

Water Provider Agreement Between
Colorado Department of Natural Resources
And
Town of Castle Rock ("Water Provider")
For the Use of Storage Space at Chatfield Reservoir

Recitals

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List of Exhibits:

- Exhibit A Water Storage Agreement Between U.S. Army Corps and Colorado DNR
- Exhibit B Fish, Wildlife, and Recreation Mitigation Plan for the Chatfield Reallocation Project approved pursuant to Section 37-60-122.2, C.R.S.
- Exhibit C Signed Escrow Agreement Between Water Provider and Financial Institution
- Exhibit D Signed Loan Contracts to Water Provider from CWCB (if applicable)
- Exhibit E Chatfield Reservoir Management Agreement
- Exhibit F Bylaws of the Chatfield Reservoir Mitigation Company
- Exhibit G Articles of Incorporation of the Chatfield Reservoir Mitigation Company

This Water Provider Agreement (“Agreement”), effective as of October 16, 2015, is entered into by and between the Colorado Department of Natural Resources (“CDNR”) and the **Town of Castle Rock** (“Water Provider”). CDNR and Water Provider are each a “Party” and collectively, the “Parties.”

I. **Recitals**

- A. Chatfield Reservoir is located in Sections 1, 2, 11, 12, 13, 14 and 23, Township 6 South, Range 69 West, 6th P.M. and Sections 6, 7 and 18, Township 6 South, Range 68 West, 6th P.M. in Douglas and Jefferson Counties, Colorado. It is owned by the United States of America, was constructed for flood control and other purposes, and is operated by the Department of the Army represented by the Assistant Secretary of the Army (Civil Works) (“Government”).
- B. The Government issued its Chatfield Reservoir Storage Reallocation Final Integrated Feasibility Report and Environmental Impact Statement dated July 2013, Addendum No.1, dated March 2014, and Addendum No.2, dated September, 2014, (collectively, the “*Reallocation Report*”) evaluating the *Chatfield Storage Reallocation Project*. (See Paragraph II.A. below regarding italicized terms.) On May 29, 2014, the Government issued its Record of Decision authorizing the reallocation of 20,600 acre feet of storage space from the exclusive flood control pool to *Joint-use* flood control-conservation pool for municipal and industrial water supply and other purposes.
- C. The Government and CDNR have entered into an “Agreement Between the Department of the Army and the Colorado Department of Natural Resources for Reallocation of Water Storage Space, Recreation Modifications, and Compensatory Mitigation Features at the Chatfield Dam and Reservoir, Colorado” dated October 9, 2014 (“Water Storage Agreement,” attached as Exhibit A hereto), by which CDNR acquired the right to use for water storage purposes the 20,600 acre feet of storage space referenced above, subject to the terms stated therein. Article VI of the Water Storage Agreement contemplates that CDNR will grant portions of the storage space in Chatfield Reservoir to the *Water Providers*.
- D. The purpose of this Agreement is to grant to Water Provider the right to use storage space in Chatfield Reservoir in consideration for Water Provider performing its obligations specified in Paragraph IV.A through E and complying with its other obligations specified herein, subject to the terms stated in this Agreement. This Agreement is identical in substance (except as to the Pro Rata Share and method of payment) to the agreement between CDNR and each of the *Water Providers* that are acquiring a permanent right to use storage space in Chatfield Reservoir, including agencies of CDNR (each a “Water Provider Agreement”).
- E. The *Water Providers* have incorporated or shall incorporate within fifteen days after the effective date of this Agreement the Chatfield Reservoir Mitigation Company, a Colorado non-profit corporation (“CRMC”), as the vehicle through

which the *Water Providers*, including agencies of the State of Colorado as individual *Water Providers*, will act to complete the *Non-Federal Work* described in the Water Storage Agreement and the State Mitigation Plan (as defined in II.B), and may act to complete the O&M, RRR&R and *Other Modifications to the Chatfield Project* as described in section IV.E.

