

RESOLUTION NO. 27 - 25

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT AMONG THE CITY OF COLORADO SPRINGS, COLORADO, ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES, FOREST LAKES METROPOLITAN DISTRICT, AND TRIVIEW METROPOLITAN DISTRICT FOR CONSTRUCTION COST SHARING FOR THE NORTHERN MONUMENT CREEK INTERCEPTOR

WHEREAS, the City of Colorado Springs (the "City"), on behalf of its enterprise Colorado Springs Utilities, is authorized to enter into intergovernmental agreements with other Colorado governmental entities for the provision of any function or service with the approval of the City Council of the City of Colorado Springs ("City Council"); and

WHEREAS, Forest Lakes Metropolitan District ("Forest Lakes") and Triview Metropolitan District ("Triview") are quasi-municipal corporations and political subdivisions in the State of Colorado; and

WHEREAS, Forest Lakes and Triview, together with the Donala Water & Sanitation District, jointly own and operate the Upper Monument Creek Regional Wastewater Treatment Facility; and

WHEREAS, the City, Forest Lakes, and Triview (the "Participants") believe they will mutually benefit from consolidating the treatment of wastewater at Colorado Springs Utilities' J.D. Phillips Water Resource Recovery Facility by extending Colorado Springs Utilities' existing wastewater collection system, through construction of the Northern Monument Creek Interceptor ("NMCI"), to allow Forest Lakes and Triview to deliver wastewater flows to Colorado Springs Utilities for treatment; and

WHEREAS, the Participants desire to enter into an Intergovernmental Agreement for Construction Cost Sharing for the NMCI (the "IGA"); and

WHEREAS, Colorado Springs Utilities acknowledges that a future addendum to the IGA documenting the Participants' agreement to move forward with construction of the NMCI will be brought to City Council upon completion of design of the NMCI.

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

Section 1. The City Council hereby finds that the IGA is in the best interests of the citizens of the City of Colorado Springs and the ratepayers of Colorado Springs Utilities, and hereby approves the attached Intergovernmental Agreement.

Section 2. The Chief Executive Officer of Colorado Springs Utilities is authorized to enter into the IGA in a form substantially similar to that attached hereto.

Section 3. This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this 25th day of February 2025.


Randy Helms, Council President

ATTEST:


Sarah B. Johnson, City Clerk



Intergovernmental Agreement Among
City of Colorado Springs, Colorado,
Acting by and through its enterprise, Colorado Springs Utilities
And
Forest Lakes Metropolitan District
And
Triview Metropolitan District
for Construction Cost Sharing for the Northern Monument Creek Interceptor
Effective _____

This Intergovernmental Agreement (Agreement) for Construction Cost Sharing for the Northern Monument Creek Interceptor (NMCI), is effective upon signing by all parties (Effective Date), and is among the following parties (each of whom is a Participant and are collectively referred to as the Participants):

The City of Colorado Springs, Colorado, a Colorado home rule city and municipal corporation, acting by and through its enterprise, Colorado Springs Utilities (Utilities);

Forest Lakes Metropolitan District (Forest Lakes), a quasi-municipal corporation and political subdivision in the State of Colorado; and

Triview Metropolitan District (Triview), a quasi-municipal corporation and political subdivision in the State of Colorado.

In this Agreement, Forest Lakes, and Triview are each a Northern Entity and are collectively referred to as the Northern Entities.

Purpose

The purpose of this Agreement is to establish how the Participants will share construction costs for the Northern Monument Creek Interceptor (NMCI) prior to Utilities committing to continuation of design services for the NMCI Project. Construction of the NMCI is anticipated to commence in early 2026.

Recitals

- A. The Northern Entities, together with the Donala Water & Sanitation District, jointly own and operate the Upper Monument Creek Regional Wastewater Treatment Facility.
- B. The Participants believe they will mutually benefit from consolidating the treatment of wastewater at Utilities' J.D. Phillips Water Resource Recovery Facility by extending Utilities' existing wastewater collection system to allow the Northern Entities to deliver wastewater flows to the NMCI for treatment by Utilities.

