



City of Fort Lupton

REGULAR MEETING AGENDA

Tuesday, September 7, 2021

7:00 PM

130 South McKinley Avenue

Zo Stieber, Mayor

Shannon Rhoda, Ward 1

Chris Ceretto, Ward 2

Mike Sanchez, Ward 3

David Crespino, Ward 1

Tommy Holton, Ward 2

Bruce Fitzgerald, Ward 3

You may join in person or join remotely by registering at:
<https://attendee.gotowebinar.com/register/8202213119026433036>

Pledge of Allegiance

Call to Order

Roll Call

Persons to Address Council - This portion of the Agenda is provided to allow members of the audience to present comments to the City Council. The City Council may not respond to your comments this evening, rather they may take your comments and suggestions under advisement or your question may be directed to the appropriate staff member for follow-up. Please limit the time of your comments to three (3) minutes - Mayor Stieber

Approval of Agenda

Review of Accounts Payables

a. September 7, 2021 Accounts Payable

Consent Agenda - Consent Agenda items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda items unless a Councilmember so requests, in which case the item may be removed/moved from the Consent Agenda.

a. August 17, 2021 City Council Meeting Minutes

b. August 31, 2021 City Council Special Meeting Minutes

c. Second Reading Ordinance 2021-1123 Adopt Ordinance 2021-1123 Annexing Land Legally Described in Exhibit "A" Known as the Raterink Annexation and Approving the Annexation Agreement

d. Second Reading Ordinance 2021-1124 Adopt Ordinance 2021-1124 Initially Zoning Land Known as the Raterink Initial Zoning, Legally Described in Exhibit A, to the 'A' Agricultural Zone District

e. (Correction to Ordinance Number) Ordinance 2021-1125 An Ordinance of the City Council of Fort Lupton Accepting the Richard Allen and Deborah L. Smith Public Right of Way Dedication for County Road 24

Action Memorandum

- a. AM 2021-139 Permit Application to Change, Alter, or Modify Licensed Premises Submitted by Ft Lupton Ristorante LLC DBA Wholly Stromboli at 410 Denver Avenue
- b. AM 2021-147 Adopting an Ordinance of the City Council of the City of Fort Lupton Enacting a New Article XII of Chapter 6 of the Fort Lupton Municipal Code Regarding the Regulations and Licensing of Regulated Marijuana Stores
- c. AM 2021-143 Accepting the 2022 Property/Casualty Preliminary Contribution Quotation From CIRSA Estimated at \$349,107
- d. AM 2021-144 Approval of an Ordinance Declaring That the Public Health, Safety, and General Welfare Require the Inclusion of the City of Fort Lupton Within the Metro Wastewater Reclamation District and That the City Council Desires to Have the City Included Therein Upon the Terms and Conditions Perscribed by the Metro Board of Directors
- e. AM 2021-145 Adopt Ordinance to Accept Public Right of Way From McIntosh Farm CO LLLP for 250 Feet of the Northern Portion of County Road 16
- f. AM 2021-146 Ratifying the Mayor's Signature for Contract Agreement with CDOT for State Highway Maintenance

Staff Reports

Mayor/Council Reports

Future City Events

- a. September 7, 2021 Upcoming Events

Adjourn



City of Fort Lupton

Council Check Report

By Check Number

Date Range: 08/18/2021 - 09/07/2021

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
Bank Code: Golf Course-Golf Course						
000024	ACE HARDWARE OF FORT LUPTON	08/24/2021	Regular	0.00	135.82	84631
89717	Invoice	08/01/2021	GOLF-REPAIR SUPPLIES-PRD SHOP	0.00	37.04	
90278	Invoice	08/14/2021	GOLF-FAN-PRD SHOP	0.00	45.98	
90287	Invoice	08/15/2021	GOLF-REPAIR SUPPLIES-PRD SHOP	0.00	52.80	
000160	BREAKTHRU BEVERAGE GROUP	08/24/2021	Regular	0.00	243.69	84632
340639301	Invoice	08/12/2021	GOLF-BEVERAGES-PRD SHOP	0.00	148.69	
340639302	Invoice	08/12/2021	GOLF-BEVERAGES-PRD SHOP	0.00	95.00	
000183	CALLAWAY GOLF SALES COMPANY	08/24/2021	Regular	0.00	2,954.77	84633
933635467	Invoice	08/03/2021	GOLF-SUPPLIES-PRD SHOP	0.00	2,954.77	
000239	CITY OF FORT LUPTON	08/24/2021	Regular	0.00	42,500.64	84634
FIN2021214	Invoice	08/02/2021	Golf ComData Purchases	0.00	1,860.57	
FIN2021224	Invoice	08/13/2021	GOLF-PAYROLL EXPENSES 7/24-8/6 & 8/9/21...	0.00	40,640.07	
000307	COMCAST CABLE COMM, LLC	08/24/2021	Regular	0.00	244.23	84635
6460120790 AUG...	Invoice	08/06/2021	GOLF-PHONE SERVICE 8/6-9/5/21	0.00	244.23	
002723	EAGLE ROCK COMPANY OF COLO	08/24/2021	Regular	0.00	169.00	84636
8102703	Invoice	08/12/2021	GOLF-BEVERAGES-PRD SHOP	0.00	169.00	
000567	HIGH COUNTRY BEVERAGE CORP	08/24/2021	Regular	0.00	1,038.10	84637
W-6036644	Invoice	08/16/2021	GOLF-BEVERAGES-PRD SHOP	0.00	1,038.10	
000735	LL JOHNSON DISTRIBUTING	08/24/2021	Regular	0.00	1,868.17	84638
1855268-01	Invoice	08/09/2021	GOLF-REPAIR SUPPLIES-MAINT	0.00	1,561.27	
1862631-00	Invoice	08/03/2021	GOLF-PAINT-MAINT	0.00	306.90	
000974	SAFE SYSTEMS INC	08/24/2021	Regular	0.00	139.19	84639
870192-1056	Invoice	08/08/2021	GOLF-SECURITY SYSTEM	0.00	139.19	
000999	SHAMROCK FOODS COMPANY	08/24/2021	Regular	0.00	3,492.79	84640
23425375	Invoice	08/12/2021	GOLF-FOOD-PRD SHOP	0.00	2,256.02	
23434210	Invoice	08/16/2021	GOLF-FOOD-PRD SHOP	0.00	1,236.77	
001052	SWIRE COCA-COLA, USA	08/24/2021	Regular	0.00	1,226.64	84641
13922207160	Invoice	08/10/2021	GOLF-BEVERAGES-PRD SHOP	0.00	695.74	
13922207240	Invoice	08/17/2021	GOLF-BEVERAGES-PRD SHOP	0.00	530.90	
001895	TERMINIX	08/24/2021	Regular	0.00	143.00	84642
410765036	Invoice	08/04/2021	GOLF-PEST CONTROL-PRD SHOP	0.00	143.00	
001183	WAXIE SANITARY SUPPLY	08/24/2021	Regular	0.00	125.92	84643
78973386	Invoice	08/01/2021	GOLF-JANITORIAL SUPPLIES-PRD SHOP	0.00	93.58	
80198482	Invoice	08/06/2021	GOLF-JANITORIAL SUPPLIES-PRD SHOP	0.00	54.64	
80213929	Invoice	08/12/2021	GOLF-JANITORIAL SUPPLIES-PRD SHOP	0.00	87.86	
CM78973386	Credit Memo	08/01/2021	GOLF-DISINFECTANT-PRD SHOP	0.00	-110.16	
000024	ACE HARDWARE OF FORT LUPTON	08/31/2021	Regular	0.00	15.46	84644
90342	Invoice	08/18/2021	GOLF-KEY SET-PRD SHOP	0.00	7.47	
90344	Invoice	08/18/2021	GOLF-NOZZLE GUN-PRD SHOP	0.00	7.99	
000044	AGFINITY INC	08/31/2021	Regular	0.00	1,462.69	84645
I56533	Invoice	08/01/2021	GOLF-FUEL-MAINT	0.00	1,462.69	
000138	BLACK CLOVER ENTERPRISES LLC	08/31/2021	Regular	0.00	671.29	84646

Council Check Report

Date Range: 08/18/2021 - 09/07/2021

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
86396	Invoice	08/17/2021	GOLF-SUPPLIES-PRD SHOP	0.00	671.29	
000239	CITY OF FORT LUPTON	08/31/2021	Regular	0.00	1,255.80	84647
FIN2021228	Invoice	08/19/2021	GOLF-REIMBURSE VERIZON-PRD SHOP	0.00	205.76	
FIN2021230	Invoice	08/19/2021	GOLF-REIMBURSE WORK COMP INS-PRD SH...	0.00	1,050.04	
002723	EAGLE ROCK COMPANY OF COLO	08/31/2021	Regular	0.00	1,434.03	84648
8099943	Invoice	08/19/2021	GOLF-BEVERAGES-PRD SHOP	0.00	346.38	
8099944	Invoice	08/19/2021	GOLF-BEVERAGES-PRD SHOP	0.00	1,087.65	
000567	HIGH COUNTRY BEVERAGE CORP	08/31/2021	Regular	0.00	1,527.35	84649
W-6042377	Invoice	08/23/2021	GOLF-BEVERAGES-PRD SHOP	0.00	967.35	
W-6042451	Invoice	08/23/2021	GOLF-BEVERAGES-PRD SHOP	0.00	560.00	
000735	LL JOHNSON DISTRIBUTING	08/31/2021	Regular	0.00	2,730.59	84650
1137905-00	Invoice	08/10/2021	GOLF-PARTS SUPPLIES-MAINT	0.00	1,677.44	
1863655-00	Invoice	08/16/2021	GOLF-SUPPLIES-MAINT	0.00	1,053.15	
000944	REPUBLIC NATIONAL DISTRIBUTING CO LLC	08/31/2021	Regular	0.00	236.80	84651
6254125	Invoice	08/18/2021	GOLF-BEVERAGES-PRD SHOP	0.00	161.90	
6254126	Invoice	08/18/2021	GOLF-BEVERAGES-PRD SHOP	0.00	74.90	
000999	SHAMROCK FOODS COMPANY	08/31/2021	Regular	0.00	1,320.23	84652
23443992	Invoice	08/19/2021	GOLF-FOOD-PRD SHOP	0.00	1,320.23	
001022	SOUTHERN GLAZER'S OF CO	08/31/2021	Regular	0.00	255.26	84653
2591813	Invoice	08/18/2021	GOLF-BEVERAGES-PRD SHOP	0.00	255.26	
000246	SRIXON/CLEVELAND GOLF/XX10	08/31/2021	Regular	0.00	1,361.59	84654
6524902 SO	Invoice	08/01/2021	GOLF-SUPPLIES-PRD SHOP	0.00	522.00	
6533059 SO	Invoice	08/01/2021	GOLF-SUPPLIES-PRD SHOP	0.00	113.73	
6536800 SO	Invoice	08/01/2021	GOLF-SUPPLIES-PRD SHOP	0.00	207.46	
6545298 SO	Invoice	08/03/2021	GOLF-SUPPLIES-PRD SHOP	0.00	518.40	
002812	THE HUNTINGTON NATIONAL BANK	08/31/2021	Regular	0.00	10,678.08	84655
7230693	Invoice	08/17/2021	GOLF-LEASE PAYMENT-MAINT	0.00	10,678.08	
001105	TOSHIBA FINANCIAL SERVICES	08/31/2021	Regular	0.00	231.45	84656
450833439	Invoice	08/16/2021	GOLF-8/10-9/10/21 COPIER LEASE	0.00	231.45	
001224	XCEL ENERGY-GAS	08/31/2021	Regular	0.00	138.31	84657
744446995	Invoice	08/17/2021	GOLF-AUG21 GAS BILL 7/19-8/17/21-PRD S...	0.00	138.31	
001301	AAA AUTO PARTS INC	09/07/2021	Regular	0.00	28.68	84658
121416	Invoice	09/01/2021	GOLF-OIL-MAINT	0.00	28.68	
000024	ACE HARDWARE OF FORT LUPTON	09/07/2021	Regular	0.00	121.08	84659
90216	Invoice	09/01/2021	GOLF-SAFETY SUPPLIES-MAINT	0.00	61.97	
90238	Invoice	09/01/2021	GOLF-RAIN GAUGE-MAINT	0.00	13.16	
90284	Invoice	09/01/2021	GOLF-BATTERIES-MAINT	0.00	41.96	
90498	Invoice	09/01/2021	GOLF-BRACE-PRD SHOP	0.00	3.99	
002254	ADIDAS AMERICA INC	09/07/2021	Regular	0.00	1,253.28	84660
6153683263	Invoice	09/01/2021	GOLF-SUPPLIES-PRD SHOP	0.00	198.78	
6153713372	Invoice	09/01/2021	GOLF-APPAREL-PRD SHOP	0.00	277.44	
6154416536	Invoice	09/01/2021	GOLF-APPAREL-PRD SHOP	0.00	777.06	
000160	BREAKTHRU BEVERAGE GROUP	09/07/2021	Regular	0.00	1,277.48	84661
340724231	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	666.17	
340806086	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	397.31	
340806087	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	88.00	
340806088	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	126.00	
000239	CITY OF FORT LUPTON	09/07/2021	Regular	0.00	57,024.22	84662
83121	Invoice	09/01/2021	GOLF-WATER BILLS 7/23-8/23/21	0.00	15,818.52	

Council Check Report

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Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
FIN2021233	Invoice	09/01/2021	GOLF-EAP FOR AUG21	0.00	4.55	
FIN2021237	Invoice	09/01/2021	GOLF-PAYROLL EXPENSE 8/7-8/20/21 PAID 8...	0.00	40,240.47	
FIN2021239	Invoice	09/01/2021	GOLF-REIMBURSE WORK COMP INV 205762...	0.00	960.68	
002723	EAGLE ROCK COMPANY OF COLO	09/07/2021	Regular	0.00	1,051.18	84663
8131662	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	57.73	
8131663	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	993.45	
000536	GOLF AND SPORT SOLUTIONS LLC	09/07/2021	Regular	0.00	617.32	84664
38328	Invoice	09/01/2021	GOLF-SAND-MAINT	0.00	617.32	
002175	GROSSEN BART BREWING COMPANY	09/07/2021	Regular	0.00	120.00	84665
21-80	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	120.00	
000567	HIGH COUNTRY BEVERAGE CORP	09/07/2021	Regular	0.00	796.60	84666
W-6047521	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	796.60	
000736	LOCKETT REFRIGERATION, LLC	09/07/2021	Regular	0.00	1,973.25	84667
5978	Invoice	09/01/2021	GOLF-ICE MACHINE REPAIR-PRD SHOP	0.00	1,973.25	
001724	NEXBELTS, LLC	09/07/2021	Regular	0.00	434.05	84668
234592	Invoice	09/01/2021	GOLF-SUPPLIES-PRD SHOP	0.00	591.55	
243022	Credit Memo	09/01/2021	GOLF-SUPPLIES-PRD SHOP	0.00	-157.50	
000862	O'REILLY AUTO PARTS	09/07/2021	Regular	0.00	104.99	84669
4489-313306	Invoice	09/01/2021	GOLF-BATT CHARGER-MAINT	0.00	104.99	
000913	POTESTIO BROTHERS EQUIPMENT	09/07/2021	Regular	0.00	113.65	84670
8651K	Invoice	09/01/2021	GOLF-SOLENOID-MAINT	0.00	113.65	
000999	SHAMROCK FOODS COMPANY	09/07/2021	Regular	0.00	1,133.96	84671
23462154	Invoice	09/01/2021	GOLF-FOOD-PRD SHOP	0.00	1,133.96	
001022	SOUTHERN GLAZER'S OF CO	09/07/2021	Regular	0.00	280.37	84672
2597944	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	280.37	
001052	SWIRE COCA-COLA, USA	09/07/2021	Regular	0.00	434.71	84673
22227200225	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	434.71	
001963	WASTE CONNECTIONS OF COLO, INC	09/07/2021	Regular	0.00	364.49	84674
5494720	Invoice	09/01/2021	GOLF-TRASH SRVC SEP21	0.00	215.41	
5494721	Invoice	09/01/2021	GOLF-TRASH SRVC SEPT21	0.00	149.08	
001183	WAXIE SANITARY SUPPLY	09/07/2021	Regular	0.00	161.67	84675
80244442	Invoice	09/01/2021	GOLF-JANITORIAL SUPPLIES-PRD SHOP	0.00	133.78	
80246374	Invoice	09/01/2021	GOLF-JANITORIAL SUPPLIES-PRD SHOP	0.00	27.89	
001207	WESTERN DISTRIBUTING INC	09/07/2021	Regular	0.00	318.00	84676
654004	Invoice	09/01/2021	GOLF-BEVERAGES-PRD SHOP	0.00	318.00	

Bank Code Golf Course Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	80	46	0.00	145,209.87
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	0	0	0.00	0.00
EFT's	0	0	0.00	0.00
	80	46	0.00	145,209.87

Council Check Report

Date Range: 08/18/2021 - 09/07/2021

Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
Bank Code: Pooled Cash-Pooled Cash						
000034	ADT SECURITY SYSTEM	08/24/2021	Regular	0.00	127.49	70099
080221	Invoice	08/02/2021	CPR-SECURITY-COM CTR	0.00	127.49	
000037	ADVANCED URGENT CARE AND OCC MED	08/24/2021	Regular	0.00	80.00	70100
70867	Invoice	08/12/2021	GF-RANDOM EMPLOYEE SCREEN-HR	0.00	80.00	
000041	AGFINITY	08/24/2021	Regular	0.00	173.00	70101
H64262	Invoice	08/03/2021	GF-CHEMICALS	0.00	173.00	
000136	BG'S JAPANESE DESIGNS	08/24/2021	Regular	0.00	324.00	70102
6260	Invoice	08/01/2021	GF-APPAREL-CITY ADM	0.00	324.00	
002835	BRANTON COMPANIES LLC	08/24/2021	Regular	0.00	2,750.00	70103
1041	Invoice	08/13/2021	GF-SOCIAL MEDIA MANAGEMENT-CITY ADM	0.00	2,750.00	
000230	CINTAS FIRST AID & SAFETY	08/24/2021	Regular	0.00	36.30	70104
5072804341	Invoice	08/16/2021	REC-FIRST AID SUPPLIES	0.00	36.30	
002651	COLORADO COMMUNITY MEDIA	08/24/2021	Regular	0.00	250.72	70105
33352	Invoice	08/13/2021	GF-PUBLIC NOTICES	0.00	250.72	
002266	COLORADO PAVING INC	08/24/2021	Regular	0.00	141,594.42	70106
2021-03	Invoice	08/01/2021	SST-Kahil Reconstruction-Streets	0.00	141,594.42	
001517	CORE&MAIN LP	08/24/2021	Regular	0.00	135.53	70107
073021	Invoice	08/01/2021	GF-SERVICE CHARGES-FIN	0.00	135.53	
002730	D2C ARCHITECTS	08/24/2021	Regular	0.00	9,800.00	70108
202101-004	Invoice	08/16/2021	GF-Shooting Range Park Design-Misc	0.00	9,800.00	
002847	DUN-RITE MANUFACTURING LLC	08/24/2021	Regular	0.00	1,500.00	70109
81821	Invoice	08/18/2021	UF-HYDRANT METER DEPOSIT REFUND	0.00	1,500.00	
000429	EMPIRE PORTABLE RESTROOMS	08/24/2021	Regular	0.00	1,218.75	70110
59498	Invoice	08/17/2021	GF-RESTROOMS-PARKS	0.00	542.00	
59636	Invoice	08/17/2021	GF-RESTROOMS-PARKS	0.00	123.95	
59641	Invoice	08/18/2021	CPR-RESTROOMS-COM CTR	0.00	552.80	
000455	FASTENAL COMPANY 01COFTL	08/24/2021	Regular	0.00	15.35	70111
COFTL178611	Invoice	08/13/2021	GF-PARTS-PW SHOP	0.00	15.35	
000513	G & G EQUIPMENT	08/24/2021	Regular	0.00	95.64	70112
114243	Invoice	08/01/2021	CEM-EQUIPMENT REPAIRS	0.00	67.85	
115323	Invoice	08/16/2021	GF-EQUIPMENT MAINTENANCE-PARKS	0.00	27.79	
001558	GARY L RIGG	08/24/2021	Regular	0.00	300.00	70113
081621	Invoice	08/16/2021	GF-JULY 4TH CELEBRATION	0.00	300.00	
002222	GREELEY LOCK & KEY	08/24/2021	Regular	0.00	5,335.68	70114
10060	Invoice	08/13/2021	Add IT Office and Back Control Sys to Brivo	0.00	4,650.24	
10062	Invoice	08/01/2021	Annual Brivo Door System	0.00	685.44	
001930	HUMANA HEALTH PLAN INC	08/24/2021	Regular	0.00	80,017.31	70115
379450671	Invoice	08/16/2021	GF-SEPT21 HUMANA PAYMENT	0.00	80,017.31	
000597	INSIGHT PUBLIC SECTOR INC	08/24/2021	Regular	0.00	481.33	70116
1100862116	Invoice	08/12/2021	vmWare WorkstationPro16 (3 licenses)	0.00	481.33	
002849	JACKLYN WHITE	08/24/2021	Regular	0.00	135.00	70117
2006723	Invoice	08/13/2021	REC-SWIM LESSONS REFUND	0.00	135.00	
000670	K & K LASER CREATIONS LLC	08/24/2021	Regular	0.00	519.53	70118
32486	Invoice	08/01/2021	GF-EMPLOYEE APPRECIATION-CITY ADM	0.00	519.53	
000691	KONE INC	08/24/2021	Regular	0.00	140.80	70119

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Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
959935894	Invoice	08/01/2021	REC-MAINTENANCE	0.00	140.80	
000735	LL JOHNSON DISTRIBUTING	08/24/2021	Regular	0.00	81.75	70120
1137454-00	Invoice	08/01/2021	GF-PARTS-PARKS	0.00	67.77	
1137454-01	Invoice	08/01/2021	GF-PARTS-PARKS	0.00	13.98	
000811	MOTOROLA SOLUTIONS	08/24/2021	Regular	0.00	9,577.08	70121
8281150379	Invoice	08/01/2021	Radios for New Patrol Vehicles	0.00	9,577.08	
000865	OFFICE DEPOT	08/24/2021	Regular	0.00	74.24	70122
186461085001	Invoice	08/03/2021	GF-OFFIE SUPPLIES-ADMIN	0.00	39.45	
186461424001	Invoice	08/04/2021	GF-OFFICE SUPPLIES-ADMIN	0.00	34.79	
000862	O'REILLY AUTO PARTS	08/24/2021	Regular	0.00	4.99	70123
4489-319663	Invoice	08/17/2021	GF-VEHICLE MAINTENANCE-PARKS	0.00	4.99	
000916	PRAIRIE MOUNTAIN MEDIA	08/24/2021	Regular	0.00	264.00	70124
21CW3080	Invoice	08/11/2021	UF-CASE #21CW3080 WATER COURT	0.00	264.00	
000931	R & L TIRES	08/24/2021	Regular	0.00	25.00	70125
40740	Invoice	08/13/2021	GF-TIRE MOUNTING-STREETS	0.00	25.00	
002848	ROYAL RESTROOMS MOUNTAIN WEST LLC	08/24/2021	Regular	0.00	1,800.00	70126
2711	Invoice	08/18/2021	GF-RESTROOMS	0.00	1,800.00	
001075	THE CONSOLIDATED MUTUAL	08/24/2021	Regular	0.00	203.64	70127
081121	Invoice	08/11/2021	UF-JUL21 ELECTRICAL PERRY PIT-DISCHARGE...	0.00	139.95	
081221	Invoice	08/11/2021	UF-JUL21 ELECTRICAL PERRY PIT-WELL C	0.00	31.39	
81121	Invoice	08/11/2021	UF-JUL21 ELECTRICAL PERRY PIT-WELL B	0.00	32.30	
001101	TODD HODGES DESIGN LLC	08/24/2021	Regular	0.00	9,018.76	70128
3346	Invoice	08/16/2021	GF-PLANNING SERVICES 8/2-8/15/21	0.00	9,018.76	
001105	TOSHIBA FINANCIAL SERVICES	08/24/2021	Regular	0.00	1,930.45	70129
450315999	Invoice	08/06/2021	GF-AUG21 COPIER LEASE/OVERAGE	0.00	1,930.45	
001138	UNITED POWER	08/24/2021	Regular	0.00	4,328.37	70130
21042	Invoice	08/01/2021	GF-STREET LIGHT REPLACEMENT-STREETS	0.00	4,328.37	
001137	UNITED POWER	08/24/2021	Regular	0.00	33.53	70131
22185900 JUL21	Invoice	08/01/2021	GF-6/30-7/31/21 UTILITY SERVICE FULTON P...	0.00	33.53	
001153	VALLEY FIRE EXTINGUISHER	08/24/2021	Regular	0.00	162.00	70132
147012	Invoice	08/09/2021	GF-ANNUAL INSPECTION-B&G	0.00	162.00	
002132	VECTOR DISEASE CONTROL	08/24/2021	Regular	0.00	2,967.70	70133
PI-A00009575	Invoice	08/15/2021	AM2021-045 Misquito Management	0.00	2,967.70	
000216	CHAMBER OF COMMERCE	08/31/2021	Regular	0.00	36.00	70134
5364	Invoice	08/20/2021	GF-CHAMBER LUNCHEON	0.00	36.00	
000268	COLORADO ANALYTICAL LAB	08/31/2021	Regular	0.00	46.00	70135
210602042	Invoice	08/01/2021	UF-WATER TESTING-W LINES	0.00	46.00	
000307	COMCAST CABLE COMM, LLC	08/31/2021	Regular	0.00	220.03	70136
164533 SEP21	Invoice	08/13/2021	GFF-8/23-9/22/21 INTERNET SERVICE-PW S...	0.00	220.03	
000312	CONNECT 4 EVENTS AND ENTERTAINMENT LLC	08/31/2021	Regular	0.00	2,750.00	70137
1203322	Invoice	08/25/2021	GF-STAGE EQUIPMENT	0.00	2,750.00	
000326	COYOTE CREEK GOLF COURSE	08/31/2021	Regular	0.00	3,060.00	70138
82321	Invoice	08/23/2021	GF-TRAPPER GOLF- 4 TEAMS	0.00	1,440.00	
82321b	Invoice	08/23/2021	GF-JACOBS GOLF-4 TEAMS	0.00	1,620.00	
000372	DELL MARKETING LP	08/31/2021	Regular	0.00	1,143.20	70139
10512296203	Invoice	08/18/2021	Dell Warranty (1yr ProSupport R430/N4000)	0.00	1,143.20	

Council Check Report

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Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
001089	ERGOMED	08/31/2021	Regular	0.00	310.00	70140
7244213	Invoice	08/01/2021	GF-PRE-EMPLOYMENT SCREEN-HR	0.00	310.00	
000442	ESRI INC	08/31/2021	Regular	0.00	15,000.00	70141
94085174	Invoice	08/05/2021	ESRI - Annual Maintenance (10/30/2021-10...	0.00	15,000.00	
000597	INSIGHT PUBLIC SECTOR INC	08/31/2021	Regular	0.00	32,826.68	70142
1100864541	Invoice	08/21/2021	Network Equipment - Premier Support (3yr) ...	0.00	32,826.68	
002677	JAMAR TECHNOLOGIES, INC	08/31/2021	Regular	0.00	3,958.68	70143
54396	Invoice	08/18/2021	GF-RADAR RECORDER KIT-STREETS	0.00	3,958.68	
000745	LOUIS A GRESH	08/31/2021	Regular	0.00	1,500.00	70144
AUG21	Invoice	08/24/2021	GF-ARRAIGNMENTS & TRIAL-COURT	0.00	1,500.00	
000862	O'REILLY AUTO PARTS	08/31/2021	Regular	0.00	162.58	70145
4489-312840	Invoice	08/01/2021	UF-EQUIPMENT REPAIR- S LINES	0.00	104.90	
4489-314902	Invoice	08/01/2021	GF-VEHICLE REPAIR-STREETS	0.00	57.68	
001943	PINNACOL ASSURANCE	08/31/2021	Regular	0.00	14,246.25	70146
20576279	Invoice	08/16/2021	WORK COMP INS. 8 OF 9	0.00	14,246.25	
000935	RAQUEL FERSZT	08/31/2021	Regular	0.00	375.00	70147
82463	Invoice	08/17/2021	GF-TRANSLATOR SERVICES-COURT	0.00	375.00	
001035	STANDARD INSURANCE CO.	08/31/2021	Regular	0.00	5,498.64	70148
759761 SEP21	Invoice	08/17/2021	GF-STANDARD INSURANCE	0.00	5,498.64	
002694	SYMMETRY ENERGY SOLUTIONS LLC	08/31/2021	Regular	0.00	3,027.41	70149
11524304	Invoice	08/25/2021	REC-NATURAL GAS DELIVERY	0.00	3,027.41	
001126	TYLER TECHNOLOGIES	08/31/2021	Regular	0.00	525.00	70150
25-346169	Invoice	08/26/2021	UF-METER READ INTERFACE	0.00	525.00	
001963	WASTE CONNECTIONS OF COLO, INC	08/31/2021	Regular	0.00	225.98	70151
5495366	Invoice	08/16/2021	GF-AUG21 TRASH SERVICE-PARKS	0.00	122.54	
5495876	Invoice	08/16/2021	CEM-AUG21 TRASH SERVICE	0.00	103.44	
001203	WELD COUNTY SHERIFF'S OFFICE	08/31/2021	Regular	0.00	57.97	70152
1830 072021	Invoice	07/20/2021	GF-JAIL FEES-COURT	0.00	57.97	
001224	XCEL ENERGY-GAS	08/31/2021	Regular	0.00	99.72	70153
745030455	Invoice	08/23/2021	GF-CITY HALL & GENERATOR GAS 7/19-8/17...	0.00	99.72	
000037	ADVANCED URGENT CARE AND OCC MED	09/07/2021	Regular	0.00	55.00	70154
71215	Invoice	09/01/2021	GF-EMPLOYMENT SCREEN-HR	0.00	55.00	
000081	AMERICAN SPRINKLER, INC	09/07/2021	Regular	0.00	960.00	70155
3239	Invoice	08/23/2021	GF-SPRINKLER INSPECTION-B&G	0.00	430.00	
3240	Invoice	08/23/2021	CPR-SPRINKLER INSPECTION-COM CTR	0.00	530.00	
002853	BUCKEYE CLEANING CENTER	09/07/2021	Regular	0.00	1,331.40	70156
90349797	Invoice	09/01/2021	REC-JANITORIAL SUPPLIES	0.00	1,331.40	
000239	CITY OF FORT LUPTON	09/07/2021	Regular	0.00	51,554.55	70157
8312021	Invoice	09/01/2021	GF-CITY WATER BILLS 7/23-8/23/21	0.00	51,554.55	
000242	CIVICPLUS	09/07/2021	Regular	0.00	5,083.07	70158
216020	Invoice	09/01/2021	Civic Plus Annual Renewal (Hosting/Support...	0.00	5,083.07	
001949	CIVIL RESOURCES LLC	09/07/2021	Regular	0.00	2,250.00	70159
19-305.01.14	Invoice	08/27/2021	UF-LAGOON MINING ENGINEERING WWTP	0.00	2,250.00	
000247	CLIFTONLARSONALLEN LLP	09/07/2021	Regular	0.00	735.00	70160
2989369	Invoice	08/30/2021	GF-BENEFITS PLAN CONSULTING-HR	0.00	735.00	
000267	COLONIAL LIFE	09/07/2021	Regular	0.00	105.96	70161

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Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
7816820-0901704	Invoice	09/01/2021	GF-SUPPLEMENTAL INS FOR AUG21	0.00	105.96	
002651	COLORADO COMMUNITY MEDIA	09/07/2021	Regular	0.00	31.40	70162
34473	Invoice	09/01/2021	GF-PUBLIC NOTICES	0.00	31.40	
000306	COMCAST BUSINESS	09/07/2021	Regular	0.00	2,091.76	70163
128531048	Invoice	08/15/2021	GF-PHONE SRVC 8/15-9/14/21	0.00	2,091.76	
000307	COMCAST CABLE COMM, LLC	09/07/2021	Regular	0.00	543.44	70164
147405 SEP21	Invoice	08/20/2021	CPR-INTERNET SRVC-MUSEUM	0.00	176.66	
646 0117309 AUG..	Invoice	09/01/2021	REC-CABLE/MUSIC	0.00	267.07	
6460159244 AUG..	Invoice	08/21/2021	Comcast 0159244	0.00	99.71	
000410	E-470 PUBLIC HIGHWAY AUTHORITY	09/07/2021	Regular	0.00	6.70	70165
2064966832	Invoice	08/21/2021	GF-HIGHWAY TOLLS-PD	0.00	6.70	
002568	FORT LUPTON CAR WASH	09/07/2021	Regular	0.00	319.00	70166
207	Invoice	08/01/2021	GF-CAR WASH-PD	0.00	319.00	
000493	FORT LUPTON VISION CENTER	09/07/2021	Regular	0.00	205.00	70167
82721 LD	Invoice	08/27/2021	GF-SAFETY GLASSES-LEONARD ADAME	0.00	90.00	
82721 MD	Invoice	08/27/2021	GF-SAFETY GLASSES-MANUAL ADAME	0.00	115.00	
002181	FRP APPAREL	09/07/2021	Regular	0.00	450.00	70168
8317	Invoice	09/01/2021	REC-SHIRTS	0.00	450.00	
001919	FUREVERDOG RESCUE AND BOARDING	09/07/2021	Regular	0.00	210.00	70169
81021	Invoice	08/10/2021	GF-BOARDING-COM SRV	0.00	210.00	
001979	GUADALUPE GALLEGOS	09/07/2021	Regular	0.00	351.48	70170
82721	Invoice	08/27/2021	GF-REIMBURSEMENT-PD	0.00	351.48	
000596	INLAND POTABLE SERVICES, INC.	09/07/2021	Regular	0.00	14,690.00	70171
C07-082121	Invoice	09/01/2021	UF- WATER TANK INSPECTION & CLEANING	0.00	14,690.00	
002854	IRON SPOKE REUNION	09/07/2021	Regular	0.00	500.00	70172
10381	Invoice	09/01/2021	GF-TRAPPERS DAY BAND	0.00	500.00	
000847	NORMAN'S MEMORIALS INC.	09/07/2021	Regular	0.00	120.00	70173
82721	Invoice	09/01/2021	CEM-JEANETTE WALKER MEMORIAL	0.00	120.00	
002265	QUADIENT FINANCE USA INC	09/07/2021	Regular	0.00	345.10	70174
7446 AUG21	Invoice	09/01/2021	GF-POSTAGE RECHARGES	0.00	345.10	
000932	R & M SERVICES	09/07/2021	Regular	0.00	523.93	70175
10593	Invoice	08/01/2021	GF-VEHICLE MAINTENANCE-PD	0.00	83.61	
10594	Invoice	07/15/2021	GF-TIRE REPAIR-PD	0.00	10.00	
10595	Invoice	08/01/2021	GF-VEHICLE MAINTENANCE-PD	0.00	79.62	
10596	Invoice	08/01/2021	GF-TIRES-PD	0.00	350.70	
001624	STATE OF COLORADO	09/07/2021	Regular	0.00	2,580.15	70176
2774-22	Invoice	08/26/2021	UF-BILL PRINTING/LATE NOTICES-UB	0.00	2,580.15	
001040	STERICYCLE	09/07/2021	Regular	0.00	61.00	70177
3005673798	Invoice	09/01/2021	REC-BIOHAZARD	0.00	61.00	
001069	TEQUILA YOUNG	09/07/2021	Regular	0.00	475.00	70178
82521	Invoice	08/25/2021	GF-TRAPPERS ENTERTAINMENT	0.00	475.00	
002852	TERRY GALE	09/07/2021	Regular	0.00	380.00	70179
82621	Invoice	08/26/2021	REC-SENIOR TRIP RAMBLER RANCH8/26/21	0.00	380.00	
001101	TODD HODGES DESIGN LLC	09/07/2021	Regular	0.00	10,042.50	70180
3347	Invoice	08/30/2021	GF-PLANNING SERVICES 8/16-8/29/21-PLAN...	0.00	10,042.50	
001105	TOSHIBA FINANCIAL SERVICES	09/07/2021	Regular	0.00	428.83	70181

Council Check Report

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Vendor Number	Vendor Name	Payment Date	Payment Type	Discount Amount	Payment Amount	Number
Payable #	Payable Type	Post Date	Payable Description	Discount Amount	Payable Amount	
451150437	Invoice	09/01/2021	GF-BSMT COPIER LEASE/OVERAGE	0.00	428.83	
001120	TRUDILIGENCE LLC	09/07/2021	Regular	0.00	157.16	70182
42372	Invoice	09/01/2021	GF-BACKGROUND CHECKS	0.00	157.16	
001153	VALLEY FIRE EXTINGUISHER	09/07/2021	Regular	0.00	732.00	70183
147077	Invoice	08/12/2021	GF-ANNUAL INSPECTION-PD	0.00	732.00	
001183	WAXIE SANITARY SUPPLY	09/07/2021	Regular	0.00	57.98	70184
80244269	Invoice	08/25/2021	GF-JANITORIAL SUPPLIES-PARKS	0.00	57.98	
001198	WELD COUNTY PUBLIC HEALTH	09/07/2021	Regular	0.00	150.00	70185
IN0029070	Invoice	08/10/2021	GF-EVENT APP	0.00	150.00	
001224	XCEL ENERGY-GAS	09/07/2021	Regular	0.00	323.83	70186
745964282	Invoice	09/01/2021	GF-AUG21 GAS BILL	0.00	323.83	
002715	ENTERPRISE FM TRUST	08/20/2021	Bank Draft	0.00	2,704.41	DFT0001757
2680	Invoice	08/05/2021	GF-VEHICLE LEASES	0.00	2,704.41	
000119	BANK OF COLORADO	08/27/2021	Bank Draft	0.00	5,843.08	DFT0001775
INV0001025	Invoice	08/27/2021	HSA DISTRIBUTION	0.00	5,843.08	
000119	BANK OF COLORADO	08/27/2021	Bank Draft	0.00	601.45	DFT0001776
INV0001026	Invoice	08/27/2021	HSA DISTRIBUTION	0.00	601.45	
001416	VALIC_1	08/27/2021	Bank Draft	0.00	29,325.21	DFT0001777
INV0001027	Invoice	08/27/2021	VALIC - 457(b) \$ Contributions	0.00	29,325.21	
001265	IRS	08/27/2021	Bank Draft	0.00	53,939.05	DFT0001778
INV0001028	Invoice	08/27/2021	Federal Withholding	0.00	53,939.05	
001418	CO DEPARTMENT OF REVENUE	08/27/2021	Bank Draft	0.00	9,069.81	DFT0001779
INV0001029	Invoice	08/27/2021	CO Withholding	0.00	9,069.81	
001416	VALIC_1	08/30/2021	Bank Draft	0.00	110.56	DFT0001780
INV0001030	Invoice	08/30/2021	VALIC - Regular Plan Retirement Contributio...	0.00	110.56	
001265	IRS	08/30/2021	Bank Draft	0.00	247.57	DFT0001781
INV0001031	Invoice	08/30/2021	Federal Withholding	0.00	247.57	
001418	CO DEPARTMENT OF REVENUE	08/30/2021	Bank Draft	0.00	39.72	DFT0001782
INV0001032	Invoice	08/30/2021	CO Withholding	0.00	39.72	
000465	FIRE & POLICE PENSION ASC	08/27/2021	Bank Draft	0.00	1,640.16	DFT0001783
82721	Invoice	08/27/2021	GF-FPPA PAYMENT FOR PAYROLL 8/27/21-PD	0.00	1,640.16	

Bank Code Pooled Cash Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	106	88	0.00	458,422.74
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	10	10	0.00	103,521.02
EFT's	0	0	0.00	0.00
	116	98	0.00	561,943.76

All Bank Codes Check Summary

Payment Type	Payable Count	Payment Count	Discount	Payment
Regular Checks	186	134	0.00	603,632.61
Manual Checks	0	0	0.00	0.00
Voided Checks	0	0	0.00	0.00
Bank Drafts	10	10	0.00	103,521.02
EFT's	0	0	0.00	0.00
	196	144	0.00	707,153.63

Fund Summary

Fund	Name	Period	Amount
600	GOLF ENTERPRISE FUND	8/2021	77,600.89
600	GOLF ENTERPRISE FUND	9/2021	67,608.98
999	POOLED CASH/CONSOLIDATED CASH	8/2021	464,092.52
999	POOLED CASH/CONSOLIDATED CASH	9/2021	97,851.24
			707,153.63

RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 17, 2021

The City Council of the City of Fort Lupton met in a regular session at the City Complex, 130 South McKinley Avenue, the regular meeting place of the City Council, on Tuesday, August 17, 2021. Due to the COVID-19 virus, the meeting was held with remote access provided through GoToWebinar. Mayor Zo Stieber called the meeting to order at 7:00 p.m. and invited everyone to join her in the Pledge of Allegiance.

ROLL CALL

Mari Peña, City Clerk, called the roll. Those present were Mayor Zo Stieber and Councilmembers Chris Ceretto, Michael Sanchez, and Bruce Fitzgerald. Councilmember David Crespín participated remotely through GoToWebinar. Councilmember Tommy Holton participated by phone.

Also present were City Administrator, Chris Cross, City Clerk, Mari Peña, City Attorney, Andy Ausmus, Police Chief, John Fryar, Planning Director, Todd Hodges, and Finance Director, Leann Perino.

PERSONS TO ADDRESS COUNCIL

Serafin Bachicha with Have a Heart thanked Council for support throughout the years and invited the Council to donate and attend the Have a Heart Softball Tournament at the Pierson Park, September 24, 2021 through September 26, 2021.

It was moved by Bruce Fitzgerald and seconded by Tommy Holton to approve that the cost for the Have a Heart Softball Tournament to be paid by the Fort Lupton Recreation Center. Motion passed unanimously on a roll call vote.

APPROVAL OF AGENDA

It was moved by Tommy Holton and seconded by Bruce Fitzgerald to approve the Agenda as presented. Motion passed unanimously on a voice vote.

REVIEW OF ACCOUNTS PAYABLES

Council reviewed the August 17, 2021, payables; there were no questions or comments from the Mayor or Council.

CONSENT AGENDA

It was moved by Chris Ceretto and seconded by Bruce Fitzgerald to approve the Consent Agenda as presented with the following items: August 3, 2021 City Council Meeting Minutes, Ratify Mayor Stieber's Signature on Northern Colorado Water Conservancy Districts (NCWCD) Windy Gap Farming Escrow Agreement (AM 2021-131), Approving Resolution 2021R051 A RESOLUTION OF THE CITY COUNCIL OF FORT LUPTON RATIFYING THE MAYOR'S APPOINTMENT OF EVELYN HARLAN TO THE FORT LUPTON PUBLIC AND SCHOOL LIBRARY BOARD FOR A TERM TO EXPIRE AUGUST 17, 2025 (AM 2021-132), Approving the Intergovernmental Agreement With the Board of County Commissioners of the

RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 17, 2021

County of Weld and the Weld County Clerk and Recorder Concerning the Administration of the November 2, 2021 Coordinated Election With the City of Fort Lupton and Designating Maricela Peña as Election Officer for the City (AM 2021-133), Adopt Ordinance 2021-1123 A
ORDINANCE OF THE CITY COUNCIL OF FORT LUPTON ACCEPTING THE RICHARD ALLEN AND DEBORAH L. SMITH PUBLIC RIGHT OF WAY DEDICATION FOR CR 24 LOCATED IN THE SOUTHEAST ¼ OF SECTION 3, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, WELD COUNTY, COLORADO (AM 2021-134). Motion passed unanimously on roll call vote.

ACTION MEMORANDUM

Second Reading Ordinance 2021-1114 An Ordinance Enacting a New Article XII of Chapter 6 of the Fort Lupton Municipal Code Regarding the Regulations and Licensing of Medical Marijuana Stores (AM 2021-122)

Mari Peña, City Clerk, stated that Council has directed Staff to withdraw the Ordinance and complete a combined Ordinance, which will be presented at a later date.

The Second Reading of Ordinance 2021-1114 failed due to lack of motion.

Second Reading Ordinance 2021-1115 An Ordinance Enacting a New Article XIII of Chapter 6 of the Fort Lupton Municipal Code Regarding the Regulations and Licensing of Retail Marijuana Stores (AM 2021-123)

Mari Peña, City Clerk, stated that Council has directed Staff to withdraw the Ordinance and complete a combined Ordinance, which will be presented at a later date

The Second Reading of Ordinance 2021-1115 failed due to lack of motion.

AM 2021-135 Approving a Retention Bonus to 12 Police Officers for Longevity for an Amount of \$20,664 Allocated from the General Fund

The item would allocate an officer retention bonus of \$3,000 to police officers. This bonus would be paid in two payments of \$1,500 each, October 1, 2021 and April 1, 2022 to officers who are currently employed by the police department and who continue that employment for one year based on the payment dates. The cost would be \$20,664 in 2021 and \$25,830 in 2022. This request would approve a retention bonus to encourage continued employment with the Police Department during the next year.

Chief Fryar stated that this was one bonus to be paid in two parts. Part 1 would be paid from the 2021 budget and part 2 would be budgeted and paid in 2022. Chief also stated that there is money in the current budget.

It was moved by Bruce Fitzgerald and seconded by Chris Ceretto to approve a Retention Bonus to 12 Police Officers for Longevity for an Amount of \$20,664 Allocated from the General Fund.

RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 17, 2021

Motion passed unanimously on a roll call vote. Councilmember Holton stated that he didn't want the allocation to come from the 2022 budget without review by the Council.

AM 2021-136 Approve a Recruiting Bonus to 4 Police Officers for an Amount not to Exceed \$13,776 Allocated from the General Fund

The item would allocate a hiring bonus of \$3,000 to police officers. This bonus would be paid in two payments of \$1,500 each, based upon their hiring date and satisfactory completion of the Field Training Program. This bonus' continuation is temporary until vacancies are filled or the Council rescinds approval. The maximum cost of this bonus would be \$13,776.

This request would approve a hiring bonus to encourage prospective officer applicants to apply, qualify and complete Field Officer Training requirements. John Fryar, Police Chief, discussed the hiring bonus that will be paid in two separate parts. Chief Fryar explained that the \$13,776 included tax and benefits.

There were no questions from the Council, however Councilmember Holton indicated that his comment would be the same as before.

It was moved by Chris Ceretto and seconded by Bruce Fitzgerald to approve a Recruiting Bonus to 4 Police Officers for an Amount not to Exceed \$13,776 Allocated from the General Fund.

Councilmember Holton asked for clarification of when the installments would be provided. Chief Fryar stated that when the officer would be able to work by himself/herself, the second installment would be paid.

Motion passed unanimously on a roll call vote.

AM 2021-137 Approving the Change to the Police Department From a Solely Merit Based Pay Program to a Merit Plus Pay Progression Program Beginning September 4, 2021

This item would institute a merit plus time based pay progression system for Police Officers, Master Police Officers, Investigators, and Police Sergeants. This AM provides two options for consideration, Option 1 with a cost of \$44,769 for 2021 and \$122,059 for 2022 or Option 2 with a cost of \$44,769 for 2021 and \$186,196 for 2022. The effective date of this change would be September 4, 2021.

This request is to approve either Option 1 or Option 2 that would institute a merit and time based pay progression system for police officers, master police officers, investigators and police sergeants.

The 2022 Budget for the police department is based on current wages and a 5% merit increase mid-year. This is the normal budget estimate procedure. Option 1 and Option 2 are the increase to the 2022 Budget for salaries and wages.

RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 17, 2021

	<u>2021</u>	<u>2022</u> <u>Budget</u>	<u>2022</u> <u>Option 1</u>	<u>2022</u> <u>Option 2</u>
Wages	\$ 39,117	\$1,794,745	\$ 106,424	\$ 162,337
Taxes, FPPA, VALIC (9.7%)	5,652	497,238	15,635	23,859
Total Cost	<u>\$ 44,769</u>	<u>\$2,291,983</u>	<u>\$ 122,059</u>	<u>\$ 186,196</u>

There should be sufficient 2021 budget remaining in the Police Departments payroll accounts. They PD has used 53% (\$1,488,022) of its total personnel budget, including health benefits, of \$2,808,280. The payroll budget should be 60% expended as of August 13, 2021. They are under budget by \$207,544.

John Fryar, Police Chief, presented on the two different program options to Council. Chief Fryar explained that option one is among the lower third portion of the eight compared agencies and option two is just below the mid-point of the eight compared agencies.

Council discussed approving option one now and revisiting option two at a later date when the budget is approved.

It was moved by Chris Ceretto and seconded by Bruce Fitzgerald to approve the Change to the Police Department From a Solely Merit Based Pay Program to a Merit Plus Pay Progression Program Option 1 Beginning September 4, 2021. Motion passed unanimously on a roll call vote.

AM 2021-138 Approve an Increase in City and Employee's VALIC Contribution from 9.7% to 10.2% Effective January 1, 2022

This item would increase both the City and Employee's contributions from 9.7% to 10.2% as the initial increase to assist in recruiting and retention of police officers. The cost would be determined by which option (1 - \$19,814 or 2 - \$25,517) that is selected by Council. The effective start date for this benefit would be January 1, 2022.

This request is to approve the first of three proposed incremental increases to the Police Department's retirement contributions by both the City and the Police Department Certified Employees. This would increase the contribution rates from 9.7% to 10.2%.

This increase is intended to assist in police officer recruitment and retention as most competing agencies as participants in FPPA with a committed goal of 14.5% for the governmental agencies and the employees.

The 2022 Budget for the police department is the 9.7% Valic Contribution on current wages and a 5% merit increase mid-year. Option 1 and Option 2 are the increase to the 2022 Budget.

RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 17, 2021

	<u>2022</u> <u>Budget</u>	<u>2022</u> <u>Option 1</u>	<u>2022</u> <u>Option 2</u>
Wages Subject to VALIC	\$1,794,745	\$ 1,901,169	\$ 1,957,082
9.7 % VALIC	174,105	184,424	189,847
10.2% VALIC Increase		9,495	9,775
Increase compared to 2022 Budget		19,814	25,517

John Fryar, Police Chief, presented on the VALIC contribution options.

Councilmember Bruce Fitzgerald asked if this contribution change was for all employees or just the Police Department. Chief Fryar confirmed this change is only for the Police Department.

It was moved by Tommy Holton and seconded by Chris Ceretto to approve an Increase in City and Employee's VALIC Contribution from 9.7% to 10.2% Effective January 1, 2022 for the Police Department. Motion passed unanimously on a roll call vote.

STAFF

John Fryar, Police Chief, provided a report for the month of July. He stated that Master Officer and DRE Garrett Hackett has been nominated as DUI Officer of the Year from Mother's Against Drunk Driving, and the selection process will occur in September.

Mari Peña, City Clerk, reported on the upcoming election on November 2, 2021. She stated that there has been a lot of interest in running for a position and Monday, August 23, 2021 at 5:00 P.M. will be the last day to submit petitions to the City Clerk's Office.

Chris Cross, City Administrator, reported on the painting work on South Rollie Avenue near Safeway. He stated that the painting should be done and the road will be open soon.

MAYOR/COUNCIL REPORTS

There were no reports from the Mayor or Council.

FUTURE CITY EVENTS

August 20, 2021	Jacobs Golf Tournament, Coyote Creek Golf Course
August 31, 2021	Town Hall Meeting, 130 S. McKinley Ave. 6:30 p.m.
September 6, 2021	City Offices Closed in Observance of Labor Day
September 7, 2021	City Council Meeting, 130 S. McKinley Ave. 7:00 p.m.
September 10-11, 2021	Trapper Days, Downtown Fort Lupton
September 14, 2021	Town Hall Meeting, 130 S. McKinley Ave. 6:30 p.m.

**RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 17, 2021**

September 21, 2021

City Council Meeting, 130 S. McKinley Ave. 7:00 p.m.

ADJOURNMENT

Mayor Stieber adjourned the meeting at 7:33 p.m.

Submitted by,

Maricela Peña, City Clerk

Approved by City Council

Zo Stieber, Mayor

RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 31, 2021

The City Council of the City of Fort Lupton met in a special meeting at the City Complex, 130 South McKinley Avenue, the regular meeting place of the City Council, on Tuesday, August 31, 2021. Due to the COVID-19 virus, the special meeting was held with remote access provided through GoToWebinar. Mayor Zo Stieber called the meeting to order at 6:30 p.m. and invited everyone to join her in the Pledge of Allegiance.

ROLL CALL

Mari Peña, City Clerk, called the roll. Those present were Mayor Zo Stieber and Councilmembers, Tommy Holton, Michael Sanchez, and Bruce Fitzgerald. Councilmembers Shannon Rhoda, David Crespin and Chris Ceretto participated remotely through GoToWebinar.

Also present were City Administrator, Chris Cross, City Clerk, Mari Peña, City Attorney, Police Chief, John Fryar, Planning Director, Todd Hodges, Public Works Director, Roy Vestal and Finance Director, Leann Perino. City Attorney, Andy Ausmus participated remotely through GoToWebinar.

ACTION MEMORANDUM

AM 2021-141 Approving an Ordinance for the Submission of a Ballot Question to the Registered Electors Pertaining to Marijuana Excise Tax for the November 2, 2021, Coordinated Election

The City Council may, without receipt of any petition, may submit any proposed adopted ordinance or resolution or any question to a vote of the registered electors of the municipality.

The City Council has determined to ask the registered voters the question on whether to impose an excise tax on the sale or transfer of unprocessed retail marijuana.

At this time, there is no ordinance to allow for cultivation facilities however, the City Council is proposing to add an ordinance.

The Council will determine the excise tax based on:

- The collection and enforcement of the tax by the Finance Department.
- Impacts on the Police Department

Marijuana = FLMC 10-289 Marijuana: Offenses Related

Paraphernalia = FLMC 10-285 Possession of Drug Paraphernalia

TOTAL VIOLATIONS			18-20 YEARS OLD		UNDER 18 YEARS OLD	
Year	Marijuana	Paraphernalia	Marijuana	Paraphernalia	Marijuana	Paraphernalia
2018	19	15	7	4	12	11
2019	20	12	6	3	13	8
2020	6	13	5	4	1	2
2021	9	1	5	0	4	1

* 2021 is 01-01-2021 to 07-31-2021

RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 31, 2021

Council discussed the amount of tax based on the impacts of the City. Mayor Stieber indicated that a 1.5% excise tax would be sufficient with the ability to go up to 4%. Councilmember Tommy Holton indicated that he preferred a higher rate of tax. Councilmember Chris Ceretto indicated he preferred a 2% tax rate.

It was moved by Bruce Fitzgerald and seconded by Michael Sanchez to approve Ordinance 2021-1126 An Ordinance AN ORDINANCE OF THE CITY OF FORT LUPTON APPROVING THE SUBMISSION OF A BALLOT QUESTION ON THE NOVEMBER 2, 2021, COORDINATED ELECTION, PERTAINING TO A RETAIL MARIJUANA EXCISE TAX; SETTING THE TITLES AND CONTENT OF THE BALLOT FOR THE ELECTION; AND DECLARING AN EMERGENCY. Motion passed with 6 'yes' votes and 1 'no' vote from Councilmember Tommy Holton.

AM 2021-140 Declaring Surplus of Equipment From the Information Technology (IT) Department and Approving the Recycling of the Equipment

Over time equipment becomes End of Life (EOL) meaning that the equipment is out of warranty and is no longer supported by the vendor. This equipment has been stored in the basement waiting to be recycled. All serial numbers have been noted and all data bearing devices have been wiped out according to Department of Defense (DoD) standards prior to going out for recycling. The City has partnered with DMD Systems in the past and will continue to use DMD Systems Asset Disposal Team to properly recycle the systems.

It was moved by Tommy Holton and seconded by Bruce Fitzgerald to approve the recycling of surplus equipment from the Information Technology (IT) Department. Motion passed unanimously on roll call vote.

AM 2021-142 Approve Agreement with Synergetic Systems Staffing for the Placement of Labor to Help With Temporary Needs

The City is in need of more resources to fill temporary positions. Expanding resources for filling seasonal positions would also be helpful. With the labor market being particularly challenging for employers, the City would benefit from working with multiple partners so we can get temporary staff hired more quickly and minimize any delays in City Services.

Synergetic Systems was referred to the City by the Chamber of Commerce. Staff has met with them and would like to use them as a resource. One advantage they offer is that they are willing and able to fill our seasonal maintenance positions, which very few agencies will do. That has been an area of acute difficulty in hiring. The terms of their agreement are acceptable.

It was moved by Tommy Holton and seconded by Michael Sanchez to approve the agreement with Synergetic Systems Staffing for the placement of labor to help with temporary needs. Motion passed unanimously on roll call vote.

ADJOURNMENT

Mayor Stieber adjourned the meeting at 6:43 p.m.

**RECORD OF PROCEEDINGS
FORT LUPTON CITY COUNCIL/ENTERPRISE BOARDS
August 31, 2021**

Submitted by,

Maricela Peña, City Clerk

Approved by City Council

Zo Stieber, Mayor

DRAFT

ORDINANCE NO. 2021-1123

INTRODUCED BY: CHRIS CERETTO

ADOPT ORDINANCE 2021-1123 ANNEXING LAND LEGALLY DESCRIBED IN EXHIBIT “A” KNOWN AS THE RATERINK ANNEXATION AND APPROVING THE ANNEXATION AGREEMENT.

INTRODUCED, READ, AND PASSED ON FIRST READING, AND ORDERED PUBLISHED this 20th day of July 2021.

PUBLISHED in the Fort Lupton Press the 28th day of July 2021.

FINALLY READ BY TITLE ONLY, PASSED AND ORDERED PUBLISHED BY TITLE ONLY this 7th day of September 2021.

PUBLISHED BY TITLE ONLY the 15th day of September 2021.

EFFECTIVE (after publication) the 15th day of October 2021.

CITY OF FORT LUPTON, COLORADO

Zo Stieber, Mayor

ATTEST:

Maricela Peña, City Clerk

Approved as to form:

Andy Ausmus, City Attorney

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED AT THE NORTHEAST ¼ OF SECTION 5, TOWNSHIP 1 NORTH, RANGE 66 WEST OF THE 6TH P.M. COUNTY OF WELD, STATE OF COLORADO: FURTHER DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF THE NORTHEAST 1/4 OF SAID SECTION 5 TO BEAR SOUTH 89°39'45" WEST, BEING MONUMENTED ON THE EAST END BY A 3/4" REBAR WITH 3 1/4" ALUMINUM CAP, PLS 13155 N MONUMENT BOX, AND ON THE WEST END BY A 3/4" REBAR WITH 3 1/4" ALUMINUM CAP, PLS 13155 IN MONUMENT BOX, AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; COMMENCING AT THE EAST 1/4 CORNER OF SAID SECTION 5; THENCE NORTH 00°07'26" WEST, COINCIDENT WITH THE EAST LINE OF THE NORTHEAST 1/4 OF SAID SECTION 5, A DISTANCE OF 75.00 FEET TO THE NORTH LINE OF APPEL FARM ANNEXATION TO THE TOWN OF FORT LUPTON AND THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°39'45" WEST, COINCIDENT WITH SAID NORTH LINE, A DISTANCE OF 767.13 FEET TO THE WEST LINE OF LOT A, RECORDED EXEMPTION NO. RECX20-0069, AS SHOWN ON THE PLAT RECORDED AUGUST 5, 2020 AS RECEPTION NO. 4616704 IN THE RECORDS OF THE CLERK AND RECORDER FOR WELD COUNTY, COLORADO, ALSO BEING THE EAST LINE OF TWOMBLY ANNEXATION, AS SHOWN ON THE PLAT RECORDED FEBRUARY 23, 1994 AS RECEPTION NO. 2374890 IN THE RECORDS OF THE CLERK AND RECORDER FOR WELD COUNTY, COLORADO; THENCE NORTH 00°07'26" WEST, COINCIDENT WITH SAID LINE, A DISTANCE OF 492.97 FEET TO THE NORTHWEST CORNER OF SAID LOT A; THENCE NORTH 89°40'43" EAST, COINCIDENT WITH THE NORTH LINE OF SAID LOT A AND LOT B, RECX20-0069, ALSO BEING THE SOUTH LINE OF SAID TWOMBLY ANNEXATION, A DISTANCE OF 767.13 FEET TO THE EAST LINE OF THE NORTHEAST ¼ OF SAID SECTION 5; HENCE SOUTH 00°07'26" EAST, COINCIDENT WITH SAID EAST LINE, A DISTANCE OF 492.76 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS 378,092 SQUARE FEET OR 8.68 ACRES, MORE OR LESS

ORDINANCE NO. 2021-1124

INTRODUCED BY: BRUCE FITZGERALD

ADOPT ORDINANCE 2021-1124 INITIALLY ZONING LAND KNOWN AS THE RATERINK INITIAL ZONING, LEGALLY DESCRIBED IN EXHIBIT A, TO THE 'A' AGRICULTURAL ZONE DISTRICT.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT LUPTON, COLORADO:

WHEREAS, under the procedures detailed in Section 16-9 of the Fort Lupton Municipal Code, the Applicants, Virginia J. Raterink and George V. Raterink, submitted a request to initially zone 8.68± acres of land more particularly described in Exhibit A.

