

**SPECIAL CONTRACT FOR AUGMENTATION SERVICE WATER BETWEEN
COLORADO SPRINGS UTILITIES AND CHEYENNE MOUNTAIN SPACE FORCE
STATION**

This Special Contract for Augmentation Service Water (“Agreement”) is made and entered into by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, with its principal place of business at 121 S. Tejon Street, Colorado Springs, Colorado 80903 (“UTILITIES”), and Cheyenne Mountain Space Force Station with its principal place of business at 1 Norad Rd. Cheyenne Mountain SFS, Colorado 80914, (“CMSFS”), (collectively, “the Parties”).

RECITALS

- A. CMSFS has an agreement with Arkansas Groundwater & Reservoir Association (“AGRA”) for out-of-priority depletions to be administered as part of AGRA’s Rule 14 plan.
- B. CMSFS requires releases of up to 5.0 acre-feet per year of Reusable Water (“Reusable Water”) to Fountain Creek to offset out-of-priority depletions due to the operation of CMSFS’s well located within Cheyenne Mountain, located near Colorado Springs, Colorado, more specifically located on the Section Line between Section 23 and Section 24, Township 16 South, Range 66 West.
- C. Utilities has sufficient Reusable Water to offset out-of-priority depletions caused by the operation of CMSFS’s well, and this agreement will not interfere with the City’s ability to provide service to in-City customers in accordance with the standards adopted by Utilities and the City’s existing contractual obligations.
- D. CMSFS desires to purchase Reusable Water from UTILITIES to be used to offset depletions caused by CMSFS’s well pumping.
- E. CMSFS desires to make available UTILITIES’ Reusable Water from its available sources to the Division 2 Engineers Office for depletions caused by CMSFS’s well pumping.
- F. UTILITIES agrees to release fully Reusable Water from UTILITIES’ Wastewater Treatment Plant on Fountain Creek or utilize UTILITIES’ available non-sewered return flows on Fountain Creek.
- G. The Parties previously entered into an AGREEMENT FOR THE PURCHASE OF WATER BETWEEN COLORADO SPRINGS UTILITIES AND CHEYENNE MOUNTAIN AIR FORCE STATION on March 1, 2009 (the “2009 Agreement”).
- H. The Parties wish to amend, restate, and replace the 2009 Agreement with this Agreement.

- I. Pursuant to Section 6-50 (Water Rights) of Article VI (Utilities) of the Charter of the City of Colorado Springs, as amended, the City of Colorado Springs has the authority to buy, exchange, augment, lease, own, and control water and water rights.
- J. Utilities has entered into this Special Contract pursuant to section 12.4.304 (Service; Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended.

AGREEMENT

NOW, THEREFORE, in consideration of mutual benefits to the Parties and the payment to UTILITIES as hereinafter provided, the receipt and sufficiency of which is acknowledged, **IT IS AGREED:**

1. **Incorporation of Recitals.** The above recitals are hereby incorporated into the terms and conditions of this Agreement as if fully set forth herein.
2. **Terms.** The term of this Agreement shall be twenty-five (25) years commencing once the agreement is fully executed, and expiring on February 28, 2051. The decision to extend this agreement or enter into a subsequent agreement is at the sole discretion of UTILITIES.
3. **Water Delivery.** During the term of this Agreement, UTILITIES agrees to make available to SMSFS up to 5.0 acre-feet annually of Reusable Water in accordance with the terms of this Agreement. Unless CMSFS informs UTILITIES in writing sixty (60) days prior to March 1 of each year, UTILITIES will release a total of 2.46 acre-feet of Reusable Water to Fountain Creek. This Reusable Water is to be delivered to the Fountain Creek from reusable return flows on the Fountain Creek in accordance with Schedule A.
4. **Price for Reusable Water.** CMSFS shall pay Utilities for Reusable Water deliver on behalf of CMSFS under this Agreement based on Utilities' Augmentation Service Tariff in effect at the time of delivery multiplied by 1.5. For each year during the term of this Agreement, CMSFS shall have the option of 1) Springs Utilities shall invoice CMSFS in twelve equal installments beginning in March and continuing through February, or 2) Springs Utilities shall invoice CMSFS the total annual amount each March. For option 1) Payment is due under the standard terms and conditions of the utility bill. For option 2) Payment shall be due within thirty (30) days of receipt of the invoice.

