Seter & Vander Wall, P.C.
ATTORNEYS AT LAW

KIM J. SETER
BARBARA T. VANDER WALL
COLIN B. MIELKE
ELIZABETH A. DAUER
RUSSELL NEWTON
JOEL T. DREW
MARISSA M. PECK

MEMORANDUM

TO: Castle Pines North Metropolitan District

FROM: Seter & Vander Wall, P.C.

DATE: August 24, 2023

RE: Legal Status Report for the August 28, 2023 Board Meeting

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MATTER: City Center URA

Status: The Board reviewed the Plan and related documents in the July Study Session. It will now consider the terms, if any, of an agreeable IGA to share tax increment revenues.

A copy of the URA's proposed IGA with attorney comment highlighted is attached for your consideration.

The District mill levy can be adjusted from year to year under the URA law. However, any mill levy revenue in excess of what would have been received from that mill levy applied to 2023 valuations will go to the URA.

As noted in the attached draft, the TIF sharing can be renegotiated if there is significant construction that will increase water and sewer service needs. Also, you will receive tap fees and service fees from all new construction, which is the bulk of CPN's revenue.

Action: Consider approval of IGA and/or terms for negotiation of same.

MATTER: CDPHE Notice of Violation / Cease and Desist / Clean-up Order

Status: The District was served a Cease and Desist Order from the Department of Health, Water Quality Control Division on August 8, 2023 (copy attached)

The Notice alleges 8 self-reported spills between November, 2018 and July, 2023. Based on these self-reported spills the Division alleges violations consisting of

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Discharging Pollutants to State Waters without a permit and Unauthorized Land Application without a permit.

The District must, by September 7, 2023, submit an answer admitting or denying the Findings of Fact and responding to the Notice of Violation.

The Division could impose penalties of up to $61,427 per day of violation. $10,000 per day is allowed on violations prior to July 1, 2020.

This is a legal/administrative proceeding and we will work with Nathan to prepare and file the answer. If the District disagrees with any of the findings, we can request a hearing but must do so by September 7, 2023.

The Order requires the following corrective actions:

1. Cease and desist violations immediately.

2. Initiate measures to prevent overflows.

3. By August 15, engage a soils engineer to evaluate the effect of the June 22, 2023 spill and remediate the soil.

4. By August 22, provide documentation to the Division of the engagement of a soils engineer.

5. By September 7, submit a remediation plan with a time schedule.

6. By September 22, develop and submit a Spill Response Plan.

7. By September 22, engage a qualified engineer to evaluate the system and recommend compliance measures.

8. By October 21, provide documentation of the engagement of the engineer described in 7.

9. By November 20, provide a copy of a report prepared pursuant to 7 above and corrective action recommendations and time lines.

10. November 30 and every month thereafter, submit monthly progress reports.

Nathan has begun the process for compliance and can report on same.

Action: No Board action required at this time.

MATTER: **Easement/License to Allow City to Access Parks and Stormwater Facilities**

Status: COMPLETED

Action: None Required. This matter will be removed from the September report.

MATTER: **Review and Comment on IGA with Denver Regarding Daniel's Park Water Service**

Status: COMPLETED.

Action: None required. This matter will be removed from the September report.

MATTER: **City/District Stormwater Services Conveyance IGA**

Status: Completed and signed. The following activities must be completed.

a. Assign responsibility to the City for the Stormwater system (Completed);

b. Notify property owners of the change;

c. Transfer funds to the City enterprise (Completed);

d. Provide a blanket easement for the operations of the stormwater system (Completed); and,

e. Fully remove itself from all stormwater operations and responsibility/permits.

Action: None required at this time.

AGREEMENT REGARDING CASTLE PINES URBAN RENEWAL AUTHORITY TAX INCREMENT FINANCING

This **AGREEMENT REGARDING CASTLE PINES URBAN RENEWAL AUTHORITY TAX INCREMENT FINANCING** (the "Agreement") by and between the **CASTLE PINES URBAN RENEWAL AUTHORITY** ("CPURA"), an urban renewal authority and body corporate and politic of the State of Colorado, and the **CASTLE PINES NORTH METROPOLITAN DISTRICT** (the "District"), a quasi-municipal corporation and political subdivision of the State of Colorado (each party individually referred to herein as a "Party" and collectively referred to herein as the "Parties").

