

MEMORANDUM OF AGREEMENT

This Agreement is made among the City of Colorado Springs acting through its Utilities Enterprise ("CSU"), the County of Summit, acting by its Board of County Commissioners ("Summit County"), Vail Summit Resorts, Inc. ("Vail"), and the Town of Breckenridge ("Breckenridge"). This Agreement is effective as of October 15, 2003 (the "date of this Agreement.")

Recitals

A. CSU, Summit County, Vail, and Breckenridge are parties to a Memorandum of Agreement Regarding Colorado Springs Operations dated as of May 15, 2003 (the "Substitution Agreement.") All defined terms in the Substitution Agreement are incorporated herein.

B. Paragraph 11.b. of the Substitution Agreement provides that:

“CSU, Summit County, Vail and Breckenridge shall cooperate in good faith to arrive at mutually agreeable terms and conditions to be included in the CSU Substitution Decrees that in a Substitution Year will allow the full amounts of diversion and storage of water and Substitutions by CSU described in this Agreement without decreasing the amounts of water that can be exchanged or replaced above Green Mountain Reservoir pursuant to the Summit County Agreement and the Clinton Agreement, as such agreements are now in effect, in a Substitution Year.”

C. CSU, Summit County, Vail and Breckenridge have determined that the opportunity to exchange or replace the amounts of water above Green Mountain Reservoir contemplated by the Summit County Agreement and the Clinton Agreement has not been diminished by the Substitutions that CSU has operated in past Substitution

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Years. However, Summit County, Vail and Breckenridge (collectively called the "Summit County Entities") have concerns that the amounts of water that could be exchanged or replaced above Green Mountain Reservoir in a future Substitution Year may be reduced due to Substitutions by CSU during a period in which a call of a downstream senior water right situated on the main stem of the Colorado River has been relaxed as provided in this Agreement.

D. The parties have previously agreed upon extensions of the deadlines provided in subparagraph 11.b. of the Substitution Agreement to and including the date of this Agreement.

E. The parties have reached agreement on terms and conditions (i) to resolve the concerns set forth in Recital C above and to meet the intent of paragraph 11.b. of the Substitution Agreement and (ii) terms and conditions to protect exchanges or replacements operated by the Summit County Entities above Green Mountain Reservoir pursuant to the Summit County Agreement and the Clinton Agreement, as such agreements are now in effect (the "Summit County Exchanges") in the event CSU operates exchanges to its Continental-Hoosier System without a decreed priority or in the event CSU seeks a decreed priority for exchanges to its Continental Hoosier System senior to the Summit County Exchanges. Exchanges operated by CSU under these provisions are separate and distinct from the diversions by CSU of its 1948 Blue River rights under the terms and conditions of the Substitution Agreement and/or the CSU Substitution Decrees.

F. The parties wish to memorialize their agreements in this document.

Agreement

WHEREFORE, in consideration of the mutual promises and covenants provided for herein, the parties agree as follows:

1. The parties agree that the following language shall be included in the CSU Substitution Decrees:

"In any year when CSU receives notice from the USBR that Green Mountain Reservoir is not expected to fill, and is thereby required to divert its 1948 Blue River Decree rights under the terms and conditions of the Substitution Agreement and/or the CSU Substitution Decrees, the following procedures shall apply in order to provide for operation of exchanges or replacements operated by Summit County, Vail and Breckenridge (the "Summit County Entities") above Green Mountain Reservoir pursuant to the Summit County Agreement and the Clinton Agreement, as such agreements are now in effect (the "Summit County Exchanges") or by any assignee of any one of the Summit County Entities and the operation of CSU's 1948 Blue River rights under the terms and conditions of the Substitution Agreement and/or the CSU Substitution Decrees:

"a. Not later than April 1 of each year in which CSU or the Summit County Entities anticipate a GMR Fill Deficit, representatives of CSU and the Summit County Entities shall meet to discuss the need for an operating plan for that year. Not later than May 15 of any year in which CSU or the Summit County Entities anticipate that a GMR Fill Deficit may occur or in any year in which the Bureau of Reclamation has provided notice of a possible GMR Fill Deficit, the Summit County Entities and CSU shall seek in good faith to develop a written operating plan consistent with this Agreement that will maximize the Summit County

Exchanges as well as CSU's diversions under its 1948 Blue River rights under the terms of the Substitution Agreement and/or the CSU Substitution Decrees.