- C. In addition to serving the needs of Utilities and its customers, the NMCI will allow for the Northern Entities and the customers they serve within their respective present and future service areas to receive master-metered Wastewater Service from Utilities under the Contract Service-Regional tariff, and Utilities is expressly committed to provision of such Wastewater Service to the Northern Entities, as provided herein.
- D. The Participants, therefore, desire to share construction costs of the NMCI.
- E. In April 2019, Utilities executed a Construction Manager/General Contractor Agreement with Garney Companies, Inc. (Garney), for the construction of the NMCI.
- F. In January 2024, Utilities executed a Professional Services Agreement with HDR Engineering Inc. (HDR), for design and engineering services for the NMCI.
- G. Pursuant to the PSA, HDR agreed to develop the design and specifications for the NMCI Construction Project up to 30% design, and Utilities agreed to decide on continuation of the NMCI Design Services Project when this 30% design milestone was reached.
- H. HDR has completed 30% design for the NMCI Project.
- I. To continue with the NMCI Design Services Project, HDR and Utilities must amend the PSA.
- J. Before Utilities amends the PSA to allow for continuation of the NMCI Design Services Project, the Participants desire to establish how construction costs for the NMCI will be shared.
- K. The Participants acknowledge that they may need to execute amendments to this Agreement prior to the start of construction of the NMCI, but that any such amendments will not modify the Cost Shares established herein.
- L. The Participants also acknowledge that they will need to execute subsequent agreements relating to Utilities' provision of Wastewater Service to the Northern Entities.
- M. The Participants, along with other entities who are not Participants to this Agreement, previously executed the March 30, 2020 NMCI NEPA Participation Agreement.
- N. The Participants previously executed the October 5, 2022 Design Services Cost Contribution Agreement.
- O. This Agreement does not supersede the March 30, 2020 NMCI NEPA Participation Agreement or the October 5, 2022 Design Services Cost Contribution Agreement, and therefore those agreements and this Agreement coexist according to their respective terms.
- P. This Agreement provides for the joint exercise of powers lawfully authorized to each of the Participants, for the sharing of costs for the construction of facilities that will serve each of the Participants, all as authorized by the provisions of Sections 18(2)(a) and (2)(b) of Article XIV of the Colorado Constitution and Sections 29-1-201 *et seq.*, C.R.S., regarding intergovernmental relationships.
- Q. Each Participant's governing body has authorized the execution and delivery of this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual undertakings herein contained and the mutual benefits to the Participants, the receipt and sufficiency of which is acknowledged, the Participants agree as follows:

Section 1. Definitions.

For the purposes of this Agreement, these terms shall mean as follows:

- (a) Annual Construction Costs: the Construction Costs for a calendar year.
- (b) Average Day Build Out Flow: the 90-day rolling average of wastewater flow rate in millions of gallons per day (mgd).
- (c) Construction Costs: all costs due and owing to CM/GC pursuant to the Construction Agreement.
- (d) Construction Manager/General Contractor (CM/GC): Garney Companies, Inc.
- (e) Construction Manager/General Contractor Agreement (Construction Agreement): the contract effective as of April 29, 2019, and any subsequent amendments to the same, by and between Utilities and Garney Companies, Inc., for the NMCI Construction Project.
- (f) Cost Share: Each Participant's percentage share of the Construction Costs, as set forth in Section 5(b) herein.
- (g) Flow Share in the Lower Section: the pro-rata share of Average Day Build Out Flow in the NMCI from the northern property boundary of the United States Air Force Academy to existing Colorado Springs Utilities Wastewater Manhole WW.191491.
- (h) Flow Share in the Upper Section: the pro-rata share of Average Day Build Out Flow in the NMCI from the Point of Connection to the northern property boundary of the United States Air Force Academy.
- (i) Monthly Cost Share: Each Participant's monthly share of the Construction Costs, which shall equal the monthly Construction Costs multiplied by the Participant's Cost Share.
- (j) Northern Monument Creek Interceptor (NMCI): the planned extension of Utilities' existing wastewater collection between Utilities' existing wastewater collection system located near Pine Creek and I-25 and the Upper Monument Creek Regional Wastewater Treatment Facility, which extension is to be designed, constructed, installed, owned, and operated by Utilities.
- (k) NMCI Construction Project: the phase of the NMCI Project governed by the Construction Agreement.
- (l) NMCI Design Services Project: the phase of the NMCI Project governed by the PSA, environmental and permitting services, and constructor engagement during the design process.
- (m) NMCI National Environmental Policy Act Project (NMCI NEPA Project): the NEPA permitting phase of the NMCI Project.
- (n) NMCI Project: the design, construction, and commissioning of the NMCI.
- (o) Point of Connection: the demarcation point between the Northern Entities' wastewater collection system and the NMCI, at which point a metering flume will be installed.

