

**ESTABLISHING AGREEMENT  
FOR  
RESTORATION OF YIELD WATER AUTHORITY**

A Water Authority formed pursuant to Section 29-1-204.2(1), C.R.S.

This AGREEMENT, made and entered into among the City of Aurora, Colorado, a home rule municipal corporation of the counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise (“Aurora Water”), the City of Colorado Springs, on behalf of its enterprise Colorado Springs Utilities (“Colorado Springs”), the Board of Water Works of Pueblo, Colorado (“Pueblo Water”), the City of Fountain, acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise (“Fountain”), Pueblo West Metropolitan District (“Pueblo West”), and the Southeastern Colorado Water Activity Enterprise (“Southeastern”), all political subdivisions of the State of Colorado (collectively “the Members”).

**RECITALS**

- A. Each of the Members own water rights decreed in the Arkansas River Basin; and
- B. Each of the Members (except Pueblo West) entered into an Intergovernmental Agreement with the City of Pueblo, Colorado (“City of Pueblo”), effective as of May 27, 2004, providing inter alia for Foregone Diversions (as defined below) by the parties to the Pueblo IGA, and the recapture of Foregone Diversions downstream for subsequent storage and the exchange of that water back upstream on the Arkansas River under different stream flow conditions; and
- C. Pueblo West’s participation in this Authority is authorized by and limited by the terms of the March 31, 2011, IGA Operational Clarification Letter - Arkansas River Flow Management Program & Pueblo West; and
- D. The program to recapture the Foregone Diversions is known as the “Restoration of Yield” or the “ROY Program”; and
- E. The Members have jointly acquired land, sometimes referred to as the “Haynes Creek Property,” located in portions of Sections 5, 8 and 9, Township 21 South, Range 61 West, 6th P.M., for purposes of constructing a water storage reservoir in furtherance of the ROY Program; and
- F. The Members foresee the need to construct water diversion, conveyance and storage reservoirs, in addition to the reservoir that may be constructed on the Haynes Creek Property, to implement the ROY Program; and

G. The implementation of the ROY Program will create benefits for the inhabitants of the areas served by each of the Members; and

H. The Members have concluded that they can more effectively and efficiently accomplish the objectives of the ROY Program by acquiring real property and constructing water diversion, conveyance and storage facilities through a single entity; and

I. Pursuant to Colorado Constitution Article XIV, Section 18(2)(a) and (b), and Section 29-1-203, Colorado Revised Statutes (“C.R.S.”), governmental entities may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each, including the joint exercise of the function, service or facility by joint contract, and the establishment of a separate legal entity to do so; and

J. Pursuant to Section 29-1-204.2(1), C.R.S., any combination of municipalities, special districts, and other political subdivisions of the state, by contract with each other, may establish a separate governmental entity known as a Water Authority; and

K. To make the most efficient and effective use of their powers, and to perform their responsibilities more effectively, the Members wish to establish a separate governmental entity to develop water resources, systems and facilities under Section 29-1-204.2, C.R.S. as may be amended.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the Members agree as follows:

### **1. GENERAL**

1.1. Interpretation. In this Agreement, unless the context otherwise requires:

1.1.1. The terms “herein,” “hereunder,” “hereby,” “hereto,” “hereof” and any similar term, refer to this Agreement as a whole and not to any particular provision hereof.

1.1.2. All defined terms include both the singular and the plural, and all capitalized words or terms have the meaning set forth herein.

1.2. Definitions. As used herein the words below, when capitalized in this Agreement, have the following meaning:

1.2.1. Agreement: This Establishing Agreement for the ROY Water Authority.

1.2.2. Authority: The Restoration of Yield (“ROY”) Water Authority.

1.2.3. Board: The Board of Directors of the Authority.

- 1.2.4. Property Contribution: Each Members' ownership interest in the Haynes Creek Property.
  - 1.2.5. Director: A duly appointed director of the Board of Directors of the Authority.
  - 1.2.6. Foregone Diversions: The meaning is set forth in the November 7, 2006 Clarification Letter, attached as Exhibit A, that is part of the Pueblo IGA (defined below).
  - 1.2.7. Haynes Creek Project: A proposed ROY Project for water storage to be constructed on the property identified in recital F above.
  - 1.2.8. Members: The governmental entities identified in the introductory paragraph of this Agreement.
  - 1.2.9. General Participation Percentage: Each Member's percentage of participation in the authority as set forth in Section 4.11 below.
  - 1.2.10. Pueblo IGA or Regional IGA: The Intergovernmental Agreement entered into by and among the City of Pueblo, a municipal corporation, Aurora Water, Southeastern, Fountain, Colorado Springs and Pueblo Water, on May 27, 2004, including the letters of clarification dated November 7, 2006, March 31, 2011, and November 22, 2013 (date of last signature) and any subsequent amendments thereto.
  - 1.2.11. ROY Project: A project to construct Facilities pursuant to a Work Plan approved under Section 8 that is undertaken by the Authority for the benefit of two or more of the Members desiring to participate in the particular project.
  - 1.2.12. ROY Project Facilities or Facilities: Any water works including, but not limited to, diversion structures, pump stations, transmission conduits, water storage reservoirs, and all appurtenances thereto, and including any interest in such Facilities, owned and operated by the Authority.
- 1.3. In general, and as described in greater detail in the sections that follow, the Authority will hold title to the Haynes Creek Project property and any other property interests acquired and Facilities constructed by the Authority for that Project. The Authority will also hold title to other ROY Project Facilities and associated property. The Authority will conduct investigations into other potential ROY Projects two or more Members wish to pursue. The administrative expenses of the Authority, including the costs of investigating and evaluating potential ROY Projects, will be allocated among the Members in accordance with Section 7.2 below. The Board will have control over decisions on administrative matters on the basis of one vote per member (see Section 5.1.7.1.). A subcommittee of the Board will be formed to implement a Work Plan (see Section 8 below) and to make decisions regarding construction and operational issues

related to the Haynes Creek Project; the subcommittee will be composed of the Directors for those Members who choose to participate in that project. Similar subcommittees will be formed in connection with any subsequent ROY Project Work Plan. The number of votes that may be cast by each subcommittee member and the allocation of all costs associated with construction and operation of any specific ROY Project will be based on the Facility Participation Percentage of each Member participating in that Project (see Sections 5.1.7.3., 7.3 and 7.4 below). Each separate ROY Project Facility will be operated in accordance with a Facility Governance Agreement pursuant to Section 9 below.

## 2. ESTABLISHMENT OF AUTHORITY

- 2.1. Creation. There is hereby established a governmental entity pursuant to Section 29-1-204.2(1), C.R.S., known as the ROY Water Authority, which is separate and distinct from the Members.
- 2.2. General Powers. To the extent permitted by Colorado law, and except as specifically limited herein, the Authority shall have all the powers, duties, privileges, immunities, rights, liabilities, and limitations of a political subdivision and a public corporation of the State of Colorado.
- 2.3. Purposes. The Authority is established for the general purpose of implementing the ROY Program. This includes, but is not limited to land acquisition, engineering evaluations and feasibility studies, facility design, permitting, construction and/or construction oversight, land management, facility management and operation including repair and replacement, and any such other activities as the Board may determine necessary or desirable in connection with accomplishing the objectives of the ROY Program (“Purposes”). The Purposes may be accomplished outside of the geographic boundaries of the Members and are for the primary, although not necessarily exclusive, benefit of the Members.

