

October 11, 2022

Ms. Katie Carleo, AICP
City of Colorado Springs - LUR Planning Manager
Land Use Review Division

Sent Via Email to: Katie.Carleo@coloradosprings.gov

Amara Master Plan - CPC MP 21-00208

We have received the letter from Fountain Sanitation District dated October 11, 2022, taking exceptions to certain statements made during presentations on October 10, 2022, at the City Council Work Session with respect to the Amara Annexation.

We offer the following clarifications:

1. A preliminary Agreement exists between Utilities and Fountain Sanitation District . Such Agreement is being circulated internally for execution at Utilities.
2. Fountain Sanitation District area does not encompass all proposed Amara annexation plats, only Plats 8, 9, 10, and 11 will be conveyed through an existing 18 inch, 21 inch diameter and 30 inch interceptor pipe to the Harold D Thompson waste treatment plant.

Joe Awad
General Manager – SPP
Colorado Springs Utilities

C: Jim Heckman, District Manager , Fountain Sanitation District
Aram Benyamin
Lisa Barbato



11545 Link Road, Fountain CO 80817 (719)382-5303 Fax: 382-3441
E-mail: <mailto:fsdistrict@fsd901.org> Web: www.fountainsanitation.com

October 11, 2022

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City of Colorado Springs – LUR Planning Manager
Land Use Review Division

Sent Via Email to: Katie.Carleo@coloradosprings.gov

Amara Master Plan – CPC MP 21-00208

On behalf of Fountain Sanitation District,

We take exception to certain statements made during the October 10, 2022, City Council Work Session with respect to the Amara Annexation agreement presentation.

It was stated that CSU and Fountain Sanitation District have reached an agreement for Wholesale Wastewater Management Services. This is incorrect. Internally at the staff level, there is a preliminary agreement however it has not been presented or approved by either entity's governing body.

It was also stated that Fountain Sanitation District currently has a 30-inch interceptor from the proposed Amara development down to the Harold D. Thompson Regional Water Reclamation Facility. This was also misrepresented, the District does have an interceptor that will serve this area, it is far from being a 30-inch. The 30-inch interceptor to the regional treatment facility is more than a mile south of the proposed Amara development.

Lastly, as stated to you in my January 3, 2022, comment letter for the Amara Annexation, Fountain Sanitation District will not be serving all of Amara should an agreement be reached. We would only serve Annexation Plats 8, 9, 10, and 11.

I would respectfully request that this information be immediately provided to City Council, so they have all the correct information to make an informed decision.

Respectfully,

A handwritten signature in blue ink, appearing to read "J Heckman", is written over the word "Respectfully,".

Jim Heckman, District Manager
Fountain Sanitation District



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

March 3, 2022

To:
Fountain Sanitation District
Attn: Jim Heckman
11545 Link Road,
Fountain, CO 80818

Re: proposed wastewater service for the area known as Amara

Dear Jim,

This letter is to confirm our conversations regarding wastewater service for the proposed development known as Amara, located east of Link Road and straddling Squirrel Creek Road. Due to challenges out of either party's control, Amara is seeking annexation into the City of Colorado Springs. By Colorado Springs City Code, Colorado Springs Utilities (Springs Utilities) is to be the exclusive provider of utilities for properties within the City Limits.

Springs Utilities recognizes that Fountain Sanitation District (District) invested significant capital with plans to serve most of Amara since it was planned to be within the City of Fountain - much of the subject area is as I write this. To allow recovery of that investment among other considerations, one option is both parties agree in concept the District will provide wholesale wastewater treatment and conveyance service to Springs Utilities.

We must work through details for this concept and draft an agreement, and I suggest the following as initial considerations:

- All properties in Amara will be customers of Springs Utilities
- Wastewater connection fees, by whatever official name, will be set by the District and collected by Springs Utilities
- Springs Utilities will pass fees collected on behalf of the District to the District once per month, or another interval as agreed
- Springs Utilities will retain all water rights for such wastewater conveyed and treated by the District that originate from Springs Utilities customers
- The District will serve Springs Utilities' Amara development using its existing treatment and conveyance capacity
- The District will permanently allocate treatment and conveyance capacity to Springs Utilities as and when connection fees are paid

Plaza of the Rockies, South Tower
121 S. Tejon, Suite 200
Colorado Springs, CO 80947-0920

Phone: 719-668-8550
Fax: 719-668-8547
<http://www.csu.org>

- Parties will define, within the agreement, responsibilities for constructing additional treatment and conveyance capacity

I recognize we have significant work ahead of us to formulate an agreement and this letter confirms Springs Utilities' commitment toward that end.

