

**CHERRY CREEK PROJECT WATER AUTHORITY  
WALKER RESERVOIR  
PROJECT PARTICIPATION AGREEMENT**

**THIS CHERRY CREEK PROJECT WATER AUTHORITY WALKER RESERVOIR PROJECT PARTICIPATION AGREEMENT** (“Agreement”) is made and entered into effective this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Members (“Members”) of the Cherry Creek Project Water Authority (the “Authority”) regarding the construction of, and capacity in, the Walker Reservoir.

**RECITALS**

WHEREAS, the First Amended and Restated Water Project Agreement and Establishing Contract of the Cherry Creek Water Authority dated August 20, 2008, as amended (“CCPWA Agreement”), anticipates the creation of project participation agreements;

WHEREAS, the CCPWA Agreement provides that project and asset purchases may be undertaken by the Authority pursuant to project participation agreements between all or some of the Members, and the ownership and partnership interests in such projects and related assets may be defined in the project participation agreement for such projects;

WHEREAS, the Authority has determined to construct a lined water storage facility at the Walker Pit, known as “Walker Reservoir,” which will store tributary and nontributary water, have releases for direct use and augmentation, and release and re-diversion to Rueter-Hess Reservoir;

WHEREAS, all of the Members of the Authority desire that a project participation agreement be executed related to the Walker Reservoir Project, as defined herein; and

WHEREAS, the Members of the Authority desire to formalize their participation in the Walker Reservoir Project.

NOW THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, the terms and conditions of this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members agree as follows:

**AGREEMENT**

**I. DEFINITIONS**

A. Walker Reservoir: shall mean the lined water storage facility and appurtenances to be located at the Walker Pit in Douglas County, Colorado.

B. Walker Reservoir Project: shall mean the Walker Reservoir and associated capacity (estimated to be 650 AF), the Walker Reservoir pump station and associated pumping capacity and raw water pipelines serving the Walker Reservoir, all as shown on the approved and construction drawings (and as-builts for the Walker Reservoir upon completion) as shown or listed on **Exhibit A**, which is attached hereto and incorporated herein by this reference. The Walker Reservoir Project will provide the Members the ability to convey water to Walker

Reservoir, provide water storage for seasonal deliveries and conveyance and exchange of water between and among the Members.

C. Capacity or Walker Reservoir Capacity: shall mean the volume of storage and capacity in the Walker Reservoir Project as defined herein in the amounts and percentages attributed to each Member as set forth in **Exhibit B** hereto.

D. CCPWA Project: the Cherry Creek Project Water Authority's facilities and improvements including, but not limited to, non-tributary ground water wells, the Walker Reservoir Project, alluvial ground water wells, pipelines and diversion facilities to Rueter Hess Reservoir and Rueter Hess Reservoir Storage.

## **II. TERMS OF PARTICIPATION**

The Authority shall be the contracting party for construction of the Walker Reservoir Project and shall be the owner of record of the Walker Reservoir Project. The Members of the Authority agree to participate in the Walker Reservoir Project on the terms set forth herein.. In order to provide the funding necessary to participate in the Walker Reservoir Project, each Member agrees to pay to the Authority the amounts set forth on **Exhibit B**, which are determined by each Member's Capacity. **Exhibit B** may be amended from time to time upon approval of the Members to reflect changes in the participation and allocation of Capacity. **Exhibit B** shall be amended without further action of the parties hereto to reflect changes in the amount of Capacity owned by each Member when such change results from a Member's failure to pay its proportional costs under this Agreement.

Each Member shall be obligated to fund any additional costs associated with the Walker Reservoir Project in proportion to the ratio of the Member's Capacity to the total Capacity. In the event that a Member elects not to fund the additional costs, that Member's Capacity as reflected in **Exhibit B** shall be reduced proportionally to reflect the failure to provide the additional funds.

Each Member acknowledges that the Walker Reservoir Project is part of the overall project known as the CCPWA Project. As such, each Member acknowledges their intent to cooperatively operate and manage the Walker Reservoir Project in a way that will not negatively impact another Member's ability to receive its appropriate share of the anticipated delivery capacity as set forth in the CCPWA Project master plan, as same may be amended from time to time. The Authority will be responsible for operation of all facilities jointly owned as part of the CCPWA Project per an operating agreement to be agreed upon by the Members prior to operation of the CCPWA Project and the Walker Reservoir Project.

Each Member also acknowledges that the obligation is to work jointly to achieve, to the extent possible, the volume of delivery expected as reflected in Exhibit B. To the extent that operations do not result in the volume of delivery anticipated in Exhibit B, the Members agree to work together to pursue an operating methodology that maximizes delivery to the group as a whole in the percentages consistent with Exhibit B.

## **III. WATER QUALITY**

Water stored in the Walker Reservoir by each Member shall be of a quality that meets the

Authority's standards and requirements.

