

WASTEWATER TREATMENT SERVICE AGREEMENT

THIS AGREEMENT is made and entered into this 14th day of April, 2003, by and between the TOWN OF WINDSOR, COLORADO, a statutory town and political subdivision of the State of Colorado, hereinafter referred to as "Windsor," acting through the Town Sewer Utilities Enterprise as established by the Windsor Municipal Code, and the TOWN OF SEVERANCE, COLORADO, a statutory town and political subdivision of the State of Colorado, hereinafter referred to as "Severance." Either party hereto may also be referred to as "municipality" or "party." Both parties may be referred to herein as "the municipalities" or "the parties";

WITNESSETH:

WHEREAS, on or about December 11, 2000, Windsor and Severance entered into an Intergovernmental Agreement regarding land use and development along certain portions of Highway 392 in Weld County, Colorado; and

WHEREAS, as part of the aforesaid Intergovernmental Agreement, the parties set forth their intention to cooperate with one another in providing for a regional wastewater treatment facility; and

WHEREAS, Windsor currently operates a wastewater treatment facility that is geographically situated to allow it to serve the existing needs and currently projected growth of Severance; and

WHEREAS, pursuant to the Constitution of the State of Colorado, Article XIV, Section 18(2)(a), and Section 29-1-201, *et seq.*, *Colorado Revised Statutes*, the parties are lawfully authorized and encouraged to cooperate with one another for the purposes of regulating development, which regulation includes utility services; and

WHEREAS, by the terms of this Agreement, the parties desire to set forth the entirety of their agreement concerning their common use of a wastewater treatment facility;

NOW, THEREFORE, IN CONSIDERATION OF THE COVENANTS AND OBLIGATIONS EXPRESSED HEREIN, IT IS HEREBY AGREED BY AND BETWEEN THE WINDSOR AND SEVERANCE AS FOLLOWS:

1. **Preamble.** The municipalities hereby acknowledge that the recitals set forth above are true and correct, and those recitals are incorporated into the body of this Agreement.

2. **Windsor to Provide Access to Wastewater Treatment Facility.** Subject to the terms, conditions and limitations as set forth in this Agreement, Windsor agrees that Severance shall be afforded the right to discharge wastewater to Windsor's existing wastewater treatment facility.

3. **Windsor East Side Interceptor Sewer Project.** Windsor is currently undertaking the construction of a project known as the Windsor East Side Interceptor Sewer. The anticipated completion date for this project is November 1, 2002, and upon completion of the project, it will be feasible for Windsor to accept and treat wastewater from Severance.

Prior to the commencement of this project, Severance requested that Windsor modify the construction plans of the project to provide for expanded capacity that would enable the Windsor East Side Interceptor Sewer to accept wastewater from Severance. Upon Severance's agreement to be responsible for the costs of the construction of the expanded capacity, the capacity of the Windsor East Side Interceptor Sewer was increased by 1,000,000 gallons per day. The cost of this expanded capacity will be Three Hundred Ninety Five Thousand Dollars (\$395,000.00). By the terms of this Agreement, Severance acknowledges its continuing obligation to reimburse Windsor for that amount.

It is understood and agreed that full payment of the final amount due by Severance is a condition precedent to the provisions of this Agreement concerning Severance's connection to or use of Windsor's wastewater treatment facility. The parties agree that in the event the final amount due is paid in full on or before January 1, 2006, the amount due shall not bear interest. In the event the final amount is not paid in full on or before January 1, 2006, interest shall thereafter accrue in an amount equal to the prime lending rate to New York commercial banks for large corporations as reported in the *Wall Street Journal* on January 2, 2006, plus two percent (2%) per annum. Unless sooner paid, the final amount plus any accrued interest shall be due and payable in full on January 1, 2013.

4. **Connection to the Windsor East Side Interceptor Sewer.** Upon presentation of engineering plans satisfactory to Windsor and payment of all amounts due to Windsor under the provisions of paragraph 3 of this Agreement, Severance shall have access to the Windsor East Side Interceptor Sewer and Windsor's wastewater treatment facility. Construction of all infrastructure necessary to connect to the Windsor East Side Interceptor Sewer, including the construction of an easily and safely accessible vault with electric power and lighting, metering flume, flowmeter, and data logger acceptable to Windsor, shall be the sole responsibility of Severance.

