

**AGREEMENT BETWEEN COLORADO SPRINGS UTILITIES AND
STRATMOOR HILLS WATER DISTRICT FOR
STANDBY REGIONAL WATER SERVICE**

THIS AGREEMENT (“Agreement”), beginning the ____ day of February, 2024, 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, hereinafter called “UTILITIES,” and the Stratmoor Hills Water District, 1811 B Street, Colorado Springs, Colorado, acting through its water activity enterprise hereinafter called the “DISTRICT.” Both the UTILITIES and DISTRICT hereinafter are each individually referred to as “Party” and collectively referred to as the “Parties.”

I. RECITALS

- A. DISTRICT, is a Colorado statutory water district with service boundaries located just south of Colorado Springs, north of Fort Carson, and west of Security, was formed October 16, 1956, and currently serves a customer base of approximately 2,000 taps in the Colorado Springs metropolitan area;
- B. DISTRICT is a participant in the Fountain Valley Authority (“FVA”) and has been included within the Southeastern Colorado Water Conservancy District (“SECWCD”);
- C. As an FVA participant, DISTRICT is entitled to deliveries of Frying-Pan Arkansas Project water allocated to the Fountain Valley Conduit by SECWCD (“FVA Water”) utilizing FVA’s water conveyance and treatment system (“FVA Distribution System”);
- D. The FVA Water allocated to DISTRICT is supplemented with other water supplies that are delivered to DISTRICT through infrastructure other than the FVA Distribution System (“Non-FVA Distribution System”);
- E. Under a 1983 Agreement, UTILITIES is obligated to provide water service to DISTRICT in the event FVA’s Distribution System is not in operation;
- F. To facilitate the water service under the 1983 Agreement, a connection between UTILITIES’ Water System and DISTRICT’s Water System was constructed (“FVA Standby Connection”).
- G. DISTRICT is rehabilitating the FVA Standby Connection to be in compliance with current UTILITIES’ Water Line Extension and Service Standards;

- H. In the event FVA is operating, DISTRICT desires to have the ability to receive standby water service for the delivery of DISTRICT Water, or from time to time UTILITIES Full Service Water, conveyed through UTILITIES' water system to the FVA Standby Connection to meet the water demands of the DISTRICT if there are disruptions to the DISTRICT's Non-FVA Water Distribution System operations;
- I. UTILITIES has sufficient system capacity, and may, from time to time, have available water supply to provide Standby Regional Water Service to the DISTRICT at the FVA Standby Connection;
- J. 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; and
- K. UTILITIES has entered into this Agreement pursuant to Section 12.4.304 (Service: Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended (Ord. 10-76).

II. DEFINITIONS

- A. For the purposes of this Agreement, the following terms shall have the following meanings, unless the context clearly requires otherwise. 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"):
 - 1. **Consecutive System:** The Code of Colorado Regulations defines a Consecutive System as a Public Water System that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more Consecutive Systems pursuant to a separate agreement between all involved parties.
 - 2. **DISTRICT's Service Area:** The areas as identified as DISTRICT's Service Area on Exhibit A.
 - 3. **DISTRICT's Water Distribution System:** Any devices, facilities, structures, equipment or works owned and/or operated by DISTRICT for the purpose of

- providing water service to DISTRICT's customers located within DISTRICT's Service Area.
4. **DISTRICT Water:** Fully consumable water owned or leased by DISTRICT that can legally be used for municipal purposes within DISTRICTS' water service area.
 5. **Full Service:** Water service as defined in UTILITIES' Water Rate Schedule – Contract Service -Regional (WCR) Full Service Option.
 6. **Full Service Water:** Fully consumable water owned or controlled by the City of Colorado Springs that can legally be used for municipal purposes within DISTRICT's Service Area.
 7. **Monument/Fountain Creek Transit Loss Model (“Model”):** The daily accounting model currently used by the Division of Water Resources to determine transit loss and water allocations along Monument and Fountain Creeks. Model shall also apply to any successor model(s) used by the Division of Water Resources for the same purposes.
 8. **Point of Connection:** The master meter and associated infrastructure that constitute the FVA Standby Connection which is located at 309 Loomis Avenue, Colorado Springs, Colorado.
 9. **Public Water System:** The Code of Colorado Regulations defines a Public Water System as a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year.
 10. **Tariffs:** UTILITIES' Water Rate Schedules together with Utilities Rules and Regulations.
 11. **Standby Regional Water Service:** Water service as defined in UTILITIES' Water Rate Schedule – Contract Service -Regional (WCR) Standby Service Option whereby UTILITIES' infrastructure is used on a temporary basis when DISTRICT normal operations are disrupted. Standby Service may not be used as a primary means of meeting DISTRICT's water supply demand. Service may be interrupted from time to time.

12. **UTILITIES' Water System:** UTILITIES' Water System includes any devices, facilities, structures, equipment or works owned by UTILITIES for the purpose of providing regional water service to DISTRICT's Water Distribution System.
13. **UTILITIES' Wastewater Treatment System:** UTILITIES' Wastewater Treatment System includes any devices, facilities, structures, equipment or works owned by UTILITIES for the purpose of collection and treating wastewater.
14. **WLESS:** UTILITIES' Water Line Extension and Service Standards, as may be amended or replaced.
15. **Wastewater Collection System:** Any devices, facilities, structures, equipment or works owned by the Stratmoor Hills Sanitation District for the purpose of collection, storage, and transmission of wastewater from DISTRICT's customers to UTILITIES' Wastewater Treatment System.
16. **Water Regional System Availability Fee (WRSAP):** A fee assessed for each new connection to UTILITIES' supply system by contract outside the corporate limits of the City in areas where UTILITIES' water system is available for use by UTILITIES to serve institutions, plants, organized water districts, municipal corporations, or other similar organizations and only with prior approval by the Colorado Springs City Council.
 - a. The WRSAP reflects the amount of capacity needed within UTILITIES' water system to meet the obligations of regional water contracts and is generally based on the meter size needed to deliver contracted volumes of water.
 - b. Standby Regional Water Service WRSAP is calculated based on the maximum daily delivery rate in million gallons per day as well as the maximum delivery volume in acre-feet per year.
 - c. Any entity that paid a WRSAP or an analogous charge through a contract in place prior to the implementation will be credited for the amount paid for the analogous charge. If the entity met its full contractual WRSAP or equivalent, it is deemed to have met its WRSAP and will not be charged an additional WRSAP.

