

# 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,**  
a Connecting Municipality,

and

**VINTAGE DEVELOPMENT COMPANY,**  
a Connecting Corporation.

Approved: January 15, 2009

Re- Published: October 2015

As Amended through: February 10, 2016

As Amended through: December 14, 2022

## RECITALS

**WHEREAS**, the District, located in El Paso County, Colorado, was organized on May 13, 1986, in accordance with C.R.S §32-4-501 *et seq.*, and its officers have been duly chosen and qualified; and

**WHEREAS**, in the public interest the construction and operation of a sewage disposal system (the “**System**”) by the District was authorized by Colorado law; and

**WHEREAS**, the District has prepared its costs and rate schedules for the District’s System; 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; and
- (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 construction of a portion or all of the District’s System pursuant to a Resolution to be later adopted by its Board; 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; and

**WHEREAS**, the District, through its Connecting Entities, 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 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 and the Connecting Entities 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 Annual Charges, Operations and Maintenance Expenses, also referred to as Service 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:

# Table of Contents

<b>ARTICLE I</b> .....	6
<b>Title, Definitions and Interpretations</b> .....	6
Section 101. Title .....	6
Section 102. Meanings and Construction .....	6
Section 103. Successors .....	10
Section 104. Interested Parties.....	10
<b>ARTICLE II</b> .....	11
<b>System Acquisition and Operation</b> .....	11
Section 201. Purpose.....	11
Section 202. Extensions and Alterations .....	11
Section 203. Interceptor Easements.....	11
Section 204. System Operation and Maintenance .....	11
Section 205. Rules, Regulations, and Other Details .....	11
Section 206. Payment of Lawful Governmental Charges.....	12
Section 207. Insurance and Reconstruction .....	12
Section 208. Alienating System .....	12
Section 209. Records, Accounts and Audits .....	13
Section 210. Contract Service Area.....	13
<b>ARTICLE III</b> .....	14
<b>General Sewage System Provisions</b> .....	14
Section 301. Tributary Sewer Systems.....	14
Section 302. Connections to System.....	14
Section 303. Service by District and Connecting Entities.....	15
Section 304. Competing System .....	15
Section 305. [Reserved].....	15
Section 306. Limitations Upon Consent.....	15
Section 307. New Connections.....	16
Section 308. Water Rights .....	16
Section 309. Water Quality .....	16
<b>ARTICLE IV</b> .....	17
<b>Sewage Discharge to the System</b> .....	147
Section 401. Discharge Requirements .....	17
Section 402. Special Waste Requirements .....	17
Section 403. Industrial Sewage .....	17
Section 404. Determination of Sewage Characteristics .....	18
Section 405. Infiltration and Inflow Control .....	18
Section 406. Discharge Prohibitions.....	18
Section 407. Discharge Limits and Capacity Reallocation .....	19
<b>ARTICLE V</b> .....	20
<b>District Budget and Charges</b> .....	20
Section 501. Annual Budget .....	20
Section 502. Basis for Incurring and Allocating Costs .....	20
<b>ARTICLE VI</b> .....	23
<b>Payments by Connecting Entities</b> .....	23
Section 601. Payment of Charges .....	23
Section 602. Timing of Payments .....	23
Section 603. Estimated Charges .....	23
Section 604. Preliminaries to Payment by Connecting Entities.....	23
Section 605. Adjustment of Charges .....	24
Section 606. Reserved.....	24
Section 607. Time of Adjustments to Estimated Charges .....	24
Section 608. Payment to Balance Adjustments.....	24
Section 609. Limitations Upon Adjustment of Charges .....	24

Section 610. Enforcement .....	24
Section 611. Character of Obligations .....	24
<b>ARTICLE VII</b> .....	26
<b>Abandonment of Sewer System Facilities</b> .....	26
Section 701. Abandonment Permitted .....	26
Section 702. Notice of Abandonment .....	26
<b>ARTICLE VIII</b> .....	267
<b>Additional Municipalities and Connecting Corporations</b> .....	27
Section 801. Conditions of Inclusion.....	27
Section 802. Party to This Agreement.....	27
Section 803. Voting Rights of Member Municipalities .....	27
<b>ARTICLE IX</b> .....	269
<b>Miscellaneous</b> .....	29
Section 901. Effective Date .....	29
Section 902. Terms of Agreement .....	29
Section 903. Securities of District.....	29
Section 904. Absence of Representations .....	29
Section 905. Conformance with Law .....	29
Section 906. Force Majeure.....	29
Section 907. Non-Assignability .....	29
Section 908. Severability .....	30
Section 909. Execution of Documents.....	30
Section 910. Waiver.....	30
Section 911. Remedies.....	30
Section 912. Entirety.....	30
Section 913. No Partnership Implied .....	30
Section 914. Amendments.....	30
Section 915. Effect of Headings, Type Faces and Recitals .....	30
Section 916. Regional Cooperation .....	30