RECITALS

WHEREAS, pursuant to the Colorado Urban Renewal Law, Section 31-25-101, et seq., C.R.S. (the "Act"), the City Council of the City formed CPURA by Resolution No. 23-26; and

WHEREAS, pursuant to the Act, the City Council of the City is considering adoption of an urban renewal plan (the "Plan") to carry out urban renewal projects within the Urban Renewal Plan Area ("Plan Area") described with particularity in the Plan; and

WHEREAS, the District is a taxing entity whose boundary includes real property within the Plan Area, which real property is shown in **EXHIBIT A**, which is attached hereto and incorporated herein; and

WHEREAS, the Act authorizes and the Plan will provide for the use of tax increment financing by CPURA to assist with the development of projects pursuant to the Plan; and

WHEREAS, C.R.S. § 31-25-107(9.5) requires that CPURA and the District enter into an agreement regarding the sharing of incremental property tax revenue; and

WHEREAS, the Parties recognize that this Agreement satisfies the requirements of C.R.S. § 31-25-107(9.5).

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the mutual covenants and promises set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing recitals are incorporated into and made a part of this Agreement.

2. District Mill Levy Allocation. The District agrees that CPURA may retain all incremental property tax revenues generated in the Plan Area solely as a result of the levy of the District's mill levy upon taxable property within the Plan Area; provided, however, if a singular new construction project within the Plan Area includes residential, commercial, or mixed

Commented [KS1]: This provision would allow CPN to reconsider and renegotiate its TIF share if there would be significant increases in water and sewer service demands.

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residential and commercial square footage equal or greater than 20,000 square feet, the District and CPURA agree to renegotiate the sharing of incremental property tax revenues between the Parties. The Parties agree that any such future renegotiation shall not constitute a substantial modification of the Plan.

3. Term, Termination. The term of this Agreement shall commence on the date of mutual execution of this Agreement by the Parties, and shall run for a term of twenty-five (25) years following the formal adoption of the Plan unless terminated earlier due to the abolishment of CPURA or termination of the Plan. This Agreement may be terminated at any time upon the mutual written agreement of the Parties.

4. Modification. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by the Parties.

5. Assignment. No Party shall assign this Agreement or any interest hereunder in whole or in part, without the prior written consent of each of the other Parties. Any assignment attempted without the prior written consent of all Parties hereto, which consent shall not be unreasonably withheld, shall be deemed void, and of no force or effect. Consent to one assignment shall not be deemed to be consent to any subsequent assignment nor the waiver of any right to consent to such subsequent assignment. Notwithstanding the foregoing this Agreement may be assigned to the successor entity of the District or to the District's constituent entities.

6. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to or delivered to any Party hereto, by any other Party shall be in writing and shall be deemed duly served, given or delivered when personally delivered to the Party to whom it is addressed or in lieu of such personal service, upon receipt in the United States' mail, first-class postage prepaid, addressed as follows:

To the District:	With a copy to:
Castle Pines North Metro. District 7404 Yorkshire Drive Castle Pines, CO 80108	Seter & Vander Wall, PC Attn: Kim J. Seter 7400 E. Orchard Road, Suite 3300 Greenwood Village, CO 80111

To CPURA:	With a copy to:
City of Castle Pines Castle Pines URA 360 Village Square Lane, Suite B Castle Pines, CO 80108	Michow, Cox & McAskin, LLP Attn: Linda C. Michow 6530 S. Yosemite St., Suite 200 Greenwood Village, Colorado 80111

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

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7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

8. Binding Agreement. This Agreement shall inure to and be binding on the administrator, successors, and permitted assigns of the Parties hereto.

9. Entire Agreement. This Agreement constitutes the complete and exclusive statement of the agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior oral and written proposals, negotiations, representations, promises, agreements, warranties or understandings concerning such subject matter.

10. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

11. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the rights and privileges of the Parties pursuant to the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as the same may be amended from time to time.

12. Authority to Enter Into Agreement. Each Party hereby confirms it is lawfully authorized to enter into this Agreement, has received legal counsel and advice as to the legal effect of this Agreement, and has taken all steps necessary to authorize the execution of the Agreement by the respective signatories below.

[The remainder of this page is left intentionally blank. Signature page follows.]

