

EXHIBIT A TO RESOLUTION NO. _____ - 19

INTERIM WASTEWATER TREATMENT AND DISPOSAL AGREEMENT
Special Contract for Service – Outside City Limits

THIS AGREEMENT (“Agreement”) is made and entered into this __ day of July 2019, by and between Colorado Springs Utilities (“Utilities”), an enterprise of the City of Colorado Springs (“City”), a home rule city and Colorado municipal corporation, and Sterling Ranch Metropolitan District No. 1 (“District”), c/o White Bear Ankele Tanaka & Waldron 2154 E. Commons Avenue, Suite 2000, Centennial, Colorado 80122. In this document, Utilities and District can be referred to individually as “Party” or collectively as “Parties.”

Recitals

- A. District is a Colorado metropolitan district located generally north of Woodmen Road, east of Vollmer Road, and west of Banning Lewis Parkway in El Paso County. The Service Plan for the District includes provisions for wastewater service for the District. The District’s current service area is depicted on Exhibit A hereto. El Paso County approved the Sterling Ranch Sketch Plan in December 2018 for 5,250 lots.
- B. 287 lots have been platted, or are in the process of being platted, within the District’s service area pursuant to Homestead at Sterling Ranch Subdivision Filing Nos. 1 & 2 and Branding Iron Filing Nos. 1 & 2 (the “Platted Lots”) as generally depicted Exhibit B.
- C. The District has requested that Utilities accept and treat District’s wastewater flows from the Platted Lots through Utilities’ Wastewater Treatment System that are in the process of being developed within the District’s service area on an interim basis pending annexation discussions between property owners within the District for annexation of all or a portion of the Sterling Ranch Master Plan area and certain adjacent properties.
- D. Utilities agrees to accept and treat District’s wastewater flows generated by the Platted Lots, in accordance with the terms and conditions contained herein.
- E. Utilities has entered into this Agreement pursuant to § 12.5.304 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

- A. **Term.** This Agreement shall become effective upon execution by both Parties and will remain in effect for one (1) year thereafter. This Agreement may be renewed or extended by mutual agreement of both Parties in writing.
- B. **Definitions.** Terms not otherwise defined herein shall have the meaning adopted in the latest amendment to the City Code of Colorado Springs Colorado 2001, as amended (“City Code”). Defined terms are capitalized.
1. **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, storage and transmission of wastewater from District’s customers.
 2. **Utilities’ Wastewater System:** Utilities’ Wastewater System includes any devices, facilities, structures, equipment or works owned by Utilities for the purpose of collecting and treating wastewater.
- C. **Colorado Springs City Code Jurisdiction.** District is a user of Colorado Springs’ publicly owned 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 of Colorado Springs for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 5. District shall by ordinances or resolutions provide for its 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.
- D. **Wastewater Treatment Service.** During the term of this Agreement, Utilities will accept and treat through Utilities’ Wastewater System wastewater that originates from inside District’s service area from the Platted Lots, the location of which is depicted in Exhibit B, subject to the terms and conditions contained herein. District acknowledges and agrees that Utilities shall have no obligation to accept and treat wastewater under this Agreement that originates from anywhere other than the Platted Lots unless prior approval is received from the Colorado Springs City Council. District further acknowledges and agrees that Utilities shall have no obligation to accept and treat wastewater under this Agreement that originates from the Platted Lots after expiration or termination of this Agreement, unless prior approval is received from the Colorado Springs City Council. This Agreement is for “Contract Service – Outside City Limits,” as provided in Utilities’ Tariffs. The Utilities’ Tariffs and Rules and Regulations shall apply to District, except as otherwise provided in this Agreement.
- E. **Disconnection from Utilities’ Wastewater System.** The District acknowledges and agrees that Utilities is providing wastewater service to the District under this

Agreement on an interim basis. In the event the terms and conditions of this Agreement are not satisfied, District agrees to diligently pursue the steps necessary to design and construct all infrastructure necessary to connect District's Wastewater Collection System to another wastewater provider and disconnect its system from Utilities' Wastewater System.

