

RESOLUTION NO. 20-16

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO, THE CITY OF FOUNTAIN, COLORADO, THE SECURITY WATER DISTRICT, AND THE PUEBLO WEST METROPOLITAN DISTRICT FOR THE OPERATIONS, MAINTENANCE, REPLACEMENT AND EXPANSION OF THE SOUTHERN DELIVERY SYSTEM, AND AUTHORIZING EXECUTION OF SUCH INTERGOVERNMENTAL AGREEMENT

WHEREAS, the City Council of the City of Colorado Springs, Colorado ("City Council") is authorized, pursuant to § 29-1-203, Colorado Revised Statutes, to enter into intergovernmental agreements with other governmental entities; and

WHEREAS, the City of Colorado Springs ("City"), on behalf of its enterprise Colorado Springs Utilities ("Utilities"), previously entered into that certain Intergovernmental Agreement for Construction of the Southern Delivery System, effective August 1, 2003, as amended, (the "Construction IGA") with the City of Fountain, the Security Water District, and the Pueblo West Metropolitan District for the design, acquisition, construction, and installation of the Southern Delivery System ("SDS"); and

WHEREAS, the Construction IGA contemplated that near the end of construction and installation of the SDS, the parties to the Construction IGA would need to enter into a subsequent intergovernmental agreement for operation, maintenance, replacement, and expansion of the SDS; and

WHEREAS, Utilities is willing and desires to perform the obligations of the City identified in the attached Intergovernmental Agreement for the Operations, Maintenance, Replacement and Expansion of the Southern Delivery System ("O&M IGA"); and

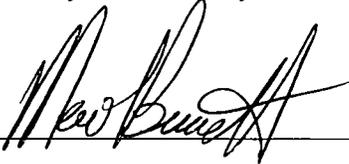
WHEREAS, approval of the O&M IGA is in the best interests of the citizens of the City of Colorado Springs and the ratepayers of Colorado Springs Utilities and provides for effective delivery of SDS water to Utilities' water customers.

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

Section 1. The City Council hereby approves on behalf of its enterprise, Colorado Springs Utilities, the Intergovernmental Agreement for the Operations, Maintenance, Replacement and Expansion of the Southern Delivery System, attached hereto as Attachment "A" and incorporated herein by reference.

Section 2. The City Council hereby authorizes the Chief Executive Officer of Colorado Springs Utilities or his designee to execute the Intergovernmental Agreement for the Operations, Maintenance, Replacement and Expansion of the Southern Delivery System on behalf of the City of Colorado Springs and Colorado Springs Utilities.

Dated at Colorado Springs, Colorado, this 23<sup>rd</sup> day of February, 2016.



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Council President

ATTEST:



Sarah Johnson, City Clerk



INTERGOVERNMENTAL AGREEMENT  
AMONG  
CITY OF COLORADO SPRINGS, COLORADO  
AND  
CITY OF FOUNTAIN, COLORADO  
AND  
SECURITY WATER DISTRICT  
AND  
PUEBLO WEST METROPOLITAN DISTRICT

**FOR THE OPERATIONS, MAINTENANCE, REPLACEMENT AND EXPANSION  
OF  
THE SOUTHERN DELIVERY SYSTEM**

EFFECTIVE April 28, 2016

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**INTERGOVERNMENTAL AGREEMENT AMONG  
CITY OF COLORADO SPRINGS, COLORADO  
AND  
CITY OF FOUNTAIN, COLORADO  
AND  
SECURITY WATER DISTRICT  
AND  
PUEBLO WEST METROPOLITAN DISTRICT**

**FOR THE OPERATIONS, MAINTENANCE, REPLACEMENT, AND EXPANSION  
OF THE SOUTHERN DELIVERY SYSTEM**

This Intergovernmental Agreement (“Agreement”) is executed on the dates shown below, to be effective on April 28, 2016, by and between the City of Colorado Springs, Colorado, a home-rule city and municipal corporation of the State of Colorado acting through its Utility Enterprise (“Colorado Springs”), the City of Fountain, Colorado, a municipal corporation of the State of Colorado and a home rule city acting through its Utility Enterprise (“Fountain”), Security Water District, a special district organized under the laws of the State of Colorado and political subdivision of the State of Colorado acting through its water activity enterprise (“Security”), and Pueblo West Metropolitan District, a special district organized under the laws of the State of Colorado and political subdivision of the State of Colorado (“Pueblo West”).

**RECITALS**

WHEREAS, Colorado Springs, Fountain, Security, and Pueblo West (collectively “Participants”) each own and operate municipal water systems which supply potable and non-potable water to their residents and other customers within their respective service areas; and

WHEREAS, Participants desire to participate, cooperatively and financially, in the operation, maintenance, replacement, and expansion of the Southern Delivery System (“SDS”), which will consist of a water pipeline, pumping facilities, one or more reservoirs, a treatment plant, power supplies for pumping, storage, and treatment facilities, real property and interests in real property and other works, equipment and facilities; and

WHEREAS, the SDS will be used to deliver water from the Pueblo Reservoir to the Participants and to their residents and other customers; and

WHEREAS, Participants are parties to an Intergovernmental Agreement for Construction of the Southern Delivery System, effective August 1, 2003, as amended on February 4, 2008, and on September 27, 2011 (“Construction IGA”), under which they support Colorado Springs in the design, acquisition, construction and installation of the SDS; and

WHEREAS, Section 3(d) of the Construction IGA requires the Participants to execute a separate intergovernmental agreement to govern the operation, maintenance, and future development of the SDS; and

WHEREAS, the Participants desire to specify their respective responsibilities for operation, maintenance, and replacement of SDS Assets, and future expansion of the SDS; and

WHEREAS, the operation of SDS is enabled by Contracts for the Use of Long Term Excess Capacity in the Facilities of the Fryingpan-Arkansas Project between each of the Participants and the United States of America, Contract Nos. 11XX6C0002 (Colorado Springs), 11XX6C0003 (Security), 11XX6C0004 (Fountain), and 11XX6C0006 (Pueblo West), effective May 4, 2011 (“BOR Project Excess Capacity Contracts”), and by a Contract between the United States of America and the City of Colorado Springs for Conveyance and for the Operation, Maintenance and Replacement Costs Associated with the North Outlet Works, a Facility of the Fryingpan-Arkansas Project (Contract No. 11XX6C0005, also referred to as Contract No. 116CXX0005) effective May 4, 2011, as amended, reauthorized, or reissued (“BOR Project Conveyance Contract”); and

WHEREAS, the City of Fountain and Colorado Springs are parties to an agreement (Subagreement No. 11XX6C0097) that authorizes a trade of capacity between the Fountain Valley Authority (FVA) and SDS to allow the City of Fountain to convey its SDS Water through the FVA and, in exchange, Colorado Springs is allowed to convey an equivalent amount of FVA Water through SDS; and

WHEREAS, when SDS becomes operational Colorado Springs will hold legal title to the SDS Assets for the benefit of the other Participants pursuant to the Second Amendment to Intergovernmental Agreement dated August 1, 2003 for Construction of the Southern Delivery System dated September 27, 2011 (“Second IGA Amendment”), and the Trust Agreement dated September 27, 2011, under which Colorado Springs is trustee and certain Participants, including Colorado Springs, are beneficiaries (“Trust Agreement”); and

WHEREAS, the Participants intend to jointly exercise powers lawfully authorized to each of the Participants, for the operation, maintenance, and replacement of SDS Assets, and expansion of the SDS needed by each of the Participants and the sharing of costs thereof, all as authorized by the provisions of Sections 18(2)(a) and (2)(b) of Article XIV of the Colorado Constitution and Sections 29-1-201 et seq., C.R.S., regarding intergovernmental relationships; and

WHEREAS, the governing bodies of Colorado Springs, Fountain, Security, and Pueblo West have each authorized the execution and delivery of this Agreement;

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual undertakings herein contained and the mutual benefits to the Participants, the receipt and sufficiency of which is acknowledged, the Participants agree as follows:

### **Section 1. Definitions.**

The following terms in quotations shall have the respective meanings set forth below:

“Additional Water” shall mean water owned or controlled by Participants that is not “SDS Water” as defined in Section 1.0 of the U.S. Bureau of Reclamation (BOR) Project Conveyance Contract.

“Administrative Officer” means, for each Participant, the person occupying the office or position stated opposite the name of that Participant below, or that person’s designee:

Colorado Springs Utilities	Chief Executive Officer
Fountain	City Manager
Security	General Manager
Pueblo West	District Manager

“Agreement” includes this document and all exhibits and schedules.

“Beneficial SDS Ownership Interest” means a Participant’s undivided Beneficial Interest (as that term is defined in the Trust Agreement) in any SDS Component equal, as a percentage, to the Participant’s Final Participation Share in that SDS Component.

“Bureau of Reclamation” (BOR) means the United States Department of the Interior, Bureau of Reclamation.

“Claim” means any claim, cause of action or demand for money, damages, specific performance, any other legal or equitable relief, and any other assertion of right with a view to imposing liability on any person, regardless of the legal or equitable theory or theories involved, and regardless of whether a formal proceeding occurs.

“Commercial Operations” means the delivery of treated drinking water into the Colorado Springs water distribution system for use by its utility customers.

“Contracted Additional Capacity (CAC)” means the additional capacity in the SDS that one Participant may contract use of on a temporary and interruptible basis (if and when) from another Participant above the Participant’s Beneficial SDS Ownership Interest capacity. The CAC applies to either conveyance or treatment with separate charges defined for each as shown in Exhibit C.

“Contracted Additional Capacity Charge” means the cost of Contracted Additional Capacity (CAC) incurred for use of SDS conveyance or treatment capacity above a Participant’s Beneficial SDS Ownership Interest capacity.

“Effective Date of this Agreement” shall mean the date after which it is fully executed by all Participants and upon which SDS commences Commercial Operations.

