

**MERIDIAN RANCH METROPOLITAN DISTRICT (MRMD)  
MERIDIAN SERVICE METROPOLITAN DISTRICT (MSMD)  
MERIDIAN RANCH METROPOLITAN DISTRICT 2018 SUBDISTRICT (MRMD 2018 Subdistrict)  
SPECIAL MEETING AGENDA**

<u>Board of Directors</u>	<u>Office</u>	<u>Term Expiration</u>
Butch Gabrielski	President	May 2023
Wayne Reorda	Secretary/Treasurer	May 2022
Bill Gessner	Asst. Secretary/Treasurer	May 2023
Mike Fenton	Asst. Secretary/Treasurer	May 2023
Tom Sauer	Asst. Secretary/Treasurer	May 2022

**DATE:** Wednesday, May 18, 2022

**TIME:** 10:00 a.m.

**PLACE:** This meeting will be held virtually

**The Public may participate by following this link : [Click here to join the meeting](#) or by telephone by calling +1 872-242-8662 and using Phone Conference ID: 899 977 519#**

**I. ADMINISTRATIVE ITEMS:**

- A. Call to Order
- B. Conflicts of Interest
- C. Approve Agenda

**II. ACTION ITEMS:**

- A. Consider and approve assignment, assumption and amendment of sanitary sewer service agreement between Sterling Ranch Metro District Number 1, Falcon Area Water and Wastewater Authority, and Meridian Service Metropolitan District.

**III. ADJOURNMENT:**

**The next regular meeting of the Boards is scheduled for Wednesday, June 8, 2022, at 10:00 a.m. at the Meridian Ranch Recreation Center, 10301 Angeles Road, Peyton, Colorado 80831.**

**ASSIGNMENT, ASSUMPTION AND AMENDEMENT OF SANITARY  
SEWER SERVICE AGREEMENT**

**THIS ASSIGNMENT, ASSUMPTION AND AMENDMENT OF SANITARY SEWER SERVICE AGREEMENT** (this "Assignment") is entered effective the \_\_\_\_ day of May, 2022 (the "Effective Date"), by and between MERIDIAN SERVICE METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("MSMD"); STERLING RANCH METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ("SRMD 1"); and the FALCON AREA WATER AND WASTEWATER AUTHORITY ("FAWWA") a political subdivision of the State of Colorado; (together SRMD 1, MSMD and FAWWA are "the Parties").

**-RECITALS-**

I. SRMD 1 and MSMD have entered into that certain Sanitary Sewer Service Intergovernmental Agreement dated as of September 11, 2014, which was subsequently amended on February 20, 2020 and again amended on November 9, 2021 (the agreement and amendments together the "Agreement") a copy of which is attached hereto as Exhibit A.

II. SRMD 1 desires to assign the Agreement to FAWWA, FAWWA is willing to accept assignment of the Agreement pursuant to the terms of this Assignment and MSMD is willing to consent to such assignment.

III. As part of this Assignment, the Parties desire to amend Section 2.1(e)(iii) of the Agreement as provided herein to extend the third date of payment for the Meridian Road Line.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. All capitalized terms used in this Assignment shall have the meaning set forth in the Agreement unless otherwise defined herein.

2. SRMD 1 hereby sells, assigns and transfers to FAWWA all of SRMD 1's right, terms, conditions, obligations, title and interest in, to and under the Agreement and MSMD hereby irrevocably consents to such assignment and transfer.

3. SRMD 1 hereby agrees to indemnify and hold FAWWA harmless from and against any and all liabilities, losses, claims, damages, actions, suits, costs and expenses (including, but not limited to, reasonable fees and disbursements of counsel through appeal) related to or arising out of the Agreement prior to the Effective Date or arising from SRMD 1's actions or inaction related to the Agreement or this Assignment.



4. SRMD 1 and MSMD respectively or together as indicated below hereby represent and warrant to FAWWA, which representations and warranties shall survive the Effective Date, that:

(a) the Agreement is unmodified and is in full force and effect;

(b) SRMD 1 warrants and represents that it has made no prior assignment of the Agreement and both SRMD 1 and MSMD warrant and represent that this Assignment is valid and binding on the Parties to the Agreement and no other consent of any other parties is required;

(c) SRMD 1 knows of no defaults existing under the Agreement on the part of SRMD 1 which would entitle MSMD to terminate the Agreement or seek damages against SRMD 1 or FAWWA;

(d) MSMD is not in default under any term, condition or covenant of the Agreement; and

(e) Except as otherwise stated therein, the Agreement and the rights and improvements subject thereto are free and clear of any liens, encumbrances and similar adverse claims.

5. MSMD previously consented to change the date in the 5<sup>th</sup> line of Section 2.1(e)(iii) of the Agreement from March 30, 2022 to May 31, 2022 for the making of the required payment by SRMD 1 of the 2021 tap purchase obligation as a condition to the transfer of the Meridian Road Sewer Line, and this Assignment hereby memorializes such consent and thus amends the referenced Section to reflect this date change.

6. As a condition to the effectiveness of this Assignment, the Parties hereto agree to further amend Section 2.1 (e)(iii) of the Agreement to change the date in the 5<sup>th</sup> line of said paragraph from the amended May 31, 2022 date referenced in paragraph 5 hereof to June 30, 2022 for the making of the required payment by SRMD 1 of the 2021 tap purchase obligation as a condition to the transfer of the Meridian Road Sewer Line.

7. The Effective Date of this Assignment shall be the date first written above, regardless of the date of execution by either party hereto.

8. This Assignment may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same original.

[Remainder of Page Intentionally Left Blank}

*ASSIGNMENT, ASSUMPTION AND AMENDMENT OF SANITARY SEWER SERVICE AGREEMENT – Signature Page*

**IN WITNESS WHEREOF**, the parties have entered into this Assignment effective as of the date first above written.

**MSMD:**

Meridian Service Metropolitan District

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SRMD 1:**

Sterling Ranch Metropolitan District No. 1

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FAWWA:**

Falcon Area Water and Wastewater Authority

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

Agreement

**SANITARY SEWER SERVICE  
INTERGOVERNMENTAL AGREEMENT  
MERIDIAN SERVICE METROPOLITAN DISTRICT  
STERLING RANCH METROPOLITAN DISTRICT NO. 1**

This Sanitary Sewer Service Intergovernmental Agreement (the "Agreement") is made and entered into this 11<sup>th</sup> day of September, 2014, by and between Meridian Service Metropolitan District, a quasi municipal corporation and political subdivision of the State of Colorado ("MSMD"), whose address is in care of Community Resource Services of Colorado, LLC, 7995 E. Prentice Ave., Suite 103E, Greenwood Village, CO 80111, and Sterling Ranch Metropolitan District No. 1 ("SRMD 1"), whose address is 20 Boulder Crescent, Suite 200, Colorado Springs, CO 80915. MSMD and SRMD 1 may be referred to individually as a Party, or collectively as the Parties or the Districts.

**RECITALS**

WHEREAS, MSMD is organized as a special district under Title 32 of the Colorado Revised Statutes and provides various municipal services to certain properties in El Paso County in the State of Colorado; and

WHEREAS, SRMD 1 is organized as a special district under Title 32 of the Colorado Revised Statutes and provides various municipal services to certain properties within its boundaries in El Paso County in the State of Colorado, including certain properties located in Sterling Ranch Metropolitan District No. 2 ("SRMD 2") and Sterling Ranch Metropolitan District No. 3 ("SRMD 3"), collectively known as "Sterling Ranch", in El Paso County in the State of Colorado, the legal description of which is attached as **Exhibit A**; and

WHEREAS, Sterling Ranch is anticipated to consist of 5,250 residential homes equating to 5,250 single family equivalents ("SFEs"), fifty-six (56) commercial acres at six (6) SFEs per acre equating to three hundred thirty-six (336) SFEs and approximately two hundred sixty-three (263) SFEs from schools, for a total of approximately 5,849 SFEs. Wastewater flows may be measured in gallons per day ("GPD"). The average gallons per day of wastewater flows from Sterling Ranch shall not exceed one hundred seventy-two (172) GPD per SFE in any one month



period, and shall not exceed two hundred ten (210) GPD per SFE in any one day period ("Peak Flow Day"); and

WHEREAS, MSMD owns 2.2 million gallons per day wastewater treatment capacity at the Cherokee Metropolitan District/MSMD Wastewater Treatment Plant ("CM Plant") located at Drennan Road and Milne Road in Colorado Springs, Colorado; and

WHEREAS, SRMD 1 desires to receive sanitary sewer service to serve Sterling Ranch from MSMD, and MSMD desires to provide such sanitary sewer service pursuant to the terms hereof; and

WHEREAS, pursuant to Colorado Constitution Article XIV, Section 18(2)(a) and Section 29-1-203, Colorado Revised Statutes, the Districts may cooperate and contract with each other to provide any function, services or facilities lawfully authorized to each; and

WHEREAS, the Districts desire to set forth the terms, conditions and respective obligations with regard to the sanitary sewer service to be provided by MSMD to SRMD 1 to serve Sterling Ranch.

## **COVENANTS**

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein, and the mutual benefits and obligations set forth herein, the Parties agree as follows:

### **ARTICLE I**

#### **TERM OF AGREEMENT**

This Agreement shall become effective on and as of the date first written above and shall remain in effect until terminated in accordance with its terms.

## ARTICLE II SERVICE

2.1. **Connection and Transmission.** All conditions, specifications and restrictions in this Agreement that apply to SRMD 1 shall also apply to SRMD 2 and SRMD 3. SRMD 1 shall design and construct a wastewater lift station, wastewater peak flow equalization system, wastewater emergency storage system, wastewater force main and all necessary appurtenances (the "Sterling Ranch Delivery System") to connect Sterling Ranch's sanitary sewer system to the MSMD sanitary sewer system at a location or locations mutually acceptable to the Parties (the "Connection Point"). It is anticipated that SRMD 1 will connect the Sterling Ranch Delivery System to carry a portion of the wastewater flow to the MSMD sanitary sewer line in Meridian Road (the "Meridian Sewer Line"), shown on the attached **Exhibit B**. SRMD 1 anticipates that the wastewater force main within the Sterling Ranch Delivery System will be a ten (10) inch diameter line (the "Sterling Force Main"). SRMD 1, at its sole cost and expense, shall modify the Meridian Sewer Line as necessary and shall obtain MSMD and all other necessary state and local government and agency approvals to make such modification and connection. It is not anticipated that the Meridian Sewer Line will be capable of carrying all of the wastewater flows from Sterling Ranch. Currently, the Meridian Sewer Line is being used to convey the wastewater flows from two commercial properties, El Paso County Parcel Schedule No. 4307202032 and No. 4307202033, as shown on **Exhibit B** (the "Existing Wastewater Commercial Users"). Except for the wastewater flows from the Existing Wastewater Commercial Users, Sterling Ranch will have the right to use the remaining capacity of the Meridian Sewer Line from the Connection Point to the MSMD Sewer Lift Station (defined below). The Meridian Sewer Line shall be owned by MSMD. Maintenance, repair and replacement of the Meridian Sewer Line from the Connection Point to the MSMD Sewer Lift Station shall be the responsibility of SRMD 1 at its sole cost and expense. SRMD 1, at its sole cost and expense, shall install an additional sewer line(s), as necessary, to accommodate any wastewater flow capacity from Sterling Ranch for which the Meridian Sewer Line does not have capacity and shall obtain MSMD and all other necessary federal, state and local government and agency approvals to make such installation of an additional sewer line(s).

2.2. Delivery/Treatment/Discharge/Equalization/Emergency Storage.

- a. **Delivery:** MSMD will deliver SRMD 1 wastewater to the CM Plant by first pumping SRMD 1 wastewater from the MSMD sewer lift station located at 7320 McLaughlin Road, Falcon, CO 80831 (the "MSMD Sewer Lift Station") into the MSMD sewer force main pipeline (the "MSMD Sewer Force Main"), which extends from the MSMD Sewer Lift Station to the Cherokee Metropolitan District ("Cherokee") sewer line located at Blaney Road and State Highway 94 (the "Cherokee Sewer Line"), as shown on the attached **Exhibit C**. The SRMD 1 wastewater will then be conveyed via the Cherokee Sewer Line to the CM Plant, as shown on the attached **Exhibit D**.
- b. **Treatment:** SRMD 1 wastewater will receive primary treatment, including screening to remove inorganic debris and wastewater grit removal, at the MSMD Sewer Lift Station. SRMD 1 wastewater will receive final wastewater treatment at the CM Plant.
- c. **Discharge:** Unless otherwise agreed pursuant to Section 5.4 herein, SRMD 1 treated wastewater will be discharged from the CM Plant to the Cherokee infiltration basins, as shown on **Exhibit D**, and allowed to infiltrate into the ground water table of the Upper Black Squirrel Creek Designated Groundwater Basin (the "UBS Basin").
- d. **Peak Hour Wastewater Periods:** Wastewater flows vary depending on the time of day and the day of the week. The Parties acknowledge and agree that for the purposes of this Agreement, the daily time periods when wastewater flows are at their highest rates will be between the hours of 6:00AM and 1:30 PM, a seven and one half (7.5) hour time period, and between the hours of 5:00PM and 10:00PM, a five (5) hour time period (collectively, the "Peak Hour Wastewater Periods"). If wastewater user characteristics change during the course of this Agreement, it may be necessary to adjust such time periods, upon mutual agreement of the Parties, provided, however, that the total number of hours, i.e., twelve and one half (12.5), shall not change.



e. **Flow Equalization:** This Agreement is subject to all terms and conditions of the McLaughlin Road Sewer Lift Station Intergovernmental Agreement between MSMD and Woodman Hills Metropolitan District (“WHMD”), as amended (“McLaughlin IGA”), and which may be further amended from time to time without notice or approval by SRMD 1. A copy of the McLaughlin IGA is attached as **Exhibit E**. Wastewater flows from MSMD and WHMD are received at the MSMD Sewer Lift Station with no flow equalization prior to receipt of MSMD and WHMD wastewater at the MSMD Sewer Lift Station. MSMD constructed a flow equalization tank at the MSMD Sewer Lift Station site to buffer or equalize the wastewater flows from MSMD and WHMD as required in the CM Plant IGA (defined below). All wastewater flow equalization capacity at the MSMD Sewer Lift Station is currently reserved for MSMD and WHMD. SRMD 1 wastewater flows shall not adversely affect the wastewater pumping and equalization capabilities of MSMD and WHMD at the MSMD Sewer Lift Station. SRMD 1 shall equalize wastewater flow rates in order to reduce the wastewater flow peaking impacts at the MSMD Sewer Lift Station. SRMD 1 shall be allowed to manage/equalize their wastewater flows through increased pumping rates only during time periods outside of Peak Hour Wastewater Periods until SRMD 1 purchases 1,160 SFEs of wastewater capacity. Before SRMD 1 purchases more than 1,160 SFE’s of wastewater capacity, SRMD 1 shall install a wastewater flow equalization system. SRMD 1 shall determine the size and type of wastewater flow equalization system required so that SRMD 1 wastewater flows into the MSMD Sewer Lift Station with wastewater flow equalization at a constant rate. The maximum wastewater flow rates during the Peak Hour Wastewater Periods that can be received at the MSMD Sewer Lift Station from SRMD 1 facilities will depend on the number of SFEs that SRMD 1 has purchased and shall be as follows:

<u>Number of SFEs</u>	<u>Maximum Peak Instantaneous</u>
0 to 500	150 GPM
501 to 1,160	200 GPM
1,161 to 2,000	350 GPM
2,001 to 3,000	500 GPM
3,001 to 4,500	650 GPM
4,501 to 5,849	770 GPM*

\*When SRMD 1 connects 5,200 or more SFEs to the Sterling Ranch Delivery System, the maximum peak instantaneous flow rate that can be received at the MSMD Sewer Lift Station may be increased to 853 GPM only during Peak Flow Days.



SRMD 1 shall size accordingly and install such wastewater peak flow equalization system and companion pumping facilities, as necessary, at its sole cost and expense. SRMD 1 shall obtain MSMD and all other necessary federal, state and local government and agency approvals to make such installation of its wastewater peak flow equalization system and companion pumping facilities.

f. **Sterling Force Main and Flushing Velocities:** SRMD 1 anticipates that in order for the Sterling Ranch Delivery System to function properly, the Sterling Force Main will require daily flushing velocities in order to maintain wastewater solids movement in the Sterling Force Main. The maximum wastewater flushing rate shall be 650 GPM (the "Sterling Flushing Rate"). SRMD 1 shall be allowed to pump up to but not exceed the Sterling Flushing Rate only during time periods outside of the Peak Hour Wastewater Periods, until such time as SRMD 1 has purchased more than 4,500 SFEs, as set forth in subsection (e) above.

g. **Emergency Storage:** MSMD constructed an emergency storage tank at the MSMD Sewer Lift Station site as specified in the CM Plant IGA and subject to the terms and conditions of the McLaughlin IGA. If SRMD 1 wastewater is to be pumped, SRMD 1 shall design and provide a wastewater emergency storage system (based on the greater of either twelve (12) hours of design average daily flow or as required by any and all other permitting and approving agencies) with emergency backup power at the SRMD 1 wastewater pumping facility. The SRMD 1 wastewater pumping facility and emergency storage system shall be designed, permitted and built to meet all CM Plant IGA, McLaughlin IGA, MSMD Rules and Regulations, federal, state and local government and other agency specifications, rules and regulations (collectively, "Rules and Regulations"). SRMD 1 shall install such wastewater pumping facility and emergency storage system at its sole cost and expense, prior to any SRMD 1 wastewater being placed into the Meridian Sewer Line. SRMD 1 shall obtain MSMD and all other necessary federal, state and local government and agency approvals to make the installation of its wastewater pumping facility and emergency storage system.

h. **Low Flows:** Until such time as one hundred (100) actual wastewater SFEs are connected and producing wastewater into the Sterling Ranch Delivery System, SRMD 1 shall be allowed to add potable water to the Sterling Ranch Wastewater Delivery System in order to

fulfill its obligations under this Agreement. The added potable water in the Sterling Ranch Wastewater Delivery System shall be considered wastewater and subject to the same terms, conditions and restrictions in this Agreement. The added potable water may cause SRMD 1 to exceed both the average permissible flow rate of one hundred seventy-two (172) GPD per SFE in any one month period, as well as the Peak Flow Day amount, which is allowed only until such time as one hundred (100) actual wastewater SFEs are connected and producing wastewater into the Sterling Ranch Delivery System. MSMD may require that SRMD 1 increase the amount of potable water added to the Sterling Ranch Wastewater System, if, in MSMD's reasonable discretion, the amount of SRMD 1 wastewater is not sufficient for the MSMD Sewer Lift Station or the CM Plant to function properly. SRMD 1 shall install a chemical bioxide feed system within the Sterling Ranch Wastewater System to provide added wastewater quality control. SRMD 1 shall add bioxide into the SRMD 1 wastewater until at least 1,160 SFEs are connected to the Sterling Ranch Wastewater System and producing wastewater. The amount of bioxide added shall be adequate for the SRMD 1 wastewater quality to meet or exceed all requirements and specifications in this Agreement.

2.3 **Wastewater Delivery and Treatment Capacity.** Subject to compliance with all the terms and conditions of this Agreement by SRMD 1, including the Minimum Tap Takedown Schedule, defined below, and so long as SRMD 1 is not in default of this Agreement and this Agreement is not otherwise terminated, MSMD will reserve wastewater delivery at the MSMD Lift Station and wastewater treatment capacity at the CM Plant for up to 5,849 SFEs at an average flow rate of 172 GPD per SFE in any one month period, which is equivalent to 1,006,028 GPD, or 45.7% of the 2,200,000 GPD wastewater treatment capacity that MSMD owns at the CM Plant. Such amount constitutes the maximum amount of dedicated wastewater treatment capacity that MSMD is obligated to provide hereunder in any one month period. The maximum wastewater treatment capacity that MSMD is obligated to provide on a Peak Flow Day is 210 GPD per SFE, which is equivalent to 1,228,290 GPD. MSMD shall not be liable to SRMD 1 for failure to accept or treat SRMD 1's wastewater when such failure is the result of any injunction, order, or judgment of any court, State or Federal agency action, or when such failure is the result of a strike, casualty, upset condition, mechanical or power failure, weather or flood condition, or other cause beyond MSMD's reasonable control. MSMD shall have the right to interrupt service and require SRMD 1 to temporarily store and contain wastewater flows to the



extent of SRMD 1's storage capabilities in the event of a malfunction of any of the following wastewater delivery or treatment systems; the CM Plant, the MSMD Sewer Lift Station, the Cherokee Sewer Line, the MSMD Sewer Force Main or the Meridian Sewer Line. In the event of maintenance to the above listed wastewater delivery or treatment systems which will prevent MSMD from delivering wastewater to the CM Plant, a 48-hour notice will be given to SRMD 1 after which SRMD 1 will temporarily store and contain wastewater to the extent of SRMD 1's storage capabilities.

**ARTICLE III**  
**FEES & TAKEDOWN SCHEDULE**

3.1. **Connection Fee.** SRMD 1 shall pay MSMD a non-refundable connection fee of Four Hundred Thousand and no/100 Dollars (\$400,000.00), due prior to the issuance of any "Will Serve" letter for Sterling Ranch. SRMD 1 shall pay MSMD an additional, non-refundable connection fee of One Hundred Thousand and no/100 Dollars (\$100,000.00), due prior to the recordation of the first plat within Sterling Ranch. The combined non-refundable connection fee of Five Hundred Thousand and no/100 Dollars (\$500,000.00) does not include the purchase of any Sewer Taps, as defined below.

3.2. **Tap Takedown.** SRMD 1 shall pay a Sewer Tap Fee, defined below, for each SFE for which SRMD 1 desires wastewater treatment (each a "Sewer Tap") not to exceed a total of 5,849. Commencing in the year 2015, SRMD 1 shall be obligated to pay for a minimum number of Sewer Taps by December 31 of each year, as follows:

2015	50 Sewer Taps
2016 and each subsequent year through 2024	300 Sewer Taps

("Minimum Tap Takedown Schedule"). SRMD 1 shall purchase all remaining, unpurchased Sewer Taps on or before March 31, 2025, to equal a total of 5,849 Sewer Taps. SRMD 1's failure to pay for the minimum number of Sewer Taps in any year will be a breach of this Agreement. MSMD shall provide written notice of such breach and an opportunity to cure. If, after one hundred eighty (180) days of receipt of such notice, SRMD 1 fails to cure such breach, MSMD may terminate SRMD 1's right to purchase any further Sewer Taps. If MSMD

terminates SRMD 1's right to purchase any further Sewer Taps hereunder, MSMD will continue to provide wastewater delivery and treatment service to all Sewer Taps previously purchased pursuant to the terms and conditions hereof. If SRMD 1 purchases more than the minimum number of Sewer Taps in any year, such Sewer Taps in excess of the minimum number shall be applied to the following year's, or subsequent years', minimum number of Sewer Taps required to be purchased.

### 3.3 Tap Fee.

a. The initial fee for each Sewer Tap will be Three Thousand Three Hundred and no/100 Dollars (\$3,300.00) for 2015 ("Sewer Tap Fee"). Commencing January 1, 2016, and each January 1 thereafter, the Sewer Tap Fee shall increase by the greater of: (a) 3%, or (b) 1.5% over the Consumer Price Index for All Urban Consumers (CPI-U) for the Denver-Boulder-Greeley, Colo., metropolitan area ("Denver CPI").

b. Starting in January 1, 2017, Sewer Tap Fees are due and payable at the time of each plat recordation (for all anticipated SFEs of such plat), or per the Minimum Tap Takedown Schedule, whichever is greater.

c. At any time during the Tap Takedown period, in the event that SRMD 1 desires to enter into a lump sum purchase agreement for all of the remaining unpurchased Sewer Taps, MSMD will consider, in good faith, such a lump sum sale of such Sewer Taps.

3.4 Monthly Service Fee. SRMD 1 shall pay MSMD a monthly wastewater service fee equal to 110% of MSMD's actual costs and expenses incurred by MSMD, based on the direct proportion of the SRMD 1 metered influent wastewater flows, for the delivery, treatment and discharge of SRMD 1 wastewater as described in paragraphs 2.2(a), (b) and (c), and including, but not limited to, (i) all costs of operation, maintenance, repairs and replacement to provide such delivery, treatment and discharge of SRMD 1 wastewater, and (ii) all costs and expenses charged to MSMD by Cherokee pursuant to the CM Plant IGA, and (iii) all costs and expenses associated with or incurred as a result of any order by federal, state, county or other regulatory agency to bring MSMD and/or the CM Plant and/or the MSMD Lift Station into compliance with



applicable Rules and Regulations, as they exist today or as the same may be hereafter amended or enacted (the "SRMD 1 Wastewater Service Fee"). All costs will be invoiced once a month and are due and payable within 45 days of receipt of invoice. SRMD 1 shall budget and appropriate sufficient funds for payment of the SRMD 1 Wastewater Service Fee. In the event that SRMD 1 is over six (6) months in arrears for payment of the SRMD 1 Wastewater Service Fee, MSMD may, but is not required to, invoice all SRMD 1 customers directly for all current and future SRMD 1 Wastewater Service Fees, including any and all additional processing and collection fees incurred by MSMD for such direct billing. SRMD 1 shall include in its service contracts with its customers a provision which provides for MSMD's right to invoice SRMD 1 customers directly, as set forth in the previous sentence.

3.5 **Interest/Service Charges**. Any fee or charge due hereunder and not timely paid shall accrue interest at 6% annually.

#### ARTICLE IV

#### ADDITIONAL COVENANTS, AGREEMENTS AND PROVISIONS

4.1 This Agreement is subject to all terms in the Chico Basin Wastewater Treatment Facility and Black Squirrel Basin Recharge Facility Intergovernmental Agreement between Cherokee and MSMD, as amended ("CM Plant IGA"), and which may be further amended from time to time without notice or approval by SRMD 1. A copy of the CM Plant IGA is attached as **Exhibit F**. The CM Plant IGA and any subsequent amendments thereto are incorporated herein by this reference. All the conditions, restrictions and penalties that apply to MSMD in the CM Plant IGA will apply to SRMD 1 as it pertains to SRMD 1's wastewater and are fully enforceable by Cherokee and/or MSMD.

4.2 The Colorado Department of Public Health and Environment, Water Quality Control Division (the "Division"), issued the CM Plant a Compliance Advisory – Notice Of Significant Noncompliance, CDPS Number COX-048348, dated March 25, 2011. The State of Colorado issued a Compliance Order on Consent, Number: MC-140514-1, on June 23, 2014, to resolve all violations cited by the Division and to establish compliance requirements and criteria for the continued operation of the CM Plant. A copy of the Compliance Order on Consent is

attached hereto as **Exhibit G**. This Agreement is subject to all terms and conditions of such Compliance Order on Consent.

4.3 Issues regarding the design and construction of the CM Plant were the subject of a lawsuit filed by Cherokee against the contractors and engineers who designed and built the CM Plant. Such lawsuit was titled Cherokee Metropolitan District v. Velocity Constructors, Inc.; GMS, Inc. Consulting Engineers, and Edward D. Meyer, El Paso County District Court, Case No. 2012CV1066. Cherokee has settled the lawsuit and it has been dismissed with prejudice by order dated January 30, 2014. MSMD was not a party to the lawsuit and makes no warranties or representations regarding the results of the lawsuit, the actions to be taken by Cherokee as a result of the settlement of the lawsuit, nor the condition of the CM Plant as a result of the lawsuit or otherwise. MSMD and Cherokee continue to operate under the CM Plant IGA referenced in section 4.1 above, and as set forth therein, this Agreement is subject to all terms of the CM Plant IGA.

4.4 SRMD 1 shall purchase and install discharge meter systems approved by MSMD and as specified in the CM Plant IGA that will provide a hard copy of totalized flows together with a corresponding continuous flow chart to measure all of SRMD 1's wastewater flows. SRMD 1 may satisfy this condition in the beginning by installing wastewater run-time meters at their wastewater pumping facilities. When SRMD 1 reaches 1,000 wastewater producing SFEs, SRMD 1 shall install the wastewater discharge meter system at the Connection Point as defined in paragraph 2.1 above. SRMD 1 shall read the discharge meter(s) and provide monthly reports of such metering and wastewater flows to MSMD, as well as, provide MSMD access to digital readouts of the wastewater flow meters. SRMD 1 shall be responsible, at its sole cost and expense, to install an MSMD approved supervisory control and data acquisition ("SCADA") system to allow MSMD to view and read SRMD wastewater flow data at all times. The cost to purchase, install, maintain and replace the meter and SCADA system shall be paid by SRMD 1. SRMD 1 shall obtain MSMD and all other necessary federal, state and local government and agency approvals for the installation of such meter and SCADA system.

4.5 SRMD 1 shall meet and require all of its customers to meet the CM Plant IGA and MSMD wastewater standards, now current and as amended or updated in the future, and



shall be responsible for any and all costs or penalties for failing to meet such standards and/or causing a violation of the discharge permit for the CM Plant or for the State of Colorado site approval and/or permit at the MSMD Sewer Lift Station. SRMD 1, at its sole cost and expense, shall provide MSMD quarterly, at a minimum, or upon request of MSMD, an updated inventory list of all non-residential users connected to SRMD 1's wastewater system. Such inventory shall include the user's name, address, Standard Industrial Classification code and average daily water usage for previous quarter. SRMD 1 shall test its wastewater a minimum of once a week prior to it entering the MSMD sewer system at any point as described in paragraph 2.1 above per the CM Plant IGA and MSMD wastewater standards and provide the test results to MSMD. At all the points of connection to the MSMD sanitary sewer system, SRMD 1 shall install a manhole with a sample port with a composite sampler such that the water quality of SRMD 1's wastewater can be monitored by Cherokee and/or MSMD to ensure that all required standards are being met.

4.6 SRMD 1 may provide wastewater service to subdivisions other than Sterling Ranch that are capable of being served by the Sterling Ranch Delivery System ("Other Subdivisions"); provided that all applicable terms and conditions of this Agreement shall apply to all Other Subdivisions customers and in no event shall MSMD be obligated to provide service for more than 5,849 SFEs to SRMD 1. In the event SRMD 1 provides wastewater service to Other Subdivisions, SRMD 1 shall be responsible to ensure that Other Subdivisions comply with all terms and conditions of this Agreement, and SRMD 1 shall collect all Sewer Tap Fees and the monthly SRMD 1 Wastewater Service Fee from Other Subdivisions for payment to MSMD. Notwithstanding any of the foregoing, it is the obligation of SRMD 1 to pay to MSMD all Sewer Tap Fees and the monthly SRMD 1 Wastewater Service Fee on behalf of all of SRMD 1's customers. Nonpayment by any of SRMD 1's customers does not relieve SRMD 1 of its obligation to pay MSMD as provide hereunder and MSMD retains the rights as set forth in section 3.4 to invoice and collect from SRMD 1 and Other Subdivisions customers in the event of non-payment by SRMD 1. In the event that SRMD 1 provides wastewater service to Other Subdivisions, MSMD will provide a "Will Serve" letter for such Other Subdivisions conditional upon SRMD 1 paying MSMD one third (1/3<sup>rd</sup>) of the cost of the then-applicable Sewer Tap Fee for all the SFE's within such Other Subdivisions within 30 days after preliminary plat approval. The balance of the Sewer Tap Fees (based on the then-applicable Sewer Tap Fee) for such Other Subdivisions will be due and payable at the time of each plat recordation within such Other



Subdivisions or per the Minimum Tap Takedown Schedule, whichever is greater. This paragraph 4.6 does not modify SRMD 1's Minimum Tap Takedown Schedule.

4.7 The number of SFE equivalence for any particular use other than a single family residence shall be determined by the AWWA fixture count calculations or the MSMD Rules and Regulations, whichever is more.

4.8 In addition to any other remedy provided herein or at law, SRMD 1 shall be solely responsible for, and liable to MSMD for, all costs associated with any damages, fines or additional clean up due to or resulting from the wastewater quality, flows or overflows from SRMD 1 that do not satisfy the terms of this Agreement.

## ARTICLE V RETURN FLOW WATER

5.1 **No Representations or Warranties.** MSMD makes no representations or warranties regarding the availability of return flow water from the treated wastewater or the availability of treated wastewater that is released from the CM Plant. This Agreement is based on the condition that no return flow water from the CM Plant may or will be available for re-use through the Replacement Plan (defined below), or any amended Replacement Plan, or new replacement plan and that no treated wastewater from the CM Plant may or will be available to be diverted, to be taken dominion and control of, or to be used for any other purpose.

5.2 **Potential for Availability of Return Water.** Treated wastewater from the CM Plant is currently released to infiltration galleries located at Henderson Road and Bar 10 Road ("CM Plant Infiltration System"). Without making any representations or warranties, MSMD anticipates that a portion of the released treated wastewater will be able to be re-used as ground water through a yet to be approved, pending Replacement Plan, or an amended Replacement Plan, or a new replacement plan.

5.3. Replacement Plan.

a. In 2008, pursuant to the CM Plant IGA, Cherokee and MSMD jointly applied for a replacement plan with the Colorado Ground Water Commission (the "Commission") to obtain replacement credit for the return flows from the CM Plant (the "Return Flows") into the UBS Basin, under Case No. 08GW71 (the "Replacement Plan"). This Replacement Plan would allow Cherokee and MSMD to divert additional water from the UBS Basin in exchange for the Return Flows. The Replacement Plan is currently the subject of litigation between the Upper Black Squirrel Creek Ground Water Management District ("UBS"), Cherokee and MSMD under Water Court Case No. 98CW80 ("Water Case"). UBS claims, among other things, that Cherokee agreed to deliver all wastewater returns from the CM Plant back into the UBS Basin for recharge of the aquifer, and, as such, UBS claims that wastewater returns from the CM Plant are not able to be claimed in the Replacement Plan or any replacement plan. The Water Court has issued a Final Order in the Water Case, which is attached hereto as **Exhibit H**, which is the subject of an appeal.

b. In the event that Cherokee and/or MSMD are legally permitted to process the Replacement Plan, or an amended Replacement Plan, or a new replacement plan ("Proposed Plan") with the Commission, and, if, at that time, after written notice from MSMD and to SRMD 1 of the opportunity to participate in the Proposed Plan process, SRMD 1 elects to participate in the Proposed Plan process and pays its allocable costs as set forth in subsection (d) below, then, subject to all Rules and Regulations, SRMD 1 may be able to receive a portion of the Return Flows derived from its treated wastewater.

c. In the event that the Proposed Plan utilizing, in part, SRMD 1's non-UBS Basin water rights, is approved ("Approved Plan"), the Parties agree to share the Return Flows from SRMD 1's treated wastewater. Per the CM Plant IGA, Cherokee is entitled to receive the first 200 acre feet of the Return Flows on an annual basis as compensation to Cherokee for its plant investment in Cherokee's water delivery system and well fields that will be used to capture, treat and deliver to the Cherokee water tank at Tamlin Road and Marksheffel Road the Return Flows (the "200 Acre Foot Commitment"). The 200 acre feet of water equates to 65,170,200 gallons of water. After the 200 Acre Foot Commitment is fulfilled, SRMD 1 agrees to share the remaining Return Flows from its treated wastewater with MSMD in the following proportions at a rate of

80% of the SRMD 1 Return Flows for SRMD 1 and 20% of the SRMD 1 Return Flows for MSMD.

d. If SRMD 1 elects to join the Proposed Plan process pursuant to subsection (b) above, which includes SRMD 1's non-UBS Basin water rights, SRMD 1 shall pay MSMD, on a monthly basis, its share of the cost to prepare and process the replacement plan and the cost of the replacement system required to be constructed pursuant to the Approved Plan based on SRMD 1's percentage share of MSMD's capacity in the CM Plant (1MGD/2.2MGD or 45.45%). Per the CM Plant IGA paragraph 3, MSMD and Cherokee agreed to pay for all documented project costs of the replacement plan and replacement system proportionately based upon the wastewater treatment capacity at the CM Plant ratio of Cherokee's 2.6 million gallons per day and MSMD's 2.2 million gallons per day. Cherokee has already constructed and MSMD paid for the construction of the Cherokee Discharge Line to the Cherokee Infiltration Basins (as defined in the CM Plant IGA) allowing the treated wastewater to be infiltrated into the UBS Basin. The additional replacement system improvements shall include adding water wells, transmission lines, pumping stations, treatment houses, storage facilities, electric services and all other improvements and easement and/or land purchases necessary to be added to the existing Cherokee water system to recover, treat and deliver the Return Flows pursuant to the Approved Plan.

e. If SRMD 1 elects to join the Proposed Plan and if it is approved, SRMD 1 shall pay MSMD a monthly replacement water service fee equal to 110% of MSMD's actual costs and expenses incurred by MSMD, based on the direct proportion of the SRMD 1 metered recovered flow delivered to SRMD 1, for its Return Flow portion of the cost to deliver, treat and store the replacement water from the replacement system to the Cherokee water tank at Tamlin Road and Marksheffel Road (the "Cherokee Water Tank") including, but not limited to, costs of operation, maintenance, repairs and replacement to provide such delivery, treatment and storage of SRMD 1 replacement water, and costs and expenses charged to MSMD by Cherokee pursuant to the CM Plant. SRMD 1 will be solely responsible for conveyance of its replacement water from the Cherokee Water Tank to Sterling Ranch or wherever it desires to deliver its water, including any and all costs to connect to the Cherokee Water Tank, pump system, water lines and all necessary approvals and permits from federal, state and local governments and all applicable agencies,



including Cherokee, MSMD and WHMD. All monthly invoicing and payments shall be as described in section 3.4.

f. A sample allocation of the Return Flows is as set forth below (all numbers are preliminary and subject to actual conditions and will change):

**Influent Wastewater Example Numbers:**

Cherokee:	1,500,000 GPD	55.56%
MSMD:	700,000 GPD	25.92%
SRMD 1:	500,000 GPD	18.52%
Totals:	2,700,000 GPD	100%

**Percentage Loss Of Wastewater:**

Wastewater Treatment Process:	25%
Evaporation:	5%
Replacement Plan Banking, Other:	10%
Total Loss %:	45%

**Return Flow Amounts From Each Development (After 200 Hundred Acre Foot Commitment):**

Cherokee:	825,000 GPD
MSMD:	385,000 GPD
MSMD from 20% SRMD Per 5.3.c.:	55,000 GPD
SRMD 1 80% Per 5.3.c.:	220,000 GPD
Total Return Flow:	1,485,000 GPD

Based on the total Return Flow number above it will take Cherokee the following number of days to receive the 200 Acre Foot Commitment:

$$65,170,200 \text{ gallons} / 1,485,000 \text{ GPD} = 43.88 \text{ Days}$$

g. Except as provided above, nothing in this Section 5.3 or in this Agreement obligates MSMD to provide any Return Flows to SRMD 1.

5.4 **SRMD 1 Treated Water.** Subject to Sections 5.1, 5.2 and 5.3, as well as any other required Cherokee and federal, state and local government and other agency approvals, SRMD 1 may elect to divert and take dominion and control of and all responsibility for its available treated wastewater at the CM Plant prior to it entering the CM Plant Infiltration System, or other wastewater discharge point, and the UBS Basin. All costs and expenses of such treated wastewater diversion shall be borne by SRMD 1, and SRMD 1 shall obtain all other necessary federal, state and local government and agency approvals and permits to make such diversion. Until such time as SRMD 1 is allowed to and elects to take its treated wastewater, SRMD 1 hereby grants MSMD the right to control and use the SRMD 1 wastewater and treated wastewater ("License"), which License is terminable at any time, upon written notice to MSMD, in SRMD 1's sole discretion. Until such time as SRMD 1 elects to take its treated wastewater, the Parties agree to cooperate in the processing of the Replacement Plan, and amended Replacement Plan, or new replacement plan with the Commission.

