

**Permit M-1980-244**  
**Cresson Project Amendment 14**

**Appendix 4**  
**Water Contract Agreements**

## WATER LEASE AGREEMENT

This AGREEMENT is made and entered into effective as of the 17<sup>th</sup> day of April, 2014, by and between the Board of Water Works of Pueblo, Colorado (hereinafter called "Pueblo Water") and Cripple Creek & Victor Gold Mining Company, a Colorado joint venture, and AngloGold Ashanti (Colorado) Corp., its Manager (hereinafter called "Lessee");

### RECITALS

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

WHEREAS, Lessee desires to procure raw water from Pueblo Water for augmentation, mining, and industrial purposes in Teller County, Colorado.

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

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

### AGREEMENT

1. **Quantity.** Each Contract Year during the term of this Agreement, and in accordance with the terms hereof, Pueblo Water will make available for delivery to Lessee 400 acre-feet of water. 400 acre-feet is both the minimum and maximum quantity of water to be paid for and made available for delivery under this Agreement for each Contract Year.
2. **Term of Agreement.** This Agreement will be in force for a period of 10 years commencing May 1, 2014 and terminating April 30, 2024. Each twelve month period, beginning with the commencement date stated above, is treated as a Contract Year under the terms of this Agreement.
3. **Notice.** Pueblo Water agrees to make available for delivery up to the quantity of water stated in paragraph 1 during each Contract Year at the request of Lessee. Lessee must notify Pueblo Water at least one business day in advance of any requested delivery of water.
4. **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.

5. **Delivery of Consumable Water.** Pueblo Water agrees to deliver to Lessee, at the Place of Delivery described in Paragraph 6, transmountain water or other water totally consumable under Colorado law, including but not limited to, reusable return flows from transmountain water or other fully consumable water. Once delivered to Lessee, all water not fully consumed by Lessee's use remains the property of Pueblo Water.

6. **Place of Delivery.** The Place of Delivery will be on the Arkansas River at the confluence with Fourmile Creek, the confluence with Beaver Creek, or Pueblo Reservoir.

7. **Choice of Water Source.** Pueblo Water may release the water from Pueblo Water's stored water at Clear Creek Reservoir, Turquoise Reservoir, Twin Lakes Reservoir; from direct flow transmountain water; or from any other reservoir or place from which Pueblo Water may legally deliver water from storage or by exchange, with the sources of such water to be at the option of Pueblo Water. At the option of Pueblo Water, such sources may be changed from time to time to suit the operational convenience of Pueblo Water.

8. **Diversion, Measurement, and Administration.** Lessee must provide appropriate and lawful means of diversion of the leased water, including such measuring devices as the Colorado administrative authorities may require. If Pueblo Water's approval or cooperation is required by Lessee in the administration of diversions of the leased water, then Pueblo Water agrees to provide the same, at the cost of Lessee.

9. **Approval to Utilize Water.** 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.

10. **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:

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

10.2. Any such delivery from Pueblo Water's supplies at 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;

10.3. 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.



11. **Transportation and Evaporation Losses.** The water delivered hereunder will be measured at the outlet of the reservoir from which released or from the point of discharge of direct flow transmountain water or reusable return flow. Lessee will bear all transportation and evaporation losses from the place of release or discharge.

12. **Charge.** In consideration of the water leased under this Agreement, Lessee agrees to pay Pueblo Water each Contract Year during the term of this Agreement a charge of \$630.63 per acre-foot of water for the quantity of water identified in paragraph 1 above, plus all rate increase as more particularly set forth in paragraph 14. The parties agree that the water leased hereunder is on a "take or pay" basis. Accordingly, Lessee must pay the Contract Year 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 each Contract Year throughout the term of this Agreement subject to paragraphs 15 through 18 below. The failure of Lessee to take delivery of the full quantity of water contracted for and paid for in any Contract Year does not entitle Lessee to the delivery of additional quantities of water in any subsequent Contract Year or to a refund of any sums paid. However, in the event that Pueblo Water is unable to make the deliveries of water to Lessee specified in this Agreement for the reasons stated in paragraphs 15 through 18, then Lessee's payment for water will be reduced or refunded in proportion to any reduction of deliveries by Pueblo Water.

13. **Payments.** The charge for water must be paid on the first day of each Contract Year in advance pursuant to the following schedule:

13.1. On the effective date of this Agreement, Lessee must pay to Pueblo Water the first Contract Year payment of \$252,252.00.

13.2. Additional payments in an amount equal to the Contract Year quantity of water described in paragraph 1 multiplied by the applicable per-acre-foot charge as determined under paragraphs 12 and 14 are due from Lessee to Pueblo Water on the first day of each Contract Year thereafter for the term of this Agreement. Delinquent balances will be subject to a late payment charge of 1.5% per month on the unpaid balance. No water will be delivered under this Agreement if Lessee has an unpaid balance.

13.3. In addition, Lessee will pay to Pueblo Water upon execution of this Agreement a non-refundable fee of \$1,000 in consideration of legal and administrative costs incurred by Pueblo Water for this Agreement.

14. **Escalation.** The charge for water for the second and all subsequent Contract Years of this Agreement will be annually adjusted based upon the percentage increase, if any, over the previous calendar year in Pueblo Water's water rates for its general customers for treated water. For example, if the percentage increase for the second Contract Year is five percent, then the price for the second Contract Year will be \$662.16 per acre-foot, and if the percentage increase for the third Contract Year is also five percent, then the price per acre-foot for the third Contract Year will be \$695.27, a five percent increase over the second Contract Year price. Pueblo Water will give to Lessee written notice before the end of the Contract Year of any rate increase pursuant to this paragraph that will take effect in the next Contract Year.

15. **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."

16. **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.

17. **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.

18. **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.

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



20. **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.

21. **Assignability; Sublease.**

21.1 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.

21.2 Lessee may sell or sublease the water obtained from Pueblo Water under this Agreement to the Town of Victor, without further approval of Pueblo Water; however, the sale or sublease agreement with the Town of Victor will provide that the agreement is subject to all the terms of this Agreement, including but not limited to, the requirements that the Town of Victor will not pay a higher price for the water than Lessee pays Pueblo Water for the water and that any sale or sublease of the water by the Town of Victor will be subject to the prior written approval by Pueblo Water as provided in paragraph 21.3 below.

21.3 Lessee may sell or sublease the water obtained from Pueblo Water under this Agreement to parties other than the Town of Victor subject to prior written approval by Pueblo Water, which approval is in the sole discretion of Pueblo Water; however, Lessee will not sell or sublease water to third parties at a higher price than it pays Pueblo Water for water under this Agreement. Sale of the water under this paragraph does not include its delivery to Lessee's customers as part of Lessee's normal water supply operations.

22. **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.

23. **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.

24. **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.

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

manner prescribed for personal service of a summons or other legal process. All notices required to be given to Pueblo Water hereunder must be delivered to:

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

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

Cripple Creek & Victor Gold Mining Co.  
PO Box 191  
Victor, Colorado 80860  
Attn: Process Manager

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

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

27. **Default, Right to Cure.** In the event that either party believes that the other is in default of any obligation under this Agreement, 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.

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

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

30. **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.

31. **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.




32. **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

33. **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.

