Walt

INTERGOVERNMENTAL AGREEMENT CONCERNING WASTEWATER SERVICE

THIS INTERGOVERNMENTAL AGREEMENT CONCERNING WASTEWATER SERVICE (this "Agreement") is made and entered into this 1st day of June, 2007, by and between the City of Idaho Springs, a Colorado municipal corporation (the "City") and Chicago Creek Sanitation District, a Colorado quasi-municipal corporation and political subdivision of the State of Colorado organized pursuant to Title 32, C.R.S., (the "District"). Collectively, the City and the District may hereinafter be referred to as the "Parties."

WITNESSETH

WHEREAS, § 29-1-203, C.R.S. authorizes governments to contract with one another to provide any function, service or facility lawfully authorized to each of the contracting units; and

WHEREAS, the City has previously connected the City's water treatment facilities with the District's wastewater transmission lines (the "District's Lines) to provide transmission of the wastewater from the City's water treatment facilities through the District's Lines to the wastewater facilities of the City; and

WHEREAS, after such connection was made, the City and the District entered into a Wastewater Service Agreement dated April 23, 2001 (the "2001 Agreement," which agreement expired by its terms on April 23, 2006), whereby the City agreed to pay the District for the District's conveyance of such wastewater to the City's wastewater treatment facilities; and

WHEREAS, the City and the District have renegotiated the terms of the 2001 Agreement and desire to memorialize the renegotiated terms; and

WHEREAS, it is the opinion of both the City, acting by and through its City Council, and the District, acting by and through its Board of Directors, that such renegotiated terms are mutually advantageous hereto and in the best interest of each of the Parties;

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

A. DISTRICT'S COVENANTS AND AGREEMENTS

1. The District agrees that the City may continue its connection to the District's Lines for the purpose of transporting wastewater from the City's water

treatment facility to the City's wastewater facilities, provided that the connection may continue only in accordance with the terms and conditions of this Agreement. The actual location of the connection between the City's line from its water treatment facility (the "City's Line") and the District's Lines is hereinafter referred to as the "Point of Connection."

2. The physical connection between the City's Line and the District's Line (the "Connection") shall be deemed to be an integral part of District's wastewater transmission system, and the District shall be solely responsible for operation and maintenance of the Connection.

3. It shall be the sole responsibility of the District to transport City's wastewater from the Point of Connection through the District Lines and the Parties specifically agree that the City shall not be liable for any act or omission of the District with respect to the transmission of wastewater from the Point of Connection to the connection with the City's wastewater facilities. The maximum flow rate from the City's water treatment facility shall not exceed 275 gallons per minute.

4. The District's wastewater system shall remain the property of the District. It shall be responsible for the operation and maintenance thereof.

5. The District agrees to abide by and conform to all applicable rules and regulations with respect to wastewater, including any applicable provisions of any permits required by any state or federal agency.

6. The District agrees to cooperate with the City in the filing of applications for any grants that may become available from time to time, including the sharing of required information and the signing of the application and/or other documents.

B. CITY'S COVENANTS AND AGREEMENTS

1. The City's Line shall remain the sole property of the City and is hereby deemed to be an integral part of City's wastewater treatment system. The City shall be solely responsible for the operation and maintenance of the City's Line.

2. The City may authorize or approve taps or connections to the City's Line, provided that the same shall comply with the rules and regulations of the District, the applicable tap fees of both the City and District have been paid and the District has given its prior written consent to the tap or connection, which consent shall not be unreasonably conditioned, delayed or denied.

3. It shall be the sole responsibility of the City to transport the City's wastewater from the City's water treatment facility to the Point of Connection,

and the City specifically agrees that the District shall not be liable for any act or omission of the City with respect to the transmission of wastewater through the City's Line to the Point of Connection nor for the City's operation and maintenance of its wastewater treatment system, lines or facilities.

4. The City shall operate and maintain its wastewater treatment system, lines and facilities in accordance with generally accepted standards for municipal wastewater operations. and agrees to abide by and conform to all applicable rules and regulations with respect to wastewater, including any applicable provisions of any permits required by any state or federal agency.

