

**RESOLUTION NO. 86-15**

**A RESOLUTION SEEKING INCLUSION OF A PORTION OF THE CITY OF COLORADO SPRINGS, COLORADO, INTO THE LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT AND AUTHORIZING THE PRESIDENT OF CITY COUNCIL TO EXECUTE AND COLORADO SPRINGS UTILITIES TO SUBMIT A PETITION FOR INCLUSION TO THE LOWER FOUNTAIN METROPOLITAN SEWAGE DISPOSAL DISTRICT.**

**WHEREAS**, the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"), on behalf of its enterprise, Colorado Springs Utilities, is eligible for inclusion in the Lower Fountain Metropolitan Sewage Disposal District (the "District") upon consent of the City Council of the City ("City Council") and the consent of the Board of Directors of the District, pursuant to s. 32-4-513, C.R.S.; and

**WHEREAS**, the City Council has determined that it is necessary and in the best interests of the citizens of the City of Colorado Springs and ratepayers of Colorado Springs Utilities to ensure the public health, safety, and general welfare of the City to include a portion of the City within the District for purposes of providing wastewater collection, treatment, and disposal services; and

**WHEREAS**, the portion of the City for which inclusion will be requested consists of the those portions of the City of Colorado Springs within the Jimmy Camp Creek Wastewater Basin that are identified the petition for inclusion attached hereto as Attachment "A" to this Resolution ("Inclusion Area"); and

**WHEREAS**, the City Council by this Resolution formally requests, on behalf of its enterprise, Colorado Springs Utilities, that the Board of Directors of the District determine the feasibility of providing wastewater service to the Inclusion Area with District facilities; and

**WHEREAS**, additional details regarding the proposed inclusion are further set forth in the attached petition for inclusion.

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

Section 1. The City Council hereby authorizes the President of City Council to sign the petition for inclusion attached hereto as Attachment "A", and incorporated herein by reference, on behalf of the City and its enterprise, Colorado Springs Utilities, and further authorizes Colorado Springs Utilities to submit the petition for inclusion to the Lower Fountain Metropolitan Sewage Disposal District Board of Directors.

Section 2. The City Council hereby formally requests, on behalf of its enterprise, Colorado Springs Utilities, that the District Board of Directors include that

portion of the City of Colorado Springs identified in the petition for inclusion within the District's service area and that the City of Colorado Springs be included as a member of the District in accordance with District policy and Colorado law.

Section 3. The City Council consents to inclusion into the District subject to City Council approval of the District's terms and conditions for inclusion by ordinance.

Dated at Colorado Springs, Colorado, this 8th day of September, 2015.



Merv Bennett, Council President

ATTEST:



Sarah Johnson, City Clerk





MERV BENNETT  
CITY COUNCIL PRESIDENT

September 23, 2015

Bobby Phillips  
President, Board of Directors  
Lower Fountain Metropolitan Sewage Disposal District  
901 South Santa Fe Avenue  
Fountain, Colorado 80817

Re: Petition for Inclusion of a Portion of the City of Colorado Springs into the Lower Fountain Metropolitan Sewage Disposal District

Dear Mr. Phillips:

This petition is being provided on behalf of Colorado Springs Utilities in accordance with the Policy Regarding Inclusion (“Inclusion Policy”) adopted by the Lower Fountain Metropolitan Sewage Disposal District (“District”) to formally request inclusion of a portion of the City of Colorado Springs (“City”) into the Lower Fountain Metropolitan Sewage Disposal District’s (“District”) service area and membership of the City in the District. In support of this petition, please find the following information required by Section V of the Inclusion Policy.

1. Attached as Appendix “A” is copy of Colorado Springs City Council Resolution No. 86-15 Seeking Inclusion into the District adopted by the City Council of the City of Colorado Springs, on behalf of its enterprise, Colorado Springs Utilities, on September 9, 2015.

2. Attached as Appendices “B” and “C” are a map and description identifying the portion of the City for which the City Council is requesting inclusion into the District. This area includes that portion of the Jimmy Camp Creek Wastewater Basin identified in red in the map attached as Appendix B that is currently within the corporate boundaries of the City of Colorado Springs (also identified in Appendix B). Additionally, the City wishes to request inclusion in advance for areas currently outside of the City limits that are included within the red boundary and may be annexed into the City in the future. Notwithstanding the boundaries of the proposed inclusion area, the City and its enterprise, Colorado Springs Utilities, reserve the right to provide wastewater service to parcels within the inclusion area through other City-owned wastewater facilities and to govern the manner in which wastewater service is provided to properties within its wastewater service territory.

3. The total anticipated volume of wastewater the City proposes to deliver to the District’s System per year, assuming an expected growth rate of 100 single family equivalents per year and a maximum growth rate of 200 single family equivalents per year, is anticipated to be between 18,000 and 36,000 gallons per day average daily wastewater flow in the first year, and an additional equivalent amount in future years until build-out. The first 198,000 gallons per

day will receive interim wastewater service from Colorado Centre Metropolitan District (“CCMD”) using CCMD’s capacity in the District facilities until such time as Colorado Springs Utilities begins providing service in accordance with the Interim Service IGA (described below).

4. As outlined in the Amended and Restated Intergovernmental Agreement for Water and Wastewater Distribution and Wastewater Collection, Treatment, and Disposal (“Interim Service IGA”), approved by City Council on June 9, 2015 and executed on July 7, 2015, and attached hereto as Appendix “D”, the City, on behalf of Colorado Springs Utilities, will acquire 198,000 gpd of wastewater capacity from CCMD in the CCMD wastewater interceptor that currently connects to the District’s system, and an equivalent interest in the District’s facilities, subject to District approval. Colorado Springs Utilities will connect to the District’s system at the current interconnection with the CCMD interceptor. This “connection” will occur at the time Colorado Springs Utilities takes over wastewater service of the customers being provided interim wastewater service by CCMD and is anticipated to happen approximately 10-11 years in the future.

5. At this time, Colorado Springs Utilities does not anticipate connecting any new interceptor facilities to the District’s system for at least ten years.

6. Assuming a rate of development within the Lower Banning Lewis Ranch area, consisting of the bottom half of the Inclusion Area, of approximately 100 single family equivalent units per calendar year, it is expected that Colorado Springs Utilities will connect to the District’s system within ten to eleven years.

7. Contact information for persons representing Colorado Springs Utilities with respect to this request:

Brian Whitehead  
Interim Systems Extensions Manager  
Colorado Springs Utilities  
P.O. Box 1103, Mail Code 1812  
Colorado Springs, CO 80947-1812  
Phone: (719) 668-8261  
Email: bwhitehead@csu.org

With a copy to:

Bethany A. Burgess  
Senior Attorney  
Office of the City Attorney  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575  
Email: bburgess@springsgov.com

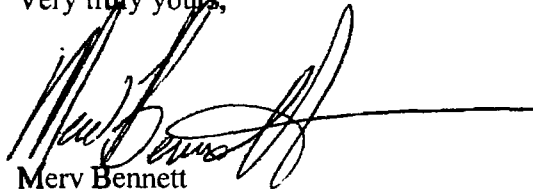
8. Included with this petition is a check made payable to the District for application and review fees, a portion of which may be refunded in the event the full amount is not used by the District in reviewing the petition.

In addition to the information referred to above, the City, on behalf of Colorado Springs Utilities, submits this petition because it has determined that provision of wastewater service to the Inclusion Area by the District is the most logical service solution to this part of the City. It is believed that inclusion stands to serve the best interests of the members of the District as well as the City and its utility ratepayers.

Lastly, upon consideration of and approval of the request for inclusion by the District, the Utilities further respectfully requests that the District Board of Directors proceed with consideration and approval of a resolution of the District approving the sale and conveyance of 198,000 gpd of wastewater capacity in the District's facilities by and from CCMD to Colorado Springs Utilities to be effective at the time Colorado Springs Utilities takes over wastewater service of the customers being provided interim wastewater service by CCMD pursuant to the Interim Service IGA.

Colorado Springs Utilities looks forward to your response and appreciate the District's consideration of this petition. If you require any further information to facilitate the feasibility study for inclusion of the Inclusion Area into the District and membership of the City, please do not hesitate to forward any requests for additional information to the persons identified above.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Merv Bennett', with a long horizontal line extending to the right.

Merv Bennett  
Council President, City of Colorado Springs

CC: Jim Heckmann, Manager, Lower Fountain Metropolitan Sewage Disposal District  
Tyler Allison, Interim Chief Water Services Officer, Colorado Springs Utilities  
Brian Whitehead, Interim Systems Extensions Manager, Colorado Springs Utilities

**APPENDIX "A"**

**CITY COUNCIL RESOLUTION NO. 86-15**

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**WHEREAS**, the City Council has determined that it is necessary and in the best interests of the citizens of the City of Colorado Springs and ratepayers of Colorado Springs Utilities to ensure the public health, safety, and general welfare of the City to include a portion of the City within the District for purposes of providing wastewater collection, treatment, and disposal services; and

**WHEREAS**, the portion of the City for which inclusion will be requested consists of the those portions of the City of Colorado Springs within the Jimmy Camp Creek Wastewater Basin that are identified the petition for inclusion attached hereto as Attachment "A" to this Resolution ("Inclusion Area"); and

**WHEREAS**, the City Council by this Resolution formally requests, on behalf of its enterprise, Colorado Springs Utilities, that the Board of Directors of the District determine the feasibility of providing wastewater service to the Inclusion Area with District facilities; and

**WHEREAS**, additional details regarding the proposed inclusion are further set forth in the attached petition for inclusion.

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Section 1. The City Council hereby authorizes the President of City Council to sign the petition for inclusion attached hereto as Attachment "A", and incorporated herein by reference, on behalf of the City and its enterprise, Colorado Springs Utilities, and further authorizes Colorado Springs Utilities to submit the petition for inclusion to the Lower Fountain Metropolitan Sewage Disposal District Board of Directors.

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portion of the City of Colorado Springs identified in the petition for inclusion within the District's service area and that the City of Colorado Springs be included as a member of the District in accordance with District policy and Colorado law.

Section 3. The City Council consents to inclusion into the District subject to City Council approval of the District's terms and conditions for inclusion by ordinance.

Dated at Colorado Springs, Colorado, this 8th day of September, 2015.



