

WASTEWATER SERVICE AGREEMENT  
Contract Service – Regional (S9C)  
Rock Creek Metropolitan District

THIS AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between Colorado Springs Utilities ("UTILITIES"), an enterprise of the City of Colorado Springs ("City"), a home rule City and Colorado municipal corporation, and Rock Creek Metropolitan District ("DISTRICT"), a quasi-municipal entity and political subdivision of the State of Colorado. In this document, UTILITIES and DISTRICT can be referred to individually as "Party" or collectively as "Parties."

Recitals

- A. DISTRICT is a Colorado statutory metropolitan district that was formed in 2018 with an existing service area that includes: (1) the Sundance at Rock Creek Apartments area ("Sundance Property") located within the City limits and (2) certain properties within an area known as Rock Creek Mesa situated west of the intersection of Pawnee Road and US Highway 115 that are outside the City limits.
- B. UTILITIES will provide water, wastewater, electric, and gas utility services to the Sundance Property in the same manner as UTILITIES' other in-City customers.
- C. As a Colorado statutory metropolitan district, DISTRICT intends to provide potable water service and wastewater collection service to development within DISTRICT's existing service area outside of the City limits and to certain extraterritorial customers located outside of both the City limits and DISTRICT's existing service area.

DISTRICT desires to obtain wastewater treatment service from UTILITIES to provide wastewater treatment service within DISTRICT's Service Area (as defined in Article 1 below) or within areas that may be included in DISTRICT's Service Area and to obtain wastewater treatment service for the outside-District, 230-unit Cheyenne Mountain Estates mobile home park ("MHP"), which will be a singular extraterritorial wastewater customer of DISTRICT, and is anticipated to contribute a Maximum Average Flow of 0.103 million gallons per day ("MGD") to UTILITIES' Wastewater Treatment System by DISTRICT.

- D. Upon completion of the connection of the outside-City collection system to UTILITIES' Wastewater Treatment System, UTILITIES will have sufficient wastewater infrastructure and treatment capacity available in its Wastewater Treatment System to provide wastewater collection and treatment services for the anticipated wastewater flows from DISTRICT subject to the terms and conditions set forth herein.
- E. DISTRICT also desires to obtain water service from UTILITIES through a separate regional water service agreement for properties within DISTRICT's Service Area and DISTRICT's Customers.

F.

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- G. The Parties have entered into this Agreement pursuant to Section 12.5.304 (Service; Special Contract) of Article 5 (Wastewater Treatment Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended (“City Code”).

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

### Article I

#### General Provisions

1. Term. This Agreement shall become effective on the date of the last signature below and shall remain in effect until 5pm MST December 31, 2048.
  - a. No later than eighteen (18) months prior to the expiration of the Term, the Parties shall begin good faith negotiations on a new agreement for UTILITIES to treat DISTRICT’s wastewater, with the expectation that such new agreement (“New Agreement”) shall be substantially similar to this Agreement.
  - b. If the Parties are unable to execute a New Agreement by the date that is six (6) months prior to the end of the Term:
    - i. UTILITIES may notify DISTRICT in writing that DISTRICT shall be disconnected from UTILITIES’s Wastewater Treatment System as of the expiration of the Term; or
    - ii. If the Parties mutually agree to continue good faith negotiations for a new wastewater service agreement beyond the Term, the term may be extended for an additional 1 year term at UTILITIES’ sole discretion.
2. Definitions. Terms not otherwise defined herein shall have the meaning adopted in the latest amendment to the City Code as amended. Defined terms are capitalized.
  - a. DISTRICT’s Customers: The persons and entities located within DISTRICT’s Service Area, that receive the benefit of the wastewater service provided hereunder
  - b. DISTRICT’s Service Area: The properties located outside of the Colorado Springs City Limits, as depicted on Exhibit A as parcels B through F, the MHP property identified as parcel J on Exhibit A, as well as the Future Inclusion Areas depicted on Exhibit A parcels G, H, I, K and L once they have been included in DISTRICT’s Service Area as provided in its Service Plan and in accordance with Title 32-1-101, *et seq.* (“Title 32”).
  - c. DISTRICT’s Wastewater Collection System: Any devices, facilities, structures, equipment or works owned and/or operated by DISTRICT for the purpose of collection and transmission of wastewater generated within DISTRICT’s Service Area to UTILITIES’ Wastewater Treatment System.
  - d. Maximum Average Flow: The Maximum Average Flow shall be calculated based on a

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ninety (90) day rolling average of discharge as measured at the Point of Connection.

- e. UTILITIES' Wastewater Treatment System: Any devices, facilities, structures, equipment or works owned and/or operated by UTILITIES for the purpose of collecting and treating wastewater.

### 3. Jurisdiction and Compliance.

- a. This Agreement is for wastewater treatment service as defined in UTILITIES' Wastewater Rate Schedule "Contract Service – Regional (S9C)," together with UTILITIES' Rules and Regulations as such may be amended or replaced from time to time by the Colorado Springs City Council ("Tariffs"). The wastewater treatment service provided to DISTRICT under this Agreement shall be governed by the Colorado Springs City Charter, the City Code, the Tariffs, UTILITIES' Wastewater Line Extension and Service Standards ("WWLESS"), and all other applicable City or UTILITIES' ordinances, resolutions regulations, policies and rules concerning use of UTILITIES' Wastewater Treatment System as may be amended or replaced, except as otherwise provided in this Agreement.
- b. DISTRICT is a User of Colorado Springs' publicly owned wastewater treatment works for the purposes of City Code §12.5.102. In accordance with City Code § 12.5.304, DISTRICT submits to the jurisdiction of the City for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 5. DISTRICT shall by ordinances, resolutions, or by contract with its extraterritorial customers, provide for DISTRICT's Customers to submit to the jurisdiction of the City for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 5. DISTRICT shall comply with all applicable laws, regulations, rules or policies concerning use of UTILITIES Wastewater Treatment System as they exist now or may be amended or replaced in the future.

