

**FIRST AMENDMENT TO ECCV-SMWSA BARR LAKE
PIPELINE ENLARGEMENT AGREEMENT**

THIS FIRST AMENDMENT ("First Amendment") to the ECCV-SMWSA Barr Lake Pipeline Enlargement Agreement ("Agreement") is made, entered into, and effective as of the 15TH day of JANUARY, 2020 by and between the SOUTH METRO WATER SUPPLY AUTHORITY ("Authority") and the EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT ("ECCV"), individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

The Parties entered into the ECCV-SMWSA Barr Lake Pipeline Enlargement Agreement dated as of March 25, 2005 and attached hereto as **Exhibit A** (the "Agreement"), which provided for the oversizing of ECCV's Barr Lake 48 inch water pipeline (the "Pipeline") and the Authority's purchase of capacity therein pursuant to certain terms and time frames for contributions by the Authority set forth in the Agreement; and

The Authority did not make all payments contemplated under the Agreement and the Parties now desire to amend the Agreement to allow payment in the amount described herein to be made to ECCV and to clarify the capacity the Authority will receive in the Pipeline; and

The Parties have the authority to cooperate and contract with each other to promote the health, safety, and welfare of the people pursuant to Colorado Constitution Article XIV, Sections 18(2)(a) and Section 29-1-203, C.R.S. as provided in the Agreement and this First Amendment.

COVENANTS

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein, the premises and the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend the Agreement as follows:

- 1) Unless otherwise defined in this First Amendment, all capitalized terms herein shall have the meaning as provided in the Agreement.
- 2) The Authority paid ECCV the sum of Five Million Nine Hundred Ninety-One Thousand Four Hundred Eighty-Eight Dollars (\$5,991,488) in 2005. This payment, along with other payments called for in the Agreement, would have entitled the Authority to capacity in the Pipeline of 5.72 million gallons per day ("MGD") at the points of connection described in Paragraph 8.


Subsequently, in 2010, the Arapahoe County Water and Wastewater Authority assigned its portion of the Authority's 5.72 MGD capacity in the Pipeline (1.75 MGD) to ECCV. This assignment effectively reduced the amount paid by the Authority for purposes of calculating capacity in the Pipeline to \$4,160,988, and resulted in capacity for the Authority of 3.065 MGD (the "Current Capacity").

- 3) As contemplated in Section 3.4 of the Agreement, and prior to the Authority's withdrawal of any water from the Pipeline, the Authority was obligated to pay its pro-rata portion of the Pipeline capacity plus Ten Percent (10%) less all amounts previously paid by the Authority under Section 1.1 of the Agreement (the "Pro-Rata Share").
- 4) The Pro-Rata Share was never paid. ECCV hereby waives its right to interest on the unpaid Pro-Rata Share and payment deadline, both as provided in Section 3.4(ii) of the Agreement.
- 5) The Parties hereby agree to liquidate and settle the maximum sum of Pro-Rata Share to be paid to ECCV as One Million One Hundred Eighty-Four Thousand Six Hundred Seventy-Three Dollars (\$1,184,673) or such lesser amount as determined by the Authority (the "Final Payment") which shall be paid as provided herein. Upon ECCV's receipt of the Final Payment, the Authority shall be entitled to the maximum capacity in the Pipeline of up to 3.978 MGD at the points of connection described in Paragraph 8 (the "Final Capacity"). The Final Capacity may be reduced from 3.978 to a lesser sum on a proportionate basis if the Authority makes payment in an amount less than the full Final Payment amount. Upon receipt of the Final Payment amount, ECCV shall provide written verification to Authority of the actual Final Capacity amount.
- 6) The Parties hereby agree that the Authority shall have until March 31, 2020 to make the Final Payment to ECCV (the "Payment Date"). Should the Authority fail to make the Final Payment to ECCV on or before the Payment Date, the Authority's capacity in the Pipeline shall remain at the Current Capacity.
- 7) The Parties hereby agree that pursuant to the terms of the Agreement, the Final Payment, together with the adjusted total payment of (\$4,160,988), purchase for the Authority capacity only in the Pipeline, and do not entitle the Authority to use or ownership of any capacity in ECCV's treatment plant, booster stations or in-line reservoirs.
- 8) The points of connection to which the Parties agreed in Section 2.1 of the Agreement are: (a) for the addition of water, at the ECCV Northern Treatment Plant Site at I-76 and Bridge Street and (b) for the withdrawal of water at the southern end of the Pipeline at Gun Club Road and Smoky Hill Road. The remaining secondary point of connection for withdrawal of water has yet to be approved by ECCV per Section 2.1(ii) of the Agreement. The secondary point of connection will be presented by the Authority for ECCV approval in the manner provided in Section 2.1.