III. AGREEMENT FOR SERVICE

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

A. Term: This Agreement shall become effective upon the date of the last signature below and remains in effect until 5 pm MST on December 31, 2049.

1. Renewal:

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

B. Standby Regional Water Service:

1. UTILITIES agrees to provide DISTRICT Standby Regional Water Service during the term of this Agreement. UTILITIES shall not be obligated to deliver more than 175 acre-feet annually of DISTRICT Water to DISTRICT, unless a greater amount is approved in writing by UTILITIES. DISTRICT shall only be entitled to receive Standby Regional Water Service hereunder if DISTRICT's normal Non-FVA Water Distribution System operations are significantly disrupted and DISTRICT has a need for water supplies in addition to FVA water to meet its customer's demands. Furthermore, UTILITIES has no obligation to provide Standby Regional Water Service hereunder until the rehabilitation of the FVA Standby Connection has been

completed by DISTRICT and approved by UTILITIES in accordance with the WLESS.

2. UTILITIES shall deliver water provided under this Agreement to DISTRICT at the Point of Connection. It is not the Parties intent for the DISTRICT to take delivery of Full Service Water under this Agreement except in the event of an emergency that results in DISTRICT's normal Non-FVA Water Distribution System operations being significantly disrupted and DISTRICT has a need for water supplies in addition to FVA Water to meet its customer's demands. If such an emergency occurs, and UTILITIES has determined Full Service Water is available, DISTRICT may request and receive deliveries of Full Service Water on a temporary basis. Any such emergency shall be expediently resolved, and DISTRICT shall, at all times, seek to avoid taking delivery of any Full Service Water.

C. Point of Connection:

1. DISTRICT shall own and shall be solely responsible, financially and otherwise, for the operation, maintenance and repair, improvement, including any improvement, repair or maintenance that is requested by UTILITIES, of the infrastructure constituting the Point of Connection located between and including the secondary valve and the DISTRICT's Water Distribution System with components generally depicted in Exhibit B and all other related facilities necessary for the DISTRICT's use of water provided in connection with this Agreement.
2. UTILITIES shall be responsible, financially or otherwise, for the operation, maintenance and repair of all infrastructure constituting the Point of Connection located between the water main/tap and the secondary valve as depicted in Exhibit B. The DISTRICT agrees to reimburse UTILITIES for its time-and-material costs associated with the maintenance and repair of such infrastructure. The DISTRICT hereby grants UTILITIES the perpetual right to ingress and egress over and through the DISTRICT's Property, including property owned by the DISTRICT or in rights-of-way or easements dedicated to the DISTRICT, to the Point of Connection so that UTILITIES may operate, maintain, repair, and inspect the Point of Connection infrastructure it is responsible for as well as perform its other duties under this Agreement and any future agreement between the Parties related to the provision of

water service. All repair or maintenance of the Point of Connection shall be completed in a timely manner in accord with standard industry practices. The Parties shall keep the Point of Connection and every part thereof for which they are responsible pursuant to this section maintained so that they continue to properly serve the purposes for which they were originally intended.

3. UTILITIES and DISTRICT agree that DISTRICT is solely responsible for the costs of the rehabilitation of the FVA Standby Connection discussed in the recitals.

D. Volumetric Delivery Terms: DISTRICT shall limit its water demand on UTILITIES' system to an instantaneous flow rate of not more than 350 gallons per minute, and a total maximum daily delivery of 0.5 million gallons per day (daily flow limit). UTILITIES agrees to maintain a minimum Hydraulic Grade Line of 6,110 feet near the Point of Connection. UTILITIES may, as it deems necessary and without providing DISTRICT notice increase, decrease, or waive these daily and instantaneous flow limits based on system performance to protect UTILITIES' Water System and deliveries to UTILITIES' customers or other good cause. UTILITIES will make best efforts to provide DISTRICT timely notice of any changes of this type.

E. DISTRICT Water Supply Obligation: DISTRICT agrees that DISTRICT bears the sole responsibility for providing a permanent supply of water to meet its customers' demands. DISTRICT shall maintain and operate its Water Distribution System on a continuous, year-round basis to meet such obligations.

F. Use of Water: DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside DISTRICT's Service Area or to any entity or person other than the current residential, commercial, industrial and contract customers of the DISTRICT. DISTRICT further irrevocably commits not to serve water delivered under this Agreement to property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River Basin. In addition, so long as marijuana is an illegal substance under Federal Law, DISTRICT shall not use, or allow its customers to use, the water provided under this agreement, directly or indirectly, to support the cultivation or distribution of marijuana.

G. Water Rights Unaffected: Neither Party is transferring the ownership of any of its water rights under this Agreement.

H. Acceptance of DISTRICT Water into UTILITIES' Water System: The acceptance of DISTRICT Water into UTILITIES' Water System will be accomplished by book over of DISTRICT Water from DISTRICT's account in Pueblo Reservoir, or some other mutually agreed upon location, to the UTILITIES' Water System at a location designated by UTILITIES. Should the mutually agreed upon location for book over be unavailable, DISTRICT is responsible for securing the ability to book over water at another mutually agreed upon location. DISTRICT Water shall be delivered to UTILITIES at locations and during times as requested at UTILITIES' sole discretion. Further, it is agreed that UTILITIES shall not be obligated to accept into its Water System any DISTRICT Water that would interfere with UTILITIES' rights, operations, or yields. The use and administration of any DISTRICT Water not so accepted into UTILITIES' Water System will be the sole responsibility of DISTRICT. DISTRICT shall be responsible for all accounting and administration requirements in connection with its diversion and use of DISTRICT Water under this Agreement. Upon acceptance into UTILITIES' Water System, the accepted DISTRICT Water takes on the character of fully consumable water that can be used in accordance with UTILITIES' water rights decrees and the water delivered to DISTRICT and any return flows therefrom up to the amount of DISTRICT Water accepted into UTILITIES' Water System take on the character of DISTRICT Water delivered to DISTRICT via UTILITIES' Water System. If DISTRICT Water cannot be booked over, is not accepted into UTILITIES' Water System or more water than accepted was delivered by UTILITIES, all water delivered to DISTRICT in excess of the amount of DISTRICT Water accepted into UTILITIES' Water System shall be considered Full Service Water. This Agreement is subject to the administration of water rights by the Division of Water Resources.

