



**AGENDA
CITY OF VICTOR
SPECIAL COUNCIL MEETING
FEBRUARY 4, 2021 – 5:00 P.M.
REMOTE***

The Victor City Council encourages and appreciates the community's interest in attending City Council meetings. Members of the public who are called to speak on an agenda item will be limited to a three-minute presentation.

- I. CONVENE REGULAR MEETING
PLEDGE OF ALLEGIANCE
INVOCATION
- II. ROLL CALL
- III. PUBLIC COMMENT WITHOUT PRIOR APPOINTMENT
- IV. ADDITIONS, DELETIONS OR CORRECTIONS TO AGENDA
- V. NEW BUSINESS
 - A. CONSTRUCTION SERVICES AGREEMENT- 4th Street Drainage Project - Earth Works Land Development - \$50,000.00 ☒
 - B. COLORADO SPRINGS UTILITY AGREEMENT ☒
- VI. EXECUTIVE SESSION PURSUANT TO CRS 24-6-402(4)(f), to consider personnel matters, and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees. The following additional details are provided for informational purposes: to consider the performance and compensation of the City Manager.
- VII. RECONVENE IN REGULAR SESSION
- VIII. ADJOURN

***To access the special meeting remotely, go to www.cityofvictor.com home page, click on "Departments" tab located at the top of the home page, scroll down and click on "Mayor and City Council", and follow pop-up window instructions.**

*Note: Any item on this agenda may be subject to a vote by City Council. Assistance for the hearing, visually, or physically impaired may be provided upon request. Please inquire at the office of the City Clerk, 1-719-689-2284, or to P. O. Box 86, Victor, CO 80860.
For persons with hearing impairments, please call RELAY COLORADO at 711 or 1-800-659-2656 and request "City of Victor at 719-689-2284."
The City of Victor supports efforts to affirmatively further fair housing.
THIS INSTITUTION IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER.*

AGREEMENT FOR SERVICES

THIS AGREEMENT, made this ____ day of _____, 2021, by and between the City of Victor, a Colorado municipal corporation (the "City") with an address of 500 Victor Avenue, Victor, CO 80860 and EarthWorks Land Development, INC. an independent contractor with a principal place of business at PO BOX 1608, Cripple Creek, CO 80813 ("Contractor") (collectively the "Parties").

WHEREAS, the City requires excavation, pipelaying and general construction services; and

WHEREAS, Contractor has held itself out to the City as having the requisite expertise and experience to perform the required professional services.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. SCOPE OF SERVICES

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Services set forth in the attached **Exhibit A**.

B. A change in the Scope of Services shall constitute a material change or amendment of services or work which is different from or additional to the Scope of Services. No such change, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the City. If Contractor proceeds without such written authorization, then Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum meruit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the City is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. COMMENCEMENT AND COMPLETION OF WORK

Contractor shall commence work as set forth in the Scope of Services. Except as may be changed in writing by the City, the Scope of Services shall be complete, and Contractor shall furnish the City the specified deliverables as provided in **Exhibit A**.

III. COMPENSATION

A. In consideration for the completion of the Scope of Services by Contractor, the City shall pay Contractor an amount not to exceed **Fifty Thousand and no/100 Dollars (\$50,000.00)**. This maximum amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the City for such fees, costs, and expenses.

B. Notwithstanding the maximum amount specified in Paragraph A hereof, Contractor shall be paid only for work performed. If Contractor completes the Scope of Services for a lesser amount than the maximum amount, Contractor shall be paid the lesser amount, not the maximum amount.

IV. PROFESSIONAL RESPONSIBILITY

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law.

B. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules, and regulations.

C. The City's review, approval, or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

D. Because the City has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any of the work required under the Scope of Services.

V. OWNERSHIP

The materials, items, and work specified in the Scope of Services, together with all related documentation and materials provided or developed by Contractor shall be exclusively owned by the City. Contractor expressly acknowledges and agrees that all work performed under the Scope of Services constitutes a "work made for hire." To the extent, if at all, it shall not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the City all its right, title, and interest in such work.

VI. INDEPENDENT CONTRACTOR

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and always remain, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a City employee for any purposes.

VII. INSURANCE

A. Contractor agrees to procure and maintain, at its own cost, a policy, or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.

B. Contractor shall procure and maintain and shall cause any subcontractor of Contractor to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the City. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of five hundred thousand dollars (\$500,000) each accident, one million dollars (\$1,000,000) disease – policy limit, and one million dollars (\$1,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this Paragraph.