- 9) All other provisions and requirements of the Agreement, except to the extent expressly and directly modified by this First Amendment shall remain in full force and effect and shall serve to bind the Parties.

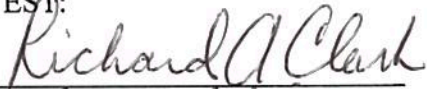
IN WITNESS WHEREOF, the parties hereto have executed this First Amendment, effective as of the day and year first above written.

EAST CHERRY CREEK VALLEY WATER AND
SANITATION DISTRICT

By: 
David J. Kaunisto

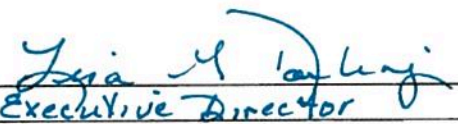
Its: ECCV District Manager

ATTEST:

By: 
Its: SR. ENG. ADVISOR

SOUTH METRO WATER SUPPLY AUTHORITY

ATTEST:

By: 
Its: Executive Director


By: 
Its: EXECUTIVE ASSISTANT

EXHIBIT A
TO FIRST AMENDMENT
(ECCV-SMWSA BARR LAKE PIPELINE ENLARGEMENT AGREEMENT)

**ECCV-SMWSA BARR LAKE
PIPELINE ENLARGEMENT AGREEMENT**

THIS AGREEMENT ("Agreement") is made, entered into, and effective as of the 25th day of March, 2005 by and between the SOUTH METRO WATER SUPPLY AUTHORITY ("Authority") and the EAST CHERRY CREEK VALLEY WATER AND SANITATION DISTRICT ("ECCV"), individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

The Parties desire to cooperate and contract with each other regarding the oversizing of the Pipeline, as defined herein.

The Parties have the authority to cooperate and contract with each other to promote the health, safety, and welfare of the people pursuant to Colorado Constitution Article XIV, Sections 18(2)(a) and Section 29-1-203, C.R.S.

COVENANTS

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein, the premises and the promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1: PURCHASE AND SALE

1.1 Pursuant to the terms hereof, ECCV hereby sells and the Authority hereby purchases capacity in the ECCV Barr Lake 48 inch water pipeline generally described in Exhibit A hereof ("Pipeline") with a design capacity of 47,000,000 gallons per day (the "Design Capacity") by initially paying the estimated cost of enlarging the pipe and the associated change in the cost of installation of the pipe plus twenty-five percent (25%). This amount is currently estimated to be THREE MILLION ONE HUNDRED THIRTY-EIGHT THOUSAND AND NO/100 dollars (\$3,138,000) for Three Million Gallons Per Day (3 MGD) to be paid as of the date of this Agreement and the same amount for an additional 3 MGD to be paid on or before May 18, 2005, totaling SIX MILLION TWO HUNDRED SEVENTY-SIX THOUSAND AND NO/100 dollars (\$6,276,000) for capacity of Six Million Gallons Per Day (6 MGD). Upon the Authority's withdrawal of water from the Pipeline, the Authority shall pay ECCV the sum of the Authority's pro-rata portion (as set out in Section 3.4) of the entire cost of the Pipeline plus ten percent (10%) less all amounts previously paid pursuant to this Section toward the cost of the Pipeline.

