

RESOLUTION NO. 82 - 23

A RESOLUTION AUTHORIZING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO EXECUTE A LONG-TERM WATER TREATMENT CONTRACT BETWEEN THE FOUNTAIN VALLEY AUTHORITY AND THE CITY OF COLORADO SPRINGS, THE CITY OF FOUNTAIN, SECURITY WATER DISTRICT, STRATMOOR HILLS WATER DISTRICT, AND WIDFIELD WATER AND SANITATION DISTRICT

WHEREAS, the City of Colorado Springs (the "City") on behalf of its enterprise Colorado Springs Utilities ("Utilities") is authorized to enter into intergovernmental agreements with other Colorado governmental entities for the provision of any function or service with the approval of the City Council of the City of Colorado Springs ("City Council"); and

WHEREAS, the City of Colorado Springs is a member of the Fountain Valley Authority ("FVA") along with the City of Fountain, Security Water District, Stratmoor Hills Water District, and Widefield Water and Sanitation District (collectively the "FVA Participants"); and

WHEREAS, the FVA was organized as a vehicle for the repayment of the costs for construction and operation and maintenance of the Fountain Valley Conduit ("FVC"), and to construct and operate a water treatment plant to provide treatment for Frying-Pan Arkansas Project water conveyed by the FVC to the FVA Participants; and

WHEREAS, the FVA has constructed and operates, or causes to be operated, a water treatment plant with sufficient capacity to treat the water allocated to the FVC for the purpose of supplying water treatment services to each FVA Participant; and

WHEREAS, the FVA has provided water treatment services to the FVA Participants pursuant to the terms of a November 1, 1979 Water Treatment Contract between the FVA and the FVA Participants ("1979 Water Treatment Contract"); and

WHEREAS, the term of the 1979 Water Treatment Contract has expired and the FVA Participants need to enter into a new contract in order to continue receiving water treatment services from the FVA; and

WHEREAS, each FVA Participant has expressly stated its desire for continued water treatment services from the FVA consistent with the terms of the 1979 Water Treatment Contract; and

WHEREAS, the FVA desires to continue providing water treatment services to the FVA Participants on terms consistent with the 1979 Water Treatment Contract; and

WHEREAS, each Customer desires to purchase, and the FVA desires to sell, water treatment services on terms consistent with the 1979 Water Treatment Contract as expressed by the terms and conditions set forth in a new Water Treatment Contract ("2023 Water Treatment Contract") between the FVA and the FVA participants; and

WHEREAS, City Council has determined that it is in the best interests of the City and Utilities to enter into the 2023 Water Treatment Contract, attached hereto and incorporated herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:**

Section 1. City Council finds and determines that the 2023 Water Treatment Contract between the FVA and the FVA Participants attached hereto will benefit the public health, safety and welfare of the surrounding community and is in the best interest of the City.

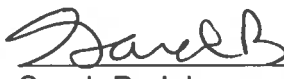
Section 2. The Chief Executive Officer of Colorado Springs Utilities is authorized and directed to enter into the 2023 Water Treatment Contract between the FVA and the FVA Participants in a form substantially similar to that attached hereto.


Section 3. This Resolution shall take effect as of the date and time of its approval.

Dated at Colorado Springs, Colorado this 13<sup>th</sup> day of June 2023.

  
\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

  
Sarah B. Johnson, City Clerk



WATER TREATMENT CONTRACT  
BETWEEN  
FOUNTAIN VALLEY AUTHORITY  
AND  
CITY OF COLORADO SPRINGS, COLORADO  
SECURITY WATER DISTRICT  
STRATMOOR HILLS WATER DISTRICT  
WIDEFIELD WATER AND SANITATION DISTRICT

Dated: \_\_\_\_\_, 2023

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WATER TREATMENT CONTRACT  
BETWEEN  
FOUNTAIN VALLEY AUTHORITY  
AND  
CITY OF COLORADO SPRINGS, COLORADO  
CITY OF FOUNTAIN, COLORADO  
SECURITY WATER DISTRICT  
STRATMOOR HILLS WATER DISTRICT  
WIDEFIELD WATER AND SANITATION DISTRICT

This Contract, made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2023, by and between Fountain Valley Authority, a political subdivision of the State of Colorado (the “Authority”), and the City of Colorado Springs, Colorado on behalf of its enterprise Colorado Springs Utilities, and the City of Fountain, Colorado, each of which cities is a municipal corporation of the State of Colorado and a home rule city, and Security Water District acting by and through its water activity enterprise, Stratmoor Hills Water District, and Widefield Water and Sanitation District, each of which districts is a public corporation being herein collectively called “Customers” or individually, “Customer”). Where applicable, the Authority and the Customers may be referred to collectively as “Parties” or individually as “Party”.

WITNESSETH

WHEREAS, each of the Customers is entitled to a portion of the Fryingpan-Arkansas water allocated to the Fountain Valley Conduit (as defined below) by the Southeastern Colorado Water Conservancy District; and

WHEREAS, the water delivered to the Fountain Valley Conduit requires treatment to be potable and fit for municipal and domestic uses; and

WHEREAS, each Customer has need for an economical, reliable source of water treatment to meet the existing and growing demands of its customers and has determined to purchase such water treatment from the Authority; and

WHEREAS, the Authority has constructed and operates, or causes to be operated, a water treatment plant with sufficient capacity to treat the water allocated to the Fountain Valley Conduit for the purpose of supplying water treatment to each Customer; and

WHEREAS, the Customers and the Authority were parties to a November 1, 1979, Water Treatment Contract for the purpose of supplying water treatment to the Customers, which Contract expired on November 1, 2019; and

WHEREAS, pursuant to Section 17 of the November 1, 1979, Water Treatment Contract each Customer has expressly stated its desire for continued water treatment services from the Authority consistent with the terms of the November 1, 1979, Water Treatment Contract; and

WHEREAS, the Authority desires to continue providing water treatment services to the Customers on terms consistent with the November 1, 1979, Water Treatment Contract; and

WHEREAS, each Customer desires to purchase, and the Authority desires to sell, water treatment on terms consistent with the November 1, 1979, Water Treatment Contract as expressed by the terms and conditions herein set forth;

NOW, THEREFORE, in consideration of the mutual undertakings herein contained, the Authority and each Customer agree as follows:

**Section 1: Term of Contract.**

This Contract shall become effective upon the date set forth above, after execution by each of the Customers and the Authority. Subject to the provisions of Section 16: hereof, this Contract shall remain in effect for a period of forty (40) years from the date hereof unless otherwise terminated or extended in writing executed by each Party or their successors.

**Section 2: Definitions.** As used herein:

(a) "Act" shall mean Title 29, Article 1, Part 2, Colorado Revised Statutes, 1973, as amended.

(b) "Authority" shall mean the Fountain Valley Authority as created and established (pursuant to the Act) by an Establishing Contract executed by and on behalf of each of the Customers.

(c) "Annual Plant Budget" shall mean, with respect to a Contract Year, the budget of the Authority prepared in accordance with Section 5 hereof for such Contract Year, or, in the case of an amended Annual Plant Budget, for the remainder of such Contract Year.

