



COLORADO
Division of Water Resources
Department of Natural Resources

July 10, 2020

Greg Geras
Asphalt Specialties Co.
10100 Dallas St
Henderson CO 80640

Re: Chavers Mining Resources Substitute Water Supply Plan (WDID 0202654)
DRMS File No. M-2015-030 (0210488)
Section 18, T1N, R66W of the 6th P.M.
Water Division 1, Water Districts 2, Weld County
SWSP ID: 5057

Approval Period: August 1, 2020 through December 31, 2020
(or July 31, 2021 subject to Condition of Approval No. 1)
Contact Information for Mr. Greg Geras: 303-289-8555 and GregG@asphaltspecialties.com

Dear Mr. Geras:

This letter is in response to your application of June 1, 2020 requesting a substitute water supply plan ("SWSP") renewal for a sand and gravel pit operated by Asphalt Specialties Co., Inc. ("Asphalt Specialties" or "Applicant") in accordance with section 37-90-137(11), C.R.S. The Applicant shall be responsible for compliance with this SWSP, but the State Engineer's Office may also pursue the landowner, for eventual compliance. The original plan was approved on August 3, 2016, and its renewal was most recently approved in a letter dated August 27, 2019. The required fee of \$257 for the SWSP has been paid (receipt no. 10003804).

SWSP Operations

The Chavers Mining Resources site is located in the E ½ of the SW ¼, Section 18, Township 1 North, Range 66 West of the 6th P.M. (Figure 1). The site is actively being dewatered to facilitate dry mining. The dewatering water is discharged into a sedimentation pond to settle out fines and from there into another dewatering trench which discharges to the South Platte River as shown on Figure 2. Mining operations in the southern portion of Cell 3 (Figure 2) continued through the end of October 2019 after which mining started in the northern portion of Cell 3 and the dewatering trench and sedimentation pond were moved to the northern portion of Cell 3. Mining operations during this approval period are to be located in the western portion of Cell 3. This SWSP seeks to replace depletions resulting from the mining of Cell 3 at the Chavers Mining Resources site (Figure 2). Cell 1 has been mined and backfilled.

The depletions that result from the mining operation over the period of this SWSP include evaporation from exposed ground water, dust suppression, dewatering, concrete production, and water lost with the mined product. The life expectancy of the Chavers Mining Resources site is approximately 10 to 12 years, with 5 to 7 years remaining. Approximately 636,000 tons are to be excavated from the pit each year during mining operation. The proposed reclamation of the site is a lined reservoir through the construction of a compacted clay liner around the mining area. Fully



consumable water from the City of Aurora will be used to replace depletions from the mining operation during this plan period.

The property has been historically used for irrigation. The source of the irrigation water was an alluvial well, permit no. 12258-F (WDID 0206393) previously augmented under the Ground Water Association of the South Platte River ("GASP"). The well is no longer in use for irrigation. Under the original SWSP, the Applicant requested a temporary change of use of water from this well to supply a wash plant with settling ponds, concrete production and dust control water. The applicant obtained permit no. 80120-F for the alluvial well (permit no. 12258-F) for industrial use associated with the mining operation at the Chavers Mining Resources site. During the period of this SWSP, this well will supply water for concrete production only.

In accordance with the letter dated April 30, 2010 (copy attached) 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. The DRMS letter identifies four approaches to satisfy this requirement.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$1,233,955.00 through the DRMS for lining of this site to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events that would lead to the abandonment of the Pit.

Depletions

Evaporation

The projected depletions for the period of this SWSP consist of net evaporation from exposed groundwater surface area, water removed in the mined product, dust suppression, dewatering, and concrete production. The SWSP anticipates that a total of 2.81 acres of water surface will be exposed at the site in the pump basin (0.35 acres), dewatering trench (0.21 acres) and wash ponds (2.25 acres).

The Applicant proposes to replace evaporation from exposed ground water at the site based upon evaporation atlases in NOAA Technical Report NWS 33 and the SEO monthly distribution factors for sites below 6,500 feet, as shown in attached Table 2. Gross annual evaporation at the gravel pit location is estimated to be 44.00 inches per year. Net evaporation is defined as gross evaporation minus 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 based on the data from the Brighton 1 NE (record 1974-2019) NOAA weather station. The net evaporation from the estimated exposed water surface is 1.52 acre-feet per year for the pump basin and dewatering trench and 6.06 acre-feet per year for the wash ponds, as shown in Table 2, columns 8 & 9.

Computation of evaporation under this SWSP was reduced during the ice covered period. It is assumed the ice covered period will occur during the months of December and January based on average monthly temperatures less than 32°F taken from the Brighton 1 NE (record 1974-2019) NOAA weather station. 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 for any time that the pit is not completely covered by ice.

Computation of the net evaporation during any time that the pit 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.

Mined Product and Operational Losses

In addition to the evaporation, water is lost with the mined product removed from the mine site. The Applicant projected that they will produce 636,000 tons of gravel for each year. Gravel mined will be in a dewatered state and will be washed, therefore the ground water lost with the mined product during this period is estimated at 4 percent by weight. The water lost with the mined product is projected to total 18.71 acre-feet per year, as shown in Table 3, column 2.

Water for gravel washing and dust control will be provided by a series of wash ponds that expose groundwater. The estimated water used for dust suppression per year total 1.25 acre-feet as shown in Table 3, column 3. As mentioned above, the water used for concrete production will be provided by the alluvial well (permit no. 80120-F). Assuming 30 gallons of water/cubic yard and 131,450 cubic yards of concrete production, the estimated water used for concrete production totals 12.11 acre-feet per year, as shown in Table 3, columns 4 & 5..

Total Consumptive Use and Lagged Depletions

The total consumptive use at this site is 39.64 acre-feet per year. Annual depletions include 1.52 acre-feet of net evaporative loss from the pump basin and dewatering trench, 6.06 acre-feet of net evaporative loss from the wash ponds, 18.71 acre-feet of water lost with the mined product, 1.25 acre-feet of water used for dust control, and 12.11 acre-feet of water used for concrete production.

The IDS AWAS stream depletion model was used to determine the lagged depletions from evaporation, operational losses, and the alluvial well to the South Platte River. The model parameters used are shown in Table A below.

Table A. IDS AWAS Model Parameters

Well Name	Boundary Condition	Distance from boundary to stream (ft)	Transmissivity (gpd/ft)	Specific Yield	Distance from well to stream (ft)
Aggregate Mining	Alluvial Aquifer	7,500	85,000	0.2	350
Aggregate Processing	Alluvial Aquifer	7,500	85,000	0.2	1,275
Concrete Production	Alluvial Aquifer	7,500	85,000	0.2	1,045

The total lagged depletions per year equal 39.54 acre-feet, of which 20.02 acre-feet are associated with the evaporation and mining operation within Cell 3, 7.24 acre-feet are associated

with the evaporation from the wash pond and dust control, and 12.28 acre-feet are associated with the water pumped from the alluvial well, as shown in Table 4. *Dewatering*

Dewatering at this site will produce delayed depletions to the stream system. As long as the pit is continuously dewatered at a relatively constant rate, the water returned to the stream system should be adequate to offset the depletions attributable to the dewatering operation. Dewatering operations must be measured by totalizing flow meters that can accurately show the monthly volume of dewatered water that is pumped and returns to the stream. Should it be determined by the water commissioner or division engineer that dewatering water is being diverted for any purpose by the operator and accounting is not adequate to show that 100 percent of the dewatering water is returned back to the South Platte River, the Applicant will need to account for any lagged dewatering depletions at the site. In addition, if it is determined by the water commissioner or division engineer that the pit is not continuously dewatered at a relatively constant rate then the Applicant must track depletions and dewatering return flows in their accounting and replace any dewatering depletions that are not offset by dewatering return flows.

Replacements

Out-of-priority depletions associated with the mining operation at this site and alluvial well will be replaced using fully consumable municipal return flows leased from the City of Aurora ("Aurora"). The applicant has entered into a 5-year renewable lease with Aurora signed August 24, 2015. A copy of this lease has been provided by the applicant and is attached.

Under the lease, water will be delivered to the outfall of the Robert W. Hite Treatment Facility (aka Metro Sewer, WDID 0200700) located on the South Platte River. Aurora may alternatively deliver water at other points along a reach of the South Platte River beginning at or below the Hite Treatment Facility extending downstream to a point at or above the location where the South Platte crosses the south section line of the E ½ of the SW ¼ of Section 18, T1N, R66W, 6th P.M. The Applicant must notify the water commissioner at least 48 hours prior to making replacement deliveries at a location other than the Hite Treatment Facility.

The Hite Treatment Facility is located approximately 22 miles upstream of the Chavers Mine Resources site. The delivery schedule includes a transit loss of 0.5% per mile (11% for 22 miles) during the months of April through September and 0.25% per mile (5.5% for 22 miles) during the months of October through March. Conveyance loss for delivery of augmentation water to the South Platte River is subject to assessment and modification as determined by the division engineer. Any changes to the assessed conveyance loss will be communicated to the Division 1 Call List via email.

Under the lease signed August 24, 2015, 11.53 acre-feet are scheduled to be delivered from the City of Aurora lease from August 1, 2020 through December 31, 2020. Since under the current delivery schedule not all depletions for the period of this SWSP are covered, the Applicant will use excess credits from the Aurora lease water used at Asphalt Specialties Speer Mining Resources Pit (DRMS M1983-176). Mining at the Speer Mining Resources has been completed and the site is currently undergoing final reclamation, consisting of backfilling the pit to eliminate exposed groundwater at the site. An SWSP for the Speer Mining Resources was approved on December 3, 2019 and is valid until December 31, 2020. According to the information provided, the backfilling of the site occurred much faster than estimated in the SWSP, therefore additional replacement water from the current lease with Aurora is available for replacement at the Chavers Mining Resources site. The total replacement requirement (lagged depletions and transit losses) at Speer

Mining Resources site are estimated at 7.08 acre-feet for August 2020 through July 2021 period (Table 5), or 3.13 acre-feet for the SWSP period.

The attached Table 5 shows the delivery schedule for both sites for the period of August 2020 through July 2021. According to the requirement of the previous SWSP approval, the two leases with Aurora were amended to reflect the new delivery schedule for each of the two mine sites and copies of the two amended leases were provided to SEO and are attached to this letter. Under the current lease for the Speer Mining Resources site, 25.89 acre-feet are scheduled to be delivered from the City of Aurora lease in 2020 and 22.87 acre-feet in 2021. A total of 12.23 acre-feet are scheduled to be delivered during this SWSP period, providing for an excess credit of 9.1 acre-feet available for replacement to be made at the Chavers Mining Resources site.

Conditions of Approval

This SWSP is hereby approved in accordance with section 37-90-137(11), C.R.S. subject to the following conditions:

1. This SWSP shall be valid for the period of August 1, 2020 through December 31, 2020, unless otherwise revoked, or superseded by decree. The plan may be extended until July 31, 2021 if the Applicant receives a lease with the City of Aurora that is sufficient, along with the other Aurora leases, to replace depletions under this plan from January 1, 2021 through July 31, 2021 and submits that lease to the Water Commissioner, Division 1 office and State Engineer's Office. If this plan is not decreed in water court by the SWSP expiration date, a renewal request must be submitted to this office with the statutory fee of \$257 no later than **November 1, 2020, or May 1, 2021 if extended**. If a renewal request is received after the expiration date of this plan, it may be considered a request for a new SWSP and the \$1,593 filing fee will apply.
2. Well permit no. 80121-F was issued for the gravel pit site in accordance with sections 37-90-137(2) and (11), C.R.S. and this permit remains valid.
3. The total surface area of the groundwater exposed at the Chavers Mining Resources site must not exceed 2.81 acres, which results in an annual evaporative loss of 7.58 acre-feet.
4. The annual water used for dust control at the Chavers Mining Resources site shall not exceed 1.25, the total product mined at the Chavers Mining Resources site shall not exceed 636,000 tons annually, which results in 18.71 acre-feet of water lost with the mined aggregate, and the total annual concrete production shall not exceed 131,450 cubic yards, which results in 12.11 acre-feet of water used for concrete production.
5. Total consumption at the Chavers Mining Resources site must not exceed these aforementioned amounts unless an amendment is made to this SWSP.
6. Approval of this SWSP is for the purposes as stated herein. This office must first approve any additional uses for the water.
7. All pumping for dust control shall be measured in a manner acceptable to the division engineer.

