

Colorado Water Conservation Board

WATER LEASE AGREEMENT

with
Colorado Water Trust

TABLE OF CONTENTS

1. PARTIES.....	1
2. EFFECTIVE DATE and NOTICE of NONLIABILITY	1
3. RECITALS.....	1
4. DEFINITIONS.....	2
5. TERM and EARLY TERMINATION.....	2
6. WATER RIGHTS DESCRIPTION	2
7. LEASE, GRANT, and DEMISE – USES and PURPOSES	2
8. PAYMENTS to LESSOR	2
9. WARRANTIES and REPRESENTATIONS	3
10. DEFAULT.....	3
11. REMEDIES.....	4
12. NOTICES and REPRESENTATIVES.....	4
13. LIABILITY LIMITATIONS.....	4
14. GENERAL PROVISIONS.....	4
15. OFFICE of THE STATE CONTROLLER'S SPECIAL PROVISIONS	7
EXHIBIT A – WATER USE AGREEMENT	1
EXHIBIT B – VICINITY MAP	

1. PARTIES

This Lease (hereinafter called “Lease”) is entered into by and between the Colorado Water Trust (hereinafter called “Lessor” or “CWT”), and the STATE OF COLORADO acting by and through the Department of Natural Resources, Colorado Water Conservation Board (hereinafter called the “State” or “CWCB”). Lessor and the State hereby agree to the following terms and conditions.

2. EFFECTIVE DATE and NOTICE of NONLIABILITY

This Lease shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Lessor for any performance hereunder including, but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Lease exists in section 37-83-105(2), C.R.S. (2012) and funds have been budgeted, appropriated and otherwise made available pursuant to section 37-60-123.7, C.R.S. (2012) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Lease.

C. Purpose

The purpose of the Lease is to make water available for use by the CWCB to preserve the natural environment to a reasonable degree under its decreed instream flow water right on the Yampa River. Lessor entered into a 2013 Water Use Agreement with the Upper Yampa Water Conservancy District (“District”) on July 16, 2013, under which the District will release up to 4,000 acre-feet from Stagecoach Reservoir on the Yampa River to Lessor. By this Lease and as provided for in the Water Use Agreement, attached as **Exhibit A**, Lessor will lease a portion of that released water to the CWCB for instream flow use on the Yampa River from its confluence with Morrison Creek down to Lake Catamount.

D. References

All references in this Lease to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless indicated as a section of the Colorado Revised Statutes (C.R.S.) or otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein: **Exhibit A** (Water Use Agreement between Lessor and the District); **Exhibit B** (Vicinity Map).

B. Lease

"Lease" means this Lease, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Lease, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

C. Lease Funds

"Lease Funds" means funds available for payment by the State to Lessor pursuant to this Lease.

D. Party or Parties

"Party" means the State or Lessor and "Parties" means both the State and Lessor.

E. Water Right(s)

"The Water Right(s)" means the water right(s) described in §6.

5. TERM and EARLY TERMINATION.

The term of this Lease shall be for a term beginning on the effective date of this Lease, and ending on November 15, 2013, unless sooner terminated as provided for herein.

6. WATER RIGHT(S) DESCRIPTION

Lessor has leased and has a contractual right to sublease to the CWCB up to 4,000 acre-feet of water stored in Stagecoach Reservoir, on the Yampa River in Routt County, Colorado, as more fully described in Recital I of the Water Use Agreement attached as **Exhibit A**.