5. With respect to the quality and type of wastewater delivered to the Point of Connection by the City, the City shall comply with all applicable provisions of any state or federal permits required of the City and/or the District. The City agrees, upon written notice from any applicable federal or state agency, to take all reasonable required steps to eliminate any violation by the City of any applicable rules, regulations, or permit requirements.

a. Specifically, the City agrees that it shall not introduce a Pollutant (defined below) into the City Line, create a fire or explosion hazard; obstruct flow or interfere with the operation of the District's facilities; cause an upset of the District's facilities; or cause any violation of the District's permits or otherwise cause a violation by the District of any federal or state statute, rule or regulation.

b. For purpose of this Agreement, "Pollutant" means any substance that is now or may become regulated or governed by any Environmental Laws, or the presence of which requires investigation under any Environmental Laws, in quantities that trigger liability for clean up or remediation responsibility, or any flammable, explosive, corrosive, reactive, carcinogenic, radioactive material, hazardous waste, toxic substance or related material and any other substance or material defined or designated as a hazardous or toxic substance, material or waste by any Environmental Laws and shall include, without limitation:

i. any substance included within the definitions of "hazardous substance" as that term is defined in CERCLA; any "hazardous waste" as that term is defined in RCRA; any "hazardous chemical" or "toxic chemical" as those terms are defined by EPCRTKA: and any "hazardous material" as that term is defined in the Hazardous Materials Transportation Act (49 U.S.W. §§ 1801 et seq.), as amended (including as those terms are further defined, construed, or otherwise used in rules, regulations or standards issued pursuant to the Environmental Laws);

ii. any substance listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as a hazardous substance (40 C.F.R. Part 302 and amendments thereto); and

iii. any material, waste, or substance which is or contains any petroleum product or by-product, flammable or explosive material, radioactive material, asbestos, PCBs, dioxins, heavy materials, mine tailings, waste or slag, radon gas or any material designated as a "hazardous substance" pursuant to Section 311 of the CWA (33 U.S.C. § 1321) or listed pursuant to Section 307 of the CWA (33 U.S.C. § 1317).

c. For purposes of this Agreement, "Environmental Laws" means all federal, state and local environmental, health and safety statutes, as may from time to time be in effect, including but not limited to federal laws such as the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §§ 9602 et seq., the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 42 U.S.C. § 9601(20) (D), the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901 et seq., the Federal Water Pollution Control Act, as amended by the Clean Water Act Amendments of 1977, 33 U.S.C. §§ 1251 et seq. ("CWA"), the Clean Air Act of 1966, as amended, 42 U.S.C. §§ 7401 et seq., the Federal Insecticide, Fungicide and Rodenticide Act ("FIFRA"), 7 U.S.C. §§ 136 et seq., the Occupational Safety and Health Act ("OSHA"), 29 U.S.C. §§ 651 et seq., the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRTKA"), 42 U.S.C. §§ 11001 et seq.; and any and all federal, state and local rules, regulations, authorizations, judgments, decrees, concessions, grants, franchises, agreements and other governmental restrictions and other agreements relating to the environment or to any Pollutants, as may from time to time be in effect.

6. Should the City become aware that any Pollutants have been introduced through the City Line into the District's Lines, the City shall promptly notify the District of such introduction and shall cooperate fully with the District in the removal of the same from the City's Line and District's Lines and the protection of the public interest.

7. The City agrees to assume full responsibility for all damages which may be caused by the City's introduction of Pollutants into the District's Lines.

9. On or before the fifteenth day of each April, July, October, and January during the term hereof, the City shall provide the District with a discharge report which includes a description of the quantity and type of wastewater delivered to the Point of Connection by the City during the preceding calendar quarter.

C. DISTRICT FEES

1. The City shall pay the District a flat monthly maintenance fee of Four Hundred Thirty Dollars ($430). This fee shall be increased or decreased in direct proportion to the percentage increase or decrease in the treatment rate the City charges the District. The District will bill the City at the beginning of each month, and the City shall pay the District the amount billed following the City Council's next meeting at which the approval of bills is on the agenda. Should the discharge from the City's Line exceed two million (2,000,000) gallons during any calendar year, the City shall credit the District at the most recent rate charged the District per thousand gallons for the excess discharge.

2. If the Parties agree to allow any third party to tap into the City Line, the City shall collect from the connecting party and pay over to the District the applicable District sewer tap fees prior to connection, as well as the District's bi-monthly maintenance fees for each such sewer tap in such amounts as may be established by the District and changed from time to time.

3. Beginning in 2010 and every five (5) years thereafter, there shall be a television inspection of the City's Line and the District's Line from the Point of Connection to the end of the District's sewer main line. The City shall pay one-half (1/2) the cost of the television inspection, but only if it has reviewed and approved the contract for the television inspection prior to its execution by the District.

4. The City and the District shall meet each January during the term of this Agreement to resolve any question concerning this Agreement or fiscal adjustments that may be required.

D. MISCELLANEOUS

1. ACTS OF GOD: It is expressly understood and agreed that neither party to this Agreement assumes any responsibility or liability to the other for any delay due to weather, non-deliverability or non-availability of materials, acts of God, strikes, accidents, or any other act beyond its control which may in any way cause an interruption or discontinuance of the services such party is obligated to

cause an interruption or discontinuance of the services such party is obligated to provide pursuant to this Agreement; however, each such party shall exercise due diligence to remove its inability, interruption or discontinuance of service as promptly as possible.