## 3. SPECIFIC POWERS

- 3.1. Statutory Powers. The Authority shall have all the powers that have been or may be granted to an entity created pursuant to the provisions of Section 29-1-204.2(3), C.R.S., as amended from time to time, except as expressly limited by this Agreement.
- 3.2. Notwithstanding the foregoing, the Members agree that this Agreement and the implementation of the ROY Program hereunder is secondary and supplementary to the Members’ legal authority to separately provide water systems and services to their respective inhabitants and others, and to incur financial obligations in connection therewith.

3.3. Specific Powers. Without limiting the effect of Section 3.1. above, to implement the ROY Program, the Authority is empowered to:

- 3.3.1. Acquire, develop, construct, expand, manage, lease (as lessor or lessee) maintain, operate, repair, and replace Facilities and related improvements, or any interest therein for the benefit of two or more of the Members.
- 3.3.2. Acquire, hold, lease (as lessor or lessee), sell or otherwise dispose of real or personal property, and all Facilities, upon such terms and conditions as may be approved by the Board. The Authority will own all Facilities.
- 3.3.3. Enter into contracts for ROY Program related activities, including for goods, services, construction, expansion, lease, operation and maintenance of the Facilities.
- 3.3.4. Perform such studies and investigations into the development of water resources, systems and facilities as may be useful in accomplishing the Purposes.
- 3.3.5. Allow non-members to acquire a contractual right of use in a Facility or Facilities where doing so will not be detrimental to any Member, and where approved as further provided herein.
- 3.3.6. Determine and set Member assessments and special assessments.
- 3.3.7. Fix, maintain and revise fees, rates and charges for functions, services, or Facilities provided by the Authority.
- 3.3.8. Sue and be sued in its own name as a separate legal entity.
- 3.3.9. Employ agents and employees and such professional or other consultants as it may deem necessary or advisable to fulfill the Purposes.
- 3.3.10. Adopt by-laws and/or regulations respecting the exercise of its powers and carrying out of the Purposes.
- 3.3.11. In general, exercise all powers that are essential, necessary, incidental, convenient, or conducive to the attainment of its Purposes.
- 3.3.12. Do and perform any acts and things authorized herein through, or by means of an agent or by contracts with any person, firm, or corporation.

3.4. Limitations on Powers.

- 3.4.1. The Authority shall not issue bonds, notes, or incur debt in its own name. To the extent debt must be incurred to finance the cost of land acquisition and/or

construction of Facilities, individual Members will be responsible for financing their respective portions of such costs.

3.4.2. The Authority shall not have any interest in the water supplies of the Members and shall have no authority without the consent of the affected Member(s) to: (a) regulate water use by Members, (b) regulate the exercise of water rights of Members, (c) impose any permitting requirements upon Members apart from any permitting requirements applicable to a Facility, or (d) take any other action to affect any Member's existing water rights or the operation of a Member's water supply system facilities other than a ROY Project Facility.

3.4.3. Notwithstanding any provision of this Agreement to the contrary, the Authority shall not have the powers of taxation or imposition of *ad valorem* special assessments.

3.4.4. Nothing in this Agreement shall affect any of the Members' rights or obligations pursuant to the Pueblo IGA.

#### 4. MEMBERSHIP

4.1. The Members' General Participation Percentages are as follows:

<b>Member</b>	<b>General Participation Percentage</b>
Aurora Water	28.57
Colorado Springs	28.57
Pueblo Water	28.58
Fountain	4.76
Pueblo West	4.76
Southeastern	4.76

4.2. Property Contribution. Within 60 days of the full execution of this Agreement, each Member will convey and assign its interest in the Haynes Creek Property to the Authority. The real property and the water rights acquired with the Haynes Creek Property will be conveyed by Special Warranty Deed free and clear of all liens and encumbrances, personal property will be conveyed by bill of sale, and all leases will be assigned to the Authority. The property so dedicated will be owned by the Authority but managed by the participants in the Haynes Creek Cost Center.

4.3. Voluntary Termination of Membership. A Member may voluntarily withdraw from this Agreement by (a) giving a minimum of 90-days' notice of intent to terminate to the remaining Members; (b) divesting itself of any Facilities Participation Interest(s) by completing the process described in Section 9.4. below, and (c) then providing to the Board a written document authorized by the governing body of such Member stating its intent to withdraw. Such withdrawing Member shall satisfy all its obligations, financial or otherwise, outstanding on the date of withdrawal, to or on behalf of the Authority. Upon withdrawal, a withdrawing Member shall have no further interest, right or title in or to any Facility, assets, or equity of the Authority. Withdrawal from the Authority by any Member or combination of Members shall not cause termination of this Agreement as between the Members not withdrawing. The termination of all or a portion of a Member's General Participation Percentage in the Authority will require a redetermination of the General Participation Percentage of all remaining Members and will be reflected in an addendum to this Agreement. Unless otherwise unanimously agreed by the remaining Members, the terminating Member's General Participation Percentage will be allocated pro rata among the remaining Members in proportion to their General Participation Percentage.

4.4. Involuntary Limitation or Termination of Membership.

4.4.1. In the event a Member is delinquent in the payment of its assessments for three months after the date such assessments are due, such Member's right to divert water into, release water from, and to store additional water in its portion storage capacity owned by the Authority, and to use any Facilities owned by the Authority shall be suspended until all assessment payments are current.

4.4.2. If a Member is delinquent in the payment of its assessments for more than 12 months, the Board may declare such Member's General Participation Percentage and Facility Participation Percentage(s) suspended. A suspended Member has no voting rights under this Agreement. A suspension of a Member does not reduce or change the obligations of the Suspended Member under the other provision of this Agreement or a Facility Governance Agreement. The suspension shall remain in effect until the Suspended Member has paid all its unpaid assessments plus interest at rate of 1.5% per month or a rate of 18% per year, compounded annually. Upon reinstatement, the formerly suspended Member's Facility Participation Percentage will remain subject to any lease entered into by the Authority under Section 4.4.3.

4.4.3. The Authority may lease a Suspended Member's Facility Participation Percentage in any Facility. The lease of the Suspended Member's Facility Participation Percentage will first be offered to other Members with a Facility Participation Percentage in the same Facility. Any remaining Facility

Participation Percentage will then be offered to other Members on a prorate basis, and finally to non-Members meeting the requirements of Section 29-2-204.2(1), C.R.S. Any such lease(s) shall be for an amount not less than the annual assessments on the portion of the Facility Participation interest subject to the Lease. Any such lease will contain a provision that it shall terminate by December 31 of the year the Suspended Member is reinstated. All revenues from such lease will be first applied to the Suspended Member's annual assessment for the current year for the Facility, then to its annual General Participation Percentage Assessment for the current year, then to its unpaid assessments for previous years and any remaining funds will be paid to the Suspended Member.

4.4.4. If a Member has been suspended for 12 or more consecutive months, then the Authority may seek to permanently sell the Suspend Member's General Participation Percentage and Facility Participation Percentage(s) in the manner allowed by law. Upon such disposition, the Suspended Member will no longer be a Member and shall have no interest in the assets of the Authority. All revenues from such disposition will be first applied to the Suspended Member's annual assessment for the current year for the Facility, then to its annual General Participation Percentage Assessment for the current year, then to its unpaid assessments for previous years and any remaining funds will be paid to the Suspended Member.

4.5. Dissolution of Member. If a Member is dissolved or otherwise ceases to exist, then either (i) the plan for dissolution for such Member shall contain adequate provisions reasonably acceptable to the Authority for the performance of all of such Member's obligations to the Authority; or (ii) all such obligations shall be fully paid and performed prior to the effective date of dissolution.