I. Return Flows:

1. DISTRICT Water

UTILITIES shall maintain dominion and control of all DISTRICT Water being delivered through UTILITIES' Water System to DISTRICT until such water is delivered at the Point of Connection. Upon delivery, DISTRICT shall have and retain

the legal ownership of and right to use, reuse, successively use, and dispose of all return flows resulting from DISTRICT's use of DISTRICT Water delivered by UTILITIES under this Agreement.

2. Full Service Water

- a.** All Full Service Water delivered by UTILITIES under this Agreement may only be used for the purposes for which UTILITIES' water rights have been decreed. Neither DISTRICT nor its customers shall have the right to make successive use of Full Service Water, and upon completion of the initial use, all dominion and control over the Full Service Water shall revert to UTILITIES.
- b.** UTILITIES retains legal ownership of and the right to use, reuse, successively use, and dispose of all return flows resulting from DISTRICT's one-time use of Full Service Water. DISTRICT shall maintain dominion and control over all Full Service Water during the distribution of the water through DISTRICT's Water Distribution System and once returned to the Wastewater Collection System. DISTRICT shall be solely responsible for the collection and delivery of all wastewater generated by the use of Full Service Water furnished under this Agreement, and shall retain dominion and control over such water until it is discharged from the Wastewater Collection System to UTILITIES' Wastewater Treatment System.
- c.** DISTRICT shall cooperate with UTILITIES to quantify daily discharges of return flows attributed to Full Service Water from the Wastewater Collection System to UTILITIES' Wastewater Treatment System to facilitate UTILITIES' dominion and control of such return flows. UTILITIES shall have the right to review the water accounting documents of DISTRICT to verify the quantities of such return flows resulting from DISTRICT's use of the Full Service Water delivered to DISTRICT.

J. Consequence of Loss of Dominion over Full Service Water Return Flows: If UTILITIES should lose legal dominion and control over the return flows that result from DISTRICT's use of any Full Service Water due to any act or failure to act by DISTRICT, DISTRICT shall pay the Augmentation (W1G) rate under the Tariffs as modified or replaced for the volume of return flows lost to UTILITIES as determined in UTILITIES'

sole discretion. UTILITIES will bill DISTRICT with payment due within thirty (30) days of the date of billing.

K. Service Rates, Fees, and Billing:

1. **WRSFAF:** The WRSFAF is typically calculated based on both a daily maximum flow and a yearly volumetric limit. The Point of Connection was constructed to meet UTILITIES' FVA delivery obligation to DISTRICT of 0.54 million gallons per day and 601 acre-feet per year under the 1983 Agreement. Under this Standby Regional Service Agreement, DISTRICT is only entitled to deliveries of up to 175 acre-feet per year through the Point of Connection while maintaining a maximum daily delivery of 0.54 million gallons per day. Since the Standby Regional Service contemplated by the agreement does not change the maximum MGD for delivery, it is appropriate for DISTRICT to pay a WRSFAF based on the yearly volumetric limit and not the daily maximum flows. The current WRSFAF annual charge per acre-foot is \$2,263.00 for a total WRSFAF per acre foot charge of \$396,025.00. DISTRICT may elect to pay the WRSFAF in one lump sum of \$396,025.00 upon execution of this agreement, in yearly lump sums during the term of this agreement of \$22,400.00 with the first payment due upon execution of this Agreement, or monthly lump sums during the term of this agreement of \$1,866.66 until WRSFAF is paid in full.
2. **Commodity Charge:** DISTRICT agrees to pay the then prevailing Contract Service – Regional (WCR) Convey, Treat, and Deliver Option rate as modified or replaced for every cubic foot of DISTRICT Water delivered to DISTRICT. If Full Service Water is delivered to DISTRICT, DISTRICT agrees to pay the then prevailing Contract Service – Regional (WCR) Full Service Option rate as modified or replaced for every cubic foot of Full Service Water delivered to DISTRICT. UTILITIES will bill DISTRICT monthly in arrears with payment due within thirty (30) days of the date of billing.
3. **Water Quality Monitoring:** DISTRICT agrees to pay a *pro rata* share of water quality monitoring UTILITIES is obligated to perform to be in compliance with its Pueblo County 1041 permit for the Southern Delivery System. DISTRICT shall be billed annually with payment due within thirty (30) days of the date of billing. UTILITIES may choose to waive this charge if DISTRICT contributes *pro rata* to

UTILITIES' water quality monitoring efforts required by UTILITIES' Pueblo County 1041 permit for SDS through means other than payments to UTILITIES.

4. **Payments:** Payments under this Article III.K shall be due at Colorado Springs Utilities, Customer Services Department, 111 S. Cascade Ave., Colorado Springs, Colorado 80903. If a payment is not made within thirty (30) days of when it is due, a deposit may be assessed as outlined in the Tariffs as modified or replaced.

L. Metering: All water delivered under this Agreement shall be measured at the Point of Connection between UTILITIES' Water System and DISTRICT's Water Distribution System. If at any time either UTILITIES or DISTRICT questions the accuracy of the meter, either Party may cause such meter to be tested for accuracy and recalibrated, if necessary, at such Party's expense. In the event a meter shall be tested, the Party testing the meter shall provide the other Party with three (3) days' notice of such testing. If the Parties cannot agree that the meter is measuring accurately, they shall choose an independent third party qualified to test the accuracy of such meters, whose decision regarding accuracy shall be binding on both Parties.

M. Water Efficiency Plan: DISTRICT agrees to abide by and enforce its water efficiency plan submitted to the State in its current form or as it may be changed through the State's approval process.

N. Regional Cooperation:

1. DISTRICT acknowledges and agrees to support the Fountain Creek Watershed, Flood Control, and Greenway District including, but not limited to, contributing to the financing of such district including, but not limited to, contributing to the financing of such District, to the extent authorized under Colorado Revised Statutes §32-1-1001, *et seq.*
2. DISTRICT agrees to actively support and cooperate with the City of Colorado Springs, El Paso County, and other regional entities having jurisdiction over stormwater detention and retention on Fountain Creek and to take whatever actions that are within DISTRICT's legal authority to ensure that stormwater in the Fountain Creek Basin does not increase above existing conditions. It is understood that DISTRICT has no legal obligation or authority with respect to regulation or control of stormwater or funding of stormwater projects within or outside of its service area.

