AGREEMENT FOR DRY-UP COVENANT AND FOR REVEGETATION OR DRY-LAND FARMING COVENANT, AND GRANT OF NON-EXCLUSIVE RIGHT OF ENTRY AND EASEMENTS

[Farm No. 3 Dry-Up]

THIS AGREEMENT FOR DRY-UP COVENANT AND FOR REVEGETATION OR DRY-LAND FARMING COVENANT, AND GRANT OF NON-EXCLUSIVE RIGHT OF ENTRY AND EASEMENTS (“Agreement”) is entered into this _____ day of _______________, 2016, by and between Arkansas River Farms, LLC, a Colorado limited liability company (“Arkansas River Farms”), as Grantor, and Lower Arkansas Water Management Association, a Colorado non-profit corporation (“LAWMA”), as Grantee (together, the “Parties”).

Recitals

A. Arkansas River Farms and LAWMA enter into this Agreement as additional consideration for LAWMA’s issuance of 8,043 shares of common LAWMA stock (the “LAWMA Shares”) to Arkansas River Farms in trade for 8,043 of the 93,989.4166 shares of capital stock outstanding in the Fort Lyon Canal Company (“Fort Lyon Shares”) pursuant to the Amended and Restated Water Rights Exchange Agreement and Reimbursement Agreement between the Parties (“Exchange Agreement”) and as more particularly described therein.

B. Arkansas River Farms and its predecessors-in-interest historically have used 83 of the Fort Lyon Shares to irrigate Farm No. 3, located in the SE ¼, the SE ¼ of the NE ¼, and the SW ¼ of the NE ¼ of Section 30, Township 23 South, Range 54 West in Otero County, Colorado (“Farm No. 3 Shares”). 1985 irrigated acreage on Farm No. 3 was 76.8 acres (“Farm No. 3 1985 Acreage”), and 2013 irrigated acreage on Farm No. 3 was 77 acres (“Farm No. 3 2013 Acreage”), all as shown on the map attached as Exhibit A. The Farm No. 3 2013 Acreage also is described as the “Farm No. 3 Dry-Up” in this Agreement. The Farm No. 3 Shares are represented by Stock Certificate No. 10488. Arkansas River Farms will exchange and convey to LAWMA 82 of the Farm No. 3 Shares (“Trade Shares”) under the Exchange Agreement.

C. Arkansas River Farms acknowledges that LAWMA intends to use the Trade Shares for augmentation and replacement purposes, and that to effect such uses, the Trade Shares will need to be changed permanently in a change of water rights proceeding before the Water Court for Division 2 (the “Water Court Change Case”), and temporarily pursuant to a substitute water supply plan (“SWSP”) or interruptible water supply agreement (“IWSA”) approved by the Office of the State Engineer. Arkansas River Farms further acknowledges that the Water Court and/or the State Engineer may require, as terms and conditions of such a change, that the Farm No. 3 Dry-Up be dried up and either revegetated or established and maintained in dry-land farming practices.
D. Arkansas River Farms and LAWMA desire to enter into this Agreement to affirm the permanent cessation of use of the Farm No. 3 Shares on the Farm No. 3 Dry-Up, to confirm Arkansas River Farms’ obligation either to revegetate or to establish and maintain dry-land farming practices on the Farm No. 3 Dry-Up, and to provide for a right of entry and easements for LAWMA and its agents, and for LAWMA’s successors and assigns and their agents, upon the Farm No. 3 Dry-Up for the purposes of enforcing this Agreement and the decree and any orders entered by the Water Court in the Water Court Change Case.