8. The Applicant shall install and maintain measuring devices as required by the division engineer for operation of this SWSP. A totalizing flow meter is required for the well operated under permit no. 80120-F. The totalizing flow meter must be installed and maintained in accordance with the Division One Ground Water Measurement Rules decreed in case no. 2011CW292 (Rules). Installation and verification of accuracy of the totalizing flow meter, in accordance with the Rules, must be accomplished prior to operation under this plan.
9. The replacement water that is the subject of this SWSP cannot be sold or leased to any other entity. As a condition of subsequent renewals of this SWSP, the replacement water must be appurtenant to this site until a plan for augmentation is obtained. All replacement water must be concurrent with depletions in quantity, timing, and locations.
10. Adequate accounting of depletions and replacements must be provided to the division engineer in Greeley (Div1Accounting@state.co.us), the River Operations & Compact Coordinator (Brent Schantz at Brent.Schantz@state.co.us), and the water commissioner (Jorge Vidal at Jorge.Vidal@state.co.us) on a monthly basis. All amounts shall be in acre-feet. All submitted accounting must conform to the Administration Protocol *"Augmentation Plan Accounting - Division One, South Platte River"* (attached).

In addition, the Applicant shall verify that the entity making replacements has included the Applicant on their accounting and submitted their accounting to the division office and the water commissioner; for this SWSP, that entity is the City of Aurora.

11. Conveyance loss for delivery of augmentation water to the point of depletion on the South Platte River is subject to assessment and modification as determined by the division engineer.
12. The division engineer, or his designated representative, will administer all such water transported in the South Platte River or its tributaries under this SWSP, including water for replacement of depletions, past intervening headgates to ensure that such water is not intercepted or otherwise diminished in quantity by diversion, use or other interference by intervening water rights and to assure that such water remains available and suitable for Applicant's uses under this SWSP, except when any intervening headgate is diverting the entire flow of ("sweeping") the river. In the event that delivery past headgates which sweep the river requires the installation of a bypass structure or the use of an existing bypass structure by agreement with a third-party, Applicant is responsible for either installing a new bypass structure with a continuous recording measuring device(s) as approved by the Water Commissioner or securing an agreement with a third-party to use an existing bypass structure and providing such information and agreement to the division engineer.
13. The Division of Water Resources will not be responsible for any enforcement or administration of third party agreements that are not included in a decree of the water court.
14. The name, mailing address, and phone number of the contact person who will be responsible for operation and accounting of this plan must be provided on the accounting forms to the division engineer and water commissioner.
15. Dewatering at this site will produce delayed depletions to the stream system. As long as the pit is continuously dewatered at a relatively constant rate, the water returned to the stream system should be adequate to offset the depletions attributable to the dewatering

operation. Dewatering operations must be measured by totalizing flow meters that can accurately show the monthly volume of dewatered water that is pumped and returns to the stream. If dewatering at the site ceases, or is significantly reduced, the monthly meter readings will be used to determine post pumping depletions that must be replaced. At least three years prior to completion of dewatering, 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. Should it be determined by the water commissioner or division engineer that dewatering water is being diverted for any purpose by the operator and accounting is not adequate to show that 100 percent of the dewatering water is returned back to the South Platte River, the Applicant will need to account for any lagged dewatering depletions at the site. In addition, if it is determined by the water commissioner or division engineer that the pit is not continuously dewatered at a relatively constant rate then the Applicant must track depletions and dewatering return flows in their accounting and replace any dewatering depletions that are not offset by dewatering return flows.

16. In accordance with the letter dated April 30, 2010 (copy attached) 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 ground water. The DRMS letter identifies four approaches to satisfy this requirement.

In accordance with approach nos. 1 and 3, you have indicated that a bond has been obtained for \$1,233,955.00 through the DRMS for lining of this site to assure that depletions from groundwater evaporation do not occur in the unforeseen event, or events that would lead to the abandonment of the Pit.

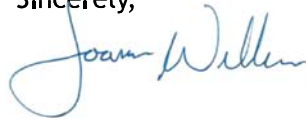
17. All releases of replacement water must be sufficient to cover all out of priority depletions and be made under the direction and/or approval of the water commissioner (including the proposed aggregated replacement for winter depletions).
18. The approval of this SWSP does not relieve the Applicant and/or 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 1 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 shall continue until there is no longer an effect on stream flow.
19. 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 excavation of

the product from below the water table, and all other use of water at the pit, must cease immediately.

20. 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 if this substitute water supply plan is of a quality to meet requirements of use to which the senior appropriation receiving the substitute supply has normally been put. As such, water quality data or analyses may be requested at any time to determine if the requirement of use of the senior appropriator is met.
21. 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 water court case or any other legal action that may be initiated concerning the SWSP. 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.

If you have any questions concerning this approval, please contact Wenli Dickinson in Denver at (303) 866-3581 or Dean Santistevan in Greeley at (970) 352-8712.

Sincerely,

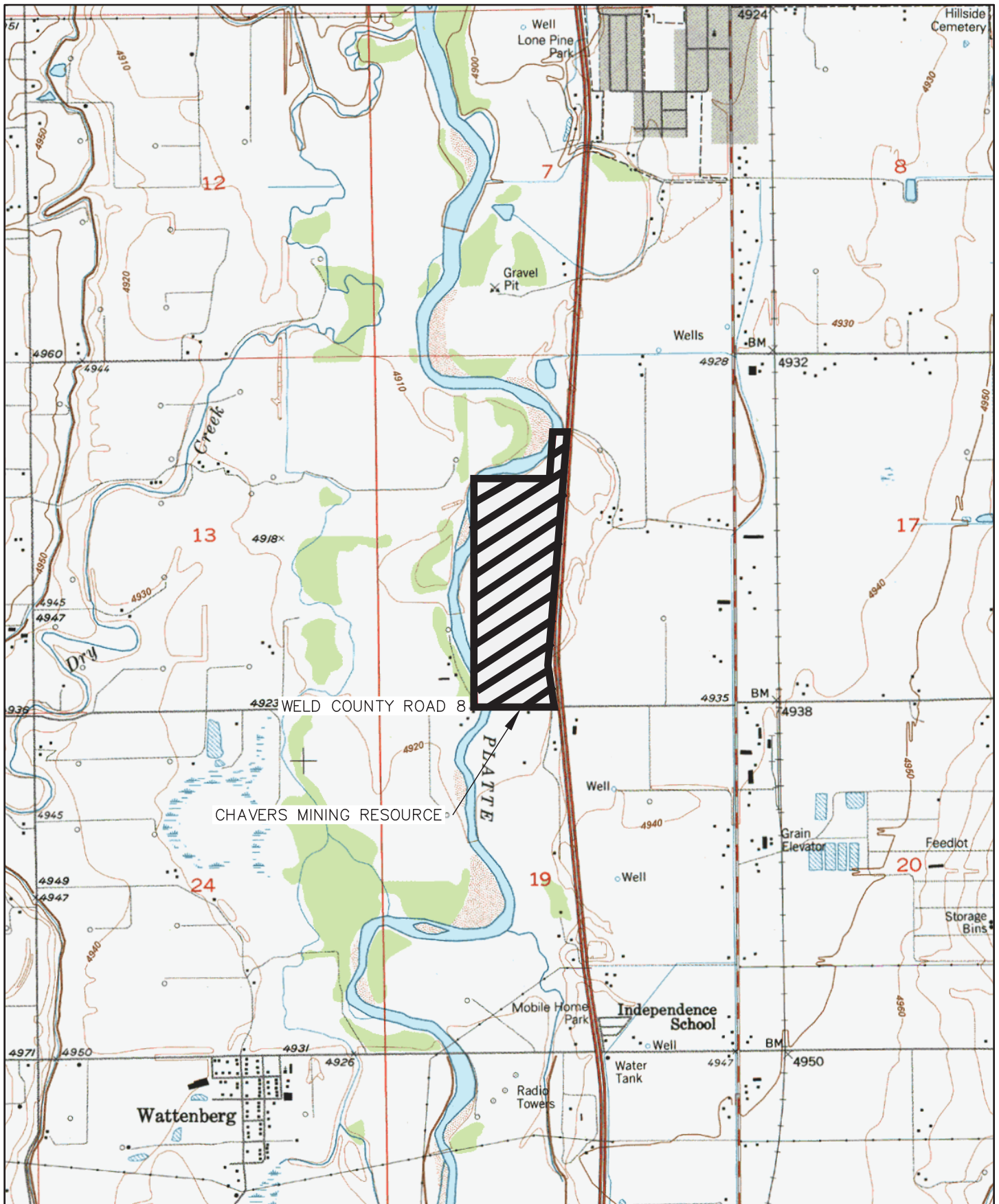
A handwritten signature in blue ink, appearing to read "Joan Willen", is written over the typed name "Jeff Deatherage".

Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Figures 1 and 2
Tables 2, 3, 4, and 5
City of Aurora Leases (including the new delivery schedule)
Letter from DRMS dated April 30, 2010

Ec: Dean Santistevan, Assistant Division Engineer, Dean.Santistevan@state.co.us
Jorge Vidal, Water Commissioner District 2, Jorge.Vidal@state.co.us
Louis Flink, Diversion Records Coordinator, Louis.Flink@state.co.us
Brent Schantz, River Operations & Compact Coordinator, Brent.Schantz@state.co.us
Division of Reclamation Mining and Safety, dnr_drmsminadmin@state.co.us

JD/JMW/wad: Chavers Mine Resources 2020 Approval.docx



Asphalt Specialties Co., Inc.
10100 Dallas St.
Henderson, CO 80640
Phone: 303-289-8555

