

RESOLUTION NO. 111-15

A RESOLUTION DIRECTING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO EXECUTE AN AGREEMENT FOR MONTH-TO-MONTH WATER SERVICE WITH DONALA WATER AND SANITATION DISTRICT

Whereas, City Code § 12.4.304 allows Colorado Springs Utilities to provide by contract for the use of or connection to the Utility supply system by institutions, plants, districts, governments, municipal corporations, or other similar users; and

WHEREAS, the Donala Water and Sanitation District is a Colorado statutory water and sanitation district with service boundaries located generally in the area of Gleneagle outside of, but adjacent to, the City of Colorado Springs; and

WHEREAS, the Donala Water and Sanitation District was formed on November 30, 1972 and provides water service to approximately 2,600 taps within the Colorado Springs metropolitan area; and

WHEREAS, the Donala Water and Sanitation District has acquired and is continuing to acquire new, renewable water rights for its existing and future municipal uses; and

WHEREAS, the Donala Water and Sanitation District does not currently have the infrastructure to deliver its renewable water to its service territory and is currently able to use those water rights by utilizing a special contract for short term water service it has had with Colorado Springs Utilities since 2011 that expires on December 31, 2015; and

WHEREAS, the Donala Water and Sanitation District is making good faith efforts to obtain all permits and approvals needed to become a Southern Delivery System project beneficiary in order for it to be able to use the Southern Delivery System project to deliver water to its service territory; and

WHEREAS, the Donala Water and Sanitation District has a continuing need for water to supply its customers and has requested month-to-month water service from Colorado Springs Utilities until the Southern Delivery System becomes commercially operational; and

WHEREAS, Colorado Springs Utilities is in a position to supply water service to the Donala Water and Sanitation District on a month-to-month basis; and

WHEREAS, in exchange for month-to-month water service, the Donala Water and Sanitation District has agreed to pay a water rate plus a system usage fee based on applicable outside City rates and an option to purchase return flows at the applicable augmentation rate; and

WHEREAS, Colorado Springs Utilities requests that City Council authorize and direct the Chief Executive Officer for Colorado Springs Utilities to execute an agreement for month-to-month water service with the Donala Water and Sanitation District; 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 a month-to-month water services agreement with the Donala Water and Sanitation District.

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

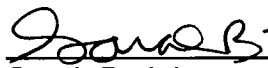
Section 1. The City Council finds and determines that a month-to-month water services agreement between Colorado Springs Utilities and the Donala Water and Sanitation District will benefit the public health, safety and welfare of the surrounding community and is in the best interest of the City.

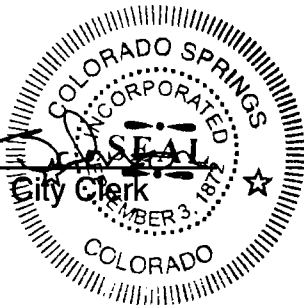
Section 2. The Chief Executive Officer for Colorado Springs Utilities is authorized and directed to enter into a month-to-month water services agreement with the Donala Water and Sanitation District in a form substantially similar to that attached hereto.

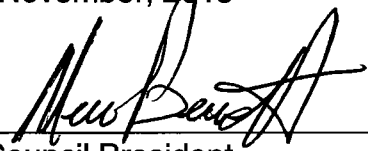
Section 3. This Resolution shall be in full force and effect immediately upon its adoption.

DATED at Colorado Springs, Colorado, this 10th day of November, 2015

ATTEST:


Sarah B. Johnson, City Clerk




Council President

AGREEMENT FOR MONTH-TO-MONTH WATER SERVICE

THIS AGREEMENT ("Agreement") is made and entered into this 22nd day of DECEMBER, 2015 by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called "UTILITIES," and the Donala Water and Sanitation District, 15850 Holbein Drive, Colorado Springs, Colorado, hereinafter called "DISTRICT."

