

RESOLUTION NO. 176-09

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN COLORADO SPRINGS UTILITIES AND
COLORADO CENTRE METROPOLITAN DISTRICT
FOR WATER DISTRIBUTION AND WASTEWATER COLLECTION,
TREATMENT, AND DISPOSAL**

WHEREAS Bradley Heights was annexed to the City in 1988 as part of the Banning Lewis Ranch Annexation; and

WHEREAS, in accordance with City Code § 12.1.110, Colorado Springs Utilities shall, to the maximum extent of its capabilities, be the sole and exclusive provider of water and wastewater services within the corporate limits of the City; and

WHEREAS, existing Colorado Springs Utilities water and wastewater facilities have not been extended to serve Bradley Heights and other parts of the Banning Lewis Ranch Annexation Area that lie within the existing service area and boundaries of Colorado Centre Metropolitan District (CCMD) (Lower BLR Annexation Area); and

WHEREAS, the Banning Lewis Ranch Annexation Agreement allows for both interim water and wastewater service; and

WHEREAS, Colorado Springs Utilities requests the approval of an Intergovernmental Agreement (IGA) with CCMD to allow CCMD to provide interim water and wastewater services to the Lower BLR Annexation Area for the initial years of development of that area; and

WHEREAS, CCMD has the ability and capacity to provide interim water and wastewater services to the Lower BLR Annexation Area, and is willing to provide those services on an interim basis; and

WHEREAS, under the IGA, connection to Colorado Springs Utilities water and wastewater systems will occur upon the termination of interim service; and

WHEREAS, due to the future permanent connection of the properties in the Lower BLR Annexation Area to Colorado Springs Utilities, during the term of the IGA Colorado Springs Utilities shall collect advanced recovery agreement charges equal to the then current water and wastewater development charges and other connection related fees prior to issuance of the building permit; and

WHEREAS, at such time as the Lower BLR Annexation Area's interim service is terminated and the interim customers become Colorado Springs Utilities customers, such customers shall not be charged any additional development charges or other related fees for connection; and

WHEREAS, it is in the best interest of the City to enter into this IGA to provide the necessary services to the Lower BLR Annexation Area for the interim period.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1: That the City Council finds that the Intergovernmental Agreement between the City of Colorado Springs and Colorado Centre Metropolitan District, attached as Exhibit 1, is in the best interest of the City.

Section 2: That the Intergovernmental Agreement is hereby approved by City Council.

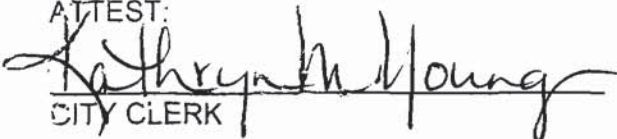
Section 3: That during the term of this Intergovernmental Agreement Colorado Springs Utilities shall collect advanced recovery agreement charges equal to the then current water and wastewater development charges and other connection related fees prior to issuance of building permit.

Section 4: That the Mayor is hereby authorized and directed to execute the Intergovernmental Agreement on behalf of the City.

Dated at Colorado Springs, Colorado, this 11th day of August, 2009.



MAYOR

ATTEST:


CITY CLERK

**INTERGOVERNMENTAL AGREEMENT FOR
WATER DISTRIBUTION AND WASTEWATER COLLECTION, TREATMENT, AND
DISPOSAL**

This Intergovernmental Agreement for Water Distribution and Wastewater Collection, Treatment, and Disposal ("Agreement") is entered into this 11 day of August, 2009 ("Effective Date") by and between the City of Colorado Springs, a home rule municipality ("City") on behalf of its enterprise, Colorado Springs Utilities ("Utilities") and Colorado Centre Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado ("CCMD"). In this document, Utilities and CCMD can each be referred to individually as "Party" or jointly as "Parties."

RECITALS

WHEREAS, Utilities is willing to allow Interim water and wastewater service through CCMD as detailed below; and

WHEREAS, CCMD is willing to provide potable water service and accept wastewater through its wastewater collection and treatment systems for final treatment and disposal at the Fountain Sanitation District's or Lower Fountain Metropolitan Sewage Disposal District's wastewater treatment plant, under the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the Recitals, promises, mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

I. DEFINITIONS

Terms not otherwise defined herein shall have the meaning inferred by standard industry practice.

