

**JOINT USE AND LICENSE AGREEMENT
BETWEEN
SOUTH METRO WISE AUTHORITY
AND
COTTONWOOD WATER & SANITATION DISTRICT**

THIS JOINT USE AND LICENSE AGREEMENT (the "Agreement") is made and entered into this 25th day of NOVEMBER 2014, by and between the SOUTH METRO WISE AUTHORITY, a body corporate and political subdivision of the State of Colorado (the "Authority") and Cottonwood Water and Sanitation District, a quasi-municipal corp. + political subdivision of CO. and a Member of the Authority (the "Member"), whose address is 2 Inverness Drive East, #200 Englewood, CO 80112. The Authority and Member may be collectively referred to herein as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water"), the City of Aurora, acting by and through its Utility Enterprise ("Aurora") and the Authority entered into the Amended and Restated WISE Partnership – Water Delivery Agreement dated December 18, 2013 ("Water Delivery Agreement") wherein Denver Water and Aurora agreed to make water available for delivery to the Authority for its delivery and use of that water by the Individual Members of the Authority, under the delivery volumes and schedule set out in Section 3.4 and at a cost set out in Section 3.5 of the Water Delivery Agreement; and

WHEREAS, the Authority is the full or partial owner of real property, licenses, easements, infrastructure, capacity, and personal property related to the Core WISE Project Infrastructure, as defined in the South Metro WISE Authority Formation and Organizational Intergovernmental Agreement ("Organizational Agreement"), dated July 10, 2013 or improvements which may be acquired, constructed, or expanded in the future (together the "WISE Assets"). ; and

WHEREAS, the Authority entered into an Agreement for the Operation of Shared Infrastructure, dated October 21, 2014 ("Operations Agreement") pursuant to which the Authority agreed to certain conditions regarding its use of WISE Assets and the quantity and quality of water to be delivered through the WISE Assets; and

WHEREAS, pursuant to the Organizational Agreement, a separate agreement between the Authority and Authority Members is required in order to determine Authority Members' cost and obligation to pay for the purchase of the East Cherry Creek Valley Water and Sanitation District (ECCV) Western Pipeline, as set forth in the Purchase Agreement for the East Cherry Creek Valley Western Pipeline and State Land Board Line (the "Purchase Agreement"); and

WHEREAS, pursuant to Section 11 of the Organizational Agreement, the Executive Board of the Authority determined that ownership of the WISE Assets shall be in the name of the

Authority and that this Agreement establishes the interest and use rights to the capacity ownership as a percentage and use in the WISE Assets by the individual Authority Members and the proportionate financial obligation of each Member to the Authority to defray the costs and obligations the Authority has and will incur for the purchase and construction of the WISE Assets, as set forth in **Exhibit A** hereto (the Member's "WISE Assets Capacity"); and

WHEREAS, the Authority and Member acknowledge and agree it is in their mutual interest to identify the respective rights and obligations in and to the Member's right of capacity use in the WISE Assets in order to avoid conflict and clarify the obligations and rights of the Parties; and

WHEREAS, Denver Water owns 15% of the Western Pipeline and the Authority owns 85% of the Western Pipeline, as set forth in the Purchase Agreement; and

WHEREAS, ECCV has 8 mgd Reserved Capacity in the Western Pipeline, as set forth in Section 3.1 of the Purchase Agreement and Section 1.E.1.8 of the Operations Agreement; and

WHEREAS, the Western Pipeline, which is a WISE Asset, currently has a capacity estimated to be 38 mgd, and this capacity may be verified or modified based upon accurate hydraulic testing and/or reliable engineering analysis by the Authority; and

WHEREAS, ECCV's, Denver Water's, and the Authority's rights to use the Western Pipeline capacity are set forth in the Operations Agreement.

NOW, THEREFORE, the Recitals set forth above are hereby incorporated into the covenants and agreements set forth below. Capitalized terms not otherwise defined herein shall have the meaning as set forth in the Organizational Agreement. In consideration of the Recitals above, the payments required of Member pursuant to the Organizational Agreement and other good and valuable consideration acknowledged by the Parties, the Parties agree as follows:

AGREEMENT

1. AUTHORITY PERFORMANCE. The Authority shall deliver water to the Member according to the WISE water deliveries from Aurora Water as set forth in Water Delivery Agreement in the amount of Member's subscription share as set forth in the Organizational Agreement or other water as may be available to the Member, so long as the Member maintains sufficient WISE Assets Capacity to accommodate such delivery. The Authority shall operate and maintain the WISE Assets in conformance with the Operations Agreement subject to Member's performance of its obligations under this Agreement and the Organizational Agreement. Authority shall enforce the terms of its licenses and agreements with other members of the Authority so as to prevent one Authority member's use of the WISE Assets from detrimentally impacting Member's use thereof.

