

**ROUND MOUNTAIN WATER AND SANITATION DISTRICT
RESOLUTION NUMBER 2023-4**

**A RESOLUTION approving an Intergovernmental Agreement between the
Round Mountain Water and Sanitation District and the Upper Arkansas
Water Conservancy District**

WHEREAS, the Round Mountain Water and Sanitation District (RMWSD) owns a decreed water right # 19CW3090; and

WHEREAS, a conditional water storage right (the Benoni Jarvis Reservoir) is included as part of this water right; and

WHEREAS, the Colorado State Department of Water Resources, Division 2, has mandated the construction and implementation of this reservoir to satisfy operational requirements of the RMWSD's Water Augmentation Plan, and


WHEREAS, to procure sufficient financing for this project, the RMWSD has partnered with the Upper Arkansas Water Conservancy District (UAWCD); and

WHEREAS, the conditions and stipulations of the partnership between the RMWSD and UAWCD are described in an Intergovernmental Water Storage Reservoir Cost Sharing and Storage Capacity Allocation Agreement (Appendix A).

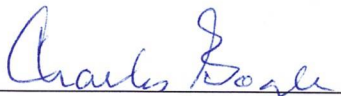
**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
ROUND MOUNTAIN WATER AND SANITATION DISTRICT, COLORADO THAT:**

The Intergovernmental Water Storage Reservoir Cost Sharing and Storage Capacity Allocation Agreement Between the RMWSD and UAWCD be Approved and Implemented.

ADOPTED, this 16th day of February 2023



Steve Lasswell, Vice Chair



Charles Bogle, Chairman





Colorado Water Conservation Board
Water Plan Grant - Detailed Budget Estimate
Fair and Reasonable Estimate

Prepared Date: June 28, 2022
 Name of Applicant: Upper Arkansas Water Conservancy District
 Name of Water Project: Round Mountain Reservoir #2 Construction Project

Construction Budget

Task 1 - Engineering and Permitting

Sub-task	Unit	Quantity	Unit Cost	Total Cost	CWCB Funds	Matching Funds
Final Design and Bid Ready construction drawings	1	LS	\$ 125,000.00	\$ 125,000.00	\$ 21,250.00	\$ 103,750.00
Permitting (based on 2%)	1	LS	\$ 50,350.07	\$ 50,350.07	\$ 8,559.51	\$ 41,790.56

Task 2 - Construction

CONSTRUCTION LABOR

Site Overexcavation	31848	CY	\$ 2.00	\$ 63,696.44	\$ 10,828.40	\$ 52,868.05
Embankment Fill	97600	CY	\$ 5.00	\$ 488,000.00	\$ 82,960.00	\$ 405,040.00
Reservoir Cut	98300	CY	\$ 2.00	\$ 196,600.00	\$ 33,422.00	\$ 163,178.00
Drain Sand	3266	CY	\$ 22.00	\$ 71,844.54	\$ 12,213.57	\$ 59,630.97
Drain Pipe Furnish and Install	2837	LF	\$ 10.00	\$ 28,369.90	\$ 4,822.88	\$ 23,547.02
Clear and Grub	15924	CY	\$ 1.00	\$ 15,924.11	\$ 2,707.10	\$ 13,217.01
Dewatering	30	Day	\$ 75.00	\$ 2,250.00	\$ 382.50	\$ 1,867.50
Erosion Control Blanket & Seeding	12702	SY	\$ 0.19	\$ 2,427.41	\$ 412.66	\$ 2,014.75
HDPE Liner Furnish and Install	317277	SF	\$ 0.18	\$ 57,109.88	\$ 9,708.68	\$ 47,401.20
Conveyance Line HDPE Furnish and Install	1500	LF	\$ 138.33	\$ 207,495.00	\$ 35,274.15	\$ 172,220.85
Precast Concrete Block Wall	402	EA	\$ 92.31	\$ 37,123.08	\$ 6,310.92	\$ 30,812.15
Pump Station and Wet Well	1	LS	\$ 38,000.00	\$ 38,000.00	\$ 6,460.00	\$ 31,540.00
3-Phase Utility Connection	1	LS	\$ 70,000.00	\$ 70,000.00	\$ 11,900.00	\$ 58,100.00
Diversion Structure	1	LS	\$ 19,000.00	\$ 19,000.00	\$ 3,230.00	\$ 15,770.00
Sediment Forebay	1	LS	\$ 26,600.00	\$ 26,600.00	\$ 4,522.00	\$ 22,078.00
Outlet Works	1	LS	\$ 64,600.00	\$ 64,600.00	\$ 10,982.00	\$ 53,618.00

