INTERGOVERNMENTAL AGREEMENT – RESTORATION OF YIELD COST SHARING AMONG THE CITY OF AURORA, THE SOUTHEASTERN COLORADO WATER CONSERVANCY DISTRICT, THE CITY OF FOUNTAIN, THE CITY OF COLORADO SPRINGS, THE BOARD OF WATER WORKS OF PUEBLO, COLORADO, AND THE PUEBLO WEST METROPOLITAN DISTRICT

This Intergovernmental Agreement ("Agreement") is entered into by and among the City of Aurora, Colorado, acting by and through its Utility Enterprise ("Aurora"), the Southeastern Colorado Water Conservancy District ("District"), the City of Fountain ("Fountain"), the City of Colorado Springs ("Colorado Springs"), the Board of Water Works of Pueblo, Colorado ("Board"), and Pueblo West Metropolitan District ("Pueblo West"). Together these entities are referred to as the "Parties," and individually by name or "Party."

RECITALS

A. This Agreement is entered into pursuant to sections 29-1-201through 203 C.R.S. Each of the Parties 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 District is a Colorado Water Conservancy District established under section 37-45-101 et seq., C.R.S. The Board is established by the charter of the City of Pueblo, which was adopted pursuant to Article XX of the Colorado Constitution. Pueblo West is a special district established pursuant to Article 1, Title 32, C.R.S.

B. Each of the Parties is the owner and beneficiary of absolute and conditional water rights that were lawfully acquired and are entitled to be recognized and protected. In addition, each of the Parties is a signatory to and beneficiary of numerous operating agreements and stipulations, the burdens and benefits of which must be enforced and protected.

C. The Board, Colorado Springs, and the City of Pueblo entered into an Intergovernmental Agreement dated March 1, 2004 ("March 1st IGA"), that addresses numerous issues of concern among those entities.

D. Pueblo West, the Board of County Commissioners of Pueblo County, Colorado Springs, and the Board entered into a Settlement Agreement dated November 23, 2010, that addresses numerous issues of concern among those entities.

E. Each of the Parties except Pueblo West is a signatory to the May 27, 2004, Inter-governmental Agreement ("May 2004 IGA") with the City of Pueblo that establishes, among other things, the Restoration of Yield Program ("ROY"). The

purpose of this Agreement is to set forth the manner of allocation of costs for the ROY Program among the Parties and any other participants.

F. By letter dated March 31, 2011, all of the Parties except Pueblo West entered into an "IGA Operational Clarification Letter – Arkansas River Flow Management Program and Pueblo West" ("Pueblo West Clarification Letter"). The purposes of the letter were: (1) to clarify the signatories understanding of the manner of determining the flows at the "Above Pueblo Location" for the purpose of determining the extent of any required reduction of the Subject Exchanges, to meet the Recreation Flows defined in the IGAs; (2) to acknowledge Pueblo West's role in the Flow Management Committee; and (3) to acknowledge Pueblo West's role in ROY Storage. Pursuant to that letter the signatories agreed that Pueblo West (1) may attend and participate fully as a non-voting member in all meetings of the Flow Management Committee established under the May 2004 IGA; and (2) may participate in the ROY and the ROY Planning Subcommittee to the extent described in paragraphs 3.c and d to Exhibit 1 to the Pueblo West Clarification Letter. Exhibit 1 is the Settlement Agreement dated November 23, 2010 among Pueblo West, the Board of County Commissioners of Pueblo County, Colorado Springs, and the Board. Pursuant to the Pueblo West Clarification Letter, the signatories agreed that as permanent ROY storage facilities are planned, Pueblo West will be extended the option to participate in the use of the ROY storage facility with the cost to Pueblo West determined on a pro rata basis.

AGREEMENT

NOW, THEREFORE, and in consideration for the keeping and performance of the mutual agreements contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. Restoration of Yield

A. The May 2004 IGA and/or the Pueblo West Clarification Letter establishes the following principles that apply to the ROY Storage program and to this Agreement:

1. The Parties will cooperate to provide for the recapture (diversion) and storage for later use of all water, the in-priority diversion or exchange of which is annually foregone in order to accommodate the Flow Management Program ("Foregone Diversions") established under the May 2004 IGA. Downstream diversion and storage facilities to recapture and store Foregone Diversions must be located downstream of the Combined Flow Location as defined in the May 2004 IGA. Downstream storage for the ROY ("ROY Storage") should have, at a minimum, sufficient capacity

to recapture (divert), store, and release the Foregone Diversions so as to permit the exchange of that water into Pueblo Reservoir or other upstream locations when river conditions and the Flow Management Program so allow.

