

RESOLUTION NO. 15-16

A RESOLUTION DIRECTING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO EXECUTE THE SEWAGE TREATMENT AND DISPOSAL AGREEMENT BETWEEN COLORADO SPRINGS UTILITIES AND THE CITY OF MANITOU SPRINGS

WHEREAS, City Code § 12.5.304 allows Colorado Springs Utilities to provide by contract a connection to the City's wastewater system by institutions, organized sewer districts, governments, municipal corporations, or other similar users which are located outside the corporate limits of the City; and

WHEREAS, the City of Manitou Springs is the owner of the wastewater collection system that collects wastewater generated by its residents; and

WHEREAS, Colorado Springs Utilities has been treating the City of Manitou Springs' wastewater since the 1970s, and the contract under which it currently provides such service expires on February 18, 2016; and

WHEREAS, the City of Manitou Springs desires that Colorado Springs Utilities continue to collect wastewater at designated delivery points from the City of Manitou Springs and process such wastewater; and

WHEREAS, Colorado Springs Utilities requests that City Council authorize and direct the Chief Executive Officer of Colorado Springs Utilities to execute a Sewage Treatment and Disposal Agreement with the City of Manitou Springs; and

WHEREAS, the City Council finds that it is in the best interest of the City and the surrounding community for Colorado Springs Utilities to enter into such a Sewage Treatment and Disposal Agreement with the City of Manitou Springs.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council finds and determines that the Sewage Treatment and Disposal Agreement between Colorado Springs Utilities and the City of Manitou Springs attached hereto will benefit the public health, safety and welfare of the surrounding community and is in the best interest of the City.

Section 2. The Chief Executive Officer of Colorado Springs Utilities is authorized and directed to enter into and administer the Sewage Treatment and Disposal Agreement with the City of Manitou Springs in a form substantially similar to that attached hereto.

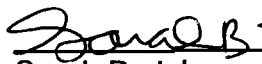
Section 3. This Resolution shall be in full force and effect immediately upon its adoption.


Dated at Colorado Springs, Colorado, this 9th day of February, 2016.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



SEWAGE TREATMENT AND DISPOSAL AGREEMENT

Special Contract for Service – Outside City Limits
City of Manitou Springs

THIS AGREEMENT ("Agreement") is made and entered into this 3rd day of February, 2016, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a home rule City and Colorado municipal corporation ("Utilities"), and the City of Manitou Springs, a Colorado home rule city and municipal corporation ("Manitou Springs"), located at 606 Manitou Avenue, Manitou Springs, CO 80829. In this document, Utilities and Manitou Springs can be referred to individually as "Party" or collectively as "Parties."

Recitals

- A. Manitou Springs is a Colorado municipality located just to the west of the City of Colorado Springs. Manitou Springs currently serves a customer base of approximately 2,100 connections in the Colorado Springs Metropolitan area.
- B. Utilities has wastewater infrastructure and treatment capacity available in its Wastewater Treatment System to provide wastewater related services for the anticipated wastewater flows from Manitou Springs through February 18, 2021, which is the end of the term of this Agreement.
- C. Utilities currently accepts and treats Manitou Springs' wastewater pursuant to an agreement for Special Contract for Services – Outside City Limits that will soon expire and Utilities agrees to continue to accept and treat through its Wastewater Treatment System, Manitou Springs' wastewater flows, subject to the terms and conditions contained herein.
- D. Utilities has entered into this Agreement pursuant to Section 12.5.304 (Service; Special Contract) of Article 4 (Wastewater Treatment Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, INCLUDING THE FOREGOING REPRESENTATIONS, IT IS AGREED AS FOLLOWS:

Article I

General Provisions

- A. **Term.** This Agreement shall become effective February 19, 2016 and remain in effect through February 18, 2021. This Agreement may be renewed in one year increments at the Utilities' CEO's discretion for up to two additional years, but in no case longer than February 18, 2023.

