

WASTEWATER SERVICE AGREEMENT
Contract Service – Regional (S9C)

THIS AGREEMENT ("Agreement") is made and entered into as of the date of the last signature below ('Effective Date') , by and between Colorado Springs Utilities ("UTILITIES"), an enterprise of the City of Colorado Springs ("City"), a Colorado home rule City and municipal corporation, and Garden Valley Water and Sanitation District, a quasi-municipal corporation and political subdivision of the State of Colorado ("GARDEN VALLEY") (collectively, the "Parties"), for and in consideration of the mutual promises and covenants provided herein, the receipt and sufficiency of which are hereby acknowledged. In this document, UTILITIES and GARDEN VALLEY can be referred to individually as "Party" or collectively as "Parties."

Recitals

- A. GARDEN VALLEY is a Colorado Water and Sanitation District that currently provides domestic wastewater collection services to a customer base located within an unincorporated enclave in the southern portion of the City of Colorado Springs.
- B. GARDEN VALLEY owns, operates and maintains a wastewater collection system located within the Service Area of GARDEN VALLEY as defined on the map attached hereto as Exhibit A and herein incorporated by reference.
- C. UTILITIES currently accepts and treats GARDEN VALLEY's wastewater pursuant to that certain Agreement between the Parties dated February 3, 2000 as amended through December 31, 2024 ("Original Agreement") and UTILITIES and GARDEN VALLEY desire for UTILITIES to continue to accept and treat through its Wastewater Treatment System GARDEN VALLEY's wastewater flows pursuant to the terms and conditions of this Agreement.
- D. The Parties are currently in negotiations to resolve disputes related to billing and infrastructure maintenance that arose under the Original Agreement.
- E. UTILITIES has wastewater infrastructure and treatment capacity available in its Wastewater Treatment System to provide wastewater related services for the anticipated wastewater flows from GARDEN VALLEY through December, 2051 which is the end of the Extended Term of this Agreement.
- F. UTILITIES has entered into this Agreement pursuant to Section 12.5.304 (Service; Special Contract) of Article 5 (Wastewater Treatment Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended.

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

Article I
General Provisions

1. Term; Renewal.

- a. This Agreement shall become effective on the Effective Date and shall remain in effect until 5 pm on December 31, 2027 ("Original Term"). If the Parties agree in writing on a resolution of the disputes addressed in Recital D above, prior to June 30, 2027, this Agreement shall remain in effect until December 31, 2051 ("Extended Term"). If the Parties have not resolved the disputes described in Recital D by June 30, 2027:
 - i. UTILITIES may notify GARDEN VALLEY in writing that this Agreement will terminate and GARDEN VALLEY shall be disconnected from UTILITIES' Wastewater Treatment System upon the expiration of the Original Term; or
 - ii. If the Parties mutually agree in writing to continue good faith negotiations related to the resolution of the disputes described in Recital D, UTILITIES, in its sole discretion may extend the deadline to complete negotiations on resolution of the disputes to the end of the Original Term or extend the Original Term to a later date ("Extended Original Term") to facilitate continued negotiations. If the disputes are not resolved by the end of the Original Term or the Extend Original Term, this Agreement will automatically terminate and GARDEN VALLEY shall immediately disconnect from UTILITIES' Wastewater Treatment System. If the Parties agree in writing on a resolution of the disputes prior to expiration of the Original Term or the Extended Original Term, this Agreement shall remain in effect until expiration of the Extended Term.
- b. No later than eighteen (18) months prior to the expiration of the Extended Term as applicable, the Parties shall begin good faith negotiations on a new agreement for UTILITIES to treat GARDEN VALLEY's wastewater, with the expectation that such new agreement ("New Agreement") shall be substantially similar to this Agreement.
- c. If the Parties are unable to execute a New Agreement by the date that is six (6) months prior to the end of the Extended Term:
 - i. UTILITIES may notify GARDEN VALLEY in writing that GARDEN VALLEY shall be disconnected from UTILITIES' Wastewater Treatment System as of the expiration of the Term; or
 - ii. UTILITIES, in its sole discretion may extend the Extended Term of this agreement for an additional one (1) year term if the Parties mutually agree to continue good faith negotiations for a new wastewater service agreement beyond the expiration of the Extended Term.

2. Definitions. Terms not otherwise defined herein shall have the meaning adopted in the City Code as amended from time-to-time.

- a. GARDEN VALLEY's Customers: The persons and entities located within GARDEN VALLEY's Service Area, that receive the benefit of the wastewater service provided

hereunder.

- b. GARDEN VALLEY's Service Area: GARDEN VALLEY's service area, as identified in Exhibit A attached hereto.
- c. GARDEN VALLEY's Wastewater Collection System: GARDEN VALLEY's Wastewater Collection System includes any devices, facilities, structures, equipment or works located upstream of the point of connection described in paragraph Article II.1 below that are owned by GARDEN VALLEY for the purpose of collection and transmission of wastewater generated within GARDEN VALLEY's Service Area to UTILITIES' Wastewater Treatment System.
- d. Industrial User: A source of discharge which introduces pollutants into Garden Valley's Wastewater Collection System and UTILITIES' Wastewater Treatment System from any nondomestic source regulated under Section 307(B), (C), or (D) of 33 USC Section 1317, et seq.
- e. Maximum Average Flow: The Maximum Average Flow shall be calculated based on a ninety (90) day rolling average of discharge as measured at the points of connection described in Article II.1.
- f. UTILITIES' Wastewater Treatment System: UTILITIES' Wastewater Treatment System includes any devices, facilities, structures, equipment or works owned by UTILITIES for the purpose of collecting and treating wastewater located downstream of the point of connection.
- g. Wastewater Regional System Availability Fee (WWRSAF): A fee assessed for each new connection to UTILITIES' Wastewater Collection and Treatment System by contract outside the corporate limits of the City in areas where UTILITIES' Wastewater Treatment System is available for use by UTILITIES to serve institutions, plants, organized wastewater districts, municipal corporations, or other similar organizations and only with prior approval by the Colorado Springs City Council.
 - i. The WWRSAF reflects the amount of capacity needed within UTILITIES' Wastewater Treatment System to meet the obligations of regional wastewater contracts.
 - ii. The WWRSAF is determined based on the meter size needed to treat GARDEN VALLEY's Maximum Average Flows.
 - iii. Any entity that paid a WWRSAF or an analogous charge through a contract in place prior to the implementation of the WWRSAF will be credited for the amount paid for the analogous charge. If the entity met its full contractual WWRSAF or equivalent, it is deemed to have met its WWRSAF and will not be charged an additional WWRSAF.
- h. WWLESS: UTILITIES' Wastewater Line Extension and Service Standards, as

may be amended or replaced.