2. The ROY Storage program must be designed to assure that all of the Parties hereto are afforded the means and opportunity to recapture Foregone Diversions and to apply those water rights to decreed beneficial uses.

3. ROY Storage can include, as example and without limitation, (1) the construction of lined gravel pit storage near the Arkansas River upstream from the headgate of the Colorado Canal; (2) the use, to the extent legally permissible, of any Party's individual shareholder account in the Colorado Canal Companies to store water in Lake Meredith; (3) the use, to the extent legally permissible, of a pump and pipeline to deliver water to and from any Party's individual shareholder account in Lake Meredith; and (4) other off-channel storage.

4. The participants in ROY Storage (Colorado Springs, the Board, Aurora, Fountain, and the District) ("ROY Participants"), through the ROY Planning Subcommittee described in Paragraph II.F of the May 2004 IGA, will agree upon (1) the method to estimate the number of acre-feet of Foregone Diversions resulting from the Flow Management Program; (2) any additional quantity of storage desired by each ROY Participant; and (3) will thereafter agree upon a participation percentage in any ROY Storage Project.

5. When the Parties have agreed upon each Party's respective percentage participation in any ROY Storage Project, they will then agree upon the cost allocation for each Party's participation percentage in the ROY Storage Project.

6. The Parties have established a ROY Planning Subcommittee ("Subcommittee") of the Flow Management Committee described in Exhibit 1 of the May 2004 IGA that will undertake cooperative investigations and planning activities designed to identify the most cost effective means to accomplish the ROY Storage objectives of this Agreement and will make recommendations to the ROY Participants. Each ROY Participant may have two members on the Subcommittee. The City of Pueblo and Pueblo West may each have one member on the Subcommittee. The Subcommittee will act by consensus of the parties that intend to participate in the recommended ROY Storage project(s).

7. Each Party is entitled to choose to participate in a ROY Storage project at a level it deems necessary but in no event will a Party's decision regarding participation or non-participation relieve that Party of its other obligations under this Agreement.

8. To the extent that the parties agree upon a ROY Storage project and an allocation of costs for each Party's respective participation as described in part III below, then each such participant making a Request for Capacity therein will use good faith efforts to seek approval, and where necessary, appropriation by its governing body of the funding necessary for its respective share of the costs. Likewise, to the extent that the participants in a Regional Water Management Program, described in Section VI of the May 2004 IGA, agree upon a specific program, each participant in that specific program will use its good faith efforts to seek approval, and where necessary, appropriation by its governing body of the funding such a program commensurate with the benefits received by the participant. In no event, however, does this Agreement require a Party to appropriate funds for a particular purpose or create debt or multi-year fiscal obligations for any Party.

II. General Cost Sharing Provisions

A. The Parties agree that all of the costs for the Subcommittee will be allocated as follows:

1. If Pueblo West chooses to participate in the Subcommittee, as evidenced by its execution of this agreement by August 31, 2015, then the costs will be allocated as follows: the District – 4.76%; Fountain – 4.76%; Aurora – 28.57%; Colorado Springs – 28.57%; Board – 28.58%; and Pueblo West – 4.76%.

2. If Pueblo West chooses not to participate in the Subcommittee, as evidenced by its failure to execute this agreement by August 31, 2015, then the costs will be allocated as follows: District – 5%; Fountain – 5%; Aurora – 30%; Colorado Springs – 30%; Board – 30%.

B. The costs to be allocated on the percentages in paragraph II.A include, but are not limited to, the expense of estimating the number of acre-feet of Foregone Diversions by all Parties resulting from the Flow Management Program, the quantity of storage desired by each Party, cooperative activities undertaken to investigate and plan to identify the most cost effective means to accomplish the ROY Storage objectives of the May 2004 IGA and the storage need for Pueblo West's foregone diversions, preliminary evaluation of the feasibility of individual ROY Storage projects, and making recommendations to the

Parties. For purposes of this paragraph "cooperative activities" refers to those activities the ROY Planning Subcommittee agrees to undertake.

