

RESOLUTION NO. 1767

A RESOLUTION AUTHORIZING AN AGREEMENT WITH THE CITY AND COUNTY OF DENVER PERTAINING TO DELIVERY OF WATER TO GOLDEN THROUGH DENVER'S JONES PASS SYSTEM

WHEREAS, in 1994, the City and County of Denver, acting through its Board of Water Commissioners entered into a stipulation and agreement with the Colorado River Water Conservation District and the Vidler Tunnel Water Co., in Water Case No. 91-CW-252 ("Stipulation"); and

WHEREAS, Golden is the successor in interest to the Vidler Tunnel Water Co.; and

WHEREAS, paragraph 3 of the Stipulation addresses diversion of water through the Vidler Tunnel; and

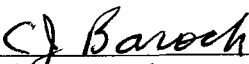
WHEREAS, the Division Engineer for Water Division No. 5 has challenged the legality of paragraph 3 of the Stipulation, which challenge is currently the subject matter of Case No: 03-CW-176 Water Division No. 5, in the City of Golden v. Simpson; and

WHEREAS, Denver has proposed that Golden and Denver enter into a "Water Delivery Agreement" that will replace and supercede paragraph 3 of the Stipulation, and therefore facilitate a settlement of the pending trial.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

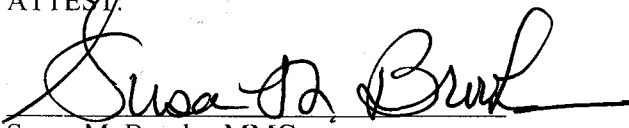
The Water Delivery Agreement ("Agreement") between the City of Golden and the City and County of Denver, acting by and through its Board of Water Commissioners, is approved in the form substantially as attached hereto as Exhibit A. The City Manager is authorized to execute the Agreement on behalf of the City of Golden.

Adopted this 10th day of May, 2007.



Charles J. Baroch
Mayor

ATTEST:




Susan M. Brooks, MMC
City Clerk

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APPROVED AS TO FORM:


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a rescheduled regular meeting thereof held on the 10th day of May, A.D., 2007.

(SEAL)

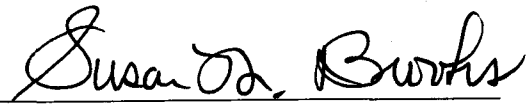
ATTEST: 
Susan M. Brooks, City Clerk of the City of
Golden, Colorado

Exhibit A

WATER DELIVERY AGREEMENT

This Water Delivery Agreement (“Agreement”) is made this __ day of April, 2007, between the CITY OF GOLDEN (“Golden”) and the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (“the “Board”).

Recitals

A. The Board, the Colorado River Water Conservation District (“River District”), and Vidler Tunnel Water Co. entered into the Stipulation and Agreement (“Stipulation”) dated December 15, 1994, in Case No. 91CW252, the Board’s joint application with the River District to use Wolford Mountain Reservoir for substitution and exchange. Golden is the successor in interest to Vidler Tunnel Water Co.

B. Paragraph 3 of the Stipulation states: “In a year in which Denver does not operate a substitution of water with Green Mountain Reservoir from Williams Fork Reservoir or Wolford Mountain Reservoir, and the Vidler Tunnel Unit water rights, as decreed by the Summit County District Court in Civil Action No. 2371, may be diverted under a power interference agreement with the United States Bureau of Reclamation, the Vidler Tunnel Unit water rights may also divert as against Denver’s Dillon Reservoir and Montezuma Tunnel rights as decreed in Case Nos. 2782, 5016 and 5017 if the contents of Dillon Reservoir are at or above 172,000 acre-feet of water on May 31 of that year.”

C. Subsequent to the execution of the Stipulation, the State and Division Engineers (“Engineers”) have refused to allow Golden to divert water as the parties intended pursuant to the terms of the Stipulation, arguing that paragraph 3 of the Stipulation constitutes an unlawful selective subordination. The Engineers have taken the position that for Golden to divert as contemplated by paragraph 3 of the Stipulation, the Board must operate its Dillon Reservoir and Montezuma Tunnel water rights in a manner that would in some years be diminish by as much as 90 acre feet the amount of water the Board could divert under these rights. This interpretation by the Engineers deprives the Board and Golden of the benefit of the bargain they made in 1994. As a result, Golden filed a claim for declaratory relief in Case No. 03CW176, seeking an order that the Engineers must recognize and administer the Stipulation as written.