4.6. No Member's water rights or rights to use water (other than those acquired in the purchase pursuant to the Haynes Creek Property Intergovernmental Agreement dated October 15, 2021) are assigned or otherwise provided to the Authority pursuant to this Agreement, and no water right is created by this Agreement. The water to be used by a Member in any Facility has been or will be acquired by such Member separately from this Agreement. The foregoing notwithstanding, the Authority may appropriate rights of exchange to move Foregone Diversions into or out of the Facilities it constructs, for the benefit of the Members, in the discretion of the Board.

## 5. GOVERNANCE

### 5.1. Board of Directors



- 5.1.1. Board of Directors. The governing body of the Authority shall be the Board in which all powers of the Authority are vested, and which shall exercise all powers, rights, and duties vested in and imposed on the Authority by this Agreement and applicable law.
- 5.1.2. Composition. The Board shall be composed of one Director appointed by each of the Members. Each Director shall serve on the Board at the pleasure of the appointing Member. Each Member may appoint an alternate Director who may act in place of that Member's Director if the Member's Director is unavailable. For all actions of the Board only one Director shall sit on the Board or act on behalf of a Member. An alternate Director shall not be deemed an Officer for any purpose. Appointment of a new Director or alternate Director must be made in writing, appropriately authorized by the appointing Member and shall be effective upon delivery to the Secretary/Treasurer provided the appointment is received by the Secretary/Treasurer at least three business days prior to a meeting of the Board in which the new Director or alternate Director will be acting on behalf of the Member. The names of the initial Directors and alternate Directors are set forth in the attached Exhibit B.
- 5.1.3. Vacancy. A vacancy on the Board shall be filled by the appointing Member.
- 5.1.4. Regular and Special Meetings. The Board shall hold regular meetings and may hold special meetings, the time and place of which shall be determined by the Board in accordance with the bylaws or regulations of the Authority.
- 5.1.5. Waiver. Whenever any notice is required to be given to any Director under the provisions of law, this Agreement, or the bylaws or regulations of the Authority, a waiver thereof in writing signed by such Director, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a Director at any meeting of the Board shall constitute a waiver by such Director of notice of such meeting, except when such Director attends such meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully convened.
- 5.1.6. Quorum. Two-thirds of the Directors then in office shall constitute a quorum for the transaction of business provided that, if less than a quorum is present, the Director(s) present may adjourn the meeting, and provided further that the Secretary shall notify the absent Directors of the time and date of such adjourned meeting.
- 5.1.7. Voting.
- 5.1.7.1.1. On all matters to come before the Board that address the administration and operation of the Authority itself, except for approval

of a Facility Work Plan, each Director will have one vote. Such matters include, but are not limited to, the election of officers described in Section 5.2, and approval of the annual budget for the Authority as a whole as described in Section 5.2.7, . For a vote on the approval of a Facility Work Plan under Section 8.1, the number of votes for each Member will be equal to 10 times that Member's General Participation Percentage.

- 5.1.7.2. Except as otherwise provided in Section 5.1.8. (Unanimous Action), a simple majority of the votes cast on an issue brought before the Board shall constitute approval. Proxies are not permitted.
- 5.1.7.3. On all matters that apply to an approved Facility Work Plan only the Directors of Members who are participants in that Facility may vote, and the number of votes for each Member will be equal to 10 times that Member's Facility Participation Percentage in the specific Facility Governance Agreement.
- 5.1.7.4. Attendance (as defined in the bylaws) is required in order to vote on any issue. The foregoing notwithstanding, nothing in this Section precludes the Board from adopting bylaws allowing participation in board meetings by telephone, video conference, or similar electronic means.
- 5.1.8. Unanimous Action. The following actions of the Board require the unanimous vote of all Directors ("Unanimous Action"):
  - 5.1.8.1. A decision to recommend to the Members' governing bodies any amendments to this Agreement.
  - 5.1.8.2. Appropriate water rights, rights of exchange, or obtain substitute water supply plans to implement the ROY Program on behalf and for the benefit of all the Members.
  - 5.1.8.3. The disposition of real or personal property rights, Facilities, or other assets of the Authority in which all Members participated financially in its acquisition.
  - 5.1.8.4. Any action which, directly or in effect, constitutes an amendment, waiver, or modification of the terms of this Agreement.
  - 5.1.8.5. Approval of the initial bylaws and rules and regulations of the Authority.
  - 5.1.8.6. The actions listed in Section 10.4.
- 5.1.9. Notice of Meetings. Notice of time and place designated for all regular meetings or special meetings shall be posted as required by the Colorado Open

Meetings Act. All official business of the Board shall be conducted in accordance with the Colorado Open Meetings Law, Section 24-6-401, *et seq.*, C.R.S.

5.1.9.1. Notice Requirement for Unanimous Action: For any Board meeting at which a Unanimous Action will be considered, a written notice of the proposed Unanimous Action shall be provided by the Director(s) seeking approval of such action to the Secretary, who shall provide the notice to each of the Directors and alternate Directors not less than ten (10) days prior to the Board meeting. In the event any Director, or alternate, fails to attend such specifically noticed Board meeting, the absent Member waives its right to vote on the matter, unless such absence is excused by the Board for good cause, in which event the Unanimous Action(s) shall be continued for consideration at the next regular or special Board meeting.

5.1.10. Duties of the Board of Directors. The duties of the Board of Directors shall be:

5.1.10.1. To govern the business and affairs of the Authority in conformity with law and this Agreement;

5.1.10.2. To exercise the powers of the Authority;

5.1.10.3. To comply with the provisions of Parts 1 (Budget), 5 (Accounting), and 6 (Audit) of Article 1 of Title 29, C.R.S., as amended, and all applicable laws and regulations;

5.1.10.4. To adopt a fiscal resolution which complies with the statutory and other restrictions imposed by law on the affairs of the Authority;

5.1.10.5. To set, on an annual basis, the assessment to be levied on the Members for the General Administrative Cost Center in proportion to each Member's General Participation Percentage.

5.1.10.6. To govern the financial transactions of the Authority, including the receipt, custody and disbursement of its funds, securities and other assets, subject to Section 8.4 below;

5.1.10.7. To provide for the services of a firm of independent certified public accountants to examine, at least annually, the financial records and accounts of the Authority, and to report thereupon to the Board;

5.1.10.8. To keep records of the Authority's proceedings;

5.1.10.9. To adopt such bylaws and regulations as are necessary and appropriate for conduct of the Authority's business; and

5.1.10.10. To elect Officers as provided below.

5.1.11. Compensation. Directors shall not receive compensation for their services as a Director of the Authority; however, the Board may provide for reimbursement of a Director for reasonable and necessary expenses incurred on behalf of, and authorized by, the Authority.

5.2. Officers. The Board shall elect a President, Vice President, and Secretary/Treasurer whose terms in office shall be for one year (1). Vacancies among the Officers shall be filled by the Board in the same manner as the Officers are elected. The officers of the Authority shall each be a Director. The Authority may hire an independent contractor as Assistant Secretary/Treasurer to assist with the day-to-day responsibilities of the office of Secretary/Treasurer.

5.2.1. Election of Officers. At the first meeting of the Board, after the Effective Date, the Directors shall elect the President, Vice President and Secretary/Treasurer who shall serve as officers of the Authority until the next succeeding annual election of the Officers, or until successors are elected. Thereafter, Officers shall be elected annually by the Board at the Board's last regular meeting for each year. Cumulative voting is not allowed.

5.2.2. Removal of Officers. Any Officer may be removed as an officer of the Board by the Board, with or without cause, whenever in the Board's judgment the best interest of the Authority shall be served thereby.

5.2.3. Duties of the Officers. Other than duties specifically delegated to an Officer by resolution of the Board, the duties of the Officers shall be limited to the following:

5.2.3.1. President: The President shall preside at all meetings of the Board of Directors and, except as otherwise directed by the Board of Directors or provided herein, shall execute and deliver on behalf of the Authority all legal instruments of the Authority. The President shall also perform such other duties as may be prescribed by the Board.