An annual administrative fee of \$250.00 shall be due each March that this Agreement is in effect. The administrative fee shall be increased annually by 2%. UTILITIES shall invoice CMSFS around March 1 of each year and payment shall be due within thirty (30) days of receipt of the invoice. See Schedule B.

5. **Measurement of Reusable Water.** The Reusable Water provided hereunder shall be measured and deemed delivered at UTILITIES' Las Vegas Street Resource Recovery Facility, or by daily releases of UTILITIES' Non-Sewered return flows. CMSFS shall be responsible for all transit losses and evaporation losses subsequent the delivery of the Reusable Water.

6. **Approvals.** CMSFS is responsible for obtaining approval by the State Engineer or Division 2 Engineer, as well as all other necessary contracts, permits, administrative approvals, and/or water rights decrees required for delivery of this Reusable Water from UTILITIES.
7. **Arrangements for Delivery.** Delivery of this Reusable Water must be coordinated with UTILITIES. A five-day notice must be provided in writing prior to the beginning of delivery of the Reusable Water. The current contact for coordination and notification is water_accounting@csu.org
8. **Interruptible Supply.** CMSFS acknowledges that UTILITIES' delivery of Reusable Water under this Agreement is on an interruptible basis. CMSFS acknowledges and consents to Utilities' right to discontinue deliveries of water under this Agreement due to (1) a significant interruption of water supplies, a substantial disruption (including, but not limited to, legal challenges impacting the water system, and maintenance and repair to the infrastructure) to Utilities' water system, or (2) as otherwise authorized by the City Code of Colorado Springs. Utilities will use reasonable efforts to provide CMSFS with 30 days prior notice of a discontinuance of water supplies provided for in the foregoing sentence. CMSFS acknowledges that Utilities cannot always anticipate when interruptions in water supplies or disruptions to its water system will occur and that Utilities has no obligation to provide CMSFS with prior notice of a discontinuance of deliveries of Reusable Water due to an interruption in water supplies or a disruption in its water system.
9. **Termination.** CMSFS acknowledges and consents to Utilities' right to terminate this Agreement: (1) due to CMSFS's breach of a material term or condition of this Agreement, if CMSFS 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 of Colorado Springs or the Colorado Springs City Council. Utilities will make reasonable efforts to notify CMSFS of circumstances that could result in such termination. CMSFS 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 CMSFS.
10. **Revocation.** CMSFS acknowledges that this Agreement is in the nature of a license as defined in the Colorado Springs, Colorado, City Charter for the use of City of Colorado Springs property. As such, this Agreement is expressly subject to Article 10 of the Charter of the City of Colorado Springs and is expressly revocable by the City of Colorado Springs City Council at any time.
11. **Rules and Regulations.** The water service provided under this Agreement shall be governed by the Colorado Springs City Charter, the City Code, the Tariffs, WLESS, and all other applicable City of Colorado Springs' or Utilities' ordinances, resolution, regulations, policies and rules concerning use of Utilities' Water System as may be amended or replaced, except as otherwise provided in this Agreement.
12. **Water Rights Unaffected.** No water rights are being transferred to or from UTILITIES or CMSFS under this agreement.

13. **Disclaimer of Warranties.** UTILITIES makes no warranty of any kind as to the timing, availability, quality, or suitability of the delivered Reusable Water to CMSFS for its intended use as detailed above. CMSFS assumes all such risks.
14. **Legal Notice.** Each notice required herein, shall be given in writing, signed by an authorized representative of the Party giving notice, and sent by certified mail, return receipt requested. Notice sent by certified mail will be deemed to have been given upon receipt, as confirmed by the return receipt. Nothing contained herein is to be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process. All notices required to be given to the parties hereunder must be delivered to the following addresses (or such other addresses as either Party may direct by written notice to the other Party):

If to CMSFS:

Cheyenne Mountain Space Force Station
ATTN: Deputy Base Civil Engineer
580 Goodfellow St.
Peterson SFB, CO 80914

If to Utilities:

United States Postal Service Address:

Colorado Springs Utilities
ATTN: Manager, Water Resources Management
P.O. Box 1107, MC 1813
Colorado Springs, CO 80947

Personal Service Address:

Colorado Springs Utilities
ATTN: Manager, Water Resources Management
1525 S. Hancock Expressway
Colorado Springs, CO 80903

and:

City Attorney's Office – Utilities Division

United States Postal Service Address:

City of Colorado Springs
ATTN: City Attorney's Office – Utilities Division
P.O. Box 1575
Colorado Springs, CO 80901-1575

Personal Service Address:

City of Colorado Springs
ATTN: City Attorney's Office – Utilities Division

30 S. Nevada Ave., 5th Floor
Colorado Springs, CO 80903

15. **Assignment/Third Party Beneficiary.** There shall be no assignment or delegation 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 or delegation shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to CMSFS, Utilities may assign or delegate its rights and obligations under this Agreement without consent from CMSFS to the City of Colorado Springs, Colorado. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Utilities and CMSFS.
16. **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 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.
17. **Force Majeure.** No Part to this Agreement will be liable for delays or failure to perform due solely to conditions or events of force majeure, as the term is defined in this section, provided that: (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the force majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used herein, "force majeure" means any delay or failure of performance under this Agreement caused by events beyond a Party's reasonable control and without the fault of the Party including, without limitation: (a) acts of God; (b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; (c) sabotage; (d) vandalism beyond that which can be reasonably prevented by the Party; (e) terrorism; (f) war; (g) riots; (h) fire; (i) explosion; (j) insurrection; (k) strike, slow down or labor disruptions; (l) denial or revocation of any governmental or regulatory permit, license, or approval; and (m) governmental restriction, denial, or moratoria. To the extent that a Party's performance is postponed or excused by an event of force majeure, the other Party's corresponding obligation to perform is likewise postponed or excused.
18. **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 the 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 CMSFS in excess of Utilities' authorized appropriation for this Agreement or the applicable spending limit, whichever is less.

Utilities will notify CMSFS as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

19. **Indemnification.** CMSFS hereby agrees to release, discharge, indemnify and hold harmless the City of Colorado Springs, Utilities, the Colorado Springs City Council, the Utilities Board, and the officers, directors, employees and agents of each from and against any and all liability for any damages, injuries to the person or property, costs (including, but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other disputed resolution costs), causes of action, demands, or actions of whatsoever kind of nature, arising out of, or caused by the negligent acts or omissions, or intentional misconduct of CMSFS under this Agreement. CMSFS shall give Utilities timely and reasonable notice of any such claims or actions. Notwithstanding the foregoing, Utilities expressly reserves any and all of the protections, defenses, and limitations that it may be afforded under the Colorado Governmental Immunity Act. Additionally, CMSFS understands and agrees that the City of Colorado Springs, Utilities the Colorado Springs City Council, the Utilities Board and the officers, directors, employees and agents of each shall not be liable, except where expressly provided by applicable laws, for incidental or consequential damages of any kind.
20. **Entire Agreement.** This Agreement contains the entire understanding between the Parties; no modification, amendment, notation, or other alteration to this Agreement shall be valid or of any force or effect unless mutually agreed to by the Parties in writing as an addendum to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement that are not specifically set forth herein. All electronic communications, including email and voice, from Utilities in connection with this Agreement are for informational purposes only. No such communication is intended by Utilities to constitute any agreement by Utilities to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.
21. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Colorado, except for its conflict of law provisions, and the Colorado Springs City Charter and City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado, specifically in the District Court for El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado, and for water matters as defined by Colo. Rev. Stat. § 37-92-201 et seq., the District Court Water Division 2.
22. **Severability.** If any provisions of this Agreement shall be held unconstitutional, illegal, or void, such finding shall not affect any other provisions of this Agreement.
23. **Counterparts and Electronic Signatures.** This Agreement may be executed in multiple counterparts by the parties. All counter parts so executed shall constitute one agreement that is binding on all Parties. Each counterpart shall be deemed an original of this Agreement. Documents executed, scanned and signed electronically shall be deemed original signatures for the purposes of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates following their signatures below.

COLORADO SPRINGS UTILITIES

CHEYENNE MOUNTAIN SPACE
FORCE STATION

BY: _____
Travas Deal
Chief Executive Officer

BY: _____

Date: _____

Date: _____

APPROVED AS TO FORM:

City of Colorado Springs City Attorney's Office