D. In order to resolve the issues raised in Case No. 03CW176, and in an effort to give effect to the mutual benefits to Golden and the Board that were the intended result of the Stipulation, Golden and the Board have entered into this Agreement, which they intend to replace and supersede paragraph 3 of the Stipulation.

Agreement

Now, therefore, the Board and Golden agree as follows:

ARTICLE I
Water Delivery

1.0 Delivered Water. The Board shall deliver to Golden 180 acre feet of non-potable water (“Replacement Water”) each Delivery Year on a 10 year rolling average basis (“Average Delivery”), with a

maximum delivery of 360 acre feet in any one Delivery Year (“Maximum Delivery”) subject to the following adjustments. Golden acknowledges that delivery of Replacement Water in any given year may be higher or lower than 180 acre feet, and in some years may be zero acre feet.

a. On the 10 year anniversary date of this Agreement, and every 10 years thereafter, the Average Delivery and Maximum Delivery shall be adjusted based on the ratio of the previous 30 years’ average annual undepleted inflow into Williams Fork Reservoir to the current average annual undepleted inflow into Williams Fork Reservoir.

b. For the purposes of this provision, the current average annual undepleted inflow into Williams Fork Reservoir shall be established as 124,000 acre feet.

c. The undepleted inflow into Williams Fork Reservoir shall be calculated as the total of the Williams Fork Reservoir computed inflow (outflow + change in storage) as determined from the accounting sheets maintained by The Board, plus total diversions at the Big Lake Ditch, plus deliveries through the Jones Pass Tunnel as measured at the east portal.

d. By way of example, if in the year 2017, the average annual undepleted inflow into Williams Fork Reservoir during the previous 30 years (1987-2016) is 130,000 acre feet, then the Average Delivery shall be adjusted to 189 acre feet ($180 \times 130,000/124,000$) and the Maximum Delivery shall be adjusted to 378 acre feet ($360 \times 130,000/124,000$).

e. Notwithstanding the foregoing, the Average Delivery shall not be adjusted below 150 acre feet nor greater than 210 acre feet, and the Maximum Delivery shall not be adjusted below 300 acre feet nor greater than 420 acre feet.

f. A Delivery Year shall extend from May 1st through April 30th of the following year.

1.1. Location of Delivery. The Replacement Water shall be delivered at the east portal of the Jones Pass Tunnel (a.k.a. Gumlick Tunnel). Deliveries will be made and measured at the east portal of the Jones Pass Tunnel.

1.2. Transportation Losses. Golden shall be solely responsible for the carriage of the Replacement Water, including any evaporation and transmission losses after measurement of the Replacement Water.

1.3. Flow Rate. The delivery rate shall not exceed 20 cubic feet per second, less the amount divertible from other sources currently available to Golden at the time for delivery to its storage facility near Empire, Colorado.

1.4. Delivery Schedule. The delivery rate and schedule shall be determined by The Board in its sole discretion. Golden must be capable of taking delivery of the Replacement Water upon 24 hours notice by the Board.

1.5. Notice of Intent to Take Water. Golden shall notify the Board on or before April 15 preceding any Delivery Year of its desire and ability to take delivery of Replacement Water in that Delivery Year. All Replacement Water which the Board notifies Golden as available for delivery shall be credited

towards the volume of Replacement Water that the Board is obligated to deliver to Golden under paragraph 1.0, even if Golden is unable to or otherwise does not take delivery of such Replacement Water.

1.6 Availability of Nonpotable Water. The Board's water supply is dependent upon natural water resources that are variable in quantity of supply from year to year. The Board shall not be liable for failure accurately to anticipate the availability of the Board's water supply or for an actual failure of the Board's water supply due to inadequate run off or other occurrences beyond the reasonable control of the Board. The Board will make a reasonable attempt to notify Golden in advance of any interruptions in delivery.

1.7 Untreated Water. All Replacement Water delivered to Golden is untreated water of whatever quality is now or in the future available from the sources specified herein, and is sometimes referred to in this Agreement as "nonpotable water". Delivery of nonpotable water under this Agreement will be on an "as is" basis only, and the Board neither expressly nor impliedly warrants the quality of the Replacement Water. The nonpotable Replacement Water leased hereunder is not warranted as suitable for any particular purpose. Golden shall not make any claim against the Board arising from the quality of Replacement Water delivered, and the Board shall have no water treatment responsibility under this Agreement.

