

**INTERGOVERNMENTAL AGREEMENT  
REGARDING COST SHARING, REIMBURSEMENT, AND OWNERSHIP  
FOR SECOND VALVE INSTALLATION**

**Between the City of Aurora, acting through its Utility Enterprise, Aurora Water, and  
the City of Colorado Springs, acting through its utilities Enterprise**

**I. PARTIES.**

This Memorandum of Agreement regarding Cost Sharing, Reimbursement, and Ownership for Second Valve Installation (“Agreement”) is entered between the City of Aurora, acting through its Utility Enterprise, Aurora Water (“Aurora Water”), and the City of Colorado Springs, acting through its enterprise, Colorado Springs Utilities (“Springs Utilities”). Aurora Water and Springs Utilities also may be referred to collectively as the “Homestake Partners” or the “Parties” and individually as “Party” throughout.

**II. RECITALS**

WHEREAS, On June 18, 1962, the City of Aurora and the City of Colorado Springs executed an agreement (the “Homestake IGA”) wherein the Cities agreed to divide equally all waters produced, collected, and diverted from the Homestake Project (the “Project”), and to share equally all costs and expenses of common facilities for the collection, storage, and diversion of water associated with the Project, the Project being more fully described in said agreement. See Map, attached as Exhibit A. The Homestake IGA established a governing body for the Project, the Homestake Steering Committee.

WHEREAS, the Homestake Partners have executed several agreements and amendments setting forth the various rights and obligations of the Homestake Partners, including those related to water distribution, use of facilities, addition of facilities for the benefit of both Homestake Partners or for one of the individual partners, and allocation of costs. Such agreements and amendments govern the operation of the Homestake Project and the interactions of the Homestake Partners in their use of the Homestake Project and its facilities.

WHEREAS, Aurora Water is in the process of permitting, planning, designing, and constructing Wild Horse Reservoir, located approximately six miles west of Spinney Mountain Reservoir, near Hartsel, Colorado, in Park County.

WHEREAS, Homestake Partners own the Otero Pipeline as part of the Project, a portion of which extends from the Otero Pump Station east through Park County. The Otero Pipeline is used to deliver water to the water systems of each of the Homestake Partners.

WHEREAS, Wild Horse Reservoir would be an off-channel reservoir that will be filled using water deliveries through the Otero Pipeline. In order to make deliveries through the Otero Pipeline to Wild Horse Reservoir, Aurora Water requires, and requested from Springs Utilities (through the Homestake Steering Committee), Springs Utilities’ consent for Aurora Water to

install a new junction, an isolation valve, and a new tap extending from the Otero Pipeline to the planned Wild Horse Reservoir (the “Aurora Improvements”). The approximate location and design of the Aurora Improvements is shown in Exhibit B. Springs Utilities consented to the request and the Parties agreed that the costs of permitting, planning, designing, installing, maintaining, operating, and repairing the Aurora Improvements are and will remain the obligation of Aurora Water.

WHEREAS, Homestake Partners required the installation of a second isolation valve at or near the location of the Aurora Improvements in order to meet Homestake Project safety requirements, including to allow for work on the Otero Pipeline upstream and downstream of the second isolation valve necessary for Aurora Water’s new tap..

WHEREAS, Aurora Water and Springs Utilities agree that the Homestake Project will realize value from installation of the second isolation valve, and that the remaining Aurora Improvements are solely for the benefit of Aurora Water.

WHEREAS, Aurora Water has completed the design and installation of the second isolation valve as part of ongoing construction of the Aurora Improvements, see Exhibit C.

WHEREAS, Aurora Water and Spring Utilities desire that the second isolation valve and infrastructure necessary thereto become part of the Homestake Project infrastructure, consistent with the Homestake IGA and its subsequent modifications and amendments.

WHEREAS, Aurora Water has provided an invoice to Springs Utilities for a portion of the costs of the design, planning, and installation of the second isolation valve consistent with the Homestake IGA, as amended, and Springs Utilities intends to pay its 25% proportionate share of the costs as provided in the invoice consistent with the Homestake IGA, as amended.

WHEREAS, Aurora Water and Springs Utilities now desire to enter into an intergovernmental agreement memorializing their agreement for the installation of the second isolation valve, allocating the repayment of costs therefore, and setting forth the responsibilities for the operation, maintenance, repair, and replacement thereof.

