

**INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN  
THE COUNTY OF BENT  
AND  
THE CITY OF COLORADO SPRINGS  
ACTING BY AND THROUGH ITS ENTERPRISE  
COLORADO SPRINGS UTILITIES**

**THIS INTERGOVERNMENTAL AGREEMENT** (this “Agreement” or “IGA”) is made and entered into effective the 11 day of October, 2022, (the “Effective Date”) by and between the **COUNTY OF BENT**, State of Colorado, a political subdivision of the State of Colorado (the “County” or “Bent County”) and the **CITY OF COLORADO SPRINGS**, a Colorado municipal corporation and home rule city, acting by and through its enterprise, **COLORADO SPRINGS UTILITES** (“Utilities”). The County and Utilities may be referred to herein, individually, as a “Party” or, collectively, as the “Parties.”

**RECITALS**

**WHEREAS**, Utilities is a four-service public municipal utility that provides, among other things, municipal and industrial water service to the City of Colorado Springs, Colorado (“Colorado Springs”) and other communities within the vicinity of Colorado Springs;

**WHEREAS**, in order to, among other things, meet the water supply demands of a growing population, mitigate against current and future water supply risks, and diversify its water supply portfolio, all consistent with Utilities’ Integrated Water Resources Plan, Utilities desires to acquire water rights from agricultural interests that have been historically used for irrigation within Bent County and change them to include municipal and industrial uses;

**WHEREAS**, in the past, the acquisition and change of use of agricultural water rights has required municipal entities to dry up and permanently remove from production historically irrigated agricultural lands;

**WHEREAS**, the permanent transfer of water from agricultural to municipal uses can have adverse impacts on agricultural communities, including, but not limited to, the loss of farm production and income, loss of tax revenues, loss of farming jobs, and loss of farm-related jobs and industries;

**WHEREAS**, pursuant to authority granted by, *inter alia*, Section 24-65.1-101, *et seq.*, C.R.S.; Section 30-28-101, *et seq.*, C.R.S.; Section 30-28-201, *et seq.*, C.R.S.; Section 29-20-101, *et seq.*, C.R.S., and Section 24-32-111, C.R.S., the County has adopted Guidelines and Regulations for Areas and Activities of State Interest, County of Bent, State of Colorado (the “County’s 1041 Regulations”);

**WHEREAS**, because of concerns about the permanent cessation of agriculture in Bent County, the County has designated the efficient utilization of municipal and industrial water

projects as an activity of state interest, and the permanent cessation of irrigation as an area of state interest, as further set forth in the County's 1041 Regulations;

**WHEREAS**, pursuant to Section 1.108 of the County's 1041 Regulations, "No Person may undertake or engage in Development in Designated Areas of State Interest or any activities of state interest designated in these Regulations, wholly or partially within the unincorporated areas of Bent County, without first applying for and obtaining from Bent County either a permit...or a 'Finding of No Significant Impact' pursuant to these Regulations";

**WHEREAS**, Utilities and the County recognize that it is in their interest to pursue water development strategies that, consistent with the Colorado Water Plan, seek to minimize the permanent cessation of irrigation and emphasize alternative transfer or water sharing methods that avoid or reduce the permanent dry-up of irrigated agricultural land in Bent County;

**WHEREAS**, both Utilities and the County recognize that it is in their interests to avoid the time, expense, and uncertainty of litigation, while reserving all rights, and instead work collaboratively to enable Utilities to utilize for municipal and industrial purposes water rights historically used for irrigation of lands in Bent County in a manner that minimizes the permanent cessation of irrigation and appropriately mitigates the impacts of water transfers on Bent County;

**WHEREAS**, under Section 3.201 of the County's 1041 Regulations, "Upon the request of the state or federal Government, as defined by Section 29-1-202(1), C.R.S., including any political subdivision of the state, as defined in Section 29-1-202(2), C.R.S., proposing to engage in a Matter of State Interest, the requirements of the Guidelines and Regulations may be met by the approval of an intergovernmental agreement between the County and the Government Applicant.";

**WHEREAS**, for the foregoing reasons, and consistent with and pursuant to Section 3.201 of the County's 1041 Regulations, the Parties desire to enter into this IGA that will (1) enable Utilities to develop up to fifteen thousand (15,000) acre-feet of annual consumptive use, measured on a 10-year rolling average, for all municipal and industrial purposes, from agricultural water rights historically used in Bent County, in lieu of, and without the need for obtaining a permit under the County's 1041 Regulations; and, in exchange, (2) satisfy the requirements of the County's 1041 Regulations and appropriately mitigate the impacts of this water development on the County.

**NOW THEREFORE**, for good consideration, including the mutual covenants and agreements hereinafter set forth, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

### **COVENANTS AND AGREEMENTS**

The recitals set forth above are hereby incorporated into the covenants and agreements below as if explicitly set forth below.

## I. PROJECTS AUTHORIZED BY THE IGA

1. Volume of Water Limitation. Utilities is hereby authorized to develop up to fifteen thousand (15,000) acre-feet of fully consumable annual water supplies (the “15,000 AF of Authorized Water Development”) through one or more water development projects, for any and all municipal and industrial uses by Colorado Springs, from agricultural water rights historically used for irrigation in Bent County (individually, an “Authorized Water Development Project” and, collectively, the “Authorized Water Development Projects” or “Projects”). This authorization includes any structures, infrastructure, or facilities, such as augmentation stations, recharge ponds, divide boxes, or culverts that are reasonably necessary to deliver water attributable to the Authorized Water Development Projects to the Arkansas River and/or its tributaries in Bent County, exchange such water upstream, and/or otherwise operate, maintain or further the purpose of the projects, such as irrigation efficiency improvements (the “Related Infrastructure”). As described in more detail below, Utilities may not take delivery of water from any Authorized Water Development Project until such project has been noticed pursuant to and consistent with the terms of this IGA.

1.1. The 15,000 AF of Authorized Water Development shall be determined on a ten-year rolling average. For the avoidance of doubt, this means that Utilities may take delivery of more than 15,000 acre-feet of water from Authorized Water Development Projects in any given year, provided that, over any consecutive ten-year period, the average annual amount of water taken from Authorized Water Development Projects does not exceed 15,000 acre-feet.

1.2. The 15,000 AF of Authorized Water Development shall be measured when water is first delivered to storage in Lake Meredith, in Pueblo Reservoir, or other mutually agreed upon locations (the “First Delivery Point”). Any transit, evaporative, or other losses prior to the First Delivery Point shall not count towards the 15,000 AF of Authorized Water Development. Each acre-foot of water delivered to a First Delivery Point shall be counted only once for the purposes of the 15,000 AF of Authorized Water Development (e.g., if one acre-foot of water is first delivered to Lake Meredith and then subsequently exchanged into Pueblo Reservoir, that acre-foot of water would be counted for the purposes of the 15,000 AF of Authorized Water Development when it is first delivered into Lake Meredith but not counted again when it is subsequently exchanged into Pueblo Reservoir).

1.2.1. Any additional First Delivery Point must be agreed to in writing by the Parties, where either Party may withhold its consent at its sole discretion.

1.3. The 15,000 AF of Authorized Water Development limit shall apply only to Authorized Water Development Projects, and shall not apply to water projects that are permitted under the County’s 1041 Regulations or otherwise exempt from regulation under the County’s 1041 Regulations.

2. Dry-Up Limitation. Utilities shall cause no more than three thousand one hundred and twenty-five (3,125) acres (the “3,125 Acres of Authorized Permanent Dry-Up”) of historically irrigated farmland in Bent County to be permanently dried up and removed from

irrigation as a result of the Authorized Water Development Projects (“Authorized Permanent Dry-Up”).

2.1. Authorized Water Development Projects that result in the permanent dry up of parcel corners for the purposes of installing irrigation efficiency improvements on farms, such as center pivot sprinklers (“Authorized Parcel Corner Dry-Up”), shall not count towards the 3,125 Acres of Authorized Permanent Dry-Up. However, if the overall irrigated parcel is subsequently permanently dried-up, then such corners shall count towards the 3,125 Acres of Authorized Permanent Dry-Up. The Parties further acknowledge and agree that, because of irregularly shaped farm parcels, Authorized Parcel Corner Dry-Up may exceed twenty-two percent (22%) of a given field in some circumstances; provided that the dry-up is reasonably related to the irrigation efficiency improvements. Otherwise, the dry-up shall be counted towards the 3,125 Acres of Authorized Permanent Dry-Up.

2.2. The 3,125 Acres of Permanent Dry-Up limit shall apply only to Authorized Water Development Projects, and shall not apply to water projects that are permitted under the County’s 1041 Regulations, a separate intergovernmental agreement between Utilities and Bent County, or otherwise exempt from regulation under the County’s 1041 Regulations.

2.3. Utilities will endeavor to work in good faith with farmers and other agricultural interests to ensure that Authorized Water Development Projects that include some or all of the 3,125 Acres of Authorized Permanent Dry-Up facilitate one or more of the following: farm efficiency, ditch efficiency, water quality improvements, net economic benefit to Bent County, or other mutually agreed upon criteria between the Parties.

3. Water Sharing Agreements. Utilities agrees and acknowledges that Bent County’s clear and expressed preference is that Utilities pursue Authorized Water Development Projects that include water sharing or alternative transfer method agreements that help avoid or minimize the permanent cessation of irrigation on a farm (individually, a “Water Sharing Agreement” or, collectively, the “Water Sharing Agreements”). A Water Sharing Agreement shall limit Utilities to taking consumptive use water from a farm in either: (1) no more than up to five out-of-every ten years; or (2) no more than up to fifty percent (50%) of the consumptive use water from a farm every year (the “5-in-10 or 50% Limit”).

3.1. For Authorized Water Development Projects that include both Authorized Parcel Corner Dry-Up and Water Sharing Agreement(s), water made available to Utilities by Authorized Parcel Corner Dry-Up on a field shall be counted towards the 5-in-10 or 50% Limit for that field.

3.2. Water that was transferred off a farm parcel to entities other than Utilities prior to the Authorized Water Development Project shall not be counted towards the 5-in-10 or 50% Limit (*e.g.*, if a farmer has previously sold some but not all ditch company shares used on a farm to a neighbor, the farmer could enter into a water sharing arrangement with Utilities to deliver to Utilities the water associated with all the

remaining ditch company shares in up to five out-of-every ten years or up to fifty percent (50%) of the consumptive use water from a farm every year).

3.3. Utilities agrees to work in good faith with farmers and other agricultural interests to pursue Water Sharing Agreements that facilitate one or more of the following: farm efficiency, ditch efficiency, water quality improvements, net economic benefit to Bent County, or other mutually agreed upon criteria between the Parties.

4. Authorized Water Development Projects. Each Authorized Water Development Project shall consist of one or more of the following, and nothing else: (1) Water Sharing Agreement(s); (2) Authorized Parcel Corner Dry-Up; and/or (3) some or all of the 3,125 Acres of Authorized Permanent Dry-Up.

5. Place of Use Limitation. Utilities may use the water attributable to the Authorized Water Development Projects for any and all municipal and industrial uses, including, but not limited to, lease or sale to third parties (including other municipal, industrial, and agricultural entities); provided that, no water attributable to an Authorized Water Development Project shall be used, leased, sold or otherwise transferred or conveyed by Utilities or any third party outside of the Arkansas River Basin. If Utilities offers to lease any water attributable to an Authorized Water Development Project for agricultural uses, Utilities will endeavor to give preference to agricultural irrigators and producers located in Bent County.

6. Frequency Limitation. With the exception of water attributable to the 3,125 Acres of Authorized Permanent Dry-Up and/or the Authorized Parcel Corner Dry-Up (which water Utilities may take every year), Utilities shall not, for the purposes of an Authorized Water Development Project, take water from farm acreage that has been fallowed for more than two consecutive years without Bent County's prior approval.

6.1. The limitation set forth above applies only to water taken by Utilities from Authorized Water Development Projects and is not intended to place any restrictions on how farmers otherwise choose to manage their fields.

7. Colorado Water Plan. It is the intent of the Parties that the Authorized Water Development Projects further the goals of the Colorado Water Plan to implement alternative transfer methods and water sharing agreements that avoid or minimize the permanent cessation of agriculture. Bent County acknowledges and agrees that Authorized Parcel Corner Dry-Up constitutes an alternative transfer method consistent with these goals; and that Water Sharing Agreements (which must meet the 5-in-10 or 50% Limit) will constitute alternative transfer methods and/or water sharing agreements consistent with these goals. Bent County agrees that it shall not assert that the water attributable to the Authorized Water Development Projects may not be used as Temporary Use Agreement Waters or TU Waters, as those terms are defined in, *inter alia*, the Decree entered in Case No. 05CW96 (Water Div. 2), or that any water attributable to the Authorized Water Development Projects may not be used, reused, subsequently used, and/or used to extinction under any existing or future decree that permits the use of Temporary Use Agreement Waters or TU Waters.