“Expansion” shall mean expanding the capacity of SDS to achieve the capacity of project components of 78 MGD identified in the Construction IGA or any portion thereof.

“Expansion Costs” shall mean those costs for design, equipment and materials, construction, land acquisition, permitting, management, professional consultant services and other activities necessary for the Expansion of SDS.

“Final Participation Share” shall mean a Participant’s share of the costs allocated to that Participant as determined pursuant to Section 7(f) of the Construction IGA.

“Fixed O&M Costs” shall mean those operations and maintenance costs that do not vary substantially relative to the amount of SDS Asset capacity that is used in a given month, including, for example, labor, equipment, vehicles, work by contractors and consultants, and permit fees.

“Governmental Person” means a state or local governmental unit or any instrumentality thereof. It does not include the United States or any agency or instrumentality thereof.

“Metering Points” shall mean the points at which raw water or treated water is made available to a Participant from the pipeline or the treatment plant, as applicable, including the Security Finished Water Connection.

“North Outlet Works” has the same meaning in this Agreement as in the BOR Project Conveyance Contract (Contract No. 11XX6C0005).

“North Outlet Works OM&R Costs” shall include the operations, maintenance, and replacement costs related to the North Outlet Works as defined in BOR Project Conveyance Contract (Contract No. 11XX6C0005).

“Pipeline” shall mean the Southern Delivery System raw water conveyance pipeline, including pump stations, meters, interconnections and other related works and facilities necessary or incidental to such pipeline, and the easements and other real property interests over which such Pipeline shall be located. “Pipeline” does not include the North Outlet Works or the SDS Water Treatment Plant.

“Pueblo West Connection” shall mean the pipeline from the Pueblo Dam Connection and appurtenances installed by Colorado Springs pursuant to the Construction IGA, constituting an interconnection between the North Outlet Works and Pueblo West’s raw water conveyance system, and through which Pueblo West will receive their SDS Water.

“Replacement Costs” shall mean those costs for design, equipment and materials, construction, land acquisition, permitting, management, professional consultant services and other activities necessary to replace or modify any SDS Assets to assure reliable and cost effective operation of the SDS. Replacement costs will be shared according to the Beneficial Ownership Interest for each Participant as shown in Exhibit A.

“SDS Assets” means all facilities and equipment, including the SDS Components identified in Exhibit A, including the easements and other real property interests on which such SDS Assets shall be located, that have been constructed with the intent that they (A) become part of the SDS, (B) be operated or used in conjunction with the SDS, or (C) otherwise become

identified or dedicated to the SDS for the benefit of the Participants; provided, however, that the facilities, and equipment constituting the North Outlet Works will be SDS Assets until they are transferred under the agreement between Colorado Springs, acting by and through its utility enterprise, as project manager on behalf of the Participants, and the United States of America, acting through the Secretary of the Interior and the BOR, dated May 4, 2011, Contract Number 11C6XX0005 (also referred to as 116CXX0005), as amended, reauthorized, or reissued (“BOR Project Conveyance Contract”).

“SDS Component” means one of the discrete SDS Assets identified as an SDS Component in Exhibit A.

“SDS Costs” shall mean the North Outlet Works OM&R Costs, the Fixed O&M Costs, the Variable O&M Costs, the Replacement Costs, and the Expansion Costs.

“SDS Operations Committee” shall mean the committee of Participant representatives described in Section 2.E that acts as liaison between the Operations Manager and the Participants.

“SDS Water” shall mean the water owned by a Participant as defined in the Record of Decision and Final EIS for SDS and which may be conveyed to the Participant via the SDS Assets.

“Security Finished Water Connection” shall mean that part of the SDS Assets, the pipeline and appurtenances installed by Colorado Springs and paid for by Security pursuant to the Construction IGA, constituting an interconnection between Colorado Springs’ and Security’s finished water distribution systems, and through which Security will receive Water Service from SDS.

“Variable O&M Costs” shall mean those operation and maintenance costs that vary substantially in relation to the amount of SDS Asset capacity used in a given month, including, for example, consumables, electric power, fuels, and chemicals.

“Electric Demand Charges” shall mean electric service rates and charges or similar consumption-based electric rate or premium added during periods of high electric demand. Electric demand charges shall be considered a Variable O&M Cost. When no SDS Asset is used during a month in which an electric demand charge applies, the electric demand charge for that month shall be included in Fixed O&M Costs.

“Water Service” includes (1) the transmission of water into the Pipeline from the North Outlet Works and through the Pipeline, (2) the storage of water at a reservoir, (3) the treatment of water at a water treatment plant, and (4) the delivery of water to connections with the water systems of the Participants through SDS Assets in which a Participant has a Beneficial SDS Ownership Interest. Water Service includes water conveyance and capacity rights but does not include water ownership rights or any legal right commonly referred to as a “water right.” Water Service includes the provision of SDS Water directly by SDS Assets, or indirectly via Fountain Valley Authority (FVA) in accordance with Subagreement No. 11XX6C0097.

“Weighted Vote” means a vote or election in which the Participants collectively cast a total of 100 votes and each Participant is entitled to cast a number of votes equal to the result obtained by multiplying the Participant’s Beneficial Ownership Interest in SDS by 100.

## **Section 2. Operations Management**

A. Colorado Springs, through Colorado Springs Utilities, shall act as the Operations Manager with responsibility to manage the operation, maintenance, replacement of the SDS Assets, and expansion of the SDS pursuant to the terms and conditions set forth in this Agreement. Operations Manager shall be the contracting agency with consultants, contractors, and suppliers, and the permittee on permits required from local, state, and federal regulatory agencies. The Operations Manager shall also hold and administer the BOR Project Conveyance Contract on behalf of the Participants.

B. The Operations Manager shall have the power to: (i) buy, lease, or otherwise acquire services, equipment, and supplies subject to its purchasing rules; (ii) enter into contracts and permits; (iii) exercise eminent domain and otherwise obtain any interest in real property; (iv) engage in construction, renewal, replacement, or expansion of facilities; (v) take actions reasonably necessary during an emergency; and (vi) exercise other powers as may be granted by the Participants from time to time. The duties of the Operations Manager shall be as set forth in this Agreement and shall be met in accordance with the Standard of Performance set forth in Subparagraph 2.P.

C. The Operations Manager shall be responsible for coordination with the BOR regarding the operation, maintenance, replacement and expansion of facilities and equipment from the North Outlet Works up to, and including, the first meter vault at the Pueblo West connection until the North Outlet Works is transferred to the BOR per the BOR Conveyance Contract. Pueblo West shall be responsible for operation, maintenance, replacement and expansion of facilities and equipment for their system downstream of the Pueblo West meter vault.

D. The Operations Manager shall be responsible for operation and maintenance of the Security Finished Water Connection from the Colorado Springs valve vault located on the north side of Milton E. Proby Parkway at the intersection with Charro Drive, southward along the pipeline approximately 310 feet up to, and including, the meter and control vault and backflow preventer vault at the Security connection located in Charro Drive. Security shall be responsible for all costs associated with the operation, maintenance, replacement and expansion of their facilities downstream of the backflow preventer vault.

E. Each Participant shall designate, via letter to the other Participants, one representative and an alternate to serve on the SDS Operations Committee. Colorado Springs’ representative on the SDS Operations Committee shall be the designee of the Operations Manager. The Operations Committee shall be responsible for acting as a liaison between the Operations Manager and the Participants. The Operations Manager’s designee shall serve as chair of this committee and be responsible for preparing meeting agendas and summaries. The committee shall meet quarterly or as otherwise determined by the Operations Manager to share information on operational topics, including, but not limited to, Annual Operating Plans, budgeted or actual costs, water

delivery schedules, maintenance activities, and replacement or expansion plans and activities. The Operations Manager's designee may convene an ad hoc meeting at any time and shall convene an ad hoc meeting within a reasonable time after receiving a written request for such meeting from any Participant.

F. General Operational Goals. The Operations Manager shall use reasonable care in accordance with the Standard of Performance (as defined in section 2.P herein), to operate, maintain and manage the SDS in the best interests of all Participants, and in such a manner so as to: (i) optimize the useful life of the SDS Assets and (ii) comply with applicable laws, permits, environmental requirements and contractual commitments and (iii) optimize efficiency and cost-effectiveness of operations.

G. Annual Operating Plan. By April 1 of each calendar year, the Operations Manager shall prepare and submit to the SDS Operations Committee a proposed Annual Operating Plan which shall set forth anticipated operations, repairs, capital improvements, routine maintenance, procurement, staffing, personnel and labor activities, administrative activities, and other work proposed to be undertaken by the Operations Manager, along with a proposed budget providing the estimated costs and expenses of the foregoing and a written estimate of each Participant's share of SDS Costs for the next calendar year. The Annual Operating Plan shall also include a five (5) year plan summarizing the scope, schedule, and estimated cost for major anticipated replacement and expansion activities. The SDS Operations Committee shall review the proposed Annual Operating Plan within thirty (30) Days of receipt and may request changes, additions, deletions and modifications. The Operations Manager shall give reasonable consideration to requests of the SDS Operations Committee and to each Participant's budgeting and financing constraints. If the requested changes are agreed upon by the Operations Manager, the proposed Annual Operating Plan as modified shall be the Annual Operating Plan for such Operating Year. If the Operations Manager does not agree with the requested changes, additions, deletions or modifications, the Participants shall meet and work in good faith to agree upon an Annual Operating Plan. If the Participants are not able to agree on an Annual Operating Plan for any year, the Operations Manager shall establish an Annual Operating Plan based on the Operations Manager's reasonable estimate of costs.