WHEREAS, the Planning Commission held a public hearing on the zone request on July 8, 2021, and recommended approval to City Council of the initial zoning of land described in Exhibit A to the 'A' Agricultural Zone District, with all the uses-by-right allowed in said district.

WHEREAS, the City Council, after public notice and hearing, and consideration of the Planning Commission recommendation, declares that the official zoning map be amended to reflect the initial zone on the property described in Exhibit A of this Ordinance to the 'A' Agricultural Zone District, and that the Ordinance is hereby approved.

INTRODUCED, READ, AND PASSED ON FIRST READING, AND ORDERED PUBLISHED this 20th day of July 2021.

PUBLISHED in the Fort Lupton Press the 28th day of July 2021.

FINALLY READ BY TITLE ONLY, PASSED AND ORDERED PUBLISHED BY TITLE ONLY this 7th day of September 2021.

PUBLISHED BY TITLE ONLY the 15th day September 2021.

EFFECTIVE (after publication) the 15th day of October 2021.

CITY OF FORT LUPTON, COLORADO

Zo Stieber, Mayor

ATTEST:

Maricela Peña, City Clerk

Approved as to form:

Andy Ausmus, City Attorney

EXHIBIT A
LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED AT THE NORTHEAST $\frac{1}{4}$ OF SECTION 5, TOWNSHIP1 NORTH, RANGE 66 WEST OF THE 6TH P.M. COUNTY OF WELD, STATE OF COLORADO: FURTHER DESCRIBED AS FOLLOWS:

CONSIDERING THE SOUTH LINE OF THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 5 TO BEAR SOUTH 89°39'45"WEST, BEING MONUMENTED ON THE EAST END BY A $\frac{3}{4}$ " REBAR WITH 3 $\frac{1}{4}$ " ALUMINUM CAP, PLS 13155 N MONUMENT BOX, AND ON THE WEST END BY A $\frac{3}{4}$ " REBAR WITH 3 $\frac{1}{4}$ " ALUMINUM CAP, PLS 13155 IN MONUMENT BOX, AND WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO; COMMENCING AT THE EAST $\frac{1}{4}$ CORNER OF SAID SECTION 5; THENCE NORTH 00°07'26" WEST, COINCIDENT WITH THE EAST LINE OF THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 5, A DISTANCE OF 75.00 FEET TO THE NORTH LINE OF APPEL FARM ANNEXATION TO THE TOWN OF FORT LUPTON AND THE TRUE POINT OF BEGINNING; THENCE SOUTH 89°39'45" WEST, COINCIDENT WITH SAID NORTH LINE, A DISTANCE OF 767.13 FEET TO THE WEST LINE OF LOT A, RECORDED EXEMPTION NO. RECX20-0069, AS SHOWN ON THE PLAT RECORDED AUGUST 5, 2020 AS RECEPTION NO. 4616704 IN THE RECORDS OF THE CLERK AND RECORDER FOR WELD COUNTY, COLORADO, ALSO BEING THE EAST LINE OF TWOMBLY ANNEXATION, AS SHOWN ON THE PLAT RECORDED FEBRUARY 23, 994 AS RECEPTION NO. 2374890 IN THE RECORDS OF THE CLERK AND RECORDER FOR WELD COUNTY, COLORADO; THENCE NORTH 00°07'26" WEST, COINCIDENT WITH SAID LINE, A DISTANCE OF 492.97 FEET TO THE NORTHWEST CORNER OF SAID LOT A; THENCE NORTH 89°40'43" EAST, COINCIDENT WITH THE NORTH LINE OF SAID LOT A AND LOT B, RECX20-0069, ALSO BEING THE SOUTH LINE OF SAID TWOMBLY ANNEXATION, A DISTANCE OF 767.13 FEET TO THE EAST LINE OF THE NORTHEAST $\frac{1}{4}$ OF SAID SECTION 5; HENCE SOUTH 00°07'26" EAST, COINCIDENT WITH SAID EAST LINE, A DISTANCE OF 492.76 FEET TO THE TRUE POINT OF BEGINNING.

SAID PARCEL CONTAINS 378,092 SQUARE FEET OR 8.68 ACRES, MORE OR LESS

ORDINANCE NO. 2021-1125

INTRODUCED BY: TOMMY HOLTON

A ORDINANCE OF THE CITY COUNCIL OF FORT LUPTON ACCEPTING THE RICHARD ALLEN AND DEBORAH L. SMITH PUBLIC RIGHT OF WAY DEDICATION FOR CR 24 LOCATED IN THE SOUTHEAST ¼ OF SECTION 3, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, WELD COUNTY, COLORADO.

NOW THEREFORE BE IT RESOLVED that City Council hereby accepts said Dedication, and orders that the Instrument of Dedication be recorded in the Recorder's Office of the County of Weld, State of Colorado, and said described real estate is hereby declared open and dedicated pursuant to C.R.S. § 24-68-101, et seq.

WHEREAS, Richard Allen and Deborah L. Smith, has this day filed with the City of Fort Lupton, Colorado (the "City"), its dedication of certain real estate, which Dedication is hereinabove set forth:

AND WHEREAS, the City finds that said Dedication is desirable and necessary;

THIS RIGHT OF WAY IS CREATED AND GRANTED THIS 17th DAY OF AUGUST 2021.

INTRODUCED, READ, AND PASSED ON FIRST READING, AND ORDERED PUBLISHED this 17th day of August 2021.

PUBLISHED in the Fort Lupton Press the 25th day of August 2021.

FINALLY READ BY TITLE ONLY, PASSED AND ORDERED PUBLISHED BY TITLE ONLY this __ day of __ 2021.

PUBLISHED BY TITLE ONLY the ____ day of ____ 2021.

EFFECTIVE (after publication) the _ day of _ 2021.

CITY OF FORT LUPTON, COLORADO

Zo Stieber, Mayor

ATTEST:

Maricela Peña, City Clerk

Approved as to form:

Andy Ausmus, City Attorney

CITY OF FORT LUPTON CITY COUNCIL



Shannon Rhoda, Ward 1
Chris Ceretto, Ward 2
Michael Sanchez, Ward 3

Zo Stieber, Mayor

David Crespino, Ward 1
Tommy Holton, Ward 2
Bruce Fitzgerald, Ward 3

AM 2021-139

PERMIT APPLICATION TO CHANGE, ALTER OR MODIFY LICENSED PREMISES SUBMITTED BY FT LUPTON RISTORANTE LLC DBA WHOLLY STROMBOLI AT 410 DENVER AVENUE

- I. **Agenda Date:** Council Meeting – September 7, 2021
- II. **Attachments:** a. Permit Application and Report of Changes
- III. **Summary Statement:**

An application has been submitted by Melissa Rickman, to modify the liquor licensed premises at her restaurant Wholly Stromboli located at 410 Denver Ave.

Attached is the application and supporting documents defining the additional exterior area to be included. Regulation 47-302 of the Liquor and Beer Code Regulations provides an opportunity for the licensee to modify their licensed premise with prior written consent of the local and state licensing authorities. The proposed modification permit application will include modification of the patio on the east, a new patio on the north and south sides as well as additional storage on the east side of the building and using space that is currently vacant in the building.

-
- IV. **Submitted by:** _____
Mari Pena, City Clerk
- V. **Finance Reviewed** _____
Finance Director
- VI. **Approved for Presentation:** _____
City Administrator
- VII. **Attorney Reviewed** _____ Approved _____ Pending Approval

VIII. **Certification of Council Approval:**

City Clerk

Date

CITY OF FORT LUPTON

AM 2021-139

IX. Detail of Issue/Request:

An application has been submitted by Melissa Rickman, to modify the liquor licensed premises at her restaurant Wholly Stromboli located at 410 Denver Ave.

Attached is the application and supporting documents defining the additional exterior area to be included. Regulation 47-302 of the Liquor and Beer Code Regulations provides an opportunity for the licensee to modify their licensed premise with prior written consent of the local and state licensing authorities. The proposed modification permit application will include modification of the patio on the east, a new patio on the north and south sides as well as additional storage on the east side of the building and using space that is currently vacant in the building.

X. Legal/Political Considerations:

None.

XI. Alternatives/Options:

1. *Approve the Modification of Premises.*
2. *Deny the Modification of Premises – If denied the applicant shall be entitled to a hearing on the denial. The request must be done in writing.*

XII. Financial Considerations:**XIII. Staff Recommendation:**

Staff recommends approval.

REC'D CITY OF FT LUPTON
JUL 27 2021 PM 5:22

Permit Application and Report of Changes

Current License Number 42-83203-0000

All Answers Must Be Printed in Black Ink or Typewritten

Local License Fee \$ _____

1. Applicant is a ☐ Corporation ☐ Individual ☐ Partnership ☒ Limited Liability Company		Present License Number 42-83203-0000
2. Name of Licensee Fort Lupton Ristorante LLC	3. Trade Name Wholly Stromboli	
4. Location Address 410 Denver Ave		
City Fort Lupton	County Weld	ZIP 80621

SELECT THE APPROPRIATE SECTION BELOW AND PROCEED TO THE INSTRUCTIONS ON PAGE 2.

Section A – Manager reg/change	Section C
• License Account No. _____ ☐ Manager's Registration (Hotel & Restr.) \$75.00 ☐ Manager's Registration (Tavern) \$75.00 ☐ Manager's Registration (Lodging & Entertainment) \$75.00 ☐ Change of Manager (Other Licenses pursuant to section 12-47-301(8), C.R.S.) NO FEE	☐ Retail Warehouse Storage Permit (ea) \$100.00 ☐ Wholesale Branch House Permit (ea) 100.00 ☐ Change Corp. or Trade Name Permit (ea) 50.00 ☐ Change Location Permit (ea) 150.00 ☒ Change, Alter or Modify Premises \$150.00 x <u>1</u> Total Fee _____ ☐ Addition of Optional Premises to Existing H/R \$100.00 x _____ Total Fee _____ ☐ Addition of Related Facility to Resort Complex \$75.00 x _____ Total Fee _____ ☐ Tavern Conversion No Fee
Section B – Duplicate License	
• Liquor License No. _____ ☐ Duplicate License \$50.00	

Do Not Write in This Space – For Department of Revenue Use Only

Date License Issued	License Account Number	Period
TOTAL AMOUNT DUE		\$ 150.00.00

The State may convert your check to a one time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department of Revenue may collect the payment amount directly from your bank account electronically.

Instruction Sheet

For All Sections, Complete Questions 1-4 Located on Page 1

☐ Section A

To Register or Change Managers, check the appropriate box in section A and complete question 8 on page 4. Proceed to the Oath of Applicant for signature. Submit to State Licensing Authority for approval.

☐ Section B

For a Duplicate license, be sure to include the liquor license number in section B on page 1 and proceed to page 4 for Oath of Applicant signature.

☐ Section C

Check the appropriate box in section C and proceed below.

- 1) **For a Retail Warehouse Storage Permit**, go to page 3 complete question 5 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Submit to State Licensing Authority for approval.
- 2) **For a Wholesale Branch House Permit**, go to page 3 and complete question 5 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Submit to State Licensing Authority for approval.
- 3) **To Change Trade Name or Corporation Name**, go to page 3 and complete question 6 (be sure to check the appropriate box). Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.
- 4) **To modify Premise**, go to page 4 and complete question 9. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.
- 5) **For Optional Premises or Related Facilities** go to page 4 and complete question 9. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.
- 6) **To Change Location**, go to page 3 and complete question 7. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. Retail Liquor License submit to Local Liquor Licensing Authority (City or County). Manufacturer, Wholesaler and Importer's Liquor Licenses submit to State Liquor Licensing Authority.
- 7) **Tavern Conversion**, go to page 4 and complete questions 10. Submit the necessary information and proceed to page 4 for Oath of Applicant signature. **(Must be completed by August 10, 2017, as the tavern conversion will no longer be permitted)*. Submit to Local Licensing Authority (city or county) for approval.

Change of Manager	8. Change of Manager or to Register the Manager of a Tavern, Hotel and Restaurant, Lodging & Entertainment liquor license or licenses pursuant to section 12-47-301(8). (a) Change of Manager (attach Individual History DR 8404-I H/R, Tavern and Lodging & Entertainment only) Former manager's name _____ New manager's name _____ (b) Date of Employment _____ Has manager ever managed a liquor licensed establishment?..... Yes ☐ No ☐ Does manager have a financial interest in any other liquor licensed establishment?..... Yes ☐ No ☐ If yes, give name and location of establishment _____
Modify Premises or Addition of Optional Premises or Related Facility	9. Modification of Premises, Addition of an Optional Premises, or Addition of Related Facility NOTE: Licensees may not modify or add to their licensed premises until approved by state and local authorities. (a) Describe change proposed <u>We are expanding into the unoccupied tenant spaces of our building and adding two additional enclosed patio spaces</u> _____ (b) If the modification is temporary, when will the proposed change: Start _____ (mo/day/year) End _____ (mo/day/year) NOTE: THE TOTAL STATE FEE FOR TEMPORARY MODIFICATION IS \$300.00 (c) Will the proposed change result in the licensed premises now being located within 500 feet of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary? (If yes, explain in detail and describe any exemptions that apply) Yes ☐ No ☒ (d) Is the proposed change in compliance with local building and zoning laws?..... Yes ☒ No ☐ (e) If this modification is for an additional Hotel and Restaurant Optional Premises or Resort Complex Related Facility, has the local authority authorized by resolution or ordinance the issuance of optional premises? Yes ☒ No ☐ (f) Attach a diagram of the current licensed premises and a diagram of the proposed changes for the licensed premises. (g) Attach any existing lease that is revised due to the modification.
Tavern Conversion	10. Tavern Conversion (Note* Must be completed by August 10, 2017 as the Tavern conversion will no longer be permitted. Only Tavern licenses issued before August 10, 2016, that do not fit the definition of a tavern as defined in section 12-47-103(38), C.R.S. may convert to a different license type.) Please pick one of the following choices: (a) I wish to convert my existing Tavern Liquor License # _____ to a Lodging and Entertainment Liquor License?..... Yes ☐ No ☐ (b) I wish to convert my existing Tavern Liquor License # _____ to a _____ Liquor License?..... Yes ☐ No ☐

Storage Permit	5. Retail Warehouse Storage Permit or a Wholesalers Branch House Permit ☐ Retail Warehouse Permit for: ☐ On-Premises Licensee (Taverns, Restaurants etc.) ☐ Off-Premises Licensee (Liquor stores) ☐ Wholesalers Branch House Permit Address of storage premise: _____ City _____, County _____, Zip _____ Attach a deed/ lease or rental agreement for the storage premises. Attach a detailed diagram of the storage premises.				
Change Trade Name or Corporation Name	6. Change of Trade Name or Corporation Name ☐ Change of Trade name / DBA only ☐ Corporate Name Change (Attach the following supporting documents) 1. Certificate of Amendment filed with the Secretary of State, or 2. Statement of Change filed with the Secretary of State, <u>and</u> 3. Minutes of Corporate meeting, Limited Liability Members meeting, Partnership agreement. <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <td style="width: 50%;">Old Trade Name</td><td style="width: 50%;">New Trade Name</td></tr> <tr> <td>Old Corporate Name</td><td>New Corporate Name</td></tr> </table>	Old Trade Name	New Trade Name	Old Corporate Name	New Corporate Name
Old Trade Name	New Trade Name				
Old Corporate Name	New Corporate Name				
Change of Location	7. Change of Location NOTE TO RETAIL LICENSEES: An application to change location has a local application fee of \$750 payable to your local licensing authority. You may only change location within the same jurisdiction as the original license that was issued. Pursuant to 12-47-311 (1) C.R.S. Your application must be on file with the local authority thirty (30) days before a public hearing can be held. Date filed with Local Authority _____ Date of Hearing _____ (a) Address of current premises _____ City _____ County _____ Zip _____ (b) Address of proposed New Premises (Attach copy of the deed or lease that establishes possession of the premises by the licensee) Address _____ City _____ County _____ Zip _____ (c) New mailing address if applicable. Address _____ City _____ County _____ State _____ Zip _____ (d) Attach detailed diagram of the premises showing where the alcohol beverages will be stored, served, possessed or consumed. Include kitchen area(s) for hotel and restaurants.				

Oath of Applicant

I declare under penalty of perjury in the second degree that I have read the foregoing application and all attachments thereto, and that all information therein is true, correct, and complete to the best of my knowledge

Signature 	Title Owner	Date 07/17/21
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Report and Approval of LOCAL Licensing Authority (CITY / COUNTY)

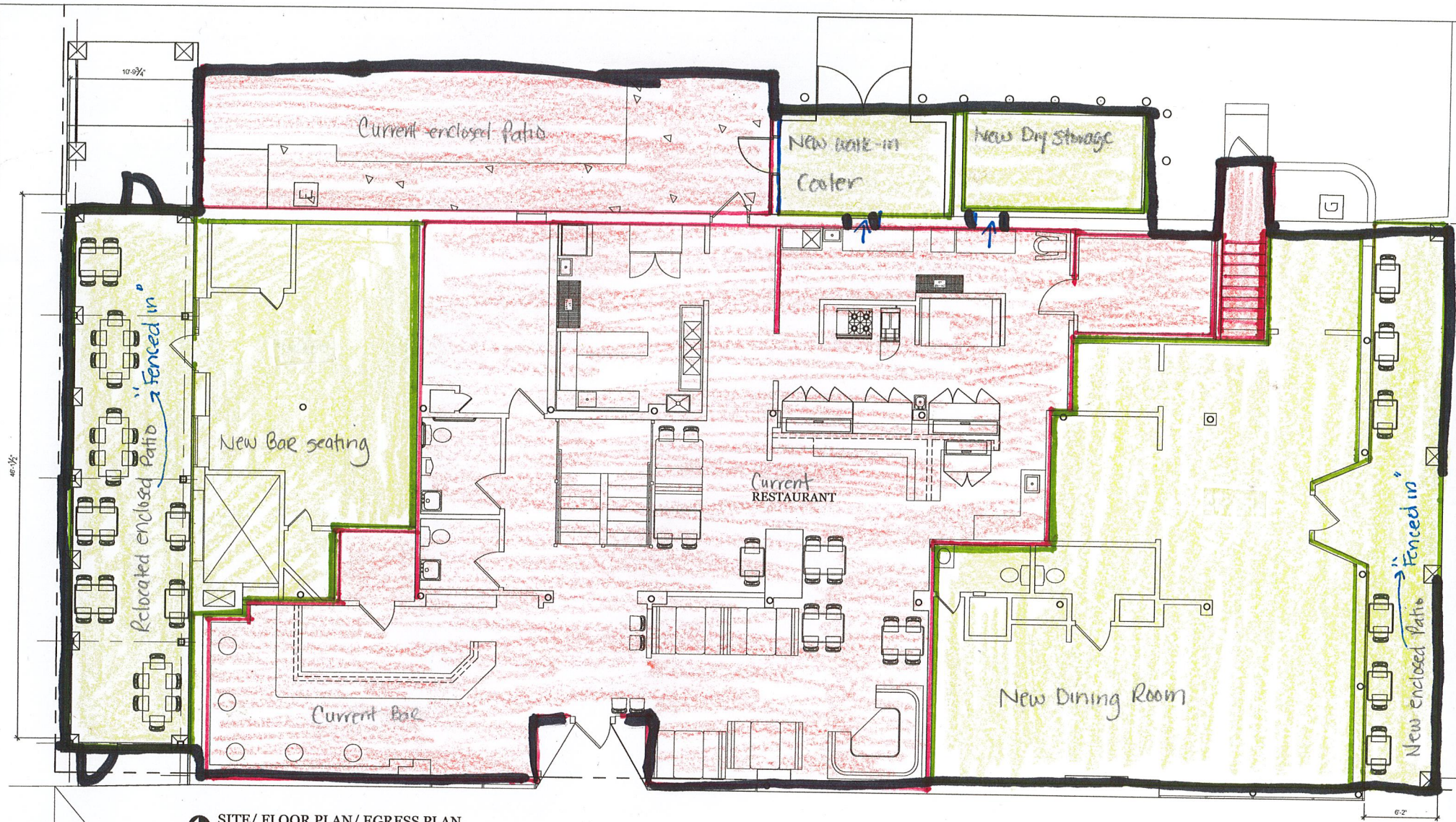
The foregoing application has been examined and the premises, business conducted and character of the applicant is satisfactory, and we do report that such permit, if granted, will comply with the applicable provisions of Title 12, Articles 46 and 47, C.R.S., as amended. **Therefore, This Application is Approved.**

Local Licensing Authority (City or County)	Date filed with Local Authority
Signature	Title
	Date

Report of STATE Licensing Authority

The foregoing has been examined and complies with the filing requirements of Title 12, Article 47, C.R.S., as amended.

Signature	Title	Date



SITE/ FLOOR PLAN/ EGRESS PLAN
SCALE: 1/4"=1'-0"

FLOOR PLAN/ EGRESS KEYED NOTES:

1. REMOVE EXISTING LOW METAL PATIO FENCING AND LOW VOLTAGE LIGHTING.
2. EXISTING CONCRETE WALK TO REMAIN.
3. REMOVE EXISTING CONCRETE WALK.
4. REMOVE EXISTING ASPHALT AT PATIO ENCLOSURE AREA.

+ entire Basement is currently licensed

— Current licensed space

— New construction being requested for sale/consumption of liquor.

— CITY OF —
Fort Lupton
EST. 1836

David Crespín, Ward 1
Tommy Holton, Ward 2
Bruce Fitzgerald, Ward 3

AM 2021-147

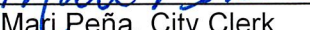
**ADOPTING AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT LUPTON,
ENACTING A NEW ARTICLE XII OF CHAPTER 6 OF THE FORT LUPTON MUNICIPAL
CODE REGARDING THE REGULATIONS AND LICENSING OF REGULATED MARIJUANA
STORES**

- I. **Agenda Date:** Council Meeting – September 7, 2021
- II. **Attachments:** a. Proposed Ordinance
- III. **Summary Statement:**

On November 3, 2020, the registered electors of the City of Fort Lupton approved ballot initiatives permitting for the establishment and operation of medical marijuana centers and retail marijuana stores subject to the requirements of the State of Colorado medical and retail marijuana codes and regulations and the ordinances and codes to be adopted by the City of Fort Lupton.

Originally, staff started with two ordinances for medical marijuana and retail marijuana. Staff was ready to proceed with the Second Reading of the Ordinances, however after much concern and discussion with the Council and the public, Council directed staff to write one ordinance rather than two and establish additional regulations within the ordinance. The ordinance reflects the changes after the discussion.

- | | | |
|------|-----------------------------------|---|
| IV. | <u>Submitted by:</u> | 

Mari Peña, City Clerk |
| V. | <u>Finance Reviewed</u> | 

Finance Director |
| VI. | <u>Approved for Presentation:</u> | 

City Administrator |
| VII. | <u>Attorney Reviewed</u> | <div style="display: flex; justify-content: space-between;"> <div>Approved _____</div> <div>Pending Approval _____</div> </div> |

VIII. Certification of Council Approval: _____
City Clerk _____ Date _____

IX. Detail of Issue/Request:

On November 3, 2020, the registered electors of the City of Fort Lupton approved ballot initiatives permitting for the establishment and operation of medical marijuana centers and retail marijuana stores subject to the requirements of the State of Colorado medical and retail marijuana codes and regulations and the ordinances and codes to be adopted by the City of Fort Lupton.

Originally, staff started with two ordinances for medical marijuana and retail marijuana. Staff was ready to proceed with the Second Reading of the Ordinances, however after much concern and discussion with the Council and the public, Council directed staff to write one ordinance rather than two and establish additional regulations within the ordinance. The ordinance reflects the changes after the discussion.

Key Points:

- Maximum number of licensed establishments shall not exceed four (4);
- Stores are permitted only within the following zoning districts: the C-1 General Commercial District, C-2 Heavy Commercial District, I-1 Light Industrial Zone District, I-2 Heavy Industrial Zone District and PUD Planned Unit Development District, which specifically permits retail marijuana stores, and upon obtaining all land use approvals necessary for such use;
- Within one thousand (1,000) feet of any school, any child care center, any juvenile or adult halfway house, correctional facility or substance abuse rehabilitation center;
- Within five hundred (500) feet any public park with playground equipment;

The Ordinance creates: Prohibited marijuana license types, License/bond requirements, Application, Co-location, Licensing Process, Local licensing authority, Issuance of license, duration, renewal; Annual operating and administrative fees, Location, operational restrictions and requirements, marijuana stores, Inspection of books, records, and licensed premises, Transfer of Ownership, change of Corporate Structure, Unlawful acts of licensees and persons, Nonrenewal suspension or revocation of license and Violations and penalties.

The Application Process is listed under Section 6-355 Application.

- Obtain an approved Zoning Verification Form from the Planning and Development Department.
- Applicant shall submit an application with the required documentation.
- Upon receipt of a complete application, the City Clerk shall notify all affected departments to determine whether the application is in full compliance with all state and local laws, rules, and regulations. The City Clerk will prepare a report to submit to the local licensing authority.

The Licensing Process is listed under Section 6-357 via a 3-Step Process.

- Initial Review
- Lottery
- Public Hearing

X. **Legal/Political Considerations:**

XI. **Alternatives/Options:**

XII. **Financial Considerations:**

XIII. **Staff Recommendation:**

Staff seeks recommendation.

ORDINANCE NO. 2021-xxx

INTRODUCED BY:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FORT LUPTON, COLORADO AND ENACTING A NEW ARTICLE XII OF CHAPTER 6 OF THE FORT LUPTON MUNICIPAL CODE REGARDING THE REGULATIONS AND LICENSING OF REGULATED MARIJUANA

WHEREAS, on November 3, 2020, the registered electors of the City of Fort Lupton approved ballot initiatives permitting for the establishment and operation of medical marijuana centers and retail marijuana stores subject to the requirements of the State of Colorado medical and retail marijuana codes and regulations and the ordinances and codes to be adopted by the City of Fort Lupton; and

WHEREAS, at the same election, the registered voters approved an additional 3.1% sales tax on the sales of retail marijuana and retail marijuana products with the rate of tax being able to decrease or increase without further voter approval so long as the rate of taxation does not exceed 10%.

WHEREAS, the City of Fort Lupton, Colorado (“City”) is authorized under Title 31 of the Colorado Revised Statutes to adopt and amend ordinances in furtherance of governmental administration and the City’s police powers; and

WHEREAS, the Colorado Constitution specifically authorizes the City to prohibit or regulate marijuana establishments and to adopt regulations consistent with the intent of state law; and

WHEREAS, The City desires to adopt a comprehensive licensing and regulatory program concerning marijuana establishments; and

WHEREAS, the City has determined that the comprehensive licensing scheme for marijuana establishments will further the public health, safety, and welfare of the community.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT LUPTON, COLORADO, THAT:

Section 1. The foregoing recitals are hereby affirmed and incorporated herein by this reference as finding of the City Council.

Section 2. **Enactment of Article XII of Chapter 6 of the Municipal Code.** A new Article XII of Chapter 6 of the Fort Lupton Municipal Code is hereby enacted to read in full as follows:

Article XII –Regulated Marijuana Establishments

Sections:

6-350	Legislative intent and authority
6-351	Relationship to other laws
6-352	Definitions
6-353	Prohibited marijuana license types
6-354	License/bond requirements
6-355	Application
6-356	Co-location
6-357	Licensing process
6-358	Local licensing authority
6-359	Issuance of license; duration, renewal
6-360	Annual operating and administrative fees
6-361	Location, operational restrictions and requirements, marijuana stores
6-362	Inspection of books, records, and licensed premises
6-363	Transfer of Ownership
6-364	Change of Corporate Structure
6-365	Unlawful acts of licensees and persons
6-366	Nonrenewal, suspension or revocation of license
6-367	Violations and penalties
6-368	No city liability; indemnification
6-369	Other laws remain applicable

Sec. 6-350. - Legislative intent and authority.

- (a) Section 16 of Article XVIII of the Colorado Constitution ("Amendment 64") authorizes a system of state licensing for businesses engaged in the cultivation, testing, manufacturing, and retail sale of marijuana (collectively "Retail Marijuana Establishments"). Subsection 16(5) (f) of Article XVIII allows localities to prohibit retail marijuana establishments and to license them subject to the time, place, and manner in which such establishments may operate and to limit the total number of such establishments.
- (b) Section 14 of Article XVIII of the Colorado Constitution establishes an affirmative defense from criminal prosecution by the state for certain persons who use or provide medical marijuana to treat debilitating conditions and the Colorado Marijuana Code, C.R.S. §44-10-101, *et seq.*, as amended, authorizes a system of state and local licensing for businesses engaged in the cultivation, testing, manufacturing, and retail sale of medical marijuana (collectively "Medical Marijuana Establishments"), which allows localities to prohibit licensing of medical marijuana establishments and to impose distance and size restrictions upon such establishments along with other requirements to ensure control of the premises and ease of enforcement.

- (c) The authority of the city to regulate marijuana establishments is further set forth in the Colorado Marijuana Code, Article 10, Title 44, C.R.S., including its rules and regulations (1-CCR 212-3) and Part 3, Article 23, Title 31, C.R.S., (municipal zoning powers), C.R.S. § 31-15-103, (Making of Ordinances) and C.R.S. § 31-15-401, (Municipal Police Powers), C.R.S. § 31-15-501, (Municipal Authority to Regulate Businesses).

Sec. 6-351. - Relationship to other laws.

Except as otherwise specifically provided herein, this article incorporates the requirements and procedures set forth in the Colorado Marijuana Code and its rules. In the event of any conflict between the provisions of this article and the provisions of the Colorado Marijuana Code, including its rules, or any other applicable state or local law, the more restrictive provision shall control.

Sec. 6-352. - Definitions.

- (a) The following words and phrases shall mean as follows unless the context clearly indicates otherwise:

Applicant means a person 21 years of age or older who has submitted an application for a license or renewal of a license issued pursuant to this Chapter. If the applicant is an entity and not a natural person, applicant shall include all persons who are the members, managers, officers, directors, and shareholders of such entity.

Co-located marijuana establishment means both a licensed retail marijuana store and a medical marijuana store operating contiguously and located within the same building, and under exclusive control of the same licensee.

Colorado Marijuana Code ("Colorado Marijuana Code") shall mean Title 44, Article 10, Colorado Revised Statutes ("C.R.S."), as the same may be amended.

C-1 means the C1 General Commercial District as defined by Article II of Chapter 16 of the Code.

C-2 means the C-2 Heavy Commercial District as defined in Article II of Chapter 16 of the Code.

Dual Operation means a regulated marijuana business that operates as both a licensed medical marijuana store and a licensed retail marijuana store in accordance with this Article.

Financier means any person who lends money or otherwise provides assets to any person applying for a license under this Article. If a financier is an entity rather than an individual, the same disclosure, shall be required for each entity with an ownership interest until a managing member that is a natural person is identified. Financier shall not include a bank, savings and loan association, credit union, or industrial bank supervised and regulated by an agency of the state or

federal government, or any person in the business of leasing equipment or marijuana business for which the rental amount does not include any percentage of the business or its profits.

Financial Interest means any ownership interest.

Good Cause purpose of denying, refusing to renew, suspending, or revoking a license, or exercising other discretionary authority granted the local licensing authority means

1. The applicant or licensee has violated, does not meet, or has failed to comply with any of the terms, requirements, conditions, or provisions of this Article, the Colorado Marijuana Code, its rules, or any applicable state or local law, rule, or regulation.
2. The local licensing authority has determined that the applicant or licensee's character record, or reputation is not satisfactory after consideration of factors, which include without limitation the following:
 - a. The applicant or licensee has knowingly submitted false application(s), made willful misrepresentations, or knowingly committed fraudulent acts;
 - b. The applicant or licensee has a criminal history of crimes of moral turpitude, which may include without limitation murder, burglary, robbery, arson, kidnapping, sexual assault, and illegal drugs or narcotics convictions;
 - c. The applicant or licensee has any previous retail or medical marijuana license denied or revoked as a result of a law, rule, or regulation, or finding of bad moral character by any licensing authority;
 - d. The applicant or licensee has been found to be currently delinquent in the payment of any state or local taxes
 - e. The applicant or licensee has established a pattern of multiple statutory violations which resulted in the revocation or denial of any other professional license, leading to the finding of bad moral character by any licensing authority; or
 - f. The licensed premises has been operated in a manner that adversely affects the public health, safety, or welfare. Evidence to support such a finding may include without limitation a continuing pattern of disorderly conduct or drug related criminal conduct upon or in the immediate vicinity of the premises, continuing pattern of criminal conduct directly related to or arising from the operation of the regulated marijuana establishment, or ongoing nuisance condition emanating from or caused by the regulated marijuana establishment.
3. The applicant or licensee has failed to comply with any special terms or conditions of a license, including without limitation those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any renewal or suspension proceedings held subsequent to the date of issuance of the license; or
4. The licensed premises has been operated in a manner that adversely affects the public health, welfare, or safety of the immediate neighborhood in which the licensed business is located. Evidence to support such a finding can include without limitation a pattern of disorderly conduct or continuing pattern of drug related criminal conduct within the business.

I-1 means the *Light Industrial District* as defined in Article II of Chapter 16 of the Code.

I-2 means the Heavy Industrial District as defined in Article II of Chapter 16 of the Code.

Local Licensing Authority (“Authority”) shall mean the City of Fort Lupton City Council.

Marijuana means all parts of the plant of the genus *Cannabis* whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or its resin, including marijuana concentrate, but excluding industrial hemp, fiber produced from the stalks, oils, or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.

Marijuana business means any of the following entities licensed pursuant to the Colorado Marijuana Code: A medical or retail marijuana store, a medical or retail marijuana cultivation facility, a medical or retail marijuana products manufacturer, a medical or retail marijuana testing facility, a marijuana research and development licensee, a medical or retail marijuana business operator, a medical or retail marijuana transporter, or a medical or retail marijuana business operator.

Medical marijuana code rules (“Rules”) means the permanent rules pertaining to the Colorado Marijuana Code adopted by the Colorado Department of Revenue, Marijuana Division, 1 CCR 212-3 as may be amended from time to time.

Medical marijuana cultivation facility means a person licensed pursuant to Title 44, Article 10 to operate a business as described in C.R.S. § 44-10-502.

Medical marijuana product means a product infused with medical marijuana that is intended for use or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.

Medical marijuana products manufacturer means a person licensed pursuant to C.R.S. § 44-10-101 *et. seq.* to operate a business as described in section C.R.S. § 44-10-503.

Medical marijuana store means a person licensed pursuant to the Colorado Marijuana Code to operate a business that sells medical marijuana to registered patients or primary caregivers, but is not a primary caregiver.

Medical marijuana testing facility means an entity licensed to analyze and certify the safety and potency of medical marijuana.

Medical marijuana transporter means an entity or person licensed to transport medical marijuana and medical marijuana-infused products from one medical marijuana establishment to another medical marijuana establishment and to temporarily store the transported medical marijuana and medical marijuana-infused products at its licensed premises, but is not authorized to sell medical marijuana or medical marijuana-infused products under any circumstances.

Parks means any public land that has been designated or used for any *park*, open space or recreational uses or activities, including but not limited to a *park*, playground, nature trail, swimming pool, reservoir, athletic field, basketball court, tennis court, bike or pedestrian path, open space, wilderness area or similar land within the City.

PUD means the Planned Unit Development District as defined in Article II of Chapter 16 of the Code.

Residential District means the R-1, R-1A, R-2, R-3, M-H, and R-O Districts as defined in Article II of Chapter 16 of the code.

Retail marijuana accelerator cultivator means a social equity licensee who exercises the privileges of a retail marijuana cultivation facility license on the premises of an accelerator-endorsed retail marijuana cultivation facility. They may receive technical assistance and financial support from the retail marijuana cultivation facility licensee with an accelerator endorsement.

Retail marijuana means marijuana that is cultivated, manufactured, distributed, or sold by a licensed retail marijuana establishment.

Retail marijuana accelerator manufacturer means a social equity licensee who exercises the privileges of a retail marijuana products manufacturer license on the premises of an accelerator-endorsed retail marijuana products manufacturer. They may receive technical assistance and financial support from the retail marijuana products manufacturer licensee with an accelerator endorsement.

Retail marijuana accelerator store means a social equity licensee who exercises the privileges of a retail marijuana store license on the premises of an accelerator-endorsed retail marijuana store. They may receive technical assistance and financial support from the retail marijuana store licensee with an accelerator endorsement.

Retail marijuana business operator means a person who is licensed to operate a licensed retail marijuana business for an owner and who may receive a portion of the profits as compensation.

Retail marijuana cultivation facility means an entity licensed to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to retail marijuana product manufacturing facilities, and to other retail marijuana cultivation facilities, but not to consumers.

Retail marijuana establishment means a retail marijuana business that has a license from the State of Colorado and the city to operate.

Retail marijuana hospitality means a business license authorizing the licensee to operate a licensed premise in which marijuana may be consumed.

Retail marijuana hospitality and sales means a licensee authorized to operate a licensed premise in which marijuana may be sold and consumed.

Retail marijuana products means concentrated marijuana products and marijuana products that are comprised of marijuana and other ingredients and are intended for use or consumption, such as, but not limited to, edible products, ointments, and tinctures.

Retail marijuana products manufacturing facility means an entity licensed to purchase marijuana, manufacture, prepare, and package retail marijuana products, and sell marijuana and retail marijuana products to other marijuana product manufacturing facilities and to retail marijuana stores, but not to consumers.

Retail marijuana store means an entity licensed to purchase marijuana from marijuana cultivation facilities and marijuana and marijuana products from marijuana product manufacturing facilities and sell marijuana and marijuana products to consumers.

Retail marijuana testing facility means an entity licensed to analyze and certify the safety and potency of retail marijuana.

Retail marijuana transporter means an entity or a person that is licensed to transport retail marijuana and retail marijuana products from one retail marijuana establishment to another retail marijuana establishment and to temporarily store the transported retail marijuana and retail marijuana products at its licensed premises, but is not authorized to sell, give away, buy, or receive complimentary retail marijuana and retail marijuana products under any circumstances. A retail marijuana transporter does not include a licensee that transports and distributes its own retail marijuana or retail marijuana products.

School means a public or private preschool or a public or private elementary, middle, junior high or high school or institution of higher education.

- (b) In addition to the definitions set forth herein, the terms used in this article shall have the meaning ascribed to them in Article XVIII, Section 16 of the Colorado Constitution, the Colorado Marijuana Code, including its rules.

Sec. 6-353. – Prohibited marijuana license types.

Except as to marijuana stores as permitted herein by this article, it shall be unlawful for any person to operate, cause to be operated, or permit to be operated a marijuana cultivation facility, products manufacturer, testing facility, transporters, business operators, research and development facility, and deliveries.

Sec. 6-354. - License/bond requirements.

- (a) It shall be unlawful for any person to operate a marijuana store without obtaining a license to operate such business in accordance with the requirements of this article.
- (b) The license requirement set forth in this article shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other state, or local law, rules

or regulations, including, by way of example, the Colorado Marijuana Code, its rules, and any applicable local licensing, zoning or building code.

- (c) All marijuana stores which sell at retail, in addition to being required to obtain a city sales tax license, must as a condition of licensing, procure, maintain, and file with the city's finance department evidence of a good and sufficient bond in the amount of five thousand dollars (\$5,000.00) with a corporate surety duly licensed to do business in the State of Colorado, approved as to form by the city and conditioned upon the applicant's reporting and payment of all city sales and use taxes required by law. In lieu of a surety bond an applicant may submit a letter of credit in a form acceptable to the city or a cash bond.
- (d) A separate license shall be required for each specific business or business entity and for each geographical location.

Sec. 6-355. - Application.

- (a) Prior to submitting an application for a local license, an applicant must obtain an approved zoning verification form from the Planning and Development Department which, based upon an applicant's submittal of an area map drawn to scale, demonstrates that the proposed marijuana establishment is in compliance with the location restrictions set forth in this article. Applicants shall submit the approved zoning verification form to the city clerk along with completed State Marijuana Enforcement Division forms, and all supplemental information required by the city.
- (b) The applicant shall also provide the following information to the city, which information shall be required for the applicant and, as applicable, the proposed manager of the marijuana store, and all persons having any financial interest in the marijuana store. To the extent that any of the following information has been included with the applicant's state license application, it may provide copies of such documents to the local licensing authority.
 - (1) Proof of insurance of workers' compensation insurance and public liability insurance, which at a minimum meets the current maximum liability amounts for injury to any single person, or for any injury to two (2) or more persons in any such occurrence, as set forth in the Colorado Governmental Immunity Act (C.R.S. § 24-10-114), as same may be amended.
 - (2) Proof of lawful possession of the premises to be licensed, which proof may include, for example, property executed deeds of trust, leases or other written documentation acceptable to the licensing authority.
 - (3) If the applicant is not the owner of the proposed licensed premises, a notarized statement from the owner of such property authorizing the use of the property for a regulated marijuana establishment and authorizing the City to enter the property for inspections of the proposed licensed premises on a form approved by the City.
 - (4) An operating plan for the proposed marijuana store, including the following information:
 - (a) A description of the products and services to be provided by the marijuana store.
 - (b) A dimensional floor plan, drawn to scale, clearly labeled, and showing:

- (1) The layout of the structure and the floor plan in which the marijuana store is to be located;
 - (2) The principal uses of the floor area depicted on the floor plan, including, but not limited to, the areas where the public will be permitted and all private, storage, retail, and restricted areas where marijuana will be located;
 - (3) Areas where any services other than the distribution of marijuana are proposed to occur in the premises.
- (5) A plan for disposal of any marijuana waste product that is not sold in a manner that protects any portion thereof from being possessed or ingested by any person or animal.
 - (6) A plan for ventilation of the marijuana store that fully describes the ventilation systems that will ensure the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the marijuana store or at any adjoining property.
 - (7) Fingerprints and personal background information for all owners, managers, and financiers employed by or under contract to provide services to the marijuana store, directly, or as a member, partner, or officer of a corporation, partnership, association, or company.
 - (8) All applications must include all documents and information required by the Colorado Marijuana Code, including its rules and any information that the city deems reasonably necessary for the investigation and review of the application.
- (c) No application shall be considered which is not complete in every detail in the opinion of the city clerk. Incomplete applications may be returned to the applicant for completion or correction without any further action. It is the applicant's responsibility to ensure the application and all supplemental materials are submitted in a timely manner.
 - (d) Upon receipt of a complete application, the city clerk shall notify all affected departments of the city to determine whether the application is in full compliance with all state and local laws, rules and regulations. The city clerk, upon review of all applicable information, shall prepare a report including all applicable documents to be submitted to the local licensing authority.
 - (e) In the event the criminal history of an owner, member, manager, financier, or other person named on the application contains information regarding conviction of a crime or previous denial or revocation of any medical or retail marijuana or professional license, that person may include with the license application any information regarding such conviction, denial, or revocation. Such information may include, but is not limited to, evidence of rehabilitation, character references, and educational achievements, especially documentation pertaining to the period of time between the applicant's last criminal conviction and the date of the application.
 - (f) Any application or renewal for a marijuana store license shall include, as applicable, payment of a nonrefundable application, or renewal fee, and payment of an annual operating fee. If a license is not granted, the operating fee is refundable in full. All such fees shall be established by resolution of city council.

- (g) A license issued pursuant to this article does not eliminate the need for the licensee to obtain other required permits or licenses related to the operation of the marijuana store, including, without limitation, any State of Colorado license or any sales tax license, business registration, development approvals, or building permits required by the code.

Sec. 6-356 Co-location.

A licensee may operate both a medical marijuana store and a retail marijuana store as a “dual operation” provided they meet the requirements of the Colorado Marijuana Code and this Code.

Sec. 6-357 Licensing process.

- (a) Applications for new retail marijuana stores filed alone or concurrently with medical marijuana stores pursuant to this article shall be awarded via a three-phase process: initial review to ensure completeness of application and compliance with state and local requirements, a public random lottery to determine which applicants will be awarded the opportunity for approval of a license. Only one application per site will be allowed, unless the applicant is applying as a dual-operational licensee. Initial Review. The city clerk will post notice of license availability on the city’s website and in a local newspaper of general circulation opening a 30-day application period for filing and acceptance of new applications. The city clerk will specify the start and end date and time of the application period. Upon receipt by the city clerk of an application for a license under this article, the city clerk or designee shall
- (1) Verify the application is complete, pursuant to Section 6-355; and
 - (2) Screen the application for automatic grounds for denial set forth in Section 6-352(a).
- (b) Lottery. The applications identified by the city clerk as meeting or exceeding the criteria required by this article shall be entered into a lottery process. A public random lottery will be conducted from among the qualified applications to determine which applications will be awarded the opportunity for approval of a license.
- (1) Public notice. The clerk shall publish notice of the public lottery not less than ten (10) days prior to the lottery and publish in the newspaper of general circulation in the City.
 - (2) Conduct of the lottery. The local licensing authority shall conduct a drawing from among the qualified applicants, in a public forum, to determine which applicants shall be awarded the opportunity to obtain a license. The local licensing authority shall use a process by which the names of the applicants are shielded from view, and through which each qualified applicant has an equal chance of being selected.
- (c) Public Hearing. The public hearing procedure shall apply to application for licensing of any regulated marijuana business and to any application for licensing renewal if the renewal application is referred to the authority by the city clerk.

- (1) Public notice of the hearing shall be given by posting a sign by the applicant on the premises for which an application has been made, not less than 10 days prior to the public hearing, stating the date of the application, the date of the hearing, the name and address of the applicant and such information as may be required to fully apprise the public of the nature of the application. The city clerk shall provide the sign to the applicant for posting. If the building in which the regulated marijuana business is to be located is in existence at the time of the application, any sign posted shall be placed so as to be conspicuous and plainly visible to the general public. If the building is not constructed at the time of the application, the applicant shall post a sign at the premises upon which the building is to be constructed in such a manner that the notice is conspicuous and plainly visible to the general public.
- (2) Publication of notice by the city clerk not less than 10 days prior to the public hearing in a newspaper of general circulation. Notice given by publication shall contain the same information that is required for posting of signs in subsection (c) of this section.
- (3) At the public hearing, the Authority:
 - (A) Must make a finding and determination as to the good moral character of the applicant
 - (B) May deny the application to license any regulated marijuana business in the same location where any regulated marijuana business is or has been previously licensed if there is evidence that the previously licensed premise was operated in a manner that adversely affects the public health, welfare or safety of the residents of the city.
 - (C) May allow any party in interest to present evidence relevant to the issuance of a license. The term party in interest means the applicant, an adult inhabitant, business owner or manager within the 1,500 foot radius of the proposed licensed premises. The Authority, in its discretion, may limit the presentation of evidence so as to prevent repetitive and cumulative evidence of examination.
 - (D) Shall consider the facts and evidence adduced as a result of its investigation, as well as any other facts, and any other pertinent matters affecting the qualifications of the application for the conduct of the business proposed.
- (4) No more than 30 days after the date of the hearing, the city clerk shall make known, in writing to the applicant the Authority's findings based upon its investigation. The Authority may approve a regulated marijuana business license with specific conditions. The Authority may issue a regulated marijuana business license if the inspection, background checks, and all other information available to the city verify that the applicant is in compliance with this code and any other applicable law, rule, or regulation.
- (5) The Authority may refuse to issue a regulated marijuana business license if the

application does not meet the requirements of this chapter or any other applicable law, rule, or regulation, or contains false or incomplete information.

- (6) The Authority may refuse to issue a regulated marijuana business for good cause, as defined Section 6-352, subject to judicial review.

Sec. 6-358. - Local licensing authority.

The City Council shall serve as the local licensing authority and have and exercise all powers expressly granted and necessarily implied by the Colorado Marijuana Code, its rules, and as set forth in this article to regulate marijuana stores within the city. The local licensing authority shall be responsible for all local duties and responsibilities, including but not limited to, the issuance, renewal, suspension, revocation, transfer of ownership, and change of location of a marijuana store.

- (a) The local licensing authority shall have the power to promulgate rules and regulations as are reasonable and necessary to implement and administer the requirements of this article.
- (b) The local licensing authority may, after notice and hearing, suspend, revoke, or refuse to renew a license for "good cause." The local licensing authority is authorized to adopt rules and procedures governing the conduct of such hearings. No portion of any application or operating fees previously paid shall be refunded in the event of any suspension or revocation of a license.

Sec. 6-359. - Issuance of license; duration, renewal.

- (a) Each license shall show the name of the licensee, the physical address for which the license is issued, and the type of marijuana establishment for which it is issued. The license, along with the city sales tax license and the current contact information for the owner(s), shall be displayed continuously in a conspicuous location at the physical address indicated on the license.
- (b) Each license issued pursuant to this article shall be valid for one (1) year from the date of issuance and may be renewed only as provided in this article. All renewals of a license shall be for no more than one (1) year. The local licensing authority shall act on renewal applications in accordance with the applicable provisions of the Colorado Marijuana Code and its rules. The timely filing of a renewal application shall extend the current license until a decision is made on the renewal.
- (c) A local license, which shall only be applicable to a specifically identified business at a fixed location within an enclosed and secure premises, shall not be issued until a state license has been granted, appropriate land use process, if required, has been approved and the building in which the store's business is to be conducted has passed all applicable inspections and is ready for occupancy with such furniture, fixtures, and equipment in place as are necessary to comply with any applicable provisions of the code or any state law, rule, or regulation.

Sec. 6-360. - Annual operating and administrative fees.

In addition to application, renewal and an annual operating fee, the city shall impose administrative fees for services, which include the transfer of ownership, background investigations, change of business manager, modification of premises, change of location, change of corporate structure, change of financier, zoning verification, duplicate license, temporary permit, change of trade name, change of class of license, with all such fees to be established by resolution of city council.

Sec. 6-361. - Location, operational restrictions and requirements, marijuana stores.

- (a) Marijuana stores are permitted only within the following zoning districts: the C-1 General Commercial District, C-2 Heavy Commercial District, I-1 Light Industrial Zone District, I-2 Heavy Industrial Zone District and PUD Planned Unit Development District, which specifically permits marijuana stores, and upon obtaining all land use approvals necessary for such use.
- (b) Marijuana stores will not be permitted if, at the time of application for such license, such location is:
 - (1) Within or immediately adjacent to any Residential District, which includes R-1 Residential District – Low Density, R-1A Residential District – Low Density, R-2 Residential District Medium Density, R-3 Residential District – High Density, M-H Mobile Home Community District, R-O Residential and Office District, and PUD Planned Unit Development District, which exclusively permits residential land uses;
 - (2) Within: Beginning at the west side of the Union Pacific Railroad right-of-way and 1st Street, thence north to 9th Street, thence west to the alley between Park Avenue and McKinley Avenue, thence south to 1st Street, thence east to the west side of the Union Pacific Railroad right-of-way;
 - (3) Within one thousand (1,000) feet of:
 - a. Any school,
 - b. Any child care center,
 - c. Any juvenile or adult halfway house, correctional facility or substance abuse rehabilitation center;
 - (4) Within five hundred (500) feet of:
 - a. Any park with playground equipment;
- (c) The distance restrictions described above shall be computed by direct measurement from the nearest property line of the parcel of land on which the protected use is located to the nearest portion of the building or unit in which the proposed marijuana store would be located, using a route of direct pedestrian access.
 - (1) The distance regulations described above shall not be applicable to the renewal of a license once granted.
 - (2) A previously licensed marijuana store that seeks to change locations and applies for and receives a marijuana store license is subject to the location requirements above.
- (d) The maximum number of licensed marijuana locations within the city shall not exceed four (4). This includes co-located medical and retail stores.

- (e) All marijuana stores shall affix labels to all receptacles on the licensed premise that contain marijuana or marijuana products which labels shall clearly display potency profiles and contaminant results from a licensed marijuana testing facility.
- (f) Business conducted within building. Any and all distribution, possession, storage, display, sales, or other distribution of marijuana shall occur only within the restricted area of a marijuana store and shall not be visible from the exterior of the store.
- (g) *Manager registration requirements.* The manager of a marijuana store shall register with the state and the local licensing authority. Whenever a person ceases to be a registered manager of a marijuana store, the marijuana licensee shall notify the licensing authorities within five (5) days and shall designate a new registered manager within thirty (30) days. Either the state or the local licensing authority may refuse to accept any person as a registered manager unless the person is satisfactory to the respective licensing authorities as to character, record, and reputation. In determining a registered manager's character, record, and reputation, the state or local licensing authority may have access to criminal history record information furnished by a criminal justice agency subject to any restrictions imposed by such agency.
- (h) *Hours of operation.* A marijuana store shall be closed to the public, and no sale or other distribution of marijuana shall occur upon the premises between the hours of 10:00 p.m., thru and including 8:00 a.m.
- (i) *Use of pesticides.* No pesticides or insecticides that are prohibited by applicable law for fertilization or production of edible produce shall be used on any marijuana produced or distributed by a marijuana store. A marijuana store shall comply with all applicable laws regarding use of pesticides.
- (j) *Ventilation required.* A marijuana store shall be ventilated to ensure the odor of marijuana cannot be detected by a person with a normal sense of smell at the exterior of the marijuana store or at any adjoining property.
- (k) *Wastewater requirements.* All marijuana stores shall be operated in such a manner as to not permit, allow, or cause to be discharged any substance or material prohibited by the city into or upon any watercourse or city reclamation conduit, facility, or plant.
- (l) *Storage prohibitions of marijuana and marijuana product prohibited.* No regulated marijuana establishment may store marijuana or any marijuana product in any off-premises storage facility located within the city nor may any retail marijuana transporter store any marijuana or marijuana product within the city.
- (m) *Reporting requirements.* A marijuana store shall report to the local licensing authority each of the following events within the time specified. If no time is specified, the report shall be provided within seventy-two (72) hours of the event.
 - (1) Transfer or change of financial interest, business manager, or financier in the license to the city at least thirty (30) days before the transfer or change.

- (2) Taxable transactions and sales and use tax reports and remits to the city monthly.
 - (3) A violation of any law by any licensee or applicant of a marijuana business.
 - (4) Each licensee shall post and keep at all times visible to the public, in a conspicuous place on the premises, a sign to be furnished by the city clerk's office, which sign shall be in the following form: "WARNING: THE FORT LUPTON POLICE DEPARTMENT MUST BE NOTIFIED IMMEDIATELY OF ALL UNLAWFUL ACTS AND DISTURBANCES IN THIS ESTABLISHMENT." Licensees' shall immediately report to the police department any unlawful act, conduct, or disturbance committed upon the premises.
- (n) *Respond to inquiry.* An owner or manager of a marijuana store is required to respond by phone or email within twenty-four (24) hours of contact by a city official concerning its marijuana store at the phone number or email address provided to the city as the contact for the business. Each twenty-four-hour period during which an owner or manager does not respond to the city official shall be considered a separate violation.
- (o) *Signs and advertising.* In addition to the items listed, all licensees shall comply with all city ordinances regulating signs.
- (1) Any person or premises licensed as a retail marijuana store shall comply with all city ordinances regulating signs and advertising. In addition, no licensed retail marijuana store shall use any advertising material that is misleading, deceptive, false, or that, as evidenced either by the content of the advertising material or the medium or the manner in which the advertising is disseminated, is designed to appeal to persons under twenty-one (21) years of age.
 - (2) Except as otherwise provided in this subsection (2), it shall be unlawful for any person licensed under this article or any other person to advertise any retail marijuana or retail marijuana product anywhere in the city where the advertisement is visible to members of the public from any street, sidewalk, park, or other public place, including advertising utilizing any of the following media: any billboard or other outdoor general advertising device as defined by the zoning code; any sign mounted on a vehicle, any hand-held or other portable sign; or any handbill, leaflet or flier directly handed to any person in a public place, left upon a motor vehicle, or posted upon any public or private property without the consent of the property owner. The prohibition set forth in this section shall not apply to:
 - (A) Any sign located on the same zone lot as a retail marijuana store which exists solely for the purpose of identifying the location of the retail marijuana store and which otherwise complies with the city's zoning requirements and any other applicable city laws and regulations; or
 - (B) Any advertisement contained within a newspaper, magazine, or other periodical of general circulation within the city; or
 - (C) Advertising which is purely incidental to sponsorship of a charitable event by a retail marijuana establishment.

- (3) For purposes of this subsection(s), the terms "advertise," "advertising," or "advertisement," means the act of drawing the public's attention to a retail marijuana establishment in order to promote the sale of retail marijuana goods or products by the establishment.

Sec. 6-362. - Inspection of books, records, and licensed premises.

- (a) Each licensee shall keep a complete set of all records necessary to show fully the business transactions of the licensee, all of which shall be open at all times during business hours for the inspection and examination by the local licensing authority, its duly authorized representatives, and the City's Public Safety Department for the purposes of investigating and determining compliance with the provisions of this article and any other applicable state and local laws or regulations. The local licensing authority may require any licensee to furnish such information as it considers necessary for the proper administration of this article. It may also require an audit to be made of the books of accounts and records on such occasions as it may consider necessary by an auditor to be selected by the local licensing authority, who shall likewise have access to all books and records of the licensee.
- (b) The licensed premises, including any places of storage retail marijuana or marijuana products are stored, manufactured, packaged, cultivated, processed, displayed, sold, or dispensed, shall be subject to inspection by the local licensing authority, its duly authorized representatives, and the City's Public Safety Department during all business hours and other times of apparent activity, for the purpose of inspection or investigation. For examination of any inventory or books and records required to be kept by the licensees, access shall be required during business hours. Where any part of the licensed premises consists of a locked area, upon demand to the licensee by the local licensing authority or any other authorized city personnel, such area shall be made available for inspection without delay.
- (c) Each licensee shall retain all books and records necessary to show fully the business transactions of the licensee for a period of the current tax year and the three (3) immediately prior tax years.

Sec. 6-363. – Transfer of ownership.

- (a) A retail marijuana business license, or co-located retail and medical marijuana business license is not transferable or assignable, in whole or in part, including, without limitation, to a different premises, to a different type of business, or to a different owner or licensee. A retail marijuana business license, or co-located retail and medical marijuana business license is valid only for the owner named thereon, the type of business disclosed on the application for the license and the location for which the license issued. The licensee of a retail marijuana business or co-located retail and medical marijuana business are only those persons disclosed in the application or subsequently disclosed to the city in accordance with this chapter. A transfer of a licensed retail marijuana business or co-located retail and medical marijuana business shall be permitted in the following circumstances:
- (1) The new owner and all licensees of the business have submitted completed applications and passed a background check by the city;

- (2) The new owner is not making any changes to any of the plans or conditions that are part of the license; and
 - (3) The license transfer is an arms-length third party transaction to one hundred percent new owners and managers.
- (b) Full transfer or partial transfer of ownership of any retail marijuana or co-located retail and medical marijuana license issued pursuant to this chapter shall be governed by the standards and procedures set forth in the Colorado Marijuana Code and any regulations adopted pursuant thereto and the Authority shall administer transfers of local licenses in the same manner as the state licensing authority administers transfers of state licenses. The public hearing requirement set forth in Section 6-357 of this Chapter shall apply to all applications for full or partial transfer of ownership of any retail marijuana or co-located retail and medical marijuana business license.
 - (c) The submission or pendency of an application for full or partial transfer of ownership does not relieve the license holder from the obligation to properly apply to renew such license in accordance with Section 6-359 of this chapter.