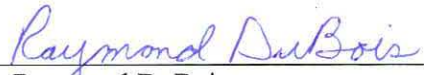
34. **Governmental Immunity.** No term or condition of this Agreement is to be construed or interpreted as a waiver, express or implied, by Pueblo Water of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §24-10-101 et seq.,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

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

BOARD OF WATER WORKS OF PUEBLO,  
COLORADO

By:   
Name: Terry R. Book  
Title: Executive Director

CRIPPLE CREEK & VICTOR GOLD MINING  
COMPANY, A COLORADO JOINT VENTURE  
*by AngloGold Ashanti (Colorado) Corp., a Delaware  
corporation, its Manager*

By:   
Name: Raymond DuBois  
Title: Vice-President & General Manager



**ADDENDUM TO AMENDED AND RESTATED AGREEMENT  
FOR THE PURCHASE OF WATER**

**THIS ADDENDUM TO AMENDED AND RESTATED AGREEMENT FOR THE PURCHASE OF WATER**, hereinafter called the "Addendum," is made and entered into on the dates set forth below, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home-rule city and municipal corporation, hereinafter called "UTILITIES," and the Cripple Creek and Victor Gold Mining Company, hereinafter called "CC&V."

**RECITALS**

- A. UTILITIES and CC&V entered into an Amended and Restated Agreement for the Purchase of Water dated May 31, 2000, hereinafter called the "Agreement," under which UTILITIES sells CC&V 300 acre feet with an option for up to 600 acre feet of water annually that CC&V uses for CC&V's Cresson Mine located in Teller County, CO.
- B. The term of the Agreement expired on April 30, 2015.
- C. Paragraph 1 of the Agreement provides that the Agreement "may be renewed for a period of 10 years upon the mutual agreement of the parties with the approval of [Utilities] Utilities Board."
- D. UTILITIES desires to renew the term of the Agreement in order to continue selling water to CC&V.
- E. CC&V desires to renew the term of the Agreement in order to continue purchasing water from UTILITIES and to secure a source of supply for the renewal term of the Agreement.
- F. UTILITIES and CC&V desire to renew the term of the Agreement for a period of 10 years that begins on May 1, 2015 and expires on April 30, 2025.
- G. UTILITIES and CC&V have determined that renewal of the term of the Agreement for a period of 10 years that begins on May 1, 2015 and expires on April 30, 2025 through this Addendum is in their respective best interests.

H. By Resolution 15-06, the Utilities Board of Colorado Springs Utilities approved the renewal of the term of the Agreement for the period of May 1, 2015 through April 30, 2025.

**NOW, THEREFORE, FOR \$10 AND OTHER GOOD AND VALUABLE CONSIDERATION, INCLUDING THE FOREGOING REPRESENTATIONS, THE RECEIPT AND BENEFIT OF WHICH ARE HEREBY ACKNOWLEDGED, IT IS AGREED AS FOLLOWS:**

1. The term of the Agreement is extended for the 10 year period of May 1, 2015 through April 30, 2025.
2. Except to the extent as amended hereby, all other terms of the Agreement shall remain the same and are hereby ratified and affirmed by the parties.
3. In the event of a conflict between the Agreement and this Addendum, the terms and conditions of this Addendum shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum on the dates set forth below.

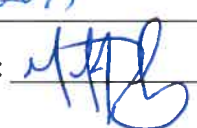
COLORADO SPRINGS UTILITIES

By: 

Name: Jerry Forte

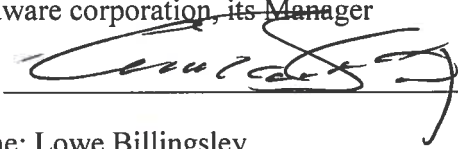
Title: Chief Executive Officer

Date: 6/1/2015

Approved as to form: 

CRIPPLE CREEK AND VICTOR GOLD MINING COMPANY

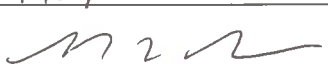
By: AngloGold Ashanti (Colorado) Corp., a Delaware corporation, its ~~Manager~~

By: 

Name: Lowe Billingsley

Title: Vice President & General Manager

Date: May 29, 2015

Attest:   
Meghan Martelon



**AMENDED AND RESTATED  
APPLICATION FOR USE OF WATER  
OUTSIDE CORPORATE LIMITS  
(CITY OF VICTOR & CC&V)**

THIS AMENDED AND RESTATED APPLICATION FOR USE OF WATER OUTSIDE THE CORPORATE LIMITS ("Application") is made and entered effective the ~~24<sup>th</sup>~~ day of March, 2016 ("Effective Date"), by and between the City of Victor ("Victor") and the Cripple Creek & Victor Gold Mining Company, a Colorado joint venture ("CC&V"), Victor and CC&V shall be referred to herein collectively as, the "Parties" or individually as, a "Party".

**RECITALS**

WHEREAS, the Parties entered into that certain Application for Use of Water Dated June 4, 1999 ("Original Application") and the Operating and Maintenance Agreement dated August 1, 1999 ("OMA") for the sale, purchase and transport of water; and

WHEREAS, the Application has been amended and supplemented pursuant to the following agreements:

- a. 2006 Amendment;
- b. 2008 Amendment;
- c. 2010 Amendment; and
- d. Supplemental Water Supply Agreement dated November 20<sup>th</sup>, 2003 and executed on February 4, 2004 ("Supplemental Agreement") (the Original Application, the 2006 Amendment and the 2010 Amendment and the Supplemental Agreement referred to herein collectively as the "Victor Agreements"); and

WHEREAS, in addition to the above referenced agreements CC&V has entered into that certain Agreement for Lease of Water with the City of Cripple Creek ("Cripple Creek") executed effective January 1, 2015 ("Cripple Creek Lease"); and

WHEREAS, pursuant to the Cripple Creek Lease, Cripple Creek has agreed to lease annually 250 acre feet of water to CC&V, of which 172 acre feet are delivered first to Victor for subsequent sale to CC&V ("Transferred Water"); and

WHEREAS, the sale of the Transferred Water is managed pursuant to a separate agreement by and between Victor and Cripple Creek; and

WHEREAS, the Parties and Cripple Creek have agreed that the price CC&V pays Cripple Creek and Victor per acre feet of water should be consistent ("Consistency"); and



WHEREAS, to ensure Consistency and due to the number of modifications to the Original Application, the Parties deem it in the best interest of the Parties to consolidate and update the Victor Agreements into one document ("Amended and Restated Application") as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, Victor and CC&V agree as follows:

### **AGREEMENT**

1. Volumes of Water and Term. Subject to the provisions of this Application, Victor agrees to provide to CC&V up to 1300 acre feet per year of raw water as requested by CC&V ("Victor Water") for use in its operations on an as available basis as well as the Transferred Water to be purchased from Cripple Creek for the benefit of CC&V pursuant to that certain Water Purchase Agreement by and between Cripple Creek and Victor dated November 19, 2015 ("Cripple Creek Agreement"). CC&V acknowledges and agrees that Victor's obligations to provide the Victor Water and Transferred Water are subject to the limitations set forth in Paragraphs 6 and 8.

Subject to CC&V's right to an extension, as described in this Paragraph 1, Victor's obligation to supply the Victor Water to CC&V and CC&V's obligation to make payments hereunder shall expire on December 31, 2024. CC&V shall have the right to extend the term of this Application by providing written notice of its intent to extend to Victor on or before July 1, 2023 ("Extension"). The Extension shall apply to the supply of Victor Water at both Taps at a cost to be negotiated in good faith between the Parties and based upon comparable rates in the market at the time for comparable water for an additional term of 25 years commencing on January 1, 2025.