### 4. Wastewater Treatment Service.

- a. During the term of this Agreement, UTILITIES will accept and treat through its Wastewater Treatment System wastewater that originates from inside DISTRICT's Service Area from DISTRICT's Customers, in accordance with City Code, the URRs and subject to the terms and conditions contained herein.
- b. Notwithstanding the foregoing, UTILITIES will only be obligated to treat wastewater that originates in the Future Inclusion Areas identified on Exhibit A, if such areas are included in DISTRICT's approved service area pursuant to Title 32. DISTRICT must provide UTILITIES with prior notice of its intent to seek inclusion of any portion of the Future Inclusion Areas and notice of the order of inclusion issued as required in Title 32. UTILITIES will only be obligated to treat wastewater that originates from the MHP after DISTRICT and the MHP enter into an agreement between those parties that makes the MHP an extraterritorial customer of DISTRICT and requires the MHP and its residents to comply with the terms of this Agreement and UTILITIES is provided with notice of such agreement. UTILITIES shall have no obligation to accept and treat wastewater from DISTRICT's Wastewater Collection System that exceeds an average flow of 0.103 MGD.

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- c. UTILITIES shall have no obligation to accept and treat additional wastewater under this Agreement that originates inside or outside of DISTRICT's Service Area, except as provided in Article 1, Paragraph 5 below.
  - d. DISTRICT shall provide to UTILITIES an updated copy of the map of DISTRICT's Wastewater Collection System by **February 15** of each year or notice that no changes to DISTRICT's Wastewater Collection System have occurred in the preceding year.
5. Expansion of Wastewater Treatment Obligations. If DISTRICT desires to obtain additional wastewater treatment service from UTILITIES for properties not identified on Exhibit A or that result in DISTRICT's discharges to UTILITIES Wastewater Treatment System to exceed an average of 0.103 MGD then:
- a. DISTRICT shall obtain prior written approval of such wastewater treatment service from UTILITIES, which may require authorization from the UTILITIES' Board of Directors and the Colorado Springs City Council.
  - b. DISTRICT shall provide notice to UTILITIES of its intent to obtain additional wastewater service for other properties prior to DISTRICT seeking approval of the proposed changes from El Paso County. The notice must include the number, types of connections, and flow estimates to DISTRICT's Wastewater Collection System that will be included in the expanded Service Area and/or the extraterritorial customer's service area or boundaries.
  - c. UTILITIES shall provide notice to DISTRICT of its approval/disapproval of the requested changes in wastewater service provided by UTILITIES and whether such expanded service will be provided under this agreement or a subsequent agreement within one hundred and eighty (180) days of UTILITIES' receipt of DISTRICT's notice of the proposed changes to the extent of wastewater service by UTILITIES. DISTRICT acknowledges that UTILITIES' approval of the expansion of wastewater service under this Agreement is limited to properties within DISTRICT's Service Area or within areas that may be included in DISTRICT's Service Area in the future and to a Maximum Average Flow rate of 0.103 MGD.
6. Rates, Charges, Surcharges and Fees Payable by DISTRICT.
- a. For the services provided hereunder, DISTRICT shall pay to UTILITIES the applicable rates, charges, surcharges, and fees as specified in the Tariffs as such may be amended or replaced from time to time by the Colorado Springs City Council. Such charges and fees include, but are not limited to, Treatment Charges and Extra Strength Surcharges, as provided in UTILITIES' rate schedule "Contract Service - Regional" and the Wastewater Regional System Availability Fee ("WWRSAF") as provided in the Tariffs. Surcharges will apply to DISTRICT's wastewater that exceeds normal domestic strength for biochemical oxygen demand and total suspended solids and will be based on twenty-four (24) hour composite samples. DISTRICT agrees that UTILITIES' rate making process, as embodied in the Tariffs, is fair and reasonable.
  - b. DISTRICT will continue to pay the rates established in the Tariffs even if UTILITIES

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changes its tariffs so long as UTILITIES' process to change the tariffs is conducted in compliance with the laws of the State of Colorado, City Code, and any other applicable law. UTILITIES will notify DISTRICT thirty (30) days in advance of City Council's consideration of the change in tariffs applicable to this Agreement.

- c. WWRSF. The WWRSF reflects the amount of capacity needed within UTILITIES' Wastewater Treatment System to meet the obligations of regional water contracts. The WWRSF is determined based on the average flow demand in million gallons per day. At buildout the DISTRICT will deliver wastewater to UTILITIES' Wastewater Treatment System at an average flow of 0.103 MGD. The WWRSF for average flows of 0.100 to 0.290 is \$28,216.00 which must be paid by DISTRICT within thirty (30) days of the date of billing at the address provided in Article 1, Paragraph 6.e.
  - d. UTILITIES conducts extensive water quality monitoring and studies in the Fountain Creek watershed and implements projects and programs to maintain and enhance conditions within the Fountain Creek Watershed. DISTRICT shall pay a Water Quality Impact Fee that will be calculated and billed annually. The annual fee will be based on DISTRICT's pro rata share of UTILITIES' combined yearly wastewater treatment flows, times the cost of UTILITIES water quality monitoring and studies and Fountain Creek watershed improvements.
  - e. Payment of the total monthly bill for service provided hereunder by DISTRICT shall be due at 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 thirty (30) days of receipt thereof, a deposit will be assessed as outlined in the Tariffs as modified or replaced.
7. DISTRICT's Responsibilities. In addition to other responsibilities and duties provided in this Agreement, DISTRICT shall solely have the following responsibilities:
- a. DISTRICT shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with, DISTRICT's Wastewater Collection System including, but not limited to, air emissions from DISTRICT's Wastewater Collection System, and spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency ("EPA") from DISTRICT's Wastewater Collection System.
  - b. At all times, DISTRICT shall cause all wastewater, which is discharged directly or indirectly into DISTRICT's Wastewater Collection System or into UTILITIES' Wastewater Treatment System by DISTRICT or DISTRICT's Customers, or on their behalf, to comply with any requirements of UTILITIES, as permitted by law.
  - c. DISTRICT shall at all times operate DISTRICT's Wastewater Collection System so as not to interfere with service to third parties who rely on UTILITIES' Wastewater Treatment System.
  - d. DISTRICT'S 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 DISTRICT's Wastewater Collection System.
  - e. If DISTRICT has a slug discharge as defined in §12.5.201 of the City Code, or a discharge

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that could cause problems to the UTILITIES' Wastewater Treatment System, UTILITIES shall be immediately notified. Additionally, a written report shall be submitted within five (5) days of the event detailing the date, time and cause of the slug discharge, the quantity and characteristics of the discharge, and corrective action taken to prevent future slug discharges.