3. Jurisdiction and Compliance.

- a. This Agreement is for wastewater treatment service as defined in UTILITIES' Wastewater Rate Schedule "Contract Service – Regional (S9C)," together with UTILITIES' Rules and Regulations ("URRs") as such may be amended or replaced from time to time by the Colorado Springs City Council ("Tariffs"). The wastewater treatment service provided to Garden Valley under this Agreement shall be governed, implemented and enforced with regard to GARDEN VALLEY and GARDEN VALLEY's Customers in accordance with the Colorado Springs City Charter, the City Code, the Tariffs, UTILITIES' WWLESS, and all other applicable City or UTILITIES' ordinances, resolutions regulations, policies and rules concerning use of UTILITIES' Wastewater Treatment System as may be amended or replaced, except as otherwise provided in this Agreement.
- b. GARDEN VALLEY is a User of Colorado Springs' publicly owned wastewater treatment works for the purposes of City Code §12.5.102. In accordance with City Code § 12.5.304, GARDEN VALLEY has previously submitted and agrees to continue to submit to the jurisdiction of the City for the purposes of implementation and enforcement of City Code Chapter 12, Article 5 with regard to GARDEN VALLEY and GARDEN VALLEY's Customers. GARDEN VALLEY has by resolution and adoption of its Rules and Regulations, provided for GARDEN VALLEY and GARDEN VALLEY's Customers to submit to the jurisdiction of the City for the purposes of the UTILITIES implementing and enforcing City Code Chapter 12, Article 5 with regard to GARDEN VALLEY and its Customers and require GARDEN VALLEY and its Customers to comply with all applicable laws, regulations, rules or policies concerning use of UTILITIES' Wastewater Treatment System as they exist now or may be amended or replaced in the future (collectively, "GARDEN VALLEY's Sewer Use Regulations"). GARDEN VALLEY's Sewer User Regulations include and, any revisions to such Sewer Use Regulations, must include provisions that mirror or are more stringent than City Code Chapter 12, Article 5.
- c. UTILITIES shall provide GARDEN VALLEY with notice of any revisions made to City Code Chapter 12, Article 5 in the future. GARDEN VALLEY shall revise and provide the contacts set forth in Article IV.13 hereof its revised Sewer Use Regulations that are at least as stringent as the revised version of City Code Chapter 12, Article 5 within sixty (60) days of its receipt of notice from UTILITIES. UTILITIES will have sixty (60) days from its receipt of the draft to provide GARDEN VALLEY with notice of whether it approves GARDEN VALLEY's proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES determines that revisions to GARDEN VALLEY's Sewer Use Regulations are necessary, GARDEN VALLEY shall provide UTILITIES with revised proposed Sewer Use Regulations that include the revisions. UTILITIES will have sixty (60) days from its receipt of the revised proposed Sewer Use Regulations to provide GARDEN VALLEY with notice of whether it approves GARDEN VALLEY's revised proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES provides GARDEN VALLEY with notice that revisions to the proposed Sewer Use Regulations are necessary, GARDEN VALLEY shall

have ninety (90) days to make such revisions and provide UTILITIES with revised proposed Sewer Use Regulations that includes UTILITIES' requested revisions. UTILITIES will have sixty (60) days from its receipt of the revised proposed Sewer Use Regulations to provide GARDEN VALLEY with notice of whether it approves GARDEN VALLEY's revised proposed Sewer Use Regulations or if revisions thereto are necessary.

- d. GARDEN VALLEY shall provide UTILITIES with notice and a copy of the most recent version of GARDEN VALLEY's Sewer Use Regulations to the contacts set forth in Article IV.13 hereof within thirty (30) days of the Effective Date, and any amendments to said regulations within thirty (30) days of adoption. GARDEN VALLEY shall promptly provide UTILITIES with a copy of its Sewer Use Regulations upon request by UTILITIES at any other time.

4. Wastewater Treatment Service.

- a. During the term of this Agreement, UTILITIES will accept and treat through its Wastewater Treatment System, wastewater that originates from inside GARDEN VALLEY's Service Area from GARDEN VALLEY's customers, subject to the terms and conditions contained herein in accordance with City Code, the URRs, and subject to the terms and conditions contained herein.
- b. UTILITIES shall have no obligation to accept and treat wastewater under this Agreement that originates outside of GARDEN VALLEY's Service Area.
- c. UTILITIES shall have no obligation to accept and treat wastewater under this Agreement that exceeds Maximum Average Flows of 0.0707 million gallons per day (70,700 gallons per day).
- d. GARDEN VALLEY shall provide UTILITIES with annual notification that its Wastewater Collection System has not changed and notice no less than thirty (30) days prior to any proposed change in GARDEN VALLEY's Wastewater Collection System and Service Area. GARDEN VALLEY shall promptly provide UTILITIES with a copy of its Service Area map upon request by UTILITIES at any other time. Failure of GARDEN VALLEY to provide annual notification that its Wastewater Collection System has not changed shall not be considered a material breach of this agreement authorizing termination or assessment of liquidated damages.

- 5. No Expansion of GARDEN VALLEY's Service Area. GARDEN VALLEY is unlikely to expand its Service Area since it is located within an enclave of the City of Colorado Springs. GARDEN VALLEY will not expand its Service Area without the prior written approval of UTILITIES.

6. Rates, Charges, Surcharges and Fees Payable by GARDEN VALLEY.

- a. For the services provided hereunder, GARDEN VALLEY shall pay to UTILITIES the applicable rates, charges, surcharges, and fees as specified in the Tariffs as such may be amended or replaced from time to time by the Colorado Springs City Council. Such

charges and fees include, but are not limited to, Treatment Charges and Extra Strength Surcharges, as provided in UTILITIES' rate schedule "Contract Service - Regional", WWRSF and Recovery Agreement Charges as provided in the Tariffs. Surcharges will apply to GARDEN VALLEY's wastewater that exceeds normal domestic strength for biochemical oxygen demand and total suspended solids and will be based on twenty-four (24) hour composite samples. GARDEN VALLEY agrees that UTILITIES' rate making process, as embodied in the Tariffs, is fair and reasonable.

- b. GARDEN VALLEY agrees to pay the prevailing Treatment Charges and Extra Strength Surcharges or replacements, for every cubic foot of wastewater delivered to UTILITIES' Wastewater Treatment System. UTILITIES will bill GARDEN VALLEY monthly in arrears for such Treatment Charges and Extra Strength Surcharges with payment due within thirty (30) days of the date of billing.
- c. GARDEN VALLEY's historical demand on UTILITIES' Wastewater Treatment System has not exceeded Maximum Average Flows of 0.0707 million gallons per day. The current WWRSF for Maximum Average Flows of between 0 and 0.10 million gallons per day is \$7,162.00. As an existing wastewater customer of UTILITIES that has paid all required connection fees for a Maximum Average Flows of 0.0707 million gallons per day, GARDEN VALLEY has satisfied the obligations of the WWRSF for such Maximum Average Flow through prior contracts and payments and shall not be required to pay the WWRSF at this time. If GARDEN VALLEY's demands on UTILITIES' Wastewater Treatment System exceed Maximum Average Flows of 0.10 million gallons per day, then GARDEN VALLEY will be required to pay the difference between the WWRSF for Maximum Average Flows of between 0 and 0.10 million gallons per day set forth above and the applicable WWRSF for the new Maximum Average Flows under UTILITIES' Tariffs.
- d. GARDEN VALLEY shall pay a Water Quality Impact Fee that will be calculated and billed annually. The annual fee will be based on the GARDEN VALLEY's pro rata share of UTILITIES' combined yearly wastewater treatment flows, times the cost of UTILITIES' water quality monitoring and studies and Fountain Creek watershed improvements.
- e. GARDEN VALLEY will continue to pay the rates and charges established in the Tariffs even if UTILITIES changes its Tariffs so long as UTILITIES' process to change the tariffs is conducted in compliance with the laws of the State of Colorado, City Code, and any other applicable law. UTILITIES will notify GARDEN VALLEY thirty (30) days in advance of City Council's consideration of the change in tariffs applicable to this Agreement.
- f. Payments under this Paragraph by GARDEN VALLEY shall be due at UTILITIES, Customer Services Department, 111 S. Cascade Ave., Colorado Springs, Colorado 80903. If a bill is not paid within thirty (30) days of when it is due, a deposit will be assessed as outlined in the Tariffs as modified or replaced.