## 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.
  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, pursuant to C.R.S. §32-4-509.
  7. “**Charges**” means the Annual Charges and the Service Charges payable to the District by the Connecting Entities 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 City of Colorado Springs on behalf of Colorado Springs Utilities, 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 Connecting Municipalities, if any, having specific boundaries which have been or will be recorded with the District, in which the Connecting Entities or the Connecting 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 existing System, 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, 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 Inflow.
22. **“Inflow”** consists of water discharged into a sewer system (including service connections) from sources such as roof leaders; cellar, basement, crawl space, 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 sewage from the Sewage Systems of the Connecting Entities and as further defined below:
  - i. **“Northern Interceptor”** located north of MH# LFW77 (formerly referred to as,” the manhole approx. 314 ft north of Ohio Ave.) to 100-feet north of MH# JCC41 (formerly referred to as,” interceptor sewer constructed by CCMD located approx. 190 ft south of the intersection of Marksheffel and Peaceful Valley Road).
  - ii. **“Southern Interceptor”** located from MH# LFW77 south to the Harold D. Thompson Regional Water Reclamation Facility (HDTRWRF.)
  - iii. The graphical representation for the Interceptor North/South delineation is further specified in **Exhibit B**.

The manholes referenced are in the same locations used in previous agreements; however, the alphanumeric references are from the LFMSDD and FSD GIS with appropriate assigned attributes better defining specific locations.

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 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) None

and the Connecting Municipalities in the District on the effective date hereof are:

- (a) Colorado Centre Metropolitan District,
- (b) City of Colorado Springs on behalf of Colorado Springs Utilities, and
- (c) 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. **“Organic Loading”** means the mass of BOD<sub>5</sub> or CBOD<sub>5</sub> associated with a given volume of sewage.
27. **“Peak Hour Flow”** means the greatest volume of sewage flows through a sewage meter, during an hour in a 24-hour period. Peak volume to be determined by monitoring hardware and software at the meter location.
28. **“Person”** means any individual, association, corporation, or the federal government, or any public body other than a Municipality, and excluding the District.
29. **“Project”** means the future or existing construction, installation and other acquisition of the District’s System and such other, associated improvements as the District may authorize.
30. **“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.
31. **“Revenue”** means all moneys derived by the District from Charges made for Services provided by the District to the Connecting Entities.
32. **“Service”** or **“Services”** mean (i) in connection with the District’s System and 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 the District’s System or for such Extension or Improvement, and (ii) otherwise, the provision of sewage transportation, treatment and disposal services.
33. **“Service Charges”** means rents, rates, fees, tolls, and other charges for direct or indirect connection with or the use of Services of the District’s 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.

34. **“Sewage Disposal System”, “District’s System” or “District’s Interceptor 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.
35. **“Sewage”** means the raw waste matter that passes through the interceptor to the treatment facility for proper treatment and disposal.
36. **“Sewage Meter”** means any continuously recording device used to measure Sewage flow and or volume.
37. **“Sewage Strength”** means the concentration of dissolved and suspended matter in the Sewage.
38. **“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).
39. **“Substantially Injurious”** means any discharge that, upon reaching the District’s System, requires the District to initiate any emergency or non-standard operating procedures in the District’s operation and maintenance documents or rules and regulations.
40. **“User”** means any Person who discharges, causes or permits the discharge of wastewater into the Sewage System of a Connecting Entity.
41. **“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. Purpose

The District will 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 any future System construction, the District will submit plans and specifications for the proposed Project to the Colorado Department of Public Health and Environment and any other entity required for approval. The District will obtain all necessary permits and approvals to construct and operate the proposed 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 District's 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 District's System properly and in a sound and economical manner. The District shall maintain, preserve, and keep the District's 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 District's 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 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 District's 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 District's 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 District's 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 sewage systems of like character. Such insurance shall protect the parties to this Service Contract against loss of or damage to the District's 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 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 District's 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 District's 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 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 District's 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 District's 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 District's 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 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, Supervisory Control and Data Acquisition (SCADA) systems with connectivity to the District's System, and sampling facilities at each Connection Point not currently established. 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's Governing Board. No individual home or business shall be allowed a Connection Point(s) onto the District's System.