7. LEASE, GRANT, and DEMISE – USES and PURPOSES

Lessor hereby leases, grants, and demises unto the CWCB the right to use water released to Lessor under the Water Use Agreement ("Released Water") to preserve the natural environment to a reasonable degree under its decreed instream flow water on the Yampa River from the confluence with Morrison Creek to the inlet of Lake Catamount Reservoir, which water right is decreed for 72.5 cfs (4/1—8/14) and 47.5 cfs (8/15/3/31) ("the Instream Flow"). In addition, the Parties shall enjoy the following rights and are subject to the following duties and restrictions:

A. Exclusivity (Select one option)

The State shall have the exclusive right to use the Released Water for instream flow use to preserve the natural environment to a reasonable degree, subject to the following limitations and/or exceptions:

- i. CWCB will use the Released Water to maintain the Instream Flow for a period not to exceed one hundred twenty days.
- ii. The amount of water provided to and used by CWCB under this Lease will not exceed the ISF rate decreed to the Instream Flow.
- iii. CWCB's use of the Released Water for instream flow purposes will comply with the approval issued by the State and Division Engineers pursuant to section 37-83-105(2) for this Lease.

8. PAYMENTS to LESSOR

The State shall, in accordance with the provisions of this §8, pay Lessor rent and any other amounts due hereunder in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Lease to Lessor by the State is \$43,000, as determined by the State from available funds.

B. Payments

i. Rate and Time of Payment

The State shall pay \$35.74 per acre-foot of water provided to and used by the CWCB for the Instream Flow within 45 calendar days of receipt of an invoice from Lessor identifying the amount of Released Water provided to and used by the CWCB for the Instream Flow.

ii. Interest

The State shall not be liable for interest on overdue amounts due the 46th day after the due date, and interest shall not exceed the rate of one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. Lessor shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of day's interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, Lessor's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. If federal funds are used to fund this Lease in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Lease shall be made only from available funds encumbered for this Lease and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Lease, the State may terminate this Lease immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to Lessor in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Lessor, may be recovered from Lessor by deduction from subsequent payments under this Lease or other contracts, grants or agreements between the State and Lessor or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

9. WARRANTIES and REPRESENTATIONS

A. Regarding the Released Water

Lessor warrants and represents that it has a contractual interest in the Released Water under the Water Use Agreement (Exhibit A), which Agreement expressly acknowledges and provides for this Lease Agreement. Lessor further warrants that the Released Water is not currently subject to any existing leases, easements, or other burdens that would result in this Lease being invalid or that would interfere with the State's intended use of the Released Water, except as follows: NONE.

B. Regarding Legal Authority

Lessor warrants that it possesses the legal authority to enter into this Lease and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Lease and to bind Lessor to its terms. The person signing and executing this Lease on behalf of Lessor hereby represents, warrants, and, guarantees that they have full authorization to do so. If requested by the State, Lessor shall provide the State with proof of Lessor's authority to enter into this Lease within 15 days of receiving such request.

10. DEFAULT

A. Defined

In addition to any breaches specified in other sections of this Lease, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Lessor, or the appointment of a receiver or similar officer for Lessor or any of its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §15. If such breach is not cured within 30 days of receipt of written notice, or if a cure

cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §11. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Lease in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

11. REMEDIES

If Lessor is in breach under any provision of this Lease, the State shall have all of the remedies listed in this §11 in addition to all other remedies set forth in other sections of this Lease following the notice and cure period set forth in §10(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Early Termination in the Public Interest

The State is entering into this Lease for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and Courts. If this Lease ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Lease in whole or in part. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. In such event, State shall provide Lessor written notice, as provided in §12 at least 30 days prior to the desired termination date. If this Lease is terminated for convenience, Lessor shall be paid prorated rent through the termination date, less payment previously made.

12. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. The State:

Linda Bassi	
Colorado Water Conservation Board	
1313 Sherman St., Room 721	
Denver, CO 80203	
linda.bassi@state.co.us	

B. Lessor:

Amy Beatie	
Executive Director	
1420 Ogden St., Suite A2	
Denver, CO 80218	
abeatie@coloradowatertrust.org	

13. LIABILITY LIMITATIONS

A. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the Governmental Immunity Act §24-10-101, et seq. and the risk management statutes, CRS §24-30-1501, et seq., as amended.

14. GENERAL PROVISIONS

A. Assignment and Subletting (Select one option)

☐ The State shall have the right to assign or sublease its interests under this Lease.