C. Each Party is responsible for its own attorney's fees incurred in the ROY Exchange Application in Case No. 06CW120. Unless otherwise unanimously agreed, all parties, through their attorneys, will fully participate in settlement discussions, trial preparation and trial in this of this case. The Parties agree to share in the fees and costs of their shared expert witnesses, reports and testimony supporting the ROY Exchange Application. The persons or firm hired to provide the shared expert testimony and reports may be changed with the consent of the Parties. All work by the Parties' shared expert(s) in support the ROY Exchange Application will be allocated as follows: will be allocated as follows: the District – 5%; Fountain – 5%; Aurora – 30%; Colorado Springs – 30%; the Board – 30%.

III. ROY Storage Project Specific Cost Allocation

A. When the Subcommittee has identified a ROY Storage project and made a preliminary determination that the project is feasible, each Party that is participating in the cost sharing under II A. above will have the opportunity to participate in the storage project and will be given written notice of the opportunity to participate in the storage project. The notice of opportunity to participate will be in the form of a "Request for Capacity" from the Subcommittee to all such parties. The Request for Capacity must generally describe the proposed ROY Storage project, including its point(s) of diversion, anticipated rate(s) of diversion, location and maximum size of storage, place of discharge, anticipated rate of discharge, and any other information the ROY Planning Committee wishes to include.

B. Within 45 days, or such longer period as stated in the Request for Capacity, each such Party may submit a written request for capacity stating the quantity of storage in acre-feet, the rate of diversion, and the rate of release the Party would like to acquire in the storage project. If the requests for capacity exceed the estimated maximum storage volume, rate of diversion and/or rate of release, then the parties making requests for capacity will attempt to agree among themselves how to allocate the estimated maximum storage volume, and diversion and release capacity. If the parties requesting capacity are unable to agree among themselves on how to allocate these capacities, then each Party will be allocated a pro rata share. A requesting Party's pro rata share will be determined as a percentage by dividing the Party's cost sharing percentage under paragraph II. A. by the sum of the cost sharing percentages of each Party requesting capacity.

C. The details for the project, including but not limited to its planning, design, permitting, financing, construction, and operation will be governed by a separate written agreement(s) among the project participants. Unless otherwise agreed in writing, all costs for a particular ROY Storage Project will be allocated pro rata based upon their paragraph III.B. percentage in that storage project. A Party making a Request for Capacity that is not able to secure funds for participation in accordance with paragraph I.8 above will not be entitled to participate in the project.

IV. Transfer of Interest and Termination

A. **Transfer or Assignment of Capacity.** A Party participating in a ROY Storage project has the right to assign or transfer its interest in a ROY Storage project provided that such transfer or assignment is to a political subdivision of the State of Colorado as defined in Section 29-1-202(2), C.R.S.

1. Transfer or Assignment to Water Authority. If the transfer or assignment is to a joint water authority, water activity enterprise or other similar organization in which the assigning Party has and will maintain the controlling interest then upon confirmation of these facts, the participating non-transferring parties must approve the assignment. The Party proposing such a transfer or assignment shall provide the other participating Parties with ninety (90) days' advance written notice of its intent to transfer or assign. The notice shall identify the entity to who the capacity is to be transferred and the amount of capacity to be transferred. It shall also provide a complete statement of the terms on which the transfer is proposed.