RECITALS

- A.** DISTRICT is a Colorado statutory water and sanitation district with service boundaries located generally in the area of Gleneagle, outside of, but adjacent to, the City of Colorado Springs. DISTRICT was formed on November 30, 1972 and currently serves a customer base of approximately 2,600 taps in the Colorado Springs metropolitan area;
- B.** DISTRICT intends to increase and diversify its water supply to meet its long-term water needs and reduce its historic and current reliance on non-renewable groundwater resources;
- C.** To that end, DISTRICT has purchased renewable water supplies, but does not have the means to convey the renewable water at this time;
- D.** UTILITIES currently has infrastructure capacity in its water system; a sufficient but interruptible supply of fully consumable water, sufficient water transportation, displacement, and storage capacity not including UTILITIES' excess capacity storage space in the Fryingpan-Arkansas Project; and water treatment capacity to provide short-term, interruptible water related services to DISTRICT until such time as UTILITIES determines in its sole discretion that the Southern Delivery System has become commercially operational;
- E.** DISTRICT has taken steps to become a participant in the Southern Delivery System including pursuing the necessary permissions from both the Bureau of Reclamation and Pueblo County;
- F.** Pursuant to Section 6-50 (Water Rights) of Article VI (Utilities) of the Charter of the City of Colorado Springs, as amended, the City of Colorado Springs has the authority to buy, exchange, augment, lease, own, and control water and water rights; and

G. UTILITIES has entered into this Agreement pursuant to Section 12.4.304 (Service; Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended (Ord. 10-76).

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

1. **Term:** This Agreement shall become effective on January 1, 2016 and shall remain in effect until December 31, 2016, unless terminated or renewed as set forth in this paragraph. This Agreement may be renewed in one year increments at the UTILITIES' Chief Executive Officer's discretion, after consultation with City staff, for up to two additional years, but in no case longer than December 31, 2018. Notwithstanding the foregoing, UTILITIES shall have the right to suspend month-to-month water service to DISTRICT under this Agreement thirty (30) days after UTILITIES provides advance notice to DISTRICT that UTILITIES has determined, in its sole discretion, that the Southern Delivery System is commercially operational and/or that UTILITIES has received notice, or information, that either Pueblo County or the Bureau of Reclamation considers the implementation or continuation of this Agreement to be at variance with the terms of permits or contracts for the operation of the Southern Delivery System unless the following occurs prior to the expiration of the thirty (30) day notice period: (1) DISTRICT obtains a storage contract in Pueblo Reservoir from the Bureau of Reclamation and provides notice of same to UTILITIES; and, (2) DISTRICT obtains written confirmation from Pueblo County that continuing to receive month-to-month service from UTILITIES pursuant to the terms and conditions of this Agreement and DISTRICT's contract with the Bureau of Reclamation until such time as DISTRICT obtains the necessary permits and permissions for use of the Southern Delivery System from both the Bureau of Reclamation and Pueblo County does not violate the terms of any permits or contracts for the operation of the Southern Delivery System, and provides notice of same to Utilities. If such conditions are met during the thirty (30) day notice period, month-to-month water service to DISTRICT will not be suspended. If such conditions are met after month-to-month water service under this Agreement is suspended by UTILITIES, UTILITIES may reinstate month-to-month water service under

this Agreement to DISTRICT. In the event that month-to-month water service is not suspended or is reinstated, this Agreement may remain in effect until the expiration of its term as set forth above or such time as UTILITIES and DISTRICT enter into a long-term service contract for delivery of water to DISTRICT via the Southern Delivery System, whichever occurs first. Either party shall have the right to terminate this Agreement at any time prior to UTILITIES' providing DISTRICT with advance notice that the Southern Delivery System will become commercially operational; such termination shall be effective sixty (60) days after the party requesting termination provides notice of termination to the other party. Upon termination, all obligations of the parties set forth in this Agreement shall cease, except that DISTRICT's obligations to make any payments for service under this Agreement provided as of the date of the termination shall survive termination.

2. **Supersedes Previous Agreement:** DISTRICT and UTILITIES agree that, upon its effective date, this Agreement supersedes the expired Agreement for Short Term Water Service dated May 1, 2011 and any amendments or addendums thereto.
3. **DISTRICT'S Obligation to Provide Service to its Customers:** DISTRICT shall maintain and operate its independent water supply system on a continuous, year-round basis, so as to be prepared to provide any water required by DISTRICT's customers in excess of the water provided by UTILITIES pursuant to this Agreement. DISTRICT also agrees that the DISTRICT bears the sole responsibility for providing an adequate supply of water for its growth.
4. **Month-to-Month Water Service:** During the term of this Agreement, UTILITIES will provide to DISTRICT's system a monthly minimum amount of 10 acre-feet of treated potable water, on a take-or-pay basis. UTILITIES shall not be obligated to provide to DISTRICT more than 1,000 acre-feet annually. The water delivered to the DISTRICT will be UTILITIES' owned treated, potable water ("Full Service Water"). DISTRICT may provide UTILITIES with fully consumable water owned or leased by the DISTRICT that is decreed for municipal use ("DISTRICT Water") to replace in UTILITIES' water system Full Service Water delivered to DISTRICT. To the extent DISTRICT Water is provided to UTILITIES, the DISTRICT will receive a credit as stated in Appendix A.