2. ARBITRATION: The Parties acknowledge and agree that they hold a position of responsibility and trust with respect to the residents of the City and the District. In order to insure continuance and uninterrupted service to users, the parties agree that no controversy, dispute, or breach of this Agreement shall justify or permit termination of the continuing obligations of this Agreement. In the event of a controversy, dispute or breach, except as provided in the same shall be submitted to arbitration before an arbitration panel comprised of a representative appointed by the City, and a representative appointed by the District, and a third arbitrator to be selected by the prior two arbitrators. The arbitration panel shall have authority to determine its procedures, to decide any and all disputes arising under this Agreement, and its ultimate decision shall be enforceable in accordance with the Uniform Arbitration Act adopted by the State of Colorado. In the event a controversy, dispute or breach of this Agreement does arise, either party may seek from the district court for Clear Creek County, in addition to the rights provided herein, a temporary restraining order and preliminary injunction pending arbitration to compel the other party to conform according to the obligations set forth in this Agreement. Further, the decision of the arbitration panel may be appealed by either party to the district court for Clear Creek County.

3. TERM OF AGREEMENT: This Agreement shall be in full force and effect for a period of sixty (60) consecutive months from the date first above written, unless sooner terminated. If the Parties have not renewed this Agreement prior to the conclusion of the sixty (60) month period, this Agreement shall continue automatically on a month-to-month basis under the same terms and conditions provided in this Agreement until written notice is given by either of the Parties to the other of its desire to terminate or renegotiate this Agreement.

4. NO TERMINATION FOR FAILURE TO PAY: Except as provided in Paragraph D. 16, below, neither party shall have the right to terminate this Agreement for nonpayment. In the event of nonpayment by either party, the other party, in addition to the rights provided herein, may ask a court of general jurisdiction to enter such orders as may be necessary to enforce the terms of this Agreement, including requiring the defaulting party to pay all sums due and owing hereunder.

5. WAIVER: Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by any party shall not constitute a

continuing wavier or waiver of any subsequent breach of the same or of another provision of this Agreement.

6. SEVERABILITY: Invalidation of any provision of this Agreement or any paragraph, sentence, clause, phrase, or word herein or the application thereof of any given circumstance shall not affect the validity of the remainder of this Agreement.

7. TIME OF ESSENCE: Time is of the essence for the performance of each and every provision hereof.

8. GOVERNING LAW AND VENUE: This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Clear Creek County, Colorado.

9. INTEGRATION: This Agreement and any attached exhibits constitute the entire Agreement between the City and the District, superseding all prior oral or written communications.

10. THIRD PARTIES: There are no intended third-party beneficiaries to this Agreement.

11. MODIFICATION: This Agreement may only be modified upon written agreement of the Parties.

12. ASSIGNMENT: Neither this Agreement nor any of the rights or obligations of the parties hereto, shall be assigned by either party without the written consent of the other.

13. GOVERNMENTAL IMMUNITY: The City and the District, their officers, and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars ($150,000) per person and six hundred thousand dollars ($600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and the District, their officers or employees.

14. BINDING EFFECT: The City and the District each bind itself, its successors and assigns to the other party to this Agreement with respect to all rights and obligations under this Agreement. Neither the City nor the District shall assign or transfer its interest in this Agreement without the written consent of the other.

15. NOTICE: Any notices, demands or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally or sent by certified mail, return receipt requested, postage prepaid, addressed as follows:

City of Idaho Springs
c/o Administrator
PO Box 907
Idaho Springs, CO 80452

Chicago Creek Sanitation District
PO Box 634
Idaho Springs, CO 80452

or at other addresses as the parties may hereafter or from time to time designate by written notice to the other party given in accordance with this paragraph. Notice shall be considered received on the earlier of the day on which such notice is actually received by the party to whom it was addressed, or the third day after such notice is given.

16. NO MULTIPLE FISCAL YEAR OBLIGATION: Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution, Article X, Section 20. Notwithstanding any other provision of this Agreement, the City's and the District's obligations under this Agreement are subject to annual appropriation by the City Council of the City and the Board of Directors of the District, respectively. Any failure of a City Council or a Board of Directors annually to appropriate adequate monies to finance the City's or the District's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are to be depleted. Notice shall be given promptly to the other Party of any failure to appropriate such adequate monies.

EXECUTED on the day and year first above written.

CITY OF IDAHO SPRINGS,
a Colorado municipal corporation

By: _____
Dennis Lunbery, Mayor

ATTEST:

_____
Reba Bechtel, City Clerk

CHICAGO CREEK SANITATION DISTRICT,
a Colorado quasi-municipal corporation

By: _____
Its: Chairman

ATTEST:

_____
Secretary