

ORDINANCE NO. 16-107

AN ORDINANCE APPROVING INCLUSION OF A PORTION OF THE CITY OF COLORADO SPRINGS, COLORADO WITHIN THE LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT UPON THE TERMS AND CONDITIONS SET FORTH BY THE BOARD OF DIRECTORS OF THE LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT

WHEREAS, the City Council of the City of Colorado Springs, Colorado, ("City Council") is authorized pursuant to § 32-4-513, C.R.S., to include all or a portion of the City of Colorado Springs ("City") within a metropolitan sewage disposal district for purposes of providing wastewater collection and treatment services to the area included; and

WHEREAS, the City Council hereby determines that inclusion of a portion of the City within the Lower Fountain Metropolitan Sewage Disposal District ("Lower Fountain") is in the best interests of the City of Colorado Springs and its utilities enterprise, Colorado Springs Utilities ("Utilities") and Utilities' ratepayers; and

WHEREAS, the City Council further determines that inclusion of a portion of the City within Lower Fountain is necessary for the public health, safety, and general welfare.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council hereby determines on behalf of Utilities that the portion of the City identified as the "Current Proposed LFMSDD Inclusion Area" in Exhibit "A" attached hereto and incorporated herein by reference shall be included within the Lower Fountain Metropolitan Sewage Disposal District for purposes of receiving wastewater treatment and collection service upon the terms and conditions set forth by the Board of Directors of Lower Fountain in the

Sewage Treatment and Disposal Agreement attached hereto and incorporated herein as Exhibit "B".

Section 2. Council approves and authorizes the President of City Council to execute on behalf of the City and Utilities, the Lower Fountain Sewage Treatment and Disposal Agreement, attached hereto as Exhibit "B".

Section 3. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.


Introduced, read, passed on first reading and ordered published this 25th day of October, 2016.


Finally passed: November 8, 2016



Council President


ATTEST:



Sarah B. Johnson, City Clerk



I HEREBY CERTIFY, that the foregoing ordinance entitled **“AN ORDINANCE APPROVING INCLUSION OF A PORTION OF THE CITY OF COLORADO SPRINGS, COLORADO WITHIN THE LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT UPON THE TERMS AND CONDITIONS SET FORTH BY THE BOARD OF DIRECTORS OF THE LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT”** was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on October 25, 2016; that said ordinance was finally passed at a regular meeting of the City Council of said City, held on the 8th day of November, 2016, and that the same was published by title and summary, in accordance with Section 3-80 of Article III of the Charter, in the Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 8th day of November, 2016.


Sarah B. Johnson, City Clerk



1st Publication Date: October 28, 2016
2nd Publication Date: November 10, 2016

Effective Date: November 15, 2016 Initial: SBJ
City Clerk

AFFIDAVIT OF PUBLICATION

STATE OF COLORADO
COUNTY OF EL PASO


I, Mary Heifner, being first duly sworn, deposes and says that she is the Legal Sales Representative of THE COLORADO SPRINGS GAZETTE, LLC., a corporation, the publishers of a daily public newspaper, which is printed and published daily in whole at the city of Colorado Springs in the County of El Paso, and the State of Colorado, and which is called The Gazette; that a notice of which the annexed is an exact copy, cut from said newspaper, was published in the regular and entire editions of said newspaper 1 time(s) to wit, **October 13, 2016.**

That said newspaper has been published continuously and uninterruptedly in said County of El Paso for a period of at least six consecutive months next prior to the first issue thereof containing this notice; that said newspaper has a general circulation and that it has been admitted to the United States mails as second-class matter under the provisions of the Act of March 3, 1879 and any amendment thereof, and is a newspaper duly qualified for the printing of legal notices and advertisement within the meaning of the laws of the State of Colorado.



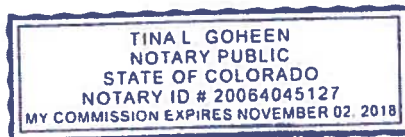
Mary Heifner
Legal Sales Representative

Subscribed and sworn to me this **October 21, 2016**, at said City of Colorado Springs, El Paso County, Colorado. My commission expires **November 2, 2018.**



Tina L. Goheen
Notary Public

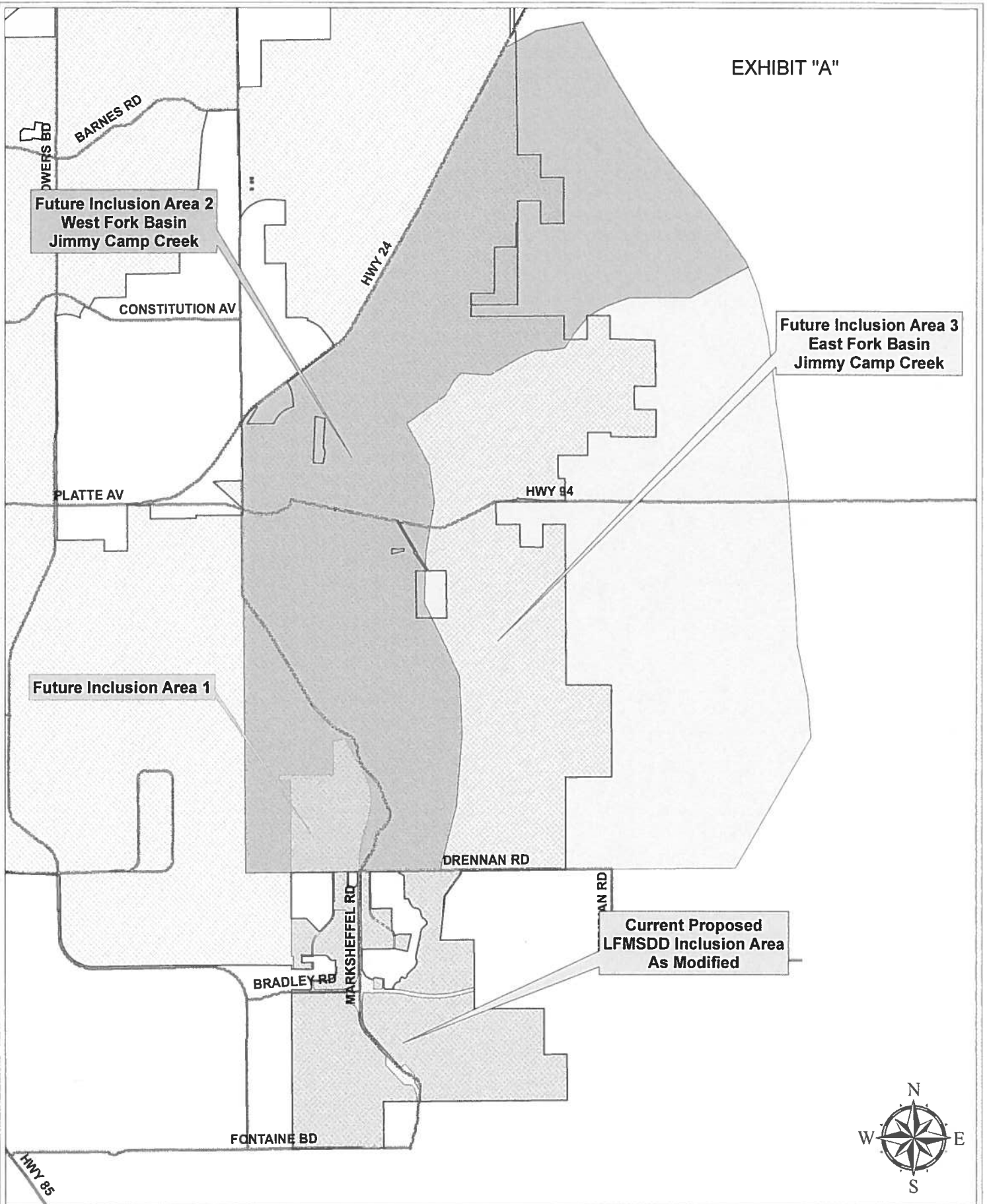
The Gazette



NOTICE IS HEREBY GIVEN pursuant to § 32-4-513, C.R.S., that the City Council of the City of Colorado Springs (City) will conduct a public hearing to consider approval of an ordinance approving the inclusion of a portion of the City within the Lower Fountain Metropolitan Sewage Disposal District. The public hearing will take place on October 25, 2016 at 1:00 p.m., in the City Council Chambers located at City Hall, at 107 N. Nevada Avenue, Colorado Springs, CO 80903. A copy of the ordinance and proposed inclusion area are on file with the Clerk for City of Colorado Springs at 30 S. Nevada Ave, Colorado Springs, CO 80901, and are also available online at: <https://coloradosprings.legistar.com/Calendar.aspx>.

Published in CS Gazette October 13, 2016

EXHIBIT "A"



Colorado Springs Utilities
It's how we're all connected

Copyright © 2013 City of Colorado Springs in behalf of the Colorado Springs Utilities. All rights reserved. This map and the data contained herein, and any reproduction thereof, are the property of Colorado Springs Utilities. This map is provided as a service to the City of Colorado Springs and Colorado Springs Utilities. This map is provided without warranty, and the City of Colorado Springs and Colorado Springs Utilities are not responsible for any errors or omissions. The City of Colorado Springs and Colorado Springs Utilities are not responsible for any damages, including consequential damages, arising from the use of this map. The City of Colorado Springs and Colorado Springs Utilities are not responsible for any damages, including consequential damages, arising from the use of this map.