5. **Use of Water:** The DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside the Arkansas River Basin. DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside DISTRICT's existing service territory as of the date of this Agreement or to any entity or person other than the current residential, commercial, and industrial customers of DISTRICT, except DISTRICT may serve subdivided lots within Chaparral Hills Subdivision, El Paso County, Colorado, which are served under court order by the DISTRICT, as well as Academy Water and Sanitation District if absorbed into DISTRICT's service area. Neither Chaparral Hills Subdivision nor Academy Water and Sanitation District are beneficiaries of this Agreement, except as they may receive water service from DISTRICT.
6. **Requests for and Delivery of Water:** DISTRICT shall directly communicate with UTILITIES' Systems Control as specified in 6.A. and follow-up with a written request for deliveries of water specifying amounts, rates, and duration at least three (3) business days prior to the expected delivery date(s). UTILITIES will provide a response at least one (1) day prior to the requested delivery date accepting, modifying, or denying the request. For the purposes of DISTRICT requesting service and UTILITIES responding to requests, the term "written" shall include communications by electronic mail to certain electronic mail addresses, which DISTRICT and UTILITIES shall provide to each other upon execution of this Agreement. DISTRICT shall limit its water demand on UTILITIES' system to an instantaneous flow rate of not less than 200 gallons per minute, not more than 2,083 gallons per minute, and a total maximum daily delivery of 1.2 million gallons per day (daily flow limit). UTILITIES agrees to maintain the hydraulic grade line at the connection point between DISTRICT's system and UTILITIES' system at or above 7,072 feet. UTILITIES may, as it deems necessary and without providing DISTRICT notice, increase, decrease, or waive these daily and instantaneous flow limits based on system performance to protect UTILITIES' water system and deliveries to UTILITIES' customers or for other good cause. UTILITIES will make best efforts to provide DISTRICT timely notice of any changes of this type.

A. UTILITIES System Control:

- i. Operations Supervisor, Jeremy McBeain, jmcbeain@csu.org, office (719) 668-4588, cell phone (719) 494-6973.
- ii. System Control Operator, if acknowledged within 24 hours by Mr. McBeain, office (719) 668-4570.
- iii. Water_accounting@csu.org

B. DISTRICT's System Control:

- i. Superintendent, Robert Hull, robert@donalawater.com, office (719) 488-3603, cell phone (719) 499-3661.
- ii. Chief Water Operator, Mark Parker, markp@donalawater.com, office (719) 488-3603, cell phone (719) 499-8255.

7. Acceptance of DISTRICT Water into UTILITIES' Water System: UTILITIES may accept DISTRICT Water into UTILITIES' water system which will thereby transfer ownership of the DISTRICT Water to UTILITIES. The amount of DISTRICT Water accepted by UTILITIES shall not exceed the amount of Full Service Water UTILITIES provides to DISTRICT pursuant to this Agreement plus any system losses. The acceptance of DISTRICT Water will be accomplished by book over of DISTRICT Water from DISTRICT's account in Pueblo Reservoir, or some other mutually agreed upon location, to the UTILITIES' water system as designated by UTILITIES. DISTRICT Water shall be delivered to UTILITIES as requested at UTILITIES' sole discretion. Further, it is agreed that UTILITIES shall not be obligated to accept into its water system any DISTRICT Water that would interfere with UTILITIES' rights, operations, or yields. Any DISTRICT Water not accepted into UTILITIES' water system will be the sole responsibility of DISTRICT.

8. Return Flows:

A. All Full Service Water furnished by UTILITIES under this Agreement is only for the use of DISTRICT for the purposes for which the water rights have been decreed. Except as provided in paragraph 8.B below, neither DISTRICT nor its customers shall have the right to make a succession of uses of such water; and upon completion of the primary use, all dominion over the Full Service Water furnished hereunder shall revert completely to UTILITIES.