- A. "Average Flow"** for: wastewater means the thirty (30) day high average wastewater flow as such flow is used by the State of Colorado to calculate permit flow limits (on a per SFE basis, as of the Effective Date, this equates to two hundred (200) gpd, as may be amended by Utilities in the future in conformance with Utilities design standards, and which may change upon actual flow metering analysis); and for water means the average annual water demand (on a per SFE basis, as of the Effective Date, this equates to two hundred ninety (290) gpd), as may be amended by Utilities in the future in conformance with Utilities design standards and which may change upon actual flow metering size).

- B.** “**CCMD Interim Capacity Fee**” means the fee CCMD charges to each Individual Plan Owner for an Interim WW Collection System to defray the cost of additional wastewater capacity as detailed in Section IV.D.2.below.
- C.** “**Conventional Pollutants**” shall have the definition as provided for in the Code for the City of Colorado Springs, section 12.5.201, as may be amended from time to time.
- D.** “**Conversion**” means the termination of an Interim Water Distribution System and/or an Interim WW Collection System or, at Utilities’ discretion, any part of such system(s), plus the simultaneous transfer of related customers, systems, and service from CCMD to Utilities. The costs of Conversion will not be incurred by the Parties, but by the Individual Plan Owner. Despite anything to the contrary, any Interim Plan Owner may only convert systems or parts of systems for which it has actual ownership. .
- E.** “**EPA**” means the United States Environmental Protection Agency.
- F.** “**First Responder Fee**” means the fee adopted by CCMD Resolution No. 2009-04-23.1 in regard to fire protection applicable to all CCMD customers.
- G.** “**gpd**” means gallons-per-day.
- H.** “**Individual Plan**” means an Interim Water Distribution System and/or an Interim WW Collection System connection location and payment. Each such Individual Plan shall be attached hereto as incorporated by reference when approved by the Parties.
- I.** “**Individual Plan Owner**” means the individual or entity requesting Interim service through the Interim Water Distribution System and/or an Interim WW Collection System.
- J.** “**Industrial User**” shall have the definition: (i) as provided in the Code for the City of Colorado Springs, section 12.5.201, as may be amended from time to time, (ii) as provided for any industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N, and for CCMD customers, shall also mean any other industrial user that:
- (1) Discharges an average of 25,000 gpd or more of process wastewater to CCMD’s wastewater treatment system (excluding sanitary, non-contact cooling and boiler blowdown wastewater);
 - (2) Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of CCMD’s wastewater treatment system; or
 - (3) Is designated as such by CCMD on the basis that the industrial user has a reasonable potential for adversely affecting CCMD’s wastewater treatment system or for violating any pretreatment standard or requirement.
- K.** “**Interim**” means water flow, wastewater flow, and/or related facilities that are not in conformance with Utilities’ long range plans, as used in the Utilities Rules and Regulations, as may be amended from time to time.

- L. **“Interim Customer”** means the party or authorized agent of the party designated on CCMD’s records as the party responsible for payment of System Improvement Fees, rates and charges incurred for the provision of Interim water and/or wastewater service through CCMD.
- M. **“Interim WW Collection System”** means all devices, facilities, structures equipment or works installed or purchased for the purpose of Interim collection of wastewater from a defined area within the LJCC Basin to the CCMD wastewater treatment system.
- N. **“Interim Water Distribution System”** shall mean all devices, facilities, structures equipment, or works installed or purchased for the purpose of Interim water service from CCMD to a defined area within the LJCC Basin.
- O. **“LJCC Basin”** means the lower portion of the 1988 Banning Lewis Ranch annexation agreement area, including, but not limited to, the JCC Basin. As of the effective date, the LJCC Basin is depicted in **Exhibit A** and may be amended pursuant to Section III.A below.
- P. **“mgd”** means millions of gallons per day.
- Q. **“Peak Flow”** for wastewater means a wastewater flow of three hundred sixty (360) gpd per SFE, as such factor may be amended by Utilities in the future, which may change upon actual wastewater flow metering analysis; and for water means a flow of six hundred nine (609) gpd per SFE, as such factor may be amended by Utilities in the future and which may change upon water metering size.
- R. **“SFE”** means Single Family Equivalent, the average monthly amount of water or wastewater Utilities determines is necessary for a residential, single family connection to Utilities water or wastewater system, regardless of size of water meter. Non-residential service, multi-family, and meters larger than ¾” will be identified as a ratio or multiple of the applicable per SFE fee.
- S. **“System Improvement Fees”** means the per SFE fees the Individual Plan Owner must pay directly to CCMD to compensate CCMD for the Interim use and depreciation of CCMD’s existing water distribution system, wastewater collection system, wastewater treatment system, and additional equipment needed to convey the wastewater to Fountain Sanitation District as detailed in Section IV.D.I.below.

