3d 687 (Colo. 2001). As of the date of this Agreement, the City Sewer Fee is \$12.36. Of this amount, \$9.86 (or approximately 80%) is currently remitted by the District, per District User, to the City¹. This current percentage has been determined in accordance with the 1989 Agreement. The Parties expressly acknowledge and agree that it is proper that the District Users continue to pay 80% of the City Sewer Fee, given that the District pays certain ongoing costs associated with the operations and maintenance of its sanitary sewer collection facilities, including but not limited to the following: costs of insurance, accounting, certified operator expenses, electricity for the lift station which delivers the sewage to the City WWTP, and other administrative costs. Any City increases or decreases to the City Sewer Fee shall apply to the District on the percentage basis set forth above (80%). For example, if the City increases the City Sewer Fee from \$12.36 to \$13.00 (an increase of \$0.64), the District shall be required to remit the revised amount of \$10.37 per District User per month (\$9.86 + \$0.51) to the City. Such monthly user fees shall be payable year-round, regardless of occupancy. In sum, the City will bill the District monthly based on the total number of sewer connections/EQRs within the Service Area times 80% of the City Sewer Fee. City sewer fees applicable to commercial development (those uses which exceed 1.00 EQRs), as set forth in Appendix A to Ordinance 334, shall apply to commercial uses within the Service Area.

c) Fee Allocation. The City currently has a combined fee covering both water and sewer for City Users. Regardless of the current allocation, the City reserves the right to alter such allocation as between water and sewer, at any time, based upon reasonable changes in the existing circumstances. In the event of any change in such allocation, the provisions of Section 5.1 b) shall apply.

¹ As of the date of this Agreement, there are currently fifty (50) District Users. Based on the current City Sewer Fee, the City bills the District \$493.00 on a monthly basis, and the District pays the same to the City.

d) Late Payments. The District shall be solely responsible for the collection of all payments from District Users, the enforcement of penalties, and other related obligations, as set forth in the District's Rules and Regulations, as the same may be amended from time to time. As set forth in Section 5.1 b), above, the City will bill the District monthly based on the total number of sewer connections/EQRs within the Service Area times 80% of the City Sewer Fee, and said amount shall be due from the District within thirty (30) days. If this fee is not received within forty five (45) of the applicable due date, penalty interest shall accrue at the rate of 12% per annum. This penalty interest is in addition to any and all remedies available to the City, any or all which may be invoked at the City's option.

ARTICLE VI

OPERATION OF CITY WWTP

6.1 City Operations. The City will operate the City WWTP in conformity with applicable Federal, State and local laws, rules and regulations. Within such requirements, the City shall retain full discretion to determine the method and manner of its operation of the City WWTP. The City may not interrupt service to the District unless ordered to do so by the State or CDPHE, or unless required under applicable Federal or State regulations.

6.2 Applicable Law. In the event of any conflict between the City's regulations pertaining to the operation and maintenance of the City WWTP and applicable laws, rules or regulations of the Federal or State governments, the more stringent laws, rules or regulations shall apply.

6.3 Testing. The City may require the District to perform infiltration tests at the District's expense, no more frequently than annually. In addition, the City may require quality or quantity tests at the District's expense, no more frequently than annually. Such tests may be requested only if the City has reasonable belief that excessive infiltration is occurring in the District's lines or that the quality or quantity of District sewage is such that testing is necessary. All such tests shall be promptly performed and the results delivered to the City.

6.4 Water Rights. With respect to discharges from the City WWTP, the Parties agree that the District is entitled to its pro rata share of any and all water rights created by such discharge,

any and all irrigation rights, and any and all sludge rights, subject to the terms of any decreed augmentation plan affecting the District's water rights.

ARTICLE VII

7.1 Facility Ownership and Responsibility. All facilities constructed, owned or maintained by the District within the Inside Service Area, to the point or points of connection with the City's main trunk line, shall be the sole property and responsibility of the District and the City shall have no responsibility therefore of any kind or character. The homeowners within the Outside Service Area shall be solely responsible for the maintenance, repair and replacement of all lines and facilities within the Outside Service Area. All maintenance, repair and replacement of all facilities within the Inside Service Area shall be the sole responsibility of the District. All the City's lines shall remain under the City's exclusive ownership, care and control of the City. Sections 7.2 through 7.10 set forth various responsibilities and obligations of the District created by this Agreement which may be reduced or expanded in a manner not inconsistent with this Agreement, at the City's discretion, by ordinance, rule or regulation adopted by the City after the effective date of this Agreement.