2. **LICENSE.** Member is hereby granted by the Authority a perpetual license (“License”) for the right of capacity use in the WISE Assets in proportion to the Member’s WISE Assets Capacity as set forth in **Exhibit A**, as **Exhibit A** may be amended, for the purpose of transmission and delivery of water for Member’s use. The License does not convey any other rights under the Organizational Agreement or any other rights not specifically stated herein. Member’s use of the WISE Assets is conditioned on compliance with the water quality standards and WISE Assets use restrictions applicable to the Authority pursuant to the Operations Agreement.

A. Access Restriction. This License is for capacity use in the WISE Assets only. Member shall not at any time access the WISE Assets except pursuant to the terms, restrictions and conditions set forth in the Organizational Agreement, the Water Delivery Agreement, the Operations Agreement, this Agreement and duly adopted and approved agreements, rules and regulations of the Authority related to the operation of the WISE Assets.

B. License Capacity. This License grants to the Member the right to use the Member’s WISE Assets Capacity in the amounts as reflected in **Exhibit A** as **Exhibit A** may be amended, to account for a change in Member’s WISE Assets Capacity due to the sale or assignment of Member’s WISE Assets Capacity, which sale or assignment shall be accomplished in the same manner and pursuant to the procedures as set forth in Section 14 of the Organizational Agreement relating to the procedures for assignment or sale of Member Pro-Rata Shares. The Member shall have sole authority and discretion over the sale or assignment of its Member’s WISE Assets Capacity.

C. Capacity Sharing. The Authority realizes that additional permanent or temporary capacity may be available in the WISE Assets pursuant to the Operations Agreement (“Excess Capacity”). The Authority shall notify all Authority members of the available Excess Capacity in each WISE Asset in a timely manner, and Member shall have the option to use its respective share of the Excess Capacity in proportion to its WISE Assets Capacity, subject to the terms of the Operational Agreement regarding the use thereof. As to be detailed in the adopted rules and regulations of the Authority, Member shall have the option to use a proportional share of Excess Capacity declined by other members until all capacity desired to be used by members has been allocated. If there is Excess Capacity available in a WISE Asset facility after each Member has exercised its proportional share of all remaining Excess Capacity, the Authority may utilize such capacity for the benefit of the members pursuant to sub-section 2(F) of this Agreement.

The temporary use, lease, exchange, and trading of capacity between members shall be governed by rules and regulations of the Authority related to the operation of the WISE Assets, as adopted and as may be amended from time to time. Compensation for the temporary assignment of a Member’s WISE Asset Capacity shall be governed by rules and regulations of the Authority related to the operation of the WISE Assets, as adopted and as may be amended from time to time.

D. Additional Licenses. The Authority has granted licenses and other interests in the WISE Assets to Denver Water and ECCV in proportion to their respective ownership shares and/or capacity in the Core WISE Project Infrastructure. In addition, the Authority has or will enter into Joint Use and License Agreements with each of the other Members of the Authority under the same conditions and restrictions as contained in this Agreement and subject to the Organizational Agreement.

E. Conveyance and Delivery of Non-WISE Water. The Member may use its licensed capacity or Excess Capacity in the Western Pipeline to convey and deliver non-WISE water to the Member provided it meets the provisions set forth in the Operations Agreement.

F. Future Third Party (i.e. Non-Member) Access. The Member hereby acknowledges and agrees that the Authority may, from time to time and subject to sub-section 2(C), issue rights for temporary use of Excess Capacity not claimed by its Authority Members and available pursuant to the Organizational Agreement and the Water Delivery Agreement and the terms and restrictions provided for therein.

G. Non-Essential Assets. The Authority reserves the right to use, assign or convey any physical improvement, land right or interest in the WISE Assets pursuant to the terms and conditions of the Organizational Agreement provided that such use, assignment or conveyance does not interfere with or adversely impact the Member's WISE Assets Capacity rights in this Agreement including the right to Excess Capacity as set out in sub-section 2(C).

H. Revocation or Modification of License. The License shall only be revocable by the Authority in the event of a default of the Member and its failure to cure such default in accordance with the provisions of Section 6 below.