3. DISTRICT agrees to accept and comply with the City of Pueblo Flow Management Program and Pueblo Recreational In-Channel Diversion Decree, both impacting the Arkansas River between Pueblo Dam and its confluence with Fountain Creek, in any Water Court application or request for administrative approval for a change of water rights or exchange implicating that reach of the Arkansas River.
4. DISTRICT agrees to support, without any financial contribution, any studies of a flood control dam or dams on Fountain Creek, it being understood that DISTRICT has no legal obligation or authority to regulate or control stormwater or fund stormwater.

O. Changes in Terms or Type of Service: Should DISTRICT take delivery of Full Service Water more than three events in five years on a rolling average, request deliveries that exceed the limits outlined in the Agreement, or desire a different type of water service, UTILITIES and DISTRICT shall either amend this Agreement or renegotiate the Agreement in its entirety.

IV. WATER DELIVERIES

A. Requests for Delivery of Water: DISTRICT shall directly communicate with UTILITIES' System Control as specified in this section and follow up with a written request for delivery of water, specifying amounts, rates, and duration at least three (3) business days prior to the expected delivery date(s). UTILITIES will provide a written response at least one (1) day prior to the requested delivery date accepting, modifying, or denying the request. The detailed reason for any denial shall be provided. For the purposes of DISTRICT requesting service and UTILITIES responding to requests, the term "written" shall include communications by electronic mail to certain electronic mail addresses, which DISTRICT and UTILITIES shall provide to each other upon execution of this Agreement and keep current through the duration of the Agreement. DISTRICT shall limit its water demand on UTILITIES' system as specified in Article III.D. The initial contacts are set forth below.

1. UTILITIES System Control

- a. Operations Supervisor, Jeremy McBeain

jmcbain@csu.org
Office Phone (719) 668-4588
Cell Phone (719) 494-6973

- b. System Control Operator, to be acknowledge within 24-hours by Operations Supervisor
Office Phone (719) 668-4570

- c. Water_accounting@csu.org

2. **DISTRICT System Control**

- a. Nancy Lee Watkins, Field Supervisor

- nancy@stratmoorhillswater.org
Cell Phone: (719) 649-8953

- b. Kirk Medina, District Manager

- kirk@stratmoorhillswater.org
Cell Phone (719) 210-5295

B. Delivery Interruptions. UTILITIES may interrupt deliveries of water hereunder due to lack of water supplies, infrastructure failure, system capacity failure, or water quality concerns. UTILITIES shall take all reasonable steps to provide DISTRICT with advance notice providing the reasons for any and all delivery interruptions and further take all reasonable steps to restore deliveries of water to the DISTRICT through resolution of such issues.

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

1. **Disinfection pursuant to Exhibit C is required when:**

- a. The consecutive system is bringing the Point of Connection into service for the first time, or
- b. The consecutive system is bringing the Point of Connection back into service after repairs or similar event that has compromised the main or opened it to the environment, or
- c. UTILITIES may also require a disinfection in these cases if there is a possibility the water quality has been compromised in any way.

2. **Scheduling Requirements:** UTILITIES' Water Quality Assurance requires at least two business days' notice to disinfect for consecutive system use. Notify waterquality@csu.org to schedule for disinfection.

D. Drinking Water Quality Regulatory Compliance; Required Permits:

1. The water provided by UTILITIES to DISTRICT at the Point of Connection shall be potable water which complies with the Federal Safe Drinking Water Act and the applicable Colorado Primary Drinking Water Regulations (5 C.C.R. 1002-11). Pursuant to §1.8 of the Colorado Primary Drinking Water Regulations, UTILITIES' responsibility regarding the quality of water furnished shall extend only to the Point of Connection. DISTRICT agrees that its Water Distribution System constitutes a Consecutive System and, in accordance with §1.9 of the Colorado Primary Drinking Water Regulations, DISTRICT is responsible for all applicable monitoring and reporting requirements of the Colorado Primary Drinking Water Regulations of water within DISTRICT's Water Distribution System.
 2. DISTRICT will be responsible for obtaining, prior to operation, any applicable permits from any permitting authority or approvals from the Colorado Department of Public Health and Environment required for the construction and connection of DISTRICT's Water Distribution System to UTILITIES' Water System at and from the Point of Connection and to fulfill all purposes of this Agreement. A copy of such approval will be provided to UTILITIES within 30 days of receipt by DISTRICT to the UTILITIES' contacts set forth in Article V.A below.
- E. **Colorado Water Quality Control Act Compliance:** If at any time during the effective term of this Agreement DISTRICT fails to meet the requirements of the Colorado Water Quality Control Act applicable to DISTRICT, and applicable control regulations promulgated and permits issued thereunder, UTILITIES may in its sole discretion suspend deliveries and interrupt its performance of this Agreement, without commensurate extension of the term of this Agreement or liability to DISTRICT or any third party, including DISTRICT's customers, until DISTRICT has achieved compliance. With or without suspension or interruption by UTILITIES, DISTRICT, in the event of its failure to meet such requirements applicable to DISTRICT, shall implement cost-effective solutions to reduce water pollution with the objective of achieving and maintaining water quality in accordance with the applicable designated uses and water quality standards established by the Water Quality Control Commission and discharge permit limits imposed by the Water Quality Control Division on DISTRICT. In the event UTILITIES fails to meet the requirements of the Colorado Water Quality Control Act

and applicable regulations thereunder, UTILITIES shall notify DISTRICT in the same manner as its other customers, and DISTRICT shall have the same rights and remedies as provided to UTILITIES, including the option of requesting the suspension of the delivery of water under this Agreement until such time as UTILITIES has achieved compliance.

V. STANDARD TERMS AND CONDITIONS

A. **Legal Notice:** Notices under this Agreement, other than DISTRICT's requests for water and UTILITIES' responses to such requests, shall be given in writing, signed by an authorized representative of the Party giving notice. Telephonic or email notice is not acceptable. Notices shall be delivered by courier service delivery (such as Federal Express) that maintains delivery records requiring a signed receipt; certified mail, postage prepaid with return receipt requested; or personal delivery to the people specified below at the following addresses:

For UTILITIES:

1. Manager, Water Resources

Courier Service Address:

Colorado Springs Utilities
ATTN: Manager, Water Resources
1525 S. Hancock Expressway
Colorado Springs, CO 80906

United States Postal Service Address:

Colorado Springs Utilities
ATTN: Manager, Water Resources
P.O. Box 1103, MC 1825
Colorado Springs, CO 80947-1825

2. 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\

For DISTRICT:

1. District Manager

Stratmoor Hills Water District
ATTN: District Manager
1811 B St.
Colorado Springs, CO 80906

2. Attorney

Leventhal, Kuhn, Taylor, Swan, PC
Attn: Andrew Swan
24 S. Weber Street
Colorado Springs, CO 80903

Notices shall be effective (1) the next day following the date sent by carrier service delivery that maintains delivery records requiring a signed receipt; (2) upon receipt by the addressee of a personal delivery; or (3) seven (7) days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested.

