

RESOLUTION NO. 24 - 24

A RESOLUTION AUTHORIZING AND DIRECTING THE CHIEF EXECUTIVE OFFICER OF COLORADO SPRINGS UTILITIES TO ENTER INTO AN AGREEMENT FOR REGIONAL WASTEWATER SERVICE BETWEEN COLORADO SPRINGS UTILITIES AND FALCON AREA WATER AND WASTEWATER AUTHORITY

WHEREAS, City Code § 12.5.304 allows Colorado Springs Utilities (“Utilities”) to provide by contract for the use of or connection to its wastewater system by institutions, plants, districts, governments, municipal corporations, or other similar users; and

WHEREAS, The Falcon Area Water and Wastewater Authority (“FAWWA”) is a Colorado statutory water and wastewater authority that was formed in 2017 with a planned service area of approximately 2,560 acres located 20 miles northeast of downtown Colorado Springs in unincorporated El Paso County with close proximity to Woodmen Road and Powers Boulevard, outside the City limits; and

WHEREAS, FAWWA desires to obtain wastewater treatment service from Utilities to provide wastewater treatment service to certain properties within FAWWA’s service area which are anticipated to contribute Maximum Allowable Flow of up to 0.29 Million Gallons Per Day to Utilities’ wastewater treatment system; and

WHEREAS, Utilities currently has sufficient infrastructure capacity in its wastewater system to provide regional wastewater service to FAWWA; and

WHEREAS, in exchange for regional wastewater service, FAWWA has agreed to pay the rates and fees set forth in Utilities’ Tariffs for such service; and

WHEREAS, Utilities requests that City Council approve Utilities’ provision of regional wastewater service to FAWWA and authorize and direct the Chief Executive Officer of Colorado Springs Utilities to enter into an agreement for regional wastewater service with FAWWA; and

WHEREAS, City Council recognizes that approving the provision of wastewater service to FAWWA does not set precedent for future requests for regional wastewater service.

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

Section 1. City Council finds and determines that Utilities’ provision of regional wastewater service to FAWWA will benefit the public health, safety and welfare of the

surrounding community and is in the best interest of Utilities and the City of Colorado Springs.

Section 2. City Council hereby approves Utilities' provision of regional wastewater service to FAWWA in accordance with the Wastewater Service Agreement attached hereto.

Section 3. The Chief Executive Officer of Colorado Springs Utilities is authorized and directed to enter into the Wastewater Service Agreement with FAWWA in a form substantially similar to that attached hereto.

Section 4. This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this 26th day of March 2024.


Randy Helms, Council President

ATTEST:


Sarah B. Johnson, City Clerk



WASTEWATER SERVICE AGREEMENT
Contract Service – Regional (S9C)
Falcon Area Water and Wastewater Authority

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 Falcon Area Water and Wastewater Authority ("FAWWA"), a quasi-municipal entity and political subdivision of the State of Colorado. In this document, UTILITIES and FAWWA can be referred to individually as "Party" or collectively as "Parties."

Recitals

- A. FAWWA is a Colorado statutory water and wastewater authority that was formed in 2017 with a planned service area of approximately 2,560 acres located 20 miles northeast of downtown Colorado Springs in unincorporated El Paso County with close proximity to Woodmen Road and Powers Boulevard, outside the City limits.
- B. FAWWA intends to provide wastewater collection service to a development within FAWWA's Service Area that is outside of the City limits (as defined in Article 1 below).
- C. FAWWA desires to obtain wastewater treatment service from UTILITIES to provide wastewater treatment service to certain properties within FAWWA's Service Area which are anticipated to contribute Maximum Allowable Flow of up to 0.29 Million Gallons per Day (MGD) to UTILITIES' Wastewater Treatment System.
- D. FAWWA may in the future seek to obtain wastewater treatment service from UTILITIES to provide wastewater treatment service to properties within FAWWA's Service Area that are not served under this Agreement.
- E. 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 Annual Flow from FAWWA subject to the terms and conditions set forth herein.
- F. FAWWA is the successor in interest to the Sterling Ranch Metropolitan District No. 1 ("Sterling Ranch") which was the previous wastewater collection service provider for portions of FAWWA's Service Area. Sterling Ranch and UTILITIES entered into an Interim Wastewater Treatment and Disposal Agreement dated August 12, 2019 under which UTILITIES agreed to provide wastewater treatment service for up to 302 single family equivalents ("SFEs") located in FAWWA's Service Area that will be served under this Agreement ("Interim Wastewater Agreement").
- G. UTILITIES and FAWWA intend for this Agreement to supersede and replace the Interim Wastewater Agreement in its entirety.
- 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

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

the City of Colorado Springs 2001, as amended ("City Code").

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

Article I

General Provisions

1. **Term.** This Agreement shall become effective on the Effective Date and shall be in effect for a period of twenty five (25) years.
 - 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 FAWWA's 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 FAWWA in writing that FAWWA 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 1 year term at UTILITIES' sole discretion.
 - c. FAWWA and UTILITIES agree that upon its Effective Date, this Agreement supersedes the expired Interim Wastewater Agreement and any amendments or addendums thereto and that this Agreement shall govern UTILITIES' wastewater collection and treatment obligations with regard to FAWWA.
2. **Definitions.** Terms not otherwise defined herein shall have the meaning adopted in the latest amendment to the City Code as amended. Defined terms are capitalized.
 - a. **FAWWA's Customers:** The persons and entities located within FAWWA's Service Area, that receive the benefit of the wastewater treatment service provided hereunder.
 - b. **FAWWA's Service Area:** The properties located outside of the Colorado Springs City Limits, as depicted on Exhibit A and identified thereon as Sterling Ranch West, Sterling Ranch East, Retreat at TimberRidge, Jaynes Parcel, the easterly portion of the property known as the Schmidt Parcel as described in Exhibit "D" attached hereto ("Easterly Schmidt Parcel"), along with property known as Raygor and The Ranch, all as defined and set forth in the FAWWA organizing Intergovernmental Agreement. This Agreement shall only apply to wastewater treatment service for properties located within Sterling Ranch West, Jaynes Parcel, the Easterly Schmidt Parcel, Retreat at TimberRidge and that portion of Sterling Ranch East that is within the applicable sewer basin, all as further

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

set forth and depicted on Exhibit A attached hereto ("Eligible Service Area"), with Maximum Allowable Flows not to exceed 0.29 MGD.

- c. FAWWA's Wastewater Collection System: Any devices, facilities, structures, equipment or works owned and/or operated by FAWWA for the purpose of collection and transmission of wastewater generated within FAWWA's Service Area to UTILITIES' Wastewater Treatment System.
- d. Industrial User: A source of discharge which introduces pollutants into FAWWA'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.
- e. Initial Allowable Flow: The Initial Allowable 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 Section 1.
- f. Maximum Allowable Flow: The Maximum Allowable 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 Section 1.
- g. 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. 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.
- h. 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.
- i. 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 FAWWA'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

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

analogous charge. If the entity met its full contractual WWRSF or equivalent, it is deemed to have met its WWRSF and will not be charged an additional WWRSF.