- (p) Professional Services Agreement (PSA): the contract effective as of January 23, 2024, and any subsequent amendments to the same, by and between Utilities and HDR Engineering Inc., for the NMCI Design Services Project, permitting, and construction oversight services. The scope of the PSA includes the main interceptor and any metering facilities, all of which shall be owned and operated by Utilities.
- (q) Wastewater Service: Utilities' receipt and treatment of wastewater conveyed through the NMCI: (1) from the Point of Connection between the master meter(s) associated with each Northern Entity or group of Northern Entities and the NMCI through the point of discharge of treated wastewater; and (2) from any Utilities feeder pipeline connected to the NMCI. Wastewater Service also includes the accounting of the Northern Entities' total return flows and reporting of such, and the maintenance of the NMCI and Utilities' water resource recovery facilities at all times in good and workable condition so as to facilitate such collection and treatment of wastewater to, or for the benefit of, the Participants.

Section 2. Term and Scope.

- (a) This Agreement will be in effect from the Effective Date until the first of the following to occur (Term): (a) all Participants have performed all their respective obligations under this Agreement; or (b) all Participants agree to terminate this Agreement.
- (b) This Agreement is intended to govern only the rights and obligations of the Participants with respect to the NMCI Construction Project.

Section 3. Individual Rights and Responsibilities of Utilities.

- (a) Upon this Agreement becoming effective, Utilities will execute an amendment to the PSA to provide for continuation of the NMCI Design Services Project to 100% design.
- (b) When the NMCI Design Services Project reaches 90% design, Utilities will issue a request to the CM/GC for a guaranteed maximum price (GMP). Upon receipt of the GMP, Utilities will provide the Northern Entities with notice of the GMP pursuant to the notice provisions set forth in Section 13 below.
- (c) If all Participants execute the addendum to this Agreement described in Section 5(a) below, Utilities will execute an amendment to the Construction Agreement authorizing the CM/GC to proceed with construction of the NMCI.
- (d) Utilities will manage the NMCI Construction Project in accordance with this Agreement and with its responsibilities and obligations under the PSA and the Construction Agreement.
- (e) Utilities will manage the NMCI Construction Project in accordance with all applicable governmental laws, ordinances, regulations, and requirements applicable thereto.
- (f) Utilities will exercise due diligence in performing its obligations under this Agreement, the PSA, and the Construction Agreement.
- (g) Utilities will make all reasonable attempts to ensure that the time between the Notice to Proceed and Substantial Completion of the NMCI, with both the Notice to Proceed and

Substantial Completion as defined in the Construction Agreement, does not exceed thirty-six (36) months.

- (h) Utilities, in its sole discretion pursuant to the terms of the PSA and the Construction Agreement, will make all decisions related to amendments to the PSA and the Construction Agreement.
- (i) Utilities acknowledges that it will bear its own indirect costs, such as internal staff time, related to the NMCI Construction Project.
- (j) Utilities will prepare and, if necessary, schedule and conduct the Regular Project Communications more specifically set forth in Section 9.
- (k) Utilities will hold title to and ownership of the NMCI at all times; however, in connection with any revenue bonds or similar financing undertaken by or on behalf of the Northern Entities to fund their shared cost of the NMCI (NMCI Revenue Bonds), Utilities shall not take (or omit to take) or permit or suffer any action to be taken if the result of the same would cause the interest on NMCI Revenue Bonds which is excludable from gross income for federal income tax purposes, to be (i) "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code; or (ii) "private activity bonds" within the meaning of Section 141 of the Internal Revenue Code.
- (l) Utilities will, in advance of giving the Northern Entities notice of the GMP described in Section 3(b) above, which notice will be given pursuant to Section 13 below, provide each Northern Entity with a proposed Wastewater Services Agreement for the Northern Entity's review and comment. The Participants expect that such Wastewater Services Agreements may be revised to the achieve mutual agreement between each Northern Entity and Utilities and expect that such Agreements are to be executed concurrently with, or in advance of, the Participants executing the addendum described in Section 5(b) below.

