

RESOLUTION NO. 1734

**A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING A THREE PARTY AGREEMENT WITH EVERIST
MATERIALS AND MOUNTAIN AGGREGATES PERTAINING
TO THE OPERATION OF A GRAVEL PROCESSING
OPERATION AT GUANELLA RESERVOIR**

WHEREAS, during the construction of Guanella Reservoir, the City of Golden removed and stockpiled several hundred thousand yards of gravel (the "Stockpiled Material"); and

WHEREAS, Golden and Mountain Aggregates entered into a Settlement Agreement dated May 21, 2003 under which Golden agreed to place the Stockpiled Material on Parcel 2 for Mountain Aggregates to process and sale; and

WHEREAS, Everist Materials and Mountain Aggregates entered into a Sublease Agreement dated October 1, 2003 under which Mountain Aggregates subleased to Everist Materials its rights under the Settlement Agreement; and

WHEREAS, Everist Materials now conducts operations on Parcel 2 under the Sublease; and

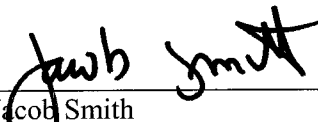
WHEREAS, Everist Materials' operations on Parcel 2 have significantly increased water and electricity consumptions and have increased other impacts on or around Parcel; and

WHEREAS, the parties have reached further understandings respecting the Sublease and the Settlement Agreement and modifying their respective rights and obligations.

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

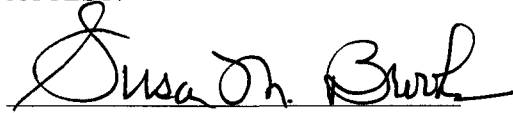
City Council hereby approves the three party agreement with Mountain Aggregates and Everist Materials in essentially the same form as the copy of such agreement accompanying this resolution.

Adopted this 7th day of December, 2006.



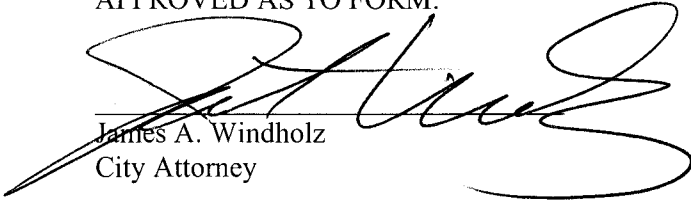
Jacob Smith
Mayor Pro Tem

ATTEST:



Susan M. Brooks, MMC
City Clerk

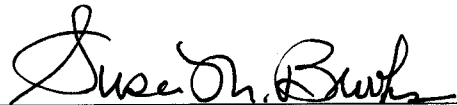
APPROVED AS TO FORM:


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 7th day of December, A.D., 2006.

(SEAL)

ATTEST:


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

AGREEMENT

This Agreement (the "Agreement") is made effective the 8th day of December, 2006 between the City of Golden, a Colorado home rule municipal corporation ("Golden"), Mountain Aggregates, Inc., a Colorado corporation ("MAI") and Everist Materials, LLC, a South Dakota limited liability company ("Everist").

BACKGROUND CIRCUMSTANCES

WHEREAS, Golden commenced and prosecuted a condemnation proceeding in the District Court in and for Clear Creek County, Colorado in Case No. 03CV33, relating to Golden's Guanella Reservoir Project (the "Condemnation Action"), in which MAI was named as a respondent;

WHEREAS, Golden concurrently defended against an inverse condemnation action regarding Parcel 2 brought in Case No. 04CV80, District Court for Clear Creek County (the "Inverse Condemnation Action"). The Condemnation Action and the Inverse Condemnation Action are sometimes referred to herein as the "Condemnation Cases";

WHEREAS, Golden and MAI entered into a Settlement Agreement dated May 21, 2003, as amended on August 22, 2003 relating, in part, to the Condemnation Action (the "Settlement Agreement"). Each capitalized term used in this Agreement which is not separately defined in this Agreement and which is defined in the Settlement Agreement shall have the meaning ascribed to such term in the Settlement Agreement;

WHEREAS, Golden is the lessee and Byron Paul Guanella is the lessor under an agreement dated January 1, 1983, recorded in the real property records of Clear Creek County, Colorado at Book 420 at page 569-575, by which Paul Guanella leased certain property described therein to Golden for the purpose of development of a reservoir. This agreement is referred to herein as the "Golden Lease";

WHEREAS, MAI is a party to an agreement captioned "Guanella Gravel Lease Agreement" dated October 31, 2000 by and between Glenda Guanella and Sally Buckland (referred to therein collectively as "Guanella") and MAI, referred to therein as "MAI". In this Agreement, the Guanella Gravel Lease Agreement is referred to as the "Guanella Lease";

