

**FIRST AMENDMENT TO
MEMORANDUM OF AGREEMENT**

**MT. CRESTED BUTTE WATER & SANITATION DISTRICT
AND
MERIDIAN LAKE PARK CORPORATION**

**RE: CONNECTION OF MERIDIAN LAKE PARK RESERVOIR NO. 1
TO MERIDIAN LAKE PARK WATER SUPPLY SYSTEM**

The Mt. Crested Butte Water & Sanitation District (the "District") and Meridian Lake Park Corporation ("MLPC") agree as follows:

a. This First Amendment is intended to operate as an express modification to the original Memorandum of Agreement between MLPC and the District (collectively referred to herein as the "Parties") effective May 9, 1995 ("1995 MOA") pursuant to Paragraph 18 of the 1995 MOA.

b. MLPC is the duly constituted homeowners association for approximately 180 residential lots within the Meridian Lake Park residential development. The District is a Colorado special district that was formed to provide water and sewer service to certain developments within the District's boundaries pursuant to Title 32, Colorado Revised Statutes.

c. Among other things, the 1995 MOA provided that MLPC would be included within the boundaries of the District and receive water and sewer service from the District upon dedication of MLPC's then-existing water and sewer plants and associated water rights to the District.

d. Additionally, the 1995 MOA included a provision, paragraph 7.5, which states as follows:

7.5 The District and the Association [MLPC] acknowledge and agree that the water service and water distribution system for Meridian Lake Park, unless otherwise agreed in writing, shall be a stand-alone system constructed, operated and maintained as a self-contained water system within Meridian Lake Park without connection to the water distribution systems, water storage and water treatment facilities otherwise owned and maintained by the District.

With this First Amendment the Parties wish to clarify and confirm the meaning of this provision.

e. The historical and principal raw water source for the MLPC water system is the Jaklich Ditch collection system. But, since the Jaklich system does not yield

sufficient water supplies to meet the peak water demands of MLPC's membership at full build-out, the District has recently connected Meridian Lake Park Reservoir No. 1 (the "Reservoir") to the treatment plant for the MLPC water system in order to provide additional raw water supplies when necessary to meet peak demands. This pumped connection is known as the "Meridian Lake Park Reservoir No. 1 Pump and Pipeline" and is described in the Final Decree in Case No. 95CW218, Water Division No. 4, entered on September 2, 1997.

f. The District owns existing decreed water rights which allow up to 110 acre-feet of water stored in the Reservoir to be utilized directly or for augmentation of domestic, irrigation, recreation or industrial uses (*see* Final Decree in Case No. W-2009 entered September 10, 1974). After a recent survey of the Reservoir revealed that the Reservoir's capacity is actually 192.46 acre-feet, the District filed an application in Case No. 09CW175 to confirm a junior filling right for an additional 82.46 acre-feet of storage and a junior refill right for 92.46 acre-feet.

g. Although MLPC has no objection to the District's completion of a physical connection of the Reservoir to the Meridian Lake Park treatment system for the purpose of meeting peak future water demands for MLPC's membership, nor to the District's confirmation of additional raw water storage in the Reservoir, MLPC wishes to clarify the extent to which Paragraph 7.5 of the 1995 MOA provides it with a right to review and approve any proposed future connection of the Meridian Lake Park water system to other water sources, systems or users. The parties also wish to clarify and confirm the 1995 MOA with regard to what currently constitutes MLPC's "stand-alone" system, and how water stored in the Reservoir will be allocated in the future.

WHEREFORE, the parties further agree as follows:

1. The parties hereby agree and confirm that the "stand-alone" system referred to in the 1995 MOA presently includes the following components (collectively referred to below as the "MLP water system"), which system shall not be utilized directly or indirectly to deliver water to areas outside of Meridian Lake Park absent the prior written consent of MLPC:

a. All physical flow available from the Jaklich Ditch system, including the 2.50 c.f.s. adjudicated to this system in C.A. 1635 (Priority No. 210), decreed on October 25, 1921, and Case No. W-240 entered on May 27, 1971, for irrigation and domestic purposes. If, however, there is any excess yield from the Jaklich Ditch system after the water demands of the MLP water system are satisfied from the direct flow from the Jaklich Ditch, the District may store such excess water in the Reservoir, at which point it shall no longer be considered part of the Jaklich Ditch system, but rather shall be considered water stored under the District's storage rights in the Reservoir.

b. 23.6 acre-feet of the 120 acre-feet of historical consumptive use credit associated with the historical use of the Jaklich Ditch system as determined in Case Nos. W-2009 and 95CW218, Water Division No. 4, entered on September 10, 1974 and July 23, 1997, respectively (provided that the Parties agree and acknowledge that the District may legally allocate any excess consumptive use credits from this decree to other District purposes without MLPC's consent so long as no physical curtailment of available flow from the Jaklich Ditch is necessitated thereby).

c. 36.5 acre feet of water stored in the Reservoir pursuant to the storage water rights confirmed in Case No. W-2009, entered on September 10, 1974, for domestic, irrigation, recreational and industrial uses, either directly or indirectly by augmentation and exchange.

d. The presently existing pump and pipeline connecting the Reservoir to the water treatment plant for Meridian Lake Park (known as the Meridian Lake Park Reservoir No. 1 Pump & Pipeline). The Meridian Lake Park Reservoir No. 1 Pump & Pipeline is described in more detail in the attached Exhibit ___.

e. All other water storage tanks, treatment or distribution facilities, water distribution lines, and water service lines that serve Meridian Lake Park.