ARTICLE 2: DESIGN AND CONSTRUCTION

2.1 (a) Engineering Plans and Specifications. ECCV shall substantially complete plans and technical specifications for the Pipeline ("Plans and Specifications").

(b) Points of Connection. (i) the Authority will be entitled to one point of connection to add water to the Pipeline and two points of connection to withdraw its water, provided that the Authority pays the entire cost of each Point of Connection. The primary Point of Connection to add water shall be constructed in the vicinity of Barr Lake. The primary Point of Connection to withdraw its water shall be constructed in the vicinity of the intersection Smoky Hill Road and E-470, both final locations reasonably determined by ECCV. All Points of Connection will be sized to comply with the capacity entitlement of the Authority based on engineering standards at the operating pressures of the Pipeline. At such time as the Authority desires to begin utilizing a Point of Connection, the Authority shall submit plans to ECCV for approval, which approval shall not be unreasonably withheld. The Authority will be responsible for the costs of construction and maintenance of a meter station, which shall include a meter supplied by the Authority, and backflow prevention devices, pumps, valves, and water control devices, as necessary. The Authority will also be responsible for all costs associated with the meter station. The Pipeline at each such Point of Connection shall be engineered and operated by ECCV in such a manner as to maintain the standards of reasonable operating pressures within the Pipeline, water quality, and flow entitlements of the Parties. ECCV will operate the meter and gate valve at each Point of Connection.

(ii) The Authority shall have the right to determine the size and location of a secondary Point of Connection for withdrawal of water, subject to approval by ECCV which shall reasonably determine whether the standards set forth in 2.1(b)(i) are met by a particular proposed Point of Connection. The reasonable costs of the evaluation by ECCV shall be paid by the Authority. ECCV shall cooperate in providing access across, but not along or within ECCV property, as necessary, at no cost to the Authority to construct and access this Point of Connection.

(iii) When the Authority desires to implement the secondary Point of Connection for withdrawal of water, the construction, installation, and timing of the Point of Connection and the resultant disruption in the use of the Pipeline shall be reasonably approved by ECCV.

(iv) In the event the Authority desires any other Point or Points of Connection, such additional Point or Points of Connection, if approved by ECCV in its sole discretion, may be installed on terms mutually negotiated by ECCV and the Authority in the future.

2.2 Permits. ECCV shall acquire any and all needed permits for the Pipeline.

2.3 Documents. ECCV shall prepare all documents necessary to contract for the construction of the Pipeline and to provide for construction administration and oversight,

("Contract Documents"), and shall require such payment and performance bonds as are required by law. The Plans and Specifications, Contract Documents, and any other documents, including Change Orders approved by the ECCV Board of Directors, shall be made available to the Authority by ECCV from ECCV's engineer.

2.4 Bidding and Construction Process. ECCV shall be the owner of the Pipeline for all purposes relating to the preparation of bid documents, advertising for bids and proposals in accordance with Colorado law, opening bids and entering into a contract for the completion, supervision and control of construction of the Pipeline. The bidding process shall include two schedules as further described in Article 3 hereof.

2.6 Substantial Completion of the Work. ECCV shall notify the Authority when it delivers a notice of substantial completion to the contractor.

ARTICLE 3: PAYMENT OF CONSTRUCTION COSTS

3.1 Bidding. (i) ECCV has received bids for the pipe to be installed with two schedules, one that shows the cost of \$17,530,000 for the 42-inch pipe diameter required by ECCV ("Small Pipe") and a second showing the cost of \$21,734,000 for the 48-inch pipe diameter required by ECCV and the Authority together ("Large Pipe"). ECCV will also proceed to obtain two schedules for the installation of those Pipes.

(ii) The difference between the lowest responsive and responsible bid for the Small Pipe and its installation and the approved bid for the Large Pipe and its installation plus twenty-five percent (25%) shall be the amount to be paid by the Authority to ECCV "up front" as described and estimated in Section 1.1 and Section 3.2.