7. GARDEN VALLEY's Responsibilities. In addition to other responsibilities and duties provided

in this Agreement, GARDEN VALLEY shall solely have the following responsibilities:

- a. GARDEN VALLEY shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with, GARDEN VALLEY's Wastewater Collection System including, but not limited to, air emissions from GARDEN VALLEY's Wastewater Collection System, and spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency ("EPA") from GARDEN VALLEY's Wastewater Collection System.
- b. GARDEN VALLEY shall at all times have in place and enforce its Sewer Use Regulations. In the event that GARDEN VALLEY fails to provide resources or otherwise fails to implement and enforce its Sewer Use Regulations within GARDEN VALLEY's Service Area in a timely manner, UTILITIES is authorized to take all such actions on behalf of and as an agent for GARDEN VALLEY after providing GARDEN VALLEY with notice of same.
- c. At all times, GARDEN VALLEY shall cause all wastewater, which is discharged directly or indirectly into GARDEN VALLEY's Wastewater Collection System or into UTILITIES' Wastewater Treatment System by GARDEN VALLEY or GARDEN VALLEY's Customers, or on their behalf, to comply with GARDEN VALLEY's Sewer Use Regulations and any requirements of UTILITIES, as permitted by law.
- d. GARDEN VALLEY shall at all times operate GARDEN VALLEY's Wastewater Collection System so as not to interfere with service to third parties who rely on UTILITIES' Wastewater Treatment System.
- e. GARDEN VALLEY's Wastewater Collection System shall collect only from separate sanitary sewer systems and there shall be no combined sanitary and stormwater systems or stormwater systems connected to GARDEN VALLEY's Wastewater Collection System.
- f. If GARDEN VALLEY has a slug discharge as defined in §12.5.201 of the City Code, or a discharge that could cause problems to the UTILITIES' Wastewater Treatment System, UTILITIES shall be immediately notified. Additionally, a written report shall be submitted within five (5) days of the event detailing the date, time and cause of the slug discharge, the quantity and characteristics of the discharge, and corrective action taken to prevent future slug discharges.
- g. GARDEN VALLEY shall inform UTILITIES at least two (2) weeks prior to any planned significant change in operations which will affect wastewater characteristics or at least 90 days prior to discharge of any new source of categorical process wastewater. Unplanned changes in wastewater characteristics must be reported within seven (7) days after the change becomes known.
- h. GARDEN VALLEY shall report, in the manner provided below, any illicit discharge, spill, leak, or sanitary overflow from GARDEN VALLEY's Wastewater Collection System, which may endanger human health, the environment or otherwise enter State Waters (as defined

in C.R.S. § 25-8-103(19)) directly or indirectly ("Incident") to UTILITIES and the Colorado Department of Public Health and Environment – Water Quality Control Division ("CDPHE"), as soon as GARDEN VALLEY becomes aware of the Incident. Such notification shall, at a minimum, provide the following information:

1. A description of the Incident including bypass or upsets.
2. The period of and cause of the Incident the exact dates and times and/or anticipated time when the Incident will be remedied.
3. The steps GARDEN VALLEY is taking to reduce, eliminate and prevent reoccurrence of the Incident.

Incidents shall be reported verbally to UTILITIES and the CDPHE within twenty-four (24) hours and a written report shall be mailed to said entities within five (5) days from the date GARDEN VALLEY becomes aware of the Incident.

- i. GARDEN VALLEY shall maintain an approved EPA User Charge System (40 CFR 35.2140). UTILITIES will notify GARDEN VALLEY by February 1 of each calendar year of UTILITIES' classifications, classes and surcharges per class and any other information on revenues, costs and allocation of costs between BOD, TSS and flow so as to assure proportional allocation of costs to Users. GARDEN VALLEY shall provide within sixty (60) days of implementation or upon request by UTILITIES, a report on GARDEN VALLEY's classes, rates, and implementation provisions. GARDEN VALLEY will comply with EPA regulation 40 CFR § 35.2140(c) by advising GARDEN VALLEY's Wastewater Collection System Users in conjunction with a regular bill (or other means acceptable to the EPA Regional Administrator) of their wastewater rate and that portion of the rate attributable to wastewater treatment services. A copy of the notification shall be forwarded to UTILITIES within sixty (60) days of when GARDEN VALLEY provides such notification to its wastewater customers.
 - j. GARDEN VALLEY is prohibited from contributing excess flows that cause or contribute to overflows, flooding, or non-compliance with UTILITIES' Colorado Discharge Permit System ("CDPS") Permit No. CO-0026735.
8. Approvals and Permits. The Parties expressly acknowledge that the service contemplated and/or the construction of any Improvements, defined below, under this Agreement is dependent upon the receipt of any necessary approvals and/or permits by Federal, State, and local governmental and/or regulatory entities. GARDEN VALLEY shall be responsible for obtaining all approvals and/or permits for the Improvements necessary for the implementation of this Agreement, but this requirement shall not be interpreted to require GARDEN VALLEY to obtain approvals and/or permits UTILITIES must obtain independent of its service obligations to GARDEN VALLEY under this Agreement. UTILITIES will cooperate with GARDEN VALLEY to obtain any necessary approvals and/or permits. If any required approval and/or permit is not obtained by GARDEN VALLEY, either Party may terminate this Agreement. A copy of such approval or permit shall be provided to UTILITIES by GARDEN VALLEY.

9. Interpretation of Requirements. In all cases where the application or the enforcement of the City Code, URRs, Tariffs or WWLESS, as may be amended, involve technical or scientific analyses or determinations, UTILITIES shall have final authority as to methods, standards, criteria, significance, evaluation, and interpretation of such analyses and determinations.
10. Reusable Return Flows. Unless separately agreed to by the Parties, UTILITIES will maintain dominion, and control of treated reusable water effluent resulting from wastewater introduced by GARDEN VALLEY into UTILITIES' Wastewater Treatment System for treatment until such time as such reusable water effluent is discharged from UTILITIES' wastewater treatment facilities. Upon such discharge, GARDEN VALLEY shall have, to the extent allowed by law and consistent with its ownership of the water treated by UTILITIES, the right to use, reuse, successively use, and dispose of all return flows resulting from wastewater introduced by GARDEN VALLEY into UTILITIES' Wastewater Treatment System.

