

**INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF WASTEWATER
TREATMENT SERVICES TO THE TOWN OF CRESTONE**

This INTERGOVERNMENTAL AGREEMENT FOR THE PROVISION OF WASTEWATER TREATMENT SERVICES TO THE TOWN OF CRESTONE (the "Agreement") is entered into this ____ day of _____ 2024 (the "Effective Date"), by and between the BACA GRANDE WATER AND SANITATION DISTRICT, a Colorado special district (the "District"), and the TOWN OF CRESTONE, COLORADO, a Colorado municipal corporation (the "Town"). The District and the Town may be referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS:

- A. The District was organized pursuant to and exists in accordance with the provisions of C.R.S. § 32-1-101, et seq., for the purpose of providing certain water and sanitary sewer facilities, improvements and services to its customers;
- B. The Town exists pursuant to and in accordance with the provisions of C.R.S. § 31-1-101, et seq., for the purpose of providing certain facilities and services to its residents and taxpayers;
- C. Pursuant to C.R.S. § 29-1-203, the Town and the District may cooperate and contract with one another to provide any function, service or facility lawfully authorized to each of the contracting parties;
- D. Pursuant to that certain Intergovernmental Agreement dated February 22, 2002, as amended by that certain First Addendum To Intergovernmental Agreement, dated December 16, 2011 (the "IGA"), the District treated wastewater collected by the Town's wastewater collection system (the "Town System"), however, the Town owns the Town System and is responsible for the operation and maintenance of the Town System located inside the Town and is responsible for all costs associated with operation and maintenance of the same;
- E. Pursuant to paragraph 14 of the IGA, the term of the IGA was for a period of twenty years commencing on March 1, 2002, with five-year renewals automatically thereafter "unless either party notifies the other in writing at least (2) two years before [the] renewal date of intent not to renew."
- F. On January 31, 2020, the District gave the Town notice of its intent not to renew the IGA.
- G. Accordingly, the IGA expired on February 28, 2022.
- H. The Parties are now willing to enter into a new IGA through December 31, 2044, pursuant to the terms and conditions set forth herein.

Now, therefore, in consideration of the above Recitals and the mutual covenants and conditions set forth below, the Parties agree as follows:

AGREEMENT

1. TERM. The term of this Agreement shall be from the Effective Date through December 31, 2044 (the "Term"), unless terminated earlier in accordance with the terms and conditions set forth herein. This Agreement shall terminate automatically without any further action necessary by the Parties upon (a) the inclusion of all of the Town within the District; or (b) the Town constructing and commencing the use of its own CDPHE-approved wastewater treatment facilities.

2. INITIAL COST OF SERVICE. The District shall provide wastewater treatment services to the Town during the Term of this Agreement based on the gallons of flow and pounds of Biochemical Oxygen Demand ("BOD") produced by the Town. The District shall initially charge the Town pursuant to the following rates:

a. Rate per 1,000 Gallons of Flow: **\$8.33 / 1,000 gallons;**

and

b. Rate per Pound of BOD: **\$1.05 / pound BOD**

For purposes of determining the amounts owed by the Town pursuant to the foregoing rates, the gallons of flow and pounds of BOD produced by the Town shall be sampled, measured, and determined by the District at the effluent flume located at the intersection of the Town System and the District's wastewater collection and treatment system and facilities. Such sampling and measurements shall be performed on behalf of the District by an individual or individuals qualified to make such measurements using equipment and techniques for taking such samples and making such measurements in accordance with EPA and CDPHE standards. The District shall afford representatives of the Town of Crestone the opportunity to attend any sampling or measurement. The District shall measure flow no less than daily. The District shall sample BOD no less than weekly. The pounds of BOD produced by the Town shall be determined by an independent third party lab. Upon request, the District shall provide documentation to the Town of the pounds of BOD produced by the Town as determined by the independent third party lab, and of the gallons of flow produced by the Town as measured by the District. Since pounds of BOD produced by the Town shall be determined by an independent third party lab, this lab's determination shall be binding and conclusive on the Parties. The District and the Town shall split the cost of installing the most accurate meter available to measure gallons of flow. Calibration of this meter shall be performed jointly by the Parties, and thereafter the gallons of flow produced by the Town shall be as measured by the new meter, which measurement shall be binding and conclusive on the Parties. In the event the Town has reasonable grounds to believe that the new meter needs to be recalibrated, the Parties shall jointly recalibrate the meter.

3. INCREASES IN COST OF SERVICE. The District shall have discretion to increase the rates charged to the Town for wastewater treatment services during the Term of this Agreement, subject to the following requirements:

a. Except as set forth in paragraph 4 below, any increase in the rate that the Town pays the District for wastewater treatment services during the Term of this Agreement shall be made in the sole, good faith, discretion of the District, taking into account only increases in infrastructure, operational, administrative, and other costs over time of providing wastewater treatment services to the Town, and not increases in infrastructure, operational, administrative and other costs over time of providing wastewater treatment services to the District's other customers.