(iii) The cost of increasing the size of the line from 42-inches in diameter to 48-inches in diameter, with the intended increase in capacity of no less than 6 MGD is presently estimated as the amounts set forth in Section 1.1 for the increase in pipe size and installation of that pipe. This estimate will be replaced by the outcome of the actual Small Pipe and Large Pipe bidding procedure described above and the bid numbers will be used to determine the actual "up front" deposit by the Authority. If the actual required deposit is less than \$6,275,000, the excess will be refunded. If the actual required deposit exceeds the amount deposited either the Authority will deposit additional funds or the capacity made available to the Authority will be reduced pro rata by the deficiency.

3.2 Incremental Cost Payment. (i) The Authority will pay the estimated incremental cost of the difference between the Small Pipe and the Large Pipe "up front" by a deposit in the Colorado Local Government Liquid Asset Trust (Colotrust). All funds deposited with Colotrust pursuant to this Agreement shall be governed by the Construction Account Agreement, which is attached hereto and incorporated herein. A minimum of \$3,138,000 shall be deposited by March 18, 2005, and the deposit for any of the additional capacity of up to 3,000,000 MGD capacity shall be made before May 18, 2005.

(ii) ECCV shall be permitted to draw upon the deposit as set forth in the Construction Account Agreement.

3.3 Change Orders. ECCV shall determine and approve all change orders and, upon approval of the ECCV Board of Directors, make such change orders available to the Authority through the ECCV engineer. Change orders for the sole benefit of ECCV shall be paid solely by ECCV and not included in the actual cost of the Pipeline for the purposes of paragraph 3.4.

3.4 Additional Cost Payments. (i) Prior to the Authority's withdrawal of any water from the Pipeline, the Authority will pay to ECCV the full sum of the Authority's pro-rata portion of capacity (based upon design capacity) of the entire actual cost of the Pipeline plus ten percent (10%) of that cost, less all amounts previously paid toward the cost of the Pipeline pursuant to Section 1.1. Such actual costs shall include but not be limited to the costs for design, construction, construction management, construction observation, surveys, easement acquisition, bond issuance costs and the cost of pump stations and treatment plants as set out in Paragraph 6.1.

(ii) In the event that the Authority only desires to utilize a portion of its capacity in the Pipeline, the Authority may pay a prorated portion of the actual costs based upon the capacity the Authority desires to utilize. Such prorations shall only be made upon One Million Gallons Per Day increments. If the Authority chooses to proceed with a portion of its capacity, the remaining amount due under Subsection (i) above for capacity not being utilized shall earn interest at the four and one-half percent (4.5%) per annum until paid. Such amounts, including accrued interest shall be paid no later than the fifth anniversary of the use of the first portion of the Authority's capacity and if not paid at that time, the capacity made available to the Authority shall be reduced to the capacity actually paid for with the total payments reduced by the amount of interest on the unpaid balance.

ARTICLE 4: OWNERSHIP AND OPERATION

4.1 Ownership. For all purposes, ownership of the Pipeline shall be in ECCV.

4.2 Maintenance. (a) Operation. ECCV shall operate, maintain, repair, and replace the Pipeline in such a way that the water carrying capacity allowed each Party is available at all times and at reasonable operating pressures, and that whenever there is a failure in the system to deliver the required capacities, ECCV will use its reasonably best efforts to restore the capacity at the earliest opportunity. ECCV shall use its reasonably best effort to keep the Pipeline in good operating condition and in good repair. Improvements to the Pipeline, as reasonably required, that benefit the Pipeline and both Parties, will be paid on a prorata basis by the Parties. Improvements benefiting either Party alone will be paid by the benefited Party.

(b) Delivery of Water.

