

REQUEST FOR BOARD ACTION

To: ESD Board of Education
From: ESD Finance Director, Ron Patera
Date: April 1, 2019
Business Date: April 8, 2019
Subject: Potable and Wastewater Operator Services Intergovernmental Agreement (IGA)

RECOMMENDATION:

Approve the Intergovernmental Agreement with the Town of Elizabeth as presented.

BACKGROUND AND FINDINGS:

District staff has previously discussed with the Board of Education the possibility of the Town of Elizabeth's Public Works department taking over SHE's wastewater and potable water operating systems. This includes providing all of the services outlined in Exhibit A of the IGA.

The IGA was created through the collaboration of district staff and our attorney. The Town Manager and the Town's attorney have also thoroughly reviewed and approved the version before you tonight.

The Town's Board of Trustees will be considering the IGA for approval at their April 9th or 23rd business meetings.

RECOMMENDED MOTION:

I move to approve the Intergovernmental Agreement between the Elizabeth School District and the Town of Elizabeth and authorizing Town staff to provide Potable and Wastewater operational services.

INTERGOVERNMENTAL AGREEMENT REGARDING WASTEWATER SERVICES

THIS INTERGOVERNMENTAL AGREEMENT REGARDING WASTEWATER SERVICES (the "Agreement") is made and entered into as of April 9, 2019 by and between the Town of Elizabeth, a statutory town of the State of Colorado (the "Town"), and the Elizabeth School District, a political subdivision of the State of Colorado (the "School District") (collectively, the "Parties," and each individually a "Party").

WHEREAS, the Town's Public Works Department provides wastewater and transmission and treatment services in accordance with its rules and regulations; and

WHEREAS, the School District owns and operates Singing Hills Elementary School, which is located at 41012 Madrid Drive, Parker, Elbert County, Colorado 80138 (the "School Site"); and

WHEREAS, the legislature of the State of Colorado adopted C.R.S. § 29-1-203 to authorize and enable governmental entities to enter into cooperative agreements, and the Parties intend this Agreement to constitute such an intergovernmental agreement; and

WHEREAS, the Town, has the required professional skills, personnel and technical resources, and has agreed to provide the Services on the terms and conditions set forth in this Agreement; and

WHEREAS, the School District and the Town desire to establish the terms and conditions for the treatment of School District potable water and wastewater in accordance with the terms set forth below.

AGREEMENT

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

1. Term. The Town will commence performing the Services described herein on June 1, 2019 ("Effective Date"). Unless terminated as provided herein, the term of this Agreement shall be three (3) years from the Effective Date. By written notice to the Town at least sixty (60) days prior to the expiration of this Agreement, the School District may elect to renew this Agreement for one (1) additional three (3) year term. Such continued services shall be upon the terms and conditions as set forth herein.

2. Responsibilities of the Town.

a. Potable and Wastewater Services. The Town shall perform the potable and wastewater services set forth in the attached Exhibit A at the School Site, which hereinafter shall collectively be referred to as the "Services".

b. Personnel. The Town shall employ qualified and experienced personnel as are required to carry out the performance of the Services. The Town shall abide by all School District policies and procedures, including without limitation, those related to the prohibited use and/or possession of alcohol, tobacco or firearms on School District grounds. The School District policies are available at <https://www.elizabethschooldistrict.org/Page/258>, and should the School District amend such applicable policies, the School District shall notify the Town within thirty (30) days of the School District's approval of any such amendments. The Town shall at all times strictly enforce this prohibition among its own employees, agents or subcontractors and their employees, agents or subcontractors.

c. Records. The Town (i) shall keep accurate and systematic accounts and records in respect of the Services hereunder, in accordance with industry accepted accounting principles and in such form and detail as will clearly identify all relevant time charges and cost, and the bases thereof, and (ii) shall permit the School District or its designated representatives periodically to inspect the same and make copies thereof as well as to have them audited by auditors appointed by the School District.

