

RESOLUTION NO. 11
(Series of 2018)

**A RESOLUTION OF THE BOARD OF SELECTMEN FOR THE TOWN OF
GEORGETOWN, COLORADO, AUTHORIZING APPROVAL OF A WATER
LEASING AND BASIN-WIDE AUGMENTATION PLAN
PARTICIPATION AGREEMENT WITH CLEAR CREEK COUNTY**

WHEREAS, the Town of Georgetown is a Colorado municipal corporation operating under a Territorial Charter approved in 1868 and governed pursuant thereto by its elected Board of Selectmen; and

WHEREAS, the town operates a treated municipal water supply system; and

WHEREAS, the Board of Selectmen wishes to provide treated water service for the non-irrigation treated water needs of the Bighorn Crossing Subdivision, which is presently seeking subdivision approval from the Town; and

WHEREAS, in order to provide treated water for the non-irrigation needs of the Bighorn Crossing Subdivision, the Town can utilize its water rights, supplies and infrastructure, including diversions from the Georgetown Intake on South Clear Creek and Georgetown Lake, as well as decreed exchanges and plans for augmentation, but the Town requires additional augmentation water in order to provide a legal, reliable water supply for its anticipated needs and those of its customers, with the addition of the planned Bighorn Crossing Subdivision; and

WHEREAS, Clear Creek County ("Clear Creek") can provide the needed augmentation water to the Town pursuant to its Basin-wide Augmentation Plan, decreed by the Water Court in Case No 05CW302

WHEREAS, the Board of Selectmen is authorized to enter into intergovernmental agreements by Article XIV Section 18 of the Colorado Constitution and CRS 29-1-203; and

WHEREAS, the Town has negotiated with Clear Creek County for Clear Creek's lease and reservation of up to 5.0 acre-feet of fully-consumable water from the water rights included in its Basin-Wide Augmentation Plan, to be used by the Town for augmentation of depletions associated with non-irrigation water use at the Bighorn Crossing Subdivision as provided in the attached Water Leasing and Basin-Wide Augmentation Plan Participation Agreement ("Agreement") in order to meet the augmentation demand as development of the Bighorn Crossing Subdivision proceeds; and

WHEREAS, the Town's staff and attorneys have reviewed the Agreement, and have discussed it with the Town Board, and have recommended that the Town approve the Agreement in substantially the form attached hereto, and

WHEREAS, the Board of Selectmen finds and determines approval of the Agreement is in the interests of the Town and its residents.

NOW THEREFORE, BE IT RESOLVED by the Board of Selectmen of the Town of
Town of Georgetown, Colorado:

Section 1. The Water Leasing and Basin-Wide Augmentation Plan Participation Agreement, in substantially the form attached to this Resolution as **Exhibit A**, be, and hereby is, approved, and the Police Judge or Police Judge pro tempore and Town Clerk are authorized and directed to execute it, subject to final approval of the Agreement by the Town's attorneys.

Section 2. This Resolution shall be effective upon adoption.

PASSED, ADOPTED AND APPROVED this 24 day of July, 2018 at a regular meeting of the Board of Selectmen of the Town of Georgetown, Colorado.

TOWN OF GEORGETOWN

Matthew D. Skeen
Matthew Skeen, Police Judge

ATTEST:

Jennifer Yobski
Jennifer Yobski, Town Clerk



EXHIBIT A
Water Leasing and Basin-Wide Augmentation Plan Participation Agreement
[attached]

**WATER LEASING
AND BASIN-WIDE
AUGMENTATION PLAN
PARTICIPATION
AGREEMENT**

Between the
CLEAR CREEK COUNTY BOARD OF COMMISSIONERS
and THE TOWN OF GEORGETOWN, COLORADO

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Water Leasing and Basin-Wide Augmentation Plan Participation Agreement

THIS AGREEMENT, effective _____, 2018, by and between THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CLEAR CREEK ("Clear Creek"), a county of the State of Colorado, and the TOWN OF GEORGETOWN, COLORADO ("Lessee or Town of Georgetown").

WITNESSETH

WHEREAS, Clear Creek purchased a portion of the fully-consumable, non-tributary water developed in connection with operations at the Henderson Mine in Clear Creek and Grand Counties, Colorado, to be released upstream of the confluence of Lion Creek and the West Fork of Clear Creek, for a term expiring June 1, 2031 and renewable through June 1, 2071 in accordance with a Water Sales Agreement between Climax Molybdenum Company and Clear Creek dated June 1, 1991 ("Water Sales Agreement"); and

WHEREAS, Clear Creek owns fully-consumable water rights delivered through the Vidler Tunnel, to be released to Leavenworth Creek; and

WHEREAS, Clear Creek has the right to store 50 acre feet of water in Golden Reservoirs Nos. 1, 2 and 3 (also known as Guanella Reservoir); and

WHEREAS, Clear Creek owns 100 acre feet of water storage and water rights decreed for augmentation purposes in Green Lake (Clear Creek's Rights in the Henderson Mine, the Vidler Tunnel and Green Lake are collectively referred to herein as "Water Rights"); and

WHEREAS, Clear Creek may store water within or outside the County boundaries; and

WHEREAS, Lessee is a municipal water provider that provides water service for its municipal needs and for the needs of its customers in Clear Creek County, utilizing its water rights, supplies and infrastructure, including diversions from the Georgetown Intake on South Clear Creek and Georgetown Lake, as well as decreed exchanges and plans for augmentation, and Lessee may require additional augmentation water in order to provide a legal, reliable water supply for its

anticipated needs and those of its customers, with the addition of the planned Bighorn Crossing Subdivision; and

WHEREAS, the parties hereto desire to enter into an agreement that will provide for (1) Clear Creek's lease and reservation of up to 5.0 acre-feet of fully-consumable water from the Water Rights for the Lessee's use in providing augmentation of depletions associated with non-irrigation water use at the Bighorn Crossing Subdivision as herein described; (2) Lessee's agreement that depletions to be augmented pursuant to this Agreement will not exceed 5.0 acre-feet per Water Year; and (3) the parties' agreement that Lessee may call for deliveries of Leased Water in one-tenth of an acre-foot units, such that Clear Creek's annual delivery commitment will be increased over time (to a maximum of 5.0 acre-feet) in order to meet the augmentation demand as development of the Bighorn Crossing Subdivision proceeds.