II. TERM

- A. This Agreement shall be in full force and effect and shall be binding upon the Parties hereto from its Effective Date through the applicable terms below:
1. From zero to one hundred fifty (0-150) SFEs, CCMD shall provide Interim water and wastewater service until such time as the Agreement and service is terminated by Utilities for convenience. Beginning with the one hundred fifty-first (151st) SFE that is provided Interim service, this Subsection II.A.1. shall terminate of its own accord and be replaced in its entirety by Subsection II.A.2 below.
 2. Beginning with the one hundred fifty-first (151st) SFE that is provided Interim service, this Agreement shall terminate when the earlier of the following occurs: i) five (5) years from the Effective Date or (ii) one (1) year after the date that the total wastewater flow from the LJCC Basin reaches an Average flow of six hundred (600) SFEs, and in either case, upon successful Conversion of all of the Individual Plan Owners. Utilities may request one, five (5) year extension of this Agreement no later than prior to expiration. Any extension request shall be made in writing to CCMD no later than September 1 of the year when the extension is requested.

III. GENERAL PROVISIONS

- A. **Area Served.** This Agreement shall apply to the LJCC Basin, as such area may be amended by annual submittals in accordance with this subsection. Utilities represents and warrants that it shall submit to CCMD any proposed significant additions to, expansions of, or deletions of the LJCC Basin at least sixty (60) days prior to modification.
- B. **Separate Wastewater Lines.** Only wastewater from separate wastewater lines (i.e. not from storm water systems or combined wastewater and storm water systems) shall be discharged into CCMD's wastewater collection and treatment system.
- C. **Treated Effluent.** CCMD shall retain dominion, ownership, title, and control of treated reusable water effluent resulting from wastewater discharged by any Interim WW Collection System to CCMD's wastewater treatment system.
- D. **Operation and Maintenance.** CCMD shall own (via a bill of sale between the Individual Plan Owner), operate, and maintain at its discretion all approved Interim Water Distribution Systems and Interim WW Collection Systems for the term of this Agreement. Upon the earlier of Subsection II.A.2.(i) and II.A.2.(ii), CCMD shall convey (via a bill of sale) the Interim Water Distribution Systems and Interim WW Collection Systems to the Individual Plan Owner that installed such systems, including all components of such systems purchased by such Individual Plan Owner per its Individual Plan.

- E. **Water Lease.** During the term of this Agreement and for the sole purpose of providing water and wastewater service subject to the terms and conditions herein, Utilities agrees that CCMD may lease from Utilities up to seventy five (75) acre feet of groundwater diversions annually from Utilities' allocation pursuant to the March 14, 1995 Water Agreement between the Parties which allocates groundwater diversions and replacement obligations for the Parties' Jimmy Camp Creek Wells. CCMD shall ensure that all diversions and use of such groundwater and the replacement of the resulting depletions is consistent with CCMD's existing plan for augmentation or is approved by Division 2 Engineer and shall pay any and all costs for obtaining such approval. CCMD shall be solely responsible for all accounting and for replacing any and all depletions resulting from any such lease. The costs and terms of such lease shall be mutually agreed to by the Parties prior to the diversion and use of such groundwater. The right to use any such groundwater shall terminate when this Agreement is terminated.

