

Windy Gap Firming Project Intergovernmental Agreement (WGFP IGA)

The Municipal Subdistrict, Northern Colorado Water Conservancy District and its Windy Gap Firming Project Water Activity Enterprise, Board of County Commissioners of Grand County, Colorado, Middle Park Water Conservancy District, Colorado River Water Conservation District and Northwest Colorado Council of Governments enter into this Windy Gap Firming Project Intergovernmental Agreement (“WGFP IGA”) as of the latest date of execution of this WGFP IGA by the Parties.

I) Definitions.

- A. “1980 and 1985 Agreements” are the April 30, 1980 “Agreement Concerning the Windy Gap Project and the Azure Reservoir and Power Project” (“1980 Agreement”) and the March 29, 1985 “Supplement to Agreement of April 30, 1980” (“1985 Agreement”).
- B. “Accounting Year” for the Middle Park Water Apportionment will begin on August 1st and end on July 31st the following calendar year. Middle Park’s Accounting Year shall become effective on August 1 following execution of this WGFP IGA.
- C. “Active Storage” for Chimney Hollow Reservoir is that reservoir capacity contained between the invert of the reservoir outlet works and the normal high water line in Chimney Hollow Reservoir, or in the case of Alternative Reservoirs, the total capacity available for storage and release for the benefit of the WGFP.
- D. “Amendatory Contract” is the Amendatory Contract for the Introduction, Storage, Carriage, and Delivery of Water for Municipal Subdistrict, Northern Colorado Water Conservancy District, Colorado-Big Thompson Project, Colorado dated March 1, 1990 among Reclamation, the Subdistrict and Northern Water and any amendments, replacements, or supplements thereto necessary to implement the WGFP.
- E. “Carryover Balance” is a portion of a Water Apportionment that is available for use pursuant to this WGFP IGA that can be stored for multiple years.
- F. “Carryover Balance Limitation” is the maximum total Carryover Balance that can be credited to Middle Park or Grand County at any point in time.
- G. Chimney Hollow Reservoir (“Chimney Hollow Reservoir”) is that reservoir located on the East Slope identified in the Final Environmental Impact Statement for the Windy Gap Firming Project as the proposed action and any reservoir or reservoirs on the East Slope that are constructed as an alternative or in addition to the reservoir identified in the Final

Environmental Impact Statement (“Alternative Reservoir”), provided that the cumulative active storage capacity of Chimney Hollow Reservoir and any Alternative Reservoirs does not exceed 90,000 acre feet.

- H. Colorado River Water Conservation District, (“River District”) is a political subdivision of and a body corporate under the laws of Colorado, created by the provisions of C.R.S. §§ 37-46-101, et seq., for the purposes stated therein.
- I. Grand County (“Grand County”) is a county of the State of Colorado created by Article XIV of the Colorado Constitution and C.R.S. § 30-5-128, for the purposes stated therein.
- J. Middle Park Water Conservancy District (“Middle Park”) is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein.
- K. Municipal Subdistrict, Northern Colorado Water Conservancy District, (“Subdistrict”) is a political subdivision of the State of Colorado, and formed under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein and as created by the Decree dated July 6, 1970, Weld County District Court, State of Colorado.
- L. Municipal Subdistrict, Northern Colorado Water Conservancy District, Windy Gap Firming Project Water Activity Enterprise (“WGFP Enterprise”) is a water activity enterprise of the Subdistrict organized under and pursuant to Article X, Section 20, of the Colorado Constitution and C.R.S. §§ 37-45.1-101 et seq.
- M. “Net Credited Storage,” is the amount of Windy Gap Project Water pumped at the Windy Gap Pumping Plant and conveyed to Granby Reservoir less any losses charged pursuant to the Amendatory Contract.
- N. Northern Colorado Water Conservancy District (“Northern Water”) is a political subdivision of the State of Colorado, created under the provisions of C.R.S. §§ 37-45-101, et seq., for the purposes stated therein, and is referenced in but not a party to this WGFP IGA.
- O. Northwest Colorado Council of Governments (“NWCCOG”) is a regional planning commission organized pursuant to C.R.S. § 30-28-105, and an association of local governments contracting pursuant to Article XIV, Section 18 of the Colorado Constitution and C.R.S. §§ 29-1-201, et seq., comprising municipalities and counties within the geographic boundaries of the Colorado counties of Grand, Eagle, Summit, Jackson, Routt, and Pitkin.

- P. “Prepositioning” is the manner of integrated operations of the Colorado-Big Thompson Project and WGFP described in the Final Environmental Impact Statement for the WGFP and as may be authorized by Reclamation in the Amendatory Contract and/or Reclamation’s Record of Decision for the WGFP.
- Q. “Pumping Costs” incurred by Middle Park or Grand County pursuant to this WGFP IGA are 110% of the average electrical power costs of pumping for the Windy Gap Project for that year on a per acre-foot basis for Net Credited Storage.
- R. United States Army Corps of Engineers (“USACE”) is referenced in but not a party to this WGFP IGA.
- S. United States Bureau of Reclamation, Department of the Interior (“Reclamation”) is referenced in but not a party to this WGFP IGA.
- T. “Water Apportionment” is Windy Gap Project Water that is made available for use by West Slope Parties pursuant to this WGFP IGA.
- U. “West Slope Parties” are Grand County, Middle Park, the River District, and NWCCOG.
- V. Windy Gap Firming Project (“WGFP”) is a proposed project that will use the Windy Gap Water Rights and that is described in the Final Environmental Impact Statement and Record(s) of Decision.
- W. “WGFP Completion” is the first time that the combined volume of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir is equal to 32% of the Active Storage of the constructed capacity of Chimney Hollow Reservoir.
- X. WGFP Participants (“WGFP Participants”) are those entities identified in the Final Environmental Impact Statement for the Windy Gap Firming Project, and also their successors and assigns, that hold a water allotment contract for the Windy Gap Project and own or are otherwise allocated a portion of the storage capacity of Chimney Hollow Reservoir.
- Y. “Windy Gap Project” is an existing water supply system defined in Part II.A. of the 1980 Agreement.
- Z. “Windy Gap Project Participants” are those entities that hold a water allotment contract for the Windy Gap Project.

- AA. "Windy Gap Project Water" is any water stored or diverted pursuant to the Windy Gap Water Rights. Both the Windy Gap Project and the Windy Gap Firming Project will divert and store Windy Gap Project Water. Windy Gap Project Water will be diverted under the Grand County 2012 WGFP ("1041") Permit unless the Subdistrict notifies Grand County that it will divert under the original 1980 Windy Gap Project Permit. Only Windy Gap Project Water diverted under the terms and conditions of the 2012 WGFP ("1041") Permit may be stored in Chimney Hollow Reservoir.
- BB. "WG Volumetric Limits" shall be those limitations set forth in Paragraph 34 of the 1980 Agreement, as modified by Paragraph 2 of the 1985 Supplemental Agreement. The WG Volumetric Limits are not affected or modified by this WGFP IGA.
- CC. "Windy Gap Water Rights" are defined in the Decrees entered on October 27, 1980 in Civil Action No. 1768, District Court, Grand County, State of Colorado and Case Nos. W-4001, 80CW108, and 85CW135, District Court, Water Division No. 5; the Decree entered on February 6, 1989 in Case No. 88CW169, District Court, Water Division No. 5, State of Colorado; and the Decree entered on July 19, 1990, in Case No. 89CW298, District Court, Water Division No. 5, State of Colorado ("Windy Gap Decrees") and any subsequent diligence or other related decrees or amendments thereto.

II) Relationship to 1980 and 1985 Agreements.

