Built On What Matters

Town of Frederick
Board of Trustees Agenda

Frederick Town Hall
Board Chambers
401 Locust Street
Tuesday, January 21, 2025

6:30 PM

Agenda
Special Meeting 6:30 PM

Call to Order – Roll Call

Pledge of Allegiance

Approval of Agenda

Special Presentations

Public Comment

This portion of the agenda is provided to allow members of the audience to provide comments to the Board of Trustees. Please sign in and you will be called. If your comments or concerns require an action, that item(s) will need to be placed on a later Agenda. Please limit the time of your comments to three (3) minutes.

Staff Reports

Consent Agenda

Consent Agenda items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member so requests, in which case the item may be removed from the Consent Agenda and considered at the end of the Consent Agenda.

Executive Session

A. Executive Session for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators under C.R.S. Section 24-6-402(4)(e)(1) regarding water change case.

Action Agenda

B. Water Storage Agreement Consideration - Tiefel and EAS - Sarah Watson, Engineer

Mayor and Trustee Reports

Adjournment

TOWN OF FREDERICK
Board of Trustees
Staff Report

Water Storage Agreement Consideration - Tiefel and EAS

Agenda Date: January 21, 2025 Special Meeting

Attachments:

1. 25-R-17 Reso EAS water storage Agmnt
2. Agreement for cross-conveyances of storage capacity
3. EX. A - Tiefel - EAS agreement
4. Ex. B - Assignment and Assumption Agreement
5. Ex. C - Milavec Capacity Agreement
6. Ex. D to Agreement for Cross-Conveyances
7. Ex. E-1 - Proposed stipulation - EAS
8. Ex. E-2 - Proposed stipulation - Frederick

Reviewed By: Jason Leslie, Deputy Town Manager

Action Type

1) Legislative: Actions that relate to subjects of a long term and general applicability; such as the passing of ordinances/resolutions/policies/etc.

Strategic Plan Alignment:

Strategic, Reliable & Sustainable Infrastructure – This request aligns with the Town's goal to invest in existing and future water while planning for sustainable growth and development by providing flexibility to the Town's future changed raw water rights.

Summary Statement:

Town Staff, our Water Consultant, and Water Attorney have been working through the water court application for the change of a large portion of the Town's Lower Boulder shares. As the case progresses towards the end of the process and towards a final decree the Town will need to make sure that agreements are in place to make all shares available for use as outlined in our draft decree. The agreements that are needed include the lease or purchase of storage outside the Town's boundary which is necessary to meet return flow replacement requirements.

Detail of Issue/Request:

In 2021, the Town applied to modify the use of a significant portion of its Lower Boulder water shares. Since then, Town staff, along with consultants from Element and legal counsel from Moses, Wittemyer, Harrison & Woodruff, have been managing the change case and addressing concerns raised by objectors. Historically, the purchased or dedicated shares were used for irrigation both inside and outside Town boundaries. When these properties were irrigated, some water not consumed by plants or lost to evaporation flowed downstream as return flows, benefiting other users. Now, the Town must replace these return flows at multiple locations since the shares were historically used in diverse areas.
Currently, the Town can replace return flows to Godding Hollow and No Name Creek using the Lower Boulder Ditch and Milavec Lake. Partial replacements can also be made through the Town's infrastructure and agreements with the Lower Boulder Ditch Company. However, to use shares tied to properties outside the current return flow replacement zones, the Town must install new infrastructure and secure agreements to ensure replacements are feasible.

One critical location for return flow replacements is Boulder Creek. Staff and consultants have been identifying opportunities for water storage in existing facilities near Boulder Creek. Stored water can be released as needed to meet return flow obligations. If these obligations are unmet, the Town cannot repurpose those shares for use outside the ditch service area.

The Town has been in communication with Doug Tiefel, a property owner near Boulder Creek and the Lower Boulder Ditch, regarding the use of his existing infrastructure and adjacent facilities. Agreements with Tiefel for storage and water release are necessary to meet the Town's return flow requirements. The Town's draft decree outlines this plan and its intent to formalize these agreements.

Eldorado Artesian Springs (EAS), another owner of Lower Boulder shares, has an active change case for shares historically used in Frederick, north of Milavec Lake. EAS currently stores water in Tiefel's Pond. Since EAS shares historically irrigated areas near Godding Hollow and No Name Creek, their return flow obligations align with these locations. However, Tiefel's Pond is less effective for meeting their needs compared to Milavec Lake. For the Town, storage in Tiefel's Pond is more advantageous than using the same volume in Milavec.

The Town is considering a trade with EAS: exchanging 22.5 acre-feet (AF) of Milavec Lake storage for the same volume in Tiefel's Pond. This trade would reduce Milavec Lake's storage capacity by approximately 2%—a minimal impact on the Town's overall water resources. The depth reduction in Milavec would range from 4.2 to 7.2 inches, a nearly imperceptible change given the lake's 30-foot depth. Additionally, water quality in Milavec is unlikely to be affected since the transferred water would still flow through the

Lower Boulder Ditch.
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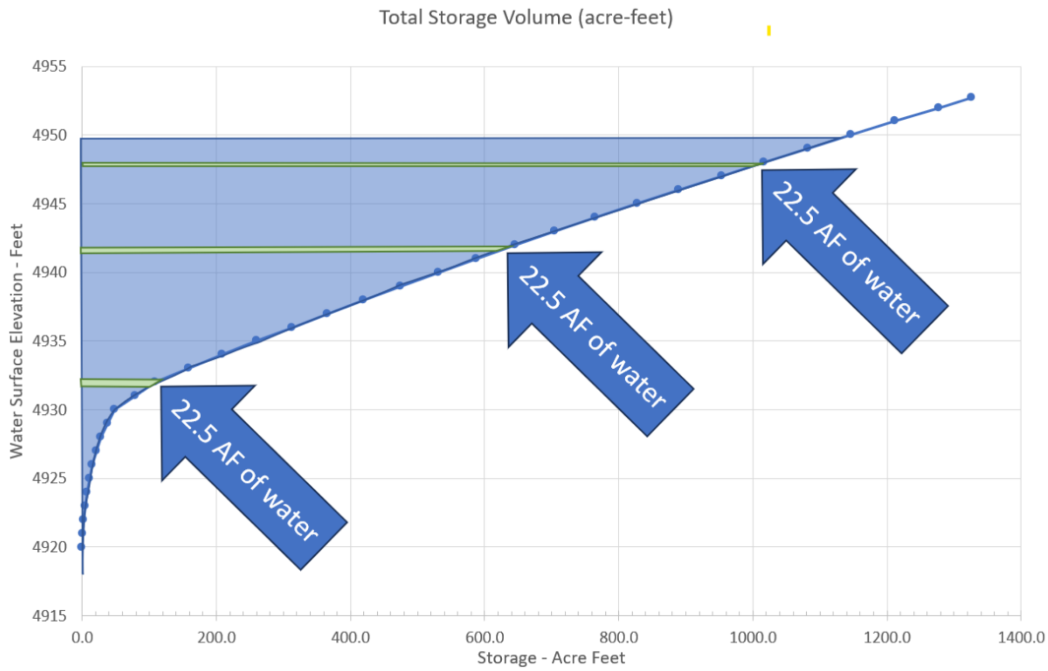


Figure 1 - Storage within Milavec Lake to show depth of 22.5 AF

The change in water depth in Milavec Lake due to the storage or release of water will be minimal and barely noticeable throughout the year. This is because the lake's water surface elevation naturally fluctuates as the Town fills and uses water for irrigation. Additionally, during the off-season, the water level decreases due to evaporation, seepage, and releases to meet the Town's return flow obligations.

Legal Comments:

The Town's Water Attorney has drafted the attached Agreement with input from staff and our consultant for consideration.

Alternatives/Options

The Town Board may direct staff to amend the proposed agreement. The Town Board may decide to investigate other storage facilities in the area for willingness to enter into agreement for use of their storage. However, there are very few locations that meet the Town's specific needs, and this location is the best option for the Town.

Financial Considerations

This is a swap of storage between two owners of storage. The Town will need to contribute to improvements to the measurement and delivery infrastructure of Tiefel Pond and Milavec Lake. Those improvements that are not included in the 2025 Budget will be included in future budget requests.

Staff Recommendation

As our water court application progresses, the water workgroup team has been actively pursuing options to allow the Town to meet the return flow requirements. A swap of 22.5 acre-feet of water between Milavec and Tiefel Pond provides a win-win to accomplish this Staff recommends support of this draft term letter and direction for staff to advance discussions with the parties.

Community Impact

Approval of this agreement will allow the Town to meet a portion of it's obligations related to the changed use of the Lower Boulder shares. This is vital to allowing the Town to have a reliable potable water supply that can be treated at Milavec in the future to meet future water demands.

TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 25-R-17

A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY AND FOR MUTUAL WATER COURT STIPULATIONS.