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

CASTLE PINES URBAN RENEWAL AUTHORITY, an urban renewal authority and body corporate and politic of the State of Colorado:

_____
Tracy Engerman, Chairperson

ATTEST:

_____

By:_____

Its:_____

Approved as to form:

_____
CPURA Counsel

CASTLE PINES NORTH METROPOLITAN DISTRICT

_____
Jason Blackaert, President

ATTEST:

_____
Tera Radloff, Secretary/Treasurer

Approved as to Form:

_____
Kim J. Seter, Legal Counsel Atty No. 14294

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EXHIBIT A

DISTRICT BOUNDARY

DRAFT

COLORADO
Department of Public Health & Environment

August 8, 2023

Certified Mail Number: 7020 0640 0001 0179 3042
Via Electronic Mail: nathan@cpnmd.org

Nathan Travis, District Manager
Castle Pines North Metropolitan District
7404 Yorkshire Dr
Castle Pines, CO 80108

RE: Service of Notice of Violation / Cease and Desist / Clean-Up Order, Number: DO-230808-1

To Whom It May Concern:

Castle Pines North Metropolitan District ("CPNMD") is hereby served with the enclosed Notice of Violation / Cease and Desist / Clean-up Order ("NOV/CDO/CUO"). This NOV/CDO/CUO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division ("Division") pursuant to authority given to the Division by §§ 25-8-602, 25-8-605 and 25-8-606, C.R.S., of the *Colorado Water Quality Control Act* ("Act"). The Division bases this NOV/CDO/CUO upon findings that CPNMD violated the Act and regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO/CUO.

Pursuant to § 25-8-603, C.R.S., CPNMD is required, within 30 calendar days of receipt of this NOV/CDO/CUO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to § 25-8-608, C.R.S. and 5 CCR 1002-101, to impose a penalty of up to $61,427 per day for each day during which such violation occurs (violations that occurred prior to July 1, 2020 shall be subject to a civil penalty of not more than $10,000 per day of violation).

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO/CUO or the issuance of additional enforcement actions.

Should you or representatives of CPNMD desire to discuss this matter informally with the Division, or if you have questions regarding the NOV/CDO/CUO, please do not hesitate to contact me at (303) 692-2840 or jocelyn.brink@state.co.us (preferred).

Sincerely,

Jocelyn Brink

Jocelyn Brink, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

ec: Enforcement File
Stephanie Meyers, EPA Region 8
Michael Hill, Douglas County Health Department

Aimee Konowal, Watershed Section, CDPHE
Kelly Morgan, Compliance & Enforcement Section, CDPHE
Mark Henderson, Grants and Loans Unit, CDPHE
Emily Wong, Engineering Section, CDPHE
Paul Hanson, Field Services Section, CDPHE
Michelle DeLaria, Permits Section, CDPHE
Eric Mink, Clean Water Enforcement Unit, CDPHE
Veronica Kenkel, Data Management Workgroup, CDPHE

COLORADO
Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST / CLEAN-UP ORDER

NUMBER: DO-230808-1

IN THE MATTER OF: **CASTLE PINES NORTH METROPOLITAN DISTRICT**
UNPERMITTED
DOUGLAS COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's ("Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division ("Division"), and pursuant to §§25-8-602, 25-8-605, and 25-8-606, C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist / Clean-up Order ("Order"):

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the alleged violations cited herein, Castle Pines North Metropolitan District ("CPNMD") was a special district formed in Douglas County, Colorado, pursuant to the Special District Act, §§32-1-101 et seq and 32-4-501 et seq, C.R.S.

2. CPNMD is a "person" as defined by the Water Quality Control Act ("Act"), §25-8-103(13), C.R.S.

3. CPNMD owns and/or operates a wastewater collection system ("Sewer System"), which was designed to collect and convey municipal sewage to the Plum Creek Water Reclamation Authority Wastewater Treatment Facility, located at approximately 39.4236, -104.9042, south of the City of Castle Pines, Douglas County, Colorado ("Facility").

