

RESOLUTION NO. 95 - 25

A RESOLUTION AUTHORIZING AND DIRECTING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO ENTER INTO AN AGREEMENT FOR REGIONAL WASTEWATER SERVICE BETWEEN COLORADO SPRINGS UTILITIES AND CHEYENNE MOUNTAIN ESTATES MHC HOLDINGS, LLC

WHEREAS, City Code § 12.5.304 allows Colorado Springs Utilities ("Utilities") to provide by contract for the use of or connection to its wastewater system by institutions, plants, organized sewer districts, governments, municipal corporations, or other similar users; and

WHEREAS, Cheyenne Mountain Estates MHC Holdings, LLC, a Minnesota limited liability company, doing business as Cheyenne Mountain Estates ("CME") owns the Cheyenne Mountain Estates Manufactured Housing Community ("MHP") located at 8160 Piute Rd., Colorado Springs, CO 80926; and

WHEREAS, as a similar user, CME owns and operates wastewater treatment and collection facilities that it utilizes to provide wastewater collection, treatment and disposal service to the MHP and single-family residences adjacent to the MHP ("CME Customers") located within its Service Area; and

WHEREAS, CME desires to obtain regional wastewater treatment service from Utilities to provide wastewater treatment service to CME's Customers which are anticipated to contribute Maximum Allowable Flow of up to 0.020 Million Gallons Per Day to Utilities' wastewater treatment system; and

WHEREAS, Utilities currently has sufficient infrastructure capacity in its wastewater system to provide regional wastewater service to CME; and

WHEREAS, in exchange for regional wastewater service, CME has agreed to pay the rates and fees set forth in Utilities' Tariffs for such service; and

WHEREAS, Utilities requests that City Council approve Utilities' provision of regional wastewater service to CME and authorize and direct the Chief Executive Officer of Colorado Springs Utilities to enter into an agreement for regional wastewater service with CME; and

WHEREAS, City Council recognizes that approving the provision of wastewater service to CME does not set precedent for future requests for regional wastewater service.

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

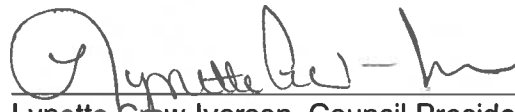
Section 1. City Council finds and determines that Utilities' provision of regional wastewater service to CME will benefit the public health, safety and welfare of the surrounding community and is in the best interest of Utilities and the City of Colorado Springs.

Section 2. City Council hereby approves Utilities' provision of regional wastewater service to CME in accordance with the Wastewater Service Agreement attached hereto.

Section 3. The Chief Executive Officer of Colorado Springs Utilities is authorized and directed to enter into the Wastewater Service Agreement with CME in a form substantially similar to that attached hereto.

Section 4. This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this 22<sup>nd</sup> day of July 2025.



Lynette Crow-Iverson, Council President

ATTEST:

  
Sarah B. Johnson, City Clerk

**WASTEWATER SERVICE AGREEMENT**  
Contract Service – Regional (S9C)  
Cheyenne Mountain Estates MHC Holdings, LLC

THIS AGREEMENT ("Agreement") is made and entered into as of the date of the last signature below ("Effective Date") 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 Cheyenne Mountain Estates MHC Holdings, LLC, a Minnesota limited liability company, doing business as Cheyenne Mountain Estates ("CME"). In this document, UTILITIES and CME can be referred to individually as "Party" or collectively as "Parties."

**Recitals**

- A. CME owns the Cheyenne Mountain Estates Manufactured Housing Community ("MHP") located at 8160 Piute Rd., Colorado Springs, CO 80926, and depicted on Exhibit A.
- B. CME owns and operates wastewater treatment and collection facilities that it utilizes to provide wastewater collection, treatment and disposal service to the MHP and single-family residences adjacent to the MHP located within its Service Area depicted on Exhibit A.
- C. CME is currently a party to that certain Sanitary Sewer Service Agreement, dated October 7, 2022, between CME and the Rock Creek Metropolitan District ("RCMD") under which RCMD agreed to provide wastewater treatment service for the residents of the MHP and the single-family residences subject to certain conditions being met ("RCMD Agreement").
- D. CME desires to terminate the RCMD Agreement and instead obtain wastewater treatment service from UTILITIES for properties within CME's Service Area which are anticipated to contribute a Maximum Allowable Flow of up to 20,000 gallons/day Average Annual Flow (0.020 million gallons per day (MGD)) with a maximum hourly flow of 0.054 MGD, and a maximum monthly flow of 25,000 MGD (0.025 MGD) to UTILITIES' Wastewater Treatment System.
- E. 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 Maximum Allowable Flow from CME subject to the terms and conditions set forth herein.
- F. Pursuant to Colorado Springs City Code and Springs Utilities' Tariffs, regional wastewater service is only available by special contract outside City limits to institutions, plants, organized sewer districts, municipal corporations, or other similar user and only with prior approval by the City Council.
- G. Since CME is not an institution, plant, organized sewer district or municipal corporation, CME's eligibility for regional wastewater service depends on whether it qualifies as a "similar user" in accordance with City Code and Springs Utilities' Tariffs.
- H. To qualify as a "similar user" for the purposes of regional wastewater treatment service, the

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement  
requesting entity must own and operate a "domestic wastewater treatment works" as defined in the Colorado Site Location and Design Regulations for Domestic Wastewater Treatment Works (5 CCR 1002-22) that serves the area for which it is requesting service.