CHAVERS MINING RESOURCE

SITE LOCATION MAP

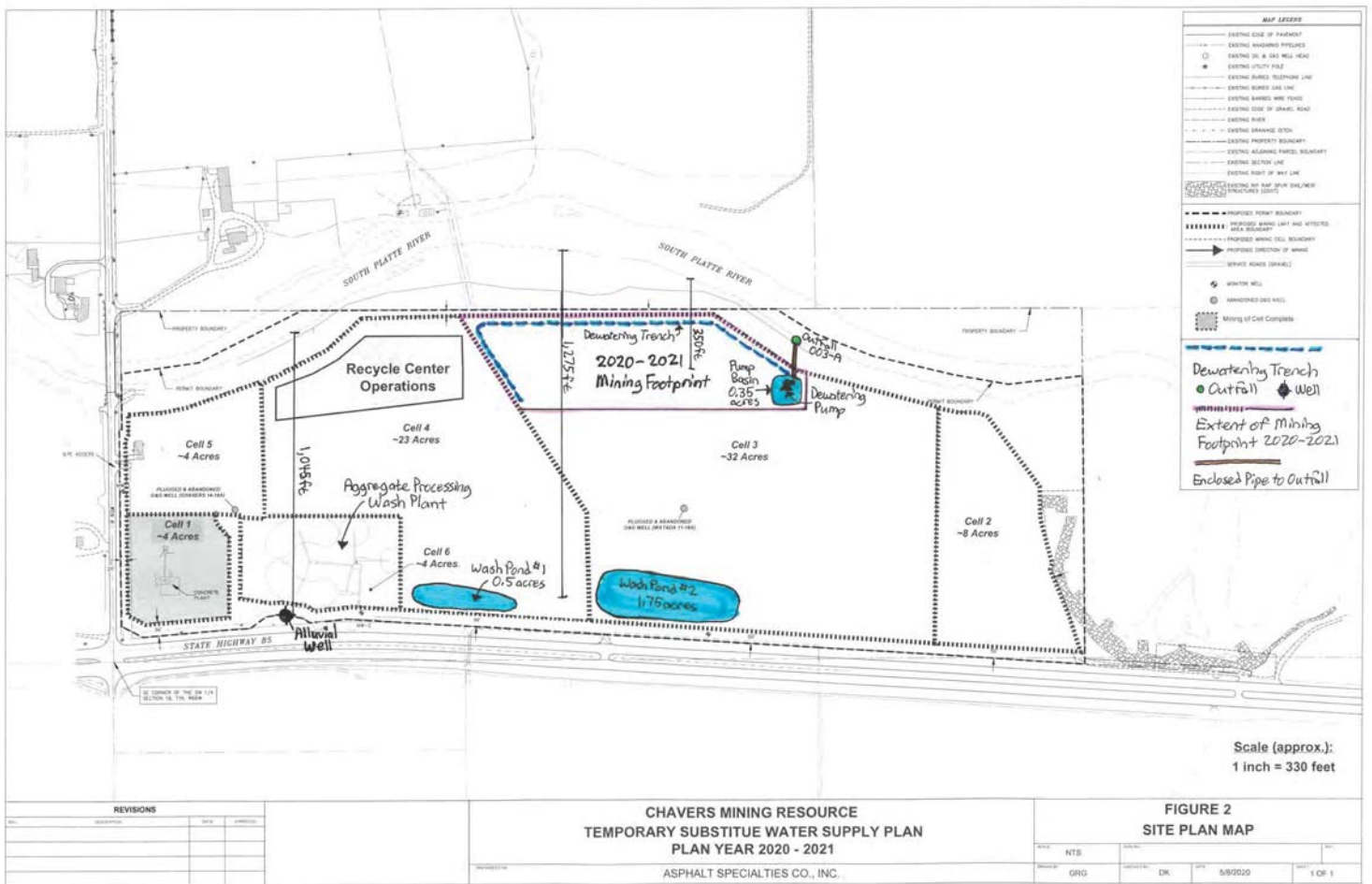
TEMPORARY SUBSTITUTE WATER SUPPLY PLAN

FIGURE 1

1"=2000'

FORT LUPTON QUAD

E 1/2 OF THE SW 1/4 S18, T1N, R68W



**Chavers Mining Resource
SWSP Plan Year 2020 - 2021
Mean Climate Data**

Table 1

Month	Mean Temperature 1974 - 2019^a [° F]	Mean Precipitation 1974 - 2019^a [inches]
January	29.28	0.44
February	32.53	0.40
March	41.01	1.09
April	48.48	1.70
May	57.47	2.47
June	68.00	1.52
July	73.60	1.51
August	71.32	1.52
September	63.20	1.08
October	50.80	0.91
November	38.59	0.73
December	29.88	0.41

Notes:

^a = From DWR: BRIGHTON 1 NE Station, NOAA Data (January-1974 to December-2019)

Chavers Mining Resource
SWSP Plan Year 2020 - 2021
Free Water Surface (FWS) Evaporative Water Depletions

Table 2

Source
Pump Basin
Dewatering Trench
Length = 1,530 feet
Width = 6 feet
Wash Ponds

FWS Area
0.35 acres
0.21 acres
2.25 acres

Month - Year	Climate Data					Total FWS Area		FWS Net Evaporation		Total Evaporative Depletions
						Aggregate Mining	Aggregate Processing	Aggregate Mining	Aggregate Processing	
	(1) Gross FWS Evaporation [inches]	(2) Monthly Evaporation [%]	(3) Mean Precipitation [inches]	(4) Effective Precipitation [inches]	(5) Net Evaporation [inches]	(6) FWS Pump Basin & Dewatering Trench [acre]	(7) FWS Wash Ponds [acre]	(8) Pump Basin & Dewatering Trench [acre-feet]	(9) Wash Ponds [acre-feet]	(10) Sum of Water Evaporated [acre-feet]
August - 2020	44	13.5%	1.52	1.06	4.88	0.56	2.25	0.23	0.91	1.14
September - 2020	44	10.0%	1.08	0.76	3.64	0.56	2.25	0.17	0.68	0.85
October - 2020	44	7.0%	0.91	0.64	2.44	0.56	2.25	0.11	0.46	0.57
November - 2020	44	4.0%	0.73	0.51	1.25	0.56	2.25	0.06	0.23	0.29
December - 2020	ice	3.0%	0.41	0.29	0.00	0.56	2.25	0.00	0.00	0.00
January - 2021	ice	3.0%	0.44	0.31	0.00	0.56	2.25	0.00	0.00	0.00
February - 2021	44	3.5%	0.40	0.28	1.26	0.56	2.25	0.06	0.24	0.30
March - 2021	44	5.5%	1.09	0.76	1.66	0.56	2.25	0.08	0.31	0.39
April - 2021	44	9.0%	1.70	1.19	2.77	0.56	2.25	0.13	0.52	0.65
May - 2021	44	12.0%	2.47	1.73	3.55	0.56	2.25	0.17	0.67	0.84
June - 2021	44	14.5%	1.52	1.06	5.32	0.56	2.25	0.25	1.00	1.24
July - 2021	44	15.0%	1.51	1.06	5.54	0.56	2.25	0.26	1.04	1.30
TOTALS:		100.0%	13.78	9.65				1.52	6.06	7.58

Notes:

(1) = Gross free water surface evaporation from NOAA Technical Report NWS 33 [*ice* verified by temperature data from BRIGHTON 1 NE Station, NOAA (Januray-1974 to December-2019)]

(2) = Evaporation monthly distribution for elevations below 6500 feet msl from *General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits* .

(3) = Mean Precipitation from BRIGHTON 1 NE Station, NOAA (January-1974 to December-2019)

(4) = Effective Precipitation = 70% Mean Precipitation per *General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits*.

= Column (3) X 0.7

(5) = [Column (1) x Column (2)] - Column (4)

(6) = Pump Basin Area + Dewatering Trench Area

(7) = Area of Wash Ponds

(8) = [Column (5)/12] x Column (6)

(9) = [Column (5)/12] x Column (7)

**Chavers Mining Resource
SWSP Plan Year 2020 - 2021
Operational Water Depletions**

Table 3

<u>Source</u>	<u>Amount</u>
Sand & Gravel Aggregate Production (Annual)	636,000 tons
Concrete Production	131,450 cubic yards
Dust Control	1.25 acre-feet

Month - Year	Aggregate Mining		Aggregate Processing	Concrete Production		Total Operational Depletions
	(1) Monthly Aggregate Mined [tons]	(2) Water Extracted with Aggregate [acre-feet]	(3) Water Used for Dust Control [acre-feet]	(4) Concrete Production [cubic yards]	(5) Alluvial Well Water for Concrete Production [acre-feet]	(6) Sum of Operational Water Used [acre-feet]
August - 2020	51,250	1.51	0.18	13,000	1.20	2.89
September - 2020	56,000	1.65	0.15	14,000	1.29	3.09
October - 2020	48,000	1.41	0.10	13,750	1.27	2.78
November - 2020	30,000	0.88	0.06	6,000	0.55	1.49
December - 2020	28,000	0.82	0.03	6,000	0.55	1.40
January - 2021	54,000	1.59	0.03	13,800	1.27	2.89
February - 2021	48,000	1.41	0.03	7,800	0.72	2.16
March - 2021	51,000	1.50	0.06	11,400	1.05	2.61
April - 2021	62,000	1.82	0.10	14,200	1.31	3.23
May - 2021	69,250	2.04	0.15	9,000	0.83	3.02
June - 2021	69,250	2.04	0.18	10,400	0.96	3.18
July - 2021	69,250	2.04	0.18	12,100	1.11	3.33
TOTALS:	636,000.00	18.71	1.25	131,450.00	12.11	32.07

Notes:

- (1) = Estimated monthly portion of annual sand & gravel production (636,000 tons)
- (2) = Water removed with mined product (assumes 4% water by mass per *General Guidelines for Substitute Water Supply Plans for Sand and Gravel Pits*)
= [Column (1) x (0.04) x (2,000 lbs./ton) x (1 ft³/62.4 lbs.) x (1 acre-ft/43,560 ft³)]
- (3) = Predicted volume of water used for dust control
- (4) = Estimated concrete production
- (5) = Estimated alluvial well water used (assumes 30 gallons/cubic yard of concrete)
- (6) = Total monthly water used for operations
= [Column (2) + Column (3) + Column (5)]

**Chavers Mining Resource
SWSP Plan Year 2020 - 2021
Total Unlagged/Lagged Depletions**

Table 4

<u>Category</u>	<u>Depletion Source(s)</u>
Aggregate Mining Depletions	Pump Basin & Dewatering Trench (Evap. Depletions) and Water Extracted with Aggregate Mined (Oper. Depletions)
Aggregate Processing Depletions	Wash Ponds (Evaporative Depletions) and Dust Control (Operational Depletions)
Concrete Production Depletions	Alluvial Well Water Used for Concrete Production (Operational Depletions)

Month - Year	Unlagged Source Depletions			Lagged Source Depletions			Net Water Depletions
	(1) Aggregate Mining [acre-feet]	(2) Aggregate Processing [acre-feet]	(3) Concrete Production [acre-feet]	(4) Aggregate Mining [acre-feet]	(5) Aggregate Processing [acre-feet]	(6) Concrete Production [acre-feet]	(7) Sum of Lagged Source Depletions [acre-feet]
August - 2020	1.74	1.09	1.20	1.81	0.95	1.35	4.11
September - 2020	1.82	0.83	1.29	1.80	0.87	1.22	3.89
October - 2020	1.52	0.56	1.27	1.58	0.73	1.21	3.51
November - 2020	0.94	0.29	0.55	1.11	0.56	0.93	2.60
December - 2020	0.82	0.03	0.55	0.93	0.38	0.74	2.05
January - 2021	1.59	0.03	1.27	1.46	0.27	0.95	2.68
February - 2021	1.47	0.27	0.72	1.47	0.30	0.91	2.68
March - 2021	1.58	0.37	1.05	1.54	0.37	0.93	2.84
April - 2021	1.95	0.62	1.31	1.83	0.47	1.09	3.39
May - 2021	2.21	0.82	0.83	2.08	0.61	1.00	3.68
June - 2021	2.29	1.18	0.96	2.19	0.79	0.94	3.93
July - 2021	2.30	1.22	1.11	2.22	0.93	1.01	4.17
TOTALS:	20.23	7.31	12.11	20.02	7.24	12.28	39.54

Notes:

- (1) = Depletions from Pump Basin & Dewatering Trench (Evaporative) and Water Extracted with Aggregate Mined (Operational)
= [Table 2 - Column (8)] + [Table 3 - Column (2)]
- (2) = Depletions from Wash Ponds (Evaporative) and Dust Control (Operational)
= [Table 2 - Column (9)] + [Table 3 - Column (3)]
- (3) = Depletions from Alluvial Well Water Used in Concrete Production (Operational)
= [Table 3 - Column (5)]
- (4) = Column (1) Lagged (Real Time) Stream Depletions Using AWAS
- (5) = Column (2) Lagged (Real Time) Stream Depletions Using AWAS
- (6) = Column (3) Lagged (Real Time) Stream Depletions Using AWAS
- (7) = Total Lagged Depletions
= [Column (4) + Column (5) + Column (6)]

