



COLORADO
Division of Water Resources
Department of Natural Resources

September 4, 2018

Mr. Stephen Buechner, P.E.
Applegate Group, Inc.
1490 W. 121st Avenue, Suite 100
Denver, CO 80234

Re: Parkdale Project (Front Range Aggregate) Substitute Water Supply Plan
DRMS File No. M-97-054
Sec. 12, Twp. 18S, Rng. 72W, 6th P.M.
Water Division 2, Water District 12
SWSP ID 2654, WDID 1207022

Approval Period: October 1, 2018 through September 30, 2019

Contact Information: 303-452-6611, stephenbuechner@applegategroup.com

Dear Mr. Buechner:

We have received your June 26, 2018 letter requesting the renewal of a substitute water supply plan ("SWSP") for a sand and gravel mine pursuant to §37-90-137(11), C.R.S., known as the Parkdale Project, operated by Front Range Aggregates, LLC ("Applicant"). The mine is permitted with the Division of Reclamation, Mining, and Safety under file no. M-97-054. The \$257 renewal fee has been received and given receipt no. 3687117.

PLAN OPERATION

The Parkdale Project is located approximately 12 miles west of Cañon City on the north bank of the Arkansas River, as shown on the attached Figure 1. The mining operation consists of sand and gravel production and a granite quarry operation, which cause depletions to the Arkansas River due to evaporation and operational losses associated with mining including dewatering, dust control, and water retained in product hauled off site.

Mining below the ground water table has been completed, and the Applicant is now mining the granite reserve that exists above the groundwater table within the permit boundary. The two different mining areas (gravel and granite) are depicted on the attached Figure 1. All mining during this plan period will occur above the groundwater table. Mining at the site is estimated to continue for approximately 15 years.



In accordance with the letter dated April 30, 2010 from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), all sand and gravel mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long term injurious stream depletions that result from mining related exposure of groundwater.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$1,174,724 through DRMS to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events, which would lead to the abandonment of the Pit. In addition, Front Range Aggregates owns and has dedicated five shares of Twin Lakes Reservoir and Canal Company to cover these potential long term depletions. Front Range Aggregates must continue to commit those shares to this plan until such time as the State Engineer authorizes the release of this commitment.

DEPLETIONS

The depletions that result from the mining operation over the period of this SWSP include evaporation from exposed ground water, dust suppression, dewatering, and water lost with the mined product. Evaporation losses will result from the exposure of groundwater in the settling ponds, a gravel washing pond, dewatering trenches and two small sumps. The maximum exposed water surface area during this SWSP period will not exceed 5.0 acres. The 5.0 acres of exposed surface area consist of a combination of dewatering pumps and trenches, settling ponds and a washing pond; all of whose configurations may change during the plan year, but will not exceed 5.0 acres. The total exposed surface water area will be verified by a consultant the Applicant has contracted to provide aerial photography services and quantification analyses.

Gross annual evaporation at the gravel pit location is estimated to be 46.0 inches per year and the monthly distribution is as depicted on the attached Table 1. Net evaporation is defined as gross evaporation less the consumptive use of water by vegetation that naturally occurred at the site prior to construction of the pit. The historical consumptive use was assumed to be equal to the effective precipitation, which was estimated as 70% of the 12.51 inches of average annual precipitation based on data from the Cañon City weather station over the period 1893 through 2016. The net evaporation from the exposed water surface is 37.32 inches per year with a monthly distribution as shown on the attached Table 1. The total annual stream depletion resulting from the exposure of groundwater is estimated to be 15.53 acre-feet.

Computation of evaporation under this SWSP was also reduced during the ice covered period. The assumption was made that the ice covered period will occur during the months of December, January, and February based on the Cañon City weather station average temperatures of 22.5°F for December, 26.23°F for January, and 24.13°F for February. However, for the purpose of this SWSP, the Applicant shall replace the net evaporation depletions from the exposed groundwater surface area that may occur during the assumed ice covered period (the months of December, January, and February) for any time that the exposed ground water in the pit is not completely covered by ice. Computation of the net evaporation during any time that the pond is not completely covered by ice shall be

determined as the pro-rata amount of the monthly gross evaporation rate distribution amount identified in the State Engineer's *General Guidelines for Substitute Supply Plans for Sand and Gravel Pits*, subtracting the pro-rata amount of the effective precipitation for that period.

You have provided a monthly breakdown of the depletions under this SWSP on the attached Table 2, which includes 15.53 acre-feet of net evaporative loss, 7.37 acre-feet of water lost in product, and 12.00 acre-feet for on-site dust control, for a total consumptive use of 34.90 acre-feet. The Applicant anticipates that 650,000 tons of aggregate will be mined at the site during this SWSP period, of which 500,000 tons will be washed material and 150,000 tons will be unwashed material. For this SWSP approval period, all material is to be mined above the groundwater table; therefore, the washed material will be charged a depletion of 2 percent by weight of the material, and the unwashed material will be charged a depletion of zero percent by weight of the material.

The IDS Alluvial Water Accounting System ("AWAS") stream depletion model was used to determine the lagged depletions from dewatering, evaporation and operational losses to the Arkansas River. The aquifer characteristics used in the model are: transmissivity (T) = 55,000 gallons per day per foot and specific yield (SY) = 0.2, the distance of the exposed ground water to the stream = 1,400 feet (measured from the centroid of the exposed groundwater surface), and the location of the parallel impermeable boundary was estimated to be 2,650 feet from the stream.

During this plan approval period, no ground water will be used for reclamation, concrete batching, or any other purpose. As shown on Table 3, attached, the total consumptive use was calculated to be 34.90 acre-feet and lagged stream depletions were calculated to total 36.93 acre-feet during this SWSP period.

SITE DEWATERING

The Applicant began dewatering the Parkdale Pit in 2012 to assist in the mining of material below the groundwater table. The water is removed from the ground and placed into a series of dewatering trenches. This water will eventually be piped and then discharged on the north side of the property boundary into Currant Creek which is a tributary to the Arkansas River. All water pumped from the pit reaches Arkansas River within the same month it is pumped. The Applicant will monitor the dewatering operations and include the data in their monthly accounting submittals to the State Engineer's Office.

REPLACEMENTS

The proposed sources of replacement water for this pit include a five-year lease of 50 acre-feet per year of fully consumable water from the Board of Water Works of Pueblo ("PBWW"), valid April 1, 2016 through March 31, 2021 (attached), the applicant's ownership of 5 shares of Twin Lakes Reservoir and Canal Company stock, which yield approximately 3.65 acre-feet/year of water, and a 35-year lease with Canon City Water Department for 50 acre-feet, from January 3, 2000 through January 3, 2035. The PBWW water will be provided at the City of Pueblo wastewater treatment plant located east of Pueblo when adequate exchange potential exists to make that replacement water available at the Parkdale Project site. When there is insufficient exchange potential to utilize reusable effluent, the PBWW will

release water from upstream storage at Twin Lakes Reservoir. Upstream reservoir releases will be subject to a 0.07 percent per mile river transit loss, which equates to approximately 6.55 percent from Twin Lakes to Parkdale.