Section 4. Individual Rights and Responsibilities of the Northern Entities.

- (a) Each Northern Entity will provide Utilities with any and all assistance needed to complete the NMCI Construction Project, including, but not limited to, the following:
 - (1) Sharing of information related to its wastewater system, including point of connection and design thereof;
 - (2) Cooperating with other Participants to obtain all federal, state, and local permits and approvals necessary for the construction and use of the NMCI;
 - (3) With respect to property owned by a Northern Entity, providing property access and rights of entry; and
 - (4) With respect to property located within a Northern Entity's service boundaries, to the extent possible, assisting with property access and rights of entry.
- (b) Each Northern Entity will review and provide timely comment on the 60% and 90% designs for the NMCI prepared pursuant to the PSA and on the CM/GC's GMP prepared pursuant to the Construction Agreement.
- (c) A Northern Entity will not speak on behalf of the NMCI Construction Project, the NMCI Project, or Utilities without the written approval of Utilities or as permitted by Section 11.

- (d) The Northern Entities acknowledge that each will bear its own indirect costs related to the NMCI Construction Project, such as consultant fees, costs related to supplying information for the NMCI Construction Project, and legal fees.

Section 5. Joint Rights and Responsibilities of all Participants

- (a) If all Participants agree the GMP is reasonable, the Participants intend to enter into an addendum to this Agreement documenting the Participants' agreement to move forward with the NMCI Construction Project. Utilities will, subject to any restrictions in the Colorado Springs City Charter, Colorado Springs City Code, and Utilities' rules and regulations, concurrently execute a separate Wastewater Services Agreement with each Northern Entity documenting the Northern Entity's contractual entitlement to the use of the NMCI and Utilities' responsibility to provide Wastewater Services.
- (b) If any Participant does not agree that the GMP received by Utilities and provided to the Northern Entities pursuant to Section 3(b) is reasonable, the Participants will promptly meet to discuss whether opportunities exist to either value engineer the CM/GC's proposal or to reject the CM/GC's GMP and solicit competitive bids from third party contractors or explore other alternatives satisfactory to all the Participants which would allow the NMCI project to continue.
- (c) All Participants will participate in good faith in any and all negotiations related to any disputes that arise under this Agreement, any amendments to this Agreement, and agreements related to the operation of the NMCI and to Utilities' provision of Wastewater Service to the Northern Entities.
- (d) Each Participant will pay its Cost Share as follows, with invoicing and billing to take place in accordance with Section 7 herein:

Participant	Average Day Build Out Flow	Flow Share Lower Section (%)	Flow Share Upper Section (%)	Project Cost Share (%)
Forest Lakes	0.264 mgd	7.09%	20.9%	7.5%
Triview	1.000 mgd	26.85%	79.1%	28.4%
Colorado Springs Utilities	2.460 mgd	66.06%	0.0%	64.1%
<i>Total</i>	<i>3.724 mgd</i>	<i>100%</i>	<i>100%</i>	<i>100%</i>

- (e) In the event a Participant withdraws from this Agreement, and provides notice of this withdrawal pursuant to Section 13, the remaining Participants agree to meet, with this meeting attended by persons with decision-making authority, within thirty (30) days of the notice of withdrawal to decide whether to continue the NMCI Construction Project and to take appropriate actions in response to the notice of withdrawal.

- (f) In the event a non-Participant requests to become a party to this Agreement, the Participants will, within thirty (30) days of this request, meet, with this meeting attended by persons with decision-making authority, to consider the request and decide whether to enter negotiations with the non-Participant on an amended and restated agreement to replace this Agreement

Section 6. Budgets and Appropriations for Annual Construction Project Costs.