Chavers Mining Resource
SWSP Plan Year 2020 - 2021
ASCI Replacement Water Requirements and City of Aurora Water Lease Allotments

Table 5

Month - Year	City Of Aurora Replacement Water Lease Allotments			Total Replacement Water Available (4) Leases Combined (acre-feet)	Total Replacement Water Allotments Per Site		Required Replacement Water Volumes Per Site		Net Affect on River Per Site	
	(1) Lease 8-24-2015 (acre-feet)	(2) Lease 6-29-2016 (acre-feet)	(3) New Lease (acre-feet)		(5) Chavers (acre-feet)	(6) Speer ^a (acre-feet)	(7) Chavers (acre-feet)	(8) Speer ^a (acre-feet)	(9) Chavers (acre-feet)	(10) Speer ^a (acre-feet)
August - 2020	3.48	2.59	--	6.07	5.07	1.00	4.11	1.00	0.40	0.00
September - 2020	3.23	2.74	--	5.97	5.13	0.84	3.89	0.84	0.68	0.00
October - 2020	2.58	2.52	--	5.10	4.44	0.66	3.51	0.66	0.44	0.00
November - 2020	1.54	2.19	--	3.73	3.30	0.43	2.60	0.43	0.33	0.00
December - 2020	0.70	2.19	--	2.89	2.69	0.20	2.05	0.20	0.34	0.00
January - 2021	0.45	--	3.00	3.45	3.33	0.12	2.68	0.12	0.28	0.00
February - 2021	0.91	--	3.00	3.91	3.65	0.26	2.68	0.26	0.57	0.00
March - 2021	1.17	--	3.00	4.17	3.82	0.35	2.84	0.35	0.56	0.00
April - 2021	1.68	--	3.00	4.68	4.16	0.52	3.39	0.52	0.31	0.00
May - 2021	2.21	--	3.00	5.21	4.53	0.68	3.68	0.68	0.35	0.00
June - 2021	2.98	--	3.00	5.98	5.01	0.97	3.93	0.97	0.53	0.00
July - 2021	3.31	--	3.00	6.31	5.22	1.09	4.17	1.09	0.48	0.00
TOTALS:	24.24	12.23	21.00	57.47	50.35	7.12	39.54	7.12	5.27	0.00

Notes:

^a = Speer Site is currently in reclamation stage. Water depletions have reached near steady-state conditions

(1) = Replacement Water from Lease with City of Aurora dated 8-24-2015

(2) = Replacement Water from Lease with City of Aurora dated 8-24-2015

(3) = Requested Replacement Water Volume in new lease submitted to City of Aurora

(4) = Combined Replacement Water Volumes Available

= [Column (1) + Column (2) + Column (3)]

(5) = Replacement Water Allotments for Chavers Site

(6) = Replacement Water Allotments for Speer Site

(7) = Net Water Depletions for Chavers Site

= [Table 4 - Column (7)]

(8) = Net Water Depletions for Speer Site

= From Speer SWSP

(9) = Net Affect on River at Chavers Site

= [Column (5) * 0.89] - Column (7)

Transit Loss = 0.11 (11%)

Positive Value = Stream Accretion

(10) = Net Affect on River at Speer Site

= [Column (6) - Column (8)]

**AGREEMENT
FOR LEASE OF FIRM DELIVERY OF RECLAIMED WASTEWATER**

This Agreement ("Agreement") is entered into as of the Effective Date defined in Paragraph 21 below by and between the City of Aurora, Colorado, a Colorado municipal corporation of the Counties of Adams, Arapahoe and Douglas, acting by and through its Utility Enterprise ("Aurora"), whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012, and Asphalt Specialties Company, Inc., whose address is 10100 Dallas Street, Henderson, Colorado 80640 ("Lessee"). Aurora and Lessee each referred to herein as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Aurora has the right to use, sell, or lease certain of its fully reusable municipal wastewater return flows to the South Platte River ("Reclaimed Wastewater"); and

WHEREAS, such Reclaimed Wastewater is derived from trans-mountain or other reusable sources; and

WHEREAS, Lessee has a use for a certain portion of such Reclaimed Wastewater; and,

WHEREAS, Aurora and Lessee desire to enter into this Agreement whereby Aurora shall lease a portion of such Reclaimed Wastewater to Lessee; and

WHEREAS, this Agreement will be of mutual benefit and convenience to Aurora and Lessee; and

WHEREAS, the Aurora Utility Enterprise staff has determined as a precondition to entering this Agreement that Aurora is able to fulfill all exchange and operational obligations that require Reclaimed Wastewater, that it is able to fulfill all existing long-term agreements that require Reclaimed Wastewater (including this Agreement) and that all other needs of Aurora that may be fulfilled by these sources are met; and

WHEREAS, the Aurora City Council adopted a Resolution establishing a policy for the management and lease of reclaimed wastewater, and authorizing the Director of Aurora Water to enter into short term leases; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, Aurora and Lessee hereby agree as follows:

AGREEMENT

1. **General Terms.** The term of this Agreement shall commence on the Effective Date, as defined in Paragraph 21, below, and continue until the last date for delivery of water as provided for on the water delivery schedule attached hereto as Exhibit A, and incorporated herein by this

reference ("Delivery Schedule"). Aurora will commence supplying the Reclaimed Wastewater on January 1, 2016 and cease supplying the Reclaimed Wastewater on December 31, 2021.

2. **Delivery Schedule.** Delivery of the Reclaimed Wastewater will be made in accordance with the Delivery Schedule. No later than October 31 of each year, Lessee may submit to Aurora a proposed modified Delivery Schedule ("Modified Schedule"), setting forth revised monthly delivery totals for the upcoming Lease Year, as that term is defined in Paragraph 8 below. Any proposed Modified Schedule shall be effective only upon Aurora's written consent, and upon Aurora's acceptance of any Modified Schedule, such Modified Schedule shall be the Delivery Schedule for the upcoming Lease Year. In no event shall the total amount of Reclaimed Wastewater delivered exceed the maximum amounts set forth in the Delivery Schedule or Modified Schedule. As long as Aurora is capable of delivering the Reclaimed Wastewater to the Delivery Points according to the Delivery Schedule or Modified Schedule, Lessee will be obligated to pay the per-acre foot charge set forth in Paragraph 7 regardless of whether or not Lessee requests or uses the Reclaimed Wastewater.

3. **Delivery Location.**

(a) **Delivery Points.** Lessee agrees that Aurora shall initially make its delivery of the Reclaimed Wastewater at the outfall of the Metro Wastewater Reclamation District's Hite treatment facility located on the South Platte River ("Metro"). Lessee further agrees that Aurora may, in its sole discretion, satisfy its delivery obligations under this Agreement by delivering the Reclaimed Wastewater at any other delivery point or delivery points on the South Platte River (each of Metro and such other delivery points, hereinafter, a "Delivery Point" and collectively, the "Delivery Points"), provided that such alternative delivery points are located within a reach of the South Platte River beginning at or below Metro and continuing downstream to a point at or above the location where the South Platte River crosses the center of the southeast quarter of Section 34, Township 1 South, Range 67 West of the 6th P.M. ("Point of Use"). Lessee acknowledges and agrees that the alternate Delivery Points may include, but are not limited to, other wastewater treatment plants that may be constructed in the future that discharge Reclaimed Wastewater owned by Aurora, the Brighton Ditch Augmentation Stations, the outfall of Walker Reservoir, and the confluence of Sand Creek and the South Platte River. Aurora will take the responsibility for delivery of the Reclaimed Wastewater to these Delivery Points, and in its sole discretion may determine which of the Delivery Points it will use at any given time. Once Aurora has completed its delivery of the Reclaimed Wastewater hereunder, Lessee shall assume sole liability for any loss, damage, or injury that may occur to persons or property as the direct or indirect result of the control and/or use of said Reclaimed Wastewater by Lessee. The amount of Reclaimed Wastewater needed at the Delivery Points was calculated by Lessee to include any transportation losses, or "shrinkage," from the Delivery Points to Lessee's point of use downstream. Lessee also acknowledges the travel time between the alternate Delivery Points and Lessee's Point of Use varies, and the timing for Aurora's delivery obligations as provided for under the Delivery Schedule shall remain the same regardless of Aurora's use of alternative Delivery Points.

(b) **Credit for Avoided Transit Loss.** Aurora's obligations with respect to the volume of Reclaimed Wastewater to be delivered under this Agreement are deemed to be satisfied if Aurora makes deliveries in such amounts as if delivered at Metro. Thus, if Aurora elects, in its sole discretion, to make its delivery of any Reclaimed Wastewater under this Agreement at a Delivery Point other than Metro, and if delivery at such alternative Delivery Point(s) results in

reduced transit loss, Aurora shall be entitled to retain such avoided transit loss with no credit to Lessee in water, money or otherwise. Aurora shall maintain and provide to Lessee a monthly accounting and report of daily deliveries at the Delivery Point(s). If Aurora elects to deliver some or all of the Reclaimed Wastewater at alternative Delivery Point(s), then the foregoing reports shall include the calculated amount of avoided transit loss and the amount of water physically delivered at such alternative Delivery Point(s). For purposes of calculating any such avoided transit loss, the Parties hereby agree that the volume of Reclaimed Wastewater required to be delivered by Aurora in accordance with the Delivery Schedule shall be discounted by an amount equal to one-half of one percent (0.5%) of such volume during the April through September irrigation season, or one-fourth of one percent (0.25%) of such volume during the October through March non-irrigation season, for each river mile in distance between Metro and such alternative Delivery Point(s) (such distance calculated to the nearest one-tenth of a mile), or by such other amount as determined by the Division Engineer for Water Division No. 1 (such office or its replacement the "Division Engineer") or as specified in an applicable statute or decree from a court of applicable jurisdiction. The product of this calculation shall represent the amount of avoided transit loss in acre-feet, which Aurora shall be entitled to retain.

4. **Source and Quality of Reclaimed Wastewater.** The Reclaimed Wastewater to be provided by Aurora under this Agreement shall, at Aurora's discretion, consist of Aurora's reusable municipal return flows to the South Platte River, any fully consumable portion of changed irrigation water rights owned by, or available to, Aurora, fully consumable water diverted pursuant to decrees entered in 03CW414, 03CW415 and 06CW104, and any other legal source of Reclaimed Wastewater available to Aurora. Under no circumstances shall this Agreement be interpreted to mean that Aurora must supply potable water should the sources set forth in this paragraph be unavailable. Aurora does not warrant or guaranty any water quality standards with respect to the Reclaimed Wastewater to be delivered as provided for under this Agreement and Lessee hereby waives any such warranty or guaranty.

5. **Use of Reclaimed Wastewater.** Lessee shall have the right to use and reuse to extinction the Reclaimed Wastewater delivered under this Agreement for water supply purposes, including replacement and exchange purposes in connection with any substitute water supply plan approved by the Colorado State Engineer's Office, and augmentation and exchange purposes in accordance with any augmentation plan decreed by the Colorado Water Court; provided that such use is consistent with the terms of this Agreement and all applicable laws, rules and regulations.

6. **Water Rights Accounting.** Lessee will be solely responsible for any and all reporting and accounting required by the Colorado State Engineer, the Division Engineer for Water Division 1, the Water Commissioner for Water Commissioner District 2, or any other lawful authority after Aurora makes its delivery of the Reclaimed Wastewater as provided for under this Agreement. This responsibility includes, but is not limited to, Lessee's withdrawal of the Reclaimed Wastewater from the South Platte River (if any) and Lessee's use of the Reclaimed Wastewater. In addition to the report requirements set forth in Section 3(b) above, Aurora will provide any and all reporting and accounting required by the Colorado State Engineer, the Division 1 Engineer, or any other lawful authority concerning proof of the reusability of the Reclaimed Wastewater and conveyance of the Reclaimed Wastewater to the Delivery Point(s).

