

**WASTEWATER SERVICE AGREEMENT**  
Contract Service – Regional (S9C)  
FOREST LAKES METROPOLITAN DISTRICT FOR WASTEWATER SERVICE

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 home rule City and Colorado municipal corporation, and Forest Lakes Metropolitan District ("DISTRICT"), 2 N. Cascade Avenue, Suite 1280, Colorado Springs, Colorado. In this document, UTILITIES and DISTRICT can be referred to individually as "Party" or collectively as "Parties."

Recitals

- A. DISTRICT, is a Colorado metropolitan district authorized under C.R.S. § 32-1-1001, *et seq.*, for provision of municipal water service, in addition to other municipal services, and is located in northern El Paso County, Colorado. DISTRICT was formed on September 13, 1985 by decree of the El Paso County District Court in Case No. 85CV2156. DISTRICT provides water, wastewater, and stormwater services to an approximately 1,400 acre service area currently serving a customer base of approximately 460 single family equivalents, consisting of approximately 450 residences and 10 commercial and irrigation SFEs in and near the Town of Monument;
- B. DISTRICT owns, operates and maintains a wastewater collection system located within DISTRICT's service area as defined in Exhibit A and herein incorporated by reference;
- C. NMCI is a planned wastewater interceptor that has been constructed that will be owned by UTILITIES and will allow the DISTRICT and other wastewater providers located to the North of the City of Colorado Springs to consolidate the treatment of their wastewater flows at UTILITIES' either of Utilities' Water Resource Recovery Facilities and receive wastewater treatment service from UTILITIES;
- D. DISTRICT desires to receive wastewater treatment service from UTILITIES through NMCI to meet the wastewater treatment service requirements of DISTRICT's customers;
- E. Upon completion of NMCI, UTILITIES will have sufficient wastewater infrastructure and treatment capacity available in its Wastewater Treatment System to provide wastewater collection and treatment services for the anticipated Maximum Allowable Flow from DISTRICT subject to the terms and conditions set forth herein;
- F. Triview Metropolitan District ("Triview") also desires to receive wastewater treatment service through NMCI from UTILITIES to meet the wastewater treatment service requirements of DISTRICT's customers pursuant to a separate Agreement with UTILITIES;
- G. Triview and DISTRICT intend to connect to NMCI at the same point of connection and utilize the same meter ("Joint Meter") to measure the wastewater flows from their respective Wastewater Collection Systems into UTILITIES' Wastewater Treatment System which requires a pro-rata allocation of the flows between those entities to

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

determine the amount each entity will be charged for wastewater service in accordance with Article I.6.c below.

- H. The Parties have 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 (“City Code”).

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

Article I

General Provisions

1. Term. This Agreement shall become effective on the date this Agreement has been executed by both parties (“Effective Date”) and shall be in effect for a period of ninety-nine (99) years, which term shall begin upon connection of the DISTRICT to the UTILITIES Wastewater Treatment System and provision of wastewater treatment service by UTILITIES pursuant to the terms of this Agreement.
  - a. No later than twenty-four (24) months prior to the expiration of the Term, the Parties shall begin good faith negotiations on a new agreement for UTILITIES to treat DISTRICT wastewater, with the expectation that such new agreement shall be substantially similar to this Agreement.
  - b. If the Parties are unable to execute a new agreement by the date that is six (6) months prior to the end of the Term:
    - i. UTILITIES may notify DISTRICT in writing that DISTRICT shall be disconnected from UTILITIES’ Wastewater Treatment System as of the expiration of the Term; or
    - ii. If the Parties mutually agree to continue good faith negotiations for a new wastewater treatment service agreement beyond the Term, the term may be extended for an additional one (1) year term at UTILITIES’ sole discretion.
2. Definitions. For the purposes of this Agreement, the following terms shall have the following meanings, unless the context clearly requires otherwise. Terms not otherwise defined herein shall have the meaning adopted in the latest amendment to the City Code in place as of the effective date. Defined terms are capitalized.
  - a. Average Annual Flow: ninety (90) day rolling average of wastewater flow rate in million gallons/day.
  - b. DISTRICT’s Customers: The persons residing in the DISTRICT’s Service Area, that receive the benefit of the wastewater treatment service provided hereunder.

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

- c. DISTRICT's Service Area: The Service Area as depicted on Exhibit A, as may be altered or expanded by future inclusions or extra-territorial service agreements, provided the DISTRICT's wastewater generated thereby does not exceed the Maximum Allowable Flow, as defined herein.
- d. DISTRICT's Wastewater Collection System: Any devices, facilities, structures, equipment or works owned and/or operated by DISTRICT for the purpose of collection and transmission of wastewater generated within DISTRICT's Service Area to UTILITIES' Wastewater Treatment System.
- e. IMMEDIATE HARM TO PERSON OR PROPERTY means actual or a high possibility of: (a) death, serious bodily injury, or serious illness to any person; or (b) substantial damage to real or personal property (including buildings, finished spaces, critical infrastructure, or natural resources) that is reasonably likely to occur promptly if immediate action is not taken, and that results from or is caused by wastewater conditions or failures.
- f. IMMEDIATE HEALTH HAZARD means any condition, event, circumstance, discharge, release, or system failure in connection with the collection, conveyance, treatment, storage, or disposal of wastewater (including sewage, biosolids, or related gases) that poses a significant threat of danger to human health and requires immediate correction, mitigation, or cessation of the contributing activity to prevent injury or illness. In determining whether an Immediate Health Hazard exists, the Parties shall consider the nature, severity, and likely duration of the anticipated harm and the number of persons likely to be affected, applying reasonable professional judgment.
- g. Industrial User: A source of discharge which introduces pollutants into DISTRICT'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 1251, et seq.
- h. Maximum Allowable Flow: The Maximum Allowable Flow under this Agreement is 0.264 MGD and shall be calculated based on a ninety (90) day rolling average of DISTRICT's pro-rata share of discharge determined in accordance with Article 1.6.c below as measured at the points of connection described in Article II.1.
- i. Recovery Agreement Charges: A Recovery Agreement Charge may be assessed for each connection to a collection line or use of a pumping station and force mains, where such line or facility is planned or constructed by UTILITIES or is the subject of a Recovery Agreement between UTILITIES and the property owner or developer who constructed such line or facility as of the Effective Date of this Agreement. Consistent with such agreements, the charge will be in an amount which represents a pro rata share of the cost of construction of the line or facility. UTILITIES commits to work in good faith with the DISTRICT to similarly provide the DISTRICT with cost recovery should 3<sup>rd</sup> parties other than the DISTRICT and Triview seek to utilize infrastructure financed by the DISTRICT or capacity in NMCI allocated to the DISTRICT.

