

**Stagecoach Reservoir**

**WATER MARKETING POLICY**

**Upper Yampa Water Conservancy District**

**January 18, 2023**

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Appendix A: Water Supply Contract Forms (Revised 01/01/2023)

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## PURPOSE OF MARKETING PROGRAM

The Upper Yampa Water Conservancy District (UYWCD) is authorized and directed to provide for the beneficial use of water available for use from the UYWCD's storage capacity in Stagecoach Reservoir. The UYWCD's Board of Directors (Board) has approved the marketing of such water and other UYWCD water supplies as may be used to complement the use of such Reservoirs' water supplies through a contracting program described herein. The person or entity contracting with UYWCD for stored water under this policy is sometimes herein referred to as a "user" or "contract user" or "contractor."

### 1. AUTHORITIES UNDER PROGRAM.

- a. The General Manager is delegated the authority of the Board to implement and administer this Policy and the water supply contracts and assignments made pursuant to this Policy subject to the several specific reservations of Board authority stated herein. The General Counsel shall assist in the negotiation and drafting of the Water Supply Contracts.
- b. The General Manager is authorized by the Board to execute the Water Supply Contracts of not more than 100-acre feet in volume and for contract term of not more than 1 year made pursuant to this Policy on behalf of the UYWCD without further Board action. The General Manager will notify the Board of all such contracts.
- c. The General Counsel is directed and authorized to oppose Water Court applications which propose use of the UYWCD's water supplies without the existence of a current Water Supply Contract or otherwise at variance with this Policy.

### 2. SOURCES AND SCOPE OF MARKETING PROGRAM.

- a. Source: "Stagecoach Reservoir". Water delivered from Stagecoach Reservoir, for which a storage water right decrees were obtained by the UYWCD in the following Cases:

WATER RIGHT				AMOUNT					ADMIN NO.	APPROP. DATE
<b>Agricultural HCU Credits/Ditch Rights (below per 95CW078)<sup>1</sup></b>				<b>518.4 AF absolute</b>						
Ditch	April	May	June	July	Aug	Sept	Oct	Total (AF)		
Yellow Jacket	0.5	16.5	52.1	48.9	23.8	5.5	0.7	148.0	14175.00000 33782.25353	10/22/1888 06/01/1919
Union	1.5	20.7	165.3	154.7	36.4	2.9	0	381.5	14563.00000 33782.24988	11/14/1889 06/01/1918
Union reduction <sup>2</sup>	1.3	18.7	149.1	139.5	32.8	2.6	0	344.0	n/a	n/a
Little Chief	0.8	4.8	12.3	6.8	1.6	0.1	0	26.4	20450.19968 33782.25353	09/02/1904 03/01/1919
Total	2.6	40.0	213.5	195.2	58.2	8.2	0.7	518.4		
<b>Four Counties Ditch No. 1 and No. 3 (Priority 40)</b>				<b>184.8 cfs (366.55 AF/day) absolute 571.2 cfs (1,133 AF/day) conditional</b>					<b>39599.00000</b>	<b>06/02/1958</b>
<b>Bear Reservoir</b>				<b>11,614.2 AF absolute</b>					<b>40815.00000</b>	<b>09/30/1961</b>
<b>Pleasant Valley Reservoir</b>				<b>20,854 AF absolute/ 9,246 AF conditional<sup>3</sup></b>					<b>41727.39991</b>	<b>06/29/1959</b>
<b>Pleasant Valley Feeder Canal</b>				<b>300 cfs (600 AF/day) conditional</b>					<b>41727.39991</b>	<b>06/29/1959</b>
<b>Four Counties Ditch No. 3 Enlargement and Extension (Priority 45)</b>				<b>394 cfs (781.5 AF/day) conditional</b>					<b>41727.41412</b>	<b>05/20/1963</b>
<b>Bear Reservoir Enlargement</b>				<b>3,928 AF conditional</b>					<b>44559.44488</b>	<b>10/21/1971</b>
<b>Bear/Stagecoach Reservoir 2<sup>nd</sup> Filling</b>				<b>6,670 AF absolute</b>					<b>53691.53386</b>	<b>03/01/1996</b>

- <sup>1.</sup> Case No. 95CW078 changed these water rights for storage in Stagecoach Reservoir and allows for evaporation and augmentation and other uses under respective priorities.
- <sup>2.</sup> Union Ditch consumptive use reduced for wetland development and maintenance, water supply for waterfowl ponds and recreation uses in Case No.9 5CW78.
- <sup>3.</sup> 40,720 AF total per Case No. W-946-76, minus 20,854 AF absolute, minus 10,620 AF transferred to Morris on Creek Reservoir in Case No. 07CW061.

Decreed Uses:

	Bear Reservoir (1st & Enlg.)	Bear Reservoir Refill	Pleasant Valley Reservoir	Four Counties P-40	Four Counties P-45	Agricultural HCU Credits
Irrigation	x	x	x	x	x	x
Stock	x	x	x	x		x
Domestic	x	x	x	x	x	x
Municipal	x	x	x	x	x	x
Industrial	x	x	x	x	x	x
Fish	x	x	x	x		x
Recreation	x	x	x	x	x	x
Aesthetics		x				
Evaporation			x			x
Power	x	x	x	x	x	x
Energy				x	x	
Mining	x		x	x	x	
Augmentation	x	x	x	x	x	x
Exchange	x	x	x	x	x	x

Additional storage water right decrees may be obtained in the future by the UYWCD, and other water sources available to the UYWCD for use in its Water Marketing Program.

- b. Geographic. The UYWCD may enter into contracts with third parties for use of UYWCD water supplies directly, or by exchange or augmentation, within the UYWCD Boundary, subject to site-specific determination by the UYWCD's Board of Directors, and subject to determination by the General Manager and General Counsel of the legal and physical feasibility of such use, and subject to the principles and limitations stated herein. The UYWCD will not contract to provide a water supply to any parcel of land or area that was previously served with water rights that were conveyed out of the UYWCD District Boundary, absent express approval by the UYWCD Board of Directors. Contracts with third parties for use of the UYWCD water supplies outside of UYWCD Boundary or to facilitate uses outside of Water Division No. 6 (including for use outside of, or to facilitate use outside of, the UYWCD) require express approval, including pricing, by the Board of Directors. All contracts will describe the specific locations of use of the water supply by the Contract user, and for Environmental and Recreational Contracts, to the extent known, subsequent uses by downstream Reuse Contractors, so that any change of locations of use shall require prior approval of the Board of Directors.

### 3. NATURE OF WATER SERVICE.

- a. Contract Form. The UYWCD shall provide water supply for beneficial uses pursuant to contracts substantially in the forms attached hereto as Appendix A. The forms of the Water Supply Contract shall be used for all Contract applications made on and after the

date of the adoption of this Policy as revised, and the forms also may be used for Contract applications which are in progress as of such date. The Board reserves the authority to modify the Water Supply Contract forms on a case-by-case basis. The General Manager and General Counsel may make non-substantive changes to the Contract on a case-by-case basis in order to tailor that Contract to specific situations. In the event of any conflict between an executed Water Supply Contract and these policies the Contract shall be controlling.

- b. Type of Service. The UYWCD will deliver previously stored water at the outlet of the UYWCD's storage facilities into a stream system. The contract user is responsible at the user's sole cost for arranging and obtaining the legal use or credit of such water, shall bear the burden of any stream flow losses (seepage and evaporation) below such outlet, and shall be responsible, in consultation with the Division Engineer for Water Division No. 6, for arranging and administering the delivery of such stored water below such outlet to the place or places of use by such user. As reasonably requested by the Contract user under an Environmental or Recreational Contract, the UYWCD will cooperate with the Contract user in fulfilling the Contract user's responsibilities as described in this paragraph.
- c. Primary Sources of Supply. As previously described in subparagraph 3.a. above, the UYWCD's supply of water for the program described herein is anticipated to derive substantially from the following sources of supply:
  - i. Stagecoach Reservoir. The UYWCD's volume stored in priority of Stagecoach Reservoir, located on the Yampa River.
- d. Alternate Sources of Supply. The UYWCD may, in its sole discretion, provide water to a Contract user from alternate sources or facilities, provided that the releases from alternate sources or facilities are suitable to legally and physically meet the calling water right at the point or points of delivery of such water at such alternate sources or facilities.

#### 4. CONTRACTING PROCESS AND TERMS.

- a. Timing. As to particular sources of supply, the UYWCD shall not execute any contracts until that source has been legally acquired by the UYWCD and all needed permits satisfactory to the General Manager have been issued by appropriate agencies and received by the UYWCD. Pending legal acquisition of and the receipt of all permits for a particular source of supply by the UYWCD, the UYWCD will process contract applications for such source but will defer contract execution.
- b. Applications and Fees.
  - i. Prospective Contractors shall make written application to the UYWCD on forms prepared by UYWCD staff and approved by the General Manager and General Counsel. Such completed application forms shall be accompanied by the Contractor's non-reimbursable payment to the UYWCD of \$300.00 as the fee for the UYWCD's processing of the application.
  - ii. The General Manager will impose a fee of \$600.00 for contract amendments and

assignments. At the General Manager's discretion, the assignment and/or amendment fee may be waived.

- c. Verification of Need. The application process shall include a description by the contract applicant of the nature of its water service, its places of use, its available water rights and supplies, and its need for Contracted Water. The need of the contract applicant for program water in the quantity requested shall be verified by the General Manager, in consultation with the General Counsel, as necessary. If the General Manager determines that all or any portion of a water contract request is not based upon real, lawful, legitimate need, the General Manager shall report that finding to the UYWCD Board before approval of any contract, with a copy of such report provided to the Applicant. The Board will allow the contract applicant to present written information in support of its claimed need and in response to the General Manager's report, and the Board may in its sole discretion approve, disapprove, or approve with modifications or conditions the application. The Applicant may modify its application up to the date of decision by the Board. The Board's decision on such matters shall be final.
- d. Consistency with UYWCD Programs. The General Manager and General Counsel shall review all contract applications for consistency with the principles and limitations stated herein, consistency with the District's water rights for the requested water supply, and consistency with Colorado law and state and local governmental regulations and any separate agreements regarding water conservancy district water supply programs.
- e. Minimum and Maximum Quantities. The minimum amounts of water which may be contracted pursuant to this Policy shall be not less than 1 acre-foot annually. The maximum amounts of water which may be contracted to each person or entity pursuant to this Policy shall be as set forth below unless otherwise approved in advance by the Board of Directors on a case-by-case basis. In determining such maximum amount, existing prior contracts by the District for water supply for the applicant or its affiliates shall be counted and included in determining whether the maximum quantity would be exceeded by a new requested application.

Source	Maximum
Stagecoach Reservoir	2,000 AF

- f. Project Contract Year. The basis for calculating delivery obligations for water supply of the District contracted to persons or entities shall be the "Project Contract Year" or multiples thereof. A "Project Contract Year" shall be the period from March 1 in one year through February 28 (29) in the succeeding year, and such a Project Contract Year shall be herein referred to as the calendar year in which it commences. The date or dates of payment for contracted water supply shall be set forth in the Contract by the General Manager, shall normally be expected to be August 1 within the Project Contract Year for municipal and industrial water supplies, and October 31 for agricultural supplies within the Project Contract Year, but in all circumstances the date of payment for water to be delivered in a Project Contract Year shall be no later than October 31 of such Year.
- g. Terms and Provisions of Contracts. Multiple options are available for Contract terms, as follows:

- i. Term for Municipal or Industrial Contracts: The maximum duration or term for delivery of stored water of the District for industrial contracts shall be from the date of execution of such Contract through the end of the 2041 Project Contract Year. The maximum duration or term for delivery of stored water of the District for municipal contracts shall be forty (40) years from the date of execution of such Contract. Any such Contract shall require the District to commence and participate in discussions with the contracting user regarding possible execution of a new water supply Contract, for the same or a lesser amount of stored water, to commence upon the end of the current Contract term, to be held within the final Project Contract Year of such Contract. Each municipal contract whose duration exceeds 20 years (the “20-Plus Contract”) shall contain a clause by which the District reserves the right and authority to increase, at its sole discretion, the annual base contract pricing per acre foot of water, in the 2042 Project Contract Year of such 20-Plus Contract, up to a price then competitive with the market for similar municipal water supplies in similar quantities in the Yampa River Basin, such competitive pricing to include reference to contracts from the District to others for municipal water supplies which have been executed after the 20-Plus Contract, and thereafter during each year of the 20-Plus Contract beyond the 2042 Contract Year such annual price shall continue to be adjusted by the CPI as provided in Subsection 4-h below. The District reserves the right to change this policy and to change the pricing, duration, limitations, principles and forms for new water supply contracts going forward, at any time and from time to time, and such changes are to be applicable to all new contracts for the same type of water use thereafter, including any new contracts entered into by the District in 2021 or later pursuant to the following paragraph immediately below.