#### Monitoring Stations and Use in Billing for Services.

In lieu of the Fountain Sanitation District's (FSD's) obligations contained within the Service Agreement with respect to the construction and maintenance of Flow Monitoring Stations (the "Monitoring Stations") at discrete locations (see **Exhibit B**), the Parties agree as follows:

(a) One Monitoring Station will be located at the Southwest corner of Lorson Blvd. and Marksheffel Road; said Monitoring Station being referred to herein as LFMS No. 1;

(b) A second Monitoring Station, referred to herein as LFMS No. 2, located at the point of entry to the Harold D. Thompson Regional Water Reclamation Facility (HDTRWRF); said LFMS No. 2 will measure all wastewater influent to the HDTRWRF and will satisfy FSD's meter station obligation.

(c) Billing to Colorado Centre Metropolitan District (CCMD) by the District will be based on the total flow and or volume and Organic Loading measured as the contribution from LFMS No. 1.

(d) Billing to FSD by the District will be based on the total flow and or volume as measured at LFMS No. 2 after subtracting the contribution or proportional flow and Organic Loading measured at LFMS No. 1.

(e) A Connecting Entity receiving service from the District may provide service to another Connecting Entity. Charges and billing shall be determined between the entities by separate instrument.

#### 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 required to deliver its sewage to the Connection Point(s). However, the District shall maintain and repair as part of its operations LFMS No. 1.

### **Section 303. Service by District and Connecting Entities**

The District shall be the exclusive agency for acquisition and operation of the District's 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 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. In the event a Connecting Entity desires to extend sewer service to areas not currently within the Contract Service Area as set forth in **Exhibit A**, the Connecting Entity will obtain approval of the District Board in advance of such extension.

### **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 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 District's 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 District's 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.

In general, new connections to the District's Interceptor System will be allowed only from major sewer mains, and other interceptor sewers, which for purposes of this Agreement shall mean a main or sewer greater than ten inches (10") in diameter. The connection of minor collector lines or individual service lines to a District's Interceptor will be considered on a case-by-case basis where no other alternative is feasible. The District may also consider any other factors in the best interest(s) of the District. Only lines which are the property of and/or under the complete control of the Connecting Entity will be allowed to be connected to the District's Interceptor System.

The number of connections to the District's Interceptor System authorized for each Connecting Entity shall be kept to a minimum. Wherever feasible, flows from newly developed areas shall enter the District's Interceptor System at existing points of connection. The Connecting Entities should not consider the District's Interceptors to be a replacement for portions of their collection system but rather for the purpose of intercepting the Flow from their collection systems.

New connections shall be made in such a manner that the quantity and quality of Flow at a point downstream from each Connecting Entity shall be measured as stipulated in the District Rules and Regulations, for the purpose of determining Service Charges and ensuring needed hydraulic capacity.

### **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 treated 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 District's System at the 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 treated 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 adopted 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 adopted 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 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-equalization 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 shall prepare and submit reports to each respective Connecting Entity concerning the volume of Sewage delivered at the Connection Point(s) on a monthly basis. If needed, the District shall also perform at its expense a meter calibration at all Connection Point(s) not less than annually. Volume shall be monitored continuously by Sewage Meters and SCADA systems and the Sewage strength shall be periodically monitored as determined by the District and will be by composite sampling. The District's monthly billings to the Connecting Entities shall state the actual volume and strength; when monitored, 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 analytical and or 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 District's 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 District shall calibrate the Sewage Meters and appurtenances not less than annually and shall submit to the Connecting Entities a report of results 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. In addition, any Connecting Entity may, at any time and at its sole expense, request the District to perform a 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 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 District's 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 Hourly 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, 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. **Treatment Facility.** 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. **Penalties.** When the District observes any Connecting Entity has reached 85% of its owned capacity allocation(s), the District will provide written notice of warning within 48-hours. This may be by email, regular mail, or both. A Connecting Entity will be charged \$5,000 per day per violation for exceeding their Interceptor or Treatment Facility as listed above and flow capacities as allocated to them. If said violations continue for more than 30 days in a rolling one-year period, the penalty will increase to \$15,000 per day per violation.
- D. **Reallocation.** No Connecting Entity's allocation of capacity in the District's System, including but not limited to the wastewater treatment facility and Interceptor, shall be changed without the consent of the affected Connecting Entities.
- E. **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 operate and maintain the District System efficiently and shall not incur costs inconsistent with sound management. The parties agree that the Annual Charges to Connecting Entities under the Rate Schedule shall apply in a uniform manner regardless of a Connecting Entity’s proportionate use level, irrespective of 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 adopted annually by the District. Such charges shall be based upon the amount and quality of Sewage delivered into the District’s System.
2. The District shall estimate the amount of total volume and Sewage Strength 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 delivery of the succeeding year’s budget to each Connecting Entity. 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. *Wastewater Treatment and Conveyance*