In consideration of the mutual promises contained herein, CDNR and Water Provider hereby agree as follows.

II. Definition of Terms

- A. Terms defined in Article I of the Water Storage Agreement and used in this Agreement in italics and initial capitals shall have the same meaning as in the Water Storage Agreement.
- B. "State Mitigation Plan" shall mean that "Fish, Wildlife, and Recreation Mitigation Plan for the Chatfield Reallocation Project" approved by the Colorado Parks and Wildlife Commission on January 9, 2014, pursuant to Section 37-60-122.2, C. R. S., and subsequently approved by the Colorado Water Conservation Board on January 28, 2014 defining the mitigation actions required by the State of Colorado in connection with the *Chatfield Storage Reallocation Project*. The Fish, Wildlife, and Recreation Mitigation Plan for the Chatfield Reallocation Project approved pursuant to Section 37-60-122.2, C.R.S. is attached hereto as Exhibit B.
- C. "Pro Rata Share" shall mean 0.971%, calculated as the volume of storage space in Chatfield Reservoir granted to Water Provider pursuant to this Agreement divided by 20,600 acre feet.

III. Rights Granted to Water Provider

- A. Storage Space. Pursuant to Article VI of the Water Storage Agreement, CDNR hereby grants to Water Provider the use of two hundred (200) acre feet of storage space in Chatfield Reservoir ("Storage Space"), representing Water Provider's Pro Rata Share as defined in Paragraph II.C of this Agreement. This grant includes and is subject to the rights, limitations and requirements of Articles II.B. through II.I., II.K. through II.R., V.A. and V.B. of the Water Storage Agreement. To the extent such limitations restrict the total volume of reallocated storage space to an amount less than 20,600 acre feet, such restrictions shall be allocated among the *Water Providers* on a pro rata basis.
- B. Water Storage Agreement Impacts. Nothing in this Agreement shall be construed to affect or modify the reciprocal rights, obligations or responsibilities of the Government and CDNR under the Water Storage Agreement, nor create any rights, obligations or responsibilities between the Government and Water Provider.

- C. Water Rights. No water rights or rights to use water are assigned or otherwise provided pursuant to this Agreement, and no water right is created by this Agreement. The water to be stored in Water Provider's Storage Space has been or will be acquired by Water Provider separately from this Agreement. This Agreement creates no limitation on the water rights that Water Provider can use to fill its Storage Space, or on the types of uses to which such water can be placed. Such uses are governed by the decrees for the various water rights stored in Chatfield Reservoir, and Water Provider is responsible for compliance with all applicable aspects of Colorado water law pertaining to the storage of its water rights in Chatfield Reservoir.
- D. Transfer of Storage Space.
1. Right of First Refusal. Water Provider's Storage Space shall be transferrable to the fullest extent allowed by the Water Storage Agreement, except that Water Provider shall not transfer all or a portion of its Storage Space to any third party other than one of the other *Water Providers* without first offering it to the other *Water Providers* at the same price and on the same terms as a third party has offered in writing to purchase such space. Written notice of such offer by a third party, including the identity of the third party, shall be given to the other *Water Providers* and CDNR. Each of the other *Water Providers* shall have 30 days after its respective receipt of written notice of the third party offer to provide written notice to Water Provider and CDNR of its intent to exercise its first right to purchase the Storage Space ("Notice Period"). In the event more than one of the other *Water Providers* properly seeks to exercise the first right to purchase within the Notice Period, Water Provider's Storage Space (or the portions thereof being offered for sale) shall be divided between the other *Water Providers* on mutually agreeable terms, or in the absence of an agreement, in the same ratio as the volume of storage space then owned by the other *Water Providers* seeking to exercise the first right to purchase. Other *Water Providers* seeking to acquire the offered Storage Space pursuant to this Paragraph III.D.1 shall have 90 days following the end of the Notice Period in which to close the transaction for the offered Storage Space which includes completion of all items noted in "Process for Transfer" below. ("Closing Period").
 2. Transfer Limitation. Any transfer that results or will result in termination of the Water Storage Agreement, or a suspension thereof by the Government shall be void ab initio.
 3. Transfer to Third Party. If none of the other *Water Providers* provides proper written notice within the Notice Period and/or closes the transaction for the offered Storage Space with the Closing Period, the Water Provider may transfer its offered Storage Space to such third party pursuant to the terms provided in the written notice and this Paragraph

