

MIDDLE PARK WATER CONSERVANCY DISTRICT

Water Allotment Contract

(Mixed Windy Gap/Wolford Mountain)

THIS CONTRACT is made and entered into this _____ day of _____, 20____ by and between the **BOARD OF DIRECTORS OF MIDDLE PARK WATER CONSERVANCY DISTRICT**, hereinafter referred to as “Middle Park”, and _____, hereinafter referred to as “Applicant”;

WITNESSETH:

WHEREAS, Middle Park is one of the signatories to an agreement dated the 30th day of April, 1980, with Municipal Subdistrict, Northern Colorado Water Conservancy District which is denoted AGREEMENT CONCERNING THE WINDY GAP PROJECT AND THE AZURE RESERVOIR AND POWER PROJECT, and Supplement thereto dated March 29, 1985, which Agreements are fully incorporated herein and hereinafter referred to as the Agreement or the Windy Gap Agreement or Agreements; and

WHEREAS, Middle Park is one of the signatories to an agreement dated the 17th day of December, 1992, with the Colorado River Water Conservation District and Board of County Commissioners, Grand County, which Agreement is fully incorporated herein and hereinafter referred to as the Agreement; and

WHEREAS, Middle Park receives certain benefits and obligations under said Windy Gap and Wolford Mountain Agreements; and

WHEREAS, the Windy Gap Agreement provides Middle Park 3,000 acre-feet of water by allowing it to be placed in either Granby Reservoir and/or an alternate reservoir, as more particularly set forth in said Windy Gap Agreement (“Windy Gap Water”); and

WHEREAS, Middle Park entered into the 2012 Windy Gap Firing Project Intergovernmental Agreement, dated July 12, 2016, which among other things reduced the previous 3,000 acre-feet to 2,300 acre-feet as provided therein and which is also referred to as the Windy Gap Agreement or Agreements; and

WHEREAS, the Wolford Mountain Agreement provides Middle Park an interest in 3,000 acre-feet of water by allowing it to be placed in Wolford Mountain Reservoir, as more particularly set forth in said Wolford Mountain Agreement (“Wolford Mountain Water”); and

WHEREAS, Applicant is the owner of property located in Grand County, Colorado upstream from the point where the outflow from the Windy Gap Reservoir meets the Colorado River; and

WHEREAS, due to the location of said property and the requirements placed on the Applicant by the Division and State Engineer, Applicant requests the ability to contract for a mix of both Windy Gap Water and Wolford Mountain Water; and

WHEREAS, Applicant is interested in purchasing from Middle Park a certain portion of the water that is designated to be stored in EITHER Granby Reservoir or Wolford Mountain Reservoir, subject to the terms and conditions of said Windy Gap Agreement and Wolford Mountain Agreement, respectively, and this Contract; and

WHEREAS, Applicant has, prior to execution of this Contract, performed whatever studies it deems necessary to determine that the engineering assumptions and legal effect of said Windy Gap and Wolford Mountain Agreements will result in usable water to Applicant from a combination of both Granby Reservoir and Wolford Mountain Reservoir, which water will be adequate for the purposes and uses contemplated by Applicant.

NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements, as well as the sum of money to be paid by Applicant to Middle Park, it is agreed as follows:

(1) The water specifically subject to this Contract is that stated and described in the Windy Gap Agreement and the Wolford Mountain Agreement, as well as any subsequent modifications to said agreements.

(2) Middle Park makes no warranties or representations regarding the suitability of either Windy Gap Water or Wolford Mountain Water for the purposes of Applicant, and it shall be Applicant's duty to perform whatever engineering and legal studies that are necessary to ascertain whether or not the combination of Windy Gap Water and Wolford Mountain Water is adequate for its purposes. This Contract is subject to existing water law, and it shall be the obligation of Applicant to initiate and pay for whatever Water Court proceedings that are necessary to exchange these water rights to the location and use necessary for the Applicant. The point of delivery shall be the outlet works of Granby Reservoir and/or the outlet works of Wolford Mountain, or a combination thereof. Applicant, its permitted heirs, successors and assigns, agree to indemnify and hold harmless Middle Park from any costs or loss incurred by Middle Park as a result of any litigation arising out of said Water Court proceedings or arising out of execution and performance of this Contract. Attached hereto as Exhibit "A" are Middle Park's terms and conditions and current fees for Wolford Mountain and Windy Gap Contracts; said Exhibit is incorporated herein by reference. Also, attached hereto as Exhibit "B" are Middle Park's bylaws relating to water allotment contract restrictions; said Exhibit is incorporated herein by reference. Middle Park reserves the right to modify said terms, conditions, fees and bylaws at any regular or special meeting of Middle Park called for that purpose.

