

WASTEWATER SERVICE AGREEMENT
Special Contract for Service - Outside Colorado Springs City Limits

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2022 ("Effective Date"), by and between Colorado Springs Utilities ("UTILITIES"), an enterprise of the City of Colorado Springs ("City"), a Colorado home rule City and municipal corporation, and Stratmoor Hills Sanitation District ("DISTRICT"), a quasi-municipal entity and political subdivision of the State of Colorado, located at 1811 B Street, Colorado Springs, Colorado 80906. In this document, UTILITIES and DISTRICT can be referred to individually as "Party" or collectively as "Parties."

Recitals

- A. DISTRICT is a Colorado statutory sanitation district with service boundaries in the area north of South Academy Blvd near I-25, outside of but adjacent to the City of Colorado Springs. DISTRICT was formed in 1956 and currently serves a customer base of approximately 2,076 connections in the Colorado Springs metropolitan area.
- B. DISTRICT anticipates adding approximately 16 new connections by the end of 2023.
- C. UTILITIES has wastewater infrastructure and treatment capacity available in its Wastewater Treatment System to provide wastewater related services for the anticipated wastewater flows from DISTRICT, including wastewater flows from the South Academy Highlands development until the expiration of the term of this Agreement.
- D. UTILITIES currently accepts and treats DISTRICT'S wastewater pursuant to an agreement for Special Contract for Services – Outside City Limits that will soon expire, and UTILITIES agrees to continue to accept and treat through its Wastewater Treatment System DISTRICT'S wastewater flows, subject to the terms and conditions contained herein.
- E. UTILITIES has 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.

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

Article I
General Provisions

- 1. Term; Renewal.
 - a. This Agreement shall become effective on the Effective Date and shall remain in effect for a period of ten (10) years.
 - b. 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 to treat DISTRICT's wastewater, with the expectation that such new agreement ("New Agreement") shall be substantially similar to this Agreement.

- c. 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's 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 service agreement beyond the Term, the term may be extended for an additional 1 year term at UTILITIES' sole discretion.
2. Definitions. Terms not otherwise defined herein shall have the meaning adopted in the City Code as amended from time-to-time.
- a. DISTRICT's Service Area: DISTRICT's service boundary, as identified in Exhibit A. DISTRICT's Service Area may be amended in accordance with this Agreement.
 - b. DISTRICT's Wastewater Collection System: DISTRICT's Wastewater Collection System includes any devices, facilities, structures, equipment or works owned by DISTRICT for the purpose of collection and transmission of wastewater generated within DISTRICT's Service Area to UTILITIES' Wastewater Treatment System.
 - c. UTILITIES' Wastewater Treatment System: UTILITIES' Wastewater Treatment System includes any devices, facilities, structures, equipment or works owned by UTILITIES for the purpose of collecting and treating wastewater.
3. Jurisdiction and Compliance.
- a. This Agreement is for "Contract Service – Regional (S9C)," as provided in UTILITIES' Tariffs as modified or replaced. The wastewater treatment service provided to DISTRICT under this Agreement shall be governed by the Colorado Springs City Charter, the City Code, UTILITIES' Rules and Regulations ("URRs"), UTILITIES' Wastewater Tariffs ("Tariffs"), UTILITIES' Wastewater Line Extension and Service Standards ("WWLESS"), and all other applicable City 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. DISTRICT 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, DISTRICT submits to the jurisdiction of the City for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 5. DISTRICT shall by ordinances, resolutions, or by contract with its extraterritorial customers, provide for DISTRICT's customers to submit to the jurisdiction of the City for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 5. DISTRICT shall comply with all relevant laws, regulations or policies related to wastewater treatment as they exist now or may be amended or replaced in the future.