However, the municipal contract user of any municipal water supply contract entered into by the District in 2021 or later, which expires at the end of or before the final Contract Year, who has not defaulted on such contract provisions during the term thereof and whose area of use remains the largest of (a) the lawful boundary of such municipality, including any annexations into such municipality, or (b) the approved urban growth boundary, or (c) the approved municipal water service area boundary, each as may be determined by the governing board of such municipality from time to time during the contract (a through c above each including a municipality’s legally approved out of service area water contracts and service to its own facilities), may request in writing to the District during the final Project Contract Year that the duration of a succeeding contract to such municipal user be for a term (a) ending at the end of forty (40) years from the date of execution, if the term of the existing contract ends before forty (40) years, or (b) in the event that the contract is for forty (40) years, then up to 35 years after such final Project Contract year, in either case for an annual supply up to but not exceeding the maximum amount under the then-effective water supply contract upon such terms and conditions as the District is offering at that time. If such request is made during the final Project Contract Year, and if such municipal user otherwise agrees with the pricing, limitations, principles, and form for such new municipal water supply contract under the policies of the District in effect at that



time (other than any duration limitation), then the Board during such final Project Contract Year shall enter into such new municipal water supply contract with such municipal user on the then-approved form of Contract and then-prevailing municipal supply pricing, for the term requested by such municipal user but not exceeding 35 years, for the amount of annual supply requested by such municipal user not exceeding the amount contracted for under the expiring Contract. It is expected that this policy and the pricing, limitations, principles and forms for new water supply contracts of the District will be changed from time to time in the future by the Board of Directors to adapt to changing conditions, including (but not limited to) changes in law and regulation, hydrologic changes, the financial condition of the District, availability of water sources, interstate conditions of the Colorado River system, environmental requirements or policies, water quality changes, or changes in the master planning of the District Board of Directors.

- ii. **Term for Agricultural Contracts:** The maximum duration or term for delivery of stored water of the District for agricultural contracts shall be from the date of execution of such Contract through the end of the 2041 Project Contract Year. Any such Contract shall require the District to commence and participate in discussions with the contracting user regarding possible execution of a new water supply Contract, for the same or a lesser amount of stored water, to commence upon the end of the current Contract term, to be held within the final Project Contract Year of such Contract. The District reserves the right to change this policy and to change the pricing, duration, limitations, principles, and forms for new water supply contracts going forward, at any time and from time to time, and such changes are to be applicable to all new contracts for the same type of water use thereafter, including any new contracts in 2021 or later. Every agricultural use contract for delivery of stored water from Stagecoach Reservoir shall contain a limitation that the District may, in its sole discretion, upon written notice to such user terminate and end such contract prior to its stated termination date without liability of any kind to the contracting user if such contracting user physically uses the stored water to replace water lawfully available to such user from direct flow water rights or other storage supplies, if such user or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by such user of the stored water under the District's agricultural use water supply contract then in effect.
- iii. **Term for Environmental or Recreational Contracts:** The UYWCD recognizes that a diversity of contract terms may be necessary to provide mechanisms for environmental or recreational or in-stream flow enhancement agreements that allow for flexible water management. Unless otherwise determined by the Board of Directors on a case-by-case basis, the initial duration or term for delivery of stored water of the UYWCD for environmental or recreational or in-stream flow enhancement purposes shall be for one year from the date of execution of such Contract. Longer-term durations for environmental or recreational or in-stream flow enhancement agreements considered will not extend beyond the end of the

2041 project year. No environmental or recreational or in-stream flow enhancement contract shall contain any renewal or extension clause or provision. Contracts for storage of water for intended release for environmental or recreational use shall (a) preserve the right of the District for first use to generate hydro power through Stagecoach Dam for all such releases, and (b) permit the allottee to sub-contract the return flow from the contracted environmental or recreational location(s) of use to other water users approved by the District (a “Reuse Contractor”) for subsequent use downstream from the original contracted location(s)(whether within or outside of the District boundary) so long as such Reuse Contractor or its affiliates does not use the subcontracted reuse water to replace water lawfully available to such Reuse Contractor or its affiliates from direct flow water rights or other storage supplies (including storage supplies from a District project). The District reserves the right to change this policy and to change the pricing, duration, limitations, principles and forms for new environmental or recreational or in-stream flow enhancement water supply contracts going forward, at any time, and such changes are to be applicable to all new contracts for the same type of water use thereafter.

- h. Pricing. The pricing for each type of water use described above in subsection (g) will be reviewed and set annually by the UYWCD’s Board of Directors (which decision normally will be made prior to March 1 each year). The approved pricing for the current Project Contract Year is attached hereto as Appendix B. Each contract for water supply from the District shall contain a Cost-of-Living Adjustment (COLA) provision by which the amount payable per acre foot in the next Project Contract Year shall automatically be adjusted upwards by annual changes to the COLA index for the Denver-Aurora-Lakewood index, “all items,” “urban consumer” for the 12 -months ending at the end of June of the then-applicable Project Contract Year.

Annual payment terms in all water storage contracts, including contracts for industrial, municipal, agricultural, recreational, environmental or other purposes, shall be “take OR pay” contracts requiring payment to the District for the full amount of the water contracted for storage in Stagecoach Reservoir each year as required in such contract, whether or not the contractor calls for and/or uses the full stored amount that year, so long as such full contracted amount for that Project Year is in fact stored during that Project Year. Given the evolving nature of environmental and recreational water agreement legal authorization(s) and delivery administration in the State of Colorado, the District may consider additional payment terms for environmental and recreational contract agreements. All payment terms for water storage contracts, unless otherwise specified in section 1. b. of this policy, require the authorization of the Upper Yampa Water Conservancy District Board of Directors.

- i. Minimum Charges. The pricing charge under Appendix B for District water supply for each type of water use will be based upon the amount contracted by the user times the then applicable per-acre-foot price as of the date of execution of such contract, except that the minimum annual billing for any type of water supply use for any amount shall be \$100.00, which amount shall escalate in the same manner as provided in subparagraph h. above.

- j. Contract Execution. The applicant(s) for a Stagecoach Reservoir Water Supply Contract shall have sixty (60) days after mailing or electronically transmitting the final Contract document to them in which to execute the final Contract and deliver the executed originals to the UYWCD's offices. If such execution and delivery are not accomplished in that time, the applicant shall be deemed to have rejected the District's offer to contract.
  - k. Limitation on Disposition. Subject to the exceptions set forth below, Contractors may not sublet, sell, donate, loaned, or otherwise dispose of any of its rights to a Contract or Contracted Water. All Contracts will describe the specific locations of use of the water supply, so that any change of locations of use shall require prior approval of the Board of Directors. For municipal use Contractors, the specific location of use shall be the largest of (a) the lawful boundary of such municipality, including any annexations into such municipality, or (b) the approved urban growth boundary, or (c) the approved municipal water service area boundary (a through c above each including a municipality's legally approved out of service area water contracts and service to its own facilities), each as may be determined by the governing board of such municipality from time to time during the contract. The UYWCD will approve an assignment of a Contract for industrial or agricultural use water in all instances in which a permanent transfer and assignment of the Contract is to be made to a successor in interest of Contractor by reason of the transfer of the title or other legal right to use the property served by the Contracted Water, or where the transfer is made to an entity such as a homeowners' association or special district created to serve the property originally represented to the UYWCD to be served with the Contracted Water. Assignments and transfers of municipal use water shall require the approval of the Board of Directors of the District. Any disposition of a Contractor's rights to a Contract or Contracted Water must be by written instrument signed by the UYWCD. An example of a Contract Assignment form is attached hereto as Appendix C. As provided in subparagraph 4.b. ii. above, a \$600.00 fee will be imposed for each contract assignment. Water supply contracted for environmental or recreational use may be used by Reuse Contractors as set forth above in subparagraph 4.g.iii.
  - l. Pricing upon Assignment. Except for sub-contracts to Reuse Contractors of environmental or recreational water use contracts as described in Subsection 4(g) above, every assignment of a Contract will be subject to review and approval by the UYWCD, and such approval shall require the assigning Contractor and assignee to agree in writing to such changes in provisions of such Contract as will bring such Contract into full compliance with the then-current pricing and contracting policies duration, limitations, and principles in effect at the time of the assignment.
- 5. SHORTAGE CRITERIA. Water shortages among the UYWCD's Contractors shall be apportioned in the sequence detailed in the Stagecoach Fill and Release Policy attached hereto as Appendix D.
  - 6. DELIVERY CONTINGENCIES. There are several assumptions upon which the UYWCD's ability to deliver water pursuant to this Water Marketing Policy are contingent.

- a. Terms and conditions of applicable Water Court decrees for the sources of supply.
  - b. Terms and conditions of permits for all of said sources of supply and their related facilities.
  - c. Terms and conditions of any substitute supply plans and plans for augmentation or exchange regarding Contractors' use of the sources of supply.
  - d. Hydrologic availability of water supply from natural sources to Stagecoach Reservoir sufficient to place enough water in storage in any year sufficient to meet all of the permitted demands for deliveries under the contracts of the District.
  - e. The physical condition of Stagecoach Reservoir sufficient to physically store water up to the designed capacity of the Reservoir and to deliver water out of the outlet works of the Reservoir into the Yampa River below the dam.
  - f. The water quality of stored water in Stagecoach Reservoir being sufficient to meet the water quality requirements of any governmental entity or agency permitting raw water deliveries into the Yampa River below the dam.
7. ANNUAL REVIEW OF THIS POLICY. The Board of Directors shall review this Policy each year prior to the end of the calendar year, to determine if any amendments or revisions should be made to this Policy. The District Manager or Board Chairman/President shall place such review on the agenda of a Board meeting before the end of each calendar year.

**APPENDIX A**  
**CONTRACT FORMS**

## **WATER SUPPLY CONTRACT**

(Industrial)

**THIS WATER SUPPLY CONTRACT** (“Contract”) is entered into by and between

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(“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

### **RECITALS**

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153 and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under the absolute storage water rights it owns (“Water Rights”).

C. Contractor owns, leases and/or operates property and/or facilities within the boundaries of the District which it utilizes for industrial purposes.

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under the District Fill Policy as follows:

(i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

(ii) 2,000 acre-feet “Augmentation Pool” – The Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;

(iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed; the

General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the District Fill Priority;

(iv) 3,164 acre-feet “Raise Pool” – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the District Fill Priority, but is called the “Raise Pool” only for definitional purposes;

(v) 3,125 acre-feet “Preferred Remainder Pool” – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the District Fill Priority, but is called the “Preferred Remainder Pool” only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the “Emergency Remainder Pool” – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

E. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release unto Contractor \_\_\_\_\_ acre-feet of water stored in Stagecoach Reservoir from the \_\_\_\_\_ Pool for beneficial uses by the Contractor on an annual basis during the Term of this Contract (the “Contracted Water”).

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Contracted Water.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Upper Yampa agree as follows:

## **USE OF WATER RIGHTS**

### **1. Contract Price and Payment Procedure.**

1.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Contractor for Water Year 20\_\_\_\_ under this Contract (the “First Water Year”) shall be \$ \_\_\_\_\_ (the “Base Price”) for each acre-foot of such Contracted Water stored in the Reservoir and available for release to the Contractor in such First Water Year.

1.2 The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Contractor in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the price per acre-foot charged to the Contractor for the

Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the Base Price by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Water Year prior to the First Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.3 The annual payments for the Contracted Water shall be made by Contractor to Upper Yampa on or before August 1<sup>st</sup> of each year during the term of this Contract, beginning August 1, 20\_\_\_\_. Any annual payment not made within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in Section 2.5 below.

## **2. Storage and Delivery of Contracted Water.**

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15<sup>th</sup> of each calendar year for release for Contractor's beneficial use, upon request between July 15<sup>th</sup> and March 1<sup>st</sup> of the then current Water Year. Contractor shall be entitled to one use of the water delivered hereunder to extinction but shall not be entitled to the reuse or successive uses of such water. Contracted Water may only be used during the then current Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from one Water Year to the next.

2.2 The Contracted Water shall be stored as part of the \_\_\_\_\_ Pool of Upper Yampa, to be stored in the priority of such Contract Pool under the Stagecoach Fill Policy.

2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours' advance written notice to Upper Yampa specifying the time and quantity of the Contracted Water requested to be released out of the Reservoir. The point of delivery of the



Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for transportation and delivery of such Contracted Water after the point of delivery, and for all transit and transportation and carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored (*i.e.* either the General Supply Pool or the Municipal/Industrial Pool), then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

2.5 In any calendar year when insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to Contractor by this Contract is reduced by such abatement, Upper Yampa shall notify Contractor in writing of such fact, and of the amount of the reduction in such water, by July 25<sup>th</sup> of that year, and in the absence of such notice the full amount of water for Contractor shall be deemed to have been in storage on or prior to July 15<sup>th</sup> of that year. The Contractor will be credited against that Water Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to the Contractor, multiplied by that year's purchase price per acre-foot.

2.6 The Contracted Water shall only be beneficially used by Contractor for industrial purposes and on or within the property and/or facilities described in **Exhibit A** attached hereto. No change in the location or purpose of use of the Contracted Water as described in this Section 2.6 or in **Exhibit A** is permitted except as approved by Upper Yampa in writing in its sole discretion.

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other contractees without discrimination, to the extent that, in conjunction with other adjusted required release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.

### **3. Contractor's Water Use Obligations of the Contracted Water.**

3.1 **Carriage and Transit Losses.** Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.

3.2 **Use per Contract and Law.** Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of Upper Yampa's Water Rights, Upper Yampa's adopted Policies and Procedures, as they may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Upper Yampa warrants and represents to Contractor that the Contracted Water may be used by Contractor for industrial purposes, subject to (a) transit losses after release from Stagecoach Dam, (b) the terms of Section 3.3 below and any plan of exchange or augmentation obtained by Contractor to which Upper Yampa has consented, and (c) administration of the Yampa River at and above Contractor's point(s) of use and/or exchange or augmentation. Upper Yampa does not, however, warrant or represent that any augmentation plan of Contractor is sufficient, adequate, effective, or lawful to accomplish its objectives or to protect the continued diversion of the Contracted Water during administration of the Yampa River. Contractor is not authorized to apply for or secure any change in the Water Rights of Upper Yampa for or associated with any of the sources of supply of the Contracted Water.