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Merv Bennett, Council President

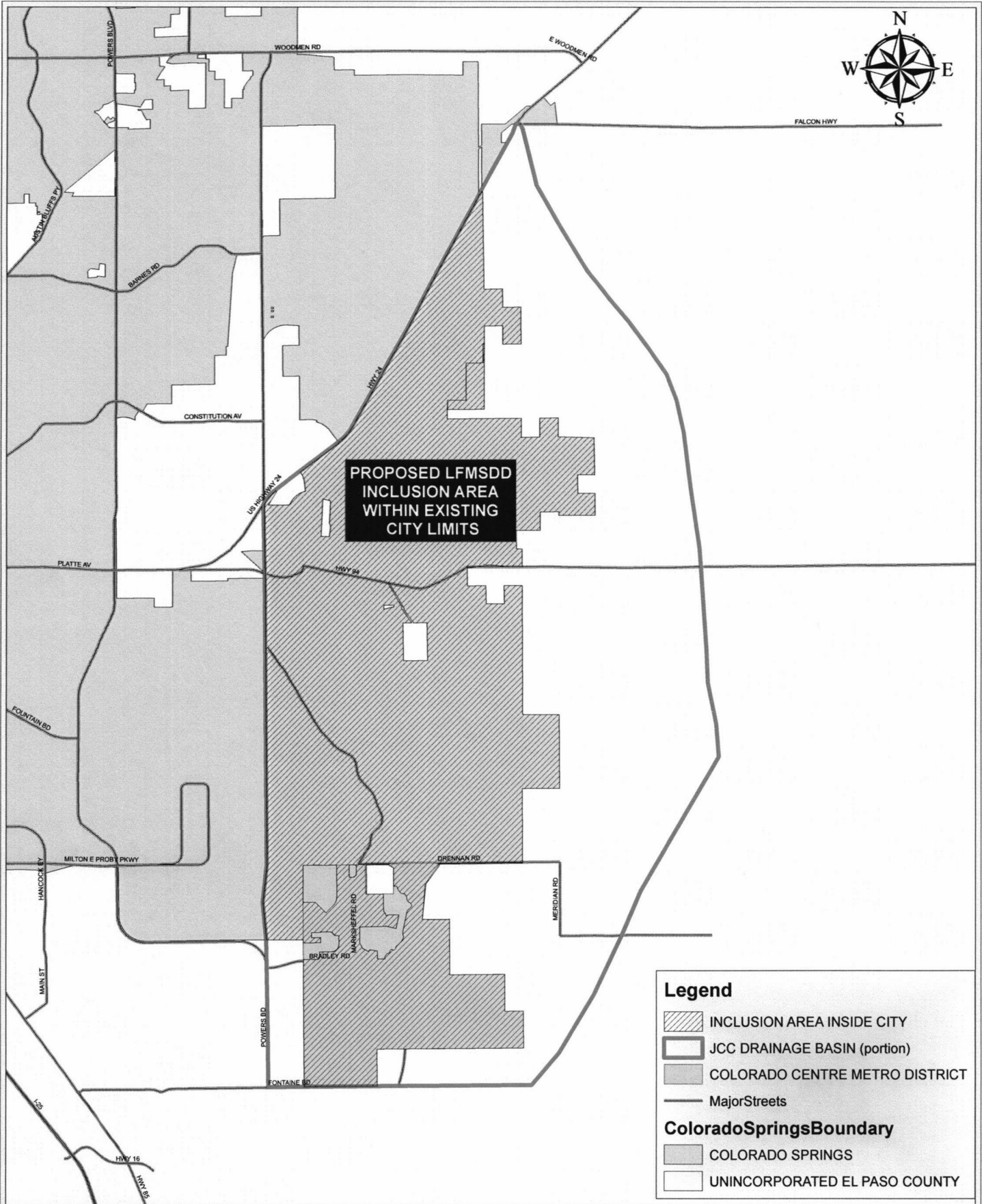
ATTEST:



Sarah Johnson, City Clerk



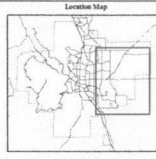
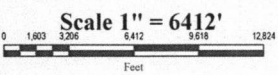




**PROPOSED LFMSDD  
INCLUSION AREA  
WITHIN EXISTING  
CITY LIMITS**

- Legend**
- INCLUSION AREA INSIDE CITY
  - JCC DRAINAGE BASIN (portion)
  - COLORADO CENTRE METRO DISTRICT
  - Major Streets
- Colorado Springs Boundary**
- COLORADO SPRINGS
  - UNINCORPORATED EL PASO COUNTY

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



**APPENDIX 'B'**  
**PROPOSED LFMSDD INCLUSION AREA**

**JULY 2015**

Plot File Created: 06/15/2015

State Plane Coordinates Horizontal Datum: Central CO Zone - NAD83 Vertical Datum: NAVD83 - US Survey Feet

## **APPENDIX "C"**

### **DESCRIPTION OF INCLUSION AREA**

A portion of the City of Colorado Springs to include:

All land parcels within the City of Colorado Springs as of July, 2015, that are located both: south and east of US Highway 24 and within the land area annexed by the Annexation Agreement recorded at Book 5557, Page 405 in the El Paso County Clerk and Recorders office (aka the 1988 Banning Lewis Ranch Annexation Agreement); including those existing City land parcels situated in:

T13S R65W Section 23, 25, 26, 27, 34, 35, and 36;

T14S R64W Sections 6 and 7;

T14S R65W Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36;

T15S R65W Sections 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, and 16;

and excluding those existing City land parcels situated in T13S R65W Section 12.

**APPENDIX "D"**

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

**BETWEEN**

**COLORADO CENTRE METROPOLITAN DISTRICT**

**AND**

**THE CITY OF COLORADO SPRINGS, COLORADO**

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

This Amended and Restated Intergovernmental Agreement for Water Distribution and Wastewater Collection, Treatment, and Disposal ("Agreement") is entered into this 7<sup>th</sup> day of July, 2015 ("Effective Date") by and between the City of Colorado Springs, a home rule municipality ("City") on behalf of its enterprise, Colorado Springs Utilities ("Utilities"), and the Colorado Centre Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado ("CCMD"). In this document, City, Utilities, and CCMD may each be referred to individually as "Party" or jointly as "Parties."

**RECITALS**

**WHEREAS**, on August 11, 2009, the Parties entered into that certain Intergovernmental Agreement for Water Distribution and Wastewater Collection, Treatment, and Disposal ("Original Agreement"), under which the City and Utilities authorized CCMD to provide Interim water and wastewater service under the terms specified therein; and

**WHEREAS**, the Original Agreement is insufficient for the Parties and the Individual Plan Owners to complete all necessary activities required for Conversion and requires revision; and

**WHEREAS**, due to economic conditions beyond the control of the Parties, development activities within the Interim Service Territory have not occurred at the rate anticipated in the Original Agreement; and

**WHEREAS**, the City and Utilities are willing to allow CCMD to continue Interim water and wastewater service as detailed herein; and

**WHEREAS**, CCMD is willing to provide potable water service and accept wastewater through its wastewater collection and treatment systems for final treatment and disposal at the LFMSDD Treatment Plant, under the terms and conditions set forth below; and

**WHEREAS**, one Individual Plan Owner is currently receiving Interim service from CCMD pursuant to the Original Agreement and its Individual Plan shall remain in full force and effect under this Agreement; and

**WHEREAS**, the Parties recognize that development within the Interim Service Territory both during and after the Term of this Agreement will benefit both Parties; and

**WHEREAS**, the Parties agree that it is in the best interests of each to approve this amended and restated Agreement to revise and replace the Original Agreement.

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

## **AGREEMENT**

### **I. DEFINITIONS**

Terms not otherwise defined herein shall have the meaning consistent with that used in standard industry practice.

- A. "CCMD Connection Fees"** means all applicable fees and charges assessed by CCMD prior to CCMD approval of each new Interim service connection to be served by CCMD pursuant to this Agreement.
- B. "CCMD Interceptor"** means the wastewater pipeline more specifically identified in Exhibit E-1 attached hereto, utilized by CCMD to transfer wastewater from CCMD's service territory to the LFMSDD Facilities.
- C. "Conversion"** means (1) the conversion of each Interim Customer's water and wastewater service from CCMD to Utilities' permanent water and wastewater service after all necessary Utilities water and wastewater system extensions and connections, including but not limited to the extensions shown in Exhibit F, have been completed in accordance with the Service Agreement(s) or the Individual Plan(s), and the simultaneous termination of CCMD Interim water and wastewater service; and (2) the conveyance to Utilities of the Interim Water Distribution System and/or the Interim WW

Collection System, or, at Utilities' discretion, any part of such system(s), and CCMD's conveyance to Utilities of capacity and an ownership interest in the CCMD Interceptor and Utilities' acquisition of capacity in the LFMSDD Facilities for which all CCMD fees have been paid. Conversion shall be completed pursuant to the applicable terms and conditions of this Agreement, including Sections IV.F., V., and VI.B., and shall apply only to SFEs for which all CCMD fees have been paid.