1.8 Units of Measurement. All Replacement Water delivered to Golden will be accounted for and delivered in whole units of cubic feet per second-days. The conversion 1 cfs per day equals 2 acre-feet shall be used.

ARTICLE II Charges and Payments

2.0 Rate for Nonpotable Water. In consideration for the benefit to the Board of the removal of the subordination provision in the 1994 stipulation which would have cost the Board as much as 90 acre feet of water in some years, the Board shall deliver the first 90 acre feet of Replacement Water in any year at no cost to Golden. For any amount over 90 acre feet in any year, Golden shall pay the Board for each acre foot of nonpotable Replacement Water delivered in any month at the Board's then-current nonpotable water service rate for customers outside the Board's Combined Service Area. The current nonpotable water service rate is set forth in the attached Exhibit __.

2.1 Modification of Rates. The Board may modify the rates in Exhibit __ from time to time in its discretion, provided:

- a. Such modification shall become effective not earlier than 60 days after the change shall be adopted by the Board.
- b. The Board will notify Golden within 10 days after such change shall have been adopted by the Board.
- c. The new rates shall not exceed the Board's rates to other users for similar service, including similar service to others located outside the Board's Combined Service Area.

2.2 Payment. The Board shall bill Golden each month for any Replacement Water in excess of 90 acre feet delivered during the preceding month, and Golden shall pay such invoices within thirty (30) days of receipt.

ARTICLE III
Operations

3.1 Location of Use. Use of Replacement Water shall be limited to the Golden Service Area. A map of Golden's Service Area as of the date of this Agreement is attached hereto as Exhibit __. If Golden's Service Area is changed, Golden agrees to furnish the Board with a map necessary to show the area as changed, which map shall supplant Exhibit __. Any Replacement Water supplied by Golden for use outside the city limits of Golden shall be supplied under a written contract which delineates the area in which the Replacement Water may be used and incorporates by reference or otherwise all of the appropriate provisions of this Agreement. Use of the Replacement Water supplied under this Agreement outside of Golden's Service Area is prohibited.

3.2 Use of Replacement Water. Replacement Water shall be used only for purposes for which the Board's water rights have been decreed.

3.3 Dominion over Water. All Replacement Water furnished by the Board is on a leasehold basis only. Neither Golden nor its customers shall have any right to make a succession of uses of Replacement Water and upon completion of the primary use, all dominion over the Replacement Water reverts completely to the Board. Except as herein specifically provided, all property rights to the Replacement Water furnished hereunder are reserved in the Board. It is mutually agreed that Golden has no obligation with respect to creating any particular volume of return flow from Replacement Water.

3.4 Conservation. In furtherance of the Board's objective that water is used in an efficient manner, the water conservation plan of the Denver Water Department, as it may be amended from time to time, is applicable to Replacement Water leased from the Board for use by Golden; except that the parties may agree to modifications or variances in the plan as may be appropriate to unusual characteristics of Golden, so long as a good faith conservation effort is evidenced by Golden and the modifications or variances may be reasonably expected to result in water conservation quantities in balance with the Board's efforts. Nothing herein however should be construed to prohibit Golden's use of Replacement Water for golf course irrigation or other uses.

3.5 Outside Denver Use. This agreement involves the use of water outside the territorial limits of the City and County of Denver from the water works system owned and controlled by the Board, under authority of the Charter of the City and County of Denver, which provides, among other things, that "the Board shall have power to lease water and water rights for use outside the territorial limits of the City and County of Denver, but such leases shall provide for limitation of delivery of water to whatever extent may be necessary to enable the Board to provide an adequate supply of water to the people of Denver...". The extent to which limitation of water delivery outside Denver may be necessary to enable the Board to provide an adequate supply of water to the people of Denver is a fact to be determined by the Board in the exercise of its reasonable discretion. The Board has determined that the delivery conditions in paragraph 1, which permit the Board to reduce deliveries below 180 acre feet or even eliminate deliveries in dry years, are sufficient to ensure an adequate supply of water inside Denver.

3.6 Water Use Restrictions. Due to the Board's ability under the delivery conditions in this agreement to designate Replacement Water available for delivery under Article I and its ability to deliver no Replacement Water in some years, the Board has determined that additional water use restrictions are unnecessary.