3.3 **Legal Approvals.** If Contractor requires a plan of augmentation or Substitute Water Supply Plan (SWSP) to utilize the Contracted Water, Contractor shall at its sole expense adjudicate such plan of augmentation, or obtain approval of such SWSP, needed for Contractor to use its Contracted Water. Upper Yampa may in its discretion become a co-applicant or opposer in the prosecution of any such applications, or submit comments regarding any SWSP, for the purpose of protecting its Water Rights and related policies and the operation of the Reservoir by Upper Yampa. If a Water Court decree is required for Contractor to use the Contract Water, Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of an Upper Yampa contract.

3.4 **Limitation on Disposition.** Contractor shall not sublet, sell, donate, loan, or otherwise dispose of any of its rights to Contracted Water without prior written notice to, and the written approval of, Upper Yampa, and the payment of a transfer fee at the prevailing rate set forth by Upper Yampa, which approval may be given, withheld or conditioned by Upper Yampa in its sole discretion.

3.5 **Assignment.** This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent to be given, withheld, or conditioned by Upper Yampa in its sole discretion; provided that Upper Yampa shall not unreasonably withhold, condition or delay its consent to an assignment of this Contract by Contractor in connection with the sale of the entire property and/or facilities described in **Exhibit A** and for industrial purposes. Nothing in this Section 3.5 shall prohibit Upper Yampa

from conditioning approval of any assignment on the agreement in writing of assignee to changes in provisions of this Contract as will bring this Contract into full compliance with Upper Yampa's then-current pricing and contracting policies duration, limitations, and principles. All assignments and transfers not in compliance with the foregoing shall be void and of no effect.

3.6 **Nondiscrimination.** Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria prohibited under state or federal law.

3.7 **Accounting of Use.** Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to Upper Yampa specifically to enable Upper Yampa to prove the use of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

3.8 Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

#### 4. **Term.**

4.1 **Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall commence effective \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") and shall end on \_\_\_\_\_, 20\_\_\_\_ (the "Term").

4.2 **No Right to Renew.** This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water.

#### 5. **Contract Termination.**

##### 5.1 **Termination by Upper Yampa.**

5.1.1 Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any amount due under this Contract, provided that Upper Yampa has first given at least 60 days' prior written

notice specifying in detail such material breach and giving Contractor the right within such 60-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor as contemplated in Section 3 above materially threaten or interfere with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

5.1.4 Upper Yampa may terminate this Contract, in its sole discretion, upon written notice to Contractor prior to its stated termination date without liability of any kind to the Contractor if Contractor physically uses the stored water to replace water lawfully available to Contractor from direct flow water rights or other storage supplies and Contractor or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by Contractor hereunder.

## **5.2 Termination by Contractor.**

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 60 days' prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 60-day period to cure and remedy such material breach.

5.2.2 Except as provided in these preceding sections, Contractor has no right to terminate or reform or rescind this Contract.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

**6. Force Majeure.** Upper Yampa shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to Upper Yampa's ability to perform; major equipment or facility breakdown; and

changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

**7. Inspections.** Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants, access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

**8. Miscellaneous Provisions.**

8.1 Upper Yampa may assign this Contract without necessity of Contractor's consent or approval to any entity which succeeds Upper Yampa in the ownership of Stagecoach Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.

8.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

8.3 The Parties agree to communicate, coordinate and cooperate, if needed, on any required or desired water use accounting.

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which providing supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

8.6 Any notice required or permitted to be given by a party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by (i) registered or certified mail, return receipt requested, postage prepaid, (ii) expedited courier service, or (iii) email with confirmation of receipt, to the following addresses:

If to Contractor:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to Upper Yampa: Upper Yampa Water Conservancy District  
Attention: General Manager  
PO Box 775529  
Steamboat Springs, Colorado 80477-5529  
Email: UYWCD@upperyampawater.com

Each party may change its address or contact information for notices under this Contract upon written notice to the other party in accordance with this paragraph.

**9. Limited Representations by the Parties.** Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Contractor's point and locations of use, and pay for and perform its obligations hereunder during the Term.

**10. Enforcement of this Contract; Remedies on Default.**

10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

10.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

**11. Effective Date.** The effective date of this Contract shall be the last date below it is executed by all Parties.

[Signatures on following page]

IN WITNESS WHEREOF, Contractor and Upper Yampa have executed this Contract on the dates set forth below.

**CONTRACTOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**UPPER YAMPA WATER  
CONSERVANCY DISTRICT:**

BY: \_\_\_\_\_  
\_\_\_\_\_, President

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_, General Manager and Secretary

**WATER SUPPLY CONTRACT**  
(Municipal)

**THIS WATER SUPPLY CONTRACT** (“Contract”) is entered into by and between

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(“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

**RECITALS**

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153 and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under the absolute storage water rights it owns (“Water Rights”).

C. Contractor is a \_\_\_\_\_ which utilizes water within the boundaries of Upper Yampa for municipal purposes.

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under Upper Yampa Fill Policy as follows:

(i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

(ii) 2,000 acre-feet “Augmentation Pool” – The Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;

(iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed; the



General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than Upper Yampa Fill Priority;

(iv) 3,164 acre-feet “Raise Pool” – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than Upper Yampa Fill Priority, but is called the “Raise Pool” only for definitional purposes;

(v) 3,125 acre-feet “Preferred Remainder Pool” – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D (i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than Upper Yampa Fill Priority, but is called the “Preferred Remainder Pool” only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the “Emergency Remainder Pool” – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

E. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release unto Contractor \_\_\_\_\_ acre-feet of water stored in Stagecoach Reservoir from the \_\_\_\_\_ Pool for beneficial uses by the Contractor on an annual basis during the Term of this Contract (the “Contracted Water”).

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Contracted Water.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Upper Yampa agree as follows:

## **USE OF WATER RIGHTS**

### **1. Contract Price and Payment Procedure.**

1.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Contractor for Water Year 20\_\_ under this Contract (the “First Water Year”) shall be \$ \_\_\_\_\_ (the “Base Price”) for each acre-foot of such Contracted Water stored in the Reservoir and available for release to the Contractor in such First Water Year.

1.2 The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Contractor in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the price per acre-foot charged to the Contractor for the

Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the Base Price by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Water Year prior to the First Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.3 The annual payments for the Contracted Water shall be made by Contractor to Upper Yampa on or before August 1<sup>st</sup> of each year during the term of this Contract, beginning August 1, 20\_\_\_\_. Any annual payment not made within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in Section 2.5 below.

1.4 If the duration of this Contract exceeds 20 years, Upper Yampa reserves the right and authority to increase, at its sole discretion, the annual base contract pricing per acre foot of water, in the 2042 Water Year of such Contract, up to a price then competitive with the market for similar municipal water supplies in similar quantities in the Yampa River Basin, such competitive pricing to include reference to contracts from Upper Yampa to others for municipal water supplies which have been executed after this Contract, and thereafter during each year of such Contract beyond the 2042 Contract Year such annual price shall continue to be adjusted by the CPI as provided in Subsection 1.2 above.

## **2. Storage and Delivery of Contracted Water.**

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15<sup>th</sup> of each calendar year for release for Contractor's beneficial use, upon request between July 15<sup>th</sup> and March 1<sup>st</sup> of the then current Water Year. Contractor shall be entitled to one use of the water delivered hereunder to extinction but shall not be entitled to the reuse or successive uses of such water. Contracted Water may only be used during the then current Water Year and no unreleased Contracted Water

will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from one Water Year to the next.

2.2 The Contracted Water shall be stored as part of the \_\_\_\_\_ Pool of Upper Yampa, to be stored in the priority of such Contract Pool under the Stagecoach Fill Policy.

2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours' advance written notice to Upper Yampa specifying the time and quantity of the Contracted Water requested to be released out of the Reservoir. The point of delivery of the Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for transportation and delivery of such Contracted Water after the point of delivery, and for all transit and transportation and carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored (*i.e.* either the General Supply Pool or the Municipal/Industrial Pool), then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

2.5 In any calendar year when insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to Contractor by this Contract is reduced by such abatement, Upper Yampa shall notify Contractor in writing of such fact, and of the amount of the reduction in such water, by July 25<sup>th</sup> of that year, and in the absence of such notice the full amount of water for Contractor shall be deemed to have been in storage on or prior to July 15<sup>th</sup> of that year. The Contractor will be credited against that Water Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to the Contractor, multiplied by that year's purchase price per acre-foot.

2.6 The Contracted Water shall only be beneficially used by Contractor for municipal purposes and within the larger of (a) the lawful boundary of Contractor, including any lawful annexations, inclusions, or expansions of Contractor's boundaries or (b) the approved

urban growth boundary of Contractor if Contractor is a municipality, or (c) the approved water service area boundary if Contractor is a municipality or special district, each as may be determined by the governing board of Contractor from time to time during the Term (a through c above each including the Contractor's legally approved out of service area water contracts and service to its own facilities).

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other contractees without discrimination, to the extent that, in conjunction with other adjusted required release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.

### **3. Contractor's Water Use Obligations of the Contracted Water.**

3.1 **Carriage and Transit Losses.** Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.

3.2 **Use per Contract and Law.** Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of Upper Yampa's Water Rights, Upper Yampa's adopted Policies and Procedures, as they may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Upper Yampa warrants and represents to Contractor that the Contracted Water may be used by Contractor for the municipal purposes, subject to (a) transit losses after release from Stagecoach Dam, (b) the terms of Section 3.3 below and any plan of exchange or augmentation obtained by Contractor to which Upper Yampa has consented, and (c) administration of the Yampa River at and above Contractor's point(s) of use and/or exchange or augmentation. Upper Yampa does not, however, warrant or represent that any augmentation plan of Contractor is sufficient, adequate, effective, or lawful to accomplish its objectives or to protect the continued diversion of the Contracted Water during administration of the Yampa River. Contractor is not authorized to apply for or secure any change in the Water Rights of Upper Yampa for or associated with any of the sources of supply of the Contracted Water.

3.3 **Legal Approvals.** If Contractor requires a plan of augmentation or SWSP to utilize the Contracted Water, Contractor shall at its sole expense adjudicate such plan of augmentation, or obtain approval of such SWSP, needed for Contractor to use its Contracted Water. Upper Yampa may in its discretion become a co-applicant or opposer in the prosecution of any such applications, or submit comments regarding any SWSP, for the purpose of protecting its Water Rights and related policies and the operation of the Reservoir by Upper Yampa. If a Water Court decree is required for Contractor to use the Contracted Water, Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of an Upper Yampa contract.

3.4 **Limitation on Disposition.** Contractor shall not sublet, sell, donate, loan, or otherwise dispose of any of its rights to Contracted Water without prior written notice to, and the written approval of, Upper Yampa, and the payment of a transfer fee at the prevailing rate set forth by Upper Yampa, which approval may be given, withheld or conditioned by Upper Yampa in its sole discretion.

3.5 **Assignment.** This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent to be given, withheld, or conditioned by Upper Yampa in its sole discretion.

3.6 **Nondiscrimination.** Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria prohibited under state or federal law.

3.7 **Accounting of Use.** Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to Upper Yampa specifically to enable Upper Yampa to prove the use of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

3.8 Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

#### **4. Term.**

4.1 **Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall commence effective \_\_\_\_\_, 20\_\_ (the "Effective Date") and shall end on \_\_\_\_\_, 20\_\_ (the "Term").

4.2 **Contract Renewal.** If Contractor has not defaulted during the Term, and provided Contractor is in compliance with the requirements of Section 2.6 above, Contractor may request in writing to Upper Yampa during the last year of the Term that the Contract be renewed for a renewal Term (a) ending at the end of forty (40) years from the date of execution, if the Term is less than (40) years, or (b) in the event that the Term is for forty (40) years, then up to 35 years, in either case for an annual supply up to but not exceeding the maximum amount of the Contracted Water amount upon such terms and conditions as the Upper Yampa is offering at

that time. If such request is made during the final year of the Term and if Contractor otherwise agrees with the pricing, limitations, principles, and form for such new municipal water supply contract under the policies of Upper Yampa in effect at that time (other than any duration limitation), then the Board during such final year of the Term shall enter into such new municipal water supply contract with such Contractor on the then-approved form of Contract and then-prevailing municipal supply pricing, for the term requested by such municipal user but not exceeding 35 years, for the amount of annual supply requested by such municipal user not exceeding the amount contracted for under the expiring Contract. It is expected that this policy and the pricing, limitations, principles and forms for new water supply contracts of Upper Yampa will be changed from time to time in the future by the Board of Directors to adapt to changing conditions, including (but not limited to) changes in law and regulation, hydrologic changes, the financial condition of Upper Yampa, availability of water sources, interstate conditions of the Colorado River system, environmental requirements or policies, water quality changes, or changes in the master planning of Upper Yampa Board of Directors.

## **5. Contract Termination.**

### **5.1 Termination by Upper Yampa.**

5.1.1 Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any amount due under this Contract, provided that Upper Yampa has first given at least 60 days' prior written notice specifying in detail such material breach and giving Contractor the right within such 60-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor as contemplated in Section 3 above materially threaten or interfere with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

5.1.4 Upper Yampa may terminate this Contract, in its sole discretion, upon written notice to Contractor prior to its stated termination date without liability of any kind to the Contractor if Contractor physically uses the stored water to replace water lawfully available to Contractor from direct flow water rights or other storage supplies and Contractor or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by Contractor hereunder.