### III. AGREEMENT

Now, therefore, in consideration of the foregoing recitals, the Parties agree as follows:

**1. Purpose.** The purpose of this Agreement is to set forth the terms upon which the Springs Utilities will reimburse Aurora Water for a portion of the costs for the design and installation of the second isolation valve and infrastructure related thereto, and the terms upon which the Parties will work collaboratively and in good faith in allocating the costs of maintenance, operation, repair, and replacement of the second isolation valve and its related infrastructure.

**2. Term of the Agreement.** The Term of this Agreement shall be from the last date of execution by the Parties until the expiration or termination of the Homestake IGA, as modified by subsequent agreements between the Parties.

### **3. Allocation of Responsibilities, Costs, and Ownership.**

3.1. Responsibilities regarding Plan, Design, Acquisition, Installation. Aurora Water planned, designed, acquired, and installed the Aurora Improvements. Aurora Water, in consultation with Springs Utilities, acting jointly as the Homestake Partners, planned, designed, acquired, and installed the second isolation valve and any appurtenances necessary therefore. Aurora Water will present the final secondary valve project to the Homestake Steering Committee for final review and acceptance by motion, which acceptance shall not be unreasonably withheld. Springs Utilities obligations to reimburse Aurora Water for the costs of the second isolation valve shall not go into effect until the acceptance by the Homestake Steering Committee.

#### **3.2. Costs; Escrow; Reimbursement.**

3.2.1. Costs: Aurora Water is responsible for all costs related to the Aurora Improvements, without recourse to Springs Utilities. The costs of the second isolation valve, including engineering, planning, design, acquisition, and installation, as well as the acquisition of any real property and the construction of any infrastructure appurtenant and necessary to the second isolation valve, shall be divided between Springs Utilities (25%) and Aurora Water (75%).<sup>1</sup> Costs include work hours and materials allocated by Aurora Water, Springs Utilities, and Homestake Project staff and employees on the work as well as payments made to contractors engaged to complete the work, as determined by Aurora Water in its reasonable discretion after consultation with Springs Utilities and Homestake Partners staff. Aurora Water has made the initial payments for all costs for this work, and has submitted an invoice to Springs Utilities for 25% of the total costs, together with a full accounting of such costs, including staff and employee time, materials used, and contractor charges in the amount of \$392,760.75. See Exhibit D, attached. Any dispute related to an invoice or a cost incurred pursuant to this paragraph is subject to the provisions of Section 7, below.

3.2.2. Escrow: Springs Utilities has placed an amount equal to the invoiced amount in an escrow account held by Springs Utilities until execution of this Agreement and acceptance of the secondary valve installation by the Homestake Steering Committee.

3.2.3. Reimbursement: Springs Utilities will pay such invoice using the escrowed funds within 30 days of execution of this Agreement or acceptance by the Homestake Steering Committee of the second valve installation, whichever comes last.

3.3. Ownership. All materials, equipment, infrastructure, devices, and interests in real property necessary for installation, maintenance, operation, repair, and replacement of the second isolation valve, including the valve, will be the property of Homestake Partners upon acceptance of same by the Homestake Steering Committee and payment of the invoice attached as Exhibit E, by Springs Utilities. All materials, equipment, infrastructure, devices, and interests in real property that are necessary for installation of the Aurora Improvements but not necessary for the secondary valve will remain the property of Aurora Water.

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<sup>1</sup> The intent of the Parties is for Aurora to be responsible for 50% of the costs for the second isolation valve, and for the Cities, acting as the Homestake Partners, to be responsible for 50% of the costs.

3.4. Maintenance. Aurora Water shall remain responsible for all maintenance, operation, repair, replacement, and removal of the Aurora Improvements and infrastructure necessary and related thereto. Upon acceptance of the second isolation valve by the Homestake Steering Committee, Homestake Partners shall be responsible for all maintenance, operation, repair, replacement, and removal of the second isolation valve and infrastructure necessary and related thereto. To the extent either Party, or both Parties through the Homestake Project, performs maintenance, repair, replacement, or removal work on the infrastructure that is the responsibility of the other Party, all of the costs of that work will be invoiced to the non-performing party. The invoiced Party will pay such invoice within 30 days of receipt. Any dispute related to an invoice or a cost incurred pursuant to this paragraph is subject to the provisions of Section 7, below.