8. 1041 Permit Not Required. Provided that Utilities complies with the requirements of this IGA, including the Notice of Authorized Water Development Project Process, the impacts

to the County, including, but not limited to, any impacts to natural resources, wildlife, wildlife areas, wetlands, soil loss, land use, local water and wastewater treatment, county residents, the local economy, agricultural lands, areas of paleontological, historic, or archaeological importance, visual quality or other nuisances, recreation, environmentally sensitive areas, air quality, water quality, water quantity, or vegetation and weed management from or caused by the Authorized Water Development Projects, or the operation thereof, including any Authorized Permanent Dry-Up, Authorized Parcel Corner Dry-Up, Water Sharing Agreement and/or Related Infrastructure, will be adequately mitigated, and the Authorized Water Development Projects shall not require a separate or additional permit under the County's 1041 Regulations.

8.1. This IGA exclusively contemplates projects for the acquisition of water supplies for Utilities from water rights historically used for irrigation or other farming and ranching activities in Bent County (including the Related Infrastructure and any changes of water rights and appropriative rights of substitution and exchange that are necessary for Utilities' use such water supplies). This IGA does not contemplate, or approve, any other municipal or industrial water projects, including, but not limited to, the construction or enlargement of reservoirs, pipelines to transport water outside of Bent County, or water treatment facilities.

8.2. This IGA does not exempt Utilities from compliance with Bent County's zoning, building, health or other regulations and codes.

8.3. The County acknowledges and agrees that the benefits accruing to the County and its citizens from Authorized Water Development Projects approved and mitigated in accordance with the terms of this IGA are equal to or outweigh the losses of any resources within the County, or the losses of opportunities to develop such resources.

8.4. The County acknowledges and agrees that Utilities has the necessary expertise and financial capability to develop and operate Authorized Water Development Projects consistent with the requirements of this IGA, and that the Authorized Water Development Projects are technically and financially feasible.

8.5. Subject to compliance with the terms and conditions of this IGA, the Authorized Water Development Projects will not significantly degrade existing natural scenic characteristics, create blight, or cause other nuisance factors such as excessive noise, obnoxious odors, airborne dust, or noxious weed invasion.

8.6. The Authorized Water Development Projects do not conflict with an approved local master plan, or other applicable regional, state, or federal land use or water plan.

8.7. Utilities shall be responsible for any other approvals (state, federal, ditch company, private) necessary for the Authorized Water Development Projects. Utilities shall comply with all state, local, and federal regulatory requirements, permits, decrees and other approvals applicable to the Authorized Water Development Projects. Utilities shall provide copies of any such approvals, permits, and decrees to Bent County. In the event of conflict between such other requirements, permits, decrees and other approvals and this IGA, the stricter standard shall be applicable.

8.8. Any dry-up by third-parties (including project proponents) that is not otherwise exempt from Bent County's 1041 Regulations or expressly authorized pursuant to this IGA, must be pursuant to a separate permit issued under Bent County's 1041 Regulations or an intragovernmental agreement with the County.

## II. UPFRONT AND PER ACRE-FOOT MITIGATION AND OTHER PAYMENTS

9. Upfront Mitigation Payment. Within thirty (30) business days of the Effective Date, Utilities shall deposit in good funds two million five hundred thousand and 00/100 dollars (\$2,500,000.00) (the "Upfront Mitigation Payment") into an interest-bearing restricted account maintained by Utilities or an interest-bearing escrow account maintained by a commercially-reputable financial institution selected by Utilities (the "Economic Mitigation Account"). The Upfront Mitigation Payment is a one-time payment.

10. GIS Services Payment. Within thirty (30) business days of the Effective Date, Utilities shall pay to Bent County in good funds three hundred fifty thousand and 00/100 dollars (\$350,000.00) to be used by Bent County for the development of a Geographic Information System (GIS) based land management system and online assessor and clerk and recorder records (including a GIS based assessor map and searchable records of recorded documents) (the "GIS Payment"). The GIS Payment is a one-time payment.

10.1. If the amount of the GIS Payment exceeds Bent County's actual costs to develop the GIS land management system and online records, any excess payment shall be credited against payments due for the Per Acre-Foot Charge (defined below). If the amount of the GIS Payment is less than the County's actual costs to develop the GIS land management system and online records, then CS-U shall be responsible for the additional costs, in an amount not to exceed fifty thousand and 00/100 dollars (\$50,000.00).

11. Per Acre-Foot Charge. Utilities shall annually pay to Bent County in good funds forty-five and 00/100 dollars (\$45.00) for every acre foot of water first delivered to the First Delivery Point from the Authorized Development Projects (the "Per Acre-Foot Charge"). Payment of the Per Acre-Foot Charge is based on water delivered during the previous water year (November 1 through October 31).

11.1. Any transit, evaporative, or other losses prior to delivery to the First Delivery Point shall not count towards the Per Acre-Foot Charge. Each acre-foot of water delivered to a First Delivery Point shall only be counted once for the purposes of the Per Acre-Foot Charge (e.g., if one acre-foot of water is first delivered to Lake Meredith and then subsequently exchanged into Pueblo Reservoir, that acre-foot of water would be counted for the purposes of the Per Acre-Foot Charge when it is first delivered into Lake Meredith but not counted again when it is subsequently exchanged into Pueblo Reservoir).

11.2. Payments of the Per Acre-Foot Charge shall be used by Bent County to hire and pay a new Land Management staff position that will be responsible for monitoring and enforcement of land use issues within the County, including monitoring and enforcement related to the Authorized Water Development Projects; provided that if the payments of the Per Acre-Foot Charge exceed the amounts necessary for the Land

Management staff position, then Bent County shall use the additional payments of the Per Acre-Foot Charge for economic development within Bent County, including support of business retention, expansion, and diversification, agricultural and agricultural-added business development, small business development, and infrastructure improvements for business development, and which may include funding for an Economic Development Coordinator staff position.

11.2.1. The Parties may mutually agree to other acceptable uses of the Per Acre-Foot Charge payments. Such other acceptable uses must be agreed to in writing by the Parties, where either Party may withhold its consent at its sole discretion.

11.3. Beginning the first January 1 following the Effective Date, for ten years, Utilities shall guarantee that the minimum payment to Bent County for the Per Acre-Foot Charge will be at least one hundred thirty-five thousand and 00/100 dollars (\$135,000.00) each year (the "Guaranteed Minimum Payment"), regardless of the amount of water that Utilities actually takes from Approved Water Development Projects (the "Guarantee Period"). Utilities shall make the Guaranteed Minimum Payment by January 31 in each year it is due (together with any other payments due for the Per Acre-Foot Charge from the previous year, if any).

11.3.1. If, at the end of the Guarantee Period, Utilities has developed one or more Authorized Water Development Projects sufficient to deliver at least 3,000 acre-feet of projected average annual supply to the First Delivery Point (the "3,000 Acre-Foot Minimum"), Utilities will make the Guaranteed Minimum Payment by January 31 each year (together with any other payments due for the Per Acre-Foot Charge from the previous year, if any). For the purposes of the 3,000 Acre-Foot Minimum, the amount of "developed" projected annual average supply shall be determined based on all Authorized Water Development Projects that have received an Authorized Water Development Project Certification; and the "projected average annual supply" shall be determined by a mutually-agreed qualified expert on a ten-year running average and based on a historical consumptive use analysis over a representative period of time that includes wet, average, and dry hydrological years.

11.3.2. If, at the end of the Guarantee Period, Utilities has developed less than 3,000 Acre-Foot Minimum, but more than or equal to 1,000 acre-feet of projected average annual supply that can be delivered to the First Delivery Point from Authorized Water Development Projects, the Guaranteed Minimum Payment shall be recalculated based on the then-existing amount of projected average annual supply ("Recalculated Acre-Foot Minimum") from Authorized Water Development Projects multiplied by the Per Acre-Foot Charge (the "Recalculated Guaranteed Minimum Payment"). In such case, at end of the Guarantee Period, Utilities shall make the Recalculated Guaranteed Minimum Payment by January 31 in each year it is due (together with any other payments due for the Per Acre-Foot Charge from the previous year, if any), until such time that Utilities develops the 3,000 Acre-Feet Minimum, at which time, beginning the next January 31, Utilities shall make the Guaranteed Minimum Payment pursuant to the previous paragraph.



11.3.3. If, at the end of the Guarantee Period, Utilities has developed less than 1,000 acre-feet of projected average annual supply that can be delivered to the First Delivery Point from Authorized Water Development Projects, Utilities may by January 31 each year, at its option: (1) continue the IGA by making the Recalculated Minimum Payment as if Utilities had developed 1,000 acre-feet of projected average annual supply that can be delivered to the First Delivery Point until such time that Utilities develops at least 1,000 acre-feet of projected average annual supply that can be delivered to the First Delivery Point from Authorized Water Development Projects, at which time, beginning the next January 31, Utilities shall make the Recalculated Guaranteed Minimum Payment pursuant to the previous paragraph; or (2) terminate the IGA pursuant to its terms. If Utilities elects to terminate the IGA pursuant to this paragraph, the terms and conditions applicable to any Authorized Water Development Project previously authorized pursuant to this IGA, including any Authorized Water Development Project Certification, shall survive the termination of this IGA.

11.3.4. After the Guarantee Period, if Utilities takes less than the 3,000 Acre-Foot Minimum or the Recalculated Acre-Foot Minimum at the First Delivery Point (whichever is applicable) from the Authorized Water Development Projects in any given year for hydrological reasons beyond Utilities' and Bent County's control (such as drought or lack of exchange potential), Utilities shall not seek a refund or any credit against the Guaranteed Minimum Payment for water not used. Otherwise, Utilities shall be entitled to take a credit against the Guaranteed Minimum Payment or Recalculated Guaranteed Minimum Payment (whichever is applicable) in the following year.

11.4. The Per-Acre Foot Charge shall apply only to Authorized Water Development Projects noticed and/or approved pursuant to this IGA.

12. Annual Reports. By January 31 each year, Bent County shall provide to Utilities and make available to the public an annual report detailing how any funds released from the Economic Mitigation Account and any funds derived from the Per-Acre Foot Charge were expended by Bent County in the previous year.

13. IGA Cost Reimbursement. Within thirty (30) business days of the Effective Date, Utilities shall pay in good funds One Hundred Thirty-Four Thousand One Hundred Forty-Seven and 94/100 dollars (\$134,147.94) to reimburse Bent County for the reasonable costs that it has incurred in the negotiation and formation of this IGA. This is a one-time payment.

### **III. NOTICE AND CERTIFICATION OF AUTHORIZED WATER DEVELOPMENT PROJECT PROCCESS**

14. Project Notice. Prior to taking water from an Authorized Water Development Project, Utilities shall provide notice of the Authorized Water Development Project to the County and any ditch company whose shares are included in the Authorized Water Development Project (the "Notice of Authorized Water Development Project"). Each Authorized Water Development Project must be separately noticed. The Notice of Authorized Water Development

Project shall include the following information about the Authorized Water Development Project (the “Submittal Requirements”):

14.1. Other Proponents and Owners. If Utilities is not the sole proponent of or sole owner of the land and/or water rights subject to the Authorized Water Development Project, Utilities shall submit a letter, signed by all other proponents or owners (or an association representing all the owners), by which all proponents and owners consent to the Authorized Water Development Project and acknowledge and agree: (1) that the Authorized Water Development Project is subject to and will be operated in conformity with this IGA; and (2) to become bound by the terms of this IGA to the extent that it is applicable to such proponents and owners. A mutual ditch or reservoir company shall not be considered a proponent or owner of an Authorized Water Development Project solely because shares in such company are included in the Authorized Water Development Project.

14.2. Deeds and Agreements. Utilities shall include a deed or other evidence of Utilities’ title, ownership interest, and/or right to use the land(s) and/or water right(s) that are the subject of the Authorized Water Development Project (the “Deeds and Agreements”). The Deeds and Agreements shall include copies of all contractual agreements, including any Water Sharing Agreements, option agreements, or any other binding agreements related to the Authorized Water Development Project and affecting the land and/or water rights that are included in the Authorized Water Development Project.

14.3. Project Narrative. A narrative description of the Authorized Water Development Project, including the location of any Authorized Permanent Dry-Up, Authorized Parcel Corner Dry-Up, or Related Infrastructure (proposed or existing) (the “Project Narrative”). The Project Narrative shall also explain how the Authorized Water Development Project will facilitate one or more of the following: farm efficiency, ditch efficiency, water quality improvements, net economic benefit to Bent County, or other mutually agreed upon criteria between the Parties.

14.4. Vicinity Map. Location of the Authorized Water Development Project shown on USGS quadrangle map.

14.5. Site Plan. A detailed map of the Authorized Water Development Project. The map shall include:

14.5.1. North arrow, scale, and legal description of the Authorized Water Development Project site.

14.5.2. Area of the Authorized Water Development Project site and clearly identified boundary lines and dimensions of the site.

14.5.3. Locations of public lands, special district boundaries, municipal boundaries, and boundaries or any residential subdivisions within one mile of the Authorized Water Development Project site.