(i) Following the opportunity for review and comment on the cost of water conveyance by the Authority, ECCV shall establish and collect a fair, reasonable, and

nondiscriminatory charge based on generally accepted utility rate making practices per each thousand gallons actually conveyed and/or delivered to the Authority through Points of Connection to pay operation and maintenance costs, to pay an administrative charge of 15% of operation and maintenance costs, to accrue a reasonable reserve for operation, maintenance, and repair purposes, and to accrue a reasonable reserve for replacement purposes. ECCV may establish a different utility rate for winter delivery and summer delivery based on total flows to be delivered. The Authority may request ECCV to set flow rates for specific 3-month periods. For the purchase of a replacement reserve, the charges by ECCV may include a depreciation charge with the Pipeline being depreciated over 35 years.

(ii) The Authority shall not be required to pay anything under this Section until and unless it uses some or all of its capacity and then only for the capacity that it uses by conveyance and/or delivery of water to, or acceptance of water from, the Pipeline as further provided in paragraph 3.4(ii). ECCV may adjust these charges from time to time to reflect increases or decreases in costs of service.

(iii) ECCV may assess delinquency charges and interest on late payments, as allowed by state law, and attorneys' fees, and may discontinue water deliveries to the Authority following a five-day notice to the Authority of a hearing by the ECCV Board.

(iv) Failure of the Authority to pay its costs under this Section 4.2 shall be deemed to be a breach of this Agreement, and ECCV may shut off and lock the valve at any or all Points of Connection until such costs are paid, such costs may include the cost of shutting and reopening the valve.

(v) The Authority shall have the right to review ECCV's accounts and rate setting calculations at any reasonable time and at the expense of the Authority. Upon written request of the Authority and at the Authority's cost, ECCV shall provide all necessary documentation to substantiate the operation and maintenance costs.

4.3 Water Rights/Quality. (a) Subject to all of the terms and the capacities set out in this Agreement, ECCV and the Authority or their permitted assignees shall each be entitled to convey water through the Pipeline within the flow parameters reasonably defined by ECCV while retaining their respective exclusive rights to use and reuse of their respective water.

(b) ECCV shall have no obligation and assumes no liability to furnish a source of water to the Authority, but shall make capacity as described herein available to the Authority if the Authority chooses to deliver water through the Pipeline.

(c) Any water to be conveyed through the Pipeline by either Party must meet or exceed the reasonable standards set from time to time by ECCV ("Quality Standard"). ECCV shall set the Quality Standards at the time the Authority provides ECCV with notice of its intent to connect to the Pipeline and provide ECCV with the analysis of the water to be transported by the Pipeline. The Quality Standard may be changed by ECCV based on governmental regulations,

change in the Authority water quality or because the mixture of water delivered by the Pipeline has an undesirable effect on the quality of ECCV 's water.

(d) The Authority and ECCV shall be solely responsible to treat or otherwise cause their respective water to be added to the Pipeline to meet such Quality Standard prior to placing such water in the Pipeline. The Authority and ECCV shall monitor their respective water placed into the Pipeline for compliance with the Quality Standard. ECCV shall have access to all monitoring devices and records. Violation of the Quality Standard shall be immediately reported by either Party to the other Party. Violations of the Quality Standard of more than 24 continuous hours or more than 7 days in any 3 month period shall be a violation in which the Party in compliance can require that deliveries by the Party in violation be terminated. Upon cure of the violation as evidenced through testing provided to the other Party, the Party in violation may resume deliveries into the Pipeline. ECCV shall furnish records of the quality of water that it adds to the Pipeline to enable the Authority to compare its respective additions of water to the Pipeline to comply with the Quality Standard. The introduction of water in violation of the requirements of the Clean Water Act may be shut down without notice and shall not resume until cured.

(e) ECCV and the Authority shall place water in the Pipeline at a pressure acceptable to ECCV to sustain reasonable operating conditions. Such reasonable pressure shall be determined by ECCV based on engineering requirements. Backflow prevention devices, and water control devices required for the Authority capacity shall be approved by ECCV and shall be installed and maintained by the Authority, subject to inspection by ECCV.

