

**REVISED  
INTERGOVERNMENTAL AGREEMENT  
FOR THE JOINT SEWER AUTHORITY**

**THIS AGREEMENT** is entered into as of the 1st day of January, 2010, by and among the **TOWN OF SILVERTHORNE, COLORADO** (hereinafter, "Silverthorne"), the **TOWN OF DILLON, COLORADO** (hereinafter, "Dillon"), the **DILLON VALLEY DISTRICT**, a quasi-municipal corporation of the State of Colorado (hereinafter, "Dillon Valley"), the **BUFFALO MOUNTAIN METROPOLITAN DISTRICT**, a quasi-municipal corporation of the State of Colorado (hereinafter, "Buffalo Mountain"), and the **MESA CORTINA WATER AND SANITATION DISTRICT**, a quasi-municipal corporation of the State of Colorado (hereinafter "Mesa Cortina"), all of whom are collectively referred to herein as the "Participants."

**RECITALS**

**A. WHEREAS**, an agreement regarding the joint construction and mutual use of certain wastewater transmission, treatment and disposal facilities was entered into on the 6th day of July, 1971, by and between Silverthorne and Dillon (the "1971 Agreement"); and

**B. WHEREAS**, the 1971 Agreement was amended on May 22, 1973, January 26, 1976, and December 27, 1977; and

**C. WHEREAS**, Section 4, Paragraph A of the 1971 Agreement permitted Dillon and Silverthorne to contract jointly with proposed users of the wastewater facilities; and

**D. WHEREAS**, Dillon and Silverthorne jointly entered into agreements dated July 20, 1971 with Dillon Valley and Denver Union Corporation, and Dillon and Silverthorne jointly entered into an agreement with effective date of October 1, 1971, with Buffalo Mountain Water and Sanitation District (the predecessor-in-interest to Buffalo Mountain), whereby Dillon Valley, Denver Union Corporation and Buffalo Mountain Water and Sanitation District respectively acquired certain rights to use an allocated share of the capacity of the Joint Facilities, and the right to require the expansion of the Joint Facilities capacity, and Dillon and Silverthorne entered into an agreement with Summit County dated June 13, 1980, whereby Summit County acquired certain rights to use an allocated share of the capacity of the Joint Facilities for use in the Mesa Cortina area, and the right to participate in any expansion of the facilities, but without the right to require the expansion of the Joint Facilities capacity, all of which agreements are hereafter referred to as the "Participation Agreements"; and

**E. WHEREAS**, the Participation Agreements were amended as follows: the Participation Agreement between Silverthorne and Dillon and Dillon Valley was amended on January 30, 1976 and December 27, 1977; the Participation Agreement between Silverthorne and Dillon and the Denver Union Corporation was amended by unsigned Addendum determined to have been agreed upon in the year 1976 and by Amendment dated December 27, 1977; the Participation Agreement between Silverthorne and Dillon and Buffalo Mountain was amended by Addendum dated January 26, 1976 and by Amendment on December 27, 1977; and

**F. WHEREAS**, the Joint Facilities were constructed and have since been operated, maintained and expanded, pursuant to the 1971 Agreement and the Participation Agreements

among the Participants; and

**G. WHEREAS**, Silverthorne has acquired all of the right, title and interest of the Denver Union Corporation and its successors-in-interest to use present and reserved capacity in the Joint Facilities; and

**H. WHEREAS**, new plumbing fixtures and other water conservation practices have resulted in lower per capita contributions to wastewater flows and this has raised the possibility that the volume of wastewater flows experienced by the Joint Facilities will be less than the design flows, if Infiltration and Inflow can be reduced to quantities equal to or below design allowances; and

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

**J. WHEREAS**, in 2002 the Participants consolidated the 1971 Agreement, as amended, and the Participation Agreements, as amended, into a single Intergovernmental Agreement among the Participants, and made further amendments thereto, which consolidated agreement (“**INTERGOVERNMENTAL AGREEMENT FOR THE JOINT SEWER AUTHORITY**” hereinafter the “**JSA-IGA**”) superseded all such prior agreements, as amended, and which accomplished, among other things, the following:

1. Provision for overall management, operation and maintenance functions of the Joint Facilities to be performed by Silverthorne; and

2. Maintenance of the basic provisions of the 1971 Agreement and of the Participation Agreements with respect to extension of service, expansion of facilities and sharing of costs; and

3. The addition of provisions for (a) the more complete funding of capital replacements, (b) the categorization of certain small capital expenditures as current operations and maintenance expenses, (c) simplifying the cost sharing for maintenance of jointly used interceptor sewers, and (d) authority to deal with infiltration and inflow problems which become capacity-critical; and

**K. WHEREAS**, the JSA-IGA provided for the expansion of the Blue River Wastewater Treatment Plant (“BRWWTP”) to a capacity of 4.0 mgd; and

**L. WHEREAS**, the predesign report for the expansion of the BRWWTP to a capacity of 4.0 mgd included the addition of a second digester, to balance the biosolids handling capacity with the sewage treatment capacity; and

**M. WHEREAS**, in light of (a) the prospects for continued recycling of biosolids at the Climax mine, and (b) certain operational flexibility and efficiencies associated the present Combination Basin and the heat recovery system, all parties to the JSA-IGA agreed that it would be economically prudent and efficient to defer the addition of such second digester until the time when it will be clearly required to comply with then current regulations or operating conditions;

and

**N. WHEREAS**, in light of (a) unexpectedly high Infiltration and Inflow (“I&I”), (b) the high costs of correcting it, and (c) the fact that I&I flows do not have the same peaking factor or organic content as domestic sewage, the Participants desire to redefine **Excess Capital I&I** and clarify the disposition of Excess Capital I&I compensation paid by Participants; and

**O. WHEREAS**, the Participants desire to provide an option for the disposition of surplus operation and maintenance (O&M) funds, and for additions to the Capital Replacement Fund (defined in Section 5B, herein below).

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

The **JSA-IGA** is hereby superseded by this **REVISED INTERGOVERNMENTAL AGREEMENT FOR THE JOINT SEWER AUTHORITY (“REVISED JSA-IGA”** or this **“Agreement”**) and is hereby republished with amendments integrated into the body hereof.

## **SECTION 1. GENERAL PROVISIONS**

**A. Creation of Joint Sewer Authority.** Silverthorne and Dillon have created, pursuant to the Colorado Constitution and Revised Statutes aforesaid, a joint venture between them known as the Joint Sewer Authority (the “Authority” or the “Joint Authority”), by this Agreement and its predecessors.

**B. Powers of the Authority.** The Authority shall have and exercise all of the powers of Silverthorne and Dillon relating to the transmission, treatment and disposal of wastewater, and also all powers of Silverthorne and Dillon necessary or convenient to the exercise of the functions of the Authority described herein. The Authority shall be considered an “enterprise” of each of the Participants, to the extent of their rights and obligations under this Agreement therein, and within the meaning of Article X, Section 20(2)(d) of the Colorado Constitution. Pursuant to Section 31-35-402(1)(h), C.R.S., the Authority shall have the power to issue revenue bonds, and for that purpose, the “governing body” of the Authority shall be the governing bodies of Silverthorne and Dillon, acting collectively as provided herein.