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

- j. UTILITIES' Wastewater Treatment System: Any devices, facilities, structures, equipment or works owned and/or operated by UTILITIES for the purpose of collecting and treating wastewater.
  - k. 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 the DISTRICT's Maximum Allowable Flow.
    - 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.
  - l. 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 DISTRICT under this Agreement shall be governed, implemented and enforced with regard to DISTRICT and DISTRICT's Customers in accordance with the Colorado Springs City Charter, the City Code, the Tariffs, WWLESS, and all other applicable City's 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. DISTRICT 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, DISTRICT hereby submits to the jurisdiction of the City for the purposes of implementation and enforcement of City Code Chapter 12, Article 5 with regard to DISTRICT and DISTRICT's Customers under this Agreement. DISTRICT shall by ordinances or resolutions, provide for DISTRICT and DISTRICT'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 DISTRICT and its Customers and require DISTRICT and its Customers to comply with all applicable laws, regulations, rules or policies concerning use of UTILITIES'

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

Wastewater Treatment System as they exist now or may be amended or replaced in the future (collectively, "DISTRICT's Sewer Use Regulations"). DISTRICT's Sewer Use Regulations must include provisions that mirror or are more stringent than City Code Chapter 12, Article 5. DISTRICT shall provide UTILITIES with a draft of DISTRICT's proposed Sewer Use Regulations to the contacts set forth in Article III.13 hereof within ninety (90) days after the Effective Date. UTILITIES will have sixty (60) days from its receipt of the draft to provide DISTRICT with notice of whether it approves DISTRICT's proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES determines that revisions to DISTRICT's Sewer Use Regulations are necessary, DISTRICT 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 DISTRICT with notice of whether it approves DISTRICT's revised proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES provides DISTRICT with notice that revisions to the revised proposed Sewer Use Regulations are necessary, DISTRICT 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 DISTRICT with notice of whether it approves DISTRICT's revised proposed Sewer Use Regulations or if revisions thereto are necessary. DISTRICT shall adopt the approved Sewer Use Regulations within sixty (60) days of receiving notice of UTILITIES' approval of the regulations.

- c. UTILITIES shall provide DISTRICT with notice of any revisions made to City Code Chapter 12, Article 5 in the future. DISTRICT shall revise and provide the contacts set forth in Article III.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 DISTRICT with notice of whether it approves DISTRICT's proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES determines that revisions to DISTRICT's Sewer Use Regulations are necessary, DISTRICT 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 DISTRICT with notice of whether it approves DISTRICT revised proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES provides DISTRICT with notice that revisions to the proposed Sewer Use Regulations are necessary, DISTRICT 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 DISTRICT with notice of whether it approves DISTRICT's revised proposed Sewer Use Regulations or if revisions thereto are necessary.
- d. DISTRICT shall provide UTILITIES with notice and a copy of the most recent version of DISTRICT's Sewer Use Regulations to the contacts set forth in Article III.13 hereof by **February 15** of each calendar year, following the year in which this Agreement is executed, and any amendments to said regulations within thirty (30) days of adoption.

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

4. Wastewater Treatment Service.
  - a. During the term of this Agreement, UTILITIES will accept and treat through its Wastewater Treatment System up to the Maximum Allowable Flow of wastewater that originates from inside DISTRICT's Service Area 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 DISTRICT's Service Area, as it exists or may be expanded consistent with the definitions provided herein, or in excess of the Maximum Allowable Flow.
  - c. DISTRICT shall provide UTILITIES with an updated copy of the map of DISTRICT's Wastewater Collection System to the contacts set forth in Article III.13 hereof by **February 15** of each year following the year in which this Agreement is executed or notice to the same contacts that no changes to DISTRICT's Wastewater Collection System have occurred in the preceding year.
5. Expansion of Wastewater Treatment Obligations. DISTRICT may expand DISTRICT's Service Area and contract to provide wastewater service to customers located outside of its existing Service Area, provided such inclusions or extra-territorial service agreements do not result in the DISTRICT exceeding the Maximum Allowable Flow. Should the DISTRICT wish to so expand its service area in a manner that would alter any point of connection to UTILITIES' Wastewater Treatment System, or result in any operational changes for UTILITIES of UTILITIES' Wastewater Treatment System, DISTRICT may not do so without first receiving UTILITIES' prior written approval of the expansion or contract, which may require authorization from the UTILITIES' Board of Directors and the Colorado Springs City Council. If DISTRICT desires to obtain additional wastewater treatment service from UTILITIES for newly included or serviced properties located outside of its existing Service Area that would result in DISTRICT discharges to UTILITIES' Wastewater Treatment System to exceed the Maximum Allowable Flow then:
  - a. UTILITIES and DISTRICT must negotiate an amendment to this Agreement or a new agreement that provides for such an expansion of the Maximum Allowable Flow. DISTRICT acknowledges that any such amendment of this Agreement or a new agreement may require approval by the UTILITIES' Board of Directors and/or the Colorado Springs City Council. UTILITIES shall have no obligation to treat wastewater, and DISTRICT shall not introduce wastewater in excess of the Maximum Allowable Flow into UTILITIES' Wastewater Treatment System until the parties have entered into such an amendment or new agreement.
  - b. DISTRICT shall provide notice to UTILITIES of its intent to request expanded wastewater treatment service beyond the Maximum Allowable Flow for other properties prior to DISTRICT seeking approval of the proposed changes from El Paso County. The notice must include the number, types of connections, and flow estimates to DISTRICT's

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

Wastewater Collection System that will be included in the proposed expanded Service Area.

- c. UTILITIES shall provide notice to DISTRICT of whether it supports the requested changes in wastewater treatment service provided by UTILITIES, whether such expanded service will need to be provided under an amendment to this Agreement or a new agreement, and whether such amendment or new agreement will require approval by the UTILITIES' Board of Directors and/or the Colorado Springs City Council within one hundred and eighty (180) days of UTILITIES' receipt of notice of the requested proposed changes to the extent of wastewater treatment service by UTILITIES. DISTRICT acknowledges the expansion of wastewater treatment service is limited to properties within DISTRICT's Service Area or within areas that may be included in DISTRICT's Service Area in the future.