ARTICLE IV
General Provisions

4.1. Platte and Metro Agreements. The Board and Golden relinquish any and all claims that one may have against the other, which claims may arise out of or with respect to: (1) the Metropolitan Water Development Agreement ("Metro Agreement") and (2) whatever remaining interests either party may have, if any, in the Platte and Colorado River Storage Projects Participation Agreement ("Platte Agreement"). Further, the Board and Golden mutually rescind and hereby terminate, with respect to each other, the Metro Agreement and any remaining interests that might exist in the Platte Agreement. Upon termination of the Metro and Platte Agreements, the Board agrees to pay to Golden an amount equal to all Denver Water Trust payments made by Golden pursuant to the Platte Agreement, plus actual interest accrued thereon, less a pro-rated share of any outstanding escrow management fees.

4.2. Effect on Stipulation. This Agreement is intended to supercede and replace paragraph 3 of the Stipulation, which is hereby terminated and of no further effect as between Golden and the Board. All other provisions of the Stipulation remain in full force and effect.

4.3. Dismissal of Complaint. Golden shall seek to dismiss the complaint filed in Case No. 03CW176 with prejudice. This Agreement shall be effective between Golden and the Board regardless of whether the action is dismissed.

4.4. Denver's Representation. The Board represents that it has the legal right to deliver the Replacement Water to Golden as set forth in this Agreement. In the event that a court of competent jurisdiction determines, in a final, non-appealable decision, that the Board does not have the right to deliver the Replacement Water to Golden pursuant to this Agreement, the Board will deliver Replacement Water to Golden from another source that is mutually acceptable to the Board and Golden. The Board makes no representation regarding the suitability of the Replacement Water for any particular use by Golden.

4.5. Further Assurances. The Board and Golden agree to take all further actions and execute any documents necessary to give effect to this Agreement.

4.6. No Operating Obligation. Nothing herein shall be deemed or construed as creating any obligation on the Board to operate its facilities in any particular manner, so long as the Board complies with the express terms of this Agreement.

4.7. Assignability. No right hereunder shall be assigned by either party.

4.8. Indemnity. To the extent it lawfully may, Golden shall defend, indemnify, and hold harmless, the Board of Water Commissioners of the City and County of Denver, its officers, agents, and employees against any liability, loss, damage, demand, action, or cause of action of any third party which may occur as a result of the delivery of Replacement Water by the Board to Golden under this Agreement, except as to any portion of negligence judicially determined to be caused by the Board. This includes but is not limited to, any damages which may result from the transportation of Replacement Water under this Agreement by means of any water carriage facilities.

4.9. Representatives. The Board's representative, to accept or give any request, approval, notice or the like provided for by this agreement shall be:

Manager
Denver Water Department
1600 W. 12th Ave.
Denver, Colorado 80254.
FAX: 628-6509

Golden's representative shall be:

Daniel J. Hartman
Public Works Department
911 10th Street
Golden, CO 80401
FAX: 303-384-8161

Where written notice is required, either mailed or faxed notices will be acceptable.

4.10 Amendments. Amendments to this Agreement shall only be effective if entered into with the same formality as this Agreement.

4.11 Denver Charter. This Agreement is made under and conformable to Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System. Insofar as applicable, the Charter provisions are fully incorporated herein and made a part hereof and shall supersede any apparent conflicting provisions otherwise contained in this Agreement.

4.11 Venue. This Agreement shall be deemed performable in the City and County of Denver notwithstanding that the parties hereto may find it necessary to take action in compliance with the Agreement outside the City and County of Denver. The forum for resolution of any and all disputes arising hereunder shall be the District Court for the City and County of Denver. This Agreement shall be interpreted and governed in accordance with the laws of the State of Colorado.

4.12 Termination. The parties hereto agree that this Agreement shall continue until terminated by mutual agreement.

4.13 Waiver of Rights. The failure of either party to exercise any right under this Agreement shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise at some future time the right or rights or any other right it may have under this Agreement.

4.14 Captions. The captions in this Agreement are for convenience of reference only, are not part of this Agreement and shall not define or limit any of the terms or provisions hereof.

Executed to be effective as of the date first set forth above.

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CITY AND COUNTY OF DENVER, acting
by and through its Board of Water
Commissioners

By: _____

CITY OF GOLDEN

By: _____
Michael C. Bestor, City Manager

WATER DELIVERY AGREEMENT

This Water Delivery Agreement (“Agreement”) is made this 10th day of May, 2007, between the CITY OF GOLDEN (“Golden”) and the CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS (“the Board”).