2. Commercial general liability insurance with minimum combined single limits of six hundred thousand (\$600,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interest's provision and shall be endorsed to include the City and the City's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

3. Professional liability insurance with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

C. Any insurance carried by the City, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

D. Contractor shall provide to the City a certificate of insurance, completed by Contractor's insurance agent, as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the City. The City reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

E. Failure on the part of Contractor to procure or maintain the insurance required herein shall constitute a material breach of this Agreement upon which the City may immediately terminate this Agreement, or at its discretion, the City may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the City shall be repaid by Contractor to the City upon demand, or the City may offset the cost of the premiums against any monies due to Contractor from the City.

VIII. INDEMNIFICATION

Contractor agrees to indemnify and hold harmless the City and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which

arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor. Contractor's liability under this indemnification provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to indemnify and hold harmless the City may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. TERMINATION

This Agreement shall terminate at such time as the work described in the Scope of Services is completed and the requirements of this Agreement are satisfied, or upon the City's providing Contractor with seven (7) days advance written notice, whichever occurs first. If the Agreement is terminated by the City's issuance of written notice of intent to terminate, the City shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the City shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Scope of Services, any use of documents by the City thereafter shall be at the City's sole risk, unless otherwise consented to by Contractor.

X. ILLEGAL ALIENS

A. Certification. By entering into this Agreement, Contractor hereby certifies that, at the time of this certification, it does not knowingly employ or contract with an illegal alien who will perform work under the Agreement and that Contractor will participate in either the E-Verify Program administered by the United States Department of Homeland Security and Social Security Administration or the Department Program administered by the Colorado Department of Labor and Employment in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement

B. Prohibited Acts. Contractor shall not:

(1) Knowingly employ or contract with an illegal alien to perform work under this Contract; or

(2) Enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract.

C. Verification.

(1) If Contractor has employees, Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Agreement through participation in either the E-Verify Program or the Department Program.

(2) Contractor shall not use the E-Verify Program or Department Program procedures to undertake pre-employment screening of job applicants while this Contract is

being performed.

(3) If Contractor obtains actual knowledge that a subcontractor performing work under this Contract knowingly employs or contracts with an illegal alien who is performing work under the Agreement, Contractor shall:

1. Notify the subcontractor and the City within three (3) days that Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien who is performing work under the Agreement; and

2. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to subsection (1) hereof, the subcontractor does not stop employing or contracting with the illegal alien who is performing work under the Agreement; except that Contractor shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien who is performing work under the Agreement.

D. Duty to Comply with Investigations. Contractor shall comply with any reasonable request by the Colorado Department of Labor and Employment made in the course of an investigation conducted pursuant to C.R.S. § 8-17.5-102(5)(a) to ensure that Contractor is complying with the terms of this Contract.

E. If Contractor does not have employees, Contractor shall sign the “No Employee Affidavit” attached hereto.

F. If Contractor wishes to verify the lawful presence of newly hired employees who perform work under the Agreement via the Department Program, Contractor shall sign the “Department Program Affidavit” attached hereto.

XI. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Teller County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between Contractor and the City, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either party without the written consent of the other.

I. Governmental Immunity. The City, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers or employees.

J. Rights and Remedies. The rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriations. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of the City not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

CITY OF VICTOR, COLORADO

Bruce M. Davis, Mayor

ATTEST:

Glori Thurston, City Clerk/Treasurer

APPROVED AS TO FORM:

Jefferson H. Parker

EXHIBIT A

SCOPE OF SERVICES

General Scope Description

Excavation of ditch located at 4th and Diamond, north to 4th and Granite, and then west on Granite to Electric Ave., Continue west on Granite passing North 6th St. approximately 70 yards. install 18” ADS culvert with 18” flared end sections. Install 12” ADS culvert and move existing meter pit and replace. Install catch basin in solid rock at Trail Head and/or end of road. All work includes excavation, rock hammering, bedding materials, backfill, compaction, alignment, and straight grades, materials import and export (haul away to old city dump), all other materials, equipment, and labor.

It is understood that:

1. The bid proposal, including all drawings and specifications are made part of this contract by reference.
2. Project shall commence immediately upon full execution of this contract and completed by April 30th, 2021.
3. No performance or payment bond is required. Payments will be issued based on work completed and/or stored to date.

WATER TRADE AGREEMENT

THIS AGREEMENT is made and entered into by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a home-rule city and municipal corporation (“Springs Utilities”), and the City of Victor (“Victor”), (individually a “party” and collectively “the parties”) as of the dates set forth below.

