

## **INTER-GOVERNMENTAL AGREEMENT FOR TEMPORARY LEASE OF POTABLE WATER TO THE CITY OF BRIGHTON**

THIS INTER-GOVERNMENTAL AGREEMENT ("Agreement") is entered into by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS (the "Board" or "Denver Water"), the CITY OF BRIGHTON ("Brighton"), a municipal corporation and political subdivision of the State of Colorado, and SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado acting by and through its SOUTH ADAMS COUNTY WATER AND SANITATION DISTRICT ACTIVITY ENTERPRISE ("SACWSD"). The Board, SACWSD and Brighton are referred to herein together as the "Parties" and individually as a "Party" when the capitalized term is used.

### **RECITALS**

- A. The Board owns and operates a municipal water supply system that provides water supply for inhabitants of the City and County of Denver and by contract to certain areas outside the boundaries of the City and County of Denver.
- B. Brighton owns and operates a water supply system that provides water service for its customers.
- C. SACWSD owns and operates a water supply system that provides water service for its customers.
- D. Brighton desires a temporary lease of treated potable water for use within its service area while it is constructing a new water treatment facility. The water will be delivered from the Board's distribution system via its interconnect with SACWSD's distribution system, which shall deliver an equivalent amount of water through its interconnect with Brighton's distribution system.
- E. SACWSD is willing to convey an amount of treated potable water to Brighton equivalent to the amount of water delivered from the Board's system to SACWSD under the terms of this Agreement.
- F. The Board is willing to lease potable water to Brighton on a temporary as available basis.
- G. Brighton, the Board, and SACWSD wish to establish the terms, arrangements for delivery, and cost of a temporary lease of water for the term of this Agreement.
- H. Under Article I.B.3 of the Colorado River Cooperative Agreement ("CRCA"), the Board may provide for a temporary lease of water outside of its service area for a duration not to exceed five consecutive years, subject to certain conditions including payment of a West Slope Charge, as defined in the CRCA.

- I. SACWSD and Brighton have previously executed an agreement related to SACWSD's provision of service to areas within Brighton, and contemporaneously with this Agreement those two parties have entered into a separate agreement which provides for winding up that other service.
- J. Section 18(2) of Article XIV of the Colorado Constitution and Sections 29-1-201, et seq. and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit.

## AGREEMENT

1. Purpose. Under the terms set forth below and the CRCA, the Board will make available treated potable water ("Temporary Lease Water") to Brighton on a temporary lease basis.

2. Amount. The Board, in its sole discretion, shall determine on a daily basis whether treated potable water is available for delivery of Temporary Lease Water to Brighton and if so, the amount and delivery location for the water subject to SACWSD's physical ability to accept deliveries and make equivalent deliveries to Brighton. The Board is willing to deliver a volume of Temporary Lease Water not to exceed a maximum of 45.4 million gallons or 139 acre-feet per year during the term of this Agreement and a daily limit of 350 gallons per minute, subject to availability. In the event the Board does not have enough water to deliver to Brighton the amounts set forth in this Agreement along with full amounts set forth in other agreements between the Board and SACWSD, deliveries to SACWSD under other agreements shall have priority.

3. Term. Deliveries of Temporary Lease Water to Brighton may be made from June 1<sup>st</sup> through August 31<sup>st</sup> of each year following the Effective Date of the Agreement through August 31, 2026. Unless the Parties mutually agree in their sole discretion to extend this Agreement by written amendment, this Agreement will automatically terminate on December 31, 2026.

4. Delivery Locations. Temporary Lease Water will be delivered from Denver Water's distribution system to SACWSD connection at 56th Avenue and Quebec Street and Brighton will take an equivalent delivery from SACWSD's distribution system at Brighton's connection to SACWSD distribution system located at 118th Avenue & Peoria Street. The precise boundary between SACWSD's distribution system and Brighton's distribution system shall be the downstream side of the flow meter in the pump station building at 118<sup>th</sup> and Peoria St., and as further depicted in **Exhibit A**. The Operating Representatives for the Board and Brighton shall coordinate with each other and SACWSD's Operating Representative when making deliveries of Temporary Lease Water to Brighton.

