

**AGENDA**  
**Wednesday, Jan. 17, 2024**  
**1:00 p.m.**  
Join on your computer or mobile app  
[Click here to join the meeting](#)  
Or call in (audio only)  
[+1 719-733-3651,,72106697#](#)

<b>1:00 p.m.</b>	<b>1. Call to Order</b>	Chair Donelson
<b>1:05 p.m.</b>	<b>2. Invocation and Pledge of Allegiance</b>	Chair Donelson
<b>1:10 p.m.</b>	<b>3. Consent Calendar</b> These items will be acted upon as a whole, unless a specific item is called for discussion by a Board Member or a citizen wishing to address the Utilities Board. (Any items called up for separate consideration shall be acted upon following Compliance Reports.)	Chair Donelson
	<b>3a. Approval of Utilities Board Meeting Minutes: Nov. 15, 2023</b>	
	<b>3b. Resolution to Appoint Members to the Board of the Public Authority for Colorado Energy ("PACE")</b>	
<b>1:15 p.m.</b>	<b>4. Update from the Colorado River Commissioner</b> <a href="#">Informational presentation</a> regarding updates from the Colorado River Commissioner.	Becky Mitchell, Colorado River Commissioner
<b>1:35 p.m.</b>	<b>5. Recognition:</b> 5a. Federal Energy Regulatory Commission (FERC) Dam Inspectors	Bryan Babcock, General Manager of Operations
	5b. 2023 Wack Dam It Golf Tournament in support of Project COPE	Kandy Drake, Public Affairs Specialist
<b>1:55 p.m.</b>	<b>6. Customer Comments</b>	Chair Donelson

- During the customer comment period, comments are accepted for any topic not on the agenda.
- Comments for specific agenda items will be taken following the presentation of the item and the Board's discussion.
- Comments will be limited to three minutes per speaker, per item.
- Following the comments from customers that have signed up to speak, an announcement will be made seeking additional comments and the Board will accept all those wishing to comment.

<b>2:00 p.m.</b>	<b>7. Compliance Reports:</b> I-6 Infrastructure  C-2 Annual Board Evaluation  E-2 CEO Responsibilities <ul style="list-style-type: none"> <li>• Water Outlook</li> <li>• ECA/GCA monitoring</li> </ul>	Travas Deal, Chief Executive Officer
<b>2:20 p.m.</b>	<b>8. Items Called Off Consent Calendar</b>	
<b>2:25 p.m.</b>	<b>9. Long-Term Regional Water Service Agreements</b> <u>Vote</u> to recommend approval of the following regional agreements to City Council: Triview Amendment, Stratmoor Hills Emergency Service and Manitou Springs Water Service. Utilities will renew Bypass Water Agreement with Manitou Springs. Regional water and wastewater agreement must be approved by Utilities Board pursuant to Board Policy I-7 and approved by City Council per City Code sections 7.5.701J and 12.4.304.	Jenny Bishop, Water Resource Planning Engineer
<b>2:45 p.m.</b>	<b>10. Blue River Settlement Negotiations Update</b> <u>Informational presentation</u> regarding the proposed Blue River Settlement Agreement, which requires approval by City Council is per City Code sections 1.2.104 and 1.5.506.	Maria Pastore, Water Resources Management Project Manager
<b>3:05 p.m.</b>	<b>11. Pikes Peak Geospatial Alliance (PPGA) Orthoimagery Project</b> <u>Informational presentation</u> regarding memorandum of understanding (MOU) between Springs Utilities, the City of Colorado Springs, El Paso County, El Paso-Teller E911 Authority, and Teller County for the acquisition of orthorectified imagery for the 2024 Pikes Peak Geospatial Alliance (PPGA) project. The resolution approving the MOU must be approved by City Council pursuant to the terms of the original intergovernmental agreement between the parties.	Mike Herrmann, Asset Management Innovation and Technology Manager & Tim Scheiderer, City Associate Attorney

<b>3:25 p.m.</b>	<b>12. Outside City Wastewater Service Request and Agreement to Annex 7508 Tudor Road</b> <u>Vote</u> whether to recommend approval of extending wastewater service to property outside of City limits if complies with City Code section 12.4.305, subject to City Council approval of an agreement to annex pursuant to City Code section 7.5.701.	Bryan English, Development Projects Manager
<b>3:35 p.m.</b>	<b>13. Black Forest Road Addition No. 2 Right of Way Annexation</b> <u>Vote</u> whether to recommend approval of extending water to Black Forest Road Addition No. 2 right of way if complies with City Code section 12.4.305, subject to City Council approval of an annexation of the property pursuant to City Code section 7.5.701.	Bryan English, Development Projects Manager
<b>3:45 p.m.</b>	<b>14. Resolution Delegating Authority to Chief Executive Officer to Enter into Agreements to Annex for Residential Properties in the Park Vista Enclaves</b> <u>Vote</u> whether to recommend approval of resolution delegating authority to Chief Executive Officer to enter into agreements to annex for residential properties in the Park Vista subdivision. Resolution must be approved by City Code, as it is a delegation of City Council’s authority under City Code sections 7.5.701 and 12.4.305.	Bryan English, Development Projects Manager
<b>4:05 p.m.</b>	<b>15. Proposed Annexation-Related City Code Changes</b> <u>Vote</u> whether to recommend approval of code changes for annexation changes to City Code. Changes to City Code must be approved by City Council pursuant to City Charter section 3-70 and Code sections 1.2.108 and 12.1.104.	Renee Congdon, City Attorney’s Office – Utilities Division Chief
<b>4:35 p.m.</b>	<b>16. Colorado Springs Underground Damage Prevention Safety Program Update</b> <u>Vote</u> whether to recommend approval of code changes for the Underground Damage Prevention Safety Program. Changes to City Code must be approved by City Council pursuant to City Charter section 3-70 and Code sections 1.2.108 and 12.1.104.	Melissa Brown, Energy Regulatory and Compliance Manager
<b>4:55 p.m.</b>	<b>17. Executive Session</b> In accordance with City Charter art. III, § 3-60(d) and its incorporated Colorado Open Meetings Law, C.R.S. § 24-6-402(4)(b) and Utilities Board Bylaws Rules 10(c)(2) the Utilities Board, in Open Session, is to determine whether it will hold a Closed Executive Session on one issue. The issue to be discussed involves conferences with the City Attorney’s Office regarding pending per-and polyfluoroalkyl substances (PFAS) litigation and compliance with reporting requirements.	Renee Congdon, City Attorney’s Office – Utilities Division Chief

The City Attorney's Office, on behalf of the Chair of the Utilities Board, shall poll the Utilities Board members, and, upon consent of two-thirds of the members present, may conduct a Closed Executive Session. In the event any Utilities Board member is participating electronically or telephonically in the Closed Executive Session, each Utilities Board member participating electronically or telephonically in the Closed Executive Session shall affirmatively state for the record that no other member of the public not authorized to participate in the electronic Closed Executive Session is present or able to hear the matters discussed as part of the Closed Executive Session. If consent to the Closed Executive Session is not given, the item may be discussed in Open Session or withdrawn from consideration.

- |                      |                                 |                    |
|----------------------|---------------------------------|--------------------|
| <b>5:35<br/>p.m.</b> | <b>18. Board Member Updates</b> | Board of Directors |
| <b>5:45<br/>p.m.</b> | <b>19. Adjournment</b>          | Chair Donelson     |

**MINUTES**  
**Colorado Springs Utilities Board Meeting**  
**Wednesday, November 15, 2023**

**Utilities Board members present via Microsoft Teams or Blue River Conference Room:**

Chair Dave Donelson, Vice Chair Yolanda Avila, Randy Helms, Nancy Henjum, Lynette Crow-Iverson, Brian Risley, Michelle Talarico and David Leinweber

**Utilities Board Members Excused:** Mike O'Malley

**Staff members present via Microsoft Teams or Blue River Conference Room:**

Chris Robinson, Travas Deal, Renee Adams, Somer Mese, Mike Francolino, Tristan Gearhart, Lisa Barbato, Bethany Schoemer, Jessica Davis and Nicole Means

**City of Colorado Springs staff members present via Microsoft Teams or Blue River Conference Room:**

Renee Congdon, Alex Ryden and Jamie Fabos

**Citizens present via Microsoft Teams or Blue River Conference Room:**

**1. Call to Order**

Chair Donelson called the Utilities Board meeting to order at 1:03 p.m. and Ms. Nicole Means, Utilities Board Administrator, called the roll.

**2. Invocation and Pledge of Allegiance**

Mr. Chris Robinson, Customer Service Supervisor, delivered the invocation, and Chair Donelson led the Pledge of Allegiance.

**3. Consent Calendar**

**Approval of Utilities Board Meeting Minutes: Oct. 18, 2023**

Board Member Helms moved approval of the Consent Calendar and Board Member Talarico seconded the motion. The Consent Calendar was unanimously approved.

**4. Customer Comments**

There were no customer comments.

**5. Compliance Reports**

- I-2 Financial Condition and Activities
- I-1 Pricing of Services

- E-2 CEO Responsibilities
  - Water Outlook
  - ECA/GCA monitoring

Chair Donelson explained that compliance reports are on the agenda by exception and asked if there were any questions. There were no requests to review any compliance reports.

#### **6. Items Called Off Consent Calendar**

There were none.

#### **7. 2024 Board Expected Results Scorecard (ER: 1-3)—Enterprise Scorecard**

Mr. Al Wells, Analyst Senior, reviewed the changes to the proposed 2024 Enterprise Scorecard. Mr. Wells explained the purpose of the Balance Scorecard is to measure the organization's performance in achieving enterprise strategic objectives. The targets are made to be achievable yet challenging. The Colorado Springs Utilities leadership team approved the draft scorecard in October, and the Strategic Planning Committee reviewed the scorecard in their November meeting.

Mr. Tristan Gearhart, Chief Planning and Finance Officer, addressed a question from Board Member Henjum regarding the Industrial Electric-Intensive Customer Bill Front Range Comparison measure.

The Utilities Board contemplated changing performance measure seven under "far exceeds expectation" from greater than 15% lower than the average to greater than 10% lower than the average. Board Member Brian Risley made a motion to modify the metrics for line item seven, Industrial Electric Intensive Customer Bill Front Range Comparison, to be the same as line item 8, Industrial Electric Nationwide Comparison, so the criteria adjust downward.

Board Member Risley made a motion to approve the 2024 Board Expected Results Scorecard with the changes specified by the Utilities Board, and Board Member Leinweber seconded the motion. The Utilities Board unanimously approved the Board Expected Results Enterprise Scorecard with the proposed change to Industrial Electric Intensive Customer Bill Front Range Comparison.

#### **8. 2024 CEO Performance Plan**

Ms. Renee Adams, Chief Human Resources Officer, reviewed the current CEO Performance Plan and a proposal for the 2024 CEO Performance Plan.

The current CEO Performance Plan is composed of three elements: the Balanced Scorecard (40%), Strategic Objectives (10%) and the CEO Leadership Competencies (50%). Ms. Adams went into more detail regarding the specific strategic objectives and leadership competencies for Springs Utilities.

Ms. Adams recommended going back to a previous version of the CEO Performance Plan which weighs the Balanced Scorecard at 50% and CEO Leadership Competencies at 50%. Ms. Adams explained the reason for the change is to reduce redundancy as the Balanced Scorecard already lists and measures the strategic objectives.

Board Member Yolanda Avila made a motion to approve the CEO Performance Plan, and Board Member Helms seconded the motion. The Utilities Board unanimously approved the 2024 CEO Performance Plan.

**9. P-5.4 2023 Committee Accomplishments**

The committee accomplishments were reviewed by the respective committee chairs. Ms. Bethany Schoemer, Strategic Planning and Governance Specialist, summarized the 2023 Finance Committee accomplishments.

Ms. Means played audio of Personnel Committee Chair Avila reviewing the Personnel Committee accomplishments.

Program Management Review Committee Chair Talarico discussed the committee accomplishments and tours.

Strategic Planning Committee Chair Risley reviewed the 2023 committee accomplishments and highlighted the work that was done for the Clean Heat Plan, the Water Integrated Resource Plan and the Water Service Extension Ordinance and Annexations.

**10. P-5.4 2024 Committee Work Plans**

Chair Donelson explained that the committee work plans have already been reviewed by each committee and need approval from the Utilities Board. Board Member Risley discussed specific items in the Strategic Planning Committee Work Plan for 2024 including resource planning for all four services, the UPAC Cost Recovery Mechanisms assignment and annexations to City code to align with best practices.

Board Member Henjum proposed having a joint Strategic Planning Committee and Finance Committee due to overlaps in the committee work plans. Ms. Schoemer discussed the joint Utilities Board and Utilities Policy Advisory Committee meeting scheduled in January.

Board Member Helms made a motion to approve the 2024 committee work plans, and Vice Chair Avila seconded the motion. The Utilities Board unanimously approved the 2024 Committee Work Plans.

**11. A Resolution Authorizing the Acquisition of a Real Property for a Watershed Caretaker Residence Located at 38 Bluestem Way, Fairplay, Colorado**

Ms. Jessica Davis, Land Resource Manager, explained the property acquisition. The acquisition allows Springs Utilities to expand the applicant pool for the Blue River Watershed caretaker position by providing housing for the individual and their family. The caretakers of the Montgomery Reservoir and the Blue River/Montgomery Pipeline must be available 24/7 and live within close proximity to the watershed. Ms. Davis explained the residence is in an HOA with a yearly fee of \$75.

Board Member Helms made a motion to authorize acquisition of the caretaker residence, and Board Member Leinweber seconded the motion. The Utilities Board approved the acquisition of a real property for a watershed caretaker residence located at 38 Bluestem Way to go to City Council on Nov. 28 on consent.

#### **12. A Resolution Authorizing Acquisition of Property Near the Bradley Substation**

Ms. Davis described the property acquisition near the Bradley Substation. Springs Utilities is using a right of first refusal to purchase the property. Springs Utilities will not be purchasing the community solar garden that operates on the property but will lease the land to a third party that operates the solar garden.

Board Member Talarico made a motion to authorize the acquisition of the property near the Bradley Substation, and Board Member Risley seconded the motion. The Utilities Board approved the acquisition of property near the Bradley Substation to go to City Council on Dec. 12 on consent.

#### **13. Board Member Updates**

Board Member Helms gave a brief update regarding the fiber installation in northern Colorado Springs.

Board Member Henjum discussed the tour to Sand Creek Lift Station.

Vice Chair Avila shared about the 2024 Employee Climate Survey and the need to get field employees involved in the survey.

Board Member Risley discussed annexation changes to City code and asked to bring the changes to the board in January 2024.

Board Member Talarico expressed gratitude for Ms. Somer Mese, Chief Operations Officer, for attending a meeting with her and hearing her constituent's concerns.

#### **14. Summary of Board Actions**

The Utilities Board unanimously approved the Board Expected Results Enterprise Scorecard with the proposed change to Industrial Electric Intensive Customer Bill Front Range Comparison.

The Utilities Board unanimously approved the 2024 CEO Performance Plan.



The Utilities Board unanimously approved the 2024 Committee Work Plans.

The Utilities Board approved the acquisition of a real property for a watershed caretaker residence located at 38 Bluestem Way to go to City Council on Nov. 28 on consent.

The Utilities Board approved the acquisition of property near the Bradley Substation to go to City Council on Dec. 12 on consent.

**15. Adjournment**

The meeting adjourned at 2:20 p.m.

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024  
**To:** Utilities Board  
**From:** Travas Deal, Chief Executive Officer  
**Subject:** Resolution to Appoint Members to the Board of the Public Authority for Colorado Energy ("PACE")

### NARRATIVE:

**Desired Action:** Approval

**Executive Summary:** The Public Authority for Colorado Energy ("PACE") Board of Directors requires three members.

The PACE Board of Directors have made the following nominations:

1. Somer Meese to replace Travas Deal as President
2. Lisa Barbato to replace Joe Awad as Vice President

All nominations require approval by the Colorado Springs Utilities Board of Directors.

**Benefits:** These changes realign participation to job function in response to recent promotions and staffing changes.

**Board Policy:** N/A

**Cost/Budget:** N/A

**Affected Parties:** N/A

**Alternatives:** The Utilities Board may choose to not accept these nominations. If that were to occur, the current PACE Board could choose to maintain its current form or propose new candidates.

<b>Submitter:</b> Adam S. Hegstrom	<b>Email address:</b> AHegstrom@csu.org
<b>Division/ Department:</b> Planning and Finance Division	<b>Phone number:</b> 719-668-8530
	<b>Date submitted:</b> 01/02/2024

<b>SPG Staff Use Only:</b> Consent Calendar	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No <b>X</b>	<b>ITEM NO. 3</b>
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Colorado Springs Utilities  
*It's how we're all connected*

# Resolution to Appoint Members to the Board of the Public Authority for Colorado Energy ("PACE")

Adam S. Hegstrom  
Manager, Treasury and Finance  
January 17, 2024

# Public Authority for Colorado Energy

- Public Authority for Colorado Energy (“PACE”) is a separate legal entity governed and operated solely by Colorado Springs Utilities
- Created in 2008 to transact and execute a natural gas prepay transaction
  - Issued \$653 million dollars in bonds to pre-purchase natural gas at substantial discounts for ratepayers.
  - 30 years in duration
  - Contracted volumes of ~20% of forecasted natural gas supply needs
  - Results in just under \$1.00/MMBtu discount for said volumes
  - Cumulative savings to customers from 2008-2023: ~\$70 million

# Board of Directors

- PACE bylaws require three members sit on its Board
  - Current President – Travas Deal (Chief Operations Officer)
  - Current Vice President – Joe Awad (General Manager, Planning and Engineering)
  - Current Secretary/Treasurer – Adam Hegstrom (Treasury and Finance Manager)
  
- The PACE Board of Directors nominates the following candidates for PACE Board appointment
  - President – Somer Meese (Chief Operations Officer)
  - Vice President – Lisa Barbato (Chief Systems Planning and Projects Officer)

# Proposed Resolutions

1. The PACE Board of Directors nominates Somer Meese (Chief Operations Officer) to replace Travas Deal as President
2. The PACE Board of Directors nominates Lisa Barbato (Chief Systems Planning and Projects Officer) to replace Joe Awad as Vice President

RESOLUTION NO. 24-01

A RESOLUTION OF COLORADO SPRINGS UTILITIES BOARD  
APPOINTING SOMER MESE AND LISA BARBATO TO THE  
PUBLIC AUTHORITY FOR COLORADO ENERGY BOARD OF  
DIRECTORS

WHEREAS, the City Council of the City of Colorado Springs, Colorado (“City Council”) previously authorized the establishment of the Public Authority for Colorado Energy (“PACE”) as part of City Ordinance No. 07-165; and

WHEREAS, pursuant to the Amended and Restated Bylaws of PACE (the “PACE Bylaws”), all members of the PACE Board of Directors (“PACE Board”) are to be appointed by the Utilities Board of Directors (“Utilities Board”) through an affirmative vote of at least five (5) members of the Utilities Board; and

WHEREAS, the PACE Board is currently composed of three members, all Colorado Springs Utilities employees, who were appointed to the PACE Board by the Utilities Board; and

WHEREAS, the Utilities Board has the authority under the PACE Bylaws and desires to change the makeup of the PACE Board.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF COLORADO SPRINGS UTILITIES:**

Section 1. The Colorado Springs Utilities Board of Directors hereby removes Travas Deal and Joe Awad from the PACE Board and replaces them with Somer Mese, Chief Operating Officer of Colorado Springs Utilities, and Lisa Barbato, Chief System Planning and Projects Officer of Colorado Springs Utilities.

Section 2. This Resolution has been approved by at least five (5) members of the Utilities Board and shall take effect immediately.

DATED at Colorado Springs, Colorado, this 17th day of January, 2024.

\_\_\_\_\_  
Dave Donelson, Chair

ATTEST:

\_\_\_\_\_  
Travas Deal, Secretary

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024  
**To:** Utilities Board  
**From:** Travas Deal, Chief Executive Officer  
**Subject:** Update from the Colorado River Commissioner

### NARRATIVE:

**Desired Action:** Information

**Executive Summary:** Ms. Becky Mitchell, the State of Colorado Commissioner to the Upper Colorado River Commission is presenting on her commitment to negotiating sustainable operations at Lake Powell and Lake Mead with the Basin States, Federal Government and Tribal Nations. She will highlight the priorities for the Post-2026 Operational Guidelines and solutions to sustainably manage both reservoirs in the face of climate change and ongoing Lower Basin overuse.

**Benefits:** Understanding Colorado River issues and challenges.

**Board Policy:** N/A

**Cost/Budget:** N/A

**Affected Parties:** State of Colorado, Upper Basin States and Lower Basin States.

**Alternatives:** N/A

**Submitter:** Kim Gortz

**Email address:** kgortz@csu.org

**Division/** Water Resources Management

**Phone number:** (719) 668-8030

**Department:**

**Date submitted:** 12/18/2023

**SPG Staff Use Only:** Consent Calendar

Yes

No **X**

**ITEM NO. 4**



# *Colorado Springs Utilities Board Presentation*

# Colorado River Updates

**Rebecca Mitchell**

Colorado River Commissioner



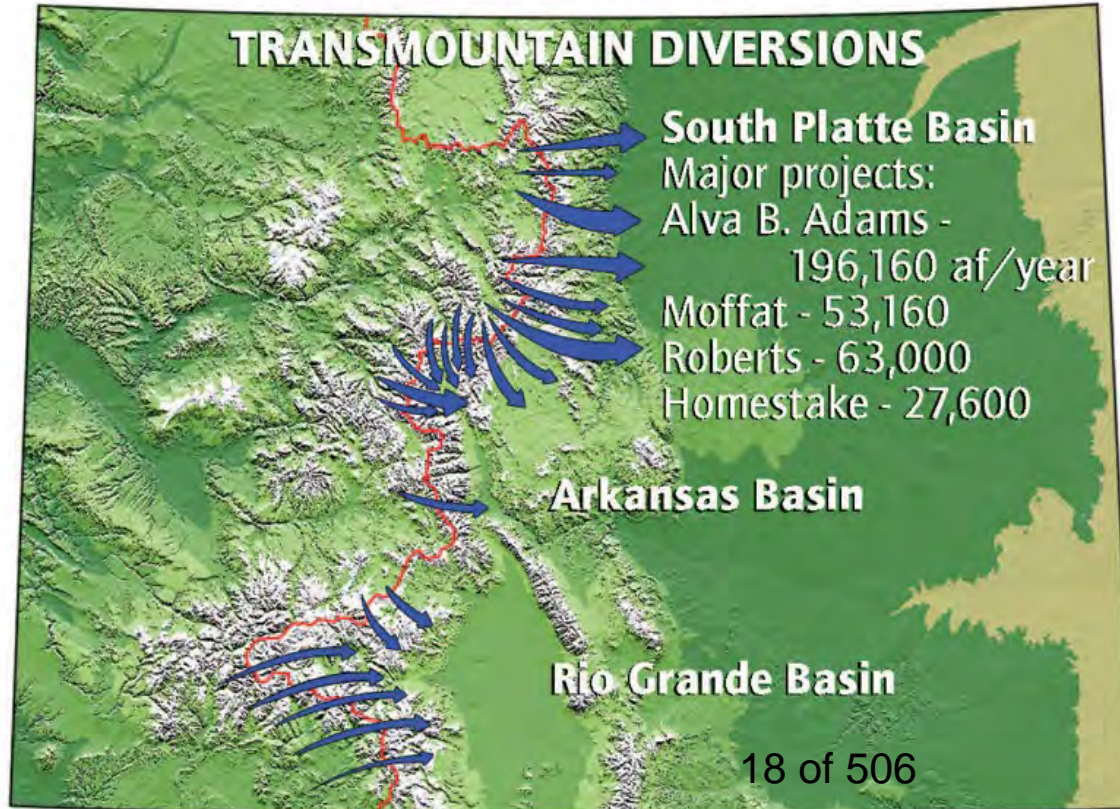
**COLORADO**

Colorado Water  
Conservation Board

Department of Natural Resources

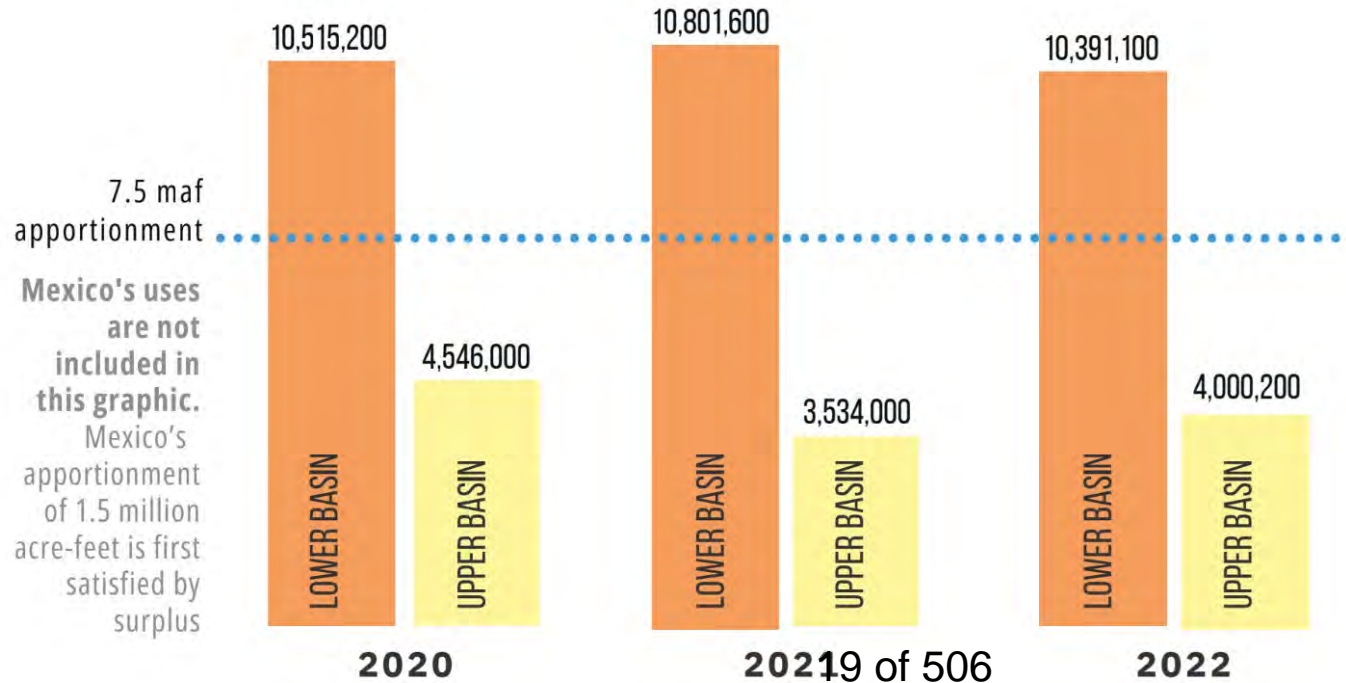


# Colorado's River



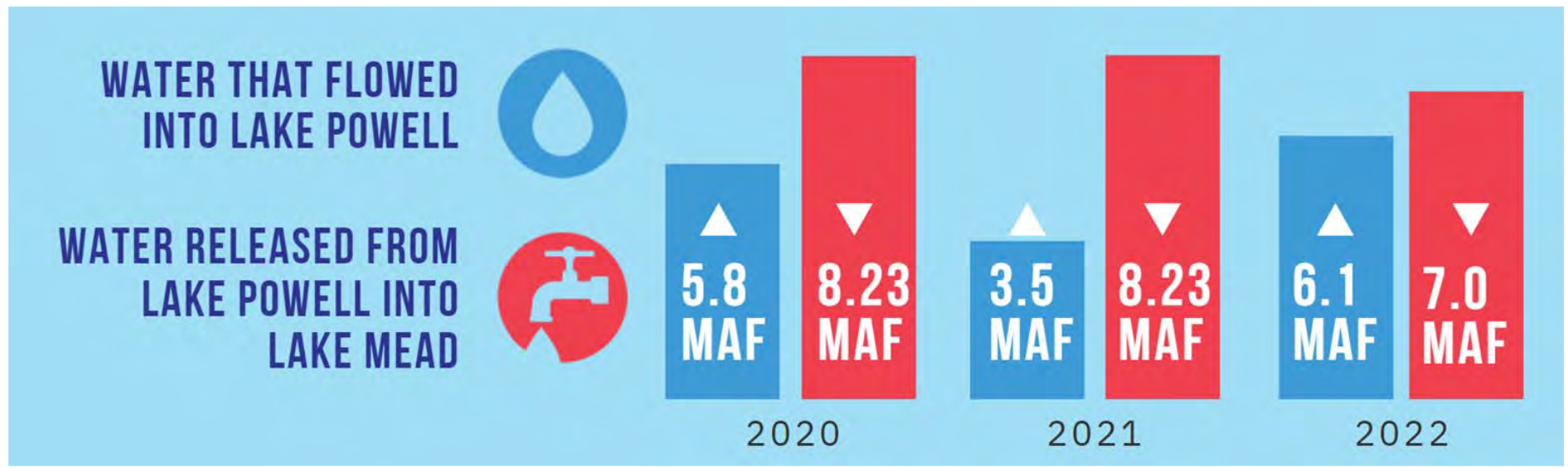


# Colorado River Uses





# Mass Balance Problem





# Upper Basin 5 Point Plan

- June 2022: Reclamation called for 2 to 4 million acre-feet in conservation
- Upper Basin developed 5 Point Plan:
  - System Conservation Pilot Program (SCPP)
  - Demand Management Feasibility Investigation
  - Drought Response Operations Agreement (DROA)
  - BIL funding for measurement & monitoring infrastructure
  - Continue strict administration according to priority

## *Principles for Post-2026 Negotiations*

- Acknowledging that climate change is real.
- Recognizing that water users in the Lower Basin are not more important than water users in the Upper Basin.
- Preventing overuse in the Lower Basin.
- Defending against attempts at Compact curtailment in the Upper Division States.

## *Principles for Post-2026 Negotiations*

- Operating Lake Powell and Lake Mead to respond to hydrology and available water supplies.
- Preserving federal reserved water rights for Tribal Nations.
- Complying with federal environmental law.
- Advancing coordination between the United States and Mexico.



**COLORADO**

Colorado Water  
Conservation Board

Department of Natural Resources

## COMMISSIONER'S CORNER

Regular Colorado River Updates



# Stay Informed

- Commissioner's Corner
- State staff
  - [DNR\\_ColoradoRiver@state.co.us](mailto:DNR_ColoradoRiver@state.co.us)
  - [Amy.Ostdiek@state.co.us](mailto:Amy.Ostdiek@state.co.us)



**COLORADO**

Colorado Water  
Conservation Board

Department of Natural Resources



# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024  
**To:** Utilities Board  
**From:** Travas Deal, Chief Executive Officer  
**Subject:** Federal Energy Regulatory Commission (FERC) Dam Inspectors

### NARRATIVE:

**Desired Action:** Recognition

**Executive Summary:** Following a comprehensive Dam Safety Program review, the Federal Energy Regulatory Commission has issued two separate inspection findings without any recommendations or follow-up. These inspections are very thorough to ensure the safety of our community and inspections typically result in findings or comments that require changes to safety programs. Our dedicated employees take the responsibility for safe operation and maintenance of all 25 of our dams and our inspection results reflect their efforts.

**Benefits:** N/A

**Board Policy:** N/A

**Cost/Budget:** N/A

**Affected Parties:** N/A

**Alternatives:** N/A

<b>Submitter:</b> Bill Sturtevant	<b>Email address:</b> bsturtevant@csu.org
<b>Division/ Department:</b> SFO – System and Field Operations	<b>Phone number:</b> 719-668-4591
	<b>Date submitted:</b> 12/21/2023

**SPG Staff Use Only:** Consent Calendar

Yes

No **X**

**ITEM NO. 5**

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024  
**To:** Utilities Board  
**From:** Travas Deal, Chief Executive Officer  
**Subject:** 2023 Whack Dam It Golf Tournament in support of Project COPE

**NARRATIVE:**

**Desired Action:** Recognition

**Executive Summary:** The Water Construction and Maintenance Department hosted the ninth annual Whack Dam It Golf Tournament on September 8, 2023. The tournament started in 2013 as an after-hours team building event. Since 2015, the tournament has dedicated all proceeds to Colorado Springs Utilities' customer assistance program, Project COPE (Citizen's Option to Provide Energy).

The September 8, 2023, event was sold out and yielded a record-breaking contribution to Project COPE in the amount of \$23,000. This donation will be fully matched by Colorado Springs Utilities.

In total, this group of amazing employees have raised \$87,000 (\$175,000 with the match) in support of Project COPE. We look forward to the 10-year anniversary event on September 13, 2024.

The Whack Dam It golf committee will present a check to Colorado Springs Utilities Foundation for Project COPE.

**Benefits:** Support for Project COPE – utilities assistance for struggling customers.

**Board Policy:** N/A

**Cost/Budget:** N/A

**Affected Parties:** N/A

**Alternatives:** N/A

<b>Submitter:</b> Kandy Drake	<b>Email address:</b> kdrake@csu.org
<b>Division/ Department:</b> Community Relations Public Affairs	<b>Phone number:</b> 719-668-3836
	<b>Date submitted:</b> 12/21/2023

<b>SPG Staff Use Only:</b> Consent Calendar	Yes		No	<b>X</b>	<b>ITEM NO. 5</b>
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Colorado Springs Utilities  
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# 2023 9<sup>th</sup> Annual Whack Dam-It Golf Tournament

## Supporting Project COPE

# Banner Year \$23,000 Raised



**Date:** January 17, 2024

**To:** Utilities Board

**From:** Travas Deal, Chief Executive Officer

**Subject:** **Excellence in Governance Compliance Report Infrastructure (I-6)**

**Desired Action:** Monitoring

**Compliance:** The CEO reports compliance with the instructions.

INSTRUCTIONS			
Category:	<b>Utilities Board Instructions to the Chief Executive Officer</b>	Reporting Timeframe:	<b>June 1, 2023 – November 30, 2023</b>
Policy Title (Number):	<b>Infrastructure (I-6)</b>	Reviewing Committee:	<b>Strategic Planning</b>
Monitoring Type:	<b>Internal</b>		
Monitoring Frequency:	<b>Semi-Annual</b>		
Guidelines:	<b>Urban Planning Area Utility Infrastructure Master Plan (G-12)</b>		

**The Chief Executive Officer shall direct that annual, five-year and 20-year infrastructure plans are developed for each utility service. Accordingly, the CEO shall:**

- 1. Use a reasonable planning period to meet obligation to serve requirements for current and future customers.*

Colorado Springs Utilities' Integrated Resource Plans (IRPs) determine generation and resource needs for planning horizons of 20-years and longer. Springs Utilities is currently developing a land use and demand model for growth within existing and future service territories. This model looks at both short-term and long-range horizons with input from financial forecasts. Additionally, Springs Utilities evaluates extra-territorial obligations including military and other municipalities. The output from the IRPs feed into the system plans that determine both resource and infrastructure needs to serve demand growth with a 5-to-10-year horizon.

Customer needs, operational needs, and regulatory requirements specific to each service and system drive plans with a variety of planning horizons and update frequencies for each plan. The Annual Operating and Financial Plan (AOFPP) allocates resources to fund the work required to accomplish strategic initiatives and meet organizational strategic objectives.

- 2. Base plans on operational and regulatory requirements to provide safety, system reliability, and security.*

Colorado Springs Utilities manages all resource and infrastructure planning based on accepted professional and industry practices, regulatory requirements, and prudent planning requirements by developing a system plan for each service. The plan's holistic evaluation includes findings and recommendations from integrated resource plans, facility plans, and program plans. These documents are evaluated on a regular basis based upon dynamic conditions including actual asset service life, changes in operational condition, failure information, regulatory drivers, opportunities for safety improvements, growth, and maintenance data to ensure systems are meeting reliability and level of service metrics.

While the models that inform the system plans are updated as often as daily, full revisions to the system plans are made annually for the electric system, every 3-years for the gas system, and every 5-years for the water and wastewater systems to reflect changes in the planning landscape. System plans, facility plans, program plans, and risk modeling are utilized to identify capital project needs which are then incorporated into the Capital Improvement Plan (CIP). Currently, the organization is focused on managing a 10-year CIP with a focus on reliability, regulatory compliance, and growth.

- 3. Maintain an organization-wide long-range infrastructure plan that considers the annual impact to the typical customer bill, maintains strong financial metrics, and sequences infrastructure projects to the extent operationally and financially practical.*

Long-range plans have a minimum of 20-years for a planning horizon and address organizational, operational, and financial requirements to maintain a competitive position in each of the Board's strategic focus areas of rates, reliability, and relationships. Projects will be sequenced to moderate the impact on the total four-service bill and maintain infrastructure reliability across all four services.

- 4. Plan for replacement of aging infrastructure, information and operational technology upgrades, utility relocations for public works and road projects, life extension of existing systems and services to approved contract customers.*

The Annual Operating Financial Plan (AOFPP) funds programs and projects for the renewal and replacement of aging infrastructure and the life extension of systems and services. These programs and projects are based upon risk models that evaluate both probability and consequence of failure for project prioritization. Probability of failure is evaluated based upon age and site conditions that may drive deterioration. Projects are designed and constructed in coordination with key stakeholders including customers and the City of Colorado Springs. Informational and technology upgrades are also addressed in the Annual Operating and Financial Plan as well as the 10-year CIP.

- 5. Coordinate infrastructure planning with the Municipal Government's Strategic Plan, Comprehensive Plan and Annexation Policy and other governmental agency plans.*

Colorado Springs Utilities coordinates planning efforts in conjunction with the Municipal Government's Strategic Plan, Comprehensive Plan, Annexation Policy as well as other governmental agency plans.

Additionally, Colorado Springs Utilities representatives participate throughout the Municipal Government's land development review process to ensure coordination of activities, compliance with regulations, and pursuit of opportunities to improve the delivery of services.

Staff actively supports the Municipal Government's Annexation Steering Committee, the Municipal Governments' Land Development Technical Committee, Special District Committee, Rapid Response Team, and other committees related to utility infrastructure standards. Staff coordinates and supports community development activities to provide expedited response levels to stakeholders and economic development prospects.

In addition to coordinating with the Municipal Government, staff also works with the Housing and Building Association of Colorado Springs (HBA), Affiliated Commercial Construction Association (ACCA), the Pikes Peak Regional Building Department (PPRBD), and other development community stakeholders to identify and implement improvements to the land development review process and Line Extension and Service Standards (LESS).

Colorado Springs Utilities engaged with the City during the drafting of revised land use requirements. Many of the revisions were adopted by City Code in 2022. Springs Utilities LESS have been updated to address these changes including impacts from greater density development.

Springs Utilities is currently working with the City to develop the City's Annexation Plan. The plan includes guidelines for utility considerations when evaluating annexation requests, including financial impact, resource availability, infrastructure requirements and property rights. Springs Utilities and the City are working collaboratively to develop a land use planning model to assist Colorado Springs Utilities in resource and utility planning.

#### **G-12 Guideline: Urban Planning Area Utility Infrastructure Master Plan**

- 1. Develop and maintain an Urban Planning Area Utility Infrastructure Master Plan which identifies objectives, strategies, and principles for urban planning area redevelopment.*
- 2. The Master Plan will align with Colorado Springs Utilities' Strategic Plan, Integrated Resource Plans, PlanCOS and other City master plans.*

The Urban Planning Area Utility Infrastructure Master Plan team analyzed future population and utility load growth in areas with existing utility infrastructure and a high potential of redevelopment. The analysis identified the need to upgrade aging electric, gas, water and wastewater infrastructure in key areas of the City to improve the reliability and capacity of utility systems to support future growth. Project boundaries have been identified and are included in risk models for prioritization of renewal and replacement of aging infrastructure.

**Date:** January 17, 2024

**To:** Utilities Board

**From:** Travas Deal, Chief Executive Officer

**Subject:** **Excellence in Governance Compliance Report  
Utilities Board Annual Evaluation (C-2)**

**Desired Action:** Monitoring

**Compliance:** The CEO reports compliance with the instructions.

INSTRUCTIONS			
Category:	<b>Utilities Board Commitments to Excellence Governance</b>	Reporting Timeframe:	<b>January 1, 2023 – December 31, 2023</b>
Policy Title (Number):	<b>Utilities Board Annual Evaluation (C-2)</b>	Reviewing Committee:	<b>Strategic Planning</b>
Monitoring Type:	<b>Internal</b>		
Monitoring Frequency:	<b>Annual</b>		
Guidelines:	<b>Utilities Board Annual Evaluation (G-1)</b>		

**The Chief Executive Officer shall ensure that an annual Utilities Board Evaluation occurs in accordance with policy C-2:**

*The Utilities Board establishes governance performance metrics to evaluate the Board's performance and to initiate improvement opportunities annually.*

**G-1 Guideline: Utilities Board Evaluation**

1. Annually, Utilities Board members evaluate the work of the Board and provide feedback to the Utilities Board Chair.
2. The approved evaluation feedback form includes accomplishments, plans for improvement and comments on what to start, what to stop, what should continue, and lessons learned.

**Policy C-2 and G-1 Guideline Compliance Response**

- Per policy and guideline, an evaluation form has been previously provided to each Board member for completion. The Utilities Board performed a self-evaluation during the month of January.
- Additionally, the leadership of Colorado Springs Utilities provided an evaluation of the Utilities Board.
- Evaluation results will be provided at the Board Meeting.





Colorado Springs Utilities  
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# Water Outlook

Katie Garrett, P.E.

Water Resource Engineer, Water Resource Planning

January 17, 2024

# Local Weather Conditions as of December 31, 2023

## Precipitation (Inches of Moisture)

- December 2023 – 0.57 in. (248% of normal)
- 2023 YTD Total – 25.45 in. (160% of normal)

## Average Temperature (Degrees F)

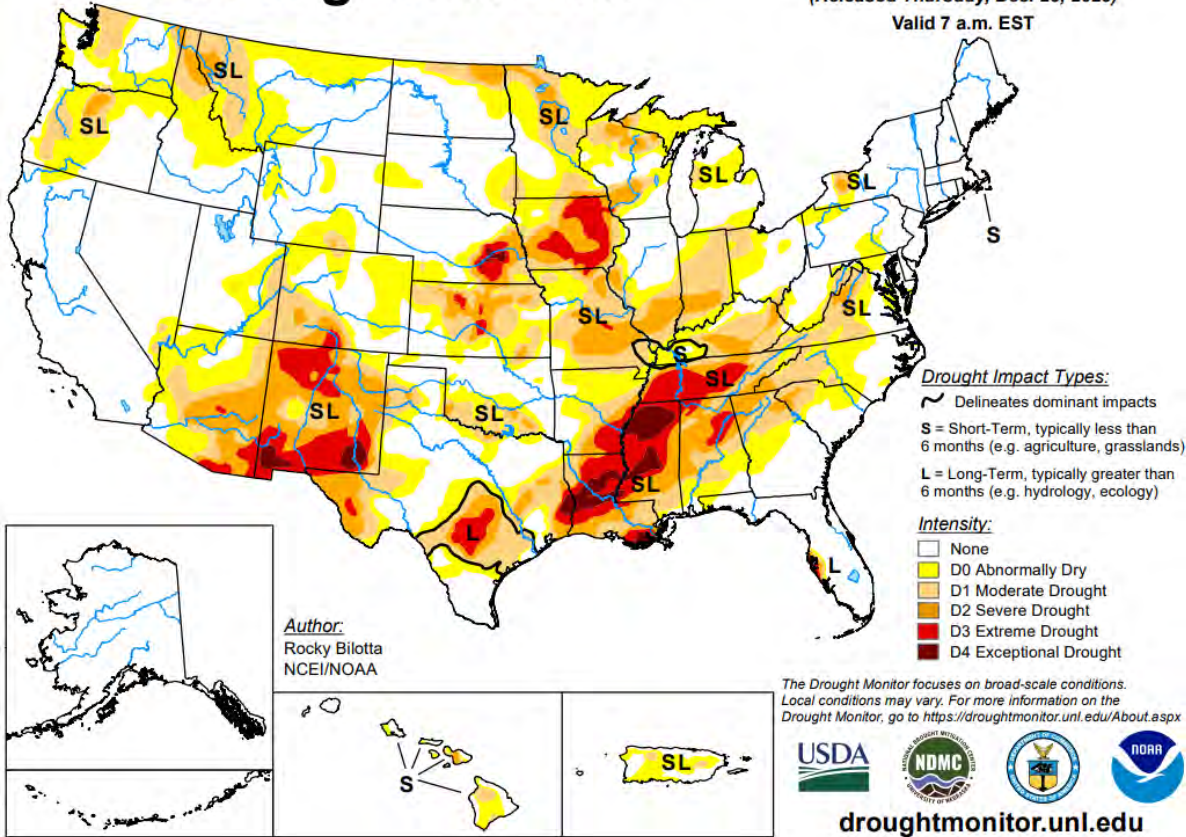
- December 2023 – 37.4 Deg. (5.7 deg. above normal)
- 2023 YTD Average – 51.1 Deg. (0.6 deg. above normal)



# DROUGHT MONITOR

## U.S. Drought Monitor

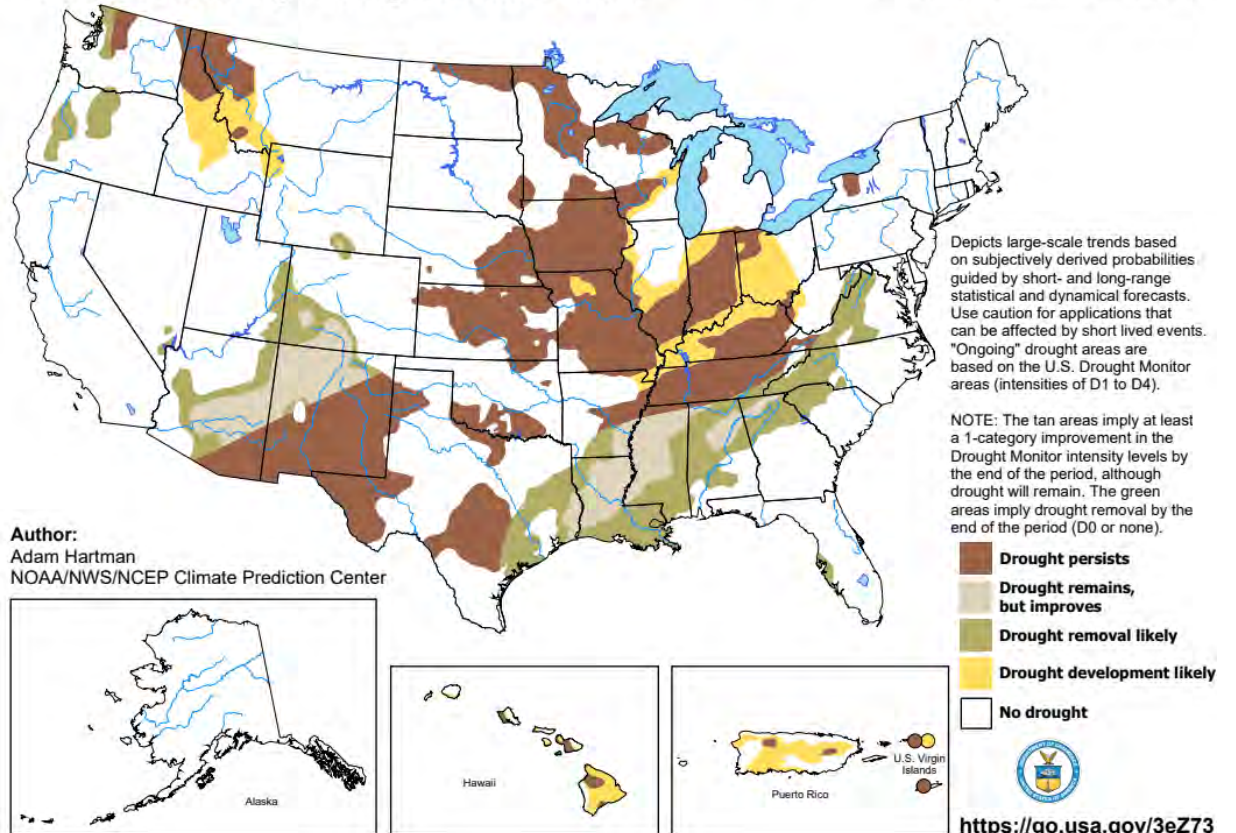
December 26, 2023  
 (Released Thursday, Dec. 28, 2023)  
 Valid 7 a.m. EST



## U.S. Seasonal Drought Outlook

### Drought Tendency During the Valid Period

Valid for December 21, 2023 - March 31, 2024  
 Released December 21, 2023



# DROUGHT MONITOR

# COLORADO

Map released: Thurs. December 28, 2023

Data valid: December 26, 2023 at 7 a.m. EST

## Intensity

- None
- D0 (Abnormally Dry)
- D1 (Moderate Drought)
- D2 (Severe Drought)
- D3 (Extreme Drought)
- D4 (Exceptional Drought)
- No Data

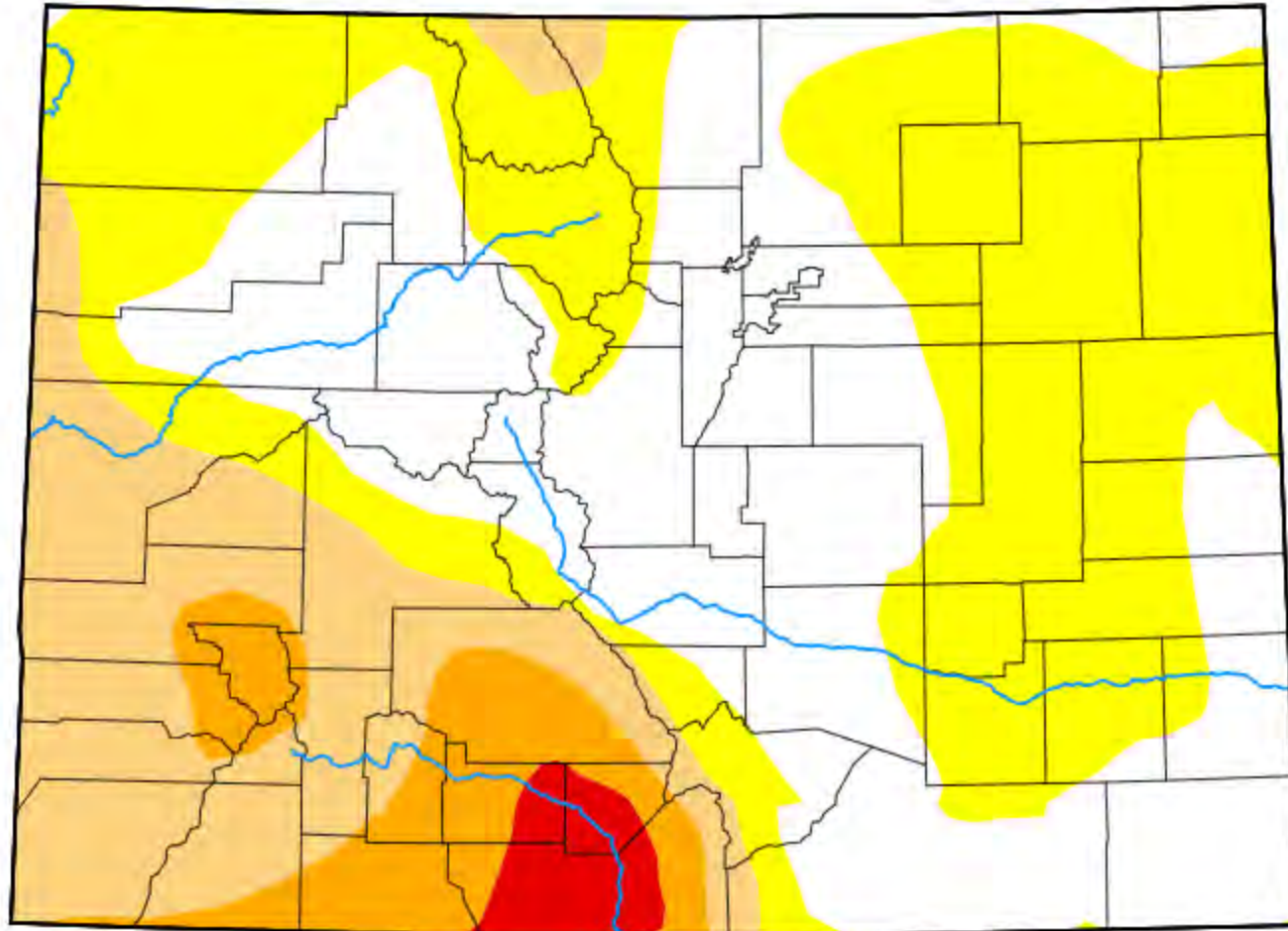
## Authors

United States and Puerto Rico Author(s):

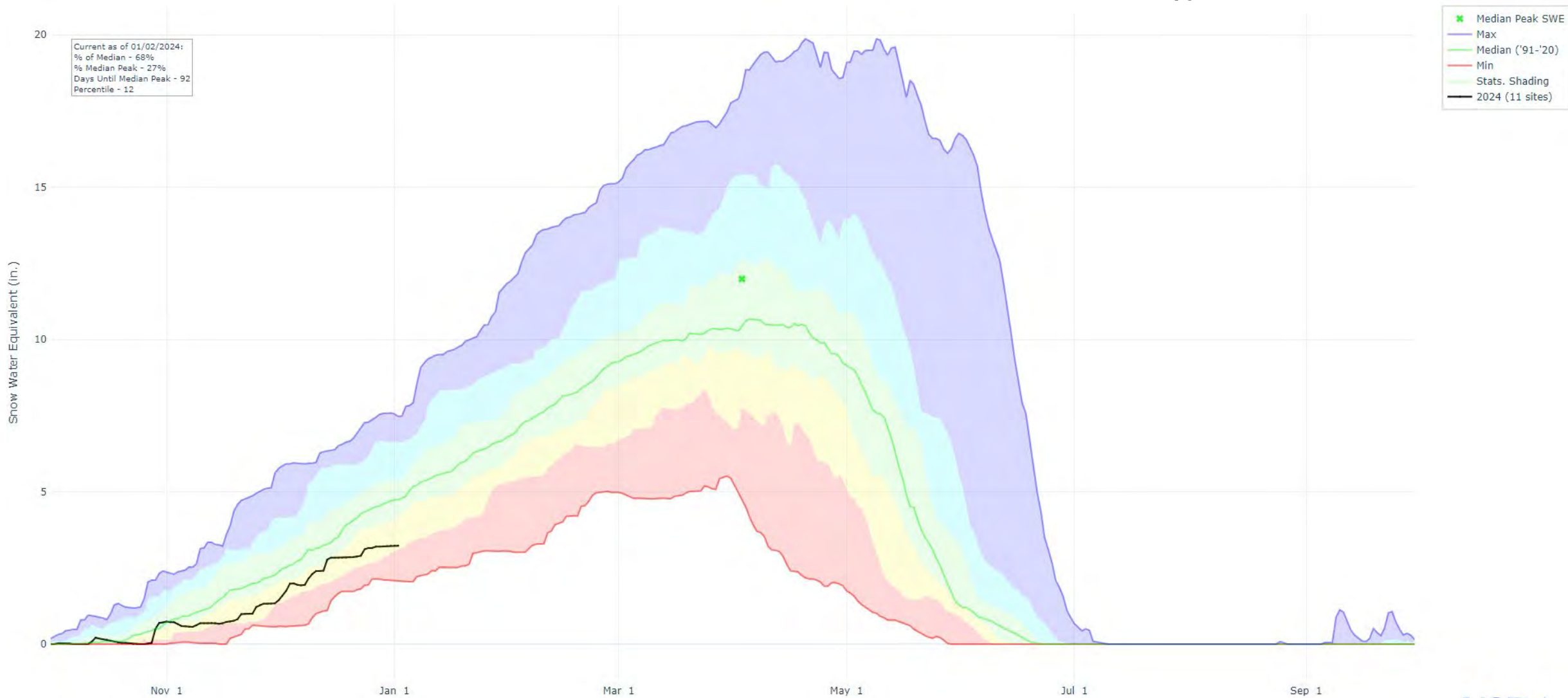
[Rocky Bilotta](#), NOAA/NCEI

Pacific Islands and Virgin Islands Author(s):

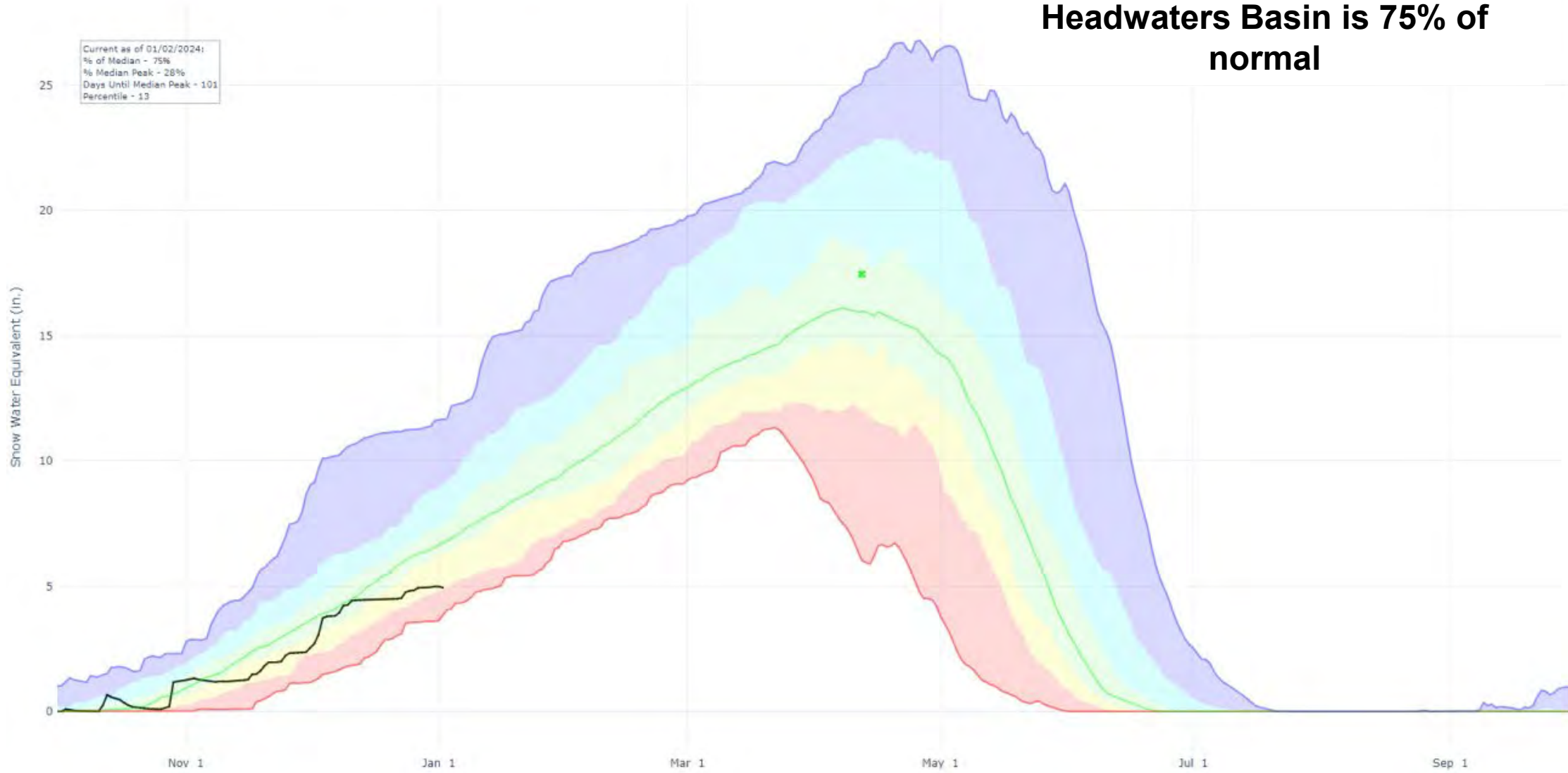
[Richard Heim](#), NOAA/NCEI

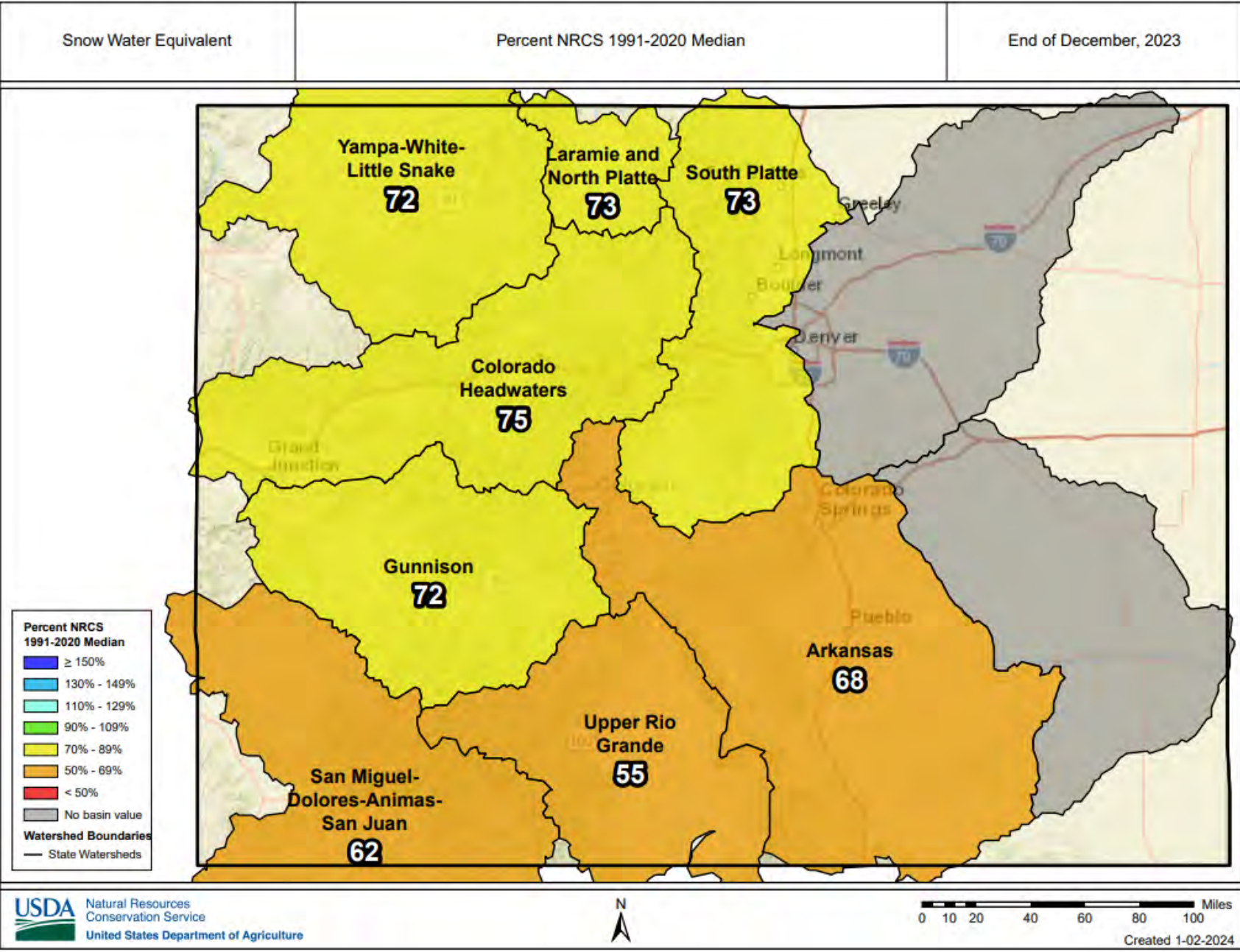


# Snowpack in the Arkansas River Basin is 68% of normal



# Snowpack in the Colorado River Headwaters Basin is 75% of normal





# 2023 Demands

## December

- Averaged 38.9 MGD
- 12.0% less than December 2022

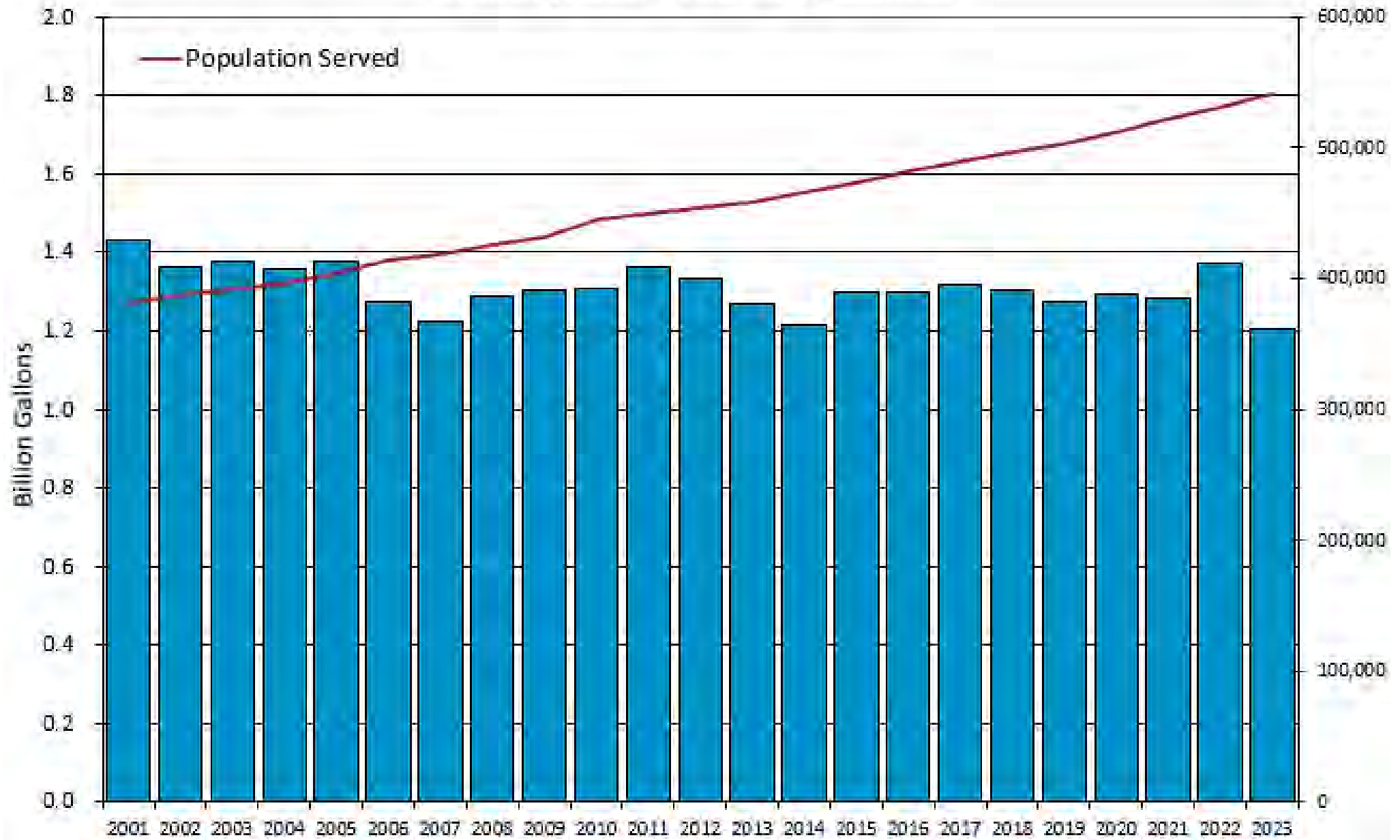
## 2023 Year to Date

- Averaging 58.5 MGD, 21.4 BG total
  - 9.4% less than 2022
  - 2.2 Billion Gallons less than 2022

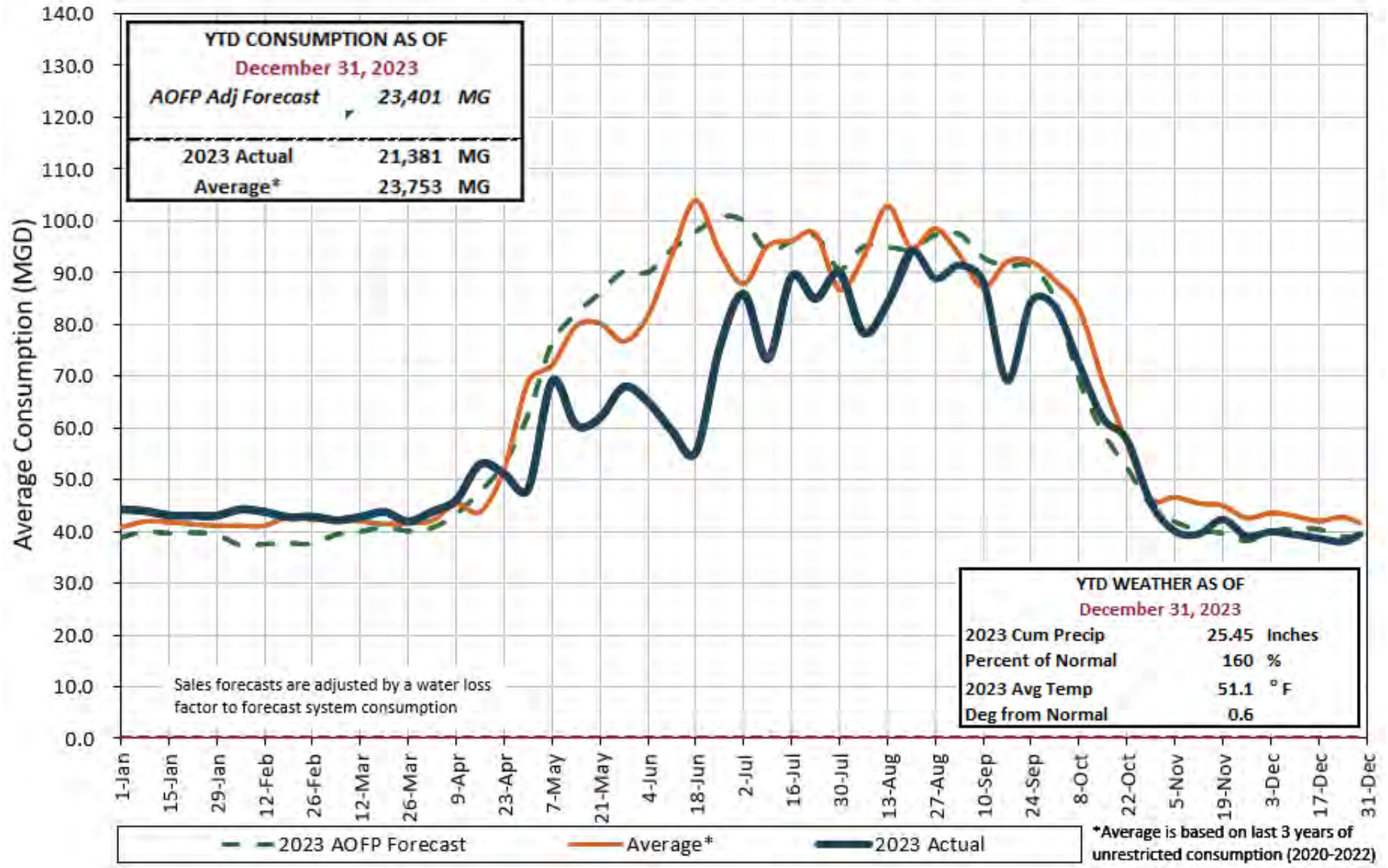




# Monthly Water Use for December



## 2023 Actual Consumption (Weekly Data)



# Reservoir Levels

December 31, 2023

- Pikes Peak 66 %
  - 91-20 Avg. 63 %
- Rampart 80 %
  - 91-20 Avg. 72 %
- Local Total 74 %
  - 91-20 Avg. 68 %
- System Total 85 %
  - 91-20 Avg. 73 %

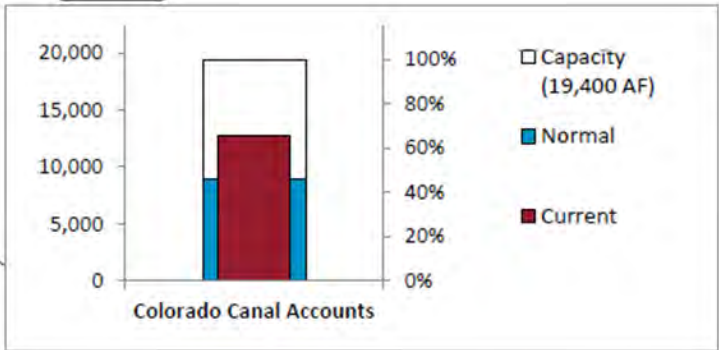
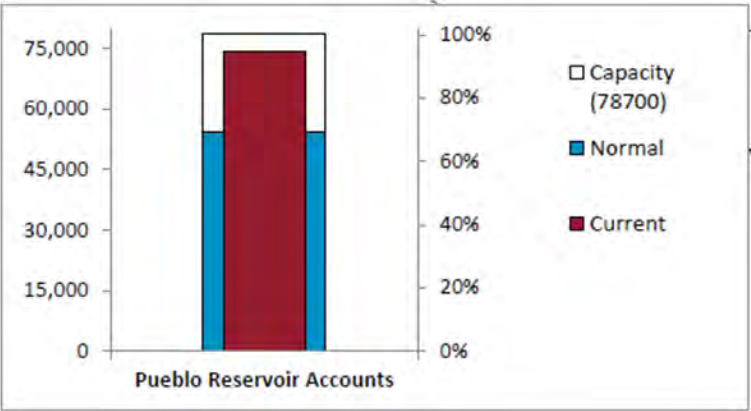
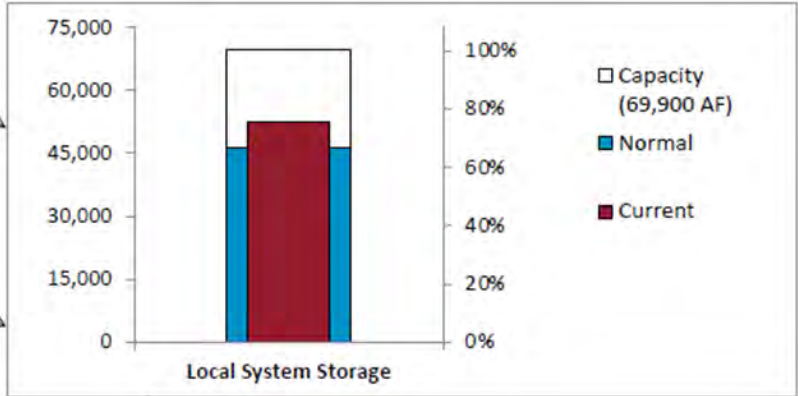
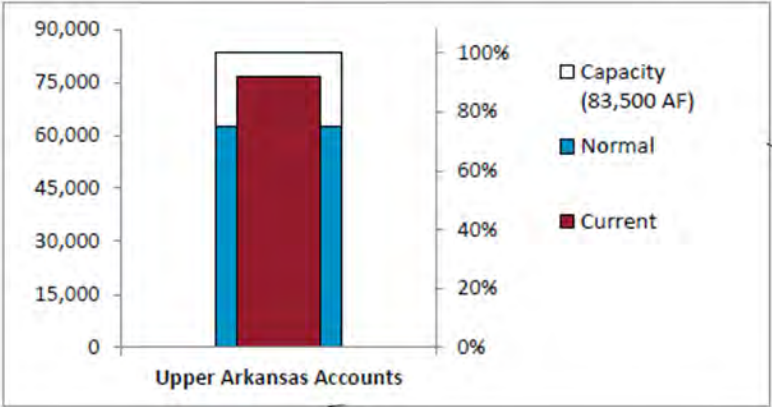
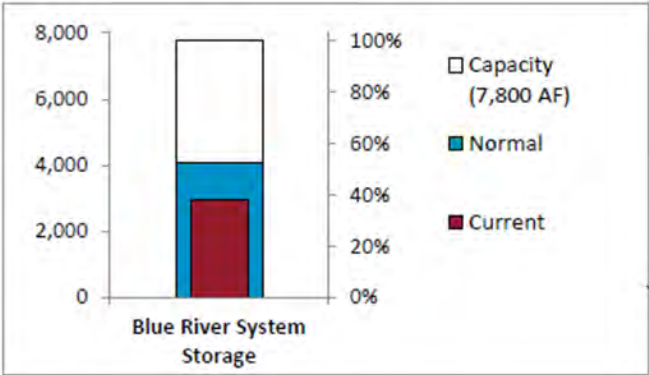


**Colorado Springs' System Wide Storage:**

**December 31, 2023 : 219,600 af**  
**84.7 %**

**2001-2022 avg : 176,400 af**  
**68.0 %**

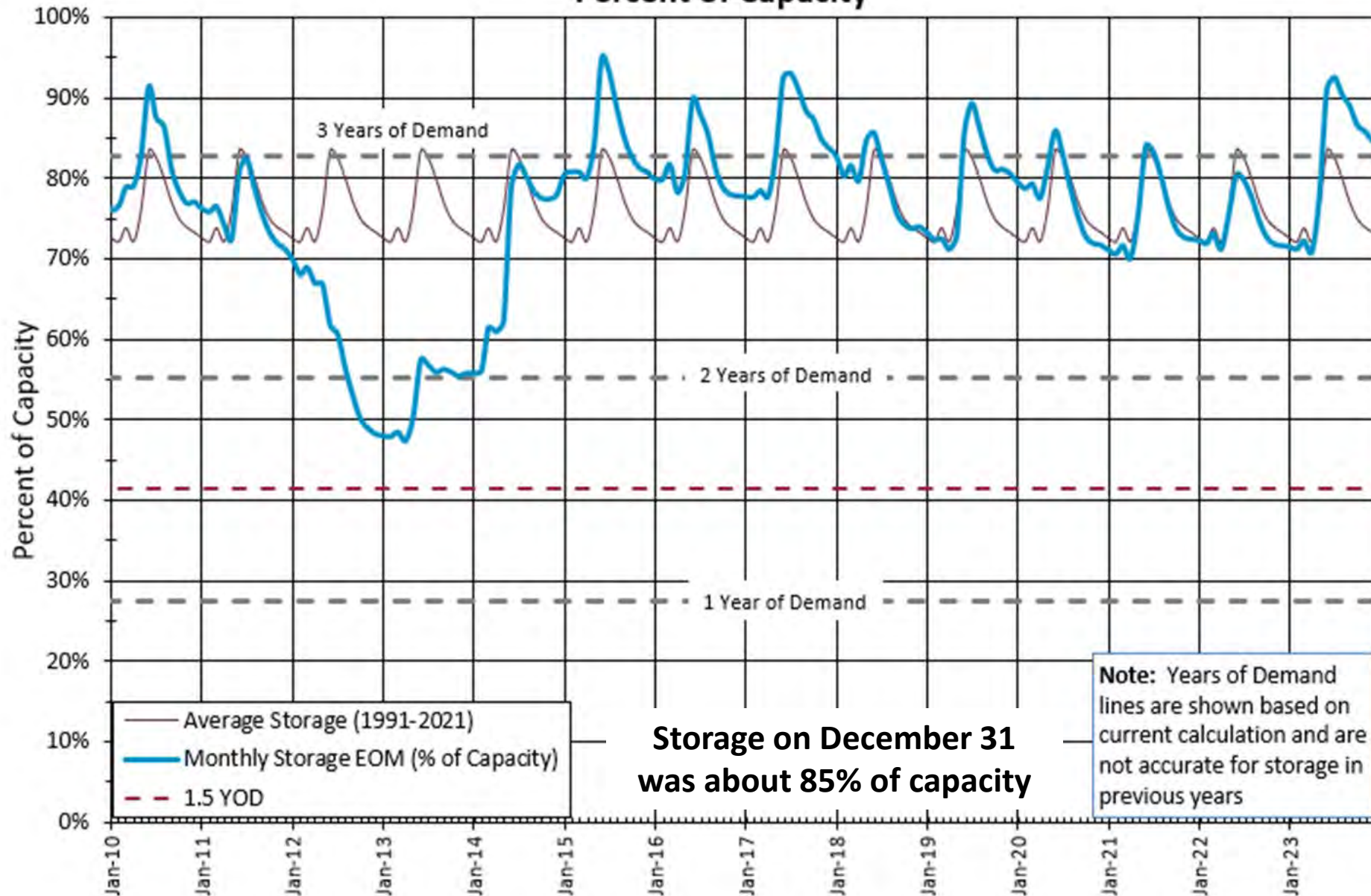
**Average YTD Demand : 58.5 MGD**



MAX. 20 MGD

MAX. 68 MGD

# Monthly Storage Percent of Capacity



# Water Outlook

- Situation Outlook Summary
  - System-wide storage is at 84.7% of capacity, about 16.7% above our long-term average
  - About 3.1 years of demand in storage, based on the past 3 years of demand
  - Have 250 days of demand in local storage
- Three-month outlook predicts
  - Equal chances for above-average and below-average temperatures across all of Colorado
  - Higher chances for above-average precipitation across all of Colorado
- We continue to monitor snowpack, demand and storage to maximize available water supply

# Operational Notes

## Storage Conditions

- South Catamount Reservoir capacity remains restricted for planned dam maintenance this fall
- South Slope system pipeline to Tollefson WTP has been removed from service until spring of 2024 for normal winter operations

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024  
**To:** Utilities Board  
**From:** Travas Deal, Chief Executive Officer  
**Subject:** Long-Term Regional Water Service Agreements

### NARRATIVE:

**Desired Action:** Approval

**Executive Summary:** Utilities staff will be informing the Utilities Board about four water service agreements. The Memorandum of Understanding with the City of Manitou Springs is an operational agreement and does not require Utilities Board approval. Should Utilities Board approve of the other agreements, they will go to City Council for approval at the February 13 Regular City Council meeting.