B. Breach of Agreement and Termination:

1. **Breach of Agreement:** Upon any breach of this Agreement the non-breaching Party shall have the right to: (a) seek specific performance; (b) be reimbursed for costs; (c) be entitled to money damages for the period between the breach and the order for specific performance; or terminate this Agreement. Unless an emergency situation requires immediate action in order to protect the health, safety and welfare of its customers or UTILITIES' Water System, or of DISTRICT's customers or DISTRICT's Water Distribution System the non-breaching Party shall provide written notice to the breaching Party of a breach of this Agreement and the breaching Party shall have thirty (30) days to cure such breach or take reasonable steps to address such breach and provide the non-breaching Party with notice of same prior to exercising its rights hereunder.

a. **Consequential Damages.** Any action by DISTRICT that results in violations of any of UTILITIES' water service-related permits may subject DISTRICT to consequential damages for breach of contract including, but not limited to, any amounts the City or UTILITIES may be required to pay for violation of the conditions of any UTILITIES' water service- related permits to the extent that the DISTRICT's actions caused or contributed to the violation.

- b. **Disconnection Damages:** If DISTRICT disconnects from UTILITIES' Water System for any reason other than a material breach by UTILITIES, the Parties agree that UTILITIES will suffer minimum damages equal to the cost to replace any infrastructure that UTILITIES can no longer use to provide water service to customers other than DISTRICT because of DISTRICT's disconnection.
2. **UTILITIES Right to Suspend Service:** DISTRICT acknowledges and consents to UTILITIES' right to suspend the Standby Regional Water Service or terminate this Agreement without liability or obligation to DISTRICT or any other person or entity:
 - a. Due to a significant interruption of water supplies, a substantial disruption (including, but not limited to, legal challenges impacting UTILITIES' Water System, and maintenance and repair to the infrastructure) to UTILITIES' Water System; or
 - b. Due to DISTRICT's breach of a material term or condition of this Agreement, if DISTRICT has not taken substantial steps to cure the breach within a reasonably sufficient time frame that allows DISTRICT to cure the material breach after receiving written notice of such breach from UTILITIES; or
 - c. As otherwise authorized by the City Code or City Council.
3. **Notice of Breach:** Each Party shall promptly notify the other Party of circumstances that could result in a breach, and UTILITIES shall further promptly notify DISTRICT of changes in City Code, or City Council action that could result in termination of the Agreement.
5. **Effect of Termination:** Upon termination, UTILITIES shall have no further obligation to provide Standby Regional Water Service to DISTRICT and DISTRICT's Water Distribution System shall be disconnected from UTILITIES' Water System. Upon termination of this Agreement, UTILITIES shall determine the connection facilities between DISTRICT's Water Distribution System and UTILITIES' Water System that must be removed at DISTRICT's sole expense. UTILITIES shall determine the way the connection facilities are to be removed and water delivery services discontinued in accordance with UTILITIES' WLESS. All outstanding charges owed by DISTRICT to UTILITIES are due and payable prior to the

disconnection of service. If all outstanding charges owed by DISTRICT to UTILITIES are not paid prior to disconnection, DISTRICT's obligation to make full payment shall survive termination of this Agreement.

- C. **Approvals/Permits:** The Parties expressly acknowledge that the service contemplated and/or the construction of any Improvements under this Agreement may be dependent upon the receipt of any necessary approvals and/or permits by Federal, State, and local governmental and/or regulatory entities. DISTRICT shall be solely responsible for obtaining and complying with all approvals or permits necessary to accomplish the provision of water service and water conveyance by UTILITIES to DISTRICT under this Agreement. UTILITIES will cooperate as reasonably requested by DISTRICT in any application or proceedings to obtain such approvals.
- D. **DISTRICT Dissolution:** If DISTRICT seeks to dissolve pursuant to relevant laws, rules, and regulations, then DISTRICT shall provide a copy of its dissolution petition to UTILITIES, at the time of its filing. The dissolution petition shall provide for assignment of DISTRICT's rights and obligations under the Agreement to a third party acceptable to UTILITIES. If no provision is made for such an assignment or other arrangement reasonably acceptable to UTILITIES, upon DISTRICT's dissolution, this contract shall be null, void and of no further force or effect, and UTILITIES shall have no further obligation to provide water service pursuant to the terms of this Agreement.
- E. **City of Colorado Springs' Compliance:**
1. This Agreement is for "Contract Service – Regional (WCR), Standby Service Option," as provided in the Tariffs. The water service provided under this Agreement shall be governed by the Colorado Springs City Charter, the City Code, the Tariffs, WLESS, and all other applicable City of Colorado Springs' or UTILITIES' ordinances, resolutions regulations, policies and rules concerning use of UTILITIES' Water System as may be amended or replaced, except as otherwise provided in this Agreement. When receiving water under this Agreement, DISTRICT shall comply with applicable laws, ordinances, regulations, rules or policies concerning use of UTILITIES' Water System by regional entities as they exist now or may be amended or replaced in the future. The Parties acknowledge and agree that City Code Chapter 12, Article 4, Part 13 is not applicable to DISTRICT under this Agreement.

2. In accordance with City Code § 12.4.304, DISTRICT submits to the jurisdiction of the City of Colorado Springs for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 4 that are applicable to this Agreement.