**4. Covenant to Pay Costs.** Each Party covenants and commits to make payment for all amounts billed pursuant to this Agreement, subject to the provisions of Section 7, below. At their discretion, the Parties can agree periodically to reconciliation or off-set billing in lieu of exchanging funds for amounts paid pursuant to this Agreement. A final accounting of amounts paid and billed by each Party shall be made within 30 days after the end of each calendar year.

4.1. Appropriations. In accord with the Colorado Springs City Charter (Colorado Springs acting in its role as a Homestake Partner for this Agreement), and the Aurora City Charter, performance of either Party's obligations under this Agreement is expressly subject to appropriation of funds by each City's respective City Council. 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 of Aurora or the City of Colorado Springs within the meaning of the Constitution and laws of the State of Colorado or of the respective Charters and ordinances of each City. If either City is unable to appropriate sufficient funds for a particular fiscal year, such amount shall continue to be outstanding and shall continue to be requested in each subsequent fiscal year budget until appropriated. In the event of a non-appropriation by either City, that City shall provide notice to the other Party as soon as reasonably practicable. In the event funds are not appropriated in whole or in part sufficient for performance of either Party's obligations under this Agreement, or appropriated funds may not be expended due to City Charter or other spending limitations, then neither City will thereafter have liability for compensation or damages to the other Party for future performance and obligations thereafter in excess of a Party's authorized appropriation for this Agreement or the applicable spending limit, whichever is less. A Party will provide notice to the other Party as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable.

4.2. Obligation of Aurora's Utility Enterprise. In the event of a default by Aurora Water of any of its obligations under this Agreement, the Parties shall have no recourse for any amounts owed to them 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 Aurora

Water 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 Water or the City of Aurora.

4.3. Records and Accounts. Homestake and Aurora Water will cause to be kept accurate records and accounts of the costs incurred under this Agreement in accordance with generally accepted accounting principles as applied to governmental units.

## **5. Access; Easements.**

5.1. Separate Easement or Access Agreement Required. This Agreement is separate and distinct from any easement, license, right of way, or other right of access, possession, occupation, or use agreement between the Parties and the underlying landowners for the projects addressed herein. If necessary, Aurora Water will be responsible for obtaining a long-term right of access, occupation, and use agreement from any third-party landowner to allow the Homestake Partners to access and occupy the construction site and surrounding area for the work contemplated herein as well as the long-term operation, maintenance, repair, and removal of the second isolation valve and the Aurora Improvements.

**6. Default.** If either Party fails or defaults in meeting the terms, conditions and covenants of this Agreement (including the failure to make any payment due hereunder) and such default continues for a period of 30 days, the non-defaulting Party shall give notice (in the manner contemplated by Section 11 of this Agreement) to the defaulting Party. The defaulting Party shall from the date of providing such notice, have a period of 30 days to cure the default, unless otherwise extended by mutual agreement of the Parties. Thereafter, the non-defaulting Party shall have all rights and remedies available at law or in equity, unless otherwise limited by this Agreement.

**7. Dispute Resolution; Mediation; No Attorney Fees; Third-Party Dispute Resolution.** The Parties desire to resolve any disputes between them by seeking consensus through internal discussions. The Parties agree to put forth their best efforts to resolve any future disagreements and disputes according to the shared principles of respect and congeniality that have existed through planning and construction of the Homestake Project.

7.1. Informal Discussions. In the event of a dispute between the Parties related to the obligations of each under this Agreement, the Parties agree that they will use their best efforts to resolve that dispute in an informal fashion through consultation and communication between the Parties. The Parties agree to work in good faith in fulfilling their respective obligations under this Agreement.

7.2. Mediation. If a dispute arises between the Parties relating to this Agreement that cannot be resolved after 30 days from providing a notice of dispute pursuant to the provisions of Section 11 of this Agreement through informal consultation and communication, any Party may elect, after written notice to the other Parties, to enter into an agreement for mediation using a mediator agreed upon by the Parties.

7.2.1. If the Parties elect to mediate the dispute, the Parties agree to participate in good faith in the mediation until the dispute is resolved, until the Parties mutually agree that they cannot resolve the dispute through mediation, or the expiration of 30 days after the notice of election of mediation was made, whichever comes first. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to utilize any other form of dispute resolution, exclusive of binding arbitration.