WHEREAS, before entering into this Agreement and at no cost to Lessee, in order to utilize its Water Rights to replace out-of-priority depletions to the stream, Clear Creek adjudicated a basin-wide augmentation plan in District Court, Water Division No. 1, State of Colorado, in Case No. 05CW302, which was decreed on June 20, 2014 ("**Basin-Wide Augmentation Plan**"); and

WHEREAS, a copy of said Basin-Wide Augmentation Plan has been provided to the Lessee and is incorporated by reference herein; and

WHEREAS, Lessee wishes to participate in the Basin-Wide Augmentation Plan and has submitted the **Application for Inclusion in the County of Clear Creek Augmentation Plan**, attached hereto as **Exhibit 1** and incorporated by reference; and

WHEREAS, it is intended that the Basin-Wide Augmentation Plan will be used to replace a portion of the out-of-priority depletions of the Lessee, as provided herein; and

WHEREAS, Clear Creek's obligation to replace out-of-priority depletions hereunder shall not exceed five (5.0) acre feet of water per Water Year, as set forth in this Agreement; and

WHEREAS, Clear Creek may amend or supplement its Basin-Wide Augmentation Plan by supplemental decree of the Water Court ("**Supplemental Decree**") or approved Substitute Water Supply Plan ("**SWSP**") in order to better or more efficiently serve the needs of the County or any of its Basin-Wide Augmentation Plan participants ("**Plan Participants**"); and

WHEREAS, the Parties desire to enter into this Agreement for the Lessee to participate in Clear Creek's Basin-Wide Augmentation Plan, subject to the terms of said Plan and this Agreement; and

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, Clear Creek and Lessee agree as follows:

1. Amount and Provision of Water.

a. Lease.

All rights and obligations of Clear Creek and Lessee are contingent on inclusion of five (5.0) acre-feet of Lessee's depletions in the Basin-Wide Augmentation Plan and subject to Section 7 hereof. Clear Creek hereby reserves for Lessee, and leases to Lessee a maximum of five (5.0) acre-feet of water available under the Water Rights per Water Year, to be provided on the following schedule, and subject to the terms and conditions set forth in this Agreement, including but not limited to paragraph 1.a.iv. below. All references to "5.0 acre feet" herein shall likewise be subject to the potential reductions pursuant to said paragraph 1.a. iv. below ("**Leased Water**").

- i. The parties recognize that Lessee's need for the Leased Water will commence and increase as development of the Bighorn Crossing Subdivision commences and proceeds. Lessee will not initially require the entire Water Year allocation of 5.0 acre-feet of Leased Water. Rather, Lessee's requirement for Leased Water is expected to increase over a period of several years, up to the 5.0 acre-foot maximum commitment, as development of the Bighorn Crossing Subdivision will proceed in phases.
- ii. No later than March 1 of each year, Lessee shall submit its Projected Monthly Water Augmentation Notice as provided in subsection (b) below for the amount of Leased Water, in one-tenth acre-foot units, required during the upcoming Water Year up to the 5.0 acre-foot maximum commitment.
- iii. Lessee may increase the amount of Leased Water to be delivered in a Water Year up to the total of 5.0 acre-feet per Water Year by including the increased amount required for the upcoming Water Year in the Projected Monthly Water Augmentation Notice described in subsection (b) below. However, the total amount of Leased Water requested for a Water Year shall not be reduced from Water Year to Water Year, and the total amount of Leased Water requested

shall be permanently committed to Lessee pursuant to this Agreement until this Agreement is terminated, or the total amount committed hereunder is reduced pursuant to paragraph 1.a.iv below. For example, if the Projected Monthly Water Augmentation Notice requests a total of 3.0 acre-feet for the second Water Year of this Agreement, all future Projected Monthly Water Augmentation Notices must request no less than 3.0 acre-feet per Water Year, and Clear Creek shall permanently commit 3.0 acre-feet to Lessee, unless and until this Agreement is terminated, or the total amount committed hereunder is reduced pursuant to paragraph 1.a.iv below.

- iv. The total of 5.0 acre feet per Water Year shall be reduced in the event Lot 2, Block 2 in Bighorn Crossing Subdivision is developed in a manner that will result in augmented depletions of less than 2.0 acre feet per year as currently contemplated or if the initial development is changed such that Lot 2, Block 2 depletions are less than 2.0 acre feet per year. In said events, the 5.0 acre feet subject hereto shall be reduced by the difference between 2.0 acre feet of depletions and the depletions for the ultimate development of Lot 2, Block 2.
- v. In the event that 5.0 acre-feet of Leased Water per Water Year has not been requested by Lessee by the sixth Water Year following execution of this Agreement, this Agreement shall be deemed amended such that the maximum amount of Leased Water to be provided each Water Year pursuant to this Section 1 shall be the amount requested by Lessee in its most recent Projected Monthly Water Augmentation Notice, unless otherwise agreed by the parties.

The "Water Year" for purposes hereof is April 1 of each year through the following March 31. Lessee's actual monthly water consumptive use that is augmented hereunder during the term of this Agreement may vary, but Lessee's actual consumptive use to be augmented pursuant to this Agreement shall not exceed 5.0 acre-feet per Water Year.

b. Annual Projected Monthly Water Augmentation Notice.

Not later March 1 of each Water Year, Lessee shall provide Clear Creek written notice of its projected monthly consumptive water use for that Water Year to be augmented by Clear Creek ("**Projected Monthly Water Augmentation Notice**"), in substantially the form attached as **Exhibit 2**, although for no greater than 5.0 acre-feet of consumptive use per Water Year to replace out of priority depletions. The projected monthly amounts required may be varied upon 30 days' advance written notice given by Lessee to Clear Creek, so long as the annual maximum is not exceeded. Said notice shall initially be delivered to Lisa Leben, Special Projects Manager, P.O. Box 2000, Georgetown, Colorado

80444, email lleben@co.clear-creek.co.us, or such other person designated by Clear Creek. Delivery of Leased Water will be in accordance with the most recent Projected Monthly Water Augmentation Notice unless modified in writing by both parties hereto. If no notice is received by March 1 in subsequent years, Clear Creek shall assume that the previous year's notice is still valid and shall deliver Leased Water accordingly.

