

RESOLUTION NO. 57-16

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF AURORA, THE SOUTHEASTERN COLORADO WATER ACTIVITY ENTERPRISE, THE CITY OF FOUNTAIN, THE CITY OF COLORADO SPRINGS, AND THE BOARD OF WATER WORKS OF PUEBLO, COLORADO

WHEREAS, the City of Colorado Springs, on behalf of its enterprise Colorado Springs Utilities, along with the City of Aurora, Colorado ("Aurora"), the Southeastern Colorado Water Activity Enterprise, the City of Fountain, Colorado, and the Board of Water Works of Pueblo, Colorado are collectively referred to as the "ROY Participants;" and

WHEREAS, on May 27, 2004, the City of Colorado Springs entered into an Intergovernmental Agreement ("IGA") with the ROY Participants. Article II of the IGA provides, *inter alia*, for the recapture and storage for later use of water owned or controlled by one or more of the ROY Participants pursuant to a program called "Restoration of Yield;" and

WHEREAS, the May 27, 2004, IGA requires the parties to curtail exchanges to meet the Pueblo Flow Management Program flow targets to the extent possible; and

WHEREAS, on March 1, 2005, the City of Aurora entered into an agreement ("Original Holbrook Agreement") with the Holbrook Mutual Irrigation Company ("Holbrook") to use the unused diversion, carriage, and storage capacity that at times is available in Holbrook's water diversion, conveyance and storage facilities ("Holbrook System"); and

WHEREAS, on March 1, 2005, Aurora and the ROY Participants entered into an agreement between themselves ("Original ROY Participants Agreement") pursuant to which, *inter alia*, Aurora assigned a portion of its rights under the Original Holbrook Agreement to the ROY Participants on a *pro rata* basis; and

WHEREAS, on February 23, 2010, Aurora extended the term of the Original Holbrook Agreement for an additional five years ("Original Holbrook Agreement Extension"); and

WHEREAS, on October 6, 2010, Aurora and the ROY Participants entered into a renewed agreement ("Renewed ROY Participants Agreement") pursuant to which Aurora's assignment of a portion of its rights under the Original Holbrook Agreement to the ROY Participants was continued;

WHEREAS, on March 3, 2015, Aurora and Holbrook amended the Original Holbrook Agreement (the “Amended Holbrook Agreement”) to again extend the Original Holbrook Agreement; and

WHEREAS, the ROY Participants are fully aware of the terms of the Amended Holbrook Agreement; and

WHEREAS, the City of Colorado Springs on behalf of Colorado Springs Utilities desires to enter into an Amended Agreement with the ROY Participants for the use of the Holbrook System (“Amended ROY Participants Agreement”); and

WHEREAS, Colorado Springs Utilities is willing and desires to perform the obligations of the City of Colorado Springs identified in the attached Amended ROY Participants Agreement; and

WHEREAS, The Amended ROY Participants Agreement is necessary to effectuate Aurora’s assignment of a portion of its rights under the Original Holbrook Agreement to the ROY Participants and delineate the respective rights and obligations of all ROY Participants with respect to the use of the Holbrook System and actions contemplated by the Original Holbrook Agreement, the Original Holbrook Agreement Extension, and the Amended Holbrook Agreement; and

WHEREAS, it is in the best interest of the City of Colorado Springs to enter into the Amended ROY Participants Agreement because Colorado Springs Utilities’ *pro rata* use of the Holbrook System is an integral part of the Pueblo Flow Management Program and the Holbrook Agreement will enable Restoration of Yield through the recapture of flow curtailed as part of that program.

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

Section 1. City Council finds that the Amended ROY Participants Agreement between Aurora and the ROY Participants, attached as Exhibit 1 and incorporated herein by reference, is in the best interest of the City of Colorado Springs.

Section 2. City Council hereby approves the Amended ROY Participants Agreement on behalf of its enterprise, Colorado Springs Utilities.


Section 3. City Council hereby authorizes the Chief Executive Officer of Colorado Springs Utilities or his designee to execute the Amended ROY Participants Agreement on behalf of the City of Colorado Springs and Colorado Springs Utilities.


Dated at Colorado Springs, Colorado, this 14th day of June, 2016.



Council President

ATTEST:


Sarah B. Johnson, City Clerk



**AMENDED AGREEMENT BETWEEN AURORA AND ROY
PARTICIPANTS FOR USE OF THE HOLBROOK SYSTEM FACILITIES**

This Amended Agreement ("Amended Agreement") is entered into this 29 day of February, 2018, by and among the: City of Aurora, acting by and through its Utility Enterprise ("Aurora"); Southeastern Colorado Water Activity Enterprise ("Southeastern"); City of Fountain, acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise ("Fountain"); the City of Colorado Springs, on behalf of its utility enterprise known as Colorado Springs Utilities ("Colorado Springs"); and Board of Water Works of Pueblo, Colorado ("Pueblo Water"). Collectively these parties are referred to hereinafter as the "ROY Participants" and any one of them may be referred to as a "ROY Participant."

RECITALS

WHEREAS, on May 27, 2004, Aurora entered an Intergovernmental Agreement ("IGA") with the ROY Participants and others, Article II of which provides, *inter alia*, for the recapture and storage for later use of water owned or controlled by one or more of the ROY Participants pursuant to a program called Restoration of Yield ("ROY"); and

WHEREAS, 1) on March 1, 2005, Aurora entered an agreement ("the Original Holbrook Agreement") with the Holbrook Mutual Irrigating Company ("Holbrook") to use the unused diversion, carriage, and storage capacity that, at times, is available in Holbrook's water diversion, conveyance and storage facilities ("Holbrook System"), 2) also on March 1, 2005, Aurora and the ROY Participants enter into an agreement between themselves ("Original ROY Participants Agreement") pursuant to which, *inter alia*, Aurora assigned a portion of its rights under the Original Holbrook Agreement to the ROY Participants, 3) on February 23, 2010 Aurora Extended the term of the Original Holbrook Agreement for an additional five years ("Original Holbrook Agreement Extension"), 3) On October 6, 2010 Aurora and the ROY Participants entered into a renewed agreement ("Renewed ROY Participants Agreement") pursuant to which, *inter alia*, the Aurora assignment of a portion of its rights under the Original Holbrook Agreement to the ROY Participants was continued, and 4) on March 3, 2015 Aurora and Holbrook amended the Original Holbrook Agreement (the "Amended Holbrook Agreement") to, *inter alia*, again extend the Original Holbrook Agreement; and

WHEREAS, the Original Holbrook Agreement, which is attached hereto as **Exhibit A**, the Original Holbrook Agreement Extension, which is attached hereto as **Exhibit B**, and the Amended Holbrook Agreement, which is attached hereto as **Exhibit C**, are all incorporated herein by this reference; and

WHEREAS, currently, Aurora is solely responsible for the obligations it undertook pursuant to the Original Holbrook Agreement and is the sole beneficiary of the rights to use Excess Capacity created by that agreement (and defined in Paragraph A.2.a. herein); and

WHEREAS, the Original Holbrook Agreement, Original Holbrook Agreement Extension and Amended Holbrook Agreement expressly contemplate Aurora's assignment of rights and obligations thereunder to ROY Participants; and

WHEREAS, this Amended Agreement is necessary to effectuate such an assignment and delineate the respective rights and obligations of all ROY Participants with respect to the use of Excess Capacity in the Holbrook System and actions contemplated by the Original Holbrook Agreement, including the Original Holbrook Agreement Extension; and

WHEREAS, this Amended Agreement is necessary to effectuate such an assignment and delineate the respective rights and obligations of the ROY Participants with respect to the use of Excess capacity in the Holbrook System and actions contemplated by the Amended Holbrook Agreement.

NOW THEREFORE; Aurora and the ROY Participants hereby agree as follows:

AGREEMENT

A. General Provisions:

1. The following is each of the ROY Participants' percentage of participation/pro rata share in an assignment of rights under the Original Holbrook Agreement ("Percentage of Participation"):

<u>Participant Entity</u>	<u>Percentage of Participation/ Pro Rata Share</u>
City of Fountain	5 %
Southeastern Colorado Water Activity Enterprise	1 %
Board of Water Works of Pueblo	2 %
Colorado Springs	46 %
City of Aurora Utility Enterprise	46 %

Accordingly, Aurora hereby assigns to each ROY Participant an undivided interest in the Amended Holbrook Agreement equal to the Percentages of Participation stated above, and each of the ROY Participants agrees to assume Aurora's rights and obligations under both the Original Holbrook Agreement and the Amended Holbrook Agreement to the extent of its Percentage of Participation. The ROY Participants may adjust the percentages stated above only upon the unanimous consent of all ROY Participants at the time of the request.