X The State shall not have the right to assign or sublease its interest under this Lease, or any portion thereof, absent Lessor's written consent, which consent shall not be unreasonably withheld.

B. Binding Effect

Except as otherwise provided in §14(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Lease are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Lease may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Lease represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Extinguishment and Replacement

This Lease extinguishes and replaces any prior leases between the Parties related to the Property upon the effective date hereof.

G. Indemnification

Lessor shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Lessor, or its employees, agents, subcontractors, or assignees pursuant to the terms of this Lease; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

H. Jurisdiction and Venue

The exclusive jurisdiction for all suits, actions, or proceedings related to this Lease shall be in the State of Colorado and the exclusive venue shall be in the City and County of Denver.

I. Modification

i. By the Parties

Except as specifically provided in this Lease, modifications of this Lease shall not be effective unless agreed to in writing by both parties in an amendment to this Lease, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF CONTRACTS - TOOLS AND FORMS.

ii. By Operation of Law

This Lease is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Lease on the effective date of such change, as if fully set forth herein.

J. Order of Precedence

The provisions of this Lease shall govern the relationship of the State and Lessor. In the event of conflicts or inconsistencies between this Lease and its exhibits and attachments, including, but not limited to, those provided by Lessor, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions;**
- ii. Remaining pages of this Lease;**
- iii. Exhibit A, and**
- iv. Exhibit B.**

K. Severability

Provided this Lease can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for

any reason shall not affect the validity of any other provision hereof, provided that the Parties can continue to perform their obligations under this Lease in accordance with its intent.

L. Survival of Certain Lease Terms

Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Lessor fails to perform or comply as required.

M. Taxes

The State is exempt from paying any taxes, including, but not limited to, real property taxes. Lessor shall be solely liable for paying any taxes associated with this Lease as the State is prohibited from paying or reimbursing Lessor for such taxes.

N. Third Party Beneficiaries

Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Lease or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

P. CORA Disclosure

To the extent not prohibited by federal law, this Lease and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

15. OFFICE OF THE STATE CONTROLLER'S SPECIAL PROVISIONS for REAL PROPERTY LEASES

The Special Provisions apply to all Leases except where noted in *italics*.

A. 1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).

This Lease shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

B. 2. FUND AVAILABILITY. CRS §24-30-202(5.5).

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. 3. GOVERNMENTAL IMMUNITY.

No term or condition of this Lease shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

D. 5. COMPLIANCE WITH LAW.

Lessor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

E. 6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Lease. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Lease, to the extent capable of execution.

F. 7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Lease or incorporated herein by reference shall be null and void.

G. 10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [

***Not Applicable to intergovernmental agreements*]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

SPs Effective 1/1/09

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK_SIGNATURE PAGE


THE PARTIES HERETO HAVE EXECUTED THIS LEASE

Persons signing for Lessor/Lessor hereby swear and affirm that they are authorized to act on Lessor/Lessor's behalf and acknowledge that the State is relying on their representations to that effect.

<p>LESSOR/LESSOR COLORADO WATER TRUST</p> <p>By: Amy Beatie Title: Executive Director</p> <p> *Signature</p> <p>Date: 9/24/2013</p>	<p>STATE OF COLORADO John W. Hickenlooper, Governor Department of Natural Resources Mike King, Executive Director Colorado Water Conservation Board</p> <p> James Eklund, Director Name and Title</p> <p>Date: 9/24/2013</p>
	<p>LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By:  Signature - Assistant Attorney General Signature</p> <p>Date:</p>

ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts/Leases. This Lease/Lease is not valid until signed and dated below by the State Controller or delegate. Lessor/Lessor is not authorized to begin performance until such time. If Lessor/Lessor begins performing prior thereto, the State of Colorado is not obligated to pay Lessor/Lessor for such performance or rents or costs incurred hereunder.