Article II

Improvements/Connection to UTILITIES' Wastewater Treatment System

1. Point(s) of Connection of GARDEN VALLEY to UTILITIES' Wastewater Treatment System. GARDEN VALLEY shall deliver its wastewater to UTILITIES' Wastewater Treatment System at UTILITIES' 48 inch collection line located depicted on Exhibit B hereto. This connection point, and all other approved new, modified or abandoned connections to UTILITIES' Wastewater Treatment System shall be made at the expense of GARDEN VALLEY.
2. GARDEN VALLEY's Wastewater Collection System Improvements. GARDEN VALLEY shall be solely responsible, financially and otherwise, for designing, installing, constructing, maintaining, replacing and operating GARDEN VALLEY's Wastewater Collection System including, but not limited to, existing infrastructure, wastewater mains, sampling equipment, and all infrastructure improvements necessary to connect UTILITIES' Wastewater Treatment System to GARDEN VALLEY's Wastewater Collection System point(s) of connection, and all other related facilities necessary for use in connection with this Agreement, but excluding the wastewater discharge meters described in paragraph 4 below ("Improvements"). The Improvements shall be agreed upon by the Parties in advance and shall be designed, installed, constructed, inspected, operated and maintained in accordance with the City Code and the WWLESS as each may be amended or replaced. The Improvements shall be located on property owned by GARDEN VALLEY or in rights-of-way or easements dedicated for public utilities or conveyed to GARDEN VALLEY. GARDEN VALLEY shall, at its own cost and subject to UTILITIES' approval, which shall not be unreasonably withheld, locate, design, and construct the Improvements in such a manner and of such material that the Improvements will not at any time be a source of danger to or interference with any of UTILITIES' structures, facilities, or operations. UTILITIES shall have the right to perform its own inspection of all completed Improvements to ensure compliance with the City Code and the WWLESS.
3. Customer Connections. GARDEN VALLEY shall require any construction, installation, and connection of new customer service lines to GARDEN VALLEY'S Wastewater Collection

System, to be in accordance with the City Code, the Tariffs, and WWLESS, to minimize the possibility of damage to UTILITIES' Wastewater Treatment System. GARDEN VALLEY shall perform inspection of all such installations and connections to ensure compliance with the Colorado Springs City Code, the Tariffs, and the WWLESS and provide UTILITIES with the results of such inspections. UTILITIES reserves the right to perform its own inspection of all service line installations and connections to ensure compliance with City Code and the WWLESS. Any Customer Connections to GARDEN VALLEY's Wastewater Collection System which are in existence upon execution of this Agreement, or which are subsequently constructed or acquired by DISTRICT, and which do not comply with WWLESS, shall be brought into compliance at the time of replacement or repair.

4. Wastewater Discharge Meters.

- a. A wastewater discharge meter that records the amount of wastewater delivered to UTILITIES' Wastewater Treatment System by GARDEN VALLEY is in place at the existing point of connection.
- b. UTILITIES will own and shall install, read, operate, maintain, and replace the discharge meters at UTILITIES' cost.
- c. The accuracy of the meter shall be verified by UTILITIES on an annual basis at UTILITIES' cost, with results provided to UTILITIES and GARDEN VALLEY. GARDEN VALLEY has the right to request meter verification tests more often than once annually; however, if the accuracy of the subsequent GARDEN VALLEY requested meter test(s) are within +/-2% of the results of the most recent past annual test, GARDEN VALLEY shall be responsible for the cost of the test. If the subsequent GARDEN VALLEY requested meter test(s) are greater than the +/-2% accuracy imitation specified herein, then UTILITIES shall be responsible for the cost of said meter test and meter calibration. In the event that the meter is found to be in error no adjustments to previous invoices will be permitted.

5. Ownership and Maintenance of Improvements. It is understood by the Parties that the point of demarcation between GARDEN VALLEY's Wastewater Collection System and UTILITIES' Wastewater Treatment System is located at the point of connection described in Exhibit B All Improvements, located upstream of the point of connection is understood to be owned and maintained by GARDEN VALLEY and all infrastructure, including the Improvements, located downstream of the point of connection is understood to be owned and maintained by UTILITIES. Unless earlier dedicated by plat, upon completion of design, installation and construction of the Improvements, GARDEN VALLEY shall convey and dedicate to UTILITIES or shall cause the conveyance and dedication to UTILITIES by a third party who owns the Improvements, on forms acceptable to UTILITIES, ownership of all the Improvements located on the UTILITIES' side of the point of connection, as depicted on Exhibit A, and the right to locate the Improvements dedicated and conveyed to UTILITIES on property upon which they are located. UTILITIES shall be responsible for the operation, maintenance and repair of all Improvements dedicated to it and after they are conveyed to it pursuant to this Paragraph. GARDEN VALLEY shall continue to own all of the other

Improvements. GARDEN VALLEY hereby agrees to grant UTILITIES ingress and egress over and through GARDEN VALLEY's property to the GARDEN VALLEY -owned Improvements so that UTILITIES may operate, maintain, repair, and inspect the Improvements that UTILITIES is responsible for as well as perform its other duties under this Agreement. If such an easement is necessary, GARDEN VALLEY shall provide UTILITIES with an easement providing for such ingress and egress in a form approved by UTILITIES. GARDEN VALLEY shall be responsible for the operation, maintenance and repair of all Improvements not conveyed and dedicated to UTILITIES hereunder, including any repair or maintenance that is requested by UTILITIES. The Parties shall keep the Improvements and every part thereof for which they are responsible pursuant to this Paragraph maintained and in good repair so that they continue to properly serve the purposes for which they were originally intended. All repair or maintenance of the Improvements shall be completed in a timely manner and in accordance with the City Code and the WWLESS, as each may be amended or replaced. Any facilities that are part of GARDEN VALLEY's existing Wastewater Collection System or are subsequently constructed or acquired by GARDEN VALLEY, and which do not comply with WWLESS, shall be brought into compliance at the time of replacement or repair. GARDEN VALLEY agrees to provide UTILITIES with a continuously complete record of all Improvements.