WHEREAS, by agreement dated October 5, 1992 between MAI and Golden, Golden subordinated the Golden Lease to the Guanella Lease, subject to the terms and conditions set forth in that agreement;

WHEREAS, under the Settlement Agreement, the parties agreed to numerous matters including, but not limited to, the following: (a) MAI recognized and agreed that the Guanella Lease was now subordinate to the Golden Lease; (b) Golden agreed to place Stockpiled Material on Parcel 2 for MAI to process and sell; (c) Golden agreed to relocate to Parcel 2 the existing utility services that provided electricity to MAI's existing facilities; and (d) Golden agreed to supply water to MAI sufficient to wash and process the Stockpiled Material;

WHEREAS, Golden included in an amendment to the Condemnation Action a small piece of land (referred to in such amendment as parcel 2, but referred to herein as "Parcel 2-A") on which the Stockpiled Material is also located. Whenever the term "Parcel 2" is used in this Agreement from this point forward, such term shall be deemed to include both the Parcel 2 described in the Settlement Agreement and Parcel 2-A;

WHEREAS, Everist and MAI entered into a Sublease Agreement dated October 1, 2003 under which MAI subleased to Everist its rights under the Settlement Agreement (the "Sublease") and Golden agreed to the Sublease on October 1, 2003;

WHEREAS, Everist now conducts operations on Parcel 2 under the Sublease. Everist's operations include (a) screening, crushing, processing and washing the Stockpiled Material (the "MAI Scope of Operations"); and (b) a concrete batch plant, an asphalt batch plant and the processing of approved materials imported on to Parcel 2 (collectively the "Everist Supplemental

Operations”). The MAI Scope of Operations and the Everist Supplemental Operations are hereinafter collectively referred to as the “Everist Operations”;

WHEREAS, Everist’s Supplemental Operations have significantly increased water and electricity consumption, and may increase other impacts on or around Parcel 2;

WHEREAS, Everist asserts that the Everist Supplemental Operations further the interests of MAI and Golden, by increasing demand for the Stockpiled Materials, and thereby accelerating the rate at which the Stockpiled Materials are processed and removed from Parcel 2;

WHEREAS, it is the parties intention that Everist shall remove substantially all of the Stockpiled Material during the term of this Agreement with as little remaining waste material as is practicable; and

WHEREAS, the parties have reached other, further understandings respecting the Sublease and the Settlement Agreement and modifying their respective rights and obligations, as provided herein.

COVENANTS

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Relationship Between this Agreement and Prior Agreements.

(a) Except as expressly modified by the terms of this Agreement, the Settlement Agreement and the Sublease (collectively the “Prior Agreements”) shall be unamended and unaffected by this Agreement. To the extent there are inconsistencies between this Agreement and the Prior Agreements, this Agreement controls.

(b) Each party waives any claim for breach of the Prior Agreements existing as of the Effective Date of this Agreement. Such waiver shall not operate as an acquiescence to a future event of default, or affect any subsequent default of the same or of a different nature.

(c) The Sublease is subject and subordinate to all of the terms, covenants, and conditions of the Settlement Agreement and this Agreement, and to all of the rights of Golden under the Settlement Agreement and this Agreement.

(d) In addition to complying with the terms of this Agreement, Everist hereby agrees to assume all obligations of MAI under the Settlement Agreement and to comply with all terms and conditions thereof, as modified herein, except for the provisions of Section 6, 7, 10 and 11, and except as otherwise expressly noted in this Agreement. Golden agrees that Everist's performance of MAI's duties shall satisfy MAI's obligations under the Settlement Agreement. MAI continues to assume any obligation in the Settlement Agreement not assumed by Everist under this Agreement. MAI acknowledges and agrees that the Sublease provided Everist with certain rights with respect to Sections 6 and 7 of the Settlement Agreement, and MAI and Everist agree that any provisions of the Sublease concerning both said Sections 6 and 7 and Parcels 3 and 12 shall continue to be in full force and effect. This Agreement shall not be deemed consent by Golden to any assignment or sublease from MAI to Everist regarding said Parcels 3 and 12.

(e) MAI agrees that, except with respect to the payment of royalties and accounting for the obligation to pay royalties to MAI, Everist's performance of its duties under the Sublease and this Agreement, to the satisfaction of Golden, shall be deemed satisfactory performance of Everist's duties to MAI under the Sublease.

(f) Everist and MAI agree that Everist shall report directly to Golden (with a copy to MAI of any written report) any matters required or permitted to be reported or communicated to MAI under the Sublease.

