

WASTEWATER SERVICE AGREEMENT

Contract Service – Regional (S9C)

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2023 ("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 the City of Manitou Springs ("MANITOU SPRINGS") a Colorado home rule city and municipal corporation. In this document, UTILITIES and MANITOU SPRINGS can be referred to individually as "Party" or collectively as "Parties."

Recitals

- A. MANITOU SPRINGS is a Colorado municipality located just to the west of the City of Colorado Springs. MANITOU SPRINGS currently services a customer base of approximately 2,100 connections in the Colorado Springs metropolitan area.
- B. MANITOU SPRINGS owns, operates and maintains a wastewater collection system located within the Service Area of MANITOU SPRINGS as defined on the map of the Service Area attached hereto as Exhibit A and herein incorporated by reference.
- C. UTILITIES currently accepts and treats MANITOU SPRINGS' wastewater pursuant to that certain Sewage Treatment and Disposal Agreement between the Parties dated February 3, 2016 as amended through February 18, 2023 and UTILITIES and MANITOU SPRINGS desire for UTILITIES to continue to accept and treat through its Wastewater Treatment System MANITOU SPRINGS' wastewater flows pursuant to the terms and conditions of this Agreement.
- D. UTILITIES has wastewater infrastructure and treatment capacity available in its Wastewater Treatment System to provide wastewater related services for the anticipated wastewater flows from MANITOU SPRINGS through February 18, 2048, which is the end of the term of this Agreement.
- E. UTILITIES has entered into this Agreement pursuant to Section 12.5.304 (Service; Special Contract) of Article 4 (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 twenty-five (25) 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 definitive agreement for UTILITIES to treat MANITOU SPRINGS' 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 MANITOU SPRINGS in writing that MANITOU SPRINGS shall be disconnected from UTILITIES Wastewater Treatment System as of the expiration of the Term; or

ii. If the Parties mutually agree to continue good faith negotiations for a new wastewater service agreement beyond the Term, the term may be extended for an additional one (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. MANITOU SPRINGS' Customers: The persons and entities located within MANITOU SPRINGS' Service Area, that receive the benefit of the wastewater service provided hereunder.

b. MANITOU SPRINGS' Service Area: MANITOU SPRINGS' service area, as identified in Exhibit A attached hereto. MANITOU SPRINGS' Service Area may be amended in accordance with this Agreement.

c. MANITOU SPRINGS' Wastewater Collection System: MANITOU SPRINGS' Wastewater Collection System includes any devices, facilities, structures, equipment or works owned by MANITOU SPRINGS for the purpose of collection and transmission of wastewater generated within MANITOU SPRINGS' Service Area to UTILITIES' Wastewater Treatment System.

d. Maximum Average Flow: The Maximum Average Flow shall be calculated based on a ninety (90) day rolling average of discharge as measured at the points of connection described in Article II Section 1.

e. 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 MANITOU SPRINGS 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. MANITOU SPRINGS 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, MANITOU SPRINGS submits to the jurisdiction of the City for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 5. MANITOU SPRINGS shall by ordinances, resolutions provide for MANITOU SPRINGS' 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 5. MANITOU SPRINGS 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 MANITOU SPRINGS' Service Area from MANITOU SPRINGS' customers, in accordance with City Code, the URRs, and subject to the terms and conditions contained herein.
- b. UTILITIES shall have no obligation to accept and treat wastewater under this Agreement that originates outside of MANITOU SPRINGS' Service Area.
- c. MANITOU SPRINGS shall provide to UTILITIES an updated copy of the map of MANITOU SPRINGS' Wastewater Collection System by February 15 of each year or notice that no changes to MANITOU SPRINGS' Wastewater Collection System have occurred in the preceding year.

5. Expansion of MANITOU SPRINGS' Service Area. MANITOU SPRINGS may not expand the MANITOU SPRINGS' Service Area without first receiving UTILITIES' prior written approval of the expansion or contract, which may require authorization from the UTILITIES' Board of Directors and the Colorado Springs City Council. MANITOU SPRINGS shall provide UTILITIES with notice of its intent to expand MANITOU SPRINGS' Service Area at least one hundred and eighty (180) days prior to approval of the expansion by its governing body, if required. The notice must include the number and types of connections to MANITOU SPRINGS' Wastewater Collection System that will be included in the expanded MANITOU SPRINGS' Service Area and/or pursuant to the contract. UTILITIES shall provide notice to MANITOU SPRINGS of its approval/disapproval of the proposed expansion or contract within ninety (90) days of UTILITIES' receipt of MANITOU SPRINGS' notice.