This WGFP IGA supplements and partially amends the 1980 Agreement and the 1985 Agreement. The 1980 Agreement, as amended and supplemented by the 1985 Agreement, and the 1985 Agreement, remain valid and enforceable except as explicitly modified by this WGFP IGA. In the event of a termination of this WGFP IGA for any reason the 1980 and 1985 Agreements shall be enforceable according to their terms as if this WGFP IGA did not exist. While there are several signatories to the 1980 Agreement in addition to the undersigned parties, the rights of those additional signatories under the 1980 Agreement are not altered by this WGFP IGA.

III) Terms of the Agreement

- A. Enhancements. The benefits provided in this WGFP IGA are in addition to and are not a substitute for the mitigation required by governmental agencies with jurisdiction over the WGFP.
- B. Notification of Intent to Proceed with Windy Gap Firming Project.
 - 1) The Subdistrict will proceed as expeditiously as reasonably possible using its best efforts to cause the construction of Chimney Hollow Reservoir. The Subdistrict shall notify the West Slope Parties in writing whether or not it intends to proceed with the Windy Gap Firming Project within 10

years of the issuance of the 404 Permit for the WGFP by the United States Army Corps of Engineers ("USACE") or upon execution of construction contracts for Chimney Hollow Reservoir, whichever occurs first.

- 2) This WGFP IGA shall terminate upon written notice to the West Slope Parties that the Subdistrict does not intend to proceed with the WGFP.
- 3) If the Subdistrict notifies the West Slope Parties that it intends to proceed with the WGFP, then it shall have the right under this WGFP IGA, but not the obligation, to construct and operate a total of 90,000 acre feet of storage on the Front Range. If the Subdistrict proceeds with the WGFP, then it shall provide all of the West Slope mitigation required by the Records of Decision for the WGFP and satisfy all of the obligations set forth in this WGFP IGA, regardless of the storage capacity that is authorized by the 404 Permit issued by the USACE, or the storage capacity that is ultimately constructed or utilized for the WGFP.

C. Except as necessary to ensure compliance with this WGFP IGA, all parties agree not to take any official action that results in a restriction of the right of the Subdistrict to construct, operate and use the full 90,000 acre feet of storage capacity of the Chimney Hollow Reservoir or Alternative Reservoir.

- 1) In the event of a breach of this obligation by Grand County, Paragraph IV. H. 2) of this WGFP IGA shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP IGA and to Middle Park pursuant to Paragraph III.E. of this WGFP IGA shall be subject to the proportional reduction determined using the methods described in III.D.1.
- 2) In the event of a breach of this obligation by the River District, Paragraph IV. H. 2) of this WGFP IGA shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP IGA and to Middle Park pursuant to Paragraph III.E. of this WGFP IGA shall be subject to the proportional reduction determined using the methods described in III.D.1.
- 3) In the event of a breach of this obligation by Middle Park, Paragraph III.E. of this WGFP IGA shall terminate and Middle Park shall receive water pursuant to the 1980 and 1985 Agreements, and the benefits provided to Grand County pursuant to Paragraph III.F. of this WGFP IGA shall be subject to the proportional reduction determined using the methods described in III.D.1 .
- 4) In the event of a breach of this obligation by NWCOG, Paragraph IV. H. 2) of this WGFP IGA shall terminate and be of no further force or effect and the benefits provided to Grand County pursuant to Paragraph III.F. of

this WGFP IGA and to Middle Park pursuant to Paragraph III.E. of this WGFP IGA shall be subject to the proportional reduction determined using the methods described in III.D.1.

- 5) The consequences provided for in Paragraphs III.C.1), III.C.2), III.C.3), and III.C.4) shall be suspended in the event that the Subdistrict later obtains the right to construct, operate, and use the full 90,000 acre feet of storage capacity of the Chimney Hollow Reservoir or Alternative Reservoir.

D. Proportional Reduction.

- 1) If a binding regulatory event, judicial determination, other implementation of existing or future legal requirements or restrictions, or other formal action of any entity causes or results in a permanent reduction in firm yield of the WGFP, other than a prohibition on prepositioning, then the West Slope Parties agree that the amount of water they receive pursuant to Paragraph III of this WGFP IGA will be subject to proportional reduction. The Parties agree to jointly determine the amount of said proportional reduction at the time the event takes effect or, as an alternative to the proportional reduction, identify measures that can be implemented to mitigate the reduction in firm yield of the WGFP. A proportional reduction shall be made to the Middle Park Water Apportionment and to the Grand County Water Apportionment under this WGFP IGA. In the event that the Parties cannot jointly determine what the proportional reduction should be, the issue of what constitutes a proportional reduction shall be resolved by a panel of three experts, one selected by the West Slope Parties, one selected by the WGFP Enterprise, and the third selected by the experts selected by the West Slope Parties and the WGFP Enterprise. If the determination of the expert panel is not acceptable, any Party may pursue any available judicial remedies.
- 2) If a binding regulatory event, judicial determination, other implementation of existing or future legal requirements or restrictions, or other formal action of any entity causes or results in a prohibition of prepositioning , then the West Slope Parties agree that the amount of water they receive pursuant to Paragraph III of this WGFP IGA shall be reduced in accordance with this Paragraph III.D.2).
 - (a) Middle Park Variable Water Supply will be reduced by reducing the 700 acre feet option in spill years in proportion to the amount of Windy Gap Project Water stored on August 1 in Chimney Hollow and Granby Reservoir, combined, as compared to the full storage capacity of Chimney Hollow Reservoir. If Middle Park elects to receive its portion of pumping in spill years, there shall be no reductions.

- (b) Grand County Variable Water Supply shall not be subject to reductions.
- (c) Middle Park Annual Water Supply shall not be subject to reductions.
- (d) Grand County annual amount of Transfer Water shall be reduced by 15%.

E. Middle Park Water Apportionment.

1) Middle Park Election to Receive Water.

The provisions of the 1980 and 1985 Agreements which relate to the operation of the Windy Gap Project and the rights and interests of Middle Park shall remain in place until such time as WGFP Completion, and the approval of this WGFP IGA by the Water Court, Water Division No. 5 by Decree not subject to appeal.

- (a) Middle Park shall have the right, within 1 year of WGFP Completion, to make a one-time and irrevocable election as to whether it will receive water pursuant to this WGFP IGA or receive water pursuant to the 1980 and 1985 Agreements.
- (b) If a binding regulatory event, judicial determination, or other implementation of existing or future legal requirements or restrictions occurs as provided in Paragraph III. D. then Middle Park shall have the right to make an election as to whether it will receive water pursuant to this WGFP IGA, or receive water pursuant to the 1980 and 1985 Agreements. Subdistrict shall notify Middle Park within 60 days of each regulatory event, judicial determination, or other implementation of existing or future legal requirements or restrictions and shall explain to Middle Park the effect(s) of the event, determination, or implementation on water available to Middle Park pursuant to this WGFP IGA. If Middle Park has not made this election pursuant to a previous event, this election will be made by Middle Park within one year after written notification of each event.
- (c) In the event that Middle Park elects to continue to receive water pursuant to the 1980 and 1985 Agreements following WGFP Completion, such water shall be available for use on August 1 of the Accounting Year immediately following pumping (except that any water pumped in August will be credited to the current Accounting Year), and any such water, which is unused on July 31st of that Accounting Year shall be transferred to Grand County on August 1st for use in accordance with Paragraph III. F. 2) and Paragraph III.F.4).