RECITALS

- A. In 2020, the City of Victor leased from Board of Water Works Pueblo (“BWWP”) 150 ac-ft of fully consumable water. The water to be delivered to Victor by BWWP is to be fully consumable and of the type legally available for the intended use. Victor’s intended uses were primarily for augmentation of municipal and industrial uses during the May through October period. If Victor does not take delivery of the leased water by March 31, 2021 the water will be forfeited back to BWWP.
- B. Victor does not have a need for this leased water prior to March 31, 2021, but it does have a need for water later in 2021 when it is undergoing reservoir repairs. Victor has contacted Alan Ward, BWWP Water Resources Division Manager. Mr. Ward stated that BWWP can provide Springs Utilities with the water available to Victor under the lease, and that such water will be fully consumable and of a type that Springs Utilities can use in its system, such as Twin Lakes water.
- C. Victor desires to trade water available to it under its lease with BWWP that can be made available to Springs Utilities in Twin Lakes Reservoir, Turquoise Reservoir, and/or Pueblo Reservoir for fully consumable water owned or controlled by Springs Utilities that can be released and delivered to Victor from Springs Utilities’ South Slope Reservoir system (McReynolds or Mason Reservoirs).
- D. Springs Utilities has determined that a limited amount of surplus fully consumable water owned or controlled by Springs Utilities is or will be available for trade with Victor.

AGREEMENT

NOW, THEREFORE, in consideration of mutual benefits to the parties as hereinafter provided, the receipt and sufficiency of which is acknowledged, Victor and Springs Utilities agree as follows:

- 1) During the period of May 15, 2021 through August 30, 2021 Springs Utilities agrees to deliver for Victor’s use up to 135 acre-feet of fully consumable water released from its South Slope Reservoir system (McReynolds or Mason Reservoirs) in exchange for Victor delivering 150 ac-ft of water available to it under the BWWP lease to Springs Utilities’ storage accounts in Twin Lakes Reservoir, Turquoise Reservoir, and/or Pueblo Reservoir (“operational Trade”). Victor’s delivery of water to Springs Utilities’ storage account(s) shall occur between March 1, 2021 and March 31, 2021.

- 2) On or about March 1, 2021, Victor will request that BWWP deliver the 150 ac-ft of water available under Victor's lease to Springs Utilities at a location that Springs Utilities will have identified by that time and that is acceptable to BWWP (Twin Lakes Reservoir, Turquoise Reservoir and/or Pueblo Reservoir). Springs Utilities shall coordinate the rate and timing of delivery of the 150 ac-ft with BWWP. The water delivered to Springs Utilities will be legally available for Springs Utilities use and will be of a water type acceptable for such use. Delivery of water to Springs Utilities may take place after March 31, 2021 if BWWP agrees to extend the term of Victor's lease, but must be completed prior to Springs Utilities releasing water for Victor's use.
- 3) In the period from May 15, 2021 through August 31, 2021, Springs Utilities will release to Victor 135 ac-ft of fully consumable water that is legally available for Victor's use from Springs Utilities' South Slope Reservoir system (McReynolds or Mason Reservoirs). The water will be released from the reservoirs by Springs Utilities for delivery to the confluence of Middle Beaver Creek and West Beaver Creek. Victor's plan is to exchange that water from that confluence up to the Altman Pump station. Any water that remains unreleased after August 31 will be forfeited by Victor.
- 4) Springs Utilities will release water to Victor from its South Slope Reservoir System at a rate of 200 to 500 gpm (0.45 – 1.11 cfs) plus an additional amount to account for transit losses as determined by the Division Engineer's staff.
- 5) Victor and Springs Utilities will cooperate to establish a weekly release and delivery schedule that will accommodate Victor's exchange of the water to the Altman Pump Station, but acknowledge that hydrologic conditions may force the interruption of or change in the agreed-upon delivery schedule.
- 6) Springs Utilities will provide Victor with reports documenting its reservoir releases to Victor. Victor will provide reports of the releases by Springs Utilities and its exchange and diversion of the released water at the Altman Pump Station as needed or required by the Division Engineer.
- 7) All water traded by Springs Utilities and Victor shall retain the legal characteristics and associated obligations of the water that party brought to the trade, although the location of the water will change as the result of the trade, i.e., 135 ac-ft of Springs Utilities' fully reusable water shall be transferred to storage in Twin Lakes Reservoir, Turquoise Reservoir and/or Pueblo Reservoir and Victor's water available under its lease with BWWP shall be released and delivered to the confluence of Middle Beaver Creek and West Beaver Creek for Victor's use. The additional 15 ac-ft of water provided to Springs Utilities to account for increased evaporation shall be of a water type allowable for its uses as described in Paragraph 2. Each party shall be responsible for complying with the legal requirements associated with the use and/or storage of the water type it brings to the trade contemplated herein.

