

WATER SERVICE AGREEMENT
Contract Service – Regional (WCR), Full Service
Rock Creek Metropolitan District

THIS Agreement ("Agreement ") is made and entered into this ____ day of _____, 202__, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a home rule City and Colorado municipal corporation ("UTILITIES"), and Rock Creek Metropolitan District ("DISTRICT"), a quasi-municipal entity and political subdivision of the State of Colorado. In this document, UTILITIES and DISTRICT can be referred to individually as "Party" or collectively as "Parties."

I. Recitals

- A. DISTRICT is a Colorado statutory metropolitan district that was formed in 2018 with an existing service area that includes: (1) the Sundance at Rock Creek Apartments area ("Sundance Property") within the Colorado Springs City limits and (2) certain properties within an area known as Rock Creek Metropolitan District, generally situated west of the intersection of Pawnee Road and US Highway 115 that are outside the City limits.
- B. UTILITIES will provide water, wastewater, electric, and gas utility services to the Sundance Property, which is located entirely within the City, in the same manner as UTILITIES' other in-City customers.
- C. As a Colorado statutory metropolitan district, DISTRICT intends to provide on-demand potable water service to up to 543 single family equivalents (SFE) to be located within DISTRICT's Service Area.
- D. DISTRICT desires to obtain on-demand water service from UTILITIES so as to provide water service to a maximum of 543 SFEs to be located in DISTRICT's Service Area (as defined in Article II.3) at full build-out.
- E. Through a separate agreement, DISTRICT will concurrently contract for wastewater treatment service from UTILITIES for portions of DISTRICT's Service Area.
- F. UTILITIES and DISTRICT recognize that it will be necessary for UTILITIES' water system to be extended and DISTRICT's proposed outside-City water distribution system to be connected to such extensions in order to implement water service to DISTRICT's Customers.
- G. UTILITIES has the infrastructure capacity available in its water system, a sufficient supply of fully consumable water, sufficient water transportation, storage capacity, and water treatment capacity to provide water service to DISTRICT subject to the terms and conditions set forth herein.
- H. UTILITIES and DISTRICT acknowledge that DISTRICT's Water Distribution System is a consecutive system to UTILITIES' Water System.
- I. The Parties have 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).

II. Definitions

Terms not otherwise defined herein, shall have the meaning adopted in the latest amendment to the City Code of Colorado Springs Colorado 2001, as amended ("City Code").

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1. **Consecutive System:** A Public Water System that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more Consecutive Systems pursuant to a separate agreement between all involved parties.
2. **DISTRICT's Customers:** The persons and entities located within DISTRICT's Service Area that receive the benefit of Full Service provided hereunder.
3. **DISTRICT's Service Area:** The properties located outside of the Colorado Springs City Limits, as depicted on Exhibit A as parcels B through F, the Future Inclusion Areas depicted on Exhibit A parcels G, H, I, K and L once they have been included in DISTRICT's Service Area as provided in its Service Plan and in accordance with Title 32-1-101, *et seq.* ("Title 32") and the Rock Creek Mesa Water District's (RCMWD) Service Area identified as parcel J on Exhibit A.
4. **DISTRICT's Wastewater Collection System:** Any devices, facilities, structures, equipment or works owned by DISTRICT for the purpose of collection, storage, and transmission of Wastewater from DISTRICT's Customers.
5. **DISTRICT's Water Distribution System:** Any devices, facilities, structures, equipment or works owned and/or operated by DISTRICT for the purpose of providing water service to DISTRICT's Customers located within DISTRICT's Service Area.
6. **Full Service:** Water service as defined in UTILITIES' Water Rate Schedule – Contract Service - Regional (WCR) Full Service Option together with Utilities Rules and Regulations ("Tariffs").
7. **Full Service Water:** Fully consumable potable water owned or controlled by the City of Colorado Springs which complies with the Federal Safe Drinking Water Act and any other applicable drinking water laws, rules and regulations that is derived from UTILITIES' controlled water that can legally be used for municipal purposes within DISTRICT's Service Area.
8. **Improvements:** All DISTRICT infrastructure including, but not limited to, the Point of Connection, water mains, and all other infrastructure necessary to connect UTILITIES' Water System to DISTRICT's Water Distribution System and for DISTRICT's distribution of water to its Customers.
9. **Monument/Fountain Creek Transit Loss Model ("Model"):** The daily accounting model currently used by the Division of Water Resources to determine transit loss and water allocations along Monument and Fountain Creeks. Model shall also apply to any successor model(s) used by the Division of Water Resources for the same purposes.
10. **Point of Connection:** The master meter(s) installed at the location where UTILITIES' Water System is connected to DISTRICT's Water Distribution System.
11. **Public Water System:** A system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days per year.
12. **WLESS:** UTILITIES' Water Line Extension and Service Standards, as may be amended or

replaced.

13. **UTILITIES' Wastewater Treatment System:** UTILITIES' Wastewater Treatment System includes any devices, facilities, structures, equipment or works owned by UTILITIES for the purpose of collection and treating Wastewater.
14. **UTILITIES' Water System:** UTILITIES' Water System includes any devices, facilities, structures, equipment or works owned by UTILITIES for the purpose of providing Full Service to DISTRICT's Water Distribution System.
15. **Water Regional System Availability Fee (WRSAP):** A fee assessed for each new connection to UTILITIES' Water System by contract outside the corporate limits of the City in areas where UTILITIES' Water System is available for use by UTILITIES to serve institutions, plants, organized water districts, municipal corporations, or other similar organizations and only with prior approval by the Colorado Springs City Council.
 - a. The WRSAP reflects the amount of capacity needed within UTILITIES' Water System to meet the obligations of regional water contracts.
 - b. The WRSAP is determined based on the meter size needed to deliver the maximum daily delivery rate in million gallons per day as well as the maximum delivery volume in acre-feet per year.

