

**AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF MORRISON AND THE CITY AND COUNTY OF DENVER,
COLORADO REGARDING TOWN OF MORRISON'S WATER TREATMENT
FACILITY**

THIS AMENDED AND RESTATED INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered of the date of execution by and between the **Town of Morrison**, a Colorado municipal corporation (referred to herein as “Morrison”) with an address of 321 Colorado Hwy 8, Morrison, Colorado 80465; and the **City and County of Denver**, a Colorado municipal corporation (referred to herein as “Denver”) with an address of 1437 Bannock Street, Denver, Colorado 80202, jointly referred to as the “Parties”.

RECITALS

WHEREAS, Denver owns certain real property generally located at Red Rocks Park, Town of Morrison, State of Colorado, a Denver designated mountain park, more particularly described and depicted on the Overall Location attached hereto as **Exhibit A** and incorporated herein by this reference, (a portion of which is utilized as the Headquarters for the Denver Mountain Parks (referred to as the “**Park**” or “**DMPHQ**”)); and

WHEREAS, Morrison has operated water purification facilities for over 90 years on and within the Park and DMPHQ; and

WHEREAS, in or around 2007 Morrison and Denver entered into a new intergovernmental agreement (“**Intergovernmental Agreement**”) to replace and supersede an agreement, dated August 10, 1973 and amended July 3, 1981, all regarding Morrison’s water treatment plant located and operated at and within DMPHQ to provide potable water supply for fire protection and other public uses; to allow Morrison to expand and upgrade the water treatment plant at DMPHQ; to accord with certain policies established by the Colorado Department of Public Health and Environment; and to quitclaimed right, title and interest in the old filter building to Denver (“**WTP Expansion**”); and

WHEREAS, certain existing utilities constructed under the Intergovernmental Agreement continue to remain within the DMPHQ, including a treated water line that provides delivery of potable water from the water treatment plant; a raw water line that provides delivery of nonpotable water for treatment at the water treatment plant; a buried natural gas line; electrical and telephone lines located on a single set of overhead poles running from the WTP Site through the center of DMPHQ; and an existing sewer line that runs from the Mess Hall on the south side of DMPHQ to a point where it connects to a Morrison sewer line; and

WHEREAS, in consideration of the water treatment plant allowed by Denver under the initial agreement, the WTP Expansion under the Intergovernmental Agreement, and construction of a clearwell under a First Amendment to the Intergovernmental Agreement, executed June 23, 2017, Morrison agreed to provide water and sewer services free of tap fees and special utility assessments to DMPHQ; and

WHEREAS, Morrison has a continuing and increasing need to provide adequate potable water supplies for the Morrison community, and has therefore determined that it is necessary for it to construct a new water treatment facility (the “**New WTP**”) to replace the function of the existing treatment facility (the “**Existing WTP**”); and intends to purchase approximately one (1) acre of real property immediately adjacent to the DMPHQ property (“**Town Property**”), upon which it intends to construct the New WTP; and

WHEREAS, the construction of the New WTP is necessary in order to allow Morrison to provide service to Morrison's existing municipal customers within its Town boundaries; to provide service to additional anticipated new water and sewer customers; and to provide continued service to the DMPHQ and to the Red Rocks Amphitheatre located within Denver's Red Rocks Park; and

WHEREAS, construction and operation of the New WTP is necessary as a critical and important public purpose of long term sustainability and redundancy required for the Town's municipal water customers, including the DMPHQ and the Red Rocks Amphitheatre, and to ensure a reliable and sustainable water supply for all of these customers; and

WHEREAS, as a part of this Agreement, Morrison requested that Denver, with Morrison's assistance and contribution, modify certain existing utility locations and service to allow Morrison to enhance water supply and delivery reliability for the Town in order to serve its existing customers including Denver Mountain Parks, Red Rocks Amphitheatre, and anticipated future customers; and

WHEREAS, recognizing that the requested modifications will result in a detriment to the DMPHQ and Denver's park land, both Denver and Morrison also desire to improve the DMPHQ and affected park land for the benefit of Denver, Morrison, Morrison's Existing and New WTP, and for the general public; and

WHEREAS, the Parties wish to replace the Intergovernmental Agreement, as amended, with this Agreement to provide for the conditions under which the existing treatment plant buildings will continue to be used, to address the impacts of the Town's construction of the New WTP on the DMPHQ, and to address the expansion of treated water service to DMPHQ from the Town's New WTP; and

WHEREAS, as consideration for entering this Agreement, Morrison agrees to continue to provide sewer service for Denver's use at DMPHQ as specified in this Agreement, which service will be in addition to the water service previously provided for in the Intergovernmental Agreement, as amended; and

WHEREAS, this Agreement is for the mutual benefit of the Parties and serves important public purposes for the Morrison community and the Denver Mountain Parks.

NOW THEREFORE, in consideration of the mutual agreements by and between Morrison and Denver, and subject to the terms and conditions set forth hereinafter, it is understood and agreed as follows:

1. **Water Treatment Plant Modification and Expansion.** Morrison intends to remove or modify some portions of the Existing WTP in its current location, and construct a new expanded WTP on Morrison land immediately west of and contiguous abutting Red Rocks Park.

a. **Location of New WTP.** Morrison intends to construct its New WTP outside of Denver property, but still directly adjacent to the DMPHQ. Morrison will require limited access to the DMPHQ and Denver property for the operation of the New WTP.

b. **Facilities Remaining in Park; Decommissioning of Existing WTP.** Some portions of the Existing WTP, including but not limited to Bear Creek Diversion, raw water piping and flow monitoring, overflow manhole, pretreatment building, filter building, clearwell and pump station, electrical systems and buried piping are intended to remain and function within DMPHQ after completion of the New WTP. The portions of the Existing WTP that will continue to function in order to provide water service shall remain within the DMPHQ subject to the terms and conditions of this Agreement and as set forth below in Section 2.b. Morrison intends to decommission the non-functioning portions of the Existing WTP. As a part of the decommissioning of the Existing WTP, Morrison shall demolish and remove non-functioning portions from Denver property.

2. **Existing Utilities and Service.**

a. The Existing WTP remains within the land owned by Denver and operated as the DMPHQ. The site is as shown and described in **Exhibit B**, attached and incorporated herein by reference (the “**Existing WTP Site**”). The Existing WTP Site shall be utilized as set forth below in Paragraph 2.b. Any changes to these facilities or changes in uses may only be permitted through written approval by the Executive Director. Material modifications to the Existing WTP or this Agreement are permitted only by amendment to this Agreement, or by a new agreement, executed in the same manner as this Agreement.

b. **Use of Existing WTP.** Four preexisting buildings and other infrastructure described in this subparagraph b. shall remain on the Existing WTP Site as set forth or limited under this Agreement. Three of the four buildings, the existing pretreatment building, the filter building, and the framed shed (each separately indicated as “**Existing Pretreatment Building**”, “**Existing Filter Building**”, “**Existing Framed Shed**” on **Exhibit B**), will be decommissioned for water treatment purposes. As a material requirement of this Agreement, the Existing Pretreatment Building, Existing Filter Building, and Existing Framed Shed shall be (i) demolished and removed from Denver property within one (1) year after completion of the New WTP; or (ii) subject to Denver’s sole discretion and determination, either the Existing Pretreatment Building, the Existing Filter Building, or the Existing Framed Shed may be donated to Denver from Morrison if Denver finds a suitable park purpose and use for the Buildings. The exterior of the Clearwell and Pump Station Building, which will remain on Denver property only for water treatment purposes, unless otherwise required, shall be painted in a manner directed by Denver to be consistent or complement Denver’s structures existing on the DMPHQ land. The Clearwell and Pump Station Building will remain as is and will continue to function and provide service as a part of Morrison’s water treatment facility.