Scale 1" = 40,000'

Legend
 [Dashed Line] COLORADO SPRINGS
 [Thick Line] Major Streets



Plot File Created: 07/07/2016

**JIMMY CAMP CREEK BASIN AREAS
LFMSDD INCLUSION DELINEATION**

July 2016

Statewide Planning & Consultation, Inc. 1000 North Academy Blvd., Suite 100, Colorado Springs, CO 80902

EXHIBIT "B"

SEWAGE TREATMENT AND DISPOSAL AGREEMENT

by and between the

LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT

organized pursuant to C.R.S., 32-4-501 *et seq.*

and the

FOUNTAIN SANITATION DISTRICT,

and the

COLORADO CENTRE METROPOLITAN DISTRICT,

and the

**CITY OF COLORADO SPRINGS on behalf of
COLORADO SPRINGS UTILITIES,
an Associated Municipality,**

and

**VINTAGE DEVELOPMENT COMPANY,
a Colorado corporation.**

Approved: January 15, 2009

Re- Published: October 2015

As Amended through: February 10, 2016

The Service Contract was executed on January 15, 2009, by the Lower Fountain Metropolitan Sewage Disposal District Board of Directors. This republished version includes proposed refinements and amendments for the Board of Directors approval consideration. It is intended to be a working copy and not a legal and binding copy.

RECITALS

WHEREAS, the District, located in El Paso County, Colorado, was organized on May 13, 1986, and its officers have been duly chosen and qualified; and

WHEREAS, the public interest demands the construction of a sewage disposal system (the “System”) by the District as authorized by Colorado law; and

WHEREAS, the District has prepared and is revising plans and specifications for the District’s System, its costs and rate schedules; and

WHEREAS, the District has the power:

- (1) To fix and adjust charges to the Connecting Entities for connection with or use of the District’s System including minimum charges and service availability charges;
- (2) To pledge District Revenues for the repayment of District Securities; and
- (3) To borrow money, to issue Securities to evidence the amounts so borrowed, and to secure their repayment by a pledge of the District’s Revenues; and

WHEREAS, the Board will conduct a public hearing after notice thereof at a meeting in El Paso County, Colorado, within the District, concerning the means of determining Service Charges, at which hearing any representative of any Connecting Entity or any other interested Person may appear and be heard; and

WHEREAS, after said hearing and meeting, the Board will adopt a Rate Schedule by resolution; and

WHEREAS, as authorized by C.R.S. §31-35-401 *et seq.*, the District may issue Securities for a portion or all of the District’s System pursuant to a Resolution to be later adopted by its Board; and

WHEREAS, the District has acquired the necessary lands for the Project; and

WHEREAS, the District also has the power to enter into and perform, without an election, contracts for any term not exceeding fifty (50) years with any Municipality or Person concerning sewage facilities, their financing, planning, acquisition, construction, operation, maintenance and disposal, and the periodic payment of amounts to compensate the District for the costs of providing, operating and maintaining the sewage facilities; and

WHEREAS, each other party hereto has the power to contract with the District; and

WHEREAS, the District cannot finance the acquisition, operation and maintenance of the System, unless the District treats and disposes of the Sewage from the Contract Service Area shown on *Exhibit A*, and unless each Connecting Entity is legally bound to accept and pay for such service from the time the District’s System begins operation; and

WHEREAS, the District, through its Connecting Entities and Associated Municipalities, desires to provide for financing the District’s monetary and budget requirements from time to time by providing for annual charges (herein referred to as “Annual Charges”) to be paid by each Connecting Entity and Associated Municipality as herein provided, in addition to Service Charges unilaterally fixed, charged, and collected by the District from the Connecting Entities independent of any such Annual Charges, and

otherwise appertaining to the District's Sewage Disposal System and to the Sewage System of a Connecting Entity; and

WHEREAS, the District, the Connecting Entities and the Associated Municipalities have determined to enter into this agreement (herein referred to as this "**Service Contract**" or this "**Agreement**") for the aforesaid purpose; and

WHEREAS, the above parties, and including all future signatories, to this Agreement commit and agree that each shall financially support the District through payments of fees, charges, pro-rated contributions and operation costs in return for District services provided prior to and after construction of the System; and

WHEREAS, the parties have determined to enter into this Agreement for these purposes.

NOW, THEREFORE, in consideration of the promises, mutual covenants and agreements herein contained and the performance thereof by the parties, and in order to secure the payment of the District's expenses and the payment of the principal of and the interest on any District's Securities, **THE PARTIES AGREE** as follows:

ARTICLE I

TITLE, DEFINITIONS AND INTERPRETATIONS

Section 101. Title

This Agreement may be referred to as the “**Service Contract**” or the “**Agreement**”.

Section 102. Meanings and Construction

- A. Except as more specifically defined herein, the definitions listed in C.R.S. §32-4-502 are incorporated into this Agreement by this reference.
- B. When used in this Agreement, the terms defined in Section 102 C. or the Act are capitalized to indicate that they are specifically defined. If a term is capitalized and is not specifically defined in Section 102 C. of this Agreement, it shall have the meaning set forth in the Act.
- C. As used in this Agreement, unless the context otherwise requires:
1. “**Act**” means C.R.S. §32-4-501 *et seq.*, as amended from time to time.
 2. “**Annual Budget**” means the budget or the amended budget for a Fiscal Year and adopted by the District or in effect pursuant to Section 501 of this Agreement.
 3. “**Annual Charges**” means the sums paid or payable to the District pursuant to this Agreement, other than Service Charges.
 4. “**Associated Municipality**” means a Member Municipality, as herein defined, which is not a Connecting Municipality, as herein defined. The Associated Municipality presently is the City of Colorado Springs on behalf of Colorado Springs Utilities.
 5. “**Average Day Flow**” means the average calendar-day discharge of Sewage during a rolling one-year period, including all forms of flow entering the District’s System.
 6. “**Board**” means the Board of directors of the District.
 7. “**Charges**” means the Annual Charges and the Service Charges payable to the District by the Connecting Entities and the Associated Municipalities pursuant to this Agreement.
 8. “**Connecting Corporation**” means a corporation which is a party to this Agreement and whose sewer system is or is to be connected, in whole or in part, to the District’s System. A Connecting Corporation is not within the boundaries of the District but it owns or has an interest in land located, in whole or in part, within the Contract Service Area. The Connecting Corporation on the effective date of this Agreement is Vintage Development Company.
 9. “**Connecting Entities**” means all Connecting Corporations and Connecting Municipalities, collectively.
 10. “**Connecting Municipality**” means a Member Municipality, as herein defined, all or any part of whose sewer system is connected in whole or in part to the District’s System,

whether through the Interceptor or otherwise. The Connecting Municipalities on the effective date of this Agreement are Colorado Centre Metropolitan District and Fountain Sanitation District.

11. **“Connection Point(s)”** refers to the point or points at which Sewage from a Connecting Entity enters the District’s System.
12. **“Contract Service Area”** means the land served by the Connecting Entities and the land designated by the Associated Municipalities, if any, having specific boundaries which have been or will be recorded with the District, in which the Connecting Entities or the Associated Municipalities have either the right or the obligation to provide sewer service, and areas outside of the Connecting Entities in which Connecting Entities or the District have an obligation to provide such Service, as such area is set forth in the attached *Exhibit A*.
13. **“District”** means the Lower Fountain Metropolitan Sewage Disposal District formed pursuant to C.R.S. §32-4-501, *et seq.* or as changed from time to time. The District’s boundaries are composed of the Contract Service Area.
14. **“District Manager” or “Manager”** shall mean the Person or Entity retained by the District Board to handle all administrative and management responsibilities associated with District operations. Such Person or Entity shall serve at the pleasure of the District Board, and may retain outside contractors or consultants to assist in carrying out the District Manager’s responsibilities.
15. **“Engineer”** has the meaning given such term in the Act.
16. **“Extend” or “Extension”** means the installation of any new interceptor or other sewer main which is not part of the Project, which installation extends the System to a Connecting Entity which hereafter is included in the District or to an area hereafter annexed to a Connecting Entity now in the District or an area otherwise hereafter served by the District.
17. **“Fiscal Year”** means the twelve (12) months commencing on the first day of January of any year and ending on the last day of December of the same year.
18. **“General Fund”** means the “Lower Fountain Metropolitan Sewage Disposal District, Colorado, General Fund,” as maintained by the District.
19. **“Independent Accountant”** means any Certified Public Accountant or any firm of such Accountants, appointed and paid by the District:
 - (a) Who is, in fact, independent and not under the dominion of the District or any party to this Agreement, *and*
 - (b) Who does not have any substantial interest, direct or indirect, with the District or any party to this Agreement, *and*
 - (c) Who is not an officer or employee of the District or any party to this Agreement but who may be regularly retained to make periodic audits of the District’s books and records of the District.