- (a) On or before the first of August of each calendar year, Utilities will prepare or cause to be prepared a written estimate of Annual Construction Costs for the NMCI Construction Project for itself and for each Northern Entity for the next calendar year along with a high-level forecast for subsequent years.
- (b) Utilities, prior to the beginning of each calendar year, will adopt an annual budget sufficient to pay its share of the estimated Annual Construction Costs for the ensuing calendar year.
- (c) Each Northern Entity, prior to the beginning of each calendar year, will adopt an annual budget, will appropriate sufficient funds to pay its share of the estimated Annual Construction Costs for the ensuing calendar year, and will deliver to Utilities a copy of the budget as adopted.
- (d) Appropriation of Funds: The Participants acknowledge that, in accordance with the Colorado Constitution, Article X, Section 20, performance of the Participants' obligations under this Agreement is expressly subject to annual appropriation and availability of funds for that purpose. In the event that funds are not appropriated, in whole or in part, sufficient for any Participant's performance of its obligations under this Agreement, or appropriated funds may not be expended due to any Participant's spending limitations, such event shall be treated as a withdrawal from this Agreement and shall be subject to the provisions in Section 5(e).
- (e) If, at any time or from time to time after the Participants adopt annual budgets and make appropriations in accordance with Section 6(b) and (c), as relevant, Utilities estimates that the actual Annual Construction Costs for the calendar year or any part thereof for which such annual budgets apply will be greater than the Annual Construction Costs set forth in the written estimate prepared pursuant to Section 6(a), then each Participant will prepare and adopt an amended annual budget including sufficient amounts to pay all actual Annual Construction Project Costs for the current year and, as necessary, will approve supplemental appropriations consistent with the amended budget or will commit to deferring such additional appropriation to the next fiscal year.
- (f) Any Participant which does not adopt an annual budget sufficient to pay its share of the estimated Annual Construction Costs, or which does not appropriate, as relevant, sufficient funds to pay its share of the estimated Annual Construction Costs, will be in breach of this Agreement.

- (g) No later than November 1, 2025, each Participant shall commence appropriate action to budget and appropriate, as relevant, sufficient funds to pay all estimated Annual Construction Costs for 2026.
- (h) Each Participant reserves the right to provide for the payment of its Cost Share through the issuance of bonds or indebtedness, on such terms as the Participant deems appropriate.

Section 7. Monthly Invoicing and Payment of each Northern Entity's Cost Share.

- (a) Each month throughout the Term, Utilities will determine each Participant's Monthly Cost Share of the monthly CM/GC-invoiced Construction Costs and will invoice each Northern Entity for its Monthly Cost Share.
- (b) Each Northern Entity shall pay its Monthly Cost Share within thirty (30) calendar days after receiving its monthly invoice.
- (c) All payments due from a Northern Entity pursuant to this Agreement will be due and payable as stated in the relevant provision of this Agreement, without setoff, recoupment, or counterclaim.
- (d) Each Northern Entity's payment obligation under this Agreement is separate and several; the failure of any Northern Entity to make any payment when due will not relieve any other Northern Entity of its own payment obligations under this Agreement.
- (e) Within sixty (60) days after the end of each calendar year, Utilities will review all Construction Costs, monthly invoices, and monthly payments during the previous calendar year to assure that all Construction Costs were invoiced and paid in accordance with this Agreement. Utilities will credit any amount it determines a Northern Entity overpaid towards the amount due from that Northern Entity in the next monthly invoice it sends to that Northern Entity. Utilities will invoice any amount it determines a Northern Entity underpaid in the next invoice it sends to that Northern Entity, and that Northern Entity will pay such amount as part of its payment due for that invoice.
- (f) As soon as practicable after the completion of the NMCI Construction Project, Utilities will conduct a final review of all of the Construction Costs, invoices, and payments. If the final review reveals that a Northern Entity has overpaid its Cost Share, Utilities will remit the amount of the overpayment to that Northern Entity within thirty (30) days. If the final review reveals that a Northern Entity has underpaid its Cost Share, Utilities will send that Northern Entity an invoice for the underpayment, and that Northern Entity will remit payment of that amount to Utilities within thirty (30) days of its receipt of the invoice.