1. The District and Connecting Entities have provided for construction and operation of the Harold D. Thompson Regional Water Reclamation Facility (HDTRWRF) and an interceptor sewer to provide Service to Connecting Entities.
2. **Wastewater Treatment Facility.** The capacity of the wastewater treatment facility has been allocated to the Connecting Entities on the basis of their treatment needs or in accordance with agreements between Connecting Entities. Any future capacity needs will be paid for on a pro-rata share, based upon the additional capacity allocated to each Connecting Entity participating in the capacity expansion. Notwithstanding the foregoing, the parties agree that Vintage Development Company (“**Vintage**”) shall not be required to

incur or pay any direct costs related to Project construction. The parties agree that the FSD will provide service to the Vintage property, known as JV Ranches LLC and Giovenca LLC properties. FSD will use its prorated capacity allocation in the District's System to provide such service and will collect such tap fees, charges, and assessments in accordance with the FSD's rules, regulations, policies and procedures as compensation for providing such service.

3. **Capacity Ownership and Allocation.** The parties acknowledge that, based on agreements reached among themselves regarding past financial contributions toward the District's System, FSD and CCMD funded the entire initial Project construction, which includes construction of the Interceptor through the JV Ranches property. Presented and agreed by the Board, Colorado Centre Metropolitan District sold a proportionate share of its ownership to City of Colorado Springs on behalf of Colorado Springs Utilities. As of the effective date of this Agreement, the following capacity allocations have been established:

<b>Capacity and Treatment Allocations</b>			
<b>Connecting Entity</b>	<b>HDTRWRF</b>	<b>Northern Interceptor</b>	<b>Southern Interceptor</b>
	ADF (MGD)	PHF (MGD)	PHF (MGD)
Colorado Center MD	0.427	0.500	1.000
Colorado Springs Utilities	0.198	0.500	0.500
Fountain Sanitation District	1.875	Remaining flow within the max. 75% pipe depth	Remaining flow within the max. 75% pipe depth
ADF = Average Daily Flow			
PHF = Peak Hourly Flow			
MGD = Million Gallons per Day			
HDTRWRF = Harold D. Thompson Regional Water Reclamation Facility			

Interceptor pipes were designed for maximum flow at a depth no greater than 75% of pipe diameter (75% pipe depth), with a 0.013 Manning's roughness coefficient, and the accompanying segment slope. Per invoice records, CCMD originally paid 12.52% of the Southern Interceptor and FSD paid for 87.48%. Based on current flow capacity ownership agreements; CCMD owns 8.39% and the City of Colorado Springs on behalf of Colorado Springs Utilities owns 4.13% of the Southern Interceptor with FSD still owning 87.48%. The hydraulic capacity analysis of the Northern Interceptor Peak Hourly Flows, and agreement between the parties CCMD and CSU each own 9.12% (see **Exhibit C**) and FSD owns 81.76% (see **Exhibit D**). Subject to Sections 208 and 407.E 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 to serve that Connecting Entity.

4. **Interceptor.** Interceptor capacity has been allocated between FSD, CCMD, and the City of Colorado Springs on behalf of Colorado Springs Utilities based upon the respective ownership interests described in Section 502.C.3 above. For any Extension or Improvement of the 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 participating in the Extension or Improvement or construction of a new

Interceptor (or Connecting Municipality or other Person that will be a Connecting Entity as a result of such Extension or Improvement of a new Interceptor) shall be responsible for its pro rata share of the actual cost of such Extension, Improvement or construction of a new Interceptor. All existing Entities will keep their original capacities within the Interceptor prior to the date of the Extension or Improvement or construction of a new Interceptor.

**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.

**E. *Dissolution of the District***

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 if sufficient funds are unavailable to fully reimburse the parties then the available funds shall be distributed among the Connecting Entities in proportion to the amounts paid by the Connecting Entities for District administrative expenses; and (b) any remaining balance shall be distributed to each Connecting Entity based on its then-current interest in the District's System.

## ARTICLE VI

### Payments by Connecting Entities

#### Section 601. Payment of Charges

Each Connecting Entity 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 as invoiced. Otherwise, each party shall promptly pay the Annual 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 from committing any other funds for the purpose of meeting its obligations hereunder and paying Annual Charges and other costs due the District.