H. Services Provided by Operations Manager. Including those services set forth in Subparagraphs I through K, the Operations Manager shall perform all work and obtain all permits, licenses and certifications necessary to operate, replace, expand and maintain SDS Assets, pay all fees and satisfy all obligations associated with operation, maintenance, or replacement of SDS Assets, or expansion of the SDS; keep the SDS free and clear of all liens, claims and rights of others claiming by or through the Operations Manager; ensure compliance with all applicable agreements and permits; provide reasonable support and assistance (including the provision of information) for the other Participants to perform their obligations hereunder; and any other services as appropriate and necessary to fulfill the purposes of this Agreement (the "Services").

I. Administrative Services. The Operations Manager shall provide administrative services including but not limited to the following:

i. *Personnel.* The Operations Manager shall provide for all labor and professional, supervisory, and managerial personnel as required to operate the SDS. At all times, the Operations Manager shall retain sole authority, control, and responsibility with respect to personnel matters in connection with the operation, maintenance, replacement, and expansion of the SDS.

ii. *Accounting Services.* The Operations Manager shall provide for accounting services related to the operation, maintenance, replacement of the SDS Assets, and expansion of the SDS. The Operations Manager shall maintain adequate books, accounts and records with respect to the operation, maintenance, replacement and expansion of the SDS in accordance with Generally Accepted Accounting Principles consistently applied, and in compliance with the regulations of any governmental authority having jurisdiction thereof. The Operations Manager shall permit the other Participants, at their own cost, to examine the books, accounts and records related to this Agreement and to the services provided there under and make copies thereof at any reasonable time until the same are disposed of consistent with the Operations Manager's records retention policy and schedule. The accounting services shall include a monthly detailed breakdown provided in each monthly billing statement of the Participant's SDS Water deliveries, percentage interests in the various SDS Components, the fixed and variable costs related to each SDS Component, how those fixed and variable costs are allocated to each of the SDS components, how those fixed and variable costs for each SDS component are allocated to the Participants, and all other charges to each Participant for the billing period. A review of the accuracy of the Participants' cost allocation shall be included in the City of Colorado Springs City Auditor's audit of SDS operations following their normal audit schedule and procedures.

iii. *Procurement and Inventories.* The Operations Manager shall procure all supplies, consumables, tools, equipment, services, and materials, necessary for the operation, maintenance, replacement and expansion of the SDS. Items purchased for incorporation in the SDS shall be warranted only by the vendor or manufacturer.

iv. *Utility Services.* The Operations Manager shall be responsible for procuring, maintaining and administering all utility contracts and equipment necessary for the operation of the SDS.

v. *Permits.* The Operations Manager shall obtain, renew, maintain, and comply with all permits necessary to operate, maintain, replace the SDS Assets, or expand the SDS.

vi. *Billing.* The Operations Manager shall be responsible for billing Participants for payment of SDS Costs in accordance with Section 3 herein.

vii. *Meter Verification.* The Operations Manager shall be responsible for verifying the proper function of water meters used for tracking delivery of SDS Water to Participants. Meter verification will be performed annually or as may be deemed necessary by the Operations Manager.

J. Operation Services. The Operations Manager shall provide operational services including but not limited to the following:

- i. *Operating Responsibilities*. The Operations Manager shall have responsibility to operate the SDS. The Operations Manager by its sole discretion may operate through its own employees and/or by contracts with other parties.
- ii. *Operations Records*. The Operations Manager shall keep operating logs and equipment records in accordance with the Operations Manager's record retention policy and schedule.
- iii. *Safety and Security*. The Operations Manager shall implement and at all times follow appropriate safety and security procedures. The Operations Manager shall operate SDS in such a manner as to minimize the risk of bodily harm to persons and damage to property.
- iv. *Emergencies*. In the event of any emergency involving the SDS endangering life or property, the Operations Manager shall take such action as may be reasonable and necessary to prevent, avoid, or mitigate injury, damage, or loss, and shall, as soon as practicable, report any such incident to the Participants.
- v. *Inspection*. The Operations Manager shall coordinate access to the SDS by the Participants for inspection and review of operations and maintenance practices and for tours. Any such inspection or tour shall be carried out only when conditions are safe and so as not to materially interfere with the Operations Manager's operation of the SDS and shall require reasonable advance notice. The Operations Manager or designee shall accompany all visitors during inspection.
- vi. *Water Service*. The Operations Manager will provide Water Service to the Participants including accounting for all water conveyed and delivered through the system to the point of delivery. The Operations Manager shall be responsible for determining water losses incurred during conveyance, treatment and system operations and allocating those losses according to each Participant's pro rata share of water losses based on SDS Water deliveries made to Participant in the billing period. Participants shall contact the Operations Manager to coordinate water deliveries in accordance with Section 2.0 herein.
- vii. *Standard Operating Procedures*. The Operations Manager will operate SDS in accordance with the Operations Manager's standard operating procedures for its water systems and will develop specific standard operating procedures for the SDS, as needed.

K. Maintenance, Replacement, and Expansion Services. The Operations Manager shall schedule and be responsible for all maintenance replacement and expansion of the SDS.

- i. *Work Planning and Control*. The Operations Manager shall establish schedules for regular maintenance activities. Maintenance shall be scheduled so as to

reduce interference with SDS operations. The Operations Manager shall be responsible for the planning, scheduling, and management of all anticipated shutdown (also referred to herein as “outage”) activities, and shall use reasonable efforts to schedule maintenance shutdowns so as to minimize expenses and to maximize coordination with Participants. In the event of any shut down for maintenance, repair, replacement, or expansion of the SDS, no Participant will be guaranteed Water Service, but the Operations Manager shall keep the representatives on the Operating Committee reasonably informed of progress in restoring the SDS to normal operations.

ii. *Materials and Tools.* The Operations Manager shall provide all materials and tools to operate and maintain the SDS and shall see that all special tools and similar items included with the purchase of equipment from vendors are maintained at the SDS facilities.

iii. *Replacement and Expansion.* The Operations Manager shall plan, schedule, and manage any replacement or expansion of SDS. Replacement and expansion shall be scheduled so as to reduce interference with SDS operations. The Operations Manager shall use reasonable efforts to schedule all replacement or expansion shutdowns so as to minimize expenses and to maximize coordination with Participants.

iv. *Consultants and Contractors.* The Operations Manager shall, if necessary, retain the services of specialists in order to assist in resolving certain problems, inspecting certain equipment, and designing, managing, or constructing SDS facilities.

v. *Logistical Support.* The Operations Manager shall procure, store, and maintain all consumable and expendable materials as needed for the performance of the Services. The Operations Manager shall keep accurate records and accounts of the consumption and inventory of such materials in accordance with the Operations Manager’s records retention schedule.

vi. *Manuals.* The Operations Manager shall maintain and keep current the operations and maintenance manuals prepared and submitted by the suppliers and manufacturers of SDS Assets (the “Operations and Maintenance Manuals”).

vii. *Record Drawings.* The Operations Manager shall maintain one set of reproducible record drawings which shall be revised within thirty (30) Business Days (or such longer period as may be reasonably necessary) following the implementation of an addition to, or modification of, the SDS which is performed by the Operations Manager. Such record drawings will be maintained in accordance with the Operations Manager’s records retention schedule.

viii. *Warranties.* The Operations Manager shall obtain from contractors and vendors all normal and customary warranties. The Operations Manager shall

administer any warranties and shall use reasonable efforts to enforce all such warranties.

L. Reports and Notices. In January of each year, the Operations Manager shall provide to Participants an annual report on the water deliveries, facility status, operation, maintenance, and expansion activities and costs of the SDS for the preceding year. Each month, the Operations Manager shall provide a water accounting report showing water released from Pueblo Reservoir, water losses, SDS Water delivered to each Participant in the period, year-to-date SDS Water deliveries and year-to-date remaining SDS Water balance. The Operations Manager will determine whether the water accounting report will be included with the monthly billing statement or provided as a separate report. All notices from the BOR regarding the SDS shall promptly be forwarded to Participants.

M. Emergency Conditions. The Participants recognize and acknowledge that it may be necessary from time to time to operate the SDS under emergency conditions, including but not limited to natural disasters, management decisions made by the BOR or other agencies, water supply limitations, and water quality limitations. The Participants agree to cooperate on operational decisions during emergency conditions, including, but not limited to, imposition of temporary SDS capacity or delivery limitations or acceptance of water quality that differs from the typical operating range.

N. Access. The Participants shall cooperate to permit the Operations Manager any necessary access to any property controlled by a Participant for operations, maintenance, replacement, or expansion activities.

O. Use of SDS Facilities and Administration of Water Service. The following outlines each Participant's use of SDS Facilities and the Administration of Water Service by the Operations Manager:

i. Each Participant shall have average daily and annual capacity rights in SDS as set forth in Exhibit A hereto. Fountain's capacity rights are also subject to the terms of Subagreement No. 11XX6C0097 between Colorado Springs and Fountain, attached as Exhibit B.

ii. Each Participant shall submit to the Operations Manager an annual schedule of planned water deliveries for the next operating year by September 1<sup>st</sup> for Operations Manager's use in preparing the Annual Operating Plan; a quarterly updated schedule of planned water deliveries at least five business days before the start of each calendar quarter; and a monthly schedule of planned water deliveries at least five business days before the start of each month. In the event of an unresolved conflict among planned water delivery schedules, the Operations Manager shall, to the extent practicable, apportion water deliveries among Participants on a pro-rata basis consistent with their SDS Beneficial Ownership Interest share as outlined in Exhibit A.

iii. No Participant is guaranteed Water Service in the event the SDS experiences an emergency, a planned outage, or an unplanned outage. In the event

SDS is out-of-service, the Participants shall cease taking deliveries via SDS but may take contracted deliveries through other facilities such as the Fountain Valley Authority Fountain Valley Conduit, Colorado Springs facilities or other available means as may be feasible. In such case, the Operating Committee will coordinate with the Operations Manager to arrange alternative delivery, determine and agree upon associated costs for such alternative delivery and determine any contractual water transfers as may be required to allow such alternative delivery. In the event SDS has a short-term reduction in delivery or treatment capacity, the available capacity will be shared among the Participants on a pro rata basis as outlined in Exhibit A.

iv. Each Participant shall be responsible for delivery to the SDS of all SDS Water to be transmitted through the SDS for ultimate delivery to said Participant, and for the construction and operation of all facilities necessary to deliver water from the Metering Points to its water system. Fountain's SDS Water will be delivered through other facilities as provided by Subagreement No. 11XX6C0097.