2. Approval of Everist Operations. Golden confirms and ratifies its prior approval of the Sublease and hereby approves the Everist Operations, both subject to the terms of this Agreement and the Settlement Agreement. If Everist desires to add to or expand upon the Everist Operations, it shall first obtain Golden's written approval and such approved activity shall thereafter be considered part of the Everist Operations under this Agreement.

3. Regarding the Condemnation Cases and Access to Parcel 2.

(a) The parties agree that the Everist Operations are permissible to process Stockpiled Materials under the Golden Lease and/or the Guanella Lease. Moreover, the parties agree that Golden took additional steps in the Condemnation Cases to ensure Everist the right of continued access to Parcel 2 to allow the Everist Operations, including, but not limited to, the processing and sale of the Stockpiled Material. Litigation in the Condemnation Cases was at Golden's sole cost.

(b) Everist assigns to Golden any claim or interest it may have had in the Condemnation Action and, in doing so, disclaims any interest in the condemnation proceeds to be paid by Golden pursuant to the Condemnation Action.

(c) MAI assigns to Golden any claim or interest it may have had in the Condemnation Action and, in doing so, disclaims any interest in the condemnation proceeds to be paid by Golden pursuant to the Condemnation Action.

4. Stockpiled Material Payments.

(a) In order to reimburse Golden for a portion of the costs incurred in mining and placing the Stockpiled Material on Parcel 2, Everist shall pay Golden One Dollar (\$1.00) for each ton of Stockpiled Material sold (the "Golden Payments"). Golden and Everist agree that the Golden Payments shall be owed for any Stockpiled Material sold in the future and any Stockpiled Material already sold by Everist prior to the date of this Agreement. Everist has paid Golden \$174,011 for the amounts due it under the

Settlement Agreement from October 1, 2003 (the date of the Sublease) through the first quarter of 2006. All future Golden Payments shall be made on a quarterly basis, within thirty (30) days after the end of each calendar quarter, based upon Everist's records of Stockpiled Material sold, which records shall be provided to Golden within a reasonable time after a written request therefor.

(b) Beginning in 2007, and every year of this Agreement thereafter, the minimum annual amount of Golden Payments shall be \$33,000 after taking into account the offset for electricity described below in paragraph 7(a). Accordingly, if the Golden Payments for any year beginning in 2007 are less than \$33,000 after the offset for electricity, Everist shall pay the difference with the payment for the last calendar quarter for that year.

(c) As provided for in the Sublease, Everist shall pay MAI One and 33/100 Dollars (\$1.33) per ton for the first 750,000 tons of Stockpiled Material sold by Everist and Two and no/100 Dollars (\$2.00) for each ton of Stockpiled Material sold by Everist over and above 750,000 tons (the "MAI Payments"), subject to Everist's reimbursement rights as set forth in this paragraph 4 (c). MAI and Everist agree that as provided for in the Sublease, Everist shall pay MAI Three Hundred Twenty Three Thousand Seven Hundred Nine and 00/100 Dollars (\$323,709.00) for amounts owed by Everist to MAI, net of an offset in the amount of One Hundred Eighty Seven Thousand Four Hundred Eighteen and 00/100 Dollars (\$187,418.00) to reimburse Everist for Costs incurred by Everist, prior to the date of execution of this Agreement, all as set forth in Exhibit A hereto, resulting in a net payment by Everist to MAI in the amount of One Hundred Thirty Six Thousand Two Hundred Ninety One 00/100 Dollars (\$136,291.00), which payment shall be made promptly upon execution of this Agreement without further offset. Everist shall have the right to be reimbursed from MAI against its future payment obligations to MAI for the following expenses incurred after the date of this Agreement: the annual disposal fee of Fifteen Thousand and 00/100 Dollars (\$15,000.00) to the Town of Empire; the annual access fee to Sam Newton in the amount of One Thousand and 00/100 Dollars (\$1,000.00); and Two Thousand Five Hundred Forty and no/100 Dollars (\$2,540.00) per

month for each month after the date of this Agreement during which Everist pumps water to process the Stockpiled Material, with such amount to be prorated for each partial month during which such pumping occurs. Everist may withhold or offset all such amounts from the MAI Payments due after the payment of One Hundred Thirty Six Thousand Two Hundred Ninety One and 00/100 Dollars (\$136,291.00) provided herein.