The parties recognize that the Leased Water provided pursuant to this Agreement is a partial augmentation supply and that Lessee also has available and uses other augmentation supplies to augment its out of priority depletions. Until such time as Lessee is taking delivery of the entire 5.0 acre-foot maximum annual commitment, or in the event that Lessee does not require delivery of its full amount of available Leased Water in any given Water Year for any reason, Clear Creek shall be free to lease the excess Leased Water to third parties. However, non-use by Lessee during any Water Year shall in no way forfeit, terminate or impair Lessee's right to the full amount of the Leased Water in the next Water Year.

c. Provision of Leased Water for Augmentation

- i. Clear Creek agrees to provide the Leased Water as augmentation water from the Places of Delivery herein identified as necessary to replace in time, amount and location, a portion of Lessee's out-of-priority depletions consistent with this Agreement and pursuant to the terms of the Basin-Wide Augmentation Plan, and any administrative requirements of the Offices of the State and Division Engineers or Water Commissioner. No Leased Water delivered by Clear Creek pursuant to this Agreement will be used to augment depletions from irrigation uses.
- ii. Said Leased Water shall be provided from Clear Creek's current Basin-Wide Augmentation Water stored in the Places of Delivery herein identified or from any other source approved pursuant to Clear Creek's Basin-Wide Augmentation Plan, set forth in paragraph 4.b. Clear Creek shall exercise its exchanges, decreed or otherwise, in priority as necessary to deliver Leased Water to Lessee from the Places of Delivery.
- iii. Clear Creek shall include Lessee's reported and projected use of the Leased Water in its annual projections and all accounting required under the Basin-Wide Augmentation Plan.

2. **Price; Payment Terms.**

a. **Price for Leased Water.**

The current price for the Leased Water delivered by Clear Creek pursuant to this Agreement is a Delivered Base Rate of Fifteen Hundred Dollars (\$1500.00) per acre foot of Leased Water delivered per Water Year (“**Delivered Base Rate**”). The Clear Creek County Water Bank Rate Schedule provides for a fee of 50% of the Delivered Base Rate for water which it reserves for future years, but Clear Creek hereby waives said reserved water fee for the term of this Agreement as an accommodation to the Town of Georgetown.

Commencing April 1, 2019, the Delivered Base Rate will be adjusted annually for inflation in accordance with the Denver-Aurora-Lakewood metropolitan area Consumer Price index for All Items, All Urban Consumers (CPI-U) published by the United States Department of Commerce (or, if that is unavailable, the most nearly applicable index elected at the discretion of Clear Creek). The rate increase calculation is shown on **Exhibit 3**.

b. **Payment Date.**

Payment for Leased Water for a Water Year is due before the first day of the Water Year, commencing in the first Water Year in which Lessee requests delivery of Leased Water hereunder. Late payments will bear interest at a rate of nine percent (9%) per annum. Solely as an accommodation, but not as a condition of payment, Clear Creek will issue a written invoice for each Water Year. The late payment rate has been reduced from 18% in the Clear Creek County Water Bank Rate Schedule to 9% as an accommodation to the Town of Georgetown.

c. **Basin-Wide Augmentation Plan Costs.**

In addition to the Delivered Base Rate, Lessee shall pay the following amounts for its participation in the Basin-Wide Augmentation Plan:

- i Fees to reimburse Clear Creek’s reasonable legal and engineering expenses to process Lessee’s application and to pursue the inclusion of Lessee as a participant in the Basin-Wide Augmentation Plan (“**Legal and Engineering Expenses**”), which expenses will be billed to Lessee on a monthly basis as incurred, in an itemized bill. Payment will be due to Clear Creek within 45 days of invoice receipt. This reimbursement obligation will end following completion

process for inclusion of Lessee as a participant in the Basin-Wide Augmentation Plan and Lessee's payment of amounts to be reimbursed to Clear Creek pursuant to this paragraph (i).

ii A one-time Augmentation Participation Fee of \$5,000, due and payable upon the execution hereof; and

iii An Annual Augmentation Plan Administration Fee, which is currently \$ 750 per Water Year for ongoing administrative costs, which fee may be adjusted in the future by Clear Creek to reflect increased administrative costs ("**Administrative Fee**").

Lessee shall pay its first Administrative Fee upon execution of this Agreement.

3. Responsibilities of Lessee.

- a. Lessee wishes to have Clear Creek deliver Leased Water from the Places of Delivery as described in paragraph 4.b. for Lessee to replace a portion of its out-of-priority depletions consistent with this Agreement and the terms of the Basin-Wide Augmentation Plan, for which it agrees to assume the responsibilities enumerated in this paragraph 3, and throughout this Agreement.
- b. Lessee agrees to notify Clear Creek of any material changes to Lessee's water diversion, conveyance, or treatment facilities that may impact Clear Creek's augmentation obligations under the Basin-Wide Augmentation Plan with respect to the Leased Water.
- c. Lessee hereby agrees to be bound by the applicable terms and conditions of the Basin-Wide Augmentation Plan with regard to its use of the Leased Water.
- d. The parties acknowledge that Lessee operates its own water rights, supplies, exchanges and plans for augmentation, and measures, accounts for and reports its water use as required by its decrees and state water administration officials. Lessee will measure and report to Clear Creek the Lessee's water diversions as necessary to meet the reporting requirements of the Basin-Wide Augmentation Plan, at Lessee's cost.
- e. Lessee shall meter and report to Clear Creek its actual daily delivery of water to Bighorn Crossing Subdivision based on records from water

meters installed by Lessee to measure treated water deliveries to the Bighorn Crossing Subdivision for each of the uses which require different depletion (consumptive use) factors for augmentation purposes, including indoor use and uses on Lot 2, Block 2 if uses on Lot 2, Block 2 will be more than 5% consumptive. Lessee shall provide such information to Clear Creek as reasonably required by Clear Creek to meet its recordkeeping, accounting and reporting requirements, in a form reasonably approved by Clear Creek by electronic communication (email) in accordance with paragraph 1(b) above. In order to comply with current requirements from the Division Engineer, Georgetown hereby agrees to provide daily meter readings to the Clear Creek Water Resources Dept. on a weekly basis, recognizing that this could change in the future based upon revised requirements from said Division Engineer. A **Sample Monthly Accounting Form** for Lessee is attached hereto as **Exhibit 4**. Lessee shall not use the Leased Water for augmentation of irrigation depletions.

- f. Lessee shall cooperate with Clear Creek in preparing its Annual Report to the Division Engineer, as required under the Basin-Wide Augmentation Plan, and will make diversion and use records and other relevant information or documentation available upon request.
- g. Lessee shall comply with the Basin-Wide Augmentation Plan requirements with regard to its use of the Leased Water pursuant to the Basin-Wide Augmentation Plan.