Sec. 6-364. – Change of Corporate Structure.

A change of corporate structure of any retail marijuana or co-located retail and medical marijuana business that results in any of the changes in subsection (a) through (c) below shall require the filing of an application and payment of the requisite fees and shall be subject to all requirements of the post-award licensing process. A change of corporate structure shall be heard and approved or denied by the Authority.

- (a) Any transfer or assignment of ten percent or more of the capital stock of any corporation, or ten percent or more of the ownership interests of any limited partnership interest in any year, or transfer of a controlling interest regardless of size.
- (b) Any change of officer or directors of a corporation that involves the addition or substitution of individual(s) who was not previously an officer or director of the corporation during a period of time that the corporation held the license.
- (c) Any transfer of the capital stock of any corporation, or transfer of any limited partnership interest in any general partnership of a limited partnership, or transfer of any limited liability company interest in a limited liability company of any kind, joint venture or business entity that results in any individual owning more than ten percent of an ownership interest in the business entity if that individual's ownership interest did not exceed ten percent prior to the transfer.
- (d) A change of corporate structure that results in any transfer or assignment of less than ten percent of the capital stock of any corporation or less than ten percent of the ownership interests of any limited partnership interest in any year to a person who currently has an interest in the business, and that does not result in a change of controlling interest, shall not

require and application for change of corporate structure.

- (e) No application for transfer of ownership or change in corporate structure may be approved by the Authority until all city and state occupational taxes, city and state sales and use taxes, excise taxes, any fines, penalties, and interest assessed against or imposed upon such licensee in relation to operation of the licensed business are paid in full.
- (f) In determining whether to permit a transfer of ownership, the Authority may consider the requirements of state statute and the Colorado Marijuana Rules. In addition, no application for transfer of ownership will be considered by the Authority if, at the time of such application, the licensee is under a notice of violation or other unlawful acts issued by either the Authority or the state licensing authority.
- (g) A licensee of a license issued pursuant to this Chapter shall report each transfer or change of financial interest in the license and/or the licensee to the Authority prior to any such transfer or change pursuant to and in accordance with the provisions of state statutes and the Colorado Marijuana Rules. A report shall be required for transfer of capital stock of any corporation regardless of the size, for transfers of member interests of any limited liability company regardless of size, and for any transfer of an interest in a partnership or other entity or association regardless of size.

Sec. 6-365. - Unlawful acts of licensees and persons.

- (a) It shall be unlawful for any licensee to:
 - (1) Violate or fail to comply with any provision, term, condition, or requirement of the Colorado Marijuana Code, including its rules.
 - (2) Allow marijuana or marijuana products to be consumed upon its licensed premises.
 - (3) Use advertising material that is misleading, deceptive, false, or designed to appeal to persons under twenty-one (21) years of age.
 - (4) Sell marijuana or marijuana products to a person under twenty-one (21) years of age or to a person who does not present a government-issued identification at the time of purchase.
 - (5) Refuse to allow inspection of a marijuana store upon request of an authorized city employee. Any licensee, owner, business manager, operator of a marijuana store, or owner of the property where a marijuana store is located may be charged with violation of this requirement.
 - (6) Advertise or publish materials or display signs that are in violation of this article.
 - (7) Violate any provision of this article or any condition of an approval granted pursuant to this article, or any law, rule, or regulation applicable to the use of retail marijuana or the operation of a retail marijuana store.
 - (8) Distribute marijuana or marijuana product within a marijuana store to any person who shows visible signs of intoxication from alcohol, marijuana, or other drugs.
 - (9) No marijuana store or marijuana transporter may store marijuana or marijuana-infused products in any off-premises storage facility located within the city.

- (b) It shall be unlawful for any person to engage in any form of business or commerce involving the cultivation, processing, manufacturing, storage, sale, distribution, testing, or consumption of marijuana other than those forms of business and commerce that are expressly permitted by Section 14 of Article XVIII of the Colorado Constitutions, Section 16 of Article XVIII of the Colorado Constitution, the Colorado Marijuana Code including its rules, and this article, which permits only marijuana stores.

Sec. 6-366. – Nonrenewal, suspension or revocation of license.

- (a) The Authority may, after notice and hearing, suspend, revoke or refuse to renew a license for any of the following reasons:
 - (1) The applicant or licensee, or his or her agent, manager or employee, or financier has violated, does not meet, or has failed to comply with, any of the terms, requirements, conditions or provisions of this Chapter or with or with any applicable state or local law or regulation.
 - (2) The applicant or licensee, or his or her agent, manager or employee, or financier has failed to comply with any special terms or conditions of its license pursuant to an order of the state or the Authority, including those terms and conditions that were established at the time of issuance of the license and those imposed as a result of any disciplinary proceedings held subsequent to the date of issuance of the license.
 - (3) The retail marijuana or co-located retail and medical marijuana business has been operated in a manner that adversely affects the public health, safety or welfare.
 - (4) Misrepresentation or omission of any material fact, or false or misleading information, on the application or any amendment thereto, or any other information provided to the City related to the retail marijuana or co-located retail and medical marijuana business;
 - (5) Violation of any law by which, if occurring prior to submittal of the application, could have been cause for denial of the license application.
 - (6) Distribution of retail marijuana and/or medical, marijuana including, without limitation, in violation of this Chapter or any other applicable law, rule, or regulation.
 - (7) failure to maintain, or provide to the City upon request, any books, recordings, reports, or other records required by this Chapter.
 - (8) Failure to timely notify the City and to complete necessary forms for changes in financial interest, controlling interest, financier, or agent.
 - (9) Temporary or permanent closure, or other sanction of the business, by the city, or by the county or state public health department or other governmental entity with jurisdiction, for failure to comply with health and safety provisions of this Chapter or otherwise applicable to the business or any other applicable law.
 - (10) Revocation or suspension of another retail marijuana business or any other license issued by the city, the State, or any other jurisdiction held by any licensee of the retail marijuana or co-located retail and medical marijuana business.
 - (11) Failure to timely correct any violation of any law or comply with any order to correct a violation of any law within the time stated in the notice or order.
- (b) Evidence to support a finding under subsection (a) above may include, without limitation, one or a combination of the following;

- (1) a continuing pattern of disorderly conduct;
 - (2) a continuing pattern of drug-related criminal conduct within the premises of the retail marijuana or co-located retail and medical marijuana business or in the immediate area surrounding such business;
 - (3) a continuing pattern of criminal conduct directly related to or arising from the operation of the retail marijuana or co-located retail and medical marijuana business; or
 - (4) An ongoing nuisance condition emanating from or caused by the retail marijuana or co-located retail and medical marijuana business.
 - (5) Criminal conduct shall be limited to the violation of a state or city law or regulation.
- (c) In the event a business or licensee is charged with violation of any law, upon which a final judgment would be grounds for suspension or revocation of the license, the city may suspend the license pending the resolution of the alleged violation.
- (d) If the city revokes or suspends a license, the business may not move any marijuana from the premises except under the supervision of the Fort Lupton Public Safety Department.
- (e) The Authority shall conduct a review of all licenses at least annually and, in addition to examining the factors enumerated in this subsection, may hold a hearing on each license at which the general public shall be invited to appear and provide testimony as to the effects of the license on the surrounding community and the city at large, and the Authority may take such views into consideration when deciding whether to continue or renew such license.
- (f) In the event of the suspension of a marijuana business license, during the period of suspension, the business:
1. Shall post two notices provided by the Authority, in conspicuous places, one on the exterior and one on the interior of its premises for the duration of the suspension; and
 2. Shall not distribute or produce or test or transport marijuana, nor allow any customers into the licensed premises.

Sec. 6-367. Violations and penalties.

- (a) The Authority shall hear all actions relating to the suspension or revocation of licenses pursuant to this Chapter. The Authority shall have the authority to impose remedial sanctions for violations as well as suspend or revoke the license in its entirety.
- (b) In addition to the possible denial, suspension, revocation or nonrenewal of a license under the provisions of this Chapter, any person, including but not limited to, any licensee, manager or employee of a retail marijuana or co-located retail and medical marijuana business, or any customer of such business, who violates any of the provisions of this Chapter, shall be guilty of a misdemeanor offense punishable in accordance with Section 1-72 and 10-289 of this Code. A person committing a violation shall be guilty of a separate offense for each and every day during which the offense is committed or continued to be permitted by such person and shall be punished accordingly.
- (c) The city shall commence suspension or revocation proceedings by petitioning the Authority

to issue an order to the licensee to show cause that the licensee's license(s) should not be suspended or revoked. The Authority shall issue such an order to show cause if the petition demonstrates that evidence exists to determine that one or more grounds exist to suspend or revoke the licensee's license(s). The order to show cause shall set the matter for a public hearing before the authority.

- (d) The city clerk shall give written notice of the public hearing no later than ten days prior to the hearing by mailing, either electronically or by first class mail, the notice to the licensee at the address contained in the licensee's license. At the hearing, the licensee shall have the opportunity to be heard, to present evidence and witnesses, and to cross examine witnesses presented by the city. The Authority shall have the power to administer oaths and issue subpoenas to require the presence of persons and the production of papers, books, and records necessary to the determination of any hearing that the Authority is authorized to conduct. The standard of proof at such hearings shall be a preponderance of the evidence. The burden of proof shall be upon the city. The Authority shall be permitted to accept any evidence that they find to be relevant to show cause proceeding.
- (e) The following shall be grounds for suspension or revocation of the licensee's license(s):
 - (1) A violation by a licensee or licensee's officers, agents, or employees of any of the provisions of this Chapter, or any laws of the city or the State of Colorado relating to the sale of marijuana products.
 - (2) Violations of any conditions imposed in connection with the issuance or renewal of the license.
 - (3) Failure to pay state or local taxes related to the operation of the business associated with the license.
 - (4) Loss of right of possession to the licensed premises.
 - (5) Fraud, misrepresentation, or a false statement of material fact contained in the original or renewal license application or communication with the city.
 - (6) The licensee, or any of the agents or employees of the licensee, have committed any unlawful act as described in this Chapter or violated any ordinance of the city or any state law on the premises or have permitted such a violation on the premises by any other person.
 - (7) The odor of marijuana is perceptible to an ordinary person at the exterior of the building at the licensed premises or is perceptible within any space adjoining the licensed premises.
- (f) If the Authority finds that a violation has occurred, the Authority may:
 - (1) Revoke the license for any period up to and including permanent revocation;

- (2) Suspend the license for any period of time;
 - (3) Impose a fine or fine in lieu of suspension of at least \$500.00 but no more than \$100,000.00; or
 - (4) Establish conditions that must be met before the license holder may apply for reinstatement of the license.
- (g) The Authority must establish factors to consider when determining the amount of fine to impose and a matrix of steps for fine amounts. These factors and matrix must be used consistently for all imposed penalties. The Colorado State Marijuana Enforcement Penalty Schedule may be used as a guide to create the local sentencing scheme.
 - (h) Payment of any fine pursuant to the provisions of this Chapter shall be in the form of cash or in the form of a certified check or cashier's check made payable to the City Clerk and paid within 15 days of the imposed sanction.
 - (i) If a license is suspended for any period of time, the licensee must post signage that states the license is under suspension or revocation due to violations of this Chapter, and that all sales of marijuana products are prohibited for the period of the suspension. The signage shall be prominently displayed at all entrances on the premises for the entirety of the suspension or revocation.
 - (j) When a license has been revoked, no new license shall be issued to the same licensee for the period of one year after the revocation.
 - (k) All licensees are assumed to be fully aware of the law and the city shall not therefore be required to issue warnings before issuing citations for violations of this Chapter.

Sec. 6-368. - No city liability; indemnification.

- (a) By accepting a license issued pursuant to this article, the licensee waives and releases the city, its officers, elected and appointed officials, employees, attorneys, agents, and authorized volunteers from any liability for injuries, damages, or liabilities of any kind that result from any arrest or prosecution of the owners, operators, employees, clients, or customers of the retail marijuana store for a violation of state or federal laws, rules, and regulations.
- (b) By accepting a license issued pursuant to this article, all licensees, jointly and severally, if more than one, agree to indemnify, defend, and hold harmless the city, its officers, elected and appointed officials, employees, attorneys, agents, authorized volunteers, insurers, and self-insurance pool, against all liability, claims, and demands on account of any injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever

arising out of or in any manner connected with the operation of the retail marijuana store that is the subject of the license.

Sec. 6-369. - Other laws remain applicable.

- (a) Except as specifically provided herein, to the extent the state adopts any additional or stricter law, rule or regulation, governing the sale, transportation, manufacture, cultivation, processing, packaging, displaying, testing, or distribution of retail marijuana or retail marijuana products, the additional or stricter regulation shall control the operation of any retail marijuana establishment in the city. Compliance with any applicable state law, rule or regulation shall be deemed an additional requirement for issuance, renewal or denial of any license or operation of any establishment under this article, and noncompliance with any applicable state law or regulation shall be grounds for non-renewal, revocation, or suspension of any license issued hereunder.
- (b) Any licensee may be required to demonstrate, upon demand by the local licensing authority, its authorized representative, or by law enforcement officers that the source and quantity of any marijuana sold upon the licensed premises are in full compliance with any applicable state law or regulation.
- (c) If the state or federal government prohibits the sale, transportation, manufacture, cultivation, processing, packaging, testing, or distribution of marijuana through retail marijuana establishments, any license issued hereunder shall be deemed immediately revoked by operation of law, with no ground for appeal, or other redress available, on behalf of the licensee.
- (d) The issuance of any license pursuant to this article shall not be deemed to create an exception, defense, or immunity to any person in regard to any potential criminal liability the person may have for the transportation, packaging, manufacturing, cultivation, possession, sale, distribution, testing, or use of marijuana.

Section 3. Codification Amendments. The codifier of Fort Lupton's Municipal Code is hereby authorized to make such numerical, technical, and formatting changes as may be necessary to incorporate the provisions of this ordinance within the Fort Lupton Code.

Section 4. If any article, section, paragraph, sentence, clause or phrase of this ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The city council hereby declares that it would have passed this ordinance and each part or parts hereof irrespective of the fact that any one part or parts be declared unconstitutional or invalid.

Section 5. All other ordinances or portions thereof inconsistent or conflicting with this ordinance or any portion hereof are hereby repealed to the extent of such inconsistency or conflict.

Section 6. The repeal or modification of any provision of the Municipal Code of the City of Fort Lupton by this ordinance shall not release, extinguish, alter, modify or change in whole or in part any penalty, forfeiture or liability, either civil or criminal, which shall have been incurred under such provision. Each provision shall be treated and held as still remaining in force for the purpose of sustaining any and all proper actions, suits, proceedings and prosecutions for

enforcement of the penalty, forfeiture or liability, as well as for the purpose of sustaining any judgment, decree or order which can or may be rendered, entered or made in such actions, suits, proceedings or prosecutions.

Section 7. This ordinance is deemed necessary for the preservation of the public property, health, welfare, peace and safety.

INTRODUCED, READ, AND PASSED ON FIRST READING, AND ORDERED PUBLISHED this 7th day of September 2021.

PUBLISHED in the Fort Lupton Press the 15th day of September 2021.

FINALLY READ BY TITLE ONLY, PASSED AND ORDERED PUBLISHED BY TITLE ONLY this __ day of ____ 2021.

PUBLISHED IN ITS ENTIRETY the __ day of __ 2021.

EFFECTIVE (after publication) the __ day of __ 2021.

CITY OF FORT LUPTON, COLORADO

Zo Stieber, Mayor

ATTEST:

Maricela Peña, City Clerk

Approved as to form:

Andy Ausmus, City Attorney

**CITY OF FORT LUPTON
CITY COUNCIL**



Shannon Rhoda, Ward 1
Chris Ceretto, Ward 2
Mike Sanchez, Ward 3

Zo Stieber, Mayor

David Crespín, Ward 1
Tommy Holton, Ward 2
Bruce Fitzgerald Ward 3

AM 2021-143

**ACCEPTING THE 2022 PROPERTY/CASUALTY PRELIMINARY CONTRIBUTION QUOTATION
FROM CIRSA ESTIMATED AT \$349,107**

- I. **Agenda Date:** Council Meeting – September 7, 2021
- II. **Attachments:** a. 2022 Property/Casualty Preliminary Contribution Quotation.
- III. **Summary Statement:**

CIRSA annually submits an estimated billing for City's Property/Casualty Insurance coverage. The estimate for the 2022 fiscal year is \$349,107. This will be billed on January 1, 2022

IV. **Submitted by:**


Leann Perino, Finance Director

V. **Finance Reviewed**


Finance Director

VI. **Approved for Presentation:**


City Administrator

VII. **Attorney Reviewed**

Approved

Pending Approval

VIII. **Certification of Council Approval:**

City Clerk

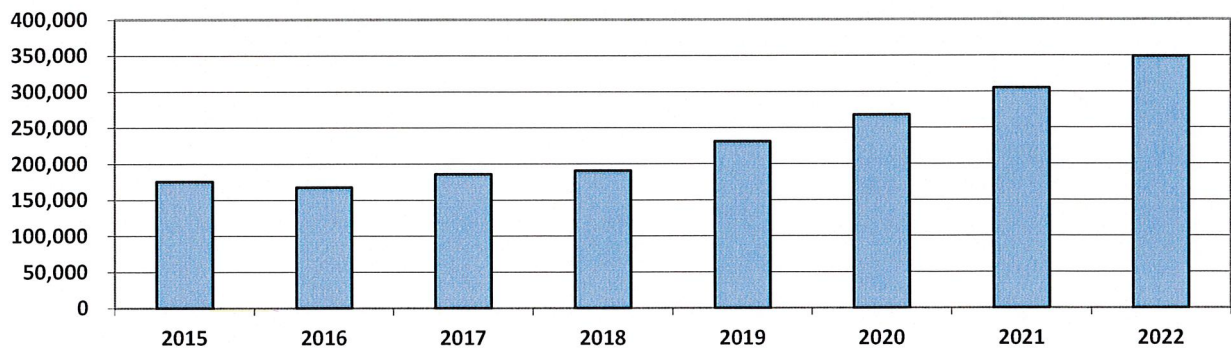
Date

IX. Detail of Issue/Request:

Based on the performance of the City during the year, we are provided a preliminary billing by CIRSA for our Property/Casualty Insurance coverage for the following year. The City will not be billed for this payment until after January 1, 2022.

As a result of the City's claims history, premium contributions have changed over time as follows (it should be noted that "legal" expenses incurred by CIRSA to represent the City are also included in the claims costs):

2015	\$ 175,430	2019	\$ 231,152
2016	\$ 167,640	2020	\$ 267,758
2017	\$ 185,936	2021	\$ 305,176
2018	\$ 190,464	*2022	\$ 349,107



*(*Denotes the preliminary/estimated cost of contribution. This may increase due to actual costs at the end of the year).*

The increase is mainly due to the City's loss experience which has increased our 2022 quote \$36,144.77. Other increases are due to the general increase in property insurance due to nationwide national disasters.

X. Legal/Political Considerations:

The City must carry Property/Casualty coverage for its properties and vehicles as required by law.

XI. Alternatives/Options:

None

XII. Financial Considerations:

The estimate from CIRSA will be included in the 2022 budget.

XIII. Staff Recommendation:

Accept the 2022 Property/Casualty Preliminary Contribution Quotation from CIRSA estimated at \$349,107.

August 31, 2021

Leann Perino, Finance Director
City of Fort Lupton
130 South McKinley
Fort Lupton, CO 80621

RE: 2022 Property/Casualty Preliminary Contribution Quotation

Dear Leann:

Enclosed is the preliminary quotation for your 2022 contribution to the CIRSA Property/Casualty Pool.

As you may know, the excess/reinsurance market continues to be unfavorable in Colorado and elsewhere. Your quotation reflects these unfavorable conditions.

On the liability side, municipalities face an increasingly hostile legal and social climate. The cost of your liability coverage reflects this adverse trend, particularly in law enforcement liability coverage. State legislation has significantly increased law enforcement liability exposures, and defending and settling law enforcement claims grows more costly and challenging each year. During the 2021 session, the legislature also expanded liability for sexual misconduct claims by minors, and we expect to see this change reflected in the cost of liability excess/reinsurance coverage as well.

On the property side, the property market continues to raise deductibles and increase the cost of insurance. Conditions around the country (and globally) have a significant impact on the availability and cost of property coverage. For this reason, although our members have been largely spared from wildfires, wind/hail, and flood events this year, we do not expect an easy excess/reinsurance renewal on the property side, either.

The COVID-19 pandemic has resulted in stricter communicable disease exclusions becoming universal in property policies. And, although we have not seen any significant COVID-19-related liability claims among our membership, we can expect that reinsurers will continue to include communicable disease exclusions in liability policies as well.

In summary, whether individually insured or as part of a pool, municipalities and other insurance consumers all continue to face a hard market for property and liability insurance. A significant portion of your 2022 quotation reflects these conditions.

Despite these market conditions, CIRSA remains committed to keeping each member's cost of risk as low as possible. One of the benefits of pooling is that those members with substantial member equity will experience less of an impact from these rate increases than newer members, who have less equity in the pool.

Whether you are a long-time or newer member, now is a good time to look at your chosen property and liability deductibles. Many of our members have greatly expanded their budgets and operating expenditures over the past several years, but have not increased their chosen deductibles accordingly.

We can run a deductible analysis for you and help you identify additional deductible options that are more in line with your financial capacity. If you would like to see additional deductible options, please contact Linda Black, Chief Financial Officer, at (720) 605-5440 or lindab@cirsa.org.



Of course, being a member of a pool offers you significant benefits that are not available elsewhere. CIRSA will continue to offer you the very best in risk management services specifically tailored to your needs. Please see the attached brochure for a summary of those services.

The attached quotation sheet provides a preliminary quotation. Final invoices, e-mailed on January 1, 2022, will be adjusted for any changes made to your 2022 renewal application. Moreover, quoted contributions may also change if CIRSA membership changes significantly for 2022 and/or actual excess insurance premiums are not adequately funded by the budget established within your rate.

The attached quotation sheet provides information on your 2022 contribution, the amount of any Loss Control Credits available to your entity, and optional payment plans. In addition, a general description of the types and monetary limits of the proposed coverages to be provided to 2022 CIRSA Property/Casualty members is attached.

The acceptance form must be completed and returned to CIRSA by **Friday, October 1, 2021**. When completing your form, please make sure to:

- Initial next to your entity's desired deductible option for 2022
- Write the amount of any available Loss Control Credits you wish to use in the appropriate section of the *Loss Control Credits* table on the quotation sheet
- Indicate which payment option you would like for 2022 on the quotation sheet
- Return the signature page signed by an authorized signer

Please note that if you have requested quotations for any of the Optional Coverage Programs including Equipment Breakdown, Excess Crime, Excess Cyber (Data Privacy and Network Security), Community Service Workers' Accident Medical Plan, Sports Accident Medical Plan, Occupational Accidental Death and Dismemberment Plan, Volunteer Accident Medical Plan, No-Fault Water Line Rupture and/or Sewer Back-Up coverage, Property Damage Caused by Member's Operation of Mobile Equipment coverage, or Detainee Medical coverage, they are not included in this mailing. The majority of the carriers that provide coverage for each program are unable to provide quotes until later this year. We anticipate that quotations for these optional coverages will be mailed to members in October.

If you have any questions about your renewal quote, please don't hesitate to contact us. Courtney Fagan, Strategy and Member Engagement Manager, is available to offer any further explanation of your quote that you may require. Courtney can be reached at (720) 728-1304 or courtneyf@cirsa.org. We are also available to give presentations to your governing body upon request.

Thank you for the opportunity to serve you. We look forward to continuing our relationship with you in 2022.

Sincerely,



Tami A. Tanoue
Executive Director

enc.





CIRSA Property/Casualty Pool
Preliminary 2022 Contribution Quotation
City of Fort Lupton

Current Deductibles:

Liability	Auto Liability	Auto Physical Damage	Property
\$1,000	\$1,000	\$1,000	\$1,000

Description	Amount
Contribution Before Reserve and Loss Experience	\$319,349.39
Reserve Refund Contribution	\$0.00
Impact of Loss Experience	\$36,144.77
Total 2022 Preliminary Quotation before Credits	\$355,494.16

To Renew with Current Deductibles
Initial Here: _____

Loss Control Credits

Description	Amount	Credit Options – You must write in the amount that you wish to use. Amount may be split between available options.		
		Credit PC Contribution	Deposit/Leave in Account	Send Check
2021 Loss Control Audit Credit	(\$6,387.00)			
Balance Remaining from Prior Years' LC Credits	(\$0.00)			
Total Preliminary Quotation at Current Deductible with all Available Credits	\$349,107.16			

Alternative Deductibles

Liability	Auto Liability	Auto Physical Damage	Property	Revised Quote (Before Credits)	To Accept New Deductible Option – Initial Here (Choose Only one)

*Contact Linda Black, CFO at (720) 605-5440 or lindab@cirs.org if you are interested in other options.

Billing Options (Please indicate which option you choose)

☐ Annual Billing on January 1, 2022	☐ Quarterly Billing January 1, April 1, July 1, and October 1, 2022
--	--

Preliminary 2022 Contribution Quotation Continued

This preliminary quotation includes all exposures reported on your entity's 2022 Property/Casualty Renewal Application and any Application Amendment Requests received by CIRSA before August 13, 2021.

* Regarding the Liability Deductible shown on page 1, a \$500 deductible quotation is offered to members, if requested, for general liability. However, police professional and public officials errors and omissions deductibles cannot go below \$1,000.

** Regarding the Property Deductible shown on page 1, an additional property deductible will apply separately to each location in a National Flood Insurance Program (NFIP) Zone A if total building and contents values at that location are in excess of \$1,000,000. The deductible will be the maximum limit of coverage which could have been purchased through NFIP, whether it is purchased or not.

Based upon the selections made in your 2022 Property/Casualty Renewal Application, the City of Fort Lupton has elected to participate in Uninsured/Underinsured Motorist Coverage.

If this is incorrect, or you wish to change your selection at this time, please contact your Underwriting Representative at (800) 228-7136 or (303) 757-5475.

The undersigned is authorized to accept this preliminary quotation on behalf of the City of Fort Lupton.

We accept this preliminary quotation for January 1, 2022 to January 1, 2023. We understand our final invoice may increase or decrease depending upon the number of CIRSA Property/Casualty members for 2022, actual excess insurance premiums, and any changes made to our 2022 renewal application.

Signature: _____ Date: _____

Title: _____

Signature must be that of the Mayor, Manager, Clerk or equivalent (such as President of a Special District.)

Both pages of this form must be returned by Friday, October 1, 2021. A mailed, faxed or e-mailed copy is acceptable. Please return to:

Monique Ferguson, Underwriting Administrative Assistant
3665 Cherry Creek North Drive
Denver, CO 80209
Fax: (303) 757-8950 or (800) 850-8950
E-Mail: MoniqueF@cirsa.org

PROPOSED 2022 PROPERTY/CASUALTY COVERAGES

The types and monetary limits of the proposed coverages to be provided to CIRSA Property/Casualty members for the coverage period of January 1, 2022 to January 1, 2023 are generally described below. The scope, terms, conditions, and limitations of the coverages are governed by the applicable excess and/or reinsurance policies, the CIRSA Bylaws and Intergovernmental Agreement, and other applicable documents.

I. TYPES OF COVERAGES (subject to the limit on CIRSA's liability as described in Section II below):

- A. Property coverage (including auto physical damage and public relations expense and privacy breach expense)
- B. Liability coverage:
 - 1. General liability
 - 2. Automobile liability
 - 3. Law enforcement liability
 - 4. Public officials errors and omissions liability
 - 5. Cyber (security and privacy breach liability)
- C. Crime coverage (including employee dishonesty and theft of money and securities)

II. CIRSA RETENTIONS, LOSS FUNDS, AGGREGATE LIMITS, AND MEMBER DEDUCTIBLES:

For the coverages described in Section I, CIRSA is liable only for payment of the applicable self-insured retentions and only to a total annual aggregate amount for CIRSA members as a whole of the amount of the applicable CIRSA loss fund for the coverage period. There is no aggregate excess coverage over any loss fund.

Coverages in excess of CIRSA's self-insured retentions are provided only by the applicable excess insurers and/or reinsurers in applicable excess and/or reinsurance policies, and shall be payable only by those excess insurers and/or reinsurers. The limits of coverage provided by the excess insurers and/or reinsurers for the coverage period shall be described in the coverage documents issued to the members. Aggregate and other limits shall apply as provided in said documents.

A. CIRSA PROPOSED SELF-INSURED RETENTIONS FOR THE COVERAGE PERIOD:

- 1. \$1,000,000 per claim/occurrence property*
- 2. \$100,000 per claim/annual aggregate public relations expense and privacy breach expense
- 3. \$1,000,000 per claim/occurrence liability
- 4. \$1,000,000 each and every claim public officials liability
- 5. \$500,000 per claim/annual aggregate cyber (security and privacy breach liability)
- 6. \$150,000 per claim/occurrence crime

*Subject further to CIRSA retention of first \$5,000,000 each and every hail/wind loss and/or occurrence

B. CIRSA LOSS FUND AMOUNTS FOR THE COVERAGE PERIOD:

Loss fund amounts are as adopted or amended from time to time by the CIRSA Board of Directors based on the members in the Property/Casualty Pool for the year and investment earnings on those amounts. Information on the current loss fund amounts is available from CIRSA's Finance Department.

C. PROPOSED EXCESS INSURANCE LIMITS FOR THE COVERAGE PERIOD:

- | | |
|-----------------------------|--|
| 1. Excess property: | to \$500 million each claim/occurrence |
| 2. Excess liability: | to \$10 million each claim/occurrence; \$5 million excess auto liability; \$10 million annual aggregate for public officials errors and omission liability |
| 3. Excess crime (optional): | to \$5 million per claim/occurrence |

D. MEMBER DEDUCTIBLES:

A member-selected deductible shall apply to each of the member's claims/occurrences. Payment of the deductible reduces the amount otherwise payable under the applicable CIRSA retention. Allocated loss adjustment expenses are included in the member deductible.

EXPLANATION OF CREDITS AVAILABLE AND ACCEPTANCE OR WITHDRAW PROCEDURES

LOSS CONTROL AUDIT SCORE CREDIT

CIRSA members who received a Loss Control Audit Score of 80 or higher in 2021, and renew their membership in 2022, are eligible for a Loss Control Audit Score Credit. This credit is offered to all members that take an active role in preventing or reducing their losses by complying with the CIRSA Loss Control Standards.

If you did not receive a credit for 2022 and would like to receive one in future years, please contact your Loss Control Representative.

LOSS CONTROL CREDIT ACCOUNT

The CIRSA Board of Directors has approved your use of any balance in the Loss Control Credit Account, except any Special Credit monies, to pay 2022 contributions. Your entity's balance in this account, if any, is shown on the quote letter.

ACCEPTANCE PROCEDURES

Please complete the enclosed acceptance form indicating your decision for 2022 and return it to the CIRSA office ***on or before Friday, October 1, 2021***. **Failure to return the form in time may result in the imposition of penalties under CIRSA Bylaw Article XIV upon withdrawal.**

WITHDRAWAL PROCEDURES (*if applicable*)

The enclosed Article XIV of the CIRSA Bylaws describes withdrawal procedures from CIRSA. **Written notice of withdrawal must be received by CIRSA *no later than Friday, October 1, 2021*, for a withdrawal without penalty effective January 1, 2022.** No withdrawing member shall be eligible for the above-described credits.

Article XIV should be read in its entirety for any penalties which would otherwise apply. Withdrawing members who subsequently apply to rejoin CIRSA may be subject to such terms and conditions as established by the CIRSA Board of Directors.

WITHDRAWAL NOTICE

**MUST BE RECEIVED AT THE CIRSA OFFICE
ON OR BEFORE FRIDAY, OCTOBER 1, 2021**

Sign and return this form if your entity has decided to **withdraw** from CIRSA effective January 1, 2022. Under CIRSA Bylaws, this form must be received by CIRSA ***no later than Friday, October 1, 2021***, for withdrawal without penalty effective January 1, 2022.

NOTICE OF WITHDRAWAL FROM CIRSA

This is to notify the CIRSA Board of Directors that the City of Fort Lupton is withdrawing from CIRSA for purposes of Property/Casualty coverage effective January 1, 2022. We understand the City of Fort Lupton remains obligated and will be billed for any amounts due CIRSA pursuant to the Bylaws and the policies established by CIRSA.

The undersigned is authorized to provide this notice of withdrawal on behalf of the City of Fort Lupton.

Signature must be that of the Mayor, Manager, Clerk, or equivalent (such as President of a Special District.)

Signature: _____

Title: _____

Date: _____

CIRSA BYLAWS
ARTICLE XIV

Withdrawal from Membership

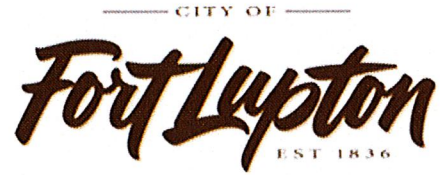
(1) Any member may withdraw from CIRSA by giving prior notice in writing to the Board of Directors of the prospective effective date of its withdrawal.

(2) If the effective date of a member's withdrawal is a date other than January 1, the withdrawing member shall not be entitled to receive any refund of contributions made for administrative costs for the claim year of withdrawal. The withdrawing member shall be entitled to receive within forty-five (45) days after the effective date of withdrawal, a proportionate return of its contribution to any loss fund.

(3) If the effective date of a member's withdrawal is January 1 but the member's written notice of withdrawal is received by CIRSA more than thirty (30) days after the date on which CIRSA mailed a preliminary quotation of the contribution to be assessed the member for the year beginning on that January 1, the withdrawing member shall be obligated to pay its share of CIRSA's administrative costs for the year beginning on that January 1. However, if the preliminary quotation is mailed by CIRSA prior to September 1, members shall not be obligated for future claim year administrative costs if the member's written notice of withdrawal is received by CIRSA on or before the October 1 preceding the January 1 renewal date.

(4) The members may, by a two-thirds (2/3) vote of the members present at a meeting, adopt or amend a policy establishing additional conditions applicable to members which withdraw.

**CITY OF FORT LUPTON
CITY COUNCIL**



Shannon Rhoda, Ward 1
Chris Ceretto, Ward 2
Michael Sanchez, Ward 3

Zo Stieber, Mayor

David Crespín, Ward 1
Tommy Holton, Ward 2
Bruce Fitzgerald, Ward 3

AM 2021-144

APPROVAL OF AN ORDINANCE DECLARING THAT THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE REQUIRE THE INCLUSION OF THE CITY OF FORT LUPTON WITHIN THE METRO WASTEWATER RECLAMATION DISTRICT AND THAT THE CITY COUNCIL DESIRES TO HAVE THE CITY INCLUDED THEREIN UPON THE TERMS AND CONDITIONS PRESCRIBED BY THE METRO BOARD OF DIRECTORS.

I. Agenda Date: Council Meeting – September 7, 2021

II. Attachments:

- a. Ordinance
- b. Metro District Rules and Regulations
- c. Sewage Treatment and Disposal Agreement (Service Contract)
- d. Fort Lupton

III. Summary Statement:

Approval of this Ordinance is required to continue application with the Metro Wastewater Reclamation District for inclusion as a metropolitan connector.

IV. Submitted by:

Roy Vestal, Public Works Director

V. Finance Reviewed

Leann Perino
Finance Director

VI. Approved for Presentation:

[Signature]
City Administrator

VII. Attorney Reviewed

Approved

Pending Approval

VIII. Certification of Council Approval:

City Clerk

Date

IX. Detail of Issue/Request:

Council approved pursuit of the METRO connection option on April 20, 2021 with AM2021-066. The City has determined that entering into an agreement with the Metro Wastewater Reclamation District's (MWRD) Regional Northern Treatment Plant may be a preferred alternative to expanding the City's Wastewater Treatment Plant (WWTP). The Metro District Board of Director's Resolution NO. 0721-B7.f was approved on July 20, 2021, which determined that the District could feasibly serve the City.

The next step for joining the regional facility is adopting an ordinance "declaring that the public health, safety, and general welfare require the inclusion of said municipality within the district and that the governing body desires to have said municipality included therein upon the terms and conditions prescribed by the board of directors."

X. Legal/Political Considerations:

Regulation 22 and the City's current WWTP Discharge Permit compliance schedule requires the City WWTP to meet discharge limits on Total Inorganic Nitrogen and Total Phosphorous by 01/31/2023. (now extended to July 1, 2025)

XI. Alternatives/Options:

*Approve Ordinance
Contract WWTP upgrades*

XII. Financial Considerations:

None.

XIII. Staff Recommendation:

Staff recommends approval of this Ordinance.

ORDINANCE NO. 2021-xxxx

INTRODUCED BY:

AN ORDINANCE OF THE CITY COUNCIL OF FORT LUPTON, COLORADO, ACTING BY AND THROUGH THE UTILITY ENTERPRISE BOARD, DECLARES THAT THE PUBLIC HEALTH, SAFETY, AND GENERAL WELFARE REQUIRE THE INCLUSION OF FORT LUPTON WITHIN THE METRO WASTEWATER RECLAMATION DISTRICT (DISTRICT) AND THAT THE CITY OF FORT LUPTON INCLUDED THEREIN UPON THE TERMS AND CONDITIONS PRESCRIBED BY THE BOARD OF DIRECTORS OF THE DISTRICT; APPROVING THAT CERTAIN “SEWAGE TREATMENT AND DISPOSAL AGREEMENT (SERVICE CONTRACT) WITH THE METRO WASTEWATER RECLAMATION DISTRICT”; AUTHORIZING THE MAYOR TO EXECUTE SAID *AGREEMENT* ON BEHALF OF THE CITY; AND SETTING FORTH OTHER DETAILS RELATED THERETO.

WHEREAS, The City of Fort Lupton, Colorado (“City”) is a political subdivision and municipal corporation of the State of Colorado, pursuant to certain powers set forth in Article XX of the Constitution of the State of Colorado and is Home Rule Charter, and pursuant to its status as a water and sewer enterprise; and

WHEREAS, at its regular meeting on April 20, 2021 (AM2021-066), the Fort Lupton City Council approved and authorized the Mayor to sign a written request (the “Request”) to the Metro Wastewater Reclamation District (“District”), pursuant to C.R.S. Section 32-4-513(2)(a), to determine the feasibility of serving all of the City through the District’s facilities and the terms and conditions upon which the City may be included within the District; and

WHEREAS, at its meeting on July 20, 2021, the Board of Directors of the District considered the City’s request and adopted Resolution NO. 0721-B7.f in which it determined that it could feasibly serve the City pursuant to certain terms and conditions of said Resolution and as provided herein; and

WHEREAS, in reliance on the City’s Request and District’s finding of feasibility, the City and the District have negotiated in good faith and finalized a “***SEWAGE TREATMENT AND DISPOSAL AGREEMENT (SERVICE AGREEMENT) WITH THE METRO WASTEWATER RECLAMATION DISTRICT***”; and

WHEREAS, pursuant to C.R.S Section 32-4-513, the City published in the Fort Lupton Press a Notice of Public Hearing *regarding Potential Inclusion of the City of Fort Lupton Acting by and Through its Utility Enterprise in the Metro Wastewater Reclamation District*, such publication occurring on August 18, 2021, August 25, 2021 and September 1, 2021; and

WHEREAS, at its regular meeting on September 7, 2021, the City Council conducted the requisite public hearing, received information from representatives from the District and City staff, and provided an opportunity for public comment; and

WHEREAS, the City Council finds and determines that the public health, safety, and general welfare of the City, its utility customers and property owners, require the inclusion of the City of Fort Lupton into the District, as provided herein, in order to receive wastewater services from the District pursuant to the terms and conditions prescribed by the District and set forth in the

“SEWAGE TREATMENT AND DISPOSAL AGREEMENT (SERVICE CONTRACT) WITH THE METRO WASTEWATER RECLAMATION DISTRICT”; and

AND WHEREAS, the City Council further finds and determines that the terms of the subject **AGREEMENT** are reasonable and that it is in the best interest of the City to enter into said **AGREEMENT** with the District

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT LUPTON, COLORADO, AS FOLLOWS:

Section 1. The public health, safety, and general welfare of the City, its utility customers and property owners, require the inclusion of the City of Fort Lupton into the District in order to receive wastewater services from the District pursuant to the terms and conditions prescribed by the District and set forth in the **“SEWAGE TREATMENT AND DISPOSAL AGREEMENT (SERVICE CONTRACT) WITH THE METRO WASTEWATER RECLAMATION DISTRICT”** a copy of which is attached hereto as Exhibit “A”.

Section 2. The **“SEWAGE TREATMENT AND DISPOSAL AGREEMENT (SERVICE CONTRACT) WITH THE METRO WASTEWATER RECLAMATION DISTRICT”** is hereby approved and the Mayor is authorized to execute the same on behalf of the City.

Section 3. Pursuant to this Ordinance and subject to final inclusion by the District, the City of Fort Lupton shall be included within the District.

Section 4. Upon final approval, a copy of this Ordinance shall be forwarded to the District.

Section 5. **Purpose.** The purpose of this Ordinance is to provide for the health, safety and welfare of the people.

Section 6. **Repeal.** Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or part of ordinance inconsistent with the provision of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 7. **Validity.** If any part or parts of this Ordinance are for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts be declared invalid.

Section 8. **Interpretation.** This Ordinance shall be so interpreted and construed as to effectuate its general purpose.

INTRODUCED, READ, AND PASSED ON FIRST READING, AND ORDERED PUBLISHED this 7th Day of September 2021.

PUBLISHED in the Fort Lupton Press the 15th day of September 2021.

FINALLY READ BY TITLE ONLY, PASSED AND ORDERED PUBLISHED BY TITLE ONLY this __ day of __ 2021.

PUBLISHED BY TITLE ONLY the ____ day of ____ 2021.

EFFECTIVE (after publication) the _ day of _ 2021.

CITY OF FORT LUPTON, COLORADO

Zo Stieber, Mayor

ATTEST:

Maricela Peña, City Clerk

Approved as to form:

Andy Ausmus, City Attorney



***METRO WASTEWATER RECLAMATION DISTRICT
RULES AND REGULATIONS
GOVERNING THE
OPERATION, USE, AND SERVICES OF THE SYSTEM***

**6450 York Street
Denver, Colorado 80229-7499**

Telephone: (303) 286-3000

Facsimile: (303) 286-3030

www.metrowastewater.com

Published July 2018

Effective July 1, 2018

Effective July 2, 2018, for Sections 2, 5, 6, and 10

These Rules and Regulations reflect:

- All amendments adopted by the Board of Directors on March 20, 2018, and June 19, 2018.
- All amendments to Sections 2, 5, 6, and 10 approved by the U.S. Environmental Protection Agency on July 2, 2018.

**METRO WASTEWATER RECLAMATION DISTRICT
RULES AND REGULATIONS
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SECTION 1

INTRODUCTION

1.1. PURPOSE

Section 206 of the Service Contract and Section 205 of the Special Connectors Agreement state in part that “The Metro District shall establish and enforce reasonable *Rules and Regulations* governing the operation, use, and services of the system.” This document is for the purpose of not only fulfilling that requirement, but of providing for the orderly development of the system so as not to allow uncontrolled practices which may, in the future, prove to be detrimental to the District, any of its Members, or any Special Connector. It is also intended to maintain and enhance a strong level of understanding and cooperation among the Board of Directors, staff of the District, and the officials of its Member Municipalities or Special Connectors. It is intended that the policies set forth herein will conform with and supplement the provisions set forth in the Service Contract and Special Connectors Agreement.

Any User, the Sewage or Wastewater from which directly or indirectly enters or has the potential to enter the District System from areas within or without the boundaries of the Metro District, shall be bound by these *Rules and Regulations* as they now exist or may hereafter be amended. These *Rules and Regulations* may be enforced by any User.

1.2. AMENDMENT OR MODIFICATION

These *Rules and Regulations* may be added to or modified by Resolution of the Board of Directors. The Board shall periodically review the *Rules and Regulations* for potential amendments and updates. Such reviews shall occur at a minimum of once every five (5) years and shall be conducted by a Committee of the Board appointed by the Chairman of the Board for that purpose. The Committee shall complete its review and make recommendations to the Board. In the event a Director wishes to propose a change or modification to these *Rules and Regulations* at a time other than during the periodic review set forth herein, the Director shall make a request of the Chairman of the Board who, in his or her discretion, may appoint a Committee to review the request and make a recommendation to the Board.

Revisions	05/91	04/96	04/99	04/03	03/06	07/18
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SECTION 2

DEFINITION OF TERMS

The terms used in these *Rules and Regulations*, except where the context clearly implies otherwise, shall have the meanings herein specified.

1. **Act** means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, *et seq.*
2. **Administrator** means the Administrator of the U.S. Environmental Protection Agency (EPA).
3. **Altered Sewer Connection** or **Altered Connection** means any direct or indirect Sewer Connection which serves a building or structure in which the number of single family units (as defined in Section 7.4.1) is increased, single family units are converted to other than single family units, or where there is an increase in the size of the Water Service Tap.
4. **Amalgam** means an alloy of mercury with various metals used by dentists to fill cavities in teeth.
5. **Amalgam Separator** means a device designed to remove Amalgam from a Dental Facility's Wastewater before it discharges to a sanitary sewer system.
6. **Amalgam Waste** means any waste from a Dental Facility containing Amalgam. This includes any Amalgam generated or collected by chair side traps, screens, filters, vacuum system filters, Amalgam Separators, and Amalgam that may have accumulated in the plumbing system.
 - A. "Non-contact amalgam" includes scrap or excess Amalgam after the procedure is complete, as well as pre-encapsulated dental Amalgam capsules and the remaining Amalgam capsule.
 - B. "Contact amalgam" means Amalgam that has come into contact with the patient or body fluids, including but not limited to, extracted teeth with dental Amalgam and scrap collected chair side and by chair side traps and vacuum pump filters or other Amalgam capture devices.
7. **Annual Charges** or **Annual Charges for Service** means the sums paid or becoming payable to the Metro District pursuant to the Service Contract or a Special Connectors Agreement and pursuant to any agreement supplemental thereto.
8. **Approval Authority** means the Regional Administrator of the EPA Region VIII or, if the State has an approved state pretreatment program, the Director of the Water Quality Control Division of the Colorado Department of Public Health and Environment (CDPHE).
9. **Associated Municipality** means a Member Municipality, as herein defined, which is not a Connecting Municipality, as herein defined. (An Associated Municipality is a member of the Metro District which indirectly receives service through a Connecting Municipality.)

10. **Authorized Representative of Industrial User** means:
- A. a responsible officer if the Industrial User is a corporation, specifically the president, secretary, treasurer, or vice president in charge of principal business activity or any other person who performs similar policy or decision-making functions for the corporation, or the manager of one or more manufacturing, production or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate and direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; can ensure the necessary systems are established or actions taken to gather complete and accurate information for control mechanism requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;
 - B. a general partner if the Industrial User is a partnership, or the proprietor if the Industrial User is a sole proprietorship;
 - C. a duly authorized representative of the individual designated in (A) or (B) having overall responsibility for the facility from which the Wastewater discharge originates if the authorization is made in writing.
 - D. a specific individual or position having responsibility for the overall operation of the facility or overall responsibility for environmental matters for the facility if the Industrial User is a governmental facility.
 - E. if an authorization under (C) above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, or overall responsibility for environmental matters for the company, a new authorization satisfying the requirements of (C) must be submitted to the Metro District prior to or together with any reports to be signed by an authorized representative.
11. **Best Management Practices or BMP** means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. As a form of Local Limit, BMPs are considered to be Pretreatment Standards.
12. **BOD** means 5-day biochemical oxygen demand. The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures for five (5) days at 20 degrees centigrade, usually expressed as a concentration (e.g., mg/l).
13. **Board of Directors** or **Board** means the Board of Directors of the Metro District.
14. **Capital Recovery Charge** means the charge assessed in lieu of a Sewer Connection Charge for the discharge of waste not required to be accepted by the Metro District under the conditions of the Service Contract, Special Connectors Agreement, or these *Rules and Regulations*.

15. **Categorical Industrial User (CIU)** means an Industrial User subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N.
16. **Categorical Standard** or **Categorical Pretreatment Standard** or **National Categorical Pretreatment Standard** means any regulation containing Pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of Industrial Users and that appear in 40 CFR Chapter I, Subchapter N.
17. **Chemical Oxygen Demand (COD)** means a measure of the dissolved oxygen-consuming capacity of inorganic and organic matter present in water or Wastewater. It is expressed as the amount of oxygen consumed from a chemical oxidant in a specific test. It does not differentiate between stable and unstable organic matter and thus does not necessarily correlate with biochemical oxygen demand.
18. **Colorado Discharge Permit System (CDPS) Permit** or **CDPS Permit** means a National Pollutant Discharge Elimination System permit (NPDES permit) that is issued by the State through its NPDES permit program approved pursuant to section 402(b) of the Federal Water Pollution Control Act, 33 USC 1251 et. seq and/or pursuant to the Colorado Water Quality Control Act, CRS 25-8-101 et. seq.
19. **Connecting Municipality** means a Member Municipality, as herein defined, all or any part of the Municipal Sewer System of which, for the disposition of Sewage therefrom, is directly connected with an Interceptor of the Metro District which terminates at a sewage treatment and disposal plant of the District.
20. **Connector** means a Member Municipality or Special Connector or Corporate Connector, as herein defined.
21. **Construction** or **Initiation of Construction** means documentation of the first inspection of concrete pouring by the appropriate regulatory agency for purposes related to Section 7.
22. **Contracting Municipality** means a Municipality, as herein defined, which is not a member of the Metro District but receives service indirectly by right of contract with either a Connecting Municipality, an Associated Municipality, or a Special Connector by discharging sewage into the Municipal Sewer System of such entity.
23. **Corporate Connector** means a corporate entity having a service agreement with the Metro District appertaining to the acquisition of any site for sewage disposal facilities or sewage treatment plant.
24. **Customer Equivalent Connection Unit (CECU)** means the value assigned to each metering, sampling, and estimating location.
25. **Date of Connection** means the date that a building, structure, or premise is physically attached such that sewage flow may enter the Municipal Sewer System. For the purposes of payment of Sewer Connection Charges under Section 7, a Municipality may select the date of sewer inspection, the date a certificate of occupancy is issued, the water meter set date, or the date evidenced by any equivalent documentation to represent the Date of Connection. The Date of Connection for an altered sewer connection shall be when the

additional single family units are completed and available for use or when the enlarged water service tap is installed, whichever is appropriate. Each Municipality shall select one method of determining the Date of Connection and use it consistently.

26. **Dental Facility** means any facility that practices dentistry including, but not limited to, dental clinics, dental labs, offices, hospitals, and schools.
27. **Direct Connector** means a connecting Municipality or Special Connector which receives sewage service from the Metro District through a direct connection to an Interceptor of the District.
28. **District** or **Metro District** means the Metro Wastewater Reclamation District. Wherever approval of, or correspondence with the Metro District is referred to, it shall mean the District Manager unless otherwise specified.
29. **District Interceptor** or Interceptor means any one of the intercepting sanitary sewers, outfalls, or force mains owned and operated by the Metro District.
30. **District Interceptor System** means the system owned by the Metro District associated with conveyance or collection of sewage, including intercepting sanitary sewers, outfalls, force mains, pump stations, siphon structures, and all related appurtenances.
31. **District Manager or Manager** means the District Manager of the Metro District.
32. **District System** means the sanitary sewer and other sanitation facilities owned, constructed, installed, or otherwise acquired, initially and as thereafter modified, by the Metro District, including the District Interceptor System. This definition shall have the same meaning as "Sewage Disposal System" or "System" as defined in the Service Contract.
33. **Environmental Protection Agency** or **EPA** means the U.S. Environmental Protection Agency or, where appropriate, the Regional Water Management Division Director, the Regional Administrator, or other duly authorized official of said Agency.
34. **Existing Source** means any source of discharge that is not a New Source.
35. **Existing Source Dental Facility** or **Existing Dental Facility** means a Dental Facility that is not a New Source Dental Facility or New Dental Facility.
36. **Expected Service Area** means the geographical area which the Metro District has anticipated providing Wastewater service. This Expected Service Area is normally evidenced by and defined in an approved facility plan or facility report which shows the area which the District has planned to be able to serve. Other Board-approved District documents may be used where appropriate to make the determination of Expected Service Area. Expected Service Area is used solely for the purpose of determining whether additional service areas requested by special connectors are within the area the District has planned to serve.
37. **Flow** means the quantity of Sewage measured in gallons received from a Connector.

38. **Hauled Waste** means Sewage or Wastewater that is transported and discharged to a publicly owned treatment works (POTW) by truck or rail.
39. **Inactive Connection** means a Sewer Connection through which no flow has been discharged for more than ten years. A Sewer Connection shall be considered to have been inactive when records of the water supply agency serving the building or premises show that no measurable water was supplied to the building or premises during that time, regardless of whether any payment for water was made during or after the ten years. The date of reactivation shall be the date the water supply agency resumes water service.
40. **Indirect Connector** means an Associated Municipality or Contracting Municipality which receives sewage service indirectly from the Metro District through a connection to a Municipal Sewer System of a Connecting Municipality or Special Connector.
41. **Industrial User** (IU) means any non-domestic source discharging or with a potential to discharge Pollutants into a Publicly Owned Treatment Works under Section 307(b), (c), or (d) of the Act.
42. **Initiation of Construction** or **Construction** means documentation of the first inspection of concrete pouring by the appropriate regulatory agency for purposes related to Section 7.
43. **Interference** means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:
- A. Inhibits or disrupts the Metro District's treatment processes or operations, or its sludge processes, use, or disposal; and
 - B. Therefore is a cause of a violation of any requirement of the Metro District's NPDES/CDPS Permit(s) (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent state or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the SWDA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research, and Sanctuaries Act.
44. **ISO 11143** means the International Organization of Standardization's current standard for dental equipment – Amalgam Separators.
45. **Loadings** means the amount of Biochemical Oxygen Demand (BOD), Suspended Solids (SS), and Total Kjeldahl Nitrogen (TKN) in the Wastewater.
46. **Local Limit** means a specific discharge limit developed and enforced by the Metro District upon Industrial Users to implement the general and specific discharge prohibitions listed in 40 CFR 403.5(a)(1) and (b) and these *Rules and Regulations*. A Local Limit is a Pretreatment Standard.
47. **Manager or District Manager** means the District Manager of the Metro District.

48. **Member Municipality** or **Member** means a member of the Metro District.
49. **Metro District** or **District** means the Metro Wastewater Reclamation District. Wherever approval of, or correspondence with the Metro District is referred to, it shall mean the District Manager unless otherwise specified.
50. **Metro Standards** means those commonly used construction standards of the Metro District. If standards have not been previously established by the District for particular construction materials or methods, this term shall include those materials or methods subsequently approved by the District Manager.
51. **MG** means million gallons.
52. **MGD** means million gallons per day.
53. **MGY** means million gallons per year.
54. **Mobile Dental Facility** means a specialized mobile self-contained van, trailer, or equipment used in providing dentistry services at multiple locations.
55. **Municipal Sewer System** means a system provided by a Municipality to provide sewer service to its inhabitants by the collection of Sewage arising within its corporate limits and to the extent determined by its governing body without its corporate limits. This definition shall have the same meaning as "Sewer System" as defined in the Service Contract.
56. **Municipal Water System** means a water supply system which is open to potential users in a specific category (such as property owners in a geographical area). A Municipal Water System does not have to be governmentally owned.
57. **Municipality** means any city, city and county, incorporated town, sanitation district, water and sanitation district, or any other political subdivision or public entity heretofore or hereafter created under the laws of the State of Colorado having specific boundaries within which it is authorized or empowered to provide sewer service for the area within its boundaries.
58. **National Pollutant Discharge Elimination System Permit** or **NPDES Permit** means a permit issued pursuant to Section 402 of the Act (33 U.S.C. 1342).
59. **National Pretreatment Standard, Pretreatment Program Standard, Pretreatment Standard, or Standard** means any regulation containing Pollutant discharge limits promulgated by the EPA in accordance with Section 307 (b) and (c) of the Act, which applies to Industrial Users. This term includes prohibitive discharge limits established pursuant to 403.5 and the Categorical Standards established pursuant to Section 403.6.
60. **New Sewer or New Connection** means any direct or indirect Sewer Connection serving any building or structure which was not physically attached to the Municipal Sewer System of a Servicing Municipality.

61. **New Source** means any building, structure, facility, or installation from which there is or may be a discharge of Pollutants, the construction of which commenced after the publication of proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source, if such standards are thereafter promulgated in accordance with that Section, provided that:
- A. the building, structure, facility, or installation is constructed at a site at which no other source is located; or
 - B. the building, structure, facility, or installation totally replaces the process or production equipment that causes the discharge of pollutants at an Existing Source; or
 - C. the production of Wastewater generating processes of the building, structure, facility, or installation are substantially independent of an Existing Source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the Existing Source, should be considered.

Construction on a site at which an Existing Source is located results in a modification rather than a New Source if the construction does not create a new building, structure, facility, or installation meeting the criteria of Section (1)(b) or (c) above but otherwise alters, replaces, or adds to existing process or production equipment.

Construction of a New Source as defined under this Section has commenced if the owner or operator has:

- A. begun, or caused to begin, as part of a continuous onsite construction program
 - a. any placement, assembly, or installation of facilities or equipment; or
 - b. significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of New Source facilities or equipment; or
 - B. entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.
62. **New Source Dental Facility** or **New Dental Facility** means a Dental Facility whose first date of discharge to a Metro District Publicly Owned Treatment Works is after July 14, 2017.
63. **Pass Through** means a discharge which exits the facilities of the Metro District into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the District's NPDES/CDPS Permit(s) (including an increase in the magnitude or duration of a violation).

64. **Period Represented** means the period of time over which the results of a sampling period are applied for the determination of Annual Charges.
65. **Period Sampled** means the period of time, normally seven (7) days, during which the Flow from a particular Connector is sampled for the purpose of computing Annual Charges.
66. **Person** means not only a natural person, corporation, or other legal entity, but also two or more natural persons, corporations, or other legal entities acting jointly as a firm, partnership, unincorporated association, joint venture, joint stock company, trust, estate, governmental entity (federal, state, and local), or any other legal entity; or their legal representatives, agents, or assigns.
67. **pH** means the logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in moles per liter of solution. It is a measure of the acidity or alkalinity of a solution, expressed in standard units.
68. **Pollutant** means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, an excess of heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, agricultural waste, and certain characteristics of wastewater [e.g., pH, Lower Explosive Limit (LEL), temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor].
69. **POTW or Publicly Owned Treatment Works** means a treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned in this instance by the Metro District. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of Sewage and any sewers that convey Wastewater to a District treatment plant. For the purposes of these *Rules and Regulations*, POTW shall also include any sewers that convey Wastewater to the POTW from Persons outside the District who are Users of the District's POTW. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the indirect discharges to and the discharges from such treatment works.
70. **POTW Treatment Plant** means that portion of the POTW designed to provide treatment of municipal sewage and industrial waste.
71. **Pretreatment or Treatment** means the reduction of the amount of Pollutants, the elimination of Pollutants, or the alteration of the nature of Pollutant properties in Wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such Pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, or by other means, except as prohibited by 40 CFR §403.6(d).
72. **Pretreatment Program or Program** means the Metro District's program, approved by the Approval Authority in accordance with §403.11 of the Federal Pretreatment Regulations, that implements the federal Pretreatment Standards and Requirements and all other Pretreatment Requirements and the District's associated legal authority included in Sections 5, 6, and 10 of these *Rules and Regulations*.