- j. 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 FAWWA under this Agreement shall be governed, implemented and enforced with regard to FAWWA and FAWWA'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. FAWWA 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, FAWWA submits to the jurisdiction of the City for the purposes of implementation and enforcement of City Code Chapter 12, Article 5 with regard to FAWWA and FAWWA's Customers. FAWWA shall by ordinances, resolutions, provide for FAWWA and FAWWA'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 FAWWA and its Customers and require FAWWA 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, "FAWWA's Sewer Use Regulations"). FAWWA's Sewer Use Regulations must include provisions that mirror or are more stringent than City Code Chapter 12, Article 5. FAWWA shall provide UTILITIES with a draft of FAWWA's proposed Sewer Use Regulations to the contacts set forth in Article III.13 of this agreement within ninety (90) days after the effective date of this Agreement. UTILITIES will have sixty (60) days from its receipt of the draft to provide FAWWA with notice of whether it approves FAWWA's proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES determines that revisions to FAWWA's Sewer Use Regulations are necessary, FAWWA 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 FAWWA with notice of whether it approves FAWWA's revised proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES provides FAWWA with notice that revisions to the proposed Sewer Use Regulations are necessary, FAWWA shall have ninety (90) days to make such revisions and provide UTILITIES with a 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 FAWWA with notice of whether it approves FAWWA's revised proposed Sewer Use Regulations or

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

if revisions thereto are necessary. FAWWA shall adopt the approved Sewer Use Regulations within sixty (60) days of receiving notice of UTILITIES' approval of the regulations.

- c. UTILITIES shall provide FAWWA with notice of any revisions made to City Code Chapter 12, Article 5 in the future. FAWWA shall revise and provide the contacts set forth in Article III.13 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 FAWWA with notice of whether it approves FAWWA's proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES determines that revisions to FAWWA's Sewer Use Regulations are necessary, FAWWA 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 FAWWA with notice of whether it approves FAWWA's revised proposed Sewer Use Regulations or if revisions are necessary. If UTILITIES provides FAWWA with notice that revisions to the proposed Sewer Use Regulations are necessary, FAWWA shall have ninety (90) days to make such revisions and provide UTILITIES with a revised proposed Sewer Use Ordinance that includes UTILITIES' requested revisions. UTILITIES will have sixty (60) days from its receipt of the revised proposed Sewer Use Regulations to provide FAWWA with notice of whether it approves FAWWA's revised proposed Sewer Use Regulations or if revisions thereto are necessary.
 - d. FAWWA shall provide UTILITIES with notice and a copy of the most recent version of FAWWA's Sewer Use Regulations to the contacts set forth in Article III.13 by **February 15** of each calendar year, and any amendments to said regulations within thirty (30) days of adoption.
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 the portions of FAWWA's Service Area located within the Eligible Service Area from FAWWA's Customers, including the 302 SFEs previously served under the Interim Agreement, subject to the terms and conditions contained herein.
 - b. It is anticipated that at full build out the Maximum Allowable Flow from the Eligible Service Area served hereunder will be 0.29 MGD. UTILITIES shall have no obligation to accept and treat wastewater from FAWWA's Wastewater Collection System that exceeds the Maximum Allowable Flow of 0.29 MGD.
 - c. UTILITIES shall not be obligated to accept and treat wastewater from FAWWA's Wastewater Collection System that exceeds the Initial Allowable Flow of 0.115 MGD until FAWWA has constructed and UTILITIES has approved the relief systems described in Article I.8 of this Agreement.

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

- d. The Parties shall meet annually, no later than **February 15** or within thirty (30) days after UTILITIES provides FAWWA with notice that its Initial Allowable Flow has exceeded 0.092 MGD, to discuss FAWWA's plans for development of its Service Area and whether FAWWA intends to expand the wastewater treatment service provided by UTILITIES to Maximum Allowable Flow in excess of 0.115 MGD and the anticipated timeline for such expansion of service. If FAWWA intends to expand the wastewater treatment service provided by UTILITIES hereunder to Maximum Allowable Flow in excess of 0.115 MGD, FAWWA shall provide UTILITIES with notice of that intent and UTILITIES shall have no obligation to treat wastewater and FAWWA shall not introduce wastewater at Maximum Allowable Flow in excess of 0.115 MGD until FAWWA has constructed and UTILITIES has approved the relief systems described in Article I.8 of this Agreement. If FAWWA does not intend to expand the wastewater treatment service provided by UTILITIES hereunder to Maximum Allowable Flow in excess of 0.115 MGD, FAWWA shall provide UTILITIES with notice of that intent and UTILITIES shall have no obligation to treat wastewater and FAWWA shall not introduce wastewater at a flow in excess of 0.115 MGD into UTILITIES' Wastewater Treatment System after such notice is provided.
 - e. UTILITIES may terminate this Agreement if FAWWA introduces wastewater into UTILITIES' Wastewater Treatment System at Maximum Allowable Flow in excess of 0.115 MGD prior to when the relief systems required by Article I.8 are constructed and approved by UTILITIES or after FAWWA provides UTILITIES with notice of its intent not to expand the service provided beyond Maximum Allowable Flow of 0.115 MGD. If UTILITIES does not terminate the Agreement for such reasons, FAWWA shall take whatever steps are necessary to ensure that it does not introduce Maximum Allowable Flow in excess of 0.115 MGD into UTILITIES' Wastewater Treatment System and shall pay UTILITIES \$1,000.00 per day that the Maximum Allowable Flow introduced into UTILITIES' Wastewater Treatment System are above 0.115 MGD.
 - f. UTILITIES shall have no obligation to accept and treat additional wastewater under this Agreement that originates outside of the Eligible Service Area, except as provided in Article I, Paragraph 5 below.
 - g. FAWWA shall provide to UTILITIES an updated copy of the map of FAWWA's Wastewater Collection System to the contacts set forth in Article III.13 by **February 15** of each year or notice to the same contacts that no changes to FAWWA's Wastewater Collection System have occurred in the preceding year.
5. Expansion of Wastewater Treatment Obligations.
- a. If FAWWA desires to obtain additional wastewater treatment service from UTILITIES (1) for properties located outside of the Eligible Service Area; or (2) that results in FAWWA's discharges to UTILITIES' Wastewater Treatment System to exceed Maximum Allowable Flow of 0.29 MGD then:
 - i. UTILITIES and FAWWA must negotiate an amendment to this Agreement or a new

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

agreement that provides for such an expansion. FAWWA 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.

- ii. FAWWA shall provide notice to UTILITIES of its intent to request expanded wastewater treatment service for other properties prior to FAWWA seeking approval of the proposed changes from El Paso County. The notice must include the number, types of connections, and flow estimates to FAWWA's Wastewater Collection System that will be included in the expanded Service Area.
 - iii. UTILITIES shall provide notice to FAWWA 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. FAWWA acknowledges the expansion of wastewater treatment service is limited to properties within FAWWA's Service Area or within areas that may be included in FAWWA's Service Area in the future.
 - iv. The Parties shall meet annually, no later than February 15, or within thirty (30) days after UTILITIES provides FAWWA with notice that its Initial Allowable Flow over the past ninety (90) days have exceeded 0.092 MGD, to discuss FAWWA's plans for development of its Service Area and whether FAWWA intends to expand the wastewater treatment service provided by UTILITIES and the anticipated timeline for such expansion of service.
 - v. If FAWWA intends for the wastewater treatment service provided by UTILITIES to be expanded beyond the Maximum Allowable Flow of 0.29 MGD, the Parties shall meet annually, no later than **February 15**, or within thirty (30) days after UTILITIES provides FAWWA with notice that its average daily wastewater flow over the past ninety (90) days has exceeded 0.232 MGD, to discuss FAWWA's plans for development of its Service Area and whether FAWWA intends to pursue expansion of the wastewater treatment service provided by UTILITIES to Maximum Allowable Flow in excess of 0.29 MGD and the anticipated timeline for such expansion of service. If FAWWA intends to expand the wastewater treatment service provided by UTILITIES hereunder to Maximum Allowable Flow in excess of 0.29 MGD, FAWWA shall provide UTILITIES with notice of its intent to pursue an amendment to this Agreement or a new agreement to allow for such service and UTILITIES shall have no obligation to treat wastewater and FAWWA shall not introduce wastewater at Maximum Allowable Flow in excess of 0.29 MGD into UTILITIES' Wastewater Treatment System until the parties have entered into such an amendment or new agreement.
6. Rates, Charges, Surcharges and Fees Payable by FAWWA.