- F. **Compliance with Laws and Regulations:** This Agreement and the rights and obligations of the Parties hereunder shall be subject to all applicable laws, orders, court decisions, directives, rules, and regulations of any duly constituted governmental body or official having jurisdiction. Nothing contained in the Agreement, however, shall require either Party hereto to comply with any law, the validity of applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings. DISTRICT agrees to comply with all applicable ordinances, regulations and rules concerning the connection to and use of UTILITIES' Water System by DISTRICT.
- G. **No Assignment without Consent; No Third-Party Beneficiary:** There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party, and any such assignment shall be null and void. Unless otherwise prohibited, upon written notice to DISTRICT, UTILITIES may assign this Agreement without consent to the City of Colorado Springs, Colorado. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than UTILITIES and DISTRICT.
- H. **Governing Law, Jurisdiction and Venue:** This Agreement shall be construed in accordance with the laws of the State of Colorado (except for its conflict of law provisions) as well as the Colorado Springs City Charter and the 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 El Paso County, Colorado and, if necessary, for exclusive federal questions, the United States District Court for the District of Colorado.
- I. **Force Majeure:** Neither Party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence, including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbance.
- J. **Appropriation of Funds:** In accord with the Colorado Springs City Charter, performance of UTILITIES' obligations under this Agreement is expressly subject to

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

- K. **Entire Agreement; Modifications to be in Writing:** This Agreement, including any and all appendices and exhibits attached hereto, contains the entire understanding between the Parties. No modification, amendment, notation, or other alteration to this Agreement shall be valid or 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 which are not specifically set forth therein. Electronic mail and all other electronic (including voice) communications from UTILITIES, except as otherwise specifically provided herein, in connection with this Agreement, are for informational purposes only. No such communication is intended by UTILITIES to constitute either 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.
- L. **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 and this agreement shall be reformed to replace such stricken provisions with a new provision that comes as close as possible to expressing the intention of the stricken provision.

- M. **Remedies Cumulative:** Remedies herein are cumulative and may be used individually, sequentially, concurrently, or in any order.
- N. **Audits:** UTILITIES shall have the right to audit at any time all of DISTRICT's records relating to compliance with this Agreement. DISTRICT shall have the right to audit all UTILITIES' records relating to compliance with this Agreement.
- O. **No Exclusive Rights:** Nothing in this Agreement shall be construed as a grant by either Party of any exclusive right or privilege.
- P. **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.
- Q. **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.
- R. **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 in tort or contract to DISTRICT or its customers for failure to provide water service under this Agreement if such failure is the result of a significant interruption of water supplies or an inadequate natural physical water supply, a substantial disruption to UTILITIES' Water System (including, but not limited to, legal challenges impacting the water system, and maintenance and repair of UTILITIES' Water System), or the adoption and implementation of water use or delivery restrictions in accordance with City Code.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date of the last signature below.

Stratmoor Hills Standby Regional Water Service Agreement

COLORADO SPRINGS UTILITIES

STRATMOOR HILLS WATER DISTRICT

By: _____

Travas Deal
Chief Executive Officer

Date: _____

By: _____

Robert Colgrove
Board President

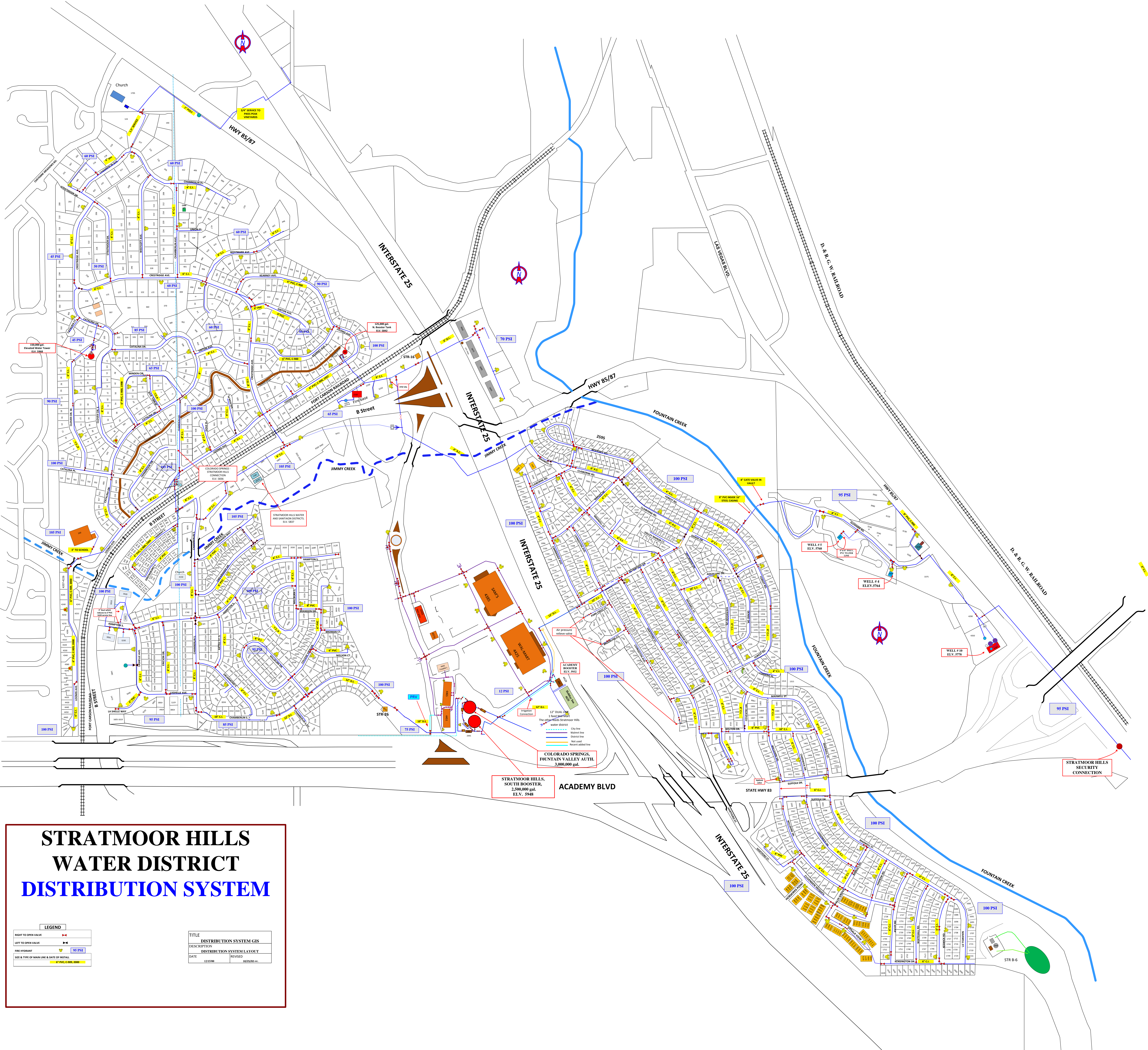
Date: _____

APPROVED AS TO FORM:

Michael Gustafson
City Attorney's Office – Utilities Division

Date: _____

Exhibit A – Map of District’s Service Area



STRATMOOR HILLS WATER DISTRICT DISTRIBUTION SYSTEM

LEGEND	
RIGHT TO OPEN VALVE	→
LEFT TO OPEN VALVE	←
PIPE HYDRANT	⊕
SIZE & TYPE OF MAINLINE & DATE OF INSTALL.	4\"/>

TITLE	
DISTRIBUTION SYSTEM GIS	
DISTRIBUTION SYSTEM LAYOUT	
DATE	REVISED
12/15/08	10/25/09

Exhibit B– Infrastructure Configuration

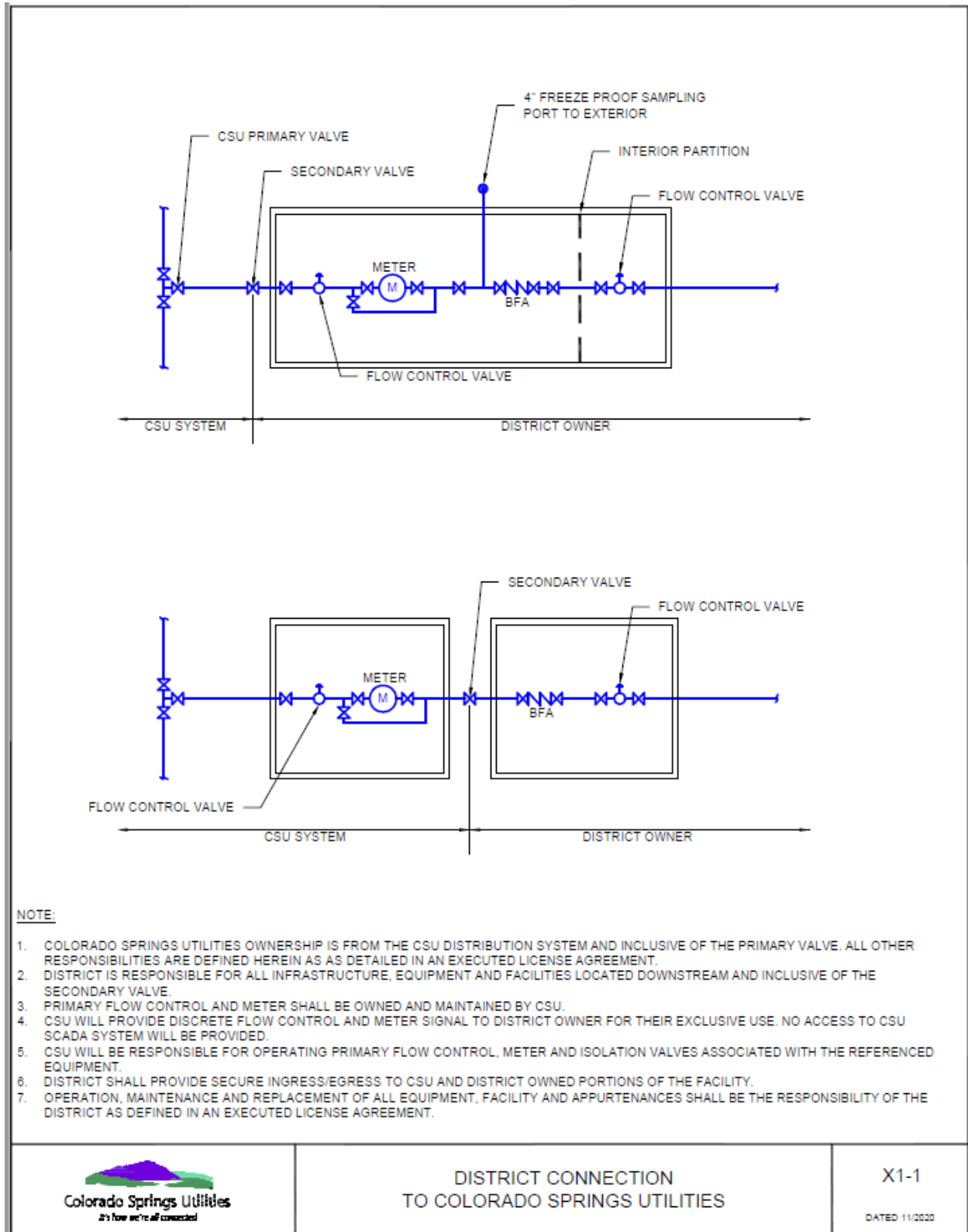


Exhibit C – Consecutive System Disinfection Protocol

1.0 Purpose

The purpose of this Consecutive Systems Disinfection Protocol for Regional Water Service Contracts Appendix is to define Colorado Springs Utilities’ (Utilities) and the Regional Water Service Contract holder’s roles and responsibilities pertaining to potable water main disinfection procedures for Connective Systems.

A Consecutive System is defined as a Public Water System that receives some or all its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more Consecutive Systems.

The Consecutive System Standard Operating Procedure followed by Utilities is available upon request.

2.0 Scope

The scope of this document is to establish the sanitary standard for potable infrastructure management as it pertains to Utilities’ consecutive systems. The objective is to protect Utilities’ potable water distribution system and comply with Colorado Primary Drinking Water Regulations.

3.0 Scheduling Requirements

Scheduling requirements for a Potable Water Main Disinfection or system flush are as follows:

1. The Operator in Responsible Charge (ORC) of the Consecutive System receiving water shall notify Utilities’ Water Quality Assurance Department (WQA) at waterquality@csu.org to schedule a disinfection or system flush. To be accommodated, requests must be submitted at least **two business days** in advance.
2. The following information must be included when requesting flushing services:
 - Point of Contact (Name and Phone Number).
 - Address or Intersection of where the flush will be taking place.
 - Requested date and time of the flush
3. The site ORC and Operations from the Consecutive System shall be available during disinfection or flushing activities to assist with any issues that may occur such as valve locations, closed valves, leaks, main breaks, cross-connections, or safety concerns.

Disinfection of the potable system is required when:

1. The Consecutive System is bringing the interconnect into service for the first time, or
2. The Consecutive System is bringing the interconnect back into service after repairs, or a similar event that could have potentially compromised the mail.