- 2) If Middle Park elects to receive water in accordance with this WGFP IGA, its apportionment will consist of the Middle Park Annual Water Supply and the Middle Park Variable Water Supply.
- 3) Middle Park Annual Water Supply.
 - (a) For the purposes of this WGFP IGA, Middle Park's Annual Water Supply is the combination of the 850 acre feet of Water defined in Section III.E.3)(b) and the 1,450 acre feet of Water defined in Section III.E.3)(c). Middle Park Annual Water Supply is not eligible to become a part of or contribute to the Middle Park Carryover Balance.
 - (b) 850 acre feet of Water. The Subdistrict and WGFP Enterprise will dedicate and set aside annually, but not cumulatively, at no cost to Middle Park, 850 acre feet of Windy Gap Project Water, which shall be available each and every year.
 - (c) 1,450 acre feet of Water.
 - (i) If the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir at any time between the start of pumping of the Windy Gap Project and August 1st of any year is equal to or greater than 32% of the constructed capacity of Chimney Hollow Reservoir, the Subdistrict and WGFP Enterprise will dedicate and set aside at no cost 1,450 acre feet of water for Middle Park.
 - (ii) If the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir at any time between the start of pumping of the Windy Gap Project and August 1st of any year does not equal or exceed 32% of the constructed capacity of Chimney Hollow Reservoir, the 1,450 acre feet of water will be reduced at the same proportion as the maximum amount of storage of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of the WGFP Participants in Granby Reservoir during the period between the start of pumping and August 1 is to 32% of the constructed capacity of Chimney Hollow Reservoir.
 - (iii) The Subdistrict and WGFP Enterprise shall provide Middle Park with the April 1st water supply forecast and any subsequent forecasts, which shall be used for planning

purposes to estimate the amount, if any, of the reduction in the 1,450 acre feet of water.

- (iv) In the event that Middle Park receives less than 1450 acre feet of water pursuant to paragraph III.E.3)(c)(ii), Middle Park may retain and use any unused Annual Water Supply from the prior Accounting Year to make up the difference between the amount which it receives pursuant to paragraph III.E.3)(c)(ii) and 1450 acre feet of water.
 - (d) The Middle Park Annual Water Supply is available to Middle Park during the Accounting Year. Unused water from the Middle Park Annual Water Supply from the prior Accounting Year will transfer on August 1st to Grand County pursuant to Paragraph III.F.2) unless some portion of the water from the prior year is required to make up for the reduction in the 1450 acre feet of Water pursuant to Paragraph III.E.3)(c)(iv). Grand County shall, subject to the limitations in Paragraph III.F.4), have the right to use Middle Park Annual Water Supply transferred from Middle Park to Grand County in accordance with this Paragraph III.E.3)(d).
 - (e) Middle Park's Annual Water Supply will not be reduced by any losses charged pursuant to the Amendatory Contract.
- 4) Middle Park Variable Water Supply.
- (a) Middle Park's Variable Water Supply is the water supply defined in this Paragraph III.E.4). Only Middle Park's Variable Water Supply is eligible to become part of or contribute to Middle Park's Carryover Balance and will be credited immediately upon pumping.
 - (b) The Subdistrict and WGFP Enterprise will provide a water supply forecast to Middle Park on April 1st.
 - (c) If the April 1st forecast does not anticipate a spill of Windy Gap Project Water, Middle Park may, on May 1st of that year, elect to receive 3.8% of the Windy Gap Project Water that will be diverted in the current water year in excess of 15,000 acre feet Net Credited Storage, up to a maximum of 1,500 acre feet Net Credited Storage as further limited by Middle Park's Carryover Balance Limitation. If the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Middle Park has received 1,500 acre feet of Variable Water Supply, and the Windy Gap Water Rights are still in priority, Middle Park may request that the Subdistrict continue diversions of Windy

Gap Project Water up to the 1,500 acre feet maximum, as limited by Middle Park's available Carryover Balance Limitation.

- (d) If the April 1st forecast anticipates a spill of Windy Gap Project Water or if a spill has actually occurred, Middle Park shall, by May 1st, elect whether it will:
- (i) Receive 3.8% of the Windy Gap Project Water diverted and stored in the current water year in excess of 15,000 acre feet Net Credited Storage, up to a maximum of 1,500 acre feet of Net Credited Storage, and as further limited by Middle Park's available Carryover Balance Limitation. If the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Middle Park has received 1,500 acre feet of Variable Water Supply, and the Windy Gap Water Rights are still in priority, Middle Park may request that the Subdistrict continue diversions of Windy Gap Project Water up to 1,500 acre feet maximum, as limited by Middle Park's Carryover Balance Limitation; or
 - (ii) Receive from the Subdistrict and WGFP Enterprise by substitution such additional amount of Windy Gap Project Water stored in Chimney Hollow Reservoir as is required to result in a total Carryover Balance of 700 acre feet of Middle Park Variable Water Supply, which 700 acre feet shall not be subject to spill; or
 - (iii) Middle Park may elect to not receive any Middle Park Variable Water Supply.
- (e) Middle Park shall pay to the Subdistrict the Pumping Costs for pumping the Middle Park Variable Water Supply which it elects to receive pursuant to Paragraph III.E.4).
- 5) The Subdistrict will release Middle Park Annual Water Supply and Middle Park Variable Water Supply at the request of Middle Park for all beneficial uses allowed by the 1980 Agreement and 1985 Agreement. Such uses shall include direct use or use by substitution, augmentation, or exchange, including but not limited to, exchange into Wolford Mountain Reservoir or replacement to Denver Water by entities that have Middle Park Contracts, and any other use authorized in a subsequent written agreement between Middle Park, the Subdistrict, and WGFP Enterprise.

F. Grand County Water Apportionment.

- 1) For the purposes of this WGFP IGA, the Grand County Water Apportionment consists of the Grand County Transfer Water, the Grand County Interim Transfer Water, and the Grand County Variable Water Supply described in this Paragraph III.F. The Grand County Water Apportionment shall be used as directed by Grand County and consistent with this WGFP IGA.
- 2) Grand County Interim Transfer Water and Grand County Transfer Water.
 - (a) Grand County Transfer Water is any of the Middle Park Water Apportionment received by Middle Park which is transferred to Grand County on August 1st of each year pursuant to Paragraph III.E.1)(c) and Paragraph III.E.3)(d).
 - (b) Commencing on the first day of August, but no less than 12 months after the execution of this WGFP IGA, the Subdistrict shall make available for Grand County's use 50% of any of the Middle Park Water Apportionment that is unused from the previous year (the "Grand County Interim Transfer Water"). Upon WGFP Completion, the Grand County Interim Transfer Water shall vest as 100% of the water provided by Paragraph III.E.1)(c) and Paragraph III.E.3)(d). In the alternative, the Subdistrict's provision of the Grand County Interim Transfer Water will cease upon notice pursuant to III.B.2) that the Municipal Subdistrict does not intend to proceed with the WGFP.
 - (c) Grand County Transfer Water must be either: (1) used between August 1st and October 15th of the then current water year, or (2) on October 15th become Grand County Carryover Balance, as limited by Grand County's available Carryover Balance Limitation.
 - (d) Grand County's Transfer Water shall not be subject to any losses charged pursuant to the Amendatory Contract until such water is transferred to Grand County's Carryover Balance, at which time it will be assessed the appropriate losses, if any, specified in the Amendatory Contract.
- 3) Grand County Variable Water Supply shall include the following elements:
 - (a) Concurrent Pumping.
 - (i) Grand County Concurrent Pumping shall become available at WGFP Completion.

- (ii) Grand County may, by May 1st of each year, elect to receive 3.8% of the Windy Gap Project Water diverted and stored in the current water year in excess of 15,000 acre feet Net Credited Storage, up to a maximum of 1,500 acre feet Net Credited Storage, and as further limited by Grand County's available Carryover Balance Limitation.

(b) Additional Pumping.

- (i) Grand County Additional Pumping shall become available at WGFP Completion.
- (ii) If Windy Gap Project Participants and WGFP Participants have a need for additional water but do not wish to pay for the costs of additional pumping prior to such time as Grand County has received 1,500 acre feet of water from Concurrent Pumping and the Windy Gap Water Rights are still in priority, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions up to a combined maximum of 1,500 acre feet of Concurrent and Additional Pumping, as further limited by the available Grand County Carryover Balance Limitation. The Subdistrict and WGFP Enterprise will make best efforts to provide five (5) days advance notice of the anticipated end of pumping for Windy Gap Project Participants and WGFP Participants.

(c) End of Year Pumping.

