

**INTERGOVERNMENTAL AGREEMENT REGARDING
WATER AND WASTEWATER SERVICE**

between

4-WAY RANCH METROPOLITAN DISTRICT NO. 1

and

4-WAY RANCH METROPOLITAN DISTRICT NO. 2

This Intergovernmental Agreement Regarding Water and Wastewater Service (“IGA”) is made and entered into as of this 25th day of April, 2018, by and between the 4-Way Ranch Metropolitan District No. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (“District No. 1”), and the 4-Way Ranch Metropolitan District No. 2, a quasi-municipal corporation and political subdivision of the State of Colorado (“District No. 2”) (Districts No. 1 and No. 2 may be collectively referred to herein as the “Districts”).

RECITALS:

WHEREAS, District No. 1 and District No. 2 are each a separate unit of local government, organized in 2005 pursuant to Title 32 of the Colorado Revised Statutes as quasi-municipal corporations and political subdivisions of the State of Colorado; and

WHEREAS, the Districts were formed under a Consolidated Service Plan, as amended, approved by the Board of County Commissioners of El Paso County, Colorado, to finance and provide public improvements and services to property within the 4-Way Ranch service area, El Paso County, Colorado (“4-Way Ranch”), including water, sewer, streets, drainage, and park and recreation improvements; and

WHEREAS, District No. 1 designed, financed and constructed a water distribution system consisting of wells, water filtration plant building, pipeline, fire hydrant, copper services, and a potable water storage tank, to serve property within 4-Way Ranch (the “Water System”), together with the necessary land interests for the Water System; and

WHEREAS, pursuant to an agreement between District No. 1 and District No. 2 dated March 14, 2018, District No. 1 conveyed the Water System to District No. 2 for ownership, operation and maintenance; and

WHEREAS, District No. 2 has agreed to provide water service to the 4-Way Ranch service area; and

WHEREAS, both District No. 1 and District No. 2 are governmental subdivisions of the State of Colorado formed pursuant to Title 32, Article 1, C.R.S., and may cooperate with one another and contract to provide services lawfully authorized to each of them pursuant to Title 29, Article 1, Part 2, C.R.S.; and

WHEREAS, District No. 1 and District No. 2 desire to enter into an agreement whereby District No. 2 will supply to District No. 1 water and wastewater services at the rates established herein and subject to the provisions set forth herein, and District No. 1 will accept water and wastewater services at the rates established herein subject to the provisions set forth herein.

NOW, THEREFORE, for and in consideration of the mutual covenants, representations and warranties of each of the parties, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, District No. 1 and District No. 2 agree:

1. **DEFINITIONS.** Unless otherwise stated in this Agreement, the following terms, when used herein, shall have the following meanings:

a. **“Agreement”** shall mean this Agreement, including any and all exhibits and documents referenced as an integral part of this Agreement.

b. **“4-Way Ranch Service Area”** shall mean the area to which District No. 2 is authorized to provide water services, within the legal boundaries of both District No. 1 and District No. 2, pursuant to the Consolidated Service Plan and this Agreement, as shown on attached **Exhibit A**.

c. **“Customer”** shall mean any person, firm, corporation, association, agency or other entity who is authorized, or who desires, to obtain or receive water or wastewater service from District No. 2, and who owns or is the developer of property within the 4-Way Ranch Service Area as described herein.

d. **“District No. 1”** shall mean the 4-Way Ranch Metropolitan District No. 1, organized pursuant to a Consolidated Service Plan, as amended, approved by the El Paso County Board of Commissioners on September 8, 2005, and on April 15, 2010, and filed with the District Court in El Paso County, Colorado, in Civil Action No. 05CV3774.

e. **“District No. 2”** shall mean the 4-Way Ranch Metropolitan District No. 2, organized pursuant to a Consolidated Service Plan, as amended, approved by the El Paso County Board of Commissioners on September 8, 2005, and on April 15, 2010, and filed with the District Court in El Paso County, Colorado, in Civil Action No. 05CV3775.