1. **Notice.** In the event District disconnects from Utilities' Wastewater System, District shall provide Utilities with notice of the date it intends to disconnect the District's Wastewater Collection System from Utilities' Wastewater System, at least thirty (30) days prior to the proposed disconnection date. District shall also provide Utilities with notice of the actual date it disconnected within one (1) day of the disconnection.
2. **Expenses and Standards.** District shall be solely responsible, financially and otherwise, for designing, constructing and maintaining all infrastructure improvements necessary to connect District's Wastewater Collection System to Utilities' Wastewater System and all infrastructure necessary to complete any disconnection from Utilities' System. Any connection and disconnection from Utilities' Wastewater System shall be made in accordance with Utilities' Line Extension and Service Standards and shall be inspected and approved by Utilities.

F. Rates, Charges, Surcharges and Fees Payable by District. District shall pay to Utilities the applicable rates, charges, surcharges and fees for the services provided hereunder. Such charges and fees include, but are not limited to, the applicable Wastewater Development Charge, Treatment Charges, Extra Strength Surcharges, Water Quality Impact Fees, and Wastewater Advanced Recovery Agreement Charges. All charges are provided in **Appendix A** attached hereto and incorporated herein.

1. **Wastewater Development Charge.** The District shall pay the Outside City Limits Wastewater Development Charge for a three-inch meter as provided in Utilities' Rules and Regulations. District acknowledges and agrees that by paying the Wastewater Development Charge it has no right or claim to receive wastewater service from Utilities other than as provided in this Agreement. Utilities shall have no obligation to provide wastewater service to District hereunder until the Wastewater Development Charge has been paid.
2. **Treatment Charges and Extra Strength Surcharges.** The District shall be responsible for Treatment Charges and Extra Strength Surcharges, as provided in Utilities' Tariff "Contract Service - Outside City Limits (S9C)." Extra Strength Surcharges will be based on twenty-four (24) hour composite samples. Payment of the total monthly bill for Treatment Charges and any applicable Extra Strength Surcharges shall be due within thirty (30) days of receipt thereof. If the bill is not paid within the thirty (30) day period, a deposit will be assessed as outlined in

Utilities' Rules and Regulations, which may be changed from time to time by the Colorado Springs City Council.

3. **Water Quality Impact Fee.** 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. The District shall pay a Water Quality Impact Fee that will be calculated on a yearly basis based on District's pro rata share of treated wastewater flows.
 4. **Wastewater Advanced Recovery Agreement Charges.** District further acknowledges that properties seeking Utilities' wastewater service are subject to Recovery Agreement Charges and Advanced Recovery Agreement Charges for future infrastructure needed to serve such properties. District agrees to pay the current Wastewater Advanced Recovery Agreement Charge for the Platted Lots.
- F. **Compliance with Requirements.** In all cases where the application or the enforcement of Utilities' requirements, 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.

Article II **Connection to Utilities' Wastewater System**

- A. **Point(s) of Connection of District to Utilities' Wastewater System.** District shall deliver its wastewater to Utilities' Wastewater System at the 8" interconnect to be constructed by District and to be located as depicted on Exhibit C hereto. This connection point, and all other approved new, modified or abandoned connections to Utilities' Wastewater System, if any, shall be made at the sole expense of District in accordance with subsection C below. Utilities shall have no obligation to provide wastewater treatment service hereunder until such interconnect is constructed.
- B. **Responsibility for Cost of District's Wastewater Collection System Extensions.** District, at its own expense and cost, will construct, install, operate and maintain its Wastewater Collection System and any and all extensions of District's Wastewater Collection System or the outfalls therefrom necessary to cause the same to reach to and to deliver wastewater at the point of connection. All connections to Utilities' Wastewater System shall be made in accordance with Utilities' Line Extension and Service Standards and shall be inspected by Utilities.
- C. **Point of Demarcation between District's Wastewater Collection System and Utilities' Wastewater System.** It is understood by the Parties that the point of demarcation between the District's Wastewater Collection System and Utilities' Wastewater 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 System begins at the metering manhole.