2. Transfer or Assignment to Other Entity. Any other assignment or transfer must be approved by the participating non-transferring Parties, which approval must not be unreasonably withheld. The assignee or transferee must have established financial responsibility and must own at least twenty-five percent (25%) of the original transferring Party's capacity. In addition, in such an instance, the Party proposing such a transfer must first offer to transfer or assign such interests to the other Parties to this Agreement on the same terms and conditions as offered to such third party, or for a cash equivalent, and give the other Parties to this Agreement sixty (60) days from the date of such offer within which to accept or reject the offer. The other Parties to this Agreement will not be entitled to such right of first refusal in respect of any assignment or transfer of all (but not less than all) of the Party's rights under this Agreement to a third party pursuant to this section if such assignment or transfer is effected contemporaneously with a transfer or sale to such third party of all or such portion of the assigning Party's water rights as are to be diverted,

conveyed, and/or stored by such third party in exercise of its usage rights hereunder. The Parties electing to exercise the right of first refusal must acquire one-hundred percent (100%) of the offered interest and are not entitled to acquire any lesser portion thereof under this right of first refusal. If the offered interests are not transferred at the offering price to other Parties to this Agreement during the sixty (60) day period after the notice of intent to exercise its right of first refusal (or such longer period agreed to by the offering Party), then during the next ensuing one-hundred eighty (180) days, the offering Party may sell the offered interests to a third-party political subdivision of the State on the offered terms or conditions, a cash equivalent, or terms and conditions that are more generous to the offering Party. No subsequent assignment or transfer may be made in any amount less than twenty-five percent (25%) of the original assignors'/transferors' capacity.

3. General Reorganization of Municipal Government. The above provisions do not apply to a general reorganization of the government of Aurora, Colorado Springs, the Board, the District, Fountain, or Pueblo West that results in the transfer of title to another existing or newly-created entity charged with carrying out substantially the same responsibilities as its predecessor. Such transfers are expressly allowed hereunder.

4. Continuing Obligations. Any assignee/transferee of interests is bound by the terms and conditions of this Agreement. The original assignor/-transferor remains liable for the obligations under this Agreement to the extent such obligations are not fulfilled by its transferees and assignees.

B. Termination.

1. Any Party may elect to terminate its participation in this Agreement by providing 30-days advanced written notice to the remaining Parties. If a Party terminates its participation in the May 2004 IGA, that Party will be deemed to have terminated its rights under this Agreement. If the November 23, 2010 Settlement Agreement is terminated, all of Pueblo West's rights under this Agreement will terminate.

2. Upon termination by a Party, the terminating Party remains liable for its share of all costs incurred under this Agreement prior to its notice of termination. A terminating Party also remains liable for its pro rata share of the costs for operation, maintenance, and repair of any ROY Storage project in which it continues to owns capacity. The terminating Party forfeits all rights to use its capacity in any ROY Storage project upon the effective date of its termination. The terminating Party will have 90-days after the effective date of its termination to release any of its water stored

in a ROY Storage project. At the end of said 90 days, any water not so released will be forfeited and will be divided pro rata among the remaining participants in the ROY Storage project.

3. A terminating Party may assign or transfer its capacity in a ROY Storage project to any other Party, and upon such assignment or transfer, the terminating Party will cease to be liable for any on-going costs for the ROY Storage project.

4. A terminating Party may assign or transfer its interest to a third-party only in accordance with the provision of paragraph IV.A. Upon completion of such assignment or transfer the terminating Party will cease to be liable for any on-going costs for the ROY Storage project.

V. Other Provisions

A. **Effective Date.** This Agreement becomes effective upon date of the approval by the governing body of the last Party to approve this Agreement ("Effective Date"), and remains in effect as written unless modified by the Parties in writing.

B. **Notices.** All notices and other communications that are required or permitted to be given to the Parties under this Agreement is sufficient in all respects if given in writing and delivered in person, by express courier, or by First Class U.S. Mail, postage prepaid. Notice delivered in person or by courier is effective upon such delivery; notice provided through U.S. Mail is effective three days after deposit in the U.S. Mail. Notice must be given to the receiving party at the following addresses:

If to the Board:	Executive Director Board of Water Works of Pueblo, Colorado P.O. Box 400 Pueblo, CO 81002
and also to:	William A. Paddock Carlson, Hammond & Paddock, LLC 1900 Grant, Suite 1200 Denver, CO 80203
If to Colorado Springs:	Chief Executive Officer Colorado Springs Utilities 121 South Tejon Street, Fifth floor P.O. Box 1103, Mail Code 950 Colorado Springs, CO 80947-0950

and also to	City Attorney/General Counsel City of Colorado Springs, Colorado 30 S. Nevada, Suite 501 P.O. Box 1575/MC 510 Colorado Springs, CO 80901-1575
If to Fountain:	Director of Utilities City of Fountain 116 South Main Street Fountain, CO 80817
and also to:	Cynthia F. Covell Alperstein & Covell P.C. 1600 Broadway, Suite 900 Denver, CO 80202
If to the District:	Executive Director Southeastern Colorado Water Conservancy District 31717 United Avenue Pueblo, CO 81001
and also to:	Lee E. Miller, General Counsel Southeastern Colorado Water Conservancy District P.O. Box 261088 Lakewood, CO 80226-1088
If to Aurora:	Director of Utilities 15151 East Alameda Parkway Suite 3600 Aurora, CO 80012-1555
and also to:	Aurora City Attorney 15151 E. Alameda Parkway, Suite 5300 Aurora, Colorado 80012-1555

or to such other address as such party may have given to the other by notice pursuant to this Paragraph.

C. **No Costs or Attorney's Fees.** In the event of any litigation or other dispute resolution process arising out of this Agreement, the Parties agree that each is

responsible for its own costs and attorney's or other fees associated with any such action.

D. **Entire Agreement; Amendments.** The Parties recognize and acknowledge that there are numerous other agreements between and among them addressing certain issues that are also addressed in this Agreement and that nothing contained in this Agreement changes or modifies any of those other agreements. This Agreement (together with the Exhibits hereto, which constitute parts of this Agreement and which are hereby incorporated by this reference) constitutes the entire agreement between all the Parties relating to the subject matter hereof. All prior or contemporaneous oral agreements and discussions among all of the Parties or their respective agents or representatives relating to the subject hereof are merged into this Agreement. This Agreement may be altered, amended, or revoked only by an instrument in writing signed by all of the Parties. Email and all other electronic (including voice) communications from any Party in connection with this Agreement are for informational purposes only. No such communication is intended by any Party to constitute either an electronic record or an electronic signature, or to constitute any agreement by any Party to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

E. **Applicable Law.** This Agreement is governed by and construed according to the law of the State of Colorado.

F. **Waiver.** The failure of one of the Parties to insist upon the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach thereof shall not constitute a waiver of that or any other provision of this Agreement or limit that Party's, or any other Party's, right thereafter to enforce any provision or exercise any right.

G. **Captions.** All captions contained in this Agreement are for convenience only and shall not be deemed to be part of this Agreement.

H. **Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, constitute one agreement. Signatures may be provided by electronic means.

I. **Parties Bound by Agreement.** This Agreement is binding upon the Parties hereto and upon their respective legal representatives and successors. Notwithstanding the final and binding nature of this Agreement, the Parties understand and agree that the circumstances and conditions that have led to this Agreement may change and there is a recognition of this possibility and a commitment to negotiate in good faith if any Party believes that circumstances and conditions have substantially changed and that, as a result, an

alteration of the prospective rights and obligations imposed by this Agreement is appropriate.

J. **Construction.** All section, paragraph, and exhibit references used in this Agreement are to this Agreement unless otherwise specified.

K. **Authorizations.** The governing bodies of each of the Parties have authorized by appropriate action the execution of this Agreement.

L. **Dispute Resolution.** If a dispute arises between the Parties relating to this Agreement, the Parties will follow the Dispute Resolution provisions of the May 2004 IGA.

M. **No Third Party Beneficiaries.** This Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and does not confer any rights on any persons or entities not named as parties, and does not limit in any way the powers and responsibilities of the Parties or any other entity not a party hereto.

N. **Force Majeure.** Subject to the terms and conditions in this paragraph, no party to this Agreement is liable for any delay or failure to perform under this Agreement due solely to conditions or events of Force Majeure, specifically a) acts of God, b) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, c) sabotage, d) vandalism beyond that which can be reasonably prevented, e) terrorism, f) war, and g) riots provided that: A) the non performing Party gives the other Parties prompt written notice describing the particulars of the occurrence of the Force Majeure; B) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event or condition; and C) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Parties describing the actions taken to remedy the consequences of the Force Majeure event or condition. In the event of a change in municipal (or other local governmental entity), state or federal law or practice that prohibits or delays performance, the obligation to seek a remedy extends to making reasonable efforts to reform the Agreement in a manner consistent with the change that provides the Parties substantially the same benefits as this Agreement, provided, however, that no such reformation can increase the obligations of any of the Parties. In the event any delay or failure of performance on the part of the party claiming Force Majeure continues for an uninterrupted period of more than three hundred sixty-five (365) days from its occurrence or inception as noticed pursuant to this Agreement, all of the Parties not claiming Force Majeure may, at any time following the end of such one year period, terminate this Agreement upon written notice to the Party claiming Force Majeure, without