- (i) Prior to WGFP Completion, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions if the Windy Gap Project Participants have a need for additional water but do not wish to pay for the costs of additional pumping and the Windy Gap Project Water Rights are in priority, as limited by the Grand County Carryover Balance Limitation.
- (ii) After WGFP Completion, Grand County may request that the Subdistrict continue Windy Gap Project Water diversions if the Windy Gap Project Participants, WGFP Participants, and Middle Park have a need for additional water but do not wish to pay for the costs of additional pumping and the Windy Gap Project Water Rights are in priority, as limited by the Grand County Carryover Balance Limitation.

- (d) Grand County's Variable Water Supply shall be credited to Grand County's Carryover Balance immediately upon pumping.

- (e) Grand County shall pay pumping costs for the Grand County Variable Water Supply provided pursuant to Paragraph III.F.3).
- 4) The Subdistrict will release the Grand County Water Apportionment from Granby Reservoir at the request of Grand County or its designee for diversion for irrigation, domestic, municipal or industrial uses on the West Slope that do not require a change of the Windy Gap Water Rights. The Parties will use their best efforts to effectuate the purposes of the Grand County Water Apportionment in a manner that does not require a change of the Windy Gap Water Rights. The Parties acknowledge that Grand County intends to time such releases for beneficial use in a manner that results in optimizing the benefits to aquatic and recreation resources within the County and furthering the goals of the Learning by Doing Cooperative Effort (Exhibit 1). The Parties intend that the Grand County Water Apportionment not be diverted for irrigation, domestic, municipal or industrial uses upstream of the confluence of the Colorado River and Blue River by any person or any entity.
 - (a) The Parties intend for the reservoir releases of the Grand County Water Apportionment to increase the flow of water through the County above flows that would otherwise exist. To accomplish these objectives, the River District will make good faith efforts to arrange for the delivery of the Grand County Water Apportionment for diversion and beneficial use for irrigation, domestic, municipal or industrial uses on the Colorado River or its tributaries, below the confluence of the Blue and Colorado Rivers. Unless otherwise directed by Grand County, the River District's efforts will be focused on diversion and beneficial use downstream of the confluence of the Colorado and Roaring Fork Rivers but upstream of the Utah State Line.
 - (b) Grand County and the Subdistrict may request annual reports of the beneficial use made of the Grand County Water Apportionment. Any dispute regarding such use will be resolved in accordance with the Conflict Resolution provisions of this WGFP IGA (Paragraph VI.O.). Regardless of the outcome of any dispute regarding this paragraph, the Parties agree that the River District shall not bear any liability regarding the beneficial use of, or the failure to arrange for the beneficial use any of, the Grand County Water Apportionment.
 - (i) Following is a list of representative, but not exclusive, beneficial uses that the Parties agree satisfy the intent of this paragraph III.F.4):

Diversion for irrigation (including agriculture, lawn watering, parks, and stock-water), domestic, municipal, or industrial uses by: the Grand Valley Irrigation Company (irrigation, including uses incident of irrigation); Grand Valley Water Users Association (including irrigation, power generation, and uses incident to those uses); Orchard Mesa Irrigation District (irrigation, irrigation lift/pumping, power generation, and exchanges incident to such uses); Palisade Irrigation District (irrigation); Mesa County Irrigation District (irrigation); Ute Water Conservancy District (including municipal); Town of Clifton (municipal); Silt Water Conservancy District (irrigation and domestic); Town of Silt (municipal); Town of New Castle (municipal); City of Rifle (municipal); Battlement Mesa (municipal); diversions at the Bluestone or Town of Debeque intakes (municipal, irrigation, and industrial); substitutions in lieu of releases from Wolford Mountain Reservoir or Ruedi Reservoir for municipal, irrigation or industrial uses under the River District's water marketing program; substitutions in lieu of releases from, or exchanges into, Williams Fork Reservoir to increase the amount of, or flexibility of use, of water in Grand County's account in Williams Fork Reservoir; transit losses attributable to such uses as may be assessed by the State Engineer.

- 5) The Parties agree that, if Grand County determines then-current stream flow conditions in the County are sufficient to satisfy the purposes of the releases of water as described in Paragraph III.F.4), including downstream of the confluence of the Colorado and Blue Rivers, then the Grand County Water Apportionment may be exchanged or substituted for water that otherwise would be released from Wolford Mountain Reservoir, Green Mountain Reservoir or Williams Fork Reservoir in order to assist Front Range and West Slope water users in managing limited water supplies for use in the upper Colorado River basin.

G. Priority of Pumping. The right of Middle Park and Grand County to pump additional water pursuant to Paragraphs III.E.4)(c), III.E.4)(d)(i) and III.F.3)(b)(ii) shall be shared on an equal basis between Middle Park and Grand County.

H. Middle Park and Grand County Water Apportionments, Carryover Balances, and Carryover Balance Limitations.

- 1) Subject to the provisions of this Paragraph III.H., Middle Park and Grand County may each have a Carryover Balance derived from Water Apportionments made available pursuant to Paragraphs III.E.4), III.F.2) and III.F.3). The maximum Carryover Balance available to Middle Park

and Grand County shall not exceed their respective Carryover Balance Limitation.

- 2) Middle Park shall have the right to a Carryover Balance Limitation of 3,000 acre feet for its Variable Water Supply for use in the then current or subsequent water years.
- 3) Grand County Carryover Balance Limitations.
 - (a) Upon execution of this WGFP IGA and until WGFP Completion, Grand County shall have the right to accrue a maximum of 7,500 acre feet of Carryover Balance for use in the then current or subsequent water years.
 - (b) Upon WGFP Completion Grand County's Carryover Balance Limitation shall be reduced to 6,000 acre feet until at such time as the Windy Gap Project Water stored in Chimney Hollow Reservoir has reached, at any point in time, 85% of the constructed active storage capacity of Chimney Hollow Reservoir .
 - (c) At such time as the Windy Gap Project Water stored in Chimney Hollow Reservoir has reached, at any point in time, 85% of the constructed active storage capacity of Chimney Hollow Reservoir, Grand County's Carryover Balance Limitation shall be reduced to 4,500 acre feet
 - (d) The permanent Grand County Carryover Balance Limitation shall be 4,500 acre feet. If Chimney Hollow Reservoir construction begins but is not completed as a result of actions by the West Slope Parties, any water stored in this account will revert to the Subdistrict.
- 4) Except during the first fill of Chimney Hollow, during which Paragraphs III.H.3) controls, Middle Park and Grand County can share a combined Carryover Balance Limitation of 7,500 acre feet. Middle Park and Grand County shall notify the Subdistrict before or during pumping of their intent to share the Carryover Balances and the respective amounts of water to be stored for each.
- 5) Any Carryover Balance of Middle Park or Grand County shall be reduced by any losses, if any, charged pursuant to the Amendatory Contract. Middle Park and Grand County shall be provided with documentation of such charges before any such reductions.
- 6) Any Variable Water Apportionment and any Carryover Balance made available to Middle Park or Grand County pursuant to this WGFP IGA shall be subject to a pro rata share of monetary charges, payable by Middle

Park or Grand County as applicable, for storage of Windy Gap Project Water in Granby Reservoir, if any, assessed pursuant to the Amendatory Contract. The Parties will advocate to Reclamation that no monetary charges be assessed for storage of Windy Gap Project Water in Granby Reservoir.

- 7) The Parties will advocate that Reclamation adopt specific and different shrink charges for introduction and storage of Windy Gap Project Water on the West Slope and conveyance and delivery of Windy Gap Project Water to the east slope.
- 8) All Carryover Balances referred to in this paragraph III.H. shall be Net Credited Storage.

