

AGREEMENT FOR THE OPERATION OF SHARED INFRASTRUCTURE

Section 1. PURPOSE AND TERM. This “Operating Agreement” is entered into this 20th day of February, 2024, by **Cherry Creek Project Water Authority**, a quasi-municipal corporation and political subdivision of the State of Colorado (“CCPWA”); **Town of Castle Rock, Colorado by and through its Water Activity Enterprise**, a Colorado home rule municipality (“Castle Rock”); **Inverness Water and Sanitation District**, a quasi-municipal corporation and political subdivision of the State of Colorado (“Inverness”); **Denver Southeast Suburban Water and Sanitation District**, a quasi-municipal corporation and political subdivision of the State of Colorado (“Pinery”); and **Cottonwood Water and Sanitation District**, a quasi-municipal corporation and political subdivision of the State of Colorado (“Cottonwood”). Castle Rock, Inverness, Pinery, and Cottonwood are collectively referred to herein as the “Members” and individually referred to as “Member.” CCPWA, Castle Rock, Inverness, Pinery, and Cottonwood are collectively referred to herein as the “Parties” and individually referred to as a “Party.” This Agreement is intended to provide details relating to the joint ownership and use of certain facilities in furtherance of the following interests:

A. First Amended and Restated Water Project Agreement and Establishing Contract of the Cherry Creek Project Water Authority, dated August 20, 2008, between Inverness, Pinery, Cottonwood, and Arapahoe County Water and Wastewater Authority, and as amended pursuant to that First Addendum to the First Amended and Restated Water Project Agreement and Establishing Contract of the Cherry Creek Project Water Authority, dated April 21, 2021, between the Parties (the “WPA”);

B. Cherry Creek Project Water Authority Walker Reservoir Project Participation Agreement, dated November 17, 2021, between the Parties attached hereto as **Exhibit A** and incorporated herein (the “PPA”); and

C. The individual objectives of each Party arising from its status as a public entity providing water service to its customers and, in the case of CCPWA, providing water acquisition, transmission and delivery for the benefit of its members.

This Operating Agreement is effective upon execution by the Parties. This Operating Agreement may be amended thereafter at any time by mutual written agreement of the Parties executed with the same formality as this original Operating Agreement. Likewise, its term shall be perpetual unless terminated by mutual written agreement of the Parties executed with the same formality as this original Operating Agreement.

D. Definitions.

1.1 “Capacity” shall mean the volume of storage and capacity in the Walker Reservoir as defined in the PPA in the amounts and percentages attributed to each Member as set forth in **Exhibit B** thereto.

1.2 “CCPWA Project” shall mean the CCPWA’s facilities and improvements, including, but not limited to, non-tributary ground water wells, the Walker Reservoir,

alluvial ground water wells, pipelines, and diversion facilities to Rueter Hess Reservoir and Rueter Hess Reservoir Storage located in Douglas County, Colorado.

1.3 “Contract Operator” shall mean one or more qualified operators CCPWA contracts with to operate and maintain Walker Reservoir and to administer water rights on behalf of CCPWA.

1.4 “Fixed Operations and Maintenance Costs” shall mean the non-variable costs required to operate and maintain the Walker Reservoir and Shared Facilities including but not limited to landscaping, regulatory compliance, administration, maintenance, etc.

1.5 “Shared Facilities” shall mean the wells and their associated pumping capacity, and raw water pipelines connecting the Members’ water to and from the Walker Reservoir.

1.6 “Variable Operations and Maintenance Costs” shall mean the variable costs of utilizing Walker Reservoir, such as the costs of electricity for pumping out of the Shared Facilities and into and out of Walker Reservoir, labor, materials, direct consumables attributable to the operation of Walker Reservoir, costs associated with protection of existing or acquisition of future easements and rights of way necessary for the operation of Walker Reservoir.

1.7 “Walker Reservoir” shall mean the lined water storage facility with approximately 650 acre-feet of associated capacity, the Walker Reservoir pump station, and all appurtenances located at the Walker Pit in Douglas County, Colorado.