4. Wastewater Treatment Service.
 - a. During the term of this Agreement, UTILITIES will accept and treat through its Wastewater Treatment System wastewater that originates from inside DISTRICT's Service Area from DISTRICT's customers 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 DISTRICT's Service Area.
 - c. DISTRICT shall provide to UTILITIES an updated copy of the map of DISTRICT's Wastewater Collection System by **February 15** of each year or notice that no changes to DISTRICT's Wastewater Collection System have occurred in the preceding year.
5. Expansion of District's Service Area. DISTRICT may not expand the DISTRICT's Service Area or contract to provide wastewater service to additional extraterritorial customers 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. DISTRICT shall provide UTILITIES with notice of its intent to expand DISTRICT's Service Area or contract for wastewater service with additional extraterritorial customers at least one hundred and eighty (180) days prior to the earlier of the date when (a) the DISTRICT will request approval of the expansion or contract by its governing body or (b) the DISTRICT will request approval of the expansion or contract by El Paso County, if required. The notice must include the number and types of connections to DISTRICT's Wastewater Collection System that will be included in the expanded DISTRICT's Service Area and/or pursuant to the contract. UTILITIES shall provide notice to DISTRICT of its approval/disapproval of the proposed expansion or contract within ninety (90) days of UTILITIES' receipt of DISTRICT's notice.
6. Rates, Charges, Surcharges and Fees Payable by DISTRICT.
 - a. For the services provided hereunder, DISTRICT shall pay to UTILITIES the applicable connection fees, system availability charges, rates, charges, surcharges and fees as provided 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' Tariff "Contract Service - Regional" and the Wastewater Regional System Availability Fee ("WWRSAF") as provided in UTILITIES Tariffs as modified or replaced. Surcharges will apply to DISTRICT'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. DISTRICT agrees that UTILITIES' rate making process, as embodied in the Tariffs, is fair and reasonable.
 - b. As an existing wastewater customer of UTILITIES that has paid all required connection fees, DISTRICT has satisfied the obligations of the WWRSAF through prior contracts and payments. If DISTRICT'S demands on UTILITIES Wastewater Treatment System exceed 25,000 gallons per day, then DISTRICT will be required to pay the applicable WWRSAF

under UTILITIES' Tariffs.

- c. 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 Councils' consideration of the change in tariffs applicable to this Agreement.
 - d. 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. DISTRICT shall pay a Water Quality Impact Fee that will be calculated and billed annually. The annual fee will be based on the District'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.
 - e. Payment of the total monthly bill 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.
7. DISTRICT's Responsibilities. In addition to other responsibilities and duties provided in this Agreement, DISTRICT shall solely have the following responsibilities:
- a. DISTRICT shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with, DISTRICT's Wastewater Collection System including, but not limited to, air emissions from DISTRICT's Wastewater Collection System, and spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency ("EPA")) from DISTRICT's Wastewater Collection System.
 - b. At all times, DISTRICT shall cause all wastewater which is discharged directly or indirectly into DISTRICT's Wastewater Collection System or into UTILITIES' Wastewater Treatment System by DISTRICT or DISTRICT's customers, or on their behalf, to comply with any requirements of UTILITIES, as permitted by law.
 - c. DISTRICT shall at all times operate DISTRICT's Wastewater Collection System so as not to interfere with service to third parties who rely on UTILITIES' Wastewater Treatment System.
 - d. DISTRICT'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 DISTRICT's Wastewater Collection System.

- e. If the DISTRICT 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.
 - f. District shall inform Utilities at least two (2) weeks prior to any planned significant change in operations which will affect wastewater characteristics or at least 90 days prior to discharge of any new source of categorical process wastewater. Unplanned changes in wastewater characteristics must be reported within seven (7) days after the change becomes known.
 - g. DISTRICT shall report, in the manner provided below, any illicit discharge, spill, leak, or sanitary overflow from DISTRICT'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 DISTRICT 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 DISTRICT 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 mailed to said entities within five (5) days from the date DISTRICT becomes aware of the Incident.
 - h. DISTRICT shall maintain an approved EPA User Charge System (40 CFR §§ 35.929-2(e) and 35.925-11). UTILITIES will notify DISTRICT by **February 1** 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. DISTRICT shall provide within sixty (60) days of implementation or upon request by UTILITIES, a report on DISTRICT's classes, rates, and implementation provisions. DISTRICT will comply with EPA regulations 40 CFR §§ 32.929-2(3) and 35.2140(c) by advising DISTRICT'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. A copy of the notification shall be forwarded to UTILITIES within sixty (60) days of when DISTRICT provides such notification to its wastewater customers.
8. Discharge Prohibitions, Discharge Limitations, and Point of Discharge Limitations.
- a. UTILITIES shall have the right to restrict additional connections to and discharges from DISTRICT's Wastewater Collection System in the event of a limitation in UTILITIES' treatment or collection system capacity.