20. **“Improve” or “Improvement”** means the capital extension, alteration, betterment, reconstruction, replacement, repair, or other improvement (or any combination thereof) of facilities, other property, any project, or an interest therein, as authorized by the Act.
21. **“Infiltration”** is water entering a sewer system from the ground through means such as defective pipe, pipe joints, connections, or manhole walls. Infiltration does not include and is distinguished from Inflow.
22. **“Inflow”** consists of water discharged into a sewer system (including service connections) from sources such as roof leaders; cellar, yard and area drains; foundation drains; cooling water discharges; drains from springs and swampy areas; manhole covers, cross-connections from storm sewers and combined sewers; catch basins; storm water surface run-off; street wash waters; and drainage.
23. **“Interceptor”** means such sewers and appurtenances thereto as may be necessary to intercept and transport the outfalls from the Sewage Systems of the Connecting Entities.
24. **“Member Municipality”** means any city, city and county, incorporated town, sanitation district, water and sanitation district, or any other political subdivision or public entity heretofore or hereafter created under the laws of the State of Colorado (other than a metropolitan sewage disposal district), having specific boundaries within which it is authorized or empowered to provide sewer service for the area within its boundaries, and being a component and comprising a part of the District. A Member Municipality may be either an Associated Municipality, as herein defined, or a Connecting Municipality, as herein defined. The Associated Municipalities in the District on the effective date of this Agreement are:
- (a) City of Colorado Springs on behalf of Colorado Springs Utilities
- and the Connecting Municipalities in the District on the effective date hereof are:
- (a) Colorado Centre Metropolitan District, and
- (b) Fountain Sanitation District.
25. **“Operation and Maintenance Expenses”** means all reasonable and necessary current expenses of the District, paid or accrued, of operating, maintaining, and repairing the District’s System, including the establishment and funding of a reserve account not to exceed ten percent (10%) of the District’s then-current annual budget. The term does not include:
- (a) Any depreciation allowance or any capital improvement reserves;
- (b) Working capital reserves related to cash flow requirements for grant administration or other capital improvement costs;
- (c) Any allowance for the redemption of any note, bond or other obligation evidencing a loan or the payment of any interest thereon; *or*
- (d) The costs of any Improvements or Extensions.

26. **“Peak Flow”** means the maximum instantaneous discharge of Sewage which consists of the sum of all forms of flow entering the District’s System.
27. **“Person”** means any individual, association, corporation, or the federal government, or any public body other than a Municipality, and excluding the District.
28. **“Project”** means the construction, installation and other acquisition of the District’s System to consist of a 2.5 million gallon per day treatment plan and an Interceptor line, all as described in the District’s Site Application, and such other, associated improvements as the District may authorize.
29. **“Rate Schedule”** refers to the schedule of and methods for determining Charges to be assessed by the District for its operations and for the provision of Services to the Connecting Entities, together with the current calculation of rates and Charges for the current Year.
30. **“Revenue”** means all moneys derived by the District from Charges made for Services provided by the District to the Connecting Entities and Associated Municipalities.
31. **“Service”** or **“Services”** mean (i) in connection with any Extension or Improvement, the planning, financing, construction, completion, repair, property acquisition, employment of personnel and agents, and provision for insurance and financial records of or for such Extension or Improvement, and (ii) otherwise, the provision of sewage transportation, treatment and disposal services.
32. **“Service Charges”** means rents, rates, fees, tolls, and other charges for direct or indirect connection with or the use of Services of the Sewage Disposal System, including, without limiting the generality of the foregoing, Operation and Maintenance Expenses, minimum charges and charges for the availability of service, which Service Charges the District is or may be authorized to fix, charge, and collect from any Connecting Entity, independent of this or any other service contract, pursuant to Subsection (m) of Section 32-4-510 and to Section 32-4-522 of the Act.
33. **“Sewage Disposal System”, “District’s System”** or **“System”** means the District’s sewage disposal system and includes anyone or all or any combination of the following: Any sewage treatment plant, sewage treatment works, sewage disposal facilities, connections and outfalls, intercepting sewers, outfall sewers, force mains, conduits, pipelines, water lines, pumping and ventilating plants or stations, compensating reservoirs, other plants, structures, facilities, equipment, and appurtenances useful or convenient for the interception, transportation, treatment, purification or disposal of sewage, liquid wastes, solid wastes, night soil, and industrial wastes along with all necessary lands, interest in lands, easements and water rights.
34. **“Sewage Meter”** means any continuously recording device used to measure Sewage flow.
35. **“Sewage System of a Connecting Entity”** means a system provided by a Connecting Entity to provide sewer service to inhabitants within or without its jurisdiction, which is connected with the District’s System at the Connection Point(s).

36. **“Substantially Injurious”** means any discharge that, upon reaching the District’s System, requires the District staff to initiate any emergency or non-standard operating procedures in the District’s operation and maintenance documents or rules and regulations.
37. **“User”** means any Person who discharges, causes or permits the discharge of wastewater into the Sewage System of a Connecting Entity.
38. **“Year”** means a calendar year.

D. Unless the context otherwise requires, these definitions shall include both singular and plural and apply to both genders.

Section 103. Successors

Whenever the District, a Connecting Corporation, or any Member Municipality is named or is referred to, such provision shall be deemed to include its successors or assigns.

Section 104. Interested Parties

All of the covenants, stipulations, promises and agreements set forth herein shall be for the sole and exclusive benefit of the parties hereto, any trustee for, and any holder of any Security of the District, and shall not be construed to confer upon or give to any other Person any right, remedy or claim, nor to create for the benefit of any other Person any covenant, condition or stipulation.

ARTICLE II

System Acquisition and Operation

Section 201. Acquisition and Purpose

The District will prepare and complete plans for the Project and its financing. Upon completion of such financing or the making of arrangements therefore satisfactory to the District, it will complete the Project and place the District's Sewage Disposal System in operation. The District will thereafter operate, maintain and enlarge the System so as to receive, treat and dispose of Sewage delivered into it by any Connecting Entity in accordance with Article IV.

Before undertaking construction, the District will submit the plans and specifications for the Project to the Colorado Department of Public Health and Environment for approval. The District will obtain all necessary permits and approvals to construct and operate the Project.

Section 202. Extensions and Alterations

Through agreement with interested Member Municipalities or Connecting Corporations, the District may at any time enlarge or modify the System or renew or replace any part thereof and may construct or otherwise acquire any Extension, Improvement or alteration, as may be feasible and then be permitted by law and will not obligate any member of the District not a party to such agreement, except for any Charges assessed pursuant to Article V hereof.

Section 203. Interceptor Easements

Each party through whose Contract Service Area the District's Interceptor must pass shall furnish the District a perpetual easement a minimum of 50 feet in width for Interceptor right-of-way, construction and maintenance without charge to the District. If a Connecting Entity is unable to acquire the necessary easement, the District shall condemn the required easement at the expense of the Connecting Entity which is obligated to provide the easement. The District shall provide all services required to locate, describe, convey and record these easements. To the maximum extent practicable, the Connecting Entities shall work cooperatively toward locating the Interceptor and its easement to greatest advantage.

Section 204. System Operation and Maintenance

The District shall at all times operate the System properly and in a sound and economical manner. The District shall maintain, preserve, and keep the System, or cause the same to be, properly maintained, reserved, and kept, with the appurtenances and every part and parcel in good repair, order, and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals so that at all times the operation of the System may be properly and advantageously conducted.

Section 205. Rules, Regulations, and Other Details

The District shall establish and enforce reasonable rules and regulations governing the operation, use and Services of the District's System. The District's rules and regulations shall, except for special waste and industrial pretreatment requirements, be applicable solely to the District's Sewage Disposal System and not to the Sewage Systems of the Connecting Entities. All compensation, salaries, fees, and wages paid by the District for maintenance, repair, and operation of the System shall be reasonable and comparable to payments by other corporations, municipalities, or public bodies for similar services. The

District shall comply with all valid laws, rules, regulations, orders, and directions of anybody having jurisdiction over the System or the District.

Section 206. Payment of Lawful Governmental Charges

The District shall pay all taxes, assessments or other charges lawfully levied or assessed upon the District's System, or any part thereof, when the same shall become due. The District shall not create or allow any lien or charge upon the System or any part thereof, or any Revenues therefrom, except the pledge and lien created by any resolution for the payment of the principal of, premium (if any), and interest on District Securities.

The District shall pay or shall cause to be discharged or will make adequate provision to satisfy and to discharge, within sixty (60) days after the same shall become payable, all lawful claims and demands for labor, materials, supplies, or other objects which if unpaid might by law become a lien upon the System or the revenues there from. Nothing shall require the District to pay or to cause to be discharged or to make provision for any such lien or charge so long as the validity thereof shall be contested in good faith, so long as failure to pay will not result in a material adverse impact to the District.

Section 207. Insurance and Reconstruction

- A. *Insurance.* The District shall maintain such insurance as is customarily maintained for sewerage systems of like character. Such insurance shall protect the parties to this Service Contract against loss of or damage to the System, against loss of Revenues, and against public and other liability to the extent reasonably necessary to protect the interests of the District.
- B. *Limited Liabilities.* Any liability incurred by the District as a result of the operation of the District's Sewage Disposal System shall be its sole liability, and any liability incurred by any Connecting Entity as a result of the operation of a Sewage System of a Connecting Entity shall be the Connecting Entity's sole liability. An Associated Municipality shall have no liability arising from operation of the District's System or a Sewage System of a Connecting Entity. Section 401 of this Agreement contains special provisions for industrial discharges. To the extent permitted by the Colorado Constitution and consistent with the Colorado Governmental Immunity Act, the District shall indemnify and hold each Connecting Entity harmless from any loss, damages, costs or expenses arising directly or indirectly out of the District's failure to treat or dispose of the Sewage of a Connecting Entity properly, providing such Connecting Entity has complied with the District's rules and regulations with regard to the incident(s) in question.
- C. *Reconstruction.* If any useful part of the System is damaged or destroyed, the District shall expeditiously repair or replace the damaged property. The District shall apply any applicable insurance proceeds (except for proceeds of use and occupancy insurance) to the costs of such repair and replacement. The District shall deposit any excess insurance proceeds, together with proceeds of any use and occupancy insurance, as Revenues of the System. If the costs of repairing or replacing the damaged property exceed the insurance proceeds, money in the emergency capital reserve fund as provided in Section 502.D shall be used as necessary for such purposes.