73. **Pretreatment Program Responsibilities** means all responsibilities associated with implementation of the Metro District's Pretreatment Program.
74. **Pretreatment Program Requirement or Pretreatment Requirement or Requirement** means any substantive or procedural requirement related to pretreatment other than a National Pretreatment Standard imposed on an Industrial User.
75. **Program or Pretreatment Program** means the Metro District's program, approved in accordance with §403.11 of the Federal Pretreatment Regulations, that implements the federal Pretreatment Standards and Requirements and all other Pretreatment Requirements and the District's associated legal authority included in Sections 5, 6, and 10 of these *Rules and Regulations*.
76. **Publicly Owned Treatment Works or POTW** means a treatment works as defined by Section 212 of the Act (33 U.S.C. 1292), which is owned in this instance by the Metro District. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of Sewage and any sewers that convey Wastewater to a District treatment plant. For the purposes of these *Rules and Regulations*, POTW shall also include any sewers that convey Wastewater to the POTW from Persons outside the District who are Users of the District's POTW. The term also means the municipality as defined in Section 502(4) of the Act, which has jurisdiction over the Indirect Discharges to and the discharges from such treatment works.
77. **SS** means suspended solids or total suspended solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, Wastewater, or other liquid, and that is removable by laboratory filtering.
78. **Service Contract** means the Sewage Treatment and Disposal Agreement between the Metro District and each Member Municipality for the interception and treatment of Sewage from the Member Municipality. To the extent the obligations in the Service Contract(s) conflict or are inconsistent with any provision of these *Rules and Regulations*, the terms of the Service Contract will be deemed to control and govern.
79. **Servicing Municipality** means any Municipality having direct responsibility for providing and regulating sewage service to individual customer connections.
80. **Sewage or Wastewater** means liquid wastes, solid wastes, night soil, industrial wastes, and any other substance, whether it be liquid, solid, in suspension, or in solution, in a Municipal Sewer System or in the District System, or in both such systems.
81. **Sewer Connection** means any physical connection to the District System or Municipal Sewer System, whether direct or indirect, through which Flow does or may enter into the District System. A "stub-in" made for the convenience of construction shall not be considered a physical connection until it is connected to a building or structure.
82. **Sewer Connection Charge** means the charge set by the Board of Directors for each Single Family Residential Equivalent connection.
83. **Sewer Connection Charges or Total Sewer Connection Charges** means the sum total of charges due from a Connector or Special Connector in a quarter or a year pursuant to the Sewer Connection Charge.

84. **Sewer Connection Permit** means any document or permit, including but not limited to a building permit, sewer connection permit, inspection certificate, certificate of occupancy, or other document issued by a Connecting Municipality or Special Connector which authorizes for a specific address(es) the use of a Municipal Sewer System or the District System for a new or altered connection and requires payment of a Sewer Connection Charge to the Connecting Municipality or Special Connector. The Sewer Connection Permit shall be designated by a Connecting Municipality or Special Connector and filed with the Metro District and shall be consistently used by the Connecting Municipality or Special Connector such that the District can audit the Sewer Connection Charge payments accurately. Any document described above may be designated as a Sewer Connection Permit, but in no case can a Sewer Connection Permit be issued after a User is actually connected to and using the Municipal Sewer System or the District System or after a certificate of occupancy is issued for the address(es) associated with the new or altered connection.

85. **Significant Industrial User (SIU)** means:

- A. any CIU;
- B. any Industrial User designated as such by the Metro District on the basis the Industrial User has a reasonable potential for adversely affecting District operations or for violating any Pretreatment Standard or Requirement;
- C. any Industrial User discharging an average of 25,000 gallons per day or more of process wastewater to the sanitary sewer system (excluding sanitary, non-contact cooling, and boiler blowdown wastewater); and
- D. any Industrial User discharging a process waste stream which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the Metro District's treatment plant.

Upon a finding that an Industrial User meeting the criteria in paragraph (A) above never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standards) the Metro District may determine the Industrial User a Nonsignificant CIU if the following conditions are met:

- a. the Industrial User, prior to the District's finding, has consistently complied with all applicable categorical pretreatment standards and requirements;
- b. the Industrial User annually submits the certification statement required in 403.12(q) together with any additional information necessary to support the certification statement; and
- c. the Industrial User never discharges any untreated concentrated Wastewater.

Upon a finding that an Industrial User meeting the criteria in paragraphs (B), (C), or (D) above has no reasonable potential for adversely affecting the Metro District's operation or for violating any Pretreatment Standard or Requirement, the District may at any time, on its own initiative or in response to a petition received from a Municipality or Industrial User, determine that such Industrial User is not a SIU.

86. **Single Family Residential Equivalent (SFRE)** means the capacity of sewer service or water service necessary for a single family household.
87. **Slug Discharge** means any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge which has a reasonable potential to cause Interference or Pass Through, or in any other way violates the Metro District's *Rules and Regulations*, local limits, or permit conditions.
88. **Special Connector** means a Municipality which receives service from the Metro District by contract and is not a Member but is directly connected with an Interceptor of the District.
89. **Special Connectors Agreement** means the standard form of contract which the Metro District enters into with Special Connectors.
90. **Staff** means the staff of the Metro District.
91. **Stub-in** means the physical connection to a Municipal Sewer System or District System using sewer pipe or similar device which, until a future time, shall be capped in a manner to not allow sewage to be discharged to the system. When service is required, the cap can be removed to allow the physical connection to the District System or Municipal Sewer System.
92. **Summary of Period Represented** means the determination of quantity, quality, and characteristics of Sewage which is sent to each Connector showing the results of a sampling period including the computation of the total flow, BOD, SS, and TKN for each period represented.
93. **Total Kjeldahl Nitrogen (TKN)** means the sum, expressed in parts per million (ppm) or milligrams per liter (mg/L), of free-ammonia nitrogen and organic nitrogen compounds which are converted to ammonia under digestion conditions specified by the Kjeldahl Nitrogen test method
94. **Total Sewer Connection Charges** or **Sewer Connection Charges** means the sum total of charges due from a Connector or Special Connector in a quarter of a year pursuant to the Sewer Connection Charge.
95. **Toxic Pollutant** means, but is not limited to, any Pollutant or combination of Pollutants listed as toxic in regulations promulgated by the administrator of the EPA under the provisions of Section 307(a) of The Act or other acts
96. **Treatment** or **Pretreatment** means the reduction of the amount of Pollutants, the elimination of Pollutants, or the alteration of the nature of Pollutant properties in Wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such Pollutants into a POTW. The reduction or alteration can be obtained by physical, chemical, or biological processes, or by other means, except as prohibited by 40 CFR §403.6(d).
97. **User** means any Person who contributes, causes, or permits the contribution of Wastewater into the Metro District's POTW.

98. **Wastewater** or **Sewage** means liquid wastes, solid wastes, night soil, industrial wastes, and any other substance, whether it be liquid, solid, in suspension, or in solution, in a Municipal Sewer System or in the District System, or in both such systems.
99. **Water Service Tap** or **Tap** means the meter attached to a Municipal Water System through which water may enter a building or structure, or the pipe directly attached to the the Municipal Water System if there is no meter.

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SECTION 3

DISTRICT INTERCEPTOR SYSTEM

3.1. GENERAL

The District Interceptor System is for the purpose of intercepting Wastewater flows from the Municipal Sewer System of each of the Member Municipalities and Special Connectors and transporting such Wastewater. The District Interceptor System is for the use of all Member Municipalities and Special Connectors and no part of the District Interceptor System shall be construed as being for the sole use of any one Member Municipality or Special Connector.

Access to and use of the District Interceptor System shall be controlled solely by the Metro District. Entry into the District Interceptor System will be allowed only after consent has been received from the District. Use of the District Interceptor System, modifications to the District Interceptor System, or other construction work directly affecting the District Interceptor System will be allowed only after written approval has been issued by the District. In the event of an emergency, the requirement for written approval can be waived by the District Manager. Work on the District Interceptor System must meet all applicable federal, state, and local safety requirements and comply with safety practices specified by the District as being suitable to minimize risk to human life and safety, damage to property, and degradation to the environment.

3.2. CONNECTIONS TO THE SYSTEM

3.2.1. Eligibility for Connections

Only Connectors who are signatories of the Service Contract or a Special Connectors Agreement are eligible to make connections to the District System. Under extreme or unusual circumstances, special temporary connections may be approved by the Board of Directors for other parties. If such a special temporary connection is approved, a contract shall be entered into with the Connector that shall include a specific time limitation for the Connector to either become a Member of the District, a Special Connector, or to disconnect from the District Interceptor System.

3.2.2. Responsibility for Costs of Connections

The Service Contract and Special Connectors Agreement provide that upon the mutual agreement of a Connector and the Metro District, additional connections to the District Interceptor System can be authorized. The specific Connector shall pay the cost of such additional connections and the cost of any required metering and sampling facilities. When the District authorizes a connection with less than permanent metering and sampling facilities, such approval is for the benefit of both the Connector and the District. Approval of such a connection shall not be construed to release the Direct Connector from the obligation to pay for full metering and sampling facilities when the District determines such facilities are required.

3.2.3. Limitations on Connections

In general, new connections to the District Interceptor System will be allowed only from major outfalls, sewer mains, and other interceptor sewers. The connection of minor collector lines or

individual service lines to a District Interceptor will only be permitted where no other alternative is feasible. In evaluating such requests, Staff shall consider whether the denial of such a request would result in undue hardships such as unreasonable increased costs to the Connector, safety issues, construction of pumping or lift stations or substantial additional piping or facilities, or creation of substantial traffic or other conflicts. The District may also consider any other factors in the best interest(s) of the District. Only lines which are the property of and/or under the complete control of the Connector will be allowed to be connected to the District Interceptor System. Where minor collection lines or individual service lines are allowed to be connected, the permission to connect is granted to the Connector and the Connector shall be responsible for the connection and for all Flows through the connection.

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

New connections shall be made in such a manner that the quantity and quality of Flow from each Direct Connector may be measured or otherwise estimated, as stipulated elsewhere in these *Rules and Regulations*, for the purpose of determining Annual Charges. Two general types of connections may be made to the District Interceptor System: Type 1 for which the quantity and quality of flow must be determined for that individual connection, and Type 2 for which the quantity and quality of Flow will be determined at a point downstream. Type 2 connections may be allowed in cases where the Flow introduced into any section of an Interceptor is from a single Direct Connector and will be metered and sampled at the downstream end of the section. The Metro District shall consider possible future connections that other Connectors may wish to make to the Interceptor segment before granting approval for a Type 2 connection. Direct Connectors who receive permission for a Type 2 connection may be required to make provisions for possible future metering and sampling facilities, and agreement on the part of the Direct Connector to provide such facilities in the future may be included as a part of the permission to connect. This determination will be made by the District Manager and will be based on the existing and/or anticipated physical conditions for each individual case. Nothing herein shall be construed as prohibiting the District from requiring the Direct Connector to install necessary metering and sampling facilities in the future as the District System and connections to it change.

Connections may not be altered or enlarged without the written permission of the Metro District. When the change is for the purpose of increasing the capacity of the connection, the request for alteration shall be considered as a request for a new connection and must follow the requirements of this Section 3 for requests for new connections.

3.2.4. Physical Requirements for the Connection

All work performed in making a new connection to a District Interceptor shall conform to Metro District standards and shall be subject to the approval of District inspectors.

All connections to District Interceptors where the connecting line is larger than twelve (12) inches in diameter shall be made at an existing manhole. If it is not feasible to connect to an existing manhole, permission may be requested for constructing a new manhole on the Interceptor. The final determination of feasibility shall be made by the District Manager based upon information provided by the Direct Connector and, where the Metro District deems it

necessary, upon information obtained independently by the District. Where the line to be connected is twelve (12) or less inches in diameter, the District Manager may authorize the connection to be made without a manhole if the District Manager determines such connection is in the best interest of the District.

Metro District standard drawings and specifications shall be used on all connections. Modifications to these drawings and specifications may be required by the District to meet specific physical conditions.

Upon acceptance by the Metro District, manholes constructed on District Interceptors and new metering and sampling facilities, plus connecting sewers between metering and sampling facilities and the Interceptor, shall become the property of the District. All necessary deeds, easements, and rights-of-way shall be transferred to the District.

Where the Metro District determines it is not in the best interest of the District to own certain facilities, the District will not accept such transfer, and the Direct Connector will provide the District with an agreement allowing District use of the facilities and defining maintenance responsibilities.

3.2.5. Request for Connection

A Connector wishing to make a new connection to the District Interceptor System shall submit a request in writing to the District Manager of the Metro District. The request shall include the following:

1. If the Connector already has one or more connections to the District Interceptor System, an explanation of why an additional connection is needed rather than using an existing connection(s).
2. Plans or preliminary sketches showing details of the proposed connection to the Interceptor. If final plans are not submitted with the original request, submission and approval of such plans will be required prior to final approval for the connection.
3. A statement that the Connector will provide the following:
 - A. Notification to the Metro District at least forty-eight (48) hours prior to starting construction so that a District inspector can be present during the construction. (No construction shall begin on or around District facilities until a District inspector is present.)
 - B. Transfer of all necessary deeds, easements, or other documents to the Metro District by the Connector upon acceptance by the District.
 - C. Any additional information as may be deemed necessary by the Metro District.
4. In addition, for connections with a projected ultimate Flow of less than 0.5 MGY:
 - A. A description of the property, size of the connection, location of the connection to the District Interceptor System, and the approximate timeline for connection.

5. In addition, for connections with a projected ultimate Flow greater than or equal to 0.5 MGY:
 - A. A map of the general area showing the boundaries of the ultimate area to be served by the connection, the 'Interceptor including the proposed point of connection, the proposed major sewers which will be tributary to the connection and any existing sewers in the areas adjacent to the area to be served.
 - B. The estimated average and peak quantity of flow expressed in MGD at the proposed time of connection plus the estimated Flow versus time curve projected to the ultimate development of the area.
 - C. The estimated quality of Flow expressed in BOD, SS, and TKN, plus any additional pertinent information regarding the quality of Flow expected, particularly from industrial sources.

The Connector requesting the connection shall be totally responsible to the Metro District in all matters regarding the request for and the actual construction of the connection. All correspondence and dealings concerning the connection shall be with the Connector.

Connectors are advised the submission of a request for a connection does not assure the Connector of approval. It is therefore necessary that requests be submitted and approved prior to proceeding with the construction of facilities for which a connection will be required. It is also necessary that ample time be allowed for Metro District review of the request.

3.2.6. Action Required for Approval of a Request for Connection

When a request for connection is submitted by a Connector, the District Manager shall decide whether a Type 1 connection or a Type 2 connection is required.

1. Type 1 Connections

When the separate determination of quantity and quality of Flow through that connection (by either metering and sampling or estimating) is required, the request for connection shall be studied by the Staff and a recommendation shall be submitted to the District Manager. If the projected ultimate flow through the requested connection is less than or equal to ten (10) MGY, the District Manager may act on the connection request. If the projected ultimate Flow through the requested connection is greater than ten (10) MGY, the District Manager shall submit the request and recommendation to the Board of Directors through the appropriate Board Committees. Connectors are advised a minimum of forty-five (45) days is required when Board approval is needed, and a minimum of twenty (20) days is required when District Manager approval is necessary. Approval is valid only when issued by the District Manager in writing and received by the Connector.

2. Type 2 Connections

When the separate determination of quantity and quality of Flow is not required because it is measured elsewhere, the District Manager has the authority to approve or disapprove a request for connection. Such approval is valid only when issued by the District Manager in writing and received by the Connector. Connectors are advised a minimum of twenty (20) days is required for staff review of a request for a Type 2 connection.

- A. ***Interceptor Segments Where Type 2 Connections Are Allowed.*** The District Manager shall review the Metro District's facility drawings, active project listings, and the Facility Plan to determine all Interceptors (and segments of interceptors) which (by virtue of the quantity and quality of Flow being determined at a point downstream) are eligible for Type 2 connections. This review shall consider possible future connections which other Member Municipalities or Special Connectors may wish to make. This review shall indicate which Member Municipality or Special Connector may connect to each segment under the Type 2 requirements.
- B. ***Numerous Type 2 Connections.*** When a Member Municipality, a Special Connector, or the District Manager is aware that a certain Direct Connector will be requesting numerous Type 2 connections to a specific segment of an Interceptor, that Direct Connector should prepare a connection plan for that segment of Interceptor. At a minimum, the connection plan should address those items of information and assurances required under Section 3.2.5. The connection plan should specifically consider the number of physical connections to the Interceptor segment and should keep the number of physical connections needed to the minimum through the use of collecting lines parallel to the Interceptor and such other physical arrangements as are appropriate. The scope of the connection plan should be based on developing a long-term plan for providing service to the entire area.

When a connection plan for Type 2 connections to a specific Interceptor segment has been approved in writing by the District Manager, requests for connections in compliance with the connection plan will require only simplified application and review. Each application for connection shall cite the connection plan and the specific connection requested. The District Manager shall make every effort to approve, in less than five (5) working days, a request for a Type 2 connection where the connection is in compliance with an approved plan. When the request for connection differs from the approved connection plan, the normal procedure for Type 2 connections, including submission of all information and assurances under Section 3.2.5, shall apply.

3.2.7. Expiration of Connection Approval

New connection approvals expire if construction of the connection is not initiated within two (2) years of the date of the Metro District's letter of approval unless otherwise specified during the approval process. If the Connector making the request anticipates a delay before construction of the connection, the request should indicate the reasons for this delay in the original request. For connections approved by the Board of Directors, any timing cited in the approval resolution shall supercede this general policy. For connections approved by the District Manager, the District Manager may extend the connection approval period if requested in writing by the Connector and provided the anticipated service through the connection has not changed. Only one extension will be granted and the extension period will be for one year.

3.3. INDIRECT CONNECTIONS

In general, Direct Connectors are responsible for all Flows through their connection points to Metro District facilities. However, situations may arise in which it may be beneficial to the District to provide for metering and charging for an area of a Member Municipality or Special Connector which is not directly connected to facilities of the District. Arrangements with the parties of interest for such indirect connections will be considered independently by the Board of Directors based on the merits of each case.

3.4. ABANDONMENT OF CONNECTIONS

Existing connections to the District Interceptor System may be abandoned only with prior approval of the District Manager. A Direct Connector wishing to abandon a connection to the District Interceptor System shall submit a request in writing to the District Manager along with the proposed method of permanently abandoning the connection. Upon review and written approval by the District Manager, the approved physical changes to permanently abandon the connection shall occur within sixty (60) days of approval. The Direct Connector must provide 48 hours' notice of the intent to perform the work necessary to abandon the connection to the Metro District and schedule an inspection. It shall be the responsibility of the Connector to cover all costs of abandonment and ensure the inspection notification to the District and the physical modification of the connection is performed in accordance with District requirements.

3.5. ACCEPTING ADDITIONAL EXISTING LINES AS METRO DISTRICT PROPERTY

One or more Connectors may request, in writing, to transfer any existing sewer line owned by the Connector(s) which carries at least two Connectors' Flows to the Metro District upon approval and determination of the Board of Directors that acceptance of such transfer is in the best interest of the District, including but not limited to efficiency of transmissions, regional benefits, health, financial impacts to the District, and welfare and safety concerns. Approval of such transfer shall be in the District's sole discretion and on terms set forth by the District. Prior to any approval, the Connector proposing to transfer such line shall provide District Staff with information relating to the line's condition and any other information requested by Staff to assist the District in its determination. Nothing in this Section shall require the District to accept transfer of any lines, and no acceptance of transfer shall be deemed a waiver of the District's sole discretion to accept any other such lines or give any rights to any other parties seeking to transfer any other such lines.

Revisions	01/93	01/01	03/06	06/14	07/18
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SECTION 4

ANNUAL CHARGES FOR SERVICE

4.1. GENERAL

Each Connector shall be assessed Annual Charges for Service based on its contributions of Flow and Loadings (BOD, SS, and TKN) to the District System, and on the costs of determining such contributions. The Metro District shall determine each Connector's Flow and Loadings by metering, sampling, and/or estimating; the costs of these determinations, measured by Customer Equivalent Connection Units (CECU), shall reflect the level of metering, sampling, and/or estimating used.

4.2. CUSTOMER CATEGORIES AND CUSTOMER EQUIVALENT CONNECTION UNITS

4.2.1. Description of Customer Categories

Customer categories shall be assigned to all points of connection to the District System where Flows and Loadings are determined for Annual Charges for Service. The category assignments shall dictate the level of metering, sampling, and estimating wastewater Flow and Loadings to be used in calculating Annual Charges:

<u>Customer Category</u>	<u>Flow Metering</u>	<u>Sampling</u>
A	Continuous	11–13 Periods*/Year
B	Continuous	5–7 Periods*/Year
C	5–7 Weeks/Year*	5–7 Periods*/Year
D1	Continuous	Loadings Estimated
D2	Minimum of 4 Weeks/Year*	Loadings Estimated
E	Flow Estimated Loadings Estimated	

*Metering and sampling periods shall be distributed so as to allow for seasonal variations to be monitored. For the definition of "Sampling Period," see Section 4.3.2.

4.2.2. Customer Equivalent Connection Units

Each customer category described in Section 4.2.1 shall be assigned a CECU value representing the operation and maintenance costs required to conduct the metering, sampling, and estimating activities associated with the particular category. Category A shall be assigned a CECU value of 1.00; all other categories shall be assigned CECU values equal to the ratio of projected costs for the given category to the projected costs for Category A.

4.2.3. Assignment of Customer Categories and CECU Values to Connectors

The customer category and CECU value for a given connection point shall in general be assigned to the Connector whose Flows and Loadings are determined at that connection point.

Where the Flow through a connection's metering and sampling station is attributed to more than one Connector (common station), and where the Flows and Loadings are determined upstream of the common station for all but one of the Connectors contributing Flow through the connection, the customer category and CECU value for the connection point shall be assigned to the remaining Connector. Where contributing Connectors' Flows and/or Loadings are not determined upstream, but are determined by prorating Flows and/or Loadings measured at the common station, the customer category for the connection point shall be assigned to each contributing Connector, with the CECU value divided equally among the Connectors.

For existing connections to the District System, customer category assignments and CECU values shall be recommended annually by the District Manager and certified by the Board of Directors no later than September 1 of each year for the following calendar year. For new connections, customer category and CECU assignments will be made at the time of approval of such new connections by the Metro District. Customer category assignments and CECU values may be revised by the Board during the process of estimating and adjusting Annual Charges for Service as described in Section 4.7.

Where circumstances require the level of metering, sampling, and estimating at a particular connection point be changed during the year, the CECU value assigned to a Connector for that connection point shall be prorated to reflect the change.

4.2.4. Guidelines for Assignment of Customer Categories

Assignment of customer categories to connection points shall in general conform to the following guidelines:

<u>Customer Category</u>	<u>Guideline</u>
A	The Flow is projected to exceed 100 MGY, and the variability of Loadings is such that the reliable determination of Annual Charges for Service requires the metering and sampling frequency specified for Category A.
B	The Flow is projected to exceed 100 MGY, and Annual Charges for Service may be reliably determined with the metering and sampling frequency specified for Category B.
C	1. The Flow is projected to be in the range of 50–100 MGY, or 2. The Flow is projected to be below 50 MGY, but the Loadings are such that Annual Charges for Service cannot be reliably determined by estimating.

**Customer
Category**

Guideline

- | | |
|----|---|
| D1 | The Flow is projected to be in the range of 25–50 MGY, and Loadings are such that they may be reliably determined by estimating, but the potential variability of the Flow rate is such that the reliable determination of Flow requires continuous metering. |
| D2 | The Flow is projected to be in the range of 25–50 MGY, Loadings are such that they may be reliably determined by estimating, and the Flow rate is sufficiently constant that Flow may be reliably determined by periodic metering. |
| E | The Flow is projected to be below 25 MGY and Annual Charges for Service may be reliably determined by estimating Flows and Loadings. |

The Flows used to guide the category assignments will generally ignore short-term fluctuations due to rainfall and other transient conditions.

4.2.5. Multiple Category E Connection Points

Where a Connector has multiple Category E connection points to the District System, the number of Category E assignments shall be based on the total Flow through all such connection points. One Category E assignment shall be made for each 25 MG/Year of Flow, or part thereof.

4.2.6. Exceptions to Guidelines for Customer Category Assignments

1. Where the District Manager determines a special circumstance exists for a given connection point, including but not limited to unusual variation in Flow or Loadings or excessive Loadings in relation to flow, the District Manager may recommend a higher (i.e., A vs. B) customer category for the connection point than would be indicated under Section 4.2.4.
2. Where the District Manager recommends and the Board of Directors determines it is not feasible to meter and/or sample at a given connection point, the District Manager shall use the most appropriate system available for estimating Flows and/or Loadings. The customer category assigned to the connection shall be the category which would normally be assigned under Section 4.2.4. Circumstances where such estimating may be considered include, but are not limited to, the following:
 - A. The Flow is too low to accurately meter and/or sample.
 - B. The Flow is so low it would not be economically feasible to construct, operate, and maintain a metering and sampling station.
 - C. Due to the lack of grade on the incoming line or other physical restriction, it is not feasible to operate a metering and sampling station.

At such time it becomes feasible to meter and/or sample at the connection point, a metering and sampling station shall be constructed by the Connector, and the Flow shall be metered and sampled as appropriate to determine the Flows and Loadings.

3. Where a Connector desires more frequent metering and/or sampling than provided by the normal customer category assignment, a written request to that effect may be submitted to the District Manager prior to category certification by the Board of Directors. The District Manager may then recommend a higher category assignment be approved by the Board.

4.2.7. Temporary Suspension of Metering and/or Sampling

Notwithstanding the metering and sampling requirements of Section 4.2.1, when the District Manager determines a temporary condition exists which will not allow the Metro District to obtain reliable data by metering and sampling, the District Manager shall use the most appropriate system available for estimating Flows and Loadings for the duration of the temporary condition. Such conditions include, but are not limited to, metering and/or sampling equipment malfunctions, construction activities, and safety hazards. In such cases, the District Manager shall direct the temporary condition be remedied in the shortest reasonable time so that metering and sampling can be instituted or resumed.

4.3. METHODS OF DETERMINING FLOW AND LOADINGS

4.3.1. Metering of Flow

Techniques used in metering the quantity of Flow discharged to the system shall conform to sound engineering practices. Where feasible, a primary measuring device with a flow sensor, transmitter, flow recorder, and totalizer shall be used.

4.3.2. Measurement of Loadings

Measurement of BOD, SS, and TKN (Loadings) shall be made on representative samples of the Wastewater discharged to the District System. Methods and procedures used in the sampling and analysis shall be in accordance with, or have accuracy and precision equal to or greater than, those published in the latest edition of Standard Methods for the Examination of Water and Wastewater.

Each sampling period used to determine Loadings shall be at least seven (7) consecutive days. In the event of equipment malfunctions or other sampling or analytical problems, a maximum of one missing day out of the consecutive sampling days will be allowed for the sampling period to be considered valid without additional sampling. If more than one day is missed, the missing samples shall be replaced with samples collected subsequently on the same days of the week as the missing samples, until at least six samples have been collected. Any exceptions must be approved by the Metro District's Director of Environmental Services.

Notification shall not be given to any Connector prior to the start of any sampling period.

4.3.3. Estimating Flow and Loadings

1. Estimating Loadings

For Category D1 and D2 connection points, where Flow is determined by metering, Loadings shall be estimated by the following formulas:

$$\text{BOD (lbs/day)} = \text{Flow (MG/day)} \times 8.34 \times \text{BOD (mg/L)}$$

$$\text{SS (lbs/day)} = \text{Flow (MG/day)} \times 8.34 \times \text{SS (mg/L)}$$

$$\text{TKN (lbs/day)} = \text{Flow (MG/day)} \times 8.34 \times \text{TKN (mg/L)}$$

For connection points where all or nearly all Wastewater constituents are contributed by residential sources, the values used for BOD (mg/L), SS (mg/L), and TKN (mg/L) shall be those shown for single family residences in Table 4-1. Where such is not the case, the Metro District may use other appropriate values from Table 4-1 or may, at its option, conduct such sampling activities as may be necessary to determine the appropriate values for any given connection point.

2. Estimating Flow and Loadings

For Category E connection points, Flow and Loadings shall be estimated based on the number, type, and dates in service of sources discharging Wastewater through the connections. The Flow and pollutant concentration values used in such estimating shall be those shown in Table 4-1 (or Table 4-2, if applicable), except where it can be shown by temporary metering and/or sampling that the values for a particular source or connection should be greater or less than those indicated. When values other than those shown in Table 4-1 (or Table 4-2, if applicable) are used, a check shall be made at least once every twelve months by the Metro District to verify the values being used.

Each Connector with Category E connection points shall provide the individual tap and water use information necessary for using Table 4-1 (or Table 4-2, if applicable). The Connector shall update this information at least annually and shall send the updated information for the previous calendar year to the Metro District no later than January 31 of each year. More frequent updating may be required at the discretion of the District. The District shall from time to time verify the information submitted by each Connector, and, where requested to do so by the District Manager, the Connector shall provide such assistance to District personnel as may be required for such verification.

3. Temporary Estimating

Where Flows and/or Loadings through any connection point are being temporarily estimated, the District Manager may use the methods described in this Section or use other appropriate methods. Such methods include, but are not limited to, estimates based on reasonable projections of data obtained during metering and/or sampling at the connection being temporarily estimated, and estimates based on metering and/or sampling at connections similar to the connection being temporarily estimated.

4.4. DETERMINATION OF ANNUAL FLOWS AND LOADINGS AT SYSTEM CONNECTIONS

4.4.1. Representative Periods

The Metro District determines Flows and Loadings at connections to the system over various periods of time, depending upon the customer categories assigned to the connections. For example, Category A connections are metered continuously, but sampling is done only 11–13 weeks per year; Category D2 connections are metered only four weeks per year. The data acquired during these metering and sampling periods must be extrapolated to cover the entire year, so that each Connector's annual contributions can be determined. This extrapolation is done by dividing the year into "representative periods," with the Flow and Loadings in each period determined by the metering, sampling, and estimating performed during the period.

For Category A, B, and C connection points, the representative period for each sampling period shall begin at a point in time halfway between the first day of the sampling period and the last day of the previous sampling period, and shall end at a point in time halfway between the last day of the sampling period and the first day of the next sampling period. This procedure shall be followed even though a representative period may fall into two different calendar years. In such cases, the representative period shall be divided into two periods, the first ending on December 31 and the next beginning on January 1 of the following year, so the contributions for each year may be determined separately.

For Category D1 and D2 connection points, the representative periods shall be calendar quarters.

For Category E connection points, the representative period shall encompass the entire year.

TABLE 4-1
FLOW, BOD, SS, AND TKN FACTORS FOR ESTIMATING QUANTITY AND QUALITY OF FLOW

SOURCE	FLOW (gpd)	BOD (mg/L)	SS (mg/L)	TKN (mg/L)
Residential				
• Single Family Residences (includes each unit in duplexes and each unit with separately connected water service in multi-family structures, and mobile homes)	148	255	260	40
• Multi-Family Residences (Master water metered, each unit)	104	255	260	40
Commercial	Metered Winter Water*			
• Restaurants		840	840	126
• Schools		340	340	51
• Offices		400	400	60
• Hotels and Motels		360	360	54
• Health Care/Nursing Facilities		230	240	35
• Self-Service Laundries		600	1,200	133
• Theaters		480	480	72
• Service Stations		400	400	60
• Supermarkets		985	245	165
• Travel Centers		435	310	60
• Factories and Warehouses (excluding industrial and cafeteria wastes)		400	400	60
• Other		Shall be evaluated separately.		
Industrial	Metered Winter Water*	Shall be evaluated separately.		
*Metered winter water use information must include at least two months' data during the period October through March. With the approval of the District Manager, the Connector may submit annual water use or non-winter water use information in lieu of winter water use. Where water usage information is not available, or does not appropriately represent water discharged to the sewer, fixture unit information (see Table 4-2) must be submitted. Where the nature of the business is seasonal or the Direct Connector can show that the Flow to the sewer is significantly different from the water use, the District Manager may specify an alternative method of estimating Flow.				

Table 4-2
DRAINAGE FIXTURE UNIT VALUES*
(1 Fixture Unit = 10.2 Gallons per Day [GPD] of Flow)

FIXTURE TYPE	FIXTURE UNIT VALUE
Automatic clothes washers, commercial	3
Automatic clothes washers, residential	2
Bathroom group as defined in Section 202 (1.6 gpf water closet)	5
Bathroom group as defined in Section 202 (water closet flushing greater than 1.6 gpf)	6
Bathtub (with or without overhead shower or whirlpool attachments)	2
Combination sink and tray	2
Dental lavatory	1
Dental unit or cuspidor	1
Dishwashing machine, domestic	2
Drinking fountain	½
Emergency floor drain	0
Floor drains	2
Kitchen sink, domestic	2
Kitchen sink, domestic with food waste disposer and/or dishwasher	2
Laundry tray (1 or 2 compartments)	2
Lavatory	1
Shower (based on the total flow rate through showerheads and body sprays) Flow rate:	
• 5.7 gpm or less	2
• Greater than 5.7 gpm to 12.3 gpm	3
• Greater than 12.3 gpm to 25.8 gpm	5
• Greater than 25.8 gpm to 55.6 gpm	6
Service sink	2
Sink	2
Urinal	4
Urinal, 1 gallon per flush or less	2
Urinal, nonwater supplied	½
Wash sink (circular or multiple) each set of faucets	2
Water closet, flushometer tank, public or private	4
Water closet, private (1.6 gpf)	3
Water closet, private (flushing greater than 1.6 gpf)	4
Water closet, public (1.6 gpf)	4
Water closet, public (flushing greater than 1.6 gpf)	6
All Other Fixtures:	
• Trap Size 1-1/4 Inch or Less	1
• Trap Size 1-1/2 Inch	2
• Trap Size 2 Inch	3
• Trap Size 2-1/2 Inch	4
• Trap Size 3 Inch	5
• Trap Size 4 Inch	6

*Fixture Unit Value Table 709.1 from the 2015 International Plumbing Code.

4.4.2. Determination of Flows and Loadings for the Representative Period

The total Flow for any representative period shall be expressed in millions of gallons (MG) and shall be determined as follows:

Category A, B, D1:	Total Flow metered
Category C:	Total Flow = $F_S \times N$
Category D2:	Total Flow = $F_m \times N$
Category E:	Total Flow estimated

The total Loadings for any representative period shall be expressed in tons and shall be determined as follows:

$$\text{Tons (BOD, SS, or TKN)} = \frac{C \times \frac{F_r}{F_s} \times N}{2000}$$

- C = Average daily contribution of BOD, SS, or TKN (in pounds) for the period sampled (or average daily contribution estimated).
- F_r = Average daily Flow for the representative period (not applicable for Category D1, D2, or E).
- F_m = Average daily Flow for the period metered.
- F_s = Average daily Flow for the period sampled (not applicable for Category D1, D2, or E).
- N = Number of days in the representative period.

4.4.3. Determination of Annual Flows and Loadings

The annual Flows and Loadings at each connection shall be the sum of the Flows and Loadings determined for all representative periods in the calendar year.

4.5. DETERMINATION OF CONNECTOR ANNUAL FLOWS AND LOADINGS

4.5.1. Infiltration Credit Allowance

Where a metering and sampling station used to meter Flows is so situated that the measurement may include Flows infiltrating into a District Interceptor, the Connector(s) whose Flows are being determined at that station shall be given an infiltration credit allowance which shall be subtracted from the measured flow. The credit allowance shall be 400 gallons per day per inch diameter per mile of interceptor, and shall be given only when the length of interceptor which may be contributing infiltration to the metering and sampling station exceeds 0.5 mile.

4.5.2. Connections Serving a Single Connector

Where a connection to the District System serves a single Connector, the annual Flows and Loadings determined at the connection in accordance with Section 4.4.3 shall be attributed to that Connector, subject only to the Infiltration Credit Allowance described in Section 4.5.1.

4.5.3. Connections Serving Multiple Connectors – Method of Subtraction

Where the Flow through a metering and sampling station is attributable to more than one Connector (common station), and where the Flows and Loadings are determined upstream of the common station for all but one of the Connectors contributing Flows through the common station, the annual Flows and Loadings for the remaining Connector shall normally be computed by subtracting the upstream annual Flows and Loadings of all other contributors, and the Infiltration Credit Allowance, if applicable (Section 4.5.1), from those measured at the common station. When the District Manager determines the Flows and/or Loadings of the remaining Connector may not be reliably determined by measuring at the common station, they shall be determined by estimating as provided in Section 4.3.

4.5.4. Connections Serving Multiple Connectors – Method of Prorating

Where the Flow through a metering and sampling station is attributable to more than one Connector (common station), the Metro District may, with the consent of all Connectors affected, and in lieu of determining upstream Flows and/or Loadings, determine the annual Flows and/or Loadings of the contributing Connectors by a method of prorating as described in either paragraph 1 or 2 below.

1. Prorating of Flows and Loadings – Tap Method

For prorating purposes, separate estimates of the annual Flows and Loadings contributed through the common station shall be made for each Connector, as described in Section 4.3.3, paragraph 2. The annual Flows and Loadings attributable to each Connector shall then be computed as follows:

$$\text{Flow} = \text{Flow}_C \times \frac{\text{Flow}_e}{\text{Flow}_{te}}$$

$$\text{Tons (BOD,SS, or TKN)} = \text{Tons}_C \times \frac{\text{Tons}_e}{\text{Tons}_{te}}$$

Flow_C (Tons_C) = Measured Flow (tons) through the common station, less the Infiltration Credit Allowance, if applicable.

Flow_e (Tons_e) = Estimated Flow (tons) for given Connector.

Flow_{te} (Tons_{te}) = Estimated Flow (tons) for all Connectors through the common station.

The tap method of prorating requires a combination of metering and sampling and estimating to determine Connector Flows and Loadings. Accordingly, connections at which such prorating is performed shall be assigned customer categories appropriate to both methods of determination.

2. Prorating of Loadings – Flow Method

Where Flow determinations have been made for all Connectors contributing Flow through a common station, and where Loadings are determined only at the common station, the annual Loadings shall be prorated among all Connectors contributing flow through the common station as follows:

$$\text{Tons (BOD,SS, or TKN)} = \text{Tons}_C \times \frac{\text{Flow}_m}{\text{Flow}_C}$$

Flow_C (Tons_C) = Measured Flow (tons) through the common station, less the Infiltration Credit Allowance, if applicable.

Flow_m = Flow attributed to given Connector.

4.6. REPORTING OF FLOWS AND LOADINGS

4.6.1. Preliminary Flows and Loadings Reports

The Metro District shall provide preliminary Flows and Loadings reports to each Connector discharging Wastewater to the District System. Each report shall provide preliminary information on the Connector's discharge through a specific connection point, for a period of time coinciding with the "representative period" described in Section 4.4.1. For Category E connection points, where the representative period is the entire year, these preliminary reports may be provided more frequently than annually.

These preliminary reports provide Connectors with ongoing information relating to their Wastewater contributions to the District System. For a number of reasons involving the ways that Flows and Loadings are determined for different Connectors, the reports must be considered preliminary and should not be relied upon as final determinations of Flows and Loadings. Final contributions attributable to each Connector are determined only after the end of each calendar year.

4.6.2. Annual Summaries of Flows and Loadings

Following each calendar year, the Metro District shall provide "Annual Summary of Flows and Loadings" reports to each Connector discharging Wastewater to the District System during the year. Each report shall provide the final annual Flows and Loadings determinations for the Connector's discharge through a specific connection point. Connectors shall receive such reports for all connection points at which their Flows and Loadings are determined for the purpose of computing Annual Charges for Service.

The annual summary reports may be revised by the Metro District any time prior to the Final Adjustment of Annual Charges for Service made by the Board of Directors. In such cases, revised annual summary reports will be immediately provided to the affected Connectors.

4.6.3. Disagreement Over Reported Flows and Loadings

1. Preliminary Reports

Although the preliminary Flows and Loadings reports may contain only approximate determinations of the Flows and Loadings attributable to a Connector's discharge, much of the information reflects actual Metro District data which will be used in the final determination of annual Flows and Loadings. For this reason, these reports should be reviewed carefully by each Connector at the time of receipt. Any disagreements with or inquiries concerning these preliminary reports should be directed to the Staff of the Metro District. If a disagreement is not resolved to the Connector's satisfaction, the Connector should send a written notice of disagreement, together with all facts pertinent to the disagreement, to the District Manager within sixty days after receipt of the preliminary report. If the disagreement cannot be satisfactorily resolved by the District Manager, the Connector may appeal the determinations in accordance with the procedures in Section 10 of these *Rules and Regulations*.

2. Annual Summaries

The determinations provided in the "Annual Summary of Flows and Loadings" reports will be used to determine each Connector's Annual Charges for Service. These determinations will be deemed correct unless, within sixty days from the date the reports are mailed by the Metro District, a Connector files with the District a written objection to the determinations. In such instance, if the objection cannot be satisfactorily resolved by the District Manager, the Connector may appeal the determinations in accordance with the procedures in Section 10 of these *Rules and Regulations*.

4.6.4. Notifications of Unusual Conditions

If the Staff of the Metro District observes, at any time, any unusual conditions relating to the quantity or quality of Wastewater contributed to the District System by a Connector, they shall immediately notify the Connector of such conditions. Similarly, if a Connector observes any unusual conditions, or anticipates any changes in the quantity or quality of Wastewater to be discharged to the District System, the Connector shall immediately notify the District.

It is the intent of this Section that the Staffs of the Metro District and its Connectors should work together to prevent any situations from arising that may cause problems in the District's determining Annual Charges for Service fairly and accurately, and to solve any problems as quickly as possible while the facts involved are readily available.

4.7. COMPUTATION OF ANNUAL CHARGES FOR SERVICE

4.7.1. Determination of Total Annual Charges for Service

The total Annual Charges for Service to be assessed by the Metro District for any calendar year are determined by the Board of Directors. The Annual Charges so assessed shall be sufficient to pay the amounts estimated to be needed by the District, as shown in its annual budget for such calendar year.

4.7.2. Allocation of Annual Charges for Service to Charge Parameters

Annual Charges for Service are based upon five charge parameters; Flow, BOD, SS, TKN, and CECUs. The Metro District shall annually review its total costs to determine the percentage of these costs associated with each charge parameter. These percentages will then be applied to the total Annual Charges for Service, to determine the amount of Annual Charges to be applied to each charge parameter.

4.7.3. Calculation of Estimated Unit Charges

Prior to September 1 of each year, for the following calendar year, the Board of Directors shall prepare a Certified Estimate of Unit Charges for each of the five charge parameters. The estimated unit charge for each parameter will be based on the total Annual Charges for Service applied to that parameter (Section 4.7.2), and the total quantity of that parameter estimated to be received or charged for by the Metro District:

$$\begin{aligned}\text{Unit Charge, Flow (\$/MG)} &= \frac{\text{Total Annual Flow Charge}}{\text{Total Flow to System (MG)}} \\ \text{Unit Charge, BOD (\$/Ton)} &= \frac{\text{Total Annual BOD Charge}}{\text{Total BOD to System (Tons)}} \\ \text{Unit Charge, SS (\$/Ton)} &= \frac{\text{Total Annual SS Charge}}{\text{Total SS to System (Tons)}} \\ \text{Unit Charge, TKN (\$/Ton)} &= \frac{\text{Total Annual TKN Charge}}{\text{Total TKN to System (Tons)}} \\ \text{Unit Charge, CECU (\$/CECU)} &= \frac{\text{Total Annual CECU Charge}}{\text{Total CECUs}}\end{aligned}$$

4.7.4. Determination of Estimated Annual Charges for Service

Prior to September 1 of each year, for the following calendar year, the Board of Directors shall adopt and deliver to each Connector a Certified Estimate of Annual Charges for Service. This estimate shall be calculated by multiplying the estimated unit charge for each charge parameter (Section 4.7.3) by the quantity of that parameter estimated to be contributed by the Connector. The total for all charge parameters shall be the Connector's estimated Annual Charges. These charges are payable in the calendar year following the adoption of the Certified Estimate, that is, in the year for which the Certified Estimate is made (See Section 4.7.7).

4.7.5. Revised Estimate of Unit Charges and Annual Charges for Service

At any time following the adoption of the Certified Estimate of Unit Charges and Annual Charges for Service as described in Sections 4.7.3 and 4.7.4, the Board of Directors may adopt a Revised Estimate based on updated estimates of Connector contributions or other information. This shall generally be done during the calendar year for which the Revised Estimate is being made. Where the Revised Estimate is based on updated estimates of

Connector contributions, the procedures followed in preparing the Revised Estimate are identical to those described in Sections 4.7.3 and 4.7.4, using the Revised Estimates of Connector contributions as the basis for the calculations.

When a Revised Estimate of Annual Charges for Service for any year is adopted by the Board of Directors, the difference in charges compared to the Certified Estimate shall be added to or subtracted from each Connector's Annual Charges payments in the calendar year for which the Connector prepares its next annual budget (see Section 4.7.7).

4.7.6. Final Adjustment of Unit Charges and Annual Charges for Service

On or before the last day of June of each year, the Metro District Board of Directors shall adopt a Final Adjustment of Unit Charges and Annual Charges for Service for the preceding calendar year. The procedures followed in preparing the Final Adjustment are identical to those described in Section 4.7.3 and 4.7.4, using the actual Connector contributions during the year as the basis for the calculations.

The difference in charges calculated in the Final Adjustment, compared to the most recent Revised Estimate or, if no Revised Estimate was adopted for the calendar year in question, the Certified Estimate, shall be added to or subtracted from each Connector's Annual Charges for Service payments in the calendar year following the Final Adjustment, that is, in the second year after the year for which the Final Adjustment is made (See Section 4.7.8).

4.7.7. Payment of Annual Charges for Service

Each Connector shall pay in any calendar year the Certified Estimate of Annual Charges for Service for that year as determined under Section 4.7.4. Each Connector shall also pay, or be credited for, any adjustments to the Annual Charges for prior years, as determined under Sections 4.7.5 and 4.7.6. Payment shall be in four substantially equal quarterly installments, due on or before the 15th day of March, June, September, and December.

4.7.8. Minimum Payment

Notwithstanding the above determinations of Annual Charges for Service payments, in any calendar year in which the Metro District collects Annual Charges, each Connector shall pay a minimum of \$2,000.

4.7.9. Disagreement over Annual Charges for Service

Any disagreements with or inquiries concerning any estimates or adjustments to the Annual Charges for Service should be directed to the District Manager of the Metro District. If a disagreement cannot be satisfactorily resolved, a Connector may appeal the District's determinations in accordance with the procedures in Section 10 of these *Rules and Regulations*.

Prior to adopting the Final Adjustment of Annual Charges for Service, the Board of Directors shall hold, at a regular meeting no later than June next following the last day of that fiscal year, a hearing on the proposed final adjustment. Any Connector, or any holder of any security issued by the District, may present objections to the adjustment at this hearing.

4.8. REQUIREMENT FOR USER CHARGE COMPLIANCE

All Municipal Connectors and Corporate Connectors which use the District System including, but not limited to, Member Municipalities, Special Connectors, Contracting Municipalities, and any Connector to or user of the sewer systems of these entities shall have a User Charge System as required by Title 40, Part 35 of the Code of Federal Regulations as amended, in particular Section 35.2140 thereof.

Revisions	11/90	10/99	01/01	04/03	06/14	07/18
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SECTION 5

HAULED WASTES

5.1. GENERAL

Discharge of liquid or solid wastes into an Interceptor and/or the District System is prohibited unless provided for within a Service Contract with the Metro District or authorized either by a special permit issued by the Metro District's Pretreatment Program or, in emergency circumstances, written authorization from the District Manager, issued in accordance with these *Rules and Regulations*. Pursuant to Section 6.14.9, discharge of wastes under such a permit or written authorization will be allowed only at authorized points in the System. Any discharger of wastes under such permit or written authorization shall be subject to the requirements of this Section and Section 6 of these *Rules and Regulations* and consents to the enforcement of same by the District.

5.2. PERMITS

5.2.1. Application for Discharge Permits

No person or company shall discharge hauled wastes into a District Interceptor or District System until a discharge permit has been obtained in accordance with these *Rules and Regulations*. Such discharge permits will only be issued for the discharge of wastes from septic tanks, grease traps, lift stations that serve only domestic sewage and grease traps, privies, and sewer cleanings, and for the discharge of other non-hazardous materials and wastes which can be effectively and efficiently treated by Metro District facilities. Individuals or companies desiring to discharge such wastes to the District System shall file an application with the District for a discharge permit. A separate vehicle permit must be obtained in accordance with Section 5.2.3 for each vehicle which will be used to discharge wastes to the District System. Discharge permit application forms may be obtained from the District's website or by writing or calling the District. All waste grease transporters must be registered with the CDPHE.

5.2.2. Discharge Permit Application Fee

A one-time fee of \$25 shall be charged for each discharge permit application for the discharge of routine wastes from septic tanks, grease traps, lift stations that serve only domestic sewage and grease traps, privies, and sewer cleanings. A one-time fee of \$75 shall be charged for each discharge permit application for the discharge of other non-hazardous materials and wastes which can be effectively and efficiently treated by the Metro District. The discharge permit application fee, payable to the Metro Wastewater Reclamation District, must accompany the completed discharge permit application form. Application fees are non-refundable.

5.2.3. Vehicle Permit Fee

A fee of \$10, payable to the Metro Wastewater Reclamation District, shall be charged for each vehicle permit issued. This payment must accompany the completed application form. A separate vehicle permit must be obtained for each vehicle used to discharge wastes to the District System. Each permit will include the license plate number of the vehicle for which it is issued and cannot be transferred to another vehicle, unless it is a replacement vehicle and license plates from the previous vehicle are being transferred to the new vehicle.

5.2.4. Vehicle Inspection

Prior to the issuance of a vehicle permit, the vehicle for which the permit will be issued shall be inspected by Metro District sStaff. The applicant may make an appointment for a vehicle inspection by calling the Environmental Services Department of the District.

Vehicles for which permits have been issued are subject to subsequent inspection by Metro District Staff. Any items of nonconformance regarding the vehicle's condition which have developed since the permit was issued may be noted by the inspector and a written notice of the need to correct the deficiency within a specific time limit will be provided to the permittee.

The issued permit must be displayed in a window of the vehicle during the discharge of wastes to the District System such that it can be seen from the outside of the vehicle by an inspector and will not obstruct the driver's view.

5.2.5. Surety Bond (Escrow)

Each applicant for a discharge permit shall execute and deposit with the Metro District a surety bond in the sum of \$1,000, or in an amount equal to the anticipated District charges for an average sixty-day (60) period, whichever is greater. Alternatively, the applicant may place such monies in an escrow account, under terms and conditions acceptable to the District Manager. The bond or escrow monies shall provide reimbursement to the District for any work required for the elimination of any unsanitary conditions caused by the permittee on or around District facilities, for the repair of District facilities damaged by the permittee, or for any unpaid charges owed to the District by the permittee. A suitable escrow account shall be established or bond received by the District before a discharge permit will be issued. Escrow and bonding requirements may be revised by the District Manager from time to time in consideration of changes in District charges or volume of business done with the permittee.

5.2.6. Insurance

Each permittee shall keep on file with the Metro District a current valid certificate of insurance for Workers Compensation and current valid certificates of insurance for auto liability and general liability coverage in the amounts as determined from time to time by the District Manager. Such certificate(s) of insurance shall be received by the District before a discharge permit is issued or renewed. Upon request of an owner of a company who is the sole operator/employee, the District may waive, in writing, the requirement for Workers Compensation insurance.

5.2.7. Discharge Permit Renewal

Discharge permits for discharge of wastes shall be issued for a specified time period not to exceed five (5) years. The permittee shall apply for permit renewal a minimum of ninety (90) days prior to expiration of the permittee's existing permit. Applications for such permit renewals must be accompanied by a \$5 fee for each vehicle to handle the cost of renewal. If the renewal application is not received within the allotted time, the discharge permit will expire on the existing permit's expiration date. Once a permit has expired, a new application, along with the appropriate application fee, must be submitted to the Metro District before any new permit will be issued.

In addition, a vehicle inspection must be performed by Metro District Staff on each vehicle to be renewed prior to issuance of a renewed discharge permit. The renewal applicant may make an appointment for such a vehicle inspection by calling the District.

5.2.8. Permit Suspension and Revocation

Any discharge or vehicle permit(s) issued in accordance with these *Rules and Regulations* will be subject to suspension or revocation by the Metro District, at its discretion, for failure to submit accurate monthly reports, failure to submit timely reports, failure to pay proper charges, failure to discharge at authorized disposal site(s), failure to meet sanitation standards, discharging of industrial sludges or other unacceptable wastes into the District System, for any other infraction of these *Rules and Regulations*, or if the District Manager determines it is necessary to protect the District's facilities.

5.3. MONTHLY REPORTS

Each permittee must submit a monthly report containing a list of all sources of waste material(s) discharged to the Metro District. This requirement may be waived by the District for permittees hauling only portable toilet wastes. Failure to submit accurate or timely monthly reports shall be cause for suspension or revocation of the permit, at the discretion of the District. Copies of the report form to be used may be obtained from the District upon request. Section 6.27 of these *Rules and Regulations* applies to all reports submitted.

5.4. DETERMINATION OF QUANTITY BY METRO DISTRICT

The Metro District will make determinations of the quantity of material discharged to the District from all vehicles and will use these determinations for charges.

5.5. CHARGES

The unit charge for wastes from septic tanks, grease traps, privies, or other classes of hauled wastes to the permittee for discharging waste to the District System shall be established by resolution of the Executive Committee of the Board of Directors. The charges shall be based on the working tank capacity and the Metro District's determinations as to the strength of material discharged. Any permittees discharging wastes significantly higher in Pollutant concentration than anticipated by the District may be charged additional fees.

For all other requests for disposal of hauled wastes, the District Manager is authorized to determine a charge on a case-by-case basis if the amount of projected income is within the District Manager's Board-approved spending authority per year or by the Executive Committee if the projected annual income is greater than the District Manager's Board-approved spending authority. At the discretion of the District Manager or the Executive Committee, the determination of such charges may be referred to the Board of Directors.

5.6. PAYMENT

The Metro District shall bill the permittee for all discharges, with payment due no later than thirty (30) days following the date of the billing. If any payment or any part thereof remains unpaid following the due date, the District may charge and collect interest on the amount unpaid from its due date until paid at the rate of one per centum (1%) per month (or fraction thereof). Additionally, failure of the permittee to make full payment within the allotted time or to pay any interest due shall be cause for suspension or revocation of the permit, at the discretion of the District.

5.7. AUTHORIZED DISPOSAL SITES

5.7.1. Site Limitations

Only those disposal sites which have been authorized by the Metro District and approved by the appropriate city, county, sanitation district, and health department and which are specifically authorized in these *Rules and Regulations* shall be used for the disposal of wastes under the permits granted by these *Rules and Regulations*.

5.7.2. Approved Site Locations

The authorized sites for the disposal of wastes by a permittee will be designated by the Metro District.

5.8. SANITATION AND SAFETY STANDARDS

Each permittee who discharges wastes to the District System shall be responsible for the cleanliness and safety practices at the points of disposal. It shall be the permittee's responsibility to have available the proper tools to remove and replace the manhole lids, where necessary, in a safe and proper manner. It shall be the responsibility of the permittee to discharge wastes in such a manner as to keep the area clean and free from spills or other debris. Any spills shall be promptly cleaned up. The permittee is also responsible for keeping its vehicle and related facilities clean and in good repair while being used for disposal to the District System. These sanitary and safety practices shall be carried out in a manner acceptable to the Metro District and to appropriate health departments. Failure to comply with these sanitation and safety standards shall be grounds for revocation of the permit.

5.9. QUALITY OF WASTES

Wastes discharged to the District System under a permit granted by these *Rules and Regulations* shall conform to the requirements and limitations of any applicable *Rules and Regulations*, including but not limited to Section 6. In addition, the discharge of any Pollutants by the permittee shall be controlled and regulated in accordance with all applicable state and federal regulations. It shall be the responsibility of each permittee to be familiar with the provisions of these documents.

The permittee consents to the Metro District's right to sample and analyze the contents of any vehicle using the District System for the discharge of wastes. The purpose of such sampling and analysis will be to determine conformance with the *Rules and Regulations*. It shall be the responsibility of the permittee's driver or other personnel authorized by the District to obtain any necessary samples required by the District.

5.10. EMERGENCY HAULED WASTE DISCHARGE SERVICES

Emergency discharge of hauled wastes may be authorized in accordance with these *Rules and Regulations* if the quantity and quality of the discharge will have no material effect on the Metro District's operations, including the quality of its effluent or biosolids. Written approval from the District Manager must be received before the discharge may commence, and discharge must take place at authorized points in the District System as provided for in Section 5.7 of these *Rules and Regulations* and must comply with Sections 5.8, 5.9, 6.13, and 6.14 of these *Rules and Regulations*. Approval of such a discharge is entirely at the discretion of the District and shall not constitute approval of any additional or similar discharges. In the event a proposed emergency discharge is not approved by

the District, said decision shall not be subject to the appeal and hearing procedure set forth in Section 10 of these *Rules and Regulations*.

5.10.1. Metro District Authorization

The requesting entity shall provide all information necessary for the Metro District to determine the existence of an emergency. If the request is verbal, the requesting entity shall provide written documentation within 24 hours. The District Manager shall determine (1) whether an emergency condition exists; (2) whether the discharge will have any material effect on the District's operations, including the quality of its effluent and biosolids; and (3) whether the District chooses to provide such service under the Hauled Wastes program. After such determination, the requesting entity shall be notified of the decision. If the decision is to authorize the emergency service, the District, in coordination with the entity involved, shall make those physical arrangements necessary for service to be provided by the District. No physical arrangement for emergency service shall be undertaken and no emergency discharge shall occur by any entity without the written permission of the District Manager.

5.10.2. Form of Authorization and Written Notification

The District Manager shall notify the requesting entity in writing if the request has been granted or denied. If granted, the notification will specify the requirements of the *Rules and Regulations* and of any specific conditions or limitations on the approval.

5.10.3. Vehicle Inspection

Metro District Staff shall have the right to inspect the vehicle used to discharge at any time before, during, or after the discharge.

5.10.4. Insurance

The requesting entity shall provide the Metro District a current valid certificate of insurance for Workers Compensation and current valid certificates of insurance for auto liability and general liability coverage in the amounts as determined by the District Manager. The District shall receive such certificate(s) of insurance before emergency discharge is allowed.

5.10.5. Charges

The requesting entity shall pay for each request for emergency hauled wastes discharge services. The charge for services shall be the sum of:

1. A deposit of \$1,000 applicable before discharge for each emergency service authorized, to be held by the Metro District for the purposes described in Section 5.2.5.
2. A service fee of \$200 applicable upon approval of each emergency request by the Metro District.
3. All direct costs (including applicable overhead costs) incurred by the Metro District related to providing emergency services.
4. A charge for the hauled waste, based on Flow, BOD, TKN, and SS, equal to three (3) times the unit rates in the current Estimated Annual Charges for these parameters.

5.10.6. Payment

The charges for emergency service shall be payable within thirty (30) days after a bill is submitted to the requesting entity by the Metro District. Late payments shall be charged interest at a rate of eighteen percent (18%) per annum. The District may bill for services rendered to date at any time after the initiation of emergency service.

Revisions	05/91	04/96	04/99	01/01	04/03	06/06	01/08	09/09	10/13	07/18
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SECTION 6

PRETREATMENT PROGRAM

6.1. GENERAL

The Pretreatment Program of the Metro District is designed to enable the District to comply with all applicable state and federal laws, including the Clean Water Act (33 United States Code [U.S.C.] Section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the Code of Federal Regulations [CFR] Part 403), conditions of its National Pollutant Discharge Elimination System (NPDES) Permits or Colorado Discharge Pollutant System (CDPS) Permits, as applicable, Operating Permit (Air), and any other permit and applicable sludge disposal regulations, and to meet the following objectives:

1. To prevent the introduction of Pollutants into the District System which will interfere with the operation of the District System or contaminate the sludge.
2. To prevent the introduction of Pollutants into the District System which will Pass Through the District System, inadequately treated, into the receiving waters or the atmosphere, or otherwise be incompatible with the Publicly Owned Treatment Works.
3. To prevent the introduction of Pollutants into the District System which might constitute a hazard to humans or to animals.
4. To ensure the District's ability to recycle and reclaim Wastewater and sludge.
5. To enable the District to comply with its NPDES or CDPS permit conditions, sludge use and disposal requirements, and any other applicable federal or state laws.

