

DISTRICT COURT, JEFFERSON COUNTY,
STATE OF COLORADO
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**IN RE: THE ORGANIZATION OF FOSSIL RIDGE
METROPOLITAN DISTRICT NO. 1, CITY OF
LAKEWOOD, JEFFERSON COUNTY, COLORADO**

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Case No. 2005 CV 003044

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**AMENDED MOTION PURSUANT TO C.R.S. § 32-1-207(3)(a) TO ENJOIN A
MATERIAL MODIFICATION TO THE SERVICE PLAN AND ENFORCE
MANDATORY OBLIGATIONS OF THE SERVICE PLAN**

Plaintiff Solterra LLC, (“Solterra”), an interested party under C.R.S. § 32-1-204(1), by and through its attorneys, hereby moves this Court to enjoin a material modification of the Service Plan that has not been properly approved by the City of Lakewood, Colorado (“City”) and to enforce the mandatory obligations of the Service Plan regarding sanitary sewer and states as follows:

Certificate of Conferral Pursuant to C.R.C.P. § 121, Section 1-15(8)

Undersigned counsel for Solterra certifies that he has conferred by email with counsel for Fossil Ridge Metropolitan District No. 1 (“FRMD No. 1”) and for interested party Green Mountain Water and Sanitation District (“Green Mountain”) regarding this Motion. FRMD No. 1 takes no position. Green Mountain opposes the Motion.

I. INTRODUCTION

The Service Plan (as defined herein) for FRMD No. 1, Fossil Ridge Metropolitan District No. 2 (“FRMD No. 2”) and Fossil Ridge Metropolitan District No. 3 (“FRMD No. 3”) (collectively “FRMD”) states unequivocally that “sanitation services **will be provided to the Project by Green Mountain Water and Sanitation District.**” The Service Plan also provides that sanitation services **will be** coordinated by FRMD No. 1 and Green Mountain pursuant to intergovernmental agreements. These are mandatory, enforceable obligations that FRMD and Green Mountain committed to over 16 years ago and that require they provide sanitary sewer service to the entire “Project,” which is the development of the real property located within FRMD. Pursuant to those obligations, FRMD No. 1 and Green Mountain entered into intergovernmental agreements in 2008 and 2014 in which FRMD No. 1 agreed to be responsible for the funding and construction of sanitary sewer within its boundaries and Green Mountain agreed to reserve capacity for up to 1,727 residential units. FRMD No. 1 and Green Mountain also agreed that FRMD No. 1 owned and would own all of the sewer mains and sewer lines located within the boundaries of FRMD and that Green

Mountain would be paid to maintain and repair the FRMD sewer system. Thereafter, FRMD No. 1 caused the extension and expansion of the sewer system to serve development within FRMD by connecting its system to Green Mountain's sewer system. Wastewater from the FRMD system flows into the Green Mountain system for processing. Green Mountain maintains and repairs the FRMD sewer system for a fee. The funding of the FRMD sewer system has been provided by Solterra.

Solterra is the Developer within FRMD and funded the extension and expansion of the Green Mountain sewer system. It has completed over 90 percent of the development, approximately 1,237 residential units with another 23 residential units in process. Solterra has another 94 residential units to be completed for a total of 1,354 residential units, which is well below the amount reserved by Green Mountain.

As described in more detail herein, Solterra learned in December 2022 that Green Mountain and FRMD were negotiating changes to their agreement that would deny sewer service to the remaining Solterra development and prevent Solterra from completing construction of the last 94 residential units. Green Mountain also has refused to provide Certificates of Service (as defined below) and to issue tap permits for the remaining residential units. FRMD No. 1 has failed and refused to take appropriate steps to coordinate with Green Mountain to ensure that sanitation services are provided to Solterra's remaining development. The failure and refusal to provide sewer service as required by the Service Plan constitutes a material modification to the Service Plan that has not been approved by the City. Accordingly, Green Mountain and FRMD No. 1 should be enjoined from taking any action contrary to the mandatory obligations in the Service Plan to provide sanitary sewer service for the Project, and to comply with the requirements of the Service Plan, including issuing the Certificates of Service and the sewer tap permits requested by Solterra for its

remaining units.