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

- a. For the services provided hereunder, FAWWA 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 FAWWA'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. FAWWA agrees that UTILITIES' rate making process, as embodied in the Tariffs, is fair and reasonable.
- b. FAWWA 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 FAWWA thirty (30) days in advance of City Council's consideration of the change in tariffs applicable to this Agreement.
- c. FAWWA 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 FAWWA monthly in arrears for such Treatment Charges and Extra Strength Surcharges with payment due within thirty (30) days of the date of billing.
- 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 determined based on the average flow demand in million gallons per day. At buildout of the Eligible Service Area, FAWWA will deliver wastewater to UTILITIES' Wastewater Treatment System at a Maximum Allowable Flow of 0.29 MGD. The WWRSF for average flows of 0.10 to 0.29 is \$28,216.00. Under the Interim Agreement, FAWWA's predecessor in interest paid a development charge of \$39,060.00. The Parties agree, that consistent with UTILITIES' Tariffs, FAWWA is not required to pay an additional WWRSF under this Agreement due to FAWWA's predecessor in interest's payment of the development charge.
- e. FAWWA 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. FAWWA Agrees to pay initial Recovery Agreement charges of \$1,645,928.01 based on UTILITIES' acceptance of wastewater at Initial Allowable Flow of up to 0.115 MGD. Such Recovery Agreement charges must be paid by FAWWA within thirty (30) days after the Effective Date. FAWWA agrees to pay additional Recovery Agreement charges in an amount determined by UTILITIES prior to UTILITIES accepting and treating wastewater at Maximum Allowable Flow in excess of 0.115 MGD. UTILITIES shall provide FAWWA notice of the amount of the additional Recovery Agreement charges and such charges must be paid by FAWWA within thirty (30) days after such notice. The infrastructure that will be used by UTILITIES to provide wastewater treatment service under this Agreement that is subject to the payment of Recovery Agreement Charges by FAWWA are depicted in Exhibit B.
- f. FAWWA shall pay a Water Quality Impact Fee that will be calculated and billed annually. The annual fee will be based on FAWWA's pro rata share of UTILITIES' combined yearly wastewater treatment flows, times the cost of UTILITIES' water quality monitoring and

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

studies and Fountain Creek watershed improvements.

- g. Payments under this Paragraph by FAWWA 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. FAWWA's Responsibilities. In addition to other responsibilities and duties provided in this Agreement, FAWWA shall solely have the following responsibilities:
- a. FAWWA shall be solely responsible for the permitting, construction, operation, maintenance, integrity of, and reporting associated with, FAWWA's Wastewater Collection System including, but not limited to, air emissions from FAWWA's Wastewater Collection System, and spills, leaks, and sanitary sewer overflows (as defined by the United States Environmental Protection Agency ("EPA") from FAWWA's Wastewater Collection System.
 - b. Have in place and make best efforts to enforce its Sewer Use Regulations. In the event that FAWWA fails to provide resources or otherwise fails to implement and enforce its Sewer Use Regulations within FAWWA's Service Area in a timely manner, UTILITIES is authorized to take all such actions on behalf of and as an agent for FAWWA after providing FAWWA with notice of same.
 - c. At all times, FAWWA shall cause all wastewater, which is discharged directly or indirectly into FAWWA 's Wastewater Collection System or into UTILITIES' Wastewater Treatment System by FAWWA or FAWWA's Customers, or on their behalf, to comply with FAWWA's Sewer Use Regulations and any requirements of UTILITIES, as permitted by law.
 - d. FAWWA shall at all times operate FAWWA's Wastewater Collection System so as not to interfere with service to third parties who rely on UTILITIES' Wastewater Treatment System.
 - e. FAWWA'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 FAWWA's Wastewater Collection System.
 - f. If FAWWA 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. FAWWA shall report, in the manner required by applicable laws and regulations provided below, any illicit discharge, spill, leak, or sanitary overflow from FAWWA'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 FAWWA becomes aware of the Incident.

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

- h. FAWWA shall maintain an approved EPA User Charge System (40 CFR §§ 35.2140. UTILITIES will notify FAWWA by February 15 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. FAWWA shall provide within sixty (60) days of implementation or upon request by UTILITIES, a report on FAWWA's classes, rates, and implementation provisions. FAWWA will comply with EPA regulations 40 CFR § 35.2140(c) by advising FAWWA'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 FAWWA provides such notification to its wastewater Customers.
- i. FAWWA 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-0046850

8. Relief Systems.

- a. Before UTILITIES is obligated to provide wastewater treatment service and FAWWA is entitled to introduce wastewater into UTILITIES' Wastewater Treatment System at Maximum Allowable Flow in excess of 0.115 MGD, FAWWA 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 FAWWA's Service Area in excess of 0.115 MGD can be accepted. The relief facilities may be constructed on property owned by FAWWA, within the boundaries of FAWWA, 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 FAWWA 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:
 - i. Relief of pipelines operating in excess of design capacity.
 - ii. Replacement of structurally deficient pipelines.
 - iii. Replacement of pipelines subject to flooding or other hazards.
 - iv. Replacement of pipelines with inadequate operations and maintenance access.
 - v. Replacement of pipelines subject to excessive inflow/infiltration.

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

- vi. Pipelines that provide for the elimination of pump stations and force mains.
 - b. UTILITIES shall provide FAWWA with notice of the required relief systems within 90 days of when FAWWA provides UTILITIES with the notice required under Article I.4.d that it intends to expand the wastewater treatment service provided by UTILITIES hereunder to Maximum Allowable Flow in excess of 0.115 MGD. FAWWA 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.
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. FAWWA shall be responsible for obtaining all approvals and/or permits necessary for the implementation of this Agreement. UTILITIES will cooperate with FAWWA to obtain any necessary approvals and/or permits. If any required approval and/or permit is not obtained by FAWWA, either Party may terminate this Agreement. A copy of such approval or permit shall be provided to UTILITIES by FAWWA.
 10. Interpretation of Requirements. In all cases where the application or the enforcement of the City Code, 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.
 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 FAWWA 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, FAWWA shall have the legal ownership of and right to use, reuse, successively use, and dispose of all return flows resulting from wastewater introduced by FAWWA into UTILITIES' Wastewater Treatment System.

Article II

Improvements/Connection to UTILITIES' Wastewater Treatment System

1. Point(s) of Connection of FAWWA to UTILITIES' Wastewater Treatment System. FAWWA shall deliver its wastewater to UTILITIES' Wastewater Treatment System at the points of connection located within the wastewater metering vaults depicted on Exhibit C 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 FAWWA.
2. FAWWA's Wastewater Collection System Improvements. FAWWA shall be solely responsible, financially and otherwise, for designing, installing, constructing, and operating

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

FAWWA's Wastewater Collection System including, but not limited to, wastewater mains, and all infrastructure improvements necessary to connect UTILITIES' Wastewater Treatment System to FAWWA'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"). 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 FAWWA or in rights-of-way or easements dedicated for public utilities or conveyed to FAWWA. FAWWA shall, at its own cost and subject to UTILITIES' approval, 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. Ownership and Maintenance of Improvements. Unless earlier dedicated by plat, upon completion of design, installation and construction of the Improvements, FAWWA shall convey and dedicate to UTILITIES or shall cause the conveyance and dedication to UTILITIES, on forms acceptable to UTILITIES, ownership of all the Improvements located on the UTILITIES' side of the metering vault(s), as depicted on Exhibit C, and the right to locate the Improvements dedicated and conveyed to UTILITIES on property owned by FAWWA or in rights-of-way or easements conveyed to FAWWA as necessary. 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. FAWWA shall continue to own all of the other Improvements. FAWWA hereby agrees to grant UTILITIES ingress and egress over and through FAWWA's property to the UTILITIES' owned Improvements and all FAWWA-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. Prior to installation of Improvements, FAWWA shall provide UTILITIES with an easement or plat requirement providing for such ingress and egress in a form approved by UTILITIES. FAWWA 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 FAWWA's Wastewater Collection System which are in existence upon execution of this Agreement, or which are subsequently constructed or acquired by FAWWA, and which do not comply with WWLESS, shall be brought into compliance at the time of replacement or repair. FAWWA agrees to provide UTILITIES with a continuously complete record of all Improvements.
4. Customer Connections. FAWWA shall require any construction, installation, and connection of customer service lines to FAWWA's Wastewater Collection System that flows into

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

UTILITIES' Wastewater Treatment System to be in accordance with the City Code, the Tariffs, and WWLESS, to minimize the possibility of damage to UTILITIES' Wastewater Treatment System. FAWWA 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.