Regards,



Brian Whitehead
System Extensions Manager
Colorado Springs Utilities
bwhitehead@csu.org
(719) 668-8261

Cc:

Colorado Springs Utilities
Aram Benyamin, CEO
Earl Wilkinson, Chief Water, Compliance, and Innovation Officer



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It was stated that CSU and Fountain Sanitation District have reached an agreement for Wholesale Wastewater Management Services. This is incorrect. Internally at the staff level, there is a preliminary agreement however it has not been presented or approved by either entity's governing body.

It was also stated that Fountain Sanitation District currently has a 30-inch interceptor from the proposed Amara development down to the Harold D. Thompson Regional Water Reclamation Facility. This was also misrepresented, the District does have an interceptor that will serve this area, it is far from being a 30-inch. The 30-inch interceptor to the regional treatment facility is more than a mile south of the proposed Amara development.

Lastly, as stated to you in my January 3, 2022, comment letter for the Amara Annexation, Fountain Sanitation District will not be serving all of Amara should an agreement be reached. We would only serve Annexation Plats 8, 9, 10, and 11.

I would respectfully request that this information be immediately provided to City Council, so they have all the correct information to make an informed decision.

Respectfully,

A handwritten signature in blue ink, appearing to read 'J Heckman', is written over the word 'Respectfully,'.

Jim Heckman, District Manager
Fountain Sanitation District

WASTEWATER SERVICE AGREEMENT

Between
Colorado Springs Utilities
And
Fountain Sanitation District

This Wastewater Service Agreement ("Agreement") is made and entered into this ____ day of _____, 2022, by and between Colorado Springs Utilities ("Utilities"), an enterprise of the City of Colorado Springs ("City"), a home rule City and Colorado municipal corporation, and Fountain Sanitation District ("District"), [Entity Type]. In this document, Utilities and District can be referred to individually as "Party" or collectively as "Parties."

Recitals

- A. Due to circumstances beyond the control of either Party, the proposed development known as Amara (more fully defined within) is seeking annexation to the City of Colorado Springs.
- B. Prior to Amara's decision to seek annexation into the City, District invested significant capital with plans to serve Amara with wastewater service and currently has the treatment capacity needed to provide wastewater service to Amara.
- C. The District's provision of wastewater service to Utilities will allow District to recover the investment District made in its wastewater system for purposes of providing wastewater service to Amara and will allow Utilities to defer or avoid construction of significant wastewater collection and treatment facilities.
- D. The District desires to provide and Utilities desires to receive wholesale wastewater service for Amara following Amara's annexation into the City, subject to all conditions and requirements set forth in this Agreement.
- E. The Parties recognize that the annexation of Amara into the City will be governed by the applicable annexation agreement.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE FOREGOING REPRESENTATIONS, IT IS AGREED AS FOLLOWS:

Article I General Provisions

- 1. Term. This Agreement shall become effective on the date of the last signature below and shall remain in effect in perpetuity, unless terminated by mutual agreement or for cause as described in Section [X].
- 2. Definitions. The following terms shall have the meanings set forth below.
 - a. Amara: [Description and Map Reference]