III. Agreement for Service

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

1. **Term.** This Agreement shall become effective on the date of the last signature below and shall remain in effect until 5pm MST December 31, 2048.
 - a. No later than eighteen (18) months prior to the expiration of the Term, the Parties shall begin good faith negotiations on a new agreement for UTILITIES' provision of Full Service to DISTRICT, with the expectation that such new agreement ("New Agreement") shall be substantially similar to this Agreement. The Parties acknowledge that the intent of the Agreement is for the Parties to enter into such successive New Agreements so as to continue the provision of service as contemplated herein, subject to approval by the Colorado Springs City Council.
 - b. If the Parties are unable to execute a New Agreement by the date that is six (6) months prior to the end of the Term:
 - i. UTILITIES may notify DISTRICT in writing that DISTRICT shall be disconnected from UTILITIES' Water System as of the expiration of the Term; or
 - ii. If the Parties mutually agree to continue good faith negotiations for a new water service agreement beyond the Term, the term may be extended for an additional one (1) year term at UTILITIES' sole discretion.

2. **Incorporation of Recitals and Definitions.** The recitals and definitions set forth above are hereby incorporated into the terms and conditions of this Agreement.

3. **Full Service.** UTILITIES agrees to provide the DISTRICT Full Service Water hereunder during the term of this Agreement. UTILITIES shall not be obligated to deliver more than 244 acre-feet of Full Service Water annually to DISTRICT, unless a greater amount is approved in writing by UTILITIES.

4. **Point of Connection.** UTILITIES shall deliver water provided under this Agreement to DISTRICT at the location of the master meter(s) the Parties agree upon and designed, installed, constructed, operated, and maintained in accordance with Article V.6 . (“Point of Connection”).

- a. The Improvements associated with the Point of Connection shall be agreed upon in advance by the Parties and will include:
 - i. Primary valve which will be owned and maintained by UTILITIES;
 - ii. Secondary valve which will be owned and maintained by DISTRICT;
 - iii. Inlet valve;
 - iv. Flow control valve;
 - v. Meter which will be owned and maintained by UTILITIES; and
 - vi. Backflow prevention assembly in a configuration similar to that shown in Exhibit B.
- b. UTILITIES shall be responsible for the operation, maintenance, and repair of all parts of the Point of Connection located between the water main/tap and the secondary valve as depicted in Exhibit B. The DISTRICT agrees to reimburse UTILITIES for its time-and-material costs associated with the maintenance and repair of such infrastructure.
- c. No deliveries will be made to the Point of Connection under this Agreement until UTILITIES is satisfied that the Point of Connection is in compliance with the Colorado Springs City Code and UTILITIES’ WLESS, and all necessary easements or other property interests have been conveyed to UTILITIES.

5. **Volumetric Delivery Terms.** DISTRICT shall limit its water demand on UTILITIES’ Water System to an instantaneous flow rate of not less than 100 gallons per minute, not more than 380 gallons per minute, and a total maximum daily delivery of 0.55 million gallons per day (daily flow limit). UTILITIES agrees to maintain the hydraulic grade line at the Point of Connection at or above 6,356 feet. The hydraulic grade line may adjust depending actual construction and will be confirmed with **DISTRICT** prior to delivery of water to the DISTRICT. UTILITIES may, as it deems necessary and without providing DISTRICT notice, increase, decrease, or waive these daily and instantaneous flow limits based on system performance to protect UTILITIES’ Water System and deliveries to UTILITIES’ customers or other good cause. UTILITIES will make best efforts to provide DISTRICT timely notice of any changes of this type.

6. **Limits on Service.**

- a. UTILITIES’ commitment to provide Full Service is limited only by the occurrence of factors that make it impossible for UTILITIES to provide such service. For the purposes of this Agreement, “impossible” shall mean a circumstance in which UTILITIES is truly prevented from performing, and not that continued performance is merely impractical or unreasonably expensive. Such circumstances must be beyond the control of UTILITIES’ and not created by UTILITIES. If it becomes impossible for UTILITIES to meet its commitment to furnish Full Service hereunder, UTILITIES shall provide notice to DISTRICT of such impossibility and

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UTILITIES shall have a right not to provide additional Full Service Water beyond the volumes that the DISTRICT has already regularly received.

- b. DISTRICT acknowledges and agrees that UTILITIES' water supply is dependent upon natural resources that are variable in quantity and supply from year to year. UTILITIES shall not be liable for failure to accurately anticipate availability of UTILITIES' water supply in any given year or for an actual failure of UTILITIES' water supply due to inadequate run-off or other occurrence beyond UTILITIES' reasonable control. In times of such shortage or failure, UTILITIES may curtail Full Service hereunder in a manner to be determined by UTILITIES consistent with use restrictions in place on UTILITIES' other outside-City full water service customers .
 - c. DISTRICT agrees that it will, at all times, operate DISTRICT's Water Distribution System so as not to interfere with service to third parties who rely on UTILITIES' Water System.
 - d. Potable water furnished to DISTRICT hereunder shall not be comingled with water from any other source.
 - e. UTILITIES reserves the right to refuse to permit its water supply to be furnished to any property or premises within DISTRICT's Service Area where the use of such water will result in a health hazard to UTILITIES' water supply. Any determination on such matters by UTILITIES shall be subject to review by the Health Department of the State of Colorado or a similar lawfully authorized health authority of the State, and UTILITIES agrees to be bound by the decision of such authority but may appeal such decision in accordance with law.
 - f. DISTRICT agrees not to use the Full Service Water furnished pursuant to this Agreement, directly or indirectly, to deliver water outside DISTRICT's Service Area or to any entity or person other than DISTRICT and DISTRICT's Customers without prior written approval from UTILITIES.
7. **Service to DISTRICT's Service Area.** UTILITIES shall have no obligation hereunder to provide Full Service to DISTRICT for areas located outside of DISTRICT's Service Area as identified in Exhibit A. In addition, UTILITIES shall have no obligation to provide Full Service hereunder until DISTRICT's Service Area is included within the Southeastern Colorado Water Conservancy District's ("SECWCD") boundaries or DISTRICT obtains a written waiver of the inclusion requirement from SECWCD and the United States Bureau of Reclamation and provides UTILITIES with notice of such inclusion or waiver. Finally, UTILITIES shall have no obligation to provide Full Service to DISTRICT until it provides UTILITIES with notice that El Paso County has approved the Full Service provided hereunder as the primary water supply for DISTRICT's Service Area.
8. **Water Rights Unaffected.** No water rights are being transferred to or from UTILITIES or DISTRICT under this Agreement.
9. **Return Flows.**
- a. All Full Service Water delivered by UTILITIES under this Agreement may only be used for the purposes for which UTILITIES' water rights have been decreed. Neither DISTRICT nor DISTRICT's Customers shall have the right to make successive use of Full Service Water, and upon completion of the initial use, all dominion and control over the Full Service Water shall revert to UTILITIES.