5.5 **Treatment Procedure.** It is anticipated that a new treatment procedure will be required at the CM Plant that will reduce the amount of treated wastewater available for a replacement plan. It is also anticipated that, in any approved replacement plan, a portion of the available treated wastewater may be required to be left in the UBS Basin groundwater aquifer and not be allowed to be recovered as Return Flows. The amount of any return flows available will be subject to the future restrictions at the CM Plant, the CM Plant IGA as well as any replacement plan terms and conditions. SRMD 1 acknowledges that the treatment methodology and systems will result in less Return Flows than influent wastewater from SRMD 1.

## ARTICLE VI

### BREACH AND NON-BREACH

6.1 **Termination After Sewer Taps are Purchased.** Except as otherwise expressly set forth herein, after Sewer Taps are purchased, the Parties agree that no default or breach of this Agreement shall justify or permit termination of the continuing obligations of this Agreement as applicable to the purchased Sewer Taps and service capacity therefor; provided, however, that this Section 6.1 does not prohibit termination or suspension of service to a

customer as permitted by the CM Plant Rules and Regulations or MSMD Rules and Regulations, as they may be revised or amended from time to time. Notwithstanding the foregoing, this Agreement may be terminated for default as provided in Sections 6.2 and 6.3, as applicable to all unpurchased Sewer Taps and service capacity therefor.

6.2 **Default.** In addition to the default described in paragraph 3.2 above, the occurrence of any of the following events not cured within thirty (30) days of receipt of written notice from the non-defaulting Party by the defaulting Party constitutes a default under this Agreement:

- a. failure to pay any fee, charge or other sum when due;
  - b. failure to perform any other term, condition, covenant, representation or warranty;
- or
- c. The appointment of a receiver, general assignment for the benefit of creditors, or any declaration of filing under any insolvency or bankruptcy act.

6.3 **Remedies.** Upon default, the non-defaulting Party may elect to terminate this Agreement by written notice of termination to the defaulting Party, subject to the provisions of Section 6.1, and seek appropriate relief, including damages, as may be available under the laws of the State of Colorado. Notwithstanding the foregoing, if on or before January 1, 2018, SRMD 1 has not received the required Cherokee and federal, state and local government and other agency approvals to exercise the right of election afforded in Section 5.4 above, despite making reasonable efforts to obtain same, SRMD 1 may terminate the Agreement without the agreement of MSMD required in Section 7.3 with written notice to MSMD on or before December 31, 2019; provided, however, that a precondition to such termination is that SRMD 1 must have purchased the minimum number of Sewer Taps for 2019 as specified in Section 3.2.

6.4 **Venue.** The Parties agree and stipulate the proper venue for any court action that might occur in connection with or as a result of this Agreement is the District Court in and for the County of El Paso, Colorado.

6.5 **Lender's Notice and Cure Rights.** The Parties acknowledge that NBH Bank, N.A. ("Lender") has previously entered into certain loan agreements in connection with the



financing and development of Sterling Ranch. If SRMD 1 defaults under this Agreement, MSMD shall, in addition to delivering a default notice to SRMD 1, deliver a copy of a SRMD 1 default notice to Lender in accordance with the provisions of Section 7.9 below. In the event of any default by SRMD 1 for which MSMD has given a copy of the default notice to Lender and which MSMD has not waived in writing, Lender shall be entitled, but is not required, to exercise SRMD 1's cure rights as the same are set forth in the Agreement. Lender's exercise of such cure rights shall be upon written notice ("Lender's Notice") delivered to MSMD. If Lender fails to timely cure any such default identified in Lender's Notice, MSMD may pursue its remedies against SRMD 1 as provided under this Agreement, at law or in equity, including termination of this Agreement.

## ARTICLE VII MISCELLANEOUS

7.1 **Liability of Parties.** No provision, covenant or agreement contained in this Agreement, nor any obligations herein imposed upon each Party, nor the breach thereof, shall constitute or create an indebtedness of the other Party within the meaning of any Colorado constitutional provision or statutory limitation. Neither Party shall have any obligation whatsoever to repay any debt or liability of the other Party.

7.2 **Indemnification.** Subject to the provisions of the Colorado Governmental Immunity Act, and without waiving the same, to the extent permitted by law, each District agrees to indemnify, protect and hold harmless the other District from any claims or damages to persons or property resulting from the actions or inactions of the indemnifying District. Said indemnification shall include, but not be limited to, court costs, damages, and attorneys fees.

7.3 **Modification.** This Agreement may be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, only by an agreement in writing duly authorized and executed by both Parties. No consent of any third party shall be required for the negotiation and execution of any such agreement.

7.4 **Waiver.** No failure by either Party to insist upon the strict performance of any agreement, term, covenant, or condition hereof or to exercise any right or remedy consequent upon default, and no acceptance of full or partial performance during the continuance of any such default, shall constitute a waiver of any such default of such agreement, term, covenant, or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either Party, and no default thereof, shall be waived, altered, or modified except by a written instrument executed by the non-defaulting Party. The waiver of any breach or default of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver or a waiver of any subsequent breach by the other Party of the same or another provision of this Agreement.

7.5 **Integration.** This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by either Party or the agent of either Party that is not contained in this Agreement shall be valid or binding.

7.6 **Effect of Invalidity.** If any provision of this Agreement is deemed invalid and unenforceable by a court of competent jurisdiction as to either Party, or as to both Parties, such invalidity or unenforceability shall not cause the entire Agreement to be terminated, so long as the primary purposes of this Agreement remain viable.

7.7 **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

7.8 **Headings for Convenience Only.** The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.

7.9 **Notices.** Any notices or other communications required or permitted by this Agreement or by law to be served on, given to or delivered to either Party, by the other Party, shall be in writing and shall be deemed received on the date personally delivered to the Party to whom it is addressed, on the date received via e-mail with confirmation of receipt, or, upon

receipt in the United States mail, by certified mail, return receipt requested, addressed to the following:

To SRMD 1: Sterling Ranch Metropolitan District No. 1  
20 Boulder Crescent, Suite 200  
Colorado Springs, CO 80915

To MSMD: Meridian Service Metropolitan District  
c/o Community Resource Services of Colorado  
7995 E. Prentice Ave., Suite 103E  
Greenwood Village, CO 80111

With a copy to: Jody Harper Alderman  
Alderman Bernstein LLC  
101 University Blvd, Suite 350  
Denver, CO 80206

And to: Matt Dalton  
Spencer Fane LLP  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203

And copy of any notice of default pursuant to Section 3.2 and Article VI to:

NBH Bank, N.A.  
Attn: Special Asset Group  
11111 W. 95<sup>th</sup> Street  
Overland Park, KS 66214

With a copy to:

Flynn Wright & Fredman, LLC  
Attn: Jane Fredman, Esq.  
111 South Tejon Street Suite 202  
Colorado Springs, CO 80903

Either Party may change its address for the purpose of this Section by giving written notice of such change to the other Party in the manner provided in this Section.

7.10 **Government Authority.** The Parties shall comply with any and all valid state, federal or local laws or regulations covering the subject of this Agreement, and any and all valid orders, regulations or licenses issued pursuant to any federal, state or local law or regulation governing the subject of this Agreement. SRMD 1 shall comply with all terms and conditions of



the CM Plant IGA and the terms and conditions of the MSMD Rules and Regulations applicable to sanitary sewer service.

7.11 **Force Majeure.** Either Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government; war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government; national fuel shortage; when satisfactory evidence of such cause is presented to the other Party, and provided further that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of the Party not performing.

7.12 **Other Applicable IGAs.** All terms and conditions of the CM Plant IGA and the McLaughlin IGA apply to this Agreement; provided, however, that if the terms of this Agreement are more restrictive than the CM Plant IGA and/or the McLaughlin IGA, then the terms of this Agreement shall prevail.

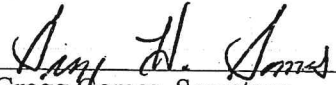
7.13 **Authority to Execute Agreement.** The individuals signing this Agreement expressly affirm and represent that s/he has the authority to enter this Agreement and to bind the Party s/he represents.

7.14 **Fair Dealing.** In all cases where the consent or approval of one Party is required before the other may act, or where the agreement or cooperation of either or both Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof. SRMD 1 will not be bound by or subject to any rules or regulations of the MSMD that are not also applicable and enforced in the same manner against similarly situated properties and users of Services within MSMD boundaries, except as otherwise specifically set forth herein. All references in this Agreement to MSMD's standards, policies, rules or regulations, or similar references, shall mean the same as adopted and applied by MSMD within its boundaries, but as the same may be amended from time to time. Furthermore, notwithstanding any provisions in

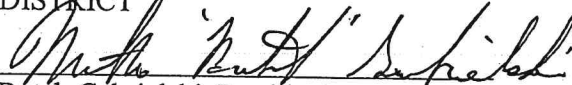
this Agreement to the contrary, in furnishing sanitary sewer services to SRMD 1, MSMD will be bound by the same duties and standards of care as are applicable to and benefit recipients of such services within MSMD's boundaries.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

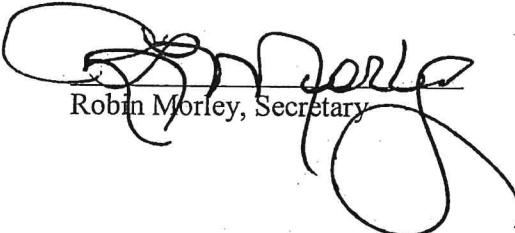
ATTEST:

  
Gregg Gomes, Secretary

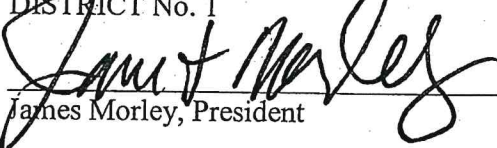
MERIDIAN SERVICE METROPOLITAN  
DISTRICT

  
Butch Gabrielski, President

ATTEST:

  
Robin Morley, Secretary

STERLING RANCH METROPOLITAN  
DISTRICT No. 1

  
James Morley, President

# EXHIBIT A

## STERLING RANCH MASTER PLAN

THE WEST HALF OF THE WEST HALF OF THE EAST HALF AND EAST HALF OF THE WEST HALF AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 27; THE EAST HALF OF THE SOUTHEAST QUARTER AND THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER LYING SOUTH AND EAST OF THE COUNTY ROAD KNOWN AS VOLLMER ROAD, OF SECTION 28; THE WEST HALF OF THE EAST HALF AND THE WEST HALF OF SECTION 34; THE EAST HALF AND THE EAST HALF OF THE SOUTHWEST QUARTER AND THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 33, AND ALL THAT PART OF THE NORTHWEST QUARTER OF SECTION 33 LYING SOUTH AND EAST OF THE COUNTY ROAD KNOWN AS VOLLMER ROAD, EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 33 LYING SOUTH AND EAST OF SAID COUNTY ROAD AS DEEDED TO COLORADO INTERSTATE GAS COMPANY BY WARRANTY DEED RECORDED IN BOOK 1173 AT PAGE 359; AND THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER AND THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER LYING SOUTHEAST OF THE COUNTY ROAD KNOWN AS VOLLMER ROAD, OF SECTION 32, EXCEPT THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 32 DEEDED TO J. MARCUS BROWN BY TRUSTEES' DEED RECORDED IN BOOK 3292 AT PAGE 168; ALL IN TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6<sup>TH</sup> P.M., EL PASO COUNTY, COLORADO. ALL THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 28, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6<sup>TH</sup> P.M., EL PASO COUNTY, COLORADO LYING SOUTH AND EAST OF THE COUNTY ROAD (VOLLMER ROAD); ALSO: THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 13 SOUTH, RANGE 65 WEST OF THE SIXTH PRINCIPAL MERIDIAN, LYING SOUTHERLY OF AN EXISTING EAST- WEST FENCE AS DESCRIBED IN SPECIAL WARRANTY DEED RECORDED DECEMBER 23, 2004 AT RECEPTION NO. 204209417, COUNTY OF EL PASO, STATE OF COLORADO, ALSO: THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 32, TOWNSHIP 12 SOUTH, RANGE 65 WEST OF THE 6<sup>TH</sup> P.M., LYING SOUTHEASTERLY OF THE PUBLIC ROAD KNOWN AS VOLLMER ROAD, EL PASO COUNTY, COLORADO, AND CONTAINING 1443.695 ACRES MORE OR LESS.

DESCRIPTION PREPARED BY:  
M&S CIVIL CONSULTANTS, INC.  
102 E PIKES PEAK AVENUE  
COLORADO SPRINGS, CO 80903





CIVIL CONSULTANTS, INC.

- EXHIBIT A-4

15 North Nevada Avenue  
Colorado Springs,  
Colorado 80903  
v 719.955.5485  
f 719.444.8427

Sterling Ranch  
District 1 - Ownership

M&S Job No. 09-002  
August 31, 2009

That portion of the Northeast Quarter of the Northwest Quarter of Section 27, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, described as follows:

The basis of bearings is the North line of the Northeast Quarter of Section 27, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., monumented at the West end by a 30.00 foot offset witness corner which is a 3 1/4 inch aluminum cap stamped 30 W.C. 1/4 S22, S27 T12S R65W, LS 13830, 1991 and a 2 1/4 inch aluminum cap stamped T12S R65W S22, S23, S27, S26, 1999, FLS 4842 at the East end and a line between them is assumed to bear N 89°05'36" E and having a distance of 2661.17 feet, the monuments were recovered in 2005.

Commencing at the Northwest corner of said Section 27; thence N 88°38'53" E on the North line of Section 27, a distance of 1330.89 feet to the point of beginning, said point being the Northwest corner of the Northeast Quarter of the Northwest Quarter of said Section 27; thence N 88°38'53" E, on said North line of the Northeast Quarter of the Northwest Quarter, a distance of 210.00 feet; thence S 01°21'07" E, a distance of 211.63 feet; thence S 89°05'30" W, a distance of 211.63 feet, to the West line of the Northeast Quarter of the Northwest Quarter of said Section 27; thence N 00°54'30" W on said West line of the Northeast Quarter of the Northwest Quarter, a distance of 210.00 feet to the point of beginning and containing 1.020 Acres, more or less.

Description prepared by:  
M&S Civil Consultants, Inc.  
15 North Nevada Avenue  
Colorado Springs, CO 80903





15 North Nevada Avenue  
Colorado Springs,  
Colorado 80903  
v 719.955.5485  
f 719.444.8427

Sterling Ranch  
District 2 - Residential

M&S Job No. 09-002  
August 31, 2009

The West Half of the West Half of the East Half and East Half of the West Half and the Southwest Quarter of the Southwest Quarter of Section 27; the East Half of the Southeast Quarter and that portion of the Southwest Quarter of the Southeast Quarter lying South and East of the county road known as Vollmer Road, of Section 28; the West Half of the East Half and the West Half of Section 34; the East Half and the East Half of the Southwest Quarter and the Southwest Quarter of the Southwest Quarter of Section 33, and all that part of the Northwest Quarter of Section 33 lying South and East of the county road known as Vollmer Road, except that portion of the Southwest Quarter of the Northwest Quarter of said Section 33 lying South and East of said county road as deeded to Colorado Interstate Gas Company by warranty deed recorded in Book 1173 at Page 359; and that portion of the Northeast Quarter of the Southeast Quarter and the Southeast Quarter of the Southeast Quarter lying Southeast of the county road known as Vollmer Road, of Section 32, except that portion of the Northeast Quarter of the Southeast Quarter of said Section 32 deeded to J. Marcus Brown by trustees' deed recorded in Book 3292 at Page 168; all in Township 12 South, Range 65 West of the 6th p.m., El Paso County, Colorado, ALSO:

All that portion of the Northwest Quarter of the Southeast Quarter of Section 28, Township 12 South, Range 65 West of the 6th p.m., El Paso County, Colorado lying South and East of the county road (Vollmer Road), ALSO:

The Southeast Quarter of the Southwest Quarter of the Southeast Quarter of Section 32, Township 12 South, Range 65 West of the 6th p.m., lying Southeasterly of the public road known as Vollmer Road, El Paso County, Colorado, ALSO:

A portion of the Northwest Quarter of Section 4, Township 13 South, Range 65 West of the 6th p.m., El Paso County, Colorado described as follows:

Beginning at the Northwest corner of Pawnee Rancheros Filing No. 2 as recorded in plat Book U-2 at Page 45 of the Records of El Paso County; thence S 00°13'49" W on an assumed bearing to which all others in this description are relative and on the West line of said Filing No. 2, a distance of 1128.15 feet to the Southwest corner thereof; thence S 89°17'10" W on the boundary line of the tract of land described in Book 5528 at Page 947 of the said Records, 1321.24 feet to an angle point on said boundary; thence N 06°23' 51" E, on the West line of Section 4, a distance of 1132.29 feet to the Northwest corner of said Section 4; thence N 89°04'30" E on the North line of said Section 4, a distance of 1199.66 feet to the point of beginning.

EXCEPTING THEREFROM the following four (4) tracts of land:

TRACT 1:

That portion of the Northeast Quarter of the Northwest Quarter of Section 27, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, described as follows:

The basis of bearings is the North line of the Northeast Quarter of Section 27, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., monumented at the West end by a 30.00 foot offset witness corner which is a 3 1/4 inch aluminum cap stamped 30 W.C. 1/4 S22, S27 T12S R65W, LS 13830, 1991 and a 2 1/4 inch aluminum cap stamped T12S R65W S22, S23, S27, S26, 1999, PLS 4842 at the East end and a line between them is assumed to bear N 89°05'36" E and having a distance of 2661.17 feet, the monuments were recovered in 2005.

Commencing at the Northwest corner of said Section 27; thence N 88°38'53" E on the North line of Section 27, a distance of 1330.89 feet to the point of beginning, said point being the Northwest corner of the Northeast Quarter of the Northwest Quarter of said Section 27; thence N 88°38'53" E, on said North line of the Northeast Quarter of the Northwest Quarter, a distance of 210.00 feet; thence S 01°21'07" E, a distance of 211.63 feet; thence S 89°05'30" W, a distance of 211.63 feet, to the West line of the Northeast Quarter of the Northwest Quarter of said Section 27; thence N 00°54'30" W on said West line of the Northeast Quarter of the Northwest Quarter, a distance of 210.00 feet to the point of beginning, said exception containing 1.020 Acres, more or less, ALSO EXCEPT:

TRACT 2:

That portion of the Southeast Quarter of Section 32, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, described as follows:

The basis of bearings is the North line of the Northeast Quarter of Section 27, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., monumented at the West end by a 30.00 foot offset witness corner which is a 3 1/4 inch aluminum cap stamped 30 W.C. 1/4 S22, S27 T12S R65W, LS 13830, 1991 and a 2 1/4 inch aluminum cap stamped T12S R65W S22, S23, S27, S26, 1999, PLS 4842 at the East end and a line between them is assumed to bear N 89°05'36" E and having a distance of 2661.17 feet, the monuments were recovered in 2005.

Commencing at the Southeast corner of said Section 32; thence S 89°12'38" W on the South line of Section 32, a distance of 412.10 feet to the point of beginning; thence N 49°38'29" W, 1055.10 feet; thence on the Easterly line of Vollmer Road the following two (2) courses:  
(1) S 40°15'29" W, 172.13 feet;  
(2) S 36°15'39" W, 707.24 feet to the South line of Section 32; thence N 89°12'38" E on said South line, 1333.66 feet to the point of beginning said exception containing 10.725 Acres, more or less, ALSO EXCEPT:

TRACT 3:

That portion of the South Half of Section 28 and that portion of the North Half of Section 33, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., described as follows: Commencing at the point

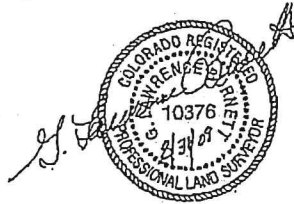


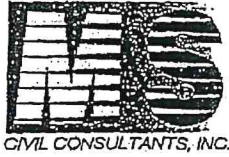
of intersection of the Easterly line of Vollmer Road with the West line of the East Half of the Northwest Quarter of said Section 33; thence N 39°33'48" E on the Easterly line of Vollmer Road, 1290.81 feet to the point of beginning; thence S 50°26'12" E, 28.24 feet to a point of curve; thence on the arc of a curve to the right, having a central angle of 50°10'52", a radius of 565.00 feet, an arc distance of 494.84 feet to point on curve; thence N 89°44'40" E, radial to the last mentioned curve, 97.13 feet to a point of curve; thence on the arc of a curve to the left, having a central angle of 50°10'52", a radius of 565.00 feet, an arc distance of 494.84 feet to the point of tangent; thence N 39°33'48" E, 707.03 feet; thence N 50°26'12" W, 740.00 feet to the Easterly line of Vollmer Road; thence S 39°33'48" W on said Easterly line, 1000.00 feet to the point of beginning said exception containing 17.941 Acres, more or less, ALSO EXCEPT:

TRACT 4:

That portion of Section 34, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M. described as follows: Commencing at the Southeast corner of the West Half of the Southeast Quarter of said Section 34; thence N 00°13'01" W on the East line of the West Half of the Southeast Quarter, 1721.93 feet to the point of beginning; thence continue on said line, N 00°13'01" W, 1095.85 feet; thence S 89°59'37" W, 576.78 feet; thence Northwest on the arc of a curve to the right, having a central angle of 13°28'52", a radius of 930.00 feet, an arc distance of 218.82 feet to the point of tangent; thence N 76°31'31" W, 250.00 feet; thence S 13°28'29" W, 1035.83 feet; thence S 82°20'46" E, 1293.75 feet to the point of beginning said last exception containing 27.689 Acres, more or less.

Description prepared by:  
M&S Civil Consultants, Inc.  
15 North Nevada Avenue  
Colorado Springs, CO 80903





15 North Nevada Avenue  
Colorado Springs,  
Colorado 80903  
v 719.955.5485  
f 719.444.8427

Sterling Ranch  
District 3 - Commercial

M&S Job No. 09-002  
August 31, 2009

That portion of the Southeast Quarter of Section 32, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., El Paso County, Colorado, described as follows:

The basis of bearings is the North line of the Northeast Quarter of Section 27, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., monumented at the West end by a 30.00 foot offset witness corner which is a 3 1/4 inch aluminum cap stamped 30 W.C. 1/4 S22, S27 T12S R65W, LS 13830, 1991 and a 2 1/4 inch aluminum cap stamped T12S R65W S22, S23, S27, S26, 1999, PLS 4842 at the East end and a line between them is assumed to bear N 89°05'36" E and having a distance of 2661.17 feet, the monuments were recovered in 2005.

Commencing at the Southeast corner of said Section 32; thence S 89°12'38" W on the South line of Section 32, a distance of 412.10 feet to the point of beginning; thence N 49°38'29" W, 1055.10 feet; thence on the Easterly line of Vollmer Road the following two (2) courses:

(1) S 40°15'29" W, 172.13 feet;

(2) S 36°15'39" W, 707.24 feet to the South line of Section 32; thence N 89°12'38" E

on said South line, 1333.66 feet to the point of beginning and containing 10.725 Acres, more or less, ALSO:

That portion of the South Half of Section 28 and that portion of the North Half of Section 33, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M., described as follows: Commencing at the point of intersection of the Easterly line of Vollmer Road with the West line of the East Half of the Northwest Quarter of said Section 33; thence N 39°33'48" E on the Easterly line of Vollmer Road, 1290.81 feet to the point of beginning; thence S 50°26'12" E, 28.24 feet to a point of curve; thence on the arc of a curve to the right, having a central angle of 50°10'52", a radius of 565.00 feet, an arc distance of 494.84 feet to point on curve; thence N 89°44'40" E, radial to the last mentioned curve, 97.13 feet to a point of curve; thence on the arc of a curve to the left, having a central angle of 50°10'52", a radius of 565.00 feet, an arc distance of 494.84 feet to the point of tangent; thence N 39°33'48" E, 707.03 feet; thence N 50°26'12" W, 740.00 feet to the Easterly line of Vollmer Road; thence S 39°33'48" W on said Easterly line, 1000.00 feet to the point of beginning and containing 17.941 Acres, more or less, ALSO:

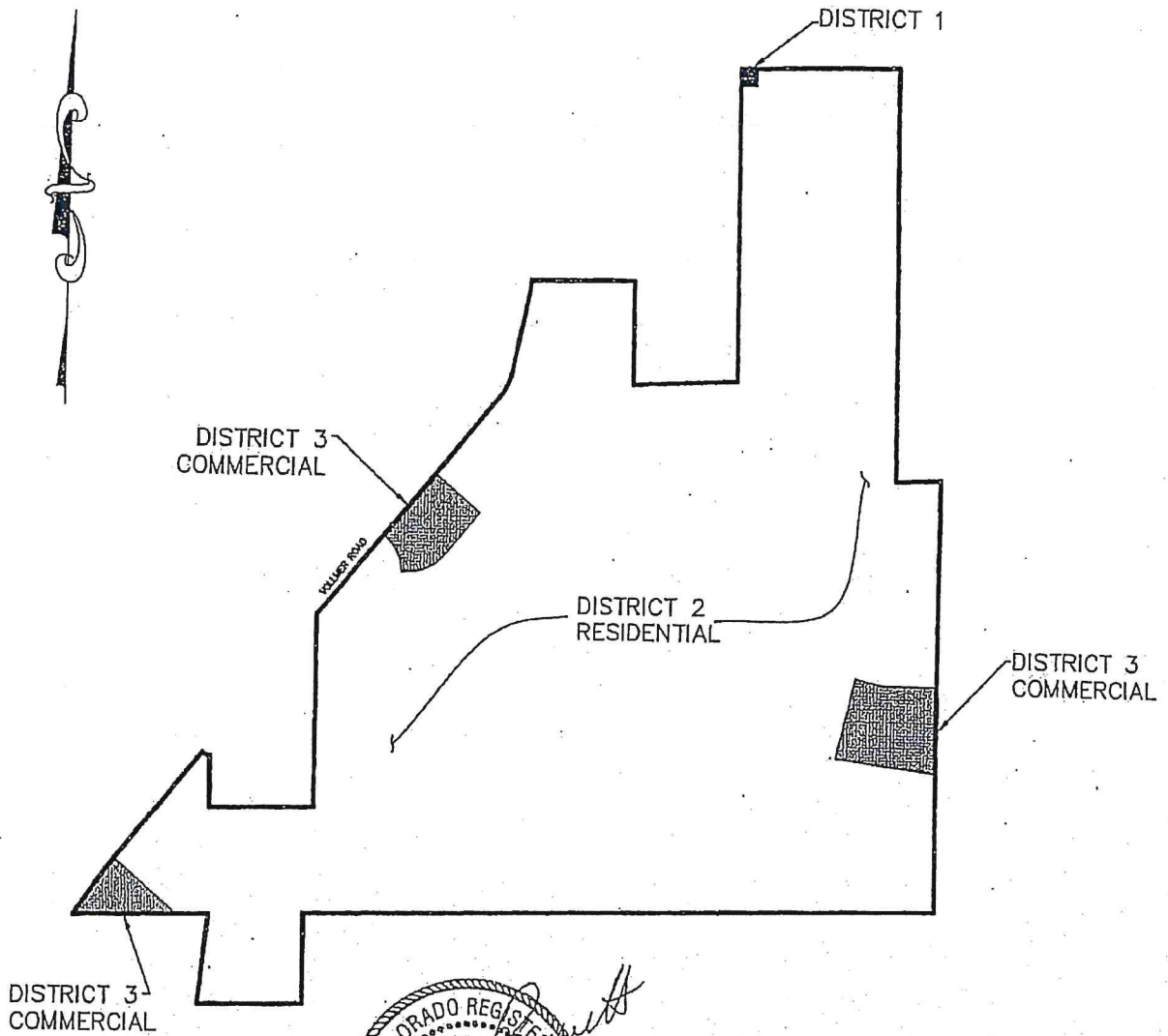
That portion of Section 34, Township 12 South, Range 65 West of the 6<sup>th</sup> P.M. described as follows: Commencing at the Southeast corner of the West Half of the Southeast Quarter of said Section 34; thence N 00°13'01" W on the East line of the West Half of the Southeast Quarter, 1721.93 feet to the point of beginning; thence continue on said line, N 00°13'01" W, 1095.85 feet; thence S 89°59'37" W, 576.78 feet; thence Northwesterly on the arc of a curve to the right, having a central angle of 13°28'52", a radius of 930.00 feet, an arc distance of 218.82 feet to the point of tangent; thence N 76°31'31" W, 250.00 feet; thence S 13°28'29" W, 1035.83 feet; thence S 82°20'46" E, 1293.75 feet to the point of beginning and containing 27.689 Acres, more or less, the sum of the three parcels is 56.355 Acres, more or less.

Description prepared by:  
M&S Civil Consultants, Inc.  
15 North Nevada Avenue  
Colorado Springs, CO 80903



# STERLING RANCH DISTRICT

EL PASO COUNTY, COLORADO  
EXHIBIT A-2



STERLING RANCH DISTRICT  
EXHIBIT  
JOB NO. 09-002  
DATE PREPARED: AUGUST 31, 2009  
DATE REVISED:

15 NORTH NEVADA AVENUE  
COLORADO SPRINGS,  
COLORADO 80903

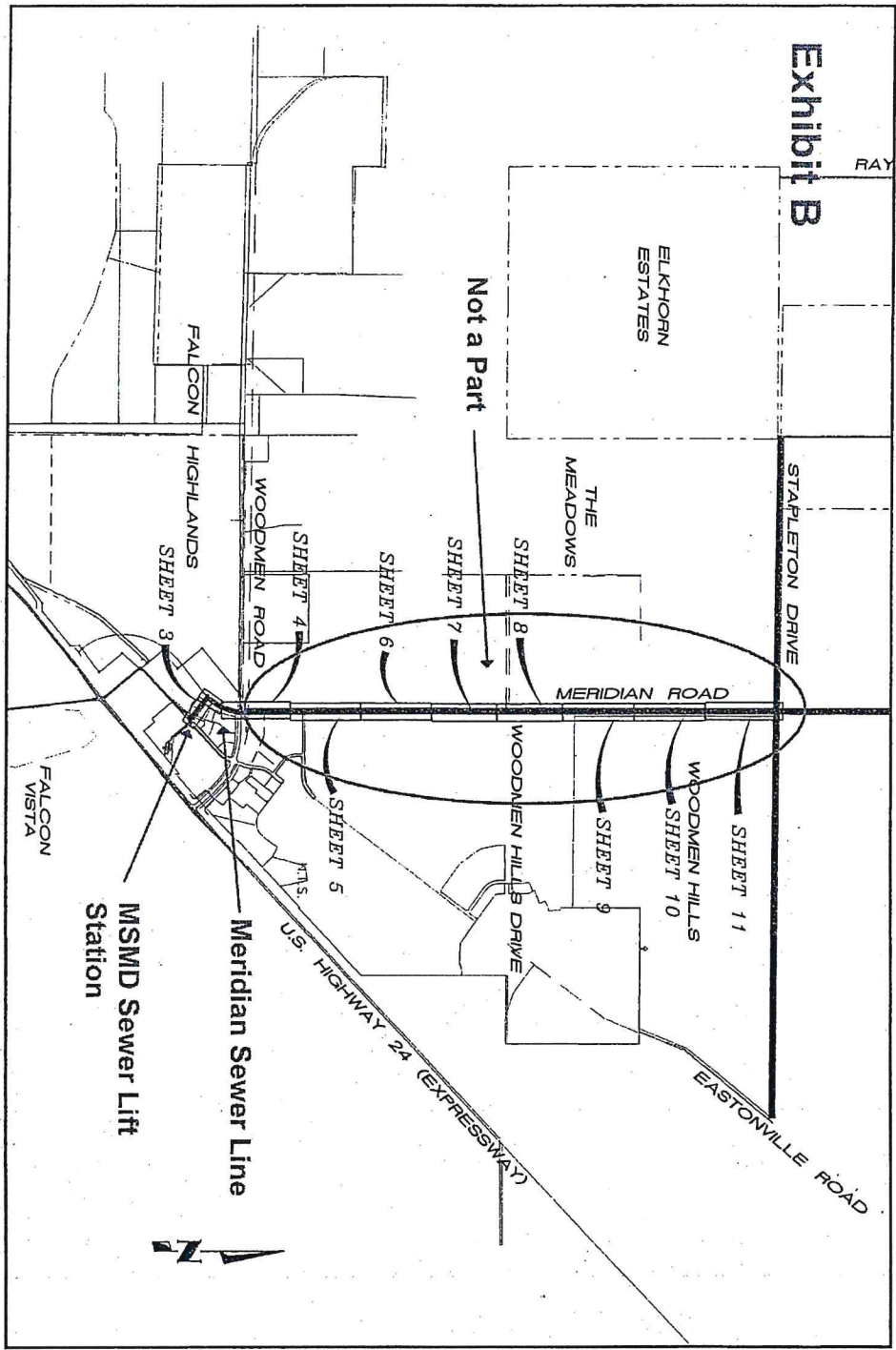
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f 719.444.8427

SHEET 1 OF 1





# SHEET INDEX

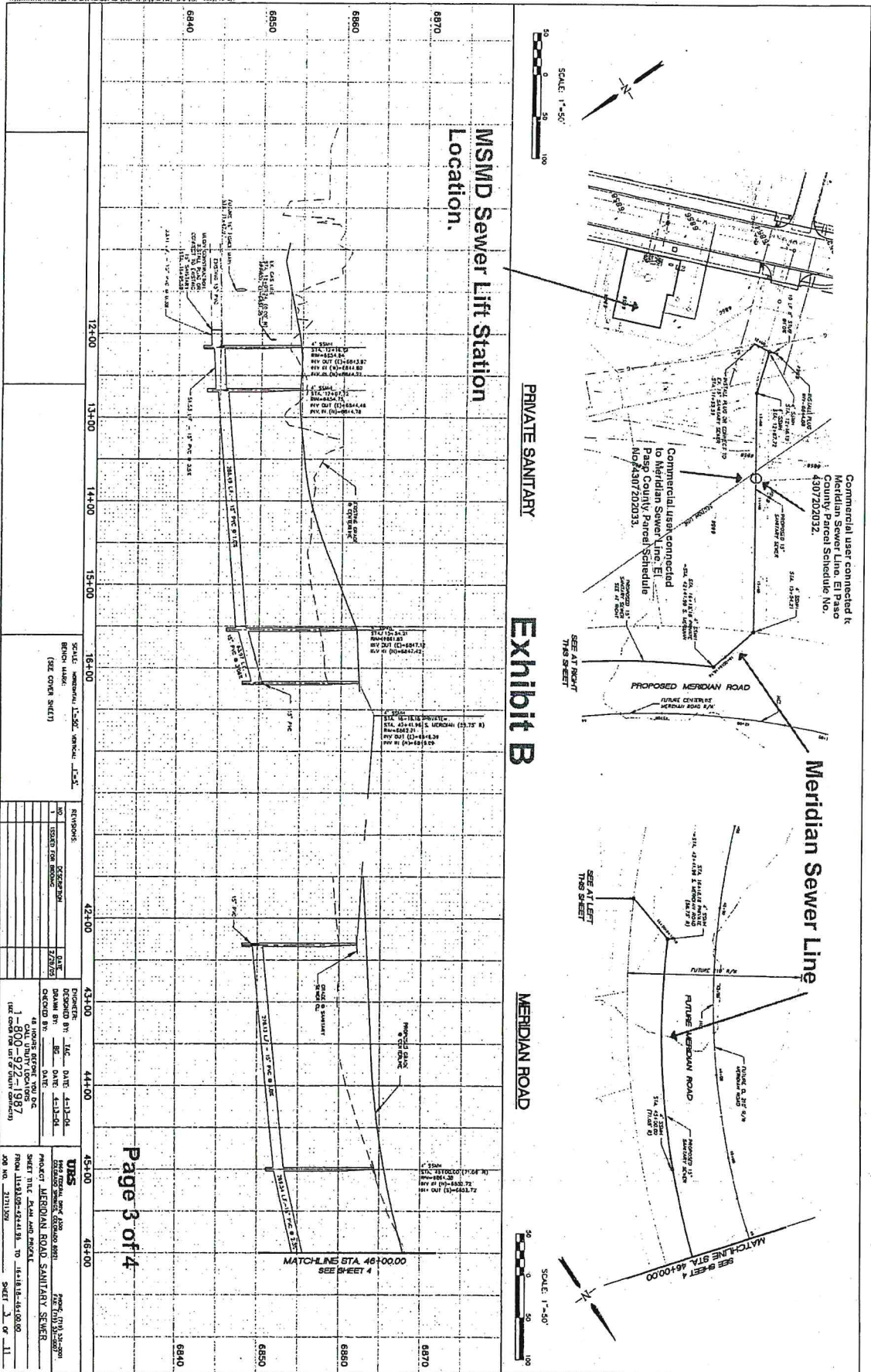


REVISIONS		DATE	
NO.	DESCRIPTION	BY	DATE

DESIGNED BY: JAC. OAK	DATE: 12-1-84	<b>URS</b> CONSULTING ENGINEERS AND ARCHITECTS PROJECT: MERIDIAN ROAD SANITARY SEWER SHEET TITLE: SHEET INDEX JOB NO.: 231193
CHECKED BY: JAC. OAK	DATE: 12-1-84	
48 HOURS BEFORE YOU DIG 1-800-922-1987 (see code for list of phone contacts)		DRAWN BY: JAC. OAK DATE: 12-1-84 SHEET NO. OF 11





PRIVATE SANITARY

Exhibit B

MERIDIAN ROAD

Page 3 of 4

12+00	13+00	14+00	15+00	16+00	42+00	43+00	44+00	45+00	46+00
SCALE: Horizontal: 1"=50' Vertical: 1"=5' (SEE OTHER SHEET)					RESPONSE:				
PROJECT:					DISC:				
DESIGNED BY:					DRAWN BY:				
CHECKED BY:					DATE:				
DATE:					DATE:				
PROJECT: MERIDIAN ROAD SANITARY SEWER					SHEET NO. 2111/09				
FROM 1153302-224133 TO 1153302-224133					SHEET 3 OF 11				

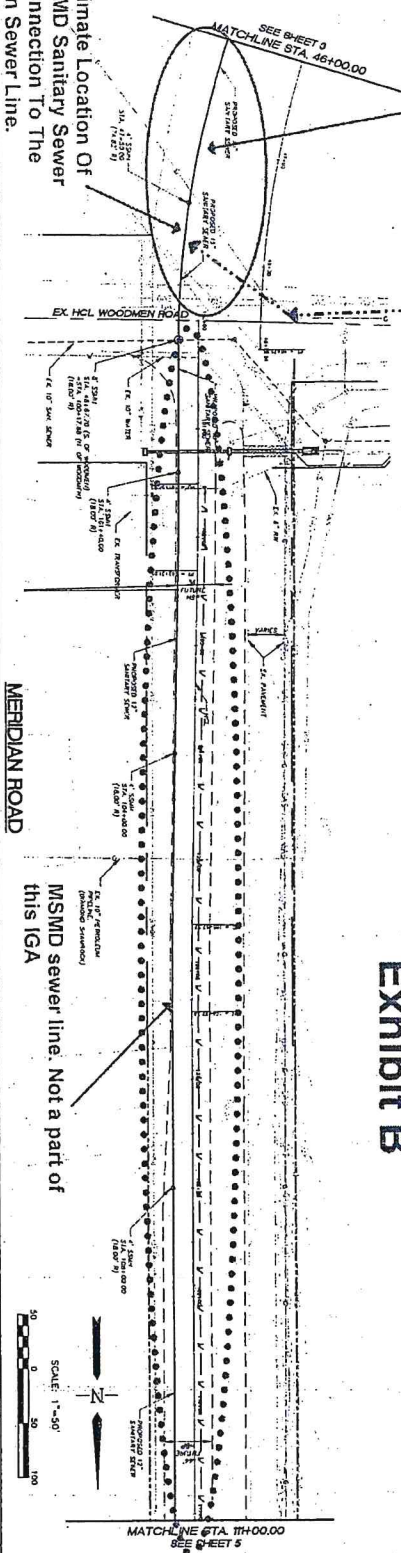


Meridian Sewer Line

Proposed Sanitary Sewer Line  
From SRMD.