(d) "Annual Plant Costs" shall mean, with respect to a Contract Year, and to the extent not paid or to be paid from the proceeds of Bonds or other funds legally available to the Authority (other than payments by the Customers hereunder), all costs and expenses of the Authority that are paid or incurred during such Contract Year and are allocable to the Plant, including, but not limited to the payment of the Operation and Maintenance Expenses of the Plant, all costs, charges, and expenses of replacements and renewals of the Plant and all taxes, assessments or other governmental charges lawfully imposed on the Authority or on the revenues of the Plant or payments in lieu thereof, and the deposit or payment of any and all amounts which the Authority may now or hereafter become obligated to deposit into any fund or to pay from revenues of the Plant, by law or contract.

(e) "Bonds" shall mean all bonds issued by the Authority.

(f) "Contract Year" shall mean the fiscal year of the Authority.

(g) "Conveyance Service Contract" shall mean the Contract between the United States and the District for Conveyance Service from the Fountain Valley Conduit (Contract No. 9-07-70-W0315 of the United States Department of the Interior Bureau of Reclamation) made July 10, 1979, as amended, renewed, and supplemented from time to time.

(h) "Conveyance Service Subcontract" shall mean the Subcontract between the District, each of the Customers and the Authority for Conveyance Service from the Fountain Valley Conduit, made July 10, 1979, as amended, renewed, or supplemented from time to time.

(i) "Debt Service" or "Debt Service Requirements" shall mean, with respect to any period, the aggregate of the amounts of principal, interest and redemption premium, if any, required to be paid from revenues of the Authority on any Obligations outstanding as the same shall become due.

(j) "District" shall mean the Southeastern Colorado Water Conservancy District, a political subdivision of the State of Colorado, and any successor thereto.

(k) "Metering Points" shall mean the points on the Fountain Valley Conduit at which Treated Water is made available to a Customer from the Fountain Valley Conduit.

(l) "Obligations" shall mean Bonds, notes, or other evidence of indebtedness of the Authority.

(m) "Operation and Maintenance Expenses" shall mean all expenses incurred in the operation and maintenance of the Plant and normally recurring expenses incurred by the Authority in the conduct of its activities related to water treatment that are properly accounted for such purpose under generally accepted accounting principles as applied to governmental units; provided that such term shall not include any costs assessed under the Conveyance Service Subcontract. Such term does not include depreciation or obsolescence charges or reserves therefor, interest charges and charges for the payment of principal, or amortization, of Bonds or other Obligations of the Authority or required deposits into any reserves therefor.

(n) "Participation" shall mean for each of the Customers the following acre feet and corresponding percentages:

	<u>Acre Feet</u> <u>Per Year</u>	<u>Stated as a</u> <u>Percentage</u>
1. Colorado Springs	14,353	71.41%
2. Fountain	2,000	9.95
3. Stratmoor Hills Water District	601	2.99
4. Security Water District	1,646	8.19
5. Widefield Water and Sanitation District	1,500	7.46

(o) "Plant" shall mean only the water treatment facility operated by the Authority on the Fountain Valley Conduit (as defined in the Conveyance Service Contract).

(p) "Treated Water" shall mean water that shall comply with all applicable Federal and State regulations for drinking water served to the public.

(q) "Variable Costs" shall mean the total costs in any calendar month of chemicals and other materials used in Water Treatment plus the costs of electricity directly related to Water Treatment, but excluding electricity costs related to maintaining the Plant in operational condition.

(r) "Water Treatment" shall mean such treatment of water as is required to convert it to Treated Water.

(s) "Water Treatment Availability Charge" shall be the charge to each Customer for the right to receive Water Treatment at the Plant, calculated as provided in paragraph (a) of Section 6 hereof.

**Section 3: Delivery of Water to Authority.**

The water to be treated for each Customer by the Authority at the Plant will be the water delivered to each Customer pursuant to the Conveyance Service Contract and Conveyance Service Subcontract through the Fountain Valley Conduit (as defined in the Conveyance Service Contract). Each Customer agrees to take all actions necessary under the Conveyance Service Contract and Conveyance Service Subcontract to cause delivery to the Plant of all water conveyed through the Fountain Valley Conduit. In order to assure such delivery, the Authority shall collect "conveyance service charges" (as defined in the Conveyance Service Contract) from each of the Customers and shall transfer all such charges collected to the District, as provided in the Conveyance Service Contract.

**Section 4: Purchase of Water Treatment; Delivery of Treated Water.**

(a) Each Customer agrees to purchase from the Authority the right to have Water Treatment for any water delivered to the Plant on its behalf pursuant to the Conveyance Service Subcontract by making the payments under Sections 7 and 12 hereof.

(b) In the event that the Authority is not able to supply all Treated Water requested under this Contract, it shall allocate Plant daily capacity among the Customers requesting Treated Water for such day pro rata in accordance with their respective Participation unless such Customers agree to a different allocation.

(c) The Authority shall deliver to a Customer upon request any Treated Water to which such Customer is entitled by returning it to the Fountain Valley Conduit at the Plant. The Authority shall have no obligation hereunder to deliver Treated Water to the Metering Point for a Customer.

(d) Each Customer shall make and pay for all connections between its facilities and its Metering Point. Each Customer shall install, own and maintain any necessary substation equipment at the Metering Points. In the event that the Metering Points are not on the Customer's water system, each Customer shall arrange and pay for transmission of Treated Water delivered under this Contract to its system, including the installation and maintenance of any facilities required for it to receive such Treated Water into its system.

(e) For purposes of billing pursuant to the last sentence of Section 7 hereof, metering equipment shall be furnished, installed and maintained by the Authority at each Metering Point;



provided that the Authority's obligation to install such meters shall be satisfied to the extent that the United States provides such meters at the Metering Points.

(f) The Authority may allocate daily capacity among the Customers requesting Treated Water for such day upon agreement of the Customers involved.

**Section 5: Annual Plant Budget.**

(a) The Authority shall prepare or cause to be prepared an Annual Budget for the ensuing Contract Year that shall itemize estimates of Annual Plant Costs and all revenues, income or other funds to be applied to such Annual Plan Costs for and applicable to such Contract Year. Such Annual Plan Budget shall also utilize and take into account forecasts, which shall be furnished by each Customer to the Authority of the monthly Treated Water requirements estimated to be obtained from the Authority during such Contract Year. The Authority and each Customer shall provide such Annual Budget and the forecasts to the other Parties in a timely fashion, and the Authority and each Customer shall provide comments to the same, if any, in a manner and at a time that will allow the Customers and the Authority to comply with applicable budget laws.

(b) After consideration of any comments of the Customers, the Authority, prior to the beginning of such ensuing Contract Year, shall adopt an Annual Plant Budget for such Contract Year and the rates and charges for Water Treatment to be furnished and the services to be performed during such Contract Year and shall cause copies of such Annual Plant Budget and rates and charges to be promptly delivered to the Customers. The Authority prepared and adopted an Annual Plant Budget for the current Contract Year (2023) in accordance with the terms of the 1979 Water Treatment Contract and the Parties agree that such budget shall be considered to be the Annual Budget for the current Contract Year under this Agreement.