<p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: </p> <p>Date: 10/7/2013</p>

2013 WATER USE AGREEMENT

This 2013 Water Use Agreement ("Agreement") is entered into by and between the COLORADO WATER TRUST ("CWT"), a Colorado nonprofit corporation; and UPPER YAMPA WATER CONSERVANCY DISTRICT, a Colorado water conservancy district ("Upper Yampa"), collectively, the Parties.

RECITALS

- A. CWT is a Colorado nonprofit dedicated to restoring and protecting stream flows in Colorado through voluntary, market-based efforts. CWT works within the Colorado Water Conservation Board's ("CWCB's") acquisition program to accomplish this mission. This Agreement supports that mission.
- B. Section 37-92-102(3), C.R.S. (2012) authorizes the CWCB to acquire by lease or other contractual agreement such water, water rights, or interests in water as CWCB determines may preserve and improve the natural environment to a reasonable degree.
- C. Section 37-83-105(2), C.R.S. (2012) authorizes water rights owners to lease or loan water to CWCB for instream flow use pursuant to a decreed instream flow water right held by CWCB and administrative approval, subject to certain conditions and procedures ("Short Term Lease Program").
- D. This year, CWT anticipates many decreed instream flows will not be met. CWT desires to supply stored water to those decreed, but not met, instream flows to protect Colorado's aquatic ecosystems.
- E. Upper Yampa has stored water in Stagecoach Reservoir on the Yampa River under the absolute storage water rights described in Appendix A ("Water Rights"). Upper Yampa wishes to contract with CWT to release up to 4,000 acre-feet of water stored in Stagecoach Reservoir pursuant to the Water Rights ("Stored Water") to CWT.
- F. CWT desires to subcontract a portion of the Stored Water to CWCB for instream flows under the Short Term Lease Program ("Subcontract"). CWCB holds an instream flow on the Yampa River, decreed in Case No. 6-01CW106 for 72.5 cfs (April 1 to August 14) and 47.5 cfs (August 15 to March 30), in the reach of the Yampa River extending from Morrison Creek to the inlet of Lake Catamount ("Instream Flow"). CWT also desires to subcontract the water for other beneficial uses.

- G. Subject to the terms of this Agreement, Upper Yampa will release Stored Water for hydropower use first, and then to CWT for the Subcontract and other beneficial uses.
- H. Subject to the terms of this Agreement, CWT will pay Upper Yampa for the use of Stored Water.
- I. The District has designated certain pools of water within the Reservoir for the purpose of administration of the storage and release of water from the Reservoir, as follows:
- (i) 7,000 acre-feet of water allocated to Tri-State Generation and Transmission, Inc. ("Tri-State") or its successors or assigns, or the municipal or industrial allottees of water from Stagecoach Reservoir who contract for all or part of the 7,000 acre-feet allotted to Tri-State if the District's current contract with Tri-State for 7,000 acre-feet from Stagecoach is terminated or released or amended in whole or in part ("Tri-State Pool");
 - (ii) 2,000 acre-feet allocated for municipal use pursuant to existing contracts between the District 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 the District's current contract with any such municipal user for water from Stagecoach is terminated or released or amended in whole or in part ("Municipal Pool");
 - (iii) 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");
 - (iv) 4,000 acre-feet 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 ("Exchange Pool");
 - (v) 3,164 acre-feet of water not currently under contract which represents the increase in capacity of the Reservoir resulting from the raise in the level of the spillway completed in 2011 ("Raise Pool");
 - (vi) 3,125 acre-feet of water not currently under contract which represents the remaining capacity of the Reservoir not allocated to the pools described in paragraphs I (i) through (v) above or viii below ("Preferred Remainder Pool");

- (vii) 15,000 acre-feet of water not currently under contract which represents the remaining capacity of the Reservoir not allocated to the pools described in paragraphs 1 (i) through (vi) above ("Emergency Remainder Pool");
- (viii) The District has agreed to make a one time allotment of water to CWT of the Stored Water, 3,000 acre-feet to be delivered from the Exchange Pool and 1,000 acre-feet to be delivered from the Raise Pool, as hereinafter set forth.