4. WASTEWATER TREATMENT PLANT UPGRADES AND EXPANSION. The District is in the process of upgrading its existing wastewater treatment facility and may ultimately be required to expand or replace its current facility. The amount the Town pays for wastewater treatment services under this Agreement shall increase so that the Town is paying its proportionate share of the cost of any upgrades to the existing wastewater treatment facility, the costs of any expansion of the existing wastewater treatment facility, and the costs of a new wastewater treatment facility. This amount of this increase shall be determined by a qualified, third party consultant retained by the District, which consultant shall base such amount on the percentage the Town's treatment needs bears to the overall treatment needs of the District (the "Town's Share"). The consultant's fees shall be shared equally by the Parties. The Town's Share shall be determined by adding the Town's average percentage contribution to the overall volume of wastewater treated by the District during the 12 months preceding the commencement of any upgrade, expansion, or replacement of the District's wastewater treatment facility, together with the Town's average percentage contribution to the total pounds of BOD treated by the District during the 12 months preceding the commencement of any upgrade, expansion, or replacement of the District's wastewater treatment facility, divided by two. By way of example, if the Town's average percentage contribution to the overall volume of wastewater treated by the District during this period is 28%, and the Town's average percentage contribution to the total pounds of BOD treated by the District during this period is 37%, the Town's Share would be 32.5%, and the consultant would base the amount of the increase necessary for the Town to pay its proportionate share of the cost of upgraded, expended, or new wastewater treatment facilities on this percentage. All or any portion of the Town's Share may be paid through loans or grants secured by the Town.

5. PAYMENT. The District shall submit an invoice to the Town on a monthly basis. The invoice shall include the gallons of flow and pounds of BOD produced by the Town during the prior month. The Town shall pay such invoices no later than thirty (30) days after receipt thereof. Late fees and interest will accrue on amounts not paid within thirty (30) days after receipt of an invoice from the District in accordance with the District's Rules and Regulations.

6. DISCHARGE PERMIT. Contemporaneously with, and as a condition of, the execution of this Agreement, the Town shall execute the Town of Crestone Wastewater Discharge Permit

attached hereto as **Exhibit A** (the “Discharge Permit”). A breach of the Discharge Permit shall constitute a breach of this Agreement.

7. **DISTRICT WASTEWATER COLLECTION SYSTEM IMPACT FEES.** The Town shall collect a District Wastewater Collection System Impact Fee (“DWCSIF”) from a new user of the Town System in an amount equal to 50% of the District’s Sewer Tap Fee in effect at the time the DWCSIF is assessed. The purpose of the DWCSIF shall be to contribute to the cost of operating, maintaining, repairing, and replacing that portion of the District’s wastewater collection system and facilities from the terminus of the Town System through and including the District’s wastewater treatment facility. The Town shall collect the DWCSIF and remit it to the District prior to allowing a new user to connect to the Town System.

8. **INFILTRATION AND INFLOW.** The reduction in infiltration and inflow (“I&I”) into the Town System is in both Parties’ interest. The Town shall use best practices to minimize I&I into the Town System. The District shall coordinate, cooperate, and consult with the Town regarding the Town’s efforts to reduce I&I into the Town System, provided that the reduction of I&I from the Town System shall remain solely a Town responsibility and Town expense. The District shall use best practices to minimize I&I into the District’s wastewater collection system and facilities, and those practices will remain solely a District responsibility and District expense.

9. **FATS, OILS, AND GREASE PROGRAM.** The reduction of fats, oils, and grease entering the Town System is in both Parties’ interest. The Town shall use best practices to minimize the amount of fats, oils, and grease entering the Town System. The District shall coordinate, cooperate, and consult with the Town regarding the Town’s efforts to reduce the amount of fats, oils, and grease deposited into the Town System, provided that the reduction of fats, oils, and grease into the Town System shall remain solely a Town responsibility and Town expense.

10. **PRETREATMENT.** The Parties agree to work together to evaluate whether the pretreatment of certain wastewater discharged by users of the Town System would reduce biological loading at the District’s wastewater treatment facility.

11. **DISTRICT RULES AND REGULATIONS.** The Town agrees that it shall at all times be subject to all applicable wastewater rules and regulations of the District, including but not limited to Article 15 thereof, as those rules and regulations may be promulgated or modified from time-to-time, and except as otherwise modified herein. In addition, the Town agrees that all users of the Town System shall be subject to all applicable wastewater rules and regulations of the District, and the Town agrees to enforce such rules and regulations within the Town.

12. **OPERATION, MAINTENANCE, REPAIR, AND MODIFICATION OF TOWN SYSTEM.** The Parties understand and agree that the Town is responsible for the construction and ongoing repair, maintenance, and operation of the Town System such that the Town System remains at all times in good working order. Any deficiencies in the Town System shall not be the responsibility of or result in liability for the District but shall be promptly remedied by the Town at the Town’s sole expense. The District shall have the right to inspect the Town System upon reasonable notice, unless it is an emergency, in which case no notice shall be required.