5. Imported Material.

(a) As part of the Everist Operations, Everist may temporarily stockpile and process non-hazardous materials on Parcel 2 that are imported from another location, if such materials facilitate processing the Stockpiled Materials ("Imported Material"). Everist shall obtain Golden's written approval before any Imported Material is brought onto Parcel 2 and, if requested by Golden, Everist shall provide reasonable assurances that the additional Imported Material will increase the rate at which the Stockpiled Material can be sold over the rate of such sales without Imported Material. Golden, in its reasonable discretion, may restrict the amount of Imported Material to be stockpiled, if Golden, after consultation with Everist, determines that additional Imported Material will not, in fact, increase the rate of removal of the Stockpiled Material, that the amount of the existing and additional Imported Material on Parcel 2 will be excessive, that the Imported Material violates any applicable permits, or that there are other unreasonable impacts associated with the additional Imported Materials. Imported Material stored on Parcel 2 shall not exceed 100,000 tons at any one time without Golden's prior written approval. Imported Material is limited to rock, sand and gravel unless Golden provides prior written approval. Execution of this Agreement shall not be deemed approval of all imported material on the site at the time of execution.

(b) On or before October 15 of each year during the term of this Agreement, Everist shall provide a detailed accounting describing the weight and nature of the Imported Material brought onto Parcel 2, and the weight of the Imported Material sold for the preceding twelve (12) months ended September 30 and the amount of Imported Material remaining on Parcel 2. In the first such accounting, which shall be provided within 30

days of full execution of this Agreement, Everist shall account for and describe the total Imported Material brought onto the property and sold since the initiation of Everist Operations, as well as the amount of Imported Material being stored. Within a reasonable time after each year's accounting for Imported Materials, Everist and Golden shall review the quantity of Stockpiled Material sold that year as a result of combining Stockpiled Material with Imported Material to provide Golden with reasonable assurances that allowing Imported Material is increasing the rate at which the Stockpiled Material is being sold over the rate at which the Stockpiled Material could be sold without Imported Material.

(c) Imported Material being stockpiled and any resulting waste material shall be segregated from the Stockpiled Material.

(d) At the termination of Everist Operations under this Agreement, Everist shall cause all Imported Material, including waste, to be removed from Parcel 2 and Everist agrees that, if necessary, it shall haul such Imported Material off site so as to comply with this provision.

6. Accounting for Removal of Materials.

(a) Everist shall establish a protocol acceptable to Golden to ensure that all materials leaving the site, including Stockpiled Material and Imported Material, are properly weighed and accounted for. Golden and MAI shall have the right to inspect and monitor, at any time, the scales and the protocol and, in addition, upon reasonable advance notice to Everist, Golden or MAI shall have the right to audit Everist's records with respect to processing, weighing, transporting and sale of the Stockpiled Material and Imported Material. If the audit determines that the amount of Stockpiled Material sold according to Everist's records exceeds the amount of Stockpiled Materials for which Payments have been made by more than 5%, Everist shall pay: (i) the payments due on account of the shortfall, plus (ii) all reasonable costs associated with the audit.

(b) Everist acknowledges that Kiewit Western Co. reported to Golden that the Stockpiled Material consisted of 738,000 cubic yards hauled to Parcel 2, but that a survey of the Stockpiled Material showed approximately 500,000 cubic yards. A 2005 survey showed the Stockpiled Material was approximately 383,000 cubic yards and a 2006 survey showed the Stockpiled Material was approximately 330,000 cubic yards. Everist and Golden agree that progress toward the goal of removing as much of the Stockpiled Material as can be sold by Everist over the ten year term of the Settlement Agreement can be measured by comparing surveys of the number of cubic yards of Stockpiled Material remaining. The parties also agree that conversion of the cubic yards of Stockpiled Material estimated to have been removed to tons will provide Golden with a reasonable means of determining whether the amount of Stockpiled Material reported to have been sold by Everist approximates the amount of Stockpiled Material removed. However, the parties acknowledge that the Kiewit Western Co. reporting may not have been accurate, conversion formulas for cubic yards to tons and vice versa are not exact, and not all of the Stockpiled Material is of a quality which can be sold.

7. Modifications to Settlement Agreement. MAI and Golden agree that the Settlement Agreement shall be modified as provided in this paragraph 7, and as provided in the other terms of this Agreement. Everist, as sublessee pursuant to the Sublease, agrees that these changes to the Settlement Agreement are binding and applicable to Everist as part of its obligations while conducting the Everist Operations pursuant to the Sublease and the Settlement Agreement, as modified by this Agreement. Everist and MAI further agree that the execution and performance by Golden of the terms of the Settlement Agreement, as so modified, satisfies the corresponding obligations of MAI under the Sublease. MAI, Golden and Everist further agree that Everist and Golden shall have the contractual right to directly enforce against each other the relevant provisions of the Settlement Agreement assumed by Everist and the changes to the Settlement Agreement incorporated in this Agreement.