CONDITIONS OF APPROVAL

I hereby approve the proposed SWSP in accordance with §37-90-137(11), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of October 1, 2018 through September 30, 2019, unless otherwise revoked or superseded by decree. If this plan will not be made absolute by a water court action by the plan's expiration date, a renewal request must be submitted to this office and the Division 2 Office (please copy Kathy Trask at Kathy.Trask@state.co.us) with the statutory fee (currently \$257) by August 1, 2019.
2. Well permit no. 78822-F was obtained for the current use and exposed pond surface area of the gravel pit in accordance with §37-90-137(2) and (11), C.R.S. WDID 1205065 is assigned to the gravel pit structure and should be included in all reporting.
3. The total surface area of the groundwater exposed at the Parkdale Project site must not exceed 5.0 acres during this SWSP period, which will result in a net annual evaporative loss of 15.53 acre-feet (assuming ice cover the months of December, January, and February).
4. The annual amount of water used at the operation shall not exceed 12.0 acre-feet for dust control and the total product mined shall not exceed 650,000 tons (500,000 tons of washed aggregate and 150,000 tons of unwashed material) resulting in 7.37 acre-feet of water lost with the product.
5. Total consumption at the Parkdale Project site must not exceed the aforementioned amounts unless a new SWSP application is made and approved for such.
6. Approval of this SWSP is for the purposes as stated herein. Any additional uses of groundwater must first be included in a new SWSP approved by this office.
7. Water used for gravel washing ponds that does not infiltrate within 24 hours may require a new SWSP to include additional acres of exposed surface area subject to evaporation that will require additional replacement under the plan. Field visits by the Water Commissioner may be made to confirm that 5.0 acres of evaporative surface area is appropriate for dewatering trenches, settling ponds and the gravel washing pond under this plan.
8. All pumping for product washing and dust control shall be measured in compliance with the Amended Rules Governing the Measurement of Tributary Groundwater Diversions Located in the Arkansas River Basin.
9. The Applicant shall provide daily accounting (including, but not limited to diversions, depletions, replacement sources, and river calls) on a monthly basis. The accounting

must be emailed to the Division Engineer (DNR_Div2groundwater@state.co.us) and the Water Commissioner (Dan.Henrichs@state.co.us) with the subject line "Parkdale Project Gravel Pit SWSP". Said accounting must be received by the 10th of the month following the month being reported. The name, mailing address, and phone number of the contact person who is responsible for operation and accounting of this plan must be provided on the accounting forms.

10. Approval of this SWSP does not relieve the Applicant and/or the landowner of the requirement to obtain a Water Court decree approving a permanent plan for augmentation or mitigation to ensure the permanent replacement of all depletions, including long-term evaporation losses and lagged depletions after gravel mining operations have ceased. If reclamation of the mine site will produce a permanent water surface exposing groundwater to evaporation, an application for a plan for augmentation must be filed with the Division 2 Water Court at least three (3) years prior to the completion of mining, to include, but not be limited to, long-term evaporation losses and lagged depletions. If a lined pond results after reclamation, replacement of lagged depletions from mining and dewatering shall continue until there is no longer an effect on stream flow.
11. Dewatering at this site will produce delayed depletions to the stream system. As long as the pit is continuously dewatered, the water returned to the stream system should be adequate to offset the depletions. However, once dewatering at the site ceases the delayed depletions must be addressed. At least three years prior to completion of dewatering at the Parkdale Pit a plan must be submitted that specifies how the post pumping dewatering depletions (including refilling of the pit) will be replaced, in time, place and amount.
12. In accordance with the letter dated April 30, 2010 from the Colorado Division of Reclamation, Mining, and Safety ("DRMS"), all sand and gravel mining operators must comply with the requirements of the Colorado Reclamation Act and the Mineral Rules and Regulations for the protection of water resources. The April 30, 2010 letter from DRMS requires that you provide information to DRMS to demonstrate you can replace long term injurious stream depletions that result from mining related exposure of groundwater.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$1,174,724 through DRMS to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events, which would lead to the abandonment of the Pit. In addition, Front Range Aggregates owns and has dedicated five shares of Twin Lakes Reservoir and Canal Company to cover these potential long term depletions. Front Range Aggregates must continue to commit those shares to this plan until such time as the State Engineer authorizes the release of this commitment.

13. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP expire without renewal or be revoked prior to adjudication of a permanent plan for

augmentation, all use of water under this SWSP must cease immediately and the Applicant shall obtain and present to this office an alternate source of replacement water.

14. In accordance with amendments to Section 25-8-202-(7), C.R.S. and "Senate Bill 89-181 Rules and Regulations" adopted on February 4, 1992, the State Engineer shall determine whether or not the substitute supply is of a quality to meet the requirements of use to senior appropriators. As such, water quality data or analysis may be requested at any time to determine if the water quality is appropriate for downstream water users.
15. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning this plan. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other plans, or in any proposed renewal of this plan, and shall not imply concurrence with any findings of fact or conclusions of law contained herein, or with the engineering methodologies used by the Applicant.

Should you have any questions, please contact Melissa van der Poel of this office or Charlie DiDomenico, Augmentation Coordinator, in our Division 2 office in Pueblo at (719) 542-3368.