7.3. Time is of the Essence; Best Efforts. The Parties acknowledge that time is of the essence in resolving any dispute that may arise while pursuing the purposes of this Agreement, and hereby pledge to make their best efforts to resolve any dispute in a timely and efficient manner.

7.4. Rule 408 Protection. All communications and negotiations conducted pursuant to this section will be governed by Rule 408 of the Federal Rules of Evidence and Rule 408 of the Colorado Rules of Evidence, to the same extent as though they were conduct or statements made in compromise negotiations regarding a claim involving an unresolved issue, regardless of whether those Rules would apply in the absence of this subsection.

7.5. Costs. Each Party shall be solely responsible for its costs incurred in resolving disputes pursuant to this paragraph and agrees not to seek recovery of legal and consultant fees and costs incurred by a Party from the other Party.

7.6. Third-Party Dispute/Litigation. The Parties acknowledge and anticipate that their pursuit of the purpose of this Agreement may result in litigation involving third-party litigants in which the Parties may be either plaintiffs, defendants, or both. The Parties also acknowledge that each Party may develop different interests, concerns, and strategies related to such litigation. Further, the Parties may exchange privileged, confidential, and protected information and documents between them with a high expectation of confidentiality and protection from disclosure should such third-party litigation be anticipated or ensue; and the Parties have not, will not, and do not intend to waive such protections while advancing the purpose of this Agreement. In the event of third-party litigation related to the purpose of this Agreement, and within a reasonable time after the Parties, or either Party, receives notice that such litigation will or is expected to be filed, the Parties will negotiate in good faith an agreement allocating roles and responsibilities for each Party in the third-party litigation.

7.6.1. Without waiving its rights to settle, withdraw, or pursue any claims related to third-party litigation, each Party agrees that its decisions made in relation to threatened or actual third-party litigation will be made in a good faith effort to advance the purpose of this Agreement in a reasonable manner.

**8. Force Majeure.** If for any reason of “force majeure” either of the Parties is rendered unable, wholly or in part, to carry out its obligations under this Agreement, other than the obligation of the Parties to make the payments required under the terms of this Agreement, then if such Party gives notice and the full particulars of such reasons in writing to the other Party

within a reasonable time after the occurrence of the event or cause relied on, the obligation of the Party giving such notice, so far as it is affected by such “force majeure,” shall be suspended during the continuance of the inability then claimed, but for no longer period, and such Party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term “force majeure” as employed herein shall mean acts of nature and natural disaster, illness pandemic, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders or actions of any kind of the government of the United States or of the State of Colorado or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, droughts, arrests, restraints or government and people, civil disturbances, explosions, breakage or accident to dams, machinery, pipelines, or canals or other structures or machinery, on account of any other cause not reasonably within the control of the Party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the Party having the difficulties, and that the above requirement that any “force majeure” shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing parties when such settlement is unfavorable to it in the judgment of the Party having the difficulty.

## **9. Insurance; No Waiver of Governmental Immunity; Liability.**

9.1. **Insurance:** Prior to acceptance of the second isolation valve by the Homestake Steering Committee, Aurora Water shall maintain insurance for the construction, operation, repair, maintenance, and removal of the second isolation valve and its appurtenances described in Exhibit D as set forth as set forth in 9.1.1 through 9.1.7. Upon acceptance of the second isolation valve by the Homestake Steering Committee, the Cities, on behalf of the Homestake Partners, will provide insurance for the continued operation, repair, maintenance, and removal of the second isolation valve in the amounts required by the risk management departments of the Cities.

9.1.1. **Commercial General Liability:** Each Party shall maintain a Commercial General Liability insurance policy with limits of at least \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Coverage shall include XCU (underground, collapse and explosion), contractual liability and a waiver of subrogation.

9.1.2. **Business Automobile Liability:** Each Party shall maintain Business Automobile Liability with limits of at least \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing the work under this Agreement.

9.1.3. **Workers’ Compensation/Employer’s Liability Insurance:** Each Party shall maintain the coverage as required by statute and shall maintain Employer’s Liability insurance with limits of at least \$1,000,000 per occurrence for each bodily injury claim, \$1,000,000 per occurrence for each bodily injury caused by disease claim, and \$1,000,000 aggregate for all bodily injuries caused by disease claims.

9.1.4. **Contractors and Consultants:** All contractors and consultants, including subcontractors, subconsultants, independent contractors, suppliers or other entities performing work under this Agreement shall be subject to all of the requirements herein and shall procure and maintain at a minimum, the same coverages required of the Parties.