## **5.2 Termination by Contractor.**

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 60 days' prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 60-day period to cure and remedy such material breach.

5.2.2 Except as provided in these preceding sections, Contractor has no right to terminate or reform or rescind this Contract.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

**6. Force Majeure.** Upper Yampa shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to Upper Yampa's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

**7. Inspections.** Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants, access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

## **8. Miscellaneous Provisions.**

8.1 Upper Yampa may assign this Contract without necessity of Contractor's consent or approval to any entity which succeeds Upper Yampa in the ownership of Stagecoach Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.

8.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

8.3 The Parties agree to communicate, coordinate and cooperate, if needed, on any required or desired water use accounting.

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair,

maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which providing supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

8.6 Any notice required or permitted to be given by a party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by (i) registered or certified mail, return receipt requested, postage prepaid, (ii) expedited courier service, or (iii) email with confirmation of receipt, to the following addresses:

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to Upper Yampa: Upper Yampa Water Conservancy District  
Attention: General Manager  
PO Box 775529  
Steamboat Springs, Colorado 80477-5529  
Email: UYWCD@upperyampawater.com

Each party may change its address or contact information for notices under this Contract upon written notice to the other party in accordance with this paragraph.

**9. Limited Representations by the Parties.** Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Contractor's point and locations of use, and pay for and perform its obligations hereunder during the Term.



**10. Enforcement of this Contract; Remedies on Default.**

10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

10.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

11. **Effective Date.** The effective date of this Contract shall be the last date below it is executed by all Parties.

IN WITNESS WHEREOF, Contractor and Upper Yampa have executed this Contract on the dates set forth below.

**CONTRACTOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**UPPER YAMPA WATER  
CONSERVANCY DISTRICT:**

BY: \_\_\_\_\_

\_\_\_\_\_, President

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_, General Manager and Secretary

**WATER SUPPLY CONTRACT**  
(Agricultural)

**THIS WATER SUPPLY CONTRACT** (“Contract”) is entered into by and between

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(“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

**RECITALS**

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153 and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under the absolute storage water rights it owns (“Water Rights”).

C. Contractor owns, leases and/or operates property and/or facilities within the boundaries of Upper Yampa which it utilizes for agricultural purposes.

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under the Upper Yampa Fill Policy as follows:

(i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

(ii) 2,000 acre-feet “Augmentation Pool” – The Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;

(iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed; the

General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the Upper Yampa Fill Priority;

(iv) 3,164 acre-feet “Raise Pool” – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the Upper Yampa Fill Priority, but is called the “Raise Pool” only for definitional purposes;

(v) 3,125 acre-feet “Preferred Remainder Pool” – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the Upper Yampa Fill Priority, but is called the “Preferred Remainder Pool” only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the “Emergency Remainder Pool” – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

E. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release unto Contractor \_\_\_\_\_ acre-feet of water stored in Stagecoach Reservoir from the \_\_\_\_\_ Pool for beneficial uses by the Contractor on an annual basis during the Term of this Contract (the “Contracted Water”).

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Contracted Water.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Upper Yampa agree as follows:

## **USE OF WATER RIGHTS**

### **1. Contract Price and Payment Procedure.**

1.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Contractor for Water Year 20\_\_\_\_ under this Contract (the “First Water Year”) shall be \$ \_\_\_\_\_ (the “Base Price”) for each acre-foot of such Contracted Water stored in the Reservoir and available for release to the Contractor in such First Water Year.

1.2 The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Contractor in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the price per acre-foot charged to the Contractor for the

Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the Base Price by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Water Year prior to the First Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.3 The annual payments for the Contracted Water shall be made by Contractor to Upper Yampa on or before October 31<sup>st</sup> of each year during the term of this Contract, beginning October 31, 20\_\_\_\_. Any annual payment not made within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in Section 2.5 below.

## **2. Storage and Delivery of Contracted Water.**

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15<sup>th</sup> of each calendar year for release for Contractor's beneficial use, upon request between July 15<sup>th</sup> and March 1<sup>st</sup> of the then current Water Year. Contractor shall be entitled to one use of the water delivered hereunder to extinction but shall not be entitled to the reuse or successive uses of such water. Contracted Water may only be used during the then current Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from one Water Year to the next.

2.2 The Contracted Water shall be stored as part of the \_\_\_\_\_ Pool of Upper Yampa, to be stored in the priority of such Contract Pool under the Stagecoach Fill Policy.

2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours' advance written notice to Upper Yampa specifying the time and quantity of the Contracted Water requested to be released out of the Reservoir. The point of delivery of the

Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for transportation and delivery of such Contracted Water after the point of delivery, and for all transit and transportation and carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored (*i.e.* either the General Supply Pool or the Municipal/Industrial Pool), then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

2.5 In any calendar year when insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to Contractor by this Contract is reduced by such abatement, Upper Yampa shall notify Contractor in writing of such fact, and of the amount of the reduction in such water, by July 25<sup>th</sup> of that year, and in the absence of such notice the full amount of water for Contractor shall be deemed to have been in storage on or prior to July 15<sup>th</sup> of that year. The Contractor will be credited against that Water Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to the Contractor, multiplied by that year's purchase price per acre-foot.

2.6 The Contracted Water shall only be beneficially used by Contractor for agricultural purposes and on or within the property and/or facilities described in **Exhibit A** attached hereto. No change in the location or purpose of use of the Contracted Water as described in this Section 2.6 or in **Exhibit A** is permitted except as approved by Upper Yampa in writing in its sole discretion.

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other contractees without discrimination, to the extent that, in conjunction with other adjusted required release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.

### **3. Contractor's Water Use Obligations of the Contracted Water.**

3.1 **Carriage and Transit Losses.** Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.

3.2 **Use per Contract and Law.** Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of Upper Yampa's Water Rights, Upper Yampa's adopted Policies and Procedures, as they may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Upper Yampa warrants and represents to Contractor that the Contracted Water may be used by Contractor for agricultural purposes, subject to (a) transit losses after release from Stagecoach Dam, (b) the terms of Section 3.3 below and any plan of exchange or augmentation obtained by Contractor to which Upper Yampa has consented, and (c) administration of the Yampa River at and above Contractor's point(s) of use and/or exchange or augmentation. Upper Yampa does not, however, warrant or represent that any augmentation plan of Contractor is sufficient, adequate, effective, or lawful to accomplish its objectives or to protect the continued diversion of the Contracted Water during administration of the Yampa River. Contractor is not authorized to apply for or secure any change in the Water Rights of Upper Yampa for or associated with any of the sources of supply of the Contracted Water.

3.3 **Legal Approvals.** If Contractor requires a plan of augmentation or SWSP to utilize the Contracted Water, Contractor shall at its sole expense adjudicate such plan of augmentation, or obtain approval of such SWSP, needed for Contractor to use its Contracted Water. Upper Yampa may in its discretion become a co-applicant or opposer in the prosecution of any such applications, or submit comments regarding any SWSP, for the purpose of protecting its Water Rights and related policies and the operation of the Reservoir by Upper Yampa. If a Water Court decree is required for Contractor to use the Contract Water, Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of an Upper Yampa contract.

3.4 **Limitation on Disposition.** Contractor shall not sublet, sell, donate, loan, or otherwise dispose of any of its rights to Contracted Water without prior written notice to, and the written approval of, Upper Yampa, and the payment of a transfer fee at the prevailing rate set forth by Upper Yampa, which approval may be given, withheld or conditioned by Upper Yampa in its sole discretion.

3.5 **Assignment.** This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent to be given, withheld, or conditioned by Upper Yampa in its sole discretion; provided that Upper Yampa shall not unreasonably withhold, condition or delay its consent to an assignment of this Contract by Contractor in connection with the sale of the entire property and/or facilities described in **Exhibit A** and for agricultural purposes. Nothing in this Section 3.5 shall prohibit Upper Yampa from conditioning approval of any assignment on the agreement in writing of assignee to

changes in provisions of this Contract as will bring this Contract into full compliance with Upper Yampa's then-current pricing and contracting policies duration, limitations, and principles. All assignments and transfers not in compliance with the foregoing shall be void and of no effect.

3.6 **Nondiscrimination.** Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria prohibited under state or federal law.

3.7 **Accounting of Use.** Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to Upper Yampa specifically to enable Upper Yampa to prove the use of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

3.8 Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

#### 4. **Term.**

4.1 **Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall commence effective \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") and shall end on \_\_\_\_\_, 20\_\_\_\_ (the "Term").

4.2 **No Right to Renew.** This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water. If requested to do so by Contractor in writing, Upper Yampa agrees to commence and participate in discussions with the Contractor regarding possible execution of a new water supply contract, for the same or a lesser amount of stored water, to commence upon the end of the Term, to be held within the final year of the Term. Upper Yampa reserves the right to change the pricing, duration, limitations, principles and forms for new water supply contracts going forward, at any time and from time to time, and such changes are to be applicable to all new contracts for the same type of water use thereafter, including any new contract with Contractor and any other contract entered into by Upper Yampa on or after the date of this Contract.

## **5. Contract Termination.**

### **5.1 Termination by Upper Yampa.**

5.1.1 Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any amount due under this Contract, provided that Upper Yampa has first given at least 60 days' prior written notice specifying in detail such material breach and giving Contractor the right within such 60-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor as contemplated in Section 3 above materially threaten or interfere with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

5.1.4 Upper Yampa may terminate this Contract, in its sole discretion, upon written notice to Contractor prior to its stated termination date without liability of any kind to the Contractor if Contractor physically uses the stored water to replace water lawfully available to Contractor from direct flow water rights or other storage supplies and Contractor or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by Contractor hereunder.

### **5.2 Termination by Contractor.**

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 60 days' prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 60-day period to cure and remedy such material breach.

5.2.2 Except as provided in the preceding sections, Contractor has no right to terminate or reform or rescind this Contract.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.



**6. Force Majeure.** Upper Yampa shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to Upper Yampa's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

**7. Inspections.** Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants, access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

**8. Miscellaneous Provisions.**

8.1 Upper Yampa may assign this Contract without necessity of Contractor's consent or approval to any entity which succeeds Upper Yampa in the ownership of Stagecoach Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.

8.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

8.3 The Parties agree to communicate, coordinate and cooperate, if needed, on any required or desired water use accounting.

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which providing supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

8.6 Any notice required or permitted to be given by a party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by (i) registered or certified mail, return receipt requested, postage prepaid, (ii) expedited courier service, or (iii) email with confirmation of receipt, to the following addresses:

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to Upper Yampa: Upper Yampa Water Conservancy District  
Attention: General Manager  
PO Box 775529  
Steamboat Springs, Colorado 80477-5529  
Email: UYWCD@upperyampawater.com

Each party may change its address or contact information for notices under this Contract upon written notice to the other party in accordance with this paragraph.

**9. Limited Representations by the Parties.** Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Contractor's point and locations of use, and pay for and perform its obligations hereunder during the Term.

**10. Enforcement of this Contract; Remedies on Default.**

10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

10.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

11. **Effective Date.** The effective date of this Contract shall be the last date below it is executed by all Parties.

IN WITNESS WHEREOF, Contractor and Upper Yampa have executed this Contract on the dates set forth below.

**CONTRACTOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**UPPER YAMPA WATER  
CONSERVANCY DISTRICT:**

BY: \_\_\_\_\_  
\_\_\_\_\_, President

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_, General Manager and Secretary

## **WATER SUPPLY CONTRACT**

(Irrigation Only)

**THIS WATER SUPPLY CONTRACT** (“Contract”) is entered into by and between

---

(“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

### **RECITALS**

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153 and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under the absolute storage water rights it owns (“Water Rights”).

C. Contractor owns, leases and/or operates property and/or facilities within the boundaries of Upper Yampa which it utilizes for irrigation purposes.

D. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under the Upper Yampa Fill Policy as follows:

(i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa's current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

(ii) 2,000 acre-feet “Augmentation Pool” – The Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;

(iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed; the

General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the Upper Yampa Fill Priority;

(iv) 3,164 acre-feet “Raise Pool” – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the Upper Yampa Fill Priority, but is called the “Raise Pool” only for definitional purposes;

(v) 3,125 acre-feet “Preferred Remainder Pool” – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the Upper Yampa Fill Priority, but is called the “Preferred Remainder Pool” only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the “Emergency Remainder Pool” – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs D(i) through D(v) above.

E. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release unto Contractor \_\_\_\_\_ acre-feet of water stored in Stagecoach Reservoir from the \_\_\_\_\_ Pool for beneficial uses by the Contractor on an annual basis during the Term of this Contract (the “Contracted Water”).

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the use of Contracted Water.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Upper Yampa agree as follows:

## **USE OF WATER RIGHTS**

### **1. Contract Price and Payment Procedure.**

1.1 The purchase price for the Contracted Water from the Reservoir storage water allocated to the Contractor for Water Year 20\_\_\_\_ under this Contract (the “First Water Year”) shall be \$ \_\_\_\_\_ (the “Base Price”) for each acre-foot of such Contracted Water stored in the Reservoir and available for release to the Contractor in such First Water Year.