Article III

Agreement for Check Meters on Wastewater Line

1. For the past several years, the Parties have been working on resolving issues related to discrepancies in the volume of wastewater received and treated by UTILITIES under the Original Agreement versus the amount of water GARDEN VALLEY delivered to its customers. UTILITIES has inspected the meter and associated equipment used to measure the volume of wastewater delivered from GARDEN VALLEY'S Wastewater Collection System to UTILITIES' Wastewater Treatment System to determine whether it is functioning properly. The cause of the discrepancies between the volume of water delivered to GARDEN VALLEY's customers and the volume of wastewater delivered to UTILITIES Wastewater Treatment System has not yet been determined. In a further attempt to determine the cause of discrepancies, the Parties agree that UTILITIES may install check meter(s) or other similar technology mutually agreed to by the Parties ("Check Meter(s)") on certain wastewater lines within GARDEN VALLEY's Wastewater Collection System in order for the Parties to attempt to determine the source of the discrepancy in the amount of wastewater metered as follows:
 - a. Consent to Installation of Check Meters on Garden Valley's Wastewater Lines. Subject to the terms and conditions of this Agreement, GARDEN VALLEY consents to and agrees that UTILITIES may place approved Check Meter(s) within Garden Valley rights-of-way on certain wastewater lines within GARDEN VALLEY's Wastewater Collection System. The Parties shall jointly determine the number and location of the Check Meter(s) to be installed and UTILITIES shall obtain and document approval from GARDEN VALLEY's operator Rod Podhola prior to installation of any such Check Meter(s). After the Check Meter(s) are placed on the agreed upon wastewater line(s), UTILITIES agrees to make best efforts to read the check meter(s) weekly and share the results with GARDEN VALLEY. If UTILITIES is not able to read the meter(s) during a particular week, it will read the meter(s) the following week and provide the results to GARDEN VALLEY. UTILITIES will be responsible for the maintenance and repair of the check meter(s) while they are installed on GARDEN VALLEY'S Wastewater Collection System.

- b. Time Period. UTILITIES and GARDEN VALLEY shall mutually agree on the date the Check Meter(s) will be installed by UTILITIES. The Check Meter(s) shall be installed for a period of 120 days from the date they are installed unless the Parties mutually agree on a shorter period. Upon expiration of the 120 day period UTILITIES will be responsible for removal of any Check Meter(s) installed by UTILITIES and restoration of GARDEN VALLEY's Wastewater Collection System.
- c. Limitation on Rights Granted by Article III. The agreements provided in this Article III are not intended and should not be construed to provide UTILITIES with any right of access or entry to property not owned by GARDEN VALLEY. In the event UTILITIES requires access to any property not owned by GARDEN VALLEY, UTILITIES is responsible for ensuring that it has all necessary rights of access from the owner of the property.
- d. Liability. In the event UTILITIES' installation of the Check Meter(s) on the agreed upon wastewater line(s) cause any damage to such wastewater line(s), UTILITIES will be fully responsible for such damage, including, but not limited to reimbursing GARDEN VALLEY for actual costs associated with the damage or for repairing such damage at UTILITIES' cost.

Article IV

GARDEN VALLEY's Industrial Pretreatment Program Delegated to Utilities

- 1. Industrial Users. GARDEN VALLEY has commercial users who discharge into GARDEN VALLEY's Wastewater Collection System. GARDEN VALLEY shall submit to UTILITIES' Industrial Pretreatment Program quarterly, on the due dates as specified by UTILITIES, an updated inventory of all commercial or industrial users connected to the GARDEN VALLEY's Wastewater Collection System. Such inventory shall include customer's name, address, Standard Industrial Classification code, and average daily water consumption.
- 2. Delegation of Industrial Pretreatment Program Responsibilities. GARDEN VALLEY designates UTILITIES as the agent of GARDEN VALLEY for the purposes of implementation and enforcement of GARDEN VALLEY's Sewer Use Regulations promulgated pursuant to Article I.3.b hereof against Industrial Users located in GARDEN VALLEY's Service Area ("GARDEN VALLEY's Industrial Pretreatment Responsibilities"). As such, UTILITIES shall have direct authority to develop, implement, and enforce all pretreatment standards and requirements as necessary to regulate Industrial Users located in GARDEN VALLEY's Service Area. This includes, but is not limited to, those responsibilities and obligations set forth in the United States Code of Federal Regulations and Colorado Code of Regulations and implementing regulations. GARDEN VALLEY agrees that UTILITIES will implement GARDEN VALLEY's Industrial Pretreatment Responsibilities in accordance with City Code Chapter 12, Article 5, as well as *UTILITIES' Enforcement Response Plan, Silver Source Control Policies & Procedures Manual, Mercury Source Control Policies & Procedures Manual, Fats, Oil and Grease Policies & Procedures Manual, Liquid Waste Hauler Program Policies and Procedures Manual*, and other related sector control program requirements ("UTILITIES' Industrial Pretreatment Program Standards").
- 3. Compliance with Discharge Limitations. GARDEN VALLEY hereby agrees to comply and

require its Customers whose discharged flow enters into UTILITIES' Wastewater Treatment System to comply, with the discharge prohibitions, discharge limitations, and points of discharge limitations set forth in GARDEN VALLEY's Sewer Use Regulations and City Code Chapter 12, Article 5.

4. Technical and Administrative Duties. UTILITIES, on behalf of and as agent for GARDEN VALLEY, will perform technical and administrative duties necessary to implement and enforce GARDEN VALLEY's Sewer Use Regulations including, but not limited to: (1) updating its industrial waste inventory to include users within GARDEN VALLEY's Service Area; (2) issuing or co-issuing permits to all Industrial Users that are required to obtain a permit (see Article IV.8 hereof); (3) conducting inspections, sampling and analysis related to Industrial Users; (4) taking all appropriate enforcement action as outlined in City Code Chapter 12, Article 5 as well as UTILITIES' enforcement response plan and provided for in GARDEN VALLEY's Sewer Use Regulations; (5) providing GARDEN VALLEY with notice of enforcement actions UTILITIES takes against any Industrial User in GARDEN VALLEY's Service Area; and (6) performing any other technical or administrative duties UTILITIES deems appropriate.
5. UTILITIES Emergency Actions. In addition, UTILITIES, may, as agent of GARDEN VALLEY, take emergency action to stop or prevent any discharge to UTILITIES' Wastewater Treatment System originating within GARDEN VALLEY's Service Area which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.
6. UTILITIES' Duties. UTILITIES, on behalf of and as an agent of GARDEN VALLEY, agrees to perform the following actions and duties as necessary to implement and enforce GARDEN VALLEY's Sewer Use Regulations and City Code Chapter 12, Article 5 consistent with 40 CFR 403.8(f):
 - a. Review and authorize or prohibit the connection of an Industrial User to GARDEN VALLEY's Wastewater Collection System;
 - b. Control through permit or other means, the contribution of wastewater to UTILITIES' Wastewater Treatment System by Industrial Users within GARDEN VALLEY's Service Area. Without limitation, UTILITIES shall have the right to prohibit any connection to, or discharges into, GARDEN VALLEY's Wastewater Collection System of an Industrial User in accordance with City Code;
 - c. Require GARDEN VALLEY's Customers to comply with all requirements of UTILITIES' Industrial Pretreatment Standards;
 - d. Deny or condition new or increased contributions of pollutants or changes in the nature of pollutants by an Industrial User;