#### **IV. TIMING OF PAYMENTS**

Payments from Members as allocated on **Exhibit B** ("Project Payment") shall be due and payable within thirty (30) days of invoice by the Authority. For all other costs provided herein, the Authority will invoice the Members who shall pay the Authority the amounts due within thirty (30) days of receipt of the invoice from the Authority. Failure to timely pay the amount stated in an invoice shall result in the Authority providing notice of non-payment and if payment is not received within fifteen (15) days of such notice, the Member shall be in default under the terms of this Agreement. If, upon termination of this Agreement, there are Project Payment funds remaining, such funds shall be refunded to the Members by the Authority pro-rata based upon the amount of funds each Member contributed.

#### **V. OWNERSHIP – TITLE**

The Authority will own the Walker Reservoir Project. Ownership may be conveyed to the Authority in various forms depending on the particular improvement or property being conveyed. The capacity owned by each Member shall be fully alienable and transferable by Members, except as specifically limited hereby.

#### **VI. OPERATION AND MAINTENANCE**

The Authority shall operate, maintain, repair, and replace the Walker Reservoir Project as needed. Each Member shall pay its pro-rata share of the operation and maintenance expenses the Authority incurs based on each Member's Capacity. The Authority will establish a separate capital reserve account ("Capital Reserve Account") to be used for future capital maintenance and replacement costs in connection with the Walker Reservoir Project. The Members shall pay the Authority an annual lump sum contribution to the Capital Reserve Account based upon the percentage allocation set forth in **Exhibit B** ("Capital Reserve Contribution"). The Capital Reserve Contribution shall be subject to adjustment on an annual basis based on actual capital expenses incurred during the prior 12-month calendar year. A separate operations agreement shall be entered into by the Members regarding the specific operational aspects of Walker Reservoir.

#### **VII. ASSIGNMENT AMONG MEMBERS**

Any Member ("Assignor") may assign its Capacity to any other Member of the Authority ("Assignee"). The Assignor shall promptly notify the Authority of any assignment. The Authority shall maintain a record of all assignments and of the current Capacity each Member owns.

#### **VIII. RIGHT OF FIRST REFUSAL**

If at any time during the term of this Agreement, any Member ("Selling Member") desires to sell its Capacity in the Walker Reservoir, or any portion thereof, and receives a bona

offer therefor acceptable to the Selling Member from a prospective purchaser who is not a Member of the Authority (“Offer”), the other Members of the Authority (collectively, the “Non-Selling Members”) and the Authority itself shall be given written notice of such offer and the terms thereof, together with a copy of the Offer (“Offer Notice”). Upon receipt of the Offer Notice, each Non-Selling Member shall have the right to purchase some or all of the Selling Member's Capacity described in the Offer Notice upon terms and conditions that are the same as described in the Offer Notice (“Right of First Refusal”). Any Non-Selling Member desiring to purchase the Selling Member's Capacity shall provide written notice of such desire to the Selling Member, the Non-Selling Members, and the Authority within thirty (30) days receipt of the Offer Notice. Any sale of a Member's Capacity to a non-member of the Authority shall only occur in conjunction with the Selling Member's sale of its interest in Authority as specified, and subject to, the Authority establishing agreement.

If more than one Non-Selling Member desires to purchase some or all the Selling Member's Capacity, the amount of Capacity to be purchased by each Non-Selling Member shall be divided between them in any way they mutually agree. If the Non-Selling Members desiring to purchase the Selling Member's Capacity cannot mutually agree on the Capacity to be purchased by each Non-Selling Member within fifteen (15) days following the expiration of the thirty (30) days following the Offer Notice, each Non-Selling Member shall be entitled to purchase that proportion of the Selling Member's Capacity which that Non-Selling Member's Capacity bears to the total of the Authority Capacity then owned by the other Non-Selling Members desiring to purchase the Selling Member's Capacity.

If the Other Members elect to purchase either none or less than all of the Selling Member's Capacity described in the Offer Notice, the Authority shall have the right to purchase some or all of the Selling Member's Capacity not to be purchased by the Non-Selling Members upon terms and conditions which are the same as described in the Offer Notice (the “Authority Right of First Refusal”). Within fifteen (15) days following the expiration of the time period for the Non-Selling Members to exercise their Right of First Refusal, the Authority shall give notice to the Selling Member indicating the amount of Capacity that the Authority desires to purchase.