IV. CCMD SYSTEMS

- A. **CCMD Responsibility.** CCMD shall be solely responsible for the permitting, operation, maintenance, and reporting associated with the Interim Water Distribution System(s) and the Interim WW Collection System(s), including but not limited to air emissions, spill, leaks, and sanitary sewer overflows (as defined by the EPA and the State of Colorado). CCMD shall provide written notice to Utilities of any sanitary sewer overflow arising from an Interim WW Collection System and maintain records of the operational history to include leaks and repairs of the Interim WW Collection System and Interim Water Distribution System during the term of this Agreement.
- B. **Point(s) of Connection to CCMD.** Each Interim Water Distribution System shall deliver its water to CCMD's water distribution line(s) and each Interim WW Collection System shall deliver its wastewater to CCMD's wastewater collection line(s) as indicated in the associated Individual Plan. Each Individual Plan Owner, at its sole cost and expense shall, construct, install, and own all extensions of its Interim Water Distribution System and its Interim WW Collection System and the outfalls therefrom necessary to such systems to reach to and deliver water and wastewater at the designated points of connection until such time as CCMD accepts such lines as a part of its systems in accordance with CCMD's rules and regulations. Upon Conversion, CCMD shall transfer the infrastructure associated with the Interim system to the Individual Plan Owner.
- C. **CCMD Interim Customers.** Through the term of this Agreement, any customer receiving water through and an Interim Water Distribution System and/or wastewater service through an Interim WW Collection System shall be an Interim Customer subject to CCMD's standard rules and regulations, including any relevant CCMD policies adopted by resolution, and shall be served by, billed directly by, and solely responsible for all associated payments to CCMD and charged CCMD's standard rates applicable to all CCMD customers, charges, fees, and penalties, as may be adjusted by CCMD's Board of Directors.

D. CCMD Interim Connection Fees. The fees below cover specific CCMD charges for Interim WW Collection System and Interim Water Distribution System connections and are not a part of the standard schedule of rates, charges, fees and penalties adopted annually by CCMD. These fees are not pro-rated over the life of this Agreement and may increase as part of the CCMD annual budgeting process. Once paid in full by an Individual Plan Owner, CCMD shall issue a receipt for such fees to the paying Individual Plan Owner.

1. Within seven (7) days of a plat approval or any subdivision construction activity, the Individual Plan Owner shall pay a one-time, Interim connection System Improvement Fee of forty percent (40%) of the then current value of CCMD's standard System Improvement Fee for each water and each wastewater connection. The 2009 fee for each such connection is two thousand, two hundred dollars (\$2,200.00). Commercial, Office and Industrial interim connections, if any, will be charged according to the appropriate sections of the CCMD Rules and Regulations then in effect. However, for purposes of this IGA, water and sewer demands for these types of connections shall be converted into their equivalent SFE and will count against the maximum 600 SFEs limit as set forth in Section II.A.2 of this Agreement.
2. Within seven (7) days of a plat approval or any subdivision construction activity, the Individual Plan Owner must pay a one-time CCMD Interim Capacity Fee of two thousand dollars (\$2,000) per wastewater connection. Such fee will be forwarded by CCMD to Fountain Sanitation District to be used by Fountain Sanitation District to defray expenses of serving additional wastewater capacity demand from CCMD for the Interim basis. The CCMD Interim Capacity Fee shall not be charged once CCMD connects to Lower Fountain Metropolitan Sewage Disposal District's interceptor and treatment system.
3. All Individual Plan Owners and CCMD Interim Customers shall pay a monthly First Responder Fee to CCMD in accordance with CCMD Resolution No. 2009-04-23.1.

E. Right to Restrict Connections and Discharges. CCMD shall allow wastewater flow from Interim WW Collection Systems up to an Average Flow of one hundred fifty (150) SFEs in the first year plus at least fifty (50) additional SFEs each year through the term of this Agreement or until such time as CCMD is being served by the Lower Fountain Metropolitan Sewer and Disposal District. Despite anything to the contrary, at no time may CCMD provide a cumulative total Average Flow of more than six hundred (600) SFEs for wastewater and at no time shall CCMD provide additional water service once such Average Flow for wastewater is reached.