3. **The New WTP.** Morrison has entered into a contract for purchase of approximately one (1) acre of land located immediately adjacent to the southerly boundary of the DMPHQ, which is also the southerly boundary of the licensed area for the Existing WTP. Morrison intends to construct a 1.0 million gallons per day (MGD) water treatment plant on this site. The New WTP will not be located on land owned by Denver, however, Morrison will construct certain appurtenances on Denver land, including retaining walls, concrete gutters, rip rap, electric pads, and other installations for the improvement and access to Morrison property. The Parties acknowledge and agree that Morrison's construction and operation of the New WTP will adversely impact Denver land and park operations, and for this reason, wish to provide for certain conditions and restrictions upon the construction and operation of the New WTP, as follows:

a. **Construction of The New WTP.** Morrison has caused preliminary construction drawings to be prepared for the construction of the New WTP. Such drawings are provided to Denver for its review and comment. Denver shall have no authority or right to object to or require changes in the plant design, except Denver shall have the authority and right to approve or reject any part of Morrison's design or construction encroaching on, adversely affecting, or impacting Denver property. Denver shall promptly inform Morrison if any designs may result in an unauthorized encroachment on or use of Denver land or otherwise adversely affect Denver land in a manner not permitted under this Agreement. Morrison and Denver shall cooperate in the manner set forth in Paragraph 3(d) below to resolve the encroachment or adverse impact. Construction is anticipated to begin in 2022.

b. **Access for Morrison Construction.** During construction of the New WTP, Morrison shall be provided temporary access to the DMPHQ as depicted in **Exhibit C** for the purposes of transporting heavy equipment and Morrison's road widening work, and other related uses. Morrison's access paths shall avoid other ongoing park uses and operations. Vehicle sizes shall be limited as set forth in **Exhibit C**. Morrison acknowledges and agrees that this access and Morrison's work will cause significant disruption to DMPHQ and other park operations and may prevent normal operations and uses. Morrison shall restore and repair to the same or better condition any portion of the DMPHQ altered, modified or damaged as a result of Morrison's uses and work.

c. **Access After Construction for Normal Operations; Roadways.** After completion of construction of the New WTP, and during normal operation of the New WTP and the term of this Agreement, Morrison will be provided limited, permanent access as needed for the reasonable use and function of the New WTP and the Existing WTP. Morrison shall make all reasonable efforts to avoid interruption of DMPHQ operations and any Denver Parks and Recreation ("**DPR**") park uses. Morrison shall restore and repair any alteration, modification or damage caused as a result of its operation of the New WTP and Existing WTP. Pedestrian and motor vehicle access to the New WTP shall be limited to the existing access road to the Existing WTP, which is within the DMPHQ, with access points as shown in **Exhibit A**. Morrison may utilize existing roadways within DMPHQ for its access to the Existing WTP and the New WTP and may provide minor road maintenance, patching and debris removal as sufficient and needed to allow Morrison to utilize the roadways and access the facilities. Said roadways may not be widened, altered, or paved by Morrison without prior written approval of the Executive Director. Morrison shall promptly repair and restore any roadways damaged by vehicles or equipment

owned or used by Morrison or its contractors or subcontractors, or damaged by erosion from the New WTP, the Existing WTP, or any Morrison facility, or by other activities engaged in by Morrison or its contractors or subcontractors under this Agreement.

d. Access During DPR Work. Morrison further acknowledges that DPR may be performing construction, renovations, or other improvement work at the DMPHQ during the same period as Morrison construction. In the case DPR's work and Morrison's work conflicts, or DPR requires access to its own facilities to perform DPR work, DPR's project work shall take precedence over Morrison work and access. The Parties shall coordinate in good faith to avoid conflict in the respective work. However, Denver is not liable or responsible for delays, including associated costs or any other liabilities, to Morrison's project work as a result of conflicts.

e. Roadway and Other Improvements. As a material condition of the Agreement and part of the benefit to Denver and the DMPHQ, Morrison shall perform an engineering study of the existing access road to the Existing WTP. Morrison shall make roadway improvements as recommended in a scope of work and to be mutually agreed upon between Morrison and Denver.

f. Stormwater. The New WTP will be located south and uphill of the existing DMPHQ property. Morrison agrees that discharge of all stormwater and water runoff from the New WTP site shall be detained and released with stormwater control facilities on site such as to deliver the historic runoff to the DMPHQ property at materially the same time, rate, and amount of flow as current historic patterns. After one (1) year of the New WTP's operation, Denver and Morrison shall review and assess discharge and runoff to determine whether improvements are required. If such improvements are needed then the improvements shall be completed in accordance with the recommendations of appropriate professionals, including engineers or other design professionals as may be needed, and to Denver's satisfaction. Morrison shall be responsible for any damage caused to Denver property as a result of the operation of the New WTP and the Existing WTP including stormwater discharge.

g. Overflow Structure and Drainage Line. Morrison agrees to maintain the usage of the overflow structure, metering vault(s), and drainage line at the Existing WTP to return excess diversions to Bear Creek via the channel flowing north through DMPHQ. The overflow infrastructure will perform the same function for the New WTP. Morrison is required to maintain or improve overflow structures and drainage lines in a manner that avoids damage to any Denver property. The location of the overflow structure, drainage line, and swale are shown on **Exhibit A**. Morrison shall be responsible for any damage caused to Denver property as a result of the operation of the New WTP and the Existing WTP including discharge from overflow structures and drainage lines.

h. New WTP Building Aesthetics. Morrison shall make all best efforts to design and construct its New WTP to match or complement the aesthetic design of the DMPHQ facilities and buildings, including building colors, roof color and design.

4. Existing and New Ancillary Facilities. Morrison and Denver agree that the New WTP, the existing clearwell at the Existing WTP site, as well as the DMPHQ buildings, will need

to be served by various existing and new ancillary facilities, including, among other things, the access road, raw water lines to the New WTP, treated water lines running from the water treatment plant to the DMPHQ buildings, a sanitary sewer service line from the New WTP to connect to the sewer main serving the DMPHQ buildings, as well as various other lines and facilities, all integral to the operation of a modern water treatment plant. These ancillary facilities are listed below and shown on **Exhibit D** entitled “**Ancillary Improvements.**” The Parties agree that to the extent located on Denver property, these facilities are permitted pursuant to the license granted by Paragraph 7 below. The identified ancillary facilities may be modified, relocated, added to or deleted administratively as mutually agreed by the Parties from time to time by revising Exhibit D and substituting the revision as the official Exhibit D to this Agreement. The specific design and work needed to modify, relocate, add or remove ancillary facilities within Denver property shall require prior notice, review and approval before any work may commence on Denver property.