II. BACKGROUND

A. Organization of FRMD No. 1 and Approval of Service Plan

FRMD No. 1, FRMD No. 2 and FRMD No. 3 were each organized pursuant to Title 32 of the Colorado Revised Statutes (the “Special District Act”).¹

The organization of each FRMD district was approved by an election of eligible electors held on November 1, 2005. Orders creating each of the districts were entered by this Court in September and October 2006, and those orders were recorded with the Jefferson County Clerk and Recorder on October 10, 2006.

The governing service plan for FRMD is the Second Amended and Restated Service Plan for Fossil Ridge Metropolitan District No. 1, Fossil Ridge Metropolitan District No. 2, Fossil Ridge Metropolitan District No. 3, which was approved by the City on August 27, 2007 (the “Service Plan.”) (*See* Affidavit of Anastasia Urban (“Urban Aff.”) ¶ 5, Exhibit A.)

B. Status of Development within FRMD

Carma Lakewood, LLC is defined as the Developer under the Service Plan. (Service Plan, p. 4.) Carma Lakewood, LLC changed its name to Solterra LLC on March 31, 2011. (Urban Aff., ¶ 6 and Exhibit B.)

The development within FRMD is a planned residential community commonly referred to as “Solterra” (hereinafter “Solterra Community”). The real property within FRMD encompasses approximately 390 acres and is located entirely within the City. The general boundaries of FRMD are State Highway C-470 on the west, West Yale Avenue on the south, and West Alameda Parkway on the north. (Urban Aff., ¶ 7.)

¹ FRMD No. 2 and FRMD No. 3 are interested parties and have previously intervened in this Action.

Development within the Solterra Community has been phased with Filings numbering 1 through 21. Over 90% of the development is complete with residential units and infrastructure built out for Filings 1 through 17. Infrastructure, including sanitary sewer, has been installed and residential units are currently being built for Filing 19. Infrastructure including water and sanitary sewer lines has been installed for Filings 18 and 20. Filing 21 is in the final planning stages. (Urban Aff., ¶ 8.)

In total, approximately 1,237 single family detached homes and single family attached homes (townhomes) have been built. There are 23 single family townhomes being built in Filing 19 and approximately 94 single family townhomes that are to be built within Filings 18, 20, and 21. Solterra owns all the tracts for Filings 18, 19, 20, and 21, and an affiliate of Solterra is the only active home builder within FRMD. (Urban Aff., ¶ 9.)

Development of the Solterra Community includes extensive Public Improvements identified in the Service Plan, including onsite water, sanitary sewer, storm sewer, roads, a recreation center, parks, open space, and landscaping as well as regional water, sewer, and street expansions and improvements. The recreation center is known as the “Retreat,” which has a pool, fitness area, patio areas, outdoor fireplace, amphitheater, and clubhouse with large entertaining room, kitchen with appliances, bar, and dining room. (Urban Aff., ¶ 10.) These public improvements have been funded by Solterra under a reimbursement agreement with FRMD.

C. Green Mountain Is the Sanitary Sewer Provider Under the Service Plan

The Service Plan states unequivocally that Green Mountain Water and Sanitation District (“Green Mountain”) will provide sanitation services to the planned development within the Service Area for FRMD. Specifically, the Service Plan provides as follows:

“Sanitation. Sanitation services will be provided to the Project by Green Mountain Water and Sanitation District. . . . Sanitation facilities constructed by

the Service District and/or funded by the Financing Districts are intended to be conveyed to Green Mountain Water and Sanitation District for ongoing operations and maintenance. **Dedication and conveyance of the Public Improvements for sanitation services shall be made to Green Mountain Water and Sanitation District** in accordance with all applicable rules, regulations and policies of the Green Mountain Water and Sanitation District.”