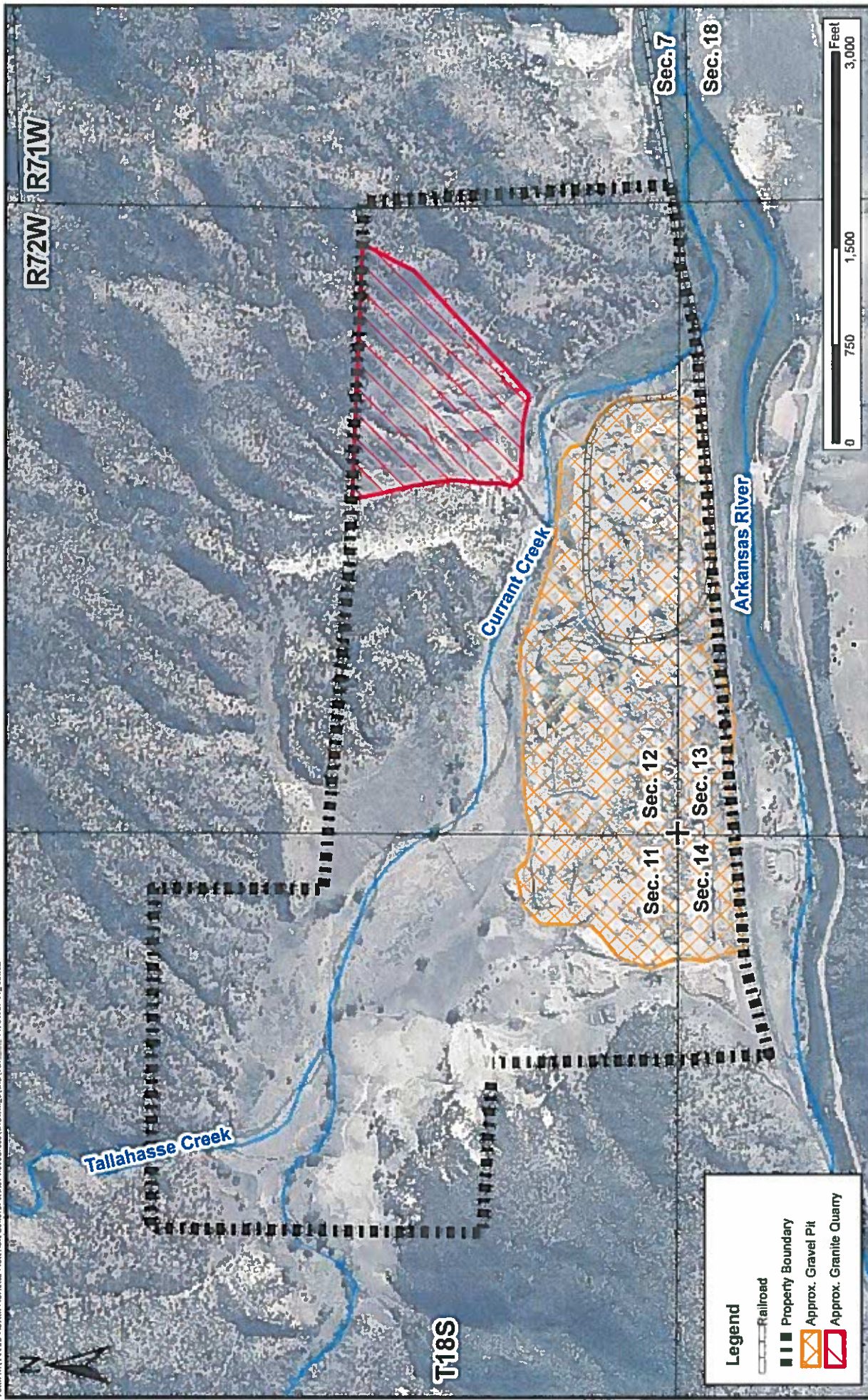
Sincerely,



Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Figure 1
 Tables 1 - 3
 PBWW and Canon City Lease Agreements

cc: Division 2 SWSP Staff
 Dan Henrichs, District 12 Water Commissioner
 Brian Sutton, West Region Lead Water Commissioner
 Division of Reclamation, Mining, and Safety



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Martin Marietta Materials
 Parkdale Pit
 Vicinity Map

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Figure:

Date: 20 Jun 2018

Job #: 11-126

Drawn By: SJB

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Table-1

Martin Marietta Materials
Parkdale Project M-97-054

MAXIMUM VALUES



Substitute Supply Plan - Evaporative Losses

Month	(1) Percent of Annual Evaporation	(2) Exposed Surface Area (ac)	(3) Gross Lake Evaporation (ft)	(4) Precipitation (in)	(5) Effective Precipitation (ft)	(6) Net Lake Evaporation (acre-ft/acre)	(7) Total Evaporative Consumptive Use (ac-ft)
Oct-18	7.0%	5.0	0.27	0.80	0.05	0.22	1.11
Nov-18	4.0%	5.0	0.15	0.60	0.04	0.12	0.59
Dec-18	3.0%	5.0	0.12	0.49	0.03	0.09	0.43
Jan-19	3.0%	5.0	0.12	0.41	0.02	0.09	0.46
Feb-19	3.5%	5.0	0.13	0.50	0.03	0.11	0.53
Mar-19	5.5%	5.0	0.21	0.86	0.05	0.16	0.80
Apr-19	9.0%	5.0	0.35	1.40	0.08	0.26	1.32
May-19	12.0%	5.0	0.46	1.60	0.09	0.37	1.83
Jun-19	14.5%	5.0	0.56	1.13	0.07	0.49	2.45
Jul-19	15.0%	5.0	0.58	1.80	0.11	0.47	2.35
Aug-19	13.5%	5.0	0.52	1.88	0.11	0.41	2.04
Sep-19	10.0%	5.0	0.38	1.01	0.06	0.32	1.62
Total	100%	-	3.83	12.5	0.73	3.11	15.53

Maximum Exposed Water Surface =

Annual Precipitation =	5.0
Gross Annual Evaporation =	12.5
	46

acres
inches
inches

-Settling ponds, a gravel washing pond, and dewatering trenches
-Taken from Western Regional Climate Center
-Taken from NOAA Technical Report NWS 33

Notes

- (1) Taken from State Engineer's Guidelines for Gravel Pits at elevations below 6500 feet.
- (2) Estimate of exposed water surface area for 2018-19
- (3) Taken from NOAA Technical Report NWS 33 Map 3 and distributed monthly according to Percent of Annual Evaporation (1).
- (4) From Western Regional Climate Center Canon City station #51294 (1948-2005).
- (5) Effective Precipitation equals 70% of Average Annual Precipitation, 70% * (4).
- (6) Gross Evaporation minus Effective Precipitation converted to units of feet, (3) - (5).
- (7) Total Evaporative Loss is the product of Net Evaporation (6) and Exposed Water Surface (2) and % of month Not Frozen

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Table-2

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Parkdale Project M-97-054

MAXIMUM VALUES



Substitute Supply Plan - Operational Losses for water hauled off-site

Month	(1) % of Washed Aggregate Production	(2) % of Unwashed Aggregate Production	(3) Washed Aggregate Production (tons)	(4) Unwashed Aggregate Production (tons)	(5) Water Retained in Product (ac-ft)	(6) Water Used for Dust Control (ac-ft)	(7) Operational Consumptive Use (ac-ft)	(8) Evaporative Consumptive Use (ac-ft)	(9) Total Depletion (ac-ft)
Oct-18	11.4%	12.6%	57,000	19,000	0.84	1.27	2.11	1.11	3.22
Nov-18	13.5%	5.7%	67,000	8,000	0.99	0.88	1.86	0.59	2.45
Dec-18	7.3%	2.5%	37,000	4,000	0.54	0.48	1.02	0.43	1.45
Jan-19	4.3%	1.5%	22,000	2,000	0.32	0.34	0.66	0.46	1.12
Feb-19	2.8%	1.5%	14,000	2,000	0.21	0.37	0.58	0.53	1.10
Mar-19	10.0%	6.3%	50,000	9,000	0.74	0.79	1.53	0.80	2.33
Apr-19	9.6%	10.6%	48,000	16,000	0.71	1.03	1.74	1.32	3.06
May-19	8.2%	12.6%	41,000	19,000	0.60	0.94	1.54	1.83	3.37
Jun-19	8.1%	10.2%	41,000	15,000	0.60	1.49	2.09	2.45	4.54
Jul-19	8.5%	11.4%	43,000	17,000	0.63	1.41	2.05	2.35	4.40
Aug-19	8.8%	13.6%	44,000	20,000	0.65	1.80	2.45	2.04	4.49
Sep-19	7.5%	11.6%	37,000	17,000	0.54	1.20	1.75	1.62	3.37
Total	100%	100%	500,000	150,000	7.37	12.00	19.37	15.53	34.90

Total Washed Material Mined =	500,000	tons
Total Unwashed Material Mined =	150,000	tons
Moisture Content (washed) =	2.0%	
Moisture Content (unwashed) =	0.0%	
Dust Control =	12.00	ac-ft

Total Depletion = **34.90** acre-feet

Notes

- (1) Based on actual mining activity from 2012-18.
- (2) Based on actual mining activity from 2012-18.
- (3) Equals column (1) * Total Washed Material Mined.
- (4) Equals column (2) * Total Unwashed Material Mined.
- (5) Equals column (3) * Moisture Content (washed) * (2000 / 62.4) / 43,560 + Column (4) * Moisture Content (unwashed) * (2000 / 62.4) / 43,560.
- (6) Estimated amount of water used for dust control at entire mine (gravel pit and granite quarry)
- (7) Equals column (5) + column (6) + column (7).
- (8) Taken from Table No. 1, Column (7)
- (9) Total Depletions equal Column (7) + Column (8).