5. **Future Improvements to DMPHQ.** Under this Agreement Morrison shall be required to perform and complete certain improvements to DPR property intended to benefit Denver and Morrison, including the specific improvements set forth in this Paragraph 5, as well as the other obligations of Morrison in this Agreement. If certain improvements to the DMPHQ cannot be completed as a part of Morrison’s work and the New WTP design, as required by this Agreement, then such work shall be completed in a mutually agreed upon manner and timeframe (“**Future Improvements**”). These Future Improvements, and any other future work that may not be set forth in this Agreement, shall require written approval of the design and work by the Executive Director before such work commences, and may require assignment of authority from Denver to Morrison by separate agreement. As a material condition of this Agreement and the right granted to Morrison to continue operation of the Existing WTP including storage of Morrison’s personal property, Morrison shall perform and complete to Denver’s satisfaction the following additional improvements:

a. **Screening and Landscaping.** Morrison shall provide screening and landscaping designs and plans within one (1) year of the completion of the New WTP. These landscaping plans shall be provided to Denver for its review and approval before being finalized by Morrison. The Parties shall work in good faith to resolve any objections by Denver so as to reach an agreement on the appropriate landscaping plan. The landscaping and associated materials shall be donated to Denver. Morrison’s installation shall be completed within the one-year period and in a manner that benefits DMPHQ.

b. **Overflow Structure and Drainage.** Denver and Morrison shall confer to review and assess the need for Future Improvements to the overflow structures and drainage facilities. Overflow structures, channels and drainage facilities shall be designed as a riparian feature of the park in manner that complements the DMPHQ and other affected park land, and provides a natural drainage function that controls flooding and preserves the aesthetics of the park and the habitats. To comply with this subpart b., Morrison will contribute one-half of the cost of the study and design of improved overflow and drainage facilities, and one-half of the construction costs, not to exceed a total Morrison cost of \$50,000.00.

6. **Inspections; Construction Meetings.**

a. Denver shall have the right to enter upon the Existing WTP site at all reasonable hours, to inspect the exterior areas of the plant site and shall be provided access by Morrison to the existing plant buildings, including any other structures on the Existing WTP site, upon reasonable notice, in order to confirm compliance with this Agreement. Morrison shall also provide Denver the right to enter upon the New WTP site, upon reasonable advance notice, only for the purposes of inspection for compliance with this Agreement, specifically granting rights to Denver with respect to the New WTP plant site (stormwater, drainage, landscaping).

b. Denver Mountain Parks staff shall be included as a part of all construction progress meetings so as to be informed of construction progress and to provide needed coordination.

7. **License Granted.** Denver hereby grants to Morrison, and Morrison hereby accepts, a revocable license (“**License**”) for the construction, reconstruction, repair, maintenance, and continued operation of the facilities described on **Exhibit D** which are or will be partially located upon property owned by Denver. Such license is issued for a term of 50 years from the date hereof and is subject to all of the terms and conditions in, and shall run simultaneously with, the term of this Agreement. The revocable license to Morrison for the construction described under this Agreement and as it may affect Denver land is limited to the construction of the New WTP and related activities only. Any future construction on Denver land after completion of the New WTP shall require prior notice to Denver and prior written approval from the DPR Executive Director. Future construction on Denver land may also require a separate agreement for the assignment of authority to Morrison for such construction.

8. **Morrison’s Water and Sewer Service to Denver and DMPHQ.** Morrison and Denver agree that in consideration for the License to Denver land and the related uses of facilities provided by this Agreement, Morrison shall provide the following water and sewer services to Denver for Denver’s use in connection with the DMPHQ operation:

a. **Water Service.** Morrison shall provide potable water service for use at DMPHQ. This service shall include the existing fire hydrant connection, for fire protection purposes, on the treated water line in DMPHQ. Morrison shall also furnish, at no cost to Denver for ordinary use at DMPHQ, up to and including sixteen thousand (16,000) gallons of water per month from the treated water line. For water usage above and beyond sixteen thousand (16,000) gallons of water per month, Morrison may charge Denver limited to one-half of the normal residential rate for potable water. Morrison shall not charge Denver administrative, environmental, or other fees for potable water service. Measurement of Denver’s water use shall be by a standard operating water meter, furnished at no cost by Morrison. In addition to the foregoing, Morrison shall provide water service equal to six (6) single-family residential taps for use by Denver at the DMPHQ property totaling 864,000 gallons annually, in locations and for use by Denver at the DMPHQ property, in locations and for buildings as determined by Denver. The six taps shall be in addition to the existing taps previously provided to Denver. When Denver requests additional taps, such taps may be sold consistent with Morrison’s policies and procedures as a utility provider. In the event such sale is approved, Denver shall pay Morrison’s in-town rate for the taps.

b. Sewer Service. Sanitary sewer services shall be provided by Morrison for use at DMPHQ as follows:

i. Mess Hall Sewer Line. Morrison agrees to provide free sewer service for the Mess Hall. It shall be Denver's responsibility to maintain the sewer line running from the Mess Hall to the eastern boundary of DMPHQ as shown on **Exhibit E**.

ii. Residential Quarters. Morrison agrees to continue to provide residential sewer service to the caretaker's residence through the existing sewer line as shown on Exhibit E. Morrison shall provide monthly sewer service at the caretaker's residence at no cost to Denver, so long as sewer services are required. Denver shall be responsible for the maintenance, repair, and replacement of the sewer line connection to the caretaker's residence. Morrison acknowledges and agrees to continue to provide these services to this building if Denver modifies or expands the caretaker's residence use.

iii. Mountain Parks Office. Morrison has previously installed a removable plug and hole in the sewer line for a future sewer connection with the Denver Mountain Parks office located on the north side of DMPHQ. Denver has installed a sewer connection to the Mountain Parks office. Morrison shall provide monthly sewer service at no cost to Denver at the Mountain Parks office so long as sewer service is required at the Mountain Parks office. Denver shall be responsible for the installation, operation and maintenance of the service line to the main and any needed lift station on the service line.

Any existing, renovated, or added DPR facility located within the DMPHQ shall also be provided sewer service at no cost to Denver.

9. **Term**. The term of this Agreement shall commence as of the date of execution and shall terminate on that same date 2072. The term may be extended, upon mutual agreement of the Parties, at any time by restatement of or amendment to this Agreement. The License for the facilities set forth in this Agreement on DMPHQ land granted under Paragraph 7 of this Agreement shall run for the same term and simultaneously with the effectiveness of this Agreement.

10. **Responsibility, Ownership, Risks & Financial Interests**.

a. Morrison. It is understood and agreed that Morrison shall have the sole responsibility, including all costs and other financial liabilities, for the construction, operation, use, maintenance, repair, replacement, and removal (upon termination) of the Existing WTP, the New WTP, treated water lines, raw water lines, sanitary sewer lines, any and all gas utility lines, electrical utility lines, telephone and communication lines serving the New WTP and the Existing WTP Site ("**Morrison Facilities**"). It is further understood and agreed that all of the Morrison Facilities shall be owned solely by Morrison; however, Morrison shall have no property interest of any kind, including any lease or easement, in the real property on which the Morrison Facilities are located.

b. Denver. It is understood and agreed that Denver shall have no responsibility or liability, of any sort including financial responsibility or liability, with respect to the construction, operation, use, maintenance, repair, replacement, or removal of the Morrison

Facilities, including any damages or costs arising from accidents, defects or system failures associated with the Morrison Facilities. It is further understood and agreed that Denver shall have no ownership interest in the Morrison Facilities; however, it is beyond dispute that Denver owns the fee simple absolute title to DMPHQ and supporting land, including all areas where the Existing WTP is located, and that this Agreement is not intended, nor shall this Agreement be construed, to convey or transfer any real interest in property, including any lease or easement, to Morrison. Denver has no ownership interest, and is conveyed no ownership interest, in the New WTP or any part of the Town Property.

c. Risks. Morrison assumes all risks including damage to Denver property or injury or death caused by Morrison's operations with respect to the operation of the Morrison Facilities, of DMPHQ, excluding existing conditions of DMPHQ not caused by Morrison's construction or operation of the Morrison Existing WTP or the New WTP to the extent modified or affected by Morrison's operations, and the management, processing, and release of water and sewage through or from the Morrison Facilities. To avoid doubt, Morrison remains responsible for existing conditions if such conditions were created by Morrison's operations of the Existing WTP prior to the construction of the New WTP.

d. Financial Interests in the Morrison Facilities. Morrison agrees and promises that any financial interests created in, or used to secure payment for the costs of, the Morrison Facilities that remain on Denver property, including but not limited to any bonds, certificates of participation, purchase agreements, and Uniform Commercial Code filings, shall expressly exclude all property title, rights and interests held by Denver in DMPHQ from such debt or financial security contained in such financial instruments. The terms and conditions of this Agreement must be expressly recognized in any such financial instrument(s), which must specifically acknowledge and affirm that any financial interests created by the financial instrument(s) are subordinate to this Agreement.