(Service Plan, § I.C(4)(b), p. 12 (emphasis added).) The “Project” is defined in the Service Plan to mean “the development of real property located within the District Boundaries” (Service Plan, p. 7.) The term “District Boundaries” is defined in the Service Plan to mean “the boundaries of the Districts as described in Exhibit C-1, C-2, and C-3, as amended from time to time as permitted in Section I.C.3.” (Service Plan, p. 5.) Solterra Filings 1 to 21 are located entirely within the District Boundaries. (Urban Aff., ¶ 8.)

Pursuant to the Service Plan, each of the FRMD districts “has the power and authority to provide the services and facilities outlined in Section II.B in accordance with law, including the power to control and enforce covenants and security services as permitted in the Special District Act.” (Service Plan, § II.B, p. 13.) Specifically, each of the FRMD districts has the following power and authority as it relates to sanitation services:

“The design, acquisition, installation, construction, operation, and maintenance of storm or sanitary sewers, or both, flood and surface drainage, treatment and disposal works and facilities, and all necessary or proper equipment and appurtenances incident thereto, together with all necessary, incidental and appurtenant facilities, land and easements, and all necessary extensions of and improvements to said facilities or systems.”

(Service Plan, § II.B(5), p. 14.)

The Service Plan provides that each of the FRMD districts “**will** coordinate and cooperate with respect to financing, constructing, operating, and maintaining improvements that serve the Districts.” (Service Plan § IV.A, p. 16.) The Service Plan further provides that “**sanitation services will be coordinated between the Service District [FRMD No. 1] and Green Mountain Water**

and Sanitation District and/or other appropriate entities pursuant to intergovernmental agreements or other arrangements. The Service District will have authority to enter into such contracts and to acquire land and easements necessary to provide sanitation services for the Districts.” (Service Plan, § IV.B, p. 16 (emphasis added).)

D. Intergovernmental Agreements Between FRMD No. 1 and Green Mountain

Pursuant to the requirements outlined in the Service Plan that Green Mountain will provide sanitary sewer service within the FRMD Service Area, on January 15, 2008, FRMD No. 1 and Green Mountain entered into an Intergovernmental Agreement for Extra-Territorial Sewer Service (the “2008 IGA”). The 2008 IGA was subsequently amended and restated by the Amended and Restated Intergovernmental Agreement for Extra-Territorial Sewer Service that was dated November 11, 2014 (the “2014 IGA”). In both the 2008 IGA and the 2014 IGA, Green Mountain confirmed its commitment to provide sewer service for the Solterra Community, and Green Mountain reserved capacity to serve 1,727 equivalent residential units (“EQRs”) within the District Boundaries for FRMD. (Urban Aff., ¶ 11 and Exhibit C.)

On or about September 19, 2008, FRMD No. 1 and Green Mountain also entered into an Intergovernmental Agreement for Maintenance and Repair of Sewer System (“IGA for Maintenance”). In this IGA, the parties agreed that FRMD No. 1 owned the sewer system within the boundaries of FRMD and that Green Mountain would maintain and repair the FRMD sewer system for a fee. (Urban Aff., ¶ 13 and Exhibit G.)

Pursuant to the 2014 IGA, FRMD No. 1 has caused expansions and extensions of the FRMD sewer system to connect to the Green Mountain sanitary sewer system in order to serve development and residents of FRMD. Solterra funded the construction of FRMD sanitary sewer system pursuant to a reimbursement agreement with FRMD. (Urban Aff., ¶ 12.)

E. Green Mountain and FRMD Have Refused to Provide Sanitary Sewer Services for Filings 18, 20, and 21

As required by the Service Plan, Green Mountain and FRMD have provided sanitary sewer service for Solterra Filings 1 to 17.

FRMD and Green Mountain also agreed to provide sanitary sewer service for Filing 19 by, among other things, Green Mountain approving the design and construction of the sanitary sewer infrastructure for Filing 19, FRMD approving the Master Site Plan for Filing 19, including layout for sanitary sewer, and Green Mountain providing Certificates of Sanitary Sewer Service Availability (the “Certificates of Service”) for each of the residential units within Filing 19. The Certificates of Service are a requirement of the City to issue building permits for the residential units. Solterra also paid sewer tap fees to Green Mountain for each of the residential units within Filing 19. (Urban Aff., ¶ 14.)