6. Rates, Charges, Surcharges and Fees Payable by DISTRICT .

- a. For the services provided hereunder, DISTRICT 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 DISTRICT wastewater that exceeds normal domestic strength for biochemical oxygen demand and total suspended solids, as further described in the Colorado Springs City Charter, the City Code, the Tariffs, WWLESS, and all other applicable City's or UTILITIES' ordinances, resolutions regulations, policies and rules concerning use of UTILITIES' Wastewater Treatment System as may be amended or replaced, and will be based on twenty-four (24) hour composite samples. DISTRICT agrees that UTILITIES' rate making process, as embodied in the Tariffs, is fair and reasonable.
- b. DISTRICT 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 DISTRICT thirty (30) days in advance of City Council's consideration of the change in tariffs applicable to this Agreement.
- c. DISTRICT agrees to pay the then prevailing Treatment Charges and Extra Strength Surcharges or replacements, for every cubic foot of wastewater delivered to UTILITIES' Wastewater Treatment System. UTILITIES will bill DISTRICT monthly in arrears for such Treatment Charges and Extra Strength Surcharges with payment due within thirty (30) days of the date of billing. Since the Joint Meter totalizes the flow for both DISTRICT and Triview each of those entities will be responsible for their pro rata share of the flow. The apportionment of the flow to each entity will be determined by Triview and DISTRICT pursuant to a separate agreement between those parties. No matter the terms of that separate agreement, DISTRICT shall be responsible for providing UTILITIES with its pro-rata share of the flows entering into UTILITIES Wastewater Treatment System within fifteen (15) days after the end of the month for which the billing is occurring.
- d. The WWRSF reflects the amount of capacity needed within UTILITIES' Wastewater Treatment System to meet the obligations of regional water contracts. The WWRSF is

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

determined based on the average flow demand in million gallons per day. DISTRICT will deliver wastewater to UTILITIES' Wastewater Treatment System at no greater than the Maximum Allowable Flow. The WWRSF for average daily flows of between 0.10 MGD and 0.29 MGD is \$28,216.00, which must be paid by DISTRICT within thirty (30) days after the date DISTRICT's Wastewater Collection System is connected to UTILITIES' Wastewater Treatment System. If DISTRICT'S demands on UTILITIES' Wastewater Treatment System exceed the 0.264 MGD, then DISTRICT will be required to pay the difference between the WWRSF for Maximum Allowable Flows of between 0.10 MGD and 0.29 MGD set forth above and the applicable WWRSF for the new Maximum Available Flows under UTILITIES' Tariffs, should UTILITIES elect to allow such additional flows pursuant to the terms of this Agreement.

- e. DISTRICT shall pay Recovery Agreement Charges for previously constructed and planned wastewater infrastructure that will be utilized by UTILITIES in accordance with the Tariffs, as amended or replaced. DISTRICT agrees to pay initial Recovery Agreement Charges of \$0 based on UTILITIES' acceptance of wastewater at up to the Maximum Allowable Flow. Such Recovery Agreement Charges must be paid by DISTRICT within thirty (30) days after the Effective Date. In the event following the Effective Date, the Maximum Allowable Flow is exceeded, DISTRICT agrees to pay additional Recovery Agreement Charges in an amount determined by UTILITIES prior to UTILITIES accepting and treating wastewater in excess of the Maximum Allowable Flow. UTILITIES shall provide DISTRICT notice of the amount of the additional Recovery Agreement Charges and such charges must be paid by DISTRICT within thirty (30) days after such notice.
  - f. UTILITIES conducts extensive water quality monitoring and studies in the Fountain Creek watershed and implements projects and programs to maintain and enhance conditions within the Fountain Creek Watershed. DISTRICT shall pay a Water Quality Impact Fee that will be calculated and billed annually. The annual fee will be based on DISTRICT 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.
  - g. Payments under this Paragraph by DISTRICT 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. DISTRICT Responsibilities. In addition to other responsibilities and duties provided in this Agreement, DISTRICT shall solely have the following responsibilities:
- a. DISTRICT shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with DISTRICT's Wastewater Collection System including, but not limited to, air emissions from DISTRICT's Wastewater Collection System, as may be applicable, and spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency ("EPA") from DISTRICT's Wastewater Collection System.
  - b. DISTRICT shall at all times have in place and make best efforts to enforce its Sewer Use Regulations. In the event that DISTRICT fails to provide resources or otherwise fails to implement and enforce its Sewer Use Regulations within DISTRICT's Service Area in a

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

timely manner, UTILITIES is authorized to take all such reasonable actions on behalf of and as an agent for DISTRICT after providing DISTRICT with at least ten (1) days' written notice of same.

- c. At all times, DISTRICT shall cause all wastewater, which is discharged directly or indirectly into DISTRICT's Wastewater Collection System or into UTILITIES' Wastewater Treatment System by DISTRICT or DISTRICT's Customers, or on their behalf, to comply with DISTRICT's Sewer Use Regulations and any applicable requirements of UTILITIES, as permitted by law.
- d. DISTRICT shall at all times operate DISTRICT's Wastewater Collection System so as not to interfere with service to third parties who rely on UTILITIES' Wastewater Treatment System.
- e. DISTRICT's Wastewater Collection System shall collect only from separate sanitary sewer systems and there shall be no combined sanitary and stormwater systems or stormwater systems connected to DISTRICT's Wastewater Collection System.
- f. If DISTRICT has a slug discharge as defined in §12.5.201 of the City Code, or a discharge that could cause problems to the UTILITIES' Wastewater 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. DISTRICT shall report, in the manner required by applicable laws and regulations provided below, any illicit discharge, spill, leak, or sanitary overflow from DISTRICT'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 DISTRICT 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 DISTRICT 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 DISTRICT becomes aware of the Incident.
- h. DISTRICT shall maintain an approved EPA User Charge System (40 CFR §§ 35.2140). UTILITIES will notify DISTRICT by February 15<sup>th</sup> of each calendar year following the year in which this Agreement is executed of UTILITIES' classifications, classes and surcharges per class and any other information on revenues, costs, and allocation of costs between biochemical oxygen demand, total suspended solids and flow so as to assure proportional

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

allocation of costs to Users. DISTRICT shall provide within sixty (60) days of implementation or upon request by UTILITIES, a report on DISTRICT classes, rates, and implementation provisions. DISTRICT will comply with EPA regulations (40 CFR § 35.2140(c)) by advising the DISTRICT's Wastewater Collection System Users in conjunction with a regular bill (or other means acceptable to the EPA Regional Administrator) of their wastewater rate and that portion of the rate attributable to wastewater treatment services provided hereunder. A copy of the notification shall be forwarded to UTILITIES within sixty (60) days of when DISTRICT provides such notification to its wastewater Customers.