2. Uses of Water. The Victor Water shall be raw water, not treated to meet human drinking water quality standards. CC&V's use of the Victor Water shall be limited to use in mining and processing, including but not limited to mineral extraction, ore processing, dust control, mined land reclamation, replacement and augmentation, and all incidental uses related to CC&V's mining and processing operations and shall not, in any event, be resold to others. Further, CC&V shall be responsible for the use of Victor Water and any effects thereof on third parties, including, but not limited to, the effects of discharges and changes in the quality of the Victor Water or any water impacted by the Victor Water supplied to CC&V.

3. No Warranty. Victor makes no warranty as to the quality of the Victor Water or the Transferred Water delivered to CC&V. Victor agrees that CC&V may monitor the quality of the Victor Water at the facilities owned by Victor that are used to deliver the water to CC&V. CC&V acknowledges that, to the extent it desires to monitor the quality of the Transferred Water, it shall make such arrangements directly with Cripple Creek.

4. Procedure for Delivery of Water. The Parties agree that the delivery of the Victor Water and Transferred Water (collectively, the "Water"), as applicable, to CC&V will take place at Victor's facilities located at the following points:



- a. At a 3-inch tap ("3 Tap") at the Victor Mine Pump Station in Grassy Valley, more specifically described as the point on the Victor's raw water transmission line from the Victor's reservoirs, where CC&V's line taps on, north of Goldfield in Section 16, Township 15 South, range 69 West, 6<sup>th</sup> P.M.; and
- b. At a 9-inch tap ("9 Tap") (the 3 Tap and 9 Tap are collectively referred to herein as the "Taps") near Victor's Water Treatment Plant near the top of Victor Pass in Section 21, township 15 South, range 69 West, 6<sup>th</sup> P.M.

5. Consideration and Payment Terms. The consideration for the Water provided to CC&V pursuant to this Agreement shall be as follows:

a. Acre-Foot Charge. The lease price for the Water for 2015 shall be \$864.64 per acre-foot (the "Base Rate"). The Base Rate shall be applied retroactively from and after January 1<sup>st</sup> of 2015 and CC&V shall promptly pay Victor for any difference to the extent that CC&V's actual payments to date are less than what Victor would otherwise be entitled to under this Application. The Base Rate shall be adjusted upward by 4% each year with the first adjustment to occur on January 1, 2016 and January 1<sup>st</sup> of every year thereafter for the term of this Application unless otherwise agreed to in writing by the Parties. Victor shall provide CC&V with a monthly invoice for all water furnished hereunder and payment shall be due and payable by CC&V thirty (30) days after the date of the invoice.

b. Minimum use of Taps. CC&V acknowledges that its minimum use of the Taps shall be 4,073,000 gallons per month. Victor acknowledges that the Water Plant Investment Fee and the Physical Connection (for both Taps) have been previously paid by CC&V.

c. Wheeling. Victor shall not be required to supply more than 800 gallons per minute nor more than 1300 acre feet a year of Victor Water. The preceding limitation specifically excludes the Transferred Water. If CC&V requires more than 800 gallons per minute, or more than 1300 acre feet per year, excluding the Transferred Water, and Victor, after good faith negotiations, does not wish or cannot supply, such excess needs, or in the event Victor cannot supply 800 gallons per minute and/or 1300 acre feet per year because of limitations, then and in either event, Victor shall allow CC&V to "wheel" (transport) water acquired from third parties through the Altman Pump Station and the pipeline from the Altman Pump Station to CC&V's meter at the top of Victor Pass, for a charge of \$.16 per 1,000 gallons plus all direct costs of electrical, operations and maintenance, associated with that usage. This "wheeling" right shall not apply to CC&V's interest in the Altman Water Rights, only to the water purchased from third parties, specifically including, but not limited to the Transferred Water. Victor and CC&V agree to cooperate in a fair and prompt manner to enable CC&V to obtain one or more contracts for water and water rights from third parties suitable to provide additional reliable water



supplies for CC&V's use. CC&V shall only purchase and use water from a third party if and to the extent that Victor cannot or does not wish to provide the full amount of water requested by CC&V. To the extent logistically possible, water purchased from third parties shall be transported through Victor's Altman Pump Station and pipeline under the provisions of this Paragraph 5.

d. Operating and Maintenance Expenses. CC&V hereby acknowledges and reaffirms its obligations under the OMA, the terms of which are incorporated herein as attached and as amended pursuant to the terms of the 2008 Amendment. The terms modified pursuant to the 2008 Amendment are stated below:

i. CC&V shall pay all Operating and Maintenance Expenses and Capital Improvement Costs, as each term is defined in the OMA; and

ii. CC&V shall operate and maintain the following pipe and transmission lines:

The pipe replacing the old leaky ditch to Bison;

- The pipeline from the Cripple Creek transmission line to the five-way valve area, and to the Altman Pump Station; and
- The transmission line from the Altman Pump Station to the top of Victor Pass.

e. Take or Pay. CC&V shall pay for 172 acre-feet of water annually whether or not it takes any water under this agreement. In the event Victor is unable to deliver in whole or in part the purchase amount under this Take or Pay provision due to physical, legal, or administrative limitations, CC&V shall not be responsible for payment for that portion not delivered.

#### 6. Transferred Water.

a. Notice. Subject to the provisions of this Section 6, upon reasonable notice from CC&V, Victor agrees that it will purchase from Cripple Creek, for delivery to CC&V, up to one cubic foot per second (1 cfs) of the Transferred Water pursuant to the Cripple Creek Agreement. CC&V's right to delivery of the Cripple Creek Water shall be in addition and supplemental to CC&V's right to purchase water from Victor under this Application.

b. Reimbursement. CC&V agrees to reimburse Victor for any and all reasonable and necessary costs and expense it incurs under the Cripple Creek Agreement ("Cripple Creek Expenses"), including but not limited to all costs (including increased lifting or pumping costs) associated with the operation of or repairs or maintenance to the Altman Pump Station or to any other component of the Victor municipal supply system that is reasonably necessitated by delivery of the Transferred Water to CC&V. Provided, however, the Cripple Creek Expenses shall not exceed the



charges set forth or actually paid pursuant to the Cripple Creek Agreement. In addition, CC&V shall reimburse Victor for any and all reasonable costs and expenses Victor incurs for Victor's operations necessary to deliver the Transferred water to CC&V (including increased lifting or pumping costs), in addition to the Cripple Creek Expenses, since the former are not charges actually paid pursuant to the Cripple Creek Agreement.

c. Additional Water. The Transferred Water purchased from Victor for delivery to CC&V shall be in addition to the Victor Water purchased and delivered to CC&V pursuant to this Application, and shall not be considered within the maximum water delivery limitation set forth in Paragraph 5.c.