On December 9, 2022, Solterra first learned that Green Mountain and FRMD No. 1 were negotiating a renewal of the 2014 IGA, which was set to expire on January 15, 2023. Solterra also learned on December 9, 2022, that Green Mountain was proposing terms for the renewed agreement that would prevent Solterra from completing its planned development within the Solterra Community by refusing to provide sewer service for the planned residential units within Filings 18, 20, and 21. (Urban Aff., ¶ 15, Exhibit D.) Specifically, Section 2.1 of the renewed agreement would deny sewer service to any residential unit that was not already in service or for which the City had not issued building permits. (*Id.*, Exhibit D, § 2.1.)

Solterra was advised by representatives of FRMD and Green Mountain that Green Mountain was intentionally trying to stop development within the Solterra Community and within its service area generally. (Urban Aff., ¶ 16.)

Shortly after learning of the negotiations regarding the renewal of the 2014 IGA, Solterra

began communicating with FRMD and Green Mountain to ensure that both had accurate information regarding the status of Solterra's development and the limited number of additional residential sewer connections that are needed for Solterra to complete its development within FRMD. Solterra advised both FRMD and Green Mountain of the following status:

1. A total of 1,260 residential units have been completed or are under construction with building permits issued by the City, which includes Filings 1 to 17 and 19.

2. The total number of residential units remaining for development in Filings 18, 20, and 21 is 94.

3. The total EQRs that are and will be in service within FRMD – upon completion of the development – is 1,354, which is substantially below the 1,727 EQRs reserved under the 2014 IGA.

4. The remaining 94 residential units (EQRs) break down as follows:

a. Filing 18 has a total of 15 residential units. The sewer main and sewer lines up to the lots have been installed pursuant to construction plans approved by Green Mountain and the City. FRMD approved the Master Site Plan, including layout for sanitary sewer.. Solterra requested and received Certificates of Service from Green Mountain and has paid sewer tap fees for 3 of the 15 residential units in Filing 18.

b. Filing 20 has a total of 20 residential units. The sewer main and sewer lines up to the lots have been installed pursuant to construction plans approved by Green Mountain and the City. FRMD approved the Master Site Plan, including layout for sanitary sewer. Solterra requested and received Certificates of Service from Green Mountain and has paid sewer tap fees for

4 of the 20 residential units in Filing 20.

- c. Filing 21 has a total of 59 residential units. The construction plans for sanitary sewer service for Filing 21 have gone through six (6) rounds of review and comments by Green Mountain. FRMD also has reviewed and provided comments to the sanitary sewer construction plans. The construction plans were first submitted to Green Mountain in April 2019. The last submittal was on November 30, 2022. Solterra was recently advised by Green Mountain staff that the latest construction plans are ready for signature by Green Mountain.

(Urban Aff., ¶ 17, Exhibits E and F.) The involvement of Green Mountain and FRMD in approving plans, *etc.* makes clear that they are fully aware of the status of the remaining development within the Solterra Community, and rather than coordinating their efforts to ensure sanitary sewer service is provided for the remaining residential units, they are knowingly and intentionally trying to prevent Solterra from completing the remaining development by denying sanitary sewer service that is required under the Service Plan. In fact, during a December 13, 2022 board meeting for Green Mountain both the Green Mountain board and representatives of FRMD stated that they were generally aware of the status of Solterra Filings 18, 20, and 21 and nonetheless stated that they were not interested in ensuring sanitary service for the remaining development. The president of FRMD No. 2 and assistant secretary for FRMD No. 1 even stated that “To us, it doesn’t matter whether there are any more townhouses built or not. . . . when I look at the services that we have to provide, I don’t think that we gain much by having more townhouses. They are a headache for us. Snow removal, everything else.” These statements were made in the presence of the president of FRMD No. 1, who did not object to or correct the statements. (Urban Aff., ¶ 18.)