- e. Require the development of compliance schedules by Industrial Users for installation of technology required to meet UTILITIES' Industrial Pretreatment Program Standards;
 - f. Require submission of all notices and self-monitoring reports from Industrial Users as are necessary to assess and assure compliance with UTILITIES' Industrial Pretreatment Program Standards as well as GARDEN VALLEY's Sewer Use Regulations;
 - g. Carry out all inspection, surveillance and monitoring procedures necessary to determine whether an Industrial User is complying with UTILITIES' Industrial Pretreatment Program Standards as well as GARDEN VALLEY's Sewer Use Regulations;
 - h. Carry out all inspections, surveillance and monitoring necessary to ensure compliance with UTILITIES' Industrial Pretreatment Program Standards as well as GARDEN VALLEY's Sewer Use Regulations;
 - i. Enter the property/premises of an Industrial User in which a discharge source or pretreatment infrastructure is located, or in which required records are kept, to ensure compliance with UTILITIES' Industrial Pretreatment Program Standards as well as GARDEN VALLEY's Sewer Use Regulations;
 - j. Evaluate and enforce compliance with Industrial Pretreatment Program Standards and requirements utilizing remedies including, but not limited to, injunctive relief and assessment of civil or criminal penalties for violations; and
 - k. Meet the confidentiality requirements set forth in 40 CFR Part 403.14.
7. GARDEN VALLEY's Duties. GARDEN VALLEY is responsible for, and hereby accepts the following duties and agrees to perform the following actions in relation to all Industrial Users within GARDEN VALLEY's Service Area:
- a. Prior to allowing an Industrial User to connect to GARDEN VALLEY's Wastewater Collection System, GARDEN VALLEY shall provide UTILITIES with notice of its intent to permit connection of an Industrial User to GARDEN VALLEY's Wastewater Collection System that includes such customer's name, address, Standard Industrial Classification code, and average daily water usage;
 - b. Submit to UTILITIES' Industrial Pretreatment Program, quarterly by January 31, April 30, July 31, and October 31 each year during the term of this Agreement, an updated inventory of all Industrial Users and commercial customers connected to GARDEN VALLEY's Wastewater Collection System. Such inventory shall include such customer's name, address, Standard Industrial Classification code and/or NAICS code, and average daily water usage for the previous quarter;
 - c. GARDEN VALLEY shall provide the resources and commit to implementation and enforcement of its Sewer Use Regulations with UTILITIES' oversight;

- d. GARDEN VALLEY agrees to be responsible for any violations of applicable law for failure of UTILITIES' Industrial Pretreatment Program meeting applicable law resulting from GARDEN VALLEY's neglect, failure to report any known violations, or failure to comply with the terms and conditions of this Agreement; and
 - e. GARDEN VALLEY shall inform UTILITIES at least two (2) weeks prior to any planned significant change in operations which will affect wastewater characteristics or at least ninety (90) days prior to discharge of any wastewater from a new Industrial User as defined in City Code. Unplanned changes in wastewater characteristics must be reported within seven (7) days after the change becomes known.
8. Co-Issue Permits. GARDEN VALLEY may co-issue all permits if GARDEN VALLEY notifies UTILITIES' Industrial Pretreatment Program Director in writing requesting to do so UTILITIES will take the lead in preparing draft control mechanisms.
9. Enforcement Discretion. GARDEN VALLEY and UTILITIES shall each retain their enforcement discretion. Regarding Industrial Users served by GARDEN VALLEY, each Party shall be copied on all notices of violation and administrative orders issued by the other Party. Notwithstanding the above, UTILITIES has full authority to take enforcement action directly against any GARDEN VALLEY Customer discharging flows to the UTILITIES' Wastewater Treatment System as provided in the City Code. UTILITIES shall notify GARDEN VALLEY when assessing penalties, terminating wastewater treatment service, or seeking criminal sanctions against any of GARDEN VALLEY's Customers. UTILITIES shall provide GARDEN VALLEY with a status report regarding the compliance of Significant Industrial Users within GARDEN VALLEY's boundaries on or before **April 1** of each year.
10. Challenges to UTILITIES' Authority. GARDEN VALLEY agrees that if UTILITIES' authority to act as agent for GARDEN VALLEY under this Agreement is questioned or challenged by an Industrial User within GARDEN VALLEY's Service Area, administrative agency, court of law, or otherwise, GARDEN VALLEY will take all actions necessary to ensure that implementation and enforcement of its Sewer Use Regulations against any Industrial User within its Service Area discharging flows into UTILITIES' Wastewater Treatment System, including implementing its Sewer Use Regulations on its own behalf.
11. Admission to Property. GARDEN VALLEY acknowledges that UTILITIES has the power to carry out all inspection, surveillance, and monitoring procedures necessary in accordance with City Code § 12.5.805. GARDEN VALLEY's Sewer Use Regulations shall provide that UTILITIES is authorized to enter any premises of any industrial user located within GARDEN VALLEY's Service Area to determine compliance with applicable pretreatment standards and requirements, or access GARDEN VALLEY's wastewater collection system at any time in order to obtain samples.
12. Charges and Fees Related to Industrial Pretreatment Program.

- a. To GARDEN VALLEY. UTILITIES may bill GARDEN VALLEY under this Agreement for any costs associated with performing the responsibilities delegated to UTILITIES or that UTILITIES is authorized to perform under this Article IV.5.
- b. To Industrial Users. Prior to allowing an Industrial User to connect to GARDEN VALLEY's Wastewater Collection System, GARDEN VALLEY shall collect all fees related to wastewater treatment for Industrial Users as set forth in the Tariffs and pay those fees to UTILITIES. All general and special sewer service charges, and other charges levied against Industrial Users by GARDEN VALLEY, shall be retained by GARDEN VALLEY, except as otherwise provided by this Agreement or applicable law. Permit fees shall be retained by UTILITIES.
- c. Enforcement. All penalties or other enforcement receipts arising from enforcement actions taken by UTILITIES against GARDEN VALLEY or GARDEN VALLEY's Customers under this Article IV shall be collected and retained by UTILITIES.

Article V Remedies

1. Liquidated Damages. Damages to UTILITIES resulting from GARDEN VALLEY's breach of this Agreement are difficult to ascertain. To the extent permitted by law, in addition to any and all costs and charges provided herein, and in accordance with City Code § 12.5.304.B.2, GARDEN VALLEY is subject to liquidated damages for violation of provisions of City Code Chapter 12, Article 5, in an amount equal to the penalties imposed pursuant to said Article. Such liquidated damages are a reasonable estimate of damages to UTILITIES and are not a penalty.
2. Consequential Damages. GARDEN VALLEY acknowledges and agrees that any illicit discharge of industrial wastewater by GARDEN VALLEY, or a GARDEN VALLEY Customer, may subject GARDEN VALLEY to consequential damages for breach of contract including, but not limited to, any amounts the City of Colorado Springs or UTILITIES may be required to pay for violation of the conditions of UTILITIES' CDPS permit where the discharge of GARDEN VALLEY or its customer(s) caused or contributed to the violation.
3. Disconnection Damages. In the event a breach of this Agreement by GARDEN VALLEY results in GARDEN VALLEY permanently disconnecting from UTILITIES' Wastewater Treatment System it is agreed that the damage to UTILITIES will not be less than the reproduction costs of any of UTILITIES' facilities, including UTILITIES' owned Improvements, that are rendered useless by such disconnection and that must be replaced in order for UTILITIES to provide wastewater treatment service to UTILITIES' other customers.
4. Breach of Agreement. Upon any breach of this Agreement by GARDEN VALLEY, which does not also constitute a breach of City Code Chapter 12, Article 5, UTILITIES shall have the immediate right to: (a) seek specific performance, if available under the law be reimbursed for reasonable costs incurred by UTILITIES as a result of the breach; and (b) be entitled to money

damages. Said rights also apply if liquidated damages, as provided in City Code § 12.5.304.B.2, are unavailable.