F. Industrial & Large Commercial Users. No Industrial User shall be permitted to connect with and/or discharge into CCMD's wastewater treatment system without prior written consent of Utilities and CCMD, which may be withheld at Utilities' and CCMD's discretion, and no water users requiring four inch (4") water meters or larger shall be

permitted to connect with CCMD's water distribution system without the prior written consent of Utilities and CCMD, which may be withheld at either Party's discretion. Furthermore, CCMD shall maintain the right to prohibit any connection to, or discharge into, CCMD's wastewater collection system of an Industrial User for compliance issues specified in Utilities' Wastewater Treatment Code and of any large commercial user for compliance issues specified in Utilities' Water Treatment Code. Any Industrial User or other commercial user that CCMD allows to connect to CCMD's wastewater collection and treatment system shall comply with the Fountain Sanitation District and/or the Lower Fountain Metropolitan Sewage and Disposal District rules and regulations, as applicable.

- G. Prohibited Flows.** Utilities acknowledges that Interim WW Collection Systems shall be prohibited from contributing excess flows that cause or contribute to overflows, flooding or non-compliance with Fountain Sanitation District's Colorado Discharge Permit System Permit No. CO-0020532 or with Lower Fountain Metropolitan Sewage Disposal District's Permit as issued. CCMD may demand that any violating Individual Plan Owner or Interim Customer shall, within a reasonable time after written notification from CCMD that flow demand exceeds existing system capacity, construct relief systems and necessary appurtenances. These relief facilities may be constructed on property owned by the violator or at other locations within CCMD's wastewater treatment system, as CCMD so directs.
- H. Inspections.** Utilities shall review each Individual Plan Owner's extension plans and perform all inspections for all Interim Water Distribution Systems and/or Interim WW Collection Systems. Such reviews and inspections shall be performed in accordance with Utilities' rules, regulations, and line extension standards for water and/or wastewater. If Utilities determines that an Interim WW Collection System or Interim Water Distribution System complies with such rules, regulations, and line extension standards, Utilities shall issue a letter to CCMD confirming that all installations, including meters, are satisfactory to Utilities so that CCMD may activate the associated system for service. CCMD may charge the Individual Plan Owner for reviews or inspections that it would otherwise require to activate the associated connection. CCMD may perform its own inspections or may choose to rely on Utilities' representation that such systems comply with Utilities' rules, regulations, and line extension standards. The Parties agree that such inspections of the systems is for Utilities' purposes and although CCMD may choose to rely on Utilities' representations that such systems meet Utilities specifications, CCMD releases Utilities from all liability whatsoever related to such inspections.
- I. Meters.** All meters for Interim WW Distribution Systems and Interim Water Collection Systems shall be those required by Utilities' line extension standards. All meters shall be installed at the sole cost and expense of the Individual Plan Owner. Subject to terms and conditions mutually agreed by the Parties, Utilities may read the meters remotely and send the meter data via batch transfer to CCMD.
- J. Records.** Within seven (7) days of Utilities' request, CCMD shall provide Utilities with copies of all inspection and maintenance records associated with any Interim WW Collection System and/or any Interim Water Collection System.

V. DISPUTE RESOLUTION

If a dispute arises between the Parties relating to this Agreement, the following procedure applies:

- A. The Parties shall hold a meeting attended by persons with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution. The meeting shall be held promptly, but in no event later than fourteen (14) calendar days after an initial written notice of the dispute by one of the Parties to the other. Such meeting shall not be deemed to reduce or eliminate the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled, unless otherwise agreed to by the Parties in writing.
- B. If, within fourteen (14) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
- C. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within ten (10) calendar days from the date of Section V.B. above, they shall each select a mediator. The two mediators will then appoint, within five (5) calendar days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the Parties.
- D. The Parties will schedule the mediation for a date within thirty (30) calendar days after selection of the mediator(s). The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days after the mediation. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to seek specific performance.
- E. If undue prejudice would be caused by delay, a Party may seek a preliminary injunction or other judicial relief, if in the judgment of that Party, such action is necessary to avoid irreparable damage or to preserve the status quo. Despite the initiation of such judicial proceedings the Parties will continue to participate in good faith in the procedures specified in this section.

VI. REMEDIES

- A. **Breach of Agreement.** Upon any breach of this Agreement by one of the Parties, the affected Party(ies) shall have the immediate right to initiate dispute resolution. Specific performance shall be the sole remedy.
- B. **Failure to Pay.** At CCMD's request, Utilities shall withhold issuance of Service Contracts and building permits for the Individual Plan Owner for failure to pay the CCMD Improvement Fee or the CCMD Interim Capacity Fee.