- f. DISTRICT shall inform UTILITIES at least two (2) weeks prior to any planned significant change in operations which will affect wastewater characteristics or at least ninety (90) days prior to discharge of any new source of categorical process wastewater. Unplanned changes in wastewater characteristics must be reported within seven (7) days after the change becomes known.
  - g. DISTRICT shall report, in the manner provided below, any illicit discharge, spill, leak, or sanitary overflow from DISTRICT'S Wastewater Collection System, which may endanger human health, the environment or otherwise enter State Waters (as defined in C.R.S. § 25-8-103(19)) directly or indirectly ("Incident") to UTILITIES and the Colorado Department of Public Health and Environment – Water Quality Control Division ("CDPHE"), as soon as DISTRICT becomes aware of the Incident. Such notification shall, at a minimum, provide the following information:
    - 1. A description of the Incident including bypass or upsets.
    - 2. The period of and cause of the Incident the exact dates and times and/or anticipated time when the Incident will be remedied.
    - 3. The steps DISTRICT is taking to reduce, eliminate and prevent reoccurrence of the Incident. Incidents shall be reported verbally to UTILITIES and the CDPHE within twenty-four (24) hours and a written report shall be mailed to said entities within five (5) days from the date DISTRICT becomes aware of the Incident.
  - h. DISTRICT shall maintain an approved EPA User Charge System (40 CFR §§ 35.929-2(e) and 35.925-11). UTILITIES will notify DISTRICT by **February 1** of each calendar 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. DISTRICT shall provide within sixty (60) days of implementation or upon request by UTILITIES, a report on DISTRICT's classes, rates, and implementation provisions. DISTRICT will comply with EPA regulations 40 CFR §§ 32.929-2(3) and 35.2140(c) by advising DISTRICT's 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 DISTRICT provides such notification to its wastewater customers.
8. Discharge Prohibitions, Discharge Limitations, and Point of Discharge Limitations.
- a. UTILITIES shall have the right to prohibit any connection to, or discharges into, DISTRICT's Wastewater Collection System of an Industrial User in accordance with City

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Code.

- b. DISTRICT 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.
- c. DISTRICT hereby agrees to comply, and require DISTRICT's 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 and shall prohibit the discharge of waste silver-rich photochemical solutions with total silver concentrations greater than 400 mg/l.
- d. DISTRICT shall enact and keep in full force and effect for DISTRICT's Customers by ordinances, resolutions, and by contract with the MHP and other extraterritorial customers, limitations that mirror these City Code sections as may be amended from time to time. DISTRICT shall provide UTILITIES with notice and a copy of the most recent discharge ordinance, resolution and/or contract to UTILITIES by February 15 of each calendar year, and amendments to said ordinance, resolution and/or contract within thirty (30) days of adoption.
- e. In addition to other remedies provided in this Agreement, DISTRICT must, after written notification from UTILITIES that flow demands have reached 80% of capacity of the portions of UTILITIES' Wastewater Treatment System used to provide service to the DISTRICT hereunder, at no cost to UTILITIES, construct relief systems and necessary appurtenances in accordance with the City Code and the WWLESS, as each may be amended or replaced. Relief facilities shall be approved by UTILITIES, and operational before additional DISTRICT wastewater loading can be accepted. These relief facilities may be constructed on property owned by DISTRICT, within the boundaries of DISTRICT, or at other locations within UTILITIES' Wastewater Treatment System that are mutually agreed upon by the Parties. At the discretion of UTILITIES, UTILITIES may, but is not obligated to, enter into a cost sharing agreement with DISTRICT 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:
  - 1. Relief of pipelines operating in excess of design capacity.
  - 2. Replacement of structurally deficient pipelines.
  - 3. Replacement of pipelines subject to flooding or other hazards.
  - 4. Replacement of pipelines with inadequate operations and maintenance access.
  - 5. Replacement of pipelines subject to excessive inflow/infiltration.
  - 6. Pipelines that provide for the elimination of pump stations and force mains.
- f. Approvals and Permits. The Parties expressly acknowledge that the service contemplated and/or the construction of any Improvements under this Agreement is dependent upon the receipt of any necessary approvals and/or permits by Federal, State, and local governmental and/or regulatory entities. DISTRICT shall be responsible for obtaining all approvals and/or permits necessary for the implementation of this Agreement. UTILITIES

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will cooperate with DISTRICT to obtain any necessary approvals and/or permits. If any required approval and/or permit is not obtained by DISTRICT, either Party may terminate this Agreement. A copy of such approval or permit shall be provided to UTILITIES by DISTRICT.

9. Interpretation of Requirements. In all cases where the application or the enforcement of the City Code, URRs, Tariffs or WWLESS, 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.
10. Reusable Return Flows. Unless separately agreed to by the Parties, UTILITIES will retain dominion, ownership, title, and control of treated reusable water effluent resulting from wastewater discharged by DISTRICT into UTILITIES' Wastewater Treatment System for treatment.