5.2.3.2. Vice-President: The Vice-President shall, in the absence of the President, or in the event of their inability or refusal to act, perform the duties of the President, and when so acting, shall have all the powers of, and be subject to all restrictions upon, the President. The Vice President shall also perform such other duties as may be prescribed by the Board.

5.2.3.3. Secretary/Treasurer: The Secretary/Treasurer shall in the absence of the President and Vice-President, or in the event of their inability or refusal to act, perform the duties of the President. The Secretary/Treasurer shall

maintain the official records of the Authority, including this Agreement, bylaws, rules and the regulations established by the Board, minutes of meetings of the Board, and a register of the names and addresses of the Directors and Officers, and shall issue notice of meetings, attest and affix the corporate seal to all legal documents of the Authority, and perform such other acts and duties as may be required by law. The Secretary/Treasurer shall serve as financial officer of the Authority, and pursuant to the fiscal resolutions adopted by the Board governing the financial transactions of the Authority and the restrictions imposed by law, be responsible for the receipt, custody, investment and disbursement of the Authority's funds and securities, and for duties incident to the office of Treasurer. The Secretary/Treasurer shall also perform such other duties as may be prescribed by the Board.

- 5.2.4. Bonds of Officers. The Secretary/Treasurer and any other Officer or agent of the Authority charged with the responsibility for the custody of any of its funds or property shall give a bond in such sum and with such surety as the Board, in its discretion, may determine. The Board may also require any other Officer, agent or employee of the Authority to provide a bond in such amount and with such surety as the Board shall determine. The cost of such a bond shall be an expense payable by the Authority.
- 5.2.5. Indemnification of Officers, Directors and Employees. The Authority shall, to the extent permitted by law and within the limitations of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., as amended, indemnify and defend each Director, officer or employee (if any) of the Authority, in connection with any claim or actual or threatened suit, action, or proceeding in which he or she may be involved, in either his or her individual or official capacity, by reason of his or her being or having been such Director' Officer, or employee, or by reason of any action or omission by him or her in any such capacity and shall protect, save and hold each Director and officer harmless from any loss, cost or expense arising from or growing out of such claim. The Authority shall have no obligation to indemnify and defend any such Director, officer or employee for any claim, suit, action or proceeding arising out of criminal offenses, a civil rights violation or any other willful and wanton misconduct or gross negligence.
- 5.2.6. Insurance. The Authority shall at all times maintain insurance in sufficient amounts to cover, as determined by the Board, the liability of its Officers, Directors and employees and the Authority under the Colorado Governmental Immunity Act and applicable resolutions of the Board. The

Authority shall allocate the cost of insurance attributable to a specific ROY Project to the Members with Facility Participation Percentages in that particular Facility. The allocation of such costs will be equal to the Member's Facility Participation Percentage in the Facility.

- 5.2.7. Budget. The fiscal year of the Authority shall be the calendar year, unless otherwise determined by a resolution of the Board. The Board shall cause a proposed budget for the next fiscal year to be prepared and shall submit a copy of such proposed budget to all Members for approval in accordance with the bylaws. Annual budgets proposed by the Board and approved by the Members shall conform to the requirements of Sections 29-1-101, *et seq.*, C.R.S., as amended. The annual budget shall provide that all expenses of the General Administrative Cost Center shall be prorated equally among the Members based on each Member's General Participation Percentage. All expenses for cost centers other than the General Administrative Cost Center shall be prorated among the applicable Members based on each the Facility's Governance Agreement. The Board may amend its annual budget in accordance with Sections 29-1-101, *et seq.*, C.R.S., as amended. The Board shall make available to each Member a detailed statement of the final costs and expenses for the General Administrative Cost Center's prior fiscal year allocated in the same manner as estimated expenses were allocated, as soon as reasonably practical after the close of each fiscal year.

## 6. OPERATIONAL MATTERS.

- 6.1. Facilities Projects. The first priority of the Board will be to study, and if appropriate, prepare and adopt a Work Plan for the Haynes Creek Project. The Board may decide to investigate and develop Work Plans for other Facilities or projects to implement the ROY Program, concurrently or thereafter as it deems appropriate. All Work Plans shall be prepared and approved in accordance with Section 8.1
- 6.2. Storage of Water. The diversion or recapture of Foregone Diversions pursuant to the Pueblo IGA is the primary reason for the construction of Facilities by the Authority. Nevertheless, each Member shall have the right to decide what water rights it will divert, store, and release, by exercising its rights to use its diversion capacity, storage capacity and outlet capacity of any Facility. The physical capacity of any Facility made available to third-party non-members, if any, and the terms of their use of such capacity, will be determined by their contract(s) with the Authority.
- 6.3. Management and Supervision. The Authority may hire one or more appropriately qualified personnel, either as contractors or employees of Authority, to manage land assets, execute the operation of Facilities, and to perform such other functions, which may include managing the business affairs of the Authority, as may be necessary or

desirable for the Authority to fulfill the Purposes. The Board shall appropriately document the tasks and responsibilities of such personnel, and the scope of their authority to act on behalf of the Authority.

## 7. MEMBER ASSESSMENTS – COST CENTERS

7.1. Members shall be assessed annually, in accordance with Sections 7.2, 7.3, and 7.4 below.

7.2. General Administrative Cost Center. This Cost Center includes all costs of operation of the Authority not attributable to a specific ROY Project Facility. Each Member will be assessed for this Cost Center in an equal amount, regardless of the Member's General Participation Percentage set forth in Section 4.1 above.

7.3. Haynes Creek Cost Center. This Cost Center includes all costs for land acquisition, construction, and operation of ROY Project Facilities to be constructed on the Haynes Creek Property. It also includes all other costs associated with the operation and maintenance of the Haynes Creek Property. This Cost Center will become active when the Authority has approved a Work Plan for the Haynes Creek Project. Prior to implementing the Work Plan, the participating Members will enter into a Facility Governance Agreement governing the implementation of the Work Plan for the Haynes Creek Project. Annual assessments will be based on each Member's Facility Participation Percentage.

7.4. Other Cost Centers. The Board will establish a separate Cost Center for each separate ROY Project. A Member's assessment for any such Cost Center will be based on the Member's Participation Percentage included in the Cost Center.

## 8. WORK PLANS AND ALLOCATION OF CAPACITY IN FACILITIES.

8.1. Facilities Work Plans. For each Cost Center, except the General Administrative Cost Center, the Members shall prepare a preliminary Work Plan for the Facilities to be constructed and/or acquired for that Cost Center. There can never be a Work Plan for the General Administrative Cost Center. Each preliminary Work Plan must contain (a) a complete description of the activities to be conducted thereunder, including details of capital acquisition and improvement programs and specification of the Facilities to be acquired and/or constructed, including their location, and supporting technical data in respect of such activities, (b) an estimate of the time required to construct the Facilities, and (c) an estimate of costs, both capital and operating, showing, in reasonable detail, the nature and amount of all projected expenditures. Except as authorized by action of the Participating Members, the Authority shall undertake only such activities and incur only such costs for which provision is made in an approved Work Plan.

