

INTERGOVERNMENTAL AGREEMENT

FOR

JOINT OFFICE AND GARAGE FACILITY

This Intergovernmental Agreement for Joint Office and Garage Facility (“Agreement”) is made and entered into to be effective January 1, 2019, by and between the **PLATTE CANYON WATER AND SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision in the State of Colorado (sometimes referred to as “Platte Canyon”) and the **SOUTHWEST METROPOLITAN WATER AND SANITATION DISTRICT**, a quasi-municipal corporation and political subdivision in the State of Colorado (sometimes referred to as “Southwest”). The Parties may hereinafter sometimes be collectively referred to as “Districts” and singularly be referred to as “District.”

RECITALS

WHEREAS, Platte Canyon and Southwest are water and sanitation districts organized and existing under what is now known as the Special District Act, § 32-1-101, *et seq.*, C.R.S.; and

WHEREAS, each District has authority to acquire, dispose of and encumber real and personal property, including without limitation, rights and interests in real property, leases, and easements necessary to the functions or operations of each District; and

WHEREAS, Southwest owns the real property commonly known and numbered as 8739 West Coal Mine Avenue, Littleton, Colorado 80123, together with the office and garage facility (“Office and Garage Facility”), located thereon; and

WHEREAS, Southwest occupies the Office and Garage Facility jointly with Platte Canyon pursuant to an Intergovernmental Agreement for the joint use of the Office and Garage Facility dated to be effective January 1, 2008 (hereinafter referred to as “Intergovernmental Agreement”); and

WHEREAS, the Intergovernmental Agreement supersedes and replaces an Intergovernmental Agreement dated March 27, 1998, as amended by a First and Second Amendment dated December 27, 1998 and October 25, 2002 respectively (hereinafter referred to as “Original Intergovernmental Agreement”); and

WHEREAS, pursuant to the Original Intergovernmental Agreement, Southwest agreed to construct, operate and maintain the Office and Garage Facility (sometimes hereinafter referred to as “Facility”), for the use and benefit of both Parties in exchange

for Platte Canyon paying its proportionate share of the initial construction cost and its proportionate share of all subsequent operation, maintenance, repair and capital costs of the Facility; and

WHEREAS, the Intergovernmental Agreement will expire by its terms on December 31, 2018; and

WHEREAS, the Districts have found that sharing the use, operation, maintenance, repair and capital costs of the Office and Garage Facility is economically advantageous and improves the efficiency of their respective operations; and

WHEREAS, the Districts desire to enter into a new intergovernmental agreement that will continue the existing joint use arrangement on substantially the same terms and conditions; and

WHEREAS, the Districts have further determined that it is in the public health, welfare and safety of the inhabitants of each District that such joint use arrangement be continued in the future.

NOW, THEREFORE, the Districts agree as follows:

1. **Purpose of Agreement.** This Agreement is entered into for the express purpose of enabling the Districts to continue to cooperate in the operation, maintenance, repair, renovation, and use of the Office and Garage Facility. It is the intent of the Parties that each District will pay its proportionate share, as hereinafter defined, of the operation, maintenance, repair and renovation cost of the Office and Garage Facility and that this Agreement will allow for the joint use of the Facility in an efficient and economical manner.

2. **Allocation of Operation and Maintenance Costs.** All costs for the operation, maintenance, repair and renovation of the Office and Garage Facility, including all costs for the installation, maintenance and repair of any landscaping, including irrigation system, for the Facility, as well as the operation, maintenance and replacement of the drainage, parking and other improvements necessary or as needed in the operation of the Facility (hereinafter referred to as "Operation and Maintenance Costs") shall be shared by the Districts. Southwest's percentage share of said Operation and Maintenance Costs shall be 70% and Platte Canyon's percentage share of said Costs shall be 30%. These percentages are based upon each District's projected ultimate percentage share of the aggregate number of single family equivalent sanitary sewer taps that the Districts are expected to have issued at the time both Districts are fully built out. It is agreed by the Districts that this allocation is not merely for administrative convenience, but that it is fair and reasonable and that it approximates as nearly as is reasonably practical, each District's respective use of and benefit to be derived from the Facility now and in the future, and that it is preferable, by far to a more complicated cost

allocation formula that studies have shown will not produce a significantly different cost allocation.