I. Modification. In the event that Member, in its sole discretion, assigns, sells or purchases any use rights in the WISE Project pursuant to the procedures set forth in Section 14 of the Organizational Agreement, Member's WISE Assets Capacity shall be amended to reflect the Member's modified percentage of capacity use in the WISE Assets as reflected in **Exhibit A**. Member agrees to execute any additional documents required to effect conveyance of the Member's License, WISE Assets Capacity or other interest claimed pursuant to this Agreement at the time of withdrawal or assignment of such interest or thereafter at the Authority's request.

3. COST ALLOCATION. Member, by acceptance of this License agrees to contribute to the Authority such amounts as are invoiced by the Authority to Member for the operation, maintenance, capital acquisition and capital replacement costs for the WISE Assets as provided in Section 6 (H-M) of the Organizational Agreement. Each Member of the Authority shall be invoiced for such costs in direct relation to the percent of such Member's WISE Assets Capacity as reflected in **Exhibit A** as **Exhibit A** may be amended.

4. INDEMNIFICATION. Member shall indemnify, defend and hold harmless the Authority and each of the governmental entities that is now or may in the future become a party

to the Organizational Agreement, and each of its directors, employees, agents and consultants, from and against any and all claims, demands, suits, actions, proceedings, judgments, losses, damages, injuries, penalties, costs, and expenses (including reasonable attorneys' fees), and liabilities, of, by or with respect to third parties ("any claims") to the extent they arise from or may be alleged to arise, directly or indirectly, in whole or in part, from the intentional or negligent acts or omissions of Member and its officers, agents, and employees in connection with this Agreement. Nothing in this Agreement or in any actions taken by the Authority or the Member pursuant to this Agreement shall be deemed a waiver of the Authority's or Member's sovereign immunity under the Colorado Governmental Immunity Act. Further, Member shall not be liable for any claim, loss, damage, injury or liability arising out of the intentional or negligent acts or omissions of the Authority and each of the governmental entities that are now or may in the future become a party to the Organization Agreement and each of their respective directors, employees, agents and consultants. The obligations of the indemnifications extended by Member to the Authority under this Paragraph, as to any action or omission which occurs while Member is a Member of the Authority, shall survive termination or expiration of this Agreement.

Member's defense, indemnification and insurance obligations shall be to the fullest extent permitted by law and nothing in this Agreement shall be construed as requiring Member to defend in litigation, indemnify or insure the Authority against liability for damage arising out of the death or bodily injury to persons or damage to property caused by the negligence or fault of the Authority or any third party under the control or supervision of the Authority.

5. OWNERSHIP OF WISE ASSETS. The Authority owns the WISE Assets which are comprised of multiple types of real and personal property and rights. The Authority represents and warrants to Member that it has all necessary right, title and interest in the WISE Assets to convey the License and enter into this Agreement. The Authority does covenant and agree that it shall warrant and forever defend Member in its quiet and peaceful possession of the License against all and every person or persons. In the event that the License or any part thereof is challenged the Authority shall, to the extent permitted by law, take all necessary actions including exercising the power of eminent domain, in order to acquire the requisite interest needed to satisfy its obligations hereunder. The representations and warranties of this Section 5 are for the sole benefit of the Member and shall not be deemed to be given to any third party.

6. DEFAULT and TERMINATION. The Authority shall have the right to terminate this Agreement upon the Member's withdrawal or removal from the Authority pursuant to the terms and conditions of the Organizational Agreement. A default under this Agreement shall be an event of default under the Organizational Agreement, subject to Section 9 of the Organizational Agreement. In the event the Authority seeks the remedies provided in Section 9.C.6 or 9.C.9 of the Organizational Agreement, termination of this Agreement shall also be an available remedy. To the extent necessary, Member agrees to execute any additional documents required to effect conveyance of the Member's WISE Assets Capacity or other interest claimed pursuant to this Agreement at the time of withdrawal or assignment of its Members WISE Assets Capacity or thereafter at the Authority's request.

7. DEFAULT BY AUTHORITY. In the event that Member deems the Authority to be in default of the terms, covenants or conditions of this Agreement, the Member shall provide

written notice to the Authority indicating the event of default. The Authority shall have thirty (30) days from the date of the notice to cure the stated default or, if such default is not capable of being cured within thirty (30) days, cure of such default shall commence and be diligently pursued. In no event shall the cure period exceed sixty (60) days except by mutual written consent of the Parties. In the event that the Authority has failed to cure in accordance with this Section 7, the Member shall have the right to commence an action in Douglas or Arapahoe County District Court for declaratory judgment, temporary or permanent restraining order, an order for specific performance or other relief available under the law. Alternatively, if the Authority has failed to cure the default, the Member may elect to terminate its membership in the Authority pursuant to the terms of the Organizational Agreement.