III.D. If necessary, CDNR will assist with coordination among interested parties to support a transfer.

4. Process for Transfer. Water Provider may transfer its Storage Space by means of assignment of all or a portion of this Agreement. In the event of such assignment, the transferee shall, within 90 days after the end of the Notice Period, enter into an agreement with CDNR, identical in substance to this Agreement (except as to the Pro Rata Share in the event of a partial assignment and method of payment), which will replace and supersede this Agreement, in whole or in part. The transferee shall not store water in Chatfield Reservoir until it has executed such agreement with CDNR. In the event of a partial assignment, concurrently with the transferee's execution of an agreement with CDNR, Water Provider shall execute an amendment of this Agreement that reflects Water Provider's reduced Pro Rata Share. All amounts due and owing through and including the Closing Date by Water Provider pursuant to this Agreement are the responsibility of Water Provider. For any Storage Space transferred pursuant to this Paragraph III.D, all amounts due and owing by Water Provider pursuant to this Agreement shall be paid in full prior to transfer of such Storage Space being effective.

IV. Water Provider's Payment Obligations

- A. First Cost of Storage. Water Provider shall pay its Pro Rata Share of the *First Cost of Storage* as defined in Article I.J of the Water Storage Agreement, which amount is more specifically described in Article II.F.1 of the Water Storage Agreement.
- B. Federal Mitigation Costs. Water Provider shall pay its Pro Rata Share of the costs of *Recreation Modifications*, and *Compensatory Mitigation Features* as defined in Articles I.R and I.F, and Government oversight as described in Article II.F.5. of the Water Storage Agreement.
- C. State Mitigation Plan Costs. Water Provider shall pay its Pro Rata Share of the costs of implementation of the State Mitigation Plan.
- D. Total Project Costs. The total estimated amount of the costs described in Paragraphs IV.A, B and C is One Hundred Thirty-four Million Dollars (\$134,000,000.00) (collectively, the "Total Project Costs"). Concurrently with the execution of this Agreement, Water Provider shall fully fund its Pro Rata Share of the total amount of the Total Project Costs (collectively, the "Obligation") through a deposit of cash into an approved escrow account ("Escrow Account") and, if applicable, execution of one or more loan agreements with the Colorado Water Conservation Board (each a "Loan Contract" and collectively, the "Loan Contracts"). The escrow agreement, including instructions, for the Escrow Account is attached hereto as Exhibit C and the Loan Contracts are attached as

Exhibits D-1, D-2 and D-3. Water Provider's total Obligation is \$1,300,970.00 and it is fully funded as follows:

1. **1,300,970.00** deposited into the Escrow Account in cash;
2. N/A in CWCB loan funds pursuant to Loan Contract N/A;
3. N/A in CWCB loan funds pursuant to Loan Contract N/A;
4. N/A in CWCB loan funds pursuant to Loan Contract N/A.

E. Costs of O&M, RRR&R and Other Modifications to the Chatfield Project. Water Provider shall pay its Pro Rata Share of the payments required by Articles IV.A.2., IV.A.3. and IV.B of the Water Storage Agreement pertaining to *Specific Repair, Rehabilitation, Reconstruction And Replacement Costs, Joint-Use Repair, Rehabilitation, Reconstruction And Replacement Costs, Specific Annual Operation And Maintenance Expenses, Joint-Use Annual Operation And Maintenance Expenses* and *Other Modifications to the Chatfield Project*, directly or through CRMC, within the time allowed by Water Storage Agreement Articles IV.A.2., IV.A.3. and IV.B. CDNR will forward to Water Provider and CRMC the Government's notification of the annual amount of such payments immediately upon receipt.