4.4 Meters. (a) ECCV shall set reasonable standards for, and shall own, operate, and maintain all meters and valves connected at the Pipeline. ECCV shall have the right to shut off such valves for nonpayment, or other violations of ECCV's generally applicable reasonable rules concerning the Pipeline and the delivery or removal of water therein. Such shut off shall occur no sooner than 7 days after delivery of written notice to the Authority as required herein, and only if the Authority has not cured or diligently acted to cure the violation. Notwithstanding any other provision of this Agreement, ECCV shall not be required to give prior notice of any shut-off necessitated by a bona fide emergency. ECCV shall give the Authority notice of such emergency shut-off as soon as reasonably practicable following such emergency shut off.

(b) Each Point of Connection to and from the Pipeline shall be metered. ECCV shall read the meters to monitor for compliance with this Agreement and for billing purposes.

4.5 Project Liaison. ECCV shall provide the Authority with the monthly construction report provided to the ECCV Board of Directors by the ECCV engineer. During construction of the Pipeline, ECCV shall provide to the Authority, upon written request, such information as may be reasonably necessary for the Authority to keep abreast of costs, technical progress, and potential problems with the construction process. Such requests shall be made no more frequently than quarterly. Following construction of the Pipeline, ECCV shall inform the Authority of any matters that may impair or impact the Authority's use of its capacity. ECCV may provide the information in writing by mail.

4.6 Limitation on the Parties. With the exception of the right of ECCV to stop deliveries for nonpayment and unauthorized removal of water from the Pipeline or the Parties rights for violations of the Quality Standards, no Party shall have the power to stop the other Party from adding water to, or taking water from, the Pipeline pursuant to the terms of this Agreement.

ARTICLE 5: ASSIGNMENT

5.1 Assignment of Capacity. The Authority ("Assignor") may assign all, and no less than all, of its Capacity in the Pipeline on such terms as may be agreed by the Assignor and an assignee ("Assignee").

(a) At least twenty business days prior to the anticipated closing date of the assignment, the Assignor shall notify ECCV of the capacity to be assigned and the terms of the assignment.

(b) The Assignor shall promptly notify ECCV of the completion of the assignment.

(c) The Assignee shall execute an agreement to be bound by the terms of this Agreement.

5.2 ECCV Participation in Authority Costs. Notwithstanding ECCV's membership in the Authority, ECCV shall not be included as a paying member in any agreement by members of the Authority for the payment of Authority costs for the Pipeline or its operations. ECCV shall have no vote in the Authority's decisions concerning the Pipeline, but may, if approved by a majority of the votes on the Authority Board (not including the vote of ECCV) attend and participate in any Authority meeting or discussion concerning the Pipeline. No Member of the Authority, including ECCV, shall have obligations as a Member of the Authority based upon the Authority's execution of this Agreement, except as may be agreed to by any such members by separate agreements..

ARTICLE 6: FURTHER COOPERATION

6.1 Additional Facilities.

(a) ECCV may construct a water treatment plant or partial water treatment facilities at the Barr Lake end of the Pipeline using plans approved by ECCV in its sole discretion. ECCV will construct such facility in a manner that does not unnecessarily preclude the future expansion of the facility to accommodate the Authority. ECCV will cooperate in, and if desired by ECCV, will construct such expansion, if such expansion is requested by the Authority and the full costs of the expansion will be paid by the Authority to ECCV. ECCV agrees to give the Authority 90-day's prior written notice of any changes in ECCV's treatment methodology or standards related to the Pipeline. The Authority may participate in the construction of the water

treatment plant provided it pays its pro rata costs plus 10%, and it pre-treats its water to a standard determined by ECCV.

(b) ECCV shall construct its pump stations using plans approved by ECCV in its sole discretion. Such plans will include provisions to allow for construction or expansion of such pump stations as may be necessary to deliver up to the design capacity in stages, and the pro rata costs of the pump stations, including anticipated costs of construction in stages, will be paid by the Authority to ECCV if ECCV constructs the pump stations.