- b. UTILITIES retains legal ownership and the right to use, reuse, successively use, and dispose of all return flows resulting from the DISTRICT's and DISTRICT Customer's one-time use of Full Service Water.
- c. DISTRICT shall be solely responsible for the collection, and discharge of all wastewater generated by the use of Full Service Water furnished under this Agreement, except for wastewater that is generated by up to twenty-five (25) future residences within both DISTRICT's Service Area and RCMWD's Service Area that will utilize septic systems, to UTILITIES' Wastewater Treatment System pursuant to a separate agreement between the District and such parties. Upon completion of the initial use and discharge into DISTRICT's Wastewater System from DISTRICT's Customers other than those excepted above, all dominion and control over the water furnished by DISTRICT to those customers hereunder shall revert completely to UTILITIES.
- d. The Parties acknowledge that wastewater generated by up to twenty-five (25) future residences within both RCMWD's Service Area and DISTRICT's Service Area that will receive water service from DISTRICT and utilize septic systems will not return to UTILITIES' Wastewater Treatment System and will result in delayed return flows that may be re-used by UTILITIES if they are quantified and accounted for. In addition, the use of Full Service Water by the DISTRICT's Customers for irrigation or other outdoor uses will result in delayed return flows that may be re-used by UTILITIES if they are quantified and accounted for. Upon UTILITIES' request, DISTRICT agrees to cooperate fully with UTILITIES to develop a methodology for quantifying and accounting for such return flows and with obtaining any required administrative or court approvals necessary for UTILITIES' reuse of such return flows. Upon completion of the initial use, all dominion and control over such water shall revert completely to UTILITIES.

10. **Consequence of Loss of Dominion over Return Flows.** If UTILITIES should lose legal dominion and control over the return flows that result from DISTRICT's use of the Full Service Water, , due to any act or failure to act by DISTRICT, DISTRICT shall pay the then-applicable augmentation tariff rate or its replacement for the value of the volume of return flows lost to UTILITIES. UTILITIES will bill DISTRICT with payment due within thirty (30) days of the date of billing. If UTILITIES determines such loss of legal dominion and control over the return flows, UTILITIES shall notify and cooperate with DISTRICT to address such loss to the extent reasonably possible.

11. **Service Rates, Fees, and Billing.**

- a. The Full Service provided to DISTRICT shall be in accord with the Tariffs, which are incorporated herein by reference. For the service provided hereunder, DISTRICT shall pay to UTILITIES the then 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, Commodity Charges and Service Charges, as provided in UTILITIES' rate schedule for "Contract Service - Regional (WCR) Full Service Option", the Water Regional System Availability Fee, and the WRSF Full Service Option - Annual Cost of Water fee as provided in the Tariffs. DISTRICT will continue to pay the rates 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 DISTRICT thirty (30) days in advance of City Council consideration of the change in tariffs applicable to this Agreement.

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- i. **WRSF.** A 3” meter shall be installed at the Point of Connection and will be used to measure the deliveries to DISTRICT of water under this Agreement. The WRSF Tariff rate for a 3” meter is \$2,731,945.00. If the DISTRICT elects to pay this over the period of this twenty-five year contract and will pay \$154,496.00 each year. The election will be made 30 days prior to the meter being set. The yearly WRSF must be paid within thirty (30) days of the date of billing at the address provided in subparagraph b below.
 - ii. **WRSF Full Service Option – Annual Cost of Water.** The DISTRICT desires to contract for up to 244 acre-feet per year of Full Service water. Customers contracting for the Full Service Option will also pay an annual fee of \$1,760.00 per acre foot of water based upon the maximum number of acre-feet that can be delivered to the DISTRICT in any contract year under this Agreement. The DISTRICT will pay \$429,440.00 each year over the period of this twenty-five year contract. The yearly WRSF Full Service Option – Annual Cost of Water must be paid within thirty (30) days of the date of billing.
 - iii. **Commodity Charge.** The DISTRICT agrees to pay the then prevailing Full Service Option rate, or its replacement, for every cubic foot of Full Service Water delivered to the DISTRICT. UTILITIES will bill the DISTRICT monthly in arrears with payment due within thirty (30) days of the date of billing.
 - iv. **Water Quality Monitoring.** DISTRICT agrees to pay a *pro rata* share of water quality monitoring UTILITIES is obligated to perform to be in compliance with its Pueblo County 1041 permit for the Southern Delivery System. The DISTRICT shall be billed annually with payment due within thirty (30) days of the date of billing. UTILITIES may choose to waive this charge if the DISTRICT can demonstrate its participation in water quality monitoring that meets Pueblo County’s 1041 permitting criteria.
 - b. Payment of the total monthly bill for service provided hereunder by DISTRICT shall be due at Colorado Springs Utilities, Customer Services Department, 111 S. Cascade Ave., Colorado Springs, Colorado 80903, within thirty (30) days of receipt thereof. If the bill is not paid within thirty (30) days of receipt thereof, a deposit will be assessed as outlined in the Tariffs as modified or replaced.
12. **Metering.** All water delivered under this Agreement shall be measured at the master meter(s) located at the Point(s) of Connections. UTILITIES shall install, read, operate, maintain, and replace the meters at UTILITIES' cost. If at any time, either UTILITIES or DISTRICT questions the accuracy of the master meter(s), either Party may cause such master meter to be tested for accuracy and recalibrated, if necessary, at such Party's expense. In the event a master meter shall be tested, the Party testing the meter shall provide the other Party with three (3) days' notice of such testing. If the Parties cannot agree that the meter is measuring accurately, they shall choose an independent third party qualified to test the accuracy of such meters, whose decision regarding accuracy shall be binding on both Parties.
13. **Water Use Restrictions.** DISTRICT agrees to establish formal restrictions regarding the use of water and to declare and enforce water use restrictions at least as restrictive as those in force within the City of Colorado Springs as directed by UTILITIES at any time during the term of this Agreement consistent with Sections 12.4.602 and 12.4.1312 of the City Code of Colorado Springs, or as amended.
14. **Regional Cooperation.**