5. Delivery Flow Rates. The Board shall allow a flow rate up to 350 gallons per minute for water delivery, unless the Operating Representatives agree to a lower flow rate. SACWSD infrastructure is not able to deliver water at a rate above 350 gallons per minute.

6. Notice of Availability. Brighton's Operating Representative shall notify the Board's and SACWSD's Operating Representatives of its desire to purchase Temporary Lease Water on any given day. Brighton must specify the total delivery amount, the delivery start date and

flow rate for the delivery, and the Board's and SACWSD's Operating Representatives will make such deliveries subject to availability and the terms of this Agreement.

7. Cancellation of Deliveries. Under the Board's current water accounting methods, it can usually determine the amount of treated potable water that will be available. However, the Board cannot determine with certainty whether the treated potable water will be excess to its current needs and available for delivery under this Agreement. The Board will use its best efforts to forecast availability to meet the notice provisions in paragraph 6 above, but on occasion the Board may determine that it has forecasted incorrectly and needs to reduce or cancel a delivery. If this occurs, the Operating Representatives will determine a mutually agreeable method for reducing or canceling the delivery. Brighton will be charged only for the amount of water actually delivered, except as otherwise provided by the take or pay requirement in paragraph 8 below.

8. Charges for Temporary Lease Water.

- a. Brighton will pay all standard fees, charges and rates as published from time-to-time by the Board. Brighton shall pay the Board for each 1,000 gallons of Temporary Lease Water delivered in any month to Brighton under this Agreement at the Board's then-current treated potable water service rate for customers outside the Board's Service Area. The current treated potable water service rate for 2022 for wholesale water service outside of the Board's combined service area is \$4.66 per 1,000 gallons (total \$1518.47 per acre-foot), plus the West Slope Charge of 15%. Brighton shall pay, on a take or pay basis, the full cost of a minimum of fifty (50) percent of Temporary Lease Water, which shall be \$105,533.67, regardless of whether the Temporary Lease Water is used. The West Slope Charge is not applied to the amount subject to the take or pay for Temporary Lease Water not delivered. The Board, along with numerous West Slope water entities, is a signatory to the CRCA. Under the CRCA those who receive water from Denver Water on a temporary basis for use outside Denver Water's service area must enter into a West Slope Charge Agreement, attached as **Exhibit B**. Delivery of water under this Agreement is contingent upon Brighton executing and complying with the West Slope Charge Agreement.
- b. Brighton will pay a carriage fee to SACWSD based on each 1,000 gallons of Temporary Lease Water delivered in any month to Brighton under this Agreement. The fee shall be \$4.32 per 1,000 gallons per month, and such fee shall be increased by the same amount as any increase in the District's water service rates for multi-family and commercial properties, if and when the SACWSD Board of Directors increases such fees and rates. For example, if the rate for multi-family and commercial properties is increased by \$0.33 per 1,000 gallons per month, then the carriage fee charged to Brighton will be increased by \$0.33 per 1,000 gallons per month.

9. SACWSD Offset of Charges. Brighton will report to the Board and SACWSD the meter readings from Brighton's meter located at 118th Avenue & Peoria Street on a monthly basis in electronic form. SACWSD will deduct the monthly meter readings reported by Brighton

from SACWSD's meter readings at its 56th Avenue & Quebec Street delivery location that it reports to the Board to ensure that SACWSD is not charged for water delivered to Brighton at 118<sup>th</sup> Avenue & Peoria Street under this Agreement. Both the Board and SACWSD shall have a right to inspect, audit, and calibrate the meters located at the Board's and SACWSD's delivery locations.