Exhibit B

Approximate Location Of  
The SRMD Sanitary Sewer  
Line Connection To The  
Meridian Sewer Line.



MSWMD sewer line. Not a part of  
this IGA



Page 4 of 4

46+00	47+00	48+00	101+00	102+00	103+00	104+00	105+00	106+00	107+00	108+00	109+00	110+00	111+00														
<p>SEE SHEET 3 MATCHLINE STA. 46+00.00</p> <p>SEE SHEET 5 MATCHLINE STA. 111+00.00</p>																											
<p>Scale: Horizontal, 1"=30'; Vertical, 1"=10'</p> <p>Revisions:</p> <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>BY</th> <th>CHECKED</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>5/20/07</td> <td>FOR RECORD</td> <td>JAC</td> <td>JAC</td> </tr> <tr> <td>2</td> <td>10/2/07</td> <td>FOR RECORD</td> <td>JAC</td> <td>JAC</td> </tr> </tbody> </table> <p>Project: JAC - DATE 12-1-04          Described by: JAC - DATE 12-1-04          Drawn by: JAC - DATE 12-1-04          Checked by: JAC - DATE 12-1-04          Date of issue: 12/1/04          Date of revision: 10/2/07          Date of revision: 5/20/07</p> <p>DRS          PROJECT: MERIDIAN ROAD SANITARY SEWER          SHEET NO. 4 OF 11</p>													NO.	DATE	DESCRIPTION	BY	CHECKED	1	5/20/07	FOR RECORD	JAC	JAC	2	10/2/07	FOR RECORD	JAC	JAC
NO.	DATE	DESCRIPTION	BY	CHECKED																							
1	5/20/07	FOR RECORD	JAC	JAC																							
2	10/2/07	FOR RECORD	JAC	JAC																							



men Rd

E Woodmen Rd

McL...

Sign In

**Meridian Sewer Line**

Walgreens Store Falcon

Frankie's Tool

Bank

Dental - Falcon

SW

Meridian Rd

McLaughlin Rd

**MSMD Sewer Lift Station Site**

24

24

Rock Island Trailhead

**MSMD Sewer Force Main**

24

4th St

Chicago Ave

Old Meridian Rd

High Prairie Library

**EXHIBIT C**

Page 1 of 2

Pikes Peak Community College - Falcon Campus

mond Shamrock

Swingline Rd

Animal Hospital of Falcon

Swingline Rd

oogle



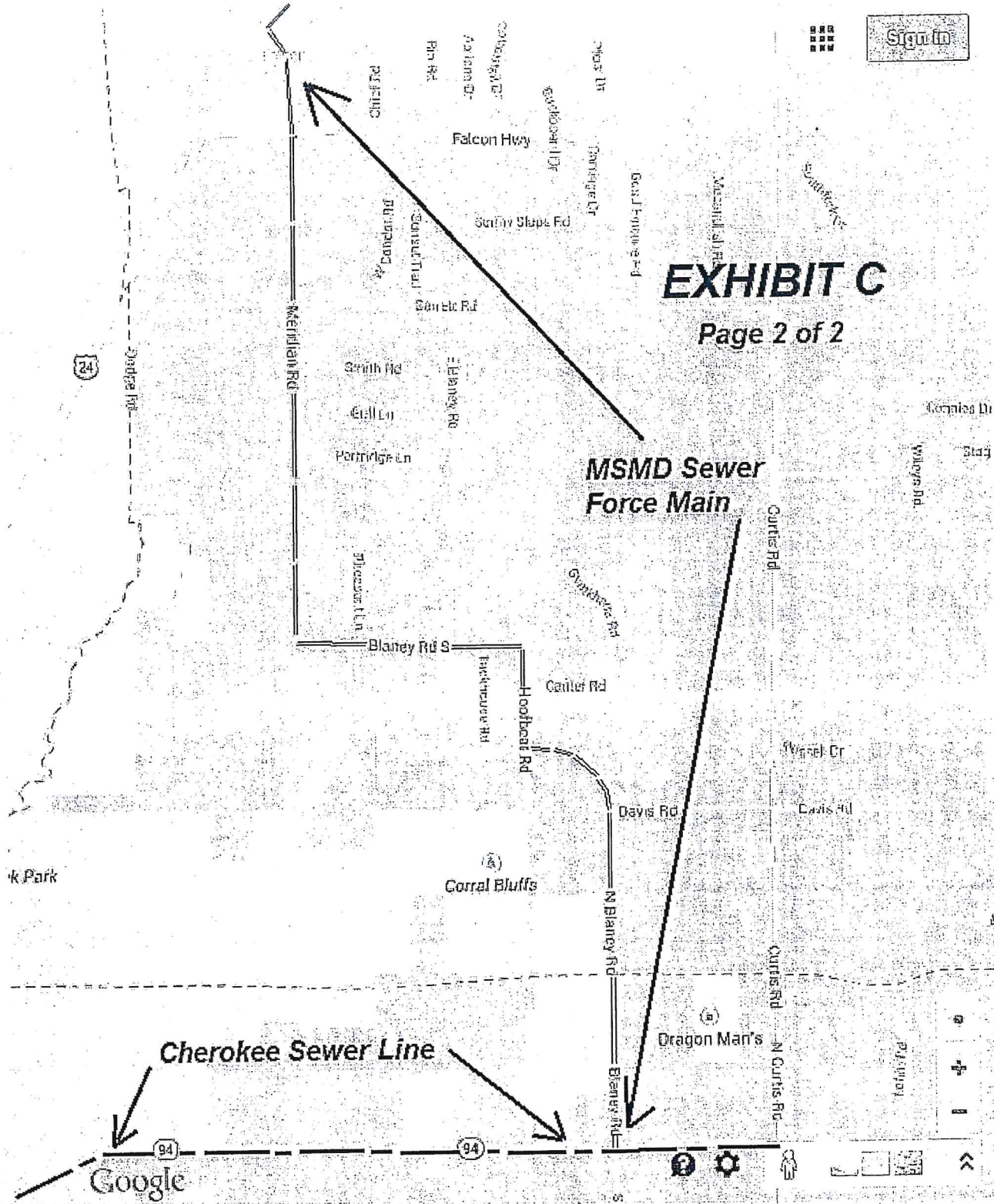
© 2014 Google





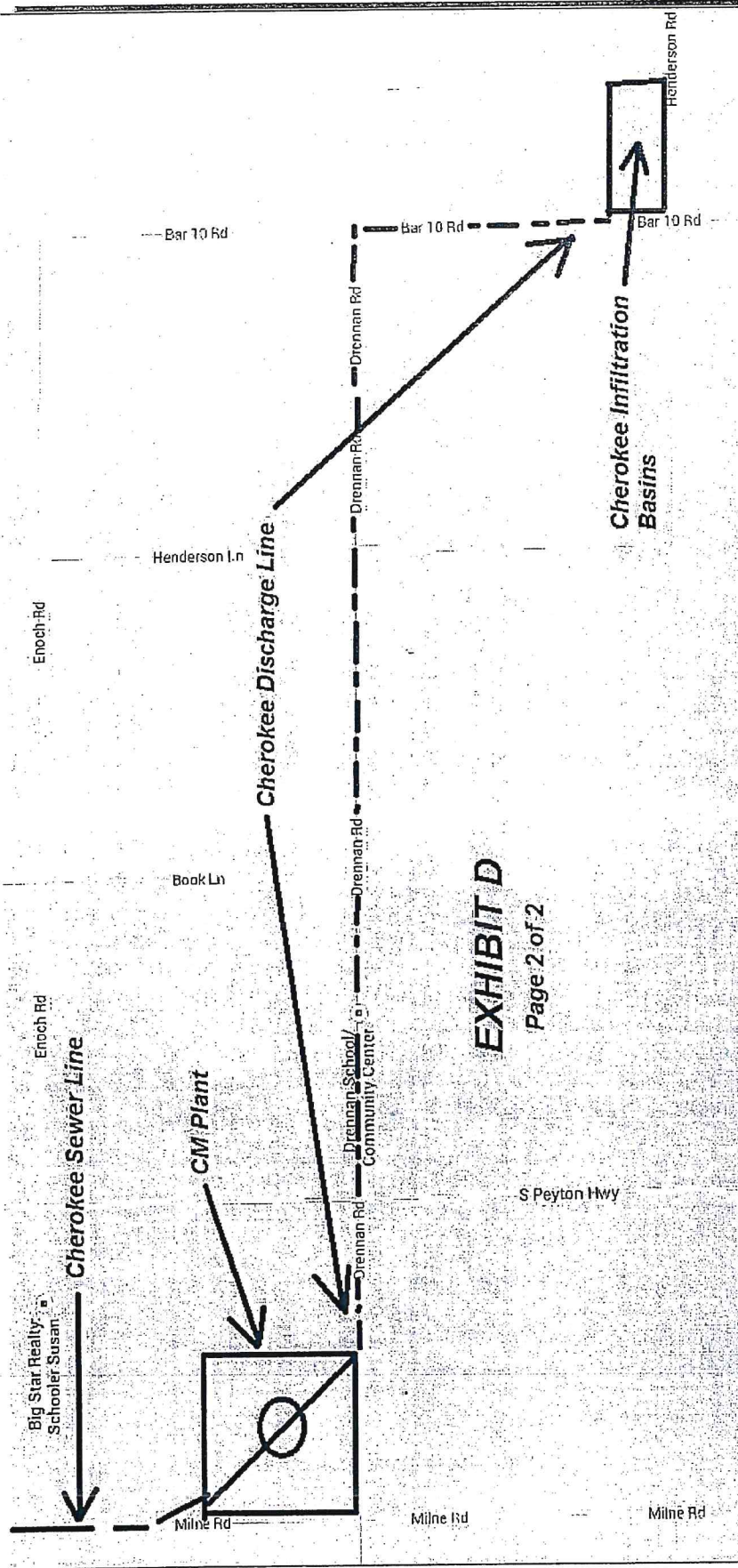
# EXHIBIT C

Page 2 of 2









**EXHIBIT D**

Page 2 of 2



# EXHIBIT E

## McLAUGHLIN ROAD SEWER LIFT STATION INTERGOVERNMENTAL AGREEMENT

THIS McLAUGHLIN ROAD SEWER LIFT STATION INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered this 21<sup>ST</sup> day of SEPTEMBER, 2009, by and between **MERIDIAN SERVICE METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("Meridian Service"), and **WOODMEN HILLS METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado ("Woodmen Hills") (sometime collectively referred to as the "Districts" or the "Parties").

### RECITALS

**WHEREAS**, Meridian Service provides, among other things, sanitary sewer service to the Meridian Ranch development; and

**WHEREAS**, Woodmen Hills provides, among other things, sanitary sewer service to the Woodmen Hills development; and

**WHEREAS**, Meridian Service and Woodmen Hills have entered into Metropolitan Districts Intergovernmental Agreement (Woodmen Hills – Meridian Ranch) dated March 17, 2004; and

**WHEREAS**, Woodmen Hills owns and operates the existing Woodmen Hills sewer lift station and backup emergency lift station and well system on Tract A, Beckett at Woodmen Hills Filing No. 3, 7320 McLaughlin Road (the "Lift Station Site"); and

**WHEREAS**, Meridian Service owns and operates the existing temporary sewer lift station that was approved via the modification of a lift station (site application #4406), Woodmen Hills Metropolitan District, El Paso County dated December 14, 2007 ("Temporary Lift Station"). The Temporary Lift Station is inside the existing Woodmen Hills sewer lift station backup wet well on the Lift Station Site; and

**WHEREAS**, Woodmen Hills granted a permanent easement over the Lift Station Site to Meridian Service for a sewer lift station, equalization basin and appurtenant equipment, (the "Lift Station") which easement was recorded on April 22, 2008, at Reception No. 208045754, in the office of the clerk and recorder of El Paso County, Colorado ("Lift Station Easement"); and

**WHEREAS**, in the Lift Station Easement, Woodmen Hills granted a construction easement to Meridian Service over Tract B, Falcon Highlands Market Place, Filing No.



1, El Paso County, Colorado for construction of the Lift Station Improvements (as described herein) on the Lift Station Easement (the "Construction Easement"); and

**WHEREAS**, a depiction of the Lift Station Easement and the construction easement are shown on Exhibit A, which is attached hereto and incorporated herein; and

**WHEREAS**, Meridian Service plans to construct the sanitary sewer Lift Station Improvements on the Lift Station Easement in order to serve its constituents and send its sewage to the Black Squirrel Waste Water Treatment Facility (the "Black Squirrel Facility"); and

**WHEREAS**, Woodmen Hills desires to participate in the construction of the Lift Station Improvements in order to serve its constituents and send its sewage to the Paint Brush Hills Waste Water Treatment Facility ("Paint Brush Facility"); and

**WHEREAS**, per all terms and specifications of this agreement and subject to obtaining all required permits and approvals, the Lift Station may be used to pump Meridian Service and/or Woodmen Hills sewage to any treatment facility permitted by the State of Colorado; and

**WHEREAS**, pursuant to Section 18(2)(a) of Article XIV of the Constitution of the State of Colorado, and Sections 29-1-201 et seq., the Districts have found that it is in their respective best interests to enter into this Agreement.

**WHEREAS**, this Agreement is contingent upon both Districts obtaining all necessary permits and or approvals to pump sewage to their respective waste water treatment facilities including approvals of all State of Colorado and El Paso County site applications and transferring of the existing Woodmen Hills State pumping site application to the Lift Station. It is in the best interest of both Districts to assist each other and expedite the permit/approval process.

**NOW, THEREFORE**, in consideration of the foregoing Recitals, which are incorporated herein, the mutual promises and obligations contained herein, and other good a valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Districts agree as follows:

#### **ARTICLE 1 – Lift Station Improvements**

1.1 The Lift Station Improvements shall be divided into the following three distinct/separate systems:

- 1.1.1 The Joint Lift Station System;
- 1.1.2 The Meridian Service Lift Station System; and
- 1.1.3 The Woodmen Hills Lift Station System.

1.2 The Joint Lift Station System shall consist of all Lift Station Improvements on the Lift Station Site that are used to receive, remove screening and grit, pump, temporarily store, dispose and handle sewage, screening and grit for both Meridian Service and Woodmen Hills (i.e. improvements that do not serve the sole purpose of pumping sewage for either Meridian Service or Woodmen Hills). The Joint Lift Station System improvements include, but are not limited to, the following:

1.2.1 General Site Improvements - Flatwork, paving, walls, fences, landscaping, exterior electric, lighting, phone and water systems, emergency storage basin system, equalization storage basin system, backup generator(s) system, etc.

1.2.2 Lift Station Building Improvements – The above grade and below grade Lift Station building structure; the Lift Station building piping, valves, meters, bends, tees, mechanical bar screen system, grit removal system necessary to transport sewage from the inlet piping to the Lift Station sewer wet well; the Lift Station building piping, valves, meters, bends, tees and pumps necessary to transport the sewage from the Lift Station wet well to either the emergency or equalization storage basins; the electrical, mechanical, plumbing, lighting, waste, phone, water, SCADA systems required to operate the Joint Lift Station System.

1.3 The Meridian Service Lift Station System shall mean those Lift Station Improvements that are used specifically for pumping only Meridian Service sewage via force mains to the Black Squirrel Facility for subsequent sewage treatment. This shall consist of, but not be limited to, pumps, chemical injection systems at the pump inlets, flow monitoring, sewer force mains, valves, piping, bends, electrical controls, chemical storage, electrical metering for the electrical components specific for the Meridian Service Lift Station, SCADA and phone systems required to operate the Meridian Service Lift Station System. Meridian Service shall properly design, engineer and build the Meridian Service Lift Station System and Meridian Service sewer force main system per all Federal, State and local regulations to accommodate its sewage flows, including peaking flows, to minimize the use of the equalization basins. Meridian Service shall make any future modifications and or improvements to the Meridian Service Lift Station System and Meridian Service sewer force main system necessary to meet all current or future Federal, State and local regulations including but not limited to sewer pumping flow rates and sewer quality standards.



- 1.4 The Woodmen Hills Lift Station System shall mean those Lift Station Improvements that are used specifically for pumping only Woodmen Hill's sewage via force mains to the Paint Brush Facility for subsequent sewage treatment of such sewage. This shall consist of, but not be limited to, pumps, chemical injection systems at the pump inlets, flow monitoring, sewer force mains, valves, piping, bends, electrical controls, chemical storage, electrical metering for the electrical components specific for the Woodmen Hills Lift Station System, SCADA and phone systems required to operate the Woodmen Hills Lift Station System. Woodmen Hills shall properly design, engineer and cause Meridian Service to initially construct the Woodmen Hills Lift Station System.

## ARTICLE 2 – Construction

- 2.1 Meridian Service shall construct the Lift Station Improvements on the Lift Station Easement and have full use of the Construction Easement. Meridian Service shall set up a pre-construction meeting prior to start of construction and invite Woodmen Hills to attend. Meridian Service shall at all times during construction provide Woodmen Hills access to the existing Woodmen Hills sewer lift station and backup emergency lift station and wet well system. Except as specified herein, Meridian Service shall pay the entire cost of constructing the Lift Station Improvements and shall own, operate and maintain the Joint Lift Station System and the Meridian Service Lift Station System. Woodmen Hills will own, operate and maintain the Woodmen Hills Lift Station System when Meridian Service has completed the Lift Station Improvements and the Lift Station is operational and put to its intended use.
- 2.2 The timing of construction of the Lift Station Improvements shall be in the sole discretion of the Meridian Service. Meridian Service shall provide Woodmen Hills with a construction schedule and update such schedule on a monthly basis. Meridian Service shall hold monthly construction update meetings and invite Woodmen Hills to attend the monthly construction meetings.
- 2.3 Woodmen Hills shall provide, at no cost to Meridian Service, the following equipment and/or services for the construction of the Lift Station Improvements and/or the operation of the Lift Station for the beneficial use of both Districts:
  - 2.1.1 the complete bioxide system necessary to treat Woodmen Hills sewage;
  - 2.1.2 the existing back-up electric generator located at the existing Woodmen Hills lift station (Kohler Model No. 180R0ZJ; Serial No. 0624052);
  - 2.1.3 a fire hydrant meter and all necessary construction water needed to construct and test the Lift Station Improvements;
  - 2.1.4 a 1½ inch water tap, water meter and water to provide all of the water necessary for the operation of the Lift Station and maintenance of the Lift Station Site;



- 2.4 Woodmen Hills shall assist Meridian Service in selecting the manufacturer(s) for the equipment used in the Woodmen Hills Lift Station System. During the public bid process, if there is a price difference between the equipment Woodmen Hills desires and the equipment Meridian Service has selected in the bid selected by Meridian Service (assuming comparable manufacturer(s)), then Woodmen Hills will pay Meridian Service the difference. Meridian Service shall install the equipment provided and specified by Woodmen Hills as agreed upon in this Agreement.
- 2.5 Meridian Service shall be responsible for paying all fees for and obtaining all necessary permits and or approvals to construct the Lift Station Improvements and to pump Meridian Service sewage to the Black Squirrel Facility. Woodmen Hills agrees to cooperate with Meridian Service and assist Meridian Service as necessary in obtaining all of the required permits and approvals.
- 2.6 Woodmen Hills shall be responsible for paying all fees for and obtaining all necessary permits and or approvals to pump Woodmen Hill's sewage to the Paint Brush Facility. Meridian Service agrees to cooperate with Woodmen Hills and assist Woodmen Hills as necessary in obtaining all of the required permits and approvals.
- 2.7 Once the Lift Station Improvements are complete and the Lift Station is operational, Woodmen Hills shall, if required, be responsible for the removal and disposal of the existing Woodmen Hill's sewer lift station and backup wet well system on the Lift Station Site. Meridian Service shall be responsible for the removal and disposal of the existing Meridian Service temporary sewer lift station inside the existing Woodmen Hills sewer lift station backup wet well.
- 2.8 Meridian Service shall maintain builder's risk insurance during the duration of the construction period and name Woodmen Hills as additional insured.

### **ARTICLE 3 – Ownership, Operation and Maintenance**

- 3.1 Meridian Service shall own and be responsible for the operation, maintenance, and repair of the Meridian Service Lift Station System. All costs for the operation, maintenance and repair of the Meridian Service Lift Station System shall be the responsibility of Meridian Service. Meridian Service shall purchase and maintain comprehensive general public liability and property damage insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such policies shall name Woodmen Hills as an additional insured and shall prohibit cancellation without thirty (30) days' notice to Woodmen Hills. Meridian Service will furnish Woodmen Hills, within ten (10) days of receipt of a written request for the same, written verification from the insurance carrier for Meridian Service that such

coverage is in full force and effect. Meridian Service shall be responsible for the proper operation of the Meridian Service Lift Station System at all times and for pumping Meridian Service sewage from the Lift Station to the Black Squirrel Facility. Meridian Service shall maintain an approved emergency sewer backup plan (updated annually and delivered to Woodmen Hills for their records) to transfer Meridian Service sewage from the Lift Station to the Black Squirrel Facility in the event that the Meridian Service Lift Station System goes off line and the emergency storage basin can not handle all the Meridian Service sewage flows.

- 3.2 Meridian Service shall own and be responsible for the operation, maintenance, and repair of the Joint Lift Station System. Once the Lift Station is complete and operational, all costs for the operation, maintenance and repair of the Joint Lift Station System shall be shared between both Districts. If the expense amount is a fixed cost, i.e. the amount of the cost is not dependent on sewage flows such as roof repairs, insurance, upgrades, building maintenance, etc., then the expense shall be paid proportionally based on 54% for Meridian Service and 46% for Woodmen Hills. If the expense amount is based on sewage flow quantities and not a fixed cost, i.e. expenses such as electric, disposal, etc., then the expense shall be paid proportionally on a monthly basis between Meridian Service and Woodmen Hills based on the end of the month sewage flow percentage breakdown. Meridian Service shall purchase and maintain for the Joint Lift Station System comprehensive general public liability and property damage insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Insurance costs shall be considered fixed cost. Such policies shall name Woodmen Hills as an additional insured and shall prohibit cancellation without thirty (30) days' notice to Woodmen Hills. Meridian Service will furnish Woodmen Hills, within ten (10) days of receipt of a written request for the same, written verification from the insurance carrier for Meridian Service that such coverage is in full force and effect.
- 3.3 Once the Lift Station is complete and operational, Meridian Service shall invoice Woodmen Hills on a monthly basis for its share of the costs for the operation, maintenance and repair of the Joint Lift Station System as noted above. Meridian Service and Woodmen Hills shall hold a meeting at least once a month to review all meter readings, monthly invoices, previous expenditures, future expenditures, maintenance status, operational concerns, and all other Lift Station matters. Meridian Service shall provide Woodmen Hills all necessary backup information for all invoicing including a detailed summary sheet breaking down all costs. Woodmen Hills shall pay Meridian Service invoices within 30 days of being received. Meridian Service shall provide Woodmen Hills a yearly operation and maintenance budget for the Joint Lift Station System by November 1 of the previous year. The yearly budget will be updated from time to time depending on



unforeseen repairs and expenditures. For the Joint Lift Station System Meridian Service shall have to do the following:

- 3.3.1 Get a minimum of three (3) qualified proposals for any unforeseen non-emergency repairs that are anticipated to exceed \$15,000. Woodmen Hills will assist Meridian Service in selecting the lowest qualified bid.
  - 3.3.2 Meridian Service shall notify Woodmen Hills immediately on any potential Emergency repairs that are anticipated to exceed \$15,000. If due to the emergency it is not possible to get more than one or any bids and the repairs have to be repaired immediately than Meridian Service agrees to work with Woodmen Hills to expedite such repairs. Meridian Service shall update Woodmen Hills on the status of all said repairs.
  - 3.3.3 Meridian Service and Woodmen Hills will agree at the start of the year on a list of potential repairs that will have a single source repair company. Three (3) bids will not be required for these repairs. All repair and or replacement projects that are anticipated to exceed \$60,000 (labor and materials combined) are required to be bid out.
  - 3.3.4 Whenever possible Meridian Service shall work with Woodmen Hills to complete all repair work using both Districts labor forces.
- 3.4 Once the Lift Station is complete and operational, Woodmen Hills shall own and be responsible for the operation, maintenance, and repair of the Woodmen Hills Lift Station System. All costs for the operation, maintenance and repair of the Woodmen Hills Lift Station System shall be the responsibility of Woodmen Hills. Woodmen Hills shall purchase and maintain comprehensive general public liability and property damage insurance in an amount not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. Such policies shall name Meridian Service as an additional insured and shall prohibit cancellation without thirty (30) days' notice to Meridian Service. Woodmen Hills will furnish Meridian Service, within ten (10) days of receipt of a written request for the same, written verification from the insurance carrier for Woodmen Hills that such coverage is in full force and effect. Woodmen Hills shall be responsible for the proper operation of the Woodmen Hills Lift Station System at all times and for pumping Woodmen Hills' sewage from the Lift Station to the Paint Brush Facility. Woodmen Hills shall maintain an approved emergency backup plan (updated annually and delivered to Meridian Service for their records) to transfer Woodmen Hills sewage from the Lift Station to the Paint Brush Facility in the event that the Woodmen Hills Lift Station System goes off line and the Emergency Storage Basin can not handle all the Woodmen Hills sewage flows.
- 3.5 Woodmen Hills shall own the Lift Station Site. Woodmen Hills shall purchase and maintain comprehensive general public liability and property damage insurance for the Lift Station in an amount not less than \$1,000,000



per occurrence and \$2,000,000 aggregate. Insurance costs shall be a fixed cost shared proportionally based on 54% for Meridian Service and 46% for Woodmen Hills. Such policies shall name Meridian Service as an additional insured and shall prohibit cancellation without thirty (30) days' notice to Meridian Service. Woodmen Hills will furnish Meridian Service, within ten (10) days of receipt of a written request for the same, written verification from the insurance carrier for Woodmen Hills that such coverage is in full force and effect.

- 3.6 Meridian Service shall install sewer flow meters ("Meridian Flow Meters") as necessary to measure flows originating from Meridian Service customers. Meridian Service shall pump its sewer flows to the Black Squirrel Facility at the same or greater rate as measured by the Meridian Flow Meters and shall utilize the EQ basin based upon daily flows when necessary while attempting to minimize the use of the equalization storage basin.
- 3.7 Meridian Service shall install a sewer flow meter at the Lift Station that will measure the total sewage being received at the Lift Station ("Lift Station Flow Meter") and sewer flow meters at the Meridian Service force main ("Meridian Force Meter") that measure the total sewage being pumped from the Lift Station to the Black Squirrel Facility by Meridian Service and at the Woodmen Hills force main ("Woodmen Force Meter") that measure the total sewage being pumped from the Lift Station to the Paint Brush Facility by Woodmen Hills. Meridian Service is responsible and shall pay all costs to have the Meridian Flow Meters and the Meridian Force Meter calibrated. Woodmen Hills is responsible and shall pay all costs to have the Woodmen Force Meter calibrated. Meridian Service is responsible to have the Lift Station Flow Meter calibrated and the costs shared by both Meridian Service and Woodmen Hills proportionally the same as the Joint Lift Station System costs. All meters shall be calibrated a minimum of once a year by an approved and licensed calibration company with the calibration results provided to each District.
- 3.8 Woodmen Hills Sewer Flows shall be measured by subtracting the sewer flows from the Meridian Flow Meters from the sewer flows of the Lift Station Flow Meter. Woodmen Hills shall pump its sewer flows to the Paint Brush Facility at the same or greater rate as measured by subtracting the sewer flows from the Meridian Flow Meters from the sewer flows of the Lift Station Flow Meter and shall utilize the EQ basin based upon daily flows when necessary while attempting to minimize the use of the equalization storage basin.
- 3.9 Woodmen Hills and Meridian Service agree that all sewage entering the Lift Station shall not violate the standards and specifications as set forth by all Federal, State, and local regulations ("Standards and Specifications"). The Standards and Specifications are subject to change from time to time

depending on new regulations and/or findings that require them to be changed. Meridian Service shall test their sewage prior to flowing into the Woodmen Hills sewer system. If the Standards and Specifications are violated by either District, each District agrees to assist the other District in the investigation to locate the source(s) of the non-compliant sewage. Each District shall be responsible to charge its non-compliant customers any required fines and/or fees and cause such customers to immediately make any necessary changes and/or repairs to their sewer systems to eliminate violations of all Standards and Specifications. The District that is responsible for the non-compliant sewage shall pay for all costs and penalties due to the non-compliant sewage.

- 3.10 Each district will maintain their separate SCADA and phone system for the notification of alarm situations. Certain alarms will be dual alarms such as high/low wet well, equalization system pump failure, power failure, water on the floor etc. If either district will be viewing data from the other districts SCADA a separate RTU and radio will need to be installed in the respective districts SCADA with all costs paid for by the district wanting the viewable information. At no time will either district be able to have any type of control over the other districts SCADA and viewable information about the other District's SCADA system will be only for observation purposes.
- 3.11 The maximum amount of sewage that Woodmen Hills shall receive at the Lift Station and pump through the Lift Station is one million gallons per day (1 MGD).
- 3.12 Woodmen Hills and Meridian Service authorized personnel shall have equal access rights to the Lift Station Site and Lift Station. Meridian Service and Woodmen Hills shall have equal rights to properly store all necessary materials for normal sewer lift station operations inside of the Lift Station per all El Paso County, State of Colorado and any and all agency rules and regulations. Neither Meridian Service nor Woodmen Hills can limit the other's access to any portion of the Lift Station Site or Lift Station. Access to individual equipment and parts shall be limited to the ownership of the equipment and parts as described above. In the event that it is necessary to re-program/re-key the door locks of any portion of the Lift Station Site or Lift Station the responsible District that causes the need to re-program/re-key shall pay for all such costs. Meridian Service shall schedule the re-program/re-keying.
- 3.13 On a monthly basis, Meridian Service shall invoice Woodmen Hills for amounts due under this Agreement. All amounts not paid within sixty (60) days of the invoice shall earn interest at the rate of 1% per month.



#### ARTICLE 4 – Term/Remedies

- 4.1 Termination. This Agreement shall remain in force as long as the Lift Station Improvements or their replacements remain in service for one or both of the Districts.
- 4.2 Default. Upon Default, the non-defaulting District shall have the right to take whatever action, at law or in equity, appears necessary or desirable to recover damages and/or to enforce performance and observation of any obligation, agreement or covenant of the Defaulting District under this Agreement, or to collect the monies then due and thereafter to become due.
- 4.3 Interim conditions. Woodmen Hills will work with Meridian Service to expedite changing the Temporary Lift Station state permit condition restricting the use of the Temporary Lift Station on an emergency basis to use of the Temporary Lift Station on a permanent basis until the Lift Station is complete and put to its intended use.
- 4.4 Shared Sewage Treatment. Whenever possible it is the intent of both Districts to help each other in the event of an emergency to borrow sewer pumping capacity and treatment for a short time period until the emergency is corrected. A mutually agreed upon fee or re-payment plan of the borrowed sewer pumping capacity and treatment at a later date will be agreed to by both Districts at the beginning of each year based on each Districts pumping and treatment capacities. All requests to borrow the other Districts pumping capacity must be made in writing and approved in writing prior to any pumping of sewage. It is not the intent that either District is responsible for providing pumping capacity and/or sewage treatment to the other District.
- 4.5 Sewage over capacity conditions. Both Districts agree to operate their respective sewer pumping systems at the Lift Station per all Federal, State and local regulations and as per this Agreement. Both Districts shall have the right to use the equalization and emergency storage basin systems. The Districts shall share the capacity of either the equalization or emergency storage basin systems based on for Meridian Service 1.2MGD/2.2MGD, 54.5%, and for Woodmen Hills 1MGD/2.2MGD, 45.5%. Woodmen Hills shall have the use of the equalization storage basin system in order to provide equalization capacity for the diurnal flow fluctuations will allow for the pumping of up to 1 MGD of wastewater at an even flow rate of 695 gallons per minute. If either the equalization or emergency storage basins are over capacity and sewage pumper trucks or other means are necessary to transport the excess sewage from the Lift Station then the responsible District that caused the over capacity of either basin shall pay for all costs to transport the excess sewage from the Lift Station. Each District shall take immediate steps to locate the cause of either the excess sewage capacity (such as water infiltration) or the pumping problem causing the over capacity of sewage at the Lift Station system. Both Districts agree to inspect their sewer



systems on a regular basis for ground water infiltration. Under no circumstances shall it be acceptable to purposely allow ground water to enter the sewer systems. Both Districts shall adhere to all El Paso County, State of Colorado and any and all agency groundwater rules and regulations.

#### ARTICLE 5 – General Provisions

- 5.1 Governing Law. This Agreement shall be governed by the laws of the State of Colorado and venue for any action shall be the District Court in and for the County of El Paso.
- 5.2 Counterparts. This Agreement may be executed in counterparts, each of which, when combined, shall be deemed to be an original. Facsimile or scanned signatures shall be an acceptable form of execution of this Agreement.
- 5.3 Notices. All notices required or permitted to be given hereunder shall be in writing and shall be effective upon the date of personal delivery, or three business days after deposit of the same in the US mail, first class postage prepaid, addressed to the following, or to such other address as designated in writing by a party:
- |                         |   |
|-------------------------|---|
| If to MERIDIAN SERVICE: | Meridian Service Metropolitan District<br>c/o RS Wells<br>8390 Crescent Parkway, Suite 500<br>Greenwood Village, Colorado 80111 |
| If to WOODMEN HILLS:    | Woodmen Hills Metropolitan District<br>8046 Eastonville Road<br>Falcon, Colorado 80831  |
- 5.4 Captions. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any of the provisions of this Agreement.
- 5.5 Assignment. Neither party may assign its rights under this Agreement without the prior written consent of the other.
- 5.6 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective legal representatives, successors and permitted assigns.
- 5.7 Modifications, Waiver. No waiver, modification, amendment, discharge or change of this Agreement shall be valid unless the same is made in writing and signed by the party against which the enforcement of such modification, waiver, amendment, discharge or change is sought.

- 5.8 Merger/Entire Agreement. The Agreement constitutes the whole agreement between the parties and no additional or different oral representation, promise or agreement shall be binding on any of the parties hereto with respect to the subject matter of this Contract.
- 5.9 Severability. Any provision or part of this Agreement held to be void or unenforceable by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon the Parties, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 5.10 No Third Party Rights. Nothing in this Agreement, express or implied, is confers upon any person, other than the Parties hereto and their respective successors and assigns, any rights or remedies under or by reason of this Agreement.
- 5.11 Attorneys Fees. In the event of any controversy, claim or dispute between the Parties affecting or relating to the subject matter or performance of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable attorney fees and costs incurred in such action, including arbitration.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date first written above.

MERIDIAN SERVICE METROPOLITAN DISTRICT

By: *Matthew Sabicki*

ATTEST:

By: *Wm L Miller*

CRYSTAL THURBER  
NOTARY PUBLIC  
STATE OF COLORADO

My Commission Exp. May 17, 2013

*Crystal Thurber 9/21/09*

WOODMEN HILLS METROPOLITAN DISTRICT

By: *Janice L. Pizz*

ATTEST:

By: *Debra Wright*

CRYSTAL THURBER  
NOTARY PUBLIC  
STATE OF COLORADO

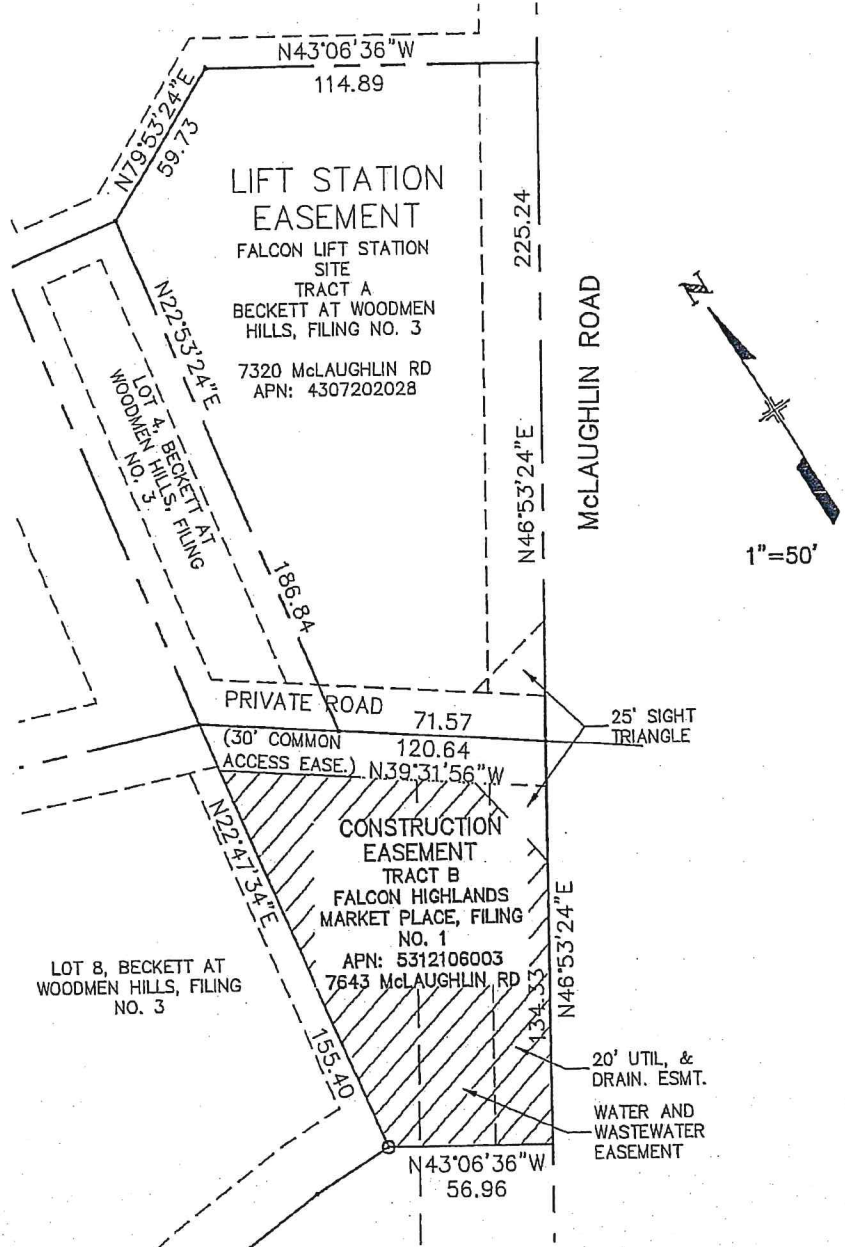
My Commission Exp. May 17, 2013

*Crystal Thurber  
9/21/09*





**EXHIBIT A**



<b>A</b>	SCALE: 1"=50'
	DATE: 07/30/09
	DRAWN: TAK
	CHECK: RG

**LIFT STATION EASEMENT  
AND  
CONSTRUCTION EASEMENT**

TECH CONTRACTORS  
10305 ANGELES ROAD  
FALCON, CO 80831  
TELEPHONE: 719.495.7444  
FAX: 719.495.7808

RECEIVED  
AUG -- 7 2003

## EXHIBIT F

### CHICO BASIN WASTEWATER TREATMENT FACILITY AND BLACK SQUIRREL BASIN RECHARGE FACILITY INTERGOVERNMENTAL AGREEMENT

This Intergovernmental Agreement ("IGA") is made and entered into effective this 26<sup>th</sup> day of June, 2003 by and between the following public entities:

1. Cherokee Metropolitan District ("Cherokee"); and
2. Meridian Service Metropolitan District ("Meridian") acting for, and on behalf of, the Meridian Ranch Metropolitan District

#### RECITALS

A. The above entities (collectively the "Districts") are both quasi-municipal corporations and political subdivisions of the State of Colorado formed pursuant to Title 32, Colorado Revised Statutes.

