

**SETTLEMENT AGREEMENT
CONCERNING
WATER RIGHTS**

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This Agreement is made among the City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities (“Colorado Springs”), the Colorado River Water Conservation District (“CRWCD”), the County of Summit (“Summit County”), the Town of Breckenridge, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, and the Ute Water Conservancy District, acting by and through the Ute Water Activity Enterprise, and collectively referred to as the Parties.

RECITALS

A. Colorado Springs has filed an application for a finding of reasonable diligence for its conditional water storage rights for Spruce Lake Reservoir, Mayflower Lake Reservoir, and Lower Blue Lake Reservoir, which is now pending in Case No. 15CW3019, District Court, Water Division 5. The West Slope Parties (defined below) have filed statements of opposition in Case No. 15CW3019.

B. Colorado Springs has filed an application for a finding of reasonable diligence for its conditional appropriative rights of exchange for its 2003 Homestake-Blue River Exchange, which is now pending in Case No. 18CW3041, District Court, Water Division 5. Summit County has filed a statement of opposition to that application.

C. Summit County has filed an application for a finding of reasonable diligence for its conditional water rights for Swan River Reservoir and Lower Mohawk Reservoir in Case No. 16CW3015, District Court, Water Division No. 5. Colorado Springs has filed a statement of opposition to that application.

D. Each Party to this Agreement owns water rights in the Colorado River Basin and believes that settlement of their respective claims in Cases Nos. 15CW3019, 16CW3015, and 18CW3041, on the terms set forth in this Agreement, will protect their water rights or provide other material benefits to them.

AGREEMENT

In consideration of the foregoing introductory statement, the keeping and performance of the promises contained herein, and other valid consideration to each of the Parties, which is hereby acknowledged and confirmed, the Parties agree as follows:

1. Definitions.

For the purposes of this Agreement, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1.1. “1929 Blue River Water Rights” means the Colorado Springs’ Continental-Hoosier System water rights adjudicated to the East Hoosier Ditch and the West Hoosier Ditch in Civil Action No. 1710 by the Summit County District Court by decree entered on October 26, 1937.

1.2. “1948 Blue River Water Rights” means the following Colorado Springs’ water rights:

1.2.1. “Continental-Hoosier System¹ storage rights” means the water storage rights with a May 13, 1948 appropriation date for Upper Blue Lake (“Upper Blue Reservoir”), Lower Blue Lake (“Lower Blue Reservoir”), Spruce Lake Reservoir, and Mayflower Lake Reservoir, adjudicated in Civil Action Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952 and confirmed by the Blue River Decree.

1.2.2. “Continental-Hoosier System direct flow water rights” means the direct flow water rights with a May 13, 1948 appropriation date for the Blue River Ditch, Crystal Ditch, Spruce Ditch, McCullough Ditch, East Hoosier Ditch, Hoosier Ditch, the “Additionally Intercepted Waters”, and Hoosier Tunnel, adjudicated in Civil Action Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952 and confirmed by the Blue River Decree.

1.3. “Acceptable Alternative” means a permissible alternative that serves substantially the same functions and meets substantially the same needs as the proposed Lower Blue Reservoir that is described in paragraph 2.2.2(2) below.

1.4. “Adverse Action” means an action of a legislature, court, administrative agency, regulatory body or other governmental entity that would cause a material adverse impact to a Party’s interests or resources that have been committed, compromised or otherwise addressed in this Agreement. In the event that an Adverse Action is proposed or is likely to occur, the Party whose interests or resources would suffer a material adverse impact will notify the other Parties. The Parties will meet and discuss in good faith the potential detrimental effect of such Adverse Action and whether such Adverse Action may be mitigated or avoided by changes in operations or other efforts.

1.5. “Blue River Decree” means the Findings of Fact, Conclusions of Law, and Final Judgment entered on October 12, 1955, in Consolidated Case Nos. 5016 and 5017 and the Findings of Fact and Conclusions of Law and Final Decree entered on October 12, 1955, in Consolidated Case Nos. 2782, 5016, and 5017 (“Consolidated Cases”) by the United States District Court, District of Colorado (“1955 Decree”), and all supplemental or amendatory orders, judgments, and decrees in said cases, including,

¹ Sometimes also referred to as the “Continental-Hoosier Project.”

without limitation, the Decree entered on April 16, 1964, therein and the Supplemental Judgment and Decree dated February 9, 1978 .

1.6. “Blue River Decree Stipulations” means the 1955 Stipulation and 1964 Stipulation entered into among the parties to the Consolidated Cases in connection with the Blue River Decree, which are further defined as follows:

1.6.1. “1955 Stipulation” means the Stipulation among the parties to the Consolidated Cases entered into on October 5, 1955, and amended on October 10, 1955, which is set forth in full in paragraph 17 of the Findings of Fact and Conclusions of Law of the 1955 Decree.

1.6.2. “1964 Stipulation” means the Stipulation among the stipulating parties dated April 16, 1964, in the Consolidated Cases.

1.7. “Colorado Springs Substitution Account” has the same meaning as defined in the Substitution Agreement.

1.8. “Construction Agreement” means an agreement between Colorado Springs and the Lower Blue Parties for the design, permitting, and construction of Lower Blue Reservoir that shall be negotiated by Colorado Springs and the Lower Blue Parties and that must be consistent with this Agreement. This Agreement shall control in the event of any conflict between the interpretation of this Agreement and the Construction Agreement.

1.9. “Dotsero Gauge” means the existing U.S.G.S. stream gauging station number 09070500 on the Colorado River near Dotsero, Colorado, or its replacement.

1.10. “Hoosier Tunnel” means Colorado Springs’ tunnel under the continental divide that is used to deliver water to the South Platte River drainage with a maximum decreed flow rate capacity of 400 c.f.s., or its replacement that does not exceed the 400 c.f.s. decreed flow rate capacity.

1.11. “LEDPA” means Least Environmentally Damaging Practicable Alternative.

1.12. “Lower Blue Reservoir Water Right” means the 1,006 acre-feet conditional water right for Lower Blue Reservoir with a May 13, 1948 appropriation date, as decreed in Summit County District Court Civil Action No. 1806, and in United States District Court Consolidated Case Nos. 2782, 5016, and 5017.

1.13. “Lower Blue Reservoir Site” means the location of the Lower Blue Reservoir determined in accordance with paragraph 4.1.1 below.

1.14. “Lower Blue Parties” means the Town of Breckenridge and Summit County.

1.15. “Montgomery Reservoir” means the dam and reservoir owned by Colorado Springs located in sections 13 and 17, T8S, R78W of the 6th P.M., in Park County, Colorado and that stores water diverted from the Middle Fork of the South Platte River and Blue River water diverted and delivered by Colorado Springs under its 1929 and 1948 Blue River Water Rights.

1.16. “Operating Agreement” means the agreement between Colorado Springs and the Lower Blue Parties titled “Lower Blue Reservoir and Montgomery Reservoir Water Storage Operating Agreement.”

1.17. “Substantial Completion” with respect to reservoirs means that the reservoir’s construction is sufficiently complete such that the reservoir can be used for its intended purposes under this Agreement.

1.18. “Substitution Agreement” means the Memorandum of Agreement Regarding Colorado Springs Substitution Operations entered into among Colorado Springs, the Colorado River Water Conservation District, the City and County of Denver acting through its Board of Water Commissioners, Northern Colorado Water Conservancy District (“Northern”), Summit County, Vail Resorts, Inc., and the Town of Breckenridge, that became effective on May 15, 2003.

1.19. “USBR Substitution Agreement” means the Memorandum of Agreement No. 09AG6C0027 between the United States and Colorado Springs Establishing Principles for Substitution of Water to Green Mountain Reservoir, dated February 22, 2010.

1.20. “SPP Water Rights” means the Shoshone Power Plant’s hydropower water rights with a January 7, 1902 appropriation date for 1,250 c.f.s. adjudicated by the Eagle County District Court by decree entered on December 9, 1907, Case No. 466, (“Senior SPP Water Right”) and the May 15, 1929 appropriation date for 158 c.f.s. adjudicated by the Eagle County District Court by decree entered on February 7, 1956, in Case No. 1123 (“Junior SPP Water Right”). The point of diversion for these water rights is located on the Colorado River in the SE ¼ NW ¼ of Section 30, T5S, R87W of the 6th P.M., in Garfield County, Colorado.

1.21. “Plan of Substitution Decree” means the Plan of Substitution/Augmentation decreed on November 14, 2012 in Case No. 2003CW320 by the District Court for Water Division No. 5, Colorado.

1.22. “Substitution” and “Substitution Year” have the same meaning as defined for those terms in the Substitution Agreement.

1.23. “West Slope Account” has the same meaning as defined in the Substitution Agreement.

1.24. “West Slope Parties” means the Colorado River Water Conservation District, Summit County, the Town of Breckenridge, the Grand Valley Water Users Association, the Orchard Mesa Irrigation District, and the Ute Water Conservancy District.

1.25. “1041 Permit” means a permit or other authorizations issued by a local government pursuant to its authority under the Areas and Activities of State Interest Act, C.R.S. § 24-65.1-101 *et seq.*, or other applicable provisions of a local government’s land use regulations and applicable law.

2. Summary Description and Purposes of Agreement.

2.1. Colorado Springs will pursue permitting and construction of an enlargement of Montgomery Reservoir² in the South Platte River Basin in which to store water from the South Platte and its previously decreed water rights from the Blue River. The West Slope Parties will express general support for the Montgomery Reservoir enlargement project as a component of this Settlement Agreement and will not take any action to prevent or interfere with the enlargement or encourage others to take any action to prevent or interfere with the enlargement.

2.2. The successful permitting and construction of an enlarged Montgomery Reservoir and the terms of this Agreement will:

2.2.1. Allow Colorado Springs to forego the construction of Spruce Lake and Mayflower Lake Reservoirs, to withdraw its requests for exclusion of certain lands from around Spruce Lake Reservoir and Mayflower Lake Reservoir in the proposed Ten Mile Wilderness Area, and to convey the lands owned by Colorado Springs for those reservoirs to Summit County.

2.2.2. Allow Colorado Springs to cooperate with the Lower Blue Parties to permit and build either (1) a maximum of 600 acre-foot active capacity west slope use reservoir in lieu of Colorado Springs’ planned Lower Blue Reservoir, or (2) an

²Colorado Springs is proposing an enlargement of Montgomery Reservoir for federal, state, and local permitting. Upon regulatory agency review, analysis and approvals, Colorado Springs will pursue the proposed project. This Agreement will apply to the LEDPA arising out of the permitting process for an enlargement of Montgomery Reservoir carried out as part of this Agreement, provided that any such LEDPA project will have a substantially similar impact on the Blue River and its tributaries in the volume and timing of depletions as the enlargement of Montgomery Reservoir as proposed by Colorado Springs. If the LEDPA project is not located east of the Continental Divide, then the provisions of paragraph 14.7 shall apply.

Acceptable Alternative to such reservoir if the Lower Blue Parties are unable to secure the permits and authorizations required to construct a 600 acre-foot active capacity reservoir at or near the Lower Blue Reservoir Site. Colorado Springs and the Lower Blue Parties will cooperate on the permitting, design, cost, and construction of an Acceptable Alternative to supply water for use by the Lower Blue Parties on the west slope. If the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs will provide water to the Lower Blue Parties under the applicable provisions of paragraphs 4.15 – 4.18 below.

2.3. When Colorado Springs has received all final permits and authorizations, and after resolution of any appeals, required to construct an enlarged Montgomery Reservoir or permitted alternative, if the Lower Blue Parties construct a Lower Blue Reservoir, then Colorado Springs will convey to the Lower Blue Parties the amount of its conditional water right for Lower Blue Reservoir equal to the lesser of the as-built active storage capacity of the reservoir (excluding dead storage), or 600 acre-feet. Colorado Springs will retain ownership of the remainder of the Lower Blue Reservoir Conditional Water Right. If the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs will convey part of the Lower Blue Reservoir Water Right to the Lower Blue Parties as provided in paragraph 4.15 below.

2.3.1. To provide water for use by the Lower Blue Parties and their respective assignees, whether for storage in the Lower Blue Reservoir or as a release of water directly to the Blue River by substitution for Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir, Colorado Springs will provide the lesser of 475 acre-feet or the unfilled capacity of the Lower Blue Reservoir as of April 1 in all years that are not Substitution Years; and in every Substitution Year, will provide 300 acre-feet, all in accordance with the further terms of this Agreement. In addition, Colorado Springs will release from Upper Blue Reservoir up to 100 acre-feet annually for use pursuant to the Substitution Agreement.

2.3.2. If the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs will provide water to the Lower Blue Parties as specified in paragraphs 4.16-4.18 below.