- 8.2. Calls for Capacity: Prior to the approval of a preliminary Work Plan each Member shall notify the other Members of its call for capacity in the Facilities included in the Work Plan. For direct flow facilities the call for capacity must be in terms of cubic feet per second and for storage facilities the call for capacity must be in terms of acre feet for live storage (i.e., that which can be withdrawn or replenished under normal operating conditions) of water in the Reservoir. In the event the Member's calls for capacity exceed the capacity of the Facilities in the Work Plan, then unless otherwise agreed by the participating Members, capacity will be allocated in the same proportion as the Member's General Participation Percentage bears to the total of the membership interest of all Members calling for Capacity in the Facilities covered by the Work Plan.
- 8.3. Approval of Facilities Work Plans. After all Members have had the opportunity to submit a call of capacity in Facilities to be constructed under the proposed Work Plan, the Members calling for capacity must develop, and the Board must approve, a final Work Plan. Upon approval of a final Work Plan, the participating Members will be responsible for their proportionate share of all costs of the Facilities to be constructed or used under the Work Plan.
- 8.3.1. With respect to the Haynes Creek Project only, the cost of the Project will include payment for the Haynes Creek Property to the Members who either make no call for capacity in the Haynes Creek Project or whose call for capacity is less than their General Participation Interest as among the Members who make calls for capacity. For a non-participating Member, the payment will be the amount paid by that Member for acquisition of their interest in the Haynes Creek Property and for the Member's share of any post-purchase expenses incurred to operate and maintain the property. For a Member whose Facility Participation Percentage is less than its General Participation Percentage, the payment will be equal to the percentage by which the Member's Facility Participation Percentage is less than its General Participation Percentage multiplied times the amount that Member paid for acquisition of its interest in the Haynes Creek Property and the amount paid for the Member's share of any post-purchase expenses incurred to operate and maintain the property. The allocation among the Participating Members of the interest of Members who either make no call for capacity or whose call for capacity is less than their General Participation Interest will be included in the final Work Plan. The amount of the payment by a Participating Member to a non-participating Member or whose call for capacity is less than their General Participation Interest shall be determined in accordance with the allocation of capacity included in the final Work Plan and shall be made within 182 days of approval of the Final Work Plan.



- 8.4. Upon Approval of a Facility Work Plan, the Directors of the Members participating in the Facility (“Participating Facility Members”) will constitute a subcommittee of the Board. The Subcommittee will have sole decision-making authority for the financing, construction, operation, maintenance and repair of the Facility in accordance with a Facility Governance Agreement which must be approved by the Participating Facility Members prior to implementing the final Work Plan. The Facility Governance Agreement may include changes in the number of Participating Facility Members and adjustments to the Members’ Facility Participation Percentage among the participating Members.

## 9. FACILITIES PARTICIPATION

- 9.1. Facility Participation Percentage. A Member’s Facility Participation Percentage will be based upon the Calls for Capacity of the Members as determined under Section 8.2.
- 9.2. Facility Governance Agreement. The Participating Facility Members will enter into a Facility Governance Agreement that governs all aspects of the Facility, including allocation of costs, financing, construction, operation, use, and maintenance of the Facility and the organizational structure through which decisions regarding such Facility will be made. The Facilities Governance Agreement must also contain provisions governing the use of unused capacity in the Facility by any Member and third-parties. Any such agreement must be consistent with the terms of this Agreement and must be approved by the Board if consistent it is with this Agreement.
- 9.3. The use of Facilities by non-Members through separate contracts with the Authority may be allowed upon approval by the Board and the Participating Facility Members in the relevant Facility. Any such agreement must be consistent with the terms of this Agreement and the Facilities Governance Agreement and must be approved by the Board if consistent it is with those Agreements. Such contracts do not create a membership interest in the Authority and do not relieve the Member of any of its obligations under this Agreement.
- 9.3.1. Any Member may lease all or a part of its Facility Participation Percentage to a non-Member meeting the requirements of Section 29-2-204.2(1), C.R.S., in conformity with the Facility Governance Agreement. The Facility Governance Agreement cannot prohibit such leases. Any such lease to non-Members shall not be for more than ten years unless otherwise permitted by the Facilities Governance Agreement.
- 9.3.2. A Member wishing to lease all or a part of its Facility Participation Percentage must first offer to lease it to other Members with a Facility Participation Percentage in that Facility, and then to all other Members, before entering into a lease with a non-Member meeting the requirements

of Section 29-2-204.2(1), C.R.S. The offer to lease to a Member must be on terms no more favorable to the leasing Member than the terms of a bona fide written offer to lease by a non-Member.

9.4. Transfer of Facility Participation Percentage. A Member's Facility Participation Percentage in a Facility cannot be transferred except as provided in this section.

- 9.4.1. Withdrawal by a Member. A Participating Facility Member may withdraw from participation in a specific facility by giving a minimum of 90-days advance written notice to the remaining Members. The termination is effective on the transfer of the withdrawing Member's entire Facility Participation Percentage. The terminating Member remains liable for all costs incurred by the Authority attributable to the Member's General Participation Percentage up to the date of withdrawal. The withdrawing Member's Facility Participation Percentage will be allocated among the Participating Facility Members in the affected Facility in proportion to the amount of that interest they acquire pursuant to this Section 9.4. Any portion of the withdrawing Member's Facility Participation Percentage not acquired by a Member may be acquired only by a third-party non-member that meets the requirements of Section 29-2-204.2(1), C.R.S.
- 9.4.2. Transfer by a Member. A Member shall not sell or otherwise permanently transfer or allow the use of all or any portion of its Facility Participation Percentage in any Facilities to any other entity, including another Member without first offering it first to other Members with a Facility Participation Percentage in that Facility, and if any interest remains, offering it to all of the other Members. All offers to Members shall be at the same price and on the same terms as a bona fide offer written offer from a Member or third-party entity that meets the requirements of Section 29-2-204.2(1), C.R.S. to purchase all or any portion of such Member's Facility Participation Percentage(s).
- 9.4.3. In the absence of a bona fide offer as provided in Section 9.4.2, a Member wishing to sell all or a portion of its Facility Participation Percentage (which may include a portion of its General Participation Percentage) in any Facility shall offer it to the other Members in the order stated in Section 9.4.2.
- 9.4.4. Written notice of such offer by a Member shall be given to the other Members pursuant to Section 9.4.2 or a desire to sell pursuant to Section 9.4.3. The other Members shall have 45 days after receipt of such notice within which to provide notice of its intent exercise their first right to purchase. In the event more than one Member seeks to exercise the first

right to purchase, the selling Member's Facility Participation Percentage (or the portions thereof being offered for sale) shall be divided between the other Members seeking to purchase the Facility Participation Percentage in proportion to their (a) Facility Participation Percentage for Members participating in that Facility, and (b) General Participation Percentage, unless all acquiring Members agree on a different allocation. The sale of all or a portion of a Member's Facility Participation Percentage in the Facility will require a redetermination of the Facility Participation Percentage of all remaining Members with a Facility Participation Percentage in that Facility and will be reflected in an addendum to the Facility Governance Agreement.

9.4.5. In the event the acquiring Members do not desire to purchase all of the selling Participating Facility Member's Facility Participation Percentage in a Facility, the selling Member may only sell the remaining portion thereof to a third-party non-member that meets the requirements of Section 29-1-204.2(1), subject to the Board's approval of the credit-worthiness of the third-party and the execution of an agreement between the Authority and the third-party defining the rights and obligations of each with respect to the use of the Facilities.

9.4.6. If the Member is unable to sell its entire Facility Participation Percentage, then it shall remain liable for its pro rata share of Project Costs attributable to its remaining Facility Participation Percentage.

9.5. Sale of Facility. A ROY Facility may only be sold or otherwise disposed of upon the unanimous vote of all Directors for Members with a Facility Participation Percentage in that Facility.

9.6. A member cannot hypothecate its General Membership Percentage or its Facility(s) Participation Percentages.

## 10. MISCELLANEOUS PROVISIONS.

10.1. Effective Date. This Agreement shall take effect and become binding on the Members upon the date that all approvals of the Members' governing bodies have been obtained ("Effective Date"). The term of this Agreement is perpetual and shall continue in full force and effect until mutually terminated as provided above or by a court of law.