6.2. APPLICABILITY

Any Industrial User, the Sewage or Wastewater from which directly or indirectly enters or has the potential to enter the District System from areas within or without the boundaries of the District, shall be bound by these *Rules and Regulations*, Section 5, and this Section 6 as they now exist or may hereafter be amended. These *Rules and Regulations* may be enforced against any Industrial User.

6.3. COMPLIANCE WITH PROGRAM IMPLEMENTATION REQUIREMENTS

Where Pretreatment Program responsibilities are not delegated to the Metro District, the Connector or Contracting Municipality must design and administer a Pretreatment Program which is in accordance with Section 6 and will enable the District to comply with all pretreatment and effluent limitation conditions of its NPDES or CDPS Permit, Federal Pretreatment Regulations, State Pretreatment Regulations, and applicable sludge disposal and air regulations. Where Pretreatment responsibilities have been delegated to the District, the District is required to design and administer its Pretreatment Program in accordance with this Section. Any Connector or Contracting Municipality which has delegated Pretreatment Program responsibilities to the District must demonstrate, to the District's satisfaction, compliance with this Section 6 prior to resuming any responsibilities of the District's Pretreatment Program.

Each Connector or Contracting Municipality, or the Metro District, where Pretreatment Program authority has been delegated by the Connector or Contracting Municipality, will cause all Sewage at any time discharged directly or indirectly into the District System by it or on its behalf, to comply with any requirements of the District. In all cases where the application or the enforcement of said requirements involve technical or scientific analyses or determinations, the District shall have final authority as to methods, standards, criteria, significance, evaluation, and interpretation of such analyses and determinations. Each Connector or Contracting Municipality will permit no new connections and will discontinue existing public connections and will require the discontinuance of existing private connections to its Municipal Sewer System or to the District System which allow entrance therein of such Sewage as will cause the discharge at any time into its Municipal Sewer System or the District System that does not comply with said requirements of the District.

The Metro District may from time to time make a determination of the respects in which Sewage discharged or to be discharged into the Municipal Sewer System, or into the District System by any Connector or Contracting Municipality, is not in compliance with said requirements and with the amendments thereof, if any, then in effect. If the Connector or Contracting Municipality currently has not delegated Pretreatment Program Responsibilities, a copy of said determination shall be mailed to the Connector or Contracting Municipality at its usual place of business and for all purposes of these *Rules and Regulations* shall be conclusively deemed to have been made in accordance with this Section and to be correct at the expiration of thirty (30) days after such mailing unless within said period of thirty (30) days the Connector or Contracting Municipality shall have filed with the District an objection thereto stating that such determination is incorrect and stating the changes therein which should be made in order to correct such determination.

6.3.1. Penalties

Any Connector or Contracting Municipality found to have violated any provision of this Section 6, the Service Contract, Special Connectors Agreement, or the Metro District's Procedures for Implementing the Pretreatment Program or any other written requirement of the District shall be subject to a penalty not to exceed, except as noted below, five thousand dollars (\$5,000) for such violation. Penalty amounts are determined in accordance with the District's Pretreatment Enforcement Management System, as may be amended from time to time, up to the maximum amount allowed by this regulation. Each day on which a violation occurs or continues shall be deemed a separate and distinct violation. Such penalty shall be in addition to any actual damages the District may incur because of such violation.

In addition to the penalties provided here, the Metro District may recover reasonable attorney's fees, court costs, court reporter's fees, and other expenses of litigation against the Connector or Contracting Municipality found to have violated these *Rules and Regulations*.

Where a violation is found to have caused Interference or Pass Through, the maximum penalty of \$5,000 per violation described above may be increased as necessary to allow the Metro District to recover any fines or penalties paid by the District for NPDES/CDPS permit violations due to the Interference or Pass Through.

6.4. LEGAL AUTHORITY REQUIREMENTS

6.4.1. Ordinance/Resolution

Except as provided in Subsection 6.4.3, each Connector or Contracting Municipality will enact and enforce an ordinance or resolution which conforms to 40 CFR §403.8(f)(1) Pretreatment Program Requirements, as from time to time amended, for legal authority and containing all other legal provisions mandated by these *Rules and Regulations*. Any proposed amendments to such ordinance or resolution, or any proposed actions which would serve to amend such ordinance or resolution with respect to any Pretreatment Program Requirements, must be submitted to the Metro District for review and must be approved in writing by the District Manager prior to such enactment.

Each Connector or Contracting Municipality shall adopt and enforce in its ordinance or resolution provisions which are in conformance to the following provisions:

1. A provision requiring any Industrial User responsible for an accidental, unusual, or slug discharge to notify immediately both the Connector or Contracting Municipality and the Metro District, and a provision requiring any Significant Industrial User to notify the District immediately of any changes at the facility affecting the potential for a slug discharge.
2. A provision precluding, except where authorized by Categorical Standards, the use of dilution to attain conformance to Pretreatment Standards and Requirements, and authorizing the Connector or Contracting Municipality to set mass limitations for any Industrial User using improper dilution.
3. A provision forbidding and where possible penalizing the knowing transmittal of false information by an Industrial User to the Connector or Contracting Municipality or Metro District.
4. A provision requiring the installation of all necessary monitoring and pretreatment facilities by Industrial Users. This provision shall also authorize the Connector or Contracting Municipality to impose compliance schedules on Industrial Users for the installation of such facilities.
5. A provision applying civil or criminal penalties or, where permitted by 40 CFR §403.8(f)(1), assessing liquidated damages against Industrial Users which violate Pretreatment Standards or Requirements. Where possible, such penalties and liquidated damages shall be set at a level determined by the Metro District to provide a reasonable degree of deterrence to violations.
6. A provision adopting discharge limitations for Industrial Users at least as stringent as the corresponding limitations in this Section 6.
7. A provision requiring that Industrial Users agree to act and allow the Metro District to act as provided under the provisions of this Section 6.
8. A provision requiring that any Industrial User discharging any toxic Pollutants which cause an increase in the cost of managing the effluent or the sludge of the Metro District's treatment works shall pay for such increased costs.

6.4.2. Attorney's Statement

Except as provided in Subsection 6.4.3, each Connector or Contracting Municipality must submit to the Metro District an attorney's statement which conforms to the requirements of 40 CFR §403.9(b)(1) and which certifies the Connector or Contracting Municipality has adequate authority to carry out its Responsibilities under the Pretreatment Program. Where Pretreatment Program Responsibilities are delegated to the District, the District will maintain the attorney's statement which conforms to 40 CFR §403.9(b)(1).

6.4.3. Legal Authority Exemption

Any Connector or Contracting Municipality that does not serve any Industrial Users may submit a letter to the Metro District in lieu of enacting the ordinance or resolution and submitting the attorney's statement, as required by these *Rules and Regulations*. The letter must state the entity has no Industrial Users. Furthermore, any entity submitting such a letter shall (1) notify the District at least fourteen (14) days in advance of the date that any Industrial User is granted a Sewer Connection and (2) fully comply with the District's Pretreatment Program, including the requirements of these *Rules and Regulations*, and the National Pretreatment Standards and Requirements prior to allowing that Industrial User to connect to the Sewer System. The District, at its own discretion, may require any Connector or Contracting Municipality to fully comply with these *Rules and Regulations* regardless of whether or not the aforementioned letter has been submitted and/or previously accepted by the District.

Any Connector or Contracting Municipality that has delegated all Pretreatment Program Responsibilities to the Metro District is exempt from enacting (or updating) the pretreatment ordinance or resolution, submitting the attorney's statement, and the procedural requirements of these *Rules and Regulations*.

6.5. PROGRAM PROCEDURE REQUIREMENTS

6.5.1. General

Each Connector or Contracting Municipality must formulate, fund, and implement procedures which will enable Metro District compliance with the "Procedures" and "Funding" requirements contained in 40 CFR §403.8(f)(2) and (3) of the National Pretreatment Standards and Requirements which will enable compliance with the requirements of these *Rules and Regulations*. Any Connector or Contracting Municipality that has delegated all pretreatment responsibilities to the District is exempt from enacting (or updating) the pretreatment ordinance or resolution, submitting the attorney's statement, and the procedural requirements of these *Rules and Regulations*.

6.5.2. Procedures Manual

The District Manager shall issue to all Municipalities which are Connectors or Contracting Municipalities a manual on Procedures for Implementing the Pretreatment Program of the Metro District (Procedures Manual). The Procedures Manual shall set forth District requirements on formulating, funding, and implementing Pretreatment Program procedures and shall provide guidance to Municipalities and District Staff on implementing the procedural requirements.

Where necessary to maintain continued compliance with applicable federal and state regulations, or these *Rules and Regulations*, or to facilitate the operation of the Pretreatment Program, the District Manager or the District Manager's designee may from time to time amend

the Procedures Manual, and shall provide notice of such amendments to all Municipalities and Staff performing pretreatment duties under the Metro District's Pretreatment Program.

The following subsections highlight the procedural requirements as discussed more fully in the Procedures Manual.

6.5.3. Industrial Waste Survey

Each Connector or Contracting Municipality shall formulate and implement procedures for conducting ongoing, comprehensive industrial waste surveys to locate and identify all Industrial Users within the Municipal Sewer System which may be subject to the Metro District's Pretreatment Program.

6.5.4. Notification to Industrial Users

Each Connector or Contracting Municipality is responsible for notifying its Industrial Users of their obligations under the Pretreatment Program.

6.5.5. Permitting of Industrial Users

Each Connector or Contracting Municipality shall control, through permit, industrial waste discharges from each Significant Industrial User, and other Industrial Users as required by the Metro District, within its service area.

The Metro District shall make the final determination as to whether a particular Industrial User is a Significant Industrial User or otherwise requires permitting. To this end, the District may require that a Connector or Contracting Municipality collect and forward to the District all information necessary to make this determination.

In the event a Connector or Contracting Municipality fails to issue a suitable permit to an Industrial User upon notification to do so by the Metro District, the District shall have full authority to issue such permit directly to the Industrial User. In this event, the District may bill the Connector or Contracting Municipality for all costs incurred by the District for issuance of the permit and for the administration of permit requirements.

6.5.6. Monitoring of Industrial Users

Each Connector or Contracting Municipality must sample, monitor, and inspect its Significant Industrial Users and other Industrial Users as required by the Metro District and, where appropriate, require industrial self-monitoring, at a frequency adequate to determine if such Industrial Users are in compliance with applicable Pretreatment Program Standards and Requirements.

6.5.7. Slug Discharge Determinations

Each Connector or Contracting Municipality must evaluate whether each Significant Industrial User needs a plan to control slug discharges. This evaluation must be conducted in accordance with 40 CFR 403.8(f)(2)(vi). If needed, the Slug Control Plan must contain the minimum elements listed at 40 CFR §403.8(f)(2)(vi).

6.5.8. Compliance Activities

Each Connector or Contracting Municipality is required to implement procedures for identifying violators of Pretreatment Program Standards and Requirements, and to diligently enforce such Standards and Requirements and provide suitable remedies for noncompliance.

6.5.9. Industrial User Reporting/Confidentiality

Each Connector or Contracting Municipality is required to receive and analyze self-monitoring reports and any other notices submitted by Industrial Users pursuant to the Requirements of the Pretreatment Program. Where an Industrial User claims confidentiality for any information transmitted, the Connector or Contracting Municipality must implement procedures to ensure that confidential information is treated in accordance with the procedures in 40 CFR Part 2.

6.5.10. Public Participation

1. Each Connector or Contracting Municipality and the Metro District must comply with the public participation requirements of 40 CFR Part 25 in the enforcement of National Pretreatment Standards and Requirements.
2. Each Connector or Contracting Municipality must make all information collected under the Pretreatment Program, except those documents legitimately classified as “confidential,” available for public review and copying to the extent required by 40 CFR §403.14 and the Colorado Open Records Act (C.R.S. 1973, Title 24, Article 72).
3. The Metro District will publish an annual notice in a newspaper of general circulation that provides meaningful public notice within the District’s service area, a list of Industrial Users found to be in significant noncompliance during the previous year with Pretreatment Standards or Pretreatment Requirements. For the purposes of this provision, “significant noncompliance” is as defined in 40 CFR §403.8(f)(2)(viii) and in the District’s Procedures Manual.

6.5.11. Information Transmittal

Each Connector or Contracting Municipality shall transmit to the Metro District, in a timely manner, all documents as necessary to enable the District to effectively administer the Pretreatment Program. Such documents shall include:

1. A certified copy of the Industrial Waste Discharge Ordinance or Resolution, and any amendments thereto, together with any *Rules and Regulations* issued pursuant to such ordinance or resolution.
2. Copies of all Discharge, General, and Zero Discharge permits issued pursuant to the Requirements of the Pretreatment Program.
3. Copies of all industrial survey, monitoring, and inspection reports.
4. Any information needed to enable the Metro District to determine whether a particular Industrial User is subject to a particular Categorical Standard.

5. Notices of all compliance and enforcement activities, and all related correspondence.
6. An annual staffing, costs, and funding report, if requested by the District Manager (see Subsection 6.5.12).

6.5.12. Staffing, Costs, and Funding

Each Connector or Contracting Municipality must provide sufficient resources and qualified personnel to carry out its responsibilities under the Pretreatment Program. Upon request of the District Manager, a Connector or Contracting Municipality must submit to the Metro District a report describing personnel responsibilities, an itemization of program capital and operating costs, and a demonstration that adequate funds are available to support program activities.

6.6. EXTRA-JURISDICTIONAL INDUSTRIAL USERS

Except where delegated to the Metro District, each Connector or Contracting Municipality shall have the responsibility for those Industrial Users located outside its corporate limits which discharge industrial Wastewater directly into its Municipal Sewer System. Each extra-jurisdictional Industrial User shall be subject to an ordinance, resolution, or equivalent source of legal authority which contains 40 CFR §403.8(f)(1) minimum legal authorities and all legal provisions mandated by these *Rules and Regulations*. Each extra-jurisdictional Industrial User shall also be subject to all Requirements of the District's Pretreatment Program.

6.7. EXEMPTIONS

A Connector or Contracting Municipality administering a Pretreatment Program, separate from that of the Metro District, which has been approved by the Approval Authority in accordance with §403.11 of the Federal Pretreatment Regulations, may be exempted from compliance with certain provisions of this Section 6, as determined by the District.

6.8. PROGRAM REVIEW

Where a Connector or Contracting Municipality performs any responsibilities of the Metro District's Pretreatment Program, the District shall review Municipal ordinances and amendments thereof for conformance to 40 CFR §403.8(f)(1) Pretreatment Requirements for minimum legal authorities and for the inclusion of all other legal provisions mandated by these *Rules and Regulations*. The District shall participate in all enforcement efforts of Municipalities to ascertain whether the District's approved Pretreatment Standards and Requirements are being diligently enforced.

Insofar as a Connector or Contracting Municipality participates in the administration of the Pretreatment Program, the Metro District shall periodically review the Connector or Contracting Municipality's procedures, including, but not limited to, procedures for updating the industrial waste survey, and for inspecting, sampling, and monitoring industrial waste discharges, to ensure each such Connector or Contracting Municipality is administering the Program in technical conformance to "Procedures" and "Funding" requirements under 40 CFR §403.8(f)(2) and (3) of the National Pretreatment Standards and Requirements and to the provisions of these *Rules and Regulations*. Any significant Program changes shall be subject to District approval prior to implementation.

6.9. REMEDIES

6.9.1. Emergency Remedies

Where a discharge to the District System reasonably appears to present an imminent endangerment to the health or welfare of persons, or presents or may present an endangerment to the environment, or threatens to interfere with the operation of the Metro District, the District shall immediately initiate investigative procedures to identify the source of the discharge and take any steps necessary to halt or prevent the discharge. If necessary, the District shall seek injunctive relief against the violating Connector or Contracting Municipality and any Industrial User contributing significantly to the emergency condition.

6.9.2. Routine Remedies

If the Metro District determines that a Pretreatment Program as administered by a Connector or Contracting Municipality is not in compliance with Pretreatment Standards or Requirements, or that the discharge from a Connector or Contracting Municipality is not in compliance with District Standards, the District shall issue a notice setting forth the Requirements and Standards not being complied with and directing the Connector or Contracting Municipality to attain conformance to these Requirements and Standards within a period of ten (10) days. Penalties may also be assessed in accordance with Section 6.3.1 of these *Rules and Regulations*.

If after ten (10) days, the Connector or Contracting Municipality has failed or refuses to comply with this notice, the Metro District may issue an additional notice setting forth remedial actions to be taken by the violating Connector or Contracting Municipality and a time schedule for attaining compliance with all Pretreatment Standards and Requirements. If after thirty (30) days' notice, the violating Connector or Contracting Municipality has not taken necessary steps to correct the violation, the District may assume in whole or in part Pretreatment Program responsibilities in lieu of the violating Connector or Contracting Municipality. The District may continue in this capacity until the violating Connector or Contracting Municipality agrees to the original terms of the notice and any additional terms which the District feels are necessary to ensure ongoing compliance by the Connector or Contracting Municipality with all Pretreatment Standards and Requirements.

6.10. PROGRAM PREEMPTION

Where the Metro District preempts a Connector or Contracting Municipality in the execution of Pretreatment Program responsibilities, the District shall directly enforce National Pretreatment Standards and Requirements, including Categorical Standards, and the provisions of Section 6 of these *Rules and Regulations* against the Industrial Users located within the service area of the Connector or Contracting Municipality. All industrial self-monitoring reports, including those required under 40 CFR §403.12, must be conveyed directly to the District. Moreover, the District shall carry out all inspection and sampling activities necessary to monitor compliance with Pretreatment Standards and Requirements. Where Program preemption occurs, the District shall have the right to seek injunctive relief against the Connector or Contracting Municipality and any Industrial User in order to obtain full compliance with Pretreatment Standards and Requirements. The District may bill the Connector or Contracting Municipality for costs incurred by the District in conjunction with the administration of the Program in lieu of the Connector or Contracting Municipality. The District shall have the right to require the cessation of any industrial wastewater discharge in violation of Pretreatment Standards or Requirements.

6.11. PROGRAM DELEGATION

Any Connector or Contracting Municipality may enter into an agreement delegating some or all technical and administrative procedures necessary to implement the Metro District's approved Pretreatment Program to the District. These procedures may include, among others, updating the industrial waste survey, providing technical services relating to the issuance and review of industrial waste discharge permits, inspecting and monitoring industrial waste discharges, waste discharge facilities and operations of permittees, and providing technical assistance for local enforcement actions. The procedures do not include surcharge programs, grease trap/sand trap programs, or other similarly established local programs that are not part of the District's approved Pretreatment Program, unless specifically identified in a delegation agreement. Where Program delegation occurs, the delegation agreement may contain provisions for the District to recover the costs incurred by the District in conjunction with the administration of the Program on behalf of the Connector or Contracting Municipality.

6.12. METRO DISTRICT MONITORING

For the purpose of determining the quantity, quality, and other characteristics of any Sewage which shall be or may be delivered and discharged into the District System by a Connector or Contracting Municipality, or into the Municipal Sewer System by any Industrial User, the Metro District shall have the right at all reasonable times to enter and to inspect the Municipal Sewer System or any industrial or commercial installations connected thereto or any other connections which contribute or have a potential to contribute Sewage or wastes to the Municipal Sewer System and to inspect and copy records, to take samples and to make tests, measurements, and analyses of Sewage or other wastes in, entering, or with a potential to enter, or to be discharged into such Municipal Sewer System; and to require the installation of facilities and equipment necessary to monitor such discharges or to ensure no discharge occurs. The District will make and will keep records of tests, measurements, and analyses of such Sewage or other wastes entering such Municipal Sewer Systems and, where appropriate or requested, forward to each Connector or Contracting Municipality the results of such tests, measurements, and analyses appertaining thereto.

6.13. GENERAL REQUIREMENTS REGARDING DELETERIOUS WASTES

The following Sewage, water, substances, materials, or waste are prohibited from being discharged into the District System or into the Municipal Sewer System by any Industrial User unless authorized through prior written permission by the Metro District. Written permission by the District may include, but not be limited to, the imposition of site-specific limitations, Best Management Practices, and/or requirement to obtain a discharge permit pursuant to Section 6.22.1. These Requirements and prohibitions may be imposed directly on process Wastewaters prior to dilution by domestic or other Wastewaters discharged by Industrial Users.

Approval of such a discharge is solely at the discretion of the Metro District and shall not constitute approval of any additional or similar discharges. The conditions, site-specific limitations or Best Management Practices imposed by the District or terms of any permit or approval issued in relation to such discharges by the District shall not be subject to the appeal and hearing procedure set forth in Section 10 of these *Rules and Regulations*.

1. Any night soil or septic tank pumpage.
2. Sludge or other material from sewage or industrial waste treatment plants or from water treatment plants.

3. Water which has been used for cooling or heat transfer purposes without recirculation discharged from any system of condensation, air conditioning, refrigeration, or similar use.
4. Any wastes that contain concentrated dye wastes or other wastes are either highly colored or could become highly colored by reacting with any other wastes.
5. Stormwater, directly or indirectly, from surface drains, ditches, or streams, storm or combined sewers, roof, or from any other means, except as authorized in Section 301 of the Service Contract or by the District's memorandum "Approval of Specific Categories of Outdoor Facilities with Incidental and Insignificant Amount of Stormwater where it is impracticable to Eliminate such Stormwater" dated January 7, 2015, and as it may be amended.
6. Any water or wastes potentially contaminated with (1) transmissible spongiform encephalopathy agents from diseases such as chronic wasting disease, bovine spongiform encephalopathy, scrapie, Creutzfeldt-Jakob disease; (2) foot-and-mouth disease agents; or (3) anthrax.
7. Any wastes which are unusual in composition (i.e., contain an extremely large amount of suspended solids or BOD); are high in dissolved solids such as sodium chloride, calcium chloride, or sodium sulfate; contain substances conducive to creating tastes or odors in drinking water supplies; otherwise make such waters unpalatable even after conventional water purification treatment; or are in any other way extremely unusual.
8. Solids, sludges, filter backwash, or other Pollutants removed in the course of treatment or control of Wastewater (including, but not limited to, materials which have been removed by catch basins, grease traps, sand traps, or pretreatment systems/devices), or acquired from another person or location.
9. Any blood and other bodily fluids from hospitals, clinics, offices of medical doctors, medical laboratories, or other medical facilities that have not been rendered noninfectious.
10. Any garbage other than that received directly into the Municipal Sewer System from domestic and commercial garbage grinders in dwellings, restaurants, hotels, stores, and institutions, by which such garbage has been shredded to such a degree that all particles will be carried freely under flow conditions normally prevailing in public sewers with no particle greater than one-half (1/2) inch in any dimension.
11. Any water or wastes containing grease or oil and other substances that will solidify or become discernibly viscous at temperatures between 32°F and 150°F.
12. Water accumulated in excavations or accumulated as the result of grading, water taken from the ground by well points, or any other drainage associated with construction.
13. Groundwater, directly or indirectly from areaway, sumps and sump pumps, or foundation drains, or from any other means, including subsurface drainage.
14. Any Wastewater discharges to the District System, except at locations approved by the District.

15. Any waste stream not included in 6.13 or 6.14 that is regulated under one or more National Emissions Standards for Hazardous Air Pollutants (NESHAP) listed in the Code of Federal Regulations (C.F.R), Title 40 Parts 61 and 63 (40 CFR 61 and 40 CFR 63).
16. Brine or other concentrated waste streams from reverse osmosis or other membrane filtration processes from drinking water treatment plants.

6.14. PROHIBITED DISCHARGES

No Industrial User, whether or not subject to the National Categorical Pretreatment Standards or any other national, State, district, or local Pretreatment Standards and Requirements, shall contribute or cause to be contributed, directly or indirectly, any Pollutant or Wastewater which will Pass Through or Interfere with the operation or performance of the Metro District. None of the following described Sewage, water, substances, materials, or wastes shall be discharged into the District System or into the Municipal Sewer System by any Industrial User. These Requirements and prohibitions may be imposed directly on process Wastewater prior to dilution by domestic and other Wastewater discharged by Industrial Users. Site-specific limitations and/or Best Management Practices and/or requirements to obtain a discharge permit pursuant to Section 6.22.1 may be developed and imposed on Industrial Users to ensure compliance with the prohibitions of this Section.

1. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the District System, any Municipal Sewer System, or to the operation of the Metro District. At no time shall any reading on an explosion hazard meter, at the point of discharge into the District System or any Municipal Sewer System (or at any point in the Systems), or at any monitoring location designated by the District in a Wastewater Discharge Permit, be more than ten percent (10%) of the Lower Explosive Limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides.
2. Any solid or viscous material which could cause an obstruction to Flow in the District System or in any way could interfere with the treatment process, including as examples of such materials but without limiting the generality of the foregoing, significant proportions of ashes, wax, paraffin, cinders, sand, mud, straw, shavings, metal, glass, rags, wipes, diapers, paper towels, napkins, toilet bowl scrub products, lint, feathers, tars, plastics, wood and sawdust, paunch manure, hair and fleshings, entrails, lime slurries, beer and distillery slops, grain processing wastes, grinding compounds, acetylene generation sludge, chemical residues, acid residues, food processing bulk solids, snow, ice, and all other solid objects, material, refuse, and debris not normally contained in sanitary Sewage.
3. Any Wastewater having a pH less than 5.0 for discharges from Industrial Users or Wastewater having any other corrosive property capable of causing damage or hazard to any part of the District System or any Municipal Sewer System.
4. Any Wastewater having a temperature which will inhibit biological activity at the Metro District's treatment plant, but in no case Wastewater containing heat in such amounts that the temperature at the introduction into the District's treatment plant exceeds 40°C (104°F).

5. Any pollutants, including oxygen demanding pollutants (BOD, etc.) released at a Flow rate and/or Pollutant concentration which cause Pass Through or Interference. In no case shall a slug load have a Flow rate or contain concentrations or qualities of Pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four (24) hour concentration, quantities, or Flow during normal operation.
6. Any water or wastes containing a toxic substance in sufficient quantity, either singly or by interaction with other substances, to injure or interfere with any sewage treatment process, to constitute a hazard to humans or to animals, or to create any hazard or toxic effect in the waters which receive the treated or untreated Sewage.
7. Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, each in amounts that will cause Interference or Pass Through.
8. Pollutants which result in the presence of toxic gases, vapors, or fumes within the District System or any Municipal Sewer System in a quantity that may cause acute worker health and safety problems.
9. Any trucked or hauled pollutants except at discharge points designated by the Metro District.
10. Any water or wastes containing Pollutant quantities or concentrations exceeding the limitations in Section 6.18 of these *Rules and Regulations* or the limitations in any applicable Categorical Standards.
11. Wastewater which alone or in conjunction with other sources causes the Metro District's effluent to fail toxicity testing.
12. Detergents, surface-active agents, or other substances which alone or in conjunction with other sources cause excessive foaming in the District System or at the treatment plants.
13. Any solid wastes from hospitals, clinics, offices of medical doctors, medical laboratories, or other medical facilities, including, but not limited to, hypodermic needles, syringes, instruments, utensils, or other paper and plastic items.
14. Sewage of such a nature and delivered at such a rate as to impair the hydraulic capacity of the District System, normal and reasonable wear and usage excepted.
15. Sewage of such a quantity, quality, or other nature as to impair the strength or the durability of the District System including sewer structures, equipment or treatment works, either by chemical or by mechanical action.
16. Sewage having a flash point lower than 187°F, as determined by the test methods specified in 40 CFR §261.21.
17. Any radioactive substance, the discharge of which does not comply with Section RH 4.35 of the Colorado Rules and Regulations pertaining to Radiation Control (Volume 6 of the Code of Colorado Regulations, 6 CCR 1007-1, Part 4, et seq.).

18. Any wastes that contain a corrosive, noxious, or malodorous material or substance which, either singly or by reaction with other wastes, is capable of causing damage to the District System or to any part thereof, of creating a public nuisance, or a hazard, or of preventing entry into the District Interceptor System for maintenance and repair.
19. Any substance which may cause the Metro District's effluent or any other product of the District such as residues, sludges, or scums, to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the District System cause the District to be in non-compliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the Federal Water Pollution Control Act; any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
20. Any substance which may cause the Metro District to violate its NPDES or CDPS Permits or the receiving water quality standards.
21. Any waste or Wastewater associated with hydraulic fracturing (fracking) and drilling activities.
22. Any water or Wastewater from alkaline hydrolysis or other chemical decomposition processes of human or animal tissues, remains, or bodies.

6.15. SPECIFIC DISCHARGE LIMITATIONS – MUNICIPALITIES

No Connector or Contracting Municipality shall discharge to the District System at any time or over any period of time Wastewater containing any of the following materials and substances in excess of the limitations provided herein:

	<u>Limit mg/L</u>
1. Cyanides (as HCN)	2
2. Oil and Grease (Hexane or approved solvent extractable)	75
3. Phenolic compounds (as Phenol)	10
4. Sulfides (as H ₂ S)	10

6.16. SECTOR CONTROL PROGRAMS

The Metro District may establish sector control programs based on Best Management Practices (BMP) to control specific pollutants as necessary to meet the requirements of this Section for industrial Users that engage in similar activities and discharge similar pollutants. The District may establish policies for sector control programs as necessary to supplement the requirements included in this Section and Industrial Users subject to these sector control programs must comply with these policies. Industrial Users subject to these sector control programs may be required to install and operate wastewater treatment systems and/or implement BMPs and may be required to apply for a wastewater discharge permit.

6.16.1. Dental Amalgam Control Program

The requirements of Sections 6.16.1.1 through 6.16.1.5 apply to all Dental Facilities except for those Dental Facilities listed in Section 6.16.1.6. Dental Facilities listed in Section 6.16.1.6 must comply with the requirements listed in Sections 6.16.1.7 and 6.16.1.8.

1. By no later than July 14, 2020, Existing Source Dental Facilities shall implement BMPs according to the requirements contained below and shall install, and are required to maintain, and utilize an Amalgam Separator(s) that meet(s) the requirements specified in 40 CFR 441.30 or 441.40.
2. Operations and Maintenance (O&M) Plan. Except for Dental facilities that contract with a third-party service provider that performs all maintenance of the Amalgam Separators, each Dental Facility shall develop and implement an O&M Plan to ensure proper operation and maintenance of all Amalgam Separators and documentation of all maintenance activities. This Plan must be kept current and must address, at a minimum, the following:
 - A. Required maintenance according to manufacturer recommendations.
 - B. Visual inspection of separator(s) at least monthly and inspection log with dates and personnel signatures.
 - C. Collection device replacement per manufacturer recommendation or when solids reach the full line; whichever comes first.
 - D. Disposal of all amalgam wastes in accordance with regulatory requirements.
3. At a minimum, unless specifically waived in writing by the Metro District, the following BMPs shall be implemented and documented to verify compliance.
 - A. Amalgam selection. The Dental Facility shall use pre-capsulated, single-use Amalgam.
 - B. Equipment. All dental chairs at which dental amalgam may be present in the resulting wastewater shall be equipped with chair-side traps and all vacuum pumps shall be equipped with traps or filters. All equipment shall be cleaned and maintained in accordance with the manufacturer's instructions.
 - C. Dental Facility staff shall be trained in the proper handling and disposal of Amalgam material and keep a log documenting such training.
 - D. The Dental Facility shall use non-chlorine or non-oxidizing disinfectants and neutral cleaners. When cleaning filters or collecting scrap Amalgam, the Dental Facility shall not rinse screens, filters, traps, or Amalgam Separators, or any other Amalgam-containing equipment over sinks or drains. Spilled Amalgam must be cleaned up immediately. Each Dental Facility must provide protection from accidental discharges.
 - E. All contact and non-contact Amalgam scrap shall be salvaged and stored in structurally sound, tightly closed, and appropriately labeled containers.

- F. The Dental Facility shall recycle all Amalgam waste by transferring the waste to an offsite recycling facility or shall manage and dispose of the waste in accordance with applicable federal, state, and local hazardous waste laws and regulations.
 - G. At no time shall Amalgam waste be disposed or flushed down the drain or toilet.
4. Record Keeping. Excluding the One-Time Compliance Report, which must be maintained as long as a Dental Facility is in operation or until ownership is transferred, the following documentation shall be established and maintained in either physical or electronic format for no less than three (3) years and must be made available for Metro District review upon request:
- A. Documentation of amalgam retaining container or equivalent container replacement (including the date, as applicable).
 - B. Documentation of all dates that collected dental amalgam is picked up or shipped for proper disposal in accordance with 40 CFR 261.5(g)(3) including copies of receipts, manifests, and other documents that include the date(s) of the amalgam waste collection and the name of the permitted or licensed treatment, storage, or disposal facility receiving the amalgam retaining containers.
 - C. Documentation of any repair or replacement of an amalgam separator or equivalent device, including the date, person(s) making the repair or replacement, and a description of the repair or replacement (including make and model).
5. Compliance Reporting.
- A. For Existing Source Dental Facilities that have not previously submitted a Compliance Certification to the Metro District, a One-Time Compliance Report must be submitted to the District by no later than October 12, 2020. If a Dental Facility transfers ownership of the facility, the new owner must submit a new One-Time Compliance Report to the District no later than 90 days after the transfer.
 - B. For New Source Dental Facilities, a One-Time Compliance Report must be submitted to the Metro District no later than 90 days following the commencement of discharge to the District.
 - C. The One-Time Compliance Report must be signed and certified by a responsible corporate officer, a general partner or proprietor if the dental discharger is a partnership or sole proprietorship, or a duly authorized representative in accordance with the requirements of 40 CFR 403.12(l).
 - D. The One-Time Compliance Report must include the following information:
 - a. The facility name, physical address, mailing address, and contact information.
 - b. Name(s) of the operator(s) and owner(s).
 - c. A description of the operation at the Dental Facility including: the total number of chairs, the total number of chairs at which dental amalgam may be present in the resulting wastewater, and a description of any existing amalgam

separator(s) or equivalent device(s) currently operated to include, at a minimum, the make, model, and year of installation.

- d. Certification that the amalgam separator(s) or equivalent device is designed and will be operated and maintained to meet the requirements specified in 40 CFR 441.30 or 441.40.
- e. Certification that the Dental Facility is implementing BMPs specified in Section 6.16.1.4, 40 CFR 441.30(b) or 441.40(b) and will continue to do so.
- f. The name of the third-party service provider that maintains the amalgam separator(s) or equivalent device(s) operated at the Dental Facility, if applicable. Otherwise, a copy of the O&M Plan required under Section 6.16.1.2, which must explain the practices employed by the facility to ensure proper operation and maintenance in accordance with 40 CFR 441.30 or 441.40.
- g. Other information deemed necessary by the Metro District to confirm compliance with the requirements of this Section 6.16.1.

6. Exempt Dental Facilities include the following:

- A. Dental Facilities that exclusively practice one or more of the following: oral pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics, periodontics, and prosthodontics.
- B. Mobile Dental Facilities.
- C. Dental Facilities that do not place any amalgam.
- D. Dental Facilities whose removal of teeth with amalgam comprises less than 5 percent of the Dental Facility's business.

7. Exempt Dental Facility Reporting Requirements. For Existing Dental Facility Sources, a One-Time Compliance Report must be submitted to the Metro District no later than October 12, 2020, or 90 days after a transfer of ownership. For New Dental Facility Sources, a One-Time Compliance Report must be submitted to the District no later than 90 days following the commencement of discharge to the District. The One-Time Compliance Report must:

- A. Be signed and certified by a responsible corporate officer, a general partner or proprietor if the dental discharger is a partnership or sole proprietorship, or a duly authorized representative in accordance with the requirements of 40 CFR 403.12(l).
- B. Include the following information:
 - a. Facility name.
 - b. Physical address.
 - c. Mailing address.

- d. Contact information.
 - e. Name of the operator(s) and owner(s).
 - f. Identification of the basis for Exemption under Section 6.16.1.6.
 - g. A certification statement that the Dental Facility does not place dental amalgam; or for Dental Facilities exempted under Section 6.16.1.6. a certification statement that removal of teeth with amalgam comprises less than 5 percent of its business.
8. Exempt Dental Facility Recordkeeping Requirements. As long as an Exempt Dental Facility is in operation, or until ownership is transferred, the Exempt Dental Facility, or an agent or representative of the Exempt Dental Facility, must maintain the One-Time Compliance Report required in Section 6.16.1.7 and make it available for inspection in either physical or electronic form.

6.17. RESERVED

6.18. SPECIFIC DISCHARGE LIMITATIONS – LOCAL LIMITS

6.18.1. Metro District Limitations

No Industrial User shall discharge into the District System or into any Municipal Sewer System at any time or over any period of time, Wastewater containing any of the following materials and substances in excess of the limitations provided herein. These limitations may also be imposed directly on process Wastewaters prior to dilution by domestic and other Wastewaters discharged by the Industrial User:

	<u>Limit mg/L</u>		<u>Limit mg/L</u>
1. Arsenic	0.33	7. Molybdenum	0.43*
2. Cadmium	3.4	8. Nickel	5.6
3. Chromium	3.6	9. Selenium	0.66
4. Copper	6.1	10. Silver	2.9
5. Lead	2.2	11. Tetrachloroethene	1.5**
6. Mercury	0.13	12. Zinc	15.6

*Notwithstanding this numeric limitation, discharge from cooling towers, boilers, closed-loop heat transfer systems, and any other cooling/heating system treated with molybdenum-containing water treatment chemicals is prohibited entirely. Where necessary, the Metro District may require that these wastes be physically prevented from discharging into the Municipal Sewer System.

**Notwithstanding this numeric limitation, the discharge of dry-cleaning process wastes, including new and used tetrachloroethene (perchloroethylene), still bottom oil, and separator water, is prohibited entirely. Where necessary, the Metro District may require that these wastes be physically prevented from discharging into the Municipal Sewer System.

6.18.2. Site-Specific Metro District Limitations

The Metro District may develop site-specific limits on an as-needed basis. Industrial User compliance with site-specific limits is additional to all other applicable limits specified in this Section 6.18.

6.18.3. National Pretreatment Standards and Requirements

Once promulgated, Categorical Standards for a particular industrial subcategory, if more stringent, shall supersede all conflicting discharge limitations contained in this Section 6, as they apply to that industrial subcategory. All Industrial Users must comply with all applicable National Pretreatment Standards and Requirements.

6.18.4. State Requirements

State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those contained elsewhere in this Section 6.

6.18.5. Dilution Prohibited

Except where permitted by Categorical Standards, no Industrial User may increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to attain compliance with the limitations contained in National Categorical Pretreatment Standards or any other specific discharge limitations contained in this Section 6. The Metro District may set or require a Connector or Contracting Municipality to set mass limitations or alternate concentration-based limitations for those Industrial Users which are using improper dilution to meet these limitations.

6.19. RESERVED

6.20. NOTIFICATION/REPORTING OF POTENTIAL PROBLEM DISCHARGES

6.20.1. Accidental, Unusual, or Slug Discharges

An accidental or unusual discharge is a discharge which differs significantly in quantity or quality from discharges under normal conditions and may disrupt the District System treatment processes or operations, Pass Through the District System into the receiving waters or the atmosphere, damage the District System facilities, cause an NPDES/CDPS Permit violation at a Metro District treatment plant, degrade sludge quality, or constitute a hazard to humans or to animals. A Slug Discharge is any discharge of a nonroutine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause Interference or Pass Through, or in any other way violate the District's *Rules and Regulations*, local limits, or permit conditions.

1. Accidental Discharge Protection. Each Industrial User shall provide protection from accidental or unusual discharges of prohibited materials or other substances regulated by these *Rules and Regulations*. Facilities to prevent accidental discharge of prohibited materials shall be provided and maintained at the Industrial User's own cost and expense.

2. Notification Requirements.

- A. Telephone Notification. In the case of any accidental, unusual, or Slug Discharge, it is the responsibility of the Industrial User to immediately telephone and notify the Metro District of the incident. The notification shall include the caller's name and contact information, date and time of the call, date and start and end times of the discharge, location of discharge, type of waste, concentration and volume, and corrective actions taken.
- B. Written Notice. Within five (5) days following an accidental, unusual, or Slug Discharge, the Industrial User shall, unless this requirement is waived by the Metro District, submit to the District a detailed written report describing the cause of the discharge and the measures to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the Industrial User of any fines, civil penalties, or other liability which may be imposed by these Rules and Regulations or other applicable law.
- C. Notice To Employees. A notice shall be permanently posted on the Industrial User's bulletin board or other prominent place advising employees who to call in the event of an accidental, unusual, or Slug Discharge. Employers shall ensure all employees who may cause or suffer such an accidental, unusual or slug discharge to occur are advised of the emergency notification procedure.
- D. Slug Notification. Significant Industrial Users are required to notify the Metro District immediately of any changes at its facility affecting the potential for Slug Discharge.

6.20.2. Slug Discharge Plan Requirements

In accordance with 40 CFR §403.8(f)(2)(vi), the Metro District shall evaluate whether each Significant Industrial User needs a plan to control Slug Discharges. If a Slug Discharge plan is needed, it shall be submitted to the District for review and approval as directed by the District and shall contain, at a minimum, the following elements:

- 1. A description of discharge practices, including non-routine batch discharges.
- 2. A description of stored chemicals.
- 3. Procedures for immediately notifying the Metro District of Slug Discharges, including any discharge that would violate any prohibition or limitation under Sections 6.13, 6.14, or 6.18 of these *Rules and Regulations*, with procedures for follow-up written notification within five (5) days.
- 4. If necessary, procedures to prevent adverse impact from accidental spills, including inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant-site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

6.20.3. Discharge Violation/Repeat Sampling and Reporting

If sampling performed by an Industrial User indicates a violation of these *Rules and Regulations* or any permit or any other pollutant limits established pursuant thereto, the Industrial User must notify the Metro District within twenty-four (24) hours of becoming aware of the violation. The Industrial User shall also repeat the sampling and analysis for any Pollutants in violation and submit the results of the repeat analysis to the District within thirty (30) days after becoming aware of the violation. Resampling by the Industrial User may not be required if the District performs sampling at the Industrial User's facility at least once a month, or if the District performs sampling at the Industrial User's facility between the time the initial sampling was conducted and the time the Industrial User or the District receives the results of this sampling, or if the District performed the sampling and analysis which showed the violation(s) in lieu of the Industrial User.

The Metro District may also require additional sampling and analysis upon a finding of a discharge violation based on sampling performed by the District, the Industrial User, or any other entity.

Unless waived by the Metro District, within five (5) working days of becoming aware of any violation from self-monitoring, District monitoring, or other agency monitoring events, the Industrial User shall submit to the District a detailed written report describing the cause of the violation and the measures taken or to be taken by the Industrial User to prevent similar future occurrences. Such notification shall not relieve the Industrial User of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, fish kills, or any other damage to person or property; nor shall such notification relieve the Industrial User of any fines, civil penalties, or other liability which may be imposed by these *Rules and Regulations* or other applicable laws or regulations.

6.20.4. Notification/Reporting Of Changed Conditions

Each Industrial User must notify the Metro District in advance of any significant changes to the Industrial User's operations or system which might alter the nature, quality, or volume of its Wastewater, or any substantial change in the volume of flow or in the volume or character of Pollutants in its discharge. The District may require the Industrial User to submit such information as may be deemed necessary to evaluate the changed condition.

6.21. HAZARDOUS WASTE DISCHARGE NOTIFICATION

Industrial Users shall notify the Metro District, the EPA Regional Waste Management Division Director, and the state hazardous waste authorities in writing of any discharge into the POTW of any substance which, if otherwise disposed of, would be considered a hazardous waste under 40 CFR Part 261. Each Industrial User shall notify the District in advance of any substantial change to such discharge. This notification requirement does not apply to Industrial Users subject to Categorical Pretreatment Standards already being reported under the reporting requirements contained in Section 6.23 of these *Rules and Regulations*. The specific information required to be reported and the time frames in which it is to be reported are found at 40 CFR §403.12(p). The Industrial User is responsible for ensuring compliance with the *Rules and Regulations Pertaining to Hazardous Waste* issued by the CDPHE (Volume 6 of the *Code of Colorado Regulations* 1007-3, Part 260, et seq.).

6.22. WASTEWATER DISCHARGE PERMITS/ GENERAL PERMITS/ZERO DISCHARGE PERMITS

6.22.1. Applicability

All Significant Industrial Users and other Industrial Users as required by the Metro District, discharging to, proposing to discharge to, or with a potential to discharge to the District or engaging in certain industrial processes shall obtain a Wastewater Discharge Permit, General Permit, or Zero Discharge Permit. Such permit shall either be issued by the District or co-issued by the Connector or Contracting Municipality providing sewage services and the District.

Requirements pertaining to permits co-issued with Municipalities or issued solely by the Metro District are contained in the District's *Rules and Regulations*. Permits co-issued with Municipalities may also contain requirements contained in the various municipal codes, ordinances, resolutions, and rules and regulations.

6.22.2. Permit Application

Industrial Users required to obtain a Wastewater Discharge Permit, General Permit, or Zero Discharge Permit shall complete and file with the Metro District an application on the form prescribed by the District, and accompanied by a fee, as determined, pursuant to Section 6.29 of these *Rules and Regulations*.

Applications are due:

1. For new dischargers, at least one hundred eighty (180) days prior to beginning discharge to the Metro District.
2. For existing dischargers who become subject to a newly promulgated Categorical Standard, at least one hundred-eighty (180) days prior to the effective date of such Standard.
3. For existing dischargers who, because of process changes or additions, will become subject to an existing Categorical Standard, at least ninety (90) days prior to beginning discharge from the categorical process.
4. For existing dischargers subject to Categorical Standards as of the effective date of these *Rules and Regulations*, who have not previously obtained a Wastewater Discharge Permit or General Permit, in a time frame specified per notice from the Metro District not later than thirty (30) days of the effective date of these *Rules and Regulations*.
5. For renewal of Wastewater Discharge Permits, General Permits, and Zero Discharge Permits, at least one hundred-eighty (180) days prior to the expiration date of the current permit.
6. For all other Industrial Users, in a time frame as specified per notice from the Metro District.

In support of the application, the Industrial User shall submit, in units and terms appropriate for evaluation, the information identified below.

1. Name, mailing address, and facility location.
2. SIC number(s) according to the Standard Industrial Classification (SIC) Manual, Office of Management and Budget, 1987, as amended or the 1997 North American Industrial Classification System (NAICS), as amended.
3. Time and duration of Wastewater discharges.
4. Average daily and thirty (30) minute peak Wastewater flow rates, including daily, monthly, and seasonal variations, if any.
5. Site plan, floor plans, mechanical and plumbing plans, and details to show all sewers, Sewer Connections, and appurtenances by the size, location, and elevation.
6. Description of activities, facilities, and plant processes on the premises including all materials which are or could be discharged.
7. Wastewater constituents and characteristics including, but not limited to, those limited by Sections 6.13 and 6.14 of these *Rules and Regulations*, as determined by a reliable analytical laboratory. Sampling and analysis shall be performed in accordance with procedures established by the EPA pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136, as amended.
8. A statement regarding whether or not the discharge standards and Pollutant limitations contained in Sections 6.13, 6.14 and 6.18 of these *Rules and Regulations*, including any applicable State or National Pretreatment Standards, are being met on a consistent basis and, if not, whether additional Operational Changes and/or installation of new or additional treatment is required for the Industrial User to meet the applicable standards.
9. If additional Pretreatment and/or Operational Changes will be required to meet the discharge standards and pollutant limitations, the shortest schedule by which the Industrial User will provide such additional treatment. For state or National Pretreatment Standards and Requirements, the completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the Industrial User to meet the applicable discharge standards and Pollutant limitations (e.g., hiring an engineer, completing preliminary plans, completing final plans, executing contract for major components, commencing construction, completing construction). In no case shall an increment of progress exceed nine (9) months.
10. Each product produced by type, amount, process or processes, and rate of production.
11. The type and amount of raw materials processed (average and maximum per day).
12. The number and type of employees, hours of operation of the plant, and proposed or actual hours of operation of the Pretreatment system.

13. Any other information deemed necessary by the Metro District to characterize and evaluate the potential and/or actual discharge from the facility and to support associated permitting decisions.
14. Information regarding each waste stream generated by the Industrial User that is regulated under one or more NESHAPs listed in the Code of Federal Regulations (C.F.R), Title 40 Parts 61 and 63 (40 CFR 61 and 40 CFR 63). For each identified waste stream, the waste stream composition, volume generated (per-day/month/year), specific method(s) of disposal and method(s) of compliance with the NESHAPs must be included. If the Industrial User does not generate any waste streams regulated under the above-referenced NESHAPs, the Industrial User must include the following statement:

Based upon my inquiry of the person or persons directly responsible for managing compliance for this facility, including the NESHAPs listed in 40 CFR 61 and 40 CFR 63, I certify that, as of (today's date), to the best of my knowledge and belief (facility name) does not generate any waste streams that are subject to one or more of the NESHAPs listed in 40 CFR 61 and 40 CFR 63.
15. Other conditions as deemed appropriate by the Metro District to ensure compliance with these *Rules and Regulations*.

6.22.3. Permit Issuance

The Metro District shall issue a Wastewater Discharge Permit or General Permit to the applicant if the District finds all of the following conditions are met:

1. The proposed discharge of the applicant is in compliance with the prohibitions and limitations of Sections 6.13, 6.14, and 6.18 of these *Rules and Regulations*;
2. The proposed discharge of the applicant would permit the normal and efficient operation of the District System;
3. The proposed discharge of the applicant would not result in a violation by the Metro District of the terms and conditions of its NPDES/CDPS Permit; and
4. As a result of receiving the proposed discharge of the applicant, the POTW will not be used or considered as the means for the applicant to comply with the requirements of any NESHAPs listed 40 CFR 61 and 40 CFR 63 that are applicable to waste streams generated by the applicant. The proposed discharge of the applicant meets all compliance requirements of all applicable NESHAP(s) using treatment and controls at the applicant's facility, prior to discharge.
5. All SIUs that will be covered under a specific General Discharge Permit must also meet the following criteria pursuant to 40 CFR 403.8(f)(1)(iii)(A)(1):
 - A. Is not subject to production-based categorical Pretreatment Standards or categorical Pretreatment Standards expressed as mass of pollutant discharged per day.
 - B. Is not subject to limits that are based on the Combined Wastestream Formula or Net/Gross calculations.
 - C. Involve the same or substantially similar types of operations.

- D. Discharge the same types of wastes.
- E. Require the same effluent limitations.
- F. Require the same or similar monitoring.
- G. In the opinion of the Metro District, are more appropriately controlled under a general control mechanism than under individual control mechanisms.

If the Metro District finds the condition set out in Paragraph 1 of this subsection is not met, the District may issue a Wastewater Discharge Permit or General Permit to the applicant if the conditions set out in Paragraphs 2-4 of this subsection are met and if the applicant submits, and the District approves, a schedule setting out the measures to be taken by the applicant and the dates such measures will be implemented to ensure compliance with the provisions of these *Rules and Regulations*.

The Metro District may issue a Zero Discharge Permit that requires specific controls and/or process configurations to prevent the discharge from specified process operations, or of specified Pollutants, to the POTW.

6.22.4. Permit Denial: Appeal and Hearing

In the event an application for a Wastewater Discharge Permit, General Permit, or Zero Discharge Permit is denied, the Metro District shall notify the applicant in writing of such denial. Such notification shall state the grounds for denial with that degree of specificity which will inform the applicant of the measures or actions which must be taken by the applicant prior to issuance of a permit.

An applicant denied a Wastewater Discharge Permit, General Permit, or Zero Discharge Permit may request the District Manager review the denial and issue a permit. If the District Manager reaffirms the denial, the applicant may appeal this decision pursuant to the terms and conditions of the District's appeal and hearing procedure as set forth in Section 10 of these *Rules and Regulations*.

6.22.5. Permit Conditions

Wastewater Discharge Permits, General Permits, or Zero Discharge Permits shall be expressly subject to all provisions of these *Rules and Regulations*. Wastewater Discharge Permits and General Permits must contain, but is not limited to, the following:

1. A statement of duration (in no case more than five [5] years).
2. A statement of non-transferability without, at a minimum, prior notification to the Metro District and provision of a copy of the existing permit to the new owner or operator.
3. Effluent limits, including Best Management Practices, based on applicable Pretreatment Standards and Requirements, Categorical Pretreatment Standards, specific discharge limitations, as cited in these *Rules and Regulations*; site-specific discharge limitations; and other federal, state, and local law and regulations. The Metro District reserves the right to establish in permits more stringent Standards or Requirements on discharges consistent with the purpose of these *Rules and Regulations*.

4. Self-monitoring, sampling, reporting, notification, and record-keeping requirements, including an identification of the Pollutants to be monitored (including the process for seeking a waiver for a Pollutant neither present nor expected to be present in the discharge in accordance with 403.12[e][2], or a specific waived Pollutant in the case of an individual control mechanism), sampling locations, sampling frequencies, and sample types. These requirements shall be based on applicable general Pretreatment Standards and Requirements at 40 CFR §403; categorical Pretreatment Standards; specific discharge limitations; state and local law and regulations; and Metro District determinations as to the type, quantity, quality, and frequency of information needed to adequately determine compliance with conditions of the permit.
5. A statement of applicable civil and criminal penalties for violation of Pretreatment Standards or Requirements, and any applicable compliance schedules. Such schedules may not extend compliance dates beyond federal deadlines.
6. Requirements to control Slug Discharges, if determined by the Metro District to be necessary.
7. Requirements for notification of Slug Discharges and any changes at the facility affecting the potential for Slug Discharges.

Wastewater Discharge Permits and General Permits may also contain the following:

1. A Schedule of Industrial User Charges and Fees pursuant to Section 6.29 of these *Rules and Regulations*.
2. Limits on average and maximum rate and time of discharge or requirements for flow regulation and equalization.
3. Requirements for installation and maintenance of pretreatment equipment; pollution controls or containment devices to reduce, eliminate or prevent the discharge of Pollutants to the Metro District; and/or inspection and sampling facilities.
4. Requirements for notification to the Metro District of any new introduction of Wastewater constituents or any substantial change in operations or in the volume or character of the Wastewater constituents being introduced into the District.
5. Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or nonroutine discharges.
6. Other conditions as deemed appropriate by the Metro District to ensure compliance with these *Rules and Regulations*.

Zero Discharge Permits may contain the following:

1. A statement of duration (not to exceed five [5] years).
2. Discharge prohibition requirements for specific controls and/or process configurations to prevent the discharge from specified process operations, or of specified Pollutants, to the POTW.

3. Reporting, notification, and record-keeping requirements.
4. A statement of applicable civil and criminal penalties for violation of Pretreatment Standards or Requirements.
5. Requirements for notification of discharges of prohibited Wastewater or any accidental, unusual, or Slug Discharges.
6. Other conditions as deemed appropriate by the Metro District to ensure compliance with these *Rules and Regulations*.

6.22.6. Permit Modifications

1. The terms and conditions of a Wastewater Discharge Permit, General Permit, or Zero Discharge Permit may be modified by the Metro District during the term of the permit as limitations or Requirements identified in these *Rules and Regulations* are modified or other just cause exists. The Industrial User shall be informed of any proposed changes in its permit at least thirty (30) days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
2. Within nine (9) months of the promulgation of a National Categorical Pretreatment Standard, the Wastewater Discharge Permit, General Permit, or Zero Discharge Permit of Industrial Users subject to such standard shall be revised to require compliance with such standard within the time frame prescribed by such standard.

6.22.7. Permit Duration; Reapplication

Permits shall be issued for a specified time period, not to exceed five (5) years. The Industrial User shall apply for permit reissuance a minimum of one hundred-eighty (180) days prior to the expiration of the Industrial User's existing Permit.

6.23. REPORTING REQUIREMENTS FOR SIGNIFICANT INDUSTRIAL USERS

6.23.1. Baseline Monitoring Report for Industrial Users subject to National Categorical Pretreatment Standards

Within 180 days after the effective date of a Categorical Pretreatment Standard, or 180 days after the final administrative decision made upon a category determination submission under 40 CFR §403.6(a)(4), whichever is later, existing Industrial Users subject to such Categorical Pretreatment Standards and currently discharging to or scheduled to discharge to the Metro District shall submit to the District a report which contains the information required by 40 CFR §403.12(b)(1)–(7). At least 90 days prior to commencement of discharge, New Sources, and sources that become Industrial Users subsequent to the promulgation of an applicable Categorical Standard, shall be required to submit to the District a report which contains the information required by 40 CFR §403.12(b)(1)–(7). New Sources shall also be required to include in this report information on the method of Pretreatment the source intends to use to meet applicable Pretreatment Standards and Requirements. New Sources shall give estimates of the anticipated flow and quantity of Pollutants to be discharged.

In cases where the Categorical Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the CIU must submit documentation required by the Metro District to determine compliance status of the Industrial User. New Sources can provide estimates of the information since discharge cannot commence until a permit is issued.

6.23.2. Initial Compliance Report for Industrial Users **Subject to National Categorical Pretreatment Standards**

Within ninety (90) days following the date for final compliance with applicable Pretreatment Standards or, in the case of a New Source, following commencement of the introduction of Wastewater into the Municipal Sewer System, or as specified by the Metro District, any CIU shall submit to the District a report which contains the information required in 40 CFR 403.12(d). In cases where the Categorical Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the CIU shall submit documentation required by the District to determine the compliance status of the CIU.

Where applicable Categorical Pretreatment Standards contain limitations on the mass of Pollutants discharged per unit of production, the report shall also contain the Pollutant mass and production information necessary to determine compliance with such Categorical Pretreatment Standards. The report shall state whether the applicable Pretreatment Standards and Requirements are being met on a consistent basis and, if not, what additional O&M and/or pretreatment is necessary to bring the CIU into compliance with the applicable Pretreatment Standards and Requirements. This statement shall be signed by an Authorized Representative of the CIU, and certified to by a qualified professional.

6.23.3. Periodic Compliance Reports

1. Except in the case of Nonsignificant Categorical Users, any CIU, after the compliance date of such Categorical Pretreatment Standard, or, in the case of a New Source, after commencement of the discharge into the Municipal Sewer System, shall submit to the Metro District during the months of July and January, unless required more frequently in the Categorical Pretreatment Standard or by the District, a report covering the preceding six (6) months and indicating the nature and concentration of Pollutants in the effluent which are limited by such Categorical Pretreatment Standards. In addition, this report shall include a record of average and maximum daily flows for the reporting period for all regulated processes. In cases where the Categorical Pretreatment Standard requires compliance with a Best Management Practice (or pollution prevention alternative), the CIU shall submit documentation required by the District to determine the compliance status of the CIU.

Where applicable Categorical Pretreatment Standards contain limitations on the mass of Pollutants discharged per unit of production, the report shall also contain the Pollutant mass and production information necessary to determine compliance with such Categorical Pretreatment Standards. At the discretion of the Metro District and in consideration of such factors as local high or low flow rates, holidays, and budget cycles, the District may agree to alter the months during which the above reports are to be submitted.

2. SIUs not subject to National Categorical Pretreatment Standards shall submit to the Metro District at least once every six (6) months (on dates specified by the District), unless required more frequently by the District, a description of the nature, Pollutant concentrations, flows, and, where requested, Pollutant masses, of the discharges required to be reported by the District. In cases where a Local Limit requires compliance with a BMP or pollution prevention alternative, the SIU must submit the documentation required by the District to determine the compliance status of the SIU.
3. All reports submitted pursuant to this Section shall be based on analyses performed in accordance with procedures established by the Administrator pursuant to Section 304(g) of the Act and contained in 40 CFR, Part 136 and amendments thereto or with any other test procedures approved by the Administrator. Sampling shall be performed in accordance with the techniques approved by the Administrator.

6.23.4. Annual Certification by Nonsignificant Categorical Industrial Users

A facility determined to be a Nonsignificant CIU pursuant to 40 CFR 403.3(v)(2) must annually submit the certification statement contained in 40 CFR 403.12.q, signed in accordance with the signatory requirements in 40 CFR 403.12(l). This certification must accompany any alternative report required by the Metro District.

6.23.5. Annual Certification by Zero Discharge Facilities.

A facility issued a Zero Discharge Permit must annually submit a statement certifying the facility has or has not discharged any prohibited process Wastewater or Pollutants to the Municipal Sewer System. The statement must be signed in accordance with the signatory requirements in 40 CFR 403.12(l).

6.24. MONITORING FACILITIES/REQUIREMENTS

The Metro District may require to be installed and operated at the Industrial User's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of any discharges as necessary to determine compliance with the provisions of these *Rules and Regulations*.

