

RESOLUTION NO. \_\_\_\_-18

A RESOLUTION TERMINATING THAT CERTAIN MODIFIED AND RESTATED WASTEWATER FACILITIES PARTICIPATION, UTILIZATION, AND SERVICE AGREEMENT APPROVED FEBRUARY 10, 2009, AS AMENDED, BY AND BETWEEN COLORADO SPRINGS UTILITIES AND THE BANNING LEWIS RANCH METROPOLITAN DISTRICT NO. 1

WHEREAS, Colorado Springs Utilities (“Utilities”) and The Banning Lewis Ranch Company, LLC and Banning Lewis Ranch Development I and II, LLC (collectively, the “Developer”), previously entered into that certain Wastewater Facilities Participation, Utilization and Service Agreement, effective as of January 24, 2006, and recorded on February 16, 2006, at Reception No. 206024599 in the records of the El Paso County Clerk and Recorder, as subsequently amended and recorded (the “Wastewater Service Agreement”); and

WHEREAS, on February 10, 2009, the City Council of the City of Colorado Springs (the “City Council”) approved Resolution No. 45-09 supporting a Modified Restated Wastewater Facilities, Participation, Utilization, and Service Agreement, recorded on February 20, 2009, at Reception No. 209017179 in the records of the El Paso County Clerk and Recorder, as subsequently amended and recorded (the “Modified and Restated Wastewater Service Agreement”); and

WHEREAS, Section VII.B., of the Modified and Restated Wastewater Service Agreement required the Developer to assign the Developer’s obligations under the Agreement to the Banning Lewis Ranch Regional Metropolitan District, formerly known as Banning Lewis Ranch Metropolitan District No. 6, a special district formed under C.R.S. § 32-1-101, *et seq.*, and City Council approved the acceptance of such assignment by Resolution No. 102-10; and

WHEREAS, Section VII.B., of the Modified and Restated Wastewater Service Agreement further contemplated that the Banning Lewis Ranch Regional Metropolitan District may further assign the obligations of the Modified and Restated Wastewater Service Agreement to the Banning Lewis Ranch Metropolitan District No. 1, a special district formed under C.R.S. § 32-1-101, *et seq.*, (“District No. 1”) and City Council previously approved by Resolution No. 103-10, the acceptance of an intergovernmental assignment of the Modified and Restated Wastewater Service Agreement from the Banning Lewis Ranch Regional Metropolitan District to District No. 1; and

WHEREAS, the original Wastewater Service Agreement and the Modified and Restated Wastewater Service Agreement were intended to implement the obligations of that annexation agreement often referred to as the “Aries Annexation Agreement” recorded in the records of the El Paso County Clerk and Recorder at Book 5557, page

405, which set forth the obligations of annexors in the portion of the City of Colorado Springs commonly known as the “Banning Lewis Ranch”; and

WHEREAS, by approval of Resolution \_\_\_-18, concurrent with consideration of this Resolution, City Council has approved an Amended and Restated Banning Lewis Ranch Annexation Agreement (the “Amended Annexation Agreement”) which eliminates the need for the Modified and Restated Wastewater Service Agreement on the basis that under the Amended Annexation Agreement, wastewater infrastructure needed to serve Banning Lewis Ranch will be required in accordance with the City Code for the City of Colorado Springs and Colorado Springs Utilities Tariffs, Utilities Rules and Regulations, Line Extension and Service Standards, and policies; and

WHEREAS, based on the above information, the City’s utility enterprise, Colorado Springs Utilities, requests that City Council terminate the Modified and Restated Wastewater Service Agreement; and

WHEREAS, City Council has found that the Modified and Restated Wastewater Service Agreement is inconsistent with the terms of the Amended Annexation Agreement and that it is appropriate to terminate the Modified and Restated Wastewater Service Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. The City Council hereby terminates the Modified and Restated Wastewater Service Agreement. Such termination shall be effective forty-five (45) days from the date the City Council approves an Amended and Restated Banning Lewis Ranch Annexation Agreement.

Section 2. The City Council hereby authorizes the Chief Executive Officer to sign any documents needed to acknowledge termination of the Modified and Restated Wastewater Service Agreement, if any.

DATED at Colorado Springs, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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Council President

ATTEST:

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Sarah B. Johnson, City Clerk