5. **Payment of Plant Investment Fee and Measurement of Discharge.** Within ninety (90) days of connecting to the Windsor East Side Interceptor Sewer, Severance shall pay

to Windsor a plant investment fee reflecting its acquisition of capacity in Windsor's wastewater treatment facility, together with the cost of maintaining and expanding that capacity. For the purposes of this Agreement, the plant investment fee shall be expressed in a rate per gallon of wastewater discharge per day as measured at the flowmeter located at the connection to the Windsor East Side Interceptor Sewer. This plant investment fee rate shall first be established by Windsor upon Severance's connection to the East Side Interceptor Sewer and thereafter on an annual basis. This rate shall be calculated based upon the current plant investment fees then in effect for Windsor residents, which fees include the actual cost of maintaining and expanding the capacity of Windsor's wastewater treatment facility. The plant investment fee rate shall not include any additional surcharge or additional payment for the expansion of the existing lift station that may be required to provide service to Severance pursuant to this Agreement.

The initial plant investment fee due from Severance to Windsor shall be established by calculating the peak gallons per day of wastewater discharge as measured at the flowmeter during the initial thirty (30) days of usage, and then multiplying that amount by the plant investment fee rate. As is set forth above, Severance shall not pay any additional surcharge or additional payment for the expansion of the existing lift station that may be required to provide service to Severance pursuant to this Agreement. The resulting amount shall be the initial plant investment fee, and said amount shall be paid in full by Severance to Windsor within ninety (90) days of the initial connection.

After the establishment of the initial plant investment fee, all subsequent plant investment fee amounts due from Severance to Windsor for increased capacity required by Severance shall likewise be calculated upon peak demand. Windsor shall regularly monitor the amount of wastewater discharge received from Severance as measured at the flowmeter. Whenever demand per day exceeds the level upon which the initial, or then existing, plant investment fee has been calculated, an additional plant investment fee shall be due. The additional fee shall be calculated as aforesaid by multiplying the additional gallons of usage per day by the then existing plant investment fee rate. Payment of the additional plant investment fee shall be due within thirty (30) days of Windsor providing Severance with notice of the increased peak demand and calculation of the additional amount due.

The foregoing notwithstanding, it is understood and agreed that any future expansion of Severance's capacity as provided for in this Agreement shall ultimately be limited to the total increased capacity in the Windsor East Side Interceptor Sewer Project acquired by Severance pursuant to the provisions of paragraph 3 of this Agreement.

6. **Monthly User Fees.** Severance shall pay to Windsor a monthly user fee to be established by Windsor on an annual basis and calculated per hundred (100) cubic feet of wastewater discharge as measured at the flowmeter. Said fee shall reflect Windsor's actual costs

of wastewater treatment. Windsor shall annually establish such fee, and upon the adoption of a revised fee each year, Severance agrees to pay such fee for all wastewater discharge after the effective date of the fee revision. The fee first established by Windsor and any revisions thereof shall be in accordance with the schedule of user fees then in effect for Windsor residents, which fees include the actual costs of wastewater treatment.

Billing for monthly user fees shall be tendered by Windsor to Severance on or about the last day of each month and shall be payable by Severance on or before the 20th day of the following month. Any bill not paid by the 20th day of the month following billing shall be delinquent, and Severance shall pay a delinquency fee equal to ten percent (10%) of the unpaid monthly billing.

7. **Construction Standards.** Subsequent to the adoption of this Agreement, the wastewater collection system of Severance shall be installed and constructed in accordance with generally recognized standards at least equal to the construction standards of Windsor. Severance shall properly inspect its collection system and the service lines and connection to the Windsor East Side Interceptor Sewer to assure adherence to such standards of construction and to minimize infiltration, exfiltration, and deposits of rock and/or other debris.

8. **Storm Water Prohibited.** Severance agrees that it shall not permit the connection of any storm or drainage facilities to the Windsor East Side Interceptor Sewer and shall strictly enforce such prohibition.

9. **Quality of Discharge.** Unless agreed upon by the parties in writing, all discharge permitted by Severance to enter the Windsor East Side Interceptor Sewer, shall be within the following minimum and maximum standards:

- PH 6.5-9
- Mercury 0.02 micrograms per liter (to be tested quarterly)
- BOD 400 milligrams per liter
- TSS 350 milligrams per liter

The parties acknowledge that maintaining the quality of discharge into the Windsor East Side Interceptor Sewer is critical. The integrity and safety of Windsor's wastewater treatment facility could be compromised in a very short time should discharge not in compliance with the standards set forth above be introduced to that facility. Accordingly, the provisions of paragraph 19 of this Agreement notwithstanding, in the event it is determined that Severance is not in compliance with the quality of discharge requirements of this paragraph, Windsor shall immediately provide written notice of non-compliance to Severance. Such notice shall specify the non-compliance and shall have attached thereto all relevant test results. Upon receipt of such

notice, Severance shall have thirty (30) days to restore compliance with quality requirements set forth in this paragraph. In the event corrective measures are not taken by Severance within this time period, Windsor may take such steps as it deems necessary to protect the integrity and safety of the wastewater treatment facility including, but not limited to, refusal to accept discharge from Severance and the remedies set forth in paragraph 19 of this Agreement.