Upon learning of the proposed changes to the 2014 IGA, and at the direction of Green Mountain’s legal counsel, Solterra promptly submitted requests to Green Mountain for Certificates of Service for the remaining 87 residential units needed to complete development of residential units within the Solterra Community.² (Urban Aff., ¶ 19.) Solterra also tendered to Green Mountain a check in the amount of \$421,167 as payment for sewer tap fees for the remaining 87 residential units at the 2023 rate of \$4,841 per tap (the “Tap Fee Check”). (*Id.*, ¶ 20.) The requests for Certificates of Service were submitted on January 5, 2023 and again on January 9, 2023. (*Id.*, ¶ 21.) The Tap Fee Check was tendered and refused on January 6, 2023, and then sent again by overnight mail on January 12, 2023. (*Id.*, ¶ 22.) Green Mountain management retains possession of the Tap Fee Check. (*Id.*) Solterra also proposed language for the renewed 2014 IGA to ensure that the remaining 94 units for Filings 18, 20, and 21 would be serviced. (*Id.*, ¶ 23.)

Despite repeated inquiries and requests from Solterra and its counsel, no action has been taken by Green Mountain on the requests for Certificates of Service and no tap fee permits have been issued to Solterra. In addition, FRMD and Green Mountain have not entered into a new IGA that would ensure sanitary sewer service to Filings Nos. 18, 20, and 21 as required under the Service Plan. (*Id.*, ¶ 24-25.)

Solterra’s requests for 87 Certificates of Service and the tender of Tap Fee Check for tap permits were made within the terms of the 2014 IGA. Even with this service being requested by Solterra, the sanitary sewer service for the Solterra Community (1,354 EQRs) is substantially less than reserved by Green Mountain (1,727 EQRs) under the 2014 IGA. (Urban Aff., ¶ 26.)

F. City Has Not Approved any Changes to the Service Plan

² This represents the 94 units remaining for Filings 18, 20, and 21, less the 7 Certificates of Service already obtained for Filings 18 and 20. (Urban Aff., ¶ 19.)

The City is the governing body of the FRMD districts and has not approved any changes to the Service Plan regarding sanitary sewer service. (Urban Aff., ¶ 27.)

III. ARGUMENT

A. This Court Has Authority to Enjoin Material Modifications to Service Plan.

In order to form a special district under the Special District Act, C.R.S. §§ 32-1-101, *et seq.* a service plan must be submitted to the board of county commissioners or the governing body of a municipality where the district is to be located. *See* C.R.S. §§ 32-1-204, 32-1-204.5; *see also Indian Mountain Corp. v. Indian Mountain Metro. District*, 412 P.3d 881, 892-93 (Colo. App. 2016). Once the service plan for a district is approved, it becomes the charter or governing document for the district, and the special district must conform to its approved service plan “so far as practicable.” C.R.S. § 32-1-207(1), (2)(a); *Indian Mountain*, 412 P.3d at 893. “Upon final approval by the court for the organization of the special district, the facilities, services, and financial arrangements of the special district **shall conform** so far as practicable to the approved plan.” C.R.S. § 32-1-207(1)(emphasis added).

Any material modification of the service plan must be approved by the governing county or municipality for the district. C.R.S. § 32-1-207(2)(a).

After organization of a special district pursuant to the provisions of this part 2 and part 3 of this article, **material modifications of the service plan as originally approved may be made by the governing body of such special district only by petition to and approval by . . . the governing body of the municipality that has adopted a resolution of approval of the special district pursuant to section 32-1-204.5 . . . in substantially the same manner as is provided for approval of an original service plan; . . . Such approval or modifications shall be required only with regard to changes of a basic or essential nature, including but not limited to the following:** Any addition to the types of services provided by the special district; **a decrease in the level of services;** a decrease in the financial ability of the district to discharge the existing or proposed indebtedness; or a decrease in the existing or projected need for organized service in the area. . . .