If (i) the Non-Selling Members elect to purchase either none or less than all of the Selling Member's Capacity described in the Offer Notice and (ii) the Authority elects to purchase either none or less than all of the remaining Selling Member's Capacity described in the Offer Notice, the Selling Member giving the Offer Notice may consummate a third-party transaction for the transfer of the Selling Member's Capacity not to be purchased by the Non-Selling Members or the Authority within one hundred twenty (120) days after expiration of the Authority's Right of First Refusal at a price and on terms and conditions not more favorable than set forth in the Offer Notice. Any proposed transfer of any of the Selling Member's Capacity which is to close after one hundred twenty (120) days from the expiration of the Authority's Right of First Refusal, shall again be subject to the Right of First Refusal of the Non-Selling Members and the Authority described in this Section and shall require compliance by the Selling Member with the procedures described in this Section.

The exercise or non-exercise of any Non-Selling Member's or the Authority's Right of First Refusal pursuant to this Section shall not adversely affect any Right of First Refusal with respect to subsequent sales of any Selling Member's Capacity.

In the event that a Member no longer remains a Member of the Authority, the departing Member shall assign its Capacity in accordance with this section. In the event that a Selling Member is permitted to assign the Selling Member's Capacity to a non-Member of the Authority pursuant to the terms above, the Members of the Authority agree to work in good faith to allow the prospective purchaser to become a Member, create an alternate form of membership for the prospective purchaser or create a contractual relationship that would allow the assignment of the Selling Member's Capacity and bind the prospective purchaser to the duties and obligations of the Selling Member in relation to the Capacity and the terms of this Agreement, including the aforementioned Rights of First Refusal. All assignments or transfers of a Members rights or Capacity pursuant to this Agreement shall be subject to the requirements and provisions of the CCPWA Agreement in regard to membership in the Authority and transfer of assets. In the case of any conflict between this Agreement and the CCPWA Agreement, the terms of the CCPWA Agreement shall control.

## **IX. MEMBER VOTES**

On all matters related to this Agreement and the Capacity governed hereby, the vote of Members shall be weighted pursuant to the percentages shown on **Exhibit B**.

## **X. DEFAULT AND BREACH**

A. Failure of any Member (“Defaulting Party”) to perform any covenant, agreement, obligation or provision of this Agreement constitutes an event of default under this Agreement (“Default”).

B. In the event the Authority or any Member alleges either the Authority or any other Member is in breach or default of this Agreement, the non-defaulting party shall first notify the defaulting party in writing of such default and specify the exact nature of the default in such notice. Except in the case of non-payment of amounts due, the defaulting party shall have thirty (30) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder, provided that: (i) such default is capable of being cured, (ii) the defaulting party has commenced such cure within said 30-day period, and (iii) the defaulting party diligently prosecutes such cure to completion. If such default is not of a nature that can be cured in such thirty (30) day period, corrective action must be commenced within such period by the defaulting party and thereafter diligently pursued. In the case of non-payment of amounts due, the defaulting party shall have fifteen (15) working days from receipt of such notice within which to cure such default before the non-defaulting party may exercise any of its remedies hereunder.

C. In any legal action, to the extent allowed by law, the prevailing party shall be entitled to recover its reasonable attorney's fees and litigation costs from the other party.

D. In the event of breach of any provision of this Agreement, in addition to contractual remedies, any party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders of specific performance, to compel the other party to perform in accordance with the obligations set forth under this Agreement. Notwithstanding any other provision of this Agreement, remedies for breach or default hereunder shall be cumulative. In addition to specific remedies provided elsewhere in this Agreement, upon

Default, the non-defaulting Party(ies) shall have the right to take whatever action, at law or in equity, appears necessary or desirable to recover damages and/or to enforce performance and observation of any obligation, agreement or covenant of the Defaulting Party under this Agreement, or to collect the monies then due and thereafter to become due.

E. If amounts due from a Member are not paid within the cure period provided in Section 11.B., above, the use of the capacity for which such amounts are due of the non-paying Member shall be suspended and the Member's rights to such Capacity shall be reduced and re-allocated to other Member(s) who have paid such amounts on defaulting Member's behalf and **Exhibit B** shall be amended to reflect such reduction in Member's Capacity.

F. If amounts due from a Member are not paid within six (6) months following the notice provided in Section 11.B., above and no other Member has paid such amounts, the capacity for which the amounts were due shall be made available to the other Members and the Authority pursuant to the Right of First Refusal.

## **XI. MISCELLANEOUS**

A. **Appropriations.** Any monetary obligation under the Agreement shall be subject to the annual appropriation provisions of § 29-1-110, C.R.S. A failure or refusal of any Member to appropriate any annual monies required under this Agreement shall be governed by the provisions of Section X. Nothing set forth herein shall make or constitute this Agreement as a multiple-year fiscal obligation of any of the Members, nor shall it constitute or create a debt on the part of any Member.

B. **No Joint Venture.** Nothing contained in this Agreement shall create any joint venture between the Members whereby one Member may be liable for the actions of another.

