

# **FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF MORRISON, COLORADO AND THE CITY AND COUNTY OF DENVER REGARDING WASTEWATER TREATMENT FOR RED ROCKS PARK**

This First Amendment to Intergovernmental Agreement (this First Amendment”) is entered into, as of the Effective Date defined below, by and between the Town of Morrison, a Colorado municipal corporation whose address is 321 Colorado Hwy. 8, Morrison, CO 80465 (the "Town"), and the City and County of Denver, a Colorado municipal corporation whose addresses 1437 Bannock, Denver, CO 80202 (the "City"), together referred to herein as the parties.

## **RECITALS**

Whereas, the Town and the City have previously entered into that certain Intergovernmental Agreement dated July 15, 2004 (the “2004 IGA”) whereby the City has purchased from the Town certain rights to discharge wastewater generated by the recreational and entertainment facility known as Red Rocks Amphitheatre which is located in Red Rocks Park (the Park and Amphitheatre and all associated buildings, improvements and activities connected therewith collectively referred to herein as the "Park"); and

Whereas, the 2004 IGA provides that the Town shall provide wastewater treatment in the Town's wastewater treatment plant for the Red Rocks wastewater discharge, at specified discharge amounts, frequency, and defined effluent concentration limits; and

Whereas, the 2004 IGA also functions as the discharge permit required by Section 5.2 of the Town's Industrial Users Pretreatment Regulations dated June 1999 ("the Regulations"); and

Whereas, the actual discharge from the Park to the Town has on occasion exceeded the wastewater effluent concentration limitations imposed by Section 12.1.3 of the 2004 IGA, resulting in fines of \$10,000 imposed upon the City by the Town during calendar year 2013; and

Whereas, in order to avoid the fines provided by Section 12.1.5 of the 2004 IGA, as well as additional wastewater treatment or hauling costs, the City wishes to obtain from the Town, and the Town wishes to provide, additional wastewater treatment services as described in this First Amendment; and

Whereas, the Town is willing to provide the required additional wastewater treatment on the terms and conditions contained herein; and

Whereas, the Town wishes to provide the additional wastewater treatment as a goodwill accommodation to the City without establishing any continuing obligation to do so beyond the term set forth in this First Amendment.

NOW THEREFORE in consideration of the mutual covenants contained herein, the Town and the City agree as follows:

**1. 2004 IGA amended**

This First Amendment shall amend the 2004 IGA only with respect to the specific items contained herein. To the degree this First Amendment is inconsistent with the provisions of the 2004 IGA, this First Amendment shall control. In all other respects, the 2004 IGA shall remain in full force and effect.

**2. Effective date and term of amendment**

This First Amendment shall become effective as of July 1, 2014 (the "Effective Date") and shall extend to and include October 4, 2014. Thereafter, this First Amendment shall expire, become null and void, and the original 2004 IGA shall continue to be effective.

**3. Wastewater effluent concentration limitations**

Section 12.1.3 of the 2004 IGA permits the City to discharge 40,320 gallons of wastewater per day at the following effluent concentration limitations (each, an "Effluent Concentration Limit"):

- a) 12.1.3.1 biological oxygen demand (BOD) shall not exceed 300 mg/L
- b) 12.1.3.2 total suspended solids (TSS) shall not exceed 500 mg/L
- c) 12.1.3.3 fats, oils and grease shall not exceed 10 mg/L
- d) 12.1.3.4 phosphorous shall not exceed 10 mg/L, which shall be increased to 25 mg/L upon completion of the Town's tertiary treatment facilities.

The parties agree that in return for the payment made pursuant to Section 6 below, the wastewater discharge concentrations from the Park to the Town's wastewater collection and treatment system may exceed, during the period of this First Amendment, any of the foregoing effluent limits by a factor of 1.90 on a two-sample rolling average, all as measured pursuant to Sections 4 and 6 below. This First Amendment does not amend or increase the daily volume limit of 40,320 gallons imposed by Section 1.1 of the 2004 IGA.