2.4. For purposes of providing water for storage in Lower Blue Reservoir to the Lower Blue Parties in Substitution Years, 150 acre-feet of the 300 acre-feet of water to be provided by Colorado Springs shall be delivered by means of bypasses of 150 acre-

feet of water available to Upper Blue Reservoir; provided that 100 acre-feet shall be stored in the West Slope Account under the Substitution Agreement in Upper Blue Reservoir prior to the bypass of 150 acre-feet of inflow available at Upper Blue Reservoir to Lower Blue Reservoir. The remainder of the 300 acre-feet shall be provided from water decreed for west slope use: (a) that is physically available in Monte Cristo Creek for storage in Lower Blue Reservoir under the Lower Blue Reservoir Water Right; (b) stored in Upper Blue Reservoir and is not required for Substitution operations; and/or, as necessary, (c) releases at the Combination Flume of water under the Lower Blue Reservoir Water Right stored in the enlarged Montgomery Reservoir as more fully described in paragraphs 6 and 7 below.

2.5. Upon Substantial Completion of the enlargement of Montgomery Reservoir, Colorado Springs will abandon its conditional storage rights for Spruce Lake Reservoir and Mayflower Lake Reservoir. If a reservoir is constructed at the Lower Blue Reservoir Site or alternative location, then Colorado Springs, Summit County, and the Town of Breckenridge will exercise the Lower Blue Reservoir Water Right in the manner and amounts allowed in paragraphs 6 and 7 below.

2.6. Summit County will abandon its conditional water rights to Lower Mohawk Reservoir (a) upon Substantial Completion of either the Lower Blue Reservoir or its alternative or (b) if the Lower Blue Parties are unable to obtain one or more of the permits or authorizations necessary to construct Lower Blue Reservoir or an Acceptable Alternative and Colorado Springs is providing water to the Lower Blue Parties pursuant to the applicable provisions of paragraphs 4.15 to 4.18 below.

3. Montgomery Reservoir Enlargement.

3.1. The West Slope Parties will not assert, now or at any time in the future, that it is unlawful (a) for Colorado Springs to store water diverted under its 1929 or 1948 Blue River Water Rights through the Hoosier Tunnel to an enlarged Montgomery Reservoir; (b) to re-regulate the volume so stored in an enlarged Montgomery Reservoir, in accordance with paragraph 12.2 and 12.3, in other Colorado Springs' existing or future east slope water storage reservoirs; and (c) to divert through the Hoosier Tunnel for delivery to its municipal water supply system water from any other sources, the use of which by Colorado Springs has been authorized in the manner required by law. The provisions of subparagraph 3.1.(c) do not prevent the West Slope parties from opposing any future proceeding in which Colorado Springs seeks authorization to divert through the Hoosier Tunnel for delivery to its municipal water supply system water not currently authorized for diversion through the Hoosier Tunnel.

3.2. Montgomery Reservoir may be enlarged so that the invert of the dam's spillway is at the existing elevation of the invert of the Hoosier Tunnel outlet at

elevation 10,930 feet (Colorado State Plane, central Zone, NAD83-2007 Horizontal, NAVD88 Vertical), which Colorado Springs estimates will result in an increase of 8,100 acre-feet of storage capacity.

3.3. The West Slope Parties shall not oppose, and shall not take any action, or encourage any Adverse Action, that would impair or impede any Federal, state, or local permitting for Colorado Springs' enlargement of Montgomery Reservoir. However, nothing in this paragraph will preclude coordinated or cooperative 1041 Permit review by Summit County and Park County or otherwise limit Summit County's administration of its regulations promulgated under the Areas and Activities of State Interest Act, C.R.S. § 24-65.1-101 *et seq.*, or other applicable provisions of the Summit County Land Use Code and applicable law.

3.4. Colorado Springs shall continue to limit its diversions from the Blue River and its tributaries in compliance with paragraph l.c. of the October 13, 2003 Memorandum of Agreement among Colorado Springs, Summit County, Vail Summit Resorts, and the Town of Breckenridge.

3.5. Colorado Springs shall refrain from diverting its 1948 Blue River Water Rights to the extent necessary to maintain a flow of 5 c.f.s. in the Blue River immediately upstream of the high-water line of Goose Pasture Tarn Reservoir, which is currently located in the NE ¼ NE ¼ of Section 18 7S, R77W of the 6th P.M. with UTM Coordinates Easting: 411036, Northing: 4367098, NAD83, UTM Zone 13. Flows at this location will be estimated based on U.S.G.S. gauge 09046490 Blue River at Blue River, or any replacement gauge which is located just downstream of Goose Pasture Tarn, adjusted to account for diversions out of and storage in Goose Pasture Tarn.

3.6. The West Slope Parties, excluding Summit County, agree that the full implementation of this Agreement, together with Colorado Springs' compliance with any mitigation measures required by applicable federal, state, or local permits, will satisfy all of their concerns with the proposed enlargement of Montgomery Reservoir and Colorado Springs' diversion and use of Blue River water made possible by the enlargement of Montgomery Reservoir.

4. Construction of West Slope Lower Blue Reservoir.

4.1. If Colorado Springs accepts the terms of a Summit County 1041 Permit related to its enlargement of Montgomery Reservoir and after the issuance of all final permits and authorizations, and after resolution of all appeals, for the construction of an enlargement to Montgomery Reservoir or its permitted alternative, Colorado Springs and the Lower Blue Parties shall do the following:

4.1.1. The Lower Blue Parties will identify land ownership for the final Lower Blue Reservoir Site, including the following tasks:

- 4.1.1.1.** Identify land ownership within the reservoir's highwater line.
- 4.1.1.2.** Identify the land owned by Colorado Springs needed for the construction and operation of the reservoir that are to be conveyed in fee to the Lower Blue Parties pursuant to paragraph 4.12. below.
- 4.1.1.3.** Identify federal land ownership and needed federal authorizations.
- 4.1.1.4.** Identify private lands required to be purchased and/or condemned by the Lower Blue Parties.

4.1.2. Colorado Springs shall convey to the Lower Blue Parties, as tenants in common, without cost, the land that it owns that will be inundated by or required for the construction and operation of Lower Blue Reservoir at the final Lower Blue Reservoir Site identified pursuant to paragraph 4.1.1.2 above. Colorado Springs will also convey to Summit County, without cost, such other land that it owns at the final Lower Blue Reservoir Site that is not needed for Colorado Springs current or future operation, maintenance, and repair of Upper Blue Reservoir. Colorado Springs will retain all of its existing interest in roads, and all rights of access necessary for its continued operation, maintenance, and repair of Upper Blue Reservoir, which interests and rights shall also apply to any roads that are relocated for the construction, operation, maintenance, and repair of Lower Blue Reservoir. All such lands shall be conveyed by quit claim deed with title insurance, free and clear of all liens and encumbrances. All such conveyances shall be in accordance with a conveyance procedure to be contained in the Construction Agreement.

4.1.3. Upon Substantial Completion of the construction of Lower Blue Reservoir, Colorado Springs will convey to the Lower Blue Parties, free of any charge, that portion of its Lower Blue Reservoir Water Right equal to the lesser of 600 acre-feet or the as-built active capacity of the reservoir, for use in accordance with this Agreement. Such conveyance shall be by quit claim deed, free and clear of all liens and encumbrances and be made in accordance with a conveyance procedure to be contained in the Construction Agreement. Colorado Springs will cooperate with, and not oppose, any application that may be filed by the Town of Breckenridge and/or Summit County for the change of use of those water rights subsequent to the change of use under paragraph 7 below. Colorado Springs may file a statement of opposition in such proceedings and participate to the extent necessary to ensure they do not impair the exercise of Colorado Springs' diversion and storage of its 1929 and 1948 Blue River Water Rights and do not injure its appropriative rights of exchange decreed in Case No. 03CW314.

4.1.4. Summit County shall convey to the Town of Breckenridge, at a price to be negotiated by those parties, a 50% undivided interest in the land Summit County owns that will be inundated by or acquired for the development of

Lower Blue Reservoir. Such conveyance shall be by special warranty deed free and clear of all encumbrances. The cost of this land is not a reservoir construction or permitting cost under subparagraph 4.5.

4.1.5. The Lower Blue Parties and Colorado Springs shall further cooperate to acquire ownership of or a permit to use the remaining private and federal lands required to develop and operate the Lower Blue Reservoir, the costs of which shall be borne by the Lower Blue Parties in such manner as they may agree. Such additional lands and permits shall be owned by the Lower Blue Parties in such manner as they may agree. Such cooperation by Colorado Springs does not include exercise of its powers of eminent domain or payment for the land.

4.2. The specific lands to be conveyed pursuant to paragraphs 4.1.2, 4.1.4, and 4.1.5 will be determined based on the final design for Lower Blue Reservoir pursuant to a procedure to be set forth in the Construction Agreement.

4.3. The Town of Breckenridge and Summit County shall each own 50% of the capacity of the Lower Blue Reservoir constructed pursuant to this Agreement. Colorado Springs will not own any interest in the Lower Blue Reservoir.

4.4. The Town of Breckenridge and Summit County are each entitled to 50% of: (a) the Lower Blue Reservoir Water Right stored in the Lower Blue Reservoir, and (b) water from the Lower Blue Reservoir Water Right provided by substitution or exchange from an enlarged Montgomery Reservoir.

4.5. The actual costs for permitting, designing, and constructing a Lower Blue Reservoir of the minimum size necessary to achieve an active storage capacity of not more than 600 acre-feet shall be paid in the following percentages:

4.5.1.1. Colorado Springs: 50%

4.5.1.2. Town of Breckenridge: 25%

4.5.1.3. Summit County: 25%

4.6. Colorado Springs', Summit County's, and the Town of Breckenridge's share of the costs for permitting, designing, and constructing a Lower Blue Reservoir will be based on the actual cost to construct a dam, the design for which has been approved in advance by Colorado Springs, Summit County, and the Town of Breckenridge, as determined in accordance with a procedure to be contained in the Construction Agreement.

4.7. The Lower Blue Parties will cooperate in applying for grants from the Colorado Water Conservation Board, Colorado River Roundtable, CRWCD, and any other available sources to fund the permitting, land acquisition, and construction of the Lower Blue Reservoir. The proceeds of such grants shall be available exclusively to the Lower Blue Parties. Colorado Springs shall cooperate with those efforts but will

not be a co-applicant. Colorado Springs may also apply for grants from the Colorado Water Conservation Board or other potential funding sources to pay all or a portion of its costs for permitting and construction of the reservoir that do not reduce the amounts of grants available to the Lower Blue Parties.

4.8. Either Colorado Springs, Summit County, or the Town of Breckenridge may exercise the right to terminate their individual and separate obligations under this Agreement in accordance with paragraph 14.1 below if Colorado Springs, Summit County, or the Town of Breckenridge determines that it is unwilling to pay its pro rata share of the actual costs to construct Lower Blue Reservoir based on the design approved pursuant to paragraph 4.6 above and the Construction Agreement.

4.9. The Lower Blue Parties and Colorado Springs will jointly identify what further authorizations, if any, may be needed from the Denver Water Board, Bureau of Reclamation, Northern, or other persons or entities, for Colorado Springs to provide Substitution for west slope use of Lower Blue Reservoir Water Right as against Green Mountain Reservoir.

4.10. The Lower Blue Parties will be responsible for applying for all permits for, and the construction of, the Lower Blue Reservoir, subject to cost-sharing by Colorado Springs in the percentage stated above. The Lower Blue Parties agree to abstain from pre-permitting discussions and agency coordination with any permitting agency or authority until earlier of (a) January 1, 2029; or (b) all final permits and authorizations have been issued, and after resolution of any appeals, for the construction of an enlargement of Montgomery Reservoir or permitted alternative.

4.11. If a reservoir is constructed at or near the Lower Blue Reservoir Site, it must not have an active storage capacity in excess of 600± acre-feet.

4.12. Colorado Springs and the Lower Blue Parties will cooperate on the design, permitting and construction of Lower Blue Reservoir to ensure that Colorado Springs' access to and ability to continue to use Upper Blue Reservoir is not impaired.

4.13. Colorado Springs and the Lower Blue Parties have entered into an Operating Agreement to implement the water deliveries described in paragraphs 6 and 7 below. A copy of the Operating Agreement is attached as Exhibit 1. This Agreement shall control in the event of any conflict between the interpretation of this Agreement and Exhibit 1, provided that this Agreement does not change the rights of any party to the Substitution Agreement who is not also a party to this Agreement.

4.14 Colorado Springs Permitting Timeline and Provision of Temporary Water Supply for Lower Blue Parties.

4.14.1 Colorado Springs anticipates that it will file complete applications for all necessary federal, state, and local permits or authorizations required for the enlargement of Montgomery Reservoir by December 31, 2025. Colorado Springs anticipates that all such permits or authorizations will be issued by December 31, 2027.