- I. Utilities has determined that CME is eligible for Springs Utilities' regional wastewater treatment service as a "similar user" because CME and its predecessor, Broadmoor Park Village Properties, LLC, have provided and currently provide wastewater collection, treatment and disposal service to individual customers residing in the MHP, and have owned and operated wastewater collection and treatment facilities that meet the definition of a "domestic wastewater treatment works" to provide these services to its customers.
- J. 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 RECITALS, IT IS AGREED AS FOLLOWS:

#### Article I

##### General Provisions

1. Term. This Agreement shall become effective on the later of (1) the date this Agreement has been executed by both parties or (2) the date the RCMD Agreement is terminated ("Effective Date") and shall be in effect for a period of twenty-five (25) years.
  - a. No later than twenty-four (24) months prior to the expiration of the Term, the Parties shall begin good faith negotiations on a new agreement for UTILITIES to treat CME's wastewater, with the expectation that such 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 CME in writing that CME shall be disconnected from UTILITIES' 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 treatment service agreement beyond the Term, the term may be extended for an additional 1-year term at UTILITIES' sole discretion.
2. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings, unless the context clearly requires otherwise. Terms not otherwise defined herein shall have the meaning adopted in the latest amendment to the City Code. Defined terms are capitalized.
  - a. Average Annual Flow: 90 day rolling average of wastewater flow rate in million gallons/day.

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

- b. CME's Customers: The persons residing in the CME Service Area, that receive the benefit of the wastewater treatment service provided hereunder.
- c. CME's Service Area: The Service Area as depicted on Exhibit A.
- d. CME's Wastewater Collection System: Any devices, facilities, structures, equipment or works owned and/or operated by CME for the purpose of collection and transmission of wastewater generated within CME's Service Area to UTILITIES' Wastewater Treatment System.
- e. Industrial User: A source of discharge which introduces pollutants into CME's Wastewater Collection System and UTILITIES' Wastewater Treatment System from any nondomestic source regulated under Section 307(B), (C), or (D) of 33 USC Section 1251, et seq.
- f. Maximum Allowable Flow: The Maximum Allowable Flow shall be calculated based on a ninety (90) day rolling average of discharge as measured at the points of connection described in Article II.1.
- g. Recovery Agreement Charges: A Recovery Agreement Charge may be assessed for each connection to a collection line or use of a pumping station and force mains, where such line or facility is planned or constructed by UTILITIES or is the subject of a Recovery Agreement between UTILITIES and the property owner or developer who constructed such line or facility as of the Effective Date of this Agreement. Consistent with such agreements, the charge will be in an amount which represents a pro rata share of the cost of construction of the line or facility.
- h. 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.
- i. Wastewater Regional System Availability Fee (WWRSAF): A fee assessed for each new connection to UTILITIES' Wastewater Collection and Treatment System by contract outside the corporate limits of the City in areas where UTILITIES' Wastewater Treatment System is available for use by UTILITIES to serve institutions, plants, organized wastewater districts, municipal corporations, or other similar organizations and only with prior approval by the Colorado Springs City Council.
  - i. The WWRSAF reflects the amount of capacity needed within UTILITIES' Wastewater Treatment System to meet the obligations of regional wastewater contracts.
  - ii. The WWRSAF is determined based on the meter size needed to treat the CME's Maximum Allowable Flow.
  - iii. Any entity that paid a WWRSAF or an analogous charge through a contract in place prior to the implementation of the WWRSAF will be credited for the amount paid for the analogous charge. If the entity met its full contractual WWRSAF or equivalent, it is deemed to have met its WWRSAF and will not be charged an additional WWRSAF.

- j. WWLESS: UTILITIES' Wastewater Line Extension and Service Standards, as may be amended or replaced.

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 ("URRs") as such may be amended or replaced from time to time by the Colorado Springs City Council ("Tariffs"). The wastewater treatment service provided to CME under this Agreement shall be governed, implemented and enforced with regard to CME and CME's Customers in accordance with the Colorado Springs City Charter, the City Code, the Tariffs, WWLESS, and all other applicable City's 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. CME 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, CME submits to the jurisdiction of the City for the purposes of implementation and enforcement of City Code Chapter 12, Article 5 with regard to CME and CME's Customers. CME shall by ordinances or resolutions, provide for CME and CME's Customers to submit to the jurisdiction of the City for the purposes of the UTILITIES implementing and enforcing City Code Chapter 12, Article 5 with regard to CME and its Customers and require CME and its Customers to 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 (collectively, "CME's Sewer Use Regulations"). CME's Sewer Use Regulations must include provisions that mirror or are more stringent than City Code Chapter 12, Article 5. CME shall provide UTILITIES with a draft of CME's proposed Sewer Use Regulations to the contacts set forth in Article III.13 hereof within ninety (90) days after the Effective Date. UTILITIES will have sixty (60) days from its receipt of the draft to provide CME with notice of whether it approves CME's proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES determines that revisions to CME's Sewer Use Regulations are necessary, CME shall provide UTILITIES with revised proposed Sewer Use Regulations that include the revisions. UTILITIES will have sixty (60) days from its receipt of the revised proposed Sewer Use Regulations to provide CME with notice of whether it approves CME's revised proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES provides CME with notice that revisions to the revised proposed Sewer Use Regulations are necessary, CME shall have ninety (90) days to make such revisions and provide UTILITIES with a revised proposed Sewer Use Regulations that includes UTILITIES' requested revisions. UTILITIES will have sixty (60) days from its receipt of the revised proposed Sewer Use Regulations to provide CME with notice of whether it approves CME's revised proposed Sewer Use Regulations or if revisions thereto are necessary. CME shall adopt the approved Sewer Use Regulations within sixty (60) days of receiving notice of UTILITIES' approval of the regulations.

