

Colorado Springs Utilities
AGREEMENT AND BILL OF SALE for
Water or Wastewater Facilities

This **AGREEMENT AND BILL OF SALE** is made this _____ day of _____, _____ (the “Effective Date”) by and between the undersigned owner (“Owner”) and Colorado Springs Utilities (“Utilities”), an enterprise of the City of Colorado Springs, a home rule city and Colorado municipal corporation (“City”). In consideration of the mutual promises, covenants, and agreements set forth herein and Utilities’ permission to connect the Facilities to Utilities’ public water system and/or wastewater system (“Public System”), the Owner and Utilities agree as follows:

1. Definitions. The following words shall have the following definitions:

“Construction Plan” means the construction plan approved by Utilities for Project No. _____ titled _____, providing for the plan for construction of water and/or wastewater infrastructure.

“Facilities” means the water and/or wastewater infrastructure and appurtenances identified as public on the Construction Plan.

“Preliminary Acceptance Date” means the date Utilities accepts the Facilities into its Public System as evidenced by the signature of Utilities below.

“Record Drawings” means the final construction documents that represent the as-built condition of the Facilities.

2. Indemnification. Owner hereby releases Utilities and shall fully protect, defend, discharge, indemnify and hold harmless the City, Utilities, the Colorado Springs City Council, Utilities’ Board of Directors, and their respective officers, employees, agents and representatives from and against any and all liability for damages, injuries to the person or property of the Owner or any third party, causes of action, demands, or actions of whatsoever kind or nature arising from the failure of Owner to perform its obligations herein, and further, from and against any other claims, costs and fees (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature arising from, in connection with, or related in any way to the construction or operation of the Facilities and to any extent arising from or due to Owner’s action(s) or failure(s) to act. Owner’s obligation hereunder shall commence on the Effective Date, shall survive the date of final acceptance, and shall continue in effect for a period of six years following the date of final acceptance and such additional time as it may take to completely and finally negotiate, settle, or litigate any timely claim.

3. Warranty.

a. Owner hereby represents and warrants that: (i) it will own the Facilities and will have the right and authority to transfer the Facilities, or that in the event of any sale or transfer of ownership, that Owner will sign an Assignment Agreement on a form acceptable to Utilities; (ii) that the Facilities will be constructed in accordance with the approved Construction Plan (and any changes thereto approved by Utilities and reflected in the record drawings accepted and approved by Utilities), the City Code of the City of Colorado Springs (“City Code”), all applicable provisions of Utilities’ Water and/or Wastewater Line Extension and Service Standards (“LESS”) in effect on the date the Construction Plans are approved by Utilities; (iii) the Facilities will be installed within a street, right-of-way previously dedicated to the City, or easement granted to and accepted by the City at no cost to the City or Utilities which dedication or easement will be recorded at the El Paso County Clerk and Records Office, Colorado; and (iv) the Facilities will be free and clear of all claims, liens, and other security interests, including, but not limited to, claims for labor or materials.

b. For a period of 24 months from the Preliminary Acceptance Date or any extension thereof (“Warranty Period”), Owner warrants: (i) that the condition, safety, suitability, and utility of the Facilities are adequate for their

intended purpose; and (ii) that the Facilities shall be free from all defects and faults in materials or workmanship and conform to Utilities' LESS. For the Warranty Period, Owner agrees that, at its sole cost and responsibility, any defects or failures of the Facilities shall be remedied by Owner to Utilities' satisfaction ("Corrections") within thirty (30) days following provision of Utilities' written notice of any defect or failure of the Facilities; and that Owner shall schedule such Corrections in order to minimize any related service interruptions. In the event of an emergency, or if Owner fails to timely make such repairs after provision of written notice, Utilities shall have the right to perform work on the Facilities during the Warranty Period to correct such defects or failure of the Facilities. In the event Utilities performs any such work on the Facilities, Owner shall reimburse Utilities for its costs to repair, replace or move the Facilities within 30 days from the date of Utilities' invoice for such costs. In the event Owner fails to so reimburse Utilities, Utilities may, in its sole discretion, withhold any further approvals of connections to the Facilities until Utilities is reimbursed by Owner.

c. Owner acknowledges and agrees that the Correction of any failure to comply with the above warranties, other than any variances expressly identified on the Construction Plan approved by Utilities, shall be the sole responsibility of Owner during the Warranty Period. Any such Correction whether made by Owner or Utilities shall cause the period of warranty to be extended to (i) the date twelve months from the date such Correction is approved by Utilities, or (ii) the end of the original 24-month period of warranty as established by the Preliminary Acceptance Date, whichever occurs later.