4.14.2 After the issuance by Summit County of all necessary permits, including a 1041 Permit for the enlargement of Montgomery Reservoir, if any other necessary permits or authorizations required for the enlargement of Montgomery Reservoir by federal, state, or local governments (other than Summit County) have not been issued by December 31, 2027, then on the commencement of storage in Upper Blue Reservoir in the spring of 2030, which occurs when the reservoir is safely accessible after snowmelt so that the reservoir's outlet can be closed, Colorado Springs will provide annually, for a period of up to 5 years or until Lower Blue Reservoir is substantially completed, whichever occurs first, 250 acre-feet of water to the Lower Blue Parties. This 250 acre-feet will be the first water stored annually in Upper Blue Reservoir after filling the 100 acre-feet reduced West Slope Account. The 250 acre-feet of water will be provided and used in the following manner:

4.14.2.1 Prior to the Substantial Completion of the enlargement of Montgomery Reservoir, annually the Lower Blue Parties and Colorado Springs will jointly seek approval of a Substitute Water Supply Plan pursuant to C.R.S. § 37-92-308(5) ("SWSP") to allow the use of up to 250 acre-feet of water stored by Colorado Springs in Upper Blue Reservoir to supply the demands of the Lower Blue Parties. Colorado Springs' obligations to make Upper Blue Reservoir water available to the Lower Blue Parties under this paragraph will terminate after (1) the expiration of the fifth annual SWSP; or (2) upon Substantial Completion of an enlargement of Montgomery Reservoir, whichever occurs first.

4.14.2.2 The water provided by Colorado Springs under this paragraph 4.14.2 will be used by the Lower Blue Parties for direct diversion from the Blue River or its tributaries upstream of Dillon Reservoir, or for the replacement of stream depletions to the Blue River or its tributaries upstream of Dillon Reservoir that one or more of the Lower Blue Parties is legally required to replace by Division of Water Resources.

4.14.2.3 Prior to the Substantial Completion of the enlarged Montgomery Reservoir, Colorado Springs will have no obligation to provide up to 250 acre-feet if that quantity of water is not legally and physically available for storage in Upper Blue Reservoir, or if it is required for Substitution purposes.

4.14.3 Upon Substantial Completion of an enlargement of Montgomery Reservoir, and for eight years thereafter, or until the Substantial Completion of Lower Blue Reservoir, whichever occurs first, Colorado Springs will seek administrative approval to exchange annually 250 acre-feet of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir into Upper Blue Reservoir for release to and use by the Lower Blue Parties. Colorado Springs will have no obligation to exchange 250 acre-feet of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir into Upper Blue Reservoir if (a) that quantity of water is not legally and physically available for storage in Upper Blue Reservoir; or (b) that storage space in Upper Blue Reservoir is required for Substitution purposes.

4.14.4 The water to be provided by Colorado Springs under paragraph 4.14.2 or 4.14.3 will be the first water stored annually in Upper Blue Reservoir after the annual filling of the then applicable quantities in the West Slope Account and will be provided free of any charge.

4.14.5 The water to be provided to the Lower Blue Parties from Upper Blue Reservoir will be delivered at the downstream end of the outlet from Upper Blue Reservoir pursuant to a delivery schedule provided by the Lower Blue Parties. Colorado Springs and the Lower Blue Parties will coordinate operations to ensure that releases to the Lower Blue Parties do not impair Colorado Springs' ability to make Substitution releases in the amount and at the time required, or impair Colorado Springs' ability to deliver its remaining water stored in Upper Blue Reservoir through the Hoosier Tunnel prior to either (1) November 1st or (2) when Colorado Springs' determines that weather conditions prevent safe access to or operation of Upper Blue Reservoir.

4.14.6 If a request for administrative exchange is formally denied by the Colorado Division of Water Resources, Colorado Springs and the Lower Blue Parties will file an application in the Division 5 Water Court for an appropriative right of exchange for the 250 acre-feet specified in subparagraph 4.14.3.

4.15 Upon receipt of a final determination by one or more permitting authorities that a required permit cannot be issued for the construction of the proposed Lower Blue Reservoir or an Acceptable Alternative, and after all appeals, the Lower Blue Parties will give prompt written notice of the final denial to Colorado Springs. Upon such notice, this paragraph will replace all other requirements for the conveyance of Lower Blue Reservoir water rights to the Lower Blue Parties. Within ninety (90) days after receipt of written notice of such denial, Colorado Springs will convey to the Lower Blue Parties, free of any charge, 475 acre-feet of its Lower Blue Reservoir Water Right, to be provided and used in accordance with this Agreement. Such conveyance shall be

by quit claim deed, free and clear of all liens and encumbrances. The conveyance will be made in accordance with a procedure agreed upon by Colorado Springs and the Lower Blue Parties. That water will be provided to the Lower Blue Parties in accordance with paragraphs 4.16, 4.17, and 4.18 below.

4.16 If the Lower Blue Parties are denied the necessary permits for the construction of Lower Blue Reservoir or an Acceptable Alternative by any permitting authority other than Summit County, then paragraphs 4.16 and its subparts and 4.17 will apply and will replace all other requirements for Colorado Springs to provide water to the Lower Blue Parties under this Agreement.

4.16.1 Lower Blue Reservoir Water provided by Exchange. Upon Substantial Completion of the enlargement of Montgomery Reservoir, Colorado Springs will annually provide by exchange into Upper Blue Reservoir up to 250 acre-feet of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir. The exchange will be (a) made only during the time that Colorado Springs' 1948 Blue River Water Rights are in priority and water is otherwise legally and physically available for storage in Upper Blue Reservoir; (b) the first water stored in Upper Blue Reservoir after filling the 100 acre-feet West Slope Account (reduced from the 250 acre-feet), or as soon thereafter as exchange conditions permit; and (c) made only to the extent of the 250 acre-feet of storage space in Upper Blue Reservoir that is not required for Substitution purposes. This water will be delivered in accordance with paragraph 4.14.5 above and will be provided free of any charge.

4.16.2 Lower Blue Reservoir Water provided by substitution. Annually, after filling the 100 acre-feet West Slope Account (reduced from 250 acre-feet) in Upper Blue Reservoir and the exchange of up to 250 acre-feet of Lower Blue Reservoir water into Upper Blue Reservoir, in Substitution Years Colorado Springs will provide by substitution from an enlarged Montgomery Reservoir an additional amount of Lower Blue Reservoir water that, when added to the amount of Lower Blue Reservoir water exchanged into Upper Blue Reservoir, equals 300 acre-feet. In Non-Substitution Years Colorado Springs will annually provide by substitution from an enlarged Montgomery Reservoir an additional amount of Lower Blue Reservoir water that, when added to the amount of Lower Blue Reservoir water exchanged into Upper Blue Reservoir, equals 475 acre-feet. These substitutions will be made only during the time that Colorado Springs' 1948 Blue River Water Rights are in priority, and in accordance with a decree granting a change in the Lower Blue Reservoir water rights resulting from the application attached to this Agreement as Exhibit 7. The total amount of water provided annually to the Lower Blue Parties pursuant to paragraphs 4.16.1 and 4.16.2 will not exceed 475 acre-feet in non-Substitution Years and 300 acre-feet in Substitution Years. The water to be provided by substitution to the Lower Blue Parties will be free of any charge and

will be measured and delivered at the Combination Flume, or one or more other points of diversion of the 1948 Blue River Water Rights located upstream of Goose Pasture Tarn, as determined by Colorado Springs.

4.16.3 The Lower Blue Parties bear the risk that the full quantities of water cannot be delivered by exchange or by substitution annually due to insufficient Lower Blue Reservoir water in storage in an enlarged Montgomery Reservoir. Notwithstanding the foregoing, Colorado Springs agrees to operate the enlarged Montgomery Reservoir in a manner to provide the full quantities of water to be delivered to the Lower Blue Parties by exchange or by substitution to the maximum extent practicable.

4.17 The Lower Blue Parties must take delivery of all Lower Blue Reservoir water stored in Upper Blue Reservoir by the earlier of November 1st or when Colorado Springs determines that weather conditions prevent safe access to or operations of Upper Blue Reservoir. The Lower Blue Parties are not entitled to credit for any Lower Blue Reservoir water stored in Upper Blue Reservoir that they do not request the delivery of sufficiently in advance to permit its full release prior to November 1st or when Colorado Springs determines that weather conditions prevent safe access to or operation of Upper Blue Reservoir.

4.18 If the Lower Blue Parties are denied the necessary permits for the construction of Lower Blue Reservoir or an Acceptable Alternative by Summit County, then this paragraph 4.18 and its subparts will apply and will replace all other water delivery requirements by Colorado Springs to the Lower Blue Parties under this Agreement. Colorado Springs will deliver Lower Blue Reservoir water to the Lower Blue Parties only by substitution at the Combination Flume, or one or more other points of diversion of the 1948 Blue River Water Rights located upstream of Goose Pasture Tarn as determined by Colorado Springs. Colorado Springs will deliver 475 acre-feet in non-Substitution Years and 300 acre-feet in Substitution Years. The substitution will be (a) made only during the time that Colorado Springs' 1948 Blue River Water Rights are in priority, and (b) only to the extent of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir. Colorado Springs agrees to operate the enlarged Montgomery Reservoir in a manner to provide the full quantities of water to be delivered to the Lower Blue Parties by substitution to the maximum extent practicable. The Lower Blue Reservoir water will be provided to the Lower Blue Parties free of any charge.

4.19 Not an Acceptable Alternative to Lower Blue Reservoir. The Lower Blue Parties assert that the procedures under paragraphs 4.16.1, 4.16.2, 4.16.3, and 4.18 above are not a reasonable or Acceptable Alternative to the construction and use of Lower Blue Reservoir as otherwise contemplated in this Agreement, and that said

procedures do not adequately attain the primary objectives, purposes, and needs of the Lower Blue Parties in meeting their future water requirements. No Party will take the position in any process for any permitting associated with the construction of Lower Blue Reservoir that the procedures under paragraphs 4.16 and 4.18 above are a preferred or Acceptable Alternative to the construction and use of Lower Blue Reservoir as contemplated in this Agreement. The Lower Blue Parties may initiate agency consultation and permitting for the construction of Lower Blue Reservoir upon the first to occur of (a) Colorado Springs receipt of all permits needed for construction of an enlarged Montgomery Reservoir and after resolution any appeals, or (b) January 1, 2029.

5. 1041 Permitting - Summit County. Colorado Springs will seek a 1041 Permit from Summit County for the change in operation of its Continental-Hoosier System made possible by the enlargement of Montgomery Reservoir. In any such permitting process, and in determination of the level of review, Summit County shall consider as mitigation of any significant impacts to Summit County each of the actions to be undertaken by Colorado Springs under the following paragraphs and their subparts under this Agreement: 2.2.1, 2.2.2, 2.3, 2.4, 2.5, 3.5, 4.1.2, 4.1.3, 6, 7.1, 7.3, 8.5.2, , 9.1.6, 10.5.2, 12.2, and 12.3. This paragraph does not limit the action that Colorado Springs may assert as mitigation of any significant impacts to Summit County as part of its 1041 Permit Application to Summit County.

6. Quantity of Water for a Lower Blue Reservoir to be Provided by Colorado Springs. This paragraph 6 and its subparts apply upon the Substantial Completion of Lower Blue Reservoir or an Acceptable Alternative.

6.1. In every year that is not a Substitution Year, Colorado Springs will provide up to 475 acre-feet of the water available under the Lower Blue Reservoir Water Right to the Lower Blue Parties for storage in Lower Blue Reservoir. The volume provided in any non-Substitution year shall be the lesser of 475 acre-feet or the unfilled capacity of Lower Blue Reservoir on April 1. This obligation to provide the 475 acre-feet in non-Substitution Years will take operational priority over diversions and storage by Colorado Springs under any of its 1948 Blue River Water Rights available at or upstream from the as-built Lower Blue Reservoir, after the storage of 100 acre-feet in the West Slope Account. Colorado Springs will not exercise its 1948 Blue River Water Rights in a manner that reduces the amount of water available for storage in Upper and Lower Blue Reservoir pursuant to this Agreement. Colorado Springs will not be required to provide water for this purpose after September 30th of any year.

6.1.1. In any year following a year in which water has been delivered to the west slope from an enlarged Montgomery Reservoir, Colorado Springs will refill the Lower Blue Reservoir account in an enlarged Montgomery Reservoir to the extent

water is lawfully available to the 1948 Blue River Water Rights, up to a maximum of 600 acre-feet or such lesser amount as will ensure that (a) the combined amount of physical storage under the Lower Blue Reservoir Water Right in Lower Blue Reservoir and the Lower Blue Reservoir account in an enlarged Montgomery Reservoir, shall never at any one time exceed 1,006 acre-feet; and (b) no more than 1,006 acre-feet shall be stored in any one year (April 1 to March 31) under the Lower Blue Reservoir Water Right, including carry-over storage from the prior year. Water may be delivered to and stored in an enlarged Montgomery Reservoir under the Lower Blue Reservoir Water Right under this paragraph only after the full amount of water supply specified herein has been provided to the Lower Blue Parties.