(a) Electricity. Under paragraph 1 of the Settlement Agreement, Golden agreed to relocate existing utility services from MAI's existing facilities to Parcel 2, which Golden has not done. The parties acknowledge and agree that (A) the existing utility services for

MAI consisted of a single-phase, 120 volt line to service its office trailer, maintenance shop, site lighting and scale; (B) the power demands by Everist greatly exceed what MAI used; and (C) Everist is currently meeting its electricity needs solely by generator and that Golden paid \$108,344 in 2004 for rental costs and fueling costs of the generators. In lieu of relocating the utility line as originally provided for in the Settlement Agreement, and in recognition of payments already made by Golden, the parties agree to replace Paragraph 1 of the Settlement Agreement in its entirety with the following:

Golden shall owe Everist a credit equal to \$3,500.00 per month for electricity beginning August 1, 2006, and thereafter during the term of this agreement. The credit owed for electricity shall be payable only as an offset against the Golden Payments made for the Stockpiled Material sold in the year in which the credit occurred subject, however, to paragraph 4.b, and credits incurred in one year shall not be applied against Golden Payments for a subsequent year.

(b) Water Supply. Paragraph 5 of the Settlement Agreement shall be modified in its entirety to read as follows:

Golden shall supply up to 120 acre-feet of water per year of fully consumable water at no cost for use in connection with the Everist Operations on Parcel 2. The amount of water provided shall be determined by Golden's delivery of water from Guanella Reservoir, minus any water that is lawfully allowed to return to the Reservoir after its use. Such returns shall be of water quality reasonably acceptable to Golden and the parties acknowledge that this may require longer detention in settling ponds. Everist shall provide a minimum of 48 hours advance notice before starting to pump water from Guanella Reservoir and shall install and maintain, at its own cost, totalizing flow meters for measuring the amount of water pumped from Guanella Reservoir and any return flow to Guanella Reservoir, in a manner acceptable to Golden, which Everist

acknowledges may require it to provide to Golden pumping and return flow measurements in a manner necessary to satisfy requirements of the Office of the State Engineer. Within thirty (30) days of this Agreement, Everist shall install a remote telemetry system on any pumps that take water out of or return water to Guanella Reservoir so that Golden may monitor and account for all water use by Everist, provided that Golden has consulted with Everist on the specifications for such remote telemetry. The water supply shall be used solely for purposes of washing and processing the Stockpiled Material and Imported Material, dust suppression, and other activities related to the Everist Operations. To the extent Everist requires more than 120 acre-feet of fully consumable water from Golden in any given year for these purposes, Golden shall provide that water and Everist shall pay Golden, on December 31 of that year, \$525 for every acre-foot of water that exceeds 120 acre-feet. In no event shall Golden be required to provide more than 140 acre-feet of fully consumable water in any given year without prior written authorization from Golden, which authorization shall not be unreasonably denied. Any discharge permit required in connection with the discharge of water by Everist into Guanella Reservoir or the West Fork of Clear Creek shall be obtained and complied with by Everist at its expense, provided that Golden shall cooperate as reasonably necessary for Everist to obtain such permit. Golden shall report the water usage by Everist to the State Engineer.

(c) Other Services to be Supplied by Golden. Golden shall pay Everist an amount equal to the monthly cost of installing and maintaining one portable toilet on Parcel 2 during the Everist Operations on Parcel 2. Golden is not responsible for the cost of renting trailers or any other cost that is not expressly identified in this Agreement or the Settlement Agreement.

(d) Security and Access. Everist shall limit its access to Parcel 2 to the access road at the toe of the dam and is prohibited from accessing and/or driving on the dam and flood levee, except as necessary for access to water pumps required in connection with the Everist Operations on Parcel 2. Everist shall be responsible for any damage caused by it or its agents to the dam or its related appurtenances and shall, at Golden's election, either repair the damage or compensate Golden for the repair. Everist shall keep the main gate closed and locked at all times when not operating and open for business with personnel present at the site. The gate shall not, under any circumstances, be left open and unlocked when no one is present at the site. If Golden reasonably believes that Everist is not keeping the main gate closed and locked when no one is present at the site, Golden, after consultation with Everist, may require additional measures to be taken to insure that the main gate is closed and locked when Everist is not operating and open for business with personal present at the site, which measures may include such things as installing a gate capable of being opened and closed by electronic means. Everist shall provide Golden keys or whatever else may be needed so that Golden and its agents may access the site at any time without first contacting Everist. Everist's access to Parcel 2, and the security obligations hereunder, shall terminate when the Everist Operations terminate under this Agreement, except as may be necessary to comply with any post-operation obligations pursuant to this Agreement and/or the Settlement Agreement.

(e) Permitting.

(i) Golden currently holds a reclamation permit from the Division of Minerals and Geology ("Reclamation Permit") that includes Parcel 2. Golden acknowledges and reaffirms its obligation to reassign the Reclamation Permit to MAI, upon request. Golden further acknowledges that Everist may continue to operate on Parcel 2 under the Reclamation Permit, subject to paragraph 7(e)(ii) and the other terms and conditions of this Agreement.