Section 208. Alienating System

No component required to construct, reconstruct or operate the System shall be sold, leased, mortgaged, pledged, encumbered, or otherwise disposed of or alienated, until all Securities of the District have been paid in full or redeemed. In addition to a sale or lease of capacity in the District's System between Connecting Entities as provided in Section 407.D, any sale or lease of capacity may be made

only by the Connecting Entity that owns such capacity. Written notice of any such sale or lease shall be provided to the District as soon as practicable.

Section 209. Records, Accounts and Audits

The District shall keep proper books of record and account (separate from all other records and accounts), in which complete and correct entries shall be made of its transactions relating to the System. The District shall also keep a list of the insurance policies in force at the end of the Fiscal Year, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer, and the expiration date of the policy. All books and papers of the District shall be subject to inspection by any member of the Board and any officer of a Connecting Entity or an Associated Municipality at all reasonable times. The District shall cause its books and accounts to be audited annually by an Independent Accountant selected by the District. Each audit shall at a minimum include the following:

- A. A detailed statement of the income and expenses of the System for the Year, including a classified statement of gross Revenue received, of net Revenues, and of the amount of any capital expenditures pertaining to the System for the Year, and a statement of the profit or loss for the Year.
- B. A balance sheet as of the end of the Year showing the assets and liabilities in each of the District's accounts.
- C. The Independent Accountant's comments regarding: (1) the District's methods of operation and accounting practice; (2) the manner in which the District has carried out the requirements of each resolution and any other proceedings authorizing the issuance of outstanding bonds or other obligations; and (3) the Independent Accountant's recommendations for changes or improvements as the Independent Accountant deems appropriate.
- D. A recapitulation of each account into which are deposited funds derived from the operation of the System or from the sale of District Securities. Such analysis shall show the balance in each account at the beginning of the Year, the deposits and withdrawals during the Year, and the balance at the end of the Year.

Section 210. Contract Service Area

In the event that a portion of any Connecting Entity or Associated Municipality is excluded from the District pursuant to C.R.S. §32-4-515, the attached *Exhibit A* shall be updated to reflect such exclusion.

Within forty-five (45) calendar days of the District's request, each party to this Agreement shall file with the District a map or legal description depicting the boundaries of and land included within its Contract Service Area.

ARTICLE III

General Sewage System Provisions

Section 301. Tributary Sewer Systems

Connections to the District's System shall be made only at Connection Points approved by the District. Service shall be limited to the Sewage Systems of the Connecting Entities owned, operated, or controlled by the respective Connecting Entities. Sewage from the Connecting Entities shall be metered.

The Connecting Entity will install at its expense metering and sampling facilities at each Connection Point. Any new Connection Points shall include metering and sampling facilities, all of which shall be paid for by the Connecting Entity concerned. Subject to the provisions of Section 405, only Sewage from separate Connecting Entity systems shall be discharged into the District's System. For any new Connection Point(s) a Connecting Entity may desire, a written request must be made to the District and formally approved by the District. No individual home or business shall be allowed a Connection Point(s) onto the District's System.

The District will make provision at each point of metered connection listed in *Schedule A* hereof for measurement of quantity and for quality sampling at the District's own cost and expense.

Section 302. Connections to System

Each Connecting Entity shall construct, install and operate at its own expense each Connection Point to the District's Sewage Disposal System. This shall include any extension of a Connecting Entity's sewer system or outfalls required to deliver its sewage to the Connection Point(s).

Section 303. Service by District and Connecting Entities

The District shall be the exclusive agency for the Acquisition and operation of a Sewage Disposal System within and for the District, except as otherwise authorized in this Agreement or the Act. Each Connecting Entity shall retain its authority to provide sewer service to its inhabitants including the Acquisition, Improvement, operation, and maintenance of Sewage collection, treatment and disposal facilities, including any existing facilities or system, subject to Section 304 hereof and to C.R.S. §32-4-538.

Section 304. Competing System

The District shall not grant any franchise or license to a competing system, nor shall it permit (except as it may legally be required so to do) the acquisition or improvement by any Connecting Entity of sewage treatment or disposal facilities which increases the capacity thereof. This section shall not affect existing facilities of the Member Municipalities and Connecting Corporations which do not serve lands within the District's Contract Service Area. For purposes of this section and except as otherwise allowed by this Agreement, a competing system is any wastewater treatment system that serves an area that is capable of receiving service from the District but not currently included within the District's service area.

Subject to Sections 303 and 307 herein, the District may consent to Acquisition or Improvement of a competing system and may approve the plans and specifications therefor if the Board determines in writing that:

- A. it is not economically feasible for the District to furnish the desired treatment or disposal, *and*
- B. the Acquisition or Improvement of such facilities or system by the Member Municipality or Connecting Corporation or by any other Person within its boundaries will not materially impair the security for payment of District Securities or other obligations, *and*
- C. it is not inequitable or unreasonable for the District to grant such consent and approval, pursuant to §§32-4-506, 32-4-513, 32-4-516, and 32-4-538 of the Act, *and*
- D. the plans and specifications for the proposed competing system are acceptable to the District.

Section 305. [Reserved]

Section 306. Limitations Upon Consent

Whenever under the terms of this Agreement the District is authorized to give its written consent, the District in its discretion may give or may refuse such written consent and if given, may restrict, limit, or condition such consent in such manner as it shall deem advisable. Acceptance by the District of Sewage from a Connecting Entity into the Sewage Disposal System in a volume or with characteristics exceeding or violating any limit or restriction provided for by or pursuant to this Agreement, in one or more instances or under one or more circumstances, shall not constitute a waiver of such limit or restriction or of any of the provisions of this Agreement, and such acceptance shall not in any way obligate the District thereafter to accept or to make provision for Sewage delivered and discharged into the System in a volume or with characteristics exceeding or violating any such limit or restriction in any other instance or under any other circumstances.

Section 307. New Connections

It is the policy of the District that the Connecting Entities shall require that all new construction conform to current wastewater engineering standards.

Section 308. Water Rights

The District makes no claim to the ownership of the water rights of the Connecting Entities stemming from their Sewage contributions to the System. The District will return its discharge flow to Fountain Creek downstream of the District's treatment plant at the location specified on *Exhibit A*. Each Connecting Entity shall provide for this point of discharge in its water rights as appropriate. If any Connecting Entity requires its return flow to be conveyed to a location other than the System's Fountain Creek discharge location, the Connecting Entity shall be solely responsible for all costs associated with delivering its return flow to an alternate location. Any structure proposed to withdraw a portion of the District's wastewater treatment plant's discharge shall be subject to District approval. This section does not limit the District's authority to acquire water rights to be used as determined by the District.

Section 309. Water Quality

The District will treat the Sewage sufficient to comply with the District's effluent permit limitations. Any additional treatment desired and or required by a Connecting Entity shall be the responsibility of the Connecting Entity.

ARTICLE IV

Sewage Discharge to the System

Section 401. Discharge Requirements

- A. *Users to Comply.* All Connecting Entities will ensure that their Sewage discharges to the District's System comply with the rules and regulations issued by the District. The District shall have final authority concerning methods, standards, criteria, significance, evaluation, and interpretation of technical or scientific analyses and methods used to determine compliance.
- B. *Non-Complying Discharges.* Immediately upon discovery of a non-complying discharge to the District's System, a Connecting Entity shall notify the District in writing of the non-complying discharge stating the nature, time and place of the violation. The Connecting Entity shall promptly bring the discharge into compliance or disconnect the connection(s) causing the violation. The District may take enforcement action, as defined in its rules and regulations, against any Person discharging Sewage in violation of District regulations into a Connecting Entity's sewer system.
- C. *Compliance Determinations.* The District may determine in accordance with Section 404 herein whether Sewage discharged into the District's System by any Connecting Entity complies with the District's requirements. The District shall promptly notify a Connecting Entity in writing of any discharge which the District determines violates its requirements. Unless objected to in writing within thirty (30) calendar days, the District's determination shall be deemed correct. If an objection is filed with the District, the District Engineer shall review the matter and attempt to resolve the matter informally.

Section 402. Special Waste Requirements

The District may, through its rules and regulations, prohibit or regulate the discharge into the District's Sewage Disposal System of any substances which are or may be Substantially Injurious to the System or its efficient operation.

Section 403. Industrial Sewage

The Connecting Entities shall require any potential User whose Sewage would not conform to the District's rules and regulations to provide pretreatment, flow-equalizing or other facilities required to bring that User's discharge into compliance at the point at which it enters the Connecting Entity's sewer system. The Connecting Entities will require such Users to construct, operate and maintain pretreatment facilities in a safe and effective operating condition.

The Connecting Entities will comply with the District's requirements concerning industrial sewage contained in the District's rules and regulations. The Connecting Entities agree to support and enforce the District's requirement that significant new industrial users obtain a discharge permit from the Colorado Department of Public Health and Environment prior to discharging sewage to the Connecting Entity's sewer system.