6.2. During a Substitution Year Colorado Springs shall continue to be responsible for the release of “Replacement Water” (see subsection 9.27 below) for up to 100 acre-feet of water in Upper Blue Reservoir dedicated to west slope use pursuant to the Substitution Agreement, and in addition thereto will release replacement water on the quantity of the Lower Blue Reservoir Water Right stored that year in the Lower Blue Reservoir and stored in an enlarged Montgomery Reservoir use to provide water to the Lower Blue Parties, all in accordance with the USBR Substitution Agreement.

6.3. In every Substitution Year, Colorado Springs will provide to the Lower Blue Parties the lesser of 300 acre-feet or the unfilled capacity of Lower Blue Reservoir on April 1st and will not provide water after September 30th of any year unless Colorado Springs 1948 Blue River Water Rights are in priority and stream flow conditions permit such delivery. The 300 acre-feet shall be provided in the following order and from the following sources of water decreed for west slope use by the Lower Blue Parties:

6.3.1. The first 150 acre-feet of the 300 acre-feet of water to be provided by Colorado Springs during Substitution Years shall be delivered by means of bypasses of 150 acre-feet of the first water available at Upper Blue Reservoir after storage of 100 acre-feet in the West Slope Account. Colorado Springs will not exercise its other 1948 Blue River Water Rights in a manner that reduces the amount of water available at Upper Blue Reservoir to supply the 150 acre-feet.

6.3.2. The remainder of the 300 acre-feet shall be provided from water decreed for west slope use: (a) physically available in Monte Cristo Creek at Lower Blue Reservoir (excluding Replacement Water released from Upper Blue Reservoir that are made for the purpose of meeting the “CSU Replacement Obligation” pursuant to the Substitution Agreement and the Plan of Substitution Decree); and then either (b) the release of water from Upper Blue Reservoir that is not required for Substitution operations; and/or (c) releases at Colorado Springs’ combined flume

on Monte Cristo Creek or one or more other points of diversion of the 1948 Blue River Water Rights located upstream of Goose Pasture Tarn as determined by Colorado Springs and more fully described in paragraph 7.1 below.

Colorado Springs' obligation to provide the 300 acre-feet in Substitution Years will take operational priority over diversions and storage by Colorado Springs under any of its 1948 Blue River Water Rights on Monte Cristo Creek other than the storage of 100 acre-feet in Upper Blue Reservoir in the West Slope Account. Colorado Springs' obligation to deliver the 300 acre-feet in Substitution Years shall be limited to water legally and physically available from the sources listed in subparagraphs 6.3.1 and 6.3.2.

6.4. In the event that more than 300 acre-feet was delivered to Lower Blue Reservoir prior to the determination that a given year is a Substitution Year, then Colorado Springs is entitled to regain and use the difference between the actual delivery to Lower Blue Reservoir that year and 300 acre-feet. For example, if Colorado Springs had delivered 475 acre-feet to Lower Blue Reservoir prior to declaration of a Substitution Year, Colorado Springs would be entitled to use 175 acre-feet ($475 - 300 = 175$) stored in Lower Blue Reservoir for Substitution purposes or delivery through the Hoosier Tunnel to Montgomery Reservoir.

6.5. Colorado Springs will not operate exchanges with priorities junior to 1948 on Monte Cristo Creek if the effect of such exchanges is to deprive Lower Blue Reservoir of the amounts of water Colorado Springs has agreed to provide for storage in that Reservoir by exercise of its 1948 Blue River Water Right as described in paragraphs 6.1, 6.2, and 6.3 above.

6.6. Colorado Springs shall continue to pay power interference charges on the amount of Lower Blue Reservoir Water Right stored annually in Lower Blue Reservoir and in an enlarged Montgomery Reservoir in accordance with its power interference agreement with the United States. Colorado Springs is entitled to seek credit from the United States against power interference charges for any unconsumed portion of this water that returns to the Blue River. The Town of Breckenridge and Summit County will provide sufficient information concerning their diversions to allow Colorado Springs to quantify the unconsumed water reaching the Blue River.

6.7. The Lower Blue Parties may exchange their respective Clinton Gulch Reservoir, Dillon Reservoir, and/or Old Dillon Reservoir water to storage in the Lower Blue Reservoir. Colorado Springs is not required to provide replacement or substitution water for such water stored in the Lower Blue Reservoir.

6.8. The Town of Breckenridge and Summit County may file one or more applications to adjudicate such exchanges. Colorado Springs may file a statement of

opposition to such applications. Its participation therein shall be limited to ensuring they do not impair the exercise of Colorado Springs' diversion and storage of its 1929 or 1948 Blue River Water Rights or impair its appropriative right of exchange decreed in Case No. 03CW314.

6.9. Nothing in this Agreement shall preclude the storage by exchange in Lower Blue Reservoir by the Lower Blue Parties of additional water that may be available under their exchange priorities.

7. Confirmation of type and place of use of Lower Blue Reservoir Water Right.

7.1. Colorado Springs, with the support of the Lower Blue Parties, will be responsible for filing and prosecuting a separate change of water rights application to obtain:

7.1.1. A change of up to 600 acre-feet of the Lower Blue Reservoir Water Right to be diverted annually at the Monte Cristo Creek diversion (located between the outlet of Lower Blue Reservoir and the Combination Flume on Monte Cristo Creek) and to be held in an enlarged Montgomery Reservoir for the purposes of effectuating an appropriative right of substitution/exchange to facilitate making water available as specified in paragraph 6.3 above. To provide water to the Lower Blue Parties by exchange, Colorado Springs will release water diverted in priority under its 1948 Blue River Water Rights at the Combination Flume on Monte Cristo Creek, or one or more other points of diversion of the 1948 Blue River Water Rights located upstream of Goose Pasture Tarn as determined by Colorado Springs, back to the Blue River, or provide water to the Lower Blue Parties by book-over of Lower Blue Reservoir water stored in an enlarged Montgomery Reservoir.

7.1.2. A change of up to 600 acre-feet of the Lower Blue Reservoir Water Right to an alternate place of storage in Lower Blue Reservoir or an Acceptable Alternative;

7.1.3. A change of the 1,006 acre-feet Lower Blue Reservoir Water Right to add places of use and types of use identified by Summit County and the Town of Breckenridge; and

7.1.4. Confirmation by the District Court for Water Division No. 5 that the Lower Blue Parties' use on the west slope of the Lower Blue Reservoir Water Right conveyed by Colorado Springs is a lawful beneficial use that is not contrary to the terms of the Blue River Decree Stipulations and Blue River Decree.

7.1.5. The West Slope Parties may file statements of opposition to this change of water rights application and participate therein. Their participation shall be limited to ensuring the application and the decree entered thereon are consistent

with this Settlement Agreement. The West Slope Parties shall bear their own costs and fees for participation in that proceeding.

7.1.6. Colorado Springs will have no obligation to provide water from the Lower Blue Reservoir Water Right to the Lower Blue Parties under the change of water rights decree until the Substantial Completion of the enlargement of Montgomery Reservoir or the Substantial Completion of a permitted alternative project as described in footnote 2 of this Agreement.

7.2. Colorado Springs and the Lower Blue Parties will be jointly responsible for securing all administrative approvals needed for the Lower Blue Parties' use of the Lower Blue Reservoir Water Right.

7.3. Colorado Springs' application filed pursuant to paragraph 7.1 above will seek a determination that the use of the Lower Blue Reservoir Water Right in the Colorado River Basin by the Lower Blue Parties is not subject to the following requirements of the Blue River Decree applicable to Colorado Springs' 1948 Blue River Water Rights:

7.3.1. Submit to the Secretary of the Interior, on or before December 31 of each calendar year, beginning with the year water is first stored in Lower Blue Reservoir, a report showing by months for the water year ended September 30th last past, the quantities of water diverted from the Blue River System.

7.3.2. The quantities of return flow (unconsumed water) resulting from the use of such water.

7.3.3. Such report will also show what steps, by legal action or otherwise, the reporting entities have taken to utilize such return flow by exchange or otherwise reduce or minimize the demand of such entities on Blue River water.

7.3.4. Exercise due diligence in taking, with respect to their return flow of water, all steps that, in view of legal limitations and economic feasibility, might reasonably be required of such entity in establishing, enforcing, utilizing, and operating a plan designed to minimize or reduce the demands on Blue River water.

7.4. The Town of Breckenridge and Summit County shall have the first right, without limitation, to use, reuse, successively use, dispose of, consume, allocate, assign, dedicate, take credit for, and claim for mitigation purposes all water stored in and released from Lower Blue Reservoir under the Lower Blue Reservoir Water Right and all return flows therefrom. After the exercise of such rights by the Town of Breckenridge and Summit County, and to the extent not inconsistent with the environmental mitigation or enhancement use of such water by the Town of Breckenridge and Summit County, Colorado Springs may seek to use any remaining

water as part of any required environmental mitigation or enhancement in any permitting process for the construction of an enlarged Montgomery Reservoir. None of the West Slope Parties warrant or guarantee that any agency or governmental subdivision including, without limitation, Summit County, will recognize or agree to Colorado Springs' request. Colorado Springs shall be entitled to claim as an off-set against its power interference charges any unconsumed return flow.

7.5. Nothing in this Agreement grants to the Lower Blue Parties any interest in or right to storage space in Upper Blue Reservoir (subject to the operations described in subparagraphs 4.16 and 4.17) or Montgomery Reservoir, nor does it grant an interest or right to any water stored therein. Colorado Springs will provide Lower Blue Reservoir water to the Lower Blue Parties by release, by-pass, exchange, or substitution in conformity with the terms of this Agreement.

8. Colorado Springs and Summit County Diligence Cases.

8.1. Colorado Springs' diligence applications in Cases No. 15CW3019 and 18CW3041.

8.1.1. In Case No. 15CW3019, the Parties will enter into a stipulated settlement consenting to a decree confirming diligence on the development of the conditional rights for Lower Blue Reservoir, Spruce Lake Reservoir, and Mayflower Lake Reservoir as part of an overall settlement agreement. The stipulated proposed decree will be substantially in the form of Exhibit 2 and will specifically determine that Colorado Springs' failure to obtain diligence decrees for said water rights from the U.S. District Court in Consolidated Cases No. 2782, 5016 and 5017 did not and does not deprive the Colorado water court of jurisdiction to enter diligence decrees.

8.1.2. In Case No. 18CW3041, Colorado Springs and Summit County will enter into a stipulated settlement consenting to a decree confirming diligence on the development of the conditional rights for the Colorado Springs 2003 Homestake-Blue River Exchange, substantially in the form attached hereto as Exhibit 3.

8.2. In Summit County diligence Case No. 16CW3015, Colorado Springs and Summit County will enter into a stipulated settlement consenting to a decree confirming diligence on the development of the conditional rights for Swan River Reservoir and Lower Mohawk Reservoir, substantially in the form attached hereto as Exhibit 4.

8.3. So long as this Agreement remains in effect, the Parties agree not to oppose diligence applications filed by any other Party with respect to their existing conditional water rights, including exchanges, in or through the Blue River Basin. A Party may file a statement of opposition in such proceedings and participate to the extent necessary

to ensure any decree does not contain terms or conditions, other than a finding of reasonable diligence, that may impair the Party's water rights.

8.4. Colorado Springs agrees not to oppose entry of a decree for (1) any applications by the West Slope Parties for exchanges, changes of water rights, substitute supply plans, and plans for augmentation or amendments thereto that are related to the portion of the Lower Blue Reservoir Water Right conveyed to the Lower Blue Parties under this Agreement or storage of water in Lower Blue Reservoir or an Acceptable Alternative under this Agreement, and (2) any other water court or substitute supply plan applications utilizing the Lower Blue Reservoir Water Right conveyed to the Lower Blue Parties, whether held in Lower Blue Reservoir or provided by substitution, exchange, or book-over from an enlarged Montgomery Reservoir, provided that the proposed decrees do not impair the exercise of Colorado Springs' diversion and storage under its 1929 and 1948 Blue River Water Rights or impair its appropriative right of exchange decreed in Case No. 03CW314. Colorado Springs may file a statement of opposition in such proceedings and participate to the extent necessary to ensure the decree does not contain terms or conditions that may impair the exercise of Colorado Springs' diversion and storage under its 1929 and 1948 Blue River Water Rights or impair its appropriative right of exchange decreed in Case No. 03CW314.