### Article II

#### Improvements/Connection to UTILITIES' Wastewater Treatment System

1. Point(s) of Connection of DISTRICT to UTILITIES' Wastewater Treatment System. DISTRICT shall deliver its wastewater to UTILITIES' Wastewater Treatment System at the point of connection located within the master meter wastewater metering vault depicted on Exhibit B as initially approved by UTILITIES and any other location agreed to by the Parties in writing. These connection points, and all other approved new, modified or abandoned connections to UTILITIES' Wastewater Treatment System, shall be made at the expense of DISTRICT.
2. DISTRICT's Wastewater Collection System Improvements. DISTRICT shall be solely responsible, financially and otherwise, for designing, installing, constructing, and operating DISTRICT's Wastewater Collection System including, but not limited to, wastewater mains, and all infrastructure improvements necessary to connect UTILITIES' Wastewater Treatment System to DISTRICT's Wastewater Collection System at the agreed upon points of connection, and all other related facilities necessary for use in connection with this Agreement ("Improvements"). The Improvements shall be agreed upon by the Parties in advance and shall be designed, installed, constructed, inspected, operated and maintained in accordance with the City Code and the WWLESS as each may be amended or replaced. The Improvements shall be located on property owned by DISTRICT or in rights-of-way or easements dedicated for public utilities or conveyed to DISTRICT. DISTRICT shall, at its own cost and subject to UTILITIES' approval, locate, design, and construct the Improvements in such a manner and of such material that the Improvements will not at any time be a source of danger to or interference with any of UTILITIES' structures, facilities, or operations. UTILITIES shall have the right to perform its own inspection of all completed Improvements to ensure compliance with the City Code and the WWLESS.
3. Ownership and Maintenance of Improvements. Unless earlier dedicated by plat, upon completion of design, installation and construction of the Improvements, DISTRICT shall convey and dedicate to UTILITIES or shall cause the conveyance and dedication to UTILITIES, on forms acceptable to UTILITIES, ownership of all the Improvements located on the UTILITIES' side of the master meter(s), as depicted in Exhibit B, and the right to locate



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the Improvements dedicated and conveyed to UTILITIES on property owned by DISTRICT or in rights-of-way or easements conveyed to DISTRICT as necessary. UTILITIES shall be responsible for the operation, maintenance and repair of all Improvements dedicated to it and after they are conveyed to it pursuant to this Paragraph. DISTRICT shall continue to own all of the other Improvements. DISTRICT hereby agrees to grant UTILITIES ingress and egress over and through DISTRICT's property to the UTILITIES' owned Improvements and all DISTRICT-owned Improvements so that UTILITIES may operate, maintain, repair, and inspect the Improvements that UTILITIES is responsible for as well as perform its other duties under this Agreement. Prior to installation of Improvements, DISTRICT shall provide UTILITIES with an easement or plat requirement providing for such ingress and egress in a form approved by UTILITIES. DISTRICT shall be responsible for the operation, maintenance and repair of all Improvements not conveyed and dedicated to UTILITIES hereunder, including any repair or maintenance that is requested by UTILITIES. The Parties shall keep the Improvements and every part thereof for which they are responsible pursuant to this Paragraph maintained and in good repair so that they continue to properly serve the purposes for which they were originally intended. All repair or maintenance of the Improvements shall be completed in a timely manner and in accordance with the City Code and the WWLESS, as each may be amended or replaced. Any facilities that are part of DISTRICT's Wastewater Collection System which are in existence upon execution of this Agreement, or which are subsequently constructed or acquired by DISTRICT, and which do not comply with WWLESS, shall be brought into compliance at the time of replacement or repair. DISTRICT agrees to provide UTILITIES with a continuously complete record of all Improvements.

4. Approvals/Permits. The Parties expressly acknowledge that the service contemplated and/or the construction of any Improvements under this Agreement is dependent upon the receipt of any necessary approvals and/or permits by Federal, State, and local governmental and/or regulatory entities. DISTRICT shall be responsible for obtaining all approvals and/or permits necessary for the implementation of this Agreement. UTILITIES will cooperate with DISTRICT to obtain any necessary approvals and/or permits. If any required approval and/or permit is not obtained by DISTRICT, either Party may terminate this Agreement. A copy of such approval or permit shall be provided to UTILITIES by DISTRICT.
5. Customer Connections. DISTRICT shall require any construction, installation, and connection of customer service lines to DISTRICT'S Wastewater Collection System, and the connection of the MHP or any other extraterritorial customer, to DISTRICT's Wastewater Collection System, to be in accordance with the City Code, the Tariffs, and WWLESS, to minimize the possibility of damage to UTILITIES' Wastewater Treatment System. DISTRICT shall perform inspection of all such installations and connections to ensure compliance with the Colorado Springs City Code, the Tariffs, and the WWLESS and provide UTILITIES with the results of such inspections. UTILITIES reserves the right to perform its own inspection of all service line installations and connections to ensure compliance with City Code and the WWLESS.
6. Wastewater Discharge Meters.
  - a. DISTRICT must obtain UTILITIES' approval of the design and installation of all facilities related to DISTRICT's wastewater discharge meters that record the amount of wastewater

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delivered to UTILITIES' Wastewater Treatment System by DISTRICT. DISTRICT is responsible for the design and construction of the wastewater metering vault and appurtenances depicted in the WWLESS detail C3-8, the electrical supply to the operating equipment inside the metering vault, and for providing adequate maintenance access to the vault. Responsibility of the meter vault and appurtenances extends to and includes providing a suitable housing/protection and electric supply for any required instrumentation and Remote Terminal Units used to collect and transmit level and flow data to UTILITIES.

- b. It is understood by the Parties that the point of demarcation between DISTRICT's Wastewater Collection System and UTILITIES' Wastewater Treatment System is located at the metering manhole. All infrastructure upstream of the metering manhole is understood to be owned and maintained by DISTRICT. UTILITIES' Wastewater Treatment System begins at the metering manhole.
- c. UTILITIES shall install, read, operate, maintain, and replace the discharge meters at UTILITIES' cost.
- d. The accuracy of the meter shall be verified by UTILITIES upon installation and on an annual basis thereafter, with results provided to UTILITIES and DISTRICT. DISTRICT has the right to request meter verification tests more often than once annually; however, if the accuracy of the meter tests within +/-2% of the results of the most recent past annual test, DISTRICT shall be responsible for the cost of the test. If the meter does not test within the +/-2% accuracy imitation specified herein, then UTILITIES shall be responsible for the cost of meter calibration. In the event that the meter is found to be in error no adjustments to previous invoices will be permitted.