Section 2. OWNERSHIP OF WALKER RESERVOIR. As set forth in the PPA, each Party acknowledges that the Walker Reservoir is part of the overall project known as the CCPWA Project and CCPWA owns the Walker Reservoir. In the event a Member assigns its Capacity to a non-Member of CCPWA in accordance with the PPA, the non-Member shall be expressly subject to the terms and conditions of this Operating Agreement. Any transfer, sale, assignment, or disposition in violation of this provision shall be a default under this Operating Agreement.

Section 3. OWNERSHIP OF SHARED FACILITIES. The CCPWA shall own all Shared Facilities. The Members shall coordinate with each other when determining their respective water capacity requirements in the Shared Facilities with the goal of maximizing the water deliveries by CCPWA to the Members. Operation of the Shared Facilities shall prioritize each Member’s share of Capacity and the CCPWA will utilize the Shared Facilities to deliver water at a time and at a location available now or in the future as requested by the Members. Each Member shall own, operate, and maintain the infrastructure associated with its respective delivery point or withdrawal point from the Shared Facilities (“Delivery Points”).

Section 4. WALKER RESERVOIR CAPACITY RIGHTS. The Parties have agreed to the following as a fair and equitable method for exercising their storage rights in Walker Reservoir. The Parties agree that no additional storage rights remain available in Walker Reservoir except through assignment or exchange by the Members. The Parties further agree that none of the

Members can rely upon CCPWA deliveries as its sole source of water supply. The Parties acknowledge the need to maintain existing water supplies, develop new water supplies, or have adequate complimentary storage available to meet their demands when CCPWA deliveries are interrupted.

Except as provided herein, no Party shall use any part of its Capacity, nor shall any Party permit a third party to use any part of its Capacity if such use requires the CCPWA to coordinate use of Walker Reservoir or the Shared Facilities for or with a third party. The CCPWA, through its Contract Operator, shall only operate, schedule, invoice, and account for Capacity and use of Walker Reservoir and the Shared Facilities for Parties to this Operating Agreement. Use of Capacity shall be conditioned upon a third party being made a party to this Operating Agreement, including the third party's acknowledgment to be bound by, and subject to, all of the representations, covenants, terms, and conditions of this Operating Agreement in the same manner as if the third party were an original signatory to the Operating Agreement. A third party may only be made a party to this Operating Agreement upon unanimous consent by the Parties.

Any Member seeking to offer all or a portion of its Capacity to a third party on a temporary basis shall first offer such Capacity to the other Members. The requesting Member shall give the other Members notice of such offer no less than two full business days or with as much advance notice as possible prior to presenting the offer to any third party. If the requesting Member does not receive an offer from a Member after two full business days, consent to present the offer to third parties is deemed to be given. If a Member wishes to lease the requesting Member's offered Capacity, such Member and the requesting Member shall provide the Contract Operator notice of such lease.

The Walker Reservoir has approximately 650 acre-feet of water storage capacity. Each Member may use Capacity in the Walker Reservoir year-round based upon each Member's percentage allocation set forth in Exhibit B to the PPA. Members may create separate agreements among themselves regarding temporary transfer of their respective Capacity rights or the timing for utilization of the Shared Facilities. The use of Capacity, the Shared Facilities, and schedule for transferring water to Walker Reservoir and transferring water out of Walker Reservoir will be determined in a separate agreement between the Members and coordinated by the CCPWA Contract Operator. Each Member's use of the Walker Reservoir shall not negatively affect the other Members' use of the Walker Reservoir or interfere with the other Members' intended deliveries. The CCPWA Contract Operator shall be responsible for implementing the Members' requests through operation, scheduling, and accounting for all Capacity and use of Walker Reservoir and the Shared Facilities, including Member exchanges, assignments, trades or agreements regarding delivery to, storage in, and discharge from Walker Reservoir and the respective impacts and efficient use of the CCPWA water rights. The Contract Operator and Members shall diligently communicate and interact regarding the operation, scheduling, and accounting for the use of the Walker Reservoir and Shared Facilities.

A. Emergency Storage Use. In the event a Member experiences an emergency situation and requires additional storage in Walker Reservoir beyond its Capacity rights set forth above, the Member shall immediately notify CCPWA and the other Members of the emergency situation. Emergency use may include, but is not limited to, system outages, water treatment plant upsets, or other situations which materially impair a Member's ability to receive its Capacity

discharge as scheduled. CCPWA and the other Members will exercise their best efforts to allow the Member to utilize the additional storage needed in Walker Reservoir until the emergency situation ends.

