



MEMORANDUM

TO: Boards of Directors
FROM: Diane Johnson, Communications & Public Affairs Manager
DATE: January 20, 2022
RE: January 27, 2022, Regular Joint Meeting

This memorandum shall serve as notice of the Regular Joint Meeting of the Boards of Directors of the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority:

**Thursday, January 27, 2022
11:00 a.m.**

This meeting will be held via Microsoft Teams

Call-in information is available prior to the meeting by emailing info@erwsd.org.

C:
ERWSD Managers

Public meeting materials via email:
Bob Armour, Vail resident
Caroline Bradford, Independent Consultant

Rick Sackbauer, Vail resident
Cliff Thompson, IKS Consulting



REGULAR JOINT MEETING
BOARDS OF DIRECTORS

January 27, 2022
11:00 a.m.

Remote via Microsoft Teams

AGENDA

1. **Consultant/Guest Introduction**
2. **Public Comment**
3. **Update on Jan. 19 Minturn Town Council meeting – Jason Cowles**
4. **General Counsel and Water Counsel Report – Kathryn Winn and Kristin Moseley**
 - 4.1. **Executive Session pursuant to §24-6-402(4)(a)(b) and (e), C.R.S.**
 - 4.1.1. Bolts Lake Due Diligence Update – Jason Cowles†
 - 4.1.2. Unification
5. **Review of Bolts Lake Matters – Kathryn Winn and Kristin Moseley***
 - 5.1. Intergovernmental Agreement Among the Town of Minturn, the Eagle River Water & Sanitation District, and the Upper Eagle Regional Water Authority☼
 - 5.2. Supplement to Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project and Escrow Instructions
 - 5.3. Settlement Agreement with Battle North, LLC
 - 5.4. Temporary Easement Agreement (Inundation Area Parcel)
 - 5.5. Temporary Easement Agreement (Processing Area)
6. **Adjournment**

☼ **Action Item Attachment**

* **Informational Attachment**

† **Confidential Attachment**

- Public comment of items not on the agenda is limited to three minutes per person on any particular subject for which public comment is accommodated, pursuant to §18-9-108, C.R.S.

This is an all-remote meeting. For Microsoft Teams information to join the meeting, please contact info@erwsd.org prior to the meeting.



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MEMORANDUM

TO: Eagle River Water & Sanitation District and Upper Eagle Regional Water Authority Boards of Directors

CC: Linn Brooks, Jason Cowles, Jim Collins and Kathryn Winn

FROM: Kristin Moseley

DATE: January 21, 2022

RE: Intergovernmental Agreement Among the Town of Minturn, the Eagle River Water & Sanitation District, and the Upper Eagle Regional Water Authority regarding Bolts Lake.

Attached for consideration for approval by both boards of directors is a proposed Intergovernmental Agreement Among the Town of Minturn, the Eagle River Water & Sanitation District, and the Upper Eagle Regional Water Authority regarding Bolts Lake. This same version of the Intergovernmental Agreement is being provided to the Minturn Town Council for a first reading vote on Tuesday, January 25, 2022. The only modification to the previous draft is inclusion of a new paragraph 16(b) relating to environmental issues, and this provision has consensus agreement from the Minturn and District/Authority negotiating teams.

**INTERGOVERNMENTAL AGREEMENT AMONG THE TOWN
OF MINTURN, THE EAGLE RIVER WATER & SANITATION
DISTRICT AND THE UPPER EAGLE REGIONAL WATER
AUTHORITY**

This Agreement dated February 2, 2022, is among the Town of Minturn (“Minturn”), Eagle River Water & Sanitation District (“District”) and the Upper Eagle Regional Water Authority (“Authority”) (the “Agreement”).

A. Whereas, the District and Authority have an integrated water system that provides municipal water service from the Town of Vail to Wolcott.

B. Whereas, the District provides sanitation service from Vail to Wolcott, including Minturn.

C. Whereas, Minturn’s jurisdictional boundaries are included within the District for sanitation purposes, but not for water purposes, and Minturn operates its own independent water system within its municipal boundaries.

D. Whereas, Minturn has requested that the District provide Minturn with augmentation water to serve needs within Minturn’s jurisdictional boundaries.

E. Whereas, the District has an available augmentation water supply which has a current cash-in-lieu price of \$43,000 per acre-foot.

F. Whereas, the District and Authority have contracted with Battle North, LLC (“Battle North”) to purchase land within Minturn’s municipal boundaries for construction of Bolts Lake storage reservoir, conditional water rights, easements and additional commitments (the “Battle North Agreement”).

G. Whereas, the Battle North Agreement provides for conveyance of Battle North’s conditional water rights in Bolts Lake and Bolts Ditch as well as the real property underlying the Bolts Lake location to the District and Authority;

H. Whereas, the Battle North Agreement commits the District and Authority to provide a series of augmentation credit options for Battle North to develop its property (the “Battle North Augmentation Options”) and be served with domestic water supplies by Minturn, should Minturn be willing to provide physical water service, or alternatively for the District and Authority to provide physical water service if Minturn declines water service.

I. Whereas, the District and Authority desire to own, construct and operate Bolts Lake to meet existing and future water service obligations for the region.

J. Whereas, the District and Authority have filed an application for water rights, augmentation and exchange for Bolts Lake in Case No. 21CW3029 in the Water Court in and for Water Division No. 5 (the “Water Court”).

K. Whereas, the District and Authority have filed an application for water rights, augmentation and exchange for various augmentation options in Case No. 21CW3030 in the Water Court.

L. Whereas, Minturn has filed Statements of Opposition to the applications in Case Nos. 21CW3029 and 21CW3030.

M. Whereas, Minturn also owns conditional water storage rights in Bolts Lake which list Bolts Ditch as a source of fill.

N. Whereas, Minturn and multiple entities called the “Ginn Entities”, a prior owner and developer of the Bolts Lake property, entered into a Water Service Agreement on February 27, 2008 (the “WSA”), which provided for conveyance to Minturn of conditional water rights, included an easement for constructed storage capacity in Bolts Lake (the “Easement”), and required the Ginn Entities to provide replacement storage and capacity to the Town if Bolts Lake was not constructed within a five-year period.

O. Whereas, Minturn recorded the WSA on March 27, 2008 in the real property records of the Eagle County Clerk and Recorder at Reception No. 200806743.

P. Whereas, almost fourteen (14) years have passed since the WSA was executed and recorded and the District and Authority estimate that it will take a minimum of ten (10) years to construct Bolts Lake following acquisition of the Bolts Lake reservoir property.

Q. Whereas, the District and Authority have offered to Minturn use of augmentation water supplies as defined herein.

R. Whereas, Minturn recorded the Easement on October 7, 2021 in the real property records of Eagle County Clerk & Recorder at Reception No. 202122820.

S. Whereas there is disagreement between Minturn and the current owner and developer of the Bolts Lake property, Battle North, regarding the obligations set forth in the WSA.

T. Whereas, the District and Authority intend to close on the purchase outlined in the Battle North Agreement by February 9, 2022.

U. Whereas, the District and Authority desire to obtain clear title to the Bolts Lake property without a formal condemnation proceeding, and in connection therewith have requested that Minturn release the Easement and WSA from the Bolts Lake property.

V. Whereas, the District and Authority desire to obtain the right to divert water from Bolts Ditch to fill Bolts Lake and in connection therewith have requested that Minturn take certain actions to support the District's and Authority's efforts to obtain necessary approvals to operate Bolts Ditch.

W. Whereas, the parties desire to enter into an intergovernmental agreement in satisfaction of the formal permitting process under Article 25 of the Minturn Municipal Code.

X. Whereas, the District and Authority desire to secure Minturn's cooperation on the operation and filling of Bolts Lake.

Y. Whereas, Minturn is entering into this Agreement, in part, to mitigate damages it believes arise from Ginn's and/or Battle North's failure to construct Bolts Lake pursuant to the WSA.

Z. Whereas, Minturn is a permitting authority for the construction and operation of Bolts Lake.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Water Service Agreement and Easement. Minturn agrees that for purposes of the WSA and Easement, neither the District nor the Authority shall be treated as a "successor" or "assign" of the Ginn Entities or Battle North; nor shall the WSA or the Easement be deemed to have been assigned to the District or Authority; and Minturn will not look to the District and/or Authority for enforcement of outstanding obligations, if any, under the WSA or Easement. No later than March 16, 2022, Minturn will record a Release of the Easement and WSA in the form attached hereto as **Exhibit A** (the "Release"). The District and Authority agree not to interfere with any enforcement of the WSA or Easement or any claims that Minturn may have against Battle North under the WSA or Easement, however, if the District and/or Authority (or a successor entity of either) construct Bolts Lake, Minturn shall not claim rights to any storage capacity, including enforcement of the Easement or WSA, in Bolts Lake.

2. Provision of Supplemental Augmentation Water to Minturn. (a) As consideration to Minturn for effecting clear title through the release of the Easement and WSA as set forth in Section 1 herein, the District and Authority shall provide without charge of

cash-in-lieu fees to Minturn a source of augmentation water in the amount of 20 acre feet to shore up augmentation supplies for Minturn's water rights ("Supplemental Augmentation Supply"). The present cash-in-lieu price of the Supplemental Augmentation Supply is \$860,000. The Supplemental Augmentation Supply shall be a use right, and not a title conveyance, and shall consist of a mix of storage water and historic consumptive use credits chosen annually by the District/Authority in their sole discretion.

(b) The Supplemental Augmentation Supply shall be legally available to augment depletions associated with Minturn's points of diversion on Cross Creek and the Eagle River (at or above Dowd Junction).

(c) The Supplemental Augmentation Supply shall be provided to Minturn upon entry of a full and final judgement and decree in Case No. 21CW3030.

(d) Until such time as a full and final judgement and decree is entered in Case No. 21CW3030, upon Minturn's request the District shall provide to Minturn the Supplemental Augmentation Supply (up to 20 acre feet) from its Eagle Park Reservoir Project supply, for augmentation of out-of-priority depletions under Minturn's plan for augmentation decreed in Case No. 07CW225.

3. Provision of Augmentation Options. The District/Authority shall reserve and grant to Minturn an option to obtain the right to the perpetual deliveries and use of water to augment the municipal diversions in Minturn up to a maximum of 55 acre feet of augmentation water (the “Minturn Option”). The water provided pursuant to the Minturn Option shall be a use right, and not a title conveyance, and shall consist of a mix of storage water and historic consumptive use credits chosen annually by the District/Authority in their sole discretion (the “Option Water”). The Option Water shall be legally available to augment depletions associated with Minturn’s points of diversion on Cross Creek and the Eagle River (at or above Dowd Junction). The Minturn Option may be exercised in an amount of up to 30 acre feet upon entry of a full and final judgement and decree in Case No. 21CW3030, and the option period shall extend for 30 years from the Effective Date of this Agreement. The remaining 25 acre feet of the Option Water may only be exercised after such time as Bolts Lake Reservoir is constructed and operational, and shall extend for (i) 30 years from the Effective Date of this Agreement, or (ii) 15 years from the date upon which Bolts Lake Reservoir is constructed and operational, whichever occurs later. Such option period may be extended upon mutual agreement of the parties. The Minturn Option shall not be subject to the “first come, first serve” policy of the District/Authority. The price for the Option Water shall be the cash in lieu fee of the District/Authority then in effect (for in-district rates) at the time Minturn exercises any portion of the Minturn Option. It is anticipated that the Option Water shall be paid for by developers of future residential and commercial properties within Minturn’s service area, however, Minturn may also pay applicable cash in lieu fees in order exercise the Minturn Option directly for usage within its municipal water system. If Minturn wishes to request additional augmentation supplies from the District and Authority after the Minturn

Option has been fully exercised or has expired, the District and Authority will evaluate Minturn's request for additional water at that time.

4. Annual OM&R. (a) The District shall also assess Minturn an annual operations, maintenance and capital replacement fee ("OM&R") associated with the Supplemental Augmentation Supply and the volume of Option Water exercised pursuant to the Minturn Option based on a pro-rata share of costs based on the percentage of single family equivalents in Minturn compared to the percentage of single family equivalents in the District's service area. Operations, maintenance and capital replacement fees unrelated to the Supplemental Augmentation Supply and the Option Water shall not be included in the OM&R fee assessed to Minturn. A description of the OM&R fee and the component costs as would be assessed in 2022 is attached as **Exhibit B**. This Exhibit is attached to give an example of the types of operations, maintenance, and capital replacement items that are associated with the Supplemental Augmentation Supply and will be associated with the Option Water upon any exercise of the Minturn Option; but recognizing that the exact OM&R components and costs may change over time as the District develops and changes the elements of its augmentation water supplies. The District will provide Minturn with a breakdown of the OM&R fee associated with the Supplemental Augmentation Supply and the Minturn Option on an annual basis.

(b) Minturn shall commence payment of OM&R fees on the Supplemental Augmentation Supply upon entry of a full and final decree in Case No. 21CW3030. If Minturn requests the District to provide the Supplemental Augmentation Supply for augmentation under Case No. 07CW225 (as described above in paragraph 2(d)) prior to entry of a full and final judgement and decree in Case No. 21CW3030, then Minturn shall commence payment of OM&R fees on that portion of the Supplemental Augmentation Supply made available at such time.

(c) Minturn shall commence payment of OM&R fees on the Option Water on such amounts and at such time as the cash in lieu fee is paid to the District and Authority. For the first year that OM&R fees are paid by Minturn, OM&R fees shall be pro-rated based upon the day of the year on which the final decrees are entered or the cash in lieu fee is paid divided by the total number of days in the year.

5. Subsequent Water Augmentation Agreements. The parties will enter into subsequent water augmentation agreements that set forth detailed terms for the provision of Supplemental Augmentation Supply and the Option Water purchased pursuant to the Minturn Option, in the form attached hereto as **Exhibit C**. In recognition that Minturn released its rights in its permanent Easement, the Supplemental Augmentation Supply and Option Water purchased pursuant to the Minturn Option shall be made available by the District and Authority on a permanent basis. However, the subsequent water augmentation agreements shall have set terms (99 years) with an automatic renewal provision, to avoid concerns with the rule against perpetuities. The subsequent water augmentation agreements will be recorded in the public records of Eagle County. The parties will also prepare and record an annual joint

statement identifying Option Water secured by Minturn in the public records of Eagle County on an annual basis.

6. Obligation to purchase Option Water. During the option period described in Paragraph 3, Minturn shall require that all Town water users shall secure a perpetual use right to Option Water to fulfill any cash in lieu payment obligations provided for under the Minturn Town Code. Any water use made by the Town of Minturn or the Eagle County School District (up to 120 SFEs and irrigation of lands owned by the Eagle County School District with water rights owned by the School District) shall be exempt from this obligation. If Minturn collects cash-in-lieu payments prior to entry of a full and final judgement and decree in Case No. 21CW3030, Minturn will hold such payments in escrow and then transfer such funds to the District and Authority within 30 days of entry of such decree in satisfaction of the obligation to purchase Option Water. Minturn shall assess cash-in-lieu fees no less than the cash-in-lieu fees that are charged by the District and Authority at the time the payment is collected. Within six months of entry of full and final judgments and decrees in Case No. 21CW3030, the Town shall amend its Code to implement the requirement that new water uses shall require the purchase Option Water.

7. Process of Case Nos. 21CW3029 and 21CW3030. Obtaining water rights for Bolts Lake in Case No. 21CW3029 and augmentation supplies for Minturn and Battle North in Case No. 21CW3030 are crucial priorities for the District and Authority in order to provide essential water supplies for all of its customers within its service area as well as be in compliance with the terms of this Agreement and the Battle North Agreement. Accordingly, the District and Authority will pursue the cases through completion of final judgments and decrees as quickly

as possible, and, if necessary, through trials and appeals. The District and Authority shall file amended applications within 30 days of the recording of the Release to effectuate the commitments set forth in this Agreement.

8. Minturn's Conditional Water Right in Bolts Lake. (a) Minturn owns a conditional water right for Bolts Lake and associated rights to divert water into Bolts Lake through the Bolts Ditch. If Minturn desires to exercise its conditional water storage right in Bolts Lake, Minturn may do so only pursuant to a decree entered by the Water Court that changes the place of storage of the water right to a location outside of the land underlying Bolts Lake that the District and Authority have contracted to acquire from Battle North and shall not fill from the Bolts Ditch. Any such change of water right application shall be filed by Minturn no later than one month prior to Minturn's first deadline to file an application seeking a finding of diligence on its Bolts Lake water right after Bolts Lake is constructed and operational.

(b) Minturn shall not file an action against the District or Authority to condemn the real property underlying Bolts Lake. Nor shall Minturn file an action against the District or Authority to condemn water storage capacity in the Bolts Lake Reservoir.

9. Land Use Approvals.

(a) The District and the Authority intend to develop, construct, and operate Bolts Lake and the associated diversion, pipelines, ditches, and outlet facilities for all decreed beneficial uses to meet the water requirements of their existing and future service areas. The Town has, set forth in Article 25 of the Minturn Municipal Code (the

“1041 Regulations”), certain requirements and criteria related to the construction of major facilities of public utilities, such as the Bolts Lake Reservoir. The formal permitting process under the 1041 Regulations can be fulfilled by entering into an intergovernmental agreement with an implementing governmental entity addressing the various requirements of the 1041 Regulations. This Agreement constitutes, in part, an intergovernmental agreement entered into to partially fulfill the 1041 Regulations requirements. The Parties hereby agree as follows that for purposes of the Town’s 1041 Regulations:

- i. The Town will not require security for the construction of Bolts Lake.
- ii. Any changes to Article 25 of the Code adopted after February 2, 2022 will not apply to construction of Bolts Lake without the District’s and Authority’s consent.
- iii. In lieu of public hearings contemplated under Section 16-25-110 of the Town Code, the Town will conduct public hearings as part of the adoption of this Agreement and any subsequent intergovernmental agreements related to Bolts Lake.
- iv. The District and Authority, through prior presentations to the Town and the additional provisions of water contemplated by this Agreement, have met the “demonstration of need” requirement of Section 16-25-270 of the Code.
- v. The District and Authority anticipate purchasing title insurance upon taking title to the Bolts Lake property, which title commitment does not show any mineral owners required to be notified pursuant to

Section 16-25-270(11) of the Town Code and Section 24-65.5-101, *et seq.*, of the Colorado Revised Statutes. The District and Authority will present a copy of the title commitment to the Town, which will satisfy the mineral owners' notice requirement.

- vi. The Parties agree that once completed, the impacts of the Reservoir on to utilities, water supply, emergency services, transportation, infrastructure, etc. will be de minimus.
 - vii. The recreational use covenant set forth in Section 10 of this Agreement satisfies the requirement to describe impacts and net effect of the project on recreational opportunities as set forth in Section 16-25-270(15) of the Code.
 - viii. The requirement to provide a description of social impacts as set forth in Section 16-25-270(16) of the Code is inapplicable to further land use actions involving Bolts Lake.
 - ix. The District's provision of water to the Town pursuant to this Agreement satisfies the water quantity provisions of Section 16.25-270(23) of the Code.
- (b) The staging and placement of excavated material on the Old Tailings Pile area are components of the CERCLA remedy for Operable Unit 3 of the Eagle Mine Superfund Site, as set forth in the United States Environmental Protection Agency's 2017 Record of Decision. Accordingly, so long as the activities are

conducted entirely on-site and in compliance with section 121 of CERCLA, 42 U.S.C. § 9621, the Town will not apply the 1041 permitting process or requirements to those specific activities.

(c) The Town's land use code applies to the area where Bolts Lake will be constructed. For purposes of zoning compliance, the parties agree:

- i. Section 16-10-20(6) of the Code allows for lands within the Bolt's Lake Character Area to be used, as a matter of right, for: Operation, maintenance and use of water rights, water resources, water diversion structures, ditches, pipeline structures, ponds, water impoundments and associated facilities consistent with the decreed uses but subject to these restrictions. The parties agree that the current zoning allows for the use by right for construction of the Bolts Lake Reservoir and the associated points of diversion, ditches, and pipelines associated with Bolts Lake. The Town agrees not to modify the zoning for the Bolt's Lake Character Area in any manner that would alter the use by right nature of the Bolts Lake project.
- ii. The Bolts Lake project is subject to Minturn Code provisions of general applicability.

(d) No later than April 30, 2022, the Parties will enter into a separate intergovernmental agreement, pursuant to

Section 16-25-40(8) of the Town of Minturn Municipal Code, outlining and satisfying how the requirements under Article 25 of the Minturn Municipal Code (the “1041 Regulations”) will be implemented as further information is generated for the Bolts Lake project. The Parties agree to address the following within the intergovernmental agreement:

- i. As part of the construction of Bolts Lake, the District and Authority must obtain numerous state and federal permits. The Town, following review of the applications for such permits and participation as a cooperating agency where applicable and permitted by the state or relevant federal agency, agrees to consider such state and federal permits as satisfactory of relevant provisions of the 1041 Regulations.
- ii. As further construction plans and construction phasing for the Bolts Lake project are generated, the Town will review such documents and pursuant to a process to be identified in the intergovernmental agreement impose reasonable restrictions to effectuate compliance with the 1041 Regulations.
- iii. The Parties intend to minimize duplication of efforts and outside consultations related to the processing and review of the project under the 1041 Regulations so that the ultimate cost to the taxpayers and customers is minimized.

10. Bolts Ditch. (a) Minturn shall execute and deliver to the District and Authority the assignment attached hereto as **Exhibit D**

which assigns to the District and the Authority all of Minturn's interest in and to the physical headgate and ditch structure of the Bolts Ditch, together with any special use permit to the Bolts Ditch which it may obtain. Minturn shall pass a resolution in support of the District's and Authority's efforts to obtain the approval of the U.S. Forest Service to the assignment of any special use permit to the Bolts Ditch that it may obtain, or to have the District and Authority substituted for Minturn as the permittee of the special use permit for the Bolts Ditch.

(b) Minturn shall support the amendment of the Bolts Ditch federal legislation passed as part of S.47 entitled the John D. Dingell, Jr. Conservation, Management and Recreation Act to include the District and the Authority as permittees of the U.S. Forest Service special use permit for the Bolts Ditch. Minturn's support shall be limited to passing a resolution in support of such amendment and tendering the same to the Colorado congressional delegation.

(c) Minturn shall support any application filed by the District and Authority to obtain a special use permit from the U.S. Forest Service for a structure that diverts water from Cross Creek and the associated diversion facilities that transport the Cross Creek water to Bolts Lake. Minturn's support shall be limited to passing a resolution in support of the application and tendering the same to the United States Forest Service.

11. Recreational Use. Certain terms and conditions contained in Article X of the Battle North Agreement provide for allowed public recreational uses of the Bolts Lake reservoir including: (i) non-motorized boating, (ii) fishing from shores, boats, or float tubes (i.e. belly boats), (iii) paddle boarding, (iv) picnicking, (v) hiking around

lake, and (vi) other future uses approved by the District and Authority. The District and Authority confirm that Article X of the Battle North Agreement is strictly a type of use limitation and that the granting of authority to use or operate the Bolts Lake reservoir remains at the discretion of the District and Authority, as further acknowledged in Section 10.1(k) of the Battle North Agreement. The District and Authority hereby authorize Minturn the right to provide recreational services and facilities to the general public as follows:

(a) Any recreational use of Bolts Lake shall be secondary and subordinate to the primary use of Bolts Lake by the District and the Authority for the existing and future decreed uses.

(b) Any recreational use shall be limited to: (i) non-motorized boating, (ii) fishing from shores, boats, or float tubes (i.e. belly boats), (iii) paddle boarding, (iv) picnicking, (v) hiking around lake, and (vi) other future uses approved by the District and Authority. Minturn shall be allowed to stock Bolts Lake with fish subject to the provisions of paragraph 11 of this Covenant. Except for the above permitted uses, no other recreational uses shall be allowed on Bolts Lake. Moreover, no recreation use of Bolts Lake by a commercial operator shall be permitted.

(c) There shall be no right to maintenance of water levels in Bolts Lake for the purpose of supporting the permitted recreational use. No surface recreational use shall be allowed during the months of December through April, or when it would jeopardize the health, safety and welfare of users.

(d) One dock may be installed at Bolts Lake at no cost to the District and Authority to facilitate the above-described recreational uses. The design of the dock shall be subject to review and approval by the District and Authority; provided that such approval may be withheld at their sole discretion.

(e) Should new water quality regulations be adopted in Colorado that would subject Bolts Lake to increased water quality testing as a result of body contact with the water stored in Bolts Lake, the body contact recreational use shall be discontinued to ensure that the recreational use of Bolts Lake does not result in the District and Authority being subjected to increased testing and treatment costs; provided, however, if Minturn pays for all costs and agrees to assume all liabilities associated with testing and treatment costs, recreational uses involving body contact will be allowed to continue.

(f) To the extent permitted by law, Minturn shall indemnify the District and Authority against any claims, demands and liabilities arising out of, resulting from or related to the recreational use of Bolts Lake. The District and Authority will notify Minturn of any such claim or demand, when and if made, and Minturn shall defend against or participate in the defense against such claims and the District and Authority shall cooperate fully in the defense of such claims.

(g) Minturn must obtain and maintain appropriate insurance coverage related to the recreational use of Bolts Lake and name the District and Authority as additional insureds. If necessary, to obtain such insurance, the District and Authority shall grant at no charge a recreational use lease to Minturn for Bolts Lake in a form mutually agreeable to the District, Authority and Minturn.

(h) The District and Authority may prohibit any and all recreation use of Bolts Lake if they determine in their sole discretion, following notice to Minturn, that such recreation use (i) interferes with or in any manner restricts the use of Bolts Lake as a water storage facility for its decreed uses; and/or (ii) increases the cost of operating Bolts Lake. In the event the District and Authority have made the decision to prohibit any or all recreation use of Bolts Lake pursuant to this provision, the District and Authority shall provide written notice to Minturn specifically describing the recreational use at issue and the reasons for prohibiting such recreational use. Minturn shall have 60 days from receipt of such notice to cure the cause of such recreation use prohibition identified by the District and Authority, or such other amount of time as the parties mutually agree in writing is reasonably necessary to cure the cause of such recreation use prohibition: provided; however, that the District and Authority shall have sole discretion to determine whether to allow more than 60 days to achieve a cure. If Minturn is not able to achieve a cure to the satisfaction of the District and Authority within 60 days of receiving notice from the District and Authority, then the recreation use that is being prohibited shall cease in whole or part if required by the District and Authority.

(i) The District and Authority shall determine, in their sole discretion, the specific areas of Bolts Lake that will be open to public access and the Permitted Recreational Uses, including the locations of any access, parking areas, trails, and the dock.

12. Minturn Eagle River Diversion.

(a) The District and Authority have appropriated a 2 cubic foot per second (c.f.s.) conditional water right for the Minturn Eagle River Diversion pending in Case No. 21CW3030. Water from the Minturn Eagle River Diversion is anticipated to be utilized to provide physical water service to Battle North, by either Minturn or the District and Authority.

(b) Minturn would also like to utilize the Minturn Eagle River Diversion as a location to divert water to the Minturn municipal water system as augmented by the Supplemental Augmentation Supply and the Option Water for use in Minturn's municipal service area.

(c) The District and Authority agree to amend the pending application in Case No. 21CW3030 to increase the flow rate of the Minturn Eagle River Diversion to a rate of 6.0 c.f.s. and convey an undivided interest in an amount of 4.0 c.f.s. to Minturn. The District and Authority also agree to include Minturn's contract supplies from the Colorado River Water Conservation District as augmentation sources for the Minturn Eagle River Diversion in the amended application in Case No. 21CW3030.

(d) The District and Authority agree to convey an undivided interest in the Minturn Eagle River Diversion to Minturn in an amount of 4.0 c.f.s. within 60 days of entry of a full and final judgment and decree in Case No. 21CW3030. In the event that Minturn serves as the physical water provider to Battle North, the District and Authority will convey an additional 2.0 c.f.s. of the Minturn Eagle River Diversion to Minturn.

(e) Following the construction of the Minturn Eagle River Diversion, in the event that the District and Authority have not obtained a final judgment and decree in Case No. 21CW3030, Minturn may seek a substitute water supply plan in order to supply Minturn with the Supplemental Augmentation Supply while a final decree is pending in Case No. 21CW3030.

13. District/Authority and Minturn Water Rights Decreed at Same Locations. Minturn has numerous decreed diversion points on Cross Creek at the same diversion points claimed by the District and Authority in Case No. 21CW3030. The parties agree to work together to eliminate duplicative points of diversion decreed to their respective water rights where appropriate. Each party will be responsible for developing its own physical infrastructure unless there is an agreement between the parties otherwise.

14. Settlement of Opposition.

(a) Minturn agrees that it will Stipulate to entry of a decree in the District and Authority's Case Nos. 21CW3029 and 21CW3030 within 30 days after the amended applications are filed in the cases. Such stipulations shall include the terms set forth on **Exhibit E**.

(b) Minturn has filed an Application for Water Right, Approval of Plan for Augmentation and Appropriative Rights of Exchange in Case No. 21CW3180. Minturn agrees to stay Case No. 21CW3180 upon execution of this Agreement, and to withdraw such application within 30 days of entry of full and final judgments and decrees in Case Nos. 21CW3030.

15. Cross Creek Diversions.

(a) The District/Authority acknowledge that Minturn's decreed water rights on Cross Creek are senior to the District/Authority's Cross Creek water rights pending in Case Nos. 21CW3029 and 21CW3030. Accordingly, if Minturn places a valid call for its senior water rights on Cross Creek, the District and Authority will be subject to that call.

(b) The District and Authority shall coordinate Bolts Lake operations, including operation of exchanges, with Minturn to ensure that flows at the USGS Gage at Cross Creek Near Minturn (Gage No. 09065100) do not drop below the Colorado Water Conservation Board instream flows decreed in Case No. 78W3795 as a result of diversion into Bolts Lake from Cross Creek.

(c) The District and Authority shall not seek diligence in Water Court on the conditional water rights acquired from Battle North (originally decreed in Case No. 06CW264) at such time as full and final judgments and decrees are entered in Case Nos. 21CW3029 and 21CW3030 and Bolts Lake is constructed and operational.

16. Environmental Considerations. (a) The parties will work together on matters involving environmental protections in the Bolts Lake area. The District and Authority will provide Minturn with electronic copies of all non-confidential, non-privileged and non-draft records, reports, documents or other information (the "Documentation") provided to the District and Authority by Battle North or the District and Authority's consultants directly related to the Reservoir Project, including Documentation that will be or has been submitted to the Environmental Protection Agency and/or the Colorado Department of Public Health and Environment (together, the "Agencies"). The District and Authority will make best efforts to timely provide the Documentation.

(b) The District and Authority will regularly update Minturn regarding the status and progress of the obligations outlined in Article 6.9 of the Battle North Agreement (Remediation of the OTP Area; Post-Acquisition Obligations). In the event that the District and Authority determine that Battle North is in material breach of its obligations under Section 6.9 of the Battle North Agreement, then the District and Authority agree to timely pursue all reasonable efforts to secure Battle North's performance of its obligations under Article 6.9 of the Battle North Agreement. To the extent the efforts require prior approval of the District and Authority's respective boards of directors, the efforts will be subject to obtaining such approval. The forgoing notwithstanding, neither the District nor the Authority shall have any duty to perform any of Battle North's obligations under the Battle North Agreement.

17. Water Service to Battle North. The parties acknowledge that additional negotiations are required between Minturn and Battle North prior to finalizing any development plans and approvals. However, the parties prefer that Minturn be the physical water provider to whatever development is approved within Minturn's water service area, if appropriate arrangements can be reached between Minturn and Battle North. If Minturn is the physical water provider to Battle North, the District and Authority consent to the Battle North Augmentation Options being assigned by Battle North to Minturn.

18. Dowd Junction Water Service Options.

(a) The District and Authority are open to exploring water service options to a future development at Dowd Junction via an interconnect line to the District and Authority's water system. In the event that an interconnect line is mutually agreed to, Minturn or a future developer would be solely responsible for all costs associated with

infrastructure necessary to provide such service and for all applicable water rights dedication fees, impact fees, and monthly water service fees to the District and Authority. However, the parties acknowledge that water quality considerations of a smaller system exclusively to Dowd Junction may make an interconnect infeasible.

(b) The District and Authority will include in the amendment of the pending augmentation plan in Case No. 21CW3030 a Dowd Junction well or wells and surface diversion points, to be augmented by the augmentation sources listed in Case No. 21CW3030. If Minturn develops a well, wells or a surface diversion at Dowd Junction that are covered by the augmentation plan in Case No. 21CW3030, the augmentation supply would come from the exercise of the Minturn Option provided herein. Development of a well, wells or surface at Dowd Junction shall be at Minturn's sole expense.

19. Mutual Cooperation. The parties wish to provide mutual assurances on future cooperation in water cases to maximize water supplies for the region. The parties mutually agree that they will not object to movement of diversion points less than 1,500 feet from decreed diversion points; the parties mutually agree they will work together on nearby or coincident diversion structures. The parties shall not claim in any future judicial action that any party to this Agreement has abandoned any portion of any of its water rights. The District and Authority further agree that they will not object to a future downstream change in point of diversion for any of Minturn's water rights, provided that only a change in point of diversion is sought and the District and Authority do not divert water in the impacted reach.

20. Remedies. (a) The terms of this Agreement shall be specifically enforceable; provided, however, nothing contained herein

shall obligate the District or the Authority to construct Bolts Lake. If Minturn fails to record the Release by March 16, 2022, the District and Authority may pursue condemnation of Minturn's interests in the Bolts Lake property and may delay prosecution of Case Nos. 21CW3029 and 21CW3030 until either such time as Minturn has recorded the Release, or the District and Authority elect to notify Minturn that this Agreement is null and void and of no further effect.

(b) Prior to enforcing in Court any remedy for breach of this Agreement, the party asserting that such a breach has occurred shall give the other party written notice thereof including a description of the alleged breach and citation to the relevant provisions in this Agreement. The party against whom a breach is asserted shall have fourteen (14) days after such notice is sent in which to cure the breach.

21. Recording. This Agreement and all exhibits attached to this Agreement shall be recorded in the records of Eagle County, Colorado.

22. No Waiver. Nothing contained herein shall constitute a waiver by Minturn, the District or the Authority as against any third party of their respective rights of immunity under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq., or a waiver of any rights these parties may have under the Colorado Recreational Use Act, C.R.S. § 33-44-101 et seq.

23. Assignment

(a) The District and Authority may assign its interests and obligations under this Agreement to each other or to a successor consolidated district or authority.

(b) The terms of this Agreement shall be binding on the parties' successors and assigns.