WHEREAS, in pending Case No. 21CW3138 in the Water Court for Division 1 ("Water Court"), Frederick is seeking to change the water rights associated shares in the New Consolidated Lower Boulder Reservoir and Ditch Company ("Lower Boulder"); and

WHEREAS, in pending Case No. 22CW3176 in the Water Court, Eldorado Artesian Springs, Inc., ("EAS") is seeking to change the water rights associated with shares in the Lower Boulder; and

WHEREAS, to assist in meeting their respective obligations to replace historical return flows under the decrees to be entered into in the Water Court cases mentioned above, Frederick and EAS are willing to exchange storage capacities in Tiefel Pond and Milavec Lake as reflected in the attached Agreement; and

WHEREAS, the Town and EAS are willing to file stipulations in the cases mentioned above as described in the attached Agreement.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Frederick, Colorado, that:

Section 1. The attached AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY AND FOR MUTUAL WATER COURT STIPULATIONS is approved and the Mayor is authorized to execute it.

Section 2. Effective Date. This resolution shall become effective immediately upon adoption.

Section 3. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 4. Certification. The Town Clerk shall certify the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND ADOPTED THIS _______ DAY OF ________________, 2025.

ATTEST: **TOWN OF FREDERICK**

By __________________
Tricia David, Town Clerk

By _________________
Tracie Crites, Mayor

AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY AND FOR MUTUAL WATER COURT STIPULATIONS

THIS AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY AND FOR MUTUAL WATER COURT STIPULATIONS ("Agreement") is made and entered into this ______ day of January, 2025, by and between the Town of Frederick, Colorado, a statutory town ("Frederick" or "Town"); and Eldorado Artesian Springs, Inc., a Colorado corporation ("EAS") (each a "Party" and together the "Parties").

RECITALS

A. In pending Case No. 21CW3138 in the Water Court for Division 1 ("Water Court"), Frederick is seeking to change the water rights associated with 34.8234 preferred shares and 40.7174 common shares in the New Consolidated Lower Boulder Reservoir and Ditch Company ("Lower Boulder"). The water attributable to Frederick's water rights that are the subject of Case No. 21CW3138 is referred to as "Frederick's Changed Lower Boulder Water" in this Agreement.

B. In pending Case No. 22CW3176 in the Water Court, EAS is seeking to change the water rights associated with 2.915 preferred shares in the Lower Boulder. The water attributable to EAS's water rights that are the subject of Case No. 22CW3176 is referred to as "EAS's Changed Lower Boulder Water" in this Agreement.

C. Frederick owns and operates Milavec Reservoir, a/k/a Lower Boulder Extension Reservoir (WDID 0604182) ("Milavec"). Milavec is filled from the Layton (a/k/a Leyton) Lateral, which diverts from the Lower Boulder Ditch at a point known as the Saddle.

D. EAS and Tiefel entered into a permanent access and water storage agreement dated December 23, 2024, to include, *inter alia*, EAS's use of 22.5 acre-feet of dedicated capacity in Tiefel Pond (a.k.a., Tiefel Reservoir) (the "Permanent EAS – Tiefel Agreement"). That part of the Permanent EAS-Tiefel Agreement that permits EAS to use 22.5 acre-feet of dedicated capacity, including rights to the delivery of water into and from this capacity, is referred to herein as "EAS's 22.5 AF of Capacity"). A copy of the Permanent EAS – Tiefel Agreement (except that all consideration paid, performed, or owning to Tiefel has been redacted) is attached as **Exhibit A**. A memorandum of the Permanent EAS – Teifel Agreement is recorded in the real property records of Boulder County at Reception No. _________________.

E. To assist in meeting its obligations to replace historical return flows under the decree to be entered in Case No. 21CW3138, Frederick seeks dedicated storage capacity in Tiefel Pond; and to assist in meeting its obligations to replace historical return flows under the decree to be entered in Case No. 22CW3176, EAS seeks dedicated storage capacity in Milavec, with the right to sub-contract with the City and County of Broomfield for the use of a portion of that capacity.

F. The Parties have certain legal and technical disputes in their Water Court cases, and they seek to resolve those disputes by mutual stipulations and settlements.

G. The Parties enter into this Agreement for their mutual benefit in obtaining needed storage capacity and as a means of resolving their disputes in the Water Court cases.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Closing. The Parties will consummate this Agreement at a "Closing" to be held either electronically or in person. As used in this Agreement, the term "Closing Date" means the actual date of Closing. As of the date of execution of this Agreement, the Parties anticipate that the Closing Date will be January 29, 2025.

2. Assignment and conveyance of Permanent EAS – Tiefel Agreement.

2.1 At Closing, EAS shall assign and convey to Frederick all of EAS's rights under the Permanent EAS – Tiefel Agreement in and to EAS's 22.5 AF of Capacity; and Frederick shall assume all of EAS's obligations under the Permanent EAS – Tiefel Agreement in and to EAS's 22.5 AF of Capacity other than obligations relating to EAS's payment or performance of consideration to Tiefel ("Assignment, Conveyance, and Assumption"). As thus assigned and conveyed, the 22.5 AF of Capacity is referred to in this Agreement as the "Conveyed Tiefel Capacity." Following such assignment, Frederick will stand in EAS's shoes with respect to EAS's 22.5 AF of Capacity.

2.2 Under the Permanent EAS – Tiefel Agreement, EAS holds an interest in the "Performance Easement" associated with EAS's 22.5 AF of Capacity. At Closing, EAS shall assign and convey to Frederick that part of EAS's rights in the Performance Easement that pertains to EAS's 22.5 AF of Capacity. Following such assignment, Frederick will stand in EAS's shoes with respect to that part of the Performance Easement that pertains to EAS's 22.5 AF of Capacity. For the avoidance of doubt, EAS is not assigning and conveying that part of its rights in the Performance Easement that pertain to EAS's 1 AF of Capacity (as that term is defined in the Permanent Tiefel – EAS Agreement).

2.3 Tiefel has agreed, as part of the Permanent EAS – Tiefel Agreement, to negotiate in good faith with Frederick and EAS regarding the terms and conditions of a "Tiefel Pond Operations Agreement" for Tiefel's, Frederick's, and EAS's use of Tiefel Pond; and with Frederick regarding improvements to the East Tiefel Outlet.

EAS will negotiate in good faith to execute the Operations Agreement no later than March 31, 2025.

2.3.1 The Tiefel Pond Operations Agreement will memorialize the details of Tiefel's, EAS's, and Frederick's joint use of Tiefel Pond, including without limitation the protocol for Frederick and EAS to order deliveries into and releases from the pond; the protocol for Tiefel, EAS, and Frederick to measure and account for such deliveries and releases; and any other operational issues.

2.3.2 As long as all terms and conditions of the Tiefel Pond Operations Agreement are consistent with the terms and conditions of this Agreement, Frederick, EAS, and Tiefel may amend the Tiefel Pond Operations Agreement in writing from time to time based on operational experience, without the requirement for EAS and Frederick to amend this Agreement.

2.3.3 Notwithstanding the date of Closing, Frederick's entitlement to store water in the Conveyed Tiefel Capacity under the Assignment and Assumption and the deeded transfer of the Conveyed Tiefel Capacity will begin on the first day on which the Lower Boulder delivers water to shareholders during the 2025 irrigation season, and no earlier than May 1, 2025.

2.4 Assignment, Conveyance, and Assumption Agreement: The Parties will accomplish the Assignment, Conveyance, and Assumption by executing, at Closing, an Assignment, Conveyance, and Assumption Agreement in the form of attached **Exhibit B**.

2.5 Contractual relationship and obligations – Frederick and EAS. By entering into this Agreement, Frederick and EAS enter into a binding contractual relationship with enforceable mutual obligations.

3. Conveyed Milavec Capacity. At Closing, Frederick shall convey to EAS, by agreement substantially in the form of attached **Exhibit C**, an exclusive license for and right to dedicated use and control of 22.5 acre-feet of storage capacity in Milavec ("Conveyed Milavec Capacity"); for EAS's entitlement to order deliveries to that capacity via the Layton Lateral; and for EAS's entitlement to order releases from that capacity to Mayfield Hollow and, following Frederick's installation of infrastructure to connect Milavec directly to Frederick's raw water irrigation system and to Godding Hollow, to Godding Hollow. The agreement is referred to in this Agreement as the "Milavec Capacity Agreement." The exclusive license conveyed by the Milavec Capacity Agreement will be irrevocable unless it is terminated subject to and in compliance with the terms of this Agreement. Notwithstanding the date of Closing, EAS's entitlement to store water in the Conveyed Milavec Capacity will begin on the first day on which the Lower Boulder delivers water to shareholders during the 2025 irrigation season, and no earlier than May 1, 2025.

3.1 No trucking of water withdrawn from the Conveyed Milavec Capacity. EAS's entitlement to release water from the Conveyed Milavec Capacity is limited to releases through the existing infrastructure for delivery to Mayfield Hollow and through the to-be-constructed infrastructure for delivery to Godding Hollow. EAS is prohibited from pumping or otherwise withdrawing water from the Conveyed Milavec Capacity for trucking or other transportation to a location of beneficial use.

