

Contract No. \_\_\_\_\_

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

**UPPER GUNNISON RIVER WATER ACTIVITY ENTERPRISE  
AGREEMENT**

FOR PURCHASE OF **CLASS D** AUGMENTATION CERTIFICATE  
PROVIDING FOR WATER SERVICE FROM MERIDIAN LAKE RESERVOIR

This Agreement is entered into between the Upper Gunnison River Water Activity Enterprise, a water activity enterprise established by the Upper Gunnison River Water Conservancy District pursuant to § 37-45.1-103, Colorado Revised Statutes (Enterprise) and the buyer identified below (Buyer).

Buyer's Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

The Enterprise is providing water stored in Meridian Lake Reservoir for use as replacement water to the Slate, East and Gunnison Rivers to permit out-of-priority depletions by wells or other diversion structures that would otherwise be curtailed by a call by senior water rights diverting water from said rivers or senior instream flow water rights. The replacement water is provided by the Enterprise according to the terms and conditions of the Plan for Augmentation decreed in Case No. 03CW107, Water Division No. 4 (Plan for Augmentation).

**AGREEMENT**

In consideration of the mutual and dependent covenants contained herein, the parties to this Agreement agree as follows:

1. This Agreement shall become effective upon execution of the Agreement by the Enterprise, and shall continue until terminated as provided in this Agreement.
2. The well or other diversion structure to be protected by release of water authorized by an Augmentation Certificate acquired under the terms of this Agreement is described on *EXHIBIT A* attached to this Agreement and is referred to in this Agreement as the Protected Well.
3. A Base Unit is quantified as 0.05 acre-feet of water stored in Meridian Lake Reservoir. Ownership of a Class D Augmentation Certificate entitles Buyer to the release of water from Meridian Lake Reservoir, according to the terms and conditions of the Plan for Augmentation, in an amount equal to the number of Base Units purchased multiplied by 0.05 acre-feet.

**The number of Base Units purchased by Buyer is \_\_\_\_\_ Base Units.**

4. The purchase price for each Base Unit is \$3,500 per Base Unit, for a total payment under this Agreement of \$\_\_\_\_\_, payable to the Enterprise in cash upon execution of this Agreement. The Enterprise acknowledges receipt of the purchase price in the form of \_\_\_\_\_.

5. Upon execution of this Agreement by all parties and payment by Buyer of the purchase price, the Enterprise will issue and deliver to Buyer an Augmentation Certificate identifying the Protected Well and the number of Base Units purchased by Buyer. The Enterprise will record a copy of the Augmentation Certificate in the records of Gunnison County.

6. Commencing in the calendar year following the year in which this Agreement is signed, Buyer shall pay an annual assessment to the Enterprise equal to Buyer's prorated share of the reservoir operations, maintenance and capital reserve assessment adopted for such year by the Enterprise, plus Buyer's prorated share of the Enterprise's annual cost reimbursement for administration of the Plan for Augmentation (collectively, the Annual Assessment) according to the following procedures.

6.1 During February of each year during the term of this Agreement, the Enterprise will mail an invoice for the Annual Assessment to Buyer's last known address, as reflected in the Enterprise's records, which shall include the following:

6.1.1 An itemization of the reservoir operations and maintenance assessment for that year and the calculation of Buyer's prorated share thereof;

6.1.2 An itemization of the reservoir capital reserve assessment for that year and the calculation of Buyer's prorated share thereof;

6.1.3 The amount of the Enterprise's annual cost reimbursement for administration of the Plan for Augmentation and the calculation of Buyer's prorated share thereof.

6.2 Buyer shall pay the invoiced Annual Assessment on or before March 31 in each year.

7. By signing this Agreement, Buyer acknowledges:

7.1 That Buyer has read and understands this Agreement and agrees to be bound by its terms;

7.2 That the Plan for Augmentation requires Owners of Augmentation Certificates to install totalizing flow meters on augmented wells and approved measuring devices for augmented surface diversions and ponds, and that the Colorado Division of Water Resources will enforce this requirement;

7.3 That Buyer is responsible for obtaining any permit required by the Colorado Division of Water Resources for the Protected Well;

7.4 That the Augmentation Certificate purchased under this Agreement entitles Buyer to the release of water from Meridian Lake Reservoir according to the terms and conditions of the Plan for Augmentation, that the water released for Buyer shall be measured by facilities of the Enterprise and delivered into Washington Gulch at the outlet works of Meridian Lake Reservoir, and that Buyer shall suffer all transit losses assessed by the Division Engineer from the point of delivery to the place of use;