Each Connecting Entity's obligations to pay the Annual 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 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 shall be liable for and shall render prompt payment of all Annual 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

Service Charges and any additional fees, costs and other special Charges shall be due and payable monthly within thirty (30) days of their assessment by the District and shall become delinquent thirty (30) days thereafter.

#### Section 603. Estimated Charges

Pursuant to Section 502.B.2 of this Agreement, the District shall determine 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. Upon notice to the Connecting Entities the Board may adjust for the current Fiscal Year for the estimated Charges previously expected. 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 estimated Charges, each Connecting Entity 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. Adjustment of Charges**

The Charges fixed or imposed against any Connecting Entity may be adjusted for any Fiscal Year.

### **Section 606. Reserved**

### **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 at any time whenever the Board determines that such adjustment is necessary or desirable.

### **Section 608. Payment to Balance Adjustments**

Any Connecting Entity 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 determines to pay the supplemental Charge prior thereto.

Any Connecting Entity 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 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, supplemental 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. 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 ten percent (10%) 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 from making any payment to the District or from fully performing any other obligation required of



it under this Agreement. Any Connecting Entity 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, 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 independent 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. Any new Connecting Entity shall be solely responsible for the construction and installation costs for all associated facilities necessary for such Connecting Entity 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 LFMSDD Contract Service Area, and each Member Municipality's respective

population shall be the population of that Member Municipality residing within the LFMSDD 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 execution of the parties hereto for a period of twenty-five (25) years 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 any body, 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 conveyance, treatment and disposal of Sewage by the Connecting Entities and the acceptance of such Sewage for disposal by the District.

#### **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.

#### **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 may 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**

\_\_\_\_\_  
Charles Durbin, President

ATTEST:

\_\_\_\_\_  
James Heckman, Secretary

**ACKNOWLEDGEMENT**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by Charles Durbin, President of the Board of Directors, Lower Fountain Metropolitan Sewage Disposal District.

Witness my hand and official seal.

My commission expires\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

**FOUNTAIN SANITATION DISTRICT**

\_\_\_\_\_  
Carl Christian, Chairman/President

ATTEST:

\_\_\_\_\_  
Charles Durbin Vice-Chairman/Director

**ACKNOWLEDGEMENT**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by Carl Christian, Chairman/President, on behalf of the Fountain Sanitation District.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]



**COLORADO CENTRE METROPOLITAN DISTRICT**

\_\_\_\_\_  
Jackie McClintock, Chair

ATTEST:

\_\_\_\_\_  
Norman Wodell, Secretary

**ACKNOWLEDGEMENT**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by Jackie McClintock, Chair of the Board of Directors, Colorado Centre Metropolitan District.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

**VINTAGE DEVELOPMENT COMPANY**

\_\_\_\_\_  
Sheila Venezia, President

ATTEST:

\_\_\_\_\_  
Secretary

**ACKNOWLEDGEMENT**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022 by Sheila Venezia, President of Vintage Development Company.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

**CITY OF COLORADO SPRINGS on behalf of COLORADO SPRINGS UTILITIES**

\_\_\_\_\_  
Travas Deal, Acting Chief Executive Officer, Colorado Springs Utilities

Approved as to Form:

\_\_\_\_\_  
Colorado Springs City Attorney – Utilities Division

**ACKNOWLEDGEMENT**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2022  
by \_\_\_\_\_, Chief Executive Officer, Colorado Springs Utilities.

Witness my hand and official seal.

My commission expires \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

[SEAL]

## EXHIBIT ATTACHMENTS

EXHIBIT A:	LFMSDD SOUTH CONTRACT SERVICE AREA
EXHIBIT A CONTINUED:	LFMSDD NORTH CONTRACT SERVICE AREA
EXHIBIT B:	LFMSDD INTERCEPTOR NORTH/SOUTH DELINEATION
EXHIBIT C:	CCMD AND CSU NORTH INTERCEPTOR CAPACITY OWNERSHIP AT 1 MGD PEAK HOURLY FLOW
EXHIBIT D:	NORTH/SOUTH FOUNTAIN SANITATION DISTRICT INTERCEPTOR PEAK HOURLY FLOW ALLOCATIONS

# Exhibit A

Colorado Centre Metro District within Colorado Springs

Fontaine Blvd (match line)