- a. DISTRICT acknowledges and agrees to support the Fountain Creek Watershed, Flood Control, and Greenway District to the extent authorized under Colorado Revised Statutes § 32-1-1001, *et seq.*
 - b. DISTRICT irrevocably commits not to serve water provided under this Agreement to property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River Basin.
 - c. DISTRICT agrees to support and cooperate with the City of Colorado Springs, El Paso County, and other regional entities having jurisdiction over stormwater detention and retention on Fountain Creek and to take whatever actions that are within DISTRICT's legal authority to insure that stormwater in the Fountain Creek Basin does not increase above existing conditions, it being understood that DISTRICT has no express authority with respect to regulation or control of stormwater or funding of stormwater projects.
 - d. DISTRICT agrees to accept and comply with the City of Pueblo Flow Management Program and Pueblo Recreational In-Channel Diversion Decree, both impacting the Arkansas River between Pueblo Dam and its confluence with Fountain Creek, in any application for a change of water rights or exchange implicating that reach of the Arkansas River.
 - e. DISTRICT agrees to support any studies of a flood control dam or dams on Fountain Creek, it being understood that DISTRICT has no express authority to regulate or control stormwater or fund stormwater projects.
15. **Changes in Terms or Type of Service.** Should DISTRICT request deliveries that exceed the limits outlined in the Agreement, or desire a different type of water service, UTILITIES and DISTRICT shall either amend this Agreement or renegotiate the Agreement in its entirety.

IV. Water Deliveries

1. **Requests for Delivery of Water.** Prior to (1) the initial delivery of Full Service Water to any portion of DISTRICT's Service Area; or (2) the initial delivery of Full Service Water to additional portions of DISTRICT's Service Area; the DISTRICT shall directly communicate with UTILITIES' System Control as specified in this section to request delivery of Full Service Water, specifying amounts, rates, and duration at least three (3) business days prior to the expected delivery date(s). UTILITIES will provide a written response at least (1) day prior to the requested delivery date accepting, modifying, or denying the request. For the purposes of the DISTRICT requesting deliveries and UTILITIES responding to the 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 and keep current through the duration of the Agreement. The DISTRICT shall limit its water demand on UTILITIES' system as specified in Article 3.5 . UTILITIES' initial contacts are set forth below. DISTRICT will provide UTILITIES with notice of the contact information for DISTRICT's representative for the purpose of the communications under this section prior to the first request for delivery of water.
 - a. **UTILITIES System Control**
 - i. System Control Operator
 - ii. Name:Jeremy McBeain
 - iii. Office Phone (710) 668-4570

- iv. Water Accounting
Water_accounting@csu.org

2. **Consecutive System Disinfection.** DISTRICT and UTILITIES shall comply with Consecutive Systems Disinfection Protocol set forth in Exhibit C during the term of this Agreement.

- a. Disinfection pursuant to Exhibit C is required when:
 - i. The consecutive system is bringing the Point of Connection into service for the first time, or
 - ii. The consecutive system is bringing the Point of Connection back into service after repairs or similar event that has compromised the main or opened it to the environment, or
 - iii. The consecutive system is bringing the Point of Connection back into service after a period of >72 hours of the line being stagnant or empty. UTILITIES may also require a disinfection in these cases if there is a possibility the water quality has been compromised in any way.
- b. **Scheduling Requirements.** UTILITIES' Water Quality Assurance requires at least two (2) business days' notice to disinfect for consecutive system use. Notify waterquality@csu.org to schedule for disinfection.

3. **Drinking Water Quality Regulatory Compliance; Required Permits.**

- a. The water provided by UTILITIES to DISTRICT under this Agreement shall be potable water which complies with the Federal Safe Drinking Water Act and the applicable Colorado Primary Drinking Water Regulations (5 C.C.R. 1003-1). Pursuant to §1.8 of the Colorado Primary Drinking Water Regulations, UTILITIES' responsibility regarding the quality of water furnished shall extend only up to the point of delivery to DISTRICT's Water Distribution System. DISTRICT agrees that District's Water Distribution System constitutes a Consecutive Systems to Utilities Water System and, in accordance with §1.9 of the Colorado Primary Drinking Water Regulations, DISTRICT is responsible for all applicable monitoring and reporting requirements of the Colorado Primary Drinking Water Regulations of water within DISTRICT's Water Distribution 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 required for the construction and connection of the DISTRICT's water system to UTILITIES' water system at the Point of Connection and to fulfill all purposes of this Agreement. A copy of such approval will be provided to UTILITIES within thirty (30) days of receipt by DISTRICT to the UTILITIES' contacts set forth in Article V.1. below.

4. **Colorado Water Quality Control Act Compliance.** If at any time during the effective term of this Agreement, DISTRICT fails to meet the requirements of the Colorado Water Quality Control Act, and applicable control regulations promulgated and permits issued to DISTRICT or UTILITIES 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 DISTRICT or any third party, including DISTRICT's Customers, until compliance is achieved. With or without

suspension or interruption by UTILITIES, DISTRICT, in the event of failure to meet such requirements 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 upon DISTRICT. In the event UTILITIES fails to meet requirements of the Colorado Water Quality Control Act and applicable regulations thereunder, UTILITIES shall notify DISTRICT in the same manner as other customers, and DISTRICT shall have the same rights and remedies as provided to UTILITIES, including the option of requesting the suspension of delivery of water under this Agreement until such time as UTILITIES has achieved compliance.