- D. Discharge Meters and Other Improvements.** District shall be solely responsible, financially and otherwise, for designing, installing, and constructing all infrastructure improvements necessary to connect District's Wastewater Collection System to Utilities' Wastewater System and all other related facilities necessary for use in connection with this Agreement ("Improvements"). The Improvements shall be agreed upon by the Parties and shall be designed, installed and constructed in accordance with Utilities' Line Extension and Service Standards. The improvements shall be located on property owned by the District or in rights-of-way or easements dedicated to the District ("District Property"), unless constructed on land owned by the City of Colorado Springs. Utilities shall have the sole discretion to determine and approve the actual 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. Upon completion of design, installation and construction of the Improvements, District shall convey and dedicate to Utilities, in a form acceptable to Utilities, ownership of all the Improvements and the right to access and use the District Property for the purposes of operating and maintaining the Improvements. Utilities shall be responsible for the operation, maintenance and repair of all Improvements dedicated and conveyed to it pursuant to this section, including reading the meter. District agrees to reimburse Utilities for its reasonable costs associated with the maintenance and repair of the Improvements conveyed and dedicated to Utilities under this section.
- E. User Charge System.** District shall maintain an approved EPA User Charge System (40 CFR §§ 35.929-2(e) and 35.925-11). Within 10 days after District's Wastewater Collection System is connected to Utilities' Wastewater System, Utilities will notify District of Utilities' classifications, classes and surcharges per class and any other information on revenues, costs and allocation of costs between Biochemical Oxygen Demand ("BOD"), Total Suspended Solids ("TSS"), and flow so as to assure proportional allocation of costs. District shall provide within sixty (60) days of implementation or upon request by Utilities, a report on District's ordinance classes, rates and implementation provisions. District will comply with EPA regulations 40 CFR §§ 32.929-2(f) 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 Collection System Users.
- F. District's Responsibilities.** In addition to other responsibilities and duties provided in this Agreement, District shall be solely responsible for the following:

1. District shall be 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. District shall also be responsible for billing its customers for wastewater service and collecting payments from its customers.
2. 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.
3. District shall require any installation and connection of service lines to District's Wastewater Collection System to be in accordance with the City Code and Utilities' Water and Wastewater Line Extension and Service Standards, as each may be amended, so as to minimize the possibility of damage to Utilities' Wastewater System. District shall perform inspection of all such installations and connections to ensure compliance with the City Code and Utilities' Water and Wastewater Line Extension and Service Standards and Specifications.

Article III
Conditions of Service

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

1. Utilities shall have the right to restrict additional connections and discharges to District's Wastewater Collection System in the event of limitation in Utilities' treatment or collection system capacity.
2. At all times District shall cause all wastewater, which is discharged directly or indirectly into District's Wastewater Collection System or into Utilities' Wastewater System by District or on its behalf, to comply with any requirements of Utilities, as permitted by law.
3. 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.

B. Submission of Annexation Petition to City. District shall cause owners of properties included in the Sterling Ranch Master Plan area and the owner of that certain property known, as of the date of this Agreement, as Tax Schedule Number 5200000264 in the records of the El Paso County Tax Assessor, to submit one or

more petitions for annexation of all or a portion of such properties into the City in a form acceptable to the City within 90 days of making the connection from District's Wastewater Collection System to Utilities' Wastewater System.

- C. **Requirement to Post Bond.** District shall cause a bond to be posted with El Paso County, for the construction of a force sewer main to connect the District's Wastewater Collection System to an alternate wastewater provider in the event this Agreement is not extended or renewed at the end of its term. In the event this Agreement is not extended or renewed Utilities and District shall develop a plan for disconnection of the District's Wastewater Collection System and connect to the alternate wastewater provider. Such bond shall remain in place until such time as the force sewer main is constructed or the annexation is complete.