- b. UTILITIES shall have the right to prohibit any connection to, or discharges into, DISTRICT's Wastewater Collection System of a DISTRICT commercial and industrial customers ("Industrial User") in accordance with City Code.
- c. DISTRICT 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.
- d. DISTRICT hereby agrees to comply, and require DISTRICT's customers to comply, with the discharge prohibitions, discharge limitations and points of discharge limitations set forth in City Code §§ 12.5.702, 12.5.703, 12.5.704 A- E, and 12.5.801-12.5.811, as amended, and shall prohibit the discharge of waste silver-rich photochemical solutions with total silver concentrations greater than 400 mg/l.
- e. DISTRICT has enacted and keep in full force and effect for DISTRICT's customers by ordinances and resolutions, and contract with its extraterritorial customers, limitations that mirror these City Code sections as may be amended from time to time. DISTRICT shall provide UTILITIES with notice and a copy of the most recent discharge ordinance, resolution and/or contract to UTILITIES by **February 15** of each calendar year, and amendments to said ordinance, resolution and/or contract within thirty (30) days of adoption.
- f. DISTRICT agrees to participate in any water quality monitoring or studies to the same degree and extent as undertaken by UTILITIES.
- g. In addition to other remedies provided in this Agreement, DISTRICT must, after written notification from UTILITIES that flow demands have reached 80% of capacity of the portions of UTILITIES' existing Wastewater Treatment System that are used to provide service to DISTRICT under this Agreement as a direct result of increased flow demands from DISTRICT'S Service Area, at no cost to UTILITIES, construct relief systems and necessary appurtenances in accordance with the City Code and the WWLESS, as each may be amended or replaced within the timeframe provided by UTILITIES in the notice. Relief facilities shall be approved by UTILITIES, and operational before additional DISTRICT wastewater loading can be accepted. These relief facilities may be constructed on property owned by DISTRICT, within the boundaries of DISTRICT, 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 DISTRICT to pay a pro rata share of the construction cost of relief systems based upon the 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.
- h. 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. DISTRICT shall be 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.
9. Interpretation of Requirements. In all cases where the application or the enforcement of the City Code, URRs, 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.
10. Reusable Return Flows. Unless separately agreed to by the Parties, UTILITIES will retain dominion, and control of treated reusable water effluent resulting from wastewater introduced by DISTRICT 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, the DISTRICT shall have the legal ownership of and right to use, reuse, successively use, and dispose of all return flows resulting from wastewater introduced by DISTRICT into UTILITIES' Wastewater Treatment System.

Article II

Improvements/Connection to Utilities' Wastewater Treatment System

1. Point(s) of Connection of DISTRICT to UTILITIES' Wastewater Treatment System. DISTRICT shall deliver its wastewater to UTILITIES' Wastewater Treatment System at the point(s) of connection depicted on Exhibit B. These connection points, and all other approved new, modified or abandoned connections to UTILITIES' Wastewater Treatment System shall be made at the expense of DISTRICT. DISTRICT, at its own expense and cost, will construct, install, operate and maintain any and all extensions of its Wastewater Collection System or the outfalls therefrom necessary to cause the same to reach to and to deliver wastewater at the point(s) of connection.
2. DISTRICT's Wastewater Collection System Improvements. DISTRICT shall be solely responsible, financially and otherwise, for designing, installing, constructing, and operating

DISTRICT's Wastewater Collection System including, but not limited to, wastewater mains, all infrastructure improvements necessary to connect UTILITIES' Wastewater Treatment System to DISTRICT's Wastewater Collection System point(s) of connection, and all other related facilities necessary for use in connection with this Agreement ("Improvements"). The Improvements 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 DISTRICT or in rights-of-way or easements dedicated for public utilities or conveyed to DISTRICT. UTILITIES shall have the sole discretion to determine and approve the actual location and design of the Improvements. DISTRICT shall, at its own cost and subject to UTILITIES' approval, locate, design, and construct the Improvements in such a manner and of such material that the Improvements will not at any time be a source of danger to or interference with any of UTILITIES' structures, facilities, or operations. UTILITIES shall have the right to perform its own inspection of all completed Improvements to ensure compliance with the City Code and the WWLESS.