- D. "First Responder Fee"** means the monthly fee adopted by CCMD Resolution No. 2009-04-23.1, as amended, with regard to first responder services applicable to all CCMD customers.
- E. "gpd"** means gallons-per-day.
- F. "Individual Plan"** means an Interim Water Distribution System and/or an Interim WW Collection System plan identifying Interim connection locations, payment requirements, and related details concerning interconnection to CCMD and Conversion and other obligations for a specific area receiving Interim service pursuant to this Agreement. Each such Individual Plan shall be approved by the Parties and incorporated herein by reference. An example of an Individual Plan is attached hereto as Exhibit G.
- G. "Individual Plan Owner"** means the individuals or entities having obligations under an Individual Plan, or an entity or individual to whom such obligations are assigned. CCMD agrees that the assignment of obligations of the Individual Plan Owner may be approved by Utilities in accordance with the Service Agreement(s).
- H. "Industrial User"** shall have the definition: (i) as provided in the Code for the City of Colorado Springs, section 12.5.201, as may be amended from time to time, (ii) as provided for any industrial users subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR chapter I, subchapter N, and for CCMD customers, shall also mean any other industrial user that:
- (1) Discharges an average of 25,000 gpd or more of process wastewater to CCMD's wastewater treatment system (excluding sanitary non-contact cooling and boiler blowdown wastewater);

- (2) Contributes a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of CCMD's wastewater treatment system; or
- (3) Is designated as such by CCMD on the basis that the industrial user has a reasonable potential for adversely affecting CCMD's wastewater treatment system or for violating any pretreatment standard or requirement.
- I. **"Interim"** means the time period during which Interim Customers receive water and wastewater service from CCMD, which period shall continue until Utilities assumes the responsibility to provide permanent water and wastewater service to such customers upon Conversion.
- J. **"Interim Customer"** means the party designated on CCMD's records, as may be updated from time to time, as receiving Interim service pursuant to this Agreement.
- K. **"Interim Capacity Limit"** means the total amount of Interim water or wastewater system capacity available for all Individual Plan Owners in the Interim Service Territory as detailed in Section IV.E.
- L. **"Interim Service Territory"** means the geographic area within the City and within areas approved by CCMD to receive Interim water and wastewater service from CCMD pursuant to this Agreement as more fully described and depicted in Exhibit C of this Agreement; the Interim Service Territory may also be referred to as the LJCC Basin.
- M. **"Interim WW Collection System"** means (i) all wastewater collection system mains and appurtenances connecting CCMD's existing wastewater system to Interim Customers' wastewater service lines pursuant to this Agreement; and (ii) all devices, facilities, structures, equipment or works installed or utilized for the purpose of providing for the collection of wastewater from the Interim Customers at the point of connection to the CCMD wastewater collection system.
- N. **"Interim Water Distribution System"** means (i) all water distribution mains and appurtenances connecting CCMD's existing water system to Interim Customers' water service lines pursuant to this Agreement; and (ii) all devices, facilities, structures, equipment, or works installed or utilized for the

purpose of providing Interim water service to Interim Customers at the point of connection to the CCMD water distribution system.

- O. "LFMSDD"** means the Lower Fountain Metropolitan Sewage Disposal District, a Metropolitan District organized under Title 32 of the Colorado Revised Statutes.
- P. "LFMSDD Facilities"** means all facilities and appurtenances owned and operated by LFMSDD, including, but not limited to, the LFMSDD Interceptor and the LFMSDD Treatment Plant.
- Q. "LFMSDD Interceptor"** means the wastewater interceptor and appurtenances owned and operated by LFMSDD that deliver wastewater flows to the LFMSDD Treatment Plant.
- R. "LFMSDD Treatment Plant"** means the Lower Fountain Metropolitan Sewage Disposal District's Harold D. Thompson Regional Water Reclamation Facility.
- S. "mgd"** means million gallons per day.
- T. "NWQ Area"** means the northwest quadrant of CCMD's service territory identified and described in Exhibit D.
- U. "NWQ Facilities"** means the CCMD-owned wastewater and water pipeline facilities and appurtenances generally located in the NWQ Area and other areas of CCMD, and which are more fully identified and described in Exhibits E-1 and E-2.
- V. "Service Agreement"** means the Facilities Participation, Utilization, and Service Agreement entered into by and between Utilities, any developer, and the Bradley Heights Metropolitan District #1 or other district or entity as approved by Utilities, that further defines the terms and conditions for Interim service and the obligations and responsibilities for Conversion. Except for the existing Interim Customer as of the Effective Date, Interim Customers must be included within a Service Agreement to receive Interim service through this Agreement.
- W. "Service Contract"** means the contract executed by Utilities' customers prior to obtaining utility service as defined in Utilities' Regulations.



- X. "SFE"** means "Single Family Equivalent," or the meter size Utilities determines is necessary for a residential, single-family connection to Utilities' water or wastewater system. For purposes of this Agreement and any Individual Plan, one (1) SFE shall be defined as a single residential connection having an average day water use rate based on the water flow rate of 300 gpd through a three-fourths inch (3/4") water meter and having wastewater discharges of 180 gpd average flow. Non-residential service, multi-family, and meters larger than 3/4" will be identified as a ratio or multiple of one SFE as shown in Exhibit B.
- Y. "Utilities' Fees"** means any applicable fees and charges required pursuant to Utilities' Regulations for new connections to Utilities' systems which, pursuant to this Agreement, shall be paid at the time of issuance of a building permit.
- Z. "Utilities' Regulations"** means any applicable Utilities' regulations, policies, or standards, including, but not limited to, the applicable Line Extension and Service Standards for a given utility service, Utilities' tariffs, and the Utilities Rules and Regulations, all as may be amended from time to time.

## II. TERM

CCMD's Interim service obligations set forth in this Agreement shall be in full force and effect and shall be binding upon the Parties hereto from the Effective Date until such time as: (1) the Agreement is terminated by Utilities for convenience; (2) upon completion of successful Conversion of all Interim Customers; or (3) no later than one (1) year after the date that the Interim Capacity Limit is reached, provided, however, in no event shall this Agreement and CCMD's Interim service obligation terminate prior to successful Conversion of all then-existing Interim Customers. For the Individual Plan already in effect, such obligations shall continue from the effective date of the Original Agreement until such time as this Agreement is terminated. Upon termination of this Agreement, CCMD shall have no further legal obligation to serve any Individual Plan Owner or any Interim Customer.

**III. GENERAL PROVISIONS**

- A. Area Served.** This Agreement shall apply to the Interim Service Territory as such area may be amended by the Parties in accordance with the provisions of this Agreement.
- B. Interim Service.** CCMD shall provide Interim water service to the Interim Customers through the connection of the Interim Water Distribution System to CCMD's water system. Also, CCMD shall provide Interim wastewater service to the Interim Customers through the connection of the Interim WW Collection System to CCMD's wastewater collection system, which in turn delivers wastewater into CCMD's Interceptor and beyond to the LFMSDD Facilities connected thereto for treatment and disposal. Interim service shall continue until completion of Conversion when each Interim Customer shall be disconnected from CCMD's water and wastewater systems and shall become permanent customers of Utilities via connections to Utilities' water and wastewater systems. Thereafter, Utilities shall provide permanent water and wastewater system capacity for all former Interim Customers post-Conversion in accordance with Utilities' Regulations. Such capacity will be available on a first-come, first-served basis in accordance with Utilities' Regulations and no reservation of capacity shall occur until an Interim Customer's application for service and payment of all Utilities Fees are accepted and approved by Utilities.
- C. Separate Wastewater Lines.** Only wastewater from separate wastewater lines (i.e. not connected to storm water systems or combined wastewater and storm water systems) shall be discharged into CCMD's wastewater collection and treatment system.
- D. Treated Effluent.** Except as provided in Section III.F.3., CCMD shall retain dominion, ownership, title, and control of treated reusable water effluent resulting from wastewater discharged by any Interim WW Collection System to CCMD's wastewater collection and treatment system until Conversion. After Conversion, Utilities shall retain dominion, ownership, title, and control of any and all water supplied by Utilities to Utilities' customers and effluent resulting from wastewater discharges from Utilities' customers.

**E. Operation and Maintenance and Utilities' Condition Assessment and Inspections.**

1. CCMD shall own, operate, and maintain the NWQ Facilities and all approved Interim Water Distribution Systems and Interim WW Collection Systems for Interim service until Conversion. Such facilities shall be maintained in a manner that complies with Utilities' Regulations for maintenance. Prior to performing any repairs or modifications to the Interim Water Distribution Systems, the Interim WW Collection Systems, and the NWQ Facilities that are expected to be conveyed to Utilities upon Conversion, CCMD shall give Utilities advance notice of the need for such repairs or modifications and shall further provide Utilities with an opportunity to inspect and advise CCMD, as necessary, regarding such repairs prior to completion of the repairs.
2. Following execution of this Agreement and thereafter, with 48-hours' prior notice to CCMD, Utilities may perform periodic condition assessments of the Interim Water Distribution System, the Interim WW Collection System, and the NWQ Facilities, at Utilities' sole cost and discretion. Additionally, within 180 days prior to Conversion, Utilities at its sole cost may conduct a final condition assessment of the Interim Water Distribution System, the Interim WW Collection System, and the NWQ Facilities.
3. In the event Utilities performs an inspection or condition assessment and determines that repairs or modifications to such facilities are not acceptable, Utilities shall so notify CCMD and the Parties shall coordinate to determine whether additional repairs or modifications are required.

**F. Use of Groundwater Diversions and Replacements.**

1. Under the water agreement between the Parties dated March 14, 1995, which allocates groundwater diversions and replacement obligations for the Jimmy Camp Creek Wells ("1995 Agreement"), Utilities has the right to divert up to 1200 acre-feet of Jimmy Camp Creek groundwater per year. As partial consideration for CCMD's provision of Interim water and wastewater service hereunder, Utilities shall make available to CCMD up to 370 acre-feet per year of Utilities' Jimmy Camp Creek groundwater diversion rights ("Diversion Rights") during the term of this Agreement.

2. Under the 1995 Agreement, Utilities also has the right to replace up to 400 acre-feet per year of groundwater depletions resulting from its Jimmy Camp Creek groundwater diversions to Fountain Creek. To assist CCMD with covering depletions associated with the pumping of the Diversion Rights for the Interim Customers under this Agreement, Utilities shall make available to CCMD up to 370 acre-feet per year of Utilities' replacement rights ("Replacement Rights") during the term of this Agreement. Utilities will also make available to CCMD up to 370 acre-feet per year of replacement water available to it on Fountain Creek to effect CCMD's replacements of diversions associated with CCMD's use of the Diversion Rights and Replacement Rights to serve the Interim Customers ("Replacement Water"). CCMD shall provide Utilities with an annual schedule of delivery for the Replacement Water. CCMD shall also be responsible for incorporating any Replacement Water provided by Utilities into CCMD's applicable augmentation plan(s) and for obtaining any approvals necessary for CCMD's use of the Diversion Rights and Replacement Rights. The Parties agree that CCMD's use of the Diversion Rights and Replacement Rights is consistent with CCMD's augmentation plans decreed in District Court, Water Division No. 2 Case Nos. 86 CW 31 and 07 CW 47 ("Decrees").
3. Utilities retains all return flows resulting from the augmentation replacement of metered deliveries to the Interim Customers per this Agreement, including both sewerage return flows and lawn irrigation return flows, as allowed by the Decrees and the Division 2 Engineer. To implement this provision, CCMD agrees to provide Utilities on a daily basis a volume of water from CCMD's discharges to Fountain Creek from the LFMSDD Treatment Plant that is equal to the volume of Replacement Water provided by Utilities minus the total actual depletions accruing to Fountain Creek as a result of indoor and outdoor use of the Interim Customers. Such volume of water shall be accounted for as Utilities water of the same water type as that of the replacement water Utilities delivers to CCMD per the provisions of Section III.F.2. above. CCMD shall account for and report to Utilities and the District 10 Water Commissioner on a daily basis the

volume of discharges from the LFMSDD Treatment Plant that CCMD is making available to Utilities under this Agreement.