1.2 The annual price per acre-foot for the Contracted Water stored in the Reservoir and allocated and available for release to the Contractor in the next Water Year after the First Water Year, and in each Water Year thereafter during the Term of this Contract, shall be an amount equal to the greater of (i) the price per acre-foot charged to the Contractor for the

Contracted Water the prior Water Year, or (ii) the product obtained by multiplying the Base Price by a fraction, the denominator of which is the Consumer Price Index for All Urban Consumers, Denver-Boulder-Greeley Metropolitan Area, "All Items" (1982 – 84 = 100), published by the Bureau of Labor Statistics of the United States Department of Labor (the "CPI") for the semi-annual period ending December 31 in the Water Year prior to the First Water Year and the numerator of which is the CPI for the semi-annual period ending December 31 of the prior Water Year. In the event the Bureau of Labor Statistics discontinues publication of the CPI in the format existing as of the Effective Date, then Upper Yampa shall select a reasonably comparable price index, which index shall be substituted for the CPI in this paragraph. If the base year used in computing the CPI is changed, the adjustment to the purchase price shall be changed accordingly, so that all applicable increases in the CPI are considered, notwithstanding any such change in the base year. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.3 The annual payments for the Contracted Water shall be made by Contractor to Upper Yampa on or before October 31<sup>st</sup> of each year during the term of this Contract, beginning October 31, 20\_\_\_\_. Any annual payment not made within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water delivered to Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15 as described in Section 2.5 below.

## **2. Storage and Delivery of Contracted Water.**

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15<sup>th</sup> of each calendar year for release for Contractor's beneficial use, upon request between July 15<sup>th</sup> and March 1<sup>st</sup> of the then current Water Year. Contractor shall be entitled to one use of the water delivered hereunder to extinction but shall not be entitled to the reuse or successive uses of such water. Contracted Water may only be used during the then current Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from one Water Year to the next.

2.2 The Contracted Water shall be stored as part of the \_\_\_\_\_ Pool of Upper Yampa, to be stored in the priority of such Contract Pool under the Stagecoach Fill Policy.

2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours' advance written notice to Upper Yampa specifying the time and quantity of the Contracted Water requested to be released out of the Reservoir. The point of delivery of the

Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for transportation and delivery of such Contracted Water after the point of delivery, and for all transit and transportation and carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored (*i.e.* either the General Supply Pool or the Municipal/Industrial Pool), then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

2.5 In any calendar year when insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to Contractor by this Contract is reduced by such abatement, Upper Yampa shall notify Contractor in writing of such fact, and of the amount of the reduction in such water, by July 25<sup>th</sup> of that year, and in the absence of such notice the full amount of water for Contractor shall be deemed to have been in storage on or prior to July 15<sup>th</sup> of that year. The Contractor will be credited against that Water Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to the Contractor, multiplied by that year's purchase price per acre-foot.

2.6 The Contracted Water shall only be beneficially used by Contractor for irrigation purposes and on or within the property and/or facilities described in **Exhibit A** attached hereto. No change in the location or purpose of use of the Contracted Water as described in this Section 2.6 or in **Exhibit A** is permitted except as approved by Upper Yampa in writing in its sole discretion.

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after a request from Contractor, proportionally with diminishment of rates of releases of stored water to other contractees without discrimination, to the extent that, in conjunction with other adjusted required release rates by Upper Yampa for such other contractees, the maximum safe release rate of stored water and required bypasses through the outlet works is not exceeded.

### **3. Contractor's Water Use Obligations of the Contracted Water.**

3.1 **Carriage and Transit Losses.** Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to Contractor's point(s) of use and/or exchange or augmentation.

3.2 **Use per Contract and Law.** Contractor's use of Contracted Water shall in all instances be in accordance with the terms of this Contract, the permits and decrees of Upper Yampa's Water Rights, Upper Yampa's adopted Policies and Procedures, as they may change from time to time, and in accordance with applicable law and all decrees related to the Contracted Water. Upper Yampa warrants and represents to Contractor that the Contracted Water may be used by Contractor for irrigation purposes, subject to (a) transit losses after release from Stagecoach Dam, (b) the terms of Section 3.3 below and any plan of exchange or augmentation obtained by Contractor to which Upper Yampa has consented, and (c) administration of the Yampa River at and above Contractor's point(s) of use and/or exchange or augmentation. Upper Yampa does not, however, warrant or represent that any augmentation plan of Contractor is sufficient, adequate, effective, or lawful to accomplish its objectives or to protect the continued diversion of the Contracted Water during administration of the Yampa River. Contractor is not authorized to apply for or secure any change in the Water Rights of Upper Yampa for or associated with any of the sources of supply of the Contracted Water.

3.3 **Legal Approvals.** If Contractor requires a plan of augmentation or SWSP to utilize the Contracted Water, Contractor shall at its sole expense adjudicate such plan of augmentation, or obtain approval of such SWSP, needed for Contractor to use its Contracted Water. Upper Yampa may in its discretion become a co-applicant or opposer in the prosecution of any such applications, or submit comments regarding any SWSP, for the purpose of protecting its Water Rights and related policies and the operation of the Reservoir by Upper Yampa. If a Water Court decree is required for Contractor to use the Contract Water, Contractor shall cause to be included in any final decree of the Water Court a provision conditioning Contractor's use of the Contracted Water on the existence of an Upper Yampa contract.

3.4 **Limitation on Disposition.** Contractor shall not sublet, sell, donate, loan, or otherwise dispose of any of its rights to Contracted Water without prior written notice to, and the written approval of, Upper Yampa, and the payment of a transfer fee at the prevailing rate set forth by Upper Yampa, which approval may be given, withheld or conditioned by Upper Yampa in its sole discretion.

3.5 **Assignment.** This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent to be given, withheld, or conditioned by Upper Yampa in its sole discretion; provided that Upper Yampa shall not unreasonably withhold, condition or delay its consent to an assignment of this Contract by Contractor in connection with the sale of the entire property and/or facilities described in **Exhibit A** and for irrigation purposes. Nothing in this Section 3.5 shall prohibit Upper Yampa from conditioning approval of any assignment on the agreement in writing of assignee to



changes in provisions of this Contract as will bring this Contract into full compliance with Upper Yampa's then-current pricing and contracting policies duration, limitations, and principles. All assignments and transfers not in compliance with the foregoing shall be void and of no effect.

3.6 **Nondiscrimination.** Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria prohibited under state or federal law.

3.7 **Accounting of Use.** Contractor shall maintain an accounting of its use of all water used or supplied by Contractor on form(s) acceptable to Upper Yampa specifically to enable Upper Yampa to prove the use of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents.

3.8 Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

#### 4. **Term.**

4.1 **Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall commence effective \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") and shall end on \_\_\_\_\_, 20\_\_\_\_ (the "Term").

4.2 **No Right to Renew.** This Contract is not renewable, although the Parties may at any time prior to the expiration of the Term enter into a new water allotment contract for the Contracted Water. If requested to do so by Contractor in writing, Upper Yampa agrees to commence and participate in discussions with the Contractor regarding possible execution of a new water supply contract, for the same or a lesser amount of stored water, to commence upon the end of the Term, to be held within the final year of the Term. Upper Yampa reserves the right to change the pricing, duration, limitations, principles and forms for new water supply contracts going forward, at any time and from time to time, and such changes are to be applicable to all new contracts for the same type of water use thereafter, including any new contract with Contractor and any other contract entered into by Upper Yampa on or after the date of this Contract.

## **5. Contract Termination.**

### **5.1 Termination by Upper Yampa.**

5.1.1 Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any amount due under this Contract, provided that Upper Yampa has first given at least 60 days' prior written notice specifying in detail such material breach and giving Contractor the right within such 60-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor as contemplated in Section 3 above materially threaten or interfere with Upper Yampa's authority to contract for delivery of Contracted Water or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to deliver Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations which are needed to deliver the Contracted Water.

5.1.4 Upper Yampa may terminate this Contract, in its sole discretion, upon written notice to Contractor prior to its stated termination date without liability of any kind to the Contractor if Contractor physically uses the stored water to replace water lawfully available to Contractor from direct flow water rights or other storage supplies and Contractor or its affiliates obtains economic benefits from the absence of use of lawfully available direct flow water rights or other storage supplies in an amount exceeding the pricing paid or payable by Contractor hereunder.

### **5.2 Termination by Contractor.**

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 60 days' prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 60-day period to cure and remedy such material breach.

5.2.2 Except as provided in the preceding sections, Contractor has no right to terminate or reform or rescind this Contract.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division Engineer and any other appropriate governmental officials of any termination of this Contract.

**6. Force Majeure.** Upper Yampa shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to Upper Yampa's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

**7. Inspections.** Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants, access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonable protective terms and conditions.

**8. Miscellaneous Provisions.**

8.1 Upper Yampa may assign this Contract without necessity of Contractor's consent or approval to any entity which succeeds Upper Yampa in the ownership of Stagecoach Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor.

8.2 This Contract does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

8.3 The Parties agree to communicate, coordinate and cooperate, if needed, on any required or desired water use accounting.

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which providing supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this contract or its provisions and implementation shall be effective unless documented in writing which is approved and executed by both parties with the same formality as they have approved and executed this Contract.

8.6 Any notice required or permitted to be given by a party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by (i) registered or certified mail, return receipt requested, postage prepaid, (ii) expedited courier service, or (iii) email with confirmation of receipt, to the following addresses:

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to Upper Yampa: Upper Yampa Water Conservancy District  
Attention: General Manager  
PO Box 775529  
Steamboat Springs, Colorado 80477-5529  
Email: UYWCD@upperyampawater.com

Each party may change its address or contact information for notices under this Contract upon written notice to the other party in accordance with this paragraph.

**9. Limited Representations by the Parties.** Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and deliver the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point and cause it to be delivered to Contractor's point and locations of use, and pay for and perform its obligations hereunder during the Term.

**10. Enforcement of this Contract; Remedies on Default.**

10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least 60 days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 60-day period to cure and remedy such material breach.

10.2 Specific performance and/or restraining orders and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party.

11. **Effective Date.** The effective date of this Contract shall be the last date below it is executed by all Parties.

IN WITNESS WHEREOF, Contractor and Upper Yampa have executed this Contract on the dates set forth below.

**CONTRACTOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**UPPER YAMPA WATER  
CONSERVANCY DISTRICT:**

BY: \_\_\_\_\_  
\_\_\_\_\_, President

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_, General Manager and Secretary

**WATER SUPPLY CONTRACT**  
(Environmental, Instream, and Recreational)

**THIS WATER SUPPLY CONTRACT** (“Contract”) is entered into by and between

---

(“Contractor”), and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district (“Upper Yampa”), individually each a “Party” and collectively referred to herein as the “Parties,” effective as of the Effective Date set forth below.

**RECITALS**

A. Upper Yampa is a Colorado water conservancy district formed under the Water Conservancy Act, C.R.S. §§37-45-101 through 153 and is the owner and operator of Stagecoach Reservoir (hereinafter referred to as the “Reservoir” or “Stagecoach Reservoir”) in Routt County, Colorado.

B. Upper Yampa has stored and expects annually to store water in the Reservoir on the Yampa River under absolute storage water rights it owns (“Water Rights”). The Water Rights are decreed for several uses. The decreed uses are described in the Stagecoach Reservoir Fill and Release Policy.

C. Upper Yampa has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir (the below-described “Contract Pools,” or individually, a “Contract Pool”). Upper Yampa has adopted a filling priority for the various Contract Pools under the Stagecoach Reservoir Fill and Release Policy as follows:

(i) 9,000 acre-feet “Municipal/Industrial Pool” – The Municipal/Industrial Pool consists of water formerly allocated to Tri-State Generation and Transmission Association, Inc. (“TriState”) under Upper Yampa’s expired contract with Tri-State or the municipal or industrial contractees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet formerly allotted to TriState; and 2,000 acre-feet allocated for municipal use pursuant to existing contracts between Upper Yampa and such contracting entities or the municipal or industrial contractees of water from Stagecoach Reservoir who contract for all or part of the 2,000 acre-feet allotted to such contracting municipal users if Upper Yampa’s current or former contracts with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part;

(ii) 2,000 acre-feet “Augmentation Pool” – The Augmentation Pool consists of water allocated for augmentation use pursuant to the decree of the Water Court entered in Case No. 06CW49, Water Division 6;

(iii) 4,000 acre-feet “General Supply Pool” – The General Supply Pool consists of water formerly under contract to Tri-State and deliverable out of Yamcolo Reservoir pursuant to an exchange agreement which expired and was not renewed; the

General Supply Pool water is not subject to any exchange obligation or right or limitations on storage and use other than the Stagecoach Reservoir Fill and Release Policy;

(iv) 3,164 acre-feet “Raise Pool” – The Raise Pool consists of water that represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011; the Raise Pool water is not subject to any right or limitations on storage and use other than the Stagecoach Reservoir Fill and Release Policy, but is called the “Raise Pool” only for definitional purposes.

(v) 3,125 acre-feet “Preferred Remainder Pool” – The Preferred Remainder Pool consists of water not currently under contract, which represents a defined quantity of water in the Reservoir not allocated to the Contract Pools described in paragraphs C(i) through C(iv) above; the Preferred Remainder Pool water is not subject to any right or limitations on storage and use other than the Stagecoach Reservoir Fill and Release Policy, but is called the “Preferred Remainder Pool” only for definitional purposes; and

(vi) 15,000 acre-feet, approximately, is the “Emergency Remainder Pool” – The Emergency Remainder Pool consists of water that represents the remaining capacity of the Reservoir not allocated to the Contract Pools described in paragraphs C(i) through C(v) above.