P. Operations Manager's Standard of Performance. The SDS shall be operated, maintained, and managed in an efficient manner consistent with sound municipal utility practices and in accordance with standards normally used by municipal utilities owning like facilities. In discharging its obligations as Operations Manager under this Agreement, the Operations Manager will comply with the following standard of performance (the "Standard of Performance"):

i. In exercising its judgment and discretion, the Operations Manager shall Act in a manner that is in the best interests of the SDS and the Participants consistent with the operational goals set forth in Section 2.F herein; and

ii. The Operations Manager shall exercise its judgment and discretion in conformance with the degree of skill, diligence, prudence and foresight of an experienced operator of a water delivery and treatment facility of similar type to the SDS and only after giving due consideration to those facts and circumstances that a reasonable municipal utility operations manager would consider under the same or similar circumstances.

iii. So long as it complies with the Standard of Performance, the Operations Manager may exercise, or may refrain from exercising, any power or authority stated in this Agreement to the extent and in the manner that the Operations Manager, in its judgment and discretion, considers necessary or appropriate.

iv. An action of the Operations Manager will be deemed to satisfy the Standard of Performance if that action: (a) is within the power and authority of the Operations Manager as set forth in this Agreement and (b) substantially complies with applicable provisions of this Agreement. This subsection does not state the exclusive manner in which the Operations Manager may comply with the Standard of Performance.

v. Notwithstanding any other provision of this Section 2.P, an action constituting gross negligence or willful misconduct will not comply with the Standard of Performance.

### **Section 3. Rates and Charges.**

A. The allocation of SDS O&M Costs among the Participants is set forth in the following section. In addition, rates for use of additional capacity in the SDS beyond a Participant's SDS Beneficial Ownership Interest share and charges required to fully cover the operational expenses related to the operation, maintenance, repair and replacement and administration of the SDS facilities is outlined herein and in the exhibits to this Agreement. Such rates and charges shall be set forth in detail in the monthly billing statement.

B. North Outlet Works Operations, Maintenance, and Replacement Costs. Operations, Maintenance, and Replacement costs for the North Outlet Works shall be determined and invoiced to the Operations Manager by the BOR in accordance with the Conveyance Contract. Those costs shall be allocated among the Participants in proportion to each Participant's share of the final construction cost for the North Outlet Works. In the event the BOR enters into new agreements with third parties for use of the North Outlet Works, any corresponding reduction in costs related to SDS will be allocated to the Participants on a pro rata basis in accordance with each Participant's SDS Beneficial Ownership Interest in the North Outlet Works as shown in Exhibit A.

C. Excess Capacity Storage Costs through 2017. Excess Capacity Storage Costs shall be determined in accordance with Subsection 6 of the BOR Project Excess Capacity Contract held by Colorado Springs (BOR Contract No. 11XX6C0002 dated May 4, 2011). Those costs shall be allocated to the Participants in accordance with each Participant's pro rata share of the annual total storage amount as set forth in the BOR Project Excess Capacity Contract. The Operations Manager shall invoice each Participant for its share of the Excess Capacity Storage Costs concurrently with its payment to BOR of the total annual amount. Each Participant shall submit payment to Operations Manager within thirty (30) days of the mailing date of the invoice.

D. SDS Operations and Maintenance (O&M) Costs.

i. Fixed O&M costs for each SDS Asset shall be allocated in proportion to each Participant's Beneficial SDS Ownership Interest in that asset as outlined in Exhibit A.

ii. Variable O&M costs shall be allocated in proportion to the Water Service provided to each Participant for actual contracted delivery of their SDS Water.

a. Security's Variable O&M Costs shall be determined based on actual variable expenses for contracted delivery of their SDS Water as shown in Exhibit C.

b. Fountain's Variable O&M Costs shall be determined based on variable expenses for contracted delivery of their SDS Water as shown in Exhibit C.

c. Colorado Springs' Variable O&M Costs shall be determined based on variable expenses for contracted delivery of their SDS Water as shown in Exhibit C.

d. Pueblo West shall not be responsible for SDS Variable O&M Costs as shown in Exhibit C.

E. Security Finished Water Pipeline Operations and Maintenance Costs. Actual costs for fixed and variable operation and maintenance costs, including replacement costs, associated with the Security Finished Water Pipeline will be billed to Security on a monthly basis.

F. Replacement Costs. Replacement Costs for SDS Components shall be considered Fixed O&M Costs and shall be allocated among the Participants in proportion to each Participant's Beneficial SDS Ownership Interest in such SDS Asset as outlined in Exhibit A.

G. Future SDS Expansion Costs. Costs for the future expansion of SDS to achieve the full planned raw water conveyance capacity of 78 MGD, and expansion of water treatment plant capacity to 78 MGD, shall be allocated among the Participants in proportion to each Participant's Beneficial SDS Ownership Interest in each SDS Component as shown in Exhibit A. A Participant shall have the option not to participate in the expansion and expansion costs of the SDS and if it so elects, its Beneficial SDS Ownership Interest and allocation of future SDS Costs shall be adjusted accordingly upon completion of the expansion to reflect its new Beneficial SDS Ownership Interest share in the SDS Assets. A Participant may have the option to participate in expansion and expansion costs for future raw water storage facilities should future storage be made available by Colorado Springs. Should a Participant elect to participate in future storage facilities, the participation share of the costs and use in such future storage facilities shall be determined by the Participants and this Agreement amended as needed to properly reflect each Participant's ownership interest in the future facilities and costs. The deadline for such elections shall be set by the Participants in a reasonable amount of time after estimates of expansion costs are developed.

H. Use of Contracted Additional Capacity (CAC). Participant's may wish to offer use of their Beneficial Ownership Interest share of capacity in the SDS Assets to other Participants, should such capacity be available, in order to enable a Participant to deliver water above their share of conveyance and/or treatment capacity in SDS. Costs for the use of available CAC shall be paid on a unit price basis as shown in Exhibit C for actual contracted deliveries to the Participant using another Participant's share, or share portion, of their Beneficial SDS Ownership Interest conveyance and/or treatment capacity. The CAC Charge provides the method for the owning Participant to recover the portion of capital investment made in the SDS Assets for that period when another Participant has use of their Beneficial Ownership Interest share in the SDS Assets. The CAC Charge is initially set based on forecasted final total Phase 1 construction costs for SDS and will be re-evaluated by the Operations Manager following closeout of construction contracts. The CAC Charge may be revised by the Operations Manager to account for future

capital costs incurred related to expansion or major capital replacement of SDS Assets. Charges for use of CAC will be assessed to the lessee Participant by the Operations Manager for any daily average flow rate that exceeds the lessee's Beneficial Ownership Interest share as shown in Exhibit A. CAC charges will be billed on a monthly basis for actual deliveries made using CAC. Fixed and Variable O&M costs will be charged in addition to the CAC Charge for CAC deliveries. Revenue received from CAC Charges will be credited to the owning Participant on a monthly basis. The determination of which Participant's Beneficial SDS Ownership Interest share, or share portion, will be leased to another Participant shall be determined and documented in the Annual Operating Plan.

I. Administrative Charge. The Administrative Charge is a charge to each Participant based on each Participant's Beneficial SDS Ownership Interest to cover an allocation of the actual administrative, accounting, management, data collection, record keeping, reporting, legal, regulatory agency coordination costs and any other costs incurred by the Operations Manager for the operation of the SDS Assets. The Administrative Charge and reasonable detail on the basis and calculation of such charge will be included in the monthly billing statement to each Participant and is in addition to the Fixed O&M costs.

#### **Section 4. Billing.**

A. By the fifteenth (15<sup>th</sup>) day of each month during the term of this Agreement, the Operations Manager shall bill each Participant for its required share of the SDS Costs for the preceding month. The amounts due from each Participant shall be totaled for billing purposes each month. Monthly billings may also include amounts from previous months that have not been paid by a Participant and that have been determined in the same manner. Such billing shall include Participant's cost allocation of total SDS Costs for the period.

B. Each Participant shall pay the amounts billed by the Operations Manager within fifteen (15) calendar days of the date the Operations Manager sends the monthly bill to that Participant.

C. Within sixty days after the end of the calendar year, the SDS Operations Committee and the Operations Manager shall review all monthly billings during the previous calendar year to assure that all amounts were billed and paid in accordance with this Agreement. This review shall include a review of the City of Colorado Springs City Auditor's audit reports described in Section 2.I.ii. Any overpayments or underpayments shall be corrected. Amounts determined to have been overpaid by a Participant shall be credited towards amounts due from that Participant in future monthly billings. Any amounts underpaid by a Participant shall be billed and shall be paid as part of the next monthly billing to that Participant.

#### **Section 5. Payment Due Dates and Delinquency.**

A. All payments required to be made by each Participant under the terms of this Agreement shall be due and payable as provided in Section 4, and the Participants shall have no right of setoff, recoupment, or counterclaim against any payment which is to be made under this Agreement.

B. In the event that a Participant fails to make a payment at the time herein specified, and a Notice of Default has been sent pursuant to Section 11, interest on such delinquent amount shall accrue at the rate of one percent (1%) per month from the due date such payment becomes due until paid in full, and Colorado Springs may institute a proceeding for mandamus requiring payment of the amount due and interest thereon in a court of competent jurisdiction.