11. Construction Requirements. The following requirements shall be applicable with respect to work performed by Morrison or its contractors or subcontractors on Morrison Facilities at DMPHQ or requiring access to DMPHQ.

a. Notice & Permits. Demolition, excavation, construction, reconstruction, or replacement work on or requiring access to the DMPHQ shall not be commenced until fifteen (15) days prior written notice is provided to Denver. Any work, staging or storage shall require that Morrison or its contractor(s) or subcontractor(s) to obtain Temporary Construction and Access Permit(s) from Denver, the Parties to reasonably cooperate in the issuance thereof.

b. Applicable Laws. Morrison shall be responsible for obtaining and maintaining, or causing to be obtained and maintained, all required permits, licenses or other governmental authorizations and approvals necessary to perform the construction work and to complete and utilize the Morrison Facilities, including all permits and approvals required by federal, state, and local agencies with authority over water treatment facilities and utilities. Morrison shall, at all times during construction, ensure or cause to be ensured compliance with all laws, statutes, rules, regulations, and order as well as the terms and conditions of this Agreement. Failure to substantially comply with the requirements of this paragraph shall be legal grounds

under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by Denver, until compliance is achieved and any penalties or fines are paid.

c. Insurance, Bonds, and Indemnification. Morrison shall obtain and maintain or require its contractor(s) and subcontractor(s) to obtain and maintain, a) insurance in the amounts and types of coverages appropriate for the work described in this Agreement, and b) one hundred percent (100%) payment and performance bonds from an acceptable surety, with respect to any work on structures, facilities or improvement to land owned by, or to be owned by, Denver. Denver shall be named as an additional insured on all insurance coverages, except professional liability coverage, and Denver shall be named as an obligee on all payment bonds, with respect to any work on structures, facilities or improvement to land owned by, or to be owned by, Denver. In addition, all contractor(s) and subcontractor(s) performing work at the DMPHQ or accessing DMPHQ shall be required to include an indemnification and “hold harmless” clause, approved by and for the benefit of Denver, to protect Denver against claims, actions, and demands arising from or related to the work performed by the contractor(s) and subcontractor(s) or failure to pay mechanic(s) or materialmen with respect to any work on structures, facilities or improvements to land owned by, or to be owned by, Denver. Failure to comply with the requirements of this paragraph shall be legal grounds under this Agreement for construction work on or affecting DMPHQ, and all access to the DMPHQ, to be ordered to cease or to be restricted, as deemed appropriate by Denver, until compliance is achieved and any unpaid claims are resolved. The obligations set out in this paragraph shall survive the termination of this Agreement.

d. Liens & Claims: Morrison shall not permit any mechanic’s or materialman’s liens or any other liens to be imposed and remain for more than thirty (30) days upon any Denver-owned property, or any part thereof, by reason of any work or labor performed or materials furnished by any person or legal entity to or on behalf of Morrison, either pursuant to C.R.S. § 38-26-107 or by any other authority. Morrison shall promptly pay when due, and shall require its contractor(s) and subcontractor(s) to pay when due, all bills, debts and obligations incurred in connection with work performed at DMPHQ and shall not permit the same to become delinquent. Morrison shall not permit any lien, judgment, execution or adjudication of bankruptcy which will in any way impair the rights of Denver under this Agreement or to DMPHQ. Morrison shall timely obtain and submit all documentation or other certifications necessary to demonstrate, to the satisfaction of the Denver, that all liens and claims for labor, materials, equipment, or other services or goods have been released and waived, and that all Denver-owned property is free of any potential liens or claims associated with construction work performed by or on behalf of Morrison. Failure to comply with the requirements of this paragraph shall be legal grounds under this Agreement for construction work to be ordered to cease or to be restricted, as deemed appropriate by Denver, until compliance is achieved and any unpaid liens or claims are paid or otherwise resolved. The obligations set out in this paragraph shall survive the termination of this Agreement.

e. Contracts. Morrison has no authority to bind Denver on any contractual matters. Denver shall have no liability or financial obligation to or for any contractor, subcontractor, supplier, or other person or entity with which the Morrison contracts or has a contractual arrangement with respect to work allowed under this Agreement.

f. Warranties. For any structure or facility built on Denver property by Morrison, which structure, facility or improvement to land is to be owned by Denver after construction, Morrison shall obtain, for the benefit of Denver, a 2-year warranty with respect to the construction and materials.

12. Environmental Requirements. The following requirements shall be applicable with respect to the WTP Expansion and any other work performed by Morrison or its contractors or subcontractors on Morrison Facilities at DMPHQ.

a. Compliance. Morrison shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements relating to the Morrison Facilities. Morrison, in relation to conducting any activity at DMPHQ, shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (collectively, “**Environmental Requirements**”), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment. The term “**Hazardous Materials**” shall mean asbestos and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

b. Noise, Water and Air Pollution. Morrison shall use all reasonable efforts to minimize and control noise, water and air pollution, water discharges, and soil erosion resulting from activities allowed under this Agreement and to avoid any adverse impacts to DMPHQ as a result of noise, water and air pollution, water discharges, and soil erosion resulting from Morrison exercising its rights under this Agreement.

c. Storage & Disposal. Morrison shall make all reasonable efforts to avoid storing materials, chemicals or supplies at the DMPHQ. If such storage does occur, all materials, chemicals, and supplies not otherwise addressed in this section shall be properly contained, managed and stored within enclosed structures at the DMPHQ. All residues, debris, wastes, trash and litter generated by or associated with the water treatment plant and not otherwise addressed in this section shall be properly contained within enclosed structures and lawfully disposed of on a regular basis.

d. Morrison’s Additional Responsibility and Liability. Morrison shall (i) assume all liability for proper manifesting and management of all waste and, in particular, Hazardous Materials generated or uncovered by PSCo in the course of the work or related activities; (ii) use best efforts to minimize the volume of Hazardous Materials associated with the work or related activities on or about the Permitted Area, and shall properly and lawfully handle, containerize, manage and lawfully dispose of all such Hazardous Materials and other waste; (iii) will not take any action with respect to such Hazardous Materials that may cause any alteration in

the chemical, physical or biologic nature or characteristics of the Hazardous Materials while the Hazardous Materials are on or about the Water Treatment Plant site or any other Denver-owned property; and (iv) remove all Hazardous Materials and other waste associated with the construction work or related activities from the Water Treatment Plant site and any other Denver-owned property. All such environmental obligations stated above for construction work shall be completed promptly upon completion of the construction work. Denver shall not own or be responsible for and does not take legal title to any of the Hazardous Materials and other waste associated with the construction work.

e. Soils Management. Soil excavated during construction which contain Hazardous Materials must be removed from the DMPHQ any other Denver-owned property and legally disposed of as specified above. Excavated soil which does not contain Hazardous Materials or other waste may be reused as backfill or re-grading on the DMPHQ premises and any other Denver-owned property provided there are no field indications of contamination such as odors, staining, or organic vapor meter readings above background. Otherwise, any soil brought to the DMPHQ and any other Denver-owned property by Morrison or its contractors for fill or grading purposes must be free of Hazardous Materials and other waste. Determinations as to the existence of Hazardous Materials and other waste shall be made by the Denver's Department of Public Health and Environment.

f. Denver-Owned Property. Morrison is prohibited from bringing or exposing Hazardous Materials on the Denver-owned property during construction, or any other activity associated with the Agreement, but if Morrison should violate this prohibition, Morrison shall be subject to the provisions of this Paragraph 12, and any requirements and directives of the Denver's Department of Public Health and Environment and other federal and state agencies and shall be solely liable for any costs and expenses for remedial actions and damages.