- Triview Metropolitan District – Addendum to Long-Term Convey, Treat, and Deliver Regional Water Service Agreement. Proposed language to clarify the limitations on Triview deliveries.
- Stratmoor Hills Water District – Long-Term Standby Convey, Treat, and Deliver Regional Water Service Agreement. A new Standby Service agreement that would allow Stratmoor Hills to convey its own water to the district in the event Stratmoor Hills' water system is disrupted.
- City of Manitou Springs – Renewal of Agreement to Deliver or Exchange Fryingpan-Arkansas Project Water.
- City of Manitou Springs – Renewal of Memorandum of Understanding to Bypass flow down Ruxton Creek.

**Benefits:** These long-term (25-year) regional water services agreements will be consistent with current regional policy and regional tariffs and will provide a positive revenue benefit to Springs Utilities customers.

**Board Policy:** I-7, Water Supply Management

**Cost/Budget:** Gross revenue under the proposed Regional Water Services Agreements will be approximately \$1.68 million dollars per year once Triview Metropolitan District is receiving water deliveries.

**Affected Parties:** Colorado Springs Utilities, Triview Metropolitan District, Stratmoor Hills Water District, and the City of Manitou Springs.

**Alternatives:** N/A

<b>Submitter:</b> Jenny Bishop	<b>Email address:</b> jbishop@csu.org
<b>Division/ Department:</b> System Planning & Projects / Water Resource Planning	<b>Phone number:</b> 719-668-8575
	<b>Date submitted:</b> 1/2/2024

**SPG Staff Use Only:** Consent Calendar

Yes

No

**ITEM NO. 9**





Colorado Springs Utilities  
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# Long-Term Regional Water Service Agreements

January 17, 2024 Utilities Board Meeting

Jenny Bishop, P.E.

Water Resource Planning

# Agenda

1. Background Regional Service Contracts
2. Triview Metropolitan District
3. Stratmoor Hills Water District
4. City of Manitou Springs
5. Next Steps

# Board Policy I-7

- Adopted in 2018
- Requires regional service contracts to provide a net benefit to Utilities and its ratepayers, appropriately balancing costs and risks, and recognizing historic and planned investments.
  - Requires a premium on rates above what in-city customers pay.
  - Reflected in Regional Service Tariffs.
- Requires an evaluation of impacts to system reliability, level of service, and resource availability based on a 10-year planning horizon.
  - Allows Springs Utilities to require mitigation and impose terms that offset impacts and risks.
- Cannot exceed a 25-year term.

# Agreement Terms and Conditions

- 25-year terms
- Convey, Treat, and Deliver contracts
  - We are delivering water owned by the individual entities
- Utilities may amend or renegotiate the agreement if:
  - Delivery requests exceed limits in agreements
  - A different type of service is needed
- Entity responsible for any external permit approvals
- Utilities may interrupt service if needed
- No negative impact to Utilities

# Regional Water Service Financials

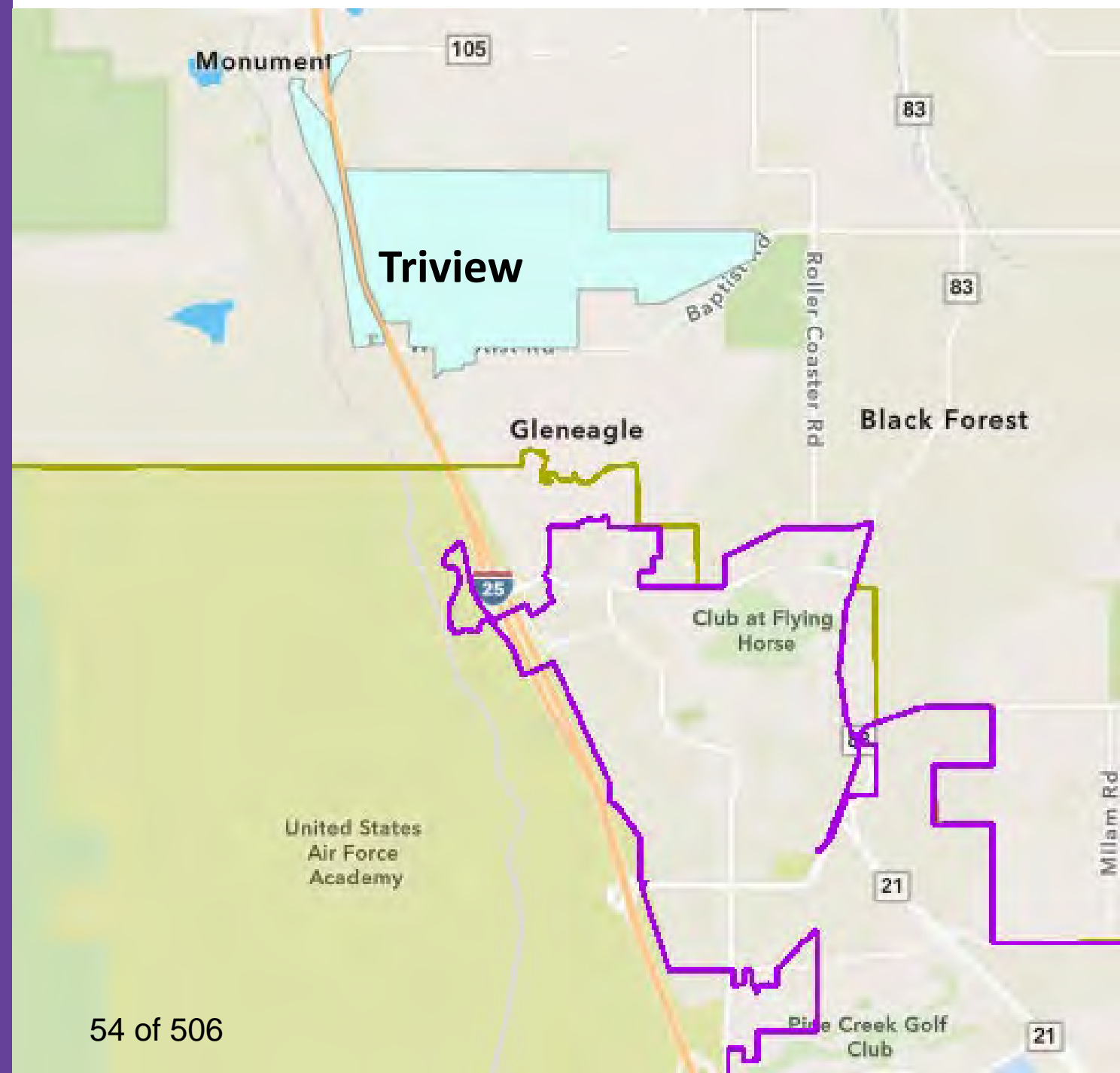
## Consistent with Regional Tariffs and Utilities Rules and Regulations (URRs)

- System Availability Fee (WRSFAF)
  - Consistent with URRs and agreements
  - Set for term of contract
- 2024 Convey, Treat, and Deliver Commodity Charge
  - \$0.0622 per cubic foot
  - \$2,709.43 per acre foot
  - Changes consistent with Tariff Rate Cases

**Approximately \$1.68 Million in revenue each year once Triview begins receiving deliveries**

# Triview Metropolitan District

- Located north of Colorado Springs
- Approximately 2,150 customers
- Clarification of language in existing agreement

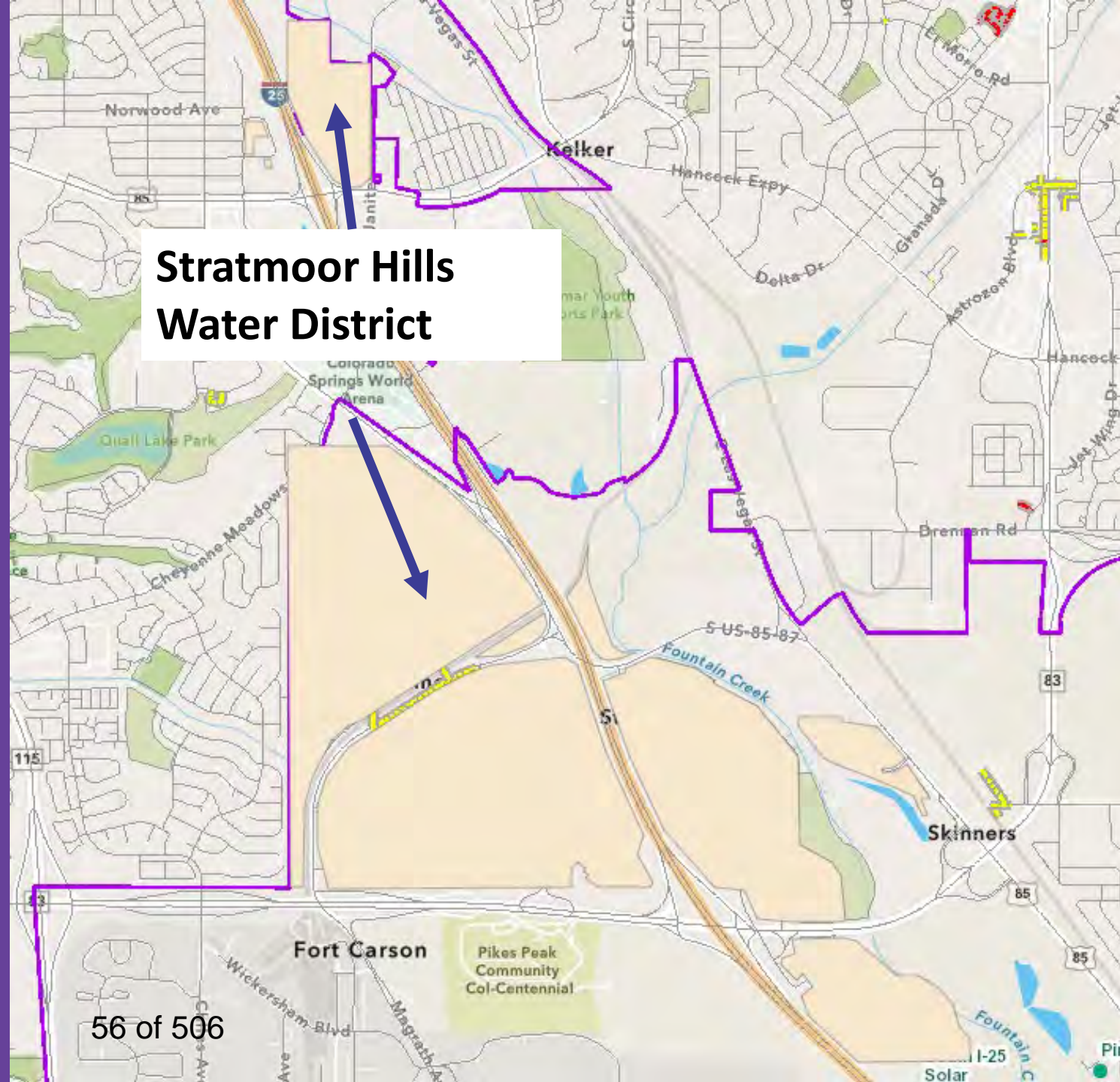


# Convey, Treat, and Deliver Regional Water Agreement

- Addendum clarifies language about Triview delivery limitations
  - Allows conveyance through Triview to others
  - Allows for Triview's service territory boundary to change
- Delivery outside of the current service territory boundary must be approved by Pueblo County and Bureau of Reclamation
- Estimated Revenue per preliminary demands at 400 AF/year
  - WRSUF = \$564,393
  - Commodity Charge = \$1,083,772
  - **Total = \$1,648,165**

# Stratmoor Hills Water District

- Located generally in southwestern Colorado Springs
- Approximately 2,000 customers
- Springs Utilities has provided Fountain Valley Authority backup service since 1983



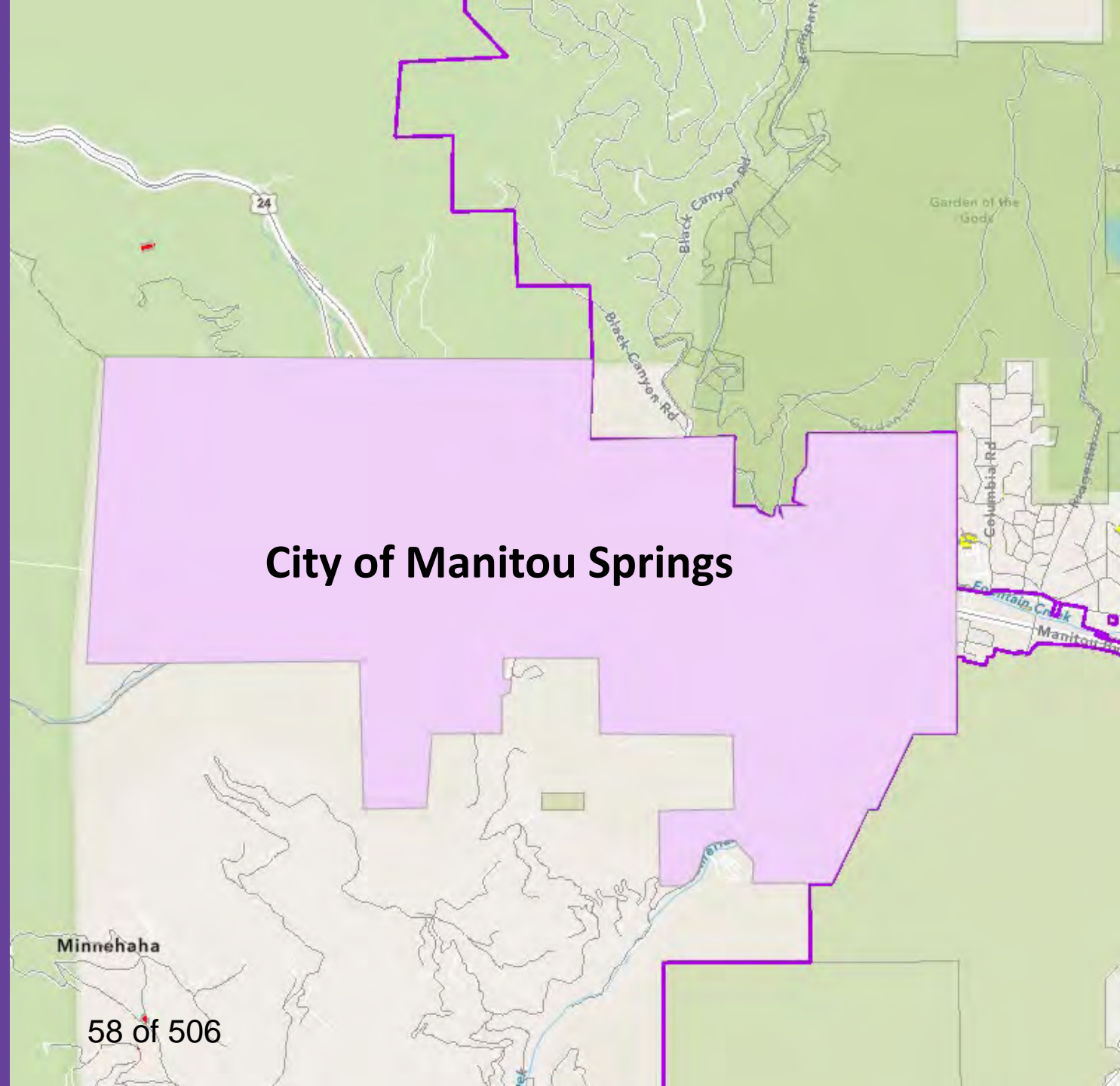


# Standby Regional Water Agreement

- Convey, treat, and deliver water owned or controlled by Stratmoor Hills
- Up to 175 acre-feet of deliveries per year
- Existing connection to be upgraded to current standards
- Intended to be used on a temporary, as-needed basis
- Estimated Revenue based on WRSUF
  - WRSUF = \$22,400
  - Commodity Charge = Based on any water deliveries made

# City of Manitou Springs

- Located west of Colorado Springs
- Approximately 2,165 customers
- Renew existing water agreements



# Agreement Renewals

- Agreement to deliver or exchange Fryingpan-Arkansas Project water
  - Directly deliver untreated water from North Slope System
  - Replaced via exchange
  - Existing Agreement has been in place since 2005
- Agreement to bypass flows down Ruxton Creek
  - Allows for bypass at the Manitou Intake of up to 0.25 cubic feet per second
  - Existing Agreement has been in place since 2004
- Estimated Revenue
  - 3-year annual average = \$10,750

# Next Steps

Submit agreements for consideration by City Council

1. Addendum to Long-Term Convey, Treat, and Deliver Water Service Agreement with Triview Metropolitan District
2. Long-Term Standby Convey, Treat, and Deliver Standby Water Service Agreement with Stratmoor Hills Water District
3. Renew Raw Water Delivery Agreement with Manitou Springs

Utilities will renew Bypass Water Agreement with Manitou Springs

**ADDENDUM TO AGREEMENT BETWEEN COLORADO SPRINGS UTILITIES AND  
TRIVIEW METROPOLITAN DISTRICT FOR  
CONVEY, TREAT, AND DELIVER REGIONAL WATER SERVICE**

THIS **ADDENDUM**, herein after the “Addendum,” is made and entered into by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called “UTILITIES,” and Triview Metropolitan District, hereinafter called the “DISTRICT.”

**RECITALS**

- A. UTILITIES and DISTRICT entered in to a Convey, Treat and Deliver Regional Water Service Agreement dated April 12, 2023 (“Agreement”).
- B. Article III.F of the Agreement limits DISTRICT’S use of water delivered under the Agreement to: (1) serve properties located within DISTRICT’s existing service area; (2) the current residential, commercial, industrial and contract customers of DISTRICT; and (3) the Forest Lakes Metropolitan District (“FLMD”).
- C. DISTRICT has requested that UTILITIES agree to amend Article III.F of the Agreement to allow DISTRICT to use the water delivered under the Agreement to serve (1) properties that are added to DISTRICT’s Service Area in the future; (2) new residential, commercial and industrial customers located within DISTRICT’s Service Area; (3) certain properties located outside of DISTRICT’S Service Area; and (4) the Town of Monument in addition to FLMD.
- D. UTILITIES is willing and able to amend Article III.F of the Agreement as requested by DISTRICT.

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

1. ARTICLE III.F is hereby replaced in its entirety with the following:

**F. Use of Water:** The DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside the Arkansas River Basin. DISTRICT further irrevocably commits not to serve water delivered under this Agreement to property located outside of the natural

drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River Basin. DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside DISTRICT's Service Area as of the date of this Agreement except that DISTRICT may provide water delivered by this Agreement to properties included within its Service Area in the future, the properties located outside of DISTRICT'S Service Area identified by the El Paso County Assessor as Parcel Nos. 6100000517; 6203000001; and 6200000724 pursuant to water supply contracts between DISTRICT and the property owners, and/or wheel water delivered under this Agreement to FLMD, and to the Town of Monument provided that DISTRICT obtains written agreement from UTILITIES, Reclamation, SECWCD, and Pueblo County, and makes any amendments to its Pueblo County 1041 Permit as may be required by Pueblo County to allow for such service. Neither FLMD nor the Town of Monument are beneficiaries of this Agreement, except as they may receive water service from DISTRICT. In addition, so long as marijuana is an illegal substance under Federal Law, DISTRICT shall not use, or allow its customers to use, the water provided under this agreement, directly or indirectly, to support the cultivation or distribution of marijuana.

2. In the event of a conflict between the Agreement and the Addendum, the terms and conditions of the Addendum shall prevail.
3. Except to the extent as amended hereby, all other terms of the Agreement shall remain the same and are hereby ratified and affirmed by the parties.
4. This Addendum may be executed in counterparts, each of which, or any combination of which, when signed by the Parties shall be deemed an original, but all of which when taken together shall constitute one agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the \_\_\_ day of \_\_\_\_\_ 2024.

[Signatures on Following Page]

COLORADO SPRINGS UTILITIES

TRIVIEW METROPOLITAN DISTRICT

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

Travas Deal  
Chief Executive Officer

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

Mark Melville  
District President

APPROVED AS TO FORM:

\_\_\_\_\_

Michael Gustafson  
City Attorney's Office – Utilities Division

DRAFT

**AGREEMENT BETWEEN COLORADO SPRINGS UTILITIES AND  
STRATMOOR HILLS WATER DISTRICT FOR  
STANDBY REGIONAL WATER SERVICE**

**THIS AGREEMENT** (“Agreement”), beginning [insert date of last signature here], is made and entered into by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called “UTILITIES,” and the Stratmoor Hills Water District, 1811 B Street, Colorado Springs, Colorado, acting through its water activity enterprise hereinafter called the “DISTRICT.” Both the UTILITIES and DISTRICT hereinafter are each individually referred to as “Party” and collectively referred to as the “Parties.”

**I. RECITALS**

- A. DISTRICT, is a Colorado statutory water district with service boundaries located just south of Colorado Springs, north of Fort Carson, and west of Security, was formed October 16, 1956, and currently serves a customer base of approximately 2,000 taps in the Colorado Springs metropolitan area;
- B. DISTRICT is a participant in the Fountain Valley Authority (“FVA”) and has been included within the Southeastern Colorado Water Conservancy District (“SECWCD”);
- C. As an FVA participant, DISTRICT is entitled to deliveries of Frying-Pan Arkansas Project water allocated to the Fountain Valley Conduit by SECWCD (“FVA Water”) utilizing FVA’s water conveyance and treatment system (“FVA Distribution System”);
- D. The FVA Water allocated to DISTRICT is supplemented with other water supplies that are delivered to DISTRICT through infrastructure other than the FVA Distribution System (“Non-FVA Distribution System”);
- E. Under a 1983 Agreement, UTILITIES is obligated to provide water service to DISTRICT in the event FVA’s Distribution System is not in operation;
- F. To facilitate the water service under the 1983 Agreement, a connection between UTILITIES’ Water System and DISTRICT’s Water System was constructed (“FVA Standby Connection”).
- G. DISTRICT is rehabilitating the FVA Standby Connection to be in compliance with current UTILITIES’ Water Line Extension and Service Standards;



- H. In the event FVA is operating, DISTRICT desires to have the ability to receive standby water service for the delivery of DISTRICT Water, or from time to time UTILITIES Full Service Water, conveyed through UTILITIES' water system to the FVA Standby Connection to meet the water demands of the DISTRICT if there are disruptions to the DISTRICT's Non-FVA Water Distribution System operations;
- I. UTILITIES has sufficient system capacity, and may, from time to time, have available water supply to provide Standby Regional Water Service to the DISTRICT at the FVA Standby Connection;
- J. Pursuant to Section 6-50 (Water Rights) of Article VI (Utilities) of the Charter of the City of Colorado Springs, as amended, the City of Colorado Springs has the authority to buy, exchange, augment, lease, own, and control water and water rights; and
- K. UTILITIES has entered into this Agreement pursuant to Section 12.4.304 (Service: Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended (Ord. 10-76).

## II. DEFINITIONS

- A. For the purposes of this Agreement, the following terms shall have the following meanings, unless the context clearly requires otherwise. Terms not otherwise defined herein shall have the meaning adopted in the latest amendment to the City Code of Colorado Springs Colorado 2001, as amended ("City Code"):
  - 1. **Consecutive System:** The Code of Colorado Regulations defines a Consecutive System as a Public Water System that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more Consecutive Systems pursuant to a separate agreement between all involved parties.
  - 2. **DISTRICT's Service Area:** The areas as identified as DISTRICT's Service Area on Exhibit A.
  - 3. **DISTRICT's Water Distribution System:** Any devices, facilities, structures, equipment or works owned and/or operated by DISTRICT for the purpose of

- providing water service to DISTRICT's customers located within DISTRICT's Service Area.
4. **DISTRICT Water:** Fully consumable water owned or leased by DISTRICT that can legally be used for municipal purposes within DISTRICTS' water service area.
  5. **Full Service:** Water service as defined in UTILITIES' Water Rate Schedule – Contract Service -Regional (WCR) Full Service Option.
  6. **Full Service Water:** Fully consumable water owned or controlled by the City of Colorado Springs that can legally be used for municipal purposes within DISTRICT's Service Area.
  7. **Monument/Fountain Creek Transit Loss Model (“Model”):** The daily accounting model currently used by the Division of Water Resources to determine transit loss and water allocations along Monument and Fountain Creeks. Model shall also apply to any successor model(s) used by the Division of Water Resources for the same purposes.
  8. **Point of Connection:** The master meter and associated infrastructure that constitute the FVA Standby Connection which is located at 309 Loomis Avenue, Colorado Springs, Colorado.
  9. **Public Water System:** The Code of Colorado Regulations defines a Public Water System as a system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least fifteen service connections or regularly serves an average of at least 25 individuals daily at least 60 days per year.
  10. **Tariffs:** UTILITIES' Water Rate Schedules together with Utilities Rules and Regulations.
  11. **Standby Regional Water Service:** Water service as defined in UTILITIES' Water Rate Schedule – Contract Service -Regional (WCR) Standby Service Option whereby UTILITIES' infrastructure is used on a temporary basis when DISTRICT normal operations are disrupted. Standby Service may not be used as a primary means of meeting DISTRICT's water supply demand. Service may be interrupted from time to time.

12. **UTILITIES' Water System:** UTILITIES' Water System includes any devices, facilities, structures, equipment or works owned by UTILITIES for the purpose of providing regional water service to DISTRICT's Water Distribution System.
13. **UTILITIES' Wastewater Treatment System:** UTILITIES' Wastewater Treatment System includes any devices, facilities, structures, equipment or works owned by UTILITIES for the purpose of collection and treating wastewater.
14. **WLESS:** UTILITIES' Water Line Extension and Service Standards, as may be amended or replaced.
15. **Wastewater Collection System:** Any devices, facilities, structures, equipment or works owned by the Stratmoor Hills Sanitation District for the purpose of collection, storage, and transmission of wastewater from DISTRICT's customers to UTILITIES' Wastewater Treatment System.
16. **Water Regional System Availability Fee (WRSAP):** A fee assessed for each new connection to UTILITIES' supply system by contract outside the corporate limits of the City in areas where UTILITIES' water system is available for use by UTILITIES to serve institutions, plants, organized water districts, municipal corporations, or other similar organizations and only with prior approval by the Colorado Springs City Council.
  - a. The WRSAP reflects the amount of capacity needed within UTILITIES' water system to meet the obligations of regional water contracts and is generally based on the meter size needed to deliver contracted volumes of water.
  - b. Standby Regional Water Service WRSAP is calculated based on the maximum daily delivery rate in million gallons per day as well as the maximum delivery volume in acre-feet per year.
  - c. Any entity that paid a WRSAP or an analogous charge through a contract in place prior to the implementation will be credited for the amount paid for the analogous charge. If the entity met its full contractual WRSAP or equivalent, it is deemed to have met its WRSAP and will not be charged an additional WRSAP.

### **III. AGREEMENT FOR SERVICE**

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

**A. Term:** This Agreement shall become effective upon the date of the last signature below and remains in effect until 5 pm MST on December 31, 2049.

**1. Renewal:**

- a. No later than eighteen (18) months prior to the expiration of the Term, the Parties shall begin good faith negotiations on a new agreement for UTILITIES' provision of Standby Convey, Treat, and Deliver Regional Water Service to DISTRICT, with the expectation that such new agreement ("New Agreement") shall be substantially similar to this Agreement. The Parties acknowledge that the intent of the Agreement is for the Parties to enter into such successive New Agreements so as to continue the provision of service as contemplated herein, subject to approval by the Colorado Springs City Council.
- b. If the Parties are unable to execute a New Agreement by the date that is six (6) months prior to the end of the Term:
  - i. UTILITIES may notify DISTRICT in writing that DISTRICT shall be disconnected from UTILITIES' Water System as of the expiration of the Term; or
  - ii. If the Parties mutually agree to continue good faith negotiations for a new water service agreement beyond the Term, the term may be extended for an additional one (1) year term at UTILITIES' sole discretion.

**B. Standby Regional Water Service:**

1. UTILITIES agrees to provide DISTRICT Standby Regional Water Service during the term of this Agreement. UTILITIES shall not be obligated to deliver more than 175 acre-feet annually of DISTRICT Water to DISTRICT, unless a greater amount is approved in writing by UTILITIES. DISTRICT shall only be entitled to receive Standby Regional Water Service hereunder if DISTRICT's normal Non-FVA Water Distribution System operations are significantly disrupted and DISTRICT has a need for water supplies in addition to FVA water to meet its customer's demands. Furthermore, UTILITIES has no obligation to provide Standby Regional Water Service hereunder until the rehabilitation of the FVA Standby Connection has been

completed by DISTRICT and approved by UTILITIES in accordance with the WLESS.

2. UTILITIES shall deliver water provided under this Agreement to DISTRICT at the Point of Connection. It is not the Parties intent for the DISTRICT to take delivery of Full Service Water under this Agreement except in the event of an emergency that results in DISTRICT's normal Non-FVA Water Distribution System operations being significantly disrupted and DISTRICT has a need for water supplies in addition to FVA Water to meet its customer's demands. If such an emergency occurs, and UTILITIES has determined Full Service Water is available, DISTRICT may request and receive deliveries of Full Service Water on a temporary basis. Any such emergency shall be expediently resolved, and DISTRICT shall, at all times, seek to avoid taking delivery of any Full Service Water.

**C. Point of Connection:**

1. DISTRICT shall own and shall be solely responsible, financially and otherwise, for the operation, maintenance and repair, improvement, including any improvement, repair or maintenance that is requested by UTILITIES, of the infrastructure constituting the Point of Connection located between and including the secondary valve and the DISTRICT's Water Distribution System with components generally depicted in Exhibit B and all other related facilities necessary for the DISTRICT's use of water provided in connection with this Agreement.
2. UTILITIES shall be responsible, financially or otherwise, for the operation, maintenance and repair of all infrastructure constituting the Point of Connection located between the water main/tap and the secondary valve as depicted in Exhibit B. The DISTRICT agrees to reimburse UTILITIES for its time-and-material costs associated with the maintenance and repair of such infrastructure. The DISTRICT hereby grants UTILITIES the perpetual right to ingress and egress over and through the DISTRICT's Property, including property owned by the DISTRICT or in rights-of-way or easements dedicated to the DISTRICT, to the Point of Connection so that UTILITIES may operate, maintain, repair, and inspect the Point of Connection infrastructure it is responsible for as well as perform its other duties under this Agreement and any future agreement between the Parties related to the provision of

water service. All repair or maintenance of the Point of Connection shall be completed in a timely manner in accord with standard industry practices. The Parties shall keep the Point of Connection and every part thereof for which they are responsible pursuant to this section maintained so that they continue to properly serve the purposes for which they were originally intended.

3. UTILITIES and DISTRICT agree that DISTRICT is solely responsible for the costs of the rehabilitation of the FVA Standby Connection discussed in the recitals.

**D. Volumetric Delivery Terms:** DISTRICT shall limit its water demand on UTILITIES' system to an instantaneous flow rate of not more than 350 gallons per minute, and a total maximum daily delivery of 0.5 million gallons per day (daily flow limit). UTILITIES agrees to maintain a minimum Hydraulic Grade Line of 6,110 feet near the Point of Connection. UTILITIES may, as it deems necessary and without providing DISTRICT notice increase, decrease, or waive these daily and instantaneous flow limits based on system performance to protect UTILITIES' Water System and deliveries to UTILITIES' customers or other good cause. UTILITIES will make best efforts to provide DISTRICT timely notice of any changes of this type.

**E. DISTRICT Water Supply Obligation:** DISTRICT agrees that DISTRICT bears the sole responsibility for providing a permanent supply of water to meet its customers' demands. DISTRICT shall maintain and operate its Water Distribution System on a continuous, year-round basis to meet such obligations.

**F. Use of Water:** DISTRICT agrees not to use the water provided pursuant to this Agreement, directly or indirectly, to furnish water outside DISTRICT's Service Area or to any entity or person other than the current residential, commercial, industrial and contract customers of the DISTRICT. DISTRICT further irrevocably commits not to serve water delivered under this Agreement to property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River Basin. In addition, so long as marijuana is an illegal substance under Federal Law, DISTRICT shall not use, or allow its customers to use, the water provided under this agreement, directly or indirectly, to support the cultivation or distribution of marijuana.

**G. Water Rights Unaffected:** Neither Party is transferring the ownership of any of its water rights under this Agreement.

**H. Acceptance of DISTRICT Water into UTILITIES' Water System:** The acceptance of DISTRICT Water into UTILITIES' Water System will be accomplished by book over of DISTRICT Water from DISTRICT's account in Pueblo Reservoir, or some other mutually agreed upon location, to the UTILITIES' Water System at a location designated by UTILITIES. Should the mutually agreed upon location for book over be unavailable, DISTRICT is responsible for securing the ability to book over water at another mutually agreed upon location. DISTRICT Water shall be delivered to UTILITIES at locations and during times as requested at UTILITIES' sole discretion. Further, it is agreed that UTILITIES shall not be obligated to accept into its Water System any DISTRICT Water that would interfere with UTILITIES' rights, operations, or yields. The use and administration of any DISTRICT Water not so accepted into UTILITIES' Water System will be the sole responsibility of DISTRICT. DISTRICT shall be responsible for all accounting and administration requirements in connection with its diversion and use of DISTRICT Water under this Agreement. Upon acceptance into UTILITIES' Water System, the accepted DISTRICT Water takes on the character of fully consumable water that can be used in accordance with UTILITIES' water rights decrees and the water delivered to DISTRICT and any return flows therefrom up to the amount of DISTRICT Water accepted into UTILITIES' Water System take on the character of DISTRICT Water delivered to DISTRICT via UTILITIES' Water System. If DISTRICT Water cannot be booked over, is not accepted into UTILITIES' Water System or more water than accepted was delivered by UTILITIES, all water delivered to DISTRICT in excess of the amount of DISTRICT Water accepted into UTILITIES' Water System shall be considered Full Service Water. This Agreement is subject to the administration of water rights by the Division of Water Resources.

**I. Return Flows:**

**1. DISTRICT Water**

UTILITIES shall maintain dominion and control of all DISTRICT Water being delivered through UTILITIES' Water System to DISTRICT until such water is delivered at the Point of Connection. Upon delivery, DISTRICT shall have and retain

the legal ownership of and right to use, reuse, successively use, and dispose of all return flows resulting from DISTRICT's use of DISTRICT Water delivered by UTILITIES under this Agreement.

**2. Full Service Water**

- a.** All Full Service Water delivered by UTILITIES under this Agreement may only be used for the purposes for which UTILITIES' water rights have been decreed. Neither DISTRICT nor its customers shall have the right to make successive use of Full Service Water, and upon completion of the initial use, all dominion and control over the Full Service Water shall revert to UTILITIES.
- b.** UTILITIES retains legal ownership of and the right to use, reuse, successively use, and dispose of all return flows resulting from DISTRICT's one-time use of Full Service Water. DISTRICT shall maintain dominion and control over all Full Service Water during the distribution of the water through DISTRICT's Water Distribution System and once returned to the Wastewater Collection System. DISTRICT shall be solely responsible for the collection and delivery of all wastewater generated by the use of Full Service Water furnished under this Agreement, and shall retain dominion and control over such water until it is discharged from the Wastewater Collection System to UTILITIES' Wastewater Treatment System.
- c.** DISTRICT shall cooperate with UTILITIES to quantify daily discharges of return flows attributed to Full Service Water from the Wastewater Collection System to UTILITIES' Wastewater Treatment System to facilitate UTILITIES' dominion and control of such return flows. UTILITIES shall have the right to review the water accounting documents of DISTRICT to verify the quantities of such return flows resulting from DISTRICT's use of the Full Service Water delivered to DISTRICT.

- J. Consequence of Loss of Dominion over Full Service Water Return Flows:** If UTILITIES should lose legal dominion and control over the return flows that result from DISTRICT's use of any Full Service Water due to any act or failure to act by DISTRICT, DISTRICT shall pay the Augmentation (W1G) rate under the Tariffs as modified or replaced for the volume of return flows lost to UTILITIES as determined in UTILITIES'



sole discretion. UTILITIES will bill DISTRICT with payment due within thirty (30) days of the date of billing.

**K. Service Rates, Fees, and Billing:**

1. **WRSAF:** The WRSAF is typically calculated based on both a daily maximum flow and a yearly volumetric limit. The Point of Connection was constructed to meet UTILITIES' FVA delivery obligation to DISTRICT of 0.54 million gallons per day and 601 acre-feet per year under the 1983 Agreement. Under this Standby Regional Service Agreement, DISTRICT is only entitled to deliveries of up to 175 acre-feet per year through the Point of Connection while maintaining a maximum daily delivery of 0.54 million gallons per day. Since the Standby Regional Service contemplated by the agreement does not change the maximum MGD for delivery, it is appropriate for DISTRICT to pay a WRSAF based on the yearly volumetric limit and not the daily maximum flows. The current WRSAF annual charge per acre-foot is \$2,263.00 for a total WRSAF per acre foot charge of \$396,025.00. DISTRICT may elect to pay the WRSAF in one lump sum of \$396,025.00 upon execution of this agreement, in yearly lump sums during the term of this agreement of \$22,400.00 with the first payment due upon execution of this Agreement, or monthly lump sums during the term of this agreement of \$1,866.66 until WRSAF is paid in full.
2. **Commodity Charge:** DISTRICT agrees to pay the then prevailing Contract Service – Regional (WCR) Convey, Treat, and Deliver Option rate as modified or replaced for every cubic foot of DISTRICT Water delivered to DISTRICT. If Full Service Water is delivered to DISTRICT, DISTRICT agrees to pay the then prevailing Contract Service – Regional (WCR) Full Service Option rate as modified or replaced for every cubic foot of Full Service Water delivered to DISTRICT. UTILITIES will bill DISTRICT monthly in arrears with payment due within thirty (30) days of the date of billing.
3. **Water Quality Monitoring:** DISTRICT agrees to pay a *pro rata* share of water quality monitoring UTILITIES is obligated to perform to be in compliance with its Pueblo County 1041 permit for the Southern Delivery System. DISTRICT shall be billed annually with payment due within thirty (30) days of the date of billing. UTILITIES may choose to waive this charge if DISTRICT contributes *pro rata* to

UTILITIES' water quality monitoring efforts required by UTILITIES' Pueblo County 1041 permit for SDS through means other than payments to UTILITIES.

4. **Payments:** Payments under this Article III.K shall be due at Colorado Springs Utilities, Customer Services Department, 111 S. Cascade Ave., Colorado Springs, Colorado 80903. If a payment is not made within thirty (30) days of when it is due, a deposit may be assessed as outlined in the Tariffs as modified or replaced.

**L. Metering:** All water delivered under this Agreement shall be measured at the Point of Connection between UTILITIES' Water System and DISTRICT's Water Distribution System. If at any time either UTILITIES or DISTRICT questions the accuracy of the meter, either Party may cause such meter to be tested for accuracy and recalibrated, if necessary, at such Party's expense. In the event a meter shall be tested, the Party testing the meter shall provide the other Party with three (3) days' notice of such testing. If the Parties cannot agree that the meter is measuring accurately, they shall choose an independent third party qualified to test the accuracy of such meters, whose decision regarding accuracy shall be binding on both Parties.

**M. Water Efficiency Plan:** DISTRICT agrees to abide by and enforce its water efficiency plan submitted to the State in its current form or as it may be changed through the State's approval process.

**N. Regional Cooperation:**

1. DISTRICT acknowledges and agrees to support the Fountain Creek Watershed, Flood Control, and Greenway District including, but not limited to, contributing to the financing of such district including, but not limited to, contributing to the financing of such District, to the extent authorized under Colorado Revised Statutes §32-1-1001, *et seq.*”.
2. DISTRICT agrees to actively support and cooperate with the City of Colorado Springs, El Paso County, and other regional entities having jurisdiction over stormwater detention and retention on Fountain Creek and to take whatever actions that are within DISTRICT's legal authority to ensure that stormwater in the Fountain Creek Basin does not increase above existing conditions. It is understood that DISTRICT has no legal obligation or authority with respect to regulation or control of stormwater or funding of stormwater projects within or outside of its service area.

3. DISTRICT agrees to accept and comply with the City of Pueblo Flow Management Program and Pueblo Recreational In-Channel Diversion Decree, both impacting the Arkansas River between Pueblo Dam and its confluence with Fountain Creek, in any Water Court application or request for administrative approval for a change of water rights or exchange implicating that reach of the Arkansas River.
4. DISTRICT agrees to support, without any financial contribution, any studies of a flood control dam or dams on Fountain Creek, it being understood that DISTRICT has no legal obligation or authority to regulate or control stormwater or fund stormwater.

**O. Changes in Terms or Type of Service:** Should DISTRICT take delivery of Full Service Water more than three events in five years on a rolling average, request deliveries that exceed the limits outlined in the Agreement, or desire a different type of water service, UTILITIES and DISTRICT shall either amend this Agreement or renegotiate the Agreement in its entirety.

#### **IV. WATER DELIVERIES**

**A. Requests for Delivery of Water:** DISTRICT shall directly communicate with UTILITIES' System Control as specified in this section and follow up with a written request for delivery of water, specifying amounts, rates, and duration at least three (3) business days prior to the expected delivery date(s). UTILITIES will provide a written response at least one (1) day prior to the requested delivery date accepting, modifying, or denying the request. The detailed reason for any denial shall be provided. For the purposes of DISTRICT requesting service and UTILITIES responding to requests, the term "written" shall include communications by electronic mail to certain electronic mail addresses, which DISTRICT and UTILITIES shall provide to each other upon execution of this Agreement and keep current through the duration of the Agreement. DISTRICT shall limit its water demand on UTILITIES' system as specified in Article III.D. The initial contacts are set forth below.

**1. UTILITIES System Control**

- a. Operations Supervisor, Jeremy McBeain

[jmcbeain@csu.org](mailto:jmcbeain@csu.org)  
Office Phone (719) 668-4588  
Cell Phone (719) 494-6973

- b. System Control Operator, to be acknowledge within 24-hours by Operations Supervisor  
Office Phone (719) 668-4570

- c. [Water\\_accounting@csu.org](mailto:Water_accounting@csu.org)

2. **DISTRICT System Control**

- a. Nancy Lee Watkins, Field Supervisor

- nancy@stratmoorhillswater.org  
Cell Phone: (719) 649-8953

- b. Kirk Medina, District Manager

- kirk@stratmoorhillswater.org  
Cell Phone (719) 210-5295

B. **Delivery Interruptions.** UTILITIES may interrupt deliveries of water hereunder due to lack of water supplies, infrastructure failure, system capacity failure, or water quality concerns. UTILITIES shall take all reasonable steps to provide DISTRICT with advance notice providing the reasons for any and all delivery interruptions and further take all reasonable steps to restore deliveries of water to the DISTRICT through resolution of such issues.

C. **Consecutive System Disinfection:** DISTRICT and UTILITIES shall comply with the Consecutive Systems Disinfection Protocol set forth in Exhibit C during the term of this Agreement.

1. **Disinfection pursuant to Exhibit C is required when:**

- a. The consecutive system is bringing the Point of Connection into service for the first time, or
- b. The consecutive system is bringing the Point of Connection back into service after repairs or similar event that has compromised the main or opened it to the environment, or
- c. UTILITIES may also require a disinfection in these cases if there is a possibility the water quality has been compromised in any way.

2. **Scheduling Requirements:** UTILITIES' Water Quality Assurance requires at least two business days' notice to disinfect for consecutive system use. Notify [waterquality@csu.org](mailto:waterquality@csu.org) to schedule for disinfection.

D. **Drinking Water Quality Regulatory Compliance; Required Permits:**

1. The water provided by UTILITIES to DISTRICT at the Point of Connection shall be potable water which complies with the Federal Safe Drinking Water Act and the applicable Colorado Primary Drinking Water Regulations (5 C.C.R. 1002-11). Pursuant to §1.8 of the Colorado Primary Drinking Water Regulations, UTILITIES' responsibility regarding the quality of water furnished shall extend only to the Point of Connection. DISTRICT agrees that its Water Distribution System constitutes a Consecutive System and, in accordance with §1.9 of the Colorado Primary Drinking Water Regulations, DISTRICT is responsible for all applicable monitoring and reporting requirements of the Colorado Primary Drinking Water Regulations of water within DISTRICT's Water Distribution System.
  2. DISTRICT will be responsible for obtaining, prior to operation, any applicable permits from any permitting authority or approvals from the Colorado Department of Public Health and Environment required for the construction and connection of DISTRICT's Water Distribution System to UTILITIES' Water System at and from the Point of Connection and to fulfill all purposes of this Agreement. A copy of such approval will be provided to UTILITIES within 30 days of receipt by DISTRICT to the UTILITIES' contacts set forth in Article V.A below.
- E. **Colorado Water Quality Control Act Compliance:** If at any time during the effective term of this Agreement DISTRICT fails to meet the requirements of the Colorado Water Quality Control Act applicable to DISTRICT, and applicable control regulations promulgated and permits issued thereunder, UTILITIES may in its sole discretion suspend deliveries and interrupt its performance of this Agreement, without commensurate extension of the term of this Agreement or liability to DISTRICT or any third party, including DISTRICT's customers, until DISTRICT has achieved compliance. With or without suspension or interruption by UTILITIES, DISTRICT, in the event of its failure to meet such requirements applicable to DISTRICT, shall implement cost-effective solutions to reduce water pollution with the objective of achieving and maintaining water quality in accordance with the applicable designated uses and water quality standards established by the Water Quality Control Commission and discharge permit limits imposed by the Water Quality Control Division on DISTRICT. In the event UTILITIES fails to meet the requirements of the Colorado Water Quality Control Act

and applicable regulations thereunder, UTILITIES shall notify DISTRICT in the same manner as its other customers, and DISTRICT shall have the same rights and remedies as provided to UTILITIES, including the option of requesting the suspension of the delivery of water under this Agreement until such time as UTILITIES has achieved compliance.

## V. STANDARD TERMS AND CONDITIONS

A. **Legal Notice:** Notices under this Agreement, other than DISTRICT's requests for water and UTILITIES' responses to such requests, shall be given in writing, signed by an authorized representative of the Party giving notice. Telephonic or email notice is not acceptable. Notices shall be delivered by courier service delivery (such as Federal Express) that maintains delivery records requiring a signed receipt; certified mail, postage prepaid with return receipt requested; or personal delivery to the people specified below at the following addresses:

For UTILITIES:

1. Manager, Water Resources

Courier Service Address:

Colorado Springs Utilities  
ATTN: Manager, Water Resources  
1525 S. Hancock Expressway  
Colorado Springs, CO 80906

United States Postal Service Address:

Colorado Springs Utilities  
ATTN: Manager, Water Resources  
P.O. Box 1103, MC 1825  
Colorado Springs, CO 80947-1825

2. City Attorney's Office – Utilities Division:

City Attorney's Office  
ATTN: City Attorney's Office – Utilities Division  
30 South Nevada Ave., Suite 501  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575\

For DISTRICT:

1. District Manager

Stratmoor Hills Water District  
ATTN: District Manager  
1811 B St.  
Colorado Springs, CO 80906

2. Attorney

Leventhal, Kuhn, Taylor, Swan, PC  
Attn: Andrew Swan  
24 S. Weber Street  
Colorado Springs, CO 80903

Notices shall be effective (1) the next day following the date sent by carrier service delivery that maintains delivery records requiring a signed receipt; (2) upon receipt by the addressee of a personal delivery; or (3) seven (7) days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested.

**B. Breach of Agreement and Termination:**

1. **Breach of Agreement:** Upon any breach of this Agreement the non-breaching Party shall have the right to: (a) seek specific performance; (b) be reimbursed for costs; (c) be entitled to money damages for the period between the breach and the order for specific performance; or terminate this Agreement. Unless an emergency situation requires immediate action in order to protect the health, safety and welfare of its customers or UTILITIES' Water System, or of DISTRICT's customers or DISTRICT's Water Distribution System the non-breaching Party shall provide written notice to the breaching Party of a breach of this Agreement and the breaching Party shall have thirty (30) days to cure such breach or take reasonable steps to address such breach and provide the non-breaching Party with notice of same prior to exercising its rights hereunder.
  - a. **Consequential Damages.** Any action by DISTRICT that results in violations of any of UTILITIES' water service-related permits may subject DISTRICT to consequential damages for breach of contract including, but not limited to, any amounts the City or UTILITIES may be required to pay for violation of the conditions of any UTILITIES' water service- related permits to the extent that the DISTRICT's actions caused or contributed to the violation.

- b. **Disconnection Damages:** If DISTRICT disconnects from UTILITIES' Water System for any reason other than a material breach by UTILITIES, the Parties agree that UTILITIES will suffer minimum damages equal to the cost to replace any infrastructure that UTILITIES can no longer use to provide water service to customers other than DISTRICT because of DISTRICT's disconnection.
2. **UTILITIES Right to Suspend Service:** DISTRICT acknowledges and consents to UTILITIES' right to suspend the Standby Regional Water Service or terminate this Agreement without liability or obligation to DISTRICT or any other person or entity:
  - a. Due to a significant interruption of water supplies, a substantial disruption (including, but not limited to, legal challenges impacting UTILITIES' Water System, and maintenance and repair to the infrastructure) to UTILITIES' Water System; or
  - b. Due to DISTRICT's breach of a material term or condition of this Agreement, if DISTRICT has not taken substantial steps to cure the breach within a reasonably sufficient time frame that allows DISTRICT to cure the material breach after receiving written notice of such breach from UTILITIES; or
  - c. As otherwise authorized by the City Code or City Council.
3. **Notice of Breach:** Each Party shall promptly notify the other Party of circumstances that could result in a breach, and UTILITIES shall further promptly notify DISTRICT of changes in City Code, or City Council action that could result in termination of the Agreement.
5. **Effect of Termination:** Upon termination, UTILITIES shall have no further obligation to provide Standby Regional Water Service to DISTRICT and DISTRICT's Water Distribution System shall be disconnected from UTILITIES' Water System. Upon termination of this Agreement, UTILITIES shall determine the connection facilities between DISTRICT's Water Distribution System and UTILITIES' Water System that must be removed at DISTRICT's sole expense. UTILITIES shall determine the way the connection facilities are to be removed and water delivery services discontinued in accordance with UTILITIES' WLESS. All outstanding charges owed by DISTRICT to UTILITIES are due and payable prior to the



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

- C. **Approvals/Permits:** The Parties expressly acknowledge that the service contemplated and/or the construction of any Improvements under this Agreement may be dependent upon the receipt of any necessary approvals and/or permits by Federal, State, and local governmental and/or regulatory entities. DISTRICT shall be solely responsible for obtaining and complying with all approvals or permits necessary to accomplish the provision of water service and water conveyance by UTILITIES to DISTRICT under this Agreement. UTILITIES will cooperate as reasonably requested by DISTRICT in any application or proceedings to obtain such approvals.
- D. **DISTRICT Dissolution:** If DISTRICT seeks to dissolve pursuant to relevant laws, rules, and regulations, then DISTRICT shall provide a copy of its dissolution petition to UTILITIES, at the time of its filing. The dissolution petition shall provide for assignment of DISTRICT's rights and obligations under the Agreement to a third party acceptable to UTILITIES. If no provision is made for such an assignment or other arrangement reasonably acceptable to UTILITIES, upon DISTRICT's dissolution, this contract shall be null, void and of no further force or effect, and UTILITIES shall have no further obligation to provide water service pursuant to the terms of this Agreement.
- E. **City of Colorado Springs' Compliance:**
1. This Agreement is for "Contract Service – Regional (WCR), Standby Service Option," as provided in the Tariffs. The water service provided under this Agreement shall be governed by the Colorado Springs City Charter, the City Code, the Tariffs, WLESS, and all other applicable City of Colorado Springs' or UTILITIES' ordinances, resolutions regulations, policies and rules concerning use of UTILITIES' Water System as may be amended or replaced, except as otherwise provided in this Agreement. When receiving water under this Agreement, DISTRICT shall comply with applicable laws, ordinances, regulations, rules or policies concerning use of UTILITIES' Water System by regional entities as they exist now or may be amended or replaced in the future. The Parties acknowledge and agree that City Code Chapter 12, Article 4, Part 13 is not applicable to DISTRICT under this Agreement.

2. In accordance with City Code § 12.4.304, DISTRICT submits to the jurisdiction of the City of Colorado Springs for the purposes of the enforcement procedures set out in City Code Chapter 12, Article 4 that are applicable to this Agreement.

- F. **Compliance with Laws and Regulations:** This Agreement and the rights and obligations of the Parties hereunder shall be subject to all applicable laws, orders, court decisions, directives, rules, and regulations of any duly constituted governmental body or official having jurisdiction. Nothing contained in the Agreement, however, shall require either Party hereto to comply with any law, the validity of applicability of which shall be contested in good faith and, if necessary or desirable, by appropriate legal proceedings. DISTRICT agrees to comply with all applicable ordinances, regulations and rules concerning the connection to and use of UTILITIES' Water System by DISTRICT.
- G. **No Assignment without Consent; No Third-Party Beneficiary:** There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party, and any such assignment shall be null and void. Unless otherwise prohibited, upon written notice to DISTRICT, UTILITIES may assign this Agreement without consent to the City of Colorado Springs, Colorado. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than UTILITIES and DISTRICT.
- H. **Governing Law, Jurisdiction and Venue:** This Agreement shall be construed in accordance with the laws of the State of Colorado (except for its conflict of law provisions) as well as the Colorado Springs City Charter and the City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be El Paso County, Colorado and, if necessary, for exclusive federal questions, the United States District Court for the District of Colorado.
- I. **Force Majeure:** Neither Party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence, including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbance.
- J. **Appropriation of Funds:** In accord with the Colorado Springs City Charter, performance of UTILITIES' obligations under this Agreement is expressly subject to

appropriation of funds by City Council. In the event funds are not appropriated in whole or in part sufficient for performance of UTILITIES' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement will thereafter become null and void by operation of law, and UTILITIES will thereafter have no liability for compensation or damages to DISTRICT for future performance and obligations thereafter in excess of UTILITIES' authorized appropriation for this Agreement or applicable spending limit, whichever is less. UTILITIES will notify DISTRICT as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

- K. **Entire Agreement; Modifications to be in Writing:** This Agreement, including any and all appendices and exhibits attached hereto, contains the entire understanding between the Parties. No modification, amendment, notation, or other alteration to this Agreement shall be valid or any force or effect unless mutually agreed to by the Parties in writing as an addendum to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement which are not specifically set forth therein. Electronic mail and all other electronic (including voice) communications from UTILITIES, except as otherwise specifically provided herein, in connection with this Agreement, are for informational purposes only. No such communication is intended by UTILITIES to constitute either an electronic signature or to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.
- L. **No Precedent; Severability:** The Parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future Agreement, nor vest any rights in either Party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be binding upon the Parties and this agreement shall be reformed to replace such stricken provisions with a new provision that comes as close as possible to expressing the intention of the stricken provision.

- M. **Remedies Cumulative:** Remedies herein are cumulative and may be used individually, sequentially, concurrently, or in any order.
- N. **Audits:** UTILITIES shall have the right to audit at any time all of DISTRICT's records relating to compliance with this Agreement. DISTRICT shall have the right to audit all UTILITIES' records relating to compliance with this Agreement.
- O. **No Exclusive Rights:** Nothing in this Agreement shall be construed as a grant by either Party of any exclusive right or privilege.
- P. **Waiver:** No waiver by either Party of any terms or condition of this Agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different provision of this Agreement.
- Q. **Limitations upon Consent:** Whenever, under the terms of this Agreement, UTILITIES is authorized to give its written consent, UTILITIES, in its discretion, may give or may refuse such written consent and if given, may restrict, limit, or condition such consent in such manner as it shall deem advisable.
- R. **Liability:**
1. **Party Responsible for Own Negligence:** Each Party shall be responsible for its own negligence. Neither Party waives the benefits or obligations afforded it by the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*
  2. **UTILITIES' Limitation of Liability:** In addition to force majeure events described in this Agreement, UTILITIES shall not be liable in tort or contract to DISTRICT or its customers for failure to provide water service under this Agreement if such failure is the result of a significant interruption of water supplies or an inadequate natural physical water supply, a substantial disruption to UTILITIES' Water System (including, but not limited to, legal challenges impacting the water system, and maintenance and repair of UTILITIES' Water System), or the adoption and implementation of water use or delivery restrictions in accordance with City Code.

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

COLORADO SPRINGS UTILITIES

STRATMOOR HILLS WATER DISTRICT

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

Travas Deal  
Chief Executive Officer

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

Robert Colgrove  
Board President

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

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

APPROVED AS TO FORM:

\_\_\_\_\_

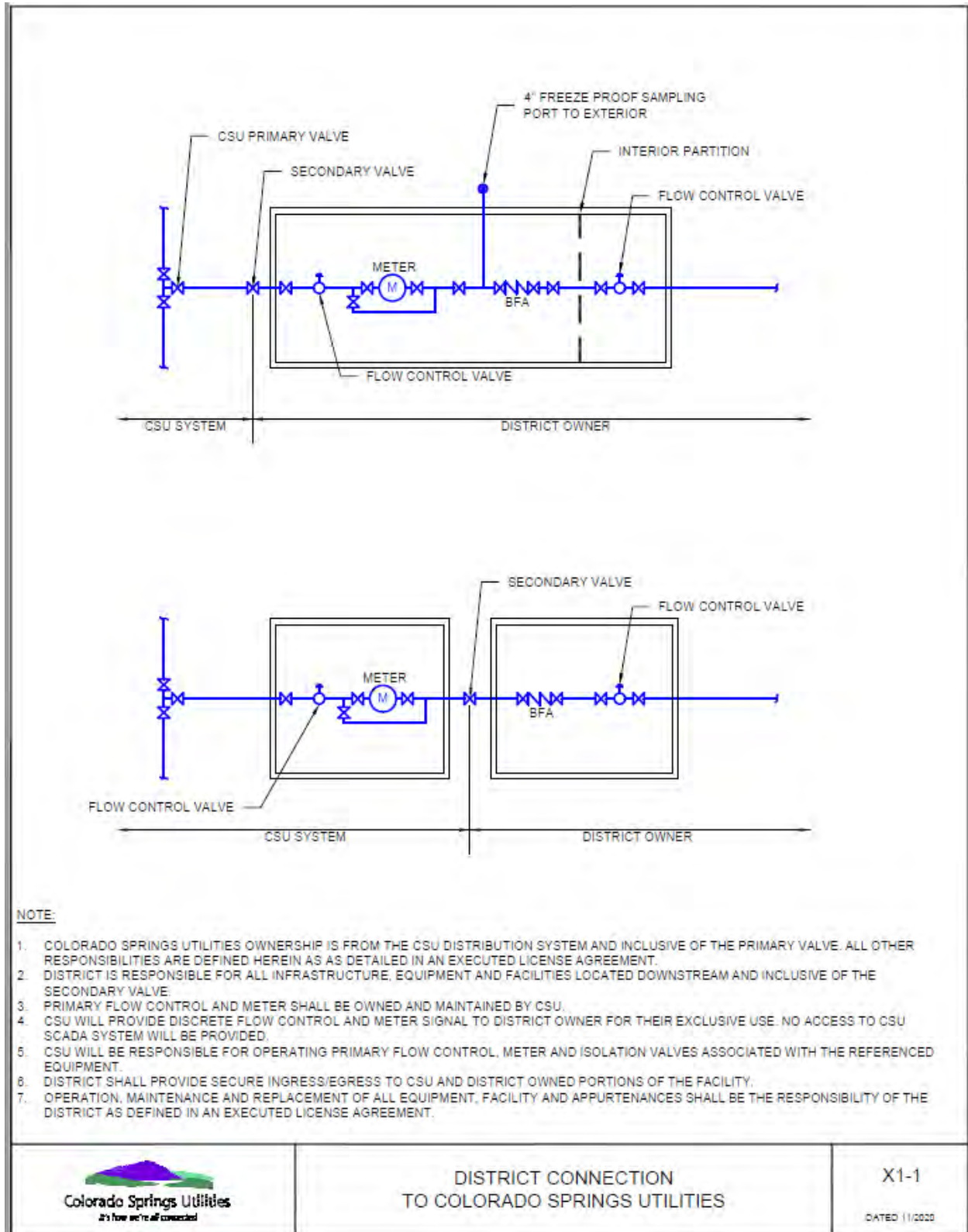
Michael Gustafson  
City Attorney's Office – Utilities Division

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

**Exhibit A – Map of District’s Service Area**

DRAFT

## Exhibit B– Infrastructure Configuration



## Exhibit C – Consecutive System Disinfection Protocol

### 1.0 Purpose

The purpose of this Consecutive Systems Disinfection Protocol for Regional Water Service Contracts Appendix is to define Colorado Springs Utilities' (Utilities) and the Regional Water Service Contract holder's roles and responsibilities pertaining to potable water main disinfection procedures for Connective Systems.

A Consecutive System is defined as a Public Water System that receives some or all its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system of one or more Consecutive Systems.

The Consecutive System Standard Operating Procedure followed by Utilities is available upon request.

### 2.0 Scope

The scope of this document is to establish the sanitary standard for potable infrastructure management as it pertains to Utilities' consecutive systems. The objective is to protect Utilities' potable water distribution system and comply with Colorado Primary Drinking Water Regulations.

### 3.0 Scheduling Requirements

Scheduling requirements for a Potable Water Main Disinfection or system flush are as follows:

1. The Operator in Responsible Charge (ORC) of the Consecutive System receiving water shall notify Utilities' Water Quality Assurance Department (WQA) at [waterquality@csu.org](mailto:waterquality@csu.org) to schedule a disinfection or system flush. To be accommodated, requests must be submitted at least **two business days** in advance.
2. The following information must be included when requesting flushing services:
  - Point of Contact (Name and Phone Number).
  - Address or Intersection of where the flush will be taking place.
  - Requested date and time of the flush
3. The site ORC and Operations from the Consecutive System shall be available during disinfection or flushing activities to assist with any issues that may occur such as valve locations, closed valves, leaks, main breaks, cross-connections, or safety concerns.

Disinfection of the potable system is required when:

1. The Consecutive System is bringing the interconnect into service for the first time, or
2. The Consecutive System is bringing the interconnect back into service after repairs, or a similar event that could have potentially compromised the mail.

Flushing of the system (without disinfectant) is required when:



1. The Consecutive System is bringing the interconnect back into service after a period of >72 hours of the line being stagnant or empty. This flushing is designed to purge stagnant water and reestablish water quality parameters that meet or exceed Safe Drinking Water Act guidelines.

#### **4.0 Responsibilities**

This section defines the general responsibilities of stakeholders within Utilities that are directly involved with the disinfection and flushing of potable water mains for Connective Systems.

##### **4.1 Colorado Springs Utilities' Responsibilities:**

- Utilities' Water Quality Assurance (WQA) team is responsible for the managerial oversight of all chlorination injections, disinfections, system flushing, chlorine neutralization and system monitoring during dewatering activities.
- Utilities' Distribution and Collection Specialist is considered the Operator in Responsible Charge of all Utilities' potable mains under the control of the assigned specialist. This encompasses legal responsibility of all distribution system pipelines being operated and maintained.

##### **4.2 Consecutive System Operations/ Management:**

- Public Water Systems that receive water from Utilities will be considered the ORC downstream of the demarcation/interconnect valve. This encompasses legal responsibility of all distribution system pipelines being operated and maintained. Responsibilities include, but are not limited to, the following:
  - The oversight authority of the operation of the Consecutive System's potable water distribution system.
  - Placement and providing a containment structure large enough to retain six times the volume of water to be discharged if an adequate storm intake is not available or the water cannot otherwise be properly managed.
  - Overseeing the operation of pressure regulation equipment, cross-connection and system control valves.
  - ORC is responsible for the operation and maintenance of the cross-connection device, to include state certified cross connection control technician simultaneously testing its backflow assembly to ensure proper operation.

#### **5.0 Operational Procedures**

##### **5.1 Initial start-up or bringing back into service after repairs:**

- WQA will work with the Utilities ORC and the consecutive system ORC to disinfect the main (see Section 6.2).
- Utilities will conduct bacteriological testing.
- Utilities will notify the Utilities' ORC of results of bacteriological testing once results are confirmed, typically within 24 hours. The system may be placed in service if bacteriological test shows an absence of total coliforms.

### **5.2 Temporary shut downs (>72 hours):**

- In instances where the water main has been isolated >72 hours, WQA will flush the system to reestablish adequate chlorine and pH levels. No bacteriological testing is required if the system has been offline for <90 days.
- In instances where the system has been offline >90 days, WQA will flush to reestablish water quality and collect a bacteriological test. The system may be placed in service if bacteriological test shows an absence of total coliform.

### **5.3 Temporary shut downs (<72 hours):**

- Temporary shut downs <72 hours do not require additional flushing or testing. In cases where the Consecutive System suspects the water quality may have been negatively impacted by the shut down, WQA may be contacted ([waterquality@csu.org](mailto:waterquality@csu.org)) to schedule flushing or testing.

### **5.4 Emergency Start-up:**

- In cases of emergency start-up, the preceding protocols (Section 5.0) will be followed. If workload allows, WQA will waive the two business day requirement for requests.
- Under certain circumstances, the requirement to wait for total coliform results may be waived. When necessary, WQA will work with the Utilities' ORC and the Consecutive System ORC to identify circumstances where this may be appropriate.

## **6.0 Process**

### **6.1 Flushing:**

- Utilities' WQA team will be responsible for managing all waters associated with dewatering, to include dichlorination and pH mitigation if necessary.
- Operations from the Consecutive System will be responsible for best management practices (BMPs) which adequately mitigate erosion, control runoff, and protect storm inlets. Alternatively, Operations from the Consecutive System will be responsible for providing a containment structure large enough to retain six times the volume of water to be discharged if an adequate storm intake is not available or the water cannot otherwise be properly managed.

- Flushing will be complete when the volume of the main has been turned over three times or chlorine line residual and clarity have been reached.
- When required, WQA personnel will collect a bacteriological sample from Utilities' side of the interconnect closest to the demarcation valve to ensure water being delivered meets all Safe Drinking Water Act standards. This analysis takes approximately 24 hours to complete.
- If requested, Utilities personnel may also collect a bacteriological sample from the Consecutive System's side of the interconnect.

## **6.2 Disinfection:**

Disinfection is required when the connecting main is brought into service for the first time or when the main has been compromised.

- WQA personnel will be responsible for determining which disinfection method is most appropriate. WQA personnel will also be responsible for all aspects of water management during disinfection and flushing.
- The Consecutive System's ORC will be responsible for BMP placement and providing a containment structure large enough to retain six times the volume of water to be discharged if an adequate storm intake is not available or the water cannot otherwise be properly managed.
- If disinfection activities must occur downstream of the demarcation valve, Utilities will function as a contractor if requested by the consecutive system. These activities are a courtesy to the Consecutive system and Utilities holds no liability for infrastructure damage or contamination. Additionally, the consecutive system will be responsible for all time and material costs incurred by Utilities associated with the disinfection. The Consecutive System's ORC will be responsible for operating all appurtenances and valves on their system.

## **6.3 Sampling Requirements:**

Water quality tests noted in Sections 5.1 and 5.2 will be conducted at the Consecutive System point of entry on the Utilities' side of the demarcation valve.

Before water delivery:

- Free chlorine will be >0.20 mg/L
- pH will be 9.0 s.u.
- Enzyme substrate test(s) will be negative for total coliform/*E. coli*

Bacteriological Resampling

If a bacteriological sample analysis results in "presence" of total coliform, the potable water main in question shall remain isolated and will be re-sampled

- Resampling a bacteriological sample after the first failure event.

- If a sample results in “presence” for total coliform, TWO additional bacteriological samples will need to be taken from the isolated point of failure.
- Samples will be collected within 48 hours of the first failure, at least 16 hours apart.
- Both of the repeat samples collected must be absent of total coliforms before the infrastructure can be turned into service.
- Resampling a bacteriological sample if there is a SECOND failure event.
  - Sample will be collected within 48 hours of the first failure, at least 16 hours apart.
  - Both of the repeat samples collected must be absent of total coliforms before the infrastructure can be turned into service.
  - If the results are “absent” for total coliform, the LSS Microbiology Lab will contact the site ORC that the samples “passed”.
  - Consecutive System can be placed in service.
- In the event of a THIRD failure:
  - If the main fails a third time after disinfection, it will be considered contaminated. At the discretion of the LSS Manager and WQA Supervisor, more extensive mitigation strategies will be implemented, up to and including removal and replacement of the contaminated section of the main.

**Exhibit D – 1983 Fountain Valley Agreement**

DRAFT

**AGREEMENT  
REGARDING DELIVERY/EXCHANGE OF MANITOU FRY-ARK  
PROJECT WATER**

**THIS AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called "UTILITIES," and the City of Manitou Springs, a Colorado home rule municipality, hereinafter called "MANITOU."

**RECITALS**

A. MANITOU is a Colorado home rule municipality with service boundaries located immediately adjacent to the City of Colorado Springs on the east. MANITOU was incorporated in 1876 and currently serves a customer base of approximately 2,165 taps within MANITOU.

B. MANITOU has the right to a certain amount of Fryingpan-Arkansas Project Water ("Project Water") that is delivered to and stored in MANITOU's project water accounts in Pueblo, Twin Lakes or Turquoise Reservoirs.

C. MANITOU does not have the water supply infrastructure necessary to deliver its Project Water stored in Pueblo, Twin Lakes or Turquoise Reservoirs to its water system for the use and benefit of MANITOU's citizens and water customers.

D. UTILITIES has the water system infrastructure necessary to deliver MANITOU's Project Water to MANITOU's water system either directly or via exchange.

E. MANITOU desires to receive a physical delivery or exchange of MANITOU's Project Water through UTILITIES' water system infrastructure into MANITOU's water system for the use and benefit of MANITOU's citizens and water customers.

F. UTILITIES currently has infrastructure capacity available in its water system; sufficient water transportation, displacement and storage capacity; to provide for direct delivery or delivery by exchange of MANITOU's Project Water.

G. MANITOU and UTILITIES acknowledge that any Project Water deliveries by UTILITIES to MANITOU are a supplemental supply to Manitou's native water rights.

H. The physical delivery or exchange of MANITOU's Project Water will not injure the water rights of UTILITIES.

I. MANITOU shall fairly compensate UTILITIES for all services that UTILITIES provides in accordance with the Agreement.

J. Pursuant to Section 6-50 (Water Rights) of Article VI (Utilities) of the Charter of the City of Colorado Springs, as amended, the City of Colorado Springs has the authority to buy, exchange, augment, lease, own, and control water and water rights.

K. UTILITIES has entered into this Agreement pursuant to Section 12.4.304 (Service; Special Contract) of Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended (Ord. 10-76).

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

1. **TERM.** This Agreement shall become effective 8 AM MST, \_\_\_\_\_, and remain in effect until 5 PM MST, December 31, 2049, MANITOU agrees that MANITOU bears the sole responsibility for providing an adequate supply of water for its growth. MANITOU shall maintain and operate its independent water supply system on a continuous, year-round basis, so as to be prepared to receive any water delivered to it pursuant to this Agreement.

2. **Water Delivery.** Pursuant to the terms of this Agreement, UTILITIES agrees to deliver to MANITOU's water supply system, either by direct delivery or exchange, MANITOU's Project Water stored in Pueblo, Twin Lakes or Turquoise Reservoirs. In each year of the Agreement UTILITIES shall only be required to deliver a maximum amount of 250 acre-feet of MANITOU's Project Water. UTILITIES may consider requests from MANITOU for deliveries in excess of the 250 acre-foot annual limit, provided approval of any such requests will be at UTILITIES' sole discretion. UTILITIES shall limit Project Water delivery to less than 3.5 cubic feet per

second. Deliveries shall be subject to available excess capacity in all of UTILITIES' necessary associated infrastructure including, but not limited to, the following: Otero Pump Station and Homestake Pipeline, Twin Rock Pump Station, Twin Rock Pump Station, North Slope Transfer, and UTILITIES' North Slope System, including reservoir storage system and the Old North Slope Pipeline.

**3. Direct Delivery of MANITOU's Project Water.** UTILITIES may directly deliver Project Water to MANITOU when MANITOU has Project Water available in Pueblo, Twin Lakes or Turquoise Reservoirs and UTILITIES has infrastructure available including capacity in Otero Pump Station, Homestake Pipeline, Twin Rocks Transfer Pump and the Blue River Pipeline. MANITOU will pay conveyance charges listed in Appendix A for all direct deliveries. UTILITIES retains the right to refuse direct delivery if infrastructure is not available, in which case an effort will be made to deliver water by exchange.

**4. Exchange of Project Water.** At times when MANITOU requests a direct delivery of its Project Water and UTILITIES is not operating its Twin Rock Pump Station transfer to the North Slope system, the following exchange will be effectuated: (1) UTILITIES will deliver water it owns on the North Slope system to MANITOU's delivery point, to be labeled Project Water, (2) a simultaneous delivery of MANITOU's Project Water held in Project accounts will be made to UTILITIES reservoir storage account(s) in Twin Lakes, Turquoise, or Pueblo Reservoir and labeled as the UTILITIES water type released in (1) above. The amount of Project Water exchanged by UTILITIES shall not exceed the amount of water UTILITIES delivers to MANITOU, plus any system losses. At UTILITIES' sole discretion, and based upon operational circumstances, UTILITIES may accept MANITOU's Project Water at Pueblo Reservoir, or some other mutually agreed upon location. Water exchanged shall be delivered to UTILITIES as requested at UTILITIES' sole discretion. Further, it is agreed that either Party shall not be obliged to accept into their water system any water that would interfere with either Party's rights, operations, or yields.

**5. Requests for and Delivery of Water.** MANITOU shall directly communicate with UTILITIES Systems Control as specified in 5.A. below and follow-up with a written request for deliveries of water, specifying amounts, rates, and timing of water deliveries requested, no



later than five (5) business days before MANITOU desires to receive the requested deliveries or other services. MANITOU's notice shall specify the method(s) of water delivery (i.e., exchange(s) or direct delivery) to be used as well as the desired amount, rate, and timing of the water deliveries requested.

UTILITIES will provide a response to MANITOU by the second business day following the request. UTILITIES will respond with UTILITIES' ability or inability to provide the requested deliveries or other service as requested by MANITOU or as conditioned by UTILITIES, any conditions required by UTILITIES to provide the requested deliveries or other service, and a general description of the fees and costs anticipated by UTILITIES in performing the requested water deliveries or other services. UTILITIES, in its sole discretion, may decline to pursue the request. If UTILITIES accepts MANITOU's request, UTILITIES agrees to use best efforts to execute the request, provided, however, UTILITIES shall not be liable for non-performance for any reason. Regardless of whether UTILITIES accepts or declines MANITOU's request for water deliveries or other services, MANITOU shall pay UTILITIES for any fees UTILITIES incurs in assessing MANITOU's requests.

For the purposes of MANITOU requesting service and UTILITIES responding to requests, the term "written" shall include communications by electronic mail to certain electronic mail addresses, which MANITOU and UTILITIES shall provide to each other upon execution of this Agreement.

A. UTILITIES System Control

- i. Water Control Room Supervisor  
Jeremy McBeain ([jmcbeain@csu.org](mailto:jmcbeain@csu.org))  
Office: (719) 668-4570; Cell: (719) 494-6973
- ii. System Control Operator, if acknowledged within 24 hours by Mr. McBeain, (719) 668-4570
- iii. Planning Supervisor  
Justin Zeisler, P.E. ([jzeisler@csu.org](mailto:jzeisler@csu.org))  
Office: (719) 668-8607; Cell: (719) 323-4743
- iv. [Water\\_accounting@csu.org](mailto:Water_accounting@csu.org)

B. MANITOU System Control

- i. Public Works Director,
- ii. Treatment Plant Operator,

When any contact information or staff members change, notification of all Parties is required.

**5.1 Requests for immediate water delivery:** MANITOU may request water delivery as soon as possible in the event MANITOU determines that water quality in French Creek upstream of MANITOU's water intake will cause MANITOU to exceed primary or secondary water quality limits. MANITOU shall directly communicate with UTILITIES Systems Control as specified in paragraph 5.A above and follow-up with a written request for delivery of water, specifying the desired amounts, rates, and timing of water deliveries requested as soon as practicable. MANITOU's notice shall specify the method(s) of water delivery (i.e. exchange(s) or direct delivery) to be used. UTILITIES will provide a response to MANITOU as soon as practicable following MANITOU's request. UTILITIES will respond with UTILITIES' ability or inability to provide the requested water deliveries or other service as requested by MANITOU or as conditioned by UTILITIES, any conditions required by UTILITIES to provide the requested water deliveries or other service, and a general description of the fees and costs anticipated by UTILITIES in performing the requested emergency water deliveries or other services.

- 5.1.1 Good Faith: MANITOU will act in good faith when requesting emergency service and shall keep its water storage tanks as full as reasonably practicable so as to meet demand from storage to the extent possible before requesting emergency service under this subsection 5.1.
- 5.1.2 UTILITIES discretion: UTILITIES in its sole discretion may decline to provide service under section 5.1. If UTILITIES accepts MANITOU's request, UTILITIES agrees to use best efforts to execute the request, provided however, UTILITIES shall not be liable for non-performance for any reason. Regardless of whether UTILITIES accepts or declines MANITOU's emergency request for deliveries or other services, MANITOU shall pay UTILITIES for any fees UTILITIES incurs in assessing MANITOU's requests.

5.1.3 UTILITIES will make no adjustment to the source of water provided through the interconnect under this section unless necessary to meet all applicable safety and health standards.

**5.1.4 Completion of Service:** MANITOU must be certain water quality in French Creek above MANITOU's intake has improved and is such that diversion of French Creek water into MANITOU's water treatment plant will not cause its finished water to exceed primary or secondary water quality standards before requesting water deliveries to be concluded to ensure that additional water deliveries will not be required immediately after closure of the interconnect due continued inadequate water quality. UTILITIES will not start a subsequent delivery within 48 hours after conclusion of the previous delivery.

**5.2 UTILITIES to manage water deliveries:** UTILITIES must operate the water deliveries. MANITOU may not operate UTILITIES infrastructure.

**6. MANITOU Reservoir Accounting.** MANITOU must maintain adequate reservoir accounting for the different types of water stored in Manitou Reservoir to distinguish between Project Water and native water. Upon receipt of its Project Water, including Project Water previously stored in Manitou Reservoir, to its municipal system for treatment and use, MANITOU must determine and report daily to UTILITIES the metered amount of MANITOU's wastewater delivered to UTILITIES wastewater system and its ratio of Project Water versus native water. From time to time, UTILITIES may request MANITOU's reservoir accounting for review. MANITOU will comply with the request and provide a digital, unlocked copy of the accounting to UTILITIES within 3 business days after the request is received.

**7. Use of Project Water.** All Project Water delivered by UTILITIES under this Agreement is for the use of MANITOU for the purposes for which the water rights have been decreed. MANITOU retains all rights to the Project Water.

8. **MANITOU Project Water Exchange Operations.** MANITOU's Case No. 08CW61 decree outlines three appropriative rights of exchange utilizing its entitlement of Project Water and, with the approval of the Southeastern Colorado Water Conservancy District, its Project Water Return Flows.

The three exchanges decreed in 08CW61 are as follows: (1) exchange of Project Water and Project Water Return Flows released from Pueblo Reservoir, from the confluence of Fountain Creek and the Arkansas River, up Fountain Creek, French Creek, and North French Creek to Manitou Reservoir; (2) exchange of Project Water Return Flows, after first time use in MANITOU's municipal service area, from its location of discharge into Fountain Creek at UTILITIES' Las Vegas Street Wastewater Treatment Facility, up Fountain Creek, French Creek, and North Fork French Creek to Manitou Reservoir, and (3) exchange of Project Water delivered to MANITOU via the cross-over connection on UTILITIES' Old North Slope Pipeline, and then exchanged from MANITOU's French Creek Diversion Structure to Manitou Reservoir.

UTILITIES has senior appropriative rights of exchange (decreed in Case No. 84CW202(A) and in Consolidated Cases No. 84CW202, 84CW203 and 86CW118(B) & 89CW36) (collectively referred to as UTILITIES' Local Exchanges), and case 07CW122. The Local Exchanges allow UTILITIES to exchange its Transmountain and other fully consumable return flows to numerous direct flow points of diversion and storage reservoirs in the Pikes Peak watershed. Due to their senior priority dates, UTILITIES' Local Exchanges will generally prevent MANITOU's exchange of Project Water stored in Pueblo Reservoir or Project Water Return Flows discharged from UTILITIES' Las Vegas Street Wastewater Treatment Facility into Manitou Reservoir unless UTILITIES' water demands are fully satisfied at UTILITIES' French Creek and 33<sup>rd</sup> Street diversions.

UTILITIES has stipulated as an objector in Case No. 08CW61 to ensure that UTILITIES' senior water rights, including the Local Exchanges, are not injured by MANITOU's claimed exchange operations.

The Parties agree that MANITOU will be responsible for initiating coordinating, and accounting for all exchange operations claimed in Case No. 08CW61.

- (A) UTILITIES shall:
- (1) Assist MANITOU and the Division 2 Engineer in determining whether MANITOU's requested exchange operation(s) will cause injury to UTILITIES' senior water rights, including the Local Exchanges;
  - (2) If requested by MANITOU and subject to the Administrative Fees described in Section 11, temporarily assist MANITOU with the water rights accounting and other necessary administrative support for MANITOU's exchange operations; and
  - (3) Provide timely invoices to MANITOU for all costs and fees related to the operation of this Agreement including, but not limited to, assessing Manitou's requests for water deliveries or other services;
- (B) MANITOU shall:
- (1) Notify UTILITIES and the Division 2 Engineer when MANITOU desires to operate its exchanges as contemplated herein;
  - (2) Operate its exchanges as described herein in such a manner that they do not cause injury to senior water rights, including UTILITIES' water rights at the 33<sup>rd</sup> Street and French Creek points of diversion and UTILITIES' senior Local Exchanges. If injury does occur to UTILITIES' water rights, MANITOU will remedy such injury with water at the location of injury, or other location as agreed to by UTILITIES.