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

25. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Colorado. In the event of a dispute involving this Agreement, such dispute shall be heard in the District Court for the State of Colorado in Eagle County.

26. Notice. Any notice or communication required pursuant to this Agreement shall be in writing and may be given either personally, or by email with a printed copy sent via First Class U.S. Mail. If given by email and U.S. Mail, notice shall be deemed to have been given and received on the date that the email was sent. If personally delivered, notice shall be deemed to have been given and received on the date delivered to the party to whom it is addressed. Any party may, by giving written notice, designate any other address or person in substitution of or in addition to the names and addresses contained herein. Such notice and communication shall be given to the parties at the addresses set forth below:

If to Town: Town of Minturn
 Town Manager
 302 Pine Street
 P.O. Box 309
 Minturn, CO 81645
 manager@minturn.org

With Copy To: Michael Sawyer, Esq.
Karp Neu Hanlon
P.O. Drawer 2030
Glenwood Springs, CO 81602
mjs@mountainlawfirm.com

With Copy To: Meghan Winokur, Esq.
Holland & Hart
600 Main Street #104
Aspen, CO 81611
mwinokur@hollandhart.com

If to District/Authority:
Eagle River Water and Sanitation District
Upper Eagle Regional Water Authority
General Manager and Director of Engineering & Water
Resources
846 Forest Road,
Vail, CO 81657
lbrooks@erwsd.org
jcowles@erwsd.org

With Copy To: Kathryn Winn, Esq.
Collins, Cole, Flynn, Winn & Ulmer
165 South Union Blvd., Suite 785
Lakewood, CO 80228
kwinn@cogovlaw.com

With Copy To: Kristin Moseley, Esq

Somach Simmons Dunn
2033 11th Street, Suite 5
Boulder, CO 80302
kmoseley@somachlaw.com

27. Construction. The parties represent that they have been represented by legal counsel in the drafting of this Agreement and that the parties have each had the full opportunity to participate in the drafting and review of the document. The parties agree that this Agreement shall not be interpreted or construed in favor of, or against, any party based upon such party being characterized as the “drafting party.”

Executed as of the date first set forth above.

**EAGLE RIVER WATER &
SANITATION DISTRICT**

**UPPER EAGLE REGIONAL
WATER AUTHORITY**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

TOWN OF MINTURN

By: _____
Name: _____

STATE OF COLORADO)

) SS.

COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ as _____ of the Upper Eagle Regional Water Authority.

Witness my hand and official seal.

My commission expires _____.

Notary Public

STATE OF COLORADO)

) SS.

COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____ as _____ of the Town of Minturn.

Witness my hand and official seal.

My commission expires _____.

Notary Public

SUPPLEMENT TO AGREEMENT PERTAINING TO ACQUISITION FOR BOLTS LAKE RESERVOIR PROJECT

This Supplement to Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project (this “**Supplement**”) is made and entered into as of January 28, 2022 (“**Effective Date**”), by and among the Eagle River Water & Sanitation District (together with its successors and assigns, the “**District**”), Upper Eagle Regional Water Authority (together with its successors and assigns, the “**Authority**”), and Battle North, LLC, a Georgia limited liability company (together with its successors and assigns, “**Battle North**”).

RECITALS

This Supplement is made with respect to the follow facts:

A. The District, the Authority and Battle North (individually, a “**Party**” and, collectively, the “**Parties**”) are signatories to that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project having an “Effective Date” as defined therein of February 10, 2021 (the “**Agreement**”).

B. Unless otherwise defined in Paragraph 2 of this Supplement, capitalized words and phrases used in this Supplement have the meanings set forth in the schedule of defined terms attached at Exhibit 19 of the Agreement.

C. Among other matters, Article IV of the Agreement contemplates the District would:

1. Pursuant to and as set forth in Section 4.4, “commence the Eminent Domain Action to obtain Clear Title to the Land and the Easement Areas and, upon satisfaction of the Contingencies, to complete the Acquisition in accordance with the terms and conditions of” the Agreement.
2. Pursuant to and as set forth in Section 4.4(a), “commence the Eminent Domain Action promptly after the District/Authority complete their review of the matters affecting title to the Land and Easement Areas and identify the parties to be named as respondents therein, which period will not exceed 90 days after the Effective Date without the Parties’ mutual written consent.”
3. Pursuant to and as set forth in Section 4.5, prior to filing the Eminent Domain Action and in coordination with the Authority, deliver the Deposit into escrow with the Title Company, acting as escrow agent pursuant to escrow instructions agreeable to the Parties and the Title Company.

D. The District/Authority have diligently pursued completion of their review of the matters identified in Section 4.4(a) of the Agreement and the Parties have extended the 90-day period for commencing the Eminent Domain Action in order to enable the Parties to evaluate the potential and suitability for the District to acquire the Land and the Easement Areas, and to complete the Acquisition, without the necessity of commencing and completing the Eminent Domain Action as contemplated in the Agreement.

E. As of the Effective Date, the Parties have agreed for the District not to commence the Eminent Domain Action, the Parties have not executed mutually agreeable escrow instructions, the District/Authority have not delivered the Deposit, and the Parties have not deposited any transaction documents and instruments into escrow with the Title Company in connection with and in advance of commencing the Eminent Domain Action as contemplated in the Agreement.

F. Pursuant to and as set forth therein, Section 5.1(a) of the Agreement identifies the Unencumbered Use Contingency, including but not limited to, the Agencies Approvals, suitability of the Property Interests and related matters for development of the Reservoir Project, resolution of certain matters pertaining to the AOC, Clear Title, and certain matters pertinent to the Water Rights, all of which the District/Authority and Battle North, respectively, have diligently pursued by, without limitation:

1. Pursuant to the District/Authority's request relating to partially satisfying the requirement for Clear Title, Battle North obtained and the District/Authority have approved the Final Judgment and Quiet Title Decree relating to the Deed of Trust (as defined therein), as granted on October 12, 2021 by the District Court, Eagle County in Case No. 2021CV30147, and Recorded on October 12, 2021, at Reception No. 202122992 (the "**Quiet Title Decree**").
2. Battle North has obtained and the District/Authority have approved the Agencies Approvals pursuant to the following:
 - a. That certain Subarea Response Action Completion Report, Eagle Mine Superfund Site. Operable Unit 3 - Trestle Area, Minturn, Colorado, December 2021, having an Agencies approval and concurrence date of December 22, 2021.
 - b. That certain Project Delivery Strategy, Eagle Mine Superfund Site, Operable Unit 3 – Old Tailings Pile Area, December 2021, having an Agencies approval date as reflected in the CDPHE records system of December 22, 2021.
3. Battle North has obtained and the District/Authority have approved the matters pertaining to the AOC pursuant to the following:
 - a. That certain Addendum: Certification for Transfer of Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(R) Lien pertaining to Docket No. CERCLA-08-2018-0009, as certified by the District/Authority on November 22, 2021 and consented to by the Agencies (CDPHE authorized signatures dated November 30, 2021 and December 14, 2021, and EPA authorized signatures dated January 13, 2022 and January 18, 2022).
 - b. That certain Settlement Agreement entered into by and among Battle North and the District/Authority having an Effective Date (as defined therein) as of the date that all instruments transferring title to the Trestle Area from

Battle North to the District/Authority have been duly executed and recorded.

4. The District/Authority have approved the suitability of the Property Interests and related matters for development of the Reservoir Project.

G. In consideration of the foregoing and subject to the terms and conditions set forth in this Supplement, the Parties wish to consummate the Acquisition by, in lieu of the Eminent Domain Action, delivering the Deposit and the requisite transaction documents into escrow with the Title Company and conducting the Closing by causing the delivery and, as applicable, Recording of the requisite documents and instruments, together with release of the Deposit to Battle North, pursuant to the Escrow Instructions.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above are incorporated into and made substantive provisions of this Supplement.
2. Effective Date. Notwithstanding any earlier execution by the Parties, the Parties intend this Supplement to be legally effective and binding on the Parties as of the Effective Date.
3. Defined Terms. Capitalized words and phrases used in this Supplement (and which are not incorporated from the schedule of defined terms attached at Exhibit 19 of the Agreement) have the following meanings:

Agreement has the meaning stated in Recital A of this Supplement.

Authority has the meaning stated in the introductory paragraph of this Supplement.

Battle North has the meaning stated in the introductory paragraph of this Supplement.

Closing means the Parties' respective deliveries of, as applicable, the Deposit, the Deed, the Easement Agreements and other requisite transaction documents into escrow with the Title Company and causing the delivery and, as applicable, Recording of the Deed, Easement Agreements and other requisite documents and instruments, together with release of the Deposit to Battle North, pursuant to and subject to the terms and conditions of the Escrow Instructions.

Deed means a statutory form of special warranty deed in the form attached at Appendix A to this Supplement.

District has the meaning stated in the introductory paragraph of this Supplement.

Effective Date has the meaning stated in the introductory paragraph of this Supplement.

Escrow Instructions means the written instructions and agreement to be mutually agreed and entered into by and among the Parties and the Title Company (in its capacity as escrow agent), pursuant to which the Closing will be effected and Post-Closing Matters will be addressed and administered.

Paragraph(s) means and refers to the numbered provisions under the section of this Supplement that is entitled “Agreement”.

Part(y)(ies) has the meaning stated in Recital A.

Post-Closing Matter(s) means and refers to those exceptions to the warranties of title that may be set forth in the Deed and which the Escrow Instructions identify as being reasonably necessary to address after consummation of the Closing in order to further establish Clear Title.

Quiet Title Decree has the meaning stated in Recital I

Recital(s) means and refers, unless otherwise stated, to the provisions under the section of this Supplement that is entitled “Recitals”.

Retained Funds has the meaning stated in Paragraph 5(c)(iii).

Supplement has the meaning stated in the introductory paragraph of this Supplement.

Title Commitment means and refers to Commitment Number 08562A2021, issued by H.C. Peck & Associates, Inc., as agent of Westcor Land Title Insurance Company, having an original issuance date of March 30, 2021, as updated prior to or as of the date of the Closing.

4. Purpose and Intent. This Supplement sets forth the Parties’ agreements and intent with respect to effecting the Acquisition by conducting the Closing in accordance with and subject to the terms and conditions of this Supplement and as to be set forth in the Escrow Instructions. Notwithstanding consummation of the Closing, the Parties intend that the District/Authority and Battle North, individually and collectively, will retain the ability to later resolve certain Post-Closing Matters. While the Parties anticipate such Post-Closing Matters may be resolved by other means, the District will retain the ability to utilize the Eminent Domain Action solely to resolve the Post-Closing Matters (and not to effect the Acquisition), Battle North will cooperate in and will not oppose the District utilizing the Eminent Domain Action for such purpose, and the District will not oppose Battle North’s joinder in the Eminent Domain Action, all generally as contemplated in Article IV of the Agreement and as to be set forth in the Escrow Instructions.

5. Supplementation of Agreement. In lieu of effecting the Acquisition pursuant to the Eminent Domain Action as the Agreement contemplates, the Parties will effect the Acquisition by consummating the Closing as follows:

(a) Date of Closing. The Closing will occur on: (i) February 9, 2022; or (ii) such earlier date as the District/Authority designate in a writing delivered to Battle North and the Title Company.

(b) Title Company; Escrow Agent. The District/Authority has selected H.C. Peck & Associates, Inc., as agent of Westcor Land Title Insurance Company, as the Title Company. Battle North has consented to such selection and the Parties intend that the Title Company will be the escrow agent pursuant to the Escrow Instructions.

(c) Escrow Instructions. The Closing will occur as set forth in the Escrow Instructions. If not previously accomplished, the Parties will negotiate the form and substance of the Escrow Instructions with the Title Company promptly following the Effective Date. The Parties and the Title Company will execute the Escrow Instructions prior to or on the date of the Closing.

(i) *Deliveries Into Escrow.* After execution of the Escrow Instructions and subject to the terms and conditions thereof, the Parties will execute (as applicable) and deliver to the Title Company in escrow on or prior to the date of the Closing, as applicable, the Deed, the Easement Agreements, other transaction documents and instruments contemplated by the Agreement and this Supplement (including but not limited to the documents and instruments comprising and implementing the Non-Cash Consideration pursuant to Section 5.1(b) of the Agreement), such other documents and instruments as are customary and reasonable to enable the Title Company to conduct the Closing, and the District/Authority will deliver the funds comprising the Deposit (in the amount of \$7,500,000 and comprising the Cash Compensation).

(ii) *Recording and/or Delivery of Documents.* The Escrow Instructions will identify the documents and instruments the Title Company is to Record and/or release and deliver to the applicable Parties, the conditions precedent thereto, and the sequence of Recording for documents and instruments which are to be Recorded.

(iii) *Disbursement of Cash Compensation.* The Escrow Instructions will require the Title Company, on the date of Closing, to retain \$500,000 of the Deposit/Cash Compensation in escrow for the purpose of addressing the Post-Closing Matters (the “**Retained Funds**”) and to disburse \$7,000,000 of the Deposit/Cash Compensation to Battle North, will identify the conditions precedent to the foregoing, and will set forth the prorations, adjustments and other applicable terms, conditions and disbursement instructions pertaining to the Cash Compensation and the Retained Funds.

(iv) *Post-Closing Matters.* The Escrow Instructions will identify the Post-Closing Matters, the terms upon which the Retained Funds and related security relating to the Post-Closing Matters, if any, will be held in and released from escrow, the duration of such escrow arrangements and such other matters as may be reasonable or necessary to implement the Parties’ intent regarding such matters. If required by the escrow agent or otherwise convenient to the Parties’ purposes, the terms and conditions relating to such security and escrow arrangements may be set forth in a separate escrow agreement to be entered into by and among the Parties and the Title Company (in its capacity as escrow agent).

(d) Form of Conveyance Documents; Method and Timing of Conveyance. Notwithstanding any references in Sections 4.2(a) through (d) and 4.3 of the Agreement to Recording of the Rule and Order, and notwithstanding any implicit or explicit conflicts therein

with the provisions of this Supplement, the Acquisition will be effected on the date of Closing as follows:

(i) *Fee Interest in the Land; Reserved Easements.* Upon Recording and in lieu of Recording of the Rule and Order, the Deed will effect conveyance to and vest in the District/Authority a fee title estate in and to the Land. The Reserved Easements will be established by the Deed as and in the locations described and/or depicted in exhibits to the Deed. As to be incorporated in the applicable exhibits to the Deed, conveyance of the Land will be subject to the Reserved Easements, will be subject to the matters set forth in Schedule B-II of the Title Commitment, and will be Relocatable as contemplated in Section 4.3 of the Agreement.

a. *Reservoir Design Alternatives.* As conceptually depicted in Appendix B, the District/Authority are evaluating four potential alternative designs. “Alternative 4” would adversely impact the BN Development by causing the loss of developable lots and impacting road alignments within the area of “Alternative 4” at the northerly limits of the Reservoir Parcel and the Dam Parcel. For avoidance of doubt regarding the Parties’ obligations relating to Relocation pursuant to Section 4.3 of the Agreement if the District/Authority choose to pursue Alternative 4, the Parties will coordinate and cooperate in a commercially reasonable manner to refine the design of “Alternative 4” and to reach mutual agreement regarding revised legal descriptions of the Reservoir Parcel and the Dam Parcel that do not cause, and Battle North will not be construed as being obligated to agree to, the loss of developable lots or adverse impact on road alignments within (or loss of ingress/egress to) the BN Development adjacent to the northerly limits of the Reservoir Parcel and the Dam Parcel as the same may be Relocated to accommodate “Alternative 4”.

(ii) *Water Rights, Easements and Reserved Uses.* Conveyance of the Water Rights and the Easements will be effected, and the Reserved Uses will be established, by Recording of the special warranty deed and the Easement Agreements contemporaneously with Recording of the Deed and as otherwise contemplated in, respectively, Sections 4.2(b), (c) and (e) of the Agreement.

(e) Clear Title. Battle North’s performance of its obligations pursuant to this Supplement and the Escrow Instructions will be deemed and construed as fully satisfying the Clear Title component of the Unencumbered Use Contingency notwithstanding any real property interests, encumbrances and other exceptions to title to which the Property Interests remain subject as of the date of Closing and as of the date on which the Deed and Easement Agreements are Recorded.

(f) Post-Acquisition Obligations. The Parties’ effecting the Acquisition pursuant to this Supplement rather than pursuant to the Eminent Domain Action as the Agreement contemplates will not result in any modification of Parties’ respective rights and obligations regarding the Post-Acquisition Agreement and Post-Acquisition Obligations as identified and defined in Section 4.12 of the Agreement. For the avoidance of doubt, the following Post-Acquisition Obligations as described and defined in Section 4.12 of the Agreement will

survive Recording of the Deed, will not merge with title to the fee conveyances, and will remain legally binding and enforceable rights and obligations of the Parties and their respective successors and assigns until fully performed: (i) the Relocation obligations pursuant to Section 4.3 of the Agreement and Paragraph 5(d)(i)a of this Supplement; (ii) remediation of the OTP Area pursuant to Section 6.9 of the Agreement; (iii) the Water Service Commitment pursuant to Articles VII and IX of the Agreement; and (iv) the Recreational Use Covenant pursuant to Article X of the Agreement. Performance of the Post-Acquisition Obligations comprises a material element of the consideration for the Agreement and this Supplement, and no Party or such Party's successors and assigns will seek or assert the right to condition performance of such Party's Post-Acquisition Obligations on another Party's payment of fees or provision of other consideration beyond that stated in the Agreement.

(g) Harmonization With Agreement. As and to the extent necessary to harmonize and give the intended effect both to this Supplement and to the Agreement, and in supplementation but not negation of their original meanings pursuant to the Agreement, certain terms and phrases in and provisions of the Agreement will be construed as follows relative to effecting the Acquisition by Closing:

(i) *Eminent Domain Action*. The terms "Eminent Domain Action", "condemnation" and substantially similar language will be construed as referring to, as applicable and consistent with the context, the Closing and/or the Escrow Instructions. Additionally:

a. *Commence the Eminent Domain Action*. The phrase "commence the Eminent Domain Action", "abandon the Eminent Domain Action" and substantially similar language will be construed as referring to effecting the Acquisition by Closing pursuant to the Escrow Instructions.

b. *Dismiss the Eminent Domain Action*. The phrases "dismiss the Eminent Domain Action", "terminate the Eminent Domain Action", "abandon the Eminent Domain Action" and substantially similar language will be construed as referring to a decision not to effect the Acquisition by Closing and termination of the Escrow Instructions.

(ii) *Rule and Order*. The term "Rule and Order" will be construed as referring to, as applicable and consistent with the context, the Closing and/or the Escrow Instructions, or the Deed and/or the Easement Agreements. Additionally:

a. *Entry and Recording of the Rule and Order*. The phrase "the Court's entry and Recording of the Rule and Order", "Recording of the Rule and Order" and substantially similar language will be construed as referring to Recording of the Deed and/or Easement Agreements, as applicable, in connection with the Closing.

(iii) *Court*. The term "Court", the phrase "Court or clerk thereof" and substantially similar language relating to delivery or disbursement of the Deposit and/or

the Cash Compensation will be construed as referring to the Title Company in its capacity as escrow agent pursuant to the Escrow Instructions.

a. *Court Registry.* The term “Court registry” and substantially similar language will be construed as referring to the escrow established with the Title Company in its capacity as escrow agent pursuant to the Escrow Instructions.

(iv) *Affected Sections.* Without limitation of other provisions within the Agreement that may require harmonization with effecting the Acquisition by Closing, the Parties intend that the harmonizing provisions of this Paragraph 4(b) will or may apply to Sections 1.2, 2.2, 2.4, 3.1, 3.2, 4.2(a)-(d), 4.3, 4.5, 4.6(a)(iii), 4.7(b), 4.9, 4.10, 4.12, 5.1(a)(iv) and (v), 5.1(b), 5.3, 6.8(d), 6.9, 7.5, 10.1, 11.1, 11.2, and 12.2, and to Exhibits 17 and 19 of the Agreement.

6. Effect of Supplement. Except as expressly harmonized with and modified by this Supplement, the Agreement remains unmodified, remains in full force and effect in accordance with its terms, and is hereby ratified and affirmed. If there is any express or implied conflict or inconsistency between the terms of this Supplement and the terms of the Agreement, the terms and provisions of this Supplement will govern and control. For avoidance of doubt, if the District/Authority, in connection with resolving the Post-Closing Matters, grants to Minturn and the general public recreational use rights at the Reservoir generally consistent with the Recreational Use Covenant and Permitted Recreational Uses, such recreational use rights will be deemed and construed to be permitted by Section 10.1(k) of the Agreement and will not be construed as modifying or diminishing Battle North’s rights or obligations pursuant to the Recreational Use Covenant and Permitted Recreational Uses.

7. Counterparts. This Supplement may be executed in counterparts, each of which will constitute an original and all of which taken together will constitute one and the same instrument. Executed counterparts of this Agreement may be delivered by email (pdf) or other electronic means (DocuSign or similar) and, upon receipt, will be deemed originals and binding upon the Parties for all purposes.

[Signature Pages and Appendix Follow This Page]

IN WITNESS WHEREOF, the Parties have executed this Supplement on the dates set forth below with the intent that, notwithstanding any earlier execution date, this Supplement will be legally effective and binding on the Parties as of the Effective Date.

EAGLE RIVER WATER & SANITATION
DISTRICT

By: _____
Name: Bill Simmons
Title: Chair
Date: _____, 2022

UPPER EAGLE REGIONAL WATER
WATER AUTHORITY

By: _____
Name: George Gregory
Title: Chair
Date: _____, 2022

Battle North, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By: _____
Name: Lorne Bassel
Title: President
Date: _____, 2022

**Appendix A
Form of Deed**

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

**COLLINS COCKREL & COLE, P.C.
390 UNION BLVD.
DENVER, CO 80228
ATTENTION: KATHRYN WINN**

No Documentary Transfer Tax Payable.
Grantee is a political subdivision of the State of
Colorado. C.R.S. § 39-13-104(1)(a)

**SPECIAL WARRANTY DEED
[STATUTORY FORM – C.R.S. § 38-30-113(b)]**

BATTLE NORTH, LLC, a Georgia limited liability company (“**Grantor**”), whose street address is 164 Railroad Ave., Minturn, CO 81645, for the consideration of Ten and 00/100 Dollars (\$10.00), in hand paid, and other good and valuable consideration described herein, hereby sells and conveys to EAGLE RIVER WATER & SANITATION DISTRICT (“**Grantee**”), whose street address is [_____], the real property that is legally described and graphically depicted at **Exhibit A** attached hereto and made a part hereof, with all its appurtenances (the “**Land**”), and warrants the title to the same against all persons claiming under Grantor; subject, however, to:

(a) As described at **Exhibit B** attached hereto and made a part hereof, (i) the easements reserved to Grantor (the “**Reserved Easements**”), and (ii) the provisions for future relocation and modification (“**Relocation**”) of the Reserved Easements and the legal description of the parcels comprising the Land; and

(b) The matters (the “**Exceptions**”) set forth in **Exhibit C** attached hereto and made a part hereof.

Conveyance of the Land pursuant to the terms and conditions hereof is in lieu of Grantee initiating an action in eminent domain to acquire the Land.

Signed the ____ day of _____, 2022, to be made effective the ____ day of _____, 2022.

Appendix A

Form of Deed

Battle North, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By: _____
Name: Lorne Bassel
Title: President
Date: _____, 2022

PROVINCE OF _____)
) ss:
 CITY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 2022, before me the undersigned, a notary public in and for the Province and the City aforesaid, came Lorne Bassel, in his capacity as President of Bassel Battle Investment, Corp., a Colorado corporation, as Manager of Battle North LLC, a Georgia limited liability company, who is personally known to me to be the same person who executed this instrument of writing, and said person fully acknowledged this instrument to be the free act and deed of said Lorne Bassel.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Notary Public

My appointment expires: _____

**Appendix A
Form of Deed**

**Exhibit A
to Special Warranty Deed
Legal Descriptions and Graphic Depictions of the Land**

RESERVOIR PARCEL

An area of land located in Sections 1 and 2 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 37°39'01" W a distance of 5280.23 feet; thence S 70°24'37" W a distance of 321.43 feet; thence S 88°25'20" W a distance of 133.35 feet; thence N 40°19'27" W a distance of 209.57 feet; thence S 37°10'39" W a distance of 380.51 feet; thence S 88°48'40" W a distance of 208.38 feet; thence N 53°11'01" W a distance of 658.80 feet; thence N 29°33'21" E a distance of 904.04 feet; thence N 62°05'59" E a distance of 597.19 feet; thence N 77°20'34" E a distance of 590.72 feet; thence S 70°32'11" E a distance of 192.32 feet; thence S 03°57'24" E a distance of 329.65 feet; thence S 08°36'11" W a distance of 122.85 feet; thence 74.09 feet along the arc of a tangent curve to the right having a radius of 230.00, a central angle of 18°27'27", and the chord bears S17°49'54"W a distance of 73.77 feet; thence S27°03'38"W a distance of 170.68 feet; thence 22.79 feet along the arc of a tangent curve to the right having a radius of 180.00, a central angle of 7°15'16", and the chord bears S30°41'16"W a distance of 22.78 feet; thence S34°18'54"W a distance of 88.83 feet; thence 74.76 feet along the arc of a tangent curve to the left having a radius of 131.74, a central angle of 32°30'56", and the chord bears S18°03'26"W a distance of 73.76 feet; thence S01°47'58"W a distance of 431.39 feet to the point of beginning containing 41.29 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

Appendix A Form of Deed

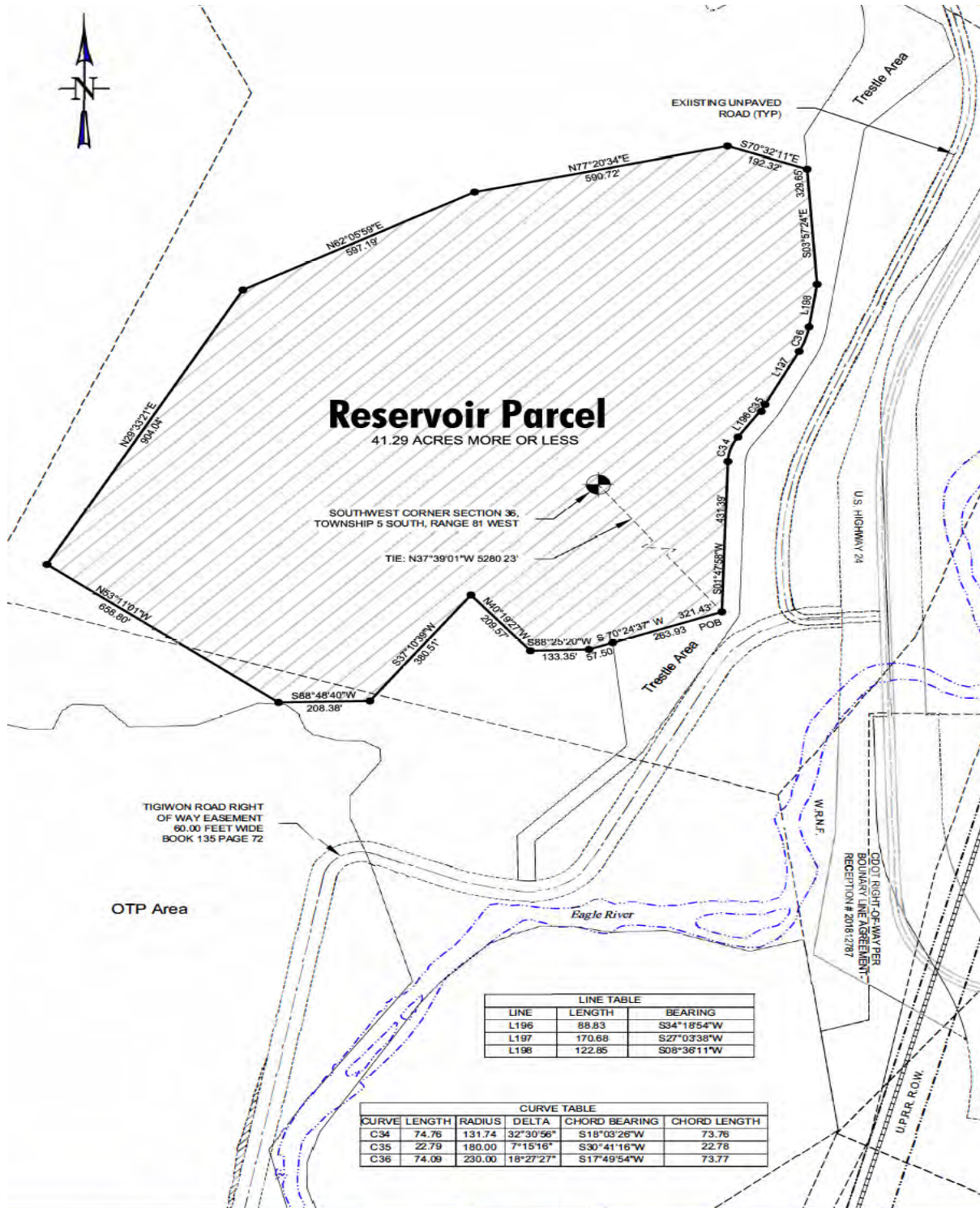


Exhibit 3 - Reservoir Parcel

SCALE: 1" = 300'
SHEET: 3 of 13
DRAWING: North Property Quiet Title Boundary 20181128 revised 20200621.dwg
DIRECTORY: K:\GWP\0555404\Survey\2011 Quiet Title\North Property\Survey\Updated North Property Survey 2013\GAMBA & ASSOCIATES

DATE: DECEMBER 16, 2020
PROJECT: 05554-04
DRAWN BY: BK
CHKD BY: MJG



BATTLE NORTH LLC

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970/948-2550 WWW.GAMBAENGINEERING.COM
112 NINTH ST., STE. 214 P.O. BOX 1436 GLENWOOD SPRING, CO 81602

Appendix A
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Appendix A Form of Deed

DAM PARCEL

An area of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 48°36'05" W a distance of 4568.24 feet; thence S 61°06'46" E a distance of 234.05 feet; thence S 22°22'09" W a distance of 746.23 feet; thence S 00°00'00" E a distance of 181.43 feet; thence S 34°56'03" W a distance of 213.62 feet; thence N 01°47'58" E a distance of 431.39 feet; thence 74.76 feet along the arc of a tangent curve to the right having a radius of 131.74 feet, a central angle of 32°30'56", and the chord bears S 18°03'26" W a distance of 73.76 feet; thence N 34°18'54" E a distance of 88.83 feet; thence 22.79 feet along the arc of a tangent curve to the left having a radius of 180.00 feet, a central angle of 07°15'16", and the chord bears S 30°41'16" W a distance of 22.78 feet; thence N 27°03'38" E a distance of 170.68 feet; thence 74.09 feet along the arc of a tangent curve to the left having a radius of 230.00 feet, a central angle of 18°27'27", and the chord bears S 17°49'54" W a distance of 73.77 feet; thence N 08°36'11" E a distance of 122.85 feet; thence N 03°57'24" W a distance of 222.27 feet to the point of beginning containing 3.06 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

SCALE: 1" = 400'	DATE: JANUARY 17, 2021	DRAWN BY: BK
SHEET: 1 of 2	PROJECT: 03554-08	CHKD BY: MB
DRAWING: North Property Quiet Title Boundary for Boits Lake Exhibit - 20210105 Bldg DIRECTORY: L:\03554\03554-08\18\Boits Lake\		



GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970/945-2550 WWW.GAMBAENGINEERING.COM
113 NINTH ST., STE. 214 P.O. BOX 1488 GLENWOOD SPRINGS, CO 81601

Appendix A
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INLET PARCEL

A Parcel of land 40 feet in width located in H.E.S. No. 41 as patented March 7, 1912 in Section 2, Township 6 South, Range 81 West, 6th P.M., for the purpose of constructing, operating and maintaining a water supply conveyance structure consisting of open channels and/or pipelines to supply water to Bolts Lake Reservoir from the Eagle River and from Cross Creek, more particularly described as follows:

Beginning at a point on the westerly boundary of the OTP Area as described on an Exhibit prepared by Gamba & Associates, Inc., dated January 18, 2018 on behalf of Battle Mountain, whence Corner No. 2 of said H.E.S. 41, being an original stone monument found in place, bears S64°05'11"W a distance of 376.68 feet;

Thence from the Point of Beginning the following 15 courses along the northerly boundary of said 40-ft wide Easement:

1. thence N24°43'37"W a distance of 57.52 feet;
2. thence N02°34'28"W a distance of 50.51 feet;
3. thence N17°36'42"E a distance of 57.23 feet;
4. thence N23°06'54"E a distance of 15.58 feet;
5. thence N10°13'05"E a distance of 33.85 feet;
6. thence N51°21'28"E a distance of 144.42 feet;
7. thence N80°01'14"E a distance of 245.49;
8. thence N75°30'49"W a distance of 122.70 feet;
9. thence S89°25'59"W a distance of 54.63 feet;
10. thence N22°13'41"W a distance of 55.35 feet;
11. thence N51°17'35"E a distance of 30.98 feet;
12. thence S87°20'19"E a distance of 69.22 feet;
13. thence S43°32'09"E a distance of 86.00 feet;
14. thence N87°52'49"E a distance of 154.45 feet;
15. thence N66°03'04"E a distance of 185.03 feet to a point on the southerly boundary of the Bolts Lake Reservoir Area as described on an Exhibit prepared by Gamba & Associates, Inc., dated February 1, 2019 on behalf of Battle North LLC;

Thence the following two courses along said southerly boundary of the Bolts Lake Reservoir Area;

1. thence S53°11'01"E a distance of 19.42 feet;
2. thence N88°48'40"E a distance of 59.59 feet ;

Thence leaving said southerly boundary of the Bolts Lake Reservoir Area the following 16 courses along the southerly boundary of said 40-ft wide Easement:

1. thence S66°03'04"W a distance of 257.18 feet;
2. thence S87°52'49"W a distance of 180.21 feet;
3. thence N43°32'09"W a distance of 87.98 feet;
4. thence N87°20'19"W a distance of 40.88 feet;
5. thence S22°13'41"W a distance of 75.43 feet;

**Appendix A
Form of Deed**

6. thence S89°25'59"W a distance of 86.49 feet;
7. thence N75°30'49"W a distance of 119.31 feet;
8. thence S80°01'14"W a distance of 226.60 feet;
9. thence S51°21'28"W a distance of 119.19 feet;
10. thence S10°13'05"W a distance of 23.36 feet;
11. thence S23°06'54"W a distance of 18.18 feet;
12. thence S17°36'42"W a distance of 48.19 feet;
13. thence S02°34'28"E a distance of 35.56 feet;
14. thence S24°43'37"E a distance of 4.16 feet;
15. thence S10°13'05"W a distance of 16.93 feet;
16. thence S19°01'53"W a distance of 43.82 feet,

to the Point of Beginning, containing 1.23 acres more or less.