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Table-3

Martin Marietta Materials
Parkdale Project M-97-054

MAXIMUM VALUES



Substitute Supply Plan - Summary

(1) Month	(2) Evaporative Loss in SWSP Period (ac-ft)	(3) Operational Loss (ac-ft)	(4) Total Stream Depletions (ac-ft)	(5) Lagged Total Stream Depletions (ac-ft)	(6) Releases from Pueblo Board of Water Works (ac-ft)	(7) Potential Releases from Twin Lakes Reservoir (ac-ft)	(8) Potential Releases from Canon City Water Department (ac-ft)
Oct-18	1.11	2.11	3.22	4.41	4.41	4.69	4.41
Nov-18	0.59	1.86	2.45	3.72	3.72	3.97	3.72
Dec-18	0.43	1.02	1.45	3.21	3.21	3.41	3.21
Jan-19	0.46	0.66	1.12	2.53	2.53	2.70	2.53
Feb-19	0.53	0.58	1.10	1.89	1.89	2.01	1.89
Mar-19	0.80	1.53	2.33	2.02	2.02	2.15	2.02
Apr-19	1.32	1.74	3.06	2.22	2.22	2.37	2.22
May-19	1.83	1.54	3.37	2.64	2.64	2.81	2.64
Jun-19	2.45	2.09	4.54	3.01	3.01	3.21	3.01
Jul-19	2.35	2.05	4.40	3.62	3.62	3.85	3.62
Aug-19	2.04	2.45	4.49	3.88	3.88	4.13	3.88
Sep-19	1.62	1.75	3.37	3.78	3.78	4.03	3.78
Total	15.53	19.37	34.90	36.93	36.93	39.33	36.93

Notes

- (1) from Table-1, Col (7)
- (2) from Table-2, Col (7)
- (3) Total Stream Depletions = Total Evaporative Loss + Total Operational Loss
- (4) Lagged Total Stream Depletions based on Glover techniques using AWAS tool. Includes past depletions reported in accounting.
- (5) Releases from Pueblo Board of Water Works; located downstream of Parkdale Pit
- (6) Releases from Twin Lakes Res. include a 0.07% per mile ditch loss for 93.5 river miles from the reservoir to the Parkdale mining site. Martin Marietta will only be utilizing this source for water if releases cannot be made from Pueblo BWV
- (7) Releases from Canon City Water Treatment and Distribution System, located downstream of the Parkdale Pit

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WATER LEASE AGREEMENT

This AGREEMENT is made and entered into effective as of the 18th day of February, 2016 (hereinafter called "Effective Date"), by and between the Board of Water Works of Pueblo, Colorado (hereinafter called "Pueblo Water") and Martin Marietta Materials Inc., the sole member of Front Range Aggregates, LLC (hereinafter called "Lessee");

RECITALS

WHEREAS, the water use that is the subject of the Agreement is of a type not normally within any regular rate schedule fixed by Pueblo Water; and the parties mutually agree that the terms for the lease of water for the purposes hereinafter set forth should be the subject of this special Agreement;

WHEREAS, Lessee desires to procure raw water from the Board for replacement of depletions resulting from its gravel mining operations in Fremont County, Colorado.

WHEREAS, Pueblo Water is willing to lease raw water to Lessee for its use for these purposes subject to the terms of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained and the payments to be made hereunder, the parties hereto agree as follows:

AGREEMENT

1. **Term of Agreement.** Unless terminated early pursuant to paragraph 34 below, this Agreement will be in force for a period of 5 years commencing April 1, 2016 and terminating March 31, 2021. Each twelve month period, beginning with this commencement date, is a Contract Year under the terms of this Agreement.
2. **Quantity.** Each Contract Year during the term of this Agreement, and in accordance with the terms hereof, Pueblo Water will make available for delivery to Lessee 50 acre-feet of water. Fifty acre-feet is the minimum quantity of water to be paid for and made available for delivery under this Agreement for each Contract Year.
3. **Delivery of Raw Water.** The water to be delivered hereunder is raw water that has not been treated to make it suitable for any particular use. Any treatment of the water delivered hereunder to make it suitable for Lessee's use is the responsibility of Lessee.
4. **Delivery of Consumable Water.** Pueblo Water agrees to deliver to Lessee transmountain water or other water totally consumable under Colorado law, including but not limited to, reusable return flows from transmountain water or other fully consumable water. Once delivered to Lessee, all water not fully consumed by Lessee's use remains the property of Pueblo Water.

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5. **Place of Delivery.** The Place of Delivery will be the location where water is released from Pueblo Water's stored water at Pueblo Reservoir, Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir; or from direct flow transmountain water rights; with the sources of such water to be at the option of Pueblo Water. At the option of Pueblo Water, such sources may be changed from time to time to suit the operational convenience of Pueblo Water. Lessee bears responsibility for any exchanges necessary to get the leased water from the Place of Delivery to Lessee's place of use.

6. **Approval to Utilize Water.** Lessee will be responsible for compliance with all applicable laws. If Lessee requires approvals from administrative or judicial authorities to use the water to be delivered under this Agreement, then Pueblo Water will cooperate with Lessee to provide information regarding Pueblo Water's water rights that may be needed to obtain approval of Lessee's water use. However, all costs of any such approvals will be borne by Lessee. Lessee will not file an application with any administrative or judicial authorities that includes a change to any of Pueblo Water's water rights without the express written consent of Pueblo Water, which consent is in the sole discretion of Pueblo Water.

7. **Rate of Delivery.** Pueblo Water will not be required to deliver water at a rate higher than 25 c.f.s., but may do so in its discretion. Pueblo Water will upon written request deliver at rates lower than 5 c.f.s. subject, however, to the following:

7.1. Any such lower rate of delivery is subject to the approval of the Division Engineer, Water Division No. 2;

7.2. Any such delivery from Pueblo Water's supplies at Pueblo, Turquoise, Twin Lakes or other reservoir not controlled by Pueblo Water is subject to the approval of the agency which operates or controls discharges from said reservoir;

7.3. Pueblo Water is not required to make any physical alteration of any outlet gates or outlet measuring devices or incur any additional cost for the purpose of making such low rate deliveries.

8. **Transportation and Evaporation Losses.** The quantity of water to be delivered hereunder will be measured at the Place of Delivery. Lessee will bear all transportation and evaporation losses from the Place of Delivery to Lessee's place of use.