13. Property Damages.

a. Morrison agrees and promises that any real or personal property of Denver damaged or destroyed as a result of or incident to the performance of this Agreement shall be promptly repaired or replaced by Morrison, at Morrison's sole cost, to the reasonable satisfaction of the Executive Director, or in lieu of such repair or replacement, Morrison agrees and promises to pay Denver in an amount sufficient to compensate for the loss sustained or costs incurred by Denver, based on replacement cost, for any damage that may result from the location, construction, operation, repair, maintenance, or replacement of the Morrison Facilities.

b. Denver shall have no responsibility or any liability with respect to any damages or losses resulting from public access to the Morrison Facilities or from Denver employees, contractors or agents engaging in ordinary work activity at DMPHQ. Morrison shall be solely responsible, as Morrison deems it necessary, for securing the Existing WTP Site from public access (provided that any security fence installed by Morrison must receive prior written approval by the Executive Director and barbed wire or other access-control devices that might cause physical injury are not allowed). Morrison shall assist Denver, as needed, in locating any underground utilities on DMPHQ that are Morrison Facilities.

14. **Inspections.** Denver shall have the right to enter upon the Existing WTP Site at all reasonable hours to inspect the exterior areas of the Existing WTP Site and shall be provided access by Morrison upon reasonable notice in order to confirm compliance with this Agreement.

15. **Termination.**

a. Denver has the right to terminate this Agreement for substantial breach or violation of the terms, conditions, warranties and promises of this Agreement, provided that Morrison has not cured the breach or violation within sixty (60) days of the date of written notice from Denver. Notice of breach or violation shall be in writing signed by the Executive Director and delivered to Morrison as provided in this Agreement. Additional time for curing a breach or violation may be granted by the Executive Director, at the Executive Director's reasonable discretion, upon written request from Morrison.

b. Likewise, the Agreement shall be terminated, in whole or part as appropriate, with respect to the Existing WTP Site, or any portion thereof, if Morrison discontinues, intentionally or unintentionally, the use of, or otherwise abandons, the Existing WTP Site, or any portion thereof, for a period of twelve consecutive months. No use of the Existing WTP Site, or any portion thereof, shall be deemed discontinued or abandoned if Morrison obtains, prior to discontinuing use, written acknowledgment of the Executive Director that the use will be restarted within a specified time period or upon the occurrence of a specified event.

16. **General Provisions.**

a. **Appropriation.** Notwithstanding any provision of this Agreement to the contrary, the Parties agree that this Agreement is contingent upon all funds necessary for performance under this Agreement being budgeted, appropriated and otherwise made available by the respective Parties. The Parties acknowledge that this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of either Party.

b. **Non-waiver.** No Party shall be excused from complying with any provision of this Agreement by the failure of the other Party to insist upon or to seek compliance. No assent, expressed or implied, to any failure by a Party to comply with a provision of this Agreement shall be deemed or taken to be a waiver of any other failure to comply by said Party.

c. **Examination of Records and Audit.** Any authorized agent of Denver, including the Denver City Auditor or his or her representative, has the right to access, and the right to examine, copy and retain copies, at Denver's election in paper or electronic form, any pertinent books, documents, papers and records related to Morrison's performance pursuant to this Agreement, provision of any goods or services to Denver, and any other transactions related to this Agreement. Morrison shall cooperate with Denver representatives and Denver representatives shall be granted access to the foregoing documents and information during reasonable business hours and until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations. When conducting an audit of this Agreement, the Denver City Auditor shall be subject to government auditing standards issued by the United

States Government Accountability Office by the Comptroller General of the United States, including with respect to disclosure of information acquired during the course of an audit. No examination of records and audits pursuant to this paragraph shall require Morrison to make disclosures in violation of state or federal privacy laws. Morrison shall at all times comply with Denver Revised Municipal Code 20-276.

d. Applicable Law/Exercise of Authority. The Parties agree to comply with all applicable federal, state and local statutes, charter provisions, ordinances, resolutions, rules, regulations, policies, and standards in existence as of the effective date of this Agreement or as may be subsequently enacted or adopted and applicable to this Agreement; provided, however, both Parties agree that neither Party shall enact or adopt any ordinance, resolution, rule, regulation, policy or standard (other than those necessary to comply with a lawful citizen initiative or referendum) which would substantially interfere with or diminish the obligations and rights under this Agreement or result in effectively nullifying this Agreement, in whole or part, but otherwise this paragraph shall not limit the powers and authority of Morrison and Denver.

e. No Discrimination In Employment. In connection with the performance of work under this Agreement, the Parties agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, protective hairstyle, or physical or mental disability; and the Parties further agree to insert the foregoing provision in all approved contracts and subcontracts hereunder.

f. Conflict of Interest. The Parties agree that no official, officer or employee of Denver shall have any personal or beneficial interest whatsoever in the services or property described herein, and Morrison further agrees not to hire or contract for services any official, officer or employee of Denver or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.9 and 1.2.12.

g. No Personal Liability. No official, officer, agent, or employee of any Party shall be charged personally or held contractually liable to the other Party or its officials, officers, agents, or employees under any term or condition of this Agreement or for any breach, default, or violation under this Agreement.

h. Liability.

1) Morrison shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses and attorney fees, incurred as a result of any act or omission of Morrison or its officials, officers, employees, and agents in connection with the subject matter of this Agreement.

2) Denver shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees, incurred as a result of any act or omission by Denver, or its officials, officers, employees, and agents in connection with the subject matter of this Agreement.

3) Nothing in this paragraph or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Parties may have under the Colorado Governmental Immunity Act (§24-10-101, C.R. S., et. seq.) or to any other defenses, immunities, or limitations of liability available to the Parties by law.

i. Force Majeure. No Party shall be liable for delay or failure to perform hereunder, despite best efforts to perform, if such delay or failure is the result of *force majeure*. Notices of the occurrence and the end of such delay shall be provided by the Party asserting *force majeure* to the other Party. “*Force majeure*” shall mean causes beyond the reasonable control of a Party such as, but not limited to, weather conditions, acts of God or the public enemy, strikes, work stoppages, unavailability of or delay in receiving labor or materials, faults by contractors, subcontractors, utility companies or third parties, fire or other casualty, or action of government authorities.

j. Further Assurances. From time to time, upon the request of a Party, the other Party agrees to make, execute and deliver or cause to be made, executed and delivered to the requesting Party any and all further instruments, certificates and documents consistent with the provisions of this Agreement as may, in the reasonable opinion of the requesting Party, be necessary or desirable in order to effectuate, complete or perfect the rights of said Party under this Agreement, provided said requesting Party is currently in full compliance with the provisions of this Agreement and has tendered or offered to tender any reciprocal instruments, certificates and documents to which the other Party is entitled under the Agreement.

k. Contracting or Subcontracting. Any work that is allowed to be contracted or subcontracted under this Agreement shall be subject, by the terms of the contract or subcontract, to every provision of this Agreement. Compliance with this provision shall be the responsibility of the Party who arranged the contract or authorized the subcontract.