7.2 No Overload. The District will not, at any time, permit the District's sanitary sewer collection system to be overloaded.

7.3 Effluent Delivery. The District will, at all times, deliver the effluent generated by up to 708.7 EQRs to the City's main, at no cost to the City.

7.4 Conventional Pollutants. Section 4.3 of Ordinance 334 shall apply to all District Users, as if fully set forth herein, including Section 4.3.1 ("Specially Regulated Wastes") and Section 4.3.2 ("Prohibited Wastes").

7.5 Reporting Requirement. The District shall immediately report to the City any change or significant problem or failure of any kind involving the District's system.

7.6 Tap Inspection. All sewer taps of District Users taps shall meet City specifications, including those set forth in Ordinance 334, and shall be inspected by the District before burial, at the District User's expense. Such expense shall not exceed the then-current Connection Fee, as set forth

in the District's Rules and Regulations, as the same may be amended from time to time.

7.7 Liability Insurance. The District shall maintain general liability insurance with respect to its operations during the term of this Agreement, in the minimum amount of \$150,000 per occurrence, \$600,000 in the aggregate. The City shall be named as an additional insured upon said policy.

7.8 Line Expansion. The District shall be fully responsible for all costs associated with repair or expansion of the lines within the Inside Service Area. The homeowners within the Outside Service Area shall be fully responsible for all costs associated with repair or expansion of the lines within the Outside Service Area.

7.9 No Unauthorized Users. The District will prevent unauthorized users and unlawful connections at all times during the term of this Agreement, and will require all District Users to comply with the District's rules and regulations as well as applicable City, County, State and Federal regulations.

7.10 Quantity Limitation. The District will never permit more sewage than that amount generated by 708.7 EQRs to enter the City's main trunk line from the District's facilities.

ARTICLE VIII

EXPANSION OF CITY WWTP

8.1 Expansion of City WWTP. This Article VIII shall apply to any expansion of the City WWTP necessitated as a result of the District's delivery of 708.7 EQRs to the City WWTP or the City's provision of wastewater treatment services to additional City Users, which results in the City WWTP exceeding 80% of its hydraulic or organic capacity. Any future expansion of the City WWTP shall be at the City's sole discretion.

8.2 Future Expansion. The City's obligation under this Agreement is to treat no more than the effluent attributable to District Users of 708.7 EQRs. As of the date of this Agreement, the City's treatment plant is operating at approximately 18% of its total hydraulic capacity and 36% of its total organic capacity, and therefore, the Parties agree that the addition of the 708.7 EQRs of effluent attributable to District Users has not caused, and likely will not cause, the City to exceed the

design capacity of the City WWTP under current law. Notwithstanding the above, the Parties recognize that acceptance of the 708.7 EQRs from the District and/or the City's provision of wastewater treatment services to other City Users or third parties may require the future expansion of the City WWTP (the "Expanded WWTP"). Regarding such expansion or alteration project (the "Expansion Project"), the following Sections shall apply:

a) The Expansion Project may consist of either the addition of one lagoon or pond at the City WWTP and any and all related expenses.

b) The City shall determine when the Expansion Project shall be undertaken and at the time such decision is made, shall give notice to the District. The City will not make the decision to proceed with the Expansion Project and construct the Expanded WWTP until: (1) the City WWTP is at 80% of either hydraulic or organic capacity based on actual use; or (2) the City WWTP will be at 80% or more of either hydraulic or organic capacity based upon existing usage plus projected usage based on building permits that have, in fact, been issued.

c) Upon a determination by the City that the Expansion Project be undertaken, the City shall undertake the same in accordance with the provisions of Article X below.