NOW, THEREFORE, in consideration of LAWMA’s issuance of the LAWMA Shares in trade for the Fort Lyon Shares and other consideration, Arkansas River Farms hereby covenants, agrees, and grants as follows:

Section 1 – Real Covenant for Dry-Up

1.1 Arkansas River Farms covenants and agrees to cease irrigation of the Farm No. 3 Dry-Up with the Farm No. 3 Shares.

1.2 Arkansas River Farms covenants and agrees that the Farm No. 3 Dry-Up will not be irrigated, including for purposes of revegetation, with any source of water unless LAWMA first gives its express written consent or the water used for such irrigation is ground water that is treated as sole-source pumping and is fully augmented under LAWMA’s augmentation plan or other augmentation plan approved by the Water Court for Water Division 2, or any SWSP or Arkansas River replacement plan approved by the State Engineer; provided, however, that Arkansas River Farms is prohibited from performing such irrigation with ground water in a way that reduces the consumptive use credit available to LAWMA from the Fort Lyon Shares under the terms and conditions of any decree entered in the Water Court Change Case.

1.3 Arkansas River Farms shall ensure that the Farm No. 3 Dry-Up complies with all terms and conditions included in the Kansas v. Colorado Operating Procedures for Administration of Parcels Claimed for Augmentation Credit (“Kansas v. Colorado Dry-Up Agreement”), a copy of which is attached as Exhibit B. Those terms and conditions include, without limitation, requirements that a physical separation must exist between any irrigated portion of a parcel and the dry-up portion unless the Division Engineer gives prior approval, that parcels formerly containing alfalfa or alfalfa-grass stands must be deep tilled or chemically killed, and that dry-up parcels must be monumented in accordance with specific standards.

1.4 Arkansas River Farms covenants and agrees that in addition to the dry-up requirements for the Farm No. 3 Dry-Up imposed by this Real Covenant for Dry-Up, Arkansas River Farms also shall meet any dry-up obligations imposed by the following: (i) the decree and/or any orders entered by the Water Court in the Water Court Change Case; (ii) the terms and conditions of state water officials’ approval of LAWMA’s use of the Farm No. 3 Water in
any SWSP, IWSA, Arkansas River Replacement Plan pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin (“Rule 14 Plan”), and/or Compact Compliance Plan pursuant to Rule 10 of the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado (“Rule 10 Plan”); and (iii) the Fort Lyon Canal Company Board of Directors’ approval of the change of use of the Fort Lyon Shares.

1.5 Successful completion of dry-up of the Farm No. 3 Dry-Up will be determined by LAWMA and its successors and assigns in the exercise of reasonable discretion. In the event the Water Court retains jurisdiction in the Water Court Change Case to certify successful completion of dry-up of the Farm No. 3 Dry-Up as a condition to transferring the consumptive use credit available to LAWMA for the Fort Lyon Shares, then the determination of whether dry-up of the Farm No. 3 Dry-Up has been successfully completed will be made by the Water Court.

1.6 This Real Covenant for Dry-Up, with the burdens it imposes, is binding upon and will run with the Farm No. 3 Dry-Up forever, and is forever enforceable against Arkansas River Farms and its successors and assigns in the Farm No. 3 Dry-Up for the benefit of the Trade Shares, LAWMA, and LAWMA’s successors and assigns.

Section 2 – Real Covenant for Revegetation or Dry-Land Farming

2.1 As used in this Agreement, the term “revegetation” means ground cover of plant life demonstrated to be, without irrigation, reasonably capable of sustaining itself under the climatic conditions, soils, precipitation and terrain prevailing on the Farm No. 3 Dry-Up, with weeds adequately controlled; and the term “dry-land farming” means dry-land farming practices with weeds adequately controlled.

2.2 So long as Arkansas River Farms is irrigating the Farm No. 3 Dry-Up for agricultural production purposes in accordance with the terms and conditions in Section 1.2 above, the revegetation and dry-land farming obligations described in this Section 2 will not apply. Upon cessation of irrigation of the Farm No. 3 Dry-Up for agricultural production purposes pursuant to Section 1.2 above, Arkansas River Farms immediately shall revegetate or establish and maintain dry-land farming practices on the Farm No. 3 Dry-Up in accordance with the terms and conditions of this Section 2. Within sixty days of ceasing irrigation of the Farm No. 3 Dry-Up for agricultural production purposes, Arkansas River Farms shall provide LAWMA with written notice of that cessation, by email to lawma@cminet.net, with a copy to rmehren@mwhw.com.