Section 8. Default.

- (a) If a Participant fails to comply with any of the provisions of this Agreement, including by failing to make any payments when due, any other Participant may give notice, per Section 13, to the defaulting Participant specifying the nature of the default.

- (b) The defaulting Participant may cure the default within thirty (30) days of the date of the notice of default, in which case the other Participants will have no further right or remedy regarding the default.
- (c) If the defaulting Participant does not cure the default within thirty (30) days of the date of the notice of default, any other Participant may exercise any right or remedy available at law because of such default.
- (d) In the event that the event of default is non-payment of a Northern Entity's Monthly Cost Share to Utilities, the non-defaulting Northern Entity may assume responsibility for payment of the defaulting Northern Entity's Monthly Cost Share until the non-defaulting Participants meet, pursuant to Section 5(e), and make a final decision on whether to continue the NMCI Construction Project.
- (e) If the non-defaulting Northern Entity assumes responsibility for the payment of the defaulting Northern Entity's Monthly Cost Share, the defaulting Northern Entity may redeem its allocated share of the NMCI Construction Project within three (3) months after the non-defaulting Northern Entity assumes such responsibility by curing all payment and non-payment defaults and by paying all expenses incurred by the non-defaulting Participants in connection with any default, including reimbursement of all of the non-defaulting Northern Entity's payments of the defaulting Northern Entity's Monthly Cost Share plus interest at the rate of one percent per month on all expenses incurred and amounts paid by the non-defaulting Participants. The foregoing right of redemption may be exercised only once by any Northern Entity.
- (f) In the event a Northern Entity is in default under this Section 8 and does not cure such default in accordance with Section 8(b), in addition to all other available remedies, Utilities or a non-defaulting Northern Entity which chooses to assume responsibility for payment of the defaulting Northern Entity's Monthly Cost Share may pursue collection through litigation with all costs of collection, including reasonable attorneys' fees, to be paid by the defaulting Northern Entity.

Section 9. Regular Project Communications. Utilities will provide regular detailed updates to the Northern Entities, at least quarterly, on the status of the NMCI Construction Project and any pending amendments to the PSA or Construction Agreement. Each update shall include a report on the budget and projected and incurred Construction Costs. The updates and communications provided by Utilities may be used by the Northern Entities for internal communications, board or council documents, and communications with each Northern Entity's respective customers.

Section 10. Enforcement, Dispute Resolution, and Termination.

- (a) It is specifically understood that, by executing this Agreement, each Participant commits itself to timely and diligent performance of its responsibilities and obligations, pursuant to the terms contained herein.
- (b) In the event of any claim or dispute under, or in connection with, this Agreement, the Participants will meet, with this meeting attended by persons with decision-making authority, within thirty (30) days of the written notice of the dispute by one of the Participants to any other Participant. At this meeting, the Participants will, in good faith,

attempt to negotiate a resolution to the dispute. Such meeting will not be deemed to reduce or eliminate the obligations and liabilities of the Participants or be deemed a waiver by a Participant of any remedies to which such Participant would otherwise be entitled, unless otherwise agreed to by the Participants in writing.

- (c) If, within thirty (30) calendar days after such meeting, the Participants 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.
- (d) The Participants will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The three mediators will then appoint a fourth mediator who shall, as the sole mediator, conduct mediation for the Parties
- (e) The Participants agree to participate in good faith in the mediation and negotiations for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Participants are not successful in resolving the dispute through mediation, then the Participants shall be free to litigate the matter.
- (f) The Participants intend that this Agreement will only be terminated for causes beyond their reasonable control that render the NMCI Construction Project infeasible, including financial or legal restrictions.

Section 11. Records and Accounts. Utilities will keep accurate and detailed records of the NMCI Construction Project and of the transactions relating to the NMCI Construction Project in accordance with generally accepted accounting principles as applied to governmental entities. Upon giving at least thirty (30) days' notice to the other Participants, a Northern Entity may informally or formally audit Utilities' records, accounts, and transactions related to the NMCI Construction at the Northern Entity's sole expense.