4. **Delivery.**

a. **Commencement of Delivery and Delivery Rates.**

Clear Creek shall deliver and administer releases of Leased Water for the account of Lessee at times and rates specified in the Projected Monthly Water Augmentation Notice or any written modification thereof. Delivery of Leased Water shall be the physical moment a release or delivery of water from one of the Places of Delivery, described herein, is made into the Clear Creek stream system.

b. **Places of Delivery.**

The Leased Water shall be delivered to or for the account of Lessee from the following places of delivery (“**Places of Delivery**”), provided, however, that the Places of Delivery shall provide Leased Water at the times, locations and amounts required to

augment Lessee's out of priority depletions attributable to treated water deliveries to the Bighorn Crossing Subdivision for non-irrigation uses:

1. Clear Creek's permitted point of discharge from Green Lake into the South Fork of Clear Creek and/or any tributaries thereto;
2. The City of Golden's permitted point of discharge from the Vidler Tunnel Collection System to the point at which the east portal of the Vidler Tunnel discharges into Leavenworth Creek in Clear Creek County, Colorado;
3. Climax's permitted point or points of discharge from the Henderson Mine into the West Fork of Clear Creek and/or any tributaries thereto; provided, however, that the point of delivery shall be upstream of the confluence of Lion Creek and the West Fork of Clear Creek;
4. City of Golden's permitted point or points of discharge from Golden Reservoirs Nos. 1, 2, and 3 (also known as Guanella Reservoir) into the West Fork of Clear Creek and/or any tributaries thereto
5. Such other discharge points on the Clear Creek drainage within Clear Creek County as are approved pursuant to the Basin-Wide Augmentation Plan and agreed upon in writing by Clear Creek and Lessee.

c. **Risk and Assessments of Loss including Transit Loss.**

Lessee shall be solely responsible for all conveyance, transport, and use of the Leased Water downstream of the Place of Delivery and all transit losses resulting from moving Leased Water from storage, and all transit losses in providing augmentation water to the stream system in accordance with the terms of paragraph 8.9 of the Basin-Wide Augmentation Plan. Based on the distance from the Places of Delivery to the location at which Lessee must provide augmentation, Lessee shall include in its Projected Monthly Water Augmentation Notice the anticipated transit losses to be assessed on deliveries from the Places of Delivery downstream to the location of Lessee's depletion to be augmented, or to the point at which the Leased Water is exchanged upstream to Lessee's point of depletion. For purposes of Lessee's Projected Monthly Water Augmentation Notice, transit losses shall be calculated from an assumed delivery location of Green Lake, provided, however, that if the County notifies Lessee by February 1 that the deliveries for the upcoming water year will be made from a different location, Lessee will calculate transit losses from that location for purposes of its Projected Monthly Water Augmentation Notice.

5. **Beneficial Use.**

This Agreement is entered into for the sole purpose of making Leased Water

available to Lessee for replacement or augmentation of a portion of its out of priority depletions in Clear Creek County, Colorado.

Lessee shall continue to divert water for its municipal uses (including filling and refilling Georgetown Lake in accordance with its decrees, supplies, exchanges and augmentation plans) at the Georgetown Intake on South Clear Creek and at Georgetown Lake, and at the Georgetown Wastewater Treatment Plant Well, all of which locations are more specifically described in **Exhibit 1** attached hereto and incorporated by reference herein, and Lessee shall continue to operate its decreed water rights, supplies, plans for augmentation and exchanges. Nothing herein shall prevent Lessee from obtaining other water rights, supplies, decrees, changes, plans for augmentation or exchanges, substitute water supply plans, or other administrative water use opportunities as it deems reasonable and appropriate.

Lessee shall deliver treated water to Bighorn Crossing Subdivision from its own water rights, and shall utilize the Leased Water to replace out of priority depletions resulting from deliveries of treated water to the Bighorn Crossing Subdivision for non-irrigation uses. No other uses shall be made of the Leased Water by Lessee without prior written approval from Clear Creek.

Upon termination of this Agreement, Lessee understands that Clear Creek intends to consumptively use 100% of the Leased Water, and any non-use or non-consumption by Lessee during the term of this Agreement shall not be deemed to be evidence of an intent by Clear Creek to abandon the right of 100% consumptive use.

6. Sources of Water.

The Leased Water is from fully consumable developed non-tributary water, transmountain water sources, and tributary water decreed for augmentation purposes, and users thereof are entitled to consume 100% of all water delivered minus any losses as set forth in Section 4.c above.

7. Assumption of Risk.

a. Risk of Use.

Clear Creek shall not be responsible for Lessee's use of the Leased Water for augmentation and the effects thereof on third parties, including, but not limited to, the effects of diversions, discharges, and changes in the quantity and the quality of the Leased Water, except as herein provided.

b. **Hold Harmless.**

To the extent permitted by law, Lessee agrees to hold Clear Creek harmless from and against all loss, cost, liability and expense (including reasonable attorneys' fees and expenses) arising wholly or in part out of Lessee's use of the Leased Water, the effects thereof on third parties, or both. Nothing herein shall be construed to abrogate or diminish any protections and limitations afforded to either party by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* as amended, or other law.

c. **Assumption of Risk: No Warranties of Merchantability or Fitness.**

Lessee agrees it is acquiring the Leased Water "as is," and that there are no warranties, express or implied, of any kind including, but not limited to, potential limitations on use imposed by State and Federal law. Clear Creek expressly disclaims any warranty of merchantability or fitness of the Leased Water for any particular purpose. In addition, Lessee agrees it is participating in the Basin-Wide Augmentation Plan as it is decreed, and that there are no warranties, express or implied, of any kind regarding the Basin-Wide Augmentation Plan, including, but not limited to, potential limitations imposed by State or Federal law, or administration by the Division of Water Resources or other state or local agency. However, if Lessee determines that any limitations imposed after the date hereof by State or Federal law, or administration by the Division of Water Resources or other state or local agency on the use of the Leased Water for augmentation as contemplated herein are unacceptable to it, Lessee may, at its election, terminate this Agreement and will have no further liability hereunder except for payment for Leased Water delivered but not paid for prior to the effective date of termination and any additional costs Lessee is required to pay pursuant to this Agreement that have been incurred but not paid as of the date of termination.

