

**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 2,238 taps.

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)
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)
Office: (719) 668-8607; Cell: (719) 323-4743
- iv. Water_accounting@csu.org

B. MANITOU System Control

- i. Public Services Director, Roy Chaney
City of Manitou Springs
606 Manitou Ave.
Manitou Springs, CO 80829
(719) 684-5481
rchaney@manitouspringsco.gov, direct line (719) 499-1624.

- ii. Treatment Plant Operator
City of Manitou Springs

606 Manitou Ave.
Manitou Springs, CO 80829
(719) 685-5597
Jelwell@manitousprings.gov, (719) 492-2357
Jmuth@manitousprings.gov, (719) 493-2909.

When any contact information or staff members change, notification of all Parties is required. UTILITIES and MANITOU shall confer no later than December 31st annually to update contact information.

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 shall coordinate with UTILITIES to determine the type of delivery (i.e. exchange(s) or direct delivery) pursuant to paragraphs 3 and 4 of this Agreement that is mutually acceptable to both MANITOU and UTILITIES. 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: To avoid to the extent reasonably possible the need for additional water deliveries immediately after closure of the interconnect due to inadequate water quality, before requesting that water deliveries be concluded MANITOU shall ensure to the extent reasonably possible that 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. Should MANITOU request an additional water delivery within 48 hours after conclusion of a previous delivery, MANITOU shall pay UTILITIES's its reasonable labor and materials costs to execute that delivery. However, MANITOU will make its best effort to reduce these occurrences.

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 33rd 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 33rd 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 27th, 2011 by and between UTILITIES and MANITOU. Except under emergency circumstances, when maintenance of the connection is required, UTILITIES shall provide MANITOU with advance notice of any maintenance and the estimate of the costs of such maintenance

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 that is within MANITOU's legal authority and financial capacity, as determined by Manitou's City Council.

(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, 5th 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

City of Manitou Springs ATTN: City
Administrator

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:

City Attorney's Office – Utilities Division