Peaceful Valley Rd

C & S Rd

Squirrel Creek Rd

State of Colorado

FSD WWTF Site

Link Rd

City of Colorado Springs

State of Colorado

Lower Fountain Metropolitan Sewage Disposal District Property

City of Colorado Springs

Opueblo Rd

Birdsall Rd

HDRWRF Outfall

Hanover Rd

South Line of North Half of Sections 9, 10, 11 & 12 T16S, R65W

Topographic Limit of Williams Creek Drainage Basin

- LFMSDD Contract Service Area
- Colorado State Owned
- Colorado Centre Metro District
- CCMD within Colorado Springs
- City of Colorado Springs Controlled

## Contract Service Area (South) Lower Fountain Metropolitan Sewage Disposal District

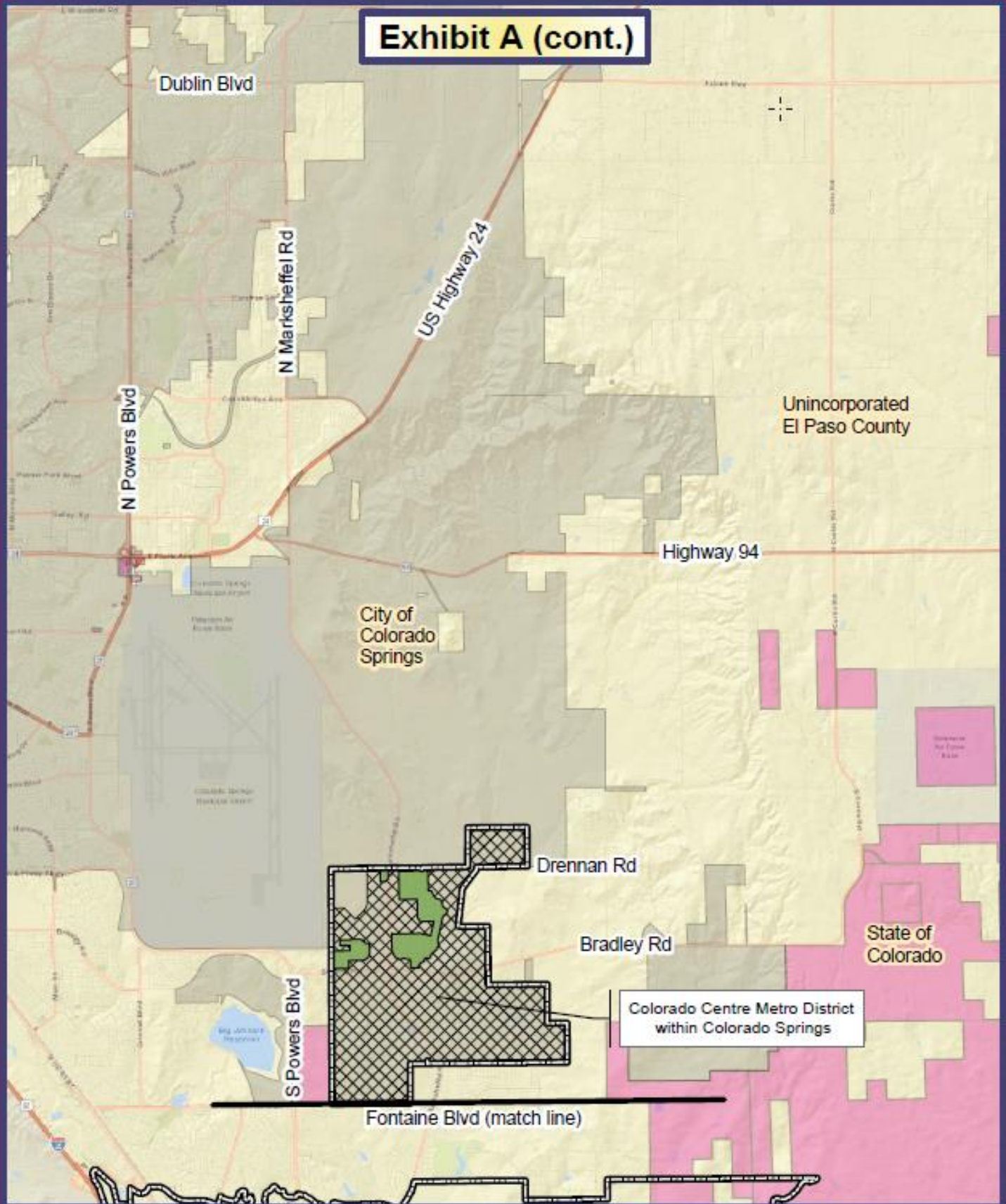


Sheet 1 of 2



1:108,000

# Exhibit A (cont.)



- LFMSDD Contract Service Area
- Colorado State Owned
- Colorado Centre Metro District
- CCMD within Colorado Springs
- City Of Colorado Springs Controlled

## Contract Service Area (North) Lower Fountain Metropolitan Sewage Disposal District



Sheet 2 of 2



1:108,000

# Exhibit B

Start Interceptor

LFMS No. 1

Northern Interceptor

FSD WWTF

Southern Interceptor

HDTRWRF  
LFMS No. 2

End Interceptor



1:60,000

\*The Fountain Sanitation District assumes no liability relating to the completeness, correctness, or fitness for use of this data.