l. Enforcement. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including actual damages and attorney’s fees, as may be available according to the laws and statutes of the State of Colorado; provided, however, the Parties agree to and hereby release any claims for incidental, consequential, or punitive damages. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to these terms and conditions contained in this Agreement, and that any failure to comply which results in any recoverable damages shall not cause the termination of any rights or obligations under this Agreement.

m. Governing Law; Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States, the State of Colorado, and the applicable provisions of the Charter and Revised Municipal Code of the City and County of Denver, and the applicable resolutions and ordinances of the Town of Morrison, Colorado. Venue for any legal action relating to this Agreement shall lie in either the District Court in and for the City and County of Denver or the District Court in and for Jefferson County, as the Party initiating the legal action may choose.

n. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Morrison and Denver; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of Morrison and Denver that any person or entity other than Morrison and Denver receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

o. Claims. In the event that any claim, demand, suit, or action is made or brought in writing by any third person or entity against one of the Parties related in any way to this Agreement, the Party in receipt of same shall promptly notify and provide a copy of said claim, demand, suit, or action to the other Party.

p. Notice. All notices, demands or consents required or permitted under this Agreement shall be in writing and delivered personally, or by appropriate facsimile transmission (receipt verified by telephone), or by certified mail, return receipt requested, to the following:

To Morrison:

Town Manager
Town of Morrison
321 Colorado Highway 8
Morrison, Colorado 80465

Town Attorney
Town of Morrison
321 Colorado Highway 8
Morrison CO 80465

To Denver:

Executive Director of Parks and Recreation
Department of Parks and Recreation
City and County of Denver
201 West Colfax Avenue, Dept. 601
Denver, Colorado 80202

City Attorney's Office
City and County of Denver
1437 Bannock Street, Room 353
Denver, Colorado 80202

The persons or addresses set forth above may be changed at any time by written notice in the manner provided herein.

q. Entire Agreement. This Agreement, including the exhibits which are hereby incorporated into this Agreement by reference, constitutes the entire Agreement of the Parties. The Parties agree there have been no representations, oral or written, other than those contained herein and that the various promises and covenants contained herein are mutually agreed upon and are in consideration for one another.

r. No Joint Venture. This Agreement is not intended, nor shall this Agreement be construed, to establish or constitute a joint venture between the Parties.

s. Amendment. Except as otherwise expressly provided in this Agreement, this Agreement must be amended, modified, or changed, in whole or in part, only by written agreement executed by the Parties in the same manner as this Agreement.

t. No Assignment. No Party shall assign its rights or delegate its duties hereunder, with the exception of contracting and subcontracting as provided in this Agreement, without the prior written consent of the other Party.

u. Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term or condition that will legally achieve the original intent and purposes of the Parties hereunder.

v. Supersession. This Agreement shall supersede, and replace in all aspects, the agreement dated August 10, 1973, as amended on July 3, 1981, between Morrison and Denver regarding the existing water treatment facility and water service to Denver, referred to herein as the Original Agreement.

w. Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to combine, limit, or describe the scope or intent of any provision of this Agreement.

x. No Construction against Drafting Party. The Parties acknowledge that each of them and their respective counsel have had the opportunity to review this Agreement and that this Agreement shall not be construed against any Party merely because this Agreement or any of its provisions have been prepared by a particular Party.

y. Authority. Each Party represents and warrants that it has taken all actions that are necessary or that are required by its applicable law to legally authorize the undersigned signatories to execute this Agreement on behalf of the Party and to bind the Party to its terms. The person(s) executing this Agreement on behalf of each Party warrants that he/she/they have full authorization to execute this Agreement.

z. Execution of Agreement. This Agreement shall not be or become effective or binding until it has been fully executed by all signatories of Denver and Morrison.

aa. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one Agreement.

bb. Electronic Signatures and Electronic Records. The Parties consent to the use of electronic signatures by the Parties. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the Parties in the manner specified by the Parties. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The

Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**[REMAINDER OF PAGE DELIBERATELY LEFT BLANK.
SIGNATURE BLOCKS BEGIN ON NEXT PAGE.]**

Contract Control Number:
Contractor Name:

PARKS-202264043
TOWN OF MORRISON

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202264043
TOWN OF MORRISON

By: _____ See next page for signagture _____

Name: _____
(please print)

Title: _____
(please print)

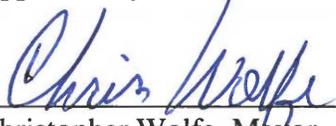
ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

Approved by the Town of Morrison Board of Trustees on the 14 day of July, 2022:



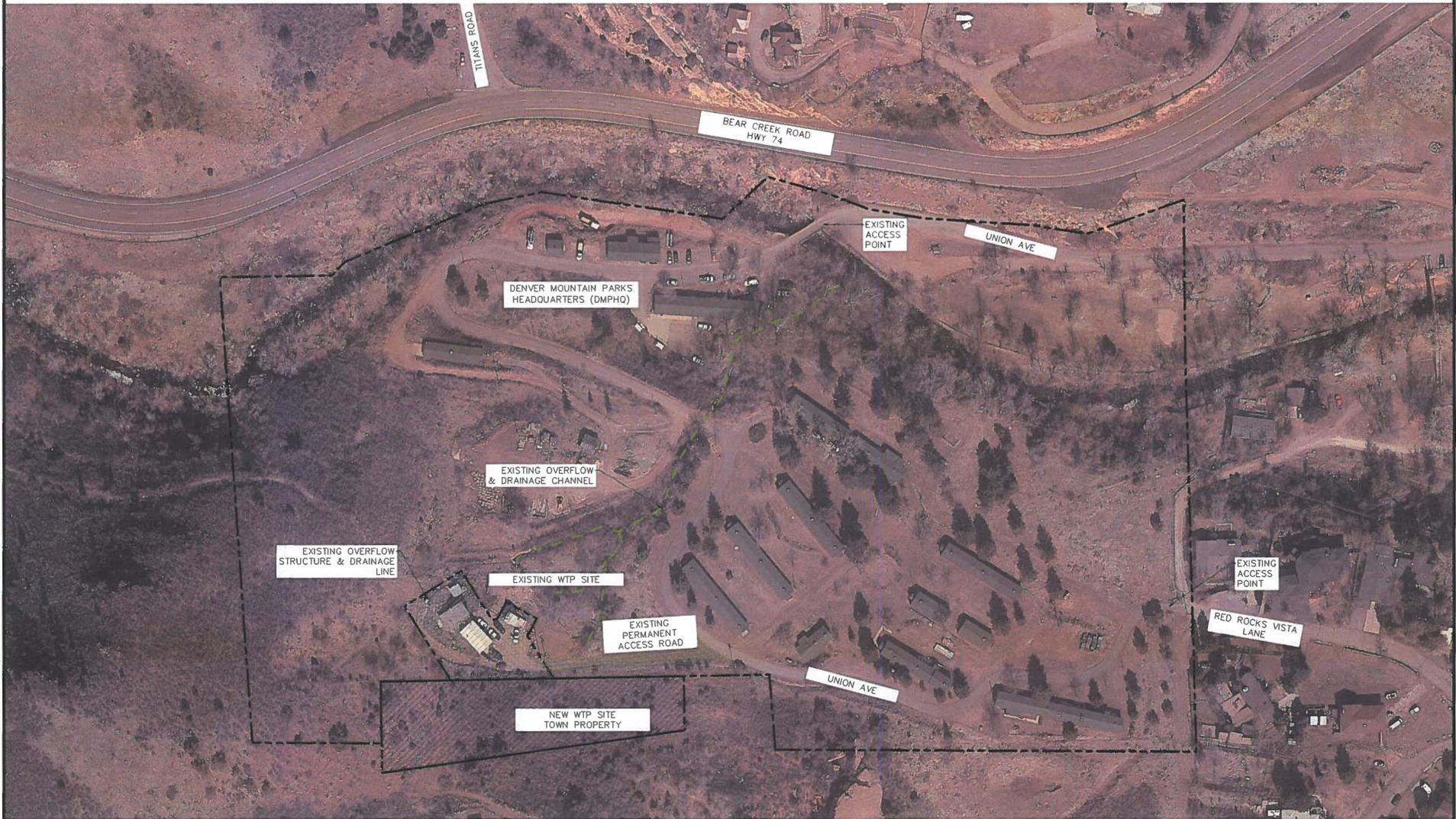
Christopher Wolfe, Mayor

Ariana Neverdahl, Town Clerk

[seal]