2. The ROY Participants' use of Excess Capacity in the Holbrook System contemplated by this Amended Agreement, including storage of water, will be allocated in the same ratio as the Percentage of Participation of each ROY Participant. Any ROY Participant may store water in the unused portion of any other ROY Participant's allocated Percentage of Participation in the Excess Capacity on the following terms:

a. The Original Holbrook Agreement defined Excess Capacity to mean: diversion, carriage and storage capacity in the Holbrook System that at any given time is not needed for the diversion, carriage and storage of water pursuant to: a) Holbrook's water rights, or; b) other water controlled by Holbrook pursuant to contract.

b. Use of Excess Capacity in addition to a ROY Participant's Percentage of Participation of the Excess Capacity is referred to hereafter as the use of Others' Excess Capacity.

c. If more than one ROY Participant desires to use for a specified period of time some or all of Others' Percentage of Participation in the Excess Capacity, then the use of Others' Percentage of Participation in the Excess Capacity will be allocated based on the ratio of the Percentage of Participation of the ROY Participants then desiring to use any available Others' Excess Capacity. For example if Fountain (a 5% Percentage of Participation) and Colorado Springs (a 45% Percentage of Participation assuming Pueblo West is included) sought to use the unused Excess Capacity of Southeastern (a 1% Percentage of Participation) and Pueblo Water (a 2% Percentage of Participation), Fountain and Colorado Springs would share the total 3% additional Excess Capacity (which would be identified as Others' Excess Capacity), and costs therefor, in a ratio of one to nine. At such times as the Others' Percentage of Participation in the Excess Capacity is fully utilized, no other ROY Participant is entitled to use a portion thereof.

d. Any use of Others' Percentage of Participation in the Excess Capacity by a ROY Participant will spill prior to spill of any ROY Participants' water stored in their respective Pro Rata Share of Excess Capacity. Water spilled out of Others' Percentage of Participation in the Excess Capacity will be spilled in proportion to the amount of water stored in Other's Percentage of Participation in the Excess Capacity by each ROY Participant.

e. If it is necessary to spill water out of ROY Participants' Percentage of Participation in the Excess Capacity, then the water of each ROY Participant will be spilled in proportion to the amount of water each ROY Participant has stored in the Holbrook System at the time such spill occurs.

3. Before March 1st of each year that this Amended Agreement is in effect, Holbrook, Aurora, and all ROY Participants will meet to discuss operational issues relating to the expected operations for the coming year.

4. This Amended Agreement is effective upon its execution by all ROY Participants and continues thereafter until the Amended Holbrook Agreement, or any renewal thereof, expires or is terminated.

5. By unanimous consent, the ROY Participants may agree to include the Pueblo West Metropolitan District (Pueblo West) as a party to this Amended Agreement so long as Holbrook consents in writing to such inclusion and the associated assumption by Pueblo West of rights and obligations pursuant to the Original Holbrook Agreement, Original Holbrook

Agreement Extension and Amended Holbrook Agreement. If Pueblo West is included as a party to the Amended Agreement (which does not include Pueblo West as a ROY Participant nor does it preclude Pueblo West for becoming a ROY Participant), then the respective percentages of participation in the assignment of rights pursuant to this Amended Agreement will be:

<u>Participant Entity</u>	<u>Percentage of Participation/ Pro Rata Share</u>
City of Fountain	5 %
Southeastern Colorado Water Activity Enterprise	1 %
Board of Water Works of Pueblo	2 %
Colorado Springs	45 %
City of Aurora Utility Enterprise	45 %
Pueblo West	2%.

6. The ROY Participants hereby designate the following officials from their organizations with the authority for their respective organizations to 1) agree whether or not to include Pueblo West as a party and 2), extend this Amended Agreement upon any subsequent renewal or renewals of the Original Holbrook Agreement, Original Holbrook Agreement Extension and/or Amended Holbrook Agreement:

City of Fountain	Utilities Director
Southeastern Colorado Water Activity Enterprise	Executive Director
Board of Water Works of Pueblo	Executive Director
Colorado Springs	Utilities Director
City of Aurora Utility Enterprise	Director of Utilities.

B. Responsibilities of Aurora for Implementing the Original Holbrook Agreement:

1. Aurora will be responsible for coordination between the ROY Participants and Holbrook.

2. Aurora will communicate with Holbrook regarding all operational activities necessary, such as the amount of the ROY Participants' water to be diverted, stored, released, or exchanged on a daily basis.

3. Aurora will maintain the necessary accounting to operate this Amended Agreement and the Original Holbrook Agreement. Accounting will consist of both water accounting and financial accounting. Aurora will provide its accounting information to ROY Participants within 2 business days of a request.

4. Aurora will provide to Holbrook and the State and Division Engineers any required periodic water accounting.

5. Aurora will invoice the ROY Participants on a monthly basis (as needed) for the required payments for use of the Holbrook System under the Original Holbrook Agreement.

6. Aurora will develop any necessary Substitute Water Supply Plan ("SWSP") pursuant to § 37-92-308, C.R.S., for use of the Holbrook System by the ROY Participants after coordination and with input from each ROY Participant. The ROY Participants acknowledge and agree that it may not be necessary for some ROY Participants to have a SWSP in order to use excess capacity in the Holbrook System.

7. Aurora will be responsible to coordinate with Holbrook for installation and improvement of structures contemplated in the Original Holbrook Agreement. These efforts will be made in cooperation with the other ROY Participants.

8. Aurora's records maintained pursuant to this Amended Agreement will be available for inspection and copying by any ROY Participant upon reasonable advanced notice to Aurora.

C. Responsibilities of ROY Participants.

1. The Original Holbrook Agreement, Original Holbrook Agreement Extension and Amended Holbrook Agreement require that Aurora provide 12 hours advance notice to Holbrook of changes in Holbrook's operations necessary for the ROY Participants' use of the Holbrook system. Therefore, each ROY Participant will provide to Aurora at least 24 hours advance notice of its requests for diversion, storage, release, and exchange of water using the Holbrook System. Notwithstanding other provisions of this Amended Agreement dealing with notice and notices, the notice to Aurora discuss in this paragraph may be given to Aurora by telephone at 719-254-7984 or by E-mail to ppfeiff@auroragov.org or to such other telephone number or E-mail address as Aurora may later determine, with notice of such determination to the ROY Participants.

2. If any party or parties to this Amended Agreement determines it is necessary for said party or parties to obtain and operate under a Substitute Water Supply Plan ("SWSP") in order to conduct operations under this Amended Agreement, then such party or parties will be responsible for all costs incurred in obtaining and operating such SWSP or SWSPs. If two or more parties share an SWSP or SWSPs they will allocate as between themselves the costs incurred. A ROY Participant or party to this Amended Agreement that does not have water included in a ROY SWSP will not be responsible for any SWSP costs.

3. Each ROY Participant will pay its Pro Rata Share of all payments, fees and costs due under the Original Holbrook Agreement and as modified by the Amended Holbrook Agreement. Each ROY Participant must make its payment to Aurora for any such fees and costs within 45 days after the date of any Aurora invoice.

4. Each ROY Participant will pay Aurora an Administration and Management Fee in the amount of 15% of each amount charged such ROY Participant under this Amended

Agreement. This charge applies to categories of payments, fees and costs described in this Amended Agreement, and will be included in each ROY Participant's billing invoice.

5. If any ROY Participant determines that it no longer desires to participate in this Amended Agreement, it may provide notice of termination to the other ROY Participants. Such termination will be effective 90 days following notice of termination. The terminating ROY Participant will be responsible for its Pro Rata Share of fees and costs described in this Section C, and its Pro Rata Share (if any) of the costs incurred in development of the ROY SWSP through the date of termination. Upon such ROY Participant's termination, the water of such terminating ROY Participant remaining in the Holbrook System will, at the option of the terminating ROY Participant, be transferred to one or more of the remaining ROY Participants storage in the Holbrook System or released from storage.