9.1.5. For purposes of this subsection, either Party and acting jointly as Homestake Partners may self-insure, so long as such self-insurance is sufficient to meet the requirements of subsections 9.1.1-9.1.3.

9.1.6. Each Party shall be responsible for any deductible applicable to that Party's insurance policy, and each Party that is self-insured shall be responsible for applicable self-insured retention requirements.

9.2. **Governmental Immunity.** Each Party is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., as amended or as may be amended ("Act"). Parties shall maintain insurance, by commercial policy as set forth in this attachment, or self-insurance, as is necessary to meet their liabilities under the Act. Proof of such insurance shall be provided only upon request by and between the Parties. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Parties may have under the Act or to any other defenses, immunities, or limitations of liability available to the Parties against third parties by law. The Parties understand and agree liability for claims for injuries to persons or property arising out of the alleged negligence of either Party, their officials and employees may be controlled or limited by said Act. Any provision of this Agreement, whether or not incorporated herein by reference, shall not be interpreted to control, limit or otherwise modify so as to limit any liability protection of any Party pursuant to the above cited laws. Each Party agrees to be responsible for its own liability and costs resulting from the actions taken in furtherance of the purpose of this Agreement.

9.3. **Liability.** Each Party shall, to the extent provided for and allowed by state or federal law, as applicable, be responsible for its own acts and the results thereof and shall not be responsible for the acts of the other Party and the results thereof. Each Party agrees to assume all risk and liability to the extent provided for and allowed under state or federal law, as applicable, but without waiving governmental immunity: (a) to itself, its agents or employees, for any injury to persons or property resulting in any manner from the conduct of its own operations, and the operation of its agents, employees or contractors under this Agreement; and (b) for any loss, damage, or expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its own agents, its own employees, or its own contractors, while occupying or visiting the premises under and pursuant to the Agreement. Notwithstanding any provision in this Agreement to the contrary, neither Party shall be deemed to have waived its rights (if any) to governmental immunity.

## **10. Limitations on Liability; Damages.**

10.1. Neither Party will incur or suffer liability to the other Party resulting from, or otherwise arising in connection with, any action that complies with the commonly-accepted

Standard of Care for the planning, designing, acquisition, construction, operation, repair, or removal of the second isolation valve, the Aurora Improvements, and or their appurtenances.

10.2. Neither Party will incur or suffer any liability to the other Party in excess of the total costs of the structures and obligations governed by this Agreement paid by the injured Party, exclusive of any insurance proceeds, attorneys' fees, or costs. Nothing in this provision shall be deemed to preclude any Party from recovery of actual damages for breach of contract against any applicable excess errors and omission policy coverage.

10.3. Neither Party will be liable to the other Party for any incidental, consequential, special or punitive damages arising out of or in connection with this Agreement. The preceding sentence applies without regard to the basis for the underlying claims, whether they are grounded in contract or in tort, and whether they are legal or equitable in nature.

10.4. Neither Party is a guarantor of any obligation, indebtedness, or liability of the other Party.

10.5. Neither Party will be vicariously liable for any obligation, indebtedness, liability, default, or misconduct of the other Party.

**11. Notices.** Any notice, request, demand or statement provided for in this Agreement, except notices of emergencies, shall be in writing and shall be considered to have been duly delivered when personally delivered or sent by registered or certified mail (provided that bills sent hereunder may be sent by first class mail), addressed as follows, unless another address has been designated, in writing, by the party entitled to receive same. Notices in case of emergency shall be considered to have been delivered when an emergency contact listed below has been reached by telephone, or a voicemail message detailing the nature of the emergency and proposed resolution has been left at the designated number, or an email detailing the nature of the emergency and proposed resolution has been sent to the designated emergency contact email address. Although not a party to this Agreement, due to Homestake Partner's interest in the operation, maintenance, and repair of the Homestake Project, the Parties shall copy Homestake Steering Committee on each notice related to the purposes of this Agreement.

