

REPLACEMENT WATER LEASE AGREEMENT

THIS REPLACEMENT WATER LEASE AGREEMENT (“Agreement”) is entered into this ____ day of May, 2022 by and between Huerfano County, whose address is c/o County Administrator, 401 Main Street, Suite 201, Walsenburg, Colorado 81089 (the “County”), and Siete, Inc., whose address is P.O. Box 202, Rye, Colorado 81069 (“Siete”). The County and Siete are referred to collectively herein as “Parties” and individually as “Party.”

RECITALS

A. Siete is contracted to conduct road and bridge construction and maintenance activities on I-25 within Huerfano County and is in need of water to conduct such activities.

B. The County is included as a plan participant in the augmentation plan adjudicated by the Huerfano County Water Conservancy District (“District”) on November 14, 2016 in Case No. 13CW3062, Colorado District Court, Water Division 2.

C. As a plan participant, the County leases augmentation water from the District for road and bridge construction and maintenance activities throughout Huerfano County.

D. The County is willing to lease additional augmentation supplies from the District in order to provide Siete with water for road and bridge construction and maintenance activities on I-25 within Huerfano County.

E. Siete desires to lease from the County the right to make diversions from the Huerfano River to provide water supply for the road and bridge construction and maintenance activities on I-25 within Huerfano County.

F. Siete projects that it will need 1 acre-foot of water in May, 7.73 acre-feet of water in June, and 0.0869 acre-feet in July, all in 2023.

G. As the Huerfano County Water Conservancy District provides augmentation water in 1 acre-foot increments, the County will lease to Siete nine (9) acre-feet.

AGREEMENT

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. Lease of Augmented Water. The County agrees to lease to Siete and Siete agrees to lease from the from the County the right to divert augmented water from the Huerfano River in the amount of nine (9) acre-feet (“Leased Water”).

3. **Lease Price.** The lease price for the Additional Replacement shall be forty five thousand dollars (\$45,000.00) (“Rental”). This amount represents the price of five thousand dollars (\$5,000.00) per acre-foot. The Rental is due upon execution of this Amended Agreement.

4. **Administrative Cost and Deposit.** Siete shall also pay to the County eight thousand five hundred dollars (\$8,500.00) to cover administrative costs including legal, engineering, an accounting costs (“Administrative Cost”). The Administrative Cost is due upon execution of this Agreement.

5. **Term.** The term of this Amended Agreement shall be for the months of May, June, and July, 2023.

6. **Non-Use.** There shall be no refunds to Siete from the County for water not taken by Siete, whether or not water was legally or physically available to be taken by Siete.

7. **Timing and Amount of Diversion.** Subject to the approval requirement pursuant to Paragraph 9 herein, Siete shall not divert from the Huerfano River more than 1 acre-foot of water in May, 2023; 7.73 acre-feet of water in June, 2023; and 0.0869 acre-feet in July, 2023. However, as Siete projects a need of 8.8169 acre-feet for May, June, and July, but is leasing nine (9) acre-feet from the County, Siete is free to allocate the diversion of the remaining 0.1831 acre-feet as it deems fit, subject to the approval requirement of Paragraph 9 herein.

8. **Points of Withdrawal.** The locations the Leased Water may be taken from the Huerfano River by Siete are the same as those for the county set forth in the augmentation plan decreed in Case No. 13CW3062, Colorado District Court, Water Division 2 and are described as follows:

- a. A point where County Road 560 crosses the Huerfano River in the NW1/4 of the NW1/4 of Section 24, Township 26 South, Range 70 West of the 6th P.M, UTM Coordinates Zone 13, NAD83; Easting: 484300, Northing: 4181185.
- b. A point near Badito Crossing just upstream of the point where County Road 616 crosses the Huerfano River in the NE1/4 of the SE1/4 of Section 5, Township 27 South, Range 68 West of the 6th P.M., UTM Coordinates Zone 13, NAD83; Easting: 498726, Northing: 4175615.
- c. A point just under one-half mile east of I-25 in the SW1/4 of the NW1/4 of Section 30, Township 26 South, Range 66 West of the 6th P.M., UTM Coordinates Zone 13, NAD83; Easting: 515155, Northing: 4179070.

9. **Conferral with District Engineer.** Due to the volume of the Additional Replacement that may potentially be taken at any given time from the Huerfano River, prior to diversions from the Huerfano River, Siete shall confer with the Huerfano County Water

Conservancy District's engineer, Steve Smith of the Applegate Group, to confirm timing and amounts of requested diversions and to receive approval for the requested diversions.

10. Recording and Accounting. Siete agrees to install/utilize a separate meter to measure the amount of water diverted by Siete from the Huerfano River pursuant to this Agreement and report such meter readings to the County on a weekly basis. Such meter shall be calibrated and certified for accuracy. No pumping from the Huerfano River may occur that is not metered.

11. Subject to Rules and Regulations. This Agreement and the provision of water by the County by means of augmentation from the District are all subject to the lease agreements between Huerfano County and the District, the current Rules and Regulations of the District, as well as the terms and conditions of the decree entered in Case No. 13CW3062, District Court, Water Division 2, copies of which Siete acknowledges being provided by the signing of this Agreement.

12. Restrictions on Transfer. Siete may not sell, transfer, lease, or convey the Leased Water to another party without the express written consent of the County and the District, which such consent is within the County and the District's sole discretion.

13. Restriction and Nonliability. The District, pursuant to its Rules and Regulations, reserves the right to restrict water use based on actual augmentation water supplies. As such, the County nor the District shall not be liable to Siete for the lack of available Leased Water due to water supply conditions as determined by the District.

14. Contingency. This Agreement shall only become effective if/when the County enters into an amended agreement with the District for the provision of augmentation water in order to meet the herein demand by Siete. If the County is unable to enter into such an agreement with the District for any reason, this Agreement shall be null and void.

15. Governmental Immunity. Notwithstanding any other provision of this Agreement to the contrary, none of the Agreement's terms or conditions are to be construed or interpreted as a waiver, either expressed or implied, of any of the immunities, rights, benefits, or protections provided to the Parties under the Colorado Governmental Immunities Act, 24-10-101, *et seq.* C.R.S., as amended (including, without limitation, any amendments to such statute, or under any similar statute which is subsequently enacted).

16. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter covered herein.

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

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

Huerfano County
c/o _____

Email: _____

Siete, Inc.
c/o _____

Email: _____

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

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

20. **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, if applicable, Water Court, Division 2, State of Colorado having subject matter jurisdiction over the matters arising under this Agreement. 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.

21. **Counterparts.** This Agreement may be executed in counterparts.

22. **Binding Effect.** This Agreement shall be binding upon the Parties hereto.

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

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COUNTY
HUERFANO COUNTY

SIETE
SIETE, INC.

BY:

BY:

Name Title

Name Title

Signature

Signature

DATE: _____

DATE: _____