D. Aurora's Right of Non-Participation:

In the event Aurora is unable to obtain the legal authorizations required to conduct the operations contemplated in the Original Holbrook Agreement or Amended Holbrook Agreement, or other barriers are raised that frustrate the purposes of the Original Holbrook Agreement or Amended Holbrook Agreement, the ROY Participants signing this Amended Agreement will have no obligation to continue to perform any portion of this Amended Agreement for the benefit of any ROY Participant hereto. The Remaining ROY Participants, as assignees of Aurora, however, may elect to continue to fulfill the terms of the Original Holbrook Agreement and Amended Holbrook Agreement and to assume Aurora's obligations thereunder.

E. Allocation of Exchange Opportunity:

No ROY Participant may independently seek to adjudicate its own exchange into or out of the Holbrook System absent the consent of all ROY Participants to this Amended Agreement. Although Pueblo West may become a party to this Amended Agreement, it is not a ROY Participant and neither benefits from nor is burdened by this Paragraph E. The ROY Participants acknowledge the Co-Application in Water Division 2, Case No. 06CW120 is not in contravention of this paragraph. Southeastern filed Water Division 2, Case No. 06CW8 (Water Division 2) in January 2006 to facilitate operations of the Arkansas Valley Conduit ("AVC"). The ROY Participants acknowledge that in paragraph IV of the IGA, they agreed to support the proposed AVC, and agree that Case No. 06CW8 is not subject to this provision. However, some of the ROY Participants have filed statements of opposition in Case No. 06CW8 on grounds other than this Amended Agreement, and nothing in this paragraph will be interpreted to limit those ROY Participants' participation in 06CW8. Nothing in this Amended Agreement restricts or limits any ROY Participants' (or Pueblo West's if it becomes a party to this Amended Agreement) exercise of that ROY Participants' existing decreed or contract exchanges.

F. Other Provisions:

1. Entire Agreement. This Amended Agreement (including the Exhibits) represents the entire agreement of the ROY Participants relating to the use of Excess Capacity in the Holbrook System, and it supersedes any other prior agreements and understandings of any

type, both written and oral, among the ROY Participants with respect to the subject matter hereof.

2. Headings for Convenience Only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Amended Agreement.

3. ROY Participants are Governmental Entities. This Amended Agreement is entered into pursuant to sections 29-1-201 through 203, C.R.S. Each of the ROY Participants hereto is a political subdivision of the State of Colorado within the meaning of section 29-1-202(2), C.R.S., and therefore each is a government within the meaning of section 29-1-202(1). The Cities of Aurora, Colorado Springs and Fountain are home rule cities pursuant to Article XX of the Colorado Constitution. The Southeastern Colorado Water Activity Enterprise is a Colorado Water Activity Enterprise established under section 37-45.1-103, C.R.S. The Board of Water Works of Pueblo, Colorado is an independent board established by the Charter of the City of Pueblo, which was adopted pursuant to Article XX of the Colorado Constitution.

4. Constitutional and City Charter Limitations of ROY Participants:

a. Sole Obligation of Aurora's Utility Enterprise. This Amended Agreement will never constitute a general obligation or other indebtedness of the City of Aurora, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City of Aurora.

In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Amended Agreement, no one will have any recourse for any amounts owed to it against any funds or revenues of the City of Aurora except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Water Enterprise Fund, as the terms "Water System" and "Water Enterprise Fund" are defined in City Ordinance No. 2003-18, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Amended Agreement will be construed as creating a lien upon any revenues of the Utility Enterprise or the City of Aurora.

Aurora represents that this Amended Agreement has been duly authorized, executed and delivered by Aurora and constitutes a valid and legally binding obligation of Aurora, enforceable against Aurora in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

b. Appropriation of Funds by the City of Colorado Springs. In accord with The Charter of the City of Colorado Springs, performance of Colorado Springs'

obligations under this Amended Agreement is expressly subject to appropriation of funds by the City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Colorado Springs' obligations under this Amended Agreement, or appropriated funds may not be expended due to City Charter spending limitations, then all rights and obligations of Colorado Springs under this Amended Agreement will terminate, and Colorado Springs will thereafter have no liability for compensation or damages to Aurora in excess of Colorado Springs' authorized appropriation for this Amended Agreement or the applicable spending limit, whichever is less. Colorado Springs will notify Aurora and the ROY Participants as soon as reasonably practicable in the event of non-appropriation or in the event a spending limitation becomes applicable. The funds appropriated for this Amended Agreement are equal to or exceed the contract amount for the year in which this Amended Agreement was executed. For any Amended Agreement payments to be made in subsequent fiscal years, if any, Colorado Springs will notify Aurora and the ROY Participants of the appropriation of funds for such payment after the adoption of Colorado Springs' annual appropriation ordinance for those years.

c. Sole Obligation of City of Fountain Electric, Water and Wastewater Utility Enterprise. Any and all financial obligations of the City of Fountain hereunder will be solely the obligations of the City of Fountain acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise (the "Enterprise"), and not the financial obligations or other indebtedness of the City of Fountain, Colorado or a multiple fiscal year direct or indirect debt or an obligation of future appropriations by the City Council of the City of Fountain, Colorado contrary to Article X, Section 20 of the Colorado Constitution or contrary to any other constitutional, charter, or statutory limitation. The City of Fountain's obligation to perform any financial obligation hereunder will be fulfilled solely from the net revenues of the Enterprise. "Net revenues" will mean the gross revenues of the Enterprise, less all operation and maintenance expense related thereto as determined by the Enterprise, and less periodic payments on bonds, loans, and other financial obligations of the Enterprise. No other funds or property interests of the City of Fountain, nor any property taxes or any other form of taxation, will be used directly or indirectly, to perform any financial obligation of the City of Fountain pursuant to this Amended Agreement, and the full faith and credit of the City of Fountain is not pledged for the payment of the obligations of the City of Fountain pursuant to this Amended Agreement.

5. Effect of Invalidity. If a court of competent jurisdiction holds that any portion of this Amended Agreement is invalid or unenforceable, for any reason, as to any ROY Participant, the ROY Participants will immediately negotiate valid alternative portion(s) that as near as possible give effect to any invalid or unenforceable portion(s).

6. Waiver of Breach. No waiver or breach of any of the provisions of this Amended Agreement by any ROY Participant will constitute a continuing waiver of any subsequent breach by said ROY Participant, or any other ROY Participant whether of the same or any other provision of this Amended Agreement.

7. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof will be deemed to refer to the singular or plural, and masculine

or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document will mean such policy, procedure, law, regulation, rule or document as it may be amended from time to time.

8. Non-Severability and Effect of Invalidity. Each paragraph of this Amended Agreement is interdependent with the others and is not severable unless by mutual written consent of the ROY Participants hereto.

9. Multiple Originals. This Amended Agreement may be executed in any number of counterparts, each of which will be deemed original, and all of which constitute one and the same Amended Agreement.

10. No Attorney's Fees or Costs. In the event of any litigation, mediation, or other dispute resolution process arising out of this Amended Agreement, the ROY Participants agree that each is responsible for their own costs and fees associated with any such action.

11. Joint Draft. The ROY Participants agree they drafted this Amended Agreement jointly with each having the advice of legal counsel and an opportunity to contribute to its content. Therefore, this Amended Agreement will not be construed for or against any ROY Participant on the basis of authorship.

12. Intent of Amended Agreement. This Amended Agreement is intended to describe the rights and responsibilities of and between the ROY Participants hereto and is not intended to, and will not be deemed to, confer rights upon or to benefit any persons or entities not signatories hereto, nor to limit, impair, or enlarge in any way the powers, regulatory authority, or responsibilities of any ROY Participant or any other governmental entity not a ROY Participant hereto.

13. Specific Performance Available. In the event of litigation, mediation, arbitration or other dispute resolution process concerning this Amended Agreement, the remedy of specific performance will be available to any ROY Participant.

14. Notices. Any notice required or permitted to be given hereunder will be in writing and will be deemed given when delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Aurora:

Director of Utilities, City of Aurora
15151 East Alameda Parkway, Suite 3600
Aurora, CO 80012

City Attorney, City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012

John M. Dingess, Esq.
Hamre, Rodriguez, Ostrander & Dingess, P.C.
3600 S. Yosemite Street, Suite 500
Denver, Colorado 80237-1829

If to Colorado Springs:

Chief Legal Officer/City Attorney
City of Colorado Springs
30 South Nevada, Suite 501
Colorado Springs, Colorado 80903

Michael Gustafson, Esq.
Deputy City Attorney - Utilities.
P.O. Box 1103
Mail Code 940
Colorado Springs, Colorado 80947

If to City of Fountain:

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

Cynthia F. Covell, Esq.
Alperstein & Covell, P.C.
1600 Broadway, Suite 900
Denver, CO 80202

If to Board of Water Works of Pueblo:

Executive Director
Board of Water Works of Pueblo
P.O. Box 400
Pueblo, Colorado 81002-0400

William A. Paddock, Esq.
Carlson Hammond & Paddock, LLC
1900 Grant Street, Suite 1200
Denver, CO 80203

If to Southeastern Colorado Water Activity Enterprise:

James Broderick
Southeastern Colorado Water Activity Enterprise
31717 United Avenue
Pueblo, CO 81001

Lee E. Miller, Esq.
PO Box 261008
Lakewood, CO 80226-1088

or at such other address as any ROY Participant may designate by giving written notice thereof to the other ROY Participants hereto in the aforesaid manner. Notice will be effective upon delivery.