There shall be ample room in or near such sampling manhole or facility to allow accurate sampling representative of the discharge and preparation of samples for analysis. The facility, sampling, and measuring equipment shall be maintained at all times in a safe and proper operating condition at the expense of the Industrial User. All devices shall be calibrated in accordance with manufacturers' specifications to ensure their accuracy, unless a waiver is obtained from, or an alternative method specified by, the Metro District.

The sampling and monitoring facilities shall be provided in accordance with the Metro District's requirements and all applicable local construction standards and specifications. Construction shall be completed within such a time frame as the District shall specify by written notification.

Unless specifically stated otherwise, all samples must be preserved, handled, and analyzed according to 40 Part 136 of the *Code of Federal Regulations* (40 CFR 136), *Guidelines Establishing Test Procedures for the Analysis of Pollutants* under the Clean Water Act, and amendments thereto. Where 40 CFR 136 does not contain sampling or analytical techniques for the Pollutant(s) in question, or where the Administrator of the EPA determines the Part 136 sampling and analytical techniques are inappropriate for the Pollutant(s) in question, sampling

and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures specified by the Metro District.

6.25. INFORMATION SUBMITTAL, INSPECTION AND SAMPLING, RECORD KEEPING REQUIREMENTS

The Metro District may require any Industrial User to submit information as necessary to determine compliance with the Requirements of these *Rules and Regulations*. All information required by these *Rules and Regulations*, or a permit or order issued hereunder, must be signed and certified for accuracy by an Authorized Representative of the Industrial User.

The Metro District shall have the right to enter and inspect the facilities of any Industrial User to ascertain compliance with the Requirements of these *Rules and Regulations* and any permit or order issued hereunder. Persons or occupants of premises where Wastewater is created or discharged shall allow the District or its representatives ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, records examination and copying, or in the performance of any of their duties.

The Metro District, CDPHE, and EPA shall have the right to set up on the Industrial User's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and/or metering operations. Where an Industrial User has security measures in force which would require proper identification and clearance before entry into the Industrial User's premises, the Industrial User shall make necessary arrangements with security guards so that upon presentation of suitable identification, Staff from the District, the CDPHE, and EPA will be permitted to enter, without delay, for the purposes of performing their specific responsibilities. Unreasonable delays in allowing the District access to the Industrial User's premises shall be a violation of these *Rules and Regulations*.

All records relating to compliance with Pretreatment Standards and Requirements shall be maintained for at least three (3) years and made available to officials of the Metro District, the CDPHE, and EPA upon request. The period of retention may be extended by the District during the course of any unresolved enforcement proceedings or at the request of the District.

6.26. WASTEWATER TREATMENT

Industrial Users shall provide Wastewater treatment as required to comply with the requirements of these *Rules and Regulations* and shall achieve compliance with all National Categorical Pretreatment Standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat Wastewater to a level acceptable to the Metro District shall be provided, operated, and maintained at the Industrial User's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the District for review and shall be acceptable to the District before such facilities are constructed. The review of such plans and operating procedures shall in no way relieve the Industrial User from the responsibility of modifying such facilities as necessary to produce a discharge acceptable to the District under the provisions of these *Rules and Regulations*.

6.27. CONFIDENTIAL INFORMATION

Information and data on an Industrial User obtained from reports, questionnaires, permit applications, permits, monitoring programs, and inspections shall be available to the public or other governmental agency without restriction unless the Industrial User specifically designates and is able to demonstrate to the satisfaction of the Metro District that the release of such information would divulge sales or marketing data, processes, or methods of production entitled to protection as "Confidential Business Information" of the Industrial User. Wastewater constituents and characteristics will not be recognized as confidential information. It shall be the Industrial User's obligation to stamp each page, which has been demonstrated to the District's satisfaction to contain trade secrets, with the words "Confidential Business Information," "Confidential Information," or "Confidential." A failure by the Industrial User to designate and identify any document in this manner may result in the document losing its protection from disclosure as confidential business information.

Except as required by law, Confidential Business Information shall not be made available for inspection by the public. Such information shall be made available upon request to governmental entities or agencies for uses related to these *Rules and Regulations*, the Metro District's NPDES/CDPS Permit and/or the Pretreatment Program in accordance with 40 CFR Part 2. Confidential Business Information shall not be transmitted to any governmental agency or entity for other uses by the District except upon written request and after a ten (10) day notification and right to object is given to the Industrial User. Such notification shall not be required in certain circumstances provided for in 40 CFR Part 2. If after a request for public inspection, a person or entity challenges the determination of any record to protection as Confidential Business Information, the Industrial User shall cooperate, to the fullest extent possible and at the Industrial User's own expense, with the District in the defense of the determination. At the request of the District the Industrial User shall, at the Industrial User's expense, provide a defense to such challenge.

6.28. REMEDIES FOR NONCOMPLIANCE; ENFORCEMENT

6.28.1. Notice Of Violation

Whenever the Metro District determines any Industrial User has violated or is violating any provision of these *Rules and Regulations* or a permit or any directives or orders issued hereunder, the District may serve upon such Industrial User a verbal or written notice stating the nature of the violation(s). Where directed to do so by the notice, a plan for the satisfactory correction of the violation(s) shall be submitted to the District by the Industrial User, within a time frame as specified in the notice.

6.28.2. Administrative Orders

Whenever the Metro District determines any Industrial User has violated or is violating any provision of these *Rules and Regulations*, or any directives, orders, or permits issued hereunder, the District may serve upon such Industrial User a written order stating the nature of the violations(s), and requiring that the Industrial User correct the violation(s) within a specified period of time; perform such tasks as the District determines are necessary for the Industrial User to correct the violations; or perform such tasks and submit such information as is necessary for the District to evaluate the extent of noncompliance or to determine appropriate enforcement actions to be taken.

6.28.3. Compliance Orders; Compliance Schedules

Whenever the Metro District determines any Industrial User has violated or is violating any provision of these *Rules and Regulations*, or any directives, orders or permits issued hereunder, the District may serve upon the Industrial User a written order requiring that the Industrial User submit, within a time frame as specified in the notification, a plan (compliance schedule) for the satisfactory correction of such violation(s).

The compliance schedule must represent the shortest schedule by which the Industrial User will provide additional treatment or perform such other tasks as will enable the Industrial User to consistently comply with applicable requirements. The schedule shall contain increments of progress in the form of dates for the commencement and completion of major events leading to compliance (e.g., hiring an engineer, completing preliminary plans for pretreatment systems, completing final plans, executing contracts for major components, commencing construction, completing construction). In no case shall an increment of progress exceed nine (9) months.

Upon approval by the Metro District, the compliance schedule will be issued to the Industrial User as an administrative order which contains the approved schedule milestones and any applicable reporting requirements. Issuance of a compliance schedule by the District does not release the Industrial User of liability for any violations.

Not later than fourteen (14) days following each date in the schedule and the final date for compliance, the Industrial User shall submit a progress report to the Metro District including, at a minimum, information on whether or not the Industrial User complied with the increment of progress to be met on such date and, if not, the date on which it expects to comply with this increment of progress, the reason(s) for delay, and the steps being taken by the Industrial User to return to the schedule established.

6.28.4. Consent Orders

The Metro District may enter into Consent Orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any Industrial User responsible for non-compliance. Such documents will include specific action to be taken by the Industrial User to correct the non-compliance within a time period specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to Section 6.28.2 of these *Rules and Regulations* and shall be judicially enforceable. Use of a Consent Order shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

6.28.5. Show Cause Hearings

The Metro District may order an Industrial User which has violated or is violating any provision of these *Rules and Regulations*, or any directives, orders, or permits issued hereunder, or any other pretreatment standard or requirement, to appear before the District and show cause why the proposed enforcement action should not be taken. Notice shall be served on the Industrial User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the Industrial User show cause why the proposed enforcement action should not be taken. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the Industrial User.

6.28.6. Suspension of Service

The Metro District may suspend the Wastewater treatment service and/or a permit when such suspension is necessary, in the opinion of the District, in order to stop an actual or threatened discharge which presents or may present an imminent or substantial endangerment to the health or welfare of persons, to the environment, causes Pass Through or Interference or causes the District to violate any condition of its NPDES/CDPS Permit. Service may also be suspended in accordance with the District's Pretreatment Enforcement Management System. If necessary, the District may seek injunctive relief against the violating Connector or Contracting Municipality and any Industrial User contributing significantly to the emergency condition.

Any Industrial User notified of a suspension of the Wastewater treatment service and/or the Wastewater Discharge Permit shall immediately stop or eliminate the discharge. In the event of a failure of the Industrial User to comply voluntarily with the suspension order, the Metro District shall take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the District System or endangerment to any individuals or the environment. The District shall reinstate the Wastewater Discharge Permit and/or the Wastewater treatment service upon proof of the elimination of the non-complying discharge. A detailed written statement submitted by the Industrial User describing the causes of the harmful contribution and the measures taken to prevent any future occurrence shall be submitted to the District within fifteen (15) days of the date of occurrence.

6.28.7. Permit Revocation

Any Industrial User who has violated or is violating any provision of these *Rules and Regulations*, or any orders or permits issued hereunder, is subject to having its permit revoked. Grounds for permit revocation include, but are not limited to:

1. Failure of an Industrial User to factually report the Wastewater constituents and characteristics of its discharge.
2. Failure of the Industrial User to report significant changes in operations, or Wastewater constituents and characteristics.
3. Refusal of reasonable access to the Industrial User's premises for the purpose of inspection or monitoring.
4. Violation of conditions of the permit.

6.28.8. Penalties

Any Industrial User found to have violated any provision of these *Rules and Regulations*, or any written requirements, orders, or permits issued hereunder, shall be subject to a penalty not to exceed, except as noted below, five thousand dollars (\$5,000) for such violation. Penalty amounts shall be determined in accordance with procedures and/or policies developed to support implementation of the Metro District's Pretreatment Enforcement Management System, as may be amended from time to time, up to the maximum amount allowed by this regulation. Each day on which a violation occurs or continues shall be deemed a separate and distinct violation. In the case of violations of monthly or other long-term average discharge limitations, penalties may be assessed for each day in the period covered by the violations.

In addition to the penalties provided herein, the Metro District may recover reasonable attorney's fees, court costs, expert fees, court reporter's fees, and other expenses of litigation against the Industrial User found to have violated these *Rules and Regulations*, or any written requirements, orders, or permits issued hereunder. Such penalties shall be in addition to any actual damages the District may incur because of such violations. In addition, any Industrial User discharging toxic Pollutants which cause an increase in the cost of managing the influent, effluent, biosolids, or solid wastes of the District's treatment facility, shall pay for such increased costs.

Where a violation is found to have caused Interference or Pass Through, the maximum penalty of \$5,000 per violation as described above may be increased as necessary to allow the Metro District to recover any fines or penalties paid by the District for NPDES/CDPS Permit violations due to the Interference or Pass Through.

6.28.9. Legal Action

If any person discharges Sewage, industrial wastes or other wastes into the District System contrary to the provisions of these *Rules and Regulations*, or any orders or permits issued hereunder, or any other Pretreatment Standard or Requirement, the Metro District's attorney may commence an action for appropriate legal and/or equitable relief in the District Court. When the District finds an Industrial User has violated, or continues to violate, any provision of these *Rules and Regulations*, or any written requirements, orders or permits issued hereunder, or any other Pretreatment Standard or Requirement, the District may petition the Court for the issuance of a temporary restraining order or permanent injunction, as appropriate, which restrains or compels the specific performance of the permit, order, or other requirement imposed by these *Rules and Regulations* on the activities of the Industrial User. The District may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the Industrial User to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against an Industrial User.

6.28.10. Federal Penalties for Falsification of Reports

Sections 309(c)(4) and 309(c)(6) of the Clean Water Act, as amended, published at Title 33 of the *United States Code*, Section 1251, et seq. [33 U.S.C. §1251]), at 33 U.S.C. §1319, and 18 U.S.C. §1001, provide that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this Section 6, including monitoring reports or reports of compliance or noncompliance, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Section 6 shall, upon conviction, be punished by a monetary fine, or by imprisonment for not more than two years, or by both, for the first such conviction. Subsequent convictions under this Section shall be punished by monetary fines, or by imprisonment of not more than four (4) years, or by both. Maximum civil monetary fine amounts that may be assessed, upon conviction, for falsification of reports are prescribed in the most current Civil Monetary Penalty Adjustment Rule, 40 C.F.R., Part 19 as amended.

6.28.11. Appeal and Hearing Procedure

Any Industrial User who is aggrieved by any enforcement action taken by the Metro District pursuant to this Section 6.28 may within thirty (30) days of the receipt of notice of the determination, order, or finding being appealed request in writing via mail or electronic mail, receipt confirmed, that the District Manager review the enforcement action. The request (Letter of Appeal) shall state all points of disagreement and objection to the determination, order, or finding. If the District Manager reaffirms the action, the Industrial User may appeal this decision following the provisions of Section 10, of these *Rules and Regulations*. It shall not be a defense for a permittee in an enforcement action to claim it would have been necessary to halt or reduce the regulated activity to maintain compliance with the conditions of these *Rules and Regulations*, a permit or directive, order issued hereunder, or any other Pretreatment Standard or Requirement.

6.29. CHARGES AND FEES

Charges and fees to be assessed against Industrial Users will be determined by the District Manager and, where instituted, will be set at a level to allow the Metro District to recover its costs for administering elements of the Pretreatment Program. Program elements for which charges and fees may be assessed include, but are not limited to, permit applications; monitoring, inspection, and surveillance activities; and general program administration.

6.30. AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

6.30.1. Upset

1. For the purposes of this Section, Upset means an exceptional incident in which there is unintentional and temporary noncompliance with Categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
2. An Upset shall constitute an affirmative defense to an action brought for noncompliance with Categorical Pretreatment Standards if the requirements of paragraph (3) below are met.
3. An Industrial User who wishes to establish the affirmative defense of Upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - A. An Upset occurred and the Industrial User can identify the cause(s) of the Upset;
 - B. The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
 - C. The Industrial User has submitted the following information to the Metro District within twenty-four (24) hours of becoming aware of the Upset [if this information is provided orally, a written submission must be provided within five (5) days]:

- a. A description of the discharge and cause of noncompliance;
 - b. The period of noncompliance, including exact dates and times or, if not corrected at the time of the submission, the anticipated time the noncompliance is expected to continue; and
 - c. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- 4. In any enforcement proceeding, the Industrial User seeking to establish the occurrence of an Upset shall have the burden of proof.
- 5. Industrial Users shall have the opportunity for a judicial determination on any claim of Upset only in an enforcement action brought for noncompliance with Pretreatment Standards or Requirements.
- 6. An Industrial User shall control production of all discharges to the extent necessary to maintain compliance with National Pretreatment Standards and Requirements, including Categorical Pretreatment Standards, upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

6.30.2. Bypass

- 1. For the purposes of this Section,
 - A. Bypass means the intentional diversion of wastestreams from any portion of an Industrial User's treatment facility.
 - B. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a Bypass. Severe property damage does not mean economic loss caused by delays in production.
- 2. An Industrial User may allow any Bypass to occur which does not cause Pretreatment Standards or Requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These Bypasses are not subject to the provision of paragraphs (3) and (4) of this Section.
- 3. Bypass Notifications
 - A. If an Industrial User knows in advance of the need for a Bypass, it shall submit prior notice to the Metro District at least ten (10) days before the date of the Bypass, if possible.
 - B. An Industrial User shall submit oral notice to the Metro District of an unanticipated Bypass that results in an exceedance of applicable Pretreatment Standards or Requirements within twenty-four (24) hours from the time it becomes aware of the Bypass. A written submission shall also be provided within five (5) days of the time

the Industrial User becomes aware of the Bypass. The written submission shall contain a description of the Bypass and its cause; the duration of the Bypass, including exact dates and times, or, if the Bypass has not been corrected at the time of the submission, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the Bypass. The District may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.

4. Prohibition of Bypass

- A. Bypass is prohibited, and the Metro District may take an enforcement action against an Industrial User for a bypass, unless:
 - a. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - c. The Industrial User submitted notices as required under paragraph (3) of this Section.
- B. The Metro District may approve an anticipated bypass, after considering its adverse effects, if the District determines it will meet the three conditions listed in paragraph (4)(A) of this Section.

Revisions	03/94	04/96	04/99	01/01	03/01	04/03	06/06
	01/08	09/09	09/10	10/13	06/14	07/18	

SECTION 7

SEWER CONNECTION CHARGE SYSTEM

7.1. GENERAL

The Metro District has established a Sewer Connection Charge system for the purpose of distributing a portion of the capital costs of new facilities to those requiring the new facilities. Except as provided in Section 7.10, for each new or altered Sewer Connection served directly or indirectly by the District System, a Sewer Connection Charge shall be paid to the District. The amount due shall be based upon the number of Single Family Residential Equivalents (SFRE) attributable to each connection and the Sewer Connection Charge at the rate set forth in Schedule C of the Service Contract. From time to time, this charge may be adjusted by the Board of Directors. Each Connecting Municipality and Special Connector has the obligation to pay the Sewer Connection Charge to the District. This obligation includes any Associated Municipality or Contracting Municipality receiving service through such Connecting Municipality or Special Connector of the District. Each Connecting Municipality and Special Connector is required to report and pay the Sewer Connection Charges due the District pursuant to these *Rules and Regulations*. The method of collecting funds for payment of Sewer Connection Charges is at their discretion.

7.2. GEOGRAPHICAL AREA OF APPLICATION AND RESPONSIBILITY

7.2.1. Area of Application

The Sewer Connection Charge is applicable for all new or altered sewer connections in the entire service area from which Wastewater Flow enters the District System. Each Connecting Municipality and Special Connector is responsible for meeting the obligations of the Sewer Connection Charge System for all sewer connections within its service area and those areas it serves by contract. A map of each Servicing Municipality's geographical service area and political boundaries showing street numbers and names at boundaries shall be furnished to the District. Maps shall be of legible standard size and to a scale of not less than 1 inch equals one-half mile. All changes to the service area shall be reported to the District and new maps furnished annually if changes are made. The map showing any changes must be submitted within sixty (60) days after the end of the calendar year.

7.2.2. Overlap Area

When the service area boundaries of a Servicing Municipality extend into the political boundaries of another Municipality, the area shall be known as an overlap area. Overlap areas shall be the responsibility of the Servicing Municipality. Where there are disputes concerning such responsibility, the District Manager or designated representative shall assign responsibility and transmit this assignment in writing to the affected Municipalities involved.

7.2.3. Service Area Extensions

After January 1, 1983, if a Connecting Municipality or Special Connector extends service to an area with an existing sewer system or to an area with existing structures, each individual existing connection is considered a new Sewer Connection. The Sewer Connection Charge is applicable to each new sewer connection in the service area extension, with the exception that

for any connection which was served directly or indirectly by the Metro District on January 1, 1983, there shall be no charge.

7.2.4. Service Area Codes

All applications for new or altered connections required pursuant to these *Rules and Regulations* shall include a preassigned service area code for control and location purposes to identify the associated drainage basin, Connecting Municipality or Special Connector, and Associated Municipality or Contracting Municipality. A listing of service area codes may be obtained from the Metro District.

7.3. APPLICATION FOR CONNECTION TO SEWER

7.3.1. Standard Forms

The Connecting Municipality or Special Connector is responsible for providing all relevant information regarding connections within its service area and the service area of any Associated Municipality and Contracting Municipality served by it to the Metro District. Copies of suggested report forms may be obtained from the District.

7.3.2. Disposition of Application

The Connecting Municipality or Special Connector shall receive and retain all completed forms and file such forms in a systematic order for review by the Metro District.

7.4. SINGLE FAMILY RESIDENTIAL PROPERTY

7.4.1. Single Family Residential Equivalent

An SFRE is equal to one (1) Single Family Unit which means a building or structure used or designed to be used as only one residential unit (including a detached dwelling [single family house], a mobile home), and a temporary construction trailer; each residential unit in a duplex; and each residential unit having water service separately connected to the water main or private water distribution system in a building or structure with three or more residential units.

Residential Unit means a room or group of rooms which includes or is designed to include kitchen and bathroom facilities and in which one or more persons could reasonably reside on a permanent and nontransient basis. Notwithstanding the above, a room or group of rooms shall not be considered a Residential Unit if it contains Wastewater-generating fixtures other than or in addition to those used or intended to be used in normal residential activities. For example, a group of rooms that includes a residence and a doctor's office, or a residence and a restaurant, in which separate fixtures serve the nonresidential uses, will be considered "other than single family residential property."

7.5. OTHER THAN SINGLE FAMILY RESIDENTIAL PROPERTY

7.5.1. Single Family Residential Equivalent

All connections which are not Single Family Units as defined in Section 7.4.1 shall have the number of SFREs determined through the size of Water Service Taps serving the building, structure, or premise, and in certain cases specified below by the estimated quantities of Flow, BOD, SS, and TKN to be discharged to the System.

The following table determines the SFREs for other than single family residential property for each Water Service Tap size:

Water Service Tap Size (Inches)	Number of SFREs
3/4	2.0
1	4.8
1-1/2	11.0
2	20.0
3	43.0
4	86.0
6 or Larger	See Below

New connections served by multiple new Water Service Taps with a combined number of SFREs greater than or equal to 218 shall have the number of SFREs determined as for connections with Water Service Taps 6 inches or larger.

For Water Service Taps 6 inches or larger, waste discharge not typically domestic in character, and waste discharge with expected strength exceeding domestic strength, the number of SFREs for calculating the Sewer Connection Charge shall be determined from the formula below.

A waste discharge that is “not typically domestic in character” is any discharge that includes wastes or Wastewater other than from sanitary facilities such as toilets, showers, and the like; non-commercial preparation of food; non-commercial clothes washing; and any other activities that would reasonably be expected to occur in a domicile as opposed to commercial, industrial, or other establishments. Where waste discharges from food preparation occur in institutions such as assisted care facilities, nursing homes, and the like, and where such food preparation is completely in lieu of residents of these facilities preparing their own food, such wastes will be considered as typically domestic in character.

$$\text{SFREs} = \frac{\text{Flow} \times F}{148} + \frac{\text{BOD} \times B}{0.3148} + \frac{\text{SS} \times S}{0.3209} + \frac{\text{TKN} \times T}{0.0494}$$

Where: Flow = Estimated Flow, gpd (peak month)
 BOD = Estimated BOD, lbs/day (peak month)
 SS = Estimated SS, lbs/day (peak month)
 TKN = Estimated TKN, lbs/day (peak month)

AND

Where: F = Fraction of District's capital investment used to treat Flow
 B = Fraction of District's capital investment used to treat BOD
 S = Fraction of District's capital investment used to treat SS
 T = Fraction of District's capital investment used to treat TKN

At a minimum, the following values shall be used in the above formulas:

Tap Size	Flow	BOD	SS	TKN
6 inches	32,264	68.62	69.96	10.76
8 inches	48,396	102.92	104.94	16.14
10 inches	76,516	162.73	165.92	25.53

The Metro District shall make the final determination of the estimated Flow, BOD, SS, and TKN used to determine the number of SFREs for each new connection which is subject to the above formula.

The Capital Investment fractions may be adjusted annually, effective on January 1, by Resolution of the Board of Directors not later than its certification of Annual Charges for Service. Current Capital Investment fractions shall be set forth in Schedule C of the Service Contract and Exhibit C of the Special Connectors Agreement.

7.5.2. Other Water Service Tap Sizes

For Water Service Tap sizes which are not denoted in Section 7.5.1, the next larger size shall be used. For example, a 1-1/4 inch service shall be considered as a 1-1/2 inch service. If Taps larger than 10 inches are made, SFREs shall be determined by the Metro District on the basis of expected Wastewater discharge relative to those sizes shown.

7.5.3. Multiple Water and/or Sewer Taps

When a building, structure, or premise is served by more than one Water Service Tap, the SFRE shall be the sum of equivalents of each Tap. Where a building, premise, or structure has more than one physical Sewer Connection, the Sewer Connection Charge shall be determined by the Water Service Tap size serving the premise.

7.5.4. Water Supplied by Other than a Municipal Water Supplier

For any new or altered water connection where water is supplied, either in whole or in part, by any source that will not have a Water Service Tap to a municipal water system, the SFRE will be assigned on the basis of a Water Service Tap size that such a customer would normally require if connecting exclusively to a Municipal Water System. A copy of the application for connection by an applicant will be furnished to the Metro District. The District reserves the right to affirm or to modify the assigned Water Service Tap size based upon the facts and circumstances of each individual application and case.

7.5.5. Water Supplied by a Water Distribution System Behind a Water Tap to a Municipal System.

This Section applies to any new or altered, direct or indirect, sewer connection with a separate water distribution system serving a multi-building development with one or more taps to the Municipal Water System. If a Sewer Connection Charge has been paid to the Metro District based on the size of the Water Service Tap(s) to the Municipal Water System, no additional Sewer Connection Charge will be due unless the size of a Water Service Tap is increased or new Water Service Taps are needed. If a Sewer Connection Charge was not paid to the District based on the Water Service Tap(s), then each building shall be evaluated individually. A new or altered, direct or indirect, connection will result in a Sewer Connection Charge being due. The SFRE assignment will be based upon the size of the new or altered water service line serving the building or structure.

7.5.6. Exemptions

Water Service Taps installed solely for fire protection purposes (i.e., fire hydrant branches, fire sprinkler systems, standpipes), irrigation purposes, redundant systems for public safety, or other purposes which do not discharge to the Municipal Sewer System or District System are

excluded from the assignment of SFREs and payment of a Sewer Connection Charge. Plans and specifications for all redundant systems must be approved by the Metro District prior to installation and any change whereby both systems can operate simultaneously will void the exemption. This exemption shall only apply to these excluded functions. Any use of any water through an exempted tap which will result in discharges to a sewer will void the exemption and shall require payment of a Sewer Connection Charge for the tap at the then-current charge. The District Manager reserves the right to judge whether a Water Service Tap qualifies for this exemption, based upon such documentation as may be provided in requesting such exemption. The form requesting exemption or reduction shall be filled out by each applicant. Copies of the required form may be obtained from the District.

7.5.7. Reduction in Assignment of SFRE

An applicant for a Sewer Connection requesting a reduction in the assignment of the SFRE for water which will be used for an exempt use as defined in Section 7.5.6 and which cannot be discharged to a sewer shall request such reduction from its Servicing Municipality by completing the appropriate form. Copies of the required form and all supporting materials documenting the volume of water which will be used for an exempt purpose and cannot be discharged to a sewer, as well as the volume of water which can be used by all fixtures installed which will discharge to the sanitary sewer, will be submitted to the Connecting Municipality or Special Connector for its consideration based on the following:

1. If the Servicing Municipality is a connector to a Connecting Municipality or Special Connector of the Metro District, said Connecting Municipality or Special Connector shall approve or disapprove the request for a reduction.
2. The Connecting Municipality or Special Connector shall submit to the Metro District all approved applications, supporting data provided therewith, and reports of actions taken concerning the application for reduction.
3. The District Manager or designated representative shall review all requests for reductions and shall promptly approve or modify the actions taken by the Connecting Municipality or Special Connector.
4. Within thirty (30) days of the receipt of the notice of the District Manager's decision, a dissenting Connecting Municipality or Special Connector may request a hearing in writing. Any such hearing shall be held within thirty (30) days from the date of such request. Such hearing shall be held under the Appeal Procedure as set forth in Section 10 herein, as it may from time to time be amended.
5. Under no circumstances will a reduction of more than one tap size be authorized. Partial Tap size reductions shall not be granted.
6. An increase in the amount of discharge through a connection for which a reduction in the assignment of SFRE was approved, such that the reduction would not have been approved with the increased discharge, will render the approval null and void, and a Sewer Connection Charge at the then-current SFRE charge will be due the Metro District. Credit will be given for all previously charged SFREs.

7.6. ALTERED CONNECTION

7.6.1. Single Family Residential Equivalent

The Sewer Connection Charge for any altered connection after January 1, 1983, shall be based on the increased or added number of SFREs. The number of SFREs shall be calculated before and after the alteration of the connection according to Sections 7.4 and 7.5. The difference between these calculations shall represent the additional SFRE units used to determine the Sewer Connection Charge.

7.6.2. Credit

Where redevelopment of a tract of land occurs, all previously existing SFREs on that land may be credited. There shall be no rebate or future credit where alteration of property results in a reduction of SFREs.

Where redevelopment of a tract of land involves a multi-building development served by a separate water distribution system with one or more Water Service Tap(s) to a Municipal Water System, calculation of the previously existing SFREs will depend upon whether a Sewer Connection Charge was paid to the Metro District. If a Sewer Connection Charge was paid to the District based on the SFRE assignment for the Water Service Tap(s) to the municipal water line, a credit will be given based upon the current SFRE assignment for a Water Service Tap(s) of that size. If a Sewer Connection Charge was not paid to the District based on the size of the Water Service Tap(s) to the Municipal Water System, credits will be given for the SFREs of individual buildings or structures based upon the water service lines serving the buildings or structures being redeveloped.

If a Sewer Connection Charge was paid to the Metro District for an SFRE assignment based on Wastewater Loadings as well as Flow, credit for the previously existing SFREs will be given based upon the current SFRE assignment for a Water Service Tap(s) of that size. The values for Flow, BOD, SS, and TKN used in the original determination of SFREs, and the District's current Capital Investment fractions, will be used to calculate the SFRE credit in accordance with Section 7.5.1.

If a Sewer Connection Charge was paid to the Metro District for an SFRE assignment based only on Water Service Tap size without regard to wastewater Loadings, the credit will be limited to the number of SFREs determined similarly.

7.6.3. Inactive Connections

When a Sewer Connection is inactive, as defined in Section 2 of these *Rules and Regulations*, for a period of more than ten (10) years, a reactivation charge shall be due when the connection is reactivated. The reactivation charge, per SFRE, shall be due for each year, or part thereof, beyond ten (10) which a connection is inactive. The reactivation charge shall be set by the Board of Directors and may be adjusted from time to time by resolution of the Board. The reactivation charge shall not exceed the Sewer Connection Charges in effect at the time the connection is reactivated.

7.7. REPORTING AND PAYMENT

7.7.1. Sewer Connection Permits

The amount of payment and the obligation for payment of Sewer Connection Charges to the Metro District shall be based on the date of the issuance of a Sewer Connection Permit by a Connecting Municipality or Special Connector.

7.7.2. Quarterly Reports

Each Connecting Municipality or Special Connector shall submit a written report to the Metro District listing all Sewer Connecting Permits which were issued for New and Altered Connections in its service area during the preceding quarter. Reporting forms required by the District shall be used and shall include all relevant information requested. Quarterly reports shall be submitted within fifteen (15) days from the last day of each quarter by each Connecting Municipality or Special Connector, including a listing of or attachment of reports from all Associated Municipalities or Contracting Municipalities, even if there were no New or Altered Sewer Connections during the quarter.

7.7.3. Quarterly Payment

Accompanying the quarterly report, the Connecting Municipality or Special Connector shall submit payment to the Metro District for all Sewer Connection Permits issued for New and Altered Sewer Connections during the preceding quarter. The payment will reflect the total number of SFREs reported during the quarter multiplied by the Sewer Connection Charge for that quarter. The payment shall also reflect any credits for canceled New or Altered Sewer Connections (Section 7.7.5) and any adjustments previously authorized by the District Manager. Where payments are not made on time as required herein, interest in the amount set forth in Section 610 of the Service Contract shall be charged by the District and paid by the Connecting Municipality or Special Connector.

7.7.4. Expiration of Authorization to Connect

The use of the Sewer Connection Permit date as the date of obligating the Sewer Connection Charge is based on the timely construction and physical connection of the project. If construction is not initiated within one year of the date the Municipality issued the Sewer Connection Permit, the Sewer Connection Charge due to the Metro District shall be revised. The revised amount due shall be that amount which would be due on the day a replacement permit is issued or, if no replacement permit is issued, on the date construction is initiated. Credit shall be allowed for amounts previously paid.

Connecting Municipalities and Special Connectors may administer this one-year limitation by terminating and reissuing Sewer Connection Permits or by certifying the date that construction was initiated. Where multiple structures are authorized under a single Sewer Connection Permit, initiation of construction shall be determined for each separate structure for the purposes of this Section. Termination and reissue of permits shall not be used to avoid an increase in the Sewer Connection Charge rates.

7.7.5. Credit or Refund for Canceled Sewer Connection Permits

When a Sewer Connection Permit is canceled by the Connector because a Sewer Connection is no longer desired by the permittee or because the time limit for use of the permit has expired,

a credit for the Sewer Connection Charges paid to the Metro District will be allowed on the next quarterly report submitted by the Connector. No credit shall be allowed for a canceled permit more than five (5) years after the date of issuance of the permit. The District will not pay interest on credits. Under special circumstances at the District Manager's discretion, a cash refund may be authorized without interest. Such a credit or refund may only be authorized when a New or Altered physical connection has not been made and will not be made as determined by the Connector. When a credit or refund has been requested and granted, any and all rights related to the canceled permit are terminated.

7.7.6. Record-Keeping

Each Connecting Municipality and Special Connector shall establish and maintain a system to:

1. Document the date of the issuance of a Sewer Connection Permit and, if necessary under Section 7.7.4, the date that construction is initiated.
2. Document, for each connection, the number of Single Family Residential Units or Equivalents actually connected matches the number authorized in the permit and paid to the Metro District.

This documentation shall be maintained by the Connecting Municipality or Special Connector, but reports to the Metro District are not required unless specifically requested by the District.

7.7.7. Permit and Sewer Connection Charges Revisions

If the scope of a project changes after the original sewer connection permit is issued, the Municipality shall revise the permit. Based on the revised permit, the Connecting Municipality or Special Connector shall adjust the Sewer Connection Charges due to the Metro District on the next quarterly report. Where there is a decrease in the total number of SFREs, the credit shall be calculated based on the original rate paid. Where there is an increase in the total number of SFREs, the amount due shall be calculated by multiplying the rate per SFRE in effect on the date of the permit revision by the increased number of SFRE units. Discrepancies between the permit and the number of SFREs actually connected, as determined under the procedures of Subsection 7.7.6., shall be revised in accordance with this subsection; the Date of Connection shall be considered the date of permit revision.

7.8. RIGHT TO AUDIT

The Metro District shall have the right to audit the records of each Connecting Municipality or Special Connector to verify the accuracy of all Sewer Connection Charges reported to the District. In regard thereto:

1. Each Connecting Municipality or Special Connector shall maintain at its principal place of business all records and application forms pursuant to these *Rules and Regulations* to allow the District to verify the accuracy of all Sewer Connection Charges reported and submitted to the District.
2. The District will give a ten (10) working day written notice of its intent to audit such records.
3. If in the opinion of the District the records are not sufficient to allow audit without extensive correction, the Municipality may be permitted to update the records. If the Municipality

does not update the records within thirty (30) days of the notice from the District that the records are not in proper order, the District shall employ an accountant to reconstruct and update such records, the cost of which shall be charged to the Connecting Municipality or Special Connector involved.

4. Upon completion of the District's audit, a copy of the audit findings and recommendations shall be furnished to the Connecting Municipality or Special Connector.
5. If within sixty (60) days of the receipt of the audit the Connecting Municipality or Special Connector and the District cannot agree upon the Sewer Connection Charges to be paid, the District will bring action to collect the amount due under Section 610 of the Service Contract.

7.9. DISTRICT MANAGER'S RIGHT TO APPROVE/ DISAPPROVE SEWER CONNECTION CHARGES

7.9.1. District Manager's Approval/Disapproval

If, in the opinion of the District Manager, the number of SFREs reported and Sewer Connection Charges paid on a quarterly report is not accurate for any reason, the District Manager may disapprove same and the Connector shall be notified of such action in writing. Where the District Manager disapproves an SFRE assignment or Sewer Connection Charge payment, the corrected amount and the reasons for the action of the District Manager shall be included in the written notification. Where the District Manager determines the corrected amount would result in additional payment to the Metro District, the corrected amount shall be added to the next quarter's payment. In addition, interest in the amount set forth in Section 610 of the Service Contract shall be due from the date the payment should have been made, but the interest charged is limited to a maximum of twelve (12) months. Notwithstanding the above, should a Connector fail to pay an amount owing for a previous quarter with the next following quarter's payment, the payment shall be considered delinquent and interest shall be due from the time the payment should have been made without time limitation on interest charged. Where the District Manager determines the corrected amount would result in a refund or credit to the Connector, the Connector may request either a cash refund to be paid as soon as practicable or credits to be applied to the next quarter's (or quarters') payment(s). No interest shall be due in such cases, except where the District was the sole cause of such inaccurate payment. The District shall invoke the provisions of Section 610 of the Service Contract to bring an action to collect the amount due.

7.9.2. Appeal of Disapproval Notice

If a Connector disagrees with a disapproval notice of the District Manager, that Connector may file a letter of appeal to the District Manager. The letter of appeal must be sent to the Metro District within thirty (30) days after receipt of the District Manager's disapproval notice. The letter of appeal must state all points of disagreement by the Connector. An appeal will be heard as determined by the District's Appeal Procedures as outlined in Section 10 herein. Pending hearing of the appeal, the Connector shall owe and shall pay Sewer Connection Charges based on the District Manager's original determination. The action in approving or disapproving the District Manager's determination shall be considered the final action of the District. Should the hearing result in a total amount differing from the District Manager's determination, the adjustment of charges shall be made on the next quarterly payment report.

7.10. CAPITAL RECOVERY CHARGE IN LIEU OF SEWER CONNECTION CHARGE

For the discharge of wastes the Metro District is not required to accept under the conditions of the Service Contract, Special Connectors Agreement or these *Rules and Regulations*, the District shall assess a Capital Recovery Charge. The Capital Recovery Charge will be determined in accordance with the guidelines adopted by the Board of Directors, as may be amended from time to time.

If the discharge of such waste occurs through an existing, New, or Altered Connection together with waste the Metro District is required to accept under the conditions of the Service Contract or Special Connectors Agreement, the Capital Recovery Charge will be in addition to any Sewer Connection Charge previously paid or due.

If the discharge of such waste occurs through a New Connection that does not discharge waste the Metro District is required to accept under the conditions of the Service Contract or Special Connectors Agreement, the Capital Recovery Charge will be in lieu of a Sewer Connection Charge.

Revisions	1986	03/94	04/96	10/98	10/99	01/01	04/03	03/06	06/14	07/18
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SECTION 8

SPECIAL CONNECTOR SERVICE AREA

8.1. GENERAL

Under Section 303 of the Special Connectors Agreement, a Special Connector may only provide Wastewater service outside its corporate limits or enlarge the geographic area of its Wastewater service with the prior approval of the Metro District. This Section describes the procedures for requesting approval of an expanded Wastewater service area. The service area for each Special Connector shall include the area within its corporate boundaries as of January 1, 1984, and shall also include specific areas outside its boundaries which were served as of January 1, 1984, unless a larger area is specifically approved by the District.

8.2. REQUEST FOR APPROVAL

8.2.1. Request

When a Special Connector wishes to provide Wastewater service to any area outside the service area previously approved by the Metro District, the Special Connector shall submit a request in writing to the District Manager. The request shall include, at least, the following:

1. A map of the area showing the boundaries of the enlarged area and showing the existing and proposed major sewers which will serve the area. The map shall show which existing connection point(s) will serve the additional area and if a new connection point(s) will be required.
2. Information on the projected land use, zoning, residential densities, and commercial/industrial nature of the area.
3. The estimated average and peak quantity of Flow expressed in MGD. This data shall be in the form of a Flow versus time curve projected to the ultimate development of the area or any other form determined by the District to adequately reflect the ultimate development of the area.
4. The estimated quality of Flow expressed in BOD, SS, and TKN plus any additional pertinent information regarding the quality of flow expected, particularly from industrial sources.

The Special Connector shall supply other information concerning the proposed additional service area when the Metro District determines the information is necessary to make a proper decision. It is necessary that requests be submitted and approved prior to proceeding with construction of facilities to serve the area.

8.2.2. Approval Procedures

When the additional service area requested by the Special Connector is within the Metro District's Expected Service Area and the projected ultimate Flow from the area is less than or equal to ten (10) MGY, the District Manager may act on the request. The District Manager shall provide an annual report to the Board of Directors summarizing any actions on service area requests from Special Connectors. Where the future projected ultimate Flow from the additional service area is greater than ten (10) MGY and/or the requested service area addition lies partially or completely outside the District's Expected Service Area, the Board must act on the request. Special Connectors are advised that a minimum of twenty (20) days is required for consideration of the request by the District Manager and a minimum of sixty (60) days is required for consideration of the request by the Board.

8.3. MAPPING

8.3.1. Standards

Maps furnished to the Metro District under Sections 303 and 801 of the Special Connectors Agreement shall conform to standards established by the District.

8.3.2. Updating

Updated maps of the boundaries and service area of each Special Connector as required under Section 801 of the Special Connectors Agreement shall be furnished annually to the Metro District between January 1 and March 31. The updated maps shall include all changes in service area previously approved by the District.

Revisions	01/93	03/06	07/18
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SECTION 9

EMERGENCY SERVICES

9.1. GENERAL

In compliance with the Colorado Disaster Emergency Act, C.R.S. 24-33.5-701 et. seq., the Metro District may render emergency wastewater services to areas not presently served by the facilities of the District when the District has the capacity and capability to do so.

9.2. PROCEDURES

9.2.1. Direct Emergency Service

An entity (Requesting Entity) desiring direct emergency service from the Metro District through a connection to the District System shall submit the request to the District Manager.

9.2.2. Indirect Emergency Service

An entity desiring emergency service from the Metro District where the wastewater flow enters the District System after passing through the Municipal Sewer System of a Direct Connector shall submit its request for emergency service to that Direct Connector. The Direct Connector, if it agrees to provide emergency services through its facilities, shall submit a request for emergency services to the District Manager. In all cases of indirect emergency service, the requesting Direct Connector shall assume the responsibilities to the District of acting for the entity receiving the emergency service and shall be the Requesting Entity for the purposes of this Section.

9.2.3. Metro District Authorization

The Requesting Entity shall provide all information necessary for the Metro District to determine the existence of an emergency. If the request is verbal, the Requesting Entity shall provide written documentation within 24 hours. The District Manager or his/her designee will contact the Chairman of the Board or his/her designee, who will, based on the information presented, determine (1) whether an emergency condition exists; (2) whether the District has capacity and capability to alleviate the emergency; and (3) whether the District chooses to provide such service. If the Chairman is not available the determination will be made by the District Manager or his/her designee. After such determination, the District Manager or his/her designee shall notify the Requesting Entity of the decision. If the decision is to authorize the emergency service, the District Manager or his/her designee, in coordination with the entities involved, shall make those physical arrangements necessary for service to be provided by the District. No physical arrangement for emergency service shall be constructed or activated by any entity without the permission of the District.

In compliance with CRS 24-33.5-709, any emergency service extending beyond seven (7) days must have approval of the Board of Directors.

9.2.4. Form of Authorization and Written Notification

In rendering emergency Wastewater service under this Section 9, there will not be a Sewer Connection Charge.

Upon authorization of the emergency service, the District Manager or his/her designee shall notify in writing the Requesting Entity of the requirements of the *Rules and Regulations* and of any specific conditions or limitations on the approval. The Requesting Entity shall agree in writing to abide by all provisions of the *Rules and Regulations* and to abide by any specific conditions or limitations required by the Metro District. If the District determines the request should be denied, the District Manager shall notify the Requesting Entity in writing.

9.2.5. Termination of Service

The Metro District, at its discretion, reserves the right, with or without notice, to terminate its authorization for emergency service.

9.2.6. Report on Emergency

Within 24 hours after emergency service is initiated, the Requesting Entity shall provide a written report to the Metro District describing the current status of the emergency, efforts to alleviate the emergency, and the projected schedule to correct the situation.

9.2.7. Termination of Emergency and Severance of Service

The Requesting Entity shall notify the Metro District as soon as the emergency conditions are over. The Requesting Entity and the District shall act to immediately terminate service and act to return the physical system to a configuration whereby Flow can no longer directly or indirectly (through a Direct Connector) enter the District System.

9.2.8. Designees

For purposes of this Section 9.2, the District Manager or Chairman of the Board may also include his/her respective designees.

9.3. CHARGES FOR EMERGENCY SERVICE

9.3.1. Charges

The Requesting Entity shall pay for each request for emergency Wastewater services. The charge for services shall be the sum of:

1. A service fee of \$2,000 applicable upon approval of each emergency request by the Metro District, whether services are rendered or not.
2. All direct costs (plus applicable overhead costs) incurred by the Metro District related to the provision of the emergency services.
3. A charge for Sewage actually received based on rates for the Flow, BOD, SS, and TKN equal to three (3) times the Unit Rates in the current Estimated Annual Charges for these parameters.

9.3.2. Payment

The charges for emergency service are not Annual Charges under the Service Contract and payment for these services shall be payable within thirty (30) days after a bill is submitted to the Requesting Entity by the Metro District. Late payments shall be charged interest at a rate of eighteen percent (18%) per annum. The District may bill for services rendered to date at any time after the initiation of emergency service.

9.3.3. Metering and Sampling

The Metro District will meter and sample or otherwise estimate the Flows and Loadings received under these emergency provisions. The Requesting Entity and any other entities involved in the emergency service shall cooperate with the District in performing the metering and sampling. The information collected by the District will be gathered with reasonable care as to its accuracy. If the Requesting Entity has any concerns about the data, it may submit information to the District, but the District will make the final determination.

Revisions	11/84	04/96	03/06	01/08	07/18
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SECTION 10

APPEAL AND HEARING PROCEDURE; REMEDIES FOR VIOLATIONS

10.1. APPEAL AND HEARING PROCEDURE

10.1.1. Appeal Procedure

Any Connector may seek a formal determination, order, or finding under these *Rules and Regulations* or under the Service Contract or Special Connectors Agreement by submitting a request for same in writing to the District Manager. The District Manager shall respond in writing to such requests in a timely manner [in no more than twenty-eight (28) days unless further information is needed to complete the review] and shall report such response to the Board of Directors.

1. Except for conditions of permits or approvals of discharges issued pursuant to Section 6.13 of these *Rules and Regulations*, or as provided for otherwise in the *Rules and Regulations*, any Connector who is aggrieved by, or disagrees with, any determination, order, or finding (under these *Rules and Regulations* or under the Service Contract or Special Connectors Agreement) shall have the right to appeal to the Metro District (such Connector being referred to as an "Appellant"). No appeal may be filed until the Connector has obtained a determination, order, or finding as set forth in Section 10.1.1 herein. The Appellant shall notify the District Manager by sending a letter of appeal, within twenty-eight (28) days of the receipt of notice of the determination, order, or finding being appealed, except in the case of annual summaries of Flows and Loadings. These summaries shall be appealed in accordance with the requirements of the Service Contract or Special Connectors Agreement. The letter of appeal shall state all points of disagreement and objection to the determination, order, or finding.
2. Upon receipt of a letter of appeal, the District Manager shall forward a copy of the determination, order, or finding and the letter of appeal to the Chairman of the Board who shall, within fourteen (14) days from receipt of same, appoint a Hearing Committee comprising three or five Directors and designate the Chairman of such Committee. The Chairman of the Board shall provide the Committee with a copy of the determination, order, or finding and the letter of appeal. The District Manager shall advise the Appellant of the choice of the Chairman and the names of the Committee members and its Chairman. A staff member designated by the District Manager shall coordinate arrangements for the hearing, prepare the Metro District's evidence, and arrange for the attendance of the District's witnesses at the hearing.
3. The Chairman of the Hearing Committee shall set a time and place for the hearing which shall be no later than twenty-eight (28) days from the date of the appointment of the Hearing Committee and notify the District Manager. The District Manager shall thereafter send a letter notifying the Appellant of the date for hearing as soon as possible thereafter.
4. No later than fourteen (14) days before the hearing date, the District Manager and the Appellant shall exchange a factual and objective written summary of the issues raised in the Letter of Appeal and any pertinent exhibits. Copies of the summaries and documents shall be submitted to the Hearing Committee at that time.

5. If the Metro District or the Appellant intend to be represented at the hearing by legal counsel, notice shall be given to the other party at least fourteen (14) days before the hearing. If any party provides such notice, all parties may be represented by legal counsel without further notice. Unless notice is given, no party shall be represented by counsel.
6. In special situations where appointment of a Board Committee is not the most effective way to facilitate the process, the Chairman of the Board may appoint a third-party Hearing Officer to hear the Appeal. All other rules herein shall apply to such hearings and in such cases the Hearing Officer shall assume the duties of the Committee and the Hearing Committee Chairman.

10.1.2. Hearing Procedure

All hearings pursuant to the right of appeal under these *Rules and Regulations* shall be conducted as follows:

1. The Hearing Committee shall receive and consider evidence presented by the appealing party and by the Metro District; may take notice of general, technical, or scientific facts within their knowledge; and shall be the judge of the relevance or materiality of the evidence offered. The Hearing Committee Chairman shall have the sole authority to conduct the hearing and its procedures. With approval of the Hearing Committee Chairman, both parties may make opening statements and may cross-examine witnesses.
2. Conformity to the legal rules of evidence shall not be necessary.
3. If a party wishes to have a stenographic record made of the hearing, the party shall, at its own expense, arrange for such a record.
4. When all evidence is presented and the arguments, if any, are concluded, the Hearing Committee Chairman shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the Hearing Committee Chairman for the receipt of briefs. Unless for good cause shown, any hearing shall be concluded within twenty-one (21) days from the opening of the hearing.
5. The Hearing Committee shall render a decision within fourteen (14) days after the hearing is closed and shall send a notice, by first class mail postage prepaid, of the decision to the Appellant, the Chairman of the Board, and the District Manager.
6. The decision of the Hearing Committee shall be final and binding as to the Metro District. The Appellant shall be entitled to seek judicial review of the ruling providing such review is filed with the Court within the time provided for by applicable law after the date of the ruling. All parties shall bear their own expenses and costs relating to the Appeal and Hearing process. A prevailing party shall not be entitled to fees or any costs related to the hearing.
7. For a period of three (3) years after the close of the hearing, the Metro District shall maintain a file of the names of all witnesses and of all written materials submitted at the hearing.

10.1.3. Parties

The Metro District and the Appellant will constitute the primary parties in an appeal hearing. Other Connectors who may be affected by the hearing decision may submit their positions in writing to the Hearing Committee Chairman on or before the date the hearing begins. Non-Connectors may not appeal directly to the District.

10.1.4. Service

Any notice, submission, determination, or other document required to be served under these *Rules and Regulations* may be served by electronic mail (with confirmed receipt) or Certified Mail return receipt requested.

10.1.5. Deadlines

Any date set forth herein which falls on a holiday or weekend shall be deemed to be moved to the first following working weekday.

10.2. VARIANCE REQUESTS

Any Connector may seek a formal variance (Variance) from the application of these *Rules and Regulations* by submitting a request for same and all materials supporting such request in writing to the District Manager. Only the Rules listed in Appendix A are eligible for a Variance. No decision which has been appealed by a Connector and has resulted in a decision by the Hearing Committee or Hearing Officer as provided under these Rules may be the subject of a Variance request by that Connector. In the event a Connector has filed an appeal under Section 10.1 of the *Rules and Regulations* and no decision has been rendered, the Connector must withdraw its appeal prior to filing any Variance request related to the subject of the appeal.

10.2.1. Procedure

The District Manager shall promptly refer such requests to the Executive Committee. The Executive Committee shall review and provide a hearing for Variance requests. The Chairman of the Board, in his or her discretion, may appoint additional Directors to sit on the Committee for the purpose of hearing the Variance request. Upon receipt of the request for Variance, the Executive Committee shall set a hearing date for the first Executive Committee meeting scheduled to take place after twenty-eight (28) days of receipt of the request, or sooner in cases of emergency as deemed by the Chairman of the Board. The Committee shall require any written materials to be presented at the hearing by the requestor and/or staff be submitted to the Executive Committee no later than fourteen (14) days prior to the hearing.

10.2.2. Hearing

The Hearing Procedure shall be governed by the terms of Rule 10.1.2 (1)-(5), 10.1.2(7), 10.1.3, 10.1.4 and 10.1.5. The Hearing shall be presided over by the Chairman of the Board.

10.2.3. Decision

The Executive Committee, after the hearing, shall make a report and recommendation to the full Board of Directors as to whether the Variance request should be granted. The Board shall consider and vote on such recommendation at the first scheduled Board meeting after receipt of

the report and recommendation. Variances from these Rules may be granted only in those circumstances where the Board finds that application of the *Rules and Regulations* would constitute a substantial and unusual hardship on the Connector and where the Variance would not (1) violate the Metro District's Service Contract or governing statute (C.R.S. 32-4-501 et seq); (2) be harmful to the entity's operations or to ability of the other District Members or Connectors to make permit; or (3) constitute a risk to the health, safety, and welfare of District employees or the public.

10.2.4. Decision

Any decision by the Board of Directors as to the granting or denial of a Variance shall be final and not appealable under these *Rules and Regulations*. Any decision as to the granting of a Variance shall not act as a waiver or precedent of any kind or result in any rights to other parties seeking Variances. All costs relating to such request and hearing shall be borne individually by the parties to the hearing.

10.3. REMEDIES FOR VIOLATIONS

Subject to applicable law, any user or Connector who violates any provision of these *Rules and Regulations* shall be liable for any costs, penalties, and damages incurred or suffered by the Metro District as a result of such violation including, but not limited to, reimbursement of any fines or penalties adjudicated against or assessed against the District under any permit or state or federal law or regulation and attorney's fees and legal costs. The remedies provided in this subsection are in addition to any other remedies available to the District, including those in Section 6 of these *Rules and Regulations* as well as any other applicable remedies provided by law.

Appendix B sets forth all fees, fines, penalties, and/or interest set forth in these *Rules and Regulations*.

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APPENDIX A VARIANCE REQUESTS

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- 7 SEWER CONNECTION CHARGE SYSTEM
- 8 SPECIAL CONNECTOR SERVICE AREA
- 9 EMERGENCY SERVICES

APPENDIX B

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A credit for the Sewer Connection Charges paid to the Metro District will be allowed on the next quarterly report submitted by the Connector. No credit shall be allowed for a canceled permit more than five years after the date of issuance of the permit. The District will not pay interest on credits.	
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Where the District Manager determines the corrected amount of SFREs would result in additional payment to the Metro District, the corrected amount shall be added to the next quarter's payment. In addition, interest in the amount set forth in Section 610 of the Service Contract shall be due from the date the payment should have been made, but the interest charged is limited to a maximum of twelve months.	

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METRO WASTEWATER RECLAMATION DISTRICT
formerly
Metropolitan Denver Sewage Disposal District No. 1

**6450 York Street
Denver, Colorado 80229
(303) 286-3000**

**SEWAGE TREATMENT
AND
DISPOSAL AGREEMENT
(SERVICE CONTRACT)**

WORKING COPY*

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* The Service Contract was executed on March 30, 1964, by the Metro District Board of Directors. This republished version includes refinements and amendments approved by the Board of Directors through the years. It is intended to be a working copy and not a legal and binding copy.