13. **GRANTS AND LOANS.** The Town agrees to cooperate with the District with respect to the District’s efforts to obtain grants and low interest loans related to the District’s wastewater

collection and treatment system and facilities and the Town System. The District agrees to cooperate with the Town with respect to the Town's efforts to obtain grants and low interest loans related to the Town System and the District's wastewater collection and treatment system and facilities.

14. INDEMNIFICATION. To the extent permitted by law, and without waiving any governmental immunity or other governmental protections provided under §§ 24-10-101, et seq., C.R.S., §§ 24-91-103.6(1), et seq., C.R.S and the Colorado Constitution Article XI, Sections 1 and 2, as may be amended from time to time, each Party shall defend, indemnify and hold harmless the other Party and each of its directors, officers, contractors, employees, agents and consultants, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, damages, and expenses, including reasonable legal expenses and attorneys' fees, arising directly or indirectly, in whole or in part, out of the negligence, willful misconduct, or any criminal or tortious act or omission of the first Party or any of its subcontractors, officers, agents or employees, in connection with this Agreement, the Town System and/or the performance of the work hereunder, whether within or beyond the scope of its duties or authority hereunder. The provisions of this paragraph shall survive termination of this Agreement.

15. ASSIGNMENT. Neither Party shall have the right or power to assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other Party. Any attempted assignment, delegation or subcontracting of this Agreement in whole or in part with respect to which both Parties have not consented, in writing, shall be null and void and of no effect whatsoever.

16. DEFAULT. If either Party to this Agreement fails to perform in accordance with, or is otherwise in default of, the terms of this Agreement, the non-defaulting Party shall give written notice to the other Party of the default, and upon said Party in default having failed to cure said default within 30 days from the date of the written notice, the non-defaulting Party shall have the option to terminate this Agreement and pursue any remedy available to it at law or in equity.

17. NOTICES. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to either Party hereto, by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or in lieu of such personal services, three days after deposited in the United States' mail, first-class postage prepaid, properly addressed to the Parties at:

To the District:

Baca Grande Water and Sanitation District
Attn: District Manager
PO Box 520
Crestone, Colorado 81131-0520
Email: _____

To the Town:

Town of Crestone, Colorado
Attn: Town Manager/Clerk
PO Box 64
Crestone, Colorado 81131
Email: _____

18. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties hereto relating to the subject matter hereof as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no

force and effect. This Agreement may not be modified except by a writing executed by both Parties.

19. **BINDING AGREEMENT.** This Agreement shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties hereto.

20. **NO WAIVER.** No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

21. **CONTROLLING LAW; VENUE.** The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Saguache County District Court shall be the exclusive venue for any legal action arising out of or related to this Agreement.

22. **COMPLIANCE WITH LAW.** This Agreement shall be performed in accordance with, and to the extent permitted by, all applicable laws, rules, regulations, ordinances and/or similar directives of the jurisdiction in which this Agreement is performed.

23. **GOVERNMENTAL IMMUNITY.** Nothing in this Agreement shall be construed to constitute a waiver, in whole or in part, of any of the District's or the Town's rights and protections under the Colorado Governmental Immunity Act, §§ 24-10-101, et seq., C.R.S., as amended from time to time.

24. **NEGOTIATED PROVISIONS.** This Agreement shall not be construed more strictly against one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

25. **SEVERABILITY.** If any portion of this Agreement is declared by any court of competent jurisdiction to be void or unenforceable, such decision shall not affect the validity of any remaining portion of this Agreement, which shall remain in full force and effect. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.

26. **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 the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

27. **SEPARATION OF POWERS PRESERVED.** Nothing in this Agreement shall be construed to create a Metropolitan Sewage District. Except for the express or reasonably implied terms of this Agreement, nothing contained herein shall be construed to give the Town or its residents any power of governance of any wastewater infrastructure or treatment facility of the District. Except for the express or reasonably implied terms of this Agreement, nothing contained herein shall be construed to give the Town any rights in the government of the District or to give the District any rights in the government of the Town.

28. COUNTERPART EXECUTION. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

29. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The Parties do not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. The performance of those obligations of the Parties pursuant to this Agreement requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Parties expressly understand, acknowledge and agree that their obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by their respective governing bodies and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by either Party, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the Parties or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of the Parties' respective funds. The Parties' obligations under this Agreement exist subject to annual budgeting and appropriations, and shall remain subject to the same for the entire term of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

BACA GRANDE WATER AND SANITATION DISTRICT,
a quasi-municipal corporation and political subdivision of the State of Colorado

By: _____
President

ATTEST: _____
Secretary

Town of Crestone, Colorado

By: _____
Mayor

ATTEST: _____
Town Clerk