(ii) To the extent the operations on Parcel 2 exceed what is allowed by the Reclamation Permit, or revisions to that permit are otherwise required, such

revisions or amendments shall be at the sole cost of Everist. Any such revisions or amendments to the Reclamation Permit shall first require Golden's approval, which shall not be unreasonably denied.

(iii) Although Golden retains the obligations set forth in paragraph 8 of the Settlement Agreement, subject to paragraph 8 below, Everist shall comply with all other requirements in the Reclamation Permit, or otherwise imposed by the Division of Minerals and Geology on its operations.

(iv) MAI shall immediately procure all permits and approvals from any State or Federal authority necessary to conduct the Everist Operations, including, but not limited to, storm water and air pollution permits, and Everist shall comply with the same at its expense. In addition, MAI shall, within six (6) months of the date of this Agreement, procure all necessary or applicable permits and approvals from any local authority and, thereafter, Everist shall comply with the same at its expense.

(v) Everist shall fully indemnify Golden for any and all costs, expenses, reasonable attorneys fees, fines or liability resulting from Everist's violation of any local, State or federal authorization, permit or law, and/or resulting from the Everist Operations or other work on the subject property performed by Everist or anyone working for or on behalf of Everist that may result in impacts on property outside of Parcel 2.

(vi) Within ninety (90) days of execution of this Agreement, Everist shall provide to Golden and MAI a detailed written description of all stationary equipment on the site and all existing permits that have been obtained by MAI or Everist for the operations. Everist shall update that description in writing every time it changes and shall do so within fourteen (14) days of the date of the change.

(f) Post-Operations Restoration. At the end of the term of the Settlement Agreement, Everist agrees to regrade any Stockpiled Material and waste material remaining on Parcel 2 to a generally flat condition (subject to such minor variations as Golden may direct), and in a manner adequate for Golden to reseed and otherwise meet its reclamation obligations.

(g) Dust Suppression. Golden agrees to be responsible for maintaining or replacing, as needed, a dust suppression cover on any portion of the Stockpiled Material that has not been disrupted. Everist shall be responsible for all other dust suppression activities on Parcel 2 and on all access roads arising out of or related to the Everist Operations.

(h) Town of Empire. Everist shall designate a person who shall be available to discuss concerns raised by the Town of Empire and shall take reasonable measures to address any such reasonable concerns.

(i) Access and Bridge Repairs. The parties acknowledge that, to the date of this Agreement, Golden provided the reasonable access to Parcel 2 contemplated in the Settlement Agreement. The bridge located on the access road from U.S. 40 to Parcel 2 needs repair or replacement and the estimated cost thereof is approximately \$40,000. The parties agree that Everist shall be responsible for repairing or replacing said bridge, subject to Golden's approval of the work, and Everist shall thereafter maintain the bridge during the term of this Agreement, as necessary for Everist's continued operations during the term of this Agreement. Golden hereby agrees to bear up to \$20,000 of the cost of the bridge repair or replacement. Upon payment and reasonable documentation of Everist's costs of bridge repair or replacement, Everist may offset its reasonable costs of repair or replacement of the bridge against amounts otherwise payable by Everist to Golden hereunder, in an amount not to exceed \$20,000.

8. Reclamation and Hazardous Materials.

(a) MAI acknowledges and reaffirms its obligation to remove hazardous materials and be responsible for remediation of all environmental contamination at its past or present facilities pursuant to paragraph 1 of the Settlement Agreement. Golden likewise acknowledges and reaffirms its obligation to undertake reclamation of Parcel 2, subject to MAI's environmental responsibilities, as set forth in paragraph 8 of the Settlement Agreement.

(b) Everist does hereby agree, and accepts its obligation to Golden, to remove any hazardous materials deposited on Parcel 2 reasonably likely to have been the result of the Everist Operations, but not including hazardous materials, if any, which may have existed in the Stockpiled Material prior to the Everist Operations, and to be responsible for remediation of all environmental contamination on Parcel 2 that is reasonably likely to have been the result of the Everist Operations, not including environmental contamination existing, or remaining from, hazardous materials that may have existed in the Stockpiled Material or on Parcel 2 prior to the Everist Operations, if any. Everist also agrees to fully indemnify Golden for any liability Golden may incur as a result of any such contamination which Everist is responsible for under this Agreement.

(c) The parties acknowledge and agree that references to Parcel 2 in this paragraph 8, as in the rest of this Agreement, include Parcel 2-A, so that the parties' respective obligations regarding Parcel 2 under this paragraph include both Parcel 2-A and the parcel 2 described in the Settlement Agreement.