- B. Definitions.** Terms not otherwise defined herein, shall have the meaning adopted in the latest amendment to the City Code of Colorado Springs Colorado 2001, as amended ("City Code"). Defined terms are capitalized.
1. **Manitou Springs' Service Area:** This Agreement shall apply to Manitou Springs' Service Area, as identified in **Exhibit A** hereto and as may be amended by annual submittals in accordance with this Agreement.
 2. **Manitou Springs' Wastewater Collection System:** Manitou Springs' Wastewater Collection System includes any devices, facilities, structures, equipment or works owned by Manitou Springs for the purpose of collection, storage and transmission of Wastewater from Manitou Springs' customers.
 3. **Utilities' Wastewater Treatment System:** Utilities' Wastewater Treatment System includes any devices, facilities, structures, equipment or works owned by Utilities for the purpose of collection and treating Wastewater.
- C. Jurisdiction.** Manitou Springs is a User of Colorado Springs' publically owned treatment works for the purposes of City Code §12.5.102. In accordance with City Code § 12.5.304, Manitou Springs submits to the jurisdiction of the City of Colorado Springs for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 5. Manitou Springs shall by ordinances or resolutions provide for its customers to submit to the jurisdiction of the City of Colorado Springs for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 5.
- D. Wastewater Treatment Service.** This Agreement is a "Special Contract for Service – Outside City Limits," as provided in Utilities' Tariffs. The Utilities' Tariffs and Rules and Regulations shall apply to Manitou Springs, except as otherwise provided in this Agreement. During the term of this Agreement, Utilities will accept and treat through its Wastewater Treatment System, wastewater that originates from inside Manitou Springs' Service Area from Manitou Springs' customers, subject to the terms and conditions contained herein. Utilities shall have no obligation to accept and treat wastewater under this Agreement that originates outside of Manitou Springs' Service Area. Manitou Springs shall provide to Utilities an updated copy of the map of Manitou Springs' Wastewater Collection System by **February 15** of each year, or notice that no changes to Manitou Springs' Wastewater Collection System have occurred in the preceding year.
1. **Expansion of Manitou Springs' Service Area Requirements.** If Manitou Springs desires to expand Manitou Springs' Service Area, then Manitou Springs shall obtain prior written approval from Utilities. Manitou Springs shall provide notice to Utilities of any proposed changes in Manitou Springs' Service Area boundary at least sixty (60) days prior to approval of the proposed expansion by the governing body of Manitou Springs. Utilities shall provide

notice to Manitou Springs of its approval/disapproval of the proposed expansion within 30 days of its receipt of notice of the proposed expansion from Manitou Springs.

E. Rates, Charges, Surcharges and Fees Payable by Manitou Springs. Manitou Springs shall pay to Utilities the applicable rates, charges, surcharges and fees as provided in the Utilities' Tariffs for the services provided hereunder, as may be changed from time to time by the Colorado Springs City Council as provided by City Code. Such charges and fees include, but are not limited to, Treatment Charges and Extra Strength Surcharges, as provided in Utilities Tariff "Special Contract Services – Outside City Limits." Surcharges will be based on twenty-four (24) hour composite samples.

1. **Payment by Manitou Springs.** Payment of the total monthly bill by Manitou Springs shall be due at ***Colorado Springs Utilities, Customer Services Department, 111 S. Cascade Ave., Colorado Springs, Colorado 80903***, within thirty (30) days of receipt thereof. If the bill is not paid within the thirty (30) day period, a deposit will be assessed as outlined in Utilities Rules and Regulations, which may be changed from time to time by the Colorado Springs City Council.

F. Manitou Springs' Responsibilities. In addition to other responsibilities and duties provided in this Agreement, Manitou Springs shall be solely responsible for the following:

1. Manitou Springs shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with, Manitou Springs' Wastewater Collection System including, but not limited to, air emissions from Manitou Springs' Wastewater Collection System, and spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency ("EPA")) from Manitou Springs' Wastewater Collection System.
2. At all times, Manitou Springs shall cause all wastewater, which is discharged directly or indirectly into Manitou Springs' Wastewater Collection System or into Utilities' Wastewater Treatment System by Manitou Springs or on its behalf, to comply with any requirements of Utilities, as permitted by law.
3. In addition to any reporting requirements Manitou Springs may have to the Colorado Department of Public Health and Environment – Water Quality Control Division ("CDPHE"), Manitou Springs shall immediately copy Utilities on any verbal or written notice to CDPHE of any illicit discharge, spill or overflow from Manitou Springs' Wastewater Collection System that are required to be reported to CDPHE.