Section 404. Determination of Sewage Characteristics

- A. *Reports.* The District, at the expense of each Connecting Entity, shall prepare and submit reports to each respective Connecting Entity concerning the volume and strength of Sewage delivered at

the Connection Point(s) on a monthly basis. At the sole expense of the Connecting Entity, the District may request a Connecting Entity to submit a Sewage meter calibration report(s) on such schedule as the District may require but not less than annually. The District shall also perform at its expense a meter calibration at all Connection Point(s) not less than annually. Volume shall be monitored by Sewage Meters and Sewage strength shall be determined by periodic composite sampling. The District's monthly billings to the Connecting Entities shall state the actual volume and strength of flow from each Connecting Entity. The District's billings shall be deemed correct within thirty (30) days thereafter if no objection is filed with the District by the Connecting Entity.

- B. *Objections.* In the event that an objection is filed, the Connecting Entity shall be afforded an opportunity to review the laboratory records and to observe the Sewage Meters and sampling equipment and to obtain duplicate samples for determination of Sewage strength at its expense. The District may use an Engineer to review all relevant data and attempt to arrive at a satisfactory resolution.
- C. *Inspections.* In order to determine the characteristics of Sewage discharged into the System, the District's officers, agents and employees may at all reasonable times enter, inspect and sample the Sewer Systems of the Connecting Entities, any industrial or commercial installations connected thereto, or any other connections which contribute Sewage or wastes to the local sewer system.
- D. *Sewage Meter Calibration.* The Connecting Entity shall calibrate the Sewage Meters and appurtenances not less than annually and shall submit to the District a report each time the Sewage Meters and appurtenances are calibrated certifying that the Sewage Meters and appurtenances have been checked and calibrated by a qualified inspector for proper operation and accuracy. The District may, if it so chooses, witness such calibration procedures by the Connecting Entity, and the Connecting Entity shall give the District reasonable advance notice of when such calibration activities will be performed. In addition, any Connecting Entity may, at any time and at its sole expense, request the District to perform the calibration of Sewage Meters and appurtenances by a qualified inspector for proper operation and accuracy. Such calibration shall be performed by the District within a reasonable time period after receipt of the request.

Section 405. Infiltration and Inflow Control

No Connecting Entity shall make or permit any new connection to or extension of the Sewage System of a Connecting Entity which is designed to permit entrance directly or indirectly into the District's Sewage Disposal System of storm water drainage from ground surface, roof leaders, catch basins or any other source. Each Connecting Entity shall make reasonable efforts to limit Infiltration and Inflow into the Sewage System of the Connecting Entity.

Section 406. Discharge Prohibitions

The Connecting Entities shall not discharge Sewage into the District's System which:

- A. impairs the hydraulic capacity of the District's System, normal and reasonable wear and usage excepted;
- B. impairs the strength or the durability of the District's sewer structures, equipment or treatment works, either by chemical or mechanical action;
- C. creates flammable or explosive conditions in the District's System; or

- D. violates the Act or any rule, ordinance or regulation of the District.

Notwithstanding anything in this Agreement to the contrary, acceptance of Sewage by the District into its System in a volume or with characteristics exceeding or violating any limit or restriction provided for by or pursuant to this Agreement, in one or more instances or under one or more circumstances, shall not constitute a waiver of such limit or restriction or of the provisions of this Agreement, and such acceptance shall not in any way obligate the District thereafter to accept or to make provision for Sewage delivered and discharged into the System in a volume or with characteristics exceeding or violating any such limit or restriction in any other instance or under any other circumstances.

Section 407. Discharge Limits and Capacity Reallocation

- A. Interceptor. No Connecting Entity may exceed its allocated Peak Flow within any increment of the Interceptor without prior District approval. No parties other than the Connecting Entities which have executed this Agreement may use the Interceptor.

Notwithstanding the above, any Connecting Entity may, with advance notice to but without the approval of the District, annex or otherwise agree to serve parties or property outside the Contract Service Area as it presently or then exists. In the event that a Connecting Entity agrees to serve parties or property outside the Contract Service Area, the Interceptor and Treatment Plant allocations of said Connecting Entity will not be altered without the approval of the District and said Connecting Entity shall remain responsible for compliance with this Agreement and the District's rules and regulations in the provision of service to said parties or property.

- B. Plant. No Connecting Entity may exceed its Average Day Flow reserve capacity for more than ten (10) consecutive days without District approval. No parties other than Connecting Entities which have executed this Agreement may use the District's wastewater treatment plant without District approval. The terms of subsection A. above as concerning new Connecting Entities shall apply to the District for any additional or new facilities, or expansion of then-existing wastewater treatment capacity, required for such Connecting Entities to use the wastewater treatment plant.
- C. Reallocation. No Connecting Entity's allocation of capacity in the District's System, including but not limited to the wastewater treatment plant and Interceptor, shall be changed without the consent of the affected Connecting Entities.
- D. Lease of Capacity. Any Connecting Entity may lease, sell or otherwise transfer any or all of its capacity in the District's System to another Connecting Entity upon approval of the Board, subject to Section 306. No such lease or other transfer shall affect the financial obligations of any Connecting Entity to the District or of the District to the holders of its Securities.

ARTICLE V

District Budget and Charges

Section 501. Annual Budget

The District is governed by the “Local Government Budget Law of Colorado”, C.R.S. §29-1-101, *et seq.* for the purposes of adopting and amending its annual budgets. The District shall comply with all procedures, notification requirements and filing requirements of said law. In addition, the District shall prepare and submit to each Member Municipality and Connecting Corporation a proposed budget for the ensuing Year at least ninety (90) days prior to the final adoption by the District of the budget for the ensuing Year.

Section 502. Basis for Incurring and Allocating Costs

A. *Generally*

The District shall build, operate and maintain the Project efficiently and shall not incur costs inconsistent with sound management. The parties agree that the Annual Charges to Connecting Entities and Associated Municipalities under the Rate Schedule shall apply in a uniform manner regardless of a Connecting Entity’s proportionate use level and irrespective of an Associated Municipality’s use or non-use. Any cost or expense incurred by the District that is not considered a capital cost or a Service Charge (including any Operation and Maintenance Expenses) shall be deemed an Annual Charge.

B. *Operation and Maintenance Expenses*

1. Each Connecting Entity shall pay Operation and Maintenance Expenses in proportion to its use of the District’s System as more specifically described in the Rate Schedule to be adopted by the District. Such charges shall be based upon the amount and quality of Sewage delivered into the District’s Sewage Disposal System.
2. The District shall estimate the amount of the Charges required for the purposes of this Agreement and, while the System is in operation, shall estimate the total volume and strength of Sewage anticipated from each Connecting Entity and shall determine the total Charges due thereon, all not later than September 1 of the Year preceding that to which the Charges shall apply. The District shall certify these Charges to each Connecting Entity in writing within five business days thereafter. Each Connecting Entity shall provide for the payment of said Charges by including provisions therefor in its budget in the following Year and shall make appropriations therefor if required by law.

C. *Project*

1. In the event the District dissolves, the proceeds from such dissolution shall be distributed as follows: (a) District administrative expenses, as such expenses are described in the annual budget adopted by the Board annually, shall be reimbursed fully to the extent funds are available and in the amounts paid by the Connecting Entities and the Associated Municipalities, and if sufficient funds are unavailable to fully reimburse the parties then the available funds shall be distributed among the Connecting Entities and the Associated Municipalities in proportion to the amounts paid by the Connecting Entities and the Associated Municipalities for District administrative expenses; and

(b) any remaining balance shall be distributed to Fountain Sanitation District and Colorado Centre Metropolitan District as follows: 75% to Fountain Sanitation District and 25% to Colorado Centre Metropolitan District.

2. **Wastewater Treatment Plant Construction.** The capacity of the wastewater treatment facility was constructed and has been allocated to the Connecting Entities on the basis of their projected needs. The costs associated with construction of the treatment plant facilities was allocated *pro-rata* based upon the capacity allocated to each Connecting Entity. Notwithstanding the foregoing, the parties agree that Vintage Development Company (“**Vintage**”) and any future Connecting Entity shall not be required to incur or pay any direct costs related to Project construction when such costs are incurred initially. To the extent Vintage or another future Connecting Entity exercises this option, Vintage or the future Connecting Entity shall set tap fees in an amount sufficient to pay Vintage’s or the future Connecting Entity’s *pro-rata* portion of Project costs. Additionally, if the Vintage property, known as JV Ranches, is included within the Fountain Sanitation District service area at the time Vintage or its successors exercises this option, Fountain Sanitation District shall recover from the District such costs advanced on behalf of Vintage or its successors.
3. **Overall Project Participation.** The parties acknowledge that, based on agreements reached among themselves regarding past financial contributions toward the Project, Fountain Sanitation District and Colorado Centre Metropolitan District funded the entire initial Project construction, which includes construction of the Interceptor through the JV Ranches property. As of the effective date of this Agreement:(i) Fountain Sanitation District owns 75% (1.875 MGD) and Colorado Centre Metropolitan District owns 25% (.625 MGD) of the total 2.5 MGD capacity within the District’s wastewater treatment plant, and (ii) Colorado Centre Metropolitan District owns 1 MGD maximum daily flow or 16.81% of the total capacity within the Interceptor and Fountain Sanitation District owns the remaining and 83.19% of the capacity within the Interceptor. Subject to Sections 208 and 407.D of this Agreement concerning the sale or lease of a party’s allocated capacity, any Connecting Entity desiring wastewater treatment service shall be responsible for all costs associated with increasing the capacity of the Interceptor or the wastewater treatment plant, or both.
4. **Interceptor Construction.** Initial Interceptor capacity has been allocated between Fountain Sanitation District and Colorado Centre Metropolitan District based upon the respective ownership interests described in Section 502.C.3 above. For any Extension or Improvement of the initial Interceptor or construction of a new Interceptor that is requested or required to provide Service to other areas within the Contract Service Area, each Connecting Entity (or Associated Municipality or other Person that will be a Connecting Entity as a result of such Extension or Improvement of the initial Interceptor or construction of a new Interceptor) shall be responsible for the percentage of the actual cost of such Extension, Improvement or construction of a new Interceptor that results from (a) such Connecting Entity’s (or Associated Municipality’s or other Person’s) share of the increased Interceptor capacity, divided by (b) the total increased Interceptor capacity, and multiplied by (c) 100.