6. Rates, Charges, Surcharges and Fees Payable by MANITOU SPRINGS.

- a. For the services provided hereunder, MANITOU SPRINGS 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 (S9C)" and the Wastewater Regional System Availability Fee ("WWRSAF") as provided in UTILITIES Tariffs as modified or replaced. Surcharges will apply to MANITOU SPRINGS' 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. MANITOU SPRINGS agrees that UTILITIES' rate making process, as embodied in the Tariffs in effect on the Effective Date, is fair and reasonable.

- b. MANITOU SPRINGS' historical demand on UTILITIES' Wastewater Treatment System has not exceeded Maximum Average Flows of 0.39 million gallons per day. The current WWRSAF for Maximum Average Flows of between 0.30 and 0.59 million gallons per day is \$64,390.00. As an existing wastewater customer of UTILITIES that has paid all required connection fees, MANITOU SPRINGS has satisfied the obligations of the WWRSAF for such Maximum Average Flow through prior contracts and payments and shall not be required to pay the WWRSAF at this time. If MANITOU SPRINGS' demands on UTILITIES' Wastewater Treatment System exceed Maximum Average Flows of 0.59 million gallons per day, then MANITOU SPRINGS will be required to pay the difference between the WWRSAF for Maximum Average Flows of between 0.30 and 0.59 million gallons per day set forth above and the applicable WWRSAF for the new Maximum Average Flows under UTILITIES' Tariffs.
 - c. 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. MANITOU SPRINGS shall pay a Water Quality Impact Fee that will be calculated and billed annually. The annual fee will be based on the MANITOU SPRINGS' 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.
 - d. Payment of the total monthly bill by MANITOU SPRINGS 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. A deposit may be assessed as outlined in the Tariffs as modified or replaced.
7. MANITOU SPRINGS' Responsibilities. In addition to other responsibilities and duties provided in this Agreement, MANITOU SPRINGS shall solely have the following responsibilities:
- a. MANITOU SPRINGS shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with, MANITOU SPRINGS' Wastewater Collection System including, but not limited to, air emissions from MANITOU SPRINGS' Wastewater Collection System, and spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency ("EPA")) from MANITOU SPRINGS' Wastewater Collection System.

- b. At all times, MANITOU SPRINGS shall cause all wastewater, which is discharged directly or indirectly into MANITOU SPRINGS' Wastewater Collection System or into UTILITIES' Wastewater Treatment System by MANITOU SPRINGS or MANITOU SPRINGS' customers, or on their behalf, to comply with any requirements of UTILITIES, as permitted by law.
- c. MANITOU SPRINGS shall at all times operate MANITOU SPRINGS' Wastewater Collection System so as not to interfere with service to third parties who rely on UTILITIES' Wastewater Treatment System.
- d. MANITOU SPRINGS' 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 MANITOU SPRINGS' Wastewater Collection System.
- e. If MANITOU SPRINGS 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. MANITOU SPRINGS 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. MANITOU SPRINGS shall report, in the manner provided below, any illicit discharge, spill, leak, or sanitary overflow from MANITOU SPRINGS' 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 MANITOU SPRINGS 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 MANITOU SPRINGS is taking to reduce, eliminate and prevent reoccurrence of the Incident.

Incidents shall be reported verbally to UTILITIES and the CDPHE within twenty-four (24)

hours and a written report shall be mailed to said entities within five (5) days from the date MANITOU SPRINGS becomes aware of the Incident.

- h. MANITOU SPRINGS shall maintain an approved EPA User Charge System (40 CFR 35.2140). UTILITIES will notify MANITOU SPRINGS 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. MANITOU SPRINGS shall provide within sixty (60) days of implementation or upon request by UTILITIES, a report on MANITOU SPRINGS' classes, rates, and implementation provisions. MANITOU SPRINGS will comply with EPA regulation 40 CFR § 35.2140(c) by advising MANITOU SPRINGS' 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 MANITOU SPRINGS provides such notification to its wastewater customers.