UTILITIES retains the legal ownership of and the right to use, reuse, successively use, and dispose of all return flows resulting from DISTRICT's one-time use of Full Service Water provided by UTILITIES under this Agreement. DISTRICT shall maintain dominion and control over all Full Service Water during the distribution of the water and once returned to DISTRICT's wastewater collection system. DISTRICT shall be solely responsible for the collection, treatment and discharge of all wastewater generated by the use of Full Service Water furnished under this Agreement. DISTRICT shall cooperate with UTILITIES to quantify the daily discharge of return flows attributed to Full Service Water to permit their inclusion in the Monument/Fountain Creek Transit Loss Model. UTILITIES agrees to pay a *pro rata* share of DISTRICT's flow-based cost for the use of the Monument/Fountain Creek Transit Loss Model based upon the percentage of DISTRICT's effluent that is UTILITIES' return flows attributed to Full Service Water provided to DISTRICT pursuant to this Agreement. DISTRICT shall be solely responsible for its own base cost for the use of the Model. UTILITIES shall have the right to review the water accounting documents of DISTRICT to verify the quantities of such return flows resulting from UTILITIES' Full Service Water deliveries to DISTRICT.

B. Full Service water delivered to DISTRICT up to the amount of DISTRICT Water furnished to UTILITIES to replace Full Service Water in Utilities' water system shall be considered to be water owned by DISTRICT. Neither UTILITIES nor its customers shall have the right to make a succession of uses of such water; and upon delivery to DISTRICT, all dominion over such water furnished hereunder shall revert completely to DISTRICT. DISTRICT retains the legal ownership of and the right to use, reuse, successively use, and dispose of all return flows resulting from DISTRICT's use of such water delivered by UTILITIES under this Agreement. UTILITIES shall maintain dominion and control over all such water during the delivery of the water to DISTRICT.

9. **Consequence of Loss of Dominion over Return Flows:** If UTILITIES should lose legal dominion over the return flows that result from DISTRICT's use of the water provided under this Agreement, UTILITIES may take either of the following actions at its sole discretion:

- A. UTILITIES may apply the then-applicable augmentation tariff rate as provided to DISTRICT pursuant to this Agreement where appropriate to compensate for the value of the return flows lost to UTILITIES. DISTRICT agrees to pay UTILITIES for augmentation at the rates established in **Appendix A** attached hereto and incorporated herein. UTILITIES will bill DISTRICT monthly in arrears with payment due within thirty (30) days of the date of billing; or
- B. UTILITIES may terminate this Agreement without any liability to DISTRICT or any third party including DISTRICT's customers.

10. **Water Rights Unaffected:** No water rights are being transferred to or from UTILITIES or DISTRICT under this Agreement.
11. **Service Rate, System Usage Fee, and Billing:** DISTRICT agrees to pay UTILITIES for water provided pursuant to this Agreement at the service rates established in **Appendix A**.
- A. To the extent DISTRICT Water is accepted by UTILITIES, DISTRICT will receive a water credit as provided in **Appendix A**. Additionally, DISTRICT shall pay an annualized system usage fee as provided in **Appendix A**. UTILITIES will bill DISTRICT monthly in arrears with payment due within thirty (30) days of the date of billing.
12. **Metering:** All water delivered under this Agreement shall be measured at the point of connection between UTILITIES' and DISTRICT's systems. If at any time, either UTILITIES or DISTRICT questions the accuracy of the meter, either party may cause such meter to be tested for accuracy and recalibrated if necessary, at such party's expense. In the event a meter shall be tested, the party testing the meter shall provide the other party with three (3) days notice of such testing. If the parties cannot agree that the meter is measuring accurately, they shall choose an independent third party qualified to test the accuracy of such meters, whose decision regarding accuracy shall be binding on both parties.
13. **Water Use Restrictions: Termination:** DISTRICT agrees to establish formal restrictions regarding the use of water and to declare and enforce the same water use restrictions in force within the City of Colorado Springs as directed by UTILITIES at any time during the term of this Agreement that DISTRICT is taking delivery of Full Service

Water, consistent with Section 12.4.602 and 12.4.1313 of the City Code of Colorado Springs.

DISTRICT acknowledges and consents to UTILITIES right to terminate deliveries of water under this Agreement due to a significant interruption of water supplies, a substantial disruption (including, but not limited to, legal challenges impacting the water system, and maintenance and repair to the infrastructure) to UTILITIES' water system, or DISTRICT's breach of a material term or conditions of this Agreement, at UTILITIES' convenience, upon thirty (30) days written notice, or as otherwise authorized by the City Code of Colorado Springs. UTILITIES will make reasonable efforts to notify the DISTRICT of circumstances that could result in such termination. In the event the rate structure established in **Appendix A** is challenged in court, whether by DISTRICT or by an independent third party, either party shall have the option to suspend services under this Agreement pending the outcome of such proceeding. Notwithstanding the preceding, nothing herein shall be interpreted to extend the term of this Agreement.