7. **Consideration.** Lessee agrees to pay to Aurora the amount of Three Hundred Dollars (\$300.00) per acre-foot ("Unit Rate") of Reclaimed Wastewater delivered under this Agreement. The Unit Rate shall remain constant throughout the term of this Agreement.
8. **Payment.** On January 2, 2016, and on each succeeding January 2 until 2021, Aurora shall bill Lessee for all effluent it will deliver to Lessee during that calendar year ("Lease Year") of the Agreement as set forth in the Delivery Schedule. All billing shall be done on such forms as designated by Aurora for that purpose. Payment by Lessee shall be due no later than forty-five (45) days after such bill has been issued. If Lessee does not make the required payment by the due date, Aurora may give Lessee a notice of default. If Lessee does not cure the default by making full payment within thirty (30) days of receipt of any notice of default, then Aurora, in addition to pursuing any other remedies available to it, may declare this Agreement terminated.
9. **Non-Assignability and No Subleases.** Neither Aurora nor Lessee may assign its rights or delegate its duties hereunder without the prior written consent of the other Party. Lessee may not sublease the Reclaimed Wastewater to which it is entitled pursuant to this Agreement without the permission of Aurora, which permission Aurora may grant or withhold at its discretion.
10. **Successors and Assigns.** This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns if any are allowed. The Parties intend that Aurora shall not incur any liability other than those liabilities directly running to Aurora or assigns permitted under this Agreement if any. Lessee therefore covenants and agrees to indemnify, save and hold harmless Aurora from all liability, cost or expense of any kind, including Aurora's costs of defense, to any other party, arising in connection with or relating in any way to the execution, delivery or performance of any allowed assignment or any related document by the Parties thereto or to the consummation of any transaction in connection with such documents.
11. **No Rights Conferred.** Except as otherwise provided in this Agreement, the Parties acknowledge that all Reclaimed Wastewater leased hereunder is intended for the present and future use of Aurora. It is further understood and agreed to by the Parties that this Agreement shall confer no rights in such Reclaimed Wastewater upon Lessee, nor shall any future needs of Lessee for water enable Lessee to make claim against Aurora for any of Aurora's Reclaimed Wastewater, other water or water rights. Lessee further acknowledges the statutory prohibition against vesting of a right for a continued lease expressed in CRS § 31-35-201 applies in these circumstances.
12. **Failure to Perform Due to Force Majeure.** Subject to the terms and conditions in this Paragraph, no Party to this Agreement shall be liable for any delay or failure to perform under this Agreement due solely to conditions or events of *force majeure*, as that term is specifically defined herein; provided that: (a) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the *force majeure*; (b) the suspension of performance is of no greater scope and of no longer duration than is required by the *force majeure* event or condition; and (c) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing the actions taken to remedy the consequences of the *force majeure* event or condition. As used herein *force majeure* shall mean any delay or failure of a Party to perform its obligations under this Agreement caused by events beyond the Party's reasonable control, and without the fault or negligence of the

Party, including, without limitation A) changes in state or federal law or administrative practice concerning, water rights administration, water quality or stream flow requirements, B) changes in state water rights administrative practice concerning the reuse of reclaimed wastewater through leases to others for use at locations other than Aurora, Colorado, including, but not limited to, challenges to retained dominion and control, C) acts of God, D) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, E) sabotage, F) vandalism beyond that which can be reasonably prevented by the Party, G) terrorism, H) war, I) riots, J) fire, K) explosion, L) severe cold or hot weather, M) snow, N) drought [a condition more severe than that which occurred in 2002 in the South Platte River Basin or any basin from which the Reclaimed Wastewater originates], O) other extreme weather conditions, O) blockades, Q) insurrection, R) strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); S) actions by federal, state, municipal, or any other government or agency (including but not limited to, the adoption or change in any rule or regulation or environmental constraint imposed by federal, state or local government bodies) but only if such requirements, actions, or failures to act prevent or delay performance, T) inability, despite due diligence, to obtain required licenses, permits or approvals, and, U) changes of law relating to financial obligations, revenues and budgetary matters concerning Colorado local governments and their enterprises. In the event a *force majeure* event or condition prevents Aurora from delivering all or part of the agreed upon amounts of Reclaimed Wastewater to Lessee, Aurora shall refund all advance payments made for that water not delivered within sixty (60) days of the conclusion of the *force majeure* event or the cancellation of the Agreement pursuant to the remaining provisions of this Paragraph. In no event will any delay or failure of performance caused by any conditions or events of *force majeure* extend this Agreement beyond its stated term. In the event any delay or failure of performance on the part of the Party claiming *force majeure* continues for an uninterrupted period of more than one hundred twenty (120) days from its occurrence or inception as noticed pursuant to this Paragraph, the Party not claiming *force majeure* may, at any time following the end of such one hundred twenty (120) day period, terminate this Agreement upon written notice to the Party claiming *force majeure*, without further obligation except as to costs and balances incurred prior to the effective date of such termination.

13. **Subordination Clause.** This Agreement shall be made expressly subordinate to any present or future city use of effluent for purposes of augmentation, exchange, or any other use which is or will be of greater direct benefit to Aurora and the users of its water delivery system, as well as to the water supply obligations which Aurora has incurred or will incur through any of the following: (a) the October 25, 1993, Effluent Agreement with the State of Colorado, Division of Parks and Outdoor Recreation and any renewals thereof; (b) its obligations pursuant to Water Division 1, Case Nos. 95CW226 & 227, Case No. 99CW158, Case No. 01CW284 and Case No. 02CW341; (c) the November 30, 2007, Water Supply Agreement with the Rocky Mountain Energy Center, LLC; (d) the May 20, 2003, Water Rights Purchase and Sale Agreement with the City of Thornton, Colorado; (e) the May 19, 2006, Reusable Water Agreement with the Central Colorado Water Conservancy District, and (f) any and all obligations resulting from any firm delivery annual lease or delivery contract of Reclaimed Wastewater executed prior to the date of this Agreement. The foregoing subordination does not, in and of itself, create an excuse for Aurora's failure to deliver the Reclaimed Wastewater under this Agreement, however, Aurora and Lessee agree that the purpose and effect of the foregoing subordination is to establish a priority among and between Aurora's obligation under this Agreement and Aurora's other obligation with respect to its

Reclaimed Wastewater in the event of a *force majeure* event or other delay or interruption in Aurora's delivery of the Reclaimed Wastewater.

14. **No Opposition to Aurora Water Court Matters.** From the date of execution of this Agreement through the conclusion hereof, Lessee agrees that neither it nor any successors, if any are allowed, will oppose Aurora in any Colorado Water Court Applications filed by Aurora.

15. **Aurora Right to Request Reuse.** The Parties hereto acknowledge that hydrologic and other conditions may exist wherein Lessee may not need all or a portion of the Reclaimed Wastewater flow available to it under this Agreement. Aurora may contact Lessee, not more frequently than once per day, to determine if any of the Reclaimed Wastewater leased hereunder will not be needed.

16. **Enforcement.** The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including damages, as may be available according to the laws of the State of Colorado. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms hereof, and that any breach hereof resulting in any recoverable damages shall not thereby cause the termination of any obligations created by this Agreement unless such termination is requested by the Party not in breach hereof.

17. **Sole Obligation of Utility Enterprise.**

(a) This Agreement shall never constitute a general obligation or other indebtedness of the City of Aurora ("City"), or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City.

(b) In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Agreement, Lessee shall have no recourse for any amounts owed to it against any funds or revenues of the City except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Water Enterprise Fund, as the terms "Water System" and "Water Enterprise Fund" are defined in City Ordinance No. 2003-18, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City.

18. **Miscellaneous.**

(a) **Intent of Agreement.** This Agreement is intended to describe the rights and responsibilities of and between the named Parties and is not intended to, and shall not be deemed to confer rights upon any persons or entities not named as parties or as authorized assigns, nor to limit in any way the powers and responsibilities of Aurora, Lessee, or any other entity not a party or assign hereto.

(b) **Entire Agreement.** This Agreement represents the entire agreement of the Parties and neither Party has relied upon any fact or representation not expressly set forth herein. All prior

and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants and warranties concerning the subject matter hereof, are merged in this Agreement.

(c) Multiple Originals. This Agreement may be simultaneously executed in any number of counterparts, each one of which shall be deemed an original, but all of which constitute one and the same Agreement.

(d) Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by written agreement duly authorized and executed by the Parties hereto.

(e) Headings for Convenience. Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to confine, limit, or describe the scope of intent of any provision of this Agreement.

(f) Governing Law and Venue. This Agreement and its application shall be construed in accordance with the law of the State of Colorado. Should it be necessary to initiate court proceedings concerning this Agreement, the parties agree that venue shall be in the District Court for Arapaho County, Colorado.

(g) No Attorney Fees. In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of or related to this Agreement each Party agrees to be responsible for its own attorney and other professional fees, costs and expenses associated with any such proceedings.

(h) No Construction Against Drafter. This Agreement was drafted by Aurora with review and comment from the attorney for Lessee. Accordingly, the parties agree the legal doctrine of construction against the drafter will not be applied should any dispute arise concerning this Agreement.

(i) Non-Severability; Effect of Invalidity. Each Section in this Agreement is intertwined with the others and are not severable unless by mutual consent of Aurora and Lessee or as provided for below. If any provision or portion of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be invalid or unenforceable for any reason by a Court of competent jurisdiction, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby.

(j) Waiver of Breach. Waiver of breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party of either the same or any other provision of this Agreement.

(k) Non-Business Days. If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

(l) Recitals and Exhibits. The recitals and exhibits attached hereto are hereby incorporated into this Agreement.

(m) Recordation. Following the execution of this Agreement and any amendment hereto, the Parties may cause this Agreement to be recorded with the Clerk and Recorder's Office of such county or counties in Colorado as they may desire.

19. **Notice.** All notices, requests, demands, or other communications ("Notices") hereunder shall be in writing and given by (a) established express delivery service which maintains delivery records requiring a signed receipt, (b) hand delivery, or (c) certified or registered mail, postage prepaid, return receipt requested to the parties at the following address, or at such other address as the Parties may designate by Notice in the above manner.

To Aurora: City of Aurora
 15151 East Alameda Parkway, Suite 3600
 Aurora, CO 80012-1555
 Attn: Director, Aurora Water

with copy to City of Aurora
 15151 East Alameda Parkway, Suite 3600
 Aurora, CO 80012-1555
 Attn: City Attorney

To Lessee: Asphalt Specialties Co., Inc.
 10100 Dallas Street
 Henderson, CO 80640
 Attn: Daniel W. Hunt


Notices shall be effective (x) the next day following the date sent by an established express delivery service which maintains delivery records requiring a signed receipt, (y) upon receipt by the addressee of a hand delivery, or (z) three days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested.

20. **Commissions and Fees.** Each Party shall be solely responsible for the payment of any and all real estate commissions or other commissions or fees that it incurs with respect to this Agreement.

21. **Effective Date.** The "Effective Date" of this Agreement is the date it is signed by the Director of Aurora Water.

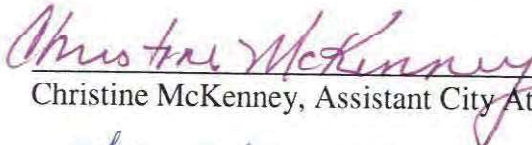
IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the date first above written.

CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE


Marshall P. Brown, Director

8/16/15
Date

APPROVED AS TO FORM FOR AURORA:


Christine McKenney, Assistant City Attorney

8/14/15
Date

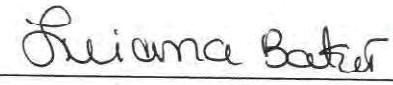
14009135
ACS #


Stephanie Neitzel, Contract Attorney

8/14/15
Date

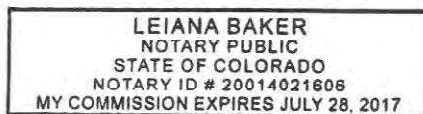
STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 16 day of August, 2015,
by Marshall P. Brown, Director, acting on behalf of the Utility Enterprise of the City of Aurora,
Colorado.

Witness my hand and official seal. 
Notary Public

My commission expires: 7-28-17

(SEAL)



LESSEE

Asphalt Specialties Company, Inc.



Daniel W. Hunt, President

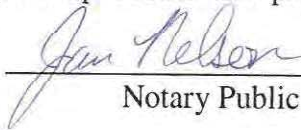
8-24-15

Date

State of Colorado)
) ss.
County of Adams)

The foregoing instrument was acknowledged before me this 24th day of August, 2015 by Daniel W. Hunt as President of Asphalt Specialties Company, Inc.

Witness my hand and official seal.



Notary Public

My commission expires: April 27, 2016

(SEAL)



EXHIBIT A - 8/24/2015 Lease Replacement Water Delivery Schedule 2016-2021

Year	Month	Replacement Volume [acre-ft]	Cost Per Acre-foot [\$/acre-ft]	Total Price [\$]
2016	January	0.70		
	February	1.53		
	March	1.99		
	April	2.92		
	May	3.88		
	June	5.27		
	July	5.90		
	August	5.49		
	September	5.12		
	October	4.08		
	November	2.43		
	December	1.07		
2016 Totals		40.37	\$300.00	\$12,111.00
2017	January	0.63		
	February	1.28		
	March	1.60		
	April	2.20		
	May	2.75		
	June	3.50		
	July	3.67		
	August	3.22		
	September	2.81		
	October	2.12		
	November	1.25		
	December	0.63		
2017 Totals		25.65	\$300.00	\$7,695.00
2018	January	0.44		
	February	0.71		
	March	0.85		
	April	1.17		
	May	1.50		
	June	1.99		
	July	2.21		
	August	2.07		
	September	1.94		
	October	1.57		
	November	0.98		
	December	0.48		
2018 Totals		15.91	\$300.00	\$4,773.00
2019	January	0.58		
	February	1.15		
	March	1.47		
	April	2.12		
	May	2.79		
	June	3.76		
	July	4.19		
	August	3.89		
	September	3.62		
	October	2.89		
	November	1.73		
	December	0.78		
2019 Totals		28.97	\$300.00	\$8,691.00

EXHIBIT A - 8/24/2015 Lease Replacement Water Delivery Schedule 2016-2021

Year	Month	Replacement Volume [acre-ft]	Cost Per Acre-foot [\$/acre-ft]	Total Price [\$]
2020	January	0.50		
	February	1.02		
	March	1.32		
	April	1.90		
	May	2.50		
	June	3.37		
	July	3.75		
	August	3.48		
	September	3.23		
	October	2.58		
	November	1.54		
	December	0.70		
2020 Totals		25.89	\$300.00	\$7,767.00
2021	January	0.45		
	February	0.91		
	March	1.17		
	April	1.68		
	May	2.21		
	June	2.98		
	July	3.31		
	August	3.06		
	September	2.85		
	October	2.27		
	November	1.36		
	December	0.62		
2021 Totals		22.87	\$300.00	\$6,861.00

Notes:

Month = Past replacement volumes purchased and delivered

Greg Geras

From: Murphy, John <JMurphy@auroragov.org>
Sent: Tuesday, September 25, 2018 1:17 PM
To: Greg Geras
Subject: RE: ASCI - Revised Replacement Water Delivery Schedule Request

Thanks Greg,

Aurora will deliver make deliveries based on the schedule you sent which has the annual totals for 2019 – 2021 from the original lease.

John Murphy

Water Resources Project Specialist | Water Department | City of Aurora
office 303.739.7360 | cell 303.681.7359



[Facebook](#) | [Twitter](#) | [Nextdoor](#) | [AuroraTV.org](#)

From: Greg Geras [mailto:GregG@asphaltspecialties.com]
Sent: Tuesday, September 25, 2018 12:52 PM
To: Murphy, John <JMurphy@auroragov.org>
Subject: ASCI - Revised Replacement Water Delivery Schedule Request

Hi John,

Please see the revised replacement water delivery schedule (Attachment 1) for the lease signed on 8/24/2015 (Attachment 2). This schedule contains monthly wastewater delivery totals for the upcoming lease year (2019) through the end of the lease (2021). I am requesting the monthly delivery volumes that were agreed upon when the lease was signed (which are not to be exceeded) be delivered for the remainder of the lease. If acceptable, please send me a copy of any documentation used to confirm Aurora's acceptance (e.g., e-mail from you, new signature page, etc.). Please let me know if I need to provide anything. I will look for the 2019 invoice in January. Please send invoices to my attention rather than Rob Laird who retired earlier this year.

Please let me know if you have any questions. I appreciate your help and the opportunity to lease water from Aurora as this is an important lease for my company.

Thank you,

Greg Geras
Land Resource Manager
Asphalt Specialties Co., Inc.
10100 Dallas Street
Henderson, CO 80640
Office (Direct): 720-322-7055 | Cell: 303-495-9888
Office (Main): 303-289-8555 | Fax: 303-289-7707

E-mail: GregG@asphaltspecialties.com

Web: www.asphaltspecialties.com

Agreement for Delivery of Reusable Raw Water

This Agreement ("Agreement") is entered into on this 29 day of June, 2016, by and between the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise ("Aurora"), whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Colorado 80012, and Asphalt Specialties Company, Inc., whose address is 10100 Dallas Street, Henderson, Colorado 80640 ("ASC"). Aurora and ASC are each referred to herein as a "Party" and together as the "Parties."

Witnesseth

WHEREAS, Aurora has the right to use, sell, or provide for use certain of its fully reusable municipal raw water flows to the South Platte River ("Reusable Raw Water"); and

WHEREAS, such Reusable Raw Water is derived from trans-mountain or other reusable sources; and

WHEREAS, ASC has a use for a certain portion of this Reusable Raw Water; and

WHEREAS, Aurora and ASC desire to enter into this Agreement whereby Aurora shall deliver a portion of such Reusable Raw Water to ASC; and

WHEREAS, this Agreement will be of mutual benefit and convenience to Aurora and ASC; and

WHEREAS, the Aurora Utility Enterprise staff has determined, as a precondition to entering this Agreement, that Aurora is able to fulfill all exchange and operational obligations that require Reusable Raw Water, that it is able to fulfill all existing long-term agreements that require Reusable Raw Water (including this Agreement), and that all other needs of Aurora that may be fulfilled by these sources are met; and

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

Agreement

1. **Recitals Incorporated.** The foregoing recitals set forth above are incorporated and made a part of this Agreement.

2. **General Terms.** The terms of this Agreement shall commence on the Effective Date as defined in Paragraph 22 below, and continue until the last date for delivery of water as provided for on the water delivery schedule attached hereto as Exhibit A such date being no later than December 31, 2020 (the "Term").

3. **Delivery Schedule.** Delivery of the Reusable Raw Water will be made in accordance with the delivery schedule attached hereto as Exhibit A ("Delivery Schedule"). No later than October 31 of each year, ASC may submit to Aurora a proposed modified Delivery Schedule ("Modified Schedule"), setting forth revised monthly delivery totals. Any proposed Modified Schedule shall be effective only upon Aurora's written consent, and upon Aurora's acceptance of any Modified Schedule, such Modified Schedule shall be the Delivery Schedule. In no event shall the total amount of Reusable Raw Water delivered exceed the total amount set forth in Exhibit A attached hereto. As long as Aurora is capable of delivering the Reusable Raw Water to the Delivery Points (defined in Paragraph 4 of this Agreement) according to the Delivery Schedule, ASC will be obligated to pay the per-acre foot charge set forth in Paragraph 9 of this Agreement regardless of whether or not ASC requests or uses the Reusable Raw Water.

4. **Delivery Location.**

(a) **Delivery Points.** ASC agrees that Aurora shall initially make its delivery of the Reusable Raw Water at the outfall of the Metro Wastewater Reclamation District's Robert W. Hite treatment facility ("Hite"). ASC further agrees that Aurora may, in its sole discretion, satisfy its delivery obligations under this Agreement by delivering the Reusable Raw Water at any other delivery point or delivery points on the South Platte River (each of Hite and such other delivery points, hereinafter, a "Delivery Point" and collectively, the "Delivery Points"), provided that such alternative Delivery Points are located within a reach of the South Platte River beginning at or below Hite, and continuing downstream to a point at or above the location where the South Platte River crosses the south section line of the E1/2 of the SW1/4 of Section 18, T1N, R66W of the 6th P.M. (such location, the "Point of Use"). ASC acknowledges and agrees that the alternate Delivery Points may include, but are not limited to, other wastewater treatment plants that may be constructed in the future that discharge Reusable Raw Water owned by Aurora, the Brighton Ditch Augmentation Stations, the outfall of Walker Reservoir, and the confluence of Sand Creek and the South Platte River. Aurora will bear the responsibility for delivery of the Reusable Raw Water to these Delivery Points, and in its sole discretion may determine which of the Delivery Points it will use at any given time. Once Aurora has completed its delivery of the Reusable Raw Water hereunder, ASC shall assume sole liability for any loss, damage, or injury that may occur to persons or property as the direct or indirect result of the control and/or use of said Reusable Raw Water by ASC. The amount of Reusable Raw Water reflected in the Delivery Schedule was calculated by ASC to include any transportation losses, or "shrinkage," from Hite to the Point of Use downstream. ASC also acknowledges the travel time between the alternate Delivery Points and the Point of Use varies, but that the timing for Aurora's delivery obligations as provided for

under the Delivery Schedule shall remain the same regardless of Aurora's use of alternative Delivery Points.

(b) **Credit for Avoided Transit Loss.** Aurora's obligations with respect to the volume of Reusable Raw Water to be delivered under this Agreement are deemed to be satisfied if Aurora makes deliveries in such amounts as if delivered at Hite. Thus, if Aurora elects, in its sole discretion, to make its delivery of any Reusable Raw Water under this Agreement at a Delivery Point other than Hite, and if delivery at such alternative Delivery Point(s) results in reduced transit loss, Aurora shall be entitled to retain such avoided transit loss with no credit to ASC in water, money or otherwise. Aurora shall maintain and provide to ASC a monthly accounting and report of daily deliveries at the Delivery Point(s). If Aurora elects to deliver some or all of the Reusable Raw Water at alternative Delivery Point(s), then the foregoing reports shall include the calculated amount of avoided transit loss, and the amount of water physically delivered at such alternative Delivery Point(s). For purposes of calculating any such avoided transit loss, the Parties hereby agree that the volume of Reusable Raw Water required to be delivered by Aurora in accordance with the Delivery Schedule shall be discounted by an amount equal to one-half of one percent (0.5%) of such volume during the April through September irrigation season, or one-fourth of one percent (0.25%) of such volume during the October through March non-irrigation season, for each river mile in distance between Hite and such alternative Delivery Point(s) (such distance calculated to the nearest one-tenth of a mile), or by such other amount as determined by the Division Engineer for Water Division 1 (such office or its replacement the "Division Engineer") or as specified in an applicable statute or decree from a court of applicable jurisdiction. The product of this calculation shall represent the amount of avoided transit loss in acre-feet, which Aurora shall be entitled to retain.