8. UTILITIES' Responsibilities.

In addition to other responsibilities and duties provided in this Agreement, UTILITIES shall:

- a. Accept and treat MANITOU SPRINGS' wastewater pursuant to the terms of this Agreement in accordance with generally accepted industry principles and practice and in full compliance with all applicable Federal, State and local, regulations, policies, rules and permits.
- b. Maintain and operate its Wastewater Treatment System in accordance with best industry practices.
- c. Perform all monitoring, sampling, testing, analyses and reporting, not assigned to MANITOU SPRINGS under the terms of this Agreement as necessary, for compliance with all applicable Federal, State and local laws, regulations, and permits.

Discharge Prohibitions, Discharge Limitations, and Point of Discharge Limitations.

- a. UTILITIES shall have the right to restrict additional connections to and discharges from MANITOU SPRINGS' 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, MANITOU SPRINGS' Wastewater Collection System of a MANITOU SPRINGS commercial and industrial customer ("Industrial User") in accordance with City Code.
- c. MANITOU SPRINGS 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. MANITOU SPRINGS hereby agrees to comply, and require MANITOU SPRINGS' 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 and shall prohibit the discharge of waste silver-rich photochemical solutions with total silver concentrations greater than 400 mg/l.
- e. MANITOU SPRINGS has enacted and shall keep in full force and effect for MANITOU SPRINGS' Customers by ordinances and resolutions, and contract with its extraterritorial customers, provisions that mirror these City Code sections as may be amended from time to time. MANITOU SPRINGS 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. MANITOU SPRINGS 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, should MANITOU SPRINGS exceed a Maximum Average Flow of 0.50 million gallons per day, and UTILITIES determines that relief systems are necessary to continue to provide wastewater service, UTILITIES will provide MANITOU SPRINGS written notification that relief facilities or necessary appurtenances must be constructed in accordance with the City Code and WWLESS, as each may amended or replaced. Relief facilities shall be approved by UTILITIES, and operational before additional MANITOU SPRINGS wastewater loading can be accepted. These relief facilities may be constructed on property owned by MANITOU SPRINGS, within the boundaries of MANITOU SPRINGS, 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 MANITOU SPRINGS 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.

MANITOU and UTILITIES may have the right to reimbursement under the provisions of

a Recovery Agreement for construction of relief facilities, as determined by Utilities.

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. MANITOU SPRINGS shall be responsible for obtaining all approvals and/or permits for the Improvements necessary for the implementation of this Agreement, but this requirement shall not be interpreted to require MANITOU SPRINGS to obtain approvals and/or permits UTILITIES must obtain independent of its service obligations to MANITOU SPRINGS under this Agreement. UTILITIES will cooperate with MANITOU SPRINGS to obtain any necessary approvals and/or permits. If any required approval and/or permit is not obtained by MANITOU SPRINGS, either Party may terminate this Agreement. A copy of such approval or permit shall be provided to UTILITIES by MANITOU SPRINGS.

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 maintain dominion, and control of treated reusable water effluent resulting from wastewater introduced by MANITOU SPRINGS 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, MANITOU SPRINGS shall have the legal ownership of and right to use, reuse, successively use, and dispose of all return flows resulting from wastewater introduced by MANITOU SPRINGS into UTILITIES' Wastewater Treatment System.

Article II

Improvements/Connection to UTILITIES' Wastewater Treatment System

1. Point(s) of Connection of MANITOU SPRINGS to UTILITIES' Wastewater Treatment System. MANITOU SPRINGS shall deliver its wastewater to UTILITIES' Wastewater Treatment System at two points of interconnection (i) the primary point of interconnection located near the intersection of Colorado Avenue and Columbia Avenue, and (ii) the secondary interconnect located near the intersection of Crystal Valley Rd., Red Canon Rd. and West High St. The location of these interconnects is depicted on Exhibit B attached hereto and herein incorporated by reference. These connection points, and all other approved new, modified or abandoned connections to UTILITIES' Wastewater Treatment System shall be made at the expense of MANITOU SPRINGS. MANITOU SPRINGS, 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. MANITOU SPRINGS' Wastewater Collection System Improvements. MANITOU SPRINGS shall be solely responsible, financially and otherwise, for designing, installing, constructing, and operating MANITOU SPRINGS' Wastewater Collection System including, but not limited to, wastewater mains, all infrastructure improvements necessary to connect UTILITIES' Wastewater Treatment System to MANITOU SPRINGS' 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 MANITOU SPRINGS or in rights-of-way or easements dedicated for public utilities or conveyed to MANITOU SPRINGS. UTILITIES shall have the sole discretion to determine and approve the actual location and design of the Improvements. MANITOU SPRINGS 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. Wastewater Discharge Meters.
 - a. Wastewater discharge meters that record the amount of wastewater delivered to UTILITIES' Wastewater Treatment System by MANITOU SPRINGS are in place at the primary point of interconnection.