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

- c. UTILITIES shall provide CME with notice of any revisions made to City Code Chapter 12, Article 5 in the future. CME shall revise and provide the contacts set forth in Article III.13 hereof its revised Sewer Use Regulations that are at least as stringent as the revised version of City Code Chapter 12, Article 5 within sixty (60) days of its receipt of notice from UTILITIES. UTILITIES will have sixty (60) days from its receipt of the draft to provide CME with notice of whether it approves CME's proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES determines that revisions to CME's Sewer Use Regulations are necessary, CME shall provide UTILITIES with revised proposed Sewer Use Regulations that include the revisions. UTILITIES will have sixty (60) days from its receipt of the revised proposed Sewer Use Regulations to provide CME with notice of whether it approves CME's revised proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES provides CME with notice that revisions to the proposed Sewer Use Regulations are necessary, CME shall have ninety (90) days to make such revisions and provide UTILITIES with revised proposed Sewer Use Regulations that includes UTILITIES' requested revisions. UTILITIES will have sixty (60) days from its receipt of the revised proposed Sewer Use Regulations to provide CME with notice of whether it approves CME's revised proposed Sewer Use Regulations or if revisions thereto are necessary.
  - d. CME shall provide UTILITIES with notice and a copy of the most recent version of CME's Sewer Use Regulations to the contacts set forth in Article III.13 hereof by **February 15** of each calendar year, and any amendments to said regulations within thirty (30) days of adoption.
4. Wastewater Treatment Service.
- a. During the term of this Agreement, UTILITIES will accept and treat through its Wastewater Treatment System up to 0.020 MGD of wastewater that originates from inside CME's Service Area in accordance with City Code, the URRs, and subject to the terms and conditions contained herein.
  - b. UTILITIES shall have no obligation to accept and treat wastewater under this Agreement that originates outside of CME's Service Area or in excess of 0.020 MGD.
  - c. CME shall provide to UTILITIES an updated copy of the map of CME's Wastewater Collection System to the contacts set forth in Article III.13 hereof by **February 15** of each year or notice to the same contacts that no changes to CME's Wastewater Collection System have occurred in the preceding year.
5. Expansion of Wastewater Treatment Obligations. Expansion of CME's Service Area/Treatment Obligations. CME may not expand the CME's Service Area or contract to provide wastewater service to customers located outside of its Service Area without first receiving UTILITIES' prior written approval of the expansion or contract, which may require authorization from the UTILITIES' Board of Directors and the Colorado Springs City Council. If CME desires to obtain additional wastewater treatment service from UTILITIES (1) for properties located outside of its Service Area; or (2) that results in CME's discharges to UTILITIES' Wastewater Treatment System to exceed Maximum Allowable Flow of 0.020 MGD

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

then:

- a. UTILITIES and CME must negotiate an amendment to this Agreement or a new agreement that provides for such an expansion. CME acknowledges that any such amendment of this Agreement or a new agreement may require approval by the UTILITIES' Board of Directors and/or the Colorado Springs City Council. UTILITIES shall have no obligation to treat wastewater and CME shall not introduce wastewater at Maximum Allowable Flow in excess of 0.020 MGD into UTILITIES' Wastewater Treatment System until the parties have entered into such an amendment or new agreement.
  - b. CME shall provide notice to UTILITIES of its intent to request expanded wastewater treatment service for other properties prior to CME seeking approval of the proposed changes from El Paso County. The notice must include the number, types of connections, and flow estimates to CME's Wastewater Collection System that will be included in the expanded Service Area.
  - c. UTILITIES shall provide notice to CME of whether it supports the requested changes in wastewater treatment service provided by UTILITIES, whether such expanded service will need to be provided under an amendment to this Agreement or a new agreement, and whether such amendment or new agreement will require approval by the UTILITIES' Board of Directors and/or the Colorado Springs City Council within one hundred and eighty (180) days of UTILITIES' receipt of notice of the requested proposed changes to the extent of wastewater treatment service by UTILITIES. CME acknowledges the expansion of wastewater treatment service is limited to properties within CME's Service Area or within areas that may be included in CME's Service Area in the future.
6. Rates, Charges, Surcharges and Fees Payable by CME.
- a. For the services provided hereunder, CME 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", WWRSAF and Recovery Agreement Charges as provided in the Tariffs. Surcharges will apply to CME'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. CME agrees that UTILITIES' rate making process, as embodied in the Tariffs, is fair and reasonable.
  - b. CME will continue to pay the rates and charges established in the Tariffs even if UTILITIES 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 CME thirty (30) days in advance of City Council's consideration of the change in tariffs applicable to this Agreement.
  - c. CME agrees to pay the then prevailing Treatment Charges and Extra Strength Surcharges or replacements, for every cubic foot of wastewater delivered to UTILITIES' Wastewater Treatment System. UTILITIES will bill CME monthly in arrears for such Treatment Charges and Extra Strength Surcharges with payment due within thirty (30) days of the date of



Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement  
billing.