2.3 No later than the end of the third growing season after irrigation for agricultural purposes has ceased on the Farm No. 3 Dry-Up pursuant to Section 1.2 above (the “Revegetation/Dry-Land Farming Deadline”), Arkansas River Farms shall have established and maintained either revegetation or dry-land farming on the Farm No. 3 Dry-Up. For either revegetation or dry-land farming to be “maintained” on the Farm No. 3 Dry-
Up, such revegetation or dry-land farming must have been established for more than one growing season. Arkansas River Farms shall pay all costs of the revegetation, dry-land farming, and weed control of the Farm No. 3 Dry-Up, including without limitation the cost of any water required for establishing and maintaining revegetation and all power costs for associated well pumping.

2.4 The species of grass or other plants used for revegetation may not include grasses or other plants defined as “noxious” under the provisions of the Colorado Weed Management Act, Article 5.5 of Title 35, C.R.S., and may not include alfalfa or other highly water-consumptive species.

2.5 Arkansas River Farms covenants and agrees that in addition to the revegetation and dry-land farming requirements imposed by this Real Covenant for Revegetation or Dry-Land Farming, Arkansas River Farms also shall meet any lawful revegetation or dry-land farming obligations imposed by the following: (i) the decree and/or any orders entered by the Water Court in the Water Court Change Case; (ii) the terms and conditions of state water officials’ approval of LAWMA’s use of the Farm No. 3 Water in any SWSP, IWSA, Rule 14 Plan, and/or Rule 10 Plan; and (iii) the Fort Lyon Canal Company Board of Directors’ approval of the change of use of the Fort Lyon Shares. Arkansas River Farms also shall take any and all actions as may be necessary to comply with any requirements imposed upon Arkansas River Farms and/or LAWMA by federal, state, and/or local government authorities due to the removal of the Farm No. 3 Water from the Farm No. 3 Dry-Up, including without limitation any requirements imposed by a 1041 permit, if any, issued by Otero County. If a decree is entered in the Water Court Change Case after the Revegetation/Dry-Land Farming Deadline, Arkansas River Farms shall satisfy any additional terms and conditions for revegetation and/or dry-land farming in that decree.

2.6 Successful completion of revegetation of the Farm No. 3 Dry-Up will be determined by LAWMA and its successors and assigns, using applicable Conservation Reserve Program criteria, lawful criteria imposed by the Board of Directors of the Fort Lyon Canal Company, or the criteria imposed by the Water Court, whichever standards are strictest. Successful establishment and maintenance of dry-land farming of the Farm No. 3 Dry-Up will be determined by LAWMA and its successors and assigns in the exercise of reasonable discretion, or by the Water Court. At Arkansas River Farms’ request, the Revegetation/Dry-Land Farming Deadline will be extended by one year for each year that, from the year of closing and up to and including the year of the Revegetation/Dry-Land Farming Deadline, the amount of precipitation measured at the Lamar precipitation station falls below 80% of the March through August average of 10.4 inches (1950-2004 average). Until the decree is entered in the Water Court Change Case, at Arkansas River Farms’ request, LAWMA will extend the Revegetation/Dry-Land Farming Deadline upon a showing by Arkansas River Farms that its efforts to establish and maintain dry-land farming practices or revegetation have been materially hindered due to circumstances beyond Arkansas River Farms’ control, including fire, hail storms, wind storms, tornadoes, flooding, and freezes after May 15 and before September 15 of any year from the year of
closing up to and including the year of the Revegetation/Dry-Land Farming Deadline; after
the decree is entered in the Water Court Change Case, at Arkansas River Farms’ request,
LAWMA may extend the Revegetation/Dry-Land Farming Deadline upon a showing by
Arkansas River Farms that its efforts to establish and maintain dry-land farming have been
materially hindered due to the same circumstances.