5. Termination by UTILITIES. GARDEN VALLEY acknowledges and consents to UTILITIES' right to terminate this Agreement without liability or obligation to GARDEN VALLEY, GARDEN VALLEY's Customers or any other person or entity: (1) due to GARDEN VALLEY'S breach of a material term or condition of this Agreement, if GARDEN VALLEY has not taken substantial steps to cure the breach within a reasonable period of time from delivery of notice of its breach from UTILITIES; or (2) as otherwise authorized by the City Code or City Council. UTILITIES shall promptly notify GARDEN VALLEY of circumstances that could result in a breach or changes in City Code, or City Council action that could result in termination of the Agreement. In the alternative, if UTILITIES determines that the breach(s) may result in an immediate health hazard or harm to person or property, UTILITIES, may take control of any portion of GARDEN VALLEY's Wastewater Collection System and other GARDEN VALLEY facilities which UTILITIES find to be necessary for provision of wastewater treatment service within GARDEN VALLEY's Service Area for the purpose of remedying the breach(s). While in control of any portion of GARDEN VALLEY's Wastewater Collection System, UTILITIES may immediately take all actions it deems necessary to correct the noticed breach(s) and put in place corrective measures to prevent further breaches. GARDEN VALLEY agrees to reimburse UTILITIES for all expenses incurred by UTILITIES in correcting the breach or breaches and putting in place corrective measures to prevent further breaches. Upon such payment, control of the applicable portions of GARDEN VALLEY's Wastewater Collection System shall be returned to GARDEN VALLEY. The notice provision of this Subparagraph shall not apply when UTILITIES determines that the breach(s) may result in an immediate health hazard or harm to person or property, in which case UTILITIES may take immediate control of any portion of GARDEN VALLEY's Wastewater Collection System and take the same actions regarding a noticed breach(s), upon hand delivery of written notice of the breach and description of the harm likely to result. The term breach of a material term or condition by GARDEN VALLEY shall include, but not be limited to, failure to continue to exist as a municipal, quasi-municipal or corporate entity; failure to maintain GARDEN VALLEY's Wastewater Collection System; failure to perform functions necessary to the operation of GARDEN VALLEY's Wastewater Collection System or UTILITIES' Wastewater Treatment System; failure to adopt measures or take actions required to enable UTILITIES to obtain any required permits; unauthorized extension of wastewater service or expansion of GARDEN VALLEY's Service Area; unauthorized connection of a GARDEN VALLEY extraterritorial customer to GARDEN VALLEY's Wastewater Collection System; failure to make payments required under the Agreement; or other actions or inactions which could reasonably cause a health hazard or harm to persons or property. After completion of any actions it takes to correct a breach or prevent further breaches from occurring, UTILITIES shall issue an itemized invoice to GARDEN VALLEY for payment of the costs UTILITIES incurred in taking the actions. In the event GARDEN VALLEY fails to make full payment on an invoice by the date set forth in the invoice, which shall not be less than thirty (30) days, UTILITIES may immediately terminate this agreement.

6. Termination by GARDEN VALLEY. GARDEN VALLEY may terminate this Agreement due to

a material breach on the part of UTILITIES if UTILITIES has not taken substantial steps to cure the breach within a reasonably sufficient time frame that allows UTILITIES to cure the material breach after receiving written notice of such breach from GARDEN VALLEY.

7. Effect of Termination. Upon termination by either Party, UTILITIES shall have no further obligation to provide Wastewater Treatment Service to GARDEN VALLEY or GARDEN VALLEY's Customers and GARDEN VALLEY's Wastewater Collection System shall be disconnected from UTILITIES' Wastewater Treatment System. Upon termination, UTILITIES shall determine the connection facilities between GARDEN VALLEY's Wastewater Collection System and UTILITIES' Wastewater Treatment System that must be removed at GARDEN VALLEY's sole expense in accordance with the WWLESS. UTILITIES shall determine the way the connection facilities are to be removed and wastewater treatment service discontinued in accordance with the URRs and WWLESS. All outstanding charges owed by GARDEN VALLEY to UTILITIES are due and payable prior to the disconnection of service. If all outstanding charges owed by GARDEN VALLEY to UTILITIES are not paid prior to disconnection, GARDEN VALLEY's obligation to make full payment shall survive termination of this Agreement.
8. Time for Cure. The time frame for a Party to cure a material breach shall be set forth in the notice of breach and shall in no event be less than ninety (90) days except in the case of an emergency.
9. Enforcement of Rights. Nothing herein shall prevent either Party from enforcing its rights under this Agreement by an appropriate legal or equitable action.
10. Remedies Cumulative. Remedies herein are cumulative and may be used individually, sequentially, concurrently, or in any order.

Article VI Miscellaneous

1. Parties' Enforcement Powers. Both Parties to this Agreement recognize in the other Party the power to enforce its laws, rules and regulations and the terms of this Agreement by turning off or disconnecting wastewater service to a property within GARDEN VALLEY's Service Area for violations of such laws, rules, regulations and this Agreement. Neither Party shall turn back on or reconnect wastewater service for a property after the same has been turned off or disconnected by the other Party in the course of enforcing its laws, rules, or the terms of this Agreement, except upon written consent of the Party originally causing the turn off or disconnection. Each Party agrees to provide notice to the other Party prior to turning off or disconnecting wastewater service to property for violations of its laws, rules, regulations and this Agreement.
2. Annual Review of Agreement. GARDEN VALLEY understands that UTILITIES is a publicly owned treatment works, and is required by the Clean Water Act, 33 USC § 1251, *et seq.*, to control wastewaters introduced by all Users into UTILITIES' Wastewater Treatment System.

GARDEN VALLEY also understands that UTILITIES is subject to present and continuing Federal and State statutory and regulatory controls and other factors which may, subsequent to the Effective Date, be added to or amended. The Parties will review and determine if revisions to this Agreement are necessary to ensure compliance with all applicable Federal, State and local laws, rules and regulations issued thereunder and other added or amended controls or factors, as necessary, but at least once every year on or before February 15. GARDEN VALLEY agrees to cooperate with UTILITIES in preparing, executing and implementing any revisions to this Agreement deemed necessary in order to comply with Federal or State law or regulation.