d. Standards. The Town shall perform all Services in a diligent, safe, and workmanlike manner, using its best skill and judgment pursuant to the standards, techniques and practices used in the wastewater industry for the Services. The Town represents that the work performed will be in conformance with all applicable laws, statutes, rules, regulations, ordinances, codes and orders of any governmental bodies, agencies, authorities and courts and all equipment, machinery, materials, and methods are safe and effective. If the Town's performance does not conform to such standards and School District notifies Town of same, the Town agrees to immediately take all action necessary to remedy the nonconformance. Any costs incurred by Town to correct such nonconformance shall be at the Town's sole expense.

3. Responsibilities of the School District.

a. School District Representative. The School District appoints its facilities coordinator as the individual who has responsibility for the day-to-day management of the Town's performance of the Services. The School District further agrees to commit and approve expenditures to a level commensurate with the Town's obligations to implement the Services successfully. The School District representatives shall cooperate and not interfere with the Town's employees or contractors in their execution of their duties or in the Town's day-to-day management of the Services.

b. Access to School Property. The School District shall make available to the Town and its authorized employees and contractors, access to the School Property that is required for the performance of the Services.

4. Rates, Charges, and Billing.

a. The School District agrees to pay the Town for wastewater treatment services at a rate as established from time to time by the Board of Trustees of the Town in

accordance with the Town's utility regulations. Initially, the fee for the provisions of the Services set forth in Section 2 shall be \$1,600.00 per month ("Rate"). Any adjustment in the Rate made during the term of this Agreement shall be in the form of an amendment to this Agreement, signed by each of the parties hereto, and shall become a part of this Agreement. In addition, the School District agrees to pay all inspection fees, service connection costs, and user charges, security deposits established by the Town Board for the provision of such potable and wastewater treatment services. Unless otherwise expressly stated in this Agreement, labor costs not to exceed eight (8) hours per week, licenses, materials, supplies, equipment, reimbursables, including but not limited to mileage, and other items necessary to complete the Services shall be part of and not in addition to the Rate.

b. The School District will pay the Rate on or before the 10th day of each month during the term of this Agreement. All payments under this Section 4 shall be made only after all reports pursuant to Section 2(c) required prior to the statement shall have been submitted by the Town and approved as satisfactorily by the School District.

5. Indemnification. Each Party to this Agreement shall be responsible to the fullest extent allowed under Colorado law for its own negligence, and the negligence of its employees acting within the scope of their actual authority. It is expressly understood and agreed that nothing contained in this Agreement shall be construed as an express or implied waiver by the Town or the School District of its governmental and sovereign immunities, as an express or implied acceptance by the Town or the School District of liabilities arising as a result of actions that lie in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or as the assumption by any of the parties of a debt, contract or liability of each other in violation of Article XI, Section 1 of the Constitution of Colorado. The Town and the School District are liable for breach of contract in the same manner as any private party would be under Colorado law under the same or similar circumstances. The Town shall obtain and keep in full force and effect during the term of this Agreement general liability and property damage insurance covering its actions and activities permitted under this Agreement in an amount at least equivalent to Town's liability under the Colorado Governmental Immunity Act, as amended from time to time. A certificate of insurance will be provided at the request of the School District.

6. Termination.

a. Termination With Cause. This Agreement may be terminated by the School District upon not less than ten (10) days' written notice should the Town fail to perform in accordance with the terms of this Agreement through no fault of the School District. Subject to the ability of the Town to terminate this Agreement for convenience pursuant to Section 6(b) of this Agreement, the Town shall not terminate this Agreement, without the written consent of the School District; provided, however, that if the School District fails to make payment when due, the Town may, upon ten (10) days' written notice to the School District, suspend performance of Services and, unless payment is received by the Town within (10) days of the date of the notice, the suspension shall take effect without further notice.

b. Termination For Convenience. This Agreement may be terminated by either Party at any time and without cause by giving ninety (90) days' prior written notice to the other Party of such termination.

c. Effect of Termination. Upon such termination, all rights and obligations of the Parties set forth in this Agreement shall terminate and be of no further force and effect, unless expressly stated otherwise, and all potable and wastewater obligations and ongoing Town monitoring shall be governed by applicable ordinances, policies, and practices in effect at the time. The Town shall be compensated for all services successfully performed through the effective date of termination.