MATERIALS AND SUPPLIES

Drain Sand	3266	CY	\$ 33.00	\$ 107,766.80	\$ 18,320.36	\$ 89,446.45
Drain Pipe Furnish and Install	2837	LF	\$ 17.00	\$ 48,228.83	\$ 8,198.90	\$ 40,029.93
Erosion Control Blanket & Seeding	12702	SY	\$ 0.44	\$ 5,597.07	\$ 951.50	\$ 4,645.57
HDPE Liner Furnish and Install	317277	SF	\$ 0.45	\$ 142,774.71	\$ 24,271.70	\$ 118,503.01
Conveyance Line HDPE Furnish and Install	1500	LF	\$ 138.33	\$ 207,495.00	\$ 35,274.15	\$ 172,220.85
Precast Concrete Block Wall	402	EA	\$ 100.00	\$ 40,216.67	\$ 6,836.83	\$ 33,379.83
Pump Station and Wet Well	1	LS	\$ 72,000.00	\$ 72,000.00	\$ 12,240.00	\$ 59,760.00
3-Phase Utility Connection	1	LS	\$ 40,000.00	\$ 40,000.00	\$ 6,800.00	\$ 33,200.00
Diversion Structure	1	LS	\$ 6,000.00	\$ 6,000.00	\$ 1,020.00	\$ 4,980.00
Sediment Forebay	1	LS	\$ 8,400.00	\$ 8,400.00	\$ 1,428.00	\$ 6,972.00
Outlet Works	1	LS	\$ 30,400.00	\$ 30,400.00	\$ 5,168.00	\$ 25,232.00
Construction Contingency (based on 15%)	1	LS	\$ 314,687.00	\$ 314,687.00	\$ 53,496.79	\$ 261,190.21
Construction Engineering and Management (based on 10%)	1	LS	\$ 251,750.33	\$ 251,750.33	\$ 42,797.56	\$ 208,952.77

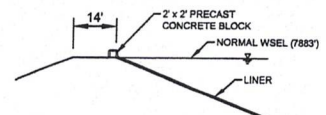
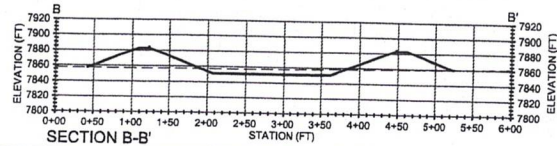
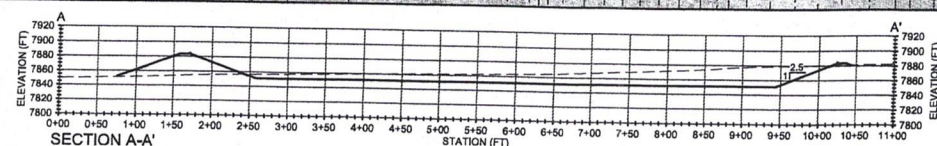
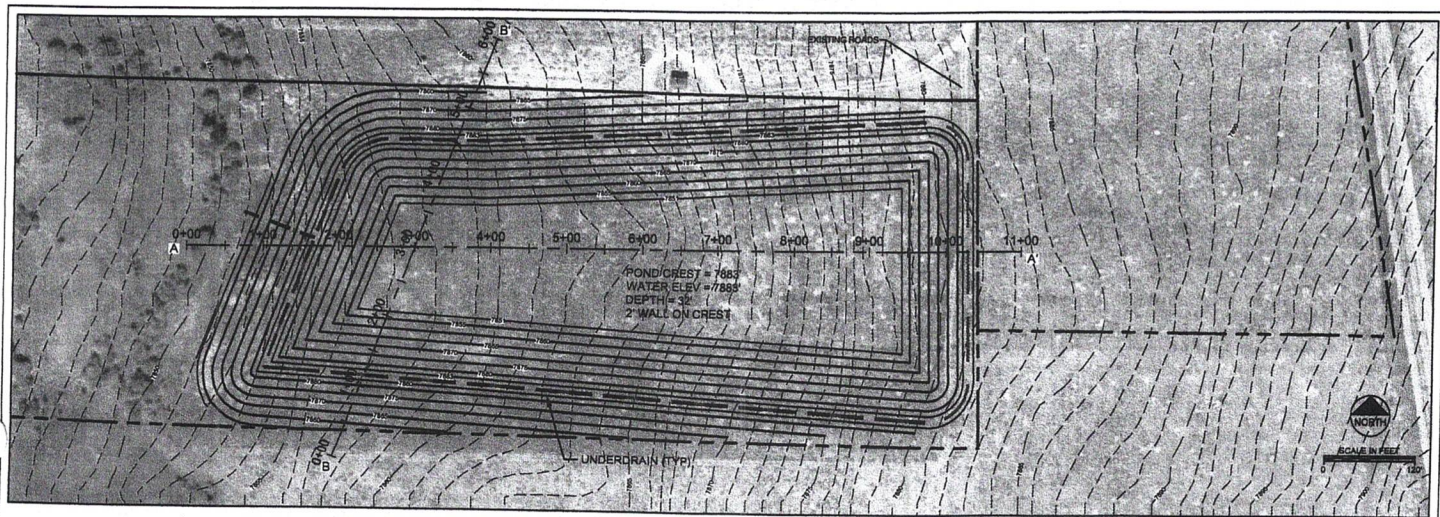
Task 3 - Project Management and Administration