Legal Description Prepared By:
Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81601

Appendix A Form of Deed

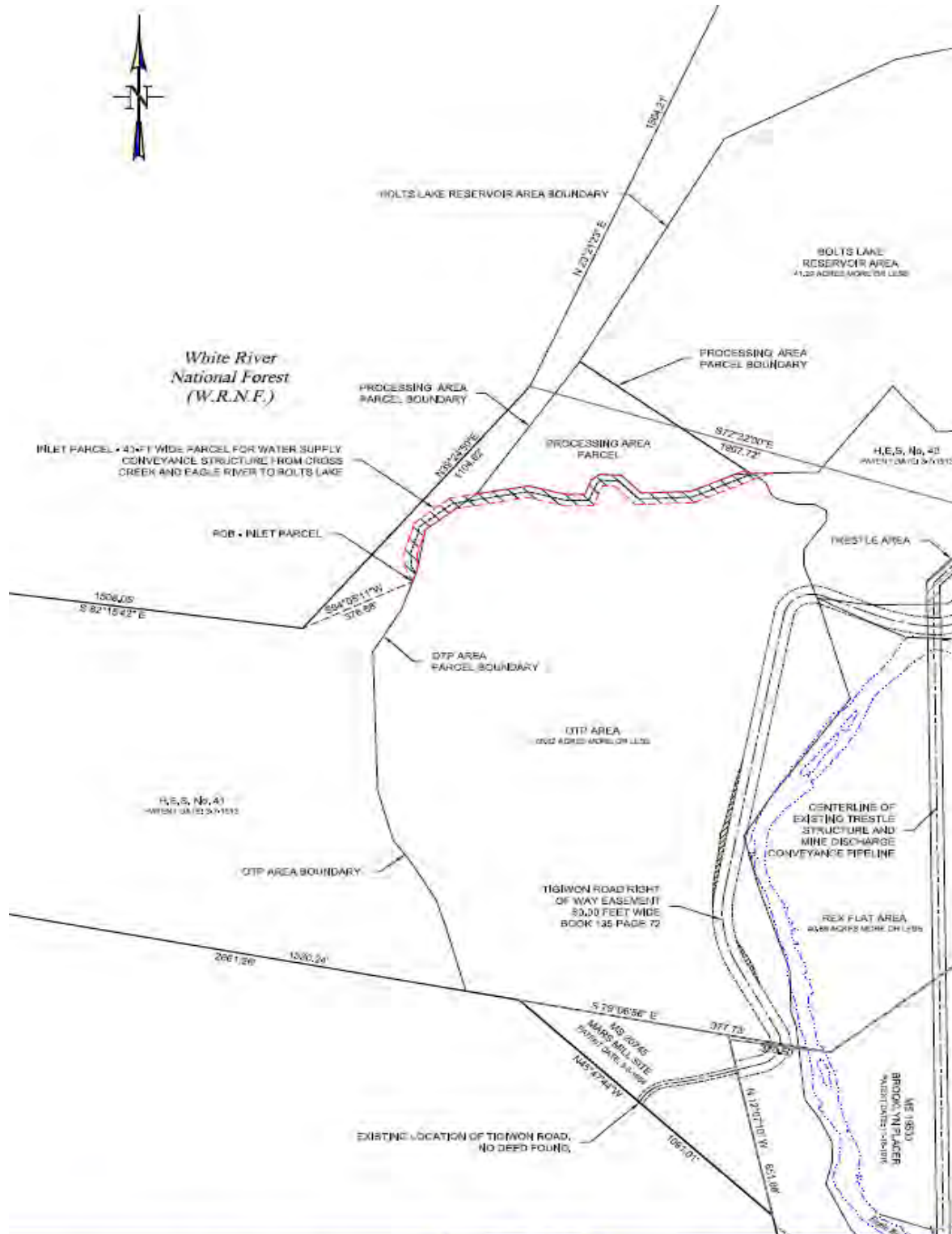


Exhibit 5 - Inlet Parcel

SCALE: 1" = 400'	DATE: JANUARY 11, 2021	DRAWN BY: BK
REF: 1 of 1	PROJECT: 95554-01	CHKD BY: BK
DRAWING: Pacific Property Survey Title Boundary for Battle North Exhibit - 20210105 BLDg		
DATE: 01/11/2021		



BATTLE NORTH LLC

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970/549-2550 WWW.GAMBAENGINEERING.COM
112 NORTH ST., STE. 212 P.O. BOX 1488 GLENWOOD SPRING, CO 81625

Appendix A
Form of Deed

**Appendix A
Form of Deed**

CROSS CREEK PARCEL

A parcel of land 40 feet in width located in H.E.S. No. 41 as patented March 7, 1912 in Section 2, Township 6 South, Range 81 West, 6th P.M., for the purpose of constructing, operating and maintaining a water supply conveyance structure consisting of open channels and/or pipelines to supply water to Bolts Lake Reservoir from Cross Creek, more particularly described as follows:

Beginning at a point on the 4-5 line of said H.E.S. No. 41 whence Corner No. 5 of said H.E.S. 41, being an original stone monument found in place, bears S38°40'30"E a distance of 209.77 feet; thence from the Point of Beginning N38°40'30"W a distance of 42.22 feet along said 4-5 line of said H.E.S. No. 41;

thence leaving said 4-5 line the following 52 courses along the northern boundary of said 40-ft wide

Parcel:

1. thence N32°39'21"E a distance of 27.83 feet;
2. thence N51°22'40"E a distance of 60.49 feet;
3. thence N57°17'27"E a distance of 81.86 feet;
4. thence N28°51'58"E a distance of 17.48 feet;
5. thence N37°59'43"E a distance of 40.08 feet;
6. thence N59°32'43"E a distance of 36.90 feet;
7. thence N79°41'59"E a distance of 25.11 feet;
8. thence N59°28'21"E a distance of 12.12 feet;
9. thence N29°00'22"E a distance of 9.26 feet;
10. thence N01°30'29"E a distance of 7.78 feet;
11. thence N15°41'15"W a distance of 25.00 feet;
12. thence N30°19'19"E a distance of 60.07 feet;
13. thence N45°20'15"E a distance of 69.82 feet;
14. thence N80°43'22"E a distance of 64.07 feet;
15. thence N74°01'07"E a distance of 79.28 feet;
16. thence N59°31'42"E a distance of 161.00 feet;
17. thence S76°40'51"E a distance of 30.12 feet;
18. thence S50°54'02"E a distance of 73.00 feet;
19. thence S65°50'54"E a distance of 48.74 feet;
20. thence S72°43'32"E a distance of 44.10 feet;
21. thence S55°22'06"E a distance of 56.36 feet;
22. thence S71°34'21"E a distance of 81.30 feet;
23. thence S81°19'48"E a distance of 52.56 feet;
24. thence S57°21'03"E a distance of 52.70 feet;
25. thence S64°54'54"E a distance of 53.72 feet;
26. thence S69°30'00"E a distance of 56.02 feet;
27. thence S46°49'29"E a distance of 34.38 feet;
28. thence N71°56'14"E a distance of 44.33 feet;
29. thence S58°11'01"E a distance of 65.31 feet;
30. thence S74°03'40"E a distance of 24.97 feet;
31. thence N77°15'36"E a distance of 54.42 feet;

**Appendix A
Form of Deed**

32. thence N47°40'31"E a distance of 25.21 feet;
33. thence N89°12'17"E a distance of 62.32 feet;
34. thence S87°39'42"E a distance of 140.68 feet;
35. thence S59°38'48"E a distance of 57.24 feet;
36. thence S71°30'33"E a distance of 27.33 feet;
37. thence S82°12'51"E a distance of 54.26 feet;
38. thence S77°43'20"E a distance of 106.59 feet;
39. thence S70°35'49"E a distance of 65.95 feet;
40. thence S87°25'05"E a distance of 55.95 feet;
41. thence N76°07'16"E a distance of 27.53 feet;
42. thence N13°39'39"E a distance of 66.59 feet;
43. thence S85°50'53"E a distance of 72.54 feet;
44. thence N50°35'41"E a distance of 22.66 feet;
45. thence N34°29'42"E a distance of 101.73 feet;
46. thence N69°09'13"E a distance of 31.70 feet;
47. thence S86°10'16"E a distance of 83.45 feet;
48. thence N84°39'57"E a distance of 56.51 feet;
49. thence S53°23'43"E a distance of 29.64 feet;
50. thence N88°59'36"E a distance of 17.27 feet;
51. thence N65°07'19"E a distance of 39.81 feet;
52. thence N54°04'58"E a distance of 36.08 feet to a point on the westerly boundary of a 40-ft wide Easement for a water supply conveyance structure from the Eagle River to Bolts Lake;

thence S14°44'58"E a distance of 4.99 feet along the westerly boundary of a 40-ft wide Easement for a water supply conveyance structure from the Eagle River to Bolts Lake; thence S11°51'41"E a distance of 38.71 feet along said westerly boundary of a 40-ft wide Easement for a water supply conveyance structure from the Eagle River to Bolts Lake;

thence leaving said westerly boundary the following 52 courses along the southern boundary of said 40-ft wide Parcel:

1. thence S54°04'58"W a distance of 22.36 feet;
2. thence S65°07'19"W a distance of 52.13 feet;
3. thence S88°59'36"W a distance of 39.34 feet;
4. thence N53°23'43"W a distance of 27.94 feet;
5. thence S84°39'57"W a distance of 44.39 feet;
6. thence N86°10'16"W a distance of 77.90 feet;
7. thence S69°09'13"W a distance of 10.47 feet;
8. thence S34°29'42"W a distance of 94.91 feet;
9. thence S50°35'41"W a distance of 44.30 feet;
10. thence N85°50'53"W a distance of 54.66 feet;
11. thence S13°39'39"W a distance of 56.99 feet;
12. thence S76°07'16"W a distance of 57.57 feet;
13. thence N87°25'05"W a distance of 67.65 feet;
14. thence N70°35'49"W a distance of 69.37 feet;
15. thence N77°43'20"W a distance of 102.54 feet;
16. thence N82°12'51"W a distance of 56.44 feet;

**Appendix A
Form of Deed**

17. thence N71°30'33"W a distance of 35.23 feet;
18. thence N59°38'48"W a distance of 51.42 feet;
19. thence N87°39'42"W a distance of 129.61 feet;
20. thence S89°12'17"W a distance of 46.06 feet;
21. thence S47°40'31"W a distance of 20.60 feet;
22. thence S77°15'36"W a distance of 75.21 feet;
23. thence N74°03'40"W a distance of 40.77 feet;

24. thence N58°11'01"W a distance of 52.28 feet;
25. thence S71°56'14"W a distance of 49.41 feet;
26. thence N46°49'29"W a distance of 50.03 feet;
27. thence N69°30'00"W a distance of 49.60 feet;
28. thence N64°54'54"W a distance of 57.96 feet;
29. thence N57°21'03"W a distance of 46.85 feet;
30. thence N81°19'48"W a distance of 47.48 feet;
31. thence N71°34'21"W a distance of 90.41 feet;
32. thence N55°22'06"W a distance of 55.95 feet;
33. thence N72°43'32"W a distance of 40.40 feet;
34. thence N65°50'54"W a distance of 56.39 feet;
35. thence N50°54'02"W a distance of 69.09 feet;
36. thence N76°40'51"W a distance of 4.89 feet;
37. thence S59°31'42"W a distance of 150.01 feet;
38. thence S74°01'07"W a distance of 86.71 feet;
39. thence S80°43'22"W a distance of 53.65 feet;
40. thence S45°20'15"W a distance of 51.79 feet;
41. thence S30°19'19"W a distance of 37.81 feet;
42. thence S15°41'15"E a distance of 14.06 feet;
43. thence S01°30'29"W a distance of 23.62 feet;
44. thence S29°00'22"W a distance of 29.94 feet;
45. thence S59°28'21"W a distance of 30.15 feet;
46. thence S79°41'59"W a distance of 25.13 feet;
47. thence S59°32'43"W a distance of 22.18 feet;
48. thence S37°59'43"W a distance of 29.27 feet;
49. thence S28°51'58"W a distance of 24.41 feet;
50. thence S57°17'27"W a distance of 89.93 feet;
51. thence S51°22'40"W a distance of 51.83 feet;
52. thence S32°39'21"W a distance of 34.75 feet; to the Point of Beginning, containing 2.496 acres more or less.

Legal Description Prepared By:
Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81601



Appendix A
Form of Deed

**Appendix A
Form of Deed**

**Exhibit B
to Special Warranty Deed
Relocation; Reserved Easements**

RELOCATION

The legal descriptions and graphic depictions of the parcels comprising the Land (as such parcels are legally described and graphically depicted in Exhibit A to this Special Warranty Deed) represent Grantors' and Grantee's best current understanding of the general locations and configurations of such parcels; provided, however, the Parties understand and intend that the final "as built" locations of such parcels will be subject to relocation and modification ("**Relocate**") based on the final engineering designs for the up to approximately 1,210 acre foot water storage facility and certain additional related water conveyance structures and related improvements to be located within Grantor's property in the vicinity of the Land (collectively, the "**Reservoir Project**") and related considerations as described below. Grantor and Grantee will by mutual agreement Relocate such parcels (and associated Reserved Easements, as described below) by executing and Recording an amendment to this Special Warranty Deed, which amendment will replace the original legal description with an updated legal description that conforms the applicable parcel's acreage, location, alignment and configuration to its final engineering design, as established to reflect cost efficiencies, technical requirements, impacts on development of Grantor's property in the vicinity of the Land and other pertinent considerations. Without limitation of the foregoing, the Grantor and Grantee will Relocate such parcels with updated legal descriptions that conform to the State Engineer's final approval, pursuant to the Dam Safety Rules, of the Reservoir Project design. Without limitation of the foregoing, modifications to the parcels that comprise the Land may be accomplished by the exchange of statutory forms of bargain and sale deeds.

RESERVED EASEMENTS

The conveyance to Grantee of the Dam Parcel, the Cross Creek Parcel and the Inlet Parcel (as such parcels are legally described and graphically depicted in Exhibit A to this Special Warranty Deed) is subject to Grantor's reservation of general, Relocatable (defined above) easements (the "**Reserved Easements**") for construction, ownership, operation, maintenance, repair and replacement of existing and to be constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements (the "**Permitted Improvements**") in designated locations within the Dam Parcel, the Cross Creek Parcel and the Inlet Parcel. The Reservoir Parcel will not be subject to the Reserved Easements.

The locations and engineering requirements of Permitted Improvements within the Reserved Easements will be subject to The Rules and Regulations for Dam Safety and Dam Construction promulgated pursuant to the authority granted the State Engineer in C.R.S. §§ 37 87 102, 37 87 105, 37 80 102(11K), and 24 4 103, applicable provisions of the Rules and Regulations for Water and Wastewater Service as adopted and amended from time to time by the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority, and applicable operation and maintenance requirements pursuant thereto. The final "as built" locations of the Reserved Easements will be established pursuant to and in the manner described in the Relocation provision above.

**Appendix A
Form of Deed**

**Exhibit C
to Special Warranty Deed
Exceptions**

Conveyance of the Land pursuant to the foregoing Special Warranty Deed is subject to the following Exceptions: **[Note: Below are verbatim from most recent Title Commitment]**

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met
2. Rights or Claims of parties in possession not shown by the public records.
3. Easements or claims of easements not shown by the public records.
4. Discrepancies, conflicts in boundary lines, encroachments, overlaps, variations or shortage in area or content, party walls and any other matters that would be disclosed by a correct survey and/or physical inspection of the land.
5. Any lien, or right to lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public record.
6. Any water or well rights, or rights or title to water or claims thereof, in, on or under the land, including, but not limited to the following:
Water Rights Agreement recorded September 12, 1983 at Reception No. 264401 in Book 368 at Page 80.
Findings of Fact, Conclusion of Law, Judgment and Decree recorded August 20, 1999 at Reception No. 706202.
Stipulation recorded September 20, 2019 at Reception No. 201915613.
Stipulation recorded September 20, 2019 at Reception No. 201915614.
7. Unpatented mining claims; reservations or exceptions in patents or in the Acts authorizing the issuance of said patents, including, but not limited to the following:
Patent recorded November 25, 1912 in Book 48 at Page 581.
Patent recorded November 25, 1912 in Book 48 at Page 582.
Patent recorded December 4, 1916 in Book 42 at Page 270.
Patent recorded December 23, 1954 in Book 146 at Page 167.
Unrecorded Patent No. 1054108 dated March 25, 1932.

Appendix A Form of Deed

8. All taxes, assessments, levies and charges which constitute liens or are due or payable including unredeemed tax sales.
9. Any rights, interests or easements in favor of the State of Colorado, the United States of America, or the general public, which exist or are claimed to exist in, over, under and/or across the waters and present and past bed and banks of the Eagle River.
10. Any question, dispute or adverse claims as to any loss or gain of land as a result of any change in the riverbed location by other than natural causes, or alteration through accretion, reliction, erosion or evulsion of the center thread, bank, channel or flow of the waters in the Eagle River lying within subject land; and any question as to the location of such center thread, bank, bed or channel as a legal description monument or marker for the purposes of describing or location subject lands.
11. Right of Way for U.S. Highway 24.
12. Right of Way for Tigiwon Road.
13. Terms, conditions, provisions, agreements and obligations as specified in the Notice of Environmental Use Restrictions, Battle North, LLC, Grantor and the Colorado Department of Public Health and Environment, Grantee, recorded December 11, 2020 at Reception No. 202024014.
14. Terms, conditions, provisions, agreements and obligations as specified in the Notice of Environmental Use Restrictions, Battle North, LLC, Grantor and the Colorado Department of Public Health and Environment, Grantee, recorded November 20, 2019 at Reception No. 201919762.
15. Terms, conditions, provisions, agreements and obligations as specified in the Boundary Agreement by and between The State of Colorado, for the use and benefit of the Department of Transportation, and Battle One Developer, LLLP formerly known as Ginn-LA Battle One Ltd., LLLP, Battle North, LLC formerly known as Ginn Battle North, LLC and Battle South, LLC formerly known as Ginn Battle South, LLC dated July 20, 2018 and recorded July 27, 2018 at Reception No. 201812787.
16. Terms, conditions, provisions, agreements and obligations as specified in Ordinance No. 24 – Series 2008, creating the Town of Minturn General Improvement District recorded January 29, 2009 at Reception No. 200901380.
17. Terms, conditions, provisions, agreements and obligations as specified in Ordinance No. 11 – Series 2008, Authorizing the Mayor of the Town of Minturn, Colorado, to sign a Water Service Agreement recorded March 27, 2008 at Reception No. 200806743.
18. Terms, conditions, provisions, agreements and obligations as specified in Ordinance No. 10 – Series 2008, Authorizing the Mayor of the Town of Minturn, Colorado, to sign an Annexation Agreement and Vested Property Rights Development Agreement recorded March 27, 2008 at Reception No. 200806742.

Appendix A Form of Deed

19. Terms, conditions, provisions, agreements and obligations as specified in Ordinance No. 4 – Series 2008, Annexing to the Town of Minturn, County of Eagle, State of Colorado, Battle Mountain Annexation Parcel No. 4 recorded March 27, 2008 at Reception No. 200806731.
Battle Mountain Annexation Map recorded March 27, 2008 at Reception No. 200806723.
Affidavit of Registered Surveyor Brent Biggs concerning conflicts in descriptions of land scrivener's errors in recorded instruments recorded July 1, 2008 at Reception No. 200813860.
20. Terms, conditions, provisions, agreements and obligations as specified in Resolution No. 12 – Series 2008, A Resolution of the Town Council of the Town of Minturn, Colorado concerning findings for Petition for Annexation, Battle Mountain Annexation Parcel No. 4 recorded March 27, 2008 at Reception No. 200806730.
21. The effect of the inclusion of the subject property in the Eagle River Fire Protection District as evidenced by the Order of Inclusion recorded June 24, 2002 at Reception No. 799500.
Eagle River Fire Protection District Map recorded December 7, 2009 at Reception No. 200926003.
22. Terms, conditions, provisions, agreements and obligations as specified in the Covenant Running with the Land by Eagle County School District RE 50J to and for the benefit of Viacom International Inc. dated January 8, 1997 and recorded February 11, 1997 at Reception No. 614340.
23. Terms, conditions, provisions, agreements and obligations as specified in the Revised Consent Decree between the State of Colorado and Battle Mountain Corporation, and its successors and assigns recorded July 23, 1985 at Reception No. 341928 in Book 445 at Page 684.
24. Terms, conditions, provisions, agreements and obligations as specified in the Revised Consent Decree between the State of Colorado and Glenn T. Miller, and his successors and assigns recorded July 23, 1985 at Reception No. 341927 in Book 445 at Page 683.
25. Terms, conditions, provisions, agreements and obligations as specified in the Right of Way Deed between The New Jersey Zinc Company and the County of Eagle, State of Colorado dated June 21, 1949 and recorded October 24, 1949 at Reception No. 78345 in Book 135 at Page 72.
26. All matters set forth on the Land Survey Plat Battle Mountain North recorded August 22, 2018 at Reception No. 201814343.
27. Right of Way for Pipe Line as shown on the Preliminary Map of the Empire Water System recorded November 3, 1926 at Reception No. 47118.
28. Terms, conditions, provisions, agreements and obligations as specified in the Notice of Environmental Use Restrictions recorded May 24, 2021 at Reception No. 202112199.

Modify applicable items above per B-II exceptions in final title commitment and per below.

Appendix A
Form of Deed

1. Any facts, rights, interests, or claims which are not shown by the Public Records but which could be ascertained by an inspection of said Land or by making inquiry of persons in possession thereof. [# 2 above]
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land. [# 4 above]
3. Taxes and assessments for the year 2022 and subsequent years, a lien not yet due and payable. [# 8 above]
4. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) Minerals of whatsoever kind, subsurface and surface substances, in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records or listed in this Exhibit B to Special Warranty Deed. [#7 above]
5. The effect of inclusions in any general or specific water conservancy, fire protection, soil conservation or other district or inclusion in any water service or street improvement area.
6. Any and all water and water rights, reservoir and reservoir rights, ditches and ditch rights, and the enlargements and extensions thereof, and all laterals, flumes and headgates used in connection therewith. [#6 above]

CTP AREA

OTP AREA

ACCESS ROAD

EAGLE RIVER

TIGMON ROAD

PREX FLATS AREA

ALTERNATIVE 1 (ELEV. 8135)

ALTERNATIVE 2 (ELEV. 8135)

ALTERNATIVE 3 (ELEV. 8135)

ALTERNATIVE 4 (ELEV. 8135)

ALTERNATIVE 5 (ELEV. 8135)

LEGEND

- ALTERNATIVE 1 (DAM CANAL)
- ALTERNATIVE 2
- ALTERNATIVE 3
- ALTERNATIVE 4
- ALTERNATIVE 5
- LAND ROCK CUT

NOTES:

1. THE STUDY IS INTENDED TO PROVIDE VISUAL COMPARISONS OF THE VARIOUS CONCEPTS FOR THE BORE LAKE RESERVOIR. THE STUDY IS NOT A FINAL DESIGN AND SHOULD NOT BE USED FOR ANY OTHER PURPOSES.
2. THE STUDY IS BASED ON THE BEST AVAILABLE INFORMATION AND SHOULD NOT BE USED FOR ANY OTHER PURPOSES.
3. THE STUDY IS BASED ON THE BEST AVAILABLE INFORMATION AND SHOULD NOT BE USED FOR ANY OTHER PURPOSES.
4. THE STUDY IS BASED ON THE BEST AVAILABLE INFORMATION AND SHOULD NOT BE USED FOR ANY OTHER PURPOSES.
5. THE STUDY IS BASED ON THE BEST AVAILABLE INFORMATION AND SHOULD NOT BE USED FOR ANY OTHER PURPOSES.

Scale in Feet

0 200 400

107453-001

December 2021

CONCEPTUAL RESERVOIR DESIGN ALTERNATIVES

Bore Lake Reservoir Feasibility Study

Eagle County, Colorado

FIG. 4

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), effective as of the date set forth in Paragraph 1, below is entered into by and among Battle North, LLC (“Battle North”), the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority (collectively, the “District/Authority”). Battle North and the District/Authority may each be referred to in this Agreement individually as a “Party” and collectively as “the Parties.”

RECITALS

A. In accordance with the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et. seq. (“CERCLA”), the United States Environmental Protection Agency (“EPA”), together with the Colorado Department of Public Health and the Environment (“CDPHE”) have entered into that certain Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien with Battle North and Battle South, LLC (“Battle South”) captioned *In the Matter of Eagle Mine Superfund Site Eagle County, Colorado*, Dkt. No. CERCLA-08-2018-0009 (the “AOC”). The AOC is attached hereto as Exhibit A, and sets forth certain rights, benefits and obligations of Battle North and Battle South with respect to property owned within the Eagle River Superfund Site in Eagle County Colorado (the “Superfund Site”) including requirements related to additional response actions, the payment of certain response costs which have or will be incurred by the United States and the release and waiver of a lien at or in connection with certain real property which is the subject of the AOC and within the boundaries of the Superfund Site.

B. On February 10, 2021, Battle North and the District/Authority entered into that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project attached hereto as Exhibit B, and subsequently entered into that certain Supplement to Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project having an Effective Date of January 28, 2022 (such instruments being, collectively, the “Reservoir Agreement”), pursuant to which they confirmed and memorialized the process by which the District/Authority will acquire from Battle North certain real property located adjacent to and within the Superfund Site, including a portion of the property known as the Trestle Area further described in Exhibit C.

C. In accordance with the terms of the Reservoir Agreement and the AOC, Battle North has implemented a Subarea Response Action Work Plan with the approval of EPA and CDPHE to remediate the Trestle Area. Following completion of this remedial action, Battle North obtained EPA’s Certification of RA Completion and Certification of Completion of the Work for the Trestle Area. As required under the terms of the Reservoir Agreement, on _____, Battle North requested that EPA and CDPHE take all actions necessary to delete the Trestle Area from the National Priorities List, thereby removing the Trestle Area from the Superfund Site. Deletion of the Trestle Area from the National Priorities List is anticipated to occur following the completion of EPA’s Procedures for Partial Deletion at NPL Sites.

D. The AOC provides that, in the event Battle North transfers any of the property subject to the AOC, the rights, benefits and obligations conferred upon Battle North by the AOC with respect to the specific property that is transferred, may be assigned or transferred to any person acquiring such property, subject to EPA’s approval after consultation with CDPHE. The AOC further provides that the transferee of such rights, benefits and obligations must consent to

be bound by the terms of the AOC with respect to the transferred property in order for the rights, obligations and benefits of the AOC to be available and effective as to such transferee.

E. As an integral part of the consideration for entering into the Reservoir Agreement, and as a condition to transferring title to the Trestle Area, the Parties have agreed that the District/Authority shall obtain all the rights, benefits and obligations provided under the AOC solely to the extent such rights, benefits and obligations relate to the Trestle Area. Accordingly, on _____, the District/Authority executed an addendum to the AOC (the "Addendum"), attached hereto as Exhibit D, pursuant to which they agreed to be bound by the terms and conditions of the AOC solely to the extent such terms and conditions apply to the Trestle Area. The Trestle Area is the only property the District/Authority will acquire fee title to that is also within the Superfund Site and subject to the AOC. The Parties intend that all rights, benefits and obligations pertaining to any other property to which the AOC applies shall remain Battle North's and Battle South, LLC's.

AGREEMENT

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged:

1. Effective Date; Reservoir Agreement; Transfer of Property. This Agreement shall become effective on the date that all instruments transferring title to the Trestle Area from Battle North to the District/Authority have been duly executed and recorded (the "Effective Date"). This Agreement is premised on Battle North's and the District/Authority's continued adherence to all the terms and conditions of the Reservoir Agreement, including but not limited to the satisfaction of all contingencies set forth in the Reservoir Agreement, the exchange of all compensation contemplated in the Reservoir Agreement, the District/Authority's acquisition of property from Battle North, and delivery (and recording, as applicable) of all instruments affecting the property to be transferred pursuant to the Reservoir Agreement. In the event such contingencies are not satisfied, or the Reservoir Agreement is terminated, then this Agreement shall terminate and the Parties shall have no further obligations pursuant to its terms except with respect to those which specifically survive termination.

2. Obligations of the District/Authority.

A. Compliance with the AOC. Following the Effective Date of this Agreement, The District/Authority agree to comply with all terms and conditions of the AOC, solely to the extent such terms and conditions relate to the Trestle Area, including the following:

i. Access. The District/Authority shall be responsible for the provision of access to the Trestle Area to officers, employees and authorized representatives of EPA and CDPHE, and to those entities and their successors, assigns and contractors conducting response actions at the Superfund Site pursuant to any agreement with EPA and/or CDPHE including, but not limited to, activities related to the requirements contained in any prior remedial action work plan, statement of work, ROD or ROD Amendment still in effect.

ii. Emergency Response; Notification. The District/Authority shall be solely responsible for all requirements arising under the AOC relating to emergency response on the Trestle Area, including prevention, reporting, and abatement of any release of hazardous substances there, except to the extent such release is caused by Battle North or any third party.

B. Indemnification. The District/Authority agree to indemnify, defend and hold harmless, Battle North and its respective directors, officers, shareholders, parents, subsidiaries, and successors (collectively the “Battle North Indemnitees”) from any and all claims, actions, judgments, liens, writs, damages, stipulated penalties, interest payments, losses, liabilities or demands of any character arising directly or indirectly from the District/Authority’s failure to comply with the terms and conditions of the Addendum, the AOC or this Agreement. The Indemnity set forth in this Paragraph 2(B) shall survive for: (i) a period of ten (10) years after the Effective Date; or, (ii) if the District/Authority commence construction of the Bolts Lake reservoir prior to the 10th anniversary of the Effective Date, for a period of seven (7) years after commencement of construction.

3. Obligations of Battle North.

A. Battle North agrees to comply with all terms and conditions of the AOC. Section 2 and any other provision of this Agreement notwithstanding, as between Battle North and the District and Authority, Battle North shall remain solely responsible for the following obligations as they relate to the Trestle Area and all other property subject to the requirements of the AOC, as well as any requirements that arise under the AOC independently of any specific property regardless of whether such requirements are specifically described here:

i. Lien Waiver. To the extent not already satisfied, Battle North shall be solely responsible for meeting all requirements to pay EPA any sums necessary in accordance with Article VII of the AOC in order to obtain a lien waiver with respect to any of the Existing Contamination (as defined in the AOC), and any other obligations related to such lien waiver.

ii. Work. The Parties recognize that Battle North has fully implemented all remedial requirements of the OU3 ROD with respect to the Trestle Area, and has obtained Certification of RA Completion and Certification of Completion of the Work for the Trestle Area. In the event Battle North determines to alter the current use of any other property that is within the boundaries of the Superfund Site and subject to the AOC to include residential use, then, except as specifically set forth in Article VI of the Reservoir Agreement relating the Old Tailings Pile Subarea, Battle North shall be solely responsible, at its sole cost and expense, for fully implementing all actions necessary to implement the OU3 ROD and SOW on such property in accordance with the AOC and all applicable law, and satisfying all requirements relating to the Work to be Performed, as set forth in Sections IX of the AOC, Section XXVII of the AOC regarding Modification, and Section XXVII of the AOC regarding Additional Work. Such requirements include, but are not limited to, the development, submission for approval, and execution of all necessary Subarea Response Action Work Plans and the development of all related deliverables, progress reports, Response Action Reports, satisfaction of all related requirements of EPA or CDPHE and all associated costs and expenses.

iii. Access. For all property within the boundaries of the Superfund Site and subject to the AOC which it now owns, or later comes to own, Battle North shall be solely responsible, at its sole cost and expense, for satisfaction of all requirements to provide access to officers, employees and authorized representatives of EPA and CDPHE, including the use of best efforts (as defined in the AOC) to secure such access to property owned now or in the future by any third party and for providing access to those entities and their successors, assigns and contractors conducting response actions at the Superfund Site pursuant to any agreement with EPA and/or CDPHE including, but not limited to, activities related to the requirements contained in any prior remedial action work plan, statement of work, ROD or ROD Amendment still in effect.

iv. Restrictive Notice; Additional Institutional Controls. To the extent not already satisfied, Battle North Shall be solely responsible for all requirements, costs and expenses necessary to execute and record any restrictive notice required in accordance with Paragraph 53 of the AOC. Battle North shall be solely responsible for the implementation of, and all costs and expenses related to, any other institutional controls EPA or CDPHE may request with respect to any property within the Superfund Site and subject to the AOC that it now owns now or may own in the future.

v. Emergency Response and Notification of Releases. Battle North shall be solely responsible for all requirements, costs and expenses relating to emergency response, including prevention, reporting, abatement, and remediation of any release of hazardous substances from any property within the Superfund Site and subject to the AOC that it owns now or may own in the future except to the extent such release is caused by the District/Authority or any third party.

vi. Payment of Future Response Costs; Stipulated Penalties. Battle North shall be solely responsible for the payment of all future response costs as set forth in Section XV of the AOC and any stipulated penalties imposed by EPA or CDPHE in accordance with Section XVIII of the AOC, or otherwise.

B. Indemnification. Battle North shall indemnify, defend and hold harmless the District/Authority and their affiliates, predecessors, successors, administrators and assigns (the "District/Authority Indemnitees") from any and all claims, actions, judgments, liens, writs, damages, stipulated penalties, interest payments, losses, liabilities or demands of any character arising directly or indirectly from Battle North's failure to comply with the terms and conditions of the AOC or this Agreement. The indemnity set forth in this Paragraph 3(B) shall survive for: (i) a period of ten (10) years after the Effective Date; or, (ii) if the District/Authority commence construction of the Bolts Lake reservoir prior to the 10th anniversary of the Effective Date, for a period of seven (7) years after commencement of construction.

4. Notice. Any notices required by this Agreement shall be in writing sent by United States mail or internationally recognized overnight courier service (charges prepaid) to the applicable address set forth below. Each Party may from time to time specify as its address for purposes of this Agreement any other address upon giving ten (10) days prior written notice thereof to the other party.