10. Approvals. Brighton shall be responsible for obtaining all necessary authorizations, approvals, and permits as may be required to effectuate the deliveries and use of water under this Agreement, including the approval of the Colorado Department of Public Health and the Environment under the new source review rule at section 11.4(1)(b) of the Colorado Primary Drinking Water Regulations, 5 CCR 1002-11. The Board will cooperate with Brighton to obtain such approvals, so long as the terms of this Agreement are complied with and the Board's water rights are not adversely affected.

11. Treated Water. All water delivered to Brighton pursuant to this Agreement is treated potable water. The Board warrants that such water will meet all applicable standards under the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq. and Colorado Primary Drinking Water Regulations, 5 CCR 1002-11, at the 56th Avenue and Quebec delivery connection to SACWSD's system. Beyond this location, the Temporary Lease Water is provided "as is" and the Board makes no warranty for the quality of water beyond the point at which SACWSD takes delivery from the Board's connection. SACWSD makes no warranty; the water is provided "as is" at the 118th Avenue & Peoria Street connection with Brighton's potable water distribution system. Brighton shall assume responsibility for water quality at the 118<sup>th</sup> Avenue & Peoria Street connection as per CDPHE consecutive system regulations, and the relationship between the Board and SACWSD to Brighton shall be that of a wholesaler. Brighton shall be responsible for assuring compliance with regulatory requirements for its system, including adequate disinfection requirements. Brighton shall not make any claim against the Board or SACWSD arising from the quality of water delivered, and the Board and SACWSD shall have no water treatment responsibility under this Agreement. Brighton acknowledges that it has reviewed the Board's and SACWSD's annual Consumer Confidence Reports.

12. Location of Use. The Temporary Lease Water will be used only within Brighton's treated water service area.

13. Use of Water. Temporary Lease Water delivered to Brighton under this Agreement shall be used only for purposes for which the Board's and SACWSD's water rights have been decreed. Brighton will use the water only for municipal purposes within its treated water service area.

14. Dominion over Water. All Temporary Lease Water furnished by the Board under this Agreement is on a leasehold basis only. Brighton shall not have any right to make a succession of uses of water delivered under this Agreement and upon completion of the primary use, all dominion over the water provided hereunder reverts completely to the Board. Except as herein specifically provided, all property rights to the water furnished hereunder are reserved in the Board. It is mutually agreed that Brighton has no obligation with respect to creating any particular volume of return flow from water delivered under this Agreement.

15. Water Rights. Brighton shall not use this Agreement, or the deliveries contemplated under this Agreement, as a basis for appropriating a water right from the South

Platte River or its tributaries. Nothing herein shall require the Board to change or transfer any of its water rights.

16. Temporary Agreement. This Agreement is temporary in nature and limited to the term set forth in paragraph 3 above.

17. Water Use Restrictions. The Board may limit the delivery of potable water hereunder during periods of shortages or system emergencies. Accordingly, water deliveries to Brighton as set forth in this Agreement will be curtailed progressively during such times as use restrictions are applied to all customers within the Board's combined service area. Should the Board adopt by resolution or modification to its Operating Rules a different percentage reduction in water use as a target for a particular restriction imposed within the Board's Service Area, the percentage in the Board resolution or Operating Rules will apply in place of the percentages in this paragraph to reduce deliveries to Brighton.

- a. Stage 1 Response - 30% reduction in available Lease Water.
- b. Stage 2 Response - 50% reduction in available Lease Water.
- c. Stage 3 Response - no Lease Water will be made available under the Agreement.

18. Effect of Restrictions on Take or Pay. If deliveries to Brighton are restricted by the provisions of Paragraph 17 to an amount of water less than the minimum deliveries contained in Paragraph 8, no minimum payment shall apply, and Brighton shall pay only for water actually delivered.