V. Standard Terms and Conditions

1. **Legal Notice.** All notices, reports and submittals required by this Agreement, other than DISTRICT's requests for water and UTILITIES' responses to such requests, shall be in writing, signed by and authorized representative of the Party providing the notice, report or submittal and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid, return receipt requested, as follows:

- a. For UTILITIES:

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

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

With copy to:

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

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

b. For DISTRICT:

Rock Creek Metropolitan District
ATTN: District Manager

Colorado Springs, CO 80906
Phone: _____

With Copy to:

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

2. Breach of Agreement and Termination.

- a. **Breach of Agreement.** Upon any breach of this Agreement, UTILITIES shall have the right to: (a) seek specific performance; (b) be reimbursed for costs; and (c) be entitled to money damages for the period between the breach and the order for specific performance. Unless an emergency situation requires immediate action in order to protect the health, safety and welfare of its customers or the UTILITIES Water System, UTILITIES shall provide written notice to DISTRICT of a breach of this Agreement and DISTRICT shall have thirty (30) days to cure such breach or take reasonable steps to address such breach and provide UTILITIES with notice of same prior to UTILITIES exercising its rights hereunder.
- (i) **Temporary Control by UTILITIES.** In the alternative, if UTILITIES determines that the breach(s) may result in an immediate health hazard or harm to person or property, UTILITIES, may take control of any portion of DISTRICT's Water Distribution System and other DISTRICT facilities which UTILITIES find to be necessary for provision of Full Service to DISTRICT's Service Area for the purpose of remedying the breach(s). While in control of any portion of DISTRICT's Water Distribution System, UTILITIES may immediately take all actions it deems necessary to correct the noticed breach(s) and put in place corrective measures to prevent further breaches. DISTRICT agrees to reimburse UTILITIES for all reasonable expenses incurred by UTILITIES in correcting the breach or breaches and putting in place corrective measures to prevent further breaches. Upon such payment, control of the applicable portions of DISTRICT's Water Distribution System shall be returned to DISTRICT. The notice provision of this Subparagraph shall not apply when UTILITIES determines that the breach(s) may result in an immediate health hazard or harm to person or property, in which case UTILITIES may take immediate control of any portion of DISTRICT's Water Distribution System and take the same actions regarding a noticed breach(s), upon hand delivery of written notice of the breach and description of the harm likely to result. The term breach of a material term or condition by DISTRICT shall include, but not be limited to, failure to continue to exist as a municipal, quasi-municipal or corporate entity; failure to maintain DISTRICT's Water Distribution System; failure to perform functions necessary to the operation of DISTRICT's Water Distribution System or UTILITIES' Water System; failure to adopt measures or take actions required to enable UTILITIES to obtain any required permits; unauthorized extension of water

service or expansion of DISTRICT's Service Area; unauthorized connection of a DISTRICT extraterritorial customer to DISTRICT's Water Distribution System; failure to make payments required under the Agreement; or other actions or inactions which could reasonably cause a health hazard or harm to persons or property.

- (ii) **Financial Assurances.** To secure reimbursement to UTILITIES for its actions in correcting a breach(s) and/or putting in place corrective measures to prevent further breaches pursuant to Article 5.a.i above, DISTRICT shall within fifteen (15) calendar days of the execution of this Agreement, provide UTILITIES with either an irrevocable letter of credit, payment bond, or performance bond in a form approved by UTILITIES in the amount of \$3,940,936.00 ("Reimbursement Amount") that shall be in effect during the term of this Agreement. DISTRICT acknowledges the Reimbursement Amount will increase if DISTRICT requests and receives approval from UTILITIES for UTILITIES to provide Full Service for properties within DISTRICT's Service Area other than those identified herein or any future extraterritorial customers of DISTRICT pursuant to the terms hereof. After completion of any actions it takes to correct a breach or prevent further breaches from occurring, UTILITIES shall issue an itemized invoice to DISTRICT for payment of the costs UTILITIES incurred in taking the actions. In the event DISTRICT fails to make full payment on an invoice by the date set forth in the invoice, which shall not be less than thirty (30) days, UTILITIES may file a claim against DISTRICT's Financial Assurance. **DISTRICT acknowledges and agrees to UTILITIES' right to make a claim against the Reimbursement Amount to pay off any amounts due to UTILITIES for service provided under this Agreement that are past due by more than ninety (90) days.**
 - (iii) **Consequential Damages.** Any action by DISTRICT or its Customers that results in violations of any of UTILITIES' water service-related permits may subject DISTRICT to consequential damages for breach of contract including, but not limited to, any amounts the City or UTILITIES may be required to pay for violation of the conditions of UTILITIES' COPS permit where the discharge of DISTRICT or its Customer caused or contributed to the violation.
- b. **UTILITIES Right to Suspend Service.** DISTRICT acknowledges and consents to UTILITIES' right to suspend Full Service or terminate this Agreement without liability or obligation to DISTRICT or any other person or entity:
- (i) Due to a significant interruption of water supplies, a substantial disruption (including, but not limited to, legal challenges impacting the water system, and maintenance and repair to the infrastructure) to UTILITIES' Water System; or
 - (ii) Due to DISTRICT's breach of a material term or condition of this Agreement, if DISTRICT has not taken substantial steps to cure the breach within a reasonably sufficient time frame that allows DISTRICT to cure the material breach after receiving written notice of such breach from UTILITIES; or
 - (iii) As otherwise authorized by the City Code or City Council.
- c. **Notice of Breach.** UTILITIES shall promptly notify DISTRICT of circumstances that could result in a breach or changes in City Code, or City Council action that could result in termination of the Agreement.
- d. **DISTRICT Right to Terminate Agreement.** DISTRICT may terminate this Agreement due to

a material breach on the part of UTILITIES if UTILITIES has not taken substantial steps to cure the breach within a reasonably sufficient time frame that allows UTILITIES to cure the material breach after receiving written notice of such breach from DISTRICT.

(i) **Disconnection Damages.** It is agreed that the damage to UTILITIES if DISTRICT disconnects from UTILITIES' Water System will not be less than the reproduction costs of any of UTILITIES' facilities, including UTILITIES owned Improvements that were not paid for or constructed by DISTRICT, which are rendered useless by such disconnection, and which must be replaced for UTILITIES to provide water service to UTILITIES' other customers.

e. **Effect of Termination.** Upon termination, UTILITIES shall have no further obligation to provide Full Service to DISTRICT and DISTRICT's Water Distribution System shall be disconnected from UTILITIES' Water System. Upon termination of this Agreement, UTILITIES shall determine the connection facilities between DISTRICT's Water Distribution System and UTILITIES' Water System that must be removed at DISTRICT's sole expense. UTILITIES shall determine the way the connection facilities are to be removed and water delivery services discontinued in accordance with UTILITIES' WLESS. All outstanding charges owed by DISTRICT to UTILITIES are due and payable prior to the disconnection of service. If all outstanding charges owed by DISTRICT to UTILITIES are not paid prior to disconnection, DISTRICT's obligation to make full payment shall survive termination of this Agreement.