For the District/Authority:

Eagle River Water & Sanitation District
Attn: General Manager
864 Forest Road
Vail, CO 81657

with a copy to:

Joseph G. Middleton Esq.
Middleton Environmental Law LLC
1355 S. Mesa Ct.
Superior, CO 80207

For Battle North:

Battle North, LLC
440 Eagle Street
P.O. Box 56
Minturn, CO 81645

with a copy to:

Bassel Battle Investment, Corp.
3500 St. Jacques
Montreal, Quebec H4c1h2
Canada
Attn: Lorne Bassel

and to:

Otten Johnson Robinson Neff & Ragonetti, P.C.
950 17th Street, Suite 1600
Denver, Co 80005
Attn: Munsey Ayers [020665-007]

5. General Provisions.

A. Recitals. The Recitals set forth above constitute an integral part of this Agreement and are incorporated herein by reference with the same force and effect as if set forth herein as agreements of the Parties.

B. Non-Assignment of Agreement. This Agreement may not be sold, assigned, granted or transferred to any other person, corporate or natural, without the express written consent of the non-assigning party. This Agreement is binding upon, and will inure to the benefit of, the Parties and, as applicable, to the Battle North Indemnitees and the District/Authority Indemnitees, respectively.

C. Arm's Length Negotiation. The Parties each represent that they have reviewed this Agreement and discussed it with their attorneys and that they understand and accept the terms of this Agreement. The Parties each agree that this Agreement and its terms were negotiated at arm's length in good faith after consultation with experienced legal counsel.

D. Headings. The headings in this Agreement are solely for convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

E. Costs and Attorneys' Fees. The Parties shall each bear their own respective costs and attorneys' fees in connection with the negotiation and execution of this Agreement.

F. Execution and Copies. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument representing the Agreement of the Parties. Photocopies or facsimiles of executed copies of this Agreement may be treated as originals.

G. Signatory's Authority; All Necessary Consents. Each person signing this Agreement in a representative capacity expressly represents that the signatory has the subject party's authority to so sign and that the subject party will be bound by the signatory's execution of this Agreement.

H. Amendment or Waiver. This Agreement may not be amended, modified or changed, and no waiver of any provision of this Agreement shall be effective, except by an instrument in writing signed by the Parties.

I. Choice of Law, Construction, Severability. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and any disputes arising out of or relating to this Agreement shall be brought in the State District Court, City and County of Denver, Colorado. The Parties expressly waive any right to contest venue or personal jurisdiction. This Agreement's final form resulted from review and negotiations among the Parties and their attorneys, and no part of this Agreement should be construed against any party on the basis of authorship. If any provision or portion of a provision of this Agreement is held to be unenforceable, the remaining provisions of this Agreement shall nevertheless be given full force and effect as if that unenforceable provision or portion of a provision were omitted, and there shall be deemed substituted for the affected provision a valid and enforceable provision as similar as possible to the unenforceable provision.

J. Entire Agreement. This Agreement, Reservoir Agreement, the AOC and the Addendum embody the entire understanding and agreement among the Parties as to their respective obligations under the AOC and supersede all other agreements, understandings and negotiations relating to the subject matter herein.

K. No Agency or Partnership. This Agreement does not create any agency or partnership relationship among the Parties or their representatives and, neither party may bind or is responsible for the acts of the other or their representatives.

L. No Third-Party Beneficiaries. Except to the extent specifically provided in this Agreement with respect to the indemnification provisions covering the Battle North Indemnitees and the District/Authority Indemnitees (who are express third party beneficiaries of this Agreement solely to the extent provided in this Agreement), this Agreement is for the sole benefit of the Parties, and no other person (corporate or natural), is intended to be a beneficiary of this Agreement nor shall any other person (corporate or natural) have any rights under this Agreement.

[Signatures on Following Page]

The Eagle River Water & Sanitation District consents to the terms and conditions of this Settlement Agreement by its duly authorized representative on this__ day of _____, 2022.

EAGLE RIVER WATER & SANITATION DISTRICT

Linn Brooks

General Manager

Signature: *Linn Brooks*

The Upper Eagle Regional Water Authority consents to the terms and conditions of this Settlement Agreement by its duly authorized representative on this__ day of _____, 2022.

UPPEER EAGLE REGIONAL WATER AUTHORITY

Linn Brooks

General Manager

Signature: *Linn Brooks*

Battle North, LLC consents to the terms and conditions of this Settlement Agreement and Mutual Release on this __ day of _____, 2022.

BATTLE NORTH, LLC

Lorne Bassel

Title: _____

Signature: _____

EXHIBIT A, ADMINISTRATIVE ORDER ON CONSENT

UNITED STATES DEPARTMENT OF JUSTICE,
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,
REGION 8

2018 JUL 27 AM 10:46

AND
COLORADO DEPARTMENT
OF PUBLIC HEALTH AND ENVIRONMENT

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:

Eagle Mine Superfund Site
Eagle County, Colorado

Battle North, LLC, and
Battle South, LLC

Owners.

Proceeding Under the Comprehensive
Environmental Response, Compensation
and Liability Act, 42 U.S.C. §§ 9601-9675

Docket No. CERCLA-08-2018-0009

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR RESPONSE ACTION
AND RELEASE AND WAIVER OF
CERCLA § 107(r) LIEN**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien (Settlement) is entered into voluntarily by the United States on behalf of the United States Environmental Protection Agency (EPA); the Colorado Department of Public Health and Environment (CDPHE); and Battle North, LLC (Battle North) and Battle South, LLC (Battle South) (collectively, Owners). This Settlement provides for the performance of a response action by Owners, the payment of certain response costs incurred, or to be incurred, by the United States, and the release and waiver of a lien at or in connection with the Property, as hereinafter defined, within the Eagle Mine Superfund Site located in Eagle County, Colorado (Site) and generally depicted on the map attached hereto as Appendix 1.

2. This Settlement is entered into under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This authority was delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders) and 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders). This authority was further re-delegated by the Regional Administrator of EPA Region 8 to the undersigned EPA officials. This Settlement is also entered into pursuant to the inherent authority of the Attorney General to compromise and settle claims of the United States.

3. EPA has notified the State of Colorado (State) of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and the State has elected to participate as a party to this Settlement.

4. Owners represent that they are bona fide prospective purchasers (BFPPs) as defined by section 101(40) of CERCLA, 42 U.S.C. § 9601(40), that they have and will continue to comply with section 101(40) during their ownership of the Property and thus qualify for the protection from liability under CERCLA set forth in section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. Further, Owners represent that they did not arrange for disposal of any mine waste or other hazardous substances present at the Site or accept or arrange for transport of any such materials or substances for disposal at the Site. In view of the nature and extent of Work to be performed in connection with the response action at the Site and the risk of claims under CERCLA being asserted against Owners notwithstanding section 107(r)(1) as a consequence of Owners' activities at the Site pursuant to this Settlement, one of the purposes of this Settlement is to resolve, subject to the reservations and limitations contained in Section XXI (Reservations of Rights), any potential liability of Owners under CERCLA for the Existing Contamination. A second purpose of this Settlement is to settle and resolve, subject to Section XXI (Reservation of Rights), any lien EPA may have on the Property under section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for the Existing Contamination. A third purpose is to ensure Institutional Controls are placed on the Property in the form of Notices of Environmental Use Restrictions (Restrictive Notices) pursuant to Colorado's Environmental Covenants Statute, C.R.S. § 25-15-317 *et seq.*, as set forth in the OU1 ROD Amendment and OU3 ROD.

5. The Parties recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Owners in accordance with this Settlement do not constitute an admission of any liability. Owners do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the statement of facts and determinations in Sections IV (Statement of Facts) and V (Determinations) of this Settlement. Owners agree to comply with and be bound by the terms of this Settlement and further agree that they will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

6. This Settlement is binding upon the Parties. Any change in ownership or corporate status of Owners including, but not limited to, any transfer of assets or real or personal property shall not alter Owners' responsibilities under this Settlement. Any change in ownership or corporate status involving the Property shall in no way alter the release and waiver of the lien under this Settlement.

7. Each undersigned representative of Owners certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement and to execute and legally bind Owners to this Settlement.

8. Battle North shall provide a copy of this Settlement to each contractor hired to perform any Work required by this Settlement and to each person representing Battle North with respect to the Site or Work, and shall condition all contracts entered into hereunder upon performance of Work in conformity with the terms of this Settlement. Battle North or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Battle North shall nonetheless be responsible for ensuring that its contractors and subcontractors perform Work in accordance with the terms of this Settlement.

9. In the event of any Transfer of the Property, or any part thereof, Owners shall continue to comply with the obligations under this Settlement, except as EPA, the State, and Owners agree otherwise and modify this Settlement, subject to the following:

a. Prior to or simultaneous with any Transfer of the Property by Owners, or any part thereof, the rights, benefits and obligations conferred upon Owners under this Settlement, with respect to the Property that is Transferred, or any part thereof, may be assigned or transferred to any person subject to EPA's discretion to approve or disapprove, and not subject to judicial review. EPA will consult with CDPHE.

b. Prior to or simultaneous with any Transfer of the Property by Owners, or any part thereof, the transferee must consent in a written addendum to this Settlement to be bound by the terms of this Settlement, with respect to the Property that is Transferred, or any part thereof, including but not limited to the certifications contained in Section XX (Certification) of this Settlement in order for the rights, obligations, and benefits, including the Covenant Not to Sue contained in Section XXI, to be available to and effective for the transferee.

III. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

“Agencies” shall mean EPA and CDPHE collectively.

“Battle North” shall mean Battle North, LLC, a Georgia limited liability company and its successors and assigns.

“Battle South” shall mean Battle South, LLC, a Georgia limited liability company and its successors and assigns.

“BFPP” shall mean a bona fide prospective purchaser as described in section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

“CDPHE” shall mean the Colorado Department of Public Health and Environment and any successor departments or agencies.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” shall mean a calendar day. In computing any period of time under this Settlement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Eagle Mine Special Account” shall mean a special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Effective Date” shall mean the effective date of this Settlement as provided in Section XXXI.

“EPA” shall mean the United States Environmental Protection Agency and its successor departments, agencies or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Existing Contamination” shall mean:

a. Any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;

b. Any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and

c. Any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

“Future Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of any Work, or otherwise implementing, overseeing or enforcing this Settlement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, community involvement, the costs incurred pursuant to Section X (Property Requirements) including, but not limited to, cost of attorney time and any monies paid to secure or enforce access and/or to secure, implement, monitor, maintain or enforce Institutional Controls, including, but not limited to, the amount of just compensation, Section XIV (Emergency Response and Notification of Releases), Paragraph 97 (Work Takeover), Section XVI (Dispute Resolution) and all litigation costs.

“Institutional Controls” shall mean state or local laws, regulations, ordinances, zoning restrictions, or other governmental controls or notices that: (a) limit land, water or other resource use to minimize the potential for human exposure to Waste Material at or in connection with the Site; (b) limit land, water or other resource use to implement, ensure non-interference with, or ensure the integrity of the response action; and/or (c) provide information intended to modify or guide human behavior at or in connection with the Site.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <http://www.epa.gov/superfund/superfund-interest-rates>.

“NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, also called the National Contingency Plan, promulgated pursuant to section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“OU1” shall mean operable unit 1 of the Site. As defined in the OU1 ROD Amendment, OU1 is primarily media-based, focusing on protecting surface water at the Site by reducing metals loading to the Eagle River. On-going remediation within OU1 includes active engineered remedial features designed to capture and treat mine waste in surface and groundwater.

“OU2” shall mean operable unit 2 of the Site, which includes the former town of Gilman (Gilman). The OU2 remedy addressed potential human health risks by imposing local Institutional Controls to restrict access and require federal, state and local approval for future development.

“OU3” shall mean operable unit 3 of the Site. As defined in the OU1 ROD Amendment, OU3 is media-based and focuses on protection of human health for residential use through reduction of exposures to surface soil, other than OU2. Geographically, OU1 and OU3 overlap except for the area of Belden and the Consolidated Tailings Pile, which are in OU1 only.

“OU1 ROD” shall mean the Record of Decision for OU1 issued by EPA on March 29, 1993.

“OU1 ROD Amendment” shall mean the amendment to the OU1 ROD issued by EPA on September 28, 2017.

“OU2 ROD” shall mean the Record of Decision for OU2 issued by EPA on September 3, 1998.

“OU3 Property” shall mean the Property within OU3 as addressed by the OU3 ROD.

“OU3 ROD” shall mean the Record of Decision for OU3 issued by EPA on September 28, 2017.

“Owners” shall mean Battle North and Battle South.

“Paragraph” shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

“Parties” shall mean the United States, CDPHE and Owners.

“Property” shall mean all property currently owned by Owners within OU1, OU2 and OU3 of the Site.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Restrictive Notices” shall mean Notices of Environmental Use Restrictions, which are a form of Institutional Control and are established pursuant to Colorado’s Environmental Covenants Statute, C.R.S. § 25-15-317 *et seq.*

“RPM” shall mean the Remedial Project Manager as defined in 40 C.F.R. § 300.5.

“Section” shall mean a portion of this Settlement identified by a Roman numeral.

“Settlement” shall mean this Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien, and all appendices attached hereto (listed in Section XXXII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

“Site” shall mean the Eagle Mine Superfund Site, encompassing approximately 235 acres, located approximately 1 mile southeast of the town of Minturn and 8 miles south of Vail in Eagle County, Colorado and depicted generally on the map attached as Appendix 1.

“State” shall mean the State of Colorado.

“SOW” shall mean the Statement of Work attached hereto as Appendix 2. The SOW describes the activities that Battle North must perform to implement the response action pursuant to this Settlement and any modifications made thereto in accordance with this Settlement.

“State Project Manager” shall mean the CDPHE personnel designated as the Site project manager.

“Subarea Response Action Work Plan” shall mean a work plan that Battle North will submit for the implementation of Work at any subarea or subareas in accordance with Paragraph 41.a.

“Transfer” shall mean to sell, assign, convey, lease, mortgage or grant a security interest in, or where used as a noun, a sale, assignment, conveyance or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency and instrumentality of the United States, including EPA.

“Waste Material” shall mean (a) any “hazardous substance” under section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any “solid waste” under section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

“Work” shall mean all activities and obligations that Battle North is required to perform under this Settlement except those required by Section XII (Record Retention).

IV. STATEMENT OF FACTS

11. The Site encompasses a large abandoned mining and milling facility along the banks of the Eagle River near Minturn, Colorado, in a rural area of Eagle County, and includes areas impacted by past mining activity between the towns of Red Cliff and Minturn. The 235-acre Site includes the Eagle Mine workings, the former town of Gilman, the mine tailings pond areas, Rex Flats, Rock Creek Canyon, and waste rock and roaster pile areas. The Site is bordered on the south and west by the White River National Forest which includes the Holy Cross

Wilderness Area. The Eagle River and two of its principle tributaries, Cross Creek and Rock Creek, flow through the Site.

12. Mining activities began in the area in the late 1870s when gold, silver, lead and zinc deposits were discovered. The ore was processed first by roasting and later by milling. Large quantities of tailings and waste rock were piled along the banks of the Eagle River, on the steep side slopes of the canyon and at higher elevations. Later, mine waste was piped down canyon into the Old Tailings Pile and into what is now called the Consolidated Tailings Pile.

13. In 1983, the State filed a complaint against a potentially responsible party, Gulf & Western Industries, Inc., a Delaware corporation, the successor to a former operator of the Eagle Mine, in the U.S. District Court for the District of Colorado, captioned *State of Colorado v. Gulf & Western Industries, Inc.*, Civ. Action No. 83-C-2387, for natural resource damages pursuant to CERCLA, and amended its complaint in 1985 to include a claim for CERCLA response costs and state pendent claims.

14. In the 1980s, the Agencies' sampling showed that historic mining operations at the Site resulted in contamination of surface water, groundwater and soils with heavy metals including arsenic, cadmium, copper, iron, lead, manganese and zinc in levels that posed a threat to human health and the environment. These heavy metals are listed as hazardous substances as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

15. In 1986, the Site was included on the National Priorities List pursuant to CERCLA section 105, 42 U.S.C. § 9605, by publication in the Federal Register, 51 Fed. Reg. 111 (June 10, 1986).

16. In 1988, the State and Gulf+Western, Inc., a Delaware corporation and Gulf & Western Industries, Inc.'s successor, entered into a consent decree that settled the 1983 complaint and set forth a remedial action plan (1988 CD/RAP) to remediate contamination at the Site. Pursuant to this agreement, Gulf+Western performed certain work, including implementation of a mine closure program to seal pathways from the mine workings and to grout fracture zones, construction of a groundwater extraction system to collect and pump contaminated groundwater from beneath the Consolidated Tailings Pile, construction of a groundwater diversion trench to direct the flow of clean groundwater away from the Consolidated Tailings Pile, construction of a system to collect seeps along Rock Creek, installation and implementation of water quality monitoring.

17. In 1990, the State and Gulf & Western Industries, Inc.'s corporate successor, Paramount Communications, Inc., amended the 1988 CD/RAP to include a chemical water treatment plant, mine seepage collection system and pipeline to transport and treat water from the Eagle Mine.

18. In 1993, EPA issued the OU1 ROD to institute additional remedial actions to address metals loading to the Eagle River. The major components of the selected remedy included the installation of a conveyance and collection system to collect additional mine seepage along Rock Creek, the diversion of Rock Creek up-gradient of contaminated mine

seepage, revegetation of mine waste source areas, surface water run-off and groundwater monitoring, land use restrictions, capping of the Consolidated Tailings Pile, construction of a new up-gradient groundwater diversion structure and relocation of the Town of Minturn drinking water wells, continued treatment of contaminated mine seepage, removal of contaminated soils and sediments from the Maloit Park Wetlands, and regular monitoring of surface water, groundwater and the mine pool water within the mine workings.

19. In 1996, EPA, with the State as a signatory, entered into a consent decree (1996 Consent Decree) whereby Viacom International, Inc., a successor to Gulf+Western and Paramount Communications, agreed to perform additional remedial actions set forth in the OU1 ROD, captioned *United States v. Viacom International, Inc.*, Civ. Action. No 95-N-2360 (June 12, 1996), filed in the U.S. District Court for the District of Colorado. The 1996 Consent Decree described the additional remedial actions in a statement of work (1996 CD/SOW).

20. Remediation at the Site has been ongoing since 1988; however, Institutional Controls have not yet been implemented. Additionally, current water quality standards for the Eagle River have not yet been met. On September 28, 2017, EPA issued the OU1 ROD Amendment that expands the existing OU1 remedy to include the collection and treatment of groundwater adjacent to the Eagle River in Belden and at the mouth of Rock Creek, along with continued collection of contaminated water and operation of the water treatment plant and Institutional Controls in the form of Restrictive Notices to provide long-term protection of the remedy.

21. In 1998, EPA issued the OU2 ROD to provide for Institutional Controls at the former town of Gilman to restrict access and require additional risk assessment and, if needed, cleanup prior to Federal, State and local approval for future development. Institutional Controls have not yet been implemented.

22. In 2004, the Property was acquired by the previous owners, two entities, Ginn Battle South, LLC and Ginn Battle North, LLC. Ginn Battle South acquired Property within OU2. Ginn Battle North acquired Property within parts of OU1 and OU3. Ginn Battle North intended to develop parts of the Site for future residential use and requested that the Agencies review its development proposal pursuant to the CERCLA regulatory process for remedial actions.

23. With oversight by the Agencies, Ginn Battle North completed a Remedial Investigation Report that documented the current condition at OU3 and assessed the potential nature and extent of impacts to residents from the remaining mine-related wastes. Unlike the original cleanup, which was focused on lead criterion, the Remedial Investigation Report also considered arsenic. The Remedial Investigation Report affirmed that arsenic, cadmium, chromium, copper, lead, manganese and zinc contaminated the soils at OU3 and posed unacceptable risk to human health in the event of future residential use.

24. Ginn Battle North also completed a Human Health Risk Assessment and Feasibility Study that evaluated remedial alternatives to reduce, mitigate and monitor impacts to OU3.

25. In 2009, Owners acquired the Property, also with the intention of developing OU3 for future residential use.

26. On September 28, 2017, EPA issued the OU3 ROD selecting the remedial action for OU3 to provide for cleanup in the event of residential use.

27. In performing response actions in relation to the Property, EPA has incurred response costs.

V. DETERMINATIONS

28. Based on the Statement of Facts set forth above, and the administrative record, EPA has determined that:

a. The Site is a “facility” as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Statement of Facts above, includes “hazardous substances” as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Owners are “person[s]” as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. There has been an actual or threatened “release” of “hazardous substances” from the Site as those terms are defined in section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22), (14).

e. The actual or threatened “release” caused the incurrence of response costs.

f. Settlement with Owners is practicable and in the public interest within the meaning of section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

g. The Institutional Controls required by this Settlement are necessary to protect the public health, welfare or the environment.

h. In the event land use changes to residential at OU3, the Work required by this Settlement is necessary to protect the public health, welfare or the environment.

VI. SETTLEMENT AGREEMENT AND ORDER

29. Based upon the Statement of Facts and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Owners shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. PAYMENT AND RELEASE AND WAIVER OF LIEN

30. In consideration of and in exchange for EPA's release and waiver of any lien it has or may have under section 107(r) of CERCLA with respect to Existing Contamination on the Property, Owners shall, not later than 30 days after the Effective Date, pay to EPA the sum of \$200,000. Owners' obligation for payment is joint and several. Owners shall make payment to EPA by Fedwire Electronic Funds Transfer (EFT) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045

Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency" and shall reference Site Identification No. 08-45 and the EPA docket number for this action.

31. The total amount to be paid by Owners pursuant to this Section may be deposited by EPA in an Eagle Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

32. **Interest.** In the event that Owners do not make the entire payment within 30 days after the Effective Date as required, Owners shall pay Interest on the unpaid balance. The Interest shall accrue through the date of Owners' payment of the entire sum in Paragraph 30. Payments of Interest made under this Section shall be in addition to such other remedies or sanctions available to the United States by virtue of Owners' failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

33. Subject to Section XXI (Reservation of Rights), upon payment of the amount specified in Paragraph 30, EPA agrees to release and waive any lien it may have costs incurred or to be incurred by EPA for Existing Contamination on the Property under section 107(r) of CERCLA, 42 U.S.C. § 9607(r).

VIII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, REMEDIAL PROJECT MANAGER, AND STATE PROJECT MANAGER

34. Not later than 60 days prior to commencement of any Work, Battle North shall retain one or more contractors or subcontractors to perform Work and shall notify the Agencies of the names, titles, contact information and qualifications of such contractors or subcontractors. Battle North shall also notify the Agencies of the names, titles, contact information and qualifications of any other contractors or subcontractors retained to perform Work at least 30

days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Battle North. If EPA disapproves of a selected contractor or subcontractor, Battle North shall retain a different contractor or subcontractor and shall notify EPA of that contractor's or subcontractor's name, title, contact information and qualifications not later than 30 days after EPA's disapproval. With respect to any proposed contractor, Battle North shall demonstrate that the proposed contractor demonstrates compliance with ASQ/ANSI E4:2014 "Quality management systems for environmental information and technology programs – Requirements with guidance for use" (American Society for Quality, February 2014), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, Reissued May 2006) or equivalent documentation as determined by EPA. The qualifications of the persons undertaking Work for Battle North shall be subject to EPA's review for verification based on objective assessment criteria (e.g., experience, capacity, technical expertise) and that they do not have a conflict of interest with respect to Work or the Site.

35. Battle North has designated Tim McGuire as the Project Coordinator who shall be responsible for administration of all actions by Battle North required by this Settlement. To the greatest extent possible, the Project Coordinator shall be present on-Site or readily available during Site work. Notice or communication relating to this Settlement from EPA to Battle North's Project Coordinator shall constitute notice or communication to Battle North. Battle North shall have the right to change its designated Project Coordinator. Battle North shall notify EPA 7 days before such a change is made. The initial notification by Battle North may be made orally, but shall be promptly followed by a written notice. If Battle North changes its Project Coordinator, EPA retains the right to disapprove of the new Project Coordinator. If EPA disapproves of the new Project Coordinator, Battle North shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 30 days following EPA's disapproval. Battle North's Project Coordinator must have sufficient technical expertise to coordinate the Work. EPA will review Battle North's Project Coordinator based on objective criteria (e.g., experience, capacity, technical expertise) and that Battle North's Project Coordinator does not have a conflict of interest with respect to the Site. If Battle North transfers all or any portion of the Property, the successor party may select its own Project Coordinator subject to the communication and notification requirements applicable to Battle North above.

36. EPA has designated Jamie Miller of the Superfund Remedial Program in the Office of Ecosystems, Protection and Remediation, Region 8, as its Remedial Project Manager (RPM). EPA shall have the right to change its RPM.

37. CDPHE has designated Wendy Naugle of the Superfund and Brownfields Unit in the Hazardous Materials and Waste Management Division of CDPHE as its State Project Manager. CDPHE shall have the right to change its State Project Manager.

38. The RPM shall be responsible for overseeing Battle North's implementation of this Settlement. The RPM shall have the authority vested in an RPM by the NCP, including the authority to halt, conduct or direct any Work required by this Settlement or to direct any other

response action undertaken at the Site. Absence of the RPM from the Site shall not be cause for stoppage of work unless specifically directed by the RPM.

IX. WORK TO BE PERFORMED

39. If Battle North intends to change land use at a subarea or subareas within the OU3 Property to residential use, it shall provide written notice to the Agencies. Prior to implementing any change to residential use within the OU3 Property, Battle North shall perform, at a minimum, all actions necessary to implement the OU3 ROD and SOW within such subarea or subareas. The actions to be implemented under the SOW generally include, but are not limited to, excavation of contaminated soils and disposal in an approved solid waste disposal facility, installation of a soil exposure barrier, reconstruction of diversion ditches and demolition of a portion of the former tailings slurry pipeline identified in the OU3 ROD.

40. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment or replacement of such regulation or guidance. Such modifications, amendments or replacements apply to Work only after Battle North receives notification from EPA of the modification, amendment or replacement.

41. Subarea Response Action Work Plans and Implementation

a. After noticing the Agencies of its intention to change land use in accordance with Paragraph 39, Battle North shall submit to the Agencies for approval a draft Subarea Response Action Work Plan for the subarea or subareas as listed in this Paragraph to implement Work in accordance with the SOW. The draft Subarea Response Action Work Plan shall identify the subarea or subareas to be remediated and provide a description of, and an expeditious schedule for, the actions required by this Settlement that apply to the selected subarea or subareas. As described in the SOW, subareas include:

- (1) Maloit Park;
- (2) Old Tailings Pile;
- (3) Rex Flats;
- (4) Roaster Pile #5; and
- (5) The area below the elevated Mine Water Transport Pipeline adjacent to the Bolts Lake Area.

b. After consultation with CDPHE and an opportunity for CDPHE to comment, EPA may approve, disapprove, require revisions to or modify the draft Subarea Response Action Work Plan in whole or in part. EPA shall approve, disapprove, require revisions to or modify the draft Subarea Response Action Work Plan in whole or in part to Battle North. If EPA requires revisions, Battle North shall submit a revised draft Subarea Response Action Work Plan not later than 30 days of receipt of EPA's notification of the required

revisions. Battle North shall implement the Subarea Response Action Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Subarea Response Action Work Plan, the schedule and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement.

c. Upon approval or approval with modifications of the Subarea Response Action Work Plan, Battle North shall commence implementation of Work at the identified subarea or subareas in accordance with the schedule included therein. Battle North shall not commence or perform any Work except in conformance with the terms of this Settlement.

d. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the SOW shall be reviewed and approved by EPA in accordance with this Paragraph.

42. Submission of Deliverables

a. General Requirements for Deliverables

(1) Battle North shall direct all submissions required by this Settlement to the RPM and the State Project Manager. Battle North shall submit all deliverables required by this Settlement, the SOW or any approved work plan to the Agencies in accordance with the schedule set forth in such plan.

(2) Battle North shall submit all deliverables in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in Paragraph 42.b. All other deliverables shall be submitted to the Agencies in the form specified by the RPM. If any deliverable includes maps, drawings or other exhibits that are larger than 8.5 x 11 inches, Battle North shall also provide the Agencies with paper copies of such exhibits.

(3) The RPM shall consult with the State Project Manager and provide the State Project Manager an opportunity for comment on all submissions.

b. Technical Specifications for Deliverables

(1) Sampling and monitoring data should be submitted in standard Regional Electronic Data Deliverable (EDD) format of Scribe compatible EDD. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.

(2) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (a) in the ESRI File Geodatabase format, in conformance with “U.S. EPA Region 8 GIS Deliverable Guidance” (May 2017), available at https://r8gis.r08.epa.gov/GeoHub/Resources/Documents/Region8_GIS_Deliverable_Guidance.pdf; and (b) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may

optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.

(3) Each file must include an attribute name for the Site operable unit and relevant subarea or subsareas. Consult <http://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.

(4) Spatial data submitted by Battle North does not, and is not intended to, define the boundaries of the Site.

43. **Health and Safety Plan.** Not later than 30 days before the commencement of any Work, Battle North shall submit a Health and Safety Plan (HASP) that ensures the protection of the public health and safety during performance of on-Site Work to the Agencies. EPA will review and comment on the HASP and will consult with CDPHE and provide an opportunity for CDPHE to comment before approval. CDPHE shall comment to EPA within 20 days of receipt of the HASP. EPA shall review and comment on the HASP to Battle North within 30 days after receipt. The HASP shall be prepared in accordance with “OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities,” Pub. 9285.0-OIC (Nov. 2002), available on the NSCEP database at <http://www.epa.gov/nscep>, and “EPA’s Emergency Responder Health and Safety Manual,” OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaossc.org/_HealthSafetyManual/manual-index.htm. In addition, the HASP shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the HASP shall also include contingency planning. Battle North shall incorporate all changes to the HASP recommended by EPA and shall implement the HASP during the pendency of any Work.

44. **Quality Assurance, Sampling and Data Analysis**

a. Battle North shall use quality assurance, quality control and other technical activities and chain of custody procedures for all samples consistent with “EPA Requirements for Quality Assurance Project Plans (QA/R5)” EPA/240/B-01/003 (March 2001, reissued May 2006), “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005).

b. **Sampling and Analysis Plan.** Not later than 60 days before the commencement of any Work, Battle North shall submit a Sampling and Analysis Plan to the Agencies for EPA review and approval. EPA will consult with CDPHE and provide an opportunity for CDPHE to comment before approval. EPA shall approve, disapprove, require revisions to or modify the Sampling and Analysis Plan in whole or in part to Battle North. This plan shall consist of a Field Sampling Plan and a Quality Assurance Project Plan (QAPP) that is consistent with the SOW, the NCP and applicable guidance documents, including, but not

limited to, “Guidance for Quality Assurance Project Plans (QA/G-5)” EPA/240/R-02/009 (December 2002), “EPA Requirements for Quality Assurance Project Plans (QA/R-5)” EPA 240/B-01/003 (March 2001, reissued May 2006), and “Uniform Federal Policy for Quality Assurance Project Plans,” Parts 1-3, EPA/505/B-04/900A-900C (March 2005). Upon its approval by EPA, the Sampling and Analysis Plan shall be incorporated into and become enforceable under this Settlement.

c. Battle North shall ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Battle North in implementing this Settlement. In addition, Battle North shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance, quality control and technical activities that will satisfy the stated performance criteria as specified in the QAPP and that sampling and field activities are conducted in accordance with “EPA QA Field Activities Procedure,” CIO 2105-P-02.1 (9/23/2014) available at <http://www.epa.gov/irmpoli8/epa-qa-field-activities-procedures>. Battle North shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Settlement meet the competency requirements set forth in EPA’s “Policy to Assure Competency of Laboratories, Field Sampling, and Other Organizations Generating Environmental Measurement Data under Agency-Funded Acquisitions” available at <http://www.epa.gov/measurements/documents-about-measurement-competency-under-acquisition-agreements> and that the laboratories perform all analyses according to accepted EPA methods. Accepted EPA methods consist of, but are not limited to, methods that are documented in the EPA’s Contract Laboratory Program (<http://www.epa.gov/clp>), SW 846 “Test Methods for Evaluating Solid Waste, Physical/Chemical Methods” (<http://www3.epa.gov/epawaste/hazard/testmethods/sw846/online/index.htm>), “Standard Methods for the Examination of Water and Wastewater” (<http://www.standardmethods.org/>), 40 C.F.R. Part 136, “Air Toxics - Monitoring Methods” (<http://www3.epa.gov/ttnamti1/airtox.html>).

d. However, upon approval by EPA, Battle North may use other appropriate analytical method(s), as long as (i) quality assurance/quality control (QA/QC) criteria are contained in the method(s) and the method(s) are included in the QAPP; (ii) the analytical method(s) are at least as stringent as the methods listed above; and (iii) the method(s) have been approved for use by a nationally recognized organization responsible for verification and publication of analytical methods, e.g., EPA, ASTM, NIOSH, OSHA, etc. Battle North shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Settlement have a documented Quality System that complies with ASQ/ANSI E4:2014 “Quality management systems for environmental information and technology programs - Requirements with guidance for use” (American Society for Quality, February 2014), and “EPA Requirements for Quality Management Plans (QA/R-2)” EPA/240/B-01/002 (March 2001, reissued May 2006), or equivalent documentation as determined by EPA. EPA may consider Environmental Response Laboratory Network laboratories, laboratories accredited under the National Environmental Laboratory Accreditation Program, or laboratories that meet International Standardization Organization (ISO 17025) standards or other nationally recognized programs as meeting the Quality System requirements. Battle North shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Settlement are conducted in accordance with the procedures set forth in the QAPP approved by EPA.

e. Upon request, Battle North shall provide split or duplicate samples to EPA or its authorized representatives. Battle North shall notify EPA not less than 7 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall provide to Battle North split or duplicate samples of any samples it takes as part of EPA's oversight of Battle North implementation of any Work.

f. Battle North shall submit to the Agencies the results of all sampling and/or tests or other data obtained or generated by or on behalf of Battle North with respect to the Site and/or the implementation of this Settlement.

g. Battle North waives any objections to any data gathered, generated or evaluated by EPA, CDPHE or Battle North in the performance or oversight of Work that has been verified according to the QA/QC procedures required by the Settlement or any EPA-approved work plans or Sampling and Analysis Plans. If Battle North objects to any other data relating to Work, Battle North shall submit to EPA a report that specifically identifies and explains its objections, describes the acceptable uses of the data, if any, and identifies any limitations to the use of the data. The report must be submitted to EPA not later than 15 days after the monthly progress report containing the data.