3. **Payment of Costs.**

3.1 **Operation, Maintenance and Repair Costs.** Platte Canyon shall pay Southwest the sum of Eight Hundred Dollars (\$800) a month due on the first day of January and each month thereafter during the Term of this Agreement. Said payments constitute Southwest's estimate of Platte Canyon's proportionate share of the monthly Operation and Maintenance Costs for the Office and Garage Facility ("Estimated Operation and Maintenance Costs").

3.1.1 **True Up.** At the end of each calendar quarter during the Term of this Agreement, Platte Canyon's proportionate share of the Operation and Maintenance Costs for the calendar quarter just ended shall be determined by Southwest using actual costs. If the aggregate amount of Platte Canyon's Estimated Operation and Maintenance Cost monthly payments to Southwest in any calendar quarter is less than Platte Canyon's 30% share of the actual Operation and Maintenance Cost for the calendar quarter then ended, Platte Canyon shall pay to Southwest the amount of any such deficiency within thirty (30) days.

If the aggregate amount of Platte Canyon's Estimated Operation and Maintenance Costs payments to Southwest in any calendar quarter exceeds Platte Canyon's 30% share of the actual Operation and Maintenance Costs for the calendar quarter then ended, then, as long as Platte Canyon is not in default of its obligations hereunder, the amount of such excess shall be applied by Southwest to Platte Canyon's next succeeding monthly payment or payments during the Term of this Agreement.

3.2 **Modification of Monthly Payment.** Platte Canyon's fixed monthly payment of \$800 may be adjusted at any time during the Term of this Agreement by mutual consent of the Parties if it appears that Platte Canyon's proportionate share of the actual Cost on a quarterly basis will be significantly greater than \$800 per month.

3.3 **Capital Costs—Platte Canyon's Approval Rights.** Notwithstanding any other provision contained in this Agreement to the contrary, Southwest shall not authorize or incur any expenditure for any renovation/capital improvement of the Office and Garage Facility at any time in an amount in excess of \$7,500.00 without first obtaining the prior written approval of Platte Canyon. The approval of Platte Canyon can be obtained at any monthly meeting of the Board of Directors of Platte Canyon or at any duly convened and called special meeting. If Platte Canyon does not agree that the proposed renovation/capital expenditure is needed or desirable, then the proposed renovation/capital expenditure may be made by Southwest, but Platte Canyon shall not be charged a 30% share thereof.

3.3.1 **Payment of Capital Costs.** Unless otherwise agreed by the Parties, Platte Canyon's share of any renovation/capital costs shall be 30% of the actual renovation/capital cost incurred by Southwest, which amount shall be paid to Southwest within thirty (30) days of Platte Canyon's receipt of an invoice from Southwest.

3.4 **Delinquencies.** If Platte Canyon fails to make any payment due Southwest hereunder within 30 days after receipt of Southwest's invoice therefor, the amount due Southwest shall accrue interest at the rate of 1% per month from the date due. In addition, Southwest shall be entitled to recover all costs of collection, including but not limited to, reasonable attorneys' fees and court costs.

4. **Use of Joint Office and Garage Facility.**

4.1 **Office Storage Space.** The Districts shall jointly use the Office and Garage Facility. Platte Canyon shall be entitled to occupy and use up to 30% of the storage space in the Office and Garage Facility, and Southwest shall be entitled to use and occupy 70% of the storage space in the Facility; provided, however, that the Districts have found it to be more efficient for Platte Canyon to own all the tangible property capable of being stored in the Facility, including motor vehicles, and therefore Platte Canyon, with Southwest's consent, is currently utilizing 100% of the storage space in the Office and Garage Facility pursuant to the authority delegated to the Platte Canyon manager by the following sentence. The assignment of storage space and the arrangement of files shall be determined by the manager of Platte Canyon; provided, however, that if the Board of Directors of either District disapproves of the way in which either District's storage space has been assigned or is being utilized, then the disapproving District shall have the right to have the matter considered by a joint meeting of the two Boards, at which time a majority of those Directors present shall have the right to resolve the issue, and their determination shall be final.