B. Storage Capacity. If the actual Walker Reservoir capacity of design and usability parameters require adjusted capacity, such adjusted capacity shall be allocated to the Members based on each Member's percentage allocation of Capacity set forth in Exhibit B to the PPA.

C. Walker Reservoir at Full Capacity. In the event the Walker Reservoir has reached its full capacity, Members will be notified of such condition and no further placement into Walker Reservoir will be allowed until capacity is available. If the usage of storage by one Member of the Walker Reservoir storage impedes the storage Capacity or ability of other Members to utilize their Capacity, the Members shall determine an appropriate remedy to address the over-utilization of Capacity by a Member.

Section 5. OPERATIONS. The Parties agree that for all administrative and operational aspects, contracting, and day-to-day decision-making regarding Walker Reservoir, CCPWA shall be deemed the "owner" of Walker Reservoir and shall have responsibility and authority to act in that capacity under all circumstances. The Parties agree to develop an "Operations, Accounting, and Maintenance Procedures Manual," which will reflect the day-to-day technical operations, accounting, and standards for Walker Reservoir, for which the Contract Operator will be responsible for implementing pursuant to its contract with CCPWA.

A. CCPWA Administration. The Parties agree that CCPWA shall administer the Walker Reservoir and Shared Facilities as described in the Operations, Accounting, and Maintenance Procedures Manual for Walker Reservoir through its Contract Operator and shall invoice the Members for their respective shares of the expenses in accordance with Section 6 of this Agreement, including a reasonable administrative fee if such fee is approved by the Members in advance. If any Member incurs expenses that it believes should be Fixed Operations and Maintenance Costs, it shall forward related invoices and supporting information to CCPWA for consideration.

B. CCPWA Operation. CCPWA shall operate, maintain, repair, and replace Walker Reservoir in such a way that the water carrying capacity allowed each Party is available at all times and at reasonable operating parameters, and that whenever there is a failure in the system to deliver the required capacities, CCPWA will use its reasonably best efforts to restore the capacity at the earliest opportunity. CCPWA shall use its reasonably best efforts to keep Walker Reservoir in good operating condition and in good repair subject to instances of force majeure.

C. Flow Rates and Losses.

1. CCPWA will operate the Shared Facilities to introduce water to, and discharge water from Walker Reservoir at a rate consistent with the capacities of the Shared Facilities and requests of the Members, which are consistent with the operational standards of the overall system.

2. Evaporative losses in Walker Reservoir shall be shared by the Members based on the amount of water being stored by each Member relative to the total water being

stored by all Members during the loss reporting period. System losses in the Shared Facilities will be shared pro-rata based on the utilization of the Shared Facilities by each Party.

D. Water Quality

1. Each Member shall be solely responsible to treat or otherwise cause the water delivered by CCPWA from Walker Reservoir to meet their individual standards based on the intended use of such water. CCPWA shall be responsible for compliance with any water quality requirements related to the CCPWA water stored or transmitted by CCPWA.

2. If necessary, CCPWA shall develop and maintain a plan to monitor for and mitigate algal growth in Walker Reservoir which growth could negatively impact water quality as part of the Operations, Accounting, and Maintenance Procedures Manual for Walker Reservoir.

E. Meters

1. CCPWA shall own and maintain meter(s) at points in the Shared Facilities in order to accurately record the delivery of water to the Walker Reservoir and discharge of water to the Members. CCPWA's billing of Members for water delivered shall be based on the meters CCPWA owns and maintains. Members shall operate and maintain meters at their Delivery Points in order to record the water actually delivered to the Members and account for any transit losses that may be attributable to the Member.

2. CCPWA shall set reasonable standards for and shall operate all meters and valves that are part of the Shared Facilities.

3. All Parties shall have access to the CCPWA meters with proper notice to CCPWA and escort by CCPWA personnel in order to monitor compliance with this Operating Agreement, for billing purposes, and to allow CCPWA to comply with its water rights decrees and reporting requirements.