3. GARDEN VALLEY Dissolution. In the event that GARDEN VALLEY seeks to dissolve pursuant to relevant laws, rules and regulations, GARDEN VALLEY shall provide a copy of its dissolution petition to UTILITIES at the time of its filing. The dissolution petition shall provide for assignment of GARDEN VALLEY's rights and obligations under the Agreement to a party acceptable to UTILITIES. If no provision is made for such an assignment or other arrangement reasonably acceptable to UTILITIES, upon GARDEN VALLEY's dissolution, this Agreement shall be null, void and of no further force or effect, and UTILITIES shall have no further obligation to provide wastewater treatment service pursuant to the terms of this Agreement.
4. Representatives and Notice. All notices, reports and submittals required by this Agreement shall be in writing, signed by an authorized representative of the Party providing the notice, report or submittal and shall be sent by overnight delivery service, or mailed by certified mail, postage prepaid, return receipt requested, as follows:
 - a. For UTILITIES:
 - i. For notices required under Articles I.3, I.4.d, I.7.6, and IV:
Colorado Springs Utilities
Attn: Industrial Pretreatment Program
701 E. Las Vegas St.
Colorado Springs, CO 80903: and
 - ii. For notices required under I.4.d, and Article IV:

Manager
Water & Wastewater Operations
456 W. Fontanero St | MC: 1210 | Colorado Springs, CO 80909:
and

City Attorney's Office - Utilities Division
Colorado Springs Utilities
ATTN: Utilities Division
P.O. Box 1103
Colorado Springs, CO 80947-0940

- iii. For all other notices: Chief Strategic Planning and Projects Officer

Colorado Springs Utilities
ATTN: Chief Strategic Planning and Projects Officer
P.O. Box 1103,
Colorado Springs, CO 80947-0950; and

- i. City Attorney's Office - Utilities Division

Colorado Springs Utilities
ATTN: Utilities Division
P.O. Box 1103
Colorado Springs, CO 80947-0940

- b. For GARDEN VALLEY:

Garden Valley Water and Sanitation District
ATTN: Operator in Responsible Charge (ORC) Robert Kulp
Plukworks Ltd.
28104 Tresine Dr.
Evergreen, CO 80439

Cockrel Ela Glesne Greher & Ruhland, P.C.
ATTN: Joseph W. Norris, Esq.
44 Cook Street, Suite 620
Denver, CO 80206

5. Force Majeure. Neither Party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligation hereunder due to causes or conditions beyond its reasonable control, including strikes, riots, wars, floods, fires, explosions, global pandemics, epidemics, acts of nature, acts of government, labor disturbances, or if such performance would be prohibited or limited by any federal, state, or local law, rule, regulation, order or directive.
6. 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.

7. Limitations upon Consent. Whenever, under the terms of this Agreement, UTILITIES is authorized to give its written consent, UTILITIES, in its discretion, may give or may refuse such written consent and if given, may restrict, limit, or condition such consent in such manner as it shall deem advisable. Acceptance by UTILITIES into UTILITIES' Wastewater Treatment System from GARDEN VALLEY of wastewater in a volume or with characteristics exceeding or violating any limit or restriction provided for, by or pursuant to this Agreement, in one or more instances or under one or more circumstances, shall not constitute a waiver of such limit or restriction or of any of the provisions of the Agreement and shall not in any way obligate UTILITIES thereafter to accept or to make provision for wastewater delivered and discharged into UTILITIES' Wastewater Treatment System in a volume or with characteristics exceeding or violating any such limit or restriction in any other instance or under any other circumstances.
8. Audits. UTILITIES shall have the right to audit at any time all of GARDEN VALLEY's records relating to any GARDEN VALLEY's Customers or relating to compliance with this Agreement. GARDEN VALLEY shall have the right to audit all UTILITIES' records relating to compliance with this Agreement.
9. Liability.
 - a. Party Responsible for Own Negligence. Each Party shall be responsible for its own negligence. Neither Party waives the benefits or obligations afforded it by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*
 - b. UTILITIES' Limitation of Liability. In addition to force majeure events described in this Agreement, UTILITIES shall not be liable to GARDEN VALLEY for failure to accept or treat GARDEN VALLEY's wastewater when such failure is the result of upset or mechanical or power failure. UTILITIES shall have the right to interrupt service and require GARDEN VALLEY to temporarily store and contain wastewater flows to the extent of GARDEN VALLEY's storage capabilities in the event of malfunction or upset of UTILITIES' facilities. In the event of planned maintenance which makes UTILITIES' Wastewater Treatment System unavailable to accept GARDEN VALLEY's wastewater, a 48-hour notice shall be given to GARDEN VALLEY, after which GARDEN VALLEY will temporarily store and contain wastewater to the extent of its storage capabilities.
10. No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to GARDEN VALLEY and UTILITIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such agreement. It is the express intention of GARDEN VALLEY and UTILITIES that any person other than GARDEN VALLEY or UTILITIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
11. 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 GARDEN VALLEY for future performance and obligations thereafter in excess of UTILITIES' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES will notify GARDEN VALLEY as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

GARDEN VALLEY's obligations under this Agreement are expressly subject to appropriation of funds by GARDEN VALLEY's Board of Directors. In the event funds are not appropriated in whole or in part sufficient for performance of GARDEN VALLEY's obligations under this Agreement, then this Agreement will thereafter become null and void by operation of law, and GARDEN VALLEY will thereafter have no liability for compensation or damages to UTILITIES for future performance and obligations thereafter in excess of GARDEN VALLEY's authorized appropriation for this Agreement, whichever is less. GARDEN VALLEY will notify UTILITIES as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable. Nothing in this Agreement shall be interpreted or construed as a multiple-fiscal year obligation of GARDEN VALLEY pursuant to Article X, Section 20 of the Colorado constitution (TABOR). Notwithstanding the forgoing, GARDEN VALLEY's obligation to pay the applicable rates, charges, surcharges, and fees owed to UTILITIES for provision of Wastewater Service under this Agreement through GARDEN VALLEY's water and sanitary sewer enterprise fund are not subject to appropriations by GARDEN VALLEY's Board of Directors.

12. No Precedent; Severability. The Parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future agreement, nor vest any rights in either Party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining Agreement provisions shall continue to be binding upon the Parties who agree that this Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.
13. Assignment. There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party, and any such assignment shall be null and void. Nothing herein contained, however, shall be construed as preventing the reorganization of any Party hereto nor as preventing any other body corporate and politic succeeding to the rights, privileges, powers, immunities, liabilities, disabilities and duties of either Party hereto, as may be authorized by law, in the absence of any prejudicial impairment of any obligation of contract hereby imposed.
14. 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.

15. Governing Law, Jurisdiction and Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws, the Colorado Springs City Charter, the Colorado Springs City Code, the URRs, and Tariffs. In the event of litigation, this Agreement shall be enforceable by or against the City on behalf of UTILITIES as provided in City Code § 12.1.109. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado and, if necessary, for exclusive federal questions, the United States District Court for the District of Colorado.
16. Entire Agreement; Modifications to be in Writing. This Agreement with attachments constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. This Agreement may only be amended by a written agreement signed by both Parties. E-mail and all other electronic (including voice) communications from a Party in connection with this Agreement are for informational purposes only. No such communication is intended by either Party to constitute either an electronic record or an electronic signature, or to constitute any agreement by either Party to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

COLORADO SPRINGS UTILITIES

GARDEN VALLEY WATER &
SANITATION DISTRICT

By: _____

By: _____

Name: Travas Deal

Name: _____

Title: Chief Executive Officer

Title: _____

Approved as to form: _____

Attest: _____

Exhibit B
to the
WASTEWATER SERVICE AGREEMENT
Special Contract for Service - Outside City Limits
GARDEN VALLEY