(c) ECCV has no obligation or responsibility to provide water rights or its water to the Authority. Conversely, the Authority shall obtain and provide water for treatment, if necessary, and delivery of treated water, as provided herein, to and through the Pipeline (this contract is for the purchase and sale of capacity only - not water).

ARTICLE 7: MISCELLANEOUS

7.1 Breach, Cure, and Remedies. (a) In the event any Party alleges the other Party 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 as provided in paragraph 3.3(d), 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.

(b) 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.

(c) 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.

7.2 Relationship of Parties. This Agreement does not and shall not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Parties.

7.3 Liability of Parties. No Party shall have any obligation whatsoever to pay or repay any debt, financial obligation, or liability of the other Party.

7.4 Modification. This Agreement may be modified, amended, changed or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by the Parties. No consent of any third party shall be required for the negotiation and execution of any such agreement.

7.5 Waiver. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

7.6 Integration. This Agreement contains the entire agreement between the Parties and no statement, promise or inducement made by any Party or the agent of any Party that is not contained in this Agreement shall be valid or binding.

7.7 Severability. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or word herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

7.8 Survival of Obligations. Unfulfilled obligations of any Party arising under this Agreement shall be deemed to survive the expiration of the term of this Agreement or the dissolution or termination of any Party, and shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

7.9 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue for all actions shall be exclusive in the District Court in and for Arapahoe County, Colorado.

7.10 No Multiple-Year Financial Obligation. Nothing herein shall be deemed or construed to create a debt or multiple fiscal year financial obligation within the meaning of Article X, Section 20 of the Colorado Constitution.

7.11 Headings for Convenience Only. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to enlarge or restrict the content thereof.

7.12 Notices. All notices, demands, or other communications required or permitted to be given by any provision of this Agreement shall be given in writing, delivered personally, or sent by certified or registered mail, postage prepaid and return receipt requested, or sent by reliable overnight delivery service, addressed as follows:

To ECCV: East Cherry Creek Valley Water & Sanitation District
Attn: David J. Kaunisto
6201 South Gun Club Road
Aurora, Colorado 80016

with a copy to: David J. Hahn
Hahn, Smith & Walsh, PC
717 17th Street, Suite 1520
Denver, Colorado 80202-3315

To Authority: South Metro Water Supply Authority
Attn: John Hendrick, President
62 West Plaza Drive
Highlands Ranch, Colorado 80126-2304

with a copy to: Grimshaw & Harring, P.C.
1700 Lincoln Street, Suite 3800
Denver, Colorado 80203

or at such other address as either party hereto may hereafter or from time to time designate by written notice to the other party given in accordance herewith. Notice shall be considered given (i) when personally delivered, upon delivery; (ii) when mailed, upon the earlier of the day on which such notice is actually received by the party to whom it is addressed or the third day after such notice is mailed; or (iii) when sent by reliable overnight delivery service, on the next business day after it was sent.

7.13 Successors. Except as otherwise limited herein, this Agreement shall be binding upon and inure to the benefit of the Parties successor and/or assigns.

ARTICLE 8: COOPERATIVE POLICY

8.1 Future Cooperative Relationship. The Parties acknowledge that the Pipeline is an integral link in their ability to provide water services and therefore agree to cooperate in defining and exploring mutually beneficial opportunities to maximize the movement of water through the Pipeline.

8.2 Future Participation. The Parties may in the future cooperate and contract to participate in water supply development. The Parties agree to encourage new ideas and cooperation in developing water supplies to serve our constituents.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective as of the day and year first above written.

EAST CHERRY CREEK VALLEY WATER AND
SANITATION DISTRICT

ATTEST:

By: 

Its: ASST. SECRETARY

By: 

Its: Chairman

SOUTH METRO WATER SUPPLY AUTHORITY

ATTEST:

By: 

Its: ADMIN. ASSISTANT

By: 

Its: PRESIDENT