C. Should a dispute arise as to whether a Participant is in compliance with the terms and conditions herein, each Participant shall nevertheless be obligated (i) to make the payments provided by Section 3 herein and (ii) to pay such amount of the SDS Costs as the Operations Manager determines is due pending resolution of such dispute. If it is finally determined that any Participant has overpaid amounts due under this Agreement, that Participant shall be reimbursed for the amount overpaid or shall be given credit on the amounts due under the next monthly billing.

### **Section 6. Budgets and Appropriations for Annual Costs.**

A. Before the beginning of each full calendar year during the term of this Agreement, each Participant shall adopt its annual or, as applicable, biennial budget for the estimated SDS Costs as provided by the Operations Manager and shall deliver to the Operations Manager a copy of the budget as adopted

### **Section 7. Participants' Additional Water Supplies**

A. Participants recognize and acknowledge that the ability of a Participant to add Additional Water supplies to the SDS is limited by the requirements of the BOR's Record of Decision/Final Environmental Impact Statement ("ROD/FEIS") and the Pueblo County 1041 Permit.

B. Any Participant who desires to use its Beneficial Ownership Interest in SDS to convey Additional Water supplies shall be responsible for obtaining all necessary approvals and permits. The Participant seeking approvals and permits to convey Additional Water supplies shall provide reasonable notice to all other participants in advance of initiating the process to allow any other Participant to join in the coordinated approval process for its own Additional Water supplies. The cost share for the necessary approvals and permits shall be determined and agreed separately from this Agreement. All other Participants shall cooperate with the Participant obtaining the approvals and permits and coordinate to maximize the efficient use of the Additional Water supplies to the extent that there is no injury to their water rights or ability to convey water through SDS. Participants not seeking to convey Additional Water supplies shall incur no additional costs or obligations under this Agreement as a consequence of the approval and permit process.

### **Section 8. Assignment.**

A. A Participant ("Predecessor Participant") may make an Assignment to another person ("Successor Participant") only in accordance with this Section 8; provided, however, that this Section will not apply to short-term swaps or leases between Participants that occur for operational purposes and are reasonably necessary to avoid waste or undue economic or other

burden or any reallocation of capacity between Fountain and Colorado Springs pursuant to Subagreement No. 11XX6C0097. The term “Assignment” includes any actual or attempted assignment, transfer, lease or conveyance, whether full or partial, of any of the following: (A) any Beneficial SDS Ownership Interest, (B) any other interest in the SDS, (C) any other right or interest arising under this Agreement, or (D) any right regarding Water Service.

B. General

i. A Participant may not make an assignment to any person other than a Governmental Person.

ii. No assignment shall be effective unless its terms and conditions are in compliance with all applicable laws and regulations, contracts and permits.

iii. Any purported or attempted assignment that is not made in accordance with this Section 8 will be void and of no force or effect, regardless of whether any action is taken to avoid it.

iv. Unless otherwise provided in writing and approved pursuant to this Section 8, an Assignment shall be prospective in operation and shall not relieve any Participant from obligations that have accrued prior to the effective date of the Assignment.

C. With Consent. A Participant may assign (Predecessor Participant) all or a portion of its Beneficial SDS Ownership Interests and all or a portion of its rights and obligations arising under this Agreement, to a Successor Participant upon written approval of all other Participants. Such assignment or transfer shall only be effective upon the execution by all Participants and the Successor Participant of an Amendment to this Agreement setting forth all terms and conditions of the assignment and transfer and all the rights and obligations of the Subsequent Participant.

D. As of Right. A Predecessor Participant may assign its Beneficial SDS Ownership Interests, and all other rights arising under this Agreement, without the approval of any other Participant, to a Successor Participant that succeeds to the ownership of the Predecessor Participant’s municipal water system. No assignment will be valid until the Predecessor Participant, the Successor Participant and all other Participants execute an amendment to this Agreement under which the Successor Participant (1) agrees to be bound by all terms and conditions of this Agreement, and (2) agrees to assume all obligations of the Predecessor Participant under this Agreement. Such amendment shall release the Predecessor Participant from all future obligations under this Agreement. Upon execution of such amendment by all Participants and the Successor Participant, the Successor Participant shall be entitled to all rights of the Predecessor Participant under this Agreement.

E. Assignment of Water Service or Water Conveyance Rights. A Participant may assign Water Service rights in the SDS, subject to the limitations in Sections 8.A and 8.B. Such an assignment may be for a specified term (e.g., a lease), may be for all or less than all the Participant’s rights and entitlements, and may be subject to other reversionary or retained rights of the Participant. No assignment under this Subsection E shall be valid unless the assignment

contains provisions requiring the assignee to comply with all terms and conditions of this Agreement as to the assigned rights. This Subsection E does not apply to assignment of a Participant's Beneficial SDS Ownership Interest which is governed by Sections 8.B, 8.C and 8.D herein.

F. No Surcharge. There will not be any participation surcharge, or other such charge placed upon a Successor participant, assignee, lessee, or a Participant as a result of an assignment or transfer that is made under the provisions of this Section.

### **Section 9. Performance Subject to Appropriations.**

A. In accordance with the laws of the State of Colorado and the Colorado Springs City Charter, performance of Colorado Springs' obligations under this Agreement is expressly subject to appropriation of funds by the Colorado Springs City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Colorado Springs' obligations under this Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then this Agreement shall thereafter become null and void by operation of law, and Colorado Springs shall thereafter have no liability for compensation or damages to the other Participants in excess of Colorado Springs' authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Colorado Springs shall notify the other Participants as soon as reasonably practicable in the event of non-appropriation or in the event a spending limitation becomes applicable. Notwithstanding the foregoing, any Participant not appropriating funds for the performance of this Agreement and thereby not meeting its obligations hereunder shall not be entitled to Water Service.

### **Section 10. Dispute Resolution.**

A. Except as otherwise provided in this Agreement, every dispute, controversy or disagreement of any kind or nature between the Participants arising out of or in connection with this Agreement (each "Dispute") shall be resolved in accordance with the following provisions of this Section:

B. Each party to a Dispute shall report the Dispute to its Administrative Officer, and the following provisions will apply:

i. Within 10 business days after any Participant reports a particular Dispute to its Administrative Officer, the Administrative Officers from all Participants shall meet to discuss the Dispute. The meeting will be in person, if reasonably practicable.

ii. If the Dispute is within the authority of the Administrative Officers to resolve, (a) they will endeavor to resolve it by unanimous agreement; and (b) if they cannot reach unanimity, the Dispute will be resolved immediately by a Weighted Vote.

iii. An Administrative Officer may delegate the handling of a Dispute to any person within his or her organization that reports to, or is otherwise supervised by, that Administrative Officer, but only if the delegate has sufficient knowledge of the

Dispute and sufficient authority that he or she is reasonably able to make a meaningful contribution to the prompt resolution of the Dispute. As used in this Section, any such delegate will be included in the term, "Administrative Officer."

C. If for any reason a Dispute cannot be resolved pursuant to Subsection A, each Administrative Officer will promptly refer the Dispute to his or her Participant's governing body, and the following provisions will apply:

i. The governing bodies will have 30 days from the date of referral in which to attempt to resolve the Dispute by unanimous agreement.

ii. If the governing bodies cannot resolve the Dispute by unanimous agreement within the 30-day period, (a) the Dispute will be resolved by Weighted Vote, and (b) each governing body will determine its Weighted Vote at its next formal meeting after the 30-day period has expired.

D. Whenever a Weighted Vote is conducted or required under this Agreement with respect to a Dispute, the following provisions will apply:

i. The act of a majority of the Weighted Votes of the Participants shall bind all Participants.

ii. The Participants' respective votes may be cast by any means of giving notice pursuant to Section 19.

iii. Each Participant may cast all its votes in every Weighted Vote, regardless of whether it is involved in the Dispute involved in the vote.

iv. Each Participant that casts or desires to cast its votes, whether by a governing body or an Administrative Officer, (a) shall endeavor to do so at the earliest practicable opportunity after the Weighted Vote is authorized under this Agreement; (b) will be deemed to have waived its right to cast a vote if it does not do so within the time prescribed in Section 10(c)(2) herein; (c) shall notify the other Participants within 24 hours after it casts its votes.

v. Each Participant shall take every reasonable action, within its power and authority, to ensure that an action approved by a Weighted Vote is carried out in accordance with its terms.

E. No Weighted Vote or other action taken pursuant to this Section 10 shall (a) require any Participant to increase or decrease the amount of Beneficial SDS Ownership Interest without the express approval of such Participant; or (b) be used to determine any Participant's share of SDS Costs.

F. All communications and negotiations conducted pursuant to this Section 10 will be governed by Rule 408 of the Federal Rules of Evidence and Rule 408 of the Colorado Rules of Evidence, to the same extent as though they were conduct or statements made in compromise

negotiations regarding a Claim involving the Dispute, regardless of whether those Rules would apply in the absence of this subsection.

G. Nothing shall prevent the disputing Participants from waiving any of the steps in this Section 10 by mutual consent.

### **Section 11. Default and Remedies.**

A. If a Participant is in default of any provision of this Agreement, any other Participant may give notice to the defaulting Participant, specifying the nature of the default in reasonable detail; if notice is so given, the following provisions will apply:

i. The defaulting Participant may cure the default within 30 days after the effective date of the notice (or, if the default cannot reasonably be cured within said 30 day period, Participant shall proceed diligently and shall complete the cure within a reasonable time thereafter), in which case the other Participants will not have any further right or remedy by reason of the default.

ii. If the defaulting Participant does not cure the default in accordance with subsection (i), the other Participants may exercise any right or remedy that is available under this Agreement by reason of such default, including the acquisition of all of the defaulting Participant's Beneficial SDS Ownership Interests under Section 11.B. herein.

A defaulting Participant may avail itself of the cure provisions of this Section 11.A. only once within any period of 12 consecutive months.