(3) Windy Gap Water: Middle Park hereby allots Applicant ____ acre-feet of water at the price of \$3,000.00 per acre-foot. Said water shall be a portion of that water as mentioned in the Windy Gap Agreement to be placed in Granby Reservoir and/or alternate reservoir as provided in the Windy Gap Agreement. Additionally, Applicant shall pay to Middle Park a yearly sum of \$537.50 multiplied by the number of acre-feet that Applicant is contracting for (minimum charge of \$268.75 for up to 0.5 acre-feet). This will represent a service charge for the delivery of said

water and shall be paid on or before September 1, in advance, every year for use after August 1 of the following year. Applicant, at the same time, shall provide Middle Park with an estimate of the amount of water that Applicant, out of its allotted contractual amount, will be utilizing, such that Middle Park can certify to the Municipal Subdistrict, as provided in the Windy Gap Agreement, as to the usage for the coming year. The estimate shall be realistic and the only amount Middle Park will ask the Municipal Subdistrict to pump. Applicant is encouraged by Middle Park to find supplemental water rights because of problems with Windy Gap water in drought years as well as spill problems. The service charge shall increase at a rate of 5% per year or cost of living increase, whichever is greater.

(4) Wolford Mountain Water: Middle Park hereby allots Applicant acre-feet of Wolford Mountain water at the price of \$3,000.00 per acre-foot. Said water shall be a portion of that water as mentioned in the Agreement to be placed in Wolford Mountain Reservoir. Additionally, Applicant shall pay to Middle Park a yearly sum of \$599.57 multiplied by the number of acre-feet that Applicant is contracting for (minimum charge of \$300.19 for up to 0.5 acre-feet). This will represent a service charge for the delivery of said water and shall be paid on or before September 1, in advance, every year. Applicant, at the same time, shall provide Middle Park with an estimate of the amount of water that Applicant, out of its allotted contractual amount, will be utilizing, such that Middle Park can certify to the Colorado River Water Conservation District as to the usage for the coming year. The estimate shall be realistic. The service charge shall increase at a rate of 5% per year or cost of living increase, whichever is greater. The above amounts include the annual operation and maintenance charge charged Middle Park by the Colorado River Water Conservation District, which is presently \$35 per acre-foot per year.

(5) As security to Middle Park, the Applicant agrees that the foregoing covenant to make annual payments in advance of water delivery will be fully met by annual budget and appropriation of funds from such sources of revenues as may be legally available to said Applicant. As additional security to Middle Park, the Applicants will hold harmless any person, corporation, quasi-governmental entity including Middle Park and its Board of Directors, or other governmental entity, for discontinuance of service due to the failure of the Applicant to maintain the payments herein required on a current basis.

(6) The water provided hereunder shall have equal priority (as limited hereafter) with Middle Park's water stored annually in Granby Reservoir and Wolford Mountain Reservoir, respectively, and in case of shortage shall be prorated in a ratio that Applicant's contracted water bears to the total number of acre-feet available to Middle Park in Granby Reservoir or Wolford Mountain Reservoir as provided by said agreements as well as any subsequent modifications to said agreements.

(A) If the District's Windy Gap pool is not 2,300 acre-feet in any water year, contract augmentation water for either irrigation and/or pond evaporation will not be made available if release of such water for such purposes would short any other District domestic use contractee.

- (B) In any year that the District's Windy Gap pool spills from Granby Reservoir, release of Windy Gap water allotment contract water for either irrigations and/or pond evaporation shall be available up to the time of the spill and not thereafter.
- (C) Windy Gap water allotment contract water designated for use by a contractee for either irrigation depletions and/or pond evaporation shall not have the right to utilize any carryover available to the District by virtue of any existing or future agreement with either the Municipal Subdistrict Northern Colorado Water Conservancy District or Northern Colorado Water Conservancy District.
- (D) Windy Gap contracts involving water allotment contract water to only cover a contractee's irrigation depletions (understanding that the State Engineer's Office will require adequate water for domestic purposes for an augmentation plan) shall be limited to a maximum term of five (5) years for the irrigation purpose. The cost of a Windy Gap contract falling within this parameter shall be one-half the normal one-time charge for the quantity of water requested for such irrigation depletions. The annual service charge shall be the same as for all other Windy Gap contracts.