14.5.4. Easements recorded or historically used, and proposed easements that provide access to or across, or other use of the Authorized Water Development site by Utilities, shown by approximate location, dimension, use, and grantee.

14.5.5. All Related Infrastructure (proposed or existing), shown by location and dimension.

14.5.6. Significant features, including natural and artificial drainage ways, ditches, streams, lakes, and ponds; dams and reservoirs; and any on-site or offsite feature that influences the Authorized Water Development Project.

14.6. Project Schedules and Phasing. Schedules for designing, permitting, constructing, and operating the Authorized Water Development Project.

14.7. Catlin Approval(s). Any approval that has been, or Utilities believes will be, required by the bylaws of any ditch company whose shares are included in the Authorized Water Development Project.

14.8. Property Rights, Permits and Other Approvals. Utilities shall provide the following to Bent County, to the extent that the following exist (collectively, the “Property Rights, Permits and Other Approvals”):

14.8.1. A list of all other federal, state, and local approvals and approvals that have been, or Utilities believes will be, required for the Authorized Water Development Project. Utilities shall provide the County with copies of any permits, approvals, and licenses that have been issued at the time of the Notice of Authorized Water Development Project and any permits, approvals, and licenses issued thereafter upon issuance.

14.8.2. Copies of all official federal and state consultation correspondence prepared for the Authorized Water Development Project; and copies of any draft or final environmental assessments or impact statement required for the Authorized Water Development Project.

14.8.3. Copies of all deeds, contracts, or other instruments evidencing Utilities’ right, title, or other interest, obligation, claim, or share in the Authorized Water Development Project.

14.8.4. Description of the water to be used by the Authorized Water Development Project, including: the amount of water; source(s) of water; historical use of water; Utilities’ right to use the water, including contracts, deeds, and share certificates; copies of all relevant water court decrees, permits, and Division of Water Resource approvals that exist or are pending; identification of any additional decrees and/or approvals that will be necessary for the Authorized Water Development Project; a detailed description of any changes that will be necessary for the Authorized Water Development Project; and evidence of a legal right to use existing drains and/or seepage ditches for the delivery and transport of water in such structures in connection with the Authorized Water Development Project.

14.8.5. Description and documentation of property rights, easements, and rights-of-way agreements, both on-site and off-site, that are necessary for the Authorized Water Development Project.

14.9. Dry-Up Covenants. For Authorized Water Development Projects that include any of the 3,125 Acres of Authorized Permanent Dry-Up, a description and documentation of existing or proposed dry-up covenants (the “Dry-Up Covenants”) which will encumber both the dry-up lands and severed water rights and run with and bind such property interests and owners thereof to revegetate such lands and maintain revegetation when completed. The terms of the Dry-Up Covenants shall, at a minimum, require:

14.9.1. An obligation to complete “Revegetation” including a description of the minimum revegetation criteria to be met pursuant to a plan for independent verification of whether such criteria are being met (the “Revegetation Criteria”). The initial Revegetation Criteria are set forth in Exhibit C. Exhibit C is not incorporated into this IGA, and the Parties may mutually agree to modify Exhibit C from time to time based on, *inter alia*, new information or experience.

14.9.2. Access to the land by County representatives and consultants and other regulatory agencies to monitor the Revegetation.

14.9.3. After Revegetation is certified as established: (1) prohibition of any plowing, tilling, or other mechanical means to break the soil, and a grazing program with compliance procedures and accountability measures; and (2) obligation for ongoing maintenance of Revegetation, including the weed control measures to be applied (“Weed Control Measures”). The initial Weed Control Measures are set forth in Exhibit D. Exhibit D is not incorporated into this IGA, and the Parties may mutually agree to modify Exhibit D from time to time based on, *inter alia*, new information or experience.

14.9.4. Prohibition of dry-land farming.

14.9.5. Prohibition of the removal or alteration of laterals, headgates, or other structures that are: (1) existing as of the dry-up covenant and (2) necessary to accomplish irrigation of the land prior to the completion of Revegetation.

14.9.6. A covenant running with title to both the formerly irrigated lands and the water rights removed from such land, and providing for access to the property for the implementation and completion of Revegetation, and the use of such water rights to accomplish Revegetation, including limitations on the use of such water rights for changed purposes if the Initial Revegetation Period is not successful.

14.10. Revegetation Plan. For Authorized Water Development Projects that include any of the 3,125 Acres of Authorized Permanent Dry-Up, a revegetation plan (the “Revegetation Plan”), prepared by a qualified expert, for all land areas from which historic irrigation will cease, including the following:

14.10.1. Description of all lands included.

14.10.2. Description of the Revegetation Criteria.

14.10.3. Description of the enforcement mechanism to be used if the minimum revegetation establishment criteria are not met (the “Revegetation Enforcement Mechanism”). The initial Revegetation Enforcement Mechanism is set forth in Exhibit C.

14.10.4. Description of the Weed Control Measures.

14.10.5. Description of plant and seed materials to be used and the method, amounts, and timing of their application.

14.10.6. Source, amount, timing, and seasonal duration of irrigation water to be applied to establish the intended Revegetation, and that such water is available until Revegetation is completed.

14.10.7. Description of the costs of preparing the soil, seeding, and planting vegetation and irrigating the same, costs of removal of noxious weeds and maintaining weed control throughout Revegetation, and revising and repeating the Revegetation Plan in the event the plan fails in whole or in part.

14.10.8. Description of a continuing monitoring and maintenance plan for implementation following the certification and establishment on the revegetated lands; such description shall include the expected costs in maintenance of the Revegetation on these fields, and, to the extent a grazing plan is to be implemented, a description of the parameters for utilizing a grazing plan and the compliance procedures must be described.

14.10.9. Description of the methods and costs to control and prevent animal species infestations, including without limitation, prairie dogs.

14.10.10. To the extent applicable, Utilities shall ensure that the removal of any parcel from irrigation complies with all terms and conditions included in the *Kansas v. Colorado* Operating Procedures for Administration of Parcels Claimed for Augmentation Credit. In addition, Utilities must ensure that all dry-up and Revegetation is compliant with the Colorado Weed Management Act, Article 5.5 of Title 35, C.R.S., and all other applicable state and Bent County laws and regulations concerning control of noxious weeds and control of soil erosion.

14.11. Parcel Corner Weed Control. For Authorized Water Development Projects that include Authorized Parcel Corner Dry-Up, a description and documentation of existing or proposed covenants, restrictions, or agreements which will encumber both the parcel corners and run with and bind such property interests and owners thereof to control noxious weeds on the parcel corners (the “Parcel Corner Weed Control Documents”). The terms of the Parcel Corner Weed Control Documents shall, at a minimum, require:

14.11.1. Description of the Weed Control Measures.

14.11.2. Access to the parcel corners by County representatives and consultants and other regulatory agencies to monitor the parcel corners.

14.11.3. Prohibition of dry-land farming; provided that irrigated agricultural practices may be permitted on the parcel corners using another source of water not attributable to the Authorized Parcel Corner Dry-Up.

14.12. Fallowing. For Authorized Water Development Projects that include the fallowing of any field, or part thereof, for one or more years, a description and documentation of existing or proposed covenants, restrictions, or agreements which will encumber both the fields and run with and bind such property interests and owners thereof to control noxious weeds on the fallowed fields (the “Fallowing Weed Control Documents”). The terms of the Fallowing Weed Control Documents shall, at a minimum, require:

14.12.1. Description of the Weed Control Measures.

14.12.2. Implementation of best management practices (as defined by the NRCS or other appropriate federal, state, or local agency mutually agreed to by the Parties) during fallowing, such as an obligation to plant a cover crop.

14.12.3. Access to the fallowed fields, or parts thereof that are fallowed, by County representatives and consultants and other regulatory agencies to monitor the fields.

14.13. Property Owned by Utilities. If Utilities acquires title in fee simple to any historically irrigated lands as part of an Authorized Water Development Project (whether or not irrigation will permanently cease on such lands), Utilities shall submit the following (collectively the “Property Owned by Utilities Submittals”):

14.13.1. An agreement to make payment in lieu of taxes (PILT) for such lands at the assessed rate for irrigated agricultural lands in Bent County, or other appropriate rate if the Authorized Water Development Project will result in uses that the County assesses at a higher rate.

14.13.2. If such lands will remain in irrigation, and Utilities also acquires title to the water rights historically used to irrigate such lands, an easement, covenant, or other restriction that will permanently tie the water to the land; provided that such easement, restriction, or covenant may authorize Utilities to: (1) use such water for municipal purposes in up to five out-of-every ten years; or (2) use up to fifty percent (50%) of such water for municipal purposes every year. Such easement, restriction, or covenant shall also provide for the continued farming of the land.

14.14. Wetlands, Wildlife and Aquatic Habitat. Utilities shall submit a report from a qualified expert or experts demonstrating that the Authorized Water Development Project, including any Related Infrastructure, will not: (1) adversely impact wildlife habitat or otherwise increase direct risks to wildlife; or (2) significantly deteriorate aquatic habitats, marshlands or wetlands, groundwater recharge areas, steeply sloping or

unstable terrain, forests and woodlands, critical wildlife habitat or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreation areas, and unique areas of geologic, historic, or archeological importance; or a plan prepared by such expert or experts to mitigate the impacts of the same to the County (the “Wetlands, Wildlife, and Aquatic Habitat Report”).

14.15. Economic Mitigation. Within thirty (30) business days of the submittal of Notice of an Authorized Water Development Project to Bent County, Utilities shall deposit in good funds into the Economic Mitigation Account eight hundred and 00/100 dollars (\$800.00) per acre-foot of projected annual water yield from the Authorized Water Development Project that is the subject of the application (the “First Mitigation Deposit”). For the purposes of the First Mitigation Deposit, the projected annual water yield shall be determined by a qualified expert on a ten-year running average and based on a historical consumptive use analysis over a representative period of time that includes wet, average, and dry hydrological years; and the determination shall not include any deduction for delivery losses to the First Delivery Point (*e.g.*, from transit losses, lack of exchange potential, etc.). If the final annual water yield from the Authorized Water Development Project is higher than initially projected, then Utilities shall include any additional First Mitigation Deposit amount that would result from such higher amount as part of the Second Mitigation Deposit described below. If the final annual water yield from the Authorized Water Development Project is lower than initially projected, then Utilities shall be entitled to a credit against the Second Mitigation Deposit equal to the difference between the amount of the First Mitigation Deposit and the amount that would result from such lesser amount. The First Mitigation Deposit shall be paid one-time per Authorized Water Development Project.

15. Project Certification. In lieu of a permit under the County’s 1041 Regulations, each noticed Authorized Water Development Project shall proceed pursuant to a certification issued under this IGA (the “Authorized Water Development Project Certification”). Together with the Notice of an Authorized Water Development Project, Utilities shall submit a draft of the Authorized Water Development Project Certification subject to the following, and no other terms and conditions:

15.1. Project Description. The Authorized Water Development Project Certification shall contain the following:

15.1.1. The names of all proponents and owners involved in the Authorized Water Development Project, including Utilities.

15.1.2. The Project Narrative.

15.1.3. A lay and legal description of the real property and water rights included in the Authorized Water Development Project.

15.1.4. Reference to this IGA, including a statement to the effect that the Authorized Water Development Project that is the subject of the Authorized

Water Development Project Certification is an Authorized Water Development Project under the IGA.

15.1.5. Reference to the Notice of Authorized Water Development Project, including: (1) the date that it was submitted to the County; and (2) a statement to the effect that a complete description of the Authorized Water Development Project is set forth in the Notice of Authorized Water Development Project.

15.1.6. Reference to any Deeds and Agreements, including the location (*i.e.*, reception number or book and page) that such documents are recorded in the real property records of Bent County if such documents have been recorded.

15.1.7. Reference to any Property Rights, Permits and Other Approvals, including the location (*i.e.*, reception number or book and page) that such documents are recorded in the real property records of Bent County if such documents have been recorded.

15.1.8. Reference to any Dry-Up Covenants, including the location (*i.e.*, reception number or book and page) that such documents are recorded in the real property records of Bent County.

15.1.9. Reference to any Revegetation Plan, including the location (*i.e.*, reception number or book and page) that such document is recorded in the real property records of Bent County if such document has been recorded.

15.1.10. Reference to any Parcel Corner Weed Control Documents, including the location (*i.e.*, reception number or book and page) that such documents are recorded in the real property records of Bent County if such documents have been recorded.

15.1.11. Reference to any Fallowing Weed Control Documents, including the location (*i.e.*, reception number or book and page) that such documents are recorded in the real property records of Bent County if such documents have been recorded.

15.1.12. Reference to any Property Owned by Utilities Submittals, including the location (*i.e.*, reception number or book and page) that such documents are recorded in the real property records of Bent County if such documents have been recorded.

15.1.13. Reference to the Wetlands, Wildlife, and Aquatic Habitat Report.

15.1.14. The projected annual yield of the Authorized Water Development Project.

15.1.15. The amount of the 3,125 Acres of Authorized Permanent Dry-Up included in the Authorized Water Development Project, if any.