9. **Notice of Delivery.** Pueblo Water agrees to make available for delivery up to the quantity of water stated in paragraph 2 during the term of the Agreement at the request of Lessee. Lessee must notify Pueblo Water at least two business day in advance of when any requested delivery of water needs to be released. Such notice will include the desired rate of delivery and the date and time such delivery should begin and end. Once released by Pueblo Water, it is the Lessee's responsibility to ensure that the state water officials cause the water released to be delivered to the Lessee's place of use. Pueblo Water will cooperate with Lessee and the state water officials to provide them with the necessary information concerning the source, location, rate, and duration of the release of the leased water.

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10. **Charge.** In consideration of the water leased under this Agreement, including any Option Water, Lessee agrees to pay Pueblo Water a charge of [REDACTED] per acre-foot of water for the quantity of water identified in paragraph 2 above. The parties agree that the water leased hereunder is on a "take or pay" basis. Accordingly, Lessee must pay the charge for all leased water, whether or not said quantities of water are actually taken by Lessee or are required for use by Lessee. Likewise, Pueblo Water agrees to make the water available for delivery throughout the term of this Agreement subject to paragraphs 13 through 16 below. The failure of Lessee to take delivery of the full quantity of water contracted for and paid for in any given Contract Year does not entitle Lessee to a refund of any sums paid or to receive any portion of such unused water in an subsequent Contract Year.

11. **Payments.**

11.1. On the Effective Date of this Agreement, Lessee must pay to Pueblo Water the first Contract Year payment of [REDACTED]

11.2. Additional payments in an amount equal to the Contract Year quantity of water described in paragraph 2 multiplied by the applicable per-acre-foot charge as determined under paragraphs 10 and 12 are due from Lessee to Pueblo Water on the first day of each Contract Year thereafter for the term of this Agreement.

11.3. On the Effective Date of this Agreement, Lessee will also pay to Pueblo Water a one-time non-refundable fee of [REDACTED] in consideration of legal and administrative costs incurred by Pueblo Water for this Agreement.

11.4. Delinquent balances will be subject to a late payment charge of 1.5% per month on the unpaid balance. No water will be delivered under this Agreement if Lessee has an unpaid balance.

12. **Escalation.** The charge for water for the second and all subsequent Contract Years of this Agreement will be annually adjusted based upon the percentage increase, if any, over the previous calendar year in Pueblo Water's water rates for its general customers for treated water. For example, if the percentage increase for the second Contract Year is five percent, then the price for the second Contract Year will be [REDACTED] per acre-foot, and if the percentage increase for the third Contract Year is also five percent, then the price per acre-foot for the third Contract Year will be \$[REDACTED] a five percent increase over the second Contract Year price. Pueblo Water will give to Lessee written notice before the end of the Contract Year of any rate increase pursuant to this paragraph that will take effect in the next Contract Year.

13. **Pueblo City Charter Provision.** This Agreement involves the use of water outside the territorial limits of the City of Pueblo and is specifically limited by the provisions of the City Charter governing such use. The City Charter provides, among other things, that: "The Board of Water Works shall have and exercise all powers which are granted to cities of the first class by the Constitution and Laws of the State of Colorado, except the power to levy and collect taxes directly or indirectly. Surplus water may be supplied to territories outside the City until same is needed by the inhabitants of the City."

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14. **Determination of Water Availability by Pueblo Water.** Pueblo Water has determined that the welfare of Pueblo and its inhabitants requires a stable water supply not only for its citizens but also for the other customers of Pueblo Water putting to beneficial use the water belonging to Pueblo Water. Therefore, the extent to which limitation of water delivery outside Pueblo may be necessary to enable Pueblo Water to provide adequately for users inside Pueblo is a fact to be determined by Pueblo Water in the exercise of its reasonable discretion from time to time as occasion may require.

15. **Interruption of Water Supply Beyond Pueblo Water's Control.** While it is the purpose of Pueblo Water to maintain a water supply adequate to meet the needs of the metropolitan area logically dependent on Pueblo Water for water supply and for its temporary contract customers, there are many elements that make it uncertain whether the supply can always be adequate for all. Both parties to this Agreement recognize that the water supply for Pueblo Water and its water customers is dependent upon sources from which the supply is variable in quantity and beyond the control of Pueblo Water. No liability in tort or contract attaches to Pueblo Water hereunder on account of any failure to accurately anticipate availability of water supply, or because of an actual failure to supply water due to inadequate runoff or inadequate storage, arising from an occurrence beyond the reasonable control of Pueblo Water, including, but not limited to, act of God, strike, war, insurrection, or inability to serve arising out of the order of any court, or the lawful order of any governmental entity clothed with authority to regulate matters pertaining to water, public utilities, public health, or pollution control.

16. **Emergencies or Water Shortages.** The parties agree that from time to time emergency or shortage situations may arise where there is a necessity to limit the use of water for customers of Pueblo Water. The parties agree that the necessity for such limitation is a fact to be determined by Pueblo Water in the exercise of its reasonable discretion from time to time, as occasion may require. It is hereby agreed that Pueblo Water may adopt, in the situation of emergency or shortage, such reasonable restrictions on uses or priorities for curtailed use, as may be necessary to adapt to such emergency conditions or shortage. Lessee agrees that no liability in tort or contract attaches to Pueblo Water hereunder on the account of the necessity for adopting and implementing such policies to meet emergency conditions or shortage.

17. **Not a Permanent Supply.** The Parties understand and agree that this Agreement is not to be interpreted as any commitment on the part of Pueblo Water to furnish water to Lessee on a permanent basis, but rather to provide Lessee with water from Pueblo Water for the temporary period of the term of this Agreement.

18. **Sales Tax or Other Taxes.** In the event any sales tax or other tax is levied on the water leased under this Agreement, Lessee agrees to pay said tax. Lessee may, however, contest the imposition of any such tax at its own expense, and the requirement of such payment under this Agreement is without prejudice to Lessee's right to contest any attempted imposition of tax.

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19. Assignability; Sublease.

19.1 This Agreement may be assigned, in whole or part, by Lessee subject to prior written approval of said assignment by Pueblo Water, which approval is in the sole discretion of Pueblo Water.

19.2 Lessee may sublease the water obtained from Pueblo Water under this Agreement subject to prior written approval by Pueblo Water, which approval is in the sole discretion of Pueblo Water; however, Lessee will not sublease water to third parties at a higher price than it pays Pueblo Water for water under this Agreement.

20. Prohibition of Use For Marijuana Enterprises. Lessee will not use water provided under this Agreement for marijuana enterprises without written approval from Pueblo Water, which approval is in the sole discretion of Pueblo Water.

21. Waiver. Failure of either party hereto to exercise any right hereunder is not a waiver of such party's right and does not affect the right of said party to exercise at some future time said right or rights or any other right it may have hereunder. No waiver of any of the provisions of this Agreement will be deemed or constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver is binding unless executed in writing by the party making the waiver.

22. No Exclusive Right or Privilege. Nothing in this Agreement is to be construed as a grant by Pueblo Water of any exclusive right or privilege.

23. Title to Water Rights. Nothing herein is to be interpreted to give Lessee any legal or equitable title in or to any of Pueblo Water's water rights.