4. Manitou Springs' Wastewater Collection System shall collect only from separate sanitary sewer systems and there shall be no combined sanitary and stormwater systems or stormwater systems connected to Manitou Springs' Wastewater Collection System.
5. Manitou Springs shall require any installation and connection of service lines to Manitou Springs' Wastewater Collection System to be in accordance with the City Code and Utilities' Water and Wastewater Line Extension and Service Standards, as each may be amended, so as to minimize the possibility of damage to Utilities' Wastewater Treatment System. Manitou Springs shall perform inspection of all such installations and connections to ensure compliance with the City Code and Utilities' Water and Wastewater Line Extension and Service Standards and Specifications.
6. Manitou Springs shall submit to Utilities' Industrial Pretreatment Program quarterly an updated inventory of all Industrial Users and commercial customers connected to Manitou Springs' Wastewater Collection System. Such inventory shall include such customer's name, address, Standard Industrial Classification code, and average daily water usage for the previous quarter. Such listings shall include the name and address of the customer and the name of the contracting plumber performing the work.
7. Any wastewater flows delivered by Utilities to Manitou Springs' Wastewater Collection System from any Utilities' customer(s) shall be metered and Manitou Springs shall not be charged for wastewater that originates from any Utilities' customer(s).
8. Manitou Springs shall be responsible for assuring payment to Utilities by Manitou Springs' customers making new connections to Manitou Springs' Wastewater Collection System for the "System Development Charges" and "Recovery Agreement Charges," as provided in Utilities' Wastewater Tariffs, as such tariffs may be amended. Such charges shall be collected at the **CUSTOMER CONTRACT ADMINISTRATION OFFICE**, located at the **Regional Development Center, 2880 International Cir., Suite 210, Colorado Springs, Colorado 80910**. Manitou Springs and Utilities shall have the right to reimbursement under the provisions of any Recovery Agreement for construction of sewers as provided in Utilities' Tariffs.

G. Discharge Prohibitions, Discharge Limitations and Point of Discharge Limitations.

1. Utilities shall have the right to restrict additional connections and discharges to Manitou Springs' Wastewater Collection System in the event of limitation in Utilities' treatment or collection system capacity.

2. Utilities shall have the right to prohibit any connection to, or discharges into, Manitou Springs' Wastewater Collection System of an Industrial User in accordance with City Code.
3. Manitou Springs is prohibited from contributing excess flows that cause or contribute to overflows, flooding or non-compliance with Utilities' Colorado Discharge Permit System ("CDPS") Permit No. CO-0026735.
4. Manitou Springs hereby agrees to comply, and require its customers to comply, with the discharge prohibitions, discharge limitations and points of discharge limitations set forth in City Code §§ 12.5.702, 12.5.703, 12.5.704 A-E, 12.5.801-12.5.811, as may be amended from time to time, and shall prohibit the discharge of waste silver-rich photochemical solutions with total silver concentrations greater than 400 mg/l. Manitou Springs has enacted and shall keep in full force and effect for its customers by ordinances or resolutions limitations that mirror these City Code sections as may be amended from time to time. Manitou Springs shall submit a copy of the most recent discharge ordinance and/or resolution to Utilities by February 15 of each year, and amendments to said ordinance and/or resolution within 30 days of adoption.
5. In addition to other remedies provided in this Agreement, Manitou Springs must, within a reasonable time after written notification from Utilities that flow demand exceeds existing system capacity, construct relief systems and necessary appurtenances. These relief facilities may be constructed on property owned by Manitou Springs, within the boundaries of Manitou Springs, or at other mutually agreed upon locations within Utilities' Wastewater Treatment System. At the discretion of Utilities, Utilities may, but is not obligated to, enter into a cost-sharing agreement with Manitou Springs to pay a pro rata share of the construction cost of relief systems based upon the determination of benefit to Utilities. Benefit to Utilities may be derived from, but not limited to, the following:
 - Relief of pipelines operating in excess of design capacity.
 - Replacement of structurally deficient pipelines.
 - Replacement of pipelines subject to flooding or other hazards.
 - Replacement of pipelines with inadequate operations and maintenance access.
 - Replacement of pipelines subject to excessive inflow/infiltration.
 - Pipelines that provide for the elimination of pump stations and force mains.

H. Compliance with Requirements. In all cases where the application or the enforcement of Utilities' requirements, as may be amended, involve technical or scientific analyses or determinations, Utilities shall have final authority as to methods, standards, criteria, significance, evaluation, and interpretation of such analyses and determinations.

