

RESOLUTION NO. 40-17

A RESOLUTION DIRECTING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO EXECUTE AN AGREEMENT FOR SHORT TERM WATER SERVICE WITH STRATMOOR HILLS WATER DISTRICT

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

WHEREAS, Stratmoor Hills Water District is a Colorado statutory district that provides water to an unincorporated area of El Paso County, Colorado; and

WHEREAS, Stratmoor Hills Water District was formed in 1956 and provides water service to approximately 2,000 taps within its service territory; and

WHEREAS, Stratmoor Hills Water District is a participant with Colorado Springs Utilities in the Fountain Valley Authority and uses water delivered by the Fountain Valley conduit in part to meet its customers' water demands; and

WHEREAS, Stratmoor Hills Water District relies on water withdrawn from wells drilled in the Widefield Aquifer to meet its customers' demands that are not met by water delivered by Fountain Valley Authority and any other water rights it owns; and

WHEREAS, due to the presence of perfluorooctane sulfonate and perfluorooctanoic acid, water quality in the Widefield Aquifer has deteriorated to the point that Stratmoor Hills Water District can no longer divert and use water withdrawn from the aquifer to serve its customers without additional water treatment or dilution to meet governmental health advisory water limits for drinking water; and

WHEREAS, due to the contamination of the Widefield Aquifer, Stratmoor Hills Water District may need a supplemental water supply to meet its customers' water demands if its water sources other than those from the Widefield Aquifer prove insufficient to meet customer demands and has requested short-term water service from Colorado Springs Utilities to provide such a supplemental water supply, if necessary; and

WHEREAS, Colorado Springs Utilities is in a position to provide water service to Stratmoor Hills Water District on a short-term basis to deliver such a supplemental water supply; and

WHEREAS, in exchange for short-term water service, Stratmoor Hills Water District has agreed to pay Colorado Springs Utilities 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 short-term water service with Stratmoor Hills Water District; and

WHEREAS, the City Council finds that it is in the best interest of the City of Colorado Springs and the surrounding community for Colorado Springs Utilities to enter into a short-term water services agreement with Stratmoor Hills Water District.

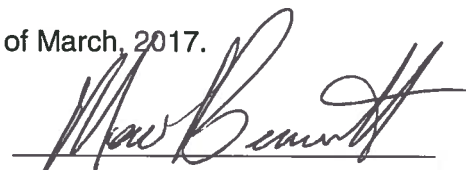
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1: The City Council finds and determines that a short-term water service agreement between Colorado Springs Utilities and Stratmoor Hills Water District will benefit the public health, safety and welfare of the surrounding community and is in the best interest of the City of Colorado Springs.

SECTION 2. The Chief Executive Officer for Colorado Springs Utilities is authorized and directed to enter into a short-term water services agreement with the Stratmoor Hills Water 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 28th day of March, 2017.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



AGREEMENT FOR SHORT TERM WATER SERVICE

THIS AGREEMENT (“Agreement”) is made and entered into 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 Stratmoor Hills Water District, hereinafter called the “DISTRICT.”

RECITALS

- A. The DISTRICT is a Colorado statutory water and sanitation district with service boundaries located south of Colorado Springs and west of Security. The DISTRICT was formed October 16, 1956 and currently serves a customer base of approximately 2,000 taps in the Colorado Springs metropolitan area;
- B. The DISTRICT is a participant in the Fountain Valley Authority;
- C. The DISTRICT has been relying on Widefield Aquifer water to meet demands not met by its portion of the Fountain Valley Authority;
- D. The DISTRICT requires additional supplies due to the contamination of the Widefield Aquifer with perfluorinated chemicals;
- E. The DISTRICT desires to receive short-term, interruptible water service from UTILITIES;
- F. UTILITIES currently has infrastructure capacity available in its water system, a sufficient but interruptible supply of fully consumable water, sufficient water transportation, storage capacity, and water treatment capacity to provide short-term, interruptible water related services to the DISTRICT until December 31, 2018.
- G. UTILITIES and the DISTRICT recognize that new infrastructure will be necessary to connect the DISTRICT’s water system to UTILITIES’ water system to implement this Agreement;
- H. 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