- 8) The parties expressly acknowledge that the release and delivery of water in this operational trade contemplated herein may be dependent upon the receipt of any necessary approvals by BWWP, the State Engineer, the Division 2 Engineer, and/or Water Court. Victor is responsible for obtaining all necessary approvals required for the operational trade contemplated hereunder prior to the commencement of the operational trade. Springs Utilities will cooperate with Victor to obtain any approvals necessary for the trade of water hereunder. If the operational trade contemplated herein is not approved by such authorities, either party may terminate this agreement, with neither party owing any further duty of performance to the other.
- 9) The parties acknowledge that the release and delivery of water under this agreement is on an interruptible basis. The parties further acknowledge and consent to the delivering party's right to discontinue releases and deliveries of water hereunder: (1) if the delivering party determines in its sole judgment that it no longer has water available for use in the trade; (2) a significant interruption of water supplies or a substantial disruption (including, but not limited to, drought, legal actions or challenges impacting the trade of water hereunder or a delivering water system and maintenance and repair to the infrastructure in that water system as determined by the owner s in its sole judgment; or (3) as otherwise authorized by the City Code of Colorado Springs, as amended from time to time. The delivering party will use reasonable efforts to provide the receiving party with prior notice of a discontinuance of releases and delivery hereunder. The parties acknowledge and agree that the delivering party cannot always anticipate when interruptions in water supplies or disruptions to a water system will occur and that the delivering party has no obligation to provide the receiving party with prior notice of a discontinuance of releases and deliveries of water hereunder due to an interruption in water supplies or a disruption in a water system. In the event a party discontinues the release and delivery of water under this agreement, the other party shall only be required to complete the operational trade on the volume of water released and delivered by the other party prior to discontinuance.
- 10) Neither party will lease or otherwise transfer any contract rights necessary for the operational trade to a third party without the prior approval of the other party. Neither title to, nor ownership of, any water right or storage is transferred to or from Springs Utilities or Victor under this agreement. After water is traded, the receiving party may use and dispose of such traded water at its discretion, including by lease, transfer or assignment. Except as specifically provided, no use of the other party's facilities is authorized by this agreement.

- 11) The parties make no warranty of any kind as to the timing, availability, or quality of the water released and delivered hereunder to the delivering party for any particular use and the delivering party expressly assumes all such risks.
- 12) Victor agrees to pay Springs Utilities a fee of \$250.00 to cover the administrative costs of completing the trade ("Administrative Fee"). The payment of the Administrative Fee shall be made upon execution of this agreement by Victor.
- 13) Either party may terminate this agreement due to the other party's breach of a material term or condition of this agreement, if the other party has not taken substantial steps to cure the breach within thirty (30) days of receiving written notice of such breach from the other party. Either party may also terminate this agreement upon written notice to the other party if Victor is unable to obtain the necessary approvals for the parties to meet their obligations under this agreement.
- 14) In the event that either party does not fulfill its obligations under this agreement, the other party's sole remedy shall be specific performance, and neither party shall have liability for special or consequential damages.
- 15) Notices required herein, shall be given in writing, signed by an authorized representative of the party giving notice at the following addresses:

For Victor:

City of Victor

City Administrator

Insert Address

For Springs Utilities:

Colorado Springs Utilities

ATTN: General Manager, Water Resources and Demand Management

P.O. Box 1107, MC 1825

Colorado Springs, CO 80903

and;

City Attorney's Office – Utilities Division

P.O. Box 1575, Mail Code 510

Colorado Springs, CO 80901-1575

- 16) There are no third-party beneficiaries and nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Springs Utilities and Victor. Neither party shall be liable for

any delay or failure to perform caused by conditions or events of force majeure or conditions or events beyond the party's control. Neither party may assign its rights or obligations hereunder without the prior written consent of the other. However, upon written notice to Victor, Springs Utilities may assign this agreement without consent to the City of Colorado Springs, Colorado.

- 17) This agreement is subject to, and shall be interpreted and performed under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado, and more specifically, El Paso County, Colorado, and if necessary, for exclusive federal questions, the United States District Court for the District of Colorado. Each party agrees to be responsible for its own liability incurred as a result of participation in this agreement. In the event of litigation or other dispute, each party shall bear its own costs and attorney's fees. No provision of this agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limits of liability provided to Springs Utilities and Victor by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 and Article XI of the Colorado Constitution.
- 18) Victor acknowledges that this agreement is in the nature of a license as defined in the Colorado Springs, Colorado City Charter for the use of City of Colorado Springs Property. As such, this agreement is expressly subject to Article 10 of the Charter of the City of Colorado Springs, and is expressly revocable by the City of Colorado Springs City Council at any time.
- 19) This agreement sets forth the entire understanding and agreement of the parties. No modification, amendment, or other alteration to this agreement shall be valid or any force or effect unless mutually agreed to by the parties in writing executed by both parties. 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 notation, 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.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the dates set forth below.

Colorado Springs Utilities

City of Victor

By: _____
M. Patrick Wells, General Manager
Water Resources and Demand Management

By: _____
Richard Mann
City Administrator

Date: _____ Date: _____

APPROVED AS TO FORM

Michael J. Gustafson
City Attorney's Office-Utilities Division