f. **“Leased Water Rights”** shall mean all of the Lessee’s interest in and to the following: a portion of the Lessor’s Water Rights described as 71,400 acre feet of ground water from the Arapahoe aquifer under the July 22, 2004 Colorado Ground Water Commission Findings and Order in Determination No. 511-BD, and 111,600 acre feet of ground water from the Laramie-Fox Hills aquifer under the July 22, 2004 Colorado Ground Water Commission Findings and Order in Determination No. 510-BD, pursuant to the terms and provisions of the Water Rights Lease.

g. **“Rules and Regulations”** shall mean the Rules and Regulations of District No. 2 regarding its Water System and Wastewater System, as adopted and may be amended from time to time;

h. **“Waterbury Property”** shall mean the real property depicted on the Waterbury PUD Development Plan recorded in the records of the El Paso County Clerk and, consisting of approximately 321 acres, and planned for residential development, located within the boundaries of 4-Way Ranch Metropolitan District No. 2. The Waterbury Property was excluded from the boundaries of District No. 1, and included into the boundaries of District No. 2, following a hearing on a petition for exclusion and a petition for inclusion on March 14, 2018, and subsequent court order.

i. **“Water System”** shall mean all right, title, property (real and personal), easements, and interest in the components of the Water System, whether tangible or intangible, including but not limited to the Water System Facilities, Leased Water Rights, rights to serve existing and future users of the water facilities, and any rights to impose and collect fees and charges relating thereto; and, any right, title, interest or claim historically used or required by District No. 2 to provide water service to its Customers.

j. **“Water System Facilities”** shall mean the water facilities acquired or constructed which make up the Water System including, without limitation, Well LFH-1 (including casing, pump and production string); Well A-1 (including casing, pump and production string; 24’x30’ water filtration plant building (including chemical feed systems, filtration tanks, distribution fire flow pumps, distribution system pumps, check valves, pressure control valves, all related electronic controls, back-up electric generation system, air ventilation and heating system, yard piping, 7,000 gallon backwash holding tank, 500 gallon holding tank, and related appurtenances, located on Tract WFP#1); 8,262 linear feet of 12” C900 SDR 18 Pipe contact retention and transmission system with related valves, bends, tees and associated thrust blocks; 11,858 linear feet of 8” C900 SDR 18 pipe distribution system with related valves, bends, tees, and associated thrust blocks; 14 fire hydrants with related piping, valves, bends, tees and associated thrust blocks; 44 1” copper services with related tapping tees, curb stops and meter pits with appurtenances; and a 522,000 gallon potable water storage tank, 50’ diameter, 30’ height, with yard piping, related overflow and drain piping; and any other Water System facilities subsequently acquired, owned and operated by District No. 2.

k. **“Wastewater System”** shall mean all right, title, property (real and personal), easements, and interest in the components of the Wastewater System, whether tangible or intangible, including but not limited to wastewater lines, appurtenances, facilities and equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent, owned and maintained by the District for wastewater collection and treatment, rights to serve existing and future users of the wastewater facilities, and any rights to impose and collect fees and charges relating thereto; the Water System Facilities, Leased Water Rights, rights to serve existing and future users of the water facilities, and any rights to impose and collect fees and charges relating thereto; and, any right, title, interest or claim historically used or required by District No. 2 to provide wastewater service to its Customers.

1. **“Wastewater System Facilities”** shall mean the Wastewater System, or any part thereof, which District No. 2 has acquired or may acquire or construct, own and operate, on its own or by Woodmen Hills Metropolitan District pursuant to the Woodmen Hills Wastewater IGA.

m. **“Water Rights Lease”** shall mean the Water Rights Lease between Spring Creek, LLC (as successor to merger with Four Way Ranch, a Colorado general partnership), as Lessor, and District No. 1, as Lessee, dated March 20, 2006, and thereafter amended June 14, 2006, October 28, 2012, and November 29, 2017, related to the lease of ground water rights owned by the Lessor in the Dawson, Denver, Arapahoe, and Laramie-Fox Hills aquifers of the Denver Basin aquifers as quantified by the July 22, 2004 Colorado Ground Water Commission Findings and Orders entered in Determination Nos. 513-BD, 512-BD, 511-BD, and 510-BD for the withdrawal of ground water in the Upper Black Squirrel Designated Ground Water Basin (“Lessor’s Water Rights”).

