INTERGOVERNMENTAL AGREEMENT
REGARDING GUNNISON RIVER WHITEWATER PARK

This Intergovernmental Agreement ("Agreement") is entered into this 26th day of March, 2002, between The Board of County Commissioners of the County of Gunnison, Colorado ("County"), a Colorado political subdivision, and the Upper Gunnison River Water Conservancy District ("District"), a water conservancy district created under the laws of Colorado.

Recitals

WHEREAS, in response to the growing interest in whitewater boating in Gunnison County and surrounding areas, the County has designed a recreational amenity known as the Gunnison River Whitewater Park ("Whitewater Park") to be located on the Gunnison River and on land owned by the County downstream of Highway 50, below Twin Bridges, near the County water treatment plant; and

WHEREAS, the channel width, stream gradient, and habitat characteristics at this location make it an ideal location for boating, kayaking and other recreational activities on and near the water; and

WHEREAS, the parties anticipate that the Whitewater Park will provide recreational and economic benefits to the County and the region generally; and

WHEREAS, the District's water management planning process has identified as a goal the improvement of water supplies for recreational purposes; and

WHEREAS, the County wishes to develop, construct, operate, maintain and repair the Whitewater Park, and the District wishes to obtain the necessary water court approvals for the Whitewater Park, but does not wish to have responsibility or liability with regard to the construction, operation, maintenance and repair of the Whitewater Park; and

WHEREAS, the parties wish to work cooperatively toward completion of the Whitewater Park and acquisition of a water right, as herein provided; and

WHEREAS, each party is empowered to enter into this Agreement and is vested with all necessary powers to accomplish the purposes of this Agreement,

NOW, THEREFORE, in consideration of the mutual promises and covenants herein

contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Design of Whitewater Park. The parties acknowledge that the Whitewater Park has been designed by Recreation Engineering & Planning, and consists of a whitewater course extending approximately one-quarter mile, composed of several structures designed to concentrate and direct the flow of the Gunnison River, a landscaped terraced play area adjacent to the boating put in area, a new trail, and landscaping and parking areas. All costs associated with the design of the Whitewater Park have been borne by the County.

2. Changes to Final Design of Whitewater Park. The County shall provide copies of any changes to the final design drawings and specifications to the District prior to commencement of construction so that the District can verify that any such changes are consistent with the District's water court application. The parties recognize that if the water court application is filed prior to commencement of construction, and if the whitewater course is not designed and constructed substantially as it is described in the water rights application, it may be necessary to amend the application, resulting in additional expense and delay and possibly additional opposition. Therefore, no substantial changes shall be made to the approved final plans and specifications without both parties' prior written approval, which shall not be unreasonably withheld.

3. Permits, Approvals and Rights of Way. The County shall be responsible for obtaining and, if necessary, extending, all permits and other governmental approvals required to construct, operate, maintain and repair the Whitewater Park. These permits and approvals may include, but are not necessarily limited to, any required zoning and land use approvals, 404 permits, other construction permits, permits for the storage and disposal of materials, access permits, road construction permits, approvals for use of existing roads, and any approvals or permits required as a result of the proximity of the Gunnison County Airport. In addition, the County shall be solely responsible for acquiring all rights-of-way required for the construction and use of the Whitewater Park. The District shall support the County's permit applications, but shall not be required to expend any District funds in order to provide such support. Within 30 days of the date of execution of this Agreement, the County shall provide to the District an opinion of counsel stating that there are no permitting requirements that will render legally impossible the construction and use of the whitewater course or the Whitewater Park.

4. Construction of Whitewater Park. Upon approval of the final design drawings and acquisition of all necessary permits and approvals, the County shall proceed with diligence to construct the Whitewater Park (including the whitewater course) in accordance with the approved design drawings, plans and specifications, at its expense. The County shall serve as Project Manager and, at its expense, shall be responsible for contracting for and overseeing

construction of the structures and facilities required by the final design drawings for the Whitewater Park, including the bidding and contracting process, all scheduling, construction inspection and oversight, and all other matters necessary to assure the proper and timely completion of construction of the Whitewater Park, and the District shall have no authority or responsibility with regard to such matters. The District shall have no obligation to share in or reimburse any costs associated with the design or construction of the Whitewater Park.