### Article III

#### DISTRICT Industrial Pretreatment Program Delegated to UTILITIES

1. Commercial/Industrial Customers. At the present time, DISTRICT does not anticipate that there will be any commercial or industrial customers connected to its Wastewater Collection System. However, the Parties acknowledge that connection of commercial and/or industrial customers to DISTRICT's Wastewater Collection System in the future is possible. The provisions of this Article III will apply in the event commercial and/or industrial customers are connected to DISTRICT's Wastewater Collection System in the future. DISTRICT shall provide UTILITIES with notice of its intent to permit connection of an industrial or commercial user to DISTRICT's Wastewater Collection System that includes such customer's name, address, Standard Industrial Classification code, and average daily water usage. DISTRICT shall submit to UTILITIES' Industrial Pretreatment Program, quarterly, an updated inventory of all Industrial Users and commercial customers connected to DISTRICT's 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.
2. Industrial Pretreatment Program Responsibilities. DISTRICT hereby represents and acknowledges that UTILITIES will administer DISTRICT's Industrial Pretreatment Program

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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 DISTRICT. DISTRICT 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, Fats, Oil and Grease Policies & Procedures Manual, Liquid Waste Hauler Program Policies and Procedures Manual*, and other related sector control program requirements. DISTRICT agrees to be responsible for any violations of applicable law for failure of UTILITIES' Industrial Pretreatment Program meeting applicable law resulting from DISTRICT's neglect, failure to report any known violations, or failure to comply with the terms and conditions of this Agreement.

3. Co-Issue Permits. DISTRICT may co-issue all permits if DISTRICT notifies UTILITIES' Industrial Pretreatment Program Director in writing requesting to do so.
4. Enforcement. DISTRICT and UTILITIES shall each retain their enforcement discretion. Regarding businesses served by DISTRICT, 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 DISTRICT as provided in the CityCode.
5. Notification of Enforcement Actions. UTILITIES shall notify DISTRICT when assessing penalties, terminating wastewater treatment service, or seeking criminal sanctions against any of DISTRICT's Customers. UTILITIES shall provide DISTRICT with a status report regarding the compliance of Significant Industrial Users under the Pretreatment Program on or before **April 1** of each year.
6. Charges and Fees Related to Industrial Pretreatment Program.
  - a. To DISTRICT. UTILITIES may bill DISTRICT under this Agreement any additional costs associated with the Industrial Pretreatment Program responsibilities delegated to UTILITIES herein, provided that DISTRICT is not responsible for any industrial pretreatment costs associated with a UTILITIES' customer.
  - b. To Industrial Users. All general and special sewer service charges, and other charges levied against Industrial Users by DISTRICT, shall be retained by DISTRICT, except as otherwise provided by this Agreement or applicable law. Permit fees shall be retained by UTILITIES.
  - c. Enforcement. All penalties or other enforcement receipts arising from enforcement actions taken by UTILITIES against DISTRICT or DISTRICT's Customers shall be collected and retained by UTILITIES.
7. Submittals. Any submittal required by this Article III, shall be made in accordance with Article V, Paragraph 4 of this Agreement, and provided at the following address:

Colorado Springs Utilities  
Attn: Industrial Pretreatment Program  
701 E. Las Vegas St.  
Colorado Springs, CO 80903

Article IV  
Remedies

1. Liquidated Damages. Damages to UTILITIES resulting from DISTRICT's breach of this Agreement are difficult to ascertain. 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, DISTRICT 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. Such liquidated damages are a reasonable estimate of damages to UTILITIES and are not a penalty.
2. Consequential Damages. DISTRICT acknowledges and agrees that any illicit discharge of industrial wastewater by DISTRICT, or a DISTRICT Customer, may subject DISTRICT 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 DISTRICT or its customer(s) caused or contributed to the violation.
3. Disconnection Damages. It is agreed that the damage to UTILITIES, if DISTRICT disconnects from UTILITIES' Wastewater Treatment System, will not be less than the reproduction costs of any of UTILITIES' facilities, including UTILITIES' owned Improvements which are rendered useless by such disconnection and which must be replaced in order for UTILITIES to provide wastewater treatment service to UTILITIES' other customers.
4. 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.
5. Termination by UTILITIES. DISTRICT acknowledges and consents to UTILITIES' right to terminate this Agreement without liability or obligation to DISTRICT, DISTRICT's Customers or any other person or entity: (1) due to DISTRICT's breach of a material term or condition of this Agreement, if DISTRICT has not taken substantial steps to cure the breach within a reasonable period of time from delivery of notice of its breach from UTILITIES; or (2) as otherwise authorized by the City Code or City Council. UTILITIES shall promptly notify DISTRICT of circumstances that could result in a breach or changes in City Code, or City Council action that could result in termination of the Agreement. In the alternative, if UTILITIES determines that the breach(s) may result in an immediate health hazard or harm to person or property, UTILITIES, may take control of any portion of DISTRICT's Wastewater Collection System and other DISTRICT facilities which UTILITIES find to be necessary for provision of

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wastewater treatment service within DISTRICT's Service Area for the purpose of remedying the breach(s). While in control of any portion of DISTRICT's Wastewater Collection System, UTILITIES may immediately take all actions it deems necessary to correct the noticed breach(s) and put in place corrective measures to prevent further breaches. DISTRICT agrees to reimburse UTILITIES for all expenses incurred by UTILITIES in correcting the breach or breaches and putting in place corrective measures to prevent further breaches. Upon such payment, control of the applicable portions of DISTRICT's Wastewater Collection System shall be returned to DISTRICT. The notice provision of this Subparagraph shall not apply when UTILITIES determines that the breach(s) may result in an immediate health hazard or harm to person or property, in which case UTILITIES may take immediate control of any portion of DISTRICT's Wastewater Collection System and take the same actions regarding a noticed breach(s), upon hand delivery of written notice of the breach and description of the harm likely to result. The term breach of a material term or condition by DISTRICT shall include, but not be limited to, failure to continue to exist as a municipal, quasi-municipal or corporate entity; failure to maintain DISTRICT's Wastewater Collection System; failure to perform functions necessary to the operation of DISTRICT's Wastewater Collection System or UTILITIES' Wastewater Treatment System; failure to adopt measures or take actions required to enable UTILITIES to obtain any required permits; unauthorized extension of wastewater service or expansion of DISTRICT's Service Area; unauthorized connection of a DISTRICT extraterritorial customer to DISTRICT's Wastewater Collection System; failure to make payments required under the Agreement; or other actions or inactions which could reasonably cause a health hazard or harm to persons or property.