Article II
Connection to Utilities' Wastewater Collection System

- A. Point(s) of Connection of Manitou Springs to Utilities' Wastewater Collection System.** Manitou Springs shall deliver its Wastewater to Utilities' Wastewater Collection Line(s) at the principal interconnect located near the intersection of Colorado Avenue and Columbia Avenue and the secondary interconnect located near the intersection of Crystal Valley Rd., Red Canon Rd., and W. High St. The location of the interconnects is depicted on **Exhibit B** hereto. These connection points, and all other approved new, modified or abandoned connections to Utilities' Wastewater Treatment System shall be made at the expense of Manitou Springs. Manitou Springs, at its own expense and cost, will construct, install, operate and maintain any and all extensions of its Wastewater Collection System or the outfalls therefrom necessary to cause the same to reach to and to deliver Wastewater at the point(s) of connection. All connections to Utilities' Wastewater Treatment System shall be made in accordance with Utilities' Line Extension and Service Standards and shall be inspected by Utilities.
- B. Discharge Meters.** Utilities shall install, read, operate, maintain and replace the discharge meters used to measure the wastewater delivered from Manitou Springs' Wastewater Collection System to Utilities Wastewater Treatment System at Utilities' cost. No meter has been installed to measure Manitou Springs' wastewater that is delivered to the secondary interconnect discussed in Article II A above. Until such time as a meter is installed to measure such wastewater, Manitou Springs shall meter water usage for its customers served by the secondary interconnect. Manitou Springs shall provide the water service meter readings for those customers to Utilities Customer Services Department no later than March 31 of each year and Utilities will use such meter readings to bill Manitou for the treatment of such wastewater.
- B. Manitou Springs Water Customers.** Manitou has three water service customers who discharge wastewater directly into Utilities' Wastewater Treatment System. Manitou Springs shall meter water usage for the water service customers who discharge wastewater directly into Utilities' Wastewater Treatment System. Manitou Springs shall provide the water service meter readings for these customers to Utilities Customer Services Department no later than March 31 of each year.
- D. User Charge System.** Manitou Springs shall maintain an approved EPA User Charge System (40 CFR §§ 35.929-2(e) and 35.925-11). Utilities will notify Manitou Springs by February 1 of each year of Utilities' classifications, classes and surcharges per class and any other information on revenues, costs and allocation of costs between BOD, TSS and flow so as to assure proportional allocation of costs to Users. Manitou Springs shall provide within sixty (60) days of implementation or upon request by Utilities, a report on Manitou Springs'

ordinance classes, rates and implementation provisions. Manitou Springs will comply with EPA regulations 40 CFR §§ 32.929-2(f) and 35.2140(c) by advising Manitou Springs' Wastewater Collection System Users in conjunction with a regular bill (or other means acceptable to the EPA Regional Administrator) of their wastewater rate and that portion of the rate attributable to wastewater treatment services. A copy of the notification shall be forwarded to Utilities within sixty (60) days of when Manitou Springs provides such notification to its Wastewater Collection System Users.

Article III

Manitou Springs Industrial Pretreatment Program Delegated to Utilities

- A. Industrial Pretreatment Program Responsibilities.** Manitou Springs hereby represents and acknowledges that Utilities will administer Manitou Springs' Industrial Pretreatment Program responsibilities required by applicable law including, but not limited to, those responsibilities and obligations set forth in the United States Code of Federal Regulations and Colorado Code of Regulations, and implementing regulations, except for those responsibilities directly related to the obligations reserved to Manitou Springs. Manitou Springs agrees that Utilities will implement its industrial pretreatment responsibilities in accordance with City Code Chapter 12, Article 5, as well as Utilities' *Enforcement Response Plan, Silver Source Control Policies & Procedures Manual, Mercury Source Control Policies & Procedures Manual* and *Fats, Oil and Grease Policies & Procedures Manual, Liquid Waste Hauler Program Policies and Procedures Manual, and other related sector control program requirements*. Manitou Springs agrees to be responsible for any violations of applicable law for failure of Utilities' Industrial Pretreatment Program meeting applicable law.
- B. Enforcement.** Manitou Springs and Utilities shall each retain their enforcement discretion. Regarding businesses served by Manitou Springs, each Party shall be copied on all notices of violation and administrative orders issued by the other Party. Notwithstanding the above, Utilities has full authority to take enforcement action directly against any customer in Manitou Springs as provided in the City Code.
- C. Notification of Enforcement Actions.** Utilities shall notify Manitou Springs when assessing penalties, terminating wastewater service, or seeking criminal sanctions against any customer within Manitou Springs' Service Area. Utilities shall provide Manitou Springs with a status report regarding the compliance of Significant Industrial Users under the Pretreatment Program on or before April 1 of each year.