B. Acquisition of a Defaulting Participant's Beneficial SDS Ownership Interests

i. If a Participant is in default, has been provided notice of the default under Section 11.A., and has failed to cure the default within the time allowed in that section, the non-defaulting Participants may elect to acquire any or all of the Beneficial SDS Ownership Interests owned by the Defaulting Participant; if such an election has been made, the following provisions will apply:

a. The non-defaulting Participants shall confer promptly and shall attempt to agree unanimously upon (1) which SDS Components, and which Beneficial SDS Ownership Interests in each SDS Component, are affected by the election, and (2) the amount, type and timing of the payments or other performance, if any, to be made or rendered in respect of any amount or performance due from the defaulting Participant pursuant to this Agreement.

b. If the non-defaulting Participants reach unanimous agreement on the matters described in clause (a), they shall give notice to the defaulting Participant of the substance of their agreement, and, effective upon giving notice they will automatically acquire all or the elected portion of the

defaulting Participant's Beneficial SDS Ownership Interest in each SDS Component so specified, subject to the other provisions of this Section 11.

c. If the non-defaulting Participants do not agree within 30 calendar days on the matters described in clause (a), each Participant shall acquire independently a portion of the defaulting Participant's Beneficial SDS Ownership Interests, subject to the other provisions of this Section 11. The portion of the defaulting Participant's Beneficial SDS Ownership Interests that a non-defaulting Participant shall acquire will be determined separately with respect to each SDS Component, will be stated as a percentage, and will be equal to the result obtained by dividing (1) the non-defaulting Participant's Final Participation Share in the SDS Component in question by (2) the total of the non-defaulting Participants' Final Participation Shares of the SDS Component in question.

d. The Operations Manager may require, as a condition to the exercise of any right by a non-defaulting Participant under this Section 11.B that adequate provision be made for the payment of all amounts that are then due under this Agreement from the defaulting Participant including a carrying charge.

e. Each non-defaulting Participant acquiring a portion of the defaulting Participant's Beneficial SDS Ownership Interest shall pay to the defaulting Participant an amount equal to all capital costs previously paid by the defaulting Participant for the construction of the SDS Assets minus (i) depreciation of the value of the SDS Assets to the default date, (ii) all amounts paid by the defaulting Participant as Common Project Costs under the Construction IGA, (iii) all accrued and unpaid interest on payments in default made by the non-defaulting Participants at the rate of one percent (1%) per month as provided herein, and (iv) all other costs incurred by the non-defaulting Participants due to a default of the defaulting Participant, including without limitation, reasonable attorney's fees.

ii. A defaulting Participant whose Beneficial SDS Ownership Interests have been acquired by other Participants pursuant to this Section 11.B may redeem (i.e., reacquire) its Beneficial SDS Ownership Interests within three months after the effective date of the acquisition, by curing all payment and non-payment defaults and by paying all expenses incurred by the non-defaulting Participants in connection with the default, including reimbursement of all payments made by the non-defaulting Participants, plus interest at the rate of one percent per month from the date of the default.

The following provisions will apply to any acquisition of a defaulting Participant's Beneficial SDS Ownership Interests under this Section 11.B notwithstanding any provision to the contrary:

- a. The right of redemption stated in subsection (ii) may not be exercised more than once by the same Participant;
- b. Security will not be required to acquire any share of a defaulting Participant's Beneficial SDS Ownership Interest in any SDS Component;
- c. Fountain will not be required to purchase a share of Colorado Springs's Beneficial SDS Ownership Interest in any SDS Component if Colorado Springs defaults.

C. If a Participant is in default, has been provided notice of the default under Section 11, and has failed to cure the default within the time allowed in that section, in addition to all other available remedies, the non-defaulting Participants may refuse to provide any Water Service to the defaulting Participant or may pursue collection through litigation with all costs of collection, including reasonable attorneys' fees, to be paid by the defaulting Participant.

D. The remedies available under this Section 11 for a particular default are in addition to any other remedies available, under this Agreement or otherwise, by reason of the default.

E. Each Participant shall notify all other Participants promptly after learning or determining that such Participant or any other Participant is in default under this Agreement, the BOR Project Conveyance Contract, or any excess capacity contract. In such event, if the defaulting Participant fails, refuses or neglects to cure the default within a reasonable time, one or more of the non-defaulting Participants may cure the default without prejudice to any claim or right that any of them might have against the defaulting Participant, including the recovery of reasonable costs and attorney's fees.

F. Any default under any provision of this Agreement will not, solely by reason of such default, cause the termination of this Agreement or any provision hereof.

## **Section 12. Compliance with Other Agreements and Permits.**

The Participants acknowledge the existence and validity of the following agreements and permits, which contain limitations on the Participants' conduct under this Agreement:

A. The Long Term Contracts for the Use of Excess Capacity in the Facilities of the Fryingpan-Arkansas Project between the Participants and the United States of America, Contract Nos. 11XX6C0002 (Colorado Springs), 11XX6C0003 (Security), 11XX6C0004 (Fountain), 11XX6C0006 (Pueblo West), effective May 4, 2011.

B. The Contract between the United States of America and the City of Colorado Springs for Conveyance and for the Operation, Maintenance and Replacement Costs Associated with the North Outlet Works, a Facility of the Fryingpan-Arkansas Project, Contract No. 11XX6C0005, also referred to as Contract No. 116CXX0005, effective May 4, 2011, as amended, reauthorized, or reissued ("Conveyance Contract").

C. Subagreement Between the Cities of Colorado Springs and Fountain for a Trade of Capacity within the Fountain Valley Conduit and the Southern Delivery System Pipeline, Fryingpan-Arkansas Project, Subagreement No. 11XX6C0097.

D. Record of Decision for the Southern Delivery System Environmental Impact Statement, United States Bureau of Reclamation, Reference No. GP-2009-01, March 20, 2009.

E. Southern Delivery System Final Environmental Impact Statement, United States Bureau of Reclamation, December 2008.

F. Resolution No. P&D 09-22, Board of County Commissioners of Pueblo County Colorado, Approving 1041 Permit No. 2008-002 with Terms and Conditions for Construction and Use of a Municipal Water Project Known as the Southern Delivery System within Pueblo County, Colorado, together with any agreements referred to therein.

G. Intergovernmental Agreement Among the City of Pueblo, the City of Colorado Springs and the Board of Water Works of Pueblo, Colorado, effective March 1, 2004.

H. Intergovernmental Agreement Among the City of Pueblo, the City of Aurora, the Southeastern Water Conservancy District, the City of Fountain, the City of Colorado Springs, and the Board of Water Works of Pueblo, Colorado, effective May 27, 2004.

The Participants shall each perform their respective obligations under these above Agreements, including that the Operations Manager shall perform the obligations of the Conveyance Contract with the BOR on behalf of all Participants.

### **Section 13. Force Majeure.**

A. A Party shall be relieved from any liability for the non-performance of its obligations under this Agreement where and to the extent that such non-performance is attributable directly to an event of Force Majeure. The existence of an event of Force Majeure shall not relieve any Party of any obligations that accrued prior to the commencement of such event of Force Majeure. "Force Majeure" shall comprise any natural phenomena that none of the Participants could reasonably control, foresee or prevent, or any human event or a combination of human events that none of the Participants could reasonably control, foresee or prevent, and whose occurrence none of them, their respective agents or employees acting under their directions, have negligently contributed to, which events impede a Participant or the Participants from performing their obligations under this Agreement.

### **Section 14. Third Party Actions.**

A. To the extent water deliveries through SDS Assets are curtailed to any Participant, in whole or in part, or reasonably threatened to be curtailed, whether by a governmental entity with permitting or approval authority, or a court of competent jurisdiction due to an alleged failure to comply with any contractual or permit term or condition governing the use of the SDS Assets or North Outlet Works, the Participants agree to promptly meet and cooperate in the expeditious

implementation of such actions as they determine may be necessary to terminate or prevent the curtailment.

### **Section 15. Necessary SDS OMR&E.**

A. To the extent operations, maintenance, replacement or expansion activities need to be performed upon any of the SDS Assets which, in the opinion of the Operations Manager, requires a total or partial curtailment in water deliveries through SDS Assets, the Participants agree as follows: (i) written notice of the need for such total or partial curtailment shall be provided to the Participants as soon as reasonably practicable; (ii) the Participants shall coordinate to the extent reasonably practicable the timing and duration of the curtailment so as to accommodate to the extent possible the water delivery needs of each Participant; and to the extent feasible and appropriate any such curtailment shall be made on a pro rata basis based on Beneficial SDS Ownership Interests.

### **Section 16. Insurance.**

The Participants shall maintain, or cause to be maintained, in full force, the following insurance:

A. The Operations Manager shall maintain or cause to be maintained such insurance with respect to SDS as shall be reasonably available and as is usually carried by municipal water utilities operating water transmission, storage and treatment facilities, with the Participants specified as insured parties.

B. All Participants shall maintain or cause to be maintained insurance in such amounts and against such risks as are required by any bond or other indebtedness of the Participants issued to pay any amount due under this Agreement.

### **Section 17. Limitations on Liability and Damages.**

A. The Operations Manager will not incur or suffer liability to any Participant resulting from, or otherwise arising in connection with, any action that complies with the Standard of Performance.

B. No Participant will be liable to any other Participant for any incidental, consequential, special or punitive damages arising out of or in connection with this Agreement. The preceding sentence applies without regard to the basis for the underlying Claims, whether they are grounded in contract or in tort, and whether they are legal or equitable in nature.

C. No Participant is a guarantor of any obligation, indebtedness or Liability of any other Participant.

D. No Participant will be vicariously liable for any obligation, indebtedness, Liability, default or misconduct of any other Participant.

E. Nothing in the Section shall be construed as a limitation on or waiver of the protections afforded to any Participant under the Colorado Governmental Immunity Act, Section 24-10-101, *et seq.*, C.R.S.