n. **“Woodmen Hills Operations IGA”** shall mean an intergovernmental agreement between District No. 2 and Woodmen Hills Metropolitan District, for the operation of the Water System and Water System Facilities, dated October 1, 2007, as amended by First Amendment dated March 12, 2008, and as may thereafter be amended by the parties thereto, by which Woodmen Hills Metropolitan District provides certain basic services on behalf of District No. 2, including providing an “operator responsible in charge,” system monitoring and administration services, as well as additional services as needed.

o. **“Woodmen Hills Wastewater IGA”** shall mean an intergovernmental agreement between District No. 2 and Woodmen Hills Metropolitan District, and as may thereafter be amended by the parties thereto, for the commitment of up to 500 wastewater taps in capacity, and ownership, operation and maintenance responsibilities of wastewater infrastructure.

2. General Intent.

a. Water and Wastewater Services to the 4-Way Ranch Service Area and District Boundaries. This Agreement intends to establish for the provision of water and wastewater services by District No. 2 to property within the boundaries of District No. 1 and District No. 2, as such boundaries may be adjusted from time to time, and which lie within the 4-Way Ranch Service Area.

b. Provision of Water Services. District No. 2 has at its disposal water rights committed to the provision of a water supply for the 4-Way Ranch Service Area, pursuant to the Water Rights Lease, described as 71,400 acre feet of ground water from the Arapahoe aquifer, and 111,600 acre feet of ground water from the Laramie-Fox Hills aquifer for a total of 183,000 acre feet of ground water. District No. 2 will make water taps available on a first come-first served basis to all development in the 4-Way Ranch Service Area, at the rates established by the District No. 2 Board and subject to the Rules and Regulations.

c. Provision of Wastewater Services. District No. 2 has at its disposal wastewater taps pursuant to the Woodmen Hills Metropolitan District Wastewater IGA. District

No. 2 will make wastewater taps available on a first come-first served basis to all development in the 4-Way Ranch Service Area, at the rates established by the District No. 2 Board and subject to the Rules and Regulations.

d. In-District Water Rates. Water supplied by District No. 2 under this Agreement shall be charged at then current in-district retail water rate, pursuant to District No. 2's then current adopted rates.

e. Water Facilities Financing. In 2011, District No. 1 financed the Water Facilities through the issuance of the 4-Way Ranch Metropolitan District No. 1 Limited Tax General Obligation Bonds, Series 2011A, in the principal amount of \$530,000 (the "2011A Senior Bonds"), and Series 2011B, in the principal amount of \$2,450,000 (the "2011B Subordinate Bonds"), pursuant to resolutions of the Board of Directors of District No. 1 adopted on October 4, 2011 (the 2011A Senior Bonds and the 2011B Subordinate Bonds are collectively referred to as the "2011 Bonds"), and the 4-Way Ranch Metropolitan District No. 1 Indenture of Trust, dated as of October 1, 2011, between District No. 1 and UMB Bank, N.A., Denver, Colorado as Trustee, related to the 2011A Bonds (collectively, the "2011 Bond Documents"). District No. 1 has agreed to the imposition of a property tax mill levy against all property within the District No. 1 (including the Waterbury Property), for collection and payment on the 2011 Bonds pursuant to the 2011 Bond Documents. District No. 2 and District No. 1 agree to cooperate in the refinance of the 2011 Bonds at such time as may be financially prudent.

f. Future Water and Wastewater Improvements. If not yet installed, the owner of undeveloped property requesting water or wastewater service (the "Future Owner") shall be responsible for the financing, construction and installation of the public water and/or wastewater improvements, together with applicable easements, which are determined by District No. 2 to be necessary to serve the then-proposed development on the undeveloped property. Such public water or wastewater improvements shall only be constructed after they are approved by District No. 2, according to the process for approval set forth in the Rules and Regulations. Easements shall be conveyed to the District No. 2 at no cost, in accordance with the Rules and Regulations. Following the applicable preliminary acceptance and warranty period, as described in the Rules and Regulations, the Future Owner shall convey all facilities to District No. 2 for ownership and maintenance. Oversized public water or wastewater improvements may be eligible for cost recovery through the collection of an applicable surcharge, pursuant to the Rules and Regulations.

g. Ownership, Use, Reuse of Water. All water furnished hereunder to Customers is on a contractual water supply basis for the use of such Customers for all the various purposes for which District No. 2 or its suppliers have a contractual right to its water supply or have been decreed the right to appropriate water. Such right to use water does not include any right to make a succession of uses of such water, and upon completion of the primary use by the Customers, all dominion of the water so used reverts completely to District No. 2.