8. NOTICES. Any notice required or permitted to be given hereunder shall be deemed given and received: (i) two business days after mailing by United States certified mail, return receipt requested, postage prepaid, (ii) one business day after deposit prepaid with a reputable overnight courier for next day delivery, (iii) upon personal delivery during regular business hours, properly addressed as follows:

If to Member:

Cottonwood Water & Sanitation District
2 INVERNESS DRIVE EAST #200
ENGLEWOOD, CO 80112

If to the Authority:

South Metro WISE Authority
Attention: Executive Director
8400 East Prentice Ave., Suite 1500
Greenwood Village, Colorado 80111

With Copy to:

Spencer Fane, LLP
Attn: Russ Dykstra
1700 Lincoln St, Suite 2000
Denver, Colorado 80203

Either party may change its address for the purposes of notice by giving written notice of such change to the other party, in any manner above specified.

9. MISCELLANEOUS.

A. Governing Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement shall lie in the District Court for Douglas County, State of Colorado.

B. Agreement Modification. The Agreement may not be amended, altered, or otherwise changed except by a written agreement between the parties.

C. Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by electronic delivery and, upon receipt, shall be deemed originals and binding upon the parties hereto.

D. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Authority or the Member or their officials, employees, contractors, or agents, or any other person acting on behalf of the Parties pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

E. Assignability. This Agreement and the License granted herein may be assigned, pledged or transferred by Member pursuant to the terms and requirements of the Organizational Agreement procedure relating to the assignment, pledge or transfer of the Member's Pro Rata Share. The Authority may assign its rights or delegate its duties hereunder without the prior written consent of Member.

F. No Public Dedication/No Third Party Beneficiary. Nothing contained herein shall be deemed to be a grant or dedication of any rights or use to the public in general, and no third party beneficiary interests are created nor intended to be created by this Agreement.

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

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

I. Recordation. This Agreement may be recorded in the records of the Clerk and Recorder for Arapahoe and Douglas counties.

J. Binding Agreement. The benefits and burdens of this Agreement shall inure to and be binding upon on the heirs, executors, administrators, successors, and assigns of the Parties.

K. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule or document shall mean such policy, procedure, law,

regulation, rule or document as it may be amended from time to time. Any capitalized term not defined herein shall have the meaning set forth in the definitions of the Organizational Agreement.

L. Non-Severability. Each Paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.

M. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either Party or as to both Parties, the Parties will immediately negotiate valid alternative portion(s) that as near as possible give effect to any stricken portion(s).

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

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IN WITNESS WHEREOF, this Agreement has been executed and the License is granted as of the day and year first written above.

SOUTH METRO WISE AUTHORITY

By: Eric B. Kech
Its: Executive Director

**COTTONWOOD WATER & SANITATION
DISTRICT**

By: [Signature]
Its: General Manager

Exhibit A

Member's WISE Assets Capacity

<u>Member</u>	<u>WISE Assets Capacity</u>
Castle Rock	13.84083%
DWSD - Castle Rock^a	13.72938%
Dominion	2.43942%
CWSD	12.20286%
Cottonwood	4.88114%
Inverness	6.10143%
Meridian	4.15225%
Parker	16.60900%
Pinery	6.10143%
Rangeview^b	6.10143%
Stonegate	13.84083%
Total^c	100.00000%

Note:

a This table reflects ownership share pursuant to the Lease Purchase Agreement for Western Pipeline capacity by and between Dominion Water & Sanitation District and the Town of Castle Rock. If there is a default under that agreement or the capacity amounts allocated between the parties in that agreement change, the above ownership shares will be updated accordingly.

b This table reflects ownership share pursuant to the Agreement for Purchase and Sale of Western Pipeline Capacity by and between Rangeview Metropolitan District, Centennial Water & Sanitation District, Cottonwood Water and Sanitation District, Dominion Water & Sanitation District, Inverness Water & Sanitation District and Denver Southeast Suburban Water & Sanitation District d/b/a Pinery Water & Sanitation District. If there is a default under that agreement or the purchase amounts in that agreement change, the above ownership shares will be updated accordingly.

c The capacity of the Western Pipeline is estimated to be 38 mgd subject to the uses by Denver Water and ECCV described in the Operations Agreement.