

RESOLUTION NO.

11-14

TITLE: A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH GREATROCK NORTH WATER AND SANITATION DISTRICT

WHEREAS, the Town of Hudson is authorized to provide facilities to their respective taxpayers, residents and users;

WHEREAS, the Town of Hudson currently has the capability to properly dispose of the reverse osmosis concentrate (the "Concentrate") as required to be disposed of in accordance with the rules, regulation and promulgations of the Colorado Department of Public Health and Environment (the "CDPHE");

WHEREAS, the Greatrock North Water and Sanitation District does not currently have the capability to properly dispose of the Concentrate in accordance with the CDPHE rules, regulations and promulgations; and

WHEREAS, the Town of Hudson has the capacity to property dispose of the Concentrate and agrees to do so in accordance with the terms set forth in this Agreement; and

WHEREAS, the Board of Trustees finds that it is in the public interest for the Town of Hudson to enter into this Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON, COLORADO, AS FOLLOWS:

Section 1, The Disposal of Reverse Osmosis Liquid Concentrate Agreement with Greatrock North Water and Sanitation District for the period beginning April 20, 2011, and ending December 31, 2011 is hereby approved.

INTRODUCED, READ and PASSED this 20th day of April, 2011.

BOARD OF TRUSTEES,
TOWN OF HUDSON, COLORADO



Neal Pontius, Mayor

ATTEST:



Linnette Barker, Town Clerk



INTERGOVERNMENTAL AGREEMENT

BY AND BETWEEN

THE TOWN OF HUDSON, COLORADO

AND

GREATROCK NORTH WATER AND SANITATION DISTRICT

Regarding Disposal of Reverse Osmosis Liquid Concentrate

This INTERGOVERNMENTAL AGREEMENT, including any and all exhibits attached hereto (the "Agreement"), is entered into and shall become effective as of the ___ day of April, 2011, by and between the GREATROCK NORTH WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), and THE TOWN OF HUDSON, COLORADO, a statutory town of the State of Colorado (the "Town"). The District and the Town are hereinafter, from time to time, referred to individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, the District was organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating and maintaining certain public facilities and improvements for itself, its taxpayers, residents and users; and

WHEREAS, pursuant to § 32-1-1001(1)(d)(I), C.R.S., the District is empowered to enter into contracts and agreements affecting the affairs of the District; and

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

WHEREAS, the District and the Town are each authorized to provide water services and facilities to their respective taxpayers, residents and users; and

WHEREAS, the District owns a reverse osmosis plant which produces reverse osmosis concentrate (the "Concentrate"), which Concentrate is required to be disposed of in accordance with the rules, regulations and promulgations of the Colorado Department of Public Health and Environment (the "CDPHE"); and

WHEREAS, the District does not currently have the capability to properly dispose of the Concentrate in accordance with the CDPHE rules, regulations and promulgations; and

WHEREAS, the Town has the capability and capacity to properly dispose of the Concentrate and agrees to do so in accordance with the terms set forth in this Agreement; and

WHEREAS, the Town and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

TERMS AND CONDITIONS

1. DELIVERY, ACCEPTANCE AND DISPOSAL OF CONCENTRATE. The Town hereby agrees to accept up to one million (1,000,000) gallons of the Concentrate each year from the District. The Concentrate shall be delivered to the Town by the District on a daily basis during the months set forth herein and up to an amount of fifty thousand (50,000) gallons per day. Deliveries of the Concentrate to the Town by the District shall take place during two (2) periods each year. The first period for delivery is anticipated to take place during the months of March, April and May of each year and the second period for delivery is anticipated to take place during the months of August, September and October of each year. The specific timing, quantities and location of the disposals shall be coordinated by and between the Parties on a per disposal basis. The Town shall dispose of the Concentrate in accordance with the CDPHE rules, regulations and promulgations, as they are applicable to the Town, and any other laws, rules, regulations or promulgations imposed upon the Town for such disposal.

2. COMPENSATION FOR DISPOSAL OF CONCENTRATE. As compensation for and in consideration of the Town's disposal of the Concentrate, the District shall pay to the Town a fee in the amount of Four Dollars and Fifty-Seven Cents (\$4.57) per thousand (1,000) gallons of Concentrate, which shall be calculated by multiplying the number of disposal truckloads by the capacity of a single truckload (the "Disposal Fee"). The Disposal Fee shall be tendered to the Town by the District on or before sixty (60) days after the final delivery of the Concentrate for that particular delivery period.