d) The total Expansion Project costs shall be paid by the District from the Capital Expansion Fund. If engineering estimates of total Expansion Project costs or total Expansion Project costs are greater than the amount then available in the Capital Expansion Fund, the District shall secure such additional funds as are necessary to pay the Expansion Project costs. The method through which the District shall finance the Expansion Project shall be determined by and remain within the full discretion of the Board of Directors of the District. The agreement by the District to fund the Expansion Project, as set forth herein, shall at all times remain subject to annual appropriation by the Board of Directors of the District, and shall not be construed as creating a multiple fiscal year obligation of the District. Should the District fail to appropriate funds for the Expansion Project in accordance with this Section 8.2 d) within six months following the notice required by Section 8.2 b), the City shall have the right to terminate this Agreement upon ninety (90) days advance written notice given to the District.

e) Any monies not expended from the Capital Expansion Fund to pay for the Expansion Project following completion of the Expansion Project shall, at the District's discretion, either be retained in said fund for future capital costs associated with the City WWTP; remitted to the District to pay for other capital improvements, including but not limited to relocation of the existing point or points of connection of the District's facilities to the City main line; or may be pledged by the District, in the discretion of its Board of Directors, to repay any outstanding loan or other obligation of the District.

ARTICLE IX

CONSTRUCTION OF NEW WWTP

9.1 Construction of New WWTP. This Article IX shall apply to the construction of any new City WWTP (the "New WWTP"), which CDPHE or the State requires to be constructed based on changes in State or Federal law, including but not limited to a requirement that nitrogen removal occur at the City WWTP. This Article IX shall also apply to the construction of any New WWTP required by functional obsolescence of the City WWTP. In the event that a New WWTP is required, the City shall undertake the same in accordance with the provisions of Article X below.

ARTICLE X

10.1 Ownership and Maintenance of City WWTP. During the term hereof, the City shall operate and maintain the WWTP at its sole cost and expenses, for the benefit of the City Users and District Users, in accordance with applicable standards, policies, rules and regulations of the City, as the same now exist or may be amended from time to time. The City shall own and upon substantial completion of construction of the New WWTP or Expanded WWTP be responsible for the continued maintenance and operation thereof.

10.2 New WWTP or Expanded WWTP. By execution hereof, the Parties agree that the New WWTP or Expanded WWTP may be required to replace or add capacity to the City WWTP. The parties anticipate that the following steps will be involved in the design, permitting and construction of either the Expanded WWTP or the New WWTP:

- a) Preparation of an updated, current Wastewater Utility Plan for the City (the "Wastewater Utility Plan");
- b) Site application and construction document approvals for the Expanded WWTP or New WWTP by CDPHE;
- c) Engineering design of the Expanded WWTP or New WWTP;
- d) Bidding for construction of the Expanded WWTP or New WWTP, and award of bid for construction;
- e) Construction of the Expanded WWTP or New WWTP.

The overall time frame for completion of the foregoing tasks is difficult to predict, given that there is no present need to expand the City WWTP, as the same is operating at approximately 18% of total hydraulic capacity and 36% of total organic capacity.

10.3 New WWTP Cost Sharing. The City will pay all amounts associated with the design, permitting and construction of the New WWTP. District Users shall be required to participate in the funding of the New WWTP to the same extent and to the same degree as City Users, as set forth in Section 10.5 hereof. No portion of the Capital Expansion Fund shall be used for the New WWTP, unless the Board of Directors of the District agrees to the same in writing.

10.4 WWTP Design and Construction Criteria and Detail. The following criteria and details shall govern the design of the New WWTP or Expanded WWTP:

- a) The New WWTP or Expanded WWTP shall be designed and constructed to conform to the most recent version of the Wastewater Utility Plan which will be prepared by the City and reviewed and approved by the District's consulting engineer prior to submission

of the necessary applications for permitting of the New WWTP or Expanded WWTP.

b) All design and construction shall assure that the New WWTP or Expanded WWTP will meet any and all applicable effluent standards required to comply with the regulations of CDPHE and any other regulatory agencies.

c) The New WWTP or Expanded WWTP shall be designed based upon the assumption that each residential sewer tap equivalent or EQR will generate a maximum month (i.e., maximum 30 day average) flow of 287.5 GPD of wastewater requiring treatment, or such other GPD figure as the City has adopted or is referenced in the Wastewater Utility Plan.