Lower Fountain Metropolitan Sewage Disposal District

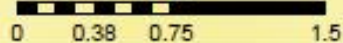
11545 Link Rd  
Fountain, CO 80817

(719) 382-5303 | (719) 382-3441 (fax)

## Lower Fountain Metropolitan Sewage Disposal District

LFMSDD Interceptor North/South Delineation

Miles



Lower Fountain Interceptor

# Exhibit C

**Colorado Centre Metropolitan District (CCMD) and  
Colorado Springs Utilities (CSU)  
Northern Interceptor Percent Ownership**

**Northern Interceptor Phase 3 - LFMSDD**

					Pipe Capacity (MGD PHF) w/ roughness Coef. =0.013	At 1MGD % Ownership	(Pipe Length) * (% Ownership)	
From MH*	To MH*	Length	Pipe Dia.	Slope	Flow at 75% Full			Notes
CCMD Ex. MH	MH40	2006.6	18"	0.76%	5.40	18.52%	371.59	At CCMD's Manhole
MH40	MH35	2000	18"	0.92%	5.94	16.84%	336.70	
MH35	MH26	3126.7	18"	0.50%	4.38	22.83%	713.86	
MH26	MH25	314.1	18"	0.54%	4.55	21.98%	69.03	
MH25	MH23	630	18"	0.57%	4.67	21.41%	134.90	
MH23	MH22 (JCC18)	315	18"	2.46%	9.71	10.30%	32.44	
MH22 (JCC18)	MH17 (JCC13)	1665.8	18"	0.32%	3.5	28.57%	475.94	Along Link Road, south of Elect. Sub-station.
MH17 (JCC13)	MH16	400	18"	3.18%	11.04	9.06%	36.23	
MH16	MH15	400	20"	0.32%	4.64	21.55%	86.21	Goes under JC Creek; HDPE
MH15	MH14	183.7	21"	0.32%	5.28	18.94%	34.79	
MH14	MH12	800	24"	0.32%	7.54	13.26%	106.10	
MH12	MH11	185.4	24"	0.50%	9.43	10.60%	19.66	
MH11	MH6	1760	24"	0.32%	7.54	13.26%	233.42	
MH6	MH5	320.2	21"	0.95%	9.1	10.99%	35.19	
MH5	MH1 (CG62)	811.3	21"	0.50%	6.6	15.15%	122.92	MH is at Jimmy Camp & Treehouse Terrace
Total =		14918.8					2809.00	

\* MH#'s from Phase 3 Interceptor Sewer CD's, by GMS; () = FSD GIS

**Northern Interceptor Phase 2 - LFMSDD**

					Pipe Capacity (MGD PHF) w/ roughness Coef. =0.013	At 1MGD % Ownership	(Pipe Length) * (% Ownership)	
From MH*	To MH*	Length	Pipe Dia.	Slope	Flow at 75% Full			Notes
CG62	CG33	1100.5	21	0.50%	6.6	15.15%	166.74	MH is at Jimmy Camp & Treehouse Terrace
CG33	CG9A	1265.74	21	0.25%	4.67	21.41%	271.04	
CG9A	CG9	310	21	1.00%	9.34	10.71%	33.19	
CG9	CG8	400	21	0.56%	6.99	14.31%	57.22	
CG8	JC32A	932.2	21	0.71%	7.87	12.71%	118.45	
JC32A	JC31B	329.37	24	0.17%	5.5	18.18%	59.89	Jimmy Camp Road to south of Drawbridge Road
JC31B	JC31A	12.71	24	0.87%	12.44	8.04%	1.02	
JC31A	MH77 (LFW77)	34.99	24	0.91%	12.72	7.86%	2.75	
Totals =		4385.51					710.30	