45. Progress Reports. Battle North shall submit a written monthly progress report to the Agencies concerning actions undertaken during the previous month pursuant to this Settlement on a monthly basis, or as otherwise requested by EPA. This requirement shall continue from the date of receipt of EPA's approval of the first Subarea Response Action Work Plan until issuance of Notice of Completion of any Work pursuant to Section XXIX, unless otherwise directed in writing by the RPM. These reports are due on the 15th of each month for the proceeding month's activities. The reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems and planned resolutions of past or anticipated problems.

46. Final Response Action Reports. Not later than 90 days after completion of any Work required by a Subarea Response Action Work Plan, other than continuing obligations listed in Section XXIX (Notice of Completion of Work), Battle North shall submit for EPA review and approval a Final Subarea Response Action Report summarizing the actions taken to comply with this Settlement. EPA will consult with CDPHE and provide an opportunity for CDPHE to comment before approval. EPA shall approve, disapprove, require revisions to or modify the Final Response Action Report in whole or in part to Battle North. The Final Subarea Response Action Report shall include a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant documentation generated during any Work (e.g., manifests, invoices, bills, contracts and permits). The Final Subarea Response Action Report shall also include the

following certification signed by a responsible corporate official of Battle North or Battle North's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

47. Off-Site Shipments

a. Battle North may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Battle North will be deemed to be in compliance with CERCLA section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Battle North obtain a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Battle North may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the RPM. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Battle North also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Battle North shall provide the written notice before the Waste Material is shipped.

c. Battle North may ship Investigation Derived Waste (IDW) from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, EPA's "Guide to Management of Investigation Derived Waste," OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the OU3 ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 C.F.R. § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.

X. PROPERTY REQUIREMENTS

48. Access and Non-Interference.

a. Owners shall provide to officers, employees and authorized representatives of EPA and the State access to the Property for the activities set forth below.

Owners shall refrain from using the Property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity or protectiveness of any Work.

b. Owners shall, with respect to any property owned or controlled by another person where EPA determines, at any time, that access is needed to implement Work, use best efforts to secure from such person an agreement, enforceable by Owners, EPA and the State, providing that such person shall, with respect to any property: (i) provide EPA, CDPHE, Owners, and their representatives, contractors and subcontractors with access at all reasonable times to such property conduct any activity regarding Work, including those activities listed in Paragraph 49 (Access Requirements); and (ii) refrain from using such property in any manner that EPA determines will pose an unacceptable risk to human health or to the environment due to exposure to Waste Material, or interfere with or adversely affect the implementation, integrity or protectiveness of any Work.

49. Access Requirements.

a. Access to the Property is required for the following activities:

- (1) Monitoring Work;
- (2) Verifying any data or information submitted to EPA or CDPHE;
- (3) Conducting investigations regarding contamination at or near the Property;
- (4) Obtaining samples;
- (5) Assessing the need for planning, implementing or monitoring response actions;
- (6) Assessing implementation of QA/QC practices as defined in the approved QA/QC plan as defined in an approved QAPP;
- (7) Implementing Work pursuant to the conditions set forth in Paragraph 97 (Work Takeover);
- (8) Inspecting and copying records, operating logs, contracts or other documents maintained or generated by Owners or their agents consistent with Section XI (Access to Information);
- (9) Assessing Owners' compliance with the Settlement;
- (10) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted under the Settlement;

(11) Implementing, monitoring, maintaining, reporting on and enforcing any Institutional Controls regarding the Property.

b. **Best Efforts.** As used in this Section, “best efforts” means the efforts that a reasonable person in the position of Owners would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements. If Owners is unable to accomplish what is required through best efforts in a timely manner, it shall notify EPA, and include a description of the steps taken to comply with the requirements. If EPA deems it appropriate, it may assist Owners, or take independent action, to obtain such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XV (Payment of Future Response Costs).

c. **Access to Construct, Operate and Maintain the OU1 Remedy.** Owners shall provide those entities and their successors, assigns and contractors conducting response actions at the Site pursuant to an agreement with EPA and/or CDPHE, access to and use of the Property pursuant to section 101(40)(E) of CERCLA, 42 U.S.C. § 9601(40)(E), to conduct response actions including, but not limited to, activities related to requirements contained in the 1988 CD/RAP, 1996 CD/SOW, the OU1 ROD Amendment and any future agreement between the Agencies and any other party or its successors and assigns.

50. Prior to notice of completion of Work pursuant to Section XXIX, in the event of any Transfer of the Property, unless EPA otherwise consents in writing, Owners shall continue to comply with their obligations under the Settlement, including their obligation to provide access to the Property to the same extent as is provided under Paragraph 49.a and to implement, maintain, monitor, and report on Institutional Controls to the same extent as required under Paragraph 51.

51. For so long as Owners own the Property, Owners shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property shall provide access and cooperation to (1) EPA, its authorized officers, employees, representatives and all other persons performing response actions under EPA oversight and (2) the State, its authorized officers, employees, representatives and all other persons performing response actions under State oversight. Owners shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Property implement and comply with any land use restrictions and Institutional Controls on the Property in connection with any response actions and not contest EPA’s or the State’s authority to enforce any land use restrictions and Institutional Controls on the Property.

52. Owners shall provide a copy of this Settlement to any current lessee, sublessee, and other party with rights to use the Property as of the Effective Date.

53. **Restrictive Notices.**

a. Battle North shall, not later than 120 days after the Effective Date, execute, record and comply with the Restrictive Notices in the Clerk and Recorder's Office of Eagle County, Colorado for the following areas as described in the SOW:

- (1) Consolidated Tailings Pile;
- (2) Maloit Park;
- (3) Old Tailings Pile;
- (4) Rex Flats;
- (5) Roaster Pile #5; and
- (6) The area below the elevated Mine Water Transport Pipeline adjacent to the Bolts Lake Area.

b. Attached hereto as Appendix 3 are the use restrictions that Battle North will include in the Restrictive Notices for the areas described in Paragraph 53.a(1)-a(6).

c. Battle South shall, not later than 120 days after the Effective Date, execute, record and comply with the Restrictive Notice in the Clerk and Recorder's Office of Eagle County, Colorado for the following area as described in the SOW:

- (1) Gilman.

d. Attached hereto as Appendix 4 are the use restrictions that Battle South will include in the Restrictive Notice for the area described in Paragraph 53.c(1).

e. Owners shall execute, record and comply with such Restrictive Notices in accordance with the CDPHE's January 2012 Institutional Controls Implementation Guidance. Owners shall cooperate with EPA and CDPHE and ensure that the Restrictive Notices and the areas subject to the Restrictive Notices are added to the CDPHE's Hazardous Materials and Waste Management Division GIS map and database, which are publicly available through an online, web-based platform. Owners shall execute and return a certification form provided by the CDPHE, on an annual basis, detailing Owners' compliance, and any lack of compliance, with the terms of the Restrictive Notices.

f. Not later than 10 days of recording the Restrictive Notices, Owners shall provide to the Agencies a copy of the recorded Restrictive Notices, in accordance with Section XVI (Notices and Submissions). Owners shall comply with all Restrictive Notices requirements including payment of annual fees.

54. Notwithstanding any provision of this Settlement, EPA and the State retain all of their access authorities and rights, as well as all of their rights to require Institutional Controls,

including enforcement authorities related thereto, under CERCLA, RCRA, Colorado's Environmental Covenants Statute and any other applicable statutes or regulations.

XI. ACCESS TO INFORMATION

55. Owners shall provide to the Agencies, upon request, copies of all records, reports, documents and other information (including records, reports, documents and other information in electronic form) (hereinafter referred to as Records) within Owners' possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence or other documents or information regarding Work. Owners shall also make available to the Agencies, for purposes of investigation, information gathering or testimony, their employees, agents or representatives with knowledge of relevant facts concerning the performance of any Work.

56. Privileged and Protected Claims

a. Owners may assert all or part of a Record requested by EPA or CDPHE is privileged or protected as provided under federal law, in lieu of providing the Record, provided Owners comply with Paragraph 56.b, and except as provided in Paragraph 56.c.

b. If Owners assert such a privilege or protection, they shall provide EPA or CDPHE with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm) and address of the author, of each addressee and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Owners shall provide the Record to EPA in redacted form to mask the privileged or protected portion only. Owners shall retain all Records that they claim to be privileged or protected until EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Owners' favor.

c. Owners may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Owners are required to create or generate pursuant to this Settlement.

57. **Business Confidential Claims.** Owners may assert that all or part of a Record provided to EPA under this Section or Section XII (Record Retention) is business confidential to the extent permitted by and in accordance with section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Owners shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Owners assert business confidentiality claims. Records that Owners claims to be confidential business information will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Owners that the Records are not

confidential under the standards of section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such Records without further notice to Owners.

58. Notwithstanding any provision of this Settlement, the Agencies retain all of their information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

XII. RECORD RETENTION

59. Until 10 years after EPA provides Owners with notice, pursuant to Section XXIX (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Owners shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in their possession or control, or that come into their possession or control, that relate in any manner to their BFPP status under CERCLA with regard to the Site, provided that Owners retain all Records that relate to the liability of any other person under CERCLA with respect to the Site. Owners must also retain, and instruct their contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in their possession or control or that come into their possession or control that relate in any manner to the performance of Work, provided, however, that Owners (and their contractors and agents) must retain, in addition, copies of all data generated during the performance of Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

60. At the conclusion of the document retention period, Owners shall notify the Agencies at least 90 days prior to the destruction of any such Records, and, upon request by EPA, and except as provided in Paragraph 56 (Privileged and Protected Claims), Owners shall deliver any such Records to EPA.

61. Owners certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to the Site and that they have fully complied with any and all EPA and State requests for information regarding the Site pursuant to sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIII. COMPLIANCE WITH OTHER LAWS

62. Nothing in this Settlement limits Owners' obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e).

63. No local, state or federal permit shall be required for any portion of Work conducted entirely on-Site (i.e., within the areal extent of contamination or in close proximity to the contamination and necessary for implementation of Work), including studies, if the action is selected and carried out in compliance with section 121 of CERCLA, 42 U.S.C. § 9621. Where

any portion of Work that is not on-Site requires a federal or state permit or approval, Owners shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Owners may seek relief under the provisions of Section XVII (Force Majeure) for any delay in the performance of Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

60. **Emergency Response.** If any event occurs during performance of Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Owners shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Owners shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the HASP. Owners shall also immediately notify the RPM or, in the event of the RPM's unavailability, the Regional Duty Officer at (800) 424-8802 of the incident or Site conditions. Owners shall also notify the State Project Manager and the State of Colorado's Environmental Release and Incident Reporting Line at (877) 518-5608. In the event that Owners fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Owners shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XV (Payment of Future Response Costs).

64. **Release Reporting.** Upon the occurrence of any event during performance of Work that Owners are required to report pursuant to section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Owners shall immediately orally notify the RPM or, in the event of her unavailability, the Regional Duty Officer at (303) 293-1788, and the National Response Center at (800) 424-8802. Owners shall also notify the State Project Manager and the State of Colorado's Environmental Release and Incident Reporting Line at (877) 518-5608. This reporting requirement is in addition to, and not in lieu of, reporting under section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and section 304 of EPCRA, 42 U.S.C. § 11004.

65. For any event covered under this Section, Owners shall submit a written report to EPA and CDPHE not later than 5 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XV. PAYMENT OF FUTURE RESPONSE COSTS

66. Payments for Future Response Costs. Owners shall pay all Future Response Costs not inconsistent with the NCP.

a. On a periodic basis, EPA will send Owners an electronic billing notification to the individuals listed for Owners in Section XXXIII (Notices and Submissions). If the billing notification is undeliverable, EPA will mail a paper copy to the billing notification to Owners at the mailing address set forth in Section XXXIII.

b. The billing notification will include a standard regionally-prepared cost report with the direct and indirect costs incurred by EPA and its contractors, subcontractors, the State and the United States Department of Justice. Owners shall make all payments not later than 30 days of receipt of the bill, except as otherwise provided in Paragraph 67 (Contesting Future Response Costs). Owners shall make payments using one of the payment methods set forth in the billing notification.

c. Owners may change their email billing address or mailing address by providing notice of the new address to:

Financial Management Officer
US EPA Region 8 (TMS-FMP)
1595 Wynkoop Street
Denver, Colorado 80202

d. Deposit of Future Response Costs Payments. The total amount to be paid by Owners pursuant to Paragraph 66.a may be deposited by EPA in an Eagle Mine Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund. Any decision by EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund shall not be subject to challenge by Owners pursuant to the dispute resolution provisions of this Settlement or in any other forum.

e. Interest. In the event that any payment for Future Response Costs is not made by the date required, Owners shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the bill's due date and shall continue to accrue through the date of Owners' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Owners' failure to make timely payments under this Section, including but not limited to, payments of stipulated penalties pursuant to Section XVIII (Stipulated Penalties).

67. Contesting Future Response Costs. Owners may initiate the procedures of Section XVI (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 66 (Payments of Future Response Costs) if they determine that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if they believe the United States incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Owners shall submit a Notice of Dispute in writing to the RPM not later than 30 days after receipt of the bill. Any such Notice of Dispute shall identify the contested Future Response Costs and the basis for objection. If Owners submit a Notice of Dispute, Owners shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future

Response Costs to EPA and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Owners shall send to the RPM a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If EPA prevails in the dispute, not later than 5 days after the resolution of the dispute, the escrow agent shall release the sums due (with accrued interest) to EPA. If Owners prevail concerning any aspect of the contested costs, the escrow agent shall release that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA. Owners shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Owners' obligation to reimburse EPA for Future Response Costs.

XVI. DISPUTE RESOLUTION

68. Unless otherwise expressly provided for in this Settlement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement. EPA and Owners shall attempt to resolve any disagreements concerning this Settlement expeditiously and informally.

69. **EPA Informal Dispute Resolution.** If Owners object to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, they shall send EPA a written Notice of Dispute describing the objection(s) not later than 30 days after such action. EPA and Owners shall have 30 days from EPA's receipt of Owners' Notice of Dispute to resolve the dispute through informal negotiations ("Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA, CDPHE and Owners pursuant to this Section shall be in writing and shall, upon signature by EPA, CDPHE and Owners, be incorporated into and become an enforceable part of this Settlement.

70. **EPA Formal Dispute Resolution.** If EPA, CDPHE and Owners are unable to reach an agreement within the Negotiation Period, Owners shall, not later than 20 days after the end of the Negotiation Period, submit a statement of position to the RPM. EPA may, not later than 20 days thereafter, submit a statement of position. Thereafter, an EPA management official at the Assistant Regional Administrative level or higher will issue a written decision on the dispute to Owners. EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Owners shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

71. Except as provided in Paragraph 67 (Contesting Future Response Costs) or as agreed by EPA or CDPHE, the invocation of formal dispute resolution procedures under this Section does not extend, postpone or affect in any way any obligation of Owners under this Settlement. Except as provided in Paragraph 81, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute.

Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Owners do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVIII (Stipulated Penalties).

XVII. FORCE MAJEURE

72. “Force Majeure” for purposes of this Settlement is defined as any event arising from causes beyond the control of Owners, of any entity controlled by Owners, or of Owners’ contractors that delays or prevents the performance of any obligation under this Settlement despite Owners’ best efforts to fulfill the obligation. Owners must exercise best efforts to anticipate any potential Force Majeure and best efforts to address the effects of any potential Force Majeure (a) as it is occurring and (b) following the potential Force Majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. Force Majeure does not include financial inability to complete Work or increased cost of performance.

73. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Owners intend or may intend to assert a claim of Force Majeure, Owners shall notify EPA’s RPM orally or, in the RPM’s absence, the Director of Superfund Remedial Program, EPA Region 8, not later than 7 days of when Owners first knew that the event might cause a delay. Not later than 30 days thereafter, Owners shall provide in writing to the Agencies an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Owners’ rationale for attributing such delay to a Force Majeure; and a statement as to whether, in the opinion of Owners, such event may cause or contribute to an endangerment to public health or welfare or the environment. Owners shall include with any notice all available documentation supporting their claim that the delay was attributable to a Force Majeure. Owners shall be deemed to know of any circumstance of which Owners, any entity controlled by Owners, or Owners’ contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Owners from asserting any claim of Force Majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a Force Majeure under Paragraph 72 and whether Owners has exercised their best efforts under Paragraph 72, EPA may, in its unreviewable discretion, excuse in writing Owners’ failure to submit timely or complete notices under this Paragraph.

74. If EPA agrees that the delay or anticipated delay is attributable to a Force Majeure, the time for performance of the obligations under this Settlement that are affected by the Force Majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the Force Majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a Force Majeure, EPA will notify Owners in writing of its decision. If EPA agrees that the delay is attributable to a Force Majeure, EPA will notify Owners in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure.

75. If Owners elect to invoke the dispute resolution procedures set forth in Section XVI (Dispute Resolution), it shall do so not later than 15 days after receipt of EPA's notice. In any such proceeding, Owners shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a Force Majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Owners complied with the requirements of Paragraphs 72 and 73. If Owners carry this burden, the delay at issue shall be deemed not to be a violation by Owners of the affected obligation of this Settlement identified to EPA.

76. The failure by EPA or the State to timely complete any obligation under the Settlement is not a violation of the Settlement, provided, however, that if such failure prevents Owners from meeting one or more deadlines under the Settlement, Owners may seek relief under this Section.

XVIII. STIPULATED PENALTIES

77. Owners shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 78 and 79 for failure to comply with the requirements of this Settlement specified below unless excused under Section XVII (Force Majeure).

78. EPA Stipulated Penalty Amounts – Payments, Major Deliverables and Other Milestones

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 78.b:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 14th day
\$ 1,500	15th through 30th day
\$ 3,000	31st day and beyond

b. Obligations

- VII.
- (1) Payment in satisfaction of windfall lien in accordance with Section
 - (2) Payment of Future Response Costs in accordance with Section XV.
 - (3) Recording of Battle North Restrictive Notices.
 - (4) Recording of Battle South Restrictive Notices.
 - (5) Timely submission of any Subarea Response Action Work Plan.

(6) Establishment of an escrow account under Paragraph 67 (Contesting Future Response Costs).

79. EPA Stipulated Penalty Amounts – Other Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, other than those specified in Paragraph 78.b and for any other noncompliance with the terms of this Settlement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 750	1st through 14th day
\$ 1,500	15th through 30th day
\$ 3,000	31st day and beyond

80. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 97 (Work Takeover), Battle North shall be liable for a stipulated penalty in the amount of \$100,000.

81. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid not later than 15 days after the agreement or the receipt of EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 41 (Subarea Remedial Action Work Plans and Implementation), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Battle North of any deficiency; and (b) with respect to a decision by the EPA management official at the Assistant Regional Administrator level or higher, under Paragraph 70 (EPA Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

82. Following EPA's determination that Owners have failed to comply with a requirement of this Settlement, EPA may give Owners written notification of the failure and describe the noncompliance. EPA may send Owners a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Owners of a violation.

83. All penalties accruing under this Section shall be due and payable to EPA, not later than 30 days of Owners' receipt from EPA of a demand for payment of the penalties, unless Owners invoke the Dispute Resolution procedures under Section XVI (Dispute Resolution) within the 30-day period. All payments to EPA under this Section shall indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 66 (Payments for Future Response Costs).

84. If Owners fail to pay stipulated penalties when due, Owners shall pay Interest on the unpaid stipulated penalties as follows: (a) if Owners have timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 81 until the date of payment; and (b) if Owners fail to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 83 until the date of payment. If Owners fail to pay stipulated penalties and Interest when due, the United States, and the State if appropriate, may institute proceedings to collect the penalties and Interest.

85. The payment of penalties and Interest, if any, shall not alter in any way Owners' obligation to complete the performance of any Work required under this Settlement.

86. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA or CDPHE to seek any other remedies or sanctions available by virtue of Owners' violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to section 106(b) of CERCLA, 42 U.S.C. § 9606(b), provided, however, that EPA shall not seek civil penalties pursuant to section 106(b) for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of this Settlement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 97 (Work Takeover).

87. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XIX. CERTIFICATION

88. By entering into this Settlement, Owners certify that to the best of their knowledge and belief they have fully and accurately disclosed to EPA and the State all information known to Owners and all information in the possession or control of their officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to their qualification for this Settlement. Owners also certify that to the best of their knowledge and belief they have not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. Owners further certify to the representations made under Paragraph 4.

XX. COVENANTS BY UNITED STATES AND STATE

89. Except as provided in Section XXI (Reservations of Rights by United States and State), the United States covenants not to sue or to take administrative action against Owners pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for Existing Contamination, Work and Future Response Costs. These covenants not to sue shall take effect upon the Effective Date and are conditioned upon the complete and satisfactory performance by Owners of all obligations under this Settlement. These covenants are also conditioned upon the veracity of the information provided to EPA and the State by Owners relating to Owners'

involvement with the Site and the certification made by Owners in Paragraph 88. These covenants not to sue extend only to Owners and do not extend to any other person.

90. Except as provided in Section XXI (Reservations of Rights by United States and State), the State covenants not to sue or to take administrative action against Owners pursuant to section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for Existing Contamination, Work and Future Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Owners of all obligations under this Settlement. This covenant is also conditioned upon the veracity of the information provided to EPA and the State by Owners relating to Owners' involvement with the Site and the certification made by Owners in Paragraph 88. These covenants not to sue extend only to Owners and do not extend to any other person.

91. Except as provided in Paragraph 89 and 90, nothing in this Settlement constitutes a covenant not to sue or to take action or otherwise limits the ability of the United States, including EPA, or the State to seek or obtain further relief from Owners, if the information provided to EPA and the State by Owners relating to Owners' involvement with the Site, or the certification made by Owners in Paragraph 88, is false or in any material response, inaccurate.

XXI. RESERVATIONS OF RIGHTS BY UNITED STATES AND STATE

92. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority, the United States or the State to take, direct or order all actions necessary to protect public health, welfare or the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at or from the Site. Further, except as specifically provided in this Settlement, nothing in this Settlement shall prevent the United States or the State from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Owners in the future to perform additional activities pursuant to CERCLA or any other applicable law.

93. The covenants set forth in Section XX (Covenant by United States and State) do not pertain to any matters other than those expressly identified therein. The United States and the State reserve, and this Settlement is without prejudice to, all rights against Owners with respect to all other matters, including, but not limited to:

- a. Liability for failure by Owners to meet a requirement of this Settlement;
- b. Liability under CERCLA, including sections 106 and 107, 42 U.S.C. §§ 9606 and 9607, which arises due to failure of Owners or assignees, successors in interest or any lessees, sublessees or other parties with rights to use the Property to comply with section 101(40), 42 U.S.C. § 9601(40);
- c. Criminal liability;

d. Liability for violations of federal or state law that occur during or after implementation of any Work;

e. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. Liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site as of the Effective Date, not within the definition of Existing Contamination;

g. Liability resulting from exacerbation of Existing Contamination by Owners, their successors, assigns, lessees or sublessees; and

h. Liability arising from the disposal, release or threat of release of Waste Materials outside of the Site.

94. With respect to any claim or cause of action asserted by the United States or the State, Owners shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Owners have complied with all of the requirements of 42 U.S.C. § 9601(40).

95. Nothing in this Settlement is intended as a release and waiver for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, other than the release and waiver of the section 107(r) lien in Section VII, which the United States or the State may have against any person, firm, corporation or other entity not a party to this Settlement. The United States reserves the right to compel potentially responsible parties that are not a party to this Settlement to perform or pay for response actions at the Site.

96. Nothing in this Settlement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by EPA in exercising its authority under federal law. Owners acknowledges that they purchased Property where response actions may be required.

97. Work Takeover

a. In the event EPA determines that Battle North: (1) has ceased implementation of any portion of any Work; (2) is seriously or repeatedly deficient or late in its performance of any Work; or (3) is implementing any Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice (Work Takeover Notice) to Battle North after consultation with CDPHE. Any Work Takeover Notice issued by EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide Battle North a period of 3 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 3-day notice period specified in Paragraph 97.a, Battle North has not remedied to EPA's satisfaction the circumstances giving rise to EPA's

issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as EPA deems necessary (Work Takeover). EPA will notify Battle North in writing (which writing may be electronic) if EPA determines that implementation of a Work Takeover is warranted under this Paragraph.

c. Battle North may invoke the procedures set forth in Paragraph 70 (Formal Dispute Resolution) to dispute EPA's implementation of a Work Takeover under Paragraph 97.b. However, notwithstanding Battle North's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 97.b until the earlier of (1) the date that Battle North remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 70 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY OWNERS

98. Owners covenant not to sue and agrees not to assert any claims or causes of action against the United States, the State, or their contractors or employees, with respect to Existing Contamination, Work, Future Response Costs and this Settlement, including, but not limited to:

a. Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through sections 106(b)(2), 107, 111, 112 or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612 or 9613, or any other provision of law;

b. Any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Colorado Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law;

c. Any claim pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding Existing Contamination, Work, Future Response Costs and this Settlement; or

d. Any direct or indirect claim for return of unused amounts from an Eagle Mine Special Account.

99. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XXI (Reservations of Rights), other than in Paragraph 93.a (Liability for Failure to Meet a Requirement of the Settlement), 93.c (Criminal Liability), or 93.d (Violations of Federal/State law During or After Implementation of Work), but only to the extent that Owners' claims arise from the same response action, response costs or damages that the United States is seeking pursuant to the applicable reservation.

100. Nothing in this Settlement shall be deemed to constitute approval or preauthorization of a claim within the meaning of section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

101. Owners reserve, and this Settlement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Owners' deliverables or activities.

XXIII. OTHER CLAIMS

102. By issuance of this Settlement, the United States, EPA, CDPHE and the State assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Owners. Neither the United States, EPA, CDPHE or the State shall be deemed a party to any contract entered into by Owners or their directors, officers, employees, agents, successors, representatives, assigns, contractors or consultants in carrying out actions pursuant to this Settlement.

103. Except as expressly provided in Section VII (Payment and Release and Waiver of Lien) and Section XX (Covenants by United States and State), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Owners or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

104. No action or decision by EPA or the State pursuant to this Settlement shall give rise to any right to judicial review, except as set forth in section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. EFFECT OF SETTLEMENT/CONTRIBUTION

105. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXII (Covenants by Owners), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands and causes of action which each Party may have with respect to any matter, transaction or occurrence relating in any way to the Site against any person not a party hereto. Nothing

herein diminishes the right of the United States, pursuant to sections 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to section 113(f)(2).

106. If a suit or claim for contribution is brought against Owners, notwithstanding the provisions of section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination, including any claim based on the contention that Owners are not BFPPs, or has lost their status as BFPPs as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM, the Parties agree that this Settlement constitutes an administrative settlement pursuant to which Owners have, as of the Effective Date, resolved liability to the United States within the meaning of sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are Work, Future Response Costs and any related windfall lien arising under section 107(r) of CERCLA.

107. If Owners are found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be BFPPs, or to have lost their status as BFPPs as a result of response actions taken in compliance with this Settlement or at the direction of EPA's RPM, the Parties agree that this Settlement shall then constitute an administrative settlement pursuant to which Owners have, as of the Effective Date, resolved liability to the United States within the meaning of section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

108. Owners shall, with respect to any suit or claim brought by it for matters related to this Settlement, notify EPA in writing not later than 60 days prior to the initiation of such suit or claim. Owners shall, with respect to any suit or claim brought against it for matters related to this Settlement, notify EPA in writing within 10 days after service of the complaint or claim upon it. In addition, Owners shall notify EPA within 10 days after service or receipt of any Motion for Summary Judgment and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Settlement.

109. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, or by CDPHE, for injunctive relief, recovery of response costs or other relief relating to the Site, Owners shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants by EPA and CDPHE set forth in Section XX (Covenants by United States and State).

XXV. INDEMNIFICATION

110. The United States and the State do not assume any liability by entering into this Settlement or by virtue of any designation of Owners as EPA's or CDPHE's authorized representatives under section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. § 300.400(d)(3). Owners shall indemnify, save and hold harmless the United States and the State, their officials, agents, employees, contractors, subcontractors and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Owners, their officers, directors, employees, agents, contractors or subcontractors, and any persons acting on Owners' behalf or under their control, in carrying out activities pursuant to this Settlement. Further, Owners agree to pay the United States and the State all costs it incurs, including but not limited to attorney fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States or the State based on negligent or other wrongful acts or omissions of Owners, their officers, directors, employees, agents, contractors, subcontractors and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Settlement. The United States or the State shall not be held out as a party to any contract entered into by or on behalf of Owners in carrying out activities pursuant to this Settlement. Neither Owners nor any such contractor shall be considered an agent of the United States or the State.

111. If Owners fail to comply with the terms of this Settlement, they shall be liable for all litigation and other enforcement costs incurred by the United States and the State to enforce this Settlement or otherwise obtain compliance.

112. The United States or the State shall give Owners notice of any claim for which the United States or the State plan to seek indemnification pursuant to this Section and shall consult with Owners prior to settling such claim.

113. Owners covenant not to sue and agree not to assert any claims or causes of action against the United States or the State for damages or reimbursement or for set-off of any payments made or to be made to the United States or the State, arising from or on account of any contract, agreement or arrangement between any one or more of Owners and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Owners shall indemnify and hold harmless the United States and the State with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement or arrangement between Owners and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXVI. INSURANCE

114. Not later than 30 days before commencing any on-Site Work under an approved Subarea Response Action Work Plan, Battle North shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXIX (Notice of Completion of Work), commercial general liability insurance with limits of \$1 million per occurrence, and automobile liability insurance with limits of liability of \$1 million per accident, and umbrella liability insurance with limits of liability of \$5 million in excess of the required commercial general liability and automobile liability limits, naming EPA as an additional insured

with respect to all liability arising out of the activities performed by or on behalf of Battle North pursuant to this Settlement. In addition, for the duration of the Settlement, Battle North shall provide EPA with certificates of such insurance and a copy of each insurance policy. Battle North shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Battle North shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing Work on behalf of Battle North in furtherance of this Settlement. If Battle North demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Battle North need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor. Battle North shall ensure that all submittals to EPA under this Paragraph identify the Eagle Mine Superfund Site in Eagle County, Colorado, and the EPA docket number for this action.

XXVII. MODIFICATION

115. After notification to the State Project Manager and an opportunity to comment, EPA's RPM may modify any plan or schedule or the SOW in writing or by oral direction. Any oral modification will be memorialized in writing by EPA within 48 hours of the oral modification, but shall have as its effective date the date of the RPM's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the EPA and Owners, after consultation with CDPHE and an opportunity for CDPHE comment.

116. If Battle North seeks permission to deviate from any approved work plan or schedule or the SOW, Battle North's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Battle North may not proceed with the requested deviation until receiving oral or written approval from the RPM pursuant to Paragraph 115.

117. No informal advice, guidance, suggestion or comment by the RPM or other EPA representatives or the State Project Manager or other State representatives regarding any deliverable submitted by Battle North shall relieve Battle North of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVIII. ADDITIONAL WORK

118. If EPA determines that additional work not included in the SOW, any Subarea Response Action Work Plan or other approved plan(s) is necessary to protect public health, welfare or the environment, EPA will notify Battle North of that determination. EPA will consult with CDPHE prior to notifying Battle North. Unless otherwise stated by EPA, within 30 days after receipt of notice from EPA that additional work is necessary to protect public health, welfare or the environment, Battle North shall submit for approval by EPA a work plan for the additional work. The plan shall conform to the applicable requirements of Section IX (Work to be Performed) of this Settlement. EPA will provide CDPHE an opportunity to comment on the

work plan prior to approval. Upon EPA's approval of the plan pursuant to Paragraph 41 (Subarea Response Action Work Plans and Implementation), Battle North shall implement the plan for additional work in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the RPM's authority to make oral modifications to any plan or schedule pursuant to Section XXVII (Modification).

XXIX. NOTICE OF COMPLETION OF WORK

119. When EPA determines, after EPA's review of a Final Subarea Response Action Report, that any Work required under the Final Subarea Response Action Report has been fully performed in accordance with this Settlement for the identified subarea or subareas, with the exception of any continuing obligations required by this Settlement, including, but not limited to continued compliance with CERCLA § 101(40) with respect to the Property in accordance with Paragraph 3, compliance with Institutional Controls, payment of Future Response Costs or record retention, EPA will provide written notice to Battle North. EPA will consult with CDPHE and provide CDPHE an opportunity to comment before approval. If EPA determines that any such Work has not been completed in accordance with this Settlement, EPA will notify Battle North and provide a list of the deficiencies and require that Battle North modify the Subarea Response Action Work Plan if appropriate in order to correct such deficiencies. Battle North shall implement the modified and approved Subarea Response Action Work Plan and shall submit a modified Final Subarea Response Action Report to EPA. Failure by Battle North to implement the approved modified Subarea Response Action Work Plan shall be a violation of this Settlement.

XXX. PUBLIC COMMENT

120. This Settlement shall be subject to a 30-day public comment period, after which EPA may modify or withdraw its consent to this Settlement if comments received disclose facts or considerations which indicate that this Settlement is inappropriate, improper or inadequate.

XXXI. EFFECTIVE DATE

121. The effective date of this Settlement shall be the date upon which EPA issues written notice to Owners that EPA has fully executed the Settlement after review of and response to any public comments received.

XXXII. INTEGRATION/APPENDICES

122. This Settlement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement.

- a. Appendix 1 is a map of the Site.

- b. Appendix 2 is the SOW.
- c. Appendix 3 is the Battle North Restrictive Notices.
- d. Appendix 4 is the Battle South Restrictive Notice.

XXXIII. NOTICES AND SUBMISSIONS

123. All approvals, consents, deliverables, modifications, notices, notifications, objections, proposals, reports and requests specified in this Settlement must be in writing unless otherwise specified. Whenever, under this Settlement, notice is required to be given, or a report or other document is required to be sent, by one Party to another, it must be directed to the person(s) specified below at the address(es) specified below. Any Party may change the person and/or address applicable to it by providing notice of such change to all Parties. All notices under this Section are effective upon receipt, unless otherwise specified. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Settlement regarding such Party.