9. Term of Agreement. Golden, MAI and Everist acknowledge and agree that the ten (10) year term of the Settlement Agreement began on May 21, 2003, and ends on May 21, 2013 and that, therefore, the term of this Agreement shall end on May 21, 2013, unless thereafter extended by mutual agreement, after which the Everist Operations shall immediately cease. Further, the parties agree that the intent of the Settlement Agreement and this Agreement is for substantially all of the Stockpiled Material to be removed from Parcel 2 before May 21, 2013. It is the parties

intention in entering into this Agreement to facilitate such timely removal of the Stockpiled Material, and Everist hereby agrees it shall be its duty to make every reasonable effort to remove substantially all of the Stockpiled Material from Parcel 2 before May 21, 2013, subject to and in accordance with the terms hereof. At the termination of the Everist Operations under this Agreement, Everist shall remove all of its facilities and equipment from Parcel 2 and perform such other post-operation obligations and responsibilities as set forth in this Agreement and the Settlement Agreement, and Golden may inspect the site for compliance with the terms of this Agreement and the Settlement Agreement. The parties further agree that all provisions of this Agreement and the Settlement Agreement that may be applicable after Everist Operations are completed, shall remain in effect and be enforceable between the parties after the term of this Agreement.

10. Buckland Royalties. The parties believe the Bucklands/Guanellas (the "Landowners") have no right to receive royalties with respect to the Stockpiled Material under the Guanella Lease. Notwithstanding, the parties agree that if a claim for royalties is asserted by the Landowners under the Guanella Lease, then Golden, Everist and MAI agree that they each shall be responsible for their own defense of such claims without any right of indemnification from each other on the claims or on the costs of defending the claims.

11. Good Faith. Each of the parties acknowledges their respective obligation and duty to act in good faith toward each other party under this Agreement, and each of the Prior Agreements.

12. Default, Right to Cure and Enforcement.

(a) In the event Everist does not timely cure any default of a duty owed by Everist to MAI under the Sublease, MAI may cure such default at Everist's expense. Failure to timely cure any such defaults is grounds for MAI to void the Sublease. For avoidance of doubt, Everist and MAI agree that failure by Everist to timely cure a default of a duty owed by Everist to Golden under this Agreement shall also constitute a material breach of the Sublease by Everist, so as to permit MAI to terminate Everist's rights under the Sublease. MAI may also seek available legal relief to obtain money owed by Everist to

MAI under the Sublease, as amended by this Agreement, which relief may include setting off against amounts owed by MAI to Everist, or to seek specific performance of any other obligations owed to MAI by Everist.

(b) In the event MAI does not timely cure any default of a duty owed by MAI to Everist under the Sublease, Everist may cure such default at MAI's expense. Everist may seek available legal relief to obtain money owed by MAI to Everist under the Sublease, as amended by this Agreement, which relief may include setting off against amounts owed by Everist to MAI, or to seek specific performance of any other obligations owed to Everist by MAI.

(c) In the event Everist or MAI does not timely cure any default of a duty owed by Everist or MAI to Golden under this Agreement or the Settlement Agreement, Golden may cure such default at Everist's or MAI's expense. Failure to timely cure any such defaults will be grounds for Golden to terminate the Everist Operations and evict the offending party. Golden may also seek available legal relief to obtain money owed by Everist or MAI to Golden under this Agreement or the Settlement Agreement, which relief may include setting off against amounts owed by Golden to Everist or MAI, or to seek specific performance of any other obligations owed to Golden by Everist or MAI.

(d) In the event Golden does not timely cure any default of a duty owed by Golden to MAI or to Everist under this Agreement or the Settlement Agreement, MAI or Everist may seek available legal relief to obtain money owed by Golden to MAI or Everist, which relief may include setting off against amounts owed by Everist or MAI to Golden or to seek specific performance of any other obligations owed by Golden to MAI or Everist.

(e) The provisions respecting right to cure contained in this paragraph shall not apply to prevent or delay the taking of any action reasonably deemed necessary by a non-defaulting party to protect the public health or welfare, or to remedy conditions deemed unsafe to the public.

(f) The parties enter into this Agreement with the intent to deal fairly and cooperatively with each other in resolving any disputes hereunder before resorting to legal action. Notwithstanding, should it be necessary to enforce any provision hereof, the parties may use any and all legally available remedies to obtain the benefit of this Agreement or any of the Prior Agreements. Should enforcement of this Agreement or any of the Prior Agreements in court be necessary, the substantially prevailing party shall be entitled to reimbursement of all costs, expenses and reasonable attorneys fees expended from the other party or parties in said litigation.

(g) Any action brought to enforce the terms of this Agreement shall be brought in the District Court in and for Clear Creek County, Colorado.