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B. Paragraph 3 of the Stipulation states: “In a year in which Denver does not operate a substitution of water with Green Mountain Reservoir from Williams Fork Reservoir or Wolford Mountain Reservoir, and the Vidler Tunnel Unit water rights, as decreed by the Summit County District Court in Civil Action No. 2371, may be diverted under a power interference agreement with the United States Bureau of Reclamation, the Vidler Tunnel Unit water rights may also divert as against Denver’s Dillon Reservoir and Montezuma Tunnel rights as decreed in Case Nos. 2782, 5016 and 5017 if the contents of Dillon Reservoir are at or above 172,000 acre-feet of water on May 31 of that year.”

C. Subsequent to the execution of the Stipulation, the State and Division Engineers (“Engineers”) have refused to allow Golden to divert water as the parties intended pursuant to the terms of the Stipulation, arguing that paragraph 3 of the Stipulation constitutes an unlawful selective subordination. The Engineers have taken the position that for Golden to divert as contemplated by paragraph 3 of the Stipulation, the Board must operate its Dillon Reservoir and Montezuma Tunnel water rights in a manner that would in some years diminish the amount of water the Board could divert under these rights. The Board believes that the loss of water would be approximately 90 acre feet; Golden believes that the amount is higher. This interpretation by the Engineers deprives the Board and Golden of the benefit of the bargain they made in 1994. As a result, Golden filed a claim for declaratory relief in Case No. 03CW176, seeking an order that the Engineers must recognize and administer the Stipulation as written.

D. In order to resolve the issues raised in Case No. 03CW176, and in an effort to give effect to the mutual benefits to Golden and the Board that were the intended result of the Stipulation, Golden and the Board have entered into this Agreement, which they intend to replace and supersede paragraph 3 of the Stipulation.

Agreement

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ARTICLE I Water Delivery

1.0 Delivered Water. The Board shall deliver to Golden 180 acre feet of non-potable water ("Replacement Water") each Delivery Year on a 10 year rolling average basis ("Average Delivery"), with a maximum delivery of 360 acre feet in any one Delivery Year ("Maximum Delivery") subject to the following adjustments. Golden acknowledges that delivery of Replacement Water in any given year may be higher or lower than 180 acre feet, and in some years may be zero acre feet.

a. On the 10 year anniversary date of this Agreement, and every 10 years thereafter, the Average Delivery and Maximum Delivery shall be adjusted based on the ratio of the previous 30 years' average annual undepleted inflow into Williams Fork Reservoir to the current average annual undepleted inflow into Williams Fork Reservoir.

b. For the purposes of this provision, the current average annual undepleted inflow into Williams Fork Reservoir shall be established as 124,000 acre feet.

c. The undepleted inflow into Williams Fork Reservoir shall be calculated as the total of the Williams Fork Reservoir computed inflow (outflow + change in storage) as determined from the accounting sheets maintained by the Board, plus total diversions at the Big Lake Ditch, plus deliveries through the Jones Pass Tunnel as measured at the east portal.

d. By way of example, if in the year 2017, the average annual undepleted inflow into Williams Fork Reservoir during the previous 30 years (1987-2016) is 130,000 acre feet, then the Average Delivery shall be adjusted to 189 acre feet ($180 \times 130,000/124,000$) and the Maximum Delivery shall be adjusted to 378 acre feet ($360 \times 130,000/124,000$).

e. Notwithstanding the foregoing, the Average Delivery shall not be adjusted below 150 acre feet nor greater than 210 acre feet, and the Maximum Delivery shall not be adjusted below 300 acre feet nor greater than 420 acre feet.

f. A Delivery Year shall extend from April 1st through March 31st. However, the period during which the Board may deliver water to Golden pursuant to this Agreement is May 1 through August 15th of each year.

1.1. Location of Delivery. The Replacement Water shall be delivered at the east portal of the Jones Pass Tunnel (a.k.a. Gumlick Tunnel). Deliveries will be made and measured at the east portal of the Jones Pass Tunnel.

1.2. Transportation Losses. Golden shall be solely responsible for the carriage of the Replacement Water, including any evaporation and transmission losses after measurement of the Replacement Water.

1.3. Flow Rate. The maximum delivery rate shall be 20 cubic feet per second, less the amount divertible from other sources currently available to Golden at the time for delivery to its storage facility near Empire, Colorado. However, the reduction in the maximum delivery rate shall not exceed 5 cubic feet per second. If there is a reduction in the maximum delivery rate, Golden shall provide the Board with 24 hour advance notice of the amount of the reduction.