(7) All terms and conditions of the Windy Gap Agreement and Supplement and 2012 IGA and the Wolford Mountain Agreement are expressly incorporated in this Contract and Applicant agrees to abide by the terms and conditions set out therein as well as the District bylaws as they are amended from time to time insofar as they relate to the water herein conveyed, as well as covenanting and agreeing not to advance a legal position contrary to the interests of Middle Park in the event of litigation regarding either the Windy Gap or Wolford Mountain Agreement.

(8) This Contract shall be perpetual and shall bind the future Boards of Middle Park as well as Applicant. The water allotted hereunder will be beneficially used for the purposes and in the manner specified herein and this Contract is for the exclusive benefit of the Applicant and shall not inure to the benefit of any successor, assign, or lessee, of said Applicant without the prior written approval of the Board of Directors of Middle Park. As a condition of Middle Park approving conveyance of an interest in the property served by this Contract and in order for Middle Park to continue to serve said property, the new property owner must agree to Middle Park's then-existing annual service charges as well as any future amendments thereto.

(9) Applicant shall have no right to sell, lease, transfer encumber, or otherwise deal in the water rights conveyed to it pursuant to this Contract, except to the normal extent of providing said water to and through its domestic or municipal water supply system or for augmentation of depletions resulting from the exercise of Applicant's water rights as described in the plan for augmentation approved in Case No. _____, District Court in and for Water Division No. 5, as the same may be amended in the future.

(10) Additionally, in recognition of the fact that Middle Park by conveying this water to Applicant is providing a preference to said Applicant over other future qualified users, and the intent is not to create a surplus of water, but to satisfy the future reasonable requirements of Applicant, it is hereby stipulated and agreed by Applicant that it shall not have the right to sell,

lease, transfer, encumber or otherwise deal in or with its other existing decreed water rights or any water rights that it may have a contract to purchase as of November 1, 1983, by any sale or conveyance of water rights which would result in a transbasin diversion or exchange of said water rights. Applicant's water rights subject to this restriction shall be binding on Applicant's heirs, successors and assigns and are described on the attached _____.

(11) In the event, as determined by Applicant at some future date, that said water for whatever reason, whether it be legal or physical availability or otherwise, cannot be utilized by said Applicant, Middle Park shall have the option to repurchase said water rights at the same price originally paid by Applicant if it is financially feasible for it to do so; and if not, to pursue its best efforts to purchase a certain amount of said water back per year over a given number of years. Middle Park shall not be obligated to repay any portion of the annual service charge.

(12) If any portion of this Contract is ruled unconstitutional or unenforceable, it shall not affect the enforceability of the other provisions.

(13) If Applicant conveys water rights in violation of this Contract, it shall pay a penalty equal to all funds it receives, together with damages equal to double the amount of money received, and Middle Park shall still have the right to void this Contract.

(14) Time is of the essence in this Contract.

(15) Since it is anticipated that Middle Park will be entering into similar contracts with many other Applicants, and since Middle Park has a vested interest in ensuring that all the entities that Middle Park contracts with will have the least difficulty possible in utilizing their contracted amount of water, it is stipulated and agreed by Applicant that Applicant shall refrain from protesting, objecting or otherwise opposing transfers of water contracted between Middle Park and other Applicants, UNLESS there is substantial likelihood that said transfer will result in the diminution of water available to Applicant.

(16) If an annual payment is not made by the due date, written notice thereof will be sent by Middle Park to the Applicant at the following address:

or to such address as may be designated by the Applicant in writing. It is Applicant's obligation to inform Middle Park in advance of any address change. Middle Park's present address is:

Post Office Box 145
Granby, Colorado 80446

If payment is not made within ten (10) days after the date of said written notice, Applicant shall have no further right, title or interest under this Contract, and the allotment of water, as herein made, shall be transferred, leased, or otherwise disposed of at the discretion of the Board of Directors of Middle Park.

WARNING: MIDDLE PARK'S WINDY GAP WATER HAS SPILLED IN 1996, 1997, 1998, 2014, 2015, 2016, 2017, 2019 AND WAS UNAVAILABLE IN 2002. IN THE EVENT OF A SPILL OR DROUGHT, THIS WATER MAY NOT BE AVAILABLE FOR APPLICANT'S USE.

(17) Middle Park Water Conservancy District reserves the right to clarify, amend, or supplement the Agreements.

Total due at Contract signing: \$_____

IN WITNESS WHEREOF, the foregoing Contract was duly approved and ratified by the appropriate entities effective the day and year first above written.