4.2 **Conference Room.** It is agreed that the conference room area shall be jointly used. Each District shall have the right to hold public meetings in the conference room area. The scheduling of said meetings, other than joint meetings between the two Districts, shall not coincide. The conference room may also be used for construction conferences and any other conferences for which a need arises in the management and operation of either District.

4.3 **Administrative Offices.** At the present time, Southwest has no employees, and the administrative office space of the Office and Garage Facility shall accordingly be occupied entirely by Platte Canyon employees, who, pursuant to Intergovernmental Agreement with Southwest, spend a significant amount of time providing Southwest with management, administrative, operation and maintenance services.

4.4 **Garage Space.** The Office and Garage Facility's garage space shall be occupied entirely by Platte Canyon's equipment, with the understanding that said equipment is utilized a significant portion of the time to provide operation and maintenance services for Southwest.

5. **Ownership of Office and Garage Facility.** Southwest shall remain the owner of the Office and Garage Facility and the real property upon which the Facility is located. By this Agreement Platte Canyon is granted a revocable license to use the Office and Garage Facility in accordance with and subject to the terms and provisions contained herein. Nothing herein contained, however, shall be deemed to grant, convey, create or vest in Platte Canyon any real property interest in the land or in the Office and Garage Facility, including but not limited to any fee, leasehold interest, easement, or irrevocable license.

6. **Term of Agreement.** This Agreement shall become effective as of January 1, 2019 and shall remain in effect for a period of 10 years, ending on December 31, 2029, unless sooner terminated in accordance with provisions of paragraph 6.1 below, by mutual agreement, or by operation of law. At the option of Platte Canyon and with the consent of Southwest, this Agreement may be renewed at the end of the initial Term for successive periods up to ten years each. In the event Platte Canyon wishes to renew this Agreement for any succeeding period, Platte Canyon, not later than June 1 next preceding the expiration of the then current Term of this Agreement, shall notify Southwest that Platte Canyon wishes to so renew. Upon receipt of such notice, Southwest shall have thirty (30) days to state its willingness to renew for an additional period of up to ten years; otherwise, this Agreement shall terminate at the end of the Term then in effect; provided, however, nothing herein contained shall preclude the Parties from renewing this Agreement for a period that is longer than ten years.

6.1 **Early Termination.** Notwithstanding any other provision contained in this Agreement to the contrary, either District may terminate this Agreement as of the first day of January of any year upon notice in writing to the other District of not less than six calendar months prior to the date of termination, i.e., January 1 of any calendar year.

6.2 **No Multiple Fiscal Year Obligations.** No provision of this Agreement shall be construed or interpreted as creating an indebtedness or a multiple fiscal year direct or indirect debt or other multiple year financial obligation whatsoever of either District within the meaning of any constitutional or statutory debt limitation provision, including without limitation, Article XI, Sections 1, 2 and 3, and Article X, Section 20 of the Colorado Constitution. This Agreement shall not directly or indirectly obligate either District to make any payment beyond the funds legally available to it for the then current fiscal year. No provision of this Agreement shall be construed to pledge or create a lien on any class or source of moneys of either District, nor shall any provision of this Agreement restrict or limit the discretion of either District in the budgeting or appropriation of its funds.

7. **Insurance.** During the Term, and any renewal Term of this Agreement the Parties shall maintain insurance coverage as follows:

7.1 **Property Insurance.** Southwest covenants and agrees that throughout the Term, and any renewal Term of this Agreement, it will insure the Office and Garage Facility against damage by fire and other casualty for such amounts as is mutually agreeable to the two Districts. Coverage shall be on a replacement value basis and shall be of a sufficient amount to provide for the full replacement of the entire Office and Garage Facility in the event of a catastrophic loss. All property insurance premiums shall be included as a part of the operation, maintenance and repair Cost for the Office and Garage Facility for which Platte Canyon shall pay a 30% share. Platte Canyon shall be named as an additional insured on the policy to the extent of 30% of any policy proceeds; provided, however, that any such proceeds received by Platte Canyon must be delivered to Southwest for the purpose of rebuilding the Office and Garage Facility if both Districts determine that the Facility should be rebuilt. If the Facility is not rebuilt then Platte Canyon may retain any such insurance proceeds it receives.