24. Notices. All notices to be given with respect to this Agreement must be in writing. Unless otherwise provide in this Agreement, each notice must be sent by first class mail, postage prepaid, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice will be deemed to have been given at the time it is deposited in the United States mail in the manner prescribed herein. Nothing contained herein is to be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process. All notices required to be given to Pueblo Water hereunder must be delivered to:

Board of Water Works of Pueblo, Colorado
319 West 4th Street
Pueblo, CO 81003
Attn: Executive Director

or at such other address as Pueblo Water may direct by written notice. All notices required to be given to Lessee hereunder must be delivered to:

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David Bieber
Martin Marietta Materials
10170 Church Ranch Way, Suite 201
Westminster, CO 80021

or at such other address as Lessee may direct by written notice.

25. **Remedies.** In the event that either party defaults in the performance of any of its obligations under this Agreement, in addition to any and all other remedies provided in this Agreement or by law or equity, each party will have the right of specific performance against the other. In the event of litigation, the prevailing party will be entitled to its litigation costs, including reasonable attorney's fees.

26. **Default, Right to Cure.** In the event that either party believes that the other is in default of any obligation under this Agreement, except as provided below in this paragraph, the non-defaulting party must give written notice of the default to the defaulting party. Such notice will be given by certified or registered mail, postage prepaid and return receipt requested. If a notice of default is provided, the party accused of the default must either cure it or provide a written statement explaining why it is not in default. If the alleged default is not cured or otherwise resolved within thirty (30) days, the parties may resort to their remedies. In the event of default for failure to pay any amount required to be paid by Lessee pursuant to the terms of this Agreement, Pueblo Water is not required to deliver water and notice of default is not required. Pueblo Water may, at its sole option, provide notice and a ten (10) day cure period. However, Pueblo Water will not be required to deliver water until the entire amount owed is paid by Lessee.

27. **Right to Enter Agreement.** Each party hereby warrants and represents that it has the full right and lawful authority to enter into this Agreement.

28. **Governing Law.** This Agreement will be governed by the laws of the State of Colorado in all respects.

29. **Entire Agreement, Modification.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter described in it and supersedes any and all prior contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement is binding unless executed in writing by all parties.

30. **Captions and Headings.** The captions and headings in this Agreement are for convenience of reference only, and will not be used to interpret, define, or limit its provisions.

31. **Construction Against the Drafter.** In the event of an ambiguity in this Agreement, the rule of construction that ambiguities will be construed against the drafter is inapplicable, and the parties hereto are to be treated as equals and no party will be treated with favor or disfavor

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32. **Third Party Beneficiaries.** Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the parties, and not to any third party. Any services or benefits that third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

33. **Governmental Immunity.** No term or condition of this Agreement is to be construed or interpreted as a waiver, express or implied, by Pueblo Water of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq., as applicable now or hereafter amended.

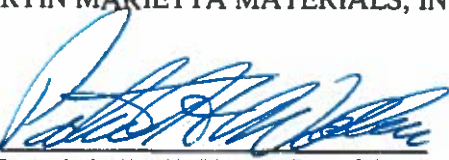
34. **Early Termination.** This Agreement may be terminated by mutual written consent of the parties; or prior to the end of each of the five Contract Years Lessee may, as provided in this provision, terminate this Agreement if Lessee diligently pursues and is unable to obtain a state of Colorado approved substitute water supply plan allowing for the short-term use of the water leased hereunder to augment the Lessee's well(s), or if the Lessee diligently pursues and is unable to obtain a Colorado judicial decree allowing for the long-term use of the water leased hereunder to augment the Lessee's operations. Lessee must provide Pueblo Water notice of termination pursuant to this provision at least 60 days prior to the end of a Contract Year during any of the five Contract Years in order to terminate this Agreement at the end of the Contract Year during which notice of termination is provided by Lessee. Notice of termination provided by Lessee must contain documentation indicating that in accordance with the terms of this provision Lessee diligently pursued and was denied a Colorado substitute water supply plan or a Colorado judicial decree. In the event of termination under this provision no refunds of previous payments will be made and, except for obligations arising or existing prior to the date of termination or those that survive this Agreement according to its terms or by law, neither party will have any further obligations under this Agreement.

IN WITNESS WHEREOF, Pueblo Water and Lessee have caused these presents to be executed in their respective behalf by their proper officers.

BOARD OF WATER WORKS OF PUEBLO,
COLORADO

By: 
Terry R. Book, Executive Director

MARTIN MARIETTA MATERIALS, INC.

By: 
Patrick H. Walker, President



COMMON
CAPITAL STOCK
\$495,889.65

Incorporated under the Laws of the State of Colorado

TWIN LAKES RESERVOIR AND CANAL COMPANY



NUMBER OF SHARES
OF COMMON STOCK
49,588,965

Best Copy Available

This is to certify that FIVE Shares of the Common Capital Stock of
The Twin Lakes Reservoir and Canal Company, fully paid up, and is transferable, and
one the books of the Company in person or by Attorney, or surrender
of this Certificate, properly endorsed.

This Certificate is issued and accepted, and the same is held subject to the Statutes of the
Incorporation, and the laws of the State of Colorado, and the laws of the United States, and the laws of the
Incorporation, and is issued subject to the assessment as authorized by law, and provided by said
Statutes of Incorporation, and By Laws.

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We Witness Whereof the President and Secretary have hereto
attached their signatures and sealed the seal of the Company to be affixed
at Colorado, Colorado this 12th day of November A.D. 19 21

The Twin Lakes Reservoir and Canal Company

Attest Richard B. Aile Secy Ray M. Miller
Secretary President

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EXTRATERRITORIAL WATER AGREEMENT

This Agreement made and entered into this 3rd day of January, 2000, by and between the Cañon City Water Department (hereinafter "Cañon City"), a water activity enterprise of the City of Cañon City, Colorado, a Municipal Corporation, and Agile Stone Systems, Inc., a corporation authorized to do business in Colorado (hereinafter "Agile").

RECITALS

WHEREAS, Cañon City owns and operates a water treatment and distribution system servicing water users in and around the City of Cañon City, Colorado and certain direct flow municipal water rights on the Arkansas River; and

WHEREAS, Agile owns a quarry and conducts mining operations thereon at a location close to the Arkansas River near Parkdale, Colorado and desires to purchase from Cañon City up to 50 acre feet of raw water annually for up to 35 years in accordance with the terms and provisions of this Agreement; and

WHEREAS, Cañon City is willing to sell and deliver water to Agile in accordance with the terms and provisions hereof.

NOW, THEREFORE, in consideration of the following covenants and conditions, the receipt and sufficiency of which each party acknowledges, Cañon City and Agile agree as follows:

1. If, but only if authorized in writing by order or decree of the District Court in and for Water Division 2, State of Colorado ("Water Court") or the Colorado State Engineer or Division Engineer, Division of Natural Resources (hereinafter collectively called "State Engineer"), and subject to any and all limitations and requirements set forth in such decree, order or writing, Cañon City shall sell, lease and deliver to Agile at Agile's existing diversion intake on the Arkansas River near Parkdale, Colorado as more fully described in Exhibit A, attached hereto and incorporated herein (hereinafter sometimes "intake" or "point of delivery"), not more than fifty (50) acre feet of raw water annually for use in and in connection with its quarry and mining operations on that certain land described herein at Exhibit B, attached hereto and incorporated herein. Unless otherwise agreed in writing, Agile shall not divert water sold and delivered pursuant to this paragraph at a rate greater than 80 gpm (0.18 cfs).