**9. Fountain Creek Transit Loss Model.** If MANITOU desires to exchange Project Water Return Flows into Pueblo Reservoir, MANITOU shall participate in the Fountain Creek Transit Loss Model for quantifying and tracking all Project Water Return Flows discharged to Fountain Creek that Manitou desires to exchange into Pueblo Reservoir. MANITOU shall assess all appropriate transit and evaporative water losses of MANITOU's Project Water conveyed and stored for direct delivery and shall abide by the Pueblo Flow Management Program as described in the Intergovernmental Agreement signed March 2004. Should MANITOU choose not to participate in the Fountain Creek Transit Loss Model, MANITOU shall be responsible for coordinating use and delivery of MANITOU's Project Water return flows with the Southeastern Colorado Water Conservancy District (SECWCD).

10. **Water Rights Unaffected.** No water rights are being transferred to or from UTILITIES or MANITOU under this Agreement.

11. **Service Rate and Billing.** MANITOU agrees to pay UTILITIES for water provided at the service rates established in **Appendix A** attached hereto and incorporated herein. UTILITIES will bill MANITOU monthly in arrears with payment due within thirty (30) days of the date of billing.

12. **Water Metering and Systems Interconnection Costs.** MANITOU shall pay for all future maintenance costs of the connection to UTILITIES' Old North Slope Pipeline resulting from the required improvements that were made pursuant to the AGREEMENT REGARDING DELIVERY/EXCHANGE OF MANITOU FRY-ARK PROJECT WATER entered on September 27<sup>th</sup>, 2011 by and between UTILITIES and MANITOU.

13. **City of Colorado Springs Compliance.** MANITOU agrees to comply with all applicable ordinances, regulations and rules concerning the use of UTILITIES' water system.

14. **Colorado Water Quality Control Act Compliance.** If at any time during the effective term of this Agreement MANITOU fails to meet the requirements of the Colorado Water Quality Control Act, and applicable control regulations promulgated and permits issued thereunder, UTILITIES may in its sole discretion suspend deliveries and interrupt its performance of this Agreement without commensurate extension of this Agreement or liability to MANITOU or any third party, including MANITOU's customers, until compliance is achieved. With or without suspension or interruption by UTILITIES, MANITOU, in the event of failure to meet such requirements, shall implement cost-effective solutions to reduce water pollution with the objective of achieving and maintaining water quality in accordance with the applicable designated uses and water quality standards established by the Water Quality Control Commission, and discharge permit limits imposed by the Water Quality Control Division upon MANITOU. In the event UTILITIES fails to meet requirements of the Colorado Water Quality Control Act and applicable regulations thereunder, UTILITIES shall notify MANITOU in the same manner as other customers, and MANITOU shall have the option of immediately suspending the delivery of water under this agreement.

**15. Regional Cooperation.**

(A) The Parties acknowledge that MANITOU is a founding member of the Fountain Creek Watershed, Flood Control, and Greenway District and that it intends to fully participate in the support and financing of said District, as dictated by its member status.

(B) MANITOU irrevocably commits not to serve water delivered under this Agreement to property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise provide water to properties or entities located outside the natural drainage of the Arkansas River Basin.

(C) MANITOU agrees to actively support and cooperate with the City of Colorado Springs, El Paso County, and other regional entities having jurisdiction over stormwater detention and retention on Fountain Creek and to take whatever actions that are within MANITOU's legal authority and financial capacity, as determined by MANITOU's City Council to ensure that stormwater in the Fountain Creek Basin does not increase above existing conditions.

(D) MANITOU agrees to accept and comply with the City of Pueblo Flow Management Program and Pueblo Recreational In-Channel Diversion Decree, both impacting the Arkansas River between Pueblo Dam and its confluence with Fountain Creek, in any application for a change of water rights or exchange implicating that reach of the Arkansas River.

(E) MANITOU agrees to participate in any water quality monitoring or studies to the same degree and extent as undertaken by the City of Colorado Springs.

(F) **MANITOU** agrees to support any studies of a flood control dam or dams on Fountain Creek.

**16. Liability.** The Parties to this Agreement agree to be responsible for their own liability incurred as a result of their participation in this Agreement. In the event any claim is litigated, each Party will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement.

**17. No Assignment Without Consent, No Third Party Beneficiary.** There shall be no assignment of the rights or obligations contained in this Agreement by either Party without the prior written consent by the other Party, and any such assignment shall be null and void. Notwithstanding anything herein to the contrary, upon written notice to MANITOU,

UTILITIES may assign this Agreement without consent to the City of Colorado Springs, Colorado. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than UTILITIES and MANITOU.

**18. Legal Notice.** Notices under this Agreement, other than the MANITOU's requests for water and UTILITIES' responses to such requests, shall be given in writing, signed by an authorized representative of the Party giving notice. Telephonic or email notice is not acceptable. Notices shall be delivered by facsimile, by courier service delivery (such as Federal Express), or by first-class mail to one of the two (2) people specified below at the following addresses and telephone numbers:

**A. For UTILITIES**

- i. Chief System Planning and Projects Officer: Lisa Barbato, P.E.

Courier Service Address:

Colorado Springs Utilities

ATTN: Chief System Planning and Projects Officer

121 S. Tejon Street, 5<sup>th</sup> Floor

Colorado Springs, CO 80903

United States Postal Service Address:

Colorado Springs Utilities

ATTN: System Planning and Projects Officer

P. O. Box 1103

Colorado Springs, CO 80947-0950

- ii. City Attorney's Office – Utilities Division

Courier Service Address:

Colorado Springs Utilities

ATTN: City Attorney's Office – Utilities Division

30 S. Nevada Avenue, Suite 510

Colorado Springs, CO 80903

United States Postal Service Address:

Colorado Springs Utilities

ATTN: City Attorney's Office – Utilities Division

P. O. Box 1575, Mail Cde 510



Colorado Springs, CO 80901-1575

**B. For MANITOU**

Manitou Springs

606 Manitou Avenue

Manitou Springs, CO 80829

Telephone: 719-685-2555; Fax: 719-685-2554

Hayes, Phillips, Hoffmann & Carberry, PC

1530 Sixteenth Street, Second Floor

Fax: 303-825-6444

Denver, CO 80202

**19. Cancellation.** Either Party has the option to cancel this Agreement by March 1 of any given year for the balance of this Agreement.

**20. Governing Law, Jurisdictional and Venue.** This Agreement shall be construed in accordance with the laws of the State of Colorado (except for its conflict of law provisions) as well as the Colorado Springs City Charter and the City Code and the Manitou Springs City Charter and City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado. In the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado and, more specifically, El Paso County, Colorado and, if necessary, for exclusive federal questions, the United States District Court for the District of Colorado.

**21. Force Majeure.** Neither Party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbance.

**22. Entire Agreement; Modifications to be in Writing.** This Agreement, including any and all appendices and exhibits attached hereto, contains the entire understanding between the Parties. No modification, amendment, notation, or other alteration to this Agreement shall be valid or any force or effect unless mutually agreed to by the parties in writing as an addendum

to this Agreement. At the time of the execution of this Agreement, there are no other terms, conditions, requirements, or obligations affecting this Agreement which are not specifically set forth herein. Email and all other electronic (including voice) communications from UTILITIES, except as otherwise specifically provided herein, in connection with this Agreement, are for informational purposes only. No such communication is intended by UTILITIES to constitute either an electronic record or an electronic signature or to constitute any agreement by UTILITIES to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

**23. No Precedent; Severability.** The Parties agree that neither of them intends that this Agreement shall in any way constitute a precedent or standard for any future Agreement, nor vest any rights in either Party or any third party for novation, renewal, modification, or addition of any other rights or services on account of this Agreement's existence, as it is based solely on unique conditions currently existing at the time of execution. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be binding upon the Parties who agree that this Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.

INWITNESS WHEREOF, the Parties hereto have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**COLORADO SPRINGS UTILITIES**

**CITY OF MANITOU SPRINGS**

By \_\_\_\_\_  
Travas Deal  
Chief Executive Officer

By \_\_\_\_\_

Title:

APPROVED AS TO FORM:

DRAFT

## APPENDIX A

A. **Direct Delivery and Delivery by Exchange Conveyance/Storage Fees.**

MANITOU agrees to pay UTILITIES for water delivered in 2024 pursuant to this Agreement at the 2024 rate of \$0.0179 per cubic foot. The rates for water delivery in subsequent years shall be adjusted to conform with changes to UTILITIES' generally applicable rates for delivery of nonresidential potable water outside the city limits of Colorado Springs; provided that when UTILITIES performs a cost of service study, the rates shall be adjusted based upon the change to the cost of service for the deliveries.

B. **Administrative Fees.** Administrative services provided pursuant to this Agreement will be billed at 1.5 times the current job rate salary for the UTILITIES Employee(s) Classification performing the required services.

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is made as of the \_\_\_\_ of \_\_\_\_\_, 2024 (“Effective Date”), by and between COLORADO SPRINGS UTILITIES, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 121 S. Tejon Street, Colorado Springs, Colorado 80903 (“Utilities”), and the City of Manitou Springs, a Colorado home rule city and municipal corporation, (“Manitou”). Each may be individually referred to as a “Party” and collectively, as the “Parties.”

WHEREAS, in the spirit of collaboration, Manitou and Utilities have agreed to bypass flow down Ruxton Creek in accordance with this MOU; and

WHEREAS, the Parties are entering into this MOU to allow each Party flexibility in operating its water system and to maximize municipal use of water supplies; and

WHEREAS, the Parties are neither modifying nor abandoning any water right held by either party.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which are hereby acknowledged, the Parties agree to the following terms and conditions.

### AGREEMENT

1. The term of this MOU shall be from the Effective Date for a period of twenty-five (25) years (“Term”), unless otherwise extended by mutual written agreement of authorized representatives of the Parties. This MOU shall automatically terminate without notice upon a modification or alteration of Manitou’s current operational practices of diverting its 03/20/1861 Ruxton Creek water right for municipal use at the alternate points of diversion, as set forth in Case Number 84CW49, located at Soda Springs Park, Memorial Park, Schriver Park, and Beckers Lane (“Water Right”). Neither party shall have any obligation to renew this Agreement after the Term.
2. During the period from April 1 through October 31 of each year during the Term, provided that Manitou continues its operational practice of diverting its Water Right for municipal use at the decreed alternate points of diversion, Utilities agrees to bypass 0.1 cfs of its Manitou #1 intake, as measured by Utilities’ flume located directly below Utilities’ diversion.
3. During the period from April 1 through October 31 of each year during the Term, in the event Manitou does not divert the bypassed flow for its municipal use under the Water Right at the decreed alternative points of diversion, Utilities will bypass a flow equal to 0.1 cfs at its Manitou #1 intake, as measured by Utilities’ flume located directly below Utilities’ diversion, provided that Utilities determines in its sole discretion that it is able operationally to re-capture the water bypassed at Utilities’ 33<sup>rd</sup> Street Pumping Station (“Pumping Station”).

4. During the period from April 1 through October 31 of each year during the Term of this agreement, Manitou may request Utilities to bypass a flow in addition to the 0.1 cfs described in Paragraph 2 above up to 0.15 cfs (for a total of up to 0.25 cfs) at its Manitou #1 intake, as measured by Utilities' flume located directly below Utilities' diversion. Utilities, in its sole discretion, primarily considering water quality and available pumping capacity at Utilities' 33<sup>rd</sup> Street Pumping Station to fully recapture all bypassed flow, may elect to accommodate Manitou's request for additional bypass flows, upon Manitou's payment of the costs associated with pumping the additional bypassed water of up to 0.15 cfs ("Pumping Costs"). The calculation of the Pumping Costs shall be as follows: Previous Years' 33<sup>rd</sup> Street Pumping Station actual electric energy costs. The actual energy cost shall be the summation of the energy charge plus demand charges, plus any electric cost adjustments, either positive or negative, plus customer charge divided by total number of acre-feet pumped in the previous year. Once the Pumping cost per acre-foot has been determined that value will be multiplied by 63.37 acre-feet which is equal to the additional 0.15 cfs multiplied times the maximum number of pumping days that would occur between April 1 and October 31 which is equal to 214 days. In the event Manitou requests additional bypass flows for a given year, in accordance with this section, Manitou shall provide written notice to Utilities by February 1. Utilities shall bill Manitou for additional pumping on or before March 1, and Manitou shall pay Utilities for any additional pumping costs by March 31. In the event Manitou, in their sole judgement elects to reduce or eliminate the amount of additional bypassed flow for a given year, Manitou shall only pay for the amount actually bypassed.
5. During the period from April 1 through August 31 of each year during the Term, Utilities will make diligent efforts to adjust its direct flow gravity systems to allow available water in excess of 0.1 cfs to be bypassed down Ruxton Creek in the event that both of the following occurs for at least twenty-four (24) consecutive hours: (i) the Pumping Station is pumping at capacity and water in excess of normal leakage is being bypassed below the 33<sup>rd</sup> Street diversion dam; and (ii) water is being spilled at other gravity direct flow diversion points that provide water to the Tollefson Water Treatment Plant. Notwithstanding the foregoing, Utilities shall have no obligation to adjust its direct flow gravity systems to allow additional bypass flow in the event Utilities determines in its sole discretion either that: (a) there are additional costs to Utilities' customers; or (b) there is diminished water supply or significantly reduced water quality at the Tollefson Water Treatment Plant.
6. Utilities' sole obligation for any failure to perform under this MOU, and Manitou's sole and exclusive remedy, shall be to allow additional bypass flow in an amount equal to the flow that would have otherwise been bypassed.
7. This MOU shall be construed in accordance with the laws of the State of Colorado, except for its conflict law provisions, the Colorado Springs City Charter and the City Code. The place of performance and transaction of business shall be deemed to be in the County of El Paso, State of Colorado, and in the event of litigation, the exclusive venue and place of jurisdiction shall be the State of Colorado, and more specifically, El Paso County, Colorado, and, if

necessary for exclusive federal questions, the United States District Court for the District of Colorado.

8. The failure of either Party to insist, in any one or more instances, upon strict performance of any of the provisions of this MOU, or take advantage of its rights under this MOU, shall not be construed as a waiver of any such provisions or the relinquishment of any such rights, but the same shall continue and remain in full force and effect.
9. If any of the provisions of this MOU are held to be invalid or unenforceable under the applicable law of any jurisdiction, the remaining provisions shall not be affected. In that event, the Parties agree that the provisions of this Agreement shall be modified and reformed so as to effect the original intent of the parties as closely as possible with respect to those provisions that were held to be invalid or unenforceable.
10. Neither Party shall be liable for delays in performing its obligations to the extent the delay is caused by an unforeseeable condition beyond its reasonable control without fault or negligence including strikes, riots, wars, floods, fires, explosions, acts of nature, acts of government, or labor disturbances.
11. With respect to water rights, this MOU addresses operational matters between the Parties. Nothing herein shall be construed by either Party as any modification or abandonment of any water rights held by either Party. The terms and conditions provided herein are contractual obligations and shall not be construed as limiting the exercise of any water rights of either Party after the Term.
12. There shall be no assignment of the rights or obligations contained in this MOU by either Party without the prior written consent by the other Party, and any such assignment shall be null and void. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Utilities and Manitou.
13. This MOU may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Digital copies of signatures shall be permitted for purposes of the binding nature of this MOU.
14. It is expressly understood and agreed that the terms and conditions of this MOU, and all rights regarding such shall be strictly reserved to the Parties hereto, and nothing contained in this MOU shall give or allow any such claim or right of action by any other or third person or entity on such MOU.
15. This MOU constitutes the entire agreement between the Parties concerning the subject matter herein and supersedes all prior written or oral communications, understandings and agreements between them in respect of the subject matter covered hereby. This MOU may

only be amended, supplemented or modified by a written instrument executed by Manitou and Utilities.

AGREED TO:

**COLORADO SPRINGS UTILITIES**

**CITY OF MANITOU SPRINGS**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

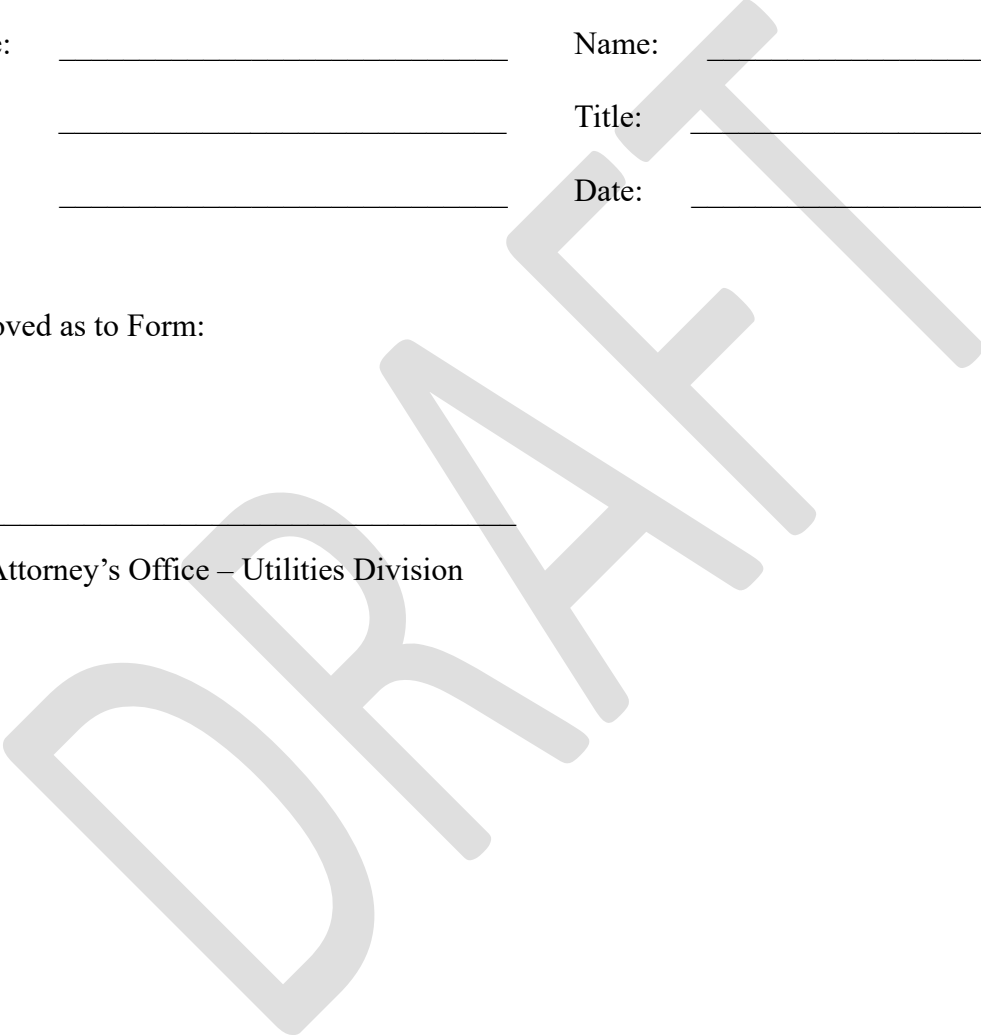
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Date: \_\_\_\_\_

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

Approved as to Form:

\_\_\_\_\_  
City Attorney's Office – Utilities Division





# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024  
**To:** Utilities Board  
**From:** Travas Deal, Chief Executive Officer  
**Subject:** Blue River Settlement Negotiations Update

### NARRATIVE:

**Desired Action:** Informational presentation regarding the proposed Blue River Settlement Agreement, which requires approval by City Council is per City Code sections 1.2.104 and 1.5.506.

**Executive Summary:** Colorado Springs Utilities has reached agreement on a proposed Memorandum of Agreement with six West Slope parties that resolves pending litigation related to Springs Utilities' diligence in perfecting its Blue River conditional water rights that it has had decrees for since 1948. We have filed applications with the Colorado Water Court as required to maintain the conditional rights every six years for the past 50 years. The six West Slope parties objected to our most recent application and the subject litigation ensued. The proposed Memorandum of Agreement is the result of years of sustained efforts to reach mutually beneficial and responsible solutions for all parties that resolve disputed issues between the parties.

**Benefits:** The proposed Memorandum of Agreement resolves the issues raised in the litigation as well as other legal disputes related to our use of the Continental-Hoosier System, including the lawful place of use and storage of Blue River water. The settlement also minimizes both the legal and permitting risks to the planned enlargement of Montgomery Reservoir, which will expand our storage capacity for collection of additional water supplies legally and physically available to us. A summary of the Key terms of the Memorandum of Agreement are included in the attached presentation.

**Board Policy:** I-7, Water Supply Management

**Cost/Budget:** We will pay 50% of the cost of designing and building a reservoir for Summit County and Breckenridge at a total cost not to exceed \$15,000,000

**Affected Parties:** The parties to the negotiations are Colorado Springs Utilities, Summit County Board of County Commissioners, Town of Breckenridge, Colorado River Water Conservation District, Grand Valley Water Users Association, Orchard Mesa Irrigation District, and Ute Water Conservancy District.

**Alternatives:** Approve or disapprove the Memorandum of Agreement moving forward to City Council.

<b>Submitter:</b> Abigail Ortega	<b>Email address:</b> ajortega@csu.org
<b>Division/ Department:</b> Infrastructure and Resources Planning	<b>Phone number:</b> 719-668-8748
	<b>Date submitted:</b> 12/20/2023

<b>SPG Staff Use Only:</b> Consent Calendar	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	<b>ITEM NO. 10</b>
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Colorado Springs Utilities  
*It's how we're all connected*

# Blue River Settlement Negotiations Update

Approval of a proposed Memorandum of Agreement settling water rights litigation  
Maria Pastore, Water Resources Planning & Bill Paddock, Outside Legal Council

January 17, 2024

# Agenda

1. Continental Hoosier System Background
2. Blue River Conditional Water Rights
3. Proposed Agreement
4. Key Terms
5. Next Steps



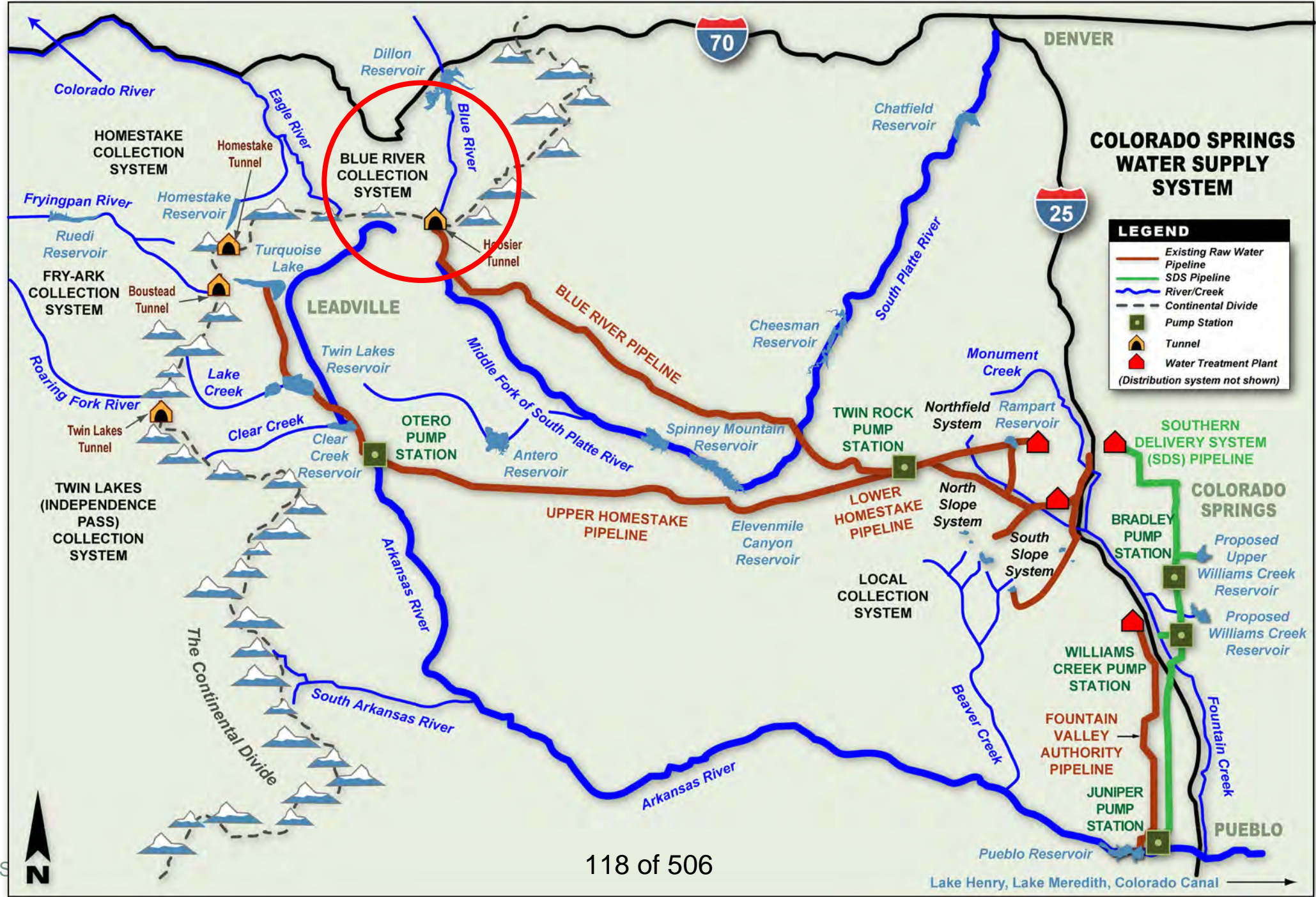
# Continental- Hoosier System

- System diverts stream flows from the Blue River watershed and Middle Fork of the South Platte for storage in Montgomery Reservoir
- Only transmountain system owned solely by Colorado Springs
- Is completely gravity flow for more than 70 miles of pipeline
- Provides critical redundancy to other systems and reliable service through drought and emergencies



# Blue River Conditional Storage Water Rights

- Lower Blue Lake, Spruce Lake, and Mayflower Reservoirs
- Diligence applications with the Colorado Water Court to maintain the conditional rights every six years as required for the past 50 years
- Six West Slope parties objected to our most recent application and the subject litigation ensued
- Storage capacity limits realizing full yield from Con-Hoosier
- Enlargement of Montgomery eliminates need to build the three conditional water storage rights and captures most of water we are now unable to capture
  - Original three conditional storage sites are difficult areas to permit and construct reservoirs



# Memorandum of Agreement (MOA) – Key Terms

- Settlement of Blue River Conditional Decree
- Agreement on place of use for Utilities' Blue River water rights
- Agreement on definition of “Municipal Area” in context of Blue River Decree
  - Clarifies that it includes area that is changing as well as interconnected systems
- Agreement that allows for legal storage of Blue River Water in East Slope storage
- West Slope parties agree to generally support permitting of Montgomery Reservoir enlargement, including support for a Summit County 1041 permit

# MOA – Key Terms, Continued

- Agree to the Shoshone Hydro Plant outage protocol “ShOP” and Shoshone Permanency
  - This is key to Colorado River District proposal to purchase hydro plant
  - Other Front Range diverters have previously agreed to terms
  - Contains provisions for drought relaxation
- Convey 600 acre-feet of the 1006-acre-foot Lower Blue water storage right to Summit County and Breckenridge
  - Create 600 acre-foot of space in Montgomery Reservoir for West Slope trades
  - File Water Court Application to change water rights for West Slope use
  - Reduce water currently stored in Upper Blue for West Slope use by 150 acre-feet
  - In wet years, bypass up to 475 acre-feet for their use
  - In dry years, reduced to 300 acre-feet for their use



# MOA – Key Terms, Continued

- Cost share on design, permitting and construction of Lower Blue Reservoir 50/50
  - Estimated total cost is \$10-\$15 Million
- Operational Contingencies to provide water to Breckenridge and Summit County to address permitting scenarios
  - Post 2027 - During permitting for Montgomery Expansion - 250 acre-feet, up to 5 years
  - Montgomery complete, awaiting construction of Lower Blue - 250 acre-feet, up to 8 years
  - If permits for Lower Blue Reservoir denied and Montgomery Expansion completed – up to 475 acre-feet

# MOA – Additional Mitigation

- Refrain from diverting to maintain 5 cubic feet per second in Blue River below our diversions
  - Current requirement in dry years only
- Agree to volumetric diversions through Hoosier Tunnel of 13,000 acre-feet/year over 15 year rolling average
  - Maximum diversion of 21,000 acre-feet in any one year
- Once Montgomery Reservoir enlargement is complete
  - Abandon conditional storage rights in Spruce and Mayflower Reservoirs and convey land to Summit County
  - Convey the lands we own under the proposed Lower Blue storage site
  - Withdraw objection to Ten-Mile Wilderness Area

# Montgomery Reservoir Enlargement Project

- The goal of the proposed project is to improve the resiliency, redundancy and efficiency of this collection system
- We plan to maximize the use of existing infrastructure to manage risk and improve the management of the collection and conveyance of legally and physically available water supplies through the Blue River pipeline to serve a portion of demands in the Colorado Springs metro area
- Approximate new supply of 4000 acre-feet annual average

**TIMELINE:** *2025 submit permit application | 2026-27 federal, state, local permitting decisions | 2028-30 construction*

# Next Steps

- Participating Entities are taking to their Boards for approval in January/February
- February 13, 2024 City Council on Consent Agenda for approval

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT RELATED TO THE SETTLEMENT OF CASE NOS. 15CW3019, 18CW3041 AND 16CW3015, DISTRICT COURT, WATER DIVISION 5, STATE OF COLORADO

WHEREAS, the City of Colorado Springs, acting through its enterprise Colorado Springs Utilities (“Utilities”) filed an application for a finding of reasonable diligence for its conditional water storage rights for Spruce Lake, Mayflower Lake, and Lower Blue Lake Reservoirs, which is now pending in Case No. 15CW3019, District Court, Water Division 5, to which 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 statements of opposition; and

WHEREAS, Utilities 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 to which Summit County filed a statement of opposition; and

WHEREAS, Summit County 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 to which Colorado Springs Utilities filed a statement of opposition; and

WHEREAS, the parties to Case Nos. 15CW3019, 18CW3041 and 16CW3015 have reached an agreement to settle those cases, the terms of which have been set forth in a Memorandum of Agreement attached hereto as Exhibit A and made a part hereof (the “Settlement Agreement”); and

WHEREAS, Utilities requests that City Council approve the Settlement Agreement.

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

Section 1. City Council finds that the public interest and best interests of the City of Colorado Springs and Colorado Springs Utilities will be served by approving and implementing the Settlement Agreement.

Section 2. City Council hereby approves the Settlement Agreement in substantially the same form as attached hereto subject to such minor modifications as maybe approved by the Colorado Springs Utilities’ Chief Executive Officer and the City Attorney.

Section 3. Utilities' Chief Executive Officer is hereby authorized to execute the Settlement Agreement for and on behalf of Utilities and to take all action reasonably necessary to perform Utilities' obligations contained in the Settlement Agreement.

Section 4. Utilities' Chief Executive Officer and the City's Real Estate Services Manager are authorized to execute all agreements and other documents contemplated in the Settlement Agreement that are necessary for implementation of the Agreement.

Section 5. This Resolution shall be in full force and effect immediately upon its adoption.

Dated at Colorado Springs, Colorado this \_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

FINAL REVIEW DRAFT (V2) DECEMBER 29, 2023

**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 System<sup>1</sup> 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

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<sup>1</sup> Sometimes also referred to as the “Continental-Hoosier Project.”

the United States District Court, District of Colorado (“1955 Decree”), and all supplemental or amendatory orders, judgments, and decrees in said cases, including, 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 6<sup>th</sup> 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 6<sup>th</sup> 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 Reservoir<sup>2</sup> 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

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<sup>2</sup>Colorado 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.

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 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 6<sup>th</sup> 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 1<sup>st</sup> 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 appropriate 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 1<sup>st</sup> 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 1<sup>st</sup> 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 30<sup>th</sup> 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 (except as provided 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 1,050<sup>3</sup> acre-feet of its rights under paragraphs 3 and 4 of the Substitution Agreement and the Plan

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



of Substitution Decree for storage in and release of water from the Colorado Springs Substitution Account in Wolford Mountain Reservoir.

**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 entities<sup>4</sup> 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

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<sup>4</sup> 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.

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 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 Project<sup>5</sup> 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

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<sup>5</sup> 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

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 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 Woford 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 MOU<sup>6</sup> 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-

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<sup>6</sup> 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.

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 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 Alternative, 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., 3<sup>rd</sup> 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 1/4 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 \_\_, 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 \_\_, 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 \_\_, 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**

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

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

By \_\_\_\_\_  
Shannon Hayes, Town Manager

ATTEST:

ATTEST:

By: \_\_\_\_\_  
Summit County Manager

\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk

**COLORADO RIVER WATER  
CONSERVATION DISTRICT**

Approved as to form:

By: \_\_\_\_\_  
Kathy Chandler-Henry, President

\_\_\_\_\_  
CITY ATTORNEY

AND ITS ATTORNEY

**COLORADO SPRINGS UTILITIES**

By: \_\_\_\_\_  
Peter C. Fleming  
General Counsel

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)

**EXHIBIT 1**

**Lower Blue Lake Reservoir and  
Montgomery Reservoir Water Storage  
Operating Agreement**

This Agreement is made among the City of Colorado Springs on behalf of its enterprise Colorado Springs Utilities (“Colorado Springs”), the County of Summit, and the Town of Breckenridge (“Lower Blue Parties”), collectively referred to as the Parties.

**RECITALS**

The Parties and the Colorado River Water Conservation District (“River District”), 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, entered into a Settlement Agreement Concerning Water Rights (“Settlement Agreement”) dated \_\_\_\_\_, 2023.

Subject to the terms of the Settlement Agreement, Colorado Springs and the Lower Blue Parties plan to construct a Lower Blue Lake Reservoir (“Lower Blue Reservoir”) at or near the location shown on Exhibit A, which reservoir will be owned and operated by the Lower Blue Parties.

Subject to the terms of the Settlement Agreement, Colorado Springs has agreed to provide a water supply for the Lower Blue Reservoir, which will require the coordinated operation of Colorado Springs’ 1948 Blue River water rights and the storage of a portion of the 1948 Lower Blue Reservoir water right (“Lower Blue Reservoir water right”) in an enlarged Montgomery Reservoir.

The purpose of this Operating Agreement is to establish the operating principles under which Colorado Springs and the Lower Blue Parties will coordinate and cooperate to provide a water supply to the Lower Blue Reservoir in accordance with the Settlement Agreement.

This Operating Agreement assumes that Lower Blue Reservoir or an Acceptable Alternative can be permitted and constructed by the Lower Blue Parties. 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 provided in paragraphs 4.16-4.18 of the Settlement Agreement.

## AGREEMENT

In consideration of the foregoing recitals, the keeping and performance of the promises contained herein, and other valid consideration to each of the Parties, the receipt of which is hereby acknowledged and confirmed, Colorado Springs and the Lower Blue Parties agree as follows:

### **1. Implementation Principles.**

**1.1.** This Operating Agreement implements a portion of the Settlement Agreement. If any provision(s) contained in this Operating Agreement conflicts with any provision(s) in the Settlement Agreement regarding the Lower Blue Reservoir, the provision(s) contained in the Settlement Agreement govern and control.

**1.2.** Any term defined in the Settlement Agreement has the same meaning in this Operating Agreement unless otherwise expressly stated.

**1.3.** This Operating Agreement is subject to and will be implemented in a manner consistent with the terms of the May 15, 2003 Memorandum of Agreement Regarding Colorado Springs Substitution Operations (“Substitution Agreement”) attached as Exhibit B hereto. Except where expressly modified by the Settlement Agreement or this Operating Agreement, if any provision(s) contained in this Operating Agreement conflicts with any provision(s) in the Substitution Agreement, the provision(s) contained in the Substitution Agreement govern and control.

**1.4.** For the purposes of their respective obligations under this Operating Agreement, the Parties have assumed that the proposed Lower Blue Reservoir when constructed will have an active storage capacity of 600 acre-feet (“AF”). Active storage capacity means the volume of water that can be drained by gravity through the outlet works of the Lower Blue Reservoir.

**1.5.** Colorado Springs’ contractual obligation to provide water under the Settlement Agreement, this Operating Agreement, and the 100 AF for the West Slope account under the Substitution Agreement will have operating 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, except during Substitution Years. During Substitution Years Colorado Springs’ storage in Upper Blue Reservoir is governed by part 4 of this Operating Agreement.

**1.6.** The Lower Blue Parties will own, operate, and maintain the Lower Blue Reservoir and up to 600 acre-feet of the changed Lower Blue Reservoir water right to be stored at the Lower Blue Reservoir. The Lower Blue Parties will be responsible for all required measurement, accounting, and reporting for the Lower Blue Reservoir

water right. The operation of Lower Blue Reservoir is subject to the terms of this Operating Agreement and the applicable provisions of the Settlement Agreement.

**1.7.** During the period when the Lower Blue Parties can safely access Lower Blue Reservoir and physically operate its outlet works, the Lower Blue Parties agree to physically operate the Lower Blue Reservoir outlet works in a timely manner (daily or more often if the Parties agree is necessary) so as to comply with water rights river administration and to effectuate the terms of this Operating Agreement.

**1.8.** Colorado Springs owns and will physically operate the Upper Blue Reservoir and the planned enlarged Montgomery Reservoir and associated water rights stored in those reservoirs. Such operations shall comply with the terms of the Settlement Agreement, this Operating Agreement and the applicable provisions of the Substitution Agreement.

**1.9.** This Operating Agreement creates a contractual right for the Lower Blue Parties to receive, and for Colorado Springs to provide water by exchange or substitution, against water stored in an enlarged Montgomery Reservoir in accordance with the terms of this Operating Agreement. This Operating Agreement does not confer on the Lower Blue Parties any ownership of water stored in Montgomery Reservoir or its enlargement or any ownership interest in that reservoir itself.

**1.10.** During the period when Colorado Springs can safely access Upper Blue Reservoir and physically operate its outlet works (typically after April 1<sup>st</sup> and ending by Nov. 15<sup>th</sup>) Colorado Springs will operate the Upper Blue Reservoir outlet works in a timely manner (daily or more often if the Parties agree is necessary) to comply with water rights administration and to effectuate the terms of this Operating Agreement.

**1.11.** Colorado Springs and the Lower Blue Parties will cooperate to obtain assurances from the Parties to the Substitution Agreement that the use of the Lower Blue Reservoir water right by the Lower Blue Parties pursuant to the terms of the Settlement Agreement and this Operating Agreement is consistent with rights and obligations of the parties to that agreement. Colorado Springs and the Lower Blue Parties will cooperate to obtain assurances from the United States that the use of the Lower Blue Reservoir water right by the Lower Blue Parties pursuant to the terms of the Settlement Agreement and this Operating Agreement is consistent with (1) Colorado Springs' February 22, 2010, Memorandum of Agreement between the United States of America and Colorado Springs Utilities Establishing Principles for Substitution of Water to Green Mountain Reservoir, and (2) the concurrently executed Power Interference Agreement. However, nothing herein requires consent of anyone not a party to this Agreement.

**1.12.** Colorado Springs will be responsible for filing and prosecuting an application for a change of water rights to allow the Lower Blue Reservoir water right to be used by the Lower Blue Parties and allow an alternate place of storage of 600 AF of that water right in an enlarged Montgomery Reservoir.

**2. Basic Annual Operating Principles.**

**2.1.** This part 2 contains generally applicable provisions that are intended to apply during both Substitution Years and Non-Substitution Years.

**2.2.** The diversion season is April 1 – September 30. Colorado Springs will not provide water to the Lower Blue Parties outside these dates, unless the 1948 Blue River water rights are in priority, or by separate agreement.

**2.3.** The Lower Blue Parties will install, operate, and maintain all measuring devices reasonably necessary to determine the quantity of water stored in and the amount of water released from or flowing out of the Lower Blue Reservoir. To the extent not already installed, Colorado Springs will install, and will operate and maintain all measuring devices reasonably necessary to determine the quantity of water delivered to the Lower Blue Parties under this Operating Agreement from inflow to or water stored in Upper Blue Reservoir and the enlarged Montgomery Reservoir. The Parties will maintain accurate accounting records of their water operations and will preserve these records for a minimum of twenty years.

**2.4.** Every year, Colorado Springs shall first store in Upper Blue Reservoir up to 100 AF for subsequent delivery to the River District as water made available to the West Slope under the terms of the Substitution Agreement. This water shall be released from Upper Blue Reservoir at the request of the River District in accordance with the Substitution Agreement. Such releases shall be to and then through the Lower Blue Reservoir to Monte Cristo Creek for use by the River District or its contractees, unless other operations are authorized by separate agreement.

**2.5.** Following storage of the 100 AF in Upper Blue Reservoir for delivery to the River District, in Non-Substitution Years Colorado Springs shall provide for storage in Lower Blue Reservoir up to the next 475 AF to the Lower Blue Parties, and in Substitution Years Colorado Springs shall provide up to 300 AF to the Lower Blue Parties, according to the terms of the Settlement Agreement and as specified in part 4 below.

**2.6.** Unless otherwise agreed to between Colorado Springs and the Lower Blue Parties, the Lower Blue Parties will not exercise any exchanges or substitutions junior to Colorado Springs' Monte Cristo (a.k.a. Blue River Ditch) diversion's 1948 water right (decreed or administrative) that (a) would materially impact Colorado Springs'

diversions under its Monte Cristo diversion's 1948 water right; or (b) would materially impact Colorado Springs' ability to divert its Monte Cristo diversion's 1948 water right under the terms of the Green Mountain Reservoir Administrative Protocol.

**2.6.1.** Prior to operation of Lower Blue Reservoir, the Parties will develop an accounting and notification protocol to be attached to this Operating Agreement.

**2.7.** Except for releases to the Lower Blue Reservoir provided for in the Settlement Agreement or this Operating Agreement, all releases by Colorado Springs from Upper Blue Reservoir will be contemporaneously passed through Lower Blue Reservoir. Such releases may include, but are not limited to, delivery of water to the River District, to Colorado Springs for delivery through the Hoosier Tunnel, or for Green Mountain Reservoir Substitution.

**2.8.** Accounting for all water operations at Lower Blue Reservoir, Upper Blue Reservoir, and Montgomery Reservoir will be shared between Colorado Springs and the Lower Blue Parties upon request and to the extent and at a frequency required to manage the physical system and the accounting set forth in this Operating Agreement.

**2.9.** For purposes of this Operating Agreement the "unfilled active storage capacity" of Lower Blue Reservoir means and is calculated as the total reservoir active storage capacity minus the amount of water physically in the active storage capacity on April 1<sup>st</sup> each year.

**2.10.** The map attached as Exhibit D to this agreement shows the location of the structures in the Blue River Basin referred to in this Operating Agreement.

**2.11.** Within one year from the signing of the Operating Agreement, Colorado Springs and the Lower Blue Parties will develop a set of technical scenarios that work through and outline basic accounting principles and notification protocols. There will be six scenarios that outline non-substitution years and substitution years under Paragraphs 2.3, 2.4, 4.14, and 4.16. These technical scenarios will then be attached to the Operating Agreement as Exhibit C.

**3. Lower Blue Reservoir Operations During Non-Substitution Years.**

**3.1.** The provisions of this part 3 describe operations during Non-Substitution Years.

**3.2.** The lesser of 475 AF, or a quantity of water equal to the unfilled active storage capacity of the Lower Blue Reservoir as of April 1, shall be made available to the Lower Blue Parties for storage in Lower Blue Reservoir accordance with the terms of both the Settlement Agreement and this Operating Agreement.



**3.3.** Storage in Lower Blue Reservoir by the Lower Blue Parties, up to the quantity of water calculated under paragraph 3.2 above, will have an operating priority equal to the diversion by Colorado Springs in Upper Blue Reservoir. Following storage of the 100 AF for the West Slope account into Upper Blue Reservoir, Colorado Springs will bypass inflow to Upper Blue Reservoir in an amount that, when combined with inflow to Lower Blue Reservoir from locations below Upper Blue Reservoir that can be lawfully stored by the Lower Blue Parties, will equal the quantity of water required to be provided to the Lower Blue Parties under paragraph 3.2 above.

**3.4.** The contractual operating priority described in paragraph 3.3 above shall not be construed as any type of subordination of Colorado Springs 1948 Blue River water rights to any other water rights. Nothing in this part 3 precludes the simultaneous exercise of storage in both Upper Blue Reservoir and Lower Blue Reservoir by mutual agreement of Colorado Springs and the Lower Blue Parties if hydrologic conditions are sufficient to satisfy both.

**3.5.** Colorado Springs will cooperate as necessary to allow the Lower Blue Parties to store water in Lower Blue Reservoir by exchange when the 1948 Blue River water rights at the Monte Cristo diversion structure are out of priority, or when such water rights are in-priority but Colorado Springs is bypassing water back to Monte Cristo Creek at the Monte Cristo Creek flume.

**4. Lower Blue Reservoir Operations During Substitution Years.**

**4.1.** The provisions of this part 4 describe operations during Substitution Years.

**4.2.** The lesser of 300 AF, or a quantity of water equal to the unfilled active storage capacity of the Lower Blue Reservoir as of April 1, shall be made available by Colorado Springs to the Lower Blue Parties according to the terms of the Settlement Agreement and this Operating Agreement.

**4.3.** Following storage of the 100 AF for the West Slope account in Upper Blue Reservoir, Colorado Springs will next provide to the Lower Blue Parties up to 150 AF of inflow to Upper Blue Reservoir or such lesser amount as is required to fill the remaining unfilled active storage capacity of Lower Blue Reservoir.

**4.4.** After providing up to 150 AF to the Lower Blue Parties under paragraph 4.3, Colorado Springs shall store in Upper Blue Reservoir all water legally and physically available to the Upper Blue Reservoir in compliance with the Substitution Agreement and the USBR Substitution Agreement.

**4.5.** The remainder of the amount of water required to be provided to the Lower Blue Parties in Substitution Years shall be made available from the Upper Blue Reservoir or from the Lower Blue Reservoir water right changed to allow for West

Slope use: (a) that is physically available in Monte Cristo Creek at Lower Blue Reservoir (excluding releases from Upper Blue Reservoir made for substitution delivery pursuant to the Substitution Agreement and the Plan of Substitution Decree, or delivery of 100 AF to the River District ); and then, either (b) water stored in Upper Blue Reservoir that is not required for substitution operations; and/or, (c) releases of water by Colorado Springs 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.

**4.5.1.** If any water stored in Upper Blue Reservoir is determined not to be needed to satisfy Colorado Springs' substitution obligations under the Substitution Agreement, such volume up to the amount required to be provided in Substitution Years under paragraph 4.2 above (less any water stored under paragraph 4.5(a)) shall be released to the Lower Blue Parties.

**4.5.2.** If the above operations are insufficient (or there is a reasonable expectation that they will be insufficient) to satisfy the amount of water required to be made available to the Lower Blue Parties in Substitution Years, then Colorado Springs and the Lower Blue Parties will operate the Montgomery Reservoir Substitution (Trade/Bookover) Operation described in part 6 below.

**4.6.** 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 may 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, then Colorado Springs would be entitled to use 175 acre-feet ( $475 - 300 = 175$ ) stored in Lower Blue Reservoir for substitution purposes or for delivery through the Hoosier Tunnel to Montgomery Reservoir.

**5. Montgomery Reservoir Storage Operations for 1948 Lower Blue Reservoir Water Right.**

**5.1.** This part 5 addresses the storage of part of the Lower Blue Reservoir water right in an enlarged Montgomery Reservoir.

**5.2.** Colorado Springs shall divert and store in an enlarged Montgomery Reservoir an amount of the Lower Blue Reservoir water right, not to exceed 600 AF, that will be utilized to provide to the Lower Blue Parties by exchange or substitution (including trade or book-over) the Lower Blue Reservoir water right stored in an enlarged Montgomery Reservoir. This water will be provided by exchange or substitution from water available in priority to Colorado Springs 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.

**5.3.** Colorado Springs is responsible for filing and prosecuting an application for change of water rights to allow up to 600 AF of the Lower Blue Reservoir water right to be diverted annually at its Monte Cristo Creek diversion and held in an enlarged Montgomery Reservoir for the purposes of effectuating a water exchange or substitution to permit the delivery of this water to the Lower Blue Parties. The Lower Blue Parties shall not oppose the application but may file a statement of opposition and participate therein to the extent necessary to ensure the application and decree entered therein are consistent with the Settlement Agreement and this Operating Agreement.

**5.4.** Colorado Springs retains ownership of the remainder of the Lower Blue Reservoir water right not conveyed to the Lower Blue Parties. The 600 acre-feet changed for storage in an enlarged Montgomery Reservoir will retain all currently decreed uses of that water right by Colorado Springs and may be used by Colorado Springs in accordance with this Operating Agreement.

**5.5.** The Lower Blue Reservoir water right held in an enlarged Montgomery Reservoir will be tracked separately from Colorado Springs' other 1948 Blue River water rights in the Montgomery Reservoir accounting.

**5.6.** Evaporation losses from Montgomery Reservoir associated with water stored under the Lower Blue Reservoir water right will be assessed pro rata based on the amount of Lower Blue Reservoir water stored in the enlarged Montgomery Reservoir.

**5.7.** The combined amount of water stored in Lower Blue Reservoir under the Lower Blue Reservoir water right and stored under the Lower Blue Reservoir water right in Montgomery Reservoir, shall not exceed 1,006 AF at any one time.

**5.7.1.** No more than 1,006 AF shall be diverted and stored in Lower Blue Reservoir and/or an enlarged Montgomery Reservoir under the Lower Blue Reservoir water right in any one year (April 1 to March 31), including carry-over storage from the prior year as determined on April 1.

**5.8.** No more than 600 AF of the Lower Blue Reservoir water right shall be stored in an enlarged Montgomery Reservoir at any time.

**5.9.** Colorado Springs will share accounting of the Lower Blue Reservoir water right stored in an enlarged Montgomery Reservoir with the Lower Blue Parties upon request.

**5.10.** The Lower Blue Parties will notify Colorado Springs Operations Representative of the amount of water that can be delivered to and stored in an enlarged Montgomery Reservoir under the Lower Blue Reservoir water right as necessary to implement this Operating Agreement and the Settlement Agreement.

**5.11.** Colorado Springs may use in its municipal water supply system water stored in an enlarged Montgomery Reservoir under the Lower Blue Reservoir water right to the extent necessary to accommodate increased storage of the Lower Blue Reservoir water right by the Lower Blue Parties in Lower Blue Reservoir to ensure that the annual storage under the Lower Blue Reservoir water right does not exceed 1,006 AF. This use can be done by either a release from an enlarged Montgomery Reservoir, or by book-over accounting to Colorado Springs 1948 Blue River direct flow rights stored in Montgomery Reservoir.

**6. Montgomery Reservoir Substitution Operations.**

**6.1.** If the Lower Blue Parties request Lower Blue Reservoir water be provided 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, from an enlarged Montgomery Reservoir by the substitution operation described in this part 6, then Colorado Springs will coordinate with them to determine a target volume for the substitution, the planned place of use, and set a schedule for the operation.

**6.2.** During Substitution Years the delivery by substitution of Lower Blue Reservoir water stored in the enlarged Montgomery Reservoir to 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, will only occur while the Lower Blue Reservoir water right can lawfully be diverted or is diverting pursuant to the terms of the Green Mountain Reservoir Administrative Protocol.

**6.2.1.** The Lower Blue Parties will notify Colorado Springs Operations Representative when they wish to be provided water by substitution. Colorado Springs will implement the delivery by substitution to the extent that the stream flow conditions allow it to be accomplished, and if it is allowed under the priority system or other lawful administrative mechanism.

**6.3.** During the Substitution Operations, the quantity of the 1948 Blue River water rights released back to Monte Cristo Creek 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, will be measured daily and communicated to the Lower Blue Parties. A like amount will be transferred from the

Lower Blue Reservoir water right stored in Montgomery Reservoir to Colorado Springs' 1948 Blue River water rights in the enlarged Montgomery Reservoir.

**6.4.** If Montgomery Reservoir needs to be drained for maintenance or other operating requirements, notice of such need will be given promptly in accordance with paragraph 8 below. Upon refilling of Montgomery Reservoir, water in the Lower Blue account will be returned to its previously stored amount with Colorado Springs' 1948 Blue River water rights, provided, however, that the combined storage under the Lower Blue Reservoir water right in an enlarged Montgomery Reservoir and Lower Blue Reservoir cannot exceed 1,006 AF.

**6.5.** In the event of a storage restriction at an enlarged Montgomery Reservoir, the Lower Blue Reservoir water stored (which cannot exceed 600 A.F.) in the enlarged Montgomery Reservoir will be reduced pro rata based on the percentage reduction in Montgomery Reservoir's allowed storage.

**7. Parties' Operations Representatives.** The Parties Operations Representatives are the individuals responsible for the day-to-day implementation of this Operating Agreement. The initial Operations Representatives and their contact information is as follows:

**7.1. Colorado Springs:**

Justin Zeisler  
Planning Supervisor, Water Resource Planning  
Colorado Springs Utilities  
PO Box 1103, MC 1825  
Colorado Springs, CO 80903  
719-668-8758  
kabbasi@csu.org

**7.2. Summit County:**

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

**7.3. Town of Breckenridge:**

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

Laura Lynch  
Water Division Manager  
1095 Airport Road  
PO Box 168  
Breckenridge, CO 80424

A party may replace or designate a different Operations Representative by providing notice in accordance with paragraph 10 below.

**8. Operational Reviews.** The Parties Operations Representatives will regularly confer concerning the deliveries and administration of water rights necessary to implement this Operating Agreement. In the event the Operations Representatives cannot agree concerning the deliveries or administration of water rights under this Operating Agreement, the Parties must meet and attempt to resolve the disagreement. In addition, during the first three years following the first year of delivery of water by Colorado Springs to Lower Blue Reservoir, the Parties must meet annually to review operations under the Operating Agreement and make any operational modifications needed to properly implement it terms. Thereafter, the Parties must meet at least every five years, to review operations under the Operating Agreement and make any operational modifications needed to properly implement it terms. Meetings to discuss operational issues may be called upon reasonable advance notice given by one or more Parties to the remaining Parties. In the event a lawful change in administration of water rights located in Water Division No. 5 adversely impacts the operation of this Operating Agreement, the parties must promptly meet and diligently negotiate any necessary modification to this agreement to address the changed circumstances.

**9.** 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 provided in paragraphs 4.16-4.18 of the Settlement Agreement. The Parties Operational Representatives will confer concerning changes needed to implement the deliveries and administration of water rights necessary to implement paragraphs 4.16-4.18 of the Settlement Agreement. In the event the Operations Representatives cannot agree concerning the needed changes to this Operating Agreement, the Parties must meet and attempt to resolve the disagreement. If the Parties are unable to resolve the disagreement, then the provision of paragraph 21 will apply.

**10. Notice.** All notices required under this Operating Agreement must be provided by U.S. Mail or hand delivery to the 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

**STATEMENT MADE IN COMPROMISE NEGOTIATIONS WITHIN THE AMBIT OF CRE 408  
FINAL REVIEW DRAFT - DEC. 21, 2023**

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

United States Postal Service Address:  
Colorado Springs Utilities  
ATTN: Chief System Planning and Projects Officer  
P.O. Box 1105  
Colorado Springs, CO 80947-0950  
Fax: (719) 668-4158.

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

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

If to Summit County:

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

If to Breckenridge:

James Phelps  
Director of Public Works  
150 Ski Hill Road

STATEMENT MADE IN COMPROMISE NEGOTIATIONS WITHIN THE AMBIT OF CRE 408  
FINAL REVIEW DRAFT - DEC. 21, 2023

PO Box 168  
Breckenridge, CO 80424

**11. Term.** This Operating Agreement shall become effective on the date of the last signature below and shall remain in effect until modified or terminated by the Parties.

**12. No Liability for Failure of Supply.** The Parties agree that Colorado Springs is not in breach of this Operating 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 that is otherwise required to be made available under this agreement, or (b) any event of force majeure as defined in paragraph 23 below. The Lower Blue Parties accept the risk that lack of physical supply in the Blue River may prevent Colorado Springs from being able to deliver water that is otherwise required to be made available under this Operating Agreement, including delivery by substitution from the enlarged Montgomery Reservoir.

**13. Compliance with Laws.** All activities carried out by any Party under this Operating Agreement shall be conducted in accordance with all applicable local, state, or federal requirements, specifications, laws and regulations.

**14. No Partnership or Agency.** Notwithstanding any language in this Operating Agreement or any representation or warranty to the contrary, no Party shall be deemed to be or to constitute a partner, joint venturer, contractor, or agent of another Party.

**15. No Third Party Beneficiaries.** The Parties understand and agree that enforcement of the terms and conditions of this Operating 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 Operating Agreement shall be deemed to be an incidental beneficiary only.

**16. Governmental Immunity.** No term or condition of this Operating Agreement is to be construed or interpreted as a waiver, express or implied, by Colorado Springs, Summit County, and the Town of Breckenridge of any of the 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.

**17. Indemnification:** Each Party agrees to be responsible for its own liability incurred as a result of its participation in this Operating Agreement.

**18. Entire Agreement.** This Operating Agreement and its Exhibits, in conjunction with the Settlement Agreement, 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.

**19. Amendment - Interpretation.** This Operating Agreement cannot be modified orally, but only by an amendment in writing signed by all Parties. The captions of this Operating 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.

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

**21. Dispute Resolution:** In the event of a dispute between the Parties regarding a Party's performance under this Operating Agreement, the Parties agree that they will use their best efforts to resolve the dispute in an informal fashion through consultation and communication between the Parties. If the dispute is not resolved through informal consultation and communication, written notice stating the general nature of each dispute or other matter shall be delivered to the other Party promptly (but in no event later than thirty (30) days) after the start of the event giving rise to the dispute. In such instance, the Parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from receiving an initial written notice of the dispute or such other date as agreed to by the Parties, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, any Party may request non-binding mediation and in such case the Parties will bear equally the costs of the mediation.

If any Party requests to mediate the dispute, the Parties will jointly select a mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint, within ten (10) calendar days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the Parties. The Parties agree to participate in good faith in the mediation until the dispute is resolved, until the Parties mutually agree that they cannot resolve the dispute through mediation, or the expiration of thirty (30) days after the mediator is selected, whichever comes first. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to litigate the matter or to pursue any and all other remedies provided in this Operating Agreement or the Settlement Agreement or by law or equity.

The Parties acknowledge that time is important in resolving any dispute that may arise during the course of pursuing the purposes of this Operating Agreement, and hereby pledge to make their best efforts to resolve any dispute in a timely and efficient manner.

**22.** Attorney Fees and Cost. If any claim arising as a result of this Operating Agreement is litigated, each Party will be responsible for its own costs and expenses of litigation, including attorney fees.

**23.** Binding Effect and Assignability. This Operating 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 Operating Agreement to another Party without the written consent of the other Party, which consent shall not be unreasonably withheld 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, documentation evidencing that the assignee agrees to be bound by the terms and conditions of this Operating Agreement, and has the ability to fulfill the assigning Party's obligations under this agreement. The other Parties shall have 30 days to provide notice of either its consent to or objection 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 dispute resolution provisions hereof.

**24.** Severability. The invalidity or unenforceability of any portion or previous version of this Operating Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Operating Agreement and in such event the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Operating Agreement.

**25.** Time. Time is of the essence in this Operating Agreement.

**26.** Legal Counsel. Each Party to this Operating 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 Operating Agreement, the Parties acknowledge and agree that it is not to be construed against any Party on the basis of authorship.

**27.** Signatures – Counterparts. This Operating 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 (or on whose behalf such signature is executed) the same with the same force and effect as if such facsimile or PDF signature page were an original itself.

**28. Force Majeure.** No Party to this Operating 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 or condition; (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 Operating 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 provision 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.

**29. Representations and Warranties of the Parties.** Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Operating Agreement.

**30. Appropriation of Funds.**

**30.1.** Colorado Springs: Performance of Colorado Springs’ obligations under this Operating Agreement is expressly subject to the appropriation of funds by its City Council. This Operating 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 Operating 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 Operating Agreement for each fiscal year that occurs during the term of this agreement. Colorado Springs acknowledges that its commitments under this Operating 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 Operating Agreement.

**30.2.** Breckenridge: Performance of Breckenridge's obligations under this Operating 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 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 Operating Agreement have been fully appropriated by Breckenridge. Breckenridge agrees to use good faith efforts to seek the appropriation of sufficient funds to allow 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 Breckenridge's obligations under this Operating 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 Breckenridge under this agreement will terminate, and Breckenridge will thereafter have no liability for compensation or damages to the other Parties in excess of Breckenridge's authorized appropriation for this agreement or the applicable spending limit, whichever is less. 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 Breckenridge's ability to perform its obligations under this Operating Agreement.

**30.3.** Summit County: Performance of Summit County's obligations under this Operating 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 Operating 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 Operating 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 Operating 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 Operating Agreement.

**31. Governing Law, Jurisdiction and Venue:** This Operating Agreement shall be construed in accordance with the laws of the State of Colorado without reference to conflicts of laws. In the event of any dispute over the Operating Agreement's terms and conditions, 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 Operating Agreement resulting in litigation shall be the Colorado District Court for the county in which any defendant resides.

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

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

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

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

ATTEST:

By: \_\_\_\_\_  
Summit County Manager

**STATEMENT MADE IN COMPROMISE NEGOTIATIONS WITHIN THE AMBIT OF CRE 408  
FINAL REVIEW DRAFT - DEC. 21, 2023**

Approved as to form:

By: \_\_\_\_\_  
General Counsel

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

By: \_\_\_\_\_  
Shannon Haynes, Town Manager

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

ATTEST:

\_\_\_\_\_  
Helen Cospolich, CMC,  
Town Clerk

Approved as to form:

By: \_\_\_\_\_  
Town Attorney

**COLORADO SPRINGS UTILITIES**

By: \_\_\_\_\_  
Travas Deal Chief Executive Officer

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

**STATEMENT MADE IN COMPROMISE NEGOTIATIONS WITHIN THE AMBIT OF CRE 408  
FINAL REVIEW DRAFT - DEC. 21, 2023**

Approved as to form:

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

**LIST OF EXHIBITS**

Exhibit A: Location of Lower Blue Reservoir

Exhibit B: Substitution Agreement

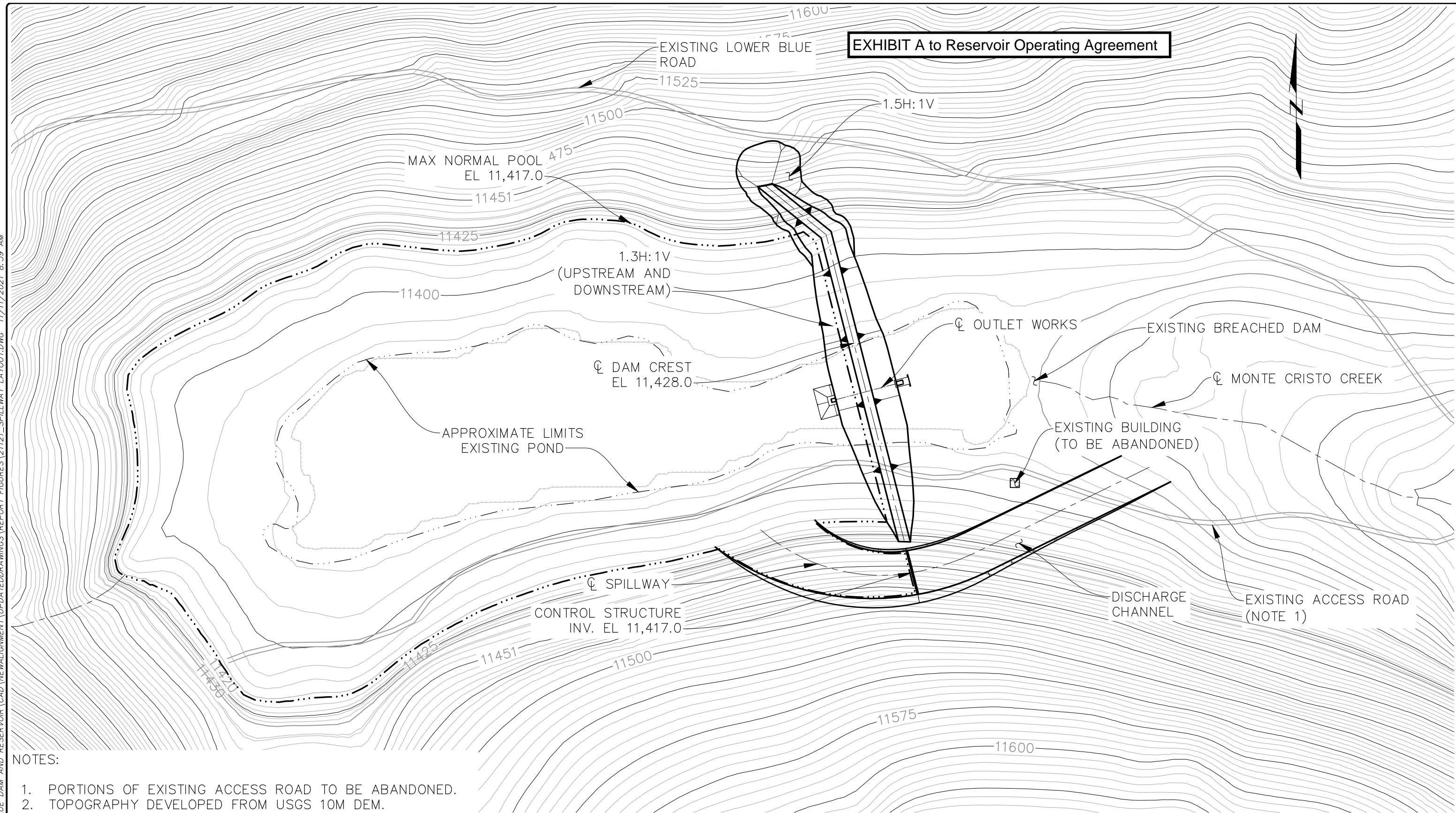
Exhibit C: Outline of accounting and notification protocol (to be prepared subsequent to execution of the agreement).

Exhibit D: Map of Structure Locations



P:\21121 - LOWER BLUE DAM AND RESERVOIR\CAD\NEWALIGNMENT\UPDATEDDRAWINGS\REPORT FIGURES\21121\_SPILLWAY\_LAYOUT.DWG 11/11/2021 8:39 AM

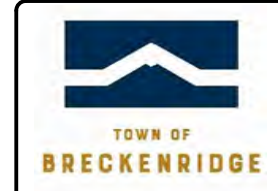
**EXHIBIT A to Reservoir Operating Agreement**



- NOTES:
1. PORTIONS OF EXISTING ACCESS ROAD TO BE ABANDONED.
  2. TOPOGRAPHY DEVELOPED FROM USGS 10M DEM.



**DRAFT**  
 PRELIMINARY  
 NOT FOR CONSTRUCTION



LOWER BLUE  
 DAM AND RESERVOIR  
 CONCEPT DESIGN ADDENDUM  
 PROJECT NO. 21121

PLAN OF MODIFICATIONS  
 November 2021  
 Figure 3.1

# EXHIBIT B to Reservoir Operating Agreement

## MEMORANDUM OF AGREEMENT REGARDING COLORADO SPRINGS SUBSTITUTION OPERATIONS

This Agreement is made among the Colorado River Water Conservation District acting by and through its Colorado River Water Projects Enterprise (“River District”), the City of Colorado Springs acting through its Utilities Enterprise (“CSU”), the City and County of Denver acting by and through its Board of Water Commissioners (“DWB”), the Northern Colorado Water Conservancy District (“Northern”), the County of Summit, acting by its Board of County Commissioners (“Summit County”), Vail Summit Resorts, Inc. (“Vail”), and the Town of Breckenridge (“Breckenridge”). This Agreement is effective as of May 15, 2003 (the “date of this Agreement.”)

### Recitals

A. Green Mountain Reservoir was constructed as part of the Colorado-Big Thompson Project (the “C-BT Project”) to provide water for use in western Colorado as compensation for construction and operation of the C-BT Project and to provide replacement water for diversions by C-BT Project collection facilities for the use and benefit of Northern. The United States Bureau of Reclamation (“Reclamation”) operates Green Mountain Reservoir, located on the Blue River, pursuant to Senate Document 80 and the October 12, 1955 and April 16, 1964 Decrees entered in the Consolidated Cases Nos. 2782, 5016 and 5017, U.S. District Court for the District of Colorado, including all supplemental orders, stipulations, and decrees (“the Blue River Decrees”).

B. CSU diverts water from the headwaters of the Blue River through its Continental/Hoosier transmountain diversion system facilities (the “CSU Blue River System”), located upstream of Green

**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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Mountain Reservoir. CSU operates the CSU Blue River System subject to separate decrees generally referred to as CSU's 1929 Rights and CSU's 1948 Blue River Decree rights, some of which remain conditional rights at the date of this Agreement.

C. DWB owns and operates the Roberts Tunnel and Dillon Reservoir, both located on the Blue River and its tributaries, upstream of Green Mountain Reservoir. DWB's Blue River diversions are subject to the terms of the Blue River Decrees.

D. Reclamation's right to fill Green Mountain Reservoir is senior in administrative priority to CSU's 1948 Blue River Decree rights and DWB's Roberts Tunnel and Dillon Reservoir.

E. DWB is a party to two separate agreements both dated December 30, 1991 (the "DWB Substitution Agreements"), and the joint substitution decree dated March 5, 1996, in U.S. District Court, District of Colorado C.A. 2782, 5016 and 5017 and in Case No. 91CW252, Water Division 5 (the "DWB Substitution Decree"). The DWB Substitution Agreements and DWB Substitution Decree set forth procedures to allow DWB to provide sources of water in substitution for water diverted by DWB from the Blue River during years in which Reclamation determines that Green Mountain Reservoir did not fill as described in the Blue River Decrees.

F. CSU desires to establish procedures to enable it to provide sources of water in substitution for water diverted by CSU from the Blue River during years in which Reclamation determines that

**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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Green Mountain Reservoir will not fill as described in the Blue River Decrees.

G. The River District owns and operates Wolford Mountain Reservoir, located on Muddy Creek.

The River District desires to obtain an annual right to the use of water (free of replacement obligation to DWB and others) physically stored by CSU in its Upper Blue Reservoir in order to provide for the water needs of individuals and entities (including, but not limited to Summit County, Vail, and Breckenridge) in the Blue River Basin and its tributaries.

H. Summit County, Vail, and Breckenridge use or provide water in the Blue River basin and are interested in contracting for the use of water made available to the River District in the West Slope Account pursuant to this Agreement.

I. Northern is a beneficiary of the replacement pool in Green Mountain Reservoir, is a water user in the upper Colorado River basin, and desires to protect the ability of Green Mountain Reservoir to obtain water to which it is entitled under the Blue River Decrees.

J. The parties desire to meet the requirements of Green Mountain Reservoir under the Blue River Decrees and promote the maximum utilization of existing water supplies.

WHEREFORE, in consideration of the mutual promises and covenants provided for herein, the parties agree as follows:

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**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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**Agreement**

1. Definitions. Wherever capitalized throughout this Agreement, the following terms shall have the meaning set forth below:

a. “GMR Fill Deficit” means the amount of water quantified by Reclamation that is required to fill Green Mountain Reservoir as described in the Blue River Decrees. The GMR Fill Deficit includes amounts of water that may be required to fill Green Mountain Reservoir as a result of diversions or storage by DWB, CSU and others. This Agreement does not address how the GMR Fill Deficit is quantified by Reclamation and does not affect or alter the manner in which Reclamation accounts for depletions caused by DWB, CSU or others in the quantification of the GMR Fill Deficit.

b. “Replacement Obligation” means the total amount of water required from DWB and CSU to meet the GMR Fill Deficit. Replacement Obligation does not include water that may be owed by entities other than DWB and CSU to meet the GMR Fill Deficit, and this Agreement does not create or alter any obligation that CSU or DWB may have to provide replacement water to Green Mountain Reservoir for depletions caused by others.

c. “DWB Replacement Obligation” means DWB’s pro rata share of the Replacement Obligation determined under the provisions of paragraph 8 of this Agreement.

d. “CSU Replacement Obligation” means CSU’s pro rata share of the Replacement Obligation determined under the provisions of paragraph 8 of this Agreement. The CSU Replacement Obligation includes replacement for the 250 acre feet of Upper Blue Reservoir water

**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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that will be booked over each year into the West Slope Account for the use of the River District under the terms and conditions of this Agreement.

e. “Replacement Water” means stored water that is used to meet the CSU Replacement Obligation by means of direct release and/or by Substitution as provided in this Agreement.

f. “Substitution” means the procedures whereby CSU may use stored water to reduce the amount of water CSU would otherwise be obligated to bypass from diversion or to release from upstream storage to complete the annual fill of Green Mountain Reservoir under the terms and conditions provided in this Agreement.

g. “Substitution Year” occurs when there is a GMR Fill Deficit.

h. “CSU Substitution Account” means the storage account maintained by the River District in Wolford Mountain Reservoir not to exceed 1,750 acre feet to manage CSU’s Upper Blue Reservoir water booked into Wolford Mountain Reservoir and the water purchased by CSU from the River District under paragraph 6 of this Agreement for use by CSU under the terms and conditions of this Agreement.

i. “GMR Water Year” means the period between the “start of fill date” of a calendar year set by Reclamation pursuant to the Blue River Decrees up to the “start of fill date” set by Reclamation for the following calendar year.

j. “West Slope Account” means the storage account maintained by CSU in Upper Blue Reservoir for 250 acre feet of Wolford Mountain Reservoir water (or such lesser amount as may be requested by the River District) booked into Upper Blue Reservoir each year for use by the River District and its contractees under the terms and conditions of this Agreement.

**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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2. CSU Diversions.

a. Diversions by CSU pursuant to its 1929 Rights are not subject to this Agreement and shall not be counted in determining CSU's total diversions from the Blue River or in calculating the CSU Replacement Obligation in a Substitution Year.

b. Annual diversions by CSU from the Blue River and its tributaries in any given calendar year shall not exceed ten (10) percent of the natural flow of the Blue River near Dillon below its confluence with the Snake River and Ten Mile Creek as described in the Blue River Decrees.

c. In any year in which Reclamation notifies CSU of a forecast of a Substitution Year, CSU agrees to store and reserve in its Upper Blue Reservoir, the first 2,100 acre feet of water available to Upper Blue Reservoir for storage, such water to be allocated in a manner consistent with the remaining provisions of this Agreement.

d. CSU may divert water through CSU's Blue River System notwithstanding a call placed by GMR, so long as (i) the terms of this Agreement are in effect, (ii) sufficient Replacement Water to meet the reasonably anticipated CSU Replacement Obligation is on hand in storage in reservoirs described in paragraph 9 of this Agreement to meet the replacement schedule to be established by Reclamation, (iii) the plan of Substitution provided for hereunder is consistent with the terms and conditions of this Agreement, the Blue River Decrees and has been approved by Reclamation, and (iv) prior notification has been provided by CSU to the Colorado State Engineer or the designated representative of the Colorado State Engineer.

**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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3. Upper Blue Reservoir Bookover With Wolford Mountain Reservoir.

a. Each year CSU will hold 250 acre feet of water (or such lesser amount as is requested by the River District) in the West Slope Account. The 250 acre feet shall be the first 250 acre feet of water stored and held in Upper Blue Reservoir in Substitution Years in accordance with subparagraph 2.c. The 250 acre feet of water stored in the West Slope Account each year (or such lesser amount as may be requested by the River District or its contractees) will be available annually, at the request of the River District, for a reservoir bookover with a like-amount of water stored by the River District in Wolford Mountain Reservoir as provided in this Agreement (the "Reservoir Bookover").

b. The intent of the Reservoir Bookover is:

i. To provide the River District and its contractees with an annual supply not to exceed 250 acre feet of Wolford Mountain Reservoir water physically stored in CSU's Upper Blue Reservoir; and

ii. To provide a storage account of not to exceed 1,750 acre feet at Wolford Mountain Reservoir to store Upper Blue Reservoir water booked into Wolford Mountain Reservoir to assist CSU in meeting the CSU Replacement Obligation.

c. The Reservoir Bookover described in this paragraph 3 does not involve an appropriative right and does not require the adjudication of an exchange; however, CSU and the River District will include the Reservoir Bookover in the CSU Substitution Decree application contemplated in paragraph 11. below.



**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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d. The parties consent to the annual operation of the Reservoir Bookover. Subject to the provisions of subparagraph 18.c., the parties agree to support any water rights application filed by CSU and the River District that includes the Reservoir Bookover to the extent such application is consistent with this Agreement.

4. Wolford Mountain Reservoir Water Stored in Upper Blue Reservoir.

a. The River District intends to enter into contracts with Summit County in the amount of 100 acre feet, Vail in the amount of 100 acre feet, and Breckenridge in the amount of 50 acre feet, on terms agreed upon by the River District and each respective entity for the delivery and use of water stored in the West Slope Account each year. In the event that Summit County, Vail or Breckenridge does not enter into a contract with the River District for water to be released from the West Slope Account, any such entity may withdraw its consent to the terms and conditions of this Agreement and may withdraw as a party from this Agreement by giving written notice to the other parties to the Agreement.

b. All of the water stored in the West Slope Account shall be available for release every year, including Substitution Years, at the request of the River District or its contractees, as provided in subparagraph 4.i, for all beneficial uses, including fully consumptive uses, free of any replacement requirement by the River District or its contractees to DWB, Green Mountain Reservoir or others. Any replacement owed to Green Mountain Reservoir for the water stored in or used from the West Slope Account will be provided as part of the CSU Replacement Obligation.

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c. Each year the West Slope Account shall be available for release at the request of the River District and its contractees at any time between June 15<sup>th</sup> and November 15<sup>th</sup> of that year. Subject to CSU's determination of operational and safety constraints such as downstream calls, icing, and avalanche danger, CSU will cooperate with the River District and its contractees with respect to any requests the River District or its contractees may make for releases of the West Slope Account at times other than the period of June 15<sup>th</sup> through November 15<sup>th</sup> of each year. Provided, however, that the River District and its contractees acknowledge and agree that any water remaining in the West Slope Account after November 15<sup>th</sup> of each year is at risk and may not be capable of delivery as requested by the River District or its contractees.

d. Subject to water accounting procedures approved by the State Engineer's Office as provided in subparagraph 4.f., the River District and its contractees shall be entitled to reuse and successively use all return flows, if any, following the initial use of water released from the West Slope Account without a change of water right. The accounting will track the use, reuse or successive use of water from the West Slope Account in order to demonstrate that the associated depletions do not exceed the accumulated total amount of water released from the West Slope Account in the then-current GMR Water Year plus all prior GMR Water Years.

e. Any use, reuse or successive use by exchange of water released from the West Slope Account shall be in priority, subject to the approval of the State Engineer or his designee, and without injury to (i) Denver's exchange operations from Williams Fork Reservoir to Dillon Reservoir/Roberts Tunnel, as confirmed in the Blue River Decrees and Case No. 88CW382, Water Division No. 5; (ii) CSU's unadjudicated exchanges shown on Attachment A, and (iii) other rights

**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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of exchange decreed at any time to be in existence as of the date of this Agreement. The parties' agreement in this subparagraph 4.(e.) applies only to the administration of the use, reuse or successive use by exchange of water released from the West Slope Account. With respect to the exchanges identified in Attachment A, nothing herein shall prevent any party from objecting to the adjudication of those exchanges by CSU on any grounds. If and when those exchanges are adjudicated, the decreed amount and priority thereof will govern the administration of those exchanges as against the use, reuse or successive use by exchange of water released from the West Slope Account, notwithstanding the terms of subparagraph 4.(e.)(ii.) and Attachment A.

f. The River District shall be responsible for the required accounting of water depletions resulting from the use, reuse and successive use of water from the West Slope Account, and shall provide personnel and equipment reasonably necessary to perform such accounting. The River District's accounting shall be available to the parties upon request. All costs associated with the required water accounting shall be borne by the River District and its contractees.

g. The parties to this Agreement consent to use of 250 acre feet of water from the West Slope Account each year by the River District and its contractees. Subject to the provisions of subparagraph 18.c., the parties shall support the ability of the River District and its contractees to reuse and successively use all return flows from the use of water released from the West Slope Account consistent with the terms and conditions of this Agreement. In the event a judicial, regulatory or other administrative order is entered finding the River District or its contractees do not have the legal right to reuse and successively use the return flow of Wolford Mountain Reservoir water booked into the West Slope Account under the existing decrees for Wolford Mountain

**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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Reservoir, then the parties to this Agreement shall cooperate in good faith to find (i) an acceptable alternative that would provide the River District and its contractees with full rights of reuse and successive use of the 250 acre feet of water available annually for release from the West Slope Account or (ii) some other form of mitigation to the River District that is acceptable to the parties to this Agreement. If no acceptable alternative or other form of mitigation is found, the River District, at its option, may terminate this Agreement by giving written notice to the other parties.

h. The water booked into the West Slope Account shall not be used to meet the CSU Replacement Obligation.

i. The storage, release, and use of the Wolford Mountain Reservoir water in the West Slope Account shall not be deemed to be an exercise of the exchange rights defined and granted by the agreement between Summit County and DWB, dated September 18, 1985, as amended as of the date of this Agreement (the "Summit County Agreement"); consequently, there shall be no deductions against the volume limits set forth in the Summit County Agreement for such exchanges, and DWB shall not be entitled to any replacement water for the storage, release and use of water from the West Slope Account. Further, the storage, release, and use of the Wolford Mountain Reservoir water from the West Slope Account shall not be credited against the volumes of allowable depletions with respect to minimum stream flow rights under either the Upper Blue River Basin Memorandum of Agreement or the Lower Blue River Basin Memorandum of Agreement between Summit County and the Colorado Water Conservation Board, both dated October 25, 1988 and recorded at Reception Nos. 447107 and 447108 respectively of the Summit County real property records. If the Colorado Water Conservation Board disagrees with the terms of this subparagraph

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**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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4.i., Summit County may at its option terminate its participation in, and consent to the terms of, this Agreement by giving written notice to the other parties. However, if Summit County terminates its participation in this Agreement, the remaining parties nevertheless shall remain bound to the terms and conditions of this Agreement.

j. In order to ensure efficient operations under this Agreement, the River District and its contractees shall designate a contact person who shall be authorized to coordinate with CSU all operational matters, including without limitation scheduling for storage, bookover and release of water from the West Slope Account. The River District and its contractees shall provide written notice to CSU of the identity of the authorized contact person. Designation and use of an authorized contact person by the River District and its contractees is a prerequisite to CSU's obligation to provide releases from Upper Blue Reservoir under this Agreement. The River District and its contractees shall be limited to one flow change per day with twenty four hour advanced notification to CSU for releases from the West Slope Account. The authorized contact person shall coordinate releases among the River District and its contractees in such a manner as to minimize the number of required flow changes from the West Slope Account.