d. Right to Purchase. CC&V shall not have the right to purchase and take delivery of the Transferred Water if it is not in compliance with its obligations and duties hereunder, including but not limited to CC&V's obligation to compensate Victor for the Victor Water delivered to CC&V. Notwithstanding any other provision of this Application, CC&V shall have the right to purchase the Transferred Water pursuant hereto, if it is unable to purchase the full amount of the Victor Water because it is legally unavailable for the use that is required by CC&V. CC&V's right to purchase pursuant to the conditions set forth in the preceding sentence shall be limited to the volume of water that would have otherwise been provided to CC&V by Victor but for the legal unavailability. (Example: If Victor is not able to provide its water to CC&V for augmentation purposes, then CC&V shall have the right to purchase its augmentation water from Cripple Creek or any other viable third party.) The water to be delivered to CC&V by virtue of the agreement between Victor and Cripple Creek will be from releases from storage in Cripple Creek's Reservoir Nos. 2 and 3 or from Gillette Well No. 5 consistent with the Cripple Creek agreements.

e. Cripple Creek Limitations. CC&V acknowledges that Victor's ability to provide the Transferred Water may be limited pursuant to the terms of the Cripple Creek Agreement that represent conditions beyond the control of Victor ("Cripple Creek Limitations"). In the event Victor is notified of any Cripple Creek Limitations it will promptly notify CC&V and CC&V shall not hold Victor liable for its inability to deliver the affected Transferred Water; provided, however, CC&V shall not be responsible to reimburse Victor for any Cripple Creek Water not delivered as a result of Cripple Creek Limitations.

7. Operation and Maintenance. Victor shall be responsible for the maintenance and repair of the infrastructure up to and including the Taps. CC&V shall be responsible for the construction, maintenance and repair of all related infrastructure for such facilities beyond the Taps. In addition, the terms and conditions of the OMA, a copy of which is attached hereto, are incorporated herein and remain in full force and effect. The OMA provides for the operation, maintenance and repair of the Altman Pump Station.

8. Water Shortage. Victor's obligation to sell and deliver water hereunder shall be suspended to the extent and for such period that a foreseeable water shortage exists within Victor and to the extent the Victor Water is required to supply the needs of the residents of Victor. A foreseeable water shortage is defined as a shortage of Victor's available water supplies resulting from circumstances and causes beyond Victor's control



and such shortages cause Victor to impose stringent water use restrictions upon its residents in order to preserve the public health. Victor shall notify CC&V promptly whenever such foreseeable water shortage appears to be reasonably foreseeable. Victor shall be relieved of its delivery obligations to CC&V pursuant to the terms of this Paragraph 8 only upon at least thirty (30) days' prior written notice to CC&V. If Victor does not deliver water to CC&V pursuant to the terms of this Paragraph 8 and CC&V has made payments to Victor for the delivery of Victor Water, Victor shall refund CC&V the full amount paid for such undelivered water. In addition, in the event Victor is unable to deliver the Victor Water for the reasons stated above, CC&V shall be entitled to use Victor's facilities to deliver water purchased from third parties, specifically including the Transferred Water, subject to the provisions of Paragraph 5.c.

9. Force Majeure. Except as set forth below, the obligations of the Parties hereunder shall be suspended to the extent and for such period that performance is prevented due to any cause outside the reasonable control of the Parties or a Party, as applicable, such causes include, but are not limited to, acts of God, acts of war, fire, explosion, earthquake, storm, flood, economic conditions or circumstances that make it infeasible to continue operations, and material and substantial breakdown of equipment, machinery, or necessary facilities provided by Victor. Further, CC&V shall have no obligation to pay for Water that Victor is unable to deliver or make available for delivery and Victor shall have no obligation to refund payments already made by CC&V for such undelivered water. Exceptions to this suspension are as follows:

- a. The "wheeling" right set forth in Paragraph 5.c. shall not be suspended unless this Application is terminated or canceled;
- b. This Application may be terminated by Victor, and all obligations hereunder shall end, if any suspension pursuant to this Paragraph 9 continues for a period longer than six (6) months and during such time CC&V has made no monthly payments. If Victor elects to terminate pursuant to the provisions of this Section 9, Victor shall provide CC&V with ten (10) days written notice before the effective date of said termination. Notwithstanding termination of this Application, Victor shall have the right and option to seek recovery of all billed, due and unpaid amounts from CC&V.

10. Non-Performance. The Parties agree that non-performance by Victor of its obligations to deliver Water pursuant to this Application shall result in damages to CC&V which will be difficult to calculate and for which there may not be adequate remedies available at law. Therefore, in the event of non-performance by Victor, in addition to all other rights available to CC&V at law or in equity, CC&V shall have the right to a remedy of specific performance to require Victor to perform its obligations as set forth herein.

11. Fire Protection and Sewer. Victor shall not be required to furnish fire protection nor sewer services unless provided by separate written contract between the



Parties. CC&V agrees to conform to all health laws and regulations of the applicable governmental entities, and to take reasonable precautions against fires.

12. Code of Ordinances. CC&V acknowledges that it is subject to and governed by the Code and Ordinances of Victor ("Code") and it shall abide thereto. Approval of this Application by the City Council shall form a binding contract and CC&V and Victor agree to abide by and be bound by the terms of this Application. The terms provided in this Application, as approved, are not meant to limit, but to supplement the Code. CC&V agrees that neither the approval of this Application, nor use of the water or facilities for any period of time, shall give CC&V any vested right to continue such use.

13. Entire Agreement. Except for the 2008 Amendment and the agreements by and between CC&V and Victor relating to the ¾ inch tap at the Victor Pump Station and Water Treatment Plant (augmentation taps)(1999 O&M Agreement), this Application constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Application shall not be modified, amended, supplemented, extended, or altered except as the Parties may from time to time agree in writing.

14. Successor and Assigns. This Application shall be binding on the Parties and their successors in interest. CC&V may freely assign this Application to its successor in operating its mining operations, joint venture, parent company, sister company or subsidiary company and such assignee may in turn reassign this Application in accordance with this Paragraph 14; provided, however, CC&V shall give Victor at least thirty (30) days prior written notice of such assignment or reassignment. CC&V, or its successors, shall not otherwise assign this Application without the express written consent of Victor, which consent shall not be unreasonably withheld.

15. Written Notice. Whenever written notice is required under this Application, it shall be sent by U.S. Mail, First Class, postage prepaid, addressed to the parties as follows:

To City of Victor:

Mayor and City Administrator  
P.O. Box 86, 500 Victor Ave.  
Victor, Colorado 80860

With a copy to:

Julianne Woldridge  
MacDougall & Woldridge, P.C.  
1586 S. 21<sup>st</sup> St., Suite 200  
Colorado Springs, CO 80904

To CC&V:

Cripple Creek & Victor Gold Mining  
Company  
Attn: General Manager  
100 North 3<sup>rd</sup> Street  
Victor, CO 80860

With a copy to:

Newmont Mining Corporation  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Any address for notice may be changed by written notice to the other party as provided in this Paragraph 15.



15. Authority. All Parties to this Application represent that they have the full power and authority to enter into and perform this Application.

16. Governing Law. This Application shall be construed in accordance with the laws of the State of Colorado. Any and all disputes concerning this matter shall be decided in any court of competent jurisdiction for Teller County, Colorado.

20. Severability. Unenforceability of any provision contained in this Application shall not affect or impair the validity of any other provision of this Application, so long as the primary purpose(s) of this Application are effectuated by the remaining terms.

Application made at Victor, Teller County, Colorado this 24th day of March, 2016.