15. No Assignment or Sublease Without Consent. With the exception of governmental reorganization none of the ROY Participants may assign their rights or delegate their duties hereunder without the prior written consent of all of the other ROY Participants and Holbrook. With the exception of governmental reorganization none of the ROY Participants may sublease their rights under this Amended Agreement without the prior written consent of all of the other ROY Participants and Holbrook, provided, however that use of Others' Excess Capacity as provided for herein will not be deemed as an assignment or sublease fo a ROY Participant's rights hereunder.

IN WITNESS WHEREOF, the ROY Participants have duly executed this Amended Agreement as of the date first above written.

(Signature Pages Follow)

City of Colorado Springs

Daniel J. Higgins
Daniel J. Higgins
Chief Water Services Officer

Date 6-29-16

Attest:

Sherril Newell Wilkinson
Sherril Newell Wilkinson,
Chief Strategy and External Affairs
Officer

Date 7-5-16

Approved as to form:

Michael J. Gustafson
Michael J. Gustafson, Senior Attorney

Date 6/22/16

STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 29 day of June, 2016, by Daniel J. Higgins, Chief Water Services Officer, acting on behalf of the City of Colorado Springs, Colorado on behalf of its enterprise Colorado Springs Utilities.

Witness my hand and official seal. Debra A. Mazza
Notary Public

My commission expires: 5/19/17

(SEAL)

DEBRA A. MAZZA
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 19974009022
MY COMMISSION EXPIRES MAY 19, 2017

Board of Water Works of Pueblo, Colorado

Terry R. Book
Executive Director

Terry R. Book
(Signature)

Date: 3-23-16

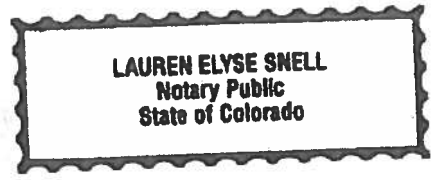
STATE OF COLORADO)
) SS
COUNTY OF Pueblo)

The foregoing instrument was acknowledged before me this 23 day of March, 2016,
by Terry R. Book, Executive Director of the Board of Water Works of Pueblo, Colorado.

Witness my hand and official seal. Lauren Elyse Snell
Notary Public

My commission expires: 6-24-2019

(SEAL)



Southeastern Colorado Water Conservancy District

Bill Long
President (Print Name)

04/21/2016
Date

[Signature]
President (Signature)

Attest:

James W. Broderick 4/21/16
James W. Broderick (Print Name) Date
Assistant Secretary

[Signature]
Assistant Secretary (Signature)

Approved as to form:

Lee E. Miller 4/21/2016
Lee E. Miller, General Counsel Date
(Print Name)

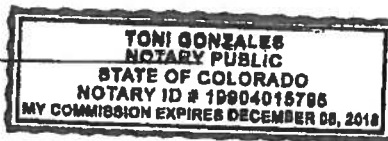
[Signature] 4/21/2016
Lee E. Miller, General Counsel Date
(Signature)

STATE OF COLORADO)
) ss
COUNTY OF Pueblo)

The foregoing instrument was acknowledged before me this 21 day of April, 2016, by Bill Long, President, acting on behalf of the Southeastern Colorado Water Conservancy District.

Witness my hand and official seal. [Signature]
Notary Public

My commission expires: _____



(SEAL)

City of Fountain

Utilities Director

Curtis Mitchell
Curtis Mitchell (Signature)
Utilities Director

5-25-2016
Date

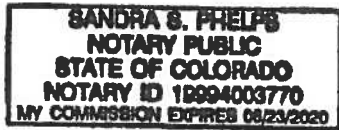
STATE OF COLORADO)
) ss
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this 25 day of May, 2016, by Curtis Mitchell, Utilities Director, acting on behalf of the City of Fountain.

Witness my hand and official seal. *Sandra S. Phelps*
Notary Public

My commission expires: 6/23/2020

(SEAL)



CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE

Stephen D. Hogan
Stephen D. Hogan, Mayor

2/17/17
Date

ATTEST:

Janice Napper
Janice Napper, City Clerk

2/17/17
Date

APPROVED AS TO FORM FOR AURORA:

Christine McKenney
Christine McKenney, Sr. Assistant City Attorney

9.27.16
Date

16030818
ACS #

John Dingess
John Dingess, Special Counsel

2-17-2017
Date

STATE OF COLORADO)
) SS
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 21 day of February, 2017, by Stephen D. Hogan, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. Leiana Baker
Notary Public

My commission expires: 7-28-17

(SEAL)

LEIANA BAKER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID # 20014021606
MY COMMISSION EXPIRES JULY 28, 2017

Exhibit A
(Original Holbrook Agreement)

Exhibit B
(Original Holbrook Agreement Extension)

Exhibit C
(Amended Holbrook Agreement)

EXHIBIT A

AGREEMENT FOR USE OF EXCESS CAPACITY

THIS AGREEMENT ("Agreement") is entered into this 1st day of March 2005 by and among the Holbrook Mutual Irrigating Company ("Holbrook") and the City of Aurora, acting by and through its Utility Enterprise ("Aurora") (collectively, the "Parties").

RECITALS

WHEREAS, during 2004 Aurora entered an intergovernmental agreement ("IGA") with the Southeastern Colorado Water Conservancy District, the City of Fountain, the City of Colorado Springs, the City of Pueblo, and the Board of Water Works of Pueblo, Colorado (the "ROY Participants"), which IGA provides, inter alia, for the release and recapture of water owned or controlled by one or more of them pursuant to a program called Restoration of Yield ("ROY"), and;

WHEREAS, Holbrook owns and operates water diversion and conveyance facilities that could be useful in the ROY program, and;

WHEREAS, at times Holbrook has unused carriage and storage capacity in its facilities, and;

WHEREAS, this Agreement regarding the use of Holbrook System and for the exchange and/or trade of water between Holbrook and Aurora will benefit both Holbrook and Aurora, and operations hereunder may be conducted to provide benefits to other ROY Participants as well, and;

WHEREAS, pursuant to its Articles of Incorporation and Bylaws and operating procedures, Holbrook affirms that it has full authority to enter into this Agreement,

NOW THEREFORE, Holbrook and Aurora hereby agree as follows:

- I. **Definitions.** The following terms, when used in this Agreement, shall have the following meaning:
 - A. "Holbrook System" shall mean the Holbrook Canal, laterals thereof, Holbrook Reservoir, Dye Reservoir, and their outlet canals by which water is returned to the Arkansas River, headgates and other control structures connected therewith.
 - B. "Excess Capacity" means diversion, carriage and storage capacity in the Holbrook System that at any given time is not needed for the diversion, carriage and storage of water pursuant to: a] Holbrook's water rights, or; b] other water controlled by Holbrook pursuant to contract.

C. "Contract Exchange" refers to an operation whereby a volume of ROY Participants' water stored in the Holbrook System is traded to Holbrook on a one-for-one basis in return for water to which Holbrook is entitled in Pueblo, Twin Lakes, or Turquoise Reservoirs. The result of such a contract exchange will be that each party retains the legal characteristics of the water they had stored, although the location at which that volume of water is stored has changed.

II. Excess Capacity Agreement. By this Agreement, Holbrook grants to Aurora the first right to use any and all Excess Capacity in the Holbrook System. The right obtained is a contractual right, not a property right, and will continue for the duration of this Agreement. Holbrook retains the right to contract with third parties for the use of Excess Capacity in the Holbrook System, so long as Aurora has the first right to such Excess Capacity, and any contracts with third parties will provide that they will spill if such Excess Capacity is demanded and used by Aurora.