5. Wastewater Discharge Meters/Vaults.

- a. Within three hundred sixty-five (365) days of the Effective Date FAWWA must design and install all required facilities related to wastewater discharge meters that will record the amount of wastewater delivered to UTILITIES' Wastewater Treatment System by FAWWA, including, but not limited to, the wastewater metering vault and appurtenances depicted in the WWLESS detail C3-8, the electrical supply to the operating equipment inside the metering vault, and for providing adequate maintenance access to the vault. FAWWA's obligations with regard to the meter vault and appurtenances extends to and includes providing a suitable housing/protection and electric supply for any required instrumentation and Remote Terminal Units used to collect and transmit level and flow data to UTILITIES. FAWWA must obtain UTILITIES' approval of the design and installation of all such facilities. FAWWA shall not connect more than 560 SFEs, including the 302 SFEs connected pursuant to the Interim Agreement, until the facilities required by this paragraph have been installed and approved by UTILITIES. FAWWA 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. UTILITIES shall read, operate, maintain, and replace the discharge meter(s) at UTILITIES' cost.
- c. It is understood by the Parties that the point of demarcation between FAWWA's Wastewater Collection System and UTILITIES' Wastewater Treatment System will be located at the metering vault. All infrastructure upstream of the metering vault is understood to be owned and maintained by FAWWA and all infrastructure downstream of the metering vault is understood to be owned and maintained by UTILITIES.
- d. The accuracy of the meter shall be verified by UTILITIES upon installation and on an annual basis thereafter, with results provided to UTILITIES and FAWWA. FAWWA 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, FAWWA shall be responsible for the cost of the test. If the 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 meter is found to be in error, no adjustments to previous invoices will be permitted.

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

FAWWA Industrial Pretreatment Program Responsibilities Delegated to UTILITIES

1. Industrial Users. At the present time, FAWWA does not anticipate that there will be any Industrial Users connected to its Wastewater Collection System. However, the Parties acknowledge that connection of Industrial Users to FAWWA's Wastewater Collection System in the future is possible. The provisions of this Article III will apply in the event commercial and/or industrial customers are connected to FAWWA's Wastewater Collection System in the future.
2. Delegation of Industrial Pretreatment Program Responsibilities. FAWWA designates UTILITIES as the agent of FAWWA for the purposes of implementation and enforcement of FAWWA's Sewer Use Regulations promulgated pursuant to Article I.3.b against Industrial Users located in FAWWA's Service Area ("FAWWA'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 FAWWA'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. FAWWA agrees that UTILITIES will implement FAWWA'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. FAWWA 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 FAWWA'S Sewer Use Regulations and City Code Chapter 12, Article 5.
4. Technical and Administrative Duties. UTILITIES, on behalf of and as agent for FAWWA, will perform technical and administrative duties necessary to implement and enforce FAWWA's Sewer Use Regulations including, but not limited to: (1) updating its industrial waste inventory to include users within FAWWA's Service Area; (2) issuing or co-issuing permits to all Industrial Users that are required to obtain a permit (see Article III.8); (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 FAWWA's Sewer Use Regulations; (5) providing FAWWA with notice of enforcement actions UTILITIES takes against any Industrial User in FAWWA'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 FAWWA, take emergency action to stop or prevent any discharge to UTILITIES' Wastewater Treatment

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

System originating within FAWWA'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 agent of FAWWA, agrees to perform the following actions and duties as necessary to implement and enforce FAWWA'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 FAWWA's Wastewater Collection System;
 - b. Control through permit or other means, the contribution of wastewater to UTILITIES' Wastewater Treatment System by Industrial Users within FAWWA's Service Area. Without limitation, UTILITIES shall have the right to prohibit any connection to, or discharges into, FAWWA's Wastewater Collection System of an Industrial User in accordance with City Code;
 - c. Require FAWWA's Customers to comply with all standards and 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 FAWWA'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 FAWWA'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 FAWWA'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 FAWWA's Sewer Use Regulations;
 - j. Evaluate and enforce compliance with Industrial Pretreatment Program Standards and

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

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. FAWWA's Duties. FAWWA is responsible for, and hereby accepts the following duties and agrees to perform the following actions in relation to all Industrial Users within FAWWA's Service Area:
- a. Prior to allowing an Industrial User to connect to FAWWA's Wastewater Collection System, FAWWA shall provide UTILITIES with notice of its intent to permit connection of an Industrial User to FAWWA'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 FAWWA'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. FAWWA shall provide the resources and commit to implementation and enforcement of its Sewer Use Regulations with UTILITIES' oversight;
 - d. FAWWA agrees to be responsible for any violations of applicable law for failure of UTILITIES' Industrial Pretreatment Program meeting applicable law resulting from FAWWA's neglect, failure to report any known violations, or failure to comply with the terms and conditions of this Agreement.
 - e. FAWWA 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. FAWWA may co-issue all permits if FAWWA 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. FAWWA and UTILITIES shall each retain their enforcement discretion. Regarding Industrial Users served by FAWWA, 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 FAWWA

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

Customer discharging flows to the UTILITIES' Wastewater Treatment System as provided in the City Code. UTILITIES shall notify FAWWA when assessing penalties, terminating wastewater treatment service, or seeking criminal sanctions against any of FAWWA's Customers. UTILITIES shall provide FAWWA with a status report regarding the compliance of Significant Industrial Users within FAWWA's boundaries on or before **April 1** of each year.

10. Challenges to UTILITIES' Authority. FAWWA agrees that if UTILITIES' authority to act as agent for FAWWA under this Agreement is questioned or challenged by an Industrial User within FAWWA's Service Area, administrative agency, court of law, or otherwise, FAWWA 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. FAWWA acknowledges that UTILITIES has the power to carry out all inspection, surveillance, and monitoring procedures necessary in accordance with City Code § 12.5.805. FAWWA's Sewer Use Regulations shall provide that UTILITIES is authorized to enter any premises of any industrial user located within FAWWA's Service Area to determine compliance with applicable pretreatment standards and requirements, or access FAWWA's wastewater collection system at any time in order to obtain samples.

12. Charges and Fees Related to Industrial Pretreatment Program.

a. To FAWWA. UTILITIES may bill FAWWA under this Agreement for any costs associated with performing the responsibilities delegated to UTILITIES in this Article III.

b. Prior to allowing an industrial user to connect to FAWWA's Wastewater Collection System, FAWWA shall collect all fees related to wastewater treatment for industrial users as set forth in the Tariffs and pay those fees to UTILITIES.

c. To Industrial Users. All general and special sewer service charges, and other charges levied against Industrial Users by FAWWA, shall be retained by FAWWA, except as otherwise provided by this Agreement or applicable law. Permit fees shall be retained by UTILITIES.

d. Enforcement. All penalties or other enforcement receipts arising from enforcement actions taken by UTILITIES against FAWWA or FAWWA's Customers under this Article III shall be collected and retained by UTILITIES.