- d. 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. CME will deliver wastewater to UTILITIES' Wastewater Treatment System at a Maximum Allowable Flow of 0.020 MGD. The WWRSF for average daily flows less than 0.10 MGD is \$7,162.00 which must be paid by CME within thirty (30) days after the date CME's Wastewater Collection System is connected to UTILITIES' Wastewater Treatment System.
  - e. CME shall pay Recovery Agreement charges for previously constructed and planned wastewater infrastructure that will be utilized by UTILITIES in accordance with the Tariffs, as amended or replaced. CME agrees to pay initial Recovery Agreement charges of \$93,161.85 based on UTILITIES' acceptance of wastewater at Maximum Allowable Flow of up to 0.020 MGD. Such Recovery Agreement charges must be paid by CME within thirty (30) days after the Effective Date. In the event following the Effective Date, the Maximum Allowable Flow of up to 0.020 MGD is exceeded, CME agrees to pay additional Recovery Agreement charges in an amount determined by UTILITIES prior to UTILITIES accepting and treating wastewater at Maximum Allowable Flow in excess of 0.020 MGD. UTILITIES shall provide CME notice of the amount of the additional Recovery Agreement charges and such charges must be paid by CME within thirty (30) days after such notice. The infrastructure that will be used by UTILITIES to provide wastewater treatment service under this Agreement that is subject to the payment of Recovery Agreement Charges by CME are depicted in Exhibit B.
  - f. 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. CME shall pay a Water Quality Impact Fee that will be calculated and billed annually. The annual fee will be based on CME'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.
  - g. Payments under this Paragraph by CME shall be due at UTILITIES', Customer Services Department, 111 S. Cascade Ave., Colorado Springs, Colorado 80903. If a bill is not paid within thirty (30) days of when it is due, a deposit will be assessed as outlined in the Tariffs as modified or replaced.
7. CME's Responsibilities. In addition to other responsibilities and duties provided in this Agreement, CME shall solely have the following responsibilities:
- a. CME shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with CME's Wastewater Collection System including, but not limited to, air emissions from CME's Wastewater Collection System, as may be applicable, and spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency ("EPA") from CME's Wastewater Collection System.
  - b. CME shall at all times have in place and make best efforts to enforce its Sewer Use Regulations. In the event that CME fails to provide resources or otherwise fails to implement and enforce its Sewer Use Regulations within CME's Service Area in a timely manner, UTILITIES is authorized to take all such actions on behalf of and as an agent for CME after providing CME with notice of same.

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

- c. At all times, CME shall cause all wastewater, which is discharged directly or indirectly into CME 's Wastewater Collection System or into UTILITIES' Wastewater Treatment System by CME or CME's Customers, or on their behalf, to comply with CME's Sewer Use Regulations and any requirements of UTILITIES, as permitted by law.
- d. CME shall at all times operate CME's Wastewater Collection System so as not to interfere with service to third parties who rely on UTILITIES' Wastewater Treatment System.
- e. CME'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 CME's Wastewater Collection System.
- f. If CME has a slug discharge as defined in §12.5.201 of the City Code, or a discharge 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.
- g. CME shall report, in the manner required by applicable laws and regulations provided below, any illicit discharge, spill, leak, or sanitary overflow from CME'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 CME 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 CME 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 CME becomes aware of the Incident.
- h. CME shall maintain an approved EPA User Charge System (40 CFR §§ 35.2140). UTILITIES will notify CME by February 15<sup>th</sup> 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. CME shall provide within sixty (60) days of implementation or upon request by UTILITIES, a report on CME's classes, rates, and implementation provisions. CME will comply with EPA regulations (40 CFR § 35.2140(c)) by advising CME'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 provided hereunder. A copy of the notification shall be forwarded to UTILITIES within sixty (60) days of when

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

CME provides such notification to its wastewater Customers.

- i. CME 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.

8. Relief Systems.

- a. Before UTILITIES is obligated to provide wastewater treatment service and CME is entitled to introduce wastewater into UTILITIES' Wastewater Treatment System at Maximum Allowable Flow in excess of 0.020 MGD, CME must, at no cost to UTILITIES, construct relief systems and necessary appurtenances as determined by UTILITIES, at its sole discretion in accordance with the City Code and the WWLESS, as each may be amended or replaced. Relief systems shall be approved by UTILITIES, and operational before sustained Maximum Allowable Flow from CME's Service Area in excess of 0.020 MGD can be accepted. The relief facilities may be constructed on property owned by CME, within the boundaries of CME, 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 CME to pay a pro rata share of the construction cost of relief systems based upon UTILITIES sole 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.

- b. UTILITIES shall provide CME with notice of the required relief systems within 90 days of when CME provides UTILITIES with the notice required under Article 1.5.b that it intends to expand the wastewater treatment service provided by UTILITIES hereunder to Maximum Allowable Flow in excess of 0.020 MGD. CME shall provide UTILITIES with its designs for the required relief systems in accordance with the current version of the WWLESS. The WWLESS process for design review, construction acceptance, bill of sale, and warranties will apply to the proposed construction of the relief system.

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

10. Interpretation of Requirements. In all cases where the application or the enforcement of the City Code, 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.
11. Reusable Return Flows. Unless separately agreed to by the Parties, UTILITIES will retain dominion, and control over treated reusable water effluent resulting from wastewater introduced by CME into UTILITIES' Wastewater Treatment System for treatment until such time as such reusable water effluent is discharged from UTILITIES' wastewater treatment facilities. Upon such discharge, UTILITIES shall have no further right to use or any other interest in the return flows resulting from wastewater introduced by CME into UTILITIES' Wastewater Treatment System and shall have no obligations related thereto.

## Article II

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

1. Point(s) of Connection of CME to UTILITIES' Wastewater Treatment System. CME shall deliver its wastewater to UTILITIES' Wastewater Treatment System at the points of connection located within the wastewater metering vaults depicted on Exhibit C as 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 and/or disconnected at the expense of CME or third parties, based on agreements between CME and such third parties.
2. CME's Wastewater Collection System Improvements. CME shall be solely responsible, financially and otherwise, for designing, installing, constructing, and operating CME's Wastewater Collection System including, but not limited to, flow meters, wastewater mains, and all infrastructure improvements necessary to connect UTILITIES' Wastewater Treatment System to CME'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"). Any Improvements required for the connection of CME Wastewater Collection System to UTILITIES Wastewater Treatment system 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 CME or in rights-of-way or easements dedicated for public utilities or conveyed to CME. CME shall, at its own cost and subject to UTILITIES' approval, locate, design, and construct 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. UTILITIES acknowledges that other than any new Improvements required under this section, CME's Wastewater Collection System infrastructure was constructed prior to the Parties entering into this Agreement and that the previously installed infrastructure may not be in compliance with City Code or the WWLESS. UTILITIES will not be inspecting or requiring upgrades to such previously installed infrastructure prior to CME connecting to UTILITIES Wastewater Treatment System.