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, CWT and Upper Yampa agree as follows:

USE OF WATER RIGHTS

1. Term. The term of this Agreement shall be from the effective date of this Agreement until November 1, 2013 ("Term").
2. Purchase Price and Payment Procedure.
 - a. For and in consideration of the payment of the sum of thirty-five and 74/100 dollars (\$35.74)("Purchase Price") per acre foot paid to Upper Yampa by CWT and the keeping and performance of the covenants and agreements contained herein, Upper Yampa shall release to CWT up to 4,000 AF of water stored in Stagecoach Reservoir to be used by CWT in accordance with the provisions hereof.
 - b. Payment by CWT to Upper Yampa shall occur only upon the approval by the State and Division Engineers and acceptance by the CWCB Director of the use of the Stored Water pursuant to sections 37-83-105(2)(a)(IV) and 37-83-105(2)(b)(VII) as set forth in this Agreement.
 - c. Payment by CWT shall not occur if the CWCB Director does not accept, or the State and Division Engineers deny the use of the Stored Water to be released from Stagecoach Reservoir for such purpose.
 - d. CWT shall pay the Upper Yampa half the Purchase Price within 10 days after this Agreement is accepted by the CWCB Director and approved by the State and Division Engineers. CWT shall pay the remaining half no later than September 30, 2013.
3. Operations, Accounting and Monitoring.

- a. CWT shall coordinate with CWCB to notify the State and Division Engineers when the water rights are used for the Instream Flow pursuant to this approval for administrative purposes.
 - b. The Parties agree to coordinate record keeping and accounting as reasonably required by the State and Division Engineers to administer the water right use for the Instream Flow.
 - c. The Parties agree to coordinate to install and maintain any measuring devices or structures reasonably required by the State and Division Engineers to administer the water right use for the Instream Flow, but nothing herein shall require Upper Yampa to incur any cost to purchase or install new or modified measuring devices or structures.
4. First Use of Water Released. The first use of the Stored Water shall be for hydropower, a decreed use of the Stored Water.
5. Subsequent Use of Water Released. CWT, under the Subcontract, will use the Stored Water to maintain the Instream Flow. Upper Yampa shall release the water at the rate and at the times as determined after consultations between Upper Yampa, CWCB and CWT, provided that Upper Yampa shall not be obligated to release water at a net rate of release as measured at the outlet of Stagecoach Reservoir exceeding the difference between the decreed amount of the CWCB Instream Flow on the date of such release minus the combination of (a) the then current inflow of Morrison Creek at the Yampa confluence, (b) the then rate of release to all other allottees of water in Stagecoach Reservoir who have called for release of allotted water from the Reservoir on a concurrent basis together and (c) the minimum release required to be made by Upper Yampa from Stagecoach Reservoir under the environmental and other permits authorizing construction and operation of the Stagecoach Reservoir and hydropower facilities (i.e. Upper Yampa shall not be obligated to exceed at any time a COMBINED TOTAL release rate of water in excess of the decreed Instream Flow amount (reduced by the Morrison Creek inflow at the confluence) at the time of such release, for all water deliveries under all allotment contracts from Stagecoach Reservoir including this Agreement and all minimum releases, through November 1, 2013). The Parties agree to begin release of Stored Water at approximately 26 cfs. The timing of the releases will be determined by mutual agreement of the Parties. This rate can be modified at any time by mutual agreement of the Parties. Further, notwithstanding the foregoing, Upper Yampa shall not be obligated to release Stored Water

more than 120 days following the date of the first release requested by CWCB. The Parties agree to cooperate to maximize the benefits of the water released in light of meteorological conditions in 2013. It is further understood that the Stored Water will be released at the outlet of Stagecoach Reservoir, that all losses by evaporation prior to release and during transit after release will be borne by CWT, that ramping rates must be approved by Upper Yampa, and that any part of the Stored Water not released before November 1, 2013 will revert to the ownership of Upper Yampa, and CWT will not have the right to call for the release of such Stored Water after November 1, 2013, for any purpose. CWT agrees in good faith to seek to find additional downstream uses of the Stored Water below the lowest structure in the City of Steamboat's Recreational In-Channel Diversion and within the Upper Yampa's boundaries, provided that the arrangements for such uses and the control and delivery for such uses, and any compensation for such delivery for such uses, shall belong solely to CWT in conjunction with administration of such delivery by the Division Engineer, and Upper Yampa has no responsibility for such arrangements or implementing such arrangements beyond the release of the Stored Water at the Stagecoach Reservoir dam in accordance with this Agreement.