1.4. Delivery Schedule. The delivery rate and schedule shall be determined by the Board in its sole discretion. Golden must be capable of taking delivery of the Replacement Water upon 24 hours notice by the Board.

1.5. Notice of Intent to Take Water. Golden shall notify the Board on or before April 1 preceding any Delivery Year of its desire and ability to take delivery of Replacement Water in that Delivery Year. All Replacement Water which the Board notifies Golden as available for delivery shall be credited towards the volume of Replacement Water that the Board is obligated to deliver to Golden under paragraph 1.0, even if Golden is unable to or otherwise does not take delivery of such Replacement Water.

1.6. Availability of Nonpotable Water. The Board's water supply is dependent upon natural water resources that are variable in quantity of supply from year to year. The Board shall not be liable for failure accurately to anticipate the availability of the Board's water supply or for an actual failure of the Board's water supply due to inadequate run off or other occurrences beyond the reasonable control of the Board. The Board will make a reasonable attempt to notify Golden in advance of any interruptions in delivery.

1.7. Untreated Water. All Replacement Water delivered to Golden is untreated water of whatever quality is now or in the future available from the sources specified herein, and is sometimes referred to in this Agreement as "nonpotable water". Delivery of nonpotable water under this Agreement will be on an "as is" basis only, and the Board neither expressly nor impliedly warrants the quality of the Replacement Water. The nonpotable Replacement Water leased hereunder is not warranted as suitable for any particular purpose. Golden shall not make any claim against the Board arising from the quality of Replacement Water delivered, and the Board shall have no water treatment responsibility under this Agreement.

1.8 Units of Measurement. All Replacement Water delivered to Golden will be accounted for and delivered in whole units of cubic feet per second-days. The conversion 1 cfs per day equals 2 acre-feet shall be used.

ARTICLE II
Charges and Payments

2.0 Rate for Nonpotable Water. In consideration for the benefit to the Board of the removal of the subordination provision in the 1994 stipulation which the Board believes would have cost the Board as much as 90 acre feet of water in some years, the Board shall deliver the first 90 acre feet of Replacement Water in any year at no cost to Golden. For any amount over 90 acre feet in Delivery Year, Golden shall pay the Board for each acre foot of nonpotable Replacement Water delivered at the Board's then-current nonpotable water service rate for customers outside the Board's Combined Service Area. The current nonpotable water service rate is set forth in the attached Exhibit A.

2.1. Modification of Rates. The Board may modify the rates in Exhibit A from time to time in its discretion, provided:

- a. Such modification shall become effective not earlier than 60 days after the change shall be adopted by the Board.
- b. The Board will notify Golden within 10 days after such change shall have been adopted by the Board.
- c. The new rates shall not exceed the Board's rates to other users for similar service, including similar service to others located outside the Board's Combined Service Area.

2.2 Payment. The Board shall bill Golden each Delivery Year for any Replacement Water in excess of 90 acre feet delivered in any Delivery Year, and Golden shall pay such invoices within thirty (30) days of receipt.

ARTICLE III
Operations

3.1 Location of Use. Use of Replacement Water shall be limited to the Golden Service Area. A map of Golden's Service Area as of the date of this Agreement is attached hereto as Exhibit B. If Golden's Service Area is changed, Golden agrees to furnish the Board with a map necessary to show the area as changed, which map shall supplant Exhibit B. Any Replacement Water supplied by Golden for use outside the city limits of Golden shall be supplied under a written contract which delineates the area in which the Replacement Water may be used and incorporates by reference or otherwise all of the appropriate provisions of this Agreement. Use of the Replacement Water supplied

under this Agreement outside of Golden's Service Area is prohibited absent the permission of the Board.

3.2 Use of Replacement Water. Replacement Water shall be used only for purposes for which the Board's water rights have been decreed.

3.3 Dominion over Water. All Replacement Water furnished by the Board is on a leasehold basis only. Neither Golden nor its customers shall have any right to make a succession of uses of Replacement Water and upon completion of the primary use, all dominion over the Replacement Water reverts completely to the Board. Except as herein specifically provided, all property rights to the Replacement Water furnished hereunder are reserved in the Board. It is mutually agreed that Golden has no obligation with respect to creating any particular volume of return flow from Replacement Water.