**C. Lead Agency.** The Town of Silverthorne is hereby designated Lead Agency of the Authority. As Lead Agency, Silverthorne shall have power on behalf of the Authority to undertake all actions necessary to accomplish the goals and functions of the Authority. It is agreed that the Town of Silverthorne will perform its Lead Agency functions and responsibilities hereunder in a reasonable manner and in good faith. The Town of Silverthorne hereby acknowledges that it continues to hold title to all real property, appurtenances, interests in land and fixtures thereon, and motor vehicles, and also owns all other physical assets used in the operation of the Joint Facilities (defined in Section 1E(6) herein below), all for the use and benefit of the Authority.

**D. Meetings.** Subject to change by the Lead Agency (upon at least five (5) days prior notice of such change to all Participants), meetings of the representatives of the Participants of the Authority shall be held: (1) each calendar quarter, at a time and place designated by the Lead Agency upon at least five (5) days prior notice to all Participants, and (2) on an as-needed basis, upon the call of the Lead Agency, with at least five (5) days prior notice to all Participants. In addition, the Lead Agency shall call a meeting of the Authority if requested by any Participant.

**E. Definitions.** The following terms used in this Agreement shall have the meanings described:

(1) **Authority:** The Joint Authority provided for by this Agreement.

(2) **Blue River Wastewater Treatment Plant (BRWWTP):** The wastewater treatment plant operated by the Authority located at 26452 Highway 9, Silverthorne, Colorado, together with the offsite Joint Metering Stations (defined below).

(3) **Connected EQR:** A Constructed EQR which is physically connected to the Joint Facilities (defined below) or to the wastewater collection system of any of the Participants, with the right to cause wastewater flows to reach the Joint Facilities.

(4) **Constructed EQR:** The capacity to transmit (in the case of an Interceptor) or treat (in the case of the BRWWTP) an EQR, which capacity has been created by (a) the completion of construction of physical facilities therefor, and (b) the payment of a proportionate share of the cost of the project which culminated in such construction. Such proportionate share shall be calculated in accordance with Exhibit B or C, as the case may be.

(5) **Equivalent Residential Unit (EQR):** An EQR is the maximum daily average quantity and strength of wastewater from an average single family residence, together with an allowance for infiltration and inflow. The strength, or BOD<sub>5</sub> Loading (which has not changed as a result of new plumbing fixtures or other water conservation practices), remains at 0.6 pounds per day. Even though some of the system-wide I&I seems to have been corrected, the quantity, or wastewater flow, has been retained, for now, at 350 gallons per day, including a 100 gpd allowance for I&I, 20 gpd of which is the I&I allowance for the Joint Interceptor. For purposes of transmission capacity in the case of an Interceptor, an EQR is the capacity to transmit at the peak flow rate of 700 gpd. It is recognized that while the allowance for I&I, excluding the 20 gpd allowance for the Joint Interceptor, is being retained, for now, at 330 gallons per day (Maximum Daily Rate (defined in Section 6I, below), the Joint Authority may modify these quantities in the future based on subsequent analysis and that may be the subject of an amendment to this Agreement as for example, when the full effects of excess I&I in systems requiring ammonia removal can be determined.

(6) **Joint Authority Interceptors:** The Joint Interceptor is a sewer line which runs parallel to Highway 9 beginning at the BRWWTP and extending south to Manhole 0-20 which is located near the intersection of West 12th Street and Highway 9. The East Bank Interceptor extends from Manhole 0-20, across the Blue River, running southerly and easterly. It crosses I-70 and terminates at a flow measuring vault located near the intersection of Little Beaver Trail and Highway 9. The West Bank Interceptor extends from Manhole 0-20 southerly through Silverthorne to the Buffalo Mountain metering vault located near the intersection of Wildernd Road and Adams Avenue. Collectively, these interceptors are referred to as the Joint Authority Interceptors.

(7) **Joint Facilities:** The Joint Facilities include all facilities of the Authority and includes the BRWWTP (including the Joint Metering Stations), and the Joint, East Bank, and West Bank Interceptors.

(8) **Joint Metering Stations:** The Joint Metering Stations are the Mesa Cortina Metering Station located just before discharge into the Buffalo Mountain system, the Buffalo Mountain Metering Station located at the upstream terminus of the West Bank Interceptor, and the Dillon/Dillon Valley Metering Station located at the upstream terminus of the East Bank Interceptor.

(9) **Joint Sewer Authority (or the "Authority"):** The Joint Sewer Authority between Silverthorne and Dillon provided for by this Agreement and its predecessors.

(10) **Operation and Maintenance (O&M) Expenses:** The minor replacement costs as described in Sections 5B and 5C herein below, and the recurring costs incurred by the Joint Authority to operate and maintain the Joint Facilities. These costs include

but are not limited to personnel costs, maintenance equipment and supplies, energy, chemicals, and related professional services. Not included are the expenses of administration by the Lead Agency of the operating, maintenance, and capital programs of the Authority referred to in Section 5 below, elected officials' fees or salaries, cost of preparation of each Participant's separate audit or budget or other separate expenses.

**(11) Capital Costs and Expenses:** The cost of expanding the capacity of the Joint Facilities, the cost of replacing equipment and building components to the extent provided for in Section 5, below, Regulatory Compliance Capital Costs to the extent provided for in Section 5, below, and related professional services.

**(12) Reserved Interceptor Capacity:** The allocated share of the total design capacity in the Joint, East Bank or West Bank Interceptor to which a Participant has the right of use. For interceptors, the capacity to serve an Equivalent Residential Unit is expressed, for now, in terms of capacity to carry peak flow rates of 700 gpd. The Joint Authority may modify such quantities based on subsequent analysis.

**(13) Reserved Treatment Capacity:** The allocated share of the total nominal design capacity (4.0 mgd) of the BRWWTP to which the Participant has the right of use, and, in the case of Silverthorne, the right to cause such capacity to be constructed.

**F. Exhibits.** The following Exhibits are attached hereto and fully incorporated herein by this reference. Exhibits A, D-1, D-2 and D-3 show the current use rights of the Participants in the Joint Facilities, and the methodologies for allocating capital costs for expansion and replacement of Joint Facilities and shall be updated and replaced by the Lead Agency on a regular basis to show current information.

**Exhibit A.** BRWWTP Nominal Reserved Capacity and Constructed EQRs

**Exhibit B.** Methodology for Allocation of Wastewater Reserved Capacity Expansion and Other Capital Costs

**Exhibit C.** Methodology for Allocation of Interceptor Expansion and Other Capital Costs

**Exhibit D-1.** Joint Interceptor Nominal Reserved Capacity and Constructed EQRs

**Exhibit D-2.** West Bank Interceptor Nominal Reserved Capacity and Constructed EQRs

**Exhibit D-3.** East Bank Interceptor Nominal Reserved Capacity and Constructed EQRs

**Exhibit E.** Map of the Joint Facilities

**Exhibit F.** EQR Schedule

**Exhibit G.** Excess Capital I&I and Compensation Calculation Methodology

**Exhibit H.** Sample Calculation For Optional Refund of Operating Surplus  
With Optional Capital Replacement Fund Assessment

Upon execution of this Agreement, the Lead Agency shall provide each Participant with a set of documents, including (i) a copy of this Agreement, (ii) current Exhibits to the Agreement, (iii) Rules and Regulations of the Authority, (iv) current annual budget, (v) most recent audit of all Joint Authority financial matters, (vi) current connected EQR schedule, (vii) quarterly billings, (viii) agendas and minutes of meetings of the Joint Authority, (ix) other operational communications to the Participants, and (x) such additional information deemed necessary or useful by the Lead Agency or reasonably requested by any Participant. Such volumes, to be known as the “JSA White Books,” (which shall contain the above-described items relating to organizational and capital matters records, and the “JSA Blue Books” (which shall contain all such above-described items pertaining to operation and maintenance of the Joint Facilities), shall be supplemented by the Lead Agency with date-stamped replacement pages to reflect current information immediately after each Participant submits to the Lead Agency the number of Connected EQRs and at any time there is a change in any Participant’s Constructed EQRs, Reserved Interceptor Capacity, Reserved Treatment Capacity, or any other items or information contained in such JSA White Books and JSA Blue Books. Each Participant shall promptly notify the Lead Agency of such changes and shall provide the Lead Agency with complete copies of any document evidencing such changes.