(c) If, at any time or from time to time after the adoption of the Annual Plant Budget in accordance with Subsection (b) of this Section 5, the Authority estimates that the actual Annual Plant Costs or revenues for the Contract Year or any part thereof from which such Annual Plant Budget applies will be greater or less than the Annual Plant Costs or revenues set forth in the Annual Plant Budget, or that the amount of Treated Water that the Authority expects to deliver during such Contract Year or any part thereof is greater or less than the amount of Treated Water that the Authority estimated at the time of adoption of the Annual Plant Budget would have been delivered during such Contract Year, then the Authority may prepare an amended Annual Plant Budget. The amended Annual Plant Budget shall be timely adopted by the Authority and promptly transmitted to the Customers.

(d) In the event an Annual Plant Budget for the ensuing Contract Year has not been adopted on or before the first day of the Contract Year, the total amount budgeted for the preceding Contract Year shall be the total amount of the temporary budget for such purposes for the ensuing Contract Year. Such temporary budget shall be effective only until such time as a permanent budget has been finally adopted and approved.

(e) The Treasurer of the Authority shall be responsible for the allocation for expenditure of the total amount of the temporary budget until a permanent budget is adopted and approved.

**Section 6: Rates and Charges.**

(a) The Water Treatment Availability Charges of the Authority to the Customers for the right to receive Water Treatment shall be:

(1) non-discriminatory, and

(2) fair and reasonable, and

(3) adequate (after taking into consideration other moneys received or anticipated to be received) in each Contract Year to pay or make provision for paying Annual Plant Costs (other than Variable Costs).

(b) The rates and charges of the Authority shall be adequate to provide revenues that, after payment of current Operation and Maintenance Expenses, will equal 120% of each Contract Year's Debt Service on Bonds, if any, and after taking into account amounts on deposit in the operating and maintenance expense reserve fund required by any applicable bond resolution.

(c) When the Board of Directors of the Authority proposes to establish a new rate or charge (other than in connection with an Annual Plant Budget), it shall give each Customer written notice that it proposes to establish a new rate or charge for Water Treatment or for related services setting forth such charge and the detailed basis upon which it was calculated not less than 30 days from the mailing of the notice to each Customer, with all such notices to be mailed simultaneously.

**Section 7: Billing for Water Treatment; Meter Reading.**

The Authority shall bill each Customer for Water Treatment Availability Charges on or before the 25th day of each month, in proportion to such Customer's Participation (stated as a percentage). In addition, the Authority shall monthly read meters or cause meters to be read at the Metering Points and shall bill (not later than the 25th day of each month) each Customer that received Treated Water during the previous month for its share of Variable Costs incurred during such month, which charge shall be not less than the product of the total Variable Costs for such month times the Treated Water delivered by the Authority to the Customer over the total Treated Water delivered by the Authority to all Customers during such month plus any amount necessary to comply with the provisions of paragraph (b) of Section 6.

**Section 8: Meter Testing and Billing Adjustment.**

The Authority shall test and calibrate the Customers' meters or cause the meters to be tested and calibrated by comparison with accurate standards at intervals of twelve (12) months, or such other intervals as the parties agree, and all tests shall be in accordance with manufacturer's specifications. The Authority shall also make or cause to be made special meter tests at any time at a Customer's request. The costs of all tests shall be borne by the Authority, provided, however, that if any special meter test made at a Customer's request demonstrates that the meters are recording accurately, the requesting Customer shall reimburse the Authority for the cost of such test. The readings on any meter that have been demonstrated by a test to be inaccurate shall be corrected from the beginning of the monthly billing period immediately preceding the billing period during which the tests are made in accordance with the percentage of inaccuracy found by

such test, provided, that no correction shall be made for a longer period unless the Authority and the Customer involved mutually agree thereto. Should any meter fail to register, the Treated Water delivered during such period of failure shall for billing purposes be estimated by the Authority and the Customer from the best information available. The Authority shall notify the Customer or cause the Customer to be notified in advance of the time of any meter reading or test so that the Customer's representative may be present at such meter reading or test.

**Section 9: Payments to Constitute Operation Expenses of Customer System.**

Each Customer's obligation to make the payments under this Contract shall constitute, and shall be treated for all purposes by each Customer as, to the extent permitted by law, an operating expense of its water system or of its combined utility of which the furnishing of water service is a part and prior to its obligation to make payments for any bonds or other securities issued by the Customer and payable from revenues of such water system or combined utility. The obligation of each Customer to make payments hereunder shall be limited to monies derived from such Customer's operation of its water system or combined utility.

**Section 10: Customer Rate Covenant.**

Each Customer shall establish, maintain and collect reasonable rates and charges for the water service of its water system or combined utility that shall produce revenues at least sufficient, together with other revenues legally available to such Customer to enable it to pay the Authority, when due (monthly or otherwise), all amounts payable by such Customer under this Contract and under the Conveyance Service Subcontract.

**Section 11: Covenants of the Authority; Covenant of Colorado Springs.**

(a) The Authority shall use reasonable diligence to provide Water Treatment hereunder. If operation of the Plant shall be interrupted, or become defective by reason of force majeure, the Authority shall not be liable therefor or for damages caused thereby.

(b) The Authority shall diligently enforce and take all reasonable steps, actions and proceedings necessary for the enforcement of all terms, covenants and provisions of this Contract. The Authority shall not amend this Contract without first having secured the prior written consent of all Customers, but no amendment shall be made in Section 12 of this Contract, except as permitted in any applicable bond resolution.

(c) The Authority covenants and agrees that it will operate, maintain and manage the Plant or cause the same to be operated, maintained and managed in an efficient and economical manner, constituent with sound municipal utility practice and in accordance with standards normally used by municipal utilities owning like properties, all in order to fulfill its obligation to provide Treated Water to the Customers.

(d) The Authority and the City of Colorado Springs, on behalf of its enterprise, Colorado Springs Utilities (Utilities), covenant and agree that if the operations, maintenance, or repair of the Fountain Valley Conduit, the Plant, or related facilities require the temporary interruption of Water Treatment under this Contract and the April 1981 Management Agreement between the Authority and Colorado Springs, the Authority and Utilities will execute an agreement substantially similar

to the Short Term Agreement for Water Service to Address Operation and Maintenance Obligations attached as Exhibit A hereto, which agreement will provide for Utilities to provide temporary water service, consisting of delivery of treated, potable water to the Authority's system for subsequent delivery to the Customers, in exchange for an equal volume of raw water to be provided by the Authority to Utilities delivered to Colorado Springs excess capacity account in Pueblo Reservoir.

**Section 12: Payment to be Sufficient for Debt Service; Operation and Maintenance Expenses.**

(a) In any instance where the amount of money on deposit in the funds created by any applicable bond resolution to make timely payments, after Operation and Maintenance Expenses, of Debt Service on Bonds as they become due and to provide reserves therefor is not the full amount then required to be on deposit therein, each Customer shall be obligated to make a payment that, together with payments similarly made by other Customers, shall be sufficient to meet such bond resolution requirements. The percentage share of the payment to be made by each Customer shall be its Participation (stated as a percentage amount). The payments required to be made under this Section 12(a) shall be paid by the Customers in the percentage shares determined above and such payments shall be made directly to the custodian of the respective funds as established in the bond resolution.

(b) In the event the Authority is held to be in default under the provisions of any applicable bond resolution (by reason of the inadequacy of payments required to be made by the Customers under the provisions of this Contract), the Customers shall cure the default by making payments in the same proportion as provided in paragraph (a) of this Section.