further obligation by any of the Parties; provided, however, that any such decision to terminate this Agreement is not effective unless agreed to by all of the Parties not claiming Force Majeure.

O. **Non-Business Days.** If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date is extended automatically until the next business day.

P. **Joint Draft.** The Parties, with each having the opportunity to seek the advice of legal counsel and each having an equal opportunity to contribute to its content, drafted this Agreement jointly.

Q. **Non-Severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.

R. **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 any Party or as to all Parties, the Parties will immediately negotiate valid alternative portion(s) that as nearly as possible give effect to any stricken portion(s).

S. **Sole Obligation of Aurora Utility Enterprise.**

1. This Agreement shall 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.

2. In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Agreement, the other Parties shall have no 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 Agreement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City of Aurora.

3. Aurora represents that this 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.

T. **City of Fountain Electric, Water and Wastewater Utility Enterprise.** All financial obligations of the City Fountain hereunder shall be solely the obligations of the City of Fountain acting through the City of Fountain Electric, Water and Wastewater Utility Enterprise ("Enterprise"), and not the financial obligations or other indebtedness of the City of Fountain, Colorado, or any other political subdivision, or a multiple fiscal year direct or indirect debt or other financial obligation of the City of Fountain within the meaning of any constitutional, charter or statutory limitation. Fountain's obligation to perform any financial obligation hereunder shall be fulfilled solely from the net revenues of the Fountain utility systems. "Net revenues" shall mean the gross revenues of the utility systems, less all operation and maintenance expense related thereto as determined by the Enterprise, and periodic payments on bonds, loans and other financial obligations of said Enterprise. No other funds or property interests of the City of Fountain, or any ad valorem property taxes will be used, directly or indirectly, to perform any financial obligation of the City of Fountain pursuant to this Agreement.

U. **Obligations of Colorado Springs.** This Agreement is expressly made subject to the limitations of the Colorado Constitution and Sections 7-60 and 7-90 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Contract, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation or appropriated funds may not be expended due to Colorado Constitution or City Charter spending limitations, such failure or limitations (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted or spending limitations become applicable, and (ii) neither such failure, limitations, nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit hereto, by the City.

V. **Obligations of the District.** Nothing herein constitutes, or be will deemed to constitute, the creation of a debt or multi-year fiscal obligation 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, statutory or charter debt limitation.

W. Specific Performance. In the event of any default by any Party hereunder, in addition to other damages or other remedies provided by law or equity, any other non-defaulting Party has the right to seek specific performance or injunctive relief.

City of Colorado Springs, Colorado

Attest_____
City Clerk

By:_____
Jerry Forte, Jr.
Chief Executive Officer
Colorado Springs Utilities
Date Approved:

Approved as to form:

_____
Colorado Springs City Attorney

Board of Water Works of Pueblo, Colorado

Attest_____
Secretary-Treasurer

By:_____
President
Date approved:

Southeastern Colorado Water Conservancy District

Attest_____ By: _____
James W. Broderick President
Assistant Secretary

Approved as to form:

_____
Lee E. Miller, General Counsel
Date approved:

City of Fountain

Attest_____ By:_____
Sharon Mosley Mayor
City Clerk Date approved:

City of Aurora Colorado
acting by and through its Utility Enterprise

_____ _____
Stephen Hogan, Mayor Date

ATTEST:

_____ _____
Janice Napper, City Clerk Date

SEAL

Approved as to form for the City of Aurora, Colorado,
acting by and through its Utility Enterprise.

_____ _____ _____
City Attorney Date ACS#

_____ _____
Special Counsel Date

Pueblo West Metropolitan District

Attest_____ By: _____
President