## **SECTION 2. MANAGEMENT, OPERATION AND MAINTENANCE OF JOINT FACILITIES**

**A. Calendar Year Operation.** The Joint Facilities shall be managed, operated and maintained by Lead Agency on a calendar year basis.

**B. Annual Budget.** The Lead Agency shall annually prepare the budget for Operation and Maintenance Expenses, and the Capital Replacement Fund (described in Section 5B) for all Joint Facilities of the Authority and shall set rates, fees and charges needed to fund the budget. The budget shall be adopted by the Lead Agency as a part of its annual budgeting process, in compliance with applicable budgeting laws. It is recognized that all other Participants must also comply with applicable budgeting laws, and that a portion of their budgeted expenses will be derived from the Joint Authority's annual budget. Accordingly, as part of the Joint Authority budget process, the Lead Agency will, in a timely manner considering the budgetary timelines of the other Participants, (1) forward a copy of the proposed budget, with a reasonable level of detail, to the other Participants, and (2) hold a meeting of the representatives of the Participants, upon due notice to the other Participants, to respond to questions and consider comments from the other Participants on the proposed budget. The obligation of the Lead Agency under this Subsection 2B shall neither expand the power of the Lead Agency, nor diminish the rights of the Participants, as otherwise set forth herein.

**C. Operation, Rates, Fees and Charges.** The Lead Agency shall at all times operate the entire Joint Facilities properly and in an economical manner and make repairs and replacements to assure the continuous operation of the system. The Lead Agency shall appoint an operating superintendent, which appointment shall be subject to the approval of Dillon. Within the constraints imposed by Section 5, the Lead Agency may set rates, fees and charges sufficient to anticipate and defray Operation and Maintenance Expenses as ongoing expenses rather than as additional capital costs. The payment of such rates, fees, and charges are payments for services rendered by the Authority to the Participants, and are not "grants" within the meaning of Article X, Section 20 of the Colorado Constitution. The Lead Agency will timely provide an annual audit of each of the Joint Authority funds, on an enterprise basis, and a report of Capital Account Values for all Participants, in accordance with Exhibit B and Section 5E, below.

**D. Joint Facilities Charges.**

(1) Operation and Maintenance ("O&M") Budget for the Joint Facilities shall be established by the Lead Agency each year, subject to adjustment during the year as provided elsewhere herein, and allocated to each of the Participants in proportion to the number of Connected EQRs attributable to each Participant as of the end of the applicable calendar quarter.

(2) An EQR schedule has been prepared (Exhibit F) which provides for the number of EQRs currently associated with various types of land use, and which shall be updated from time to time by an engineer selected by the Lead Agency and Dillon. Such schedule, as updated, shall apply to all users. An engineer hired by any of the other Participants may dispute any changes in any such updates. In addition, the Lead Agency shall have the authority, using rational methods, to conduct as-built audits of any and all

development throughout the service area of all Participants, for the purpose of verifying connected EQR quantities. If such audits reveal significant discrepancies between reported Connected EQR and actual Connected EQR, the Lead Agency shall have the authority to require that the under-reporting Participant(s) make prompt payment to the Joint Authority of all amounts which should have been paid since the last such audit, as appropriate, together with interest thereon at the rate of ten percent (10%) per annum from the date such payments should have been made, if such dates can be reasonably determined using rational methods; provided that if such date(s) cannot be so reasonably determined, it shall be assumed that such payments should have been made upon completion of the next preceding as-built audit.

(3) In the event that the wastewater from any Participant materially increases in strength because of industrial waste or similar causes, the additional expenses associated with such high strength wastewater, whether direct or indirect, shall be allocated to and borne by the Participant from which the high strength wastewater emanates. The manner of allocating additional expenses shall be determined by an engineer selected by the Lead Agency, and approved by Dillon.

**E. Quarterly Payments.** The Lead Agency shall bill each Participant for its allocated share of Operation and Maintenance Expenses and other fees, rates and charges, (collectively “quarterly payment”) as necessary to fund the budget, on a quarterly basis, not later than January 31, April 30, July 31 and October 31 of each calendar year, in advance, based on reports of Connected EQR as of the end of the preceding calendar quarter, given by the Participants to the Lead Agency not later than January 15, April 15, July 15, and October 15 as required by Section 6J, below. Each Connected EQR will be allocated one (1) share of such costs. The Lead Agency, with unanimous approval of all Participants, is authorized to bill in arrears. Each Participant, including the Lead Agency, shall be charged a premium of ten percent (10%) on its quarterly payment, excluding the Capital Replacement Fund component of the quarterly payment. Said premium shall be paid to the Lead Agency simultaneously with the quarterly payments required under this Subsection.

**F. Insurance.** The Lead Agency shall be responsible for providing that the Joint Facilities are insured by insurance, in type and coverage limit amounts, customarily maintained by a public utility of the same type and size, and shall promptly reconstruct any facilities which are destroyed and for which insurance proceeds are received. In the event of a shortfall between such insurance proceeds and the cost of reconstruction, the Lead Agency is authorized to use up to 50% of the then current balance in the applicable Fund Categories in the Capital Replacement Fund (Section 5B, below) to the extent necessary to eliminate such shortfall. If a shortfall still remains after the use of such Capital Replacement Fund monies, each Participant shall promptly pay to the Lead Agency its proportionate share of such shortfall upon billing therefor by the Lead Agency. Each such share shall be equal to the share such entity has the right to use of the total Constructed EQR, or the total Reserved Interceptor Capacity, as the case may be. Each EQR of such capacity will be allocated one (1) share of such cost. In the event any Participant fails or refuses to contribute any or all of its required share of such costs, payment of such share shall be made by the remaining Participants in proportion to their Constructed EQR, or Reserved Interceptor Capacity, as the case may be. In such event, the Authority shall (1) reallocate such amount of the defaulting Participant’s unused capacity in the BRWWTP and/or the Interceptors, among the other Participants as set forth in Subsection 6A, and/or (2) increase rates, fees and

charges paid by the defaulting Participant in a manner which recompenses the other Participants. The Authority may take any other additional or substitute actions to accomplish the goals of (1) reconstructing the facilities, and (2) ensuring that the defaulting Participant bears, in some fashion, its proper share of the cost of such reconstruction.

**G. Standards and Tests.** Silverthorne and Dillon shall jointly establish standards or tests to be used to determine the quantity, strength and other characteristics of the wastewater. When such standards or tests are being established or materially modified, reasonable notice of such matters shall be furnished to the other Participants, which shall be given a reasonable opportunity to raise questions and comment on the matters proposed for consideration by Silverthorne and Dillon.