(c) In the event any of the other Customers default in making the payments hereunder, each Customer unconditionally covenants that, notwithstanding the notice provisions of Section 6 hereof and notwithstanding the provisions of Section 15:(b) hereof, the entire Annual Plant Costs of the Authority will be paid as they become due.

The provisions of the covenants contained in this section are for the benefit and protection of the Authority, the Customers, and the owners and holders of Bonds, if applicable, it being recognized that the holders of such Bonds shall be third-party beneficiaries of such covenants, and it is understood by the contracting parties that the initial purchaser of any issue of Bonds has and will agree to the purchase of Bonds conditioned upon this covenant.

For and in consideration of the payments to be made by the Customers under this Contract (including those under this Section), the Authority agrees to use reasonable diligence to provide Water Treatment to such Customers under the terms of this Contract, and such payments by the Customers shall be in consideration for the Authority's agreement to provide such Water Treatment; but the failure of the Authority to comply with such agreement shall not relieve any Customer of its obligations under this Section, which obligations shall be unconditional and absolute.

### **Section 13: Default.**

(a) (1) If any Customer fails or defaults in meeting the terms, conditions and covenants of this Contract (including the failure to make any payment to the Authority hereunder) or of the Conveyance Service Subcontract, and such default continues for a period of 15 days, the Authority shall give notice (in the manner contemplated by 0 of this Contract) to the Customers. The defaulting Customer shall from the date of the mailing of such notice, have a period of 30 days to cure the default.

(2) If the Customer does not cure its default within such period of thirty (30) days, then, so long as such Customer remains in default, and in addition to any other rights which the Authority has under this Contract and at law and in equity, the Authority may terminate all Water Treatment and treatment related service to such Customer. Additionally, in the event of default in payment, the Authority may charge to and collect from such Customer each calendar month the amount that the Authority determines to be the difference between what the Authority would have received from such Customer under this Contract, for Water Treatment and services furnished and delivered to such Customer had such Customer not been in default and the amount, if any, that the Authority receives from sales of such Treated Water and services to the other Customers, or others. Termination of service hereunder shall not reduce or change the obligation of the defaulting Customer under the other provisions of this Contract, including without limitation, the defaulting Customer's percentage share of Operation and Maintenance Expenses under the Annual Plant Budget.

(b) If the Authority fails or defaults in meeting the terms, conditions and covenants of this Contract, except its covenant to use reasonable diligence to provide Water Treatment contained in Section 11(a), and such default continues for a period of 15 days after a Customer has given the Authority notice of such default in the manner contemplated in 0 of this Contract, then such Customer shall have all of the rights and remedies provided at law and in equity, except that in no event shall any of the Customers be relieved of its obligation specified in Section 12.

### **Section 14: Allocation of Defaulting Customers' Treated Water.**

(a) In the event a Customer is in default under 0 hereof, and the Customer has not cured such default as provided in 0(a), the Authority will cease to deliver Treated Water to the defaulting Customer without reallocation to another Party. For the duration of a default, the costs and expenses associated with the defaulting Customer's entitlement to Treated Water will accrue as a receivable due to the Authority and must be paid by the defaulting Customer to cure the default. In the event the defaulting Customer cures all defaults within six (6) months of the date of notice of default under Section 13, reimburses the non-defaulting Customers for any payments that they made under Section 12, and pays a penalty equal to one percent (1%) per month of its payments in default, such Customer shall thereafter be entitled to resume receiving its entire Participation interest in Treated Water from the Authority. The six (6) month cure period may be extended only upon resolution of the Board of Directors of the Authority and written approval of the governing bodies of each of the Customers amending the Establishing Contract of the Authority. Failure to cure a default pursuant to this provision shall subject the defaulting Customer to the provisions of Article XIII of the Establishing Contract, First Amendment, May 19, 1980.

**Section 15: Payment Due Dates and Delinquency.**

(a) In the event that a Customer fails to make any payment at the time herein specified, interest on such delinquent amount shall accrue at the rate of one percent (1%) per month from the date such payment becomes due until paid in full, and the Authority may institute a proceeding for a mandatory injunction requiring the payment of the amount due and interest thereon, such action to be instituted in a court of competent jurisdiction.

(b) All payments required to be made by the Customers under the terms of this Contract shall be due and payable within fifteen (15) days following the date the Authority renders the bill, and the Customers shall have no right of setoff, recoupment, or counterclaim against any payment under Section 12 or that part of the Annual Plant Costs which are attributable to payments to be made into the bond fund or the reserve fund by any Bond Resolution or similar funds established for the payment and security of other Obligations which are unconditional.

(c) Should a dispute between any Customer and the Authority arise as to whether the Authority is in compliance with its covenants as contained herein, each Customer shall nevertheless be obligated (1) to make the payments provided by paragraph (a) of Section 12 hereof and (2) to pay such amount of the Annual Plant Costs as may not be in dispute pending the resolution of such dispute. The disputed amount of Annual Plant Costs shall be paid by a Customer and, to the extent that such amounts are not needed to pay Debt Service on the Bonds, they shall be placed in escrow in an interest-bearing account by the Authority pending resolution of the dispute, but only the principal amount thereof shall be returned to the Customer.

**Section 16: Continuation of Services.**

A Customer not in default hereunder shall have the right to the continued performance of services provided under the provisions of this Contract for the useful life of the Plant (to the extent such useful life exceeds 40 years) by giving written notice to the Authority at least one year prior to the scheduled termination of this Contract (as specified in Section 1) provided that if such termination is occasioned by making provision for the payment of the Debts of the Authority, the notice may be given within 90 days after such provision is made. Such Customer shall be obligated to continue paying its proportionate share of the Annual Plant Costs. Each of the Customers agrees that its entitlement to Treated Water may be forfeited in the event of default hereunder following the terms and procedures for such forfeiture and termination set forth in this Contract.

**Section 17: Customer Not to Sell Its Water System.**

Each Customer covenants that during the term of this Contract (or the extensions thereof) it will not sell or otherwise dispose of its water utility distribution system in whole or substantially as a whole to any entity unless such entity can legally assume and does assume in writing all obligations of such Customer hereunder and then only with the written consent of the Authority; provided that no such sale and assumption shall be permitted hereunder if as a result thereof the exemption of interest on any Bonds from Federal income tax would be adversely affected.

**Section 18: Force Majeure.**

(a) If for any reason of “force majeure” any of the parties hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, other than the obligation of the Customers to make the payments required under the terms of this Contract, then if such party shall give notice and the full particulars of such reasons in writing to the other party within a reasonable time after the occurrence of the event or cause relied on, the obligation of the party giving such notice, so far as it is affected by such “force majeure,” shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term “force majeure” as employed herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders or actions of any kind of the government of the United States or of the State of Colorado or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraints of government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, or canals or other structures or machinery, on account of any other cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulties, and that the above requirement that any “force majeure” shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing parties when such settlement is unfavorable to it in the judgment of the party having the difficulty.

(b) No damage shall be recoverable from the Authority or the Customers by reason of the causes above mentioned.

**Section 19: Insurance.**

(a) The Authority shall maintain, or cause to be maintained in force for the benefit of the Authority, such insurance with respect to the Plant as shall be reasonably available and as is usually carried by municipal water utilities constructing and operating water treatment facilities. Provided, however, in any event the Authority shall maintain, or cause to be maintained, in force, insurance in such amounts and against such risks as required by any applicable bond resolution.