11.1. Homestake Partners: Tom Hankins, Superintendent  
Homestake Water Project  
37200 US-24  
Buena Vista, CO 81211

With a copy to: Karl D. Ohlsen, Esq.  
Carlson, Hammond & Paddock LLC  
1900 N. Grant St, Suite 1200  
Denver, CO 80203

Emergency Contacts: Tom Hankins  
(719) 395-1595

[thankins@csu.org](mailto:thankins@csu.org)

11.2. City of Aurora:

Aurora Water  
26791 E Quincy Ave.  
Aurora, CO 80016  
Attn: General Manager

With a copy to:

City of Aurora  
15151 E Alameda Parkway, Ste 5300  
Aurora, CO 80012  
Attn: Aurora City Attorney

Emergency Contacts:

Matt Allsopp  
303-903-6098(c)  
[mallsopp@auroragov.org](mailto:mallsopp@auroragov.org)

11.3. Springs Utilities:

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: Chief Strategic Planning and  
Projects Officer  
P.O. Box 1103,  
Colorado Springs, CO 80947-0950; and

With a copy to:

City Attorney's Office - Utilities Division  
Courier Service Address:  
City Attorney's Office ATTN: Utilities  
Division  
30 S. Nevada Ave. Colorado Springs, CO  
80903

United States Postal Service Address:  
Colorado Springs Utilities  
ATTN: Utilities Division  
P.O. Box 1103  
Colorado Springs, CO 80947-0940

Emergency Contacts:

Michael Myers, Manager Operations  
(719) 491-0753; and

Colorado Springs Utilities Dispatch  
(719) 448-4800

**12. Severability.** The Parties agree that if any provision, or part of a provision, of this Agreement should contravene or be held invalid under the laws of the State of Colorado, such contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as though not containing that particular provision, or part thereof, and the rights and obligations of the parties shall be construed and in force accordingly.

**13. No Construction Against Drafter.** This Agreement was drafted by counsel for Homestake Partners with review and comment from the attorneys for the Parties. Accordingly, the Parties agree the legal doctrine of construction against the drafter will not be applied should any dispute arise concerning this Agreement.

**14. Counterpart Execution.** This Agreement may be executed in counterparts.

**15. Effect of Agreement.** This Agreement is intended to and shall be considered separate and apart from prior written agreements between the Parties. This Agreement is not intended, nor shall it be interpreted, to amend, alter, or otherwise modify any prior agreement between the Parties.

**16. Governing Law; Jurisdiction; Remedies; No Jury Trial.**

16.1. Governing Law. This Agreement will be governed by, and construed in accordance with, the laws of the State of Colorado. This Agreement shall also be subject to all valid rules, regulations and laws applicable thereto, as promulgated by the United States of America, the State of Colorado, each Parties' governing body or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them.

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

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

16.4. No Jury Trial. EACH PARTICIPANT KNOWINGLY AND VOLUNTARILY WAIVES ITS RIGHT TO A JURY TRIAL ON ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

**17. Amendment.** This Agreement may be amended, modified, or changed only by a written agreement between both Parties that is approved and executed by each Party.

**18. No Third-Party Beneficiaries.** This Agreement is intended to describe the rights and responsibilities of and between the Parties and does not confer any rights upon any persons or entities other than the Parties.

**19. Assignment.** Each Party understands and agrees that it shall not assign its respective rights and obligations under this Agreement, except upon the prior written discretionary consent and approval of the assignment by the other Party.

**20. Ratification.** The General Manager of Aurora Water (acting as the City Manager's designee) has approved and executed this Agreement pursuant to City Code section 2-62(c), subject to ratification of the Aurora City Council. Should this Agreement not be ratified by the Aurora City Council, Aurora Water shall, within thirty (30) days, return any funds transferred under this Agreement to Springs Utilities.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by the proper officers duly authorized thereunto.

*[Signature pages follow.]*

**CITY OF AURORA**

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

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

Approved as to form for Aurora:

\_\_\_\_\_  
Ian Best, Assistant City Attorney      Date \_\_\_\_\_      ACS # \_\_\_\_\_

**CITY OF AURORA**

Following Ratification by the Aurora City Council

\_\_\_\_\_  
Mike Coffman, Mayor

\_\_\_\_\_  
Date

Attest:

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

\_\_\_\_\_  
Date

**CITY OF COLORADO SPRINGS**

City of Colorado Springs, Colorado  
Acting through its enterprise, Colorado Springs Utilities

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

\_\_\_\_\_  
Date

Approved as to form for Colorado Springs:

\_\_\_\_\_  
Michael J. Gustafson

\_\_\_\_\_  
Date