3. Terms and Conditions of Service

a. Tap Connections. All connections to the Water or Wastewater Facilities shall require approval by District No. 2, payment of applicable tap fees, and shall be made in compliance with the Rules and Regulations, and other applicable local, state and federal rules and requirements. All service connections are subject to inspection by District No. 2.

b. License. It is agreed that the water and wastewater services furnished by District No. 2 is a license to use the water and wastewater services of District No. 2, and does not constitute ownership in the Water or Wastewater Facilities, in the Leased Water Rights or in any other water rights of District No. 2. Notwithstanding any other provision of this Agreement, it is agreed that District No. 2 retains the right to the use of the capacity of all Water and Wastewater Facilities not provided for in this Agreement.

c. Force Majeure. District No. 2 shall not be responsible or liable in any way for any failure, delay or interruption in performing its obligation hereunder due to causes or conditions beyond its reasonable control including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, labor disturbances, or if such performance would be prohibited or limited by any federal, state, or local law, rule, regulation, order or directive.

4. Acceptance of Service.

a. Water Service Provided. District No. 2 shall supply or cause to be supplied potable water to District No. 1 on a “total service basis.” Under a total service basis, all water and billing services are provided by District No. 2. District No. 2 will be responsible for billing the water service rates adopted by District No. 2 and all payments made by Customers will be remitted to District No. 2. District No. 2 will issue hydrant meter permits and bill directly to the customer for water consumed pursuant to that permit based upon District No. 2’s water service rates. All revenue received from such billings will belong to District No. 2.

b. Wastewater Service Provided. District No. 2 shall supply or cause to be supplied wastewater services pursuant to this Agreement upon completion of the Wastewater System.

c. Woodmen Hills Metro District. District No. 1 acknowledges that Woodmen Hills Metropolitan District performs operations and administrative services on behalf of District No. 2, pursuant to the Woodmen Hills Metropolitan District Operations IGA.

d. Repairs and Maintenance. District No. 2 shall be responsible for repairs and maintenance required for the Water System Facilities and Wastewater System Facilities.

5. Fees, Rates, Tolls and Charges.

a. Monthly Water Charges / Rates. Each Water and Wastewater Customer shall pay monthly charges for all water and wastewater services furnished by District No. 2 at the rates established by District No. 2 Board of Directors. The water and wastewater rates

established by District No. 2 shall bear a reasonable relation to the actual cost of providing water and wastewater services, as determined by District No. 2 in its sole discretion. Water and wastewater service rates may be adjusted by the Board of Directors from time to time, with notice provided in accordance with the provisions required by law.

b. District Fees. Provision of new water or wastewater service by District No. 2 to Customers shall be subject to receipt by District No. 2 of all required fees, including the following fees adopted by District No. 1 as assigned to District No. 2: (a) water tap fees, as adopted by Resolutions dated May 10, 2006, and February 5, 2014; (b) wastewater tap fees, as adopted by Resolution dated February 5, 2014; (c) water resource development fee, as adopted by Resolutions dated May 10, 2006, and February 5, 2014; (d) meter installation, inspection, and other related fees, as adopted by Resolution dated February 5, 2014, and any other applicable fees, all of which as may be modified, increased or decreased from time to time. Such fees shall be paid in accordance with the Rules and Regulations.

c. District Pledged Water Tap Fees. District No. 1 has pledged a portion of water tap fees toward the payment of the 2011 Bonds pursuant to the 2011 Bond Documents. The rights to collect the water tap fees have been conveyed by District No. 1 to District No. 2 in connection with the conveyance of the Water System. On a quarterly basis, and for so long as the 2011 Bonds remain outstanding, District No. 2 agrees to collect the water tap fees and remit \$4,000 per tap to District No. 1 in accordance with the 2011 Bond Documents. District No. 1 agrees to remit and apply such pledged revenues in accordance with the 2011 Bond Documents.

d. Water Conservation. District No. 2 agrees to use reasonable means to furnish a continuous supply of water uniformly to District No. 1 and District No. 2 from its Water System so as to furnish an adequate supply of water to all Customers within the 4-Way Ranch Service Area. District No. 1 understands and agrees that District No. 2 may uniformly limit the use of water in times of water shortage. District No. 2 may adopt a water conservation policy and establish water conservation measures as deemed appropriate.