4. During each month it provides Interim water service to Interim Customers, CCMD will invoice and collect from each Interim Customer the then-effective Utilities' in-city Augmentation Tariff Rate (which as of the Effective Date is equal to \$0.006/cf or \$261.36/AF), based on the volume of depletions of each Interim Customer. The volume of depletions will be calculated using accounting methods consistent with the depletion calculations found in CCMD's augmentation plans decreed in District Court, Water Division No. 2 Case Nos. 86CW31 and 07CW47 and actual metered water usage of each Interim Customer. In addition, as further consideration for use of the Diversion Rights and Replacement Rights, CCMD shall pay to Utilities a rate of \$30.00 per acre-foot for the amount of Diversion Rights and Replacement Rights actually used during each year or portion thereof, which amount may be broken down into a per gallon or per cubic foot charge calculated based upon actual metered water usage and collected monthly from the Interim Customers and other CCMD customers. In no event shall CCMD charge Interim Customers for Diversion Rights and Replacement Rights used to serve CCMD's other customers. CCMD will pay to Utilities all amounts collected hereunder for Replacement Water and for use of the Diversion Rights and Replacement Rights on a monthly basis within thirty (30) days of the end of each month in which the rates and charges are collected. Except for the two (2) year delay for replacement of depletions as specified in Section III.F.5., Utilities' provision of Replacement Water for Interim Customers will end at Conversion.
5. In addition, within sixty (60) days after the end of each calendar year, CCMD shall also provide to Utilities a written report that sets forth the amount of depletions resulting from its use of the Diversion Rights during the previous year and the date of withdrawals to be used to schedule the Replacement Water to Fountain Creek utilizing the Replacement Rights. CCMD shall be solely responsible for all accounting and reporting of all diversions under the Diversion Rights and replacement of depletions resulting therefrom to Fountain Creek under the Replacement Rights.

CCMD shall ensure such accounting and reporting is consistent with CCMD's existing plan(s) for augmentation or as otherwise approved by the Division 2 Engineer. The Parties acknowledge that under CCMD's augmentation plan decree in Case No. 86CW31 accounting for augmentation and replacement of depletions is effected on a two (2) year delay from the time the depletion occurs. For example, under this decree depletions that occurred in 2010 were replaced with augmentation credits in 2012. Therefore, Utilities will allow the Replacement Rights to be accounted for and credited by CCMD for up to two (2) years after termination of this Agreement to effect any augmentation and replacement required for CCMD's use of the Diversion Rights for Interim Customers if such use otherwise has not been fully augmented prior to this Agreement terminating.

6. Notwithstanding anything herein to the contrary, CCMD may charge the Interim Customers a 15% administrative charge on the amount invoiced to cover the costs associated with CCMD staff time devoted to invoicing the Interim Customers, fund transfers to Utilities, and all accounting and reporting associated with Interim Customer water use and augmentation requirements.

#### IV. CCMD SYSTEMS

- A. **CCMD Responsibility.** Prior to Conversion, CCMD shall be solely responsible for the permitting, operation, maintenance, and reporting associated with the Interim Water Distribution System(s) and the Interim WW Collection System(s), including but not limited to air emissions, spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency and the State of Colorado). CCMD shall provide written notice to Utilities of any sanitary sewer overflow arising from an Interim WW Collection System and shall maintain records of the operational history to include any as-built drawings, modifications, leaks, and repairs of the Interim WW Collection System and Interim Water Distribution System during the term of this Agreement. Such records or a copy of such records shall be provided to Utilities at Conversion.
- B. **Point(s) of Connection to CCMD.** Each Interim Water Distribution System shall connect to CCMD's water distribution system and each Interim WW Collection System shall connect and deliver

its wastewater to CCMD's wastewater collection system as indicated in the approved Individual Plan. Each Individual Plan Owner, at its sole cost and expense, shall design, construct, and install its portion of the Interim Water Distribution System and its portion of the Interim WW Collection System, as approved by CCMD and Utilities in the Individual Plan. The Individual Plan Owner's responsibility for such extensions and connections shall continue until such time as CCMD accepts such extensions as a part of its systems in accordance with CCMD's rules and regulations.

**C. CCMD Interim Customers.** Interim Customers shall be subject to CCMD's rules and regulations and any relevant CCMD policies adopted by resolution; and shall be served by, billed directly by, and solely responsible for all associated payments to CCMD for Interim water and wastewater service; and charged CCMD's rates applicable to CCMD customers, and charges, fees, including the First Responder Fee, and penalties, as may be adjusted by CCMD's Board of Directors, except as otherwise provided in this Agreement.

**D. CCMD Connection Fees.**

1. In addition to the rates, charges, and fees identified in Section IV.C., above, CCMD shall assess the CCMD Connection Fees, as amended from time to time. Such fees shall be paid by the Individual Plan Owner or Interim Customer prior to CCMD's approval of a request for CCMD Interim water and wastewater service. As of the Effective Date, the CCMD Connection Fees required for Interim service under this Agreement shall be as set forth in Exhibit A. Following Early Conversion, as defined in Section IV.F.3., below, CCMD Connection Fees shall be as provided in Section V.B. Once the CCMD Connection Fees are paid in full, CCMD shall issue a receipt for such fees to the paying entity, a copy of which receipt shall be provided to Utilities. In addition to the payment of the CCMD Connection Fees, the Individual Plan Owner shall pay to Utilities all Utilities' Fees required for connection to Utilities' water and wastewater systems at the time Utilities issues to the Individual Plan Owner or Interim Customer a Utilities' Service Contract, which is required prior to the issuance of a building permit; however, in no event shall

any Individual Plan Owner or Interim Customer receive Interim service from CCMD prior to payment of all Utilities' Fees.

2. Commercial, office and industrial Interim connections, if any, will be charged according to the appropriate sections of the CCMD rules and regulations then in effect. However, for purposes of this Agreement, water and wastewater demands for these types of connections shall be converted to an equivalent number of SFEs according to Exhibit B and will be included in the count to determine the Interim Capacity Limit set forth next in Section IV.E., of this Agreement.

**E. Commitment to Serve and Interim Capacity Limit.**

1. Upon the Effective Date of this Agreement, CCMD agrees to provide Interim service for up to 1,100 SFEs on a first-come, first-served basis until such time as Conversion is completed. As Individual Plans are approved and Interim Customers pay CCMD Connection Fees, CCMD shall reserve wastewater system capacity within the CCMD Interceptor and allocate capacity within the LFMSDD Facilities for purposes of Conversion up to the Interim Capacity Limit of 198,000 gpd average flow wastewater system capacity, which is equivalent to 1,100 SFEs for wastewater. Except as provided in Section V.B., such reserved capacity in the CCMD Interceptor and allocated capacity in LFMSDD Facilities shall not transfer to Utilities until Conversion.
2. Only after all CCMD Connection Fees and other CCMD fees are paid to CCMD, Utilities' Fees have been collected and approved by Utilities, and the necessary Interim Water Distribution Systems, Interim WW Collection Systems, and connections to CCMD systems are completed, shall CCMD commence and provide Interim water and Interim wastewater service to the Interim Customers.
3. Notwithstanding anything to the contrary provided herein, at no time will CCMD provide Interim water or wastewater service for more than the Interim Capacity Limit.
4. After Conversion, the CCMD Interceptor will jointly transmit wastewater discharges from CCMD's service territory and Utilities' wastewater discharges to the LFMSDD Facilities.

**F. CCMD Conveyance of Capacity.**



1. At Conversion, CCMD shall sell and convey by bill of sale to Utilities up to 198,000 gpd average flow wastewater system capacity and the associated ownership interest in the CCMD Interceptor necessary for Utilities to provide permanent wastewater service to all Interim Customers or SFE connections for which CCMD Connection Fees for Interim service have been paid.
2. In addition, at Conversion, CCMD shall convey by bill of sale to Utilities up to 198,000 gpd average flow wastewater system capacity in the LFMSDD Facilities necessary for Utilities to provide permanent wastewater service to all of the Interim Customers. The amount of such capacity conveyed to Utilities at Conversion will include the capacity and associated ownership interest, as applicable, required to provide wastewater conveyance and treatment for all Interim Customers for which CCMD Connection Fees for Interim service have been paid.
3. If Utilities proceeds with Conversion prior to the date that the Interim Capacity Limit is reached ("Early Conversion"), then as provided in Section V.B., below, CCMD shall sell and convey to Utilities, as applicable: (i) CCMD's wastewater capacity and associated ownership interest in the CCMD Interceptor, and (ii) capacity and associated ownership interest in the LFMSDD Facilities to Utilities.
4. Prior to the conveyance of capacity at Conversion under this Section, Utilities and CCMD shall enter into a separate agreement for operations, maintenance, and allocation of expenses of the CCMD Interceptor and the NWQ Facilities for wastewater.

**G. Industrial & Large Commercial Users.** No Industrial User located within the Interim Service Territory shall be permitted to connect with and/or discharge into CCMD's wastewater collection and treatment system without prior written consent of Utilities and CCMD, which may be withheld at Utilities' or CCMD's discretion, and no water users requiring four-inch (4") or larger water meters shall be permitted to connect to CCMD's water distribution system without the prior written consent of Utilities and CCMD, which may be withheld at either Party's discretion. Any Industrial User or other commercial user that CCMD allows to connect to CCMD's wastewater collection and treatment system shall comply with the LFMSDD rules and regulations, as applicable. Furthermore, CCMD

shall maintain the right to prohibit any connection to, or discharge into, CCMD's wastewater collection system of an Industrial User for compliance issues specified in CCMD, LFMSDD, or Utilities regulations.

