PERPETUAL AUGMENTATION WATER AGREEMENT

This Augmentation Water Agreement ("Agreement") is entered into this 44 day 6000, 2012, by and between the City of Greeley, a Colorado municipal corporation, acting by and through its Water and Sewer Board ("Greeley") and the Greeley Urban Renewal Authority ("GURA") (collectively, the "Parties").

RECITALS

- 1) GURA owns the property described on Exhibit A, commonly known as the 8th Street Pit Property, which will require augmentation water to replace out-of-priority depletions caused by evaporation of exposed groundwater (the "Property").
- 2) According to the "Sand, Gravel, and Aggregate Mining Lease" dated June 9, 1999, and 2002, 2008 and 2011 amendments thereto (together referred to as the "Mining Lease") between GURA and CAMAS Colorado, Inc., during the term of the lease, the tenant miner shall obtain water for its mining operations from Greeley and prepare and administer a Temporary Substitute Supply Plan to accommodate any evaporative or other losses. After termination of the lease, GURA is responsible for the water augmentation requirements imposed by the State for the Property.
- 3) Greeley owns water rights that are fully decreed and usable for augmentation purposes under Colorado water law ("Augmentation Water").
- 4) GURA desires to secure a permanent supply of augmentation water to be used to augment the 8th Street Pit commencing after the termination of the Mining Lease.
- 5) Greeley agrees to augment the out-of-priority depletions associated with the Property after termination of the Mining Lease subject to the terms and conditions set forth in this Agreement.

AGREEMENT

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and adequacy of which is hereby acknowledged, and in further consideration of the mutual covenants and agreements set forth below, the parties agree as follows:

- 1.1. <u>Augmentation Water</u>. Greeley agrees to perpetually augment the out-of-priority depletions caused by evaporative losses at the Property for a maximum of 23 exposed surface acres subject to the conditions in Section 1.2.
- 1.2. <u>Payment.</u> In consideration of Greeley's perpetual obligation to augment 23 surface acres of the Property, GURA shall pay to Greeley \$260,868.00 within 30 days of the

1

3881586 10/17/2012 10:41 AM Page 2 of 8

execution of this Agreement. After the initial payment, Greeley will provide augmentation water to cover the out-of-priority depletions caused by evaporative losses for a maximum of 12 exposed surface acres. If GURA determines that the maximum exposed surface acres will be greater than 12 surface acres, GURA shall pay to Greeley an additional payment of \$21,739.00 per exposed surface acre over 12 surface acres, escalated at five percent annually beginning in 2013. Payment shall be made within 30 days of providing written notice to Greeley of such additional augmentation water need. Such notice of additional augmentation water shall be given prior to June 30, 2024, otherwise, all references in this Agreement to 23 surface acres shall be amended to read 12 surface acres.

- 1.3. Assignment of Augmentation Water Agreement. This Agreement is non-transferable by GURA or its successors. The augmentation water provided by Greeley under this Agreement shall only be used to augment evaporative losses associated with the out-of-priority depletions caused by mining activities at the 8th Street Pit property. In no event shall the assignment, sale, conveyance, or subdivision of some or all of the Property require Greeley to provide augmentation water to an entity other than GURA, or require Greeley to provide Augmentation Water in amounts greater, or in a different manner, than as described herein.
- 1.4. <u>Administration</u>. To the extent that the maximum amount of exposed surface acres at the Property totals less than 23 surface acres, Greeley reserves the right to use the balance of the Augmentation Water for its own purposes. Greeley shall not be obligated to augment evaporative losses for more than 23 exposed surface acres. Any augmentation required beyond 23 surface acres shall be the sole responsibility of GURA.
- 1.5. 8th Street Pit Augmentation Plan and Substitute Water Supply Plans. The Parties intend that the augmentation water provided by Greeley hereunder will be used under and incorporated into a permanent augmentation plan for the Property to be filed in Water Court, Water Division No. 1. Greeley shall be responsible for filing the permanent augmentation plan in Water Court approximately two years prior to the termination of mining at the site ("Mining Termination") and for administering such plan once it is decreed. GURA shall provide written notice to Greeley at least 180 days prior to the Mining Termination date. Greeley shall not be responsible for filing temporary substitute water supply plans at the Property during the term of the Mining Lease. GURA shall cooperate with and provide reasonable assistance and information to Greeley to enable Greeley to obtain Water Court approval of the permanent augmentation plan for the Property.
- 1.6. <u>Notices.</u> Any notices required hereunder shall be sent by certified mail or hand-delivered to the parties at the following addresses, unless a party notifies the other party in writing that such contact or address has changed:

For Greeley: Director, Water and Sewer Department

City of Greeley

1100 10th Street, 3rd Floor Greeley, Colorado 80631

With a copy to:

3881586 10/17/2012 10:41 AM Page 3 of 8

City Attorney, Environmental and Water Resources Attorney City of Greeley 1100 10th Street, Suite 401 Greeley, Colorado 80631

For GURA:

Secretary, Greeley Urban Renewal Authority c/o City of Greeley 1000 10th Street, Ste 107 Greeley CO 80631

With a copy to:

Fred L. Otis Otis, Coan & Peters, LLC 1812 56th Avenue Greeley, CO 80634

- 1.7. Water Rights Used for Augmentation Water. Greeley may use and deliver any water rights or water supplies, or any combination thereof, which Greeley owns or has a right to use to satisfy its obligations under this Agreement; provided that such water rights or water supplies are duly authorized for such use. Greeley has no obligation to ensure that the Augmentation Water provided hereunder is authorized for use in GURA's temporary substitute water supply plans.
- 1.8. Right of First Negotiation. GURA shall not, sell, transfer or otherwise dispose of the water storage in the Property, except in accordance with the provisions hereof. If GURA desires to transfer or dispose of the water storage in the Property, GURA shall first give written notice (a "Offer to Negotiate") to Greeley of its intent to sell such storage rights. Greeley shall have the right to negotiate for a period of ninety (90) days after receipt of the Offer to Negotiate, but if no agreement is reached within said ninety (90) day period, GURA shall be at liberty to sell or transfer the water storage in the Property to third parties. Nothing herein is intended to infer that GURA has any water storage rights established.
- 1.9. <u>Prior Agreements.</u> This Agreement cancels and supersedes all prior agreements between the parties related to the rental or lease of Augmentation Water.
- 1.10. <u>Default.</u> If either party shall fail or refuse to perform according to the terms of this Agreement, such party may be declared in default. Such declaration of default must be made in writing. If a party has been declared in default of this Agreement, such defaulting party shall be allowed a period of sixty days within which to cure the default. If the default remains uncorrected, the party declaring the default may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and seek specific performance; or (c) pursue any other remedy at law or equity.
- 1.11. Costs. In addition to the remedies available in Paragraph 1.13, if the default of any of the provisions of this Agreement by either party require the party not in default to commence legal action against the defaulting party, the defaulting party shall be liable to the non-defaulting

3881586 10/17/2012 10:41 AM Page 4 of 8

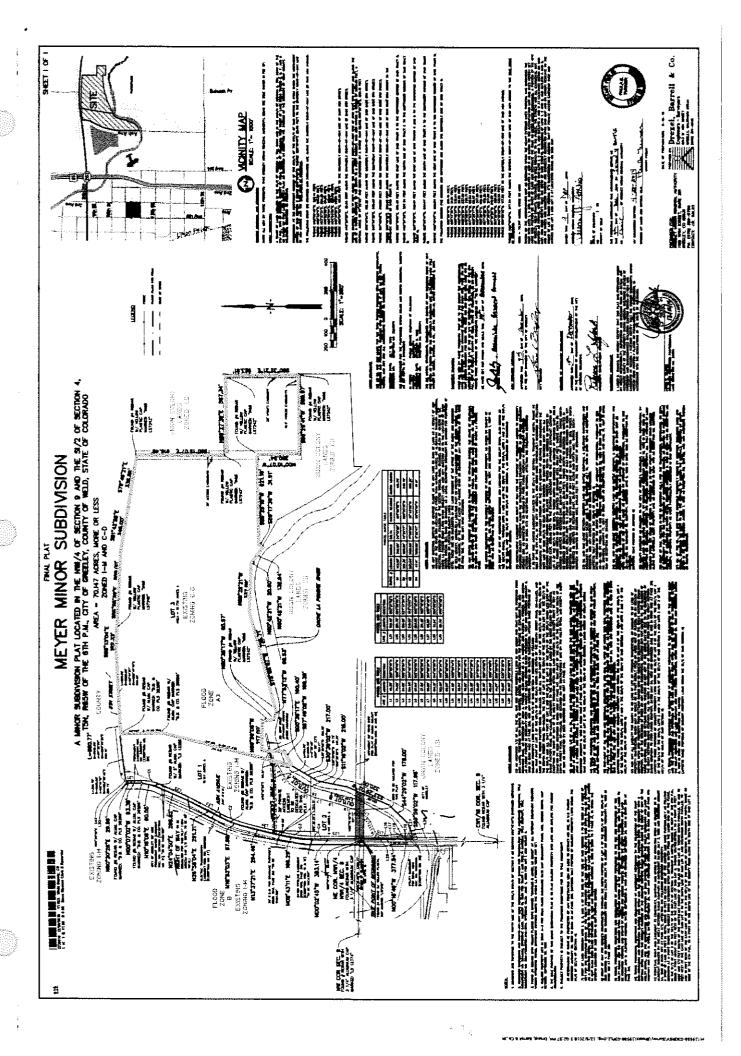
party for the costs incurred because of the default, including reasonable attorney's fees.