Project and Grant Management, Legal, and Administrative Costs (based on 5% of construction)	1	LS	\$ 105,000.00	\$ 105,000.00	\$ 17,250.00	\$ 87,750.00
TOTAL				\$ 2,944,706.85	\$ 500,000	\$ 2,444,707

EXHIBIT B

DETAILED BUDGET AND COST SHARE OVERVIEW

\N:\0848 Round Mountain Reservoir\Main\Main 2.dwg DATE: 1/23/21 DRAWN BY: JAZ



WAVE RUNUP WALL DETAIL
 SCALE: 1/2" = 1'-0"
 15' 0 30'

Project No. 111046

NORMAL WATER LEVEL
 SURFACE AREA = 290,000 SQ. FT.
 AVERAGE WIDTH = 340'

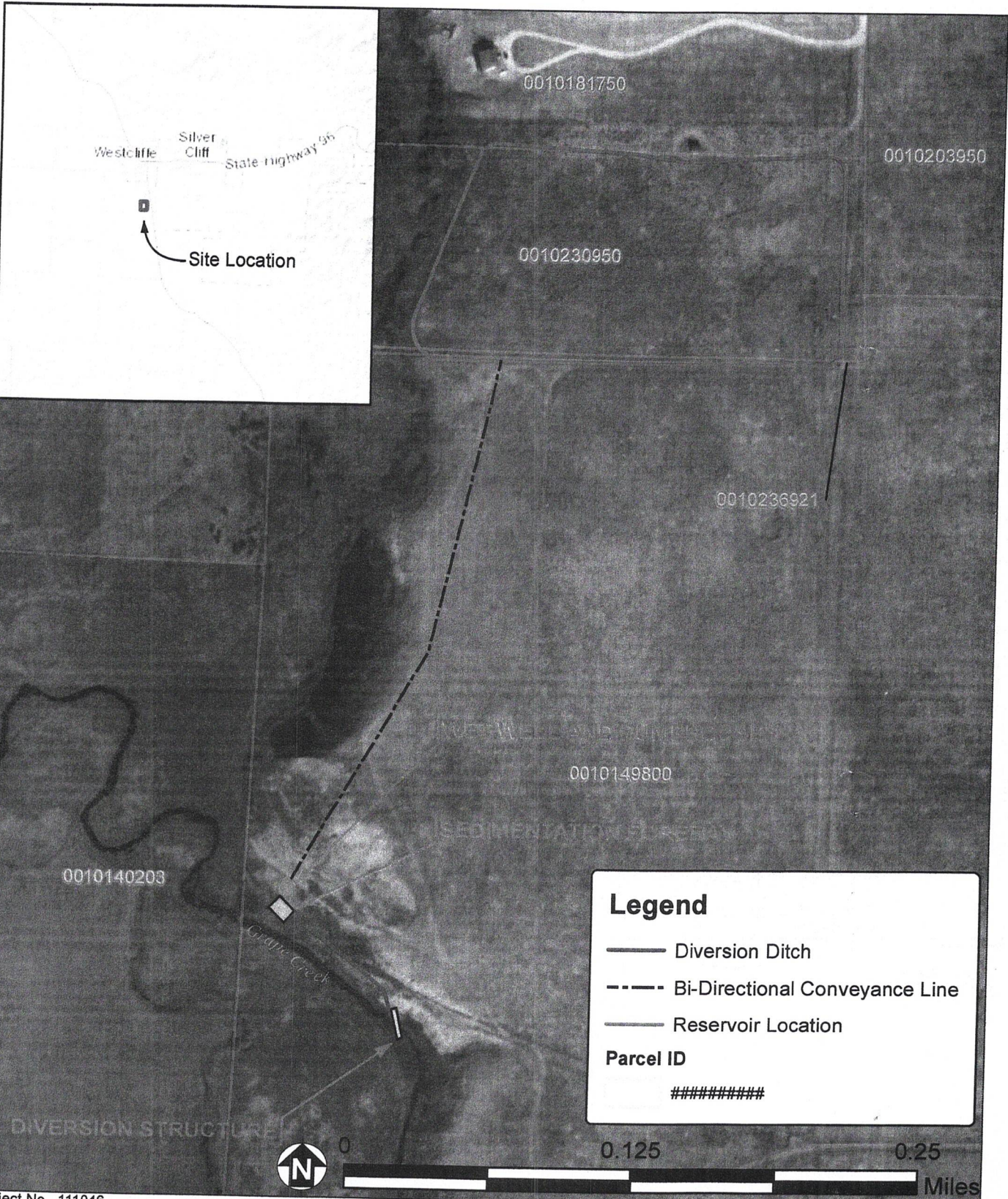
VOLUMES:
GRADING BALANCE:
 CUT FILL NET (CUT)
 98,300 CY 97,600 CY 700 CY
POND STORAGE:
 6,503,700 CuFt = 149.30 AC/FT