I. Spill Criteria:

- 1) 1st to spill - Grand County Carryover Balance over 1,500 acre feet.
- 2) 2nd to spill - Any remaining Grand County Carryover Balance, any Middle Park Carryover Balance, and any Windy Gap Project Water stored on behalf of the WGFP Participants proportionally, based on Carryover Balances and Windy Gap Project Water in storage on behalf of the WGFP Participants as of the date(s) of spill.
- 3) 3rd to spill – Windy Gap Project Water stored on behalf of Windy Gap Project Participants that are not WGFP Participants.

J. No Paper Spills. In the event that Middle Park or Grand County have a Carryover Balance and the total amount of Colorado-Big Thompson Project water in active storage in Granby Reservoir and Chimney Hollow Reservoir, combined, reaches 465,568 acre feet, Middle Park's and Grand County's Water Apportionments will only spill in the event of a physical spill from Granby Reservoir. Any physical spill of Windy Gap Project Water will be allocated between WGFP Participants, Middle Park, and Grand County in accordance with Paragraph III.I.

K. Minimum Pumping. If Windy Gap Project Water is not already being pumped, the Subdistrict shall not be required to pump Variable Water Supply for any party unless the Subdistrict's water supply forecasts predict that there will be a minimum of 1,000 acre feet of water available for diversion and storage under the Windy Gap Water Rights at the time of the proposed pumping during the current pumping season.

L. Pumping Costs. Pumping Costs shall be payable 30 days after the submission of an invoice by the Subdistrict at the end of the then current pumping season to the appropriate entity. The invoice shall include the actual bills from the

power provider. In the event of a delinquency or failure to pay Pumping Costs by Middle Park or Grand County, the Subdistrict shall suspend release of any Variable Water Supply held by the Subdistrict for that entity and all future pumping for the delinquent Party pursuant to this WGFP IGA until any delinquent payments have been made in full.

IV) Additional Provisions

- A. **Wolford Protection.** The Subdistrict, and the WGFP Enterprise agree that the Windy Gap Project and the WGFP will be operated in a manner that does not diminish the ability of the Colorado River Water Conservation District to capture the natural flow of Muddy Creek up to a maximum of 65,998 acre feet pursuant to the water rights, applicable permits, and operating criteria for Wolford Mountain Reservoir.
- B. **Future Uses.** The Subdistrict and WGFP Enterprise agree to not place a call under the Windy Gap Decrees on any present or future water rights on the Colorado and Fraser Rivers and their tributaries above Windy Gap Reservoir; Provided, however, the Windy Gap Project and WGFP may divert any water which can be diverted in priority at the decreed point of diversion without placing a call as described above except for water provided as described in paragraph IV. M. of this WGFP IGA.
- C. **Open Space.** Upon execution of this WGFP IGA, the Subdistrict agrees to impose a deed restriction on the sale of any parcel that requires subsequent development of the parcel to be approved subject to the existing Grand County Rural Land Use Process in conformance with C.R.S. § 30-28-403, as it exists now or may be amended in the future; provided, however, that nothing in this WGFP IGA or in the deed restriction shall affect or preclude the sale or development of such parcel(s) pursuant to provisions of existing or future law that allow the sale or development of lands in a manner that is not within the definition of a “subdivision” or “subdivided land”.
- D. **Public Access.** Upon execution of this WGFP IGA, the Subdistrict will make arrangements with Northern Water to provide public access to that portion of Willow Creek located on Northern Water’s lands for as long as Northern Water owns the lands adjacent to Willow Creek, if and to the extent that the public access will be managed by the Colorado Division of Parks and Wildlife or other entity acceptable to Northern Water.
- E. **Jasper Reservoir Conditional Water right.** The Subdistrict will abandon the conditional water right for Jasper Reservoir upon WGFP Completion.
- F. **Recording and Telemetry Devices.** Recording and telemetry devices for flow measuring devices approved by the Colorado State Engineer will be acquired, installed, operated, maintained and replaced by and at the expense of the

WGFP Enterprise if it is able to obtain permanent access agreements allowing the WGFP Enterprise to install, operate, maintain, and replace such devices.

- G. Water Accounting. The Subdistrict agrees to submit detailed daily water accounting to the State of Colorado Division Engineer as required by the Division Engineer and provide copies to the West Slope Parties.
- H. Future Water Development.
- 1) Compact Curtailment Plan. The Signatories agree to cooperate in good faith toward the development of a plan to avoid and address a potential curtailment of existing Colorado water rights under the provisions of the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact. The Signatories agree to meet and confer before the Municipal Subdistrict or WGFP Enterprise take any action pursuant to Paragraph IV.H.3. of this WGFP IGA.
 - 2) The Subdistrict and WGFP Enterprise agree that, without the prior express written consent of Grand County and the Colorado River Water Conservation District, they will not (a) acquire any existing water rights in Grand County; (b) construct additional water supply facilities in Grand County, (c) appropriate new water rights in Grand County; or (d) appropriate any new water rights in Water Division No. 5 that will result in depletions of water from Grand County.
 - 3) Compact Curtailment Actions.
 - (a) To the extent, and during such time that the operation of the Windy Gap Project or WGFP, or the exercise of the Windy Gap Project Water Rights, is or may in the future be curtailed, limited, or otherwise restricted as the result of, or for the purpose of, compliance with the 1922 Colorado River Compact or 1948 Upper Colorado River Compact ("Compact Curtailment"), the Municipal Subdistrict or WGFP Enterprise may take any actions or use any existing or future facilities as may be required to provide a water supply to the Municipal Subdistrict or WGFP Enterprise, as limited by and subject to the WG Volumetric Limits ("Compact Curtailment Actions") and the express obligations of the Subdistrict and WGFP Enterprise under this WGFP IGA. The Municipal Subdistrict or WGFP Enterprise may undertake such Compact Curtailment Actions as may be necessary to prudently plan and prepare in advance of any potential Compact Curtailment; Provided however, that any such advance Compact Curtailment Actions will be implemented only during such time that the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of a Compact

Curtailment. The West Slope Parties may oppose any Compact Curtailment Actions in any forum.

- (b) Nothing in this WGFP IGA, including without limitation Paragraphs IV.H.1) and IV.H.2) above, shall affect, limit, or otherwise restrict the right of the Municipal Subdistrict or WGFP Enterprise to take any actions or to use any existing or future facilities as required to provide a water supply to the Municipal Subdistrict or WGFP Enterprise, as limited by and subject to the WG Volumetric Limits, in the event, to the extent, and during such time that the operation of the Windy Gap Project or WGFP, or the exercise of the Windy Gap Project Water Rights, is or may in the future be curtailed, limited, or otherwise restricted as the result of or for the purpose of compliance with the 1922 Colorado River Compact or 1948 Upper Colorado River Compact. Nothing in this WGFP IGA shall limit or restrict the right of West Slope Parties to oppose any such actions or use of any such existing or future facilities.
- (c) Nothing in this Paragraph IV.H.3 shall be construed to 1) allow the Subdistrict or WGFP Enterprise to increase the yield of the WG Project or WGFP at times other than when the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of the enforcement of the 1922 Colorado River Compact or 1948 Upper Colorado River Compact, or 2) use any banked or stored water in a manner that causes an increase in the yield of the Windy Gap Project or WGFP at times other than when the quantity of water that would otherwise be diverted under the Windy Gap Water Rights is reduced as the result of the enforcement of the 1922 Colorado River Compact or 1948 Upper Colorado River Compact.
- (d) Nothing in this Paragraph IV.H.3) shall affect the obligations of the Subdistrict and WGFP Enterprise under Paragraph III. of this WGFP IGA.
- 4) Nothing in this WGFP IGA shall affect, limit, or otherwise restrict the right of the Municipal Subdistrict to fully utilize the Windy Gap Water Rights and associated existing facilities in Grand County or any existing or future facilities on the East Slope, or existing or future water rights in Water Division No. 1 in a manner that will not exceed the WG Volumetric Limits. The West Slope Parties reserve the right to oppose any actions taken by the Subdistrict intended to achieve the WG Volumetric Limits using existing or future facilities or water rights that are not expressly authorized by the 1980 Agreement, the 1985 Supplemental Agreement, and this WGFP IGA.