- i. DISTRICT is prohibited from contributing excess flows that cause or contribute to overflows, flooding, or non-compliance with UTILITIES' Colorado Discharge Permit System ("CDPS") Permit No. CO-0026735 and Permit No. CO-0046850.

### 8. Relief Systems.

- a. Before UTILITIES is obligated to provide wastewater treatment service and DISTRICT is entitled to introduce wastewater into UTILITIES' Wastewater Treatment System at Maximum Allowable Flows in excess of 0.264 MGD, DISTRICT must, at no cost to UTILITIES, construct relief systems and necessary appurtenances as determined by UTILITIES, at its sole discretion in accordance with the City Code and the WWLESS, as each may be amended or replaced. Relief systems shall be approved by UTILITIES, and operational before sustained Maximum Allowable Flow from DISTRICT's Service Area in excess of 0.264 MGD can be accepted. The relief facilities may be constructed on property owned by DISTRICT, within the boundaries of DISTRICT, or at other locations within UTILITIES' Wastewater Treatment System that are mutually agreed upon by the Parties. At the discretion of UTILITIES, UTILITIES may, but is not obligated to, enter into a cost sharing agreement with DISTRICT to pay a pro rata share of the construction cost of relief systems based upon UTILITIES sole determination of benefit to UTILITIES. Benefit to UTILITIES may be derived from, but not limited to, the following:

1. Relief of pipelines operating in excess of design capacity.
2. Replacement of structurally deficient pipelines.
3. Replacement of pipelines subject to flooding or other hazards.
4. Replacement of pipelines with inadequate operations and maintenance access.
5. Replacement of pipelines subject to excessive inflow/infiltration.
6. Pipelines that provide for the elimination of pump stations and force mains.

- b. UTILITIES shall provide DISTRICT with notice of the required relief systems within ninety (90) days of when DISTRICT provides UTILITIES with the notice required under Article I.5.b that it intends to expand the wastewater treatment service provided by UTILITIES hereunder to above the Maximum Allowable Flow. DISTRICT shall provide UTILITIES with its designs for the required relief systems in accordance with the current version of the WWLESS. The WWLESS process for design review, construction acceptance, bill of sale, and warranties will apply to the proposed construction of the relief system.

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

9. Approvals and Permits. The Parties expressly acknowledge that the service contemplated and/or the construction of any Improvements 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. DISTRICT shall be responsible for obtaining all approvals and/or permits necessary for the implementation of this Agreement. UTILITIES will cooperate with DISTRICT to obtain any necessary approvals and/or permits. If any required approval and/or permit is not obtained by DISTRICT, either Party may terminate this Agreement. A copy of such approval or permit shall be provided to UTILITIES by DISTRICT.
10. Interpretation of Requirements. In all cases where the application or the enforcement of the City Charter, City Code, Tariffs or WWLESS, as may be amended, involve technical or scientific analyses or determinations, UTILITIES, in its reasonable discretion, shall have final authority as to methods, standards, criteria, significance, evaluation, and interpretation of such analyses and determinations.
11. Reusable Return Flows. Unless separately agreed to by the Parties, UTILITIES will retain dominion, and control over treated reusable water effluent resulting from wastewater introduced by DISTRICT 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, DISTRICT shall have the legal ownership of and right to use, reuse, successively use, and dispose of all return flows resulting from wastewater introduced by DISTRICT into UTILITIES' Wastewater Treatment System.

### Article II

#### Improvements/Connection to UTILITIES' Wastewater Treatment System

1. Point(s) of Connection of DISTRICT to UTILITIES' Wastewater Treatment System. DISTRICT shall deliver its wastewater to UTILITIES' Wastewater Treatment System at the points of connection located within the wastewater metering vaults depicted on Exhibit B as approved by UTILITIES and any other location agreed to by the Parties in writing. These connection points, and all other approved new, modified or abandoned connections to UTILITIES' Wastewater Treatment System, shall be made and/or disconnected at the expense of DISTRICT or third parties, based on agreements between DISTRICT and such third parties.
2. DISTRICT's Wastewater Collection System Improvements. DISTRICT shall be solely responsible, financially and otherwise, for designing, installing, constructing, and operating DISTRICT's Wastewater Collection System including, but not limited to, flow meters, wastewater mains, and all infrastructure improvements necessary to connect UTILITIES' Wastewater Treatment System to DISTRICT's Wastewater Collection System at the agreed upon points of connection, and all other related facilities necessary for use in connection with this Agreement ("Improvements"). Any Improvements required for the connection of DISTRICT's Wastewater Collection System to UTILITIES Wastewater Treatment System 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 DISTRICT or in rights-of-way or easements dedicated for public utilities or conveyed to

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

DISTRICT. DISTRICT shall, at its own cost and subject to UTILITIES' approval, locate, design, and construct 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. UTILITIES acknowledges that other than any new Improvements required under this section, DISTRICT's Wastewater Collection System infrastructure constructed prior to the Parties entering into this Agreement and that the previously installed infrastructure may not be in compliance with City Code or the WWLESS. UTILITIES will not be inspecting or requiring upgrades to such previously installed infrastructure prior to DISTRICT connecting to UTILITIES Wastewater Treatment System.

### 3. Wastewater Discharge Meters/Vaults.

- a. UTILITIES will design and install the Joint Meter and related facilities that will record the amount of wastewater delivered to UTILITIES' Wastewater Treatment System by DISTRICT and Triview as part of the construction of NMCI. UTILITIES shall own, read, operate, maintain, and replace the Joint Meter at UTILITIES' cost. Notwithstanding the foregoing, DISTRICT shall be responsible for costs of future modifications of the metering flume required to measure increased flows when phased installations, such as nested flumes, are required to accurately measure multiple ranges of flows considered under this Agreement.
- b. The accuracy of the Joint Meter will be verified by UTILITIES upon installation and the accuracy of the Joint Meter shall be verified on an annual basis thereafter, with results provided to UTILITIES and DISTRICT. DISTRICT has the right to request meter verification tests more often than once annually; however, if the accuracy of the meter tests ARE within +/-2% of the results of the most recent past annual test, DISTRICT shall be responsible for the cost of the test. If the Joint Meter does not test within the +/- 2% accuracy imitation specified herein, then UTILITIES shall be responsible for the cost of meter calibration. In the event that the Joint Meter is found to be in error, no adjustments to previous invoices will be permitted.