19. Outside Denver Use. This Agreement involves the use of water outside the territorial limits of the City and County of Denver from the water works system and plant owned by Denver and controlled by the Board of Water Commissioners, under authority of the Charter of the City and County of Denver, which provides, among other things, that "the Board shall have power to lease water and water rights for use outside the territorial limits of the City and County of Denver, but such leases shall provide for limitation of delivery of water to whatever extent may be necessary to enable the Board to provide an adequate supply of water to the people of Denver. . . ." The extent to which limitation of water delivery outside Denver may be necessary to enable the Board to provide an adequate supply of water to the people of Denver is a fact to be determined by the Board in the exercise of its reasonable discretion. The Board has determined that the exercise of its sole discretion in determining whether and how much Temporary Lease Water is available, and the temporary nature of deliveries of Temporary Lease Water are sufficient to ensure an adequate supply of water inside Denver.

20. Operating Obligation. Nothing herein shall be deemed or construed as creating any obligation on the Board or SACWSD to operate their facilities in any particular manner. This Agreement shall not be construed to grant to Brighton any right or preference to use any Board's or SACWSD's facilities or for the Board and SACWSD to operate their facilities in any manner to create excess treated potable water for delivery or excess delivery capacity under this Agreement. Neither the Board nor SACWSD shall have any liability if one or the other or both are not physically able to deliver water as contemplated in this Agreement.

21. No Modification of Current Agreements Between the Board and SACWSD. The parties intend and agree that notwithstanding anything in this Agreement to the contrary, this Agreement shall not effect an amendment or otherwise modify any of the provisions or obligations of the numerous agreements between the Board and SACWSD. In the event an obligation of this Agreement is not consistent with an obligation of an agreement between the Board and SACWSD, the obligation set forth in the agreement between the Board and SACWSD shall prevail. SACWSD would not enter into this Agreement if there were to be any modification of any of its agreements with Denver Water.

#### MISCELLANEOUS PROVISIONS

22. Operating Representatives. The parties shall contact the persons listed below for all matters related to operations under this Agreement. For purposes of this Agreement, the Operating Representatives are the following or their designees:

for the Board, Phil Malone, telephone: 303-628-6378, email:  
[WCSysOperationsDL@denverwater.org](mailto:WCSysOperationsDL@denverwater.org);

for SACWSD, Distribution and Collection Maintenance Supervisor Randy Evans  
telephone: 720-206-0522, email: [revans@sacwsd.org](mailto:revans@sacwsd.org) ;

for Brighton, Sam Mingo, telephone: 303-655-2102, email: [smingo@brightonco.gov](mailto:smingo@brightonco.gov) and  
Marc Johns, telephone: 303-655-2033, email: [mjohns@brightonco.gov](mailto:mjohns@brightonco.gov);

Upon mutual Agreement, the Operating Representatives may make temporary changes to the described procedures to accommodate operational requirements.

23. Notice and Contact. The parties shall contact the persons listed below for all matters related to administration of this Agreement. All notices required or given under this Agreement shall be in writing and shall be deemed effective: (a) when delivered personally to the other party; or (b) seven (7) days after posting in the United States mail, first-class postage prepaid, properly addressed as follows; or (c) when sent by e-mail. If notice is provided by e-mail, the notifying party must follow up with a hard copy of the notice sent by United States mail; however, the notice will be effective as of the original e-mail date:

for the Board, Jeff Bandy, Planning Manager, Denver Water, 1600 West 12th Avenue,  
Denver, Colorado 80204, [jeff.bandy@denverwater.org](mailto:jeff.bandy@denverwater.org);

for SACWSD, Distribution and Collection Systems Manager Jeff Coufal, South Adams  
County Water and Sanitation District, 6595 E. 70<sup>th</sup> Ave., Commerce City, Colorado  
80022, [jcoufal@sacwsd.org](mailto:jcoufal@sacwsd.org);

for Brighton, Marc Johns, Acting Utility Director, 500 South 4<sup>th</sup> Avenue, Brighton,  
Colorado 80601, [mjohns@brightonco.gov](mailto:mjohns@brightonco.gov);

or such other persons or addresses as the parties may have designated in writing.

