

REPLACEMENT WATER LEASE AGREEMENT

THIS REPLACEMENT WATER LEASE AGREEMENT ("Lease") is entered into the 1st day of November, 2023 by and between the Huerfano County Water Conservancy District, whose address is P.O. Box 442, La Veta CO 81055 ("District"), and Huerfano County, whose address is c/o Carl Young, County Administrator, 401 Main Street, Suite 201, Walsenburg, CO. 81089 ("Participant"). The District and the Participant are referred to collectively herein as "Parties" and individually as a "Party."

RECITALS

A. The District is a water conservancy district organized pursuant to Section 32-45-101 *et seq.*, C.R.S. and known as the Water Conservancy Act.

B. The District operates an adjudicated augmentation plan pursuant to a decree entered on November 14, 2016 in Case No. 13CW3062, Colorado District Court, Water Division 2 ("Augmentation Plan"). Such decree is recorded in Huerfano County at Reception No. 407501. The service area of the Augmentation Plan is generally the Huerfano River drainage within Huerfano County ("Plan Service Area").

C. The Participant is Huerfano County who conducts road and bridge construction and maintenance activities throughout Huerfano County ("County Property"), which is within the bounds of the Plan Service Area.

D. Additionally, the Participant operates a public improvement district that provides water to the residents of unincorporated Village of Gardner ("Gardner Property") through ownership of two tributary wells located in Gardner, Colorado. The first well is Gardner Well A (WDID No. 7905005) located in the SW1/4 SE1/4, Section 13, Township 26 South, 70 West, 6th P.M. The second well is Gardner Well 3 (WDID No. 7905004) located in the NE1/4 NE1/4, Section 24, Township 26 South, Range 70 West, 6th P.M. ("Gardner Wells"). These wells were decreed on June 9, 1978 in Case No. 4714.

E. The Participant requires water for road and bridge construction and maintenance uses throughout the County Property, as well as water to provide to residents of the Gardner Property.

F. As a result of the Augmentation Plan, the District has available consumptive use credits to provide augmentation water to replace out-of-priority depletions caused by participating water uses from the Huerfano River and its tributaries ("Replacement Credits").

G. The District included the Participant and its desired uses within the decreed Augmentation Plan ("Participating Diversions").

H. The District and the Participant have determined that the intended water use for the Gardner Property will require the replacement of seven (7) annual acre-feet

of out-of-priority depletions and that the intended water use for the County Property will require three (3) annual acre-feet of out-of-priority depletions.

I. The Participant wishes to lease from the District the right to have such out-of-priority depletions replaced by the District's Replacement Credits under the terms of the Augmentation Plan, this Lease, the District's *Rules and Regulations Governing Participation in Augmentation Plan* ("Rules and Regulations"), and any issued augmentation certificate.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation by Reference.** The above recitals are incorporated herein by this reference as if fully set forth herein.

2. **Agreement.** The District agrees to lease to the Participant and the Participant agrees to lease from the District the contract right to have the out-of-priority depletions caused by the use of the Participant's Participating Diversion replaced by the District's Replacement Credits in accordance with and subject to the terms and conditions of this Lease, the Augmentation Plan, the Rules and Regulations, and any issued augmentation certificate ("Replacement Water").

a. **Lease Price.** The lease price for the Replacement Water shall be \$35,770 ("Rental"). This amount represents the price of \$3,577.00 per acre-foot for Replacement Credit for Tier 1 water for a total of ten (10) acre-feet.

b. **Administration Expense.** The Participant shall pay the District an administration fee ("Annual Fee") determined by a unit assessment of \$1,481.23 for each acre-foot of Replacement Credit. The Annual Fee of \$14,812.30 is due and payable with the Rental. The Annual Fee may be increased annually based on the United States Bureau of Labor Statistics Consumer Price Index for Denver/Aurora/Lakewood or successor index. Additionally, the Annual Fee may also be adjusted from time to time at the discretion of the District. The Parties acknowledge that the Annual Fee will change over time and that the intent of this Lease is that the Participant shall reimburse the District for the reasonable costs incurred by the District in the administration of this Lease and the Augmentation Plan, including without limitation, costs incurred in accounting for the delivery of Replacement Water

c. **Operational Costs.** The District will determine what equipment or structures specific to the Participant's operations are necessary for the District to supply Replacement Water for the Participant. The Participant understands that the District is not responsible for the procurement, installation, operation, or maintenance of such equipment or structures. Any costs for the procurement, installation, operation, or maintenance of such equipment or structures including metering devices and water

diversion structures shall be borne by the Participant. Costs and fees incurred by the District in implementing the use of such equipment and structures shall be reimbursed to the District by the Participant.

d. Term. The term of this Lease will be from November 1, 2023 to October 31, 2024.