7. Independent Contractor. The Town understands and acknowledges that this Agreement is a contract for services and that an employee-employer relationship does not exist between the Town and the School District. The Town shall perform all Services using its judgment and expertise as an independent contractor and not as an employee of the School District. Neither the Town nor any agent or employee of the Town shall be an agent or employee of the School District nor shall any of them have any authority, express or implied, to bind the School District to any agreement or incur any liability or obligation attributable to the School District. The Town acknowledges that it is not entitled to workers' compensation or other benefits from the School District and that the Town is obligated to pay federal and state income tax on any moneys earned from the School District pursuant to this Agreement.

8. Dispute Resolution. In the event that any dispute between the parties arises out of this Agreement, the parties shall meet and confer in good faith to resolve such dispute. In the event such efforts do not resolve the dispute within fifteen (15) days from the date the dispute arises, either party may elect to submit the dispute to the mediation before the Judicial Arbiter Group or other independent mediation service. This provision shall survive termination of this Agreement. This provision shall not be considered an election of remedies. Either party may elect to pursue litigation for any dispute arising under this Agreement at any time.

9. Immunities. Notwithstanding anything in this Agreement to the contrary, the parties retain all of their rights and immunities under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

10. Modification. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by the Parties.

11. Counterparts; Electronic Copy. This Agreement may be executed in one or more counterparts, each of which will constitute an original agreement, but all of which together will constitute a single agreement. An electronic copy of this Agreement executed by one of the Parties hereto will be accepted as a copy of this Agreement originally executed by such Party.

12. Governing Law/Venue. This Agreement shall be governed by, and enforced in accordance with, the laws of the State of Colorado. Any suit or proceeding arising from or relating in any way to the subject matter of this Agreement shall be brought only in the District Court for

Elbert County, Colorado. Each Party hereby consents to the exclusive personal jurisdiction and venue of the Elbert County District Court.

13. Rule of Ambiguities. The Parties agree that the rule that ambiguities in a contract are to be construed against the drafting party shall not apply to the interpretation of this Agreement.

14. Binding Agreement. This Agreement shall inure to and be binding on the heirs, successors, and permitted assigns of the Parties hereto.

15. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provisions herein, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided, nor shall the waiver of any subsequent default hereunder.

16. Authority to Enter into Agreement. Each Party hereby confirms it is lawfully authorized to enter into this Agreement and has taken all steps necessary to authorize the execution of the Agreement by the respective signatories below.

17. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third-party, including any agent, consultant or sub-consultant or contractor of a Party. Absolutely no third-party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

18. No Agency or Other Relationship. This Agreement is not intended to create any partnership or agency between the Parties.

19. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, then the legality, validity and enforceability of the remaining provisions of this Agreement will not be affected thereby; and in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and which will be legal, valid and enforceable.

20. No Assignment. This Agreement may not be assigned by the Town without the School District's prior written consent.

21. Subject to Annual Appropriation. Consistent with Article X, Section 20 of the Colorado Constitution, any financial obligations of either party not to be performed during the current fiscal year are subject to annual appropriation.