7.2 **Liability Insurance.** Both Districts shall during the Term and any renewal Term of this Agreement maintain comprehensive general liability insurance in an amount not less than the maximum amount that may be recovered against a public entity under the Colorado Governmental Immunity Act, which amount is currently \$387,000 for any injury to one person in a single occurrence and \$1,093,000 for any injury to two or more persons in any single occurrence except that in such instances no person may recover in excess of \$387,000. To the extent permitted by law, including the statutes and Constitution of the State of Colorado, and only with regard to 30% of any liability not covered by insurance, and with the express understanding that it is not waiving or limiting the immunities, defenses and protections afforded it under the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., Platte Canyon agrees to indemnify and hold harmless Southwest from and against any excess loss, damage or liability caused by the negligence of Platte Canyon, its agents or employees. To the extent there is a conflict between the provisions of this paragraph and the provisions of the Colorado Governmental Immunity Act, the Colorado Governmental Immunity Act shall control. To the extent permitted by law, including the statutes and Constitution of the State of Colorado, and only with regard to 70% of any liability not covered by insurance, and with the express understanding that it is not waiving or limiting the immunities, defenses and protections afforded it under the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., Southwest agreed to indemnify and hold harmless Platte Canyon from and against any excess loss, damage or liability caused by the negligence of Southwest, its agents or employees. To the extent there is a conflict between the provisions of this paragraph and the provisions of the Colorado Governmental Immunity Act, the Colorado Governmental Immunity Act shall control.

8. **Cooperation.** Each District shall have the full cooperation and assistance from the other in connection with the administration of this Agreement and use of the Office and Garage Facility. The Boards of each District now meet jointly on a regularly monthly basis. At any time either District can place on the agenda discussion of this Agreement. In addition, the Parties agree to discuss the operation of the Office and Garage Facility and the administration of this Agreement at least one time each year, preferably in November or December of each year in connection with the adoption of each District's budget for the ensuing calendar year.

9. **Platte Canyon's Rights Upon Termination.** Upon termination of this Agreement or its nonrenewal (hereinafter referred to as "Termination"), title to the Office and Garage Facility and the real property upon which the Facility is located shall remain vested in Southwest. As soon as practicable after Termination, or prior to Termination, if the Parties know that the Agreement will not be renewed, the Office and Garage Facility including any and all improvements that Platte Canyon has contributed 30% of the acquisition or construction costs, including but not limited to any landscaping, water fountain, water main, fire hydrant and drainage improvements, shall be appraised by a qualified appraiser to determine the then current replacement costs. The value of the land shall not be included in the appraisal. The cost of the appraisal shall be shared equally between the two Districts. Platte Canyon shall be paid in cash or by check an amount equal to 30% of the appraised replacement value of the Office and Garage Facility including any all related improvements as described above. If the appraisal is not acceptable to either or both Districts, each rejected by either or both Districts, each rejecting District can, at its own expense, obtain another appraisal, and the Parties can proceed to mutually agree upon a replacement value for the Office and Garage Facility. Any dispute as to the value of the Office and Garage Facility and all improvements related thereto, that is not resolved within 120 days following Termination of the Agreement shall be submitted to binding arbitration. The arbitration shall be for the sole purpose of determining the replacement value of the Office and Garage Facility and related improvements and Platte Canyon's 30% share thereof.