3.2 Option for additional leased supply under an administratively approved SWSP. Beginning on November 1, 2025, should EAS's stored supply in its available Conveyed Milavec Capacity not be sufficient for its collective Godding Hollow and Mayfield Hollow return flow obligations in a given "Water Year" (November 1 through October 31), and contingent upon EAS's obtaining an administratively approved substitute water supply plan ("SWSP") authorizing this operation, EAS may exercise an option to lease from Frederick up to 7.5 acre-feet per Water Year of fully consumable water attributable to Frederick's Changed Lower Boulder Water, for EAS's continued maintenance of return flows to Godding Hollow and Mayfield Hollow ("EAS Lease Option").

3.2.1 As consideration for any exercise of the EAS Lease Option, EAS will pay Frederick $400 per acre-foot of water leased ("Lease Payment"), escalated annually as described in paragraph 3.2.1.1 below. EAS shall give Frederick at least 84 days' advance written notice of EAS's intent to exercise the EAS Lease Option, including written notice of the volume of water to be leased ("Option Exercise Notice"). The actual volume leased under the EAS Lease Option in a given water year is the "Exercised Option Volume"

3.2.1.1 The Lease Payment will be adjusted automatically at the beginning of each Water Year based on the most recent non-seasonally adjusted Consumer Price Index for All Urban Consumers ("CPI-U") for the Denver – Aurora – Lakewood area for the preceding twelve months, as published by the U.S. Bureau of Labor Statistics or any successor entity ("USBLS") by October 1 each year. The CPI-U typically is updated in August or September.

3.2.1.2 No later than October 15 each year, Frederick will email EAS notice of the "Lease Payment Escalator," which Frederick will determine as the USBLS's published increase in the CPI-U over the last twelve months ("Escalator Notice"). By way of example but not by way of limitation, the Lease Payment Escalator if determined as of the date of this Agreement would be 2.0% (https://www.bls.gov/regions/mountain-plains/news-release/consumerpriceindex_denver.htm). Within the Escalator Notice, Frederick will calculate the updated Lease Payment for the upcoming Water Year as the then-current Lease Payment multiplied by (100% + the Lease Payment Escalator). In the example above, Frederick would determine the updated Lease Payment as $400 per acre-foot multiplied by 1.020 (i.e., 102.0%), for an updated Lease Payment of $408.00 per acre-foot.

3.2.1.3 EAS shall make the Lease Payment, adjusted as identified in Frederick's annual Escalator Notice, at the same time it gives Frederick the Option Exercise Notice.

3.2.2 As further consideration for any exercise of the EAS Lease Option, and also under the terms of the SWSP that EAS will obtain to authorize this operation, 100% of the Exercised Option Volume of EAS's first deliveries of EAS's Changed Lower Boulder Water to Milavec in the irrigation season immediately following exercise of the EAS Lease Option will be booked over to Frederick.

3.2.3 In its request for an administratively approved SWSP to authorize exercise of the EAS Lease Option, EAS shall request administrative approval of both (i) EAS's use of the Exercised Option Volume of Frederick's Changed Lower Boulder Water for EAS's replacement of historical return flows owed to Godding Hollow or Mayfield Hollow; and (ii) Frederick's use of the Exercised Option Volume of EAS's Changed Lower Boulder Water for Frederick's replacement of historical return flows owed to Godding Hollow or Mayfield Hollow.

3.2.4 No later than 28 days before submitting any SWSP request for authorization of exercise of the EAS Lease Option, EAS shall send Frederick a near-final draft of the SWSP request for review and comment; and EAS shall address any comments from or concerns of Frederick before submitting the request.

3.3 <u>Option for subcontract to the City and County of Broomfield</u>. Frederick agrees that EAS may subcontract with the City and County of Broomfield ("<u>Broomfield</u>") for use of a portion or all of the Conveyed Milavec Capacity ("<u>Broomfield Subcontract Option</u>"), on the following terms and conditions:

3.3.1 The parties to any such subcontract will be EAS and Broomfield; Frederick will not be a party and will not be involved in administration or enforcement of the subcontract.

3.3.2 The subcontract under any Broomfield Subcontract Option must incorporate all terms or conditions of both (i) this Agreement and (ii) the "<u>Milavec Operations Agreement</u>" described in paragraph 6 below that pertain to EAS's use of the Conveyed Milavec Capacity ("<u>Milavec Terms or Conditions</u>"). EAS and Broomfield must deliver a near-final draft of the subcontract to Frederick for confirmation of inclusion of the Milavec Terms or Conditions at least 35 days before the sublease is to take effect. Any sublease not including the Milavec Terms or Conditions will be void.

3.3.3 Within any exercise of the Broomfield Subcontract Option, EAS will remain bound by all terms and conditions of this Agreement and the Milavec Operations Agreement pertaining to the Conveyed Milavec Capacity, including without limitation the Milavec Terms or Conditions. Should Broomfield default on any Milavec Term or Condition, EAS will be in default of its obligations under this Agreement.

3.3.4 Within any exercise of the Broomfield Subcontract Option, Frederick will remain bound by all terms and conditions of this Agreement pertaining to the Conveyed Milavec Capacity, including without limitation the Milavec Terms or Conditions. Should Frederick default on any Milavec Term or Condition as it applies to Broomfield's use of the Conveyed Milavec Capacity, Frederick will be in default of its obligations under this Agreement.

3.3.5 Under any exercise of the Broomfield Subcontract Option, Broomfield will be authorized to order deliveries to and releases from the Milavec capacity, subject to EAS's prior written (emailed) approval of such orders.

3.3.6 If and to the extent that EAS exercises the Broomfield Subcontract Option, references to EAS in the Milavec Terms or Conditions are to be construed as including Broomfield.

3.4 Town approval required for any other subcontract. Should EAS wish to enter into a subcontract for use of any portion of the Conveyed Milavec Capacity by an entity other than Broomfield, EAS shall make formal written application to the Town's Board of Trustees for approval of the proposed subcontract. The Board of Trustees may approve or disapprove of such application in its sole discretion. Any subcontract approved by the Board of Trustees under this paragraph 3.4 must comply with the terms and conditions of paragraphs 3.3.1 through 3.3.5 above with respect to the new subcontractee. If and to the extent that EAS enters into an approved subcontract with an entity other than Broomfield, references to EAS in the Milavec Terms or Conditions are to be construed as including such subcontractee.

4. Evaporation and other losses from Tiefel Pond and Milavec. Frederick will bear its proportional share of evaporative and other losses from Tiefel Pond; and EAS will bear its proportional share of evaporative and other losses from Milavec. Proportional allocations of evaporative and other losses will be based on the volume of water actually stored in each account within each reservoir.

5. Accounting. EAS's and Frederick's experts will work collaboratively to prepare accounting spreadsheets to record total storage in, evaporative and other losses from, and releases from Milavec; and storage in, evaporative and other losses from, and releases from EAS's sub-account in Milavec. Frederick's, EAS's, and Tiefel's experts will work collaboratively to prepare accounting spreadsheets to record total storage in, evaporative and other losses from, and releases from Tiefel Pond; and storage in, evaporative and other losses from, and releases from Frederick's sub-account in Tiefel Pond.

6. Milavec Operations Agreement. Within twenty-eight days of Closing, the Parties shall meet to discuss the terms and conditions of a "Milavec Operations Agreement" for EAS's use of the Conveyed Milavec Capacity.

6.1 The Milavec Operations Agreement will memorialize the details of such use, including without limitation the protocol for EAS to order deliveries into and releases from the Conveyed Milavec Capacity; the protocol for each Party to account for such deliveries and releases; and any other operational issues.

6.2 The Parties shall work in good faith to ensure that they execute the Milavec Operations Agreement no later than March 31, 2025.

6.3 As long as all terms and conditions of the Milavec Operations Agreement are consistent with the terms and conditions of this Agreement, the Parties may amend the Milavec Operations Agreement in writing from time to time based on operational experience hereunder, without also amending this Agreement.

7. Water Court Stipulations. No later than 1 business day after the Closing Date, EAS and Frederick will file substantively identical stipulations of record in Case Nos. 21CW3138 and 22CW3176, respectively ("Water Court Stipulations"), to resolve each Party's opposition in the other's Water Court case and to memorialize the following binding agreements:

7.1 Frederick's and EAS's consulting technical experts will document, in their formal expert disclosures, the historically commingled use of the Frederick-controlled 4.0 Lower Boulder preferred shares and the EAS-owned 2.915 Lower Boulder preferred shares on the entire Meredith O. Johnson Trust ("MOJT") farm (i.e., with all 6.915 shares spread on both sides of the Layton Lateral and with historical return flows from all 6.915 shares accruing to both Mayfield Hollow and Godding Hollow). Frederick's expert documented that historical commingling in the Town's initial Rule 26(a)(2) disclosures served on April 29, 2024.

7.2 Frederick's and EAS's experts will further document the Parties' agreement regarding division of the historically irrigated acreage/dry-up acreage on the MOJT Farm as between the 4.0 Frederick-controlled Lower Boulder preferred shares and the EAS-owned 2.915 Lower Boulder preferred shares as described in paragraph 7.2.1 below.