**H. Legal Counsel for the Joint Authority.** The Lead Agency shall, subject to the approval of Dillon, engage the services of an attorney or attorneys to represent the Joint Authority in all legal matters. None of the attorneys so engaged shall perform legal representation services for any of the individual Participants.

### **SECTION 3. EXTENSION OF SERVICE**

Each Participant may:

- (1) extend wastewater services to customers or users within such Participant's existing boundaries, without approval of the other Participants; and
- (2) extend wastewater services to customers or users within or without such Participant's boundaries as hereinafter constituted, only upon the prior written approval of the Town of Dillon and the Town of Silverthorne; provided that Dillon Valley may extend wastewater services to customers or users within or without its boundaries as hereinafter constituted without such approvals;

provided, however, that no such extension of services is permitted unless such Participant either has the necessary excess Reserved Treatment Capacity and Reserved Interceptor Capacity or leases or otherwise acquires such capacity from other Participants. The Town of Silverthorne and the Town of Dillon may each, without approval of any other Participant, extend sewer services to customers or users within or without its own corporate boundaries as presently existing or hereinafter constituted (but not within the corporate boundaries of any other Participant). Each Participant shall have the right, but shall not be required under any circumstances, to license to any other Participant the right to use any excess Reserved Treatment Capacity or excess Reserved Interceptor Capacity to which it has the right of use. All such licenses shall be evidenced by a written license agreement setting forth the terms and conditions negotiated by said Participant, provided, however, that the term of any such license negotiated hereunder shall continue until such time as the licensee, for whatever reason, including, but not limited to the subsequent expansion of the Joint Facilities or a decline in the licensee's requirements, is able to service its customers or users without using the excess capacity licensed to the licensee under the terms of any such license. It is understood by the Participants that any license entered in accordance with this Section shall potentially continue perpetually and under no circumstances will the licensee be required to return to the licensor the excess capacity being licensed, if the licensee will be required to discontinue servicing its customers or users in order to accomplish any required return of such excess capacity.

#### **SECTION 4. INCREASE OF JOINT FACILITIES CAPACITY**

**A. Current Status of BRWWTP.** A project to expand the BRWWTP, in phases, from 7,650 EQRs (“2.7 mgd”) to 10,000 EQRs (“3.5 mgd”) has been completed and the costs thereof have been paid in accordance with the formula for Allocation of Treatment Plant Expansion Costs set forth in Exhibit B to this Revised JSA-IGA (the “Exhibit B Formula”).

**B. Construction of Digester/Expansion.** When an engineer chosen by the Lead Agency with the consent of Dillon, and the BRWWTP superintendent, determine that the second digester is needed for economic, reliable, or efficient sludge treatment or disposal, for odor control, or for compliance with any standards, rules, regulations, permit conditions, or other legal requirements, Silverthorne shall, as soon as reasonably feasible, (a) cause the second digester to be constructed, thereby expanding the capacity of the BRWWTP, increasing the Constructed EQRs which Silverthorne, (and any other Participant acquiring from Silverthorne the right to use additional EQRs) has the right of use by an aggregate of 1,400 EQRs, and increasing the Constructed EQRs in the entire BRWWTP from 10,000 (“3.5 mgd”) to 11,400 (“4.0 mgd”), and (b) apply the Exhibit B Formula. This will require Silverthorne (and any other Participant acquiring from Silverthorne the right to use additional EQRs) to make a capital contribution pursuant to the Exhibit B Formula. Silverthorne (and any other agency acquiring from Silverthorne the right to use additional EQRs) will thereafter bear all the obligations of such additional Constructed EQR use rights, including the obligation to pay Capital Replacement Fund payments.

**C. Paper Expansion Only.** Unless the expansion to a total constructed capacity of 11,400 Constructed EQRs (“4.0 mgd”) has been completed, or construction of the second digester is underway, before January 1, 2013, in accordance with the provisions of Section 4B, above, Silverthorne will do a paper expansion, i.e., an expansion requiring no physical construction, increasing the Constructed EQRs which Silverthorne (and any other agency acquiring from Silverthorne the right to use additional EQRs) has the right of use, by 1,400 EQRs, and increasing the Constructed EQRs in the entire BRWWTP from 10,000 to 11,400 (“4.0 mgd”), applying the Exhibit B Formula. If there is no physical construction, Silverthorne (and any other agency acquiring from Silverthorne the right to use additional EQRs) will be required to make a capital contribution pursuant to the Exhibit B Formula, and all other Participants will receive capital payments. Silverthorne (and any other agency acquiring from Silverthorne the right to use additional EQRs) will thereafter bear all the obligations of such additional Constructed EQR use rights, including the obligation to pay annual Capital Replacement Fund payments.

**D. Procedure.** If at any time under the terms of this Revised JSA-IGA, the allocation of the cost of a capital project is not herein provided for in some other manner, the following procedure shall be used: The Lead Agency shall give written notification of such project to all of the other Participants, and shall authorize the preparation of an engineer’s report to show the estimated cost of that project, including the estimated shares of such costs to be borne by each Participant, calculated in accordance with Exhibit B hereto. When such engineer’s report has been received, the Lead Agency will give written notification to all Participants of the date, time, and location of a joint meeting of all Participants to review the report, such meeting to be held within thirty (30) days after the Lead Agency’s receipt of the report.

Each Participant shall thereafter have thirty (30) days to provide the necessary financing for its share of the estimated cost of the project and satisfactory evidence of such financing.

In the event a Participant does not arrange the financing of its share of the project, or furnish satisfactory evidence thereof, the other Participants shall have the option of completing that project without current financial contribution of that Participant. In that event, one or more of the remaining Participants may commit the funds necessary to pay the share of that Participant. Upon payment of the share of such Participant, the provisions of Subsection 6A shall apply.

When financing for the project has been arranged for, the Lead Agency, with the prior written approval of Dillon, shall proceed with contracts for the design, permitting, and construction of such project.

**E. Cost.** The cost of the project shall be allocated to each entity by inserting the figures for the actual costs, CPI, Capital Reserve Fund, and Treatment Plant Capacities in the Illustration-Allocation of Treatment Plant Expansion/Upgrade Costs formula set forth in Exhibit B. For Participants not receiving additional capacity use rights in a particular project, zero EQR additional capacity shall be inserted in Exhibit B Formula. It is recognized that it is possible under said Formula for a Participant to receive a net payment in connection with a project in which such Participant receives the right to use additional capacity, and for a Participant to become obligated for an allocated share of costs in connection with a project in which such Participant does not receive the right to use any additional capacity. The BRWWTP Capital Account Value as used in Exhibit B is to be calculated before a capital expansion or upgrade project, and is determined as follows:

(1) Trended value for facilities shall be the original cost new of the BRWWTP with such original cost new escalated or de-escalated in an amount equal to the percentage change in the cost of living average for the twelve (12) month period immediately preceding completion of the new facilities from the cost of living average as of the 30th day of June, 1971, as reflected by the "Consumer Price Index--All Items--United States City Average for Urban Wage-Earner and Clerical-Worker Families (1967 = 100)" published by the United States Department of Labor, Bureau of Labor Statistics, said index adjusted to base and standard as of said 30th day of June, 1971, and for projects completed after 1984, said index using the base period 1982-84 = 100. If said index is no longer published, the following index will be used: Consumer Price Index for Semi-annual Averages and Percent Changes For Selective Periods, Denver, Boulder, Greeley, CO using the Base Period 1982-84 = 100, published by United States Department of Labor, Bureau of Labor Statistics, and if such index is no longer published, then another index generally recognized as authoritative shall be substituted by agreement of the parties, and, if the parties should not agree, such substituted index shall be selected by the then Chief Justice of the Colorado Supreme court or other highest State Court of Appeals in Colorado upon the application of either party. In any event, the base so used by any index or as revised on the existing index shall be reconciled to the 1967 index, or the 1982-84 index, as applicable, and adjusted to standard as of said 30th day of June, 1971.