**Name of Applicant:** Cripple Creek & Victor Gold Mining Company  
**Name of Owner of Premises to be Served:** Cripple Creek & Victor Gold Mining Company  
**Billing Address:** 100 North Third Street, Victor, CO 80860

**AGREED:**

CRIPPLE CREEK & VICTOR GOLD MINING COMPANY

By: [Signature]

Title: General Manager

Date: 4/27/16

CITY OF VICTOR

By: [Signature]

Title: Byron L. Hakes, Jr., Mayor

Date: 3/24/16

October 21, 2021

Sent via USPS and Email

Pisgah Reservoir and Ditch Company  
Catlin Canal Company  
917 Elm Ave.  
P.O. Box 352  
Rocky Ford, CO 81067

Re: Cripple Creek & Victor Gold Mining Company  
2021 Wright's Reservoir Storage Lease

Dear Mr. Williams:

On behalf of Cripple Creek & Victor Gold Mining Company ("CC&V"), this letter is to notify you of CC&V's interest in continuing to lease storage space from Catlin Canal Company ("Catlin") and Pisgah Reservoir and Ditch Company ("Pisgah") in Wright's Reservoir, a/k/a Pisgah Reservoir, from November 15, 2021 through November 14, 2022.

As you know, for the past several years CC&V has leased storage space in Wright's Reservoir for the storage of up to 419 acre-feet of fully consumable water under a November 15, 2013 Agreement for Lease of Storage Space ("Lease"). Last year, CC&V and Catlin agreed to renew the terms of the Lease, which otherwise would have expired after one year, for an additional year in exchange for CC&V's payment of \$50 per acre-foot of storage that CC&V wished to secure, plus a deposit of \$1,000. That additional year expires on November 14, 2022.

CC&V would like to continue to work with Catlin and Pisgah to store water in Wright's Reservoir. In order to renew the terms of the Lease for November 15, 2021 to November 14, 2022, enclosed with this letter is a check in the amount of \$21,950 for CC&V to secure up to 419 acre-feet of storage in Wright's Reservoir for that period. This amount includes \$20,950 for the storage space at a rate of \$50 per acre-foot, plus a \$1,000 deposit. It is our understanding that the Lease will automatically renew upon Catlin's and Pisgah's receipt of this payment. Please sign

below to acknowledge receipt of the payment and the extension of the lease, and please return to me at the address above.

Thank you for your consideration, please contact me if you have questions or would like to discuss further.

Sincerely,

Cripple Creek & Victor Gold Mining Company  
By Newmont Mining Corporation, General Manager

By: Melina Harrison  
Title: 06-OCT-2021

Enclosure

Pisgah Reservoir and Pisgah Reservoir and Ditch Company and Catlin Canal Company hereby acknowledge receipt of payment of \$21,950 and extension of the term of the November 15, 2013 Agreement for Lease of Storage Space among the Pisgah Reservoir and Ditch Company, Catlin Canal Company, and Cripple Creek & Victor Gold Mining Company from November 15, 2021 to November 14, 2022.

Pisgah Reservoir and Ditch Company

By: [Signature]  
Date: 10/15/21

Catlin Canal Company

By: [Signature]  
Date: 10/16/21



**AGREEMENT FOR LEASE OF WATER  
(CRIPPLE CREEK & CC&V)**

THIS AGREEMENT FOR LEASE OF WATER ("Agreement") is made and entered effective the 1<sup>st</sup> day of January, 2022 ("Effective Date") by and between the City of Cripple Creek, through its utility enterprise, ("Cripple Creek") and the Cripple Creek & Victor Gold Mining Company ("CC&V"). Cripple Creek and CC&V may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

WHEREAS, CC&V (through its predecessor owner/manager) and Cripple Creek entered into that certain Agreement for the Lease of Water (Cripple Creek & CC&V) dated July 7, 2010 ("Original Lease") primarily for the purpose of supplying water for CC&V's mining operations in Teller County, Colorado (the "Cresson Mine" or the "mine site"); and

WHEREAS, the Original Agreement expired on or about May 31, 2014, and was subsequently renewed through a new agreement dated January 1, 2015, and expired on December 31, 2017, and was again renewed through a new agreement dated January 1, 2019, which expires on December 31, 2021; and

WHEREAS, during 2018, at the request of CC&V, Cripple Creek continued to provide water to CC&V upon terms and conditions consistent with the agreement dated January 1, 2015, as though it had not expired at the end of 2017; and

WHEREAS, Cripple Creek entered into that certain agreement with the City of Victor dated February 17, 2004, as amended December 16, 2004, April 1, 2005, August 6, 2010, November 19, 2015, and as further amended on January 1, 2019 (the "Victor Agreement"), wherein, for the benefit of CC&V, Cripple Creek provides Victor with up to 172 acre-feet of water, primarily by and through a pipeline and well field located in Gillette. The Victor Agreement expires on December 31, 2024; and

WHEREAS, CC&V continues to require additional water supplies for its activities at the Cresson Mine; and

WHEREAS, CC&V and Cripple Creek desire to enter into a new agreement for the lease of water from Cripple Creek to CC&V pursuant to the terms and conditions set forth below; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Cripple Creek and CC&V agree as follows:

## **AGREEMENT**

1. Volumes of Water and Term of Agreement. Subject to the provisions of this Agreement, Cripple Creek agrees to lease to CC&V 275 acre-feet per year in 2022, 2023, and 2024, of raw water as requested by CC&V ("Cripple Creek Water") for use at the Cresson Mine on an as-available basis, up to 172 acre-feet of which is delivered to CC&V by the City of Victor and subject to the Victor Agreement, as amended from time to time. The term of this Agreement shall be THREE (3) years commencing on the Effective Date and ending on December 31, 2024. CC&V acknowledges and agrees that Cripple Creek's obligations to provide the Cripple Creek Water are subject to the limitations set forth in Paragraph 11.

2. Uses of Water by CC&V. The Cripple Creek Water shall be raw water, not treated to meet human drinking water quality standards. CC&V's use of the Cripple Creek Water shall be limited to mining and mining-related purposes associated with the activities of the Cresson Mine, including without limitation mineral extraction, ore processing, dust control, mined land reclamation, replacement and augmentation, and other incidental uses, such as potable uses at the mine site; provided, however, that the Cripple Creek Water shall not be used by CC&V for potable uses other than at the mine site without the written permission of Cripple Creek, which permission shall not be unreasonably withheld. If any potable use is made at the mine site, CC&V shall be solely responsible for all treatment, testing, and reporting, as now or hereafter may be required, for such potable water uses. Cripple Creek shall not be deemed to be an owner or operator of the Cresson Mine nor a partner, joint venture partner, or agent of CC&V by virtue of this Agreement, and shall have no responsibility to ensure regulatory compliance by CC&V. Similarly, CC&V shall not be deemed to be the owner of or have a real property interest in any of Cripple Creek's water rights.

3. Consideration and Payment Terms. The consideration for the Cripple Creek Water provided pursuant to this Agreement shall be as follows:

A. Infrastructure. CC&V, pursuant to the terms of the Original Lease, purchased, installed and constructed various infrastructure improvements for Cripple Creek, all of which were designed to facilitate the delivery of the Cripple Creek Water to CC&V (collectively, the "Infrastructure"). CC&V shall maintain, as necessary, the Infrastructure in reasonably good order, repair and condition and to Cripple Creek's reasonable satisfaction. In the event that the Parties mutually determine additional infrastructure is necessary to continue to facilitate the delivery of the Cripple Creek Water to CC&V ("Additional Infrastructure"), the Additional Infrastructure shall be developed, constructed and installed at CC&V's sole cost and expense, though title to all such infrastructure shall vest with Cripple Creek. CC&V shall consult with and obtain Cripple Creek's prior approval, which approval shall not be unreasonably withheld, with respect to the design, specifications, and equipment related to the Additional Infrastructure. The Parties acknowledge that, as of the Effective Date, no



such Additional Infrastructure is currently known or anticipated by either Party, and Additional Infrastructure as described in this Paragraph 3.A. shall not include any storage facilities contemplated by Paragraph 3.D.