7.2.1 The experts will document, in their formal expert disclosures, the amount and agreed-upon location of each Party's proportional share of historically irrigated acreage/dry-up acreage in the Godding Hollow and Mayfield Hollow watersheds. That proportion will be determined as 57.85% for Frederick (4/6.915) and 42.15% (2.915/6.915) for EAS, multiplied by the agreed-upon commingled historically irrigated acreage in the Godding Hollow watershed (63.42 acres) and in the Mayfield Hollow watershed (77.02 acres), as shown on the map and table attached as **Exhibit D**.

7.3 To enable Frederick to obtain dry-up credit on the EAS-owned property on the west side of the Layton Lateral in the Godding Hollow watershed, EAS will negotiate in good faith to execute binding dry-up covenants with Silverstone Development Company and the Blumenthal Group, for consideration agreed upon between EAS and those entities. The number and location of acres to be encumbered by the dry-up covenants for each of Silverstone Development Company and the Blumenthal Group are as shown on **Exhibit D**. Both dry-up covenants must be freely assignable to Frederick, without the requirement for prior approval from EAS.

7.4 Each Party shall include the agreed-upon historically irrigated acreage and associated dry-up acreage for that Party in any proposed decree or proposed Ruling of the Referee filed with the court for any purpose, including without limitation as an attachment to the Water Court Stipulations and to every stipulation filed thereafter.

7.5 Frederick and EAS will jointly brief the Division Engineer's Office on the agreed-upon division of historically irrigated acreage and associated dry-up acreage, and will participate in any needed meetings with that office to discuss the Water Court Stipulations or this Agreement.

7.6 The Water Court Stipulations will be in the form of attached **Exhibit E**.

8. <u>Recording</u>. Frederick will record the Assignment, Conveyance, and Assumption from EAS at Frederick's cost; and EAS will record the Milavec Capacity Agreement at EAS's cost. If the Parties elect to record this Agreement, they will share equally the cost of such recording.

9. <u>Default and remedies</u>. In the event that either Party believes the other is in default of any obligation under this Agreement, the non-defaulting Party shall give written notice of the default to the defaulting Party ("<u>Default Notice</u>"). Upon receipt of a Default Notice, the Party asserted to be in default shall, within five business days, either cure the alleged default or provide a written response explaining why there is no default. If the alleged

default has not been cured or otherwise resolved within ten business days from the date of the Default Notice, the Parties may pursue any remedy available to them at law or in equity, including without limitation the remedy of specific performance. In any action in a court of competent jurisdiction to enforce the terms hereof or declare the Parties' rights hereunder, the prevailing Party will be entitled to its reasonable attorneys' fees and costs as determined by the court. Venue for any such action will lie in the Weld County District Court; or, if the issue in dispute is a water matter, in the District Court for Water Division 1. Notwithstanding the foregoing, the Parties acknowledge and agree as follows:

9.1 For the purposes of this Agreement, EAS must able to physically and legally deliver water from Milavec, including water that is of suitable quality to meet any legal standards or requirements applicable to delivery of return flow replacement supplies, including any standards or requirements imposed by the water court, including, but not limited to, any standards or requirements that arise from or in relation to the Motion for Determination of Question of Law filed by Fredrick in Case No. 21CW3138 on November 4, 2024. For the purposes of this Agreement, Frederick must be able to physically and legally deliver water to Boulder Creek from the Tiefel Pond (subject to any limitations in the Permanent EAS – Tiefel Agreement). If either EAS or Frederick is unable to physically or legally deliver water as set forth above, then before invoking any rights under this paragraph, the parties will negotiate in good faith to find a mutually beneficial solution that substantially effectuates the purposes of this Agreement, including, but not limited to, a temporary pause of this Agreement that will allow EAS to store water in the Conveyed Tiefel Capacity and Frederick to store water in the Conveyed Milavec Capacity until such time as the Parties' ability to physically and legally deliver water is restored.

9.2 Should EAS default on its obligations to pay Tiefel under the Permanent EAS – Tiefel Agreement, as described in paragraph 4.a of that agreement, Frederick will be entitled to elect from among the following remedies in Frederick's sole discretion:

9.2.1 Frederick elects to make payment to Tiefel as provided under paragraph 4.a of the Permanent EAS-Tiefel Agreement, Frederick steps fully into EAS's shoes under that Agreement with no compensation due to EAS, and either (i) EAS repays Frederick in full for the payment made to Tiefel, in which circumstance the Milavec Capacity Agreement will continue or resume in full force and effect; or (ii) EAS does not repay Frederick in full for the payment made to Tiefel, in which circumstance the Milavec Capacity Agreement will terminate as a self-executing term of this Agreement and the Milavec Capacity Agreement upon 30 days' notice to EAS of EAS's obligation to repay Frederick.

9.2.2 Frederick elects not to make payment to Tiefel under 4.a of the Permanent EAS – Tiefel Agreement, the Permanent EAS – Tiefel Agreement is terminated as a result, and the Milavec Capacity Agreement is terminated simultaneously, as a self-executing term of this Agreement and the Milavec Capacity Agreement.

10. Amendment. This Agreement may be modified only through a written amendment executed by both Parties. No oral modification of this Agreement will be effective.

11. No adverse possession. Acts by Frederick under this Agreement do not and will not constitute, and are not to be construed or claimed by Frederick as constituting, adverse possession of Tiefel Pond or other property owned, maintained, or operated by Tiefel. Acts by EAS under this Agreement do not and will not constitute, and are not to be construed or claimed by EAS as constituting, adverse possession of Milavec or other property owned, maintained, or operated by Frederick.

12. No assignment. Neither Party may assign this Agreement, in whole or in part, without the prior written consent of the other Party, which consent may be given or withheld in the non-assigning Party's sole discretion. Notwithstanding the above, nothing herein prevents EAS from selling or otherwise transferring its entire operation to another entity, and in such a case, the subsequent owner shall replace EAS as a Party to this Agreement, which will remain in full force and effect.

13. Force majeure. Neither Party will be liable to the other for interruptions in storage operations in Tiefel Pond or Milavec due to causes or events beyond the applicable Party's control and not resulting from that Party's negligence, including but not limited to acts of God, floods, earthquakes, tornadoes, sabotage, vandalism beyond that which could have reasonably been prevented, terrorism, war, fire, explosion, or blizzard conditions.

14. No waiver of governmental immunity. Nothing in this Agreement constitutes or is to be deemed or construed as constituting a waiver of any privilege or immunity available to the Town under the statutes and constitution of the State of Colorado, including the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -119, as it may be amended.

15. No third-party beneficiaries. There are no third-party beneficiaries of this Agreement. In the event of a dispute between EAS and Broomfield with respect to EAS's exercise of the Broomfield Subcontract Option, or between EAS and an approved subcontractee other than Broomfield, neither EAS nor Broomfield or such other approved subcontractee will have a cause of action against or an entitlement to pursue remedies against Frederick in connection with that dispute.

16. Severability. If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, the Agreement is to be construed thereafter as if such invalid or unenforceable provision(s) were omitted.

17. Complete agreement. This Agreement represents the complete agreement of the Parties with respect to the subject matter hereof.

18. Term of Agreement. The term of this Agreement is perpetual.

19. Counterparts. This Agreement may be executed in counterparts.

20. Authorized signatories. The Parties represent and warrant to each other that the signatories executing this Agreement on their behalf are legally authorized to bind them through such execution.

Remainder of this page intentionally left blank.
Signature pages follow.

Executed on the dates written below.

ELDORADO ARTESIAN SPRINGS, INC.

____
Doug Larson, President

Date: _________________________

STATE OF COLORADO)
ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of January, 2025, by Doug Larson, President of Eldorado Artesian Springs, Inc.

Witness my hand and official seal.

My commission expires __________________________.

____
Notary Public

TOWN OF FREDERICK, COLORADO

____
Tracie Crites, Mayor

ATTEST:

____
Tricia David, Town Clerk

Date: __________________________

STATE OF COLORADO)
ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of January, 2025, by Tracie Crites, Mayor of the Town of Frederick, Colorado; and Tricia David, Town Clerk of the Town of Frederick, Colorado.

Witness my hand and official seal.

My commission expires ___________________________.

____
Notary Public

Placeholder
Tiefel – EAS agreement

**EXHIBIT B TO AGREEMENT FOR
CROSS-CONVEYANCE OF STORAGE CAPACITY**

**ASSIGNMENT AND CONVEYANCE OF
CONTRACTUAL ENTITLEMENT TO STORAGE CAPACITY
AND ASSUMPTION OF SPECIFIED CONTRACTUAL OBLIGATIONS**

This Assignment and Conveyance of Contractual Entitlement to Storage Capacity and Assumption of Specified Contractual Obligations ("Assignment, Conveyance, and Assumption") is entered into as of __________________, 2025, by Eldorado Artesian Springs, Inc., a Colorado corporation whose address is 1783 Dogwood Street, Louisville, Colorado, 80027 ("EAS"); and the Town of Frederick, Colorado, a statutory town whose address is 401 Locust Street, Frederick, Colorado, 80530 ("Frederick") (each a "Party" and together the "Parties").