METRO WASTEWATER RECLAMATION DISTRICT

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**SEWAGE
TREATMENT AND DISPOSAL
AGREEMENT**

(herein sometimes referred to as the
"Service Contract" or merely as the "Agreement")

MADE AND DATED as of the first day of January 1964, but actually executed on the 30th day of March 1964,

by and between the

METROPOLITAN DENVER SEWAGE DISPOSAL DISTRICT NO. 1

(herein sometimes referred to as the "District"), a public body politic and corporate, a quasi-municipal district, and a governmental and political subdivision of the State of Colorado (herein sometimes referred to as the "State"),

and the

Alameda Water and Sanitation District
City of Arvada
Baker Metropolitan Water and Sanitation District
Bancroft Water and Sanitation District
Berkeley Water and Sanitation District
City and County of Denver
East Lakewood Sanitation District
Highland Park Sanitation District
North Table Mountain Water and Sanitation District
North Washington Street Water and Sanitation District
Northwest Lakewood Sanitation District
Westminster Sanitation District
Wheat Ridge Sanitation District

(herein sometimes individually and collectively referred to as a "Municipality" and as "Municipalities," respectively), each a public body politic and corporate, a municipal or quasi-municipal corporation, and a governmental and political subdivision of the State:

WHEREAS, the District, now situated in the Counties of Adams and Jefferson and the City and County of Denver, within the State, was duly organized on the 15th day of May 1961, and its officers from time to time have been duly chosen and qualified; and

WHEREAS, the immediate interest of the District and the public interest and necessity demand the construction, installation, and other acquisition of a sewage disposal system for the District (herein sometimes referred to as the "Sewage Disposal System" or merely as the "System" and as the "Project," respectively), as authorized by Chapter 89, Article 15, Colorado Revised Statutes 1953, 1960 Permanent Cumulative Supplement, as amended by Chapter 69, Session Laws of Colorado 1962 (herein sometimes referred to as the "Act"); and

WHEREAS, the District has caused to be made plans and specifications for the acquisition of the System and extensive engineering studies concerning the schedule of rate formulae and cost of the System, including, without limiting the generality of the foregoing, an economic feasibility report appertaining to the Project; and

WHEREAS, at a special bond election of the taxpaying electors of the District held for and within the District on Tuesday, the 11th day of December 1962, between the hours of 7 a.m. and 7 p.m., there was submitted to said tax-paying electors a question authorizing the District to issue its bonds, as follows:

Shall the Metropolitan Denver Sewage Disposal District No. 1, in the Counties of Adams and Jefferson and City and County of Denver, and State of Colorado, be authorized to issue in one series or more the District's negotiable or non-negotiable, or both negotiable and non-negotiable, sewer acquisition bonds, in the aggregate principal amount of not exceeding \$32,500,000, for the purpose of defraying all or a part of the cost of the construction, installation and other acquisition of a sewage disposal system for the District, including, without limiting the generality of the foregoing, a sewage treatment plant, sewage treatment works, intercepting sewers, outfall sewers, force mains, water lines, pumping plants or stations, and appurtenances useful or convenient for the interception, transportation, treatment, purification or disposal of sewage and industrial wastes, and all necessary lands, interest in lands, easements, and water rights, and any other cost of said project, as authorized by Chapter 89, Article 15, Colorado Revised Statutes 1953, 1960 Permanent Cumulative Supplement, as amended, the bonds bearing interest at a rate or rates not exceeding six per centum (6%) per annum, pledging the full faith and credit of the District for their payment, and being payable from any tax proceeds and other revenues of the District at such time or times over not exceeding forty (40) years from their date or respective dates, and being issued and sold at or above par or below par at a price resulting in a net interest cost of not exceeding six per centum (6%) per annum, in such manner, upon such terms and conditions, with such covenants and agreements, and with such other detail as the District's Board of Directors may determine, including at its option provisions for the redemption of bonds prior to their respective maturities without or with the payment of a premium not exceeding six per centum (6%) of the principal amount thereof, and provisions for additionally securing the payment of the bonds by a specific pledge of revenues of the District?

and

WHEREAS, of the 27,855 valid votes cast upon the bond question so submitted, 25,099 votes were cast for the bonds, and 2,756 votes were cast against the bonds; and thus the bonds were authorized to be issued by a majority of 22,343 votes; and

WHEREAS, the District has the power:

- (a) To fix and from time to time to increase or to decrease rents, rates, fees, tolls, and other charges to the Municipalities for connection with or use of services of the District's System, including minimum charges and charges for availability of service (herein sometimes designated as "Service Charges");
- (b) To pledge such revenue for the payment of any securities of the District;

- (c) To levy during the first five (5) years of the District's existence and to collect general (ad valorem) taxes (herein sometimes designated as "taxes") on and against all taxable property within the District not exceeding in the aggregate for the five-year period a total of three-fourths (0.75) of one (1) mill;
- (d) To borrow money in anticipation of taxes or other revenues, or both, to issue notes to evidence the amount so borrowed, to secure their payment by a pledge of taxes and other revenues of the District, including, without limiting the generality of the foregoing, proceeds of bonds to be issued or reissued hereafter, and to issue and to pledge bonds as collateral security for the payment of the notes;

and

WHEREAS, at a meeting held on Tuesday, the 26th day of November 1963, the Board officially filed with the Secretary a resolution fixing a schedule of the methods for the determination of Service Charges and of the rates for their allocation (herein sometimes designated as the "Rate Schedule") by which the annual revenue requirements of the District shall be apportioned from time to time as Service Charges among the Municipalities; and

WHEREAS, the Board, on behalf of the District, held a public hearing after personal, mailed and published notice thereof on the Rate Schedule at a meeting in the Ground Level Auditorium, Farmers Union Building, 1575 Sherman Street, Denver, Colorado, within the District, on Tuesday, the 17th day of December 1963, commencing at the hour of 8 p.m., as to the propriety and advisability of determining such Service Charges by the Rate Schedule, at which public hearing any representative of any Municipality or any other interested person was permitted to appear and to be heard; and

WHEREAS, after said hearing at said meeting the Board adopted said Rate Schedule resolution; and

WHEREAS, plans and specifications have been substantially completed for the major intercepting sewers and outfall sewers constituting a part of the Project, commonly designated as the Clear Creek Interceptor, Bear Creek Interceptor, Sanderson Gulch Interceptor, Weir Gulch Interceptor, Lakewood Gulch Interceptor, Platte River Interceptor, Sand Creek Interceptor, and the Effluent Pipe Line from the North Denver treatment plant (herein sometimes designated as the "Interceptors"); and

WHEREAS, the District is in the process of causing the construction and other installation of the Interceptors and has let contracts therefor; and

WHEREAS, the construction and other acquisition of the Interceptors and the discharge therein of sewage by the Municipalities from their respective Sewer Systems (herein sometimes designated as the "Sewer Systems") will substantially alleviate a substantial danger to the health, safety, and welfare of the inhabitants of the State, as the Municipalities will thereby discharge in the Platte River below densely populated urban areas in metropolitan Denver rather than in creeks and rivers running through such areas and from which are taken some water for potable water supplies; and

WHEREAS, the District has:

- (1) Borrowed \$7,000,000 for the purpose of defraying the costs of financing the construction and other acquisition of the Interceptors, repaying certain

loans for preliminary expenses and otherwise appertaining to the Project, defraying the costs of a plant site and rights-of-way, and defraying incidental expenses and other costs of the Project; and

- (2) Evidenced such loan by the issuance of a "Metropolitan Denver Sewage Disposal District No. 1, Colorado, Bond Anticipation Note, Series April 1, 1963," the payment of which is secured by a pledge of the full faith and credit of the District; and
- (3) Secured the payment of said note by the issuance and the pledge of a bond of the District designated as the "Metropolitan Denver Sewage Disposal District No. 1, Colorado, Sewer Acquisition Bond, Series April 1, 1963," in the principal amount and denomination of \$7,000,000, numbered R-1, as collateral security therefor, the payment of which bond is secured:
 - (a) By a pledge of the full faith and credit of the District and
 - (b) By a pledge of the net income to be derived from the operation and use of the interceptors;

and

WHEREAS, the District now proposes to fund said loan in the principal amount of \$7,000,000 by the issuance and reissuance in 1964 of bonds of the District for that purpose, as well as for other purposes appertaining to the Project, in the principal amount of not exceeding \$32,500,000, as authorized by the Act and by the above-designated bond question, at which time the above-designated Note and the Bond pledged as collateral security shall thereupon be cancelled; and

WHEREAS, the Municipalities caused the District to be organized for the acquisition, operation, and maintenance of a Sewage Disposal System for the Interception from the Municipalities, transportation, treatment, purification, and disposal of sewage and industrial wastes in an efficient and economical manner; and

WHEREAS, the District has designed and prepared plans and specifications for the sewage treatment works and the other portions of the Project and is proceeding to acquire all necessary lands, interest in lands, easements, and water rights appertaining to the Project; and

WHEREAS, the District also has the power:

- (1) To enter, without an election, into joint operating or service contracts and agreements, acquisition, improvement or disposal contracts, or other arrangements for any term not exceeding fifty (50) years with any Municipality or person concerning sewage facilities, sewers, sewer system, intercepting sewers, project or sewage disposal system, and any water and water rights appertaining thereto, whether acquired by the District, or by any public body or other person, and to accept grants and contributions from any public body or other person in connection therewith; and when determined by the Board to be in the public interest and necessary for the protection of the public health, to enter into and to perform, without an election, contracts and agreements for any term not exceeding fifty (50) years with any Municipality or person for the provision

and operation by the District of sewage facilities, sewers, Sewer System, intercepting sewers, project or sewage disposal system to abate or reduce the pollution of waters or other nuisance caused by discharges of sewage, liquid wastes, solid wastes, night soil, and industrial wastes by the Municipality or person and the payment periodically by the Municipality or person to the District of amounts at least sufficient, in the determination of the Board, to compensate the District for the cost of providing, operating, and maintaining the sewage facilities, sewers, sewer system, intercepting sewers, project or sewage disposal system serving such Municipality or person; and

- (2) To enter and perform, without an election, contracts and agreements with any Municipality or person for or concerning the planning, construction, lease, or other acquisition, operation, maintenance, improvement, equipment, disposal, and the financing of any project, including but not necessarily limited to any contract or agreement for any term not exceeding fifty (50) years; and

WHEREAS, each Municipality similarly has the power so to contract with the District; and

WHEREAS, the District cannot finance on satisfactory terms the acquisition, operation, and maintenance of the Sewage Disposal System, unless the District treats and disposes of the sewage from the Sewer System of each Municipality, except to the extent its governing body determines to utilize therefor the existing facilities of the Municipality, and unless each Connecting Municipality is legally bound to accept and to pay for such sewage treatment and disposal service by the District from the time the District's Sewage Disposal System, or any part thereof, goes into operation; and

WHEREAS, the District and the Municipalities desire to provide for financing the District's monetary and budget requirements from time to time by contract providing for annual charges (herein sometimes referred to as "Annual Charges") to be paid by each Municipality as herein provided, in lieu of Service Charges unilaterally fixed, charged, and collected by the District independent of any such contract (excluding any Service Charges appertaining only to any Interceptors), and otherwise appertaining to the District's Sewage Disposal System and to the Sewer System of each Municipality; and

WHEREAS, the District and the Municipalities have determined to enter into this agreement (herein sometimes referred to as the "Service Contract" or merely as the "Agreement") for the aforesaid purpose.

NOW, THEREFORE, THIS AGREEMENT WITNESSETH:

That in consideration of the premises, of the mutual covenants and agreements herein set forth, and of the undertakings of each party to the others, and in order to secure the payment of the operation and maintenance expenses of the District, the payment of the principal of and the interest on the bonds and other obligations of the District to be hereafter issued or otherwise incurred, and the payment of any other financial obligations of the District, the parties hereto, each binding itself, its respective representatives, successors, and assigns, do mutually COVENANT, UNDERTAKE, PROMISE, AND AGREE, as follows:

ARTICLE I

SHORT TITLE, DEFINITIONS, AND INTERPRETATIONS

Section 101. Short Title.

This Agreement may be referred to as the "Service Contract" (herein sometimes designated as the "Agreement").

Section 102. Meanings and Constructions.

A. **Definitions.** The terms in this section defined for all purposes of this Agreement and of any agreement amendatory hereof or supplemental hereto or relating hereto, and of any instrument or document appertaining hereto, except where the context by clear implication otherwise requires, shall have the meanings herein specified:

- (1) **Acquire or Acquisition** means the purchase, construction, reconstruction, lease, gift, transfer, assignment, option to purchase, or grant from the Federal Government, any public body or other person, endowment, bequest, devise, installation, condemnation, other contract, or other acquirement (or any combination thereof) of facilities, other property, any project, or an interest therein, as authorized by the Act.
- (2) **Act** means the act governing the District and authorizing this Agreement, which act is commonly designated as the "Metropolitan Sewage Disposal Districts Act of Colorado," was adopted as Chapter 55, Sessions Laws of Colorado 1960, was re-enacted as Title 32, Article 4, Part 5, Colorado Revised Statutes 1973, as amended.
- (3) **Alter or Alteration** appertains to any structure or other Facility which is not completed as a part of the Project or to any enlargement or change of structure or other Facility which enlargement or change is not completed as a part of the Project, but does not include an Extension, a reconstruction, replacement, or repair of a part of the System acquired as the Project, nor does it include an enlargement or change of the sewage treatment plant acquired as part of the Project.
- (4) **Annual Budget** means the budget or the amended budget for a Fiscal Year and adopted by the District or in effect pursuant to Section 501 hereof.
- (5) **Annual Charges** means the sums paid or becoming payable to the District pursuant to this Service Contract and pursuant to any agreement supplemental thereto.
- (6) **Associated Municipality** means a Municipality, as herein defined, which is not a Connecting Municipality, as herein defined.
- (7) **Board or Board of Directors** means the Board of Directors of the District.
- (8) **Bond Question** means the question authorizing the issuance of the District's sewer acquisition bonds and submitted to the taxpaying electors of the District at a special bond election held therein on the 11th day of December 1962, the form of which question is set forth hereinabove in substantially the form so submitted.

- (9) **Bond Year** means the twelve (12) months commencing on the second day of April in any year and ending on the first day of April of the next succeeding year.
- (10) **Charge** means either an Annual Charge or a Service Charge payable to the District by a Municipality.
- (11) **Clerk** means the clerk, secretary, or other official of a Municipality who performs duties ordinarily performed by a city clerk, town clerk, or secretary of a corporation.
- (12) **Connecting Municipality** means a Municipality, as herein defined, all or any part of the Sewer System of which for the disposition of sewage therefrom is directly connected with a sewer interceptor of the District which terminates at a sewage treatment and disposal plant of the District.
- (13) **Consulting Engineer** means any registered or licensed professional engineer, or firm of such engineers, having a wide, favorable, and national reputation for skill and experience in the field of designing, preparing plans and specifications for, and supervising construction of sanitary sewer systems and facilities, and the operation and management thereof, selected, retained, and compensated by the District, but not in the regular employ or control of the District, including without limitation any successor of the present Consulting Engineer. Any Consulting Engineer may also be Project Engineer.
- (14) **Cost of the Project**, or any phrase of similar import, means, in addition to the usual connotations thereof, the cost of Acquisition and equipment of all or any part of the Sewage Disposal System for the District and of all or any property, rights, easements, privileges, agreements, and franchises deemed by the District to be necessary or useful and convenient therefor or in connection therewith, including interest or discount on bonds, costs of issuance of bonds, engineering and inspection costs and legal expenses, cost in financial, professional, and other estimates and advice, contingencies, any administrative, operating, and other expenses of the District prior to and during such Acquisition and equipment, and additionally during a period of not exceeding one year after the completion thereof, as may be estimated and determined by the Board in any resolution authorizing the issuance of any securities or other instrument appertaining thereto or in any contract with any Municipality, or otherwise, and all such other expenses as may be necessary or incident to the financing, Acquisition, equipment, and completion of the incident to the financing, Acquisition, equipment, and completion of the Sewage Disposal System or any part thereof, and the placing of the same in operation, and also such provision or reserves for working capital, operation, maintenance, or replacement expenses, or for payment or security of principal of or interest on any securities during or after such Acquisition and equipment as the District may determine, and also reimbursements to the District or to any Municipality or person of any moneys theretofore expended for the purposes of the District or to any Municipality or other public body or to the Federal Government of any moneys theretofore expended for or in connection with sanitation facilities, all of which costs are defrayed and are to be defrayed by the proceeds of bonds issued pursuant to the Bond Question.
- (15) **Debt Service** means, as of any particular date or computation and with respect to a particular Bond Year; i.e., the twelve- (12) month period beginning on the second day of April in any Fiscal Year and ending on the first day of April in the next succeeding Fiscal Year, an amount of money equal to the aggregate of the following:

- (a) All interest payable during the Bond Year on all bonds and other securities of the District outstanding on the date of computation, and
- (b) The principal amount of all bonds and other securities of the District outstanding on the date of computation which mature during the Bond Year, and
- (c) All reasonable amounts required for deposits into any reserve account or reserve fund created, accumulated, and maintained as a continuing reserve to prevent deficiencies in the payment of the principal of and the interest on any outstanding securities of the District resulting from the failure to deposit sufficient funds to pay said principal and interest as the same accrue,

all calculated on the assumption that the bonds will after the date of computation cease to be outstanding by reason, but only by reason, of the payment of the principal thereof at maturity.

- (16) **District** means the metropolitan sewage disposal district designated as the "Metropolitan Denver Sewage Disposal District No. 1," a public body politic and corporate and a governmental subdivision of the State, also constituting a quasi-municipal district and a political subdivision of the State, established as an instrumentality exercising public and essential governmental and proprietary functions to provide for the public health, safety, and general welfare, formed under and governed by the provisions of the Act, and situated in the Counties of Adams and Jefferson and the City and County of Denver, and State of Colorado, with all the powers, privileges, immunities, rights, liabilities, disabilities, and duties provided by the Act; and the term means any municipal corporation succeeding to the rights of the District.
- (17) **District Officer** means any one of the Chairman, Chairman Pro Tem, Secretary, or Treasurer of the Board and of the District.
- (18) **Extend or Extension** means the installation of any new interceptor or other sewer main which is not part of the Project, which installation extends the System to a Municipality which hereafter is included in the District or to an area hereafter annexed to a Municipality now in the District or an area otherwise hereafter served by the District.
- (19) **Facility** means any of the works or other properties, or any interest therein, appertaining to the System, as herein defined, or to a Sewer System, as herein defined.
- (20) **Federal Government** means the United States of America or any agency, instrumentality, or corporation thereof, including without limitation the Housing and Home Finance Administrator.
- (21) **Fiscal Year** means the twelve (12) months commencing on the first day of January of any year and ending on the last day of December of the same year.
- (22) **General Fund** means the "Metropolitan Denver Sewage Disposal District No. 1, Colorado, General Fund," created in Section 801 of the 4-1-63 Note and Bond Resolution, adopted by the Board on the 19th day of March 1963.

- (23) **Gross income, gross revenues, income, or revenues from the System** means all income and revenues derived by the District from the operation of the Sewage Disposal System, or any part thereof, whether resulting from improvements, extensions, alterations, enlargements, repairs, or betterments thereto, or otherwise, and includes all revenues received by the District or by any municipal corporation succeeding to the rights of the District from the System and from the sale and use of sewer service and sewerage facilities, or any combination thereof, to the Municipalities comprising the District (including all annexations which may be made while the bonds herein authorized or any part thereof are outstanding), or from the sale and use of sewer service and sewerage facilities, or any combination thereof, by means of the System to be owned and operated by the District as the same may at any time exist to serve customers outside the present District limits as well as customers within the present District limits, but **not necessarily including** the proceeds from any general (ad valorem) taxes levied by the District, and **not necessarily including** the proceeds from any donation, grant, loan, or other moneys derived by the District not from the operation of the System, or any part thereof.
- (24) **Hereby, herein, hereinabove, hereinafter, hereinbefore, hereof, hereto, hereunder,** and any similar term refer to this Agreement and not solely to the particular portion thereof in which such word is used; **heretofore** means before the stated date of this Agreement; and **hereafter** means after the stated date of this Agreement.
- (25) **Improve or Improvement** means the extension, alteration, betterment, reconstruction, replacement, repair, or other improvement (or any combination thereof) of facilities, other property, any project, or an interest therein, as authorized by the Act.
- (26) **Income** means gross income, as herein defined.
- (27) **Independent Accountant** means any certified public accountant or any firm of such certified public accountants, duly licensed to practice and practicing as such under the laws of the State, appointed and paid by the District:
- (a) Who is, in fact, independent and not under the domination of the District, and
 - (b) Who does not have any substantial interest, direct or indirect, with the District, and
 - (c) Who is not connected with the District as an officer or employee of the District but who may be regularly retained to make annual or similar audits of the books or the records of the District.
- (28) **Interceptor** means any one of the intercepting sewers and the outfall sewers constituting a part of the Project and commonly designated as the Clear Creek Interceptor, Bear Creek Interceptor, Sanderson Gulch Interceptor, Weir Gulch Interceptor, Lakewood Gulch Interceptor, Platte River Interceptor, Sand Creek Interceptor, and the Effluent Pipe Line from the North Denver treatment plant, any one of which being necessary or proper to intercept and to transport the outfalls from the Sewer Systems of the Municipalities.

(29) **Municipal Officer** means any one of the Mayor, City Manager, if any, City Clerk, City Treasurer, and any manager of a Municipality's Sewer System.

(30) **Municipality** means any city, city and county, incorporated town, sanitation district, water and sanitation district, or any other political subdivision or public entity heretofore or hereafter created under the laws of the State of Colorado (other than a metropolitan sewage disposal district), having specific boundaries within which it is authorized or empowered to provide sewer service for the area within its boundaries, and being a component and comprising a part of the District. A Municipality may be either an Associated Municipality, as herein defined, or a Connecting Municipality, as herein defined. Notwithstanding the temporary absence of any one or more connections to the System because the Project has not yet been completed on the effective date hereof, the Associated Municipalities in the District are:

- (a) Alameda Water and Sanitation District,
- (b) Bancroft Water and Sanitation District,
- (c) East Lakewood Sanitation District, and
- (d) Highland Park Sanitation District;

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

- (e) City of Arvada,
- (f) Baker Metropolitan Water and Sanitation District,
- (g) Berkeley Water and Sanitation District,
- (h) City and County of Denver,
- (i) North Table Mountain Water and Sanitation District,
- (j) North Washington Street Water and Sanitation District,
- (k) Northwest Lakewood Sanitation District,
- (l) Westminster Sanitation District, and
- (m) Wheat Ridge Sanitation District.

The term Municipality includes any municipal corporation succeeding to the right of a Municipality.

(31) **Net income or net revenues** means the revenues after deducting Operation and Maintenance Expenses.

(32) **Operation and Maintenance Expenses**, or any phrase of similar import, means all reasonable and necessary current expenses of the District, paid or accrued, of operating, maintaining, and repairing the Sewage Disposal System; and the term may include at the District's option (except as limited by law), without limiting the generality of the foregoing, engineering, auditing, legal, and other overhead

expense of the District directly related to the administration, operation, and maintenance of the System, insurance and surety bond premiums, the reasonable charges of any paying agent or other depository bank appertaining to the System, or bonds, other securities or other obligations of the District, payments to pension, retirement, health, and hospitalization funds, any taxes, assessments, or other charges which may be lawfully imposed on the District or its income or operations of facilities under its control, ordinary and current rentals of equipment or other property, refunds of any revenues lawfully due to others, including but not limited to refunds to Municipalities, expenses in connection with the issuance of bonds or other obligations evidencing any loan to the District, the expenses and compensation of any trustee or other fiduciary, contractual services, professional services required by this Agreement, or otherwise, salaries, labor, and the cost of materials and supplies used for current operation, and all other administrative, general, and commercial expenses, but **excluding** any allowance for depreciation or any reserves for capital replacements, **excluding** any reserves for operation, maintenance, or repair of the System, **excluding** any allowance for the redemption of any note, bond, or other obligation evidencing a loan, or the payment of any interest thereon, **excluding** liabilities incurred by the District as the result of its negligence in the operation of the System or other ground of legal liability not based on contract, and **excluding** the costs of improvements, extensions, or alterations.

- (33) **Person** means not only a natural person, corporation, or other legal entity, but also two or more natural persons, corporations, or other legal entities acting jointly as a firm, partnership, unincorporated association, joint adventurers, or otherwise.
- (34) **Project** means the construction, installation, and other Acquisition of the Sewage Disposal System for the District, including, without limiting the generality of the foregoing, a sewage treatment plant, sewage treatment works, intercepting sewers, outfall sewers, force mains, water lines, pumping plants or stations, and appurtenances useful or convenient for the interception, transportation, treatment, purification, or disposal of sewage and industrial wastes, and all necessary lands, interest in lands, easements, and water rights, and any other cost of the Project, as authorized by the Act and by the Bond Question; and the Project may be referred to as such, or as "constructing, installing, and otherwise acquiring the System," or words of similar import.
- (35) **Project Engineer** means any registered or licensed professional engineer, or firm of such engineers, or an association thereof, having a wide and favorable repute for skill and experience in the field of designing, preparing plans and specifications for, and supervising construction of sanitary sewer systems and facilities, entitled to practice and practicing as such under the laws of the State, selected, retained and compensated by the District, but not in the regular employ or control of the District, except that with respect to construction on the System for which the construction drawings and specifications have been prepared by District employees working on force account or otherwise under the supervision of the District's Engineer, this term may include the District's Engineer, including without limitation any successor of the present association of firms now constituting the Project Engineer. Any Project Engineer may also be Consulting Engineer.
- (36) **Rate Schedule** means the schedule of the methods for the determination of Service Charges and of the rates for their allocation.

- (37) **Redemption Price**, when used with respect to a bond, means the principal amount of such bond plus any applicable premium payable upon the redemption thereof prior to its stated maturity date in the manner contemplated in accordance with its terms.
- (38) **Revenue** means gross income, as herein defined.
- (39) **Revenue Fund** means the "Metropolitan Denver Sewage Disposal District No. 1, Colorado, System Gross Revenue Fund," created in Section 801 of the 4-1-63 Note and Bond Resolution, adopted by the Board on the 19th day of March 1963.
- (40) **Secretary** means the person chosen by the Board as Secretary of the Board and the District, which person may be (but is not necessarily) a member of the Board and may be (but is not necessarily) the same person as the Treasurer.
- (41) **Secretary of State** means the Secretary of State of the State of Colorado.
- (42) **Service Charges** means rents, rates, fees, tolls, and other charges for direct or indirect connection with or the use of services of the Sewage Disposal System, including, without limiting the generality of the foregoing, minimum charges and charges for the availability of service, which Service Charges the District is or may be authorized to fix, charge, and collect from any Municipality, independent of this or any other service contract, pursuant to Subsection (m) of Section 32-4-510 and to Section 32-4-522 of the Act.
- (43) **Service Contract** means this contract between the District and each Municipality for the collection from the Sewer System of each Municipality and for the treatment and disposal of sewage therefrom, as from time to time supplemented by contract.
- (44) **Sewage** means liquid wastes, solid wastes, night soil, industrial wastes, and any other substance, whether it be liquid, solid, in suspension, or in solution, in a Sewer System or in the Sewage Disposal System, or in both such systems.
- (45) **Sewage Disposal System or System** means the sanitary sewer and other sanitation facilities to be constructed, installed, and otherwise acquired by the District, initially as the Project, and as thereafter modified.
- (46) **Sewer System** means a system provided by a Municipality to provide sewer service to its inhabitants by the collection of sewage arising within its corporate limits and to the extent determined by its governing body without its corporate limits and by treating and by disposing of such sewage to the extent of the adequacy of existing facilities of the Municipality, as determined and approved by the regulatory agency of the State having jurisdiction.
- (47) **Special Connector** means any city, incorporated town, sanitation district, water and sanitation district, special district, or any other political subdivision or public entity heretofore or hereafter created under the laws of the State of Colorado, including a metropolitan sewage disposal district, having specific boundaries within which it is authorized or empowered to provide sewer service for the area within its boundaries, which is not a member of the District nor an Associated Municipality or a Connecting Municipality as herein defined. Special Connectors shall not be entitled to representation on the Board of Directors.
- (48) **State** means the State of Colorado.

- (49) **System** means Sewage Disposal System.
- (50) **Taxes** means general (ad valorem) taxes as authorized to be levied against all taxable property in the District by the Act.
- (51) **Treasurer** means the person chosen by the Board as Treasurer of the Board and the District, which person may be (but is not necessarily) a member of the Board and may be (but is not necessarily) the same person as the Secretary.

B. **Construction.** This Agreement, except where the context by clear implication herein otherwise requires, shall be construed as follows:

- (1) Definitions include both singular and plural.
- (2) Pronouns include both singular and plural and cover all genders.
- (3) Articles, sections, subsections, paragraphs, and subparagraphs mentioned by number, letter or otherwise, correspond to the respective articles, sections, subsections, paragraphs, and subparagraphs of this Agreement so numbered or otherwise so designated.

Section 103. Successors.

Whenever herein the District or any Municipality is named or referred to, such provision shall be deemed to include the successors of the District or the Municipality, respectively, whether so expressed or not. All of the covenants, stipulations, obligations, and agreements by or on behalf of and other provisions for the benefit of the District or any Municipality contained herein shall bind and shall inure to the benefit of such successors and shall bind and shall inure to the benefit of any officer, board, district, commission, authority, agent, or instrumentality to whom or to which there shall be transferred by or in accordance with law any right, power, or duty of the District or the Municipality, respectively, or of its successor, the possession of which is necessary or appropriate in order to comply with any such covenants, stipulations, obligations, agreements, or other provisions hereof.

Section 104. Parties Interested Herein.

Nothing herein expressed or implied is intended or shall be construed to confer upon or to give to any person or corporation, other than the District and the Municipalities, any trustee for, and any holder of any note, bonds, or other securities of the District, and the coupons thereunto appertaining, if any, any right, remedy, or claim under or by reason hereof or any covenant, condition, or stipulation hereof. All the covenants, stipulations, promises, and agreements herein contained by and on behalf of the District shall be for the sole and exclusive benefit of the District, the Municipalities, any such trustee, and any holder of any such note, bonds, other securities, and the coupons thereunto appertaining, if any.

ARTICLE II

ACQUISITION OF THE PROJECT AND OPERATION OF THE SYSTEM

Section 201. Acquisition and Purpose.

The District will with all practicable speed continue to prepare and to complete plans for the Project and its financing; and upon completion of such financing or the making of arrangements therefor satisfactory to the District, it will with all practicable speed complete the Project and place the Sewage Disposal System in operation. The District will thereafter operate, maintain, and enlarge the system so as to receive, to treat, and to dispose of all sewage, without limitation as to flow, which may thereafter be delivered into the System by any Municipality in accordance with Article III hereof. Before undertaking construction of any substantial part of the Project, the plans and specifications for such construction will be submitted by the District to the State Board of Health of Colorado for approval as to the sufficiency of design of the District's proposed sewage treatment plant and compliance with the standards for sewage treatment plants for areas under the jurisdiction of the State Board of Health, and a permit or other approval will be obtained by the District from the State Board of Health to proceed with such construction.

Section 202. Extensions and Alterations.

The District may at any time enlarge or modify the System or renew or replace any part thereof and may construct or otherwise acquire any extension or alteration, as may be feasible and then be permitted by law.

Section 203. Performing Duties.

The District will faithfully and punctually perform all duties with respect to the System required by the Constitution and laws of the State and the resolutions of the District, including but not limited to the making and collecting of reasonable and sufficient rates and charges for services rendered or furnished by the System, and the proper segregation of the revenues of the System and their application to the respective funds provided from time to time therefor. Similarly each Municipality will so perform all duties with respect to its Sewer System required by the Constitution and laws of the State, by ordinances of the Municipality, and by resolutions of the District, as permitted by law, including but not limited to the prompt payment of Annual Charges.

Section 204. Further Assurances.

At any and all times the District and each Municipality shall each, so far as it may be authorized by law, pass, make, do, execute, acknowledge, and deliver any and every such further resolution or ordinance, respectively, acts, deeds, conveyances, assignments, transfers, and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning, and confirming all and singular the rights, revenues of the System or its Sewer System, respectively, and other funds pledged or assigned, or intended so to be, or which the District or Municipality (as the case may be) may heretofore or hereafter become bound to pledge or to assign, or as may be reasonable and required to carry out the purposes of any such resolution or ordinance and to comply with the Act. The District and each Municipality shall each at all times, to the extent permitted by law, defend, preserve, and protect the pledge of the revenues of the System or Sewer System, respectively, and other funds pledged heretofore and hereafter and all the rights of every holder of any note, bond, and any other security of the District against all claims and demands of all persons whomsoever.

Section 205. Operation and Maintenance of System.

The District shall at all times operate the System properly and in a sound and economical manner and shall maintain, preserve, and keep the same properly or cause the same to be so maintained, preserved, and kept, with the appurtenances and every part and parcel in good repair, order, and condition, and shall from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals so that at all times the operation of the System may be properly and advantageously conducted.

Section 206. Rules, Regulations, and Other Details.

The District shall establish and enforce reasonable rules and regulations governing the operation, use, and services of the System. All compensation, salaries, fees, and wages paid by it in connection with the maintenance, repair, and operation of the System shall be reasonable and comparable to payments by other corporations, Municipalities, or public bodies for similar services. The District shall observe and perform all of the terms and conditions contained in the Act and shall comply with all valid acts, rules, regulations, orders, and directions of any legislative, executive, administrative, or judicial body applicable to the System or to the District.

Section 207. Payment of Lawful Governmental Charges.

The District shall pay all taxes and assessments or other municipal or governmental charges, if any, lawfully levied or assessed upon or in respect of the System or upon any part thereof or upon any revenue therefrom, when the same shall become due, and shall duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of the System and shall not create or suffer to be created any lien or charge upon the System or any part thereof or upon the revenues therefrom, except the pledge and lien created by any resolution for the payment of the principal and redemption price of and the interest on the bonds and other securities of the District. The District shall pay or shall cause to be discharged or will make adequate provision to satisfy and to discharge, within sixty (60) days after the same shall become payable, all lawful claims and demands for labor, materials, supplies, or other object which if unpaid might by law become a lien upon the System or any part thereof or the revenues therefrom; **provided, however**, that nothing in this Section 207 contained shall require the District to pay or to cause to be discharged or to make provision for any such lien or charge so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings.

Section 208. Consulting Engineer and Project Engineer.

- A. **Consulting Engineer.** The District shall employ the Consulting Engineer, whose duties shall be, among such other duties as may be imposed by the District by resolution, to coordinate the activities of the Project Engineer and to consult therewith on engineering problems during design and construction of the System, to inspect or to review the operation of the System, to make an inspection of the System at least once a year, and to submit annually before the end of each Fiscal Year to the District advices and recommendations as to the proper maintenance, repair, and operation of the System during the ensuing Fiscal Year, and an estimate of the amount of money necessary for such purposes.
- B. **Project Engineer.** With respect to each part of the System at any time under construction, the District shall employ a Project Engineer, whose duties shall be, among such other duties as may be imposed by the District by resolution, to design and supervise the construction of said part of the System and to make and to sign from time to time the certificates appertaining thereto.

- C. **Filing Copies.** Copies of the reports, estimates, or certificates of the Consulting Engineer and the Project Engineer and copies of the advices, recommendations, and estimates made as hereinabove provided shall be filed with the District for inspection by any member of the Board and by any official of any Municipality.

Section 209. Insurance and Reconstruction.

The District shall at all times maintain with responsible insurers all such insurance reasonably required and obtainable within limits and at costs deemed reasonable by the District as is customarily maintained with respect to sewerage systems of like character against loss of or damage to the System, against loss of revenues, and against public and other liability to the extent at least reasonably necessary to protect the interests of the District, the Municipalities, and each holder of any bond or other security of the District and also all such insurance as is required to indemnify and to save harmless the Municipalities against all liabilities, judgments, costs, damages, expenses, and attorneys' fees for loss, damage, or injury to person or property resulting from the operation or a failure of operation of the System caused by the negligence or willful act of the District, District Officers, employees, or any other agents. Any liability incurred by the District as a result of the operation of its System shall be its sole liability, and any liability incurred by any Municipality as a result of the operation of its Sewer System shall be its sole liability, subject to any agreement to the contrary now existing or hereafter made. If any useful part of the System shall be damaged or destroyed, the District shall as expeditiously as may be possible commence and diligently prosecute the repair or replacement of the damaged property so as to restore the same to use. The proceeds of any insurance appertaining thereto shall be payable to the District and (except for proceeds of use and occupancy insurance) shall be applied to the necessary costs involved in such repair and replacement and, to the extent not so applied, shall (together with proceeds of any such use and occupancy insurance) be deposited by the District as revenues of the System. In the event that the costs of such repair and replacement of the damaged property exceed the proceeds of such insurance available for payment of the same, moneys in the General Fund shall be used to the extent necessary for such purposes.

Section 210. Alienating System.

No part of the System shall be sold, leased, mortgaged, pledged, encumbered, or otherwise disposed of or otherwise alienated, until all the bonds authorized by the Bond Question and any other securities of the District have been paid in full, both principal and interest, or unless provision has been made therefor, or until the bonds or other securities have otherwise been redeemed, including but not necessarily limited to the termination of the pledge herein authorized; **provided, however,** that the District may sell, exchange, or lease at any time and from time to time any property or facilities constituting part of the System and not useful in the construction, reconstruction, or operation thereof; but any proceeds of any such sale or exchange received and not used to replace such property so sold or exchanged shall be deposited in the Revenue Fund, and any proceeds of any such lease received shall be deposited by the District as revenues of the System.

Section 211. Records, Accounts, and Audits.

The District shall keep proper books of record and account (separate from all other records and accounts), in which complete and correct entries shall be made of its transactions relating to the System or any part thereof and which, together with all other books and papers of the District, shall at all reasonable times be subject to the inspection of at least any member of the Board and any Municipal Officer. The District shall cause its books and accounts to be audited annually by an Independent Accountant selected by the District. Each such audit, in

addition to the matters hereinabove designated and to whatever matters may be thought proper by the Independent Accountant to be included therein, shall include the following:

- A. **Income and Expenditures.** A statement in detail of the income and expenditures of the System for the Fiscal Year, including but not necessarily limited to a classified statement of gross revenue received, of the net revenues, and also of the amount of any capital expenditures appertaining to the System for the Fiscal Year, and a statement of the profit or loss for the Fiscal Year.
- B. **Balance Sheet.** A balance sheet as of the end of the Fiscal Year, including the amount on hand, both cash and investments, in each of the accounts created by the various resolutions of the District and in other proceedings authorizing the issuance of outstanding bonds and other obligations payable from the revenues of the System.
- C. **Independent Accountant's Comment.** The Independent Accountant's comment regarding the District's methods of operation and accounting practice and the manner in which the District has carried out the requirements of each resolution and any other proceedings authorizing the issuance of outstanding bonds or other obligations and the Independent Accountant's recommendation for any change or improvement in the operation of the System as the Independent Accountant deems appropriate.
- D. **Listing Insurance.** A list of the Insurance policies in force at the end of the Fiscal Year, setting out as to each policy the amount of the policy, the risks covered, the name of the insurer, and the expiration date of the policy.
- E. **Recapitulation of Funds and Accounts.** A recapitulation of each fund or account created by the various resolutions and by the other proceedings authorizing the issuance of outstanding bonds and other obligations payable from the revenues of the System, into each of which accounts are put moneys derived from the operation of the System or derived from the sale of the securities, such analysis to show the balance in such account at the beginning of the Fiscal Year, the deposits and withdrawals during said Fiscal Year, and the balance at the end of said Fiscal Year.
- F. **Connections of Municipalities.** The number of metered connections and of any unmetered connections appertaining to the System at the beginning and at the end of the Fiscal Year.

ARTICLE III

GENERAL PROVISIONS CONCERNING SEWAGE DISPOSAL SYSTEM

Section 301. Tributary Sewer Systems.

In general, connections to the System of the District shall be made only at the connection points provided herein, or as approved by the District; shall be limited (except for any service agreement appertaining to the acquisition of any site for sewage disposal facilities or sewage treatment plant) to the Sewer Systems owned, operated, or controlled by the respective Municipalities involved; and in the case of each Connecting Municipality, shall be metered. The District will make provision at each point of connection listed in Schedule A hereof for measurement of quantity and for sampling at the District's own cost and expense. Other approved connections including facilities for measurement of quantity and for sampling shall be made at the expense of the Municipality concerned. Each Municipality shall require and enforce conformity to these regulations with respect to the tributary system and its parts and, where applicable, with respect to individual contributors or groups of contributors thereto. Except for existing combined sewers, only sewage from separate sanitary systems shall be discharged into the System, subject to the provisions of Section 406 hereof. Except for existing sewer facilities, such local sanitary systems shall receive no storm water directly or indirectly from surface drains, ditches or streams, storm or combined sewers, roof, areaway, or foundation drains, or from any other means, except that the minimum practicable infiltration of groundwater in any case not to exceed 200 gallons per inch diameter per mile per twenty-four (24) hours with a maximum of 8,400 gallons per twenty-four (24) hours per mile of sewer (for all sewers constructed after the date of this Agreement exclusive of house or building sewers) will be permitted. Municipalities in which certain areas are served by combined sewers prior to the date of this Agreement shall provide all reasonable facilities and controls to minimize storm water flow from such combined sewers to the District's System. All trunk, sub-trunk, or lateral sewers and appurtenances, structures comprising local tributary systems constructed after the date of this Agreement shall be of adequate strength to resist breakage and shall be substantially watertight. Pipelines, including without limitation house and building connections, shall be of such material as to minimize initial and future infiltration, and all such pipe shall be properly bedded or cradled and constructed using tight joints of type, materials, and workmanship which will minimize initial and future infiltration.

Section 302. Connections to System.

Upon notice from the District, each Connecting Municipality will permit its Sewer Systems or the outfalls therefrom to be connected with the District's Sewage Disposal System at the point or points designated therefor in the List of Initial Connecting, Metering, and Sampling Points, attached hereto and marked "Schedule A" and by this reference made a part hereof, or at such other point or points upon which such Municipality and the District may mutually agree. Every connection listed in Schedule A shall be made by the District at its own expense and cost, and all other approved connections shall be made at the expense of the Municipality concerned. Every such connection shall constitute and shall be operated by the District as part of its Sewage Disposal System and shall include all such pumping and other facilities as may be necessary to cause all sewage delivered at said point or points of connection to be discharged into the System and be so made and be so constructed as to discharge into the System all sewage collected in its Sewer System and delivered at said point or points of connection. Each Municipality at its own expense and cost will construct, install, and operate any and all extensions of its Sewer System or the outfalls therefrom necessary to cause the same to reach to and to deliver sewage at said point or points of connection and after the making of such connection or connections, will keep its Sewer System connected with the

System and will deliver and discharge into the System all sewage originating in and collected by the Municipality, except as herein otherwise provided expressly or by necessary implication. No Municipality shall be obligated to deliver and to discharge sewage into the District's System which the District may by its written consent exempt from delivery and discharge into the District's System. No Municipality shall be obligated to deliver and to discharge into the District's System effluents from sewage treatment plants in existence and operation on the date of this Agreement which (if discharged into surface or groundwaters of the State) would not cause or constitute a violation of any laws of the State relating to said waters or of any valid regulation or requirement relating to said waters made pursuant to said laws by the State Board of Health or by any other agency of the State having jurisdiction with respect to said waters.

Section 303. Service Rendered by District and by Municipalities.

The District's Sewage Disposal System shall intercept, receive, transport, treat, and dispose of the sewage from the Sewer Systems of the connecting Municipalities. Each Municipality within the District shall retain full power and authority to provide sewer service to the inhabitants of the Municipality, including the acquisition, improvement, operation, and maintenance of facilities for the collection of sewage arising within the corporate limits of the Municipality, and to the extent determined by its governing body, also without its corporate limits, and including the operation and maintenance of any existing sewage treatment or disposal facilities or sewage treatment and disposal system.

Section 304. Competing System.

So long as any bonds or other securities of the District are outstanding, the District shall not grant any franchise or license to a competing system, nor shall it permit during said period (except as it may legally be required to do so) the acquisition or improvement by any Municipality of sewage treatment or disposal facilities which shall increase the capacity thereof; **provided, however**, that the District may consent to such acquisition or improvement and may approve the plans and specifications therefor if the Board determines each of the following:

- A. **Not Economically Feasible.** It is not economically feasible for the District to furnish the desired treatment or disposal.
- B. **Security Not Substantially Impaired.** The acquisition or improvement of such facilities or system by the Municipality or by any other Person within its boundaries shall not substantially impair the security for the payment of the obligations of the District.
- C. **Approval Granted by Act.** It is not inequitable or unreasonable for the District to grant such consent and approval, pursuant to Sections 32-4-506, 32-4-513, 32-4-514, 32-4-516, and 32-4-538 of the Act.

Any such consent, **however**, is subject to the provisions of Section 305 and Section 307 hereof.

Section 305. Construction of Other Sewage Disposal Systems Prohibited.

The District shall be the exclusive agency for the acquisition and operation of a sewage disposal system within and for the District, except as otherwise provided or authorized in this Agreement and in the Act; and no sewage disposal system or other facilities for the collection, treatment, or disposal of sewage arising within the District (including any sewage treatment or disposal facilities of a Municipality) shall be acquired or improved hereafter which shall

increase the capacity thereof unless the District shall give its consent thereto and shall approve the plans and specifications therefor, except for any acquisition or improvement of any sewer collection facilities or Sewer System (but not sewage treatment or disposal facilities or sewage disposal system), or any part thereof, owned by a Municipality at any point above the connection of such collection facilities or Sewer System with the Sewage Disposal System, or any part thereof, of the District, except as herein otherwise provided, including without limitation the provisions of Section 406 hereof. The District is empowered by the Act to give such consent and approval, subject, however, to the terms and provisions of any agreement with any holder of securities, including but not limited to the provisions in Section 304 hereof.

Section 306. Limitations Upon Consent.

Whenever under the terms of this Agreement the District is authorized to give its written consent, the District in its discretion may give or may refuse such written consent and if given, may restrict, limit, or condition such consent in such manner as it shall deem advisable. Acceptance by the District into the Sewage Disposal System from a Municipality of sewage in a volume or with characteristics exceeding or violating any limit or restriction provided for by or pursuant to this Agreement in one or more instances or under one or more circumstances shall not constitute a waiver of such limit or restriction or of any of the provisions of this Agreement and shall not in any way obligate the District thereafter to accept or to make provision for sewage delivered and discharged into the System in a volume or with characteristics exceeding or violating any such limit or restriction in any other instance or under any other circumstances.

Section 307. Form of Consent.

Whenever under the terms of this Agreement a Municipality is authorized to give its written consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its Clerk and under its seal, of a resolution purporting to have been adopted by its governing body and purporting to give such consent. Whenever under the terms of this Agreement the District is authorized to give its written consent, such consent may be given and shall be conclusively evidenced by a copy, certified by its Secretary and under its seal, of a resolution purporting to have been adopted by the Board and purporting to give such consent.

Section 308. Special Connectors.

The District may enter into contracts with Special Connectors, under such terms and conditions as the District shall determine, to allow Special Connectors to make connection to the District's System for treatment of sewage as if they were connecting municipalities, notwithstanding any provisions to the contrary in the Service Contract, including without limitation Section 301 hereof.

ARTICLE IV

DELETERIOUS WASTES

Section 401. Additional Definitions.

As used in this Agreement, the following terms shall mean:

- A. **Biochemical Oxygen Demand (BOD)** means the laboratory determination of the quantity of oxygen utilized in the biochemical oxidation of organic matter in a given time and at a specified temperature, being expressed in parts per million (ppm) or (mg/liter) of oxygen used in a period of five (5) days at 20°C.
- B. **Requirement** means any substantive or procedural requirement imposed on a Municipality or Industrial User.
- C. **Suspended Solids (SS)** means the laboratory determination of dry weight expressed in parts per million (ppm) or milligrams per liter (mg/L) of solids that either float on the surface or are in suspension in sewage and can be removed from sewage by filtration.
- D. **Tests for Quality** means the measurements, tests, and analyses of the characteristics of waters and wastes in accordance with the methods contained in the latest edition (at the time of any such measurement, test, or analysis) of "Standard Methods for the Examination of Water and Wastewater," a joint publication of the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, or in accordance with any other method prescribed by the District by rules and regulations promulgated pursuant to this Article.
- E. **Total Kjeldahl Nitrogen (TKN)** means the sum, expressed in parts per million (ppm) or milligrams per liter (mg/L), of free-ammonia nitrogen and organic nitrogen compounds which are converted to ammonia under digestion conditions specified by the Kjeldahl Nitrogen Test Method.
- F. **User** means any person who contributes, causes, or permits the contribution of wastewater to a publicly owned treatment works.

Section 402. Reserved.

Section 403. Reserved.

Section 404. Modification of Deleterious Wastes Requirements.

The District may from time to time make any amendments of said requirements concerning deleterious wastes which may be reasonably necessary to prohibit or to regulate properly the delivery or the discharge into the System of any substances which alone or in combination with other substances delivered and discharged into the System from the same source are or may be or may reasonably be expected to be substantially injurious or deleterious to the System or to its efficient operation. Every such amendment shall take effect as to a Municipality sixty (60) days after a copy of such amendment shall have been mailed to such Municipality at its usual place of business; and for all purposes of this Agreement such amendment shall be conclusively deemed to have been made in accordance with this Article and to be authorized fully thereby at the expiration of said period of sixty (60) days unless within said period of sixty (60) days the Municipality shall have filed with the District an objection thereto stating that such amendment would contravene this Agreement in a manner

prejudicial to the Municipality and stating the manner in which such amendment would so contravene this Agreement. Any controversy or claim involving a Municipality which shall have so filed an objection to any such amendment and arising out of or relating to the making of such amendment or the breach of any requirement provided by such amendment shall be referred to the Colorado Department of Health whose decision in the matter shall be binding on all parties.

Section 405. Determination of Quantity, Quality, and Characteristics of Sewage.

The District will use meters for determining the quantity and will make tests and will use other means for determining the quality and other characteristics of all sewage which shall be delivered and discharged into the System by each of the Connecting Municipalities and in accordance with sound engineering practice shall determine such quantity, quality, and any other characteristics. A copy of each such determination made by the District with respect to each Fiscal Year shall be mailed to each Connecting Municipality at its usual place of business and for all purposes of this Agreement shall be conclusively deemed to have been made in accordance with this section and to be correct at the expiration of sixty (60) days after such mailing unless within said period of sixty (60) days a Municipality shall have filed with the District an objection thereto stating that such determination is incorrect and stating the changes therein which should be made in order to correct such determination. From and after the placing of the System in operation, the District will make and will keep permanent records of the quantity, quality, and other characteristics of sewage delivered and discharged into the System by each of the Connecting Municipalities. For the purpose of determining the quantity, quality, and other characteristics of any sewage which shall be or may be delivered and discharged into the System by a Municipality, or into the sewer system of a municipality by any user, the District shall have the right at all reasonable times to enter upon and to inspect the Sewer System of the Municipality or any industrial or commercial installations connected thereto or any other connections which contribute sewage or wastes to the local Sewer System and to inspect and copy records, to take normal samples under ordinary operating conditions and to make tests, measurements, and analyses of sewage or other wastes in, entering, or to be discharged into such Sewer System. The District will make and will keep a record of tests, measurements, and analyses of such sewage or other wastes entering such Sewer Systems, and there shall be forwarded to each Municipality the results of such tests, measurements, and analyses appertaining thereto.

The District may require that any user discharging to the system or to the sewer system of a Municipality provide, operate, and maintain, at the user's own expense, monitoring facilities to allow inspection, sampling, and flow measurement of any discharges as necessary to determine compliance with the provisions of this Agreement. All such facilities constructed shall be provided in accordance with the District's requirements, and in such a time frame as the District shall specify by written notification.

Section 406. Storm Waters.

Subject to the provisions of Section 301 hereof, no Municipality shall make or permit any new connection to or extension of its Sewer System which is so designed as to permit entrance directly or indirectly into the Sewage Disposal System of storm water drainage from ground surface, roof leaders, catch basins, or any other source.

Section 407. Reserved.

Section 408. Reserved.

Section 409. Reserved.

ARTICLE V

DISTRICT BUDGET, ANNUAL CHARGES, SERVICE CHARGES AND THEIR ESTABLISHMENT AND COLLECTION

Section 501. Annual Budget.

- A. **Preparation of Preliminary Budget.** Except with respect to any Fiscal Year ending prior to or in the calendar year 1964, the District shall prepare and file with at least the Consulting Engineer annually a preliminary budget, including therein Operation and Maintenance Expenses, Debt Service, and any provision for capital expenditures for the ensuing Fiscal Year. The District (in the preparation of each such preliminary budget and every Annual Budget) shall comply with any reasonable request of at least the Consulting Engineer as to the classifications in which such budget shall be prepared, particularly with respect to the divisions into which such budget shall be divided. The District (in the preparation of each such preliminary budget and each such Annual Budget) shall include Debt Service on the basis of the Bond Year commencing in the Fiscal Year for which the budget is prepared so that the Debt Service for that Bond Year will be appropriated prior to and collected in said Fiscal Year by the District. Any preliminary budget and any Annual Budget may set forth such additional material as the District may determine. Every preliminary budget and every Annual Budget shall also set forth a statement of the sources of funds to be available to defray such expenditures, including without limitation the Annual Charge to be paid by each Connecting Municipality. A copy of each preliminary budget shall be promptly filed with each Connecting Municipality.
- B. **Hearing on Preliminary Budget.** Except with respect to the Fiscal Year ending prior to or in the calendar year 1964, the District shall hold a public hearing not less than seven (7) months before the beginning of any Fiscal Year, at which any holder of any security issued by the District or any Municipality may appear in person or by agent or attorney and may present any objections he may have to the final adoption of the budget for such Fiscal Year. Notice of the time and place of such hearing shall be published at least once in a newspaper at least ten (10) days before such hearing, and the District shall at least ten (10) days before such hearing cause a copy of such notice to be mailed to at least the Consulting Engineer.
- C. **Adoption of Annual Budget.** On or before the first day of August 1964, and thereafter on or before the first day of August next preceding each Fiscal Year, the District shall finally adopt the Annual Budget for such next succeeding Fiscal Year (herein sometimes designated as the "Annual Budget"). Copies of the Annual Budget shall be promptly filed with at least the Consulting Engineer.
- D. **Quasi-Annual Budget.** If for any reason the District shall not have adopted the Annual Budget on or before the first day of August next preceding any Fiscal Year, the preliminary budget for such year (if it be approved by the Consulting Engineer) or otherwise the budget for the preceding Fiscal Year shall be deemed to be in effect for such Fiscal Year until the Annual Budget for such Fiscal Year is adopted.
- E. **Amendment of Annual Budget.** The District may at any time adopt an amended Annual Budget for the then current Fiscal Year, but no such amended Annual Budget shall supersede any prior budget until it shall be approved by at least the Consulting Engineer as reasonable and necessary.

Section 502. Limitations on Operation and Maintenance Expenses.

The District shall not incur Operation and Maintenance Expenses in any year in excess of the reasonable and necessary amount thereof. The District shall not expend any amount and shall not incur any indebtedness for maintenance, repair, and operation in excess of the aggregate amount provided for Operation and Maintenance Expenses in the Annual Budget (if any) then in effect, subject to the provisions of paragraph E of Section 501 hereof. Nothing in this Section 502 hereof contained shall limit the amount which the District may expend for Operation and Maintenance Expenses in any Fiscal Year, provided any amounts expended therefor in excess of the Annual Budget (if any) shall be received by the District from some source other than the income of the System; and the District shall not make or receive any reimbursement therefor out of such income, except to the extent the Board may determine to use any moneys in any reserve fund or sinking fund available therefor.

Section 503. Levy, Collection, and Calculation of Annual Charges.

With respect to all sewage delivered into the System and for all direct or indirect connection with and all use and services of the System, except for any Service Charges appertaining only to any Interceptors, the District shall make, impose, and collect Annual Charges in accordance with this Service Contract, as the same may be amended or otherwise supplemented from time to time by contract. Service Charges appertaining to the Interceptors may be fixed and collected by the District whenever the Board so determines; provided, however, that no Service Charges shall be fixed after the Board has fixed any Annual Charges hereunder. Classification for charges shall be reasonable. The charges shall be uniform within classification and shall be based upon the amount and quality of sewage delivered into the System and for all direct and indirect connection with and all use and services of the System, except for minimum charges, charges for the availability of service or readiness to serve by the System, reasonable penalties for delinquencies, including interest thereon from any date due at a rate of one per centum (1%) per month (or fraction thereof), reasonable attorneys' fees, and other costs of collection. In conformity with this Service Contract and with the Act, the District, prior to the placing in operation of any part of the System and the discharge and delivery of sewage into the System, except possibly Interceptors, hereby prescribes and hereafter from time to time whenever necessary may revise by contract between the District and all Municipalities then components of the District any method for the allocation of the Annual Charges or any method of the determination of rates, as provided in Schedule B hereof. Said rates shall at all times be calculated and prescribed and from time to time revised, and such Annual Charges shall be computed, made, imposed, and collected so that the income of the System collected, except for any Cost of the Project capitalized with the proceeds of bonds or other securities of the District, except for any Service Charges appertaining only to Interceptors, and except for any other moneys available therefore (including any proceeds to the District of use and occupancy insurance), will be at least sufficient:

- A. To pay at all times all Operation and Maintenance Expenses and at the end of each Fiscal Year to maintain therefor reserve requirements;
- B. To provide in each Fiscal Year a sum equal to the Debt Service for the Bond Year commencing in such Fiscal Year computed as of the beginning of such Bond Year;
- C. To provide at all times for any deficits of the District resulting from failure to receive any Annual Charges or any sums payable to the District by any Municipality or from any other cause;
- D. To provide at all times such sums for reserves and for sinking funds as may be fixed by

this Service Contract or other contract of the District or as may be otherwise determined from time to time by the Board (subject to any existing contractual limitations);

- E. To provide moneys required by any contract of the District or otherwise for any capital expenditure, including without limitation acquisitions, improvements, extensions, and alterations, or any other purpose authorized by the Act (not hereinabove provided) and as so determined by the Board;
- F. To comply at all times in all respects with the terms and the provisions of any resolution of the Board and of the Act and to pay and to discharge all other charges or liens payable out of the income of the System when due and enforceable.

Section 504. Filing Copies of Schedule.

Copies of every such schedule of rates and of Annual Charges and revisions thereof shall be promptly filed with at least the Consulting Engineer.

Section 505. Compliance with Service Contract and Enforcement of Annual Charges.

The District shall so plan, schedule, and prosecute all construction on or about the System and after completion of the Project shall so operate and so maintain the System as to entitle the District at the earliest practicable time to make, impose, and collect Annual Charges pursuant to this Service Contract and in accordance with the Act. Annual Charges, however, shall at all times be fixed and collected so that the District can pay without default any obligation thereof for which provision has not otherwise been made. The District shall not release the obligations of any Municipality under this Service Contract, as from time to time amended or otherwise supplemented, shall take all reasonable measures permitted by this Service Contract or by the Act or otherwise by law, including but not limited to the enforcement measures stated in Section 610 hereof, to enforce prompt payment to it of all Annual Charges, and shall at all times (to the extent permitted by the Act or otherwise permitted by law) defend, enforce, preserve, and protect the rights, benefits, and privileges of the District and of any holder of any bond or other security of the District under or with respect to this Service Contract.

Section 506. Charges Limited to Connecting Municipalities.

Each Connecting Municipality shall be liable for the payment to the District of Charges appertaining to its Sewage Disposal System. No Associated Municipality shall be liable for the payment of any Charge of the District so long as its Sewer System or any part thereof is not directly connected with a sewer interceptor of the District which terminates at a sewage treatment and disposal plant of the District. Nothing herein contained shall be construed as preventing any Municipality from fixing and collecting by contract or otherwise rates, tolls, and other fees appertaining to its Sewer System from any Associated Municipality the Sewer System of which is connected to the Sewer System of the Municipality fixing and collecting such rates, tolls, and other fees; and nothing herein contained shall be construed as preventing the District from fixing and collecting charges from a Connecting Municipality for all sewage appertaining to its Sewer System, including without limitation sewage transported thereby but collected by the Sewer System of an Associated Municipality.

Section 507. Annual Charges in Lieu of Service Charges.

The Annual Charges payable by a Connecting Municipality to the District under the provisions of this Agreement (in the absence of any modification to the contrary hereafter by contract) are and shall be in lieu of Service Charges with regard to the Sewer System of such Municipality and to real property connected to the Sewer System of such Municipality.

Section 508. Methods for Allocation of Annual Charges and Determination of Rates.

The Annual Charges shall be allocated and rates shall be determined as provided in the method for the allocation of the Annual Charges and the method for the determination of rates, attached hereto and marked "Schedule B," and by this reference made a part hereof. The unit charges applicable with respect to sewage delivered and discharged into the System by any Connecting Municipality shall be at all times uniform as to all Connecting Municipalities for the same type, class, and amount of use or service of the System and shall give effect to quantity and quality differentials in substantially the proportions reflected by said methods and shall not be more favorable to any Connecting Municipality than the unit charges applicable with respect to sewage so delivered and discharged by any other Connecting Municipality. The District, prior to the discharge and delivery of sewage into the System, except possibly for any use of Interceptors, shall prescribe (based upon reasonable estimates of sewage quantity and quality of each Connecting Municipality and total Annual Charges of the District) an initial schedule of such unit charges according to said methods, which shall be as set forth in Schedule B; and annually after prescribing such initial schedule, the District shall similarly compute the amount of such unit charges.

Section 509. Sewer Connection Charge.

In addition to other annual or service charges, the District shall impose and collect Sewer Connection Charges in accordance with the Service Contract and "Schedule C" attached hereto, as the same may be amended or otherwise supplemented from time to time, for each new or altered connection to a sanitary sewer or sewer drainage system served by the District. The Sewer Connection Charge shall be assessed to Connecting Municipalities (including the charges for their Associated Municipality connectors and others) on the basis of the number of new or altered "single family residential equivalent" connections to a Sewer System which is directly or indirectly served by the District System. The number of single family residential equivalent connections on which a Sewer Connection Charge is based may include components of wastewater strength as well as flow. It shall be the responsibility of each Connecting Municipality to affirm and report the number of new or altered "single family residential equivalent" connections to the District.

Subject to the Bond Resolutions and other proceedings authorizing the issuance of existing and any future debt obligations of the District, revenues derived from Sewer Connection Charges shall be used to provide for the payment of debt service pertaining to capital projects and to otherwise finance capital projects. Based on reasonable projections of the District, Sewer Connection Charges for each new or altered "single family residential equivalent" shall be determined annually by the Board, as provided in Schedule C, to accomplish the purposes set forth above.

The number of new or altered "single family residential equivalent" connections assessed for each new or altered individual connection to the District System shall be determined in accordance with Schedule C.

The Sewer Connection Charges and the administration thereof as provided in Schedule C shall be reviewed annually and may be changed by Resolution duly enacted by action of the Board of Directors, without additional amendment to the Service Contract.

Section 510. Definition of New Connection and Altered Connection.

For the purposes of this Service Contract and all rules and regulations issued pursuant thereto, a "new connection" shall mean the physical attachment of a new sewer line to the sewer system serving a dwelling or building. An "altered connection" shall mean any building or premise that is reconstructed or upgraded, and either increases the number of single family living units resulting in added flows or installs a larger water service tap at the existing location. Such building or premise shall be required to pay a Sewer Connection Charge for the additional living units or increased water service tap size. A building or premise that is demolished and rebuilt shall receive a credit for the pre-existing number of single family living units if reconstructed as a residential dwelling or a credit for the previous water service tap size if reconstructed as a non-residential building at the same site.

Section 511. Applications of Sections 509 and 510.

Sections 509 and 510 of this Article shall not be construed to affect any rights to a sewer tap or permit which existed before January 1, 1982, nor to make a Connecting Municipality liable to the District for Sewer Connection Charges for connection to the system of the Municipality which were granted or contracted for before such date.

ARTICLE VI

PAYMENT BY CONNECTING MUNICIPALITIES

Section 601. Connecting Municipality's Duty to Pay Charges.

Each Connecting Municipality will pay to the District any Service Charges and the Annual Charges due therefrom to the District and relating to the System, as herein provided and pursuant to the Act.

Section 602. Certification of Estimated Charges.

On or before the first day of September 1964, and thereafter on or before the first day of September next preceding each Fiscal Year, the District shall make and deliver to each Municipality subject to the payment to the District of any Service Charge or any Annual Charges fixed thereby for such Fiscal Year the District's certificate stating the estimated amount of the Charge. Such Charges in the aggregate as so certified in any calendar year by the District to the Municipalities shall be sufficient to pay the amounts estimated to be needed by the District from Charges in the next following Fiscal Year as shown in the Annual Budget therefor. Any such certificate may adjust for the Fiscal Year in which that certificate is rendered, regardless of any other adjustment theretofore or thereafter made, the estimated Charge previously so certified to the Municipality. Each such adjustment shall be based upon revised estimates resulting from the operation and maintenance of the System by the District for a portion of the current Fiscal Year prior to the date of any such adjusted estimate.