### 4. Ownership, Interests, and Maintenance of Improvements.

It is understood by the Parties that the point of demarcation between DISTRICT's Wastewater Collection System and UTILITIES' Wastewater Treatment System will be located at the metering vault. All infrastructure, including the Improvements, located upstream of the metering vault is understood to be owned and maintained by DISTRICT ("DISTRICT's Improvements") and all infrastructure, including the Improvements, located downstream of the metering vault is understood to be owned and maintained by UTILITIES ("UTILITIES' Improvements"). Unless earlier dedicated by plat, upon completion of design, installation and construction of the Improvements, DISTRICT 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 of the UTILITIES' Improvements as depicted on Exhibit B, and the right to locate the UTILITIES' Improvements on property upon which they are located. UTILITIES shall be responsible for the operation, maintenance and repair of all

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

the UTILITIES' Improvements after they are conveyed to it pursuant to this Paragraph. DISTRICT shall continue to own all of the other Improvements. DISTRICT hereby agrees to grant UTILITIES ingress and egress over and through DISTRICT property to the UTILITIES' Improvements so that UTILITIES may operate, maintain, repair, and inspect the UTILITIES' Improvements that as well as perform its other duties under this Agreement. If an easement is necessary, DISTRICT shall provide UTILITIES with an easement providing for such ingress and egress in a form approved by UTILITIES. DISTRICT shall be responsible for the operation, maintenance and repair of all of DISTRICT's Improvements, 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. DISTRICT agrees to provide UTILITIES with a continuously complete record of all Improvements.

5. Since many of the Improvements will be used jointly to provide wastewater service to DISTRICT and Triview, those parties may enter into a separate agreement that describes how those parties will split the costs and other obligations related designing, installing, and constructing the Improvements and operating, improving and maintaining the DISTRICT's Improvements that are used by both of those entities.

### Article III

#### DISTRICT Industrial Pretreatment Program Responsibilities Delegated to UTILITIES

1. Industrial Users. DISTRICT has commercial users who discharge into DISTRICT's Wastewater Collection System. DISTRICT 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 DISTRICT'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. DISTRICT designates UTILITIES as the agent of DISTRICT for the purposes of implementation and enforcement of DISTRICT's Sewer Use Regulations promulgated pursuant to Article I.3.b hereof against Industrial Users located in DISTRICT's Service Area ("DISTRICT'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 DISTRICT'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. DISTRICT agrees that UTILITIES will implement DISTRICT'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").

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

3. Compliance with Discharge Limitations. DISTRICT 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 DISTRICT's Sewer Use Regulations and City Code Chapter 12, Article 5.
4. Technical and Administrative Duties. UTILITIES, on behalf of and as agent for DISTRICT, will perform technical and administrative duties necessary to implement and enforce DISTRICT's Sewer Use Regulations including, but not limited to: (1) updating its industrial waste inventory to include users within DISTRICT's Service Area; (2) issuing or co-issuing permits to all Industrial Users that are required to obtain a permit (see Article III.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 DISTRICT's Sewer Use Regulations; (5) providing DISTRICT with notice of enforcement actions UTILITIES takes against any Industrial User in DISTRICT'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 DISTRICT, take emergency action as necessary to stop or prevent any discharge to UTILITIES' Wastewater Treatment System originating within DISTRICT'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 DISTRICT, agrees to perform the following actions and duties as necessary to implement and enforce DISTRICT's Sewer Use Regulations and City Code Chapter 12, Article 5 consistent with 40 CFR 403.8(f):
  - a. Review and authorize the connection of an industrial user to DISTRICT's Wastewater Collection System;
  - b. Control through permit or other means, the contribution of wastewater to UTILITIES' Wastewater Treatment System by Industrial Users within DISTRICT's Service Area. Without limitation, UTILITIES shall have the right to prohibit any connection to, or discharges into, DISTRICT's Wastewater Collection System of an Industrial User in accordance with City Code;
  - c. Require DISTRICT's Customers to comply with all requirements of UTILITIES' Industrial Pretreatment Program 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 DISTRICT's Sewer Use Regulations;

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

- 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 DISTRICT'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 DISTRICT'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 DISTRICT'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. DISTRICT Duties. DISTRICT is responsible for, and hereby accepts the following duties and agrees to perform the following actions in relation to all Industrial Users within DISTRICT's Service Area:
- a. Prior to allowing an Industrial User to connect to DISTRICT's Wastewater Collection System, DISTRICT shall provide UTILITIES with notice of its intent to permit connection of an Industrial User to DISTRICT'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 DISTRICT'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. DISTRICT shall commit to implementation and enforcement of its Sewer Use Regulations with UTILITIES' oversight as provided herein;
  - d. DISTRICT agrees to be responsible for any violations of applicable law for failure of UTILITIES' Industrial Pretreatment Program meeting applicable law to the extent resulting from DISTRICT neglect, failure to report any known violations, or failure to comply with the terms and conditions of this Agreement; and
  - e. DISTRICT shall inform UTILITIES at least two (2) weeks prior to any planned significant change in operations which will affect wastewater characteristics or at least 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. DISTRICT may co-issue all permits if DISTRICT notifies UTILITIES' Industrial Pretreatment Program Director in writing requesting to do so. UTILITIES will take

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

the lead in preparing draft control mechanisms.

