

RESOLUTION NO. 2252

A RESOLUTION OF THE GOLDEN CITY COUNCIL
APPROVING LEASE OF WATER TO THE CITY OF
THORNTON

WHEREAS, the City of Thornton anticipates needing additional water supplies during all or a portion of 2013; and

WHEREAS, the City of Golden is the owner of Guanella Reservoir decreed in Case No. 82CW469 and augmented by sources described in Case Nos. 82CW469, 83CW361, 87CW298 and 02CW379; and

WHEREAS, the City of Golden is willing to lease on a short-term basis, water stored at Guanella Reservoir as 92CW1117.

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

City Council hereby approves the lease with the City of Thornton in essentially the same form as the copy of such lease accompanying this resolution.

Adopted the 21st day of March, 2013.



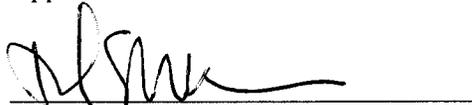
Marjorie N. Sloan
Mayor

ATTEST:



Susan M. Brooks, MMC
City Clerk

Approved as to form:



David S. Williamson
City Attorney

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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 business meeting thereof held on the 21st day of March, 2013.

(SEAL)

ATTEST:

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

AGREEMENT FOR SHORT-TERM LEASE OF WATER

This Agreement for Short-Term Lease of Water ("Lease Agreement") is entered into this ____ day of March, 2013, by and between the City of Golden ("Golden"), and City of Thornton ("Lessee") (collectively referred to as "Parties").

WHEREAS, Lessee anticipates needing additional water supplies during all or a portion of 2013; and

WHEREAS, Golden is the owner of Guanella Reservoir decreed in Case No. 82CW469, as augmented by sources described in Case Nos. 82CW469, 83CW361, 87CW298 and 02CW379, and is willing to lease on a short-term basis to Lessee, Water stored in Guanella Reservoir pursuant to the decree in 96CW117 (referred to herein as "Stored 96CW1117 Water").

NOW, THEREFORE, in consideration of the forgoing recitals, and in consideration of the promises, payments and agreements hereinafter set forth, the adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Lease Water.** Golden hereby leases to Lessee and Lessee hereby leases from Golden up to 200 acre-feet of Golden's Stored 96CW1117 Water, subject to the other terms of this Lease Agreement (the "Lease Water"). Use of the Lease Water is limited to direct beneficial use within Lessee's service area. Lessee shall incur any transit losses assessed in delivery of the Lease Water from Guanella Reservoir to Lessee without a reduction in the Lease Payment described below.
2. **Lease Term.** This Lease Agreement shall be effective as of the date signed by both Parties and shall terminate on August 31, 2013 ("Lease Term").
3. **Lease Payment.** Lessee shall pay Golden \$500/AF for the Lease Water at the time this Lease Agreement is executed ("Lease Payment"). This Agreement is on a take-or-pay basis, meaning Lessee is obligated to pay the entire Lease Payment regardless of whether it needs some or all of the Lease Water, so long as Golden has the Lease Water available for release from Guanella Reservoir.
4. **Delivery of Lease Water.** Lessee shall coordinate with Golden from time to time during the Lease Term by contacting William Stambaugh via telephone (303) 591-7653, to provide Golden with advance notice of when Lessee anticipates needing the Lease Water, and shall confirm the request by e-mail to wstambaugh@ci.golden.co.us. Requests for water shall specify the amount and timing of water deliveries desired by Lessee. Upon such notification, Golden will coordinate with Lessee to make the requested Lease Water available in a manner reasonably consistent with Golden's operations of Guanella Reservoir, or so much thereof as Golden believes it can satisfy at that time pursuant to section 7, below.
5. **Approvals.** It shall be Lessee's exclusive responsibility to obtain approval from the State Engineer's Office for the use of the Lease Water. Before filing any written application or request with the State Engineer's Office, Lessee shall obtain Golden's approval of the form and incorporate any changes deemed necessary by Golden. Lessee shall be responsible to Golden for

the cost of Golden's attorneys and/or engineers to review said request and shall pay said cost within 30 days of receiving an invoice from Golden.

6. **Measurement.** Golden shall measure and record the Lease Water released from Guanella Reservoir in a form reasonably acceptable to the State Engineer's Office and Lessee. Lessee shall measure and record its diversions of Lease Water after taking into account any transit loss in a form reasonably acceptable to the State Engineer's Office and Golden.

7. **Interruption or Modification of Lease Water Deliveries.** Golden reserves the right in its sole and unlimited discretion to reduce the volume of Lease Water and/or curtail delivery of Lease Water under this Lease Agreement, should Golden determine at any time during the Lease Term that it does not have adequate water supplies, or that making such deliveries will in some manner jeopardize the municipal water supply for its own citizens or impair its ability to satisfy other water delivery obligations existing as of the date of this Lease Agreement. In the event that a decision by Golden under this section 7 reduces the amount of Lease Water available to Lessee during the Lease Term, then the Lease Payment shall be reduced by the reduction in the Lease Water available to Lessee at a rate of \$500/acre-foot, and Golden shall reimburse Lessee that amount of the Lease Payment no later than 30 days after the end of the Lease Term.

8. **No Warranties.** Golden does not warrant: (a) the quality of the Lease Water delivered by Golden under this Lease; (b) the administration of the Lease Water or allowed use thereof once released; and/or (c) the amount of Lease Water that Golden will actually deliver to Lessee as a result of transit loss and/or application of section 7, above.

9. **Indemnification.** Lessee agrees to indemnify, defend and hold harmless Golden and its agents from and against all assignee claims, causes of action, costs, expenses (including reasonable attorneys fees and court costs), judgments, damages and any other liabilities of any kind arising out of Lessee's use of Lease Water released by Golden.

10. **Termination.** Golden reserves the right to terminate this Lease Agreement at its sole discretion upon five days advance notice to Lessee, in which event Golden shall reimburse Lessee within 30 days of termination for any Lease Water that was not already released by Golden to Lessee at the rate of \$500/acre-foot.

11. **Non-Assignability.** Lessee may not assign or sub-lease any of its rights under this Lease.

12. **Miscellaneous.**

(a) This Lease Agreement constitutes the full agreement between the parties and may not be amended, nor any rights or obligations hereunder waived, except by an instrument in writing signed by the parties sought to be charged with such amendment or waiver.

(b) This Lease Agreement may be executed in counterparts.

(c) The parties represent that they have all authorizations and approvals to enter into this Lease Agreement.

Executed as of the date set forth above.

CITY OF THORNTON

CITY OF GOLDEN

By: _____
Name:
Title:

By: _____
Marjorie N. Sloan
Mayor, City of Golden

STATE OF COLORADO)
) ss.
COUNTY OF JEFFERSON_)

The foregoing instrument was subscribed and sworn to before me this ___ day of _____, 20__, by _____, Mayor of the City of Golden.

Witness my hand and official seal

My commission expires: _____
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was subscribed and sworn to before me this ___ day of _____, 20__, by _____.

Witness my hand and official seal

My commission expires: _____
Notary Public