D. Upper Yampa and the Contractor desire to enter into this Contract for Upper Yampa to store and release at Contractor’s request \_\_\_\_\_ acre-feet of water stored in Stagecoach Reservoir from the \_\_\_\_\_ Pool for beneficial uses by the Contractor as described herein on an annual basis during the Term of this Contract (the “Contracted Water”).

E. Contractor intends to subcontract use, subsequent use, and/or re-use of the Contracted Water to water users, for only the Water Rights’ decreed uses, in or from the Yampa River downstream of Stagecoach Reservoir, including but not limited to potential subcontract(s) with the City of Steamboat Springs (“City”) for decreed municipal uses at either or both of the City’s Recreational In-Channel Diversion decreed in Case No. 03CW86 and/or the City’s wastewater treatment outfall downstream of the City (“Subcontracted Uses”). If not applicable, please state “Not applicable” below.

F. Subject to the terms of this Contract, Contractor will pay Upper Yampa for the storage of Contracted Water and release thereof at Contractor’s request.

NOW THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Contractor and Upper Yampa agree as follows:

## **USE OF WATER RIGHTS**

### **1. Contract Price and Payment Procedure.**

1.1 The purchase price for the Contracted Water for Water Year 20\_\_\_\_ under this Contract shall be \$ \_\_\_\_\_ for each acre-foot of such Contracted Water thereof. For purposes of this Contract, a "Water Year" shall be the 12-month period from March 1 in a year through February 28 of the subsequent year, unless the beginning and end of such Water Year is changed by the Division Engineer for Water Division 6.

1.2 The payment for the Contracted Water shall be made by Contractor to Upper Yampa on or before October 31<sup>st</sup>, 20\_\_\_\_. Any payment not made within thirty (30) days after the due date shall bear interest at the rate of twelve percent (12%) per annum until paid. Payments due are based on the amount of Contracted Water and shall be made regardless of the amount of water released at the request of the Contractor and there shall be no abatement or setoff against any such payment, nor shall Contractor be permitted to withhold any payment required for any reason whatsoever, except only in the event the full Contracted Water has not been stored in the Reservoir by July 15, 20\_\_\_\_ as described in Section 2.5 below.

### **2. Storage and Delivery of Contracted Water.**

2.1 Upper Yampa agrees, subject to physical water supply conditions, terms of the license issued by the Federal Energy Regulatory Commission, the administration of water rights by State of Colorado water officials, and the terms of this Contract, to store the Contracted Water in Stagecoach Reservoir prior to July 15<sup>th</sup>, 20\_\_\_\_, minus any releases made pursuant to this Contract prior to July 15, 20\_\_\_\_ for release upon request between June 15<sup>th</sup> and March 1<sup>st</sup> of the then current Water Year. Contractor shall be entitled to use the full amount of Contracted Water to extinction and shall be permitted to enter into contracts for use, subsequent use, and/or reuse of the Contracted Water consistent with Sections 2.6 and 3.2 below. Contracted Water may only be used during the 20\_\_\_\_ Water Year and no unreleased Contracted Water will be booked over to the succeeding Water Year. Unreleased Contracted Water does not carry-over from the 20\_\_\_\_ Water Year.

2.2 The Contracted Water shall be stored as part of the \_\_\_\_\_ Pool of Stagecoach Reservoir, determined by Upper Yampa in its discretion, to be stored in the priority of such Contract Pool under the Stagecoach Fill and Release Policy.

2.3 Except in times of emergency, Contractor shall give at least forty-eight (48) hours' advance written notice to Upper Yampa specifying the time and quantity of the Contracted Water requested to be released out of the Reservoir. The point of delivery of the Contracted Water shall be the discharge of the outlet works of the Reservoir. Responsibility for



transportation and delivery of such Contracted Water after the point of delivery, and for all transit, transportation, or carriage losses sustained in such delivery, shall be borne solely by Contractor. Upper Yampa shall maintain records of all releases of water from storage in the Reservoir and shall maintain records of water levels in the Reservoir measured not less frequently than once per week. Contractor shall be entitled to inspect such records and copies shall be furnished to Contractor upon written request.

2.4 Upper Yampa shall allocate and charge any evaporation losses from water stored in the Reservoir against the Emergency Remainder Pool, and if there is insufficient water stored in the Emergency Remainder Pool, against the next most senior of the Contract Pools in ascending order of priority until all evaporation is accounted for and charged. If evaporation is charged against the Contract Pool in which the Contracted Water is stored, then Upper Yampa shall first charge the evaporation against the unallocated water in that Contract Pool, and only if there is evaporation that still needs to be accounted for, then against the Contractor's storage account on a pro rata basis with other water that is stored and allocated to other water users in that Contract Pool.

2.5 If insufficient water is stored in the Reservoir to supply the full Contract Pools as measured at time of peak annual storage as reasonably determined by Upper Yampa, then the amount of water captured by Upper Yampa to fill the Reservoir shall be allocated for filling purposes to the Contract Pools in descending order of priority so that each Contract Pool is filled before allocation of any storage water to the next lower Contract Pool. Parties holding water from a Contract Pool that does not completely fill due to insufficient water available to that Contract Pool shall abate and share proportionately in any shortfall of stored water in that Contract Pool. If any part of the water allocated to Contractor by this Contract is reduced by such abatement, Upper Yampa shall notify Contractor in writing of such fact, and of the amount of the reduction in such water, by July 25<sup>th</sup>, 20\_\_\_\_ and in the absence of such notice the full amount of water for Contractor shall be deemed to have been in storage on or prior to July 15<sup>th</sup>, 20\_\_\_\_. The Contractor will be credited against that Water Year's contract purchase price for the amount of such abatement shortage in acre-feet allocated to the Contractor, multiplied by that year's purchase price per acre-foot.

2.6 At Upper Yampa's discretion, the first use of the Contracted Water may be beneficially used for hydropower generation by Upper Yampa at Stagecoach Reservoir dam, which is a decreed use of the Contracted Water, and Upper Yampa reserves the right of such use of Contracted Water without compensation to Contractor (the "hydropower use"). Subsequent to the hydropower use by Upper Yampa, or subsequent to direct release from the Reservoir without hydropower use, as the case may be, Contractor shall use the Contracted Water for environmental and/or recreational and/or instream flow and/or non-consumptive and non-augmenting municipal beneficial uses ("ER Uses") in or on the Yampa River below the Stagecoach Reservoir dam to downriver locations acceptable to Upper Yampa (the "original contracted location(s)"), and may also subcontract with third parties for such beneficial ER Uses from the dam to such original contracted location(s), and may further subcontract with Reuse Contractors, as defined in Section 3.2 of this agreement, for subsequent use and/or re-use of Contracted Water below such original contracted location(s) as set forth in section 3.2 below. The original contracted locations must all be within the boundary of Upper Yampa and the ER

Uses must occur within the boundary of the Upper Yampa and consistent with the terms of the Water Rights. The Upper Yampa reserves the right of prior approval of the original contracted location(s) of the ER Uses.

2.7 The Parties acknowledge that the turbine capacity to release stored water through the outlet works of Stagecoach Reservoir is 105 cfs, and that Upper Yampa may diminish the instantaneous rate of release of the Contracted Water after (and notwithstanding) a request from Contractor to the extent Upper Yampa deems necessary, such diminishment to apply fully to Contracted Water under this Contract before any diminishment would be applied to contractees requesting release of stored water from any Pool senior to the Pool in which the Contracted Water is stored (including at least the Municipal/Industrial Pool or the Augmentation Pool), so that the maximum release rate of stored water, including the Contracted Water, and required bypasses through the outlet works is not exceeded.

### **3. Contractor's Water Use Obligations of the Contracted Water.**

3.1 **Carriage and Transit Losses.** Contractor shall bear carriage and transit losses in the Contracted Water released by Upper Yampa, in such amounts as are determined by the Division Engineer for Water Division 6, from the point of delivery of Contracted Water to the point(s) of use.

3.2 **Limitation on Uses and Disposition.** Contractor is authorized to (and agrees in good faith to seek) to sub-contract the subsequent use and/or re-use of Contracted Water to other water users (a "Reuse Contractor") for subsequent beneficial use(s) in, on, or diverted from the Yampa River downstream from the original contracted location(s). Such subsequent use or re-use may be within or outside of the Upper Yampa boundary, so long as such Reuse Contractor does not divert and use such supply to or on any parcel of land that was previously served with water rights that were either: a) conveyed or leased out of the Upper Yampa boundary, or (b) changed (either temporarily or permanently) from irrigation to another use resulting in the fallowing of the previously irrigated land. The arrangements for the ER Uses and for any such subsequent uses and re-use of the Contracted Water, after the ER Uses, and the control and delivery for such subsequent uses and re-uses, and any compensation for delivery for such ER Uses and subsequent uses and re-uses, shall belong solely to Contractor in conjunction with administration of such delivery and uses by the Division Engineer, except that Contractor will notify Upper Yampa in writing by October 1 of the names and contact information of Reuse Contractors and where and how the subsequent use(s) or re-use were made. Upper Yampa has no responsibility for such arrangements or implementing such arrangements for subsequent use or re-use of the Contracted Water beyond the preceding sentence and prior approval of the original contracted locations set forth in Section 2.6 above, after the release of the Contracted Water at the Stagecoach Reservoir dam in accordance with this Contract. However, all uses of Contract Water are subject to limitations or restrictions contained in the Colorado Water Conservancy District Act, as amended.

3.3 **Assignment.** This Contract shall not be assigned or otherwise transferred by Contractor without the prior written consent of Upper Yampa, such consent to be given, withheld, or conditioned by Upper Yampa in its sole discretion. Nothing in this Section 3.3 shall

prohibit Upper Yampa from conditioning approval of any assignment of this Contract in writing to assignee to changes in provisions of this Contract as will bring this Contract into full compliance with Upper Yampa's then-current pricing and contracting policies duration, limitations, and principles. All assignments and transfers not in compliance with the foregoing shall be void and of no effect.

**3.4 Nondiscrimination.** Contractor and its employees shall not discriminate in the availability of or charges for any water service or water supply made available pursuant to or based upon the Contracted Water on account of race, color, religion, sex, disability, national origin, or any other criteria as is or may be prohibited under state or federal law.

**3.5 Accounting of Use.** Contractor shall maintain an accounting of the initial ER Uses of all Contracted Water used or supplied to Contractor on form(s) acceptable to Upper Yampa, specifically to enable Upper Yampa to prove the uses of the Water Rights and to administer and operate the Reservoir and water right decrees and/or administrative approvals related to Contractor's use of Contracted Water. Contractor shall submit its accounting forms and records to Upper Yampa promptly upon its request and shall assist Upper Yampa as it may reasonably request in presenting and/or verifying such evidence of use in court or before administrative agencies by testimony of Contractor or its authorized and informed officers or agents. Contractor shall also maintain such accounting of the contracted subsequent uses and re-uses of the Contracted water under Subsection 3.2 above as may be required or requested by the Division Engineer and shall submit such accounting records to Upper Yampa as well, promptly upon its request.

**3.6** Section 404 of the Clean Water Act (33 U.S.C. 1344) regulates the discharge of dredged or fill material into the waters of the United States. Contractor shall consult with the Army Corps of Engineers if construction of facilities necessary to use the Contracted Water requires Section 404 compliance, which may include obtaining a permit. Further consultation and approval by the United States Fish and Wildlife Service may be required to ensure compliance with the Endangered Species Act (16 U.S.C. 1531, et seq.) if Contractor proposes physical alterations to the designated critical habitat of the Colorado River endangered fish species.

#### **4. Term.**

**4.1 Term.** Except in the event of an early termination as provided in Section 5 below, the term of this Contract shall be for the 20\_\_\_\_ Water Year only. Upper Yampa has no obligation to renew this Contract for subsequent years and may decline to do so in its absolute and sole discretion.

#### **5. Contract Termination.**

##### **5.1 Termination by Upper Yampa.**

**5.1.1** Upper Yampa may terminate this Contract for a material breach of the terms of this Contract by Contractor, including Contractor's failure to pay timely any amount

due under this Contract, provided that Upper Yampa has first given at least fifteen (15) days' prior written notice specifying in detail such material breach and giving Contractor the right within such 15-day period to cure and remedy such material breach.

5.1.2 Upper Yampa may also terminate this Contract if it reasonably believes that any judicial or administrative proceedings initiated by Contractor materially threaten or interfere with Upper Yampa's authority to contract for delivery of, or deliver, water from any Pool in the Reservoir or in any other way may injure Upper Yampa's Water Rights, permits, or other interests associated with Upper Yampa's Water Rights or the Reservoir or Reservoir operations.

5.1.3 Upper Yampa may terminate this Contract if its legal ability to release Contracted Water is materially impaired or is eliminated because of the termination or adverse modification of permits, decrees or other authorizations that are needed to deliver the Contracted Water.

## **5.2 Termination by Contractor.**

5.2.1 Contractor may terminate this Contract only in whole and not in part, for any material breach of the terms of this Contract by Upper Yampa, including Upper Yampa's failure or inability to deliver Contracted Water for an extended period of time, provided that Contractor has first given at least 15 days' prior written notice from Contractor to Upper Yampa specifying in detail such material breach and giving Upper Yampa the right within such 15-day period to cure and remedy such material breach.

5.3 **Notice of Termination to Affected Officials.** Either Party may notify the Division 6 Engineer and any other appropriate governmental officials of any termination of this Contract.