Section 603. Preliminaries to Payment by Connecting Municipalities.

Each Connecting Municipality, after the receipt of each such certificate, shall make all budgetary and other provisions or appropriations necessary to provide for and to authorize the payment by the Connecting Municipality to the District of the Charge for the next following Fiscal Year as the Charge becomes due and payable, subject to any debit or credit resulting from any such adjusted estimate of any prior Charge and from any final adjustment of any such Charge, as hereinbefore and hereafter provided.

Section 604. Time of Payment by Connecting Municipality.

Each Connecting Municipality will pay to the District in each Fiscal Year the estimated Charge for that year in four (4) substantially equal quarterly installments, payable on or before the 15th days of March, June, September, and December in the Fiscal Year, subject to any debit or credit not theretofore made and resulting from any adjusted estimate or final adjustment of any Charge for any previous Fiscal Year.

Section 605. Final Adjustment of Each Charge.

The Charge fixed or imposed against any Municipality for each Fiscal Year shall be finally adjusted in amount, regardless of whether the original estimate thereof shall have been at any time or times adjusted prior to the time hereby fixed for the final adjustment of the amount of that Charge. The final adjustment of any Charge for any Fiscal Year shall be made on or before the last day of June next following the last day of that Fiscal Year.

Section 606. Hearing on and Notice of Final Adjustment.

Prior to making any final adjustment of any Charge for an Fiscal Year, as provided in Section 605 hereof, the District Board shall hold at a regular meeting no later than June next following the last day of that Fiscal Year a hearing on the proposed final adjustment. At the hearing any holder of any security issued by the District or any Municipality may appear in person or by agent or attorney and may present any objections he may have to the final adjustment of the Charge for such Fiscal Year. Nothing herein contained shall be construed as preventing the District from making the final adjustment after the hearing but at the same meeting at which the hearing was held. The District shall at least ten (10) days before such hearing cause a copy of such notice to be mailed to at least the Consulting Engineer.

Section 607. Time of Making Adjustments to Estimated Charges.

Notwithstanding any other provision herein, the District in its absolute discretion may adjust the estimated Charges for any Fiscal Year and may certify any debits and credits resulting therefrom to the respective Municipalities at any time or from time to time prior to the final adjustment therefor made as herein provided, whenever the Board determines that for any reason such adjustment is necessary or desirable.

Section 608. Payments to Balance Adjustments.

Any Municipality to which is certified by the District a supplemental Charge resulting from any final or other adjustment shall make provision for its payment in the next Annual Budget prepared by the Municipality and, in the manner provided in Section 604 hereof, shall pay the supplemental Charge in quarterly installments in the Fiscal Year for which that Annual Budget of the Municipality is prepared, as well as the estimated Charge payable therein, unless the Municipality has moneys available to pay, and determines to pay, the supplemental Charge prior thereto. Similarly, any Municipality to which is certified by the District any credit resulting from any final or other adjustment shall make provision therefor in the next Annual Budget prepared by the Municipality and shall thereby reduce the amount of the estimated Charge payable in the Fiscal Year for which that Annual Budget is prepared, unless the District has moneys available to pay, and does remit the amount of the credit to the Municipality, prior to the payment of the estimated Charge.

Section 609. Limitations upon Adjustment of Charges.

Whenever the District adjusts the Charges for any Fiscal Year, including but not necessarily limited to the final adjustment, the credits to Municipalities shall equal the debits to Municipalities paying Charges for that Fiscal Year, except for any supplemental Charge fixed or imposed as a reasonable penalty for any delinquency, including any interest thereon, and any reasonable attorneys' fees and any other costs of collecting any delinquency. Each such final adjustment shall be uniform within each reasonable classification and shall be based upon the actual amount and quality of sewage delivered into the System and for all actual direct or indirect connections with and all actual use and services of the System, except for any minimum charge, any charge for the availability of service or readiness to serve by the System, any reasonable penalty for any delinquency, including any interest thereon, and any reasonable attorneys' fees and any other costs of collecting any delinquency. Each adjustment not a final adjustment similarly shall be uniform within reasonable classification and shall be based upon a revised estimate of such amount of sewage, such connection, such use, and such services, subject to such exceptions.

Section 610. Enforcement.

If any payment or any part thereof due to the District from any Municipality shall remain unpaid following its due date, the Municipality shall be charged with and will pay to the District interest on the amount unpaid from its due date until paid at the rate of one per centum (1%) per month (or fraction thereof); and the District in its discretion may charge and collect Service Charges or Annual Charges from each Municipality sufficient to meet any default or deficiency in any payments herein agreed to be made by any Municipality. If in any such case Charges are so collected, the amount ultimately so collected by the District from any defaulting Municipality will be credited against the amount of such default or deficiency or any payments then or theretofore due to the District from each Municipality to offset such default or deficiency under the provisions of this Agreement. Every obligation assumed by or imposed upon any Municipality by this Agreement shall be enforceable by the District by appropriate action, suit, or proceeding at law or in equity; and the District may have and may pursue any and all remedies provided by law for the enforcement of such obligation, including the remedies and processes provided by the Act with respect to Annual Charges or other obligations, as provided in Section 505 hereof.

Section 611. Character of Obligations.

Failure on the part of the District or of any Municipality in any instance or under any circumstance to observe or to perform fully any obligation assumed by or imposed upon it by this Agreement shall not make the District liable in damages to a Municipality or relieve a Municipality from making any payment to the District or from fully performing any other obligation required of it under this Agreement; but such Municipality may have and may pursue any and all other remedies provided by law for compelling performance by the District or such other Municipality of said obligation assumed by or imposed upon the District or such other Municipality.

ARTICLE VII

ABANDONMENT OF SEWER SYSTEM FACILITIES

Section 701. Abandonment Permitted.

Any Municipality may in its sole discretion at any time abandon or, in the alternative, continue to operate, maintain, and repair all or any part of those sewage treatment or disposal facilities constituting at the time of the date of this Agreement a part of the Municipality's Sewer system, subject, however, to the provisions of Sections 303, 304, and 305 hereof.

Section 702. Notice of Abandonment.

Any Municipality, prior to abandoning any such sewage treatment or disposal facilities which abandonment will substantially increase the sewage received from its Sewer System by the District in its Sewage Disposal System, shall file written notice of the Municipality's intent to abandon the facilities designated on the date designated in the notice at least thirty (30) days prior to the date so designated with the Secretary of the District.

ARTICLE VIII

INCLUSION OF ADDITIONAL MUNICIPALITIES IN DISTRICT

Section 801. Conditions of Inclusion.

Any Municipality not a component and not comprising a part of the District on the date of this Agreement or any part of such Municipality may be included in the District as provided in Section 32-4-513 of the Act upon such terms and conditions as may be determined by the Board and upon its determination that such Municipality may feasibly be served by the facilities of the District as provided by resolution approved by a majority of the entire membership of the Board.

Section 802. Party to This Agreement.

No Municipality shall be included in the District after the date hereof unless, among any other conditions and terms so determined by the Board, the Municipality shall consent to become a party to this Service Contract, as amended, if amended, on the date of such inclusion. Any such Municipality shall execute a written instrument to that effect, filed with the Secretary of the District prior to or with the transmittal to the Division of Local Government in the Department of Local Affairs of a certified copy of the resolution of the Board including the Municipality within the District, pursuant to Section 32-4-513 of the Act. Upon the issuance of the certificate of the Division of Local Government reciting that the Municipality or the portion thereof, designated in the certificate has been duly included within the boundaries of the District, the inclusion of the Municipality or the designated territory shall be effective, and the Municipality shall simultaneously be deemed to have become a party to this Service Contract without further action by the District or by any other Municipality.

ARTICLE IX

MISCELLANEOUS

Section 901. Effective Date.

This Agreement shall be in full force and effect and be legally binding upon the District and upon each of the thirteen (13) Municipalities herein designated upon its execution and delivery by the District and by each of said Municipalities. If the District or each of said thirteen (13) Municipalities shall not have executed and delivered this Agreement within ninety (90) days from the date hereof, then neither the District nor any of said Municipalities shall be bound hereby, and these presents shall in such event be null and void and of no effect.

Section 902. Term of Agreement.

This Agreement shall be in full force and effect and shall be binding upon the parties hereto from its effective date for a period of forty-five (45) years from the date hereof or until the first day of January next following the last outstanding bond or note issued by the District, as authorized by subsections (5) or (7), respectively, of Section 32-4-523 and of all sections supplemental thereto of the Act, whichever be later. Thereafter this Agreement shall continue as a binding contract to the extent permitted by law from year to year until a District Officer or a Municipal Officer files with the Secretary or Clerk of each of the parties hereto a notice that thirty (30) days after the last such filing or on any date designated in the notice following the expiration of such thirty (30) days' period this Agreement shall then be terminated.

Section 903. Securities of District.

All bonds, notes, or other obligations of the District referred to in this Agreement or to be issued by the District shall for all purposes of this Agreement be the sole obligation of the District and shall not in any way be deemed a debt or a liability of any Municipality.

Section 904. Absence of Representations.

No party hereto makes any representation concerning the use of property, building permits required or not required, zoning regulations of any body corporate and politic, or concerning the exemption from licenses, permits, or taxes.

Section 905. Conformance with Laws.

Each party hereto agrees to abide by and to conform to all applicable laws of the Federal Government, the State, and any other body corporate and politic having any jurisdiction in the premises. Nothing in this Section contained, however, shall require any party hereto to comply with any law the validity or applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings.

Section 906. Acts of God.

No party hereto shall be responsible or liable in any way for Acts of God or any other act or acts or omissions beyond the control of such party which may in any way cause an interruption or a discontinuance of service appertaining to the Sewage Disposal System or to any Sewer System.

Section 907. Nonassignability.

No party to this Agreement may assign any interest therein to any Person without the consent of all the other parties hereto at that time, and the terms of this Agreement shall inure to the benefit of and be binding upon the respective representatives and successors of each party hereto. Nothing herein contained, however, shall be construed as preventing the reorganization of any party hereto nor as preventing any other body corporate and politic succeeding to the rights, privileges, powers, immunities, liabilities, disabilities, and duties of a party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.

Section 908. Amendments.

Subject to the rights and privileges (fixed by contract, including without limitation this Service Contract, or otherwise) of the holder or holders of any bonds or other securities of the District, this Agreement may be amended from time to time by written agreement, duly authorized and signed by representatives of all the parties hereto.

Section 909. Severability.

If any section, subsection, paragraph, clause, phrase, or other provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, subsection, paragraph, clause, phrase, or other provision shall not affect any of the remaining provisions of this Agreement.

Section 910. Execution of Documents.

This Agreement shall be executed in twenty (20) counterparts, any of which shall be regarded for all purposes as one original. Each party agrees that it will execute any and all deeds, instruments, documents, and resolutions or ordinances necessary to give effect to the terms of this Agreement.

Section 911. Waiver.

No waiver by either party of any term or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.

Section 912. Remedies.

In addition to the remedies provided by law, this Agreement shall be specifically enforceable by any party hereto.

Section 913. Entirety.

This Agreement merges and supersedes all prior negotiations, representations, and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire contract between the parties concerning the disposal of sewage by the Municipalities and the acceptance of such sewage for disposal by the District, subject, however, to the provisions of the resolution adopted by the District's Board of Directors at an adjourned regular meeting held on the 26th day of November 1963, and appertaining to the financing of the construction of the Platte River II Interceptor. Nothing herein contained shall be construed as superseding or otherwise modifying any Connector's or other agreement to which any Municipality is a party but to which the District is not a party.

EXECUTION OF THE SERVICE CONTRACT

Copies of the Execution Documents are on file in
Metro District Records Management.

METROPOLITAN DENVER SEWAGE DISPOSAL DISTRICT NO. 1

SCHEDULE A

(Attached to and part of Service Contract dated
as of the first day of January, 1964.)

LIST OF INITIAL CONNECTING, METERING, AND SAMPLING POINTS **

<u>Connecting Municipality</u>	<u>Location of Points *</u>
City of Arvada	1. Manhole No. 44 on Clear Creek Interceptor 2. Manhole No. 53 on Clear Creek Interceptor
Baker Metropolitan Water and Sanitation District	Manhole No. 17 on Clear Creek Interceptor
Berkeley Water and Sanitation District	Manhole No. 34 on Clear Creek Interceptor
City and County of Denver	1. North Side Effluent Parshall Flume 2. Primary Inlet Structure (Sand Creek Branch) at Metro Plant
North Table Mountain Water and Sanitation District	Manhole No. 137 on Clear Creek Interceptor
North Washington Street Water and Sanitation District	Manhole No. 4 on Clear Creek Interceptor
Northwest Lakewood Sanitation District	Manhole No. 103 on Clear Creek Interceptor
Westminster Sanitation District	Manhole No. 22 on Clear Creek Interceptor
Wheat Ridge Sanitation District	Manhole No. 66 on Clear Creek Interceptor

* (Nothing herein contained shall be construed as preventing the District and any Connecting Municipality from mutually agreeing upon the relocation of any connecting, metering, and sampling point appertaining thereto.)

** Updated listings of Type 1 connections are available from the District.

METRO WASTEWATER RECLAMATION DISTRICT

SCHEDULE B of the SERVICE CONTRACT and EXHIBIT B of each SPECIAL CONNECTORS AGREEMENT

Effective January 1, 2018

METHODS FOR ALLOCATION OF ANNUAL CHARGES AND DETERMINATION OF RATES

The Annual Charges and the rates for their allocation shall be determined in the following manner:

1. Annually a review of the Metro District's total costs will be made unilaterally by the District to determine the percentage of total costs associated with various cost parameters. The analysis will include consideration of operation, maintenance, and replacement expenses and capital costs associated with flows and loadings which are received at the District facilities and with customer service. Unit costs will be determined based upon the costs allocated to the various cost parameters and the total units or equivalent units which are received at the various facilities. Charges to each Connecting Municipality and Special Connector shall be based on flow volume, Biochemical Oxygen Demand (BOD), Suspended Solids (SS), Total Kjeldahl Nitrogen (TKN), and connecting, metering and sampling points (Customer Equivalent Connection Units).

2. For the year beginning January 1, 2018, the following percentages will apply:

(a) For Flow Received

Annual Flow	34.36%
BOD	23.15%
Suspended Solids	32.65%
TKN	8.71%

(b) For Customer Charges

CECU	<u>1.13%</u>
	100.00%

3. Applying these percentages to the estimated total Annual Charges and using the estimated annual sewage volume, BOD, SS, TKN, and CECU, the Metro District shall compute annually the unit charge per million gallons of sewage volume, the unit charge per ton of BOD content, the unit charge per ton of SS content, the unit charge per ton of TKN content, and the unit charge per CECU, as follows:

(a) Unit Charge for Volume Received (per MG)

$$= \frac{\text{Total Annual Volume Charge}}{\text{Total MG to System}}$$

(b) Unit Charge for BOD Received (per ton)

$$= \frac{\text{Total Annual BOD Charge}}{\text{Total Tons BOD to System}}$$

(c) Unit Charge for SS Received (per ton)

$$= \frac{\text{Total Annual SS Charge}}{\text{Total Tons SS to System}}$$

(d) Unit Charge for TKN Received (per ton)

$$= \frac{\text{Total Annual TKN Charge}}{\text{Total Tons TKN to System}}$$

(e) Unit Charge for CECU

$$= \frac{\text{Total Annual Customer Charge}}{\text{Total CECU}}$$

(prorated as necessary)

4. Each Connecting Municipality and Special Connector shall pay annually a total sum obtained by multiplying the respective unit charges thus obtained by the estimated annual volume, BOD, SS, TKN, and CECU of the sewage to be contributed by each Municipality and Special Connector to the System.

5. Following each fiscal year the actual unit charges for volume, BOD, SS, TKN, and CECU will be computed by the Metro District on the basis of actual volume, BOD, SS, TKN, and CECU to the System. The annual payments by the Connecting Municipalities and Special Connectors made on the basis of estimated unit charges shall thereafter be adjusted on the basis of the actual unit charges, and such adjustments shall be reflected in subsequent Annual Charges to be made to the Connecting Municipalities and Special Connectors.

6. In any Fiscal Year in which the Metro District collects any Annual Charges, each Connecting Municipality or Special Connector shall pay not less than \$2,000.00 in that Fiscal Year to the District:

- (a) As an availability-of-service charge, if the Connecting Municipality or Special Connector makes no use of the System, or
- (b) As a minimum charge, if the Connecting Municipality or Special Connector makes use of the System.

Any minimum charge to any Connecting Municipality or Special Connector shall be credited each Fiscal Year against the Annual Charge therefor levied against the Municipality or Special Connector without any carry-over of any remaining balance to any other Fiscal Year.

METRO WASTEWATER RECLAMATION DISTRICT

SCHEDULE C OF THE *SERVICE CONTRACT* and EXHIBIT C OF EACH *SPECIAL CONNECTORS AGREEMENT*

Effective January 1, 2018

DETERMINATION OF SEWER CONNECTION CHARGES

1. The Sewer Connection Charge for each single family residential equivalent (SFRE) connection shall be \$500¹ for the period beginning on the effective date of this amendment as set forth in Section 2 below, and shall continue in effect thereafter unless changed. The Sewer Connection Charge may be adjusted annually, effective on January 1, by Resolution of the Board of Directors not later than their certification of the Annual Charges.
2. The Sewer Connection Charge shall be effective and apply to all new or altered connections made to the Sewer System on or after January 1, 1983, or beginning the first calendar quarter following the adoption of this amendment by the required number of signators to the Service Contract, whichever is later.
3. In the event a community or area not presently served by District facilities is connected directly or indirectly to the District System after the effective date of this amendment, the Sewer Connection Charges shall apply for each individual SFRE connection existing in the community or area at the time of connection to the District System.
4. The Sewer Connection Charge will be determined directly for single family residential units. For other than single family residential, the Sewer Connection Charge will be determined by the installed water service tap size, and in some cases, by the estimated quantities of flow, BOD, SS, and TKN to be discharged to the System. The number of SFREs shall be determined as follows:
 - A. Single Family Unit means a building or structure containing only one residential unit (including a detached dwelling [single family house] and a mobile home); each residential unit in a duplex; and each residential unit having water service separately connected to the water main, in a building or structure with three or more residential units.

Number of SFREs

1.0

¹ See Page 4 of Schedule C for current rates.

B. Other Than Single Family

Water Service Tap Size Inches ²	Number of SFREs ³
3/4	2.0
1	4.8
1-1/2	11
2	20
3	43
4	86
6 or larger	See Below

For water service taps sizes 6 inches or larger, the number of SFREs for calculating the sewer connection charge shall be determined from the following formula:

$$\text{SFREs} = \frac{\text{Flow} \times \text{F}}{148} + \frac{\text{BOD} \times \text{B}}{0.3148} + \frac{\text{SS} \times \text{S}}{0.3209} + \frac{\text{TKN} \times \text{T}}{0.0494}$$

Where: Flow = estimated flow, gpd (peak month)
BOD = estimated BOD, lbs/day (peak month)
SS = estimated SS, lbs/day (peak month)
TKN = estimated TKN, lbs/day (peak month)

At a minimum, the following values shall be used in the above formulas:

<u>TAP SIZE</u>	<u>FLOW</u>	<u>BOD</u>	<u>SS</u>	<u>TKN</u>
6 inches	32,264	68.62	69.96	10.76
8 inches	48,396	102.92	104.94	16.14
10 inches	76,516	162.73	165.92	25.53

The District shall make the final determination of the estimated flow, BOD, SS, and TKN used to determine the number of SFREs for each new connection which is subject to the above formula.

Following are fractions of the Metro District's capital investment used for the treatment of flow and loadings, effective January 1, 2018:

$$\text{Flow (F)} = 0.5651$$

² Excludes water taps specifically made for fire protection purposes such as fire hydrant branches, fire sprinkler systems, standpipes, etc., and water taps specifically made for water irrigation or other purposes which do not discharge to the Sewer System.

³ New connections served by multiple new water service taps with a combined number of SFREs greater than or equal to 218 shall have the number of SFREs determined as for connections with service taps 6 inches or larger.

BOD (B) = 0.1674
SS (S) = 0.1765
TKN (T) = 0.0910

These fractions may be adjusted annually, effective on January 1, by Resolution of the Board of Directors no later than its certification of Annual Charges.

- C. When a building or premise is to be supplied either in whole or in part with water from wells or any other source that will not have a water service tap to a public water supply, "single family residential equivalent" connects will be determined and assigned based on the water tap size that such a customer would normally require if connecting to a water system. The District reserves the right to affirm or modify the assigned water tap size based upon the facts and circumstances of each individual application and case.
 - D. For connections other than residential and for water tap sizes greater than 3/4 inch, a reduction in the assignment of the "single family residential equivalent" connection may be granted where it can be demonstrated to the satisfaction of the connecting Municipality or Special Connector that sewage flow discharges will be significantly less than the sewage normally discharged from such a connection. Applications for such reductions will be made to Connecting Municipalities and special Connectors which shall approve or disapprove the reduction. In no event shall a reduction in the assignment of the "single family residential equivalent" connection, on the basis provided herein, exceed the next smaller size of water tap. For customers requesting a reduction which would exceed one smaller tap size, the provisions of Items 4B and 4C allowing separate irrigation or other taps would apply. The District reserves the right to affirm or modify any reductions in the assignment of a "single family residential equivalent" connections based upon the facts and circumstances of each individual application and case.
- 5. As provided in the Rules and Regulations for the purpose of administering the Sewer Connection Charge System, the amount of payment and the obligation for payment of Sewer Connection Charges to the District shall be based on the date a Sewer Connection permit is issued.
 - 6. The number of permits issued for new or altered individual Sewer Connections and the number of permits issued for "single family residential equivalent" connections shall be reported and the Sewer Connection Charges paid to the District within 15 days after the end of quarterly periods ending March 31, June 30, September 30, and December 31, 1983, and quarterly thereafter as long as the Board assesses a Sewer Connection Charge.

METRO WASTEWATER RECLAMATION DISTRICT
SCHEDULE C TO THE SERVICE CONTRACT
EXHIBIT C TO THE SPECIAL CONNECTOR AGREEMENTS

History of Sewer Connection Charges

Resolution No.	Sewer Connection Charge	Effective Year
0782-5.e ⁴	\$500	1983
0683-5.d	\$553	1984
0784-6.f	\$610	1985
0785-6.k	\$675	1986
0486-5.d	\$850	1987
0887-6.e	\$920	1988
0888-6.c	\$920	1989
0889-6.c	\$920	1990
0890-6.e	\$920	1991
0891-5.d	\$920	1992
0892-6.g	\$850	1993
0893-6.g	\$905	1994
0894-6.c	\$905	1995
0895-6.c	\$1,210	1996
0896-6.f	\$1,250	1997
0897-7.g	\$1,320	1998
0898-6.e	\$1,375	1999
0899-6.f	\$1,375	2000
0800-6.c	\$1,375	2001
0801-6.c	\$1,400	2002
0802-6.f	\$1,490	2003
0803-6.c	\$1,600	2004
0804-5.c	\$1,740	2005
0805-6.c	\$1,820	2006
0806-6.c	\$1,980	2007
0807-6.c	\$2,150	2008
0808-6.c	\$2,320	2009
0809-5.c	\$2,600	2010
0810-7.g	\$2,890	2011
0711-7.c	\$3,310	2012
0712-6.c	\$3,960	2013
0713-7.g	\$3,960	2014
0714-7.d	\$3,960	2015
0715-7.b	\$4,220	2016
0716-7 b	\$4,220	2017

Schedule C/Exhibit C.doc

⁴ This Resolution established the Sewer Connection Charge System and first Sewer Connection Charge effective January 1, 1983.

NOTE: This History of Sewer Connection Charges is included for information only and is not a part of the *Sewage Treatment and Disposal Agreement* or the *Special Connector Agreements*.



METRO WASTEWATER RECLAMATION DISTRICT
formerly
Metropolitan Denver Sewage Disposal District No. 1

**6450 York Street
Denver, Colorado 80229
(303) 286-3000**

**SEWAGE TREATMENT
AND
DISPOSAL AGREEMENT
(SERVICE CONTRACT)
WITH
THE CITY OF FORT LUPTON**

XXXX X, 2021

ARTICLE VIII

INCLUSION OF ADDITIONAL MUNICIPALITIES IN DISTRICT

Section 801. Conditions of Inclusion.

Any Municipality not a component and not comprising a part of the District on the date of this Agreement or any part of such Municipality may be included in the District as provided in Section 32-4-513 of the Act upon such terms and conditions as may be determined by the Board and upon its determination such Municipality may feasibly be served by the facilities of the District as provided by resolution approved by a majority of the entire membership of the Board.

- A. The District built the Northern Treatment Plant (NTP) at a site northwest of the intersection of 168th Avenue (Weld County Road 2) and Highway 85 and constructed a lower South Platte Interceptor (SPI) to the NTP. No later than December 31, 2025, with the option to extend one-year to December 31, 2026 (Connection Option), the City of Fort Lupton (Fort Lupton) will connect to either NTP or SPI and begin to send all flows to the NTP in full compliance with the terms of Section 302 of this Service Contract (hereinafter, "Date of Connection"). The Connection Option shall commence upon the Execution Date and expire on December 31, 2022. Fort Lupton may exercise the Connection Option at any time on or prior to December 31, 2022, by providing written notice of exercise to the District, which will automatically extend the deadline to connect to December 31, 2026.
- B. Upon execution of this Service Contract (Execution Date), Fort Lupton shall submit to the District an inventory of all existing connections to its tributary sewer system as of the date of execution of this Service Contract, which identifies all Single Family Units, and the number of Single Family Residential Equivalents (SFREs) for all property other than Single Family Units, as described in Schedule C of this Service Contract (Inventory).
- C. After the Execution Date the Inventory will be subject to review and audit by the District. If the District discovers any errors in the Inventory, the District will reconcile and correct the Inventory as necessary. The District will provide Fort Lupton with the audited Inventory.
- D. After the Execution Date and before payment is made pursuant to subparagraph E below, it is Fort Lupton's ongoing responsibility to update the Inventory to include (1) any existing connection identified on the Inventory which is altered after the Execution Date, or (2) a connection to Fort Lupton's tributary system which existed prior to the Execution Date which was not included in the Inventory provided to the District under subparagraph B (Omitted Existing Connection). Fort Lupton must provide the District with such updated Inventory within thirty (30) calendar days of discovering the altered or Omitted Existing Connection. Such updated Inventory will be subject to review and audit by the District. If the District discovers an error in the updated Inventory, then the District will reconcile and correct the updated Inventory as necessary. The District will provide Fort Lupton with the audited updated Inventory.
- E. After the Execution Date and no later than December 31, 2022 with the option to

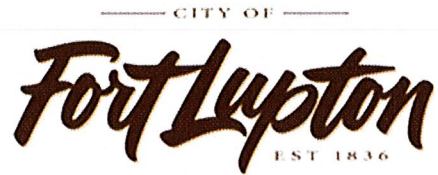
extend one year to December 31, 2023 (Payment Option), Fort Lupton will pay Sewer Connection Charges for all existing connections to its tributary sewer system identified in the Inventory (Total Sewer Connection Charges), as audited under either subparagraph C or D, at the Sewer Connection Charge rate in effect at the time payment is made. The Payment Option shall commence upon the Execution Date and expire on December 31, 2022. Fort Lupton may exercise the Payment Option at any time on or prior to December 31, 2022, by providing written notice of exercise to the District (Payment Option Notice), which will automatically extend the payment deadline for the Total Sewer Connection Charges to December 31, 2023. If Fort Lupton exercises the Payment Option, Fort Lupton shall be responsible for paying the District \$1,500,000 within thirty (30) days of the date the District receives the Payment Option Notice. The \$1,500,000 will be credited towards the Total Sewer Connection Charges.

- F. After the Execution Date, Fort Lupton will pay Sewer Connection Charges for all new connections to its tributary system which did not exist as of the Execution Date anywhere in its service area in accordance with the terms of Sections 509 and 510 of this Service Contract and any Rules and Regulations issued pursuant thereto.
- G. Pursuant to Section 302 of this Service Contract and subject to subparagraph A above, Fort Lupton may continue to operate its existing sewage treatment plant after the Execution Date of this Service Contract provided its discharge into surface or ground water of the State would not cause or constitute a violation of any laws of the State relating to said waters or of any valid regulation or requirement relating to said waters made pursuant to said laws by the State. Fort Lupton shall not be deemed to be out of compliance with this provision of Section 302 so long as its permit for its sewage treatment plant is valid with the State.
- H. Pursuant to Sections 304 and 305 of this Service Contract, Fort Lupton stipulates and agrees the capacity of its sewage treatment plant as of the Execution Date of this Service Contract is 2.75 million gallons per day ("MGD") (annual average). Fort Lupton specifically waives any rights it may have under Sections 304 or 305 to request an increase in the capacity of that sewage treatment plant beyond 2.75 MGD after the Execution Date of this Service Contract. If at any time Fort Lupton reduces the rated capacity of its sewage treatment plant, other than a temporary reduction in capacity due to construction, process, or equipment failure, or other temporary conditions, so that it falls below 2.75 MGD because of improvements made in conformance with Section 302, the treatment plant's capacity shall be limited to and shall not exceed the lowest rated capacity.
- I. Pursuant to the terms of Section 702 of this Service Contract, Fort Lupton will decommission and abandon its existing sewage treatment plant within three months following the Date of Connection.
- J. Fort Lupton shall not send any Sewage to the NTP or the Robert W. Hite Treatment Facility in excess of the amount of SFREs which have been paid through Sewer Connection Charges.

Section 802. Party to This Agreement.

No Municipality shall be included in the District after the date hereof unless, among any other conditions and terms so determined by the Board, the Municipality shall consent to become a party to this Service Contract, as amended, if amended, on the date of such inclusion. Any such Municipality shall execute a written instrument to that effect, filed with the Secretary of the District prior to or with the transmittal to the Division of Local Government in the Department of Local Affairs of a certified copy of the resolution of the Board including the Municipality within the District, pursuant to Section 32-4-513 of the Act. Upon the issuance of the certificate of the Division of Local Government reciting that the Municipality or the portion thereof, designated in the certificate has been duly included within the boundaries of the District, the inclusion of the Municipality or the designated territory shall be effective, and the Municipality shall simultaneously be deemed to have become a party to this Service Contract without further action by the District or by any other Municipality.

**CITY OF FORT LUPTON
CITY COUNCIL**



Shannon Rhoda, Ward 1
Chris Ceretto, Ward 2
Michael Sanchez, Ward 3

Zo Stieber, Mayor

David Crespín, Ward 1
Tommy Holton, Ward 2
Bruce Fitzgerald, Ward 3

AM 2021-145

**ADOPT ORDINANCE TO ACCEPT PUBLIC RIGHT OF WAY FROM MCINTOSH FARM CO LLLP
FOR 250 FEET OF THE NORTHERN PORTION OF COUNTY ROAD 16**

I. **Agenda Date:** Council Meeting – September 7, 2021

II. **Attachments:** a. Ordinance 2021-11XX
b. Dedication of ROW

III. **Summary Statement:**

To accept the dedication of a 42.5-foot wide public Right of Way located north of the centerline of County Road 16 approximately 250-feet along the frontage of the McIntosh special use permit site plan, in the Southwest ¼ of Section 29, Township 2 North, Range 66W from McIntosh Farm CO LLLP.

IV. **Submitted by:**

Roy Vestal, Public Works Director

V. **Finance Reviewed**

Finance Director

VI. **Approved for Presentation:**

City Administrator

VII. **Attorney Reviewed**

Approved

Pending Approval

VIII. **Certification of Council Approval:**

City Clerk

Date

IX. Detail of Issue/Request:

The Heavy Repair Shops Site Plan was required to dedicate Right of Way along County Road 16 as part of the planning process (Road 16 Annexation) approved with Resolution No. 2013R008 on March 11, 2013.

CR 16 is designated as a Collector in the City's Transportation Plan with a future ROW of 85-feet required.

This dedication includes property from section line (southern property line) to 42.55-feet north for ROW dedication.

X. Legal/Political Considerations:

Not Applicable.

XI. Alternatives/Options:

- *Accept Dedication*
- *Do nothing*

XII. Financial Considerations:

Not applicable.

XIII. Staff Recommendation:

City staff recommends acceptance of the 42.5-feet of public Right-of-Way from McIntosh Farms CO LLLP.

ORDINANCE NO. 2021-xxxx

INTRODUCED BY:

AN ORDINANCE OF THE CITY COUNCIL OF FORT LUPTON ACCEPTING THE MCINTOSH FARM CO LLLP PUBLIC RIGHT OF WAY DEDICATION FOR CR 16 LOCATED IN THE SOUTHWEST ¼ OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, WELD COUNTY, COLORADO.

NOW THEREFORE BE IT RESOLVED that City Council hereby accepts said Dedication, and orders that the Instrument of Dedication be recorded in the Recorder's Office of the County of Weld, State of Colorado, and said described real estate is hereby declared open and dedicated pursuant to C.R.S. § 24-68-101, et seq.

WHEREAS, Kenneth R. McIntosh, has this day filed with the City of Fort Lupton, Colorado (the "City"), its dedication of certain real estate, which Dedication is hereinabove set forth:

AND WHEREAS, the City finds that said Dedication is desirable and necessary;

THIS RIGHT OF WAY IS CREATED AND GRANTED THIS 7th DAY OF SEPTEMBER 2021.

INTRODUCED, READ, AND PASSED ON FIRST READING, AND ORDERED PUBLISHED this 7th Day of September 2021.

PUBLISHED in the Fort Lupton Press the 15th day of September 2021.

FINALLY READ BY TITLE ONLY, PASSED AND ORDERED PUBLISHED BY TITLE ONLY this __ day of __ 2021.

PUBLISHED BY TITLE ONLY the _____ day of _____ 2021.

EFFECTIVE (after publication) the _ day of _ 2021.

CITY OF FORT LUPTON, COLORADO

Zo Stieber, Mayor

ATTEST:

Maricela Peña, City Clerk

Approved as to form:

Andy Ausmus, City Attorney

DEDICATION OF PUBLIC RIGHT OF WAY

The undersigned being the fee simple owner of all the real estate described herein, for good and valuable consideration, does hereby grant and dedicate to the City of Fort Lupton, Weld County, Colorado, on and behalf of and for the public, for use as right-of-way for public purposes, the following described real estate situated in Weld County, Colorado, the portion of CR 16 right of way being dedicated is described as all of that portion lying between the existing Section line (centerline of CR 16) north 42.50 feet for a distance of approximately 250 feet along the southern property line, more particularly described on Exhibit A, and as shown on the sketch, attached hereto and made a part hereof.

This dedication is made subject to all existing easements and rights-of-way.

The Grantor hereby covenants that it is the owner in fee simple of the real estate, is lawfully seized thereof, and has the authority to grant and convey the foregoing right of way, and guarantees the quiet possession thereof, and that Grantor will warrant and defend the Grantee's title to the right of way hereby granted against all claims.

THIS RIGHT OF WAY CREATED AND GRANTED THIS 24 DAY OF August, 2021.

LAND + OWNER / GRANTOR:

Keth McIntosh
McIntosh Farm CO LLLP
Sign Name

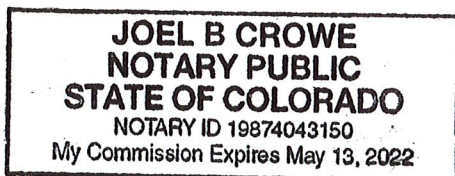
Attested to:

Joel B. Crowe
Notary

STATE OF COLORADO)
)SS.
COUNTY OF WELD)

Subscribed and sworn to before me this 24th day of August, 2021 by Kenneth xxxx *RM McIntosh*
Sign Name

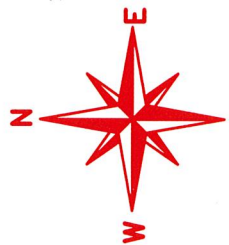
Witness my hand and official seal.



Joel B. Crowe
NOTARY PUBLIC

"EXHIBIT A"

LOT 1
±10.00 ACRES



ORIGINAL
SCALE: 1" = 100'



42.5' FOR ROAD
RIGHT-OF-WAY

30' (HALF) ROAD
RIGHT-OF-WAY
PER BOOK 86, PAGE 273

S 89°30'39" W 515.05'

30' ADDITIONAL R.O.W.
BY THIS PLAT

60' ROAD ROW
CONTAINS ±0.71 ACRES

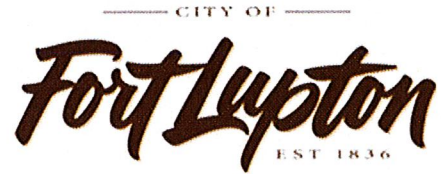
S 89°30'39" W 515.11'

WELD COUNTY ROAD 16

SOUTH 1/4 CORNER
SEC. 29, T2N, R66W
FOUND 2" ALUMINUM CAP
MONUMENT PLS 25937 IN
MONUMENT BOX

PORTION OF NORTH LAND P.L.D.
NOT A PART OF THIS PLAT

**CITY OF FORT LUPTON
CITY COUNCIL**



Shannon Rhoda, Ward 1
Chris Ceretto, Ward 2
Michael Sanchez, Ward 3

Zo Stieber, Mayor

David Crespino, Ward 1
Tommy Holton, Ward 2
Bruce Fitzgerald, Ward 3

AM 2021-146

**RATIFYING THE MAYOR'S SIGNATURE FOR CONTRACT AGREEMENT
WITH CDOT FOR STATE HIGHWAY MAINTENANCE.**

I. **Agenda Date:** Council Meeting – September 7, 2021

II. **Attachments:** a. CDOT Contract

III. **Summary Statement:**

To ratify the Mayor's signature on the contract with CDOT for maintenance services on Hwy 52 and US 85B.

IV. **Submitted by:**

Roy Vestal, Public Works Director

V. **Finance Reviewed**

Leanne Perino
Finance Director

VI. **Approved for Presentation:**

[Signature]
City Administrator

VII. **Attorney Reviewed**

Approved

Pending Approval

VIII. **Certification of Council Approval:**

City Clerk

Date

IX. Detail of Issue/Request:

The State has the responsibility to maintain state highways and contracts with local agencies for assistance to maintain the roadways within the jurisdiction. The annual payment by the state to the city will be \$13,543.00 (\$725.00 / lane mile). City Limits are currently from CR 21 to CR 35 along Hwy 52.

Contracted maintenance functions include:

*Pavement patching / minor repairs,
Crack sealing pavements
Base stabilization and repair,
Fence cleaning and maintenance,
Sign post installation, maintenance and replacement,
Delineator, reference post installation, maintenance and replacement,
Guard rail maintenance, installation and replacement,
Bridge / Structure painting,
Snow removal and traction application.*

City public works is capable of performing these maintenance activities and has done so in the past. The contract agreement period is for 4.75-years.

X. Legal/Political Considerations:

None

XI. Alternatives/Options:

Acceptance and signing of the agreement is required to receive the funds.

- 1. Ratify the Mayor's signature*
- 2. Not Ratify the Mayors signature*

XII. Financial Considerations:

The City receives \$9,439.50 per year under the current CDOT maintenance contract. The General Fund budget for 2022 will include the increase to \$13,543.00.

XIII. Staff Recommendation:

Staff recommends Council ratify the Mayor's signature on the Contract Agreement with CDOT.

(State SHWY Mtce)
CITY OF FORT LUPTON

Rev 10/03
Region: 4 (JSW)

CONTRACT

THIS AGREEMENT is entered into by and between CITY OF FORT LUPTON (hereinafter called the “Local Agency” or “Contractor”), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the “State” or “CDOT”).

RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs. Contract Encumbrance Amount: \$0.00.
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Section 43-2-135(1)(i) C.R.S., as amended, requires the State to install, operate, maintain and control, at State expense, all traffic control devices on the state highway system within cities and incorporated towns.
4. The parties desire to enter this Contract for the Contractor to provide some or all of the certain Highway maintenance services on state highways that are the responsibility of the State under applicable law, and for the State to pay the Contractor a reasonable negotiated fixed rate for such services.
5. The parties also intend that the Contractor shall remain responsible to perform any services and duties on state highways that are the responsibility of the Contractor under applicable law, at its own cost.
6. The State and the Contractor have the authority, as provided in Sections 29-1-203, 43-1-106, 43-2-103, 43-2-104, and 43-2-144 C.R.S., as amended, and in applicable ordinance or resolution duly passed and adopted by the Contractor, to enter into contract with the Contractor for the purpose of maintenance of traffic control devices on the state highway system as hereinafter set forth.
7. The Contractor has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Local Agency shall perform all Maintenance Services for the specified locations located within the Local Agency's jurisdiction and described in **Exhibit A**. Such services and highways are further detailed in Section 5.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this Contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in section 22 of this Contract
2. This Contract
3. **Exhibit A** (Scope of Work)
4. **Exhibit C** (Option Letter)
5. **Exhibit D** (Encumbrance Letter).

Section 3. Term

This contract shall be effective upon the date signed/approved by the State Controller, or designee, or on October 1, 2021, whichever is later. The term of this contract shall terminate on June 30, 2026. Provided, however, that the State's financial obligation for each subsequent, consecutive fiscal year of that term after the first fiscal year shall be subject to and contingent upon funds for each subsequent year being appropriated, budgeted, and otherwise made available therefor.

Section 4. Project Funding and Payment Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as may be evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of any such ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

- B. Subject to the terms of this Contract, for the satisfactory performance of the Maintenance Services on the Highways, as described in Section 5, the State shall pay the Local Agency on a lump sum basis, payable in monthly installments, upon receipt of the Local Agency's statements, as provided herein.
- C. The Local Agency will provide Maintenance Services as described in **Exhibit A**, for a **total maximum amount of \$7,079.63 for FY22 (partial) and \$9,439.50 per State fiscal year (FY23 through FY26), with a maximum contract total shall not exceed the cumulative total of \$44,837.63**. The negotiated rate per mile shall remain fixed for the full term of the contract, unless this rate is renegotiated in accord with the procedure set forth herein in Section 17. The total payments to the Local Agency during the term of this contract shall not exceed that maximum amount, unless this contract is amended. The Local Agency will bill the State monthly and the State will pay such bills within 45 days.
- D. The State shall pay the Local Agency for the satisfactory operation and maintenance of traffic control devices under this agreement at the rates described in **Exhibit A**.
- E. The statements submitted by the Local Agency for which payment is requested shall contain an adequate description of the type(s) and the quantity(ies) of the Maintenance Services performed, the date(s) of that performance, and on which specific sections of the Highways such services were performed, in accord with standard Local Agency billing standards.
- F. If the Local Agency fails to satisfactorily perform the Maintenance Services or if the statement submitted by the Local Agency does not adequately document the payment requested, after notice thereof from the State, the State may deduct and retain a proportionate amount from the monthly payment, based on the above rate, for that segment or portion.

Section 5: State & Local Agency Commitments:

- A. The Local Agency shall perform the Maintenance Services for the certain State Highway System locations described herein. Such services and locations are detailed in **Exhibit A**.
- B. The Local Agency shall operate and maintain the highway miles as listed on **Exhibit A**. As used herein the term "maintenance services" shall mean only those maintenance services normally performed by the State to comply with its responsibility under §§43-2-102 and 43-2-135, C.R.S., as described in the State's then current "Maintenance Management Information Manual", as amended, which is incorporated herein by this reference. The Local Agency shall obtain a copy of that Manual from the State before it performs any Maintenance Services under this contract. Maintenance Services do not include reconstruction of portions of the highways destroyed by major disasters, fires, floods, or Acts of God. Provided, however, that the Local Agency shall give the State immediate notice of the existence of any such conditions on the Highways.)
 - 1. Maintenance Services to be performed by the Local Agency, at State expense, for the Highways under this contract shall include (without limitation) the following services:
 - a. Removal of snow, sanding and salting.
 - b. Patching, making safe, repairing, spot reconditioning, spot stabilization and spot seal coating, including shoulders, and damage caused by ordinary washouts.
 - c. Painting of bridges, of other structures, and of highway appurtenances.
 - d. Warning the State's representative of any "dangerous condition" (as defined in §24-10-103(1) C.R.S., as amended), and/or repairing that condition.
 - e. Inspecting State Highway signing and regulatory devices on the Highways at least weekly and notifying the State's Regional Transportation Director as soon as the Local Agency has notice of any State Highway signing and regulatory devices in need of repair.
 - 2. Local Agency shall also continue to perform, at its own expense, all activities/duties on the Highways that Local Agency is required to perform by §43-2-135 (1) (a) and (e), C.R.S., as amended, including, but not limited to: cutting weeds and grasses within the State's right of way; fence maintenance; cleaning of roadways, including storm sewer inlets and catch basins; cleaning of ditches; and repairing of drainage structures, excluding storm sewers.
- C. The Local Agency shall perform all Maintenance Services on an annual basis. The Local Agency's performance of such services shall comply with the same standards that are currently used by the State for the State's performance of such services, for similar type highways with similar use, in that year, as determined by the State. The State's Regional Transportation Director, or their representative, shall determine the then current applicable maintenance standards for the Maintenance Services. Any standards/directions provided by the State's representative to the Local Agency concerning the Maintenance Services shall be in writing. The Local Agency shall contact the State Region office and obtain those standards before the Local Agency performs such services.
- D. The Local Agency shall perform the Maintenance Services in a satisfactory manner and in accordance with the terms of this contract. The State reserves the right to determine the proper quantity and quality of the

Maintenance Services performed by the Local Agency, as well as the adequacy of such services, under this contract. The State may withhold payment, if necessary, until Local Agency performs the Maintenance Services to the State's satisfaction. The State will notify the Local Agency in writing of any deficiency in the Maintenance Services. The Local Agency shall commence corrective action within 24 hours of receiving actual or constructive notice of such deficiency: a) from the State; b) from its own observation; or c) by any other means. In the event the Local Agency, for any reason, does not or cannot correct the deficiency within 24 hours, the State reserves the right to correct the deficiency and to deduct the actual cost of such work from the subsequent payments to the Local Agency, or to bill the Local Agency for such work.

Section 6. Record Keeping

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State and FHWA to inspect the project and to inspect, review and audit the project records.

Section 7. Termination Provisions

This contract may be terminated as follows:

- A. This Contract may be terminated by either party, but only at the end of the State fiscal year (June 30), and only upon written notice thereof sent by registered, prepaid mail and received by the non-terminating party, not later than 30 calendar days before the end of that fiscal year. In that event, the State shall be responsible to pay the Local Agency only for that portion of the highway Maintenance Services actually and satisfactorily performed up to the effective date of that termination, and the Local Agency shall be responsible to provide such services up to that date, and the parties shall have no other obligations or liabilities resulting from that termination. Notwithstanding subparagraph A above, this contract may also be terminated as follows:
- B. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- C. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract. Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined. If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.
- D. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

Section 8. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

Section 9. Representatives and Notice

The State will provide liaison with the Local Agency through the State's Region Director, Region 4, 10601 West 10th Street, Greeley, Co 80634. Said Region Director will also be responsible for coordinating the State's activities under this contract and will also issue a "Notice to Proceed" to the Local Agency for commencement of the Work. All communications relating to the day-to-day activities for the work shall be exchanged between representatives of the State's Transportation Region 4 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either party may from time to time designate in writing new or substitute representatives.

If to State

CDOT Region: 4
Justin Decker, LTC Ops I
Project Manager
10601 West 10th Street
Greeley, CO 80634
(970) 350-2155

If to the Local Agency

City of Fort Lupton
Chris Cross
Public Works
130 South McKinley Avenue
Fort Lupton, CO 80621
303-857-6694

Section 10. Successors

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

Section 11. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

Section 12. Governmental Immunity

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

Section 13. Severability

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 14. Waiver

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 15. Entire Understanding

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 16. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 17. Modification and Amendment

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

A. Amendment

Either party may suggest renegotiation of the terms of this contract, provided that the contract shall not be subject to renegotiation more often than annually, and that neither party shall be required to renegotiate. If the parties agree to change the provisions of this contract, the renegotiated terms shall not be effective until this Contract is amended/modified accordingly in writing. Provided, however, that the rates will be modified in accordance with applicable cost accounting principles and standards (including sections 24-107-101, et seq., C.R.S. and implementing regulations), and be based on an increase/decrease in the "allowable costs" of performing the Work. Any such proposed renegotiation shall not be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved by the State Controller or delegee. Any such rate change will go into effect on the first day of the first month following the amendment execution date.

B. Option Letter

- a. The State may increase/decrease the quantity of goods/services described in **Exhibit A** at the same unit prices (rates) originally established in the contract. The State may exercise the option by written notice to the Local Agency in a form substantially equivalent to **Exhibit C**.
- b. As a result of increasing/decreasing the locations, the State may also unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices (rates) originally established in the contract and the schedule of services required, as set by the terms of this contract. The State may exercise the option by providing a fully executed option to the Local Agency, in a form substantially equivalent to **Exhibit C**, immediately upon signature of the State Controller or an authorized delegate. The Option Letter shall not be deemed valid until signed by the State Controller or an authorized delegate. Any such rate change will go into effect on the first day of the first month following the option letter execution date.

C. State Encumbrance Letter

The State may encumber the funds up to the maximum amount allowed during a given fiscal year by unilateral execution of an encumbrance letter in a form substantially equivalent to **Exhibit D**. The State shall provide a fully executed encumbrance letter to the Local Agency after execution. Delivery/performance of the goods/services shall continue at the same rate and under the same terms as established in the contract.

Section 18. Disputes

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract, which is not disposed of by agreement, will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and

serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

Section 19. Does not supersede other agreements

This contract is not intended to supersede or affect in any way any other agreement (if any) that is currently in effect between the State and the Local Agency for other “maintenance services” on State Highway rights-of-way within the jurisdiction of the Local Agency. Also, the Local Agency shall also continue to perform, at its own expense, all such activities/duties (if any) on such State Highway rights-of-ways that the Local Agency is required by applicable law to perform.

Section 20. Subcontractors

The Local Agency may subcontract for any part of the performance required under this contract, subject to the Local Agency first obtaining approval from the State for any particular subcontractor. The State understands that the Local Agency may intend to perform some or all of the services required under this contract through a subcontractor. The Local Agency agrees not to assign rights or delegate duties under this contract [or subcontract any part of the performance required under the contract] without the express, written consent of the State; which shall not be unreasonably withheld. Except as herein otherwise provided, this agreement shall inure to the benefit of and be binding only upon the parties hereto and their respective successors and assigns.

Section 21. Statewide Contract Management System

If the maximum amount payable to Local Agency under this contract is \$100,000 or greater, either on the Effective Date or at any time thereafter, this **§Statewide Contract Management System** applies.

Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of Local Agency performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Local Agency’s performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Local Agency’s performance shall be part of the normal contract administration process and Local Agency’s performance will be systematically recorded in the statewide contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Local Agency’s obligations under this contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Local Agency’s obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the contract term. Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation, and showing of good cause, may debar Local Agency and prohibit Local Agency from bidding on future contracts. Local Agency may contest the final Evaluation, Review and Rating by: **(a)** filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or **(b)** under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Local Agency, by the Executive Director, upon showing of good cause.

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Section 22. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in *italics*.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law,

(ii) shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

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Section 23. SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

THE LOCAL AGENCY CITY OF FORT LUPTON Name: _____ (print name) Title: _____ (print title) _____ *Signature Date: _____	STATE OF COLORADO Jared S. Polis Department of Transportation By _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director Date: _____
2nd Local Agency Signature if needed Name: _____ (print name) Title: _____ (print title) _____ *Signature Date: _____	STATE OF COLORADO LEGAL REVIEW Philip J. Weiser, Attorney General By _____ Signature – Assistant Attorney General Date: _____

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Colorado Department of Transportation Date: _____

Exhibit A - Scope of Work

Colorado Department of Transportation Scope of work for Maintenance performed duties by the City of Fort Lupton.

The Local Agency shall perform all "maintenance services" for the State Highway and US Highway System segments described herein, US 85E MP 0.000 to MP 1.515, SH52A MP 19.643 to MP 22.460, located within the Local Agency's jurisdiction, for a total of 4.332 center line miles which is equivalent to 13.02 lane miles, as detailed in Exhibit A, attached hereto and incorporated herein by this reference. To include current and future park-and-ride locations within the local Agencies jurisdiction. All work will be performed in accordance to standards set by the state maintenance section.

Section 43-2-102 and 103, C.R.S require the state to maintain state highways (including where such highways extend through a city or an incorporated town), and 43-2-135 describes certain specific responsibilities of the State and affected local entities (respectively) with respect to state highways that are also part of a local street system;

The parties also intend that the Local Agency shall remain responsible to perform any services and duties on state highways that are the responsibility of the Local Agency under applicable law, at its own cost;

The Local Agency has adequate facilities to perform the desired maintenance services on State highways within its jurisdiction.

<u>US 85E</u> MP 0.000 to MP 1.515		<u>4.56 lane miles</u>	
<u>SH52A</u> MP 19.643 to MP 22.460		<u>8.46 lane miles</u>	
~17.44 (CR21)	~24.5 (CR35)	14.12	18.68
		13.02 lane miles x \$725.00 per lane mile	
		\$13,543.00	\$9,439.50 per year payment to The City of Ft. Lupton
		\$9,439.50 per year payment x 4.75 years \$44,837.63	
		\$64,329.25	

FLEXIBLE PAVEMENT PATCHING/ MINOR REPAIRS

Patching small areas of bituminous roadway curb and ditch to correct abrupt depressions, potholes, edge failure or surface cracking, buckling, or spalling. Includes work with the small patch machine, curb machine and planning done with motor grader. All hand patching and minor curb and gutter repair of bituminous material to be shown under this activity.

RIGID PAVEMENT PATCHING/ MINOR REPAIRS

Patching small areas of concrete roadway, curb and ditch to correct abrupt depressions, potholes, edge failure or surface cracking, buckling, or spalling. Includes patching of P.C.C. pavement with bituminous concrete. All hand patching and minor curb and gutter repair of concrete material to be shown under this activity.

CRACK SEALING FLEXIBLE PAVEMENT- HAND

Deterioration of bituminous pavement due to excessive cracking and spalling. Cleaning and filling cracks in roadway surface with crack filler material to prevent spalling and entry of water and debris.

CRACK & JOINT SEALING RIGID PAVEMENT-HAND

Deterioration of concrete pavement due to excessive cracking, spalling and joint failure. Cleaning and filling cracks and joints in roadway surface with crack and joint filler material to prevent spalling and e of water and debris. Includes routing joints, and replacement of backer rods and joints.

BASE STABILIZATION AND REPAIR

Removal and replacement of base and surface material using premixed bituminous material and/or required base material to correct severe cracking, upheavals, and base failures. Includes raising and leveling concrete slabs by mud jacking.

FENCE, GATE, CATTLEGUARD CLEANING & MAINTENANCE

Repair, replace or install fence, cattle guards and gates located on or within the Right-of-Way limits. Clean dirt, vegetation or debris from fence line. Also includes any fence taken down and not replaced (with landowner consent, if applicable).

SINGLE POST SIGN - INSTALLATION, MAINTENANCE & REPLACEMENT

Install, replace or repair signs and signpost damaged by accident, vandalism or deterioration. Includes single-posted outdoor advertising sign, mailbox repair, and all breakaway features on signs. Report to this Activity when new signs are being installed where none previously existed or when removing single-posted outdoor advertising signs.

MULTI POST SIGN - INSTALLATION, MAINTENANCE & REPLACEMENT

Install, replace or repair signs and signpost damaged by accident, vandalism or deterioration. Includes two or more posted outdoor advertising sign, mailbox repair, and all breakaway features on signs. Report to this Activity when new signs are being installed where none previously existed or when removing multi-posted outdoor advertising signs.

DELINEATOR, REFERENCE POST INSTALLATION, MAINTENANCE & REPLACEMENT

Install, straighten, paint, clean or replace delineator posts, reflectors, or reference posts to maintain desired traffic control. Includes the posts for delineators and reference posts (mile marker posts) and guardrail and median barrier delineation.

METAL GUARD RAIL MAINTENANCE, INSTALLATION, STRAIGHTENING

New installation, repair, replace, clean or remove rail sections, SRT or Safety end treatments, post and hardware damaged by accident, vandalism or normal deterioration. Includes damaged metal guardrail with straightening machine.

CONCRETE GUARDRAIL MAINTENANCE & INSTALLATION

Repair, installation and maintenance of all concrete guardrail.

BRIDGE / STRUCTURE PAINTING

Painting of all structural members and railings to prevent deterioration. This will include the preparation for painting. Also includes painting done to cover graffiti.

SNOW REMOVAL & TRACTION APPLICATION (SANDING, DEICERS)

Removing snow, ice and slush from the roadway, shoulders and ramps; plowing or blading with trucks or graders to keep roads open and reduce weather related hazardous driving conditions, including the application of chemicals and abrasives to continuous sections of roadway or isolated spots.

EXHIBIT B – LOCAL AGENCY RESOLUTION

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION
(if applicable)**

EXHIBIT C - SAMPLE OPTION LETTER

SAMPLE IGA OPTION LETTER

Highway or Traffic Maintenance

(This option has been created by the Office of the State Controller for CDOT use only)

Date:	State Fiscal Year:	Option Letter No.	Routing #
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Vendor name:

1) SUBJECT:

Change in the amount of goods within current term.

2) REQUIRED PROVISIONS:

In accordance with Section 17 of contract routing number insert FY, agency code & routing #, between the State of Colorado, Department of Transportation, and insert Local Agency name the state hereby exercises the option to an increase/decrease in the amount of goods/services at the same rate(s) specified in Exhibit A.

The amount of the current Fiscal Year contract value (encumbrance) is increased/decreased by \$ amount of change to satisfy services/goods ordered under the contract for the current fiscal year insert fiscal year. The Contract Encumbrance Amount in Recital 1 is hereby modified to \$amount of new annual encumbrance, and Section 4, B, 1 shall also be modified to show the annual not to exceed amount to \$amount of new annual encumbrance and the Contract (five-year term) not to exceed amount shall be modified to \$amount of the new five-year maximum.

The total contract value to include all previous amendments, option letters, etc. is \$insert accumulated/total encumbrance amount.

3) EFFECTIVE DATE:

The effective date of this Option Letter is upon approval of the State Controller or delegate, whichever is later.

APPROVALS:

State of Colorado:

JARED S. POLIS, GOVERNOR

By: _____ Date: _____
Stephen Harelson, P.E., Chief Engineer, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Local Agency is not authorized to begin performance until such time. If Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay Local Agency for such performance or for any goods and/or services provided hereunder.

State Controller
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

Form date: August 16, 2013

EXHIBIT D – SAMPLE ENCUMBRANCE LETTER

ENCUMBRANCE LETTER

Date:	State Fiscal Year:	Encumbrance Letter No.	Routing #:
		Orig. IGA:	PO:

1) **Encumber fiscal year funding in the contract.**

2) **PROVISIONS:** In accordance with Section 4 and Exhibit C of the original Contract routing number Orig Routing # between the State of Colorado, Department of Transportation, and Contractor's Name, covering the term July 1, Year through June 30, Year, the State hereby encumbers funds for the goods/services specified in the contract for fiscal year .

The amount to be encumbered by this Encumbrance Letter is \$ amount of change. The Total contract (encumbrance) amount, including all previous amendments, option letters, etc. is \$ Insert New \$ Amt.

3) **EFFECTIVE DATE.** The effective date of this Encumbrance Letter is upon approval of the State Controller.

STATE OF COLORADO Jared S. Polis, GOVERNOR Department of Transportation By: _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director Date: _____

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If Contractor begins performing prior thereto, the State of Colorado is not obligated to pay Contractor for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER Robert Jaros, CPA, MBA, JD By: _____ Department of Transportation Date: _____



Upcoming Events

September 10-11, 2021 Trapper Days, Downtown Fort Lupton

September 14, 2021 Town Hall Meeting, 130 S. McKinley Ave. 6:30 p.m.

September 21, 2021 City Council Meeting, 130 S. McKinley Ave. 7:00 p.m.

September 23, 2021 Senior and Disabled Citizen Fall Clean Up

September 28, 2021 Town Hall Meeting, 130 S. McKinley Ave. 6:30 p.m.

October 5, 2021 City Council Meeting, 130 S. McKinley Ave. 7:00 p.m.