**BOARD OF DIRECTORS, MIDDLE APPLICANT
PARK WATER CONSERVANCY
DISTRICT**

**BY: _____
President**

BY: _____

**EXHIBIT “A”
MIDDLE PARK WATER CONSERVANCY DISTRICT
RULES AND REGULATIONS (BYLAWS)**

I. TERMS AND CONDITIONS AND FEES FOR WOLFORD MOUNTAIN AND WINDY GAP CONTRACTS (Revised 8/1/2018)

The following general fees and conditions apply to New Wolford Mountain and Windy Gap Contracts:

1.	No contract can be granted which would adversely affect senior water rights
2.	No contract shall be executed which would exceed the reasonable present and future needs of any user as determined by Middle Park
3.	No contract shall be granted for purposes other than domestic or municipal use without a detailed plan of use
4.	No water will be provided to users who have adequate water for their purposes or who have conveyed their water rights off their property and which water historically has been used on that property
5.	The applications can only be granted on standard form contracts which may include additional terms and conditions if necessary and deemed proper by the Middle Park Water Conservancy District
6.	No contract shall exceed 5 acre-feet
7.	The one-time-only charge for Windy Gap and Wolford Mountain shall be adjusted as felt necessary by the Board and reviewed annually. Presently, the price of Windy Gap Water and Wolford Mountain Water is \$3,000.00 per acre-foot. For Windy Gap water, the annual service charge shall be a minimum charge of \$268.75 up to 0.5 acre-feet and an additional \$53.75 for each 0.1 acre feet per year (\$537.50 per acre-foot) and increased a minimum of 5% per year or cost of living increase, whichever is greater. For Wolford Mountain Water, the annual service charge shall be a minimum charge of \$300.19 up to 0.5 acre feet, and an additional \$59.95 for each 0.1 acre-foot per year (\$599.57 per acre-foot which includes the current \$35.00 per acre-foot charged by the River District for operation and maintenance) and increased a minimum of 5% per year or cost of living increase, whichever is greater.
8.	Any applicant for a Windy Gap or Wolford Mountain Contract located inside an entity (for example, town, special district providing water, etc.) that has an existing Windy Gap or Wolford Mountain Contract (except counties) shall state why it cannot use that entity’s existing contract water in its application. The applicant shall also provide a letter from the entity stating the reasons why such contract water is not made available to its constituents, unless previously provided and answered in a previous application. Any application falling under these criteria may be denied at the discretion of the Board.
9.	All applicants seeking a contract that includes temporary irrigation uses shall be provided a contract with a 5 year term. At the end of the term, the applicant must reapply for a new contract that may not be granted if the temporary irrigation use is no longer necessary. At expiration of the temporary contract, and upon written request by an applicant of a temporary irrigation contract, 50% of their original

	charge for the purchase of the contract water will be refunded by Middle Park; provided, however, that the applicant requesting refund must be in compliance with the terms of the contract at the time said request is made. Notice of any termination shall be provided to the Division Engineer.
10.	There is a limitation on the maximum allowable amount for a contract for any contractee who is an associated entity to an existing or proposed contractee. An associated entity is defined as an entity served by an existing contractee, or whose water use is within an existing contractee, or who is a subsidiary of an existing or proposed contractee, or whose use is adjudicated in the same water case as an existing or proposed contractee, or the ownership of said proposed contractee includes or is similar to an existing contractee. The intent of this paragraph is that no new contractee, collectively, shall have a contract for greater than 5.0 acre-feet.
12.	The minimum contract amount is 0.1 acre-foot.
13.	Any contract for water above Windy Gap may be blended with portions of Windy Gap and Wolford Mountain water, as long as the percentages and request by the applicant are reasonable. The reasonableness of the request for any blended contract shall be subject to the sole determination of the Middle Park Water Conservancy District Board of Directors who may solicit the advice of either the Division Engineer's Office or its own engineer.
14.	Middle Park may require the applicant to perform engineering studies to provide or establish any of the information required by this Exhibit A or by the District's Rules and Regulations.
15.	Middle Park Water Conservancy District may require in any situation involving more than one owner, residence, or property being served, that the contractee form an entity such as a water association, or homeowners association who would be responsible for the bill and administration of the water rights contracted for.
16.	Contracts must be executed and paid for in full within nine months of approval of the application unless extended.
17.	The consumptive use of .10 acre-feet per year is normally enough water to provide water to one single family equivalent consisting of 3.5 people and 1000 square feet of lawn and garden irrigation and 2 horses (however, check with your engineer)
18.	The applicant is encouraged to check with their own consultants (engineers and attorneys) to ascertain the dependability of either Middle Park Water Conservancy District's Windy Gap or Wolford Mountain water for their needs. The water decrees for both projects are relatively junior and subject to drought and spill year problems.
19.	All Windy Gap water allotment contracts requesting augmentation water for either irrigation depletions, pond evaporation, or both irrigation depletions and pond evaporation shall contain the following limitations: A. If the District's Windy gap pool is not 3,000 acre-feet in any water year, contract augmentation water for either irrigation and/or pond evaporation will not be made available if release of such water for such purposes would short any other District domestic use contractee.