24. Force Majeure. The Board and SACWSD shall not be responsible for any failure or delay in the performance of any obligations under this Agreement solely caused by the

following events: natural disaster, flood, fire, war, or public enemy. Events not listed in the preceding sentence, including, but not limited to, epidemics such as the current COVID-19 pandemic, economic conditions, and labor strikes, shall not be considered force majeure events. As a condition precedent to invoking this force majeure clause, the Board and SACWSD must provide timely written notice detailing the reasons why the force majeure event has made performance under the original contract terms impossible, and the invoking party must immediately take all reasonable measures to mitigate or avoid damages to the other Parties to this Agreement.

25. Assignment and Subcontracts. Brighton may not assign this Agreement or any right or liability of this Agreement or enter into any sublease or amend any sublease related to this Agreement without prior written consent of the Board. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and assigns. This Agreement is intended to benefit only the Parties. The Parties do not intend to benefit any other person or entity as third party beneficiaries.

26. Severability. If any provision of this Agreement is determined by a court having jurisdiction to be unenforceable to any extent, the rest of that provision and the rest of this Agreement will remain enforceable to the fullest extent permitted by law.

27. Venue and Governing Law. This Agreement shall be deemed performable in the City and County of Denver, notwithstanding that the Parties may find it necessary to take some action outside the City and County. The sole venue for any dispute resulting in litigation shall be in the District Court in and for the City and County of Denver. This Agreement shall be governed by and construed under the laws of the State of Colorado.

28. Governing Provisions. This Agreement is made under and conformable to Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System, the Board's Operating Rules and Engineering Standards, including future modifications thereto, that are applicable to the delivery of water outside the City and County of Denver.

29. Governmental Immunity Act. The Parties understand and agree that the Board, Brighton, and SACWSD are relying upon, and have not waived, the monetary limitations and all other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as it may be amended from time to time.

30. Entire Agreement. This Agreement constitutes the entire agreement between the Board, SACWSD and Brighton and replaces all prior written or oral agreements and understandings with regard to the subject matter herein. It may be altered, amended, or repealed only by a duly executed written instrument. The terms of this Agreement shall control in the event of any conflict between the terms of the Agreement and any documents or exhibits attached or incorporated into the Agreement.

31. Effective Date. This Agreement shall become effective on the date it is fully signed by the Board ("Effective Date").

32. Electronic Signatures and Records. The Parties consent to the use of electronic signatures. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically using DocuSign. The Parties agree not to deny the legal effect or

enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

THEREFORE, the Parties have executed this Agreement. This Agreement must have the signature of an authorized representative of Brighton.

ATTESTED:

**CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS**

By: \_\_\_\_\_  
Secretary

By: \_\_\_\_\_  
President

DATE: \_\_\_\_\_

APPROVED:

REGISTERED AND COUNTERSIGNED:  
CITY AND COUNTY OF DENVER

By: \_\_\_\_\_  
Richard B. Marsicek, Chief Water  
Resource Strategy Officer

By: \_\_\_\_\_  
Timothy M. O'Brien, CPA  
Auditor

By: \_\_\_\_\_  
Angela Bricmont, Chief Finance  
Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of General Counsel

**SOUTH ADAMS COUNTY WATER  
AND SANITATION DISTRICT  
ACTING BY AND THROUGH ITS  
SOUTH ADAMS COUNTY WATER  
AND SANITATION DISTRICT  
ACTIVITY ENTERPRISE**