- H. Prohibited Flows.** Utilities acknowledges that Interim WW Collection Systems shall be prohibited from contributing excess flows that cause or contribute to overflows, flooding or non-compliance with the LFMSDD Treatment Plant's Discharge Permit as issued. CCMD may demand that any violating Individual Plan Owner or Interim Customer shall, within a reasonable time after written notification from CCMD that flow demand exceeds existing system capacity, construct relief systems and necessary appurtenances. These relief facilities may be constructed on property owned by the violator or at other locations within CCMD's wastewater treatment system, as CCMD so directs.
- I. Payment of Utilities' Fees, Design Review and Inspections.** Utilities shall review and approve each Individual Plan Owner's construction drawings for water and wastewater extensions and perform all inspections for all Interim Water Distribution Systems and/or Interim WW Collection Systems. Such reviews, installation, and inspections shall be performed in accordance with Utilities' Regulations. Once all applicable Utilities' Fees have been paid and Utilities determines that an Interim WW Collection System or Interim Water Distribution System complies with Utilities' Regulations, then Utilities shall issue a letter or other document to CCMD confirming that all installations, including meters, are satisfactory to Utilities and all applicable Utilities' Fees have been collected. CCMD shall not initiate Interim water or wastewater service until CCMD receives written confirmation from Utilities that all Utilities' Fees have been collected for a particular Interim Customer. CCMD may perform its own inspections to determine compliance with CCMD requirements or may choose to rely on Utilities' representation that such systems comply with Utilities' Regulations. The Parties agree that such inspections of the systems are for Utilities' purposes and although CCMD may choose to rely on Utilities' representations that such systems meet Utilities specifications, CCMD releases Utilities from all liability whatsoever related to such inspections. The

Individual Plan Owner may be charged for reviews or inspections that are required by Utilities or CCMD to provide Interim service.

- J. Meters.** All meters for Interim WW Collection Systems and Interim Water Distribution Systems shall be those required by CCMD regulations or policies. All meters shall be installed at the sole cost and expense of the Interim Customer, in accordance with CCMD policies. After Conversion, the Parties shall coordinate in the removal of meters and/or meter transmitters from each property being provided Interim Service, unless the Parties otherwise agree that such meters and/or meter transmitters may remain at the property. Notwithstanding this cooperation, following Conversion, Utilities may change out meter components as necessary to transmit post-Conversion utility consumption data to its automated meter reading system and its billing system.
- K. Records.** CCMD shall provide Utilities with copies of all inspection and maintenance records associated with any Interim WW Collection System and/or any Interim Water Collection System within 30 days of any inspection or maintenance. Additionally, at Utilities' request, CCMD shall also provide records of the inspections and maintenance of CCMD NWQ Facilities.

## V. CONVERSION

- A.** No later than the time when the number of Interim Customers reaches 1,050 SFE's, Individual Plan Owners whose projects are receiving Interim service shall be required to begin construction of extensions required for connection to Utilities' water system. At such time, Utilities and CCMD shall develop, with the assistance of the Individual Plan Owners or Interim Customers, a plan for the Conversion of the Interim Customers from CCMD Interim service to Utilities permanent service. Such Conversion plan may include the following:
1. The Conversion plan may provide for a phased approach in planned segments or designated areas for the Conversion of Interim Customers.
  2. In accordance with the Individual Plan, each Individual Plan Owner or Interim Customer shall construct the required water and wastewater facilities necessary for Utilities to provide permanent water and wastewater service to the project, as determined by Utilities. Utilities shall inspect and

provide preliminary acceptance of construction of such facilities in accordance with Utilities' Regulations and provide notice to CCMD at such time that the facilities are complete and an Interim service area is ready for Conversion.

3. Prior to Conversion, wastewater flow meters or measurement devices shall be installed at specific locations to isolate and identify post-Conversion wastewater system flows from both CCMD and Utilities. The locations of the metering devices shall be approved by the Parties and shall be identified in the Conversion plan. If such meters are required for Interim service, then the cost of such devices will be the responsibility of the Individual Plan Owner or the Interim Customer. If such meters are required for a property not receiving CCMD Interim service (but instead receiving CCMD permanent service), then the cost of such devices will be the responsibility of CCMD's permanent customers.
4. At the time of Conversion, each Interim Customer shall be converted from CCMD Interim water and wastewater service to Utilities' permanent water and wastewater service, and at that time CCMD Interim water and wastewater service shall terminate for that customer.
5. Also at Conversion, CCMD shall convey to Utilities or the Individual Plan Owner the Interim Water Distribution Systems and Interim WW Collection Systems together with any appurtenances, as directed by Utilities. Such conveyances shall occur by bill of sale in a form acceptable to the Parties.
6. CCMD shall convey to Utilities capacity and an ownership interest in the CCMD Interceptor and capacity in the LFMSDD Facilities as described in Section IV.
7. At or prior to Conversion, CCMD shall convey ownership of the NWQ Facilities to Utilities by way of a bill of sale in a form acceptable to the Parties, so long as all requirements for permanent service by Utilities of the NWQ are satisfied in accordance with Section VI. Utilities acknowledges that the sale value of the NWQ Facilities, as noted in Exhibit A and previously agreed upon by the Parties, reflects a depreciated value, and notwithstanding any other term or

provision of this Agreement, the NWQ Facilities are sold to Utilities in "as-is" condition, with all faults and without warranty.

8. In accordance with Utilities' Regulations and the Conversion plan, the Individual Plan Owner, at Utilities and CCMD's direction, shall connect the Interim Customers to Utilities water distribution system and disconnect such customers from CCMD's water system.
  9. All costs of Conversion shall be the responsibility of the Individual Plan Owner.
  10. At or prior to Conversion, CCMD shall transfer through an assignment of easements, all existing easements to the City on behalf of Utilities for any Interim Water Distribution System, any Interim WW Collection System, the NWQ Facilities, and any other related facilities to be conveyed to Utilities by CCMD that are not located within a City right-of-way.
- B.** The Parties recognize that there may be instances where it is beneficial to begin Conversion prior to reaching the Interim Capacity Limit. Notwithstanding the time set forth for Conversion in Section V.A. above, in the event the water and wastewater extensions of Utilities' facilities required for Conversion are completed prior to the date that the Interim Capacity Limit is reached and there is no further need for CCMD to provide Interim water service, then Utilities may proceed with Early Conversion, to include CCMD's conveyance of ownership of the NWQ Facilities to Utilities, and the following shall apply:
1. The Interim CCMD Capacity Improvement Fee and the Interim Water Rights Fee shall not be assessed after Early Conversion and the applicable CCMD Connection Fees for each additional SFE up to the Interim Capacity Limit within the Interim Service Territory connected to Utilities' systems after Early Conversion shall only be the then-current Water Surcharge Fee, and the then-current Wastewater Connection and Surcharge Fee identified in Exhibit A.
  2. At the time Early Conversion is completed, CCMD shall convey to Utilities that portion of CCMD's wastewater system capacity in the CCMD Interceptor and the LFMSDD Facilities and associated ownership interest in such facilities, as applicable, by way of a bill of sale in a form acceptable to the Parties. The amount of capacity and ownership interest to be conveyed pursuant

to the previous sentence shall be determined by converting the number Interim Customers that have paid CCMD Connection Fees at the time of Early Conversion into an equivalent number of SFEs according to Exhibit B and then multiplying by 180 gpd.

3. After Early Conversion, the remaining portion of CCMD's capacity within the CCMD Interceptor up to the Interim Capacity Limit as identified in Section IV.E., and the remaining portion of CCMD's capacity within the LFMSDD Facilities up to the Interim Capacity Limit shall be transferred to Utilities on an incremental basis as each additional SFE is connected to Utilities' wastewater system. Although the Parties agree that capacity is transferred to Utilities on a per SFE basis, the Parties agree to memorialize and convey to Utilities such capacity and ownership interest in such facilities by way of a bill of sale in a form acceptable to the Parties on an annual basis, or other time frame as determined by Utilities, for the total number of SFEs connected to Utilities' wastewater system during the given time frame, provided the applicable fees identified in Section V.B.1. are paid.
4. At any given time after Early Conversion and as provided in Sections IV.F.1. and IV.F.2., Utilities' interest in the CCMD Interceptor and the LFMSDD Facilities shall be determined by multiplying 180 gpd times the number of SFEs connected to Utilities wastewater system after Early Conversion.
5. If 1,100 SFEs are not connected prior to the tenth (10th) anniversary of the completion of Early Conversion, then CCMD shall be paid a lump sum equal to the number of SFE connections that have paid CCMD Connection Fees subtracted from 1,100 SFEs, multiplied by the then-current Water Surcharge Fee and Wastewater Connection and Surcharge Fee identified in Exhibit A.

#### **VI. SERVICE TO CCMD'S NORTHWEST QUADRANT**

- A. Both during the Interim service period covered by this Agreement and following Conversion, CCMD shall provide water and wastewater service to: (1) all NWQ Area parcels receiving water and wastewater service from CCMD as of the Effective Date; and (2) all NWQ Area parcels that begin

receiving service after the Effective Date and prior to Conversion that are not within the corporate limits of the City of Colorado Springs.

- B.** As of the Effective Date, there are five outside-City, undeveloped parcels in the NWQ Area that are identified in Exhibit D. At Conversion, any of such parcels remaining undeveloped in the NWQ Area shall be referred to as the “Parcels Subject to Assignment”. At Conversion, and only if the respective owners of the Parcels Subject to Assignment agree, CCMD may offer to assign and Utilities may agree to accept responsibility for provision of permanent water and wastewater service to any of the Parcels Subject to Assignment (“Assignment”). Accordingly, CCMD shall continue to have responsibility to provide water and wastewater service to those Parcels Subject to Assignment that are not assigned to Utilities; and consequently, CCMD and Utilities shall share in future NWQ Facilities maintenance costs on a pro-rata basis as determined by the amount of water use or wastewater flow in the NWQ Area. After Conversion, if any owner of a Parcel Subject to Assignment chooses not to have its service assigned to Utilities, then each of those properties shall be allowed to connect to the NWQ Facilities for wastewater service. If after Conversion the owner of El Paso County Assessor’s Parcel 5509100005 chooses not to be assigned to Utilities, then the parcel shall be allowed to connect to the Aerospace Boulevard portion of the wastewater NWQ Facilities and the domestic water service line shall be extended from CCMD’s Foreign Trade Zone water main to the parcel. In that event, fire flow service to Parcel 5509100005 may be provided by the NWQ Facilities water main in Aerospace Boulevard. If such connection to CCMD’s Foreign Trade Zone water main is not possible, then: (i) the parcel may connect to the Aerospace water main provided that the parcel owner agrees to pay any and all applicable Utilities’ water service charges to CCMD at the outside city rates, and (ii) any such charges paid to CCMD shall be paid to Utilities by CCMD within thirty (30) days of collection of such charges. In addition, CCMD and Utilities shall share in future NWQ Facilities maintenance and operations costs on a pro rata basis as determined by wastewater flow, if such flow is metered, or otherwise by the actual water use of each customer for any of the Parcels Subject to Assignment that are not assigned to Utilities and are connected to the NWQ Facilities.