April 2022



FIGURE 8-1
ALTERNATIVE 2 LAYOUT
ROUND MOUNTAIN RESERVOIR #2

P:\111046 Round Mountain Dam\6.0 Drawings\GIS\Figure 1-1 Site Location.mxd Date Saved: April, 04, 2022



**FIGURE 1-1
SITE LOCATION MAP
ROUND MOUNTAIN RESERVOIR #2**

EXHIBIT A

DESCRIPTION OF RESERVOIR

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

ROUND MOUNTAIN WATER AND
SANITATION DISTRICT

By: _____
David Schneider, District Manager

Attest:

UPPER ARKANSAS WATER CONSERVANCY
DISTRICT

By: _____

Title: _____

Attest:

[Remainder of page intentionally blank. Signatures on following page.]

To UAWCD: _____

With a copy to: _____

J. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

K. Recordation. The Parties agree that this Agreement may be recorded in the records of the Clerk and Recorder for county in which a Party has its principal place of business.

L. Binding Agreement. The benefits and burdens of this Agreement shall inure to and be binding upon on the successors and assigns of the Parties.

M. Definitions and Interpretations. Except as otherwise provided herein, nouns, pronouns and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to a policy, procedure, law, regulation, rule, or document shall mean such policy, procedure, law, regulation, rule, or document as it may be amended from time to time. Any capitalized term not defined herein shall have the meaning set forth in the definitions of the Organizational Agreement.

N. Survival of Representations. Each and every covenant, promise, and payment contained in this Agreement shall survive each and be binding and obligatory upon each of the Parties and shall not merge into any deed, assignment, covenant, escrow agreement, easement, lease, or any other document.

O. Non-Severability. Each Section of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties.

P. Effect of Invalidity. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either Party or as to both Parties, the Parties will immediately negotiate valid alternative portion(s) that as near as possible give effect to any stricken portion(s).

Q. Force Majeure. Each Party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; action of the government (except the Parties hereto); war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants or facilities by the federal, state or local government (except the Parties hereto); and national fuel shortage, when satisfactory evidence of such cause is presented to the other Party, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the Party not performing.

D. Counterpart Execution. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by electronic delivery and, upon receipt, shall be deemed originals and binding upon the Parties hereto.

E. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Parties or their officials, employees, contractors, or agents, or any other person acting on behalf of the Parties and, in particular, governmental immunity that may be afforded or available to the Parties pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

F. Assignability. Without the consent of the other Party, either party may assign its rights and obligations under this Agreement and the Easement to an enterprise wholly owned by such Party. Subject to Round Mountain's consent, which shall not be unreasonably withheld, this Agreement and the Easement granted herein may be assigned, pledged or transferred in whole, but not in part, by UAWCD to an entity that is a municipal or quasi-municipal water provider or political subdivision of the State of Colorado. Any other assignments, pledges, or transfers shall be subject to Round Mountain's consent, which may be withheld in Round Mountain's sole discretion.

G. No Public Dedication/No Third-Party Beneficiary. Nothing contained herein shall be deemed to be a grant or dedication of any rights or use to the public in general, and no third-party beneficiary interests are created nor intended to be created by this Agreement.

H. Headings for Convenience. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

I. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage, and fees prepaid, addressed to the Party to whom such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

To Round Mountain: Round Mountain Water and Sanitation District
Attn: David Schneider
PO Box 86
59000 Highway 69 N
Westcliffe, CO 81252

With a copy to: Jefferson Parker, Esq.
Hoffmann, Parker, Wilson & Carberry, P.C.
511 Sixteenth Street, Suite 610
Denver, CO 80202

A. The use of the Reservoir and other facilities and water rights owned by the Parties for the mutual benefit of the Parties, including through leases, exchanges, and "reservoir trades" of water, water rights, and storage space; and

B. Administration of the Reservoir, including coordinating requests for approval of exchanges to fill the Reservoir.

8. RIGHTS OF FIRST REFUSAL FOR STORAGE SPACE AND WATER

A. If either Party determines that it has storage space in the Reservoir that it would like to make available for the storage of water by or on behalf of another person, the other Party shall have a right of first refusal to such storage space on substantially the same terms as offered to the other person.