Recitals

A. By virtue of an Access and Water Storage Agreement between EAS and the Tiefel Family, LLC ("Tiefel"), a memorandum of which was recorded in the real property records of Boulder County on [[DATE]] at Reception No. [[ADD]] ("Tiefel – EAS Agreement"), and as described therein, EAS owns, *inter alia*, a perpetual right to use of 22.5 acre-feet of dedicated storage capacity in Goose Haven Reservoir No. 2, a/k/a Tiefel Pond, a/k/a Tiefel Reservoir (the "22.5 AF of Capacity"), including rights to delivery of water into and from the 22.5 AF of Capacity.

B. As provided in their Agreement for Cross-Conveyance of Storage Capacity and for Mutual Water Court Stipulations dated [[DATE]] ("Conveyance Agreement"), EAS has agreed to assign and convey to Frederick its interests in the 22.5 AF of Capacity and the "Performance Easement" as it pertains to the 22.5 AF of Capacity under the Tiefel – EAS Agreement and as it is described therein, and Frederick has agreed to assume specified obligations of EAS thereunder. A copy of the fully executed Conveyance Agreement is attached as Exhibit A.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, EAS and Frederick covenant and agree as follows:

Assignment, Conveyance, and Assumption

1. Incorporation of Recitals. The Recitals are part and parcel of this Assignment, Conveyance, and Assumption**.**

2. Assignment. EAS hereby irrevocably assigns and conveys to Frederick all of EAS's right, title, and interest in and to the 22.5 AF of Capacity described in the Tiefel - EAS Agreement. Frederick henceforth will stand in EAS's shoes with respect to EAS's rights in and to the 22.5 AF of Capacity under the Tiefel – EAS Agreement. EAS hereby also irrevocably assigns and conveys to Frederick EAS's right, title, and interest in the Performance Easement as it pertains to the 22.5 AF of Capacity under the Tiefel – EAS Agreement. For the avoidance of doubt, EAS is not assigning any rights of ingress or egress to the Tiefel Pond for the purposes of trucking water from the Tiefel Pond or any right, title or interest in the "1 AF of Capacity" under the Tiefel – EAS Agreement and as

described therein (including any right, title, or interest in the Performance Easement as it pertains to the 1 AF of Capacity).

3. Assumption. With the express exclusion of any obligation pertaining to EAS's payment or performance of consideration, Frederick hereby irrevocably assumes EAS's contractual obligations to Tiefel with respect to the 22.5 AF of Capacity under the Tiefel – EAS Agreement.

4. Time of exercise of rights. It is mutually agreed by and between the Parties that Frederick may commence the exercise of the 22.5 AF of Capacity as of the first day on which the New Consolidated Lower Boulder Reservoir and Ditch Company delivers water to shareholders during the 2025 irrigation season, and no earlier than May 1, 2025.

5. Rights and remedies. In the event of any default by either Party in the timely performance of its covenants and agreements set forth in this Assignment, Conveyance, and Assumption, the non-defaulting Party will have all rights and remedies provided by law, including without limitation any remedies set forth Conveyance Agreement and the right to seek specific performance of the defaulting Party of such covenants and agreements.

6. Governing law. This Assignment, Conveyance, and Assumption is governed by and to be construed in accordance with the laws of the State of Colorado.

7. Binding effect. This Assignment, Conveyance, and Assumption binds and benefits the Parties and their respective successors or assigns.

8. Severability. If any term, condition, or provision of this Assignment, Conveyance, and Assumption is determined to be invalid or unenforceable by a court of competent jurisdiction, then such term, condition, or provision is to be severed or to be modified to the extent necessary to make it enforceable, and the resulting Assignment, Conveyance, and Assumption will remain in full force and effect.

9. Costs of legal proceedings. In the event either Party institutes legal proceedings with respect to this Assignment, Conveyance, and Assumption or enforcement thereof, the prevailing Party will be entitled to court costs and reasonable attorneys' fees incurred by such Party in connection with such legal proceedings.

10. Waiver. The failure of either Party to exercise any right or power given hereunder, or to insist upon strict compliance by the other Party with its obligations set forth herein, will not constitute and is not to be construed as a waiver of either Party's right to demand strict compliance with the terms and conditions of this Assignment, Conveyance, and Assumption.

11. Authority. EAS warrants and represents to Frederick that the execution, delivery, and performance of this Assignment and Conveyance by EAS has been duly authorized in accordance with law, and that this Assignment and Conveyance constitutes the legal, valid, and binding obligation of EAS, enforceable against EAS in accordance with its terms.

Frederick warrants and represents to EAS that the execution, delivery, and performance of this Assumption by Frederick has been duly authorized in accordance with law, and that this Assumption constitutes the legal, valid, and binding obligation of Frederick, enforceable against Frederick in accordance with its terms.

12. Counterparts. This Assignment, Conveyance, and Assumption may be executed in counterparts, each of which is an original, and all of which taken together constitute one and the same instrument.

13. Merger. This Assignment, Conveyance, and Assumption, in combination with the Conveyance Agreement, embodies the entire understanding and agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior negotiations, understanding or agreements regarding that subject matter. No additional or different oral representation, promise, or agreement will be binding on either Party with respect to the subject matter of this Assignment, Conveyance, and Assumption and the Conveyance Agreement.

14. Recording. Frederick will record this Assignment, Conveyance, and Assumption in the real property records of Weld County.

15. Captions for convenience. All headings and captions herein are for convenience only and have no meaning in the interpretation of effect of this Assignment, Conveyance, and Assumption.

Remainder of this page intentionally left blank. Signature pages follow.

EXHIBIT B TO AGREEMENT FOR
CROSS-CONVEYANCE OF STORAGE CAPACITY

Executed on the dates written below.

ELDORADO ARTESIAN SPRINGS, INC.

____
Doug Larson, President

Date: ______________________

STATE OF COLORADO)
ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _______________, 2025, by Doug Larson, President of Eldorado Artesian Springs, Inc.

Witness my hand and official seal.

My commission expires ____________________________.

____
Notary Public

EXHIBIT B TO AGREEMENT FOR
CROSS-CONVEYANCE OF STORAGE CAPACITY

TOWN OF FREDERICK, COLORADO

____
Tracie Crites, Mayor

ATTEST:

____
Tricia David, Town Clerk

Date: _________________________

STATE OF COLORADO)
ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of ______________, 2025, by Tracie Crites, Mayor of the Town of Frederick, Colorado; and Tricia David, Town Clerk, of the Town of Frederick, Colorado.

Witness my hand and official seal.

My commission expires __________________________.

____
Notary Public

EXHIBIT C TO AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY

MILAVEC CAPACITY AGREEMENT
Conveyed Milavec Capacity

THIS MILAVEC CAPACITY AGREEMENT is made this _____ day of ____________, 2025, between the Town of Frederick, Colorado, a statutory town whose address is 401 Locust Street, Frederick, Colorado, 80530 ("Grantor"); and Eldorado Artesian Springs, Inc., a Colorado corporation whose address is 1783 Dogwood Street, Louisville, Colorado, 80027 ("Grantee") (each a "Party" and together the "Parties").

Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby grants to Grantee and its successors and assigns the following:

(i) An exclusive license for and right to dedicated use and control of 22.5 acre-feet of storage capacity in Milavec Reservoir (WDID 0604182), a/k/a Lower Boulder Extension Reservoir, which is owned and operated by Grantor ("Storage License"), and for the use of such Storage License to store water attributable to water rights or contractual rights owned or controlled by Grantee ("EAS Water");

(ii) A non-exclusive license for and right to use of the Milavec Reservoir inlet and outlet infrastructure for delivery of the EAS Water into and the release of the EAS Water from Milavec Reservoir to Godding Hollow and Mayfield Hollow ("Inlet and Outlet Infrastructure License").

(iii) A non-exclusive license for and right of access to Milavec Reservoir and its inlet and outlet infrastructure for the purpose of exercising the Storage License and the Inlet and Outlet Infrastructure License, including without limitation for the purposes of measuring, accounting for, and delivering to Milavec, Godding Hollow, and Mayfield Hollow the EAS Water ("Access License").

(iv) An option to lease up to 7.5 acre-feet per year of Grantor's fully consumable water derived from Grantor's shares in the New Consolidated Lower Boulder Reservoir and Ditch Company ("Lower Boulder") for use under an administratively approved substitute water supply plan ("SWSP"), in consideration of Grantee's payment of the per-acre-foot "Lease Rate" and "Water Replenishment Volume" described herein (collectively, "Lease Option").

(v) An option to subcontract with the City and County of Broomfield ("Broomfield") for use of a portion or all of the Storage License ("Broomfield Subcontract Option").

EXHIBIT C TO AGREEMENT FOR
CROSS-CONVEYANCE OF STORAGE CAPACITY

IT IS HEREBY MUTUALLY covenanted and agreed by and between Grantor and Grantee as follows:

1. Licenses irrevocable subject to terms of Conveyance Agreement: The Storage License, Inlet and Outlet Infrastructure License, and Access License are irrevocable unless they are terminated subject to and in compliance with the terms of the separate Agreement for Cross-Conveyance of Storage Capacity and for Mutual Water Court Stipulations between Grantor and Grantee dated [[DATE]] ("Conveyance Agreement"). A copy of the fully executed Conveyance Agreement is attached as **Exhibit A**.