**Section 18. Governmental Laws and Regulations.**

A. The Agreement shall be subject to all valid laws and regulations applicable thereto, as promulgated by the United States of America, the State of Colorado, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them, which regulations and laws shall not impair the obligation of contracts including this Agreement. Provided, however, nothing herein shall require compliance with regulations or laws that have been preempted or are otherwise not applicable to the Participants.

**Section 19. Notices.**

A. A notice, request, demand, delivery or statement given or made to a Participant in connection with this Agreement (A) will be effective when actually received by the Participant for whom it is intended, and (B) must be addressed to that Participant as stated below in this section or, if the Participant has previously requested another address or addressee, in accordance with the request. Notices and other communications sent by registered or certified mail will be rebuttably presumed to have been received three business days after mailing. Notices and other communications sent by a nationally recognized express courier will be rebuttably presumed to have been received as reported on the courier's invoice or delivery receipt. A notice or other communication sent by email will be deemed effective when received; provided, however, that the person asserting the effectiveness of the emailed notice or other communication will have the burden of proving receipt:

**COLORADO SPRINGS**

c/o City of Colorado Springs Utilities  
Att'n: Chief Water Services Officer  
121 South Tejon  
South Tower, Fifth Floor  
Colorado Springs, CO 80903

Copy to:  
City Attorney  
City of Colorado Springs, Colorado  
30 S. Nevada  
P.O. Box 1575/MC 510  
Colorado Springs, CO 80817

**FOUNTAIN**

Director of Utilities  
City of Fountain  
116 South Main Street  
Fountain, CO 80817

Copy to:  
City Attorney  
City of Fountain, Colorado  
116 South Main Street  
Fountain, CO 80817

**PUEBLO WEST**

Pueblo West Metropolitan District  
Att'n: Utilities Director  
280 E. McCulloch Blvd. P. O. Box  
7005  
Pueblo West, CO 81007

Pueblo West Metropolitan District  
Att'n: District Manager  
109 E. Industrial Blvd.  
Pueblo West, CO 81007

Copy to:  
Pueblo West Metropolitan District  
General Counsel  
109 E. Industrial Blvd.  
Pueblo West, CO 81007

**SECURITY**

General Manager  
Security Water District  
231 Security Boulevard  
Colorado Springs, CO 80911

**Section 20. Severability.**

A. The parties hereto agree that if any provision of this Agreement should contravene or be held invalid under the laws of the State of Colorado or the United States, such contravention or invalidity shall not invalidate the whole Agreement but it shall be construed as though not containing that particular provision and the rights and obligations of the parties shall be construed and in force accordingly.

**Section 21. Governing law; Venue; Jury Trial Waiver.**

A. This Agreement will be governed by, and construed in accordance with, the laws of the State of Colorado.

B. Any suit, action or proceeding arising out of or in connection with this Agreement or any SDS Asset may be instituted by any Participant only in: (1) a court of the State of Colorado, sitting in El Paso County, Colorado, or (2) if federal jurisdiction exists, in a United States District Court located in the State of Colorado. Each Participant waives and will waive any objection that it may have to such venue.

C. This Agreement may be enforced in law or in equity for specific performance, injunctive relief or any other relief that may be available.

D. EACH PARTICIPANT KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHT TO A JURY TRIAL ON ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

**Section 22. Counterparts.**

A. This Agreement may be executed in several counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

**Section 23. Intent of Agreement.**

A. This Agreement is intended to describe the rights and responsibilities of and between the Participants and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any ways the powers and responsibilities of the Participants or any other entity not a party hereto. This Agreement is not intended to restrict the sources of water carried by any Participant in the Project.

**Section 24. Amendments.**

A. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by all of the Participants.

**Section 25. Term and Effectiveness.**

A. This Agreement will be in effect (“Term”) from the Effective Date until the first to occur of the following: (a) all obligations of this Agreement have been performed by all the Participants and the SDS is no longer operating, or (b) all the Participants agree to terminate this Agreement.

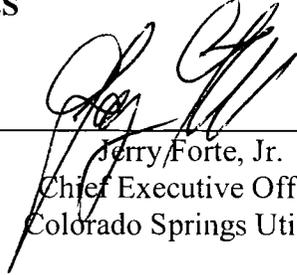
**Section 26. Entire Agreement.**

A. This Agreement constitutes the entire contract between the parties relative to the subject matter hereof. Any previous agreement among the parties with respect to the subject matter hereof is superseded by this Agreement. The Recitals are part of the contract agreements between the Participants.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in their names and their seals affixed, all by the proper officers duly authorized thereunto, on the dates shown below for each Participant.

CITY OF COLORADO SPRINGS,  
COLORADO, ON BEHALF OF ITS  
ENTERPRISE, COLORADO SPRINGS  
UTILITIES

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



Jerry Forte, Jr.  
Chief Executive Officer  
Colorado Springs Utilities

Approved as to form:

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



CITY OF FOUNTAIN, COLORADO

By: *John P. Ditty*  
Mayor

Date: 02/18/2016



*Silvia Hoffman*  
City Clerk



(SEAL)

SECURITY WATER DISTRICT

By: Dick Milhem  
President

Date: February 17, 2016

Attest:

A handwritten signature in cursive script, appearing to read "Catherine Andrews".

PUEBLO WEST METROPOLITAN DISTRICT



By: Judy Leonard  
President, Board of Directors

Date: 2/18/2016

Attest:

Leticia Bernard  
Secretary, Board of Directors  
Treasurer

Approved as to Form:

[Signature]  
General Counsel

**Exhibits:**

- Exhibit A:** Beneficial Ownership Interest by SDS Component for Fixed O&M Costs
- Exhibit B:** BOR Subagreement for Capacity Trade
- Exhibit C:** Variable O&M Costs and CAC Pricing

**Exhibit A**

Effective 4/28/2016

**Beneficial Ownership Interest by SDS Component - Phase 1  
(percentage of SDS Fixed O&M costs)**

<b>SDS Component</b>	<b>Colorado Springs (%)</b>	<b>Fountain (%)</b>	<b>Security (%)</b>	<b>Pueblo West (%)</b>	<b>Percent Totals</b>	<b>Comments <sup>(1)</sup></b>
Raw Water Conveyance (North Outlet Works only)	77.35%	2.47%	1.43%	18.75%	100.00%	Colorado Springs - 70.55 mgd, Fountain - 2.25 mgd, Security - 1.3 mgd, Pueblo West - 18 mgd, Downtime - 3.9 mgd <sup>(3)</sup>
Raw Water Conveyance (Phase 1 Capacity = 50 MGD)	93.51%	4.74%	1.75%	0.00%	100.00%	Colorado Springs - 44.42 mgd, Fountain - 2.25 mgd <sup>(7)</sup> , Security - 0.83 mgd, Pueblo West - 0.00 mgd, Downtime -2.5 mgd
<u>Finished Water Pipelines</u>						
Colorado Springs Pipelines	100.00%	0.00%	0.00%	0.00%	100.00%	
Security Pipelines	0.00%	0.00%	100.00%	0.00%	100.00%	
Water Treatment Plant/Finished Water Pump Station <sup>(6)</sup> (Phase 1 Capacity = 50 MGD)	89.88%	7.52%	2.60%	0.00%	100.00%	Colorado Springs - 44.941 mgd, Fountain - 3.759 mgd, Security - 0.83 mgd, Pueblo West - 0.00 mgd
Upper Williams Creek Reservoir (FUTURE)	100.00%	0.00%	0.00%	0.00%	100.00%	Colorado Springs - 30,500 ac-ft, Fountain - 0.00 ac-ft, Security - 0.00 ac-ft, Pueblo West - 0.00 ac-ft
Williams Creek Reservoir (FUTURE)	100.00%	0.00%	0.00%	0.00%	100.00%	Colorado Springs - 28,500 ac-ft, Fountain - 0.00 ac-ft, Security - 0.00 ac-ft, Pueblo West - 0.00 ac-ft

Notes:

- <sup>(1)</sup> - For SDS Beneficial Ownership Interest calculation, downtime allocated to each Participant based on Participant's pro rata share of component capacity in Phase 1 System
- <sup>(2)</sup> - Pueblo West is not responsible for SDS O&M Costs for raw water conveyance or treatment.
- <sup>(3)</sup> - Pueblo West excluded from downtime allocation
- <sup>(4)</sup> - O&M Costs for North Outlet Works are defined in BOR Conveyance Contract
- <sup>(5)</sup> - Variable O&M costs for SDS conveyance and treatment are shared based on proportionate portion of actual deliveries made to each Participant
- <sup>(6)</sup> - Replacement, future expansion or capital costs for Finished Water Pump Station will be allocated at the same percentages as the Water Treatment Plant.  
Fixed O&M costs related to the Finished Water Pump Station will be allocated at the same percentages as the Raw Water Conveyance (raw water pump stations).
- <sup>(7)</sup> - Fountain's Beneficial Ownership Interest in SDS raw water conveyance for Phase 1 is based on 2.25 MGD of the total system capacity of 50 MGD.  
Under SDS future expansion to 78 MGD conveyance capacity, Fountain's Beneficial Ownership Interest in the raw water conveyance components will remain 2.25 MGD.  
Fountain's percentage of fixed costs for raw water conveyance components will be adjusted accordingly (2.25/78 less downtime)

**UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF RECLAMATION  
Fryingpan-Arkansas Project, Colorado**

**SUBAGREEMENT BETWEEN THE CITIES OF COLORADO SPRINGS AND  
FOUNTAIN FOR A TRADE OF CAPACITY WITHIN THE FOUNTAIN VALLEY  
CONDUIT AND THE SOUTHERN DELIVERY SYSTEM PIPELINE, FRYINGPAN-  
ARKANSAS PROJECT**

THIS SUBAGREEMENT is between the CITY OF COLORADO SPRINGS, COLORADO, a municipal corporation, acting by and through its utility enterprise, hereinafter referred to as "Colorado Springs" and the CITY OF FOUNTAIN, a municipal corporation, acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise, hereinafter referred to as "Fountain". Colorado Springs and Fountain are collectively referred to as the "Parties."