10.2. Termination of Agreement. This Agreement shall terminate upon adoption of a written resolution authorizing termination by the governing body of each Member. No termination of this Agreement shall be effective while the Authority has bonds, notes, or other obligations outstanding, unless provision for full payment of such

obligations, by escrow or otherwise, has been made pursuant to the terms of said obligation.

- 10.3. Assets Held in Trust. All assets and properties of the Authority shall be held in trust for the purposes provided for in this Agreement, including the payment of liabilities of the Authority.
- 10.4. Distribution of Assets. In the event this Agreement is terminated or deemed invalid pursuant to Section 11, ownership of all Facilities and other real or personal property associated with the Facilities owned by the Authority shall be conveyed to those governmental entities who are Members of the Authority immediately prior to such termination in accordance with their Facility Participation Percentage. Other real or personal property of the Authority not associated with a Facility shall be distributed, or sold and the funds distributed to those governmental entities who are Members of the Authority immediately prior to such termination in accordance with their General Participation Percentage Notwithstanding the forgoing, the Members may by unanimous vote of the Board, otherwise provide for distribution of the assets or interests of the Authority to any successor of the Authority, or for any alternative disposition among the Members or to third parties upon payment of adequate consideration therefore.
- 10.5. Negotiable Instruments. All checks, drafts or other orders for payment of money and all notes, or other evidence of indebtedness issued in the name of the Authority, shall be signed by such officer or officers, agent or agents, employee or employees of the Authority, and in such manner as, from time to time, shall be determined by resolution of the Board.
- 10.6. Deposits. All funds of the Authority shall be deposited, from time to time, to the credit of the Authority, pursuant to law, in such bank or banks as the Board may select.
- 10.7. Non-Delegation of Governmental Powers. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by any Member, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of any Member or statutory debt limitation including, without limitation, Article X, Section 20, or Article XI, Sections 1, 2 or 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of funds of any Member, nor shall any provision of this Agreement restrict the future issuance of bonds or obligations payable from any class or source of funds of a Member. Without limiting the generality of the foregoing, pursuant to Section 29-1-204.2(5), C.R.S., the notes and other obligations of the Authority shall not constitute the debts, liabilities, or obligations of the Members.

## 10.8. Member Specific Financing Provisions:

10.8.1. Sole Obligation of Aurora Utility Enterprise. This Agreement shall never constitute a general obligation or other indebtedness of the City of Aurora (“Aurora”), or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of Aurora within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of Aurora.

10.8.1.1. In the event of a default by Aurora’s Utility Enterprise of any of its obligations under this Agreement, Seller shall have no recourse for any amounts owed to it against any funds or revenues 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 Aurora 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 Agreement shall be construed as creating a lien upon any revenues of Aurora’s Utility Enterprise or Aurora.

10.8.2. 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 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 Agreement or appropriated funds may not be expended due to City Charter spending limitations, then all rights and obligations of Colorado Springs under this Agreement will terminate, and Colorado Springs will thereafter have no liability for compensation or damages to the other Members or the Authority in excess of Colorado Springs’ authorized appropriation for this Agreement or the applicable spending limit, whichever is less. Colorado Springs will notify the Parties as soon as reasonably practicable in the event of non-appropriation or in the other Members and the Authority in the event a spending limitation becomes applicable. The funds appropriated for this Agreement are equal to or exceed the contract amount for the year in which this Agreement was executed. For any payments to be made under this Agreement in subsequent fiscal years, if any, Colorado Springs will notify the other Members and the Authority of the

appropriation of funds for such payment after the adoption of Colorado Springs' annual appropriation ordinance for those years.

10.8.3. 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 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 Agreement.

10.8.4. Sole Obligation of Pueblo West Metropolitan District's Water and Wastewater Enterprise. Notwithstanding anything herein to the contrary, all financial obligations of the Pueblo West Metropolitan District pursuant to this Purchase IGA shall be the sole obligations of the Pueblo West Metropolitan District acting through the Pueblo West Metropolitan District's Water and Wastewater Utility Enterprise, and not the financial obligations or other indebtedness of the Pueblo West Metropolitan District. Nothing herein constitutes, nor will be deemed to constitute, the creation of a debt or multi-year fiscal obligation of the District, or an obligation of future appropriations by the Board of Directors of the District, contrary to Article X, § 20 of the Colorado Constitution or any other constitutional or statutory debt limitation.

10.9. The Authority and each of its Members shall either support or take no position in any process or proceedings seeking to obtain permits and other authorizations from any federal, state, or local governmental entity necessary for construction and operation of a ROY Project.

10.10. Notices. If under the terms of this Agreement, or as needed in the regular business of the Authority, notice is to be provided to any Member, said notice shall be deemed provided upon personal delivery or three (3) business days after the mailing of the same by registered or certified mail, upon receipt requested. The names and address to whom the notice is to be sent may be modified by the affected Member by notice in writing to the Authority. Until so modified, the persons to receive notice are as follows:

**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

Austin Hamre  
Hamre, Rodriguez, Ostrander & Prescott, P.C.  
188 Inverness Drive West, Suite 430  
Englewood, Colorado 80112-5204

**Colorado Springs:**

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

United States Postal Service Address:  
Colorado Springs Utilities  
ATTN: System Planning and Projects Officer  
P.O. Box 1103,  
Colorado Springs, CO 80947-0950

City Attorney's Office-Utilities Division  
Courier Service Address:  
City of Colorado Springs  
30 South Nevada, Suite 501

Colorado Springs, Colorado 80903

United States Postal Service Address  
P.O. Box 1575, Mail Code 510  
Colorado Springs, Colorado 80901-1575

**Pueblo Water:**

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

William A. Paddock  
Karl D. Ohlsen  
Carlson Hammond & Paddock, LLC  
1900 N. Grant Street, Suite 1200  
Denver, CO 80203

**Pueblo West:**

Christian J. Heyn, Manager  
Pueblo West Metropolitan District  
63 E. Spaulding Ave.  
Pueblo West, CO 81007

Robert F.T. Krassa  
Krassa & Miller, LLC  
2300 Canyon Blvd. Suite 2  
Boulder, CO 80302

**Southeastern:**

Leann Noga, Executive Director  
Southeastern Colorado Water Activity Enterprise  
31717 United Avenue  
Pueblo, CO 81001

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



**Fountain:**

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

Andrea Benson  
Alperstein & Covell, P.C.  
2299 Pearl Street, Suite 400-CBoulder, CO 80304

- 10.11. Binding Effect and Assignability. The terms and obligations contained in this Agreement shall be binding upon, and shall inure to the benefit of, the Members, and to their respective successors and assigns, if any. Nevertheless, no Member may assign their respective rights or delegate their respective duties under this Agreement except as provided herein.
- 10.12. No Third-Party Beneficiaries. This Agreement is intended to describe the rights and responsibilities of the Members, and the Authority. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto. The rights of non-Members are limited to the terms of their contract with the Authority or with a Member of the Authority.
- 10.13. Severability or Reform of Invalid Provisions. The provisions of this Agreement are interrelated and interdependent. Wherever possible each provision of this Agreement shall be interpreted and implemented in such manner as to be effective and valid under applicable law. If any provision of this Agreement is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect unless the remaining provisions' effectiveness is dependent upon the invalid or unenforceable provision. The Members agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision. If the Members are unable to agree upon revised terms that meet this requirement, then the Agreement shall terminate, and the assets of the authority will be dispersed among the Members in accordance with Section 10.4.
- 10.14. Amendments. Amendments to this Agreement shall only be effective if entered into: (1) in accordance with Section 5.1.8.1. above, and (2) with the same formality as this Agreement, including approval by the governing body of each Member.
- 10.15. No Waiver of Governmental Immunity. The Members understand and agree that each of the Members and their officers and employees are relying on, and do not waive or intend to waive, by any provision of this Agreement, any right, immunity,

or protection provided by the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., as it is from time to time amended, or otherwise available to the Members and their officers or employees.