 - b. UTILITIES shall install, read, operate, maintain, and replace the discharge meters at UTILITIES' cost.

 - c. No meter has been, nor is it contemplated to be installed, to measure MANITOU SPRINGS' wastewater that is delivered to the secondary interconnect as described in Article II, Section 1, above. Until such time as a meter is installed to measure such wastewater, MANITOU SPRINGS shall meter water usage for its customer(s) serviced by the secondary interconnect. MANITOU SPRINGS shall provide the water service meter readings for those customers to UTILITIES' Customer Services Department no later than March 31 of each year and UTILITIES will use such meter readings to bill MANITOU SPRINGS for the treatment of such wastewater. MANITOU SPRINGS must obtain UTILITIES' approval of the design and installation of all facilities related to MANITOU SPRINGS' 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.

- d. MANITOU SPRINGS has three water service customers who discharge wastewater directly into UTILITIES' Wastewater Treatment System. MANITOU SPRINGS shall meter water usage for the water service customers who discharge wastewater directly into UTILITIES' Wastewater Treatment System. MANITOU SPRINGS shall provide the water service meter readings for these customers to UTILITIES' Customer Services Department no later than March 31 of each year and UTILITIES will use such meter readings to bill MANITOU SPRINGS for the treatment of such wastewater.

Article III

MANITOU SPRINGS Industrial Pretreatment Program Delegated to Utilities

1. Industrial Users. MANITOU SPRINGS has industrial and commercial customers who discharge into MANITOU SPRINGS' Wastewater Collection System. MANITOU SPRINGS 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 MANITOU SPRINGS' 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. MANITOU SPRINGS hereby delegates, and UTILITIES hereby assumes, responsibility for the performance of MANITOU SPRINGS' future Industrial Pretreatment Program responsibilities required by applicable law 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 MANITOU SPRINGS. MANITOU SPRINGS 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, and other related sector control program requirements, and consistent with applicable laws, regulations, codes and ordinances. MANITOU SPRINGS agrees to be responsible for any violations of applicable law for failure of UTILITIES' Industrial Pretreatment Program meeting applicable law resulting from MANITOU SPRINGS' neglect, failure to report any known violations, or failure to comply with the terms and conditions of this Agreement.
3. Co-Issue Permits. MANITOU SPRINGS may co-issue all permits if MANITOU SPRINGS notifies UTILITIES' Industrial Pretreatment Program director in writing.
4. Enforcement. MANITOU SPRINGS and UTILITIES shall each retain their enforcement discretion. Regarding businesses served by MANITOU SPRINGS, 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 MANITOU SPRINGS as provided in the CityCode.

5. Notification of Enforcement Actions. UTILITIES shall notify MANITOU SPRINGS when assessing penalties, terminating wastewater treatment service, or seeking criminal sanctions against any of MANITOU SPRINGS' Customers. UTILITIES shall provide MANITOU SPRINGS 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 MANITOU SPRINGS. UTILITIES may bill MANITOU SPRINGS under this Agreement any additional costs associated with the Industrial Pretreatment Program responsibilities delegated to UTILITIES herein, provided that MANITOU SPRINGS 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 MANITOU SPRINGS, shall be retained by MANITOU SPRINGS, 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 MANITOU SPRINGS or MANITOU SPRINGS' 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 MANITOU SPRINGS' 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, MANITOU SPRINGS 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. MANITOU SPRINGS acknowledges and agrees that any illicit discharge of industrial wastewater by MANITOU SPRINGS, or a MANITOU SPRINGS

Customer, may subject MANITOU SPRINGS to consequential damages for breach of contract including, but not limited to, any amounts the City of Colorado Springs or UTILITIES may be required to pay for violation of the conditions of UTILITIES' CDPS permit where the discharge of MANITOU SPRINGS or its customer(s) caused or contributed to the violation.