Section 6. COST SHARING AND MAINTENANCE RESPONSIBILITIES.

The Parties shall share capital, operations, and maintenance costs as follows:

A. Capital Improvements

1. CCPWA shall establish a separate capital reserve account ("Capital Reserve Account") to be used for immediate capital maintenance and replacement costs in connection with Walker Reservoir. Such capital maintenance and replacement costs should include consideration of reasonable immediate requirements such as pump replacement, meter replacement or repairs to Walker Reservoir or the Shared Facilities. The amount of the Capital Reserve Account shall be established by the Parties each year as part of the annual CCPWA budget. Reserves for depreciation expectations and long-term replacement requirements shall be individually funded and kept by the Members on an annual basis and

shall be available to CCPWA to address such long term needs via annual assessments to the Members.

2. The Parties shall create a ten-year capital plan that includes the consideration of reasonable depreciation expectations and replacement requirements related to Walker Reservoir. The funding requirements of the Capital Reserve Account pursuant to Section 6.A.1. above shall include consideration of reserves to help finance the ten-year capital plan.

3. The Parties will meet and confer regarding the nature of and planning for these expenses at least once per year at a coordination meeting described below.

B. Walker Reservoir and Shared Facilities Operations and Maintenance Costs

1. All Fixed Operations and Maintenance Costs that are reasonably required will be paid on a pro-rata basis based upon the percentage allocation set forth in Exhibit B to the PPA and shall be reviewed and adjusted annually. The CCPWA shall invoice each Member on a scheduled basis for such costs as determined by the Members.

2. All Variable Operations and Maintenance Costs will be shared by the Members based on the volume of water produced and delivered by the Shared Facilities, delivered to Walker Reservoir, and discharged from Walker Reservoir for the benefit of individual Members. The Variable Operations and Maintenance Costs shall be invoiced monthly to the Members based on their utilization of the Shared Facilities and Walker Reservoir and the rates established by the CCPWA, as may be adjusted from time to time.

a. Delivery rate: shall be the cost established by CCPWA directly attributable to the power, labor, operation and maintenance of Shared Facilities attributable on the per acre/ft basis for water pumped and delivered into Walker Reservoir or via the Shared Facilities for the benefit of a Member.

b. Discharge rate: shall be the cost established by CCPWA directly attributable to the power, labor, operation and maintenance of Shared Facilities attributable on the per acre/ft basis for water pumped, released and discharged from Walker Reservoir for the benefit of a Member.

3. The Parties will meet and confer regarding the nature of and planning for these expenses at least once per year as part of the CCPWA annual budget process. The rate schedule for Variable Operations and Maintenance Costs shall be reviewed and adjusted as necessary no less than annually by the Parties.

Section 7. CONTACTS AND COMMUNICATIONS. The following shall be the primary contacts for implementing this Operating Agreement. Any party may change a contact at any time by notice in writing to the administrative issues contact of the other parties. The Parties agree to communicate with each other to the maximum extent possible during situations that may impact each other's facilities or operations.

<u>CONTACT</u>	<u>NAME</u>	<u>EMAIL ADDRESS</u>	<u>PHONE NUMBER</u>
<u>CCPWA</u>	<u>Richard Krulish</u>	<u>rkrulish@pinerywater.com</u>	<u>303-841-2797 x201</u>
<u>Castle Rock</u>	<u>Matt Benak</u>	<u>mbenak@crgov.com</u>	<u>720-733-6037</u>
<u>Inverness</u>	<u>Patrick Mulhern</u>	<u>pat@mulhernmre.com</u>	<u>303-649-9857</u>
<u>Pinery</u>	<u>Heather Beasley</u>	<u>hbeasley@pinerywater.com</u>	<u>303-841-2797 x218</u>
<u>Cottonwood</u>	<u>Luis Tovar</u>	<u>luis@mulhernmre.com</u>	<u>303-649-9857</u>

Section 8. DATA EXCHANGE. The Parties agree to provide the other parties with process control data and cost data necessary to operate Walker Reservoir or the Shared Facilities. The contacts of the Parties listed in Section 7 above shall work together to determine what information should be exchanged as well as the frequency and format of the exchange.