Flushing of the system (without disinfectant) is required when:

1. The Consecutive System is bringing the interconnect back into service after a period of >72 hours of the line being stagnant or empty. This flushing is designed to purge stagnant water and reestablish water quality parameters that meet or exceed Safe Drinking Water Act guidelines.

4.0 Responsibilities

This section defines the general responsibilities of stakeholders within Utilities that are directly involved with the disinfection and flushing of potable water mains for Connective Systems.

4.1 Colorado Springs Utilities' Responsibilities:

- Utilities' Water Quality Assurance (WQA) team is responsible for the managerial oversight of all chlorination injections, disinfections, system flushing, chlorine neutralization and system monitoring during dewatering activities.
- Utilities' Distribution and Collection Specialist is considered the Operator in Responsible Charge of all Utilities' potable mains under the control of the assigned specialist. This encompasses legal responsibility of all distribution system pipelines being operated and maintained.

4.2 Consecutive System Operations/ Management:

- Public Water Systems that receive water from Utilities will be considered the ORC downstream of the demarcation/interconnect valve. This encompasses legal responsibility of all distribution system pipelines being operated and maintained. Responsibilities include, but are not limited to, the following:
 - The oversight authority of the operation of the Consecutive System's potable water distribution system.
 - Placement and providing a containment structure large enough to retain six times the volume of water to be discharged if an adequate storm intake is not available or the water cannot otherwise be properly managed.
 - Overseeing the operation of pressure regulation equipment, cross-connection and system control valves.
 - ORC is responsible for the operation and maintenance of the cross-connection device, to include state certified cross connection control technician simultaneously testing its backflow assembly to ensure proper operation.

5.0 Operational Procedures

5.1 Initial start-up or bringing back into service after repairs:

- WQA will work with the Utilities ORC and the consecutive system ORC to disinfect the main (see Section 6.2).
- Utilities will conduct bacteriological testing.
- Utilities will notify the Utilities' ORC of results of bacteriological testing once results are confirmed, typically within 24 hours. The system may be placed in service if bacteriological test shows an absence of total coliforms.

5.2 Temporary shut downs (>72 hours):

- In instances where the water main has been isolated >72 hours, WQA will flush the system to reestablish adequate chlorine and pH levels. No bacteriological testing is required if the system has been offline for <90 days.
- In instances where the system has been offline >90 days, WQA will flush to reestablish water quality and collect a bacteriological test. The system may be placed in service if bacteriological test shows an absence of total coliform.

5.3 Temporary shut downs (<72 hours):

- Temporary shut downs <72 hours do not require additional flushing or testing. In cases where the Consecutive System suspects the water quality may have been negatively impacted by the shut down, WQA may be contacted (waterquality@csu.org) to schedule flushing or testing.

5.4 Emergency Start-up:

- In cases of emergency start-up, the preceding protocols (Section 5.0) will be followed. If workload allows, WQA will waive the two business day requirement for requests.
- Under certain circumstances, the requirement to wait for total coliform results may be waived. When necessary, WQA will work with the Utilities' ORC and the Consecutive System ORC to identify circumstances where this may be appropriate.

6.0 Process

6.1 Flushing:

- Utilities' WQA team will be responsible for managing all waters associated with dewatering, to include dichlorination and pH mitigation if necessary.
- Operations from the Consecutive System will be responsible for best management practices (BMPs) which adequately mitigate erosion, control runoff, and protect storm inlets. Alternatively, Operations from the Consecutive System will be responsible for providing a containment structure large enough to retain six times the volume of water to be discharged if an adequate storm intake is not available or the water cannot otherwise be properly managed.

- Flushing will be complete when the volume of the main has been turned over three times or chlorine line residual and clarity have been reached.
- When required, WQA personnel will collect a bacteriological sample from Utilities' side of the interconnect closest to the demarcation valve to ensure water being delivered meets all Safe Drinking Water Act standards. This analysis takes approximately 24 hours to complete.
- If requested, Utilities personnel may also collect a bacteriological sample from the Consecutive System's side of the interconnect.

6.2 Disinfection:

Disinfection is required when the connecting main is brought into service for the first time or when the main has been compromised.

- WQA personnel will be responsible for determining which disinfection method is most appropriate. WQA personnel will also be responsible for all aspects of water management during disinfection and flushing.
- The Consecutive System's ORC will be responsible for BMP placement and providing a containment structure large enough to retain six times the volume of water to be discharged if an adequate storm intake is not available or the water cannot otherwise be properly managed.
- If disinfection activities must occur downstream of the demarcation valve, Utilities will function as a contractor if requested by the consecutive system. These activities are a courtesy to the Consecutive system and Utilities holds no liability for infrastructure damage or contamination. Additionally, the consecutive system will be responsible for all time and material costs incurred by Utilities associated with the disinfection. The Consecutive System's ORC will be responsible for operating all appurtenances and valves on their system.

6.3 Sampling Requirements:

Water quality tests noted in Sections 5.1 and 5.2 will be conducted at the Consecutive System point of entry on the Utilities' side of the demarcation valve. Before water delivery:

- Free chlorine will be >0.20 mg/L
- pH will be 9.0 s.u.
- Enzyme substrate test(s) will be negative for total coliform/*E. coli*

Bacteriological Resampling

If a bacteriological sample analysis results in "presence" of total coliform, the potable water main in question shall remain isolated and will be re-sampled

- Resampling a bacteriological sample after the first failure event.

- If a sample results in “presence” for total coliform, TWO additional bacteriological samples will need to be taken from the isolated point of failure.
- Samples will be collected within 48 hours of the first failure, at least 16 hours apart.
- Both of the repeat samples collected must be absent of total coliforms before the infrastructure can be turned into service.
- Resampling a bacteriological sample if there is a SECOND failure event.
 - Sample will be collected within 48 hours of the first failure, at least 16 hours apart.
 - Both of the repeat samples collected must be absent of total coliforms before the infrastructure can be turned into service.
 - If the results are “absent” for total coliform, the LSS Microbiology Lab will contact the site ORC that the samples “passed”.
 - Consecutive System can be placed in service.
- In the event of a THIRD failure:
 - If the main fails a third time after disinfection, it will be considered contaminated. At the discretion of the LSS Manager and WQA Supervisor, more extensive mitigation strategies will be implemented, up to and including removal and replacement of the contaminated section of the main.

Exhibit D – 1983 Fountain Valley Agreement