4. Effect of Utilities' Preliminary Acceptance. The Owner and Utilities agree that upon the Preliminary Acceptance Date set forth below, ownership of the Facilities shall automatically transfer to Utilities from Owner. The parties further agree that as of the Preliminary Acceptance Date, the Facilities will have been inspected for adherence to required material and installation standards, and appear to be in compliance with the approved Construction Plan (and any field changes thereto approved by Utilities and reflected in the record drawings accepted and approved by Utilities), the City Code, Utilities' Water and/or Wastewater LESS, and all other applicable specifications in effect at the time of approval of the Construction Plan. Owner acknowledges that prior to Preliminary Acceptance, Utilities will operate the Facility for testing and inspection. Inspection and preliminary acceptance by Utilities shall not waive any of Owner's representations, warranties, or obligations herein. Additionally, such inspection and preliminary acceptance shall not constitute a representation by Utilities that the Facilities are properly located and that all existing or future defects have been discovered. During the Warranty Period, Utilities may conduct inspections of the Facilities to determine whether the Facilities are in compliance with Section 3 above, or whether the Facilities require warranty work. Upon expiration of the Warranty Period, Utilities will document final acceptance of the Facilities.

5. Effect of Non-Acceptance. In the event Utilities does not preliminarily accept the Facilities, the transfer of the Facilities shall not be effective, and the Facilities shall remain private.

6. Governing Law 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, City Code, Ordinances, Rules and Regulations. In the event of litigation, this Agreement shall be enforceable by or against the City of Colorado Springs on behalf of Utilities as provided in Colorado Springs City Code § 12.1.108. In the event of any dispute over the Agreement's terms and conditions, the exclusive venue and jurisdiction for any litigation arising thereunder shall be in the District Court of El Paso County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

7. Attorney's Fees and Costs of Collections. In the event that it becomes necessary for Utilities to bring any action or proceeding to collect unpaid reimbursement or other sums due under this Agreement, to enforce any provision of this Agreement, to recover damages for Owner's breach of this Agreement, or to seek specific performance of this Agreement, Utilities shall be entitled to collect its reasonable attorney's fees, costs of suit, and costs of collection as part of the judgment in such action or proceeding.

8. Counterparts; Copies of Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Copies of signatures shall be permitted for purposes of the binding nature of this Agreement.

9. **IN WITNESS WHEREOF**, Owner warrants that the executing representative has authority to bind Owner and has executed this Agreement and Bill of Sale.

OWNER'S SIGNATURE MUST BE NOTARIZED

OWNER:

(Organization)
Address: _____

By: _____
(Signature)

Print Name: _____

Title: _____

Date: _____

Contact Phone #: _____

Email: _____
(Type or print legibly)

STATE OF _____)
) SS.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____,
by: _____ as _____(title) of
_____(organization).

Witness my hand and official seal.

My Commission Expires: _____

COLORADO SPRINGS UTILITIES

By:

Notary Public

(SEAL)

COLORADO SPRINGS UTILITIES PRELIMINARY ACCEPTANCE:

Utilities has preliminarily accepted the Facilities by execution of this Agreement and Bill of Sale this _____ day of _____, 20____ (“**Preliminary Acceptance Date**”).

Approved: _____ Title: _____

Print name: _____

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PRELIMINARY ACCEPTANCE OF WARRANTY PERIOD WORK: If any Warranty Period work was performed on the Facilities, Utilities has preliminarily accepted the work as of _____ [date] and the Warranty Period is hereby extended to _____ [date].

Approved: _____ Title: _____

Print name: _____

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COLORADO SPRINGS UTILITIES FINAL ACCEPTANCE:

Final Acceptance is effective this _____ day of _____, 20____

Approved: _____ Title: _____

Print name: _____