B. Acre-Foot Charge. The lease price for the Cripple Creek Water, being the 275 acre-feet in each of the years 2022, 2023, and 2024, of water supply described in Paragraphs 1 and 3.E., hereof, in the first year of this Agreement shall be \$1,137.80 per acre-foot (the "Base Rate"). The Base Rate shall be adjusted upward by 4% each year of this Agreement, effective upon the annual anniversary of the Effective Date. Cripple Creek shall provide CC&V with a monthly invoice for all water furnished hereunder, and payment shall be due and payable by CC&V thirty (30) days after CC&V's receipt of the invoice.

C. Operation and Maintenance. In addition to the costs related to the Infrastructure and any Additional Infrastructure, CC&V shall pay all associated utility costs, operation and maintenance costs for any pumping of the Cripple Creek Water ("Additional Costs") delivered from the Gillette Well Field or any other facilities of Cripple Creek where Additional Costs are incurred. Additional Costs may include, but are not limited to, utility and maintenance costs for the Turnout and Well Field, labor costs associated with the delivery of water to CC&V and the City of Victor, pursuant to the Victor Agreement, including but not limited to the City of Cripple Creek Public Works' labor costs in monitoring and maintaining the Turnout, Well Field, and delivery system, administrative costs associated with water delivery to CC&V and/or the City of Victor, and related accounting costs. To the extent any of the Additional Costs represent "reimbursable costs" incurred by Cripple Creek that are associated with the delivery of the Cripple Creek Water to CC&V from all such facilities, CC&V shall only be charged for such reimbursable costs in proportion to the quantity of water produced by Cripple Creek for use by CC&V (including the Cripple Creek Water provided to CC&V pursuant to the Victor Agreement), as compared to all quantities of water produced for use in Cripple Creek's municipal system; *i.e.* CC&V shall be invoiced and pay for its pro-rata share of such costs, only. Additional Costs shall be billed monthly pursuant to Paragraph 3.B.

D. Storage Surcharge. Cripple Creek has to date conducted preliminary studies and initial engineering related to potential storage facilities and projects; however, further engineering, design, cost, and timing for completion of such storage facilities or projects have yet to be determined, and plans for such storage facilities have not yet been fully developed. CC&V recognizes that additional storage facilities may also benefit CC&V by ensuring sufficient water supplies for Cripple Creek, as well as additional Beaver Creek basin storage potentials. CC&V is committed to partnering with Cripple Creek when the design, cost and timing of completing such facilities are more particularly identified and, to the extent that such storage facility or facilities benefit CC&V, CC&V may desire to participate in such projects; provided, however, any agreement as to the extent of CC&V's involvement in the development and construction of a storage facility or facilities shall be pursuant to a separate written

agreement between the Parties.

E. Take or Pay. CC&V shall pay for 275 acre-feet of the Cripple Creek Water per year in 2022, 2023, and 2024, whether or not it takes any water under this Agreement, and shall pay for the entirety of any water leased under the Victor Agreement, as amended, annually whether or not it takes any water under the Victor Agreement, which 172 acre-feet is included in the Base Amount, as described herein<sup>1</sup>. This take or pay amount shall be considered the base purchase amount ("Base Amount"). CC&V shall make payments for the Base Amount, in twelve (12) equal monthly installments, regardless of the schedule for delivery, pursuant to Paragraph 3.B., and all Base Amount water shall be priced at the Base Rate. CC&V, Victor, and Cripple Creek will confer and cooperate as concerns billing for the take or pay amounts, under both this Agreement and the Victor Agreement, as amended. Subject to availability and in addition to the Base Amount, CC&V shall have the right to request additional amounts of water from Cripple Creek ("Additional Water") by placing an additional water order with Cripple Creek. The purchase of any Additional Water remains subject to the limitations set forth in Paragraph 2, and subject to any surcharges as described herein. All Additional Water shall be priced at the Base Rate, and likewise invoiced monthly to CC&V for payment.

CC&V shall be deemed to have purchased the Cripple Creek Water, and any Additional Water ordered, on a take-or-pay basis, unless Cripple Creek is unable to deliver the water. In the event Cripple Creek is unable to deliver, in whole or in part, the Base Amount and/or Additional Water to CC&V due to physical, legal, or administrative limitations, CC&V shall not be responsible for payment for that portion which Cripple Creek is not able to deliver ("Undeliverable Water"). In the event CC&V has paid for any Undeliverable Water, Cripple Creek will refund to CC&V that portion of monies paid for the Undeliverable Water ("Refund"). Any Refund due to CC&V shall be made annually, based on annual accountings, on or before February 28 of the year following the year in which the Undeliverable Water was paid for but not delivered. CC&V may, in its sole discretion, elect to apply any such Refund to the following year's water purchase by advising Cripple Creek of the same in writing on or before the February 28 deadline.

4. Storage of Water. In order to make deliveries to CC&V at a time when the Water, as defined below in Paragraph 5, furnished hereunder is needed and efficient, Cripple Creek shall make available 275 acre-feet of water per year in 2022, 2023, and 2024, stored in Cripple Creek Reservoir No. 2 and/or Cripple Creek Reservoir No. 3 (collectively, the "Cripple Creek Reservoirs"), or in Cripple Creek's discretion, from Cripple Creek's interests in the Gillette Well Field. Should the Oil

---

<sup>1</sup> It is anticipated that CC&V will pay Victor for the 172 acre-feet under the Victor Agreement in equal monthly payments, and will pay Cripple Creek for the remaining acre-feet of the Base Amount in equal monthly payments, while Victor will likewise provide Cripple Creek with monthly payments on the 172 acre-feet under the Victor Agreement.



Creek Reservoir and associated infrastructure be constructed during the term of this Agreement, such water supplies may also be stored therein and delivered therefrom. Deliveries from storage in any vessel shall be to the West Fork of West Beaver Creek as it passes under Teller County Road 81, and measurement of deliveries shall be at the Point of Delivery, as defined below in Paragraph 6. All storage water shall be delivered by December 31<sup>st</sup> of each year.

A. The parties acknowledge that Cripple Creek may from time to time make repairs to the valving and water release mechanisms or other structures associated with the Cripple Creek Reservoirs, which may require draining all or a portion of the Cripple Creek Reservoirs. CC&V shall have a right of first refusal for the purchase of any water released for the purpose of making such repairs ("Released Water"), at the appropriate rate set forth in Paragraph 3.B. based on deliveries to date in the year such Released Water may be available, plus any applicable surcharges described herein, and pursuant to the limitations set forth in Paragraph 2. If CC&V exercises this right of first refusal and takes delivery of Released Water, then CC&V shall not be entitled to request further releases from storage until such time as the Cripple Creek Reservoirs have recovered, in Cripple Creek's reasonable discretion, to acceptable levels. Released Water will likely be released to the West Fork of West Beaver Creek between April 15 and July 15 of the year in which such construction is commenced. Cripple Creek shall provide CC&V with sufficient advance notice, to the extent reasonably practicable, of its anticipated drainage schedules so that CC&V may take such efforts as it deems necessary for the exchange and storage of the Released Water into other vessels owned or controlled by CC&V or the City of Victor, or to advise Cripple Creek that it will not be purchasing the Released Water.