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

However, any previously installed infrastructure that is part of CME's existing Wastewater Collection System or any infrastructure that is subsequently acquired by CME that does not comply with the WWLESS shall be brought into compliance at the time such infrastructure is repaired or replaced.

3. Wastewater Discharge Meters/Vaults.

- a. In addition to any other Improvements required under Article II.2 hereof, within xx (xxx) days of the Effective Date CME must design and install all required facilities related to wastewater discharge meters that will record the amount of wastewater delivered to UTILITIES' Wastewater Treatment System by CME, including, but not limited to, 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. CME's obligations with regard to 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. CME must obtain UTILITIES' approval of the design and installation of all such facilities. CME shall be responsible for costs of future modifications of the metering flume required to measure increased flows when phased installations, such as nested flumes, are required to accurately measure multiple ranges of flows considered under this Agreement.
- b. UTILITIES shall read, operate, maintain, and replace the discharge meter(s) at UTILITIES' cost.
- c. The accuracy of the meter shall be verified by UTILITIES upon installation and on an annual basis thereafter, with results provided to UTILITIES and CME. CME has the right to request meter verification tests more often than once annually; however, if the accuracy of the meter tests ARE within +/-2% of the results of the most recent past annual test, CME 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.

4. Ownership and Maintenance of Improvements. It is understood by the Parties that the point of demarcation between CME's Wastewater Collection System and UTILITIES' Wastewater Treatment System will be located at the metering vault. All infrastructure, including the Improvements, located upstream of the metering vault is understood to be owned and maintained by CME and all infrastructure, including the Improvements, located downstream of the metering vault is understood to be owned and maintained by UTILITIES. Unless earlier dedicated by plat, upon completion of design, installation and construction of the Improvements, CME shall convey and dedicate to UTILITIES or shall cause the conveyance and dedication to UTILITIES by a third party who owns the Improvements, on forms acceptable to UTILITIES, ownership of all the Improvements located on the UTILITIES' side of the metering vault(s), as depicted on Exhibit C, and the right to locate the Improvements dedicated and conveyed to UTILITIES on property upon which they are located. UTILITIES shall be responsible for the operation, maintenance and repair of all Improvements dedicated

## Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

to it and after they are conveyed to it pursuant to this Paragraph. CME shall continue to own all of the other Improvements. CME hereby agrees to grant UTILITIES ingress and egress over and through CME's property to the CME-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. If such an easement is necessary, CME shall provide UTILITIES with an easement providing for such ingress and egress in a form approved by UTILITIES. CME 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. CME agrees to provide UTILITIES with a continuously complete record of all Improvements.

### Article III

#### CME Industrial Pretreatment Program Responsibilities Delegated to UTILITIES

1. Industrial Users. At the present time, CME does not anticipate that there will be any Industrial Users connected to its Wastewater Collection System. However, the Parties acknowledge that connection of Industrial Users to CME'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 CME's Wastewater Collection System in the future.
2. Delegation of Industrial Pretreatment Program Responsibilities. CME designates UTILITIES as the agent of CME for the purposes of implementation and enforcement of CME's Sewer Use Regulations promulgated pursuant to Article I.3.b hereof against Industrial Users located in CME's Service Area ("CME's Industrial Pretreatment Responsibilities"). As such, UTILITIES shall have direct authority to develop, implement, and enforce all pretreatment standards and requirements as necessary to regulate Industrial Users located in CME's Service Area. This includes, but is 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. CME agrees that UTILITIES will implement CME's 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 ("UTILITIES' Industrial Pretreatment Program Standards").
3. Compliance with Discharge Limitations. CME hereby agrees to comply and require its Customers whose discharged flow enters into UTILITIES' Wastewater Treatment System to comply, with the discharge prohibitions, discharge limitations, and points of discharge limitations set forth in CME'S Sewer Use Regulations and City Code Chapter 12, Article 5.
4. Technical and Administrative Duties. UTILITIES, on behalf of and as agent for CME, will perform technical and administrative duties necessary to implement and enforce CME's Sewer Use Regulations including, but not limited to: (1) updating its industrial waste inventory

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

to include users within CME's Service Area; (2) issuing or co-issuing permits to all Industrial Users that are required to obtain a permit (see Article III.8 hereof); (3) conducting inspections, sampling and analysis related to Industrial Users; (4) taking all appropriate enforcement action as outlined in City Code Chapter 12, Article 5 as well as UTILITIES' enforcement response plan and provided for in CME's Sewer Use Regulations; (5) providing CME with notice of enforcement actions UTILITIES takes against any Industrial User in CME's Service Area; and (6) performing any other technical or administrative duties UTILITIES deems appropriate.