B. If either Party determines that it has water rights (including but not limited to water storage rights, exchange rights, and consumptive use credits) that it would like to make available for use by another person, the other Party shall have a right of first refusal to utilize such water rights on substantially the same terms as offered to the other person.

9. DEFAULT / REMEDIES

In the event a Party deems the other Party to be in default, it shall provide written notice indicating the event of default. The defaulting Party shall have thirty (30) days from the date of the notice to cure the stated default or, if such default is not capable of being cured within thirty (30) days, cure of such default shall commence and be diligently pursued. In no event shall the cure period exceed thirty (30) days for monetary defaults, except by written consent of the non-defaulting Party. In the event the defaulting Party has failed to cure in accordance with this Section, the non-defaulting Party may pursue all available remedies at law or equity. In addition, Round Mountain shall have the right to terminate the Easement provided for in this Agreement upon a default by UAWCD and UAWCD's failure to cure the default as set forth herein. Round Mountain may terminate the Easement by providing UAWCD with written notice of Easement termination, whereupon the Easement shall terminate 30 days after the date of the termination notice, unless UAWCD timely cures the default.

10. MISCELLANEOUS.

A. Governing Law and Venue. The Parties hereto agree that exclusive jurisdiction and venue for the resolution of any dispute relating to this Agreement shall lie in the District Court for Custer County, State of Colorado.

B. Entire Agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter thereof, and there are no prior or contemporaneous agreements, either oral or written, relating to the subject matter hereof except as expressly set forth herein.

C. Agreement Modification. The Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

I. Revocation of Easement. The Easement granted herein shall be revocable by Round Mountain in the event of a default by UAWCD and UAWCD's failure to cure such default in accordance with the provisions of Section 6 below.

5. MAINTENANCE, REPAIR, REPLACEMENT AND OPERATION

A. Round Mountain shall perform all maintenance, repairs, and replacement necessary to maintain the reservoir and related infrastructure in a reasonably safe and working condition capable of providing the Parties with the same utility as the Reservoir as originally constructed (fill rate, discharge rate, storage capacity, etc.).

B. Round Mountain shall procure and maintain property insurance for the Reservoir that is substantially similar to the coverage maintained by Round Mountain for other similar Round Mountain-owned water facilities. If the Reservoir is damaged, Round Mountain shall allocate all proceeds from the insurance policy towards repairing the Reservoir.

C. The Parties shall share the costs of maintaining, repairing, replacing, operating, and insuring the Reservoir with each Party paying its portion based upon the Sharing Ratio. At least 30 days prior to the commencement of each calendar year, Round Mountain shall provide UAWCD with the estimated costs of maintaining, repairing, replacing, operating, and insuring the Reservoir. UAWCD shall submit payment of such estimated costs by January 31 of the applicable year. Round Mountain shall use such funds solely for the maintenance, repair, replacement, operation, and insurance of the Reservoir. Round Mountain shall provide UAWCD with a detailed accounting of such costs. Within sixty (60) days of the end of each calendar year, Round Mountain shall provide UAWCD with a final accounting of such expenses. The final amount owed by UAWCD shall be adjusted from the estimated amount and Round Mountain will return excess funds or UAWCD will pay additional funds, as appropriate, so that each Party has paid its share of such costs based upon the Sharing Ratio. Such adjustment shall occur within thirty (30) days of delivery of the final accounting by Round Mountain to UAWCD. In the event of a dispute regarding the propriety of an expense, payment shall be made under protest, and the fact of payment shall not be deemed, or admitted as, evidence of the validity of the charge.

D. For capital improvements that go beyond regular maintenance, repair, and replacement activity to maintain the functionality of the initial Reservoir, the Parties shall follow the provisions in Sections 2 and 3 above with respect to design, development, decision-making, and cost-allocation.

6. ACCOUNTING

Round Mountain will provide storing Parties with monthly reports of the status of their reservoir storage, or as reasonably requested. The reports will list the storage contents, inflows, and outflows including evaporation. Round Mountain shall be responsible for providing to the government regulators records of storage contents, inflows, and outflows.