\* MH#'s from FSD GIS

**CCMD & CSU Total Ownership = 18.23% 9.12% Per Entity**

MGD = Million Gallons per Day

PHF = Peak Hourly Flow

Flow at 75% Full is based on Bentley FlowMaster Program

P:\LFMSDD\[CCMD & CSU % Ownership for Northern Interceptor.xlsx]CCMD Northern % Owshp



# Exhibit D

## Fountain Sanitation District Peak Hourly Flows (PHF) Allocation

### Northern Interceptor Phase 3 - LFMSDD

					Pipe Capacity (MGD PHF) w/ roughness Coef. =0.013	FSD PHF	
From MH*	To MH*	Length	Pipe Dia.	Slope	Flow at 75% (MGD)	- 1.0 PHF CCMD	Notes
CCMD Ex. MH	MH40	2,006.60	18"	0.76%	5.40	4.40	At CCMD's Manhole
MH40	MH35	2,000.00	18"	0.92%	5.94	4.94	
MH35	MH26	3,126.70	18"	0.50%	4.38	3.38	
MH26	MH25	314.10	18"	0.54%	4.55	3.55	
MH25	MH23	630.00	18"	0.57%	4.67	3.67	
MH23	MH22 (JCC18)	315.00	18"	2.46%	9.71	8.71	
MH22 (JCC18)	MH17 (JCC13)	1,665.80	18"	0.32%	3.50	2.50	Along Link Road, south of Elect. Sub-station.
MH17 (JCC13)	MH16	400.00	18"	3.18%	11.04	10.04	
MH16	MH15	400.00	20"	0.32%	4.64	3.64	Goes under JC Creek; HDPE
MH15	MH14	183.70	21"	0.32%	5.28	4.28	
MH14	MH12	800.00	24"	0.32%	7.54	6.54	
MH12	MH11	185.40	24"	0.50%	9.43	8.43	
MH11	MH6	1,760.00	24"	0.32%	7.54	6.54	
MH6	MH5	320.20	21"	0.95%	9.10	8.10	
MH5	MH1 (CG62)	811.30	21"	0.50%	6.60	5.60	MH is at Jimmy Camp & Treehouse Terrace

\* MH#'s from Phase 3 Interceptor Sewer CD's, by GMS; () = FSD GIS

### Northern Interceptor Phase 2 - LFMSDD

					Pipe Capacity (MGD PHF) w/ roughness Coef. =0.013	FSD PHF	
From MH*	To MH*	Length	Pipe Dia.	Slope	Flow at 75%	- 1.0 PHF CCMD	Notes
CG62	CG33	1,100.50	21	0.50%	6.6	5.6	MH is at Jimmy Camp & Treehouse Terrace
CG33	CG9A	1,265.74	21	0.25%	4.67	3.67	
CG9A	CG9	310.00	21	1.00%	9.34	8.34	
CG9	CG8	400.00	21	0.56%	6.99	5.99	
CG8	JC32A	932.20	21	0.71%	7.87	6.87	
JC32A	JC31B	329.37	24	0.17%	5.5	4.5	Jimmy Camp Road to south of Drawbridge Road
JC31B	JC31A	12.71	24	0.87%	12.44	11.44	
JC31A	MH77 (LFW77)	34.99	24	0.91%	12.72	11.72	

\* MH#'s from FSD GIS

### Southern Interceptor Phase 1 - LFMSDD

From MH*	To MH*	Length	Pipe Dia.	Slope	Flow at 75%	FSD PHF	Notes
						- 1.5 PHF CCMD	
MH77 (LFW77)	MH76	202.44	24"	0.86%	14.58	13.08	Just north of Ohio Ave.
MH76	MH75	309.52	24"	1.34%	18.21	16.71	
MH75	MH61	3,727.36	24"	0.20%	5.96	4.46	Along Railroad to Ohio Ave.
MH61	MH60	400.75	24"	0.23%	6.39	4.89	Along Railroad
MH60	MH57	1,202.63	24"	0.40%	8.43	6.93	
MH57	MH45	3,510.00	24"	0.67%	10.91	9.41	
MH45	MH37	3,185.85	24"	0.30%	7.3	5.8	Gould/Orleans to south of Wilson
MH37	MH23	5,214.62	30"	0.50%	17.09	15.59	Kane Ranch flows would enter MH33
MH23	MH18	1,778.72	30"	0.35%	14.3	12.8	
MH18	Plant	7,964.13	30"	0.14%	9.04	7.54	There is a parallel 30" pipe

MGD = Million Gallons per Day

PHF = Peak Hourly Flow

P:\LFMSDD\[Pipe flow Capacity based on CD's and Flowmaster.xlsx]FSD Interc. PHF