- 5) Any consent of Grand County under Paragraph IV.H.2) shall not be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action to be taken thereunder by Grand County.
 - 6) Nothing in this WGFP IGA shall affect, limit, or otherwise restrict the maintenance, repair, replacement or rehabilitation of the existing Windy Gap Project facilities, replacement facilities, or rehabilitated facilities located in Grand County.
- I. CWCB Instream Flow. The Subdistrict and WGFP Enterprise will support the entry of a decree in accordance with applicable law for a CWCB instream flow on the Colorado River mainstem from the confluence of the Blue and Colorado Rivers to a point immediately upstream of the confluence of the Eagle and Colorado Rivers if a) the CWCB instream flow is not used as a basis for imposing restrictions or limitations on the WGFP, b) the West Slope Parties agree that they will never assert in any forum that the CWCB Instream flow be used as a basis for restrictions or limitations on the WGP or WGFP, and c) the right is subject to substantively the same terms and conditions as are set forth in the Findings of the CWCB in declaring its intent to appropriate dated _____, 2011.
- J. Grand County RICD. Subdistrict and WGFP Enterprise will not oppose the entry of a decree in Case No. 10CW298 consistent with the draft decree dated September 20, 2012 and stipulation attached as Exhibit 2 to this WGFP IGA.
- K. Shoshone Outage Protocol.
- 1) For purposes of this WGFP IGA, the Shoshone Outage Protocol means that the Windy Gap Project and WGFP will operate as described in this paragraph IV.K.1), IV.K.2), and IV.K.3) during periods when the Shoshone Power Plant is shutdown or otherwise not able to divert the full amount of its 1,250 cfs senior water right due to repair, maintenance, or other reasons (“Shoshone Outage”). When the Windy Gap Project’s participation in the Shoshone Outage Protocol is in effect pursuant to this WGFP IGA, the Windy Gap Project and WGFP will bypass the amount of water that the Windy Gap Project and WGFP would have been required to bypass if the Senior Shoshone Call had been in effect in order to result in a flow of not more than 1,250 cfs at the Dotsero gage on the Colorado River (not including any water released for endangered fish species purposes). For purposes of this WGFP IGA, a Shoshone Outage does not include a shutdown of the Shoshone Power Plant for regularly scheduled maintenance for a cumulative period of 17-days during the period of November 1 through March 15.

- 2) The Windy Gap Project and WGFP will operate in accordance with the Shoshone Outage Protocol from July 16-April 14 of each year. Prior to WGFP Completion, the Windy Gap Project and WGFP may operate in accordance with the Shoshone Outage Protocol during the period of April 15-July 15 on a voluntary cooperative basis. Following WGFP Completion, the Windy Gap Project and WGFP will operate in accordance with the Shoshone Outage Protocol during the period April 15 – July 15 at any time during this period when the combined amount of Windy Gap Project Water stored in Chimney Hollow Reservoir and Windy Gap Project Water stored on behalf of WGFP Participants in Granby Reservoir is greater than 50% of the Active Capacity of Chimney Hollow Reservoir.
 - 3) Participation in the Shoshone Outage Protocol by the Windy Gap Project and WGFP during the period of April 15-July 15 will be limited to a total maximum volume of foregone pumping equal to 10,000 acre feet (30 days with one pump running) in one year, a total of 20,000 acre feet (60 days with one pump running) in any 3 consecutive year period, and a total of 30,000 acre feet (90 days with one pump running) in any 5 consecutive year period.
 - 4) The Subdistrict agrees that it will participate in good faith in negotiations to achieve permanent management of the flow of the Colorado River to address certain flow changes that result during a Shoshone Outage.
- L. Cooperative Effort for Aquatic Environment. The Subdistrict and the WGFP Enterprise, Grand County, Middle Park, and the River District agree to participate in the Learning by Doing Cooperative Agreement (“Cooperative Agreement”) as defined in the Intergovernmental Agreement for The Learning by, Doing Cooperative Effort which is attached as Exhibit 1 but which is not a part of or incorporated within this WGFP IGA. Any amendments to the Cooperative Agreement shall not require amendment or modification of this WGFP IGA.
- M. Colorado River Cooperative Agreement. The Subdistrict and the WGFP Enterprise agree not to oppose or otherwise interfere with the efforts to obtain such court decrees and approvals as are necessary for the Colorado River Cooperative Agreement to the extent that the court decrees and approvals do not adversely affect the WGFP or Windy Gap Project. The Subdistrict further agrees that it will not divert water that would not have been available but for the actions of the Management Committee or Grand County pursuant to the Learning by Doing process.
- N. Wild and Scenic. Within one year of issuance of an acceptable permit for the WGFP, the Subdistrict shall pay \$50,000 and the River District shall pay \$25,000 to the Endowment Fund of the Upper Colorado River Wild and Scenic Stakeholder Group for use to protect Wild and Scenic resources

identified in the Colorado River from Kremmling downstream to No Name. The Subdistrict's contribution provided herein shall satisfy the obligation of the Subdistrict and WGFP Enterprise to contribute endowment funds for Wild and Scenic purposes under this WGFP IGA. The Subdistrict agrees that the River District's contribution provided herein shall satisfy the obligation of the River District to contribute endowment funds for Wild and Scenic purposes under the WGFP IGA. The Subdistrict will contribute 20% of the amount contributed by the River District, not to exceed \$5,000 annually adjusted annually by the Denver-Boulder-Greely CPI-U, for annual operating costs of the Upper Colorado River Wild and Scenic Stakeholder Group.

- O. Windy Gap Water Right Diversion at Granby Reservoir. Absent the express written consent of Grand County and the River District, the Subdistrict and WGFP Enterprise agree that neither will divert water at Granby Reservoir under the priority of the Windy Gap Decrees or during free-river conditions.
- P. Bypass of Windy Gap Reservoir. The Subdistrict will enter into an agreement with Colorado Division of Parks and Wildlife to provide up to \$250,000 to study methods for bypass of flows, sediment, and/or fish around or through Windy Gap Reservoir and identify potential modifications that would provide tangible benefits to aquatic resources below Windy Gap Reservoir. The implementation of recommendations resulting from the study will not constitute a violation of or require amendment of this WGFP IGA or the 1980 and 1985 Agreements.

V) West Slope Parties' Commitments

- A. No Opposition to WGFP. The West Slope Parties will not oppose final state and federal approvals of the WGFP, subject to performance of this WGFP IGA by the Subdistrict and WGFP Enterprise and the performance of such mitigation, requirements, and conditions as are required in those approvals, including but not limited to the Records of Decision by Reclamation and USACE, the Amendatory Contract, 401 Certification, or the 404 Permit. Nothing herein shall affect any 1041 authority of Grand County.
- B. Reopen Approvals or Authorizations. The West Slope Parties will not request that any governmental approval or authorization of the Windy Gap Project or the WGFP be subject to provisions that have the effect of reopening the governmental approval or authorization. For a period of five years from the date of the first diversions into the constructed Chimney Hollow Reservoir, no party will unilaterally request, or cause others to request, that the United States Army Corps of Engineers or other regulatory agency with jurisdiction and authority over the WGFP, reopen a permit or license for the Windy Gap Project or WGFP for any reason except as may be necessary to preserve any right to undertake such action prior to expiration of any applicable legal deadline or statute of limitation. Each party reserves the right to oppose any

such efforts to reopen the permits or licenses for the Windy Gap Project or WGFP. This Paragraph V.B. is not intended to prevent the West Slope Parties from commencing any legal action to enforce this WGFP IGA or to request enforcement of specific terms of federal permits.