D. *Emergency Capital Reserve Fund*

A capital reserve fund is hereby established under this Agreement. The initial reserve fund account shall be funded as permitted under the Act, and shall be replenished as determined by the District in accordance

with the Act. This fund may be used for any unbudgeted, emergency capital expenditure, and any funds expended shall be replaced (in addition to any other payments required to fund this reserve fund) in the immediately following Year. Unless otherwise agreed, the parties shall contribute to the emergency capital reserve fund *pro rata* in the same proportion as their capital contributions existing at the time of funding such contributions to the emergency capital reserve fund.

ARTICLE VI

Payments by Connecting Entities

Section 601. Payment of Charges

Each Connecting Entity and Associated Municipality will budget and appropriate funds for annual Charges and other costs for each Fiscal Year as provided in Sections 502 and 604 hereof and deposit such funds with the District upon request. Otherwise, each party shall promptly pay the Charges and other costs then due to the District pursuant to this Service Contract or as may otherwise be imposed, including contributions to support District Services. This Section does not prohibit any Connecting Entity or Associated Municipality from committing any other funds for the purpose of meeting its obligations hereunder and paying Charges and other costs due the District.

Each Connecting Entity's and each Associated Municipality's obligations to pay the Charges and other costs pursuant to this Service Contract shall not constitute a debt within the meaning of Colorado law and are not general obligations but shall constitute special and limited obligations as apportioned to them. Default by a Connecting Entity or Associated Municipality shall not constitute a liability of the non-defaulting parties. The District shall seek recourse against any defaulting party as provided for herein and otherwise allowed by law. Nothing herein prohibits a non-defaulting party from paying the obligations of a defaulting party to the District and either treating such payments as a loan to the defaulting party or, subject to Section 407.D, purchasing the defaulting party's allocation of capacity in the District's System.

Each Connecting Entity and Associated Municipality shall be liable for and shall render prompt payment of all Charges and costs payable hereunder and provided for herein, at such place and in such manner as the District may reasonably prescribe. Nothing shall prevent any party from fixing and collecting fees necessary for the operation, maintenance and improvement of its own sewer system.

Section 602. Timing of Payments

Each Connecting Entity and Associated Municipality shall pay one-twelfth (1/12) of the estimated Annual Charges for the current Fiscal Year plus one-twelfth (1/12) of the adjustments from the prior Fiscal Year not later than the fifteenth (15th) day of each calendar month, and shall be considered delinquent thereafter. Service Charges and any additional fees, costs and other special Charges shall be due and payable within thirty (30) days of their assessment and shall become delinquent thirty (30) days thereafter.

Section 603. Certification of Estimated Charges

Pursuant to Section 502.B.2 of this Agreement, the District shall deliver to each Connecting Entity and Associated Municipality the District's certificate stating the estimated amount of the following Fiscal Year's Charges. Such Charges in the aggregate shall be sufficient to pay the amounts estimated to be needed by the District in the following Fiscal Year as shown in the Annual Budget. Any such certificate may adjust for the Fiscal Year in which that certificate is rendered, the estimated Charges previously certified. Each adjustment shall be based upon revised estimates resulting from the operation and maintenance of the System by the District for a portion of the current Fiscal Year prior to the date of any such adjusted estimate.

Section 604. Preliminaries to Payment by Connecting Entities

After receipt of the District's certificate of estimated Charges, each Connecting Entity and Associated Municipality shall make all budgetary appropriations necessary to provide for and authorize payment to the District of the Charges for the following Fiscal Year as the Charges become due and payable.

Section 605. Final Adjustment of Charges

The Charges fixed or imposed against any Connecting Entity or Associated Municipality may be adjusted for any Fiscal Year. This final adjustment shall be made on or before the last day of March next following that Fiscal Year.

Section 606. Hearing on and Notice of Final Payment

Prior to making any final adjustment of any Charge for any Fiscal Year, as provided in Section 605 hereof, the District shall hold at its regular meeting in March next following that Fiscal Year a hearing on the proposed final adjustment. At the hearing any Connecting Entity or Associated Municipality may appear and present objections to the final adjustment of the Charges for that Fiscal Year. The District may make a final adjustment after the hearing, but in any event on or before the last day of March.

Section 607. Time of Adjustments to Estimated Charges

The District in its absolute discretion may adjust the estimated Charges for any Fiscal Year and may certify any resulting debits and credits to the Connecting Entities and the Associated Municipalities at any time prior to the final adjustment, whenever the Board determines that such adjustment is necessary or desirable.

Section 608. Payment to Balance Adjustments

Any Connecting Entity or Associated Municipality to which the District certifies a supplemental Charge resulting from any adjustment shall provide for its payment, along with payment of the estimated charge, in its next Annual Budget unless the Connecting Entity or Associated Municipality determines to pay the supplemental Charge prior thereto.

Any Connecting Entity or Associated Municipality to which the District certifies a credit resulting from any adjustment shall so provide in its next annual budget and shall thereby reduce the amount of the estimated Charge payable in the Fiscal Year for which that Annual Budget is prepared, unless the District remits the amount of the credit to the Connecting Entity or Associated Municipality prior to the payment of the estimated Charge.

Section 609. Limitations Upon Adjustment of Charges

Whenever the District adjusts the Charges for any Fiscal Year, non-final adjustments shall be based upon estimates of the amount and quality of Sewage to be delivered into the District's System, direct or indirect connections with or use of the System, and the other costs and expenses of the District. Final adjustments shall be based upon these same characteristics as actually measured pursuant to Section 404 and such costs and expenses as actually incurred by the District. In addition, the District may adjust the Charges to include minimum or Service availability charges and delinquency penalties including interest, collection costs and actual attorney's fees.

Section 610. Enforcement

If any amount due the District from any party hereto shall remain unpaid following its due date, the delinquent party shall be charged and pay to the District interest on the unpaid amount from its due date until paid at the rate of one percent (1%) per month or fraction thereof.

Every obligation assumed by or imposed upon any party by this Agreement shall be enforceable by the District by appropriate action, suit, or proceeding at law or in equity. The District may pursue any and all remedies provided by law for the enforcement of such obligation, including the remedies and processes provided by the Act with respect to Charges or other obligations, and the District shall be awarded all actual fees and costs, including reasonable attorney's fees, incurred in pursuing such remedies.

Section 611. Character of Obligations

Failure by any party hereto to perform fully any obligation assumed by or imposed upon it by this Agreement shall not make the District liable in damages to any other party hereto nor relieve a Connecting Entity or Associated Municipality from making any payment to the District or from fully performing any other obligation required of it under this Agreement. Any Connecting Entity or Associated Municipality may pursue any and all other remedies provided by law for compelling performance by the defaulting party.

ARTICLE VII

Abandonment of Sewer System Facilities

Section 701. Abandonment Permitted

Any Connecting Entity may in its sole discretion at any time abandon or, in the alternative, continue to operate, maintain, and repair all or any part of those sewage treatment or disposal facilities constituting at the time of the date of this Agreement a part of the Sewage System of a Connecting Entity, subject to the provisions of Sections 303, 304, and 305 hereof.

Section 702. Notice of Abandonment

At least thirty (30) calendar days prior to abandoning any sewage treatment or disposal facilities, which abandonment will substantially increase the Sewage received from its sewer system by the District in its Sewage Disposal System, any Connecting Entity shall file written notice with the District's secretary of the Connecting Entity's intent to abandon the designated facilities on the date stated in the notice.

ARTICLE VIII

Additional Municipalities and Connecting Corporations

Section 801. Conditions of Inclusion

Any Municipality not comprising a part of the District on the date of this Agreement or any part of such Municipality may be included in the District as provided in §32-4-513 of the Act upon such terms and conditions as may be determined by the Board and upon its determination that such Municipality may feasibly be served by the District's System as provided by resolution approved by a majority of the Board. Any corporation not under contract to be connected to the District's System on the date of this Agreement may be served by the District upon such terms and conditions as may be determined by the Board and upon its determination that such corporation may feasibly be served by the District's System as provided by resolution approved by a majority of the Board. As consideration for the District's agreement to provide service, a corporation or any private party shall either form a new special district or wastewater district or incorporate into a Municipality.

Section 802. Party to This Agreement

No Municipality shall be included in the District or a Connecting Corporation served by the District after the date hereof unless, among any other conditions and terms so determined by the Board, the Municipality or Connecting Corporation shall consent to become a party to this Agreement, as amended, on the date of such inclusion or addition as a Connecting Corporation, as applicable. Any such Municipality or Connecting Corporation shall execute a written instrument to that effect, filed with the District's secretary. In the case of a Municipality, the instrument shall be executed prior to or simultaneously with the transmittal to the Division of Local Government in the Department of Local Affairs of a certified copy of the resolution to the Board including the Municipality within the District, pursuant to §32-4-513 of the Act.

