

AGREEMENT FOR SALE OF BULK WATER

This Agreement for the Sale of Bulk Water (the "Agreement") is made and entered into **this __ day of _____ 2024**, by and between the Round Mountain Water and Sanitation District, a Colorado special district and political subdivision of the State of Colorado with an address of PO Box 86 - 59000 Highway 69N Westcliffe, CO 81252 (the "District"), and _____, with an address of _____ (the "Purchaser") (individually, a "Party" and collectively the "Parties").

WHEREAS, the District owns and operates a water supply and distribution system with a bulk water delivery facility located at 7th and Rosita, Westcliffe, CO 81252 (the "Bulk Water Station"); and

WHEREAS, the Purchaser desires to receive and pay for bulk water and the District desires to deliver and sell bulk water in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

I. POINT OF DELIVERY

The Purchaser shall accept delivery of water from the District at the Bulk Water Station.

II. WATER DELIVERY

A. Quality. Water furnished at the Delivery Point shall meet quality standards of State, Federal, and other regulatory agencies applicable to the District's system. The District shall not be responsible for water quality beyond the Bulk Water Station. Ownership of the water shall be deemed to transfer to the Purchaser upon receipt by the Purchaser.

B. Quantity. The quantity of water deemed delivered shall be as measured at the Bulk Water Station. The quantity of water provided to the Purchaser at the Bulk Water Station may be limited at any time by the District.

C. Availability. The District's obligation to deliver water pursuant to the terms of this Agreement shall be subject to availability, which the District may determine in its sole and absolute discretion. The Purchaser acknowledges that the District's primary obligation is to deliver water to District customers permanently connected via dedicated taps to the District's water system. Demands from permanent customers, system maintenance, priority of water rights, changes to existing laws and enforcement of existing laws, stream flows, water shortages, emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire, and the use of water to fight fires, earthquake, other catastrophe or other circumstances may impact water availability.

D. Transport. The Purchaser shall ensure the trucks used by the Purchaser to transport the water are in good working order, carry insurance as set forth for automobiles in Section VI of this Agreement, and all drivers possess all required licenses and certifications. All local ordinances must be complied with including but not limited to noise and hours of operation. The Purchaser may delegate/contract hauling of the water to others as long as they comply with Section VI (INSURANCE) of this Agreement.

III. RATES AND PAYMENT PROCEDURES

A. Payments. Fees, rates, and other charges for the delivery of water from the District's Bulk Water Station shall be determined by the District's Board of Directors by resolution from time-to-time.

IV. TERM AND TERMINATION

This Agreement shall commence on the date first set forth above, and shall continue in force until terminated. This Agreement may be terminated by either Party at will upon the delivery of written notice to the other Party. Termination shall not excuse any payment obligations of the Purchaser outstanding as of the date of termination.

V. DISCLAIMER, WAIVER OF RIGHTS, AND INDEMNIFICATION

A. Waiver of Claims. The Purchaser acknowledges that the District, in the District's sole discretion, may determine that it is no longer in the District's best interest to delivery water to the Purchaser. The Purchaser hereby disclaims and waives all rights it may have now or in the future against the District for the District's decision to suspend, reduce, limit, or terminate the delivery of water to the Purchaser, regardless of the District's reason for such decision.

B. Indemnification and Hold Harmless. The Purchaser agrees to indemnify and hold harmless the District and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, mistake, negligence, or other fault of the Purchaser, any subcontractor of the Purchaser, or any officer, employee, representative, or agent of the Purchaser, or which arise out of a worker's compensation claim of any employee of the Purchaser or of any employee of any subcontractor of the Purchaser.

VI. INSURANCE

A. The Purchaser agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by the Purchaser pursuant to this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by law.

1. Worker's compensation insurance to cover obligations imposed by applicable law for any employee engaged in the performance of work under this Agreement, and Employer's Liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each accident, One Million Dollars (\$1,000,000) disease – policy limit, and One Million Dollars (\$1,000,000) disease – each employee. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this Paragraph.
2. Commercial general liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and One Million Dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision and shall be endorsed to include the District and the District's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.
3. Commercial Automobile Liability Insurance with combined single limits for bodily injury and property Damage of Two Million Dollars (\$ 2,000,000) for each occurrence.

B. At request of the District, the Purchaser shall provide to the District a certificate of insurance, completed by the Purchaser's insurance agent, as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days prior written notice has been given to the District. The District reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

VII. MISCELLANEOUS

A. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, any legal action concerning the provisions hereof shall be brought in Custer County, Colorado.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the District shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. Integration. This Agreement and any attached exhibits constitute the entire Agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Agreement.

E. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address set forth on the first page of this Agreement.

F. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. Modification. This Agreement may only be modified upon written agreement of the Parties.

H. Assignment. Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

I. Governmental Immunity. The District, its officers, and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the District and its officers or employees.

J. Rights and Remedies. The rights and remedies of the District under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the District's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

K. Subject to Annual Appropriations. Any financial obligations of the District not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of the District hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement or liability beyond the current fiscal year.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK - SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first set forth above.

ROUND MOUNTAIN WATER AND SANITATION DISTRICT, COLORADO

Peggy J Quint, Business Office Manager

PURCHASER

By: _____