- C. Windy Gap Reservoir Conditional Storage Right. The West Slope Parties will not oppose future applications to make the remaining conditional portion (1,101.14 acre feet) of the existing Windy Gap Reservoir storage right absolute.
- D. Modification of Windy Gap Decree. The West Slope Parties will consent to the entry of a decree modifying the existing Windy Gap Decrees to incorporate this WGFP IGA and will not assert that a change of the Windy Gap Water Rights is required for the operations of the Windy Gap Project or WGFP in a manner consistent with this WGFP IGA.

VI) Further Agreements of the Parties

- A. Reform of Invalid Provisions. Wherever possible each provision of this Agreement shall be interpreted and implemented to be effective and valid under applicable law. If any provision or portion of this WGFP IGA is determined to be invalid or unenforceable by a final, non-appealable order or decision of any judicial or administrative body with jurisdiction, the Parties agree to reform this WGFP IGA to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the invalid or unenforceable provision. The provisions of this WGFP IGA shall be reasonably and liberally construed to achieve the intent of the Parties.
- B. No Party will oppose final state, local and federal approvals of the WGFP, subject to performance of this WGFP IGA by the Subdistrict and WGFP Enterprise and the performance of such mitigation, requirements, and conditions as are required in those approvals, including but not limited to the Records of Decision by Reclamation and USACE, the WGFP Amendatory Contract, 401 Certification, or the 404 Permit. Nothing herein shall affect any 1041 authority of Grand County.
- C. The Subdistrict agrees that conditions of the federal authorization for the WGFP will include provisions that substantially conform to the following:
 - 1) the total volume of Colorado-Big Thompson Project water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre feet. For the purposes of this Paragraph of the WGFP IGA, the amount of Colorado-Big Thompson Project water in storage in Granby Reservoir shall be the amount of Colorado-Big Thompson Project water

stored above the invert of the Farr Pumping Plant Intake and below the normal high water line; and

- 2) in any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, Colorado-Big Thompson Project water then in storage in Chimney Hollow Reservoir shall not be released to satisfy delivery requirements to Colorado-Big Thompson Project Allottees if such release would allow the capture and storage of additional Colorado-Big Thompson Project water in Granby Reservoir.
- D. Nothing in this WGFP IGA shall be construed to limit the discretion of the Northern Colorado Water Conservancy District or Reclamation regarding the operation of the Colorado-Big Thompson Project, including, without limitation the pre-emptive release of Windy Gap Project water from Granby Reservoir that may increase the risk of or result in a spill of water provided to Middle Park or Grand County (any such spill in accordance with Paragraph III.I of this WGFP IGA).
 - E. Except as necessary to comply with the express terms of this WGFP IGA, nothing in this WGFP IGA shall be construed to limit the discretion of the Subdistrict or WGFP Enterprise regarding the operation of the Windy Gap Project or Windy Gap Firming Project, including, without limitation, the pre-emptive release of Windy Gap Project Water from Granby Reservoir that may increase the risk of or result in a spill of water provided to Middle Park or Grand County in accordance with Paragraph III.I of this WGFP IGA (any such spill in accordance with Paragraph III.I of this WGFP IGA).
 - F. The Parties agree that performance of this WGFP IGA, compliance with any mitigation requirements for the WGFP imposed by a federal or state agency, and compliance with the requirements of a Grand County 2012 Windy Gap Firming Project (“1041”) Permit for the WGFP shall constitute full and complete satisfaction of the obligations of the Subdistrict and WGFP Enterprise to set forth and complete a plan with respect to the WGFP which satisfies the requirements of C.R.S. § 37-45-118(1)(b)(II) of the Water Conservancy Act.
 - G. This WGFP IGA does not limit, change or expand the role of or protections afforded to all Parties with interests in the Colorado-Big Thompson Project as described in the Manner of Operation provisions of Senate Document No. 80, the 1961 Principles to Govern the Release of Water at Granby Dam To Provide Fishery Flows Immediately Downstream In The Colorado River (“1961 Principles”), and the Blue River Decrees. Water released from Granby Reservoir pursuant to this WGFP IGA shall be in addition to the then current bypass of water under the 1961 Principles.

- H. The obligations of the Parties to this WGFP IGA shall exist upon execution of this WGFP IGA unless otherwise specified in this WGFP IGA.
- I. Except to the extent and unless it is terminated, this WGFP IGA shall be incorporated within and be a non-severable part of the Windy Gap Decrees. The Subdistrict will not divert water into Chimney Hollow Reservoir unless this WGFP IGA is incorporated within the Windy Gap Water Rights.
- J. The West Slope Parties agree to not assert that the WGFP and Moffat Collection System Project are interdependent or interrelated.
- K. This WGFP IGA is an agreement between the Parties and does not bind or limit the authority or jurisdiction of agencies of the United States of America.
- L. Performance of the portions of this WGFP IGA that require the expenditure of funds are subject to future budgeting and appropriation of funds by the governing bodies of the Subdistrict, WGFP Enterprise, Middle Park, Grand County, and the River District. The Parties agree to make good faith efforts to appropriate such funds.
- M. The Parties agree that this WGFP IGA is an intergovernmental agreement pursuant to Article XIV, Sec. 18 of the Colorado Constitution and C.R.S. §§ 29-1-201 et. seq. inclusive, among all governmental entities hereto. In addition to any other remedy provided by law, the Parties further agree that the terms and conditions of this WGFP IGA are enforceable by specific performance and agree not to bring any defense to specific performance based on the doctrine of governmental immunity. The Parties also agree that a breach of this WGFP IGA will cause irreparable harm sufficient for injunctive relief.
- N. The Parties agree to work cooperatively to implement a stipulated resolution of the Green Mountain Reservoir Administrative Fill dispute.
- O. The Parties agree that if a dispute arises on any matter covered by this WGFP IGA, the Parties will confer in good faith and endeavor to resolve the concern. If the Parties reach an impasse, they will select a neutral third party mediator who would seek an acceptable voluntary solution to the conflict. For conflicts that involve a technical or scientific matter, the neutral third party mediator may select an independent technical or scientific expert, acceptable to the Parties involved in the mediation, to review and make a recommendation on the matter. If the conflict cannot be resolved through the efforts of the mediator, then the affected Parties may pursue any available legal or administrative recourse. Nothing herein shall preclude the commencement of any action that would otherwise be barred by a statute of limitations or the timely participation in any judicial or administrative process.

- P. This WGFP IGA is the result of negotiations between the Parties and their respective counsel. These negotiations produced numerous drafts that were prepared by one or more of the Parties. The Parties agree that these drafts, including omissions, do not provide or represent evidence of intent of any Party and may not be relied upon for purposes of construction and enforcement of this WGFP IGA or for any other purpose.
- Q. Suspension and Termination of 1041 Permits. The Subdistrict and WGFP Enterprise shall not be obligated to perform or comply with Paragraphs III. E. through L. or IV.K. (SHOP) of this WGFP IGA during any period of suspension of the WGFP 1041 Permit issued by Grand County. This WGFP IGA shall be terminated and of no further force or effect if the WGFP 1041 Permit issued by Grand County is terminated or revoked. During such time of suspension, or in the event of termination or revocation of the WGFP Permit (1041), the 1980 Agreement, as amended and supplemented by the 1985 Agreement, and the 1985 Agreement, shall be in full force and effect according to their terms.
- 1) Suspension of 1041 Permit. The Subdistrict and WGFP Enterprise shall not be obligated to perform or comply with Paragraphs III.E through L, or IV.K. (SHOP) of this WGFP IGA during any period of suspension of the WGFP 1041 Permit issued by Grand County.
 - (a) During such time of suspension, the 1980 Agreement, as amended and supplemented by the 1985 Agreement, and the 1985 Agreement, shall be in full force and effect according to their terms.
 - (b) Any water stored on behalf of Grand County or Middle Park pursuant to Paragraph III.H. at the time the WGFP Permit (1041) suspension is imposed shall not be available for use by Grand County or Middle Park during the time of the suspension, but will be available for use pursuant to Paragraph III.H. at such time as the suspension is not in effect. Any such water shall be subject to all reductions, charges, restrictions and requirements applicable to the storage of water under this WGFP IGA, the Amendatory Contract, and any other contracts or laws applicable to the storage of water on behalf of Middle Park and Grand County. Any such payments shall be made by Grand County or Middle Park, as appropriate, at such time as the suspension is not in effect and prior to the use of such water.
 - 2) Termination or Revocation. In the event the WGFP Permit (1041) is revoked or terminated, any water stored on behalf of Grand County or Middle Park pursuant to Paragraph III.H. shall revert to the ownership and control of the Subdistrict. The Subdistrict will reimburse Grand County and Middle Park respectively for 91% of any pumping costs incurred by

the respective entity associated with the water stored on behalf of Grand County or Middle Park pursuant to Paragraph III.H.