3. Disconnection Damages. In the event a breach of this Agreement by MANITOU SPRINGS results in MANITOU SPRINGS permanently disconnecting from UTILITIES' Wastewater Treatment System it is agreed that the damage to UTILITIES will not be less than the reproduction costs of any of UTILITIES' facilities, including UTILITIES' owned Improvements, that are rendered useless by such disconnection and that 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 by MANITOU SPRINGS, 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, if available under the law be reimbursed for reasonable costs incurred by UTILITIES as a result of the breach; and (b) be entitled to money damages. Said rights also apply if liquidated damages, as provided in City Code § 12.5.304.B.2, are unavailable.
5. Termination by UTILITIES. MANITOU SPRINGS acknowledges and consents to UTILITIES' right to terminate this Agreement without liability or obligation to MANITOU SPRINGS, MANITOU SPRINGS' Customers or any other person or entity: (1) due to MANITOU SPRINGS' breach of a material term or condition of this Agreement, if MANITOU SPRINGS 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 MANITOU SPRINGS 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 MANITOU SPRINGS. MANITOU SPRINGS 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 MANITOU SPRINGS.
7. Effect of Termination. Upon termination by either Party, UTILITIES shall have no further obligation to provide Wastewater Treatment Service to MANITOU SPRINGS or MANITOU SPRINGS' Customers and MANITOU SPRINGS' Wastewater Collection System shall be disconnected from UTILITIES' Wastewater Treatment System. Upon termination, UTILITIES shall determine the connection facilities between MANITOU SPRINGS' Wastewater Collection System and UTILITIES' Wastewater Treatment System that must be removed at MANITOU SPRINGS' 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 MANITOU SPRINGS to UTILITIES are due and payable prior to the disconnection

of service. If all outstanding charges owed by MANITOU SPRINGS to UTILITIES are not paid prior to disconnection, MANITOU SPRINGS' 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 MANITOU SPRINGS' 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. MANITOU SPRINGS 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. MANITOU SPRINGS 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. MANITOU SPRINGS 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. 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 MANTIOU SPRINGS:

City of Manitou Springs
ATTN: City Manager
606 Manitou Avenue
Manitou Springs, CO 80829
Phone: 719/685-2548

4. 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.

5. 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.

6. 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 MANITOU SPRINGS 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.
7. Audits. UTILITIES shall have the right to audit at any time all of MANITOU SPRINGS' records relating to any MANITOU SPRINGS' Customers or relating to compliance with this Agreement. MANITOU SPRINGS shall have the right to audit all UTILITIES' records relating to compliance with this Agreement.
8. 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 MANITOU SPRINGS for failure to accept or treat MANITOU SPRINGS' wastewater when such failure is the result of upset or mechanical or power failure. UTILITIES shall have the right to interrupt service and require MANITOU SPRINGS to temporarily store and contain wastewater flows to the extent of MANITOU SPRINGS' 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 MANITOU SPRINGS' wastewater, a 48-hour notice shall be given to MANITOU SPRINGS, after which MANITOU SPRINGS will temporarily store and contain wastewater to the extent of its storage capabilities.
9. 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 MANITOU SPRINGS 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 MANITOU SPRINGS and UTILITIES that any person other than MANITOU SPRINGS or UTILITIES receiving services or benefits under this Agreement shall

be deemed to be an incidental beneficiary only.

10. Appropriation of Funds. In accord with the Colorado Springs City Charter, Colorado law, and the Manitou Springs City Charter, performance of the Parties' obligations under this Agreement is expressly subject to appropriation of funds by each Party's City Council. In the event funds are not appropriated in whole or in part sufficient for performance of a Party's 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 the non-appropriating Party will thereafter have no liability for compensation or damages to the other Party for future performance and obligations thereafter in excess of the non-appropriating Party's authorized appropriation for this Agreement or the applicable spending limit, whichever is less. The non-appropriating Party will provide notification as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.
11. 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.
12. 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.
13. 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.
14. 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 Manitou Springs City Charter, each Party's 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 § 12.1.109. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado and, if necessary, for exclusive federal questions, the United States District Court for the District of Colorado.