- b. Annexation Agreement: [Proper summary]
 - c. District's Wastewater Treatment System
 - d. Utilities' Wastewater System within Amara: all devices, facilities, structures, or equipment owned by the City of Colorado Springs and used by Utilities for the purpose of the collection, transmission, or storage of industrial and domestic wastes located within Amara, including, but not limited to, all collection lines, outfall sewers, pumping, power and other equipment, and their appurtenances, and excluding sewer service lines.
 - e. [Add additional definitions]
3. Jurisdiction and Compliance.
- a. This Agreement is for District to provide wastewater service to Utilities at District's standard wholesale Rates and Fees as modified or replaced. The wastewater treatment service provided under this Agreement shall be governed by the _____ of the Fountain Sanitation District, and all other applicable _____, except as otherwise provided in this Agreement.
 - b. Pursuant to this Agreement, Utilities will be a wholesale customer of District's publicly owned wastewater treatment works. Utilities shall ensure its connection to District's system is in accordance with all requirements of District as set forth in this Agreement.
4. Wastewater Treatment Service.
- a. The Parties agree and acknowledge that wastewater collected by the District is treated by the Lower Fountain Metropolitan Sewage Disposal District ("LFMSDD") and that this Agreement is made expressly subject to all requirements and policies of LFMSDD. A condition precedent to District's obligations under this Agreement shall be obtaining all approvals required by LFMSDD, if any.
 - b. During the term of this Agreement, District will accept and treat through District's Wastewater Treatment System, all wastewater that originates within the boundaries of Amara, in accordance with the terms of this Agreement and applicable laws and regulations, following the annexation of Amara into the City and for the term of this Agreement as defined in Section 1.
 - c. District shall have no obligation to accept and treat wastewater under this Agreement that originates outside of Amara.
5. Expansion of Utilities' Service Area Served by District. If Utilities desires to obtain wastewater service for portions of Utilities' Service Area located outside of Amara or to expand the area defined as Amara, then the Parties will evaluate such a proposal and negotiate in good faith to amend this Agreement.

6. Rates, Charges, Surcharges and Fees Payable by Utilities.
 - a. Connection Fees. Utilities will pay District its then current wholesale wastewater connection charge for each connection to Utilities' Wastewater System within Amara.
 - b. Rates and Charges. For the services provided hereunder, Utilities shall pay to District the applicable rates, charges, surcharges and fees as provided in the applicable District rate resolution, as such may be amended or replaced in accordance with applicable law. The Parties acknowledge that Utilities may participate in District's ratemaking process. Utilities will continue to pay the rates established by District, as amended, so long as District's rate making process is legal under the laws of the State of Colorado.
 - c. Payment of the total monthly bill by Utilities shall be [due date and location – or state compliance with District's standard practice].
7. Utilities' Responsibilities. In addition to other responsibilities and duties provided in this Agreement, Utilities shall solely have the following responsibilities:
 - a. Utilities shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with, Utilities' Wastewater System within Amara and will comply with all applicable federal, state, and local laws and regulations.
 - b. At all times, Utilities shall cause all wastewater originating from within Amara, which is discharged directly or indirectly into District's Wastewater Collection System to comply with all of Utilities' wastewater standards, permits, policies, and requirements, including, but not limited to, safety and health requirements.
 - c. Utilities' Wastewater System within Amara shall collect only from separate sanitary sewer systems and there shall be no combined sanitary and stormwater systems or stormwater systems connected to Utilities' Wastewater System within Amara.
 - d. Utilities will require all customers connected to Utilities' Wastewater Collection System within Amara to comply with all of Utilities' industrial pretreatment requirements.
8. District's Responsibilities.
 - a. For the term of this Agreement, District will provide wholesale wastewater service to Utilities as established herein.
 - b. District will permanently allocate treatment and conveyance capacity to Utilities upon the payment of the fees described in Section [X] in proportion to the fees paid.
 - c. Unless otherwise agreed to by the Parties, District is responsible to construct conveyance and treatment capacity needed to serve the Amara development.
9. Reusable Return Flows. Utilities will retain dominion, ownership, title, and control of treated

reusable water effluent resulting from wastewater discharged by Utilities into District's Wastewater Treatment System for treatment.