5. CSU Substitution Account in Wolford Mountain Reservoir.

The River District will maintain the CSU Substitution Account in Wolford Mountain Reservoir, which shall be used for the sole purpose of assisting CSU to meet the CSU Replacement Obligation. Water stored in the CSU Substitution Account will therefore be available for release only in Substitution Years, except as otherwise expressly agreed by the River District. CSU's

**MEMORANDUM OF AGREEMENT REGARDING  
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obligation to book over 250 acre feet (or such lesser amount requested by the River District) of water to the West Slope Account shall continue even if the amount of water held in the CSU Substitution Account reaches and stays at the 1,750 acre foot maximum. This means that Upper Blue Reservoir water will not be credited to the CSU Substitution Account under the Reservoir Bookover to the extent the amount of water in storage in the CSU Substitution Account exceeds 1,750 acre feet as calculated at the end of a GMR Water Year. In order to determine the amount of water in the CSU Substitution Account at the end of the current GMR Water Year, all releases from the CSU Substitution Account during the current GMR Water Year shall be deducted from the amount of water stored in the CSU Substitution Account at the end of the preceding GMR Water Year prior to adding amounts for accruals to the CSU Substitution Account during the current GMR Water Year. The amount available for release from the CSU Substitution Account in any given GMR Water Year shall be the amount of water in storage in such account calculated in accordance with this Agreement for the end of the preceding GMR Water Year.

6. Initial Fill of the CSU Substitution Account.

In addition to Upper Blue Reservoir water booked into the CSU Substitution Account, CSU agrees to purchase up to 1,250 acre feet of water from the River District in an annual amount of 250 acre feet following execution of this Agreement. For the first three years this Agreement is in effect, CSU shall purchase 250 acre feet annually, and all such purchases shall be credited towards the total of up to 1,250 acre feet provided above. If this Agreement is not approved by the Secretary of the Interior by the end of 2005, CSU, by written notice to the River District and the other parties to this

s:\legal\wkdw\water\Clean Final CSU Substitution Agreement

**MEMORANDUM OF AGREEMENT REGARDING  
COLORADO SPRINGS SUBSTITUTION OPERATIONS**

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Agreement, may suspend its obligation to purchase the balance of the water until the approval of the Secretary of the Interior is obtained. Upon approval of this Agreement by the Secretary of the Interior, CSU thereafter shall be obligated to purchase 250 acre feet per year until either a total of 1,250 acre feet has been purchased or until the CSU Substitution Account is filled to 1,750 acre feet at the end of a GMR Water Year, whichever occurs first. All Wolford Mountain Reservoir water purchased by CSU will accrue in the CSU Substitution Account, subject to the overall account cap of 1,750 acre feet. This means that CSU will not be required to purchase and the River District will not be required to sell water pursuant to this paragraph once the total water in storage in the CSU Substitution Account reaches 1,750 acre feet by means of purchases and Reservoir Bookovers at the end of a GMR Water Year. The price for purchases made by CSU pursuant to this paragraph shall be in accordance with the River District's water marketing policy at the then-prevailing rate for transmountain users.

7. Change in Use of Water Rights.

Subject to the provisions of subparagraph 18.c., the parties will support any change applications that are reasonably necessary to implement this Agreement and that are consistent with this Agreement. Any change application will be the responsibility of the respective water right owner, and will be filed at the sole discretion of the water right owner.

8. Allocation of CSU and DWB Replacement Obligations.

Whenever Reclamation determines that the then-current year is a Substitution Year, the

**MEMORANDUM OF AGREEMENT REGARDING  
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allocation of the Replacement Obligation between CSU and DWB shall be determined as follows:

a. In each year in which the total amount of water diverted by CSU and DWB exceeds the GMR Fill Deficit, the allocation of the Replacement Obligation between CSU and DWB shall be calculated using the following formulas:

$$\text{CSU Replacement Obligation} = \frac{(\text{CSU diversions}) \times (\text{Replacement Obligation})}{(\text{CSU diversions} + \text{DWB diversions})}$$

$$\text{DWB Replacement Obligation} = \frac{(\text{DWB diversions}) \times (\text{Replacement Obligation})}{(\text{CSU diversions} + \text{DWB diversions})}$$

CSU diversions in the above formulas include water stored in the West Slope Account.

b. In each year in which the total amount of water diverted by DWB, CSU and others does not exceed the GMR Fill Deficit, DWB and CSU shall owe to GMR the respective amounts diverted by DWB and CSU during that year.

9. CSU's Replacement Water Operations. The CSU Replacement Obligation shall be met in the manner provided for below:

a. The initial source of Replacement Water shall be from CSU's Upper Blue Reservoir.

Subject to availability, the first 2,100 acre feet of Replacement Water will be released from Upper Blue Reservoir to DWB's Dillon Reservoir (any water in the West Slope Account will not be available for release as Replacement Water). The timing of releases to DWB's Dillon Reservoir will be coordinated between the River District, CSU, and DWB, with releases made in the late summer and early fall to provide environmental benefits:

b. If CSU's Replacement Obligation exceeds the amount of water available for release



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under subparagraph 9.a, the next incremental source of CSU's Replacement Water shall be from water obtained by CSU from DWB's account in Wolford Mountain Reservoir, DWB's Williams Fork Reservoir, or DWB's Dillon Reservoir, provided that the total amount of Replacement Water from sources identified in subparagraphs 9.a. and 9.b used to repay CSU's Replacement Obligation shall not exceed 2,100 acre feet. In repayment to DWB, CSU will release water from CSU's Montgomery Reservoir to DWB or by mutual agreement of CSU and DWB from other sources that CSU can deliver to DWB in the South Platte River above Strontia Springs in an amount equal to the amount obtained by CSU from DWB pursuant to this subparagraph 9.b. In making such repayment to DWB, CSU will also add an additional amount of water to replace the increased transit losses incurred in conveying water in natural streams to DWB from Montgomery Reservoir or from the point of delivery of the other CSU sources in the South Platte River above Strontia Springs. The increased transit losses are a result of the reduction in the amount of water delivered by CSU to the confluence of the North Fork of the South Platte River with the South Platte River as compared with the delivery of the same amount of water to the same location from the East Portal of the Roberts Tunnel. As between CSU and DWB, it is agreed that such transit loss shall be equal to six percent of the amount of water to be released from Montgomery Reservoir for the benefit of DWB or such greater or lesser amount as determined appropriate by the Division 1 Engineer's Office. Deliveries to DWB shall be made in accordance with a schedule mutually agreed between DWB and CSU in the same calendar year as water is obtained by CSU from DWB under this subparagraph 9.b. and shall be at a location and at a rate usable by Denver.

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c. The next increment of the CSU Replacement Obligation will be made by Substitution from the CSU Substitution Account in Wolford Mountain Reservoir consistent with the Replacement Obligation schedule of releases set by Reclamation.

d. If the water available under subparagraphs 9.a., 9.b., and 9.c. is inadequate to meet the CSU Replacement Obligation to Green Mountain Reservoir, the remainder of the CSU Replacement Obligation shall be made by Substitution from CSU's Homestake Reservoir in the Eagle River Basin. Any Substitution releases from Homestake Reservoir shall be coordinated with the River District and Vail and made in the late summer and early fall to provide environmental benefits, subject to meeting the Replacement Obligation schedule set by Reclamation.

e. The amount released by CSU pursuant to subparagraph 9.a. and diverted or stored by DWB and the amount obtained by CSU from DWB pursuant to subparagraph 9.b. shall be added to the DWB Replacement Obligation, and shall be released by DWB in accordance with the DWB Substitution Agreements and DWB Substitution Decree. DWB may, at its discretion, simply pass through Dillon Reservoir the water released by CSU from Upper Blue Reservoir. In such circumstance, CSU shall make such releases at times consistent with the Replacement Obligation schedule of releases set by Reclamation; the DWB Replacement Obligation shall not include any CSU releases passed through Dillon Reservoir; and such CSU releases shall be counted as part of the CSU Replacement Obligation.

f. Attachment B provides illustrative examples of how the parties to this Agreement intend that CSU's Replacement Obligation will be paid.

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g. Subject to the provisions of subparagraph 18.c., all parties to the Agreement will support DWB's ability to use stored water in Williams Fork, Dillon, or Wolford Mountain Reservoirs to meet the CSU Replacement Obligation as provided in this Agreement. In the event DWB, due to a judicial, regulatory or other administrative order, is unable to use stored water in Williams Fork, Dillon, or Wolford Mountain Reservoirs to meet the CSU Replacement Obligation under subparagraphs 9.b. and 9.e., the parties will cooperate in good faith to find an alternative to the operation described in subparagraph 9.b., which alternative is subject to the following principle:

DWB will be allowed to perform a substitution on or otherwise be able to receive water at Dillon Reservoir or on the South Platte above Strontia Springs in the amount of the CSU Replacement Obligation, up to a maximum of 2,100 acre feet in any year, minus the amount of Replacement Water that is released by CSU from Upper Blue Reservoir under subparagraph 9.a. to meet the CSU Replacement Obligation.

If CSU and DWB cannot agree on an alternative that meets the above principle, then either CSU or DWB may terminate this Agreement by giving written notice to the other parties.

**10. Transit and Evaporation Losses.**

The parties to this Agreement agree that the assessment of transit losses are not necessary or appropriate in any reservoir release contemplated by this Agreement, with the exception of the transit losses to be paid by CSU pursuant to subparagraph 9.b., above. The River District shall bear any evaporation losses assessed to the CSU Substitution Account. CSU shall bear any evaporation losses assessed to the West Slope Account.

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**11. CSU Substitution Decrees.**

a. Following the resolution, if any, of the issue described in the following subparagraph 11.(b.), CSU and the River District shall file a joint request with the Federal District Court for the District of Colorado in its retained jurisdiction under the Blue River Decrees, and with the Division 5 Water Court to enter a supplemental decree, determining and declaring that CSU may fulfill the CSU Replacement Obligation in the manner contemplated by this Agreement (the “CSU Substitution Decrees”).

b. Summit County, Vail and Breckenridge have concerns that the diversions and storage of water and Substitutions by CSU permitted under this Agreement in a Substitution Year may decrease the opportunity for replacement operations and exchange to points on the Blue River or its tributaries upstream of Dillon Reservoir that are exercised pursuant to the Summit County Agreement and the Clinton Reservoir-Fraser River Water Agreement dated July 21, 1992 (the “Clinton Agreement”). CSU believes that its diversion and storage of water and its Substitutions under this Agreement will not decrease the opportunity for replacement operations and exchanges above Dillon Reservoir on the Blue River or its tributaries that are exercised pursuant to the Summit County Agreement or the Clinton Agreement in a Substitution Year. CSU, Summit County, Vail and Breckenridge shall cooperate in good faith to arrive at mutually agreeable terms and conditions to be included in the CSU Substitution Decrees that in a Substitution Year will allow the full amounts of diversion and storage of water and Substitutions by CSU described in this Agreement without decreasing the amounts of water that can be exchanged or replaced above Green Mountain Reservoir pursuant to the Summit County Agreement and the Clinton Agreement, as such

**MEMORANDUM OF AGREEMENT REGARDING  
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agreements are now in effect, in a Substitution Year. If the parties have not agreed to such mutually agreeable terms and conditions prior to September 15, 2003, any of Summit County, Vail, Breckenridge, or CSU may terminate this Agreement prior to October 15, 2003, by giving written notice to the other parties.

c. Subject to the provisions of subparagraph 18.c., the parties hereto agree to support the efforts of CSU and the River District to secure the CSU Substitution Decrees. CSU shall bear the primary responsibility of prosecuting the CSU Substitution Decrees. The River District will be a co-applicant entitled, along with CSU to approve stipulations and any proposed decrees. The parties agree that entry of a final and non-appealable decision of either the Federal District Court or the Division 5 Water Court that does not determine that CSU may fulfill its Replacement Obligation in substantial conformity with this Agreement, will be cause for termination of this Agreement. In such event, any party to this Agreement by written notice to the other parties may terminate this Agreement.

**12. Power Replacement.**

CSU shall tender power replacement to Reclamation for power interference to the GMR powerplant resulting from Substitution operations contemplated by this Agreement. Power replacement obligations of DWB are addressed in the DWB Substitution Agreements. CSU and DWB shall cooperate to assure that power replacement obligations to Reclamation are not duplicated and are equitably paid by CSU and DWB respectively. CSU shall be responsible for

**MEMORANDUM OF AGREEMENT REGARDING  
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any power replacement required to be made for water stored in or used from the West Slope Account.

13. No Additional CSU Substitutions.

CSU shall not seek approval of additional or different Substitutions or additional or different points of delivery for the CSU Replacement Obligation, absent the approval of the other parties to this Agreement. Nothing in this Agreement is intended to prevent CSU from developing its remaining conditional 1948 Blue River Decree rights consistent with the Blue River Decrees and applicable Colorado law.

14. Priority of Denver's Exchanges.

As between CSU and DWB, CSU acknowledges that DWB has the senior right to exchange water on the Blue River.

15. Consistency With Blue River Decrees.

All water diverted by CSU by Substitution hereunder and all water made available to DWB from Montgomery Reservoir or other CSU sources as contemplated in subparagraphs 9.b. and 9.g. hereunder shall be subject to all terms, conditions, and limitations of the Blue River Decrees. It is not the intent of the parties to this Agreement or the purpose of this Agreement to alter the terms of Senate Document 80, the Blue River Decrees, the Summit County Agreement, the Clinton Agreement, or the rights of any of the beneficiaries thereof. The Substitution operations

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**MEMORANDUM OF AGREEMENT REGARDING  
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contemplated by this Agreement shall not impair the right of any beneficiary, present or future, of Senate Document 80, including any contractors for GMR water service to realize the full benefits of releases of stored water from GMR to the extent that they would have been entitled to such benefits if the Substitution had not been made.

16. Operational Limitations.

To the extent there may arise unforeseen operational constraints in the nature of force majeure conditions, which conditions are beyond the control of the parties, appropriate adjustments shall be made, upon consultation with and concurrence of the parties in the manner of timing and location of the CSU Replacement Obligation.

17. Approval by the Secretary of the Interior.

a. This Agreement is binding on all the parties but the parties recognize that implementation of the CSU Substitution and Replacement Obligation operations on a permanent basis will require the formal approval of the Secretary of the Interior and that such approval may require review under the National Environmental Policy Act of 1969, as amended ("NEPA") or other applicable federal law.

b. Promptly following the resolution, if any, of the issue described in subparagraph 11.(b.), Colorado Springs shall initiate the process for obtaining the approval of the Secretary of the Interior, and shall be responsible for carrying out that process.

c. Pending NEPA review by the Secretary of the Interior, the Reservoir Bookover, sales

**MEMORANDUM OF AGREEMENT REGARDING  
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and deliveries of water described in this Agreement will be implemented. Further, if a Substitution Year occurs prior to formal approval by the Secretary of the Interior, the CSU Replacement Water Operations described in this Agreement may be implemented for that year to meet the CSU Replacement Obligation, subject to the consent of Reclamation.

d. Any required federal actions by the Secretary of the Interior to consider formal approval of this Agreement herein on a permanent basis shall be carried out in compliance with the provisions of NEPA or other applicable federal law. If the Secretary of the Interior's decision requires any mitigation as a condition of the approval of this Agreement and such required mitigation would affect any party's system or operations to such a significant extent that such party determines is not in its best interest to continue its participation in this Agreement, then the parties shall cooperate in good faith either (i) to provide for an alternative operation that would not result in the mitigation requirement or (ii) to provide alternative mitigation that would not significantly affect any party's system or operation to such a significant extent that such party would determine it would not be in that party's best interest to continue participation in this Agreement. If no such alternative operation or alternative mitigation is identified by the parties, Colorado Springs, at its option, may provide for the mitigation required by the Secretary of the Interior. If the Secretary of the Interior does not approve this Agreement with the alternative operation or alternative mitigation identified by the parties, or with CSU providing the mitigation required by the Secretary of the Interior, any party may withdraw from this Agreement by giving written notice of the withdrawal to the other parties to this Agreement. If DWB, CSU or the River District withdraws from this Agreement, then this Agreement shall terminate.



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e. Subject to the provisions of subparagraph 18.c., all parties to this Agreement will cooperate in good faith with the intent that all required federal approvals are obtained and that all required federal actions for implementation of this Agreement are carried out in an expeditious manner.

f. If a Substitution Year occurs prior to the time when formal approval of the Secretary of the Interior is obtained, all parties will cooperate in good faith to assure that consent of Reclamation is obtained in a timely manner for implementation of CSU's Replacement Water Operations described in this Agreement to meet the CSU Replacement Obligation during any such Substitution Year.

g. In the event of the entry of a final and non-reviewable decision by the Secretary of the Interior that fails to approve the operations in substantial conformity with this Agreement, any party to this Agreement by written notice to the other parties may terminate this Agreement.

18. Miscellaneous Provisions.

a. Notice. All notices required or appropriate under or pursuant to this Agreement shall be given in writing mailed or delivered to the parties at the following addresses:

River District: Colorado River Water Conservation District  
201 Centennial Street, Suite 200  
P. O. Box 1120  
Glenwood Springs, Colorado 81602  
Attention: Secretary/General Manager

CSU: Colorado Springs Utilities  
Attention: Chief Executive Officer  
121 S. Tejon, 5th Floor

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Colorado Springs, CO 80903

DWB: Denver Board of Water Commissioners  
1600 W. 12<sup>th</sup> Avenue  
Denver, CO 80204-3412  
Attention: Secretary/Manager

Northern: Northern Colorado Water Conservancy District  
Attention: General Manager  
1250 North Wilson Avenue  
P. O. Box 679  
Loveland, CO 80539

Summit County: Summit County Commissioners  
Attention: County Manager  
P.O. Box 68  
208 E. Lincoln Avenue  
Breckenridge, Colorado 80424

Vail: Roger McCarthy  
Breckenridge Ski Resort  
P.O. Box 1058  
Breckenridge, CO 80424

Breckenridge: Tim Gagen, Town Manager  
Town of Breckenridge  
150 Ski Hill Road  
P.O. Box 1058  
Breckenridge, CO 80424

Any party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.

**MEMORANDUM OF AGREEMENT REGARDING  
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Page 26.

b. Amendments. No amendment, modification, or novation of this Agreement or its provisions and implementation shall be effective unless in writing approved and executed by all parties with the same formality as they have approved and executed this Agreement.

c. Obligation of Parties to Cooperate or Support Certain Actions. The obligations in this Agreement for parties to cooperate in good faith or to support certain actions or activities as more fully described in paragraphs 3, 4, 7, 9, 11, and 17 of this Agreement shall not preclude participation of any party in any proceedings or activities to assure the ultimate results are consistent with this Agreement, the Blue River Decrees and Senate Document 80. Parties may file statements of objection in any water court proceedings initiated as a result of this Agreement and may participate in any Federal Court proceedings regarding the Blue River Decrees to assure that the ultimate results are consistent with this Agreement, the Blue River Decrees and Senate Document 80.

d. Previous Agreements and Decrees. Nothing contained in this Agreement shall modify, alter or supercede the Blue River Decrees, Senate Document 80, the DWB Substitution Agreements, the Summit County Agreement, the Clinton Agreement, and the DWB Substitution Decree.

e. Successors and Assigns. This Agreement shall be binding upon all successors of any party to the Agreement. A party's rights and obligations under this Agreement may only be assigned to another entity with the prior written consent of the other parties to this Agreement, which written consent shall not be unreasonably withheld.

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f. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the parties relating to the matters herein provided. Any prior agreements regarding these matters, whether written or oral, have been merged and integrated into this Agreement. No subsequent modification or amendment of this Agreement shall be valid or binding upon the parties, or enforceable against any party, unless such modification or amendment is in writing and has been signed by all parties. The parties acknowledge that this Agreement may need to be amended to add additional parties.

g. Authorizations. Each party represents that it has taken all necessary actions to authorize execution and performance of this Agreement and that the Agreement has been executed by duly authorized representatives of that party.

h. Counterparts. This Agreement may be executed in separate counterparts, and shall be binding once a counterpart has been executed by all parties.

i. Miscellaneous. The Recitals are incorporated as part of this Agreement.

This Agreement has been executed by each of the parties on the dates shown below and shall be effective as of May 15, 2003 (the "date of this Agreement.").

ATTEST:

COLORADO RIVER WATER CONSERVATION  
DISTRICT, acting by and through its Colorado River Projects  
Enterprise

By David H. Merritt  
Assistant Secretary, David H. Merritt

By Paul J. Ohri  
President, Paul J. Ohri

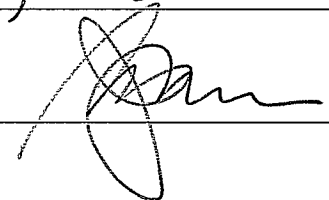
Dated: 6-17-03

MEMORANDUM OF AGREEMENT REGARDING  
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THE CITY OF COLORADO SPRINGS

By Phillip H. Tollefson  
Phillip H. Tollefson, P.E.  
Chief Executive Officer, Colorado Springs Utilities

Dated: June 15, 2003

Approved as to Form: 

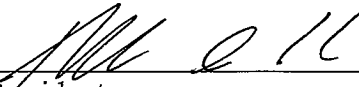
MEMORANDUM OF AGREEMENT REGARDING  
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THE CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS

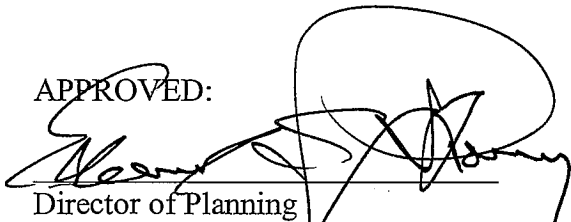
ATTEST:

By:   
Secretary

By:   
President

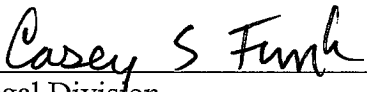
DATE: 6-25-03

REGISTERED AND COUNTERSIGNED:  
~~Donald J. Mares~~, Auditor  
CITY AND COUNTY OF DENVER

APPROVED:   
Director of Planning

By: 

APPROVED AS TO FORM:

  
Legal Division

THE NORTHERN COLORADO WATER  
CONSERVANCY DISTRICT

ATTEST:

By *Eric W. Weibman*  
Secretary

By *Milee Appleto*  
President

Dated: *6/13/2003*

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ATTEST:

VAIL SUMMIT RESORTS, INC.

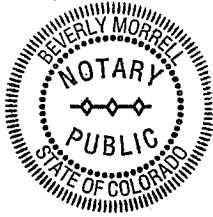
By Beverly Morrell

By [Signature]

Seal

Title: COO, SVP

Dated: 16 Jun 03



Commission Expires  
11-1-05

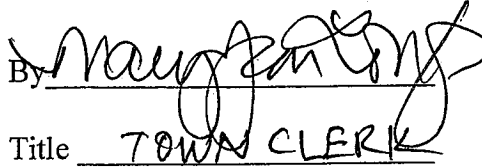


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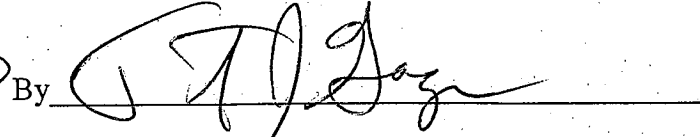
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ATTEST:

TOWN OF BRECKENRIDGE

By 

Title TOWN CLERK

By 

Title: Town Manager

Dated: 7/24/03

Seal

**MEMORANDUM OF AGREEMENT REGARDING  
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THE COUNTY OF SUMMIT, acting through its Board of County  
Commissioners

By Ron Holliday

Title: Ron Holliday, County Manager

Dated: 6-25-03

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**ATTACHMENT A**

**CSU's Unadjudicated Exchanges**

**Unadjudicated Exchanges into Colorado Springs Continental-Hoosier System**

**From Williams Fork Reservoir to Continental-Hoosier System**

Dates: July and August 1964

Maximum rate of exchange: 30 c.f.s.

**From Homestake Reservoir to Continental-Hoosier System**

Dates: July and August 1987

Maximum rate of exchange: 65.5 c.f.s.

## ATTACHMENT B

### Colorado Springs (CS) Substitution Payback Scenarios

Scenario	1	2	3	4	5	6	7	8
	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)	(acre-feet)
CS pro rata Owed to GM	400	400	2500	3000	3000	3000	1850	4500
Total Upper Blue Storage	2100	2100	2100	2100	1000	1000	1500	1000
Upper Blue Released For CRD	250	250	250	250	250	250	250	250
Upper Blue Released to GM (DWB)	400	400	1850	1850	750	750	1250	750
CS Platte Released to DWB (DWB Replace to GM)	0	0	250	250	1350	1350	600	1350
CS Wolford Acct (Start of Season)	500	1750	500	500	1750	250	250	1750
Credit to Wolford (CS)	250	250	250	250	250	250	250	250
Wolford Released for Substitution (CS)	0	0	400	500	900	250	0	1750
CS Wolford Acct (End of Season)	750	1750	350	250	1100	250	500	250
Homestake Res. Release for Substitution	0	0	0	400	0	650	0	650
Total Substitution Release	400	400	2500	3000	3000	3000	1850	4500

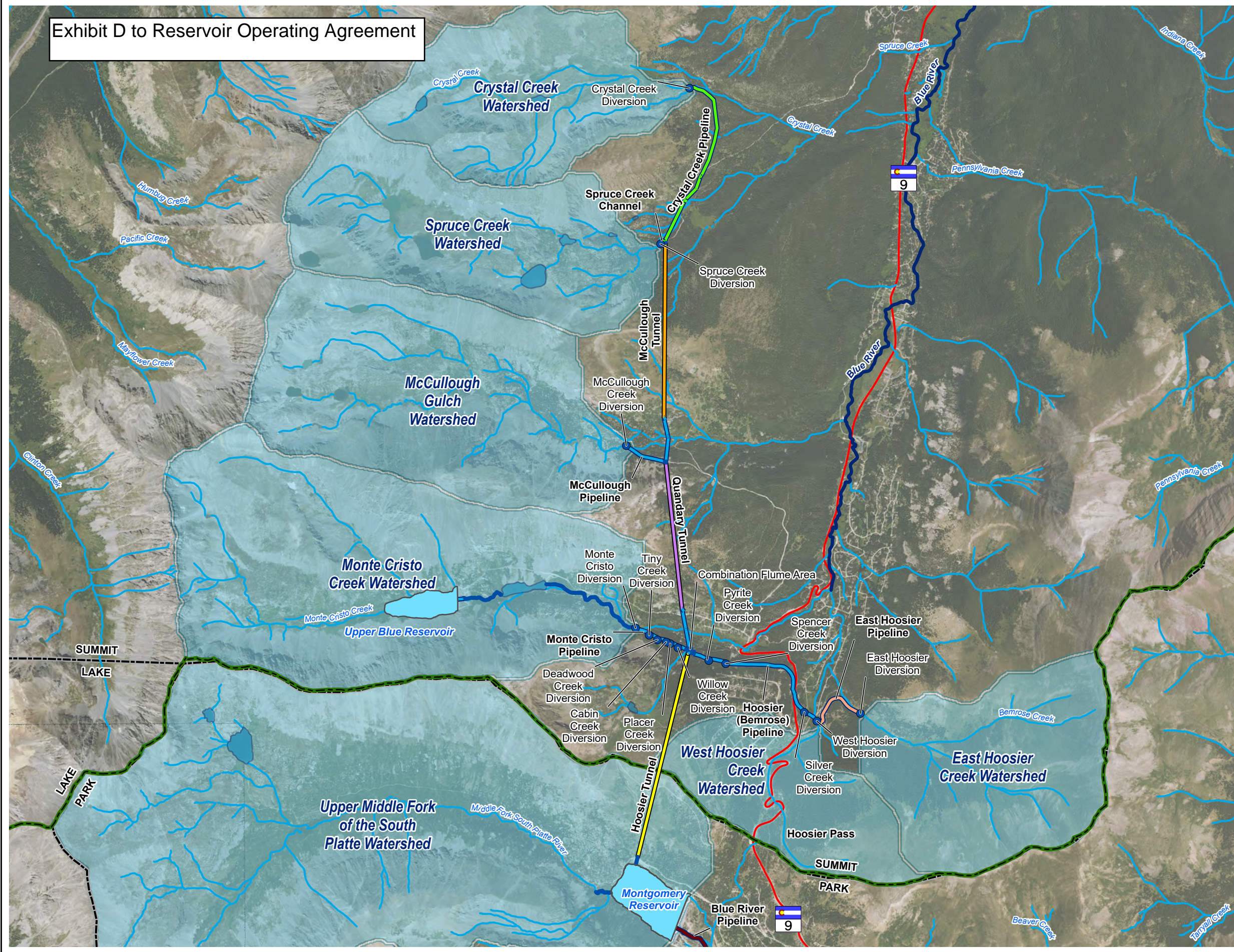
Colorado River District (CRD)  
 Colorado Springs (CS)  
 Green Mountain Reservoir (GM)  
 Denver Water Board (DWB)

4/30/2003

Exhibit D to Reservoir Operating Agreement

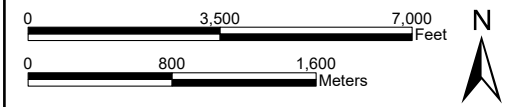
**CONTINENTAL-HOOSIER  
SYSTEM PROJECT**

- Legend**
- Existing Conveyance Features
  - Crystal Creek Pipeline
  - East Hoosier Pipeline
  - Blue River Pipeline
  - Other Raw Water Pipeline
  - River/Creek/Flume
  - Hoosier Tunnel
  - McCullough Tunnel
  - Quandary Tunnel
  - Diversion
  - Watershed
  - Existing Reservoir
  - Other Lake/Pond/Reservoir
  - Stream/River
  - Continental Divide
  - State/US Highway
  - County



Data Sources: CSU, AECOM  
Aerial Photo: 2019 NAIP, USDA  
Last Updated: 3/8/2022

**DRAFT**



**FIGURE X  
Existing CHS Facilities**

**Exhibit 2**

<p>DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601-3303</p>	<p>Draft of Nov. 15, 2023 Subject to CRE 408</p>
<p>CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF COLORADO SPRINGS, COLORADO, IN SUMMIT COUNTY, COLORADO</p>	<p><b>▲ COURT USE ONLY ▲</b></p>
<p>Attorneys for Colorado Springs Utilities: William A. Paddock, Reg. No. 9478 Karl D. Ohlsen, Reg. No. 32497 Sarah B. Wiedemann, Reg. No. 46383 Carlson, Hammond &amp; Paddock, L.L.C. 1900 Grant Street, Suite 1200 Denver, Colorado 80203 Phone: (303) 861-9000, Fax: (303) 861-9026 e-mail: bpaddock@chp-law.com <a href="mailto:kohlsen@chp-law.com">kohlsen@chp-law.com</a> swiedemann@chp-law.com</p> <p>Michael Gustafson, Reg. No. 37364 City Attorney's Office-Utilities Division P. O. Box 1575 Mail Code 510 30 S. Nevada Avenue Suite 501 Colorado Springs, Colorado 80901 Phone: (719) 385-5909 Fax: (719) 385-5535 e-mail: michael.gustafson@coloradosprings.gov</p>	<p>Case Number: 15CW3019 (Former Case No. 06CW132)</p> <p>Division 5          Ctrm:</p>
<p><b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RULING OF THE REFEREE, JUDGMENT AND DECREE</b></p>	

This matter comes before the Water Referee on the Application to For a Finding of Reasonable Diligence for the conditional water storage rights of the City of Colorado Springs, by and through its enterprise Colorado Springs Utilities, (“Colorado Springs”). The Water Referee, having reviewed the Application and other pleadings on file and having made such investigations

as are necessary to determine whether or not the statements in the Application are true and being fully advised on this matter, makes the following findings of fact, conclusions of law, and ruling in this matter:

### FINDINGS OF FACT

1. Applicant. The name and address of the Applicant:

City of Colorado Springs  
Colorado Springs Utilities  
c/o Abigail Ortega, PE, Water Supply Resources Manager  
1521 Hancock Expressway, MC 1825  
Colorado Springs, CO 80903  
Phone: (719) 668-8748  
Colorado Springs, CO 80947-1825

Colorado Springs is a home rule city and municipal corporation of the State of Colorado. It owns and operates a municipal water and sewer utility system for the benefit of its citizens, and for the provision of water and sewer service to such extra-territorial customers as it may serve from time to time pursuant to its City Charter and contracts.

2. Filing of Application. The Application was filed with the Water Clerk for Water Division No. 5 on March 30, 2015 and was published in the April 2015 Resume for Water Division No. 5.

3. Referral and Publication. The Application was referred to the Referee by Order dated April 1, 2015. The Water Referee has caused publication of the Application as provided by statute, and proof of publication for the Application was filed with the Court on May 20, 2015. All publication costs have been paid, and all notices of the Application have been given in the manner provided by law.

4. Notice to Landowners. Pursuant to C.R.S. §37-92-302(2)(b), Colorado Springs provided notice of the Application to the landowners upon which any new diversion or storage structure or any modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored. A certification that such notice was provided was filed with the Court on April 6, 2015. On July 20, 2022, Colorado Springs filed a Supplemental Notice to Landowners.

5. Statements of Opposition. Timely statements of opposition were filed by the Town of Breckenridge, the Ute Water Activity Enterprise, the Lower Arkansas Valley Water Conservancy District, the Colorado River Water Conservation District, and the Board of County Commissioners of the County of Summit. The time for filing statements of opposition has expired. On July 16, 2018, the Lower Arkansas Valley Water Conservancy District withdrew its statement of opposition. On September 8, 2022, the Water Referee granted the Unopposed

Motion to Intervene of Jeff Pope and accepted his statement of opposition. No other statements of opposition were filed in this case.

6. Stipulations. Colorado Springs has entered into the following stipulations in this case;

A. Stipulation with Jeff Pope was approved by the Court on March 29, 2023. Pursuant to that stipulation Colorado Springs acknowledged that it does not currently have permission to construct any of the structures involving the Subject Rights on any portion of the land known as the H.A.W. Tabor Mineral Survey No. 4393, consisting of 5.16 acres in Section 2, Township 8 South, Range 78 West of the 6th P.M. (the “Tabor Land”), or to inundate any portion of the Tabor Land. Prior to any construction on or inundation of the Tabor Land caused by any structures involving the Subject Rights, Colorado Springs shall either reach an agreement compensating of the owners the Tabor Land or otherwise acquire the necessary property interests in the Pope Land in accordance with the City of Colorado Springs policies and procedures for the acquisition of real property interests.

B. Stipulations with the Town of Breckenridge, the Ute Water Activity Enterprise, the Colorado River Water Conservation District, and the Board of County Commissioners of the County of Summit and those stipulations were approved by the Court on \_\_\_\_\_, 202\_.

7. Summary of Consultation. A consultation report was filed on June 23, 2015. The Referee has considered the consultation report in making this ruling.

8. Jurisdiction. Colorado Springs timely and appropriately filed its Diligence Application, and proper and adequate notice of the filing and contents of the Application was given in the manner required by law. The Court has jurisdiction over the subject matter of this proceeding and over all persons who have standing to appear as parties herein, whether they have appeared or not. None of the lands or water rights involved in the Application are located within the boundaries of a designated groundwater basin.

9. Summary of Application. This case involves an application for a Sexennial Finding of Reasonable Diligence for the conditional water storage rights decreed on May 10, 1952 in Civil Action No. 1806 (Summit County District Court), and on October 12, 1955 in Consolidated Cases No. 2782, 5016, and 5017 (United States District Court) (the “Subject Rights”). Colorado Springs requests a finding that it has exercised reasonable diligence in the development of the Subject Rights.

10. Structures Involved in the Subject Rights. The structures involved in the Subject Rights and their decreed legal descriptions of the are as follows:

A. Lower Blue Lake Reservoir (also known as Lower Quandary Lake): the initial point of survey is located at a point whence the Northeast Corner of Section 3, Township 8 South, Range 78 West of the 6th P.M., bears North 54° East 503 feet.

B. Spruce Lake Reservoir: the initial point of survey is located at a point whence the



Northeast Corner of Section 22, Township 7 South, Range 78 West of the 6th P.M bears North 12° 44' East 5,780 feet.

- C. Mayflower Reservoir: the initial point of survey is located at a point whence the Northeast Corner of Section 22, Township 7 South, Range 78 West of the 6th P.M. bears North 3° 44' East 4,770 feet.

11. Information Applicable to Subject Rights:

- A. Date of Original Decree: Civil Action No. 1806, (Summit County District Court), dated May 10, 1952, and Consolidated Cases No. 2782, 5016, and 5017 (United States District Court) dated October 5, 1955.

Subsequent decrees awarding diligence: The conditional water rights described herein have been continued as required by law, with the last diligence application filed in Case No. 06CW132, Water Division No. 5, in which a decree was entered on March 24, 2009.

- B. Source of water:

- i. Lower Blue Lake Reservoir: Blue River, tributary to the Colorado River.
- ii. Spruce Lake Reservoir: Spruce Creek, tributary to the Blue River, tributary to the Colorado River.
- iii. Mayflower Reservoir: Spruce Creek, tributary to the Blue River, tributary to the Colorado River.

- C. Appropriation Date: May 13, 1948.

Amounts:	Lower Blue Lake Reservoir:	1,006 AF
	Spruce Lake Reservoir:	1,542 AF
	Mayflower Reservoir:	618 AF
	Total:	3,166 AF

- D. Decreed Use:

- i. From CA 1806 Decree: to be used by and for the benefit of the inhabitants of the City of Colorado Springs and adjacent areas for domestic uses, fire protection, sewage disposal, manufacturing and industrial uses, street sprinkling and flushing, irrigation of lawns, trees, gardens, flowers and parks, and other municipal purposes.

- ii. From 10/12/1955 Final Decree, Consolidated Cases No. 2782, 5016, and 5017 (hereafter the “Consolidated Blue River Cases”): for municipal purposes as defined in the Stipulation dated October 5, 1955, filed in the United States District Court for the District of Colorado and set forth in full in the Findings of Fact and Conclusions of Law and incorporated into the Final Decree by reference.

12. Diligence in the Development of Conditional Amounts of the Subject Rights. Colorado Springs requests a finding that it has exercised reasonable diligence in the development of the Subject Rights. The Court finds that the work, actions and expenditures described in the Application for this case constitute reasonable diligence in the development of the Subject Rights. The Court finds that Colorado Springs has demonstrated that they can and will operate the Subject Rights in the future. Accordingly, the Court finds that Colorado Springs has demonstrated reasonable diligence towards completion of the Subject Rights. Based upon the foregoing, the Water Referee finds that the 3,166 acre-feet conditional amount of the Subject Rights, shall remain in full force and effect.

13. Terms and Conditions for the Right. Colorado Springs’ operation of the Subject Rights shall be in accordance with all terms and conditions set forth in the Decrees entered in Civil Action No. 1806 (Summit County District Court), and in Cases No. 2782, 5016, and 5017 (United States District Court), and in compliance with the agreements described therein.

### **CONCLUSIONS OF LAW**

14. Statutory Authority and Jurisdiction. The Application in this matter was filed with the Water Clerk, Water Division No. 5, pursuant to C.R.S. §37-92-302(1)(a). The Court has exclusive jurisdiction over the subject matter of the Application pursuant to C.R.S. §37-92-203, and over all persons or entities affected hereby, whether they have appeared or not. Pursuant to the Order entered on March 22, 2017, by the United States District Court in the Consolidated Blue River Cases No. 5016, and 5017, that Court no longer acts as the Water Division 5 Water Judge in matters relating to the filing of applications for showings of due diligence pursuant to the 1969 Water Right Determination and Administration Act (“1969 Act”). All proceedings in this matter are committed to the exclusive jurisdiction of the District Court in and for Water Division No. 5, State of Colorado

15. Notice. Timely and adequate notice of this proceeding was given in the manner required by law.

16. Authorized by Law. Colorado Springs’ request for findings of reasonable diligence in the development of conditional water storage rights is contemplated and authorized by law. C.R.S. §§37-87-101 and 37-92-302.

17. Standard for Finding Reasonable Diligence, C.R.S. §37-92-301(4)(b). To establish diligence, an applicant must show “the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. *See* C.R.S.

§37-92-301(4)(b); *Municipal Subdistrict v. Oxy USA, Inc.*, 990 P.2d 701 (Colo. 1999); *Municipal Subdistrict v. Chevron Shale Oil Co.*, 986 P.2d 918 (Colo. 1999). The water court's determination of reasonable diligence is a case by case determination, considering all the relevant evidence, and the following nonexclusive list of factors: 1) economic feasibility; 2) the status of required permits and governmental approvals; 3) expenditures made to develop the appropriation; 4) the ongoing conduct of engineering and environmental studies; 5) the design and construction of facilities; and 6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Oxy USA*, 990 P.2d at 706; *Chevron Shale Oil*, 986 P.2d at 921. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system." C.R.S. §37-92-301 (4)(b). The Subject Rights are a part of the Applicant's integrated municipal water system comprising all water rights decreed and used in connection with the Applicant's municipal water supply system. This case involves the Continental-Hoosier System or Blue River Project, which is an integral part of the Applicant's water supply system that includes the conditional water storage rights subject to the application herein. Applicant exercised reasonable diligence in its efforts during this diligence period to perfect its decreed conditional water storage rights in the manner required by Colorado law.

18. The "Can and Will" standard, C.R.S. § 37-92-305(9)(b). The "can and will" standard must be met by an applicant for a finding of reasonable diligence. *Municipal Subdistrict, Northern Colorado Water Conservancy Dist. v. Getty Oil Exploration Co.*, 997 P.2d 557, 564 n.6 (Colo. 2000); *Oxy USA*, 990 P.2d at 707-08. The legislative intent implied in C.R.S. §37-92-305(9)(b), in diligence proceedings, is to require that the applicant demonstrate:

... that the decreed conditional appropriation is being pursued in a manner which affirms that capture, possession, control, and beneficial use of water can and will occur in the state, thereby justifying continued reservation of the antedated priority pending perfection of a water right.

*Dallas Creek Water Co. v. Huey*, 933 P.2d 27, 37 (Colo. 1997) (footnote omitted).

Colorado Springs has established that the conditional portion of the Subject Rights can and will be diverted, stored, or otherwise captured, possessed, and controlled, and that the water will be beneficially used. Colorado Springs has also demonstrated that said conditional water right can and will be completed with diligence and within a reasonable time.

19. Compliance with Legal Requirements and Burdens of Proof. Colorado Springs has complied with all requirements and met all standards and burdens of proof and is therefore entitled to a ruling and decree making a finding of diligence in development of the conditional portions of the Subject Rights.

**RULING**

**IT IS THEREFORE ORDERED AS FOLLOWS:**

- 20. Findings of Fact Incorporated. The foregoing Findings of Fact and Conclusions of Law are incorporated by this reference as if fully set forth herein.
- 21. Approval of Application. The Application for a finding of reasonable diligence in the development of the conditional rights for the Subject Rights is granted, and said conditional water storage rights are continued in force.
- 22. Future Applications for Diligence. Colorado Springs shall file an application for sexennial finding of reasonable diligence for the Subject Rights continued herein, six years after the date on which the Water Judge enters a decree in this case, and in the same month in which the decree was entered, and thereafter as provided by law, for so long as Colorado Springs desires to maintain such conditional portions of the Subject Rights or until a determination has been made that the Subject Rights have become absolute.
- 23. Notice of Transfer. Upon sale or transfer of the conditional storage rights, the transferee shall file with the Water Court a Notice of Transfer containing the title and case number of the conditional storage rights transferred, the name of the transferor, the name and mailing address of the transferee, and a copy of the recorded deed.
- 24. Mailing of Decree. Copies of this ruling, and the final decree when entered by the Court, shall be mailed as provided by statute.

Dated: \_\_\_\_\_.

BY THE REFEREE:

\_\_\_\_\_  
Holly Strablizky, Water Referee  
Water Division No. 5, State of Colorado

**JUDGMENT AND DECREE**

**THIS MATTER** having come before the Court, pursuant to C.R.S. §§37-92-303 and 37-92-304, and the Court having reviewed the Ruling of the Water Referee, and being fully apprised of this matter,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Referee's Ruling is hereby adopted as the Judgment and Decree of this Court.

Dated: \_\_\_\_\_.

**BY THE COURT**

\_\_\_\_\_  
Hon. Christopher Seldin, Water Judge  
Water Division 5

### Exhibit 3

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO 501 N. Elizabeth Street, Suite 116 Pueblo, CO 81003	<b>Subject to CRE 408</b> <b>Draft 11-15-2023</b>
IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF COLORADO SPRINGS, COLORADO	<b>▲ COURT USE ONLY ▲</b>
IN THE ARKANSAS RIVER AND ITS TRIBUTARIES, INCLUDING FOUNTAIN CREEK	
IN LAKE, CHAFFEE, FREMONT, PUEBLO, TELLER AND EL PASO COUNTY, COLORADO	
Counsel for the City of Colorado Springs: Michael J. Gustafson, Senior Attorney, Reg. No. 37364 City Attorney's Office – Utilities Division 30 South Nevada Avenue, MC 510 Colorado Springs, CO 80903 Phone: (719) 385-5909 Fax: (719) 385-5535 Email: mgustafson@springsgov.com	Case No: 18CW3041  Original Case No: 03CW314
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RULING OF THE REFEREE, JUDGMENT AND DECREE</b>	

This matter comes before the Water Referee on the Application to For a Finding of Reasonable Diligence for the conditional appropriative rights of exchange of the City of Colorado Springs, by and through its enterprise Colorado Springs Utilities, (“Colorado Springs”). The Water Referee, having reviewed the Application and other pleadings on file and having made such investigations as are necessary to determine whether or not the statements in the Application are true and being fully advised on this matter, makes the following findings of fact, conclusions of law, and ruling in this matter:

#### FINDINGS OF FACT

1. Applicant. The name and address of the Applicant:

City of Colorado Springs

#OAFB30110D3NAIv1

Colorado Springs Utilities  
c/o Abigail Ortega, PE, Water Supply Resources Manager  
1521 Hancock Expressway, MC 1825  
Colorado Springs, CO 80903  
Phone: (719) 668-8748  
Colorado Springs, CO 80947-1825

Colorado Springs is a home rule city and municipal corporation of the State of Colorado. It owns and operates a municipal water and sewer utility system for the benefit of its citizens, and for the provision of water and sewer service to such extra-territorial customers as it may serve from time to time pursuant to its City Charter and contracts.

2. Filing of Application. The Application was filed with the Water Clerk for Water Division No. 5 on March 30, 2018 and was published in the March Resume for Water Division No. 5.

3. Referral and Publication. The Application was referred to the Referee by Order dated March 30, 2018. The Water Referee has caused publication of the Application as provided by statute, and proofs of publication for the Application were filed with the Court on July 19, 2018 and July 23, 2018. All publication costs have been paid, and all notices of the Application have been given in the manner provided by law.

4. Notice to Landowners. Pursuant to C.R.S. §37-92-302(2)(b), Colorado Springs provided notice of the Application to the landowners upon which any new diversion or storage structure or any modification to any existing diversion or storage structure or existing storage pool is or will be constructed or upon which water is or will be stored. A certification that such notice was provided was filed with the Court on May 7, 2018.

5. Statements of Opposition. Timely statements of opposition were filed by Eagle River Water & Sanitation District, Upper Eagle Regional Water Authority, and the Board of County Commissioners of the County of Summit. No other statements of opposition were filed in this case. The time for filing statements of opposition has expired.

6. Stipulations. Colorado Springs has entered into stipulations in this case with Eagle River Water & Sanitation District, Upper Eagle Regional Water Authority and \_\_\_\_\_.

7. Summary of Consultation. A consultation report was filed on June 29, 2018. The Referee has considered the consultation report in making this ruling.

8. Jurisdiction. Colorado Springs has timely and appropriately filed its Application, and proper and adequate notice of the filing and contents of the Application was given in the manner required by law. The Court has jurisdiction over the subject matter of this proceeding and over all persons who have standing to appear as parties herein, whether they have appeared or not. None of the lands or water rights involved in the Application are located within the boundaries of a designated groundwater basin.

9. Summary of Application. This case involves an application for a Sexennial Finding of Reasonable Diligence for the conditional appropriative rights of exchange known as the CSU 2003 Homestake-Blue River Exchange, decreed on March 14, 2012, in Case No. 03CW314 (the "Subject Exchange"). Colorado Springs requests a finding that it has exercised reasonable diligence in the development of the Subject Exchange.

10. Structures Involved in the Subject Exchange. The structures involved in the Subject Exchange and their decreed legal descriptions of the are as follows:

A. Homestake Reservoir. Homestake Reservoir, also known as Elliott-Weers Reservoir, has a capacity of 83,338.98 acre feet CONDITIONAL, and is located on Homestake Creek with a dam whence Homestake Peak bears South  $73^{\circ} 26'$  East 10,477 feet from the easterly end thereof and South  $74^{\circ} 57'$  East 13,347 feet from the westerly end thereof, said dam having a maximum height of 411.5 feet and a length of 3,380 feet. The sources of supply of said reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek, and Homestake Creek and said reservoir has appropriated for storage 83,338.98 acre feet annually from said sources. Homestake Reservoir also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel. Existing Homestake Reservoir has a storage capacity of 43,504.7 acre feet ABSOLUTE and is located on Homestake Creek with a dam whence the NW Corner of Section 31, T7S, R80W of the 6<sup>th</sup> P.M. bears North  $58^{\circ} 30.6'$  East 24,659 feet from the East dam abutment and North  $62^{\circ} 25.8'$  East 25,746 feet from the West dam abutment; said dam has a maximum height of 265.0 feet and a length of 1,996 feet. The sources of supply of said existing Homestake Reservoir are Homestake Conduit, East Fork Conduit, the Middle Fork of Homestake Creek, and Homestake Creek. Existing Homestake Reservoir has appropriated 43,504.7 acre feet annually from said sources and also conveys water from Homestake Conduit and East Fork Conduit to Homestake Tunnel.

B. Continental-Hoosier Diversion System:

a. Diversion Structures.

i. Blue River Ditch: The headgate and point of diversion of said Blue River Ditch is located at a point on the South bank of the Blue River, a natural stream, in said Water District No. 36, tributary to the Colorado River, from whence the East quarter corner of Section 2, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. is S.  $80^{\circ} 44'$  E. a distance of 2,096 feet.

ii. Crystal Ditch: The headgate and point of diversion of said Crystal Ditch is located at a point on the South bank of Crystal Creek, a



natural stream in said Water District No. 36, a tributary to the Colorado River, from whence the Northwest corner of Section 2, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. is S. 19° 34' W. a distance of 18,245 feet.

- iii. Spruce Ditch: The headgate and point of diversion of said Spruce Ditch is located at a point on the South bank of Spruce Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, from whence the Northwest corner of Section 2, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. is S. 23° 56' W. a distance of 12,810 feet.
- iv. McCullough Ditch: The headgate and point of diversion of said McCullough Ditch is located at a point on the South bank of McCullough Gulch Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, at a point from whence the Northwest corner of Section 2, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. is S. 28° 23' W. a distance of 6,085 feet.
- v. East Hoosier Ditch: The headgate and point of diversion of said East Hoosier Ditch is located at a point on the West bank of East Hoosier Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, at a point from whence the Southwest corner of Section 6, Township 8 South, Range 77 West of the 6<sup>th</sup> P.M. is S. 57° 36' W. a distance of 388.8 feet.
- vi. Hoosier Ditch (Hoosier Creek): The Hoosier Creek headgate and point of diversion of said Hoosier Ditch (No. 1) is located at a point on the West bank of Hoosier Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, at a point from whence the Northeast corner of Section 12, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. is N. 64° 35' E. a distance of 877.8 feet.
- vii. Hoosier Ditch (Silver Creek): The Silver Creek headgate and point of diversion of said Hoosier Ditch (No. 2) is located at a point on the West bank of Silver Creek, a natural stream in said Water District No. 36, a tributary to the Colorado River, where said ditch crosses Silver Creek at a point from whence the West quarter corner of Section 1, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. is N. 48° 35' W. a distance of 1,375.8 feet.
- viii. Hoosier Ditch (Interception): The above-named ditches are also entitled to a priority for 50 cubic feet of water per second of time as of the date of May 13, 1948, intercepted by the above-named ditches

between the respective points of diversion thereof and delivery to the Hoosier Tunnel provided, however, that the amount of water intercepted by any of the above enumerated ditches shall be in diminution of the amount of water awarded to each of said ditches and the total maximum amount of diversion for the above-named ditches shall not exceed the maximum amounts herein awarded to each of said ditches.

- ix. Hoosier Tunnel: The entrance or place of beginning of said tunnel is located at a point in Water District No. 36, from whence the East quarter corner of Section 2, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. is N. 34° 33' E. a distance of 510.6 feet.

b. Storage Structures.

- i. Upper Blue Lake Reservoir (Also known as Upper Blue Reservoir): The dam of the above reservoir is located across the channel of the Blue River, a natural stream, tributary to the Colorado River in said Water District No. 36. The initial point of survey is located at a point whence the Northeast corner of Section 3, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. bears N. 66° 30' E. 3,728 feet.

- ii. Lower Blue Lake Reservoir (Also known as Lower Quandary Lake) (Conditional): The dam of the above reservoir is located across the channel of the Blue River, a natural stream, tributary to the Colorado River in said Water District No. 36. The initial point of survey is located at a point whence the Northeast corner of Section 3, Township 8 South, Range 78 West of the 6<sup>th</sup> P.M. bears N. 54° E. 503 feet.

- iii. Spruce Lake Reservoir (Conditional): The dam of said Spruce Lake is located across the channel of Spruce Creek, a natural stream, tributary to the Colorado River in said Water District No. 36. The initial point of survey is located at a point whence the Northeast corner of Section 22, Township 7 South, Range 78 West of the 6<sup>th</sup> P.M. bears N. 12° 44' E. 5,780 feet.

- iv. Mayflower Lake Reservoir (Conditional): The dam of said Mayflower Lake is located across the channel of Spruce Creek, a natural stream, tributary to the Colorado River in said Water District No. 36. The initial point of survey is located at a point whence the Northeast corner of Section 22, Township 7 South, Range 78 West of the 6<sup>th</sup> P.M. bears N. 3° 44' E. 4,770 feet.

11. Information Applicable to Subject Exchange:

- A. Name of Exchange. CSU 2003 Homestake-Blue River Exchange.
- B. Date of Original Decree. March 14, 2012, Cases No. 03CW314, District Court, Water Division No. 5 (the "Decree").
- C. Use. In the Colorado Springs' municipal water works for all municipal uses including, without limitation, domestic use, irrigation, mechanical use, manufacturing use, generation of electrical power, power generally, fire protection, sewage treatment, street sprinkling, watering of parks, lawns, and grounds, maintenance of adequate storage reserve, replacement, exchange, augmentation, reuse and successive use to extinction.
- D. Source of Water for Subject Exchange. Water lawfully stored by Colorado Springs in Homestake Reservoir.
- E. Structures Involved. The structures utilized in the Subject Exchange are described in paragraph 10 above.
- F. Description of Exchanges. Colorado Springs' water will be released from Homestake Reservoir for delivery to the Colorado River to satisfy requirements of downstream water rights, and water will be diverted in exchange by the Continental-Hoosier Diversion System, and thence through the Hoosier Tunnel for storage in Montgomery Reservoir and subsequent delivery through Colorado Springs' Blue River Pipeline facilities to the Colorado Springs' local storage, treatment, and distribution system for beneficial use by customers of the Colorado Springs' municipal water system.
- G. Exchange Reaches.
- a. Release Point: Homestake Reservoir, described in subparagraph 10.A, above.
  - b. Exchange from Point: The confluence of the Eagle River and the Colorado River.
  - c. Exchange to Point: Continental-Hoosier Diversion System, described in subparagraph 10.B, above.
  - d. Stream Reaches: Release from Homestake Reservoir on Homestake Creek down to its confluence with the Eagle River; also down the Eagle River to its confluence with the Colorado River; thence the exchange reach is from the confluence of the Eagle River and the Colorado River up the Colorado River to the Blue River, and thence up the Blue River to the Continental-Hoosier Diversion System.

- H. Rates of Flow. The original conditional amounts of the Subject Exchange decreed in Case No. 03CW314 are 16.9 c.f.s., all of which remains conditional.
- I. Priority Date. The priority date for the Subject Exchange under Case No. 03CW314 is December 31, 2003.

12. Diligence in the Development of Conditional Amounts of the Subject Exchange. Colorado Springs requests a finding that it has exercised reasonable diligence in the development of the Subject Exchange. The Court finds that the work, actions and expenditures described in the Application for this case constitute reasonable diligence in the development of the Subject Exchange. The Court further finds that the infrastructure necessary to operate the Subject Exchange has been constructed, is in place, and is available for use in the Subject Exchange, or is the subject of pending applications for reasonable diligence. Nothing herein shall constitute a finding of reasonable diligence in the development of structures that are the subject of pending diligence applications. Despite the fact that the conditions under which the Subject Exchange would be operated did not occur during this diligence period, the Court finds that Colorado Springs has demonstrated that they can and will operate the Subject Exchange in the future. Accordingly, the Court finds that Colorado Springs has demonstrated reasonable diligence towards completion of the Subject Exchange. Based upon the foregoing, the Water Referee finds that the 16.9 c.f.s. conditional amount of the Subject Exchange, shall remain in full force and effect.

13. Exchanges Occurring Between the Filing of the Application and Entry of Decree. Nothing herein shall preclude Colorado Springs in the future from seeking an absolute water right based on exchanges and substitutions it has carried out after the Application in this case was filed and on or before the date of entry of the decree in this case. Likewise, nothing herein shall preclude Colorado Springs from relying upon said exchanges and substitutions to demonstrate reasonable diligence in the perfection of conditional water rights.

14. Terms and Conditions for the Subject Exchange. Colorado Springs' operation of the Subject Exchange shall be in accordance with all terms and conditions set forth in the Decree entered in Case No. 03CW314 and in compliance with the agreements described therein.

### CONCLUSIONS OF LAW

15. Statutory Authority and Jurisdiction. The Application in this matter was filed with the Water Clerk, Water Division No. 5, pursuant to C.R.S. §37-92-302(1)(a). The Court has exclusive jurisdiction over the subject matter of the Application pursuant to C.R.S. §37-92-203, and over all persons or entities affected hereby, whether they have appeared or not.

16. Notice. Timely and adequate notice of this proceeding was given in the manner required by law.

17. Authorized by Law. Colorado Springs' request for findings of reasonable diligence in the development of conditional exchange rights is contemplated and authorized by law. C.R.S. §§37-80-120, 37-83-104, and 37-92-302.

18. Standard for Finding Reasonable Diligence, C.R.S. §37-92-301(4)(b). To establish diligence, an applicant must show "the steady application of effort to complete the appropriation in a reasonably expedient and efficient manner under all the facts and circumstances. See C.R.S. §37-92-301(4)(b); *Municipal Subdistrict v. Oxy USA, Inc.*, 990 P.2d 701 (Colo. 1999); *Municipal Subdistrict v. Chevron Shale Oil Co.*, 986 P.2d 918 (Colo. 1999). The water court's determination of reasonable diligence is a case by case determination, considering all the relevant evidence, and the following nonexclusive list of factors: 1) economic feasibility; 2) the status of required permits and governmental approvals; 3) expenditures made to develop the appropriation; 4) the ongoing conduct of engineering and environmental studies; 5) the design and construction of facilities; and 6) the nature and extent of land holdings and contracts demonstrating the water demand and beneficial uses which the conditional right is to serve when perfected. *Oxy USA*, 990 P.2d at 706; *Chevron Shale Oil*, 986 P.2d at 921. "When a project or integrated system is comprised of several features, work on one feature of the project or system shall be considered in finding that reasonable diligence has been shown in the development of water rights for all features of the entire project or system." C.R.S. §37-92-301 (4)(b). The Subject Exchange is a part of an integrated water system comprising all water rights decreed and used in connection with the City of Colorado Springs' Continental-Hoosier Diversion System and Homestake Project, and all diligence efforts apply to all features of the system. Colorado Springs exercised reasonable diligence in its efforts during this diligence period to put its decreed conditional water rights to beneficial use in the manner required by Colorado law.

19. The "Can and Will" Test, C.R.S. § 37-92-305(9)(b). The "can and will" test must be met by an applicant for a finding of reasonable diligence. *Municipal Subdistrict., Northern Colorado Water Conservancy Dist. v. Getty Oil Exploration Co.*, 997 P.2d 557, 564 n.6 (Colo. 2000); *Oxy USA*, 990 P.2d at 707-08. The legislative intent implied in C.R.S. §37-92-305(9)(b), in diligence proceedings, is to require that the applicant demonstrate:

... that the decreed conditional appropriation is being pursued in a manner which affirms that capture, possession, control, and beneficial use of water can and will occur in the state, thereby justifying continued reservation of the antedated priority pending perfection of a water right.

*Dallas Creek Water Co. v. Huey*, 933 P.2d 27, 37 (Colo. 1997)  
(footnote omitted).

Colorado Springs has established that the conditional portion of the Subject Exchange can and will be diverted, stored, or otherwise captured, possessed, and controlled, and that the water will be beneficially used. Colorado Springs has also demonstrated that said conditional water right can and will be completed with diligence and within a reasonable time.

20. Quality and Continuity. The water to be substituted under the Subject Exchange is and shall be of a quality and continuity to meet the requirements of use to which the water of a senior appropriator has normally been put.

21. Compliance with Legal Requirements and Burdens of Proof. Colorado Springs has complied with all requirements and met all standards and burdens of proof and is therefore entitled to a ruling and decree making a finding of diligence in development of the conditional portions of the Subject Exchange.

### RULING

#### IT IS THEREFORE ORDERED AS FOLLOWS:

22. Findings of Fact Incorporated. The foregoing Findings of Fact and Conclusions of Law are incorporated by this reference as if fully set forth herein.

23. Approval of Application. The Application for a finding of reasonable diligence in the development of the conditional rights for the Subject Exchange is granted, and said conditional exchange rights are continued in force.

24. Future Applications for Diligence. Colorado Springs shall file an application for sexennial finding of reasonable diligence for the Subject Exchange continued herein, in \_\_\_\_\_ of \_\_\_\_\_, and thereafter as provided by law, for so long as Colorado Springs desires to maintain such conditional portions of the Subject Exchange or until a determination has been made that the Subject Exchange has become absolute.

25. Notice of Transfer. Upon sale or transfer of the conditional exchange rights, the transferee shall file with the Water Court a Notice of Transfer containing the title and case number of the conditional exchange rights transferred, the name of the transferor, the name and mailing address of the transferee, and a copy of the recorded deed.

26. Mailing of Decree. Copies of this ruling, and the final decree when entered by the Court, shall be mailed as provided by statute.

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BY THE REFEREE:

---

Holly Strablizky, Water Referee  
Water Division No. 5

**JUDGMENT AND DECREE**

**THIS MATTER** having come before the Court, pursuant to C.R.S. §§37-92-303 and 37-92-304, and the Court having reviewed the Ruling of the Water Referee, and being fully apprised of this matter,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Referee's Ruling is hereby adopted as the Judgment and Decree of this Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**BY THE COURT**

\_\_\_\_\_  
Hon. Christopher Seldin, Water Judge  
Water Division 5

DRAFT

**EXHIBIT 4**

<b>DISTRICT COURT, WATER DIVISION 5, COLORADO</b> GARFIELD COUNTY COMBINED COURTS 109 8 <sup>TH</sup> STREET, SUITE 104 GLENWOOD SPRINGS, CO 81601-3303	<b>DRAFT 11.14.2023</b> <b>C.R.E. 408</b>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE BOARD OF COUNTY COMMISSIONERS OF SUMMIT COUNTY IN SUMMIT COUNTY, COLORADO	<b>Δ COURT USE ONLY Δ</b>
	<b>Case No.: 16CW3015</b> <b>(82CW386, 93CW287,</b> <b>00CW74, 06CW222)</b>
<b>FINDINGS OF FACT, CONCLUSIONS OF LAW, RULING OF THE WATER REFEREE AND DECREE OF THE WATER COURT</b>	

THIS MATTER has come before the Water Referee on an Application for Finding of Reasonable Diligence (the “Application”) filed by the Applicant, the Board of County Commissioners of Summit County on January 29, 2016 and was referred by the Water Judge for the District Court in and for Water Division No. 5, State of Colorado to the Referee of the Water Court in accordance with Article 92 of Chapter 37, Colorado Revised Statutes, known as the Water Right Determination and Administration Act of 1969.

The Referee, having reviewed the Application and the other pleadings in this case, having considered the comments of the Division Engineer, and now being fully advised with respect to this matter, enters the following Findings of Fact, Conclusions of Law, and Ruling and Decree:

**I. FINDINGS OF FACT**

1. The Applicant filed a properly verified Application in this matter on January 29, 2016. Timely and adequate notice of the Application was given in the manner provided by statute. C.R.S. § 37-92-302 (2015). All notices required by law for the filing of the Application have been given, and the Court has jurisdiction over the Application.
  
2. The name and address of the Applicant is:  
Board of County Commissioners of Summit County (“Summit County”)  
c/o David Rossi, Interim County Manager  
Post Office Box 68



Breckenridge, Colorado 80424

copies of all pleadings to:  
Thomas W. Korver, No. 36924  
Hayes Poznanovic Korver LLC  
700 17<sup>th</sup> Street, Suite 1800  
Denver, CO 80202  
(303) 825-1980

3. Statements of opposition were timely filed by the Town of Breckenridge, the City of Colorado Springs, Rock Island Land Company LLC, Holt Investments Family Limited Partnership, and Everist Materials, LLC. Kilgore Companies, LLC dba Peak Materials was substituted for Everist Materials by order dated June 15, 2017. The time period for filing statements of opposition has expired.
4. The Applicant has entered into the following stipulations with the Opposers:
  - A. Town of Breckenridge, by stipulation dated August 16, 2016 and approved by the Court on August 16, 2016. Pursuant to this stipulation, the Town of Breckenridge withdrew its statement of opposition in this case.
  - B. Rock Island Land Company LLC, Holt Investments Family Limited Partnership, and Kilgore Companies, LLC dba Peak Materials, by stipulation dated April 13, 2020 and approved by the Court on April 19, 2020. The terms of said stipulation are incorporated into this Ruling and Decree.
  - C. City of Colorado Springs, by stipulation dated \_\_\_\_\_ and approved by the Court on \_\_\_\_\_.
5. All persons affected by the Application, whether appearing or not, are parties hereto and are bound by this Ruling and Decree, all notices required by law having been given and the Water Court having jurisdiction over the subject matter of this proceeding. C.R.S. § 37-92-203 (2015).
6. This Court has given due consideration to the Division Engineer's summary of consultation dated May 6, 2016 and the Applicant's May 17, 2016 response thereto.
7. Name of water rights:
  - A. Swan River Reservoir.

B. Lower Mohawk Reservoir.

8. Description of the conditional water rights (“Conditional Water Rights”):

A. Date of original decree: December 28, 1987 in Case No. 82CW386, Water Division No. 5.

B. Subsequent decrees awarding findings of diligence: May 24, 1994 in Case No. 93CW287; October 11, 2000 in Case No. 00CW74; and January 11, 2010 in Case No. 06CW222, Water Division No. 5.

C. Legal Description:

i. Swan River Reservoir: The point of intersection of the Swan River Dam axis with the right abutment is located in the SE1/4 NW1/4 of Section 24, T. 6 S., R. 77 W. of the 6th P.M., at a point whence Corner No. 9 of Mineral Survey No. 7083 (B.L.M. brass cap, 1972) bears North 55°18'0" East a distance of 182.35 feet.

ii. Lower Mohawk Reservoir: The point of intersection of the centerline of the Lower Mohawk Dam axis with the right abutment is located in an unsurveyed portion of T. 7 S., R. 78 W. of the 6th P.M., at a point whence U.S. Land Monument No. 5297 “Continental” bears South 21°40'0" East a distance of 196.61 feet.

D. Source of water:

i. Swan River Reservoir: Swan River, tributary to the Blue River, tributary to the Colorado River.

ii. Lower Mohawk Reservoir: Spruce Creek, tributary to the Blue River, tributary to the Colorado River.

E. Appropriation Date: July 22, 1982.

F. Amounts:

i. Swan River Reservoir: 11,560 acre feet, conditional.

ii. Lower Mohawk Reservoir: 1,530 acre feet, conditional.

G. Use: Irrigation, domestic, municipal, industrial, power, piscatorial, and recreational.

9. Modification of Swan River Reservoir and Partial Abandonment of Conditional Water Right.

A. Summit County complied with the October 28, 2009 stipulation in Case No. 06CW222 among Summit County and the Objectors in that case, Rock Island Land Company, LLC, Holt Investments Family Limited Partnership, and Everist Materials, LLC. Summit County affirmed that the water surface area of the Swan River Reservoir that would inundate those Objectors' properties shall be within the area of the Alternate Reservoir Configuration shown in Exhibit C to that stipulation as filed with the Court in Case No. 06CW222 on October 28, 2009 and approved by Order of the Court on November 4, 2009.

B. As a result of the foregoing reduction in the water surface area of the Swan River Reservoir, the storage volume of the Reservoir will be reduced from 11,560 acre-feet to 1,650 acre-feet. The Application requested the Court to include in any decree granting a finding of reasonable diligence for the Swan River Reservoir a term and condition abandoning the remaining 9,910 acre-feet of the conditional water right originally decreed in Case No. 82CW386.

C. The modified embankment of the Swan River Reservoir will be less than 500 feet from the decreed location of the dam embankment as described in paragraph 8.C above. Neither a natural surface stream that is tributary to the Swan River nor another surface water right is located between the decreed and modified dam embankments. In accordance with C.R.S. 37-92-305(3.6)(b)(I), the modified Reservoir shall be deemed to be diverted at its decreed location.

10. This Ruling and Decree does not make any portion of the Conditional Water Rights absolute.

11. The Application requests a finding that the Applicant has exercised reasonable diligence in the development of the Conditional Water Rights. The Swan River Reservoir and Lower Mohawk Reservoir are part of an integrated system for supplying water demands in Summit County. The Application included a summary of specific projects and work undertaken during the diligence period (from February, 2010 through January, 2016) in furtherance of the development of the Conditional Water Rights.

12. The work performed and the expenditures made during the diligence period has demonstrated adequate and diligent effort in developing the Conditional Water Rights. The Referee finds that the work and expenditures described in the Application constitute reasonable diligence in the development of the Conditional Water Rights and that the Application should be granted.

## **II. CONCLUSIONS OF LAW**

13. The foregoing Findings of Fact are incorporated herein to the extent that they constitute or include conclusions of law.

14. Summit County's Application was timely and one contemplated by law. C.R.S. §§ 37-82-101, 37-87-101, 37-92-302 (2015).

15. The Water Court has jurisdiction over the subject matter of this proceeding and over all who may be affected hereby, whether they have appeared or not. C.R.S. § 37-92-203 (2015).

16. The Applicant is entitled to continuation of the Conditional Water Rights that are the subject of this Ruling and Decree in full force and effect based upon the exercise of reasonable diligence in the development of said water rights.

## **III. RULING OF THE WATER REFEREE**

17. The Findings of Fact and Conclusions of Law set forth above are incorporated herein by reference.

18. Summit County has complied with the law in filing its Application for finding of reasonable diligence and under all of the facts and circumstances recited above, Summit County has demonstrated reasonable diligence in the development of the Conditional Water Rights described herein.

19. In accordance with the Application and as reflected in the preceding paragraph 9.B, 9,910 acre-feet of the conditional water right originally decreed to the Swan River Reservoir in Case No. 82CW386 is hereby abandoned. The remaining amount of said conditional water right decreed in Case No. 82CW386 is 1,650 acre-feet and is hereby continued in full force and effect.

20. The conditional water right decreed to the Lower Mohawk Reservoir in Case No. 82CW386 is hereby continued in full force and effect in the amount of 1,530 acre-feet.

21. An application for finding of reasonable diligence or to make the rights absolute shall be filed on or before the last day of \_\_\_\_\_, 20\_\_ and thereafter as provided by law, for so long as the Applicant desires to maintain such conditional water rights or until a determination has been made that the exchanges have become absolute.

22. Pursuant to Rule 9 of the Uniform Local Rules for all State Water Court Divisions, upon the sale or transfer of the conditional water rights decreed herein, the transferee shall file with the Division No. 5 Water Court, a notice of transfer which shall state:

- A. The title and case number of this Case No. 16CW3015;
- B. The description of the conditional water right to be transferred;
- C. The name of the transferor;
- D. The name and mailing address of the transferee; and
- E. A copy of the recorded deed.

The owner of said conditional water rights shall also notify the Clerk of the Water Court for Water Division No. 5 of any change of mailing address. The Clerk shall place any Notice of Transfer or Change of Address in the case file of this Case No. 2016CW3015 in which the Court first made a Finding of Reasonable Diligence.

23. A copy of this Ruling shall be filed with the Division Engineer for Water Division No. 5 and with the State Engineer.

IT IS THEREFORE ORDERED that this Ruling shall be filed with the Water Clerk and will become effective upon filing.

Dated this \_\_ day of \_\_\_\_\_, 20\_\_.

**BY THE REFEREE:**

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Holly Strablizky  
Water Referee  
Water Division No. 5

**IV. DECREE OF THE WATER COURT**

No protest was filed herein. This matter comes before the Court pursuant to C.R.S. §§ 37-92-303(1) and 304(7) (2015) and the Court having review the findings and determinations of the Water Referee and being fully apprised of the matter,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the Water Referee's Ruling is hereby confirmed and adopted as the Decree of this Court.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**BY THE COURT:**

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Hon. Christopher Seldin  
Water Judge  
Water Division No. 5  
State of Colorado

## EXHIBIT 5

<p>DISTRICT COURT, WATER DIVISION NO. 5, COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601</p>	
<p>CONCERNING THE APPLICATION OF THE CITY OF COLORADO SPRINGS, ACTING THROUGH ITS ENTERPRISE COLORADO SPRINGS UTILITIES AND THE COLORADO RIVER WATER CONSERVATION DISTRICT, ACTING THROUGH ITS COLORADO RIVER WATER PROJECTS ENTERPRISE</p> <p>IN SUMMIT, GRAND, AND EAGLE COUNTIES</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>Attorneys for Colorado Springs: William A. Paddock, Reg. No. 9478 Karl D. Ohlsen, Reg. No. 32497 Sarah B. Wiedemann, Reg. No. 46383 Carlson, Hammond &amp; Paddock, L.L.C. 1900 Grant Street, Suite 1200 Denver, CO 80233 Phone Number: (303) 861-9000 Fax Number: (303) 861-9026 E-mail: bpaddock@chp-law.com swiedemann@chp-law.com</p> <p>Michael J. Gustafson, Reg. No. 37364 Nathan Endersbee, Reg. No. 47426 City Attorney's Office – Utilities Division Colorado Springs Utilities P.O. Box 1575, Mail Code 510 Colorado Springs, CO 80901 Phone Number: (719) 385-5909 Fax Number: (719) 385-5535 E-mail: mgustafson@coloradospringsgov.com nathan.endersbee@coloradosprings.gov</p> <p>Attorneys for the Colorado River Water Conservation District:</p>	<p>Case Number: 2003CW320</p> <p>Division: Water Div. 5 Courtroom:</p>

Peter C. Fleming, Reg. No. 20805 Jason V. Turner, Reg. No. 35665 Colorado River Water Conservation District 201 Centennial Street, Suite 200 Glenwood Springs, CO 81601 Phone Number: (970) 945-8522 Fax Number: (970) 945-8799 E-mail: pfleming@crwcd.org jturner@crwcd.org	
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**MOTION FOR CONFIRMATION THAT DECREE IS IN EFFECT**

The Applicants, City of Colorado Springs, acting through its enterprise Colorado Springs Utilities (“Colorado Springs”), and the Colorado River Water Conservation District, acting through its Colorado River Water Projects Enterprise, (“River District”) by their attorneys, request the Court to enter an order confirming that the Findings of Fact, Conclusions of Law, Judgment and Decree (“Decree”) entered in this case on November 19, 2012, is in full force and effect, and that approval by the United States District Court as contemplated by paragraph 29 of the Decree likely is no longer available, and is not required for the Decree to be effective. The grounds for this motion are as follows:

1. Pursuant to C.R.C.P. 121, § 1-15(8), undersigned counsel certifies that they conferred with counsel for all Opposers by circulating a draft of this motion and proposed order via CCE on \_\_\_\_\_, 202\_. At the time of this filing, none of the parties who responded to Applicants’ conferral indicated that they (do not) oppose the relief requested herein.
2. The Application in this case was filed on December 31, 2003. The purpose of the Application was to implement the terms of the Memorandum of Agreement Regarding Colorado Springs’ Substitution Operations entered into among the River District, Colorado Springs, the City and County of Denver, acting by and through its Board of Water Commissioners (“Denver Water”), the Northern Colorado Water Conservancy District, the County of Summit, acting by its Board of County Commissioners, Vail Summit Resorts, Inc., and the Town of Breckenridge, effective as of May 15, 2003 (hereinafter referred to as the “Colorado Springs Substitution MOA” or “MOA”). A copy of the MOA was attached as Exhibit A to the Application.



3. The Application sought approval of a Substitution Plan or Plan for Augmentation intended to implement, on a long-term basis, the Colorado Springs Substitution MOA. The Substitution Plan requested in the Application would allow Colorado Springs to fulfill its Replacement Obligation under the Blue River Decree for diversions and storage of water under its 1948 Blue River Water Rights in any "Substitution Year" as defined in the MOA.

4. Notice of the Application was published in the December 2003 Resume for Water Division No. 5. The published resume was a substantially verbatim publication of the Application (excluding exhibits). Full and complete notice of the Application and the pendency of parallel proceeding in the U.S. District Court were given in the manner required by law. The relief requested in this motion does not amend or alter any claim asserted in the Application. Thus, no further notice of the relief requested in this motion is required beyond service on the parties to Case No. 2003CW320.

5. At the time the Application was filed Colorado Springs' 1948 Blue River Water Rights were subject to the retained jurisdiction of the United States District Court for Colorado ("U.S. District Court") in Consolidated Civil Cases Nos. 2782, 5016 and 5017. Accordingly, the published notice contained the following statement not contained in the Application:

Pursuant to the Order of the United States District Court, District of Colorado, dated August 4, 1977 in the Consolidated Civil Case Nos. 2782 5016 and 5017, the United States District Court for the District of Colorado will act as the Water Judge provided for in the 1969 Act for Water Division No 5 insofar as proceedings in connection with Consolidated Civil Case Nos 2782 5016 and 5017 are concerned. The August 4, 1977 Order further states: "Any party interested in such proceedings will hereafter take such steps as desired by such party with respect to said cases in accordance with this Order and those procedural requirements of the Act of 1969 as are required for jurisdiction under the Act by making any necessary filing in the Office of the Water Clerk, Water Division No. 5. And also a filing of two copies of every paper filed in the Office of said Water Clerk in the Office of the United States District Court. District of Colorado, at Denver Colorado.

In compliance with the August 4, 1977 Order and the MOA, the Applicants filed the Application both in this Court and the U.S. District Court pursuant to its then retained jurisdiction in the Consolidated Cases.

6. The Application requested several claims for relief including the following:

1. That the Water Court, Water Division No. 5 enter a final decree approving this Substitution Plan, including the Reservoir Book-over as

described herein, in accordance with the Colorado Springs Substitution MOA, pursuant to Sections 37-30-120(1) and (2), 37-92-103(9), 37-92-302(1) and (2), and 37-92-305(8), C.R.S. and any other applicable provisions of Colorado law;

2. That the United States District Court, District of Colorado, under its continuing jurisdiction as set forth in the Blue River Decrees, enter a supplemental decree in Consolidated Civil Case Nos. 2782, 5016 and 5017 determining that Colorado Springs may fulfill the CSU Replacement Obligation under the Blue River Decrees in the manner set forth in the Colorado Springs Substitution MOA;

3. That the decrees entered by the Water Court and the United States District Court include verbatim the terms and conditions set forth in paragraph 1 of the Memorandum of Agreement Among the City of Colorado Springs acting through its Utilities Enterprise, the County of Summit, acting by its Board of County Commissioners, Vail Summit Resorts, Inc., and the Town of Breckenridge, effective as of October 15, 2003 (the "Summit County Entities MOA").

7. Statements of Opposition were filed by the Town of Breckenridge, Vail Associates, Inc., Vail Summit Resorts, Inc., Denver Water, City of Aurora, Colorado, Everist Materials, LLC, Ute Water Conservancy District, Orchard Mesa Irrigation District, Grand Valley Water Users Association, United States of America, the Municipal Subdistrict of the Northern Colorado Water Conservancy District (its statement of opposition was withdrawn on September 30, 2008), Northern Colorado Water Conservancy District, Colorado Water Conservation Board, and Board of County Commissioners of the County of Summit.

8. On September 23, 2004, the U.S. District Court held a hearing on the Substitution Application and denied the application as premature, but did so without prejudice to renewal of the application at an appropriate point. A copy of the Minute Order is attached hereto as **Exhibit A**.

9. After the filing of the Application, the Applicants conducted protracted negotiations with the Opposers for an acceptable form of decree granting the relief requested. The corrected stipulated Decree was entered in this case on November 19, 2012. Paragraph 29 of the Decree states "[t]his Judgment and Decree shall become effective upon entry by the District Court in and for Water Division No. 5 **and approval by the United States District Court for the District of Colorado.**" (Emphasis added).