5. Source and Quality of Reusable Raw Water. The Reusable Raw Water to be provided by Aurora under this Agreement shall, at Aurora's discretion, consist of Aurora's reusable municipal return flows to the South Platte River, any fully consumable portion of changed irrigation water rights owned by, or available to Aurora, fully consumable water diverted pursuant to decrees entered in 03CW414, 03CW415 and 06CW104, Water Division 1, and any other legal source of Reusable Raw Water available to Aurora. Under no circumstances shall this Agreement be interpreted to mean that Aurora must supply potable water should the sources set forth in this paragraph be unavailable. Aurora does not warrant or guaranty any water quality standards with respect to the Reusable Raw Water to be delivered as provided for under this Agreement and ASC hereby waives any such warranty or guaranty.

6. Use of Reusable Raw Water. ASC shall have the right to use and reuse to extinction the Reusable Raw Water delivered under this Agreement for water supply purposes, including without limitation replacement and exchange purposes in connection with any substitute water supply plan approved by the Colorado State Engineer's Office, and augmentation and exchange purposes in accordance with any augmentation plan or appropriative right of exchange decreed by the Colorado Water Court, and any other lawful exchanges; provided that such use is consistent with the terms of this Agreement and all applicable laws, rules and regulations

7. Water Rights Accounting. ASC will be solely responsible for any and all reporting and accounting required by the Colorado State Engineer, the Division Engineer for Water Division 1,

the Water Commissioner for Water District 2, or any other lawful authority after Aurora makes its delivery of the Reusable Raw Water as provided for under this Agreement. This responsibility includes, but is not limited to, ASC's withdrawal of the Reusable Raw Water from the South Platte River (if any) and ASC's use of the Reusable Raw Water. In addition to the reporting requirements set forth in Paragraph 4(b) above, Aurora will provide any and all reporting and accounting required by the Colorado State Engineer, the Division 1 Engineer, or any other lawful authority concerning proof of the reusability of the Reusable Raw Water and conveyance of the Reusable Raw Water to the Delivery Points.

8. Consideration. ASC agrees to pay to Aurora the amount of Three Hundred Dollars (\$300.00) per acre-foot ("Unit Rate") for all Reusable Raw Water delivered under this Agreement. The Unit Rate shall remain constant throughout the Term.

9. Payment. Within thirty (30) business days of the Effective date, Aurora shall bill ASC for all Reusable Raw Water it will deliver to ASC during 2016, as shown on the Delivery Schedule. On January 2, 2017, and on each succeeding January 2 through 2020, Aurora shall bill ASC for all Reusable Raw Water it will deliver to ASC during the calendar year of the Agreement as set forth in the Delivery Schedule. All billing shall be done on such forms as designated by Aurora for that purpose. Payment by ASC shall be due no later than forty-five (45) days after such bill has been issued. If ASC does not make the required payment by the due date, Aurora may give ASC a notice of default. If ASC does not cure the default by making full payment within thirty (30) days of receipt of any notice of default, then Aurora, in addition to pursuing any other remedies available to it, may declare this Agreement terminated. Any delay in Aurora's invoicing for payments under this Agreement shall not constitute a breach of Aurora's obligations and shall not relieve ASC of its obligations to pay all consideration due hereunder.

10. Non-Assignability and No Subleases. Neither Party may assign its rights or delegate its duties hereunder without the prior written consent of the other Party. ASC may not sublease or give others the right to use the Reusable Raw Water to which it is entitled pursuant to this Agreement without the permission of Aurora, which permission Aurora may grant or withhold at its discretion.

11. Successors and Assigns. This Agreement and the rights and obligations created hereby shall be binding upon and inure to the benefit of the Parties hereto, and their respective successors and assigns if any are allowed. The Parties intend that Aurora shall not incur any liability other than those liabilities directly running to Aurora or its assigns permitted under this Agreement if any. ASC therefore covenants and agrees to indemnify, save and hold harmless Aurora from all liability, cost or expense of any kind, including Aurora's costs of defense to any other party arising in connection with or relating in any way to the execution, delivery or performance of any allowed assignment or any related document by the parties thereto or to the consummation of any transaction in connection with such documents.

12. No Rights Conferred. Except as otherwise provided in this Agreement, the Parties acknowledge that all Reusable Raw Water provided hereunder is intended for the present and future use of Aurora. It is further understood and agreed to by the Parties that this Agreement shall confer no rights in such Reusable Raw Water upon ASC, nor shall any future needs of ASC for

water enable ASC to make claim against Aurora for any of Aurora's Reusable Raw Water, other water or water rights. ASC further acknowledges the statutory prohibition against vesting of a right for a continued lease expressed in CRS § 31-35-201 applies in these circumstances.

13. No Opposition to Aurora Water Court Matters. From the date of execution of this Agreement through the conclusion hereof, ASC agrees that neither it nor any successors, if any are allowed, will oppose Aurora in any Colorado Water Court applications filed by Aurora except to assert injury to a vested or conditional water right.

14. Aurora Right to Request Reuse. The Parties hereto acknowledge that hydrologic and other conditions may exist wherein ASC may not need all or a portion of the Reusable Raw Water flow available to it under this Agreement. Aurora may contact ASC, not more frequently than once per day, to determine if any of the Reusable Raw Water to be provided hereunder will not be needed.

15. Entire Agreement of the Parties. This Agreement represents the entire agreement of the Parties, and neither Party has relied upon any fact or representation not expressly set forth herein. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof, are merged in this Agreement.

16. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by written agreement duly authorized and executed by the Parties hereto.

17. Enforcement. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, including damages, as may be available according to the laws of the State of Colorado. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms hereof, and that any breach hereof resulting in any recoverable damages shall not thereby cause the termination of any obligations created by this Agreement unless such termination is requested by the Party not in breach hereof.

18. Failure to Perform Due to Force Majeure. Subject to the terms and conditions in this Paragraph, no Party to this Agreement shall be liable for any delay or failure to perform under this Agreement due solely to conditions or events of *force majeure*, as that term is specifically defined herein; provided that: (a) the non-performing Party gives the other Party prompt written notice describing the particulars of the occurrence of the *force majeure*; (b) the suspension of performance is of no greater scope and of no longer duration than is required by the *force majeure* event or condition; and (c) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform and provides weekly progress reports to the other Party describing the actions taken to remedy the consequences of the *force majeure* event or condition. As used herein *force majeure* shall mean any delay or failure of a Party to perform its obligations under this Agreement caused by events beyond the Party's reasonable control, and without the fault or negligence of the Party, including, without limitation A) changes in state or federal law or administrative practice concerning, water rights administration, water quality or stream flow requirements, B) changes in state water rights administrative practice concerning the reuse of Reusable Raw Water through leases or other agreements to others for use at locations other than Aurora, Colorado, including,

but not limited to, challenges to retained dominion and control, C) acts of God, D) sudden actions of the elements such as floods, earthquakes, hurricanes, or tornadoes, E) sabotage, F) vandalism beyond that which can be reasonably prevented by the Party, G) terrorism, H) war, I) riots, J) fire, K) explosion, L) severe cold or hot weather, M) snow, N) drought [a condition more severe than that which occurred in 2002 in the South Platte River Basin or any basin from which the Reusable Raw Water originates] O) other extreme weather conditions, P) blockades, Q) insurrection, R) strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); S) actions by federal, state, municipal, or any other government or agency (including but not limited to, the adoption or change in any rule or regulation or environmental constraint imposed by federal, state or local government bodies) but only if such requirements, actions, or failures to act prevent or delay performance, T) inability, despite due diligence, to obtain required licenses, permits or approvals, and, U) changes of law relating to financial obligations, revenues and budgetary matters concerning Colorado local governments and their enterprises. In the event a *force majeure* event or condition prevents Aurora from delivering all or part of the agreed upon amounts of Reusable Raw Water to ASC, Aurora shall refund all advance payments made for that water not delivered within 60 days of the conclusion of the *force majeure* event or the cancellation of the Agreement pursuant to the remaining provisions of this Paragraph. In no event will any delay or failure of performance caused by any conditions or events of *force majeure* extend this Agreement beyond its stated term. In the event any delay or failure of performance on the part of the Party claiming *force majeure* continues for an uninterrupted period of more than one hundred twenty (120) days from its occurrence or inception as noticed pursuant to this Paragraph, the Party not claiming *force majeure* may, at any time following the end of such one hundred twenty (120) day period, terminate this Agreement upon written notice to the Party claiming *force majeure*, without further obligation except as to costs and balances incurred prior to the effective date of such termination.

19. Subordination Clause. This Agreement shall be made expressly subordinate to any present or future use of Reusable Raw Water by Aurora for the purposes of augmentation, exchange, or any other use which is or will be of greater direct benefit to Aurora and the users of its water delivery system, as well as to the water supply obligations which Aurora has incurred or will incur through any of the following: (a) its obligations pursuant to Water Division 1, Case Nos. 95CW226 and 227, Case No. 99CW158, Case No. 01CW284, and Case No. 02CW341; (b) the November, 30, 2007, Water Supply Agreement with the Rocky Mountain Energy Center, LLC; (c) the May 20, 2003, Water Rights Purchase and Sale Agreement with the City of Thornton, Colorado; (d) the May 19, 2006, Reusable Water Lease Agreement with the Central Colorado Water Conservancy District; (e) the June 1, 2015, Agreement for Delivery of Reclaimed Wastewater with Ready Mixed Concrete; (f) the June 30, 2015, IGA for Delivery of Reclaimed Wastewater with E-470 Public Highway Authority; (g) the August 16, 2015, Agreement with Asphalt Specialties Company for Lease of Firm Delivery of Reclaimed Wastewater; (h) the September 17, 2015, Agreement for Lease of Firm Delivery of Reclaimed Groundwater with Bucklen Equipment Company; (i) the December 8, 2015, IGA with Adams County for Delivery of Reclaimed Wastewater, (j) the April 4, 2016, Agreement for Delivery of Reusable Raw Water with R.M. Hiner Construction Company, Inc.; (k) the April 30, 2016, Agreement for Delivery of Reusable Raw Water with Ready Mixed Concrete Company; and (l) any and all obligations resulting from any firm delivery annual lease or delivery contract of Reusable Raw Water executed prior to the date of this Agreement. The foregoing subordination does not, in and of itself, create an excuse for Aurora's failure to deliver

the Reusable Raw Water under this Agreement. However, the Parties agree that the purpose and effect of the foregoing subordination is to establish a priority among and between Aurora's obligation with respect to its Reusable Raw Water in the event of a *force majeure* event causing delay or interruption in Aurora's delivery of the Reusable Raw Water.

20. Sole Obligation of Utility Enterprise.

(a) This Agreement shall never constitute a general obligation or other indebtedness of the City of Aurora ("City"), or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City within the meaning of the Constitution and laws of the State of Colorado or of the Charter and ordinances of the City.

(b) In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Agreement, ASC shall have no recourse for any amounts owed to it against any funds or revenues of the City except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Water Enterprise Fund, as the terms "Water System" and "Water Enterprise Fund" are defined in City Ordinance No. 2003-18, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City.

21. Miscellaneous.

(a) **Intent of Agreement.** This Agreement is intended to describe the rights and responsibilities of and between the named Parties and is not intended to, and shall not be deemed to confer rights upon any persons or entities not named as Parties, nor to limit in any way the powers and responsibilities of Aurora, ASC, or any other entity not a party hereto.

(b) **Effect of Invalidity.** If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either Party or as to both Parties, the entire Agreement will terminate.

(c) **Waiver of Breach.** Waiver of breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party of either the same or any other provision of this Agreement.

(d) **Multiple Originals.** This Agreement may be simultaneously executed in any number of counterparts, each one of which shall be deemed an original, but all of which constitute one and the same Agreement.