- I. 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 upon signing by both UTILITIES and the DISTRICT and shall remain in effect until 5 p.m. MST on December 31, 2018. The DISTRICT agrees that the DISTRICT bears the sole responsibility for providing an adequate supply of water for its current customer demands and the future customer demands based on anticipated growth. The 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 the DISTRICT's customers in excess of the water provided by UTILITIES pursuant to this Agreement. This contract may be renewed in one-year increments at 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, 2020. Notwithstanding the foregoing, UTILITIES shall have the right to suspend water service to DISTRICT under this Agreement thirty (30) days after UTILITIES provides advance notice to DISTRICT 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: DISTRICT obtains written confirmation from Pueblo County and the Bureau of Reclamation that continuing to receive service from UTILITIES pursuant to the terms and conditions of this Agreement 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 that condition is met during the thirty (30) day notice period, water service to DISTRICT will not be suspended. If such conditions are met after water service under this Agreement is suspended by UTILITIES, UTILITIES may reinstate water service under this Agreement

to DISTRICT. In the event that 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, whichever occurs first.

- 2. Short Term Water Service:** Short term water service to the DISTRICT under this Agreement shall commence after the date UTILITIES receives notice from DISTRICT that DISTRICT has issued a notice to proceed to its contractor as required by paragraph 9 of this Agreement. The DISTRICT will be required to take an annual minimum amount of 3 acre-feet of treated potable water, on a take-or-pay basis. UTILITIES shall not be obligated to provide to the DISTRICT more than 175 acre-feet annually. The annual minimum amount required to be taken by the Agreement during 2017 may be reduced on a *pro rata* basis based on the date short term water service to DISTRICT commences. The water delivered to the DISTRICT will be UTILITIES' owned treated, potable water that can legally be used for municipal purposes within the DISTRICT's water service area ("Full Service Water"). The 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 the DISTRICT. To the extent DISTRICT Water is provided to UTILITIES, the DISTRICT will receive a credit as stated in Appendix A. The DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside the Arkansas River Basin. The DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside the 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 the DISTRICT.
- 3. Requests for and Delivery of Water:** The DISTRICT shall directly communicate with UTILITIES' System Control as specified in Paragraph 3.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 the DISTRICT requesting service and UTILITIES

responding to requests, the term “written” shall include communications by electronic mail to certain electronic mail addresses, which the DISTRICT and UTILITIES shall provide to each other upon execution of this Agreement. The DISTRICT shall limit its water demand on UTILITIES’ system to an instantaneous flow rate when in use of no less than 100 gallons per minute, not more than 350 gallons per minute, and a total maximum daily delivery of 500,000 gallons per day (daily flow limit). UTILITIES agrees to maintain a Hydraulic Grade Line of 5,970. UTILITIES may, as it deems necessary and without providing the 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 the DISTRICT advance 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, to be acknowledged within 24 hours by Mr. McBeain, Office (719) 668-4570.
- iii. Water_accounting@csu.org

B. DISTRICT System Control

- i. District Manager, Kirk Medina, kirk@stratmoorhillswater.org, Office (719) 576-0311, Cell phone (719) 210-5295
- ii. Field Supervisor, Nancy Lee Watkins, Office (719) 576-0311, Cell phone (719) 649-8953

- 4. 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 accounts 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.

5. 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. Neither the DISTRICT nor its customers shall have the right to make a succession of uses of such water; and upon completion of the initial use, all dominion and control 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 the DISTRICT's one-time use of Full Service Water provided by UTILITIES under this Agreement. The DISTRICT shall maintain dominion and control over all Full Service Water during the distribution of the water and once returned to the DISTRICT's wastewater collection system. The 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 in accordance with any agreements it has with UTILITIES regarding wastewater treatment and disposal. The 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 shall have the right to review the water accounting documents of the DISTRICT to verify the quantities of such return flows resulting from UTILITIES' Full Service Water deliveries to the DISTRICT.