d. **Assumption of Risk: Changes in Quality.**

Lessee understands that changes in the quality of the Leased Water shall not be deemed to constitute a breach of this Agreement. However, if Lessee determines that any change in the quality of the Leased Water makes it unacceptable for the augmentation purposes hereunder, Lessee may, at its election, terminate this Agreement and will have no further liability hereunder except for payment for Leased Water delivered but not paid for prior to the effective date of termination and any additional costs Lessee is required to pay pursuant to this Agreement that have been incurred but not paid as of the date of termination.

e. **Assumption of Risk: Changes in Quantity.**

Based upon historical availability of the water at the Places of Delivery, it is anticipated that sufficient water will be available every year to Clear Creek, of which the amount specified in Section 1, above will be available to Lessee in the times, amounts and locations required to augment a portion of Lessee's out of priority depletions as contemplated by this Agreement. Lessee understands that the quantity of water produced by the Henderson Mine and the Water Rights has changed from time to time in the past, the quantity thereof might vary during the term hereof, and the amount of Leased Water provided for in Section 1 above may not always be physically available for delivery to Lessee. Lessee agrees that in the event of such physical shortage due to a force majeure, Clear Creek shall not be responsible for providing an alternate supply of Leased Water to Lessee and the failure to deliver the full amount of Leased Water at any particular time as provided for herein for this specific reason shall not be deemed to be a breach of this Agreement. In the event that sufficient water is not available to Clear Creek, the amount of Leased Water made available to Lessee and other parties who enter into water leases with Clear Creek after January 1, 2006, will be adjusted proportionately. As soon as reasonably determinable, Clear Creek shall notify Lessee of the amount of the Leased Water it expects to have available during such period, if such amount is expected to be less than the amount specified in Section 1 (or requested in the applicable Projected Monthly Water Augmentation Notice, if less than the total amount specified in Section 1.) In the event of a reduction in delivery pursuant to this subsection "e," Clear Creek shall pay Lessee a refund of any prepaid amounts for Leased Water that Clear Creek is unable to deliver. In the event Clear Creek is unable to deliver the full amount of Leased Water requested for a period of two consecutive Water Years, for the reasons described in this paragraph, Lessee may, at its election, reduce the total annual amount of Leased Water contracted for in this Agreement or terminate this Agreement, in which case Lessee will have no further liability hereunder except for payment for Leased Water delivered but not paid for and any additional costs Lessee is required to pay pursuant to this Agreement that have been incurred but not paid as of the date of termination.

f. **Water Rights.**

i. Lessee's rights under this Agreement are subject to the Water Sales Agreement, and the Water Agreement between City of Golden, CO and Clear Creek dated February 1, 2001, as amended by the First Amendment thereto dated March 11, 2004, and the Second Amendment thereto dated January 4, 2005 and the Water Sales Agreement between Climax Molybdenum Company and Clear Creek dated June 1, 1991 ("Water Agreements"). The Water Rights hereunder and the

delivery of Leased Water are subject to regulations and administration by the Office of the State Engineer and Lessee hereby recognizes that such administration could change to the detriment of Lessee. Clear Creek shall not be liable for any such changes in said administration. However, if Lessee determines that any change in the Water Agreements or the administration thereof, or the State's administration of the Leased Water is unacceptable to it, Lessee may, at its election, terminate this Agreement and will have no further liability hereunder except for payment for Leased Water delivered but not paid for and any additional costs Lessee is required to pay pursuant to this Agreement that have been incurred but not paid as of the date of termination.

ii. The delivery of Leased Water contemplated by this Agreement may be subject to regulation and permitting requirements under both State and Federal law. Lessee agrees that it will not protest or otherwise object to the issuance of any permit or other governmental authorization necessary to authorize the discharge or other delivery of water from the Henderson Mine, Vidler Tunnel or the Water Rights or to exchange any of such water into Golden Reservoir Nos. 1, 2 and 3 (Guanella Reservoir) or other reservoirs or to rehabilitate and store water in Green Lake. Notwithstanding the foregoing, nothing in this paragraph or in this Agreement shall be deemed to prevent or in any way limit Lessee's rights and ability to protect its water rights and supplies and its other interests, or to enforce its charter, code, ordinances, policies, rules and regulations, including but not limited to its decreed water rights, exchanges and plans for augmentation, its watershed protection ordinances, its discharge permits, and its policies and positions regarding water quality standards. Lessee shall not be responsible for any costs or expenses associated with issuance of any permits or governmental authorizations necessary to authorize such discharge or delivery of Clear Creek's water rights and supplies.

iii. Lessee will not take any action to increase the stringency of water quality, or other standards applicable to Woods Creek or the West Fork of Clear Creek which are in force as of the date first above written, and agrees that it will not propose or support any law, rule or regulation that would materially impair the ability to discharge water and wastewater from the Henderson Mine and Vidler Tunnel pursuant to the Water Sales Agreement or Water Agreement. Notwithstanding the foregoing, nothing in this paragraph or in this Agreement shall be deemed to prevent or in any way limit Lessee's rights and ability to protect its water rights and supplies and its other interests, or to enforce its charter, code, ordinances, policies, rules and regulations, including but not limited to its decreed water rights, exchanges and plans for augmentation, its watershed protection

ordinances, its discharge permits, and its policies and positions regarding water quality standards.

8. **Term.**

This Agreement shall be in effect as of the effective date set forth above, and remain in effect until terminated in writing by mutual agreement of the parties or unless earlier terminated as provided below or as otherwise provided in this Agreement.

a. **Automatic Termination.**

This Agreement shall terminate automatically in the event that no water service connection to Lessee's water distribution system has been made by any phase of the Bighorn Crossing Subdivision by January 8, 2021. The date of termination shall be thirty (30) days from the date on which Lessee notifies Clear Creek that no such water service connection has been made.

b. **Termination by Clear Creek or Lessee.**

i. Should Lessee's use of the Leased Water be denied for inclusion into the Basin-Wide Augmentation Plan, then Clear Creek or Lessee shall have the right to terminate this Agreement in full upon 30 days written notice to the other Party. Any determination to terminate pursuant to the preceding sentence shall be made within the greater period of (1) 12 months from the date of execution of this Agreement or (2) the time necessary to diligently pursue and obtain a final determination allowing or disallowing inclusion of Lessee's proposed water uses into the Basin-Wide Augmentation Plan. All fees except Clear Creek's legal and engineering fees and the Annual Augmentation Plan Administration Fees applicable to the period before the termination becomes effective (as set forth in paragraph 2.c) shall be refunded by Clear Creek and Clear Creek shall have no other liabilities to Lessee for any losses or costs incurred by Lessee or the Bighorn Crossing Subdivision due to denial of inclusion into the Basin-Wide Augmentation Plan, including, but not limited to, Lessee's reasonable attorney's fees and engineering costs. The amounts to be refunded by Clear Creek pursuant to this subparagraph (i) shall be refunded to Lessee within thirty (30) days of termination due to denial of inclusion into the Basin-Wide Augmentation Plan.

ii. Within the period of time described above at paragraph 8.a, or any extension of said period, Lessee may terminate this Agreement on thirty (30)

days written notice if Lessee determines in its reasonable discretion that the Bighorn Crossing Subdivision will not go forward or will not be constructed.