(2) Depreciation shall be applied to the trended value above at the rate of two and one-half percent (2 ½ %) per year; provided that the trended value of land shall be

excluded from the amount depreciated.

(3) In the event the BRWWTP shall have been modified, expanded or additions made thereto prior to the time the BRWWTP Capital Account Value is determined, the BRWWTP Capital Account Value of such modifications, extensions or additions shall be computed in like manner to the computation of BRWWTP Capital Account Value of the initial plant, and such computations shall be included in the final computation of BRWWTP Capital Account Value.

(4) The amount in the BRWWTP Category of the Capital Replacement Fund shall be added to the trended value of the facilities to arrive at the BRWWTP Capital Account Value before the project. The BRWWTP Capital Account Value shall be allocated to the Participants in proportion to their Constructed EQR before the project.

(5) The total project cost (less any amount expended from the BRWWTP Category of the Capital Replacement Fund to defray any of such costs) will be added to the BRWWTP Capital Account Value before the project to arrive at the BRWWTP Capital Account Value after the project. The after-project value will be allocated to the Participants in proportion to their after-project Constructed EQR.

(6) The amount to be paid (or received) by each Participant will be the difference in such Participant's allocated portion of the BRWWTP Capital Account Value before the project and its allocated portion of the BRWWTP Capital Account Value after the project.

**F. Interceptor Sewer Expansion and Replacement.**

(1) **System Balancing Expansion--Cost Allocation:** All segments of all Joint Authority Interceptors are currently sized for the 4 mgd BRWWTP, with two exceptions in the East Bank Interceptor. When the undersized segments are expanded to accommodate the Reserved Wastewater Capacities of its users in the 4 mgd BRWWTP, the costs of such expansions (the "System Balancing Expansions") will be allocated to and paid by the Participants having Reserved Interceptor Capacity in the East Bank Interceptor by application of the formula in Exhibit B (modified to (a) provide for 1.25% annual depreciation and (b) delete all references to the Capital Replacement Fund) to the East Bank Interceptor segment instead of to the BRWWTP.

(2) **Other Capital Expansions--Cost Allocation:** When any Participant requires additional capacity in any other portion of any of the Joint Authority Interceptors (or in the undersized segments of the East Bank Interceptor after the System Balancing Expansions), the costs of such expansion project will be allocated to and paid by the Participants by application of the formula in Exhibit C attached hereto and incorporated herein, to the portion to be expanded. Rather than maintaining continuous records of the value of various portions of the interceptor facilities (and updating these whenever there is a capital replacement), an engineer selected by the Lead Agency (and approved by Dillon) will appraise the facilities to be replaced (on a replacement cost, less depreciation basis), and the result, when added to the amount in the Interceptor Category of the Capital Replacement Fund, will be the "Capital Account Value of Previously Constructed Portion" for insertion into the formula. Depreciation is at the rate of 1.25% per year,

unless the appraising engineer determines that such rate is materially inconsistent with the condition of any portion of the interceptor facilities being appraised. In such case, the appraising engineer shall have the authority to apply a different rate of depreciation to such portion, considered by such engineer in his professional judgment to be more consistent with the condition of such portion. Records of Reserved Interceptor Capacity in the various segments of the interceptors will continue to be maintained.

(3) **Replacements--Cost Allocation:** When the functionality of any portion of any Joint Authority Interceptor is such that the portion should be replaced, without need for additional capacity, the costs of such replacement will be defrayed as provided in Section 5B.

(4) **Interceptor Expansions and Replacements--Procedure:** If any portion of the Joint Interceptor needs to be replaced, the Lead Agency shall cause its replacement by a procedure similar to the procedure described above for the expansion of the BRWWTP. The East Bank Interceptor and the West Bank Interceptor may be expanded or replaced, as required. The procedure for initiating and completing an expansion or replacement project shall be the same as that described above for expansion of the BRWWTP, except that any Participant having the right to use capacity in the Interceptor to be expanded or replaced can initiate the process by written request to the Lead Agency. The Lead Agency will thereupon notify all Participants having the right to use capacity in the interceptor of the date, time, and place of a meeting of all such Participants, to be held within thirty (30) days of receipt by the Lead Agency of the initiating request, to consider additional capacities which may be needed by Participants other than the initiating Participant, and to authorize the preparation of an engineer's report to inform all such Participants of the project alternatives. Upon receipt of the report, the Lead Agency will give written notice to all such Participants of the date, time and place of a meeting of all such Participants to consider the report and decide on a course of action, such meeting to be held within thirty (30) days after receipt of such report by the Lead Agency. All such Participants will then have thirty (30) days after such meeting to provide (1) written evidence of ratification of the decision to proceed with the project and pay a portion of the costs thereof, and (2) financing for, and satisfactory evidence of such financing for, the Participant's share of such projected costs. The provisions in Section 4D relating to any Participant's failure to arrange financing or provide evidence thereof, and to contracting for the design, permitting, and construction of the project, shall also apply to interceptor projects under this Section, with the proviso that even though the failure to pay occurred in connection with an interceptor project, it is nevertheless, at the option of the paying Participant(s), Reallocated Capacity of the Constructed EQR in the BRWWTP *and* the affected interceptor which the paying Participant(s) obtain the right to use, since such paying Participant(s) may or may not be able to use additional capacity in the affected interceptor. The calculation of the capacity in the BRWWTP to be reallocated is made by calculating the present value of the defaulting Participant's existing use rights in the BRWWTP, per EQR, and dividing that per EQR value by the additional amount paid by the paying Participant(s). This is accomplished by using the Exhibit B formula *as though* there were an expansion of the BRWWTP instead of a replacement of all or a segment of an interceptor, and by inserting zero (0) additional EQRs in the formula, and zero (0) project costs.

**SECTION 5. CAPITAL REPLACEMENT AND IMPROVEMENT COSTS AND REGULATORY COMPLIANCE CAPITAL COSTS FOR JOINT FACILITIES AND EQUIPMENT**

**A. Purpose.** The Participants agree that costs for replacement of BRWWTP facilities or equipment, and for changes or improvements to such facilities or equipment required or imposed by law or regulation, can be considered either a capital cost or an Operation and Maintenance Expense. The Participants recognize that such replacements, changes, or improvements are not likely to result in increased wastewater treatment capacity. This Section is intended to provide the basis for appropriately categorizing such costs and the method for their payment.