8.5. Long term disposition of conditional water rights and related interest in land:

8.5.1. Summit County agrees to abandon its conditional water rights for Lower Mohawk Reservoir upon Substantial Completion of Lower Blue Reservoir. If the Lower Blue Parties are denied the necessary permits for the construction of Lower Blue Reservoir or an Acceptable Alternative, then Summit County agrees to abandon its conditional water rights for Lower Mohawk Reservoir upon commencement of deliveries of water by Colorado Springs under the applicable provisions of paragraphs 4.16 -4.18 above.

8.5.2. Upon Substantial Completion of Montgomery Reservoir Enlargement, Colorado Springs will:

8.5.2.1. Abandon its conditional storage rights for Spruce Lake Reservoir, Mayflower Lake Reservoir, and will exercise the Lower Blue Reservoir Water Right in the maximum amounts allowed in paragraphs 6 and 7 above. If the Lower Blue Parties are denied the necessary permits for the construction of Lower Blue Reservoir or an Acceptable Alternative, Colorado Springs will exercise the Lower Blue Reservoir Water Right in accordance with the applicable provisions of paragraphs 4.16 -4.18 above.

8.5.2.2. Upon abandonment of its conditional water rights for Spruce Lake and Mayflower Lake Reservoirs, Colorado Springs will convey the land it owns at those reservoir sites to Summit County. All such lands shall be conveyed by quit claim deed with title insurance, free and clear of all liens and encumbrances in accordance with a procedure to be contained in the Construction Agreement.

8.5.2.3. Withdraw its requests for exclusion of lands from around Spruce Lake Reservoir and Mayflower Lake Reservoir in the proposed Ten Mile Wilderness Area.

9. Future Operations under the Substitution Agreement

9.1. Within 15 days of the execution of this Agreement by all Parties, Colorado Springs and the CRWCD will file a request with the Water Court for Water Division No. 5, seeking confirmation that they are no longer required to seek approval of the Decree in Case No. 03CW320 from the U.S. District Court in the Consolidated Cases, and the Decree in Case No. 03CW320 remains in full force and effect without such approval. The form of request is attached hereto as Exhibit 5.

9.2. This paragraph 9.2 goes into effect upon the Substantial Completion of Montgomery Reservoir if all necessary permits or authorizations required for the enlargement of Montgomery Reservoir by federal, state, or local governments have been issued by December 31, 2027. If, after the issuance by Summit County of all necessary permits, including a 1041 Permit for the enlargement of Montgomery Reservoir, and if any other necessary permits or authorizations required for the enlargement of Montgomery Reservoir by federal, state, or local governments (other than Summit County) have not been issued by December 31, 2027, then this paragraph 9.2 goes into effect upon the earlier of the commencement of storage in Upper Blue Reservoir in the spring of 2030, or upon the Substantial Completion of the enlargement of Montgomery Reservoir.

9.2.1. Colorado Springs will permanently forebear the exercise of 1,050³ acre-feet of its rights under paragraphs 3 and 4 of the Substitution Agreement and the Plan of Substitution Decree for storage in and release of water from the Colorado Springs Substitution Account in Wolford Mountain Reservoir.

³ The CRWCD will continue to provide up to 700 acre-feet for the Colorado Springs Substitution Account in Wolford Mountain Reservoir pursuant to the terms of the Substitution Agreement.

9.2.2. Colorado Springs further agrees that the CRWCD can use the 1,050 acre-feet previously dedicated to the Colorado Springs Substitution Account storage for any lawful purpose.

9.2.3. The Parties agree that they will forebear the storage of all but 100 acre-feet of Wolford Mountain Reservoir water in the West Slope Account in Upper Blue Reservoir under the Substitution Agreement, which water will be released in accordance with the terms of the Substitution Agreement as needed by the entities entitled to the use thereof. The actual use of such 100 acre-feet of West Slope Account water pursuant to the Substitution Agreement shall have operational priority over other water in Upper Blue Reservoir that is to be provided to the Lower Blue Parties pursuant to either paragraphs 4.14.2, 4.14.3, 4.16, 4.17, 4.18, or 6.3.

9.2.4. The CRWCD, Summit County, and the Town of Breckenridge mutually release each other from any obligations with respect to water stored in the West Slope Account in Upper Blue Reservoir.

9.2.5. The Parties agree that the future exercise of the annual reservoir book-over (water trade) from Wolford Mountain Reservoir to Upper Blue Reservoir under the Substitution Agreement and described in the Plan of Substitution Decree, will be limited to 100 acre-feet pursuant to Colorado Springs' forbearance described in paragraph 9.2.1.

9.2.6. The Parties agree that 150 acre-feet of the water available to Upper Blue Reservoir that was part of the West Slope Account in Upper Blue Reservoir will be bypassed and delivered to the Lower Blue Parties in Lower Blue Reservoir in every substitution year. Colorado Springs will forebear the exercise of its rights under paragraphs 3 and 4 of the Substitution Agreement and the Plan of Substitution Decree for (a) storage in and release of water from the Colorado Springs Substitution Account in Wolford Mountain Reservoir with respect to this water, and (b) the annual reservoir book-over (water trade) from Wolford Mountain Reservoir to Upper Blue Reservoir with respect to this water.

9.2.7. Replacement Water releases by Colorado Springs from Upper Blue Reservoir for purpose of meeting the "CSU Replacement Obligation" pursuant to the Substitution Agreement and the Plan of Substitution Decree must be passed through the Lower Blue Reservoir by the Lower Blue Parties at the same time and rate as the release from Upper Blue Reservoir.

10. Shoshone Outage Protocol (ShOP), and Shoshone Permanence.

10.1. The Shoshone Power Plant is a hydroelectricity plant with generation facilities located adjacent to the mainstem of the Colorado River downstream from its

confluence with Shoshone Creek and west of Exit 125 of Interstate Highway 70 (“SPP”). The SPP is currently owned and operated by Public Service Company of Colorado, d/b/a Xcel Energy (“PSCo”). The SPP Water Rights are diverted at the SPP. Several entities⁴ entered into an Agreement dated June 27, 2016, referred to as the Shoshone Outage Protocol (US Bu Rec Agreement No. 13XX6Co129) (“USBR ShOP Agreement”). Included within the USBR ShOP Agreement are provisions addressing when certain parties thereto would not divert under their water rights per the operating procedures.

10.2. Colorado Springs is the owner of one-half of the Homestake System which system includes, *inter alia*, the Homestake water rights first decreed in Eagle County District Court Case No. CA-1193 with appropriation dates of 1952. The Parties acknowledge that as co-owner of the Homestake System, Colorado Springs cannot bind, and is not binding, the other co-owner of the Homestake System, the City of Aurora (“Aurora”), to any of the provisions of this Agreement. Colorado Springs agrees that its portion of the Homestake water rights is subject to the terms of this Agreement. The Parties acknowledge this Agreement does not change, modify, revise, amend, replace, displace, or supersede any currently existing contract or agreement between the Colorado Springs and Aurora concerning the Homestake System (“Homestake Agreements”). Further, Colorado Springs acknowledges that on July 31, 2018 Aurora entered into an agreement with various parties (the “Busk Ivanhoe Agreement”) that separately binds Aurora to operate its portion of the Homestake System in accordance with the ShOP provisions contained in the Busk Ivanhoe Agreement.

10.3. Colorado Springs is the sole owner of the 1929 and 1948 Blue River Water Rights for its Continental-Hoosier System. The 1948 Blue River Water Rights were made absolute in part by the Decree in Consolidated Case Nos. 2782, 5016 and 5017 (U.S. District Court, District of Colorado) dated February 26, 1968. Colorado Springs agrees that its 1929 Blue River Water Rights and 1948 Blue River Water Rights are subject to the terms of this Agreement.

10.4. Term of Colorado Springs’ ShOP Agreement. The initial term of Colorado Springs’ agreement regarding its one-half of the Homestake water rights and its

⁴ US Bureau of Reclamation, Colorado Division of Water Resources, Denver Water Board, CRWCD, Middle Park Water Conservancy District, Northern Colorado Water Conservancy District & its Municipal Subdistrict, Grand Valley Water Users Association, Orchard Mesa Irrigation District and the Grand Valley Irrigation Company.

Continental-Hoosier System water rights in accordance with the ShOP herein will be for a period of 35 years commencing upon execution of this Agreement by all Parties.

10.5. Colorado Springs ShOP Agreement. Colorado Springs agrees to the following ShOP (the “Colorado Springs ShOP”):

10.5.1. The water rights owned by Colorado Springs that are subject to the Colorado Springs ShOP are its interest in the Homestake Project⁵ water rights and its 1929 and 1948 Blue River Water Rights, and any water rights it acquires or appropriates hereafter that divert from the Colorado River and its tributaries upstream of the SPP that are junior to and legally and physically subject to call by the senior SPP Water Right (collectively Colorado Springs ShOP Water Rights).

10.5.2. If the SPP is not operating because of repairs, maintenance or other reasons and the flow at the Dotsero Gauge is less than or equal to 1,250 c.f.s. (not including Shepherded Streamflow Reservoir Releases as defined in the USBR ShOP Agreement), then Colorado Springs agrees to operate the Colorado Springs ShOP Water Rights as if the Senior Hydropower Right was calling for a streamflow of 1,250 c.f.s. to be measured at the Dotsero Gauge. Colorado Springs’ operations under this paragraph 10.5.2 are referred to herein as “Colorado Springs ShOP Operations”.

10.5.3. During Colorado Springs ShOP Operations, Colorado Springs agrees that, with respect to its interest in the Homestake Project, the West Slope Parties to the 2010 Consolidated Water Exchange Agreement between Colorado Springs, CRWCD and others (the “2010 Consolidated Exchange Agreement”) may operate exchanges into the 4,000 acre-foot portion of west slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir. If the 4,000 acre-foot west slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir is full or if the West Slope Parties to that agreement do not operate under that exchange, then Colorado Springs will operate its interest in the Homestake Project water rights and its 1929 and 1948 Blue River Water Rights as if the Senior Hydropower Right was calling for a flow of 1,250 c.f.s. to be measured at the Dotsero Gauge.

10.5.4. During Colorado Springs ShOP Operations, Colorado Springs may operate exchanges into the Continental-Hoosier System facilities, so long as the sources of replacement water are delivered to the Colorado River or its tributaries

⁵ The Homestake Project is a transmountain diversion project located in the headwaters of the Eagle River basin and owned by Colorado Springs and the City of Aurora

above the Dotsero Gauge and the exchanges do not reduce flow at the Dotsero Gauge to less than 1,250 c.f.s. To the extent that the West Slope Parties to the 2010 Consolidated Homestake Exchange Agreement are not utilizing exchange capacity into Homestake Reservoir in accordance with paragraph 10.5.3 above, Colorado Springs may operate exchanges into the Homestake Reservoir so long as the sources of replacement water are delivered to the Colorado River or its tributaries above the Dotsero Gauge and the exchanges do not reduce flow at the Dotsero Gauge to less than 1,250 c.f.s.

10.5.5. Voluntary Lease During Colorado Springs ShOP Operations. If the 4,000 acre-foot west slope credit available pursuant to the 2010 Consolidated Exchange Agreement at Homestake Reservoir is full or the exchanges by West Slope Parties contemplated by that Agreement are not being exercised during Colorado Springs ShOP Operations, then Colorado Springs may choose to lease from the CRWCD, on a one-year spot-market basis (i.e., if available), up to 500 acre-feet from the CRWCD's Wolford Mountain Reservoir water marketing pool for replacement purposes by Colorado Springs for diversions by portion of the Homestake System. During Colorado Springs ShOP Operations, Colorado Springs may request an additional 500 acre-feet and the CRWCD may choose to lease 500 acre-feet to Colorado Springs for replacement purposes by Colorado Springs for diversions at its Continental-Hoosier System. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD's then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD's then-current standard form contract, the current version of which is attached for example purposes only as Exhibit 6. The Parties agree not to oppose Colorado Springs' efforts to use water leased pursuant to this paragraph by exchange or substitute supply for replacement purposes in accordance with the priority system but may participate in any judicial or administrative proceeding regarding such exchanges to ensure compliance with the terms of this Agreement.

10.5.6. Drought Exception to Colorado Springs ShOP. If the following two conditions exist ("Drought Triggers") as of April 1, and for the duration of the time period that both Drought Triggers exist, Colorado Springs will not be required to follow the Colorado Springs ShOP: 1) the 50% Forecast Exceedance Probability of streamflow prepared by the Natural Resources Conservation Service (or such other forecast as the CRWCD and Colorado Springs agree to use) indicates the April through July streamflow at the Colorado River near Dotsero Gauge will be less than or equal to eighty-five percent (85%) of average; and 2) the City of Colorado Springs' municipal potable water customers are subject to watering restrictions

that limit outdoor use of potable water for landscape irrigation to two days per week, or less (Stages II, III and IV in the current Colorado Springs Water Shortage Ordinance). Colorado Springs agrees to negotiate a mutually acceptable uniform drought exception applicable to all ShOP participants that when agreed upon will replace the provisions of this paragraph.