7.5 That water released for Buyer's benefit from Meridian Lake Reservoir will be released from the reservoir according to the terms and conditions of the Plan for Augmentation upon request of the Division Engineer, Water Division 4, at times and in amounts determined by the Division Engineer in his sole discretion, and only for the purpose of providing replacement water to the Slate, East, or Gunnison Rivers (or tributaries thereof) to permit out-of-priority depletions by the Protected Well which would otherwise be curtailed by a valid call on such rivers by senior water rights diverting water downstream from the point of diversion for the Protected Well or by senior instream flow water rights;

7.6 That the number of Base Units purchased by Buyer under the terms of this Agreement has been determined solely by Buyer, and that the Enterprise makes no representation that the amount purchased by Buyer is sufficient to protect the Protected Well from curtailment as a result of a call placed by senior water rights;

7.7 That the amount to be paid annually by Buyer under this Agreement for operations and maintenance assessment and reimbursement for administration costs is due and payable in full, whether or not any water is released from Meridian Lake Reservoir according to the terms and conditions of the Plan for Augmentation;

7.8 That Buyer shall have no right to holdover of water storage in Meridian Lake Reservoir from year to year; therefore, any water which is not released by October 31 in each year according to the terms and conditions of the Plan for Augmentation shall become integrated with the water supply for all purposes of the Meridian Lake Reservoir and be available for all purposes at that time;

7.9 That because of drought or other natural causes, there may occur a shortage during any year in the quantity of water stored or released from Meridian Lake Reservoir, and that such a shortage may result in the curtailment of the Protected Well. In no event shall any liability accrue against the Enterprise or any of its directors, agents or employees for any damage, direct or indirect, arising from such a shortage. In any year in which such a shortage occurs, the Enterprise reserves the right to apportion the available water supply among those entitled under Augmentation Certificates to releases of water from Meridian Lake Reservoir in a manner to be prescribed by the Enterprise in its sole discretion.

8. Buyer agrees to maintain a permanent record of all diversions by the Protected Well, recorded by Buyer at least monthly, and to submit a copy of such record to the Enterprise annually. To assist Buyer in maintaining such record, the Enterprise will provide to Buyer a form to be completed by Buyer itemizing monthly diversions by the Protected Well, as reflected by Buyer's flow meter (Diversion Record). In October of each year the Enterprise will mail a new

Diversion Record to Buyer's last known address, as reflected in the Enterprise's records. On or before November 15 in each year, Buyer shall mail to the Enterprise a completed Diversion Record for the preceding twelve months. Buyer may request additional forms at any time.

9. Payment by Buyer of the purchase price described in paragraph 4 is a condition precedent to receiving the benefit of the Augmentation Certificate acquired under the terms of this Agreement. In the event that Buyer's tendered payment is dishonored, the Augmentation Certificate shall be void and the Enterprise shall not release water for Buyer's benefit under Buyer's Augmentation Certificate until Buyer provides payment of the amount due, plus interest at the rate of eighteen percent (18%) per annum from the date of Buyer's original tender and a late charge equal to five percent (5%) of the payment, in cash, electronic transfer funds, certified check or cashier's check.

10. In the event of failure by Buyer to pay the Annual Assessment when due, or Buyer's failure to provide a completed Diversion Record to the Enterprise as required by paragraph 8 (collectively referred to as Buyer's Default), the Enterprise shall have the following rights and remedies:

10.1 The Enterprise may terminate release of water for Buyer's benefit under Buyer's Augmentation Certificate and, upon such termination, shall give written notice to Buyer and the Division Engineer that Buyer's right to releases has been terminated.

10.2 The Enterprise shall have a lien against the real property served by the Protected Well to secure payment of the Annual Assessment, plus interest from the date the Annual Assessment was due and payable at a rate determined by the Enterprise, but not to exceed twenty-one percent (21%) per annum, plus a late charge in an amount determined by the Enterprise, plus all costs and expenses of collecting the unpaid amount, including, but not limited to, reasonable attorneys' fees. The lien may be foreclosed in the manner of foreclosure of mortgages in the State of Colorado. If Buyer fails to pay the Annual Assessment when due, the Enterprise may record a Notice of Lien in the records of Gunnison County that shall set forth the amount of the Annual Assessment due and owing to the Enterprise, specifying the date such amount was due and payable and from which interest accrues, specifying all costs and expenses, including reasonable attorneys' fees, of collecting the unpaid amount to the date of recording of such Notice of Lien, describing the real property affected by the lien and specifying the name or names, last known to the Enterprise, of the owner of said real property.