VI. MISCELLANEOUS

A. Regulatory Modifications to Agreement. The Parties acknowledge that CCMD is a publicly-owned treatment works and may be subject to amended regulatory control or requirements during the term of this Agreement. The Parties shall review and revise this Agreement as necessary to ensure continued compliance with the Federal Clean Water Act.

B. Representatives and Notice. All notices, reports and submittals required by this Agreement shall be in writing and shall be personally delivered, sent by overnight service, or mailed by certified mail, postage prepaid and return receipt requested, as follows:

If to CCMD:

CCMD
Attn: District Manager
4770 Horizonview Drive
Colorado Springs, CO 80925
Phone: 719.390.7000

If to Utilities:

Colorado Springs Utilities
Attn: System Extensions Manager
PO Box 1103 MC 1015
Colorado Springs, CO 80947-1015
Phone: 719.668.5559

With a copy to:

Colorado Springs Utilities
Attn: CAU - Utilities
121 S. Tejon St. 4th Fl.
Colorado Springs, CO 80903

C. Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument. This Agreement may be executed and delivered by facsimile or electronic transmission with an original to follow.

D. Headings. The headings used to designate the various sections of this Agreement are solely for the convenience of reference and shall not be construed to define or limit any of the terms or provisions hereof.

E. Force Majeure. Neither Party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligation hereunder due to causes or conditions beyond its reasonable control, including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, labor disturbances, or if such performance would be prohibited or limited by any federal, state, or local law, rule, regulation, order or directive.

F. Waiver. No waiver by either Party of any terms 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.

- G. No Third-party Beneficiaries.** Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Utilities and CCMD, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. It is the express intention of Utilities and CCMD that any other person other than Utilities or CCMD receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- H. Severability.** If any provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken for as long as it remains illegal or unenforceable.
- I. Assignment.** There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party. Nothing herein contained, however, shall be construed as preventing 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 either Party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.
- J. Time is of the Essence.** Time is of the essence in this Agreement.
- K. Compliance with Laws and Regulations.** This Agreement and the rights and obligations of the Parties hereunder shall be subject to all applicable laws, orders, court decisions, directives, rules and regulations of any duly constituted governmental body or official having jurisdiction. Nothing contained in this Agreement, however, shall require either Party to comply with any law, the validity or applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings.
- L. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Colorado (without reference to conflicts of laws) and to the extent necessary to recognize the legal organization of Utilities, the Colorado Springs City Charter, City Code, City ordinances, and City rules and regulations. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of Utilities as provided in Colorado Springs City Code § 12.1.108. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.
- M. Appropriation of Funds.** In accord with the Colorado Springs City Charter, performance of Utilities' obligations under this Agreement is expressly subject to appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Utilities' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then

this Agreement shall thereafter become null and void by operation of law, and Utilities shall thereafter have no liability for compensation or damages to CCMD in excess of Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less.


In accord with the CCMD annual budgeting process, performance of CCMD's obligations under this Agreement is expressly subject to appropriation of funds by the CCMD Board of Directors. In the event funds are not appropriated in whole or in part sufficient for performance of CCMD's obligations under this Agreement, or appropriated funds may not be expended due to Board-adopted spending limitations, then this Agreement shall thereafter become null and void by operation of law, and CCMD shall thereafter have no liability for compensation or damages to Utilities in excess of CCMD's authorized appropriation for this Agreement or the applicable spending limit, whichever is less.