3. Customer Connections.

- a. DISTRICT shall require any construction, installation, and connection of customer service lines to DISTRICT's Wastewater Collection System made after the Effective Date, to be in accordance with the City Code, the URRs and the WWLESS, so as to minimize the possibility of damage to UTILITIES' Wastewater Treatment System. DISTRICT shall perform inspection of all such installations and connections to ensure compliance with City Code and WWLESS 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 City Code and the WWLESS. Any customer service lines which are in existence upon execution of this Agreement, or which are subsequently constructed or acquired by DISTRICT, and which do not comply with City Code or the WWLESS, shall be brought into compliance at the time of replacement or repair.
- b. DISTRICT shall be responsible for assuring payment to UTILITIES by DISTRICT's customers making new connections to DISTRICT's Wastewater Collection System for "Recovery Agreement Charges," as provided in UTILITIES' Tariffs, as such tariffs may be amended. Such charges shall be collected at the **CUSTOMER CONTRACT ADMINISTRATION OFFICE**, located at the **Regional Development Center, 2880 International Cir., Suite 210, Colorado Springs, Colorado 80910**. DISTRICT and UTILITIES shall have the right to reimbursement under the provisions of any Recovery Agreement for construction of sewers as provided in UTILITIES' Tariffs.

4. Wastewater Discharge Meters.

- a. Wastewater discharge meters that record the amount of wastewater delivered to UTILITIES' Wastewater Treatment System by DISTRICT are in place at the point(s) of connection. DISTRICT must obtain UTILITIES' approval of the design and installation of all facilities related to DISTRICT's wastewater discharge meters that UTILITIES

determines are necessary in the future. The design and installation of such discharge meters and associated infrastructure shall be done in accordance with the WWLESS and shall be inspected by UTILITIES.

- b. It is understood by the Parties that the point of demarcation between the DISTRICT's Wastewater Collection System and UTILITIES' Wastewater Treatment System is located at the metering manhole. All infrastructure upstream of the metering manhole is understood to be owned and maintained by the District. UTILITIES' Wastewater Treatment System begins at the metering manhole.
- c. UTILITIES shall install, read, operate, maintain, and replace the discharge meters at UTILITIES' cost.

Article III

Industrial Pretreatment Program Delegated to Utilities

1. Industrial Users. DISTRICT has Industrial Users who discharge into DISTRICT'S Wastewater Collection System. DISTRICT shall submit to UTILITIES' Industrial Pretreatment Program, quarterly, on the due dates as specified by UTILITIES, an updated inventory of all Industrial Users and commercial customers connected to DISTRICT's Wastewater Collection System. Such inventory shall include such customer's name, address, Standard Industrial Classification code, and average daily water usage for the previous quarter.
2. Industrial Pretreatment Program Responsibilities; Delegation. DISTRICT hereby delegates, and UTILITIES hereby assumes, responsibility for the performance of DISTRICT'S Industrial Pretreatment Program responsibilities required by all applicable laws , regulations, codes and ordinances, including, but not limited to, those responsibilities and obligations set forth in the United States Code of Federal Regulations and Code of Colorado Regulations, and implementing regulations, except for those responsibilities directly related to the obligations reserved to DISTRICT in this Agreement. DISTRICT agrees that UTILITIES will implement its 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*, other related sector control program requirements, and consistent with applicable laws, regulations, codes and ordinances. DISTRICT agrees to be responsible for any violations of applicable law for failure of UTILITIES' Industrial Pretreatment Program meeting applicable law resulting from DISTRICT's neglect, failure to report any known violations, or failure to comply with the terms and conditions of this Agreement.
3. Co-Issue Permits. DISTRICT may co-issue all permits if DISTRICT notifies UTILITIES' Industrial Pretreatment Program director in writing in advance.