**EXHIBIT A – OVERALL LOCATION
ATTACHED**

EXHIBIT A – OVERALL LOCATION



IMEG CORP
7500 E. ORCHARD RD. #250-S
GREENWOOD VILLAGE, CO 80111
PHONE 303.796.6000
WWW.IMEGCORP.COM



60 30 0 60 120
SCALE: 1" = 60'

**EXHIBIT B – EXISTING WATER TREATMENT PLANT SITE
ATTACHED**

EXHIBIT B – EXISTING WATER TREATMENT PLANT SITE



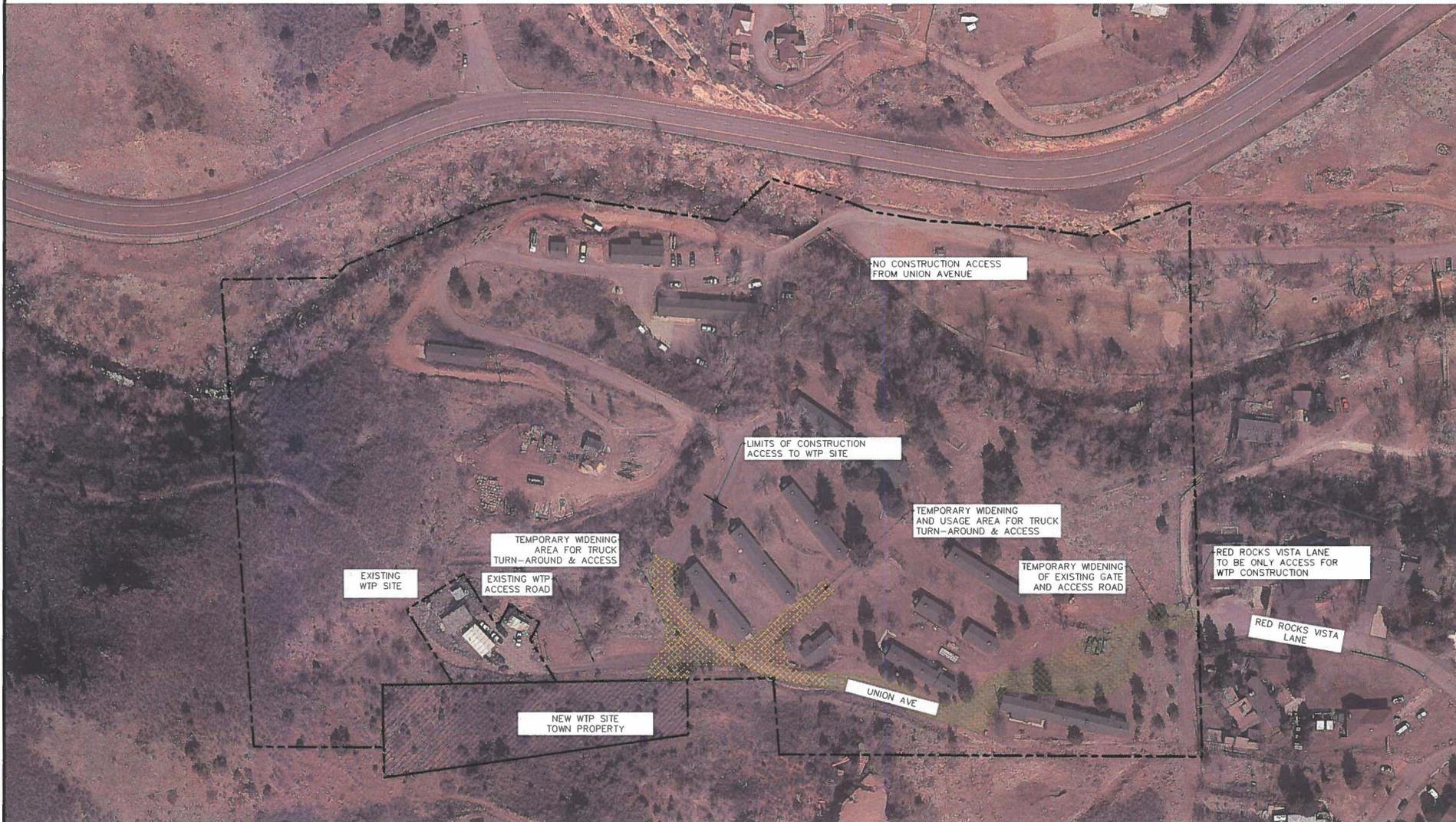
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PHONE: 303.796.6000
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60 30 0 60 120
SCALE 1" = 60'

**EXHIBIT C – CONSTRUCTION ACCESS
ATTACHED**

EXHIBIT C – CONSTRUCTION ACCESS



NOTES

1. THE ACTUAL LIMITS OF TEMPORARY MODIFICATIONS, WIDENINGS, AND TURNAROUNDS WILL BE COORDINATED WITH DMP EXECUTIVE DIRECTOR PRIOR TO DISTURBANCE OF THE AREAS.
2. MORRISON SHALL RESTORE AND REPAIR TO THE SAME OR BETTER CONDITION ANY PORTION OF THE DMPHQ ALTERED, MODIFIED OR DAMAGED AS A RESULT OF MORRISON'S USES AND WORK.
3. THE MAXIMUM ALLOWABLE VEHICLE SIZE SHALL BE WB-67 INTERSTATE SEMI-TRAILER AT 73.5 FEET IN LENGTH.