2.7 In the alternative to meeting the obligations imposed by Sections 2.2, 2.3, and 2.5 above,
Arkansas River Farms may demonstrate to LAWMA’s satisfaction that the Farm No. 3
Dry-Up has been developed with structures and improvements such that the Farm No. 3
Dry-Up is not susceptible to erosion, weeds, or agricultural uses.

2.8 To the extent that successful establishment and maintenance of revegetation may require
water for an interim period, Arkansas River Farms shall provide such water at its cost.
Potential sources of such water may include but are not limited to the following: (i) ground
water that is treated as sole-source pumping and is fully augmented under LAWMA’s
augmentation plan or other augmentation plan approved by the Water Court for Water
Division 2, or any SWSP or Arkansas River replacement plan approved by the State
Engineer; (ii) water available to other Fort Lyon Canal Company shares owned by
Arkansas River Farms; and/or (iii) water available to certain of the Fort Lyon Shares, repaid
to LAWMA in the form of an equivalent reduction in allocation to the LAWMA Shares
(e.g., if the water available to the 82 Trade Shares historically used on the Farm No. 3 Dry-
Up is required to establish and maintain revegetation, LAWMA would not allocate water
to 82 of the LAWMA Shares during that irrigation season); provided, however, that use of
any such source must not result in a reduction of the consumptive use credit attributable to
the Fort Lyon Shares under the terms and conditions of any administrative proceedings
and/or any decree entered in the Water Court Change Case. LAWMA will make the
determination as to whether water is required for an interim period to establish and
maintain revegetation based on the opinion of its consulting expert in agronomy.

2.9 This Real Covenant for Revegetation or Dry-Land Farming, with the burdens it imposes,
is binding upon and will run with the Farm No. 3 Dry-Up forever, and is forever
enforceable against Arkansas River Farms and its successors and assigns in the Farm No.
3 Dry-Up for the benefit of the Trade Shares, LAWMA, and LAWMA’s successors and
assigns.

Section 3 – Right of Entry and Easements

3.1 Arkansas River Farms hereby grants to LAWMA a non-exclusive right of entry to, upon,
under, and across the Farm No. 3 Dry-Up for the purposes of providing a reasonable means
for LAWMA and its agents, as well as the Colorado Division of Water Resources and the
Water Court, to take all actions reasonably necessary to ensure that Arkansas River Farms
has met its obligations under this Agreement and the decree or any orders entered in the
Water Court Change Case, including without limitation site inspections, installation of
observation wells, piezometers, or lysimeters, performance of soil evaporation and plant transpiration tests, and performance of vegetative studies and surveys.

3.2 Arkansas River Farms hereby further grants to LAWMA and/or its agents easements (i) to construct, operate, and maintain on the Farm No. 3 Dry-Up such facilities as are required by the decree or any orders entered in the Water Court Change Case for replication of historical return flows from irrigation use of the Fort Lyon Shares, including without limitation storage reservoirs and/or recharge facilities; (ii) to use such portions of the surface and subsurface of the Farm No. 3 Dry-Up as are necessary to replicate historical return flows from irrigation use of the Fort Lyon Shares; and (iii) to perform all acts necessary, including without limitation engineering and historical consumptive use studies, to prosecute the Water Court Change Case and/or an application for a Rule 14 Plan, a Rule 10 Plan, an SWSP or an IWSA using the Fort Lyon Shares as a source of supply. Arkansas River Farms and LAWMA acknowledge and agree that the exact nature, extent, and location of these easements are difficult to define in advance of completion of the Water Court Change Case or any administrative proceeding for approval of a Rule 14 Plan, a Rule 10 Plan, an SWSP or an IWSA. Arkansas River Farms and LAWMA agree that the absence of specified locations for the easements on the Farm No. 3 Dry-Up does not void or render the easements unenforceable. To the extent reasonably practical, any easement that may require the construction of a physical structure on the Farm No. 3 Dry-Up will be located in a manner so as not to interfere unreasonably with Arkansas River Farms’ continued and proposed future use of the Farm No. 3 Dry-Up. Upon identification of an acceptable location for any facilities required under Paragraphs 3.2(i) and (ii), the Parties shall create and record a specific legal description of easements therefor. Upon such recording, the balance of the Farm No. 3 Dry-Up will be automatically released from Paragraphs 3.2(i) and (ii).