13. Submittals. Any submittal required by this Article III, shall be made in accordance with Article V, Paragraph 4 of this Agreement, and provided at the following address:

Colorado Springs Utilities
Attn: Industrial Pretreatment Program
701 E. Las Vegas St.

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

Colorado Springs, CO 80903

Article IV
Remedies

1. Liquidated Damages. Damages to UTILITIES resulting from FAWWA'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, FAWWA 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. FAWWA acknowledges and agrees that any illicit discharge of industrial wastewater by FAWWA, or a FAWWA Customer, may subject FAWWA 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 FAWWA or its Customer(s) caused or contributed to the violation.
3. Disconnection Damages. It is agreed that the damage to UTILITIES, if FAWWA disconnects from UTILITIES' Wastewater Treatment System, 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.
4. Breach of Agreement. Upon any breach of this Agreement, 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; (b) be reimbursed for costs; and (c) be entitled to money damages for the time period between the breach and the order for specific performance. Said rights also apply if liquidated damages, as provided in City Code § 12.5.304: B.2, are unavailable.
5. Termination by UTILITIES. FAWWA acknowledges and consents to UTILITIES' right to terminate this Agreement without liability or obligation to FAWWA, FAWWA's Customers or any other person or entity: (1) due to FAWWA's breach of a material term or condition of this Agreement, if FAWWA 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 FAWWA 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 FAWWA's Wastewater Collection System and other FAWWA facilities which UTILITIES find to be necessary for provision of wastewater treatment service within FAWWA's Service Area for the purpose of remedying the breach(s). While in control of any portion of FAWWA'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. FAWWA agrees to reimburse

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

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 FAWWA's Wastewater Collection System shall be returned to FAWWA. 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 FAWWA'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 FAWWA shall include, but not be limited to, failure to continue to exist as a municipal, quasi-municipal or corporate entity; failure to maintain FAWWA's Wastewater Collection System; failure to perform functions necessary to the operation of FAWWA'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 treatment service or expansion of FAWWA's Service Area; unauthorized connection of a FAWWA extraterritorial customer to FAWWA'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.

6. Financial Assurances. If FAWWA does not complete installation of the facilities required under Article II.5.a within the time period set forth therein, UTILITIES may, at its discretion, install the facilities itself with reimbursement from FAWWA of all costs incurred in completing the installation. To ensure funds are available to reimburse UTILITIES for any costs it incurred to install such facilities if FAWWA does not, FAWWA agrees to provide UTILITIES with either an irrevocable letter of credit or a surety bond (in a form approved by UTILITIES) in the amount of \$100,000.00 ("Reimbursement Fund") within thirty (30) days from the Effective Date. UTILITIES shall have the right to make a claim against the Reimbursement Fund for reimbursement of any costs incurred by UTILITIES for the installation of the facilities required under Article II.5.a. After completion of any such installation, UTILITIES shall issue an itemized invoice to FAWWA for payment of the costs UTILITIES incurred. In the event FAWWA 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 file a claim against the Reimbursement Fund. If FAWWA completes the installation and obtains UTILITIES's approval thereof, UTILITIES shall release the reimbursement fund within thirty (30) days of the date it approves the facilities in accordance with Article II.5.a.
7. Termination by FAWWA. FAWWA 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 FAWWA.
8. Effect of Termination. Upon termination by either Party, UTILITIES shall have no further obligation to provide wastewater treatment service to FAWWA or FAWWA's Customers and FAWWA's Wastewater Collection System shall be disconnected from UTILITIES' Wastewater Treatment System. Upon termination, UTILITIES shall determine the connection facilities between FAWWA's Wastewater Collection System and UTILITIES' Wastewater Treatment System that must be removed at FAWWA'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 Tariffs and WWLESS. All outstanding

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

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

9. 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.
10. Enforcement of Rights. Nothing herein shall prevent either Party from enforcing its rights under this Agreement by an appropriate legal or equitable action.
11. 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 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 FAWWA'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. FAWWA 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. FAWWA 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**. FAWWA 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.
3. FAWWA Rules and Regulations. FAWWA 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 water use within FAWWA's Service Area. FAWWA agrees to exercise its rulemaking, rate/fee-setting and other powers to assist UTILITIES in enforcing the Tariffs and WWLESS
4. FAWWA Dissolution. In the event that FAWWA seeks to dissolve pursuant to relevant laws,

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

rules and regulations, FAWWA shall provide a copy of its dissolution petition to UTILITIES at the time of its filing. The dissolution petition shall provide for assignment of FAWWA'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 FAWWA'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:

Chief System Planning and Projects Officer
Courier Service Address:
Colorado Springs Utilities
ATTN: Customer Utilities Connections Manager
1521 S. Hancock Expressway.
Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
Customer Utilities Connections Manager
1521 S. Hancock Expressway.
Colorado Springs, CO 80903

With copy to:

City Attorney's Office - Utilities Division
Courier Service Address:
City Attorney's Office
ATTN: Utilities Division
30 S. Nevada Ave.
Colorado Springs, CO 80903

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 FAWWA:

Falcon Area Water and Wastewater Authority

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

ATTN: Authority Manager
2138 Flying Horse Club Drive
Colorado Springs, CO 80921
Phone: 719 592 9333

With Copy to:

Spencer Fane, LLP
1700 Lincoln St., Ste 2000
Denver, CO 80203

Classic Homes
ATTN: Nate Lenz, Esq.
2138 Flying Horse Club Drive
Colorado Springs, CO 80921

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.
8. 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 FAWWA 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.
9. Audits. UTILITIES shall have the right to audit at any time all of FAWWA's records relating to any of FAWWA's Customers or relating to compliance with this Agreement. FAWWA shall have the right to audit all UTILITIES' records relating to compliance with this Agreement.

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

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. 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 FAWWA for failure to accept or treat FAWWA's 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 FAWWA to temporarily store and contain wastewater flows to the extent of FAWWA'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 FAWWA's wastewater, UTILITIES shall give FAWWA ten (10) days prior notice of the planned maintenance shall be given to FAWWA, after which FAWWA 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 FAWWA. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to FAWWA 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 FAWWA and UTILITIES that any person other than FAWWA or UTILITIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

12. 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 FAWWA 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 FAWWA as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

FAWWA's obligations under this Agreement are expressly subject to appropriation of funds by FAWWA's Board of Directors. In the event funds are not appropriated in whole or in part sufficient for performance of FAWWA's obligations under this Agreement, then this Agreement will thereafter become null and void by operation of law, and FAWWA will thereafter have no liability for compensation or damages to UTILITIES for future performance and obligations thereafter in excess of FAWWA's authorized appropriation for this Agreement, whichever is less. FAWWA will notify UTILITIES as soon as reasonably practicable in the event of non-

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

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 FAWWA pursuant to Article X, Section 20 of the Colorado Constitution (TABOR). Notwithstanding the forgoing, FAWWA's obligation to pay the applicable rates, charges, surcharges, and fees owed to UTILITIES for provision of wastewater treatment service under this Agreement through FAWWA's water and sanitary sewer enterprise fund are not subject to appropriations by FAWWA's Board of Directors.

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. 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 FAWWA, UTILITIES may assign this Agreement without consent to the City of Colorado Springs.
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 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

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

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.