2. The District is presently imposing an additional surcharge on monthly bills to MLPC's members to offset the District's cost of design and construction of the Meridian Lake Park Reservoir No. 1 Pump & Pipeline No. 1. The parties hereby agree and acknowledge that, in the future, should the District ever seek to utilize MLP water system (as defined in Section 1, above) for the benefit of users outside of Meridian Lake Park, and should MLPC determine to approve the same, MLPC may condition its consent to any such utilization of the MLP water system for the benefit of users other than MLPC's membership upon MLPC's recoupment of a pro rata share of the depreciated cost of the system, according to the following criteria:

a. To determine the depreciated cost of the MLP water system, the Parties will first amortize MLPC's actual expenditures for design and construction over the predicted lifespan of the system. Next, those actual expenditures will be reduced pro rata according to the portion of the system's lifespan that has elapsed at that time. For example, assuming that MLPC spent \$1,000,000 on the MLP water system and that the system had a 50-year projected lifespan, in year 10 of operation of the MLP water system the initial expenditure would be reduced by 20%, because 20% of the lifespan had already passed. The resulting depreciated cost would be \$800,000.

b. Next, to determine the District's pro rata share of the depreciated cost, the Parties shall reduce that amount in accordance with the proportion of the

system capacity that will be used by the District for the benefit of users other than MLPC's membership. Thus, using the example above, if the District intended to use 50% of the MLP water system's capacity for the benefit of other users, the District would be responsible for 50% of the depreciated cost, or \$400,000.

c. Because the various components of the MLP water system have different lifespans, if the Parties cannot agree on an equitable recoupment under the above-described formula, the Parties shall jointly engage a qualified professional with experience in estimating the costs and projected lifespans of public water systems in Colorado to allocate costs to individual components of the system in accordance with this Agreement in order to calculate an equitable recoupment amount. If the Parties are unable to agree in selecting a qualified professional, each party may choose a qualified professional and those two professionals shall select a qualified professional to allocate costs under this provision. In either case, unless otherwise agreed by the Parties at the time, the Parties shall share equally in the cost of retaining the qualified professional, but each party shall separately bear its own attorneys' fees or costs incurred in any proceeding regarding selection of the qualified professional.

3. In the past, as with the development of the MLP water system, the District has typically assessed the costs of capital-improvements against the users of those improvements. Should the District in the future determine to assess the cost of capital improvements that serve other portions of the District against MLPC's membership, it shall first provide public notice that such an issue is being considered and shall entertain a discussion of the matter at a regularly scheduled meeting of the District's board of directors.

4. The District agrees to develop annual accounting for water stored in Meridian Lake Park Reservoir No. 1 (and to provide copies of the same to MLPC on or before December 15 of each year) that delineates between and among the following uses of water stored in the reservoir each water year:


- (a) water stored for augmentation and replacement of out-of-priority depletions due to water service to Meridian Lake Park homeowners;
- (b) water stored for direct use by Meridian Lake Park homeowners as a supplement to the Jaklich Ditch system;
- (c) water stored either for direct or replacement uses unassociated with Meridian Lake Park; and
- (d) water stored in the reservoir for other non-consumptive purposes, including recreation.

5. Should the Reservoir require significant repair or replacement, the District agrees that MLPC's membership shall not be assessed a greater percentage of those capital costs than the proportionate share of water rights then decreed for storage in the Reservoir that are then part of the MLP water system (currently 36.5 acre-feet out of 192.46 acre-feet, or approximately 19%).

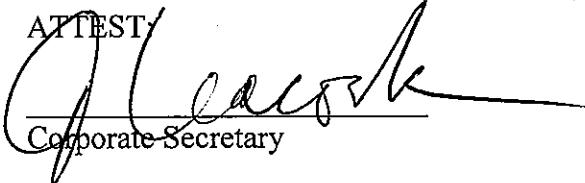
Except to the extent modified or clarified in this Agreement, MLPC and the District intend that all terms of the 1995 MOA shall remain in full force and effect.

SO AGREED effective _____, 2013.

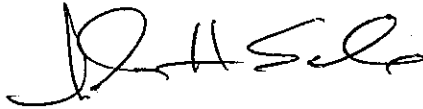
MERIDIAN LAKE PARK CORPORATION


By: _____, President
(print name)

ATTEST:



Corporate Secretary

MT. CRESTED BUTTE WATER &
SANITATION DISTRICT, a Colorado
special district



By: JOHN SALE, Chairman
(print name)

ATTEST:


Secretary