(b) The Authority will secure and maintain adequate fidelity insurance or bonds on all officers and employees handling or responsible for funds of the Authority, unless such officers and employees are otherwise covered by an existing and applicable policy or bond.

(c) The Authority may establish and create a special fund for the purpose of providing a self-insurance fund. Amounts to be deposited in or credited to such fund in any Contract Year shall be accounted for as Operation and Maintenance Expenses. To the extent that monies are deposited in such fund, if created, such monies may be invested in investment securities, as defined in any applicable bond resolution. To the extent of the amounts held in such fund, the face amount of appropriate insurance policies may be reduced.

**Section 20: Reports.**

The Authority will prepare and issue to each Customer the following reports: (i) financial and operating statement relating to the Plant; (ii) status of construction for the Plant during any future construction; and (iii) analysis of operations relating to the Plant.

**Section 21: Records and Accounts.**

The Authority will keep accurate records and accounts of the Plant and of the transactions relating thereto as well as of the operations of the Authority in accordance with generally accepted accounting principles as applied to governmental units. Within one hundred twenty (120) days after close of each Contract year, the Authority shall cause such records and accounts and all transactions of the Authority relating to the Plant with respect to such Contract Year to be subject to an annual audit by an independent certified public accountant. A copy of each such annual audit shall be sent by the Authority to each Customer.

**Section 22: Access.**

Each Customer shall at all times have reasonable access to examine any and all books and records of the Authority and to examine the Plant. The Authority and each Customer will give the other the right to enter the premises of the other at all reasonable times for the purpose of repairing or removing facilities, reading meters and performing work incidental to delivery and receipt of Water Treatment and Treated Water furnished hereunder.

**Section 23: Governmental Rates, Regulations and Laws.**

The Contract shall be subject to all valid rules, regulations and laws applicable thereto, as promulgated by the United States of America, the State of Colorado, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them, which rules, regulations and laws shall not impair the obligation of contracts including this Contract.

**Section 24: Appropriations.**

(a) Performance of Colorado Springs' obligations under this Contract is expressly subject to the appropriation of funds by its City Council. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by Colorado Springs contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Contract have been fully appropriated by Colorado Springs. Colorado Springs agrees to use good faith efforts to seek the appropriation of sufficient funds to allow Colorado Springs to fully and timely perform its obligations under this Contract for each fiscal year that occurs during the term of this Contract.

(b) Performance of Security Water District, Stratmoor Hills Water District, and Widefield Water and Sanitation District's obligations under this Contract are expressly subject to the appropriation of funds by each Customer's respective Board of Directors or governing body,



which appropriations shall be made in the sole discretion of each Customer's Board of Directors or governing body. This Agreement is expressly made subject to the limitations of the Colorado Constitution. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by any Customer contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or debt limitation. The funds for the current year's activities related to this Contract have been fully appropriated by Security Water District, Stratmoor Hills Water District, and Widefield Water and Sanitation District, and the same Customers agree to use good faith efforts to seek the appropriation of sufficient funds to allow full and timely perform each Customers obligations under this Contract for each fiscal year that occurs during the term of this Contract.

(c) Performance of the City of Fountain's obligations under this Contract is expressly subject to the appropriation of funds by its City Council, notwithstanding anything in this Contract to the contrary. This Agreement is expressly made subject to the limitations of the Colorado Constitution and the City Charter of the City of Fountain. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City of Fountain contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory or debt limitation. The funds for the current year's activities related to this Contact have been fully appropriated by the City of Fountain, and the City of Fountain agrees to use good faith efforts to seek the appropriation of sufficient funds to fully and timely perform its obligations under this Contract for each fiscal year that occurs during the term of this Contract. Financial obligations of the City of Fountain payable after the current fiscal year are contingent upon funds for that purpose being appropriated and otherwise made available in accordance with applicable law and the resolutions, regulations, and rules of the City of Fountain.

(d) The Authority is an "enterprise" for purposes of Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation, and this Contract does not affect its enterprise status. The funds for the current year's activities related to this Contract have been fully appropriated. The Authority agrees to use good faith efforts to seek the appropriation of sufficient funds to allow the Authority to fully and timely perform its obligations under this Contract for each fiscal year that occurs during the term of this Contract. In the event funds are not appropriated in whole or in part sufficient for performance of all of the Authority's obligations under this Contract that are to be performed in the next calendar year, or appropriated funds may not be expended due to applicable spending limitations, then all rights and obligations of the Authority under this Agreement will terminate, and the Authority will thereafter have no liability for compensation or damages to the Customers in excess of the Authority's authorized appropriation for this Contract or the applicable spending limit, whichever is less. The Authority shall notify the Customers as soon as reasonably possible in the event of a non-appropriation or in the event a spending limit becomes applicable that impacts the Authority's ability to perform its obligations under this Contract.

#### **Section 25: Easements.**

Each Customer agrees that the Authority or its agent shall (when permitted by existing easement) have full access to such easements or over any easements, right-of-way or property held

by such Customer if, and to the extent, required by the Authority for any and all purposes required for the Plant.

**Section 26: Notices.**

Unless otherwise provided for in this Contract, any notice, request, demand or statement provided for in this Contract (including those provided for in Sections 6(c), 13, 14, 16, and 18), and not related to the day-to-day operations of water treatment or delivery of Treated Water shall be in writing and shall be considered to have been duly delivered when sent by registered or certified mail addressed as follows, unless another address has been designated, in writing, by the party entitled to receive same:

- (1) Colorado Springs, Colorado:

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

With copies to:

City Attorney's Office – Utilities Division  
City of Colorado Springs  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575

- (2) The City of Fountain, Colorado:

City of Fountain  
ATTN: Utilities Director  
116 S. Main St.  
Fountain, CO 80817

- (3) Security Water District Enterprise:

Roy E. Heald, General Manager  
231 Security Blvd  
Colorado Springs, CO 80911  
[r.heald@securitywsd.com](mailto:r.heald@securitywsd.com)

- (4) Stratmoor Hills Water District:

Kevin W. Niles  
1811 B Street  
Colorado Springs, CO 80906  
[kevin@stratmoorhillswater.org](mailto:kevin@stratmoorhillswater.org)

(5) Widefield Water and Sanitation District:

Lucas Hale, District Manager  
8495 Fontaine Blvd.  
Colorado Springs, CO 80925  
lucas@wwsdonline.com

With copies to:

Joseph Norris, General Counsel  
Cockrel Ela Glesne Greher & Ruhland, P.C.  
44 Cook Street, Suite 620  
Denver, CO 80206

(6) Fountain Valley Authority:

President, Fountain Valley Authority  
456 West Fontanero Street  
PO Box 1103, 1210  
Colorado Springs CO 80907

With copies to:

Carlson, Hammond & Paddock, LLC  
Karl Ohlsen, Esq.  
1900 N. Grant Street, Suite 1200  
Denver, CO 80203  
kohlsen@chp-law.com

Bills and invoices will be sent electronically, and notices related to the ordinary day-to-day operations of the Plant, Water Treatment, or deliveries of Treated Water, may be verbal, electronic, or written.

**Section 27: Severability.**

The parties hereto agree that if any of the provisions of this Contact should contravene or be held invalid under the laws of the State of Colorado, such contravention or invalidity shall not invalidate the whole Contract but it shall be construed as though not containing that particular provision, and the rights and obligations of the parties shall be construed in force accordingly, as long as the primary purposes of the Contract remains in effect.