B. Full Service Water delivered to the 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 the DISTRICT. Neither UTILITIES nor its customers shall have the right to make

a succession of uses of such water; and upon delivery to the DISTRICT, all dominion over such water furnished hereunder shall revert completely to the DISTRICT. The DISTRICT retains the legal ownership of and the right to use, reuse, successively use, and dispose of all such return flows resulting from the 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. The DISTRICT shall cooperate with UTILITIES to quantify the daily discharge of return flows attributed to such water to permit their inclusion in the Monument/Fountain Creek Transit Loss Model. The DISTRICT shall be solely responsible for its own base cost for the use of the Monument/Fountain Creek Transit Loss Model. UTILITIES shall have the right to review the water accounting documents of the DISTRICT to verify the quantities of such return flows resulting from UTILITIES' deliveries of such water to the DISTRICT.

6. **Consequence of Loss of Dominion over Return Flows:** If UTILITIES should lose legal dominion and control over the return flows that result from the DISTRICT's use of the Full Service Water provided under this Agreement, due to the fault of the DISTRICT, 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 the DISTRICT pursuant to this Agreement where appropriate to compensate for the value of the return flows lost to UTILITIES. The DISTRICT agrees to pay UTILITIES for augmentation at the rates established in **Appendix A**, attached hereto and incorporated herein. UTILITIES will bill the 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 the DISTRICT or any third party including the DISTRICT's customers.
7. **Water Rights Unaffected:** No water rights are being transferred to or from UTILITIES or the DISTRICT under this Agreement.
8. **Service Rate, System Usage Fee, and Billing:** The DISTRICT agrees to pay UTILITIES for water provided pursuant to this Agreement at the service rates established in

Appendix A. To the extent DISTRICT Water is accepted by UTILITIES, the DISTRICT will receive a water credit as provided in **Appendix A**. Additionally, the DISTRICT shall pay an annualized system usage fee as provided in **Appendix A**. All system usage fee payments made for this interconnect will be applied to the cost of a permanent development fee for this interconnect to UTILITIES' water system. UTILITIES will bill DISTRICT monthly in arrears with payments due within thirty (30) days of the date of billing.

9. **Interconnection Infrastructure Obligations and Costs:** DISTRICT shall be solely responsible, financially and otherwise, for designing, installing, and constructing all infrastructure improvements necessary to connect UTILITIES' water system to the DISTRICT'S water system and all other related facilities necessary for use in connection with this Agreement ("Improvements"). The Improvements shall include a primary valve, a flow control valve, a meter, a secondary valve, and a backflow prevention assembly in a configuration similar to that shown in Exhibit A, or other improvements as determined by the parties. The Improvements shall be agreed upon by the parties and shall be designed, installed, constructed, operated and maintained in accordance with the Colorado Springs City Code and UTILITIES' Line Extension and Service Standards. The Improvements shall be located on property owned by the DISTRICT or in rights-of-way or easements dedicated to the DISTRICT ("DISTRICT Property"). UTILITIES shall have the sole discretion to determine and approve the actual location and design of the Improvements. 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. DISTRICT shall warranty all workmanship on the Improvements for a minimum of two years.

Upon completion of design, installation and construction of the Improvements, DISTRICT shall convey and dedicate to UTILITIES, on forms acceptable to UTILITIES, ownership of all the Improvements located between the water main/tap and the secondary valve and DISTRICT shall continue to own all of the Improvements located between and including the secondary valve and DISTRICT's water system and the right to locate the

Improvements dedicated and conveyed to UTILITIES on property owned by DISTRICT or in rights-of-way or easements dedicated to DISTRICT. UTILITIES shall be responsible for the operation, maintenance and repair of all Improvements dedicated and conveyed to it pursuant to this section. DISTRICT agrees to reimburse UTILITIES for its time and material costs associated with the maintenance and repair of the Improvements conveyed and dedicated to UTILITIES under this section. DISTRICT hereby grants UTILITIES ingress and egress over and through the DISTRICT Property to the vault and Improvements so that UTILITIES may operate, maintain, repair, and inspect the Improvements it is responsible for as well as perform its other duties under this Agreement. DISTRICT shall be responsible for the operation, maintenance and repair of all Improvements not conveyed and dedicated to UTILITIES, including any repair or maintenance that is requested by UTILITIES. All repair or maintenance of the Improvements shall be completed in a timely manner and in accord with standard industry practice. The parties shall keep the Improvements and every part thereof for which they are responsible pursuant to this section maintained so that they continue to properly serve the purposes for which they were originally intended.