9. **County Water Projects.**

If, during the term of this Agreement, Clear Creek submits water applications or develops water for delivery or storage of water systems, Lessee agrees that it will not oppose any water rights or permit applications, or propose or support any law, rule or regulation that would materially impair development of those projects or system, unless Lessee determines, in its sole discretion, that such opposition is necessary or appropriate to protect or enforce its water rights and supplies or its other interests, including but not limited to its charter, code, ordinances, policies, rules and regulations, its own permits or permit applications, and any laws, rules or regulations it deems appropriate for the protection of its own rights and interests.

10. **Assessments.**

Apart from Lessee's Administrative Fee set forth in Section 2(c)(iii) above, Clear Creek shall be responsible for payment of all other administrative costs of its Basin-Wide Augmentation Plan. Clear Creek shall also be solely responsible for payment of all assessments by the City of Golden and Henderson Mine.

11. **Default.**

If either party fails to comply with any requirement of this Agreement or the Basin-Wide Augmentation Plan (the "Defaulting Party"), the other party ("Non-Defaulting Party") shall provide the Defaulting Party written notice of said failure, giving the Non-Defaulting Party at least 30 days to cure the default. If the default is not one which can reasonably be cured within the time period specified in the notice, the Defaulting Party shall so notify the Non-Defaulting Party, and shall have a reasonable time within which to cure such default. If the Defaulting Party fails to cure the default within the given timeframe, or within a reasonable time if the default is not one which can reasonably be cured within the time period specified in the notice, the Non-Defaulting Party may, at its option resort to its remedies with or without terminating this Agreement. If the Defaulting Party is the Lessee, Clear Creek may, in addition to its other remedies, terminate this Agreement and take necessary actions to remove Lessee from the Basin-Wide Augmentation Plan. If the Defaulting Party is Clear Creek, Lessee may, in addition to its other remedies, seek specific performance of this Agreement.

12. Force Majeure.

Subject to the terms and conditions in this section, no party to this Agreement shall be liable for any delay or failure to perform under this Agreement due solely to conditions or events of force majeure, as that term is specifically defined herein. As used herein, force majeure means any delay or failure of a party to perform its obligations under this Agreement caused by events beyond that party's reasonable control, and without the fault or negligence of the party, including, without limitation (a) changes in state or federal law or administrative practice concerning water rights administration, water quality, or stream flow requirements; (b) acts of God; (c) sudden actions of the elements such as floods, earthquakes, storms, or tornadoes; (d) sabotage; (e) vandalism beyond that which can be reasonably prevented by the party; (f) terrorism; (g) war; (h) riots; (i) fire; (j) explosion; (k) blockades; (l) insurrection; (m) strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); and (n) actions by federal, state, municipal, or any other government or agency (including but not limited to the adoption or change in any rule or regulation or environmental constraint imposed by federal, state or local governing bodies or courts) but only if such requirements, actions, or failures to act, prevent or delay performance. Except as otherwise provided herein, in the event any delay or failure of performance on the part of the party claiming force majeure continues for an uninterrupted period of more than 120 days from its occurrence or inception, the party not claiming force majeure may, at any time, following the end of such 120-day period, terminate this Agreement upon written notice to the party claiming force majeure, without further obligation except as to costs and balances incurred prior to the effective date of such termination.

13. Notices.

Other than the Projected Monthly Water Augmentation Notice provided for in paragraph 1(b), which may be emailed with a delivery receipt option, all notices and other required communications under this Agreement shall be provided in accordance with this paragraph, and addressed as follows:

Clear Creek: Board of County Commissioners
Water Resources Department
County of Clear Creek
P.O. Box 2000
Georgetown, CO 80444
303-679-2312

With a copy to:

Clear Creek County Attorney
P.O. Box 2000
Georgetown, CO 80444
303-679-2326

Lessee: Town Administrator
Town of Georgetown
P.O. Box 426
404 6th Street
Georgetown CO 80444

With copy to: Town Attorney
Town of Georgetown
P.O. Box 426
404 6th Street
Georgetown CO 80444

All notices shall be given by (i) personal delivery or (ii) United States first class mail, postage prepaid, properly addressed to the party to whom directed at its address shown herein. All notices shall be effective, and shall be deemed delivered, respectively, on the (i) day of delivery if personally delivered during normal business hours for the recipient's offices, or, if not delivered during normal business hours, on the next business day following delivery, or (ii) if delivered by mail, the third business day after depositing in a depository of the US Postal Service.

Either party may change its address by written notice to the other party in the manner provided in this paragraph.

14. Exhibits.

The contents of Exhibits 1, 2, 3, and 4 are incorporated into this Agreement by reference as if they were fully set forth herein.

15. Titles and Subtitles.

Titles of sections and subsections are placed herein for convenience of reference only, and shall not have the effect of modifying, amending, or changing the express terms and provision of this Agreement.

16. Nonseverability.

If any provision of this Agreement is determined by final decision of a court of competent jurisdiction to be invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force and effect if the essential terms and conditions of this Agreement for each party remain valid, binding and enforceable.

17. Modification.

This Agreement shall not be modified, amended, supplemented, extended, or altered except as the parties may from time to time agree by written instrument signed by their authorized officers or representatives.