5. Procedure for Delivery of Water. The Parties agree that the lease of Cripple Creek Water, Additional Water, and Released Water (collectively, the "Water"), as applicable, to CC&V will take place within the supply limitations of the Cripple Creek water system, and that those limitations vary by season. The Parties shall develop an annual delivery schedule by November 1 for each following calendar year, based on hydrologic conditions and consultation with the Parties' engineers, all as constrained by Paragraph 11 hereof, and Cripple Creek shall provide delivery of the water subject of this Agreement at the time and in the amount requested by CC&V subject to the limitations of the Cripple Creek water system and water availability.

6. Points of Delivery. Water to be delivered to CC&V is anticipated to be primarily from Cripple Creek's municipal water transmission line from Cripple Creek Reservoir No. 2 at or near the intersection of such transmission line with the West Fork of West Beaver Creek ("Point of Delivery"). The Parties agree to develop a plan for utilization of the Point of Delivery that is reasonably satisfactory to both Cripple Creek and CC&V, and CC&V agrees to accept water delivered at an alternate point of delivery to the extent practicable, including but not limited to Gillette Well No. 5, as may be necessary for the maximum beneficial use of Cripple Creek's water system and water rights, in Cripple Creek's discretion.

7. Measurement of Deliveries and Title Thereto. All Water delivered shall be measured at the Point of Delivery or any alternate point of delivery agreed upon by the Parties pursuant to Paragraph 6. CC&V agrees to ensure that measurement devices at the Point of Delivery accurately measure the amounts of Water delivered. Title to the Water leased and delivered under this Agreement shall pass to CC&V when it is released at the Point of Delivery, and CC&V shall be solely responsible for any and all transit losses or other reductions in water supply as delivered to the Point of Delivery prior to CC&V's pumping of such delivered water at the Altman Pump Station downstream on the West Fork of West Beaver Creek.

8. Modification of Delivery Schedule. As circumstances require, CC&V may request a modification of the annual delivery schedule, described in Paragraph 5. Cripple Creek shall accept such modification and deliver water in accordance with the modified delivery schedule, provided Cripple Creek determines, in its reasonable judgment, that it has sufficient water supply to accommodate the modified delivery schedule, that the modified delivery schedule is operationally feasible and consistent with other operational needs, and that the modified delivery schedule does not result in the delivery of water in excess of the amount of the water available under this Agreement.

9. CC&V Responsibilities. In addition to the other requirements set forth in this Agreement, CC&V shall be responsible for the following:

A. All conveyance and use of the Water furnished hereunder downstream of the Point of Delivery, and CC&V shall bear all risk of loss, including, but not limited to, transit charges as determined by the Colorado State Engineer or the Division Engineer.

B. Should a dispute arise with administrative or governmental entities concerning the applicability of Cripple Creek's water rights as herein discussed or proposed methods of delivery, Cripple Creek, through its staff and counsel, shall take such action as deemed reasonable and necessary to overcome such dispute and obtain any necessary approvals from administrative or governmental agencies. CC&V agrees to reimburse Cripple Creek for the first \$20,000.00 of legal expense incurred by Cripple Creek in such efforts, as reasonably itemized and documented by Cripple Creek. Such reimbursement shall be due upon demand by Cripple Creek. Should efforts resulting in expenses beyond CC&V's preliminary \$20,000.00 contribution be deemed necessary in Cripple Creek's reasonable judgment and discretion, Cripple Creek may (1) elect to incur such costs itself; or (2) provide CC&V a written request for additional contribution, which request may be honored in the sole discretion of CC&V. The extent to which such efforts at dispute resolution are reasonable, necessary and appropriate shall be in the sole and complete discretion of Cripple Creek, and Cripple Creek shall have no obligation to make any efforts for the resolution of such disputes, nor shall CC&V have any obligation to pay for water not delivered as a result of the same.

C. CC&V's use of the Water and the effects thereof on third parties, if any, including, but not limited to, the effects of diversion, discharges, and changes in quantity and the quality of said Water.

10. Cripple Creek Warranties. Cripple Creek warrants that:

A. Cripple Creek expects to have, and will make reasonable efforts to provide, an adequate physical supply of water to furnish water to CC&V under this Agreement, except in times of water shortages as defined in Paragraph 11.A. below.

B. The Water delivered to CC&V hereunder shall be legally under Cripple Creek's dominion and control before and at the Point of Delivery. No representation or warranty is made as to fitness for the proposed use of the Water furnished hereunder. CC&V acknowledges it has performed its own diligence with respect to all legal and administrative matters involving the Cripple Creek water rights and will accept any water in an as-is condition.

C. Cripple Creek makes no warranty as to the quality of the Water delivered to CC&V. Cripple Creek agrees that CC&V may monitor the quality of the Water at facilities owned by Cripple Creek that are utilized to deliver said Water to CC&V. CC&V shall contact the Cripple Creek Public Utilities Director in order to arrange for access to monitor Water at such facilities. A mutually acceptable plan for monitoring the water furnished hereunder shall be developed by CC&V in cooperation with the Cripple Creek Water Rights Administrator.

11. Suspension of Obligations.

A. Interruption of Water Supply. While it is the intent of Cripple Creek to maintain the delivery of the Water to CC&V in accordance with the terms of this Agreement, there are certain elements that may make it uncertain as to whether the physical supply of Water can always be produced in the agreed volume and at the agreed rate. Cripple Creek and CC&V agree that Cripple Creek shall be relieved from its obligation to deliver the Water at the agreed volume and rate for the following reasons:

(1) The reasonable and prudent maintenance, repair, construction, or enlargement of Cripple Creek's reservoirs, water transmission facilities, and wells;

(2) Cripple Creek's need to use the Water for delivery to its citizens and customers other than CC&V for their use at Cripple Creek's sole discretion;

(3) The inability to deliver the Water due to surface water shortages, aquifer conditions, well cave-in or blockage, out of priority rights,



administrative regulation or water court action, or other occurrence beyond the reasonable control of Cripple Creek, including, but not limited to, an act of God, strike, war, insurrection or inability to provide the Water arising out of the order of any court or the lawful order of any governmental administrative body or agency with authority to regulate matters pertaining to water produced from the Cripple Creek water system, public utilities, public health or pollution control.

B. Force Majeure. The obligations of the Parties under this Agreement, including the payment obligations set forth in Paragraph 3, shall be suspended to the extent and for that period that performance is prevented by any cause beyond either party's reasonable control, including, without limitation, acts of God, acts of war, fire, explosion, earthquake, storm, flood, economic conditions, global pandemics, or circumstances that make it infeasible to continue operations, and material and substantial breakdown of equipment, machinery, or facilities; provided, however, that CC&V shall have no obligation to pay for Undeliverable Water and that Cripple Creek shall have an obligation to refund payments already made by CC&V for such Undeliverable Water. Nothing herein shall relieve CC&V of its obligation to pay for the Water actually delivered.