A. Holbrook shall determine the existence and extent of Excess Capacity on a daily basis after taking into account shareholder water demands, weather, freeboard requirements, and other factors affecting operation of the Holbrook System. In all situations Holbrook's operations to deliver water to its shareholders pursuant to the shares they own shall have priority over the use of Excess Capacity by Aurora. Holbrook does not guarantee the availability of Excess Capacity at any time or in any amount.

B. Aurora may transport, store, exchange, or trade in or through the Holbrook System, any water legally available to the ROY Participants. Such waters include, but are not limited to: transmountain water, transmountain return flows, other reusable return flows, Rocky Ford Ditch water, and leased water.

C. Nothing in this contract is intended to interfere with the ability of any Holbrook shareholder to sell its water shares to any buyer or to lease its water shares or rights to any lessee.

D. Aurora understands and agrees that should the Holbrook system be needed for Holbrook operations, as determined at Holbrook's discretion, and should it be necessary for Holbrook to utilize the part of the system used by Aurora under this Agreement, then Aurora will be required to spill all or a portion of its water, or otherwise reduce or terminate its use of the Holbrook System under this Agreement to the extent necessary to allow Holbrook operations for the benefit of its shareholders. Holbrook will have no liability of any kind for water spilled or system usage denied to Aurora under these conditions.

III. Term of Agreement. This Agreement between Holbrook and Aurora shall commence on March 1, 2005, and continue thereafter for a term of five (5) years. Upon agreement by Aurora and Holbrook, this Agreement may be extended for an additional five (5) years.

A. Termination.

During the first two years of operation under this Agreement, if it is determined that the operations are detrimental to Holbrook, the Company may terminate the Agreement. If this Agreement is terminated by Holbrook during the first year, the Company will repay Aurora nine-tenths of the amount actually paid by Aurora for the structural modifications itemized in Paragraph IV.B. below. If this Agreement is terminated by Holbrook during the second year, the Company will repay Aurora four-fifths of the amount actually paid by Aurora for such structural modifications. For the purposes of this paragraph, the \$7,500 to reimburse Holbrook for legal, engineering and related expenses incurred by Holbrook in connection with the negotiation of this Agreement will not be considered amounts paid for structural modifications.

2. In the event Aurora is unable to obtain all legal authorizations required to conduct the operations contemplated herein, if Holbrook's property interests do not allow it to perform under this Agreement, or other impediments frustrate Aurora's ability to use Excess Capacity under this Agreement, then Aurora shall have the right to terminate this Agreement. Either Party may terminate this Agreement if all such legal approvals have not been obtained by March 1, 2006. In the event of termination for these reasons, Holbrook shall have no obligation to repay any amounts paid by Aurora under this Agreement, and Aurora shall have no obligation to make further payments described in Paragraph IV after the effective date of the termination.
- 3 Termination by either party shall become effective 90 days after terminating party delivers written notice to the other party.

IV. Consideration. The monetary consideration paid to Holbrook for the use of its Excess Capacity will be in the form of the following payments, the adequacy and sufficiency of which Holbrook acknowledges:

A. Readiness to Serve.

Aurora agrees to pay to Holbrook a Readiness to Serve payment of \$ 50,000 for each year this Agreement is in effect. While the monies from this payment are for use at Holbrook's discretion, the parties agree that the payments are intended to compensate Holbrook for additional operating expenses and activities resulting from the use of Excess Capacity under this Agreement. These items include, but are not limited to, additional personnel and vehicle costs, maintenance of Holbrook's facilities, and administrative costs.

- 2 In the event that Aurora or the ROY Participants are not able to use the Excess Capacity in the Holbrook System due to physical failures in the Holbrook System, the Readiness to Serve payment for any such year will be pro-rated

based on the number of days such facilities are in operating condition divided by 365. Such physical failures include, but are not limited to, a failure of the ditch or headgate due to flooding and storage limitations imposed by either Holbrook or the State Engineer for dam safety purposes, provided such physical failures are not caused by Aurora or ROY operations. If maintenance of the Holbrook System should stop or impair Aurora's operations under this Agreement Holbrook shall have no liability for Aurora's inability to use Excess Capacity. To the maximum extent practical, Holbrook will coordinate its maintenance activities with Aurora to avoid limiting Aurora's ability to use Excess Capacity.

- B. Structural Modifications. Aurora will provide \$90,000 upon execution of this Agreement to fund modifications and improvements to the Holbrook System described in subparagraph IV.B.1, below. Of this amount, \$7,500 is reimbursement for legal, engineering and related professional expenses incurred by Holbrook in connection with the negotiation of this agreement; the balance of \$82,500 is reimbursement for the Structural Modifications. The \$90,000 may be paid by Aurora to Holbrook, or to contractors hired by Aurora to perform the contemplated work, or a combination thereof. In the event \$90,000 is not sufficient to complete the contemplated modifications and improvements described below, the decision as to whether Aurora will make additional funds available for such purpose will be at the sole discretion of Aurora. The first priority of the funding will go toward those projects needed to facilitate operations by Aurora. The remaining funds will be used for other facilities improvement projects selected by Holbrook.

The first priority improvement projects are the following:

- a. Installation of a measuring device at Holbrook Reservoir.
 - b. Survey and prepare an elevation-capacity table for Holbrook Reservoir.
 - c. Repair or replacement of canal diversion flume automatic control
 - d. Installation and/or repair of reservoir outflow structure, outflow flume, and outflow channel.
 - e. Other structural requirements that may be reasonably required by the State Engineer for the ROY Participants to use Excess Capacity in the Holbrook System.
2. Holbrook and Aurora will mutually agree upon the design and technical aspects of the structural modifications. Aurora shall have authority and oversight of all structural modifications made in order to facilitate operations under this Agreement, but if Holbrook and Aurora disagree after good faith negotiations with regard to the implementation of such structural

modifications, and Holbrook in good faith believes its position is in the best interests of Holbrook, Holbrook's position shall prevail. To the extent practical, Holbrook will be the contracting party for any necessary construction or reconstruction, and will seek to obtain any technical or financial assistance that may be available. If technical assistance from third parties is not available on a timely basis, Aurora, at its cost, will develop and submit to Holbrook plans and specifications for the intended structural modifications. Holbrook will consider and respond to Aurora's submission as promptly as possible and will not unreasonably withhold its approval thereof.

3. This Agreement imposes no obligation on Holbrook to spend its own money on modifications, repairs, or improvements to the Holbrook System that are only required for ROY Participants' operations, however, the \$82,500 referenced above must be spent first on the completion of the Structural Modifications identified in Paragraphs IV.B.1.a, b., and e.

- C. Storage and Conveyance Payment. Aurora will pay to Holbrook, for conveyance and storage, a fee of \$7.50 for each acre-foot of ROY Participants' water measured into the Holbrook Canal at the Manzanola flume. This fee will be adjusted upward annually by the same percentage as any upward change in the winter water storage rate charged to Holbrook for storage in Pueblo Reservoir.

V. Operation and Administration.

- A. Losses. ROY Participants' water in storage in the Holbrook System will be assessed evaporation and seepage losses on a pro-rata basis with all other water then in storage in the Holbrook System. ROY Participants' water being carried through ditches and canals in the Holbrook System will be assessed transit losses on a pro-rata basis with all other water then being carried through the Holbrook System, excluding losses in laterals through which ROY Participants' water is not being conveyed. Holbrook and Aurora will cooperate to determine an estimated rate of ditch seepage to use for this purpose and may revise that number, by mutual consent, based on operational experience.
- B. Dead Storage Pool. As of the date of this Agreement, Holbrook Reservoir is entirely empty, including its Dead Storage Pool. During the first year of operation of this Agreement, and in any future year this Agreement is in effect during which all or a portion of the Dead Storage Pool must be refilled, the amount of water for refilling the Dead Storage Pool deemed to have been contributed by Aurora and by Holbrook will be a pro-rata allocation based on the amount of water stored by each of them in Holbrook Reservoir in the year of refilling.
- C. Replacement. Holbrook may have the opportunity to use ROY water stored in Holbrook Reservoir for its shareholders' purposes, and shall replace that water to Aurora in Pueblo Reservoir within 90 days of the conclusion of the winter water

period the following spring at a time acceptable to both parties. Holbrook's obligation to replace such water shall survive termination of this Agreement by either party. This replacement may be accomplished only with the prior approval of the parties involved. Such operations will be conducted at no cost to Aurora.