- C. The parties acknowledge that there may be CCMD debt or other encumbrances ("Debt") allocated to any one of Parcels Subject to Assignment. Such Debt includes CCMD's obligations under the Fourth Amended Plan for Adjustment of Debts, Case No. 89 B 16410 J, United States Bankruptcy Court for the District of Colorado ("Bankruptcy Debt") and a loan from the Colorado Water Resources and Power Development Authority ("SRF Debt"). If the Debt allocated to any one of the Parcels Subject to Assignment is secured by CCMD utility rates, fees, and charges, then such Debt (except for the Bankruptcy Debt and the SRF Debt) must be cleared, satisfied, and/or paid in full prior to Assignment of such parcel, unless the owner of that parcel agrees to continue payment of such Debt after Utilities accepts Assignment.
- D. If Utilities accepts Assignment of any one of the Parcels Subject to Assignment, then all water dedicated or reserved by CCMD to serve such parcel in accordance with prior plat approvals shall no longer be reserved and shall be immediately available to CCMD for other use.

#### **VII. DISPUTE RESOLUTION**

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

- A. The Parties shall hold a meeting attended by persons with decision-making authority regarding the dispute to attempt in good faith to negotiate a resolution. The meeting shall be held promptly, but in no event later than fourteen (14) calendar days after an initial written notice of the dispute by one of the Parties to the other. Such meeting shall not be deemed to reduce or eliminate the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled, unless otherwise agreed to by the Parties in writing.
- B. If, within fourteen (14) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation.
- C. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within ten (10) calendar days from the date of Section VII.B. above, they shall each select a mediator. The two



mediators will then appoint, within five (5) calendar days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the Parties.

- D. The Parties will schedule the mediation for a date within thirty (30) calendar days after selection of the mediator(s). The Parties agree to participate in good faith in the mediation and negotiations related thereto for a period of thirty (30) calendar days after the mediation. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to seek 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.

#### VIII. REMEDIES

- A. **Breach of Agreement.** Upon any breach of this Agreement by one of the Parties, the affected Party(ies) shall have the immediate right to initiate dispute resolution. Specific performance shall be the sole remedy.
- B. **Failure to Pay.** At CCMD's request, Utilities shall withhold the approval of all water and wastewater construction drawings, and the issuance of service contracts and the approval of building permits for the Individual Plan Owner or the prospective Interim Customer for failure to pay the CCMD Connection Fees until such time as any outstanding fees are paid to CCMD.

#### IX. MISCELLANEOUS

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

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

If to CCMD:

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

If to Utilities:

Colorado Springs Utilities  
Attn: System Extensions Manager  
PO Box 1103 MC 1812  
Colorado Springs, CO 80947-1015  
Phone: 719.668.5559

With a copy to:

Colorado Springs Utilities  
Attn: CAU - Utilities  
PO Box 1575 MC 510  
Colorado Springs, CO 80901-1575  
Phone: 719.385-5909

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

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

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

**F. Waiver.** No waiver by either Party of any terms or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to

constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

- G. No Third-party Beneficiaries.** Enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to Utilities and CCMD, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. It is the express intention of Utilities and CCMD that any other person other than Utilities or CCMD receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- H. Severability.** If any provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken for as long as it remains illegal or unenforceable.
- I. Assignment.** There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party. Nothing herein contained, however, shall be construed as preventing the reorganization of any Party hereto nor as preventing any other body corporate and politic succeeding the Party to assume or exercise the rights, privileges, powers, immunities, liabilities, disabilities and duties of either Party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.
- J. Time is of the Essence.** Time is of the essence in this Agreement.
- K. Compliance with Laws and Regulations.** This Agreement and the rights and obligations of the Parties hereunder shall be subject to all applicable laws, orders, court decisions, directives, rules and regulations of any duly constituted governmental body or official having jurisdiction. Nothing contained in this Agreement, however, shall require either Party to comply with any law, the validity or applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings.
- L. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Colorado (without reference to conflicts of laws) and to the extent necessary to recognize the legal

organization of Utilities, the Colorado Springs City Charter, Colorado Springs City Code, City ordinances and resolutions, the legal organization of CCMD, CCMD resolutions, and CCMD and City rules and regulations. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of Utilities as provided in Colorado Springs City Code § 12.1.108. In the event of any dispute over the 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.

**M. Appropriation of Funds.** In accordance with the Colorado Springs City Charter, performance of Utilities' obligations under this Agreement is expressly subject to appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Utilities' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement shall thereafter become null and void by operation of law, and Utilities shall thereafter have no liability for compensation or damages to CCMD in excess of Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less.

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

- N. Liability and Governmental Immunity Act.** Each Party shall be responsible for its own negligence. Neither Party waives the benefits nor obligations afforded it by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*
- O. Exhibits.** Each of the exhibits referenced in this Agreement is hereby incorporated by such reference.
- P. Survival.** Sections III.F., IV.D.1., V.B., VI.B., and IX.M., shall survive the expiration or earlier termination of this Agreement.
- Q. Entire Agreement.** This Agreement with attachments constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. This Agreement can only be amended by a written agreement signed by both Parties. Email or other electronic (including voice) communications from the Parties in connection with this Agreement are for informational purposes only. No such communication is intended by the Parties to constitute either an electronic record or an electronic signature, or to constitute any agreement by the Parties to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.
- R. Condition Precedent.** In accordance with the laws of the State of Colorado and the Sewage Treatment and Disposal Agreement between LFMSDD, CCMD, the Fountain Sanitation District, and Vintage Development Company dated March 2009, and the City Charter and Code of Ordinances for the City of Colorado Springs, the following shall be conditions precedent to the provision of new Interim service under this Agreement: (1) the City of Colorado Springs obtaining membership into LFMSDD for the Interim Service Territory upon terms and conditions acceptable to both LFMSDD and the City of Colorado Springs; and (2) approval by the LFMSDD Board of Directors of the conveyance of a portion of CCMD's capacity in the LFMSDD Facilities by CCMD to the City of Colorado Springs in accordance with this Agreement and any other condition for permanent wastewater service requiring LFMSDD approval. If the conditions set forth in this Section R., are not satisfied prior to the Parties' approval of any new Interim service connection, then this Agreement

shall be null and void, and the Original Agreement shall be reinstated while the Parties negotiate in good faith a new Agreement for Interim service.

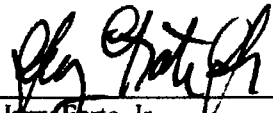
**S. List of Exhibits**

Reference	Description
Exhibit A	CCMD Connection Fees
Exhibit B	SFE Values
Exhibit C	Interim Service Territory
Exhibit D	NWQ Area and Outside City Parcels
Exhibit E-1	NWQ Facilities - Wastewater & CCMD Interceptor
Exhibit E-2	NWQ Facilities - Water
Exhibit F	Future Utilities Water System Extensions
Exhibit G	Example Individual Plan

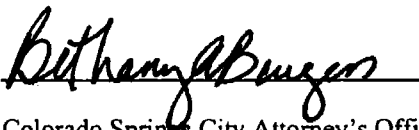
[SIGNATURES TO FOLLOW ON NEXT PAGE]

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


City of Colorado Springs on behalf of its enterprise, Colorado Springs Utilities

By:   
\_\_\_\_\_  
Jerry Forte, Jr.  
Chief Executive Officer

Approved as to Form:

  
\_\_\_\_\_  
Colorado Springs City Attorney's Office – Utilities Division

Colorado Centre Metropolitan District

By:   
\_\_\_\_\_  
Michael Cantin  
President

**Exhibit A - CCMD Connection Fees**

The following CCMD Connection Fees shall be paid as set forth in Section IV of the Agreement. As of the Effective Date of the Agreement, CCMD Connection Fees shall be as follows:

1. Interim Water Connection Fee:
  - a. Interim CCMD Capacity Improvement Fee<sup>1</sup>

= \$2,550
  - b. Interim Water Rights Fee
 

= \$ 900
2. Water Surcharge Fee<sup>2</sup>

= \$ 946
3. Wastewater Connection and Surcharge Fee<sup>3</sup>

= \$8,500

Includes:

- a. CCMD Wastewater Capacity Improvement Fee
- b. Wastewater Surcharge Fee<sup>4</sup>

Total                               = \$12,896

The fees specified in 1.b., 2.and 3.b. shall not be subject to change. The fees specified in 1.a. and 3.a. shall be subject to modification by CCMD annually to account for increased capital costs due to Federal or State regulations, provided however, that the increase of such fees in any given year shall not exceed the year-to-year rate increase identified in the Engineering News-Record Building Cost Index – Denver Area. Such fees shall not be increased if such index decreases year-to-year.

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<sup>1</sup> Calculated at 30% of CCMD's Permanent Water Improvement Fee.

<sup>2</sup> For acquisition of NWQ Facilities used for water service at their depreciated value.

<sup>3</sup> Includes costs for acquisition of capacity and associated interests in the CCMD Interceptor, the LFMSDD Facilities, the NWQ Facilities required for wastewater service, and associated appurtenances.

<sup>4</sup> For acquisition of NWQ Facilities for wastewater service at their depreciated value.