3. **Legal Compliance.** DISTRICT shall be solely responsible for obtaining and complying with all administrative or judicial approvals necessary to accomplish the provision of water service and water conveyance by UTILITIES to DISTRICT under this Agreement. UTILITIES will cooperate as reasonably requested by the DISTRICT in any application or proceedings to obtain such approvals.

4. **Approvals/Permits.** The Parties expressly acknowledge that the service contemplated and/or the construction of any Improvements under this Agreement may be dependent upon the receipt of any necessary approvals and/or permits by Federal, State, and local governmental and/or regulatory entities. DISTRICT is responsible for obtaining all approvals and/or permits necessary for the implementation of this Agreement. UTILITIES will cooperate with DISTRICT to obtain any necessary approvals and/or permits. If any required approval and/or permit is not obtained by DISTRICT, either party may terminate this Agreement. A copy of such approval or permit shall be provided to UTILITIES by DISTRICT.

5. **City Code Compliance.**

a. This Agreement is for "Contract Service – Regional (WCR), Full Service Option," as provided in UTILITIES' Tariffs. The water service provided under this Agreement shall be governed by the Colorado Springs City Charter, the City Code, the Tariffs, WLESS, and all other applicable City of Colorado Springs' or UTILITIES' ordinances, resolutions regulations, policies and rules concerning use of UTILITIES' Water System as may be amended or replaced, except as otherwise provided in this Agreement.

b. In accordance with City Code § 12.4.304, DISTRICT submits to the jurisdiction of the City of Colorado Springs for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 4. DISTRICT shall by ordinances or resolutions provide for DISTRICT Customers to submit to the jurisdiction of the City of Colorado Springs for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 4. DISTRICT shall comply with applicable laws, ordinances, regulations, rules or policies concerning use of UTILITIES'

Water System as they exist now or may be amended or replaced in the future.

6. Improvements.

- a. The Improvements, including but not limited to, the Point of Connection and a water-main-loop extension in JL Ranch Road, 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 applicable UTILITIES' WLESS. The Improvements shall be located on property owned by DISTRICT or in rights-of-way or easements dedicated to DISTRICT. DISTRICT shall, at its own cost and subject to UTILITIES' approval, locate, design, and construct the Improvements in such a manner and of such material that the Improvements will not at any time be a source of danger to or interference with any of UTILITIES' structures, facilities, or operations. UTILITIES shall have the right to perform its own inspection of all completed Improvements to ensure compliance with the City Code and UTILITIES' WLESS.
- b. Upon completion of design, installation and construction of the Improvements, DISTRICT shall convey and dedicate to UTILITIES or shall cause the conveyance and dedication to UTILITIES, on forms acceptable to UTILITIES, ownership of all the Improvements located on the UTILITIES' side of the Point of Connection 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 as necessary. UTILITIES shall be responsible for the operation, maintenance and repair of all Improvements dedicated and conveyed to it pursuant to this Paragraph. 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 Paragraph.
- c. DISTRICT shall continue to own all the other Improvements and DISTRICT shall be responsible for the operation, maintenance and repair of all Improvements not conveyed and dedicated to UTILITIES hereunder, including any repair or maintenance that is requested by UTILITIES.
- d. DISTRICT hereby grants UTILITIES ingress and egress over and through DISTRICT's property to the UTILITIES' owned Improvements and all DISTRICT owned Improvements so that UTILITIES may operate, maintain, repair, and inspect the Improvements it is responsible for as well as perform its other duties under this Agreement. Prior to installation of Improvements, DISTRICT shall provide UTILITIES with an easement or plat requirement providing for such ingress and egress in a form approved by UTILITIES.
- e. 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 UTILITIES' WLESS as each may be amended or replaced.
- f. Any facilities that are part of DISTRICT's Water Distribution System which are in existence upon execution of this Agreement, or which are subsequently acquired by DISTRICT, and which do not comply with UTILITIES' WLESS shall be brought into compliance at the time of replacement or repair.
- g. DISTRICT shall require any construction installation and connection of service lines to DISTRICT's Water Distribution System to be in accordance with the City Code Tariffs and

Rock Creek Metropolitan District Regional Water Service – Full Service

WLESS, including all requirements related to backflow prevention, as each may be amended, to minimize the possibility of damage to UTILITIES' Water System. DISTRICT shall perform inspection of all such installations and connections to ensure compliance with the Colorado Springs City Code and UTILITIES' WLESS and provide UTILITIES with the results of such inspections. UTILITIES reserves the right to perform its own inspection of all service line installations and connections to ensure compliance with the City Code and UTILITIES' WLESS.

- h. DISTRICT agrees to provide UTILITIES with a continuously complete record of all Improvements.
5. **DISTRICT Rules and Regulations.** DISTRICT retains the full right to make and enforce rules and regulations not inconsistent with the Colorado Springs City Charter, the City Code, and the Tariffs, and WLESS to govern water use within DISTRICT's Service Area. DISTRICT agrees to exercise its rulemaking, rate/fee-setting and other powers to assist UTILITIES in enforcing the Tariffs and WLESS
6. **Enforcement of Rights.** Nothing herein shall prevent either Party from enforcing its rights under this Agreement by an appropriate legal or equitable action.
7. **Parties Enforcement Powers – Disconnecting Water Service to Individual Properties.** Both Parties to this Agreement recognizes in the other Party the right to enforce its laws, rules and regulations and the terms of this Agreement by turning off or disconnecting water service to a property within DISTRICT's Service Area for violations of such laws, rules, regulations, and this Agreement. Neither Party shall turn back on or reconnect water 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 water service to a property for violations of its laws, rules, regulations, and this Agreement.
8. **No Assignment Without Consent; No Third-Party Beneficiary.** There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party, and any such assignment shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to DISTRICT, UTILITIES may assign this Agreement without consent to the City of Colorado Springs. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and DISTRICT. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to DISTRICT and UTILITIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. It is the express intention of DISTRICT and UTILITIES that any person other than DISTRICT or UTILITIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
9. **DISTRICT Dissolution.** If DISTRICT seeks to dissolve pursuant to relevant laws, rules, and regulations, then DISTRICT shall provide a copy of its dissolution petition to UTILITIES, at the time of its filing. The dissolution petition shall provide for assignment of DISTRICT's rights and obligations under the Agreement to a third party acceptable to UTILITIES. If no provision is made for such an assignment or other arrangement reasonably acceptable to UTILITIES, upon DISTRICT's dissolution, this contract shall be null, void and of no further force or effect, and UTILITIES shall have no further obligation to provide water service pursuant to the terms of this Agreement.
10. **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 Colorado Springs Utilities' Rules and Regulations, and Water Tariffs. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of UTILITIES as provided in the City Code § 12.1.108. In the event of any dispute over the Agreement 's terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado and, if necessary for exclusive federal questions, the United States District Court for District of Colorado.