22. Notice. All notices, consents or other instruments or communications provided for under this Agreement will be in writing, signed by the party giving the same, and will be deemed properly given and received (a) when actually delivered and received personally, by

messenger service, by fax or telecopy delivery; (b) upon confirmation of delivery if sent by an overnight courier service such as Federal Express or United Parcel Service; (c) three business days after deposit in the United States mail, by registered or certified mail with return receipt requested; or, (d) upon acknowledgement of receipt if sent by e-mail. All such notices or other instruments will be transmitted with delivery or postage charges prepaid, addressed to the party at the address below for that party or to such other address as such party may designate by written notice to the other parties:

School District: Elizabeth School District
Attn: Chief Financial Officer
34500 CO Rd 13
Elizabeth, CO 80107

Town: Town of Elizabeth
Attn: Town Manager
151 S. Banner Street
Elizabeth, CO 80107

23. Exhibits. The following listed exhibits are incorporated herein and made a part of this Agreement:

Exhibit A – The Services

[Signature Page Is Next Page.]

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the date(s) set forth below.

ELIZABETH SCHOOL DISTRICT, a
political subdivision of the State of Colorado

By: _____
Board of Education President

Date: _____

ATTEST:

Board of Education Secretary

TOWN OF ELIZABETH, a statutory town
of the State of Colorado

By: _____
Megan Vasquez, Mayor

Date: _____

ATTEST:

Michelle M. Oeser, Town Clerk

Exhibit A

Potable and Wastewater Services

- The Town will permit its Wastewater Treatment Facility Operator (“Operator”) to operate and maintain the District's Wastewater Treatment Facility (WWTF) to ensure its proper operation in processing and breakdown of all waste with the upkeep of all equipment to ensure the sufficient and proper cleanliness of the WWTF, including but not limited to, preparation of chemical treatment of the system; calibrate, repair and troubleshoot the treatment system; report system issues; maintain cleanliness of all manholes and cleanouts; locate all wastewater lines; and perform other related tasks as the position and wastewater system workings should dictate with regard to the overall proactive management of the wastewater system. Furthermore, Operator will sample discharge and timely file the required reports with the Colorado Department of Public Health and Environment (“CDPHE”). In doing so, the Operator will help ensure compliance with the CDPHE Permit and to provide the best quality of maintenance and operation of the District's WWTF.
- Operator will also manage and provide oversight of the school’s Potable Water System. This includes the same duties and responsibilities as the Operator of the WWTF, as applicable.
- Be on call and available for any and all visits from and by representatives of and from CDPHE, the Elbert County Health Department, as well as any and all other governmental agencies for on-site, chemical and administrative inspections of the WWTF, any and all other facilities as well as equipment and those of emergency measures relating to the proper operation and function of the total wastewater system, as well as being available and ready to answer all inquiries from representatives of these and other agencies, whether such inquiries are verbal, written or follow on in nature regarding the WWTF.
- Advise, in a timely fashion, the District's Coordinator of Operations and Maintenance on all matters involving the WWTF, overall wastewater treatment system and the fresh water system, making appropriate and timely recommendations to the same for the potential and probable purchase of parts, material(s), equipment and other related items to avoid possible down time.
- The Parties expect the regular duties and responsibilities of the Town’s Operator with respect to the operation of the District’s WWTF, to require approximately 8-10 hours per month, including travel time. This time estimate may be affected by emergency response or other unanticipated duties and responsibilities the Town’s Operator may be required to

perform in order to provide uninterrupted Services to the School District as required by this Agreement, in which case, the Town shall perform such unanticipated duties and responsibilities at its sole cost and expense and such action shall not operate as the School District's consent to a change order or amendment to the Agreement that justifies a modification to the time for performance or the contract price.

- The Operator shall comply with all applicable state and federal statutes and regulations governing WWTF and Potable Water operations.
- Operator agrees to keep all books, accounts, reports, files, and other records relating to this Agreement for five (5) years after termination or expiration of the Agreement.
- Within ninety (90) days of the date of the last signatory hereto, the Town's operations staff shall provide written Standard Operating Procedures (SOPs) for proper operations, compliance sampling, monitoring, compliance reporting, maintenance requirements, and a maintenance schedule to ensure the overall performance of the engineered designed system capabilities and expectations. Within a reasonable amount of time after supplementing or amending the SOPs during the term of this Agreement, the Town shall provide said updated or amended SOPs to the School District.