15.1.16. The amount of Authorized Parcel Corner Dry-Up included in the Authorized Water Development Project, if any.



15.1.17. Reference to the Upfront Mitigation Payment.

15.1.18. The amount of the First Mitigation Deposit.

15.1.19. Reference to Utilities' obligation to make the Second Mitigation Deposit as set forth in the IGA.

15.1.20. Reference to Utilities obligation to pay the Per-Acre Foot Charge as set forth in the IGA.

15.2. Terms and Conditions. The Authorized Water Development Project Certification shall contain terms and conditions to the effect of the following:

15.2.1. This Authorized Water Development Project Certification is issued pursuant to the IGA in lieu of a permit under the County's 1041 Regulations. Utilities may develop the Authorized Water Development Project, including any Related Infrastructure, described herein subject to the terms and conditions this Authorized Water Development Project Certification.

15.2.2. Utilities shall operate (or cause others to operate, if applicable) the Authorized Water Development Project in conformance with the terms and conditions of the IGA and otherwise remain in compliance with the terms and conditions of the IGA.

15.2.3. Utilities (or others, if applicable) shall be responsible for the repair (to as near the same condition as practicable) of any damages to County owned or operated infrastructure caused by the operation of an Authorized Water Development Project, such as the washout of County roads or culverts.

15.2.4. Utilities shall comply (or cause others to comply, if applicable) with the Dry-Up Covenants, if any. Utilities shall grant easements or otherwise provide access to the County to any lands associated with the Dry-Up Covenants for the purposes of monitoring compliance with the Dry-Up Covenants.

15.2.5. Utilities shall comply (or cause others to comply, if applicable) with the terms and conditions of the Revegetation Plan, if any, including those terms and conditions that continue to apply after Revegetation has been completed consistent with the Revegetation Criteria, such as Weed Control Measures. Utilities shall grant easements or otherwise provide access to the County to any lands associated with the Revegetation Plan for the purposes of monitoring compliance with the Revegetation Plan.

15.2.6. Utilities shall include (or cause others to include, if applicable) the terms and conditions of the Revegetation Plan in any Water Court decree(s) approving a change of water rights associated with the Authorized Water Development Project as minimum standards for the revegetation of any of the 3,125 Acres of Authorized Permanent Dry-Up associated with the Authorized Water Development Project.

15.2.7. Utilities shall complete Revegetation consistent with the Revegetation Criteria. In the event that Utilities (or others, if applicable) fail to complete Revegetation consistent with the Revegetation Criteria, the County may exercise the Revegetation Enforcement Mechanism. Utilities shall remain responsible for accomplishing Revegetation consistent with the Revegetation Criteria until such time the Revegetation is completed consistent with the Revegetation Criteria. In such event, the Parties shall meet to discuss a plan for continuing efforts to accomplish Revegetation.

15.2.8. Utilities shall comply (or cause others to comply, if applicable) with the terms and conditions of the Parcel Corner Weed Control Documents, if any. Utilities shall grant easements or otherwise provide access to the County to any lands associated with the Parcel Corner Weed Control Documents for the purposes of monitoring compliance with the Parcel Corner Weed Control Documents.

15.2.9. Utilities shall comply (or cause others to comply, if applicable) with the Fallowing Weed Control Documents, if any. Utilities shall grant easements or otherwise provide access to the County to any lands associated with the Fallowing Weed Control Documents for the purposes of monitoring compliance with the Fallowing Weed Control Documents.

15.2.10. Utilities shall comply (or cause others to comply, if applicable) with the Property Owned by Utilities Submittals, if any. Utilities shall grant easements or otherwise provide access to the County to any lands associated with the Property Owned by Utilities Submittals for the purposes of monitoring compliance with the Property Owned by Utilities Submittals.

15.2.11. The Authorized Water Development Project Certification shall be subject to interim review at the end of years one, five and ten (as measured from the date that this Authorized Water Development Project Certification is issued pursuant to the IGA). Utilities shall submit a report to the County, at each interim review, confirming that the Authorized Water Development Project is in compliance with the Authorized Water Development Project Certification.

15.2.12. Utilities has submitted a Wetlands, Wildlife, and Aquatic Habitat Report stating that the Authorized Water Development Project, including any Related Infrastructure, will not: (1) adversely impact wildlife habitat or otherwise increase direct risks to wildlife; or (2) significantly deteriorate aquatic habitats, marshlands or wetlands, groundwater recharge areas, steeply sloping or unstable terrain, forests and woodlands, critical wildlife habitat or other wildlife protection areas, big game migratory routes, calving grounds, migratory ponds, nesting areas and the habitats of rare and endangered species, public outdoor recreation areas, and unique areas of geologic, historic, or archeological importance; or a plan to mitigate the impacts of the same to the County. As part of the interim reviews provided for above, Utilities shall submit a report to the County confirming that there have been no such impacts to the County or that the same are being mitigated.

15.2.13. Utilities shall pay, and the County shall receive, the *pro rata* amount of the Upfront Mitigation Payment, the First Mitigation Deposit, the Second Mitigation Deposit, and the Per-Acre Foot Charge as provided in the IGA.

15.2.14. The term of the Authorized Water Development Project Certification shall be indefinitely for the life of the Authorized Water Development Project, provided that Utilities remains in compliance with the terms and conditions of the Authorized Water Development Project Certification and the IGA.

15.2.15. The Authorized Water Development Project Certification shall be binding on Utilities (and any other owners or proponents, if applicable). The Authorized Water Development Project Certification shall attach to and run with any land and water rights associated with the Authorized Water Development Project, and shall constitute covenants and servitudes on such real property until such time as the terms and conditions of the Authorized Water Development Project Certification and/or the IGA are satisfied. A copy of the Authorized Water Development Project Certification shall be recorded in the real property records of Bent County, and, if applicable, any stock certificates in a mutual ditch or reservoir company subject to the Authorized Water Development Certification shall be reissued identifying the Authorized Water Development Certification as an encumbrance on the shares. The County shall notify the applicable ditch or reservoir company at such time as any such encumbrance on the shares has been released.

15.2.16. Utilities may not assign its rights and obligations under the Authorized Water Development Project Certification without the express written consent of the County. The rights and obligations of any other proponent or owner under the Authorized Water Development Project Certification may be assigned without the consent of the County; provided that the assignee agree to accept all the assignor's rights and obligations under the Authorized Water Development Project and the IGA and notifies the County in writing of the name and address of assignee immediately after any such assignment. The Parties acknowledge and agree that if Utilities assigns any rights and obligations under this IGA, and such assignment includes the right to develop water for non-agricultural uses outside of Bent County pursuant to the terms and conditions of this IGA, any such development shall count against the limits established by this IGA, including the 15,000 AF of Authorized Water Development and the 3,125 Acres of Authorized Permanent Dry-Up.

15.2.17. This Authorized Water Development Project Certification does not authorize any activities in Bent County beyond those directly applicable to the Authorized Water Development Project (including any Related Infrastructure and applications for changes of water rights and/or appropriative rights of exchange).

15.2.18. This Authorized Water Development Project Certification does not constitute an exemption from Bent County's zoning, building, health or other applicable regulations and codes.

15.2.19. Utilities (and other owners and proponents, if applicable) shall comply with all local, state, and federal regulatory requirements, permits, decrees, and other approvals applicable to the Authorized Water Development Project.

15.2.20. Any material changes to the Authorized Water Development Project or the Authorized Water Development Project Certification (including Utilities' commitments of record) shall require a Project Certification Amendment pursuant to the procedures set forth in the IGA. For these purposes, a material change shall be any change in the Authorized Water Development Project that significantly changes the nature of the impacts mitigated by the Authorized Water Development Project Certification.

15.2.21. In the event of noncompliance with the terms and conditions of this Authorized Water Development Project Certification, the County may enforce, or otherwise seek to revoke or suspend the Authorized Water Development Project Certification, or such other remedies as provided for in the IGA. Any such enforcement action, or other dispute concerning or arising out of an Authorized Water Development Project or Authorized Water Development Project Certification shall be resolved pursuant to the Dispute Resolution procedures set forth in the IGA. As provided for in the IGA, the exclusive venue for any dispute between Utilities and Bent County shall be in the District Court in and for the County of Bent, and if necessary for exclusive federal questions, the United States District Court for the District of Colorado. The Parties acknowledge that any failure by Utilities to substantially comply with the terms and conditions of the Authorized Water Development Project Certification shall be grounds to suspend or revoke such certification.

15.2.22. Utilities will not use water from this Authorized Water Development Project to serve property located outside of the Arkansas River Basin or market, transfer, wheel, or otherwise provide this water to properties located outside of the Arkansas River Basin.

15.2.23. Any noncompliance with the terms and conditions of this Authorized Water Development Certification shall not be cause to seek the revocation or suspension of another Authorized Water Development Project Certification, provided that Utilities is in compliance with the terms and conditions of that Authorized Water Development Project Certification.

15.2.24. The Authorized Water Development Project Certification shall lapse after thirty-six (36) months, unless Utilities has taken substantial steps to initiate the Approved Water Development Project. "Substantial steps" do not require construction activity and may include, among other things, legal or administrative proceedings and activities directly associated with the Authorized Water Development Project. Bent County may at its discretion extend the time within which to take substantial steps if Utilities submits a written request prior to the expiration of the Authorized Water Development Project Certification. The County will not unreasonably withhold approval of such extension. Upon the lapse of an Authorized Water Development Project Certification, any principal

deposited into the Economic Mitigation Account for that project shall be released back to Utilities.

15.2.25. Any other term and condition mutually agreed to by Utilities and Bent County, including, but not limited to, any terms and conditions the Parties determine are necessary to address unforeseen circumstances or to address public comments. Such other term and condition(s) must be consented to in writing by the Parties, provided neither Party shall unreasonably withhold its consent.

15.3. Utilities acknowledges and agrees that it will not: (1) seek administrative approval from the Division of Water Resources for or related to any Authorized Water Development Project until it has first filed a Notice of an Authorized Water Development Project (as defined below) pursuant Section III of this IGA; or (2) file an application for a change of water rights with the water court for or related to any Authorized Water Development Project until it has first obtained an Authorized Water Development Project Certification pursuant to Section III of this IGA.

16. County Review. Upon receipt of a Notice of an Authorized Water Development Project and the draft Authorized Water Development Project Certification the County shall post such documents on its website, and shall allow for submission of written comments within thirty (30) days of such posting. The County shall have forty-five (45) days (the "Review and Comment Period") from the receipt of the Notice of an Authorized Water Development Project and the draft Authorized Water Development Project Certification to review and comment upon such documents (the "County Review"). The County Review shall be for the purposes of ensuring that: (1) the Submittal Requirements are complete both substantively and procedurally; (2) the Authorized Water Development Project meets the requirements of Section I of the IGA; (3) the draft Authorized Water Development Project Certification contains the terms and conditions required by the IGA; (4) Utilities has made deposits into the Economic Mitigation Account as required by the IGA; and (5) Utilities is in compliance with Section II of the IGA (collectively, the "Certification Requirements").

16.1. The County may extend the Review and Comment Period one time for an additional forty-five (45) days by providing notice to Utilities prior to the termination of the Review and Comment Period.

16.2. If, after the County Review, the County determines that Utilities has met the Certification Requirements, at the termination of the Review and Comment Period (including any extension thereof) the County's designee shall execute the draft Authorized Water Development Project Certification and issue it as the final Authorized Water Development Project Certification; or in the event that the County takes no action, the draft Authorized Water Development Project Certification shall become the final Authorized Water Development Project Certification by operation of law at the end of the third business day following the termination of the Review and Comment Period (including any extension thereof).

16.3. If, after the County Review, the County determines that Utilities has not met the Certification Requirements, the County shall provide written comments to Utilities detailing any and all perceived deficiencies in the Certification Requirements

prior to the termination of the Review and Comment Period. In the event that the County provides such comments, the Parties shall meet and attempt to resolve their differences. If, after thirty (30) days, the Parties have not resolved their differences, then either Party may invoke the Dispute Resolution Procedures set forth in this IGA. In the event of litigation, the trial court shall exercise *de novo* review, and the County shall have the burden to demonstrate that Utilities has not met the Certification Requirements by a preponderance of the evidence.

16.4. No public hearing or comment on the Authorized Water Development Project shall be required, but a publicly noticed meeting of the Commissioners to receive comments on a new Notice of Authorized Water Development Project may be held at the discretion of the Commissioners.

16.5. The parties acknowledge and agree that an Authorized Water Development Project Certification pursuant to this IGA shall not be conditioned upon, or withheld, pending the approval of any Authorized Water Development Project by a third-party, such as a state or federal regulatory agency, a ditch or reservoir company, the water court, or the Division of Water Resources.