Section 9. COORDINATION MEETINGS/COORDINATION. The Parties shall work together in good faith in furtherance of the purposes of this Operations Agreement and shall communicate as necessary and reasonable to facilitate such purposes in order to coordinate activities and implement best practices for use of Walker Reservoir and the Shared Facilities. The potential for operational changes shall be brought to the attention of the other Parties as soon as reasonably possible. Coordination meetings shall occur at least once per year to discuss operational issues, routine matters, anticipated expenditures, and compliance with this Operating Agreement. The location and time of the meeting shall be as mutually convenient. In the event of a violation of this Operating Agreement, or other serious incident involving Walker Reservoir or the Shared Facilities, any Party may request a coordination meeting be held within seventy-two (72) hours of the request. Appropriate staff will attend the meeting to resolve critical operational issues.

Section 10. ADDITIONAL AGREEMENTS. The Parties agree to work in good faith to facilitate any further agreements and documents that are reasonably necessary for the achievement of the purposes set forth in this Operating Agreement and use of Walker Reservoir and the Shared Facilities.

Section 11. FUTURE WATER RIGHTS. In no way is this Operating Agreement itself a relinquishment or alteration of the rights of any of the Parties to their water rights or effluent. In the event this Operating Agreement conflicts with such rights, those rights shall govern, and the Parties shall meet to consider ways in which this Operating Agreement can be altered to be consistent with those rights.

Section 12. ACCESS TO EXISTING AND NEW INFRASTRUCTURE

A. Each of the Parties hereto and their authorized representatives shall have access to Walker Reservoir through CCPWA upon reasonable and mutually agreed upon terms. In exercising this right, no party assumes liability or responsibility for the others but will be liable only for any of its own negligent acts subject to any and all defenses and the Colorado Governmental Immunity Act.

B. No Member shall access Walker Reservoir without providing at least two (2) business days' notice to CCPWA unless such notice is waived or a shorter time of notice is agreed to by CCPWA in advance.

C. CCPWA shall develop appropriate written security procedures and update them from time to time as necessary.

D. CCPWA shall not be required to give prior notice of any shut-off of a facility it operates that is necessitated by a bona fide emergency or event of force majeure, but it shall give the other Parties notice of such emergency shut-off as soon as reasonably practicable following such emergency shut off. For purposes of this paragraph an emergency shall include:

1. actual, or a serious threat of, injury, bodily harm or death to employees of any of the Parties or their assigns or the public;
2. actual, or a serious threat of immediate damage to the environment;
3. actual, or a serious threat of, violation of the permit of any of the Parties from the State Health Department; or
4. compliance with a court order, permit, notice or order of a governmental agency with jurisdiction, or during a force majeure event.

During any such shut off, the Parties shall cooperate and use reasonable efforts to mitigate the effects on the other Parties and to restore the Parties to their respective positions under the relevant agreements. Each of the Parties agrees to provide advance notice to the others of a potential emergency whenever possible so that the other Parties may take steps to protect themselves from any adverse effects.

Section 13. PERMITS. It is the Parties' understanding that none of the operations contemplated under this Operating Agreement will require a new environmental discharge or any other permit. In the event that this is not the case, then the Parties agree to work in good faith to acquire any necessary permits and to investigate and implement measures, to the maximum extent practicable, to mitigate or avoid a non-compliance with necessary permit requirements.

Section 14. DEFAULT. In the event of a default, dispute, dissolution, termination, sale, property damage or other event affecting Walker Reservoir or the Shared Facilities, the Parties agree that in any case of such alleged default, the Parties shall seek good faith resolution of the conditions of default. If requested in writing by any Party, the Parties shall attempt to resolve any dispute between them arising out of or in connection with this Agreement by entering into structured non-binding negotiations with the assistance of a neutral third-party mediator on a without prejudice basis. If an event of default occurs, the Party in default shall be given written notice of the default. CCPWA shall have the right to shut off water deliveries for nonpayment or other violations of this Operating Agreement. Such shut off shall occur no sooner than seven (7) days after delivery of written notice to the defaulting Party, and if the default is for reasons other than non-payment, only after the defaulting Party has failed to cure or diligently act to cure the violation in a manner that will be completed within thirty (30) days of notice.

Section 15. DISPUTE RESOLUTION. 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 defaulting 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.

