

REVOCABLE LICENSE AGREEMENT

THIS REVOCABLE LICENSE AGREEMENT ("License") is made this ____ day of _____, 2020, by and between the BOARD OF COUNTY COMMISSIONERS OF PARK COUNTY, COLORADO ("County"), the HEADWATER AUTHORITY OF THE SOUTH PLATTE ("HASP"), and MOUNTAIN MUTUAL RESERVOIR COMPANY ("MMRC"), LONE ROCK FOUNDATION ("Foundation"), HASP, MMRC and Foundation shall be referred to as the "Licensees."

For and in consideration of the sum of ten dollars (\$10) paid by the Licensees to the County, the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1. THE LICENSE

Licensees wish to acquire the right to use certain County-owned property described in the attached **Exhibit A** (the "Property"). Subject to all the terms and conditions hereof, the County hereby grants to Licensees a license to occupy and use the Property for the purpose set forth in Section 2 herein.

SECTION 2. TERMS OF AGREEMENT

The Property may be used and occupied by the Licensees for the purpose of constructing, operating, maintaining, repairing, replacing, calibrating, accessing and using a stream gaging station on Deer Creek and associated structures as are necessary to secure and protect the stream gaging station. (collectively "Gage"). Licensees' use of the Property shall be non-exclusive. To that end, personnel or agents of the County, the State Engineer's Office ("SEO") and the Division Engineer's Office ("DEO") may access and use the Property for the same purposes of this Agreement. In addition, the County shall have the right to use the Gage in conjunction with the Licensees and may continue to use the Property in a manner that is not inconsistent with the purpose of this Agreement. Licensees shall make available data from the Gage as requested by the SEO, DEO or the County to the extent such data is in Licensees' control.

Licensees acknowledge that the Property is subject to a conservation easement that is managed by Colorado Open Lands. Licensees agree that their activities on the Property pursuant to this License are subject to the specific written approval of Colorado Open Lands, as well as the County, with respect to any improvements constructed on the Property. Licensees acknowledge that HASP intends to manage the property as a State Wildlife Area but does not intend to construct, operate, maintain, or repair a stream gage as part of their separate property management agreement with the County. Licensees understand their rights to use and occupy the Property is subject to and limited by, the conservation easement, and Licensees agree to comply with the terms and conditions of the conservation easement and all laws and regulations applicable to State Wildlife Areas.

SECTION 3. TERMINATION

3.1 **Termination by Grantor.** The County may terminate this License by giving written notice to the Licensees specifying the date of termination. Such notice shall be given at least one hundred and

eighty (180) days prior to the date specified therein. Upon termination, the Licensees shall have the right to remove the Gage for use on another property.

3.2 Termination by Licensees. The Licensees may terminate this agreement, provided each Licensee agrees to do so in writing. Licensees shall return the Property to its original condition if determined necessary by the County if this Agreement is terminated by all of the Licensees.

Weather permitting, Licensees shall remove the Gage within thirty (30) days of the date of termination of this Agreement under either Paragraph 3.1 or 3.2.

SECTION 4. OPERATION AND MAINTENANCE

Licensees and the County acknowledge that they shall enter into the following agreements contemporaneously with this License: the Agreement Regarding Deer Creek Stream Gage; and the Contract with the State Engineer (collectively "O&M Agreements"). The O&M Agreements contain terms and conditions related to operation and maintenance of the Gage.

The Parties shall, at their own expense and subject to the O&M Agreements, keep and maintain in good repair the Gage. No other fixtures or structures shall be placed, operated, or stored on the Property other than the Gage and any necessary appurtenances under this License.

SECTION 5. DAMAGE TO PROPERTY

Each Licensee shall be responsible for all damage to the Property arising out of or resulting from each Licensee's individual use of the Property by each Licensee, its agents, employees, visitors, patrons and invitees. The County shall notify Licensees immediately upon discovery of any damage to the Property. The Licensee who is responsible for the damage shall correct and repair the damage within one (1) week of notification or knowledge of the damage unless otherwise directed by the County.