\_\_\_\_\_  
Mizraim Cordero, President

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Vicki Ennis, Secretary

**CITY OF BRIGHTON**

By: \_\_\_\_\_

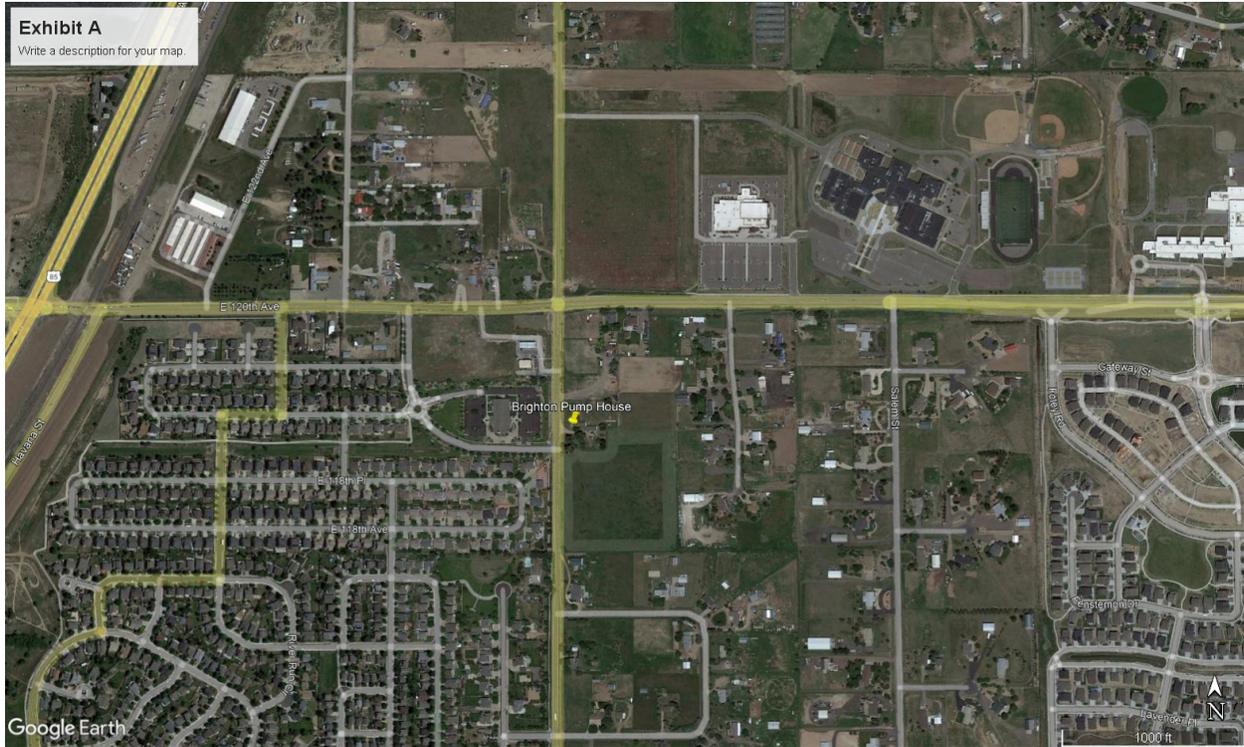
Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

# EXHIBIT A

## DEPICTION OF LOCATION OF CONNECTION POINT BETWEEN SACWSD AND BRIGHTON SYSTEMS



**Exhibit B**  
**WEST SLOPE CHARGE AGREEMENT**  
**CITY OF BRIGHTON**

This West Slope Charge Agreement ("Agreement") is entered into by the Colorado River Water Conservation District ("River District"); the City of Brighton ("Brighton"); and the City and County of Denver, acting by and through its Board of Water Commissioners ("Denver Water").

Recitals

A. The River District and Denver Water are Parties to the Colorado River Cooperative Agreement ("CRCA"). Article I.B.3.b.v. of the CRCA requires Brighton to enter into a West Slope Charge Agreement in substantially the Form of Attachment D to the CRCA. This Agreement is entered in accordance with that requirement of the CRCA. Unless otherwise indicated, capitalized terms in this Agreement shall have the same meaning as provided in the CRCA.