**Exhibit B – SFE Values**

**For Flow Computations Only**

**¾" METER = STANDARD SINGLE FAMILY EQUIVALENT**

**1" METER =  $1^2/(.75^2)= 1.8$  SFE**

**1.5" METER =  $1.5^2/(0.75^2)= 4$  SFE**

**2" METER =  $2^2/(0.75^2)= 7.1$  SFE**

**3" METER =  $3^2/(0.75^2)= 16$  SFE**

**4" METER =  $4^2/(0.75^2)= 28.4$  SFE**

Exhibit C – Interim Service Territory

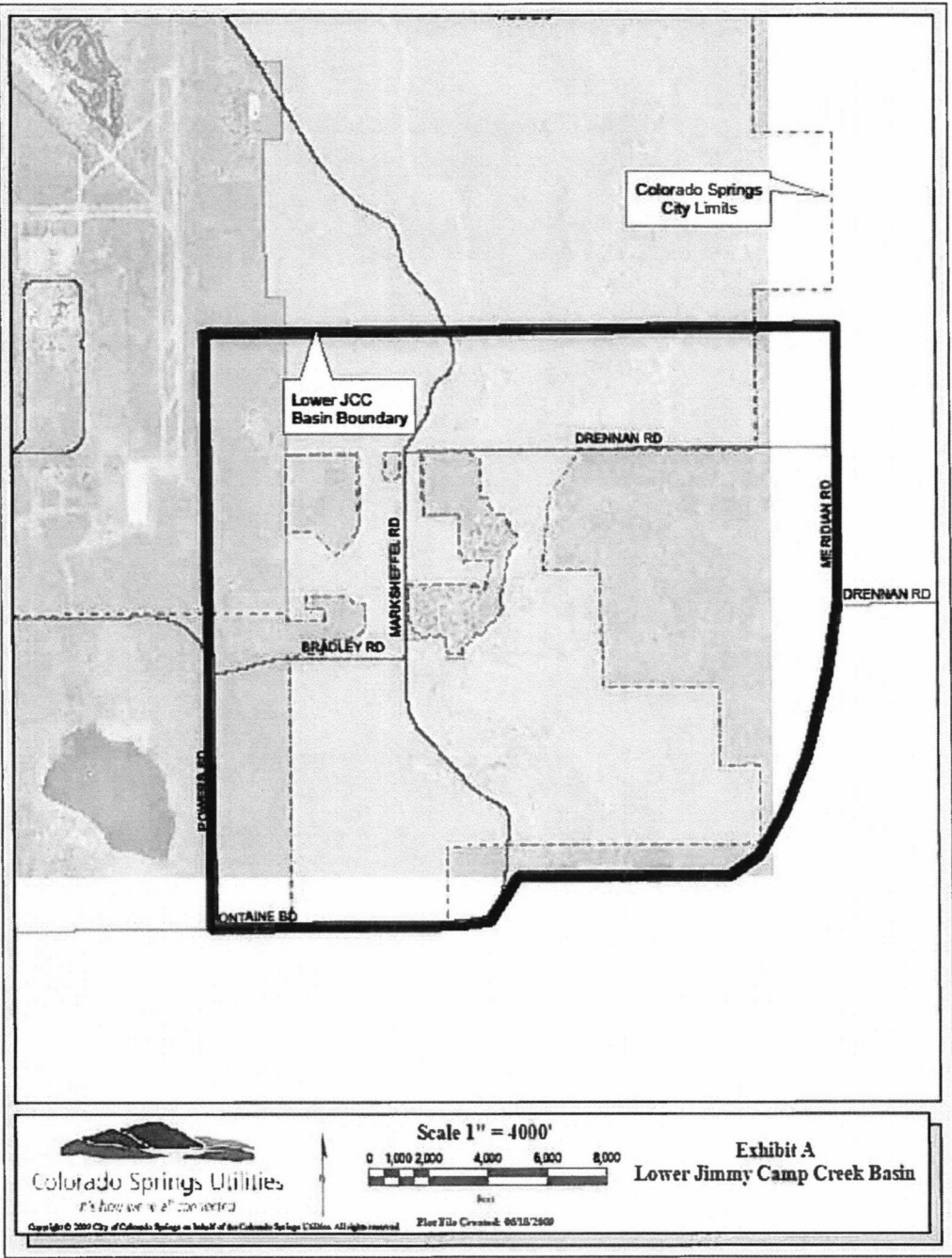
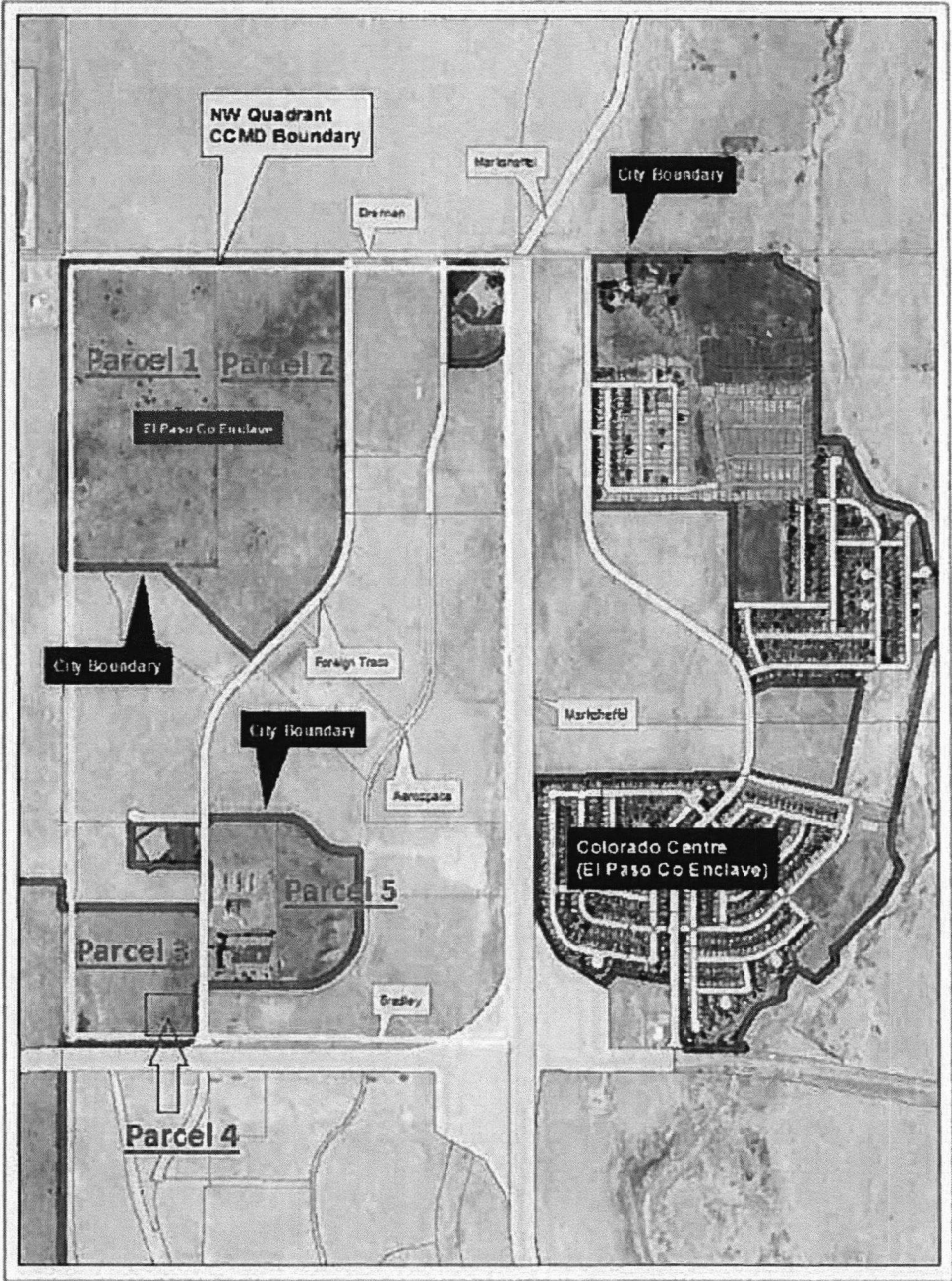
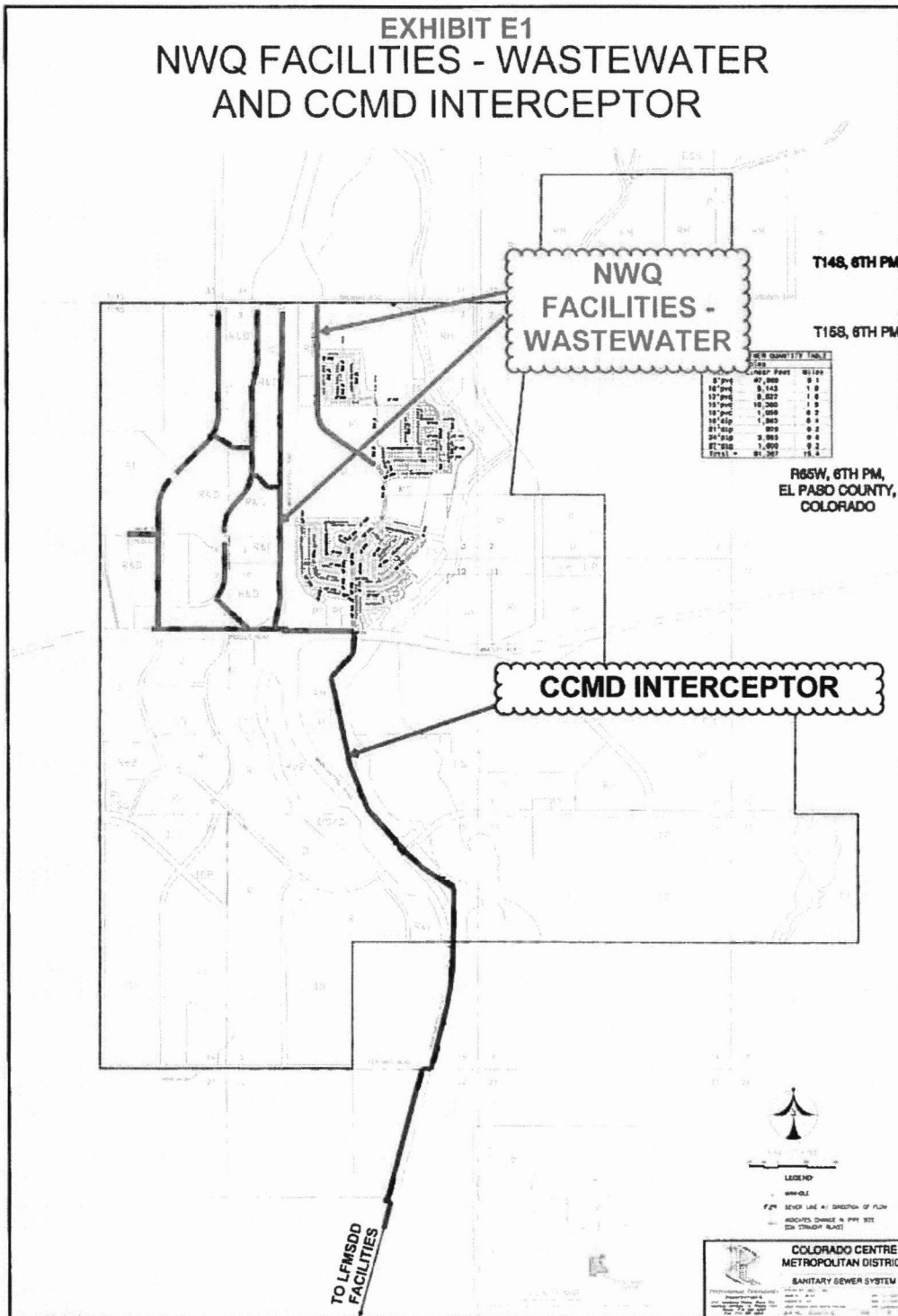