C.R.S. § 32-1-207(2)(a) (emphasis added); *see also Bill Barrett Corp. v. Lembke*, 488 P.3d 390, 402

(Colo. App. 2018) (discussing the requirement of approval for material modifications to a service plan and the court’s power to enjoin a material modification).

This Court has the power and authority to enjoin any material modification to the FRMD Service Plan not approved by the City. C.R.S. § 32-1-207(3)(a).

Any material departure from the service plan as originally approved or, if the same has been modified, from the service plan as modified, which constitutes a material modification thereof as set forth in section (2) of this section, **may be enjoined by the court approving the organization of such special district** upon its own motion, upon the motion of the board of county commissioners or governing body of a municipality from which a resolution of approval is required by this part 2 or **upon the motion of any interested party as defined in section 32-1-204(1).**

(C.R.S. § 32-1-207(3)(a) (emphasis added).)

B. Solterra Is an Interested Party and Has Standing to Seek the Relief Requested in this Motion.

Solterra is an interested party under the C.R.S. § 32-1-204 and thus has standing to file this Motion and to obtain the requested relief.

C.R.S. § 32-1-204(1) provides, among other things, that residents and property owners within the special district are interested parties. Solterra is a property owner within FRMD and thus has standing to pursue this Motion. Moreover, Solterra is the Developer under the Service Plan and is the party that is most harmed by Green Mountain’s and FRMD’s failures to comply with the Service Plan.

C. Green Mountain’s and FRMD’s Refusal to Provide Sewer Service for Solterra Filings 18, 20, and 21 Is a Material Modification of the Service Plan.

The Service Plan states unequivocally that “[s]anitation services **will be provided** to the Project by Green Mountain.” (Service Plan, § I.C(4)(b), p. 12.) The Service Plan also states that “[s]anitation services will be coordinated between [FRMD No. 1] and Green Mountain.” (*Id.*, p. 16.) The Project means “the development of real property located within the District Boundaries.”

Solterra's Filings 18, 20, and 21 constitute part of the development of real property within the boundaries of FRMD and thus are part of the Project for which sanitary sewer service is required. Accordingly, the requirement to provide sanitation service to Filings 18, 20, and 21 is mandatory as detailed in Section E below.

The refusal to provide sanitary sewer service to Filings 18, 20, and 21 constitutes a material modification to the Service Plan because it would change and completely undermine the basic and essential nature of the FRMD Service Plan, which was to advance development within the boundaries of FRMD by providing various services including sanitation sewer service for the entirety of the Project. The refusal to provide sanitation services would effectively prevent Solterra from completing development of Filings 18, 20, and 21, for which it has expended millions in planning, design, development and infrastructure installation. Solterra also would lose the opportunity to complete and sell 94 single family residential units. (Urban Aff., ¶ 29.)

Furthermore, the refusal to provide sanitary sewer service falls squarely within the definition of a material modification under Section 32-1-207(2)(a) in that it constitutes a “**decrease in the level of services**” being provided under the Service Plan. *See Upper Bear Creek Sanitation District v. Board of County Commissioners of the County of Clear Creek*, 715 P.2d 799, 802-03 (Colo. 1986) (holding that District was required to obtain county approval for a change in the services being provided); *see also Bill Barrett Corp. v. Lembke*, 488 P.3d at 402; *Bill Barrett Corp. v. Sand Hills Metro. District*, 411 P.3d 1086, 1091 (Colo. App. 2016). The court in *Lembke* held that plaintiffs were entitled to injunctive relief because the defendant district materially modified its service plan by changing the nature and scope of its services and by failing to obtain approval from the governing body, namely the Adams County board of county commissioners. *Id.* at 403-04. In *Sand Hill*, the court held, among other things, that the district's failure to comport with the requirements of the

approved service plan constituted a material departure of the plan. *Sand Hills*, 411 P.3d at 1091.

D. City Has Not Approved the Material Modification to the Service Plan.

The City is the governing body for FRMD, and thus any material modification of the Service Plan requires the City’s approval. C.R.S. § 32-1-207(2)(a). The City, however, has not approved any change to the Service Plan that would allow FRMD and Green Mountain to deny sanitary sewer service to the remaining development within the FRMD boundaries.