B. Brighton desires to enter into a temporary lease of water on an as available basis for the uses described herein.

Agreement

1. Application of West Slope Charge. Brighton agrees that the West Slope Charge applies to each acre-foot of water delivered by Denver Water.
  - 1.1. The West Slope Charge will be 15% of the standard water rate for potable water charged by Denver Water to customers outside its Service Area.
  - 1.2. Brighton agrees that payment of the West Slope Charge is a contractual obligation to the River District. The Parties to this Agreement agree that the West Slope Charge is not a cost-based rate, but a contractual obligation, and is not governed by rate provisions in Denver water's water supply contracts and leases.
  - 1.3. Brighton agrees that nonpayment of the West Slope Charge may constitute a breach of this Agreement and may result in suspension of water deliveries from Denver Water.
2. Billing and Payment.
  - 2.1. Denver Water shall bill and collect the West Slope Charge on behalf of the River District as part of Denver Water's normal billing of Brighton.
  - 2.2. Brighton shall pay the West Slope Charge as part of its payment of water delivered.
  - 2.3. Whenever Denver Water adjusts the rates charged to customers outside the service area, it will notify the River District in the same manner as it notifies its customers. The River District will respond in writing, requesting that Denver Water be responsible for billing and collection of the West Slope Charge based on the adjusted rate.
  - 2.4. Denver Water will follow its normal procedures for providing notice of nonpayment.

2.5. Denver Water will transmit the collected West Slope Charge payments to the River District on a regular schedule determined by the payment schedule.

3. Default for Nonpayment.

3.1. If Brighton fails to pay the West Slope Charge within the period allowed by Denver Water's normal collection procedures, Denver Water will send a written notice to the River District.

3.2. The River District will send written notice to Brighton, with a copy to Denver Water, of breach of contract for failure to pay the West Slope Charge. The notice of breach shall include a reasonable period during which the Brighton may cure the breach.

3.3. The River District will undertake such measures as it deems necessary to collect the unpaid West Slope Charge.

3.4. If other efforts fail and the River District deems it necessary, the River District will send a notice of proposed suspension of water delivery to Brighton and a notice of default to Denver Water requesting that Denver Water suspend delivery of water on a proposed date of suspension, which shall be no less than 10 calendar days following the date of the notice. For temporary leases of water, the notice to Denver Water will request that the Brighton be disqualified from all future leases of water until the default is cured.

3.5. If payment is not received prior to the end of the noticed period, Denver Water agrees to suspend deliveries of water as requested by the River District, until such time as the West Slope Charge is paid and the River District requests Denver Water to resume deliveries.

3.6. Denver Water will not suspend deliveries of water to Brighton unless the written notice of default includes a certification from the River District that it will take full responsibility for any damages to Brighton resulting from suspension of service requested by River District that is later determined to be unlawful or to be invalid by reason of an error committed by the River District, and to hold Denver Water harmless for any such damages and costs incurred by Denver Water, if any, in defending itself. The River District will assume no responsibility for an error committed by Denver Water.

**COLORADO RIVER WATER  
CONSERVATION DISTRICT**

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Senior Counsel, Jason Turner

ATTESTED:

By: \_\_\_\_\_  
Secretary

APPROVED:

By: \_\_\_\_\_  
Richard B. Marsicek, Chief Water  
Resource Strategy Officer

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of General Counsel

**CITY AND COUNTY OF DENVER,  
acting by and through its  
BOARD OF WATER COMMISSIONERS**

By: \_\_\_\_\_  
President

DATE: \_\_\_\_\_

REGISTERED AND COUNTERSIGNED:  
CITY AND COUNTY OF DENVER

By: \_\_\_\_\_  
Timothy M. O'Brien, CPA  
Auditor

**CITY OF BRIGHTON**

By: \_\_\_\_\_

DATE: \_\_\_\_\_