D. Charges and Fees Related to Industrial Pretreatment Program.

1. **To Manitou Springs.** Utilities may bill Manitou Springs under this Agreement any additional costs associated with the Industrial Pretreatment Program responsibilities delegated to Utilities herein; provided that Manitou Springs is not responsible for any industrial pretreatment costs associated with a Utilities' customer.
2. **To Industrial Users.** All general and special sewer service charges, and other charges levied against Industrial Users by Manitou Springs, shall be retained by Manitou Springs, except as otherwise provided by this Agreement or applicable law. Permit fees shall be retained by Utilities.
3. **Enforcement.** All penalty or other enforcement receipts arising from enforcement actions taken by Utilities against Manitou Springs or Manitou Springs' customers shall be collected and retained by Utilities.

Article IV
Remedies

- A. **Liquidated Damages.** To the extent permitted by law, in addition to any and all costs and charges provided herein, and in accordance with City Code § 12.5.304:B.2, Manitou Springs is subject to liquidated damages for violation of provisions of City Code Chapter 12, Article 5, in an amount equal to the penalties imposed pursuant to said Article.
- B. **Consequential Damages.** Any discharge of industrial wastewater by Manitou Springs or a Manitou Springs' customer shall subject Manitou Springs to consequential damages for breach of contract including, but not limited to, any amounts the City or Utilities may be required to pay for violation of the conditions of Utilities' CDPS permit where the discharge of Manitou Springs or its customer caused or contributed to the violation.
- C. **Breach of Agreement.** Upon any breach of this Agreement, which does not also constitute a breach of City Code Chapter 12, Article 5, Utilities shall have the immediate right to: (a) seek specific performance; (b) be reimbursed for costs; and (c) be entitled to money damages for the time period between the breach and the order for specific performance. Said rights also apply if liquidated damages, as provided in City Code § 12.5.304:B.2, are unavailable.
- D. **Termination.** Manitou Springs acknowledges and consents to Utilities' right to terminate this Agreement: (1) due to Manitou Springs' breach of a material term or condition of this Agreement, if Manitou Springs has not taken substantial steps

to cure the breach within thirty (30) days of receiving written notice of such breach from Utilities; or (2) as otherwise authorized by the City Code or City Council. Utilities will make reasonable efforts to notify Manitou Springs of circumstances that could result in such termination. Manitou Springs may terminate this Agreement due to a material breach on the part of Utilities, if Utilities has not taken substantial steps to cure the breach within thirty (30) days of receiving written notice of such breach from Manitou Springs.

- E. **Enforcement of Rights.** Nothing herein shall prevent either Party from enforcing its rights under this Agreement by an appropriate legal or equitable action.
- F. **Remedies Cumulative.** Remedies herein are cumulative and may be used individually, sequentially, concurrently, or in any order.

Article V **Miscellaneous**

- A. **Annual Review of Agreement.** Manitou Springs understands that Utilities is a publicly-owned treatment works, and is required by the Clean Water Act, 33 USC § 1251, *et seq.*, to control wastewaters introduced by all Users into Utilities' Wastewater Treatment System. Manitou Springs also understands that Utilities is subject to present and continuing Federal and State statutory and regulatory controls and other factors which may, subsequent to the date of this Agreement, be added to or amended. The Parties will review and revise this Agreement to ensure compliance with the Federal Clean Water Act (33 USC § 1251, *et seq.*), rules and regulations issued thereunder and other added or amended controls or factors, as necessary, but at least once every year commencing on November 15.
- B. **Termination of Agreement.** Either Party shall have the right to terminate this Agreement upon giving ninety (90) days written notice to the other Party, in which case Manitou Springs' connection to Utilities' Wastewater Treatment System shall be removed at Manitou Springs' sole expense in a manner approved in advance by Utilities and wastewater treatment services discontinued. All outstanding charges owed by Manitou Springs to Utilities are due and payable prior to the disconnection of service. If all outstanding charges owed by Manitou Springs to Utilities are not paid prior to disconnection, Manitou Springs' obligation to make full payment shall survive termination of this Agreement.
- C. **Representatives and Notice.** All notices, reports and submittals required by this Agreement shall be in writing and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid, return receipt requested, as follows:

If to Utilities: COLORADO SPRINGS UTILITIES
Business Account Management
111 S. Cascade Avenue
Customer Care Center, 2nd Floor
Colorado Springs, CO 80903
Phone: (719) 668-3543

If to Manitou Springs: CITY OF MANITOU SPRINGS
ATTN: City Administrator
606 Manitou Avenue
Manitou Springs, CO 80829
Phone: (719) 685-2548

- D. **Force Majeure.** Neither Party hereto shall be liable to the other 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.
- E. **Waiver.** No waiver by either Party of any terms or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.
- F. **Limitations upon Consent and No Waiver.** Whenever, under the terms of this Agreement, Utilities is authorized to give its written consent, Utilities, in its discretion, may give or may refuse such written consent and if given, may restrict, limit, or condition such consent in such manner as it shall deem advisable. Acceptance by Utilities into Utilities' Wastewater Treatment System from Manitou Springs of Wastewater in a volume or with characteristics exceeding or violating any limit or restriction provided for, by or pursuant to this Agreement, in one or more instances or under one or more circumstances, shall not constitute a waiver of such limit or restriction or of any of the provisions of the Agreement and shall not in any way obligate Utilities thereafter to accept or to make provision for Wastewater delivered and discharged into Utilities' Wastewater Treatment System in a volume or with characteristics exceeding or violating any such limit or restriction in any other instance or under any other circumstances.
- G. **Audits.** Utilities shall have the right to audit at any time all of Manitou Springs' records relating to any new customers to Manitou Springs, or relating to compliance with this Agreement. Manitou Springs shall have the right to audit all Utilities' records relating to compliance with this Agreement.

H. Liability.

1. **Party Responsible for Own Negligence.** Each Party shall be responsible for its own negligence. Neither Party waives the benefits or obligations afforded it by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*
2. **Utilities' Limitation of Liability.** In addition to force majeure events described in this Agreement, Utilities shall not be liable to Manitou Springs for failure to accept or treat Manitou Springs' Wastewater when such failure is the result of upset or mechanical or power failure. Utilities shall have the right to interrupt service and require Manitou Springs to temporarily store and contain wastewater flows to the extent of Manitou Springs' storage capabilities in the event of malfunction or upset of Utilities' facilities. In the event of planned maintenance which will render Utilities' facilities unable to accept Manitou Springs' Wastewater, a 48-hour notice shall be given to Manitou Springs, after which Manitou Springs will temporarily store and contain Wastewater to the extent of its storage capabilities.

- I. No Third-Party Beneficiaries.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to Manitou Springs and Utilities, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. It is the express intention of Manitou Springs and Utilities that any person other than Manitou Springs or Utilities receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- J. Severability.** If any provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken for as long as it remains illegal or unenforceable.
- K. Assignment.** There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party, and any such assignment shall be null and void. Nothing herein contained, however, shall be construed as preventing the reorganization of any Party hereto nor as preventing any other body corporate and politic succeeding to the rights, privileges, powers, immunities, liabilities, disabilities and duties of either Party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.
- L. Compliance with Laws and Regulations.** This Agreement and the rights and obligations of the Parties hereunder shall be subject to all applicable laws, orders, court decisions, directives, rules and regulations of any duly constituted governmental body or official having jurisdiction. Nothing contained in the Agreement, however, shall require either Party hereto to comply with any law, the

validity of applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings.

M. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws, the Colorado Springs City Charter, the City Code of the City of Colorado Springs, and the Colorado Springs Utilities' Rules and Regulations, and Wastewater Tariffs. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of Utilities as provided in the City Code § 12.1.108. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

N. Entire Agreement. This Agreement with attachments constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. This Agreement may only be amended by a written agreement signed by both Parties. E-mail and all other electronic (including voice) communications from Utilities in connection with this Agreement are for informational purposes only. No such communication is intended by Utilities to constitute either an electronic record or an electronic signature, or to constitute any agreement by Utilities to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

In witness whereof, the representatives of each Party hereto certify via execution below that they are duly authorized to commit their organization to this Agreement in its entirety:

COLORADO SPRINGS UTILITIES

By:  _____

Name: Jerry Farte

Title: CEO

Date: 2/11/16

Approved as to form:  _____

CITY OF MANITOU SPRINGS

By:  _____

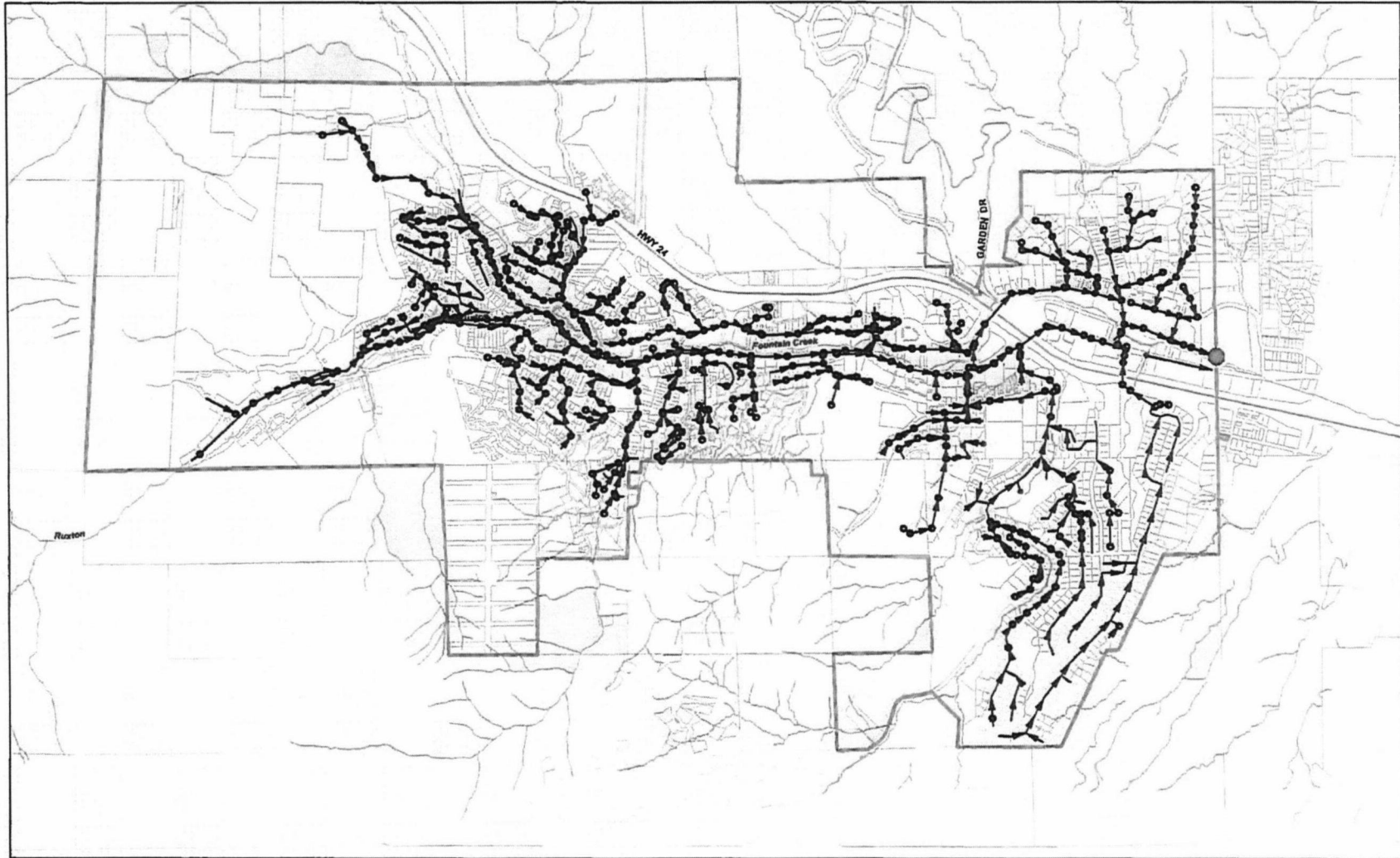
Name: Jason S. Wells

Title: City Administrator

Date: 2/3/2016

Attest:  _____

Exhibit A



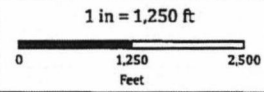
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Due to security concerns, The City requests that you do not post this document on the internet or otherwise make it available to persons unknown to you.



City of Manitou Springs Sewer Collection System

Printed: 10/21/2015



- Active MH
- Drop MH
- Private MH
- Abandoned MH
- Sewer Main
- Municipal Junction

Exhibit B