3.3 In the event that Arkansas River Farms defaults in its obligations for dry-up and revegetation or dry-land farming hereunder, this right of entry and these easements also will entitle LAWMA, at Arkansas River Farms’ expense, to take all actions necessary to accomplish the dry-up and revegetation or dry-land farming of the Farm No. 3 Dry-Up, including without limitation constructing drainage and conveyance ditches, monumenting dried-up acreage, revegetating with drought-resistant plants, removing alfalfa and other deep-rooted plants, trees, phreatophytes, and tamarisk, and removing and filling in all or portions of irrigation ditches and/or farm laterals; provided, however, that Arkansas River Farms will not be required to incur out-of-pocket expenses in excess of $200 per acre, for a maximum of $15,400, to complete the actions necessary to dry-up and revegetate or dry-land farm the Farm No. 3 Dry-Up as required by Sections 1 and 2 above; and provided further that this out-of-pocket expense limitation does not include or apply to any costs Arkansas River Farms may incur in relation to its provision of water for revegetation purposes pursuant to Section 2.8 above.

3.4 This non-exclusive right of entry and these non-exclusive easements, with the burdens they impose, are binding upon and will run with the Farm No. 3 Dry-Up forever, and are forever
enforceable against Arkansas River Farms and its successors and assigns in the Farm No. 3 Dry-Up for the benefit of the Trade Shares, LAWMA, and LAWMA’s agents, successors, and assigns.

**Section 4 – General Provisions**

4.1 The terms and conditions of this Agreement and the real covenants given and non-exclusive right of entry and non-exclusive easements granted herein are perpetual and will not expire unless specifically released in writing by LAWMA or its successor or assign.

4.2 This Agreement may be enforced by LAWMA or its successor or assign, by any party having any right, title, or interest in the Trade Shares, or by the State Engineer of the State of Colorado, through an action at law or in equity.

4.3 Arkansas River Farms is and will be entitled to use the Farm No. 3 Dry-Up for any purpose not inconsistent with this Agreement, including but not limited to the mining and removal of sand, gravel, and other materials; dry-land grazing; and recreational, residential, commercial, and industrial purposes.

4.4 Arkansas River Farms shall reasonably cooperate with LAWMA to demonstrate the dry-up and revegetation of the Farm No. 3 Dry-Up, including but not limited to providing affidavits or testimony at no cost to LAWMA.

4.5 Upon LAWMA’s transfer of the Trade Shares to any party, that party will succeed to LAWMA’s interest in this Agreement and will have the right to enforce the terms of the Agreement against Arkansas River Farms or the then-current owner of the Farm No. 3 Dry-Up.

4.6 All attached exhibits to this Agreement are incorporated herein by this reference.

4.7 LAWMA shall record this Agreement in the real property records of the Otero County Clerk and Recorder.

**Remainder of this page intentionally left blank.**
Executed and effective as of the day first written above.

ARKANSAS RIVER FARMS, LLC

_________________________________________________
Aaron M. Patsch, authorized representative
Resource Land Fund, IV, LLC
Managing Member

Date: ________________________________

LOWER ARKANSAS WATER
MANAGEMENT ASSOCIATION

_________________________________________________
Robert Wilger, Vice-President

Date: ________________________________

ATTEST:

_________________________________________________
Donald F. Higbee, Secretary