3.4 Conservation. In furtherance of the Board's objective that water is used in an efficient manner, the water conservation plan of the Denver Water Department, as it may be amended from time to time, is applicable to Replacement Water leased from the Board for use by Golden; except that the parties may agree to modifications or variances in the plan as may be appropriate to unusual characteristics of Golden, so long as a good faith conservation effort is evidenced by Golden and the modifications or variances may be reasonably expected to result in water conservation quantities in balance with the Board's efforts. Nothing herein however should be construed to prohibit Golden's use of Replacement Water for golf course irrigation or other uses.

3.5 Outside Denver Use. This Agreement involves the use of water outside the territorial limits of the City and County of Denver from the water works system owned and controlled by the Board, under authority of the Charter of the City and County of Denver, which provides, among other things, that "the Board shall have power to lease water and water rights for use outside the territorial limits of the City and County of Denver, but such leases shall provide for limitation of delivery of water to whatever extent may be necessary to enable the Board to provide an adequate supply of water to the people of Denver...". The extent to which limitation of water delivery outside Denver may be necessary to enable the Board to provide an adequate supply of water to the people of Denver is a fact to be determined by the Board in the exercise of its reasonable discretion. The Board has determined that the delivery conditions in paragraph 1, which permit the Board to reduce deliveries below 180 acre feet or even eliminate deliveries in dry years, are sufficient to ensure an adequate supply of water inside Denver.

3.6 Water Use Restrictions. Due to the Board's ability under the delivery conditions in this Agreement to designate Replacement Water available for delivery under Article I and its ability to deliver no Replacement Water in some years, the Board has determined that additional water use restrictions are unnecessary.

ARTICLE IV
General Provisions

4.1. Platte and Metro Agreements. The Board and Golden relinquish any and all claims that one may have against the other, which claims may arise out of or with respect to: (1) the Metropolitan Water Development Agreement ("Metro Agreement") and (2) whatever remaining interests either party may have, if any, in the Platte and Colorado River Storage Projects Participation Agreement ("Platte Agreement"). Further, the Board and Golden mutually rescind and hereby terminate, with respect to each other, the Metro Agreement and any remaining interests that might exist in the Platte Agreement. Upon termination of the Metro and Platte Agreements, the Board agrees to pay to Golden an amount equal to all Denver Water Trust payments made by Golden pursuant to the Platte Agreement, plus actual interest accrued thereon, less a pro-rated share of any outstanding escrow management fees.

4.2. Effect on Stipulation. This Agreement is intended to supercede and replace paragraph 3 of the Stipulation, which is hereby terminated and of no further effect as between Golden and the Board. All other provisions of the Stipulation remain in full force and effect.

4.3. Dismissal of Complaint. Golden shall seek to dismiss the complaint filed in Case No. 03CW176 with prejudice. This Agreement shall be effective between Golden and the Board regardless of whether the action is dismissed. Golden and the Board contemplate entering into a stipulation with other parties in Case No. 03CW176. In the event that the terms of this Agreement and said stipulation are in conflict, this Agreement shall control.

4.4. Denver's Representation. The Board represents that it has the legal right to deliver the Replacement Water to Golden as set forth in this Agreement. In the event that a court of competent jurisdiction determines, in a final, non-appealable decision, that the Board does not have the right to deliver the Replacement Water to Golden pursuant to this Agreement, the Board will deliver Replacement Water to Golden from another source that is mutually acceptable to the Board and Golden. The Board makes no representation regarding the suitability of the Replacement Water for any particular use by Golden.

4.5. Further Assurances. The Board and Golden agree to take all further actions and execute any documents necessary to give effect to this Agreement.

4.6. No Operating Obligation. Nothing herein shall be deemed or construed as creating any obligation on the Board to operate its facilities in any particular manner, so long as the Board complies with the express terms of this Agreement.

4.7. Assignability. No right hereunder shall be assigned by either party.

4.8 Indemnity. To the extent it lawfully may, Golden shall defend, indemnify, and hold harmless, the Board of Water Commissioners of the City and County of Denver, its officers, agents, and employees against any liability, loss, damage, demand, action, or cause of action of any third party which may occur as a result of the delivery of Replacement Water by the Board to Golden under this Agreement, except as to any portion of negligence judicially determined to be caused by the Board. This includes but is not limited to, any damages which may result from the transportation of Replacement Water under this Agreement by means of any water carriage facilities after the Replacement Water is delivered at the east portal of the Jones Pass Tunnel.