C. **Assignment.** Notwithstanding any provision in this Agreement to the contrary, each Member shall have the absolute right to assign their respective rights and delegate their respective duties under this Agreement to another entity over which the Member has full control or is a re-constitution or replacement entity for Member. Such assignment and delegation shall be effective only after written notice to the Authority. Following such assignment and delegation, references in this Agreement to a particular Member shall be to its assignee. However, after such assignment, the assignor may continue to discharge any financial obligation under this Agreement on behalf of the respective assignee. In no event shall such assignment be used to get around the Right of First Refusal contained herein.

D. **Force Majeure.** No Member shall be liable or responsible hereunder by reason of any failure or delay in the performance of its duties or obligations hereunder (except for the payment of money) on accounts of strikes or labor unrest, shortages in labor, material or equipment, riots, insurrection, fire, flood, storm, extreme and unusual weather conditions, explosions, Acts of God, war, governmental action, earthquakes, or any other cause which is beyond the reasonable control of such Member.

E. **Notice.** The addresses of the Members are listed in CCPWA Agreement. Any and all notices allowed or required to be given in accordance with this Agreement are deemed to have been given when hand delivered to the other Members, or five (5) calendar days following

the date the same is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed to the other parties at the addresses noted, or such address as is subsequently endorsed in writing.

F. **Severability.** It is understood and agreed by the Members that if any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.

G. **Other Agreements.** This Agreement shall supersede all previous communications, representations or agreements, either verbal or written concerning the subject matter of this Agreement.

H. **Interpretation, Venue.** The provisions of this Agreement shall be interpreted in accordance with Colorado law. Venue for any dispute between the parties hereto shall be vested solely in the District Court in and for the County of Douglas, State of Colorado.

I. **Amendment.** Any amendments to this Agreement shall be reduced to writing and shall be executed by each Member, or its successor or permitted assign.

J. **Waiver and Non-Waiver.** No provision of this Agreement may be waived except by an agreement in writing signed by each Member. No waiver by the Members of any one or more of the terms, covenants, conditions, and agreements of this Agreement shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

K. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of all successors and permitted assigns of the Members.

L. **No Third-Party Beneficiaries.** This Agreement is made solely and specifically among and for the benefit of the Members, together with their permitted successors or assigns, if any, and no other person or entity shall have any right, interest, or claim hereunder or be entitled to any benefit hereunder or on account of this Agreement. This Agreement shall not be deemed to limit, impair, or enlarge in any way the powers, regulatory authority and responsibility of any Member or any other governmental entity not a party hereto.

M. **Headings.** All headings contained herein are for the purposes of reference and convenience only and shall not limit or define any rights or obligations of the Members.

N. **Authority to Sign.** Each Member represents that it is duly organized and existing under the laws of the state of Colorado and has full power and authority to execute this Agreement and thereafter perform all of the terms and conditions set forth herein. Each person signing this Agreement represents and warrants that he or she has the authority to execute this Agreement on behalf of the Member for which he or she is signing.

O. **Counterparts and Facsimiles.** This Agreement may be executed in counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Facsimile signatures bind the parties hereto.

**APPROVED** by the Members of the Cherry Creek Project Water Authority, effective as of the date first set forth above.

INVERNESS WATER AND SANITATION DISTRICT

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

COTTONWOOD WATER AND SANITATION DISTRICT

\_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

TOWN OF CASTLE ROCK

\_\_\_\_\_  
\_\_\_\_\_, Mayor

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Town Clerk

Approved as to Form:

\_\_\_\_\_  
Town of Castle Rock, Attorney



**EXHIBIT A  
TO  
CHERRY CREEK PROJECT WATER AUTHORITY  
WALKER RESERVOIR  
PROJECT PARTICIPATION AGREEMENT**

**WALKER RESERVOIR INFRASTRUCTURE PLANS**

Reference plan set:

Construction Drawings for Walker Reservoir Bid Plan Set

By: Wenck and Associates, now – Stantec; dated: Mar-21, 2021

**EXHIBIT B  
TO  
CHERRY CREEK PROJECT WATER AUTHORITY  
WALKER RESERVOIR  
PROJECT PARTICIPATION AGREEMENT**

CAPACITY IN AND COSTS OF WALKER RESERVOIR AND WELLS

<b>Member</b>	<b>Approximate Capacity (acre-feet)</b>	<b>Amount</b>	<b>Allocation</b>
Inverness Water & Sanitation District	125 AF	\$2,226,106.91	19.23%
Denver Southeast Suburban Water and Sanitation District	300 AF	\$5,342,425.07	46.15%
Cottonwood Water and Sanitation District	75 AF	\$1,335,895.67	11.54%
Town of Castle Rock	150 AF	\$2,671,791.35	23.08%
<b>Total</b>	<b>650 AF</b>	<b>\$11,576,219</b>	<b>100%</b>