F. Default and Remedies. If Water Provider defaults on any of the payment obligations described herein, and fails to cure such default within 60 days after written notice from CDNR or CRMC, the following actions shall be taken:

1. If Water Provider fails to provide all of its Pro Rata Share of the Total Project Costs, and after notice fails to cure such default, Water Provider shall relinquish to CDNR the percentage of its Storage Space equal to the percentage that Water Provider's shortfall bears to its Pro Rata Share of the Total Project Costs.
 - a. In the event of such relinquishment, CDNR shall offer the relinquished Storage Space to the non-defaulting *Water Providers* in accordance with Paragraph III.D. above, and if not disposed of through that process, CDNR may enter into an agreement identical in substance to this Agreement (except as to the Pro Rata Share and method of payment) with a party who is not currently a *Water Provider* for the use of the relinquished Storage Space, subject to Paragraph III.D.
2. If Water Provider fails to pay its Pro Rata Share of *Annual Operation And Maintenance Expenses* and *Repair, Rehabilitation, Reconstruction And Replacement Costs* on a timely basis, Water Provider's right to release water from and to store additional water in its storage space shall be suspended until all payments are current, including the payment of any interest assessed by the Government. If Water Provider fails to pay its Pro Rata share of *Annual Operation And Maintenance Expenses* and *Repair, Rehabilitation, Reconstruction And Replacement Costs* for a total of 3 years in a 5 year period, Water Provider shall be in default and its

Storage Space shall be relinquished. Such relinquished Storage Space shall be subject to the terms of Section IV.F.1.a above.

V. **Membership in CRMC.** Water Provider is currently or will be a member of CRMC and shall remain a member in good standing of CRMC, unless or until CRMC is dissolved.

VI. **Other Obligations of CDNR and Water Provider**

- A. **Project Coordination Team Members.** With regard to the appointment of representatives on the Project Coordination Team (Water Storage Agreement, Article VII) that are not representatives of the Government (i.e., the non-federal Project Coordination Team members), CDNR shall have the right to appoint fifty percent and the *Water Providers* who are not agencies of the State of Colorado shall have the right to appoint fifty percent of such non-federal Project Coordination Team members.
- B. **Chatfield Storage Reallocation Project Modifications.** The *Chatfield Storage Reallocation Project* is as described in the *Reallocation Report*, and both Parties will jointly seek to avoid any additions, revisions or modifications that expand and/or increase the costs associated with the mitigation required for the *Chatfield Storage Reallocation Project* beyond that described in the *Reallocation Report* and the State Mitigation Plan.
- C. **Administration of Chatfield Reservoir.** The Colorado Division of Water Resources currently administers the use of water stored in Chatfield Reservoir using a spreadsheet tool commonly referred to as the "Chatfield Check Sheet." The Government operates Chatfield Reservoir, including the "Project Outlet Works" to the South Platte River. Water Provider shall give such notices and provide such information, including accounting, to the Colorado Division of Water Resources, the Government and/or their designee as is required by Water Provider's decrees or to complete the Chatfield Check Sheet or any modified administration tool subsequently used by the Colorado Division of Water Resources for administration of Chatfield Reservoir. Water Provider shall comply with the Chatfield Reservoir Management Agreement, attached hereto as Exhibit E.
- D. **CERCLA and Historic Preservation Act.** In the event it becomes necessary to perform studies, surveys or take other actions to comply with CERCLA and/or the Historic Preservation Act (Water Storage Agreement, Articles IX and X, respectively), CDNR must obtain the consent of Water Provider before agreeing to incur any costs that will be passed on to Water Provider in whole or in part based upon its Pro Rata Share. The consent of Water Provider shall not be unreasonably withheld. The CRMC may perform additional work authorized by this Paragraph VI.D only with prior written approval of the Parties.
- E. **Modification to Water Storage Agreement.** As long as Water Provider is not in default of any of its obligations hereunder for one year or longer, CDNR shall not seek or consent to a modification or amendment of the Water Storage