As to EPA:

Jamie Miller
Remedial Project Manager
Mail Code: 8EPR-SR
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street,
Denver, Colorado 80202
Miller.Jamie@epa.gov
(303) 312-6519

and:

Kayleen Castelli
Enforcement Attorney
Mail Code: 8ENF-L
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street,
Denver, Colorado 80202
Castelli.kayleen@epa.gov
(303) 312-6174

As to the State:

Wendy K. Naugle
State Project Manager
Colorado Department of Public Health &
Environment
HMWMD-RP-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246
Wendy.naugle@state.co.us
303-692-3394

and:

Jason King
Assistant Attorney General
Office of Attorney General
1300 Broadway,
Denver, Colorado 80202
Jason.king@coag.gov
720-508-6283

As to Owners:

Lorne Bassel
General Partner
Crave Real Estate
4333 Ste. Catherine St. West – Suite 520
Westmount, QC H3Z 1P9

Stuart A. Margulies
Senior Managing Principal
Lubert-Adler Partners, L.P.
The Cria Centre
2929 Arch Street
Philadelphia, PA 19104-2868

Tim McGuire
Battle Mountain Director of Development
ACP Communities
PO Box 56
Minturn, Colorado 81645
tmcguire@battlemountainresort.com
(970) 827-4609

and:

Rebecca Almon
Director, Outside Counsel
Ireland Stapleton Pryor & Pascoe, PC
717 17th Street, Suite 2800
Denver, Colorado 80202
ralmon@irelandstapleton.com
(303) 628-3606

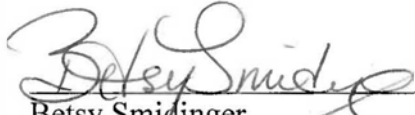
XXXIV. DISCLAIMER

124. This Settlement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

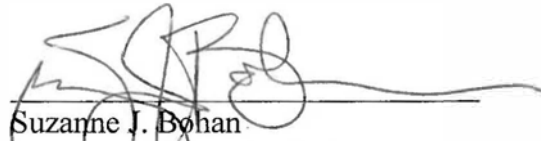
IT IS SO AGREED AND ORDERED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

6/11/18
Dated


Betsy Smidinger
Assistant Regional Administrator
Office of Ecosystems, Protection and Remediation

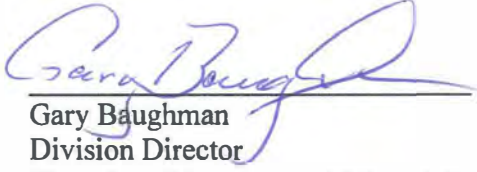
7/3/18
Dated


Suzanne J. Bohan
Assistant Regional Administrator
Office of Enforcement, Compliance and
Environmental Justice

IT IS SO AGREED AND ORDERED:

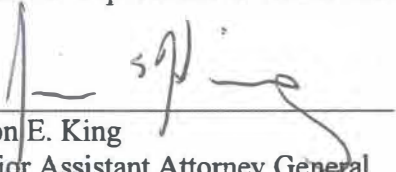
COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

6/7/2018
Dated



Gary Baughman
Division Director
Hazardous Materials and Waste Management Division
Colorado Department of Public Health and Environment

6/7/18
Dated



Jason E. King
Senior Assistant Attorney General
Colorado Attorney General's Office

IT IS SO AGREED AND ORDERED:

UNITED STATES DEPARTMENT OF JUSTICE

7/24/18
Dated

Jeffrey W. Wood
Jeffrey Wood
Acting Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice


The undersigned representative of Owners certifies that it is fully authorized to enter into the terms and conditions of this Settlement and to bind the party it represents to this document.

IT IS SO AGREED:

FOR Battle North, LLC:

By: Bassel Battle Investment, Corp., a Colorado corporation, its Manager

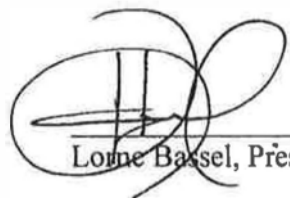
6/5/18
Dated


Lorne Bassel, President

FOR Battle South, LLC:

By: Bassel Battle Investment, Corp., a Colorado corporation, its Manager

6/5/18
Dated

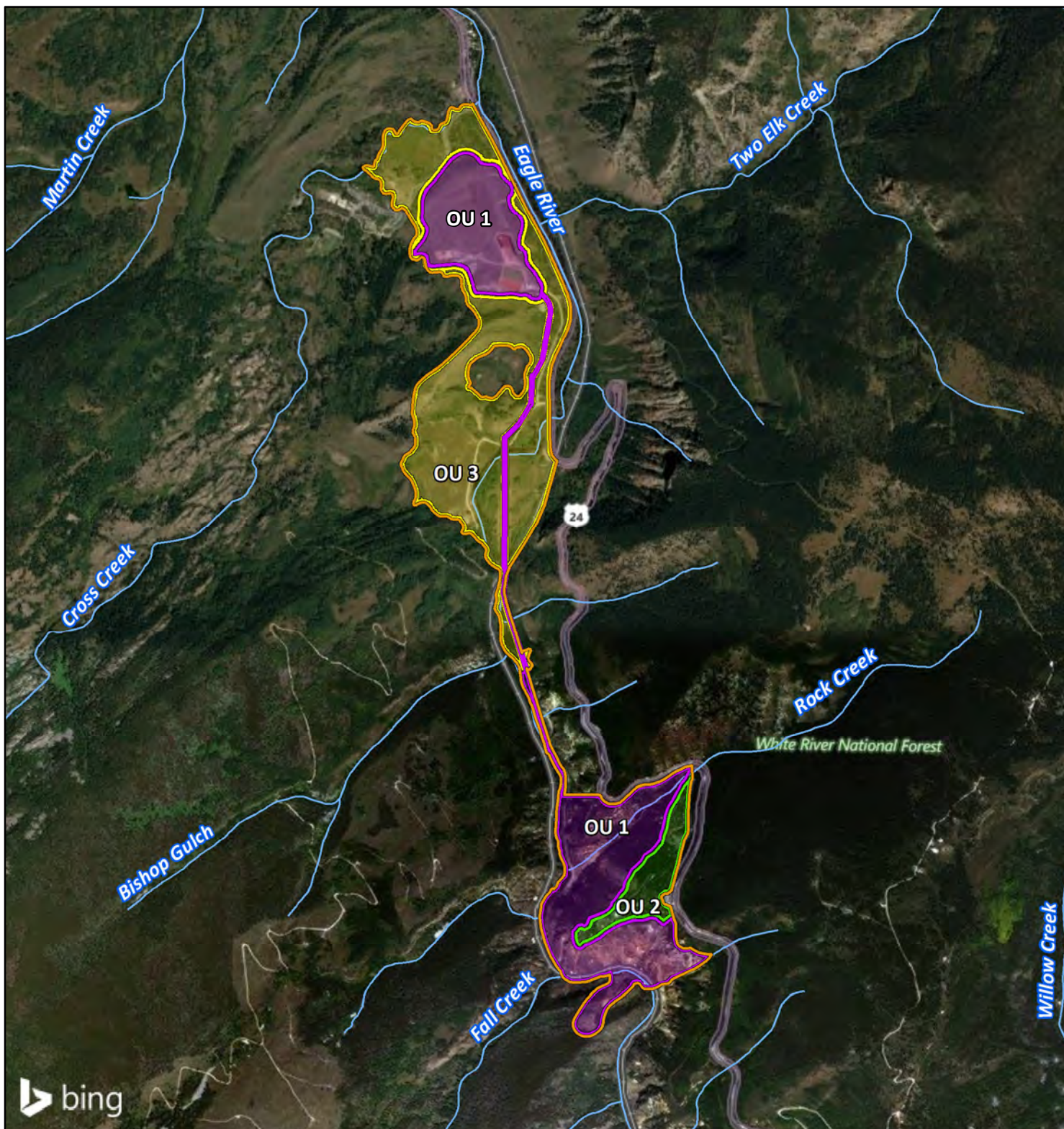

Lorne Bassel, President

To be completed by EPA after the public comment period:






The Effective Date of this Settlement is September 25, 2018.

Appendix 1

Site Map



Eagle Mine OU Boundaries

-  NPL Boundary
-  OU 1
-  OU 2
-  OU 3
-  Stream

Date: February 22, 2018

Map Projection: UTM, Meters, 13 North, WGS84

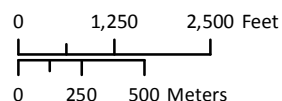
Data Sources: Boundaries - U.S. EPA Region 8 (2018);

Streams - CDOW (2004);

Imagery - Microsoft Bing Web Service (2018).

*Boundaries are based on the nature and extent of contamination and are subject to change.

*This site map does not depict legal boundaries and has not been surveyed. It is intended to be a visual representation.



Appendix 2
Statement of Work
Operable Unit 3
Eagle Mine Superfund Site
EPA Region 8

April 2018

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1. INTRODUCTION

1.1 Purpose of the SOW. This Statement of Work (SOW) sets forth the procedures and requirements for implementing the Work (as defined in the Settlement noted in Section 1.4).

1.2 Structure of the SOW

- (a) Section 2 (Community Involvement) sets forth the U.S. Environmental Protection Agency's (EPA's) and Battle North, LLC's (Battle North's) responsibilities for community involvement.
- (b) Section 3 (Response Design) sets forth the process for developing the Response Design (RD), which includes the submission of specified primary deliverables.
- (c) Section 4 (Response Action) sets forth requirements regarding the completion of the Response Action (RA), including primary deliverables related to completion of the RA.
- (d) Section 5 (Reporting) sets forth Battle North's reporting obligations.
- (e) Section 6 (Deliverables) describes the content of the supporting deliverables and the general requirements regarding Battle North's submission of, and EPA's review of, approval of, comment on, and/or modification of, the deliverables.
- (f) Section 7 (Schedules) sets forth the schedule for submitting the primary deliverables, specifies the supporting deliverables that must accompany each primary deliverable, and sets forth the schedule of milestones regarding the completion of the RA.
- (g) Section 8 (State Participation) addresses participation by the State of Colorado (State).
- (h) Section 9 (References) provides a list of references, including URLs.

1.3 The Scope of the Remedy includes the actions described in Section 12 of the Record of Decision (ROD) for Operable Unit 3 (OU3) of the Eagle Mine Superfund Site (Site), issued by EPA on September 28, 2017, including:

- (a) Excavation of impacted soil, tailings and boulders;
- (b) Containment/disposal of the excavated materials at a solid waste disposal facility;
- (c) Installation of a soil exposure barrier;
- (d) Grading to manage water drainage around impacted materials and prevent ponding;

- (e) Demolition of the Former Tailings Slurry Pipeline and containment/disposal of the materials at a solid waste disposal facility;
- (f) Implementation of institutional controls (ICs); and
- (g) Long-term management to ensure continued compliance with Applicable or Relevant and Appropriate Requirements (ARARs).

Battle North (or designated representative) will complete design and construction for the response components listed above for individual subareas of OU3 as described in the Settlement. Traditionally, the ROD includes a level of detail sufficient to begin RD. For OU3, Battle North will prepare RD packages specific to a subarea or subareas as identified by Battle North for land use change.

- 1.4** The terms used in this SOW that are defined in CERCLA, in regulations promulgated under CERCLA, or in the Administrative Settlement Agreement and Order on Consent for Response Action and Waiver of CERCLA § 107(r) lien (Settlement), have the meanings assigned to them in CERCLA, in such regulations, or in the Settlement, except that the term “Paragraph” or “¶” means a paragraph of the SOW, and the term “Section” means a section of the SOW, unless otherwise stated.

2. COMMUNITY INVOLVEMENT

2.1 Community Involvement Responsibilities

- (a) EPA has the lead responsibility for developing and implementing community involvement activities at the Site. In 2006, EPA developed a Community Involvement Plan (CIP) for the Site. Pursuant to 40 C.F.R. § 300.435(c), EPA shall review the existing CIP and determine whether it should be revised to describe further public involvement activities during the Work that are not already addressed or provided for in the existing CIP.
- (b) If requested by EPA, Battle North shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification and (2) public meetings that may be held or sponsored by EPA to explain activities at or relating to the Site. Battle North’s support of EPA’s community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any Community Advisory Groups, (2) any Technical Assistance Grant recipients and their advisors, and (3) other entities to provide a reasonable opportunity for review and comment. EPA may describe in its CIP Battle North’s responsibilities for community involvement activities. All community involvement activities conducted by Battle North at EPA’s request are subject to EPA’s oversight.
- (c) **Battle North’s CI Coordinator.** If requested by EPA, Battle North shall, within 15 days, designate and notify EPA of Battle North’s Community Involvement Coordinator (Battle North’s CI Coordinator). Battle North may hire a contractor

for this purpose. Battle North's notice must include the name, title, and qualifications of Battle North's CI Coordinator. Battle North's CI Coordinator is responsible for providing support regarding EPA's community involvement activities, including coordinating with EPA's CI Coordinator regarding responses to the public's inquiries about the Site.

3. RESPONSE DESIGN

3.1 RD Work Plan. Battle North shall submit an RD Work Plan (RDWP) for EPA approval for each subarea or subareas as identified by Battle North. The RDWP must include:

- (a) Plans for implementing all RD activities identified in this SOW, in the RDWP, or required by EPA to be conducted to develop the RD;
- (b) A description of the overall management strategy for performing the RD, including a proposal for phasing of design and construction, if applicable;
- (c) A description of the proposed general approach to contracting, construction, operation, maintenance, and monitoring of the RA as necessary to implement the Work;
- (d) A description of the responsibility and authority of all organizations and key personnel involved with the development of the RD;
- (e) Descriptions of any areas requiring clarification and/or anticipated problems (e.g., data gaps);
- (f) Description of any proposed pre-design investigation;
- (g) Descriptions of any applicable permitting requirements and other regulatory requirements;
- (h) Description of plans for obtaining access in connection with the Work, such as property acquisition, property leases, and/or easements;
- (i) The following supporting deliverables described in ¶ 6.7 (Supporting Deliverables): Health and Safety Plan (HASP); Emergency Response Plan (EPR); and Quality Assurance Project Plan (QAPP); and
- (j) Certification in accordance with ¶ 6.5 (Certification).

3.2 Battle North shall meet regularly with EPA to discuss design issues as necessary, as directed, or determined by EPA.

3.3 Pre-Design Investigation. The purpose of the Pre-Design Investigation (PDI) is to address data gaps by conducting additional field investigations.

- (a) **PDI Work Plan.** Battle North shall submit a PDI Work Plan (PDIWP) for EPA approval for each subarea or subareas as identified by Battle North. The PDIWP must include:
 - (1) An evaluation and summary of existing data and description of data gaps;
 - (2) A Field Sampling Plan (FSP) including media to be sampled, contaminants or parameters for which sampling will be conducted, location (areal extent and depths), and number of samples as described in ¶ 6.7(d);
 - (3) Cross references to quality assurance/quality control (QA/QC) requirements set forth in the QAPP as described in ¶ 6.7(d); and
 - (4) Certification in accordance with ¶ 6.5 (Certification).
- (b) **PDI Evaluation Report.** Following the PDI, Battle North shall submit a PDI Evaluation Report for each subarea or subareas as identified by Battle North. This report must include:
 - (1) Summary of the investigations performed;
 - (2) Summary of investigation results;
 - (3) Summary of validated data (i.e., tables and graphics);
 - (4) Data validation reports and laboratory data reports;
 - (5) Narrative interpretation of data and results;
 - (6) Results of statistical and modeling analyses;
 - (7) Photographs documenting the Work conducted;
 - (8) Conclusions and recommendations for RD, including design parameters and criteria; and
 - (9) Certification in accordance with ¶ 6.5 (Certification).
- (c) EPA may require Battle North to supplement the PDI Evaluation Report and/or to perform additional pre-design studies.

3.4 Preliminary (30%) RD. Battle North shall submit a Preliminary (30%) RD for EPA's comment for each subarea or subareas as identified by Battle North. The Preliminary RD must include:

- (a) A design criteria report, as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995);

- (b) Preliminary drawings and specifications;
- (c) Descriptions of permit requirements, if applicable;
- (d) Preliminary Operation and Maintenance (O&M) Plan and O&M Manual;
- (e) A description of how the RA will be implemented in a manner that minimizes environmental impacts in accordance with EPA's *Principles for Greener Cleanups* (Aug. 2009);
- (f) A description of monitoring and control measures to protect human health and the environment, such as air monitoring and dust suppression, during the RA;
- (g) Any proposed revisions to the RA Schedule that is set forth in ¶ 7.3 (RA Schedule);
- (h) Updates of all supporting deliverables required to accompany the RDWP and the following additional supporting deliverables described in ¶ 6.7 (Supporting Deliverables): Field Sampling Plan; Construction Quality Assurance/Quality Control Plan (CQA/QCP); Transportation and Off-Site Disposal Plan; O&M Plan; and Institutional Controls Implementation and Assurance Plan (ICIAP); and
- (i) Certification in accordance with ¶ 6.5 (Certification).

3.5 Pre-Final (95%) RD. Battle North shall submit the Pre-final (95%) RD for EPA's comment for each subarea or subareas as identified by Battle North. The Pre-final RD must be a continuation and expansion of the previous design submittal and must address EPA's comments regarding the Preliminary RD. The Pre-final RD will serve as the approved Final (100%) RD if EPA approves the Pre-final RD without comments. The Pre-final RD must include:

- (a) A complete set of construction drawings and specifications that are: (1) certified by a registered professional engineer; (2) suitable for procurement; and (3) follow the Construction Specifications Institute's MasterFormat 2012;
- (b) A survey and engineering drawings showing existing OU3 features, such as elements, property borders, easements, and OU3 conditions;
- (c) Pre-Final versions of the same elements and deliverables as are required for the Preliminary RD;
- (d) A specification for photographic documentation of the RA;
- (e) Updates of all supporting deliverables required to accompany the Preliminary (30%) RD; and
- (f) Certification in accordance with ¶ 6.5 (Certification).

- 3.6 Final (100%) RD.** Battle North shall submit the Final (100%) RD for EPA approval for each subarea or subareas as identified by Battle North. The Final RD must address EPA's comments on the Pre-final RD and must include final versions of all Pre-final RD deliverables and be certified in accordance with ¶ 6.5 (Certification).

4. RESPONSE ACTION

- 4.1 RA Work Plan.** Battle North shall submit an RA Work Plan (RAWP) for EPA approval for each subarea or subareas as identified by Battle North that includes:

- (a) A proposed RA Construction Schedule provided to EPA in a Gantt chart format;
- (b) An updated HASP that covers activities during the RA;
- (c) Plans for satisfying permitting requirements, including obtaining permits for off-Site activity, and for satisfying substantive requirements of permits for on-Site activity; and
- (d) Certification in accordance with ¶ 6.5 (Certification).

4.2 Meetings and Inspections

- (a) **Preconstruction Conference.** Battle North shall hold a preconstruction conference with EPA and others as directed or approved by EPA and as described in the *Remedial Design/Remedial Action Handbook*, EPA 540/R-95/059 (June 1995). Battle North shall prepare minutes of the conference and shall distribute the minutes to all Parties and meeting attendees.
- (b) **Periodic Meetings.** During the construction portion of the RA (RA Construction), Battle North shall meet regularly (weekly teleconferences) with EPA, and others as directed or determined by EPA, to discuss construction issues. Battle North shall distribute an agenda and list of invitees to all Parties and meeting invitees prior to each meeting. Battle North shall prepare minutes of the meetings and shall distribute the minutes to all Parties and meeting attendees.
- (c) **Inspections**
 - (1) EPA or its representative shall conduct periodic inspections and may have an on-Site presence during the Work. At EPA's request, Battle North's Project Coordinator or other designee shall accompany EPA or its representative during inspections.
 - (2) Upon notification by EPA of any deficiencies in the RA Construction, Battle North shall take all necessary steps to correct the deficiencies and/or bring the RA Construction into compliance with the approved Final RD, any approved design changes, and/or the approved RAWP. If applicable, Battle North shall comply with any schedule provided by EPA in its notice of deficiency.

4.3 Emergency Response and Reporting

- (a) **Emergency Response and Reporting.** If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from OU3 and that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Battle North shall: (1) immediately take all appropriate action to prevent, abate, or minimize such release or threat of release; (2) immediately notify the authorized EPA officer (as specified in ¶ 4.3(c)) orally; and (3) take such actions in consultation with the authorized EPA officer and in accordance with all applicable provisions of the HASP, ERP, and any other deliverable approved by EPA under the SOW.
- (b) **Release Reporting.** Upon the occurrence of any event during performance of the Work that Battle North is required to report pursuant to section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, consistent with Section XIV of the Settlement, Battle North shall immediately notify the authorized EPA officer orally. Battle North shall also notify the State Project Manager and the State of Colorado's Environmental Release and Incident Reporting Line as described in the Settlement.
- (c) The "authorized EPA officer" for purposes of immediate oral notifications and consultations under ¶ 4.3(a) and ¶ 4.3(b) is the EPA Remedial Project Manager (RPM) as designated in the Settlement or the EPA Regional Duty Officer and the EPA National Response Center (if the RPM is available).
- (d) For any event covered by ¶ 4.3(a) and ¶ 4.3(b), Battle North shall, within 5 days after the onset of such event, submit a report to EPA and the Colorado Department of Public Health and Environment (collectively, the Agencies): (1) describing the actions or events that occurred and the measures taken, and to be taken, in response thereto; and (2) all actions taken in response to such event.
- (e) The reporting requirements under ¶ 4.3 are in addition to the reporting required by CERCLA § 103 or EPCRA § 304 and must be consistent with the Settlement.

4.4 Off-Site Shipments

- (a) Battle North may ship hazardous substances, pollutants, and contaminants from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. EPA will deem Battle North to be in compliance with CERCLA § 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Battle North obtains a prior determination from EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).
- (b) Battle North may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides notice to the appropriate state environmental official in the receiving facility's state and to the

RPM. This notice requirement will not apply to any off-Site shipments when the total quantity of all such shipments does not exceed 10 cubic yards. The notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Battle North also shall notify the state environmental official referenced above and the RPM of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Battle North shall provide the notice after the award of the contract for RA construction and before the Waste Material is shipped.

- (c) Battle North may ship Investigation-Derived Waste (IDW) from the Site to an off-Site facility only if it complies with section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), 40 C.F.R. § 300.440, *EPA's Guide to Management of Investigation Derived Waste*, OSWER 9345.3-03FS (Jan. 1992), and any IDW-specific requirements contained in the ROD. Wastes shipped off-Site to a laboratory for characterization, and RCRA hazardous wastes that meet the requirements for an exemption from RCRA under 40 CFR § 261.4(e) shipped off-Site for treatability studies, are not subject to 40 C.F.R. § 300.440.
- (d) All actions taken under ¶ 4.4 must be consistent with the Settlement.

4.5 Certification of RA Completion

- (a) **RA Completion Inspection.** The RA for each subarea or subareas as identified by Battle North is "Complete" for purposes of this ¶ 4.5 when it has been fully performed and the Cleanup Levels have been achieved. Battle North shall schedule an inspection for the purpose of obtaining EPA's Certification of RA Completion. The inspection must be attended by Battle North (and/or their representatives) and EPA (and/or their representatives).
- (b) **RA Report.** Following the inspection, Battle North shall submit an RA Report to EPA requesting EPA's Certification of RA Completion for each subarea or subareas as identified by Battle North. The report must: (1) include certifications by a registered professional engineer and by Battle North's Project Coordinator that the RA is complete; (2) include as-built drawings signed and stamped by a registered professional engineer; (3) be prepared in accordance with Chapter 2 (Remedial Action Completion) of EPA's *Close Out Procedures for NPL Sites* guidance (May 2011), as supplemented by *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017); (4) contain monitoring data to demonstrate that Cleanup Levels have been achieved; and (5) be certified in accordance with ¶ 6.5 (Certification).
- (c) If EPA concludes that the RA is not Complete, EPA shall so notify Battle North within 60 days of EPA's receipt of Battle North's RA Report. EPA's notice must include a description of any deficiencies. EPA's notice may include a schedule for addressing such deficiencies or may require Battle North to submit a schedule for

EPA approval. Battle North shall perform all activities described in the notice in accordance with the schedule.

- (d) If EPA concludes, based on the initial or any subsequent RA Report requesting Certification of RA Completion, that the RA is Complete, EPA shall so certify to Battle North within 60 days of EPA's receipt of Battle North's RA Report. This certification will constitute the Certification of RA Completion for purposes of the Settlement, including Section XXII of the Settlement (Covenants by Owners). Certification of RA Completion will not affect Battle North's remaining obligations under the Settlement.

4.6 Periodic Review Support Plan. Battle North shall submit the Periodic Review Support Plan (PRSP) for EPA approval. The PRSP addresses the studies and investigations, including, but not limited to, sampling of remediated subarea(s), that Battle North shall conduct to support EPA's reviews of whether the RA is protective of human health and the environment in accordance with section 121(c) of CERCLA, 42 U.S.C. § 9621(c) (also known as "Five-year Reviews"). Battle North shall develop the plan in accordance with *Comprehensive Five-year Review Guidance*, OSWER 9355.7-03B-P (June 2001), and any other relevant Five-year Review guidance.

4.7 Certification of Work Completion

- (a) **Work Completion Inspection.** Battle North shall schedule an inspection for the purpose of obtaining EPA's Certification of Work Completion. The inspection must be attended by Battle North (and/or their representatives) and EPA (and/or their representatives).
- (b) **Work Completion Report.** Following the Work Completion Inspection, within 60 days, Battle North shall submit a report to EPA requesting EPA's Certification of Work Completion. The report must: (1) include certifications by a registered professional engineer and by Battle North's Project Coordinator that the Work for the subarea or subareas, including all O&M activities, is complete; and (2) be certified in accordance with ¶ 6.5 (Certification). If the RA Report(s) submitted under ¶ 4.5(b) includes all elements required under this ¶ 4.7(b), then the RA Report(s) suffices to satisfy all requirements under this ¶ 4.7(b).
- (c) Within 60 days of EPA's receipt of a Work Completion Report, if EPA concludes that the Work is not complete, EPA shall so notify Battle North. EPA's notice must include a description of the activities that Battle North must perform to complete the Work. EPA's notice must include specifications and a schedule for such activities or must require Battle North to submit specifications and a schedule for EPA approval. Battle North shall perform all activities described in the notice or in EPA-approved specifications and schedule.
- (d) Within 60 days of EPA's receipt of a Work Completion Report, if EPA concludes, based on the initial or any subsequent report requesting Certification of Work Completion, that the Work is complete, EPA shall so certify in writing to Battle

North. Issuance of the Certification of Work Completion does not affect the following continuing obligations: (1) activities under the PRSP ¶ 4.6; (2) obligations under Sections X (Property Requirements), XI (Access to Information), and XII (Record Retention) of the Settlement; (3) IC obligations as provided in the ICIAP; and (4) reimbursement of Future Response Costs under Section XV (Payments of Future Response Costs) of the Settlement.

5. REPORTING

5.1 Progress Reports. Battle North shall submit a written monthly progress report to the Agencies concerning actions undertaken during the previous month consistent with the Settlement on a monthly basis, or as otherwise requested by EPA. This requirement shall continue from the date of receipt of EPA's approval of the first Subarea Response Action Work Plan until issuance of Notice of Completion of any Work, unless otherwise directed in writing by the RPM. The reports must cover all activities that took place during the prior reporting period, including:

- (a) The actions that have been taken toward achieving compliance with the Settlement;
- (b) A summary of all results of sampling, tests, and all other data received or generated by Battle North;
- (c) A description of all deliverables that Battle North submitted to EPA;
- (d) A description of all activities relating to RA Construction that are scheduled for the next six weeks;
- (e) An updated RA Construction Schedule, together with information regarding percentage of completion, delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays;
- (f) A description of any modifications to the work plans or other schedules that Battle North has proposed or that have been approved by EPA; and
- (g) A description of all activities undertaken in support of the CIP during the reporting period and those to be undertaken in the next six weeks.

5.2 Notice of Progress Report Schedule Changes. If the schedule for any activity described in the Progress Reports, including activities required to be described under ¶ 5.1(d), changes, Battle North shall notify EPA of such change at least 7 days before performance of the activity.

6. DELIVERABLES

6.1 Applicability. Battle North shall submit deliverables for EPA approval or for EPA comment as specified in the SOW and as consistent with the Settlement. If neither is

specified, the deliverable does not require EPA's approval or comment. Paragraphs 6.2 (In Writing) through 6.4 (Technical Specifications) apply to all deliverables. Paragraph 6.5 (Certification) applies to any deliverable that is required to be certified. Paragraph 6.6 (Approval of Deliverables) applies to any deliverable that is required to be submitted for EPA approval.

6.2 In Writing. Consistent with the Settlement, all deliverables under this SOW must be in writing unless otherwise specified.

6.3 General Requirements for Deliverables. All deliverables must be submitted by the deadlines in the RD Schedule or RA Schedule, as applicable. Battle North shall submit all deliverables to EPA in electronic form. Technical specifications for sampling and monitoring data and spatial data are addressed in ¶ 6.4. All other deliverables shall be submitted to EPA in the electronic form specified by the RPM. If any deliverable includes maps, drawings, or other exhibits that are larger than 8.5" by 11", Battle North shall also provide EPA with paper copies of such exhibits.

6.4 Technical Specifications

- (a) Sampling and monitoring data should be submitted in standard regional Electronic Data Deliverable (EDD) format that is compatible with the EPA software tool Scribe. Other delivery methods may be allowed if electronic direct submission presents a significant burden or as technology changes.
- (b) Spatial data, including spatially-referenced data and geospatial data, should be submitted: (1) in the ESRI File Geodatabase format; and (2) as unprojected geographic coordinates in decimal degree format using North American Datum 1983 (NAD83) or World Geodetic System 1984 (WGS84) as the datum. If applicable, submissions should include the collection method(s). Projected coordinates may optionally be included but must be documented. Spatial data should be accompanied by metadata, and such metadata should be compliant with the Federal Geographic Data Committee (FGDC) Content Standard for Digital Geospatial Metadata and its EPA profile, the EPA Geospatial Metadata Technical Specification. An add-on metadata editor for ESRI software, the EPA Metadata Editor (EME), complies with these FGDC and EPA metadata requirements and is available at <https://edg.epa.gov/EME/>.
- (c) Each file must include an attribute name for the relevant Site operable unit and relevant subarea or subareas. Consult <https://www.epa.gov/geospatial/geospatial-policies-and-standards> for any further available guidance on attribute identification and naming.
- (d) Spatial data submitted by Battle North does not, and is not intended to, define the boundaries of the Site.

6.5 Certification. All deliverables that require compliance with this Certification must be signed by the Battle North's Project Coordinator, or other responsible corporate official of Battle North, and must contain the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

6.6 Approval of Deliverables

(a) Initial Submissions.

- (1) After review of any deliverable that is required to be submitted for EPA approval under the Settlement or the SOW, EPA shall: (i) approve, in whole or in part, the submission; (ii) approve the submission upon specified conditions; (iii) disapprove, in whole or in part, the submission; or (iv) any combination of the foregoing.
- (2) EPA also may modify any submission to cure deficiencies in the submission if: (i) EPA determines that disapproving the submission and awaiting a resubmission would cause substantial disruption to the Work; or (ii) previous submission(s) have been disapproved due to material defects and the deficiencies in the initial submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

(b) Resubmissions. Upon receipt of a notice of disapproval under ¶ 6.6(a) (Initial Submissions), or if required by a notice of approval upon specified conditions under ¶ 6.6(a), Battle North shall, within 30 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the deliverable for approval. After review of the resubmitted deliverable, EPA may: (1) approve, in whole or in part, the resubmission; (2) approve the resubmission upon specified conditions; (3) modify the resubmission; (4) disapprove, in whole or in part, the resubmission, requiring Battle North to correct the deficiencies; or (5) any combination of the foregoing.

(c) Implementation. Upon approval, approval upon conditions, or modification by EPA under ¶ 6.6(a) (Initial Submissions) or ¶ 6.6(b) (Resubmissions), of any deliverable, or any portion thereof: (1) such deliverable, or portion thereof, will be incorporated into and enforceable under the Settlement; and (2) Battle North shall take any action required by such deliverable, or portion thereof. The implementation of any non-deficient portion of a deliverable submitted or resubmitted under ¶ 6.6(a) or ¶ 6.6(b) does not relieve Battle North of any liability for stipulated penalties under the Settlement.

6.7 Supporting Deliverables. Battle North shall submit each of the following supporting deliverables for EPA approval, except as specifically provided. Battle North shall develop the deliverables in accordance with all applicable regulations, guidance, and policies (see ¶ 9 References). Battle North shall update each of these supporting deliverables as necessary or appropriate during the course of the Work, and/or as requested by EPA.

- (a) **Health and Safety Plan.** The HASP describes all activities to be performed to protect on-Site personnel and area residents from physical, chemical, and all other hazards posed by the Work. Battle North shall develop a HASP in accordance with EPA's Emergency Responder Health and Safety and Occupational Safety and Health Administration (OSHA) requirements under 29 C.F.R. §§ 1910 and 1926. The HASP should cover RD activities and should be, as appropriate, updated to cover activities during the RA and updated to cover activities after RA completion. EPA does not approve the HASP, but will review it to ensure that all necessary elements are included and that the HASP provides for the protection of human health and the environment.
- (b) **Emergency Response Plan.** An ERP must describe procedures to be used in the event of an accident or emergency at OU3 (for example, power outages, water impoundment failure, slope failure, etc.). An ERP must include:
 - (1) Name of the person or entity responsible for responding in the event of an emergency incident;
 - (2) Plan and date(s) for meeting(s) with the local community, including local, state, and federal agencies involved in the cleanup, as well as local emergency squads and hospitals;
 - (3) Spill Prevention, Control, and Countermeasures (SPCC) Plan (if applicable), consistent with the regulations under 40 C.F.R. Part 112, describing measures to prevent, and contingency plans for spills and discharges;
 - (4) Notification activities in accordance with ¶ 4.3(b) (Release Reporting) in the event of a release of hazardous substances requiring reporting under section 103 of CERCLA, 42 U.S.C. § 9603, or section 304 of EPCRA, 42 U.S.C. § 11004; and
 - (5) A description of all necessary actions to ensure compliance with Section XIV (Emergency Response and Notification of Releases) of the Settlement in the event of an occurrence during the performance of the Work that causes or threatens a release of Waste Material from the Site that constitutes an emergency or may present an immediate threat to public health or welfare or the environment.
- (c) **Field Sampling Plan(s).** The Field Sampling Plan(s) (FSPs) augment the QAPP and address RA sample collection activities. EPA anticipates individual FSPs for

each subarea of OU3. The FSP must be written so that a field sampling team unfamiliar with the project would be able to gather the samples and field information required. Battle North shall develop the FSP in accordance with *Guidance for Conducting Remedial Investigations and Feasibility Studies*, EPA/540/G 89/004 (Oct. 1988). Each FSP shall be certified in accordance with ¶ 6.5 (Certification).