12. Cooperation. It is agreed and acknowledged that each of the Parties may, due to their respective areas of expertise, have certain advantages in negotiating the price of equipment or services which may be necessary for ongoing maintenance or repair of infrastructure necessary for performance of this Agreement. The Parties therefore agree to confer in advance of any such infrastructure work to ensure that the most efficient means and pricing for products and services is utilized to the Parties' mutual benefit.

13. Default; Right to Cure. If either Party believes that the other is in default under this Agreement, that Party shall give written notice to the other immediately. Within 15 days of receiving a notice of default, the Party accused of the default shall either cure or deliver a written response explaining why there has been no default. If the Party accused of the default does not respond or cure within said 15 days, then that Party shall be deemed to be in default, and the non-defaulting Party shall have the right to terminate this Agreement, or in the case of nonpayment, Cripple Creek may interrupt delivery of the water furnished hereunder until the payment default is cured. If more than one payment default occurs, Cripple Creek may require payment for water in advance of delivery, subject to refund if the water is not made available.

14. Written Notice. Whenever written notice is required under this Agreement, it shall be sent by U.S. Mail, First Class, postage prepaid, addressed to the Parties as follows:

To Cripple Creek:

To CC&V:

Cripple Creek City Administrator  
337 E. Bennett Ave.  
Cripple Creek, CO 80813

Cripple Creek & Victor Gold Mining  
Company  
Attn: General Manager  
100 North 3<sup>rd</sup> Street  
Victor, CO 80860

With a copy to:

Monson, Cummins & Shohet, LLC  
Attn: Chris D. Cummins  
13511 Northgate Estates Dr., Ste. 250  
Colorado Springs, CO 80903

With a copy to:

Newmont Corporation  
Attn: Legal Counsel  
6363 S. Fiddler's Green Circle, Ste 800  
Greenwood Village, CO 80111

Any address for notice may be changed by written notice to the other Party as provided in this Paragraph 14.

15. Merger. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement shall not be modified, amended, supplemented, extended, or altered except as the Parties may from time to time agree in writing executed by their authorized officers or representatives.

16. Assignability. This Agreement shall be binding on the Parties and their successors in interest. So long as the uses of the water remain the same as provided in Paragraph 2 above, CC&V may freely assign this Agreement to its successor, joint venturer, parent company, sister company, or subsidiary company, and such assignee may in turn reassign this Agreement in accordance with this provision. CC&V or its assignees shall give Cripple Creek at least (30) days prior written notice of such assignment or reassignment of this Agreement. CC&V or its assignees shall not otherwise assign this Agreement without the express prior written consent of Cripple Creek. Cripple Creek may not assign this Agreement without the express prior written consent of CC&V.

17. Attorney's Fees. In the event of any dispute between the Parties concerning this Agreement or in the event of any action to enforce this Agreement or to collect damages on account of any breach of the obligations provided for herein, the prevailing Party shall be entitled to recover from the other Party, all costs and expenses, including reasonable attorney's fees, incurred in such litigation as well as all additional such costs and expenses incurred in enforcing and collecting any judgment rendered in such action.

18. Authority. All Parties to this Agreement represent that they have the full power and authority to enter into and perform this Agreement.

19. Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado. Any and all disputes concerning this matter shall be decided in any court of competent jurisdiction for Teller County,

Colorado.

20. Severability. Unenforceability of any provision contained in this Agreement shall not affect or impair the validity of any other provision of this Agreement, so long as the primary purpose(s) of this Agreement are effectuated by the remaining terms.

21. Counterparts. This Agreement may be signed in counterparts.

22. Binding Effect. This Agreement shall be binding upon the Parties and their successors and assigns.

IN WITNESS WHEREOF, the authorized representatives of Cripple Creek and CC&V have executed this Agreement on the day and year first set forth above.

**CITY OF CRIPPLE CREEK**

**CRIPPLE CREEK & VICTOR GOLD  
MINING COMPANY, LLC**

By:

  
By: Milford Ashworth  
Title: Mayor

\_\_\_\_\_  
By: [To be confirmed]  
Title: [To be confirmed]

ATTEST:

  
Clerk, City of Cripple Creek





Cripple Creek & Victor  
Gold Mining Company  
100 North 3<sup>rd</sup> Street  
P.O. Box 191  
Victor, Colorado 80860

P 719.689.2977  
F 719.689.3254  
[newmont.com](http://newmont.com)

October 17, 2023

Sent via Email

Pisgah Reservoir and Ditch Company  
Catlin Canal Company  
917 Elm Ave.  
P.O. Box 352  
Rocky Ford, CO 81067

Re: Cripple Creek & Victor Gold Mining Company  
2024 Water Year Wright's Reservoir Storage Lease

Dear Mr. Williams:

On behalf of Cripple Creek & Victor Gold Mining Company ("CC&V"), this letter is to notify you of CC&V's interest in continuing to lease storage space from Catlin Canal Company ("Catlin") and Pisgah Reservoir and Ditch Company ("Pisgah") in Wright's Reservoir, a/k/a Pisgah Reservoir, from November 1, 2023 through October 31, 2024.

As you know, for the past several years CC&V has leased storage space in Wright's Reservoir for the storage of up to 419 acre-feet of fully consumable water under a November 15, 2013 Agreement for Lease of Storage Space ("Lease"). Last year, CC&V and Catlin agreed to renew the terms of the Lease, which otherwise would have expired after one year, for an additional year in exchange for CC&V's payment of \$50 per acre-foot of storage that CC&V wished to secure, plus a deposit of \$1,000. That additional year expires on October 31, 2023.

CC&V would like to continue to work with Catlin and Pisgah to store water in Wright's Reservoir. In order to renew the terms of the Lease for November 1, 2023 to October 31, 2024, enclosed with this letter is a check in the amount of \$46,252 for CC&V to secure up to 419 acre-feet of storage in Wright's Reservoir for that period. This amount includes \$45,252 for the storage space at a rate of \$108 per acre-foot, plus a \$1,000 deposit. It is our understanding that the Lease will automatically renew upon Catlin's and Pisgah's receipt of this payment. Please sign

\*(check will arrive  
under separate  
cover)



Cripple Creek & Victor  
Gold Mining Company  
100 North 3<sup>rd</sup> Street  
P.O. Box 191  
Victor, Colorado 80860


P 719.689.2977  
F 719.689.3254  
[newmont.com](http://newmont.com)

below to acknowledge receipt of the payment and the extension of the lease, and please return to me at the address above.

Thank you for your consideration, please contact me if you have questions or would like to discuss further.

Sincerely,

Cripple Creek & Victor Gold Mining Company  
By Newmont Mining Corporation, General Manager

By:  B117848DA37B435...  
Title: General Manager

Enclosure

Pisgah Reservoir and Pisgah Reservoir and Ditch Company and Catlin Canal Company hereby acknowledge receipt of payment of \$46,252 and extension of the term of the November 15, 2013 Agreement for Lease of Storage Space among the Pisgah Reservoir and Ditch Company, Catlin Canal Company, and Cripple Creek & Victor Gold Mining Company from November 1, 2023 to October 31, 2024.

Pisgah Reservoir and Ditch Company

By: \_\_\_\_\_

Date: \_\_\_\_\_

Catlin Canal Company

By: \_\_\_\_\_

Date: \_\_\_\_\_