B. In any year that the District's Windy Gap pool spills from Granby Reservoir, release of Windy Gap water allotment contract water for either irrigation and/or pond evaporation shall be available up to the time of the spill and not thereafter.

C. Windy Gap water allotment contract water designated for use by a contractee for either irrigation depletions and/or pond evaporation shall not have the right to utilize any carryover available to the District by virtue of any existing or future agreement with either the Municipal Subdistrict, Northern Colorado Water Conservancy District or Northern Colorado Water Conservancy District.

D. Windy Gap contracts involving water allotment contract water to only cover a contractee's irrigation depletions (understanding that the State Engineer's Office will require adequate water for domestic purposes for an augmentation plan) shall be limited to a maximum term of five (5) year for the irrigation purpose. The cost of a Windy Gap contract falling within this parameter shall be one-half the normal one-time charge for the quantity of water requested for such irrigation depletions. The annual service charge shall be the same as for all other Windy Gap contracts.

**EXHIBIT “B”
MIDDLE PARK WATER CONSERVANCY DISTRICT
RULES AND REGULATIONS (BYLAWS)**

II. MIDDLE PARK WATER CONSERVANCY DISTRICT BYLAWS (RELATING TO WATER ALLOTMENT CONTRACT RESTRICTIONS)

A. The District’s Water Rights and right to use water in Windy Gap Reservoir, as well as Wolford Mountain Reservoir, are the direct result of the “Basin-of-Origin” provisions found in C.R.S. § 37-45-118. The right to the use of water in Windy Gap Reservoir and Wolford Mountain Reservoir involves the settlement of litigation involving numerous parties, including both the Northern Colorado Water Conservancy District, Municipal Subdistrict, Northern Colorado Water Conservancy District, as well as the Colorado River Water Conservation District. The Board of Directors of the Middle Park Water Conservancy District specifically find that it would be a violation of the policy found in C.R.S. § 37-45-118(l)(b)(II), as well as the various Windy Gap and Wolford Mountain Agreements, for it to contract with any user who, or whose predecessor, has sold, or otherwise conveyed water rights out of the Colorado River Basin for any parcel that either had water rights that were conveyed out-of-basin or said parcel was part of a larger parcel at the time that water rights were conveyed out-of-basin. The Board of Directors of the Middle Park Water Conservancy District further find that in order to prevent users from conveying water rights out-of-basin, the District shall have the right in any contract to require a covenant running with the land and/or water rights prohibiting conveyance directly or indirectly out-of-basin. This provision shall likewise apply to any situation in which the conveyance of water rights increases the amount of water that a trans-basin diverter can convey out-of-basin, even though it is unnecessary for the purchaser of that water right to bring a court action to transfer the water right to receive increased yield. As an example, where the non-use or abandonment of a water right, increases the yield to an out-of-basin diverter, this policy would apply.

The provisions of this section shall be liberally construed by the Board to discourage providing Windy Gap Water or Wolford Mountain Water being provided to any property which is or which was part of a parcel that presently or previously had water rights previously appurtenant to some part of the property and which water rights have been conveyed separate and apart from the real property. The decision of the Board of Directors of the Middle Park Water Conservancy District in all cases involving interpretation of this section shall be final and absolute.

B. No contract shall be executed to provide water to any user or entity which water rights would be utilized to service lands that were previously served by water rights which have been transferred and/or conveyed to entities or users and severed from the land historically irrigated by said water rights, or which lands have adequate water rights to serve said persons or user, even though it may take a water court proceeding to change the water right.

Furthermore, Middle Park may require any applicant not convey any water rights that it owns at time of contracting separate and apart from land it owns without Middle Park’s prior written approval.

C. Nothing herein shall preclude the District from making water available by contract when an Applicant’s water is unsuitable for its proposed purpose and/or Applicant proposes to limit the use of its water rights off of its property in a manner acceptable to the Board.