17. Project Certification Amendment. Material changes to an Authorized Water Development Project shall require a Project Certification Amendment. A Project Certification Amendment shall require a new Notice of Authorized Water Development Project and a new draft Authorized Water Development Project Certification and proceed according to the applicable provisions of this IGA. The Parties agree that any change to an Authorized Water Development Project that alters: (1) the boundaries of a project by less than 1,000 feet; (2) the amount of farm acreage involved in the project by less than 10%; and/or (3) the amount of water developed from the project by less than 10% does not constitute a material change.

17.1. Regardless of whether a change to an Authorized Water Development Project is material, deposits made by Utilities into the Economic Mitigation Account shall be applied to/refunded from the project, as amended, on a *pro rata* basis; provided that, the County shall not be required to repay or refund any money previously released from the Economic Mitigation Account prior to the Project Certification Amendment.

#### **IV. POST-CERTIFICATION PROCESS AND ADDITIONAL MITIGATION**

18. Administrative Approvals. Upon the filing of the Notice of an Authorized Water Development Project pursuant to Section III of this IGA and the submission of any required payments/deposits, Utilities may take delivery of water for that project pursuant to a substitute water supply plan ("SWSP") or other administrative approval. Utilities shall be obligated to pay the Per Acre-Foot Charge for any water that it takes for an Authorized Water Development Project pursuant to an SWSP or other administrative approval, and such water shall be counted towards the 15,000 AF of Authorized Water Development.

19. Water Court. Utilities shall file an application with the water court to approve any changes of water rights that are necessary for the Authorized Water Development Project after the issuance, and prior to the lapse, of the Authorized Water Development Certification.

Utilities may also file an application for appropriative rights of substitution and exchange as part of the same application or a part of a different application with the water court.

19.1. Any decree in a change of water rights case for an Authorized Water Development Project shall ensure that historical return flows associated with the water rights that are the subject of that case shall be replaced in time, amount, and location.

19.2. Any decree in a change of water rights case for an Authorized Water Development Project shall include terms and conditions that are no less restrictive on Utilities and no less protective of Bent County's interests than the terms and conditions of the Authorized Water Development Project Certification for that Authorized Water Development Project, including any Revegetation Plan, to the extent that the terms and conditions of the Authorized Water Development Project Certification are applicable to the change of water rights case.

19.3. Bent County acknowledges and agrees that because the waters attributable to the Authorized Water Development Projects are Temporary Use Agreement Waters or TU Waters, as that term is defined in, *inter alia*, the Decree entered in Case No. 05CW96, Utilities may, but is not required to, file an application for a blanket right of substitution and exchange for the 15,000 AF of Authorized Water Development to the First Delivery Point, and other points of storage or use on the Arkansas River or its tributaries prior to the identification or certification of all Authorized Water Development Projects. Further Bent County acknowledges and agrees that, in part because of this IGA, Utilities can and will complete such an appropriation within a reasonable time and that such an appropriation is non-speculative.

19.4. Bent County shall be entitled, but not required, to participate, at its expense, in any change of water rights or appropriative rights of substitution and exchange case related to an Authorized Water Development project for the limited purposes of: (1) ensuring that the terms and conditions of any decree are consistent with the terms and conditions of this IGA; (2) to support Utilities' position (consistent with the terms and conditions of the IGA) on one or more issue in the case; or (3) to participate in an Authorized Water Development Project as provided in this IGA.

19.5. Bent County agrees that it will not seek, or encourage others to seek, to impose through the water court, or the County permitting, regulatory, or code authority, or other legal or administrative means, terms and conditions that are more restrictive than those agreed to by the Parties in this IGA.

20. Additional Economic Mitigation. Within thirty (30) business days of the entry of a final unappealable decree in a change of water rights case, or any administrative approval if court approval is not required, for an Authorized Water Development Project, Utilities shall deposit in good funds into the Economic Mitigation Account eight hundred and 00/100 dollars (\$800.00) per acre-foot of projected annual water yield from the Authorized Water Development Project that is the subject of the application (the "Second Mitigation Deposit"), together, if applicable, with any additional amount of First Mitigation Deposit resulting from a higher than initially projected yield (see above). The projected annual water yield shall be determined based on the ruling of the water court on a ten-year running average; and such determination shall not

include any deduction for losses (e.g., from transit, lack of exchange potential, etc.) associated with delivery of such supply from the historic place of use to the First Delivery Point. The Second Mitigation Deposit shall be paid one-time per Authorized Water Development Project.

## V. RELEASE OF FUNDS FROM ESCROW ACCOUNTS

21. Economic Mitigation Account. Upon the first delivery of water to a First Delivery Point from an Authorized Water Development Project pursuant to (or after the entry of) a final unappealable change decree of the water court, or other applicable approval, for that project, the First Mitigation Deposit, the Second Mitigation Deposit, and a *pro rata* amount of the Upfront Mitigation Payment for that project shall be released from the Economic Mitigation Account to Bent County.

21.1. The *pro rata* amount of the Upfront Mitigation Payment to be released shall be based on the projected average annual water supply that can be delivered to the First Delivery Point determined based on the ruling of the water court on a ten-year running average, without any deduction for losses to the First Delivery Point.

21.2. Interest (as it is accrued) and principal funds (as they are released) from the Economic Mitigation Account shall be used by Bent County for one or more of the following: paying Bent County's costs associated with the Arkansas Valley Conduit, monitoring Authorized Water Development Projects, economic development within Bent County, irrigation improvements within Bent County, and water quantity and quality infrastructure improvements within Bent County. Bent County shall not be obligated to expend interest as it accrues or principal funds as they are released, provided that such interests and principal funds are maintained in a restricted account and used for the purposes set forth in this paragraph at the time that they are spent.

21.2.1. The Parties may mutually agree to other acceptable uses of the funds released from the Economic Mitigation Account. Such other acceptable uses must be agreed to in writing by the Parties, where either Party may withhold its consent at its sole discretion.

## VI. ADDITIONAL AGREEMENTS

22. Inflation Adjustment. The payments and deposits due to Bent County by Utilities under this IGA shall be adjusted five (5) years after the Effective Date, and then once every five (5) years thereafter, based on the rolling average of the [Personal Consumption Expenditure Price] Index over the proceeding five (5) years; provided that the amount of such adjustment shall not be less than one and a half percent (1.5%) or greater than five percent (5%) per annum.

22.1. These adjustments shall not be applied retroactively to payments already made to Bent County by Utilities or to deposits already made into the Economic Mitigation Account.

23. Bent County Businesses. In implementing Authorized Water Development Projects, Utilities will endeavor to use the local workforce and businesses in Bent County, and to purchase goods and services from businesses in Bent County to the maximum extent feasible.



24. Conservation and Reuse. In recent years, Utilities has demonstrated a commitment to water conservation programs and local reuse. Continued commitment and local reuse will reduce Utilities diversions from the Arkansas River below what they would have been without such conservation and reuse. Utilities agrees to endeavor to maintain and improve such conservation and reuse measures and programs despite the availability of additional water from the Authorized Water Development Projects, and to the reuse of water available pursuant to Authorized Water Development Projects to the extent economically and technically feasible. Utilities shall annually provide Bent County a copy of Utilities' Arkansas Exchange Report which details Utilities' reuse.

25. Future Storage Projects. In the event that Utilities is the sole proponent of one or more future storage and/or water supply projects located in whole or in part within Bent County, the County shall have the option to participate in those projects (including any related changes of water rights or appropriative rights of substitution and exchange) up to a total of 1,000 acre-feet of the storage/supply at the County's expense, where such expense will be equal to Utilities' *pro rata* cost of the project(s), including, but not limited to, design, permitting, construction, operation and maintenance costs; provided that Bent County's participation in any project shall not exceed 10% of the storage and/or water supply available from that project. In the event that Utilities is involved in, but not the sole proponent of, one or more future storage and/or water supply projects located in whole or in part within Bent County, Utilities agrees to make reasonable efforts to allow the County to participate in those projects up to a total of 1,000 acre-feet of storage/supply at the County's expense, which such expense will be equal to Utilities' *pro rata* cost of the project(s), including, but not limited to, design, permitting, construction, operation and maintenance costs; provided that Bent County's participation in any project shall not exceed 10% of the storage and/or water supply available from that project.

25.1. Nothing in this IGA shall be interpreted as approving these future storage and/or water supply projects under Bent County's 1041 Regulations or other laws and regulations.

26. Arkansas River Water Preservation Principles. In order to safeguard and preserve for present and future generations the water available for diversion and use within the Arkansas River Basin, including therein all cities, towns, counties, and communities of interest within the Arkansas River drainage, and in order to impose appropriate conditions and limitations on the transfer of water and water rights from the Arkansas River Basin, both Parties acknowledge and agree that they will abide by the Arkansas River Water Preservation Principles (the "Preservation Principles"), namely:

26.1. Support reasonable efforts to maintain and improve the economy of the entire Arkansas River Basin from its headwaters to the State line with the understanding that protecting the quantity and maintaining the reasonable quality of the water in the Arkansas River available to water users for existing and future decreed beneficial uses is absolutely vital to that objective.

26.2. Support reasonable efforts to protect or improve the quantity and quality of the water in the Arkansas River Basin from the headwaters to the State line.

26.3. Support reasonable efforts to retain water originating in the Arkansas River Basin for use within the Basin while acknowledging the ability of water rights owners to sell their water rights and support reasonable mitigation for the future loss of any water that is transferred out of the basin by sale, lease, or other device.

26.4. Support stream flows in the Arkansas River Basin sufficient to enhance and protect recreation, the environment, agriculture, economic development, and water quality.

26.5. Support efforts for development of agricultural and municipal water storage and delivery projects for the benefit of Arkansas River Basin users.

26.6. Support agreements, which will optimize and coordinate water storage and water exchanges within all reaches of the Arkansas River Basin (including recreational instream flows) with priority for such water exchanges directed to intra-basin water users.

26.7. Promote the vitality of the Arkansas River Basin communities by pursuing regional economic development, transportation, and other projects of mutual interest.

26.8. Consider water quality in all discussions, negotiations, agreements, and legislation related to the foregoing goals.

26.9. All of the foregoing goals shall be pursued in accordance with the doctrine of prior appropriation, federal law, local law, and the laws and regulations of the State of Colorado, while acknowledging the rights and obligations of the Parties under existing agreements, the right to continue utilizing existing decreed water storage rights and exchanges in order of priority, and the right of the Parties to compromise such rights or interests and amend existing agreements.

26.10. The Parties acknowledge that each is a governmental entity with differing legal authority that, in some circumstances, may constrain a Party's actions in pursuit of the stated goals. The Parties will work cooperatively, promptly, and constructively within this framework towards reasonable and equitable specific solutions, projects, and agreements that achieve the Parties' respective goals and to the benefit of the Arkansas River.

26.11. To the extent that there is any difference between the Preservation Principles and this IGA, the original language of the Preservation Principles shall control.

27. Use of Water by Third Parties. In the event that Utilities contracts with a municipal or industrial third-party located in the Arkansas River Basin to deliver water attributable to any Authorized Water Development Project to that third-party, Utilities shall require that the following conditions be included in any contract, permit, or agreement with such third-party:

27.1. An adoption of the Preservation Principles.

27.2. A clear and irrevocable commitment not to serve property located outside of the natural drainage of the Arkansas River or to market, transfer, wheel, or otherwise

provide water from an Authorized Water Development Project to properties located outside the natural drainage of the Arkansas River.

27.3. *Pro rata* payment of the Per Acre-Foot Charge, including any adjustments for inflation.

27.4. The requirements of this paragraph shall not apply to the lease or sale of any water (including reusable return flows) from an Authorized Water Development Project to irrigators located within the Arkansas River Basin.

28. Other 1041 Permits. Bent County shall endeavor not to issue a permit under the County's 1041 Regulations to, enter into an intergovernmental agreement with, or otherwise allow another municipal or industrial entity (with the exception of municipal and industrial entities located within Bent County or projects within the Lower Arkansas River Basin below and outside the greater Pueblo area providing benefits to Bent County) that permits such municipal or industrial entity to develop water from sources within Bent County on terms and conditions that are materially more favorable or less restrictive than those agreed to by Utilities pursuant to this IGA. In the event that Bent County issues a permit for, enters into an intergovernmental agreement for, or otherwise approves a development in designated areas of state interest or any activities of state interest of a similar purpose as contemplated herein (viz., water development by Utilities' competitors in Pueblo County, El Paso County, and Water Division 1), in contravention of this paragraph, and not pursuant to any court order, Utilities may invoke the Dispute Resolution procedures under this IGA to conform the terms and conditions of this IGA to the materially more favorable or less restrictive terms and conditions of the permit issued or intergovernmental agreement agreed to with the other municipal or industrial entity. Any reformation shall be forward looking.

29. Out of Basin Projects. The Parties acknowledge and agree that harms of water projects that increase the diversion of water from the Arkansas River Basin to another river basin substantially outweigh any benefits to the Parties, and each agrees that it shall endeavor to oppose any such project to the maximum extent possible.

## VII. DISPUTE RESOLUTION

30. Mediation. Before a Party commences any action for enforcement of this IGA, including to revoke or suspend an Authorized Water Development Project Certification, or to terminate this IGA (except an action for enforcement or termination of this IGA for failure to pay monetary payments required herein), the Parties shall make a good-faith effort to resolve their differences in the manner outlined below.