13. Insurance. Everist agrees to maintain liability insurance reasonably acceptable to Golden covering the Everist Operations with combined liability limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in aggregate. In addition, Everist shall cause Golden and MAI to be named as additional insureds under such liability insurance policy and to be provided with certificates verifying that such insurance is in effect and that Golden and MAI are named as additional insureds.

14. Headings. Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

15. Assignment. This Agreement and the obligations thereunder shall not be assigned without the express written consent of the parties. In the event Everist's rights and obligations hereunder are terminated, MAI, with Golden's prior written consent, which shall not be unreasonably denied, shall have the right to assume all of Everist's rights and obligations hereunder or to provide a substitute sublessee to assume all of such rights and obligations and, after approval by Golden, MAI or such substitute sublessee shall be deemed to have assumed all of the rights and obligations of Everist under this Agreement.

16. Construction. This Agreement shall be construed under Colorado law without the aid of any canon or rule of law requiring interpretation against the party drafting or causing the drafting of an agreement or the portions of an agreement in question, as all parties are represented by legal counsel.

17. Counterparts. This Agreement may be executed in counterparts.

Executed as of the date first set forth above.

SIGNATURE PAGES FOLLOW

Remainder of this page intentionally left blank.

**EXHIBIT A TO
 AGREEMENT AMONG MOUNTAIN AGGREGATES, INC.,
 EVERIST MATERIALS, INC. AND THE CITY OF GOLDEN**

<u>Description</u>	<u>Amounts</u>	<u>Notes</u>
Mountain Aggregates Commitments:		
Hook up electrical power to plant	\$ 10,000.00	
Hook up electrical power to office and shop	11,000.00	
Set up wash plant	10,750.00	
Build a shop 40' x 60'	63,444.00	1
Water system	56,083.00	
Concrete for scale footing and pit (discounted from \$8,829)	3,906.00	
Storm Water Management Plan (water truck and administration costs)-- Everist to absorb	-	
Settling ponds	29,235.00	
Discharge permit (pumps, permit, materials, floc)	-	
Generator power for plant, office and shop	-	
Plumbing, electrical hook-up and phones	3,000.00	
Golden's electrical credit offset (Jan-July x 50%)	<u>-</u>	
Subtotal - payable to Everist	<u>187,418.00</u>	
Everist Materials Commitments:		
Royalties due thru 9/30/06	266,642.00	
Equipment rent	12,000.00	
Purchase of material (10,250 tons of sand)	33,500.00	
Purchase of scale	8,000.00	
Clear Creek County Taxes	<u>3,567.00</u>	
Subtotal - payable to Mountain Aggregates	<u>323,709.00</u>	
Net Payable to Mountain Aggregates, Inc.	136,291.00	

Notes:

1 Subject to recoupment in an amount not to exceed \$34,472, pursuant to a separate letter agreement between Everist and MAI.

CITY OF GOLDEN, a Colorado
home rule municipal corporation

By: Jacob Smith
Name: Jacob Smith
Title: Mayor Pro Tem

MOUNTAIN AGGREGATES, INC.,
a Colorado corporation

By: Rinda R. Marquez
Name: RINDA R. MARQUEZ
Title: President

EVERIST MATERIALS, LLC,
a South Dakota limited liability company

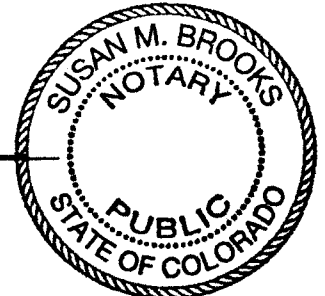
By: Greg Norwick
Name: GREG NORWICK
Title: PRESIDENT

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this 7th day of December 2006, by Jacob Smith, the Mayor Pro Tem for the City of Golden, a Colorado home rule municipal corporation.

My commission expires 10/06/09.
Witness my hand and official seal.

Susan M. Brooks
Notary Public



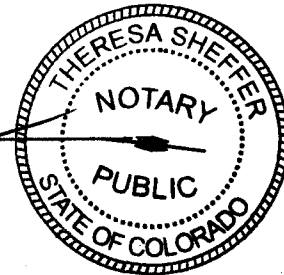
My Commission Expires 10/06/09

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 22 day of November 2006, by Linda Marquez, the President for Mountain Aggregates, Inc., a Colorado corporation.

My commission expires 5/19/2010
Witness my hand and official seal.

Theresa Sheffer
Notary Public



STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this 17th day of November 2006, by Grea Norwick, the President for Everist Materials, LLC, a South Dakota limited liability company.

My commission expires 03/29/2010
Witness my hand and official seal.

Amber De...
Notary Public



My Commission Expires 03/29/2010