**B. Capital Replacement Fund.** The Lead Agency will, using rational methods, establish a Capital Replacement Fund to provide the funds to replace all components of the Joint Facilities, as required by normal wear and tear and obsolescence of such components. The Capital Replacement Fund will be segregated into two Fund Categories, one for the BRWWTP and the other for the Joint Authority Interceptors, due to their markedly different depreciation schedules. The money to raise the Capital Replacement Fund to reasonable levels, given the current age and condition of such components, shall be contributed by the Participants upon quarterly billing therefor by the Lead Agency. Each Participant's share of such quarterly billing shall be based on its Constructed EQR in the BRWWTP for the BRWWTP Fund Category, and on its Reserved Treatment Capacity in the nominal 4.0 mgd BRWWTP (less the 600 EQR assumed not to use the Joint Interceptor, but discharge directly to the BRWWTP) for the Joint Authority Interceptors Fund Category. If any Participant fails to pay its invoice for Capital Replacement Fund Items within 30 days after invoice by the Lead Agency therefor, the remaining Participants shall pay their proportionate shares of the amount which the Defaulting Participant failed to pay, and the provisions of Section 6A shall apply. No part of the Capital Replacement Fund will be used to defray any O&M Expenses. The Lead Agency will provide to all Participants an annual accounting and audit of the Capital Replacement Fund by category. When it is necessary to replace any components of such Joint Facilities, the cost thereof shall be paid from the Capital Replacement Fund category to which the replacement relates; *provided however*, that if:

(1) the replacement costs are less than five-tenths of one percent (0.5%) of the preceding year's capital value of the BRWWTP, in the case of replacements of portions of the BRWWTP, or less than one percent (1%) of the preceding year's capital value of all the Joint Authority Interceptors, in the case of replacements of portions of a Joint Authority Interceptor calculated, in either case, pursuant to Section 5E, below; and

(2) the Lead Agency so elects, considering the nature of the replacement project, then such replacement costs may be treated as Operation and Maintenance Expenses.

If, when a particular component needs to be replaced, the amount in the relevant Capital Replacement Fund category is insufficient to pay the cost thereof, the deficit may be eliminated by borrowing from the other Capital Replacement Fund category or from Operation and Maintenance Expenses funds, or both, at no interest, to be repaid within the three (3) succeeding budget years after the borrowing; *provided however*, that the limit which may be borrowed from

Operation and Maintenance Expenses funds is that amount which would leave at least six (6) months operating reserve in such Operation and Maintenance Expenses funds, and *provided further* that the repayment shall be accomplished by increasing the regular quarterly contributions to the deficient Capital Replacement Fund category by amounts necessary to fund such repayments within said three (3) succeeding budget years, in addition to any increases necessary to raise such deficient category to reasonable levels, given the current age and condition of the Joint Facilities components within that fund category. If the deficit is not eliminated by such borrowings, the remaining deficit shall be eliminated by the method described in Subsection 5D, below.

At the end of each year of operations the Lead Agency is authorized and directed to examine the balance in the Operation and Maintenance Expenses fund. If such balance exceeds 75% of the succeeding year's annual budget for Operations and Maintenance Expenses, (the "O&M Budget Surplus") the Lead Agency is authorized, but not required, to (1) calculate each Participant's share of the O&M Budget Surplus based on its proportionate share of all Operations and Maintenance Expenses paid since the next preceding refund of such shares, (2) refund such shares to the respective Participants, and (3) may, at its discretion, make a Capital Replacement Fund assessment to the Participants in proportion to their shares of the total Constructed EQR at such year end, in a manner designed to cause the least assessment net of such refund for one Participant, with net refunds to the other Participants. An example calculation of such refunds and assessments is set forth on Exhibit H attached hereto and incorporated herein by this reference. Such refunds and assessments may be netted against each other to minimize the amounts actually distributed and remitted.

**C. Regulatory Compliance Capital Costs.** Costs for changes or improvements to Joint Facilities or equipment required or imposed by law or regulation ("Regulatory Compliance Capital Costs") may be treated as Operation and Maintenance Expenses if the cost to fund projects to complete such changes or improvements is less than (1) five tenths of one percent (0.5%) of the preceding year's capital value of the BRWWTP (in the case of projects involving components of the BRWWTP), or (2) one percent (1%) of the preceding year's capital value for all of the Joint Authority Interceptors, in the case of projects involving components of the Joint Authority Interceptors, calculated, in either case, pursuant to Section 5E, below.

As used in this Subsection 5C, the phrase "changes or improvements" means "all changes or improvements commenced in any one calendar year". If the Regulatory Compliance Capital Costs for specific changes or improvements are not to be treated as Operation and Maintenance Expenses in accordance with this Subsection 5C, such costs may be borrowed from either Capital Replacement Fund category, or both, or from Operation and Maintenance Expenses funds, or any combination of such categories and funds, at no interest, to be repaid, in the case of borrowing from the Operations and Maintenance Expenses fund, within the three (3) succeeding budget years after the borrowing; *provided however*, that the limit which may be borrowed from Operation and Maintenance Expenses funds is that amount which would leave at least six (6) months operating reserve in such Operation and Maintenance Expenses funds, and *provided further* that the repayment shall be accomplished by increasing the regular quarterly contributions to the deficient Capital Replacement Fund category by amounts necessary to fund such repayments within said three (3) succeeding budget years, in addition to any increases necessary to raise such deficient category to reasonable levels, given the current age and condition of the Joint Facilities components within that fund category. If funds are borrowed from either or both of the Capital Replacement Fund categories, repayment may be made on a

schedule determined by the Lead Agency and approved by Dillon. If repayment is to be made, it shall be accomplished by increasing the regular quarterly contributions to the Capital Replacement Fund category or categories from which the borrowing occurred by amounts necessary to fund such repayments within approved schedule, in addition to any increases necessary to raise such Capital Replacement Fund category or categories to reasonable levels, given the current age and condition of the Joint Facilities components within that fund category or categories. Except as provided above, Regulatory Compliance Capital Costs shall be funded as set forth in Subsection 5D hereof.

**D. Cost Recovery.** Those capital replacements costs which under Subsection 5B hereof are not funded from the Capital Replacement Fund, or treated as Operations and Maintenance Expenses, and all Regulatory Compliance Capital Costs which under Subsection 5C hereof are not treated as Operation and Maintenance Expenses, shall be funded by the Participants by contribution in proportion to their then-current Constructed EQR in the BRWWTP, in the case of replacement of portions of the BRWWTP, and in proportion to Reserved Treatment Capacity in the nominal 4.0 mgd BRWWTP, in the case of replacement of portions of the Joint Authority Interceptors, by application of the principles set forth in Section 4E and illustrated in Exhibit B. In the event any Participant fails or refuses to contribute any or all of its required share of such costs, payment of such share shall be made by the remaining Participants in proportion to their Constructed EQR in the BRWWTP or Reserved Wastewater Capacities in the nominal 4.0 mgd BRWWTP, as applicable. In such event, the provisions of Subsection 6A shall apply.

**E. Capital Account Value Calculations.** For purposes of maintaining accurate cumulative “before” and “after” Capital Account Values for insertion into the cost-sharing formula in Exhibit B, (a) all contributions to the Capital Replacement Fund, (b) all Regulatory Compliance Capital Costs, and (c) all expenditures described in Section 5D, shall be considered to be expenditures to expand the BRWWTP capacity, or the capacity of the other Joint Facilities, as the case may be. The Lead Agency will calculate all Capital Account Values annually and provide copies of such calculations to every Participant.