- D. Legal Authority. Aurora shall be responsible for obtaining any legal authorization(s) necessary to store and use the ROY Participants' water in the Holbrook System or for any use of ROY Participants' water that may be allowed by this Agreement, including but not limited to any authorizations required from state water administration officials. Aurora may, but shall not be obligated to, defend challenges to Holbrook's ability to perform under this Agreement. In no event will Holbrook have any obligation to defend challenges to Holbrook's ability to perform under this Agreement.
- E. Accounting. Aurora shall be responsible to account for all ROY Participants' water conveyed and stored in the Holbrook System. Holbrook shall provide spot readings or daily averages for all necessary measuring flumes, lateral releases, and reservoir contents. Aurora shall provide Holbrook 12 hours advance notice of any diversions into or releases from the Holbrook System. Aurora will provide Holbrook summaries of its accounting of the ROY Participants' water diverted into, stored in, and released from the Holbrook System on a monthly basis, or more frequently if requested by Holbrook, and Holbrook may inspect Aurora's detailed accounting records for this water at any time, upon reasonable notice to Aurora.

VI. Water Exchange and/or Trade Alternatives. ROY Participants' water stored in the Excess Capacity of the Holbrook System may be released and/or exchanged using one of the following alternatives:

- A. River Exchange. When river conditions allow, Holbrook will release the ROY Participants' water at Aurora's direction for exchange to upstream facilities, for augmentation, for other uses, or for downstream delivery. Aurora will pay to Holbrook \$5.00 per acre foot for water so released. Holbrook shall have the first opportunity to use any exchange potential for its own purposes and employing its own water under the terms and exchange priority of its existing decree in Case No. W-3905.
- B. Contract Exchange. During the period March 16 to November 14, if desired by Aurora and acceptable to Holbrook, the parties may operate a Contract Exchange to move the ROY Participants' water to upstream storage reservoirs as described in Paragraph I.C., above. Aurora will pay to Holbrook \$12.50 per acre-foot for waters so exchanged. This fee will be adjusted upward annually by the same percentage of any upward change in the cost of agricultural Fryingpan-Arkansas Project water that would be purchased by Holbrook through the SECWCD.

- C. Winter Water Carryover/Contract Exchange. If, at the beginning of the Winter Water Storage Season (November 15), Holbrook has storage space available to it in Pueblo Reservoir and Aurora has ROY Participants' water stored in the Holbrook System, to the greatest extent practical without loss of yield to its shareholders, Holbrook will operate the Holbrook System during that Winter Water Storage Season so that ROY Participants' water held in the Holbrook System will not be spilled to accommodate Holbrook water. Aurora will pay to Holbrook \$20.00 for each acre-foot held in the Holbrook System from November 15 through March 14 and then moved to Pueblo, Twin or Turquoise reservoirs by Contract Exchange with Holbrook, which exchange will occur by June 15th at a time acceptable to both parties. The contract exchanges and associated fees provided for in this paragraph are an alternative to, and are not cumulative with the exchanges and fees provided for in the preceding paragraph regarding Contract Exchanges during the period from March 15 to November 14. This carryover/contract exchange fee will be adjusted upward annually by the same percentage as any upward change in the cost of agricultural Fryingpan-Arkansas Project water that would be purchased by Holbrook through the SECWCD.

VII. Payments.

- A. The Readiness to Serve payment will be made on or before March 1 of each year, except in the first year of this Agreement when the payment will be made concurrently with Aurora's Notice to Proceed, which will follow the State Engineer's approval of Aurora's Substitute Water Supply Plan for the operations contemplated by this Agreement.
- B. The payments for carriage, storage and exchange will be billed by Holbrook to Aurora on a monthly basis and Aurora will pay each invoice within 60 days of its receipt. Holbrook is not obligated to divert or release water for Aurora if Aurora has outstanding invoices that have not been paid within such 60 day period.
- C. On March 1 of each year, the Readiness to Serve payment provided for under this Agreement shall be increased by a factor equal to the percentage increase in the Consumer Price Index over the preceding calendar year. As used herein, the "Consumer Price Index" shall mean the Consumer Price Index for All Items, U. S. City Average for All Urban Consumers, published by the U. S. Department of Labor, Bureau of Labor Statistics, or successor index should publication of the Consumer Price Index cease.

- VIII. Protection From Expenses. Aurora agrees that Holbrook shall be protected from additional, unanticipated expenses incurred by Holbrook due to this Agreement. Holbrook shall in no event be held responsible for circumstances beyond its control. Holbrook and Aurora agree to cooperate in identifying any additional expenses and negotiate additional payments if necessary.

- A. The foregoing notwithstanding, however, if any of the above payments, or all of them collectively, result in income tax liability to Holbrook, Aurora shall not be required to pay additional money to Holbrook to cover such liability.
- B. In the event of extraordinary operations problems or other unforeseen expenses, Holbrook and Aurora agree they will discuss them and attempt to find cooperative solutions including cost allocations appropriate to the circumstances. By way of example of an extraordinary operations problem, but not by way of limitation, if during the fall when Holbrook would normally be out of priority and not expecting to operate until the following irrigation season, a wind storm fills the canal with weeds, cleaning of the canal by appropriate means may be necessary for diversion and storage of ROY Participants' water. Holbrook should not have to bear a cleaning expense beyond that which it would normally bear. Aurora could agree to pay the expense of cleaning the ditch in the fall subject to a partial refund or credit if Holbrook's ditch cleaning expense the following spring is reduced.

IX. Additional Investigations. The parties will cooperatively perform engineering analyses of the following issues, the costs for which will be borne by Aurora:

- A. An analysis to determine transit losses in the Holbrook Canal from the Manzanola measuring flume to Holbrook Reservoir.
- B. The exchange potential and feasibility of filing exchange applications from Holbrook Reservoir to upstream locations for the benefit of Holbrook's shareholders and the ROY Participants, including Aurora.
- C. The parties may identify other potential improvements or enlargements to the Holbrook System for the benefit of Holbrook's shareholders and the ROY Participants, including Aurora. Once identified, Aurora may agree to fund engineering analyses.

X. Operations Involving Other ROY Participants.

- A. Holbrook and Aurora agree that operations under this Agreement may involve water owned or controlled by other ROY Participants other than Aurora and/or may benefit such other ROY Participants. Aurora may enter into cost-sharing agreements with such other ROY Participants. Holbrook consents to Aurora's assignment of the rights and obligations created by this Agreement, in whole or in part, to any other ROY Participant(s) provided such Assignee agrees to assume all obligations under this Agreement. Holbrook's written consent must be obtained for any assignment of rights and obligations hereunder to an entity created by and composed of ROY Participants, which consent shall not be unreasonably withheld. No other assignment may be made by Aurora without the written consent of Holbrook, which consent may be withheld in Holbrook's sole discretion. There shall be no further assignment by an Assignee of rights or

obligations under this Agreement without the written consent of both Holbrook and Aurora, which consent may be withheld at the discretion of either of them. Moreover, absent assignment of this Agreement as provided herein, Aurora is solely responsible for the obligations it undertakes and is the sole party authorized to request action by Holbrook and to direct that action. If requested by Holbrook, Aurora will provide documentation of Aurora's authority to request diversion and storage of water owned or controlled by other ROY Participants.

- B. This Agreement shall not become effective until Aurora provides Holbrook with a Notice to Proceed. If Aurora is not successful in entering cost-sharing agreements with other ROY Participants to an extent that Aurora, in its sole discretion, deems sufficient, Aurora may elect not to proceed with this Agreement.
- C. Prior to March 1 of each year this Agreement is in effect, Holbrook and Aurora shall meet to discuss operational issues relating to the expected operations for the coming year.

XI. Other Provisions.

- A. **Entire Agreement.** This Agreement represents the entire agreement of the Parties and neither Party has relied upon any fact or representation not expressly set forth herein. This Agreement relating to the use of excess capacity supersedes any other prior agreements and understandings of any type, both written and oral, among the parties with respect to the subject matter hereof.
- B. **Headings for Convenience Only.** Paragraph headings and titles contained herein are intended for convenience and reference of the Parties only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.
- C. **Non-Severability and Effect of Invalidity.** If any portion of this Agreement is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to either party or as to both parties, the parties will immediately negotiate valid alternative portion(s) that as near as possible give effect to any stricken portions.
- D. **Governing Law and Venue.** This Agreement and its application shall be construed in accordance with the laws of the State of Colorado. The Parties agree that venue for any litigated disputes regarding this Agreement shall be the District Court in and for Otero County Colorado, unless any such issues are water matters as defined by C.R.S. § 37-92-203, for which the Parties agree that jurisdiction and venue for any litigated disputes shall be in the District Court, Water Division 2.
- E. **Multiple Originals.** This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same Agreement.