**Section 28: Contracts to be Separate.**

This instrument embodies five separate contracts between the Authority and each Customer. Termination of one Contract shall not affect the others.

**Section 29: Use of Fountain Valley Authority Conduit for Water Treatment of Non-Project Water.**

The Authority will support its Customers in the continued use of the Fountain Valley Authority Conduit for the conveyance and treatment of non-Project water, to the extent of the Customers' respective capacity in the Fountain Valley Authority Conduit and the Plant, in order to achieve efficient and full utilization of the Customers' capacities in the Fountain Valley Authority Conduit and the Plant, so long as such use does not interfere with the other Customers' rights and obligations under this Contract.

**Section 30: Authority.**

All parties represent and warrant that they have the full power and authority to enter into and perform this Contract, and that they have taken all entity actions necessary for the execution and performance of this Contract.

**Section 31: Amendment.**

This Contract may be extended, modified, amended, or changed, in whole or part, only by written amendment duly authorized and executed by all Parties with the same formality as this Agreement.

**Section 32: Binding Effect and Assignability.**

This Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective representatives, heirs, successors and assigns, if any. The Parties may not assign their rights or delegate their duties under this Agreement without the prior written consent of all other Parties.

**Section 33: Governing Law and Venue.**

This Agreement and its application shall be construed in accordance with the laws of the State of Colorado. Should it be necessary to institute court proceedings concerning this Agreement, venue shall be in the District Court for El Paso County, Colorado.

**Section 34: Multiple Originals.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same agreement.

**Section 35: Counterparts and Electronic Signatures.**

This Agreement may be executed in multiple counterparts by the Parties. All counterparts 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.

**Section 36: Interpretation.**

Except as otherwise provided herein, nouns, pronouns, and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to policy, procedure, law, regulation, rule, or document shall mean such policy, procedure, law, regulation, rule, or document as it may be amended from time to time.

**Section 37: Entire Agreement.**

This Contract, and documents references herein, represent the entire agreement of the parties with respect to the subject matter covered herein. All negotiations, considerations, representations and understandings between the parties are incorporated and merged herein. This Contract may be modified or altered only by the parties' written agreement.

**Section 38: Cooperation.**

The parties agree to cooperate with each other in good faith in the performance of their obligations and requirements under this Contract and to fulfill the intent and purposes of this Contract.

**Section 39: No Third-Party Beneficiary.**

This Contract shall be for the sole benefit of the parties hereto, and no other party is entitled to have any rights or benefits by reason of this Contract as a third-party beneficiary or otherwise.

**Section 40: Waiver.**

Any waiver of any breach of any provision of this Agreement by any Party shall not constitute a continuing waiver of any subsequent breach of either the same or any other provision of this Agreement.

**Section 41. Attorney Representation.**

Each Party has been represented by and has had an opportunity to consult legal counsel in connection with the negotiation and execution of this Agreement. No provision of this Agreement shall be construed against or interpreted to the disadvantage of either Party by reason of such Party having drafted or being deemed to have drafted such provision.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed in their corporate names and their corporate seals affixed, all by the proper officer duly authorized thereunto, as of the day and year first hereinabove written.

**Fountain Valley Authority, a Political Subdivision of the State of Colorado**

By: \_\_\_\_\_

Name: Abigail Ortega

Title: President

Date: \_\_\_\_\_

**Security Water District, acting by and through its water activity enterprise,**

Attest:

\_\_\_\_\_

By: David Allgood, President

\_\_\_\_\_

Roy E. Heald, Assistant Secretary

**City of Colorado Springs, acting on behalf of its enterprise Colorado Springs Utilities**

\_\_\_\_\_

Travas Deal

Chief Executive Officer

Date:

Approved as to Form

\_\_\_\_\_  
City Attorney's Office-Utilities Division

**City of Fountain, Colorado acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise,**

Attest:

By: \_\_\_\_\_  
Dan Blankenship, Utilities Director

\_\_\_\_\_  
City Clerk's Office

Date: \_\_\_\_\_

**Widefield Water and Sanitation District**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Stratmoor Hills Water District, acting by and through its water activity enterprise**

Attest:

\_\_\_\_\_  
By: Robert Colgrove, President

\_\_\_\_\_  
John Willcox Secretary/ Treasurer

## **EXHIBIT A TO WATER TREATMENT CONTRACT**

### **FORM OF:**

#### **SHORT TERM AGREEMENT FOR WATER SERVICE TO ADDRESS OPERATION AND MAINTENANCE OBLIGATIONS**

**THIS SHORT TERM AGREEMENT FOR WATER SERVICE TO ADDRESS OPERATION AND MAINTENANCE OBLIGATIONS** (“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, hereinafter called “UTILITIES,” and the Fountain Valley Authority, a political subdivision of the State of Colorado, hereinafter called the “AUTHORITY.” Both UTILITIES and AUTHORITY hereinafter are each individually referred to as “Party” and collectively referred to as the “Parties.”

#### **RECITALS**

- A. The AUTHORITY was established by and includes participation from the following entities: Stratmoor Hills Water District, the City of Fountain, the Security Water District, the Widefield Water & Sanitation District, and the City of Colorado Springs (collectively the “FVA Participants”). Stratmoor Hills Water District, City of Fountain, Security Water District, and Widefield Water & Sanitation District are referred to herein as the “Partner Entities”.
- B. The AUTHORITY was organized under the laws of the State of Colorado as a vehicle for the repayment of the costs for construction and operation and maintenance of the Fountain Valley Conduit (“FVC”), and to construct and operate a water treatment plant to provide treatment for water conveyed by the FVC to the FVA Participants.
- C. Each of the FVA Participants is entitled to a portion of the Fryingpan-Arkansas water allocated to the FVC by the Southeastern Colorado Water Conservancy District, pursuant to the Contract Between the United States and the Southeastern Colorado Water Conservancy District for Conveyance Service from the Fountain Valley Conduit dated July 10, 1979, and the Subcontract Between the Southeastern Colorado Water Conservancy District and the Fountain Valley Authority, the City of Colorado Springs, the City of Fountain, the Security Water District, Stratmoor Hills Water District, and the Widefield Homes Water Company for Conveyance Service from the Fountain Valley Conduit dated July 10, 1979.
- D. The water delivered to the FVC requires treatment to be potable and fit for municipal and domestic uses by the FVA Participants.
- E. The AUTHORITY provides water treatment service to the FVA Participants pursuant to the terms set forth in a Water Treatment Contract Between the AUTHORITY and the FVA Participants dated \_\_\_\_\_, 2023, replacing a prior agreement between the Authority and FVA Participants dated November 1, 1979 (“Water Treatment Contract”).