7. COOPERATION IN REGIONAL WATER MANAGEMENT

The Parties agree to meet, no less frequently than annually, to discuss ways in which the Parties can cooperate in:

B. Capacity Reservation and Allocation.

i. Round Mountain hereby grants to UAWCD a perpetual, non-exclusive easement for storage capacity in the Reservoir ("Easement"), upon its completion, as further set forth herein.

ii. If, at any time, a Party is not fully utilizing its storage space, the other Party may store water in such space on an "if and when" basis. Any water stored on an "if and when" basis shall be subject to spill as necessary to allow the first Party to fully utilize its storage space.

iii. When both Parties desire to store water, and the combined rate at which the Parties desire to store water exceeds the maximum rate at which water can be stored due to the capacity of the feeder infrastructure or the physical or legal availability of water in Grape Creek ("fill capacity"), the right to deliver water into Round Mtn Reservoir shall be allocated pro rata based on the Sharing Ratio. When one Party is not using its full entitlement, the other Party may use the entire fill capacity less the amount that the first Party is actually using, if any.

C. Easement Capacity. The total capacity of the Reservoir is estimated to be between 150- and 220-acre feet of which the Parties estimate Round Mountain shall use two-thirds and UAWCD shall use one-third of the total usable Reservoir Storage Space ("Sharing Ratio"). This Sharing Ratio may be adjusted upon agreement of the Parties and shall be agreed upon prior to execution by Round Mountain of the construction agreement. The Easement to UAWCD is limited to its share of the capacity, which may be sublicensed by UAWCD provided such sublicense does not interfere with Round Mountain's use and operation of the Reservoir for its own purposes.

D. Capacity Restriction. If capacity in the Reservoir is restricted on account of maintenance, emergencies, force majeure, legal or regulatory requirements, or any other reason, Round Mountain shall forthwith advise UAWCD of such capacity restriction and the anticipated duration thereof, and apportion capacity in the Reservoir based upon UAWCD's proportional share of Reservoir capacity. Round Mountain shall use commercially reasonable efforts to eliminate any capacity restriction.

E. Evaporation and Seepage. Each Party's stored water shall be subject to daily evaporation and seepage losses based on the Sharing Ratio.

F. Spills. In the event it is necessary to spill or release water from the Reservoir due to a safety, maintenance, or similar issue, absent mutual agreement of the Parties to the contrary, the spill or release shall be allocated based on the Sharing Ratio.

G. Water Quality. All water diverted into the Reservoir shall be stored and used for augmentation purposes and not for potable uses.

H. Access Restriction. UAWCD acknowledges that the Easement granted herein is for capacity in the Reservoir only. UAWCD shall not at any time access the Reservoir or other facilities or property owned or controlled by Round Mountain, except pursuant to the terms, restrictions and conditions set forth herein.

the same. Within 20 days of receipt of the pay request by UAWCD, UAWCD shall deposit with Round Mountain funds equal to UAWCD's pro rata share of the pay request. Such funds shall be used by Round Mountain solely for payment of Reservoir Costs. If UAWCD does not make a timely deposit, Round Mountain may deliver a notice of default in accordance with Section 9 and utilize the UAWCD Deposited Funds to make the required payment. If UAWCD does not deposit with Round Mountain funds sufficient to pay its share of the pay request and restore its UAWCD Deposited Funds balance within 30 days of receipt of the notice of default, Round Mountain may pursue its enforcement remedies under Section 9. On an on-going basis, Round Mountain shall provide UAWCD with copies of approved pay requests and disbursements from Reservoir funds.

F. Grant Funds. UAWCD obtained a \$500,000 grant from the CWCB for the project. In addition to the copies of pay requests and disbursements described above, Round Mountain shall provide UAWCD such other documentation reasonably required for UAWCD to receive grant disbursements from the CWCB. UAWCD will compile and submit such documentation to the CWCB for monthly reimbursement. It is anticipated that CWCB will disburse grant proceeds such that the amount of each grant disbursement bears the same ratio to the amount of the monthly invoice(s) as the total grant amount bears to the total Reservoir Cost. For example, if the total estimated Reservoir Cost is \$3 Million, and the monthly invoice(s) are for \$100,000, the grant disbursement would be \$16,666.67 ($\$100,000 \times (\$500,000 / \$3,000,000)$). The grant funds, less the 3.4% grant administration fee to be retained by UAWCD, will be split pro rata between the Parties. In the preceding example, assuming UAWCD's pro rata share of costs is 33.33%, UAWCD would retain the grant administration fee of \$566.67 and an additional \$5,366.67 as its pro rata share, and would transmit \$10,734 to Round Mountain. Round Mountain's share of grant disbursement will be transmitted by UAWCD within 20 days of receipt by UAWCD.