B. The Districts supply or will supply a variety of municipal services to their residents and land owners within in their respective boundaries and service areas.

C. Cherokee provides services to Cimarron Hills and owns and operates a wastewater treatment plant ("Cherokee WWTP") located near Peterson Field. This plant has a capacity of treating 2,000,000 gallons per day (2 MGD) and will need expansion within a few years.

D. Meridian will provide services to a yet to be constructed development located north of Falcon, Colorado. Woodmen Hills Metropolitan District ("Woodmen Hills") and Paint Brush Hills Metropolitan District ("Paint Brush") own and operate a treatment facility north of Falcon, Colorado ("Paint Brush WWTP"). Meridian has secured capacity in this facility. Meridian is the manager of the Meridian Ranch Metropolitan District. Meridian will facilitate sewer services through this IGA with Woodmen Hills, Paint Brush and the newly formed Falcon Highlands Metropolitan District with the goal and objective of eventually closing the Paint Brush WWTP.

E. Cherokee also provides wastewater services to the Shriever Air Force Base as a bulk wastewater customer via a 14-inch diameter polyvinylchloride (PVC) sewage force main extending from Shriever AFB west to the Cherokee WWTP (the "Shriever Line"). The Shriever Line is sized for reverse flow so that Cherokee's raw wastewater can be pumped to the east.

F. Cherokee's source of potable water is from the Upper Black Squirrel Creek Designated Ground Water Basin ("Black Squirrel") located approximately 15 miles east of the Cherokee WWTP. Meridian and Woodmen Hills also own water rights in the Black Squirrel (the "Guthrie Rights").

G. Cherokee has an extensive water collection and conveyance system in the Black Squirrel consisting of approximately 17 wells, pumps, a booster station, storage tank, and transmission pipelines varying in size from 8-inches to 30-inches in diameter (the "Cherokee System").

H. The parties are desirous of: closing the Cherokee and Paint Brush WWTPs, constructing a new WWTP at a new location, and recovering and delivering treated effluent to the Black Squirrel aquifer for replacement water pursuant to a yet to be developed and approved water replacement plan (the "Replacement Plan") which plan will provide for:

- the construction and operation of an advanced treatment facility (the "Advanced Plant") located in the Chico Creek drainage basin;
- the construction and operation of a recovery and recharge line extending from the Advanced Plant to a site at which percolation ponds will be constructed located south of Ellicott, Colorado at the northeast corner of Bar Ten and Henderson Roads in the Black Squirrel ("Recharge System");
- the reversal of flow in the Shriever Line so that raw wastewater may move from the Cherokee WWTP site and Shriever AFB to the Advanced Plant;
- the construction and operation of a raw sewage force main from the Paint Brush WWTP to connect with the Shriever Line (the "Falcon Line"); and
- obtaining additional water diversions points together with expanding authorized diversions at Cherokee's existing diversion points in the Black Squirrel allowing for the recapture of the water that is being replaced in the Basin ("Replacement Water").

Collectively these improvements shall be referred to as the "Replacement Plan Facilities".

I. The parties have already and are continuing to incur substantial expenses in regard to preliminary hydrological engineering, the acquisition of the recharge site, and the design, construction and operation of a pilot recharge facility.

J. Meridian desires to participate with Cherokee in the installation of the new Advanced Plant and the ultimate recovery of treated effluent in the form of ground water from the Black Squirrel.

K. Cherokee shall have and will maintain full control over all components of the Replacement Plan and Replacement Plan Facilities, except for the Falcon Line, including, but not limited to, the design, financing, construction, operations, ownership and management activities.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:



1. **OWNERSHIP.** Cherokee will maintain a 100% ownership interest in and control of the Schriever Line, Advanced Plant, Recharge System and the Cherokee System.
2. **ALLOCATION OF CAPACITY/COST - WWTP.** Based upon receiving an allocation of dedicated capacity in the Advanced Plant of 2.2 MGD by Cherokee for Meridian of the total required 4.8 MGD, Meridian agrees to pay 45.8% of all documented project costs for the Advanced Plant and associated work to Cherokee. Cherokee is responsible for the remaining 54.2% of all documented project costs and associated work.
3. **ALLOCATION OF CAPACITY / COST - RECHARGE SYSTEM / CHEROKEE SYSTEM.** A proportionate allocation of resulting newly available Black Squirrel Replacement Water will be made by Cherokee for Meridian based upon the ratio of Cherokee's influent flow to that of Meridian adjusted annually to take into account changes in influent flow volumes, not to exceed the allocated dedicated WWTP capacity of Meridian unless so otherwise agreed. Meridian agrees to pay 45.8% of all documented project costs to cover the Recharge System and the cost of additional water well/transmission lines required to be added to the Cherokee System to recover Replacement Water from new diversion points. Available new water withdrawals shall take into account the replacement water physically available in the aquifer in addition to limitations contained in Sections 8 and 13.
4. **CONSTRUCTION.** Based upon required build-out capacities, Cherokee agrees to provide 2.2 MGD of dedicated capacity in the Advanced Plant for Meridian together with 2.6 MGD of capacity for its own needs.
5. **FINANCE.** Each party to this IGA is responsible for the payment of their prorated portion of the total costs of the Replacement Plan Facilities and the upgrades to Cherokee's System to accommodate new diversion points including land acquisition, site preparation, design, construction, bond issuance and underwriting, engineering and legal based upon the allocated capacities and corresponding percentages of the total Advanced Plant capacity as set forth in Sections 2, 3 and 4. The parties may meet their obligations by cash contribution, separate or joint bond financing, or bond financing through Cherokee with appropriate fee obligations from Meridian subject to Cherokee's approval.
6. **INTERIM USEAGE.** On an interim basis, Meridian is authorized to make use of available Cherokee WWTP capacity up to an average day flow of 150,000 gallons. Meridian will pay a monthly fee based on 50% of Cherokee's then going rate for sewer service (currently 50% of \$10.00) for each single family residence combined with the single family equivalency for commercial and industrial users for wastewater treatment services. A single family equivalent ratio is to be based on 210 gallons per tap per day of wastewater generation. In addition thereto, Meridian shall pay a one time non-refundable connection fee of \$20,100 to cover the available 150,000 gallons per day that Cherokee is making available which is intended to compensate Cherokee for its plant investment taking into account that Meridian's use will be on a temporary basis. The use of

Cherokee's existing WWTP capacity is authorized through December 31, 2006, the date established in Cherokee's Compliance Schedule contained in its Colorado Department of Public Health and Environment, Water Quality Control Division, Colorado Discharge Permit System permit No. CO-0024457 which mandates Cherokee's Advanced Plant be operational by that time.

7. **REPLACEMENT PLAN.** Cherokee in cooperation with Meridian will plan and draft the Replacement Plan for filing with the Colorado Ground Water Commission in conjunction with Curt Wells, ground water hydrologist, and the URS Corporation and/or others as Cherokee determines. The goal of the Replacement Plan is to allow for the expansion of water withdrawals at existing Cherokee diversion points and securing additional diversion points in the Black Squirrel based upon the right to divert the Replacement Water.

The parties have tentatively agreed to cooperate with the Upper Black Squirrel Creek Ground Water Management District in the approval of the Replacement Plan and to potentially make some return flow waters available for recharge in the northern part of the Basin, assuming that the Management District provides, at its expense, a recharge line and recharge site, subject to final approval of Cherokee and Meridian of the requirements associated therewith.

8. **REPLACEMENT WATER.** Replacement Water is that additional water that the parties are allowed to divert from the Black Squirrel as a result of the Replacement Plan. Specifically, this Replacement Water shall include water derived from any new diversion points as well as water derived from existing Cherokee diversion points for Well Nos. 9-17 which result in an increase of productivity over and above the historic amounts produced or authorized for diversion, whichever is greater, from said existing Cherokee diversion points.

Any increase in the present allocation of 840 Acre Feet (AF) for Cherokee Wells 9-12 shall be considered as Replacement Water. For Cherokee wells 13-18, Replacement Water shall be any amount over and above the Maximum Annual Withdrawal as set forth:

<u>WELL NUMBER</u>	<u>MAXIMUM ANNUAL WITHDRAWAL</u>
13	1,516.2
14	129.0
15	371.0
16	387.1
17	379.1
18	433.9

In addition, Cherokee shall be entitled to receive the first 200 AF of Replacement Water on an annual basis as compensation to Cherokee for its plant investment in the water delivery system and well fields.



9. **PLANT EXPANSION.** The Districts acknowledge and agree that statutes and regulations imposed and propounded by the applicable regulatory authorities as in existence or hereafter amended may require that Cherokee commence the planning for WWTP expansion when the Advanced Plant reaches 80% of capacity and that construction must be underway when the facility reaches 95% of capacity. Cherokee shall determine the need for any such expansion based, in part, on the need for future capacity. Cherokee shall define the responsibilities for paying for such expansion prior to initiation of same. If Meridian does not project the need for additional capacity beyond the initial 2.2 MGD allocation of capacity, then Meridian shall not be required to fund same, unless said modifications are a result of regulatory requirements and/or replacements.

Meridian shall give Cherokee reasonable notice of growth projections and capacity needs from time to time so that Cherokee can adequately plan and obtain the necessary governmental approvals. Meridian shall give Cherokee rolling 5 year growth projections of capacity needs no later than March 15 of each year. In connection with any future expansion, the estimated costs of the same shall be fully funded prior to commencement of construction. Ownership and control of any expansion shall be solely vested in Cherokee unless otherwise agreed. Any expanded allocation of capacity requested by Meridian, if approved by Cherokee, will require not only work at the Advanced WWTP, but also the installation of a parallel sewage force main as the capacity of the existing main is limited in capacity as defined in a March 13, 2002 letter from GMS, Inc. to GTL, Inc., which is attached hereto and conditions stated therein incorporated herein.

10. **USE OF CAPACITY.** Cherokee under the conditions of this Agreement is allocating and dedicating 2.2 MGD in capacity in the new Advanced Plant to Meridian. Cherokee acknowledges that Meridian may enter into IGA's with other governmental or quasi-municipal entities for the provision of wastewater treatment service, subjecting any such parties to all of the conditions set forth in this Agreement. All wastewater, generated from Meridian and/or its contracting entities, is to be conveyed to Cherokee's Schriever Line through the Falcon Line or through a parallel line to the Schriever Line. Said wastewaters' daily volume, maximum flow rate, water quality parameters, regulatory related issues and related matters shall comply with all of the conditions set forth herein. Cherokee will only work directly with Meridian on matters pertaining to this Agreement. Meridian shall include as a minimum all requirements set forth in this Agreement in any IGA entered into with another entity requiring said entity to comply therewith and be subject thereto. Meridian is responsible for all financial obligations and compliance with all conditions set forth within this Agreement in regard to both its wastewater operations and those of its contract users.

11. **OPERATIONS, MAINTENANCE, AND REPLACEMENT OF REPLACEMENT PLAN FACILITIES.** All operation, maintenance and replacement costs for the Replacement Plan Facilities shall be allocated by Cherokee for Cherokee and Meridian in direct proportion to their respective metered influent flows transmitted to the Advanced Plant ("O & M Costs"). Subject to annual budgeting and appropriation, Meridian agrees to budget and appropriate sufficient funds for payment of its O & M



Costs including those attributable to any entities with whom it has contracted through an IGA to provide wastewater treatment service. Cherokee will provide Meridian with the monthly metered influent sewage flow data within the calculation of the pro-rated monthly O&M Costs. Documentation will be provided in regard to the operation, administration, maintenance, and replacement (including a reasonable repair and replacement reserve) costs forming the basis of cost against which the ratio of influent flows is applied.

**12. WHEELING COSTS FOR MERIDIAN REPLACEMENT WATER.** Cherokee will establish a wheeling charge per acre foot of water for Replacement Water conveyed through the Cherokee System for delivery to Meridian. All Meridian water will be made available at Cherokee's 5 MG tank site located at Marksheffel and Tamlin Roads at which location Meridian has participated with Woodman Hills in the construction of a water booster station and 12-inch pipeline. Said wheeling charge developed by Cherokee will include all costs of operation, administration, maintenance, and replacement (including a reasonable repair and replacement reserve) for those portions of the Cherokee System required to convey the Replacement Water to Meridian. The cost of wheeling water per acre foot shall be established and adjusted annually on January 31 by Cherokee based upon dividing the prior calendar year's total related costs covering those items set forth herein by the total acre feet conveyed from the Black Squirrel through the Cherokee System for the calendar year in question. Billings for conveying Meridian Replacement Water will be submitted monthly based upon the metered volume of water conveyed. Billings for this activity carry the same payment provisions as that of the monthly O&M Costs associated with the Replacement Plan Facilities.

**13. REPLACEMENT WATER AVAILABILITY AND USE:** Meridian's pro-rated volume of Replacement Water is subject to the physical availability of water in the Black Squirrel taking into such factors as evaporation losses in the percolation ponds, failure to capture all of the resulting ground water, ground water withdrawals by unrelated parties and the like. At no time shall Cherokee be required to reduce its water withdrawals in the Black Squirrel below those to which it has been historically entitled to under its water rights and approved diversion point withdrawals that existed prior to the Replacement Plan in order to accommodate water withdrawals desired by Meridian. Replacement Water to the extent available may be withdrawn for the benefit and use of Cherokee and Meridian based upon the ratio of their contributing effluent flows to the Recharge System. Meridian may use its Recharge Water once conveyed through the Cherokee System to the 5 MG tank site in any manner it determines prudent.

**14. POINT OF MERIDIAN CONNECTION.** Meridian shall deliver its wastewater without cost and in accordance with the technical requirements set forth in a letter dated March 13, 2002 from GMS, Inc. to GTL, Inc., a copy of which is attached hereto and incorporated herein, to the Schriever Line at the wye connection installed for that purpose.

Meridian shall be responsible for all costs and other obligations for the design, construction, operation, maintenance and replacement of its Falcon Line and appurtenant facilities including those components detailed in said March 13, 2002 letter.

15. **STRENGTH OF WASTEWATER.** If Meridian's wastewater contains greater than 280 milligrams per liter (mg/l) of five day biochemical oxygen demand (BOD<sub>5</sub>) or 250 mg/l of total suspended solids (TSS) as monitored at the point of entry into the Falcon Line, Meridian shall pay an extra-strength surcharge in addition to the pro-ration of the Replacement Plan Facilities' operation, maintenance and replacement costs as provided in Section //hereof. In such case, the following formulas shall be used for calculating extra-strength surcharges for BOD<sub>5</sub> and TSS as appropriate. The unit cost shall be modified from time to time to reflect current operational costs.

$$\text{BOD}_5 \text{ Extra-strength surcharge} = \$0.241 \text{ per } 1,000 \text{ gallons} \times 280 \times (\text{BOD}_5 - 280)/280$$

$$\text{TSS Extra-strength surcharge} = \$0.107 \text{ per } 1,000 \text{ gallons} \times 250 \times (\text{TSS} - 250)/250$$

Where:

BOD<sub>5</sub> = BOD<sub>5</sub> loading in mg/l for extra-strength discharges

TSS = TSS loading in mg/l for extra-strength discharges

Surcharges will be based on twenty-four (24) hour composite samples.

16. **MONTHLY PAYMENTS FOR SERVICE.** Payment of the total monthly bill shall be due at Cherokee's office at the address stated herein within thirty (30) days of the date of the invoice.

17. **FAILURE TO ACCEPT OR TREAT.** Cherokee shall not be liable to Meridian for failure to accept or treat Meridian's wastewater when such a failure is the result of any injunction, order, judgement of any court, State or Federal agency action, or when such failure is the result of a strike, casualty, upset condition, mechanical or power failure, weather or flood conditions, or other cause beyond Cherokee's reasonable control. Cherokee shall have the right to interrupt service and require Meridian to temporarily store and contain wastewater flows to the extent of Meridian's storage capabilities in the event of a malfunction of Cherokee's Advanced Plant. In the event of plant maintenance which will render the Advanced Plant unable to accept wastewater from Meridian, a 48-hour notice shall be given to Meridian after which it will temporarily store and contain wastewater to the extent of its storage capabilities.

18. **CONVENTIONAL POLLUTANTS.** The obligation of Cherokee is limited to the acceptance for treatment of conventional pollutants. No Significant Industrial User (SIU), as defined in Cherokee's Ordinance 83-0100, as it may be amended from time to time, shall be permitted to connect to Meridian's wastewater system or any district's wastewater system that Meridian provides wastewater treatment service to through an IGA, and no industrial wastes shall be permitted to enter the system without the prior



written consent of Cherokee. Written consent by Cherokee shall not be unreasonably withheld. "Industrial user" and "Industrial wastes" shall be as defined in Cherokee Ordinance 83-0100 as it may be amended from time to time. Pursuant to 40 CFR Part 403.8 (f)(2), Meridian must provide Cherokee each quarter (due on January 15, April 15, July 15, October 15), an updated inventory of all non-residential users connected to Meridian's wastewater system and any other system whose wastewater treatment service is provided through agreement with Meridian. Such inventory shall include the user's name, address, Standard Industrial Classification code (SIC) and average daily water usage for previous quarter. The inventory list must be sent by certified mail to Cherokee at the address given herein.

19. **PLUMBING INSTALLATIONS.** Meridian and any other system whose wastewater treatment service is provided through agreement with Meridian shall require plumbing installations to their wastewater system to be in accordance with the rules and regulations of Cherokee so as to minimize the possibility of damage to Cherokee's Schriever Line and Advanced Plant. Meridian and any other system whose wastewater treatment service is provided through agreement with Meridian shall perform inspection of all such plumbing installations.

20. **SERVICE AREA CHANGES.** Any significant changes in service area and/or political boundary limits, additions, expansions or deletions of Meridian's collection system or any other system whose wastewater treatment service is provided through agreement with Meridian shall be reported to Cherokee. Meridian and any other system whose wastewater treatment service is provided through agreement with Meridian must maintain current maps of their collection systems and provide a copy of the documents by registered mail to Cherokee on an annual basis to the address contained herein.

21. **WASTEWATER METERING.** Meridian shall purchase, install and replace discharge meters which meet specifications approved by Cherokee to measure Meridian's wastewater discharge to Cherokee's Schriever Line. Cherokee shall read the discharge meter(s). The cost to purchase, install, operate, maintain and replace the meters shall be paid by Meridian. Cherokee may require that flows which may originate outside Meridian's boundaries be metered prior to discharge into Meridian's wastewater system.

22. **PRETREATMENT PROGRAM.** Meridian or any other system whose wastewater treatment service is provided through agreement with Meridian shall adopt, implement and enforce a Pretreatment Program if required to do so by Federal regulation (40 CFR Section 403.8). Meridian and any other system whose wastewater treatment service is provided through agreement with Meridian hereby authorize Cherokee to conduct enforcement activities as described in Cherokee Ordinance 83-0100 as amended from time to time against users within Meridian's service area or any other system whose wastewater treatment service is provided through agreement with Meridian along, with authority to disconnect users who violate requirements of the Pretreatment Program. An annual report documenting Pretreatment Program activities shall be submitted on an annual basis by registered mail to Cherokee at the address listed herein on forms provided



by Cherokee by Meridian and any other system whose wastewater treatment service is provided through agreement with Meridian

23. **RULES AND REGULATIONS.** Meridian and any other system whose wastewater treatment service is provided through agreement with Meridian shall adopt discharge regulations or ordinances prohibiting certain classes of pollutants and controlling certain classes of discharges as stringent as, or more restrictive than those regulations of Cherokee as they may be amended from time to time (40 CFR Part 403.5, 35.927.4). Meridian and any other system whose wastewater treatment service is provided through agreement with Meridian shall maintain these regulations to be in compliance and shall submit a copy of their rules annually to Cherokee at the address contained herein by January 15 and amendments to these regulations within thirty (30) days following adoption. Such regulations and amendments shall be submitted by registered mail to Cherokee at the address contained herein.

24. **RECORD AUDITS.** Cherokee shall have the right to audit all of Meridian's records and any other system whose wastewater treatment service is provided through agreement with Meridian relating to this Agreement annually to insure compliance with EPA regulations (40 CFR Part 403.8, 35.929.3). Meridian shall have the right to audit all Cherokee records relating to this Agreement and charges imposed pursuant thereto.

25. **FEDERAL AND STATE REGULATIONS.** Meridian understands that Cherokee's existing WWTP and yet to be constructed Advanced Plant are publicly-owned treatment works, and Cherokee is required by the Clean Water Act of 1977 (P.L. 95-217) to control wastewaters introduced by all users into the system. Meridian also understands that Cherokee is subject to present and continuing Federal and State statutory and regulatory controls which may, subsequent to the date of this Agreement, be changed, amended or added to, which changes, amendments or additions are unforeseen by the parties hereto and which may result in additional costs to Cherokee for capital improvements, operations, maintenance, repair, inspection and administration of its system. Therefore, Cherokee may incur added costs that may increase Meridian's pro-rated operating or capital construction costs as a result of Federal or State statutory or regulatory changes which result in an increased cost to Cherokee for capital improvements, operations, maintenance, repair, inspection, or administration of its Replacement Plan Facilities. Meridian and any other system whose wastewater treatment service is provided through agreement with Meridian agree that they will comply with, and cause to be complied with by their users, all Federal laws and regulations applicable to Cherokee including the Clean Water Act of 1977.

26. **WARRANTIES AND REPRESENTATIONS.** In addition to the other warranties, covenants and representations, the Districts make the following warranties, representations, and covenants to each other:

(a) Each District has full right, power and authority to enter into, perform, and observe this Agreement.

(b) Neither the execution of this Agreement, the consummation of the transactions contemplated hereunder, nor the compliance with the terms and conditions of this Agreement by either District will conflict with or result in a breach of any terms, conditions or provisions of, or constitute a default under any agreement, instrument, indenture, order or decree to which either District is a party or by which either District is bound.

(c) This Agreement is a valid and binding obligation of each of the Districts and is enforceable in accordance with its terms.

(d) The Districts shall keep and perform all of the covenants and agreements contained herein and, except in the event of an uncured default, shall not take any action which could have the effect of rendering this Agreement unenforceable in any manner.

(e) The facilities, systems and Replacement Plan shall not be utilized in any manner which would jeopardize the tax exempt status of any bonds or debt issued by either of the Districts.

(f) Each of the Districts is a duly constituted and validly existing political subdivision of the State of Colorado.

(g) Each District has, or reasonably believes it can obtain adequate financial resources to fulfill the obligations of this Agreement.

27. **INDEMNIFICATION.** Subject to the provisions of the Colorado Governmental Immunity Act, and without waiving the same, and to the extent allowed by law each District agrees to indemnify, protect, and hold harmless each other from any claims or damages to persons or property resulting from the interruption of service or other malfunction of their respective systems including any claims for the share of costs and repairs so resulting.

28. **DEFAULTS.** The occurrence of any of the following events not cured within fifteen (15) days of written notice, may, at the option of the non-defaulting party, constitute a default under this Agreement:

(a) failure to pay any sums due;

(b) failure to perform or observe any other term, condition, covenant, representation or warranty;

(c) the appointment of a receiver, general assignment for the benefit of creditors, or any declaration of filing under any insolvency or bankruptcy act.

29. **REMEDIES.** A non-defaulting District shall have all remedies available through law or equity as may be determined in arbitration and in addition thereto, may refuse to allow the addition of any new taps or connections beyond those being served on the date of default. Any sum not paid when due, shall bear interest at 8%.



30. ARBITRATION. In any dispute involving this Agreement, the same shall be resolved by binding and mandatory arbitration before one mutually-agreed to arbitrator in El Paso County, Colorado which arbitrator shall make all decisions concerning procedure and discovery and shall be empowered to grant injunctive relief. Should the parties be unable to agree upon said arbitrator, the same shall be appointed by an El Paso County District Court Judge. The arbitrators fees shall be divided between the parties.

31. MISCELLANEOUS.

(a) Notices. All notices required or permitted to be given hereunder shall be in writing and shall be effective upon personal delivery or three (3) business days following deposit of the notices in the United States Mail, postage prepaid and addressed as follows, or to such other address designated by a party upon notice as hereinabove provided:

Cherokee Metropolitan District  
Att: Manager  
1335 Valley  
Colorado Springs, CO 80915

Meridian Service Metropolitan District  
% R.S. Wells LLC  
6399 South Fiddler's Green  
Suite 102  
Greenwood Village, CO 80111

(b) Entire Agreement. This Agreement constitutes the final and complete expression of the parties' agreements and each party agrees that it has not relied upon any prior negotiations, representations, warranties or understandings, whether oral or written.

(c) Amendment. This Agreement cannot be amended or modified except by a writing executed by the parties.

(d) Owner and Operator. Meridian is the owner and operator of all facilities and infrastructure benefiting Meridian Ranch Metropolitan District.

(e) Severability. The invalidity, illegality or unenforceability of any provision of this Agreement shall not render the other provisions invalid, illegal or unenforceable.

(f) Applicable Law. This Agreement shall be construed and interpreted in accordance with Colorado law.

(g) Access to Records. Each party shall have the right to inspect the books and records of the other party relating to this Agreement at reasonable times upon reasonable notice.



(h) Waiver. No failure by either party to insist upon the strict performance of any agreement, term, covenant, or condition hereof or the exercise of any right or remedy consequent upon default, and no acceptance of full or partial performance during the continuance of any such default, shall constitute a waiver of any such default of such agreement, term, covenant, or condition. No agreement, term, covenant, or condition hereof to be performed or complied with by either party, and no default thereof, shall be waived, altered, or modified except by a written instrument executed by the non-defaulting party.

(i) Attorney Fees. In any dispute over this Agreement, the prevailing party shall be entitled to an award of all costs and reasonable attorney fees.

(j) Enterprise. Each party may establish and operate pursuant to an enterprise as provided by Article X, Section 20 of the Colorado Constitution. Any rights or responsibilities under this Agreement may be assigned to said enterprise provided that such assignment shall not relieve the Districts of their responsibilities hereunder.

(k) Perpetuity. Insofar as this Agreement affects water and water rights it is the intention of the parties that it be perpetual in nature according to the Colorado Supreme Court's decision in Cherokee v. City of Colorado Springs. Therefore, the parties forever waive any and all arguments in defense to the effect that this Agreement violates the Rule Against Perpetuities.

(l) Recording. A summary of this Agreement, with the consent of all parties, may be recorded in the real property records of El Paso County with an attachment thereto setting forth the legal description for the location of the Advance Plant and recharge sites.

Made and entered the day first above written.

(Signature Page Follows)

CHEROKEE METROPOLITAN DISTRICT

BY: Jon Maroon

ATTEST:

Stuart L. L... ..

MERIDIAN SERVICE METROPOLITAN DISTRICT

BY: Angela J. Marshall, Pres.

ATTEST:

Jacqueline C. G... ..

**GMS, INC.**  
CONSULTING ENGINEERS  
811 NORTH WEBER, SUITE 300  
COLORADO SPRINGS, COLORADO 80903-1074

TELEPHONE (719) 475-2936  
TELECOPY (719) 478-2938

EDWARD D. MEYER, P.E.  
ROGER J. SAMS, P.E.

GREGORY R. WORDEN, P.E.  
KEN L. WHITE, P.L.S.  
DAVID R. FRISCH, P.L.S.

March 13, 2002

Mr. Doug Woods  
GTL, Inc.  
PO Box 80036  
San Diego, CA 92138

Dear Doug:

This correspondence is submitted on behalf of the Cherokee Metropolitan District. Your consultant, Charles Cothorn with URS, has contacted Cherokee requesting information with respect to the interconnection points on Cherokee's soon to be installed 14-inch sanitary sewage force main. I am by way of copy of this correspondence providing the information to Charles that he has requested. I am also incorporating into this correspondence a list of those items that need to be addressed within the design of your improvements for interconnection to Cherokee's facilities. The following listing of technical items addresses those measures that must be undertaken to ensure capability of the wastewater being transmitted from your and other area developments to the Cherokee system. These items represent steps Cherokee has already incorporated into the current design and installation of their interconnecting line work as well as items that will be incorporated into Cherokee's revisions to their wastewater operations when their raw wastewater flow is to be transmitted easterly. As such, please coordinate with your consultant to ensure that these items are incorporated into your wastewater conveyance system's design and installation.

1. All raw wastewater shall receive grit removal prior to being transferred to the Cherokee system.
2. All raw wastewater shall be screened to eliminate to the greatest extent practicable nonorganic debris within the raw wastewater being transferred to Cherokee's system.
3. Your conveyance facilities must provide for flow equalization. Your consultant will need to determine the size and type of flow equalization facilities required together with what action may be required to keep the sewage in a fresh state. If the wastewater is to be pumped, we strongly recommend the facility be equipped with emergency backup power.

Two potential operating conditions exist that have different flow equalization requirements. The first of these is the conveyance of wastewater from your facilities westerly in Cherokee's force main for ultimate treatment at Cherokee's existing wastewater treatment facility. A westerly connection point has been incorporated into the design of Cherokee's 14-inch force main. I have enclosed Sheet 31 of the force main drawings which depicts both the location and the nature of the piping and valving to be installed to accommodate your westerly interconnection. This westerly location has been determined based upon the need to minimize any additional head placed on the Cherokee Schriever Air Force Base lift station. The imposition of additional head on the station will significantly reduce its pumping capacity. Thus the westerly connection point has been shifted to a location immediately upstream of the dramatic vertical drop to the west to minimize the introduction of additional head. The maximum flow rate that can be accommodated from your facilities and transmitted westerly is 1,150 gallons per minute (gpm). Your flow equalization facilities and companion pumping facilities should be sized accordingly.



The second scenario pertains to the conveyance of wastewater to a location east of Blaney Road for conveyance to the east. Sheet 31 again depicts this connection. In this case, Cherokee will also be pumping its raw wastewater easterly from its current wastewater treatment plant location. The force main has been designed to accommodate an influent flow rate from your facilities of 1,675 gpm. That flow rate will work in harmony with Cherokee's projected pumping rate of 1,800 gpm.

4. Your facilities must be equipped with a flow recording device that will provide a hard copy of totalized flows together with a corresponding continuous flow chart.
5. Your facilities must be equipped with a composite sampler such that the nature of the raw wastewater's water quality being conveyed to the Cherokee system can be established.
6. As with Cherokee's current design, your facilities must incorporate hydrogen sulfide control. We have incorporated US Filter's patented bioxide chemical feed system into the current Cherokee system. We anticipate the need to suppress hydrogen sulfide in an aqueous solution to less than 0.1 milligram per liter (mg/l). The chemical should be fed in close proximity to the downstream side of your flow equalization facilities.
7. Within your interconnecting line work, likely just north of Highway 94 and Blaney Road, a manhole is required with a sample port such that water quality can be monitored at that location to ensure that hydrogen sulfide concentrations are at acceptable levels.
8. We have undertaken extensive research on the gaskets to be incorporated into Cherokee's sanitary sewage force main conveyance system. Unless specified otherwise, the standard gasket material that will be provided is Styrene Butadiene (SBR). This material is not recommended for use with wastewater containing hydrogen sulfide. It will deteriorate over time. It holds the potential of failure. As such, within Cherokee's force main project, we have specifically required the use of Neoprene (CR) or Ethylene Propylene Diene Monomer (EPDM) gasket material. This requirement has added cost to the piping based upon the cost associated with the higher quality gasket material. Given the fact these conveyance facilities are transmitting raw wastewater under pressure, we viewed the higher quality gasket material as necessary based upon potential future failures of the gaskets. The potential failure of the gaskets is not acceptable. I suggest you have your consultant review this issue and make recommendations to you.

In addition to the above technical aspects of the interconnection requirements, Doug, I believe it is important to start laying the ground work for the ultimate long term working agreement between Cherokee, your organization and other related parties. In that regard, the following is offered.

1. The outlying district's conveying wastewater to Cherokee's wastewater conveyance and treatment systems must comply with all of Cherokee's Sewer Use Regulations and the limitations established therein to ensure compatibility and acceptability of the raw wastewater.
2. The sewage conveyance facilities described above will originate in the vicinity of your development and will convey wastewater to Cherokee's 14-inch force main. They are to be operated and maintained by Mederian Ranch and your related contractual partners. Cherokee will operate and maintain the 14-inch force main to which the connections are projected to be made. All necessary operation and maintenance activities that are required prior to the connecting point on Cherokee's main will be your responsibility. Likewise, Cherokee will be solely responsible for the operation and maintenance costs associated with those segments of the conveyance system in which Cherokee is the sole party using that segment of the line for the conveyance of their wastewater. In those areas where the wastewater flows are combined, the operation and maintenance expenses will be prorated back to the parties based upon the proportional relationship of the volumes of wastewater conveyed.

Mr. Doug Woods  
March 13, 2002  
Page 3

3. The long term intention of the Cherokee board of directors at this time is that the ultimate construction of the remaining components of the sanitary sewage force main extending easterly together with the future wastewater treatment plant (WWTP) would be owned, operated and maintained by the Cherokee Metropolitan District. Mederian Ranch, Woodman Hills and any other related districts would be bulk wastewater customers who would pay their proportionate share of capital construction costs for a corresponding proportionate allocation of capacity together with paying their proportionate share of operation and maintenance costs based on actual loadings. These items along with other potable water related issues are to be further refined in an agreement yet to be developed and consummated.

Per our earlier discussions, Doug, I understand that Cherokee has provided a letter commitment to you indicating their willingness to accept up to 150,000 gallons per day of your wastewater at their current WWTP. In exchange for that initial commitment, Mederian Ranch will reimburse Cherokee for the cost associated with the two connection points programmed to be installed on the 14-inch line to accommodate you. Each connection has been bid as an alternate to the base bid. Each represents a cost of \$5,700 for a total cost of \$11,400. In addition, I understand that Mederian Ranch is willing at the time of the connection to Cherokee's wastewater system, and prior to the installation of the new easterly wastewater treatment plant, to advance to Cherokee at no interest, the differential pipeline material costs between the needed 10-inch main size to accommodate Schriever and the 14-inch line work currently being installed. That differential cost totals \$161,207.20. I understand that amount would be paid to Cherokee at the time of your connection. It is, in turn, to be credited by Cherokee toward your account to cover future capital construction costs when the force main is extended easterly and the new wastewater treatment plant is constructed.

Upon your review of these items, Doug, if you should have any questions, please feel free to contact me. As noted, I am providing this information to your consultant together with Sheet 11 of our drawings to facilitate their design effort. Once that design has progressed to a sufficient point, we request that Cherokee be allowed to review the key components such as flow monitoring, flow equalization and composite sampling to determine their acceptability. If you should have any questions in regard to any of these matters, please feel free to contact me. We look forward to working with you and your associates as this project of regional scope is brought to a point of successful implementation.

Sincerely,



Edward D. Meyer, P.E.

EDM/mv

Enclosures

cc: Stuart Loosley, Cherokee Metropolitan District  
Art Sintas, Cherokee Metropolitan District  
Charles Cothorn, URS Greiner, Inc. w/enclosure  
Rusty Green, Woodman Hills Metropolitan District  
Peter Susemihl, Esquire



# STATE OF COLORADO

John W. Hickenlooper, Governor  
Larry Wolk, MD, MSPH  
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.  
Denver, Colorado 80246-1530  
Phone (303) 692-2000  
Located in Glendale, Colorado  
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Colorado Department  
of Public Health  
and Environment

## **EXHIBIT G** **Part 1 of 2** **State Approval of C.O.C.**

June 23, 2014

Cherokee Metropolitan District  
Attention: Sean Chambers, General Manager  
6250 Palmer Park Boulevard  
Colorado Springs, CO 80915

Certified Mail Number: 7007 0220 0001 0163 1121

**RE: Compliance Order on Consent, Number: MC-140514-1**

Dear Mr. Chambers:

On May 14, 2014, the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") executed a Compliance Order on Consent, Number MC-140514-1 (the "Consent Order"), between the Division and Cherokee Metropolitan District. The Consent Order was public noticed on May 16, 2014 and was subject to a thirty (30) day public comment period.

In accordance with paragraph 76 of the Consent Order, the Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period. The public comment period closed on June 16, 2014 and no comments were received by the Division during this period. **Therefore, effective the date of this letter, the Consent Order constitutes a final agency action and is fully enforceable.**

Additionally, pursuant to paragraph 29 of the Consent Order, the Division hereby provides Cherokee Metropolitan District authorization to continue its *Pilot/Full Scale Demonstration Project-Methanol Addition as a Carbon Source* ("Demonstration Project") until August 31, 2014, subject to the same terms and conditions outlined in the Division's November 26, 2013 extension.

If you have any questions, please don't hesitate to contact me at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

Michael Harris, Manager  
Clean Water Enforcement Unit  
WATER QUALITY CONTROL DIVISION





**EXHIBIT G**  
**Part 2 of 2, C.O.C.**



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
**DIVISION OF ADMINISTRATION**  
**WATER QUALITY CONTROL DIVISION**

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**COMPLIANCE ORDER ON CONSENT**

**NUMBER: MC-14XXXX-X**

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**IN THE MATTER OF:   CHEROKEE METROPOLITAN DISTRICT**  
**CDPS PERMIT NO. COX-048348**  
**EL PASO COUNTY, COLORADO**

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The Colorado Department of Public Health and Environment ("Department"), through the Water Quality Control Division ("Division"), issues this Compliance Order on Consent ("Consent Order"), pursuant to the Division's authority under §§25-8-602 and 605, C.R.S. of the Colorado Water Quality Control Act ("the Act") §§25-8-101 to 803, C.R.S., and its implementing regulations, with the express consent of Cherokee Metropolitan District ("Cherokee"). The Division and Cherokee may be referred to collectively as "the Parties."

**STATEMENT OF PURPOSE**

1. The mutual objectives of the Parties in entering into this Consent Order are:
  - a. To establish compliance requirements and criteria for the continued operation of Cherokee's Wastewater Reclamation Facility located at or near 19174 Drennan Road, El Paso County, Colorado Springs, Colorado (the "Facility"); and
  - b. To resolve, without litigation, the alleged violations of the Act cited herein by the Division, and the associated civil penalties.

**DIVISION'S FINDINGS OF FACT AND DETERMINATION OF ALLEGED VIOLATIONS**

2. Based upon the Division's investigation into and review of the compliance issues identified herein, and in accordance with §§25-8-602 and 605, C.R.S., the Division has made the following determinations regarding Cherokee, the Facility and Cherokee's compliance with the Act and its Colorado Discharge Permit System ("CDPS") permit.