4. Between November 17, 2018 and June 22, 2023, CPNMD reported multiple sanitary sewer overflow ("SSO") events, during which municipal sewage was spilled, released, or diverted from the Sewer System to the ground and/or state waters, to the Department's Office of Emergency Preparedness and Response ("OEPR"). The Division received the following self-reported SSO spill reports from CPNMD:

CPNMD SSO AND SPILL EVENTS NOVEMBER 17, 2018 – JUNE 22, 2023					
Date(s) of Event	**OEPR Incident Case Number**	**Location Provided**	**Cause of Release**	**Affected Media**	**Estimated Volume Released**
11/17/2018	2018-0608	7650 Monarch Blvd	Lift station power surge / power failure	Ground (storm retention pond)	8,000 - 10,000 gallons
10/23/2020	2020-0481	7650 Monarch Blvd	Attempted lift station bypass / pump failure	Ground (drainage area with connection to Cherry Creek)	20,000 gallons
2/3/2021	2021-0471	39.4884, -104.8968	Sewer System force main break and 2 lift station backups	Ground (storm retention ponds)	70,000 gallons
2/28/2021	2021-0069	7650 Monarch Blvd	Lift station power failure / equipment failure	Ground (storm retention pond)	30,000 gallons
11/1/2021	2021-0526	259 Crossing Cir	Clogged lift station	Ground	300 - 500 gallons
11/23/2021	2021-0578	7650 Monarch Blvd	Lift station pump failure	Ground (storm channel with connection to Cherry Creek)	4,500 gallons
3/19/2022	2022-0111	750 Hidden Point Blvd	Lift station level sensor failure	Ground (drainage area with connection to Chery Creek)	25,000 gallons
6/22/2023	2023-0455	8100 Monarch Blvd	Lift station pipe burst due to heavy rainfall and infiltration	Ground (Happy Canyon Creek drainage canal)	40,000 gallons

Unauthorized Discharge to State Waters

5. Pursuant to §25-8-501(1), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.3(1)(a), no person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article.

6. Municipal sewage contains, among other substances, biochemical oxygen demand ("BOD"), total suspended solids ("TSS"), ammonia, fecal coliform, and *E. coli*.
7. BOD, TSS, ammonia, fecal coliform, and *E. coli* are "pollutants," or indicators thereof, as defined by §25-8-103(15), C.R.S.

8. The retention ponds and drainage areas identified in paragraph 4 above, Happy Canyon Creek, and Cherry Creek are "state waters" as defined by §25-8-103(19), C.R.S.

9. Each SSO location along CPNMD's Sewer System, as it relates to each event identified in paragraph 4 above, is a "point source" as defined by §25-8-103(14), C.R.S.

10. Each SSO event identified in paragraph 4 above that reached state waters constitutes a "discharge of pollutants" as defined by §25-8-103(3), C.R.S.

11. Division records establish that CPNMD does not have any permits authorizing the SSO events identified in paragraph 4 above into state waters.

12. CPNMD's unauthorized discharge of municipal sewage from the Sewer System into state waters, as identified in paragraph 4 above, constitutes violations of §25-8-501(1), C.R.S.

Unauthorized Land Application

13. Pursuant to 5 CCR 1002-61, §61.14(1)(a), a Colorado Discharge Permit System ("CDPS") permit shall be required for all land application discharges unless the discharge meets the specific exemption criteria outlined in 5 CCR 1002-61, §61.14(1)(a)(i) through (v).

14. CPNMD's discharges of pollutant-containing municipal sewage from the Sewer System to the ground, as identified in paragraph 4 above, constitutes "land application" as defined by 5 CCR 1002-61, §61.2(48).

15. CPNMD's land application of municipal sewage from the Sewer System, as identified in paragraph 4 above, does not meet any of the exemption criteria of 5 CCR 1002-61, §61.14(1)(a)(i) through (v), and, therefore, is subject to CDPS permit requirements.

16. Division records establish that CPNMD does not have any permit authorizing the land application of municipal sewage from the Sewer System.

17. CPNMD's land application of municipal sewage from the Sewer System, as identified in paragraph 4 above, constitutes violations of 5 CCR 1002-61, §61.14(1)(a).

NOTICE OF VIOLATION

18. Based on the foregoing Findings of Fact and Conclusions of Law, CPNMD is hereby notified that the Division has determined that the CPNMD has violated the following sections of the Act and its implementing permit regulations promulgated thereto.

    Section 25-8-501(1), C.R.S., which states in part: "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article..."

    5 CCR 1002-61, §61.3(1)(a), which states in part: "No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge…"

5 CCR 1002-61, §61.14(1)(a), which states in part: "Pursuant to this section, a permit shall be required for all land application discharges…"

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, and §25-8-606, C.R.S., CPNMD is hereby ordered to:

19. Cease and desist from all violations of the Act, §§25-8-101 through 25-8-803, C.R.S. and its implementing regulations promulgated thereto.