6. Early Releases. Before the approvals referenced in Paragraph 2(b) are completed, and notwithstanding anything elsewhere set forth herein, Upper Yampa may release Stored Water to CWT for other decreed downstream uses outside of the Short Term Lease Program, in amounts and timing as mutually agreed upon by the Parties. Notwithstanding the payment schedule in Paragraph 2, CWT shall pay for any water released before the approvals at a rate of \$35.74 per acre foot released due on or before July 31. After approval, the two payments CWT owes Upper Yampa in paragraph 2 shall be reduced pro rata by the amount CWT owes for such early releases such that the total payment from CWT to Upper Yampa under this Agreement is \$142,960.00.
7. Insufficient Water. If insufficient water is stored in Stagecoach Reservoir to supply the full allocations for municipal, agricultural, industrial and other users holding contracts within the District for allotments of water, as measured at time of peak annual storage, then the water in Stagecoach Reservoir shall be allocated to the pools described in Paragraph J above in the descending order listed in such paragraphs so that each pool is completely filled before any water is allocated to the next pool. It is agreed that the one time allotment of water to CWT under this Agreement consists of 3,000 acre feet to be delivered from the Exchange Pool and 1,000 acre feet to be delivered from the Raise Pool. It is further agreed that water to be delivered

under this Agreement from the Exchange Pool and the Raise Pool shall entirely abate before any abatement of the 11,000 acre feet allocated to the Tri-State Pool, the Municipal Pool or the Master Augmentation Pool. If there is less than 4,000 acre feet in the Exchange Pool at the time of peak annual storage, then the water allocated to all parties holding contracts for delivery of water from the Exchange Pool shall abate proportionately so that such Parties shall receive only a prorated portion of their allotment. If there is less than 3,164 acre feet of water in the Raise Pool at the time of peak annual storage, then the water allocated to all parties holding contracts in such pool shall abate proportionally so that such parties shall receive a prorated portion of their allotment. Provided, however, that the District at its sole discretion, may deliver some or all the water allocated to CWT under this Agreement from the Tri-State Pool, the Municipal Pool, or the Master Augmentation Pool. If any part of the water allocated to CWT by this Agreement is to be reduced by abatement as provided herein, the District shall notify CWCB and CWT in writing of such fact and the amount of reduction of such water by July 20, 2013 and in the absence of such notice the full amount of water for CWCB shall be deemed to have been in storage on or by July 15, 2013. If such notice of abatement occurs, the purchase price shall be adjusted accordingly.

8. Inspections. Upper Yampa grants CWCB and CWT staff and any of their representatives access to the Stagecoach Reservoir subject to the Agreement at reasonable times to ensure compliance with the terms of the Agreement.

STATE AND DIVISION ENGINEER APPROVAL OF AGREEMENT

9. Denial and/or Termination.
 - a. If acceptance by the CWCB Director under Paragraph 2(b) or the request for approval from the State Engineer or Division Engineer is denied in whole or in part, or if the approval is conditioned in such manner as to prevent this Agreement from being completely fulfilled, then this Agreement may be terminated within 30 days of written notice by either party to this Agreement, but Upper Yampa shall receive compensation from CWT for stored water released prior to termination at the rate of \$35.74 per acre feet released.
 - b. If acceptance by the CWCB Director under Paragraph 2(b) or the request for approval from the State Engineer or Division Engineer is conditioned in such manner that would injure Upper Yampa's Stored Water or affect Upper Yampa's ability to refill Stagecoach Reservoir in priority, Upper Yampa may terminate

this Agreement upon written notice by Upper Yampa to CWT, but Upper Yampa shall receive compensation from CWT for Stored Water released prior to termination at the rate of \$35.74 per acre foot released.