5. UTILITIES Emergency Actions. In addition, UTILITIES, may, as agent of CME, take emergency action to stop or prevent any discharge to UTILITIES' Wastewater Treatment System originating within CME's Service Area which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.
6. UTILITIES' Duties. UTILITIES, on behalf of and as an agent of CME, agrees to perform the following actions and duties as necessary to implement and enforce CME's Sewer Use Regulations and City Code Chapter 12, Article 5 consistent with 40 CFR 403.8(f):
  - a. Review and authorize the connection of an industrial user to CME's Wastewater Collection System;
  - b. Control through permit or other means, the contribution of wastewater to UTILITIES' Wastewater Treatment System by Industrial Users within CME's Service Area. Without limitation, UTILITIES shall have the right to prohibit any connection to, or discharges into, CME's Wastewater Collection System of an Industrial User in accordance with City Code;
  - c. Require CME's Customers to comply with all requirements of UTILITIES' Industrial Pretreatment Standards;
  - d. Deny or condition new or increased contributions of pollutants or changes in the nature of pollutants by an Industrial User;
  - e. Require the development of compliance schedules by Industrial Users for installation of technology required to meet UTILITIES' Industrial Pretreatment Program Standards;
  - f. Require submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance with UTILITIES' Industrial Pretreatment Program Standards as well as CME's Sewer Use Regulations;
  - g. Carry out all inspection, surveillance and monitoring procedures necessary to determine whether an Industrial User is complying with UTILITIES' Industrial Pretreatment Program Standards as well as CME's Sewer Use Regulations;
  - h. Carry out all inspections, surveillance and monitoring necessary to ensure compliance with UTILITIES' Industrial Pretreatment Program Standards as well as CME's Sewer Use Regulations;
  - i. Enter the property/premises of an Industrial User in which a discharge source or pretreatment infrastructure is located, or in which required records are kept, to ensure compliance with UTILITIES' Industrial Pretreatment Program Standards as well as CME's Sewer Use Regulations;

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

- j. Evaluate and enforce compliance with Industrial Pretreatment Program Standards and requirements utilizing remedies including, but not limited to, injunctive relief and assessment of civil or criminal penalties for violations; and
  - k. Meet the confidentiality requirements set forth in 40 CFR Part 403.14.
7. CME's Duties. CME is responsible for, and hereby accepts the following duties and agrees to perform the following actions in relation to all Industrial Users within CME's Service Area:
- a. Prior to allowing an Industrial User to connect to CME's Wastewater Collection System, CME shall provide UTILITIES with notice of its intent to permit connection of an Industrial User to CME's Wastewater Collection System that includes such customer's name, address, Standard Industrial Classification code, and average daily water usage;
  - b. Submit to UTILITIES' Industrial Pretreatment Program, quarterly by January 31, April 30, July 31, and October 31 each year during the term of this Agreement, an updated inventory of all Industrial Users and commercial customers connected to CME's Wastewater Collection System. Such inventory shall include such customer's name, address, Standard Industrial Classification code and/or NAICS code, and average daily water usage for the previous quarter;
  - c. CME shall provide the resources and commit to implementation and enforcement of its Sewer Use Regulations with UTILITIES' oversight;
  - d. CME agrees to be responsible for any violations of applicable law for failure of UTILITIES' Industrial Pretreatment Program meeting applicable law resulting from CME's neglect, failure to report any known violations, or failure to comply with the terms and conditions of this Agreement; and
  - e. CME 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 wastewater from a new Industrial User as defined in City Code. Unplanned changes in wastewater characteristics must be reported within seven (7) days after the change becomes known.
8. Co-Issue Permits. CME may co-issue all permits if CME notifies UTILITIES' Industrial Pretreatment Program Director in writing requesting to do so. UTILITIES will take the lead in preparing draft control mechanisms.
9. Enforcement Discretion. CME and UTILITIES shall each retain their enforcement discretion. Regarding Industrial Users served by CME, 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 CME Customer discharging flows to the UTILITIES' Wastewater Treatment System as provided in the City Code. UTILITIES shall notify CME when assessing penalties, terminating wastewater treatment service, or seeking criminal sanctions against any of CME's Customers. UTILITIES shall provide CME with a status report regarding the compliance of Significant Industrial Users within CME's boundaries on or before **April 1** of each year.
10. Challenges to UTILITIES' Authority. CME agrees that if UTILITIES' authority to act as agent for CME under this Agreement is questioned or challenged by an Industrial User within CME's Service Area, administrative agency, court of law, or otherwise, CME will take all actions necessary to ensure that implementation and enforcement of its Sewer Use Regulations



Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement  
against any Industrial User within its Service Area discharging flows into UTILITIES' Wastewater Treatment System, including implementing its Sewer Use Regulations on its own behalf.

11. Admission to Property. CME acknowledges that UTILITIES has the power to carry out all inspection, surveillance, and monitoring procedures necessary in accordance with City Code § 12.5.805. CME's Sewer Use Regulations shall provide that UTILITIES is authorized to enter any premises of any industrial user located within CME's Service Area to determine compliance with applicable pretreatment standards and requirements, or access CME's wastewater collection system at any time in order to obtain samples.
12. Charges and Fees Related to Industrial Pretreatment Program.
  - a. To CME. UTILITIES may bill CME under this Agreement for any costs associated with performing the responsibilities delegated to UTILITIES in this Article III.
  - b. To Industrial Users. Prior to allowing an Industrial User to connect to CME's Wastewater Collection System, CME shall collect all fees related to wastewater treatment for Industrial Users as set forth in the Tariffs and pay those fees to UTILITIES. All general and special sewer service charges, and other charges levied against Industrial Users by CME, shall be retained by CME, 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 CME or CME's Customers under this Article III shall be collected and retained by UTILITIES.
13. Submittals. Any submittal required by this Article III, shall be made in accordance with Article V.4 hereof, 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 CME'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, CME 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. CME acknowledges and agrees that any illicit discharge of industrial wastewater by CME, or a CME Customer, may subject CME 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 CME or its Customer(s) caused or contributed to the violation.