Section 12. Governing Law; Jurisdiction and Venue. This Agreement will be subject to, and shall be interpreted and performed under, the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs. Each Participant hereby expressly and irrevocably agrees and consents that any suit, action or proceeding arising out of or relating to this Agreement and the transactions contemplated hereby shall be instituted by any party hereto exclusively in any State court sitting in El Paso County, Colorado or, if federal jurisdiction exists, exclusively in the Federal court sitting in the City and County of Denver, State of Colorado and, by the execution and delivery of this Agreement, expressly waives any objection which it may have now or hereafter to the laying of the venue of any such suit, action, or proceedings.

Section 13. Notices. Any notice, request, demand, or statement provided for in this Agreement will be in writing and will be considered to have been duly delivered when personally delivered, sent by overnight delivery service, or sent by certified mail, postage prepaid, return receipt requested, addressed as follows, unless another address has been designated, in writing, by the party:

NMCI Design Services Cost Contribution Agreement

(a) Utilities: System Planning and Projects Officer
Colorado Springs Utilities
121 South Tejon Street, Fifth Floor
P.O. Box 1103/MC 950
Colorado Springs, CO 80903/80947-0950

With a copy to: City Attorney
City of Colorado Springs
30 S. Nevada
P.O. Box 1575/MC 510
Colorado Springs, CO 80901-1575

(b) Forest Lakes: Forest Lakes Metropolitan District
District Manager
2 North Cascade, Suite 1280
Colorado Springs, CO 80903
(719) 327-5810

(c) Triview: Triview Metropolitan District
Attn: District Manager
16055 Old Forest Point, Suite 302
Monument, CO 80132

With Copy to: Monson, Cummins, Shohet, & Farr LLC
Chris D. Cummins
13511 Northgate Estates Dr., Ste. 250
Colorado Springs, CO 80921

Section 14. Severability. If any provision of this Agreement is held by any court of competent jurisdiction to be invalid under the laws of the State of Colorado, or the United States, such invalidity will not invalidate the whole Agreement, but it will be construed as though not containing that particular provision and the rights and obligations of the Participants will be construed and in force accordingly, provided that the purposes of this Agreement are accomplished as originally intended by the Participants.

Section 15. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.

Section 16. Intent of Agreement. This Agreement is intended to describe the rights and responsibilities of and between the Participants and is not intended to, and will not be deemed to, confer any rights upon any persons or entities not named as parties, nor to limit in any ways the powers and responsibilities of the Participants or any other entity not a party hereto.

Section 17. Amendments. This Agreement may be amended, modified, changed, or terminated, in whole or in part, only by a written agreement duly authorized and executed by all Participants.

Section 18. Assignability. Each Participant, without the approval of the other Participants, may assign its rights and obligations under this Agreement only to a governmental entity that succeeds to ownership of that Participant's wastewater system. Such governmental entity will become a Subsequent Participant upon execution by all Participants and by the Subsequent Participant of an Amendment to this Agreement whereby the Subsequent Participant agrees to be bound by all terms and conditions of this Agreement and agrees to assume all obligations of the former Participant under this Agreement. Such Amendment will release the former Participant from all further obligations under this Agreement. Upon execution of such Amendment by all Participants and the Subsequent Participant, the Subsequent Participant will be entitled to all rights of the former Participant under this Agreement and will be obligated for all further obligations of the former Participant under this Agreement.

Section 19. Entire Agreement. This Agreement constitutes the entire contract between the Participants relative to the subject matter hereof. Any previous agreement among the Participants with respect to the subject matter hereof is superseded by this Agreement. The Purpose and Recitals are incorporated herein by this reference.

IN WITNESS WHEREOF, this Agreement has been duly authorized and executed by the officers authorized thereunto, on the dates shown below for each Participant.

Colorado Springs Utilities,
an enterprise of the City of Colorado Springs, a
Colorado home rule city and municipal corporation

By: _____
Travas Deal
Chief Executive Officer

Date: _____

Approved as to form:

Forest Lakes Metropolitan District

By: _____

NMCI Design Services Cost Contribution Agreement

Date: _____

Attest:

Triview Metropolitan District

By: _____

Date: _____

Attest:
