



COLORADO
Division of Water Resources
Department of Natural Resources

March 2, 2021

Charles E. Stanzione, P.G.
BBA Water Consultants, Inc.
333 West Hampden Avenue, Suite 1050
Englewood, CO 80110

Re: Willow Creek Mine Substitute Water Supply Plan
DRMS File No. M-1983-011
Sections 5 and 6, T11S, R80W. 6th P.M.
Water Division 2, Water District 11
SWSP ID 6230, WDID 1107819

Approval Period: March 2, 2021 through February 28, 2022
Contact Information: (303) 806-8952; cstanzione@bbawater.com

Dear Mr. Stanzione:

We have reviewed your letter of December 16, 2020 requesting approval for a substitute water supply plan ("SWSP") pursuant to § 37-92-308(5), C.R.S., for a gold sluice mining operation for Willow Creek Mine ("Willow Creek" or "Applicant"). Notice was served to all subscribers to the Division 2 SWSP notification list on December 16, 2020, and no comments were received during the 35-day comment period. The \$300 filing fee has been received and given receipt no. 10008566.

An application for approval of a change of water right or plan for augmentation has not been filed with the water court and the depletions associated with the proposed water uses will not exceed five years, therefore this request has been submitted pursuant to § 37-92-308(5), C.R.S. In accordance with § 37-92-308(5), C.R.S., SWSPs may be approved for new water use plans involving out-of-priority diversions or a change of water right, if no application for approval of a plan for augmentation or a change of water right has been filed with the water court and the depletions associated with such water use plan or change will be for a limited duration not to exceed five years. **This is the first year of approval for this SWSP.**

SWSP OPERATION

The Willow Creek mine is a placer mining operation that processes glacial till material through a trommel. Water used to wash and separate material is circulated through a series of three settling ponds that allow process water to be recirculated and reused. Water is delivered to the site through a ditch system that crosses property owned by the City of Aurora ("Aurora"). Previously, water use at the mine occurred pursuant to an administrative exchange. This SWSP is being requested to allow the current operations to continue with no change in the amount or location of water use.



Glacial till material is excavated on-site, and processed using a gravity flow trommel. Water is diverted from Corske Creek into a ditch, and delivered to an on-site pond, and then delivered into the trommel/slucice system. A vibrating hopper feeds an eight-inch grizzly screen. All eight inch minus material is then fed through an apron feeder, onto a 36 inch conveyor belt that is conveyed by stacker to a stockpile to be used for backfilling the open pit. Material smaller than $\frac{7}{8}$ inch is conveyed into a hopper which feeds two side-by-side 4X30 inch sluices followed by two 42 inch square duplex jigs and another set of 4X30 sluices. The final concentrate is stored in 55 gallon drums in the process building awaiting final gravity filtration. Sluice tailings are placed in a three step series of settling ponds that allows for recirculating process water. The fresh water pond is lined, and does not expose groundwater. The three recycling ponds are excavated above the groundwater table. According to the DRMS permit application from August 14, 2018, the groundwater level is approximately 54 feet below ground surface, and the lowest elevation of disturbance for the mining activities including pond construction, is expected to be 9850 feet in elevation.

The water demand during mining operations is estimated to be 4500 gallons per day for dust suppression, and approximately 3000 gallons per day for processing needs (totaling 7500 gallons per day or 0.023 acre-feet), which is the average daily consumption calculated over a period of time. In addition, the calculated evaporation of the 1 acre pond is approximately 2.17 acre-feet per year. The combined total depletion for the site is estimated at 6.31 acre-feet per year. In order to give Willow Creek operational flexibility, the estimated maximum demand during this SWSP was projected to be approximately 2.5 acre-feet per month, not to exceed 15 acre-feet/year, assuming a 6 month mine operation period. Diversions are considered to be 100% consumptive.

DEPLETIONS

Depletions from the site consist of direct diversions of water from Corske Creek, which will be used for processing material and dust suppression. All excavated ponds on site have been constructed above the water table. No lagged depletions occur on site.

REPLACEMENTS

Willow Creek has leased 15 acre-feet of fully consumable water from the Pueblo Board of Water Works ("PBWW") and will use this leased water as the source of replacement water through November 30, 2022. A copy of the lease has been provided and a copy is attached to this letter.

CONDITIONS OF APPROVAL

This SWSP is hereby approved pursuant to § 37-92-308(5), C.R.S., subject to the following conditions:

1. This SWSP shall be valid for the period of March 2, 2021 through February 28, 2022, unless otherwise revoked or superseded by decree. Should an additional SWSP be requested, the provisions of § 37-92-308(5)(b), C.R.S., shall apply. The statutory fee of \$300 will be required pursuant to § 37-92-308(8), C.R.S. Any request for an additional SWSP must be submitted to this office no later than **December 1, 2021**.
2. In accordance with §37-92-308(5), C.R.S., this SWSP cannot be renewed or approved for more than five years and the depletions associated with the proposed water uses must not exceed five years. **This is the first year of approval for this SWSP.**
3. The total direct diversions from Corske Creek at the Willow Creek Mine site must not exceed 15.0 acre-feet, including transit losses from any releases from upstream reservoirs, during the SWSP period. Total consumption must not exceed the aforementioned amounts unless a new SWSP application is made and approved for such.
4. All direct diversions from Corske Creek will be measured with a Parshall Flume, or equivalent measuring device, and recorded with a digital continuous recorder. Daily average diversions will be reported monthly and augmented at 100%.
5. 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 or all depletions have ceased and any lagged depletions have been replaced. All replacement water must be concurrent with depletions in quantity, timing and location, except that releases aggregated at the discretion of the Division Engineer or the Augmentation Coordinator may occur in a later month than the depletions. Releases of water by PBWW pursuant to this SWSP shall be identified as to the Reservoir making the release, to determine appropriate transit losses, and be coordinated with the Division Engineer and the Augmentation Coordinator. All release requests for the following month must be coordinated with Division 2 Staff by the last day of each month. All releases of water by PBWW are subject to transit losses, which are subject to assessment and modification by the Water Commissioner and Division Engineer.
6. The Applicant shall provide daily accounting (including, but not limited to diversions, and river calls) on a monthly basis. The accounting must be submitted to the Division Engineer via the online submittal tool. Please contact Joe Regur at joseph.regur@state.co.us to set up an account with the subject line "Willow Creek SWSP". Accounting must be submitted within 10 days after the end of the month for which the accounting applies. Accounting and reporting procedures are subject to approval and modification by the Division Engineer.
7. The State Engineer may revoke this SWSP or add additional restrictions to its operation if at any time the State Engineer determines that injury to other vested water rights has occurred or will occur as a result of the operation of this SWSP. Should this SWSP

expire without renewal or be revoked prior to adjudication of a permanent plan for augmentation, all use of water under this SWSP must cease immediately.

8. The decision of the State Engineer shall have no precedential or evidentiary force, shall not create any presumptions, shift the burden of proof, or serve as a defense in any pending water court case or any other legal action that may be initiated concerning the SWSP. This decision shall not bind the State Engineer to act in a similar manner in any other applications involving other SWSPs or in any proposed renewal of this SWSP, 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. Any appeal of a decision made by the State Engineer concerning an SWSP pursuant to § 37-92-308(5), C.R.S., shall be to the Division 2 water judge within thirty days of the date of this decision.

Should you have any questions regarding this SWSP, please contact Willem Scott at (719) 221-0367 or willem.scott@state.co.us, or Melissa van der Poel of this office.

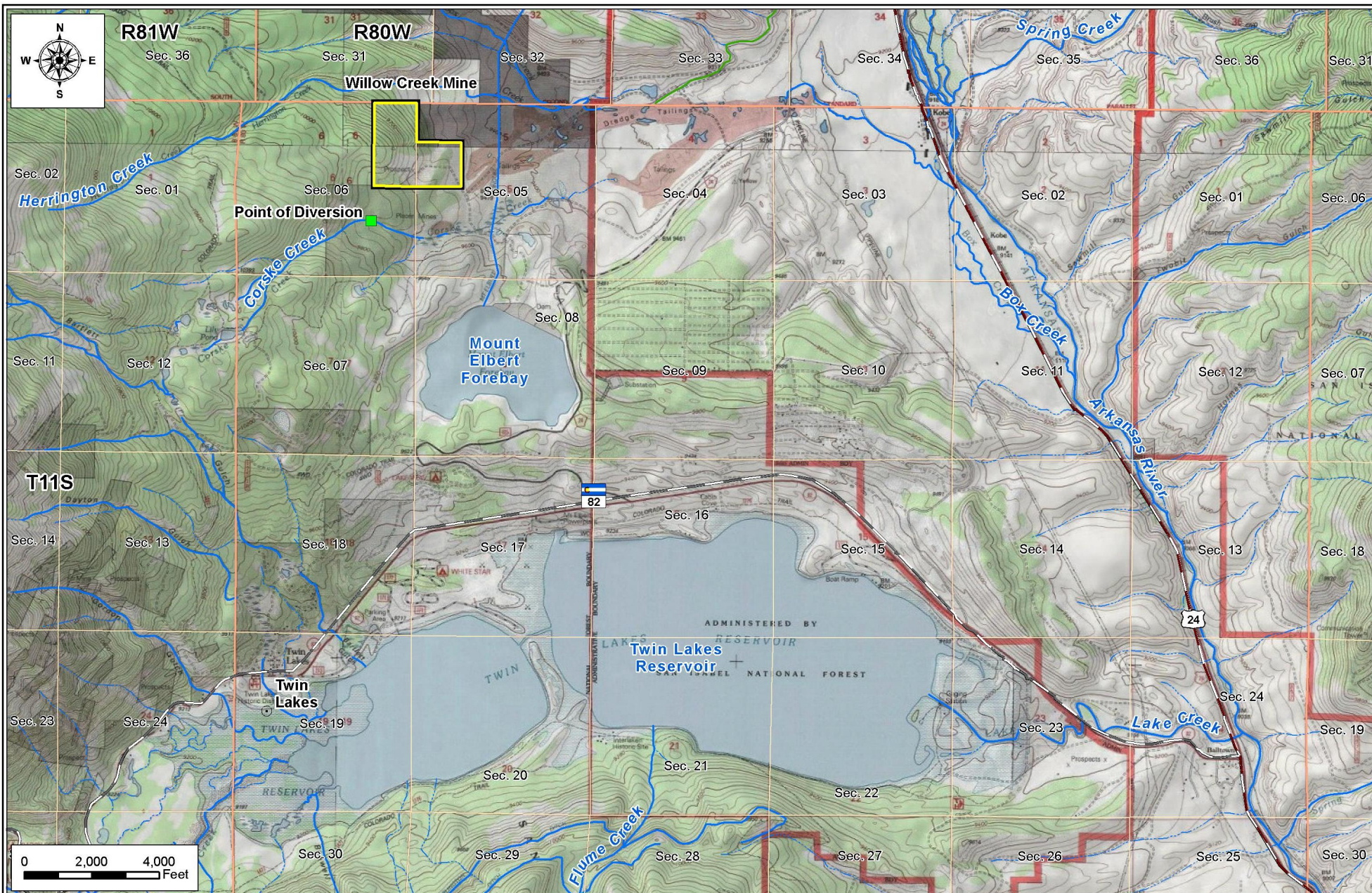
Sincerely,



Jeff Deatherage, P.E.
Chief of Water Supply

Attachments: Willow Creek Mine General Location Map, Table 1, Water Lease Agreement

cc: Division 2 SWSP Review Team
Willem Scott, District 11 Lead Water Commissioner
Division of Reclamation, Mining and Safety



Willow Creek Mine General Location Map

Date: 12/3/2020 | Job No. 2027.00

Legend

- Point of Diversion
- Mine Permit Boundary - Approx.

Data Source: Lake County, Edward-James Surveying, CDSS, CDOT, USGS, BLM



Table 1
Mt. Elbert Mining Company-Willow Creek Mine
Summary of Estimated Water Demand

Month	Estimated Water Demand (ac-ft)
December 2020	0
January 2021	0
February	0
March	0
April	0
May	2.5
June	2.5
July	2.5
August	2.5
September	2.5
October	2.5
November	0
	15

Note: Demand has historically been approximately 2-3 ac-ft/yr.
These estimates are very likely high.

Attachment A

WATER LEASE AGREEMENT

This AGREEMENT is made and entered into effective as of the 15th day of December, 2020 (hereinafter called "Effective Date"), by and between Pueblo, a municipal corporation, acting by and through the Board of Water Works of Pueblo, Colorado (hereinafter called "Pueblo Water") and Mt. Elbert Mining Co., L.L.C., (hereinafter called "Lessee");

RECITALS

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

WHEREAS, Lessee desires to procure raw water from Pueblo Water for replacement of depletions resulting from its gold mining operation in Lake County, Colorado;

WHEREAS, Pueblo Water desires to supply raw water to Lessee for its use for this purpose; and,

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

AGREEMENT

1. **Term of Agreement.** This Agreement will be in force for a period of 2 years commencing December 1, 2020 and terminating November 30, 2022. Each twelve month period, beginning with the commencement date stated above in this paragraph, is treated as a Contract Year under the terms of this Agreement.
2. **Quantity.** In accordance with the terms hereof, Pueblo Water will make available for delivery to Lessee 15 acre-feet of water during each Contract Year. This is the quantity of water to be paid for and made available for delivery under this Agreement for each Contract Year.
3. **Delivery of Raw Water.** The water to be delivered hereunder is raw water that has not been treated to make it suitable for any particular use. Any treatment of the water delivered hereunder to make it suitable for Lessee's use is the responsibility of Lessee.
4. **Delivery of Consumable Water.** Pueblo Water agrees to deliver to Lessee transmountain water or other water that is considered totally consumable or suitable for augmentation and replacement purposes under Colorado law, including but not limited to, reusable return flows from transmountain water or other fully consumable water. Once delivered to Lessee, all water not fully consumed by Lessee's use remains the property of Pueblo Water.

Attachment A

5. **Place of Delivery and Choice of Water Source.** The Place of Delivery will be the location where water is released from any of Pueblo Water's sources, including but not limited to stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir; or from direct flow transmountain water rights; with the sources of such water to be at the option of Pueblo Water, but such sources do not include Fryingpan-Arkansas Project Water. At the option of Pueblo Water, such sources may be changed from time to time to suit the operational convenience of Pueblo Water. Lessee bears responsibility for any exchanges necessary to get the leased water from the Place of Delivery to Lessee's place of use.

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

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

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

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

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

8. **Transportation and Evaporation Losses.** The quantity of water to be delivered hereunder will be measured at the Place of Delivery. Lessee will bear all transportation and evaporation losses from the Place of Delivery to Lessee's place of use. Pueblo Water will, in its sole discretion, deliver water from the location closest to the Lessee's place of use when reasonably possible in order to minimize transit losses.

9. **Notice of Delivery.** Pueblo Water agrees in accordance with the terms of this Agreement, to make available for delivery up to the quantities of water stated in paragraph 2 during the term of the Agreement at the request of Lessee. Lessee must notify Pueblo Water's Water Resources Division by email at least two business days in advance of when any requested delivery of water needs to be released. Such notice will include the desired rate of delivery and

Attachment A

the date and time such delivery should begin and end. Once released by Pueblo Water, it is the Lessee's responsibility to ensure that the state water officials cause the water released to be delivered to the Lessee's place of use. Pueblo Water will cooperate with Lessee and the state water officials to provide them with the necessary information concerning the source, location, rate, and duration of the release of the leased water.

10. **Charge.** In consideration of the water leased under this Agreement Lessee agrees to pay Pueblo Water a charge of \$762.17 per acre-foot of water for the quantities of water identified in paragraph 2 above. The parties agree that the water leased hereunder is on a "take or pay" basis. Accordingly, Lessee must pay the charge for all leased water, whether or not said quantities of water are actually taken by Lessee or are required for use by Lessee. Likewise, Pueblo Water agrees to make the water available for delivery throughout the term of this Agreement subject to paragraphs 13 through 16 below. Except as provided in paragraph 11.5, the failure of Lessee to take delivery of the full quantity of water contracted for and paid for in any given Contract Year does not entitle Lessee to a refund of any sums paid or to receive any portion of such unused water in a subsequent Contract Year.

11. **Payments.**

11.1. On the Effective Date of this Agreement, Lessee must pay to Pueblo Water the First Contract Year payment of \$11,432.55.

11.2. Upon the Effective Date of this Agreement, Lessee will also pay to Pueblo Water a non-refundable fee of \$1,000 in consideration of legal and administrative costs incurred by Pueblo Water for this Agreement.

11.3. An additional payment in an amount equal to the Contract Year quantity of water described in paragraph 2 multiplied by the applicable per acre-foot charge as determined under paragraphs 10 and 12 is due from Lessee to Pueblo Water on the first day of the second Contract Year.

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

11.5. If Pueblo Water does not make available for delivery the full quantity of water as provided in paragraph 2 during any Contract Year pursuant to paragraphs 13 through 16, Pueblo Water will notify Lessee of the quantity of water available for the Contract Year. Said notice will include reimbursement to Lessee of the amount paid by Lessee, per acre-foot, for the difference between the quantity of water provided in paragraph 2 and the quantity of water specified as available for delivery in said notice.

12. **Escalation.** The charge for water for the second Contract Year of this Agreement will be adjusted based upon the percentage increase, if any, over the previous calendar year in Pueblo Water's water rates for its general customers for treated water. For example, if the percentage increase for the second Contract Year is five percent, then the price for the second Contract Year

Attachment A

will be \$800.28 per acre-foot. Pueblo Water will give Lessee written notice of any rate increase pursuant to this paragraph that will take effect in the next Contract Year.

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

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

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

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

17. **Not a Permanent Supply.** The Parties understand and agree that this Agreement is not to be interpreted as any commitment on the part of Pueblo Water to furnish water to Lessee on a

Attachment A

permanent basis, but rather to provide Lessee with water from Pueblo Water for the temporary period of the term of this Agreement.

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

19. **Assignability; Sublease.**

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

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

20. **Prohibition of Use For Marijuana Enterprises.** Lessee will not use water provided under this Agreement for marijuana enterprises.

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

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

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

24. **Notices.** All notices to be given with respect to this Agreement must be in writing. Unless otherwise provide in this Agreement, each notice must be sent by first class mail, postage prepaid, to the party to be notified at the address set forth herein or at such other address as either party may from time to time designate in writing. Every notice will be deemed to have been given at the time it is deposited in the United States mail in the manner prescribed herein. Nothing contained herein is to be construed to preclude personal service of any notice in the manner prescribed for personal service of a summons or other legal process. All notices, except for delivery requests pursuant to paragraph 9 above, required to be given to Pueblo Water hereunder must be delivered to:

Attachment A

Board of Water Works of Pueblo, Colorado
Attn: Executive Director
Mail: Hand Delivery:
P.O. Box 400 319 West 4th Street
Pueblo, CO 81002-0400 Pueblo, CO 81003

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

Mt. Elbert Mining Co., L.L.C.
32460 Inverness Drive
Evergreen, CO 80439

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

25. **Remedies.** In the event that either party defaults in the performance of any of its obligations under this Agreement, in addition to any and all other remedies provided in this Agreement or by law or equity, each party will have the right of specific performance against the other. Any suit, action or proceeding arising out of or relating to this Agreement will only be instituted in the County of Pueblo, State of Colorado.

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

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

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

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

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

Attachment A

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

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

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

34. **Offer.** This Agreement will not be effective and Pueblo Water withdraws its offer to enter into this Agreement unless Lessee executes and delivers this Agreement to Pueblo Water, along with the initial payments required under paragraphs 11.1 and 11.2 above, within sixty (60) days following approval of this Agreement by Pueblo Water's elected Board which occurred on November 17, 2020.

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

Pueblo, a municipal corporation, acting by and through the
BOARD OF WATER WORKS OF PUEBLO, COLORADO

By: _____

Seth J. Clayton, Executive Director

MT. ELBERT MINING CO., L.L.C.

By: _____

Dennis Sonnenschein, Managing Director