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

3. Disconnection Damages. It is agreed that the damage to UTILITIES, if CME disconnects from UTILITIES' Wastewater Treatment System prior to the expiration of the term of this Agreement or any extension thereof, 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 unless the disconnection is required by events beyond the reasonable control of CME.
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. CME acknowledges and consents to UTILITIES' right to terminate this Agreement without liability or obligation to CME, CME's Customers or any other person or entity: (1) due to CME's breach of a material term or condition of this Agreement, if CME 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 but only after reasonable and proper notice to CME, public hearing, and an opportunity to be heard. UTILITIES shall promptly notify CME 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 CME's Wastewater Collection System and other CME facilities which UTILITIES find to be necessary for provision of wastewater treatment service within CME's Service Area for the purpose of remedying the breach(s). UTILITIES will provide CME with notice of the action(s) taken within a reasonable timeframe. While in control of any portion of CME'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. CME 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 CME's Wastewater Collection System shall be returned to CME. 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 CME'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 CME shall include, but not be limited to, failure to continue to exist as a municipal, quasi-municipal or corporate entity or similar user; failure to maintain CME's Wastewater Collection System; failure to perform functions necessary to the operation of CME'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 treatment service or expansion of CME's Service Area; unauthorized connection of a CME extraterritorial customer to CME's Wastewater Collection System; failure

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

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. Termination by CME. CME 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 UTILITIES to cure the material breach after receiving written notice of such breach from CME.
7. Effect of Termination. Upon termination by either Party, UTILITIES shall have no further obligation to provide wastewater treatment service to CME or CME's Customers and CME's Wastewater Collection System shall be disconnected from UTILITIES' Wastewater Treatment System. Upon termination, UTILITIES shall determine the connection facilities between CME's Wastewater Collection System and UTILITIES' Wastewater Treatment System that must be removed at CME'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 Tariffs and WWLESS. All outstanding charges owed by CME to UTILITIES are due and payable prior to the disconnection of service. If all outstanding charges owed by CME to UTILITIES are not paid prior to disconnection, CME's obligation to make full payment shall survive termination of this Agreement.
8. 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.
9. Enforcement of Rights. Nothing herein shall prevent either Party from enforcing its rights under this Agreement by an appropriate legal or equitable action.
10. 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 treatment service to a property within CME's Service Area for violations of such laws, rules, regulations and this Agreement. Neither Party shall turn back on or reconnect wastewater treatment 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 treatment service to property for violations of its laws, rules, regulations and this Agreement.
2. Annual Reviews of Agreement. CME 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. CME

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

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 factors, as necessary, but at least once every year on or before **February 15**. CME 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. CME Rules and Regulations. CME retains the full right to make and enforce rules and regulations not inconsistent with or less stringent than the Colorado Springs City Charter, the City Code, the Tariffs, and WWLESS to govern water use within CME's Service Area. CME agrees to exercise its rulemaking, rate/fee-setting and other powers to assist UTILITIES in enforcing the Tariffs and WWLESS.
4. CME Dissolution. In the event that CME seeks to dissolve pursuant to relevant laws, rules and regulations, CME shall provide a copy of its dissolution petition to UTILITIES at the time of its filing. The dissolution petition shall provide for assignment of CME'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 CME'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: Customer Utilities Connections Manager  
1521 S. Hancock Expressway.  
Colorado Springs, CO 80903

United States Postal Service Address:  
Colorado Springs Utilities  
Customer Utilities Connections Manager  
1521 S. Hancock Expressway.  
Colorado Springs, CO 80903

With copy to:

City Attorney's Office - Utilities Division

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

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

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 CME:

Cheyenne Mountain Estates MHC Holdings, LLC  
Attn: Josh Winter and Larry Saliterman  
350 State Highway 7, Suite 224  
Excelsior, MN 55331

With Copy to:

David G. Eisenstein  
Blockwick Eisenstein Krahenbuhl, LLC  
2672 North Park Drive, Suite 200  
Lafayette, CO 80026

Local Community Manager  
Cheyenne Mountain Estates MHP  
8160 Piute Road  
Colorado Springs, CO 80926

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

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

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 CME 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 CME's records relating to any of CME's Customers or relating to compliance with this Agreement. CME 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 CME for failure to accept or treat CME'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 wastewater service and require CME to temporarily store and contain wastewater flows to the extent of CME'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 CME's wastewater, UTILITIES shall give CME ten (10) days prior notice of the planned maintenance shall be given to CME, after which CME 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 CME. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to CME 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 CME and UTILITIES that any person other than CME 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

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

compensation or damages to CME 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 CME as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

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. Except as provided herein, 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 CME, UTILITIES may assign this Agreement without consent to the City of Colorado Springs. Notwithstanding anything herein to the contrary, upon written notice to UTILITIES, CME may assign this Agreement without consent to any purchaser of or any other successor in interest to CME in the MHP, provided such purchaser or successor in interest agrees in writing with UTILITIES and CME to assume all of CME's rights and obligations under this Agreement.
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, and the 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 § 12.1.109. 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 Court for the District of Colorado.
17. Entire Agreement; Modifications to be in Writing. This Agreement with attachments constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. This Agreement may only be amended by a written agreement signed by both

**Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement**

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.

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Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement  
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of  
the last signature below.

COLORADO SPRINGS UTILITIES

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

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

Title: Chief Executive Officer

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

Approved as to form:

\_\_\_\_\_

CHEYENNE MOUNTAIN ESTATES  
MHC HOLDINGS, LLC, a Minnesota  
limited liability company