10. While Colorado Springs was negotiating a resolution of the Application, it was also engaged in the protracted negotiations over the Green Mountain Reservoir Administrative Protocol (“GMR Protocol”) and the Green Mountain Reservoir Administrative Protocol Agreement. The GMR Protocol and the Green Mountain Reservoir Administrative Protocol Agreement were entered into effective February 22, 2013. The Colorado Springs Substitution MOA and the Substitution Decree in this case are part of the GMR Protocol, Art. IV, governing the Cities’ Replacement Obligations under the Blue River Decree.

11. An Application for approval of the GMR Protocol was filed with this Court on November 15, 2013, and assigned Case No. 2013CW3077. It sought a determination that Articles I, II, and III of the GMR Protocol were consistent with the Blue River Decree. In compliance with the August 4, 1977 Order the Co-Applicants in Case No. 2013CW3015 concurrently filed a petition in U.S. District Court seeking a similar determination from that Court, including a request that the Court determine that Section IV of the GMR Protocol is consistent with the Blue River Decree.

12. On December 2, 2013, the U.S. District Court held a hearing on the Application for Approval of the GMR Protocol. At that hearing the Court set a briefing schedule on the following questions:

What do the petitioners ask the federal court to do?

What is the federal court’s jurisdiction in this matter?

If there is overlapping jurisdiction with the Colorado Water Court, what court is best to address this matter?

If parties other than the named parties in the Consolidated Cases are to be bound, what kind of procedure is required to satisfy due process and afford an opportunity to object?

13. On February 14, 2014, Colorado Springs, the River District and other parties filed briefs addressing the questions raised by the Court. Because the U.S. District Court’s questions addressed both its jurisdiction and what forum was most appropriate to address the GMR Protocol, Applicants did not renew their request for approval of the Decree in Case No. 2003CW320. Rather, they elected to wait for the U.S. District Court to rule on the jurisdictional questions posed at the December 2, 2013 hearing.

14. The U.S. District Court did not rule on the questions posed at the December 2, 2013 hearing. Instead, on March 22, 2017, in response to an Unopposed Motion for Entry of [a diligence] Decree filed by Denver Water, the U.S. District Court vacated the August 4, 1977 Order, and bifurcated the “companion cases” Nos. 5016 and 5017 from the underlying Case No. 2782 and discontinued its exercise of jurisdiction over diligence

applications and applications to make decrees absolute. Instead, it directed such matter be pursued solely in the Water Court for Water Division No 5. March 22, 2017 Order at 5. (Copy attached as Exhibit B).

15. The U.S. District Court went on to rule:

Indeed, to the extent that the decree reserves exclusive federal jurisdiction to hear and resolve suits that arose among exclusively state and local entities concerning the decree's terms, this Court vacates such provision. The Water Court is certainly familiar with the decree, the circumstances that led to it, and its subsequent interpretations to effectively assume the mantle of interpreting and applying its terms as among state and local entities. The only future proceedings that this Court anticipates in this action would be those in which the United States asserts a claim such that this Court would exercise subject-matter jurisdiction over it pursuant to 28 U.S.C. § 1345.

March 22, 2017 Order at 5.

The U.S. District Court then directed the Clerk of the Court to administratively close the case, subject only to a motion by the United States to reopen it.

16. The requirement of Paragraph 29 of the Decree providing that it would be effective when entered by this Court and approved by the U.S. District Court was based solely on the requirements of the August 4, 1977 Order establishing the retained jurisdiction of the U.S. District Court. The U.S. District Court's order of March 22, 2017 terminated the August 4, 1977 Order and terminated any retained jurisdiction in the Consolidated Cases over suits that arise exclusively among state and local entities concerning the terms of the Blue River Decree. The Decree in Case No. 03CW320 involves appropriative rights of substitution under Colorado law. It does not involve a claim asserted by the United States. As such, the Application does not fall within the limited scope of any retained jurisdiction of the U.S. District Court in the Consolidated Cases as defined in the March 22, 2017 Order.

17. This Court has jurisdiction to review the Blue River Decree to ascertain whether the Application would interfere with the terms or objectives of the Blue River Decree. *City of Grand Junction v. City and County of Denver*, 960 P.2d 675, 683 (Colo. 1998). This Court has done so; paragraph 11.4 of the Decree expressly finds:

11.4 Blue River Decree. The use of Replacement Water by Direct Release or Substitution Release to meet the CS-U Replacement Obligation as provided by the Substitution Plan in this Decree is contemplated by the Blue River Decree, including the 1955 Stipulation and Paragraph 2 of the 1964 Decree, and is consistent with the requirement of the Blue River Decree that the

rights of the United States to fill Green Mountain Reservoir and to use Green Mountain Reservoir for decreed purposes not be impaired. Further, the Substitution operations in this Decree provide a means to assure that Replacement Water for Direct Release or Substitution Release is on hand at the time that Colorado Springs diverts or stores water under its 1948 Blue River Rights in a Substitution Year. The use of the Replacement Water described in this Substitution Plan is subject to the approval of the Secretary of the Interior as required by the Blue River Decree and the Colorado Springs Substitution MOA.

18. Because the U.S. District Court has terminated its retained jurisdiction in the Consolidated Cases over the types of claims contained in the Application, its approval of the Decree under the provisions of the Consolidated Cases is not available and is no longer required. This Court has jurisdiction to review the Blue River Decree to ascertain whether the relief requested in the Application would interfere with the terms or objectives of the Blue River Decree. This Court has determined that the Decree in this Case No. 03CW320 is consistent with and does not interfere with the Blue River Decree. Thus, nothing further is required for the Decree to be in full force and effect.

For the foregoing reasons, the Applicants request the Court to enter an order determining that approval of the Decree by the U.S. District Court, pursuant to its now terminated retained jurisdiction in the Consolidated Cases is no longer required and that the Decree in this case is in full force and effect as of its date of entry by this Court, November 19, 2012.

Dated \_\_\_\_\_, 202\_\_

**Colorado River Water Conservation District**

*PURSUANT TO CRCP RULE 121. Section 1-26(9).  
A DULY SIGNED COPY OF THIS DOCUMENT IS ON FILE*

By: \_\_\_\_\_  
Peter C. Fleming, Reg. No. 20805  
Jason V. Turner, Reg. No. 35665

Colorado River Water Conservation District  
201 Centennial Street, Suite 200  
Glenwood Springs, CO 81601  
(970) 945-8522

Attorneys for Applicant Colorado River Water Conservation District

**Carlson, Hammond & Paddock, L.L.C.**

*PURSUANT TO CRCP RULE 121. Section 1-26(9).  
A DULY SIGNED COPY OF THIS DOCUMENT IS ON FILE*

By: \_\_\_\_\_  
William A. Paddock, Reg. No. 9478  
Karl D. Ohlsen, Reg. No. 32497

Carlson, Hammond & Paddock, L.L.C.  
1900 N. Grant Street, Suite 1200  
Denver, CO 80233

Attorneys for Applicant City of Colorado Springs,  
acting through its Enterprise, Colorado Springs Utilities

**City of Colorado Springs, Colorado Springs Utilities**

*PURSUANT TO CRCP RULE 121. Section 1-26(9).  
A DULY SIGNED COPY OF THIS DOCUMENT IS ON FILE*

By: \_\_\_\_\_  
Michael J. Gustafson, #37364

Office of the City Attorney  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901

Attorney for Applicant City of Colorado Springs,  
acting through its enterprise Colorado Springs Utilities

Exhibit A

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
JUDGE EDWARD W. NOTTINGHAM

Edward Butler, Deputy Clerk  
Kara Spitler, Court Reporter

Date: September 23, 2004

Consolidated Civil Action Nos. 2782, 5016, 5017 and 2003 CW 320

UNITED STATES OF AMERICA,

James Dubois, *Dept. of Justice*

Plaintiff,

v.

NORTHERN COLORADO WATER CONSERVANCY  
DISTRICT, *et al.*,

Robert Trout, *and*  
Douglas Sinor, *for Northern Colorado*  
*Water Conservation District.*

Defendants.

COLORADO RIVER WATER CONSERVATION  
DISTRICT, GRAND VALLEY WATER USERS  
ASSOCIATION,  
ORCHARD MESA IRRIGATION DISTRICT, PALISADE  
IRRIGATION DISTRICT, GRAND VALLEY IRRIGATION  
COMPANY, and MIDDLE PARK WATER  
CONSERVANCY DISTRICT,

Peter Fleming, *for the Colorado River*  
*Water Conservation District;*  
Gregory Johnson  
Charles White  
Kevin Kinnear  
Austin Hamre  
Casey Funk, *the City and County of*  
*Denver, acting by and through its board*  
*of water commissioners*

Petitioners.

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COURTROOM MINUTES

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9/23/04

**Hearing:** IN THE MATTER OF THE APPLICATION FOR WATER RIGHTS OF THE CITY OF COLORADO SPRINGS AND THE COLORADO RIVER WATER CONSERVATION DISTRICT ACTING BY AND THROUGH ITS COLORADO PROJECTS ENTERPRISE, IN SUMMIT AND EAGLE COUNTIES, COLORADO

**2:12 pm** Court In Session.

APPEARANCES OF COUNSEL.

In regards to this matter, the court proposes to deny the application as premature without prejudice to filing it again, as the matter would be taken by the state water court.

The parties do not object.

**ORDERED:** 1. The application/petition before the court is **DENIED** as premature without

**prejudice to renewal of the application at an appropriate point.**

The court acknowledges that Denver Water's stipulated motion remains pending.

**2:40 pm** Court In Recess.



EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 49-cv-02782-MSK-CBS

Consolidated with District Court, Water Division No. 5, Case No. 2006CW255

DATE FILED: March 31, 2017 1:58 PM  
FILING ID: B71E0979FB40C  
CASE NUMBER: 2006CW255

UNITED STATES OF AMERICA,

Plaintiff,

v.

NORTHERN COLORADO WATER CONSERVANCY DISTRICT, et al.,

Defendants.

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OPINION AND ORDER GRANTING, IN PART, MOTION FOR ENTRY OF DECREE,  
VACATING ORDER RESERVING FUTURE JURISDICTION, AND CLOSING CASE

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**THIS MATTER** comes before the Court pursuant to the Applicant’s (“Denver”) Unopposed Motion for Entry of Decree (# 402).

The Court foregoes an extensive recitation of the facts and procedural history of this aged case.<sup>1</sup> It is sufficient to note that this action concerns various parties’ rights to the water that flows in the Blue River. Some of that flow is captured in the Green Mountain and Dillon Reservoirs, and some of the captured water is put to various uses by federal, state, and local entities. The case was initially commenced in 1949, the original claims to water rights were resolved by settlement in 1955, and the terms of that settlement were reduced to a decree over which the Court has since continued to exercise its jurisdiction. Pursuant to the decree and the

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<sup>1</sup> For those who desire a comprehensive historical context, the Court refers readers to the 10<sup>th</sup> Circuit’s abbreviated historical retelling of the dispute in *City of Colorado Springs v. Climax Molybdenum Co.*, 587 F.3d 1071 (10<sup>th</sup> Cir. 2009) and *U.S. v. Northern Colorado Water Conservancy Distr.*, 608 F.2d 422 (10<sup>th</sup> Cir. 1979), among others.

Court's continuing exercise of jurisdiction, holders of water rights occasionally return to this Court to reaffirm or contest such rights.

### **1. Denver's Motion**

As part of the decree, Denver was granted conditional rights to take 788 cubic feet per second ("cfs") of water from Dillon Reservoir through a diversion project known as the Roberts Tunnel. In prior proceedings, the Court has made absolute – that is, converted those conditional rights to the water to permanent rights -- Denver's appropriation of 520 cfs of the flow through the Roberts Tunnel. In the instant motion, which was initially filed in 2006 and most recently amended in 2013, Denver seeks to make absolute its rights to an additional 134 cfs, increasing the total amount of its absolute rights to 654 cfs.

Several state and municipal entities initially filed objections to Denver's motion. Over the ensuing years, Denver has reached various agreements with the objectors and, at this point in time, all objections to Denver's motion have been withdrawn. Thus, the motion is presently unopposed. Denver has filed a proposed decree granting its motion. That 45-page document purports to have this Court make extensive findings of fact about Denver's conduct, both historically and presently, about the nature of Denver's agreements with other entities, about the capacity of the Roberts Tunnel and other components of the diversion project, and numerous other matters.

The Court declines to approve the proposed decree as written. This Court makes findings of fact in only where there is a live dispute as to the existence of a given fact and the Court is called upon to receive and weigh evidence in order to resolve the factual dispute. No party is contesting the facts recited in Denver's proposed decree, and thus, there is no factual dispute that

requires (or even permits) this Court to make any findings. Instead, the Court is left with a situation in which all parties agree that a given set of facts is present. The most the Court can say that the parties agree that the facts recited in the proposed decree are true, and that they further agree that such facts warrant granting Denver the relief it requests. Accordingly, the Court finds and decrees as follows:

1. The parties – meaning Denver, any entity that previously lodged an objection to Denver’s motion, and any individual or entity with actual or constructive notice of Denver’s application and who has not appeared herein and lodged any timely objection or disputed any representation -- agree that Denver has been reasonably diligent in the development of the conditional water rights described in its motion and proposed decree for the period of December 14, 2000 to December 26, 2006, and that such conditional rights shall continue in effect;

2. The parties agree that Denver lawfully diverted 654 cfs, in compliance with prior orders and legal obligations, and put that water to beneficial use during the period referenced above; and

3. The parties herein are bound by that agreement and are hereafter estopped from acting or asserting otherwise.

Denver’s motion (# 402) is thus **GRANTED IN PART** and **DENIED IN PART** on these terms.

## **2. Termination of jurisdictional reservation**

The foregoing decree brings to the Court’s attention, a fundamental question of whether it should exercise jurisdiction over issues of priority and use of water rights which are customarily and expertly handled by Colorado water courts. Indeed, since 1977, this Court and

the Colorado Water Court District #5 have both been considering such issues. Review of the history of this case offers some explanation, but also points to the need to avoid requiring parties to seek relief in two fora.

This action was originally initiated by the United States for determination of its water interests under federal law. But in its first few years, the case collected a number of companion cases, petitions for adjudication of water rights of other non-federal entities. It appears that by 1955, the main action had been consolidated with petitions for “adjudication of priorities of water rights in Water District No. 36” both for purposes of irrigation (Civil No. 5016)<sup>2</sup> and non-irrigation (Civil No. 5017). Largely by virtue of an August 4, 1977 Order issued by Judge Arraj, even after the United States’ water rights were determined, the “companion cases” remained in this Court. Denver’s instant motion is brought pursuant to a companion case.

When this case was first filed, Colorado had no water courts to adjudicate and enforce appropriative rights. But in 1969, Colorado established a system of state Water Courts in which disputes over water rights and priorities could be efficiently litigated before judges with particular expertise. One would expect that the “companion cases” that had been consolidated into this case would have been returned to supervision by the Colorado Water Courts. But in 1977, Judge Arraj issued an Order declaring that, for purposes of “quadrennial showing of due diligence and applications for making absolute conditional decrees or portions thereof” in connection with Civil Actions 5016 and 5017, the federal court would “act as the Water Judge” applying state law. Since then, the two courts have worked in tandem, requiring parties to file notices and pleadings in both courts and obtain orders from both.

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<sup>2</sup> The full case numbers for these companion actions are not immediately ascertainable from this Court’s review of handwritten docket sheets dating back to the 1950s.

This Court has concluded that, the merits of Judge Arraj's August 1977 Order are no longer operative. From a theoretical perspective, showings by state or municipal entities of due diligence or applications to make conditional decrees absolute are not within the limited scope of federal subject-matter jurisdiction conferred on this Court by Congress. From a policy perspective, such proceedings, involving competing rights among Colorado entities to the use of water within Colorado, involve matters of state concern and state law and thus, are properly adjudicated by Colorado Water Courts. Judge Arraj, who took over management of this case in 1960, may have had more familiarity with the Blue River Decree and Colorado water law than judges in Colorado's nascent Water Courts. This may have made the exercise of federal jurisdiction for adjudication as to showings of diligence or applications to make conditional allocations absolute an efficient use of judicial resources. But almost 40 years have passed since Judge Arraj's order was issued, and no federal district judge presiding over the case has been the beneficiary of his expertise or institutional knowledge. In contrast, for almost 50 years, Colorado Water Courts have been providing skilled and efficient determinations of the types of issues reflected in the "companion cases". This Court's continued exercise of jurisdiction over these types of collateral issues arising in the companion cases results in duplicative judicial supervision and unnecessary costs to the parties. It is not necessary and no longer reflects a prudent allocation of judicial or party resources, particularly when Colorado already provides a forum that is ready, willing, and able to make such adjudications.

Accordingly, this Court vacates Judge Arraj's August 4, 1977 Order, thereby bifurcating the "companion cases" from the underlying case, and discontinuing this Court's exercise of jurisdiction over issues of showing of due diligence or applications to make conditional decrees

absolute. Such proceedings shall hereafter be pursued by the affected parties exclusively in the Colorado Water Court for District No. 5, and on such schedule as that court may direct.

The fact that conditional allocations arise, in part, from the Blue River Decree shall not, by itself, suffice to vest jurisdiction in this Court. Indeed, to the extent that the decree reserves exclusive federal jurisdiction to hear and resolve suits that arose among exclusively state and local entities concerning the decree's terms, this Court vacates such provision. The Water Court is certainly familiar with the decree, the circumstances that led to it, and its subsequent interpretations to effectively assume the mantle of interpreting and applying its terms as among state and local entities. The only future proceedings that this Court anticipates in this action would be those in which the United States asserts a claim such that this Court would exercise subject-matter jurisdiction over it pursuant to 28 U.S.C. § 1345.

There being no further proceedings to conduct in this action, the Clerk of the Court shall administratively close this case, subject only to a motion by the United States to reopen it.

Dated this 22nd day of March, 2017.

**BY THE COURT:**

A handwritten signature in black ink that reads "Marcia S. Krieger". The signature is written in a cursive style with a distinct dot over the 'i' in "Krieger".

---

Marcia S. Krieger  
Chief United States District Judge

## Exhibit 6

### WATER SUPPLY CONTRACT

This Contract is made between the COLORADO RIVER WATER CONSERVATION DISTRICT (herein the “River District”), a political subdivision of the State of Colorado acting by and through its Colorado River Water Projects Enterprise, and \_\_\_\_\_ (herein “Contractor”) effective as of the date of the River District’s execution indicated below.

#### RECITALS

A. The River District is authorized to contract to deliver water for beneficial use from River District water projects pursuant to provisions of C.R.S. § 37-46-101, *et seq.* (herein “River District Organic Act”).

B. The River District is the owner and operator of the Wolford Mountain Reservoir Project located on the Muddy Creek drainage near Kremmling, Colorado, having obtained necessary decrees from the District Court in and for Colorado Water Division No. 5 (herein “Water Court”) and permits from governmental agencies, and the River District is entitled to deliveries of water from Ruedi Reservoir under its Contracts with the U.S. Bureau of Reclamation.

C. The River District’s Board of Directors has adopted a Water Marketing Policy, as revised by the Board from time to time, to provide for the use of water available from the River District’s sources of supply pursuant to contracts, and that Water Marketing Policy is to be implemented through the River District’s Water Projects Enterprise.

D. Contractor has a need for wholesale water supply, demonstrated in its submittal to the River District pursuant to the Water Marketing Policy’s contracting process, in the amount of \_\_\_\_\_ acre feet Colorado River Supply above the Roaring Fork Confluence annually for Municipal/Industrial purposes, which beneficial uses will be accomplished by Contractor generally in the vicinity of SECTION \_\_\_\_, TOWNSHIP \_\_\_\_\_, RANGE \_\_\_\_\_ of the 6<sup>th</sup> P.M. by surface water diversions from or within the Blue River drainage, which is a tributary to the Colorado River.

E. Contractor is aware of the “Hydrology Assumptions” which are part of the Water Marketing Policy and is satisfied that, based on its review and investigations, Contractor legally and physically can make use for its intended purposes of the Contracted Water, which are the subject of this Contract and that such use will comply with the Water Marketing Policy.

#### AGREEMENT

The foregoing Recitals are incorporated into this agreement between the River District and Contractor.

#### DEFINITIONS

In this Contract certain terms will have definitions as stated below:

- The “River District” means the Colorado River Water Conservation District created and existing pursuant to the River District Organic Act defined in Recital A and acting by and through its Colorado River Water Projects Enterprise which is currently described and memorialized in the Resolution of the Colorado River Water Conservation District’s Board of Directors dated April 20, 2005.
- The “Project” means the River District’s “Colorado River Supply” from: (1) Wolford Mountain Reservoir, for which storage water right decrees were obtained by the River District in Cases No. 87CW283, 95CW281 and 98CW237 in the District Court for Colorado Water Division No. 5, and for which additional storage water right decrees may be obtained in the future by the River District in other cases; (2) the River District’s contractual right to water deliveries from Ruedi Reservoir; and (3) other supplies that the River District may acquire suitable for use in its Water Marketing Program.
- “Agricultural” means the use of water for commercial production of agricultural crops and livestock and other uses consistent with any right decreed for irrigation purposes, which uses are made on a parcel of land of at least ten acres.
- “Municipal and Industrial” means the use of water by individuals, cities, towns, public or quasi-public districts, private corporations, homeowners associations, or other entities for domestic, municipal, and miscellaneous related purposes as those terms are traditionally and commonly construed, including the use of water for purposes of producing or processing a non-agricultural product or service for sale, including without limitation, such uses as manufacturing, mining, milling, land reclamation, golf course irrigation, snowmaking, and non-hydroelectric power generation; and including the use of water for environmental mitigation purposes associated with such uses; but excepting the agricultural use of water defined herein.
- “Contracted Water” means the water which is the subject of this Contract which is to be released and delivered by the River District and used by Contractor. The Contracted Water is \_\_\_\_\_ acre feet of Colorado River Supply above the Roaring Fork Confluence available during each Project Year during the term of this Contract, subject to the provisions hereof, for Contractor’s use without right of carryover of any amount not used in any Project Year.
- “Project Year” means a period of time from July 1 through and including the subsequent June 30.
- “Water Marketing Policy” means the River District’s policy statement as revised and readopted as of the execution date of this Contract and as the same may be amended in the future.
- “Project Hydrology Assumptions” or “Hydrology Assumptions” means the



document attached as Appendix “A” to the Water Marketing Policy adopted on October 17, 2006.

1. River District Water Delivery Obligations and Responsibilities.

- a. Delivery. The River District will deliver the Contracted Water at the outlet works of the Contracted Water’s sources of supply into the receiving natural streams in quantities provided herein. Unless otherwise agreed to by the River District’s General Manager based upon written request of Contractor, the River District will make releases or request that releases be made for Contractor, based upon Contractor’s written schedule of anticipated demand, adjusted as necessary by the ongoing status of river administration *vis-a-vis* the priority status of Contractor’s diversions, provided that the releases can be made within the operational limitations of the River District’s project facilities as determined by the River District in its sole discretion. Contractor shall be solely responsible after delivery for the legal and physical delivery and use of the Contracted Water.
- b. Delivery Contingencies. The River District’s delivery of Contracted Water shall be subject to Contractor’s payments pursuant to paragraph 3 below, and the provisions for curtailment of deliveries in paragraph 5 below.
- c. Water Measurements. The River District shall measure at the outlet works of the Contracted Water’s sources of supply all Contracted Water and shall notify the Division Engineer of Colorado Water Division No. 5 of the date, time and amount of Contracted Water released pursuant to this Contract. Copies of such records shall be provided to Contractor upon request.
- d. Water Quality. The River District shall have no obligation to Contractor or any other person regarding and makes no warranties or representations to Contractor concerning the quality of Contracted Water delivered pursuant to this Contract by releases of raw water to natural streams.
- e. Maintenance of Facilities. The River District, to the extent that it has ownership and maintenance control, shall use its best efforts to maintain in good working condition the water storage and release facilities of the Contracted Water.
- f. Withholding of Delivery. The River District may withhold deliveries of Contracted Water in the event of Contractor’s nonpayment for Contracted Water or any other breach of this Contract by Contractor. Such remedy shall not be the River District’s exclusive remedy in the event of any such breach.
- g. Delivery from Primary or Alternate Sources. The River District will deliver the Contracted Water from the sources of Colorado River Supply above the Roaring Fork Confluence described herein, which will meet the Contractor’s need to satisfy calls by senior water rights or the Contractor’s physical need for any direct delivery of Contracted Water to Contractor’s diversions. Subject to meeting those

objectives, the River District reserves the right to provide all or any of the Contracted Water to Contractor from alternate reservoirs for Contractor's use, provided that the alternate sources are suitable to physically satisfy calls by senior water rights or Contractor's need for direct delivery.

2. Contractor's Water Use Obligations and Responsibilities.

- a. Scheduling of Use. Contractor SHALL PROVIDE OR HAS PROVIDED the River District a preliminary written schedule of its anticipated monthly demands for the Contracted Water during the current Project Year (July \_\_\_\_\_ - June \_\_\_\_\_). The schedule provided by Contractor for this Contract shall serve as the schedule to be used until it is modified in a written notice given by Contractor to the River District, or as necessary in response to river administration of the Contractor's diversions. The schedule shall identify the volume of any Contracted Water anticipated by Contractor not to be needed by it during any particular Project Year. Contractor shall update said schedule periodically during the Project Year as conditions require and give the River District written notice of all such revisions.
- b. Carriage Losses. Contractor shall bear carriage losses in such amount as is determined by the Division Engineer for Colorado Water Division No. 5, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.
- c. Use per Contract and Law. Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of the Project, the Water Marketing Policy, as it may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Contractor is not authorized to apply for or secure any change in the water rights for or associated with any of the sources of supply of the Contracted Water.
- d. Legal Approvals. If Contractor intends to make any application(s) for any augmentation or exchange plan(s) or substitute supply plan(s) needed for Contractor to use its Contracted Water, Contractor shall submit the proposed application(s) to the River District within a reasonable time before Contractor proposes to file such application(s). The River District shall grant written approval of such applications before they are submitted or filed, and the River District's approval shall not be unreasonably withheld. The River District may in its discretion become a co-applicant in the prosecution of any such applications for the purpose of protecting its water rights and related policies. Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of a River District contract.
- e. Limitation on Disposition.

- i. Contractor shall not sublet, sell, donate, loan, assign or otherwise dispose of any of its rights to this Contract or to Contracted Water without prior written notice to, and the written approval of, the River District and the payment of a transfer fee at the prevailing rate set forth in the Water Marketing Policy. The River District's approval of such disposition shall be granted in all instances in which the Contractor is transferring the water system which supplies the Contracted Water, or a permanent transfer of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the River District to be served with the Contracted Water.
  - ii. The assignment of a Contract is subject to the Water Marketing Policy as revised as of the effective date of the assignment. In accordance with this subparagraph (ii), any assignee must pay for the Contracted Water at the then-current price determined by the River District Board of Directors.
- f. Contractor's Water Rates. Contractor may charge its water customers who are supplied with Contracted Water such rates and charges as are permitted by Colorado law.
- g. Nondiscrimination. Contractor shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, or national origin or any other criteria prohibited under state or federal law.
- h. Accounting of Use. Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to the River District specifically for the purpose of enabling the River District to prove the use of River District Project water rights and to administer and operate the Project and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to the River District promptly upon request and shall assist the River District as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.
- i. Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, *et seq.*) if Contractor proposes physical alterations to the

designated critical habitat of the Colorado River endangered fish species. As of March 1, 2007, designated critical habitat exists from the Garfield County 320 Road Bridge Crossing of the Colorado River in Rifle downstream to the Colorado State line.

3. Contractor's Payments.

- a. In addition to the application fee already paid by Contractor, in order for the River District's delivery obligation to become effective, Contractor shall pay to the River District on the execution of this Contract the total sum of \$ \_\_\_\_\_, being \$ \_\_\_\_\_ for each acre foot of \_\_\_\_\_ acre feet of Contracted Water for the current Project Year (July \_\_\_\_\_ -June \_\_\_\_\_).
- b. Contractor also shall pay any special assessment levied by the River District on Contractor to recoup all or a portion of costs attributable to extraordinary maintenance incurred by the River District or assessed upon the River District by its third party water suppliers.

4. Contract Term.

- a. The term of this Contract shall be for a period of one (1) year.

5. Water Shortage. In the event that the River District is unable, because of either legal or physical reasons (including, but not limited to, hydrologic shortages and operational restrictions), to deliver any or all of the full amount of water contracted from the Project, including the Contracted Water, the River District reserves the right to apportion the Project's available water among its several contractors, including Contractor, in the manner provided in paragraph 6 of the Water Marketing Policy.

6. Contract Termination.

- a. Termination by River District.
  - i. The River District may terminate this Contract for any violation or breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any sum or amount due under this Contract within thirty (30) days after receiving written notice from the River District of such breach.
  - ii. The River District also may terminate this Contract if, in its discretion, any judicial or administrative proceedings initiated by Contractor as contemplated in subparagraph 2.d above, threaten the River District's authority to contract for delivery of Project Water or the River District's water rights, permits, or other interests associated with the Project.

- iii. The River District may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.
  - b. Termination by Contractor.
    - i. Contractor may terminate this Contract in its entirety for any reason by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment.
    - ii. Every fifth year after the year in which this Contract is executed, Contractor may partially terminate this Contract as to the amount of Contracted Water by giving the River District at least thirty (30) days advance notice prior to the due date of Contractor's next annual payment. Partial termination by Contractor shall not exceed more than fifty percent (50%) of the amount of Contracted Water which is then under contract.
    - iii. Within thirty (30) days of final approval of the Water Court application contemplated by subparagraph 2.d. above, Contractor may by written notice to the River District partially terminate this Contract as to the amount of Contracted Water which is not needed under that approval.
  - c. Notice of Termination to Affected Officials. The River District will notify the Division Engineer and any other appropriate governmental officials of any full or partial contract termination except for any partial termination under subparagraph 6.b.(iii).
- 7. Force Majeure. The River District shall not be responsible for any losses or damages incurred as a result of the River District's inability to perform pursuant to this Agreement due to the following causes if beyond the River District's control and when occurring through no direct or indirect fault of the River District, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to the River District's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.
- 8. Miscellaneous/Standard Provisions.
  - a. Notices.
    - i. All notices required or appropriate under or pursuant to this Contract shall be given in writing mailed or delivered to the parties at the following addresses:

River District:

Colorado River Water Conservation District  
Attention: General Manager / Secretary  
201 Centennial Street, Suite 200  
Glenwood Springs, Colorado 81601  
Phone: (970) 945-8522  
Fax: (970) 945-8799

Contractor:

with copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

Phone: \_\_\_\_\_  
Email: \_\_\_\_\_

- ii. Either party may, by written notice given in accordance with this provision, change the address to which notices to it shall be mailed or delivered.
- b. Amendments. No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.
- c. This Contract is subject to the River District's Water Marketing Policy, as it may be revised from time to time by the River District's Board.

COLORADO RIVER WATER CONSERVATION  
DISTRICT acting by and through its Colorado River  
Water Projects Enterprise

DATE: \_\_\_\_\_

By: \_\_\_\_\_  
Andrew A. Mueller  
General Manager/Secretary

CONTRACTOR:

\_\_\_\_\_  
Company Name

By: \_\_\_\_\_  
**Name:**  
**Title:**

**Exhibit 7**

DISTRICT COURT, WATER DIVISION NO. 5 STATE OF COLORADO Garfield County Courthouse 109 8th Street, Suite 104 Glenwood Springs, CO 81601-3303	<b>Final Review Draft: Nov. 28, 2023</b>  <b>Statement made in compromise negotiations within the ambit of CRE 408</b>
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE CITY OF COLORADO SPRINGS, COLORADO, IN SUMMIT COUNTY, COLORADO	
Attorneys for Colorado Springs Utilities: William A. Paddock, Reg. No. 9478 Karl D. Ohlsen, Reg. No. 32497 Carlson, Hammond & Paddock, L.L.C. 1900 Grant Street, Suite 1200 Denver, Colorado 80203 Phone: (303) 861-9000 Fax: (303) 861-9026 e-mail: bpaddock@chp-law.com kohlsen@chp-law.com  Michael Gustafson, Reg. No. 37364 City Attorney's Office-Utilities Division P. O. Box 1575 Mail Code 510 30 S. Nevada Avenue Suite 501 Colorado Springs, Colorado 80901 Phone: (719) 385-5909 Fax: (719) 385-5535 e-mail: michael.gustafson@coloradosprings.gov	<b>▲ COURT USE ONLY ▲</b> <hr/> Case Number: 2022CW_____  Division 5          Ctrm:
<b>APPLICATION FOR CHANGE OF CONDITIONAL WATER RIGHT</b>	

1. Name, address and telephone number(s) of Applicant:

City of Colorado Springs  
Colorado Springs Utilities  
c/o Abigail Ortega  
1521 Hancock Expressway, Mail Code 1825  
Colorado Springs, Colorado 80903



Phone: (719) 668-8748

Pleadings and all other filings with the court should be served on the undersigned counsel for the Applicant.

2. Applicant has entered into Settlement Agreement Concerning Water Rights (“Settlement Agreement”) among Colorado River Water Conservation District, the County of Summit (“Summit County”), the Town of Breckenridge (“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. This change of water right claim is filed in furtherance of and subject to the terms of that Settlement Agreement.

3. Decreed Water Right for which change is sought:

A. Lower Blue Lake Reservoir (“Lower Blue Reservoir”).

B. Date of original and all subsequent relevant decrees

1). Original Decrees: May 10, 1952, CA Nos. 1805 and 1806, Summit County District Court, and October 12, 1955, Consolidated Cases No. 2782, 5016, and 5017, United States District Court, Colorado.

2) Subsequent decree awarding diligence: The conditional water right for Lower Blue Reservoir has been continued as required by law, with the last diligence decree entered on March 24, 2009, Case No. 06CW132, Water Division No. 5. An application for a further finding of reasonable diligence is pending in this Court’s Case No. 2015CW3019.

C. Legal Description of Structure: Lower Blue Reservoir (also known as Lower Quandary Lake): the initial point of survey is located at a point whence the Northeast Corner of Section 3, Township 8 South, Range 78 West of the 6th P.M., bears North 54° East 503 feet.

D. Decree Source of water: Blue River, tributary to the Colorado River.

E. Date of Appropriation: May 13, 1948.

F. Total Amount Decreed to Structure: 1006 acre-feet, conditional.

G. Decreed Use:

1) From the May 10, 1952 Decree in Cases No. CA 1805 and 1806: to be used by and for the benefit of the inhabitants of the City of Colorado

Springs and adjacent areas for domestic uses, fire protection, sewage disposal, manufacturing and industrial uses, street sprinkling and flushing, irrigation of lawns, trees, gardens, flowers and parks, and other municipal purposes.

2) From the October 10, 1955 Final Decree, Consolidated Cases No. 2782, 5016, and 5017 (hereafter the “Consolidated Blue River Cases”): for municipal purposes as defined in the Stipulation dated October 5, 1955, filed in the United States District Court for the District of Colorado, and set forth in full in the Findings of Fact and Conclusions of Law and incorporated into the Final Decree by reference.

H. Amount of Water Applicant Intends to Change: 1006 acre-feet.

4. Detailed description of proposed change:

A. Applicant seeks the following alternate places of storage:

1). Change of up to 600 acre-feet to an alternate place of storage in a relocated smaller Lower Blue Reservoir. The location of the approximate center of the axis of the dam at the proposed new location is:

<b>UTM coordinates:</b> Easting 406079.52 Northing 4360297.49 <b>Zone 13</b>
------------------------------------------------------------------------------

Source of UTM's : GIS Desktop Analysis;
-----------------------------------------

2) Change up to 600 acre-feet to an alternate place of storage in Montgomery Reservoir located in Water Division No. 1. The location of Montgomery Reservoir, as decreed on March 24, 1953, in Case No. CA 3286, by the Park County District Court, is in sections 13 and 14, T8S, R789W of the 6<sup>th</sup> P.M. The location of the approximate center of the axis of the dam is:

<b>UTM coordinates:</b> Easting 407,643.284 Northing 4,356,589.024 <b>Zone 13</b>
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Source of UTM's: GIS Desktop Analysis
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3). To effect the change in place of storage to an enlarged Montgomery Reservoir, the water legally and physically available at the original point of diversion of Lower Blue Reservoir will be conveyed down Monte Cristo Creek, diverted into Colorado Springs's Monte Cristo Creek Diversion structure (a.k.a. Blue River Ditch), and then delivered to Montgomery Reservoir. The location of Monte Cristo Creek diversion as decreed in Cases No. 1805 and

1806 is located at a point from whence the East quarter corner of Section 2, T8S, R78W of the 6th PM is South 80° 44'1" East a distance of 2096 feet.

<b>UTM coordinates :</b> Easting 407,213.403, Northing 4,359,812.486 <b>Zone 13</b>
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Source of UTM's: GIS Desktop Analysis
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4) Total combined storage under the Lower Blue Reservoir water right at the alternate places of storage in the new Lower Blue Reservoir location and Montgomery Reservoir will not exceed 1006 acre-feet in any one year, April 1 to March 31, including any water carried over in storage from the prior April 1 to March 31.

B. Pursuant to the Settlement Agreement, Applicant will provide a water supply for use by Breckenridge and Summit County principally in the smaller Lower Blue Reservoir. To implement that agreement, Applicant seeks to change the use of 1006 acre-feet of the Lower Blue Reservoir water right to include, in addition to the currently decreed uses, the following new uses to be made on the West Slope:

1) Breckenridge and Summit County will use water from Lower Blue Reservoir for municipal, domestic, commercial, industrial, irrigation, firefighting, snowmaking, augmentation and replacement, exchange, recreation, piscatorial, and wildlife watering, with the right of reuse, successive use, and disposition to extinction, and use as water for repayment to Denver Water for Dillon Reservoir water provided under the Colorado River Cooperative Agreement.

C. But for this change of water rights, water stored under the Lower Blue Reservoir water right would have been available under Colorado Springs' water rights for export from the Blue River Basin by Colorado Springs and would have represented a 100% depletion to the Blue River Basin. Accordingly, the application seeks the right for Breckenridge and Summit County to fully consume the water stored under the Lower Blue Reservoir water right by first use and by successive use pursuant to subsequent decrees entered by this court.

D. Because the Lower Blue Reservoir water made available by Applicant to Breckenridge and Summit County will no longer be applied to beneficial use outside of the Colorado River Basin, the Applicant further requests a determination by the court that Breckenridge's and Summit County's use of

that water will not be subject to the following requirements of the Blue River Decree that apply to Applicant's beneficial use of its 1948 Blue River Water Rights:

- 1) Submission 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 30<sup>th</sup> last past, the quantities of water diverted from the Blue River System.
- 2) The quantities of return flow (unconsumed water) resulting from the use of such water.
- 3) What steps, by legal action or otherwise, have been taken to utilize such return flow by exchange or otherwise reduce or minimize the demand on Blue River water.
- 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.

E. Redelivery of Water to Breckenridge and Summit County by substitution: Applicant also seeks the right to provide Breckenridge and Summit County with water stored under the Lower Blue Reservoir water right in an enlarged Montgomery Reservoir. This right will be implemented by Applicant releasing water diverted in priority under its 1948 Blue River direct flow water rights at the combination flume, or any one or more of the decreed points of diversion for its 1948 Blue River direct flow water rights (locations shown on the attached map). The water so released will be credited as a delivery of water under the changed Lower Blue Reservoir water right to Breckenridge and Summit County. An equal amount of water previously stored in an enlarged Montgomery Reservoir under the Lower Blue Reservoir water right will be booked over to Applicant as water diverted under its 1948 Blue River direct flow water rights.

F. Applicant's 1948 Blue River direct flow water rights are the water rights with a May 13, 1948, appropriation date for the Crystal Ditch, Spruce Ditch, McCullough Ditch, East Hoosier Ditch, Hoosier Ditch, and Hoosier Tunnel adjudicated in CA Nos. 1805 and 1806 by the Summit County District Court on March 10, 1952, and confirmed by the Blue River Decree.

G. For all water from the Lower Blue Reservoir water right provided to Breckenridge and Summit County, Applicant will provide any “Substitution Water” required to satisfy Green Mountain Reservoir under the Blue River Decree, the Memorandum of Agreement Regarding Colorado Springs Substitution Operations dated May 15, 2003 and the Memorandum of Agreement dated as of October 15, 2003 among the Applicant and the County of Summit, Vail Summit Resorts, Inc., and the Town of Breckenridge (collectively the “2003 MOA”), the February 22, 2010 Memorandum of Agreement with the United States, and the Green Mountain Reservoir Administrative Protocol.

H. Names and addresses of owner(s) or reputed owners of the land upon which any new diversion or storage structure, or modification to any existing diversion or storage structure is or will be constructed or upon which water is or will be stored, including any modification to the existing storage pool:

- 1) United States Forest Service  
c/o District Ranger  
P. O. Box 620  
Silverthorne, Colorado 80498-0620  
(White River National Forest)
- 2) Summit County  
Box 68  
Breckenridge, Colorado, 80424-0068  
(U.S. Mineral Survey No. 2625 Antarctic Lode; U.S. Mineral Survey No. 4144A Mountain King Lode; U.S. Mineral Survey No. 4373A Silver Star Lode; U.S. Mineral Survey No. 5107 Robinson Millsite; U.S. Mineral Survey No. 6265 Dickson & Spot Cash Lodes; U.S. Mineral Survey No. 6632A Polaris, Western Star, Arctic & Arctic Extension Lodes; U.S. Mineral Survey No. 6632B Arctic Millsite)
- 3) City of Colorado Springs  
30 So. Nevada Ave. Suite 601  
Colorado Springs, Colorado 80903  
(Mt. Gilead Placer, U.S. Mineral Survey No. 13160; Mayflower, U.S. Mineral Survey No. 11725; Bronson, U.S. Mineral Survey No. 11725; Garrison, U.S. Mineral Survey No. 11725; L.T. Frost, U.S. Mineral Survey No. 11389; Mt. Gilead, U.S. Mineral Survey No. 11389; E.J. Shaw, U.S. Mineral Survey No. 11389; Salt Lake, U.S. Mineral Survey No. 11389; Chicago Pl. LS, 1454 Blue Lakes Road)

- 4) Carolyn M. Holm  
c/o Janet C. McDermott  
P.O. Box 3716  
Breckenridge, CO 80424-3716  
(Star Mountain Lode, U.S. Mineral Survey No. 4145)
- 5) Eileen M. Sesson  
6142 So. Marion Way  
Littleton, Colorado 80121  
(A.W. Tabor, U.S. Mineral Survey No. 4393)
- 6) Jeffrey Pope  
P.O. Box 702  
Pullman, Washington 99163  
(A.W. Tabor, U.S. Mineral Survey No. 4393)
7. Pamela Begal  
5240 S. Joilet Way  
Englewood, CO 80111  
U.S. Mineral Survey No. 6632B Arctic Millsite)

Wherefore, Applicant requests the court enter a decree granting the changes of water right described herein.

Dated this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**Carlson, Hammond & Paddock, LLC.**

By: \_\_\_\_\_  
William A. Paddock, Reg. No 9478  
Karl D. Ohlsen, Reg. No. 32497

**Office of the City Attorney**

By: \_\_\_\_\_  
Michael Gustafson, Reg No. 37364

**Attorneys for Applicant City of Colorado Springs**

**VERIFICATION**

STATE OF COLORADO     )  
                                          ) ss.  
COUNTY OF EL PASO     )

I, \_\_\_\_\_, \_\_\_\_\_ of Applicant Colorado Springs Utilities, being first duly sworn, depose and state that I have read the foregoing *Application for Change of Conditional Water Right*, know the contents thereof, and that the same are true.

\_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT 8**  
**Outline of planned Lower Blue Reservoir**  
**Construction Agreement**

Draft of 12-29-2023

1. Parties
  - a. Summit County
  - b. Town of Breckenridge
  - c. City of Colorado Springs acting through its Utilities Enterprise
2. Recitals
  - a. Settlement Agreement Concerning Water Rights (“MOA”) executed on \_\_\_\_\_.
  - b. MOA includes a separate Lower Blue Reservoir and Montgomery Reservoir Water Storage Operating Agreement (Operating Agreement”).
  - c. MOA contemplates construction of 600 a.f. active capacity Lower Blue Reservoir at a location just downstream from Upper Blue Reservoir.
  - d. The MOA contemplates that the Parties will share in the costs of the design, permitting and construction of the proposed Lower Blue Reservoir pursuant to a separate agreement between the Parties.
  - e. The purpose of this agreement is to memorialize the Parties agreements regarding the design, permitting, and construction of Lower Blue Reservoir in accordance with the MOA.
3. Type of Agreement
  - a. This agreement falls within the scope of sections 18(2)(a) and 2(b) of Article XIV of the Colorado Constitution and CRS Section 29-1-201. This agreement does not establish a separate governmental entity.
4. Term of Agreement.
  - a. Effective upon execution by all parties
5. Definitions
  - a. Terms defined in MOA have the same meaning when used in this agreement.
  - b. Construction Agreement Specific Terms.
    - i. Project : 600 A.F. activity capacity reservoir as generally described in the report titled “Revised Draft Conceptual Design Report – Lower



Blue Dam and Reservoir” prepared by RJH Consultants, Inc. dated May 2019 (“RHJ Phase II Study”.

- ii. Annual Project Costs
  - iii. Cost of Project
    - 1. Pro Rata sharing 50%-25%-25%
  - iv. Decision making process re: annual budget and costs.
6. Principals of interpretation
- a. Construed to be consistent with MOA and Operating Agreement.
  - b. In the event of a conflict, the terms of the MOA and Operating Agreement control.
7. Project Management
- a. Managing Parties: Summit County and Breckenridge.
  - b. Responsibilities of Managing Parties.
    - i. All activities related to permitting, design, and construction of reservoir.
    - ii. Regularly advise Colorado Springs of status of permitting, design and construction of reservoir.
    - iii. To consult with Colorado Springs on matters that impact access to and operation of Upper Blue Reservoir and other components of Colorado Springs water supply system in the drainage.
  - c. Rights of Colorado Springs Utilities.
    - i. Have representative participate in meeting where decisions are to be made concerning Utilities financial obligations, including, but not limited to preparation of bid packages, selection of firms to design and build Lower Blue Reservoir, decision to proceed with construction, and other decision that impact the cost of the reservoir.
      - 1. Weighted voting process for making these decisions.
    - ii. Approval of final design of dam and reservoir to ensure:
      - 1. No impairment of Colorado Springs access to Upper Blue Reservoir.
      - 2. No Impairment of safety or operation of Upper Blue Reservoir.
      - 3. No increase in cost of operation or maintenance of Upper Blue Reservoir other than the change in operations contemplated by the MOA and Operating Agreement.

4. Reservoir can be operated to measure, release, and bypass water in the manner contemplated by the MOA and Operating Agreement.
      5. No impairment of any other Colorado Springs water diversion and conveyance facilities downstream of Lower Blue Reservoir.
    - iii. Rights provided in MOA and Operating Agreement.
8. Final Reservoir Design.
  - a. Selection and approval of final design.
    - i. Requires agreement of all three parties.
    - ii. Colorado Springs will approve the final design if it meets the requirements of paragraph 7.c.ii above.
  - b. Cost of selected design.
  - c. Decision to proceed with reservoir construction (upon completion of permitting and land acquisition).
    - i. Decisions to proceed must be made by all parties. After final design approval, Colorado Springs decision not to proceed limited to disapproval based on the total cost exceeding the amount agreed upon in the MOA.
9. Permitting of Construction of Final Reservoir Design
  - a. Lower Blue Parties responsible for permitting.
  - b.
10. Acquisition of property needed for Reservoir Construction.
  - a. Identification of lands needed for reservoir construction, operation and maintenance based on approved final design.
  - b. Identification of owners of needed lands.
  - c. Conveyance of land by Colorado Springs for final reservoir site.
    - i. Identification of permanently needed lands.
    - ii. Identification of lands for which temporary construction easement is needed.
    - iii. Identification of lands for which permanent easements are needed.
    - iv. Procedure and timeline for conveyance.
  - d. Acquisition of any other land need is responsibility of Lower Blue Parties.

- e. Lower Blue Parties can use Eminent Domain to acquire additional lands but Utilities will not. Given the amount of land being provided by Utilities, this should not be a shared cost.

11. Construction Contracts

- a. Lower Blue Parties will be the contracting entities.
- b. Colorado Springs will not be a party to the contracts.

12. Construction Coordination

- a. Parties Representatives
- b. On-going co-ordination process
- c. Decision making process. .

13. Ownership and Operation.

- a. Owned and Operated solely by Lower Blue Parties in accordance with MOA and Operations Agreement.

14. Cost Sharing

- a. Eligible Costs
  - i. “Out-of-pocket expenses” of Lower Blue Parties for reservoir design, permitting and construction.
- b. Does not include time of employees of Parties, cost of a party use of its own vehicles, equipment, supplies, materials, and attorney fees.
- c. Allocation of Costs
  - i. 25%-25%-50% per MOA
- d. Annual Budgets and appropriations.
  - i. Managing Parties must annually prepare an estimate of Annual Project costs for the coming year. Estimate to be prepared and provided to all parties by \_\_\_\_\_ annually.
    - 1. Components of annual budget: Anticipated costs for all approved design, permitting and construction costs for upcoming year based upon approved bids and schedule for work
  - ii. Approval of annual budget by majority vote
  - iii. Parties must seek appropriation in amount of their pro rata share of the annual budget.
- e. Participants Financial Covenants.
  - i. Lower Blue Parties:

1. Will timely fund their share of expenses and do so in the manner they deem most appropriate.
  - ii. Colorado Springs:
    1. Colorado Springs will establish, maintain and collect reasonable rates and charges that must produce revenues that are sufficient, when added to other funds legally available, to enable Colorado Springs to pay its pro rata share of costs and all other amounts, if any, due under this Agreement.
    2. Colorado Springs reserves the right to provide for the payment of its pro rata share of costs through the issuance of indebtedness, on such terms as Colorado Springs deems appropriate.
    3. All payments by the Colorado Springs under this Agreement shall be made only from funds lawfully available for such purposes.
  - f. Documenting Costs.
    - i. Project Managers must record and report all eligible project costs.
  - g. Any party may review all records of costs incurred.
  - h. Procedure for determining and billing participants' share of costs.
  - i. Time for billing and payment of pro rata share of costs.
15. Due date for payment and delinquencies.
- a. Billing date
  - b. Payment date
  - c. No set-offs in payment
16. Reconciliation of over/under payments
17. Withdrawal of Party
- a. If either Breckenridge of Summit County withdraws, the remaining Lower Blue Party is responsible for the withdrawing party's share of the project costs.
18. Maintaining Records and access thereto.
19. .
20. Default/Remedies
21. Insurance during construction
22. Rights of Termination

23. Dispute Resolution.

24. General Provisions

- a. Notice
- b. Severability
- c. Governing Law, Jurisdiction/Venue
- d. Counterparts
- e. Amendments
- f. Assignment
- g. Enforcement
- h. Entire Agreement

## Outline of Key Blue River MOA Settlement Terms

### Parties

Colorado Springs Utilities

Summit County Board of County Commissioners, Town of Breckenridge, Colorado River Water Conservation District (CRD), Grand Valley Water Users Association, Orchard Mesa Irrigation District, and Ute Water Conservancy District (collectively “West Slope Parties”).

### Utilities’ consideration to the West Slope Parties:

- 1) Agree to the Shoshone outage protocol (“ShOP”) and Shoshone Permanency.
  - a. Essentially agreeing that the call on the Colorado River downstream of Utilities’ system under the Shoshone Power Plant water rights would always be on for 1250 c.f.s. with an appropriation date of May 15, 1929, subject to drought exceptions.
  - b. The Shoshone Power Plant water rights are senior to Utilities’ Blue River water rights.
  - c. Denver, Aurora, and the United States have previously entered into similar ShOP agreements.
- 2) Cost share on design, construction and permitting of an up to 600 AF Lower Blue Reservoir owned and operated by Breckenridge and Summit County (together the “Lower Blue Parties”).
  - a. Utilities will pay 50% of the cost of the reservoir based on engineering estimate (total cost of reservoir estimated between \$10-15 million for various alternatives).
- 3) Convey 600 AF (or lesser as-built volume) of Lower Blue Reservoir conditional water storage right to the Lower Blue Parties. Amount provided to Lower Blue Parties will be made available for storage in Lower Blue Reservoir by:
  - a. 600 AF “West Slope Account” for Lower Blue Reservoir water created in an enlarged Montgomery Reservoir.
  - b. The maximum combined storage of Lower Blue Water between Lower Blue Reservoir and an enlarged Montgomery Reservoir is 1,006 AF.
  - c. In non-substitution years<sup>1</sup>, annually bypass from Upper Blue Reservoir to the Lower Blue Reservoir the lesser of 475 AF or the amount needed to fill the unfilled capacity in Lower Blue Reservoir as of April 1.
  - d. In substitution years, annually bypass from Upper Blue Reservoir to the Lower Blue Reservoir the lesser of 300 AF or the unfilled capacity of Lower Blue Reservoir as of April 1.

<sup>1</sup> Substitution years are years in which Green Mountain Reservoir does not achieve a fill, and water stored upstream by Denver and Utilities in that year must be released and delivered to Green Mountain Reservoir.

- 4) Reduce the amount of water stored and released from Upper Blue Reservoir for the Colorado River District from 250 AF to 100 AF.
- 5) Refrain from diverting the Blue River water rights to the extent necessary to maintain 5 c.f.s. in the Blue River just above Goose Pasture Tarn (Blue River at Blue River gage) at all times.
- 6) Refrain from delivering water through the Hoosier Tunnel, regardless of sources, in excess of annual and fifteen-year average volumetric limits:
  - a. Annual Limits: Deliveries cannot exceed the lesser of 21,000 AF or 10% of the natural flow of the Blue River near Dillon below the confluence with the Snake River and Ten Mile Creek.
  - b. Average Limits: Diversions through Hoosier Tunnel will not exceed 195,000 AF of water in any continuous running fifteen-year period (an average of 13,000 AF per calendar year).
  - c. Calculation of limits does not include volume of water delivered to the Lower Blue Parties at the combined flume on Monte Cristo Creek.
- 7) Utilities will file an application in the Division 5 Water Court changing the decreed use and location of the Lower Blue Water Right to allow use by the Lower Blue Parties and to approve the substitution/exchange.
- 8) Provide water to Lower Blue Parties to address the following permitting scenarios:
  - a. If all required permits for Montgomery Expansion, other than Summit County 1041, are not issued by December 31, 2027, Utilities will provide up to 250 AF of water to Lower Blue Parties until the completion of Montgomery Expansion or for up to 5 years, whichever comes first.
  - b. If Montgomery Expansion is completed and Lower Blue Reservoir is not completed, then Utilities will provide up to 250 AF of water to Lower Blue Parties for 8 years or until Lower Blue Reservoir is completed, whichever comes first.
  - c. If the Lower Blue Parties are denied required permits by entities other than Summit County and upon completion of Montgomery Expansion, Utilities will make available by exchange 250 AF of Lower Blue Reservoir water stored in Montgomery by exchange into Upper Blue Reservoir. An additional amount is provided by substitution:
    - i. 50 AF in substitution years (not to exceed 300 in combination with 250 AF above)
    - ii. 225 AF in non-substitution years (not to exceed 475 in combination with 250 AF above)
  - d. If Lower Blue Parties are denied required permits by Summit County and upon completion of Montgomery Expansion, Utilities will make available annually 300 AF in substitution years and 475 AF in non-substitution years by substitution or direct diversion.

#### Consideration to Utilities:

- 1) Increased yield from the Blue River system by more than the quantity of water that could be stored in the three west slope reservoirs and achieve that increased yield without the risk and cost of trying to permit and build the three west slope reservoirs.
- 2) A finding of reasonable diligence on Utilities' conditional storage rights sought in the 15CW3019 and 18CW3041 (Homestake Exchange) diligence filings.
- 3) Agreement on place of use for Utilities' Blue River water rights – including definition of “municipal area” in context of Blue River Decree.
  - a. Clarifies that the condition applies to "the Colorado Springs' municipal boundary as it exists 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.”
- 4) Agreement on the right to store Blue River water on the East Slope.
  - a. Clears ambiguity about whether Blue River water can be stored on East Slope, which mitigates against risk that a party could challenge whether East Slope storage is allowed.
- 5) General support for permitting a Montgomery Reservoir enlargement or equivalent project, including support for a Summit County 1041 permit.

#### General Provisions:

- 1) Once Montgomery Reservoir is enlarged – or equivalent project – Utilities would abandon its conditional storage rights for Spruce Lake and Mayflower Reservoirs.
- 2) Utilities would convey the land it owns at the conditional storage sites to Summit County for Lower Blue Reservoir construction and for public use.
- 3) Utilities would withdraw its objection to expansion of the Ten-Mile Wilderness area. This area is within the recent Camp Hale-Continental Divide National Monument designation.



# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024

**To:** Utilities Board

**From:** Travas Deal, Chief Executive Officer

**Subject:** Pikes Peak Geospatial Alliance (PPGA) Orthoimagery Project

**NARRATIVE:**

**Desired Action:** Informational presentation regarding memorandum of understanding (MOU) between Utilities, the City of Colorado Springs, El Paso County, El Paso-Teller E911 Authority, and Teller County for the acquisition of orthorectified imagery for the 2024 Pikes Peak Geospatial Alliance (PPGA) project. The resolution approving the MOU must be approved by City Council pursuant to the terms of the original intergovernmental agreement between the parties.

**Executive Summary:** Colorado Springs Utilities will brief the Utilities Board regarding a proposed resolution approving a memorandum of understanding (MOU) between Springs Utilities, the City of Colorado Springs, El Paso County, El Paso-Teller E911 Authority, and Teller County for the acquisition of orthorectified imagery for the 2024 Pikes Peak Geospatial Alliance (PPGA) project. All entities are part of the PPGA, an entity formed by Intergovernmental Agreement in 2004, whose purpose is to acquire geospatial data and digital orthorectified imagery through joint funding arrangements set forth in the MOU on a project by project basis. Since that time, MOUs for aerial photography have been entered into in 2005, 2007, 2009, 2011, 2014, 2016, 2018, 2020 and 2022. Additionally, Springs Utilities will brief the Utilities Board on the 2024 imaging project.

**Benefits:** Benefits to this program include the receipt of orthorectified imagery for the project area and a significant cost savings of obtaining said imagery over performing the project as a single customer.

**Board Policy:** N/A

**Cost/Budget:** Total cost of the project is \$175,227 with Utilities share being \$35,892. Springs Utilities has budgeted for this project.

**Affected Parties:** This updated information is utilized to update the database operated by Colorado Springs Utilities and utilized by Springs Utilities and other City departments and operations. These services and data are necessary to ensure that all new development and changes to existing infrastructure are captured accurately and completely. Additionally, this updated information is important for public safety, as it is used by the E911 system operators to send emergency vehicles to a location and may be used when necessary to shut off utilities to a particular area during a fire to assist in mitigating the situation.

**Alternatives:** N/A

<b>Submitter:</b> Mike Herrmann	<b>Email address:</b> mherrmann@csu.org
<b>Division/ Department:</b> Asset Management – Geospatial Technology	<b>Phone number:</b> 719-668-8369
	<b>Date submitted:</b> 12/29/2023

<b>SPG Staff Use Only:</b> Consent Calendar	<input type="checkbox"/>	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/>	<input checked="" type="checkbox"/> No	<input type="checkbox"/>	<b>ITEM NO. 11</b>
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Colorado Springs Utilities  
*It's how we're all connected*

# 2024 Pikes Peak Geospatial Alliance (PPGA) Orthoimagery Project

**Michael Herrmann**

**Manager – Asset Management/Geospatial Technology**

**Tim Scheiderer**

**Senior Attorney-City Attorney's Office- Utilities Division**

**January 17, 2024**

# Agenda

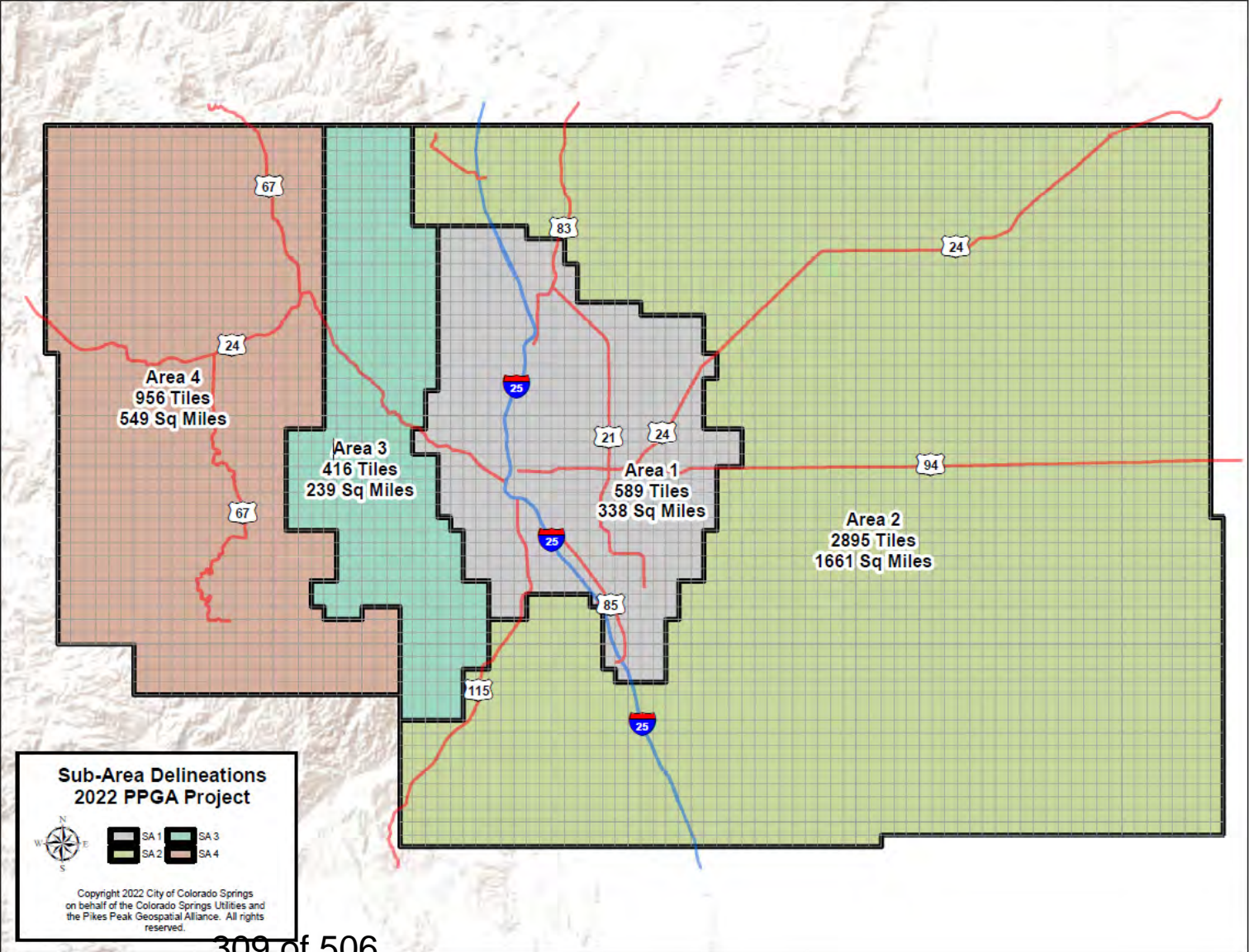
1. PPGA History
2. 2024 Project Description
3. 2024 Project Cost
4. Next Steps

# Colorado Springs Utilities – PPGA History

- Established in 2004 with other area local governments
- Purpose: cost sharing for digital aerial photography and geo-spatial products
- Current members:
  - City of Colorado Springs
  - Colorado Springs Utilities
  - El Paso County
  - El Paso/Teller E911
  - Teller County

# Colorado Springs Utilities – 2024 Project

The purpose of the 2024 PPGA project is to acquire new color digital aerial photography of El Paso and Teller Counties.



# Colorado Springs Utilities - 2022 Project Cost

## Cost

- **Total Cost of Project – \$175,226.95**

Project Area – 2785 sq. mi, 7213 sq. km (Full tiles)

- **El Paso County – \$143,570.16**

Project Area – 2237 sq. mi, 5794 sq. km (Full tiles)

- **Teller County – \$31,656.79**

Project Area – 548 sq. mi, 1419 sq. km (Full tiles)

Imagery Area	Product	Cost	Sq Miles	Cost/sq mi	Sq Kilo	Cost/sq km
Entire Project	Class I & II	<b>\$175,226.95</b>	2785	\$62.91	7213	\$24.29
El Paso County	Class I	\$143,570.16	2237	\$64.18	5794	\$24.78
Teller County	Class II	\$31,656.79	548	\$57.76	1419	\$22.30

# Colorado Springs Utilities – Participant Cost

✓ Breakdown of Costs by Participants

November 28, 2023							
Product Description	Subtotal	Cost Estimates					
		Colorado Springs	CSU	E911	EPC	Teller County	
<b>Total Cost Estimate</b>	<b>\$175,226.95</b>						
<b>Base Product (Sub Areas 1-3)</b>							
Cost Share (%)	100%	25.00%	25.00%	25.00%	25.00%	0%	
8 Bit, 4 Band Ortho Imagery - 6" & 12" Resolution	\$143,570.16	\$35,892.54	\$35,892.54	\$35,892.54	\$35,892.54	\$0.00	
NIR Included	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	<b>\$143,570.16</b>	<b>\$35,892.54</b>	<b>\$35,892.54</b>	<b>\$35,892.54</b>	<b>\$35,892.54</b>	<b>\$0.00</b>	
<b>Secondary Products (Sub Area 4 - Teller County)</b>							
Cost Share (%)	100%	0%	0%	50%	0%	50%	
8 bit, 4 Band Ortho Imagery - 1 Foot Resolution	\$31,656.79	\$0.00	\$0.00	\$15,828.40	\$0.00	\$15,828.40	
NIR Included	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	<b>\$31,656.79</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$15,828.40</b>	<b>\$0.00</b>	<b>\$15,828.40</b>	
<b>Mosaic Deliverables</b>							
JPEG 2000 - PD Areas 1-3 (Colorado Springs Area)*	\$0.00	\$0.00	\$0.00	\$0.00	NA	NA	
JPEG 2000 - PD Areas 1-13 (El Paso County Area)*	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	NA	
JPEG 2000 - PD Areas 14-15 (Teller County Area)*	\$0.00	NA	NA	NA	NA	\$0.00	
JPEG 2000 - PD Areas 1-15 (Entire Project Area)*	\$0.00	NA	NA	\$0.00	NA	NA	
	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	
	<b>\$175,226.95</b>	<b>\$35,892.54</b>	<b>\$35,892.54</b>	<b>\$51,720.94</b>	<b>\$35,892.54</b>	<b>\$15,828.40</b>	<b>\$175,226.95</b>
Variance from estimate	\$0.00						\$0.00

\* Mosaics included in the overall price

# Next Steps

- Submit agreement to the February 13, 2024, City Council meeting for approval.



A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING AMONG COLORADO SPRINGS UTILITIES, THE CITY OF COLORADO SPRINGS, EL PASO COUNTY, THE EL PASO-TELLER COUNTY E911 AUTHORITY, AND TELLER COUNTY TO ACQUIRE DIGITAL ORTHORECTIFIED IMAGERY IN 2024

WHEREAS, the City of Colorado Springs (“City”), Colorado Springs Utilities (“Utilities”), El Paso County, Teller County, and the El Paso-Teller County E911 Authority entered into an agreement called the Pikes Peak Geospatial Alliance Intergovernmental Agreement, dated June 24, 2004 (“PPGA IGA”) which established the Pikes Peak Geospatial Alliance (“PPGA”); and

WHEREAS, the purpose of the PPGA is to acquire geospatial data and technologies for the benefit of its members; and

WHEREAS, pursuant to the PPGA IGA, members of the PPGA may enter into a memorandum of understanding to cooperatively acquire geospatial data, which such memorandum of understanding shall provide cost sharing arrangements for the geospatial data acquisition projects between the PPGA members and non-member participants to such projects; and

WHEREAS, in accordance with the PPGA IGA, the PPGA has conducted six past projects for acquisition of geospatial data through aerial photography pursuant to memoranda of understanding entered into in the years 2004, 2007, 2009, 2011, 2014, 2016, 2018, 2020, and 2022; and

WHEREAS, participation in the past PPGA memoranda of understanding for the joint acquisition of geospatial data has been beneficial to the City and Utilities and has resulted in reduced costs for the acquisition of such data; and

WHEREAS, the City, Utilities, El Paso County, the El Paso-Teller County E911 Authority, and Teller County, as members of the PPGA (collectively, the “Parties”), wish to enter into a memorandum of understanding for the acquisition of geospatial data (the “Project”); and

WHEREAS, the City Council of the City of Colorado Springs (“City Council”) has determined that it is in the best interests of the City and Utilities to share the costs of geospatial data acquisition in the manner set forth in the memorandum of understanding attached hereto and incorporated herein (“MOU” or “Memorandum of Understanding”).

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

Section 1. The City Council finds that participation in the Project by approval of the Memorandum of Understanding attached hereto and incorporated herein is in the best interests of the citizens of the City of Colorado Springs and ratepayers of Colorado Springs Utilities and further approves the Memorandum of Understanding.

Section 2. The City Council hereby authorizes the Mayor of the City of Colorado Springs or his designee, on behalf of the City, and the Chief Executive Officer of Colorado Springs Utilities or his designee, on behalf of Utilities, to execute the Memorandum of Understanding attached to this Resolution on behalf of the City of Colorado Springs and Colorado Springs Utilities.

Dated at Colorado Springs, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2024.

ATTEST:

\_\_\_\_\_  
Randy Helms, Council President

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

## MEMORANDUM OF UNDERSTANDING

THIS Memorandum of Understanding (“MOU”) is made as of the \_\_\_ day of January, 2024, by and between:

- Colorado Springs Utilities, an enterprise of the City of Colorado Springs, with its principal place of business at 121 S. Tejon Street, Colorado Springs, Colorado 80903 (“Utilities”)
- the City of Colorado Springs, a Colorado home rule city and municipal corporation, with its principal place of business at 30 S. Nevada Avenue, Colorado Springs, Colorado, 80903
- El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, with its principal place of business at 200 S. Cascade Avenue, Colorado Springs, Colorado, 80903
- the El Paso-Teller County E911 Authority, with its principal place of business at 2350 Airport Road, Colorado Springs, Colorado, 80910
- Teller County, with its principal place of business at PO Box 959, Cripple Creek, Colorado, 80813.

(individually referred to as “Party” or collectively as the “Parties”).

### WITNESSETH:

**WHEREAS**, the City of Colorado Springs, Utilities, El Paso County, Teller County, and El Paso – Teller County E911 Authority entered into an agreement called the Pikes Peak Geospatial Alliance Intergovernmental Agreement dated June 24, 2004 (“PPGA IGA”), attached hereto as Exhibit 1, to establish the Pikes Peak Geospatial Alliance (“PPGA”);

**WHEREAS**, the Parties desire to be Participants, as defined in the PPGA IGA, to execute a common Memorandum of Understanding to acquire digital orthorectified imagery for an area encompassing El Paso County and Teller County in the manner described in the SOW (defined in Section 3.2, below) (“OP 2024”);

**WHEREAS**, the acquisition cost to individual Parties can be substantially reduced by jointly acquiring this data;

**WHEREAS**, the cost to each Party was determined by the PPGA IGA steering committee and that the PPGA IGA steering committee's cost formula takes into account factors such as the size of area of interest, overlapping areas of interest, and desired resolution and accuracy;

**WHEREAS**, each Party has identified funds for the joint acquisition of the digital orthorectified imagery;

**WHEREAS**, with respect to the OP 2024, the Parties wish to establish the funding and contracting procedure, the specification of requirements and deliverables, and the guidelines for ownership and distribution of data;

**WHEREAS**, as applicable, the articles and stipulations of the PPGA IGA shall be adhered to by all Parties;

**WHEREAS**, Utilities entered into a contract for orthorectified imagery with the Sanborn Map Company, Inc. (“Contractor”) which was selected through a competitive RFP process in October 2021;

**WHEREAS**, each of the Parties that co-funds or solely funds any Primary Product shall receive an original copy of the OP 2024 Base Product deliverables indicated the 2024 Scope of Work, found within Exhibit 2 – Section 10.1 to the Contract.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, the Parties hereby agree as follows:

## **ARTICLE 1: COVENANTS OF THE PARTIES**

The Parties represent, covenant, and warrant as follows:

- 1.1 Each Party is duly authorized to execute and deliver this MOU and further represents, covenants and warrants that all requirements have been met and procedures have been completed in order to ensure the enforceability of this MOU, and each Party has complied with its public procurement requirements, if any, which are necessary to make this MOU enforceable.
- 1.2 Each Party agrees to abide by the articles and stipulations of the PPGA IGA.
- 1.3 Subject to the provisions of this MOU and the PPGA IGA, each Party agrees to recognize and honor in perpetuity the licensing agreements, copyrights, and other proprietary claims for software, databases, collateral information, and products established or produced by any other Party and the vendors furnishing said items to such Party.

## **ARTICLE 2: PURPOSE**

The purpose of this MOU is to provide joint funding for a contract with Contractor. Contractor is to provide Professional Services for OP 2024. The anticipated payment to Contractor for the Base Product deliverables shall not exceed **\$175,226.95**. The anticipated payment to Contractor for Secondary Product deliverables shall not exceed **\$175,226.95**.

This MOU specifies the project requirements and deliverables and articulates the guidelines for ownership and distribution of those deliverables.

## **ARTICLE 3: ORTHORECTIFIED IMAGERY FUNDING AND PARTICIPATION**

- 3.1 The Parties agree that Utilities has been selected by the PPGA IGA steering committee as lead agency and as such has contracted on behalf of the Parties with Contractor. Such contract shall be referred to herein as “Contract”. The Parties further agree that this orthorectified imagery benefits them all, and that each Party’s funding share and in-kind contributions will be provided by each Party to Utilities in the amounts or percentages set forth in Exhibit 3. OP 2024 project costs in excess of the limit provided in Article 2 shall be paid by the Parties hereto in proportion to their financial contributions in Exhibit 3, subject to additional appropriations and approval by each Party in advance. Utilities shall use all these funds to finance the orthorectified imagery in accordance with the terms of the OP 2024. In the event any funds are reimbursed under terms of the Contract, those funds will be distributed to the Parties in proportion to the funding provided by each Party.
- 3.2 Utilities agrees to perform the following duties under this MOU:
- A. Issue the "Statement of Work with Appendices" (“SOW”) approved by the PPGA IGA steering committee to Contractor for the digital orthorectified imagery contractual services in 2024, attached hereto as Exhibit 2 to the Contract and incorporated herein.
  - B. Ensure that Contractor delivers the specific products listed in the Deliverable Products and Acceptance section of the SOW by the approximate dates indicated.
  - C. Fully perform its obligations in accordance with standard business practices and such other professional standards as may be appropriate.
  - D. During the term of the Contract, or until the conclusion of any matters on which Contractor works hereunder, whichever shall occur last, Utilities shall take no position contrary to those advocated by the Parties in the contracted matters, nor represent any client whose interests are in conflict with the positions advanced by the Parties in the contracted matters.
  - E. Maintain a complete file of all records, documents, communications, and other written materials which pertain to the performance of the Contract, including the delivery of services, and shall maintain such records for a period of three years after the date of completion of OP 2024. Each Party shall have the right to audit records at reasonable times and upon reasonable notice.
- 3.3 The Parties to this MOU shall pay Utilities an amount not to exceed that set forth in Article 2 according to the percentages listed on Exhibit 3, attached hereto, upon receipt of invoices from Utilities. Utilities will issue one invoice to each Party that will be issued at a mutually agreed upon time following the start of the OP 2024 project. The final amounts shall be determined when the Contract is confirmed and shall be based on the same funding proportions as those currently listed in Exhibit 3.

- 3.4 The Parties agree that all digital products, as listed in Exhibits 2 and 3, that are delivered by the Contractor shall be subject to the terms of the PPGA IGA and the rights and restrictions defined in Articles 5 and 6 of this MOU.
- 3.5 Subject to the terms of the PPGA IGA, for the purpose of OP 2024, each of the fifteen (15) orthorectified imagery deliverables (collectively the “Base Product deliverables” – Sub Areas 1-3 and “Secondary Product deliverables” – Sub Area 4) will be made available to the Parties for internal use only after written “preliminary acceptance” of each deliverable. The Parties recognize that until final written acceptance and payment for each imagery deliverable of OP 2024 has been made, the accuracy and quality of the OP 2024 deliverables may be subject to correction, and any Party that uses or relies on any such deliverables prior to each acceptance assumes the risk of use of such OP 2024 deliverables. External data distribution may occur only after acceptance and payment for each respective final OP 2024 deliverable. The allocation of risk provisions in this Section also apply to any Secondary deliverables. Procedures for Quality Assurance are included in the SOW.
- 3.6 Final Report. Utilities shall prepare and submit to the Parties a final accounting of all expenses of the OP 2024 at the termination of the project.

#### **ARTICLE 4: TERMINATION**

- 4.1 A Party may terminate its participation in this MOU by providing 30 days’ written notice to the other Parties by certified mail, return receipt requested. If notice is so given, the Party’s participation in this MOU shall terminate on the expiration of the thirty days, and the liability of the Party hereunder for the further performance of the terms of this MOU shall thereupon cease, provided the Party shall not be relieved of the duty to perform their obligations under Article 6, Restrictions on Use of the Data, and provided further, that if this MOU is terminated after a Contract has been negotiated by Utilities, all monies obligated by the terminating Party but not yet paid over to Utilities for the performance of the Contract shall be due to Utilities and shall be paid to Utilities within thirty (30) days of the date of termination.
- 4.2 If, through any cause, the Contractor shall fail to fulfill, in a timely and proper manner, the Contractor’s obligations under the awarded Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of the awarded Contract, any Party to this MOU shall thereupon have the right to terminate that Party’s participation in this MOU for cause by giving written notice to the other Parties, and subject to payment of the terminating Party’s funding obligations per the above paragraph. In the event of Contract termination, remaining project funds will be reimbursed to the Parties in proportion to the funding provided.
- 4.3 In the event of nonperformance by Contractor, Utilities may pursue any available remedy at law or in equity against Contractor on behalf of the Parties or individually as provided for under the Contract either on its own or as directed by the PPGA steering committee.

## **ARTICLE 5: DATA OWNERSHIP**

- 5.1 The OP 2024 Base Product deliverables will be jointly owned by the Parties who co-funded those products. Ownership of Secondary products is defined by those participants that co-fund each Secondary product as specified in Exhibit 3. PPGA project participants shall only receive products they fund. Each Party's decision regarding whether to participate in and fund each Secondary product shall be confirmed in writing. In the event that a Party chooses not to fund a Secondary product (referenced within Exhibit 3), the proportionate payment requirements for that non-participating Party shall be zero for such Secondary product, and the proportionate payment requirements for the remaining participating Parties shall be adjusted accordingly.
- 5.2 Any products delivered in hard-copy format, such as camera calibration reports and other supporting documents, shall be owned by the Parties as specified in Exhibits 1 and 3.
- 5.3 All additional, optional products that are included as deliverables and are not otherwise addressed herein shall be discussed with the PPGA steering committee. After each Party, including Non-Member Participants, has had a reasonable opportunity to provide input to the PPGA steering committee, cost sharing, usage, and ownership of additional products shall be determined by the PPGA steering committee and in accord with the PPGA IGA.

## **ARTICLE 6: RESTRICTIONS ON USE OF THE DATA**

- 6.1 Each Party shall be bound by the data distribution guidelines specified in Article VI of the PPGA IGA.
- 6.2 Each Party shall have the right to use the digital data to prepare presentations such as maps, exhibits, memoranda, reports, etc., on paper, mylar, or other printed media. These hard-copy materials may be distributed to the public as governed by the internal policies held by each Party.
- 6.3 Each Party shall have the right to use the digital data to prepare presentations such as maps, exhibits, memoranda, reports, etc., in electronic document form for distribution to the public via electronic media or via the Internet. These electronic documents may be distributed to the public as governed by the internal policies held by each Party as defined in the PPGA IGA.
- 6.4 Each Party shall have the right to use the digital data for internet map applications. Internet map applications that deliver orthorectified imagery data as map images to the end user may be developed at the discretion of the Parties, subject to the display area restrictions described in Section 6.5. The PPGA steering committee shall be advised of the application and data security architecture of any internet map applications that propose to deliver aerial photography feature data to the end user. The Parties agree to mitigate any data security concern raised by a PPGA steering committee member before deploying orthorectified imagery applications that deliver feature data.

6.5 The Parties agree that the sublicensing of the digital data for a fee to the general public or to other agencies, organizations, or commercial businesses can only be undertaken by PPGA members and only in accordance with Article 6 of the PPGA IGA. Digital products and their unit prices are defined as follows:

- 4000 by 4000-foot tile shall be \$50 for 1 foot resolution imagery
- 4000 by 4000-foot tile shall be \$100 for 6-inch resolution imagery

These price figures are based upon current business strategies and policies. The distribution and fee schedules for Secondary products will be addressed by an amendment to this MOU if necessary. Release of the digital data to external customers (or to a non-participating PPGA member) requires the execution of a License Agreement by the respective issuing agency in a form substantially similar to Exhibit B of the PPGA IGA (Exhibit 1) – “Customer Geospatial Data License Agreement.” Any Party may, in its sole discretion, designate certain portions of the digital orthorectified imagery, not to exceed 1% of project area, as “Confidential” due to security concerns. Security concerns in excess of 1% must be unanimously approved by the PPGA. The Parties shall be prohibited from sub-licensing and releasing confidential digital data.

6.6 The Parties who co-funded the Base Product agree that the jointly owned Base Product deliverable will be made publicly available free of charge following a period of two (2) years after final acceptance of the entire OP 2024 project or when the PPGA executes final acceptance of a subsequent Orthorectified Imagery Project of the same scope, whichever comes first.