14. **Conservation Plan:** The DISTRICT agrees to abide by and enforce its conservation plan submitted to the State in its current form or as it may be changed through the State's approval process.
15. **City of Colorado Springs Compliance:** DISTRICT agrees to comply with all applicable ordinances, regulations and rules concerning the use of UTILITIES' water system.
16. **Drinking Water Quality Regulatory Compliance:** The water provided by UTILITIES into DISTRICT's system shall be potable water which complies with the Federal Safe Drinking Water Act and the applicable Colorado Primary Drinking Water Regulations (5 C.C.R. 1003-1). Pursuant to §1.8 of the Colorado Primary Drinking Water Regulations, UTILITIES' responsibility regarding the quality of water furnished shall extend only up to the point of delivery to DISTRICT's water system. The DISTRICT agrees that its system constitutes a Consecutive System and, in accordance with §1.9 of the Colorado Primary Drinking Water Regulations, DISTRICT is responsible for all applicable monitoring and reporting requirements of the Colorado Primary Drinking Water Regulations for water within DISTRICT's system.
17. **Colorado Water Quality Control Act Compliance:** If at any time during the term of this Agreement DISTRICT fails to meet the requirements of the Colorado Water Quality

Control Act and applicable control regulations promulgated and permits issued thereunder, after giving notice of the failure, if DISTRICT fails to undertake reasonable actions to come into compliance, UTILITIES may, in its sole discretion, suspend deliveries and interrupt its performance of this Agreement without commensurate extension of this Agreement or liability to DISTRICT or any third party, including DISTRICT's customers, until compliance is achieved. With or without suspension or interruption by UTILITIES, DISTRICT, in the event of failure to meet such requirements, shall implement cost-effective solutions to reduce water pollution with the objective of achieving and maintaining water quality in accordance with the applicable designated uses and water quality standards established by the Water Quality Control Commission, and discharge permit limits imposed by the Water Quality Control Division upon DISTRICT. In the event UTILITIES fails to meet requirements of the Colorado Water Quality Control Act and applicable regulations thereunder, UTILITIES shall notify DISTRICT in the same manner as other customers, and DISTRICT shall have the option of immediately suspending the delivery of water under this Agreement.

18. Regional Cooperation:

- A. DISTRICT acknowledges and agrees to support the Fountain Creek Watershed, Flood Control, and Greenway District to the extent authorized under Colorado Revised Statutes §32-1-1001, *et seq.*
- B. DISTRICT irrevocably commits not to serve water purchased under this Agreement to property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River Basin.
- C. DISTRICT agrees to actively support and cooperate with the City of Colorado Springs, El Paso County, and other regional entities having jurisdiction over stormwater detention and retention on Fountain Creek and to take whatever actions that are within DISTRICT's legal authority to insure that stormwater in the Fountain Creek Basin does not increase above existing conditions, it being understood that DISTRICT has no express authority with respect to regulation or control of stormwater or funding of stormwater projects.

- D. DISTRICT agrees to accept and comply with the City of Pueblo Flow Management Program and Pueblo Recreational In-Channel Diversion Decree, both impacting the Arkansas River between Pueblo Dam and its confluence with Fountain Creek, in any application for a change of water rights or exchange implicating that reach of the Arkansas River.
- E. DISTRICT agrees to participate *pro rata* in any water quality monitoring or studies to the same degree and extent as undertaken by the City of Colorado Springs under its Pueblo County 1041 permit for the Southern Delivery System. DISTRICT shall pay a yearly water quality monitoring fee as provided in **Appendix A. UTILITIES** will bill DISTRICT annually with payment due within thirty (30) days of the date of billing.
- F. DISTRICT agrees to support any studies of a flood control dam or dams on Fountain Creek, it being understood that DISTRICT has no express authority to regulate or control stormwater or fund stormwater projects.