6. Financial Assurances. To secure reimbursement to UTILITIES for its actions in correcting a breach(s) and/or putting in place corrective measures to prevent further breaches pursuant to Article IV Paragraph 5 above, DISTRICT shall within fifteen (15) calendar days of the execution of this Agreement, provide UTILITIES with either an irrevocable letter of credit, payment bond, or performance bond in a form approved by UTILITIES in the amount of \$1,119,215.00 ("Reimbursement Amount") that shall be in effect during the term of this Agreement. DISTRICT acknowledges the Reimbursement Amount will increase if DISTRICT requests and receives approval from UTILITIES for UTILITIES to provide wastewater treatment service for properties within DISTRICT's Service Area other than those identified herein or any future extraterritorial customers of DISTRICT pursuant to Article 1, Paragraph 5 above. **DISTRICT acknowledges and agrees to UTILITIES' right to make a claim against the Reimbursement Amount to pay off any amounts due to UTILITIES for service provided under this Agreement that are past due by more than ninety (90) days.**

After completion of any actions it takes to correct a breach or prevent further breaches from occurring, UTILITIES shall issue an itemized invoice to DISTRICT for payment of the costs UTILITIES incurred in taking the actions. In the event DISTRICT fails to make full payment on an invoice by the date set forth in the invoice, which shall not be less than thirty (30) days, UTILITIES may file a claim against DISTRICT's Financial Assurance.

7. Termination by DISTRICT. DISTRICT 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 a reasonably sufficient time frame that allows the UTILITIES to cure the material breach after receiving written notice of such breach from DISTRICT.

8. Effect of Termination. Upon termination by either Party, UTILITIES shall have no further obligation to provide Wastewater Treatment Service to DISTRICT or DISTRICT's Customers and DISTRICT's Wastewater Collection System shall be disconnected from UTILITIES' Wastewater Treatment System. Upon termination, UTILITIES shall determine the connection facilities between DISTRICT's Wastewater Collection System and UTILITIES' Wastewater Treatment System that must be removed at DISTRICT's sole expense in accordance with the WWLESS. UTILITIES shall determine the way the connection facilities are to be removed and wastewater treatment service discontinued in accordance with the URRs and WWLESS. All outstanding charges owed by DISTRICT to UTILITIES are due and payable prior to the disconnection of service. If all outstanding charges owed by DISTRICT to UTILITIES are not paid prior to disconnection, DISTRICT's obligation to make full payment shall survive termination of this Agreement.
9. Time for Cure. The time frame for a Party to cure a material breach shall be set forth in the notice of breach and shall in no event be less than ninety (90) days except in the case of an emergency.
10. Enforcement of Rights. Nothing herein shall prevent either Party from enforcing its rights under this Agreement by an appropriate legal or equitable action.
11. Remedies Cumulative. Remedies herein are cumulative and may be used individually, sequentially, concurrently, or in any order.

Article V  
Miscellaneous

1. Parties' Enforcement Powers. Both Parties to this Agreement recognize in the other Party the power to enforce its laws, rules and regulations and the terms of this Agreement by turning off or disconnecting wastewater service to a property within DISTRICT's Service Area for violations of such laws, rules, regulations and this Agreement. Neither Party shall turn back on or reconnect wastewater service for a property after the same has been turned off or disconnected by the other Party in the course of enforcing its laws, rules, or the terms of this Agreement, except upon written consent of the Party originally causing the turn off or disconnection. Each Party agrees to provide notice to the other Party prior to turning off or disconnecting wastewater service to property for violations of its laws, rules, regulations and this Agreement.
2. Annual Review of Agreement. DISTRICT 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. DISTRICT 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 determine if revisions to this Agreement are necessary to ensure compliance with all applicable Federal, State and local laws, rules and regulations issued thereunder and other added or amended controls or

Rock Creek Metropolitan District Regional Wastewater Service Agreement

factors, as necessary, but at least once every year on or before February 15. DISTRICT agrees to cooperate with UTILITIES in preparing, executing and implementing any revisions to this Agreement deemed necessary by UTILITIES as part of the annual review.

3. DISTRICT Rules and Regulations. DISTRICT retains the full right to make and enforce rules and regulations not inconsistent with the Colorado Springs City Charter, the City Code, the Tariffs, and WWLESS to govern water use within DISTRICT's Service Area. DISTRICT agrees to exercise its rulemaking, rate/fee-setting and other powers to assist UTILITIES in enforcing the Tariffs and WWLESS
4. DISTRICT Dissolution. In the event that DISTRICT seeks to dissolve pursuant to relevant laws, rules and regulations, DISTRICT shall provide a copy of its dissolution petition to UTILITIES at the time of its filing. The dissolution petition shall provide for assignment of DISTRICT's rights and obligations under the Agreement to a party acceptable to UTILITIES. If no provision is made for such an assignment or other arrangement reasonably acceptable to UTILITIES, upon DISTRICT's dissolution, this Agreement shall be null, void and of no further force or effect, and UTILITIES shall have no further obligation to provide wastewater treatment service pursuant to the terms of this Agreement.
5. Representatives and Notice. All notices, reports and submittals required by this Agreement shall be in writing, signed by an authorized representative of the Party providing the notice, report or submittal and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid, return receipt requested, as follows:

a. For UTILITIES:

Chief System Planning and Projects Officer  
Courier Service Address:  
Colorado Springs Utilities  
ATTN: Chief Systems Planning and Projects Officer  
121 S. Tejon St., 5th Floor  
Colorado Springs, CO 80903

United States Postal Service Address:  
Colorado Springs Utilities  
ATTN: Chief Systems Planning and Projects Officer  
P.O. Box 1103,  
Colorado Springs, CO 80947-0950

With copy to:

City Attorney's Office - Utilities Division  
Courier Service Address:  
City Attorney's Office  
ATTN: Utilities Division  
30 S. Nevada Ave. Colorado Springs, CO 80903

Rock Creek Metropolitan District Regional Wastewater Service Agreement

United States Postal Service Address:  
City Attorney's Office  
ATTN: Utilities Division  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575

b. For DISTRICT:

Rock Creek Metropolitan District  
ATTN: District Manager

\_\_\_\_\_  
Colorado Springs, CO 80906  
Phone: \_\_\_\_\_

With Copy to:

Rock Creek Metropolitan District  
c/o Spencer Fane LLP  
Attn: Russ Dykstra  
1700 Lincoln St., Suite 2000  
Denver, CO 80203  
303-839-3845

6. 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, global pandemics, epidemics, 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.
7. 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.
8. Limitations upon Consent. 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 DISTRICT 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.