30.1. In the event of a dispute between the Parties related to this Agreement, the Parties agree that they will use their best efforts to first resolve the dispute informally through consultation and communication between the Parties. If the dispute is not resolved through informal consultation and communication, written notice stating the general nature of each dispute or other matter shall be delivered to the other Party promptly (but in no event later than thirty (30) days) after the start of the event giving rise to the dispute. In such instance, the Parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from receiving an initial written notice of the dispute

or such other date as agreed to by the Parties, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, either Party may request non-binding mediation and in such case the Parties will bear equally the costs of the mediation.

30.2. If either Party requests to mediate the dispute, the Parties will jointly select a mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint, within ten (10) calendar days of their selection, a third mediator who shall, as the sole mediator, conduct mediation for the Parties. 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 thirty (30) days after the mediator is selected, whichever comes first.

30.3. No suit for enforcement of this IGA, or to terminate this IGA, shall be filed unless there has been compliance with the dispute resolution process described herein. However, a suit may be commenced immediately if an emergency circumstance exists that requires injunctive or other immediate relief, including, without limitation, commencement of any action that would otherwise be barred by a statute of limitations if delayed due to the dispute resolution process described herein.

## **VIII. APPROVAL OF IGA BY UTILITIES AND THE COUNTY**

31. IGA Authorized by Law. Both Utilities and the County are authorized by Article XIV, Section 18(2) of the Colorado Constitution and Sections 29-1-201, *et seq.*, 29-20-105, and 29-20-107 to enter into this IGA.

32. Consistent with County 1041 Regulations. The requirements of this IGA satisfy the purpose and intent of the County's 1041 Regulations. Any Authorized Water Development Project that meets the requirements of this IGA will satisfy the purpose and intent of the County's 1041 Regulations. Nothing in this IGA is contrary to the purpose and intent of the County's 1041 Regulations.

33. Approval by Bent County. The Bent County Board of County Commissioners approved the form of this IGA at a regular board meeting on May 26, 2022. After this approval, the Bent County Board of County Commissioners conducted a public hearing on July 12, 2022 for the purposes of taking comment upon the proposed IGA. After this public hearing, the Bent County Board of County Commissioners approved the IGA by resolution on September 1, 2022. A copy of the resolution is attached as Exhibit A.

34. Approval by Utilities. The Colorado Springs City Council Approved this IGA by resolution on October 11, 2022. A copy of this resolution is attached as Exhibit B.

## **IX. MISCELLANEOUS**

35. Indebtedness. No provision, covenant or agreement contained in this IGA, nor any obligations herein imposed upon the Parties shall constitute or create an indebtedness or debt

of Utilities or Bent County within the meaning of any Colorado constitutional provision or statutory limitation.

36. Future 1041 Permitting. By entering into this IGA, neither Party intends to waive any argument, claim, defense, or otherwise, at law or in equity, concerning any future project not covered, approved, or contemplated by this IGA. By entering into this IGA, Bent County is not waving any assertion of jurisdiction under the County's 1041 Regulations or otherwise concerning any future project not covered, approved, or contemplated by this IGA. By entering into this IGA, Utilities is not agreeing to Bent County's jurisdiction over any future project not covered, approved, or contemplated by this IGA under the County's 1041 Regulations or otherwise.

37. No Future Commitments. Nothing in this IGA shall commit, require, or obligate Utilities to develop one or more Authorized Water Development Projects. Nothing in this IGA shall commit, require, or obligate Bent County to issue a permit under the County's 1041 Regulations for any future projects not covered, approved, or contemplated by this IGA.

38. Subject to Annual Budget and Appropriation. This Agreement is expressly made subject to the limitations of the Charter of the City of Colorado Springs. Nothing herein constitutes or will 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 or Bent County or any other constitutional, statutory, or charter debt limitation.

39. Assignment. Excepts as expressly provided herein, neither party may assign any of its rights or obligations under this IGA without the express written consent of the non-assigning Party.

40. Headings. The headings and captions in this IGA are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this IGA.

41. No Waiver. No waiver of any of the provisions of this IGA shall be deemed to constitute a waiver of any other provisions of this IGA, nor shall such waiver constitute a continuing wavier unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

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

43. Binding Contract. This IGA shall inure to and be binding on the heirs, executors, administrators, successors, and assigns of the Parties.

44. Time is of the Essence. The Parties acknowledge and agree that time is of the essence in the performance of this IGA.

45. Breach and Enforcement. It is specifically understood that, by executing this IGA, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this IGA. The Parties agree that this IGA may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws and statutes of the State of Colorado.

46. Controlling Law and Venue. This IGA is made and performed in Colorado. The laws of the State of Colorado shall be applied in the interpretation, execution, and enforcement of this IGA (without reference to conflicts of laws). The Parties agree that the exclusive venue for any trial of any action arising out of any dispute hereunder, including any Authorized Water Development Project Certification issued pursuant to this IGA, shall be in the District Court in and for the County of Bent, and if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

47. No Attorney's Fees or Costs. In the event of any litigation, mediation, arbitration, or other dispute resolution proceeding arising out of or related to this IGA, each Party agrees to be responsible for its own attorney's fees and other professional fees, costs, and expenses associated with such proceedings.

48. Force Majeure. Any Party shall be excused from performing its obligations under this IGA during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government (except the Parties); war or civil disorder; violence or threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government (except the Parties); or national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provide further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

49. No Partnership or Agency. Notwithstanding any language of this IGA or any representations or warranty to the contrary, neither Party shall be deemed or constitute a partner, joint venturer, or agent of the other Party. Any actions taken by the Parties pursuant to this IGA shall be deemed to be the actions of an independent contractor.

50. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this IGA and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person other than the Parties shall be deemed to be only and incidental beneficiary under this IGA.

51. Reservation of Rights. The Parties have entered into this IGA by way of substantial discussion, compromise, and settlement. Except as expressly provided herein, the terms of this IGA (or construction or interpretation thereof) shall have no precedential, preclusive, or binding effect in any other matter and the Parties expressly reserve all rights with respect to any other matter not expressly governed by this IGA.

52. Governmental Immunity. Nothing in this IGA or in any actions taken by the Parties pursuant to this IGA shall be construed or interpreted as a waiver, express or implied, of

any of the immunities, right, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Section 2-10-101, *et seq.*, C.R.S., as from time to time may be amended.

53. Statutory Liability Protection. Either Party may rely on, and does not waive or intend to waive any liability protections or any other rights, immunities, or protections afforded by Colorado statutes or other law.

54. Press Releases. Neither Party shall issue any press release concerning this IGA (or the terms and conditions hereof) without the prior written consent of the other Party.

55. Conservation Easements. Nothing in this IGA is intended to prevent a third-party (including a project proponent) from granting a conservation easement on lands that are part of an Authorized Water Development Project; provided that the terms and conditions of such conservation easement do not conflict with the Authorized Water Development Project (including any agreements that were entered into as part of the Authorized Water Development Project).

56. Notices. Any notices, payments, or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to a Party by the other Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed; or, in lieu of such personal services, five (5) days after being deposited in the United States mail, first-class postage prepaid, return-receipt requested, addressed to the applicable address set forth below:

**If to Utilities:** Colorado Springs Utilities  
ATTN: Manager, Water Resources  
P.O. Box 1103  
Colorado Springs, CO 80947-1825

**With copies to:**

City Attorney's Office – Utilities Division  
P.O. Box 1575, Mail Code 510  
Colorado Springs, CO 80901-1575

**If to Bent County:** Attn: Bent County Administrator  
Bent County Courthouse  
P.O. Box 350  
725 Bent Avenue  
Las Animas, CO 81054

**With copies to:**

County Attorney  
Nathan D. Shultz  
Shultz Law Office, LLC  
317 South Main Street  
Fowler, CO 81039

Any Party may change its address for the purpose of this paragraph by giving written notice of such change to the other Party in the manner provided in this paragraph.

57. Amendment. This IGA may be amended, in whole or part, only by written amendment duly authorized and executed by both Parties with the same formality as this IGA, which shall include a public hearing in Bent County for the purposes of taking public comment.

58. Regular Meetings. The County and Utilities shall endeavor to meet at least once every five years until the 15,000 AF of Authorized Water Development limit is reached to discuss the IGA and operations thereunder in the future.

59. Entire Agreement. This IGA represents the entire agreement of the Parties and neither Party has relied upon any fact or representation not expressly set forth herein. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof, are merged in this IGA.

60. No Construction Against the Drafter. This Agreement was drafted with consultation of all Parties. Accordingly, the Parties agree the legal doctrine of construction against the drafter will not be applied should any dispute arise concerning this Agreement.

61. Severability. The invalidity or unenforceability of any portion or previous version of this IGA shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this IGA and in such event the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent to the Parties in entering into this IGA. In the event that the Parties are unable to mutually agree upon such a provision, either may seek to terminate this IGA by invoking the Dispute Resolution procedures.

62. Counterpart Execution. This IGA may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

*[Remainder of this page intentionally left blank]*

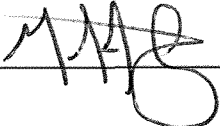


**IN WITNESS WHEREOF**, the Parties have executed this IGA on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this IGA.


**THE CITY OF COLORADO SPRINGS  
BY AND THROUGH ITS ENTERPTISE  
COLORADO SPRINGS UTILITIES**


  
Aram Benyamin  
Chief Executive Officer


Approved as to form:

  
\_\_\_\_\_

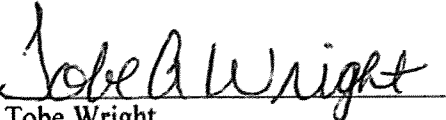
**THE COUNTY OF BENT  
State of Colorado**

  
Chuck Netherton, Chairman  
Bent County Board of  
Commissioners

  
Jean Sykes,  
Bent County Commissioner

  
Kim MacDonnell,  
Bent County Commissioner

ATTEST:

  
Tobe Wright,  
Deputy Bent County Clerk & Recorder

**Exhibit A**

Resolution of Bent County Board of County Commissioners

**RESOLUTION NO. 2022-13**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN THE COUNTY OF BENT AND  
THE CITY OF COLORADO SPRINGS ACTING BY AND THROUGH ITS  
ENTERPRISE COLORADO SPRINGS UTILITIES**

WHEREAS, the Board of County Commissioners of the County of Bent, Colorado (hereinafter “the Board”) is authorized by Section 24-65.1-101, *et seq.*, C.R.S.; Section 30-28-101, *et seq.*, C.R.S.; Section 30-28-201, *et seq.*, C.R.S.; Section 29-20-101, *et seq.*, C.R.S., and Section 24-32-111, C.R.S., to adopt regulations for the protection of the public health, safety, and welfare of the inhabitants of Bent County; and

WHEREAS, Section 24-65.1-101, *et seq.*, C.R.S., grants authority to local governments, including counties, acting by and through their boards of county commissioners to designate matters of state interest and to adopt regulations for the administration thereof; and

WHEREAS, the Board has designated the following matters of state interest within the County of Bent, State of Colorado: (a) efficient utilization of municipal and industrial water projects; and (b) areas containing or having a significant impact upon natural resources of statewide importance; and

WHEREAS, the Board also adopted the *Guidelines and Regulations for Areas and Activities of State Interest of the County of Bent, State of Colorado* (hereinafter, the “Regulations”), most-recently amended on June 26, 2021; and

WHEREAS, pursuant to Section 1.108 of the Regulations “[n]o Person may undertake or engage in Development in Designated Areas of State Interest or any activities of state interest designated in these Regulations, wholly or partially within the unincorporated areas of Bent County, without first applying for and obtaining from Bent County either a permit...or a ‘Finding of No Significant Impact’ pursuant to these Regulations”; and

WHEREAS, Section 3.201 of the Regulations provides that “[u]pon the request of the state or federal Government, as defined by Section 29-1-202(1), C.R.S., including any political subdivision of the state, as defined in Section 29-1-202(2), C.R.S., proposing to engage in a Matter of State Interest, the requirements of the Guidelines and Regulations may be met by the approval of an intergovernmental agreement between the County and the Government Applicant”; and

WHEREAS, the City of Colorado Springs, a Colorado municipal corporation and home rule city, acting by and through its enterprise Colorado Springs Utilities (“Utilities”), desires to acquire water rights from agricultural interests that have been historically used for irrigation within Bent County and change them to include municipal and industrial uses; and

WHEREAS, consistent with and pursuant to Section 3.201 of the Regulations, Utilities desires to enter into an Intergovernmental Agreement (hereinafter, "IGA") that will (1) enable Utilities to develop up to fifteen thousand (15,000) acre-feet of annual consumptive use, measured on a 10-year rolling average, for all municipal and industrial purposes, from agricultural water rights historically used in Bent County, in lieu of, and without the need for obtaining a permit under the Regulations; and, in exchange, (2) satisfy the requirements of the Regulations and appropriately mitigate the impacts of this water development on Bent County;

WHEREAS, on May 26, 2022, the Board approved the form of the proposed IGA; and

WHEREAS, on July 12, 2022, the Board conducted a public hearing, noticed pursuant to the requirements of the Regulations, for the purpose of considering the IGA; and

WHEREAS, on September 1, 2022, the Board considered revisions to the draft IGA in response to public comments; and

WHEREAS, the Board has taken into consideration the hearing record presented at the July 12, 2022, public hearing, including testimony and exhibits, as well as the recommendations of County staff and counsel; and

**NOW THEREFORE, BE IT RESOLVED, by the Bent County Board of County Commissioners:**

1. The Board approves the IGA, as revised following the July 12, 2022 hearing, and authorizes the Board's Chair to execute the IGA on behalf of Bent County.
2. The Board finds that terms and conditions of the IGA satisfy the purpose and intent of the Regulations and are designed to, *inter alia*, (a) ensure efficient development of the proposed municipal water projects, (b) minimize and mitigate the impacts of soil loss, erosion, dust, and weeds related to the proposed municipal water projects, (c) minimize economic burdens on communities within Bent County resulting from the proposed projects, (d) protect the agricultural character and resources in Bent County, and (e) ensure that benefits accrue to the County's citizens in balance with or in excess of the potential loss of resources.