5. Ownership of Structures. The parties acknowledge that the County owns the land on which the Whitewater Park will be constructed, including the bed and banks of the Gunnison River running through the Whitewater Park. The County will also own all structures and facilities constructed on, over or in the Whitewater Park and the Gunnison River in connection with the Whitewater Park, and will be solely responsible for their upkeep, operation, maintenance, repair and replacement. The District shall have no ownership interest in the Whitewater Park, the bed or banks of the Gunnison River, or any of the structures, facilities or amenities appurtenant to the Whitewater Park by virtue of this Agreement.

6. Operation, Maintenance, Repair and Replacement.. The County shall have all authority and responsibility for controlling and overseeing the use, upkeep, operation, maintenance, repair and replacement of the Whitewater Park and the structures, facilities and amenities associated therewith, including the whitewater course. The District shall not be responsible for any costs associated with the construction, operation, maintenance, repair or replacement of the Whitewater Park or any structures, facilities or amenities associated therewith. The County shall be responsible for meeting any water quality requirements which may be imposed upon the use and operation of the whitewater course.

7. Liability. This Agreement is not intended, and shall not be construed, to create any liability or responsibility of either the District or the County to any third parties, or to abrogate or diminish any protections and limitations afforded to the parties by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* as amended, or other law. Without limiting the foregoing, the County shall indemnify and defend the District, its directors, officers, employees, agents and assigns, and hold them harmless from and against any and all claims, damages, demands, actions, losses, liabilities, or expenses of whatever sort, including attorney fees, for which the District, its directors, officers, employees, agents and assigns may be or become liable arising out of or in connection with the Whitewater Park and its associated structures, facilities and amenities, including any liability which may be imposed upon the District as a result of flooding, icing, or other conditions of the Gunnison River alleged to have been caused by the whitewater course.

8. Water Right Acquisition and Maintenance. The District shall, at its expense, file and diligently pursue an application for water rights for the Whitewater Park. The District has

consulted with the County and has obtained public input regarding appropriate amounts, terms and conditions of the water rights to be applied for. However, the District shall make the final determination as to all aspects of the water right or rights applied for, shall direct and control the administrative processing of the application before the Colorado Water Conservation Board (CWCB) as provided for in Senate Bill 01-216, and the water court approval process. The District shall make all decisions regarding settlement of any or all aspects of the water right proceeding, both before the CWCB and in the water court. The County shall not oppose the District's application, or file any competing application for water rights for the Whitewater Park without the District's prior written agreement.

9. Withdrawal of Application Prior to Entry of Decree. If the County determines not to proceed with construction of the Whitewater Park prior to entry of a decree, for reasons within the County's control, including but not limited to increased costs of construction or obtaining necessary permits, and if the water rights application is subsequently withdrawn by the District, the County shall be responsible for any costs or fees that may be awarded against the District as a result of such withdrawal.

The parties recognize that the application may be withdrawn prior to entry of a decree in the event of force majeure, such as wars, riots, insurrections, strikes, acts of God, natural disasters or other similar occurrences outside of the control of the parties, and that in such event, each party will bear its own costs in connection with the Whitewater Park, the whitewater course, and/or the water rights application, and the District shall be responsible for any fees or costs that may be awarded against the District.

10. County Support for Water Rights Application. The County will support the District's application, and will provide documents, information, testimony and witnesses as reasonably requested by the District to support the application before the Colorado Water Conservation Board (to the extent deemed necessary or appropriate by the District) and before the Water Court, and in discovery, depositions or other pretrial or post trial proceedings. The County will make no charge to the District for time spent by any County staff or employees, or members of the Board of County Commissioners, in connection with the water court proceeding. The District shall be responsible for obtaining and compensating the necessary water rights consultants, water engineers, other expert witnesses (other than County staff or commissioners), and attorneys involved in the development and prosecution of the application.

The County shall be responsible for all costs associated with time spent by its employees, contractors, agents or consultants in connection with any redesign or construction modifications to the Whitewater Park which may be required as a result of the water rights proceeding or otherwise.