9. Enforcement Discretion. DISTRICT and UTILITIES shall each retain their enforcement discretion. Regarding Industrial Users served by DISTRICT, each Party shall be copied on all notices of violation and administrative orders issued by the other Party. Notwithstanding the above, UTILITIES has full authority to take enforcement action directly against any of DISTRICT's Customer discharging flows to the UTILITIES' Wastewater Treatment System as provided in the City Code. UTILITIES shall notify DISTRICT when assessing penalties, terminating wastewater treatment service, or seeking criminal sanctions against any of DISTRICT's Customers. UTILITIES shall provide DISTRICT with a status report regarding the compliance of Significant Industrial Users within DISTRICT's Service Area on or before **April 1** of each year.
10. Challenges to UTILITIES' Authority. DISTRICT agrees that if UTILITIES' authority to act as agent for DISTRICT under this Agreement is questioned or challenged by an Industrial User within DISTRICT's Service Area, administrative agency, court of law, or otherwise, DISTRICT will take all actions necessary to ensure 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. DISTRICT acknowledges that UTILITIES has the power to carry out all inspection, surveillance, and monitoring procedures necessary in accordance with City Code § 12.5.805. DISTRICT's Sewer Use Regulations shall provide that UTILITIES is authorized to enter any premises of any industrial user located within DISTRICT's Service Area to determine compliance with applicable pretreatment standards and requirements, or access DISTRICT's Wastewater Collection System at any time in order to obtain samples.
12. Charges and Fees Related to Industrial Pretreatment Program.
  - a. To DISTRICT. UTILITIES may bill DISTRICT under this Agreement for any costs associated with performing the responsibilities delegated to UTILITIES or that UTILITIES is authorized to perform under this Article III.
  - b. To Industrial Users. Prior to allowing an Industrial User to connect to DISTRICT's Wastewater Collection System, DISTRICT 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 DISTRICT, shall be retained by DISTRICT 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 DISTRICT or DISTRICT's Customers under this Article III shall be collected and retained by UTILITIES.

### Article IV Remedies

1. Liquidated Damages. Damages to UTILITIES resulting from DISTRICT'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,

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

DISTRICT is subject to liquidated damages for violation of provisions of City Code Chapter 12, Article 5, in an amount equal to the penalties imposed pursuant to said Article. Such liquidated damages are a reasonable estimate of damages to UTILITIES and are not a penalty.

2. Consequential Damages. DISTRICT acknowledges and agrees that any illicit discharge of industrial wastewater by DISTRICT, or a DISTRICT Customer, may subject DISTRICT to consequential damages for breach of contract including, but not limited to, any amounts the City or UTILITIES may be required to pay for violation of the conditions of UTILITIES' CDPS permit where the discharge of DISTRICT or its Customer(s) caused or contributed to the violation.
3. Disconnection Damages. It is agreed that the damage to UTILITIES, if DISTRICT disconnects from UTILITIES' Wastewater Treatment System prior to the expiration of the term of this Agreement or any extension thereof, will not be less than the reproduction costs of any of UTILITIES' facilities, including UTILITIES' owned Improvements which are rendered useless by such disconnection, and which must be replaced in order for UTILITIES to provide wastewater treatment service to UTILITIES' other customers unless the disconnection is required by events beyond the reasonable control of DISTRICT. Similarly, it is agreed that the damages to DISTRICT, if UTILITIES causes the DISTRICT to be disconnected from the UTILITIES' Wastewater Treatment System prior to the expiration of the term of this Agreement or any extension thereof, will not be less than the DISTRICT's costs to construct, lease or otherwise obtain alternate wastewater treatment facilities, unless such disconnection is required by events beyond the reasonable control of UTILITIES. The provisions of this section shall not apply if the Party seeking damages was disconnected from the other Parties' system as a result of a breach of this Agreement.
4. Breach of Agreement. Upon any breach of this Agreement, the non-breaching Party shall have the right to: (a) seek specific performance; (b) be reimbursed for costs; (c) be entitled to money damages for the period between the breach and the order for specific performance; or (d) terminate this Agreement. Unless an emergency situation requires immediate action in order to protect the health, safety and welfare of its customers or UTILITIES' Wastewater Treatment System, or of DISTRICT's customers or DISTRICT's Wastewater Collection System, the non-breaching Party shall provide written notice to the breaching Party of a breach of this Agreement and the breaching Party shall have ninety (90) days to cure such breach or take reasonable steps to address such breach and provide the non-breaching Party with notice of same prior to such non-breaching Party exercising its rights hereunder.
5. Termination by UTILITIES. DISTRICT acknowledges and consents to UTILITIES' right to terminate this Agreement without liability or obligation to DISTRICT, DISTRICT's Customers or any other person or entity: (1) due to DISTRICT's breach of a material term or condition of this Agreement, if DISTRICT has not taken substantial steps to cure the breach within a reasonable period of time from delivery of notice of its breach from UTILITIES in accordance with Article V.5 of this Agreement; or (2) as otherwise authorized by the City Code or City Council but only after reasonable and proper notice to DISTRICT in accordance with Article V.5 of this Agreement, public hearing, and an opportunity to be heard. UTILITIES shall

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

promptly notify DISTRICT in accordance with Article V.5 of this Agreement 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. As provided in the Addendum to Intergovernmental Agreement for Construction Cost Sharing for the Northern Monument Creek Interceptor between UTILITIES, DISTRICT and Triview dated February \_\_\_\_, 2026, DISTRICT has an equitable ownership interest in the capacity of NMCI in the amount of the Maximum Allowable Flow. If UTILITIES terminates this Agreement, it may purchase DISTRICT'S equitable ownership interest in NMCI for its fair market value as of the date of such termination. In the alternative, if UTILITIES determines in its reasonable discretion that the breach(s) may result in an Immediate Health Hazard or Immediate Harm to Person or Property, UTILITIES, may take control of any portion of DISTRICT's Wastewater Collection System and other DISTRICT facilities which UTILITIES reasonably finds to be necessary for provision of wastewater treatment service within DISTRICT's Service Area for the purpose of remedying the breach(s). UTILITIES will provide DISTRICT with advance notice of the action(s) taken, if possible, but otherwise within a reasonable timeframe and as quickly as reasonably practicable. While in control of any portion of DISTRICT's Wastewater Collection System, UTILITIES may immediately take all actions it reasonably deems necessary to correct the noticed breach(s) and put in place corrective measures reasonably necessary to prevent further breaches. DISTRICT agrees to reimburse UTILITIES for all actual 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 DISTRICT's Wastewater Collection System shall be returned to DISTRICT. The term "breach of a material term or condition by DISTRICT" shall include, but not be limited to, failure to continue to exist as a municipal, quasi-municipal or corporate entity or similar user; failure to maintain DISTRICT's Wastewater Collection System pursuant to the terms of this Agreement; failure to perform functions necessary to the operation of DISTRICT's Wastewater Collection System or UTILITIES' Wastewater Treatment System pursuant to the terms of this Agreement; failure to adopt measures or take actions required to enable UTILITIES to obtain any required permits; unauthorized extension of wastewater treatment service or expansion of DISTRICT's Service Area resulting in flows beyond the Maximum Allowable Flows; unauthorized connection of a DISTRICT extraterritorial customer to DISTRICT's Wastewater Collection System resulting in flows beyond the Maximum Allowable Flows; 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.