- F. The AUTHORITY constructed and operates, or causes to be operated, a water treatment plant (“Treatment Plant”) with sufficient capacity to treat the water allocated to the FVC for the purpose of supplying water treatment to each FVA Participant.
- G. UTILITIES operates the Treatment Plant and performs the AUTHORITY’s obligations according to the terms set forth in the Water Treatment Contract on behalf of AUTHORITY pursuant to a Management Agreement dated April 1981, between the AUTHORITY and UTILITIES and approved by the FVA Participants (the “Management Agreement”).
- H. Pursuant to the Management Agreement, UTILITIES is responsible for delivering potable water to the FVA Participants.
- I. Colorado Springs’ allotment of FVC water treated at the Treatment Plant is delivered to UTILITIES’ water system through a connection located in the AUTHORITY’s Colorado Springs/Stratmoor Hills Terminal Tank vault that was constructed in the early 1980s as part of the FVC project.
- J. The connection at the AUTHORITY’s Colorado Springs/Stratmoor Hills Terminal Tank was designed and constructed such that (1) Colorado Springs’ treated FVC water could be conveyed into its water distribution system and (2) so that the flow of water at the connection could be reversed such that Colorado Springs could provide treated water to the other FVA Participants in case of an emergency or required maintenance of the Treatment Plant.
- K. The AUTHORITY and UTILITIES have determined that the Treatment Plant needs to be shut down for an extended maintenance outage during the period between \_\_\_\_\_, 20\_\_\_\_, and \_\_\_\_\_, 20\_\_\_\_, (“Outage Period”) and the Treatment Plant will not be available to treat the FVC water during that time. Failure to perform the necessary preventative maintenance during the Outage Period could result in Treatment Plant failure and the need for extended and unplanned emergency service.
- L. In light of the need for preventive maintenance of the Water Treatment Plant, AUTHORITY and UTILITIES agree that, in order to meet each Party’s obligations set forth in the Water Treatment Contract and the Management Agreement, UTILITIES will provide AUTHORITY with temporary water service during the Outage Period; with the temporary water service consisting of UTILITIES’ delivery of treated, potable water to the AUTHORITY’s system at the AUTHORITY’s Colorado Springs/Stratmoor Hills Terminal Tank for AUTHORITY’s subsequent delivery to the Partner Entities (the “Service”). In exchange for the delivery of treated potable water to the AUTHORITY, the AUTHORITY will make a volume of water subject to the AUTHORITY’s control, use, and allocation equal to the volume of treated water UTILITIES delivered to the Point of Connection into UTILITIES’ excess capacity account in Pueblo Reservoir, in the manner described in Section II. G., below.

- M. UTILITIES currently has infrastructure capacity available in its water system, a sufficient but interruptible supply of fully consumable water, sufficient water conveyance, storage capacity, and water treatment capacity to provide short-term, interruptible delivery to AUTHORITY of the volume of treated water allocated to each FVA Participant during the Outage Period as required under the Water Treatment Contract.
- N. Given that this Agreement is necessary for UTILITIES and AUTHORITY to meet their obligations under the Water Treatment Contract and the Management Agreement, that the connection point between the systems was built for emergency redundancy, and that the provision of Service under this Agreement is temporary and preventative, this Agreement is not a Regional Water Service Agreement contemplated by UTILITIES' Tariffs and the rates and fees applicable to such agreements under the Tariffs do not apply to this Agreement.
- O. UTILITIES entered into this Agreement pursuant to and in accordance with UTILITIES' Excellence in Governance Policy, Utilities Board Instructions to the Chief Executive Officer, Water Supply Management (I-7).

## **AGREEMENT**

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

### **I. DEFINITIONS**

- A. For the purposes of this Agreement, the following terms shall have the following meanings, unless the context clearly requires otherwise:
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. 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.

### **II. SERVICE**

- A. **Term:** This Agreement shall become effective upon the date of the last signature below and remains in effect until 5:00 pm MST on \_\_\_\_\_, 20\_\_ ("Term"). Should the AUTHORITY provide UTILITIES with notice no later than \_\_\_\_\_, 20\_\_, that the Outage Period needs to continue beyond \_\_\_\_\_, 20\_\_, the term may, at Utilities' sole

discretion, be extended through the date for the end of the Outage Period provided in the notice or \_\_\_\_\_, 20 \_\_, whichever comes first. Utilities shall provide AUTHORITY with notice of whether it approves the requested extension of the Term within fourteen days of its receipt of notice from AUTHORITY requesting the extension. Any further extension of the Term will be subject to paragraph II.J.

**B. Service:** In order for UTILITIES and AUTHORITY to meet their obligations set forth in the Water Treatment Contract and the Management Agreement, UTILITIES agrees to provide the AUTHORITY with Service as contemplated in this Agreement.

**C. Point of Connection:**

1. UTILITIES shall deliver treated, potable water under this Agreement to the AUTHORITY at the AUTHORITY's Colorado Springs/Stratmoor Hills Terminal Tank vault located at 2447 Chamberlin South, Colorado Springs, CO 80906, and the water will be deemed delivered as it flows through the meter at that location (Point of Connection).
2. AUTHORITY shall be solely responsible, financially and otherwise, for the operation, maintenance and repair, improvement, including any necessary improvement, repair or maintenance of the Point of Connection that is requested by UTILITIES for the purpose of meeting its obligations under this Agreement. All repair or maintenance of the Point of Connection shall be completed in a timely manner and in accord with standard industry practices.

**D. Volumetric Delivery Terms:** AUTHORITY shall limit its treated water demand on UTILITIES' system to an instantaneous flow rate of not more than 5,125 gallons per minute, and a total maximum daily delivery of 7.38 million gallons per day (daily flow limit). UTILITIES may, as it deems necessary and without providing AUTHORITY 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 AUTHORITY timely notice of any changes of this type, unless the delay from doing so would result in material injury to the AUTHORITY's or the Partner Entities' infrastructure. UTILITIES shall not be obligated to deliver more than the amount of water allocated to each FVA Participant, as shown in the table below:

<u>Allocated Flow</u>	<u>MGD</u>
Stratmoor Hills	0.54
Fountain	1.78
Fountain Swap	2.25
Security	1.47
Widefield	1.34
<b>Total</b>	<b>7.38</b>

- E. Use of Water:** AUTHORITY agrees not to allow the FVA Participants to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside their existing service territories as of the date of this Agreement or to any entity or person other than the Partner Entities. AUTHORITY further irrevocably commits not to allow FVA Participants 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.
- F. Water Rights Unaffected:** No water rights are being transferred to or from UTILITIES or AUTHORITY under this Agreement.
- G. Replacement Water:** UTILITIES will measure the volume and provide accounting to AUTHORITY for all treated water delivered to AUTHORITY pursuant to this Agreement. Such accounting shall be provided to AUTHORITY. In exchange for the treated water provided by UTILITIES under this Agreement, AUTHORITY will credit the designated UTILITIES' account in Pueblo Reservoir for the volume of water delivered to AUTHORITY under this Agreement and will subtract the appropriate volume from the Partner Entities' accounts such that all water delivered by UTILITIES to AUTHORITY under this Agreement will be replaced on a one for one basis. Such replacement shall occur on or before the date set forth in paragraph II.H, below.
- H. Service Rates, Fees, and Billing:** AUTHORITY agrees to pay UTILITIES for water provided pursuant to this Agreement at the "agreement rate", defined as the previous three-month average Colorado Springs SDS Variable Costs as defined in Exhibit C of the Intergovernmental Agreement for the Operations, Maintenance and Replacement of the Southern Delivery System. UTILITIES will bill AUTHORITY monthly in arrears for all treated water provided under this Agreement with payment due within thirty (30) days of the date of billing.
- I. Metering:** All water delivered under this Agreement shall be measured at the previously installed meter located at the Point of Connection and for AUTHORITY's billing purposes the previously installed meters at the point of connection between the AUTHORITY System and each of the FVA Participant's systems. All such meters were installed by AUTHORITY and are owned and operated by AUTHORITY. Testing and calibration of such meters and resolution of any issues related thereto shall be in accordance with the terms set forth in Section 8 of the Water Treatment Contract.
- J. Changes in Terms or Type of Service:** Should AUTHORITY require Service for longer than the Term, request deliveries that exceed the limits outlined in this Agreement, or desire a different type of water service, UTILITIES and AUTHORITY shall either amend this Agreement or renegotiate the Agreement in its entirety. Any such additional Service will be evaluated based on the nature of the situation and may be subject to additional costs and/or requirements in accordance with UTILITIES' then current tariffs, standards, and policies.