4. Enforcement. DISTRICT and UTILITIES shall each retain their enforcement discretion. Regarding businesses served by DISTRICT, 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 customer in DISTRICT as provided in the CityCode.
5. Notification of Enforcement Actions. UTILITIES shall notify DISTRICT when assessing penalties, terminating wastewater treatment service, or seeking criminal sanctions against any of DISTRICT's customers. UTILITIES shall provide DISTRICT with a status report regarding the compliance of Significant Industrial Users under the Pretreatment Program on or before **April 1** of each year.
6. Charges and Fees Related to Industrial Pretreatment Program.
 - a. To DISTRICT. UTILITIES may bill DISTRICT under this Agreement any additional costs associated with the Industrial Pretreatment Program responsibilities delegated to UTILITIES herein, provided that DISTRICT is not responsible for any industrial pretreatment costs associated with a UTILITIES' customer.
 - b. To Industrial Users. All general and special sewer service charges, and other charges levied against Industrial Users by DISTRICT, shall be retained by DISTRICT, 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 DISTRICT or DISTRICT's customers shall be collected and retained by UTILITIES.
7. Submittals. Any submittal required by this Article III, shall be made in accordance with Article V Section 4 of this Agreement, 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 DISTRICT'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, DISTRICT 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. DISTRICT acknowledges and agrees that any illicit discharge of industrial wastewater by DISTRICT, or a DISTRICT customer, 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' CDPS permit where the discharge of DISTRICT or its customer(s) caused or contributed to the violation.
3. Disconnection Damages. It is agreed that the damage to UTILITIES, if DISTRICT disconnects from UTILITIES' Wastewater Treatment System, 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.
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. DISTRICT acknowledges and consents to UTILITIES' right to terminate this Agreement without liability or obligation to DISTRICT, DISTRICT's customers or any other person or entity: (1) 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 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. 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.
6. Termination by DISTRICT. 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.
7. Effect of Termination. Upon termination by either Party, UTILITIES shall have no further obligation to provide Wastewater Treatment Service to DISTRICT or DISTRICT's customers and DISTRICT's Wastewater Collection System shall be disconnected from UTILITIES' Wastewater Treatment System. Upon termination, UTILITIES shall determine the connection facilities between DISTRICT's Wastewater Collection System and UTILITIES' Wastewater Treatment System that must be removed at DISTRICT'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 URRs and WWLESS. 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.

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 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 wastewater 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 service to property for violations of its laws, rules, regulations and this Agreement.
2. Annual Review of Agreement. DISTRICT 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. DISTRICT 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 Effective Date, 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**. DISTRICT 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. DISTRICT Dissolution. In the event that DISTRICT seeks to dissolve pursuant to relevant

laws, rules and regulations, 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 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 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.

4. 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:

i. Chief Strategic Planning and Projects Officer

Courier Service Address:

Colorado Springs Utilities

ATTN: Chief Strategic Planning and Projects Officer

121 S. Tejon St., 5th Floor

Colorado Springs, CO 80903

United States Postal Service Address:

Colorado Springs Utilities

ATTN: Chief Strategic Planning and Projects Officer

P.O. Box 1103,

Colorado Springs, CO 80947-0950

ii. 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:

Colorado Springs Utilities

ATTN: Utilities Division

P.O. Box 1103

Colorado Springs, CO 80947-0940

b. For DISTRICT:

DISTRICT Stratmoor Hills Water District

ATTN: District Manager

Kevin Niles

Colorado Springs, CO 80906

Phone: (719) 576-0311

5. 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.
6. 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.
7. 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. Acceptance by UTILITIES into UTILITIES' Wastewater Treatment System from DISTRICT 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.
8. 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.
9. 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 DISTRICT for failure to accept or treat DISTRICT's wastewater when such failure is the result of upset or mechanical or power failure. UTILITIES shall have the right to interrupt service and require DISTRICT to temporarily store and contain wastewater flows to the extent of DISTRICT'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 DISTRICT's wastewater, a 48-hour notice shall be given to

DISTRICT, after which DISTRICT will temporarily store and contain wastewater to the extent of its storage capabilities.

10. No Third-Party Beneficiaries. 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.
11. 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.
12. 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.
13. Assignment. 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. Nothing herein contained, however, shall be construed as preventing the reorganization of any Party hereto nor as preventing any other body corporate and politic succeeding to the rights, privileges, powers, immunities, liabilities, disabilities and duties of either Party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.
14. 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.

15. 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, the URRs, and 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 § 12.1.108. 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 the District of Colorado.
16. 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.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

COLORADO SPRINGS UTILITIES

DISTRICT

By: _____

By: _____

Name: Aram Benyamin

Name: _____

Title: Chief Executive Officer

Title: _____

Approved as to form: _____

Attest: _____

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Exhibit A
to the
WASTEWATER SERVICE AGREEMENT
Special Contract for Service - Outside City Limits
Stratmoor Hills Sanitation District Boundaries

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Exhibit B
to the
WASTEWATER SERVICE AGREEMENT
Special Contract for Service - Outside City Limits
Stratmoor Hills Sanitation District Points of Connection

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