3. TERM OF AGREEMENT/RENEWAL. This Agreement shall become effective as of the date first above written and shall terminate on December 31, 2011, unless otherwise terminated by either Party in accordance with this Agreement. Notwithstanding the foregoing, this Agreement shall automatically renew on January 1st of each succeeding year for an additional one (1) year term unless: 1) terminated by the Parties in writing at least thirty (30) days prior to the automatic renewal date; 2) terminated by the Parties pursuant to this Agreement; or 3) failure by the District to budget and appropriate funds for the succeeding year.

4. ASSIGNMENT. Neither Party shall not 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 hereto. Any attempted assignment, delegation or subcontracting of this Agreement in whole or in part with respect to which the other Party has not consented, in writing, shall be null and void and of no effect whatsoever.

5. TERMINATION. This Agreement may be terminated for cause or for convenience by the either Party upon delivery of sixty (60) days prior written notice to the other Party. If this Agreement is terminated, the Town shall be paid the Disposal Fee for any Concentrate properly disposed of prior to the date of the termination of this Agreement. Said payment shall be made in the normal course of business. Should either Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of the other Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement.

6. DEFAULT. In addition to the termination provisions in Paragraph 5, if either Party to this Agreement fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, after giving ten (10) days written notice to the other Party of the alleged default, and upon said Party in default having failed to cure said breach within ten (10) days, the other Party shall have the option to terminate this Agreement and pursue any remedy available by law or in equity.

7. 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 (3) days after deposited in the United States' mail, first-class postage prepaid, properly addressed to the Parties at:

To the District: Greatrock North Water and Sanitation District
Special District Management Services, Inc.
Attention: Lisa Johnson, District Manager
141 Union Boulevard, Suite 150
Lakewood, Colorado 80228
(303) 987-0835
ljohnson@sdmsi.com

With a copy to: WHITE, BEAR & ANKELE
Professional Corporation
Attention: Jennifer Gruber Tanaka, Esq.
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
(303) 858-1800
jtanaka@wbapc.com

The Town at: Town of Hudson, Colorado
Attention: Joe Racine, Town Administrator
557 Ash Street
Post Office Box 351
Hudson, Colorado 80642

Either Party may change its address for the purpose of this Paragraph by giving written notice of such change to the other Party in the manner provided in this Paragraph 7.

8. ENTIRE AGREEMENT. This Agreement constitutes the entire Agreement between the Parties hereto relating to the disposal of the Concentrate, and sets forth the rights, duties, and obligations of each to the other 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.

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

10. 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.

11. GOVERNING LAW. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for Adams County.

12. AUTHORITY. By execution hereof, each Party hereto represents and warrants that its representative signing hereunder has full power and lawful authority to execute this Agreement and to bind the respective Party to the terms hereof.

13. MINOR CHANGES. The Parties executing this Agreement are authorized to make non-substantive corrections to this Agreement and attached exhibits, if any, as the Parties mutually consider necessary.

14. GOOD FAITH OF PARTIES. In the performance of this Agreement, or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.

15. SUBJECT TO ANNUAL APPROPRIATION AND BUDGET. The District does 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 District hereunder requiring budgeting and appropriation of funds are subject to annual budgeting and appropriations. The Town expressly understands and agrees that the District's obligations hereunder shall extend only to monies appropriated for the purposes of this Agreement by the Board 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 the District, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of the District 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 District funds. The District's 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.

16. 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.

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

18. 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.

19. 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.

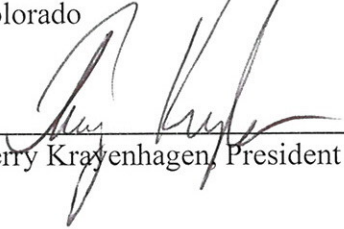
20. NO THIRD PARTY BENEFICIARIES. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such 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.

21. 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.

[Remainder of Page Intentionally Left Blank].

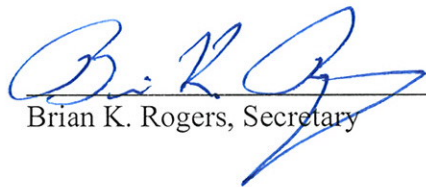
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

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



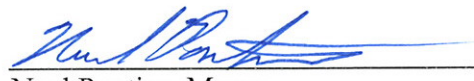
Terry Kravenhagen, President

ATTEST:



Brian K. Rogers, Secretary

THE TOWN OF HUDSON, COLORADO, a
statutory town and political subdivision of the State
of Colorado



Neal Pontius, Mayor

*[Signature Page to Intergovernmental Agreement between Greatrock North Water and
Sanitation District and the Town of Hudson, Colorado]*