Article II
Improvements/Connection to Utilities' Wastewater Treatment System

1. Point(s) of Connection of Utilities to District's Wastewater Treatment System. Utilities shall deliver its wastewater from Utilities' Wastewater System within Amara to District's Wastewater Treatment System at the point(s) of connection located within the master meter wastewater metering vault depicted on Exhibit [X] and any other location agreed to by the Parties in writing. Utilities shall ensure these connection points, and all other approved new, modified or abandoned connections to District's Wastewater Treatment System, shall be made in accordance with Utilities' Wastewater Line Extension and Service Standards.
2. Utilities' Wastewater System within Amara. Utilities will ensure that Utilities' Wastewater System within Amara and all customer connections thereto is designed, installed, constructed, maintained, repaired, and operated in accordance with Utilities' Wastewater Line Extension and Service Standards, Tariffs, Utilities Rules and Regulations and City Code, including all responsibilities for costs of such System.
3. Wastewater Discharge Meters. Utilities will coordinate with District in the design and installation of all wastewater discharge meters that record the amount of wastewater delivered to District's Wastewater Treatment System by Utilities.

Article III
Dispute Resolution and Remedies

1. Regulatory Penalties. Each Party will be responsible for any regulatory penalties incurred due to its own actions.
2. Breach of Agreement. Upon any breach of this Agreement by one of the Parties, the affected Party shall have the immediate right to initiate dispute resolution.
3. Dispute Resolution. In the event of a breach of this Agreement or a dispute between the Parties related to this Agreement, the following procedure will apply:
 - a. The Parties shall hold a meeting attended by persons with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution. The meeting shall be held promptly, but in no event later than fourteen (14) calendar days after an initial written notice of the dispute by one of the Parties to the other. Such meeting shall not be deemed to reduce or eliminate the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled, unless otherwise agreed to by the Parties in writing.
 - b. If, within fourteen (14) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding

mediation and to bear equally the costs of the mediation.

- c. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within ten (10) calendar days, they shall each select a mediator. The two mediators will then appoint, within five (5) calendar days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the Parties.
 - d. The Parties will schedule the mediation for a date within thirty (30) calendar days after selection of the mediator(s). The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days after the mediation. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to seek other judicial relief.
 - e. If undue prejudice would be caused by delay, a Party may seek a preliminary injunction or other judicial relief if, in the judgment of that Party, such action is necessary to avoid irreparable damage or to preserve the status quo. Despite the initiation of such judicial proceedings the Parties will continue to participate in good faith in the procedures specified in this section.
4. Mutual Termination. The Parties agree and acknowledge that this Agreement may be terminated by the mutual agreement of the Parties in writing for any reason whatsoever according to terms and conditions for such termination set forth in Section 6, below, and agreed upon by the Parties.
 5. Termination for Default by Either Party. In the event either Party is in default of its obligations under this Agreement, the non-defaulting Party may issue a notice of default to the other Party demanding that the other Party cure the default within a reasonable period of time based on the nature of the default. For defaults involving a failure to pay sums due under this Agreement, the defaulting Party shall make all required payments within forty-five (45) days of receiving the notice of Default. In the event the defaulting Party fails to cure the default as set forth herein, the non-defaulting Party may provide notice of its intent to terminate, subject to the terms and conditions for such termination set forth in Section 6, below.
 6. Effect of Termination. Upon mutual termination of the Parties or for default by either Party, District will transfer and convey to Utilities by bill of sale all conveyance and treatment capacity for which connection charges and fees have been paid under this Agreement by Utilities at no additional charge. All outstanding charges owed by Utilities to District are due and payable prior to the disconnection of service. If all outstanding charges owed by Utilities to District are not paid prior to disconnection, Utilities' obligation to make full payment shall survive termination of this Agreement. District shall also convey to Utilities all real property interests needed for Utilities to utilize the conveyance and treatment capacity transferred by District to Utilities under this Section.
 7. Enforcement of Rights. Nothing herein shall prevent either Party from enforcing its rights under

this Agreement by an appropriate legal or equitable action upon completion of the dispute resolution process set forth herein.