10.5.7. “Paper-fill” Accounting during Colorado Springs ShOP Operation.

The Parties acknowledge that the Colorado State Engineer currently has an administrative practice known as “Paper-fill” accounting for water storage rights. Generally, under this administrative practice, if a water storage right is in-priority and can legally and physically store water, but the operator(s) thereof choose not to store water, then the State Engineer or his/her designee account for the exercise of the water storage right as though the available water was physically placed into storage for purposes of determining the total lawful storage in that Water Year. The Parties acknowledge that pursuant to the Colorado State Engineer’s current administrative practice during ShOP Agreement operations, bypasses and the resulting “Paper-fill” made in the current Water Year are only accounted for under that Water Year’s storage volume and are not carried forward and accounted for against the lawful storage volume in the next Water Year. If future administrative actions by the Colorado State Engineer require that “Paper-fill” of water storage rights resulting from bypasses under the Colorado Springs ShOP made in the then-current Water Year are carried forward and accounted against either the Homestake Reservoir water storage right decree or the Upper and Lower Blue Reservoir water storage rights decrees under both the current Water Year and the next Water Year’s lawful storage volume, then the Colorado Springs ShOP Operation will not be required for the remainder of the then-current Water Year and the subsequent Water Year to the extent of such “Paper-Fill.” Colorado Springs may choose to lease from any west slope supplier or the CRWCD’s Wolford Mountain Reservoir water marketing pool, on a one-year spot-market basis (i.e., if available), up to the amount of any Paper-fill for the then current Water Year for exchange or substitute supply for replacement purposes by Colorado Springs so that Colorado Springs may divert and store water at its facilities and so that water will be released from Wolford Mountain Reservoir or other sources as a component of maintaining flows of 1,250 c.f.s. as measured at the Dotsero Gauge. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD’s then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD’s then-current standard form contract, the current version of which is attached for example purposes only as Exhibit 6. The Parties agree not to oppose Colorado

Springs' efforts to use water leased pursuant to this paragraph by exchange or substitute supply for replacement purposes in accordance with the priority system.

10.5.8. If the Colorado State Engineer or Division Engineer is requiring carry forward of "Paper-fill" storage from one Water Year to the next Water Year as described above, the Parties will apply good faith efforts to find a mutually acceptable permanent solution to ending this administrative practice.

10.5.9. Colorado Springs agrees that it will not divert or exchange any of the water released or bypassed by any party pursuant to the 2016 USBR ShOP Agreement or the ShOP provisions of the Busk Ivanhoe Agreement, as the same exist on the date of this Agreement, or otherwise operate its system or water rights in a manner that will diminish the stream flows that result from implementation of the 2016 USBR ShOP Agreement and the ShOP provisions of the Busk Ivanhoe Agreement up to 1,250 c.f.s. at the Dotsero Gauge.

10.5.10. Colorado Springs will give its consent to and agree to be bound by (1) future amendments to, or extensions of the 2016 USBR ShOP Agreement or the ShOP provisions of the Busk Ivanhoe Agreement; and (2) any future ShOP agreements with other parties or other parties' agreements to bypass water, provided that such agreements do not impose any greater curtailment on Colorado Springs' water rights than the limitations imposed on Colorado Springs' water rights by the Colorado Springs ShOP provisions of paragraphs 10.5.1 to 10.5.9 of this Agreement. Such consent must be in writing signed by Colorado Springs and by the CRWCD.

10.6. Shoshone Permanency. The West Slope Parties seek to achieve permanent protection of the stream flow conditions that result from the exercise of the SPP Water Rights when the SPP is in operation, regardless of whether the SPP continues to operate in the future ("Shoshone Permanency"). Colorado Springs agrees to not oppose Shoshone Permanency as follows:

10.6.1. Colorado Springs will not oppose a sale or other form of transfer of interest by PSCo of its SPP and/or SPP Water Rights, including any contractual interest therein, to the CRWCD or any other west slope entity or consortium containing west slope entities for the purpose of achieving Shoshone Permanency.

10.6.2. Colorado Springs will not seek to acquire or participate with others in the acquisition of the SPP and/or the SPP Water Rights.

10.6.3. The Parties recognize the existence of that certain 2007 Agreement Concerning Shoshone Call between the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water") and PSCo (the "2007 Call Reduction Agreement"). The 2007 Call Reduction Agreement provides that

under certain defined drought conditions, Denver Water is entitled to pay PSCo to reduce (or “relax”) the call of the SPP Water Rights. The Parties further recognize that Article VI.E.2 of the 2012 Colorado River Cooperative Agreement (“CRCA”) provides that Denver Water, with the support of the west slope signatories, may request PSCo to amend the 2007 Call Reduction Agreement to “relax” the call of the SPP Water Rights to 704 c.f.s., during extreme drought conditions, for an expanded period during the winter months subject to certain terms and conditions described in CRCA Article VI.E.2.a-e (“CRCA Winter Call Reduction”). Colorado Springs agrees that it will not seek or support any additional “relaxation” of the SPP Water Rights, except as expressly provided for in paragraph 10.6.4.1 below.

10.6.4. Colorado Springs will not oppose an agreement between a west slope entity or entities, the Colorado Water Conservation Board (“CWCB”), and any other entity entered into for the purpose of adding instream flow as an additional use of the Senior Hydropower Right (“CWCB Agreement”). In addition, Colorado Springs may become a party to any water court application seeking such instream flows (“ISF Application”) but will not oppose the entry of a final water court decree for the purpose of adding instream flow as an additional use of the Senior Hydropower Right. Colorado Springs’ non-opposition to any such CWCB Agreement and ISF decree shall be contingent on inclusion of the following terms in the CWCB Agreement, ISF Application, and any resulting ISF Decree:

10.6.4.1. In the event of a curtailment of Colorado water rights, or an imminent threat thereof, resulting from the State of Colorado’s obligations under the Colorado River Compact and/or the Upper Colorado River Basin Compact, the Parties will work cooperatively to implement this Agreement consistent with any duly adopted final rules or regulations of the State Engineer adopted for purposes of fulfillment of Colorado’s commitments under either or both compacts, and that are in force, any appeal notwithstanding.

10.6.5. Colorado Springs recognizes that the West Slope Parties, upon acquiring any interest in the SPP Water Rights, may also request that instream flow uses be added as an additional use to the Junior SPP Water Right. Colorado Springs agrees to participate in good faith discussions and negotiations with the West Slope Parties, the CWCB, and any other parties regarding the addition of instream flow uses to the Junior Hydropower Right. Any agreement with the CWCB and any water court decree adding instream flow uses to the Junior Hydropower Right will at a minimum be subject to the terms identified in paragraph 10.6.4.1, above. Additionally, the West Slope Parties agree to diligently meet and negotiate in good faith with Colorado Springs regarding the inclusion of Colorado Springs’ drought exceptions described in paragraph 10.5.6 above, into

any final agreement with the CWCB for any instream uses of the SPP Water Rights in excess of 1,250 c.f.s.

10.6.5.1. After instream flow use has been added as an alternate use of the Senior Hydropower Right, the CRWCD agrees that, during a drought period that meets the drought conditions described in paragraph 10.5.6, above, Colorado Springs may choose to lease from any west slope supplier or the CRWCD's Wolford Mountain Reservoir water marketing pool, on a one-year spot-market basis (i.e., if available), up to the amount of any shortage in fill for the then current storage season for replacement purposes by Colorado Springs. The CRWCD agrees that, due to the unique nature of this Agreement and the mutual compromises included herein, the rate of any such lease shall not be greater than two times the CRWCD's then-current spot-market lease rate for in-basin municipal use. The form of such lease will be generally consistent with the CRWCD's then-current standard form contract, the current version of which is attached for example purposes only as Exhibit 6. The Parties agree not to oppose Colorado Springs' efforts to use water leased pursuant to this paragraph by exchange for replacement purposes in accordance with the priority system. The lack of water available for lease by the CRWCD to Colorado Springs on a spot-market basis pursuant to this paragraph shall not excuse operation of Colorado Springs' water rights in accordance with the priority system as junior to, and subject to, the call of the SPP Water Right being exercised for instream flow purposes.

10.6.6. If the West Slope Parties provide written notice to Colorado Springs that they do not intend to acquire an interest in the SPP Water Rights and do not intend to pursue a change of use of the SPP Water Rights for instream flow purposes as contemplated in paragraph 10.6 (inclusive of subparagraphs) of this Agreement, then Colorado Springs will agree to enter an amended ShOP Agreement with the same terms and conditions provided in paragraph 10.5 (inclusive of subparagraphs) of this Agreement, except as follows:

10.6.6.1. The term of an amended ShOP Agreement will be perpetual.

10.6.6.2. In the event of a curtailment of Colorado water rights, or imminent threat thereof, resulting from the State of Colorado's obligations under the Colorado River Compact and/or the Upper Colorado River Basin Compact, the Parties agree that implementation of an Amended Perpetual ShOP Agreement must be consistent with any duly adopted final rules or regulations of the State Engineer that are in force, any appeal notwithstanding.

10.7. Other Provisions.

10.7.1. Colorado Springs, the CRWCD, and Summit County are among the numerous entities that comprise the Upper Colorado River Wild and Scenic Alternative Management Plan Stakeholder Group (“UPCO SG”). The Parties agree to support the recognition of the ShOP and Shoshone Permanency provisions of this Agreement as a cooperative measure and/or long-term protective measure submitted by the Parties that are members of the UPCO SG for the benefit of river Segment 7 (immediately downstream of the confluence of the Eagle and Colorado Rivers to one-half mile east of No Name Creek).

10.7.2. The Parties will not seek, as a condition of any Eagle River MOU⁶ permitting process or any permitting process for the development of storage for the Continental-Hoosier System, minimum base flows in the Colorado River at the current location of the Dotsero Gauge in excess of the SPP Water Rights.

10.7.3. This Agreement does not modify or amend any provisions of the Eagle River MOU as among the parties thereto.

11. Non-opposition to re-purposing the use of water previously diverted by the Bunte-Highline Ditch.

The Parties agree not to assert injury or adverse impact to water rights for which replacement water or other offset is necessary that may be attributable to the Colorado-Big Thompson Project’s diversion or storage of water previously diverted by the Bunte-Highline Ditch, provided such water is subsequently released or bypassed from the Colorado-Big Thompson Project for non-consumptive purposes in Water Division 5 upstream of the Dotsero Gauge (any consumptive use would occur downstream of the Dotsero Gauge).

12. Colorado Springs’ amount, timing, and location of use of Blue River water

12.1. For purposes of application of the terms of the Blue River Decree to Colorado Springs’ place of use of its 1948 Blue River Water Rights, and because the Continental-Hoosier System is supply limited and insufficient to meet more than a small percentage of the water supply need within Colorado Springs’ current municipal boundaries, and further in consideration of the terms of this Agreement, the Parties agree that, for purposes of Colorado Springs’ compliance with the terms of the Blue

⁶ The 1998 Memorandum of Understanding among Colorado Springs, the City of Aurora, the Colorado River Water Conservation District, Cypress Climax Metals Company, and the Vail Consortium consisting of the Eagle River Water and Sanitation District, the Upper Eagle Regional Water Authority and Vail Associates, Inc., and any amendments thereto.

River Decree, “the metropolitan area that is reasonably integrated with the development of Colorado Springs” referred to in subparagraph 4.g. on page 34 of the 1955 Decree in the Consolidated Cases includes the Colorado Springs’ municipal boundary as it may exist from time to time, and such other service areas as may now or hereafter be interconnected with and integrated into the City’s municipal treated water and non-potable water systems.

12.2. Diversions of water (regardless of decreed source) through the Hoosier Tunnel in any calendar year will not exceed the lesser of 21,000 acre-feet or 10% of the natural flow of the Blue River near Dillon below the confluence with the Snake River and Ten Mile Creek. The computation of the 10% limitation of the natural flow of the Blue River includes water provided by Colorado Springs to the CRWCD and the Lower Blue Parties under Colorado Springs’ 1948 Blue River rights pursuant to the terms of the Substitution Agreement or this Agreement. However, except as provided above for the calculation of the 10% limit, the calculation of the maximum annual volumetric limit does not include the amount of water delivered to the Lower Blue Parties at the combined flume on Monte Cristo Creek by means of substitution or exchange, or by book-over, of water previously diverted and stored by Colorado Springs in Montgomery Reservoir in accordance with paragraph 7.1.1 of this Agreement.