[SIGNATURES ON FOLLOWING PAGE]

**\*20220847\***

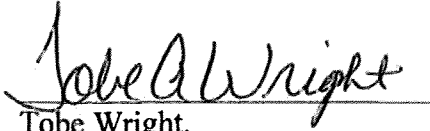
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Lynda G Moss  
Bent County Clerk

DONE and signed this 1st day of September, 2022

ATTEST:

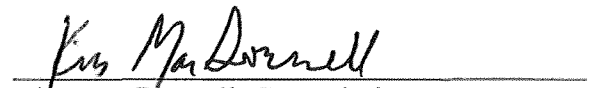
BOARD OF COUNTY COMMISSIONERS  
OF BENT COUNTY, STATE OF  
COLORADO:



Tobe Wright,  
Deputy Clerk & Recorder



Chuck Netherton, Chair



Kim MacDonnell, Commissioner



Jean Sykes, Commissioner

**Exhibit B**

Resolution of City Council of Colorado Springs

RESOLUTION NO. 148 -22

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE CITY OF COLORADO SPRINGS, COLORADO, ACTING BY AND THROUGH ITS ENTERPRISE COLORADO SPRINGS UTILITIES, AND BENT COUNTY, COLORADO

WHEREAS, the City of Colorado Springs (the "City"), on behalf of its enterprise Colorado Springs Utilities ("Utilities") is authorized to enter into intergovernmental agreements with other Colorado governmental entities for the provision of any function or service with the approval of the City Council of the City of Colorado Springs ("City Council"); and

WHEREAS, in order to meet the water supply demands of a growing population, mitigate against current and future water supply risks, and diversify its water supply portfolio, all consistent with Utilities' Integrated Water Resources Plan, Utilities desires to acquire water rights from agricultural interests that have been historically used for irrigation within Bent County, Colorado (the "County") and change them to include municipal and industrial uses; and

WHEREAS, in the past, the acquisition and change of use of agricultural water rights to municipal and industrial uses have required municipal entities to dry up and permanently remove from production historically irrigated agricultural lands, which can have adverse impacts on agricultural communities including, but not limited to, the loss of farm production and income, loss of tax revenues, loss of farming jobs, and loss of farm-related jobs and industries; and

WHEREAS, pursuant to authority granted by, *inter alia*, § 24-65.1-101, *et seq.*, C.R.S.; § 30-28-101, *et seq.*, C.R.S.; § 30-28-201, *et seq.*, C.R.S.; § 29-20-101, *et seq.*, C.R.S., and § 24-32-111, C.R.S., the County has adopted Guidelines and Regulations for Areas and Activities of State Interest, County of Bent, State of Colorado (the "County's 1041 Regulations"); and

WHEREAS, the County has designated the efficient utilization of municipal and industrial water projects as an activity of state interest, and the permanent cessation of irrigation as an area of state interest, as further set forth in the County's 1041 Regulations; and

WHEREAS, pursuant to § 1.108 of the County's 1041 Regulations, "No Person may undertake or engage in Development in Designated Areas of State Interest, or any activities of state interest designated in these Regulations, wholly or partially within the unincorporated areas of Bent County, without first applying for and obtaining from Bent County either a permit or a 'Finding of No Significant Impact' pursuant to these Regulations"; and

WHEREAS, under § 3.201 of the County's 1041 Regulations, "Upon the request of the state or federal Government, as defined by Section 29-1-202(1), C.R.S., including any political subdivision of the state, as defined in Section 29-1-202(2), C.R.S., proposing to engage in a Matter of State Interest, the requirements of the Guidelines and Regulations may be met by the approval of an intergovernmental agreement between the County and the Government Applicant."; and

WHEREAS, Utilities and the County recognize that it is in their interest to pursue water development strategies that, consistent with the Colorado Water Plan, seek to minimize the permanent cessation of irrigation and emphasize alternative transfer or water sharing methods that avoid or reduce the permanent dry-up of irrigated agricultural land in Bent County; and

WHEREAS, both Utilities and the County recognize that it is in their interests to avoid the time, expense, and uncertainty of litigation, while reserving all rights, and instead work collaboratively to enable Utilities to utilize water rights historically used for irrigation of lands in Bent County for municipal and industrial purposes in a manner that minimizes the permanent cessation of irrigation and appropriately mitigates the impacts of water transfers on Bent County; and

WHEREAS, Utilities and the County desire to enter into the attached intergovernmental agreement that (1) enables Utilities to develop up to fifteen thousand (15,000) acre-feet, on an average annual basis, for all municipal and industrial purposes, from agricultural water rights historically used in Bent County, in lieu of, and without the need for obtaining a permit under the County's 1041 Regulations; and, in exchange, (2) satisfy the requirements of the County's 1041 Regulations and appropriately mitigate the impacts of water development on the County; and

WHEREAS, City Council has determined that it is in the best interests of the City and Utilities to enter into the Intergovernmental Agreement, attached hereto and incorporated herein.

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

Section 1. The City Council hereby finds that approval of the attached Intergovernmental Agreement by and between the County of Bent and the City of Colorado Springs, acting by and through its enterprise Colorado Springs Utilities, is in the best interests of the citizens of the City of Colorado Springs and the ratepayers of Colorado Springs Utilities, and hereby approves the attached Intergovernmental Agreement.

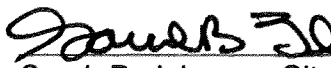



Section 2. The City Council hereby authorizes the Chief Executive Officer of Colorado Springs Utilities, or his designee, to execute the attached Intergovernmental Agreement on behalf of Utilities.

DATED at Colorado Springs, Colorado, this 11<sup>th</sup> day of October 2022.

ATTEST:

  
\_\_\_\_\_  
Council President

  
Sarah B. Johnson, City Clerk



**Exhibit C**  
Revegetation

The Parties agree that the following criteria and process shall serve as minimum standards and guidelines for any Revegetation Plans and/or Dry-Up Covenants required by the IGA. This Exhibit C is not incorporated into the IGA, and they may be amended from time to time by mutual written agreement of the Parties. Capitalized terms that are not specifically defined herein shall have the same meaning as in the IGA. In the event of a conflict between the terms of this Exhibit C and the IGA, the terms of the IGA shall control.

**I. REVEGETATION PROCESS**

1. Upon the permanent removal of irrigation water from any Field in Bent County as part of the 3,125 Acres of Authorized Dry-Up, such Field shall be subject to the requirements set forth below. The parties acknowledge and agree that, by written agreement, Utilities may delegate these requirements to a third-party, such as the owner or operator of any Field, provided that Utilities shall continue to be responsible for completing Revegetation.
2. Utilities shall initially have up to ten (10) years from the date of permanent removal of irrigation water from any Field in Bent County to obtain a Certificate of Substantial Completion for that Field. During the initial five (5) years, if the Field will be revegetated, and not converted to other uses, Utilities may use the Historic Water Rights available to that Field, or water from other sources available to Utilities at Utilities' expense, to ensure appropriate irrigation to establish drought tolerant revegetation. In the event that Utilities has not obtained a Certificate of Substantial Completion for any Field after the initial five (5) year period, Utilities' use of water attributable to that Field for its new uses will be limited per the Enforcement Mechanism below.

A Certificate of Substantial Completion shall be issued for any Field once that Field is deemed Acceptable pursuant to the procedures described below. After a Certificate of Substantial Completion is issued for any Field, Utilities shall be required to maintain that Field for a subsequent ten (10) year Maintenance Period. At the end of the Maintenance Period, a Certificate of Compliance for that Field shall be issued subject to the requirements set forth in Section II.D., below. No grazing of a Field shall be permitted until a Certificate of Substantial Completion is issued for that Field. *To the extent a grazing program is to be implemented during the Maintenance Period, the parameters for utilizing a grazing plan and the compliance procedures must be described in the Maintenance Report and adhered to.*

3. Prior to removal of any Field from irrigation, Utilities shall provide notice to the County - and, ditch company, if any - that specifies i) the identity of the Field(s) to be removed from irrigation, ii) the water rights historically used to irrigate such Field(s) (the "Historic Water Rights") and iii) the date(s) that such Field(s) will be removed from irrigation.
4. Upon the removal of any Field from irrigation, Utilities shall revegetate, re-irrigate, or convert the dried-up Field to another use (except dry-land farming).
5. Once Utilities obtains a Certificate of Compliance for any revegetated Field, Bent County shall have no further oversight of the farming or land management practices on that Field,

other than pursuant to Bent County's zoning, building, health or other applicable regulations and codes; provided that, upon mutual agreement of the Parties, Utilities may assign to Bent County the authority to enforce any contractual, deed, or other restrictions upon any Field, such as an obligation to control weeds.

6. To the extent that successful establishment and maintenance of revegetation on any Field may require non-historic use water for an interim period, Utilities shall provide such water at its cost.
7. In the event that the owner of any Field desires to continue to irrigate all or portions of any Field subject to An Authorized Water Development Project with ground water pumped by wells, the County acknowledges that nothing in this Exhibit is intended to preclude the owner from continuing to irrigate the Field(s) with ground water, as long as notice has been provided to the County, and any such irrigation is treated as sole-source pumping and is fully augmented under a plan for augmentation or other replacement plan approved by the State Engineer or Water Court.
8. In the event that the owner of any Field desires to continue to irrigate all or portions of any Field subject to an Authorized Water Development Project with ditch company shares that have not been previously used on the Field and are not part of the Historic Water Rights, the County acknowledges that nothing in this Exhibit is intended to preclude the owner from doing so, as long as notice has been provided to the County, and such irrigation has been approved by the ditch company, if required by the ditch company by-laws, and the State Engineer or Water Court, and any alternate lands dried-up are subject to either the IGA or a separate 1041 permit, if required.
9. On Fields that will continue to be irrigated with alternative sources of water, Utilities shall maintain a responsibility for assuring revegetation is conducted on the Field(s) pursuant to the Process described herein should irrigation cease, unless the alternative water source is a permanent source decreed for the Field(s).
10. If any Dry-Up Covenant is more restrictive than the criteria set forth in this Exhibit C, then the more-restrictive terms and conditions of the Dry-Up Covenant shall control.

## **II. CERTIFICATION OF SUBSTANTIAL COMPLIANCE AND COMPLETION**

### **A. Definitions**

1. "Acceptable" for Fields where Revegetation will occur means:
  - a. Any Field that meets the criteria for Class 4 using the Revegetation Land Classification Methodology schedule in Section III.
  - b. Certain Fields may never reach Class 4, nonetheless, if the Inspection Report determines that a particular Field has been revegetated as far as can be reasonably expected, such Field will be Acceptable if weeds and/or erosion of the soil caused by wind is adequately controlled in a manner consistent with state and local law.

- c. Any Field that is converted to another use (that is not dry-land farming), such as fields upon which buildings, grain storage facilities, railways or railroad facilities, oil and gas facilities, wind power generation facilities, power transmission facilities, gravel mining facilities, pump houses, recharge facilities, augmentation stations, feed yards, roads, reservoirs, drains, impervious surfaces or other facilities or structures on a Field that will adequately control weeds and/or erosion of the soil caused by wind shall be classified as Acceptable.
    - d. Any Field that is irrigated under the terms and conditions of Section I, Paragraphs 7 and 8 above shall be classified as Acceptable.
2. "Basal Cover" means the outline of the plant near the ground surface.
3. "Canopy Cover" means the percentage of ground surface covered by vegetation material, including a measure of the vertical projection of all vegetation plant parts over the ground surface.
4. "Desired Species" means the seed or plant mix to be selected by Utilities consistent with the expected vegetative species for the NRCS Ecological Site description for the dominant soil on that parcel and long-term Management Objectives. Desired Species may include introduced species that are not invasive or competitive to the point of dominating the reestablished plant community and shall contain no less than 90 percent native species. Desired Species selected for revegetation should be compatible with one another and their establishment should result in a self-sustaining plant community that is adapted to the soils and climatic conditions of the site. Desired species should be perennial, but not limited to grass or grass-like species. The use of forbs and/or shrubs are allowable if they support the Management Objectives. Species such as alfalfa or other similar deep-rooted phreatophytes should not be used and will not be considered Desired Species.
5. "Field" means the land used for agricultural purposes which will be permanently removed from irrigation as described in the Authorized Water Development Project. For the avoidance of doubt, a farm (as that word is commonly understood) may have multiple Fields.
6. "Management Objectives" means the intended use of a Field, including weed management and other relevant criteria, following Revegetation, such as grazing or non-grazing.
7. "Percentage of Completion" is the total dry-up acres for a Field classified as Acceptable divided by the total number of dry-up acres for a Field as shown in the Inspection Report, multiplied by 100.
8. "Revegetation" means the establishment of Desired Species with weeds adequately controlled. Revegetation may include, but is not limited to, the following activities:
  - a. Class 1 Fields. Seeding, irrigation, herbicide application and mowing.

- b. Class 2 Fields. Spot seeding and irrigation, herbicide application and mowing or grazing.
  - c. Class 3 Fields. Spot herbicide application and mowing or grazing.
9. “Quantitative Sampling Protocol” means the objective sampling criteria used to determine the Canopy Cover (and Basal Cover, if this criterion is also determined) of each Field. Quantitative plant cover sampling will be conducted for each Field using a systematic random sampling approach where each Field is divided into four quadrants and random sampling conducted in each of the four quadrants. This approach will ensure that all portions of each parcel are sampled to account for variation in cover that occurs across the Field. Cover sampling will be conducted using a point intercept method and samples will be collected across the entire parcel until cover data is estimated at a 90% level of confidence.

## **B. Annual Report and Inspection Report**

1. Utilities and Bent County shall jointly retain an expert (the “Joint Expert”) to provide the following information about the Fields (“Inspection Report”). Utilities shall pay all reasonable expenses of the Joint Expert in preparing the Inspection Report which will be submitted to both Utilities and Bent County by October 1 each year until such time as a Certificate of Substantial Completion is issued for that Field; provided that such expenses shall not exceed \$100,000 per year for all Inspection Reports prepared that year without agreement of both parties.
- a. Description of the Field, including a unique identifier and location description.
  - b. The total number of acres that were dried-up including the year that irrigation water was first removed.
  - c. The Management Objectives and Desired Species for each Field.
  - d. The efforts undertaken in the preceding year(s) to Revegetate the dried-up acreage, including without limitation, the seeding rate, date planted, information about herbicides or pesticides applied, and information about efforts to control erosion of soil caused by wind.
  - e. The approximate annual precipitation that fell on the Field, which may be estimated based on the average of published local weather station data.
  - f. Whether water was used to assist in Revegetation, and if so, the amount and timing of water used and method of application.
  - g. Whether any other factors occurred that had a negative impact on efforts to Revegetate.
  - h. The Canopy Cover of each Field. The Basal Cover may also be measured for the purposes of determining whether the Field is Acceptable.

- i. The classification of each Field pursuant to the Revegetated Land Classification Methodology schedule in Section III below. Either Utilities or Bent County may, at its expense, retain an expert to accompany the Joint Expert.
  - j. A description of weed control measures implemented.
  - k. Whether a Field has been revegetated as far as can reasonably be expected and whether such Field is considered Acceptable.
  - l. If an Inspection Report was filed on the Field in the past year, how the conditions on the Field compare to past years.
  - m. Whether the Field is eligible for issuance of a Certificate of Substantial Completion. If a Field is recommended for a Certificate of Substantial Completion, the Inspection Report shall also contain representative photographs of the Field depicting how the Field has been Revegetated.
2. If either Party disagrees with the Inspection Report, that Party may invoke the dispute resolution procedures set forth in the IGA. In the event of litigation, the trial court shall exercise *de novo* review, and the disagreeing Party shall have the burden to establish any inadequacy of the Inspection Report by a preponderance of the evidence.

**C. Certificate of Substantial Completion.** The criteria for issuing a Certificate of Substantial Completion for Fields where Revegetation has occurred shall be:

1. Certificate of Substantial Completion may only be issued for an entire Field.
2. Any Field that meets the criteria of Acceptable shall be issued a Certificate of Substantial Completion.

**D. Maintenance Period.** The requirements of the Maintenance Period for Fields where Revegetation has occurred shall be:

1. Utilities and Bent County shall jointly retain an expert (the "Maintenance Expert") to perform a qualitative reconnaissance survey each year, which shall include the following information about the Fields ("Maintenance Report") during the ten (10) year Maintenance Period. Utilities shall pay all reasonable expenses of the Maintenance Expert in preparing the Maintenance Report which will be submitted by October 1 each year until such time as a Certificate of Compliance is issued for that Field; provided that such expenses shall not exceed \$50,000 per year for all Maintenance Reports prepared that year without agreement of both parties.
  - a. Description of the Field, including a unique identifier and location description.
  - b. The total number of acres that were revegetated including the year that the Certificate of Substantial Completion was issued for that field.
  - c. The Management Objectives and Desired Species for each Field.

- d. The efforts undertaken in the preceding year(s) to maintain the Field, including weed control measures implemented.
  - e. The approximate annual precipitation that fell on the Field, which may be estimated based on the average of published local weather station data.
  - f. Whether any other factors occurred that had a negative impact on efforts to maintain the Fields.
  - g. The condition of each Field.
  - h. Whether a Field has been maintained as well as can reasonably be expected.
  - i. What steps Utilities must take to adequately maintain the Field in the following year (the "Maintenance Requirements").
2. The Enforcement Mechanism shall not apply during the Maintenance Period, unless any Field subject to a Maintenance Period reverts to not Acceptable for three (3) consecutive years as a result of Utilities' negligence in implementing the Maintenance Requirements (such application of the Enforcement Mechanism does not restart the Maintenance Period). Examples of negligence include, without limitation, overgrazing, mechanical tillage, or destruction of vegetation by chemical means. Utilities' obligation during the Maintenance Period shall be to implement the Maintenance Requirements set forth in the Maintenance Report by the Maintenance Expert; and Utilities actions shall be deemed reasonably prudent if Utilities implements the Maintenance Requirements set forth in the Maintenance Report by the Maintenance Expert, even if the vegetation cover fluctuates or reverts to not Acceptable.
3. The Parties acknowledge and agree that the vegetation cover will fluctuate from year to year in response to precipitation (or lack thereof) and other natural causes (such as pests and wildlife) beyond Utilities' control and that these fluctuations are not intended to be controlled or addressed by the Maintenance Requirements. Nevertheless, if, in the last two years of the Maintenance Period, any Field is deemed not Acceptable by the Maintenance Expert for reasons other than Utilities' negligence, the Maintenance Period shall be extended until that Field is deemed Acceptable by the Maintenance Expert or for a maximum of three (3) years. If, at the end of the three (3) years, the Maintenance Expert still deems that Field not Acceptable for reasons other than Utilities' negligence, the Parties may invoke the dispute resolution procedures set forth in the IGA to determine what actions, if any, Utilities must reasonably take under the circumstances to obtain a Certificate of Compliance. In no event shall the Enforcement Mechanism be applied under this paragraph..
4. If either Party disagrees with the Maintenance Report, that Party may invoke the dispute resolution procedures set forth in the IGA. In the event of litigation, the trial court shall exercise *de novo* review, and the disagreeing Party shall have the burden to establish any inadequacy of the Maintenance Report by a preponderance of the evidence.

5. If Utilities fails to take the steps required by the Maintenance Report, Bent County may seek specific performance of such steps in the District Court for Bent County, or invoke the dispute resolution procedures set forth in the IGA.
6. At the end of the ten (10) year Maintenance Period (or an extension thereof), provided that Utilities has otherwise complied with its obligations to maintain the Field as Acceptable, Bent County shall issue a Certificate of Compliance for that Field. At such time, Field monitoring, if any, shall be the responsibility of Bent County pursuant to Bent County's zoning, building, health or other applicable regulations and codes; or, upon mutual agreement of the Parties, any authority assigned to Bent County by Utilities to enforce any contractual, deed, or other restrictions upon any Field, such as an obligation to control weeds. The Parties acknowledge and agree that one of the purposes of the Per Acre-Foot Charge (and the Land Management position funded by this charge) is to offset any ongoing Field monitoring.

### **III. REVEGETATED LAND CLASSIFICATION METHODOLOGY**

- CLASS 1      Seeding has failed, and full reseeding is required.
- CLASS 2      Seeding has some success, but the stand is variable and partial reseeding is required.
- CLASS 3      Seeding is successful. The stand is adequate and uniform across the Field of land, but plant cover has not developed enough to meet success criteria of 10% Basal Cover or 20% Canopy Cover.
- CLASS 4      Seeding is successful. The stand is adequate, uniform across the Field, and achieves an average of 15% Basal Cover or 25% Canopy Cover of Desired Species using the Quantitative Sampling Protocol. For the avoidance of doubt, a Field shall be considered Class 4 if it meets either the Basal Cover or Canopy Cover criteria described above; the Field does not need to meet both criteria to be considered Class 4.

### **IV. ENFORCEMENT MECHANISM**

Beginning in year 6 of Revegetation, the amount of the Historic Water Rights that Utilities may divert for municipal and industrial uses by Utilities from any Field, until such time that the Field has received a Certificate of Substantial Completion, shall be determined as follows (the "Enforcement Mechanism"):

1. Year 6: The allowed diversions of the Historic Water Rights associated with any Field for municipal and industrial uses by Utilities shall be limited to the amount of historical consumptive use of the Historic Water Rights available to that Field in that given year multiplied by the greater of: (a) the Percentage of Completion for that Field, or (b) 80%.
2. Year 7: The allowed diversions of the Historic Water Rights associated with any Field for municipal and industrial uses by Utilities shall be limited to the amount of historical consumptive use of the Historic Water Rights available to that Field in that given year multiplied by the greater of: (a) the Percentage of Completion for that Field, or (b) 60%.



3. Year 8: The allowed diversions of the Historic Water Rights associated with any Field for municipal and industrial uses by Utilities shall be limited to the amount of historical consumptive use of the Historic Water Rights available to that Field in that given year multiplied by the greater of: (a) the Percentage of Completion for that Field, or (b) 40%.
4. Year 9: The allowed diversions of the Historic Water Rights associated with any Field for municipal and industrial uses by Utilities shall be limited to the amount of historical consumptive use of the Historic Water Rights available to that Field in that given year multiplied by the greater of: (a) the Percentage of Completion for that Field, or (b) 20%.
5. Year 10 and on: The allowed diversions of the Historic Water Rights associated with any Field for municipal and industrial uses by Utilities shall be limited to the amount of historical consumptive use of the Historic Water Rights available to that Field in that given year multiplied by the greater of: (a) the Percentage of Completion for that Field, or (b) 0%.
6. At such time that Utilities obtains a Certificate of Substantial Completion for any Field, the allowed diversions of the Historic Water Rights associated with that Field shall not be limited by the Enforcement Mechanism.
7. Water that is not available to Utilities for the new uses per the Enforcement Mechanism will be used first for revegetation purposes, as necessary, or, if not necessary for revegetation, leased to other irrigators under the ditch system until a Certificate of Substantial Completion is obtained. Funds received for any such leasing shall be dedicated to revegetation purposes, and an accounting of such use of funds shall be provided to the County as part of the annual reports.

**Exhibit D**  
Weed Control

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**Weed Control**

The Parties agree that the following shall serve as minimum standards and guidelines for any Weed Control obligations under the IGA. This Exhibit D is not incorporated into the IGA and may be amended from time to time by mutual written agreement of the Parties. Capitalized terms that are not specifically defined herein shall have the same meaning as in the IGA. In the event of a conflict between the terms of this Exhibit D and the IGA, the terms of the IGA shall control.

**WEED CONTROL**

Weeds shall be controlled as required by the Colorado Noxious Weed Act, C.R.S § 35-5.5-108. Control measures will provide for the eradication, elimination, suppression or containment of List A, B, C and Nuisance Species as defined in the Act and by County regulation. Weed Control as part of any Revegetation Plan may include management objectives for specific species and identify the means for removal, destruction, buffers, reduction of spread or other control measures. Control measures may include integrated management techniques, including herbicide, mechanical and biological methods.

Mechanical methods, such as mowing shall be implemented in a manner that achieves the following objectives.

Weed infestations are managed to minimize blight. A stubble of five-to-ten inches in height and residue should remain to aid in protection from solar evaporation and erosion. The mowing operations occur at regular and timely intervals to reduce development of viable seeds and before the height is such that excessive litter is produced. Low-growing weeds and species not controlled by mowing, may require herbicide application(s) for adequate control. Herbicide applications will occur at regular and timely intervals to reduce development of seeds and spread.