Furthermore, the Division hereby orders CPNMD to comply with the following specific terms and conditions of this Order:

20. CPNMD shall immediately initiate measures to prevent overflows of municipal sewage from the Sewer System.

21. Within 7 calendar days of receipt of this Order, CPNMD shall retain the services of an independent third party experienced in soil remediation to evaluate the impacts to soil resulting from the June 22, 2023 SSO ("Spill 2023-0455") and prepare and submit a Remediation Plan to the Division. The evaluation shall be conducted with the goals of 1) identifying the nature and extent of the soil contamination resulting from the unauthorized discharged from the Sewer System, and 2) identifying necessary actions to ensure all soil contamination is completely remediated.

22. Within 14 calendar days of receipt of this Order, CPNMD shall provide documentation to the Division that it has retained the services of the qualified individual or entity required by paragraph 21. At a minimum, this documentation shall include a copy of the individual or entity's qualifications and a copy of the written contract or agreement for such services, including a copy of the scope of services to be provided. The Division reserves the right to reject the individual or entity if it finds, after reasonable inquiry and evaluation, the individual or entity does not meet the expected qualifications. Should the Division deny the individual/ entity, CPNMD will have 14 calendar days from notification from the Division to submit documentation for an alternative individual/entity.

23. Within 30 calendar days of receipt of this Order, CPNMD shall submit to the Division the Remediation Plan identified in paragraph 21. At a minimum, the Remediation Plan shall include:

    a. A plan for determining the toxicity, mobility, and persistence in the environment of all contaminants discharged from the Sewer System;
    b. A discussion of soil sampling protocol;
    c. A soil sampling plan; and
    d. A discussion of the remediation techniques and/or technologies that will be used to mitigate and eliminate contaminated soil.

24. The Remediation Plan shall include an aggressive time schedule for completing the necessary work. The measures and time schedule submitted shall become a condition of this Order, and CPNMD shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.

25. Within 45 calendar days of receipt of this Order, CPNMD shall develop and submit to the Division an SSO and Spill Response Plan to address potential municipal sewage releases from the Sewer System. CPNMD shall also submit to the Division a written certification that CPNMD and its employees/representatives will comply with the SSO and Spill Response Plan. At a minimum, the SSO and Spill Response Plan shall include:

    a. A written plan for routine inspections of the Sewer System at whatever frequency is necessary to prevent future releases;
    b. Identification of staff or personnel responsible for conducting routine inspections and implementing SSO and spill response procedures;
    c. A detailed description of SSO and spill response procedures, including availability of auxiliary equipment to pump, haul, and/or divert SSO or spill event material to the nearest lift station or other treatment facility;
    d. A description of recovery and clean up procedures;
    e. A description or example of signage that will be posted in impacted areas;
    f. Soil and water quality sampling activities to be completed by CPNMD or its representatives in response to a municipal sewage release;
    g. Documentation and reporting procedures;
    h. Employee and/or representative training; and
    i. Notification procedures. At a minimum, the notification procedures shall include oral notification to the Division within 24 hours of discovering an SSO or spill event occurred, the submittal of a Five Day Reporting Form to the Division as well as a written notification to any neighboring private property that is impacted. The written notification to the neighboring property shall include 1) a copy of the Five Day Reporting Form, 2) a description of how the release was remediated, 3) a description of steps taken to prevent additional discharges to the neighboring property, and 4) an explanation of how notification to the property owner will be completed in the event that future releases occur.

26. Within 45 calendar days of receipt of this Order, CPNMD shall retain the services of a professional engineer registered in the state of Colorado and experienced in domestic wastewater treatment to perform an evaluation of the Sewer System and recommend measures to ensure that adequate conveyance is provided such that CPNMD complies with the Act and its implementing regulations to ensure that proper operation and maintenance of the Sewer System takes place. At a minimum, the engineering evaluation should include, but not be limited to, the following items:

    a. An evaluation of the Sewer System's service area, including current and projected population and current and projected wastewater contributors;
    b. An evaluation of the Sewer System's infrastructure, including all lift stations, manholes, gravity sewer mains, and force mains to identify any deficiencies in the current infrastructure that may impact CPNMD's ability to achieve compliance with the Act and its implementing regulations; and
    c. An evaluation of the Sewer System's operation and maintenance practices to identify any deficiencies that may impact CPNMD's ability to achieve compliance with the Act and its implementing regulations.