Agreement without the consent of Water Provider. The consent of Water Provider shall not be unreasonably withheld. In addition, it is the understanding of CDNR and Water Provider that the reservation by the Government of the right to control and use all of the storage capacity of Chatfield Reservoir in Article II.C. of the Water Storage Agreement is for purposes related to dam safety, emergency management and flood control. In the event the Government asserts the right to control and use the Storage Space granted to Water Provider for purposes other than flood control and public safety on a temporary basis, CDNR will use its best efforts to ensure the purposes of the Water Storage Agreement are fulfilled. In the event of litigation between the Government and CDNR pertaining to the rights and obligations that are the subject of the Water Storage Agreement, CDNR consents to Water Provider's intervention in such litigation.

F. SPWRAP. Water Provider is currently a member of South Platte Water Related Activities Program, Inc. ("SPWRAP"), and shall continue its membership in SPWRAP for as long as SPWRAP and the Platte River Recovery Implementation Program both are in existence and this Agreement remains in effect.

G. Termination of Water Storage Agreement.

1. If the Government serves notice upon CDNR of the Government's intention to terminate or suspend the Water Storage Agreement pursuant to Article XV thereof due to non-performance of an obligation, CDNR and the Water Provider shall have the right to take such actions as are necessary to prevent the termination or suspension, however, Water Provider shall have no obligation to take an action to cure the default of CDNR or other *Water Providers*.
2. As long as Water Provider is not in default of any of its obligations hereunder for one year or longer, CDNR shall not seek to terminate the Water Storage Agreement without the consent of Water Provider. The consent of Water Provider shall not be unreasonably withheld.
3. If the Water Storage Agreement is terminated, Water Provider is responsible for legal obligations, including financial obligations, previously incurred based on its Pro Rata Share.

H. Modification to Water Provider Agreements.

By the Parties. Concurrently with the execution of this Agreement, CDNR is executing agreements with other *Water Providers* that are identical in substance to this Agreement, except for matters resulting from differences in the Pro Rata Share and method of payment. As long as Water Provider is not in default of any of its obligations hereunder for one year or longer, CDNR shall not consent to the amendment or modification of any such agreements with other *Water Providers* without the consent of Water Provider, and

acknowledges that in the event of such an amendment, similar or identical amendments to this Agreement will likely be required. The consent of Water Provider shall not be unreasonably withheld. Any amendment or modification of any such agreement with other *Water Providers* obtained without the consent of Water Provider, when required, shall be void.

I. Site Access and Authorization to Conduct Work

CDNR, through this Agreement, authorizes CRMC access to the Project Site, contingent upon the inclusion of provisions related to insurance, professional standards of care, immunity, access to work products and reporting, in the bylaws of the CRMC attached as Exhibit F hereto. (For reference, the articles of incorporation of the CRMC are also attached as Exhibit G.) For purposes of this Agreement, the Project Site is defined as the State Park located at Chatfield Reservoir as of the effective date of this Agreement.