- 10.16. Governing Law and Venue. This Agreement and its application shall be construed in accordance with the laws of the State of Colorado. Venue for the resolution of any dispute arising under this Agreement shall be the District Court for the County of Pueblo, State of Colorado.
- 10.17. No Assumption of Obligations. Except as expressly provided in this Agreement, Member shall have any authority to act for or assume any obligations or responsibilities on behalf of another Member. This Agreement creates an independent political subdivision of the State and shall not be construed as creating a common law or statutory partnership or any other relationship whereby one Member shall be held liable for the acts or omissions of the other.
- 10.18. Indemnification: Each Member agrees to be responsible for its own liability incurred as a result of its participation in this Agreement. In the event any claim is litigated, each Member will be responsible for its own expenses of litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability of Members under the Colorado Governmental Immunity Act, Sections 24-10-101, *et. seq.*, C.R.S., and Article XI of the Colorado Constitution.
- 10.19. Multiple Originals. This Agreement may be simultaneously executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same Agreement.
- 10.20. No Construction Against Drafter. This Agreement has been prepared by the combined efforts of the Members and their respective legal counsel and, accordingly, the Members agree there shall be no construction against the drafter of this Agreement should any dispute arise.
- 10.21. The provisions of this Agreement shall be reasonably and liberally construed to achieve the intent of the Parties.
- 10.22. Headings for Convenience Only. Section headings and titles contained herein are intended for convenience of reference only and are not intended to define, limit, or describe the scope of intent of any portion of this Agreement.
- 10.23. Authority of the Members. The Members each affirm and represent that they have the full power and authority to execute this Agreement and thereafter perform all the terms and conditions set forth herein. Each Member hereto represents and warrants

to the other that the execution, delivery, and performance of this Agreement has been duly authorized by it, and that upon execution and delivery, this Agreement will constitute a legal, valid, and binding obligation, enforceable against it in accordance with the terms of this Agreement.

10.24. No Public Utility. Nothing contained in this Agreement shall be construed as an intent by any of the Members to subject any of them to regulation as a “public utility” as defined in the Colorado Public Utilities Code or any other applicable law.

10.25. No Costs or Fees. In the event of litigation, arbitration or other dispute resolution process arising out of this Agreement, the Members agree that each shall pay its own costs and expenses including attorney fees.

**City of Colorado Springs.**  
on behalf of its enterprise  
**Colorado Springs Utilities**

\_\_\_\_\_  
Travas Deal,  
Chief Executive Officer

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Colorado Springs City Attorney  
Michael J. Gustafson

\_\_\_\_\_  
Date

STATE OF COLORADO   )  
  ) ss  
COUNTY OF EL PASO   )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Travas Deal, Chief Executive Officer, acting on behalf of the City of Colorado Springs, Colorado.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

**Board of Water Works of Pueblo, Colorado**

\_\_\_\_\_  
Chris Woodka, President

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Secretary-Treasurer

\_\_\_\_\_  
Date

STATE OF COLORADO    )  
  ) ss  
COUNTY OF PUEBLO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025,  
by Chris Woodka, President, acting on behalf of the Board of Water Works of Pueblo,  
Colorado.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

**Southeastern Colorado Water Activity Enterprise**

\_\_\_\_\_  
Bill Long, President

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
Leann Noga  
Secretary/Treasurer

\_\_\_\_\_  
Date

Approved as to form:

\_\_\_\_\_  
Lee E. Miller, General Counsel

\_\_\_\_\_  
Date

STATE OF COLORADO    )  
                                      ) ss  
COUNTY OF PUEBLO    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2025,  
by Bill Long, President, acting on behalf of the Southeastern Colorado Water Activity  
Enterprise.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

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

\_\_\_\_\_  
Sharon Thompson, Mayor

\_\_\_\_\_  
Date

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Date

STATE OF COLORADO    )  
                                      ) ss  
COUNTY OF EL PASO    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Sharon Thompson, Mayor, acting on behalf of the City of Fountain, acting by and through the City of Fountain Electric, Water and Wastewater Utility Enterprise.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

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

\_\_\_\_\_  
Michael Coffman, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Kadee Rodriguez, City Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM FOR AURORA:

\_\_\_\_\_  
Marshall Brown,  
General Manager, Aurora Water

\_\_\_\_\_  
Date

\_\_\_\_\_  
Steve Cann, Assistant City Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
ACS #

\_\_\_\_\_  
Austin Hamre, Special Counsel

\_\_\_\_\_  
Date

STATE OF COLORADO     )  
  ) ss  
COUNTY OF ARAPAHOE    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2025, by Michael Coffman, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)

**PUEBLO WEST METROPOLITAN DISTRICT**

\_\_\_\_\_  
Doug Proal, President

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Date

APPROVED AS TO FORM FOR PUEBLO WEST:

\_\_\_\_\_  
, Attorney

\_\_\_\_\_  
Date

STATE OF COLORADO     )  
  ) ss  
COUNTY OF PUEBLO     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2025, by Doug Proal, President, Pueblo West Metropolitan District

Witness my hand and official seal. \_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

(SEAL)



**Exhibit A**  
**Establishing Agreement**  
**For**  
**ROY WATER AUTHORITY**

**ROY Clarification Letter dated November 7, 2006**

November 7, 2006

Jerry Forte  
Colorado Springs Utilities  
121 South Tejon Street, Fourth Floor  
P.O. Box 1103, Mail Code 946  
Colorado Springs, CO 80947-0946

Larry Patterson  
City of Fountain  
116 South Main Street  
Fountain, CO 80817

Alan Hamel  
Board of Water Works of Pueblo, Colorado  
P.O. Box 400  
Pueblo, CO 81002

Peter Binney  
City of Aurora  
15151 East Alameda Parkway  
Suite 3600  
Aurora, CO 80012-1555

Jim Broderick  
Southeastern Colorado Water Conservancy  
District  
31717 United Avenue  
Pueblo, CO 81001

Dave Galli  
City of Pueblo  
One City Hall Place  
Pueblo, CO 81003

**Re: IGA Letter Agreement - Arkansas River Flow Management Program**

This letter concerns the *Intergovernmental Agreement among the City of Pueblo, the City of Aurora, the Southeastern Colorado Water Conservancy District, the City of Fountain, the City of Colorado Springs, and the Board of Water Works of Pueblo, Colorado*, which was signed by the Parties in May 1, 2004 ("May 2004 IGA"). It also applies to the *Intergovernmental Agreement among the City of Pueblo, the City of Colorado Springs, and the Board of Water Works of Pueblo, Colorado*, entered into on March 1, 2004 ("March 2004 IGA"). These two Intergovernmental Agreements are collectively referred to in this Letter Agreement as the "IGAs", and the parties to the IGAs are the "Parties" to this letter. In part, the IGAs require certain of the Parties to forego the in-priority exercise of certain water rights, defined in the IGAs as the "Subject Exchanges," in order to protect certain levels of water flow in the Arkansas River from near Pueblo Reservoir downstream to the confluence of Fountain Creek and the Arkansas River. The water not diverted to comply with the Flow Management Program is defined in the IGAs as the "Foregone Diversions." The IGAs contemplate that the Parties that forego diversions of the Subject Exchanges would recapture those Foregone Diversions at or below the confluence of the Arkansas River and Fountain Creek ("ROY Storage") and then move the water back upstream by exchange when flow conditions permit. A question has now arisen between the Parties concerning whether, under the IGAs, exchanges from ROY Storage of Foregone Diversions from the Subject Exchanges are subject to curtailment by the priority of the RICD

water right obtained by the City of Pueblo in Case No. 01CW160 and whether Foregone Diversions include all water not diverted under any future exchanges and changes of water rights of the Parties. The purpose of this letter is to clarify the Parties' understanding of what exchanges and changes of water rights operated by the Parties will be subject to curtailment by the priority of the RICD water right obtained by the City of Pueblo in Case No. 01CW160 and what water constitutes Foregone Diversions. This Letter Agreement is intended only to clarify operation of the IGAs as between the Parties and may not be enforced by any non-party to this Letter Agreement. Additionally, this Letter Agreement is not intended to amend or modify the IGAs in any respect.