Upon the issuance of the certificate of the Division of Local Government reciting that the Municipality or the portion thereof designated in the certificate has been duly included within the boundaries of the District, the inclusion of the Municipality or the designated territory shall be effective, and the Municipality shall simultaneously be deemed to have become a party to this Service Contract without further action by the District or by any other Municipality. A corporation shall be a Connecting Corporation upon the execution of this Service Contract, as amended, and by resolution approved by a majority of the Board.

Any other party or property located outside the Contract Service Area desiring to receive service through or independently of a Connecting Entity must execute and agree to be bound by the terms of this Agreement and pay any fees then in effect. Upon signing this Agreement and payment of the prevailing fees, such other party or property shall be deemed either a Connecting Entity or an Associated Municipality. Any new Connecting Entity or Associated Municipality shall be solely responsible for the construction and installation costs for all associated facilities necessary for such Connecting Entity or Associated Municipality to receive service, and such new facilities shall be constructed and installed so as to not affect service to the existing Connecting Entities.

Section 803. Voting Rights of Member Municipalities

For purposes of determining the composition of the Board pursuant to §32-4-509 of the Act and in accordance with *Crestview Water and Sanitation District v. Board of Directors of Metropolitan Denver Sewage Disposal District No. 1*, 640 P.2d 265 (Colo. App. 1981), the total District population shall be the

population within the Contract Service Area, and each Member Municipality's respective population shall be the population of that Member Municipality residing within the Contract Service Area. If a person resides within the boundaries of more than one Member Municipalities, such person shall be counted as part of the population of the Connecting Municipality within which such person resides.

ARTICLE IX

Miscellaneous

Section 901. Effective Date

This Agreement shall become effective and be legally binding upon the parties upon its execution and delivery by each of the parties.

Section 902. Terms of Agreement

This Agreement shall be in full force and effect and shall be binding upon the parties hereto for a period of twenty-five (25) years from December 31, 2015 or until the first day of January next following the last outstanding bond or note issued by the District. Thereafter this Agreement shall continue as a binding contract to the extent permitted by law from year to year until a District, Municipal or Corporate officer files with the Secretary or Clerk of each of the parties hereto a notice that thirty (30) days after the last such filing or on any date designated in the notice following the expiration of such thirty (30) days' period this Agreement shall then be terminated.

Section 903. Securities of District

All bonds, notes or other obligations of the District referred to in this Agreement or to be issued by the District shall for all purposes of this Agreement be the sole obligation of the District and shall not in any way be deemed a debt or a liability of any Member Municipality or Connecting Corporation.

Section 904. Absence of Representations

No party makes any representation concerning the use of property, building permits required or not required, zoning regulations of anybody corporate and politic, or concerning exemption from licenses, permits, or taxes.

Section 905. Conformance with Law

Each party agrees to abide by and to conform to all applicable laws of the United States, the State of Colorado, and any other body corporate and politic having any jurisdiction in the premises. Nothing shall require any party to comply with any law the validity or applicability of which shall be contested in good faith in a court of law or administrative tribunal.

Section 906. Force Majeure

No party shall be responsible or liable in any way for Acts of God or any other act or acts or omissions beyond the control of such party which may in any way cause an interruption or a discontinuance of service appertaining to the District's Sewage Disposal System or to any Sewage System of a Connecting Entity.

Section 907. Non-Assignability

No party to this Agreement may assign any interest herein to any Person without the consent of the Board, and the terms of this Agreement shall inure to the benefit of and be binding upon the respective representatives and successors of each party hereto. Nothing herein contained, however, shall be construed to prevent the reorganization of any party hereto nor as preventing any other body corporate

and politic succeeding to the rights, privileges, powers, immunities, liabilities, disabilities, and duties of a party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.

Section 908. Severability

If any provision of this Agreement shall for any reason be held invalid or unenforceable, the disability of such provision shall not affect any of the remaining provisions of this Agreement.

Section 909. Execution of Documents

This Agreement may be executed in several counterparts, which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents, resolutions or ordinances necessary to give effect to this Agreement.

Section 910. Waiver

No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

Section 911. Remedies

In addition to the remedies provided by law, this Agreement shall be specifically enforceable by any party.

Section 912. Entirety

This Agreement amends, restates, merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire contract between the parties concerning the operation of the District and the disposal of Sewage by the Connecting Entities and Associated Municipalities and the acceptance of such Sewage for disposal by the District. Nothing herein contained shall be construed as superseding or otherwise modifying any other agreement to which any Connecting Entity or Associated Municipality is party but to which the District is not a party.

Section 913. No Partnership Implied

The approval of this Agreement does not create on behalf of the District any exclusive privileges or property rights in any Member Municipality or Connecting Corporation, neither by such approval does any Member Municipality or Connecting Corporation acquire any ownership interest of any sort whatever in the District's Sewage Disposal System nor is any joint venture, partnership, cooperative or other legal relationship created hereby.

Section 914. Amendments

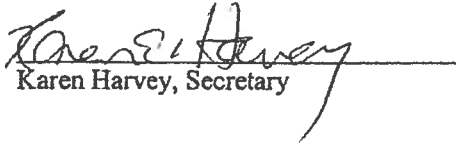
This Agreement may be amended by writing, duly authorized and signed by representatives of all of the parties.

COLORADO CENTRE METROPOLITAN DISTRICT



Michael Cantin, Chair

ATTEST:



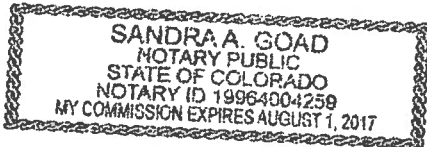
Karen Harvey, Secretary

ACKNOWLEDGEMENT

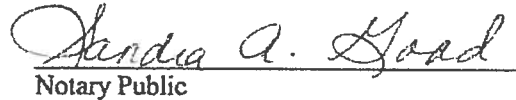
The foregoing instrument was acknowledged before me this 18th day of February, 2016 by Michael Cantin, Chair of the Board of Directors, Colorado Centre Metropolitan District.

Witness my hand and official seal.

My commission expires August 1, 2017.



[SEAL]



Sandra A. Goad
Notary Public

FOUNTAIN SANITATION DISTRICT

Bobby Phillips

Bobby Phillips, Chairman/President

ATTEST:

Carl Christian

Carl Christian, Vice-Chairman/Director

ACKNOWLEDGEMENT

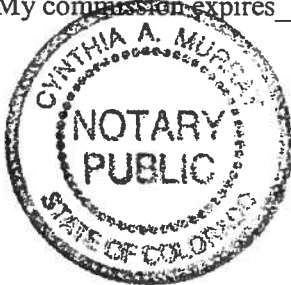
The foregoing instrument was acknowledged before me this 10th day of February, 2016 by Bobby Phillips, Chairman/President, on behalf of the Fountain Sanitation District.

Witness my hand and official seal.

My commission expires _____

9-18-18

[SEAL]



Notary Public

Cynthia A. Murray

Section 915. Effect of Headings, Type Faces and Recitals

The headings and bold and italic type faces in this Agreement are inserted only for convenient reference and do not define, limit or prescribe the scope of this Agreement. The Recitals of this Agreement are included as an aid to interpretation, but do not themselves create, limit or define any rights or obligations of the parties.

Section 916. Regional Cooperation

The District shall work with such other wastewater service providers on a larger, regional scale as such opportunities may arise from time to time.

LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT

Bobby Phillips

Bobby Phillips, President

ATTEST:

Michael Cantin

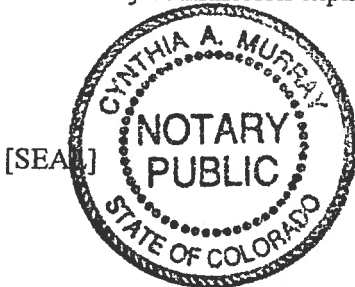
Michael Cantin, Secretary

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 11th day of February, 2016 by Bobby Phillips, President of the Board of Directors, Lower Fountain Metropolitan Sewage Disposal District.

Witness my hand and official seal.

My commission expires 9-18-18.



Cynthia A. Murray

Notary Public

VINTAGE DEVELOPMENT COMPANY

NOTARY PUBLIC
MAY 02 2016
BY: _____

Sheila Venezia
Sheila Venezia, President

ATTEST:

Scott Kurtz
Secretary

ACKNOWLEDGEMENT

The foregoing instrument was acknowledged before me this 26th day of April, 2016 by Sheila Venezia, President of Vintage Development Company.

Witness my hand and official seal.

My commission expires August 10, 2019.

Randa Rae Tapia
Notary Public


RANDA RAE TAPIA
[SEAL] NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19994020630
MY COMMISSION EXPIRES AUGUST 10, 2019

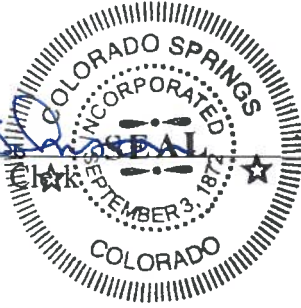
**CITY OF COLORADO SPRINGS,
ON BEHALF OF ITS ENTERPRISE
COLORADO SPRINGS UTILITIES**




Council President

ATTEST:


Sarah B. Johnson, City Clerk



Approved as to form:




Bethany A. Burgess
City Attorney's Office

ACKNOWLEDGEMENT

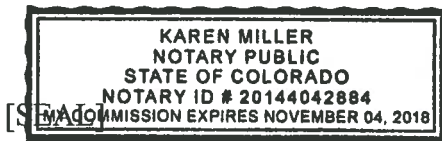
The foregoing instrument was acknowledged before me this 8th day of November, 2016, by Merv Bennett, President of the City Council of the City of Colorado Springs.