- J. Termination After Redetermination of Total Project Costs. Within 24 months of the effective date of this Agreement, the Total Project Costs will be re-examined and refined. If the refined estimate exceeds One Hundred Thirty-four Million Dollars (\$134,000,000.00) by ten percent or more, Water Provider shall have the right to terminate this Agreement and relinquish its Pro Rata Share for a period of sixty (60) days after the day on which it is given notice of such refined estimate in accordance with the notice provision below. If the refined estimate exceeds One Hundred Thirty-four Million Dollars (\$134,000,000.00) and the Water Provider declines to terminate this Agreement, the Total Project Costs shall be adjusted to equal the refined estimate and Water Provider shall have 180 days to fully fund the additional amount of its Pro Rata Share of the total amount of the refined Total Project Costs in accordance with Paragraph IV.D. Water Provider will be subject to Paragraph IV.F.1. if it fails to fund such amounts in accordance with this Paragraph. If this Agreement is terminated in accordance with this provision, Water Provider shall be entitled to a refund of the funds it put into the Escrow Account and/or cancellation of any further disbursements pursuant to any Loan Contract with CWCB, both as described in Paragraph IV.D. above, except that Water Provider shall be required to pay from its Escrow Account or pursuant to its Loan Contracts its Pro Rata Share of the costs incurred in developing the refined estimate of Total Project Costs, as well as its Pro Rata Share of the project implementation costs incurred by CRMC, through the date of such termination, including costs of any necessary reclamation of the Project Site caused by disturbances prior to the termination.

VII. Miscellaneous Provisions.

- A. Binding Effect. This Agreement and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns, if any.
- B. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to all matters set forth herein and neither Party has relied upon any fact or representation not expressly set forth herein. This Agreement supersedes

all other prior agreements and understandings of any type, both written and oral, with respect to Water Provider's use of Storage Space in Chatfield Reservoir, including Water Provider's "Letter(s) of Commitment" with the Colorado Water Conservation Board. The recitals and Exhibits A-G attached hereto are hereby incorporated herein.

- C. Captions. The captions in this Agreement are for convenience of reference only, are not part of this Agreement and shall not define or limit any of its terms or provisions.
- D. Amendments. Amendments to this Agreement shall only be effective if entered into: 1) in accordance with paragraph VI.H. above; and 2) with the same formality as this Agreement.
- E. Venue and Governing Law. This Agreement shall be governed by and construed under the laws of the State of Colorado. The proper venue for resolution of any dispute resulting in litigation shall be the District Court for Douglas County.
- F. Notices. All notices, requests, demands, or other communications (collectively, "Notices") hereunder shall be in writing and given by (i) express delivery service which maintains delivery records requiring a signed receipt, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following addresses, or at such other addresses as the Parties may designate by notice in the above manner.

If to CDNR:
Executive Director
Colorado Department of Natural Resources
1313 Sherman Street, Room 718
Denver, Colorado 80203

with copy to
Deputy Attorney General
Natural Resources and Environment Section
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 7th Floor
Denver, CO 80203

If to Water Provider:

Utilities Director
Town of Castle Rock
175 Kellogg Court
Castle Rock, CO 80109

with copy to:

Town Attorney

Town of Castle Rock
100 North Wilcox Street
Castle Rock, CO 80104

Notices shall be effective (a) the next day following the date sent by an established express delivery service which maintains delivery records requiring a signed receipt, (b) upon receipt by the addressee of a hand delivery, or (c) three days after the date of mailing via certified or registered mail, postage prepaid, return receipt requested.

- G. Waiver of Rights. The failure of either Party to exercise any right under this Agreement shall not be deemed a waiver of such Party's right and shall not affect the right of such Party to exercise at some future time the right or rights or any other right it may have under this Agreement.
- H. Failure to Perform Due to Force Majeure. Neither Party to this Agreement shall be liable for any delay or failure to perform due solely to conditions or events of force majeure, as that term is defined in this paragraph; provided that: (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the force majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the force majeure event or condition; and (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing the remedial actions taken. As used in this paragraph, force majeure shall mean any delay or failure of a Party to perform its obligations under this Agreement caused by events beyond the Party's reasonable control and without the fault or negligence of the Party, including, without limitation acts of God, sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, sabotage, vandalism beyond that which can be reasonably prevented by the Party, terrorism, war, riots, fire, explosion, blockades, insurrection, strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group) and changes of law relating to financial obligations, revenues and budgetary matters concerning Colorado local governments and their enterprises .
- I. Defense Against Third Parties. In the event of litigation by any third party concerning this Agreement, and to the extent permitted by law, the Parties agree to jointly defend any such third party action.
- J. No Third Party Beneficiaries. Except with regard to provisions herein intended to protect other *Water Providers*, there are no third party beneficiaries of this Agreement. Except for other *Water Providers*, no third party has any right to enforce this Agreement.
- K. Authority of the Parties. The Parties each affirm and represent that they have the full power and authority to execute this Agreement and thereafter perform all of the terms and conditions set forth herein.