Section 16. PAYMENTS. The CCPWA shall invoice each Member on a monthly basis for the charges incurred under this Agreement. Any payments required to be made by the Parties hereto shall be paid within thirty (30) days of invoice. If there is any dispute regarding an invoice, the disputing party shall pay any undisputed portion within thirty (30) days of invoice. Failure to pay all correctly invoiced amounts shall constitute a default.

Section 17. FORCE MAJEURE. The Parties failure to perform hereunder shall be excused for, and Parties waive against each other, any delay in performance under this Operating Agreement caused by acts of God; inclement weather; war, terrorism, strikes, labor trouble, supply shortage or disruption; acts of governmental and/or public utilities, governmental/public bodies; or any other contingencies unforeseen by a Party and beyond its reasonable control.

Section 18. ASSIGNMENT. No Party shall assign its interest in this Operations Agreement without the prior written consent of all other Parties and in accordance with the provisions of this Operating Agreement. Any alleged or attempted assignment without such written consent and in violation of this Operating Agreement shall not be binding against the non-assigning Parties.

Section 19. THIRD PARTY BENEFICIARIES. None of the terms, conditions or covenants contained in this Operating Agreement shall be deemed to be for the benefit of any person, customer or user not a Party hereto.

Section 20. INSURANCE

A. Parties. Each of the Parties shall have insurance, by commercial policy or self-insurance, as follows.

1. Workers' Compensation and Employer's Liability. The liability limits shall not be less than:

Workers' Compensation	Statutory
Employer's Liability	\$350,000 each accident \$1,000,000 policy limit \$1,000,000 each employee

2. Comprehensive Automobile Liability. This insurance shall be as required by law.

3. Property Insurance. CCPWA shall maintain property insurance in the amount reasonably necessary to replace the schedule of assets at Walker Reservoir or the Shared Facilities.

4. Comprehensive General Liability. Each of the Parties shall insure for general liability in an amount not less than \$350,000 each person and \$1,000,000 each occurrence for bodily injury, \$1,000,000 each occurrence for property damage.

Section 21. PUBLIC RELATIONS. Except as required to fulfill obligations of disclosure or other requirements of law, all press releases about this Operating Agreement shall be agreed to by the Parties prior to issuance. Press releases may be done independently provided the release does not substantively address issues related to Walker Reservoir.

Section 22. TOURS. All tours of Walker Reservoir by members of the public and Members require advance coordination and approval by CCPWA.

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IN WITNESS WHEREOF, the Parties hereto have caused this Operating Agreement to be executed by their duly authorized representatives.

CHERRY CREEK PROJECT WATER AUTHORITY

President

ATTEST:

Secretary

TOWN OF CASTLE ROCK

_____, Town Mayor

ATTEST:

_____, Town Clerk

Approved as to form:

Town of Castle Rock Attorney

INVERNESS WATER AND SANITATION DISTRICT

President

ATTEST:

Secretary

DENVER SOUTHEAST SUBURBAN WATER AND SANITATION DISTRICT

Chairman

ATTEST:

Secretary

COTTONWOOD WATER AND SANITATION DISTRICT

President

ATTEST:

Secretary

EXHIBIT A

Walker Reservoir Project Participation Agreement

**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 17th day of November, 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.

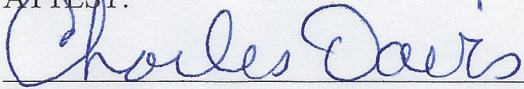
APPROVED by the Members of the Cherry Creek Project Water Authority, effective as of the date first set forth above.

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

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

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

Linda J. Dillon

President

ATTEST:

William C. Thomas

Secretary

TOWN OF CASTLE ROCK

_____, Mayor

ATTEST:

_____, Town Clerk

Approved as to Form:

Town of Castle Rock, Attorney

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

AEJ

Jason Gray, Mayor

ATTEST:

Lisa Anderson

Lisa Anderson, Town Clerk

Approved as to Form:

Michael J. Hyman

Town of Castle Rock, Attorney
Michael J. Hyman



**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

Member	Approximate Capacity (acre-feet)	Amount	Allocation
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%
Total	650 AF	\$11,576,219	100%