G. Cost Adjustments. The Estimated Costs may increase at any time during design, construction, or installation of the Reservoir. Accordingly, the Estimated Costs may be adjusted at any time by Round Mountain. Round Mountain shall administer the Reservoir in substantially the same manner and with the same care as other Round Mountain projects of a similar scope and nature. Round Mountain shall manage all change orders and costs adjustments, subject to UAWCD's right to review under Section 2.B. Adjusted cost estimates will be made based upon actual construction bids or change orders. If the Estimated Costs are adjusted, Round Mountain shall give written notice to UAWCD. UAWCD shall, within thirty (30) days after receipt of said written notice, deposit new funds with Round Mountain necessary to maintain a balance equal to 10% of the UAWCD Estimated Costs as updated. Similarly, Round Mountain shall deposit into the Reservoir fund its share of the increased Estimated Costs.

H. Reconciliation. Upon completion of the Reservoir, UAWCD's proportional share of the Final Reservoir Costs shall be finally adjusted as set forth in the **Amended Exhibit C**. Any overpayment shall be refunded to UAWCD by Round Mountain, and any underpayment shall be satisfied by UAWCD.

4. RESERVOIR OWNERSHIP, CAPACITY ALLOCATION, AND INSURANCE

A. Reservoir Ownership. Round Mountain shall be the sole owner of the Reservoir.

operation, maintenance, repair, or replacement of the Reservoir. Such costs and other related terms and conditions are set forth in Section 5 below.

B. Estimated Costs. The estimated costs of designing, constructing, and installing the Reservoir (the "Reservoir Costs"), including UAWCD's proportional share of the Reservoir Costs ("UAWCD Estimated Costs"), are set forth in **Exhibit B**, which is attached hereto and incorporated by this reference (the "Estimated Costs"). UAWCD Estimated Costs are currently set at one-third of the Reservoir Costs, based on the anticipated Sharing Ratio as described in paragraph 4.C below. If the Sharing Ratio is adjusted upon agreement of the Parties as contemplated by paragraph 4.C, the UAWCD Estimated Costs will also be adjusted accordingly. The Reservoir Costs include without limitation, the costs of Round Mountain staff time spent administering the work set forth herein and the costs of the owner's agent that will be providing construction and contract management. Round Mountain staff time shall not be tracked. Instead, the costs of Round Mountain staff time shall be set at one percent (1%) of the Reservoir Costs.

C. Actual Costs. The actual Reservoir costs may vary from the Estimated Costs. Upon completion of the Reservoir, Round Mountain shall prepare an amended **Exhibit B** ("Amended Exhibit B") showing the actual final costs incurred ("Final Reservoir Costs") and UAWCD's adjusted proportional share of the Final Reservoir Costs ("UAWCD Final Cost"). The Amended Exhibit B shall be substituted for the original Exhibit B as a part of this Agreement. Round Mountain shall provide a copy of the Amended Exhibit B to UAWCD upon completion of the Reservoir. At UAWCD's request, Round Mountain shall provide records relating to the design and construction of the Reservoir, including copies of each draw request from Round Mountain's general contractor, together with paid invoices or such other documentation as may be available and reasonably requested for UAWCD to verify the Final Reservoir Costs. The Parties shall cooperate to resolve any disputes concerning either the Final Reservoir Costs or the UAWCD Final Cost informally. If the Parties are unable to resolve their dispute informally, they shall submit the dispute to nonbinding mediation before a mutually agreeable mediator. If the Parties remain unable to resolve their dispute within sixty (60) days of commencing mediation, the Parties may pursue any remedies lawfully available to them.

D. Appropriated and Deposited Funds. On or before the date Round Mountain enters into a binding agreement for the construction of the Reservoir, UAWCD shall deposit with Round Mountain a sum equal to 10% of the UAWCD Estimated Costs (the "UAWCD Deposited Funds"), and shall certify to Round Mountain that UAWCD has appropriated funds in an amount no less than the UAWCD Estimated Costs for this project, and that it possesses and has set aside for this project funds in an amount no less than the UAWCD Estimated Costs less the UAWCD Deposited Funds and less UAWCD's share of the grant described in sub-paragraph F below. Round Mountain shall separately account for and use the UAWCD Deposited Funds solely for payment for Reservoir costs. As a condition to UAWCD's deposit of the UAWCD Deposited Funds with Round Mountain, Round Mountain shall certify to UAWCD that Round Mountain has appropriated Round Mountain funds in an amount sufficient to meet the Estimated Costs less the UAWCD Estimated Costs.

E. Disbursements. Reservoir construction cost payments shall be made proportionately by UAWCD and Round Mountain in accordance with their respective share of the Reservoir Costs. Round Mountain shall provide copies of pay requests within 5 days of receipt of

shall be a mutually agreed upon plan for financing the construction, maintenance, repair, replacement, and operation of the Reservoir (which shall include permitting) and the appropriation by each Party of funds necessary to pay its share of the Reservoir construction costs.