d) The design shall comply with all applicable laws, regulations, codes and standards established by federal, state and local agencies with approval or regulatory authority over wastewater treatment facilities. In addition to subsections a), b), and c), above, all wastewater improvements shall be designed and constructed to meet the most current version of all applicable criteria established by the CDPHE. At the time of execution of this Agreement, the principal CDPHE criteria document is entitled "Policy 96-1: Design Criteria Considered in the Review of Wastewater Treatment Facilities" (Revised April 9, 2007). This document shall be the general guide with respect to the degree of redundancy and reliability provided in the overall design. The CDPHE criteria do not provide the level of detail necessary to fully design and construct the facilities. The additional detail must be provided by the design engineer.

e) The New WWTP or Expanded WWTP shall be contracted for pursuant to a competitive bidding process in which a minimum of three (3) contractors designated by the City and approved by the District, with approval not to be unreasonably withheld, are solicited to submit bids for construction. Upon completion of the bidding process, the City shall enter into a contract with one of the bidding contractors, which, in the City's discretion, may or may not be the low responsive bidder. The City may reject all bids and rebid the work if it is in the best interest and is reasonable to do so.

f) The New WWTP or Expanded WWTP construction contracts shall include a requirement that the contractor provide a payment and performance bond as a condition of the contract; shall require a minimum of one (1) year warranty on labor and materials from the contractor, commencing at substantial completion of the construction provided for in the contract; shall provide for conditional acceptance by the City of the New WWTP or Expanded WWTP upon substantial completion of construction as certified by the design engineer, walk through/inspection and preparation of a punch list; and shall provide for final acceptance of the New WWTP or Expanded WWTP by the City upon satisfactory completion of the punch list and final inspection, as certified by the design engineer.

g) The New WWTP or Expanded WWTP shall be inspected full time or periodically during construction and upon completion of construction by the design engineer, as specified by the design engineer, to assure that construction conforms to the design and is being performed in a good and workmanlike fashion. In addition, the City's engineer may conduct such inspections during construction as deemed necessary by the City.

10.5 Usage Limitations and Funding of New WWTP. Except as provided in this Agreement, all City rates and regulations pertaining to sewer service shall remain applicable to the Service Area. The City shall set the rates for the wastewater treatment/sewer service and the District agrees to remit its fixed percentage of City Sewer Fees per District User to the City on a monthly basis, in accordance with Section 5.1 of this Agreement. By way of example and not limitation, if the City Sewer Fee increases to \$20.00 per month in order to finance or otherwise offset the costs of the New WWTP, that new rate would be applicable within the Service Area and the District would be required to remit \$15.97 per month to the City per District User (representing 80% of \$20.00). Additionally, if the City elects to finance the New WWTP through the issuance of revenue bonds and establishes a new temporary fee or fee structure for wastewater treatment / sewer service, the new temporary fee or fee structure shall be applicable within the Service Area, but only for the period that such temporary fee or fee structure is imposed within the City. The intent of this Section 10.5 is to ensure that District Users and City Users bear an equivalent burden with respect to financing costs associated with the New WWTP and that District Users do not bear a

disproportionate share of the same. Nothing in this Agreement shall be interpreted to limit the various means by which the Parties may proceed to finance the New WWTP. For example, the City shall be required to apply for and seek State grants, low interest loans and other means of financing the New WWTP which minimizes the cost of the New WWTP for City Users and District Users. The District shall fully cooperate with the City in any such grant or loan application. Should the City elect to finance the New WWTP through limited tax general obligation bonds issued for that purpose, and proceed to seek voter approval for a new tax to support such debt, the City shall so notify the District and the District shall take all reasonable steps to also seek voter approval for its equitable share of the costs of the New WWTP, which equitable share shall be equal to the District's then-current percentage utilization of the City WWTP, based on average use figures over the immediately preceding 36-month period. In the event eligible electors within the District approve issuing debt to finance the District's of the New WWTP, the District shall not be required to issue such debt or impose a debt service mill levy unless and until eligible electors within the City have approved the same. In the event eligible electors within the District do not approve issuing debt to finance the District's portion of the costs of the New WWTP, the Board of Directors of the District shall consider adopting a fee in lieu of taxes ("FILT") within the Service Area, which fees will be collected and remitted to the City in order to ensure that District Users pay their fair share of the design, engineering and construction of the New WWTP, net of any grants obtained by the City. The City is aware and agrees that a FILT may be utilized by the District within the Outside Service Area, given that the Outside Service Area is not within the boundaries of the District and the District does not possess the ability to impose a property tax therein.