**EXPLANATORY RECITALS**

The following statements are made in explanation:

- a. WHEREAS, the Secretary of the Interior (Secretary), acting through the Bureau of Reclamation was authorized by the Fryingpan-Arkansas (Fry-Ark) Project Act of August 16, 1962 (76 Stat. 389) as amended, to construct, operate and maintain the Fry-Ark Project for the purposes of supplying water for irrigation, municipal, domestic, industrial, hydroelectric power, flood control and other beneficial incidental uses including recreation and the conservation and development of fish and wildlife;
- b. WHEREAS, the Secretary, as part of the Fryingpan-Arkansas Project, constructed a conduit called the Fountain Valley Conduit ("FVC") that provides municipal and industrial water conveyance service to the City of Colorado Springs, the City of Fountain, the Security Water District, the Stratmoor Hills Water District, and the Widefield Homes Water Company; and
- c. WHEREAS, the Southeastern Colorado Water Conservancy District ("District") is the repayment entity for the reimbursable costs of the Fry-Ark Project, including the FVC, pursuant to Contract No. 5-07-70-W0086 (January 21, 1965), as amended and supplemented, with the United States; and
- d. WHEREAS, on July 10, 1979 the Secretary executed Contract No. 9-07-70-W0315, with the District for conveyance service from the FVC, and for the repayment within a 40-year period of the reimbursable costs of the FVC plus interest at a rate of 3.046 percent per annum; and

e. WHEREAS, on July 10, 1979 the District, the Fountain Valley Authority, the City of Colorado Springs, the City of Fountain, the Security Water District, the Stratmoor Hills Water District and the Widefield Homes Water Company executed a subcontract ("FVC Conveyance Agreement") to provide for the use of the FVC to convey water from Pueblo Reservoir to the service areas of the signatories. The compliance under the National Environmental Policy Act of 1969 (NEPA) (Public Law No. 91-190; 42 U.S.C. § 4321) was completed for construction and operation of the FVC in the Fryingpan-Arkansas Project Final Environmental Statement dated April 16, 1975; and

f. WHEREAS, the Fountain Valley Authority was organized under the laws of the State of Colorado as a vehicle for the contractual coordination with the District for repayment of costs for construction and operation and maintenance of the FVC and to construct and operate a water treatment plant to provide treatment for water conveyed by the FVC; and

g. WHEREAS, the Fountain Valley Authority includes all parties to the subcontract as referenced in Whereas "e" above except the District and Widefield Homes Water Company.

h. WHEREAS, each of the parties to the FVC Conveyance Agreement was individually allocated a specific conveyance capacity in the FVC facility and all of the parties obligated themselves to set water utility charges adequate to repay the United States their respective shares of the construction cost obligation for the FVC; and

i. WHEREAS, the Southern Delivery System (SDS) is a proposed non-federal regional water delivery project that is designed to meet future water needs for the City of Colorado Springs, City of Fountain, Security Water District, and Pueblo West Metropolitan District, hereinafter collectively referred to as SDS Project Participants; and

j. WHEREAS, the City of Colorado Springs, Colorado, acting by and through its Utility Enterprise, as Contractor on its own behalf and on behalf of its partners, Security Water District Enterprise, the City of Fountain acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise, and the Pueblo West Metropolitan District, acting by and through its Water Enterprise, has entered into Contract No. 11XX6C0005, entitled "Contract between the United States of America and the City of Colorado Springs, Colorado for Conveyance and for the Operation, Maintenance and Replacement Costs Associated with the North Outlet Works - A Facility of the Fryingpan-Arkansas Project ("SDS Conveyance Contract"); and

k. WHEREAS, the SDS Conveyance Contract provides for conveyance of certain water, therein defined as "SDS Water" from Pueblo Reservoir through the SDS. The Compliance under the National Environmental Policy Act of 1969 (NEPA) (Public Law No. 91-190; 42 U.S.C. § 4321) for the construction and operation of the SDS was completed in the Final Environmental Impact Statement Number 08-63 and Record of Decision Number GP-2009-01; and

l. WHEREAS, on January 6, 2005 the Fountain Valley Authority members requested approval from the Secretary to enter into a subagreement that would allow Fountain to convey an average daily conveyance rate of 2.25 million gallons per day (mgd) up to a maximum

conveyance rate of 5.625 mgd of Fountain's SDS Water through the existing FVC for delivery to the City of Fountain, in return for allowing Colorado Springs to convey through the proposed SDS Pipeline an equivalent amount of water that it might otherwise be entitled to convey through the FVC ("other water").

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is hereby mutually agreed as follows:

**PURPOSE**

1. The purpose of this Subagreement is to confirm and effectuate the January 6, 2005 request of the Fountain Valley Authority and to authorize a trade of capacity within the FVC and SDS Pipeline to allow Fountain to convey on average 2.25 mgd per day (up to a maximum conveyance rate of 5.625 mgd) of SDS Water through the FVC, and, in exchange, to allow Colorado Springs to convey an equivalent amount of other water through the proposed SDS, to offset that portion of its water displaced from conveyance in the FVC.

**SUBAGREEMENT STIPULATIONS**

2. a. The Parties agree that, to implement the purpose of this Subagreement, Fountain is authorized to convey on average 2.25 mgd per day (up to a maximum conveyance rate of 5.625 mgd) of SDS Water through the FVC, and, in exchange, Colorado Springs is authorized to convey an equivalent amount of other water that may be conveyed using the FVC through the proposed SDS. The exchanged capacity will be scheduled on a quarterly basis. Five business days before the start of each calendar quarter, Fountain will notify Colorado Springs of its intended use of capacity in the FVC for the upcoming quarter. Such scheduled capacity may be modified by mutual agreement of Fountain and Colorado Springs.

b. This Subagreement does not amend, change, or affect the obligations in Contract No. 9-07-70-W0315, the FVC Conveyance Agreement, or any other agreement governing or related to the SDS Project.

c. The Parties will continue to remain responsible for paying their respective obligations under Article 10.b. of Contract No. 9-07-70-W0315.

d. The water conveyed through the FVC for Fountain under this Subagreement will be counted as part of Colorado Springs' 14,353 acre-feet share of the annual conveyance capacity as set forth in Article 10.b. of Contract No. 9-07-70-W0315.

e. The water displaced from conveyance in the FVC and conveyed through the SDS Project by Colorado Springs will be counted against Fountain's conveyance capacity within the SDS Project.

f. The Parties will continue to be responsible for paying their respective obligations under Section 7 of the Intergovernmental Agreement among City of Colorado Springs, Colorado, and

City of Fountain, Colorado, and Security Water District, dated August 1, 2003, as amended to include Pueblo West Metropolitan District.

g. This Subagreement will not become effective unless or until the SDS Pipeline and related facilities necessary to deliver water through the SDS Pipeline are completed and in operation.

IN WITNESS WHEREOF, the Parties hereto have signed their names the day and year first above written.

City of Colorado Springs, acting by and through its Utility Enterprise

By [Signature]  
Chief Executive Officer: Jerry Forte, P.E.

APPROVED AS TO FORM FOR COLORADO SPRINGS

[Signature]  
Counsel

State of Colorado )  
County of El Paso )ss

The foregoing Subagreement was acknowledged before me this 9th day of August, 2011 by Jerry Forte, Chief Executive Officer, for the City of Colorado Springs, acting by and through its Utility Enterprise.

Witness my hand and official seal

[Signature]  
Notary Public

My Commission Expires: 5/19/2013



My Commission Expires 05/19/2013

City of Fountain, acting by and through the  
City of Fountain Electric, Water  
and Wastewater Utility Enterprise

By L. J. Patterson  
Director of Utilities: Larry Patterson

APPROVED AS TO FORM FOR FOUNTAIN,

[Signature]  
Counsel

State of Colorado )  
County of El Paso )ss

The foregoing Subagreement was acknowledged before me this 9<sup>th</sup> day of Aug. 2011 by Jerry Forte, Chief Executive Officer, for the City of Colorado Springs, acting by and through its Utility Enterprise.

Witness my hand and official seal

[Signature]  
Notary Public

My Commission Expires: 4-16-12



My Commission Expires 04/16/2012

CONCURRENCE BY:

Southeastern Colorado Water Conservancy District

By: James W. Bodetich  
Title: Executive Director

United States Department of the Interior

By: [Signature] / Aug 31<sup>st</sup>, 2011  
Regional Director

**Exhibit C**

Effective 4/28/2016

Cost Component	Colorado Springs	Fountain	Security	Comments
<b>Contracted Additional Capacity (CAC) Charge</b> <sup>1) 2)</sup>				
Raw Water Conveyance (\$/kgal)	2.22	2.22	2.22	Excludes O&M costs for CAC capacity
Treatment (WTP and FWPS) (\$/kgal)	1.51	1.51	1.51	Excludes O&M costs for CAC capacity
<b>SDS Variable O&amp;M Costs</b>				
SDS Water - Physical Deliveries	Actual SDS Variable O&M Costs for Colorado Springs SDS Water Delivery	N/A	Actual SDS Variable O&M Costs for Security SDS Water Delivery	SDS Water delivered Via SDS Assets
SDS Water - Contracted Deliveries	FVA Variable O&M Costs for Fountain SDS Water Delivery	SDS Variable O&M Costs based on Fountain SDS Water Delivery	N/A	Under "Swap" Agreement, Fountain's SDS Water physically delivered via FVA

1) Contracted Additional Capacity charge determined based on total capital costs for facilities capital recovery per unit of capacity used by non-owning Participants.

2) Contracted Additional Capacity charge shown is preliminary and based on forecasted EAC for construction costs. Rate shown to be adjusted if necessary following final Phase 1 construction completion.