10. **Insurance.** Windsor and Severance agree to carry insurance against public and other liability, naming the other as an additional insured, which insurance shall cover loss or damage to the wastewater facilities of each. Nothing herein shall be deemed to constitute a waiver by either municipality of its rights, privileges and benefits under the Colorado Governmental Immunity Act.

11. **Assignment.** This Agreement shall not be assigned by either party without the written consent of the other.

12. **Term.** This Agreement shall be binding upon the parties and their successors in interest for a period of thirty-five (35) years. Beginning on the thirty-fifth year, either municipality may give notice to the other of its desire to terminate this Agreement. If such notice is given, this Agreement shall terminate five (5) years from the date of such notice.

13. **Severance to Receive Notice of Windsor Water and Sewer Board Meetings.** As a major customer of Windsor's Town Sewer Utilities Enterprise, Severance shall regularly receive notice of all meetings of the Windsor Water and Sewer Board, and representatives from Severance shall be welcome to attend and participate in such meetings.

14. **Amendments.** This Agreement may be amended by the parties in writing if such amendment does not prejudice the interests of any bond holder of either party.

15. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

16. **Waiver.** A waiver by either party of a breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

17. **Effect of Invalidity.** If any portion of this Agreement is finally held invalid or unenforceable as to either party, or as to both parties, by a court of competent jurisdiction, the parties agree to take such action or actions as may be necessary to achieve to the greatest degree possible the intent of the entirety of this Agreement. If any portion of any other paragraph of this Agreement is finally held invalid or unenforceable as to either party, or as to both parties, by a

court of competent jurisdiction, such invalidity or unenforceability shall not affect the other paragraphs of this Agreement, except that any corresponding right or obligation of the other party shall be deemed invalid.

18. **Reliance by the Parties.** Windsor and Severance understand that each is relying upon all of the promises made by the other in this Agreement, and each agrees: 1) Not to assert to any court or other body the invalidity or unenforceability of any portion of this Agreement; 2) To promptly notify the other party of any legal action that may affect this Agreement; 3) To allow the other party to participate in such legal action as the other party deems appropriate; and 4) To defend this Agreement in such legal action.

19. **Rights upon Default and Mediation provisions.** The Local Government Land Use Enabling Act provides that agreements between municipalities for the purposes set forth herein, are mutually binding and enforceable. Both parties hereby acknowledge the binding and enforceable nature of this Agreement. Should either party fail to comply with the provisions of this Agreement, the other party, after providing written notification to the non-complying party, and upon the failure of the non-complying party to achieve compliance within ninety (90) days after said notice, may at its option, either terminate this Agreement or maintain an action in a court of competent jurisdiction for specific performance, injunctive, or other appropriate relief. In the event of such litigation, each party shall be responsible for its own costs, including attorney fees. It shall be the obligation of the parties to submit to mediation any issue of non-compliance prior to declaring this Agreement terminated or prior to commencing an action in court as aforesaid. The parties shall agree on the appointment of a mediator who shall be experienced in matters of local government and the legal obligations of local government entities. In the event the parties are unable to agree upon a mediator, each party shall appoint an independent third party, and the third parties so appointed shall select a single mediator. The procedures and methodology for mediation shall be determined by the mediator. Appointment of the mediator shall take place no later than thirty (30) days following written notification as provided in this paragraph, and mediation shall be completed no later than sixty (60) days thereafter.

By the provisions of this paragraph it is the express intention of the parties to establish fully enforceable consequences upon the breach of this Agreement, while not in any way limiting the ability of the parties to freely exercise legislative discretion.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement the day and year first above written.

TOWN OF WINDSOR, COLORADO

By W. Wayne Miller
W. Wayne Miller, Mayor



TOWN OF SEVERANCE, COLORADO
By Pierre DeMilt
Pierre DeMilt, Mayor

ATTEST:
Cathy M. Kennedy
Town Clerk



Lorinda Lash
Town Clerk

APPROVED AS TO FORM AND CONTENT:

Roderick L. Wensing
Roderick L. Wensing
Town Administrator, Town of Windsor

John C. Holdren
John C. Holdren
Town Manager, Town of Severance

APPROVED AS TO FORM:

John P. Frey
John P. Frey
Town Attorney, Town of Windsor

Greg Bell
Greg Bell
Town Attorney, Town of Severance