2. Exercise of licenses subject to terms and conditions of Conveyance Agreement: Grantee's exercise of the Storage License, Inlet and Outlet Infrastructure License, and Access License are subject to the terms and conditions of the Conveyance Agreement.

3. Additional terms of Access License. Grantee will have and exercise the non-exclusive Access License in connection with or to facilitate Grantee's exercise of the Storage License and the Inlet and Outlet Infrastructure License. Grantee will exercise these rights of ingress and egress in a manner that minimizes interference with Grantor's activities at Milavec Reservoir.

4. Additional terms of Lease Option. Grantee's exercise of the Lease Option is conditioned upon all of the following:

   4.1 Lease Rate. As consideration for any exercise of the Lease Option, Grantee shall pay Grantor, on a per-acre-foot basis, the rate established in the Conveyance Agreement. That rate, which is subject to annual adjustment under the Conveyance Agreement, is the "Lease Rate." The Lease Rate will be applied to the actual volume leased under the Lease Option in a given water year ("Exercised Option Volume").

   4.2 Water Replenishment Volume. As further consideration for any exercise of the Lease Option, and under the terms of the SWSP that EAS will obtain to authorize the Parties' operation under the Lease Option, Grantee's first deliveries of the EAS Water to Milavec Reservoir in the irrigation season immediately following exercise of the Lease Option will be booked over to Grantor in the amount of 100% of the Exercised Option Volume; that percentage is the Water Replenishment Volume.

   4.3 Compliance with Conveyance Agreement. In exercising the Lease Option, Grantee shall comply strictly with all terms of the Conveyance Agreement pertaining to that option.

5. Additional terms of Broomfield Subcontract Option. Grantee's exercise of the Broomfield Subcontract Option is conditioned upon all of the following:

5.1 Parties to subcontract. The parties to any subcontract under any exercise of the Broomfield Subcontract Option will be Grantee and Broomfield; Grantor will not be a party and will not be involved in administration or enforcement of the subcontract.

5.2 Compliance with Conveyance Agreement. In exercising the Broomfield Subcontract Option, the Parties shall comply strictly with and will remain bound by all terms of the Conveyance Agreement pertaining to that option and to Grantee's exercise of the Storage License. If and to the extent that Grantee exercises the Broomfield Subcontract Option, references to Grantee in those terms and conditions are to be construed as including Broomfield.

6. Restrictions on obstructions. Grantor is prohibited from obstructing Grantee's access to and use of Milavec Reservoir in accordance with the terms and conditions of this Milavec Capacity Agreement and the Conveyance Agreement.

7. Grantor's retained rights. Grantor retains the right to the undisturbed use and occupancy of Milavec Reservoir insofar as such use and occupancy are consistent with and do not impair Grantee's access to and use of the reservoir.

8. Representation and warranty by Grantor. Grantor represents and warrants that it has granted no prior licenses across, over, and/or under Milavec Reservoir that have not been previously disclosed to Grantee; that there are in effect no existing easements or licenses for use of the Storage License; and that it has full right and lawful authority to make the grant herein contained. Grantor promises and agrees to defend Grantee in the exercise of Grantee's rights hereunder against any claim by any party claiming by, through, or under Grantor.

9. Maintenance, repair and replacement of Milavec Reservoir and its inlet and outlet infrastructure. Grantor and its successors and assigns shall maintain Milavec Reservoir and its inlet and outlet infrastructure in good repair and shall replace in a timely manner any component of Milavec Reservoir or the inlet and outlet infrastructure that is not capable of being kept in good repair.

10. Binding effect, enforcement costs, and remedies. This Milavec Capacity Agreement with the burdens it imposes, is binding upon and will run with Milavec Reservoir forever, and is forever enforceable against Grantor and its representatives, successors, and assigns in Milavec Reservoir for the benefit of Grantee and its representatives, successors and assigns. In the event either Party or its representative, successor, or assign seeks to enforce its rights hereunder through litigation, arbitration, or administrative proceeding, the non-prevailing Party shall pay to the prevailing Party, as part of any judgment, order, or award, the prevailing Party's reasonable attorneys' fees and costs. In any such litigation, venue will lie in the District Court for Weld County, or, if the dispute is a water matter, in the

District Court for Water Division 1; and the Parties may seek any remedy available at law or in equity, including without limitation the remedy of specific performance.

11. Time of exercise of rights. It is mutually agreed by and between the parties that Grantee may commence the exercise of the Storage License, Inlet and Outlet Infrastructure License, Access License, Lease Option, and Broomfield Subcontract Option on the first day on which the Lower Boulder delivers water to shareholders during the 2025 irrigation season, and no earlier than May 1, 2025.

12. Merger. This Milavec Capacity Agreement, in combination with the Conveyance Agreement, embodies the entire understanding and agreement between the Parties regarding the subject matter hereof, and supersedes any and all prior negotiations, understanding or agreements regarding that subject matter. No additional or different oral representation, promise, or agreement will be binding on either Party with respect to the subject matter of this Milavec Capacity Agreement and the Conveyance Agreement.

13. Recording. Grantee will record this Milavec Capacity Agreement in the real property records of Weld County.

14. Captions for convenience. All headings and captions herein are for convenience only and have no meaning in the interpretation or effect of this Milavec Capacity Agreement.

Remainder of this page intentionally left blank.
Signature pages follow.

EXHIBIT C TO AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY

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

GRANTOR:	GRANTEE:
TOWN OF FREDERICK, COLORADO	**ELDORADO ARTESIAN SPRINGS, INC.**
______________________________	______________________________
Tracie Crites Mayor	Douglas A. Larson President

ATTEST:

____

[Name]]
Town Clerk

{00317364-6 }

EXHIBIT C TO AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY

STATE OF COLORADO)
ss.
COUNTY OF BOULDER)

The foregoing instrument was acknowledged before me this _____ day of _______________, 2024, by Douglas A. Larson, President of Eldorado Artesian Springs, Inc., a Colorado corporation.

Witness my hand and official seal.

My commission expires __________________________.

____
Notary Public

STATE OF COLORADO)
ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me this _____ day of _______________, 2024, by Tracie Crites, Mayor, and [[NAME]], Town Clerk of the Town of Frederick Colorado.

Witness my hand and official seal.

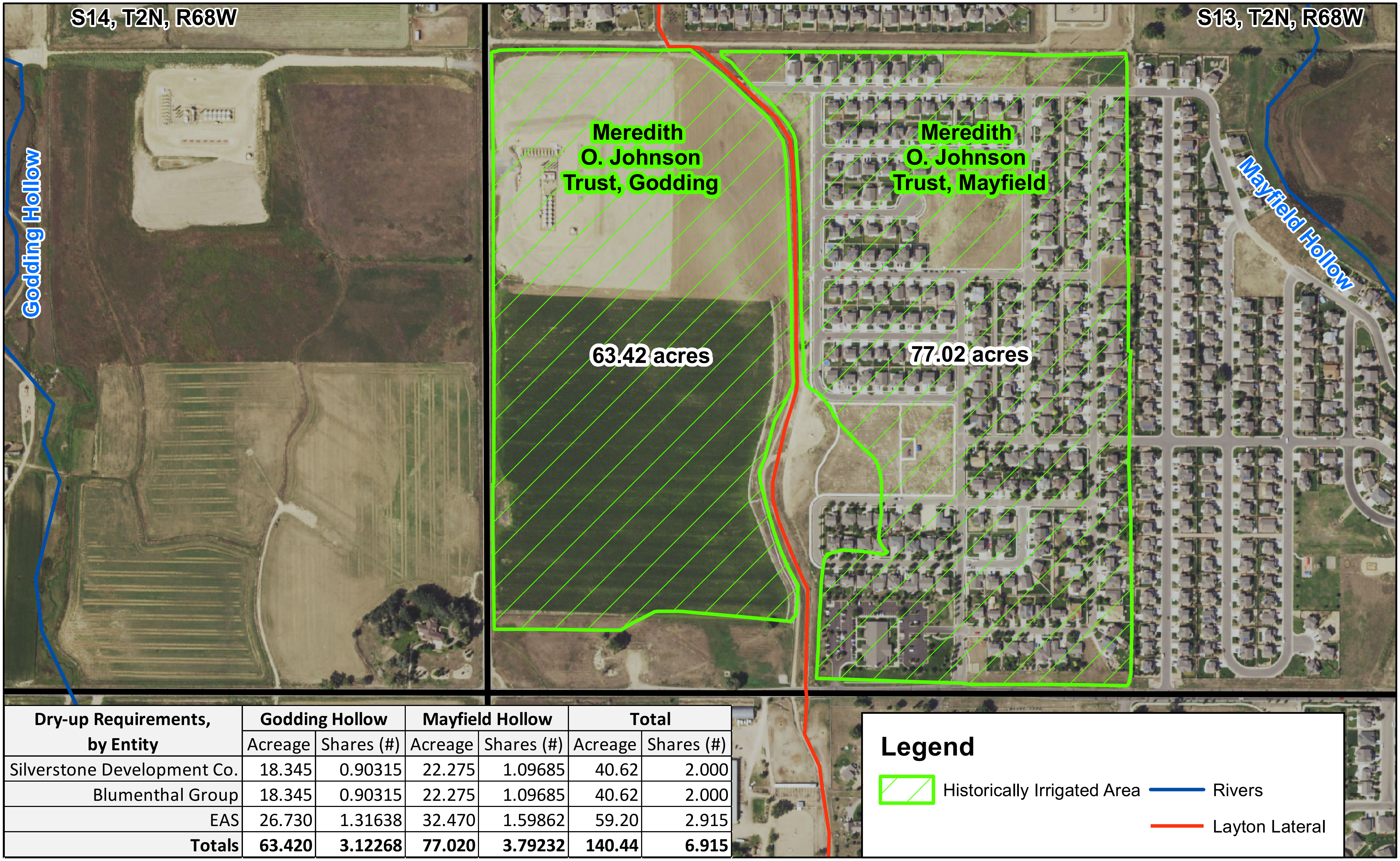
My commission expires __________________________.