- L. Counterparts and Facsimiles. This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Facsimile signatures bind the parties hereto.
- M. Non-Business Days. If any date for any action under this Agreement falls on a Saturday, Sunday or a holiday recognized by the State of Colorado, then the relevant date shall be extended automatically until the next business day.
- N. No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties, or to impose any such obligation or liability upon either Party. Neither of the Parties shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.
- O. No Public Utility. Nothing contained in this Agreement shall be construed as an intent by any of the Parties to dedicate any of their property to public use or subject any of them to regulation as a "public utility" as defined in the Colorado Public Utilities Code or any other applicable law.
- P. No Costs or Fees. In the event of litigation or other dispute resolution process arising out of this Agreement, the Parties agree that each shall pay its own costs and expenses including attorney fees.
- Q. Joint Draft. This Agreement was drafted jointly by CDNR and Water Provider with each having the opportunity for review, comment, advice and the contribution of legal counsel. Accordingly, the Parties agree the legal doctrine of construction against the drafter shall not be applied should any dispute arise concerning this Agreement.
- R. Severability. The provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Agreement in accordance with its intent.
- S. CORA Disclosure. To the extent not prohibited by law, this Agreement is subject to public release through the Colorado Open Records Act, CRS §24-72-201, et seq.
- T. Authority, Appropriation, And Approval. Authority to enter into this Agreement exists in Resolution No. 2014-91 and funds have been budgeted, appropriated and placed into escrow in accordance with Section IV.D. Financial obligations of the Water Provider payable after the current fiscal year, identified in Section IV.E above, and mitigation costs in excess of those identified in Section IV.D, if any, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

VIII. Required State Provisions. The following provisions apply only when the Water Provider is an agency of CDNR and do not limit the rights or remedies of other *Water Providers* pursuant to their individual Water Provider Agreements:

- A. Effective Date. This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the "Effective Date"), but shall be effective and enforceable thereafter in accordance with its provisions.
- B. Failure to Perform – Disputes. The failure of a Party to perform its respective obligations in accordance with the provisions of this Agreement is a breach of this Agreement. In the event of disputes concerning performance hereunder or otherwise related to this Agreement, the Parties shall attempt to resolve them at the divisional level. If this fails, disputes shall be referred to senior departmental management staff designated by each party. If this fails, the matter shall be submitted in writing by both Parties to the State Controller, whose decision shall be final.
- C. Records Maintenance. During the term of this Agreement and for a period terminating upon the later of (i) the six year anniversary of the final payment under this Agreement or (ii) the resolution of any pending Agreement matters (the "Record Retention Period"), each Party shall maintain, and allow inspection and monitoring by the other Party, and any other duly authorized agent of a governmental agency, of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the work or the delivery of services or goods hereunder.
- D. Records Inspection. Water Provider shall have the right to inspect CDNR's performance at all reasonable times and places during the term of this Agreement. CDNR shall permit Water Provider, and any other duly authorized agent of a governmental agency having jurisdiction to monitor all activities conducted pursuant to this Agreement, to audit, inspect, examine, excerpt, copy and/or transcribe CDNR's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate performance hereunder. Monitoring activities controlled by Water Provider shall not unduly interfere with CDNR's performance hereunder.
- E. Confidential Information. Each Party shall treat the confidential information of the other Party with the same degree of care and protection it affords to its own confidential information, unless a different standard is set forth in this Agreement. Each Party shall notify the other Party immediately if it receives a request or demand from a third party for records or information of the other Party.
- F. Authority, Appropriation, And Approval. Authority to enter into this Agreement exists in N/A and funds have been budgeted, appropriated pursuant to N/A and placed into escrow in accordance with Section IV.D. Financial obligations of the Water Provider payable after the current fiscal year, identified in