ARTICLE XI

MISCELLANEOUS

11.1 Relationship of Parties. This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Parties.

11.2 Modification. This Agreement may be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, only by an Agreement in writing duly authorized and executed by both Parties.

11.3 Waiver. The waiver of a breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver or a waiver of any subsequent breach by the other Party of the same or another provision of this Agreement.

11.4 Integration. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement shall be valid or binding.

11.5 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

11.6 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado, and the Parties agree that the venue and jurisdiction over any claim arising from this Agreement shall lie in the District Court of Mineral County.

11.7 Headings for Convenience Only. The headings, captions and contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.

11.8 Government Authority. The Parties shall comply with any and all valid state, federal or local laws or regulations covering the subject of this Agreement, and any and all valid orders, regulations or licenses issued pursuant to any federal, state or local law or regulation governing the subject of this Agreement.

11.9 Default and Remedies. If either party believes the other is in default hereunder, a written notice specifying the default shall be sent from the non-defaulting party to the defaulting party and the defaulting party shall have thirty (30) days from the date of the notice to cure the default. If the default is a failure of the City to make available EQRs as required herein, the District shall be entitled to specific performance and damages. If there is any other default hereunder, the non-defaulting party shall be entitled to all remedies permitted at law or in equity.

11.10 Costs and Attorneys' Fees. In the event of litigation arising out of this Agreement or an alleged default hereunder, in addition to any other remedies, the prevailing party shall be entitled to recovery of its costs and reasonable attorneys' fees.

11.11 Force Majeure. Performance of this Agreement shall be delayed or excused to the extent that Acts of God, labor or material shortages, strikes, wars, insurrections, or other circumstances beyond the control of the parties either delay or prevent performance hereof. Force majeure events specifically do not include adverse market, financing or general economic conditions.

11.12 Notice. Notices under this Agreement shall be by certified mail, return receipt requested and shall be effective and deemed received two (2) business days after deposit in the U.S. Mails. Notices shall be as follows:

City:	City of Creede 2223 Main Street P.O. Box 457 Creede, Colorado 81130
District:	Deep Creek Water and Sanitation District c/o Grimshaw & Harring, P.C. 1700 Lincoln Street, Suite 3800 Denver, Colorado 80203 <i>with a copy to:</i> Board of Directors 2043 S. Washington Street Denver, Colorado 80210

11.13 Indemnification. The District expressly states and agrees, to the maximum extent permitted by law, that it will indemnify and hold harmless the City, its Board members, officers, directors, agents, successors, assigns and representatives, from any and all liability, damage, expense (including reasonable attorney fees, court costs, and all costs of investigation and discovery), causes of action, suits, claims or judgments arising from or relating in any way to the operation, maintenance or repair of the City WWTP, injury to person or property or legal violations which occur on or about the City WWTP and arise as a result of the maintenance, use, construction, repair, and operation of the City WWTP, except to the extent caused by the City's negligence or intentional acts, or the negligence or intentional acts of third-parties.

11.14 Governmental Immunity. Nothing in this Agreement shall be deemed to waive or otherwise limit any and all defenses available to the Parties pursuant to the Colorado Governmental Immunity Act or as otherwise provided by law.

11.15 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which will constitute an original agreement, but all of which together will constitute a single agreement. A facsimile transmitted copy of this Agreement executed by one of the Parties hereto will be accepted as a copy of this Agreement originally executed by such Party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written, with an effective date of May 1, 2009.