____
Notary Public

EXHIBIT C TO AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY

EXHIBIT A

Easement Property



Dry-up Requirements, by Entity	Godding Hollow		Mayfield Hollow		Total	
	Acreage	Shares (#)	Acreage	Shares (#)	Acreage	Shares (#)
Silverstone Development Co.	18.345	0.90315	22.275	1.09685	40.62	2.000
Blumenthal Group	18.345	0.90315	22.275	1.09685	40.62	2.000
EAS	26.730	1.31638	32.470	1.59862	59.20	2.915
Totals	**63.420**	**3.12268**	**77.020**	**3.79232**	**140.44**	**6.915**

TOWN OF FREDERICK

MEREDITH O. JOHNSON TRUST DRY-UP REQUIREMENTS (2017 AERIAL)

DATE CREATED - 01/14/2025

DATA SOURCES

CANALS, RIVERS, PLSS (CDSS, DIVISION 1)
AERIAL IMAGERY DATED 08/27/2017 (NRCS NAIP)

COORDINATE SYSTEM

NAD 1983

Disclaimer: This map is intended for general reference purposes only. Legal Spatial Data is compiled from multiple public resources and has not been verified by a Colorado registered PLS.

Exhibit D

ELEMENT Water Consulting

EXHIBIT E-1 TO AGREEMENT FOR CROSS-CONVEYANCE OF STORAGE CAPACITY

DISTRICT COURT, WATER DIVISION NO. 1, STATE OF COLORADO 901 Ninth Avenue P. O. Box 2038 Greeley, Colorado 80632	
CONCERNING THE APPLICATION FOR WATER RIGHTS OF THE TOWN OF FREDERICK IN BOULDER AND WELD COUNTIES	▲ **COURT USE ONLY** ▲
<u>Attorneys for the Town of Frederick</u> Jennifer M. DiLalla, #40319 Virginia S. Sargent, #56646 Molly K. Haug-Rengers, #58033 Evan R. Weis, #59278 Moses, Wittemyer, Harrison and Woodruff, P.C. 2595 Canyon Boulevard, Suite 240 Boulder, Colorado 80302 (303) 443-8782 jdilalla@mwhw.com; vsargent@mwhw.com; mhaug@mwhw.com; eweis@mwhw.com <u>Attorneys for Eldorado Artesian Springs, Inc.</u> Matthew A. Montgomery, #44039 Hill & Robbins, P.C. 1660 Lincoln St., Suite 2720 Denver, CO 80264 (303) 296-8100 matthewmontgomery@hillandrobbins.com	Case Number: 21CW3138

STIPULATION BETWEEN APPLICANT AND OBJECTOR ELDORADO ARTESIAN SPRINGS, INC.

Applicant, the Town of Frederick, and Objector Eldorado Artesian Springs, Inc. ("EAS") (each a "Party" and together the "Parties"), by and through their respective undersigned attorneys, stipulate and agree as follows:

1. EAS consents to entry of a decree in the form of the draft proposed decree dated ____________________, and attached as **Exhibit 1** ("Proposed Decree"). EAS will not object to entry of any modified form of decree as long as its terms and conditions are no

{00317369-3 }

less restrictive on Frederick and no less protective of EAS than those in the Proposed Decree.

2. EAS consents to Frederick's motion to the Water Court for an order approving this Stipulation, which motion Frederick will file promptly following execution of this Stipulation.

3. EAS shall limit its further participation herein to ensuring that the decree ultimately entered by the Court in this case is in conformity with the terms of this Stipulation. Frederick shall give EAS the opportunity to review any changes to the Proposed Decree so that EAS may verify that the conditions in such decree remain as restrictive on Frederick and as protective of EAS as the conditions in the Proposed Decree. If EAS determines that any terms or conditions of a subsequent proposed decree are less restrictive or less protective than those in the Proposed Decree, EAS will be entitled to participate in any further proceedings before the Water Court or any post-decree proceedings in this case.

4. EAS is the applicant in Case No. 22CW3176 in this Court. In Case No. 22CW3176, EAS is seeking to change the water rights associated with 2.915 preferred shares in the New Consolidated Lower Boulder Reservoir and Ditch Company ("Lower Boulder"). The EAS subject shares were used historically for irrigation of what is known as the "Meredith O. Johnson Trust farm." EAS's subject 2.915 preferred shares are referred to in this Stipulation as the "EAS MOJT Shares."

5. As described in paragraphs 8 (Table 1), 9 (Table 5), and 12.2 (Table 9) of the Proposed Decree, in this case Frederick is seeking to change the water rights associated with 4.0 preferred shares in the Lower Boulder that also were used historically for irrigation of the Meredith O. Johnson Trust Farm. Those 4.0 preferred shares are referred to in this Stipulation as the "Frederick MOJT Shares."

6. To resolve their differences over representation of the historical consumptive use of the EAS MOJT Shares and the Frederick MOJT Shares, and over each Party's resulting dry-up obligations and return flow obligations associated with that use, EAS and Frederick agree as follows:

   6.1 The 2.915 EAS MOJT Shares and the 4.0 Frederick MOJT Shares were historically commingled and used for irrigation of the entire Meredith O. Johnson Trust Farm, which is divided by the Layton Lateral. Those 6.915 Lower Boulder preferred shares are referred to in this Stipulation as the "Commingled MOJT Shares."

{00317369-3 }

6.2 The portion of the Meredith O. Johnson Trust Farm on the west side of the Layton Lateral is now owned by EAS; the portion on the east side of the Layton Lateral has been developed as the Johnson Farm subdivision in Frederick.

6.3 Historical irrigation with the Commingled MOJT Shares on the portion of the farm on the west side of the Layton Lateral resulted in return flows to Godding Hollow, and historical irrigation with the Commingled MOJT Shares on the portion of the farm on the east side of the Layton Lateral resulted in return flows to Mayfield Hollow. Accordingly, both the EAS MOJT Shares and the Frederick MOJT Shares will have dry-up obligations on both sides of the Layton Lateral and historical return flow obligations to both Godding Hollow and Mayfield Hollow.

6.4 Frederick's consulting technical expert documented, in Frederick's formal expert disclosures, and EAS's consulting technical expert will document, in EAS's further preliminary reports and its formal expert disclosures, the historically commingled use of the Commingled MOJT Shares on the Meredith O. Johnson Trust Farm, with historical return flows from all 6.915 shares accruing to both Mayfield Hollow and Godding Hollow.

6.5 Frederick's and EAS's consulting technical experts will further document the Parties' agreement regarding division of the historically irrigated acreage and dry-up acreage on the Meredith O. Johnson Trust farm as between the 4.0 Frederick MOJT Shares and the 2.915 EAS MOJT Shares, as described in paragraph 6.5.1 below.

6.5.1 Frederick and EAS have determined each Party's proportional share of historically irrigated acreage and dry-up acreage in the Godding Hollow and Mayfield Hollow watersheds as 57.85% for Frederick (4/6.915) and 42.15% (2.915/6.915) for EAS, multiplied by the number of historically irrigated acres in the Godding Hollow watershed (63.42 acres) and in the Mayfield Hollow watershed (77.02 acres), as shown on the map and table attached as **Exhibit 2**.

6.5.2 The division of historically irrigated acreage and dry-up acreage described in paragraph 6.5.1 above is as documented in the ELEMENT Water Consulting report served with Frederick's initial Rule 26(a)(2) disclosures on April 29, 2024; and as represented in paragraphs 8 (Table 1), 9 (Table 5), and 12.2 (Table 9) of the Proposed Decree.

6.6 To ensure that Frederick will be entitled to dry-up credit on the EAS-owned property on the west side of the Meredith O. Johnson Trust farm, EAS shall negotiate binding dry-up covenants with Silverstone Development Company, Inc., and with Columbine Heights, LLC, and Miners Park LLC, for consideration agreed upon between EAS and those entities, which are developers that will dedicate the Frederick MOJT Shares to Frederick following entry of the decree in this case.

6.6.1 The number and location of acres to be encumbered by the dry-up covenants for each of Silverstone Development Company and the Blumenthal Group are as shown on **Exhibit 2**.