**6. Force Majeure.** Upper Yampa shall not be responsible for any losses or damages incurred as a result of Upper Yampa's inability to perform pursuant to this Contract due to the following causes if beyond Upper Yampa's control and when occurring through no direct or indirect fault of Upper Yampa, including without limitation: acts of God; natural disasters; actions or failure to act by governmental authorities; unavailability of supplies or equipment critical to Upper Yampa's ability to perform; major equipment or facility breakdown; and changes in Colorado or federal law, including, without limitation, changes in any permit requirements.

**7. Inspections.** Upper Yampa grants to the managerial staff of Contractor and any of its professional consultants, access to Stagecoach Reservoir and Stagecoach Dam subject to this Contract at reasonable times and under reasonably protective terms and conditions.

## **8. Miscellaneous Provisions.**

8.1 Upper Yampa may assign this Contract without necessity of Contractor's consent or approval to any entity that succeeds Upper Yampa in the ownership of Stagecoach

Reservoir, and Upper Yampa or such successor may collaterally assign the proceeds of this Contract to any entity providing financing to Upper Yampa or its successor in interest.

8.2 This Contract does not and is not intended to confer any rights, duties, or obligations upon any person or entity other than the Parties.

8.3 The Parties agree to communicate, coordinate and cooperate, if needed, on any required or desired water use accounting.

8.4 It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing, maintaining, enlarging, permitting, changing, renovating, or modifying the Reservoir, and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities and all lands used in connection with the construction, operation, repair, maintenance, enlarging, permitting, changing, renovating, or modifying the Reservoir and all facilities in which Upper Yampa has ownership or rights which provide supplies of water for storage in the Reservoir.

8.5 No amendment, modification, or novation of this Contract or its provisions and implementation shall be effective unless documented in writing that is approved and executed by both Parties with the same formality as they have approved and executed this Contract.

8.6 Any notice required or permitted to be given by a Party under or in connection with this Contract shall be in writing and shall be deemed duly given when personally delivered or sent by (i) registered or certified mail, return receipt requested, postage prepaid, (ii) expedited courier service, or (iii) email with confirmation of receipt, to the following addresses:

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

With a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

If to Upper Yampa: Upper Yampa Water Conservancy District  
Attention: General Manager  
PO Box 775529  
Steamboat Springs, Colorado 80477-5529  
Email: UYWCD@upperyampawater.com

Each Party may change its address or contact information for notices under this Contract upon written notice to the other Party in accordance with this paragraph.

8.7. The Recitals set forth above are and for all purposes shall be interpreted as being an integral part of this Contract, constituting acknowledgments and agreements by and among the Parties hereto, and are incorporated in this Contract by this reference.

**9. Limited Representations by the Parties.** Upper Yampa represents and warrants that it has full power and authority to execute this Contract, allocate and release the Contracted Water, and perform its obligations hereunder during the Term. Contractor represents and warrants that it has full power and authority to execute this Contract, receive Contracted Water at the delivery point, and pay for and perform its obligations hereunder during the Term.

**10. Enforcement of this Contract; Remedies on Default.**

10.1 Before commencing any action for enforcement of this Contract, the Party alleging a material breach of this Contract shall first give at least fifteen (15) days' prior written notice to the other Party specifying in detail such material breach and giving the other Party the right within such 15-day period to cure and remedy such material breach.

10.2 Specific performance and/or injunctive relief shall be the exclusive remedies for the violation or default by a Party in any provision of this Contract, except that Upper Yampa shall have all remedies at law for collection of sums required to be paid by Contractor hereunder which are not paid when due, including interest and reasonable attorneys' fees.

10.3 In the event of litigation between the Parties with respect to this Contract or performance of this Contract or any alleged material breach of the terms of this Contract, the Party substantially prevailing in such litigation shall recover from the other Party all reasonable attorneys' fees and costs of discovery and suit incurred by the substantially prevailing Party, unless otherwise determined by the Court in equity.

**11. Effective Date.** The effective date of this Contract shall be the last date below it is executed by all Parties.

[Signatures on following page]

IN WITNESS WHEREOF, Contractor and Upper Yampa have executed this Contract on the dates set forth below.

**CONTRACTOR:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**UPPER YAMPA WATER  
CONSERVANCY DISTRICT:**

BY: \_\_\_\_\_  
\_\_\_\_\_, President

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_

\_\_\_\_\_, General Manager and Secretary

APPENDIX B  
STAGECOACH RESERVOIR WATER CONTRACT  
PRICING



## Appendix B

Contract Category		All Prices = \$ per AF/year Earliest Contract Year = 2025			Notes:
		Contract Period (Years or End Date)			
		11 years to 2041	6 to 10 years	1 to 5 years	
Industrial	Contract Volume (AF)				\$300 application fee
	1 to 2000	152.08	160.53	168.98	
		Contract Period (Years or End Date)			
		11 to 40 years	6 to 10 years	1 to 5 years	
New Municipal	Contract Volume (AF)				\$300 application fee
	1 to 2000	99.03	104.53	110.03	Municipal contract period terms detailed in section 4 g (i) of Stagecoach Water Marketing Policy
		Contract Period (Years or End Date)			
		Existing Contract Term			
Existing Municipal	Contract Volume (AF)				CP = Contract Price calculated as per existing contract terms w/Budget Data
	As Specified in Existing Contract(s)	CP			
		Contract Period (Years or End Date)			
		Contract Term (all end in 2041)			
Environmental Recreational	Contract Volume (AF)				\$300 application fee
	1 to 2000	55.01			
		Contract Period (Years or End Date)			
		11 years to 2041	6 to 10 years	1 to 5 years	
Agricultural	Contract Volume (AF)				\$300 application fee
	1 to 2000	34.66	36.58	38.51	
		Contract Period (Years)			
		40 years			
Augmentation	Contract Type				Greater than 10 AF requires Approval by UYWCD BOD. Yampa Augmentation Plan Water May be Contract from Yamcolo Reservoir at the same price.
	Non-commercial / Non-Industrial	256.65			
	Commercial / Industrial	300.69			
	Application Fee	Small		Large	
		600.00		2000.00	
	Assignment Fee	600.00		600.00	
	Amendment Fee	600.00		600.00	

Approved by UYWCD BOD: 01/22/2025

Elk River Augmentation Plan Water Contract Pricing (Steamboat Lake)

Appendix B

		Contract Period (Years)			
Augmentation	Contract Type	40 years			Greater than 10 AF requires Approval by UYWCD BOD
	Non-commercial / Non-Industrial	256.65			
	Commercial / Industrial	300.69			
	Application Fee	Small		Large	
		600.00		2000.00	
		Assignment Fee		600.00	
	Amendment Fee	600.00		600.00	

**APPENDIX C**  
**CONTRACT CONSENT TO**  
**ASSIGNMENT FORM**

## CONSENT TO ASSIGNMENT

This Consent to Assignment (“**Consent**”) is made effective \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by the UPPER YAMPA WATER CONSERVANCY DISTRICT (“**District**”).

### RECITALS

The District entered into an agreement with \_\_\_\_\_ for the sale of \_\_\_\_\_ acre feet of water for \_\_\_\_\_ purposes annually dated \_\_\_\_\_, such water to be used on land owned or leased by \_\_\_\_\_ (the “Agreement”). The Agreement is for a \_\_\_\_ year term expiring \_\_\_\_\_. The District is under no obligation to extend or renew the Agreement, and if extended or renewed, the terms of such extension will be entirely within the discretion of the District, including the amount of water to be sold and the price per acre foot for such water and the term for such renewal or extension. Use of water on property other than property described in the Agreement (the “Property”) or for a purpose other than described in the Agreement requires the consent of the District, which may be withheld by the District in its discretion. The District is willing to consent to the assignment of the Agreement from \_\_\_\_\_ (“**Assignor**”) to \_\_\_\_\_ (“**Assignee**”). Such assignment is void unless approved by the District in writing. The District is willing to approve such Assignment in accordance with the terms and provisions of this consent.

NOW THEREFORE in consideration foregoing recitals and the acknowledgment and agreement of Assignee as set forth below, the District hereby approves and consents to the assignment of the contract from Assignor to Assignee under the following terms and conditions:

1. Assignee assumes the obligations of Assignor under the Agreement and agrees to be bound by them.
2. Assignee acknowledges that the Agreement expires \_\_\_\_\_, and the District is under no obligation to renew or extend the Agreement, and if extend or renewed, the terms of such extension or renewal, including the price per acre foot, the term of the agreement and the amount of water to be sold is entirely within the discretion of the District.
3. The District releases Assignor from all of its duties, liabilities and obligations under the Agreement which would otherwise be required or occur on and after the Effective Date, excepting duties, liabilities and obligations which accrued prior to the Effective Date or which are based on actions of Assignor or events which accrued prior to the Effective Date.

[Signatures on following page]

IN WITNESS WHEREOF, the undersigned have executed this Consent as of the date and year first above written.

ASSIGNEE:

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

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title (if applicable)

UPPER YAMPA WATER CONSERVANCY  
DISTRICT:

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

\_\_\_\_\_, General Manager and Secretary

**IMPORTANT NOTICE:** The District's Policies provide that the District may condition approval of any assignment of the Agreement on the agreement in writing of Assignee to changes in provisions of the Agreement as will bring the Agreement into full compliance with the District's then current pricing and contracting policies, duration, limitations, and principles.

**APPENDIX D**

**STAGECOACH RESERVOIR**

**FILL AND RELEASE POLICIES**

January 20, 2021

**RESOLUTION NO. 2021-2**

**A RESOLUTION**

**ADOPTING STAGECOACH RESERVOIR FILL AND RELEASE POLICIES.**

**WHEREAS**, the Upper Yampa Water Conservancy District ("District") constructed, owns, and operates Stagecoach Reservoir located in Routt County, Colorado on the Yampa River; and

**WHEREAS**, the District is empowered pursuant to C.R.S. § 37-45-134 to make and enforce all reasonable rules and regulations for the management, control delivery, use and distribution of water; and

**WHEREAS**, the Board of Directors of the District ("Board") desires to adopt the attached fill and release policies for Stagecoach Reservoir, which the Board finds to be reasonable rules and regulations for the management, control, delivery, use and distribution of water, which maximize the beneficial use of water available for storage and release from Stagecoach Reservoir and which are consistent with all permits, approvals and contractual commitments of the District and the requirements of law for the operation of Stagecoach Reservoir.

**NOW THEREFORE**, be it resolved that the Upper Yampa Water Conservancy District Stagecoach Reservoir Fill and Release Policy attached hereto is approved and adopted effective January 20, 2021.

**UPPER YAMPA WATER  
CONSERVANCY DISTRICT**

*Ken Brenner*

By: Ken Brenner (Jan 25, 2021 15:21 MST)

**ATTEST**

*Andy Rossi*

Andy Rossi, Secretary

**Upper Yampa Water Conservancy District**  
**Stagecoach Reservoir Fill and Release Policy**

**I. General Policy**

The Upper Yampa Water Conservancy District (" District") has constructed and owns and operates a dam and reservoir known as Stagecoach Reservoir in Routt County, Colorado for the purpose of supplying water within its boundaries. The dam and reservoir are located on the Yampa (Bear) River upstream from the City of Steamboat Springs. The total storage capacity of the Reservoir is approximately 36,439 acre-feet. Water is stored in Stagecoach Reservoir pursuant to various water rights owned by the District. The storage and release of water to meet the needs of water customers holding water contracts with the District is the primary function of the reservoir. Use of the Reservoir as a recreational amenity and for generation of green hydroelectric energy are important ancillary benefits to the storage and releases of water but remain secondary to providing water to the District's allotment and augmentation contract customers. The District recognizes the need to adapt to the variability of precipitation throughout the year and over successive years in adopting these policies on reservoir filling and release. The District will continue to work towards making its system a reliable source of water for the District' s constituents by improvements in its operation of existing projects and contemplation of new projects that may change these policies in the future. To that end the District Board adopts these policies for the operation of Stagecoach Reservoir.

**II. Filling Policies**

Stagecoach Reservoir typically fills during spring runoff and releases water under allotment contracts in the late summer and fall of the year. Water is stored under decreed water rights owned by the District in order to best meet the needs of its constituents. Water accounting will be done in accordance with the laws of the State of Colorado. Water accounting procedures subject to these policies will be developed by UYWCD staff in consultation with the Division Engineer and approved by the Board.

