**YELLOW-JACKET WATER CONSERVANCY DISTRICT**

**WATER LEASE AGREEMENT: Highland Ditch**

THIS WATER LEASE AGREEMENT (“Lease”) is entered into this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2024, by and between the YELLOW JACKET WATER CONSERVANCY DISTRICT (hereinafter the “District”) and the WHITE RIVER HIGHLAND DITCH COMPANY (herein after the “Ditch Company”), each a “Party” and collectively, the “Parties.”

**RECITALS**

 A. The District and Ditch Company are owners of water rights in the Highland Ditch, which structure is decreed to divert from the left bank of the White River, from whence the South Quarter Corner of Section 10, Township 1 South, Range 93 West of the 6th P.M. bears South 67 degrees, 48 minutes West, a distance of 1,694 feet (hereinafter the “Ditch”);

 B. The District owns the Fourth Enlargement and Extension of the Highland Ditch in the amount of 61 cfs, absolute for irrigation and domestic uses as decreed in Civil Action 1269, Rio Blanco County District Court and later made absolute in Case No. 89CW131, Garfield County District Court, Water Division No. 5 (the “Fourth Enlargement”);

 C. The Fourth Enlargement has diverted at the Ditch for use by the Ditch Company and its shareholders and the Ditch Company has made payment to the District for the use of the Fourth Enlargement; and

D. The District and Ditch Company desire to enter into an agreement whereby the Ditch Company shall lease the District’s water right decreed to the Fourth Enlargement.

**AGREEMENT**

NOW, THEREFORE, by execution of this Agreement, Ditch Company and the District hereby agree to the following terms and conditions:

1. **Lease Grant**: The District hereby agrees to grant and lease to the Ditch Company the use of the Fourth Enlargement subject to the terms and conditions contained herein.
2. **Term of Lease**: The term of the Lease begins April 1, in the year in which this lease is executed and shall end on March 31, 2034 or such earlier or later date as provided for under this Lease (the “Term”). Unless otherwise terminated by giving written notice to either party by January 1 of any year for delivery in that year or modified, this lease shall automatically renew for another period of one (1) year upon completion of the Term.
3. **Diversion, Use Quantity, and Source of Water**
	1. Quantity: The Ditch Company agrees to take and use the entire amount of the Fourth Enlargement diverted at the headgate of the Ditch. In the event the Ditch Company will not use the full amount of the Fourth Enlargement, it shall notify the District of the amount that is not required for use by the Ditch Company. Should the Ditch Company not need the full amount, then the District shall be allowed to deliver any unused portion for use within the District pursuant to such terms as it sees fit.
	2. Source: Water provided under this Lease shall be from the Fourth Enlargement and, at the District’s election, from other water rights owned or acquired by the District, which may also be diverted at the Ditch for the same or similar purposes.
	3. Diversion: The District shall allow the Ditch Company full use of the Fourth Enlargement upon execution of this Lease. The Ditch Company shall divert to the extent practical the Fourth Enlargement in such quantities as approved by the State Engineer or in the amount decreed to the Fourth Enlargement, which is 61.0 c.f.s. In the event the Ditch Company does not require the full extent of the 61 c.f.s. decreed to the Fourth Enlargement, the District may, after providing notice to the Ditch Company take such steps to deliver this water for other use within the District’s boundaries.
	4. Use: The Ditch Company agrees to use the Fourth Enlargement solely for purposes permitted under the Decree (irrigation and domestic uses).
	5. Water Availability: Water service provided by the District shall be limited to the amount of water available in priority at the point of diversion of the Ditch. The District makes no representations to ensure that water will be available every year.
	6. Quality: The District makes no representation as to the quality of the water supplied under this Lease.
4. **Purpose and Location of Use**: The Ditch Company will, to the best of its ability, use all of the waters herein granted for beneficial purposes upon lands owned or operated by the Ditch Company or its shareholders. All lands, facilities and areas served by the Fourth Enlargement are situated within the boundaries of the District. The District reserves the exclusive right to review and approve any conditions which may be attached to any judicial approval of the Ditch Company’s use of the District’s water rights hereunder.
5. **Lease Rate:** The Ditch Company agrees to pay the District annually in the amount of $2,000.00 (two thousand dollars) for use of the District’s interest in the Fourth Enlargement (the “Lease Rate”).
6. **Payment:** The District shall send an annual invoice to the Ditch Company for use of the Fourth Enlargement no sooner than May 1 of each calendar year. Payment by the Ditch Company shall be due no later than sixty (60) days after the Ditch Company’s receipt of an invoice. If the Ditch Company does not make the required payment by the due date, the District may provide the Ditch Company a notice of default. If the Ditch Company does not cure the default by making full payment within thirty (30) days of receipt of any notice of default, then the District may terminate this Lease by written notice to the Ditch Company. In the event of termination, the water rights hereunder may be transferred, leased or otherwise disposed of by the District at its discretion.
7. **Expenses**: Ditch Company shall be solely responsible for the operations, maintenance and repair of the Ditch and any and all expenses incurred by the Ditch Company in connection with its use of the Fourth Enlargement, including, but not limited to, legal and engineering fees that may be incurred in connection with such use. The Ditch Company and its shareholders shall be solely responsible for providing works and facilities, if any, necessary to utilize the Fourth Enlargement.
8. **Change of Water Right**: The District reserves the exclusive right to review and approve or disapprove any proposed change in use of the water. Any use other than that set forth or any lease or sale of the water or water rights hereunder without the prior written approval of the District shall be deemed to be a material breach of this Lease.
9. **Entire Agreement of the Parties**: This writing constitutes the entire agreement between the Parties and supersedes all prior written or oral agreements, negotiations, representations, and understandings of the Parties with respect to the subject matter contained herein. The District and the Ditch Company waive all claims arisen in prior agreements, negotiations, or representations. All prior leases entered into between the Parties or their successors will have no force and effect after execution of this Lease.
10. **No Fee Title**: It is understood and agreed that nothing herein shall give the Ditch Company any equitable or legal fee title interest or ownership in or to any of the water or water rights of the District, but that the Ditch Company is entitled to the right to use the water hereunder, subject to the limitations, obligations and conditions of this Lease.
11. **Amendment:** This Lease may be amended, modified, changed, or terminated in whole or in part only by written agreement duly authorized and executed by the Parties.
12. **Enforcement:** The Parties agree that this Lease may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including damages, as may be available according to the law of the State of Colorado. It is specifically understood that, by executing this Lease, each Party commits itself to perform pursuant to the terms hereof, and that any breach hereof resulting in any recoverable damages shall not thereby cause the termination of any obligations created by this Lease unless such termination is requested by the Party not in breach hereof.
13. **Venue:** Venue for the trial of any action arising out of any dispute hereunder shall be in the District Court, Rio Blanco County.
14. **Intent of Lease:** This Lease is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer rights upon any persons or entities not named as Parties, nor to limit in any way the powers and responsibilities of the Ditch Company, the District, or any other entity not a party hereto.
15. **Effect of Invalidity**: If any portion of this Lease is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both Parties, the entire Lease will terminate.
16. **Successors and Assigns**: This Lease and the rights and obligations created hereby shall be binding upon the Parties hereto and their respective successors and assigns if any are allowed.
17. **Notice**: Unless otherwise stated herein, any notices, demands, or other communications required or desired to be given under any provision of this Lease shall be given in writing, to be delivered personally, or sent by certified or registered mail, return receipt requested, postage prepaid, to the following:

The White River Highland Ditch Company

2496 County Road 8

Meeker, CO 81641

Or

Yellow-Jacket Water Conservancy District

P.O. Box 447

Meeker, CO 81641

With copy to:

Balcomb & Green P.C.

P.O. Drawer 790

Glenwood Springs, CO 81601

1. **Governing Law**. This Lease and its application shall be construed in accordance with the laws of the State of Colorado.
2. **No Attorneys' Fees**. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of or related to this Lease each Party agrees to be responsible for its own attorneys' and other professional fees, costs and expenses associated with any such proceedings.

#

 Yellow Jacket Water Conservancy District

 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Kelly Sheridan, President

Attest:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Secretary

 White River Highland Ditch Company

 By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF COLORADO )

 ) ss.

County of Rio Blanco )

The foregoing Water Lease Agreement was acknowledged before me by as duly authorized signatory and on behalf of the White River Highland Ditch Company.

Witness my hand and official seal.

|  |
| --- |
|  |
| Notary PublicAddress:  |
| My commission expires:  |