2.(a) In addition, without promising any particular result now or at any time in the future, the City agrees that it will fully support and cooperate with Agile in Agile's efforts to obtain requisite authorization, whether administrative or judicial, to take delivery of the raw water the City is willing to sell to Agile pursuant to the terms and provisions of this Agreement at Agile's intake facility; provided that all outside legal, engineering, administrative, court and related fees, costs and expenses (except those expenses which may be evenly divided between Agile and Cañon City in accordance

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with the agreement described in the Cañon City Attorney's letter to John McDermott, Esq. dated August 19, 1999 and attached hereto as Exhibit C) incurred with respect to Agile's efforts to secure such authorization, whether successful or not, shall be paid by Agile or promptly reimbursed by Agile to the City, if first paid by the City.

(b) Notwithstanding anything to the contrary set forth hereinabove, neither Cañon City nor its Water Department shall be obligated under this Agreement to pursue the "change" of any water right or to otherwise file or participate in any Water Court or other judicial proceeding that could require the quantification of any of the water rights owned or controlled by the City of Cañon City and/or the Cañon City Water Department. Cañon City neither guarantees nor warrants that Agile will become entitled to receive water committed hereunder at Agile's intake and will not put its water rights in jeopardy as a part of Agile's effort to obtain authorization to receive water sold by the City at its intake.

3. Except as provided in paragraphs 4 and 5 hereof, Agile will be solely responsible for the installation, operation, maintenance, repair and replacement of all the infrastructure of and within its intake, diversion and distribution systems. Such infrastructure includes, but is not limited to all weirs, channels, mains, pipes, valves, connections, pumping facilities, temporary storage facilities, treatment facilities, discharge facilities and appurtenances now or hereafter established on such land to serve and support Agile's quarry and mining operations and which divert, channel, measure, distribute and discharge raw water purchased and used pursuant to this Agreement.

4. Agile shall purchase from Cañon City a meter or otherwise provide an accurate measuring device designated by Cañon City and approved by the State Engineer's office at the point of delivery and allow representatives of Cañon City and the State Engineer's office access to such meter or other accurate measuring device at all reasonable times during the term hereof.

5. Cañon City or its agents will read the meter or other measuring device once monthly, on or about the 15th day of each month, to determine Agile's raw water consumption for each billing period and submit to Agile an invoice for water consumed by Agile on or about the 30th day of each month.

6.(a) The base rate for water consumption billed to and payable by Agile will be the water rate established by ordinance or resolution of the Council of Cañon City, the governing board of the Cañon City Water Department, from time to time for outside "group users" who receive treated water from Cañon City. Agile's cost for raw water shall be calculated by subtracting from such base rate the "raw water discount" provided for at subparagraph (b) of this paragraph 6. The outside group user rate is currently provided for at subsection (A) of Section 13.08.050 of the Cañon City Municipal Code and paragraph 7 said Council's Resolution No. 2, Series of 1999. If, during the term hereof, the governing board should fail to establish a water rate for

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"group users" who receive water outside the corporate limits of Cañon City, the base water rate payable by Agile for water sold and delivered to it by Cañon City pursuant to this Agreement will be the rate (per one thousand gallons) chargeable to commercial customers of the Cañon City system who receive water outside the corporate limits of the City of Cañon City. In any event, the base rate chargeable to Agile shall never exceed the water rate charged by Cañon City to the Town of Brookside, Colorado pursuant to any contract or other agreement between those parties. Agile shall pay in full all invoices submitted by Cañon City not later than fifteen (15) days following the dates of such invoices.

(b) For all "raw water" sold and delivered to Agile hereunder, Agile shall be entitled to a raw water discount. Initially, the raw water discount will be thirty eight cents (\$0.38) per 1000 gallons of raw water sold and delivered to Agile during any applicable billing period. Thereafter, whenever Agile's base water rate--as determined with respect to subparagraph 6(a) above--is increased, the raw water discount also shall be increased by a like percentage.

(c) The raw water discount shall apply only to raw water sold and delivered to Agile. If at any time during the term hereof "treated water" is sold and delivered to Agile at any place by Cañon City, the raw water discount will not be allowed with respect to the cost of such treated water.

(d) The parties agree that the base water rate applicable under subparagraph 6(a), as of the date of execution hereof, is \$ [REDACTED] per 1000 gallons, and that after subtraction of the raw water discount provided for at subparagraph 6(b), the net raw water rate applicable on such date would be \$ [REDACTED] per 1000 gallons ([REDACTED]).

7. It is understood and agreed that Agile will be solely responsible for the acquisition and acquisition costs of all land, easements and rights-of-way necessary for the operation of all components of Agile's intake, diversion and distribution systems. With the exception of the option available under subparagraph 25(b) hereof, Cañon City shall have no obligation whatsoever to deliver raw water at any place other than at the intake described in Exhibit A and shall have no duty to deliver raw water to Agile if, for any reason, Agile loses its right to divert raw water sold to it by Cañon City pursuant to this Agreement at Agile's intake.

8. Agile shall operate and maintain its distribution system and use all water sold and delivered to it by Cañon City in full compliance with all applicable federal, state and local laws, rules, regulations and policies regarding the use of water which is delivered to Agile pursuant to this Agreement. At all times during the term hereof, Agile shall comply with the provision of any and all orders of the office of the State Engineer and all orders of the Water Court, if any, pertaining to the delivery, use and discharge of water sold to Agile pursuant to this Agreement.

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9. In the absence of an uncured breach by either party or a mutual written agreement to terminate this Agreement on an earlier or later date, this Agreement shall terminate on that date which is thirty-five (35) years from the date of execution hereof.

10.(a) Agile understands that, during the term hereof and subject to the availability of such water after Cañon City has met the requirements of the domestic and commercial uses of the inhabitants of the City of Cañon City, the municipal uses of said city, and the requirements of other outside water users who have contractual rights superior to those of Agile hereunder, Cañon City will use reasonable efforts to deliver a continuous supply of water to Agile that is adequate to satisfy the reasonable needs of Agile, as set forth and described herein. However, in the event of a disruption in the supply of such water, Agile shall not have any claim or cause of action against Cañon City, its governing board, or any officer, agent or employee of the City of Cañon City, for damages incurred as a consequence of such disruption in supply. Agile expressly waives the right to make any such claim and also waives any right it otherwise might have to sue Cañon City for damages or injunctive relief with respect to a disruption in supply; provided that Cañon City will make prompt, diligent and continuous efforts to restore an adequate supply of water to Agile.

(b) In the event the amount of raw water available to Cañon City is insufficient to supply all other users in the Cañon City system and Agile, Cañon City shall endeavor to deliver water to Agile on the same basis as water is delivered to Cañon City's other customers within Cañon City's water system service area.

11. Agile's rights under this Agreement are subject to the ordinances, resolutions, policies and regulations of the City of Cañon City as the same may be amended from time to time by or with the authorization of the Council of Cañon City. Nothing in this Agreement shall prohibit the Council of Cañon City from changing its ordinances, resolutions, policies and regulations during the term of this Agreement. In fact, the parties hereto anticipate and expect that water rates, including the base rate applicable to Agile hereunder, will be increased from time to time during the term hereof and that tap fees chargeable to Cañon City's outside water users periodically will be increased.