- F. **Sole Obligation of Aurora's Utility Enterprise.** The Parties agree any and all obligations of Aurora under this Agreement are special and limited obligations payable solely out of and secured by an irrevocable (but not necessarily exclusive) subordinate pledge of net revenues, after payment of all costs of operation and maintenance, of the municipal water system of the City of Aurora operated by the Utility Enterprise. Holbrook further agrees the obligations of the City of Aurora do not constitute a debt or indebtedness of multiple fiscal year debt or other obligation of the within the meaning of any constitutional, charter, or statutory provision or limitation. Holbrook further agrees that the obligations of Aurora are not payable in whole or in part from the proceeds of general property taxes or any other form of taxation, and the full faith and credit of the City of Aurora is not pledged for the payment of the obligations of Aurora pursuant to this Agreement. Holbrook further agrees any lien or pledge of the net revenues securing payment of the obligations of Aurora are expressly subordinate to all other current obligations payable from the revenues of the water system of the City of Aurora operated by the Utility Enterprise.
- G. **No Attorney's Fees or Costs.** In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this Agreement, the Parties agree that each shall be responsible for their own costs and fees associated with any such legal action.
- H. **Joint Draft.** The parties agree they drafted this Agreement jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Therefore, this Agreement shall not be construed for or against a party on the basis of authorship.
- I. **Intent of Agreement.** This Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto, nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either Party or any other governmental entity not a party hereto.
- J. **Waiver or Breach.** Waiver or breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party of either the same or any other provision of this Lease.
- K. **Specific Performance Available.** In the event of litigation, mediation, arbitration or other dispute resolution process concerning this Agreement the remedy of specific performance will be available to either party, as well as any other remedy which may be available, either at law or in equity.
- L. **Definitions and Interpretations.** Except as otherwise provided herein, nouns, pronouns, and variations thereof shall be deemed to refer to either the singular or plural, masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy,

procedure, law, regulation, rule, or document as it may be amended from time to time.

- M. **Notices.** Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given when delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Aurora: Director of Utilities
City of Aurora
15151 East Alameda Parkway, Suite 3600
Aurora, CO 80012

AND TO:

John M. Dingess, Esq.
Duncan, Ostrander & Dingess, P.C.
4600 S. Ulster Street, Suite 1111
Denver, Colorado 80237-2875

If to Holbrook:

Holbrook Mutual Irrigating Company
P.O. Box 34
Cheraw, CO 81030

AND TO:

Michael L. Nicklos, Esq.
P.O. Box 581
La Junta, Colorado 81050

or at such other address as either party hereto may designate by giving written notice thereof to the other party hereto in the aforesaid manner. Notice shall be effective upon receipt.

- N. **Force Majeure.** Neither party shall be considered to be in default in performance of any obligation hereunder, nor liable for damages therefor, for such periods of time that failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" means any cause beyond the control of the party affected, including, but not limited to, embargoes, epidemics, major failure of facilities, flood, earthquake, storm, fire, volcanic action, nuclear accident, terrorist acts, war, riot, civil disturbance, labor disturbance, work stoppages, sabotage, and restraint by court order or public authority clothed with authority to regulate matters pertaining to water, public health or pollution control which, by exercise of due foresight, such party could not reasonably have been expected to avoid and which, by exercise of due diligence, it shall be unable to overcome. Neither party, however, shall be relieved of liability for failure of performance if such failure were due to causes arising from its own negligence or causes, which it fails to remove or remedy with reasonable dispatch.

- O. Holbrook agrees to negotiate in good faith with Aurora to resolve any concerns it may have with regard to Aurora's application in Case No. 01CW145 in an effort to reach a stipulation with Aurora in that case as soon as reasonably possible. If Holbrook has legitimate concerns that cannot be resolved by good faith negotiations, then Holbrook will be free to continue to assert its Statement of Opposition in said case.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

**CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE**

By: Edward J. Tauer
Edward J. Tauer, Mayor

ATTEST:

Debra Johnson
Debra A. Johnson, City Clerk
APPROVED AS TO FORM

Christine McKernan for John Augers
Special Counsel

STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 1st day of March 2005, by Edward J. Tauer, as Mayor, and Debra A. Johnson, as City Clerk, of the City of Aurora, acting by and through its Utility Enterprise.

Witness my hand and official seal.

Notary Public:

Jean M Russell

My Commission expires: April 20, 2008



My Commission Expires 04/20/2008

HOLBROOK MUTUAL IRRIGATING COMPANY
A Colorado Mutual Ditch Company

By: Donny Haver

ATTEST:

Name: Delia Hood

Title: Bookkeeper SEAL

STATE OF COLORADO

COUNTY OF Otero) ss

The forgoing instrument was acknowledged before me this 21st day of February 2005, by Donny Hansen as President of Holbrook Mutual Irrigating Company and attested to by Debbie Hall

Witness my hand and official seal.

Notary Public:



My Commission expires: 2/22/2006

EXHIBIT B

City of Aurora



Water Department
Administration
Phone: 303-739-7370
Fax: 303-739-7491



February 23, 2010

Donny Hansen, President
Holbrook Mutual Irrigating Company
P.O. Box 34
Cheraw, CO 81030

RE: Extension Of Agreement For Use Of Excess Capacity

Dear Mr. Hansen:

As you recall, the Holbrook Mutual Irrigating Company ("Holbrook") and the City of Aurora, acting by and through its Utility Enterprise ("Aurora") entered into the Agreement referenced above effective March 1, 2005. Paragraph III of the Agreement provides for a term of five years, and further allows for an extension of the Agreement for one additional five year term.

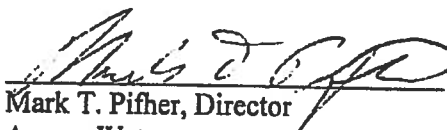
Pursuant to Paragraph XI.M. of the Agreement, Aurora hereby gives Holbrook notice of Aurora's intent to extend the Agreement in accordance with Paragraph III. This extension is conditioned on our mutual understanding that pursuant to Paragraph III.A.2. of the Agreement, if the Division Engineer ceases to allow Aurora's or the ROY Group's diversion of water into the Holbrook System, or statutory exchanges of Aurora's or the ROY Group's water from the Holbrook System, as contemplated by the Agreement, Aurora has the right to terminate the extension with no liability for further payments to Holbrook that have not accrued at the time notice of termination is given.

If Holbrook agrees to this extension, please sign the duplicate of this letter, enclosed herewith, and return it to me on or before March 1, 2010.

Thank you for your cooperation, we look forward to continuing our relationship with Holbrook.

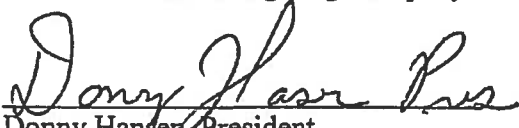
Sincerely,

By:


Mark T. Pifer, Director
Aurora Water

The foregoing extension of the March 1, 2005 Agreement for Use of Excess Capacity is agreed to and accepted this 2 day of February, 2010.

Holbrook Mutual Irrigating Company

By: 
Donny Hansen, President

c: Michael L. Nicklos, Esq.
Austin Hamre, Esq.

EXHIBIT C

AMENDMENT OF AGREEMENT FOR USE OF EXCESS CAPACITY

THIS AMENDMENT AGREEMENT ("Amendment") is entered into this 3rd day of March, 2015, by and among the Holbrook Mutual Irrigating Company ("Holbrook") and the City of Aurora, acting by and through its Utility Enterprise ("Aurora") (collectively, the "Parties").