- (d) **Quality Assurance Project Plan.** The QAPP addresses sample analysis and data handling regarding the Work performed to support the PDI and RA for each subarea. The QAPP must include a detailed explanation of Battle North's quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance, and monitoring samples and be certified in accordance with ¶ 6.5 (Certification. Battle North shall develop the QAPP in accordance with *EPA Requirements for Quality Assurance Project Plans*, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006); *Guidance for Quality Assurance Project Plans*, QA/G-5, EPA/240/R 02/009 (Dec. 2002); and *Uniform Federal Policy for Quality Assurance Project Plans*, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005). The QAPP also must include procedures:
- (1) To ensure that EPA and the State and their authorized representatives have reasonable access to laboratories used by Battle North in implementing the Settlement (Battle North's Labs);
 - (2) To ensure that Battle North's Labs analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring;
 - (3) To ensure that Battle North's Labs perform all analyses using EPA-accepted methods (i.e., the methods documented in *USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis*, ILM05.4 (Dec. 2006); *USEPA Contract Laboratory Program Statement of Work for Organic Analysis*, SOM01.2 (amended Apr. 2007); and *USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration)*, ISM01.2 (Jan. 2010) or other methods acceptable to EPA;
 - (4) To ensure that Battle North's Labs participate in an EPA-accepted QA/QC program or other program QA/QC acceptable to EPA;
 - (5) For Battle North to provide EPA with notice at least 7 days prior to any sample collection activity;
 - (6) For Battle North to provide split samples and/or duplicate samples to EPA upon request;
 - (7) For EPA to take any additional samples that it deems necessary;

- (8) For EPA to provide to Battle North, upon request, split samples and/or duplicate samples in connection with EPA's and the State's oversight sampling; and
 - (9) For Battle North to submit to EPA and the State all sampling and tests results and other data in connection with the implementation of the Settlement.
- (e) **Construction Quality Assurance/Quality Control Plan (CQA/QCP).** The purpose of the Construction Quality Assurance Plan (CQAP) is to describe planned and systemic activities that provide confidence that the RA construction will satisfy all plans, specifications, and related requirements, including quality objectives. The purpose of the Construction Quality Control Plan (CQCP) is to describe the activities to verify that RA construction has satisfied all plans, specifications, and related requirements, including quality objectives. The CQA/QCP must:
- (1) Identify, and describe the responsibilities of the organizations and personnel implementing the CQA/QCP;
 - (2) Describe the Cleanup Levels required to be met to achieve Completion of the RA;
 - (3) Describe the activities to be performed: (i) to provide confidence that Cleanup Levels will be met and (ii) to determine whether Cleanup Levels have been met;
 - (4) Describe verification activities, such as inspections, sampling, testing, monitoring, and production controls, under the CQA/QCP;
 - (5) Describe industry standards and technical specifications used in implementing the CQA/QCP;
 - (6) Describe procedures for tracking construction deficiencies from identification through corrective action;
 - (7) Describe procedures for documenting all CQA/QCP activities;
 - (8) Describe procedures for retention of documents and for final storage of documents; and
 - (9) Be certified in accordance with ¶ 6.5 (Certification).
- (f) **Transportation and Off-Site Disposal Plan.** The Transportation and Off-Site Disposal Plan (TODP) describes plans to ensure compliance with ¶ 4.4 (Off-Site Shipments). If required by EPA, the TODP must include:
- (1) Proposed routes for off-Site shipment of Waste Material;

- (2) Identification of communities affected by shipment of Waste Material; and
 - (3) Description of plans to minimize impacts on affected communities.
- (g) **O&M Plan.** The O&M Plan describes the requirements for inspecting, operating, and maintaining the RA. Battle North shall develop the O&M Plan in accordance with *Guidance for Management of Superfund Remedies in Post Construction*, OLEM 9200.3-105 (Feb. 2017). The O&M Plan must include the following additional requirements:
- (1) Description of Cleanup Levels required to be met to implement the ROD;
 - (2) Description of activities to be performed: (i) to provide confidence that Cleanup Levels will be met and (ii) to determine whether Cleanup Levels have been met;
 - (3) O&M Reporting. Description of records and reports that will be generated during O&M, such as daily operating logs, laboratory records, records of operating costs, reports regarding emergencies, personnel and maintenance records, monitoring reports, and monthly and annual reports to EPA and State agencies;
 - (4) Description of corrective action in case of systems failure, including: (i) alternative procedures to prevent the release or threatened release of Waste Material which may endanger public health and the environment or may cause a failure to achieve Cleanup Levels; (ii) analysis of vulnerability and additional resource requirements should a failure occur; (iii) notification and reporting requirements should O&M systems fail or be in danger of imminent failure; and (iv) community notification requirements; and
 - (5) Description of corrective action to be implemented in the event that Cleanup Levels are not achieved and a schedule for implementing these corrective actions.
- (h) **Institutional Controls Implementation and Assurance Plan.** The ICIAP describes plans to implement, maintain, and enforce the ICs at OU3. EPA and the State shall develop the ICIAP, and Battle North shall support EPA's implementation of the ICIAP as requested.

7. SCHEDULES

- 7.1 Applicability and Revisions.** All deliverables and tasks required under this SOW must be submitted or completed by the deadlines or within the time durations listed in the RD and RA Schedules set forth below. Battle North may submit proposed revised RD Schedules or RA Schedules for EPA approval. Upon EPA's approval, the revised RD and/or RA Schedules supersede the RD and RA Schedules set forth below, and any previously-approved RD and/or RA Schedules.

7.2 RD Schedule

	Description of Deliverable, Task	¶ Ref.	Deadline
1	RDWP (includes HASP, ERP, and QAPP)	3.1 6.7(a) 6.7(b) 6.7(d)	60 days after EPA's Authorization to Proceed regarding Battle North's Contractor under Section VIII of the Settlement
2	PDIWP (includes contents of an FSP)	3.3(a) 6.7(c)	No less than 90 days prior to scheduled commencement of field sampling activities
3	PDI Evaluation Report	3.3(b)	45 days after receipt of laboratory results from the associated PDIWP
4	Preliminary (30%) RD (includes CQA/QCP)	3.4 6.7(e)	30 days after EPA approval of PDI Evaluation Report
5	Pre-final (90/95%) RD	3.5	45 days after EPA comments on Preliminary RD
6	Final (100%) RD	3.6	20 days after EPA comments on Pre-Final RD

7.3 RA Schedule

	Description of Deliverable / Task	¶ Ref.	Deadline
1	RAWP (includes RA FSPs)	4.1, 6.7(c)	45 days after EPA approval of Final (100%) RD
2	Preconstruction Conference	4.2(a)	10 days after Approval of RAWP
3	Start of Construction		After Approval of RAWP
4	Completion of Construction		To Be Determined
5	RA Completion Inspection	4.5(a)	10 days after completion of construction
6	RA Report	4.5(b)	45 days after RA Completion Inspection
7	Work Completion Report	4.7(b)	90 days after Work Completion Inspection
8	Periodic Review Support Plan	4.6	Five years after Start of RA Construction

8. STATE PARTICIPATION

8.1 Copies. Battle North shall, at any time it sends a deliverable to EPA, send a copy of such deliverable to the State. EPA shall, at any time it sends a notice, authorization, approval, disapproval, or certification to Battle North, send a copy of such document to the State.

8.2 Review and Comment. The State will have opportunity for review and comment prior to:

- (a) Any EPA approval or disapproval under ¶ 6.6 (Approval of Deliverables) of any deliverables that are required to be submitted for EPA approval; and
- (b) Any disapproval of, or Certification of RA Completion under ¶ 4.5 (Certification of RA Completion), and any disapproval of, or Certification of Work Completion under ¶ 4.7 (Certification of Work Completion).

9. REFERENCES

9.1 The following regulations and guidance documents, among others, apply to the Work. Any item for which a specific URL is not provided below is available on one of the two EPA Web pages listed in ¶ 9.2:

- (a) A Compendium of Superfund Field Operations Methods, OSWER 9355.0-14, EPA/540/P-87/001a (Aug. 1987).
- (b) CERCLA Compliance with Other Laws Manual, Part I: Interim Final, OSWER 9234.1-01, EPA/540/G-89/006 (Aug. 1988).
- (c) CERCLA Compliance with Other Laws Manual, Part II, OSWER 9234.1-02, EPA/540/G-89/009 (Aug. 1989).
- (d) Guidance on EPA Oversight of Remedial Designs and Remedial Actions Performed by Potentially Responsible Parties, OSWER 9355.5-01, EPA/540/G-90/001 (Apr. 1990).
- (e) Guidance on Expediting Remedial Design and Remedial Actions, OSWER 9355.5-02, EPA/540/G-90/006 (Aug. 1990).
- (f) Guide to Management of Investigation-Derived Wastes, OSWER 9345.3-03FS (Jan. 1992).
- (g) Permits and Permit Equivalency Processes for CERCLA On-Site Response Actions, OSWER 9355.7-03 (Feb. 1992).
- (h) National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule, 40 C.F.R. Part 300 (Oct. 1994).
- (i) Guidance for Scoping the Remedial Design, OSWER 9355.0-43, EPA/540/R-95/025 (Mar. 1995).
- (j) Remedial Design/ Remedial Action Handbook, OSWER 9355.0-04B, EPA/540/R-95/059 (June 1995).
- (k) EPA Guidance for Data Quality Assessment, Practical Methods for Data Analysis, QA/G-9, EPA/600/R-96/084 (July 2000).
- (l) Comprehensive Five-year Review Guidance, OSWER 9355.7-03B-P, 540-R-01-007 (June 2001).
- (m) Guidance for Quality Assurance Project Plans, QA/G-5, EPA/240/R-02/009 (Dec. 2002).
- (n) Institutional Controls: Third Party Beneficiary Rights in Proprietary Controls (Apr. 2004).

- (o) Quality management systems for environmental information and technology programs -- Requirements with guidance for use, ASQ/ANSI E4:2014 (American Society for Quality, February 2014).
- (p) Uniform Federal Policy for Quality Assurance Project Plans, Parts 1-3, EPA/505/B-04/900A through 900C (Mar. 2005).
- (q) Superfund Community Involvement Handbook, SEMS 100000070 (January 2016), <https://www.epa.gov/superfund/community-involvement-tools-and-resources>.
- (r) EPA Guidance on Systematic Planning Using the Data Quality Objectives Process, QA/G-4, EPA/240/B-06/001 (Feb. 2006).
- (s) EPA Requirements for Quality Assurance Project Plans, QA/R-5, EPA/240/B-01/003 (Mar. 2001, reissued May 2006).
- (t) EPA Requirements for Quality Management Plans, QA/R-2, EPA/240/B-01/002 (Mar. 2001, reissued May 2006).
- (u) USEPA Contract Laboratory Program Statement of Work for Inorganic Analysis, ILM05.4 (Dec. 2006).
- (v) EPA National Geospatial Data Policy, CIO Policy Transmittal 05-002 (Aug. 2008), <https://www.epa.gov/geospatial/geospatial-policies-and-standards> and <https://www.epa.gov/geospatial/epa-national-geospatial-data-policy>.
- (w) Principles for Greener Cleanups (Aug. 2009), <https://www.epa.gov/greenercleanups/epa-principles-greener-cleanups>.
- (x) USEPA Contract Laboratory Program Statement of Work for Inorganic Superfund Methods (Multi-Media, Multi-Concentration), ISM01.2 (Jan. 2010).
- (y) Close Out Procedures for National Priorities List Sites, OSWER 9320.2-22 (May 2011).
- (z) Recommended Evaluation of Institutional Controls: Supplement to the "Comprehensive Five-Year Review Guidance," OSWER 9355.7-18 (Sep. 2011).
- (aa) Construction Specifications Institute's MasterFormat 2012, available from the Construction Specifications Institute, <http://www.csinet.org/masterformat>.
- (bb) Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites, OSWER 9355.0-89, EPA/540/R-09/001 (Dec. 2012).
- (cc) Institutional Controls: A Guide to Preparing Institutional Controls Implementation and Assurance Plans at Contaminated Sites, OSWER 9200.0-77, EPA/540/R-09/02 (Dec. 2012).

- (dd) EPA's Emergency Responder Health and Safety Manual, OSWER 9285.3-12 (July 2005 and updates), https://www.epaossc.org/_HealthSafetyManual/manual-index.htm.
- (ee) Broader Application of Remedial Design and Remedial Action Pilot Project Lessons Learned, OSWER 9200.2-129 (Feb. 2013).
- (ff) Guidance for Management of Superfund Remedies in Post Construction, OLEM 9200.3-105 (Feb. 2017), <https://www.epa.gov/superfund/superfund-post-construction-completion>.

9.2 A more complete list may be found on the following EPA Web pages:

Laws, Policy, and Guidance: <https://www.epa.gov/superfund/superfund-policy-guidance-and-laws>

Test Methods Collections: <https://www.epa.gov/measurements/collection-methods>

9.3 For any regulation or guidance referenced in the Settlement or SOW, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Battle North receives notification from EPA of the modification, amendment, or replacement.

Appendix 3

Battle North Restrictive Notices

**Use Restrictions
Battle North Restrictive Notices
Eagle Mine Superfund Site**

Below are the use restrictions that Battle North will include in the Restrictive Notices for the areas described in Paragraph 52.a(1)-a(6) of the Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien.

(1) Consolidated Tailings Pile

Use Restrictions

- a) Access to the CTP is prohibited, except for authorized monitoring, maintenance and remedial activities and except for recreational use authorized by OWNER in consultation with the Department. OWNER shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating “No Trespassing.” OWNER shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on the CTP. The term “residential use” means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on the CTP.
- d) Activities that may damage the CTP cover are prohibited. Such activities include, but are not limited to, grazing, digging, drilling, tilling, grading, excavation, use as an athletic field, and vehicular traffic. Solar arrays may be placed on the cover in accordance with the following conditions:
 - i. The Department must review and approve final design plans, including post-construction monitoring and maintenance plan, before any ground disturbance activities commences;
 - ii. All structures must be above grade, unless otherwise approved by the Department;
 - iii. Structures must be designed and constructed to prevent ponding on, or erosion of, the CTP cover. Positive drainage must be maintained for the CTP top deck both during and after construction of the solar arrays.

- iv. OWNER must inspect the solar arrays annually for signs of damage to the CTP cover. OWNER must report inspection results to the Department within 2 weeks of the date of the inspection. OWNER must repair any damage within 30 days of the inspection.
- e) No water from the uppermost aquifer beneath the CTP may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) Construction or maintenance of any standing body of water on the CTP, including any pond or storm water retention basin, is prohibited.
- g) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- h) Irrigation of the CTP is prohibited.
- i) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on the CTP is prohibited. Engineered components of the remedy include: the mine water transport pipeline; water treatment plant; surge ponds; CTP cover; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

(2) Maloit Park

Use Restrictions

- a) Access to Maloit Park is prohibited, except for authorized monitoring, maintenance and remedial activities and except for recreational use authorized by OWNER in consultation with the Department. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on Maloit Park. The term “residential use” means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on Maloit Park.
- d) No excavation, drilling, grading, digging, or tilling, is allowed on Maloit Park, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.

- e) No water from the uppermost aquifer beneath Maloit Park may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) Construction or maintenance of any standing body of water on Maloit Park, including any pond or storm water retention basin, is prohibited.
- g) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- h) Irrigation of Maloit Park is prohibited.
- i) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on Maloit Park is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

(3) Old Tailings Pile

Use Restrictions

- a) Access to the OTP is prohibited, except for authorized monitoring, maintenance and remedial activities. OWNER shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating "No Trespassing." OWNER shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Owner shall monitor and control trespasser use by performing weekly patrol of the OTP. Upon discovering trespassers, Owner shall contact local law enforcement and request immediate assistance to remove trespassers from the OTP.
- c) Residential use is prohibited on the OTP. The term "residential use" means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- d) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on the OTP.

- e) No excavation, drilling, grading, digging, or tilling, is allowed on the OTP, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) No water from the uppermost aquifer beneath the OTP may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- g) Construction or maintenance of any standing body of water on the OTP, including any pond or storm water retention basin, is prohibited.
- h) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- i) Irrigation of the OTP is prohibited.
- j) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on the OTP is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

(4) Rex Flats

Use Restrictions

- a) Access to Rex Flats is prohibited, except for authorized monitoring, maintenance and remedial activities. OWNER shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating “No Trespassing.” OWNER shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on Rex Flats. The term “residential use” means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on Rex Flats.

- d) No excavation, drilling, grading, digging, or tilling, is allowed on Rex Flats, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- e) No water from the uppermost aquifer beneath Rex Flats may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) Construction or maintenance of any standing body of water on Rex Flats, including any pond or storm water retention basin, is prohibited.
- g) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- h) Irrigation of Rex Flats is prohibited.
- i) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on Rex Flats is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

(5) Roaster Pile #5

Use Restrictions

- a) Access to Roaster Pile #5 is prohibited, except for authorized monitoring, maintenance and remedial activities. Owner shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating “No Trespassing.” Owner shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on Roaster Pile #5. The term “residential use” means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on Roaster Pile #5.

- d) No excavation, drilling, grading, digging, or tilling, is allowed on Roaster Pile #5, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
 - e) No water from the uppermost aquifer beneath Roaster Pile #5 may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
 - f) Construction or maintenance of any standing body of water on Roaster Pile #5, including any pond or storm water retention basin, is prohibited.
 - g) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
 - h) Irrigation of Roaster Pile #5 is prohibited.
- (6) The area below the elevated Mine Water Transport Pipeline adjacent to the Bolts Lake Area**

Use Restrictions on the Trestle Area

- a) Access to the Trestle Area is prohibited, except for authorized monitoring, maintenance and remedial activities. Owner shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating “No Trespassing.” Owner shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) Residential use is prohibited on the Trestle Area. The term “residential use” means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- c) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited on the Trestle Area.
- d) No excavation, drilling, grading, digging, or tilling, is allowed on the Trestle Area, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- e) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.

- f) Irrigation of the Trestle Area is prohibited.
- g) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy on the Trestle Area is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

Groundwater Use Restrictions on the Pipeline Parcel

- a) No water from the uppermost aquifer beneath the Pipeline Parcel may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.

Appendix 4

Battle South Restrictive Notice

**Use Restrictions
Battle South Restrictive Notice
Eagle Mine Superfund Site**

Below are the use restrictions that Battle South will include in the Restrictive Notice for the area described in Paragraph 0.c(1) of the Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA § 107(r) Lien.

(1) Gilman

Use Restrictions

- a) Access to Gilman is prohibited, except for authorized monitoring, maintenance and remedial activities. OWNER shall maintain a 6-foot chain link fence preventing access from highway 24 at critical entry points. Gates in the fence must be locked at all times except to allow authorized ingress and egress. OWNER shall post signs legible from at least 100 feet and shall be posted at 500 foot intervals, stating “No Trespassing.” OWNER shall inspect the signage quarterly and complete any necessary repairs within 30 days of the inspection. OWNER shall report in writing to the Department any obvious evidence that the restrictions on access have been violated (e.g., signs of vandalism) within 30 days of discovery.
- b) OWNER shall monitor and control trespasser use by performing weekly patrol of Gilman access points. Upon discovering trespassers, OWNER shall contact local law enforcement and request immediate assistance to remove trespassers from Gilman.
- c) Residential use is prohibited in Gilman. The term “residential use” means use of a building or part of a building as a dwelling (i.e., as a place to sleep, eat and bathe). Dwellings include single family homes, apartments, condominiums, manufactured housing, assisted living facilities and nursing homes, motels, hospitals and other buildings used only for short-term lodging are also prohibited.
- d) Schools, parks, playgrounds, day care centers and other uses that could routinely expose children to residual soil contamination are prohibited in Gilman.
- e) No excavation, drilling, grading, digging, or tilling, is allowed in Gilman, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.
- f) No water from the uppermost aquifer beneath Gilman may be withdrawn or used for any purpose, except as authorized in a remedial decision document or environmental sampling plan approved by the Department.

- g) Construction or maintenance of any standing body of water in Gilman, including any pond or storm water retention basin, is prohibited.
- h) Actions that may cause contaminated groundwater to be exposed to the surface are prohibited.
- i) Irrigation of Gilman is prohibited.
- j) Any action that may damage or interfere with the proper operation or maintenance of any engineered component of the remedy in Gilman is prohibited. Engineered components of the remedy include: the mine water transport pipeline; trestle; water treatment plant; surge ponds; covers; riprap lined ditches; access roads; collection systems; vaults; manholes; monitor wells; sumps; and underground groundwater collection systems.

EXHIBIT B, RESERVOIR AGREEMENT

**AGREEMENT
PERTAINING TO ACQUISITION FOR
BOLTS LAKE RESERVOIR PROJECT**

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EXHIBITS

- Exhibit 1** – Legal Description and Graphic Depiction of Battle North Property
- Exhibit 2** – Consolidated Map
- Exhibit 3** – Legal Description and Graphic Depiction of Reservoir Parcel
- Exhibit 4** – Legal Description and Graphic Depiction of Dam Parcel
- Exhibit 5** – Legal Description and Graphic Depiction of Inlet Parcel
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- Exhibit 11** – Legal Description and Graphic Depiction of Processing Area Parcel
- Exhibit 12** – Legal Description and Graphic Depiction of Trestle Area
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- Exhibit 14** – Water Rights Special Warranty Deed
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- Exhibit 18** – Form of Request for Partial Deletion
- Exhibit 19** – Schedule of Defined Terms

AGREEMENT PERTAINING TO ACQUISITION FOR BOLTS LAKE RESERVOIR PROJECT

This Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project (“**Agreement**”) is made and entered into as of the last date signed by all parties (“**Effective Date**”), by and among the Eagle River Water & Sanitation District (together with its successors and assigns, the “**District**”), Upper Eagle Regional Water Authority (together with its successors and assigns, the “**Authority**”), and Battle North, LLC, a Georgia limited liability company (together with its successors and assigns, “**Battle North**”). The District and Authority are referred to collectively herein as “**District/Authority**”. The District, Authority and Battle North are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

RECITALS

A. **WHEREAS**, capitalized words and phrases used in this Agreement have the meanings set forth in the schedule of defined terms attached at Exhibit 19.

B. **WHEREAS**, the District/Authority have an integrated water system that provides municipal water service within designated areas of Eagle County, Colorado (“**County**”) from the Town of Vail to Wolcott (“**Water Service Area**”), excluding the Town of Minturn, Colorado (“**Minturn**”), and the District provides sanitation service to the same general area, but including Minturn (“**Sewer Service Area**”).

C. **WHEREAS**, Battle North is the fee owner of the real property legally described at Exhibit 1 (“**Battle North Property**”), located within the municipal boundaries of Minturn.

D. **WHEREAS**, Battle North intends to develop portions of the Battle North Property for residential and commercial uses (“**BN Development**”) which, subject to obtaining land use approvals for development of such density, are anticipated to require water and sewer service of not less than 400 single family equivalent (“**SFEs**”) units and up to as many as 700 SFE’s as defined in and calculated pursuant to Section 2.94 of the District/Authority Regulations and standard practices; and

E. **WHEREAS**, Battle North desires to obtain Water Service and Sewer Service to serve the BN Development, as well as the right and option to utilize the Augmentation Water to augment municipal diversions and depletions for the BN Development.

F. **WHEREAS**, to meet their existing and future water service obligations, the District/Authority desire to own, construct and operate an approximately 1,210 acre-foot water storage facility (“**Reservoir**”) and certain additional Reservoir-related water conveyance structures and related improvements to be located within the Battle North Property (collectively, “**Reservoir Project**”).

District/Authority Signature Page to Reservoir Agreement

G. **WHEREAS**, in order to undertake and complete the Reservoir Project, the District/Authority desire to acquire the Property Interests from Battle North (“**Acquisition**”), which Property Interests consist of:

1. as applicable pursuant to Sections 4.1(a) through (c), Clear Title to fee or easement interests in certain parcels of real property, the locations of which are conceptually depicted in the map attached at Exhibit 2 (“**Consolidated Map**”) and which are legally described at Exhibits 3 through 11; and
2. the Water Rights.

H. **WHEREAS**, the areas within the Battle North Property legally described at Exhibit 12 (“**Trestle Area**”) and Exhibit 13 (“**OTP Area**”), as conceptually depicted on the Consolidated Map, are located within the Eagle Mine Superfund Site.

I. **WHEREAS**, prior to any residential or other unrestricted use in either the Trestle Area or the OTP Area, the Administrative Settlement Agreement and Order on Consent for Response Action and Release and Waiver of CERCLA Lien, Docket No. CERCLA 08-2018-0009 (“**AOC**”) that Battle North has entered into with the United States Environmental Protection Agency (“**EPA**”) and the Colorado Department of Public Health and Environment (“**CDPHE**” and, collectively with the EPA, “**Agencies**”) requires implementation of environmental remediation pursuant to the AOC, and the related Statement of Work (“**SOW**”) and the Record of Decision for Operable Unit 3.

J. **WHEREAS**, the Parties desire that environmental remediation of the Trestle Area be completed and Agencies Approvals of such completed remediation be obtained before transfer of any interest in the Trestle Area to the District/Authority, and that remediation of the OTP Area be undertaken simultaneously with construction of the Reservoir Project and that Agencies Approvals of such completed remediation be obtained.

K. **WHEREAS**, the District has legal authority pursuant to C.R.S. §§ 38-1-101, *et seq.*, to commence an action in eminent domain (“**Eminent Domain Action**”), generally pursuant to the timeline set forth in Exhibit 17, in the District Court for the County of Eagle, State of Colorado (“**Court**”) seeking to obtain the Court’s entry and the filing of record of an instrument in the real property records of the County clerk and recorder’s office (“**Recording**”) of the Court’s final, non-appealable rule and order entered upon completion of the Eminent Domain Action (“**Rule and Order**”) to accomplish the Acquisition, and the Authority has legal authority to cooperate with the District in the Eminent Domain Action and in this Agreement.

L. **WHEREAS**, the District wishes to commence and complete, and Battle North does not oppose and will not contest, the Eminent Domain Action in order to satisfy the District/Authority requirement of Clear Title to the Land and Easement Areas by

obtaining the Court's entry and Recording of the Rule and Order that fully implements the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I.

Battle North Disclosures; Due Diligence

1.1 Battle North's Disclosures. Within five (5) days after the Effective Date, Battle North shall deliver or cause to be delivered to the District/Authority, the following documents relating to the Land and Easement Areas to the extent in Battle North's possession or control, without obligation to obtain documents not in Battle North's possession or control, and without representation or warranty of any kind with respect to the accuracy or completeness of any reports, studies or other documents furnished to the District/Authority that were prepared by parties other than Battle North (collectively, "**Battle North's Disclosures**"):

(a) Surveys. Any existing surveys of any portion of the Land and Easement Areas, including Battle North's most recent ALTA survey(s), if applicable;

(b) Tax Statements. Copies of the tax statements covering the Land and Easement Areas for the most recent tax year, copies of any notices with respect to taxes received by Battle North since the most recent tax statements were issued, any notices of increased valuation or special assessments, and any documents relating to tax appeals;

(c) Contractual Documents. Copies of any leases, contracts, property management agreements, letter agreements and amendments; subleases or licenses affecting the Land and Easement Areas or any portion thereof;

(d) Reports and Documents. To the extent not publicly available at EPA's Superfund Records Center, EPA's webpage relating to the Eagle Mine Superfund Site at <https://cumulis.epa.gov/supercpad/cursites/csitinfo.cfm?id=0800159>, CDPHE's Hazardous Materials and Waste Management Division Records Center, CDPHE's webpage relating to the Eagle Mine Superfund Site at <https://cdphe.colorado.gov/eagle-mine>, within Recorded documents, or located in the Eagle Mine Site Repository in Minturn: copies of any reports or data regarding environmental conditions on the Battle North Property, including but not limited to hydrology, geology, hydrogeology, soils, ground water, cleanup or remediation plans or requirements and any amendments thereto; any material correspondence with EPA or CDPHE in the past three (3) years regarding environmental conditions, as described above, on the Battle North Property, and any order, assessment, penalty, complaint, report or data related to the physical condition of the Land

and Easement Areas or any part thereof, or any other property affected by release of any Hazardous Materials from the Reservoir Parcel (collectively, “**Environmental Documents**”);

(e) Capital Improvements. A schedule of any capital improvements performed on, at, or for the Land and Easement Areas or any part thereof during the last three (3) years;

(f) Insurance. A copy of all insurance policies relating to the Land and Easement Areas or any part thereof, and schedule of any insurance claims made during the last two (2) years; and

(g) Additional Matters. To the extent not listed above, Battle North shall deliver to the District/Authority any documents and materials that the District/Authority reasonably request from time to time which directly pertain to the physical condition or status of title to the Land and Easement Areas, are in Battle North’s possession or control, and which are neither subject to attorney-client or other privilege nor subject to any non-disclosure agreement that is legally binding on Battle North.

1.2 Due Diligence; Related Requirements. During the period commencing on the Effective Date and continuing until the earlier to occur of the date on which this Agreement is terminated or the Court enters the Rule and Order (“**Due Diligence Period**”), the Parties will cooperate in the conduct of due diligence and related tasks to facilitate satisfaction of the Unencumbered Use Contingency as follows:

(a) The District/Authority will conduct its due diligence of the Land and Easement Areas, including (i) all environmental due diligence activities on the Land and Easement Areas for completion of all appropriate inquiries necessary to obtain bona fide prospective purchaser (BFPP) status in accordance with 42 U.S.C. §§ 9601(40) and 9607(r) and 40 C.F.R. Part 312, including a Phase 1 Environmental Site Assessment and Phase II Environmental Site Assessment; and (ii) such other investigations of environmental and physical conditions at the Land and Easement Areas as the District/Authority, in their sole discretion, deem necessary or appropriate, to assess the suitability of the Land and Easement Areas for development of the Reservoir, including the activities described in Section 5.1(a) setting forth the requirements to satisfy the Unencumbered Use Contingency.

(b) The Parties in good faith will undertake to perform the tasks designated for their respective completion set forth in Section 5.1(a), to obtain whatever construction approvals are deemed necessary to allow the District/Authority to construct the Reservoir, the Dam, and related facilities, and to deliver the Excavated Soils to the Processing Area Parcel for use by Battle North that are not addressed by the other provisions of this Agreement, if any.

(c) The Parties in good faith will take all actions reasonably necessary to obtain Clear Title pursuant to Section 5.1(a)(ii) in addition to any continued investigations by the District/Authority regarding the design and construction of the Reservoir Project and such other matters as the District/Authority may deem appropriate.

1.3 License; Insurance and Indemnification. During the Due Diligence Period (and thereafter to the extent required to perform any post-termination obligation or Post-Acquisition Obligation required of the District/Authority pursuant to this Agreement):

(a) License. The District/Authority (together with its employees, contractors, subcontractors, consultants and invitees, “**Licensee(s)**”) shall have a non-exclusive license (“**License**”) to access and enter upon the Land and Easement Areas at reasonable times and from time to time for the purposes of conducting ongoing investigation, at no cost or expense to Battle North, regarding the suitability of the Land and Easement Areas for the Reservoir Project and reasonably necessary in connection with planning and design of the Reservoir Project, which may include, without limitation, reasonable tests, inspections, studies, investigations, and surveys; and, with not less than three (3) business days written notice (which may be by email) to Battle North’s local representative, Tim McGuire (tmcguire@acpcommunities.com), investigation of soil, geotechnical, environmental conditions, and invasive tests such as borings but excluding blasting without Battle North’s specific prior written consent. Battle North will cooperate reasonably with any such investigations, inspections, surveys or studies so long as such cooperation is at no cost or expense to Battle North. Prior to Acquisition, the District/Authority and its Licensees will not engage in any demolition, clearing, grading, excavation, dewatering or other activity that modifies the Land or Easement Areas without Battle North’s specific prior written consent. The District/Authority will contemporaneously notify Lorne Bassel and Tim McGuire of any entry upon the Land and Easement Areas and Battle North’s representative will have the right to be present during any entry upon or investigation of the Land and Easement Areas. Following any activities by the District/Authority causing damage to the Land or Easement Areas (or, if applicable, adjacent areas of the Battle North Property), the District/Authority will restore the damaged area to its preexisting condition. The District/Authority shall be responsible for the generation and proper disposal of any “Investigative Derived Waste”, whether solid or hazardous waste, derived from its invasive testing and perform its investigation at their own risk.

(b) Indemnity. Solely to the extent arising directly from the District’s/Authority’s investigations and other activities under this Agreement, the District/Authority will, to the maximum extent permitted by law, indemnify, defend, and hold harmless Battle North from any and all claims, demands, liens, costs, expenses, damages and liabilities, including reasonable attorneys’ fees and costs, that are asserted against Battle North, the Land, the Easement Areas or the Battle North Property, or which Battle North may suffer or incur, to the extent arising out of any claims for property damage

or personal injury, or claims from materialmen or laborers. The District/Authority will pay Battle North all reasonable costs and expenses, including reasonable attorneys' fees incurred in defending any such matter, not to exceed \$100,000. If the Agreement terminates, the District/Authority will promptly repair damage to the Land or Easement Areas (or, if applicable, to adjacent areas of the Battle North Property) directly caused by the District/Authority investigations pursuant to this Agreement. The District/Authority will reimburse Battle North on demand for all expenses Battle North incurs in repairing any damage resulting directly from the District's/Authority's investigations and other activities pursuant to this Agreement if the District/Authority does not promptly repair such damage. The District's/Authority's obligations pursuant to this Section 1.3 will survive termination of this Agreement and/or consummation of the Acquisition under this Agreement for a period of one year.

(c) Insurance. The District/Authority shall, at no cost or expense to Battle North: (i) cause Battle North to be named an additional insured on a primary non-contributory basis under its policy of commercial general liability insurance (or equivalent), in an amount not less than the limits under the Colorado Governmental Immunity Act, which are currently (I) \$387,000 for each occurrence, and (II) \$1,093,000 in the general aggregate, against claims for bodily injury, personal injury, advertising injury, death or property damage, occurring in, on or about the Land and Easement Areas; and (ii) require its contractors and other Licensees who enter the Land and Easement Areas pursuant to the License to (A) cause Battle North to be named an additional insured on a primary non-contributory basis under their respective policies of commercial general liability insurance, in an amount of at least (I) \$1,000,000 for each occurrence, (II) \$1,000,000 for personal injury, and (III) \$2,000,000 in the general aggregate; and (B) procure and maintain workers' compensation coverage, meeting the statutory requirements of the State of Colorado. Prior to any Licensees' entry upon the Land or Easement Areas, the District/Authority will cause written evidence to be delivered to Battle North of such insurance coverages being in effect.