9. Audits. UTILITIES shall have the right to audit at any time, all of DISTRICT's records relating to any of DISTRICT's Customers or relating to compliance with this Agreement. DISTRICT shall have the right to audit all UTILITIES' records relating to compliance with this Agreement.
  
10. Liability.
  - a. 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.*
  
  - b. UTILITIES' Limitation of Liability. In addition to force majeure events described in this Agreement, UTILITIES shall not be liable to DISTRICT for failure to accept or treat DISTRICT's wastewater when such failure is the result of upset or mechanical or power failure. In emergency circumstances, UTILITIES shall have the right to interrupt service and require DISTRICT to temporarily store and contain wastewater flows to the extent of DISTRICT's storage capabilities in the event of malfunction or upset of UTILITIES' facilities. In the event of planned maintenance which makes UTILITIES' Wastewater Treatment System unavailable to accept DISTRICT's wastewater, a 10 day notice shall be given to DISTRICT, after which DISTRICT will temporarily store and contain wastewater to the extent of its storage capabilities.
  
11. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and DISTRICT. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to DISTRICT 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 DISTRICT and UTILITIES that any person other than DISTRICT or UTILITIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
  
12. Appropriation of Funds. In accord with the Colorado Springs City Charter, performance of UTILITIES' obligations under this Agreement is expressly subject to appropriation of funds by City Council. In the event funds are not appropriated in whole or in part sufficient for performance of UTILITIES' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and UTILITIES will thereafter have no liability for compensation or damages to DISTRICT for future performance and obligations thereafter in excess of UTILITIES' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES will notify DISTRICT as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

DISTRICT's obligations under this Agreement are expressly subject to appropriation of funds by the DISTRICT's Board of Directors. In the event funds are not appropriated in whole or in part sufficient for performance of DISTRICT's obligations under this Agreement, then this

## Rock Creek Metropolitan District Regional Wastewater Service Agreement

Agreement will thereafter become null and void by operation of law, and DISTRICT will thereafter have no liability for compensation or damages to UTILITIES for future performance and obligations thereafter in excess of DISTRICT's authorized appropriation for this Agreement, whichever is less. DISTRICT will notify UTILITIES as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable. Nothing in this Agreement shall be interpreted or construed as a multiple-fiscal year obligation of the DISTRICT pursuant to Article X, Section 20 of the Colorado constitution (TABOR). Notwithstanding the forgoing, DISTRICT's obligation to pay the applicable rates, charges, surcharges, and fees owed to UTILITIES for provision of Water Service under this Agreement through the DISTRICT's water and sanitary sewer enterprise fund are not subject to appropriations by DISTRICT's Board of Directors.

13. No Precedent; Severability. The Parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future agreement, nor vest any rights in either Party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining Agreement provisions shall continue to be binding upon the Parties who agree that this Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.
14. No Assignment Without Consent. 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. Notwithstanding anything herein to the contrary, upon written notice to DISTRICT, UTILITIES may assign this Agreement without consent to the City of Colorado Springs.
15. 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.
16. Governing Law, Jurisdiction and Venue. 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, the URRs, and Tariffs. In the event of litigation, this Agreement shall be enforceable by or against the City on behalf of UTILITIES as provided in 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 DISTRICT of Colorado.
17. Entire Agreement; Modifications to be in Writing. This Agreement with attachments constitutes

## Rock Creek Metropolitan District Regional Wastewater Service Agreement

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.

DRAFT

Rock Creek Metropolitan District Regional Wastewater Service Agreement

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2022.

COLORADO SPRINGS UTILITIES

ROCK CREEK METROPOLITAN DISTRICT

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Chief Executive Officer

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form: \_\_\_\_\_

Attest: \_\_\_\_\_

DRAFT

Rock Creek Metropolitan District Regional Wastewater Service Agreement

Exhibit A  
to the  
**WASTEWATER SERVICE AGREEMENT**  
Special Contract for Service - Outside City Limits  
Rock Creek Metropolitan District