3. Augmentation Certificate. Fee simple title of the water rights adjudicated for the District in the Augmentation Plan shall remain with the District. The District will provide the Participant with two Augmentation Certificates documenting the Participant's right to receive up to three (3) annual acre-feet of Replacement Water for the County Property and up to seven (7) annual acre-feet for the Gardner Property, as long as the Participant complies with the terms and conditions of this Lease, the Augmentation Certificate, the Rules and Regulations, and the Augmentation Plan. As such, said Augmentation Certificate shall include and incorporate the terms, conditions, limitations, and restrictions set forth in this Lease, the District's Rules and Regulations, and the Augmentation Plan. The Augmentation Certificate shall be recorded in the real property records of Huerfano County by the District and shall be an appurtenance to the Participant's Property. The Participant is acquiring the contractual right for the replacement of its out-of-priority depletions and not an interest in the Augmentation Plan or the District's water rights within the Augmentation Plan.

4. Rules and Regulations. This Lease, the Augmentation Certificate, and Replacement Water are subject to, and the Participant shall abide by, the Rules and Regulations adopted by the District as are currently drafted and as may be amended, supplemented, and revoked from time to time at the discretion of the District. The Rules and Regulations are incorporated herein by reference.

5. Acknowledgement. By executing this Lease, the Participant hereby acknowledges receipt of the Rules and Regulations from the District.

6. Warranties and Representation of Participant and District.

a. District's Representations. District represents that it has title to the water rights used as Replacement Water under this Lease and has full power and authority to delegate such water rights to meet the replacement obligations of the Participant as provided in this Lease.

b. The Participant's Representations. The Participant represents that it has conducted its own investigation into the Replacement Water and determined its suitability for use to replace the out-of-priority depletions due to the Participant's uses. The Participant's decision to enter into this Lease is based upon the Participant's own investigation and the Participant has not relied upon the representations or affirmations of the District regarding the Replacement Water or the suitability of such Replacement Water for the Participant's needs.

7. **Restrictions on Transfer.** The Participant acknowledges that the Augmentation Certificates are for the augmentation of the out-of-priority depletions caused by use of the Participating Diversions. Therefore, the Augmentation Certificates only reflect augmentation service for the County Property and Gardner Property by providing Replacement Water for the Participant's Approved Uses. The Participant's interest in the Replacement Water and the Augmentation Certificates may be transferred to subsequent owners of the real property as part of a conveyance of the County Property or Gardner Property (however unlikely) upon approval by the District. Additionally, the Participant may not sell, transfer, lease, or convey the Replacement Water or Augmentation Certificates separate from the County Property or Gardner Property without the express written consent of the District. The restrictions on transfer are set forth in the Rules and Regulations and will be set forth in the Augmentation Certificates.

8. **Uses and Limits.**

a. **County Property Uses.** The maximum monthly diversions by the Participant shall not exceed 0.5 acre-feet. Such maximum may be increased only upon prior written approval from the District's water engineer, Steven Smith of Applegate Group. Such approval shall not be unreasonably withheld, but shall be based on the District's ability to operate the Augmentation Plan for all of the District's participants without impairment or hindrance. Total diversions on an annual basis shall not exceed 3 acre-feet. The Participant shall make withdrawals at the locations for withdrawal as set forth in the Augmentation Plan.

b. **Gardner Property Uses.** Total Pumping for Gardner not including the bulk water station shall be 9.1 acre-feet for the term of this lease unless additional pumping is approved by the District's water engineer. However, pumping between November 1, 2023 and March 31, 2024 shall be limited to 4 acre-feet for Gardner not including the bulk water station. Total Pumping for the bulk water station shall be 2.9 acre-feet for the term of this lease unless additional pumping is approved by the District's water engineer. However, pumping between November 1, 2023 and March 31, 2024 shall be limited to 1 acre-foot for the bulk water station. The above pumping is estimated with the goal of meeting the consumptive use amount of 10 acre-feet for the term of this lease. As such, the allowed pumping amounts are subject to change by the District throughout the term of this lease based on actual pumping and depletion amounts in order to keep depletions within the leased amount of 10 acre-feet.