DISTRICT must obtain UTILITIES' approval of a 30 percent and 50 percent design for the Improvements. In addition, DISTRICT must accomplish the following items at least 90 days prior to when District wants Utilities to start delivering water under this Agreement:

- A. Obtain UTILITIES' approval of a 100 percent design for the Improvements;
- B. Provide UTILITIES with notice that DISTRICT has received all necessary permits, rights-of-way and/or easements for the construction of the Improvements; and
- C. Provide UTILITIES with notice that DISTRICT has hired and has a contractor under contract to construct the Improvements upon receiving a notice to proceed from the DISTRICT.

Upon completion of the above criteria, UTILITIES will order the order the meter necessary to operate the interconnect.

If all such items are not completed by September 1, 2017, either party may thereafter terminate this Agreement, by providing notice of such termination to the other Party. In addition, UTILITIES shall not be obligated to provide short term water service to the DISTRICT under this Agreement until DISTRICT provides notice that it has issued a notice to proceed with construction of the Improvements to its contractor.

- 10. 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 the 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.
- 11. Water Use Restrictions; Termination:** The 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 the 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.
- 12. Termination of Agreement:** The DISTRICT acknowledges and consents to UTILITIES' right to terminate or suspend 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 that would impair UTILITIES' ability to deliver water under this Agreement) to UTILITIES' water system, or the 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 in advance of circumstances that could result in such termination. In the event the rate structure established in **Appendix A** is

challenged in court, whether by the 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.

- 13. Conservation Plan:** The DISTRICT agrees to deliver a State submitted conservation plan to UTILITIES within six months of the execution of this Agreement. The DISTRICT agrees to abide by and enforce the conservation plan submitted to the State in its current form or as it may be changed through the State approval process.
- 14. City of Colorado Springs Compliance:** The DISTRICT agrees to comply with all applicable ordinances, regulations and rules concerning the connection to and use of UTILITIES' water system by DISTRICT.
- 15. Drinking Water Quality Regulatory Compliance; Required Permits:**
- A.** The water provided by UTILITIES to the DISTRICT at the interconnect 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. 1003-01). 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 entry to the 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, the DISTRICT is responsible for all applicable monitoring and reporting requirements of the Colorado Primary Drinking Water Regulations of water within the DISTRICT's system.
 - B.** The DISTRICT will be responsible for obtaining, prior to operation, any applicable permits from any permitting authority or approvals from the Colorado Department of Public Health and Environment for the construction and connection of the system interconnection/point of entry necessary to fulfill this Agreement. A copy of such approval will be provided to UTILITIES.
- 16. Colorado Water Quality Control Act Compliance:** If at any time during the effective term of this Agreement, the DISTRICT fails to meet the requirements of the Colorado

Water Quality Control Act applicable to the DISTRICT, and applicable control regulations promulgated and permits issued thereunder, UTILITIES may in its sole discretion suspend deliveries and interrupt its performance of this Agreement without commensurate extension of this Agreement or liability to the DISTRICT or any third party, including the DISTRICT's customers, until any applicable compliance is achieved. With or without suspension or interruption by UTILITIES, the DISTRICT, in the event of its failure to meet such requirements applicable to the DISTRICT, 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 on the DISTRICT. In the event UTILITIES fails to meet requirements of the Colorado Water Quality Control Act and applicable regulations thereunder, UTILITIES shall notify the DISTRICT in the same manner as other customers, and the DISTRICT shall have the same rights and remedies as provided to UTILITIES, including the option of immediately suspending the delivery of water under this Agreement.

17. Regional Cooperation: The following provisions apply only during the term of this Agreement.

- A. The DISTRICT acknowledges and agrees to support, without financial contribution, the Fountain Creek Watershed, Flood Control, and Greenway District to the extent authorized under Colorado Revised Statutes §32-1-1001, *et seq.*
- B. The DISTRICT 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. The DISTRICT agrees, subject to the following sentence, 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 the DISTRICT's legal authority to insure that stormwater in the Fountain Creek

Basin does not increase above existing conditions. It is understood that the DISTRICT has no legal authority or obligation with respect to regulation or control of stormwater or funding of stormwater projects within or outside of its service area.