### III. WATER DELIVERIES

**A. Requests for Delivery of Water:** AUTHORITY will communicate directly with UTILITIES' System Control as specified in this section and follow up with a written request for delivery of treated 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. For the purposes of AUTHORITY requesting service and UTILITIES responding to requests, the term "written" shall include communications by electronic mail to certain electronic mail addresses, which AUTHORITY and UTILITIES shall provide to each other upon execution of this Agreement and keep current through the duration of the Agreement. AUTHORITY shall limit its water demand on UTILITIES' system as specified in paragraph III.D. The initial contacts are set forth below.

#### 1. UTILITIES System Control

- a. Operations Supervisor, Jeremy McBeain  
jmbeain@csu.org  
(719) 668-4588  
(719) 494-6973
- b. System Control Operator, to be acknowledged within 24-hours by Operations Supervisor  
(719) 668-4570
- c. Water\_accounting@csu.org

#### 2. AUTHORITY System Control

- a. AUTHORITY Operator I  
(719) 668-9052
- b. AUTHORITY II Sage Church  
schurch@csu.org  
(719) 668-9082

**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.

**C. Drinking Water Quality Regulatory Compliance; Required Permits:** The water provided by UTILITIES to AUTHORITY at the Point of Connection shall be potable water that 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. AUTHORITY agrees that its

water system constitutes a Consecutive System and, in accordance with §1.9 of the Colorado Primary Drinking Water Regulations, AUTHORITY is responsible for all applicable monitoring and reporting requirements of the Colorado Primary Drinking Water Regulations of water within AUTHORITY's system.

- D. Permits.** AUTHORITY 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 to fulfill all purposes of this Agreement. A copy of such approval will be provided to UTILITIES within 30 days of receipt by AUTHORITY to the UTILITIES' contacts set forth in Article V.A below.
- E. Consecutive System Disinfection:** AUTHORITY and UTILITIES shall comply with the Consecutive Systems Disinfection Protocol set forth in Appendix A during the term of this Agreement.
1. Disinfection pursuant to Appendix A is required when:
    - a. 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
    - b. The consecutive system is bringing the Point of Connection back into service after a period of >72 hours of the line being stagnant or empty. 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](mailto:waterquality@csu.org) to schedule for disinfection.
- F. Colorado Water Quality Control Act Compliance:** If at any time during the effective term of this Agreement AUTHORITY fails to meet the requirements of the Colorado Water Quality Control Act applicable to AUTHORITY and related to the subject matter of this Agreement, 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 the AUTHORITY or any third party, including AUTHORITY's customers, until AUTHORITY has achieved compliance. With or without suspension or interruption by UTILITIES, AUTHORITY, in the event of its failure to meet such requirements applicable to AUTHORITY, 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 AUTHORITY. In the event UTILITIES fails to meet the requirements of the Colorado Water Quality Control Act and applicable regulations thereunder, UTILITIES shall notify AUTHORITY in the same manner as its other customers, and AUTHORITY 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.

#### IV. STANDARD TERMS AND CONDITIONS

- A. **Legal Notice:** Notices under this Agreement, other than AUTHORITY'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) or by first-class mail 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 AUTHORITY:

1. Sage Church - Superintendent

Fountain Valley Water Treatment Plant  
13250 Ray Nixon Road  
Fountain CO 80817  
(719)668-9082

2. President, Fountain Valley Authority  
456 West Fontanero Street  
PO Box 1103, 1210  
Colorado Springs CO 80907

3. Attorney, Carlson, Hammond & Paddock, LLC  
Karl Ohlsen  
1900 N Grant Street, Suite 1200  
Denver, CO 80203

- B. Termination:** AUTHORITY acknowledges and consents to UTILITIES' right to terminate deliveries of water under this Agreement due to 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 AUTHORITY's breach of a material term or condition of this Agreement or as otherwise authorized by the City Code of Colorado Springs. To the extent UTILITIES has actual knowledge, UTILITIES will notify the AUTHORITY of circumstances that could result in such termination.
- C. Legal Compliance:** AUTHORITY shall be solely responsible for obtaining and complying with all administrative or judicial approvals necessary to accomplish the provision of water service and water conveyance by UTILITIES to AUTHORITY under this Agreement. UTILITIES will cooperate as reasonably requested by the AUTHORITY in any application or proceedings to obtain such approvals.
- D. City of Colorado Springs Compliance:** AUTHORITY agrees to comply with all applicable ordinances, regulations and rules concerning the connection to and use of UTILITIES' water system by AUTHORITY.
- E. 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. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than UTILITIES and the AUTHORITY.
- F. 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.
- G. 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.

#### **H. Appropriation of Funds:**

1. UTILITIES: This Agreement is expressly made subject to the limitations of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligations of UTILITIES that may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement by UTILITIES.
  
2. AUTHORITY: The AUTHORITY is an “enterprise” for purposes of Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation, and this Agreement does not affect its enterprise status. The funds for the current year’s activities related to this Agreement have been fully appropriated. AUTHORITY agrees to use good faith efforts to seek the appropriation of sufficient funds to allow AUTHORITY to fully and timely perform its obligations under this Agreement for each fiscal year that occurs during the term of this Agreement. In the event funds are not appropriated in whole or in part sufficient for performance of all of AUTHORITY’s obligations under this Agreement that are to be performed in the next calendar year, or appropriated funds may not be expended due to applicable spending limitations, then all rights and obligations of AUTHORITY under this Agreement will terminate, and AUTHORITY will thereafter have no liability for compensation or damages to UTILITIES in excess of AUTHORITY’s authorized appropriation for this Agreement or the applicable spending limit, whichever is less. AUTHORITY shall notify UTILITIES as soon as reasonably possible in the event of a non-appropriation or in the event a spending limit becomes applicable that impacts AUTHORITY’s ability to perform its obligations under this Agreement.

- I. **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.

**J. 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.

**K. Execution in Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall constitute an original.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the dates set forth below.

**COLORADO SPRINGS UTILITIES,  
AN ENTERPRISE OF THE CITY OF COLORADO  
SPRINGS, A HOME RULE CITY AND COLORADO  
MUNICIPAL CORPORATION**

By: \_\_\_\_\_  
Name: TBD  
Title: Chief Executive Officer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney's Office – Utilities Division

**FOUNTAIN VALLEY AUTHORITY,  
A POLITICAL SUBDIVISION OF THE  
STATE OF COLORADO**

By: \_\_\_\_\_

Name: Abigail Ortega

Title: President

Date: \_\_\_\_\_