12.3. No more than 195,000 acre-feet of water may be delivered through the Hoosier Tunnel (regardless of decreed source) in any continuous running fifteen-year period (an average of 13,000 acre-feet per calendar year). The calculation of this continuous fifteen-year limitation does not include the amount of water delivered to the Lower Blue Parties at the combined flume on Monte Cristo Creek by means of substitution or exchange of water previously diverted and stored by Colorado Springs in Montgomery Reservoir in accordance with paragraph 7.1.1 of this Agreement.

12.4. The West Slope Parties will not assert, now or at any time in the future, that it is unlawful for Colorado Springs to deliver or serve water yielded under its 1929 or 1948 Blue River Water Rights to the areas described in paragraph 12.1 above, or seek to place any additional limitations, beyond those addressed in this Agreement, on the location of east slope storage, use, or volume of diversions under those water rights that are used in the City’s municipal treated water and non-potable water systems.

13. Schedule /tiering

13.1. Upon execution of this Agreement and receipt of the approvals required in paragraphs 15.25 through 15.27:

13.1.1. The Parties will enter into stipulations in Colorado Springs’ and Summit County’s diligence cases in accordance with paragraphs 8.1 and 8.2 above;

13.1.2. Colorado Springs will file the application for change of water rights described in paragraphs 7.1 and 7.3 above substantially in the form of Exhibit 7 attached hereto;

13.1.3. The volumetric limits on Colorado Springs' diversion through the Hoosier Tunnel in paragraphs 12.2 and 12.3 go into effect;

13.1.4. The West Slope Parties' agreements described in paragraphs 3.1, 12.1 and 12.4 related to the place of storage and place of use of Colorado Springs' 1948 Blue River Water Rights for purposes of application of the terms of the Blue River Decree goes into effect;

13.1.5. Colorado Springs' agreement described in paragraph 10 for participation in ShOP goes into effect;

13.1.6. Colorado Springs' obligation in paragraph 10.6 related to non-opposition to west slope Shoshone Permanency including, but not limited to, acquisition of SPP and or SPP Water Rights ("Shoshone assets"), contractual arrangement with owner of Shoshone assets, change of the SPP Water Rights to include CWCB instream flow water rights when the SPP Water Rights are not being used for hydro-power generation goes into effect;

13.1.7. Colorado Springs' and the Lower Blue Parties' obligation described in paragraph 11 related to its non-opposition to the repurposing of Bunte-Highline Ditch water goes into effect; and

13.1.8. The West Slope Parties' agreement not to oppose, and not take any action, or encourage any Adverse Action that would impair or impede, any Federal, state, or local permitting for Colorado Springs' enlargement of Montgomery Reservoir described in paragraph 3.3 goes into effect.

13.2. Upon the occurrence of all of the following: (a) Colorado Springs' acceptance of a Summit County 1041 permit for Montgomery Reservoir enlargement or permitted alternative, (b) issuance of permits and authorizations for Lower Blue Reservoir or an Acceptable Aternative, or upon receipt of a final determination by one or more permitting authorities that a required permit cannot be issued for the construction of the proposed Lower Blue Reservoir or an Acceptable Alternative, and after resolution of any appeals, (c) issuance of all final permits and authorizations, and after resolution of any appeals, needed for construction of an enlarged Montgomery Reservoir or permitted alternative, and (d) required confirmation that Colorado Springs' Lower Blue River Reservoir Water Right may be used on the west slope in accordance with paragraph 7.1.4:

13.2.1. Colorado Springs' obligation to maintain a flow of 5 c.f.s. immediately upstream of the inlet to Goose Pasture Tarn described in paragraph 3.5 goes into effect.

13.2.2. Colorado Springs' obligation to convey the land for Lower Blue Reservoir to the Lower Blue Parties described in paragraphs 4.1.2 goes into effect.

13.2.3. Colorado Springs' obligation to convey a portion of the Lower Blue Reservoir Water Right to the Lower Blue Parties described in paragraphs 4.1.2 and 4.1.3 or 4.15 goes into effect

13.2.4. Colorado Springs' and the Lower Blue Parties' obligation to share costs for permitting, design, and construction of Lower Blue Reservoir specified in paragraph 4.5 goes into effect.

13.3. Upon Substantial Completion of Lower Blue Reservoir or upon receipt of a final determination by one or more permitting authorities that a required permit cannot be issued for the construction of the proposed Lower Blue Reservoir or an Acceptable Alternative, and after resolution of any appeals, Summit County's obligation to abandon its conditional water right for Lower Mohawk Reservoir described in paragraph 8.5.1 goes into effect.

13.4. Upon Substantial Completion of an Enlarged Montgomery Reservoir, Colorado Springs' following obligations go into effect:

13.4.1. abandonment of its conditional water rights for Mayflower Lake and Spruce Lake Reservoirs described in paragraph 8.5.2.1;

13.4.2. conveyance of the lands owned by Colorado Springs for Spruce Lake Reservoir and Mayflower Lake Reservoir to Summit County described in paragraph 8.5.2.2.; and

13.4.3. withdraw its requests for exclusion of certain lands from around Spruce Lake Reservoir and Mayflower Lake Reservoir in the proposed Ten Mile Wilderness Area described in paragraph 8.5.2.3.

14. Rights of Termination.

14.1. The Parties sharing the cost of construction of the west slope Lower Blue Reservoir may terminate this Agreement if the estimated total cost to permit and construct the facility exceed \$15,000,000 or such greater amount as the Parties may agree, and there is no other less costly and Acceptable Alternative.

14.2. Colorado Springs may terminate this Agreement if the terms and conditions of Summit County's 1041 permit for the enlargement of Montgomery Reservoir are, in Colorado Springs' sole discretion, unacceptable.

14.3. The West Slope Parties may terminate this Agreement if Colorado Springs does not apply for a Summit County 1041 permit for the enlargement of Montgomery Reservoir in accordance with the County's 1041 regulations or does not accept the terms and conditions of a permit issued by Summit County.

14.4. The Town of Breckenridge and/or Summit County may terminate this Agreement if Colorado Springs and the Lower Blue Parties are unable to secure the required judicial and administrative approvals contained in paragraphs 7.1, 7.2, and 7.3 concerning west slope use of Colorado Springs' 1948 Blue River Water Rights for Lower Blue Reservoir.

14.5. If, after the issuance of all permits and authorizations needed for the enlarged Montgomery Reservoir, the Lower Blue Parties are unable to secure all permits and authorizations required for the construction of Lower Blue Reservoir or an Acceptable Alternative, then Colorado Springs shall provide water to the Lower Blue Parties in accordance with paragraphs 4.16, 4.17, and 4.18, as applicable.

14.6. Colorado Springs may terminate this Agreement if it is unable to secure all permits and authorizations required to enlarge Montgomery Reservoir, or it decides not to pursue enlargement of the Reservoir or other less environmentally damaging preferred alternative that provides substantially the same benefits to Colorado Springs.

14.7. If the federal environmental regulatory review of the proposed enlargement of Montgomery Reservoir determines that the LEDPA is a project located in the Colorado River Basin, then Colorado Springs will promptly notify the West Slope Parties of such decision. Within 45 days of notice by Colorado Springs, the Parties will begin meeting to discuss what amendments to this Agreement are needed to allow the Colorado River Basin LEDPA project to replace the enlargement of Montgomery Reservoir under this Agreement. If within 180 days after such notice, or such longer time as the Parties may agree upon in writing, the Parties are unable to agree upon amendments to allow the Colorado River Basin LEDPA to replace the enlargement of Montgomery Reservoir under this Agreement, then any Party may terminate this Agreement.

14.8. Notice of Intent to Terminate. Any Party that intends to exercise its right of termination under the Agreement must give all other Parties 120 days written notice of its termination and a complete statement of the basis for the exercise of its right of termination.

14.9. If this Agreement is terminated, the provisions of paragraphs 13.1.1 through 13.1.7 will survive termination. Further, no Party will be required to reimburse any other Party for any costs, expenses or fees of any kind incurred under this Agreement

prior to termination. Upon termination the Parties will voluntarily dismiss with prejudice any application filed to change the Lower Blue Reservoir Water Right for use by the Lower Blue Parties. If a decree permitting such use has been entered prior to termination, the Parties agree that it will be unenforceable as between them, and that Colorado Springs use of its Blue River water rights are unaffected thereby. The Parties will not oppose an application by Colorado Springs to vacate any such decree.

15. General Provisions

15.1. Notice. All notices required under this Agreement must be provided by U.S. Mail or hand delivery to the U.S. Postal Service address or physical addresses listed below. Written notice is effective immediately when hand delivered at the addresses noted below. If notice is sent by U.S. Mail, notice is effective two days after mailing. Any notice given under this Agreement will be copied to all Parties. If any Party wishes to modify the contact information contained below, notice must be provided to all Parties.

If to Utilities:

- i. Chief Systems Planning and Projects Officer
Courier Service Address:
Colorado Springs Utilities
ATTN: Chief Systems Planning and Projects Officer
121 S. Tejon St., 5th Floor
Colorado Springs, CO 80903

United States Postal Service Address:
Colorado Springs Utilities
ATTN: Chief Systems Planning and Projects Officer
P.O. Box 1103
Colorado Springs, CO 80947-0950
Fax: (719) 668-4158.

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

United States Postal Service Address:

Colorado Springs Utilities

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

If to Colorado River Water Conservation District:

General Manager
Colorado River Water Conservation District
201 Centennial Street, Suite 200
Glenwood Springs, CO 81601

If to Summit County:

Summit County Manager
P.O. Box 68
208 Lincoln Ave., 3rd Floor
Breckenridge, CO 80424

If to the Town of Breckenridge:

James Phelps Director Public Works
1095 Airport Road
PO Box 168
Breckenridge, CO 80424

If to Grand Valley Water Users Association:

General Manager
Grand Valley Water Users Association
1147 24 Rd.
Grand Junction, CO 81505

If to Orchard Mesa Irrigation District:

Manager
Orchard Mesa Irrigation District
668 38 Rd.
Palisade, CO 81526

If to Ute Water Conservancy District:

Courier Service Address:
General Manager
Ute Water Conservancy District
2190 H ¼ Road
Grand Junction, CO 81505

United States Postal Service Address:
General Manager
Ute Water Conservancy District
P.O. Box 460
Grand Junction, CO 81502

With copy by courier service or U.S. Mail to:
Balcomb & Green, P.C.
818 Colorado Ave.
Glenwood Springs, CO 81601

15.2. Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Agreement and, except as expressly provided herein, to perform its obligations herein.

15.3. Freedom to Operate. So long as the Parties meet all of their obligations under this Agreement, their independent legal obligations and any contemporaneous implementing agreements, the Parties agree that they do not have an obligation to operate their system or to conduct their decision-making in any particular way.

15.4. No Liability for Failure of Supply. The Parties agree that Colorado Springs is not in breach of this Agreement and no liability in tort or contract attaches to Colorado Springs under this Agreement on account of (a) an actual failure to supply water due to inadequate physical water supply for diversion or storage, or (b) any event of force majeure. The Town of Breckenridge and Summit County accept the risk that lack of physical supply in the Blue River may prevent Colorado Springs from being able to deliver water, including delivery by substitution from the enlarged Montgomery Reservoir.

15.5. No Third-party Beneficiaries. The Parties understand and agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any claim to a right of action by any third person. It is the expressed intention of the Parties that any person other than a

signatory receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

15.6. No Precedent. The Parties specifically understand and agreed that this Agreement is based on the specific factual and legal circumstances of this contested matter and upon the numerous and interrelated compromises reached by the parties, and therefore shall never be the basis for any (1) argument, claim, defense, or theory of acquiescence, waiver, bar, merger, stare decisis, res judicata, estoppel, laches, or otherwise, or (2) administrative or judicial practice or precedent, by or against any of the Parties hereto in any other matter, case or dispute. This Agreement shall not be evidence in any matter, case, or dispute not involving the rights and obligations of the Parties under this Agreement. All Parties agree that they do not intend for this Agreement to have the effect of precedent or preclusion on any factual or legal issue in any matter involving the rights or obligations of the Parties under this Agreement.

15.7. Preservation of Governmental Powers. Except as specifically provided herein, nothing in this Agreement shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity including, without limitation, the legislative or quasi-judicial power or authority of Summit County, the Town of Breckenridge and the City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities.

15.8. No Property Interest Created. Any rights created by this Agreement are contractual rights. This Agreement does not create and shall not be construed to create or convey any property interest, including any covenant, easement, or servitude, in the real property of any Party. Any real property interest to be conveyed from one Party to one or more other Parties will be conveyed by separate written instrument and that written instrument will control the nature and extent of the property interest so conveyed.