The IGAs establish the Arkansas River Flow Management Program ("Flow Management Program"), which is a program to protect certain levels of stream flows in the segment of the Arkansas River beginning at the Above Pueblo Gage near Pueblo Reservoir and continuing downstream to the confluence of the Arkansas River and Fountain Creek. The Flow Management Program is described and defined in the IGAs.

The Subject Exchanges were first defined in Paragraph I.A. of the March 2004 IGA. The Subject Exchanges as defined in the March 2004 IGA are part of the Subject Exchanges defined in Paragraph I.A. of the May 2004 IGA, which states:

Exhibit 1 to this Agreement, the Arkansas River Flow Management Program ("Flow Management Program"), shall apply to (1) all exchanges of water rights of the Parties, *regardless of when initiated or decreed*, and (2) changes of water rights from points of diversion below the existing "Above Pueblo Gage" which changes are decreed *on or after November 3, 1986*, except for the decree in Case No. 84CW179, entered on November 10, 1987, and made final on November 10, 1990, that reduce flows in the Arkansas River in the river segment between the Above Pueblo Gage and the confluence of the Arkansas River and Fountain Creek. Such exchanges or changes of water rights owned, used or operated by the Parties are collectively referred to in the Flow Management Program and in this Agreement as the "Subject Exchanges." *The Parties shall operate the Subject Exchanges in accordance with the provisions of the Flow Management Program.*

(Emphasis supplied).

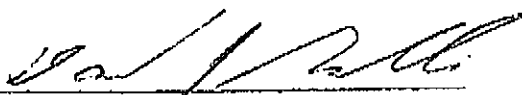
The Foregone Diversions are defined by Paragraph II.A. of the May 2004 IGA to mean water, the in-priority diversion or exchange of which is annually foregone by the Parties under the Subject Exchanges in order to accommodate the Flow Management Program. To resolve the question whether Foregone Diversions include all water not diverted under any exchanges and changes of water rights of the Parties decreed on applications pending at the time of the May 2004 IGA or filed thereafter by any Party, the Parties agree as follows: During the time of day

## Exhibit A - Page 3

the RICD is in effect, Foregone Diversions will be construed to mean only all water not diverted to comply with the Flow Management Program under changes of water rights or exchanges of the Parties decreed on applications filed before or during 2001 with appropriation dates senior to the RICD, and will include such water rights in pending Cases No. 01CW108, 01CW146 and 01CW151, Water Division No. 2, that are decreed with appropriation dates senior to the RICD. During the time of day that the RICD is not in effect, Foregone Diversions will be construed to mean both (a) all water not diverted to comply with the Flow Management Program under changes of water rights or exchanges of the Parties decreed on applications filed before or during 2001 with appropriation dates that are senior to the RICD and (b) all water not diverted to comply with the Flow Management Program for the nighttime hours (10pm to 6am) under changes of water rights and exchanges decreed on applications filed during 2001 through 2006 that are junior to the RICD and, if ultimately decreed, senior to the Colorado Water Conservation Board's proposed Minimum Stream Flow Water Rights for the Arkansas River for two stream reaches of the Arkansas River between Pueblo Reservoir and the confluence of the Arkansas River and Fountain Creek.

To resolve the question of whether the exchange of Foregone Diversions, as clarified above, from the Subject Exchanges is subject to curtailment by the priority of the RICD water right of the City of Pueblo decreed in Case No. 01CW160, District Court, Water Divisions No. 2, the Parties agree as follows:

1. The IGA Parties did not intend to subject the exchanges of Foregone Diversions, as clarified above, from ROY Storage ("ROY Exchanges") to the priority for the City of Pueblo's RICD water right decreed in Case No. 01CW160, regardless of when the ROY Exchange is initiated or decreed.
2. The IGA Parties intended to subject the ROY Exchanges to the limitations of the Flow Management Program.
3. The IGA Parties intended to subject to the priority of the City of Pueblo's RICD water right decreed in Case No. 01CW160: (a) all exchanges of water decreed with appropriation dates junior to the RICD, except the ROY Exchanges, that would decrease the flow below the decreed amounts of the RICD in the reach of the RICD; and (b) all changes of water rights decreed in applications filed after 2001 that would decrease the flow below the decreed amounts of the RICD in the reach of the RICD.

  
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City Manager  
City of Pueblo

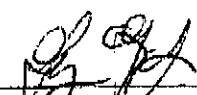
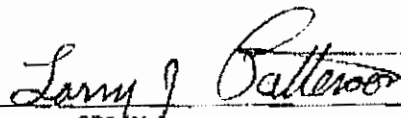
  
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Chief Executive Officer  
Colorado Springs Utilities  
City of Colorado Springs

Exhibit A - Page 4

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Director of Utilities  
City of Aurora



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Director of Utilities  
City of Fountain

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Executive Director  
Southeastern Colorado Water  
Conservancy District

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Executive Director  
Board of Water Works of Pueblo,  
Colorado

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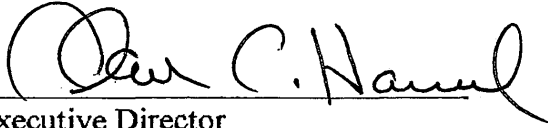
Director of Utilities  
City of Aurora

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Executive Director  
Southeastern Colorado Water  
Conservancy District

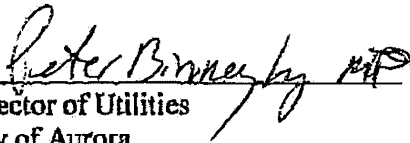
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Director of Utilities  
City of Fountain



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Executive Director  
Board of Water Works of Pueblo,  
Colorado

  
Director of Utilities  
City of Aurora

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Director of Utilities  
City of Fountain

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Executive Director  
Southeastern Colorado Water  
Conservancy District

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Executive Director  
Board of Water Works of Pueblo,  
Colorado

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**Director of Utilities  
City of Aurora**

*James W. Brockway*  
Executive Director  
Southeastern Colorado Water  
Conservancy District

**Director of Utilities**  
**City of Fountain**

Executive Director  
Board of Water Works of Pueblo,  
Colorado



**Exhibit B**  
**Establishing Agreement**  
**For**  
**ROY WATER AUTHORITY**

Initial Directors and Alternate Directors

<b>Member</b>	<b>Initial Director</b>	<b>Alternate Director</b>
Aurora Water	Rick Kienitz	Alexandra Davis
Colorado Springs	Scott Lorenz	Katie Garrett
Fountain	Taylor T. Murphy, P.E.	Dan Blakenship
Pueblo Water	Ryan Dalton	Alan Ward
Pueblo West	Elissa Velsquez	Jeffery DeHerrera
Southeastern	Leeann Noga	Lee Miller