Intentionally Left Blank

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

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

COLORADO SPRINGS UTILITIES

FALCON AREA WATER AND WASTEWATER AUTHORITY

By: _____

By: _____

Name: _____

Name: _____

Title: Chief Executive Officer

Title: _____

Date: _____

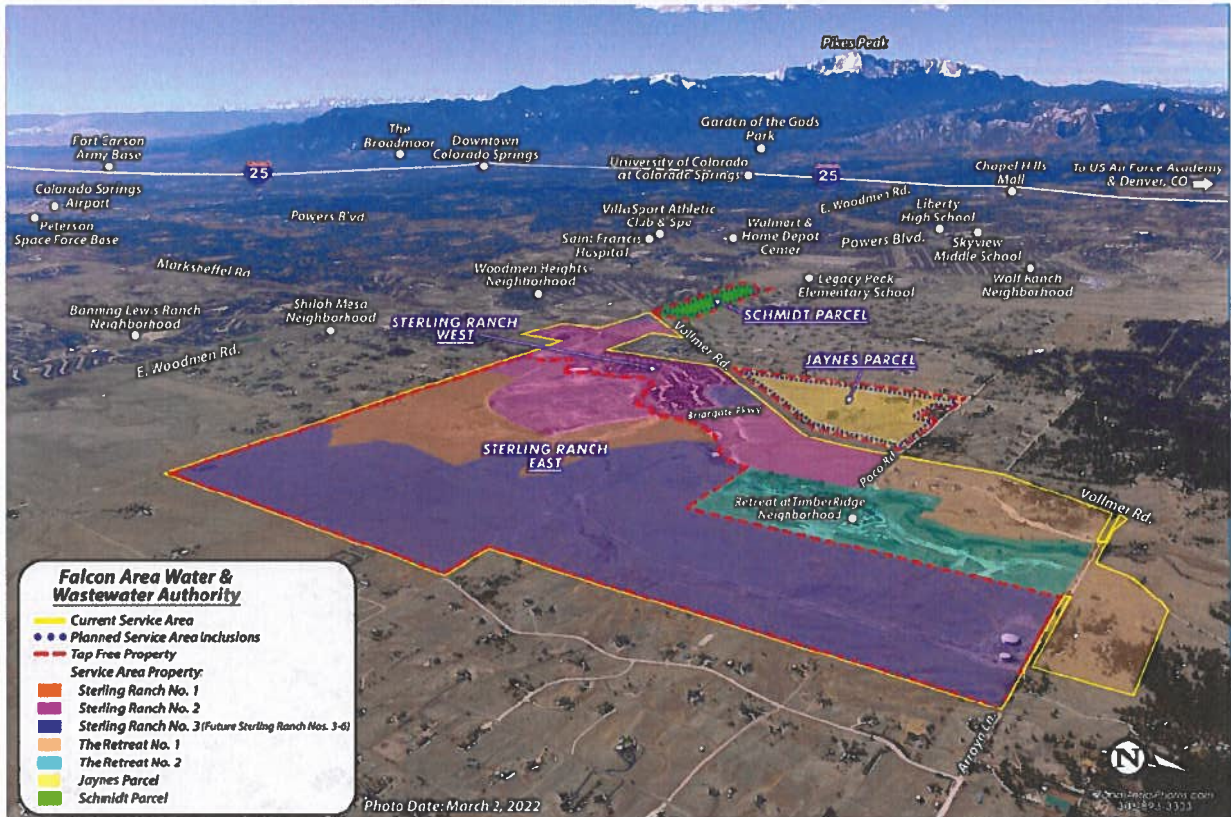
Date: _____

Approved as to form:

Attest: _____

Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

Exhibit A
to the
WASTEWATER SERVICE AGREEMENT
Special Contract for Service - Outside City Limits
Falcon Area Water and Wastewater Authority



Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

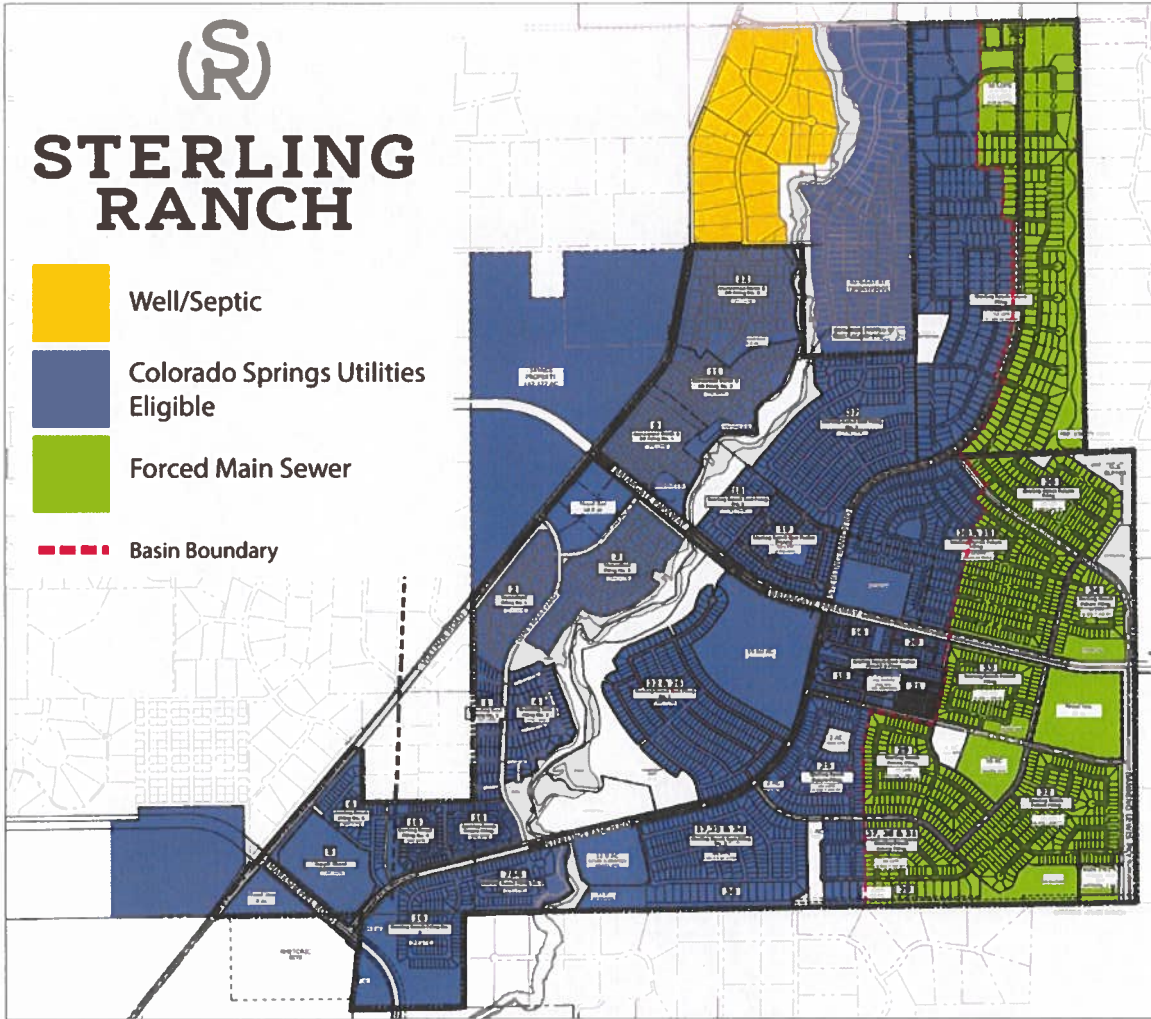
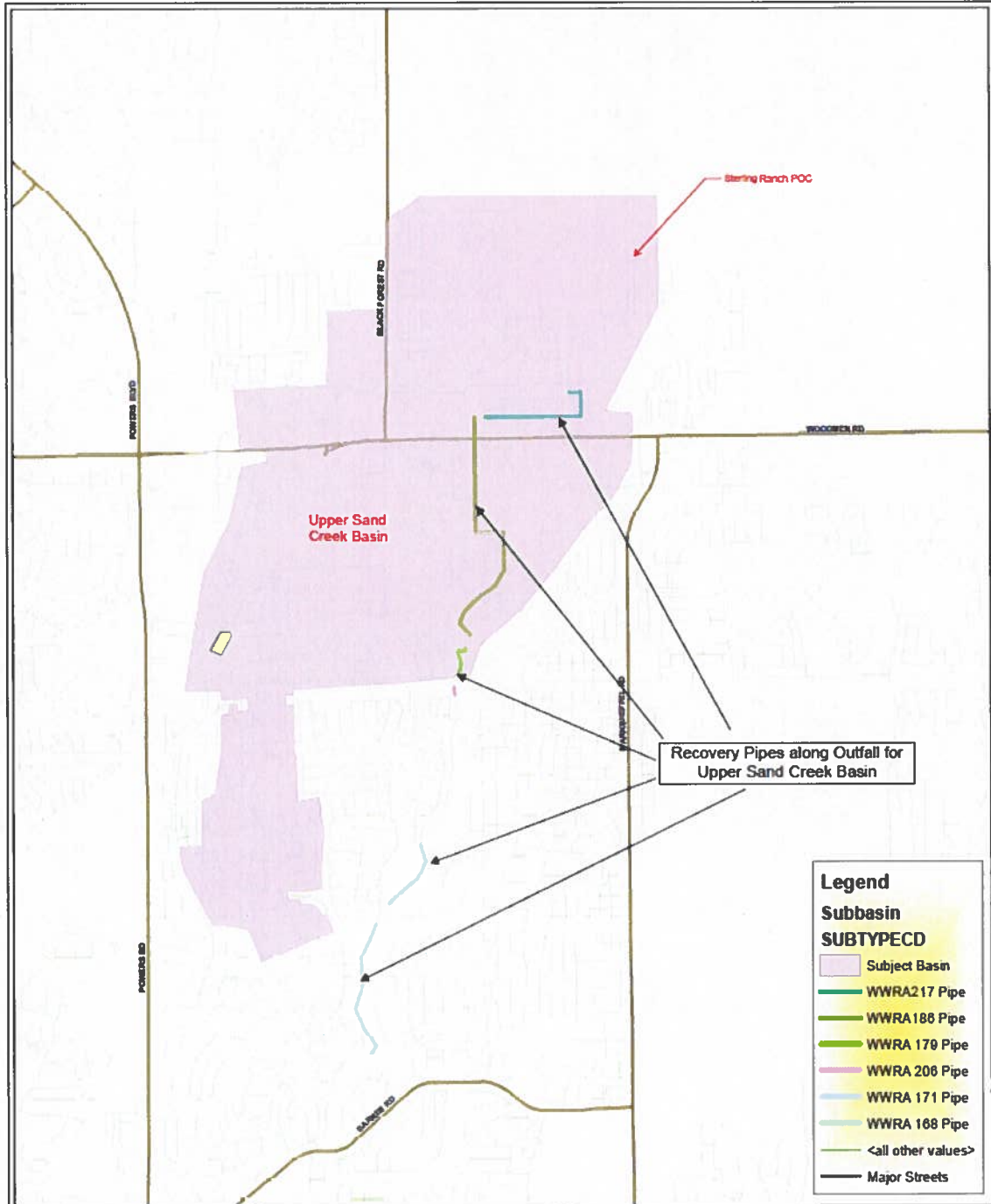
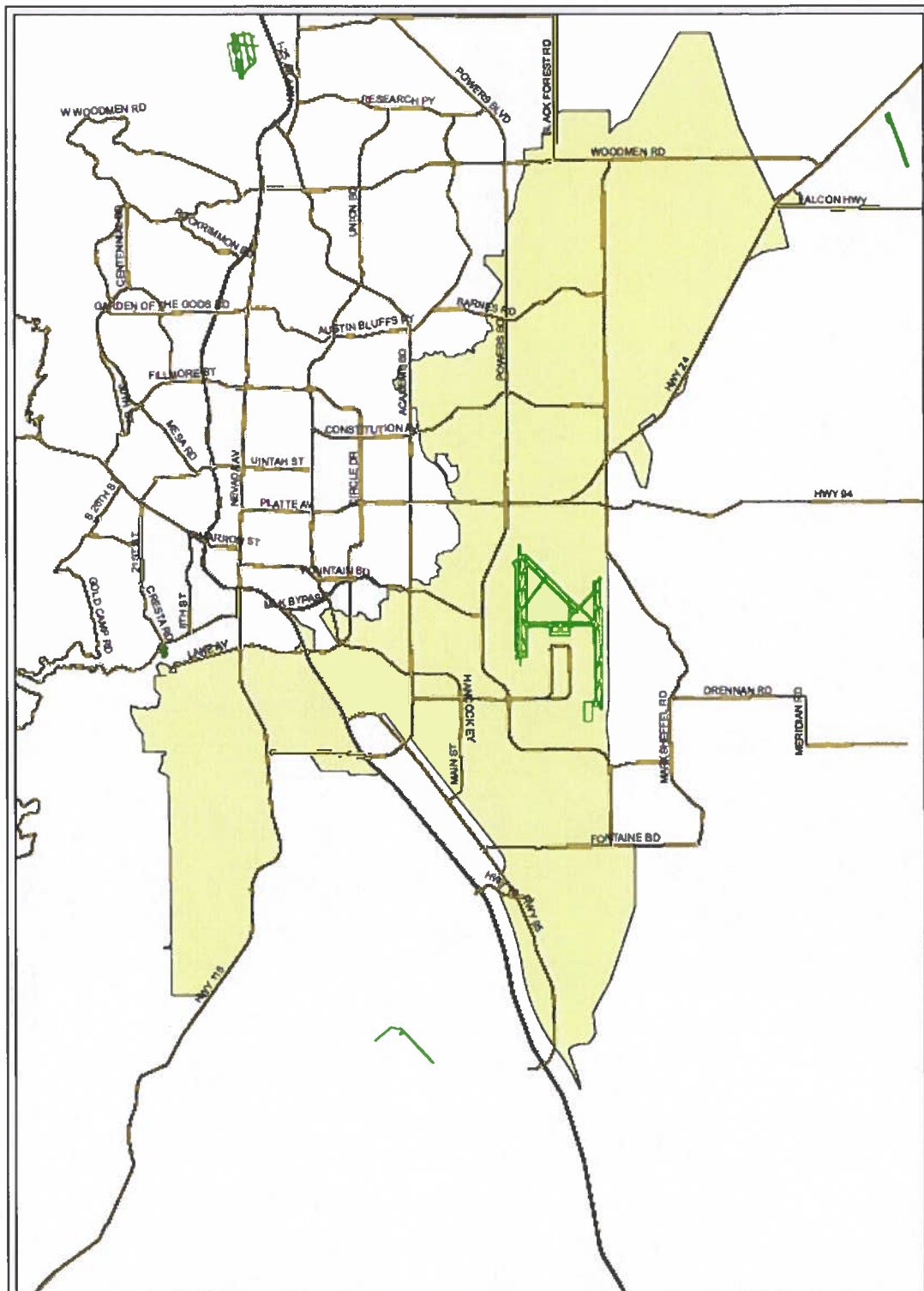