11. **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, DISTRICT will meet or exceed such prohibitions or restrictions.
12. **Appropriation of Funds.** In accord with the Colorado Springs City Charter, performance of UTILITIES' obligations under this Agreement is expressly subject to appropriation of funds by City Council. In the event funds are not appropriated in whole or in part sufficient for performance of UTILITIES' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and UTILITIES will thereafter have no liability for compensation or damages to DISTRICT for future performance and obligations thereafter in excess of UTILITIES' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES will notify DISTRICT as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.
DISTRICT's obligations under this Agreement are expressly subject to appropriation of funds by the DISTRICT's board of directors. In the event funds are not appropriated in whole or in part sufficient for performance of DISTRICT's obligations under this Agreement, then this Agreement will thereafter become null and void by operation of law, and DISTRICT will thereafter have no liability for compensation or damages to UTILITIES for future performance and obligations thereafter in excess of DISTRICT's authorized appropriation for this Agreement, whichever is less. DISTRICT will notify UTILITIES as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable. Nothing in this Agreement shall be interpreted or construed as a multiple-fiscal year obligation of the DISTRICT pursuant to Article X, Section 20 of the Colorado constitution (TABOR). Notwithstanding the forgoing, DISTRICT's obligation to pay the applicable rates, charges, surcharges, and fees owed to UTILITIES for provision of Water Service under this Agreement through the DISTRICT's water and sanitary sewer enterprise fund are not subject to appropriations by DISTRICT's Board of Directors.
13. **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 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.
14. **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.

15. **Remedies Cumulative.** Remedies herein are cumulative and may be used individually, sequentially, concurrently, or in any order.
16. **Audits.** UTILITIES shall have the right to audit at any time all of DISTRICT's records relating to any DISTRICT Customers or relating to compliance with this Agreement. DISTRICT shall have the right to audit all UTILITIES' records relating to compliance with this Agreement.
17. **No Exclusive Rights.** Nothing in this Agreement shall be construed as a grant by either Party of any exclusive right or privilege.
18. **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.
19. **Limitations upon Consent.** Whenever, under the terms of this Agreement, UTILITIES is authorized to give its written consent, UTILITIES, in its discretion, may give or may refuse such written consent and if given, may restrict, limit, or condition such consent in such manner as it shall deem advisable.
20. **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 in tort or contract to DISTRICT or its Customers for failure to provide water service under this Agreement if such failure is the result of a significant interruption of water supplies or an inadequate natural physical water supply, a substantial disruption to UTILITIES' Water System (including, but not limited to, legal challenges impacting the water system, and maintenance and repair of UTILITIES' Water System), or the adoption and implementation of water use or delivery restrictions in accordance with City Code. In the event of planned maintenance which makes UTILITIES' Water System unavailable to provide water service under this Agreement, a 48-hour notice shall be given to DISTRICT, after which DISTRICT and UTILITIES will cooperate to provide temporary water service to DISTRICT.
21. **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. DISTRICT agrees to comply with all applicable ordinances,

regulations and rules concerning the connection to and use of UTILITIES' Water System by DISTRICT.

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Rock Creek Metropolitan District Regional Water Service – Full Service