3. At all times relevant to the alleged violations cited herein, Cherokee was a "Special District" formed in El Paso County, Colorado pursuant to the Colorado Special District Act, §§32-1-101 et seq and 32-4-501 et seq, C.R.S.
4. Cherokee is a "person" as defined by §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
5. The Facility receives and treats approximately 1.59 million gallons per day of domestic sewage generated from the Cimarron Hills area of Colorado Springs, El Paso County, Colorado and from two (2) contract customers: Meridian Service Metropolitan District and Schriever Air Force Base.
6. The Facility consists of a mechanical treatment plant that includes an extended aeration activated sludge biological process, utilizing four sequencing batch reactors for carbon oxidation, nitrification and denitrification, followed by effluent flow equalization, and ultraviolet disinfection. Waste activated sludge is aerobically digested and dewatered utilizing centrifuges. Treated effluent from the Facility is conveyed to a rapid infiltration basin system, approximately four (4) miles east-southeast, and consisting of ten (10) individual infiltration basins.
7. On August 21, 2009, Cherokee applied for coverage under a CDPS individual ground water discharge permit for Discharges to Ground Water from Domestic Wastewater Treatment Works (the "Permit").
8. On May 13, 2010, the Division issued Cherokee Individual Permit Number COX-048348 authorizing Cherokee to discharge effluent wastewater from the Facility to groundwater under the terms and conditions of the Permit. The Permit became effective on June 12, 2010 and is due to expire May 31, 2015.
9. Cherokee commenced operations at the Facility in June 2010 and has continuously operated since that date.
10. The Permit specifies that Cherokee is authorized to discharge effluent wastewater from the Facility to groundwater (Upper Black Squirrel Alluvial Aquifer). No other discharges are authorized by the Permit. The discharge is subject to the specific effluent limitations and other conditions of the Permit.
11. Groundwater is "state waters" as defined by §25-8-103(19), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (101).
12. Section 61.8, 5 CCR 1002-61, states in part that "A permittee must comply with all the terms and conditions of the permit."



**Failure to Comply with Permit Effluent Limitations**

13. Pursuant to Part I.A.1 of the Permit, the discharge from the Facility at outfalls 001A, 050C(L), and 050D(L) should not have exceeded, among other parameters and limitations not listed herein, the effluent limitations specified below:

Point of Compliance	Effluent Parameters	Discharge Limitations			
		30-Day Average	7-Day Average	Monthly Minimum	Daily Maximum
Outfall 001A	5-Day Biochemical Oxygen Demand ("BOD <sub>5</sub> ") (mg/L)	30 mg/L	45 mg/L	-	-
Outfall 001A	BOD <sub>5</sub> Removal (%)	-	-	85%	-
Outfall 001A	Total Suspended Solids ("TSS") (mg/L)	30 mg/L	45 mg/L	-	-
Outfall 001A	TSS Removal (%)	-	-	85%	-
Outfall 001A	Total Inorganic Nitrogen ("TIN") (mg/L)	-	-	-	10 mg/L
Outfalls 050C(L) and 050D(L)	Total Dissolved Solids ("TDS") (mg/L)	400 mg/L	-	-	-

Each point of compliance shown in the above table is as directed in CDPS Permit No. COX-048348 effective June 12, 2010:

- a) Outfall 001A = The Facility's outfall following ultraviolet radiation disinfection and prior to the effluent being conveyed by pipeline to the rapid infiltration basins and mixing with the receiving water.
  - b) Outfalls 050C(L) and 050D(L) = Downgradient monitoring wells located within fifteen (15) feet of the southern (downgradient) boundary of the Facility's property where the rapid infiltration basins are located.
14. Pursuant to Part I.D.1 of the Permit, to provide an indication of the quality of the wastewater being discharged into the Upper Black Squirrel Alluvial Aquifer, Cherokee collects specific samples of the effluent at the monitoring locations specified in the Permit. The analytical results of the samples are summarized and reported to the Division via monthly Discharge Monitoring Reports ("DMRs") which include a certification by Cherokee affirming that the information provided therein is true, accurate and complete, to the knowledge and belief of Cherokee.
15. Cherokee's DMRs submitted to the Division include, among other information and data, the effluent concentration summary data for BOD<sub>5</sub>, BOD<sub>5</sub> Removal, TSS, TSS Removal, TIN, and TDS which

exceeded the effluent limitations imposed by Part I.A.1 of the Permit. These effluent violations are attached as Exhibit A.

16. BOD<sub>5</sub>, BOD<sub>5</sub> Removal, TSS, TSS Removal, TIN, and TDS are each a "pollutant" (or indicator thereof) as defined by §25-8-103(15), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2 (76).
17. The Permit did not authorize the pollutant discharge levels identified above in paragraph 15 and in Exhibit A and Cherokee does not have any other permits authorizing such discharge into State Waters.
18. Cherokee's failure to comply with the effluent limitations set forth in the Permit and identified above in paragraph 15 and Exhibit A constitutes alleged violations of Part I.A.1 of the Permit.

#### Cherokee's Position on Alleged Violations

19. Cherokee submitted a request for preliminary effluent limitations ("PELs") for the proposed discharge of the Facility to groundwater through rapid infiltration basins on May 2, 2006. The Division responded with a letter dated June 15, 2006 stating the PELs which would apply to that discharge to groundwater. The PELs presented by the Division in the June 15, 2006 letter did not include TDS as an effluent limit for this discharge. Cherokee accomplished the design and preparation of construction documents in accordance with the PELs set forth in the June 15, 2006 letter. The subsequent site location approval and construction documents approval by the Division for the Facility did not include any statements regarding a requirement for meeting a TDS effluent limit. TDS was presented by the Division as an effluent limit parameter in a draft discharge permit following Cherokee's application for a discharge permit on August 14, 2009. Even though the Facility was not designed or constructed to remove or otherwise control TDS in the effluent, the Division issued a draft permit for public review on March 19, 2010, and a final permit effective June 12, 2010, containing effluent limits for TDS.
20. In response to the TIN discharge permit violations occurring in early 2011, Cherokee's initial investigations indicated that the anoxic treatment periods may not have been long enough and the process may be carbon deficient. Cherokee implemented process changes to increase the anoxic treatment periods and experimented with feeding supplemental carbon, in the form of methanol, during the anoxic periods. These process modifications initially showed positive results, with the effluent TIN concentration steadily dropping from 34.0 mg/L in March 2011 to 11.8 mg/L in June 2011. Cherokee was in the process of installing equipment that would allow methanol to be fed on a more consistent basis to improve the performance of the denitrification process in June 2011 when the Division informed Cherokee that adding methanol would likely be a change in the treatment process and therefore require an amendment to the site location approval and design, plan and specification review and approval by the Division. Cherokee advocated the immediate implementation of a methanol feed and expressed its concern to the Division that the effluent would not be in compliance with the TIN limitation until process modifications could be implemented. Cherokee's *Pilot/Full Scale Demonstration Project – Methanol Addition as a Carbon Source* was authorized by the Division on May 24, 2012 and Cherokee commenced operation of the demonstration project on June 15, 2012. If a mechanism was in place that allowed the Division to immediately authorize the implementation of Cherokee's methanol feed in early July 2011, the TIN limitation exceedences that occurred from July 2011 through June 2012 might have been avoided.



21. The Division finds that Cherokee's position statement, including the additional statements documented in CMD's January 17, 2014 letter to the Division, are not entirely consistent with the information gathered in the course of the Division's inspections and investigation of the incidents described herein and the inclusion of Cherokee's position statement in this order should not be construed to constitute any admission or agreement by the Division as to the content of the position statement.

### ORDER AND AGREEMENT

22. Based on the foregoing factual and legal determinations, pursuant to its authority under §§25-8-602 and 605, C.R.S., and in satisfaction of the alleged violations cited herein, the Division orders Cherokee to comply with all provisions of this Consent Order, including all requirements set forth below.
23. Cherokee agrees to the terms and conditions of this Consent Order. Cherokee agrees that this Consent Order constitutes a notice of alleged violation and an order issued pursuant to §§25-8-602 and 605, C.R.S., and is an enforceable requirement of the Act. Cherokee also agrees not to challenge directly or collaterally, in any judicial or administrative proceeding brought by the Division or by Cherokee against the Division:
- a. The issuance of this Consent Order;
  - b. The factual and legal determinations made by the Division herein; and
  - c. The Division's authority to bring, or the court's jurisdiction to hear, any action to enforce the terms of this Consent Order under the Act.
24. Notwithstanding the above, Cherokee does not admit to any of the factual or legal determinations made by the Division herein, and any action undertaken by Cherokee pursuant to this Consent Order shall not constitute evidence of fault and liability by Cherokee with respect to the conditions of the Facility.

### Compliance Actions and Requirements

25. Cherokee shall immediately implement measures to attain compliance with the Colorado Water Quality Control Act and the terms and conditions of the Permit.

#### Schedule to Meet Total Inorganic Nitrogen Effluent Limit

26. Cherokee implemented a *Pilot/Full Scale Demonstration Project-Methanol Addition as a Carbon Source* ("Demonstration Project"), as initially authorized by the Division on May 24, 2012 with a subsequent authorization for an extension to December 31, 2013. The full-scale Demonstration Project was intended to provide for the addition of supplemental carbon to improve the denitrification process, modify the manner in which air delivery to the pre-react basin is accomplished to enhance anoxic conditions and provide for internal recycle in the aeration basin to the pre-react zone. Cherokee submitted a request to the Division to continue the Demonstration Project past December 31, 2013 to September 30, 2014. On November 26, 2013, the Division extended authorization to operate the Demonstration Project to May 24, 2014, which is two years after the initial authorization to operate the Demonstration Project.



27. On July 17, 2013, Cherokee submitted an Application for Amendment of an Existing Site Location Approval to incorporate modifications to the activated sludge system to enhance and improve performance of the denitrification process. The Division approved the Application for Amendment on September 27, 2013. The Amendment authorized Cherokee to proceed with implementation of permanent improvements for application of methanol as a supplemental carbon source to enhance the denitrification process at the Facility.
28. In accordance with the Division's WPC Policy DR-1, Cherokee submitted a Process Design Report ("PDR") to the Division on November 26, 2013, addressing the permanent improvements to the Facility to facilitate the addition of methanol as a supplemental carbon source. By April 30, 2014, Cherokee shall submit a certification of the design and construction documents (plans and specifications) in accordance with the "streamlined design review process" specified by Water Quality Control Commission ("WQCC") Regulation No. 22.
29. Upon receipt and acceptance of the certification of design and construction documents submitted by Cherokee for the Facility improvements to add supplemental carbon referenced in Paragraph 28, the Division will provide Cherokee authorization to continue the Demonstration Project until August 31, 2014 during which time Cherokee will implement the permanent improvements to the Facility.
30. Within sixty (60) days of the Division's approval of the PDR and the plans and specifications for the new preliminary treatment facility, Cherokee shall initiate construction of the new preliminary treatment facility. Cherokee shall submit quarterly progress reports to the Division outlining the progress of the preliminary treatment facility construction. At a minimum, each report shall outline activities undertaken in the current reporting period and planned activities for the next three (3) months to remain in compliance with this Consent Order.

#### Schedule to Meet Total Dissolved Solids Effluent Limit

31. Within thirty (30) days of the effective date of this Consent Order, Cherokee shall commence a technical assessment of the suitability and effectiveness of accomplishing Total Dissolved Solids ("TDS") removal in its source water supply as a means of controlling TDS discharge from the Facility. This will include blending with new source water supplies presently being developed and source water treatment. The assessment of alternative approaches for TDS control will also include evaluation of TDS control at the Facility's biological process discharge. Additionally, Cherokee shall prepare a summary report of the findings of the assessment of the suitability and effectiveness of accomplishing TDS removal in its source water supply and submit this report to the Division.
32. Within one hundred eighty (180) days of the effective date of this Consent Order, Cherokee shall complete the assessment of technically feasible approaches to control TDS in the Facility's effluent, as required by Paragraph 31 of this Consent Order addressing financial and cost-benefit impacts, operational impacts with particular attention to the requirements for management of residuals from the TDS control processes, legal issues and impacts from conditions of well permits, decrees and other water resource management and use agreements, water use efficiency, institutional constraints and other identified issues which will influence the selection of a TDS control strategy for implementation. Additionally, Cherokee shall prepare a summary report of the findings of the assessment described in this paragraph and submit to the Division.

33. Within two hundred ten (210) calendar days of the effective date of this Consent Order, Cherokee shall submit to the Division an implementation plan for a selected TDS control strategy, as addressed in Paragraphs 31 and 32. The submitted plan shall become a condition of this Consent Order and Cherokee shall comply with the plan as submitted unless notified by the Division, in writing within sixty (60) calendar days of the submittal, that modifications or an alternate plan or program is appropriate. If the Division imposes modifications or an alternate plan or program, it shall also become a condition of this Consent Order.
34. Within sixty (60) days of the effective date of this Consent Order, Cherokee shall submit a summary report of the review and an update of the dynamic groundwater model of the Black Squirrel Creek alluvial aquifer in the vicinity of the rapid infiltration basins to which the Facility discharges. Cherokee shall analyze the variation in the groundwater phreatic surface as a result of application of treated wastewater in the rapid infiltration basins and pumping of production wells upstream and downstream, and laterally from the rapid infiltration basins.
35. Within thirty (30) days of the effective date of this Consent Order, Cherokee shall complete development of a customer education program expressed as Best Management Practices to maximize the efficiency of home water softeners for purposes of minimizing wastewater generated from the ion exchange resin regeneration process. The primary means of education will be through Cherokee's customer newsletter. Outreach and educational tools shall also be developed for implementation of Best Management Practices for TDS control in nonresidential wastewater contributions. Cherokee shall publish the consumer education program in the customer newsletter no less than semi-annually.
36. Within forty-five (45) days of the effective date of this Consent Order, Cherokee shall develop design and construction documents for new groundwater monitoring wells at or near Cherokee's property boundary and submit to the Division for approval. Within one hundred twenty (120) days following Division approval of the new groundwater monitoring well location's design and construction documents, Cherokee shall complete construction of the modified groundwater monitoring system.
37. Within one hundred eighty (180) days of the effective date of this Consent Order, Cherokee shall complete an assessment of the local limits in its pretreatment program addressing TDS and other constituents of concern in accordance with USEPA Region 8 guidance for development of local limits. Additionally, within two hundred ten (210) days of the effective date of this Consent Order, Cherokee shall prepare a summary report of the findings of the assessment and submit to the Division.
38. All documents submitted under this Consent Order shall use the same titles as stated in this Consent Order, and shall reference both the number of this Consent Order and the number of the paragraph pursuant to which the document is required. No plan submitted for Division approval under this Consent Order may be implemented unless and until written approval is received from the Division except as otherwise specified or provided herein. Any approval by the Division of a plan submitted under this Consent Order is effective upon receipt by Cherokee. All approved plans, including all procedures and schedules contained in the plans, are hereby incorporated into this Consent Order, and shall constitute enforceable requirements under the Act.



## CIVIL PENALTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

39. Based upon the application of the Division's Civil Penalty Policy (May 1, 1993), and consistent with Departmental policies for violations of the Act, the Division has determined that a penalty of Sixty Three Thousand Seven Hundred Twenty Dollars (\$63,720.00) is appropriate for the violations cited herein.
40. Through the application of the criteria set forth in the Colorado Department of Public Health and Environment's Final Agency-Wide Policy on Settling Administrative and/or Civil Penalties Against Eligible Governmental Entities, the Division has determined the entire penalty can be mitigated through the completion of the following Supplemental Environmental Projects ("SEPs") identified by Cherokee and which are valued at Sixty Nine Thousand Seven Hundred Seventy Five Dollars (\$69,775.00).
41. Cherokee shall undertake the following SEPs, which the Parties agree are intended to secure significant environmental or public health protection and improvements.
42. Cherokee shall spend no less than Sixty Nine Thousand Seven Hundred Seventy Five Dollars (\$69,775.00) on the implementation and completion of energy efficiency/pollution prevention upgrades within the Cherokee service area in El Paso County. The combination of the first and third party SEPs are further described in Exhibit B. If Cherokee completes the energy efficiency/pollution prevention upgrades specified in Exhibit B and does not expend the full Sixty Nine Thousand Seven Hundred Seventy Five Dollars (\$69,775.00), Cherokee may propose an alternate SEP for Division review and approval that accounts for the remaining balance. The alternate SEP proposal shall be submitted to the Division by December 1, 2014.
43. Cherokee shall not deduct the expenses associated with the implementation of the above-described SEPs for any tax purpose or otherwise obtain any favorable tax treatment of such payment or project.
44. Cherokee hereby certifies that, as of the date of this Consent Order, it is not under any existing legal obligation to perform or develop the SEPs. Cherokee further certifies that it has not received, and will not receive, credit in any other enforcement action for the SEPs. In the event that Cherokee has, or will receive credit under any other legal obligation for the SEPs, Cherokee shall pay Sixty Three Thousand Seven Hundred Twenty Dollars (\$63,720.00) to the Division as a civil penalty within thirty (30) calendar days of receipt of a demand for payment by the Division. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Michael Harris  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Mail Code: WQCD-CWE-B2  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530



45. The SEPs must be completed to the satisfaction of the Division by November 30, 2014, and must be operated for the useful life of the SEPs. In the event that Cherokee fails to comply with any of the terms or provisions of this Consent Order relating to the performance of the SEPs, Cherokee shall be liable for penalties as follows:
  - a. Payment of a penalty in the amount of Sixty Three Thousand Seven Hundred Twenty Dollars (\$63,720.00). The Division, in its sole discretion, may elect to reduce this penalty for environmental benefits created by the partial performance of the SEPs.
  - b. Cherokee shall pay this penalty within thirty (30) calendar days of receipt of written demand by the Division. Method of payment shall be as specified in paragraph 44 above.
46. Cherokee shall submit SEP Completion Reports for each SEP to the Division by December 30, 2014. The SEP Completion Reports shall contain the following information:
  - a. A detailed description of the SEPs as implemented;
  - b. A description of any operating problems encountered and the solutions thereto;
  - c. Itemized costs, documented by copies of purchase orders and receipts or canceled checks or other forms of proof of payment;
  - d. Certification that the SEPs have been fully implemented pursuant to the provisions of this Consent Order; and
  - e. A description of the environmental and public health benefits resulting from implementation of the SEPs (with quantification of the benefits and pollutant reductions, if feasible).
47. Failure to submit the SEP Completion Reports with the required information, or any periodic report, shall be deemed a violation of this Consent Order.
48. Cherokee shall include the following language in any public statement, oral or written, making reference to the SEPs: "This project was undertaken in connection with the settlement of an enforcement action taken by the Colorado Department of Public Health and Environment for alleged violations of the Colorado Water Quality Control Act."

#### **SCOPE AND EFFECT OF CONSENT ORDER**

49. The Parties agree and acknowledge that this Consent Order constitutes a full and final settlement of the alleged violations cited herein.
50. This Consent Order is subject to the Division's "Public Notification of Administrative Enforcement Actions Policy," which includes a thirty-day public comment period. The Division and Cherokee each reserve the right to withdraw consent to this Consent Order if comments received during the thirty-day period result in any proposed modification to the Consent Order.
51. This Consent Order constitutes a final agency action upon a determination by the Division following the public comment period. Any violation of the provisions of this Consent Order by Cherokee, including any false certifications, shall be a violation of a final order or action of the Division for the

purpose of §25-8-608, C.R.S., and may result in the assessment of civil penalties of up to ten thousand dollars per day for each day during which such violation occurs.

52. The Parties' obligations under this Consent Order are limited to the matters expressly stated herein or in approved submissions required hereunder. All submissions made pursuant to this Consent Order are incorporated into this Consent Order and become enforceable under the terms of this Consent Order as of the date of approval by the Division.
53. The Division's approval of any submission, standard, or action under this Consent Order shall not constitute a defense to, or an excuse for, any prior violation of the Act, or any subsequent violation of any requirement of this Consent Order or the Act.
54. Notwithstanding paragraph 24 above, the alleged violations described in this Consent Order will constitute part of Cherokee's compliance history for purposes where such history is relevant. This includes considering the alleged violations described above in assessing a penalty for any subsequent violations against Cherokee. Cherokee agrees not to challenge the use of the cited alleged violations for any such purpose.
55. This Consent Order does not relieve Cherokee from complying with all applicable Federal, State, and/or local laws in fulfillment of its obligations hereunder and shall obtain all necessary approvals and/or permits to conduct the activities required by this Consent Order. The Division makes no representation with respect to approvals and/or permits required by Federal, State, or local laws other than those specifically referred to herein.

#### **LIMITATIONS, RELEASES AND RESERVATION OF RIGHTS AND LIABILITY**

56. Upon the effective date of this Consent Order, and during its term, this Consent Order shall stand in lieu of any other enforcement action by the Division with respect to the specific instances of alleged violations cited herein. The Division reserves the right to bring any action to enforce this Consent Order, including actions for penalties or the collection thereof, and/or injunctive relief.
57. This Consent Order does not grant any release of liability for any violations not specifically cited herein.
58. Nothing in this Consent Order shall preclude the Division from imposing additional requirements in the event that new information is discovered that indicates such requirements are necessary to protect human health or the environment.
59. Upon the effective date of this Consent Order, Cherokee releases and covenants not to sue the State of Colorado or its employees, agents or representatives as to all common law or statutory claims or counterclaims arising from, or relating to, the alleged violations of the Act specifically addressed herein.
60. Cherokee shall not seek to hold the State of Colorado or its employees, agents or representatives liable for any injuries or damages to persons or property resulting from acts or omissions of Cherokee, or those acting for or on behalf of Cherokee, including its officers, employees, agents, successors, representatives, contractors, consultants or attorneys in carrying out activities pursuant to



this Consent Order. Cherokee shall not hold out the State of Colorado or its employees, agents or representatives as a party to any contract entered into by Cherokee in carrying out activities pursuant to this Consent Order. Nothing in this Consent Order shall constitute an express or implied waiver of immunity otherwise applicable to the State of Colorado, its employees, agents or representatives.

#### **OFFSITE ACCESS**

61. To the extent any plan submitted by Cherokee requires access to property not owned or controlled by Cherokee, Cherokee shall use its best efforts to obtain site access from the present owners of such property to conduct required activities and to allow Division access to such property to oversee such activities. In the event that site access is not obtained when necessary, Cherokee shall notify the Division in writing regarding its best efforts and its failure to obtain such access.

#### **SITE ACCESS AND SAMPLING**

62. The Division shall be authorized to oversee any and all work being performed under this Consent Order. The Division shall be authorized access to the Facility property at any time work is being conducted pursuant to this Consent Order, and during reasonable business hours during any period work is not being conducted, for the purposes of determining Cherokee's compliance with the Act, the Regulations, and this Consent Order. The Division shall be authorized to inspect work sites, operating and field logs, contracts, purchasing/shipping records, and other relevant records and documents relating to this Consent Order or any requirement under this Consent Order and to interview Cherokee personnel and contractors performing work required by this Consent Order. Nothing in this paragraph limits or impairs the Division's statutory authorities to enter and inspect the Facility.
63. The Division may conduct any tests necessary to ensure compliance with this Consent Order and to verify the data submitted by Cherokee. Cherokee shall notify the Division in writing of any sampling activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to the sampling being conducted, and shall provide split samples to the Division upon request.
64. Cherokee shall notify the Division in writing of any excavation, construction (including the construction of monitoring wells) or other investigatory or remedial activities undertaken pursuant to any plan or requirement of this Consent Order a minimum of seventy-two (72) hours prior to beginning the excavation, construction, or required activity. Cherokee shall provide the Division any blue print, diagram, construction or other permits for any construction activity undertaken pursuant to this Consent Order upon request.

#### **FORCE MAJEURE**

65. Cherokee shall perform the requirements of this Consent Order within the schedules and time limits set forth herein and in any approved plan unless the performance is prevented or delayed by events that constitute a force majeure. A force majeure is defined as any event arising from causes which are not reasonably foreseeable, which are beyond the control of Cherokee, and which cannot be overcome by due diligence.



66. Within seventy-two (72) hours of the time that Cherokee knows or has reason to know of the occurrence of any event which Cherokee has reason to believe may prevent Cherokee from timely compliance with any requirement under this Consent Order; Cherokee shall provide verbal notification to the Division. Within seven (7) calendar days of the time that Cherokee knows or has reason to know of the occurrence of such event, Cherokee shall submit to the Division a written description of the event causing the delay, the reasons for and the expected duration of the delay, and actions which will be taken to mitigate the duration of the delay.
67. The burden of proving that any delay was caused by a force majeure shall at all times rest with Cherokee. If the Division agrees that a force majeure has occurred, the Division will so notify Cherokee. The Division will also approve or disapprove of Cherokee's proposed actions for mitigating the delay. If the Division does not agree that a force majeure has occurred, or if the Division disapproves of Cherokee's proposed actions for mitigating the delay, it shall provide a written explanation of its determination to Cherokee. Pursuant to the Dispute Resolution section, within fifteen (15) calendar days of receipt of the explanation, Cherokee may file an objection.
68. Delay in the achievement of one requirement shall not necessarily justify or excuse delay in the achievement of subsequent requirements. In the event any performance under this Consent Order is found to have been delayed by a force majeure, Cherokee shall perform the requirements of this Consent Order that were delayed by the force majeure with all due diligence.

#### DISPUTE RESOLUTION

69. If the Division determines that that a violation of this Consent Order has occurred, that a force majeure has not occurred; that the actions taken by Cherokee to mitigate the delay caused by a force majeure are inadequate; that Cherokee's Notice of Completion should be rejected pursuant to paragraph 75, or that the Cherokee's SEP Completion Report submitted pursuant to paragraph 46 is deficient, the Division shall provide a written explanation of its determination to Cherokee. Within fifteen (15) calendar days of receipt of the Division's determination, Cherokee shall:
    - a. Submit a notice of acceptance of the determination; or
    - b. Submit a notice of dispute of the determination.
- If Cherokee fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.
70. If the Division disapproves or approves with modifications any original or revised plan submitted by Cherokee pursuant to this Consent Order, the Division shall provide a written explanation of the disapproval or approval with modifications. Within fifteen (15) calendar days of receipt of the Division's approval with modifications or disapproval of the plan, Cherokee shall:
    - a. In the case of an approval with modifications only, submit a notice of acceptance of the plan as modified and begin to implement the modified plan;

- b. In the case of disapproval only, submit a revised plan for Division review and approval. Cherokee may not select this option if the Division has included in its disapproval an alternate plan that shall be implemented by Cherokee; or
- c. Submit a notice of dispute of the disapproval or approval with modifications.

If Cherokee fails to do any of the above within the specified time, Cherokee shall be deemed to have failed to comply with the Consent Order, and the Division may bring an enforcement action, including an assessment of penalties.

71. If Cherokee submits a revised plan, the plan shall respond adequately to each of the issues raised in the Division's written explanation of the disapproval or approval with modifications. The Division may determine that failure to respond adequately to each of the issues raised in the Division's written explanation constitutes a violation of this Consent Order. The Division shall notify Cherokee in writing of its approval, approval with modifications, or disapproval of the revised plan. If the Division disapproves the revised plan, it may include in its disapproval a plan for implementation by Cherokee. Such disapproval and plan shall be deemed effective and subject to appeal in accordance with the Act and the Colorado State Administrative Procedures Act, §§ 24-4-101 through 108, C.R.S. (the "APA"), unless Cherokee submits a notice of dispute, pursuant to paragraph 70 above, of the Division's disapproval and plan for implementation. All requirements and schedules of the Division's plan shall not become effective pending resolution of the dispute.

#### NOTICES

72. Unless otherwise specified, any report, notice or other communication required under the Consent Order shall be sent to:

For the Division:

Colorado Department of Public Health and Environment  
Water Quality Control Division / WQCD-CWE-B2  
Attention: Michael Harris  
4300 Cherry Creek Drive South  
Denver, Colorado 80246-1530  
Telephone: 303.692.3598  
E-mail: michael.harris@state.co.us

For Cherokee Metropolitan District:

Cherokee Metropolitan District  
Attention: Sean Chambers, General Manager  
6250 Palmer Park Boulevard  
Colorado Springs, Colorado 80915  
Telephone: 719.597.5080  
E-mail: schambers@cherokeemetro.org



### **OBLIGATIONS UNAFFECTED BY BANKRUPTCY**

73. The obligations set forth herein are based on the Division's police and regulatory authority. These obligations require specific performance by Cherokee of corrective actions carefully designed to prevent on-going or future harm to public health or the environment, or both. Enforcement of these obligations is not stayed by a petition in bankruptcy. Cherokee agrees that the penalties set forth in this Consent Order are not in compensation of actual pecuniary loss. Further, the obligations imposed by this Consent Order are necessary for Cherokee and the Facility to achieve and maintain compliance with State law.

### **MODIFICATIONS**

74. This Consent Order may be modified only upon mutual written agreement of the Parties.

### **COMPLETION OF REQUIRED ACTIONS**

75. Cherokee shall submit a Notice of Completion to the Division upon satisfactory completion of all requirements of this Consent Order. The Division shall either accept or reject Cherokee's Notice of Completion in writing within thirty (30) calendar days of receipt. If the Division rejects Cherokee's Notice of Completion, it shall include in its notice a statement identifying the requirements that the Division considers incomplete or not satisfactorily performed and a schedule for completion. Cherokee shall, within fifteen (15) calendar days of receipt of the Division's rejection, either:
- a. Submit a notice of acceptance of the determination; or
  - b. Submit a notice of dispute.

If Cherokee fails to submit either of the above notices within the specified time, it will be deemed to have accepted the Division's determination.

### **NOTICE OF EFFECTIVE DATE**

76. This Consent Order shall be fully effective, enforceable and constitute a final agency action upon notice from the Division following closure of the public comment period referenced in paragraph 50.

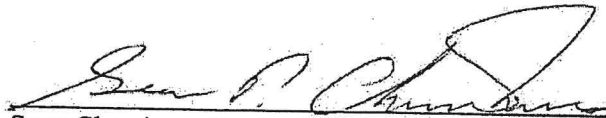
### **BINDING EFFECT AND AUTHORIZATION TO SIGN**

77. This Consent Order is binding upon Cherokee and its officials, employees, agents, representatives, successors in interest, and assigns. The undersigned warrant that they are authorized to legally bind their respective principals to this Consent Order. Cherokee agrees to provide a copy of this Consent Order to any contractors and other agents performing work pursuant to this Consent Order and require such agents to comply with the requirements of this Consent Order. In the event that a party does not sign this Consent Order within thirty (30) calendar days of the other party's signature, this



Consent Order becomes null and void. This Consent Order may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent Order.

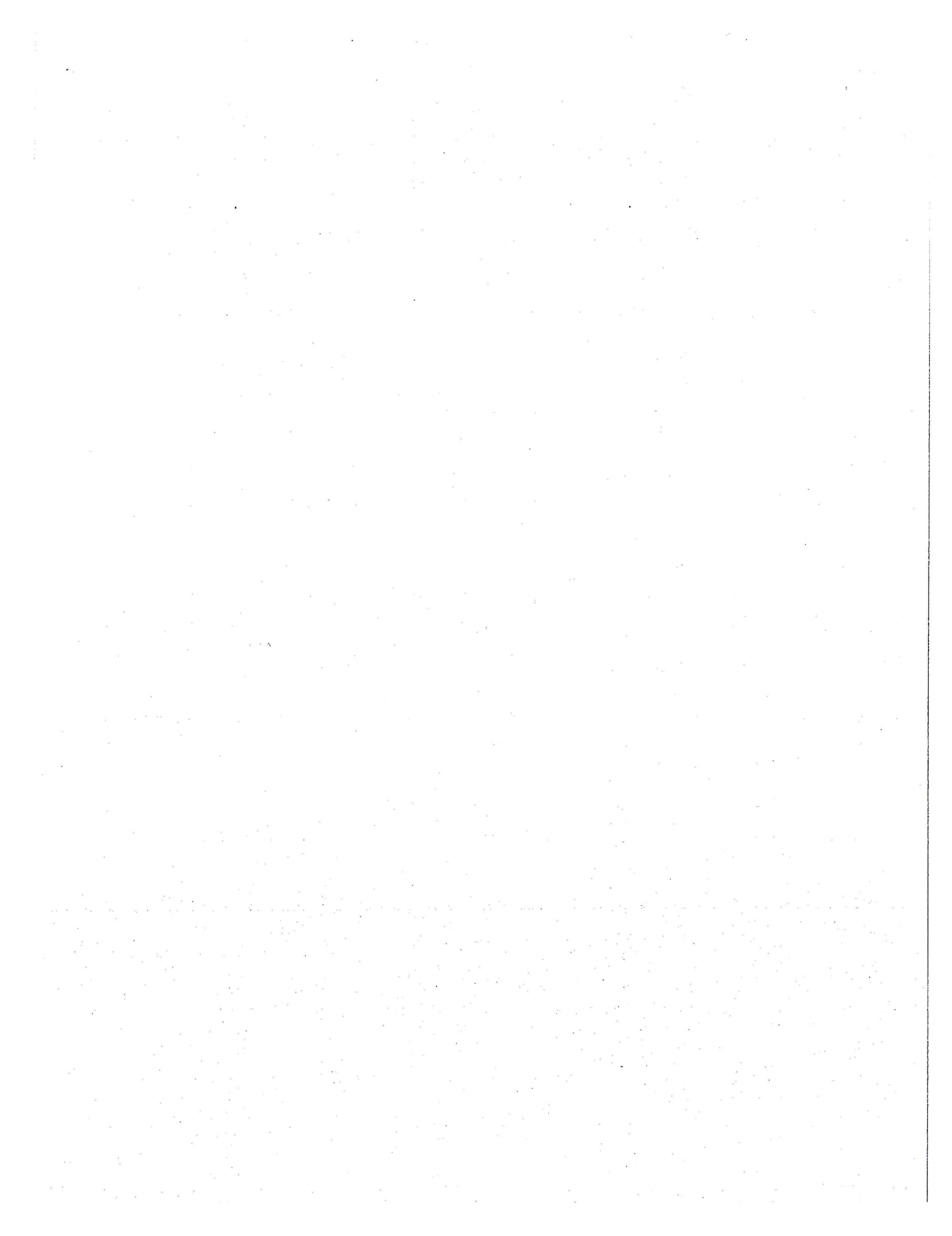
**FOR CHEROKEE METROPOLITAN DISTRICT:**

 Date: May 9, 2014  
Sean Chambers, General Manager

**FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT:**

\_\_\_\_\_  
Steven H. Gunderson, Director  
WATER QUALITY CONTROL DIVISION

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



**EXHIBIT A**  
**Colorado Department of Public Health and Environment**  
**Water Quality Control Division**  
**Effluent Violation Report**

Report #: CAEVRBX004  
 Created Date: March 2, 2012  
 Approved By:

\*\*\* Query Name: Effluent Data \*\*\*  
 Monitoring Period End Date From: 5/1/2010 12:00:00 AM  
 Monitoring Period End Date To: 4/21/2014 12:00:00 AM  
 Outfalls: (Optional)  
 Enter NPDES ID: (Optional)  
 Primary Permit SIC Code: (Optional)  
 Major/Minor (Enter "Major" or "Minor") (Enter \* to select all) -  
 Matching NPDES ID: (Optional) COX048348  
 Parameter Desc: (Optional)  
 Enter Primary Permit SIC Code Not Equal to: (Optional)

Date of Report: 4/21/14

Permit #: COX048348  
 Facility Name: CHEROKEE METRO DISTRICT WATER RECLAMATION FACILITY  
 Permit Name: Cherokee Metro District  
 Permit Status: Major/Minor Ind. County: El Paso Primary SIC Code: 4952 Water Body: Groundwater

NPDES ID	Outfall	Mon Pd Start Date	Mon Pd End Date	Parameter	Rptd Value	Unit Desc	Limit Value	Stat Base Desc	% Exceed	Viol Code	NODI Code	RNC Detect Code	RNC Resolve Code
COX048348	001A	7/1/10	7/31/10	00310 - BOD, 5-day, 20 deg. C	=47	mg/L	30	30DA AVG	57	E90			
COX048348	001A	7/1/10	7/31/10	00310 - BOD, 5-day, 20 deg. C	=47	mg/L	45	MX 7D AV	4	E90			
COX048348	001A	7/1/10	7/31/10	00640 - Nitrogen, inorganic total	=28.1	mg/L	10	DAILY MX	181	E90	R		2
COX048348	001A	7/1/10	7/31/10	81010 - BOD, 5-day, percent removal	=65.4	%	85	MO AV MN	131	E90			
COX048348	001A	7/1/10	7/31/10	81011 - Solids, suspended percent removal	=68.8	%	85	MO AV MN	108	E90			
COX048348	001A	8/1/10	8/31/10	00640 - Nitrogen, inorganic total	=33.8	mg/L	10	DAILY MX	238	E90	R		2
COX048348	001A	8/1/10	8/31/10	81010 - BOD, 5-day, percent removal	=76	%	85	MO AV MN	60	E90			
COX048348	001A	9/1/10	9/30/10	00640 - Nitrogen, inorganic total	=17.41	mg/L	10	DAILY MX	74	E90	R		2
COX048348	001A	9/1/10	9/30/10	81010 - BOD, 5-day, percent removal	=80	%	85	MO AV MN	33	E90			
COX048348	001A	10/1/10	10/31/10	00640 - Nitrogen, inorganic total	=12.64	mg/L	10	DAILY MX	26	E90	U		2
COX048348	001A	10/1/10	10/31/10	81010 - BOD, 5-day, percent removal	=80	%	85	MO AV MN	33	E90			
COX048348	001A	10/1/10	10/31/10	81011 - Solids, suspended percent removal	=83	%	85	MO AV MN	13	E90			
COX048348	001A	11/1/10	11/30/10	00310 - BOD, 5-day, 20 deg. C	=36.5	mg/L	30	30DA AVG	22	E90			



Report #: CAEVRBX004

Created Date: March 2, 2012

Approved By:

### EXHIBIT A Colorado Department of Public Health and Environment Water Quality Control Division Effluent Violation Report

Date of Report: 4/21/14

\*\*\* Query Name: Effluent Data \*\*\*  
Monitoring Period End Date From: 5/1/2010 12:00:00 AM  
Monitoring Period End Date To: 4/21/2014 12:00:00 AM  
Outfalls: (Optional)  
Enter NPDES ID: (Optional)  
Primary Permit SIC Code: (Optional)  
Major/Minor (Enter "Major" or "Minor") (Enter \* to select all) \*  
Matching NPDES ID: (Optional) COX048348  
Parameter Desc: (Optional)  
Enter Primary Permit SIC Code Not Equal to: (Optional)