4.9 Representatives. The Board's representative, to accept or give any request, approval, notice or the like provided for by this agreement shall be:

Manager
Denver Water Department
1600 W. 12th Ave.
Denver, Colorado 80254.
FAX: 628-6509

Golden's representative shall be:

City of Golden
c/o Director of Public Works
1445 10th Street
Golden, Colorado 80401
FAX: (303) 384-8161

Where written notice is required, either mailed or faxed notices will be acceptable.

4.10 Amendments. Amendments to this Agreement shall only be effective if entered into with the same formality as this Agreement.

4.11 Denver Charter. This Agreement is made under and conformable to Article X of the Charter of the City and County of Denver, which controls the operation of the Denver Municipal Water System. Insofar as applicable, the Charter provisions are fully incorporated herein and made a part hereof and shall supersede any apparent conflicting provisions otherwise contained in this Agreement.

4.11 Venue. This Agreement shall be deemed performable in the City and County of Denver notwithstanding that the parties hereto may find it necessary to take action in compliance with the Agreement outside the City and County of Denver. The forum for resolution of any and all disputes arising hereunder shall be the District Court for the City and County of Denver. This Agreement shall be interpreted and governed in accordance with the laws of the State of Colorado.

4.12 Termination. The parties hereto agree that this Agreement shall continue until terminated by mutual agreement.

4.13 Waiver of Rights. The failure of either party to exercise any right under this Agreement shall not be deemed a waiver of such party's right and shall not affect the right of such party to exercise at some future time the right or rights or any other right it may have under this Agreement.

4.14 Captions. The captions in this Agreement are for convenience of reference only, are not part of this Agreement and shall not define or limit any of the terms or provisions hereof.

Executed to be effective as of the date first set forth above.

ATTEST:

By [Signature]
Secretary

CITY AND COUNTY OF DENVER
acting by and through its
BOARD OF WATER COMMISSIONERS
[Signature]
President

APPROVED AS TO FORM:

[Signature]
Legal Division

REGISTERED AND COUNTERSIGNED:
Dennis J. Gallagher, Auditor
CITY AND COUNTY OF DENVER

By [Signature]
Auditor
Deputy Auditor

APPROVED
[Signature]
Director of Planning

CITY OF GOLDEN

By: [Signature]
Dan Hartman, Public Works Director

Date: 5/10/07

**Rate Schedule No. 7
Outside the Combined Service Area
For Bills Dated On or After January 1, 2007**

I. Potable Water Consumption / Service Charge:

A. Consumption Charge	Rate per	Rate per
	<u>1,000 Gallons</u>	<u>Acre Foot</u>
All Consumption	\$2.68	\$873.28
 B. Service Charge:		
	<u>Monthly</u>	<u>Bimonthly</u>
All Consumption	\$3.87	\$5.98

II. Raw Water Consumption / Service Charge:

A. Consumption Charge	Rate per	Rate per
	<u>1,000 Gallons</u>	<u>Acre Foot</u>
All Consumption	\$0.76	\$247.65
 B. Service Charge:		
Not Applicable		

III. Recycled Water Consumption / Service Charge:

A. Consumption Charge	Rate per	Rate per
	<u>1,000 Gallons</u>	<u>Acre Foot</u>
All Consumption	\$0.77	\$250.90
 B. Service Charge:		
	<u>Monthly</u>	<u>Bimonthly</u>
All Customers	\$3.87	\$5.98

Applicability: Entities, including municipalities, quasi-municipal districts and corporations, with which Denver Water has contracts to deliver a fixed amount of water each year at Denver Water's outside combined service area rates. These entities are located outside Denver Water's Combined Service Area, which is comprised of the total City and County of Denver, plus the total geographic area of the service areas of all the Total Service, Read and Bill, and Master Meter distributors, who rely solely on the Board's potable water for their supply. For contracts outside the Combined Service Area, Denver Water is obligated only to provide specified amounts of potable, recycled, or nonpotable water as stipulated by contract and has no relationship with or obligation to customers of the entity holding the fixed amount contract.

Payment: Payments are governed by the terms of each fixed contract. Normally, bills are prepared on a monthly basis and are due and payable 30 days later.

Rates: Charges for raw water service consist of a consumption charge only. Charges for potable and recycled water service consist of a consumption charge and a service charge. The consumption charge is based upon the amount of water delivered during the billing period. The service charge applies to all accounts that are "on" at any time during the billing period.

City and County of Denver
1600 W. 12th Avenue
Denver, CO 80204

Golden Service Area
Exhibit B