10.3 In any foreclosure proceeding under this Agreement, Buyer shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees, such costs, expenses and attorneys' fees to be secured by the lien being foreclosed. The Enterprise, through its duly authorized agents, shall have the power to bid on the real property at foreclosure sale, and to acquire and hold, lease, mortgage, and convey the same.

10.4 The amount of the Annual Assessment shall be the personal obligation of Buyer and shall be owed to the Enterprise. Suit to obtain a money judgment for such personal obligation shall be maintainable by the Enterprise without foreclosing or waiving the lien that secures the same.

10.5 In the event of voluntary sale or other conveyance of the real property served by the Protected Well, the grantee thereof shall be jointly and severally liable with the grantor for all unpaid Annual Assessments against the latter, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee.

10.6 The Enterprise shall, upon request, furnish to any person liable for an Annual Assessment, a certificate in writing, setting forth whether the Annual Assessments have been paid and the amount of the delinquency, if any. Such certificate shall be conclusive evidence of payment of the Annual Assessment.

10.7 The assessment lien and the rights to foreclosure and sale thereunder shall be in addition to, and not in substitution for, all other rights and remedies which the Enterprise may have under this Agreement and by law, including suit to obtain money judgment for unpaid assessments, as provided above.

10.8 Following Buyer's Default, the benefits of Buyer's Augmentation Certificate, including release of water for Buyer's benefit, shall not be restored by the Enterprise until Buyer's Default is cured, including payment in full to the Enterprise of all amounts due, including interest, late fees, and costs of collection including attorneys' fees.

11. Neither the Augmentation Certificate nor a Base Unit acquired under this Agreement may be transferred by Buyer separately from the Protected Well without the prior written consent of the Enterprise. The Enterprise may, in its absolute discretion, require that any Base Unit transferred separately from the Protected Well be sold back to the Enterprise for a purchase price equal to the price paid by Buyer under this Agreement; provided, however, that the Enterprise may delay payment of the purchase price to Buyer until the Enterprise is able to resell the Base Unit. Resale of Base Units by the Enterprise may be at such selling price as the Enterprise determines at the time of resale, but said resale price shall have no effect on the amount paid by the Enterprise to Buyer.

12. Prior to any transfer of the Protected Well, Buyer shall notify the Enterprise of such transfer in writing. The notice shall include the name, address and telephone number of the person to whom the transfer will be made and an application for transfer of the Augmentation Certificate. Upon receipt of such application, the Enterprise may, in its discretion, assess an administration fee to process and record a notice of the transfer, and require payment of any unpaid assessments (together with any amounts due pursuant to paragraph 10). The Enterprise shall record a notice of transfer of the Augmentation Certificate in the records of Gunnison County.

13. Any transfer of a Base Unit acquired under this Agreement or of the Augmentation Certificate without the written consent and approval of the Enterprise required by this Agreement shall be void, the Augmentation Certificate shall be rendered void, and the transferee thereof shall receive no benefit. As used in this Agreement, "transfer" shall not include a transfer by devise, descent or by operation of law upon the death of a joint tenant.

14. The Base Units purchased under the terms of this Agreement and the Augmentation Certificate shall be appurtenant to the Protected Well, and the terms of this Agreement shall be binding upon Buyer's successors in interest to the Protected Well.

15. This Agreement constitutes the entire and only agreement between the Enterprise and Buyer relating to the subject matter hereof. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

16. This Agreement shall be interpreted, construed and governed by the laws of the State of Colorado. Jurisdiction and venue for any action relating to this contract or the interpretation, enforcement or determination of the rights and duties of the parties hereto shall be the District Court in Gunnison County, Colorado.

17. Any notice to Buyer provided for in this Agreement shall be in writing and shall be given and be effective upon (1) hand delivery to Buyer or (2) mailing such notice by first-class U.S. mail, addressed to Buyer at the Buyer's address stated on the first page of this Agreement, or to such other address as Buyer may designate by notice to the Enterprise. Any notice to the Enterprise shall be in writing and shall be given and be effective upon (1) hand delivery to the Enterprise's manager or (2) by mailing such notice by first-class U.S. mail to the Enterprise at 234 N. Main Street, Suite 3C, or P. O. Box 1330, Gunnison, CO 81230, or to such other address as the Enterprise may designate by notice to Buyer.

Buyer:

Upper Gunnison River Water Activity  
Enterprise

\_\_\_\_\_

By: Frank J. Kugel, General Manager

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

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