- D. The 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 by the District implicating that reach of the Arkansas River.
- E. The DISTRICT agrees to participate in any water quality monitoring or studies to the same proportional degree and extent as undertaken by the City of Colorado Springs. The DISTRICT shall pay a yearly water quality monitoring fee as provided in **Appendix A**. UTILITIES will bill the DISTRICT annually with payment due within thirty (30) days of the date of billing. The DISTRICT's obligations under this subparagraph shall be deemed to be satisfied and the annual water quality monitoring fee will not be assessed against the DISTRICT after the DISTRICT becomes a member of the Arkansas Fountain Coalition for Urban River Evaluation ("AFCURE") and funds its share of the water quality monitoring studies performed by AFCURE.
- F. The DISTRICT agrees, subject to the following sentence, to support any studies of a flood control dam or dams on Fountain Creek. It is understood that the DISTRICT has no legal authority or obligation to regulate or control stormwater or fund stormwater projects.

18. 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 the 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 the DISTRICT.

19. Legal Notice: Notices under this Agreement, other than the 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 electronic mail notice is not acceptable. Notices shall be delivered by facsimile, by courier service delivery (such as Federal Express), or by first-class mail to one of the two (2) people specified below at the following addresses and telephone numbers:

A. For UTILITIES

i. Chief Water Services Officer: Dan Higgins

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

ii. City Attorney's Office – Utilities Division

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. District Manager: Kirk Medina

Stratmoor Hills Water District

1811 B. St.

Colorado Springs, CO 80906

- 20. 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.
- 21. Force Majeure:** Neither party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition 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, the DISTRICT will meet or exceed such prohibitions or restrictions while it is receiving water from UTILITIES pursuant to this Agreement.
- 22. 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 the 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 the DISTRICT as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.
- 23. 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 any force or 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 therein. Electronic mail 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 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.

24. 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 and that this Agreement shall be reformed to replace such stricken provision with a new provision that comes as close to possible to expressing the intention of the stricken provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below.

COLORADO SPRINGS UTILITIES

STRATMOOR HILLS WATER DISTRICT

By: _____
Dan Higgins
Chief Water Services Officer

By: _____
Dianne Cooper
Board President

Date: _____

Date: _____

APPROVED AS TO FORM:

Michael Gustafson
City Attorney's Office –
Utilities Division

APPENDIX A

- A. **Rates**: The DISTRICT agrees to pay UTILITIES for water delivered pursuant to this Agreement at the 2017 Rate of 12.25 cents per cubic foot. To the extent DISTRICT provides fully consumable water decreed for municipal use to UTILITIES at a location specified by UTILITIES, the DISTRICT will then qualify for a Water Rate Credit of 4.53 cents per cubic foot for water provided on a one for one basis. Because components of the City Council approval outside city limits residential and nonresidential potable water rates have been used to calculate both the Rate and Water Rate Credit, but the Rate and Water Rate Credit will be adjusted concurrently with changes to UTILITIES' outside city limits residential and nonresidential potable water rates.
- B. **Annualized System Usage Fee**: DISTRICT shall pay an annualized system usage fee (SUF) of \$33,300.00 each year during the term of this Agreement and any extensions thereof. DISTRICT may elect to pay the SUF in one lump sum due by May 1st of each year, or it may elect a monthly SUF totaling \$2,775.04 per month. In 2017, DISTRICT shall pay a *pro rata* SUF based on the date the Agreement becomes effective pursuant to paragraph 9. The total SUF charges to the DISTRICT under this Agreement, and under future agreements, for use of the same connection by the DISTRICT shall not exceed \$743,313.00, which is the total SUF for the subject connection at the time of this agreement.
- 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 rate for 2017 is 1.08 cents per cubic foot. This Augmentation Rate will be adjusted concurrently with changes to UTILITIES' augmentation tariff rate.
- D. **Water Quality Monitoring Fee**: Subject to the provisions of subparagraph 17.E, 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 DISTRICTS *pro rata* share of UTILITIES and DISTRICT's combined yearly Waste Water Treatment return flows.

EXHIBIT A
Backflow Prevention Assembly Configuration