9. **Overages.** The Participant shall be responsible for payment to the District for any amount of out-of-priority depletions caused by the Participant over and above the amount set forth in the Augmentation Certificate and this Lease. The cost for such overages shall be two-hundred percent (200%) of the then current lease price as adopted by the District assessed in one-half acre-foot increments. Additionally, the Participant shall be responsible to the District for any reasonable engineering expenses, legal

expenses, and penalties and fines incurred by the District for such overages. Such overages shall still constitute a breach and default under this Lease.

10. Transit Losses. Participants are responsible for any transit losses upon their Replacement Water from the point of the District's release of the Replacement Credits to the Participant's downstream point of stream depletion. The District will make reasonable efforts to provide the Replacement Credits from the District's water resources at a point that is reasonably convenient to the Participant while not impairing the District's operations and other commitments for replacement water. As a result, the Participant may have to purchase more Replacement Credits than its amount of stream depletions in order to cover transit losses.

11. Legal and Engineering Advice. The Participant's lease of Replacement Water from the District to meet the Participant's depletions to the Huerfano River system involves complex matters of Colorado water law and water resource engineering. The Participant is strongly encouraged by the District to seek competent legal and engineering advice from a professional experienced in these matters before committing to the purchase of Replacement Water from the District.

12. Responsibilities after District Delivery. Following the District's delivery of Replacement Credits to augment the Participant's out-of-priority depletions, the Participant shall thereafter be responsible for all further administration that may be required for the use of the Participating Diversion.

13. Compliance with Law.

a. **Compliance with State or Local Regulations and Laws.** The District retains the right to suspend service during noncompliance and/or terminate this Lease without need for a cure period as set forth in the Rules and Regulations for failure to remain in compliance with state or local law, rules, or regulations as follows:

i. If the Participant is not in compliance concerning permitting, licensing, or the equivalent, which either directly or indirectly involves the use of Replacement Water from the District; and

ii. If the Participant is conducting activities that are illegal under state or local law on its property which either directly or indirectly require the use of Replacement Water from the District.

b. **Compliance with Federal Law.** The District retains the right to suspend service during noncompliance and/or terminate this Lease without need for a cure period as set forth in the Rules and Regulations for failure to remain in compliance with Federal law, rules, or regulations as follows:

i. If the Participant is conducting activities that are both illegal under Colorado state law and federal law on its property which either directly or indirectly require the use of Replacement Water from the District.

ii. If the Participant is conducting activities related to the cultivation and sale of marijuana, when the District has a good faith, reasonable belief that the Participant is susceptible to a heightened potential for federal prosecution based on the federal government's desire to:

1. Prevent the distribution of marijuana to minors;
2. Prevent the revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;
3. Prevent the diversion of marijuana from states where it is legal under state law in some form to other states where it is not legal;
4. Prevent state-authorized marijuana activity from being used as a cover or pretext from the trafficking of other illegal drugs or other illegal activity;
5. Prevent violence and the use of firearms in the cultivation and distribution of marijuana;
6. Prevent the drugged driving and the exacerbation of other adverse public health consequences associated with marijuana use;
7. Prevent the growing of marijuana on public lands and the attendant public safety and environmental dangers posed by marijuana production on public lands; and
8. Prevent marijuana possession or use on federal property.

c. Federal Monies. The District retains the right to terminate this Lease and suspend service to the Participant without need for a cure period as set forth in the Rules and Regulations if providing such Replacement Water to the Participant inhibits or prevents the ability of the District, in the judgment of the District, to qualify for or to obtain federal funding or grants.

14. Recording and Accounting. The Participant agrees to install water meters and other equipment or structures as determined to be necessary by the District or the Division Engineer and to keep and provide the District and the Division Engineer with

accurate and periodic records of the Participant's diversions and water use as frequently as required by the District or Division Engineer. The Participant further agrees to permit access to representatives of the District or State or Division Engineer upon the Participant's Property to make meter readings, verify meter readings or other information submitted by the Participant, determine information not provided by the Participant, verify the condition of and extent of use of any Participating Diversion or related equipment or structures, or verify the other use or nonuse of any structures.