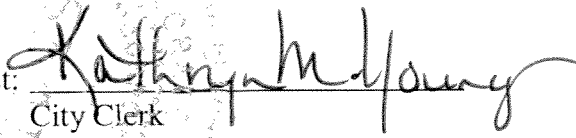
- N. Liability and Governmental Immunity Act.** Each Party shall be responsible for its own negligence. Neither Party waives the benefits or obligations afforded it by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et. seq.
- O. Exhibits.** Each of the exhibits referenced in this Agreement is hereby incorporated by such reference.
- P. Entire Agreement.** This agreement with attachments constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. This Agreement can only be amended by a written agreement signed by both Parties. E-mail or other electronic (including voice) communications from the Parties in connection with this Agreement are for informational purposes only. No such communication is intended by the Parties to constitute either an electronic record or an electronic signature, or to constitute any agreement by the Parties to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

IN WITNESS WHEREOF, the representatives of each Party hereto certified via execution below that they are duly authorized to commit their organization to this Agreement in its entirety:

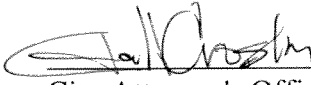
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City of Colorado Springs for Colorado Springs Utilities

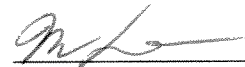
By: 
Lionel Rivera
Mayor


Attest: 
City Clerk

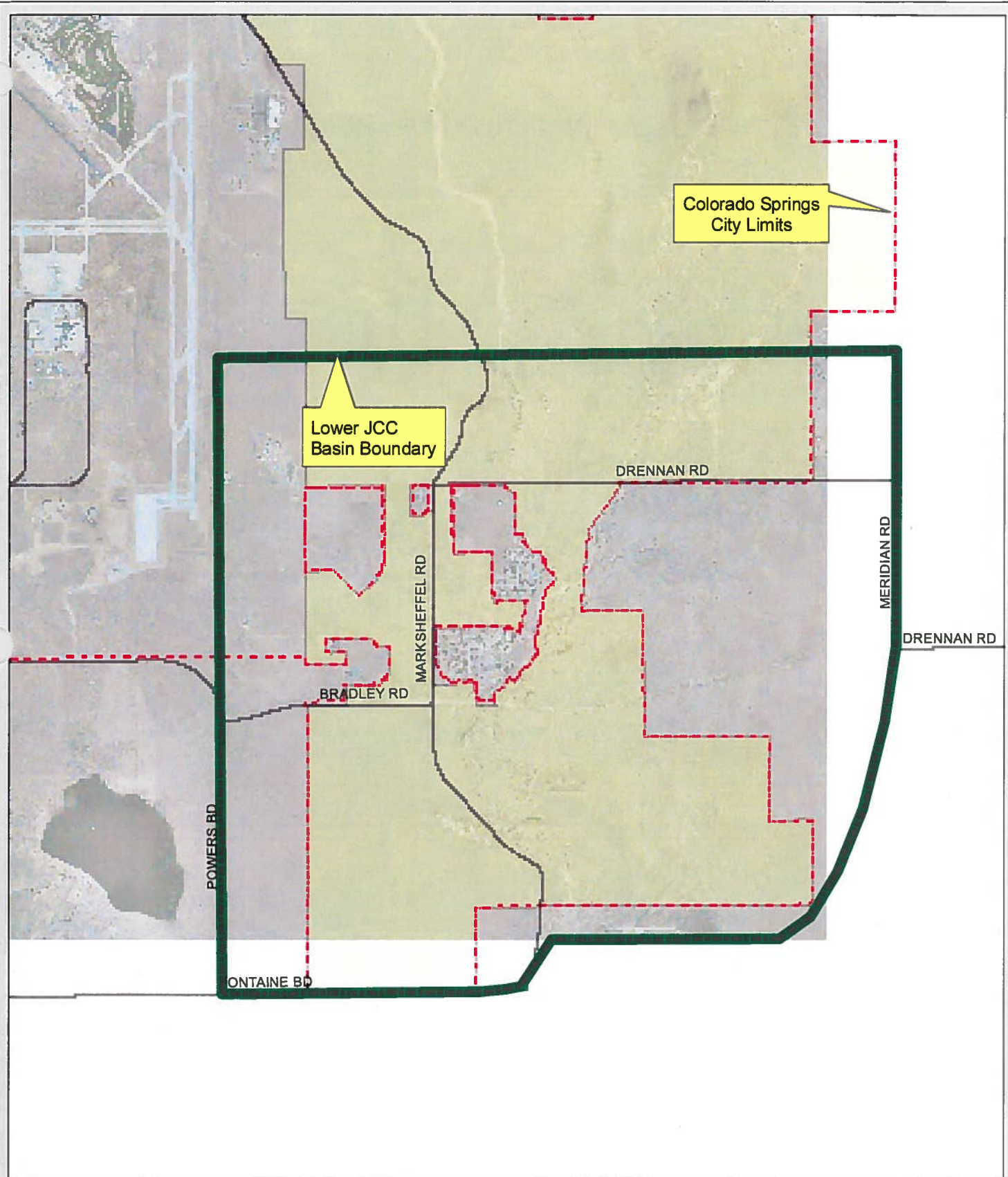
Approved as to Form:


City Attorney's Office - Utilities Division

Colorado Centre Metropolitan District

By: 
Michael Cantin
President

Attest: 
Shawn Eccles, Secretary



Colorado Springs
City Limits

Lower JCC
Basin Boundary

DRENNAN RD

MERIDIAN RD

DRENNAN RD

MARKSHEFFEL RD

BRADLEY RD

POWERS BD

ONTAINE BD



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



Scale 1" = 4000'

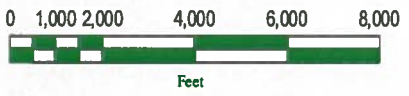


Exhibit A
Lower Jimmy Camp Creek Basin

**RESOLUTION OF THE BOARD OF DIRECTORS OF
THE COLORADO CENTRE METROPOLITAN DISTRICT
REGARDING AN INTERGOVERNMENTAL AGREEMENT
WITH COLORADO SPRINGS UTILITIES**

RESOLUTION No. 2009-07-23.1

WHEREAS, the Colorado Centre Metropolitan District (“the District”) is organized pursuant to COLO. REV. STAT. § 32-1-101 *et seq.* (“Special District Act”);

WHEREAS, certain property currently being subdivided and known as Bradley Heights is located near the District’s current service area and within the City of Colorado Springs (“City”) municipal service area;

WHEREAS, with the City’s consent, Marksheffel-Woodmen Investments, LLC, the owner and developer of the Bradley Heights subdivision, has requested certain utility services from the District on an interim basis;

WHEREAS, on the City’s behalf, representatives of Colorado Springs Utilities (“CSU”) have been discussing potential terms with the District for interim service to the Bradley Heights subdivision;

WHEREAS, as a result of such discussions, the District and CSU have negotiated the terms for interim service to Bradley Heights as set forth in the intergovernmental agreement (“IGA”) attached hereto;

WHEREAS, the District Board of Directors has determined it is feasible to provide interim service to the Bradley Heights subdivision pursuant to the IGA terms without compromising service to the District’s current and future customers located within the District’s own service area;

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

The Board of Directors hereby approves the terms of the Intergovernmental Agreement (“IGA”) with the City of Colorado Springs as attached hereto;

AND FURTHER RESOLVED that the Board’s approval per this Resolution is expressly contingent upon the “Individual Plan Owner” as described in the IGA paying the District the sum of \$325,000 as more specifically detailed in the “Individual Plan Owner” attachment to the IGA. The District agrees to collect from future Individual Plan Owners an extra fee of \$542.67 per single family equivalent (in 2009 funds), which fee shall escalate 3% annually in each subsequent year, to reimburse the initial Individual Plan Owner for the proportionate cost of creating the interim IGA;

AND FURTHER RESOLVED, that the Board's approval per this Resolution is expressly contingent upon the Colorado Springs City Council also approving the attached IGA before the District has any obligation to provide any service to the Bradley Heights subdivision pursuant to the IGA terms or otherwise;

AND FURTHER RESOLVED, that the Board's approval per this Resolution and the terms of the attached IGA shall not be binding precedent on the District as to any future request presented to the District for interim service nor as to any request for utility service within or outside of the District's service area;


AND FURTHER RESOLVED, the District Manager is hereby authorized to take such actions, including the negotiation of additional agreements as he deems reasonably necessary, to carry out the terms and provisions of service set forth in the attached IGA, and District staff are directed to assist in and otherwise take all actions necessary to carry out and/or implement the same.

The foregoing is a true copy of a resolution adopted by the Board of Directors of the Colorado Centre Metropolitan District by unanimous vote at a public meeting on the 23rd day of July, 2009.



Michael Cantin, President

ATTEST:



Shawn Eccles, Secretary