Such arbitration shall be commenced by the District seeking arbitration providing written notice to the other District. Such arbitration shall be conducted, if practical, in the Office and Garage Facility before one or more arbiters selected by mutual agreement of the Parties. If the Parties cannot agree on the arbitration panel then each District shall designate in writing two persons to act as arbiters. The list of the four potential arbiters shall be submitted to the Jefferson County District Court, Case Number 61 CV 15486 and the Court shall select from the persons so designated one arbiter to resolve the dispute. The arbitration shall be conducted in accordance with the American Arbitration Associations commercial arbitration rules then in effect or such other rules as the Districts shall mutually agree. The award of the arbiter shall be final. All costs and expenses of such arbitration, including attorney's fee, shall be paid as directed by the arbiter.

10. **Miscellaneous.**

10.1 **Amendment.** This Agreement is subject to amendment only by the written consent of the Parties hereto, and such Amendment shall be effective as of the date the Amendment is executed by the Parties or such other date as the Parties shall designate.

10.2 **Severability.** This Agreement is intended to be performed in accordance with and only to the extent permitted by law. If a provision of this Agreement or application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such provision to the other persons or circumstances shall not be affected thereby, but rather, shall be enforced to the greatest extent permitted by law.

10.3 **Construction of Language.** The language used in this Agreement and all parts thereof shall be construed as a whole according to their fair meaning, and not strictly for or against any party, all Parties having equally participated in the preparation of this Agreement.

10.4 **No Waiver.** No waiver of any condition, remedy or provision of this Agreement shall be deemed to have been made unless expressly made in writing and signed by the party against whom such a waiver is charged.

10.5 **Governing Law.** The terms and provisions of this Agreement shall be governed by and shall be construed in accordance with the laws of the State of Colorado.

10.6 **Time of Essence.** Time is of the essence in the performance of this Agreement.

10.7 **Assignment.** This Agreement is personal to the Parties hereto and neither party shall have any right, power or authority to assign this Agreement or any portion thereof or to delegate any duties or obligations arising hereunder, neither voluntary nor involuntary nor by operation of law, without the prior written approval of the other party.

10.8 **Captions and Headings.** The headings throughout this Agreement are for convenience and reference only and shall in no way be deemed to define, limit or add to the meaning of any provisions of this Agreement.

10.9 **Third Party Beneficiaries.** Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to any person other than the Districts any right, remedy or claim under or by reason of this Agreement.

10.10 **Notices.** All notices, requests, demands, consents and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered or sent by Certified United States mail, postage prepaid, with return receipt requested, addressed to the Parties as follows:

Southwest Metropolitan Water and Sanitation District
8739 West Coal Mine Avenue
Littleton, Colorado 80123

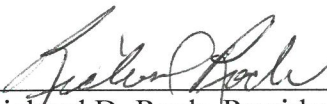
Platte Canyon Water and Sanitation District
8739 West Coal Mine Avenue
Littleton, Colorado 80123

Either party may change the address at which it receives written notice by so notifying the other party in writing in the manner provided herein.

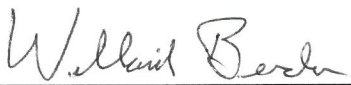
10.11 **Entire Agreement.** This Agreement represents the entire agreement of the Parties and specifically supersedes the Intergovernmental Agreement between the Parties hereto which as of January 1, 2019, shall be null and void and of no further force and effect.

IN WITNESS WHEREOF, the Parties to this Agreement have caused their names to be affixed by proper officers thereof as of the date and year first above written.

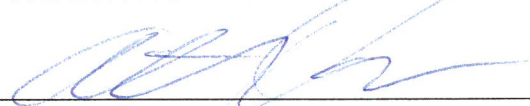
PLATTE CANYON WATER AND
SANITATION DISTRICT

By: 
Richard D. Rock, President

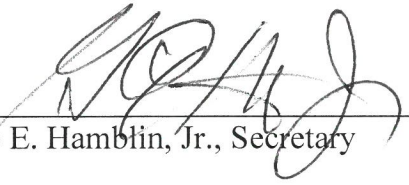
Attest:


William Buckner, Secretary

SOUTHWEST METROPOLITAN WATER
AND SANITATION DISTRICT

By: 
Anthony M. Dursey, President

Attest:



George E. Hamblin, Jr., Secretary