Exhibit D – NWQ Area and Outside City Parcels

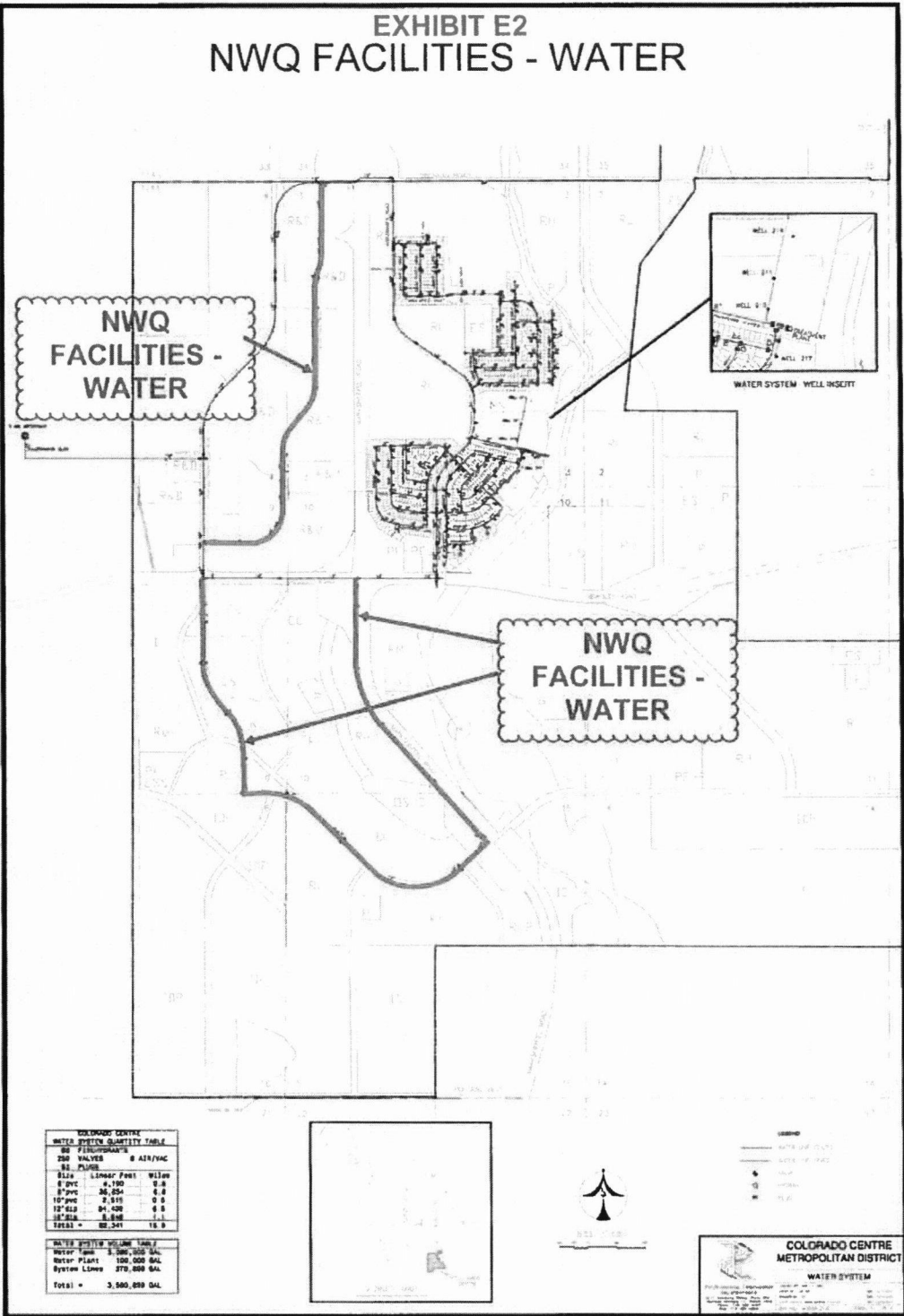


\*\*The Parcels identified above are the Parcels Subject to Assignment referenced in Section VI of the Agreement.

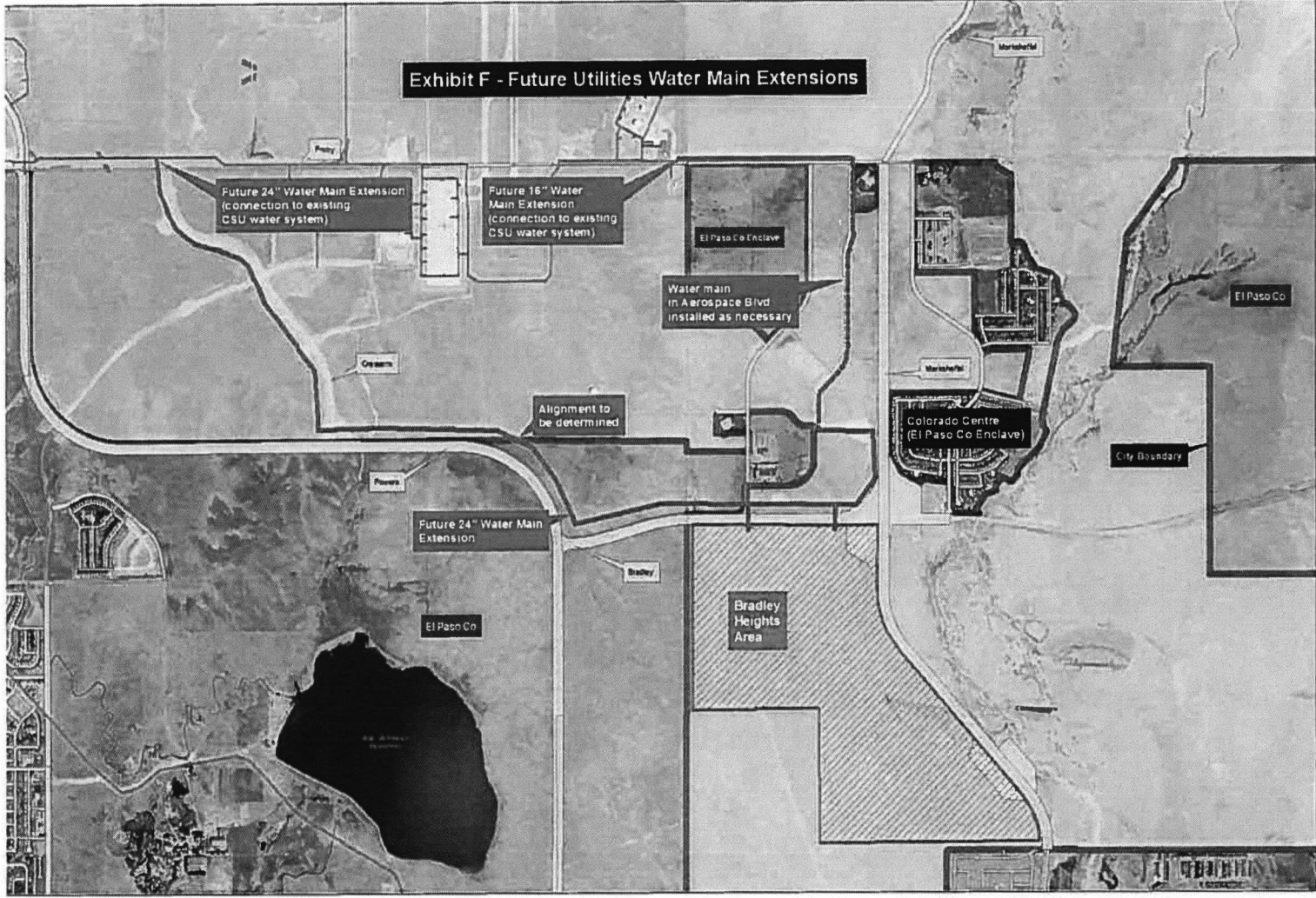
# EXHIBIT E1 NWQ FACILITIES - WASTEWATER AND CCMD INTERCEPTOR



# EXHIBIT E2 NWQ FACILITIES - WATER



**EXHIBIT F – Future Utilities Water System Extensions**



**EXHIBIT G**

**EXAMPLE INDIVIDUAL PLAN**

**INTERIM UTILITY SERVICE INDIVIDUAL PLAN**

**FOR**

**[Insert name of project and Owner]  
(hereinafter, "Individual Plan Owner")**

- A. Area Served.** This Individual Plan shall apply to the Interim Wastewater Service and Interim Water Service for the area legally described on Attachment 1, attached hereto and incorporated by reference.
- B. Points of Connection to Colorado Centre Metropolitan District (CCMD).** The Individual Plan Owner shall receive its water via water main connected to CCMD's distribution lines, adjacent to and fronting the parcel located in [describe]; and shall deliver its wastewater to CCMD's wastewater collection line also located in [describe].
- C. Conversion.** The conversion from Interim service to Utilities' service shall occur in conformance with the Amended and Restated Intergovernmental Agreement for Water Distribution and Wastewater Collection, Treatment, and Disposal, as it may be amended, Colorado Springs City Code, Utilities tariffs and the Facilities Participation, Utilization, and Service Agreement to which this Individual Plan is an attachment.
- D. Other Conditions.**

Acknowledged by:

**Colorado Springs Utilities**

**Colorado Centre Metropolitan District**

By: \_\_\_\_\_

By: \_\_\_\_\_  
President

**[Individual Plan Owner]**

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_ Date: \_\_\_\_\_

City Attorney's Office – Utilities Division