RECITALS

WHEREAS, during 2004 Aurora entered an Intergovernmental Agreement ("IGA") with the Southeastern Colorado Water Conservancy District, the City of Fountain, the City of Colorado Springs, the City of Pueblo, and the Board of Water Works of Pueblo, Colorado (such parties and Aurora collectively being the "ROY Participants"), which IGA provides, inter alia, for the release and recapture of water owned or controlled by one or more of them pursuant to a program called Restoration of Yield ("ROY"), and;

WHEREAS, Holbrook owns and operates water diversion and conveyance facilities that could be useful in the ROY program, and;

WHEREAS, at times Holbrook has unused carriage and storage capacity in its facilities, and;

WHEREAS, Holbrook and Aurora entered into an agreement for use of Holbrook's excess capacity ("Agreement") by the ROY Participants in 2005, which agreement was extended once, and by its terms, is not subject to further extension, and;

WHEREAS, the parties now desire to provide for further extensions and revise certain other terms of the Agreement, and;

WHEREAS, this Amendment will benefit both Holbrook and Aurora, and operations hereunder may be conducted to provide benefits to other ROY Participants as well, and;

NOW THEREFORE, Holbrook and Aurora hereby agree as follows:

1. Paragraph III of the Agreement is hereby deleted and replaced with the following:

Term of Agreement. This Agreement between Holbrook and Aurora shall commence on March 1, 2015, and continue thereafter for a term of five (5) years. This Agreement may be extended for an unlimited number of additional five (5) year terms upon the mutual consent of Aurora and Holbrook evidenced by a letter between the Parties signed and countersigned by Aurora's Director of Utilities and Holbrook's President.

2. Paragraph III.A. of the Agreement, including all of its sub-parts, is hereby deleted and replaced with the following:

Termination. This Agreement may be terminated by either Party effective 90 days after the Terminating Party delivers written notice of such termination to the other Party. If terminated by Holbrook after its receipt of the Readiness to Serve payment for a given year, Holbrook shall refund to Aurora a pro rata portion of such payment based on the

portion of the 12 month period for which such payment was made remaining as of the effective date of the termination.

3. Paragraph IV.A.1. is hereby amended to reflect that the amount of the Readiness to Serve Payment due March 1, 2015, will be \$62,781.49.
4. Paragraph IV.C. is hereby amended to reflect that the amount of the Storage and Conveyance Payment due for ROY Participants' water during 2015, will be \$9.34 per acre-foot measured into the Holbrook Canal at the Manzanola flume.
5. Paragraph VI.B. is hereby amended to reflect that Holbrook will be paid \$13.64 per acre-foot for water moved by Contract Exchange during 2015.
6. Paragraph VI.C. is hereby amended to reflect that Holbrook will be paid \$21.82 per acre-foot for Winter Water Carryover moved by Contract Exchange during 2015.
7. The method of determining the annual increase in the charge per acre-foot described in Paragraphs IV.C., VI.B. and VI.C. is not changed by this Amendment. Paragraph VII.C. is hereby deleted and replaced with the following:

On March 1 of each year, the Readiness to Serve payment described in Paragraph IV.A.1. shall be increased by 1.79%.

8. Aurora will pay the operating costs of the existing telemetry system (for which American Millennium Corporation Inc. is the service provider) for transmitting data regarding diversions into the Holbrook System as long as the Agreement, as amended herein, remains in effect.
9. The parties acknowledge that Holbrook has issued to Aurora the first share of Class E stock, which grants to Aurora the first right to use excess capacity in the Holbrook System and results in Aurora being the last of the users of excess storage capacity in the Holbrook System to have its water spilled. In the event the Agreement as amended is terminated or allowed to expire, Aurora will be required to transfer its Class E share back to Holbrook.
10. Except as specifically provided herein, the Agreement remains unchanged.
11. Miscellaneous Provisions.
 - a. *Entire Agreement.* This Amendment represents the entire agreement of the Parties as to the amendment of the original Agreement, and all prior negotiations, discussions or agreements related thereto are merged herein.
 - b. *Headings for Convenience Only.* Paragraph headings and titles contained herein are intended for convenience and reference of the Parties only and are not intended to define, limit or describe the scope or intent of any provision of this Amendment.
 - c. *Amendments.* This Amendment may not be further amended or modified except by a written instrument executed by both Parties with the same formality as this Amendment.

- d. **Non-Severability and Effect of Invalidity.** If any portion of this Amendment is held invalid or unenforceable for any reason by a Court of competent jurisdiction as to either party or as to both parties, the parties will immediately negotiate valid alternative portion(s) that as near as possible give effect to any stricken portions.
- e. **Governing Law and Venue.** This Amendment and its application shall be construed in accordance with the laws of the State of Colorado. The Parties agree that venue for any litigated disputes regarding this Amendment shall be the District Court in and for Otero County Colorado, unless any such issues are water matters as defined by C.R.S. § 37-92-203, for which the Parties agree that jurisdiction and venue for any litigated disputes shall be in the District Court, Water Division 2.
- f. **Multiple Originals.** This Amendment may be simultaneously executed in any number of counterparts, each of which shall be deemed original but all of which constitute one and the same agreement.
- g. **Sole Obligation of Aurora's Utility Enterprise.** The Parties agree any and all obligations of Aurora under this Amendment are special and limited obligations payable solely out of and secured by an irrevocable (but not necessarily exclusive) subordinate pledge of net revenues, after payment of all costs of operation and maintenance, of the municipal water system of the City of Aurora operated by the Utility Enterprise. Holbrook further agrees the obligations of the City of Aurora do not constitute a debt or indebtedness of multiple fiscal year debt or other obligation of the within the meaning of any constitutional, charter, or statutory provision or limitation. Holbrook further agrees that the obligations of Aurora are not payable in whole or in part from the proceeds of general property taxes or any other form of taxation, and the full faith and credit of the City of Aurora is not pledged for the payment of the obligations of Aurora pursuant to this Amendment. Holbrook further agrees any lien or pledge of the net revenues securing payment of the obligations of Aurora are expressly subordinate to all other current obligations payable from the revenues of the water system of the City of Aurora operated by the Utility Enterprise.
- h. **No Attorney's Fees or Costs.** In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of this Amendment, the Parties agree that each shall be responsible for their own costs and fees associated with any such legal action.
- i. **Joint Draft.** The parties agree they drafted this Amendment jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Therefore, this Amendment shall not be construed for or against a party on the basis of authorship.
- j. **Intent of Agreement.** This Amendment is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to, confer rights upon any persons or entities not signatories hereto, nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either Party or any other governmental entity not a party hereto.

k. Waiver or Breach. Waiver or breach of any of the provisions of this Amendment by either Party shall not constitute a continuing waiver of any subsequent breach by said Party of either the same or any other provision of the Agreement as amended.

l. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns, and variations thereof shall be deemed to refer to either the singular or plural, masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law, regulation, rule, or document as it may be amended from time to time.

m. Notices. Any notice required or permitted to be given hereunder shall be in writing and shall be deemed given when delivered personally or sent by certified or registered mail, return receipt requested, postage prepaid, addressed as follows:

If to Aurora: Director of Aurora Water
 City of Aurora
 15151 East Alameda Parkway, Suite 3600
 Aurora, CO 80012

AND TO:

Austin Hamre, Esq.
Hamre, Rodriguez, Ostrander & Dingess, P.C.
3600 S. Yosemite Street, Suite 500
Denver, CO 80237

If to Holbrook:

Holbrook Mutual Irrigating Company
P.O. Box 34
Cheraw, CO 81030

AND TO:

Michael L. Nicklos, Esq.
P.O. Box 581
La Junta, CO 81050

or at such other address as either party hereto may designate by giving written notice thereof to the other party hereto in the aforesaid manner. Notice shall be effective upon receipt.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment as of the date first above written.

CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE

MPB
Marshall P. Brown, Director

Date 3/13/15

APPROVED AS TO FORM FOR AURORA:

CM
Christine McKenney, Assistant City Attorney

Date 3/3/15

ACS # _____

Austin Hamre
Austin Hamre, Special Counsel

Date 3/3/15

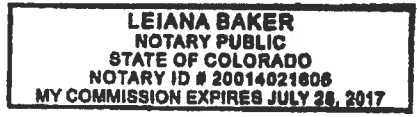
STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 13 day of March, 2015,
by Marshall P. Brown, Director, acting on behalf of the Utility Enterprise of the City of Aurora,
Colorado.

Witness my hand and official seal. *Leiana Baker*
Notary Public

My commission expires: 7-28-17

(SEAL)



HOLBROOK MUTUAL IRRIGATING COMPANY
A Colorado Mutual Ditch Company

By: *Donny Hansen*
Donny Hansen, President

3-3-15
Date

ATTEST:
By: *Paul Casper*
Paul Casper, Secretary

3/03/15
Date

STATE OF COLORADO)
) ss
COUNTY OF OTERO)

The foregoing instrument was acknowledged before me this 3 day of March, 2015, by Donny Hansen, President, of Holbrook Mutual Irrigating Company.

Witness my hand and official seal. *Michael L Nicklos*
Notary Public

My commission expires: JUNE 18, 2016

(SEAL)