6. Termination by DISTRICT. DISTRICT may terminate this Agreement due to a material breach on the part of UTILITIES if UTILITIES has not taken substantial steps to cure the breach within a reasonably sufficient time frame that allows UTILITIES to cure the material breach after receiving written notice of such breach from DISTRICT.
7. Effect of Termination. Upon termination by either Party, UTILITIES shall have no further obligation to provide wastewater treatment service to DISTRICT or DISTRICT's Customers and DISTRICT's Wastewater Collection System shall be disconnected from UTILITIES' Wastewater Treatment System. Upon termination, UTILITIES shall determine the connection facilities between DISTRICT's Wastewater Collection System and UTILITIES' Wastewater Treatment System that must be removed at DISTRICT sole expense in accordance with the

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

WWLESS. UTILITIES shall determine the way the connection facilities are to be removed, and wastewater treatment service discontinued in accordance with the Tariffs and WWLESS. All outstanding charges owed by DISTRICT to UTILITIES are due and payable prior to the disconnection of service. If all outstanding charges owed by DISTRICT to UTILITIES are not paid prior to disconnection, DISTRICT's obligation to make full payment shall survive termination of this Agreement.

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 V Miscellaneous

1. Parties' Enforcement Powers. Both Parties to this Agreement recognize in the other Party has the power to enforce its laws, rules and regulations and the terms of this Agreement by turning off or disconnecting wastewater treatment service to a property within DISTRICT's Service Area for violations of such laws, rules, regulations and this Agreement. Neither Party shall turn back on or reconnect wastewater treatment 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 treatment service to property for violations of its laws, rules, regulations and this Agreement.
2. Annual Reviews of Agreement. DISTRICT 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. DISTRICT 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 date of this Agreement, 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**. DISTRICT agrees to cooperate with UTILITIES in preparing, executing and implementing any revisions to this Agreement deemed necessary by UTILITIES, as part of the annual review. Similarly, UTILITIES acknowledges that the DISTRICT is a quasi-municipal provider of public services, including wastewater collection services, subject to present and continuing Federal and State statutory and regulatory controls. UTILITIES shall cooperate with the DISTRICT in preparing and implementing any revisions to this Agreement necessary to such State or Federal

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement  
regulatory authorities.

3. DISTRICT Rules and Regulations. DISTRICT retains the full right to make and enforce rules and regulations not inconsistent with or less stringent than the Colorado Springs City Charter, the City Code, the Tariffs, and WWLESS to govern wastewater use within DISTRICT's Service Area. DISTRICT agrees to exercise its rulemaking, rate/fee-setting and other powers to assist UTILITIES in enforcing the Tariffs and WWLESS.
4. DISTRICT Dissolution. In the event that DISTRICT seeks to dissolve pursuant to relevant laws, rules and regulations, DISTRICT shall provide a copy of its dissolution petition to UTILITIES at the time of its filing. The dissolution petition shall provide for assignment of DISTRICT's rights and obligations under the Agreement to a party acceptable to UTILITIES. If no provision is made for such an assignment or other arrangement reasonably acceptable to UTILITIES, upon DISTRICT's dissolution, this 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.
5. 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 personally delivered, 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.7.6, and IV:

Colorado Springs Utilities

Attn: Industrial Pretreatment Program

701 E. Las Vegas St.

Colorado Springs, CO 80903

With copy to:

City Attorney's Office

ATTN: Utilities Division

P.O. Box 1575, Mail Code 510

Colorado Springs, CO 80901-1575

ii. 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

With copy to:

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

City Attorney's Office - Utilities Division  
United States Postal Service Address:  
City Attorney's Office  
ATTN: Utilities Division  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575

b. For DISTRICT :

Forest Lakes Metropolitan District  
Attn: Ann Nichols, District Manager  
2 N. Cascade Avenue, Suite 1280  
Colorado Springs, CO 80903

With Copy to:

Spencer Fane LLP  
Attention: Nicole Peykov  
1700 Lincoln Street, Suite 2000  
Denver, CO 80203

6. 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.
7. 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. In addition, acceptance by UTILITIES into UTILITIES' Wastewater Treatment System from DISTRICT of wastewater in a volume or with characteristics exceeding or violating any limit or restriction provided for, by or pursuant to this Agreement, in one or more instances or under one or more circumstances, shall not constitute a waiver of such limit or restriction or of any of the provisions of the Agreement and shall not in any way obligate UTILITIES thereafter to accept or to make provision for wastewater delivered and discharged into UTILITIES' Wastewater 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. Limitations upon Consent. Whenever, under the terms of this Agreement, UTILITIES is authorized to give its written consent, UTILITIES, in its reasonable 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 reasonably advisable. Acceptance by UTILITIES into UTILITIES' Wastewater Treatment System from DISTRICT of wastewater in a volume or with

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

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.

9. Audits. Upon providing the DISTRICT reasonable notice, UTILITIES shall have the right to audit at any time all of DISTRICT's records relating to any of DISTRICT's Customers or relating to compliance with this Agreement. DISTRICT shall have the right to audit all UTILITIES' records relating to compliance with this Agreement upon providing UTILITIES with reasonable notice.
  
10. 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. Section 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 DISTRICT for failure to accept or treat DISTRICT wastewater when such failure is the result of upset or mechanical or power failure. In emergency circumstances, UTILITIES shall have the right to interrupt wastewater service and require DISTRICT to temporarily store and contain wastewater flows to the extent of DISTRICT 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 DISTRICT wastewater, UTILITIES shall give DISTRICT ten (10) days prior notice of the planned maintenance, after which DISTRICT will temporarily store and contain wastewater to the extent of its storage capabilities.
  