SECTION 6. INDEMNIFICATION

To the extent permitted by law, Licensees agree to indemnify and hold harmless the County, its officers, employees and insurers, from and against all liability, claims and demands arising out of their occupancy and use of the Property. To the extent permitted by law, Licensees agree to investigate, handle, respond to, and to provide defense for and defend against any such liability, claims or demands at their expense, or, at the option of the County, agree to pay the County or reimburse the County for the defense costs incurred by the County in connection with any such liability, claims or demands. To the extent permitted by law, Licensees also agree to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. The Parties agree that this shall not to be construed as a contractual waiver of any immunities or defenses provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq.

SECTION 7. INSURANCE

The Parties shall procure a group insurance policy which includes and covers the Property that is the subject of this Agreement. Such insurance policy shall at a minimum include liability and property damage insurance, with a combined single limit for bodily injury and property damage of one million dollars (\$1,000,000.00) aggregate. A Certificate of Insurance showing the County as an additional insured thereon shall be provided to the County within thirty (30) days of execution of this Agreement. The failure to provide the Certificate of Insurance shall be grounds for immediate revocation of this License Agreement.

SECTION 8. NOTICES

Any notice required or permitted by this License shall be in writing and shall be deemed to have been sufficiently given for all purposes upon (1) personal delivery, (2) three business days after the mailing of the same by registered or certified mail, return receipt requested, (3) when delivered (and receipted for) by an overnight delivery service, or (4) when delivered by email with automatic confirmation of receipt, addressed as follows:

Headwater Authority of the South Platte
c/o John Matteson
PO Box 1566
Fairplay, CO 80440-1566
Email: John.Matteson@haspwater.com

Copy to:

Lyons Gaddis
c/o Madoline Wallace-Gross
363 Centennial Parkway, Suite 110
Louisville, CO 80027
Email: mwg@lyonsgaddis.com

Monson, Cummins & Shohet, LLC
c/o David Shohet
13511 Northgate Estates Drive, Suite 250
Colorado Springs, CO 80921
Email: dms@cowaterlaw.com

Mountain Mutual Reservoir Company
c/o Norman S. Lewis
6949 County Hwy. 73
Evergreen, CO 80439

Copy to:

Lone Rock Foundation
c/o Amy Dee
POB 54
Bailey, CO 80421

Copy to:

Park County
856 Castello Ave
Fairplay, CO 80440

Copy to:
Star L. Waring, Esq.
Mark D. Detsky, Esq.
Dietze and Davis, P.C.
2060 Broadway, Suite 400
Boulder, CO 80303
swaring@dietzedavis.com
mdetsky@dietzedavis.com

SECTION 9. MISCELLANEOUS

A. License Binding. This License shall inure to the benefit of and be binding upon the heirs, successors and assigns of the parties hereto, subject to any other conditions and covenants contained herein.

B. Applicable Law. The laws of the State of Colorado and applicable federal, state and local laws, rules, regulations and guidelines shall govern this Agreement.

C. Amendment. This License may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

D. Headings. The headings of the sections of this License are inserted for reference purposes only and are not restrictive as to content.

E. Assignment. Licensee may not assign or transfer this License, except upon the express written authorization of the County.

IN WITNESS WHEREOF, the parties have duly executed this License, effective the day and year first above written.

COUNTY

BOARD OF COUNTY COMMISSIONERS

By: _____
_____, Chairperson

ATTEST:

County Clerk

LICENSEE:

HEADWATER AUTHORITY OF THE SOUTH PLATTE

By _____
President

Dated _____

ATTEST:

By: _____
Secretary

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LICENSEE:

MOUNTAIN MUTUAL RESERVOIR COMPANY

By _____
President

Dated _____

ATTEST:

By: _____
Secretary

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LICENSEE:

LONE ROCK FOUNDATION

By _____

Dated _____

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EXHIBIT A
DEER CREEK STREAM GAGING STATION DESCRIPTION

Within 100 feet from the center of the existing rock vane weir streamflow measurement structure, which is located in the NW1/4 of the SE1/4 of Section 5, Township 7 South, Range 72 West of the 6th P.M., a distance of 2,346 feet from the south section line and 2,006 feet from the east section line of Section 5.

Access from County Road 43 to gaging station is made on Park County property using existing access roads to the extent possible.