## **ARTICLE 7: CONFIDENTIALITY**

7.1 Any confidential and/or proprietary information that any Party discloses to any third party with respect to this MOU shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure. Each Party shall require the recipient to hold such information confidential to the extent provided by law and shall require the recipient not to engage in any use or disclosure of such information unless such use or disclosure is expressly provided for in this MOU. Some of the Parties to this MOU are public entities subject to the provisions of the Colorado Open Records Act (“CORA”). In the event a Party receives a request for such confidential and/or proprietary information from a third party, notice thereof shall promptly be given to the other Parties. Each Party shall take all reasonable steps to prevent any unauthorized possession, use, transfer, or disclosure of such confidential information. Should a Party learn of any such unauthorized possession, use, transfer, or disclosure, it shall promptly notify the other Parties.

7.2 The disclosure provisions of Section 7.1 above shall not apply to information that a) a Party had in its possession prior to disclosure by another Party; b) becomes public knowledge through no fault of the recipient; c) a Party lawfully acquires from a third party not under an obligation of confidentiality to the Parties to this MOU; or d) is required to be disclosed by law or court order.



## **ARTICLE 8: ADDITIONAL PROVISIONS**

- 8.1 This MOU is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court Jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.
- 8.2 Expenditures and Fees of Each Party Deemed Expenditures of that Party: The Parties to this MOU agree that the purpose of this MOU is to jointly accomplish pursuant to C.R.S. Section 29-1-203 activities which could be performed separately by each Party. Accordingly, it is agreed and understood for purposes of Article X, Section 20 of the Colorado Constitution, and the Colorado Springs City Charter, that any fees contributed or paid, or otherwise provided by any Party to another Party are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.
- 8.3 In accord with the Colorado Constitution, Colorado Law, and the Colorado Springs City Charter, performance of a Party's obligations under this MOU is expressly subject to appropriation of funds by the governing body of that Party and the availability of those funds for expenditure under this MOU.
- 8.4 Counterparts; Facsimile: This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be considered one and the same instrument. This MOU may be executed and delivered by facsimile transmission.

**THE PARTIES HERETO HAVE EXECUTED THIS MEMORANDUM OF UNDERSTANDING.**

FOR THE **CITY OF COLORADO SPRINGS**, A HOME RULE CITY AND COLORADO MUNICIPAL CORPORATION:

By: \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.  
Title: Mayor

Attest: \_\_\_\_\_  
City Clerk

Approved As to Form:

By: \_\_\_\_\_  
Attorney  
City of Colorado Springs

AND FOR **COLORADO SPRINGS UTILITIES**, AN ENTERPRISE OF THE CITY OF COLORADO SPRINGS:

By: \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.  
Title: Water Services Officer

Approved As to Form:

By: \_\_\_\_\_  
City Attorney's Office

AND FOR EL PASO COUNTY, COLORADO:

By: \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.  
Title: Board of County Commissioners Chair

Attest:

By: \_\_\_\_\_  
County Clerk and Recorder

Approved As to Form:

By: \_\_\_\_\_  
County Attorney's Office

AND FOR **EI PASO – TELLER COUNTY E911:**

By: \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

AND FOR **TELLER COUNTY, COLORADO:**

By: \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

Title: \_\_\_\_\_

Attest:

By: \_\_\_\_\_  
County Clerk and Recorder

Approved As to Form:

By: \_\_\_\_\_  
County Attorney's Office

**Exhibit 1**

**Pikes Peak Geospatial Alliance  
Intergovernmental Agreement**

This Pikes Peak Geospatial Alliance Intergovernmental Agreement, dated this \_\_\_ day of \_\_\_\_\_, 2004, is made by and between the following governmental entities:

- the City of Colorado Springs, a Colorado municipal corporation and home rule city
- the Colorado Springs Utilities, an enterprise of the City of Colorado Springs
- El Paso County, Colorado
- Teller County, Colorado
- El Paso – Teller County E911 Authority

The Parties to this Intergovernmental Agreement hereby agree as follows:

**Article I. Authority**

This intergovernmental agreement is made under authority of Colorado Constitution, Article XX, Section 6; Colorado Constitution Article XIV, Section 18; and Section 29-1-203 C.R.S.

**Article II. Purpose**

This intergovernmental agreement establishes the Pikes Peak Geospatial Alliance (PPGA) and defines its membership, organization and activities. The primary purpose of the PPGA is to acquire geospatial data and technologies for the benefit of its members. This agreement does not supercede existing agreements between the member agencies unless stated otherwise herein or in follow-up memorandums of understanding (MOU).

**Article III. Membership**

**Section 3.01 Charter Members**

PPGA charter agencies include the City of Colorado Springs, Colorado Springs Utilities, El Paso County, Teller County and El Paso – Teller County E911 Authority. Each agency's governing body must formally adopt this intergovernmental agreement for their membership to become official.

**Section 3.02 Additional Membership**

Additional governmental agencies may be added to the PPGA through the unanimous consent of the charter members. Each charter member will execute an IGA addendum followed by the candidate agency executing the original IGA and all addendums before the candidate agency's membership is considered to be complete.

## **Article IV. Steering Committee**

The PPGA steering committee is hereby established to administer the terms and conditions of this agreement and conduct the routine business of the Alliance. The steering committee will generally meet on a monthly basis to maintain communication between member agencies.

### **Section 4.01 Membership**

Each member agency shall designate one representative to serve on the PPGA steering committee. The representative or their proxy will communicate their agency's position on PPGA business items through participation in PPGA meetings.

The representatives for the Steering Committee are as follows:

- (a) Colorado Springs Representative: Geographic Information Officer
- (b) Colorado Springs Utilities Representative: Resource Technology Services Manager
- (c) El Paso County Representative: Information Technologies GIS Manager
- (d) Teller County Representative: LIS/GIS Coordinator
- (e) El Paso – Teller E911 Representative: E9-1-1 System Manager

### **Section 4.02 Responsibilities**

- (a) Administer IGA terms and conditions
- (b) Identify and prioritize PPGA projects
- (c) Discuss PPGA projects with members, other governments and local entities as appropriate to determine level of financial interest
- (d) Develop cost sharing formulas and proposed agreements
- (e) Participate in the development of request for information/request for proposal (RFI/RFP) language
- (f) Participate in vendor selection and contract maintenance
- (g) Participate in quality assurance/quality control (QA/QC) processes
- (h) Administer data distribution processes as defined in Article VI, Geospatial Data Distribution, and in the project-specific MOUs
- (i) Communicate the Geographic Information Systems (GIS) needs and



capabilities of member agencies to state and federal interests (grants, user groups, etc.)

- (j) Other implied responsibilities not explicitly defined

### **Section 4.03 Governance**

- (a) Chairperson

The steering committee chairperson is hereby established to act as a point of contact for the PPGA. Additional responsibilities include the organization of PPGA meetings and coordination of external data distribution requests. The chairperson role will rotate on an annual basis to each of the member agency representatives.

- (b) Decision-Making

Steering committee decision-making will be based on unanimous consent.

- (c) By-laws

The steering committee shall establish by-laws as necessary to carry out the responsibilities defined in Section 4.02.

## **Article V. Geospatial Data Acquisition**

A principal role of the PPGA is to acquire mutually beneficial geospatial data.

### **Section 5.01 Purpose**

Cooperative geospatial data acquisition reduces costs by eliminating redundancies and capturing economy of scale discounts while providing additional data sets for decision makers. Cooperation on joint agency projects may be streamlined due to a single data acquisition project.

Cooperative geospatial data acquisition may be used for concurrent geospatial analysis, joint agency projects or to support the independent operations of member agencies.

### **Section 5.02 Participation**

Participating agencies (Participants) are defined as PPGA members and non-member entities that agree to the terms of an individual project by executing a common MOU and following through with any financial commitments identified therein.

- (a) PPGA Member Agencies

Member agencies are eligible to participate in any project undertaken by the PPGA. PPGA member agencies that originally decline participation and wish to acquire the project data after MOUs have been executed will be charged the non-participant acquisition rate.

**(b) Non-Member Agencies**

Public or private sector agencies may participate on individual PPGA projects by unanimous approval of the PPGA steering committee. Non-member agencies must agree to the terms and conditions of the project through the execution of the project MOU by their governing body or authorized agency representative. Execution of the project MOU indicates an agency's commitment to abide by the project funding formula and distribution restrictions.

**Section 5.03 Project Selection**

The PPGA steering committee will meet as necessary to discuss the data needs of both individual agencies and any ongoing or upcoming agency cooperative efforts. A prioritized list of projects will be developed based on interest, feasibility and funding. External agencies that might benefit from candidate projects will be contacted to determine their level of interest and availability of funds.

Each PPGA member agency will be given the opportunity to participate in all projects organized pursuant to this intergovernmental agreement. Member agencies have the right to decline participation in any individual PPGA project. Agencies that decline to participate in individual projects surrender all rights to project deliverables.

Each project will result in a geospatial data set jointly owned by the participating PPGA member agencies. Usage of the jointly owned data shall be subject to all terms and conditions in this agreement as well as any additional conditions contained in the accompanying project MOU.

**Section 5.04 Funding**

**(a) Co-Funding Model**

Geospatial data acquisition will utilize a co-funding model that allows multiple agencies to fund and obtain the benefit and use of an individual project procured by a single member agency. The PPGA steering committee will develop a funding formula for each project that defines the contribution percentages of participating agencies.

**(b) Lead Agency**

The PPGA steering committee will select a lead agency to act as the procuring and contracting authority on each project. The lead agency will provide documentation on their procurement and contracts procedures to the participating agencies for review. Agencies unable or unwilling to comply with the lead agency's procurement procedures will withdraw from participation.

(c) Memorandum of Understanding

An interagency MOU will be drafted and executed by each participating agency prior to starting each project. The MOU will formalize the participant funding formula, procurement and data distribution guidelines that will govern the project. Agencies unable or unwilling to sign the MOU will withdraw from participation in the project identified by said MOU.

(d) Expenditures

All participants acknowledge that the purpose of this Agreement is to jointly accomplish activities that could be performed separately by each Party. It is agreed and understood for purposes of the Colorado Constitution, Article X Section 20 that any funds contributed for data acquisition or otherwise contributed under this Agreement by any Party to this Agreement, is and remains an expenditure of that Party only.

**Section 5.05 Proposal Solicitation**

A scope of work and schedule of deliverables will be developed and approved by the PPGA steering committee and submitted to the lead agency for inclusion into requests for proposals. The procurement and contracting policies of the lead agency govern the formal acquisition process. All projects must be advertised for competitive bid by the lead agency.

**Section 5.06 Proposal Evaluation**

The procuring and contracting agency shall include all participating members of the PPGA steering committee to serve on their project evaluation and selection process. Non-technical members of the evaluation and selection committee will be determined by the lead agency based on their internal guidelines. Participating members of the PPGA steering committee may also select, through unanimous consent, additional non-voting members to provide technical expertise to the evaluation and selection committee. Each PPGA steering committee member must accept the lead agency evaluation and selection participation requirements, including but not limited to confidentiality agreements and/or other disclosures. Vendor selection proceedings and contract administration will be governed by the internal policies of the lead agency.

**Section 5.07 Contract Administration**

Members of the project evaluation and selection committee will assist the lead agency with contract administration including, but not limited to, pilot area selection, interim deliverable acceptances, quality assurance, quality control and final product acceptance. Additional contract support may be requested by the lead agency.

**Section 5.08 Deliverables**

Participating PPGA member agencies shall receive an original set of all project deliverables. Non-member participants are entitled to receive an original of the

project deliverable that corresponds to the area of interest used to define their funding contribution.

## **Article VI. Geospatial Data Distribution**

Distribution of geospatial data acquired by the Participants under this agreement will be conducted on an individual project basis. For each project, Participants must agree to the following data distribution guidelines. All data distribution transactions will require the product recipient to execute a license agreement with the issuing agency. Agencies will use due diligence in distributing data.

The following general guidelines apply to all geospatial data sets acquired under this agreement. Additional distribution restrictions may be implemented on an individual project basis through inclusion in the project MOU.

### ***Section 6.01 Internal Data Distribution***

Internal data distribution is defined as the release of project deliverables by a Participant to internal departments, offices, units and enterprises, and is permitted by this Agreement.

Law, fire, and EMS agencies in El Paso and Teller Counties and Public Service Answering Points (PSAP) shall, for the purposes of this IGA, also be considered as internal departments to the El Paso – Teller E-911 Authority.

Project deliverables may also be released to a Participant's consultant. A consultant is defined as an entity under contract and financial commitment to a Participant. Exhibit A will be used for internal consultant licensing.

### ***Section 6.02 External Data Distribution***

External data distribution is defined as the release of project deliverables to a non-participating entity and shall require payments as provided in this Section 6.02. Exhibit B will be used for external customer licensing.

Non-member Participants are prohibited from releasing any project deliverables to external entities except as noted in Section 6.01.

Distribution of project deliverables to external customers or for Colorado Open Records Act requests is subject to Colorado Revised Statutes. Additional distribution constraints may be applied based on agency, local, regional or national security policies, as defined by project MOUs.

Each PPGA project will be assigned a unit price factor as determined in the project specific MOU, that will be used to categorize individual data transactions into those over and under \$1000.

(a) Transactions under \$1000

Single or collective transactions to individuals or agencies totaling less than \$1000 as calculated using the data's unit price factor will be governed by the internal data distribution policies of the agency receiving the request. Once the cumulative requests total \$1000 or more, the process detailed in section (b) below apply.

(b) Transactions equal to or over \$1000

Single or collective transactions to individuals or agencies totaling \$1000 or more as calculated using the data's unit price factor shall be forwarded to the PPGA steering committee chairperson. Data distribution will be administered by the chairperson with proceeds of said transaction returned to participant Members in proportion to their project contribution rate. The individual or agency receiving the data shall separately and directly compensate each participant Member agency accordingly.

Data delivered under this process will only be licensed by complete tile(s).

## **Article VII. Infrastructure Acquisition**

A potential role of the PPGA is to acquire mutually beneficial infrastructure assets including geospatial technologies. While the exact nature of these technologies is not totally known, the intent is to provide a mechanism to amend this Agreement to exploit future technology opportunities.

## **Article VIII. General Terms and Conditions**

### ***Section 8.01 Term***

This Agreement shall commence upon final execution and end twenty-five (25) years thereafter unless sooner terminated or extended hereunder. Regardless of the date of execution or termination, this Agreement shall be in full force and effect from the date of a Party's receipt, in digital form, of any jointly acquired GIS Data, and for so long as any portion of said geospatial data, in any form whatsoever, remains in the possession of the other Party or any of its employees, agents, contractors or subcontractors. This Agreement shall remain in effect unless a Party terminates this Agreement by giving the other Parties six (6) months' written notice. The provisions set forth in Articles VI and VII herein shall survive the termination of this Agreement.

### ***Section 8.02 Assignment***

No Member shall assign or otherwise transfer this Agreement or any right or obligation hereunder without the prior written consent of the other Members.

### ***Section 8.03 Law***

This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of

the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court Jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.

***Section 8.04 Expenditures***

Expenditures and Fees of Each Party Deemed Expenditures of that Party: The Parties to this Agreement agree that the purpose of this Agreement is to jointly accomplish pursuant to C.R.S. Section 29-1-203 activities which could be performed separately by each Party. Accordingly, it is agreed and understood for purposes of the Colorado Constitution, Article X Section 20, and the Colorado Springs City Charter, that any fees contributed or paid, or otherwise provided by any Party to this Agreement to another Party to this Agreement are and remain an expenditure of the contributing, paying, or otherwise providing Party, and are not revenue or expenditures of the receiving Party.

***Section 8.05 Appropriation of Funds***

In accord with the Colorado Constitution, Colorado Law, and the Colorado Springs City Charter, performance of a Member's obligations under this Agreement are expressly subject to appropriation of funds by the governing body of that Member and the availability of those funds for expenditure under this Agreement.

***Section 8.06 Integration***

This is a completely integrated Agreement and contains the entire agreement between the Members. Any prior written or oral agreements or representations regarding this Agreement shall be of no effect and shall not be binding on the Members.

***Section 8.07 Headings***

The headings of the several articles and sections of this Agreement are inserted only as a matter of convenience and for reference and do not define or limit the scope or intent of any provisions of this Agreement and shall not be construed to affect in any manner the terms and provisions hereof or the interpretation or construction thereof.

***Section 8.08 Local Concern***

The Members agree and acknowledge that the activities undertaken pursuant to this Agreement are matters of local concern only, and that the Members have mutually joined together for the performance of the matters of local concern, and that nothing in this Agreement shall be construed as making any of the concerns covered herein matters of mixed or statewide concern.

**Section 8.09 No Third Party Beneficiary**

It is expressly understood and agreed 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 Members hereto, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person or entity on this Agreement. It is the express intention of the Members hereto that any person or entity, other than the Members of the Agreement, receiving services or benefits under this Agreement shall be deemed to be incidental beneficiaries only.

**Section 8.10 Compensation**

No Party to this Agreement shall be required to pay any compensation to the other Party or the other Party's personnel for any services rendered hereunder. Nothing in this agreement shall be construed to place the personnel of any Party under the control or employment of another Party. Each Party remains responsible for all pay, entitlement, employment decisions, and worker's compensation liabilities, for its own personnel. Nothing in this agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law, nor does any Party waive its immunities at law, including immunity granted under the Colorado Governmental Immunity Act.

**Section 8.11 Modification**

This Agreement may only be amended in writing with the approval of the governing bodies of the Members under this Agreement.

**Section 8.12 Dispute Resolution**

- (a) The parties intend that all disputes, as defined below, shall be resolved in accordance with these dispute resolution procedures. The parties shall continue to perform their respective obligations under the terms of this Agreement until the stages of dispute resolution have been completed.
- (b) Disputes include any controversy or claim, whether based in contract, tort or otherwise, arising out of, relating to, or in connection with this Agreement or the scope, breach, termination or validity thereof ("Dispute").
- (c) In the event of a Dispute, a party will deliver written notice of the Dispute to the other parties of its intent to invoke resolution of the Dispute (the "Dispute Notice"). A party may assert the existence of a Dispute against the other party or parties until delivery of such Notice. Within thirty (30) days after the date of delivery of the Notice of Dispute the receiving party shall submit to the other a written response ("Dispute Notice Response"). The Dispute Notice Response shall include (i) a statement of the party's position and a summary of the evidence and arguments supporting the

party's position, and (ii) the name and title of the person who will represent that party.

- (d) If a Dispute Notice is given, the parties shall promptly and diligently attempt to negotiate a settlement of the Dispute through direct negotiations between representatives of the parties who are authorized to enter into settlements on behalf of the parties. The representatives shall meet at a mutually acceptable time and place within twenty (20) days after the date of delivery of the Dispute Notice Response and thereafter, as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute. If an authorized representative intends to be accompanied at a meeting by an attorney, the other authorized representative shall be given at least three (3) working days notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations for the purposes of the Federal Rules of Evidence and State Rules of Evidence. No subpoenas, summonses, citations, or other processes shall be served at or near the location of any negotiation upon any person who may be entering, leaving, attending, or in transit to any negotiation session.
- (e) If the Dispute has not been resolved within sixty (60) days following the first negotiations, either party may initiate litigation in Colorado, in the courts described below, upon thirty (30) days written notice to the other party. For the purpose of litigating any Dispute, the party's consent to the jurisdiction of the District Court of El Paso County, Colorado.
- (f) All deadlines specified in this Section may be extended by mutual agreement.
- (g) Each party is required to continue to perform its obligations under this Agreement, pending final resolution of any Dispute.
- (h) The procedures specified in this Section shall be followed for the resolution of Disputes between the parties arising out of, or relating to this Agreement; prior to the filing on any litigation between the parties, except for cases where undue prejudice would be caused by delay; a party may seek a preliminary injunction or other preliminary judicial relief; if in the judgment of that party, such action is necessary to avoid irreparable damage or to preserve the status quo. Despite the initiation of any such judicial proceedings, the parties will continue to participate in good faith in the procedures specified in this Section. As between the parties, all applicable statutes of limitation shall be tolled while the procedures specified in this Section are pending and the parties will take all actions, if any, required to effectuate such tolling. If these procedures are not successful in resolving the dispute, the procedures set forth in Section 8.12e shall apply.



- (i) The parties commitment to resolve Disputes, pursuant to this Section, survives the expiration or termination of this Agreement.

***Section 8.13 Termination***

A withdrawing Member must provide at least six months written notice of intent to terminate participation. The terminating Member shall continue to be financially responsible for and pay its share of any financial obligations entered into, pursuant to an MOU signed by the terminating agency, during the period when the terminating agency was a member of the PPGA.

As long as a terminating Member continues to possess data acquired under the auspices of the this IGA and associated project MOUs, that Member shall continue to be bound by the data distribution polices set forth in this IGA and project MOUs.

**Exhibit A: Internal Consultant Geospatial Data License Agreement**

**Exhibit B: Customer Geospatial Data License Agreement**

**THE PARTIES HERETO HAVE EXECUTED THIS INTERGOVERNMENTAL AGREEMENT.**

**FOR THE CITY OF COLORADO SPRINGS:**

By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**FOR COLORADO SPRINGS UTILITIES:**

By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

**FOR EL PASO COUNTY:**

By Alvin R. Bure this 8<sup>th</sup> day of July, 2004.

Title: BOCC Chairman

ATTEST: [Signature]  
Deputy County Clerk

**FOR TELLER COUNTY:**

By \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

Title: \_\_\_\_\_

ATTEST: \_\_\_\_\_

PPGA IGA

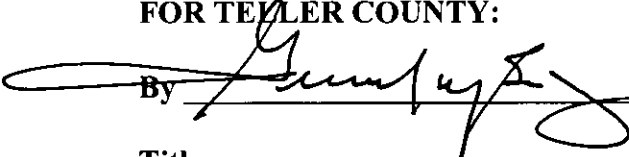
**FOR EL PASO-TELLER COUNTY E911:**

**By** \_\_\_\_\_ **this** \_\_\_\_\_ **day of** \_\_\_\_\_, **2004.**

**Title:** \_\_\_\_\_

**ATTEST:** \_\_\_\_\_

FOR TELLER COUNTY:

By  this 27 day of July, 2004.

Title: \_\_\_\_\_

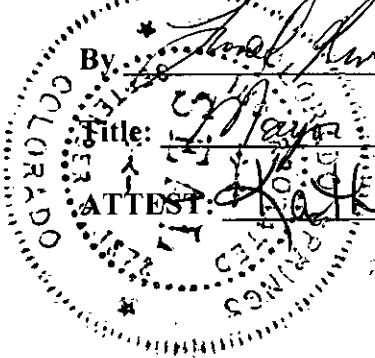
ATTEST: \_\_\_\_\_

FOR THE CITY OF COLORADO SPRINGS:

By: *Paul Aron* this 23<sup>d</sup> day of July, 2004.

Title: *Mayor*

ATTEST: *Kathryn McYoung*



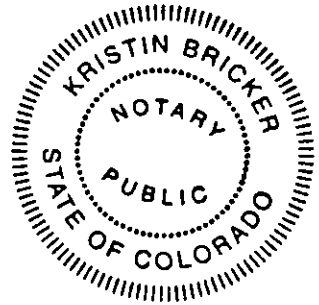
FOR COLORADO SPRINGS UTILITIES:

By Phillip H. Tollison this 26th day of July, 2004.

Title: CEO

ATTEST: *[Signature]*

*My Commission expires*  
*3/5/2007*



FOR EL PASO-TELLER COUNTY E911:

By Jane R. Day this 28<sup>th</sup> day of July, 2004.

Title: \_\_\_\_\_

ATTEST: [Signature]

# EXHIBIT A

## Pikes Peak Geospatial Alliance Internal Consultant Geospatial Data License Agreement

This Consultant Geospatial Data License Agreement is made and entered into as of the < Day > day of < Month, Year > by and among (check one):

- El Paso County, Colorado
- The City of Colorado Springs, a home rule municipality
- The Colorado Springs Utilities, an enterprise of the City of Colorado Springs
- Teller County, Colorado
- El Paso – Teller County E911 Authority

(hereafter "Licensor") and

< Company > (hereafter "the Consultant"), with its principal place of business at < Address >.

The parties understand that they are independent entities, and that this Agreement does not create a joint venture, partnership, or other similar relationship between them. Further, no agent, employee, or servant of the Consultant shall be deemed to be an employee of Licensor.

The undersigned warrants to Licensor that he/she has full power and authority to enter into, and where applicable, to act as the agent of the Consultant and be bound to perform its obligations under this Agreement.

### 1. LICENSOR'S AGREEMENT TO PROVIDE PRODUCTS:

Licensor agrees to provide the following geospatial data:

in an area described as follows:

approximate area in square mile(s):

to conform to the requirements of Licensor Purchase Order/Contract Number: \_\_\_\_\_ (hereafter "the Purchase Order(s)").



a. Licensor agrees to deliver Products to the Consultant within thirty (30) days of Consultant's execution of the original of this Agreement and its return to Licensor, provided that Licensor has the products available for delivery to the Consultant. Licensor and the Consultant understand that this Agreement facilitates a one-time delivery of Licensor's Product. This Agreement is not intended to impose upon Licensor any duty to provide the Consultant with Products on any ongoing basis. Further, Licensor has no duty or responsibility for updating the Products contained therein. Licensor may provide semi-annual updates of the Products to the Consultant as consideration for any updated data and information the Consultant may acquire and provide to Licensor as such data becomes available in the future.

b. Licensor makes no warranties or guarantees, either expressed or implied, as to the completeness, accuracy, or correctness of such Products, nor accept any liability, arising from any incorrect, incomplete or misleading information contained therein. There are no warranties, either expressed or implied, of merchantability or fitness of such Products for a particular purpose.

## **2. CONSULTANT'S AGREEMENT TO PROVIDE DATA:**

a. As consideration under this Agreement, and in exchange for the use of the data provided to the Consultant, the Consultant shall provide Licensor with the following:

b. Unless otherwise provided for in the Purchase Order(s), the Consultant agrees to deliver the data identified above in the State Plane Coordinate System, Colorado Central Zone, Datum NAD83.

c. The Consultant agrees that all physical material, photographs, reports, drawings, studies, information, specifications, estimates, maps, computer tapes, digital data, computations, intellectual property and other data (hereinafter referred to collectively as "Material" or "Products") prepared by or for the Consultant or prepared by or for any affiliate consultant or subcontractor under the terms of the project agreement are the property of the Licensor and the Licensor owns the copyright to the same. The Consultant understands that the Licensor may, at a later date, have the copyrighted Material registered with the U.S. Copyright office.

## **3. TIME OF CONSULTANT'S PERFORMANCE AND USE OF LICENSOR PRODUCTS:**

The Consultant is granted the right to use the Products Licensor provides to it for the period of the Purchase Order(s), but in no instance beyond < Date >, at which time the Consultant shall cease all use of the Products, and shall delete the Licensor Products data from their computer systems. This grant of time shall be renewable by mutual consent of the parties.

## **4. RESTRICTIONS ON CONSULTANT'S USE OF THE PRODUCTS:**

The undersigned authorized agent of the Consultant acknowledges that Licensor has imposed upon the Consultant certain limitations and restrictions on the use of the Products and the information contained therein as follows:

a. Licensor grants the Consultant the right to use Licensor's Products solely for the Consultant's internal use and as specified in paragraph 2 above. Licensor prohibits the release of its Products by the Consultant to any third party contractor without the written permission of Licensor. The Consultant agrees to use the Products for the following sole purpose:

Any other use of the Products shall be deemed a breach of this Agreement. The Consultant agrees to allow Licensor to inspect the Consultant's records regarding any possible misuse of the Products or their unauthorized release to third parties.

b. This Agreement does not constitute a sale of any title or interest in the Products. Licensor reserves all ownership rights to its Products and such other rights not expressly granted to the Consultant by this Agreement.

c. The Products are protected by the copyright laws of the United States and are being furnished with all rights reserved. The Consultant shall not copy or transmit in any form or by any means whatsoever Licensor's Products, including but not limited to, electronic, mechanical, photocopying, recording, scanning, or by any information or retrieval system for any non-approved purpose without the expressed written permission of Licensor. The Consultant shall not license, sublicense, assign, release, publish, transfer, sell or otherwise make available the Products or portion thereof to any third party without the expressed written permission of Licensor. This restriction on assignments and transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void.

d. The Products have been developed solely for Licensor's internal use. The Consultant understands and acknowledges that Licensor's geospatial database and data in the Products are subject to constant change and that its accuracy and completeness cannot be guaranteed. **UNDER NO CIRCUMSTANCE SHALL LICENSOR MAPPING BE USED FOR FINAL DESIGN PURPOSES.**

e. The Consultant agrees to recognize and honor in perpetuity the copyrights, and other proprietary claims for survey control information, databases, collateral information, and products established or produced by Licensor or the vendors furnishing said items to Licensor.

f. The Consultant will do or cause to be done all things necessary to meet the restrictions imposed on the use of the Products and to meet its obligations under this Agreement.

g. Assignment: Contractor shall not assign or otherwise transfer this agreement or any right or obligations therein.

#### **5. BREACH OF AGREEMENT, DAMAGES, CLAIMS:**

a. In the event the Consultant breaches any of the terms, conditions, covenants, or agreements contained in this Agreement, the license granted herein shall immediately cease, and Licensor shall thereupon have the right to any and all legal or equitable remedies, including but not limited to injunctive relief and damages.

b. Upon any termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and the Consultant shall immediately discontinue all use of the Products and delete the Products from their files and storage media. Upon Licensor's request, the Consultant shall promptly confirm in writing that they have complied with the foregoing.

c. Licensor is not responsible for incidental, consequential, or special damages arising out of the use of the Products provided to the Consultant. The Consultant agrees that the Products shall be used and relied upon only at the risk of the Consultant. The Consultant agrees to indemnify and hold harmless Licensor, its officials, officers, employees and servants from any liability, claims, loss, damages, injury, costs and attorney fees arising out of procuring, compiling, collecting, interpreting, producing, using or communicating the Products or information contained therein.

**6. MISCELLANEOUS:**

a. This Agreement contains no financial commitments on the part of Licensor, and any financial commitments on the part of Licensor that become a part of this Agreement are subject to the appropriation by the governing body of the Licensor.

b. This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court Jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.

c. If any provisions of this Agreement are determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable.

d. This Agreement together with the terms of the Purchase Order(s)/Contract embodies the entire agreement between the Consultant and Licensor. The parties shall not be bound by or liable for any statement, representation, promise, inducement, or understanding of any kind or motive not set forth herein. No additional agreements or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the parties.

e. Place of Performance: The place of performance for this Agreement is deemed to be:

< licensor jurisdiction >

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement  
this < Day > day of < Month, Year >.

\_\_\_\_\_  
CONSULTANT

\_\_\_\_\_  
By

\_\_\_\_\_  
Title

For Licensor: \_\_\_\_\_

If applicable:  
Approved as to Form: \_\_\_\_\_

## EXHIBIT B

# Pikes Peak Geospatial Alliance Customer Geospatial Data License Agreement

The undersigned on behalf of

---

(hereafter referred to as "the Customer") in accepting geospatial Products from (check one):

- El Paso County, Colorado
- The City of Colorado Springs, a home rule municipality
- The Colorado Springs Utilities, an enterprise of the City of Colorado Springs
- Teller County, Colorado
- El Paso – Teller County E911 Authority

(hereafter "Licensor") hereby acknowledges the limitations of the Products and the information contained therein and restrictions on its use:

1. Licensor grants the Customer a non-exclusive, non-transferable license to use the Products for internal use by the Customer and its clients and contractors. The Products are being provided to the Customer for the sole purpose of:

2. The types of Products being provided are:

3. The period of time for which the Customer is granted the right to use the Products is: < Years > years beginning < Date >. All Licensor geospatial product usage and storage must be discontinued by the customer by < Date >.

4. Delivery of the Products to the Customer shall be made by Licensor only after the Customer has fully executed this unmodified agreement and returned it to Licensor.

5. This Agreement does not constitute a sale of any title or interest in the Products. Licensor reserves all rights not expressly granted to the Customer by this Agreement.

6. The Customer understands this is a one-time delivery and that Licensor has no responsibility for updating the Products or information contained therein.

7. Upon any termination or expiration of this Agreement, all licenses granted hereunder shall immediately terminate, and the Customer shall immediately discontinue all use of the Products and delete the Products from their files and storage media. Upon Licensor's request, the Customer shall promptly confirm in writing that they have complied with the foregoing.

8. The Products are protected by the copyright laws of the United States and are being furnished with all rights reserved. No part of the information may be copied, reproduced or transmitted in any form or by any means whatsoever, including but not limited to, electronic, mechanical, photocopying, recording, scanning, or by any information or retrieval system for any non-approved purpose without the expressed written permission of Licensor. The Customer shall not license, sublicense, assign, release, publish, transfer, sell or otherwise make available the Products or portion thereof to a third party without the expressed written permission of Licensor.

9. The Products have been developed solely for internal use only. The Customer understands and acknowledges that Licensor geospatial data in the Products are subject to constant change and that its accuracy and completeness cannot be guaranteed. **UNDER NO CIRCUMSTANCE SHALL THESE PRODUCTS BE USED FOR FINAL DESIGN PURPOSES.** Licensor makes no warranties or guarantees, either expressed or implied, as to the completeness, accuracy, or correctness of such Products, nor accept any liability, arising from any incorrect, incomplete or misleading information contained therein. There are no warranties, either expressed or implied, of merchantability or fitness of such Products for a particular purpose.

10. Non-Federal/State customers: Licensor is not responsible for incidental, consequential, or special damages arising out of the use of the Products provided the Customer. The Customer agrees that the Products shall be used and relied upon only at the risk of the Customer. The Customer agrees to indemnify and hold harmless Licensor, its officials, officers, employees and servants from any liability, claims, loss, damages, injury, costs and attorney fees arising out of procuring, compiling, collecting, interpreting, producing, using or communicating the Products or information contained therein.

10a. Federal/State customers: Licensor is not responsible for incidental, consequential, or special damages arising out of the use of the Products provided the Customer. The Customer agrees that the Products shall be used and relied upon only at the risk of the Customer.

11. In the event the Customer breaches any of the terms, conditions, covenants, or agreements contained in this Agreement, not only shall the license granted herein immediately cease, but Licensor shall thereupon have the right to any and all legal or equitable remedies, including but not limited to injunctive relief and damages.

12. The Customer agrees to recognize and honor in perpetuity the copyrights, and other proprietary claims for survey control information, databases, collateral information, and products established or produced by Licensor or the vendors furnishing said items to Licensor.

13. This Agreement embodies the entire agreement between the Customer and Licensor. The parties shall not be bound by or liable for any statement, representation, promise, inducement, or understanding of any kind or motive not set forth herein. No additional agreements or modifications of any of the terms or conditions of this Agreement shall be valid unless reduced to writing and signed by the parties.

14. Neither this Agreement nor the rights granted by it shall be assigned or transferred by the Customer under any circumstance whatsoever. This restriction on assignments and transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void.

15. The Customer will do or cause to be done all things necessary to preserve its rights and meet its obligations under this Agreement.

16. This Agreement contains no financial commitments on the part of Licensor, and any financial commitments on the part of Licensor that become a part of this Agreement are subject to the appropriation by the governing body of the Licensor.

PROVISIONS

17. This Agreement is subject to and shall be interpreted under the laws of the State of Colorado, and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs, Colorado, a Colorado Home Rule City. Court Jurisdiction and venue shall exclusively be in the Colorado District Court for El Paso County, Colorado.

18. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions of this Agreement shall continue to be valid and enforceable.

19. The undersigned warrants to Licensor that he/she has full power and authority to enter into, and where applicable, to act as the agent of the Customer and be bound to perform its obligations under this Agreement.

20. Place of Performance: The place of performance for this Agreement is deemed to be:

< licensor jurisdiction >

21. Other restrictions imposed on the use of such products are:

Customer Signature line:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company or Organization Name

PPCP Exhibit B

Approved:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed or Typed Name

\_\_\_\_\_  
Title

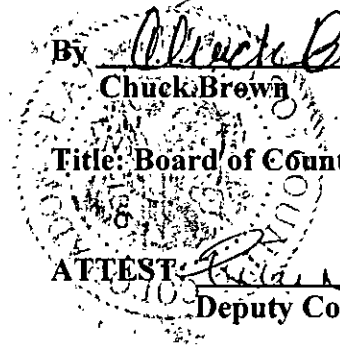
FOR EL PASO COUNTY:

By *Chuck Brown* this 8<sup>th</sup> day of July 2004.

Chuck Brown

Title: Board of County Commissioners Chairman

ATTEST: *[Signature]*  
Deputy County Clerk





FOR EL PASO COUNTY:

By *Chuck Brown* this 8<sup>th</sup> day of July 2004.  
Chuck Brown

Title: Board of County Commissioners Chairman

ATTEST: *Patricia Williams*  
Deputy County Clerk

**Scope of Services**

**for**

**2024 Pikes Peak Geospatial Alliance  
Orthoimagery Project**

**October 26, 2023**

**Revision History**

<b>Revision</b>	<b>Date</b>	<b>Description</b>
1.0	08/21/2023	<i>Previous RFP scopes, managed by CSU, were revised to account for changing specifications and new requirements.</i>
1.1	8/31/2023	<i>Adjusted text for comments provided by Tim Thomas. Still awaiting area confirmation for potential SA1 expansion.</i>
1.2	10/16/2023	<i>Exhibit appendices have been added to the document. Confirmed no changes to the SA1 area. Confirmation of Colorado Springs mosaic deliverables and stereo pair area still needed.</i>

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## 1.0 Introduction

The goal of the 2024 PPGA project is for the Pikes Peak Geospatial Alliance (PPGA), through Colorado Springs Utilities (UTILITIES), to receive high quality digital orthoimagery in a timely fashion for both El Paso and Teller counties. The CONTRACTOR shall take a conservative approach to the project to ensure that the accuracy and aesthetics of the final product are free from defects and meet or exceed PPGA expectations.

Because the desired product is to be created under “leaf-on” conditions, aerial flights are anticipated during typical summer months of June to August. Proper CONTRACTOR preparation and resource and asset management can result in acquiring and producing the product without major issues. CONTRACTOR shall approach this project in such a way as to be in the position to meet final delivery specifications without undue delays.

## 2.0 Background

The Orthoimagery Project 2024 addresses on-going needs for current digital aerial imagery by multiple governmental agencies in a two-county area of the Pikes Peak region. The following subsections describe the area of interest of each of the participants and the resulting project sub-areas. Four Band, Color/Infra-Red, digital orthorectified aerial imagery must be delivered for the entire project area. All four sub-areas may require some level of Digital Elevation Model (DEM) updating or development. As detailed in Section 3, it may also be necessary to establish additional survey control points in the sub-areas. Map accuracy requirements shall be specified in terms of standards set by the American Society of Photogrammetry and Remote Sensing (ASPRS).

UTILITIES is administering this project on behalf of the PPGA. The PPGA, for this project is comprised of the following participants:

- El Paso County
- Teller County
- El Paso - Teller E-911 (E911)
- Colorado Springs Utilities (UTILITIES)
- City of Colorado Springs

## 3.0 Scope of Services

### 3.1. Purpose

UTILITIES shall oversee this project and will designate an individual to act as the official Project Manager. The Project Manager shall, with the consent of the participating members of the PPGA Steering Committee, perform the following duties and functions relative to this project:

1. Interpret and define project specifications regarding the Contractor’s work activities
2. Direct and coordinate the (PPGA) responsibilities
3. Review Respondent’s performance
4. Manage deliverables from Respondent(s) to other PPGA participants
5. Approve payments to Respondent(s) in accordance with defined payment and deliverable acceptance terms
6. Perform such other activities as may from time to time be necessary in the performance of the terms of the contract



7. Issue final acceptance of all deliverable products and services
8. Issue any change orders or modifications to the scope of the contract.

### **3.2. CONTRACTOR Responsibilities:**

1. At the time of contract Amendment execution and subject to UTILITIES approval, CONTRACTOR shall assign a Project Manager with at least **five years** of project management experience to the project. CONTRACTOR shall obtain written approval from the PPGA prior to any change to the assigned project manager.
2. Develop a complete and concise project schedule
3. CONTRACTOR Project Manager shall strictly adhere to developed project plans, schedules and communication agreements.
4. At the time of fully executed Amendment and subject to UTILITIES approval, CONTRACTOR shall retain all required subcontractors needed to complete the project as per the project schedule.
5. Develop and document procedures to meet specifications as contracted;
6. Produce required new digital orthophotography in accordance with specifications;
7. Implement stringent QA/QC procedures and maintain specified quality standards;
8. Deliver all deliverable products as per the detailed schedule;
9. Provide project management and support services, such as required reporting, demonstrations, data handling, progress reports, and others as required.

### **3.3. Contract Administration**

CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all digital files, specifications, reports, and other products and services required to be furnished by it under this Agreement. PPGA shall have full and complete authority to reject any work deemed unacceptable pursuant to this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in such products and services if products do not conform to the specifications. In cases of rejection of CONTRACTOR's work, UTILITIES may suspend further deliveries and payments until the work tasks (products and services hereafter defined) in question are redelivered and reclassified as accepted.

## **4.0 Tasks and Deliverables**

### **4.1 Project Area and Sub-Areas**

Historically, the total project has been divided geographically into four (4) sub-areas, each reflecting a change in the delivery date. The map in Appendix B-1 illustrates these boundaries as well as a tiling scheme in which the tiles are dimensioned at 4,000' x 4,000'.

Note that all areas are represented in terms of tiles. Tiles within each of the four sub-areas are further grouped into project deliverable areas. The project deliverable areas equate to the desired delivery sequence. Deliverables for the OP 2024 project shall therefore include fifteen (15) area deliverables (Refer to Figure 1- 2024 Area Deliverables).

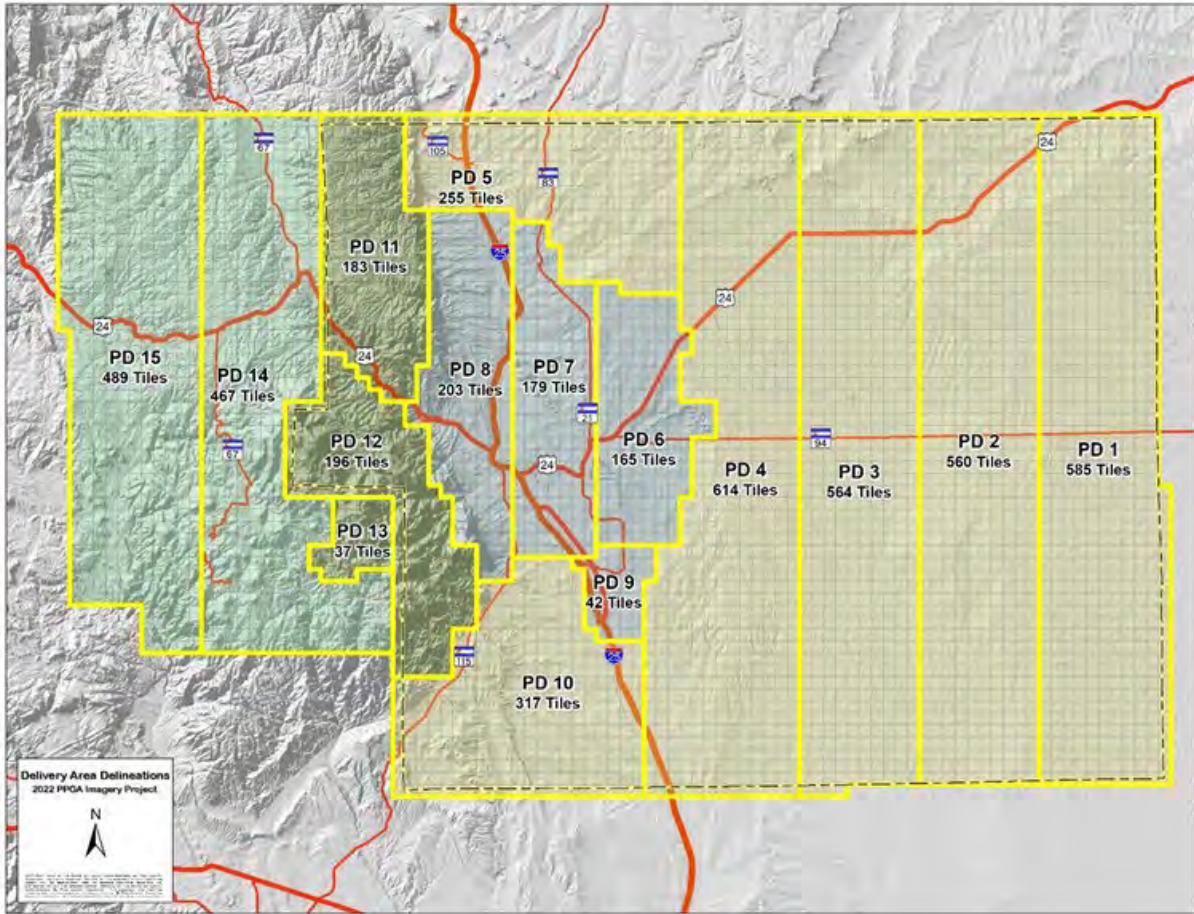


Figure 1 – 2024 Area Deliverables

Digital data representing the area and sub-area boundaries, tile layout, and deliverable areas shall be made available to CONTRACTOR. **The total project area is approximately 2787 square miles.**

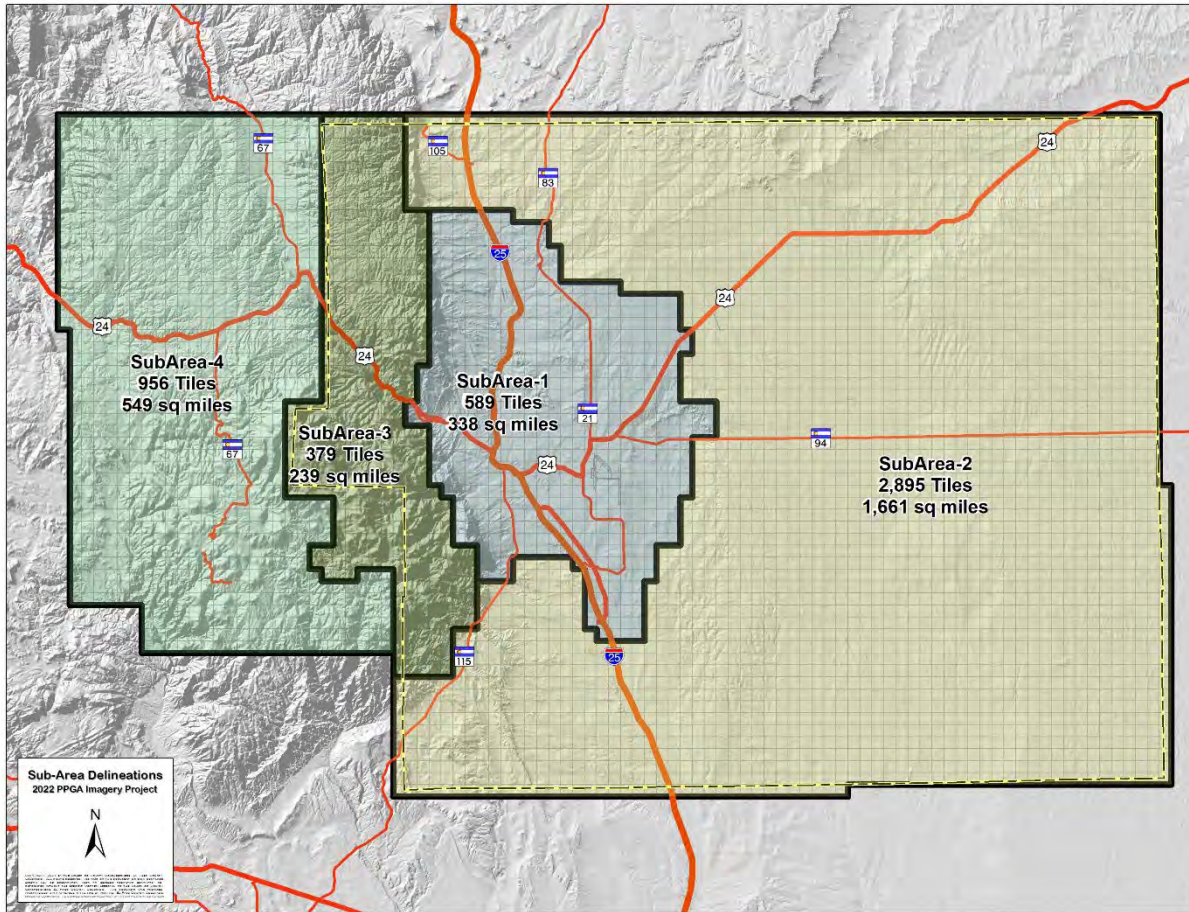


Figure 2 – 2024 Sub Areas

#### 4.1.1 Sub-Area 1

Sub-Area 1 consists mostly of the Colorado Springs metropolitan area, including the US Air Force Academy and the City of Fountain (refer to Appendix B-1). The City of Colorado Springs and Colorado Springs Utilities have a primary interest in this sub-area with overlapping interests by E911 and El Paso County.

Sub-Area 1 must be flown in the spring of 2024 during leaf-off conditions. Depending on conditions, Sub-Area 1 flights must be conducted starting on or around March 15, 2024, and concluding on or around April 30, 2024. **Sub-area 1 is 338 square miles, comprised of 589 tiles.**

#### 4.1.2 Sub-Area 2

Sub-Area 2 shall encompass Ft Carson and the majority of El Paso County east of the mountains; less Sub-Area 1 (refer to Appendix B-1). El Paso County and E911 have the primary interest in Sub-Area 2 with the City of Colorado Springs and Colorado Springs Utilities having an interest in portions of the area as well.

Sub-Area 2 must be flown during the spring of 2024. Depending on conditions, Sub-Area 2 flights must be conducted starting on or around April 15, 2024, and concluding on or around May 31, 2024. **Sub-area 2 is 1,661 square miles, comprised of 2,895 tiles.**

### 4.1.3 Sub-Area 3 & 4

Sub-Area 3 and 4 are comprised of the mountainous areas of the western portion of El Paso County and all of Teller County. E911, El Paso County, Colorado Springs Utilities, and El Paso County all have predominant interest in the sub-area. **Due to snow considerations, Sub-Area 3 and 4 must be flown during the summer of 2024. Depending on conditions, Sub-Area 3 and 4 flights must be conducted starting on or around June 1, 2024, and concluding no later than July 31, 2024. Sub-area 3 is 239 square miles and comprised of 416 tiles while Sub Area 4 is 549 square miles and comprised of 956 tiles.**

### 4.2 Sub-Area Specifications

Project Specification Overview				
Sub Area	SA-1	SA-2	SA-3	SA-4
Total Area / Tiles	338 sq mi / 589 tiles	1661 sq mi / 2895 tiles	239 sq mi / 416 tiles	548 sq mi / 956 tiles
Ground Sampling Distance	0.5'	1.0'	1.0'	1.0'
Ortho Resolution	Six Inch (6")	One Foot (1')	One Foot (1')	One Foot (1')
Orthoimagery Accuracy	ASPRS Class 1 for 1:1200 Map Scale (One Foot RMSE)	ASPRS Class 1 for 1:2400 Map Scale (Two Foot RMSE)	ASPRS Class 1 for 1:2400 Map Scale (Two Foot RMSE)	ASPRS Class 2 for 1:2400 Map Scale (Four Foot RMSE)
DEM Source	2018 LiDAR Data – Updated as needed to meet accuracy	2018 LiDAR Data – Updated as needed to meet accuracy	2018 LiDAR Data – Updated as needed to meet accuracy	Latest Available USGS NED data of 1/3 arc seconds (10 meters)
Coordinate System / Datum / Units	Colorado State Plane Central Zone, NAD 83 (HARN)	Colorado State Plane Central Zone, NAD 83 (HARN)	Colorado State Plane Central Zone, NAD 83 (HARN)	Colorado State Plane Central Zone, NAD 83 (HARN)
Control Source	CSU FIMS NAVD88 (DEM Update)	NGS, Colorado State Plane Central Zone, NAD 83 (HARN) NAVD 88 (DEM UPDATE)	NGS, Colorado State Plane Central Zone, NAD 83 (HARN) NAVD 88 (DEM Update)	NGS, Colorado State Plane Central Zone, NAD 83 (HARN) NAVD 88 (DEM Update)
Tiled Delivery Format	TIFF/TFW	TIFF/TFW	TIFF/TFW	TIFF/TFW
Mosaic Delivery Format	JP2	JP2	JP2	JP2
Imagery Type	RGBNIR	RGBNIR	RGBNIR	RGBNIR
Tile Scheme	PPGA 4000 x 4000	PPGA 4000 x 4000	PPGA 4000 x 4000	PPGA 4000 x 4000
Target Flight Window	Mar 15 – Apr 30	Apr 15 – May 31	Jun 1 – Jul 31	Jun 1 – Jul 31

### 4.3 Sub-Areas 1

#### 4.3.1 Image Resolution

Image pixel resolution for Sub-Area 1 shall be six (6) inch.

#### 4.3.2 Ground Sampling Distance

CONTRACTOR is not to exceed flying heights for the 6" pixel acquisition. CONTRACTOR shall not deviate from these requirements unless prior approval is obtained by the PPGA. Statistical sampling (RMSE) must show that these GSD values are achieved. **Offsets from the required ground sampling distances should not exceed ten percent (10%).**

Sub-area 1: Resolution = 0.5' GSD MAXIMUM

#### 4.3.3 Horizontal Accuracy

All final image products must meet the horizontal accuracy specifications listed below:

- ASPRS Class 1 accuracy standard for 1:1200 mapping. This specifies a point coordinate accuracy requirement in which the horizontal Root Mean Square Error (RMSE) for a minimum of 20 well defined points is less than 1.0 ‘

#### 4.3.4 Digital Elevation Model (DEM)

The existing 2018 DEM ground surface, originally derived from the 2018 LiDAR data, shall be used as the rectification source for the 2024 flight. CONTRACTOR shall update any tile or tiles of DEM data for the surface to be adequate for accurate orthoimagery rectification.

Should the DEM for an orthophoto imagery tile need to be updated, the PPGA requires that the DEM be re-delivered in tile format (4000'x4000') containing all DEM data used for that tile. This updated data shall be delivered in an LAS format.

#### 4.3.5 Coordinate System

The coordinate system for this project shall be Colorado State Plane Coordinate System, Central Zone, Datum of NAD83 (HARN), units of US Survey Feet. Although limited to the DEM delivery, the Vertical Datum shall be NAVD88.

#### 4.3.6 Flight Dates

Imagery shall be flown when deciduous foliage is generally under leaf-off condition. Thus, the target flight window shall be from June 1, 2024, to August 31, 2024. The appropriate flight dates are listed below and may be adjusted due to ground or weather conditions upon prior approval of UTILITIES.

Area	Start Date	Finish Date
Area SA-1	March 15, 2024	April 30, 2024

### 4.4 Sub-Area 2

#### 4.4.1 Image Resolution

Image pixel resolution for Sub-Area 2 shall be one (1) foot.

#### 4.4.2 Ground Sampling Distance (GSD)

CONTRACTOR is not to exceed flying heights for the 1' pixel acquisition. CONTRACTOR shall not deviate from these requirements unless requested by CONTRACTOR and approved by UTILITIES. Statistical sampling (RMSE) must show that these GSD values are being achieved. **Offsets from the required ground sampling distances should not exceed ten percent (10%).**

Sub-area 2: Resolution = 1.0' GSD MAXIMUM

#### 4.4.3 Horizontal Accuracy

All final image products must meet the horizontal accuracy specifications listed below:

- ASPRS Class 1 accuracy standard for 1:2400 mapping. This specifies a point coordinate accuracy requirement in which the horizontal Root Mean Square Error (RMSE) for a minimum of twenty (20) well defined points is less than 2.0 ‘

#### 4.4.4 Digital Elevation Model (DEM)

The existing 2018 DEM ground surface, originally derived from the 2018 LiDAR data, shall be used as the rectification source for the 2024 flight. CONTRACTOR shall update any tile or tiles of DEM data for the surface to be adequate for accurate orthoimagery rectification.

Should the DEM for an orthophoto imagery tile need to be updated, the PPGA requires that the DEM be re-delivered in tile format (4000'x4000') containing all DEM data used for that tile. This updated data shall be delivered in an LAS format.

#### 4.4.5 Coordinate System

The coordinate system for this project shall be Colorado State Plane Coordinate System, Central Zone, Datum of NAD83 (1996), units of US Survey Feet. Although limited to the DEM delivery, the Vertical Datum shall be NAVD88.

#### 4.4.6 Flight Dates

Imagery shall be flown when deciduous foliage is generally under leaf-off condition. Thus, the target flight window shall be from April 15, 2024, to May 31, 2024. The appropriate flight dates are listed below and may be adjusted due to ground or weather conditions upon prior approval of UTILITIES.

Area	Start Date	Finish Date
Area SA-2	April 15, 2024	May 31, 2024

### 4.5 Sub Area 3

#### 4.5.1. Image Resolution

Image pixel resolution for Sub-Area 3 shall be one (1) foot.

#### 4.5.2. Ground Sampling Distance

CONTRACTOR is not to exceed flying heights for the 1' pixel acquisition. CONTRACTOR shall not deviate from these requirements unless approved by UTILITIES. Statistical sampling (RMSE) must show that these GSD values are being achieved. **Offsets from the required ground sampling distances should not exceed ten percent (10%).**

Sub-area 3: Resolution = 1.0' GSD MAXIMUM

**4.5.3. Horizontal Accuracy**

All final image products must meet the horizontal accuracy specifications listed below:

- ASPRS Class 1 accuracy standard for 1:2400 mapping. This specifies a point coordinate accuracy requirement in which the horizontal Root Mean Square Error (RMSE) for a minimum of 20 well defined points is less than 2.0 ‘

**4.5.4. Digital Elevation Model**

The existing 2018 DEM ground surface, originally derived from the 2018 LiDAR data, shall be used as the rectification source for the 2024 flight. CONTRACTOR shall update any tile or tiles of DEM data for the surface to be adequate for accurate orthoimagery rectification.

Should the DEM for an orthophoto imagery tile need to be updated, the PPGA requires that the DEM be re-delivered in tile format (4000'x4000') containing all DEM data used for that tile. This updated data shall be delivered in an LAS format.

**4.5.5. Coordinate System**

The coordinate system for this project shall be Colorado State Plane Coordinate System, Central Zone, Datum of NAD83 (1996), units of US Survey Feet. Although limited to the DEM delivery, the Vertical Datum shall be NAVD88.

**4.5.6. Flight Dates**

Imagery shall be flown when deciduous foliage is under leaf-on condition yet early enough to minimize shadows and reduce the chance of snow. Thus, the target flight window shall be from June 1, 2024, to July 31, 2024. The appropriate flight dates are listed below and may be adjusted due to ground or weather conditions upon prior approval of UTILITIES.

Area	Start Date	Finish Date
Area SA-3	June 1, 2024	July 31, 2024

**4.6 Sub Area 4**

**4.6.1 Image Resolution**

Image pixel resolution for Sub-Area 4 shall be one (1) foot.

**4.6.2 Ground Sampling Distance**

CONTRACTOR is not to exceed flying heights for the 1' pixel acquisition. CONTRACTOR shall not deviate from these requirements unless approved by UTILITIES. Statistical sampling (RMSE) must show that these GSD values are being achieved. **Offsets from the required ground sampling distances should not exceed ten percent (10%).**

Sub-area 3: Resolution = 1.0' GSD MAXIMUM

#### 4.6.3 Horizontal Accuracy

All final image products must meet the horizontal accuracy specifications listed below:

- ASPRS Class 2 accuracy standard for 1:2400 mapping. This specifies a point coordinate accuracy requirement in which the horizontal Root Mean Square Error (RMSE) for a minimum of 20 well defined points is less than 4.0 ‘

#### 4.6.4 Digital Elevation Model

Existing DEM data available from the USGS shall be used as the DEM data source. National Elevation Dataset (NED) available data of 1/3 arc-second, or approximately 10 meters, can be downloaded for free from the USGS using the National Map viewer. CONTRACTOR is responsible for downloading this publicly available data to cover Sub-Area 4. Note that available data may be in multiple files and based on different collection years. CONTRACTOR is expected to update or supplement this DEM data, if necessary, to ensure that final orthophotos for the area meet specified horizontal accuracy tolerances.

#### 4.6.5 Coordinate System

The coordinate system for this project shall be Colorado State Plane Coordinate System, Central Zone, Datum of NAD83 (1996), units of US Survey Feet.

#### 4.6.6 Flight Dates

Imagery shall be flown in late spring to early summer, under leaf-off conditions if conditions make that possible, and early enough to minimize shadows and reduce the chance of snow. The appropriate flight dates are listed below and may be adjusted due to ground or weather conditions upon prior approval of UTILITIES.

Area	Start Date	Finish Date
Area SA-4	June 1, 2024	July 31, 2024

### 5.0 Overall Aerial Photography Requirements

#### 5.1. Digital Aerial Camera

The aerial camera used shall be a precision large-format digital aerial camera equipped with low distortion, high-resolution optics, and high pixel count charge-coupled device (CCD) sensors. It must be capable of:

- Ground resolution equal to or better than 6”
- Generating four-band imagery from separate red, green, blue, and near infrared bands



- Supporting high geometric accuracy through forward motion compensation and image stabilization
- Producing images that are compatible with existing softcopy photogrammetric environments (Image station)

A digital camera calibration report shall be submitted. If not, any available results of camera tests completed by the USGS or other organizations independent of CONTRACTOR shall be submitted. In addition, to be submitted are 1) the results of testing done by the camera manufacturer and/or CONTRACTOR and 2) detailed camera specifications. CONTRACTOR shall own the digital aerial camera and that there are spare cameras of the same make and model available should issues occur with camera performance.

## 5.2. Multi-spectral Image Acquisition

For all project areas, the color (RGB) and near-infrared (NIR) bands are to be acquired simultaneously such that a four-band image (RGBNIR) can be created for delivery. Any attempt to use image compression during image acquisition must be approved by the PPGA prior to the start of the project.

## 5.3. Flight Conditions

To ensure product uniformity, it is imperative that CONTRACTOR addresses adherence to the specific flight conditions. Flight time schedules, quality assurance of color balancing processes, continuity between flights and continuity from one sub area to the next are all conditions that must be addressed in CONTRACTOR responses.

The sun angle for all flights shall not be less than thirty (30) degrees and orthophoto imagery shall be acquired generally between 10:00 am and 2:00 pm local time. In no case shall orthophoto imagery be undertaken when the ground is obscured by snow; in the presence of obscuring fog or dust; when streams are not within their normal banks; or when cloud shadows appear on more than two percent (2%) of the area in any one image. Photographs shall not contain objectionable shadows (e.g., obscuring roads and other important features) caused by relief or low solar altitude. CONTRACTOR shall use photographic targets for use in establishing horizontal control during aerial triangulation, targets should be of an appropriate size to be easily recognizable within the aerial imagery.

**Note: UTILITIES and the PPGA strongly prefers flights to be under sunny conditions and encourages CONTRACTOR to not fly during overcast conditions. CONTRACTOR should contact UTILITIES before flying under overcast skies.**

## 5.4. Flight Plans

All flight lines shall be submitted digitally in a standard ESRI shape file format and in the coordinate system specified for the given project area. Flight line features shall be attributed with appropriate identification information. Flight lines may be broken up into flight segments to accommodate terrain changes, atmospheric problems, or military flight approval. Ground sampling distances shall be maintained throughout the flight line, which would be flown at the same altitude. Each segment of a flight line shall be flown continuously, without interruption. The principal points of the first two (2) and the last two (2) exposures of each flight line shall fall outside the boundaries of the area to be covered by the flight, and all side boundaries shall be

covered by a minimum of 25% of the photo stereo image format. The principal points of the first two (2) and the last two (2) exposures of each flight segment shall overlap. These flight plans shall be submitted for approval by the PPGA prior to the aerial photography imagery phase. Upon completion of the photographic missions, all revised, final flight lines shall be submitted with photo centers.

**Note:** There are several military reservations within the project area. Authorization for over flights of these areas and for flights within Traffic Control Zones associated with both military and civil air operations may have to be secured and shall be the responsibility of CONTRACTOR to do so. The PPGA, if requested, can set up a meeting with Colorado Springs municipal airport and Ft Carson officials (Ft. Carson absolutely requires overflight authorization) to assist with flight coordination and other communication requirements. All final arrangements shall be the responsibility of CONTRACTOR and must be reported to UTILITIES. Any issues securing clearance in these areas must be reported to the PPGA within twenty-four (24) hours.

### **5.5. Re-flights**

Unacceptable orthophoto imagery shall be corrected, at no additional cost to UTILITIES. The re-flight coverage shall overlap the accepted orthophoto imagery by at least two (2) stereo models. Re-flights fall under the same quality control standards and guidelines as all other imagery in this project. Upon completion of the re-flight(s), CONTRACTOR shall submit a detailed quality control report to the PPGA project manager for approval based upon stated specifications.

### **5.6. Aircraft**

Any aircraft to be used on the project shall be equipped with all essential navigational and photographic instruments, including Airborne Global Positioning Satellite (ABGPS) enhanced navigational systems. All aircraft must be operated by a well-trained and experienced crew. Performance of the aircraft shall be adequate to complete the proposed project in accordance with the technical specifications. All operations shall be in conformity with the applicable official regulations and ordinances. Appropriate Federal Aviation Administration documentation indicating that the aircraft used is within current requirements and operating specifications shall be submitted by CONTRACTOR prior to the first flight in which the aircraft is used on the project. CONTRACTOR shall provide evidence that all aircraft used for this project are properly insured.

The aircraft shall have a proven service ceiling with an operating load of not less than five percent (5%) above the highest altitude requirements to secure the specified orthophoto imagery. It is not mandatory, but it is preferred, that CONTRACTOR own the aircraft used for the OP 2024 project and that CONTRACTOR has access to a backup aircraft.

#### **5.7. Spacing of Images**

Overlapping images in each flight line and between flight lines shall provide full stereoscopic coverage of the area to be mapped in accordance with the end lap and side lap specifications.

#### **5.8. End lap**

Images used as stereoscopic pairs shall have overlap of between fifty-five percent (55%) and sixty-five percent (65%) in the respective frames. Consecutive images in each flight line shall have an end lap of approximately sixty percent (60%) to ensure full stereoscopic coverage.

#### **5.9. Side lap**

Side lap between adjacent parallel flight lines shall be adequate to satisfy the requirement for stereoscopic coverage, and shall be approximately thirty percent (30%), plus or minus five percent (5%).

#### **5.10. Crab**

Any flight or portion thereof in which crab is more than three degrees (3°) shall be cause for rejection of orthophoto imagery. CONTRACTOR shall describe how the proper crab shall be maintained and documented throughout the flight.

#### **5.11. Tilt**

Tilt of the camera from vertical at the instant of exposure shall not exceed three degrees (3°), nor shall it exceed five degrees (5°) between successive exposure stations. Average tilt over the entire project shall not exceed one degree (1°). CONTRACTOR shall describe how the proper tilt shall be maintained and documented throughout the flight.

#### **5.12. Flight Height**

Proper flight heights must be maintained to meet the ground sampling distance requirements as outlined in section 4 of this document. The departure above or below the flying height required to maintain the specified photo scale must not exceed five percent (5%). CONTRACTOR shall be responsible for maintaining proper flying height throughout the project.

#### **5.13. Flight Data Tagging**

CONTRACTOR shall provide a digital photo flight line index containing the geographic centers of each flight line in an ESRI shape file format. The index shall be in the coordinate system specified for this project and must include the following information.

- Flight line number
- Exposure number/ID Time of day of exposure (in the format: hr:min:sec)
- Date of flight line flight (in the format: mm/dd/yyyy)
- Elevation in feet above sea level
- Scale of orthophoto imagery
- Ground Sampling Distance

#### **5.14. Disposition of the Original Imagery**

The original orthophoto imagery and products provided shall be the property of the PPGA. Delivery of the original imagery to UTILITIES in TIFF format is required. UTILITIES prefers deliveries using portable hard drives with USB connectors. Any other type of delivery method must be approved by UTILITIES prior to delivery. CONTRACTOR shall not make, sell, or loan copies of this data except as approved in writing by UTILITIES.

#### **5.15. Photo Point Index**

CONTRACTOR shall provide a digital photo point index containing the geographic centers of each original image in an ESRI shape file format. The index shall be in the coordinate system specified for this project and must include the following information:

- Flight line number
- Exposure number/ID
- Date of exposure (in the format: mm/dd/yyyy)
- Time of day of exposure (in the format: hr:min:sec)
- Elevation in feet above sea level
- X Location of Point
- Y Location of Point
- Scale of orthophoto imagery
- Ground Sampling Distance

### **6.0 Survey Control and Analytical Triangulation Requirements**

#### **6.1 Ground Control Points**

CONTRACTOR shall need to select and use enough ground control points as necessary to facilitate both Airborne GPS data capture and sufficient ground referencing. CONTRACTOR should identify the desired location of the ground control points as part of their operational flight map.

These points shall be delivered to the PPGA in a standard ESRI shape file format, in the coordinate system specified for this project and must include the following information:

- Point Name
- X Location of Point
- Y Location of Point
- Z Location of Point

## **6.2 Survey Control**

Survey control points currently exist across a portion of the project area, generally within the Colorado Springs city limits. The Colorado Springs Utilities Land Base Services group shall be available to CONTRACTOR as available to help identify survey control points within the Colorado Springs city limits as needed for this project. CONTRACTOR is responsible for control in all other areas. Sub area delineations can be found in Appendix B-1. Note that delivery area order must be maintained. Delivery area order shall not be changed without the consent of the PPGA.

### **6.2.1 Sub-Area 1**

Portions of Sub-Area 1 have been photographed and mapped under several previous projects and therefore most of the area has sufficient control to ensure proper adjustment of new imagery. The PPGA shall work with CONTRACTOR to provide existing control point information within this area.

If new control is required within sub-area 1, if available, the PPGA may be able to provide survey services within the city limits and will provide reports of any survey efforts indicating the accuracy attained in capturing new control points. All surveying shall be conducted under the direct supervision of a licensed Colorado Professional Land Surveyor. The accuracy of any new control surveys shall meet or exceed the accuracy requirements for this project.

CONTRACTOR shall be responsible for collecting new control outside of the city limits. CONTRACTOR must fully justify any requirement for additional control to the PPGA. Upon completion of new survey control, a digital survey report shall be produced by CONTRACTOR and delivered to the PPGA project manager for approval. The accuracy of any new control surveys shall meet or exceed the accuracy requirements for this project.

### **6.2.2 Sub-Area 2**

Portions of Sub-Area 2 have been photographed and mapped under many previous projects and therefore most of the area has sufficient control to ensure proper adjustment of new imagery. UTILITIES shall work with CONTRACTOR to provide existing control point information and for any additional control that may be needed to cover any new areas within Sub-Area 2. It is doubtful that any new control is needed within this area.

However, should new control be required in this area, CONTRACTOR shall provide all survey services. CONTRACTOR must fully justify any requirement for additional control to the PPGA. Upon completion of new survey control, a digital survey report shall be produced by CONTRACTOR and delivered to the UTILITIES project manager for approval. All surveying shall be conducted under the direct supervision of a licensed Colorado Professional Land Surveyor. The accuracy of any new control surveys shall meet or exceed the accuracy requirements for this project.

### **6.2.3 Sub-Area 3**

Sub-Area 3 is the smallest of the sub-areas but is also the most remote. Sub-Area 3 has been photographed and mapped under many previous projects and therefore most of the area has sufficient control to ensure proper adjustment of new imagery.

Should new control be required in this area, CONTRACTOR shall provide all survey services. CONTRACTOR must fully justify any requirement for additional control to UTILITIES. Upon completion of new survey control, a digital survey report shall be produced by CONTRACTOR and delivered to UTILITIES project manager for approval. All surveying shall be conducted under the direct supervision of a licensed Colorado Professional Land Surveyor. The accuracy of any new control surveys shall meet or exceed the accuracy requirements for this project.

### **6.2.4 Sub-Area 4**

Sub-Area 4 consists of the entirety of Teller County that is not already part of another sub-area.

Should new control be required in this area, CONTRACTOR shall provide all survey services. Upon completion of new survey control, a digital survey report shall be produced by CONTRACTOR and delivered to UTILITIES project manager for approval. All surveying shall be conducted under the direct supervision of a licensed Colorado Professional Land Surveyor. The accuracy of any new control surveys shall meet or exceed the accuracy requirements for this project.

## **6.3 Control Point Data**

Data depicting the control points utilized for this project shall be delivered to UTILITIES in a standard ESRI shape file format and shall be in the coordinate system specified for this project. Note that all points must also include elevation (Z) coordinate information as an attribute.

## **6.4 Aerial Triangulation Standards**

Fully analytic aerial triangulation shall be used during this project to obtain high accuracy solutions for all project areas. Second generation orientation techniques are not to be used on this project. CONTRACTOR shall ensure UTILITIES that all equipment, software, and procedures used during the Aerial Triangulation process are acceptable to meeting this requirement.

The aerial triangulation solution shall adequately control all aerial imagery to facilitate accurate ortho-rectification of the imagery. At a minimum, the positional accuracy of pass and tie points established through the aerial triangulation process shall meet or exceed each of the following conditions:

- Root-mean square error (RMSE) of the final block adjustment at all control and check points shall not exceed  $1/7500$  of the flight height.
- The maximum allowable error of any point shall not exceed  $\pm 1/5000$  of the flight height.

CONTRACTOR should employ checkpoints to validate the accuracy of the aerial triangulated solution. CONTRACTOR should report the results of the check to UTILITIES before proceeding

with any ortho-rectification. Should these results fail to meet project accuracy standards, UTILITIES reserves the right to halt project progress until corrective actions have been put in place to correct the situation.

### **6.5 Aerial Triangulation Check Points**

Check points are horizontal/vertical control points that have been established by ground control procedures throughout the photo block for accuracy checking purposes. At the discretion of CONTRACTOR, checkpoints may be used to improve the aerial triangulation results. CONTRACTOR shall notify UTILITIES of the locations of any check points used within the final solution. The positional values of these points may subsequently be used in the aerial triangulation adjustment once the checks have been evaluated and approved. Independent of these check points, UTILITIES shall use its own set of checkpoints to independently validate from the CONTRACTOR deliverable product.

### **6.6 Aerial Triangulation Report**

Upon completion of all aerial triangulation work or for any required sub-block adjustments, CONTRACTOR shall deliver two separate reports for the PPGA to review. The first report shall be an overview report of flight, control, and exposure information, and shall include, but shall not be limited to, the following items:

- Control and flight line indexes
- Exposure stations
- Control points (properly labeled)

The second report shall be an Aerial Triangulation report outlining the results of the AT process.

This report shall include, but shall not be limited to, the following items:

- All geometric closure errors for survey control points
- Computed coordinates of all control, pass, and check point locations
- Identification of all points to include:
  - Points that were included in the AT solution.
  - Points that were discarded from the AT solution.
  - Explanation of why points were discarded.
  - Weighting factors applied to all points used in the AT solution.

Reports shall also include, at a minimum, a brief narrative that describes the overall AT process including equipment used, procedures, software, RMSE summaries, bundle adjustment solution results, and geometric closure errors. Also included should be significant issues (misfits) encountered at control points and the steps taken to analyze the problem and solutions to rectifying these discrepancies.

## **7.0 Digital Imagery Requirements**

### **7.1. Delivery Areas**

Orthophotos shall be delivered for each Sub-Area of this project, as described in Section 3 of this Statement of Work. Delivery areas are delineated in Appendix B-2. Delivery area order shall not be changed without the consent of UTILITIES.

### **7.2 Raw Imagery Review**

UTILITIES expects the collection of Raw imagery to meet all specifications in this scope regarding clouds, shadows, snow, etc. However, as a simple check of the raw imagery, CONTRACTOR will provide samples of raw imagery for each delivery area for UTILITIES to review. Parties will work out the details of data delivery prior to data collection.

### **7.3 Orthophotos**

CONTRACTOR will process raw imagery at the highest bit depth possible to achieve optimum effectiveness. Orthophotos shall be delivered in the following formats listed below.

- 8-bit, 4 Band (Red, Green, Blue, Near-Infrared)
- GeoTiff, TFW

### **7.4 Image Quality**

Orthophotos shall not contain defects such as missing pixels, pixel color anomalies, excessive color bleed, etc. CONTRACTOR is expected to correct any distortions caused by elevated or depressed structures such as bridges, railroad beds, overpasses, or steep terrain. Any images that are delivered to UTILITIES with these types of anomalies shall be rejected. In addition, visible image seams or sutures within a digital orthophoto shall also be rejected, including any with edge or feather effects. Furthermore, orthoimagery with evidence of imagery manipulation, such as copy/paste of pixels, shall be rejected by UTILITIES.

### **7.5 Image Mosaic Tiles**

Creating image mosaic tiles is an essential part of producing a digital orthoimagery. The methods used to mosaic imagery are critical to the final product produced. Where digital mosaic orthoimages are created, it is essential that proper color, contrast, and brightness be maintained across such areas so that visual effects are essentially eliminated. All radiometric correction processes must result in minimal radiometric seams within or between flight lines. Images must also be well edge matched such that tonal values are consistent across edges. Finally, CONTRACTOR should use advanced color balancing techniques to create an output dataset that has a seamless context across the entire project.

### **7.6 Data Structure**

Digital orthoimagery data shall be delivered in a TIFF format with associated world (TFW) files. Files shall be named and sized (4000' x 4000') according to the tile layout provided by UTILITIES. Data should be transferred to UTILITIES using portable disk technology. If applicable, CONTRACTOR shall perform anti-virus software checking of all portable disks prior to any delivery to UTILITIES.



## 7.7 Quality Acceptance / Acceptance Standards

CONTRACTOR shall provide orientation to its employees assigned to this project so that all employees clearly understand the requirements and deliverable specifications of the project. CONTRACTOR shall also perform quality assurance checks of the data prior to delivery of the data to UTILITIES and shall provide evidence of such quality assurance checks by delivering feedback regarding each delivery. In addition to that undertaken by CONTRACTOR, UTILITIES shall perform its own quality acceptance check. Acceptability of deliveries of data shall occur when all digital files and digital orthophotos delivered meet all project requirements regarding file structure and conformity as per UTILITIES review. ***UTILITIES shall provide feedback on all orthoimagery deliverables within 21 days of receipt of data.***

## 7.8 Project Wide Mosaic

Upon completion and acceptance of orthoimagery tiles and completion of sub-areas, CONTRACTOR is to produce project wide mosaic datasets for the areas and formats listed below.

- One JP2 file covering SA1 (City of Colorado Springs area)
- One JP2 file covering SA1-SA3 (El Paso County Area)
- One JP2 file covering SA Area 4 and extended areas comprising all of Teller County boundary (Teller County)
- One JP2 file covering SA Areas 1-4 (Entire Project Area)

Compression parameters shall be discussed and agreed upon prior to delivery.

## 7.9 Labor Resources

UTILITIES will allow the major production work of Orthophoto production to be performed by CONTRACTOR subcontractors. However, UTILITIES ***requires*** that all final quality control steps be completed by CONTRACTOR within the United States by CONTRACTOR employees located at that site. Should CONTRACTOR need additional production resources from outside vendors or other CONTRACTOR offices to adhere to the project schedule, the PPGA must be notified and approve such changes prior to implementation.

## 8.0 Optional Products

### 8.1 Digital Stereo Pair Requirements

Digital stereo pairs are a required deliverable for the area outlined below and covers approximately 463 square miles. Stereo pair delineations can be found in Appendix B-3. All digital stereo pairs for delivery shall be provided such that the images are compatible with ESRI ArcPRO version 3.1.

As part of this delivery, the following information related to the stereo models shall also be included with the delivery to the UTILITIES:

- Photo Position – photo center x,y,z, with Z being the above ground average
- Omega, Phi, Kappa values
- Camera Calibration
- Photo Direction
- 6 Interior orientation coefficients
- 6 exterior orientation parameters

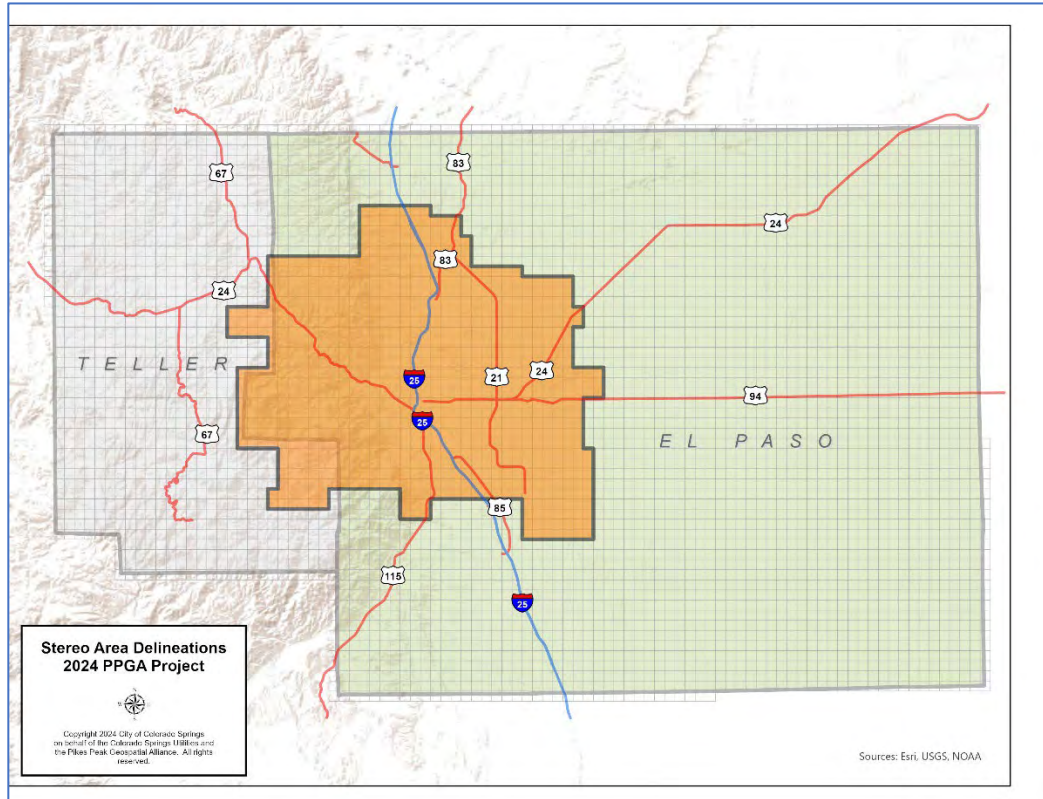


Figure 3 - Deliverable Stereo Coverage Extents

## 9.0 Warranty

The PPGA requires that CONTRACTOR warrant the deliverable products and to repair, replace, or correct any deliverable product for a **two-year period** following final acceptance of the data by the PPGA for any deliverable product that is defective, deviates from industry standards, or fails to meet all prescribed specifications set forth in this scope of work.