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

COLORADO SPRINGS UTILITIES

Rock Creek Metropolitan District

By: _____

By: _____

Name: _____

Name: _____

Title: Chief Executive Officer

Title: _____

Date: _____

Date: _____

Approved as to form: _____

Attest: _____

DRAFT

Exhibit A to the WATER SERVICE AGREEMENT *to be updated*

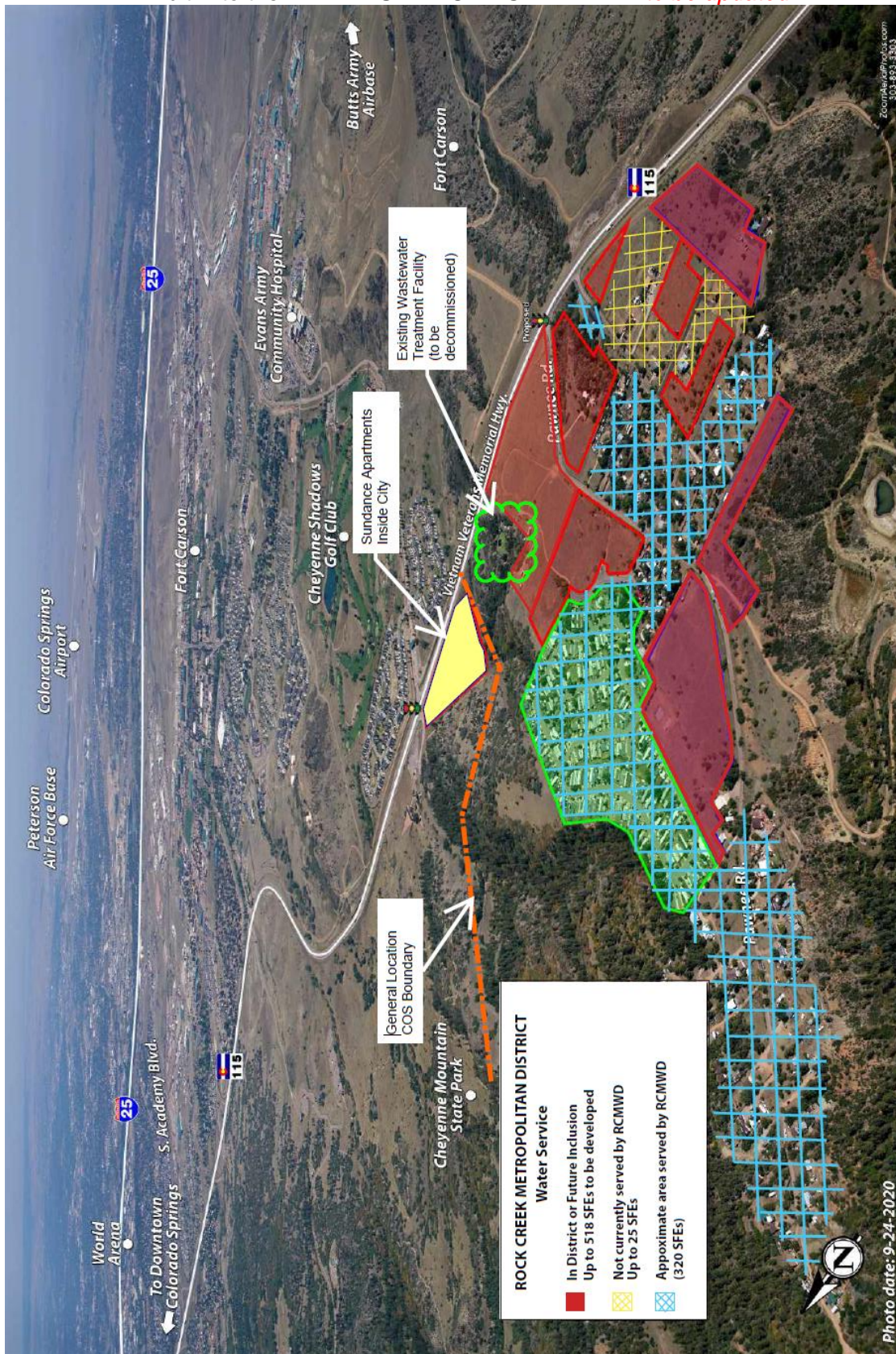


Exhibit B – Infrastructure Configuration

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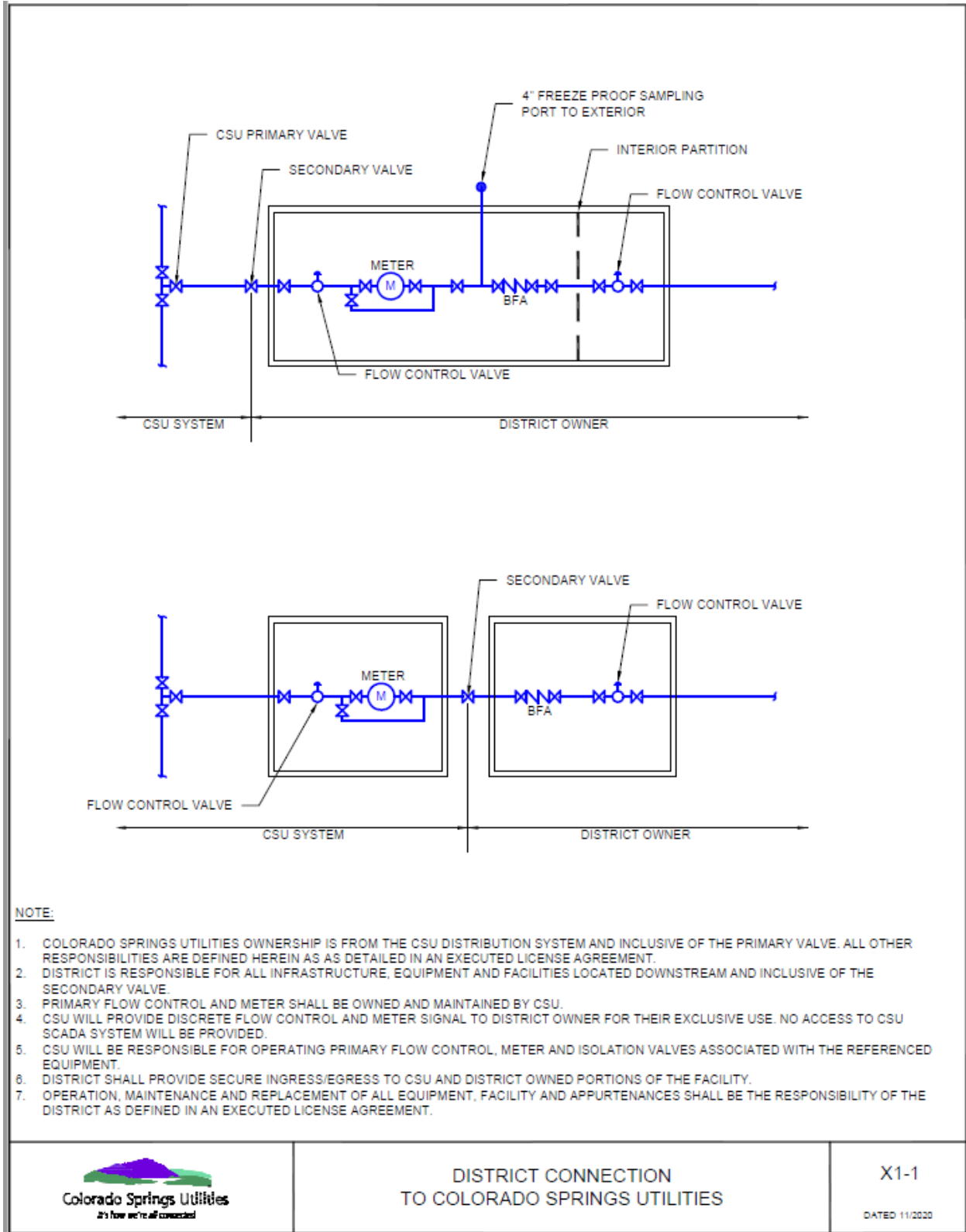


Exhibit C – Consecutive System Disinfection Protocol

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