NPDES ID	Outfall	Mon Pd Start Date	Mon Pd End Date	Parameter	Rpted Value	Unit Desc	Limit Value	Stat Base Desc	% Exceed	Viol Code	NODI Code	RNC Detect Code	RNC Resolve Code
COX048348	001A	11/1/10	11/30/10	00640 - Nitrogen, inorganic total	=10.5	mg/L	10	DAILY MX	5	E90		U	2
COX048348	001A	2/1/11	2/28/11	00310 - BOD, 5-day, 20 deg. C	=34	mg/L	30	30DA AVG	13	E90			
COX048348	001A	2/1/11	2/28/11	00640 - Nitrogen, inorganic total	=21.53	mg/L	10	DAILY MX	115	E90		R	2
COX048348	001A	2/1/11	2/28/11	81010 - BOD, 5-day, percent removal	=84	%	85	MO AV MN	7	E90			
COX048348	001A	3/1/11	3/31/11	00310 - BOD, 5-day, 20 deg. C	=89	mg/L	30	30DA AVG	130	E90			
COX048348	001A	3/1/11	3/31/11	00310 - BOD, 5-day, 20 deg. C	=69	mg/L	45	MX 7D AV	63	E90			
COX048348	001A	3/1/11	3/31/11	00530 - Solids, total suspended	=92	mg/L	30	30DA AVG	7	E90			
COX048348	001A	3/1/11	3/31/11	00640 - Nitrogen, inorganic total	=34.02	mg/L	10	DAILY MX	240	E90		R	2
COX048348	001A	3/1/11	3/31/11	81010 - BOD, 5-day, percent removal	=84	%	85	MO AV MN	7	E90			
COX048348	001A	4/1/11	4/30/11	00640 - Nitrogen, inorganic total	=21.3	mg/L	10	DAILY MX	113	E90		R	2
COX048348	001A	5/1/11	5/31/11	00640 - Nitrogen, inorganic total	=12.2	mg/L	10	DAILY MX	22	E90		U	2
COX048348	001A	6/1/11	6/30/11	00640 - Nitrogen, inorganic total	=11.8	mg/L	10	DAILY MX	18	E90		U	2
COX048348	001A	7/1/11	7/31/11	00640 - Nitrogen, inorganic total	=18.8	mg/L	10	DAILY MX	88	E90		R	2
COX048348	001A	8/1/11	8/31/11	00640 - Nitrogen, inorganic total	=20.9	mg/L	10	DAILY MX	109	E90		R	2
COX048348	001A	9/1/11	9/30/11	00640 - Nitrogen, inorganic total	=20	mg/L	10	DAILY MX	100	E90		R	2
COX048348	001A	10/1/11	10/31/11	00640 - Nitrogen, inorganic total	=20.9	mg/L	10	DAILY MX	109	E90		R	2
COX048348	001A	1/1/12	1/31/12	00640 - Nitrogen, inorganic total	=19	mg/L	10	DAILY MX	90	E90		R	2
COX048348	001A	2/1/12	2/29/12	00640 - Nitrogen, inorganic total	=12.99	mg/L	10	DAILY MX	30	E90		H	2

Report #: CAEVRBX004

Created Date: March 2, 2012

Approved By:

# EXHIBIT A Colorado Department of Public Health and Environment Water Quality Control Division Effluent Violation Report

Date of Report: 4/21/14

\*\*\* Query Name: Effluent Data \*\*\*

Monitoring Period End Date From: 5/1/2010 12:00:00 AM  
Monitoring Period End Date To: 4/21/2014 12:00:00 AM  
Outfalls: (Optional)

Enter NPDES ID: (Optional)  
Primary Permit SIC Code: (Optional)  
Major/Minor (Enter "Major" or "Minor") (Enter "\*" to select all) \*  
Matching NPDES ID: (Optional) COX048348  
Parameter Desc: (Optional)  
Enter Primary Permit SIC Code Not Equal to: (Optional)

NPDES ID	Outfall	Mon Pd Start Date	Mon Pd End Date	Parameter	Rptd Value	Unit Desc	Limit Value	Stat Base Desc	% Exceed	Viol Code	NODI Code	RNC Detect Code	RNC Resolve Code
COX048348	001A	3/1/12	3/31/12	00640 - Nitrogen, inorganic total	=11.42	mg/L	10	DAILY MX	14	E90		H	2
COX048348	001A	4/1/12	4/30/12	00640 - Nitrogen, inorganic total	=16.48	mg/L	10	DAILY MX	65	E90		R	2
COX048348	001A	5/1/12	5/31/12	00640 - Nitrogen, inorganic total	=11.8	mg/L	10	DAILY MX	18	E90		H	2
COX048348	001A	7/1/12	7/31/12	00640 - Nitrogen, inorganic total	=13.4	mg/L	10	DAILY MX	34	E90		U	2
COX048348	001A	8/1/12	8/31/12	00640 - Nitrogen, inorganic total	=12.5	mg/L	10	DAILY MX	25	E90		U	2
COX048348	001A	10/1/12	10/31/12	00640 - Nitrogen, inorganic total	=20	mg/L	10	DAILY MX	100	E90		R	2
COX048348	001A	11/1/12	11/30/12	00640 - Nitrogen, inorganic total	=18	mg/L	10	DAILY MX	80	E90		R	2
COX048348	001A	12/1/12	12/31/12	00640 - Nitrogen, inorganic total	=13	mg/L	10	DAILY MX	30	E90		U	2
COX048348	001A	1/1/13	1/31/13	00640 - Nitrogen, inorganic total	=22	mg/L	10	DAILY MX	120	E90		R	2
COX048348	001A	2/1/13	2/28/13	00640 - Nitrogen, inorganic total	=23	mg/L	10	DAILY MX	130	E90		R	2
COX048348	001A	3/1/13	3/31/13	00640 - Nitrogen, inorganic total	=17	mg/L	10	DAILY MX	70	E90		R	2
COX048348	050CC	7/1/10	7/31/10	70295 - Solids, total dissolved	=2000	mg/L	400	30DA AVG	400	E90		T	1
COX048348	050CC	10/1/10	10/31/10	70295 - Solids, total dissolved	=762	mg/L	400	30DA AVG	91	E90		T	1
COX048348	050CC	11/1/10	11/30/10	70295 - Solids, total dissolved	=752	mg/L	400	30DA AVG	88	E90		T	1
COX048348	050CC	12/1/10	12/31/10	70295 - Solids, total dissolved	=680	mg/L	400	30DA AVG	70	E90		T	1
COX048348	050CC	1/1/11	1/31/11	70295 - Solids, total dissolved	=624	mg/L	400	30DA AVG	56	E90		T	1
COX048348	050CC	2/1/11	2/28/11	70295 - Solids, total dissolved	=642	mg/L	400	30DA AVG	61	E90		T	1
COX048348	050CC	3/1/11	3/31/11	70295 - Solids, total dissolved	=694	mg/L	400	30DA AVG	74	E90		T	1

Report #: CAEVRBX004

Created Date: March 2, 2012

Approved By:

### EXHIBIT A Colorado Department of Public Health and Environment Water Quality Control Division Effluent Violation Report

Date of Report: 4/21/14

\*\*\* Query Name: Effluent Data \*\*\*  
Monitoring Period End Date From: 5/1/2010 12:00:00 AM  
Monitoring Period End Date To: 4/21/2014 12:00:00 AM  
Outfalls: (Optional)  
Enter NPDES ID: (Optional)  
Primary Permit SIC Code: (Optional)  
Major/Minor (Enter "Major" or "Minor") (Enter \* to select all) \*  
Matching NPDES ID: (Optional) COX048348  
Parameter Desc: (Optional)  
Enter Primary Permit SIC Code Not Equal to: (Optional)

NPDES ID	Outfall	Mon Pd Start Date	Mon Pd End Date	Parameter	Rpted Value	Unit Desc	Limit Value	Stat Base Desc	% Exceed	Viol Code	NODI Code	RNC Defect Code	RNC Resolve Code
COX048348	050CC	4/1/11	4/30/11	70295 - Solids, total dissolved	=664	mg/L	400	30DA AVG	66	E90	T		1
COX048348	050CC	5/1/11	5/31/11	70295 - Solids, total dissolved	=653	mg/L	400	30DA AVG	63	E90	T		1
COX048348	050CC	6/1/11	6/30/11	70295 - Solids, total dissolved	=666	mg/L	400	30DA AVG	67	E90	T		1
COX048348	050CC	7/1/11	7/31/11	70295 - Solids, total dissolved	=704	mg/L	400	30DA AVG	76	E90	T		1
COX048348	050CC	8/1/11	8/31/11	70295 - Solids, total dissolved	=637	mg/L	400	30DA AVG	59	E90	T		1
COX048348	050CC	9/1/11	9/30/11	70295 - Solids, total dissolved	=658	mg/L	400	30DA AVG	65	E90	T		1
COX048348	050CC	10/1/11	10/31/11	70295 - Solids, total dissolved	=600	mg/L	400	30DA AVG	50	E90	T		1
COX048348	050CC	11/1/11	11/30/11	70295 - Solids, total dissolved	=645	mg/L	400	30DA AVG	61	E90	T		1
COX048348	050CC	12/1/11	12/31/11	70295 - Solids, total dissolved	=678	mg/L	400	30DA AVG	70	E90	T		1
COX048348	050CC	1/1/12	1/31/12	70295 - Solids, total dissolved	=654	mg/L	400	30DA AVG	64	E90	T		1
COX048348	050CC	2/1/12	2/29/12	70295 - Solids, total dissolved	=671	mg/L	400	30DA AVG	68	E90	T		1
COX048348	050CC	3/1/12	3/31/12	70295 - Solids, total dissolved	=682	mg/L	400	30DA AVG	71	E90	T		1
COX048348	050CC	4/1/12	4/30/12	70295 - Solids, total dissolved	=669	mg/L	400	30DA AVG	67	E90	T		1
COX048348	050CC	5/1/12	5/31/12	70295 - Solids, total dissolved	=732	mg/L	400	30DA AVG	83	E90	T		1
COX048348	050CC	6/1/12	6/30/12	70295 - Solids, total dissolved	=656	mg/L	400	30DA AVG	64	E90	T		1
COX048348	050CC	7/1/12	7/31/12	70295 - Solids, total dissolved	=667	mg/L	400	30DA AVG	67	E90	T		1
COX048348	050CC	8/1/12	8/31/12	70295 - Solids, total dissolved	=672	mg/L	400	30DA AVG	68	E90	T		1
COX048348	050CC	9/1/12	9/30/12	70295 - Solids, total dissolved	=654	mg/L	400	30DA AVG	64	E90	T		1



**EXHIBIT A**  
**Colorado Department of Public Health and Environment**  
**Water Quality Control Division**  
**Effluent Violation Report**

Report #: CAEVRBX004  
 Created Date: March 2, 2012  
 Approved By:

Date of Report: 4/21/14

\*\*\* Query Name: Effluent Data \*\*\*  
 Monitoring Period End Date From: 5/1/2010 12:00:00 AM  
 Monitoring Period End Date To: 4/21/2014 12:00:00 AM  
 Outfalls: (Optional)  
 Enter NPDES ID: (Optional)  
 Primary Permit SIC Code: (Optional)  
 Major/Minor (Enter "Major" or "Minor") (Enter \* to select all) \*  
 Matching NPDES ID: (Optional) COX048348  
 Parameter Desc: (Optional)  
 Enter Primary Permit SIC Code Not Equal to: (Optional)

NPDES ID	Outfall	Mon Pd Start Date	Mon Pd End Date	Parameter	Rpted Value	Unit Desc	Limit Value	Stat Base Desc	% Exceed	Viol Code	NODI Code	RNC Detect Code	RNC Resolve Code
COX048348	050CC	10/1/12	10/31/12	70295 - Solids, total dissolved	=617	mg/L	400	30DA AVG	54	E90	T	T	1
COX048348	050CC	11/1/12	11/30/12	70295 - Solids, total dissolved	=605	mg/L	400	30DA AVG	51	E90	T	T	1
COX048348	050CC	12/1/12	12/31/12	70295 - Solids, total dissolved	=610	mg/L	400	30DA AVG	53	E90	T	T	1
COX048348	050CC	1/1/13	1/31/13	70295 - Solids, total dissolved	=610	mg/L	400	30DA AVG	53	E90	T	T	1
COX048348	050CC	2/1/13	2/28/13	70295 - Solids, total dissolved	=606	mg/L	400	30DA AVG	52	E90	T	T	1
COX048348	050CC	3/1/13	3/31/13	70295 - Solids, total dissolved	=638	mg/L	400	30DA AVG	60	E90	T	T	1
COX048348	050CC	4/1/13	4/30/13	70295 - Solids, total dissolved	=573	mg/L	400	30DA AVG	43	E90	T	T	1
COX048348	050CC	5/1/13	5/31/13	70295 - Solids, total dissolved	=643	mg/L	400	30DA AVG	61	E90	T	T	1
COX048348	050CC	6/1/13	6/30/13	70295 - Solids, total dissolved	=567	mg/L	400	30DA AVG	42	E90	T	T	1
COX048348	050CC	7/1/13	7/31/13	70295 - Solids, total dissolved	=605	mg/L	400	30DA AVG	51	E90	T	T	1
COX048348	050CC	8/1/13	8/31/13	70295 - Solids, total dissolved	=510	mg/L	400	30DA AVG	28	E90	C	C	1
COX048348	050CC	9/1/13	9/30/13	70295 - Solids, total dissolved	=422	mg/L	400	30DA AVG	6	E90	C	C	1
COX048348	050CC	10/1/13	10/31/13	70295 - Solids, total dissolved	=444	mg/L	400	30DA AVG	11	E90	C	C	1
COX048348	050CC	11/1/13	11/30/13	70295 - Solids, total dissolved	=504	mg/L	400	30DA AVG	26	E90	C	C	1
COX048348	050CC	12/1/13	12/31/13	70295 - Solids, total dissolved	=442	mg/L	400	30DA AVG	11	E90	C	C	1
COX048348	050CC	1/1/14	1/31/14	70295 - Solids, total dissolved	=476	mg/L	400	30DA AVG	19	E90			
COX048348	050CC	2/1/14	2/28/14	70295 - Solids, total dissolved	=496	mg/L	400	30DA AVG	24	E90			
COX048348	050DD	7/1/10	7/31/10	70295 - Solids, total dissolved	=2000	mg/L	400	30DA AVG	400	E90	T	T	1

Report #: CAEVRBX004  
 Created Date: March 2, 2012  
 Approved By:

**EXHIBIT A**  
**Colorado Department of Public Health and Environment**  
**Water Quality Control Division**  
**Effluent Violation Report**

Date of Report: 4/21/14

\*\*\* Query Name: Effluent Data \*\*\*  
 Monitoring Period End Date From: 5/1/2010 12:00:00 AM  
 Monitoring Period End Date To: 4/21/2014 12:00:00 AM  
 Outfalls: (Optional)  
 Enter NPDES ID: (Optional)  
 Primary Permit SIC Code: (Optional)  
 Major/Minor (Enter "Major" or "Minor") (Enter \* to select all)  
 Matching NPDES ID: (Optional) COX048348  
 Parameter Desc: (Optional)  
 Enter Primary Permit SIC Code Not Equal to: (Optional)

NPDES ID	Outfall	Mon Pd Start Date	Mon Pd End Date	Parameter	Rptd Value	Unit Desc	Limit Value	Stat Base Desc	% Exceed	Viol Code	NODI Code	RNC Detect Code	RNC Resolve Code
COX048348	050DD	10/1/10	10/31/10	70295 - Solids, total dissolved	=786	mg/L	400	30DA AVG	97	E90		T	1
COX048348	050DD	11/1/10	11/30/10	70295 - Solids, total dissolved	=618	mg/L	400	30DA AVG	55	E90		T	1
COX048348	050DD	12/1/10	12/31/10	70295 - Solids, total dissolved	=672	mg/L	400	30DA AVG	68	E90		T	1
COX048348	050DD	1/1/11	1/31/11	70295 - Solids, total dissolved	=774	mg/L	400	30DA AVG	94	E90		T	1
COX048348	050DD	2/1/11	2/28/11	70295 - Solids, total dissolved	=638	mg/L	400	30DA AVG	60	E90		T	1
COX048348	050DD	3/1/11	3/31/11	70295 - Solids, total dissolved	=692	mg/L	400	30DA AVG	73	E90		T	1
COX048348	050DD	4/1/11	4/30/11	70295 - Solids, total dissolved	=674	mg/L	400	30DA AVG	69	E90		T	1
COX048348	050DD	5/1/11	5/31/11	70295 - Solids, total dissolved	=725	mg/L	400	30DA AVG	81	E90		T	1
COX048348	050DD	6/1/11	6/30/11	70295 - Solids, total dissolved	=702	mg/L	400	30DA AVG	76	E90		T	1
COX048348	050DD	7/1/11	7/31/11	70295 - Solids, total dissolved	=734	mg/L	400	30DA AVG	84	E90		T	1
COX048348	050DD	8/1/11	8/31/11	70295 - Solids, total dissolved	=670	mg/L	400	30DA AVG	68	E90		T	1
COX048348	050DD	9/1/11	9/30/11	70295 - Solids, total dissolved	=684	mg/L	400	30DA AVG	71	E90		T	1
COX048348	050DD	10/1/11	10/31/11	70295 - Solids, total dissolved	=746	mg/L	400	30DA AVG	87	E90		T	1
COX048348	050DD	11/1/11	11/30/11	70295 - Solids, total dissolved	=707	mg/L	400	30DA AVG	77	E90		T	1
COX048348	050DD	12/1/11	12/31/11	70295 - Solids, total dissolved	=714	mg/L	400	30DA AVG	79	E90		T	1
COX048348	050DD	1/1/12	1/31/12	70295 - Solids, total dissolved	=692	mg/L	400	30DA AVG	73	E90		T	1
COX048348	050DD	2/1/12	2/29/12	70295 - Solids, total dissolved	=706	mg/L	400	30DA AVG	77	E90		T	1
COX048348	050DD	3/1/12	3/31/12	70295 - Solids, total dissolved	=682	mg/L	400	30DA AVG	71	E90		T	1

Report #: CAEVRBX004

Created Date: March 2, 2012

Approved By:

EXHIBIT A  
Colorado Department of Public Health and Environment  
Water Quality Control Division  
Effluent Violation Report

Date of Report: 4/21/14

\*\*\* Query Name: Effluent Data \*\*\*

Monitoring Period End Date From: 5/1/2010 12:00:00 AM

Monitoring Period End Date To: 4/21/2014 12:00:00 AM

Outfalls: (Optional)

Enter NPDES ID: (Optional)

Primary Permit SIC Code: (Optional)

Major/Minor (Enter "Major" or "Minor") (Enter \* to select all) \*

Matching NPDES ID: (Optional) COX048348

Parameter Desc: (Optional)

Enter Primary Permit SIC Code Not Equal to: (Optional)

NPDES ID	Outfall	Mon Pd Start Date	Mon Pd End Date	Parameter	Rptd Value	Unit Desc	Limit Value	Stat Base Desc	% Exceed	Viol Code	NODI Code	RNC Detect Code	RNC Resolve Code
COX048348	050DD	4/1/12	4/30/12	70295 - Solids, total dissolved	=656	mg/L	400	30DA AVG	64	E90		T	1
COX048348	050DD	5/1/12	5/31/12	70295 - Solids, total dissolved	=669	mg/L	400	30DA AVG	67	E90		T	1
COX048348	050DD	6/1/12	6/30/12	70295 - Solids, total dissolved	=630	mg/L	400	30DA AVG	58	E90		T	1
COX048348	050DD	7/1/12	7/31/12	70295 - Solids, total dissolved	=697	mg/L	400	30DA AVG	74	E90		T	1
COX048348	050DD	8/1/12	8/31/12	70295 - Solids, total dissolved	=605	mg/L	400	30DA AVG	51	E90		T	1
COX048348	050DD	9/1/12	9/30/12	70295 - Solids, total dissolved	=544	mg/L	400	30DA AVG	36	E90		V	1
COX048348	050DD	10/1/12	10/31/12	70295 - Solids, total dissolved	=689	mg/L	400	30DA AVG	72	E90		T	1
COX048348	050DD	11/1/12	11/30/12	70295 - Solids, total dissolved	=695	mg/L	400	30DA AVG	74	E90		T	1
COX048348	050DD	12/1/12	12/31/12	70295 - Solids, total dissolved	=706	mg/L	400	30DA AVG	77	E90		T	1
COX048348	050DD	1/1/13	1/31/13	70295 - Solids, total dissolved	=651	mg/L	400	30DA AVG	63	E90		T	1
COX048348	050DD	2/1/13	2/28/13	70295 - Solids, total dissolved	=580	mg/L	400	30DA AVG	45	E90		T	1
COX048348	050DD	3/1/13	3/31/13	70295 - Solids, total dissolved	=629	mg/L	400	30DA AVG	57	E90		T	1
COX048348	050DD	4/1/13	4/30/13	70295 - Solids, total dissolved	=608	mg/L	400	30DA AVG	52	E90		T	1
COX048348	050DD	5/1/13	5/31/13	70295 - Solids, total dissolved	=634	mg/L	400	30DA AVG	59	E90		T	1
COX048348	050DD	6/1/13	6/30/13	70295 - Solids, total dissolved	=595	mg/L	400	30DA AVG	49	E90		T	1
COX048348	050DD	7/1/13	7/31/13	70295 - Solids, total dissolved	=614	mg/L	400	30DA AVG	54	E90		T	1
COX048348	050DD	8/1/13	8/31/13	70295 - Solids, total dissolved	=641	mg/L	400	30DA AVG	60	E90		T	1
COX048348	050DD	9/1/13	9/30/13	70295 - Solids, total dissolved	=597	mg/L	400	30DA AVG	49	E90		T	1



Report #: CAEVR/BX004  
 Created Date: March 2, 2012  
 Approved By:

**EXHIBIT A**  
**Colorado Department of Public Health and Environment**  
**Water Quality Control Division**  
**Effluent Violation Report**

Date of Report: 4/21/14

\*\*\* Query Name: Effluent Data \*\*\*  
 Monitoring Period End Date From: 5/1/2010 12:00:00 AM  
 Monitoring Period End Date To: 4/21/2014 12:00:00 AM  
 Outfall: (Optional)  
 Enter NPDES ID: (Optional)  
 Primary Permit SIC Code: (Optional)  
 Major/Minor (Enter "Major" or "Minor"): (Enter \* to select all)  
 Matching NPDES ID: (Optional) COX048348  
 Parameter Desc: (Optional)  
 Enter Primary Permit SIC Code Not Equal to: (Optional)

NPDES ID	Outfall	Mon Pd Start Date	Mon Pd End Date	Parameter	Rated Value	Unit Desc	Limit Value	Stat Base Desc	% Exceed	Viol Code	NODI Code	RNC Detect Code	RNC Resolve Code
COX048348	050DD	10/1/13	10/31/13	70295 - Solids, total dissolved	=572	mg/L	400	30DA AVG	43	E90		T	1
COX048348	050DD	11/1/13	11/30/13	70295 - Solids, total dissolved	=549	mg/L	400	30DA AVG	37	E90		V	1
COX048348	050DD	12/1/13	12/31/13	70295 - Solids, total dissolved	=492	mg/L	400	30DA AVG	23	E90		V	1
COX048348	050DD	1/1/14	1/31/14	70295 - Solids, total dissolved	=515	mg/L	400	30DA AVG	29	E90			
COX048348	050DD	2/1/14	2/28/14	70295 - Solids, total dissolved	=496	mg/L	400	30DA AVG	24	E90			

EXHIBIT B

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)  
FIRST PARTY PROPOSAL/AGREEMENT FORM**

The Regulated Entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment (the Department) for consideration.

<b>Enforcement Action Information</b>	Cherokee Metropolitan District Case No.: MC-14XXXX
<b>Regulated Entity Project Manager</b>	Sean Chambers, General Manager Cherokee Metropolitan District 6250 Palmer Park Boulevard Colorado Springs, CO 80915 Office Telephone: 719-597-5080 E-mail Address: SChambers@cherokeemetro.org
<b>CDPHE Contact Person</b>	Rachel Wilson-Roussel, Supplemental Environmental Projects Coordinator, 303-692-2976, <a href="mailto:rachel.wilson-roussel@state.co.us">rachel.wilson-roussel@state.co.us</a> -and- Mike Harris, WQCD Compliance and Enforcement Unit Manager, 303-692-3598, <a href="mailto:michael.harris@state.co.us">michael.harris@state.co.us</a>
<b>Geographical Area to Benefit Most Directly From Project</b>	Cherokee Metropolitan District Street Light Service Area located in unincorporated El Paso County, Colorado
<b>Project Name</b>	LED Exterior Lighting Project
<b>Project Type</b>	First Party
<b>SEP Category</b>	Pollution Prevention
<b>Project Summary</b>	The Cherokee Metropolitan District (CMD) LED Lighting Project will replace a portion of the existing exterior lighting fixtures serving CMD facilities which use metal halide (mercury vapor and high pressure sodium) lamp technology with light emitting diode (LED) lamp assemblies. The LED lamp assemblies will be applied to certain fixtures at the CMD office and maintenance building and at the clubhouse and maintenance facility of the Cherokee Ridge Golf Course that are energized during all non-daylight hours each day of the year.

## EXHIBIT B

<p style="text-align: center;"><b>Project Description</b></p>	<p>As detailed in Attachment CMD-1, this project would replace 19 high pressure sodium (HPS) or mercury vapor pole and wall mounted lights with LED lamp assemblies with 18 LED lamps, using less than one half of the energy for an equivalent light output. The intent is to replace nine (9) existing pole mounted 400 watt lamp fixtures at public parking and exterior work areas at the District's facilities. Five pole mounted fixtures will be retrofitted at the CMD office and maintenance shop. Four pole mounted fixtures will be retrofitted at the public parking lot at the Cherokee Ridge Golf Course.</p> <p>Nine (9) 400 watt, eight (8) existing wall mounted fixtures (70 to 400 watts each) and two (2) 70 watt mercury vapor lamps (mast mounted) will be replaced with LED lamp assemblies that have a comparable light output. The 400 watt lamps would be replaced with an 85 watt LED assembly and the other wall and mast mounted fixtures would be replaced with one 30 or 50 watt LED assembly at each location. The two (2) 70 watt mercury vapor lamps at the Terminal Ave. Pump Station will be replaced with one (1) LED lamp assembly.</p> <p>The objective is to reduce energy consumption by over 50% which would reduce the carbon footprint relative to lights presently in use. Existing lamps have a design life of no more than 40,000 hours while LED lamps are anticipated to have a useful life of at least 100,000 hours. This increase in lamp life reduces the District's cost of service to its constituents for independent contractor service and expenditures for electric energy. Implementation would consist of design, procurement and installation. Fixture selection for this retrofit project will be those fixtures which are normally continuously energized during all non-daylight hours.</p>
<p style="text-align: center;"><b>Expected Environmental and/or Public Health Benefits</b></p>	<p>Refer to Attachment CMD-1 for a tabulation of the lighting fixture locations, characteristics and expected environmental impacts and benefits.</p> <p>Summary: Annual Estimated Energy Savings = 21,500 kWh          Annual Estimated Energy Cost Savings = \$1,726          Annual Estimated Maintenance Cost Savings = \$338</p> <p>Discussion:</p> <p>This project would reduce energy consumption by over 21,500 kWh per year. This represents an annual reduction of 12.9 to 25.8 tons of CO<sub>2</sub> depending on generation mix.</p> <p>All of the lamps proposed for retrofitting in this First Party SEP are provided power from Colorado Springs Utilities, billed directly to the Cherokee Metropolitan District in accordance with the current commercial rate tariff. There is an annual energy cost savings of \$1,726 to be realized under the current rates and assumptions of use recited in Attachment CMD-1. This cost savings will be directly reflected as a reduction in the Cherokee Metropolitan District (CMD) cost of service to its constituents. It is a comparatively small incremental reduction as the total CMD use of funds for operations in 2013 was approximately \$10,300,000 exclusive of capital improvements and additions, renewals and replacements.</p> <p>Maintenance requirements will be reduced by more than 50% based on the expected useful added life cycle of the LED lamp assemblies noted above, recognizing reductions in maintenance vehicle use and disposal of MH lamps. The proposed LED lamp assemblies are rated at a useful life of 100,000. The estimated savings in reduced maintenance cost due to the longer useful life of the LED light assemblies likewise will be reflected in a reduced cost of service to the District's constituents. The annual savings in maintenance cost as a result of this SEP are not significant in relation to the District's total expenditures for operations reflected above.</p>



## EXHIBIT B

	Existing high pressure sodium and mercury vapor lamps removed from the District's facilities will be reused if possible and mercury vapor lamps will be disposed of using federal guidelines.		
<b>Project Budget</b>	<b>Refer to the Budget Discussion below and Attachment CMD-1.</b>		
	<b>Category</b>	<b>Description</b>	<b>Cost</b>
	Personnel - Salaries, Wages. (Include rates and # of hrs.)	CMD Superintendent-Direct time spent on project management, evaluation of contractor proposals & management of accounts payable: 30 hrs @ \$60	\$ 1,800
	Materials and Supplies		
	Equipment		
	Contractors/ Subcontractors	Electrical contractor labor, equipment and materials	\$11,361
		GMS, Inc. Engineering Consultants	\$ 2,500
	Other Direct Costs	Publication of Request for proposals; Final report to CMD constituents	\$ 800
<b>Total:</b>		<b>\$16,461</b>	
<b>Budget Discussion</b>	<ul style="list-style-type: none"> <li>• Describe how all costs were determined and how they relate to the project. All project costs must be clearly and solely attributable to the proposed SEP and cannot include administrative overhead or indirect expenses. <ul style="list-style-type: none"> <li>○ The project costs have been developed from electrical contractor quotations for work at the Cherokee Ridge Golf Course and extrapolated to work at the CMD office and maintenance facility. The project budget does not include any general and administrative overhead or indirect expenses. It includes only costs directly associated with performance/implementation of the project. Refer to Attachment CMD-2.</li> </ul> </li> <li>• Quantify any financial or other benefit (i.e. maintenance costs) to the regulated entity resulting from the implementation of this project. <ul style="list-style-type: none"> <li>○ The estimated total annual cost savings from this project is \$2,064 (including \$1,726 in energy costs and \$338 in maintenance costs) providing an 8 year payback period. The savings in energy costs at the CMD facilities will directly impact the cost of service to the CMD constituents.</li> </ul> </li> <li>• Describe the availability of funding for this project from sources other than SEP contributors. Include sources of funding, secured and applied for, directly related to this SEP. <ul style="list-style-type: none"> <li>○ The funding for this project will be provided solely by the regulated entity, the CMD. No other funding source will be available or utilized.</li> </ul> </li> </ul> <p>This project as developed will not be completed without this funding: Replacements will be converted as part of routine maintenance or capital upgrades without LED lighting.</p>		
<b>Project Schedule</b>	<b>Activities and Deliverables</b>	<b>Staff Responsible</b>	<b>Due Date</b>
	Proposed Start Date	Art Sintas, Superintendent, Cherokee Metropolitan District (CMD)	Within 30 days of the effective date of the Consent Order
	Solicit and receive contractor proposals for labor, equipment and materials	Project Manager, GMS, Inc., Consulting Engineers	May 5, 2014
	Award contract for retrofit of MH fixtures with LED lamp assemblies	Board of Directors, CMD	June 11, 2014

## EXHIBIT B

	Initiate construction contract implementation, commence LED lamp assembly installations	Electrical Contractor TBD	July 7, 2014
	Biannual Status Report Due Date	CMD Superintendent & GMS, Inc. Project Manager	July 30, 2014
	Projected Completion Date	CMD Superintendent & GMS, Inc. Project Manager	November 30, 2014
	SEP Completion Report Due	CMD Superintendent & GMS, Inc. Project Manager	December 30, 2014
<b>Reporting Requirements</b>	<p><u>Biannual Status Reports</u></p> <p>The CMD will submit a semiannual project status report to the Department's SEP Coordinator. Status reports will include the following information reported on the Department's Status Report Form:</p> <ul style="list-style-type: none"> <li>• A description of activities completed to date;</li> <li>• A budget summary table listing funds expended to date by budget category; and</li> <li>• A discussion of any anticipated changes to the project scope or timeline.</li> </ul> <p><u>SEP Completion Report</u></p> <p>The SEP Completion report will be submitted within 30 days of project completion and contain at a minimum:</p> <ul style="list-style-type: none"> <li>• A detailed description of the project as implemented;</li> <li>• A summary table identifying project deliverables and tasks along with the associated completion date;</li> <li>• A description of any operating problems encountered and the solutions thereto;</li> <li>• A full expense accounting including itemized costs, documented by copies of purchase orders, contracts, receipts or canceled checks;</li> <li>• Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Settlement Agreement aka Compliance Order on Consent and this SEP Agreement;</li> <li>• A description of the environmental and public health benefits resulting from implementation of the SEP along with <b>quantification</b> of the outcomes and benefits;</li> </ul> <p>Additional information will include:</p> <ul style="list-style-type: none"> <li>• Examples of brochures, educational or outreach materials developed or produced as part of the SEP; and</li> <li>• Photographs documenting the project.</li> </ul>		

EXHIBIT B

<p><b>Other Relevant Information</b></p>	<p>The CMD will execute this project using competitively procured proposals from qualified electrical contractors. The cost of the contractors work and any other direct project related costs will be documented and reported to CDPHE in the Final SEP Report. The CMD proposes to apply the cost of this project at a ratio of 1.5 to 1 to the monetary penalty agreed with the Colorado Department of Public Health and Environment. With an estimated project cost of \$16,461, the offset to the monetary penalty assessed with be \$10,974.</p> <p>This project is not required by any local land use regulation, building code or utility purveyor requirement. The CMD's constituents will realize the benefit of reduced cost of energy for lighting the public facilities of the District. There will be a reduced greenhouse gas (CO<sub>2</sub>) emission as the result of reduced energy required to service the District facilities.</p>
<p>Has the applicant entered into any prior commitments to fund or implement this project, voluntary or otherwise? If yes, please explain.</p>	<p>No</p>



# EXHIBIT B

Cherokee Metropolitan District  
2012-2014 Compliance Order  
FIRST PARTY SEP - LED Lamp Replacement SEP at CMD Facilities

Current Fixture	Type	Metal Halide Mercury Vapor Pump Station	Metal Halide Pole-HPS Office-Parking	Metal Halide Pole-HPS CRGC	Metal Halide Office-Vehicle Doors CRGC	Metal Halide Office-Vehicle Doors CRGC	Metal Halide Wall-HPS CRGC-Storage	Metal Halide Wall-HPS CRGC-West Deck	Total
Wait Rating	LED	70x2 173	400 468	400 468	150 185	70 94	400 468	70 94	
Power Consumption (watts)	LED	50 38	85 58	65 58	50 38	30 27	85 58	50 38	
Quantity		1	5	4	4	2	1	18	
<b>Annual Estimated Energy Savings (kWh)</b>									
Power Consumption (watts)		173	468	468	185	94	468	94	
Current Fixture		38	58	58	38	27	58	38	
Proposed Fixture		135	410	410	147	67	410	56	
Energy Savings (watts/fixture)		4,289	4,289	4,289	4,289	4,289	4,289	4,289	
Annual Operating Hours (1)		579	1,758	1,758	630	287	1,758	240	
Energy Savings (kWh/fixture)		1	5	4	4	2	1	1	
Quantity		579	8,792	7,034	2,522	575	1,758	240	
Annual Est. Energy Savings (kWh)									
Annual Estimated Energy Cost Savings									
Annual Est. Energy Savings (kWh)		579	8,792	7,034	2,522	575	1,758	240	
Annual Est. Energy Cost (\$/kWh) (2)		\$0.0803	\$0.0803	\$0.0803	\$0.0803	\$0.0803	\$0.0803	\$0.0803	
Annual Est. Energy Cost Savings (3)		\$46.49	\$705.99	\$564.79	\$202.50	\$46.15	\$141.20	\$19.29	
<b>Annual Estimated Maintenance Cost Savings</b>									
Current Fixture		\$407.50	\$402.50	\$402.50	\$392.50	\$392.50	\$402.50	\$392.50	
Lamp Replacement Cost		40,000	40,000	40,000	40,000	40,000	40,000	40,000	
Estimated Lamp Life (hours)		4,289	4,289	4,289	4,289	4,289	4,289	4,289	
Annual Operating Hours (1)		9.33	9.33	9.33	9.33	9.33	9.33	9.33	
Lamp Replacement Interval (yrs)		1	4	4	2	2	1	1	
Annual Replacement Cost per Fixture		\$43.69	\$43.16	\$43.16	\$42.62	\$42.08	\$43.16	\$42.08	
Quantity		1	5	4	4	2	1	1	
Total Annual Replacement Cost		\$43.69	\$215.78	\$172.62	\$170.48	\$84.17	\$43.16	\$42.08	
Proposed Fixture		\$557.50	\$577.50	\$557.50	\$557.50	\$502.50	\$577.50	\$557.50	
Lamp Replacement Cost		100,000	100,000	100,000	100,000	100,000	100,000	100,000	
Estimated Lamp Life (hours)		4,289	4,289	4,289	4,289	4,289	4,289	4,289	
Annual Operating Hours (1)		23.32	23.32	23.32	23.32	23.32	23.32	23.32	
Lamp Replacement Interval (yrs)		\$23.91	\$24.77	\$23.91	\$23.91	\$24.77	\$24.77	\$23.91	
Annual Replacement Cost per Fixture		1	5	4	4	2	1	1	
Quantity		\$23.91	\$123.84	\$99.07	\$95.64	\$43.10	\$24.77	\$23.91	
Total Annual Replacement Cost (3)		\$19.78	\$81.94	\$73.55	\$74.84	\$41.06	\$18.39	\$18.17	
Annual Est. Maintenance Cost Savings									
Current Fixture		\$19.78	\$81.94	\$73.55	\$74.84	\$41.06	\$18.39	\$18.17	
Proposed Fixture		\$19.78	\$81.94	\$73.55	\$74.84	\$41.06	\$18.39	\$18.17	
Annual Est. Maintenance Cost Savings									
Current Fixture		\$19.78	\$81.94	\$73.55	\$74.84	\$41.06	\$18.39	\$18.17	
Proposed Fixture		\$19.78	\$81.94	\$73.55	\$74.84	\$41.06	\$18.39	\$18.17	
Annual Est. Maintenance Cost Savings									
Current Fixture		\$19.78	\$81.94	\$73.55	\$74.84	\$41.06	\$18.39	\$18.17	
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Annual Est. Maintenance Cost Savings									
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Annual Est. Maintenance Cost Savings									
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Annual Est. Maintenance Cost Savings									
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Proposed Fixture		\$19.78	\$81.94	\$73.55	\$74.84	\$41.06	\$18.39	\$18.17	
Annual Est. Maintenance Cost Savings									
Current Fixture		\$19.78	\$81.94	\$73.55	\$74.84	\$41.06	\$18.39	\$18.17	
Proposed Fixture									

EXHIBIT B

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)  
FIRST PARTY PROPOSAL/AGREEMENT**

The regulated entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment (the department) for SEP consideration.

<b>Enforcement Action Information</b>	Cherokee Metropolitan District Case No.: MC-14xxxx-x
<b>Regulated Entity Contact Information</b>	Sean Chambers, General Manager Cherokee Metropolitan District 6250 Palmer Park Boulevard Colorado Springs, CO 80915 Office Phone: 719-597-5080 E-mail Address: SChambers@cherokeemetro.org
<b>CDPHE Contact Person</b>	Rachel Wilson-Roussel, Supplemental Environmental Projects Coordinator, 303-692-2976, <a href="mailto:rachel.wilson-rousseau@state.co.us">rachel.wilson-rousseau@state.co.us</a> -and- Mike Harris, WQCD Compliance and Enforcement Unit Manager, 303-692-3598, <a href="mailto:michael.harris@state.co.us">michael.harris@state.co.us</a>
<b>Geographical Area to Benefit Most Directly From Project</b>	Westerly portion of Cherokee Metropolitan District Street Light Service Area provided electric power by Colorado Springs Utilities
<b>Project Title</b>	LED Streetlight Project
<b>Project Type</b>	First Party SEP
<b>SEP Category</b>	Pollution Prevention
<b>Project Summary</b>	This project would replace 41 existing high pressure sodium or mercury vapor (metal halide) streetlight lamps with high efficiency LED lamps. Energy consumption would be reduced by over 50 percent and the driving public and impacted pedestrians would have improved lighting. Hazard exposure to lighting maintenance personnel would be reduced because of longer LED lamp life.