"b. The Summit County Entities shall notify CSU whenever (i) the Blue River at the Blue River gage (below Goose Pasture Tarn) falls to 14 c.f.s. or (ii) the Blue River near Dillon gage (immediately above the Farmers Corner Wastewater Treatment Facility and Dillon Reservoir) falls to 72 c.f.s. The purpose of such notification is to alert CSU that CSU may be required to reduce diversions under its 1948 Blue River rights.

"c. Provided that a Relaxed Downstream Senior Call exists as further provided in this Agreement and subject to a maximum reduction of 10 c.f.s. in the rate of CSU's upstream diversions at any time, whenever the flow in the Blue River at the Blue River gage falls below 5 c.f.s., or the flow in the Blue River at the Highway 9 gage falls below 20 c.f.s., or the flow in the Blue River at the near Dillon gage falls below 40 c.f.s., CSU, upon notice from the Summit County contact person as provided in subparagraph 1.d. below, will reduce its diversions under its 1948 Blue River rights in order to maintain a flow of 5 c.f.s. in the Blue River at the Blue River gage, a flow of 20 c.f.s. in the Blue River at the Highway 9 gage, and a flow of 40 c.f.s. in the Blue River at the near Dillon gage. For purposes of this agreement, a Relaxed Downstream Senior Call shall be deemed to occur only when (i) CSU is allowed to continue diverting its 1948 Blue River rights beyond the time when CSU would have been called out if a call of a downstream senior water right situated on the main stem of the Colorado River had been fully exercised and (ii) the relaxation of the call of the downstream senior water right

results from agreement of the holder of that downstream senior water right to relax the call of the downstream senior water right for the benefit of junior water rights. Nothing herein shall be construed (i) to require any party to agree to the relaxation of the call of a downstream senior water right or (ii) as an admission by any party that the terms of this Agreement will prevent injury resulting from the exercise of water rights by other parties during a period in which a Relaxed Downstream Senior Call exists as provided in this Agreement.

"d. The operating plan shall designate a contact person who shall be authorized by all Summit County Entities to coordinate with CSU on all matters pertaining to the reduction of diversions by CSU herein described. Designation and use of an authorized contact person by the Summit County Entities is a prerequisite to CSU's obligation to reduce diversions under its 1948 Blue River rights as provided herein. The Summit County Entities shall be limited to one change per day in the rate of CSU's diversions with twenty-four hour advance notification to CSU as provided in the operating plan. The authorized contact person shall coordinate requests of the Summit County Entities in order to minimize the number of required diversion changes by CSU.

"e. Terms which have been defined in the CSU Substitution Agreement shall have the same meaning in this Agreement as in the CSU Substitution Agreement, and said definitions shall be incorporated by reference in this Agreement and the CSU Substitution Decrees."

2. Interim Operations. The Substitution Agreement allows CSU, under certain terms and conditions, to operate Substitutions prior to obtaining approval of the Substitution

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Agreement by the Secretary of the Interior and prior to the entry of the CSU Substitution Decrees. The terms and conditions provided in paragraph 1 of this Agreement shall apply to CSU and the Summit County Entities for Substitutions operated by CSU pursuant to the Substitution Agreement, including, without limitation, the provisions of paragraphs 2.d. and 17.f. of the Substitution Agreement.