15. 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 a Party in connection with this Agreement are for informational purposes only. No such communication is intended by either Party to constitute either an electronic record or an electronic signature, or to constitute any agreement by either Party 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

By: _____

Name: _____

Title: Acting Chief Executive Officer

Approved as to form: _____

CITY OF MANITOU SPRINGS

By: John G. Graham

Name: John G. Graham

Title: Mayor

Attest: Judy Morgan

Exhibit A
to the
WASTEWATER SERVICE AGREEMENT
Special Contract for Service - Outside City Limits
MANITOU SPRINGS

Exhibit A

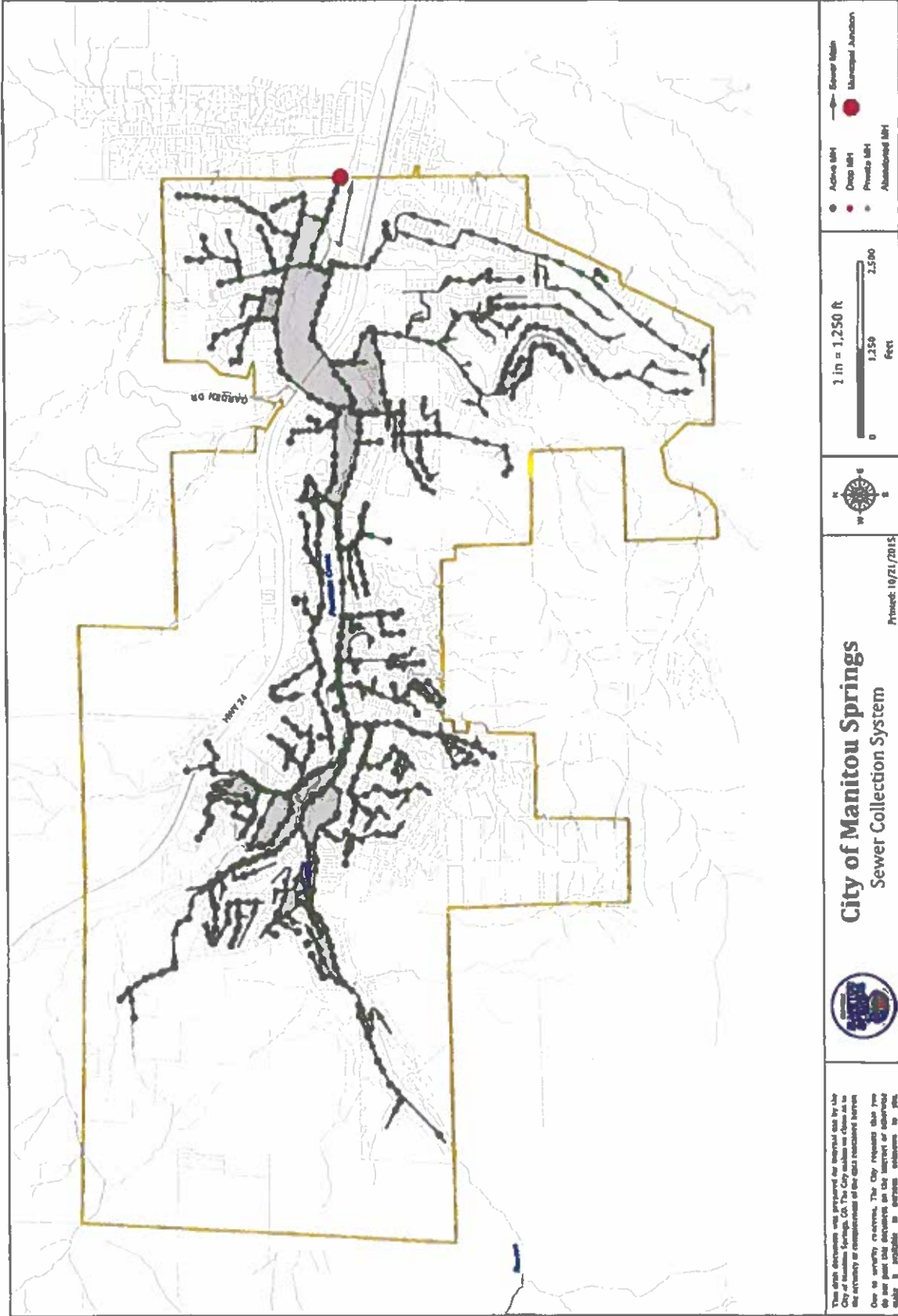
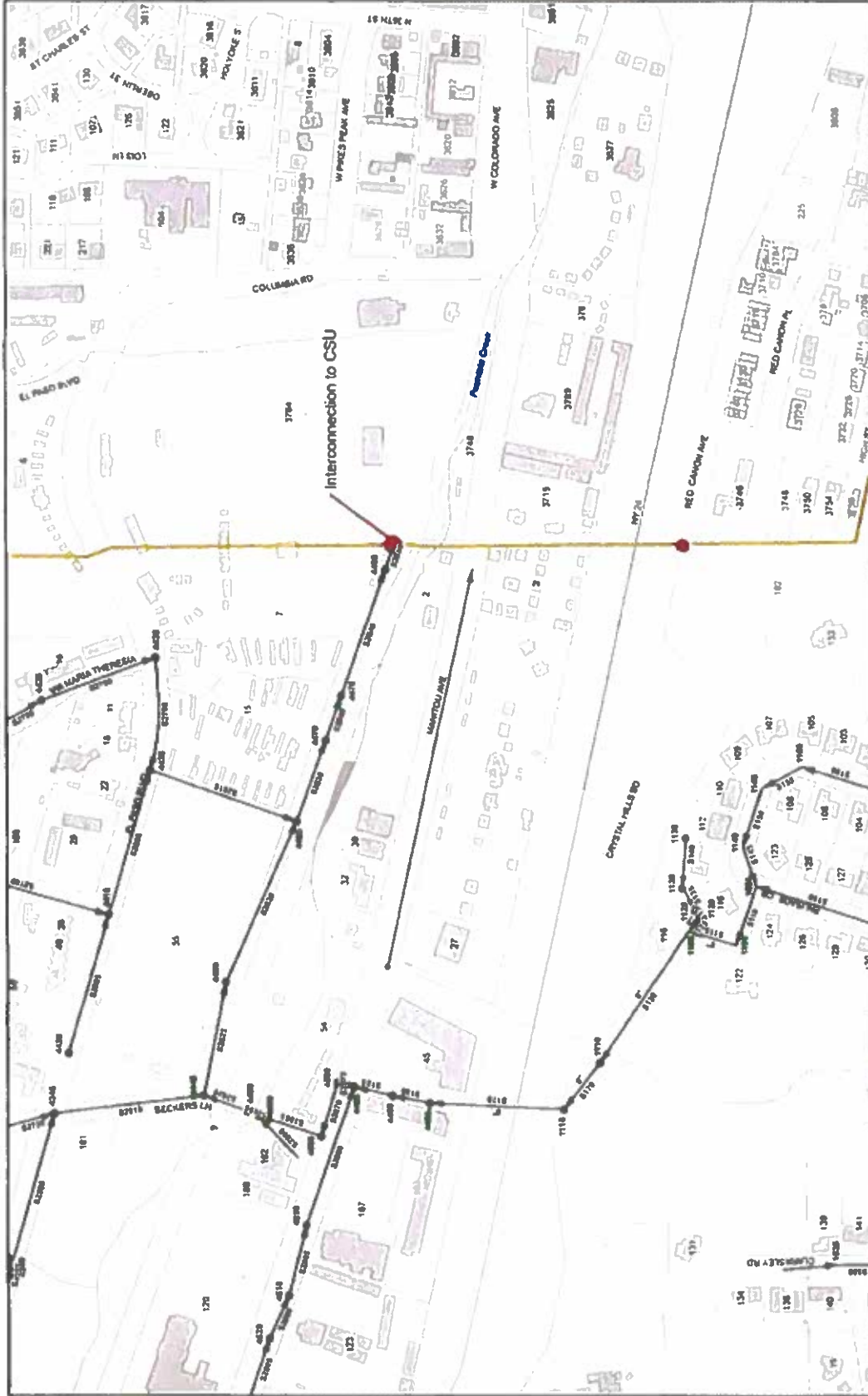


Exhibit B
to the
WASTEWATER SERVICE AGREEMENT
Special Contract for Service - Outside City Limits
MANITOU SPRINGS

Exhibit B



This draft document was prepared for internal use by the City of Manitou Springs, CO. The City makes no claim as to the accuracy or maintenance of the data contained herein. Due to security concerns, the City requests that you do not post this document on the Internet or otherwise make it available to persons without its prior approval.



City of Manitou Springs Sewer Collection System

Printed: 10/21/2015



- Active MH
- Crop MH
- Private MH
- Abandoned MH
- Sewer Main
- Municipal Junction