15. Reporting. The Participant shall completely and accurately report weekly to the District's water engineer, Steven Smith, by means of email (stevesmith@applegategroup.com) all meter readings and river diversions of the Participant for the previous week. Failure to provide complete and accurate weekly accounting of meter readings and diversion records to the District's water engineer may result in a decrease of the allowed maximum diversion amount as set forth in Paragraph 8 or the immediate cessation of the provision of Replacement Water by the District until such failure to report is rectified.

16. Restriction of Covered Use. The District reserves the right to restrict and/or ration the Participant's water use and corresponding supply of Replacement Water if the District or the State and Division Engineers project, or if actual operations demonstrate, that the quantity of augmentation water available to the District may be inadequate to supply the replacement demands of all participants in the plan in any year or portion thereof. The District shall not be liable to the Participant for any failure to deliver Replacement Water due to water supply conditions concerning the District's water rights beyond the District's control if the District has made reasonable attempts to provide the Replacement Water.

17. Less Diversions than Planned. In the event that the Participant uses less than the allocated Replacement Credit as stated in the Augmentation Certificate in a given year, the excess will not carry over to the Participant's benefit to any future year and the amount of unused Replacement Credit will remain fully subject to the District's discretionary uses.

18. Default. The Rules and Regulations set forth the rights and responsibilities of the Parties in the event of a default.

19. Physical Supply. The District agreeing to provide Replacement Water for the Participant in no way represents or acts as a warranty or guarantee by the District that the Participant will have a sufficient physical supply of water for Participant's needs. The Participant shall be fully responsible for obtaining the necessary physical supply of water for the Participant's needs.

20. Consequential Damages. The Participant assumes the risks inherent in efforts to receive a water supply in such an arid, over-appropriated water basin as the Huerfano River. The District shall not be liable to the Participant in any event for any

consequential damages including, without limitation, any lost profits, revenues, or interruptions in use of water. All such consequential damages are waived by the Participant for full, fair, and adequate consideration received by being allowed to receive an Augmentation Certificate and being provided with Replacement Water.

21. Attorney's Fees. In the event of any dispute between the Parties concerning this Lease or in the event of any action to enforce this Lease 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 engineering and 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.

22. Authority. All parties to this Lease represent that they have the full power and authority to enter into and perform this Lease.

23. Entire Agreement. This Agreement with the incorporated Rules and Regulations, Augmentation Plan, and Augmentation Certificates constitute the entire agreement between the parties with respect to its subject matter and constitutes, merges, and supersedes all prior agreements, representations and understandings of the parties, written or oral.

24. Amendment. This Lease may be amended only by a written instrument signed by the Parties.

25. Power to Contract. This Lease is entered into pursuant to Section 37-45-131, Colorado Revised Statutes.

26. Notice. Any notice which may or must be given pursuant to this Lease shall be made at the following addresses by certified mail, return receipt requested:

Huerfano County
c/o Carl Young
410 Main Street, Suite 201
Walsenburg, CO 81089

and

Huerfano County Water Conservancy District
c/o Carol Dunn
P.O. Box. 442
La Veta, CO 81055

with copy to

Ryan W. Farr, Esq.
Monson, Cummins & Shoheit, LLC
13511 Northgate Estates Drive, Suite 250
Colorado Springs, CO 80921

The above addresses may be changed upon written notice to the other parties.

27. Governing Law. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of Colorado, without regard to its conflict of laws rules.

28. Jurisdiction and Venue. The Parties agree to personal jurisdiction in any action brought in any court within the County of Huerfano, State of Colorado, or Water Court, Division 2, State of Colorado having subject matter jurisdiction over the matters arising under this Lease. Any suit, action, or proceeding shall only be instituted in the County of Huerfano, State of Colorado, or Water Court Division 2, State of Colorado. The Parties waive any objection which either Party may have now or hereafter to the laying of the venue of such action or proceeding and irrevocably submit to the jurisdiction of any such court in any such suit, action, or proceeding.

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

30. Counterparts. This Lease may be signed in counterparts.

31. Binding Effect. This Lease shall be binding upon the parties hereto as well as their successors and assigns.

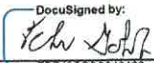
THIS LEASE is entered into on the date and year set forth above.

DISTRICT
HUERFANO COUNTY WATER
CONSERVANCY DISTRICT

PARTICIPANT
HUERFANO COUNTY

BY

Signature: 

Signature: 
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Printed: Scott King

Printed: John Galusha

Title: President

Title: Chairman

Date: 11/16/2023

Date: 11/15/2023