Witness my hand and official seal.

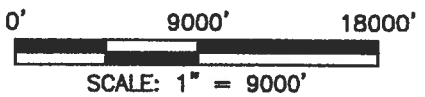
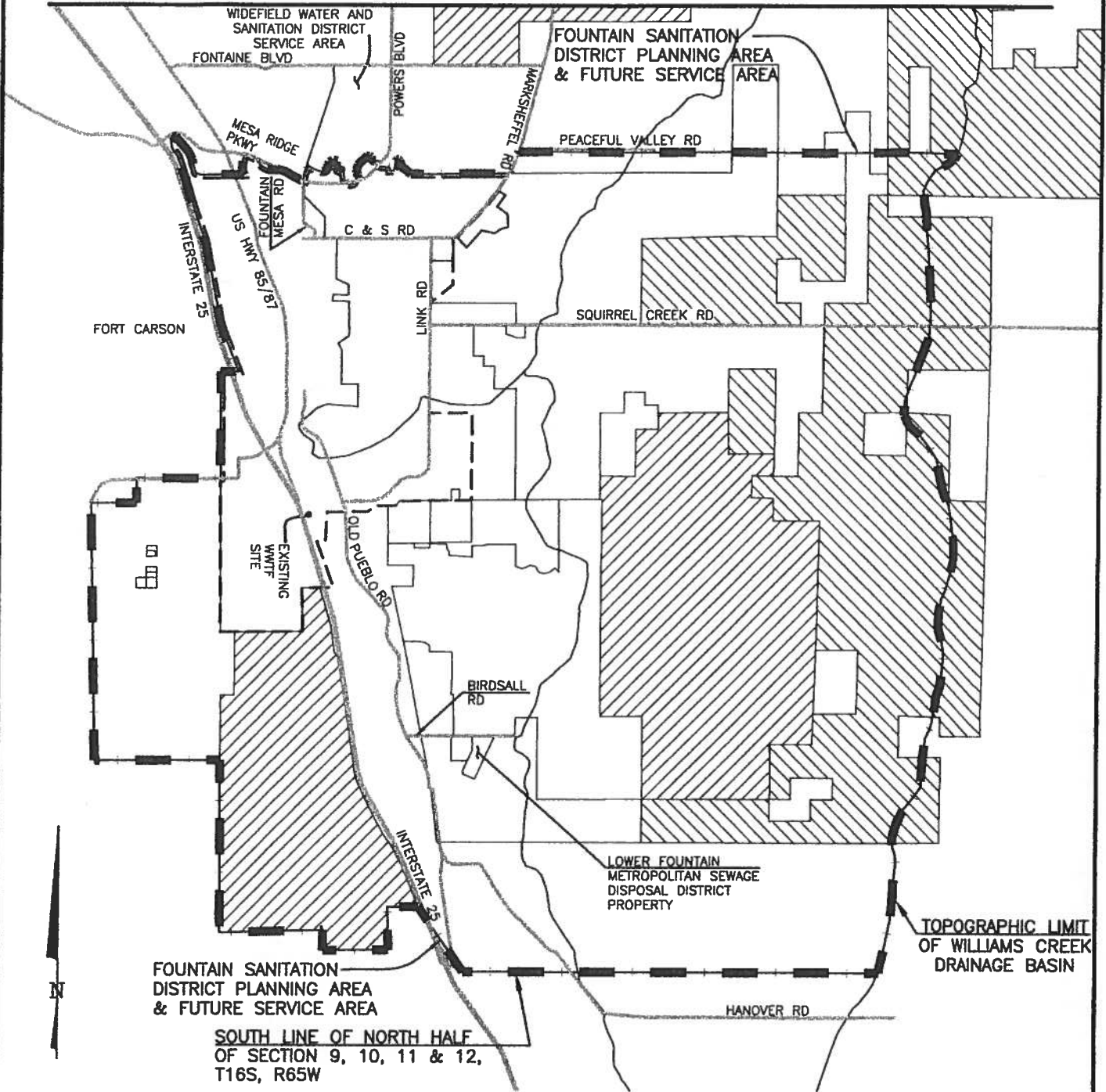
My commission expires November 4, 2018.






Notary Public



SEE SHEET 2



SERVICE AREA 2016-02-09.DWG

-  LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT CONTRACT SERVICE AREA
-  CITY OF COLORADO SPRINGS OWNERSHIP
-  STATE OF COLORADO OWNERSHIP

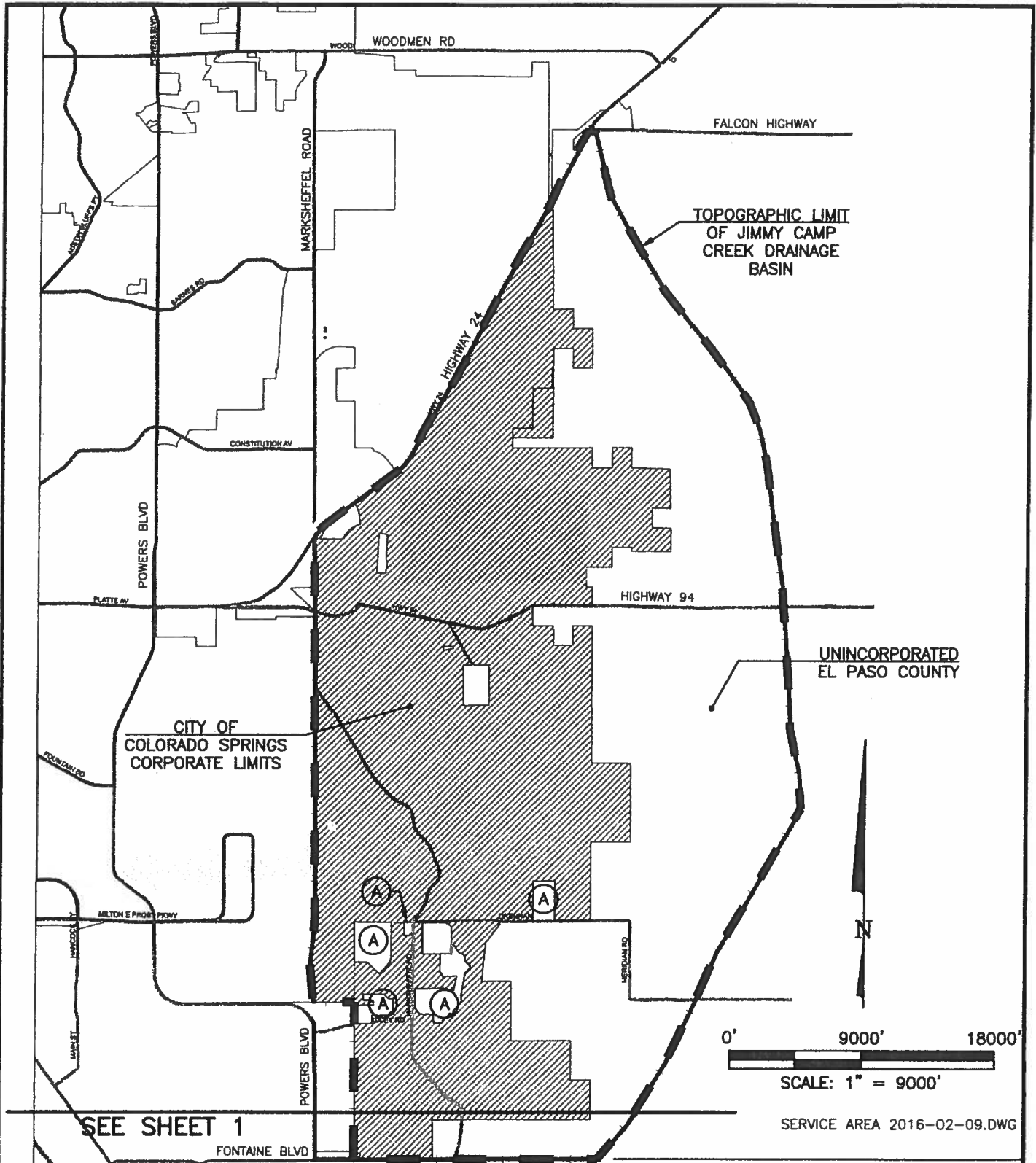
**EXHIBIT A
CONTRACT SERVICE AREA
LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT**

GMS, INC.

CONSULTING ENGINEERS
611 N. WEBER, SUITE 300
COLORADO SPRINGS, COLORADO 80903

I:\gms\2016\CADFILES\FMSDD\2016613001\SERVICE AREA 2016-02-09.dwg, Sheet 1, 2/10/2016 4:56:44 PM, sc, DWG To PDF.pc3, 1:1

\\gmsv02\CAD\FILES\FMSDD\20166\300\SERVICE AREA 2016-02-09.dwg, Sheet 2, 2/10/2016 4:44:02 PM, sc, DWG To PDF.pc3, 1:1



SEE SHEET 1

(A) COLORADO CENTRE METROPOLITAN DISTRICT SERVICE AREA

**EXHIBIT A
 CONTRACT SERVICE AREA
 LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT**

GMS, INC.

CONSULTING ENGINEERS
 611 N. WEBER, SUITE 300
 COLORADO SPRINGS, COLORADO 80903