**4. Measurement**

The effluent concentration levels of wastewater discharged by the City into the Town's wastewater collection and treatment system shall be measured as provided in Section 12.1.4.2.2 of the 2004 IGA. The effluent concentration parameter levels in the wastewater discharged by the City are presently being measured by the City. The parties agree that they may use and rely upon the City's measurement of effluent parameter levels; provided, however that the Town may independently measure or confirm such results upon request, without reasonable delay, to ensure compliance with this First Amendment.

## **5. Discharge Permit Modified**

The effluent limitations applicable to the City's discharge of wastewater to the Town's system are as set forth in Section 12.0 of the 2004 IGA, with the following modification:

- the discharge permit granted by Section 12.0 of the 2004 IGA is hereby amended to permit the discharge of wastewater at effluent concentration limits in excess of those set forth in Section 12.1.3 of the 2004 IGA, at the increased limits described herein for the term of this First Amendment only.

## **6. Additional service charges**

In addition to the charges for the base flows of 40,320 gallons per day set forth in Section 3.0 of the 2004 IGA, the City shall pay to the Town, during the term of this Agreement, the following amounts:

- \$40,000 as a lump-sum payment, within two 2 weeks of the execution of this First Amendment by the parties upon receipt of invoice in accordance prompt payment ordinance; and
- If effluent concentration levels exceed any of the Effluent Concentration Limits in Section 3.a) through d) above by a factor exceeding 1.90 on a two-sample rolling average, then the City shall pay to the Town up to \$1,000 (in the Town's discretion) for each effluent that exceeds its Effluent Concentration Limit by a factor exceeding 1.90 on a two-sample rolling average. The City also shall pay up to \$1,000 (in the Town's discretion) for each incremental increase of 10% above the 1.90 limit. For the avoidance of doubt, effluent sampling under this First Amendment shall occur every other week as required by Section 12.1.4.2.2 of the 2004 IGA; "two-sample rolling average" means that the sample taken on week 1 will be averaged with the sample taken on week 3, the sample taken on week 3 will be averaged with the sample taken on week 5, and so on and so forth. The Town agrees that for the term of this First Amendment, its remedies for any exceedance of the Effluent Concentration Limits shall be limited to the charges imposed by this provision.

## **7. Subject to appropriation**

The parties agree that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this First Amendment and paid into the treasury of the City. The Town acknowledges that: (i) the City does not by this First Amendment irrevocably pledge present cash reserves for payment or performance in future fiscal years, and (ii) this First Amendment does not and is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

## **8. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS**

The Town consents to the use of electronic signatures by the City. This First Amendment, and any other documents requiring a signature under this First Amendment, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of this First Amendment 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 this First Amendment 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.

Signature Pages Follow

**Contract Control Number:**

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:

By \_\_\_\_\_

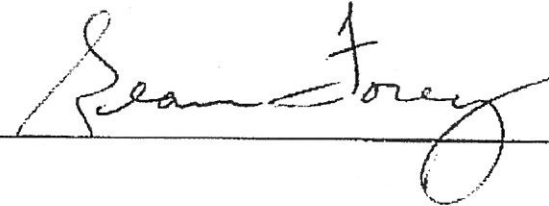
By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** THTRS-CE45001-01


**Contractor Name:** TOWN OF MORRISON

By: 

Name: Sean Forey

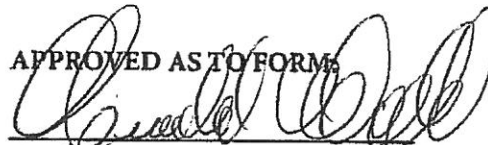
Title: Mayor

**ATTEST: [if required]**

By: 

Name: Charla Bryant

Title: Town Clerk

APPROVED AS TO FORM:  
  
Gerald E. Dahl, Town Attorney