12. Cañon City makes no express or implied representations or warranties regarding the quality, quantity or sufficiency of water or services to be provided under this Agreement. However, subject to conditions and limitations set forth elsewhere herein, Cañon City will use its best efforts to provide water in amounts sufficient to satisfy the reasonable needs and obligations of Agile, as set forth and described herein.

13. Except for any claims for breach of this Agreement, Agile releases and discharges the City of Cañon City, its officers, agents, and employees and the Cañon City Water Department, its officers, agents and employees, from any and all direct and indirect claims Agile may have which arise from any act or omission by or of Cañon City in leasing water under this Agreement. Agile hereby agrees to indemnify and hold

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harmless the City of Cañon City, its officers, agents and employees and the Cañon City Water Department, its officers, agents and employees, from and with respect to the claims of any person who is not a party to this Agreement with respect to any injury to persons or property arising from the existence, use and/or operation of Agile's intake, diversion and water distribution systems.

14. This Agreement shall be interpreted in accordance with the laws of the State of Colorado and the ordinances, resolutions, regulations and written policies of the City of Cañon City, Colorado.

15. In the event any general sales tax or other general tax is levied on the lease of water or services provided under this Agreement, Agile agrees to pay said tax.

16. Agile may, however, contest the imposition of any such tax at its own expense and the requirement of payment under this Agreement shall be without prejudice to Agile's right to so contest any attempted imposition of tax.

17. This Agreement and Agile's rights and obligations hereunder may not be assigned by Agile without the prior written consent of Cañon City, which consent will not be unreasonably withheld by Cañon City. No attempted assignment by Agile of this Agreement or of its rights or obligations hereunder shall be binding on Cañon City unless Cañon City shall have previously agreed to such an assignment in writing.

18. Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party's right and shall not affect the right of said party to exercise at some future time said right or rights or any other right it may have hereunder.

19. Nothing in this Agreement shall be construed as a grant by Cañon City of any water right or of any exclusive right or privilege to Agile or to Agile's successors or permitted assigns. In addition, Agile shall never claim, assert or obtain any perpetual easement or other perpetual right to water or to water service by virtue of its execution and performance of this Agreement or by virtue of Cañon City's lease of water to Agile under the provisions hereof during the term of this Agreement or with respect to any prior agreement or understanding between the parties hereto. Agile hereby specifically agrees, acknowledges, represents and warrants that Cañon City shall have no obligation to lease, sell, make available, deliver or otherwise provide water to Agile at any time following the termination of this Agreement. Cañon City shall have no obligation to renew or otherwise extend the term of this Agreement beyond its stated termination date or to renew this Agreement at any time following an earlier termination hereof. Cañon City shall have no obligation to increase the volume of water it has agreed to make available for sale and delivery to Agile hereunder.

20. If any provision hereof is invalid and unenforceable, then, to the fullest extent permitted by law, the other provisions hereof shall remain in full force and effect

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and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible.

21. The provisions of this Agreement are subject to the following limitation--if by reason of a force majeure, Cañon City is unable in whole or in part to carry out any agreement or promise on its part herein contained, Cañon City shall not be deemed in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; order or restraint of any kind of the government of the United States of America or of the State of Colorado or County of Fremont, or any of their departments, agencies, or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts-floods; explosions; breakage or accident to machinery, equipment, transmission pipes or canals; or any other cause or event not reasonably within the control of Cañon City.

22. At such time as a water meter has been established to measure water sold and delivered to Agile by Cañon City, Agile shall deliver to Cañon City a map showing with reasonable accuracy where such meter is located and how the City's employees and agents may gain access to it for purposes of reading and maintaining such meter. No such meter shall be relocated without the prior knowledge and consent of Cañon City.

23. Notwithstanding anything to the contrary set forth herein, nothing in this Agreement shall obligate or be construed to obligate Cañon City to make any capital improvements to its water treatment, storage, transmission or distribution facilities or systems in order to satisfy Agile's rights and demands hereunder.

24. Agile shall not give, sell or otherwise furnish or agree to give, sell or otherwise furnish any water obtained from Cañon City pursuant to this Agreement to any other person who is not a party to this Agreement or use any water sold and delivered to Agile hereunder on any property other than on the property described in Exhibit B. Exhibit B may be amended from time to time during the term hereof to reflect Agile's acquisition of additional contiguous land during the term hereof.

25.(a) If authorization for Cañon City to deliver raw water to be sold hereunder to Agile at Agile's intake is not obtained from the Water Court or State Engineer, or if such authorization, once obtained, is withdrawn or revoked, Cañon City nevertheless agrees to sell treated water to Agile at a point of delivery on land that is owned or controlled by Agile and which is within the boundaries of Cañon City's water distribution system at the time delivery is requested; provided that all costs to establish such point of delivery, including, but not limited to, all water line extensions and the cost of all other facilities and appurtenances required under the City's ordinances, resolutions, rules, regulations and policies applicable to water service within such system boundaries shall be paid by Agile prior to delivery of any such treated water. All treated water sold by Cañon City to Agile pursuant to this paragraph shall be billed and

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paid for at the base water rate provided for at paragraph 6(a) hereof without any discount.

(b) In the event Cañon City is unable to deliver raw water to Agile at Agile's intake described in Exhibit A, and as an alternative to the sale of treated water pursuant to subparagraph 25(a) above, Cañon City agrees to sell and deliver raw water to Agile at facilities developed at Agile's sole cost to accommodate the delivery of such raw water to one or more tanker cars on a railroad line or spur located near the Burnito Crossing that is owned, controlled or otherwise available for Agile's use for that specific purpose; provided that the establishment and operation of such facilities must not violate or otherwise jeopardize any of Cañon City's water rights or violate any applicable local, state or federal law, rule or regulation.

26. This Agreement shall inure to the benefit of and be binding upon the respective parties hereto. This is the entire agreement of the parties. This Agreement supercedes and replaces any and all prior direct and indirect understandings, contracts and agreements between Cañon City and Agile. This Agreement may be amended, modified or extended only by and through a written agreement signed by the authorized representatives of both parties hereto.

27. Each of the parties hereto represents and warrants that it has all necessary power and authority to execute this Agreement and each shall furnish to the other written evidence of such authorization in the form of a duly-adopted written resolution.

The parties have signed this Agreement as of the date first written above.

ATTEST:

By:

Becky Worthen
Becky Worthen, City Clerk

Cañon City, Colorado
a Municipal Corporation

By:

E. Lavelle Craig
E. Lavelle Craig, Mayor

ATTEST:

By:

Secretary
Secretary

Agile Stone Systems, Inc.

By:

Mitch Albert
Mitch Albert, President

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STATE OF COLORADO)
ARAPAHOE) ss.
COUNTY OF ~~FREMONT~~)

Subscribed and sworn to before me this 3rd day of January, 2000,
by Mitch Albert, President of Agile Stone Systems, Inc.

My commission expires: _____
My Commission Expires
09/07/2002

Kathleen Albert
Notary Public