Article IV

Industrial Pretreatment Program

- A. **Delegation of Industrial Pretreatment Program Responsibilities.** District hereby represents and acknowledges that Utilities will administer District's 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 Colorado Code of Regulations, and implementing regulations, except for those responsibilities directly related to the obligations reserved to District. 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 and Fats, Oil and Grease Policies & Procedures Manual, Liquid Waste Hauler Program Policies and Procedures Manual*, and other related sector control program requirements. District agrees to be responsible for any violations of applicable law for failure of Utilities' Industrial Pretreatment Program meeting applicable law.
- B. **Utilities' Right of Prohibition of Connection.** Utilities shall have the right to prohibit any connection to, or discharge into, District's Wastewater Collection System of an Industrial User in accordance with City Code.
- C. **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 City Code.
- D. **Notification of Enforcement Actions.** Utilities shall notify District when assessing penalties, terminating wastewater service, or seeking criminal sanctions against any customer within District's service area. 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.

E. Charges and Fees Related to Industrial Pretreatment Program.

1. **To District.** Utilities may bill District under this Agreement any additional costs associated with the Industrial Pretreatment Program responsibilities delegated to Utilities herein.
2. **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.
3. **Enforcement.** All penalty or other enforcement receipts arising from enforcement actions taken by Utilities against District or District's customers shall be collected and retained by Utilities.

F. District Industrial Pretreatment Responsibilities and Notification Requirements.

1. 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 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.
2. District shall submit to Utilities' Industrial Pretreatment Program quarterly 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. Such listing shall include the name and address of the customer and the name of the contracting plumber performing the work.
3. 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.
4. In addition to any reporting requirements District may have to the Colorado Department of Public Health and Environment – Water Quality Control Division ("CDPHE"), District shall immediately copy Utilities on any verbal or written notice to CDPHE of any illicit discharge, spill or overflow from District's Wastewater Collection System that are required to be reported to CDPHE.

5. District hereby agrees to comply, and require its 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, 12.5.801-12.5.811, as may be amended from time to time, and shall prohibit the discharge of waste silver-rich photochemical solutions with total silver concentrations greater than 400 mg/l. District has enacted and shall keep in full force and effect for its customers by ordinances or resolutions limitations that mirror these City Code sections as may be amended from time to time. District shall submit a copy of the most recent discharge ordinance and/or resolution to Utilities by **February 15** of each year, and amendments to said ordinance and/or resolution within 30 days of adoption.

G. Industrial Pretreatment Notices. All notices, reports, and submittals required by this **Article IV: Industrial Pretreatment Program** section shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid, return receipt requested, as follows:

Colorado Springs Utilities
Attn: Industrial Pretreatment Program
701 E. Las Vegas St.
Colorado Springs, CO 80903

Article V **Remedies**

- A. Liquidated Damages.** 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.
- B. Consequential Damages.** Any discharge of industrial wastewater by District or a District's customer from the District to Utilities' Wastewater System shall 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 caused or contributed to the violation.
- C. 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.

- D. **Termination.** District acknowledges and consents to Utilities' right to terminate this Agreement: (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 thirty (30) days of receiving written notice of such breach from Utilities; or (2) as otherwise authorized by the City Code or City Council. Utilities will make reasonable efforts to notify District of circumstances that could result in such termination. 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 thirty (30) days of receiving written notice of such breach from District.

Either Party shall have the right to terminate this Agreement upon giving ninety (90) days written notice to the other Party, in which case District's connection to Utilities' Wastewater System shall be removed at District's sole expense in a manner approved in advance by Utilities and wastewater treatment services discontinued. 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.

- E. **Enforcement of Rights.** Nothing herein shall prevent either Party from enforcing its rights under this Agreement by an appropriate legal or equitable action. District hereby waives any right to claim that the remedies provided hereunder are not available to Utilities in the event of a breach by District.
- F. **Remedies Cumulative.** Remedies herein are cumulative and may be used individually, sequentially, concurrently, or in any order.