10. Miscellaneous Provisions.

- a. This Agreement shall not be assignable by any party without the prior written consent of the others.
- c. This Agreement obligates Upper Yampa to release the Stored Water available for release from Stagecoach Reservoir during the period commencing on the date of this Agreement and terminating on November 1, 2013. The term of this Agreement ends unconditionally and absolutely on November 1, 2013. Upper Yampa has no obligation to renew this Agreement for subsequent years and may decline to do so in its absolute and sole discretion.
- d. It is expressly acknowledged that Upper Yampa shall be solely responsible for operating, repairing and maintaining Stagecoach Reservoir and that Upper Yampa shall be the sole owner of the Water Rights and the dam and all facilities used in connection with the construction, operation, repair, and maintenance of Stagecoach Reservoir.
- e. Any notices required or permitted hereunder shall be sent to the addresses or email addresses set forth below, as may be changed from time to time by proper notice.

If to CWT:

Colorado Water Trust
1430 Larimer Street, Suite 300
Denver, CO 80202
Attn: Amy Beatie, abeatie@coloradowatertrust.org
Attn: Zach Smith, zsmith@coloradowatertrust.org

If to Upper Yampa:

Upper Yampa Water Conservancy District
P.O. Box 775529
Steamboat Springs, CO 80477
Attn: Kevin McBride, kmcbride@upperyampawater.com

With copy to:

Weiss and Van Scoyk, LLP
600 S. Lincoln Avenue, Suite 202
Steamboat Springs, CO 80487
Attn: Robert G. Weiss, bweiss@wvsc.com

11. Limited Representations By Upper Yampa.

- a. Upper Yampa represents and warrants that it has full power and authority to execute this Agreement, allocate and deliver the Stored Water, and perform its obligations hereunder.
- b. Upper Yampa represents and warrants that the Stored Water exists in Stagecoach Reservoir as of the execution of this Agreement, and has been so stored in compliance with decreed terms of existing Water Rights decrees for Stagecoach Reservoir prior to the date of execution of this Agreement.

12. Enforcement of this Agreement.

- a. Pursuant to section 37-92-102(3), C.R.S. (2012), the terms of this Agreement shall be enforceable by each party as a water matter in Water Court in and for Water Division 6; provided, however, that before commencing any action for enforcement of this Agreement, the party alleging violation shall notify the other parties in writing of the alleged violation and the parties shall make a good faith effort to resolve their differences through informal consultation.
- b. Specific performance of this Agreement shall be the exclusive remedy for the failure of either party to comply with any provision of this Agreement.

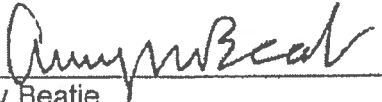
13. Effective Date. The effective date of this Agreement shall be the date it is executed by all parties.

IN WITNESS HEREOF, CWT and Upper Yampa have executed this Agreement.

UPPER YAMPA WATER
CONSERVANCY DISTRICT

By: 
Kevin McBride
General Manager
Date: 7/16/2013

COLORADO WATER TRUST

By: 
Amy Beatie
Executive Director
Date: 7/15/2013

NOTARIZATION

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on this 16 day of July, 2013, by Kevin McBride as General Manager of Upper Yampa Water Conservancy District.

Witness my hand and official seal.

Kame Ruff

Notary Public

My commission expires:

5-9-2016

NOTARIZATION

STATE OF COLORADO)
) ss.
COUNTY OF Denver)

The foregoing instrument was acknowledged before me on this 15 day of July, 2013, by Ann Beatie as Executive Director of COLORADO WATER TRUST.

Witness my hand and official seal.

Alyse Greenberg

Notary Public

My commission expires:

4/11/17