- 1.12. Governing Law: Venue. This Agreement shall be governed and enforced in accordance with the laws of the State of Colorado. Venue for any action regarding this Agreement shall be in the District Court for Weld County, Colorado or Water Court as appropriate.
- 1.13. <u>Recording.</u> This Agreement may be recorded by either party, and may be disclosed and utilized in any Water Court proceeding related to the Property's augmentation plan and related matters.
- 1.14. Counterparts. This Agreement may be executed in counterparts, each of which (or combination of which), when signed by both parties shall be deemed an original, but both together shall constitute one agreement.
- 1.15. No Third Party Enforcement. The terms and conditions of this Agreement, and all rights of action relating thereto, are strictly reserved to the Parties, and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Agreement. Any person and/or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
- 1.16. Runs with Land. The benefits and burdens of this Agreement shall run with the Property.
- 1.17. Effect of Invalidity. The Parties intend for this Agreement to establish GURA's perpetual right to use the Augmentation Water, subject to conditions. Should a Court of competent jurisdiction determine that such right may not be conveyed, the Parties intend that this Agreement be interpreted as a 99-year lease, which will renew automatically at the end of its term unless, at least one calendar year prior to its expiration, either party gives a notice of breach and the breaching party files to cure within 60 days of such notice.
- 1.18. Waiver. A waiver of a breach of any provision of this Agreement shall not waive any subsequent breach of the same or different provision of this Agreement.
- 1.19. <u>Binding Agreement.</u> This Agreement binds and benefits the Parties and their respective survivors, heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

Exhibit A

Lot 3, Meyer Minor Subdivision, a Subdivision of the City of Greeley, Weld County, Colorado.



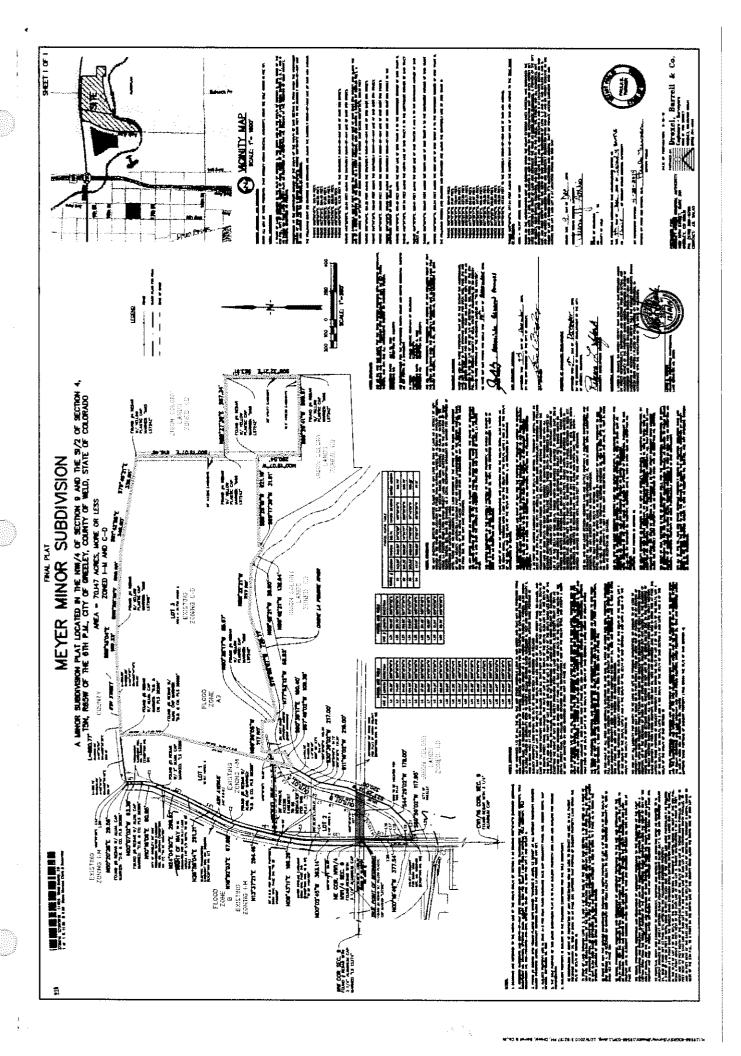


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