18. Assignment, Lease or Sale.

The Leased Water has been made available to Lessee for the uses described in Section 5 above and **Exhibit 1**. It is the intent of the parties hereto that this Leased Water shall be used solely for those purposes. An assignment of this Agreement by Lessee for the use of the Leased Water for those purposes may be made without the prior written approval of Clear Creek, provided that Lessee shall promptly give written notice to Clear Creek of such assignment (including the effective date, the name and address of the assignee, and a copy of the assignment documents). However, any assignment of this Agreement or any rights of Lessee thereunder for use of Leased Water for purposes other than those specified in Exhibit 1 and Section 5 is prohibited and shall be deemed void unless consented to in advance, in writing, by Clear Creek, which consent may be granted or refused at Clear Creek's sole discretion. Even if an assignment is made with consent, Lessee shall remain bound by the terms of this Agreement, and shall remain responsible for its augmentation obligations to Clear Creek hereunder, unless it is expressly released, in writing, by Clear Creek.

All sales, leases and subleases by Lessee of Leased Water delivered under this Agreement are prohibited, provided, however, that Lessee is not hereby prohibited from requiring deposits, or establishing water rates, tap fees, availability of service fees, surcharges or other taxes or fees to recover Lessee's costs associated with the Leased Water from the developer or water users in Bighorn Crossing Subdivision.

Any violation of this Section by Lessee will be deemed a material breach of this Agreement terminating this Agreement without notice or opportunity to cure.

19. Binding Effect on Successors and Assigns; 3rd Parties.

Subject to the provisions of the previous Section, the terms and provisions of this Agreement shall apply to and be binding upon the successors and assigns of the parties.

This Agreement is not intended to benefit third parties except as specified herein, and shall not be interpreted to allow any third party to enforce this Agreement against a party hereto. Lessee's municipal water service customers are not intended and shall not be deemed to be third party beneficiaries with rights to enforce this Agreement.

20. Gender and Number.

As used herein, unless the context clearly indicates the contrary, the singular number shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

21. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be taken to be an original upon execution and delivery to the other party.

22. Waiver.

No waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom charged. No waiver of any provision of this Agreement shall constitute a waiver of any other provision of this Agreement or of the same provision on another occasion. Only the Board of County Commissioners is authorized to waive a provision on behalf of Clear Creek, and only the Board of Selectmen of the Town of Georgetown is authorized to waive a provision on behalf of Lessee.

23. Amendment to Basin-Wide Augmentation Plan.

Clear Creek may amend its Basin-Wide Augmentation Plan by or through amendments, supplemental decrees, or Substitute Water Supply Plans, in its sole discretion. In said event, Lessee shall be given an opportunity to terminate this Agreement, at its sole discretion, if the terms of any such subsequent modifications are unsatisfactory to Lessee, and Lessee shall have no other remedy of any nature.

24. Merger.

This Agreement constitutes the final agreement between the parties regarding the subject matter hereof. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement may not be explained, supplemented, or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement other than those expressly stated in this Agreement.

25. Governing Law.

This Agreement and its application shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the date and year first above written.

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF CLEAR CREEK

By: _____
Chairman, Board of County Commissioners

Date: _____

Attest:

Deputy Clerk & Recorder

Lessee: THE TOWN OF GEORGETOWN,
COLORADO

By: Matthew D. Skeen
Name: Matthew D. Skeen
Title: Police Judge

Date: 8-1-18

Attest:

[Signature]
Town Clerk



STATE OF COLORADO)
) ss.
County of _____)

Subscribed under oath before me on this _____ day of _____, 20____, by
_____ as _____ and _____ as
Town Clerk of the Town of Georgetown, Colorado.

My commission expires: _____.

Notary Public

EXHIBIT 1

INTERNAL USE: Application Number: _____ Applicant Name: _____

Application for Inclusion in the County of Clear Creek Augmentation Plan

Case No. 05CW302, Water Division No. 1, Exhibit 4

Structure Type (Circle One): Well - Pond/Reservoir- Surface Diversion

Applicant Name: Town of Georgetown

Mailing Address: P.O. Box 426, 404 6th Street

City, State and Zip: Georgetown CO 80444 Phone: 303.569.2555

Business Name: _____

Structure Address: Structures: Georgetown Municipal Intake

Subdivision Name: _____ Lot: _____ Block: _____ Filing No.: _____

Wastewater Treatment System: Check One: Public: Private:
Central Wastewater Treatment System (i.e. Not Septic?) _____ Location of Treatment System: Onsite: Offsite:
Name of System: Georgetown Municipal Wastewater Treatment Plant

Type of System: Septic Tank with Leach Field: Vault: Other: Describe: _____

Name of Stream to which wastewater returns: Clear Creek

Is Application for an Existing Well? No If yes, Permit No.: _____ If Reservoir, Elevation: _____

Court Case No.: _____ Approximate Date of Well Construction if not permit or decree: _____

Previous Augmentation Source? Georgetown has not historically provided augmentation to non-irrigation depletions at Bighorn Crossing as this is new development that has not yet been constructed. (Court Case No. if Available): Georgetown's municipal supplies, storage rights and augmentation plans are described in Case Nos. 41340, 98CW439, 99CW12 (Consolidated with 07CW324), 08CW145, 10CW317

Structure ID Number of Well (if applicable): _____

DIVERSION LOCATION: The decreed location of the Georgetown Intake is set forth on Exhibit A
PLLS: _____ % of the _____ % of Section 17, Township 4 (North / South),
Range 74 (East / West), 6th P.M. Dist. from Sec. Line: 1,400 ft N / S and 1,800 ft E / W
NAD 83 UTM Location: Zone _____ Easting: _____ Northing: _____

Distance from Stream: _____ feet (NOTE: Zone 1: 0'-750' - Zone 2: 750'-1500' - Zone 3: Greater than 1500')

a. Location of Depletions (SUBBASINS): See MAP of Subbasins provided.