3. Miscellaneous Provisions.

a. CSU Exchanges. In the event that CSU seeks to operate an exchange to its Continental-Hoosier System on the Blue River with a priority senior to the Summit County Exchanges, CSU agrees that, at such times as the Summit County Exchanges are operating, CSU will reduce its upstream exchange diversions up to a maximum of 10 c.f.s. in order to maintain a flow of 5 c.f.s. in the Blue River at the Blue River gage, a flow of 20 c.f.s. in the Blue River at the Highway 9 gage, and a flow of 40 c.f.s. in the Blue River at the near Dillon gage. CSU agrees to include these terms and conditions in a Stipulation with the Summit County Entities in any case where CSU is seeking a decree to confirm rights of exchange to its Continental-Hoosier System senior to the Summit County Exchanges. The Summit County Entities may file statements of opposition and participate in any such exchange case filed by Colorado Springs to assure that any decrees entered in such cases are consistent with this Agreement.

b. Amendments. No amendment, modification, or novation of this Agreement or its provisions and implementation shall be effective unless in writing approved and executed by all parties with the same formality as they have approved and executed this Agreement.

c. Previous Agreements and Decrees. Nothing contained in this Agreement shall modify, alter or supercede the Blue River Decrees, Senate Document 80, the DWB Substitution Agreements, the Summit County Agreement, the Clinton Agreement, the DWB Substitution

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Decree, and the Stipulation between CSU and Breckenridge dated May 3, 2002 in Case No. 00CW281, Water Court, Water Division No. 5.

d. Successors and Assigns. This Agreement shall be binding upon all successors of any party to the Agreement. A party's rights and obligations under this Agreement may only be assigned to another entity with the prior written consent of the other parties to this Agreement, which written consent shall not be unreasonably withheld.

e. Entire Agreement and Amendments. This Agreement constitutes the entire agreement between the parties relating to the matters herein provided. Any prior agreements regarding these matters, whether written or oral, have been merged and integrated into this Agreement. No subsequent modification or amendment of this Agreement shall be valid or binding upon the parties, or enforceable against any party, unless such modification or amendment is in writing and has been signed by all parties. The parties acknowledge that this Agreement may need to be amended to add additional parties.

f. Authorizations. Each party represents that it has taken all necessary actions to authorize execution and performance of this Agreement and that the Agreement has been executed by duly authorized representatives of that party.

g. Counterparts. This Agreement may be executed in separate counterparts, and shall be binding once a counterpart has been executed by all parties.

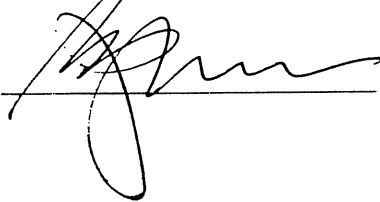
h. Miscellaneous. The Recitals are incorporated as part of this Agreement.

This Agreement has been executed by each of the parties on the dates shown below and shall be effective as of October 15, 2003 (the "date of this Agreement.").

THE CITY OF COLORADO SPRINGS

By Phillip H. Tollefson
Phillip H. Tollefson, P.E.
Chief Executive Officer, Colorado Springs Utilities

Dated: OCTOBER 28, 2003

Approved as to Form: 

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This document has been subscribed and affirmed to before me in the county of SUMMIT, state of COLORADO, this 17th day of November, 2003.

VAIL SUMMIT RESORTS, INC.

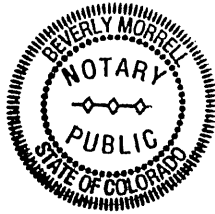
By Beverly Morrell
Notary Public

By [Signature]

Title: Sr VP / COO

Dated: 11/14/03

My Commission Expires 11-1-05

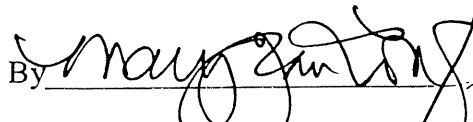
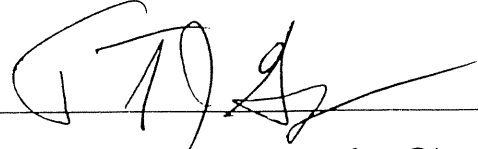


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ATTEST:

TOWN OF BRECKENRIDGE

By  By 
Title TOWN CLERK Title: TOWN MANAGER
Dated: 11/6/03

Seal

THE COUNTY OF SUMMIT, acting through its
Board of County Commissioners

By Paul Holliday
Title County Manager
Dated: November 5, 2003

Reviewed as
to form
PC
Legal