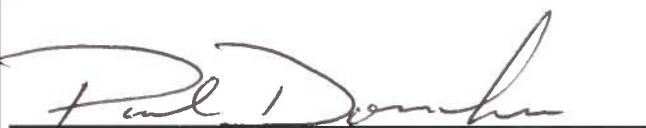

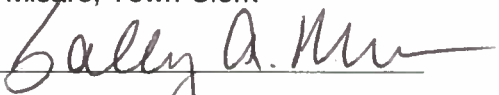

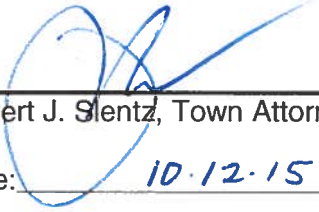
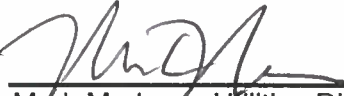
Section IV.E above, and mitigation costs in excess of those identified in Section IV.D, if any, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

~~~ Signature pages follow ~~~

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**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

\* Persons signing for parties hereby swear and affirm that they are authorized to act on behalf of their respective party and acknowledge that the other party is relying on their representations to that effect.

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p align="center"><b>WATER PROVIDER</b><br/>Town of Castle Rock</p> <p><b>TOWN OF CASTLE ROCK</b></p> <p><br/>_____<br/>Paul Donahue, Mayor</p> <p>Date: <u>10-13-15</u></p> | <p align="center"><b>STATE OF COLORADO</b><br/>John W. Hickenlooper, Governor<br/>Colorado Department of Natural Resources<br/>Mike King, Executive Director</p> <p><br/>_____<br/>Signature</p> <p>By: INSERT-Name &amp; Title of Person Signing for Agency</p> <p>Date: <u>10/15/15</u></p> |
| <p><b>ATTEST:</b></p> <p>_____<br/>Sally A. Misare, Town Clerk</p> <p>Date: <br/><u>10-13-15</u></p>                                                                        | <p align="center"><b>LEGAL REVIEW</b><br/>Cynthia H. Coffman, Attorney General</p> <p><br/>_____<br/>Signature</p> <p>By: Casey Shpall, Deputy Attorney General<br/>Natural Resources and Environment Section</p> <p>Date: <u>10/15/15</u></p>                                                |
| <p><b>Approved as to form:</b></p> <p><br/>_____<br/>Robert J. Slentz, Town Attorney</p> <p>Date: <u>10-12-15</u></p>                                                      |                                                                                                                                                                                                                                                                                                                                                                                 |
| <p><b>Approved as to content:</b></p> <p><br/>_____<br/>Mark Marlowe, Utilities Director</p> <p>Date: <u>10-12-15</u></p>                                                  |                                                                                                                                                                                                                                                                                                                                                                                 |

The following provision applies when the Water Provider is an agency of CDNR:

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

CRS §24-30-202 requires the State Controller to approve all State agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Colorado Department of Natural Resources/EDO is not authorized to begin performance until such time. If Colorado Department of Natural Resources/EDO begins performing prior thereto, the Water Provider is not obligated to pay Colorado Department of Natural Resources/EDO for such performance or for any goods and/or services provided hereunder.

**STATE CONTROLLER**  
**Robert Jaros, CPA, MBA, JD**

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



Date: \_\_\_\_\_

10-16-15