Should the District obtain a decree for one or more conditional water rights, the County shall cooperate with the District in development of the conditional water rights with the goal of making the conditional water rights absolute at the earliest practicable opportunity.

11. Affected County Water Right. The parties recognize that a water right owned by the County is diverted from a headgate within the reach of the whitewater course. The County intends to operate the Whitewater Park and water rights decreed thereto in a manner that assures that diversion of the County's water right is not altered or adversely affected by operation of the Whitewater Park, and the District agrees that appropriate language recognizing this arrangement will be included in the water rights decree.

12. Protection of Water Rights Obtained; Conveyance. Upon decree of any absolute or conditional water rights for the whitewater course, the District agrees to protect the water rights from loss or abandonment so long as the County likewise maintains the whitewater course structures and operates the whitewater course so as to protect the water rights from loss or abandonment. The County agrees to cooperate with the District in all applications filed by the District for findings of reasonable diligence or to make absolute any conditional water rights obtained for the whitewater course. The County also agrees to cooperate with the District in opposing any abandonment proceedings for such water rights. After a decree has been obtained for the whitewater course, and as long as the County agrees to operate the whitewater course or proceeds with reasonable diligence to do so, the District agrees not to sell, transfer or convey the water right or rights, or any interest therein. So long as the County operates the whitewater course, or proceeds with reasonable diligence to do so, the District will timely file applications for findings of reasonable diligence, or applications to make the conditional water rights absolute as appropriate.

13. Designated Representative. Each party shall identify a designated representative who shall be a contact person for the other with regard to all matters pertaining to design, construction, operation, maintenance, repair, or replacement of the Whitewater Park, or the water rights associated therewith. The County's designated representative shall be John DeVore, or his successor County Manager, and the District's designated representative shall be Kathleen Curry or her successor District Manager. In the event a party's designated representative is changed, that party shall notify the other party of the name, address, and telephone number of its replacement designated representative.

14. Default; Notice; Right to Cure. In the event one party believes the other party has defaulted or failed to perform its obligations hereunder, the party claiming such default or non-performance shall give the other party written notice thereof, specifying the nature of the default or non-performance. The other party shall have 30 days within which to cure the default, or to perform its obligations, or, if cure or performance cannot reasonably be completed within such

30-day period, to commence such cure or performance and diligently complete it within a reasonable time thereafter. If such cure or performance is not completed as herein specified, the non-defaulting party shall have all remedies available to it for enforcement of this agreement.

15. Time of the Essence. Time is of the essence of this Agreement. If either party fails to perform its responsibilities hereunder in a timely and diligent manner, the other party may elect to terminate this Agreement, and upon such termination, neither party will have any further responsibility to the other hereunder, except for accrued but unpaid cost-sharing obligations as of the date of termination.

16. Notices. All notices required to be given to a party hereunder shall be deemed given upon deposit in the United States Mail, certified mail, return receipt requested, addressed to the party to whom directed at the following address, or at such other address as may be given by notice pursuant to this paragraph:

County: John DeVore, County Manager
Gunnison County
200 East Virginia Avenue
Gunnison, CO 81230

District: Kathleen Curry, Manager
Upper Gunnison River Water Conservancy District
200 East Virginia Avenue
Gunnison, CO 81230

17. Amendments. All amendments to this Agreement shall be in writing, and shall be signed by the parties hereto, or their authorized successors or assigns.

18. Assignment or Transfer. Neither party may assign or transfer this Agreement or its rights hereunder without the prior written approval of the other party. Any assignment or transfer of this Agreement without such prior written approval shall be void.

19. Enforcement; Venue. Should either party be required to take legal action to enforce its rights hereunder, the prevailing party in such legal action shall be entitled to recover its costs, including reasonable attorney fees. Venue for any action to enforce this Agreement shall be Gunnison County, Colorado.

20. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Colorado.

21. Authorization. The signatory hereto for each party has full right and authority to enter into this Agreement on behalf of such party, and to perform its obligations hereunder.

Dated 3/26/02

Gunnison County

By Paul R. Fuhrl

Title: Chairperson

Attested: Kelly Balch, Deputy Clerk

Upper Gunnison River Water Conservancy District

By Ray Peterson

Title: President

Attested :

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