19. **No Assignment Without Consent; No Third Party Beneficiary:** 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, Colorado. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and DISTRICT

20. **Legal Notice:** Notices under this Agreement, other than DISTRICT's requests for water and UTILITIES' responses to such requests, shall be given in writing, signed by an authorized representative of the party giving notice. Telephonic or email notice is not acceptable. Notices shall be delivered by facsimile, by courier service delivery (such as Federal Express), or by first-class mail to the people specified below at the following addresses and telephone numbers:

A. For UTILITIES

i. Chief Water Service Officer: Tyler Allison

Courier Service Address:

Colorado Springs Utilities

ATTN: Chief Water Services Officer
121 S. Tejon St., 5th Floor
Colorado Springs, CO 80903

United States Postal Service Address:

Colorado Springs Utilities
ATTN: Chief Water Services Officer
P.O. Box 1103
Colorado Springs, CO 80947-0950

Fax: (719) 668-4158

ii. City Attorney's Office – Utilities Division

Courier Service Address:

City Attorney's Office
ATTN: City Attorney's Office – Utilities Division
30 South Nevada Ave, Suite 501
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

B. For the DISTRICT

i. General Manager: Kip Petersen

Address:

Donala Water and Sanitation District
ATTN: General Manager
15850 Holbein Drive
Colorado Springs, CO 80921

Office Phone: (719) 488-3603

Fax: (719) 488-3110

ii. Office Administrator: Betsy Bray

Address:

Donala Water and Sanitation District
ATTN: Office Administrator
15850 Holbein Drive
Colorado Springs, CO 80921

Office Phone: (719) 488-3603

Fax: (719) 488-3110

- 21. Governing Law, Jurisdictional and Venue:** This Agreement shall be construed in accordance with the laws of the State of Colorado (except for its conflict of law provisions) as well as the Colorado Springs City Charter and the City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado and, more specifically, El Paso County, Colorado and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.
- 22. Force Majeure:** Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by unforeseeable conditions beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbance. Due to any natural or manmade event, if UTILITIES mandates water restrictions or prohibitions of any type, DISTRICT will meet or exceed such prohibitions or restrictions.
- 23. 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 the 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 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.
- 24. Entire Agreement; Modifications to be in Writing:** This Agreement, including any and all appendices and exhibits attached hereto, contains the entire understanding between the parties. No modification, amendment, notation, or other alteration to this Agreement

shall be valid or of any force in effect unless mutually agreed to by the parties in writing as an addendum to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement which are not specifically set forth herein. Email and all other electronic (including voice) communications from UTILITIES, except as otherwise specifically provided herein, 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.

25. 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 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this ____ day of _____, 2015.

COLORADO SPRINGS UTILITIES

DONALA WATER AND SANITATION
DISTRICT

By:-

By:

Tyler Allison
Chief Water Services Officer

William L. George
President

APPROVED AS TO FORM:

Michael J. Gustafson

City Attorney's Office – Utilities Division

Appendix A

- A. **Rates:** DISTRICT agrees to pay UTILITIES for Full Service Water delivered pursuant to this Agreement at the Rate effective as of the date this Agreement was signed of 11.35 cents per cubic foot. To the extent DISTRICT provides DISTRICT Water to UTILITIES at a location specified by UTILITIES, the DISTRICT will then qualify for a Water Rate Credit of 4.24 cents per cubic foot for water provided on a one-for-one basis. Because components of the City Council approved outside city limits residential and nonresidential potable water rates have been used to calculate both the Rate and the Water Rate Credit, both the Rate and the Water Rate Credit charged under this Agreement will be adjusted concurrently with any changes to UTILITIES' outside city limits residential and nonresidential potable water rates.
- B. **System Usage Fee:** DISTRICT shall pay an annualized month-to-month service system usage fee (SUF) totalling at least \$15,012.50 per month and no more than \$40,080.83 per month. The SUF shall be comprised of two components, an infrastructure usage fee and a water usage fee, which shall be calculated as follows:
- i. Each month DISTRICT shall be charged an infrastructure usage fee of \$15,012.50. In addition, for any amount of water delivered which is not otherwise offset by DISTRICT Water provided to UTILITIES, DISTRICT shall pay a water usage fee of 3.453 cents per cubic foot. In no event shall the total monthly system usage fee charged to DISTRICT exceed \$40,080.83.
- C. **Augmentation Rate:** The DISTRICT agrees to pay UTILITIES for return flows purchased as a result of this Agreement at 1.5 times the Augmentation Rate as approved

by City Council. The Augmentation rate effective at the date this Agreement was signed is 0.90 cents per cubic foot. The Augmentation Rate charged under this Agreement will be adjusted concurrently with any changes to UTILITIES' augmentation tariff rate.

- D. Water Quality Monitoring Fee:** The District shall pay an annualized water quality monitoring fee that will be calculated on a yearly basis. The annual charge will be based on the DISTRICT'S pro rata share of UTILITIES and DISTRICT'S combined yearly Waste Water Treatment return flows, times the cost of any water quality monitoring or studies undertaken by UTILITIES required by its Pueblo County 1041 permit for the Southern Delivery System.