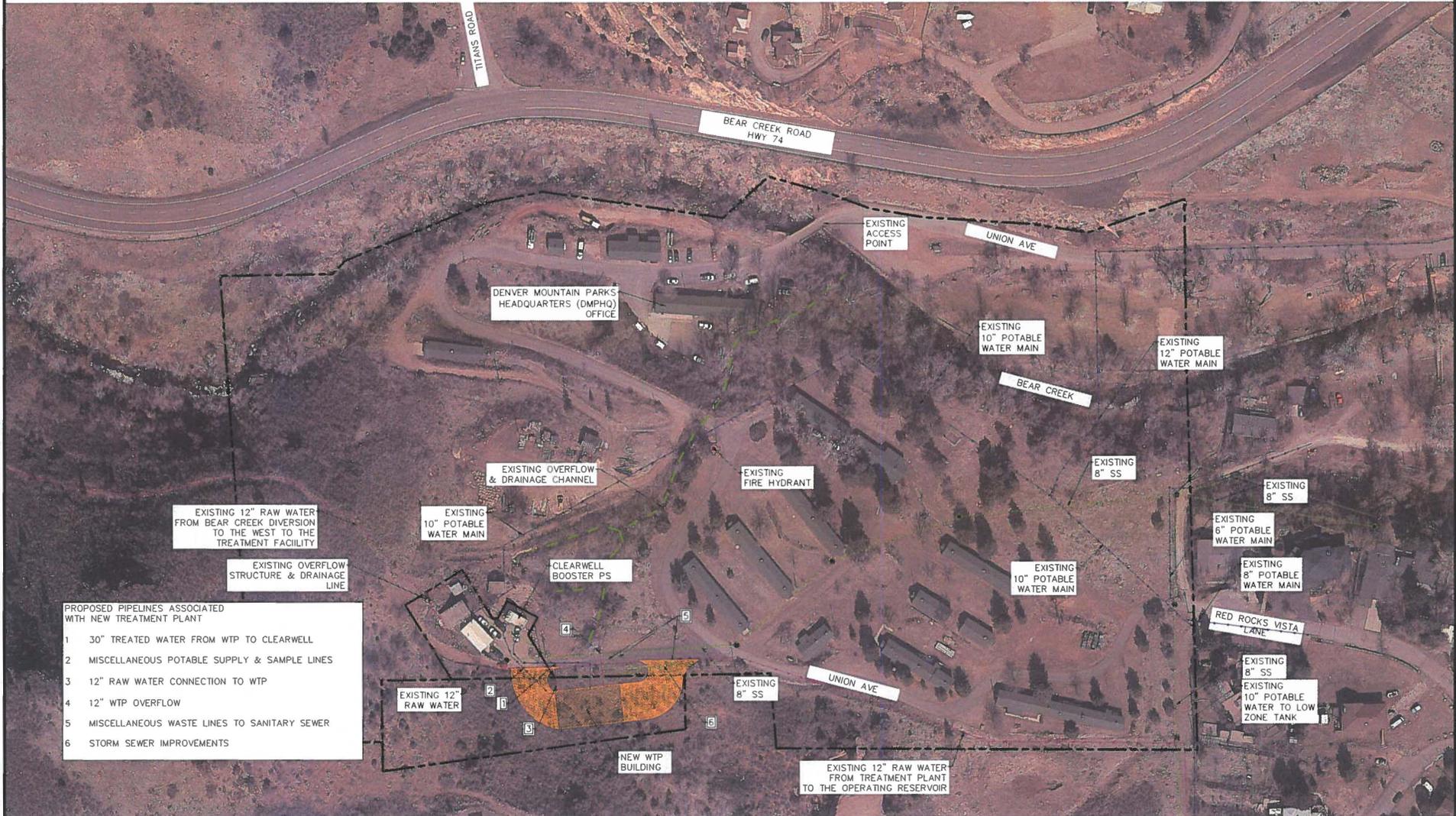


IMEG CORP
 7500 E ORCHARD RD, #250-5
 GREENWOOD VILLAGE, CO 80111
 PHONE 303.798.6000
 WWW.IMEGCORP.COM



EXHIBIT D – ANCILLARY IMPROVEMENTS
ATTACHED

EXHIBIT D – ANCILLARY IMPROVEMENTS



- PROPOSED PIPELINES ASSOCIATED WITH NEW TREATMENT PLANT**
- 1 30" TREATED WATER FROM WTP TO CLEARWELL
 - 2 MISCELLANEOUS POTABLE SUPPLY & SAMPLE LINES
 - 3 12" RAW WATER CONNECTION TO WTP
 - 4 12" WTP OVERFLOW
 - 5 MISCELLANEOUS WASTE LINES TO SANITARY SEWER
 - 6 STORM SEWER IMPROVEMENTS



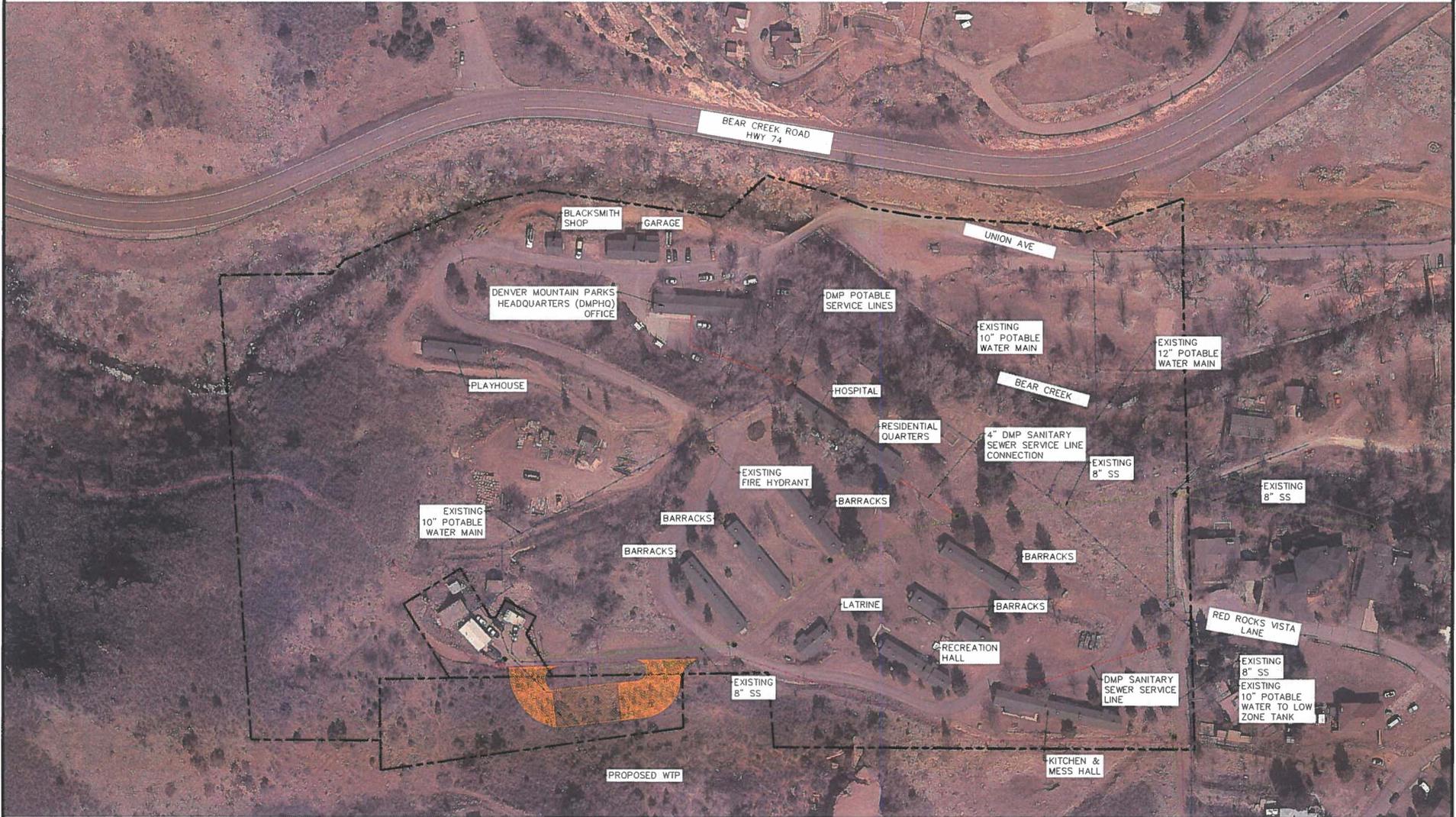
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 PHONE 303.796.6000
 WWW.IMEGCORP.COM



60 30 0 60 120
 SCALE 1" = 60'

**EXHIBIT E – MORRISON UTILITY SERVICE TO DMPHQ FACILITIES
ATTACHED**

EXHIBIT E – MORRISON UTILITY SERVICE TO DMPHQ FACILITIES



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