11. No Third-Party Beneficiaries. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and DISTRICT. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to DISTRICT and UTILITIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person under such Agreement. It is the express intention of DISTRICT and UTILITIES that any person other than DISTRICT or UTILITIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
  
12. Appropriation of Funds. In accordance 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

## FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

be expended due to City Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and UTILITIES will thereafter have no liability for compensation or damages to DISTRICT for future performance and obligations thereafter in excess of UTILITIES' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. UTILITIES will notify DISTRICT as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable. Similarly, the DISTRICT is subject to State Constitutional and Statutory provisions prohibiting it from multi-year fiscal obligations without annual appropriation of funds. As such, the DISTRICT's obligations under this Agreement are expressly subject to appropriation of funds by the DISTRICT's Board of Directors, in the DISTRICT's discretion. In the event funds are not appropriated in whole or in part sufficient for performance of the DISTRICT's obligations under this agreement, then this Agreement will thereafter become null and void by operation of law, and the DISTRICT will thereafter have no liability for compensation or damages to UTILITIES for future performance and obligations thereafter in excess of the DISTRICT's authorized appropriation for this Agreement.

13. 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.
14. No Assignment Without Consent. Except as provided herein, 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. Notwithstanding anything herein to the contrary, upon written notice to DISTRICT, UTILITIES may assign this Agreement without consent to the City of Colorado Springs. Notwithstanding anything herein to the contrary, upon written notice to UTILITIES, DISTRICT may assign all rights, entitlements, obligations and interests described in this Agreement without consent to any purchaser of or any other successor in interest to DISTRICT, provided such purchaser or successor in interest agrees in writing with UTILITIES and DISTRICT to assume all of DISTRICT's rights and obligations under this Agreement and further provided such purchaser or successor is a Colorado special district similar in scope and authority to the DISTRICT, as concerns wastewater services.
15. 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

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement  
or desirable, by appropriate legal proceedings.

16. 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 City Code, and the 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 Court for the District of Colorado.
  
17. 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 UTILITIES in connection with this Agreement are for informational purposes only. No such communication is intended by UTILITIES to constitute either an electronic record or an electronic signature, or to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

The Remainder of this Page is Intentionally Left Blank

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

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

COLORADO SPRINGS UTILITIES

FOREST LAKES METROPOLITAN DISTRICT

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

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

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

Name:

Title: Chief Executive Officer

Title:

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

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

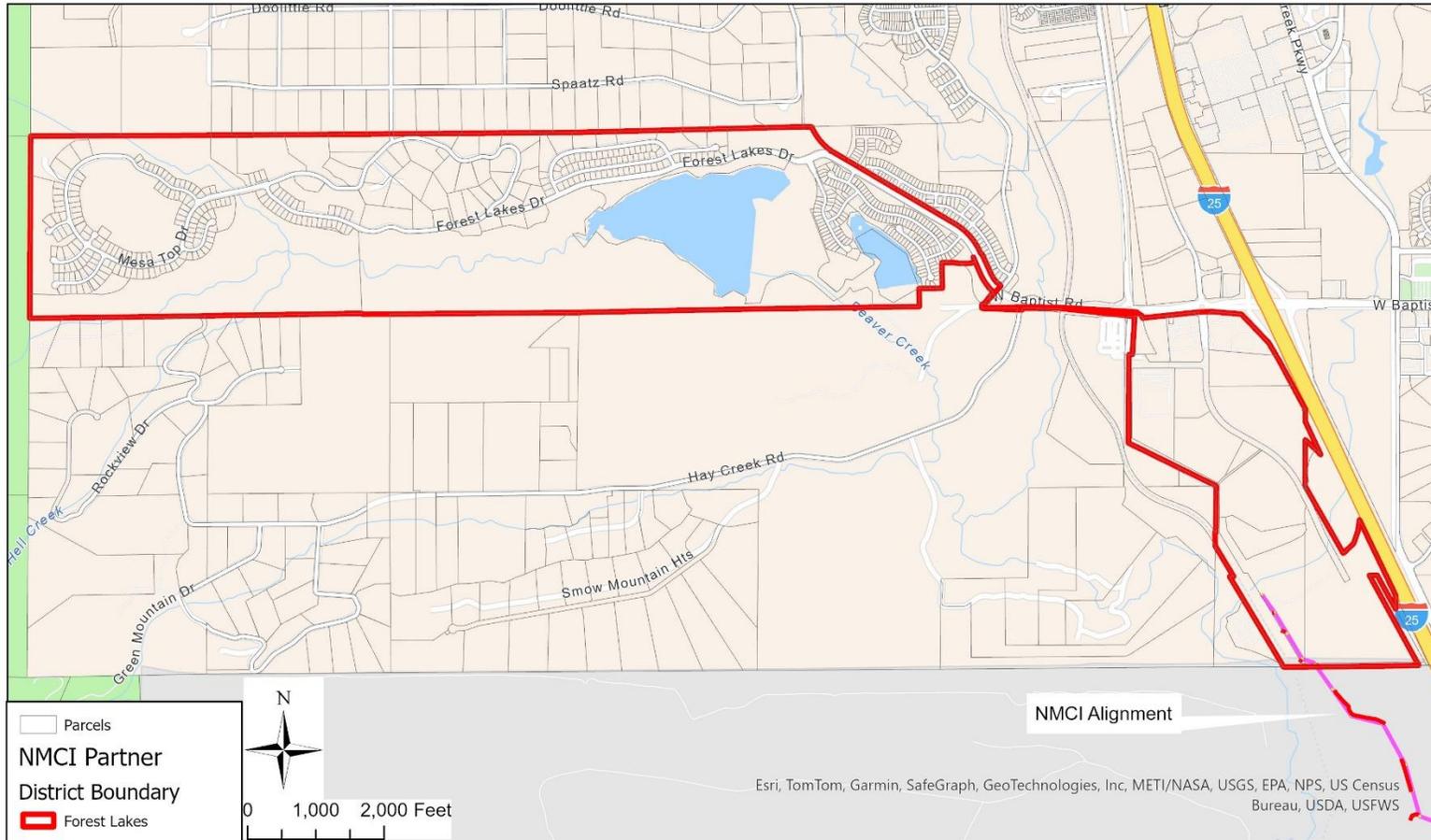
Approved as to form:

\_\_\_\_\_

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

Exhibit A  
to the  
WASTEWATER SERVICE AGREEMENT  
**Service Area**

# FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement



Forest Lakes Service Area



FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

Exhibit B  
to the

WASTEWATER SERVICE AGREEMENT

**Point of Demarcation**

Colorado Springs Utilities will operate and maintain from the point on the NMCI pipe just north of the Upper Monument Creek Regional -  
Metering Point downstream

FOREST LAKES METROPOLITAN DISTRICT - Wastewater Service Agreement