The PPGA retains the sole right to determine CONTRACTOR'S adherence to all specifications. If in the sole discretion of the PPGA, it determines that CONTRACTOR has seriously breached specifications, the PPGA may require CONTRACTOR to suspend production of additional work services until such time as CONTRACTOR can demonstrate that the problem has been remedied to the satisfaction of the PPGA. The PPGA may adjust the deliverable milestones of the project if necessary.

## 10.0 Deliverable Products and Acceptance

## 10.1. Deliverables

Deliverable products include information being exchanged from CONTRACTOR to the UTILITIES. The following matrix shows deliverable data from CONTRACTOR to UTILITIES and the PPGA as described in the scope of work.

Item	Section
Project Schedule	3.2, 10.0
Digital Elevation Model	4.6.4, 4.7.4
Camera Calibration Report	5.1
Flight Plan / Flight Index	5.4, 5.13
Ft Carson Approval	5.4
Aircraft FAA Documentation	5.6
Photo Point Index	5.15
Ground Control Points	6.1
Survey Control Reports	6.2
Control Point Data File	6.3
Aerial Triangulation Report / Check Points	6.4, 6.5, 6.6
Raw Imagery Review	7.2
Digital Orthoimagery Delivery	7.3
Data Review / Feedback	7.7
Project Area Mosaic Files	7.5, 7.8
Digital Stereo Pairs	8.0
Data Acceptance	9.2
Warranty	12.0

## 10.2. Project Deliverable Acceptance

All products must meet the specifications agreed to in the resultant contract. All deliverable products shall be reviewed by UTILITIES to determine whether the products are acceptable.

An acceptance program shall be executed based on a thorough review of the prototype delivery and the proper completion of the above deliverables. The prototype calls for the early delivery of four (4) separate locations (representing each Sub-Area) that contain four (4) contiguous tiles each.

UTILITIES shall use all specification and requirement criteria outlined in this document and accompanying appendices to determine acceptance and rejection of all identified deliverables.

After acceptance checking, products shall be either:

1. **ACCEPTED** - Products that meet specifications and contain no errors, or so few errors as to be

acceptable to UTILITIES, shall be formally indicated as ACCEPTED. UTILITIES shall notify CONTRACTOR of the products accepted. Payment for work completed shall not be made until the products are accepted by UTILITIES.

2. **REJECTED** - This means that the number and character of the errors detected by UTILITIES are such that the products are returned to CONTRACTOR. UTILITIES shall formally notify the CONTRACTOR of the REJECTED status of the products. CONTRACTOR must edit and correct the products for resubmittal to UTILITIES for its quality control edit. If, at the sole discretion of UTILITIES, there are an undue number of rejected products, the UTILITIES may require CONTRACTOR to suspend production until the problems contributing to the rejections are identified and corrected.

Execution of the correction procedure shall not affect the overall production schedule.

### 11.0 Schedule

The following table outlines the major schedule milestones for the 2024 orthoimagery project. UTILITIES understands that poor weather and undesirable ground conditions could lead to delays in aerial acquisition. However poor planning, resource issues, or other items caused by poor performance by CONTRACTOR are not appropriate reasons for schedule changes. Initial schedule dates cannot be changed without prior written approval of UTILITIES. Note, that it is the intention of UTILITIES to complete major production by December 31, 2024, with project completion by February 28, 2025.

Currently, this schedule is a simplified preliminary schedule and will be mutually reviewed and revised during the project kickoff phase such that dates for the initial delivery, PPGA quality review, corrections, and final acceptance can be defined.

CONTRACTOR and UTILITIES agree to start the project as soon as possible while ensuring that all flight parameters for leaf-off conditions, sun angle, and snow/cloud coverage can be met, with the project starting no sooner than March 15, 2024. Note that notice to proceed cannot be provided until all PPGA parties have approved the MOU. **The dates below may change and should be considered achievement goals.**

Notice to proceed	March 1, 2024
Begin Aerial flights	March 15, 2024
Conclude Aerial flights	July 31, 2024
Conclude Initial Ortho Production	December 1, 2024
Acceptance of all Ortho tiles	January 15, 2025
Conclude Mosaic Production	February 15, 2025
Final Acceptance of all data, Project Complete	March 15, 2025

### 12.0 Performance Requirements

The UTILITIES and CONTRACTOR recognize that time is of the essence concerning this agreement and that the UTILITIES shall suffer financial loss if the services provided by CONTRACTOR are not completed within the times specified in the schedules outlined in this scope, including any extensions thereof. UTILITIES and CONTRACTOR also recognize the delays, expense, and difficulties involved in proving the actual loss suffered by the UTILITIES if the services of this scope of work are not completed on time.

The PPGA reserves the right to terminate the contract with CONTRACTOR if the following project milestones or specifications do not occur according to schedule or are not met, respectively:

- Target flight windows are missed by CONTRACTOR (as noted above for each section, flight dates)
- Non-compliance of mapping specifications by CONTRACTOR
- Non-usage of specified DTM/DEM by CONTRACTOR
- Orthoimagery has been excessive manipulated by CONTRACTOR through copy/paste methods

### **13.0 Project Completion**

Upon delivery and final acceptance of all data deliveries, the project shall be deemed complete.

At that time, the PPGA shall provide CONTRACTOR with a formal letter indicating final acceptance of the data and overall completion of the project. At that point, the data shall be considered under warranty as specified in section 9 of this document.

December 29, 2023

Product Description	Subtotal	Cost Estimates				
		Colorado Springs	CSU	E911	EPC	Teller County
<b>Total Cost Estimate</b>	<b>\$175,226.95</b>					
<b>Base Product (Sub Areas 1-3)</b>						
Cost Share (%)	100%	25.00%	25.00%	25.00%	25.00%	0%
8 Bit, 4 Band Ortho Imagery - 6" & 12" Resolution	\$143,570.16	\$35,892.54	\$35,892.54	\$35,892.54	\$35,892.54	\$0.00
NIR Included	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>\$143,570.16</b>	<b>\$35,892.54</b>	<b>\$35,892.54</b>	<b>\$35,892.54</b>	<b>\$35,892.54</b>	<b>\$0.00</b>
<b>Secondary Products (Sub Area 4 - Teller County)</b>						
Cost Share (%)	100%	0%	0%	50%	0%	50%
8 bit, 4 Band Ortho Imagery - 1 Foot Resolution	\$31,656.79	\$0.00	\$0.00	\$15,828.40	\$0.00	\$15,828.40
NIR Included	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	<b>\$31,656.79</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$15,828.40</b>	<b>\$0.00</b>	<b>\$15,828.40</b>
<b>Mosaic Deliverables</b>						
JPEG 2000 - PD Areas 1-3 (Colorado Springs Area)*	\$0.00	\$0.00	\$0.00	\$0.00	NA	NA
JPEG 2000 - PD Areas 1-13 (El Paso County Area)*	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	NA
JPEG 2000 - PD Areas 14-15 (Teller County Area)*	\$0.00	NA	NA	NA	NA	\$0.00
JPEG 2000 - PD Areas 1-15 (Entire Project Area)*	\$0.00	NA	NA	\$0.00	NA	NA
	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
	<b>\$175,226.95</b>	<b>\$35,892.54</b>	<b>\$35,892.54</b>	<b>\$51,720.94</b>	<b>\$35,892.54</b>	<b>\$15,828.40</b>
<b>Variance from estimate</b>	<b>\$0.00</b>					<b>\$0.00</b>

\* Mosaics included in the overall price

	<b>Area</b>		<b>sq mi</b>	<b>Tiles</b>	<b>Sanborn Estimate</b>	<b>%</b>	<b>Combined Areas</b>
	SA1	6"	338	589	\$34,148.14	100.0%	SA1
	SA2 / SA3	12"	1899	3290	\$133,312.56	77.4%	SA2 / SA3
	SA4	12"	548	956		22.6%	SA4
	<b>Survey</b>				<b>\$7,766.25</b>		
	SA1-3 Tiles			4246	3274/4230	77.4%	
					956/4230	22.6%	
	<b>Total Tiles</b>		<b>2785</b>	<b>4835</b>	<b>\$175,226.95</b>		

<b>Subtotal</b>	<b>Survey Costs</b>	<b>Major split</b>
<b>Costs</b>		<b>SA1-3 vs SA4 (inc survey)</b>
\$34,148.14	\$942.55	\$143,570.16
\$103,183.92	\$5,295.55	
\$30,128.64	\$1,528.15	\$31,656.79
\$7,766.25		
<b>\$175,226.95</b>		<b>\$175,226.95</b>



## Summary of Project

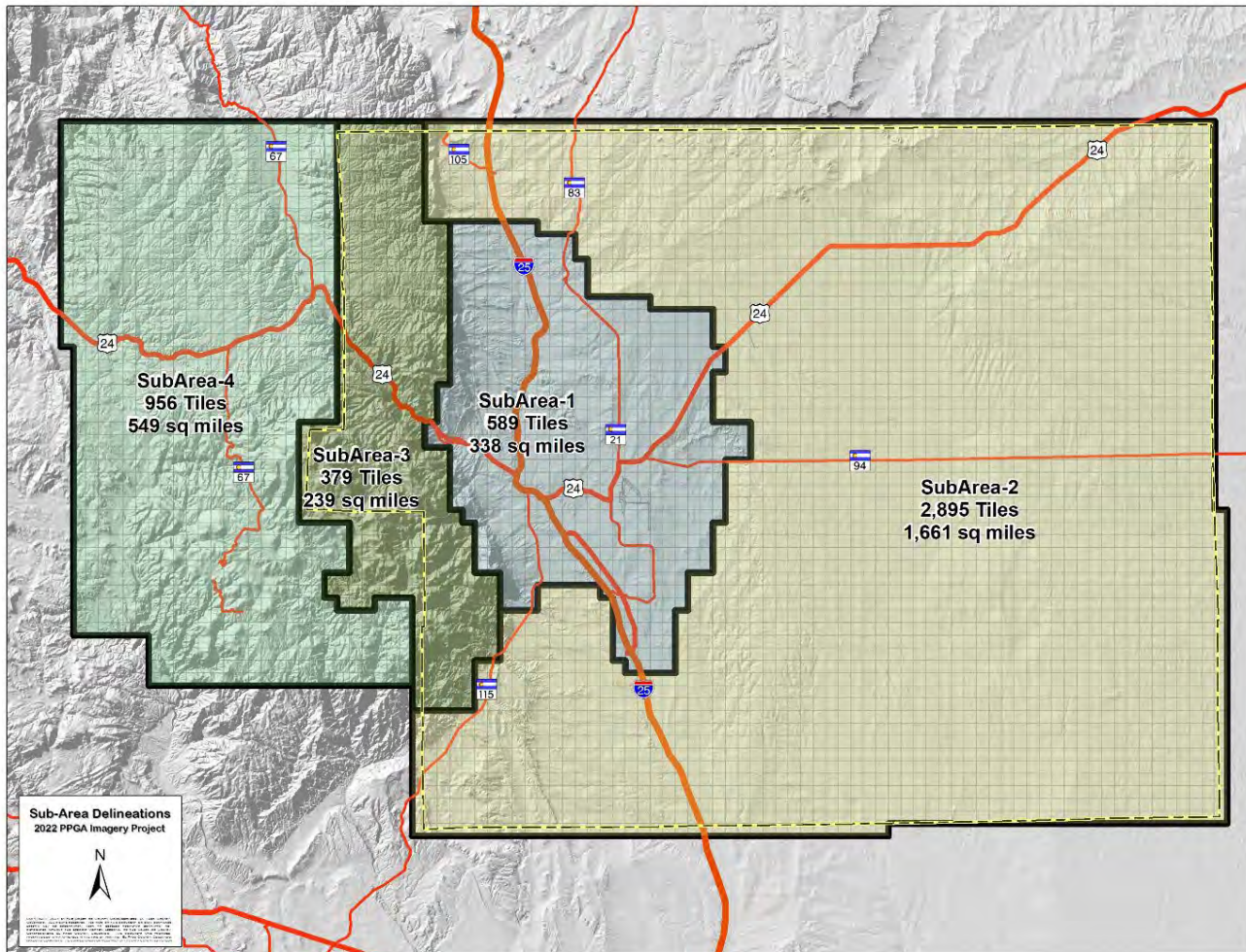
The Pikes Peak Geospatial Alliance (PPGA) is a consortium of government organizations consisting of El Paso County, the City of Colorado Springs, Colorado Springs Utilities (CSU), El Paso/Teller E911, and Teller County.

The purpose of the Orthoimagery Project 2024 (OP2024) is to acquire new color digital orthorectified aerial photography for the extents of El Paso and Teller Counties, including the Colorado Springs metropolitan area. Imagery will be acquired through the 2024 spring/summer flying season and will be commissioned by the PPGA.

For the 2024 project, CSU was asked by the PPGA to perform contractual and primary project management duties. As part, an amendment to CSU's existing geo-spatial vendor contract will be put in place to perform the work. This vendor will be used to acquire the aerial imagery and produce all derivative products.

## Project Overview

The Orthoimagery Project 2024 addresses on-going needs for current digital aerial imagery by multiple governmental agencies in a two-county area of the Pikes Peak region. The areas of interest include the City of Colorado Springs and both El Paso County and Teller County in their entirety. Data is to be acquired such that it meets standard ASPRS class 1 accuracy for orthoimagery products (1.0' and 2.0' horizontal accuracy for 6" and 12" resolution areas, respectively). Digital orthorectified aerial imagery will be created for the entire project area.



**Imagery Pricing (<1% Cloud/Shadow, 0.5'-1.5' Accuracy)**

Imagery Area	Product	Cost	Sq Miles	Cost/sq mi	Sq Kilo	Cost/sq km
Entire Project	Class I & II	\$175,226.95	2785	\$62.91	7213	\$24.29
El Paso County	Class I	\$143,570.16	2237	\$64.18	5794	\$24.78
Teller County	Class II	\$31,656.79	548	\$57.76	1419	\$22.30

**2024 Cost Breakdown**

November 28, 2023							
Product Description	Subtotal	Cost Estimates					
		Colorado Springs	CSU	E911	EPC	Teller County	
Total Cost Estimate	\$175,226.95						
Base Product (Sub Areas 1-3)							
Cost Share (%)	100%	25.00%	25.00%	25.00%	25.00%	0%	
8 Bit, 4 Band Ortho Imagery - 6" & 12" Resolution	\$143,570.16	\$35,892.54	\$35,892.54	\$35,892.54	\$35,892.54	\$0.00	
NIR Included	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	\$143,570.16	\$35,892.54	\$35,892.54	\$35,892.54	\$35,892.54	\$0.00	
Secondary Products (Sub Area 4 - Teller County)							
Cost Share (%)	100%	0%	0%	50%	0%	50%	
8 bit, 4 Band Ortho Imagery - 1 Foot Resolution	\$31,656.79	\$0.00	\$0.00	\$15,828.40	\$0.00	\$15,828.40	
NIR Included	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	\$31,656.79	\$0.00	\$0.00	\$15,828.40	\$0.00	\$15,828.40	
Mosaic Deliverables							
JPEG 2000 - PD Areas 1-3 (Colorado Springs Area)*	\$0.00	\$0.00	\$0.00	\$0.00	NA	NA	
JPEG 2000 - PD Areas 1-13 (El Paso County Area)*	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	NA	
JPEG 2000 - PD Areas 14-15 (Teller County Area)*	\$0.00	NA	NA	NA	NA	\$0.00	
JPEG 2000 - PD Areas 1-15 (Entire Project Area)*	\$0.00	NA	NA	\$0.00	NA	NA	
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	\$175,226.95	\$35,892.54	\$35,892.54	\$51,720.94	\$35,892.54	\$15,828.40	\$175,226.95
Variance from estimate	\$0.00						\$0.00

\* Mosaics included in the overall price

**2024 Project Products**

- RGB Imagery with Color Infra-Red Band
- 6" Digital Ortho Tiles (4000'x4000') (Subarea 1)
- 12" Digital Ortho Tiles (4000'x4000') (Subareas 2-4)
- Single 6" image mosaic of the City of Colorado Springs
- Single 12" image mosaic of El Paso County Colorado
- Single 12" Image mosaic of Teller County Colorado
- Updated Digital Elevation Data
- Stereo Model Coverage for a portion of El Paso County

## Intended Uses

- Colorado Springs Utilities
  - Utility Backdrop for Infrastructure Data Conversion Process
  - Change Detection Analysis (Growth, Building, Infrastructure)
  - Asset Inventory/Positional Validation
  - Vegetation Analysis & Management
  - Right of Way / Critical Access Analysis
  - Emergency Preparedness & Response
  - Planimetric Basemap Data Maintenance
  - Dam oversight / Reservoir Topographic Mapping
  
- El Paso County, E911, City of Colorado Springs, Regional Building, City of Fountain
  - Police / Fire / Emergency Response / Warrant Service
  - Property Assessment
  - Flood Control / FEMA Flood Zones
  - Other

**PPGA**

Pikes Peak Geospatial Alliance (PPGA)

- Established in 2004 as cost savings measure for all participants

**Purpose:** Cost sharing for digital aerial photography and geo-spatial products

- City of Colorado Springs
- Colorado Springs Utilities
- El Paso County
- El Paso/Teller E911
- Teller County
- City of Fountain (Participant Only)

**2024 PPGA Project**

- The purpose of the 2024 PPGA project is to acquire new color digital aerial photography for the full extents of El Paso and Teller Counties

**Cost for 2024**

- **Total Cost of Project – \$175,226.95**      Project Area – 2785 sq. mi, 7213 sq. km (Full tiles)
  - **El Paso County – \$143,570.16**      Project Area – 2237 sq. mi, 5794 sq. km (Full tiles)
  - **Teller County – \$31,656.79**      Project Area – 548 sq. mi, 1419 sq. km (Full tiles)

**Cost breakdown**

- Springs Utilities                              \$35,892.54      (El Paso County Data)
- El Paso County                                 \$35,892.54      (El Paso County Data)
- City of Colorado Springs                    \$35,892.54      (El Paso County Data)
- E911                                                \$51,720.94      (El Paso County & Teller County Data)
- Teller County                                    \$15,828.40      (Teller County Data)

**Intended Uses**

Colorado Springs Utilities

- Utility Backdrop for Infrastructure Data Conversion/Placement Process
- Change Detection Analysis (Growth, Building, Infrastructure)
- Asset Inventory/Positional Validation
- Vegetation Analysis & Management
- Emergency Preparedness & Response
- Planimetric Basemap Data Maintenance
- Dam oversight / Reservoir Topographic Mapping
- Flooding/Dam Breach Assessment
- Backdrop for mapping Products (as needed)

El Paso County, E911, City of Colorado Springs, Teller County

- Police / Fire / Emergency Response / Warrant Service
- Property Assessment
- Flood Control / FEMA Flood Zones
- Backdrop for mapping Products (as needed)

**Next Steps**

- **February 13, 2024:** City Council Consideration of Resolution
- **March 15, 2024:** Tentative Data Acquisition start date

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024

**To:** Utilities Board

**From:** Travas Deal, Chief Executive Officer

**Subject:** Outside City Wastewater Service Request and Agreement to Annex 7508 Tudor Road

**NARRATIVE:**

**Desired Action:** Approval

**Executive Summary:** Colorado Springs Utilities received an application for outside-City wastewater service from the owners of 7508 Tudor Rd – use is multi-family residential (duplex). Springs Utilities currently provides water service to property pursuant to pre-existing contractual obligations that were assumed by the City in the purchase of certain water companies. Property is not contiguous and is presently ineligible for annexation. City Code 7.5.701.J. permits wastewater service without annexation subject to execution of an Agreement to Annex and City Council approval.

If approved by City Council, Agreement to Annex would allow provision of Springs Utilities wastewater service to property located outside City limits. Property currently does not have direct access to an existing wastewater main and an extension would be required to serve property in accordance with City Code 12.5.405. We are requesting this item be placed on the Consent Calendar agenda for the January 23, 2024 Regular City Council Meeting.

**Benefits:** Approval of extension of water service would generate incremental utility wastewater revenue for Springs Utilities and allow homeowner to connect to Springs Utilities' wastewater system considering current septic system is failing.

**Board Policy:** N/A

**Cost/Budget:** Costs are null or de minimis.

**Affected Parties:** Colorado Springs Utilities, City of Colorado Springs, property owner and Springs Utilities citizen-owners.

**Alternatives:** Owner does not connect to Springs Utilities wastewater collection system and repairs or replaces existing septic system.

<b>Submitter:</b> Bryan English	<b>Email address:</b> <a href="mailto:benglish@csu.org">benglish@csu.org</a>
<b>Division/ Department:</b> System Planning and Projects, Customer Utilities Connections	<b>Phone number:</b> 719-668-8119
	<b>Date submitted:</b> 12/28/2023

<b>SPG Staff Use Only:</b> Consent Calendar	Yes	No	<b>X</b>	<b>ITEM NO. 12</b>
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Colorado Springs Utilities  
*It's how we're all connected*

# Outside City Wastewater Service Request and Agreement to Annex 7508 Tudor Road

January 17, 2024, Utilities Board Meeting

Bryan T. English, PMP, Development Projects Manager

Customer Utilities Connections

# Wastewater Service Request

Due to existing septic system failing, owners of 7508 Tudor Rd have requested Springs Utilities wastewater service for multi-family use (duplex)

Property located outside City limits, in a previously designated Council Provisional Area for water service

Springs Utilities currently provides water service to property pursuant to pre-existing contractual obligations that were assumed by the City in the purchase of certain water companies

Springs Utilities also provides natural gas and electric service to property and area



# Provision of Water/Wastewater Service

- Property not contiguous with City limits
  - Ineligible for annexation under Colorado Revised Statutes
- City Code 7.5.701.J: Service Without Annexation
  - Springs Utilities may provide wastewater services outside City limits upon approval of City Council through an Agreement to Annex
  - City Planning supports this approach



# Springs Utilities Considerations

## 7.5.701.J.

Sufficient wastewater system capacity exists at time of application

Wastewater main extension in Tudor Road required to serve property in accordance with City Code 12.5.405



# Agreement to Annex

- Standard form Agreement to Annex
  - ✓ Deed all groundwater rights to City of Colorado Springs
  - ✓ Typical Springs Utilities' extension policies apply
  - ✓ No wastewater capacity issues anticipated
  - ✓ Per tariff, owners would pay outside-City wastewater Development Charges and utility rates that are 50% higher than inside-City rates
  - ✓ Executed by owners

# Next Steps

- City Council to vote on this item at Regular City Council Meeting on January 23, 2024
  - Item on Consent Calendar

RESOLUTION NO. \_\_\_\_-24

A RESOLUTION APPROVING AN AGREEMENT TO ANNEX AND TO PROVIDE WASTEWATER SERVICE OUTSIDE THE CITY LIMITS TO 7508 TUDOR ROAD IN UNINCORPORATED EL PASO COUNTY

WHEREAS, the property owners in unincorporated El Paso County at 7508 Tudor Road, (TSN: 6306000010) (the "Property") requested wastewater service directly from Colorado Springs Utilities for multi-family residential use; and

WHEREAS, City Council has previously approved Agreements to Annex and water and wastewater service to other residences in this area, which is partially surrounded by the corporate limits of the City of Colorado Springs, Colorado in unincorporated El Paso County and Colorado Springs Utilities is providing water and wastewater service for other residences in the area; and

WHEREAS, Utilities currently provides water service to the Property pursuant to pre-existing contractual obligations that were assumed by the City in the purchase of certain water companies; and

WHEREAS, there is sufficient wastewater treatment capacity available to serve the Property; and

WHEREAS, wastewater distribution facilities do not exist in the area and a main extension is required to extend service to the Property; and

WHEREAS, the property owners have executed an Agreement to Annex and irrevocably consent to annex the Property to the City and have agreed to surrender groundwater rights as a condition of service; and

WHEREAS, the Property is outside the City limits but within an enclave that is partially surrounded by the City of Colorado Springs and Colorado Springs Utilities' water and wastewater service area; and

WHEREAS, "Residential Service – Outside City Limits" of the Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, requires prior City Council approval for Colorado Springs Utilities to provide end-use wastewater service outside the corporate limits of the City of Colorado Springs in areas where wastewater service is available from Utilities.

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

Section 1. The City Council finds the request for wastewater service at the Property from Colorado Springs Utilities for multi-family residential use is in the best interests of the City and meets all applicable requirements of the law.

Section 2. Pursuant to “Residential Service - Outside City Limits” of the Wastewater Rate Schedules of Colorado Springs Utilities’ Tariff, City Council hereby approves wastewater service outside the corporate limits of the City of Colorado Springs to the Property for multi-family residential use. The wastewater service may not be enlarged or the use changed without the prior written approval of the City. Any requests to enlarge service or change use shall be reviewed in accord with the then-current tariffs, rules, regulations, ordinances or other applicable law, and may require the property owners execute a new Agreement to Annex.

Section 3. The President of Council is hereby authorized to execute this Resolution and the Agreement to Annex in the form attached hereto on behalf of the City of Colorado Springs and the City Clerk is authorized to attest the President of Council’s signature. The Chief Executive Officer of Utilities is authorized to administer the Agreement.

Dated at Colorado Springs, Colorado this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Randy Helms, President of Council

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

AGREEMENT PROVIDING WASTEWATER  
SERVICE TO LAND LOCATED OUTSIDE THE CITY  
LIMITS  
OF THE CITY OF COLORADO  
SPRINGS AND  
AGREEMENT TO ANNEX

WHEREAS, **Wesley D. Walters** and **Lael L. Walters** (collectively referred to as "Owner") are the owners of real property in El Paso County, Colorado, as shown on the location sketch map and as described and set forth in the attached Exhibit "A" (the "property"); and

WHEREAS, Owner owns a duplex building to be used for multi-family residential purposes at **7508 Tudor Road, Colorado Springs, CO 80919 (TSN: 6306000010)**, and has requested wastewater treatment service from the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"); and

WHEREAS, the property is located within an unincorporated area in El Paso County, which enclave is partially surrounded by the corporate limits of the City and which is or will be eligible for unilateral annexation by the City under the provisions of the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S., as amended (the "Annexation Act"), and Colo. Const. Art. II, section 30; and

WHEREAS, the City currently provides water service to the property pursuant to pre-existing contractual obligations that were assumed by the City in the purchase of certain water companies.

WHEREAS, the City has considered Owner's application for wastewater service, and has determined that the property sought to be served is not presently eligible for annexation to the City or, if eligible for annexation, has determined that it is not in the best interests of the City to annex the property at this time; and

WHEREAS, the City is under no obligation to furnish but is agreeable to furnishing wastewater service upon the terms and conditions set forth below because the City has determined that the extension of service under the terms of this Agreement constitutes a community benefit.

NOW, THEREFORE, in consideration of the promises and in further consideration of the benefits which will accrue to the City and Owner, the City and Owner have entered into this Agreement Providing Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Annexation Agreement (the "Agreement") subject to the following terms and conditions:

The Agreement shall constitute the unqualified and irrevocable consent of Owner to annex the property to the City and the City shall not be required to seek legal action to compel specific performance of this Agreement to Annex, but may proceed by ordinance to annex all or part of the property as if Owner had petitioned for annexation, whenever the property becomes eligible for annexation pursuant to the Annexation Act. Owner further agrees to execute a petition for annexation, prepare annexation plats, and execute

any other documents the City determines are necessary to annex Owner's property to the City. Owner agrees that the provisions of this Agreement are applicable to the property described in Exhibit "A" or any portion of the property. It is further agreed that Owner will not annex the property or any portion or incorporate the property with any other municipality or special service district as described in Paragraph 9 without the prior written consent of the City.

1. It is specifically understood that the wastewater treatment services to be furnished by the City are for only the multi-family residential use described in this Agreement and shall be in conformity with the regulations of the City in furnishing wastewater treatment outside its corporate limits and in further conformity with all applicable resolutions, codes, ordinances, regulations and policies of the City. Owner understands and agrees that the City imposes charges for wastewater service for service provided outside of its corporate limits at a higher rate than applicable to the provision of services within the corporate limits of the City. Upon annexation of the property to the City, charges for wastewater service subsequent to annexation shall be at the rate applicable to the provisions of services within the corporate limits of the City.

2. If Owner or Owner's successor in interest desires a different wastewater service than granted the property in this Agreement, or desires to put the property to a use other than that stated above, a request shall be made to the City Council. If granted, the request shall be upon such terms and conditions as may be imposed by the Council. If the use of the property for which the request for the changed wastewater use is made involves subdividing the property or developing the property for residential, commercial or industrial purposes, the conditions for granting Owner's request shall include full compliance with the code, ordinances, rules, regulations and policies of the City.

3. If necessary, Owner will extend wastewater main lines or service lines to the property and upon the property, at Owner's expense, in accordance with the provisions of the City's codes, ordinances, rules, regulations and policies in effect at the time of the specific wastewater request. A first-come, first-served policy will govern availability of supply. In the event Owner is not required to extend wastewater service and lines and connect to the City's wastewater system at the time of entering into this Agreement, Owner shall connect to the City's wastewater system at Owner's expense when required under applicable codes, ordinances, rules, regulations and policies of the City in effect at the time of the request for service. Capacity of the system or treatment facility is not guaranteed by this Agreement, but by availability of service at the time of request. The first-come, first-served policy will govern availability of supply.

Owner agrees to pay the pro rata share of the wastewater treatment plant facility costs through the established wastewater system development charge. Owner will pay a pro-rata share of existing trunk sewer costs through established recovery agreement charges when required by codes, ordinances, rules, regulations or policies of the City. Water distribution and/or wastewater collection facilities required to serve the Property must be designed and constructed at Owner's expense in accordance with applicable codes, ordinances, rules, regulations or policies of the City at the time of the request for service, and will be required to be oversized to serve adjacent undeveloped land within the basin planning area boundaries.

Owner agrees to participate with other developments on a fair share pro rata basis in present and future off-site relief facilities.

4. As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owner grants to the City all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as the "Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owner concurrently with this Agreement and shall be made effective immediately after execution by the City. The Deed shall be recorded at the El Paso County Clerk and Recorder's office.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owner agrees to provide any and all easements required by the City prior to the construction and operation of any City well or water-rights-related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owner's Property without additional consent from Owner. Utilities may authorize Owner to continue to utilize wells located on the Property that are permitted or decreed for domestic purposes, until the Property is connected to the City's water system. Owner agrees that any wells permitted or decreed for domestic purposes only that are located on the Property at the time of connection to the City's water system will be plugged and abandoned in accord with state rules and regulations. The City may permit Owner to continue to use wells for irrigation or livestock purposes only in accord with the permit or decree when the permit or decree includes use of the well for irrigation or livestock purposes, provided that the City may withdraw this authorization upon notification to Owner by Colorado Springs Utilities. No commingling of well and City water supply will be permitted.

5. Owner shall also construct facilities, if determined necessary by the City Engineer, for the safe discharge of all subsurface water into a drainage conveyance facility. These facilities are not eligible for drainage basin credit or reimbursement.

6. Owner and the City acknowledge that if the property is not located within the corporate limits of the City at the time of its development, Owner nevertheless agrees to comply with all codes, ordinances, rules, regulations, and policies of the City including but not limited to the City's Subdivision Code, Building Code, Fire Code, Drainage Ordinance, Utility Extension Policies, and Comprehensive Land Development Plan as now existing or subsequently amended, except to the extent that such compliance would be unlawful under the applicable resolutions, codes, and regulations of the El Paso County Board of County Commissioners or another governmental entity having jurisdiction. In the event compliance is unlawful under the applicable resolutions, codes



and regulations of the El Paso County Board of County Commissioners or other governmental entity having jurisdiction over the Property, Owner shall post assurances to bring any improvements into compliance with City codes, ordinances, rules, regulations and policies upon annexation.

Compliance with City codes, ordinances, rules, regulations and policies pertaining to land development shall require but shall not be limited to:

- (1) Payment of all applicable Water and Wastewater Development fees or charges.
- (2) Payment of required school/park sites or fees in lieu of dedication to the City.
- (3) Dedication, design, and construction of required streets, sidewalks, curbs, gutters, drainage and utilities, to City standards, or to the standards of the entity having responsibility for maintenance, whichever standard is stricter, or post acceptable financial assurances.
- (4) Dedication of easements including but not limited to utility, drainage and other public improvements as required by the City Subdivision Code, or post acceptable financial assurances.
- (5) Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees.
- (6) Agreement to participate with other developments on a fair share pro rata basis in present and future drainage and/or off-site relief or other water facilities.
- (7) City requirements for off-street parking in connection with the property and improvements and submission for City approval plans for adequate off-street parking.

7. Owner agrees to pay fees, charges and take such other actions as set forth in Paragraph 7 at the time of annexation, when required under the provisions of the applicable City codes, ordinances, rules, regulations, and policies or at any other time as requested by the City. Fees payable and requirements imposed under Paragraph 7 shall be those in effect at the time the fees are required to be paid or other action to be taken under the provisions of Paragraph 7 and not those fees in effect or requirements in effect at the time of execution of this Agreement. The City may require proof of payment or proper dedication of land prior to the connection of any wastewater service under this Agreement. This Agreement shall not be interpreted to require the City to install any park or drainage facility at any specific location or within any period of time, nor as relieving Owner of any liability or obligation to third persons to provide or to refrain from providing drainage. The City shall incur no obligation to Owner by reason of any claims, suits, judgments, or other liability or obligation resulting from Owner providing or failing to provide drainage. Owner specifically agrees to indemnify and hold the City harmless from all such claims.

8. Owner understands that certain infrastructure serving the property may be required by the City to meet appropriate City standards at the time of utility service extension to the property or at the time of annexation of the property to the City, or at another subsequent time as the City determines is appropriate to be upgraded to meet City standards. Infrastructure may include public utilities and public works projects,

including but not limited to, paving and improvements of streets, curb, gutters, drainage facilities, drainage, water or wastewater systems necessary to serve the property subject to this Agreement. Infrastructure may be designed, financed, constructed, and/or maintained by special districts or other entities. These entities may include, but are not limited to, special districts, general improvements districts, limited improvement districts, special improvement maintenance districts, metropolitan districts, and building authorities or another district by whatever name, whether established pursuant to or subsequent to the annexation of the property to the City or established prior to the annexation of the property to the City. This Agreement shall constitute Owner's unqualified and irrevocable consent to including the property within any of the foregoing entities and assessing the property a fair share of the cost of any improvements as determined by the City Council or the governmental authority having jurisdiction. In addition to or in lieu of the construction of improvements by the foregoing entities, the City may at any time require Owner to execute a time delay or other agreement obligating Owner and the property to pay for some or all of the improvements and a fair share as the City in its sole discretion may determine is appropriate.

9. The covenants and agreements contained in this Agreement shall run with the land described and affected by this Agreement, and shall extend to and be binding upon the Owner's heirs, assigns, legal representatives and successors and Owner for himself and his heirs, assigns, legal representatives and successors in interest. This Agreement shall be recorded with the El Paso County Clerk and Recorder.

10. As further consideration for the City providing wastewater services, if all or part of the property is eligible for annexation and if for any reason Owner or Owner's successor in interest does not or cannot abide by the terms and conditions of this Agreement, then the services provided may be terminated by and at the sole option of the City.

11. Nothing in this Agreement shall abridge or shall be construed as a limitation on the City's authority to adopt different ordinances, rules, regulations, resolutions, policies or codes that apply generally or to the property specifically.

12. Owner will comply with all ordinances, codes, rules, regulations and policies of the City as now exist or may be amended or adopted in the future which are applicable to the property under the terms of this Agreement or are otherwise applicable to the property after the annexation to the City.

Extension of wastewater services under the terms of this Agreement is for the sole benefit of Owner and shall not be interpreted to create rights in a third party beneficiary or constitute City Council's determination of any policy pertaining to extension of wastewater service to other similarly situated individuals or property.

13. As used in this Agreement, the term "Owner", shall also mean any of Owner's heirs, executors, personal representatives, successors, transferees or assigns. A subsequent owner of the property shall have the right to enforce this Agreement subject to its provisions to the same extent as the original Owner of the property.

14. This Agreement may be amended by Owner and the City. Any amendment shall be recorded in the records of El Paso County, shall run with the land and shall be binding upon all persons or entities now having or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment.

15. The parties to this Agreement agree that for breach of any covenant, term or condition of this Agreement by any Owner, damages are not to be considered an adequate or exclusive remedy, and the City may compel specific performance of this Agreement.

16. If any part of this Agreement is declared void by a Court of competent jurisdiction, the parties agree that the void provision shall not affect the remaining terms and conditions of this Agreement, which shall continue in full force and effect.

IN WITNESS WHEREOF, the City and Owner have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF COLORADO SPRINGS

BY: \_\_\_\_\_

Randy Helms, City Council President

ATTEST:

BY: \_\_\_\_\_

Sarah Johnson, CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney's Office

OWNER:

*Wesley D Walters*  
\_\_\_\_\_

Wesley D Walters

*Lael L Walters*  
\_\_\_\_\_

Lael L Walters

STATE OF COLORADO     )  
                                           ) ss.  
COUNTY OF EL PASO     )

The foregoing instrument was acknowledged before me this 16<sup>th</sup> day of November, 2023, by Wesley D Walters and Lael L Walters, as Owner.

My Commission expires: 03/11/2026

*Daniel J Banks*  
\_\_\_\_\_

Notary Public

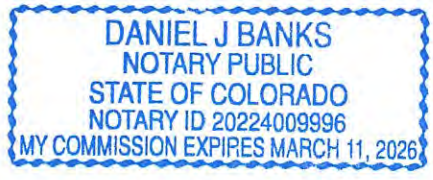
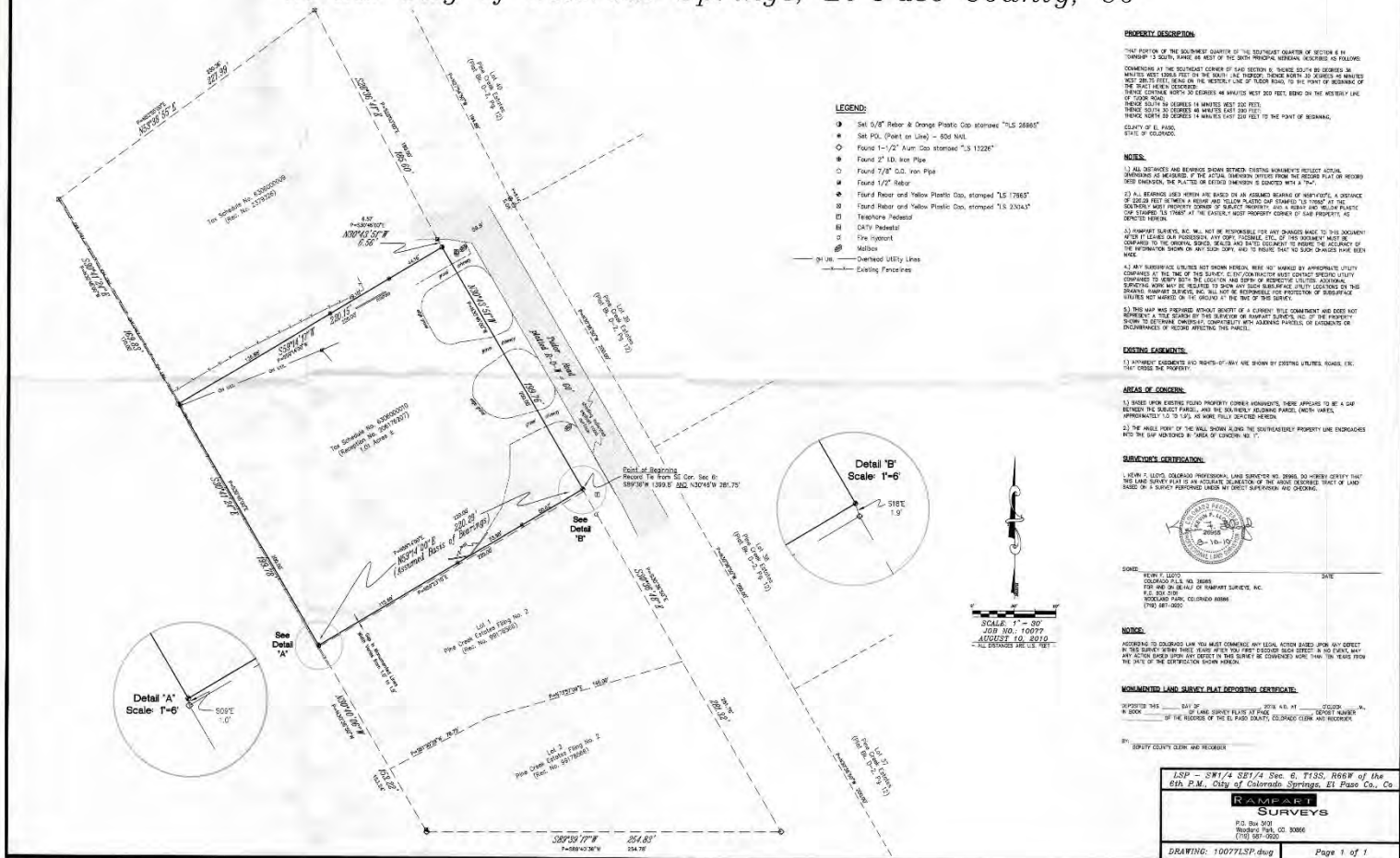


Exhibit "A"

LAND SURVEY PLAT

Located in the SW1/4 of the SE1/4 of Sec. 6, T. 13 S., R. 66 W. of the 6th P.M. in the City of Colorado Springs, El Paso County, Co



- LEGEND:**
- Set 5/8" Rebar & Orange Plastic Cap stamped "LS 28867"
  - Set P.O.L. (Point on Line) - 804 NAL
  - Found 1-1/2" Alum. Cap stamped "LS 13226"
  - Found 2" Dia. Iron Pipe
  - Found 7/8" O.D. Iron Pipe
  - Found 1/2" Rebar
  - Found Rebar and Yellow Plastic Cap, stamped "LS 17867"
  - Found Rebar and Yellow Plastic Cap, stamped "LS 23047"
  - Tapeless Rebar
  - CATV Pedestal
  - Fire Hydrant
  - Wellhead
  - Dashed Line — Delineated Utility Lines
  - Solid Line — Existing Fences

**PROPERTY DESCRIPTION:**

THAT PORTION OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 6 IN TOWNSHIP 13 SOUTH, RANGE 66 WEST OF THE SIXTH PRINCIPAL MERIDIAN, INCLUDING AS FOLLOWS: COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 6; THENCE SOUTH BY BEARINGS AND DISTANCES AS HEREIN SET FORTH IN THE SOUTH - AND THENCE, THENCE NORTH 30 DEGREES 45 MINUTES WEST 200 FEET; BEARING ON THE WESTERLY LINE OF SAID BEARING OF THE POINT OF BEGINNING OF THE SOUTHWEST QUARTER; THENCE SOUTHWEST BY BEARINGS AND DISTANCES AS HEREIN SET FORTH ON THE WESTERLY LINE OF SAID BEARING; THENCE SOUTH BY BEARINGS AND DISTANCES AS HEREIN SET FORTH TO THE POINT OF BEGINNING OF SAID BEARING.

CITY OF EL PASO,  
STATE OF COLORADO.

**NOTES:**

- 1) ALL DISTANCES AND BEARINGS SHOWN BEING FIELD MEASUREMENTS UNLESS OTHERWISE INDICATED BY THE SURVEY INSTRUMENTS FROM THE SURVEY PLAT OR RECORDS SHOWN THEREON. THE PLATES OR RECORDS DIMENSIONS IS CONSIDERED WITH A "P".
- 2) ALL BEARINGS GIVEN WITHIN ARE BASED ON AN ASSUMED BEARING OF N00°00'00" W. A DISTANCE OF 6666 FEET IS GIVEN AS A BEARING AND DISTANCE FROM THE POINT OF BEGINNING OF THE SURVEY TO THE POINT OF BEGINNING OF SAID BEARING. THIS BEARING AND DISTANCE IS GIVEN AS A BEARING AND DISTANCE FROM THE POINT OF BEGINNING OF THE SURVEY TO THE POINT OF BEGINNING OF SAID BEARING.
- 3) SURVEY MARKERS, BEIT, WILL NOT BE RESPONSIBLE FOR ANY CHANGES MADE TO THIS DOCUMENT BY ANY PERSONS, INCLUDING ANY OWNER, CONTRACTOR, ETC. OF THIS DOCUMENT. THE SURVEYOR'S RESPONSIBILITY IS TO SHOW ANY SUCH CHANGES BY THE SURVEYOR'S MARKERS AND TO SHOW THE LOCATION OF ANY SUCH CHANGES BY THE SURVEYOR'S MARKERS AND TO SHOW THE LOCATION OF ANY SUCH CHANGES BY THE SURVEYOR'S MARKERS.
- 4) THIS SURVEY PLAT IS NOT TO BE USED FOR ANY PURPOSES OTHER THAN THAT FOR WHICH IT WAS DESIGNED AND FOR WHICH IT WAS DESIGNED. THE SURVEYOR'S RESPONSIBILITY IS TO SHOW ANY SUCH CHANGES BY THE SURVEYOR'S MARKERS AND TO SHOW THE LOCATION OF ANY SUCH CHANGES BY THE SURVEYOR'S MARKERS.

**EXISTING ENCUMBRANCES:**

- 1) ALL ENCUMBRANCES AND RIGHTS-OF-WAY ARE SHOWN BY EXISTING UTILITIES, ROADS, ETC. THAT CROSS THE PROPERTY.

**AREAS OF CONCERN:**

- 1) BEARS UPON EXISTING FIELD PROPERTY CORNER MARKERS. THESE MARKERS TO BE A CAP BETWEEN THE SURVEY MARKERS, AND THE SURVEYOR'S RECORDS, WHICH MARKERS APPROXIMATELY 1.5 TO 1.75, AS MORE FULLY DETAIL HEREIN.
- 2) THE FIELD POINT OF THE WALL SHOWN ALONG THE SOUTHWEST QUARTER PROPERTY LINE ENCOMPASSES THE TOP OF THE WALL AS SHOWN IN THE FIELD OF SURVEY, IN 1".

**SURVEYOR'S CERTIFICATION:**

I, JOHN A. LUDWIG, COLORADO PROFESSIONAL LAND SURVEYOR NO. 28867, DO HEREBY CERTIFY THAT I AM THE SURVEYOR OF THIS SURVEY, AND THAT I HAVE PERSONALLY CONDUCTED THE SURVEY AND THAT THE SURVEY WAS CONDUCTED IN ACCORDANCE WITH THE REQUIREMENTS OF THE COLORADO PROFESSIONAL LAND SURVEYING ACT AND THE RULES AND REGULATIONS OF THE BOARD OF PROFESSIONAL LAND SURVEYORS.

**DATE:** \_\_\_\_\_

JOHN A. LUDWIG  
COLORADO P.L.S. NO. 28867  
P.O. BOX 100777  
DENVER, COLORADO 80210  
(303) 497-3000

**NOTICE:**

IN ACCORDANCE WITH COLORADO LAW, YOU MUST COME WITH ANY LEGAL ACTION BASED UPON ANY CORRECT OR INCORRECT SURVEY. THIS SURVEY PLAT IS NOT TO BE USED FOR ANY PURPOSES OTHER THAN THAT FOR WHICH IT WAS DESIGNED AND FOR WHICH IT WAS DESIGNED. THE SURVEYOR'S RESPONSIBILITY IS TO SHOW ANY SUCH CHANGES BY THE SURVEYOR'S MARKERS AND TO SHOW THE LOCATION OF ANY SUCH CHANGES BY THE SURVEYOR'S MARKERS.

**RECORDING INFORMATION:**

RECORDED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2017 AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ P.M. IN BOOK \_\_\_\_\_ OF THE RECORDS OF THE EL PASO COUNTY, COLORADO CLERK AND RECORDER.

BY: \_\_\_\_\_

LSP - SW1/4 SE1/4 Sec. 6, T13S, R66W of the 6th P.M., City of Colorado Springs, El Paso Co., Co

**RAMBERT SURVEYS**

P.O. BOX 101  
DENVER, CO 80206  
(303) 955-9200

DRAWING: 10077LSP.dwg Page 1 of 1

EXHIBIT B

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
7508 Tudor Road Agreement to Annex

**Wesley D. Walters and Lael L. Walters** ("Grantor(s)"), whose address is 7508 Tudor Road, in consideration of the benefits received pursuant to the Agreement Providing Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex dated \_\_\_\_\_ ("Annexation Agreement"), which is executed by Grantor(s) concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property, collectively referred to as the "Water Rights," together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor(s) warrants title to the same against all claims arising by, through, or under said Grantor(s). The Water Rights include, but are not limited to, those described in Exhibit B hereto.


Furthermore, pursuant to C.R.S. § 37-90-137(4), as now exists or may later be amended, Grantor(s), on behalf of Grantor(s) and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon its execution.

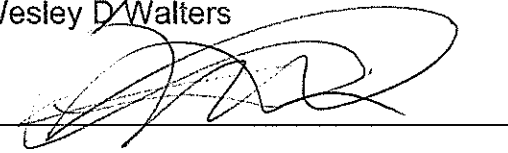
Executed this 9<sup>th</sup> day of January, 2024.

GRANTOR(s):

By:

  
\_\_\_\_\_

Wesley D Walters

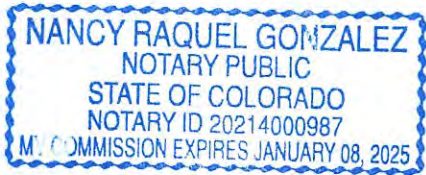
  
\_\_\_\_\_

Lael L Walters

STATE OF )  
 ) ss.  
COUNTY OF )

The foregoing instrument was acknowledged before me this 9th day of January, 2024, by Wesley D. Walters and Lael L. Walters, Grantor(s).

My commission expires: January 8, 2025



Nancy Gonzalez  
Notary Public

Accepted by the City of Colorado Springs

By: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024  
Real Estate Services Manager

By: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office





Exhibit B

to the  
Special Warranty Deed and Irrevocable Consent to the Appropriation,  
Withdrawal and Use of Groundwater Executed by  
Wesley D. Walters and Lael L. Walters Grantor(s) on Jan 9, 2024.

Decreed Groundwater Rights  
Case No.  
Court:  
Source:  
Amount:  
Date of Decree:  
Name of Owner:

Permitted Groundwater  
Permit No.  
Date of Permit:  
Source:  
Amount:  
Name of Owner:  
Legal Description of Well or other Structure:

Surface Water Rights  
Name of Water Right:  
Case No.  
Court:  
Source:  
Amount:  
Date of Decree:  
Name of Owner:

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024  
**To:** Utilities Board  
**From:** Travas Deal, Chief Executive Officer  
**Subject:** Black Forest Road Addition No. 2 Right-of-Way Annexation

### NARRATIVE:

**Desired Action:** Approval

**Executive Summary:** City of Colorado Springs accepted an annexation petition for a portion of Black Forest Road right-of-way. If approved by City Council, annexation would result in the extension of Springs Utilities' water service boundary, creating the potential for future water service(s).

Extending water service into any area not within either the existing City limits or the water service boundary is subject to the recommendation of approval by the Utilities Board and approval by City Council (City Code 12.4.305. A.). This property meets the City-owned property exception (City Code 12.4.305.B.). There has been no previous Utilities Board action for this right-of-way.

**Benefits:** Extension of Springs Utilities' water service boundary approval of annexation would support potential future water services and City's standard practice of annexing City-owned rights-of-way when eligible under Colorado Revised Statutes.

**Board Policy:** N/A

**Cost/Budget:** Costs are expected to be null or de minimis.

**Affected Parties:** City of Colorado Springs Public Works, El Paso County, residents of the City of Colorado Springs and El Paso County, and Springs Utilities citizen-owners.

**Alternatives:** Recommend approval or denial of forwarding this extension of water service boundary to City Council.

<b>Submitter:</b> Bryan English	<b>Email address:</b> benglish@csu.org
<b>Division/ Department:</b> System Planning and Projects, Customer Utilities Connections	<b>Phone number:</b> 719-668-8119
	<b>Date submitted:</b> 12/28/2023

<b>SPG Staff Use Only:</b> Consent Calendar	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>	<b>ITEM NO. 13</b>
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Colorado Springs Utilities  
*It's how we're all connected*

# Black Forest Road Addition No. 2 Right-of-Way Annexation

January 17, 2024, Utilities Board Meeting

Bryan English, PMP, Development Projects Manager

Customer Utilities Connections

# Black Forest Road Addition No. 2

Proposed 21.851-acre right-of-way (ROW) annexation

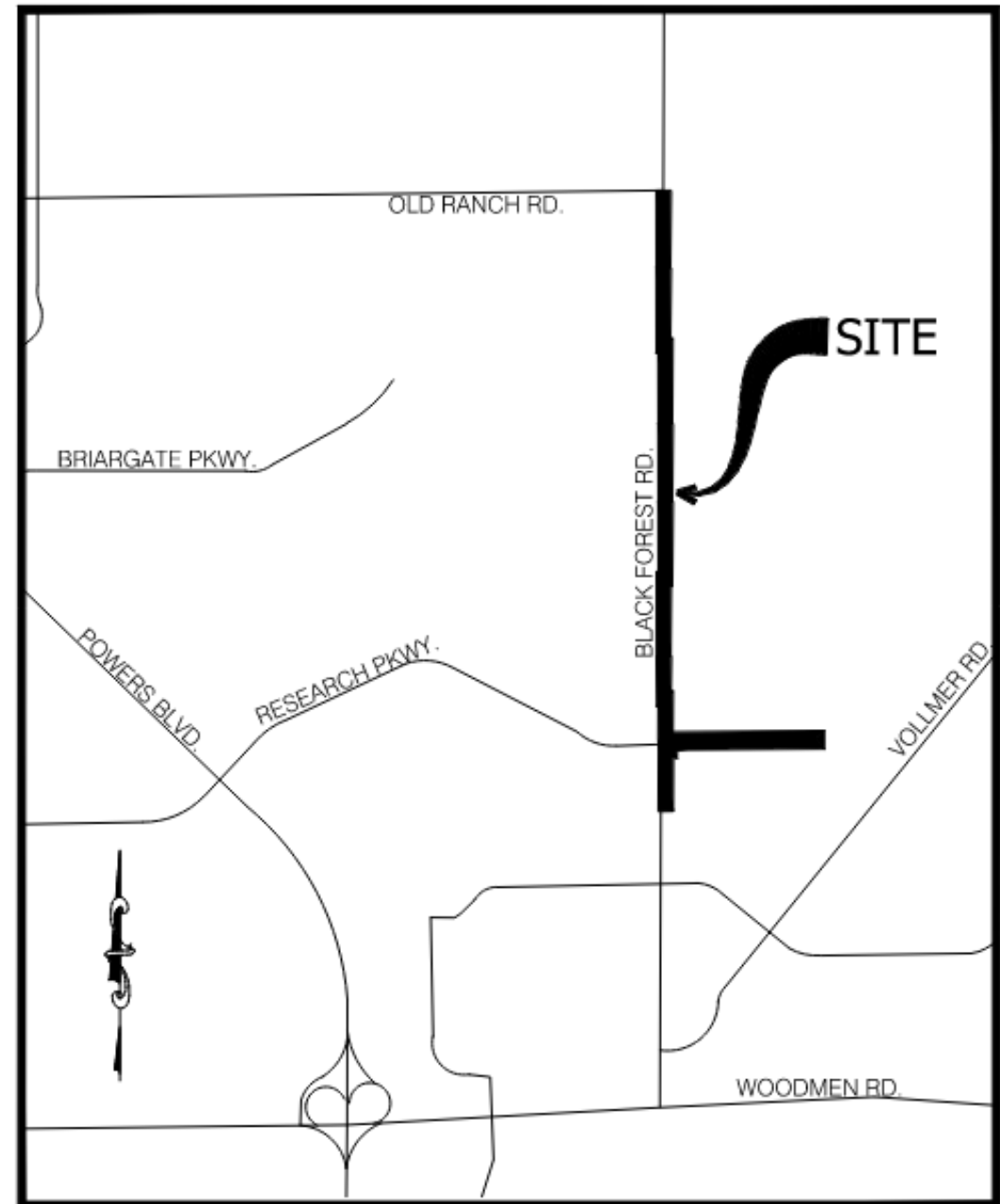
City received quit claim deed from El Paso County (EPC) to delineate O&M responsibilities between parties

City's standard practice to annex City ROWs when eligible

No existing utility services

Annexation and extension of City limits would simultaneously extend Springs Utilities' water service boundary

City Public Works is not planning to install City-maintained irrigated landscaping, but potential exists



# City Code 12.4.305

- Requires Utilities Board to recommend and City Council approval to expand water service boundary
  - Approval must be based on substantiated and written record demonstrating one of the following:

- 
1. 128% of existing water usage\* plus projected demand for proposed water extension(s), and 25% of the perimeter of the area is contiguous with City limits,
  2. A unique and extraordinary event or circumstance necessitates an extension of water services to serve critical interests of the City,
  3. The area is an enclave, or  
The area is owned or leased by the City, or  
The extension will have a de minimis impact on the overall City's available water supply.

*\*Calculated using a five- (5) year rolling average of unrestricted weather normalized usage data*

# Application of City Code 12.4.305

Per City Code 12.4.305.B.3.

- Proposed annexation and extension of water service boundary meets City-owned property exception

## Utilities Board Action

Per City Code 12.4.305.A.

- Extending water into any area not within either the existing City limits or the water service boundary is subject to the recommendation of approval by the Utilities Board and approval by City Council

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024

**To:** Utilities Board

**From:** Travas Deal, Chief Executive Officer

**Subject:** Resolution Delegating Authority to Chief Executive Officer to Enter into Agreements to Annex for Residential Properties in the Park Vista Enclaves

**NARRATIVE:**

**Desired Action:** Approval

**Executive Summary:** Springs Utilities periodically receives requests for outside-City water and wastewater service in the Park Vista enclaves, with the number of requests recently increasing. City Code 7.5.701.J. permits water and wastewater service without annexation subject to execution of an Agreement to Annex and City Council approval. City Code 12.4.305, which stipulates provisions for extending water service to any area located outside City limits, requires Utilities Board to make a recommendation of approval and City Council approval.

Park Vista properties are primarily single-family residences that would have a de minimis impact on the City's water supply. Many Park Vista properties already receive Springs Utilities water and wastewater services. Preparing materials and presenting individual requests at Utilities Board and City Council is time consuming, inefficient and does not promote a positive customer experience.

**Benefits:** Approval of the proposed resolution granting approval authority to Springs Utilities CEO would significantly reduce administrative burden, eliminate Utilities Board and City Council presentations, and overall expedite and improve the review and approval process.

**Board Policy:** N/A

**Cost/Budget:** N/A

**Affected Parties:** Colorado Springs Utilities, City of Colorado Springs, City Council, Utilities Board, Park Vista property owners and Springs Utilities citizen-owners

**Alternatives:** Do not recommend approval of proposed Resolution Delegating Authority to CEO to Enter into Agreements to Annex for Residential Properties in the Park Vista Subdivision and continue with existing process.

<b>Submitter:</b> Bryan English	<b>Email address:</b> <a href="mailto:benglish@csu.org">benglish@csu.org</a>
<b>Division/ Department:</b> System Planning and Projects, Customer Utilities Connections	<b>Phone number:</b> 719-668-8119
	<b>Date submitted:</b> 12/28/2023

<b>SPG Staff Use Only:</b> Consent Calendar	Yes	No	<input checked="" type="checkbox"/> X	<b>ITEM NO. 14</b>
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Colorado Springs Utilities  
*It's how we're all connected*

# Resolution Delegating Authority to Chief Executive Officer to Enter into Agreements to Annex for Residential Properties in the Park Vista Enclaves

January 17, 2024, Utilities Board Meeting

Bryan English, PMP, Development Projects Manager

Customer Utilities Connections

# Park Vista Enclaves

Park Vista Addition and Park Vista Estates addition are two (2) centrally located unincorporated El Paso County enclaves

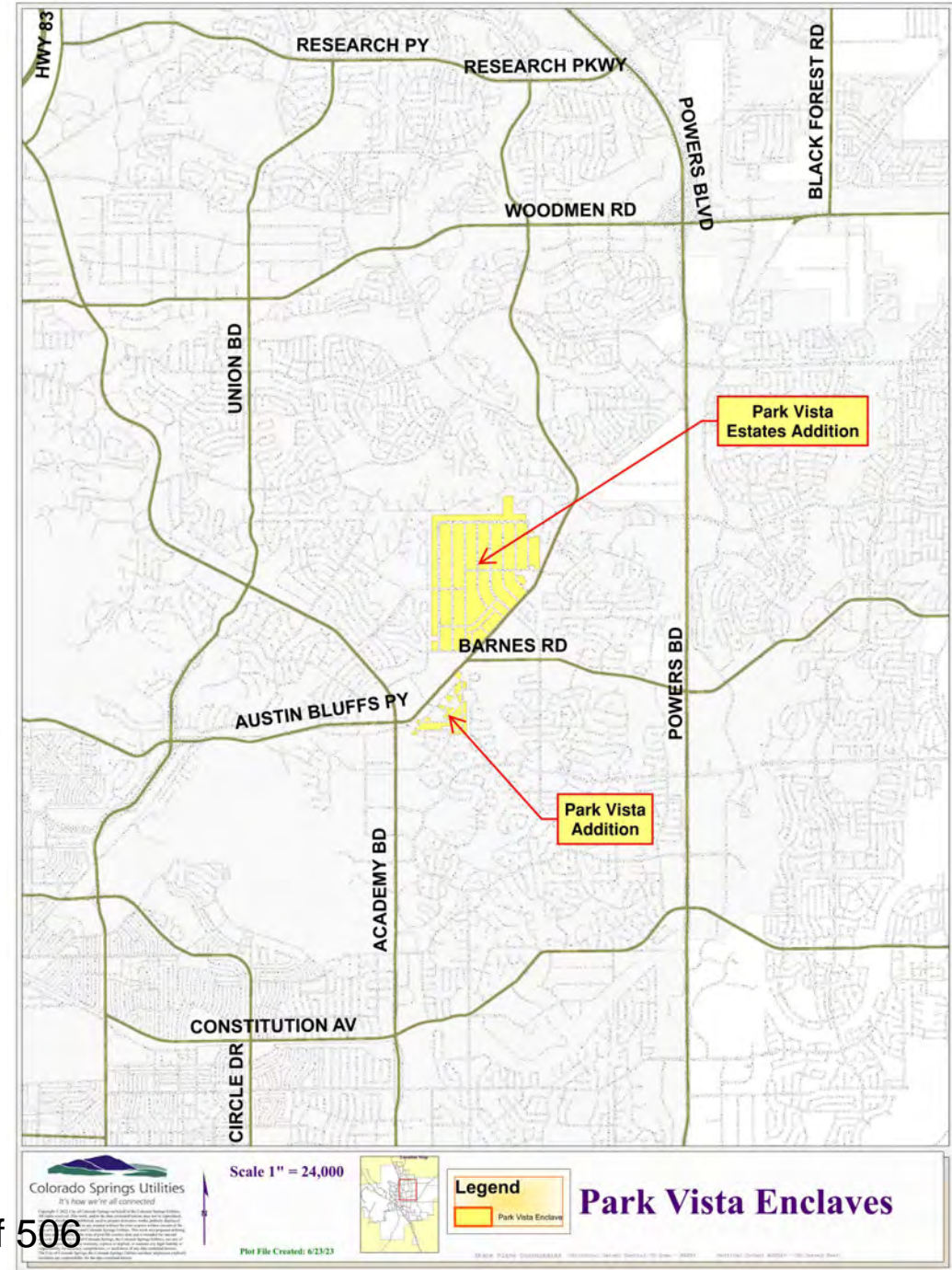
Located east of Academy Blvd on the north and south sides of Austin Bluffs Pkwy and Barnes Rd

Predominantly single-family residences with some multi-family and commercial uses

Springs Utilities provides natural gas and electric services to enclaves

Many properties served by well and septic

Many properties have connected to Springs Utilities water and wastewater through Agreements to Annex



# Provision of Water/Wastewater Services

Many properties not contiguous with City limits

- Ineligible for annexation under Colorado Revised Statutes

City Code 7.5.701.J: Service Without Annexation

- Springs Utilities may provide water and wastewater services upon approval of City Council through an Agreement to Annex
- City Planning supports

Resolution No. 106-16

- Authorized Springs Utilities to execute Agreements to Annex providing water/wastewater service for properties in Park Vista Enclaves

# Water Service Extension Ordinance



Ordinance No. 23-02 passed  
February 14, 2023

Codified as City Code section 12.4.305  
Superseded resolution No. 106-16



12.4.305 requires Utilities Board to recommend and City Council approval to provide water service outside City limits

# Issues, Concerns and Risks

Number of service requests has noticeably increased

- Three (3) requests (June – Oct 2023)
- Existing wells are underperforming or failing

Current review and approval process is inefficient

- 2-3 months from time of application to approval
- Expends considerable staff time and effort
- Delays property owner's ability to connect
- Prolongs potential health and safety risks

# Recommendation

To improve the process, Springs Utilities staff, at the request of Utilities Board, is bringing forward a proposed resolution:

- Grant Springs Utilities' CEO authority to approve Agreements to Annex in Park Vista Enclaves
- Specific to single-family residential (SFR) use
- Projected water demands qualify as de minimis per City Code 12.4.305 and current de minimis policy
  - De minimis water demand < 39 AFY
  - SFR Water Demand = 0.3 AFY
- Establish Agreement to Annex template

RESOLUTION NO. \_\_\_\_ - 24

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OF COLORADO SPRINGS UTILITIES TO EXECUTE AGREEMENTS PROVIDING WATER SERVICE AND/OR WASTEWATER SERVICE FOR SINGLE-FAMILY RESIDENTIAL USES TO LAND LOCATED OUTSIDE THE CITY LIMITS OF THE CITY OF COLORADO SPRINGS AND AGREEMENTS TO ANNEX FOR PROPERTIES LOCATED IN THE PARK VISTA ESTATES AND PARK VISTA ESTATES ADDITION SUBDIVISIONS

WHEREAS; State law defines an enclave as "an unincorporated area of land entirely contained within the outer boundaries of the annexing municipality"; and

WHEREAS, Park Vista Estates, Park Vista Estates Addition, Park Vista Estates Filing 2, Gordon Subdivision, RNC Subdivision, A Subdivision of Block 24 Park Vista Estates Addition, A Subdivision of Tracts F,N,O & part of M in the ReSubdivision of Block 24 Park Vista Estates Subdivision subdivisions (the "Subdivisions") satisfy the definition of enclaves because they are unincorporated areas of land entirely contained within the outer boundaries of the City of Colorado Springs; and

WHEREAS, in accord with City Code section 7.5.701.J, City Council, in its legislative discretion, has the authority to authorize water service and/or wastewater service outside the City without annexation; and

WHEREAS, "Residential Service – Outside City Limits" of the Water Rate Schedules and Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, requires prior City Council approval for Colorado Springs Utilities to provide end-use water service and/or wastewater service outside the corporate limits of the City of Colorado Springs in areas where water service and/or wastewater service is available from Colorado Springs Utilities; and

WHEREAS, owners of property within the Subdivisions regularly request water service and/or wastewater service from Colorado Springs Utilities for their properties for single-family residential use; and

WHEREAS, the Subdivisions are within Colorado Springs Utilities' exclusive electric service territory; and

WHEREAS, by Resolution 106-16, City Council authorized the Executive Director of Colorado Springs Utilities to execute Agreements to Annex that were consistent with a City Council-approved form providing water service and/or wastewater service for single-family residential uses to land located outside the city limits of the City of Colorado Springs for properties located in the Subdivisions without further Utilities Board or City Council action; and

# Benefits of Resolution

- Increase overall process efficiency
  - Expedite application, review and approval
  - Reduce timeline to 1-2 months
  - Significantly reduce staff's level of effort
  - Eliminate Utilities Board and City Council presentations
- Improve customer focus/experience
  - Accelerate timeframe from application to service connection
  - Mitigate safety and health risks

# Utilities Board Action

- Request proposed Resolution be added to February 13, 2024, formal City Council agenda consent calendar for approval



RESOLUTION NO. 106-16

A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR OF COLORADO SPRINGS UTILITIES TO EXECUTE AGREEMENTS PROVIDING WATER SERVICE AND/OR WASTEWATER SERVICE FOR SINGLE-FAMILY RESIDENTIAL USES TO LAND LOCATED OUTSIDE THE CITY LIMITS OF THE CITY OF COLORADO SPRINGS AND AGREEMENT TO ANNEX FOR PROPERTIES LOCATED IN THE PARK VISTA ESTATES AND PARK VISTA ESTATES ADDITION SUBDIVISIONS

WHEREAS, owners of property within the Park Vista Estates and Park Vista Estates Addition subdivision enclaves (the "Subdivisions") regularly request water service and/or wastewater service for their properties directly from Colorado Springs Utilities for single-family residential use; and

WHEREAS, the Subdivisions are located outside the City limits, but within enclaves that are totally surrounded by the City of Colorado Springs and Colorado Springs Utilities' exclusive water and wastewater service territories and that are within Colorado Springs Utilities' exclusive electric service territory; and

WHEREAS, in accord with City Code section 7.6.210, City Council, in its legislative discretion, has the authority to authorize water service and/or wastewater service outside the City without annexation; and

WHEREAS, "Residential Service – Outside City Limits" of the Water Rate Schedules and Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, requires prior City Council approval for Colorado Springs Utilities to provide end-use water service and/or wastewater service outside the corporate limits of the City of Colorado Springs in areas where water service and/or wastewater service is available from Colorado Springs Utilities; and

WHEREAS, a template agreement to annex providing for water service and/or wastewater service, to land located in the Subdivisions, which are outside the City limits of the City of Colorado Springs("Template Agreement to Annex") has been prepared and is attached hereto as Exhibit A; and

WHEREAS, under the terms of the Template Agreement to Annex, as a condition of receiving water service and/or wastewater service, the subject property owners irrevocably consent to, among other things, annex their property to the City, transfer the groundwater rights associated with their property to the City, and pay any costs associated with extending any required water and/or wastewater mains to their property; and

WHEREAS, City Council has previously approved similar agreements providing water service and/or wastewater service to land located outside the City limits of the City of Colorado Springs and agreements to annex for other residences in the Subdivisions and Colorado Springs Utilities is providing water service and/or wastewater service for those other residences in accord with those agreements; and

WHEREAS, Colorado Springs Utilities recommends that City Council approve the Template Agreement to Annex and the provision of water service and/or wastewater service for single-family residential uses within the Subdivisions upon satisfaction of the terms and conditions set forth below; and

WHEREAS, Colorado Springs Utilities further recommends that City Council authorize the Executive Director of Colorado Springs Utilities to execute the appropriate form of the Template Agreement to Annex with property owners within the Subdivisions when such property owners request service and the conditions set forth below are satisfied without the need for additional City Council action.

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

Section 1. The City Council finds that the execution of the appropriate form of the Template Agreement to Annex providing for single-family residential water service and/or wastewater service in the Subdivisions is in the best interests of the City and meets all applicable requirements of the law.

Section 2. The City Council hereby approves the Template Agreement to Annex attached hereto and authorizes the Executive Director of Colorado Springs Utilities to execute the appropriate form of the Template Agreement to Annex for properties in the Subdivisions that request water service and/or wastewater service for single-family residential use upon receiving sufficient evidence that the following conditions have been satisfied:

- a. The owner(s) of the subject property within the Subdivisions have submitted a request to Colorado Springs Utilities for water service and/or wastewater service for single-family residential uses;

- b. The City's Planning Department has been given the opportunity to review and comment on the owner(s) request for water service and/or wastewater service;
- c. There is sufficient water capacity and pressure available to serve the subject property and/or that there is sufficient wastewater treatment capacity available to serve the subject property; and
- d. The owner(s) of the subject property has executed the appropriate form of the Template Agreement to Annex ("Executed Agreement to Annex").

Section 3. Pursuant to "Residential Service - Outside City Limits" of the Water Rate Schedules and Wastewater Rate Schedules of Colorado Springs Utilities' Tariff, City Council hereby approves the provision of water service and/or wastewater service outside the corporate limits of the City of Colorado Springs to properties within the Subdivisions for single-family residential use upon the Utilities Executive Director's execution of an Executed Agreement to Annex entered into pursuant to this Resolution. Any proposed change in use or enlargement of the water service and/or wastewater service authorized by an Executed Agreement to Annex requires written approval of City Council. Any requests to enlarge service or change the use allowed under an Executed Agreement to Annex shall be reviewed in accord with the then-current tariffs, rules, regulations, ordinances or other applicable law, and may require the owner of the subject property to execute a new agreement with the City authorizing the provision of water service and/or wastewater service.


Section 4. The Executive Director of Colorado Springs Utilities is authorized to administer any Executed Agreement to Annex entered into pursuant to this resolution and shall provide City Council with annual notification of all Agreements to Annex entered into pursuant to this Resolution.


Section 5. The City Attorney's Office is authorized to make necessary revisions to the Template Agreement to Annex without seeking additional City Council authorization, but shall provide City Council with notice of any substantive revisions to the Template Agreement to Annex.

DATED at Colorado Springs, Colorado, this 25<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
Council President

ATTEST:

  
Sarah B. Johnson, City Clerk



**AGREEMENT PROVIDING  
WATER SERVICE AND/OR WASTEWATER SERVICE TO LAND LOCATED  
OUTSIDE THE CITY LIMITS  
OF THE CITY OF COLORADO SPRINGS  
AND  
AGREEMENT TO ANNEX**

WHEREAS, INSERT PROPERTY OWNER(S) NAME(S), INCLUDE TYPE OF ENTITY FOR BUSINESSES (collectively "Owner") is/are the owner(s) of real property in El Paso County, Colorado, as shown on the location sketch map (to be done on 8 1/2 x 11 paper) and as described and set forth in the attached Exhibit "A" (the "Property"); and

**Check the appropriate box(s) below:**

WHEREAS, Owner intends to build upon the Property a building (or other structure(s)) used for single-family residential purposes at INSERT ADDRESS (INSERT TSN) Colorado Springs, CO and has requested  water service,  wastewater service, or  water service and wastewater service ("Service") for the Property from the City of Colorado Springs, a home rule City and Colorado municipal corporation (the "City"); and

WHEREAS, a building (or other structure(s)) exists on the Property located at INSERT ADDRESS Colorado Springs, CO (INSERT TSN) that is used for single-family residential purposes and Owner has requested  water service,  wastewater service, or  water service and wastewater service ("Service") for the Property from the City of Colorado Springs, a home rule city and Colorado municipal corporation (the "City"); and

WHEREAS, the Property is subject to a deed of trust for which INSERT BANK NAME, INSERT BANK ADDRESS, is the beneficiary (the "Financial Institution") recorded at Reception No. INSERT NUMBER of the records of the El Paso County Clerk and Recorder; and

WHEREAS, the Property is located within an enclave, which enclave is surrounded by the corporate limits of the City and which enclave is or will be eligible for unilateral annexation by the City under the provisions of the Municipal Annexation Act of 1965, Part 1 of Article 12 of Title 31, C.R.S., as amended (the "Annexation Act"), and Colo. Const. Art. II, § 30; and

WHEREAS, the City has considered Owner's request for Service, and has determined that the Property sought to be served is not presently eligible for annexation to the City or, if eligible for annexation, has determined that it is not in the best interests

**INSERT PROPERTY ADDRESS**

of the City to annex the Property at this time; and

WHEREAS, the City is under no obligation to furnish, but is agreeable to furnishing, Service upon the terms and conditions set forth below because the City has determined the extension of Service under the terms of this Agreement constitutes a community benefit.

NOW, THEREFORE, in consideration of the premises and in further consideration of the benefits which will accrue to the City and Owner, the City and Owner have entered into this Agreement Providing Water Service and/or Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex (the "Agreement") under the following terms and conditions:

1. This Agreement shall constitute the unqualified and irrevocable consent of Owner to annex the Property to the City and the City shall not be required to seek legal action to compel specific performance of this Agreement to Annex, but may proceed by ordinance to annex all or part of the Property as if Owner had petitioned for annexation, whenever the Property becomes eligible for annexation pursuant to the Annexation Act. Owner further agrees to execute a petition for annexation, prepare annexation plats, pay all required fees and execute any other documents the City determines are necessary to annex Owner's Property to the City. Owner agrees that the provisions of this Agreement are applicable to the Property described in Exhibit "A" or any portion of the Property. It is further agreed that Owner will not annex the Property or any portion, or incorporate the Property with any other municipality or special service district as described in Paragraph 10 without the prior written consent of the City.

2. It is specifically understood that the Service to be furnished by the City is for only the single-family residential use described in this Agreement and shall be in conformity with the regulations of the City in furnishing water and/or wastewater outside its corporate limits and in further conformity with all applicable resolutions, codes, ordinances, regulations and policies of the City. Owner expressly agrees to be bound by and to comply with any and all City ordinances pertaining to water shortages, outdoor watering restrictions and water-efficient landscaping. Owner understands and agrees that the City imposes charges for water service and/or wastewater service provided outside of its corporate limits at a higher rate than applicable to the provision of such services within the corporate limits of the City. Upon annexation of the Property to the City, charges for water service and/or wastewater service subsequent to annexation shall be at the rates applicable to the provision of such services within the corporate limits of the City.

3. If Owner or Owner's successor in interest desires a different water service and/or wastewater service than granted the Property in this Agreement, or desires to put the Property to a use other than single-family residential, a change request shall be made to City Council. If granted, the request shall be upon terms and conditions as

**INSERT PROPERTY ADDRESS**

may be imposed by City Council. If the use of the Property for which the change request is made involves subdividing the Property or developing the Property for other residential, commercial or industrial purposes, the conditions for granting Owner's request shall include full compliance with the code, ordinances, rules, regulations and policies of the City.

4. If necessary, Owner will extend water and/or wastewater main lines or service lines to the Property, at Owner's expense, in accord with the City's codes, ordinances, rules, regulations and policies in effect at the time of the specific water service and/or wastewater service request. A first-come, first-served policy will govern availability of supply.

5. In the event Owner is not required to extend water service and/or wastewater service and lines and connect to the City's water and/or wastewater system at the time of entering into this Agreement, Owner shall connect to the City's water and/or wastewater system at Owner's expense at the time of request or when required under applicable codes, ordinances, rules, regulations and policies of the City in effect at the time of the request for Service. Water distribution and treatment capacity, along with wastewater collection and treatment capacity, is not guaranteed by this Agreement, but by Service availability at the time of request. The first-come, first-served policy will govern availability of supply.

Owner agrees to pay its pro rata share of applicable water and/or wastewater treatment plant facility costs through established Water and Wastewater System Development Charges. Owner will pay a pro rata share of any existing water and wastewater infrastructure or facility costs assessed through established recovery agreement charges when required by codes, ordinances, rules, regulations or policies of the City. Water distribution and/or wastewater collection facilities required to serve the Property must be designed and constructed at Owner's expense in accordance with applicable codes, ordinances, rules, regulations or policies of the City at the time of the request for Service.

Owner agrees to participate with other developments on a fair share pro rata basis in present and future off-site relief or other water and/or wastewater facilities.

6. As provided in the Special Warranty Deed and Irrevocable Consent to the Appropriation, Withdrawal and Use of Groundwater ("Deed"), which is attached to this Agreement and hereby incorporated by reference, Owner grants to the City, all right, title and interest to any and all groundwater underlying or appurtenant to and used upon the Property, and any and all other water rights appurtenant to the Property (collectively referred to as the "Water Rights"), together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the City to appropriate, withdraw and use the Water Rights. The Deed conveying the Water Rights shall be executed by the Owner concurrently with this Agreement and shall be made effective

**INSERT PROPERTY ADDRESS**

immediately after execution by the City. The Deed shall be recorded at the El Paso County Clerk and Recorder's office.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now in effect or hereafter amended, on behalf of Owner and all successors in title, Owner irrevocably consents to the appropriation, withdrawal and use by the City of all groundwater underlying or appurtenant to and used upon the Property.

In the event the City chooses to use or further develop the Water Rights that have been conveyed, Owner agrees to provide any and all easements required by the City prior to the construction and operation of any City well or water-rights-related infrastructure on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owner's Property without additional consent from Owner. Utilities may authorize Owner to continue to utilize wells located on the Property that are permitted or decreed for domestic purposes, until the Property is connected to the City's water system. Owner agrees that any wells permitted or decreed for domestic purposes only that are located on the Property at the time of connection to the City's water system will be plugged and abandoned in accord with state rules and regulations. The City may permit Owner to continue to use wells for irrigation or livestock purposes only in accord with the permit or decree when the permit or decree includes use of the well for irrigation or livestock purposes, provided that the City may withdraw this authorization upon notification to Owner by Colorado Springs Utilities. No commingling of well and City water supply will be permitted.

7. Owner shall also construct facilities, if determined necessary by the City Engineer, for the safe discharge of all subsurface water into a drainage conveyance facility. These facilities are not eligible for drainage basin credit or reimbursement.