Article VI **Miscellaneous**

- A. **Return Flows.** District understands that Utilities will account for the amount of effluent resulting from District's wastewater flows into Utilities' Wastewater System, but that Utilities will not be responsible for any tracking, accounting, or use of resulting return flows after discharge from Utilities' Wastewater System.
- B. **Representatives and Notice.** All notices, reports and submittals required by this Agreement, other than those required in the **Article IV: Industrial Pretreatment Program** section shall be in writing and shall be personally delivered, sent by overnight delivery service, or mailed by certified mail, postage prepaid, return receipt requested, as follows:

1. **If to Utilities:**

- i. Business Account Management: Carol Thomas
COLORADO SPRINGS UTILITIES

Business Account Management
111 S. Cascade Avenue,
PO Box 1103 MC1025
Customer Care Center, 2nd Floor
Colorado Springs, CO 80947-1025
Phone: (719) 668-3854

- ii. City Attorney's Office – Utilities Division
City Attorney's Office
ATTN: City Attorney's Office – Utilities Division
30 South Nevada Ave., Suite 501
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

2. If to District:

- i. District Manager
- ii. District Attorney

- C. **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, 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.
- D. **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.
- E. **Limitations upon Consent and No Waiver.** 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 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 System in a volume or with characteristics exceeding or violating any such limit or restriction in any other instance or under any other circumstances.

- F. **Audits.** Utilities shall have the right to audit at any time all of District's records relating to any new customers to District, or relating to compliance with this Agreement. District shall have the right to audit all Utilities' records relating to compliance with this Agreement.
- G. **Liability.**
1. **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.*
 2. **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 will render Utilities' facilities unable 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.
- H. **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.
- I. **Severability.** If any provision of this Agreement shall be found to be illegal or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect, and such term or provision shall be deemed stricken for as long as it remains illegal or unenforceable.
- J. **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.
- K. **Appropriation of Funds.** In accord with the Colorado Springs City Charter, performance of Utilities' obligations under this Agreement is expressly subject to

appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Utilities' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and Utilities will thereafter have no liability for compensation or damages to the District for future performance and obligations thereafter in excess of Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Utilities will notify the District as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

- L. **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.

- M. **Governing Law.** 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 of the City of Colorado Springs, and the Colorado Springs Utilities' Rules and Regulations, and Wastewater Tariffs. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of Utilities as provided in the City Code § 12.1.108. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

- N. **Entire Agreement.** 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 representatives of each Party hereto certify via execution below that they are duly authorized to commit their organization to this Agreement in its entirety:

COLORADO SPRINGS UTILITIES

By: _____

Name: _____

Title: _____

Date: _____

Approved as to form: _____

DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____

Exhibit A – Service Area

Exhibit B – Platted Lots

Exhibit C – Points of Connection

Appendix A – Rates, Charges, Surcharges and Fees

- A. **Wastewater Development Charge.** The District shall pay a Wastewater Development Charge of \$39,060.00 upon execution of this Agreement.
- B. **Treatment Charges and Extra Strength Surcharges.** District Agrees to pay Utilities for wastewater service pursuant to this Agreement at the prevailing Contract Service – Outside City Limits Tariff Rate. As of the date of this Agreement, current Charges and Surcharges are as follows:
1. **Treatment Charge** of \$0.0255 per cubic foot (cf) of wastewater collected.
 2. **Extra Strength Surcharges** will be charged to District if discharges of BOD and/or TSS exceed the normal domestic strength. At the time the agreement was signed the prevailing rate for BOD is \$0.0031 per excess BOD billing unit and for TSS is \$0.0017 per excess TSS billing unit.
- C. **Water Quality Impact Fee.** The annual Water Quality Impact Fee will be calculated and billed annually. The annual charge will be based on the District's pro rata share of Utilities' and District's combined yearly wastewater treatment flows, times the cost of Utilities' water quality monitoring and studies and Fountain Creek watershed improvements.
- D. **Wastewater Advanced Recovery Agreement Charges.** The Wastewater Recovery Agreement Charges and Advanced Recovery Agreement Charges based on the number of Single Family Equivalent Units for a three-inch meter total \$9,896.21.