## EXHIBIT B

<p><b>Project Description</b></p>	<p>This project would replace forty-one (41) 100 watt high pressure sodium (HPS) or mercury vapor ornamental exterior light fixtures with LED lamp assemblies using less than one half of the energy for an equivalent light output. The locations selected for consideration in this project include a residential collector street (Piros Drive) at a school campus, 100 watt fixtures on Palmer Park Boulevard west of Peterson Road and street lights in the Cimarron Industrial Park. In addition, 100 watt fixtures at Hathaway Drive and Peterson Road between Palmer Park Blvd and Galley Road are considered in this project.</p> <p>The objective is to reduce energy consumption by over 50% which would reduce the carbon footprint relative to lights presently in use. Existing lamps have a design life of 40,000 hours while LED lamps are anticipated to last 100,000 hours. This increase in lamp life reduces maintenance vehicle usage for replacement and lowers maintenance crew exposure to vehicle hazards while working in the roadway. Implementation would consist of design, permitting, materials ordering and installation.</p> <p>Colorado Springs Utilities Energy Services Division will coordinate and administer the project with all labor, equipment and materials being furnished by and through Colorado Springs Utilities. This will be done initially with a unit priced, time and materials work order arrangement between CSU and CMD. The work order will be jointly developed and administered by CSU and CMD to fit the desired expenditure with the greatest benefit to the Cherokee Metropolitan District service area.</p>
<p><b>Expected Environmental and/or Public Health Benefits</b></p>	<p><b>Calculated Benefits:</b></p> <p>Refer to Attachment CSU-1 for a demonstration of the estimated annual energy and energy consumption cost savings from this SEP. This attachment also shows the calculated annual savings in maintenance costs as a result of implementation of this SEP.</p> <p>Summary: Annual Estimated Energy Savings = 10,709 kWh</p> <p style="padding-left: 40px;">Annual Calculated Energy Cost Savings = \$860</p> <p style="padding-left: 40px;">Annual Calculated Maintenance Cost Savings = \$1,009</p> <p>These cost savings would only be realized if CMD was paying the energy consumption charges and maintenance costs directly. However, CMD pays Colorado Springs Utilities on a per lamp per month basis. See actual benefits discussion below.</p> <p><b>Actual Benefits:</b></p> <p>This project will reduce energy consumption by approximately 10,709 kWh per year. This represents an annual reduction of 7 to 13 tons of CO<sub>2</sub> depending on generation mix. Maintenance vehicle use and associated CO<sub>2</sub> production will be reduced by more than 50% based on the expected lamp life extension noted above. If the existing metal halide lamps have an effective service life of 40,000 hours, the maintenance vehicle and labor requirements may well be 60% less when this SEP using LED lamp assemblies is implemented.</p> <p>The major environmental benefit of this SEP is the reduction in energy consumption and the related environmental effects from power generation with fossil fuels.</p> <p>Because CMD pays for streetlights on a per lamp per month basis, the calculated cost savings from lower energy consumption and maintenance costs listed above will <b>not</b> be realized. CMD's <b>actual cost savings</b> will be approximately <b>\$142.20</b> per year from the implementation of this SEP. Additional details can be found in the Budget Discussion section.</p> <p>Existing high pressure sodium lamp heads removed from the system will be reused if possible and mercury vapor lamps will be disposed of using federal guidelines. Existing</p>



**EXHIBIT B**

	mercury vapor lamps have been and will be permanently removed from service in the CSU system.				
<b>Project Budget</b>	Refer to Attachment CSU-2 for the preliminary work order and contract with Colorado Springs Utilities.				
	<b>Budget Category</b>	<b>Description</b>	<b>SEP Funds</b>	<b>Matching Funds</b>	<b>Total Cost</b>
	Personnel (Salaries, Wages)	Lineman, apprentice, barricading, supervision, reporting	\$9,555		\$9,555
	Materials and Supplies	100 watt equivalent LED fixtures	\$10,257		\$10,257
	Major Equipment	Bucket truck, material truck	\$492		\$492
	Contractors/ Subcontractors	NONE – Install by Colorado Springs Utilities	\$0		\$0
	Other Direct Costs	Minor materials used and disposal of existing MH Lamps			
		<b>Total:</b>	<b>\$20,304</b>	<b>\$0</b>	<b>\$20,304</b>
<b>Budget Discussion</b>	<p>Note: Budget based on Colorado Springs Utilities preliminary contract issued March 20, 2014. See Attachment CSU-2.</p> <p>The comparatively low annual energy expenditures avoided with implementation of this SEP are a result of the selection of 100 watt rated lamps for retrofitting in the project. The 100 watt fixtures were selected because, under the current rate tariff, this is the only street light installation resulting in a user charge equal to or less than that for metal halide lamp installations. The District has sought to avoid an increase in on-going operations cost as a result of this SEP. Please refer to the footnotes on Attachment CSU-1.</p> <p>Although Colorado Springs Utilities has indicated the unit charge for LED street light installations will likely be reduced in the future, the amount and schedule or timing of that possible rate reduction is undefined. Thus, the District deems it most prudent to pursue retrofitting those installations which will not immediately adversely impact the District cost of service to its customers.</p> <p>As of January 1, 2014, the rate for high pressure sodium and LED lamp assemblies was \$12.42 and \$12.14 per month per pole respectively for ornamental pole installations. The current rate schedule provides for the 100 watt equivalent LED lamps on an "ornamental" pole to be \$3.36 per year per pole less cost to the District than the existing 100 watt metal halide installations.</p> <p>The classification of "ornamental" installations includes the common aluminum pole with either a mast arm or top mounted luminaire. The "Colonial" fixture identified in Attachment CSU-1 is a top mounted luminaire in a hooded four-sided fixture requiring a LED lamp assembly having a current retail cost exceeding that for a similar "cobrahead" fixture.</p> <p>This project as developed will not be completed without this funding. Replacements will be covered as part of routine capital upgrades without LED lighting in accordance with current tariffs. There are no local land use regulations, CMD service plan requirements or regulations of the electric utility which requires the CMD to initiate this project.</p>				

## EXHIBIT B

	Activities	Staff Responsible	Date
<b>Project Schedule and Work Plan</b>	Project Start Date	Colorado Springs Utilities (CSU), Energy Services Division	May 19, 2014
	Material delivery	CSU, Energy Services Division	July 31, 2014
	Status Report(s) Due to CDPHE	CMD Superintendent & GMS, Inc. Project Manager	August 15, 2014
	Projected Completion Date	CSU and CMD Superintendent	November 30, 2014
	SEP Completion Report Due to CDPHE	CMD Superintendent & GMS, Inc. Project Manager	December 20, 2014
<b>Other Relevant Information</b>	<p>This project is not required by any local land use regulation, building code or utility purveyor requirement. The CMD's constituents will not immediately realize the benefit of reduced cost of energy for lighting in the District until CSU accomplishes a cost of service study with the latest in LED lamp technology considered. There will be reduced greenhouse gas (CO<sub>2</sub>) emissions as the result of reduced energy required to service the District facilities</p>		
<b>Reporting Requirements</b>	<p><u>Biannual Status Reports</u></p> <p>The CMD SEP Administrator will submit a biannual project status report to the department's SEP Coordinator. Status reports will include the following information:</p> <ul style="list-style-type: none"> <li>• A description of activities completed to date;</li> <li>• A budget summary table listing funds expended to date by budget category; and</li> <li>• A discussion of any anticipated changes to the project scope or timeline.</li> </ul> <p><u>Final SEP Completion Report</u></p> <p>The SEP Completion report will be submitted within 30 days of project completion and contain at a minimum:</p> <ul style="list-style-type: none"> <li>• A detailed description of the project as implemented;</li> <li>• A summary table identifying project deliverables and tasks along with the associated completion date;</li> <li>• A description of any operating problems encountered and the solutions thereto;</li> <li>• A full expense accounting including itemized costs, documented by copies of purchase orders, contracts, receipts or canceled checks;</li> <li>• Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Settlement Agreement aka Compliance Order on Consent and this SEP Agreement;</li> <li>• A description of the environmental and public health benefits resulting from implementation of the SEP along with <b>quantification</b> of the outcomes and benefits;</li> <li>• Examples of brochures, educational or outreach materials developed or produced as part of the SEP; and</li> <li>• Photographs documenting the project.</li> </ul>		



ATTACHMENT 6SU-1  
**EXHIBIT B**

Cherokee Metropolitan District  
2012-2014 Compliance Order  
LED Lamp Replacement SEP

<u>Current Fixture</u>	Type	Metal Halide Cobrahead	Metal Halide Colonial	<u>Total</u>		
Watt Rating		100	100			
Power Consumption (watts)		127	118			
 <u>Proposed Fixture</u>						
Type		LED Cobrahead	LED Colonial			
Wattage						
Power Consumption (watts)		66	58			
Quantity		37	4			41
 <u>Annual Estimated Energy Savings (kWh)</u>						
Power Consumption (watts)						
Current Fixture		127	118			
Proposed Fixture		66	58			
Energy Savings (watts/fixture)		61	60			
Annual Operating Hours <sup>(1)</sup>		4,289	4,289			
Energy Savings (kWh/fixture)		262	257			
Quantity		37	4			
Annual Est. Energy Savings (kWh)		9,680	1,029	10,709	129%	\$ 1.896 =\$/KWH Reduction
 <u>Annual Estimated Energy Cost Savings</u>						
Annual Est. Energy Savings (kWh)		9,680	1,029			
Energy Cost (\$/kWh) <sup>(2)</sup>		<u>\$0.0803</u>	<u>\$0.0803</u>			
Annual Est. Energy Cost Savings <sup>(3)</sup>		\$777.28	\$82.65	\$859.93		
 <u>Annual Estimated Maintenance Cost Savings</u>						
<u>Current Fixture</u>						
Lamp Replacement Cost		\$412.50	\$462.50			
Estimated Lamp Life (hours)		40,000	40,000			
Annual Operating Hours <sup>(1)</sup>		4,289	4,289			
Lamp Replacement Interval (yrs)		9.33	9.33			
Annual Replacement Cost per Fixture		\$44.23	\$49.59			
Quantity		37	4			
Total Annual Replacement Cost		\$1,636.43	\$198.35			
 <u>Proposed Fixture</u>						
Lamp Replacement Cost		\$450.00	\$650.00			
Estimated Lamp Life (hours)		100,000	100,000			
Annual Operating Hours <sup>(1)</sup>		4,289	4,289			
Lamp Replacement Interval (yrs)		23.32	23.32			
Annual Replacement Cost per Fixture		\$19.30	\$27.88			
Quantity		37	4			
Total Annual Replacement Cost <sup>(3)</sup>		\$714.08	\$111.51			
Annual Est. Maintenance Cost Savings		\$922.35	\$86.85	\$1,009.20		

(1) Based on average operating time of 11.75 hours per day

Winter solstice = 4:45 pm to 6:45 am (MST) = 14 hrs; Summer solstice = 8:45pm to 6:15 am (MDT) = 9.5 hrs;

(2) Energy Cost Calculation Based on CSU Rates to CMD Sept 2013

Access Charge (\$/kWh) = \$0.0532

Supply Charge (\$/kWh) = \$0.0269

Electric Cost Adjustment (ECA) (\$/kWh) = -\$0.0010

Capacity Charge (\$/kWh) = \$0.0012

Energy Cost (\$/kWh) = \$0.0803

(3) CSU's rate tariff for street lights is based on Charge per pole per month. The current charges, as of Jan 1, 2014, for 100 watt fixtures are:

100 Watt Metal Halide (MH) - Ornamental = \$12.42; Current Annual User Charge = \$4,769.28

100 Watt Equivalent LED - Ornamental = \$12.14; Future Annual User Charge with LED Retrofit = \$5,972.88; \$142.20 per year less than existing MH based charge.



EXHIBIT B  
ATTACHMENT CSU-2

Colorado Springs Utilities  
Contract for Time and Material  
Third Party Billing

WHEREAS, the undersigned Applicant requests Springs Utilities (SU), to provide labor, services, materials and equipment, as described below, or on exhibits or addenda attached hereto and incorporated herein by reference for Applicant's benefit at the location commonly known as: **CHEROKEE METROPOLITAN DISTRICT.**

IT IS HEREBY AGREED that Applicant shall deposit with SU on or before 05/04/2014, as a condition precedent to SU's obligation to provide said labor, services, materials and equipment, the sum of \$20,303.55, which is the estimated cost of said labor, services, materials and equipment. This estimated sum is based upon a preliminary survey and analysis of the project as described by the Applicant. It is understood and agreed that the above estimated cost is subject to revision based upon the actual cost, as determined by SU after completion of the project. Applicant agrees to pay the actual cost of the project in full, as determined by SU, within ten (10) days after completion of the project and final billing. In the event the deposit is determined to be greater than the actual cost, as finally determined, SU shall refund the difference within thirty (30) days of completion of the project and final billing. In the event Applicant fails to pay the actual cost within ten (10) days after final billing, SU shall have the right to recover the actual costs, damages, including incidental and consequential damages, costs of collection, attorney's fees and interest on the amount owing at the statutory rate under Colorado law.

SU, its employees and agents, shall have the right to enter upon the Applicant's property, as described below, at all reasonable hours as necessary to provide the labor, services, materials and equipment described herein.

Applicant warrants and represents to SU that the individual executing this Contract on behalf of the Applicant has authority to bind the Applicant, its successors and assigns.

The laws of the State of Colorado shall apply to this Contract for Time and Material and the construction or enforcement thereof.

In the event the Applicant requests a modification to the labor, materials, services and equipment described below, or in the event it is necessary for SU to perform additional or other labor, services, materials and equipment to complete the project, the Applicant agrees to pay for the additional costs and payment thereof will be made in accordance with the terms of this Contract. The Applicant or the Applicant's representative shall execute a contract addendum describing additional labor, services, materials and equipment as requested or required by SU, upon request of SU. SU shall have discretion to require additional amounts be paid, or the entire cost of additional labor, services, materials and equipment be paid prior to commencement of work on such additions or modifications.

EXHIBIT B

Location of Job: CHEROKEE METROPOLITAN DISTRICT

Type of Service Requested: REPLACE 41 STREETLIGHT LUMINAIRES WITH LED LUMINAIRES

<b>Charges</b>	
Total Material including credit and handling charges	\$0.00
Total Labor Charges	\$9,554.96
Total Tool & Vehicle Charges	\$491.59
<b>Total</b>	<u>\$10,046.55</u>
Additional Charges	+ \$10,257.00
<b>Total Job Cost</b>	\$20,303.55
Customer Credit	- \$0.00
<b>Total Amount Due</b>	<u>\$20,303.55</u>

Special instructions on billing:

Ginny Halvorson Energy Services

Applicant

20-Mar-2014  
Date

By:

Title

2680028-01  
Work Order Number

Company Name

Address

City, State, Zip Code

Date

Phone Number

FE-16  
7/25/95

EXHIBIT B

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)  
FIRST PARTY PROPOSAL/AGREEMENT**

The regulated entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment (the department) for SEP consideration.

<b>Enforcement Action Information</b>	Cherokee Metropolitan District Case No.: MC-14xxxx-x
<b>Regulated Entity Contact Information</b>	Sean Chambers, General Manager Cherokee Metropolitan District 6250 Palmer Park Boulevard Colorado Springs, CO 80915 Office Phone: 719-597-5080 E-mail address: SChambers@cherokeemetro.org
<b>CDPHE Contact Person</b>	Rachel Wilson-Roussel, Supplemental Environmental Projects Coordinator, 303-692-2976, <a href="mailto:rachel.wilson-roussel@state.co.us">rachel.wilson-roussel@state.co.us</a> -and- Mike Harris, WQCD Compliance and Enforcement Unit Manager, 303-692-3598, <a href="mailto:michael.harris@state.co.us">michael.harris@state.co.us</a>
<b>Geographical Area to Benefit Most Directly From Project</b>	Easterly portion of Cherokee Metropolitan District Street Light Service Area provided electric power by Mountain View Electric Association
<b>Project Title</b>	LED Streetlight Project
<b>Project Type</b>	First Party SEP
<b>SEP Category</b>	Pollution Reduction, Public Health and Safety
<b>Project Summary</b>	This project would replace 15 existing high pressure sodium or mercury vapor (metal halide) streetlight lamps with high efficiency LED lamp assemblies. Energy consumption would be reduced by approximately 60 percent and the driving public and impacted pedestrians would have improved lighting. Hazard exposure to lighting maintenance personnel would be reduced because of longer LED lamp life.



## EXHIBIT B

<p><b>Project Description</b></p>	<p>This project would replace no less than 15 metal halide street light luminaires with LED lamp assemblies using less than one half of the energy for an equivalent light output. The intent is to replace existing 400 watt fixtures with LED heads that have a comparable light output. The locations to be selected are along major and minor arterial roadways and collector streets where the public roadway users may have the maximum benefit from the project.</p> <p>The objective is to reduce energy consumption by approximately 60% which would reduce the carbon footprint relative to lights presently in use. Existing lamps have a design life of 40,000 hours while LED lamps are anticipated to last 100,000 hours. This increase in lamp life reduces maintenance vehicle usage for replacement and lowers maintenance crew exposure to vehicle hazards while working in the roadway. Implementation would consist of design, permitting, materials ordering and installation.</p> <p>The Mountain View Electric Association (MVEA) will implement the project with all labor, equipment and materials being furnished by and through MVEA. This will be done initially with a unit priced, time and materials work order arrangement between MVEA and CMD. The work order will be jointly developed and administered by MVEA and CMD to fit the desired expenditure with the greatest benefit to the Cherokee Metropolitan District service area.</p>
<p><b>Expected Environmental and/or Public Health Benefits</b></p>	<p><b>Calculated Benefits:</b></p> <p>Refer to Attachment MVEA-1 for a demonstration of the estimated annual energy and energy consumption cost savings from this SEP. This Attachment MVEA-1 also shows the calculated annual savings in maintenance costs as a result of implementation of this SEP.</p> <p><b>Summary:</b> Annual Estimated Energy Savings = 15,214 kWh  Annual Calculated Energy Cost Savings = \$1,655 See Below  Annual Calculated Maintenance Cost Savings = \$366</p> <p>The calculated cost savings would only be realized if CMD was paying the energy consumption charges and maintenance costs directly. However, CMD pays Mountain View Electric on a per lamp per month basis. See actual benefits discussion below.</p> <p><b>Actual Benefits</b></p> <p>This project will reduce energy consumption by approximately 15,214 kWh per year. This represents an annual reduction of 9.1 to 18.3 tons of CO<sub>2</sub> depending on generation mix. Maintenance vehicle usage and associated CO<sub>2</sub> production will be reduced by more than 50% based on the expected lamp assembly life extension noted above.</p> <p>The MVEA does not presently have a different tariff for LED street lighting. Based on discussions with the MVEA management and Directors, there will be a rate study accomplished in the near future. In the meantime, as this SEP is implemented by the MVEA, the current rate tariff for street lighting will apply. This is a unit charge per pole, without a direct relationship to energy consumption. While there is not expected to be any actual cost savings as a result of this SEP, there will be an energy consumption reduction with implementation of this SEP.</p> <p>The reduction in maintenance vehicle operation should be reasonably directly proportional to the difference in service life for the LED lamp assemblies as compared to the metal halide lamps. Based on comparative service life cycles of 40,000 and 100,000 hours respectively for metal halide and LEDs, the maintenance vehicle operation will be reduced more than 50 percent.</p>

## EXHIBIT B

	Existing high pressure sodium lamp heads removed from the system will be reused if possible and mercury vapor lamps will be disposed of using federal guidelines. Mercury vapor lamps will be removed from service in the MVEA public street and security lighting system.			
<b>Project Budget</b>	Refer to Attachment MVEA-1			
	<b>Budget Category</b>	<b>Description</b>	<b>SEP Funds</b>	<b>Matching Funds (if any)</b>
	Personnel (Salaries, Wages)	Lineman, apprentice, barricading, supervision, reporting	\$2,720	
	Materials and Supplies	20- 400 watt equivalent LED pole mounted fixtures	\$9,750	
	Major Equipment	Bucket truck, material truck	\$1,000	
	Contractors/ Subcontractors	NONE – Install by MVEA staff using MVEA equipment	\$0	
	Other Direct Costs	Minor materials used and disposal of existing MH Lamps	\$400	
	<b>Total:</b>	<b>\$13,870</b>	<b>\$0</b>	<b>\$13,870</b>
<b>Budget Discussion</b>	<p>Note: Budget based on \$650 per lamp with MVEA engineering and procurement support.</p> <p>The project budget for this SEP to be implemented by the MVEA was based on the unit cost of retrofitting similar existing metal halide street light installations as presented by the EPCDOT. As the final work order is developed with the MVEA, the scope of work will be adjusted to provide for an expenditure conforming to the requirements of the CDPHE. In general, the scope of work will be adjusted if necessary to provide for a monetary contribution to this “first party” project in an amount no less than that shown in the referenced budget.</p> <p>As indicated in the discussion of environmental benefits of this SEP, there is no known financial benefit to the Cherokee Metropolitan District. As of this time, the MVEA will be assessing the same user charges for the LED street lights as are now billed for the metal halide installations. The MVEA has indicated they will be doing a rate study to assess the cost of the LED street light installations. There is no indication if the resulting user charge will be less or more than that assessed for metal halide street light installations.</p> <p>This project as developed will not be completed without this funding. Replacements will be covered as part of routine capital upgrades without LED lighting in accordance with current tariffs. There are no local land use regulations, CMD service plan requirements or regulations of the electric utility which requires the CMD to initiate this project.</p>			
<b>Project Schedule and Work Plan</b>	<b>Activities</b>	<b>Staff Responsible</b>	<b>Date</b>	
	Project Start Date	Cherokee/ MVEA	May 5, 2014	
	Material delivery	MVEA	July 1, 2014	
	Status Report(s) Due to CDPHE	CMD Superintendent & GMS, Inc. Project Manager	August 15, 2014	
	Projected Completion Date	MVEA and CMD Superintendent	November 30, 2014	



## EXHIBIT B

	SEP Completion Report Due to CDPHE	CMD Superintendent & GMS, Inc. Project Manager	December 20, 2014
<b>Other Relevant Information</b>	<p>This project is not required by any local land use regulation, building code or utility purveyor requirement. The CMD's constituents will not immediately realize the benefit of reduced cost of energy for lighting in the District until MVEA accomplishes a cost of service study with the latest in LED lamp technology considered. There will be reduced greenhouse gas (CO<sub>2</sub>) emissions as the result of reduced energy required to service the District facilities</p>		
<b>Reporting Requirements</b>	<p><u>Biannual Status Reports</u></p> <p>The CMD SEP Administrators will submit a biannual project status report to the department's SEP Coordinator. Status reports will include the following information:</p> <ul style="list-style-type: none"> <li>• A description of activities completed to date;</li> <li>• A budget summary table listing funds expended to date by budget category; and</li> <li>• A discussion of any anticipated changes to the project scope or timeline.</li> </ul> <p><u>Final SEP Completion Report</u></p> <p>The SEP Completion report will be submitted within 30 days of project completion and contain at a minimum:</p> <ul style="list-style-type: none"> <li>• A detailed description of the project as implemented;</li> <li>• A summary table identifying project deliverables and tasks along with the associated completion date;</li> <li>• A description of any operating problems encountered and the solutions thereto;</li> <li>• A full expense accounting including itemized costs, documented by copies of purchase orders, contracts, receipts or canceled checks;</li> <li>• Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Settlement Agreement and this SEP Agreement;</li> <li>• A description of the environmental and public health benefits resulting from implementation of the SEP along with <b>quantification</b> of the outcomes and benefits;</li> <li>• Examples of brochures, educational or outreach materials developed or produced as part of the SEP; and</li> <li>• Photographs documenting the project.</li> </ul>		



**EXHIBIT B**  
ATTACHMENT MVEA-1

Cherokee Metropolitan District  
2012-2014 Compliance Order  
Mountain View Electric Association (MVEA) LED Lamp Replacement SEP - 04/15/14

Current Fixture

Type	Metal Halide Cobrahead
Watt Rating	400
Power Consumption (watts)-EPCDOT Data	400

Proposed Fixture

Type	LED Cobrahead
Watt Rating	400
Power Consumption (watts)	163.5
Quantity	15

Annual Estimated Energy Savings (kWh)

Power Consumption (watts)			
Current Fixture	400		
Proposed Fixture	163.5		
Energy Savings (watts/fixture)	236.5		
Annual Operating Hours <sup>(1)</sup>	4,289		
Energy Savings (kWh/fixture)	1,014		
Quantity	15		
Annual Est. Energy Savings (kWh) <sup>(4)</sup>	15,214	\$	0.912 =\$/kWh Reduced

Annual Estimated Energy Cost Savings

Annual Est. Energy Savings (kWh)	\$15,214
Energy Cost (\$/kWh) <sup>(2)</sup>	<del>\$0.1088</del>
Annual Est. Energy Cost Savings	\$1,655

Annual Estimated Maintenance Cost Savings

<u>Current Fixture</u>	
Lamp Replacement Cost	\$412.50
Estimated Lamp Life (hours)	40,000
Annual Operating Hours <sup>(1)</sup>	4,289
Lamp Replacement Interval (yrs)	9.33
Annual Replacement Cost per Fixture	\$44.23
Quantity	15
Total Annual Replacement Cost <sup>(4)</sup>	\$663.42
<u>Proposed Fixture</u>	
Lamp Replacement Cost <sup>(3)</sup>	\$462.50
Estimated Lamp Life (hours)	100,000
Annual Operating Hours <sup>(1)</sup>	4,289
Lamp Replacement Interval (yrs)	23.32
Annual Replacement Cost per Fixture	\$19.84
Quantity	15
Total Annual Replacement Cost <sup>(4)</sup>	\$297.53
Annual Est. Maintenance Cost Savings <sup>(4)</sup>	\$365.88

(1) Based on average operating time of 11.75 hours per day

Winter solstice = 4:45 pm to 6:45 am (MST) = 14 hrs; Summer solstice = 8:45pm to 6:15 am (MDT) = 9.5 hrs; Avg = 11.75 hrs

(2) Comparative MVEA Rates for Commercial General Power = \$0.0725 per kWh Plus Grid Access and Demand Charges  
MVEA Small Power Rate schedule, per kWh = \$0.1088

(3) LED Replacement Lamp Cost = \$125; Equipment Cost = \$150 per hour; Labor Cost = \$75 per hour; 1.5 hours to replace lamp

(4) MVEA's rate tariff for street lights is based on charge per pole per month. The current charges, as of Jan 1, 2014, for 400 watt fixtures are:

400 Watt Metal Halide (MH) = \$18.90; Current Annual User Charge = \$3,402

400 Watt Equivalent LED rate has not been established pending rate study by MVEA; For purposes of SEP evaluation, assume LED rate tariff is equal to MH rate tariff.

400 Watt Equivalent LED = \$18.90; Future Annual User Charge with LED Retrofit = \$3,402; \$0.00 per year less than existing MH based charge.

EXHIBIT B

**SUPPLEMENTAL ENVIRONMENTAL PROJECTS (SEP)  
THIRD PARTY PROPOSAL/AGREEMENT**

The regulated entity, identified below, submits the following SEP application to the Colorado Department of Public Health and Environment (the department) for SEP consideration.

<b>Enforcement Action Information</b>	Cherokee Metropolitan District Case No.: MC-14xxxx-x:	
<b>Regulated Entity Contact Information</b>	Sean Chambers, General Manager Cherokee Metropolitan District 6250 Palmer Park Boulevard Colorado Springs, CO 80915 719-597-5080 SChambers@cherokeemetro.org	
<b>Third Party SEP Administrator Contact</b>	Mr. John Clack El Paso County Department of Public Services 3275 Akers Drive Colorado Springs, CO 80922 Office Phone: 719-520-6851 E-mail address: JohnClack@elpasoco.com	Type of organization: Non-profit* <input type="checkbox"/> Government <input checked="" type="checkbox"/>  *If non-profit, please attach a copy of your 501c(3) exemption to this SEP Agreement.
<b>CDPHE Contact Person</b>	Rachel Wilson-Roussel, Supplemental Environmental Projects Coordinator, 303-692-2976, <a href="mailto:rachel.wilson-roussel@state.co.us">rachel.wilson-roussel@state.co.us</a> -and- Mike Harris, WQCD Compliance and Enforcement Unit Manager, 303-692-3598, <a href="mailto:michael.harris@state.co.us">michael.harris@state.co.us</a>	
<b>Geographical Area to Benefit Most Directly From Project</b>	Cherokee Metropolitan District Street Light Service Area	
<b>Project Title</b>	LED Streetlight Project	
<b>Project Type</b>	Third Party SEP Donation	
<b>SEP Category</b>	Pollution Reduction, Public Health and Safety	
<b>Project Summary</b>	This project would replace existing 22 high pressure sodium or mercury vapor (metal halide) streetlight lamps with high efficiency LED lamps. Energy consumption would be reduced by approximately 58 percent, the driving public and impacted pedestrians would have improved lighting. Hazard exposure to lighting maintenance personnel would be reduced because of longer LED lamp life.	

## EXHIBIT B

<p><b>Project Description</b></p>	<p>This project would replace twenty-two (22) 400 watt high pressure sodium (HPS) or mercury vapor street light fixtures with LED lamp assemblies using less than one half of the energy for an equivalent light output. The locations selected for consideration in this project include the following</p> <ul style="list-style-type: none"> <li>Constitution Avenue and Marksheffel Road – Four fixtures</li> <li>Constitution Avenue and Piros Drive – Two fixtures</li> <li>Peterson Road and Piros Drive – Three fixtures</li> <li>Peterson Road and Palmer Park Boulevard – Four fixtures</li> <li>Galley Road and Hathaway Drive – Four fixtures</li> <li>Peterson Road and Galley Road – Three fixtures</li> <li>Peterson Road and Omaha Boulevard – One fixture</li> <li>Palmer Park Boulevard and Winnebago Drive – One fixture</li> </ul> <p>The objective is to reduce energy consumption by approximately 58% which would reduce the carbon footprint relative to lights presently in use. Existing lamps have a design life of 24,000 hours while LED lamps are anticipated to last 100,000 hours. This increase in lamp life reduces maintenance vehicle usage for replacement and lowers maintenance crew exposure to vehicle hazards while working in the roadway. Implementation would consist of design, permitting, materials ordering and installation.</p> <p>The El Paso County Department of Public Services, Transportation Division, will coordinate and administer the project with all labor, equipment and materials being furnished by and through El Paso County (EPC). This will be done initially with a unit priced, time and materials work order arrangement between EPC and CMD. The work order will be jointly developed and administered by EPC and CMD to fit the desired expenditure.</p>
<p><b>Expected Environmental and/or Public Health Benefits</b></p>	<p>Refer to Attachment EPC-1 for a demonstration of the estimated annual energy and power cost savings from this SEP. This Attachment EPC-1 also shows the estimated annual savings in maintenance costs as a result of implementation of this SEP.</p> <p>Summary: Annual Estimated Energy Savings = 22,145 kWh          Annual Estimated Energy Cost Savings = \$2,237          Annual Estimated Maintenance Cost Savings = \$1,028          Payback period: ~ 5.9 years</p> <p>Discussion:</p> <p>This project would reduce estimated energy consumption by 22,145 kWh per year. This represents an annual reduction of 13.3 to 26.6 tons of CO<sub>2</sub> depending on generation mix. Maintenance vehicle usage and associated CO<sub>2</sub> production will be reduced by more than 50% based on the expected life extension noted above.</p> <p>The EPC Department of Transportation has provided information on common replacement lamps for existing HPS fixtures reflecting a useful life of 23,000 hours. The proposed LED lamp assemblies are rated at a useful life of 100,000. Based on this ratio, there will be a reduction of 77% in the frequency or unit use of maintenance equipment when the LED assemblies are put into service.</p> <p>There are 16 of the 22 lamps located in the Mountain View Electric Association service area with 6 of the lamps provided power from Colorado Springs Utilities. Using a weighted energy user charge rate for the 22 lamps proposed for retrofitting, there is an annual energy cost savings of \$2,237 realized. This cost savings will not be passed on</p>



**EXHIBIT B**

	<p>to the Cherokee Metropolitan District as the subject street lighting fixtures are owned, operated and maintained by El Paso County, completely independent of the Cherokee Metropolitan District street lighting system. The estimated savings in reduced maintenance cost due to the longer useful life of the LED light assemblies likewise will not be passed on to the District's constituents. The energy cost savings are projected from the respective power companies' commercial energy charges applicable in their service areas. The basis of charge to EPC is on a per light basis in accordance with the applicable tariffs.</p> <p>The District's constituents will not necessarily realize and cost benefits from this SEP but will be supporting the benefits of reduced energy consumption and generation of greenhouse gases and improved lighting of public spaces.</p> <p>Existing high pressure sodium lamp heads removed from the system will be reused if possible and mercury vapor lamps will be disposed of using federal guidelines.</p>				
<b>Project Budget</b>	<b>Budget Category</b>	<b>Description</b>	<b>SEP Funds</b>	<b>Matching Funds (if any)</b>	<b>Total Cost</b>
	Personnel (Salaries, Wages)	Lineman, apprentice, barricading, supervision, reporting	\$3,640		\$3,640
	Materials and Supplies	22 – 400 watt equivalent pole mounted LED fixtures	\$13,300		\$13,300
	Major Equipment	Bucket truck, material truck	\$1,800		\$1,800
	Contractors/ Subcontractors	NONE – Install by El Paso County personnel & equipment	\$0		\$0
	Other Direct Costs	Minor materials used and disposal of existing MH Lamps	\$400		\$400
	<b>Total:</b>		<b>\$19,140</b>	<b>\$0</b>	<b>\$19,140</b>
<b>Budget Discussion</b>	<p>This project as developed will not be completed without this funding. Replacements will be covered as part of routine capital upgrades without LED lighting. The project budget total was provided by the El Paso County (EPC) Public Services Department in an electronic mail message of February 15, 2014 from the EPC Project Manager, Mr. John Clack. Refer to Attachment EPC-2. The itemization given above is to be refined with EPC if necessary and will be itemized at project close-out.</p>				
<b>Project Schedule and Work Plan</b>	<b>Activities</b>	<b>Staff Responsible</b>	<b>Date</b>		
	SEP Donation of \$19,140 from Cherokee Metro District to Third Party SEP Administrator, El Paso County	CMD Board of Directors, General Manager & Superintendent	Within 30 days of the effective date of this SEP Agreement.		
	Project Start Date	El Paso County Department of Public Services (EPC)	May 15, 2014		
	Material delivery	El Paso County Department of Public Services	July 16, 2014		

## EXHIBIT B

	Status Report(s) Due to CDPHE	CMD Superintendent & GMS, Inc. Project Manager	August 15, 2014
	Projected Completion Date	EPC and CMD Superintendent	November 30, 2014
	SEP Completion Report Due to CDPHE	CMD Superintendent & GMS, Inc. Project Manager	December 20, 2014
<p style="text-align: center;"><b>Other Relevant Information</b></p>	<p>This project is not required by any local land use regulation, building code or utility purveyor requirement. The CMD's constituents will not realize the benefit of reduced cost of energy for lighting in the District. There will be reduced greenhouse gas (CO<sub>2</sub>) emissions as the result of reduced energy required to service the District facilities and improved lighting will enhance vehicular traffic and pedestrian safety.</p>		
<p style="text-align: center;"><b>Reporting Requirements</b></p>	<p><u>Biannual Status Reports</u></p> <p>The CMD and EPC SEP Administrator will submit a biannual project status report to the department's SEP Coordinator. Status reports will include the following information:</p> <ul style="list-style-type: none"> <li>• A description of activities completed to date;</li> <li>• A budget summary table listing funds expended to date by budget category; and</li> <li>• A discussion of any anticipated changes to the project scope or timeline.</li> </ul> <p><u>Final SEP Completion Report</u></p> <p>The SEP Completion report will be submitted within 30 days of project completion and contain at a minimum:</p> <ul style="list-style-type: none"> <li>• A detailed description of the project as implemented;</li> <li>• A summary table identifying project deliverables and tasks along with the associated completion date;</li> <li>• A description of any operating problems encountered and the solutions thereto;</li> <li>• A full expense accounting including itemized costs, documented by copies of purchase orders, contracts, receipts or canceled checks;</li> <li>• Certification and demonstration that the SEP has been fully implemented pursuant to the provisions of the Settlement Agreement and this SEP Agreement;</li> <li>• A description of the environmental and public health benefits resulting from implementation of the SEP along with <b>quantification</b> of the outcomes and benefits;</li> <li>• Examples of brochures, educational or outreach materials developed or produced as part of the SEP; and</li> <li>• Photographs documenting the project.</li> </ul>		



**EXHIBIT B**  
ATTACHMENT EPC-1

Cherokee Metropolitan District  
2012-2014 Compliance Order  
El Paso County Public Services Dept. LED Lamp Replacement SEP

Current Fixture

	Type	Metal Halide
		Cobrahead
	Watt Rating	400
Power Consumption (watts)-EPCDOT Data		400

Proposed Fixture

	Type	LED
		Cobrahead
Watt Rating-Equivalency per EPCDOT		400
Power Consumption (watts)		165.3
	Quantity	22

Annual Estimated Energy Savings (kWh)

Power Consumption (watts)		
Current Fixture	400	
Proposed Fixture	165.3	
Energy Savings (watts/fixture)	234.7	
Annual Operating Hours <sup>(1)</sup>	4,289	
Energy Savings (kWh/fixture)	1,007	
Quantity	22	
Annual Est. Energy Savings (kWh)	22,145	\$ 0.864 =\$/KWH Reduced

Annual Estimated Energy Cost Savings

Annual Est. Energy Savings (kWh)	22,144.53
Energy Cost (\$/kWh) <sup>(5)</sup>	<u>\$0.1010</u>
Annual Est. Energy Cost Savings	\$2,236.72

Annual Estimated Maintenance Cost Savings

Current Fixture

Lamp Replacement Cost <sup>(4)</sup>	\$372.50
Estimated Lamp Life (hours)	24,000
Annual Operating Hours <sup>(1)</sup>	4,289
Lamp Replacement Interval (yrs)	5.60
Annual Replacement Cost per Fixture	\$66.56
Quantity	22
Total Annual Replacement Cost	\$1,464.43

Proposed Fixture

Lamp Replacement Cost <sup>(6)</sup>	\$462.50
Estimated Lamp Life (hours)	100,000
Annual Operating Hours <sup>(1)</sup>	4,289
Lamp Replacement Interval (yrs)	23.32
Annual Replacement Cost per Fixture	\$19.84
Quantity	22
Total Annual Replacement Cost	\$436.38

Annual Est. Maintenance Cost Savings     \$1,028.05

(1) Based on average operating time of 11.75 hours per day

Winter solstice = 4:45 pm to 6:45 am (MST) = 14 hrs; Summer solstice = 8:45pm to 6:15 am (MDT) = 9.5 hrs; Avg = 11.75 hrs

(2) Energy Cost Calculation Based on CSU Rates to CMD Sept 2013

    Access Charge (\$/kWh) = \$0.0532  
    Supply Charge (\$/kWh) = \$0.0269  
    Electric Cost Adjustment (ECA) (\$/kWh) = -\$0.0010  
    Capacity Charge (\$/kWh) = \$0.0012  
    Energy Cost (\$/kWh) = \$0.0803

Weighted blend of CSU & MVEA = ((16/22)\*0.10877) + ((6/22)\*0.0803)

(3) Comparative MVEA Rates for Commercial General Power = \$0.0725 per kWh Plus Grid Access and Demand Charges

MVEA Small Power Rate schedule = \$0.10877 per kWh;

(4) Lamp Cost = \$35; Equipment Cost = \$150 per hour; Labor Cost = \$75 per hour; 1.5 hours to replace lamp

(5) Weighted blend of CSU & MVEA = \$0.10101

(6) Lamp Cost = \$125; Equipment Cost = \$150 per hour; Labor Cost = \$75 per hour; 1.5 hours to replace lamp



## ATTACHMENT EPC-2

**From:** John Clack [JohnClack@elpasoco.com]  
**Sent:** Saturday, February 15, 2014 6:15 AM  
**To:** 'rjsams@gmsengr.com'  
**Cc:** Andre Brackin; Troy Wiitala; Steve Barden  
**Subject:** RE: street lights.doc  
 Roger,

Here is our estimate for the LED street lamps that would be purchased by Cherokee Metro District. These are listed by priority.