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

Name: Larry Saliterman

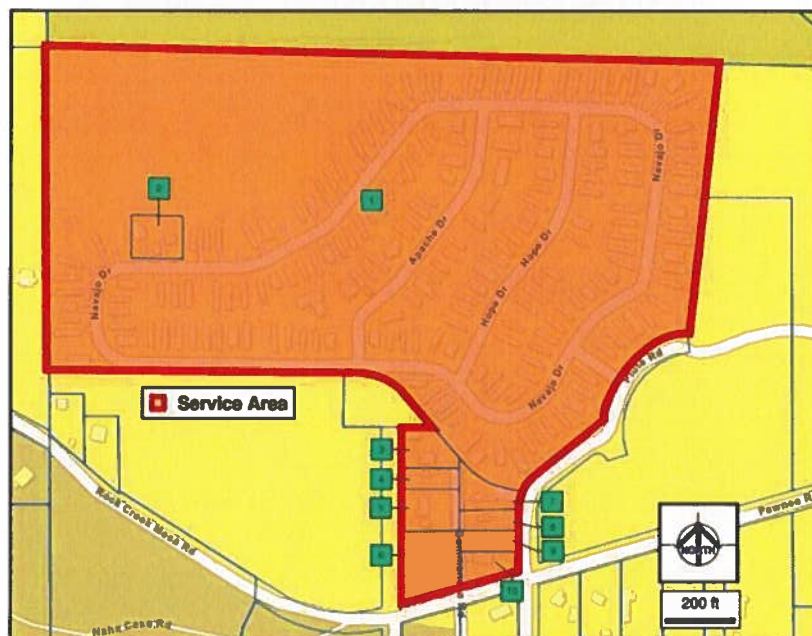
Title: Chief Manager

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

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

Exhibit A  
to the  
WASTEWATER SERVICE AGREEMENT  
Cheyenne Mountain Estates MHC Holdings, LLC  
Service Area

**Exhibit A - CME Wastewater Service Area**



Note 1: Parcel labeled 1 denotes the MHP. Parcels labeled 2 - 10 denote undeveloped parcels or parcels with existing single-family residences located outside of the boundary of the MHP but within CME's Wastewater Service Area.  
Note 2: Parcels labeled 3, 5, 7, 8, 9, and 10 are presently connected to CME's Wastewater Collection System.

Cheyenne Mountain Estates MHC Holdings, LLC - Wastewater Service Agreement

Exhibit B

to the

WASTEWATER SERVICE AGREEMENT

Cheyenne Mountain Estates MHC Holdings, LLC

Recovery Agreement Maps

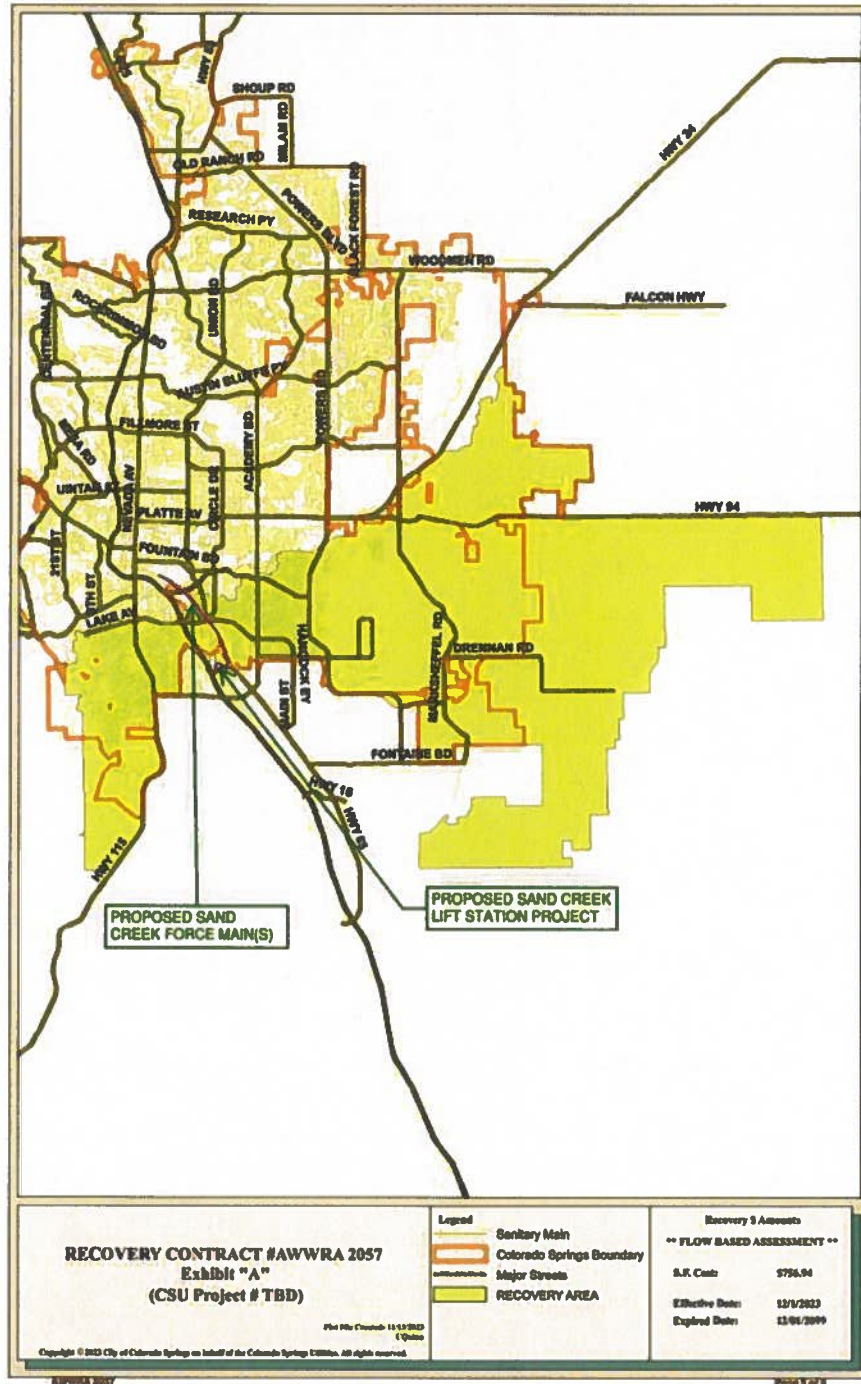


Exhibit C  
to the  
**WASTEWATER SERVICE AGREEMENT**  
Cheyenne Mountain Estates MHC Holdings, LLC  
**Point of Demarcation**