6.6.2 Both dry-up covenants must be freely assignable by the developers to Frederick, without the requirement for prior approval from EAS.

6.7 After entry of the Court's Order approving this Stipulation, each Party shall include the agreed-upon historically irrigated acreage and associated dry-up acreage for that Party in any proposed decree or proposed Ruling of the Referee filed with the Court for any purpose, including without limitation as an attachment to future stipulations.

7. This Stipulation binds and benefits the Parties and will be binding upon and benefit their assigns and successors in interest.

8. The Parties shall bear their own costs and fees associated with this case.

9. The Parties represent and affirm that the signatories to this Stipulation are legally authorized to bind the Parties in this matter.

10. This Stipulation is enforceable by the parties either as an agreement or, after approval by the Water Court, as an order of the Court.

Dated this ____ day of ________________________, 2025.

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.

____
Jennifer M. DiLalla, #40319
Virginia S. Sargent, #56646
Molly K. Haug-Rengers, #58033
Evan R. Weis, #59278

ATTORNEYS FOR APPLICANT,
TOWN OF FREDERICK

HILL & ROBBINS, P.C.

____
Matthew A. Montgomery, #44039

ATTORNEYS FOR OBJECTOR
ELDORADO ARTESIAN SPRINGS, INC.

E-filed per C.R.C.P. 121 § 1-26 via Colorado Courts E-Filing Service.
A printed or printable copy of this document bearing the original, electronic, or scanned signature(s) is on file at the offices of Moses, Wittemyer, Harrison and Woodruff, P. C.

<table>
<tr><td>DISTRICT COURT, WATER DIVISION NO. 1,
STATE OF COLORADO

901 Ninth Avenue
P. O. Box 2038
Greeley, Colorado 80632</td><td rowspan="4">▲ COURT USE ONLY ▲

Case Number: 22CW3176</td></tr>
<tr><td>CONCERNING THE APPLICATION FOR WATER RIGHTS OF ELDORADO ARTESIAN SPRINGS, INC.

IN BOULDER AND WELD COUNTIES</td></tr>
<tr><td><u>Attorneys for Eldorado Artesian Springs, Inc.</u>
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<tr><td></td></tr>
<tr><td colspan="2">STIPULATION BETWEEN APPLICANT AND
OBJECTOR TOWN OF FREDERICK</td></tr>
</table>

Applicant, Eldorado Artesian Springs, Inc. ("EAS"), and Objector Town of Frederick ("Frederick") (each a "Party" and together the "Parties"), by and through their respective undersigned attorneys, stipulate and agree as follows:

1. Frederick consents to entry of a decree in the form of the draft proposed decree dated June 21, 2024, and attached as **Exhibit 1** ("Proposed Decree"). Frederick will not object to entry of any modified form of decree as long as its terms and conditions are no less restrictive on EAS and no less protective of Frederick than those in the Proposed Decree and this Stipulation.

2. Frederick consents to EAS's motion to the Water Court for an order approving this Stipulation, which motion EAS will file promptly following execution of this Stipulation.

3. Frederick shall limit its further participation herein to ensuring that the decree ultimately entered by the Court in this case is in conformity with the terms of this Stipulation. EAS shall give Frederick the opportunity to review any changes to the Proposed Decree so that Frederick may verify that the conditions in such decree remain as restrictive on EAS and as protective of EAS as the conditions in the Proposed Decree. If Frederick determines that any terms or conditions of a subsequent proposed decree are less restrictive or less protective than those in the Proposed Decree, Frederick will be entitled to participate in any further proceedings before the Water Court or any post-decree proceedings in this case.

4. Frederick is the applicant in Case No. 21CW3138 in this Court. In Case No. 21CW3138, Frederick is seeking to change, among other water rights, the water rights associated with 4.0 preferred shares in the New Consolidated Lower Boulder Reservoir and Ditch Company ("Lower Boulder"). The Frederick 4.0 subject shares were used historically for irrigation of what is known as the "Meredith O. Johnson Trust farm." Frederick's subject 4.0 preferred shares are referred to in this Stipulation as the "Frederick MOJT Shares."

5. As described in paragraph 9 of the Proposed Decree, in this case EAS is seeking to change the water rights associated with 2.915 preferred shares in the Lower Boulder that also were used historically for irrigation of the Meredith O. Johnson Trust Farm. Those 2.915 preferred shares are referred to in this Stipulation as the "EAS MOJT Shares."

6. To resolve their differences over representation of the historical consumptive use of the EAS MOJT Shares and the Frederick MOJT Shares, and over each Party's resulting dry-up obligations and return flow obligations associated with that use, EAS and Frederick agree as follows:

   6.1 The 2.915 EAS MOJT Shares and the 4.0 Frederick MOJT Shares were historically commingled and used for irrigation of the entire Meredith O. Johnson Trust Farm, which is divided by the Layton Lateral. Those 6.915 Lower Boulder preferred shares are referred to in this Stipulation as the "Commingled MOJT Shares."

   6.2 The portion of the Meredith O. Johnson Trust Farm on the west side of the Layton Lateral is now owned by EAS; the portion on the east side of the Layton Lateral has been developed as the Johnson Farm subdivision in Frederick.

   6.3 Historical irrigation with the Commingled MOJT Shares on the portion of the farm on the west side of the Layton Lateral resulted in return flows to Godding Hollow, and historical irrigation with the Commingled MOJT Shares on the portion of the farm on the east side of the Layton Lateral resulted in return flows to Mayfield Hollow. Accordingly, both the EAS MOJT Shares and the Frederick MOJT Shares will have dry-up obligations on both sides of the Layton Lateral and historical return flow obligations to both Godding Hollow and Mayfield Hollow.

6.4 Frederick's consulting technical expert documented, in Frederick's formal expert disclosures, and EAS's consulting technical expert will document, in EAS's further preliminary reports and its formal expert disclosures, the historically commingled use of the Commingled MOJT Shares on the Meredith O. Johnson Trust Farm, with historical return flows from all 6.915 shares accruing to both Mayfield Hollow and Godding Hollow.

6.5 Frederick's and EAS's consulting technical experts will further document the Parties' agreement regarding division of the historically irrigated acreage and dry-up acreage on the Meredith O. Johnson Trust farm as between the 4.0 Frederick MOJT Shares and the 2.915 EAS MOJT Shares, as described in paragraph 6.5.1 below.

6.5.1 Frederick and EAS have determined each Party's proportional share of historically irrigated acreage and dry-up acreage in the Godding Hollow and Mayfield Hollow watersheds as 57.85% for Frederick (4/6.915) and 42.15% (2.915/6.915) for EAS, multiplied by the number of historically irrigated acres in the Godding Hollow watershed (63.42 acres) and in the Mayfield Hollow watershed (77.02 acres), as shown on the map and table attached as **Exhibit 2**.

6.5.2 The division of historically irrigated acreage and dry-up acreage described in paragraph 6.5.1 above is as documented in the ELEMENT Water Consulting report served with Frederick's initial Rule 26(a)(2) disclosures on April 29, 2024, in Case No. 21CW3138; and shall be incorporated by EAS in paragraphs 10.3, 10.4, and 10.5 of the Proposed Decree.

6.6 To ensure that Frederick will be entitled to dry-up credit on the EAS-owned property on the west side of the Meredith O. Johnson Trust farm, EAS shall negotiate in good faith binding dry-up covenants with Silverstone Development Company, Inc., and with Columbine Heights, LLC, and Miners Park LLC, for consideration agreed upon between EAS and those entities, which are developers that will dedicate the Frederick MOJT Shares to Frederick following entry of the decree in this case. EAS shall be also entitled to claim a dry-up credit for 32.470 acres on the east side of the Meredith O. Johnson Trust farm, such acreage having been developed and dried-up in fact.

6.6.1 The number and location of acres to be encumbered by the dry-up covenants for each of Silverstone Development Company and the Blumenthal Group are as shown on **Exhibit 2**.

6.6.2 Both dry-up covenants must be freely assignable by the developers to Frederick, without the requirement for prior approval from EAS.

6.7 After entry of the Court's Order approving this Stipulation, each Party shall include the agreed-upon historically irrigated acreage and associated dry-up acreage for that Party in any proposed decree or proposed Ruling of the Referee filed with the Court for any purpose, including without limitation as an attachment to future stipulations.

7. This Stipulation binds and benefits the Parties and will be binding upon and benefit their assigns and successors in interest.

8. The Parties shall bear their own costs and fees associated with this case.

9. The Parties represent and affirm that the signatories to this Stipulation are legally authorized to bind the Parties in this matter.

10. This Stipulation is enforceable by the parties either as an agreement or, after approval by the Water Court, as an order of the Court.

Dated this ____ day of ____________________________, 2025.

MOSES, WITTEMYER, HARRISON AND WOODRUFF, P.C.	HILL & ROBBINS, P.C.
______________________________	______________________________
Jennifer M. DiLalla, #40319 Evan R. Weis, #59278	Matthew A. Montgomery, #44039
ATTORNEYS FOR OBJECTOR TOWN OF FREDERICK	ATTORNEYS FOR APPLICANT, ELDORADO ARTESIAN SPRINGS, INC.

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