27. Within 60 calendar days of receipt of this Order, CPNMD shall provide documentation to the Division that it has retained the services of the qualified individual or entity described in paragraph 26. The documentation shall include, at a minimum, a copy of the individual or entity's qualifications and a copy of the written contract or agreement for services, including a copy of the scope of services to be provided. The Division reserves the right to reject the individual or entity if it finds, after reasonable inquiry and evaluation, the individual or entity does not meet the expected

COLORADO
Department of Public Health & Environment

qualifications. Should the Division deny the individual/ entity, CPNMD will have 14 calendar days from notification from the Division to submit documentation for an alternative individual/ entity.

28. Within 90 calendar days of receipt of this Order, CPNMD shall submit to the Division a report summarizing the results of the engineering evaluation identified in paragraph 26. The report shall include an aggressive plan and time schedule for the implementation of specific interim and long-term measures that CPNMD will complete to address the deficiencies identified in the evaluation to achieve reliable and consistent compliance with the Act and its implementing regulations. This includes a specific plan and time schedule for commencing and completing construction of Sewer System upgrades or improvements, if necessary. If any of the corrective measures require Division site location and design approval, CPNMD shall timely file a completed site location and/or design approval request in accordance with §25-8-702, C.R.S. and 5 CCR 1002-22. CPNMD shall not initiate any necessary construction until such time that the necessary site location and design approval(s) have been obtained, as required by §25-8-702, C.R.S. and 5 CCR 1002-22. The submitted plan and time schedule shall become a condition of this Order and CPNMD shall implement the plan and time schedule as submitted unless notified by the Division in writing that an alternate plan or time schedule is appropriate. If the Division imposes an alternate plan or time schedule, it shall also become a condition of this Order.

29. Beginning November 30, 2023, and every calendar month thereafter, CPNMD shall submit monthly progress reports to the Division by the last day of each calendar month. At a minimum, each report shall outline activities undertaken during the current month and activities planned for the next month to remain in compliance with this Order. The monthly progress reports shall be required until the issuance of written notice from the Division indicating that the reports are no longer necessary occurs.

30. If CPNMD becomes aware of any situation or circumstances that cause CPNMD to become unable to comply with any condition or time schedules set forth by this Order, CPNMD shall provide written notice to the Division within five calendar days of becoming aware of such circumstances. CPNMD's notice shall describe what, if any, impacts will occur on CPNMD's ability to comply with the Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.

31. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within 30 calendar days of receiving Division comments on submitted documents, CPNMD shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

32. For all documents, plans, records, reports and replies required to be submitted by this Order, CPNMD shall submit an original **OR** an electronic copy to the Division:

    Original copies shall be mailed to:
    Jocelyn Brink
    Colorado Department of Public Health and Environment
    Water Quality Control Division
    Mail Code: WQCD-CWE-B2
    4300 Cherry Creek Drive South

Denver, Colorado 80246-1530
Telephone: (720) 507-4518

Electronic copies shall be emailed to:
jocelyn.brink@state.co.us

33. For any person submitting documents, plans, records and reports pursuant to this Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

34. Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 CPNMD is required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than 30 calendar days after receipt of this action.

35. Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than 30 calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

36. Be advised, in accord with §25-8-610, C.R.S., Any person who knowingly makes any material false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this article 8 or who falsifies, tampers with, or knowingly render inaccurate any monitoring device or method required to be maintained under this article 8 commits a class 2 misdemeanor.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

37. CPNMD is also advised that any person who violates any provision of the Act, §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than $61,427 per day for each violation that occurs (violations that occurred prior to July 1, 2020 shall be subject to a civil penalty of not more than $10,000 per day of violation). Further, any person who recklessly, knowingly, intentionally, or with criminal negligence

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discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing this Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S, and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

38. Pursuant to §25-8-601, C.R.S., CPNMD is further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

EFFECT OF ORDER

39. Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

40. For further clarification of CPNMD's rights and obligations under this Order, CPNMD is advised to consult the Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 8th day of August, 2023.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

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Kelly Morgan
Clean Water Compliance and Enforcement Section Manager
WATER QUALITY CONTROL DIVISION