E. Sanitary Sewer Service Is a Mandatory Requirement of the Service Plan.

Even to the extent that this Court concludes that there is no material modification to the Service Plan, Solterra is entitled to an order requiring that FRMD and Green Mountain comply with the requirements of the Service Plan and provide sanitary sewer service to the residential units for Filings Nos. 18, 20, and 21. As set forth in *Plains Metro. District v. Ken-Caryl Ranch Metro. District*, 250 P.3d 697 (Colo. App. 2010), mandatory terms of a service plan are enforceable under the Special District Act. *Id.* at 700 (holding that defendant’s service plan required it to build a recreational facility). In *Plains Metro. District*, the court applied common principles of contract and statutory construction to conclude that use of the term “will” in a service plan creates a mandatory obligation. *Id.* Specifically, the court held that the following service plan language created a mandatory obligation to build recreational facilities: “[t]he recreational facilities to be designed and constructed by [plaintiff] will include a swimming and tennis facility and a ball field park,” that they “will include a swim pool, 2 tennis courts and a restroom and mechanical building,” and that the “ball field park will consist of 3 combination softball/soccer field[s].” *Id.*

Based on the analysis and reasoning of the court in *Plains Metro. District*, the statement in the FRMD Service Plan that “[s]anitation services **will be provided** to the Project by Green Mountain Water and Sanitation District” is unquestionably a mandatory term that must be enforced

under C.R.S. § 32-1-207(1) so far as practicable. *See Plains Metro. District*, 250 P.3d at 700. In addition, the statement that “[s]anitation services **will be** coordinated between” FRMD and Green Mountain is a mandatory term of the Service Plan that must be enforced. *Id.*

There is no evidence or suggestion that it would not be practicable for Green Mountain or FRMD to provide sanitary sewer service for Filings 18, 20, and 21. In fact, Green Mountain has already approved the now installed sewer lines for Filings 18 and 20 and has gone through six separate reviews of the sanitary sewer plans for Filing 21. The manager of Green Mountain represented that the plans were acceptable and that he was only waiting on board approval to sign. (Urban Aff., ¶ 28.) There also is no evidence that it would not be practicable for FRMD to coordinate with Green Mountain to ensure that sanitary sewer service is provided to Filings 18, 20, and 21. The only excuse offered by FRMD and Green Mountain for not providing the required sewer service is that Green Mountain is on a mission to curb development within its service area. That desire does not make the provision of sewer service impracticable.

IV. CONCLUSION

Based on the foregoing, Solterra LLC respectfully requests that this Court enter an order permanently enjoining³ the efforts of Green Mountain and FRMD to materially modify the FRMD Service Plan by denying sanitary sewer service to Solterra’s Filings 18, 20, and 21 without approval from the City, prohibiting them from taking any action contrary to the mandatory obligations in the Service Plan to provide sanitary sewer service for the Project, including to Filings 18, 20, and 21, and ordering that they, among other things, issue the 87 Certificates of Service requested by Solterra and issue the sanitary sewer tap permits based on Solterra’s tender of the Tap Fee Check.

³ Solterra also is entitled to a preliminary injunction under *Rathke v. MacFarlane*, 648 P.2d 648, 651 (Colo. 1982), and reserves the right to seek a preliminary injunction should a hearing on the merits be delayed.

Respectfully submitted this 7th day of March, 2023.

KUTAK ROCK, LLP

s/ Neil L. Arney

Neil L. Arney, #27860

Attorneys for Plaintiff Solterra LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of March, 2023, the foregoing **AMENDED MOTION PURSUANT TO C.R.S. § 32-1-207(3)(a) TO ENJOIN A MATERIAL MODIFICATION TO THE SERVICE PLAN AND ENFORCE MANDATORY OBLIGATIONS OF SERVICE PLAN** was filed and electronically served upon all counsel of record via Colorado Courts E-Filing and

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s/ Edna Gray _____
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