Article V
Miscellaneous

1. Periodic Review of Agreement. Periodically, the Parties may review and determine if revisions to this Agreement are necessary to ensure compliance with applicable Federal, State and local laws, rules and regulations and agree to cooperate in the preparation, execution, and implementation of any revisions deemed necessary as a result of such review.
2. Representatives and Notice. All notices, reports and submittals required by this Agreement shall be in writing, signed by an authorized representative of the Party providing the notice, report or submittal and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid, return receipt requested, as follows:
 - a. For Utilities:

System Extensions Manager
Colorado Springs Utilities
Address
Phone
Email

With a copy to:
City of Colorado Springs
City Attorney's Office – Utilities Division Chief
 - b. For District:

[Point of Contact and information]
3. Force Majeure. Neither Party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligation hereunder due to causes or conditions beyond its reasonable control, including strikes, riots, wars, floods, fires, explosions, global pandemics, epidemics, acts of nature, acts of government, labor disturbances, or if such performance would be prohibited or limited by any federal, state, or local law, rule, regulation, order or directive.
4. Waiver. No waiver by either Party of any terms or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

5. Liability and Governmental Immunity Act. Each Party shall be responsible for its own negligence. Neither Party waives the benefits or obligations afforded it by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*
6. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to District and Utilities, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. It is the express intention of District and Utilities that any person other than District or Utilities receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
7. Appropriation of Funds. Performance of Utilities' obligations under this Agreement is expressly subject to the limitations of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligations of Utilities which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate, subject to the provisions of Article IV, Section 6, this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by Utilities.
8. No Precedent; Severability. The Parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future agreement, nor vest any rights in either Party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining Agreement provisions shall continue to be binding upon the Parties who agree that this Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.
9. Assignment. There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party, and any such assignment shall be null and void. Nothing herein contained, however, shall be construed as preventing the reorganization of any Party hereto nor as preventing any other body corporate and politic succeeding to the rights, privileges, powers, immunities, liabilities, disabilities and duties of either Party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.
10. Compliance with Laws and Regulations. This Agreement and the rights and obligations of the

Parties hereunder shall be subject to all applicable laws, orders, court decisions, directives, rules, and regulations of any duly constituted governmental body or official having jurisdiction. Nothing contained in the Agreement, however, shall require either Party hereto to comply with any law, the validity of applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings.

11. Governing Law, Jurisdiction and Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws, the Colorado Springs City Charter, and the City Code. In the event of litigation, this Agreement shall be enforceable by or against the City on behalf of Utilities as provided in City Code § 12.1.109. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado and, if necessary, for exclusive federal questions, the United States District Court for the District of Colorado. The Parties acknowledge that each Party is subject to and will comply with the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.*
12. Entire Agreement; Modifications to be in Writing. This Agreement with attachments constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. This Agreement may only be amended by a written agreement signed by both Parties. E-mail and all other electronic (including voice) communications from the Parties in connection with this Agreement are for informational purposes only. No such communication is intended by either Party to constitute either an electronic record or an electronic signature, or to constitute any agreement by the Parties to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this ____ day of _____, 2022.

COLORADO SPRINGS UTILITIES

FOUNTAIN SANITATION DISTRICT

By: _____

By: _____

Name: _____

Name: _____

Title: [Insert]

Title: _____

Date: _____

Date: _____

Approved as to form: _____

DRAFT

Exhibit A
To the
Wastewater Service Agreement
Between
Colorado Springs Utilities
And
Fountain Sanitation District

DRAFT

Exhibit B
To the
Wastewater Service Agreement
Between
Colorado Springs Utilities
And
Fountain Sanitation District

DRAFT

Carleo, Katie

From: Jonathan Moore <jonathanm@fsd901.org>
Sent: Wednesday, March 23, 2022 12:21 PM
To: Carleo, Katie
Cc: Jim Heckman
Subject: Amara Annexation

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected email!

Katie,

At this point in the process, Fountain Sanitation District (FSD) objects to the Amara Annexation as the proposed area falls within Fountain Sanitation District service boundary, and there is no way for CSU to provide sanitary sewer services to this area without FSD assistance. FSD and CSU are working on a service agreement, but that agreement has not yet been finalized.

Please contact me with any questions you might have.

Thanks.

Jonathan Moore PE, District Engineer



11545 Link Road
Fountain, CO 80817
(719) 382-5303 (work), (719) 964-6654 (cell)
Office Hours: 7:00AM to 4:00PM
www.fountainsanitation.com

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