**A. Water Rights**

**1. Water Rights Decreed for Storage**

Water rights decreed for storage in Stagecoach Reservoir. The following absolute and conditional water rights are decreed for storage in Stagecoach Reservoir:



WATER RIGHT				AMOUNT					ADMIN NO.	APPROP. DATE
<b>Agricultural HCU Credits/Ditch Rights (below per 95CW078)<sup>1</sup></b>				<b>518.4 AF absolute</b>						
Ditch	April	May	June	July	Aug	Sept	Oct	Total (AF)		
Yellow Jacket	0.5	16.5	52.1	48.9	23.8	5.5	0.7	148.0	14175.00000 33782.25353	10/22/1888 06/01/1919
Union	1.5	20.7	165.3	154.7	36.4	2.9	0	381.5	14563.00000 33782.24988	11/14/1889 06/01/1918
Union reduction <sup>2</sup>	1.3	18.7	149.1	139.5	32.8	2.6	0	344.0	n/a	n/a
Little Chief	0.8	4.8	12.3	6.8	1.6	0.1	0	26.4	20450.19968 33782.25353	09/02/1904 03/01/1919
Total	2.6	40.0	213.5	195.2	58.2	8.2	0.7	518.4		
<b>Four Counties Ditch No. 1 and No. 3 (Priority 40)</b>				<b>184.8 cfs (366.55 AF/day) absolute 571.2 cfs (1,133 AF/day) conditional</b>					<b>39599.00000</b>	<b>06/02/1958</b>
<b>Bear Reservoir</b>				<b>11,614.2 AF absolute</b>					<b>40815.00000</b>	<b>09/30/1961</b>
<b>Pleasant Valley Reservoir</b>				<b>20,854 AF absolute/ 9,246 AF conditional<sup>3</sup></b>					<b>41727.39991</b>	<b>06/29/1959</b>
<b>Pleasant Valley Feeder Canal</b>				<b>300 cfs (600 AF/day) conditional</b>					<b>41727.39991</b>	<b>06/29/1959</b>
<b>Four Counties Ditch No. 3 Enlargement and Extension (Priority 45)</b>				<b>394 cfs (781.5 AF/day) conditional</b>					<b>41727.41412</b>	<b>05/20/1963</b>
<b>Bear Reservoir Enlargement</b>				<b>3,928 AF conditional</b>					<b>44559.44488</b>	<b>10/21/1971</b>
<b>Bear/Stagecoach Reservoir 2<sup>nd</sup> Filling</b>				<b>6,670 AF absolute</b>					<b>53691.53386</b>	<b>03/01/1996</b>

- <sup>1.</sup> Case No. 95CW078 changed these water rights for storage in Stagecoach Reservoir and allows for evaporation and augmentation and other uses under respective priorities.
- <sup>2.</sup> Union Ditch consumptive use reduced for wetland development and maintenance, water supply for waterfowl ponds and recreation uses in Case No. 95CW78.
- <sup>3.</sup> 40,720 AF total per Case No. W-946-76, minus 20,854 AF absolute, minus 10,620 AF transferred to Morris on Creek Reservoir in Case No. 07CW061

**Decreed Uses:**

	Bear Reservoir (1st & Enlg.)	Bear Reservoir Refill	Pleasant Valley Reservoir	Four Counties P-40	Four Counties P-45	Agricultural HCU Credits
Irrigation	x	x	x	x	x	x
Stock	x	x	x	x		x
Domestic	x	x	x	x	x	x
Municipal	x	x	x	x	x	x
Industrial	x	x	x	x	x	x
Fish	x	x	x	x		x
Recreation	x	x	x	x	x	x
Aesthetics		x				
Evaporation			x			x
Power	x	x	x	x	x	x
Energy				x	x	
Mining	x		x	x	x	
Augmentation	x	x	x	x	x	x
Exchange	x	x	x	x	x	x

**2. Start of Fill**

The start of fill date for Stagecoach Reservoir is March 1 of each year.

**3. Carry Over Storage**

On the start of fill date, the total water supply stored under the Bear Reservoir 1st Fill storage right, Pleasant Valley Reservoir 1st Fill storage right, Bear Reservoir Enlargement storage right, and Bear Refill storage right for multiple uses is first allocated to the Bear Reservoir storage right up to a maximum of 11,614.2 AF, then it is allocated to the Pleasant Valley Reservoir storage right first in an amount up to the maximum decreed absolute volume and then in an amount up to the maximum decreed conditional volume, finally, any remaining storage is allocated to the Bear Reservoir Enlargement storage right first in an amount up to the maximum decreed absolute volume and then in an amount up to the maximum decreed conditional volume. In addition, the total water supply stored under the Bear Reservoir 1st Fill storage right, Pleasant Valley Reservoir 1st Fill storage right, Bear Reservoir Enlargement storage right, and Bear Refill storage right for non-augmentation uses is allocated in a similar manner, taking into account storage supplies already allocated to these rights for multiple uses. Storage

allocations to the Four Counties Ditch No. 1 and No.3, the Four Counties Ditch No. 3 Enlargement and Extension, the Yellow Jacket Ditch, the Union Ditch, and the Little Chief Ditch will be accounted for from the start of fill date in a manner presented to the Colorado Division of Water Resources by the District in the annual Stagecoach Reservoir accounting data.

**4. First Fill**

After the start of fill date, the remaining capacity in Stagecoach Reservoir shall be filled under the water rights set forth above in order of seniority, storing first up to the maximum decreed absolute volumes.

**5. Second Fill**

After the start of fill date, any remaining capacity not carried over in Stagecoach Reservoir shall be filled under the water rights set forth above in order of seniority, to the extent each priority is available for storing. After the commencement of the first fill, evaporation and seepage during the water year shall be replaced by utilization of the water stored under the Yellow Jacket, Union and Little Chief Ditches, the Four Counties No. 1 and No. 3 rights, and the Pleasant Valley Reservoir 1st Fill water rights, in order of seniority. After a completed first fill of the Reservoir, and release of water from pools as described in Section III below, additional storable inflow may be stored during the remainder of the water year and allocated to the Stagecoach 2nd Filling water right.”

**6. Augmentation Use**

The water rights listed in paragraph II(A)(1) above were changed to add and include as beneficial uses, appropriative rights of exchange and substitution, augmentation and exchange for replacement purposes and all other augmentation uses. The priority date for such additional uses for each of the water rights is the original decreed priority date with the exception of the Bear Reservoir and Pleasant Valley Reservoir water rights, which have a priority date for such additional uses of June 29, 2001. If water is stored under the Bear Reservoir and Pleasant Valley Reservoir water rights and/or any other water rights decreed for augmentation use at such time that such water rights are not in priority for augmentation uses but are in priority for other uses, the District shall account separately for such water stored for purposes other than augmentation and such water shall not be released for augmentation purposes in the year of storage or afterwards but may be released for all other purposes.

## **7. Other Conditional Rights**

In any year which the Bear Reservoir Enlargement, Pleasant Valley Reservoir conditional water rights, Pleasant Valley Feeder Canal conditional rights and remaining conditional water rights in Four Counties Ditch Nos. 1 and 3 and Four Counties Ditch No. 3 Enlargement and Extension are in priority when filling under the first fill, the District will fill under such rights and seek to make more of such rights absolute.

## **8. Filling Priority**

The District has designated certain pools of water within the Reservoir for the purpose of contracting water. Contracts will be written and assigned to specific pools within the reservoir and contracts within each pool shall have equal priority (abated proportionally) when the pool contains water. Filling priority of Pools in the Reservoir shall be as follows:

- 1) 9,000 AF "Municipal/Industrial Pool"
- 2) 2,000 AF "Augmentation Pool"
- 3) 4,000 AF "General Supply Pool"
- 4) 3,164 AF "Raise Pool"
- 5) 3,275 AF "Preferred Remainder Pool"
- 6) 15,000 AF "Emergency Remainder Pool"

## **9. Description of Pools**

### **a. Municipal/Industrial**

The Municipal/Industrial Pool currently consists of:

9,000 acre-feet allocated for municipal and industrial uses pursuant to existing and future contracts between the District and such contracting entities, or the approved municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 9,000 acre-feet allotted to such pool ('Municipal/Industrial Pool').

Water stored in the Municipal/Industrial Pool is available for release to municipal and industrial users including community water systems

serving residential subdivisions and recreational in-channel diversions decreed to municipalities.

**b. The Augmentation Pool**

The Augmentation Pool currently consists of:

2,000 acre-feet of water allocated for augmentation use pursuant to the decree entered in Case No. 06CW49, Water Division 6 ("Master Augmentation Pool").

**c. The General Supply Pool**

The General Supply Pool currently consists of:

4,000 acre-feet of water allocated for agricultural, environmental, and recreational uses, and for municipal and industrial uses if the Municipal/Industrial Pool described above becomes fully subscribed. 192-acre feet is currently allotted to Brian Stahl et al.

**d. The Raise Pool**

The Raise Pool Currently consists of:

3,164 acre-feet of water not currently under contract which represents the increase in capacity of Stagecoach Reservoir resulting from the raise in the level of the spillway completed in 2011, and which may be contracted for any beneficial uses approved by the Board.

**e. The Preferred Remainder Pool**

The Preferred Remainder Pool currently consists of:

3,275 acre-feet of water not currently under contract which represents the remaining capacity of Stagecoach Reservoir not allocated to the pools described in paragraphs II(A)(10)(a) through (d) above or II(A)(10)(f) below. It is anticipated that water stored in this Preferred Remainder Pool will not be contracted long term by the District so long as stored water is available to be allocated from the pools described in paragraphs II(A)(10)(a) through (d) above.

**f. The Emergency Remainder Pool**

The Emergency Remainder Pool currently consists of:

14,000 acre-feet of water not currently under contract which represents the remaining capacity of Stagecoach Reservoir not allocated to the pools above 1,000 AF of Sediment Storage, physically dead storage, and water that has limited hydraulic capacity for release.

**III. Management of the Pools**

**A. Start of Year Allocation**

The water available in Stagecoach Reservoir on March first and any subsequent fill shall be allocated to the pools listed in paragraph II(A)(9) in order until each pool is completely filled before allocating any water to the next Pool. If insufficient water is available in any Pool to supply water to all parties holding contracts for delivery of water from that Pool, the water available for delivery to each contract holder shall be reduced proportionally, based upon the respective amounts of maximum contract allotments under the existing contracts from such Pool.

**B. Commitment of Reservoir Pools**

When Stagecoach Reservoir is completely filled, all contracts and commitments made in previous documents are fully served, including all contractual obligations and non-contract obligations of in-reservoir recreation storage. Thus, when the reservoir is full, with the exception of evaporation and releases from storage for minimum stream flow, 18,275 AF will be left after contract releases for the year, until and unless the Preferred Remainder Pool is contracted to allottees in the future.

**C. Post Billing Fill**

When water is not available to fill the Reservoir by July 15 in any year, the Emergency Remainder Pool, first, and then thereafter the Preferred Remainder Pool will be shorted and reduced by the amount of the fill shortage. Thus, contractual obligations will be available within Stagecoach Reservoir at a volume of 18,164 AF (elev. 7178.7 or 25.3 ft. below spillway elevation = 7204 ft.). In any year where Stagecoach Reservoir is not full by July 15 and storable inflow is available between July 15 and March 1 of the following year such storage will be made available to the unfilled pools in the order of the priority of pools set forth in Section 9 above, to be available during the water year of

such filling . Such additional water made available to a previously unfilled pool will be made available proportionally among all allottees holding contracts from such pool, up to the amount in each instance such allottee was shorted or curtailed before such additional water storage became available. If only the Emergency Remainder Pool and/or the Preferred Remainder Pool were not filled in such water year, then the additional post-July 15 storable inflow will be allocated to supply these pools, applied first to the Preferred Remainder Pool up to the amount it was shorted.

#### **IV. Release Policies**

##### **A. Release Operations**

Except as otherwise required under the District' s existing contracts for the delivery of water, releases of water pursuant to contract shall be made from the pool specified in the contract. Where feasible, Stagecoach Reservoir releases pursuant to contract will be made through the Districts hydro-power generation facilities. Use of the Jet Flow valve may be made in times of emergency if necessary, for structural concerns, control of dissolved oxygen levels downstream of the dam, or to minimize spilling over the dam crest for environmental concerns. These operational constraints made due to permitting requirements of the power plant through the Federal Energy Regulatory Commission (FERC) will be considered "Hydro" releases.

##### **B. Outlet Capacity and ramping**

Because of limited outlet capacity, the total instantaneous rate for contract releases at which water may be released from Stagecoach Reservoir will not exceed turbine capacity or the maximum instantaneous rate of release specified in an allotment contract, whichever is less. The District will make requested releases as soon as operationally possible (typically within 24 hours during the work week). Requested releases will be made in accordance with the District' s ramping rate practices and current water order and release schedules.

##### **C. Evaporation**

Evaporation for the entire Stagecoach Reservoir will be applied and debited solely against the Emergency Remainder Pool.

##### **D. Minimum Streamflow releases**

Required minimum stream flow releases which exceed inflow, and which are not released pursuant to contract shall be applied and debited first against the Emergency Remainder Pool and then against the Preferred Remainder Pool.

## **E. Prevention of Ice Damage**

After August 1 of each year the District may make 1,500 AF space available as necessary from the Emergency Remainder Pool to avoid ice on the spillway crest, provided that such releases of stored water to make such space available are made through the hydro-electric power plant in the dam and not through the jet valve, in order to confirm accepted beneficial use of such releases. The District may release such additional water up to such 1,500 AF limit first from the Emergency Remainder Pool and then from the Preferred Remainder Pool in order to make space available in the Reservoir to store an amount not exceeding the 95% confidence of Reservoir filling based on the forecasts of Colorado River Basin Forecast Center as modified by adopted District forecast criteria and snowpack data. Consistent with sound operational practices for Reservoir operations, and use of the hydro-electric power plant in the dam, the District may schedule and time such releases up to 1,500 AF to co-ordinate with other requested storage releases from Stagecoach Reservoir for existing contract allottees, and to generate income to the District from short-term environmental/recreational allotment contracts, and otherwise, in the discretion of the General Manager of the District, to co-ordinate with planned releases of stored water from other reservoirs in the Yampa River Basin owned or controlled by other entities where beneficial to improve the instantaneous in-stream flows below Stagecoach Dam and to ameliorate against periods of main-stem Yampa River administration by the Division Engineer.











# Resolution No2021-2-Stagecoach Fill Release Policies\_012021 - FINAL

Final Audit Report

2021-01-25

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