Headwaters of Clear Creek (Subbasin A) Headwaters of South Fork of Clear Creek (Subbasin B)
Headwaters of West Fork of Clear Creek (Subbasin C) Headwaters of Mill Creek (Subbasin D)
Headwaters of Fall River (Subbasin E)

EXHIBIT 1

Confluence of Clear Creek and S. Fork of Clear Creek to confluence of Clear Creek and Beaver Brook (Subbasin F)

EXHIBIT 1

County of Clear Creek Augmentation Plan User Application

INTERNAL: Application Number: _____ Applicant Name: _____

Annual Augmentation Requirements Table:

Use	Quantity	Units	Depletion Factor (AF)	Annual Depletion (AF)	Diversion Factor	Annual Diversion (AF)
In-House - WWTP	64	Each	0.0157	1.00	20	20.11
In-House - OWTS		Each	0.0314	0.000	10	0.000
Accessory Unit - WWTP	72	Each	0.01345	0.94	20	19.37
Accessory Unit - OWTS		Each	0.0269	0.000	10	0.000
Apartment, Hotel, Motel, or Cabin - WWTP	81	Per Room	0.009	0.73	20	14.9
Apartment, Hotel, Motel, or Cabin - OWTS		Per Room	0.0179	0.000	10	0.000
Commercial - Warehouse - WWTP		Per 1,000 sf	0.0045	0.000	20	0.000
Commercial - Warehouse - OWTS		Per 1,000 sf	0.009	0.000	10	0.000
Commercial - Office - WWTP	2.5	Per 1,000 sf	0.009	0.02	20	0.45
Commercial - Office - OWTS		Per 1,000 sf	0.018	0.000	10	0.000
Restaurant - WWTP	200	Per Customer	0.0005	0.100	20	2.000
Restaurant - OWTS		Per Customer	0.001	0.000	10	0.000
Brewery – not decreed in 05CW302	1		100%	2.0	N/A	2.0
Fast Food Restaurant - WWTP		Per Customer	0.00045	0.000	20	0.000
Fast Food Restaurant - OWTS		Per Customer	0.0009	0.000	10	0.000
Recreational Vehicles		Per Vehicle	0.045	0.000	1	0.000
Recreational Vehicles - Bath House - WWTP		Per 10 Vehicles	0.0017	0.000	20	0.000
Recreational Vehicles - Bath House - OWTS		Per 10 Vehicles	0.0034	0.000	10	0.000
Domestic Large Animal & Livestock Watering		Per Animal	0.012	0.000	1	0.000
Irrigation - Elev. 6,500-8,250'		Acres	1.70	0.000	Varies	0.000
Irrigation - Elev. 8,250'+	None	Acres	1.73	0.000	Varies	0.000
Evaporation - On-channel reservoirs, gravel pits		Acres, Surface Area	1.82	0.000	1	0.000
Evaporation - Off-channel reservoirs		Acres, Surface Area	2.92	0.000	1	0.000
Dust Control		Metered	1.00	0.000	1	0.000
Snowmaking		Metered	1.00*	0.000	4.167	0.000
Other Purpose		Metered	1.00	0.000	1.000	0.000
*OWTS = On-Site Wastewater Treatment Systems				Total:	4.8	58.8

* Snowmaking Diversions are 100% consumptive at the time of diversion; credit for return flows shall be as set forth in the decree in Case No. 05CW302.

- Depletion Factors shown in this table do not apply to fully depletive reaches containing intervening water rights at such time as the intervening water right has placed a call on the river. A fully depletive reach is one in which a Participating Diversion is located upstream and the return flow from such diversion returns to the stream below an intervening water right, including an instream flow water right when said intervening water right has placed a call on the river.

Provide a detailed description of proposed water uses for each property and answer the applicable questions:
 The Town of Georgetown is a municipal water provider and provides water to its customers from its portfolio of water rights and augmentation supplies. The augmentation water to be supplied pursuant to this Agreement will be used to augment out of priority depletions associated with non-irrigation water use at the Bighorn Crossing Subdivision.

Comments:

EXHIBIT 1

County of Clear Creek Augmentation Plan User Application

INTERNAL: Application Number: _____ Applicant Name: _____

Applicant's Signature: _____

Date: _____

EXHIBIT 1

County of Clear Creek Augmentation Plan User Application

INTERNAL: Application Number: _____ Applicant Name: _____

COUNTY INTERNAL USE ONLY BELOW THIS LINE: _____

Reviewed By: County: _____ Engineer Consulted: _____

Conditional Approval*: Denied: Date: _____

Reason: Outside Augmentation Area No Appropriate Augmentation Source
No Appropriate Exchange Inappropriate Use

Other: _____

Post Pumping Depletion Aug. Requirements: _____ years 600 ft well spacing review conducted? ?

Total augmentation water adjudicated (AF): 83

Amount committed to previous participating diversions and the one proposed herein (AF): Balance of uncommitted replacement water (AF):

Subbasin of depletion (A-G):

Type of replacement (release from X, admin exchange, etc.)

Name of aug source (Green Lake, etc.): Water available in aug source (AF) Exchange to
depletion location required (Y/N): Exchange Rate Required (cfs):

Exchange Potential Available (cfs): Remaining exchange potential after (cfs):

Measurement device (flume, flow meter, presumptive estimate):

Conditions of Approval: _____

Signed: _____ Date: _____

*Note: All Approvals subject to final approval pursuant to the County's augmentation plan decree, Case No. 05CW302.

**Exhibit 2 to Water Leasing and Participation Agreement:
Projected Monthly Water Augmentation Notice**

Augmentation Deliveries for Water Year 2018 (beginning April 1, 2018)

<u>Month</u>	<u>Augmentation*</u>
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April	
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May	
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June	
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July	
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August	
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September	
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October	
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November	
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December	
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January	
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February	
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March	
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Total	_____ acre feet, which include transit losses of _____ acre feet/year for releases from Green Lake.
-------	--

TOTAL: _____

*Not to exceed 5.0 af per year.

Exhibit 3 to Water Leasing and Participation Agreement: Calculation of Water Rates

Calculation of Purchase Price

The Purchase Price for Water in any Water Year shall be computed according to the following formula:

$$P = \frac{\$(D) (A) (B)}{(C)}$$

Where:

P = Purchase Price

A = Total number of acre feet of Water leased hereunder for the Water Year in question.

B = The Consumer Price Index for the reporting period preceding the first day of the Water Year.

C = The CPI (U) for the later of (a) the reporting period preceding April 1, 20__ (at the date hereof, the period July-December 20__) or (b) the reporting period preceding the effective date of the most recent Delivered Base Rate adjustment.

D = Delivered Base Rate

In the event that the United States Department of Commerce ceases to publish the CPI (U) or ceases to publish same on a semi-annual basis or for the Denver-Aurora-Lakewood metropolitan area, then Clear Creek shall select the index which most as most closely reflects the factors taken into account by the Department of Commerce in computation of the CPI (U) for the Denver-Aurora-Lakewood metropolitan area.

**Exhibit 4 to Water Leasing and Participation Agreement:
Sample Weekly Accounting Form**