CITY OF CREEDE, COLORADO, a Municipal
Corporation of the State of Colorado

By: _____
Its Mayor

ATTEST:

City Clerk

(City Seal)

DEEP CREEK WATER AND SANITATION
DISTRICT

By: _____
Chairperson and President

ATTEST:

Secretary

EXHIBIT A

Service Area

T. 41 N., R 1 W, N.M.P.M.:

Section 1:

SE¹/₄ SW¹/₄ , SE¹/₂ SE¹/₂, N¹/₂ SW¹/₄ SE¹/₄, SW¹/₄ SW¹/₄ SE¹/₄, NE¹/₄ SE¹/₄ and SE¹/₄ NW¹/₄ SE¹/₄, excluding the Mineral County Airport

Section 12;

Fraction of the NE¹/₄ NW¹/₄ located northerly of Mineral County Airport; N¹/₂ NE¹/₄, SE¹/₄ NE¹/₄ and that fraction of the NW¹/₄ SW¹/₄ located northerly of Elk Valley, Rec. No. 39179, excluding the Mineral County Airport and all federal lands.

Section 11:

Fraction of the NE¹/₄ SE¹/₄, located northerly of Elk Valley, Rec. No. 39179.

T. 41 N, R 1 E, N.M.P.M.:

Section 7:

Creede Haven No. 2, Rec. No. 35620, excluding Lot 20, Block G therefrom, and that fraction of Creede Haven No. 3, Rec. No. 35619 located in Section 7.

It is the intent of this description to exclude all federal lands.

EXHIBIT B

WAIVER AND RELEASE OF LIABILITY

We, (I), _____ Owner (Owners) of the following described property situate in Mineral County, Colorado and described as follows, to wit:

which property is not presently eligible for connection to the Deep Creek Water and Sanitation District sewage collection system and, consequently, to the City of Creede Wastewater Treatment Plant (the "City WWTP"), as consideration for permission to connect to the collection system of the Deep Creek Water and Sanitation District (the "District") and to have sewage from the property described above treated at the City WWTP, do hereby state and agree: That we, our successors in interest, our heirs, representatives and assigns, do hereby release the City of Creede, Colorado (the "City") from any and all liability of any kind or character, arising from the Intergovernmental Agreement Regarding Wastewater Collection and Treatment (the "Agreement") between the City and the District and the operation of the City WWTP, without exception as to the type of damages or amount of damages and with the following sole exception: That we reserve the right to bring action against the City and any other appropriate parties in the event that any damages incurred by us, our successors in interest, heirs, representatives and assigns directly result from the willful, deliberate and bad faith interruption of sewage service by the City or other appropriate parties. Other than as specifically set forth above, we hereby waive any damages incurred by us as a result of the City's activities under or arising from the Agreement and release the City of all liability for any such activities.

We acknowledge that this Waiver and Release of Liability constitutes a covenant running with the property above described, and shall not cease upon my/our transfer of the above referenced property. We further agree that a copy of this Waiver and Release of Liability may be recorded in the real property records of Mineral County, Colorado, at the City's expense.

IN WITNESS WHEREOF, we, (I), have hereunto set our (my) hand(s) and seal(s) this ____ day of _____, 20__.

STATE OF COLORADO)
)ss.
COUNTY OF MINERAL)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____.

WITNESS my hand and official seal.
My commission expires: _____

Notary Public

EXHIBIT C

NOTIFICATION REGARDING PAYMENT OF
CITY SEWER TAP FEE, CITY SEWER SYSTEM DEVELOPMENT FEE, AND RECEIPT OF
WAIVER AND RELEASE OF LIABILITY

Date: _____, 20__

To: Deep Creek Water and Sanitation District (*via email, email delivery preferred*)

From: City of Creede

The following address is within the Service Area of the Deep Creek Water and Sanitation District and has applied for a sewer tap: _____

The City hereby notifies the District that (check all applicable boxes):

- The City has received the current Sewer Tap Fee in the amount of \$_____.
- The City has received the current Sewer System Development Fee ("SSDF") in the amount of \$_____.
- The City has received an executed Waiver and Release of Liability.

In accordance with the intergovernmental agreement between the City and the District, the City shall deposit the SSDF in the Capital Expansion Fund, as that term is defined in the Agreement.

Certified this ___ day of _____, 20__.

Name: _____

Title: _____