## **SECTION 6. OBLIGATIONS OF ALL PARTICIPANTS**

**A. Payment Defaults.** If Under Subsections 4B, 4D, 5B, or 5D, a Participant required to arrange for financing or contribute funds to the Authority fails to do so in a timely manner, and one or more of the remaining Participants commits the funds necessary to pay the share of the defaulting Participant, then upon payment of the share of the defaulting Participant, the Authority shall (1) reallocate such amount of the defaulting Participant's unused capacity in the BRWWTP or Interceptor(s) among the other Participants in a manner which recompenses them, and/or (2) increase rates, fees and charges paid by the defaulting Participant in a manner which recompenses the other Participants. *The Authority may take any other additional or substitute actions, including, without limiting the generality of the foregoing, lawsuits and other legal actions, to accomplish the goals of: (1) constructing the improvement (if applicable), and (2) ensuring that the defaulting Participant bears, in some fashion, its proper share of the applicable cost. All attorney fees and other costs resulting from any such default, including all costs of collection or other actions taken by the Authority hereunder, shall be charged to and be borne by the defaulting Participant.* In the event of a reallocation of a portion of the defaulting Participant's unused capacity in the BRWWTP or Interceptor(s), the amount of unused capacity to be reallocated ("Reallocated Capacity") is calculated as follows:

(1) divide the amount of the payment the defaulting Participant should have made by the number of increased Constructed EQRs the nonpaying Participant would have had the right to use if its payment had been made (the "value per newly Constructed EQR"); and

(2) divide the additional amount paid by the paying Participant(s) by the value per Constructed EQR to obtain the Capacity to be reallocated (the "Reallocated Capacity").

The Reallocated Capacity shall be added to the Constructed EQRs which paying Participants have the right to use and subtracted from the Constructed EQRs which the defaulting Participant has the right to use, as reflected on the capacities schedules in the JSA White Books and in an updated Exhibit A to this Agreement.

**B. Rules and Regulations.** The Authority shall have the right to promulgate rules and regulations which shall supersede rules and regulations of the Participants in cases of conflict, provided that nothing herein shall be deemed to affect or impair any valid governmental authority of any of the Participants. In creating new rules and regulations, the Authority will be reasonable and will attempt to be equitable to all Participants. Each Participant shall establish and enforce rules and regulations concerning the use of its collection system by its customers or users. The Authority and each of the Participants shall provide to the others reasonable notice of proposed rule or regulation adoption or modification. Each Participant shall be prohibited from discharging into the Joint Facilities any gasoline, oils, greases, toxic substances or other substances which cannot be treated by the wastewater treatment facility or which may cause a violation of the discharge requirements established for the Authority by the Colorado Water Quality Control Commission, or the Authority's NPDES Discharge Permit, or successor permits or requirements. Each Participant agrees to prevent the discharge by its individual customers or users of such substances into the wastewater system. In the event any Participant fails or refuses to comply with the requirements of this Subsection 6B, the Lead Agency may increase rates, fees and charges payable by that Participant as necessary to recover all direct and indirect costs

associated with such Participant's failure or refusal; *provided however* that if the Lead Agency is the Participant failing or refusing to comply with the requirements of this Subsection 6B, the Town of Dillon is the Participant authorized to increase rates, fees and charges payable by the Lead Agency as necessary to recover all direct and indirect costs associated with the Lead Agency's failure or refusal. Each Participant shall conduct the operation of its respective system and facilities in compliance with the rules and regulations of any and all state and federal agencies having jurisdiction over its operations. Each Participant shall be required to meet the state water pollution control standards for the Blue River and to increase the capacity or efficiency of the necessary facilities to meet such standards without unnecessary or unreasonable delay.

**C. Records and Documents.** Each Participant shall maintain the records, accounts and audits required by statute or which would be kept under normal business practice, and copies of such audits shall be exchanged. Any Participant may review the use or sewer connection agreements of any other Participant in order to insure that adequate payments by any of the customers or users of any other Participants are required.

**D. Competing Systems.** No Participant shall allow a competing system to be constructed within its jurisdictional boundaries.

**E. Abandonment of Facilities.** Upon the abandonment by a Participant of any portion of its rights to use Joint Facilities, such Participant shall retain all rights guaranteed by applicable laws and shall remain liable under applicable laws.

**F. Bonds and Notes.** Except with respect to the power of the Authority to issue revenue bonds in accordance with Section 2B, above, all bonds, notes or other obligations of each Participant, either referred to in this Agreement or to be issued by any Participant, shall for all purposes of this Agreement be the sole obligation of the Participant issuing such bonds, notes or other obligations, and shall not in any way be deemed a debt or liability of any other Participant or of the Authority.

**G. Cooperation.** It is understood and agreed that because of the proximity of the Participants to each other, future mutual cooperation in the construction of additional wastewater facilities (in addition to the increase of the Joint Facilities capacity contemplated in Section 4) is contemplated and desirable and that the Participants at such future time will negotiate in good faith to effect agreement for future construction and joint use of additional sewage facilities. It is agreed that if any Participant desires to obtain additional capacity in the BRWWTP beyond its Reserved Treatment Capacity in the 4 mgd facility (and additional capacity in the Joint Authority Interceptors), it may initiate a process for such expansion similar to that described in Section 4, above. If all Participants unanimously agree, the cost of such expansion shall be allocated to the Participants in accordance with Exhibit B. If any Participant does not so agree, the entire cost of the expansion shall be borne by the Participant requesting the expansion.

**H. Assignment.** Except for assignments to other Participants hereunder, no Participant may assign its rights hereunder to a person or entity without taxing authority, nor to more than one person or entity without prior written consent of the remaining Participants.

**I. Infiltration and Inflow.** Each Participant agrees that I&I into each Participant's collection system must be limited in order to provide economical treatment and that the I&I into

the collection system of each Participant shall be to standards prescribed by an engineer selected by the Lead Agency and Dillon and/or as prescribed by the Colorado Water Quality Control Commission. I&I will be estimated based on continuously metered flow measurements for each Participant, except Silverthorne. Silverthorne's I&I will be estimated, using basic data as follows:

- (1) Influent flow measurements at the BRWWTP.
- (2) Minus flow measurements at member metering stations.
- (3) Minus an estimated allowance for I&I into the Joint Interceptor.

Measurements will be taken on a daily basis, with values published for:

- ◆ the average daily rate for the maximum 3-consecutive day period, being the maximum such average for that calendar year (termed herein as a "Maximum Daily Rate"); and
- ◆ the average flow by month.

It is recognized that the difficulty in determining Section 6I(3), above, together with inherent meter tolerances can result only in approximate values for Silverthorne. The Authority may estimate I&I into the Joint Interceptor with the aid of T.V. and special flow measuring techniques, as determined appropriate by the Authority Engineer.

Excess I&I is defined as that flow over and above allowable amounts as designated in this Agreement, and in accordance with the following formulas, where flows are all given in gallons per day:

For the BRWWTP, total flows greater than:

$$330 \text{ gpd} \times \text{Connected EQR}$$

shall be considered to be "**Excess Operating I&I.**"

Total flows greater than:

$$330\text{gpd} \times \text{Constructed EQR}$$

shall be considered to be "**Excess Capital I&I.**"

For the Joint Authority Trunk Sewer System:

Peak flow rate greater than:

$$700 \text{ gpd} \times \text{Reserved Interceptor Capacity}$$

shall be considered to be "**Excess Capital I&I.**"

**(4) Excess Operating I&I Compensation:** Costs of treatment of Excess Operating I&I result from the need to process the extra flow through the treatment facilities (including secondary biological and advanced processes). Additional treatment costs may also occur due to the low temperature of the I&I portion during cold weather periods (since biological ammonia removal is temperature dependent).