VII) No Waiver

A. The Parties do not agree:

- 1) Whether amendment of the Blue River Decree or Senate Document No. 80 is required to authorize the storage of Colorado-Big Thompson Project water in Chimney Hollow Reservoir;
- 2) Whether a change of water right is required to allow the storage of Windy Gap Project Water in Chimney Hollow Reservoir; or
- 3) Whether the Section 390b(d) of the Water Supply Act of 1958 requires Congressional approval for the Windy Gap Firming Project.
- 4) Notwithstanding these disagreements, the West Slope Parties will not object to, litigate or otherwise dispute in any forum the storage of Colorado-Big Thompson Project water in Chimney Hollow Reservoir or the storage of Windy Gap Project Water in Chimney Hollow Reservoir in accordance with, and subject to the following provisions:
 - (a) The total volume of Colorado-Big Thompson Project water stored in the combination of Granby and Chimney Hollow Reservoirs will not exceed 465,568 acre feet. For the purposes of this Paragraph of the WGFP IGA, the amount of Colorado-Big Thompson Project water in storage in Granby Reservoir shall be the amount of Colorado-Big Thompson Project water stored above the invert of the Farr Pumping Plant Intake and below the normal high water line.
 - (b) In any year in which the April 1st or subsequent projection by Northern Water anticipates a spill at Granby Reservoir, Colorado-Big Thompson Project water then in storage in Chimney Hollow Reservoir shall not be released to satisfy delivery requirements to Colorado-Big Thompson Project beneficiaries if such release would allow the capture and storage of additional Colorado-Big Thompson Project water in Granby Reservoir.
 - (c) The implementation of this WGFP IGA.
 - (d) The Parties do not waive any rights regarding any other changes to the historical operations of the Colorado-Big Thompson Project or Windy Gap Project.

- B. No Waiver – Colorado-Big Thompson. The Parties agree that the dispute concerning storage of Colorado-Big Thompson Project water in Chimney Hollow Reservoir has not been litigated. The Parties agree that, except as provided for in this WGFP IGA, in entering into the agreement and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A., above, that this WGFP IGA shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the Parties’ respective positions regarding the storage of Colorado-Big Thompson Project water and the Parties’ respective interpretations of Senate Document No. 80, the 1961 Principles, the 1938 Repayment Contract, Reclamation Law, the Blue River Decrees, or Colorado law. The Parties further agree that they do not intend this WGFP IGA to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party or entity on any other matter.
- C. No Waiver – WGFP. The Parties agree that the dispute concerning storage of Windy Gap Project Water in Chimney Hollow Reservoir has not been litigated. The Parties agree that, except as provided for in this WGFP IGA, in entering into this WGFP IGA and not litigating or otherwise objecting in any forum to the legal issues specified in Paragraph VII.A., above, that this WGFP IGA shall never give rise to any claim, defense, or theory of acquiescence, bar, merger, issue or claim preclusion, promissory estoppel, equitable estoppel, waiver, laches, unclean hands or any other similar position or defense concerning any factual or legal position regarding the Parties’ respective positions regarding the storage of Windy Gap Project Water in Chimney Hollow Reservoir and the Parties’ respective interpretations of federal or Colorado law. The Parties further agree that they do not intend this WGFP IGA to have the effect of precedent or preclusion on any factual or legal issue in any other matter. The Parties expressly reserve their rights to assert any legal or factual position or challenge the legal or factual position taken by any other party on any other matter.
- D. The Parties do not agree whether Grand County has the authority to regulate the WGFP pursuant to C.R.S. §§ 24-65.1-101, *et seq.*
- 1) Notwithstanding these disagreements, the Subdistrict will not object to, litigate, or otherwise dispute in any forum the authority of Grand County to require a permit for the WGFP issued by Grand County pursuant to C.R.S. §§ 24-65.1-101, *et seq.* (1041 Permit), including any terms and conditions thereof once said Permit has been accepted by the Subdistrict.

- 2) With the exception of a challenge to Grand County's authority to require a permit for the WGFP, the Subdistrict does not waive or relinquish its rights to raise any defense or assert in any forum that it has fully complied with and is not in violation of the WGFP 1041 Permit.
 - 3) The Subdistrict does not waive or relinquish its rights to object to, litigate, or otherwise dispute in any forum the authority of Grand County to modify, amend or terminate the WGFP 1041 Permit or to require a 1041 Permit or other Grand County permit or authorization for any other existing or future project, action, or other activity of the Subdistrict.
- E. Preservation of Governmental Powers. Except as specifically provided herein, nothing in this WGFP IGA shall be construed as a limitation on or waiver of any review, approval, or permit authority, or a predetermination of any action taken thereunder, by any governmental or quasi-municipal entity including, without limitation, the regulatory or quasi-judicial power or authority of Grand County.
- F. No Third-Party Beneficiaries. This WGFP IGA does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties.

ATTEST:



Secretary

Date: 1/3/13

MUNICIPAL SUBDISTRICT, NORTHERN
COLORADO WATER CONSERVANCY
DISTRICT

By: 

President

ATTEST:



Secretary

Date: 1/3/13

WINDY GAP FIRING PROJECT WATER
ACTIVITY ENTERPRISE

By: 

President

COLORADO RIVER WATER
CONSERVATION DISTRICT

ATTEST:

Secretary
Date: _____

By: _____
President

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GRAND, COLORADO

ATTEST:

Ana R. Rosene
Clerk and Recorder
Date: 12/4/2012

By: *Nancy Stuart*
Chairman

NORTHWEST COLORADO COUNCIL
OF GOVERNMENTS

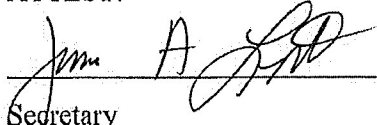
ATTEST:

Sherry Rogstad
Secretary
Date: 1/24/2013

By: *K. Swig*
Chairman

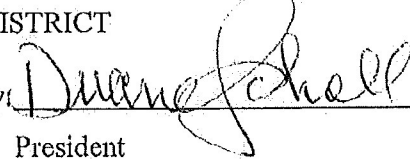
WCFP IGA Nov. 30, 2012

ATTEST:



Secretary
Date: 2/1/13

MIDDLE PARK WATER CONSERVANCY
DISTRICT

By: 

President

Exhibit 3

List of Related Agreements

1. Intergovernmental Agreement between the Northern Colorado Water Conservancy District, Grand County, Middle Park Water Conservancy District and Colorado River Water Conservation District
2. Memorandum of Understanding, Grand Lake Clarity Project (Umbrella Agreement)
3. Clarity Supplement to the 1938 Repayment Contract
4. Windy Gap Bypass Funding Agreement
5. Processed Material Supply Agreement (Gravel Pit Agreement)
6. Windy Gap Decree
7. Grand County RICD Stipulation
8. Learning by Doing Cooperative Effort
9. Green Mountain Reservoir Administration
10. Contracts for Delivery of Water to Grand Valley
11. Amendatory Contract
12. Letter from Subdistrict to River District re: no opposition to use of WG water for uses incidental to irrigation such as fish screen, fish ladder, etc
13. Letter from NW to GC stating how the 5,412.5 will be made permanent