6. MISCELLANEOUS PROVISIONS.

a. Term / Termination of Agreement. This Agreement shall be for a term of fifty (50) years, but may be extended for an additional fifty (50) years by District No. 1 by notice to District No. 2 during the first term hereof subject to earlier termination pursuant to the provisions of this Agreement; provided that in the event that either District No. 1 or District No. 2 shall be dissolved, this Agreement shall terminate upon the effective date of such dissolution. This Agreement may be terminated upon the mutual written agreement of both District No. 1 and District No. 2.

b. Compliance with Laws. Both parties agree that that in performing their respective obligations under this Agreement, they shall each comply with all laws, rules, regulations, ordinances, and orders of any governmental authority having jurisdiction.

c. Governmental Immunity Act. Nothing in this Agreement shall waive the rights or benefits afforded to either District No. 1 or District No. 2 under the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

d. Amendment; Waiver. No provision of this Agreement may be amended, waived or otherwise modified without the prior written consent of both of the parties hereto. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action or compliance with any representation, warranty, covenant or agreement herein contained. The waiver by any party hereto of a breach of any provision or condition contained in this Agreement shall not operate or be construed as a waiver of any subsequent breach or of any other conditions hereof.

e. Assignability. This Agreement shall not be assignable by either party hereto without the prior written consent of the other party hereto.

f. Notices. All notices, requests, demands or other communications required, permitted or desired to be given hereunder shall be deemed to have been properly given if delivered in writing by hand delivery, by electronic mail or facsimile transmission, or mailed by certified mail, return receipt requested, postage prepaid, to the Districts at their applicable principal business addresses as identified on the Transparency Notice published on the Special District Association of Colorado website.

g. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each and all of which shall be deemed for all purpose to be one agreement.

h. Entire Agreement. This Agreement, including any and all exhibits hereto and the other documents and certificates delivered pursuant to the terms hereof, set forth the entire agreement and understanding of the parties hereto in respect to the subject matter contained herein, and supersede all prior agreements, covenants, representations or warranties, whether oral or written, by any party hereto.

i. Applicable Law; Jurisdiction and Venue; Service of Process. This Agreement was made in the State of Colorado, and shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Colorado. All suits, proceedings and other actions relating to, arising out of or in connection with this Agreement shall be subject to the *in personam* jurisdiction of the courts of the State of Colorado and venue for all such suits, proceedings and other actions shall be in El Paso County, Colorado.

j. Severability. If any term, condition or provision of this Agreement shall be declared invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

k. Headings; Etc. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement on the date first above written.

4-WAY RANCH METROPOLITAN DISTRICT NO. 1:

(SEAL)

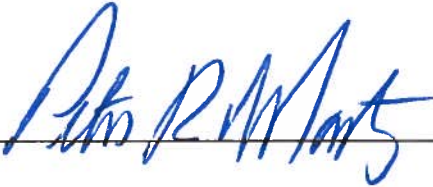
By: 

ATTEST:

By: 

4-WAY RANCH METROPOLITAN DISTRICT NO. 2:

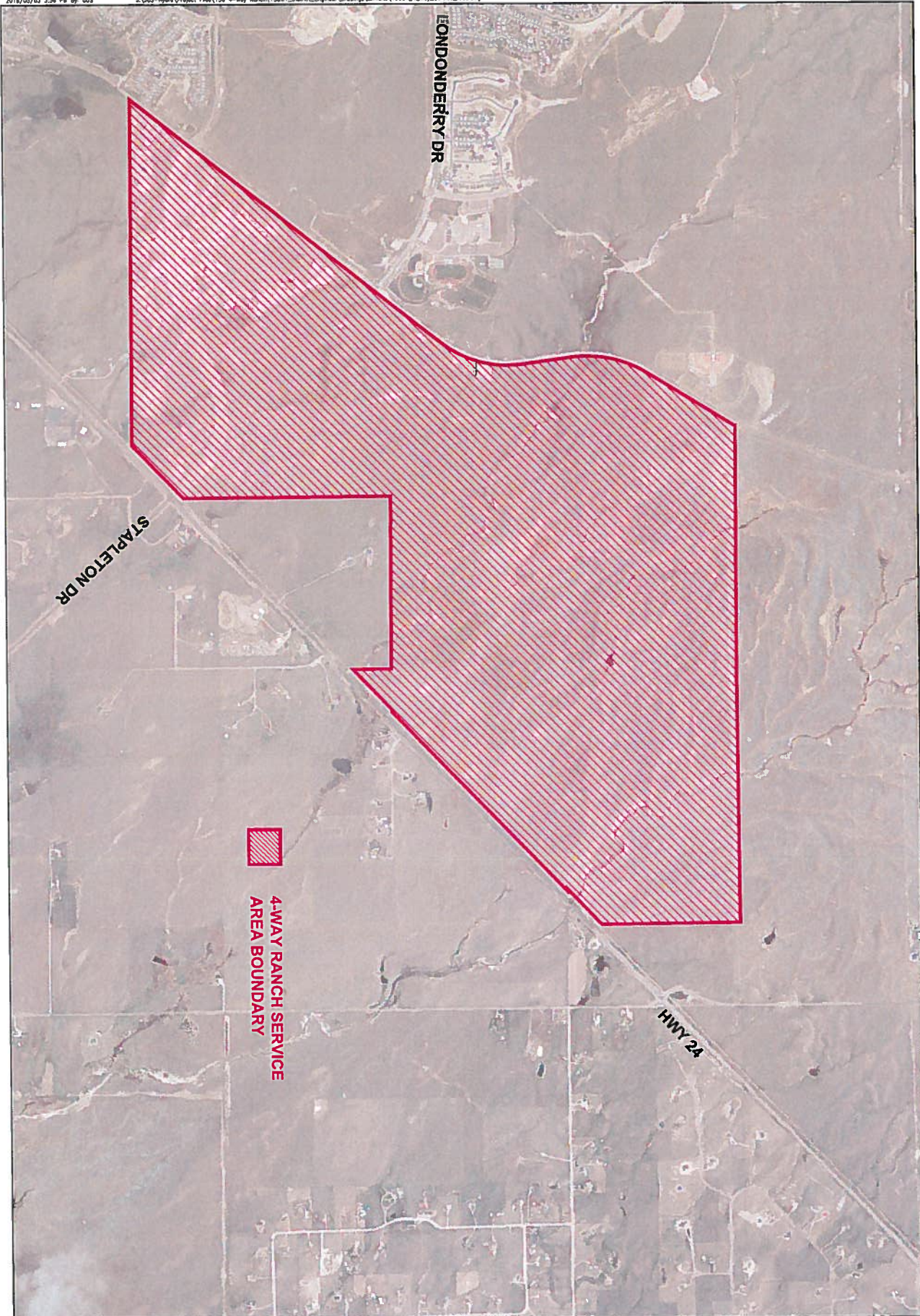
(SEAL)

By: 

ATTEST:

By: 

EXHIBIT A
4-WAY RANCH SERVICE AREA



Project No. 138-01
 Date: 5/2/18
 Design: JHM
 Drawn: GUS
 Check: JHM

REVISIONS			
NO.	DESCRIPTION	BY	DATE
1	PRELIMINARY		
2			
3			
4			
5			
6			
7			

4-WAY RANCH
 SERVICE AREA BOUNDARY

JDS-HYDRO CONSULTANTS, INC.
 545 EAST PIKES PEAK AVENUE, SUITE 300
 COLORADO SPRINGS, COLORADO 80903
 (719) 227-0072

NOTES: THE CONTRACTOR SHALL VERIFY ALL DIMENSIONS. ANY ERRORS OR OMISSIONS SHALL BE REPORTED TO JDS-HYDRO CONSULTANTS, INC. JDS-HYDRO SHALL BE LIABLE FOR UNAUTHORIZED CHANGES AND/OR REVISIONS MADE TO THIS PLAN.