Any entity contributing Excess Operating I&I for treatment will pay, upon billing, all costs for treatment, management, and penalty fines caused by such excess flow, but not less than 50 cents (\$.50) per 1,000 gallons of such excess flow. This figure shall be adjusted annually by increasing it by the same percentage as any increase in the Denver Boulder Consumer Price Index CPI-U, All Urban Consumers, from the Index figure of 180.7 for January-June, 2001. This compensates, at least partially, for the O&M costs involved with secondary and advanced treatment. If it is necessary (for example) to heat incoming sewage to attain cold weather ammonia removal, and such costs are due to Excess Operating I&I, then such costs shall be allocated to, and paid by, the Participant contributing the Excess Operating I&I, in a rational manner. Any other treatment costs attributable to excess I&I shall be similarly allocated and paid. If there is a spill or damage to property resulting from Excess Capital I&I in an Interceptor, the cost of any clean up or fines or damage repair will be allocated to Participants with such Excess I&I in proportion to the total of such Excess I&I. The Joint Authority shall, upon election by the Lead Agency or upon petition by any two participating entities, have prepared an engineering analysis as to the actual O&M costs to handle Excess Operating I&I -- in which case the initial charge of 50 cents (\$.50)/1,000 gallons shall be revised to the calculated amount. Such petitions for study may not be made more often than biannually. At the written request of any other Participant, Lead Agency shall compute a "lease" cost of the excess Interceptor capacity (providing no spill occurred). The lease cost shall be 6.0% of the Exhibit B formula value of the sewer times the ratio of EQR of the excess I&I divided by the number of EQR of constructed capacity. Such lease rate shall be for one calendar year's use, and be based on the maximum Excess Capital I&I experienced, and shall be assessed by the Lead Agency to the Participant having such Excess Capital I&I. Lease payments received shall be immediately delivered by the Lead Agency to the other Participants in proportion to unused Constructed EQR.

In no event shall any Participant have Excess Capital I&I on a long-term basis. If any Participant experiences a short term Excess Capital I&I occurrence, then it shall promptly:

(i) Submit a plan and schedule for timely correction to the Lead Agency.

(ii) Make payment to the JSA as compensation for using Constructed EQRs, the use of which is reserved to others ("**Unused Constructed EQR**"). Such compensation shall not be less than two and five tenths percent (2.5%) for one year or any portion thereof (minimum year payment) of the Exhibit B formula value per EQR of the excess capacity used. This is the capital component compensation, and is in addition to treatment costs assessed. Such excess capacity may be expressed in terms of "**Excess Capital I&I EQRs**" by dividing Excess Capital I&I flows by 580 gpd:

Maximum Day flow – (330 x Constructed EQR)

580

The JSA will distribute such capital component compensation funds to the other Participants which have Unused Constructed EQRs, such payments to each such Participant to be in proportion to that Participant's share of all Unused Constructed EQR; *provided however*, that if the total number of Excess Capital I&I EQRs is greater than the total number of Unused Constructed EQR (the "**Safety Factor EQRs**"), the compensation with respect to such Safety Factor EQRs shall be placed in the Capital Replacement Reserve Fund, with associated value allocated to each Participant in proportion to each Participant's Constructed EQR. Since peak flows for each Participant may occur at different times of the operating (calendar) year, the compensation payments described herein and the distributions thereof shall be calculated on an annual basis, with no Participant receiving credit for any Unused Constructed EQR which such Participant actually uses at any time during such operating year.

If a Participant which experiences an Excess Capital I&I occurrence does not promptly submit a plan and schedule for timely correction, or which submits such a plan and schedule, but does not adhere to it, the Authority, acting through the Lead Agency, is authorized and directed to take all steps necessary to either correct the I&I problem or to increase the transmission or treatment capacity of the Joint Facilities to handle such Excess Capital I&I. All expenses, direct and indirect, of the project to correct the problem or to increase such capacity shall be borne by the Participant with Excess Capital I&I, payable upon billing by the Lead Agency. Such billing to be made periodically as the project progresses. If the Lead Agency is the Participant with Excess Capital I&I, the Town of Dillon is the Participant authorized and directed to increase such capacity and bill the Lead Agency for the expenses thereof. In addition, the offending entity may connect no new EQRs until Silverthorne, as Lead Agency (or Dillon, if Silverthorne is the offending entity), is satisfied with progress on the plan and schedule. The offending entity shall pay all cost for resolving or mitigating the resulting problem, the cost of any fines resulting from the Excess Capital I&I, and the cost of any legal or engineering defense resulting from such Excess Capital I&I.

**J. Report of Connected EQRs.** Each Participant will report to the Lead Agency the number of EQRs connected on its behalf to the Joint Facilities on a quarterly basis. The reports shall be provided to Silverthorne not later than January 15, April 15, July 15 and October 15 of each calendar year.

**K. Late Payments.** All payments due from Participants to the Joint Authority hereunder shall bear interest at 1% per month if not paid within 30 days after invoice from the Lead Agency.

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

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

Facsimile No. 970-262-3410

With Copies To:

Gordon Garrett  
Icenogle Seaver Pogue, P.C  
835 S. Lewis Street  
Lakewood, CO 80226

Facsimile No. 303-382-6994

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

Facsimile No. 970-262-7312

With Copies To:

Gordon Garrett  
Icenogle Seaver Pogue, P.C.  
835 S. Lewis Street  
Lakewood, CO 80226

Facsimile No. 303-382-6994

Gary A. Drescher, Manager  
Buffalo Mountain Metropolitan District  
204 Wildernest Road  
P.O. Box 2430  
Silverthorne, CO 80498-2430

Facsimile No. 970-262-0913

With Copies To:

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

Facsimile No. 303-839-3838

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

Facsimile No. 970-513-4150

With Copies To:

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

With Copies To:

Facsimile No. 970-668-5534  
Tim Flynn  
Collins Cockrel & Cole  
390 Union Boulevard  
Lakewood, CO 80228-1566

Facsimile No. 303-986-1755

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

Subject to the constraints of the situation, the Lead Agency agrees to make reasonable efforts to give notice to all other Participants, of major decisions it is making or proposing to make, or actions it is taking or proposing to take, which in the exercise of reasonable care it knows or should know would have a material adverse financial impact or legal exposure to the other Participants.

## **SECTION 7. GENERAL**

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

**B. Effective Date.** The effective date of this Agreement shall be the 1st day of January, 2010. This Agreement shall be binding upon the successors and assigns of the Participants. This Agreement shall be in full force and effect until terminated by mutual agreement by the Participants or as provided by law. Upon termination, the value of each Participant's right to use the Joint Facilities shall be determined in accordance with the Formula (step one) of Exhibit B.

**C. Sole Agreement.** The Participants acknowledge that this Agreement constitutes the sole agreement between them and that no party is relying upon any oral representation made by a party or an agent or officer of a party. This Agreement may be amended only by written agreement, signed by all of the Participants hereto. Headings in this Agreement are for convenience only and shall not affect or modify the meaning of the text.

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

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

**IN WITNESS WHEREOF**, the Participants have executed this Agreement with effective date of January 1, 2010.

TOWN OF SILVERTHORNE

[ S E A L ]

ATTEST:

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Town Clerk

TOWN OF DILLON

[ S E A L ]

ATTEST:

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Town Clerk

BUFFALO MOUNTAIN METROPOLITAN DISTRICT

[ S E A L ]

ATTEST:

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary

DILLON VALLEY DISTRICT

[ S E A L ]

ATTEST:

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

MESA CORTINA WATER AND  
SANITATION DISTRICT

[ S E A L ]

ATTEST:

By: \_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_