(e) **Headings for Convenience.** Headings and titles contained herein are intended for the convenience and reference of the Parties only and are not intended to confine, limit, or describe the scope of intent of any provision of this Agreement.

(f) **Recordation.** Following the execution of this Agreement, the Parties may cause this Agreement to be recorded with the Clerk and Recorder's Office of such county or counties in Colorado as they may desire.

(g) **Notice.**

(1) All notices, requests, demands, or other communications ("Notice", and collectively, "Notices") hereunder shall be in writing and given by (i) established express delivery service which maintains delivery records requiring a signed receipt, (ii) hand delivery, or (iii) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address as the Parties may designate by Notice in the above manner.

To Aurora: City of Aurora
15151 East Alameda Parkway, Suite 3600
Aurora, CO 80012-1555
Attn: Director, Aurora Water

with copy to City of Aurora
15151 East Alameda Parkway, Suite 5300
Aurora, CO 80012-1555
Attn: City Attorney

To ASC: Asphalt Specialties Co., Inc.
10100 Dallas Street
Henderson, CO 80640
Attn: Daniel W. Hunt

Notices shall be effective (iv) the next day following the date sent by an established express delivery service which maintains delivery records requiring a signed receipt, (v) upon receipt by the addressee of a hand delivery, or (vi) three (3) days following the date of mailing via certified or registered mail, postage prepaid, return receipt requested.

(2) Notwithstanding the foregoing, the Parties may communicate with respect to modifications to the Delivery Schedule pursuant to Paragraph 3 of this Agreement by e-mail as follows: (i) to Aurora to John Murphy at jmurphy@auroragov.org; and (ii) to ASC to such e-mail address as may be designated by Notice in the manner provided for under this subparagraph 21(g).

(h) **Non-Business Days.** If any date for any action under this Agreement falls on a Saturday, Sunday or a day that is a "holiday" as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

(i) **Commissions and Fees.** Each Party shall be solely responsible for the payment of any and all real estate commissions or other commissions or fees that it incurs with respect to this Agreement.

(j) **Governing Law and Venue.** This Agreement and its application shall be construed in accordance with the law of the State of Colorado. Should it be necessary to initiate court proceedings concerning this Agreement, the Parties agree that venue shall be in the District Court for Arapahoe County, Colorado.

(k) **No Attorneys' Fees.** In the event of any litigation, mediation, arbitration or other dispute resolution process arising out of or related to this Agreement each Party agrees to be responsible for its own attorneys' and other professional fees, costs and expenses associated with any such proceedings.

(l) **No Construction Against Drafter.** This Agreement was drafted by Aurora with review and comment from the attorney for ASC. Accordingly, the Parties agree the legal doctrine of construction against the drafter will not be applied should any dispute arise concerning this Agreement.

22. Effective Date. The "Effective Date" of this Agreement shall be the date it is signed by the Director of Aurora Water.

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement as of the Effective Date.

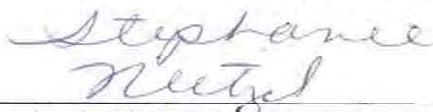
(signatures on the following pages)

CITY OF AURORA, COLORADO,
ACTING BY AND THROUGH ITS
UTILITY ENTERPRISE


Marshall P. Brown, Director

6/29/16
Date

APPROVED AS TO FORM FOR AURORA:

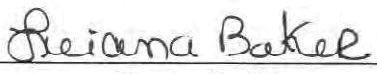

Stephanie Neitzel, Assistant City Attorney II

6/29/16
Date

16001666
ACS #

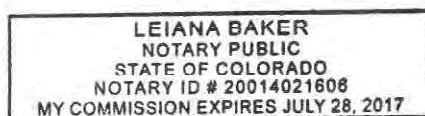
STATE OF COLORADO)
) ss
COUNTY OF ARAPAHOE)

The foregoing instrument was acknowledged before me this 29 day of June, 2016, by Marshall P. Brown, Director, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.


Witness my hand and official seal. 
Notary Public

My commission expires: 7-28-17

(SEAL)



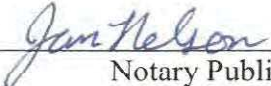
ASPHALT SPECIALTIES CO, INC. ("ASC")


Daniel W. Hunt, President

6-23-16
Date

STATE OF COLORADO)
) ss.
COUNTY OF Adams)

The foregoing Agreement was acknowledged before me this 23rd day of June, 2016, by Daniel W. Hunt as President of Asphalt Specialties Co. Inc.

Witness my hand and official seal. 
Notary Public

My commission expires: April 27, 2020

(SEAL)

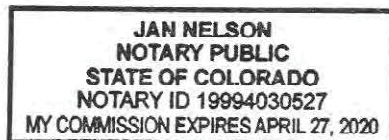


EXHIBIT A - 6/29/2016 Lease Replacement Water Delivery Schedule 2016-2020

Year	Month	Replacement Volume [acre-ft]	Cost Per Acre-foot [\$/acre-ft]	Total Price [\$]
2016	January			
	February			
	March			
	April			
	May			
	June			
	July			
	August	2.06		
	September	2.43		
	October	2.52		
	November	2.30		
	December	1.70		
2016 Totals		11.01	\$300.00	\$3,303.00
2017	January	1.21		
	February	1.13		
	March	1.16		
	April	1.87		
	May	2.44		
	June	3.43		
	July	4.09		
	August	4.09		
	September	3.30		
	October	3.10		
	November	2.74		
	December	2.04		
2017 Totals		30.60	\$300.00	\$9,180.00
2018	January	1.21		
	February	1.13		
	March	1.16		
	April	1.87		
	May	2.44		
	June	3.43		
	July	4.09		
	August	4.09		
	September	3.30		
	October	3.10		
	November	2.74		
	December	2.04		
2018 Totals		30.60	\$300.00	\$9,180.00
2019	January	2.43		
	February	2.17		
	March	2.20		
	April	2.72		
	May	2.83		
	June	2.93		
	July	3.09		
	August	2.59		
	September	2.74		
	October	2.52		
	November	2.19		
	December	2.19		
2019 Totals		30.60	\$300.00	\$9,180.00

EXHIBIT A - 6/29/2016 Lease Replacement Water Delivery Schedule 2016-2020

Year	Month	Replacement Volume [acre-ft]	Cost Per Acre-foot [\$/acre-ft]	Total Price [\$]
2020	January	2.43		
	February	2.17		
	March	2.20		
	April	2.72		
	May	2.83		
	June	2.93		
	July	3.09		
	August	2.59		
	September	2.74		
	October	2.52		
	November	2.19		
	December	2.19		
2020 Totals		30.60	\$300.00	\$9,180.00

Notes:

Month = Past replacement volumes purchased and delivered

Greg Geras

From: Murphy, John <JMurphy@auroragov.org>
Sent: Wednesday, September 26, 2018 2:46 PM
To: Greg Geras
Subject: RE: ASCI - Revised Replacement Water Delivery Schedule Request

Thanks Greg,

Aurora will make deliveries according to the revised schedule you sent.

John Murphy

Water Resources Project Specialist | Water Department | City of Aurora
office 303.739.7360 | cell 303.681.7359



[Facebook](#) | [Twitter](#) | [Nextdoor](#) | [AuroraTV.org](#)

From: Greg Geras [mailto:GregG@asphaltspecialties.com]
Sent: Wednesday, September 26, 2018 2:27 PM
To: Murphy, John <JMurphy@auroragov.org>
Subject: ASCI - Revised Replacement Water Delivery Schedule Request

Hi John,

Please see the revised replacement water delivery schedule (Attachment 1) for the lease signed on 6/29/2016 (Attachment 2). This schedule contains monthly water delivery totals for the upcoming lease year (2019) through the end of the lease (2020). No additional water is being requested. I am requesting a re-allocation of the water delivery volumes per month (i.e., monthly totals still add up to 30.60 ac-ft per year). Please let me know if this revised schedule is acceptable. I appreciate your help.

Please let me know if you have any questions.

Thank you,

Greg Geras
Land Resource Manager
Asphalt Specialties Co., Inc.
10100 Dallas Street
Henderson, CO 80640
Office (Direct): 720-322-7055 | Cell: 303-495-9888
Office (Main): 303-289-8555 | Fax: 303-289-7707
E-mail: GregG@asphaltspecialties.com
Web: www.asphaltspecialties.com

April 30, 2010

Permittee Address

RE: Mining Operations with Exposed Ground water

To Whom It May Concern:

The Division of Reclamation Mining and Safety is responsible for ensuring that Sand and Gravel mining operators comply with the requirements of the Colorado Land Reclamation Act for the Extraction of Construction Materials (Act) and the Mineral Rules and Regulations of the Colorado Mined Land Reclamation Board for the Extraction of Construction Materials (Rules). Among these requirements are provisions for the protection of water resources. The Act requires that reclamation plans must ensure minimization of disturbances to the prevailing hydrologic balance, including disturbances to the quantity of water in the area affected by mining and in the surrounding areas. § 34-32.5-116(4)(h). Rule 3.1.6(1)(a) requires compliance with Colorado water laws and regulations governing injury to existing water rights both during and after mining. Permits must specify how the permittee will comply with applicable Colorado water laws and regulations governing injury to existing water right rights. Rule 6.3.3(j); Rule 6.4.5(2)(c). After an extensive review, the Division determined that several operators may not have appropriate permit conditions to address certain reclamation liabilities arising from impacts to water resources.

In September 2009 the Division of Water Resources (DWR) updated its Guidelines for Sand and Gravel Pits. These guidelines provide guidance on achieving compliance with state law regarding replacement of depletions from sand and gravel mining, thus the guidelines provide a benchmark for the protection of hydrologic balance required under the Act and Rules. As noted in the Guidelines, sand and gravel operations which expose groundwater without complying with state law create a reclamation liability by impacting available groundwater.

State law requires that any person exposing ground water must obtain a well permit from the SEO pursuant to § 37-90-137(11). Because exposed groundwater results in out-of-priority water depletions, operations which expose ground water must also eventually obtain a water-court approved augmentation plan. Currently, several operators do not have either an augmentation plan or bonding to provide an alternative method to mitigate injurious stream depletions that result from mining-related exposure of ground water. The Division has a statutory duty to ensure that lands affected by mining are reclaimed in a manner that complies with state law and to ensure that operators have sufficient bonding to achieve reclamation. In order to assist operators in achieving compliance with these requirements, the Division proposes that, by April 30, 2011, operators should contact the Division and agree upon a plan for achieving compliance.

The Division has identified four approaches for operators:

1. File a financial warranty that will ensure backfilling of the pit to cover the exposed ground water to a depth of two feet above the static ground water level or,
2. Obtain a court approved augmentation plan prior to exposing ground water or,
3. File a financial warranty to cover the cost of installing a clay liner or slurry wall that meets the Division of Water Resources requirements for preventing ground water exposure or,
4. Obtain approval from the Division of Water Resources that acknowledges compliance with the SEO's requirements pursuant to § 37-90-137(11).

The Division will work with operators on an individual basis as they move to implement one of these plans. It is likely that options 1 and 3 will require the submittal of a technical revision or an amendment to the existing permit depending on the nature of the current mining and reclamation plan and the proposed changes. Increased financial warranties, as a result of these modifications, may be posted in a phased manner not to exceed three years. Amendments or revisions currently under review will be required to be approved by April 30, 2011 and may use the phased financial warranty approach described above. New applications going forward or presently under review by the Division will be required to meet the requirements of one of the options 1-4 at the time of application approval. Failure of affected operators to initiate contact with the Division and gain compliance as described above could result in an enforcement action being issued by the Division.

If you have any questions, please contact Tony Waldron at 303-866-3567, extension 8150.

cc: Permit Id Site Name