15.9. Appropriation of Funds.

15.9.1. Colorado Springs: Performance of Colorado Springs' obligations under this Agreement is expressly subject to the appropriation of funds by its City Council. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by Colorado Springs contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Agreement have been fully appropriated by Colorado Springs. Colorado Springs agrees to use good faith efforts to seek the

appropriation of sufficient funds to allow Colorado Springs to fully and timely perform its obligations under this Agreement for each fiscal year that occurs during the term of this Agreement. Colorado Springs acknowledges that its commitments under this Agreement are not contrary to any debt or appropriation limitations of the Colorado Constitution, the Charter of the City of Colorado Springs, statutes or other law. Colorado Springs shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation that impacts Colorado Springs' ability to perform its obligations under this Agreement.

15.9.2. Town of Breckenridge: Performance of the Town of Breckenridge's obligations under this Agreement is expressly subject to appropriation of funds by its Town Council. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the Town of Breckenridge contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Agreement have been fully appropriated by the Town of Breckenridge. The Town of Breckenridge agrees to use good faith efforts to seek the appropriation of sufficient funds to allow the Town of Breckenridge to fully and timely perform its obligations under this Agreement for each fiscal year that occurs during the term of this Agreement. In the event funds are not appropriated in whole or in part sufficient for performance of all of the Town of Breckenridge's obligations under this Agreement which are to be performed in the next calendar year, or appropriated funds may not be expended due to applicable spending limitations, then all rights and obligations of the Town of Breckenridge under this Agreement will terminate, and the Town of Breckenridge will thereafter have no liability for compensation or damages to the other Parties in excess of the Town of Breckenridge's authorized appropriation for this Agreement or the applicable spending limit, whichever is less. The Town of Breckenridge shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation or in the event a spending limit becomes applicable that impacts the Town of Breckenridge's ability to perform its obligations under this Agreement.

15.9.3. Summit County: Performance of Summit County's obligations under this Agreement is expressly subject to appropriation of funds by its Board of County Commissioners. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by Summit County contrary to Article X, § 20 of the Colorado Constitution, or any other constitutional, statutory, or charter debt limitation. The funds for the current year's activities related to this Agreement have been fully appropriated by Summit County. Summit County agrees to use good faith efforts

to seek the appropriation of sufficient funds to allow Summit County to fully and timely perform its obligations under this Agreement for each fiscal year that occurs during the term of this Agreement. In the event funds are not appropriated in whole or in part sufficient for performance of all of Summit County's obligations under this Agreement which are to be performed in the next calendar year, or appropriated funds may not be expended due to applicable spending limitations, then all rights and obligations of Summit County under this Agreement will terminate, and Summit County will thereafter have no liability for compensation or damages to the other Parties in excess of Summit County's authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Summit County shall notify the other Parties as soon as reasonably possible in the event of a non-appropriation or in the event a spending limit becomes applicable that impacts Summit County's ability to perform its obligations under this Agreement.

15.10. Severability or Reform of Invalid Provisions. Wherever possible each provision of this Agreement shall be interpreted and implemented in such manner as to be effective and valid under applicable law. If any provision or portion of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect unless the remaining provision's effectiveness is explicitly dependent upon the invalid or unenforceable provision. The Parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision. The provisions of this Agreement shall be reasonably and liberally construed to achieve the intent of the Parties.

15.11. Venue. This Agreement is governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue for resolution of any dispute of water matters under this Agreement resulting in litigation shall be the District Court, Colorado, for the appropriate Water Division or federal district court, as appropriate under the Blue River Decree. If venue for a water matter is proper both in Water Division No. 5 and another Water Division, venue shall be in Water Division No. 5 unless the parties to the dispute agree otherwise. Venue for all other matters under this Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides.

15.12. Conflict Resolution. The Parties agree that if a dispute arises between Colorado Springs and a West Slope Party, the affected Parties will confer in good faith and endeavor to resolve the concern. If the affected Parties reach an impasse, they will select a neutral third-party mediator who would seek an acceptable voluntary solution to the conflict. For conflicts that involve a technical or scientific matter, the neutral

third-party mediator may select an independent technical or scientific expert, acceptable to the Parties involved in the mediation, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the affected Parties may pursue any available legal or administrative recourse.

15.13. Information Sharing. The Parties shall maintain records in accordance with their normal procedures with regard to their respective obligations under this Agreement and shall make such records available to each other upon reasonable request. This obligation to share records does not include records that are subject to the attorney-client privilege, the deliberative process privilege, the attorney work product doctrine, other applicable privilege, limitation on disclosure in the Colorado Open Records Act, or other applicable laws or regulations restricting disclosure of records.

15.14. Governmental Immunity. No term or condition of this Agreement is to be construed or interpreted as a waiver, express or implied, by any Party of any of the applicable immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as applicable now or hereafter amended.

15.15. Entire Agreement. This Agreement and its Exhibits constitute the entire agreement between the Parties with respect to the subject matter and supersede all prior agreements and understandings, written or oral, with respect to the subject matter.

15.16. Amendment - Interpretation. This Agreement cannot be modified orally, but only by an amendment in writing signed by all Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and do not define or limit any of the terms of this Agreement. The Exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another.

15.17. Waiver. The failure of a Party to insist in one or more cases upon the strict observation of any of the terms of this Agreement is not a waiver or relinquishment in any future case of any of the terms of this Agreement.

15.18. Binding Effect and Assignability. This Agreement and the rights and obligations created hereby are binding upon and inure to the benefit of the Parties hereto and their respective heirs, successors, and assigns. No Party may assign its rights and obligations under this Agreement to another Party without the written consent of the other Parties, which consent shall not be unreasonably withheld,

delayed, or denied. Any request for consent to an assignment shall be given in writing at least 60 days before said assignment would take effect and shall include the identity of the assignee and documentation evidencing that the assignee agrees to be bound by the terms and conditions of this Agreement and has the ability to fulfill the assigning Party's obligations under this Agreement. The other Parties shall have 30 days to either consent or object to the assignment. If a non-assigning Party does not provide notice of an approval within such time period, its consent to the assignment will be presumed to have been denied. Any dispute related to a non-assigning Party's objection shall be resolved in accordance with the provisions of paragraph 15.12 above.

15.19. Time. Time is of the essence in this Agreement.

15.20. Remedies. In the event any Party defaults in the performance of any of its obligations under this Agreement, in addition to any and all other remedies provided in this Agreement or by law or equity, each Party shall have the right specific performance against the defaulting Party. In the event of litigation arising out of or related to this Agreement, each Party shall be responsible for its litigation costs, including expert and attorney's fees.

15.21. Legal Counsel. Each Party to this Agreement has engaged legal counsel or has been advised to seek legal counsel to negotiate, draft, and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it is not to be construed against any Party on the basis of authorship.

15.22. Signatures – Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. In the event that any signature is delivered by facsimile transmission or PDF, such signature shall create a valid and binding obligation of the Party executing the same (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or PDF signature page were an original itself.

15.23. Force Majeure. No Party to this Agreement will be liable for any delay or failure to perform due solely to conditions or events of force majeure, as that term is defined in this paragraph, provided that: (i) the non-performing Party gives the other Parties prompt written notice describing the particulars of the force majeure event; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform. As used herein, "force majeure" means any delay or failure of performance under this Agreement caused by events beyond a Party's reasonable control and without the fault of the Party including, without limitation: (a) acts of God; (b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes; (c) sabotage; (d)

vandalism beyond that which can be reasonably prevented by the Party; (e) terrorism; (f) war; (g) riots; (h) fire; (i) explosion; (j) insurrection; (k) strike, slow down or labor disruptions; (l) the lawful order of any governmental entity clothed with authority to regulate matters pertaining to water, public utilities, public health, public safety, or pollution control; (m) enemy or hostile governmental action, (n) civil commotion or insurrection; (o) regulatory restrictions on travel, movement, or provisions of services; or (p) any actual or threatened health emergency, epidemic, pandemic, quarantine, or other health risk, including, without limitation, health risks declared or recognized by the Centers for Disease Control, the World Health Organization, or any public health department. To the extent that a Party's performance is postponed or excused by an event of force majeure, the other Party's corresponding obligation to perform is likewise postponed or excused.

15.24. Representations and Warranties of the Parties

15.24.1. Each Party has carefully read this Agreement and knows the contents thereof and has signed the same as its free and voluntary act and after having the opportunity to have the same explained by counsel. Each Party expressly states that it has been advised of its right to consult additional professionals of its choice, including lawyers, engineers, and accountants, regarding any and all known and unknown, foreseen and unforeseen, damages, losses, injuries, costs, losses of services, expenses, liabilities, claims, and the consequences thereof, of whatever kind and nature, which the Party may have or will incur, whether suspected or unsuspected. Each Party further expressly understands and agrees that the signing of this Agreement shall be forever binding and no rescission, modification, or release of a Party from the terms of this Agreement will be made for any mistake of fact that could have been discovered with the exercise of reasonable diligence prior to the execution of this Agreement, or with the mutual agreement of all Parties.

15.24.2. Each Party understands and agrees that it is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and the monetary consideration provided hereunder. Each Party agrees that no other Party has provided representation or advice as to how this consideration is to be characterized or allocated or as to the tax treatment or its tax reporting or payment obligations for the monetary consideration set out herein.

15.24.3. Each Party further warrants that it fully realizes that it may have sustained unknown and unforeseen losses; fees; costs; or expenses and the consequences thereof which may be at this time, heretofore, and hereafter unknown, unrecognized, unawarded, and not contemplated by the Parties, which

resulted or may or will result from Case Nos. 15CW3019, 16CW3015, and 18CW3048, District Court, Water Division 5, and each Parties' representative who executes this Agreement is legally competent to execute this Agreement. Each Party accepts full responsibility and assumes the risk of any mistake of fact or law as to any damages, losses, or injuries, whether disclosed or undisclosed, known or unknown, sustained as a result of Case Nos. 15CW3019, 16CW3015, and 18CW3048.

15.25. Approval by Colorado Springs City Council. If the City of Colorado Springs City Council fails to adopt an ordinance or a resolution approving this Agreement by March 31, 2024, then this Agreement will be void and of no force and effect and all Parties will have all rights and duties that they had prior to execution of the Agreement.

15.26. Approval by Summit County Commissioners. If the Board of County Commissioners of Summit County fails to adopt an ordinance approving this Agreement by March 31, 2024, then this Agreement will be void and of no force and effect and all Parties will have all rights and duties that they had prior to execution of the Agreement.

15.27. Approval by the Town of Breckenridge. If City Council of the Town of Breckenridge fails to adopt an ordinance or resolution approving this Agreement by March 31, 2024, then this Agreement will be void and of no force and effect and all Parties will have all rights and duties that they had prior to execution of the Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth opposite their respective signatures, said Agreement to be effective as of the date of the last signature below.

(Signatures on following pages)

**BOARD OF COUNTY
COMMISSIONERS,
COUNTY OF SUMMIT**

By: _____
Chairman

ATTEST:

By: _____
Summit County Manager

**COLORADO RIVER WATER
CONSERVATION DISTRICT**

By: _____
Kathy Chandler-Henry, President

AND ITS ATTORNEY

By: _____
Peter C. Fleming
General Counsel

**TOWN OF BRECKENRIDGE,
A COLORADO MUNICIPAL CORPORATION**

By: _____
Shannon Haynes, Town Manager

ATTEST:

Helen Cospolich, CMC,
Town Clerk

Approved as to form:

CITY ATTORNEY

COLORADO SPRINGS UTILITIES

By: _____
Travas Deal
Chief Executive Officer

Approved as to form:

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

**GRAND VALLEY WATER USERS
ASSOCIATION**

By: _____
Joseph C. Bernal, Board President

Approved as to form:

By: _____
Kirsten M. Kurath
General Counsel

**ORCHARD MESA IRRIGATION
DISTRICT**

By: _____
Roblee L. Talbott, Board President

Approved as to form:

By: _____
Kirsten M. Kurath
General Counsel

**UTE WATER CONSERVANCY
DISTRICT, ACTING BY AND
THROUGH THE UTE WATER
ACTIVITY ENTERPRISE**

By: _____
Gregory L. Green, Board
President

Attest:

By: _____
Briana L. Board, Board Secretary

Approved as to form:

By: _____
Christopher L. Geiger,
General Counsel

LIST OF EXHIBITS

1. Operating Agreement (paragraph 4.1.5)
2. Proposed Decree 15CW3019 (paragraph 8.1.1)
3. Proposed Decree 18CW3041
4. Proposed Decree 16CW3015 (paragraph 8.2)
5. Motion for Confirmation Decree is in Effect, 03CW320 (paragraph 9.1)
6. CRWCD Standard Water Lease Form (paragraphs 10.5.5, 10.5.7, 10.6.5.1)
7. Application for Change of Water Rights (paragraph 13.1.2)
8. Outline of planned Lower Blue Reservoir Construction Agreement (paragraphs 1.8, 4.1.2, 4.1.3, 4.2,.4.6, 4.8, 8.5.2.2)