B. Right to Terminate. Either Party may terminate this Agreement any time prior to Round Mountain entering into an agreement for the construction of the Reservoir. The intent of this paragraph is to ensure that neither Party has a claim against the other arising from this Agreement simply for failure to move forward with construction of the Reservoir. The intent is not to allow Round Mountain to benefit from UAWCD's pre-construction agreement contributions to the project and then move forward on the project without UAWCD's participation. Therefore, if Round Mountain terminates this Agreement and then moves forward with construction of the Reservoir within two (2) years of such termination, Round Mountain will not be entitled to utilize grant funds obtained by UAWCD without UAWCD's written consent and Round Mountain shall reimburse UAWCD's out-of-pocket expenses on the project incurred prior to the termination.

C. Design and Engineering. The feasibility and pre-engineering studies and work have been completed and funded with grant and Party funds. The Parties shall share final design and engineering costs of the Reservoir in accordance with Section 3 below. The Parties shall coordinate payment of such costs as agreed upon by the Parties.

2. RESERVOIR

A. Round Mountain shall design and construct the Reservoir and acquire all required rights for the construction and operation of the Reservoir. Round Mountain shall competitively bid the construction of the Reservoir in accordance with applicable law and its internal procedures and policies. Round Mountain shall pay all such Reservoir costs, subject to contribution by UAWCD as set forth in Section 3 below. Round Mountain will make diligent and good faith efforts to meet the various Reservoir milestones. The construction contract for the Reservoir shall contain customary provisions to assure that the contractor adheres to the construction timetable. However, the Parties acknowledge that despite such efforts, unavoidable delays may be encountered with a project of this nature. The Parties shall hold regular status update and progress meetings as mutually agreed upon to keep UAWCD reasonably informed regarding the progress of the Reservoir construction, but no less frequently than once per quarter.

B. UAWCD's obligation to participate is contingent upon UAWCD's approval of a final set of construction plans for the Reservoir. Any subsequent change orders are subject to approval by UAWCD, which shall not be unreasonably withheld. Otherwise, Round Mountain shall consult with UAWCD regarding the construction of the reservoir and consider UAWCD's opinions in good faith but shall retain control of the construction decision-making.

3. ALLOCATION OF DESIGN, CONSTRUCTION, AND INSTALLATION COSTS

A. Allocation of Costs. The allocation of costs set forth in this Section between UAWCD and Round Mountain is intended to apply solely to the costs of designing and constructing the Reservoir and shall not be construed to include costs and fees related to the

**INTERGOVERNMENTAL WATER STORAGE RESERVOIR COST SHARING AND
STORAGE CAPACITY ALLOCATION AGREEMENT**

THIS INTERGOVERNMENTAL WATER STORAGE COST SHARING AND STORAGE CAPACITY ALLOCATION AGREEMENT ("the Agreement") is made and entered into this _____ day of _____ 2023 (the "Effective Date"), by and between the ROUND MOUNTAIN WATER AND SANITATION DISTRICT, a quasi-municipal special district organized and existing pursuant to the provisions of Title 32 of the Colorado Revised Statutes ("Round Mountain") and the UPPER ARKANSAS WATER CONSERVANCY DISTRICT, a quasi-municipal special district organized and existing pursuant to the provisions of Title 32 of the Colorado Revised Statutes ("UAWCD") (individually a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Article XIV, Section 18 of the Colorado Constitution and C.R.S. § 29-1-203 authorize the Parties to cooperate and contract with one another regarding functions, services, and facilities each is authorized to provide;

WHEREAS, Round Mountain plans to construct a water storage reservoir and associated facilities to include without limitation diversion and outlet structures, a pump station, and a gaging station, generally as described in **Exhibit A** (collectively, the "Reservoir") and UAWCD desires to share in the costs of the design, construction, maintenance, repair, replacement, and operation of the Reservoir in return for providing UAWCD the right to store UAWCD water in the Reservoir and to use related Round Mountain facilities to divert UAWCD water into and release water out of the Reservoir;

WHEREAS, UAWCD desires to pay its share of the costs of the design, construction, maintenance, repair, replacement, and operation of the Reservoir in proportion to the percentage of the total storage capacity of the Reservoir (and/or each of the related facilities to be shared by the Parties) allocated to UAWCD upon completion;

WHEREAS, upon completion of the Reservoir, Round Mountain will wholly own, operate, and maintain the Reservoir and UAWCD will have an easement to use capacity in the Reservoir to divert, store, and release UAWCD water; and

WHEREAS, the Parties agree it is in their best interest to share in the funding of the design, construction, maintenance, repair, replacement, and operation of the Reservoir as further set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the Parties hereby agree as follows:

1. CONDITION PRECEDENT

A. Financing plan and appropriation. Except for the design and engineering costs, as further addressed in Section 1(C), below, a condition precedent to the obligations set forth herein