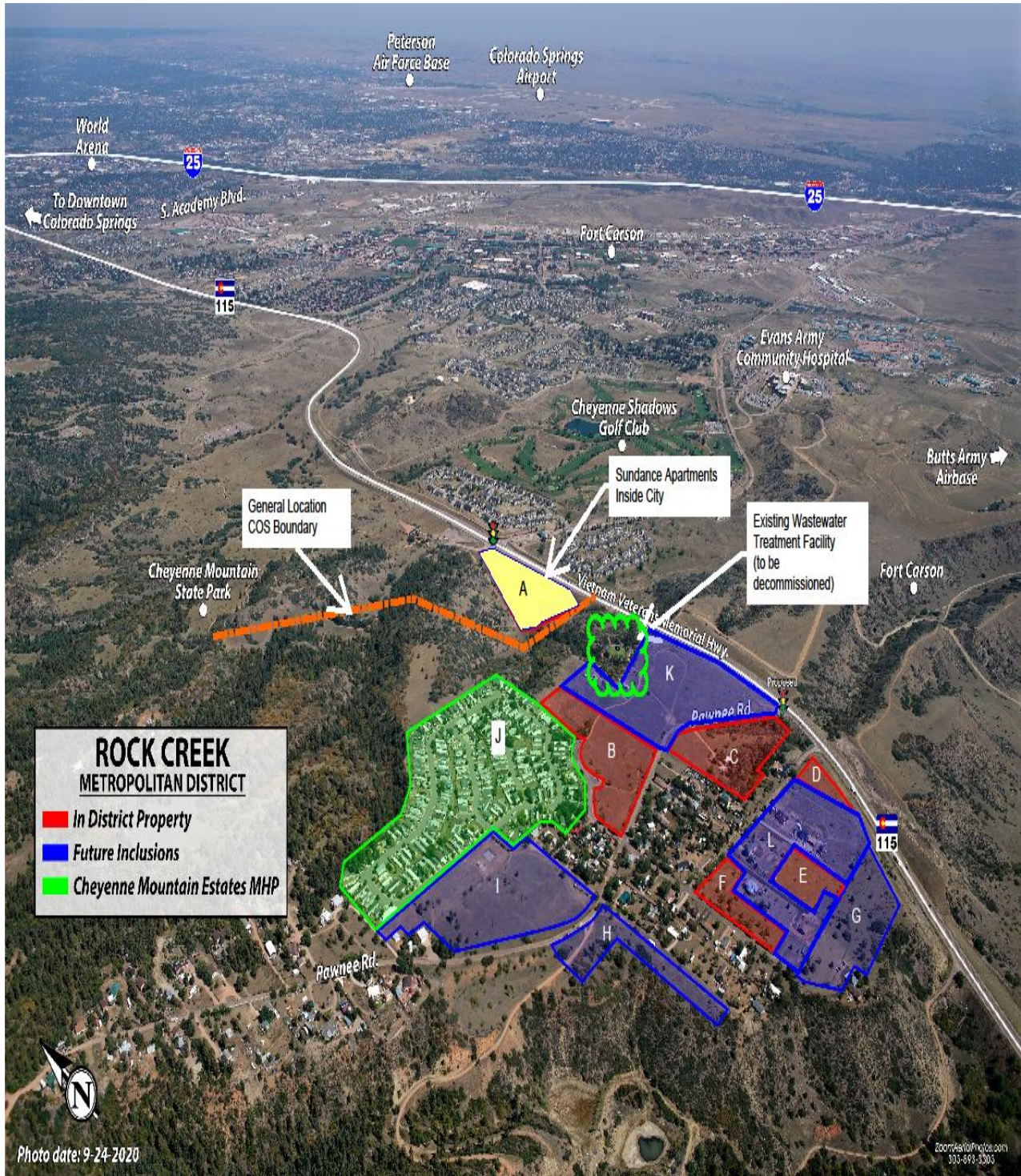
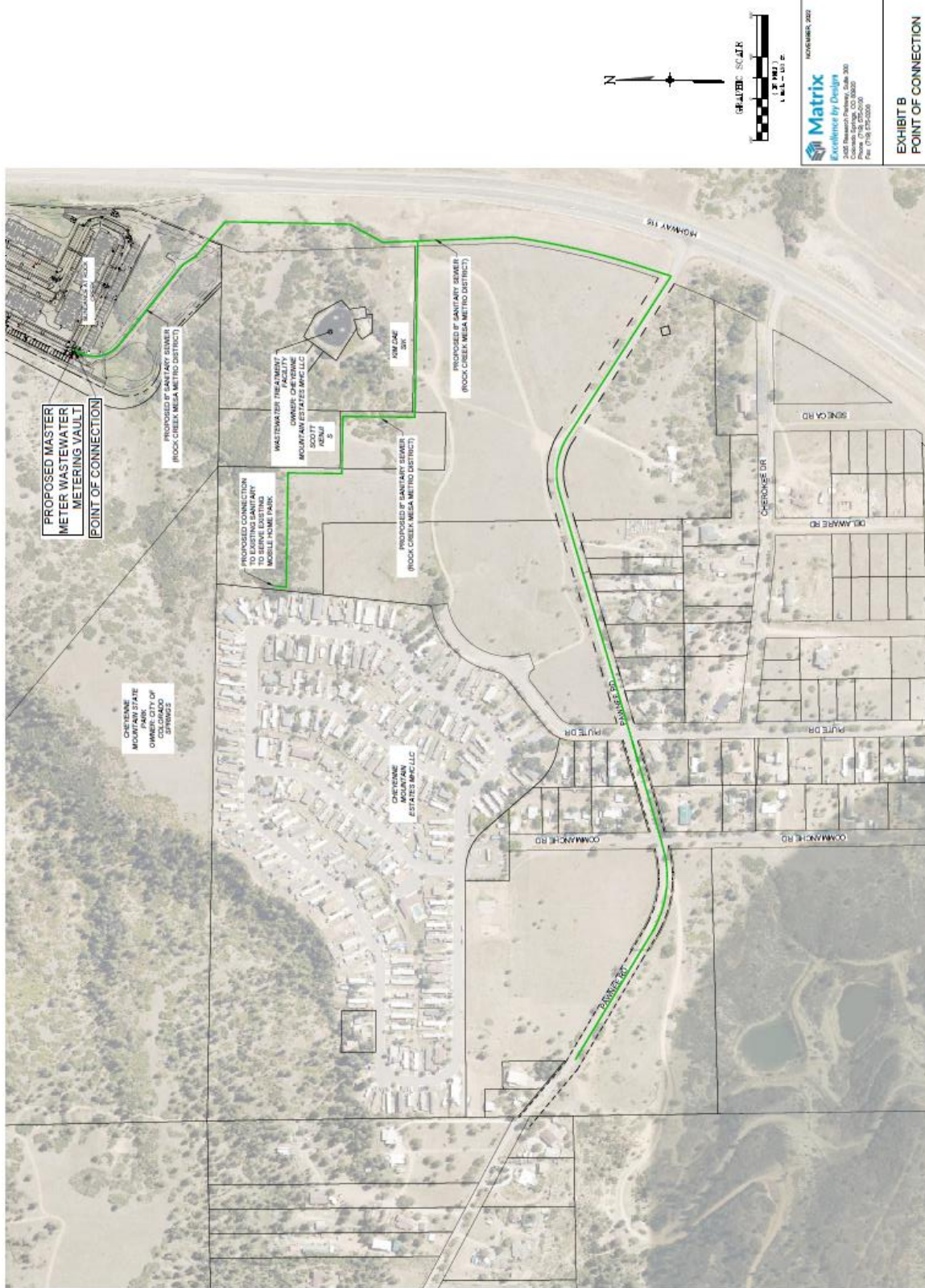


Exhibit B  
to the  
WASTEWATER SERVICE AGREEMENT  
District Points of Connection



HEALTER SCOUTS  
NOVEMBER 2021  
Matrix  
Excellence by Design  
3400 Research Parkway, Suite 300  
Boulder, Colorado 80503  
Phone: (719) 275-2000  
Fax: (719) 275-2000

EXHIBIT B  
POINT OF CONNECTION