Exhibit B
to the
WASTEWATER SERVICE AGREEMENT
Recovery Agreement Maps



Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement



ADVANCE WWRA 2041 Exhibit "A"
Sand Creek Basin Improvements
Deep Pipe Diversion Project
**** FLOW BASED ASSESSMENT ****
(CSU Project # TBD)

Legend

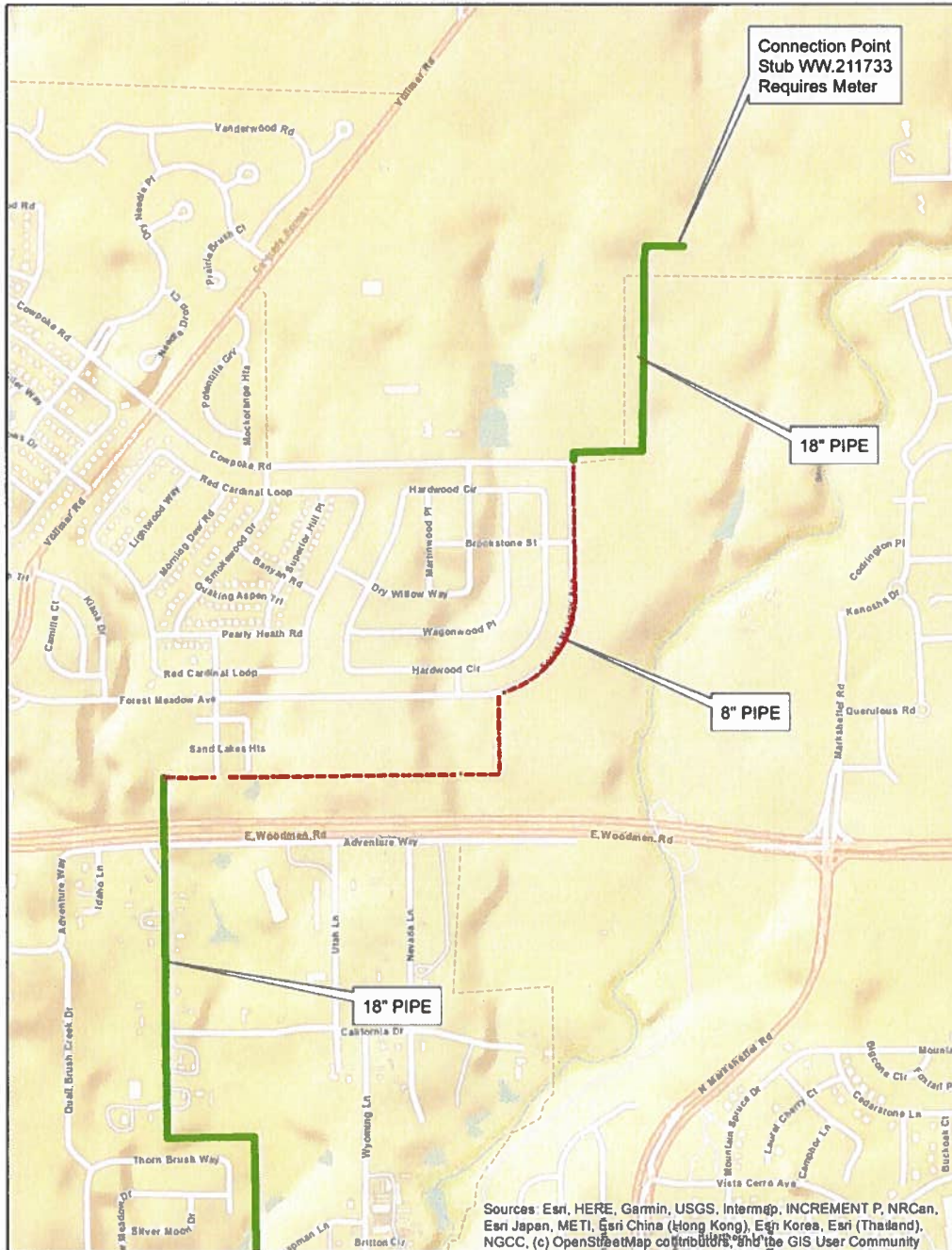
- Major Streets
- Airport
- AWWRA 2041

Effective Date: 06/08/2018
 Expired Date: 06/08/2099

Map File Created: 07/02/2018
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Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

Exhibit C
to the
WASTEWATER SERVICE AGREEMENT
District Points of Connection



Falcon Area Water and Wastewater Authority Regional Wastewater Treatment Service Agreement

Exhibit C
to the
WASTEWATER SERVICE AGREEMENT
Easterly Schmidt Parcel Legal Description

EL PASO COUNTY - COLORADO

5200000575
VOLLMER RD

Total Market Value
\$158,099

OVERVIEW

Owner:	SSRW RESIDENTIAL PARTNERS LP LTD
Mailing Address:	5915 SILVER SPRINGS DR BLDG 3 EL PASO TX, 79912-4126
Location:	VOLLMER RD
Tax Status:	Taxable
Zoning:	RM-30
Plat No:	-
Legal Description:	TR IN THE SW4 & SW4SE4 SEC 32-12-65 DESC AS FOLS: COM AT THE S4 COR OF SD SEC 32, TH ALG THE NLY ROW LN N34-04-17E 259.29 FT TO THE POB; TH N55-55-43W 490.63 FT, TH N87-41-24W 228.83 FT, TH N75-30-36W 307.08 FT, TH N28-05-30E 35.79 FT TO A PT OF A CUR, TH ALG THE ARC OF A CUR TO THE L HAVING A RAD OF 605.00 FT, A C/A OF 28-45-54, ARC DIST OF 303.91 FT, TH N00-41-24W 198.54 FT, TH N89-18-36E 333.21 FT TO A PT OF A CUR, TH ALG THE ARC OF A CUR TO THE R, HAVING A RAD OF 1146.50 FT, A C/A OF 41-02-55, ARC DIST OF 821.39 FT, TH S49-38-29E 51.96 FT, TH S00-09-11E 162.66 FT TO A PT ON THE NLY ROW LN OF VOLLMER RD, TH ALG THE NLY ROW LN S34-04-17W 504.77 FT TO THE POB

EL PASO COUNTY - COLORADO

5200000576
VOLLMER RD

Total Market Value
\$79,063

OVERVIEW

Owner:	SRW RESIDENTIAL PARTNERS LP LTD
Mailing Address:	5915 SILVER SPRINGS DR BLDG 2 EL PASO TX, 79912-4126
Location:	VOLLMER RD
Tax Status:	Taxable
Zoning:	RM-30
Plat No:	-
Legal Description:	TR IN THE SW4 & SW4SE4 SEC 32-12-65 DESC AS FOLS: COM AT THE S4 COR OF SD SEC 32, TH ALG THE S LN OF SD SEC 32 S89-14-45W 143.15 FT, TH N00-45-04W 61.34 FT, TH ALG THE ARC OF A CUR TO THE R, HAVING A RAD OF 770.00 FT, A C/A OF 13-07-51, ARC DIST OF 176.46 FT TO THE POB; TH CONT ON THE ARC OF SD CUR TO THE R, HAVING A RAD OF 770.00 FT, A C/A OF 15-42-43, ARC DIST OF 211.15 FT, TH N28-05-30E 175.07 FT, TH S75-30-36E 307.08 FT, TH S87-41-24E 228.83 FT, TH S55-55-43E 490.63 FT TO A PT ON THE NLY ROW LN OF VOLLMER RD, TH ALG THE NLY ROW LN S34-04-17W 259.29 FT TO A PT ON THE S LN OF THE SW4SE4 SEC 32, TH ALG THE S LN S89-14-13W 155.44 FT, TH N77-53-11W 507.94 FT, TH N81-15-09W 242.78 FT TO THE POB