Constitution & Marksheffel Rd	4 lights	\$3,480
Peterson & Palmer Park	4 lights	\$3,480
Galley & Hathaway	4 lights	\$3,480
Peterson & Galley	3 lights	\$2,610
Constitution & Piros Dr	2 lights	\$1,740
Peterson & Piros Dr	3 lights	\$2,610
Palmer Park & Winnebago	1 light	\$870
Peterson & Omaha	1 light	\$870
Total	22 lights	\$19,140

I understand our crews would install. Would we be responsible for purchasing the lights and then get reimbursed? If so, we will need to go out to bid using our regular process. Let me know if you need any additional information.

Thanks,  
 John

---

**From:** Roger Sams [mailto:rjsams@gmsengr.com]  
**Sent:** Monday, December 09, 2013 9:46 AM  
**To:** John Clack  
**Subject:** RE: street lights.doc

John:

Thanks to you and other EPC staff for pulling this information together for us. We, and the CMD, would like to consider funding replacement of existing lamps with LED lamp assemblies at the locations listed as part of the Supplemental Environmental Project (SEP) the District is arranging with the Colorado Department of Health & Environment (CDPHE). We will also be working directly with Colorado Springs Utilities and MVEA on some locations where those respective utilities are responsible for operation and maintenance with the CMD paying for the energy costs. The District will have about \$50,000 to \$55,000 to put into this project for all parts and pieces with all three responsible agencies.

First, it would be greatly appreciated if the EPC Public Service Department could provide a proposal for replacement of the existing lamp assemblies as described at the locations listed below. Please itemize the proposal by intersection as we may not be able to do all of them within this project. We would appreciate your input as to priorities where LED lamps would yield the most public benefit. We would agree with making Constitution and Marksheffel a top priority if EPC would concur.

The schedule for this work is presently proposed to commence April 1, 2014 and be completed by November 30, 2014. The start date could just be the ordering of materials; physical replacement would not necessarily have to start at that time.

We need to refine the CMD proposal to the CDPHE by responsible third party, i.e. CSU, MVEA and EPC, so getting us the proposal as soon as possible would be greatly appreciated. We trust the EPC experience with the

LED lamp installation at Constitution and Peterson will be useful in making the proposal for the 2014 work in the CMD service area.

Thank you again. Please let me know if you have any questions or desire additional information.

Roger J. Sams, P.E.  
GMS, Inc.  
611 North Weber Street, Suite 300  
Colorado Springs, CO. 80903  
Phone: 719-475-2935  
Fax: 719-475-2938  
Email: [rjsams@gmsenr.com](mailto:rjsams@gmsenr.com)

---

**From:** John Clack [mailto:[JohnClack@elpasoco.com](mailto:JohnClack@elpasoco.com)]  
**Sent:** Monday, December 09, 2013 9:04 AM  
**To:** [rjsams@gmsenr.com](mailto:rjsams@gmsenr.com)  
**Subject:** FW: street lights.doc

Roger,

Attached the El Paso County maintained street lights within the Cherokee Metro District's area. I verified with Frank Biggerstaff that these are all non-LED street lights. Please let me know if you have any questions or need additional information.

Thanks,  
John Clack  
719-520-6851

---

**From:** Ed Braun  
**Sent:** Tuesday, December 03, 2013 7:09 AM  
**To:** John Clack  
**Subject:** FW: street lights.doc

John,

Attached are the numbers for the luminaries for GMS, all within Cherokee's district.

Edgar Braun  
Inspection Supervisor  
El Paso County PSD  
719-520-6869, Cell 719-339-5205

---

**From:** Frank Biggerstaff  
**Sent:** Monday, December 02, 2013 4:50 PM  
**To:** Ed Braun; Steve Barden  
**Subject:** FW: street lights.doc

Inform you ask for.

Frank

---

**From:** Joe Ashe  
**Sent:** Monday, December 02, 2013 4:10 PM  
**To:** Frank Biggerstaff  
**Subject:** street lights.doc

<u>Intersection</u>	<u># Street Lights</u>
Constitution & Marksheffel Rd	4
Constitution & Piros Dr	2
Peterson & Piros Dr	3
Peterson & Palmer Park	4
Palmer Park & Winnebago	1
Peterson & Omaha	1
Peterson & Galley	3
Galley & Hathaway	4
	Total 22



RECEIVED  
APR 28 2014

# STATE OF COLORADO

John W. Hickenlooper, Governor  
Larry Wolk, MD, MSPH  
Executive Director and Chief Medical Officer

Dedicated to protecting and improving the health and environment of the people of Colorado

4300 Cherry Creek Dr. S.  
Denver, Colorado 80246-1530  
Phone (303) 692-2000  
Located in Glendale, Colorado  
[www.colorado.gov/cdphe](http://www.colorado.gov/cdphe)



Colorado Department  
of Public Health  
and Environment

April 21, 2014

Cherokee Metropolitan District  
Attention: Sean Chambers, General Manager  
6250 Palmer Park Boulevard  
Colorado Springs, Colorado 80915

**RE: Final Compliance Order on Consent for Signature**

Dear Mr. Chambers,

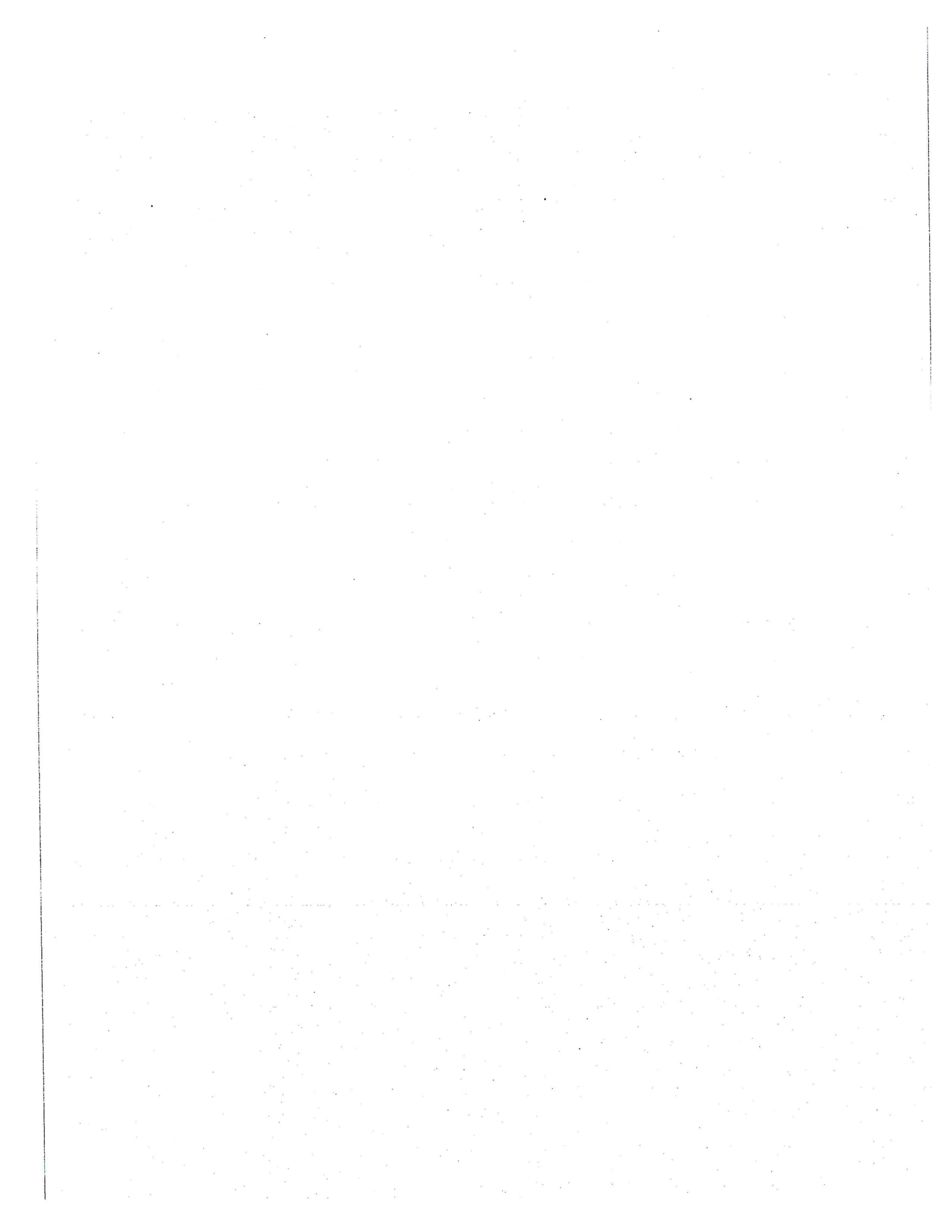
Enclosed for your signature, you will find the final version of the Compliance Order on Consent for Cherokee Metropolitan District. Please review the document carefully and, if satisfied, sign both copies. After you have signed both copies of the document, please promptly return both of the originals to me for the Division's signature. Once the Division has signed the document, we will return one copy, with original signatures, to you for Cherokee's records and the Division will retain the other copy. *(Note: The agreement number at the top of the document will be determined upon the Division's signature and inserted onto the first page prior to returning your copy to you.)*

If you have any questions, please don't hesitate to contact me at (303) 692-3598 or by electronic mail at [michael.harris@state.co.us](mailto:michael.harris@state.co.us).

Sincerely,

Michael Harris, Manager  
Clean Water Compliance & Enforcement Unit  
WATER QUALITY CONTROL DIVISION

*Enclosure(s)*



# EXHIBIT 'H'

<b>DISTRICT COURT, WATER DIVISION 2</b> <b>PUEBLO COUNTY, COLORADO</b> Pueblo County Judicial Bldg. 320 West 10 <sup>th</sup> Street Pueblo, CO 81003	DATE FILED: October 30, 2013 CASE NUMBER: 1998CW80
CONCERNING THE APPLICATION FOR WATER RIGHTS OF CHEROKEE METROPOLITAN DISTRICT  IN EL PASO COUNTY COLORADO  And Intervener: MERIDIAN SERVICE METROPOLITAN DISTRICT	<b>Court Use Only</b> Case Number: <b>98CW80</b>  Division <b>5</b> Courtroom <b>S501</b>
<b>ORDER RE: MOTION TO CERTIFY ORDERS AS FINAL</b>	

UBS has filed a Motion to Certify Orders as Final in this case. Meridian has filed an objection, arguing that a number of matters have never been addressed. Cherokee has not responded. The matter is at issue.

Meridian complains that it moved twice to vacate the preliminary injunction that issued to stop Cherokee from moving forward with the Ground Water Commission on the Cherokee/Meridian "replacement plan". Meridian also moved to dismiss this action for lack of jurisdiction. Both times the motion was denied by the Water Court and ultimately attorney fees were awarded.

In denying the motion, Judge Larry C. Schwartz concluded that the preliminary injunction only enjoined Cherokee, "it does not enjoin Meridian". He also noted that the injunction was not appealed, even though it had become a final order. He awarded attorney fees however, on the jurisdiction issue. He concluded that Meridian pursued a groundless motion since the Supreme Court had already concluded that the Water Court, not the Ground Water Commission had jurisdiction.

If my rulings are not appealed, I intend to vacate the preliminary injunction and allow the Ground Water Commission to move forward on the Cherokee/Meridian replacement plan. Cherokee has not moved to vacate the injunction. There is no reason to readdress the previous attorney fee order, which Judge Schwartz dealt with more than once.

Meridian asserts that its motion to dismiss the UBS claim against Meridian under Rule 12(b)(6) has still not been ruled upon. Under clear precedent I am required to deny such a motion unless it appears beyond a doubt that the plaintiff can prove no set of facts supporting the claim which would entitle the plaintiff to relief.

Cherokee owns the water treatment facility through which Meridian's waste returns would be processed. If I had determined that "recharge" precluded replacement



credit, then arguably Cherokee, by virtue of the 1999 stipulation could not provide the treatment services, that would be required by Meridian. The IGA and the Stipulation taken together made Meridian an indispensable party to this dispute. Accordingly, UBS stated a cognizable claim against Meridian.

Meridian's Motion to Dismiss under Rule 12(b) is DENIED.

Meridian further claimed that I had no jurisdiction to rule on the IGA agreement. I agree that I don't have jurisdiction to determine whether the IGA replacement plan should be approved. That will ultimately be determined by the Ground Water Commission. However, this lawsuit is grounded on the argument that the IGA violates the 1999 Stipulation. I had jurisdiction to at least determine whether it did. I have concluded that the IGA does not violate the 1999 Stipulation insofar as UBS argues that the requirement to "recharge" the basin prohibits such an agreement.

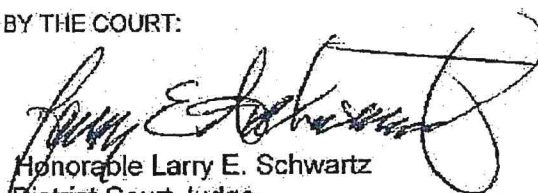
I have already ruled that the 1999 Stipulation was not binding upon Meridian.

CONCLUSION:

1. The June 17, 2013 and August 9, 2013 Orders entered in this matter are final judgments.
2. Rule 4(a) of the Colorado Appellate Rules and Rule 58 of the Colorado Rules of Civil Procedure permit the parties to file an appeal with the Supreme Court within 49 days of the date these Orders are certified as final

So ordered this 30 day of Oct 2013

BY THE COURT:

  
Honorable Larry E. Schwartz  
District Court Judge

Cc: counsel of record

## EXHIBIT 'H'

<b>El Paso County, CO DISTRICT COURT</b> Court address: <b>270 South Tejon St.</b> <b>Colorado Springs, CO 80903</b> Phone Number: <b>(719) 448-7632</b>	DATE FILED: June 17, 2013
CONCERNING THE APPLICATION FOR UNDERGROUDN WATER RIGHTS, CHANGE OF WATER RIGHTS, AND PLAN FOR AUGMENTATION OF: CHEROKEE WATER DISTRICT	<b>Court Use Only</b>
<b>EL PASO COUNTY, COLORADO</b>	Case Number: 98CW80  Division 5 Courtroom 501
Order Re: <b>UPPER BLACK SQUIRREL GROUND WATER MANAGEMENT                  DISTRICT'S AMENDED MOTION FOR DECLARATORY RELIEF</b>	

The Upper Black Squirrel Ground Water Management District ("UBS") has filed this motion, seeking a determination that the Cherokee Water District ("Cherokee") is violating a 1999 stipulation that was intended to end the original disputes in this case. UBS asserts that Cherokee violated the stipulation by entering into an IGA with Meridian Service Metropolitan District ("Meridian"). Cherokee's Intergovernmental Agreement with Meridian provided for a joint application for a replacement plan with the Colorado Ground Water Commission that would result in Cherokee being able to divert additional water from the UBS basin as a result of "replacement credit" given in exchange for Cherokee pumping wastewater return flows into the UBS basin.

Meridian sought to intervene in this action but the Water Court denied Meridian's request. Thereafter, Judge Maes granted UBS' declaratory judgment request, concluding that Cherokee was precluded by the 1999 stipulation from seeking replacement credit for Cherokee's waste water returns into basin. The Supreme Court reversed the Water Court's intervention denial as well as the grant of declaratory relief. In deciding that Meridian's interests were not being adequately protected by Cherokee, the Court noted that Meridian claimed a vested right to reuse the return flows from the "first use of its Denver Basin water".

Since the reversal, UBS has renewed its request for declaratory relief. It has filed an Amended Motion for Declaratory Relief, to which both Cherokee and Meridian have responded. Cherokee and Meridian also seek declaratory relief. UBS has recently filed a Motion for Summary Judgment on the same issues. That motion is not yet ripe for ruling.



There are two paragraphs of the 1999 stipulation that are the subject of this action:

"4E. Diversions from all wells used or owned by Cherokee located in the Upper Black Squirrel Designated Basin shall be limited to the lesser of the permit, decree or physical availability at the permitted or decreed location of the well..."

"5. RECHARGE: Cherokee will use its best efforts to deliver wastewater returns from Sunset, Paintbrush, and Woodman Hills subdivisions, Falcon Air Force Base and any other subdivisions it services back into the Upper Black Squirrel Creek Designated Basin for recharge of the aquifer. Cherokee shall recharge any wastewater returns from the Sunset Plant in the aquifer".

In arguing their interpretations of what these paragraphs mean, Cherokee and Meridian also point to following language in a 1991 Decree that resulted from a prior stipulation between the RTC (who at the time was foreclosing on certain Cherokee interests) and UBS:

"2. ...In addition, the stipulation shall not be construed as a limitation on the right to withdraw additional quantities of water lawfully available to these water rights as a result of artificial recharge of aquifer, as a result of the recapture and/or reuse of return flows resulting from the exercise of the water rights or as the result of any other lawful means of increasing the supply of water available to these water rights.

Cherokee has filed a motion seeking an evidentiary hearing regarding the meaning of the 1999 stipulation. UBS and Meridian seek rulings on their declaratory judgment motions before hearings are set. Depending on such a ruling, the motion for evidentiary hearing could be moot.

The law regarding interpretation of instruments is fairly well settled and is set forth in the UBS amended motion. "To determine the intention of the parties, courts look first to the plain meaning of the words in the instrument." Cherokee Metropolitan District v. Upper Black Squirrel Creek Ground Water Management District, 247 P.3d 567, 573 (Colo. 2011). "In the absence of any contrary manifestation in the contract itself, contractual terms that have a generally prevailing meaning must be interpreted according to that meaning..." In re Revised Abandonment List of Water Rights In Water Division 2, 276 P3 at 575. A contract is interpreted "in its entirety," and "seeking to harmonize and to give effect to all provisions so that none will be rendered meaningless" Pepcol Mfg. Co. v Dnever Union Corp., 687 P.2d 13110, 1313 (Colo. 1984). The court must "adopt a construction of the agreement that will give effect to all of its



provisions". Union Rural Elec. Ass'n, Inc. v. Pub. Utilities Comm'n of State, 661 P.2d 247, 252 (Colo. 1983).

Judge Maes ruled in favor of UBS and in doing so indicated that "recharge is synonymous with replenishing the aquifer". UBS asks that I adopt a similar interpretation of "recharge". In response, Cherokee has argued there are several meanings of "recharge" Cherokee quotes the Director of the Ground Water Commission, in dealing with UBS proposed rules, who indicated that "recharge" can have several meanings in ground water matters. While I have no reason to quibble with Judge Maes interpretation of "recharge" as "replenishment", I respectfully disagree that "recharge" is necessarily synonymous with "abandonment" of "forfeiture" of all claims or rights to the water being recharged. While the stipulation requires Cherokee to "use its best efforts to deliver waste water returns" to the basin, it does not specifically preclude Cherokee from later claiming the amount of that return as a replacement credit for future withdrawals. Rather, it is silent beyond the term "recharge".

UBS asserts that the language requiring Cherokee to use its "best efforts" in the 1999 stipulation requires Cherokee to deliver waste water to the basin without credit whether Cherokee has that authority from the individual recyclers or not. It further argues that once returned to the Basin, neither Cherokee nor any other entity has the right to claim credit for the returns for future withdrawals. In response, Meridian argues not only that it was not a party to that stipulation but that it has given no such authority to use its waste water without credit. Further, Meridian points out that some of its recycled waste water comes from the Denver Basin and is not merely a "return" to UBS. Meridian argues that the fact that Meridian uses the Cherokee facility to recycle wastewater does not mean that Meridian has abandoned any right to reuse those returns. Moreover, Meridian further asserts that adding its Denver Basin recycled water to the UBS basin would constitute augmentation of the basin and not mere replacement.

Similarly, there is no indication that the other entities listed in paragraph 5 of the 1999 stipulation have agreed to relinquish any claim to replacement credit by virtue of using Cherokee waste water plant.

UBS and Cherokee have provided affidavits from the attorneys who prepared the 1999 stipulation as well letters and emails that were exchanged by a variety of parties. The affidavits merely provide contradictory subjective opinions about what was contemplated by the creation of the 1999 stipulation. Likewise, the correspondence does little to provide meaning to the stipulation.

Paragraph 5 clearly requires the return by Cherokee of certain recycled waste water. Using "best efforts" likely gives recognition to the fact that Cherokee would not necessarily own the returns and that some of the named



waste water recyclers might not agree to be bound by the stipulation. Meridian, for one, holds itself out as one such recycler who argues that is in no way bound by the stipulation.

Even though the stipulation provides for a return, there is nothing in the agreement, or the term "recharge" that prohibits Cherokee from claiming a future credit against that return. The 1991 stipulation and subsequent decree provided that recharge alone did not result in the RTC (or successor) being unable to take additional withdrawals. That language is pertinent here not because it binds me in this determination but rather, it demonstrates the parties' recognition that "recharge" is not necessarily inconsistent with subsequent withdrawals.

In light of the language contained in the 1991 stipulation, if UBS intended for the term "recharge" to create a bar to claim future return credits it could have included language in the 1999 stipulation that by return of the waste water for recharge, Cherokee was surrendering any further claim for use of that waste water for any purpose. As it is, the stipulation is silent. I don't conclude that silence means abandonment or forfeiture of future credits.

I conclude therefore, that the 1999 stipulation does not preclude Cherokee from making a claim for return flow credits as part of the replacement plan currently before the Colorado Ground Water Commission.

This order does not imply that the Cherokee/Meridian IGA must necessarily be approved by the Ground Water Commission. I have merely concluded that the IGA does not violate the 1999 stipulation. As the Supreme Court pointed out in its opinion returning this issue for Water Judge determination, "*an applicant (for replacement plan approval) is required to replace the amount of designated ground water withdrawn with other water in such a way that no material injury occurs to other water rights.*" It may be that the Ground Water Commission will yet determine that the Cherokee/Meridian replacement plan would not meet that burden.

The second issue raised in UBS amended motion for declaratory relief is the meaning of paragraph 4E of the 1999 stipulation. The language of that paragraph is clear and not subject to varying interpretations. It limits diversions in all wells "used or owned by Cherokee" located in the UBS Basin to the amount indicated in paragraph 4E. Cherokee asserts those wells were "*obtained* after execution of the stipulation". It's not abundantly clear what "obtained after execution" means, but to the extent the wells did not exist at the time the stipulation was signed, its restrictions do not apply to those later-constructed wells. On the other hand, if the wells existed at the time, paragraph 4E clearly limits their production.

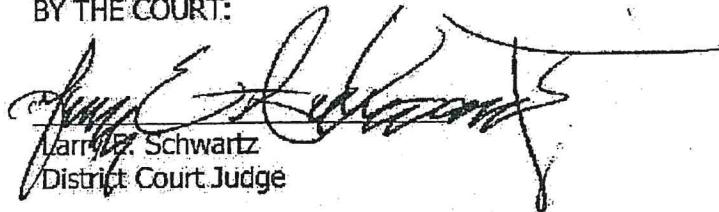
CONCLUSION:

I conclude that paragraph 5 of the 1999 stipulation does NOT prohibit Cherokee from claiming wastewater returns as credits for its replacement plan, even though the wastewater is being returned to UBS as recharge. In addition, I further conclude that Meridian was not a party to the 1999 stipulation. Accordingly, the 1999 stipulation could not preclude Meridian from claiming replacement credit.

Paragraph 4E clearly sets diversion limits. To the extent that Cherokee wells 9 – 12 were in existence when the stipulation was signed, the limits are applicable to those wells. If they were constructed after the stipulation was signed, the stipulation limits do not apply to them.

Done this 17 day of June 2013

BY THE COURT:

  
Murray Schwartz  
District Court Judge

cc: counsel of record



# EXHIBIT 'H'

<input checked="" type="checkbox"/> District Court <input type="checkbox"/> County Court <input type="checkbox"/> Other _____	
District Court, Water Division 2, Colorado Court Address: 320 West 10 <sup>th</sup> Street Pueblo, CO 81003 (719) 583-7048	DATE FILED: August 9, 2013 CASE NUMBER: 1998CW80
<b>CONCERNING THE APPLICATION FOR UNDERGROUND WATER RIGHTS, CHANGE OF WATER RIGHTS, AND PLAN FOR AUGMENTATION OF:</b>	
<b>CHEROKEE METROPOLITAN DISTRICT</b>	<b>▲ COURT USE ONLY ▲</b>
<b>EL PASO COUNTY, CO</b>	Case Number: <b>98CW80</b>
	Division: 5 Courtroom: S501
<b>ORDER RE: MOTION TO ALTER OR AMEND AND MOTION FOR SUMMARY JUDGMENT</b>	

UBS has filed a Motion to Alter or Amend my order of June 17, 2013. In that order I concluded that "recharge" did not mean what UBS asserts. Rather I concluded that term *recharge* as used in the 1999 stipulation did not preclude Cherokee (or Meridian) from seeking return credit in a replacement plan that was before the Commission. UBS also filed a Motion for Summary Judgment on the same issues.

Both of the UBS motions deal with the same issues already raised in its Amended Motion for Declaratory Judgment. There is no reason to rehash that ruling; I simply disagree with the meaning that UBS wishes to attribute to "recharge" in 1999 Stipulation. This is a contract interpretation issue. By indicating that the Cherokee returns were to be used for "recharge" the Stipulation does not preclude Cherokee from applying for return credit against that recharge in its proposed replacement plan. I merely concluded that the Stipulation does not preclude Cherokee from seeking that credit.

There may be material facts in dispute concerning the Cherokee Wells 9-12. Cherokee originally asserted that those wells had nothing to do with the Stipulation, but rather were "obtained" after its execution. They now assert that they were not "used or owned" by Cherokee at the time the Stipulation was signed. UBS factually asserts, on the other hand, that those wells existed and were either owned or replaced by Cherokee at the time the Stipulation was signed. If that is true, they are subject to the limitations of the '99 stipulation. As Judge Maes indicated in his order "Divisions from all wells used or owned by Cherokee located in the UBS Designated Basin shall be limited to the lesser..."

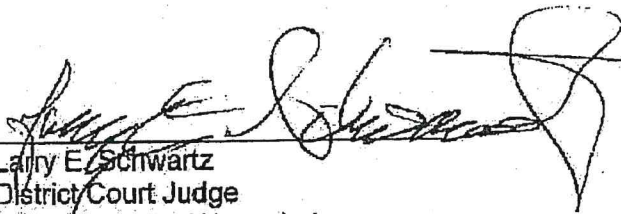
Neither summary judgment nor declaratory relief can be granted when significant factual disputes might control the outcome. Accordingly, if the parties cannot resolve whether the Pikes Peak wells were used or owned by Cherokee when the Stipulation was signed, they may set that matter for evidentiary hearing.

I agree with UBS that the Supreme Court vacated the prior Order, rather than *reversing* it, so that Meridian had an opportunity to be heard.

Except as indicated above, the UBS Motion to Alter or Amend is **DENIED**. The UBS Motion for Summary Judgment is **DENIED**.

So ordered this 9th day of August, 2013

BY THE COURT:



Larry E. Schwartz  
District Court Judge  
Alternate Div. 2 Water Judge

cc: Counsel of record





**2<sup>nd</sup> AMENDMENT TO SANITARY SEWER SERVICE  
INTERGOVERNMENTAL AGREEMENT BETWEEN THE  
MERIDIAN SERVICE METROPOLITAN DISTRICT  
AND STERLING RANCH METROPOLITAN DISTRICT NO. 1**

This 2<sup>nd</sup> Amendment to the Sanitary Sewer Service Intergovernmental Agreement Between Meridian Service Metropolitan District and Sterling Ranch Metropolitan District No. 1 (the "Amendment") is made and entered into this 9<sup>th</sup> day of November, 2021 by and between Meridian Service Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado ("MSMD") and Sterling Ranch Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado ("SRMD 1"). MSMD and SRMD 1 may be referred to individually as a Party, or collectively as the Parties or the Districts.

WHEREAS, on September 11, 2014, MSMD and SRMD 1 entered into a Sanitary Sewer Service Intergovernmental Agreement, which was recorded with the El Paso County Clerk and Recorder, Reception No. 214085189, on September 18, 2014, as amended by the Parties by the 1<sup>st</sup> Amendment entered into by the Parties on February 20, 2020 (collectively the "IGA");

WHEREAS, the IGA, among other things, provides for the Parties' agreement on terms and conditions for the connection by SRMD 1 of its sanitary sewer system to the MSMD sanitary sewer system at a location or locations mutually acceptable to the Parties, including the use of the MSMD sanitary sewer system for delivery of influent to the wastewater treatment facility owned by the Cherokee Metropolitan District ("Cherokee"), and in which MSMD is a partner (the "CM Plant");

WHEREAS, Cherokee operates the CM Plant, which discharges treated effluent to the Upper Black Squirrel Creek alluvial aquifer, in eastern El Paso County, Colorado. Cherokee is required, on the basis of an enforcement action by the Colorado Department of Public Health and Environment ("CDPHE") to remedy a total dissolved solids issue with such effluent, and has deemed development of a reverse osmosis system at the CM Plant (the "RO System") to be the appropriate remedy, at an approximately \$43 million total cost.

WHEREAS, MSMD, pursuant to an IGA with Cherokee (the "Cherokee-MSMD IGA"), is the owner of 45.8% of the wastewater treatment capacity of the CM Plant, or 2.2 million gallons per day (mgd). Following lengthy arbitration, it has been determined that MSMD is responsible for payment of 45.8% of the cost of the RO System for its 2.2 mgd treatment capacity of the CM Plant, or approximately \$19,694,000.

WHEREAS, SRMD 1, pursuant to the IGA, is potentially entitled to the use of up to 45.73% of MSMD's capacity in the CM Plant, or approximately 1,006,028 gallons per day. As such, SRMD 1 is potentially responsible under the IGA for up to 45.73% of

MSMD's cost allocation for the RO System, or approximately \$9,006,066 as well as other costs and expenses as set forth in Section 3.4 of the IGA ("SRMD 1's RO Share").

WHEREAS, Cherokee has issued municipal bonds for the financing of the entirety of the RO System, and has agreed to allow MSMD, and therefore SRMD 1 through MSMD, to participate in such bonds, rather than issuing independent debt for MSMD and SRMD 1 allocations. MSMD has agreed to such arrangement, and has made payment to Cherokee in the amount of \$550,243.49 representing MSMD's share of the initial 2021 interest only payment on the Cherokee bonds..

WHEREAS, MSMD, through its Sewer Enterprise, intends to impose a monthly fee upon its customers as a means of generating the revenue necessary to make annual payments of its share of the debt service on the Cherokee bonds, and potentially any other proportionate amounts it may owe pursuant to the Cherokee-MSMD IGA (the "MSMD Clean Water Surcharge"), and as described herein, it is SRMD 1 intention to do the same;

WHEREAS, SRMD 1, while acknowledging its obligations under the IGA, has purchased 1,550 wastewater taps from MSMD to date, and no wastewater from SRMD customers is currently delivered to the MSMD system for delivery to the CM Plant. Rather, the wastewater flows from SRMD 1 are currently delivered and treated by Colorado Springs Utilities ("CS-U") subject to a short-term agreement with SRMD 1. SRMD 1 currently has approximately 300 SFEs receiving wastewater service from CS-U;

WHEREAS, the potential exists that SRMD 1, whether due to annexation or changes in circumstance, may seek to continue to be provided wastewater service through CS-U, and therefore may not elect to use the maximum 45.73% capacity in MSMD's allocation of the CM Plant as contemplated in the IGA. As such, it is possible that SRMD 1 may ultimately assert that it is not responsible for its maximum contributions to the RO System;

WHEREAS, the Parties wish to amend the IGA to document SRMD 1's agreed upon mechanism for collection by SRMD 1 from its customers of fees sufficient to fund the SRMD 1 RO Share, while providing flexibility to SRMD 1 as to future development of its wastewater connection and resulting obligations and entitlements under the IGA, and potential resulting changes in funding obligations to be agreed to by the parties, or if not agreed to then subject to the remedies and relief provided in the IGA;

WHEREAS, all initially capitalized terms used herein, but not otherwise defined in this Amendment, will have the meanings given to such terms in the IGA;

WHEREAS, Section 7.3 of the IGA requires that any modifications to the IGA be done pursuant to an agreement in writing.



NOW THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein, and the mutual benefits and obligations set forth below, the Parties hereby agree as follows:

1. Article III of the IGA is amended to add Section 3.6, as follows:

3.6. As part of its obligation under Section 3.4 (ii) and (iii), SRMD 1, shall assess against each rate-payer served with wastewater services by SRMD 1 a monthly "SRMD 1 Clean Water Fee" which SRMD 1 must collect and pay to MSMD on a monthly basis. Such SRMD 1 Clean Water Fee shall be assessed upon SRMD 1's existing residential customers beginning in January of 2022, and the initial SRMD 1 Clean Water Fee shall be in the amount of \$10 per month, per SFE, initially generating approximately \$36,000 annually; SRMD 1 is anticipated to grow at a rate of approximately 150-300 SFE's annually for the next several years, and therefore SRMD 1 agrees to a minimum expanded schedule for assessment of the SRMD 1 Clean Water Fee as provided in this Section 3.6.

3.6.1. The SRMD 1 Clean Water Fee will be increased annually, and the minimum number of presumptive SFEs upon which such SRMD 1 Clean Water Fee will be assessed and paid to MSMD shall be as follows:

<u>Year</u>	<u>SRMD 1 Clean Water Fee</u>	<u>SFEs</u>	<u>Revenues</u>
2022	\$10	300	\$ 36,000
2023	\$11	450	\$ 59,400
2024	\$12	600	\$ 86,400
2025	\$13	750	\$117,000
2026	\$14	900	\$151,200
2027	\$15	1,050	<u>\$189,000</u>

**Minimum Total Revenue: \$639,000**

Should SFE customers be developed for service by SRMD 1 at a rate in excess of that described in the schedule above, SRMD 1 shall assess the SRMD 1 Clean Water Fee against actual SFEs served, resulting in increased revenues derived from the SRMD 1 Clean Water Fee. The SFEs and Revenues identified in the above table shall be guaranteed minimums, to be paid by SRMD 1 to MSMD on a monthly basis, whether or not such SFEs are actually developed in the time periods specified. Further, the SRMD 1 Clean Water Fee shall be assessed whether or not wastewater treatment is being provided to the SRMD 1 SFEs by MSMD pursuant to the IGA, or whether such SFEs continue to receive wastewater services from CS-U as currently occurs, or some other provider. Further, the payment of fees hereunder or under any other provision of this Section 3.6 shall not relieve SRMD 1 of any of its other payment obligations under the IGA.



3.6.2. It is the intent of the parties as stated in the IGA, that SRMD 1 will receive all wastewater service through connection to MSMD's sanitary sewer system and treatment at the CM Plant and therefore it is expected that the terms of Section 3.6.4 below will ultimately govern the payment by SRMD 1 of the SRMD 1 RO Share and thus render the minimum fee schedule set forth in Section 3.6.1 null and void. The Parties reserve all rights and remedies under the IGA related to the SRMD 1 connection to MSMD's sanitary sewer system, including but not limited to the right to further negotiate and agree to a change in SRMD 1's anticipated wastewater services and use of SRMD 1's full entitlements to wastewater service under the IGA, as well as any resulting potential change in the obligation to fully fund SRMD 1's RO Share or a portion thereof. MSMD shall be entitled to retain all revenues derived from the SRMD 1 Clean Water Fee through the end of 2027 regardless of SRMD 1's ultimate service plans, regardless of the terms of any further amendment to the IGA, and regardless of whether the SFEs provided with wastewater service by SRMD 1 are actually served through the MSMD system, or otherwise.

3.6.3. SRMD 1 shall remain obligated to purchase a minimum of 300 tap fees annually from MSMD consistent with Sections 3.2 and 3.3 of the IGA and in accordance with the payment schedule therein and with the terms of the 1<sup>st</sup> Amendment to the IGA, regardless of whether wastewater service is actually being provided through the MSMD system for treatment by Cherokee at the CM Plant, and all provisions of the IGA for breach of the purchase obligation and remedies for such breach shall remain in full force and effect.

3.6.4. Notwithstanding the fee schedule above, at such time as wastewater flows from SFEs served by SRMD 1 are delivered via MSMD infrastructure, which includes the Meridian Road Line whether purchased by SRMD 1 or not under the First Amendment to this IGA, for treatment at the CM Plant, the SRMD 1 Clean Water Fee shall be changed from the monthly fixed fee described above to a per SFE amount equal to 110% of the MSMD Sewer Enterprise Clean Water Surcharge (the "New Clean Water Fee"). The MSMD Clean Water Surcharge is a per SFE fee that MSMD has implemented or will implement and which will be paid by MSMD's own customers and/or through other MSMD revenue sources, for financing and payment of MSMD's allocation of the RO System, including any other amounts related to the CM Plant and improvements thereto for which MSMD may be proportionately responsible under the Cherokee-MSMD IGA ("MSMD's CM Plant Obligation"). The MSMD Clean Water Surcharge will be set each year in an amount necessary to fulfill MSMD's CM Plant Obligation, and shall be adjusted on an annual basis based on the New Clean Water Fee amounts expected from SRMD 1 such that the total of the New Clean Water Fee and the MSMD Clean Water Surcharge

and/or other sources of payment are in amounts sufficient to fulfill the annual MSMD CM Plant Obligation. The New Clean Water Fee shall be allocable only to SRMD 1 SFEs actually being provided wastewater service through MSMD pursuant to the IGA, and shall continue to be collected by SRMD 1 and paid to MSMD as described above and per the IGA. SRMD1 shall cease assessment of the fixed SRMD1 Clean Water Fee described above for such SFEs directly assessed the New Clean Water Fee.

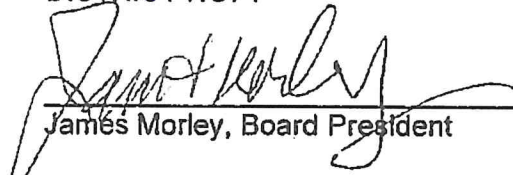
2. Except as expressly provided above, the IGA, as previously amended, remains in full force and effect as written and for all purposes. The Parties agree that nothing in this 2<sup>nd</sup> Amendment shall change the Parties' respective entitlements and obligations as set forth in the IGA, except as expressly provided herein.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first written above.

MERIDIAN SERVICE METROPOLITAN  
DISTRICT

  
\_\_\_\_\_  
Milton Gabrielski, Board President

STERLING RANCH METROPOLITAN  
DISTRICT NO. 1

  
\_\_\_\_\_  
James Morley, Board President