8. Owner and the City acknowledge that if the Property is not located within the corporate limits of the City at the time of its development, Owner nevertheless agrees to comply with all codes, ordinances, rules, regulations and policies of the City including, but not limited to, the City's Subdivision Code, Building Code, Fire Code, Drainage Ordinance, and Utility Extension Policies as now existing or subsequently amended, except to the extent that compliance would be unlawful under the applicable resolutions, codes and regulations of the El Paso County Board of County Commissioners or another governmental entity having jurisdiction. In the event compliance is unlawful under the applicable resolutions, codes and regulations of the El Paso County Board of County Commissioners or other governmental entity having jurisdiction over the Property, Owner shall post assurances to bring any improvements into compliance with City codes, ordinances, rules, regulations and policies upon annexation.

Compliance with City codes, ordinances, rules, regulations and policies pertaining to land development shall require, but shall not be limited to:

**INSERT PROPERTY ADDRESS**



- a. Payment of all applicable Water and Wastewater Development Charges and fees.
- b. Payment of required park and/or school fees in lieu of dedication to the City.
- c. Dedication, design and construction of required streets, sidewalks, curbs, gutters, drainage and utilities, to City standards, or to the standards of the entity having responsibility for maintenance, whichever standard is more strict, or post acceptable financial assurances.
- d. Dedication of easements including, but not limited to, utility, drainage and other public improvements as required by the City Subdivision Code, or post acceptable financial assurances.
- e. Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees.
- f. Agreement to participate with other developments on a fair share pro rata basis in present and future drainage and/or off-site relief or other water facilities.

9. Owner agrees to pay fees, charges and take such other actions as set forth in Paragraph 8 at the time of annexation, when required under the provisions of the applicable City codes, ordinances, rules, regulations and policies or at any other time as requested by the City. Fees payable and requirements imposed under Paragraph 8 shall be those in effect at the time the fees are required to be paid or other action to be taken under the provisions of Paragraph 8 and not those fees in effect or requirements in effect at the time of execution of this Agreement. The City may require proof of payment or proper dedication of land prior to the connection of any water service and/or wastewater service under this Agreement. This Agreement shall not be interpreted to require the City to install any park or drainage facility at any specific location or within any period of time, nor as relieving Owner of any liability or obligation to third persons to provide or to refrain from providing drainage. The City shall incur no obligation to Owner by reason of any claims, suits, judgments, or other liability or obligation resulting from Owner providing or failing to provide drainage. Owner specifically agrees to indemnify and hold the City harmless from all such claims.

10. Owner understands that certain infrastructure and/or easements serving the Property may be required by the City to meet appropriate City standards at the time of utility service extension to the Property or at the time of annexation of the Property to the City, or at another subsequent time as the City determines is appropriate to be upgraded to meet City standards. Infrastructure may include public utilities and public works projects including, but not limited to, paving and improvements of streets, curb, gutters, drainage facilities, and water and/or wastewater systems necessary to serve the Property subject to this Agreement. Infrastructure may be designed, financed, constructed, and/or maintained by special districts or other entities. These entities may

**INSERT PROPERTY ADDRESS**

include, but are not limited to, special districts, general improvements districts, limited improvement districts, special improvement maintenance districts, metropolitan districts, and building authorities or another district by whatever name, whether established pursuant to or subsequent to the annexation of the Property to the City or established prior to the annexation of the Property to the City. This Agreement shall constitute Owner's unqualified and irrevocable consent to including the Property within any of the foregoing entities and assessing the Property a fair share of the cost of any improvements as determined by City Council or the governmental authority having jurisdiction. In addition to or in lieu of the construction of improvements by the foregoing entities, the City may at any time require Owner to execute an agreement obligating Owner and the Property to pay for some or all of the improvements and a fair share as the City in its sole discretion may determine is appropriate.

11. The covenants and agreements contained in this Agreement shall run with the land described and affected by this Agreement, and shall extend to and be binding upon the Owner's heirs, assigns, legal representatives and successors and Owner for himself and his heirs, assigns, legal representatives and successors in interest. This Agreement shall be recorded with the El Paso County Clerk and Recorder.  The Financial Institution expressly accepts and approves these covenants and agreements.

12. As further consideration for the City providing Service, if all or part of the Property is eligible for annexation and if for any reason Owner or Owner's successor in interest does not or cannot abide by the terms and conditions of this Agreement, then the subject Service provided may be terminated by and at the sole option of the City.

13. Nothing in this Agreement shall abridge or shall be construed as a limitation on the City's authority to adopt different ordinances, rules, regulations, resolutions, policies or codes that apply generally or to the Property specifically.

14. Owner will comply with all ordinances, codes, rules, regulations and policies of the City as now exist or may be amended or adopted in the future which are applicable to the Property under the terms of this Agreement, or are otherwise applicable to the Property after the annexation to the City.

15. Extension of water service and/or wastewater service under the terms of this Agreement is for the sole benefit of Owner and shall not be interpreted to create rights in a third party beneficiary or constitute City Council's determination of any policy pertaining to extension of water service and/or wastewater service to other similarly situated individuals or property.

16. As used in this Agreement, the term "Owner" shall also mean any of Owner's heirs, executors, personal representatives, successors, transferees or assigns and shall also include the Financial Institution, if the Financial Institution, its successors, transferees, or assigns becomes owner of the Property through foreclosure or

**INSERT PROPERTY ADDRESS**

otherwise. A subsequent owner of the Property shall have the right to enforce this Agreement subject to its provisions to the same extent as the original Owner of the Property.

17.  This Agreement may be amended by Owner and the City.  This Agreement may be amended by Owner and the City with the concurrence of the Financial Institution. Should the Financial Institution no longer hold an interest in the Property and an affidavit to that effect is filed with the City and the El Paso County Clerk and Recorder, its concurrence with any amendment will not be required.

Any amendment shall be recorded in the records of El Paso County, shall run with the land and shall be binding upon all persons or entities now having or later acquiring an interest in the Property subject to the amendment unless otherwise specified in the amendment.

18.  By executing this Agreement, the Financial Institution agrees that: (1) should it become Owner of the Property through foreclosure or otherwise, it will be bound by the terms and conditions of this Agreement to the same extent as Owner; and (2) should it become Owner of the Property, any provisions in its deed of trust or other agreements pertaining to the Property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

19. The parties to this Agreement agree that for breach of any covenant, term or condition of this Agreement by any Owner, damages are not to be considered an adequate or exclusive remedy, and the City may compel specific performance of this Agreement.

20. If any part of this Agreement is declared void by a Court of competent jurisdiction, the parties agree that the void provision shall not affect the remaining terms and conditions of this Agreement, which shall continue in full force and effect.

**INSERT PROPERTY ADDRESS**

IN WITNESS WHEREOF, the City, Owner and Financial Institution have executed this Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

CITY OF COLORADO SPRINGS

\_\_\_\_\_  
Jerry Forte, Jr.  
Colorado Springs Utilities Executive Director

APPROVED AS TO FORM:

\_\_\_\_\_  
Office of the City Attorney

STATE OF COLORADO    )  
                                          ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_, Executive Director of Colorado Springs Utilities, on behalf of the City of Colorado Springs.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**INSERT PROPERTY ADDRESS**

OWNER:

\_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO    )  
                                          ) ss.  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_, as Owner.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**INSERT PROPERTY ADDRESS**

FINANCIAL INSTITUTION:

**INSERT BANK NAME**

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

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

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of and on behalf of **INSERT BANK NAME**.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**INSERT PROPERTY ADDRESS**

**EXHIBIT A**

**INSERT LEGAL DESCRIPTION OF PROPERTY**

**INSERT PROPERTY ADDRESS**

EXHIBIT B

SPECIAL WARRANTY DEED AND IRREVOCABLE CONSENT  
TO THE APPROPRIATION, WITHDRAWAL AND USE OF GROUNDWATER  
\_\_\_\_\_ Annexation

**INSERT OWNER(S) NAME(S)** ("Grantor(s)"), whose address is \_\_\_\_\_, in consideration of the benefits received pursuant to the \_\_\_\_\_ Agreement Providing Water Service and/or Wastewater Service to Land Located Outside the City Limits of the City of Colorado Springs and Agreement to Annex dated \_\_\_\_\_ ("Annexation Agreement"), which is executed by Grantor(s) concurrently with this Special Warranty Deed, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, sell and convey to the City of Colorado Springs, Colorado ("Grantee"), whose address is 30 S. Nevada Avenue, Colorado Springs, CO 80903, all right, title, and interest in any and all groundwater underlying or appurtenant to and used upon the property described in Exhibit A ("Property") and any and all other water rights appurtenant to the Property, collectively referred to as the "Water Rights," together with the sole and exclusive right to use the Water Rights and all rights of ingress and egress required by the Grantee to appropriate, withdraw and use the Water Rights; and Grantor(s) warrants title to the same against all claims arising by, through, or under said Grantor(s). The Water Rights include, but are not limited to, those described in Exhibit B hereto.

Furthermore, pursuant to C.R.S. § 37-90-137(4), as now exists or may later be amended, Grantor(s), on behalf of Grantor(s) and any and all successors in title, hereby irrevocably consent in perpetuity to the appropriation, withdrawal and use by Grantee of all groundwater underlying or appurtenant to and used upon the Property.

This Special Warranty Deed and the consent granted herein shall be effective upon its execution.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

GRANTOR(s):

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

**INSERT OWNER(S) NAME(S)**

**INSERT PROPERTY ADDRESS**



STATE OF            )  
                          ) ss.  
COUNTY OF        )

The foregoing instrument was acknowledged before me this \_\_\_\_day of \_\_\_\_\_, 20\_\_\_\_, by **INSERT OWNER(S) NAME(S)**, Grantor(s).

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

Accepted by the City of Colorado Springs

By: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20##  
Real Estate Services Manager

By: \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 20##

Approved as to Form:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney's Office

**INSERT PROPERTY ADDRESS**

Exhibit A

LEGAL DESCRIPTION

to the  
Special Warranty Deed and Irrevocable Consent to the Appropriation,  
Withdrawal and Use of Groundwater executed by  
**INSERT OWNER(S) NAME(S)**, Grantor(s) on \_\_\_\_\_

*(provide legal description, signed and stamped by Professional Licensed Surveyor)*

**INSERT PROPERTY ADDRESS**

Exhibit B

to the  
Special Warranty Deed and Irrevocable Consent to the Appropriation,  
Withdrawal and Use of Groundwater Executed by  
**INSERT OWNER(S) NAME(S)** Grantor(s) on \_\_\_\_\_.

Decreed Groundwater Rights

Case No.  
Court:  
Source:  
Amount:  
Date of Decree:  
Name of Owner:

Permitted Groundwater

Permit No.  
Date of Permit:  
Source:  
Amount:  
Name of Owner:  
Legal Description of Well or other Structure:

Surface Water Rights

Name of Water Right:  
Case No.  
Court:  
Source:  
Amount:  
Date of Decree:  
Name of Owner:

**INSERT PROPERTY ADDRESS**

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024

**To:** Utilities Board

**From:** Travas Deal, Chief Executive Officer

**Subject:** Proposed Annexation-Related City Code Changes

**NARRATIVE:**

**Desired Action:** Vote whether to recommend approval of code changes for annexation changes to City Code. Changes to City Code must be approved by City Council pursuant to City Charter section 3-70 and Code sections 1.2.108 and 12.1.104.

**Executive Summary:** Staff and the City Attorney's Office drafted proposed changes to portions of City Code related to annexation, outside city service and special contract service as part of the initial AnnexCOS project. Those changes were presented to the Board in September 2022. The project was put on hold as the Board and Council worked on the water extension ordinance. In June of 2023, Board member Risley started a review of the annexation ordinance and process. Changes to the annexation ordinance and process were presented to Strategic Planning Committee in August 2023. The committee asked for a wholistic review of all annexation-related code provisions.

During the wholistic review, the proposed ordinances were revised to take into account the adoption of the Uniform Development Code and the newly-adopted water extension ordinance. Utilities staff and City staff reviewed the proposed ordinances and made further revisions. The revised ordinances were presented to Strategic Planning Committee in November. The committee recommended that the ordinances be placed on the January 2024 Board agenda for review and approval. The proposed changes include changes to the annexation section in Chapter 7, the addition of exceptions to the exclusive provider section in Chapter 12, revisions to the outside city service sections and special contract sections of Chapter 12, and changes to the water extension ordinance that will streamline the approval process for water extensions.

**Board Policy:** City Charter and City Code direct the Board and Council to set policy that supports long-term sustainability of the enterprise and maximizes value to the citizens. City Charter section 3-10 and 6-30; City Code 12.1.102 and 104.

**Cost/Budget:** N/A

**Affected Parties:** Colorado Springs Community, City Staff, Utilities Staff, Utilities Board and City Council

**Alternatives:** Recommend approval or denial of proposed ordinances or recommend changes to proposed ordinances

<b>Submitter:</b> Renee Congdon	<b>Email address:</b> Renee.congdon@coloradosprings.gov
<b>Division/ Department:</b> CAO-Utilities Division	<b>Phone number:</b> 719-385-5609
	<b>Date submitted:</b> January 5, 2024

<b>SPG Staff Use Only:</b>	Yes	No	<input checked="" type="checkbox"/> X	<b>ITEM NO. 15</b>
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# ANNEXATION-RELATED CODE CHANGES



Proposed Changes to Sections of City Code  
Chapters 7 and 12

**Jan. 17, 2024**

Renee Congdon—Utilities Division Chief, City Attorney's Office

# NATURE OF CHANGES



1. Reorganization
2. Changes to the Annexation section (Chapter 7, Section 7.5.701)
3. Changes to Chapter 12
  1. Exceptions to exclusive provider
  2. Added policy considerations and requirements to sections on special contract service to be consistent with other extensions of water service
  3. Streamline water extension ordinance process

# REORGANIZATION



1. Made the organization of sections more logical
  1. Put like things together
  2. Moved the sections on outside city service from Chapter 7 to Chapter 12
  3. Moved the “Rights of the City” in the annexation section to the beginning of the section
  4. Made the analysis for annexation consistent with the analysis for outside city service
    1. Example: the section on financial analysis is currently only in the outside city service section. The proposed changes copy the financial analysis into the annexation section.

# CHANGES TO SECTION 7.5.701 ANNEXATION



## 1. Highlights of Changes to 7.5.701

1. No obligation to reserve expanded to include WW
2. Change review from only looking at water and wastewater to looking at all 4 services
3. Explicit tie-in to water extension ordinance
4. Makes transfer of water rights more robust
5. Clarifies obligation to get necessary easements
6. Clarifies annexor's obligations when annexation invades service territory
7. Improves financial analysis sections



# CHANGES TO CHAPTER 12



1. Exclusive Provider
2. Move outside city service to 12.1.116
3. Add policy considerations to outside city service sections of water and wastewater
4. Streamline water extension ordinance

# EXCLUSIVE PROVIDER



1. 12.1.111-Utilities is exclusive provider of all 4 services within City limits
2. Proposed exceptions
  1. Strategic: not in Utilities best interest to provide all 4 services to specific property
  2. Legal: providing all 4 services to specific property would result in breach of contract, violation of law, or actions inconsistent with legal obligation

# EXCLUSIVE PROVIDER



## 1. Process

1. Recommended by CEO, based on financial analysis, risk analysis, and demonstration from property owner that property does not need service or already has service
2. Approved by Utilities Board
3. Strategic exception must support current Board directive or instructions
4. Notice must be recorded to put subsequent owners on notice
5. Must have an agreement between Utilities and property owner
6. Utilities may require an agreement with other service provider

# OUTSIDE CITY SERVICE



1. Moved Agreements to Annex
  1. From 7.5.701 to 12.1.116
2. Criteria for Agreements to Annex
  1. Properties that are or are likely to be eligible for annexation, but annexation not in best interest of City or property owners unwilling or unable to annex
    1. Was property eligible to annex
3. Added Policy to Special Contract Service
  1. Acknowledge in-City investment. Justifies increased rates and development charges for outside city service

# OUTSIDE CITY SERVICE AGREEMENT TO ANNEX



## New Policies for Agreements to Annex

1. The City shall consider the future water and wastewater needs of areas outside the corporate limits of the City and the population growth of the Pikes Peak urban area. However, in considering the future water and wastewater needs of areas outside the City, consideration shall be given first to current water and wastewater systems users within the corporate limits of the City. Water needs shall be considered in accordance with section 12.4.305.
2. Water and wastewater services provided outside City limits must not have an adverse impact on the City and its facilities, public and private.

# OUTSIDE CITY SERVICE AGREEMENT TO ANNEX



## Existing Policy for Agreements to Annex

1. The funds collected from development charges, fees, the sale of water, and wastewater treatment charges are necessary to pay for the acquisition, development, construction and maintenance of the water resources, water infrastructure, and wastewater infrastructure needed to provide water and wastewater service.
2. There is no obligation imposed by general law upon the City to permit any of the City's water to be used outside its boundaries.
3. Persons inside City limits have made significant investments in both the water and wastewater systems. Persons outside the City limits who desire water or wastewater services should be required to pay an amount that reflects their pro rata demand on existing and planned infrastructure and resources as well as pay additional fees for such services in recognition of investments made to both systems by persons inside City limits.
4. There is a need to ensure that land use and development outside of the corporate limits of the City is compatible with land use within the City and will not have an adverse impact on the City and its facilities, public and private. The extension or provision of water or wastewater, or both, is a method of fostering compatible land use and development inside and outside the City limits, and should be handled in a manner which will ensure sound land use relationships and promote orderly development.

# OUTSIDE CITY SERVICE SPECIAL CONTRACT SERVICE



1. Added Policy to Special Contract Service
  1. Acknowledge in-City investment. Justifies increased rates and development charges for outside city service. Mirrors agreement to annex
  2. Outside City service must not have adverse impact on City resources and facilities. Also added to Agreement to Annex
  3. No obligation imposed by general law upon the City to permit any of the City's water resources to be used outside its boundaries or to provide wastewater service outside City limits.

# OUTSIDE CITY SERVICE SPECIAL CONTRACT SERVICE



## Requirements on Special Contract Service

1. City's facilities currently existing or planned must be sufficient to serve present and projected needs for foreseeable future for all users of the system within and outside City, including those served under special contract—as provided in water extension ordinance
2. Special contracts must not interfere with the City's ability to provide service to in-City customers in accordance with the standards adopted by Utilities and the City's existing contractual obligations.
3. Special contracts must comply with all applicable restrictions in Code and permits, contracts, agreements, and decrees.



# OUTSIDE CITY SERVICE SPECIAL CONTRACT SERVICE



## Requirements on Special Contract Service

1. Special contract customer must
  1. Pay all system availability fees and other applicable Utilities' fees.
  2. Obtain all contracts, permits, administrative approvals and water rights decrees as may be required to allow Utilities to provide special contract service without impairing Utilities' ability to operate the water system for the benefit of Utilities' customers.

# WATER EXTENSION ORDINANCE



## City Code section 12.4.305

1. Removed requirement for Board approval
2. Revised 128% test to remove 25% contiguity

# NEXT STEPS



- Planning Commission approval of Chapter 7 changes
- City Council approval of all changes
- Proposed changes are a package. If don't approve them all, some changes will be needed before moving drafts forward.

ORDINANCE NO. 2\_\_-\_\_\_\_\_

AN ORDINANCE REPEALING AND REORDAINING SECTION 701 (ANNEXATION OF LAND) OF PART 7 (POLICY DECISIONS BY CITY COUNCIL) OF ARTICLE 5 (ADMINISTRATION AND ENFORCEMENT) OF CHAPTER 7 (UNIFORM DEVELOPMENT CODE) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO ANNEXATION

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

Section 1. Section 701 (Annexation of Land) of Part 7 (Policy Decisions by City Council) of Article 5 (Administration and Enforcement) of Chapter 7 (Uniform Development Code) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

**7.5.701: ANNEXATION OF LAND:**

A. Annexation:

1. Policy: The City Council hereby declares the policy of the City to be:

a. There is no obligation under general law to reserve water resources or capacity in the City's water system and wastewater system for undeveloped land presently within the City's boundaries.

b. Water belonging to the City is in no way allocated to a particular parcel of land until the land is developed and water applied to actual use upon that land.

2. Rights of the City:

a. The right of the City Council to restrict and regulate the use of City water within or outside the City limits shall not be abridged by anything contained in this section. Nothing in this section shall be construed to confer upon undeveloped land within the City limits, as such City limits exist at the time of adoption of this section or as such City limits may be hereafter altered by annexation or disconnection, any right to the reservation of existing water rights or quantities of water for the sole and exclusive use of such land.

b. This section shall not be construed to create any rights or cause of action in any person or land, whether or not eligible for annexation, to demand annexation to the City or any municipal service.

3. Conditions for Annexation:

a. Comply with State Laws: Annexation, consolidation, or disconnection of territory to or from the City shall be in accord with Article II of the Colorado Constitution and the Municipal Annexation Act of 1965, as they exist now or may be later amended.

b. To assist the City Council in its decision, each proposal for annexation shall be studied to determine:

(1) Whether the area proposed to be annexed is a logical extension of the City's boundary.

(2) Whether the development of the area proposed to be annexed will be beneficial to the City. Financial considerations, although important, are not the only criteria and shall not be the sole measure of benefit to the City.

(3) Unless an exception granted under section 12.1.111 of this Code will be in effect at the time of annexation, whether at the time of request there is projected available surplus capacity and resources across all Utilities' service lines for the foreseeable future to serve all present users and the projected new users from the area proposed to be annexed, taking into account section 12.4.305 of this Code, and that performance criteria, as defined for each service line in standards adopted by Utilities, will not be impaired.

(4) Whether the existing and projected utility facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present and projected users whether within or outside the corporate limits of the City.

(5) Whether utility services and facilities can be extended to serve the property proposed to be annexed at the time of annexation or sometime in the future.

(6) The estimated immediate and long-range costs to the City under development plans proposed by the annexor, which cost estimates shall include, but need not be limited to:

(i) The cost of extending City services. Examples of required improvements are bridges, arterial streets, major drainage improvements, parks and park improvements,

regional and urban trails systems, and the maintenance and operation of required improvements.

(ii) The nature and cost of City-financed capital improvements made necessary by the proposed annexation when developed. The City may also include the expense that would be incurred by other governmental entities, such as school districts.

(iii) The time schedule as proposed by the annexor over which such costs would be extended.

(7) The revenues expected to be generated by proposed development within the area proposed to be annexed. This may include *ad valorem* taxes from the land and improvements situated and to be situated on the land, sales, and use taxes from commercial development, increased revenue sharing or other grant funds resulting from increased population, and increased income taxes.

(8) Whether the Utilities' revenues expected to be generated by the development of the proposed annexation will offset the estimated immediate and long-range costs to Utilities for the acquisition of utility resources, extension of utilities services, development of utilities infrastructure, and operations and maintenance as required by Utilities Rules and Regulations.

(9) Other benefits to the City for which there is no readily acceptable method of computation except subjective judgment, such as increased employment opportunity, improved wastewater management, improved drainage control, improved public transportation, and increased diversification of the City's economic base.

After the foregoing have been studied in such depth as the City Council shall require, the City Council in its discretion may annex or not annex the proposed area.

4. Requirements of Annexation:

a. The City shall require as a condition of annexation the transfer to the City of title to all water rights appurtenant to, including without limitation all groundwater underlying, the land proposed to be annexed. Should such groundwater or appurtenant water rights be separated from the land or otherwise be unavailable for transfer to the City, the City, at its discretion, may either refuse annexation or require payment commensurate with the value of such groundwater and/or appurtenant water rights as a condition

of annexation. The value of such water rights shall be determined by Utilities based on market conditions as presently exist. City Council may, in its discretion, waive the requirement to convey groundwater rights or pay the value of groundwater and/or appurtenant water rights by resolution.

b. The City shall require as a condition of annexation the transfer to the City of title to any additional water rights historically used on or for the benefit of the area to be served that Utilities determines are necessary to ensure it has sufficient water supplies to serve the property or payment of any fees in lieu thereof, as determined by City Council.

c. The City shall require as a condition of annexation that all rights of way or easements required by Utilities necessary to serve the proposed annexation, to serve beyond the annexation, and for system integrity, shall be granted to Utilities by the applicant or other property owner on forms approved by Utilities. Utilities, at the time of utility system development, shall determine such rights of way and easements.

d. If the proposed annexation to the City overlaps an existing service area of another utility under the jurisdiction of the Colorado Public Utilities Commission (PUC), if no exception has been granted under section 12.1.111 of this Code and if required by the City, the applicant shall petition the PUC to revise the service area such that the new service area will be contiguous to the new corporate boundary of the City and the applicant shall pay any and all fees or costs associated with revising the service area, including without limitation any required condition assessment, system improvements, and just compensation due to the existing service provider. If the proposed annexation overlaps the service territory of a special district, the applicant shall either have the property removed from the service territory of the special district or shall obtain permission from the special district for the property to receive utility services from Utilities and shall pay any and all fees and costs associated therewith. City Council may waive or modify the requirements in this subsection by resolution.

5. Annexation Process:

a. General: All annexations shall be reviewed by the City in accord with the Municipal Annexation Act of 1965, as amended, C.R.S. § 31-12-101 *et seq.* All applicable provisions of Chapter 7 of this Code apply unless specifically modified by the provisions of this section.

b. Zoning of Annexed Areas: The petitioners of an annexation may request that the initial zoning of the land to be annexed occur concurrently with the annexation ordinance in accord with the Municipal Annexation Act of 1965, as amended, C.R.S. §31-12-101 *et seq.* If there is no request for the establishment of an initial zone district by petitioners for annexation or if the annexation is in accord with C.R.S. §31-12-106, the initial zoning of the annexed land shall be accomplished within ninety (90) days of the effective

date of the annexation. The establishment of an initial zone district shall be accomplished after at least one public hearing by the Planning Commission and City Council jointly or singly to consider the action.

c. Decision by City Council.

(1) The City Council shall review the petition for annexation in accord with the subsection A3 above.

(2) The City Council in its discretion may approve or deny the petition for annexation.

(i) If the City Council decides to annex it may require a contemporary Annexation Agreement in the form required by the City specifying any required fees and the installation and the time of installation of certain public and utilities improvements, both on site and off site, that are required or not required under this Code. City Council may include other requirements it deems necessary.

(ii) If the City Council denies an application for annexation, utilities shall not be extended unless Council is assured that an Agreement to Annex in accord with Chapter 12 of this Code will be executed by fee owners of the real property contracting for the services prior to the utilities being extended, and that the remaining provisions of Chapter 12 of this Code regarding annexation subsequent to extension of utilities have been met.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 202\_.

Finally passed: \_\_\_\_\_

\_\_\_\_\_  
Randy Helms, Council President



**Mayor's Action:**

- Approved on \_\_\_\_\_.
- Disapproved on \_\_\_\_\_, based on the following objections:

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\_\_\_\_\_  
Mayor

**Council Action After Disapproval:**

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of \_\_\_\_\_, on \_\_\_\_\_.
- Council action on \_\_\_\_\_ failed to override the Mayor's veto.

\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

**Proposed Changes to the Annexation Section**  
**Chapter 7, Section 7.5.701**

<b>Change</b>	<b>Old Language</b>	<b>New Language</b>	<b>Purpose</b>
<p>No obligation to reserve expanded to include resources and capacity for water and wastewater</p>	<p>There is no obligation imposed by general law upon the City to permit any of the City's water to be used outside its boundaries. Neither is there an obligation under general law to reserve water for undeveloped land presently within the City's boundaries</p>	<p>There is no obligation under general law to reserve water resources or capacity in the City's water system and wastewater system for undeveloped land presently within the City's boundaries.</p> <p>Water belonging to the City is in no way allocated to a particular parcel of land until the land is developed and water applied to actual use upon that land.</p>	<p>Consistent with standard practice</p> <p>Acknowledges constraints on wastewater capacity</p>
<p>Change from only looking at water and wastewater to review of all four services</p> <p>Includes consideration of what annexation's impact on performance criteria for all four services</p> <p>Acknowledges proposed exception to exclusive provider requirement in 12.1.111</p> <p>Points to water extension ordinance to determine whether sufficient water to support annexation</p>	<p>There is a projected available water surplus at the time of request</p> <p>The existing and projected water facilities and/or wastewater facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present users whether within or outside the corporate limits of the City;</p>	<p>Unless an exception granted under section 12.1.111 will be in effect at the time of annexation, whether at the time of request there is projected available surplus capacity and resources across all Utilities' service lines for the foreseeable future to serve all present users and the projected new users from the area proposed to be annexed, taking into account City Code section 12.4.305, and that performance criteria, as defined for each service line in standards adopted by Utilities, will not be impaired.</p>	<p>Recognizes the constraints on 4 services</p>

		Whether the existing and projected utility facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present and projected users whether within or outside the corporate limits of the City.	
Cleans up ambiguous language	The annexation can be effected at the time the utilities are extended or at some time in the future	Whether utility services and facilities can be extended to serve the property proposed to be annexed at the time of annexation or sometime in the future.	
Old version only included groundwater rights.  New version includes transfer of groundwater, water rights appurtenant to the property, and water rights historically used on the property.	The City shall require as a condition of annexation the transfer of title to all groundwater underlying the land proposed to be annexed. Should such groundwater be separated from the land or otherwise be unavailable for transfer to the City, the City, at its discretion, may either refuse annexation or require payment commensurate with the value of such groundwater as a condition of annexation. The value of such groundwater shall be determined by the Utilities based on market conditions as presently exist	The City shall require as a condition of annexation the transfer to the City of title to all water rights appurtenant to, including without limitation all groundwater underlying, the land proposed to be annexed. Should such groundwater or appurtenant water rights be separated from the land or otherwise be unavailable for transfer to the City, the City, at its discretion, may either refuse annexation or require payment commensurate with the value of such groundwater and/or appurtenant water rights as a condition of annexation. The value of such water rights shall be determined by Utilities based on market	Makes transfer of water rights more robust.  Ensures City has right to receive all water rights associated with annexing property

		<p>conditions as presently exist. City Council may, in its discretion, waive the requirement to convey groundwater rights or pay the value of groundwater and/or appurtenant water rights by resolution.</p> <p>The City shall require as a condition of annexation the transfer to the City of title to any additional water rights historically used on or for the benefit of the area to be served that Utilities determines are necessary to ensure it has sufficient water supplies to serve the property or payment of any fees in leu thereof, as determined by City Council.</p>	
Clarifies obligation to obtain necessary easements to serve the annexation	All rights of way or easements required by the Utilities necessary to serve the proposed annexation, to serve beyond the annexation, and for system integrity, shall be granted to the Utilities. Utilities, at the time of utility system development, shall determine such rights of way and easements	The City shall require as a condition of annexation that all rights of way or easements required by Utilities necessary to serve the proposed annexation, to serve beyond the annexation, and for system integrity, shall be granted to Utilities by the applicant or other property owner on forms approved by Utilities. Utilities, at the time of utility system development, shall determine such rights of way and easements	Change makes it clear that the annexor has to transfer the easements it has control over and annexor has to go get the easements on properties it does not have control over. This is consistent with other development in the City.
Clarifies annexor’s obligations with respect	If the proposed annexation to the City	If the proposed annexation to the City	Acknowledges possibility of

<p>to if an annexation overlaps an existing service territory of another utility service provider</p>	<p>overlaps an existing service area of another utility, the applicant shall petition the PUC (Public Utilities Commission) or other governing authority to revise the service area such that the new service area will be contiguous to the new corporate boundary of the City.</p>	<p>overlaps an existing service area of another utility under the jurisdiction of the Colorado Public Utilities Commission (PUC), if no exception has been granted under section 12.1.111 and if required by the City, the applicant shall petition the PUC to revise the service area such that the new service area will be contiguous to the new corporate boundary of the City and the applicant shall pay any and all fees or costs associated with revising the service area, including without limitation any required condition assessment, system improvements, and just compensation due to the existing service provider. If the proposed annexation overlaps the service territory of a special district, the applicant shall either have the property removed from the service territory of the special district or shall obtain permission from the special district for the property to receive utility services from Utilities and shall pay any and all fees and costs associated therewith. City Council may waive or modify the requirements in this subsection by resolution.</p>	<p>exception to exclusive provider requirement in 12.1.111.</p> <p>Allows City to decide whether annexor or City will apply to PUC for boundary adjustment.</p> <p>Makes it clear that annexor will pay any costs associated with adjusting the service territory boundary, including the costs of condition assessments, system improvements, and just compensation to the other service provider.</p>
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<p>Adds more robust financial analysis requirements</p>	<p>(This is in the outside city service section): Estimated immediate and long range costs to the City under development plans proposed by the annexor, which cost estimates shall include, but need not be limited to:</p> <p>a. The Cost Of Extending Existing City Services: Examples of capital improvements are bridges, arterial streets, major drainage improvements, parks and park improvements and the maintenance and operation of such improvements;</p> <p>b. Capital Improvements: The nature and the cost of City financed capital improvements made necessary by the proposed annexation when developed;</p> <p>c. Time Schedule: The time schedule as proposed by the annexor over which such costs would be extended.</p> <p>2. Revenues expected to be generated by proposed development within the area proposed to be annexed;</p> <p>3. Other benefits to the City for which there is no readily acceptable method of computation except subjective judgment.</p>	<p>The estimated immediate and long-range costs to the City under development plans proposed by the annexor, which cost estimates shall include, but need not be limited to:</p> <p>(i) The cost of extending City services. Examples of required improvements are bridges, arterial streets, major drainage improvements, parks and park improvements, regional and urban trails systems, and the maintenance and operation of required improvements.</p> <p>(ii) The nature and cost of City-financed capital improvements made necessary by the proposed annexation when developed. The City may also include the expense that would be incurred by other governmental entities, such as school districts.</p> <p>(iii) The time schedule as proposed by the annexor over which such costs would be extended.</p> <p>The revenues expected to be generated by proposed development within the area proposed to be annexed.</p>	<p>Acknowledgment that there is cost associated with annexation.</p> <p>Changes are consistent with the analyses currently undertaken when an annexation is being reviewed.</p> <p>Acknowledges that there may be non-financial costs and benefits that should be considered.</p>
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		<p>This may include ad valorem taxes from the land and improvements situated and to be situated on the land, sales, and use taxes from commercial development, increased revenue sharing or other grant funds resulting from increased population, and increased income taxes.</p>	
<p>Added Utilities-specific financial analysis</p>		<p>Whether the Utilities’ revenues expected to be generated by the development of the proposed annexation will offset the estimated immediate and long-range costs to Utilities for the acquisition of utility resources, extension of utilities services, development of utilities infrastructure, and operations and maintenance as required by Utilities Rules and Regulations.</p>	
<p>Bolstered “other benefits” element of analysis</p>	<p>The development of the area proposed to be annexed will be beneficial to the City. Financial considerations, although important, are not the only criteria and shall not be the sole measure of benefit to the City;</p>	<p>Other benefits to the City for which there is no readily acceptable method of computation except subjective judgment, such as increased employment opportunity, improved wastewater management, improved drainage control, improved public transportation, and increased diversification</p>	

		of the City's economic base.	
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ORDINANCE NO. 24-\_\_\_\_\_

AN ORDINANCE AMENDING SECTION 111 (EXCLUSIVITY) OF ARTICLE 1 (GENERAL PROVISIONS) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO EXCLUSIVE PROVIDER EXCEPTIONS

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

Section 1. Section 111 (Exclusivity) of Article 1 (General Provisions) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

12.1.111: EXCLUSIVITY:

A. \* \* \*

**1. Exceptions:**

a. **Strategic Exception:** An exception to this section may be granted for a property if Utilities Board determines it is in the best interest of Utilities to grant such an exception.

b. **Legal Exception:** An exception to this section may be granted for a property if Utilities Board determines that providing one or more utility service(s) may result in (1) potential breach of contract; (2) violation of federal, state or local law by Utilities or the City; or (3) the provision of such service(s) is inconsistent with the terms of existing contracts or the federal, state or local law.

**2. Criteria:** An exception under subsection A.1. may only be granted if:

a. The Chief Executive Officer recommends approval of the proposed exception based on the following evaluations demonstrating a net benefit to Utilities:

(1) Financial analysis of the proposed exception conducted by or under the direction of Utilities' staff.

(2) Risk analysis of the proposed exception conducted by or under the direction of Utilities' staff with support from the City Attorney's Office.

(3) Demonstration from the property owner that the property can receive or does not have a need for the excluded utility service(s) independent of Utilities.

b. Additionally for an exception granted under subsection A.1.a, the proposed exception must support one or more current Utilities Board directives or instructions.

3. Approval of an exception under this subsection shall be subject to the following conditions:

a. Notice of the exception will be recorded against the property in the real property records of the El Paso County, Colorado, Clerk and Recorder.

b. The property owner must enter into an agreement with Utilities that sets out the terms and conditions of the exception, including the following:

(1) Whether the property must connect to Utilities' system(s) and terminate service by the other utility service provider(s) if (i) Utilities determines that it is in the best interest of Utilities to serve the property; and (ii) Utilities has the ability to provide service to the property.

(2) Whether the property must design and install new utility infrastructure in accordance with the then-existing Utilities Rules and Regulations and Line Extension and Service Standards.

(3) If the property must connect to Utilities' system(s), whether the property must comply with all requirements of the Utilities Rules and Regulations and Line Extension and Service Standards to connect to Utilities' system(s), including payment of any applicable development charges before building permits may be issued or the applicable utility service may be provided to the property by Utilities.

c. Utilities may require an agreement with the other utility service provider(s) providing service to a property prior to granting an exception under this subsection.

\* \* \*

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**Finally passed:** \_\_\_\_\_

\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

ORDINANCE NO. 24 - \_\_\_\_\_

AN ORDINANCE REPEALING AND REORDAINING SECTION 116 (SPECIAL CONTRACT SERVICE) OF ARTICLE 1 (GENERAL PROVISIONS) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO OUTSIDE CITY SERVICE

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

Section 1. Section 116 (Special Contract Service) of Article 1 (General Provisions) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, is repealed and reordained to read as follows:

**12.1.116: OUTSIDE CITY SERVICE:**

A. Special Contract Service: Utilities may provide by special contract for the use of or connection to the utility supply system by institutions, plants, districts, governments, Municipal corporations or other similar users.

B. Water and Wastewater Service Without Annexation:

1. Policy: The City's policy regarding Utilities providing water and wastewater service for land outside the City's corporate limits is as follows:

a. The funds collected from development charges, fees, the sale of water, and wastewater treatment charges are necessary to pay for the acquisition, development, construction and maintenance of the water resources, water infrastructure, and wastewater infrastructure needed to provide water and wastewater service.

b. The City shall consider the future water and wastewater needs of areas outside the corporate limits of the City and the population growth of the Pikes Peak urban area. However, in considering the future water and wastewater needs of areas outside the City, consideration shall be given first to current water and wastewater systems users within the corporate limits of the City. Water needs shall be considered in accordance with section 12.4.305.

c. There is no obligation imposed by general law upon the City to permit any of the City's water to be used outside its boundaries.

d. Persons inside City limits have made significant investments in both the water and wastewater systems. Persons outside the City limits who desire water or wastewater services should be required to pay an amount that reflects their pro rata demand on existing and planned infrastructure and resources as well as pay additional fees for such services in recognition of investments made to both systems by persons inside City limits.

e. Water and wastewater services provided outside City limits must not have an adverse impact on the City and its facilities, public and private.

f. There is a need to ensure that land use and development outside of the corporate limits of the City is compatible with land use within the City and will not have an adverse impact on the City and its facilities, public and private. The extension or provision of water or wastewater, or both, is a method of fostering compatible land use and development inside and outside the City limits, and should be handled in a manner which will ensure sound land use relationships and promote orderly development.

2. Rights of the City:

a. This subsection B shall not be construed to create any rights or cause of action in any person or land, whether or not the same is eligible for annexation, to demand or receive water or wastewater or other municipal service. The City has never previously and does not now assert exclusive control over the right to serve areas outside the corporate limits of the City with water and wastewater. Areas and activities outside the corporate limits of the City are free to obtain water and wastewater services from any other sources.

b. City Council's decision whether to authorize the extension of water or wastewater or both services outside the City boundaries shall be considered a matter of legislative discretion and not subject to judicial review. Neither shall such decision constitute a precedent controlling other pending or future applications for extraterritorial service.

c. The right of the City Council to restrict and regulate the use of City water within or outside the City limits shall not be abridged by anything contained in this section. Nothing in this section shall be construed to confer upon undeveloped land within the City limits, as such City limits exist at the time of adoption of this section or as such City limits may be hereafter altered by annexation or disconnection, any right to the reservation of existing water rights or quantities of water for the sole and exclusive use of such land.

3. Availability:

a. The City Council may use its legislative discretion to authorize water or wastewater services outside the City for:

(1) Properties that are or are likely to become legally eligible for annexation under section 30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965, as amended, C.R.S. §31-12-101 *et seq.*, or any successor provisions, but for which City Council has determined that annexation is not in the best interest of the citizens of the City at the time the property owners petition the City for annexation;

(2) Properties that are or are likely to become legally eligible for annexation under section 30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965, as amended, C.R.S. §31-12-101 *et seq.*, or any successor provisions, but the property owners are unwilling or unable to petition the City for annexation; or

(3) Special contract service, which is available to serve institutions, organized special districts, governments, municipal corporations, or other similar users which are located outside the corporate limits of the City. Special contract service is governed by sections 12.1.116A, 12.4.304 and 12.5.304 of this Code and not the provisions of this subsection 12.1.116B.

b. Agreement to Annex for City Services:

(1) As a condition precedent to the supplying of City water or wastewater services, or both, to land outside the limits of the City in accord with subsections 3.a(1) and (2) above, the City shall require an agreement executed by fee owners of the real property contracting for the services. This agreement shall provide:

(i) That the owners shall petition for and consent to the annexation of the area to be supplied with City water and wastewater services to the City at such future date as the area supplied, or any portion thereof, becomes both eligible for annexation pursuant to section 30 of article II of the Colorado Constitution and the Municipal Annexation Act of 1965, as amended, C.R.S. § 31-12-101 *et seq.*, or any successor provision, and the City Council determines that annexation is appropriate.

(ii) Any new development or redevelopment of the land to which the water and wastewater services are to be provided is in conformance with those provisions of this Code as are applicable to land development within the corporate

limits of the City, or adequate assurances are made that development of the land will be in compliance with the Code. Assurances of conformance may be in the form of cash deposit, corporate surety bond, letter of credit or other assurance that the City Attorney shall approve as to form and the City Engineer shall approve as to amount. Compliance with City Codes pertaining to land development may require, but shall not be limited to:

- (a) The property will comply with all applicable requirements of Chapter 12 of this Code and Utilities policy, standards, and requirements of this Code.
  - (b) Provisions for required park sites or fees in lieu thereof to the applicable jurisdictions in accordance with section 7.4.307 of this Code.
  - (c) Provision for required school sites or fees in lieu thereof to the applicable jurisdictions in accordance with section 7.4.308 of this Code.
  - (d) Dedication, design and construction of required streets, sidewalks, curbs, gutters, trail connections, transit infrastructure, and utilities, including telephone, to City standards or to the standards of the entity having responsibility for maintenance of those listed improvements, whichever standard is stricter.
  - (e) Dedication of easements including, but not limited to, utility easements and telephone and drainage easements as required by section 7.4.302.H of this Code.
  - (f) Provision for necessary drainage facilities or the payment of drainage fees and arterial roadway bridge fees in accordance with section 7.4.701 *et seq.* and section 7.4.702 *et seq.* of this Code.
- (ii) It is recognized that a court determination may be required in order to satisfy the provisions of this part.
- (iv) Any agreement in accordance with this subsection shall be reported to the City Council at the next available regular meeting of City Council following its execution. Such

agreement shall be recorded and shall run with the land and be binding on the heirs, assigns, and successors in interest of the signers.

c. Service Pending Annexation:

(1) The City Council may approve the delivery of water or wastewater service, or both, pending completion of annexation if:

(i) The pending petition for annexation meets all of the criteria for annexation as defined in Code section 7.5.701 and under the provisions of section 30 of article II of the Colorado Constitution, and has City Council support for annexation; and

(ii) A petition for annexation has been filed before a permit or permits for such water or wastewater service shall be issued or any work shall commence to extend such water or wastewater service beyond the then-existing City limits; and

(iii) Delaying the start of service until annexation would cause unnecessary delay to the annexor in commencing work on the proposed development, or

(iv) Delaying the start of service until annexation would impose an unnecessary hardship upon the annexor, without any compensating advantage or benefit to the City or its citizens.

(2) The City Council hereby declares that its discretion to determine the existence or nonexistence of good cause to approve the delivery of water or wastewater service, or both, before the completion of annexation is a legislative act and is not subject to judicial review.

(3) Once filed, the annexation petition shall not be withdrawn except with express permission of the City Council and shall be pursued by the annexor and affected City departments to a speedy conclusion. Authorization for water or wastewater extension beyond the City limits may be withdrawn by City Council without notice to the annexor at any time prior to any substantial change of position (defined as a significant expenditure of time or money) by annexor in reliance on such authorization.



4. Evaluating Requests for Water and Wastewater Service Without Annexation:

a. In determining whether to extend water or wastewater service without annexation, the City Council shall consider, among other factors, the following:

(1) For water service, whether the proposed extension of water service satisfies the requirements of section 12.4.305 of this Code.

(2) For wastewater service, whether the existing and projected wastewater facilities of the City are expected to be sufficient for the present and projected needs for the foreseeable future to serve all present and projects users whether within and outside the corporate limits of the City.

(3) The proposed use of the land to be served is compatible with the use of adjacent land areas and, to the extent acceptable to and approved by City Council, is in conformance with the plan of the Pikes Peak Area Council of Governments. Such proposed land use shall be submitted to the government entity having land use planning jurisdiction thereover for comment at least thirty (30) days before final action by City Council on the request for services.

(4) Water and wastewater development charges and other applicable utility fees will be paid, and the owner of the land to be served has agreed to abide by all conditions and terms of Utilities' tariffs, water and wastewater extension policies, water efficiency plans, and conservation standards, as are applicable to in-City Utilities' customers.

5. Additional Requirements:

a. All areas receiving water service without annexation pursuant to this section must be included in the Southeastern Colorado Water Conservancy District boundaries at the time service is approved.

b. Any request for a change of use of previously granted municipal utility services shall be considered and administered as a new application for such service and shall be subject to all of the provisions and requirements as set forth in this section.

6. Fees: All required fees shall be paid in advance of the issuance of permit(s) for the requested service(s) and no fee or portion thereof shall be refunded.

7. Limitation:

- a. Except for special contract service, in no event shall utility service be extended to property outside of the City pursuant to this subsection if annexation subsequent to the extension of utilities cannot be assured under the provisions of section 30 of article II of the Colorado Constitution.
- b. Failure to comply with the terms of the Agreement to Annex may result in the termination of the service(s) provided under this section.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 202\_.

**Finally passed:** \_\_\_\_\_

\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

ORDINANCE NO. 24-\_\_\_\_\_

AN ORDINANCE AMENDING SECTIONS OF ARTICLE 4  
(WATER CODE) OF CHAPTER 12 (UTILITIES) OF THE CODE  
OF THE CITY OF COLORADO SPRINGS 2001, AS  
AMENDED, PERTAINING TO WATER SERVICE

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

Section 1. Article 4 (Water Code) of Chapter 12 (Utilities) of the Code of  
the City of Colorado Springs 2001, as amended, is hereby amended to read as  
follows:

12.4.302: SERVICE OUTSIDE CITY; POLICY:

A. The policy of the City relating to the furnishing of water service to property  
lying outside the corporate limits of the City is set forth in subsection  
~~7.5.701~~**12.1.116** of this Code. Utilities expressly reserves the right, except as  
otherwise specifically limited by State or Federal law, to impose the conditions as  
it may see fit relative to the furnishing of the service and to refuse service in its  
discretion.

B. All provisions of this article apply to those areas outside the corporate limits  
of the City, except those areas covered by a **special** contract, **as defined in  
12.1.116 and 12.4.304 of this Code**, which expressly establishes other rules for the  
area served under the contract.

12.4.303: SERVICE OUTSIDE CITY; APPLICATION FOR:

Any person desiring to connect a service line which is located outside the  
corporate limits of the City to the water supply system shall comply fully with  
sections ~~7.5.701~~**12.1.116** of this Code. The person shall then make application to  
Utilities for water service. The application for service shall be supplemented by any  
plans, specifications or other information deemed necessary by the Chief  
Executive Officer to determine compliance with all tariffs, ordinances, regulations  
or rules concerning the water system. The Chief Executive Officer shall review and  
approve or disapprove the application as complying or failing to comply with all  
tariffs, ordinances, regulations or rules concerning the water system of the City.

12.4.304: SERVICE; SPECIAL CONTRACT:

**A.** Utilities may contract for the use of and connection to the City's water system by institutions, organized special districts, governments, municipal corporations or other similar users which are located outside the corporate limits of the City. Water service contracts shall expressly provide for the user's compliance with applicable ordinances, regulations and rules concerning use of the water system. Contracts shall be further subject to other terms and conditions as the City Council and Utilities may see fit to impose. Contracts for use of or connection to the water system in force and effect on the effective date of this section shall remain in full force and effect in accord with the contracts' terms and conditions.

**B. Policy for Special Contract Consideration**

1. Persons inside City limits have made significant investments in the City's water system. Persons outside the City limits who desire water service from the City should be required to pay an amount that reflects their pro rata demand on existing and planned infrastructure and resources as well as pay additional fees for such service in recognition for investments made to the water system by persons inside City limits.

2. Water services provided outside City limits must not have an adverse impact on the City's water resources and water system.

3. There is no obligation imposed by general law upon the City to permit any of the City's water resources to be used outside its boundaries.

**C. Requirements for Special Contract Water Service**

1. The City's water system, as currently existing or planned, must be sufficient to meet the present and projected water supply needs for the foreseeable future of all users of the water system located within and outside the corporate limits of the City including those who are to be served under the special contract, as provided in section 12.4.305 of this Code.

2. For special contracts that contemplate use of City water, the service under such special contract must not interfere with the City's ability to provide service to in-City customers in accordance with the standards adopted by Utilities and the City's existing contractual obligations.

3. The special contract customer must agree to pay all water system availability fees and other applicable Utilities' fees.

4. Special contracts shall comply with all applicable restrictions in this Code and applicable permits, contracts, agreements and decrees, including restrictions related to water use.

5. The special contract customer must obtain all contracts, permits, administrative approvals and water rights decrees as may be required to allow Utilities to provide special contract service without impairing Utilities' ability to operate the water system for the benefit of Utilities' customers.

12.4.305: SERVICE; EXTENSION LIMITATION:

A. Due to increasing demands on the City's water supply, and to ensure that the City's water rights will meet existing and anticipated water service obligations, extending water service into any area not within either the existing City limits or the water service boundary as of the effective date of this section is subject to ~~the recommendation of approval by the Utilities Board, and~~ approval by City Council.

B. \* \* \*

1. The City's available water supply is sufficient to meet at least 128% of existing usage (calculated using a five (5) year rolling average of weather normalized unrestricted usage data) and the projected demand for water services within the proposed extension(s) of services, ~~and not less than 25% of the perimeter of the area is contiguous with the City (as defined by State law); or~~

\* \* \*

C. This section shall apply to any extension of Utilities water services notwithstanding any provision to the contrary.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this

ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**Finally passed:** \_\_\_\_\_

\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

ORDINANCE NO. 24-\_\_\_\_\_

AN ORDINANCE AMENDING PART 3 (WASTEWATER SERVICE) OF ARTICLE 5 (WASTEWATER TREATMENT CODE) OF CHAPTER 12 (UTILITIES) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO WASTEWATER SERVICE

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

Section 1. Part 3 (Wastewater Service) of Article 5 (Wastewater Treatment Code) of Chapter 12 (Utilities) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

12.5.302: SERVICE OUTSIDE CITY; POLICY:

**A.** City policy relating to the furnishing of wastewater treatment service to users located outside the corporate limits of the City is set out in ~~subsection 7.6.201C of this Code.~~ **subsections 12.1.116 and 12.5.304B of this Code.** Utilities expressly reserves the right, except as otherwise specifically limited by State or Federal law, to impose the conditions as it may see fit relative to furnishing the service, and may refuse the service in its discretion.

**B. All provisions of this article apply to those areas outside the corporate limits of the City, except those areas covered by a special contract, as defined in 12.1.116A and 12.5.304, which expressly establishes other rules for areas served under the contract.**

12.5.303: SERVICE OUTSIDE CITY; APPLICATION FOR:

Any person desiring to connect a service line and/or add fixtures to an existing connection which is located outside the City limits shall comply fully with sections ~~7.6.204 through 7.6.210 of this Code.~~ **12.1.116B of this Code.** The person shall then make application to Utilities for wastewater service. The application for service shall be supplemented by any plans, specifications or other information deemed necessary by the Chief Executive Officer to determine compliance with all tariffs, ordinances, regulations or rules concerning the wastewater system. The Chief Executive Officer shall endorse approval or disapproval of the application as



complying or failing to comply with all tariffs, ordinances, regulations or rules concerning the wastewater system of the City.

#### 12.5.304: SERVICE; SPECIAL CONTRACT:

A. Utilities may provide by contract for the use of and connection to the City's wastewater treatment system by institutions, plants, organized sewer districts, Municipal corporations or other similar users which are located outside the corporate limits of the City. The use of or connection to the wastewater treatment system shall be subject to the terms and conditions as Utilities may see fit to impose.

#### B. Policy for Special Contract Consideration

1. Persons inside City limits have made significant investments in the City's wastewater system. Persons outside the City limits who desire wastewater service from the City should be required to pay an amount that reflects their pro rata demand on existing and planned infrastructure and resources as well as pay additional fees for such service in recognition for investments made to the wastewater system by persons inside City limits.

2. Wastewater services provided outside City limits must not have an adverse impact on the City and its facilities, public and private.

3. There is no obligation imposed by general law upon the City to provide wastewater service outside its boundaries.

#### C. Requirements for Special Contract Wastewater Service

1. The City's wastewater facilities, as currently existing or planned, must be sufficient to meet the present and projected wastewater needs for the foreseeable future of all users of the wastewater system located within and outside the corporate limits of the City including those who are to be served under the special contract.

2. The service under such special contract must not interfere with the City's ability to provide wastewater service to in-City customers in accordance with the standards adopted by Utilities and the City's existing contractual obligations.

3. **The special contract customer must agree to pay all wastewater system availability fees and other applicable Utilities' fees.**
4. **Special contracts shall comply with all applicable restrictions in this Code and applicable permits and agreements.**
5. **The special contract customer must obtain all contracts, permits, administrative approvals as may be required to allow Utilities to provide special contract service without impairing Utilities' ability to operate the wastewater system for the benefit of Utilities' customers.**
6. Contracts entered into pursuant to this section shall provide for compliance by the user with the discharge prohibitions and limitations contained in this article. Among other things, the contracts shall require the user to:
  1. **a.** Submit to the jurisdiction of the City for the purposes of the enforcement procedures and penalties set out in this article; and
  2. **b.** Stipulate liquidated damages for violation of the provisions of this article in an amount equal to the penalties imposed herein.
3. ~~6.~~ Contracts entered into pursuant to this section may provide for acceptance by Utilities of only normal domestic strength wastewater, and the requirements of subsection ~~B2C2~~ of this section shall not apply to the contracts. However, the contracts shall provide that any discharge of industrial wastewater by the user shall subject the user to consequential damages for breach of contract, including, but not limited to, any amounts the City or Utilities may be required to pay for violation of the conditions of its CDPS permit where the discharge of the user caused or contributed to the violation. Discharges of industrial wastewater by a user bound by the contract shall not be accepted by Utilities except pursuant to notice to the City and execution of an amended or additional contract to which the requirements of subsection ~~B2C2~~ of this section shall apply.

\* \* \*

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this \_\_\_\_ day of \_\_\_\_\_, 202\_\_.

**Finally passed:** \_\_\_\_\_

\_\_\_\_\_  
Randy Helms, Council President

ATTEST:

\_\_\_\_\_  
Sarah B. Johnson, City Clerk

# Board Memo Agenda Item

## Staff Report

**Date:** January 17, 2024  
**To:** Utilities Board  
**From:** Travas Deal, Chief Executive Officer  
**Subject:** Colorado Springs Underground Damage Prevention Safety Program Update

### NARRATIVE:

**Desired Action:** Approval

**Executive Summary:** The Colorado Springs Underground Damage Prevention Safety Program (CSUDPSP or “the Program”) was created by City Ordinance (City Code, Chapter 12 Section 10) enabling Colorado Springs to bring the enforcement of Colorado’s excavation and one call law to the local level for closer oversight.

We are requesting two updates to the Program to further the Programs’ ability to prevent underground damages. Changes include: 1) Modify language to allow certain Colorado Springs Utilities’ crews the ability to stop the work of a general excavator on a jobsite to protect public health, safety, and welfare and 2) Modify the CEO’s existing authorities to include promulgating rules and regulations for the Program to govern excavators working in Colorado Springs.

We are requesting proposed City Code changes be taken to the February 13, 2024, City Council meeting for consideration.

**Benefits:** Strengthen public safety by allowing Colorado Springs Utilities to immediately address unsafe excavation practices.

**Board Policy:** N/A

**Cost/Budget:** N/A

**Affected Parties:** Colorado Springs Utilities employees and third-party excavators.

**Alternatives:** Make changes to the proposed language or deny forwarding to City Council.

<b>Submitter:</b> Melissa Brown	<b>Email address:</b> mbrown@csu.org
<b>Division/ Department:</b> Operations / Regulatory and Compliance	<b>Phone number:</b> 719-668-8429
	<b>Date submitted:</b> 12/20/2023

<b>SPG Staff Use Only:</b> Consent Calendar	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No <b>X</b>	<b>ITEM NO. 16</b>
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Colorado Springs Utilities  
*It's how we're all connected*

# Colorado Springs Underground Damage Prevention Program Update

January 17, 2024

# Background

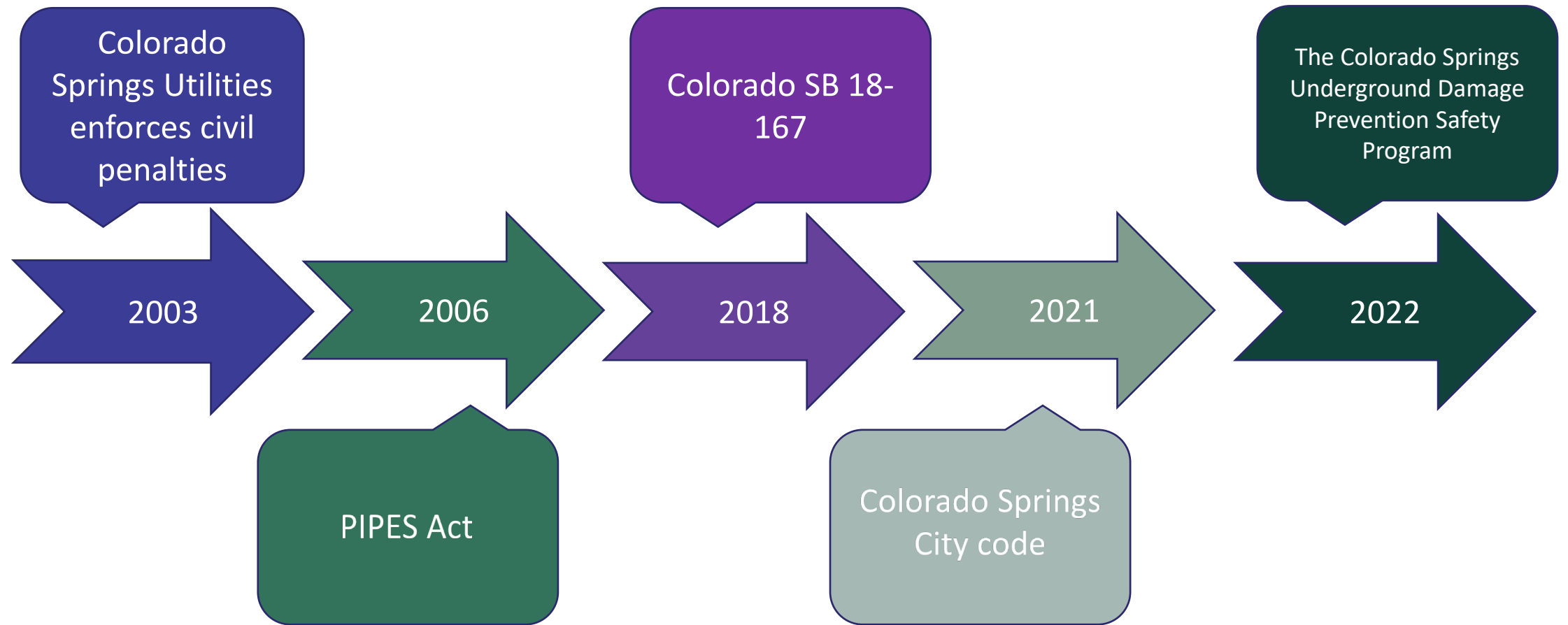


The Colorado Springs Underground Damage Prevention Safety Program is a city ordinance (City Code, Chapter 12 Section 10) which enables Colorado Springs to bring the enforcement of Colorado's excavation and one call law from the hands of a State Commission, down to the local level for closer oversight.

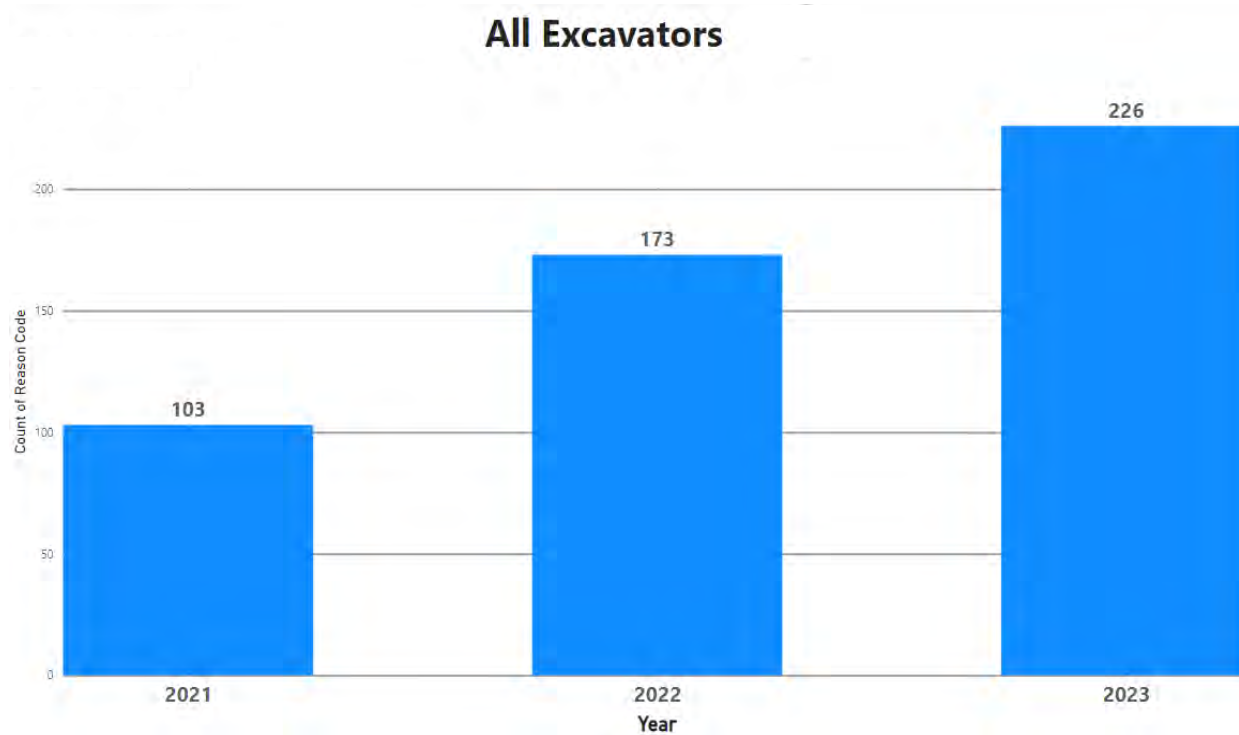


The City of Colorado Springs' program went into effect in 2021 and is administered by us as it supports our mission of providing safe and reliable utility services by protecting our underground infrastructure.

# How did we get here?



# Total Damages 2021 - 2023





# Audit Results



U.S. Department  
of Transportation  
**Pipeline and  
Hazardous  
Materials Safety  
Administration**

- On September 26, 2023, the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration (PHMSA) conducted an evaluation of the Colorado Division of Oil and Public Safety’s and the City of Colorado Springs’s enforcement of the Colorado excavation damage prevention law.
- Based on this evaluation, PHMSA has determined that the enforcement of Colorado’s excavation damage prevention law is “adequate.”
- Additional observations:
  - The Colorado State Safety Commission was advised to model their remediation process after the Colorado Springs process.
  - Colorado received a near perfect score.

# Requested Changes to Reduce Damages

Includes **two** changes to City Code:

## **Stop Work Order**

Updating City Code 12.1.115: Abatement of Imminent Hazards.

- If unsafe practices are observed, gives Colorado Springs Utilities' crews the ability to stop the work of a general excavator on a jobsite to protect public health, safety, and welfare.

## **Rulemaking**

Updating City Code 12.10.103: Underground Damage Prevention Safety Program.

- Modify the CEO's existing authorities to include promulgating rules and regulations for the Program to govern excavators working in Colorado Springs.
- Allows the program to address excavation safety concerns quickly.
- Collaborate with other safety stakeholders before rule updates are finalized.

# Next Steps

- Request this item be added to February 13, 2024 regular City Council meeting for first reading and February 27, 2024 regular City Council meeting for second reading.

### **12.10.103: UNDERGROUND DAMAGE PREVENTION SAFETY PROGRAM:**

There is hereby established the Colorado Springs Underground Damage Prevention Safety Program within Utilities. The Chief Executive Officer will appoint a Program Manager. The Program Manager will:

A. Collaborate with the underground damage prevention safety commission existing within the Colorado Department of Labor and Employment, the notification association and other state agencies to develop best practices and training to prevent damage to underground utilities.

~~B. Review complaints alleging violations of this article and order appropriate remedial action or penalties~~**Enforce rules and regulations regarding this Underground Damage Prevention Safety Program promulgated by the Chief Executive Officer pursuant to City Code section 12.1.110.**

C. Establish best practices for excavators.

~~D. Serve as the utility enforcement officer for violations of this article~~**Review complaints alleging violations of this article.**

**E. Investigate or cause to be investigated allegations of violations of this article;**

**F. Serve as the utility enforcement officer for violations of this article and rules and regulations regarding this Underground Damage Prevention Safety Program promulgated by the Chief Executive Officer pursuant to City Code section 12.1.110, and order appropriate remedial action or penalties.**

**G. Adopt all forms necessary to operate and enforce this Underground Damage Prevention Safety Program.**

(Ord. 20-70 1 )

Notes

1 1. January 1, 2021 is the effective date of Ordinance 20-70.

### **12.10.105: VIOLATIONS:**

A. It shall be a violation of this article to willfully or maliciously remove a marking used by an owner or operator to mark the location of any underground facility, except in the ordinary course of excavation.

B. It shall be a violation of this article for any person to excavate without first obtaining locates for underground facilities.

C. It shall be a violation of this article for any person to excavate in a manner inconsistent with the requirements of this article.

D. It shall be a violation of this article for any owner or operator of underground facilities to fail to locate its underground facilities in accordance with this article **or any rule regarding the Damage Prevention Safety Program promulgated by the by the Chief Executive Officer.**

(Ord. 20-70 1 )

Notes

<sup>1</sup> 1. January 1, 2021 is the effective date of Ordinance 20-70.

**12.10.106: COMPLAINTS AND ENFORCEMENT:**

A. The Program Manager will investigate all complaints and alleged damage. The Program Manager may receive complaints from any person who observes or identifies a violation or evidence of a violation of this article, or any rule promulgated by the Chief Executive Officer regarding the Damage Prevention Safety Program or it may receive a complaint from the Colorado Underground Damage Prevention Safety Commission. The Program Manager may also identify violations as a result of a damage investigation involving damaged underground facilities. The Program Manager will characterize the violations as minor, moderate or major. If violations are found, the Program Manager will issue a notice of violation that is personally served whenever feasible and states with particularity the nature of the violation, the facts giving rise to the violation, any fines, penalties, or damages to be imposed, and that the recipient of the notice has the right to appeal the notice of violation by written application within ten (10) days of the date of service of the notice of violation. Upon receipt of a written application requesting an appeal hearing, the Program Manager shall schedule a hearing with a hearing officer to occur within thirty (30) days of the date of receipt of the written application requesting the appeal. Any party adversely affected by the decision of a hearing officer may appeal that decision to the District Court in and for El Paso County, Colorado, pursuant to rule 106(a)(4) of the Colorado Rules of Civil Procedure.

B. The Program Manager may recommend to the City Engineer that the party's excavator's permit issued pursuant to City Code section 3.3.202 be suspended or revoked and notify the City Clerk.

C. In addition to penalties, the Program Manager may require any person found to be in violation of this article to take an excavation safety training class.

D. Penalties and damages for violation of this article shall be as set forth in Colorado Revised Statutes sections 9-1.5-104.4 and 9-1.5-104.5. (Ord. 20-70 1 )

Notes

<sup>1</sup> 1. January 1, 2021 is the effective date of Ordinance 20-70.

## **12.1.110: ADOPTION OF UTILITIES ENTERPRISE POLICIES ~~AND~~ SERVICE STANDARDS AND RULES AND REGULATIONS:**

The Chief Executive Officer shall have the power and authority to adopt and promulgate Utilities Enterprise Policies and service standards and specifications consistent with the provisions of the City Charter or this Code concerning matters that are applicable to all operations and finances of the Utilities.

### A. Utilities Enterprise Policies:

1. The Chief Executive Officer shall have the power and authority to adopt Utilities Enterprise Policies consistent with the provisions of the City Charter and this Code concerning matters that are applicable to all operations, personnel and finances of the Utilities, and all operational units.

2. The Chief Executive Officer, by Utilities Enterprise Policies, may delegate authority to staff reporting to the Chief Executive Officer to adopt Utilities Enterprise Policies concerning matters applicable to each respective operational unit.

3. Public notice and comment is not required for the adoption of Utilities Enterprise Policies.

### B. Service Standards And Specifications, Rules And Regulations:

1. Power And Authority: The Chief Executive Officer shall have the power and authority to promulgate service standards and specifications and rules and regulations consistent with the Charter and this Code, subject to the following guidelines:

a. Electric Generation, Transmission And Distribution: Service standards and specifications relevant to electric generation, transmission and distribution shall pertain to, but shall not be limited to, the following: 1) planning, design, construction, operation and maintenance of Utilities' electric generation plants, transmission and distribution systems and appurtenant facilities; and 2) regulation of the transmission, distribution and use of electricity supplied by Utilities. In establishing the service standards and specifications, the Chief Executive Officer shall seek to assure the safe and efficient operation of the electric production, transmission and distribution systems, and the protection of the systems, processes, equipment and facilities appurtenant thereto.

b. Gas Supply: Service standards and specifications relevant to gas supply shall pertain to, but shall not be limited to: 1) installation, construction, operation and maintenance of Utilities' natural gas distribution system; and 2) regulation of the distribution and use of natural gas supplied by Utilities. In establishing the service standards and specifications, the Chief Executive Officer shall seek to assure the safe and efficient operation of the natural gas distribution system, and the protection of the system, process, equipment and facilities appurtenant thereto.

c. Water Supply: Service standards and specifications relevant to water supply shall pertain to, but shall not be limited to, the following: 1) installation, construction, maintenance, repair or replacement of property appertaining to the water system; 2) provision of water service to the public; and 3) assurance of potable and palatable quality of water. In establishing the standards and specifications, the Chief Executive Officer shall seek to assure the safe and efficient operation of the water supply system, for a water supply sufficient to satisfy the public needs, and for water quality, by protecting the water supply and the public from polluting or unsanitary substances and conditions.

d. Wastewater Treatment: Service standards and specifications relevant to wastewater treatment shall pertain to, but shall not be limited to, the following: 1) discharge limitations, pretreatment requirements, wastewater lines and services; and 2) implementation of standards promulgated pursuant to the Federal Water Pollution Control Act amendments of 1972, PL 92-500, and subsequent amendments. In establishing the service standards and specifications, the Chief Executive Officer shall seek to assure safe, efficient operation of the wastewater system, that will limit wastewater discharges to the system in concentrations and quantities which will not harm either the wastewater system, wastewater treatment process or equipment, that will not have an adverse effect on the receiving water, or will not otherwise endanger persons or property or constitute a nuisance.

e. Computer Services: Reserved.

f. Telecommunications Activities: Reserved.

g. Nonregulated Products And Services: Reserved.

**h. Underground Damage Prevention Safety Program: Underground damage prevention safety program rules and regulations necessary to operate and enforce the Underground Damage Prevention Safety Program detailed in City Code Chapter 12, Article 10, shall pertain to, but shall not be limited to, the following: 1) governing excavations near and around underground utility infrastructure; 2) protecting persons and underground utility infrastructure from non-emergency excavation work; and 3) damage reporting requirements.**

2. Delegation Of Authority: The Chief Executive Officer by Utilities Enterprise Policies may delegate authority to staff reporting to the Chief Executive Officer to adopt service standards and specifications **and rules and regulations** for each respective department and other operational units.

3. Public Notice, Comment And Hearing:

a. Application: Except when public notice, comment, or hearing is otherwise required by law, this subsection B3 applies to the adoption of service standards and specifications.

b. List Of Interested Persons: The Chief Executive Officer shall maintain a list(s) of all persons who request notification of proposed adoption of service standards and specifications. A person may only request notification on his or her own behalf.

c. Preproposal: When promulgation of service standards and specifications **or rules and regulations** is contemplated, the Chief Executive Officer is encouraged, but not required, to provide an opportunity to interested persons to participate informally in conferences on proposals under consideration.

d. Notice: Notice of proposed adoption of service standards and specifications **or rules and regulations** proposed by the Chief Executive Officer shall be published in at least one newspaper of general circulation within the City at least fifteen (15) days and no more than thirty (30) days prior to the date set for final adoption of the proposed service standards and specifications. The notice shall include: 1) an explanation of the proposed service standards and specifications **or rules and regulations**; 2) the proposed adoption and effective dates; 3) a statement that a copy of the proposed service standards and specifications **or rules and regulations, as applicable,** are on file and open for public inspection in the Office of the Chief Executive Officer; 4) designation of the public comment period and the means to provide the comment; and 5) opportunity and manner to request a public hearing. If any material is to be

incorporated by reference in the proposed service standards and specifications **or rules and regulations**, the material shall be identified in the notice by date, title and citation. On or before the day the notice of proposed adoption is published, the Chief Executive Officer shall mail the notice to all persons on the list.

e. Public Comment: The Chief Executive Officer must give full consideration to all comments received as provided in the notice.

f. Public Hearing: The Chief Executive Officer may grant a public hearing if requested by a member of the public if a significant controversy of public import has arisen regarding the proposed service standards and specifications **or rules and regulations**.

4. Adoption Of Proposed Service Standards And Specifications: The Chief Executive Officer or the Chief Executive Officer's designee shall adopt proposed service standards and specifications after a hearing or after conclusion of the public comment period. Adoption shall be by signature on the approved service standards and specifications of the Chief Executive Officer or the Chief Executive Officer's designee. If no hearing is held, the adopted service standards and specifications shall be similar in substance and form to the proposed service standards and specifications referenced in the public notice.

5. Open To Inspection: Upon adoption, the service standards and specifications shall be available for inspection at the Office of the Chief Executive Officer by any person at any time during regular business hours, and copies thereof may be purchased by any person upon payment of the cost of reproduction and postage.

C. Rulemaking Provisions: The rulemaking provisions of this section shall be prospective only. All previously existing Utilities Enterprise Policies and service standards and specifications shall remain in full force and effect until amended, withdrawn or adopted. (Ord. 98-173; Ord. 01-42; Ord. 18-42)

#### **12.1.115: ABATEMENT OF IMMINENT HAZARDS:**

##### A. Legal Action:

1. Any use of or connection to the utility supply system in violation of any provision of this chapter, or any act or condition which damages, injures or threatens to damage or injure the utility system shall be considered a public nuisance and the City Attorney may commence an action for appropriate legal and/or equitable relief in the District Court in and for the County of El Paso or in any other appropriate court. In any such action the City may recover reasonable attorney fees, costs, court reporter fees and other expenses of litigation.

2. Any discharge in violation of the provisions of this chapter or an order of the Chief Executive Officer issued pursuant to this article or any discharge of wastewater, industrial wastes or other wastes into the wastewater treatment system contrary to the provisions of this chapter or any order of the Chief Executive Officer shall be considered a public nuisance and the City Attorney may commence an action for appropriate legal and/or equitable relief in conformance with the provisions of this subsection A.

B. Penalty: Any person who performs or fails to perform an act where the performance or failure to perform is declared in any provision of this chapter to be unlawful, shall be fined and/or imprisoned as provided in section [1.1.201](#) of this Code. A separate and distinct offense shall be deemed to have been committed for each day on which violation shall occur or continue.

##### C. Abatement Of Imminent Hazards:



1. Notwithstanding any other provisions of this chapter to the contrary, if the Chief Executive Officer certifies in writing that an imminent hazard exists, and which requires immediate action in order to protect the public health, safety and welfare, he/she may issue an order to the owner, ~~agent~~<sup>ey</sup> of the owner, ~~or~~ occupant of property upon which the imminent hazard exists, or entity causing the imminent hazard, stating that the imminent hazard exists and requiring that the actions as deemed necessary be taken in order to abate the imminent hazard. The order issued by the Chief Executive Officer shall, if appropriate, set forth the maximum time within which the owner, agent of the owner or occupant must abate the imminent hazard.

2. Whenever the Chief Executive Officer shall issue the imminent hazard order, the order shall: a) be in writing; b) be personally served whenever feasible on the owner, or agent of the owner, ~~and~~ occupant of the premises, or entity causing the imminent hazard or, when the personal service is not feasible, either post it conspicuously at the premises or mail to the person by certified mail, return receipt requested, to his last known address; c) describe with reasonable particularity the condition existing on the premises which gives rise to the issuance of the imminent hazard order; d) specify, if applicable, the maximum time period within which the imminent hazard must be abated or otherwise corrected; e) state that an appeal is available provided the provisions of this section are followed; f) have a copy of this section attached; and g) state that, in the event the property owner, agent of the owner, ~~or~~ occupant or entity causing the imminent hazard, fails to comply with the imminent hazard order, the City or Utilities may take the steps as are necessary to correct the imminent hazard, bill the property owner or entity causing the imminent hazard therefor, and if unpaid, to initiate assessment proceedings against the property or entity causing the imminent hazard pursuant to the City's Zoning Code.

3. In the event the person to whom the imminent hazard order is issued fails or refuses to comply therewith, the Chief Executive Officer is hereby empowered to cause the imminent hazard to be summarily abated in such manner or methods as are necessary and appropriate under the circumstances of each given case.

4. In the event that the owner or agent of the owner shall fail within thirty (30) days after billing to pay the costs and expenses for the abatement of the imminent hazard, a lien may be assessed against the property upon which the imminent hazard exists for the costs of abatement in accord with chapter 2, article 6 of this Code. The lien created hereby shall be superior and prior to all other liens excepting liens for general and special taxes.

5. With respect to enforcing the imminent hazard order, the Chief Executive Officer or the Chief Executive Officer's designees, and their agents, may enter upon any premises or property for the purpose of inspecting, abating, repairing or removing or otherwise preventing the condition which is an imminent hazard to the public health, safety and welfare. In the event that the owner, agent of the owner or occupant of the premises subject to the imminent hazard refuses entry to the Chief Executive Officer or the Chief Executive Officer's designees or agents when entry is sought pursuant to this section, the Chief Executive Officer or the Chief Executive Officer's designees or agents may make application to any Judge of the Municipal Court of the City for the issuance of an inspection warrant. The application shall identify the premises upon which entry is sought and the purpose for which entry is desired, and shall state facts giving rise to the belief that a condition exists at the premises which is an imminent hazard to the public health, safety and welfare. Any warrant issued pursuant to the application shall command the owner, agent of the owner or occupant to permit inspection and entry by the Chief Executive Officer or the Chief Executive Officer's designees or agents for the purpose stated therein.

6. Any person aggrieved by the imminent hazard order of the Chief Executive Officer may appeal the order to ~~the~~ Hearing Officer, ~~who shall be~~ appointed by the Chief Executive Officer, provided written application therefor upon the Chief Executive Officer is made within five (5) days of service of the imminent hazard order. In no event, however, shall the appeal of the imminent hazard order in any way stay or suspend the same. If a timely appeal is made, a hearing concerning the propriety of the order shall be granted to the owner or agent of the owner of the premises, **or entity causing the imminent hazard**, and, after notice thereof to the appellant, the hearing shall be held no more than ~~ten (10)~~**thirty (30)** days after the filing of the notice of appeal. At the hearing, the appellant and the City or Utilities may be represented by an attorney, may present evidence, and may cross examine witnesses. A verbatim transcript of the hearing shall be made. **At the conclusion of the evidence, the Hearing Officer shall make written findings of fact, conclusions of law and orders regarding the imminent hazard order. The Hearing Officer may, at the conclusion of the hearing, take the matter under advisement and issue the written findings of fact, conclusions of law and orders within thirty (30) days.** The decision of the Hearing Officer shall be based upon competent evidence.

7. The remedies provided in this section shall be cumulative and in addition to any other remedies which may be available to the Chief Executive Officer. Nothing contained herein shall be construed to preclude the Chief Executive Officer from seeking other remedies in addition to, or in lieu of, the remedies granted herein.

8. The phrase "imminent hazard" shall include, but not be limited to, a violation of any of the provisions of this chapter, or the existence of a public nuisance or any other condition or occurrence which is a menace to the public health, safety and welfare, and which interferes with, or arises out of, the provision of utility services pursuant to this chapter. (Ord. 98-173; Ord. 01-42; Ord. 18-42)

**9. The decision or determination of the Hearing Officer shall in all cases be final and conclusive. A decision or determination of the Hearing Officer may only be reviewed by the District Court pursuant to CRCP 106(a)(4). There shall be no stay of execution of the Hearing Officer's decision pending decision by the District Court, except by court order.**