ARTICLE II.

Battle North's Representations and Warranties

2.1 Representation and Warranties. Battle North represents, warrants and covenants to the District/Authority, as of the Effective Date and as of the termination of this Agreement or completion of the Contingencies, whichever comes last, as follows:

(a) Authority. Battle North is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Georgia. Battle North has the full right and authority to enter into this Agreement and consummate the transactions contemplated by this Agreement. All requisite action has been taken by Battle North in connection with the execution of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

(b) Consents; Binding Obligations. No third-party approval or consent is required to enter into this Agreement or to consummate the transactions contemplated hereby. This Agreement and all documents required hereby to be executed by Battle North are and shall be valid, legally binding obligations of and enforceable against Battle North in accordance with their terms.

(c) No Bankruptcy Proceedings. No bankruptcy, insolvency, rearrangement or similar action or proceeding, whether voluntary or involuntary, is pending or threatened against Battle North, and to Battle North's Actual Knowledge, Battle North has no intention of filing or commencing any such action or proceeding.

(d) Litigation. There are no actions, suits, litigation or proceedings pending, or to Battle North's Actual Knowledge threatened, affecting the Land and Easement Areas, or affecting the right, power or authority of Battle North to enter into and perform this Agreement in accordance with its terms, or which question the validity or enforceability of this Agreement or any action taken or to be taken by Battle North under this Agreement.

(e) Condemnation. Excepting the Eminent Domain Action, Battle North has no Actual Knowledge, and has received no notice from any governmental authorities, that proceedings for the condemnation of any portion of the Land and Easement Areas are pending.

(f) No Violations. To Battle North's Actual Knowledge, the Land and Easement Areas have been and presently are used and operated in compliance in all material respects with, and in no material way violate, any applicable statute, law, regulation, rule, ordinance, order or permit of any kind whatsoever affecting the Land and Easement Areas or any part thereof.

(g) Leases. Except as disclosed in Battle North's Disclosures, no portion of the Land and Easement Areas is subject to any lease, license, easement or right of access.

(h) No Water Rights Conveyance to Third Parties. Battle North has not conveyed any of the Water Rights to any third parties that are not affiliates of Battle North.

(i) Service Contracts. Except as disclosed in Battle North's Disclosures, there is no agreement, in writing or otherwise, between Battle North and any other person or persons for service, supply, maintenance, management or the operation of the Land and Easement Areas which is not cancelable upon not more than thirty (30) days' notice without payment of any penalty or premium.

(j) Hazardous Materials; Environmental Liens. To Battle North's Actual Knowledge, and except as disclosed in Battle North's Disclosures: (i) Battle North has received no notice, complaint or allegation from any state, federal or local agency or

authority, or any third party, of any violation of any Environmental Law with respect to any portion of the Land and Easement Areas related to any release or alleged release of Hazardous Materials at or from any portion of the Land and Easement Areas; (ii) neither the Land and Easement Areas nor any portion thereof have at any time been used for the transfer, storage, disposal or manufacture of any Hazardous Material; (ii) there has been no release of Hazardous Materials at or from any portion of the Land and Easement Areas; (iii) there are no Hazardous Materials located at, on or under the Land and Easement Areas or any portion thereof, the presence of which would constitute a violation of any Environmental Law; (iv) no other property and no third party has been affected by any release of Hazardous Materials at or from any portion of the Land and Easement Areas; (v) with the exception of utilities, if any, there are no underground storage tanks or pipelines located on the Land and Easement Areas or any portion thereof; (vi) Battle North is not in violation of, or alleged to be in violation of, any judgment, decree, order, law, license, rule or regulation or permit pertaining to any Environmental Law; and (vii) no portion of the Land and Easement Areas is subject to any environmental lien, environmental use restriction or environmental covenant.

(k) Battle North's Disclosures. To Battle North's Actual Knowledge, Battle North's Disclosures delivered to the District/Authority pursuant to Section 1.1 constitute all of such materials as are in Battle North's possession or control.

2.2 Changed Circumstances. If Battle North acquires Actual Knowledge of any act or circumstances which would change or render incorrect, in any material respect, any representation or warranty made by Battle North under this Agreement, whether as of the date given or any time during the Due Diligence Period and whether or not such representation or warranty was based upon Battle North's knowledge and/or belief as of a certain date, Battle North will give prompt written notice of such changed fact or circumstance to the District/Authority; in which event, unless Battle North elects to cause and does cause the representation or warranty to again become true or correct prior to the Court's entry of the Rule and Order, the District's/Authority's sole remedies shall be to terminate this Agreement and dismiss the Eminent Domain Action prior to the Court's entry of the Rule and Order (in which event the Parties shall be relieved of any further obligations hereunder except for the Water Service Commitment and any other obligations identified herein which survive termination) or to waive any objection to the representation or warranty to the extent it has become untrue or incorrect and to proceed with the Acquisition. Notwithstanding the foregoing, in the event that any representation or warranty made by Battle North under this Agreement is changed or rendered incorrect as a result of any wrongful act of Battle North or circumstances caused or consented to by Battle North, and Battle North does not cause the representation or warranty to again become true or correct prior to the Court's entry of the Rule and Order, then the District/Authority shall be entitled to (i) seek and obtain specific performance; or (ii) to the extent specific performance is not available or awarded, reimbursement from Battle North for the District's/Authority's out-of-pocket expenses in connection with this Agreement

and the Eminent Domain Action (including reasonable attorneys' fees) not to exceed \$100,000, and the Parties shall be relieved of any further obligations hereunder except for any obligations identified herein which survive termination.

2.3 Omissions. All representations and warranties made by Battle North in this Agreement, are, to Battle North's Actual Knowledge, free from any untrue statement of material fact and, to Battle North's Actual Knowledge, do not omit to state any material facts necessary to make the statements contained herein or therein not misleading. The copies of any documents furnished to the District/Authority in connection with this transaction are, to Battle North's Actual Knowledge, true and complete copies of the documents they purport to be. Notwithstanding the foregoing, Battle North makes no representations or warranties of any kind with respect to the accuracy or completeness of any reports, studies or other documents furnished to the District/Authority that were prepared by parties other than Battle North, including, without limitation, any Environmental Documents.

2.4 Survival. Each of the representations and warranties in this Article II are acknowledged by Battle North to be material and to be relied upon by the District/Authority in proceeding with the Acquisition, and shall survive for a period of one year following the termination of this Agreement or Recording of the Rule and Order, whichever occurs first. Battle North shall indemnify, defend and hold the District/Authority, their directors, officers, employees, agents, successors and assigns harmless from and against any loss, liability or expense, including reasonable attorneys' fees, not to exceed \$100,000, which arises out of or results from a third-party complaint that is filed against the District/Authority during such one-year period based on the breach by Battle North of any of the foregoing representations or warranties.

2.5 No Other Representations. Except as expressly set forth in this Agreement, this Agreement is made without representation or warranty of any kind by Battle North.

2.6 Environmental Definitions.

(a) As used in this Agreement, "**Actual Knowledge**" of Battle North or similar phrase shall mean the current, actual (not constructive) knowledge, without duty of inquiry or investigation, of either (i) Lorne Bassel in his capacity as President of the Manager of Battle North and, if applicable, his successor in such capacity, or (ii) Tim McGuire, in his capacity as Battle North's local representative and, if applicable, his successor in such capacity.

(b) As used in this Agreement, the term "**Hazardous Materials**" shall mean any substance: (i) the presence of which requires special handling, storage, investigation, notification, monitoring, or remediation under any Environmental Laws (defined below); (ii) which is toxic, explosive, corrosive, erosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise hazardous; (iii) which is (or becomes so

during the Due Diligence Period) regulated by any federal, state or local authority under any Environmental Laws, (iv) any hazardous substance as defined in section 101(14) of the Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9601(14), and also including petroleum, crude oil, or any fraction thereof, asbestos and polychlorinated biphenyls; (v) any substance designated in 40 C.F.R. § 304.2; (vi) any substance identified or listed pursuant to section 3001 of the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*, and (viii) any substance identified or listed by the State of Colorado pursuant to 6 CCR Part 261.

(c) As used in this Agreement, the term “**Environmental Laws**” shall mean all laws, rules and regulations, as well as all agreements between EPA, CDPHE and Battle North or any third party, relating to (i) emissions, discharges, spills, cleanup, remediation, releases or threatened releases of any Hazardous Materials; (ii) the presence of any Hazardous Materials on or in, land, soil, ambient air, surface water, groundwater, watercourses, publicly or privately owned treatment works, drains, sewer systems, storage tanks of any kind, wetlands, or septic systems, (iii) the use, treatment, storage, disposal, handling, manufacturing, transportation, or shipment, cleanup or remediation of Hazardous Materials, (iv) the protection of human health or the environment.

ARTICLE III.

The District’s and Authority’s Representations and Warranties

3.1 Representation and Warranties. The District and Authority each individually represent and warrant, as of the Effective Date and as of the date of Recording of the Rule and Order, as follows:

(a) Authority. The District and Authority are duly organized, validly existing and in good standing under the laws of the State of Colorado. The District and Authority have full right and authority to enter into this Agreement and consummate the transactions contemplated by this Agreement. All requisite action has been taken by the District and Authority in connection with the execution of this Agreement, the instruments referenced herein, and the consummation of the transactions contemplated hereby.

(b) Consents; Binding Obligations. No third-party approval or consent is required to enter into this Agreement or to consummate the transactions contemplated hereby. This Agreement and all documents required hereby to be executed by the District and Authority are and shall be valid, legally binding obligations of and enforceable against the District and Authority in accordance with their terms.

(c) Omissions. All representations and warranties made by the District and Authority in this Agreement are, to the District/Authority’s actual knowledge, free from any untrue statement of material fact and do not, to their actual knowledge, omit to state any material facts necessary to make the statements contained herein or therein not misleading.

3.2 Survival. Each of the representations and warranties contained in this Article III are acknowledged by the District/Authority to be material and to be relied upon by in proceeding with this transaction, and shall survive for a period of one year following the termination of this Agreement or Recording of the Rule and Order, whichever occurs first. The District/Authority shall indemnify, defend and hold Battle North, its directors, member, officers, employees, agents, successors and assigns harmless from and against any loss, liability or expense, including reasonable attorneys' fees, not to exceed \$100,000, which arises out of or results from a third-party complaint that is filed against Battle North during such one-year period based on the breach by District/Authority of any of the foregoing representations or warranties.

3.3 No Other Representations. With the sole exception of the representations set forth in this Article III, this Agreement is made without representation or warranty of any kind by the District or the Authority.

ARTICLE IV.

Acquisition of Property Interests; Eminent Domain Action

4.1 Acquisition of Property Interests. Subject to full and complete satisfaction of the Contingencies or the applicable Party's(ies)' written waiver of one or more such Contingencies, the District/Authority will acquire the following (collectively, "**Property Interests**") in accordance with the terms and conditions of this Agreement:

(a) Fee Interests. As conceptually depicted in the Consolidated Map, and to be documented and effected pursuant to Section 4.2(a), the legal descriptions, acreages and configurations of which and subject to Relocation, Clear Title to a fee simple estate in the following parcels (collectively, "**Land**"):

(i) *Reservoir Parcel.* Subject to and excepting the Recreational Use Covenant, the approximately 41.29 acre parcel that is legally described at Exhibit 3 ("**Reservoir Parcel**"), within which the District/Authority intend to excavate, construct, inundate and operate the Reservoir. The Reservoir Parcel is located entirely outside of the OTP Area and the Trestle Area, and is not subject to the AOC.

(ii) *Dam Parcel.* Subject to and excepting the Reserved Easements, the approximately 3.06 acre parcel that is legally described at Exhibit 4 ("**Dam Parcel**"), within which the District/Authority intend to construct and operate the dam and appurtenant improvements for the Reservoir ("**Dam**"). The Dam Parcel includes a portion of the Trestle Area. The Trestle Area is subject to the AOC. Battle North will cause the Trestle Area, inclusive of the portion within the Dam Parcel, to be remediated in accordance with the Trestle Area Work Plan pursuant to Section 6.8.

(iii) *Inlet Parcel.* Subject to and excepting the Reserved Easements, the approximately 1.23 acre, forty foot (40') wide, parcel that is legally

described at Exhibit 5, within which the District/Authority intend to construct and operate structures to convey water supply from Cross Creek and Eagle River into the Reservoir (“**Inlet Parcel**”). The Inlet Parcel is located entirely outside of the OTP Area and the Trestle Area, and is not subject to the AOC.

(iv) *Cross Creek Parcel*. Subject to and excepting the Reserved Easements, the approximately 2.496 acre, forty foot (40’) wide, parcel that is legally described at Exhibit 6, within which the District/Authority intend to construct and operate structures to convey water supply from Cross Creek to the Inlet Parcel (“**Cross Creek Parcel**”). The Cross Creek Parcel is located entirely outside of the OTP Area and the Trestle Area, and is not subject to the AOC. Additionally:

(A) *Assignment of Bolts Ditch Rights*. The form of conveyance for the Cross Creek Parcel will incorporate an express quit claim form of assignment to the District/Authority, without representation or warranty, of Battle North’s rights to divert and convey water (and which are not included in the Water Rights), if any, in and to Bolts Ditch (the historic alignment of which is located within the Cross Creek Parcel).

(b) Perpetual Easement Areas. Subject to and excepting the Reserved Uses, for the purpose of perpetual, non-exclusive easements (“**Perpetual Easement(s)**”), the terms and conditions of which will be documented and effected pursuant to Section 4.2(c)(i), Clear Title for the easement interests in, to and encumbering the following parcels as conceptually depicted in the Consolidated Map (“**Perpetual Easement Area(s)**”), the legal descriptions, acreages and configurations of which are subject to Relocation:

(i) *Eagle River Parcel*. As legally described at Exhibit 7, an approximately 3.312 acre, forty foot (40’) wide, parcel for structures to convey water supply from the Eagle River to the Inlet Parcel (“**Eagle River Parcel**”). The Eagle River Parcel is located entirely outside of the Trestle Area, but is located within the OTP Area. The OTP Area is subject to the AOC. Battle North will cause the OTP Area, inclusive of the Eagle River Parcel, to be remediated in accordance with the OTP Work Plan pursuant to Section 6.9.

(ii) *Spillway Parcel*. As legally described at Exhibit 8, an approximately 0.67 acre, forty foot (40’)-wide parcel for emergency spillway structures to convey water from the Reservoir to the Eagle River (“**Spillway Parcel**”). The Spillway Parcel includes a portion of the OTP Area. The OTP Area is subject to the AOC. Battle North will cause the OTP Area, inclusive of the portion within the Spillway Parcel, to be remediated in accordance with the OTP Work Plan pursuant to Section 6.9.

(iii) *Outlet Parcel*. As legally described at Exhibit 9, an approximately 0.43 acre, forty foot (40’)-wide parcel for the outlet structures to convey

water from the Reservoir to the Eagle River (“**Outlet Parcel**”). The Outlet Parcel includes a portion of the Trestle Area. The Trestle Area is subject to the AOC. Battle North will cause the Trestle Area, inclusive of the portion within the Outlet Parcel, to be remediated in accordance with the Trestle Area Work Plan pursuant to Section 6.8.

(iv) *Inundation Area Parcel*. As legally described at Exhibit 10, an approximately 10.91 acre parcel (comprised of, as described therein, Parcels A and B) within which the District/Authority intend to obtain ingress and egress to and from the Dam Parcel and the Reservoir Parcel in order to maintain and operate the improvements located therein (“**Inundation Area Parcel**”). The Inundation Area Parcel includes a portion of the Trestle Area. The Trestle Area is subject to the AOC. Battle North will cause the Trestle Area, inclusive of the portion within the Inundation Area Parcel, to be remediated in accordance with the Trestle Area Work Plan pursuant to Section 6.8. The Inundation Parcel is located downstream from the Dam in an area which the Parties anticipate may be subject to potential flooding in the event of a Dam failure. Accordingly:

(A) *Restrictive Covenant*. The form of Perpetual Easement Agreement to be used for Inundation Area Parcel pursuant to Section 4.2(c)(i) will incorporate a perpetual restrictive covenant (“**Inundation Covenant**”) that restricts the uses of the Inundation Area Parcel to only those uses allowed by The Rules and Regulations for Dam Safety and Dam Construction promulgated pursuant to the authority granted the State Engineer in C.R.S. §§ 37-87-102, 37-87-105, 37-80-102(11K), and 24-4-103 (“**Dam Safety Rules**”), including but not limited to the Reserved Uses for existing and to-be-constructed roads and utilities.

(B) *Temporary Easement*. The Inundation Area Parcel will be subject to a Temporary Easement pursuant to Section 4.1(c)(ii).

(c) Temporary Easement Areas. Subject to and excepting the Reserved Uses, for the purpose of temporary, non-exclusive easements (“**Temporary Easement(s)**”), the terms and conditions of which will be documented and effected pursuant to Section 4.2(c)(ii), Clear Title for the easement interests in, to and encumbering the following parcels as conceptually depicted in the Consolidated Map (“**Temporary Easement Area(s)**”), the legal descriptions, acreages and configurations of which are subject to Relocation:

(i) *Processing Area Parcel*. As legally described at Exhibit 11, an approximately 4.46 acre parcel (“**Processing Area Parcel**”) for (A) construction access for the Reservoir Project, and (B) the deposit and storage of Excavated Materials in accordance with the Excavation Contract pursuant to Section 6.9(a). The Processing Area Parcel is located entirely outside of the OTP Area and the Trestle Area, and is not subject to the AOC.

(ii) Inundation Area Parcel. In addition to the Perpetual Easement described in Section 4.1(b)(iv) and the Inundation Covenant, the Inundation Area Parcel will be subject to a Temporary Easement for construction access and staging for the Reservoir Project.

(d) Water Rights. As to be documented and effected pursuant to Section 4.2(b), all of Battle North's right, title and interest in and to all of the conditional water rights decreed in Case Nos. 06W264, 16CW3122 and 16CW3123, including but not limited to the conditional surface water rights and the conditional water storage rights (collectively, "**Water Rights**"). During the Due Diligence Period, if not previously accomplished, Battle North will cause the co-applicants under Case Nos. 06W264, 16CW3122 and 16CW3123, each of which are affiliates of Battle North, to convey to Battle North such entities' interest in the Water Rights such that all of the Water Rights are consolidated in Battle North prior to Battle North's conveyance of the Water Rights to the District/Authority pursuant to Section 4.2(b). Although the District/Authority are not acquiring the Water Rights through condemnation pursuant to the Eminent Domain Action, conveyance of the Water Rights constitutes part of the Property Interests the District/Authority will acquire as part of the Acquisition, the consideration for which is incorporated in the Total Consideration.

4.2 Form of Conveyance Documents: Method and Timing of Conveyance.

(a) Fee Interests in the Land. Recording of the Rule and Order will effect the conveyance of and will vest Clear Title in the District/Authority of a fee simple estate in the Land. The District/Authority, in their sole discretion and at their sole expense, may elect to purchase such policy(ies) of title insurance for the Land as they deem appropriate in connection with or subsequent to Recording of the Rule and Order.

(b) Water Rights. Battle North will effect conveyance of the Water Rights by Battle North's delivery of an executed special warranty deed, in a form materially consistent with that attached at Exhibit 14, for Recording contemporaneously with Recording of the Rule and Order.

(c) Easements. Recording of the Rule and Order will establish Clear Title to the District's/Authority's Perpetual Easements and Temporary Easements estates (collectively, "**Easements**") in and to, respectively, the Perpetual Easement Areas and the Temporary Easement Areas (collectively, "**Easement Areas**") described in, as described below, the Perpetual Easement Agreements and the Temporary Easement Agreements (collectively, "**Easement Agreements**"). The Parties will deliver the fully executed Easement Agreements for Recording contemporaneously with entry and Recording of the Rule and Order, and such Recording will establish the respective Easements subject to the terms and conditions set forth in the Easement Agreements. The District/Authority, in their sole discretion and at their sole expense, may elect to purchase such policy(ies) of title

insurance for the respective Easements as they deem appropriate in connection with Recording of the Rule and Order and the Easement Agreements.

(i) *Perpetual Easements.* The Parties will utilize substantially the form of agreement attached at Exhibit 15 (“**Perpetual Easement Agreement(s)**”) to establish the Perpetual Easements. The Perpetual Easement Agreements will incorporate Reserved Uses.

(ii) *Temporary Easements.* The Parties will utilize substantially the form of agreement attached at Exhibit 16 (“**Temporary Easement Agreement(s)**”) to establish the Temporary Easements, which Temporary Easements will commence with respect to the applicable Temporary Easement Areas upon the District’s/Authority’s delivery to Battle North, pursuant to Section 6.9(b), of their authorization to proceed pursuant to Section 6.3 and funds pursuant to Section 6.5.

(d) Reserved Easement(s). The Rule and Order will expressly grant and reserve to Battle North general, Relocatable, easement(s) for construction, ownership, operation, maintenance, repair and replacement of existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements in designated locations within the Dam Parcel, the Cross Creek Parcel and the Inlet Parcel (“**Reserved Easement(s)**”). The locations and engineering requirements of such improvements within the Reserved Easements will be subject to the Dam Safety Rules, applicable District/Authority Regulations, and operation and maintenance requirements, and the final “as-built” locations of the Reserved Easements will be established pursuant to Section 4.3.

(e) Reserved Uses. The Easement Agreements will expressly reserve to Battle North, as grantor thereunder, the general right to use of the Easement Areas for purposes that do not conflict with the purposes and operation of the District/Authority improvements within the Easement Areas, in accordance with the terms of the Easement Agreements, applicable District/Authority Regulations and operation and maintenance requirements and, as applicable to the Inundation Area Parcel, the Dam Safety Rules (“**Reserved Use(s)**”). The Reserved Uses will include but not be limited to Battle North’s construction, ownership, operation, maintenance, repair and replacement of existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements, and the final “as-built” locations of the Reserved Easements will be established pursuant to Section 4.3.

4.3 Relocation and Modification of Parcels; Post-Acquisition Obligation. The legal descriptions of the Land and the Easement Areas incorporated into, as applicable, the Rule and Order and the original Easement Agreements that will be Recorded concurrently with Recording of the Rule and Order represent the Parties’ best current understanding of the general locations and configurations of such parcels; provided, however, the Parties understand and intend that the final “as built” locations of such parcels will be subject to relocation and modification based on the final engineering designs for the Reservoir Project

and related considerations as described below (“**Reloca(table)(te)(tion)**”). The Parties will perform the Post-Acquisition Obligation to, by mutual agreement, Relocate such parcels (and associated Reserved Easements) by executing and Recording an amendment to the applicable Recorded instrument (i.e., the Rule and Order or an Easement Agreement), which amendment will replace the original legal description with an updated legal description that conforms the parcel’s acreage, location, alignment and configuration to its final engineering design, as established to reflect cost efficiencies, technical requirements, impacts on development of the Battle North Property and other pertinent considerations. Without limitation of the foregoing, the Parties will Relocate the Reservoir Parcel, the Dam Parcel and the Inundation Area Parcel with updated legal descriptions that conform to the State Engineer’s final approval, pursuant to the Dam Safety Rules, of the Reservoir design and the final delineation of the Inundation Area Parcel as set forth in the Dam Failure Inundation Map (as defined at Rule 4.A(7) of the Dam Safety Rules). Without limitation of the foregoing, modifications to the parcels conveyed in fee pursuant to the Rule and Order may be accomplished by the exchange of statutory forms of bargain and sale deeds.

4.4 Eminent Domain Action. The District will commence the Eminent Domain Action to obtain Clear Title to the Land and the Easement Areas and, upon satisfaction of the Contingencies, to complete the Acquisition in accordance with the terms and condition of this Agreement.

(a) Timing of Commencement. The District will commence the Eminent Domain Action promptly after the District/Authority complete their review of matters affecting title to the Land and Easement Areas and identify the parties to be named as respondents therein, which period will not exceed 90 days after the Effective Date without the Parties’ mutual written consent. Battle North will not oppose or contest the filing of the Eminent Domain Action as contemplated in this Agreement.

(b) Parties. Battle North shall be named as a respondent in the Eminent Domain Action, along with other parties that are shown of Record to hold real property ownerships, interests or encumbrances, including mineral interests, in and to the Land and Easement Areas. In the event there are parties that may have an interest in the Land and Easement Areas that are unknown, they will be designated as “unknown parties” in the Eminent Domain Action.

(c) Obligations of Battle North. Battle North will not contest any prerequisite, jurisdictional or otherwise, to the District/Authority’s power and authority to commence and pursue the Eminent Domain Action. Battle North waives any right to contest the District’s power or authority to condemn the Land and Easement Areas and to otherwise complete the Acquisition in accordance with the terms and conditions of this Agreement, the public purposes and uses for the District’s acquisition of the Land and Easement Areas, the necessity of the District’s acquisition of the Land and Easement Areas, and that good faith negotiations occurred prior to filing of the Eminent Domain Action but the Parties failed to agree on the “property sought to be appropriated” (such property being

Clear Title to the Land and the Easement Areas) due to Battle North's inability to satisfy the District/Authority's requirement of obtaining Clear Title to the Land and Easement Areas.

(d) Stipulation. In connection with the District's commencement of the Eminent Domain Action, the Parties will jointly file a stipulation with the Court containing terms consistent with this Agreement, and will provide in the stipulation that this Agreement is and will remain legally binding and enforceable in accordance with its terms and conditions. Without limitation of the foregoing, the District/Authority will have access to the Land and Easement Areas during the pendency of the Eminent Domain Action pursuant to the License and subject to the terms and conditions of Section 1.3.

4.5 Deposit of Funds. Prior to filing the Eminent Domain Action, the District/Authority shall deposit the sum of \$7,500,000 ("**Deposit**") with a title company agreeable to the Parties ("**Title Company**"), acting as escrow agent pursuant to escrow instructions agreeable to the Parties and the Title Company. Such escrow instructions will provide, among other matters, that the Title Company will hold the Deposit in escrow until required to disburse the Deposit from escrow as provided in Section 4.7, either as required to be deposited with the Court in connection with the Eminent Domain Action or as required to be disbursed upon the earlier termination of this Agreement. Additionally, the Parties by mutual agreement may deposit with the Title Company, pursuant to the escrow instructions, instruments comprising the Non-Cash Consideration and instruments required to convey the Property Interests. The escrow instructions will require the Title Company to release the fully executed instruments, upon receipt of documentation consistent with that described in Section 4.7, for delivery to the applicable Party(ies) or to the Court and, if applicable, Recording, in connection with, as applicable, either termination of the Eminent Domain Action and this Agreement or Recording of the Rule and Order.

4.6 Total Consideration. Compensation for the Acquisition will be comprised of, as described below, the Cash Compensation and the Non-Cash Consideration (together, "**Total Consideration**"). Neither the District/Authority nor Battle North shall contest or dispute the Total Consideration.

(a) Cash Compensation. The District/Authority will pay the sum of \$7,500,000, being the amount of the Deposit, in cash, as compensation for the Acquisition ("**Cash Compensation**"), subject to the following:

(i) Subject to the District's/Authority's performance of their respective obligations under this Agreement and further subject to satisfaction of the Total Consideration Contingency, Battle North shall not contest the amount of the Cash Compensation, nor shall Battle North pursue or otherwise assist other respondents to pursue a monetary award exceeding the amount of the Cash Compensation.

(ii) If, for any reason, the ultimate monetary award in the Eminent Domain Action is less than the amount of the Cash Compensation, the District/Authority nonetheless shall pay the full amount of the Cash Compensation in satisfaction of the interests of Battle North and any other named respondents in the Eminent Domain Action. If the ultimate monetary award or total settlement of compensation in the Eminent Domain Action is greater than the amount of the Cash Compensation, the District/Authority in their sole discretion shall either deposit the difference between that monetary award and the Cash Compensation into the Court registry or terminate the Eminent Domain Action. The distribution of proceeds out of the District Court to respondents in the Eminent Domain Action shall be in accordance with Section 4.7.

(iii) If the Contingencies are met, the monetary claims of all respondents named and participating in the Eminent Domain Action shall be satisfied out of the Deposit, or such higher award or total settlement of the Eminent Domain Action to which the District/Authority has agreed. Battle North is entitled to the Cash Compensation or the balance of the Deposit remaining after claims of any other named and participating respondents are settled or adjudicated. Upon satisfaction of the Unencumbered Use Contingency and concurrently with Recording of the Rule and Order, the Court or clerk thereof will disburse or order disbursement of the Cash Compensation to Battle North; provided, however, if the Rule and Order adjudges that any third-party is entitled to a portion of the Cash Compensation, such adjudged amount(s) will be disbursed to said third-party(ies) and the balance of the Deposit will be disbursed to Battle North. The distribution of the Cash Compensation, or such higher or lower monetary award or total settlement in the Eminent Domain Action, shall be a matter for resolution between Battle North and any other respondents named in the Eminent Domain Action.

(iv) Battle North waives any right to statutory interest on any monetary award or settlement in the Eminent Domain Action.

(b) Non-Cash Consideration. In addition to the Cash Compensation and as consideration for Battle North's agreement not to contest, and settlement and compromise of, the amount of the Cash Compensation, the District/Authority will undertake and perform the following Post-Closing Obligations (collectively, "**Non-Cash Consideration**"), which may or may not be incorporated into the Eminent Domain Action:

(i) *Water Service Commitment*. The District/Authority will be legally obligated to perform their respective obligations pursuant to Article VII and Article IX.

(ii) *Remediation of the OTP Area*. The District/Authority will be legally obligated to perform their respective obligations pursuant to Section 6.9 with respect to the OTP Contract, including advancing contract costs for the OTP Contract pursuant to Section 6.5.

(iii) Relocation. The District/Authority will be legally obligated to cooperate in the Relocations contemplated in Section 4.3.

4.7 Disbursement. Pursuant to the escrow instructions, the Title Company will disburse the Deposit from escrow as follows:

(a) Upon Termination. Upon receiving from any Party a Court order (or certified copy thereof) documenting termination or abandonment of the Eminent Domain Action, the Title Company will disburse the Deposit to the District/Authority, and will disburse any documents and instruments to the Party entitled to receive such documents and instruments pursuant to the escrow instructions.

(b) Acquisition. Upon receiving joint written instructions executed by the Parties or a Court order (or certified copy thereof) directing disbursement of the Deposit to the Court or clerk thereof, the Title Company will disburse the Deposit in accordance with such instructions or Court order to be held in the Court registry pending entry and Recording of the Rule and Order and, in accordance with the escrow instructions, will deliver fully executed instruments and documents to the Court or to a designated Party, as applicable, and/or Record such document or instrument in coordination with Recording of the Rule and Order.

4.8 Costs and Fees. The Parties shall pay their own costs and attorney's fees relating to the Eminent Domain Action.

4.9 Title Insurance. Upon the entry of the Rule and Order in the Eminent Domain Action, the District/Authority may, at their election, obtain and pay for title insurance policies for the benefit of the District/Authority that insures title to the Land and Easement Areas.

4.10 Abandonment. Notwithstanding any other provisions of this Agreement, the District/Authority reserves the right to abandon the Eminent Domain Action and to terminate this Agreement prior to the Court's entry of the Rule and Order, in which case the provisions of Section 5.3 will apply and will survive termination until fully performed.

4.11 Timing. Notwithstanding anything in the Agreement to the contrary, the Parties recognize that the court proceedings involved in the Eminent Domain Action are judicial, and that except for the filing of the Eminent Domain Action, the timing of such proceedings are largely outside the Parties' control. The Parties will work in good faith to keep the Eminent Domain Action moving forward.

4.12 Post-Acquisition Obligations; Post-Acquisition Agreement. Certain of the terms, conditions, rights and obligations set forth in this Article IV (including the Relocation obligations pursuant to Section 4.3), regarding remediation of the OTP Area as set forth in Section 6.9, in the Water Service Commitment as set forth in Article VII and

Article IX, and regarding the Recreational Use Covenant as set forth in Article X (such provisions comprising, collectively, the “**Post-Acquisition Agreement**”) describe the Parties’ rights and obligations regarding the performance of activities that will occur after the Acquisition has been completed (collectively, the “**Post-Acquisition Obligations**”). The Parties will make a good faith effort to jointly submit a proposed form of Rule and Order that expressly incorporates the Post-Acquisition Obligations. Without regard to whether expressly incorporated into the final Rule and Order, the Post-Acquisition Obligations will survive Recording of the Rule and Order, will comprise the Post-Acquisition Agreement, will not merge with title to the fee conveyances, and will remain legally binding and enforceable rights and obligations of the Parties until fully performed.

ARTICLE V.

Contingencies; Good Faith Cooperation; Term

5.1 Contingencies. The following, collectively, shall be the conditions precedent to disbursement of the Cash Compensation and to delivery and, as applicable, Recording of the instruments comprising the Non-Cash Consideration (collectively, “**Contingencies**”):

(a) Unencumbered Use Contingency. For the District/Authority’s benefit and unless waived in writing, it will be a condition precedent to disbursement of the Cash Compensation that each of the following have occurred (collectively, “**Unencumbered Use Contingency**”):

(i) *Agencies Approvals*. In accordance with the requirements set forth in Article VI, Battle North has obtained (collectively, the “**Agencies Approvals**”): (A) subject to and conditioned on selection and designation of the Qualified Contractor, the Agencies’ written provisional approval of the OTP Work Plan pursuant to Section 6.7(c); and (B) Certification of RA Completion and Certification of Completion of the Work for the Trestle Area remediation in accordance with all requirements of the AOC and SOW.

(ii) *Suitability for Reservoir Project*. Following due diligence activities in accordance with Section 1.2, including but not limited to the investigation of the physical characteristics of the Dam Parcel, Trestle Area and OTP Area, the District/Authority’s (i) determination, in their sole discretion, that each area is suitable for development of the Reservoir Project, including construction of the Dam, inlet and outlet works, emergency spillway and related infrastructure, and reuse of the Trestle Area after Certification of RA Completion and Certification of Work Completion; (ii) confirmation, in their sole discretion, of the feasibility of the disposal of any contaminated groundwater or soils encountered during construction of the Reservoir, the Dam or other facilities; (iii) procurement of any other assurances or protections they deem appropriate related to the provision of Excavated Soils for Battle North’s remediation of the OTP Area,

construction of the pipeline on the Eagle River Parcel and protection from liabilities which may arise from the construction, operation or maintenance of the Reservoir.

(iii) *Party to Administrative Order on Consent; Separate Settlement Agreement.*

(A) The District/Authority have become a party to the AOC with respect to the Trestle Area under terms suitable to the District/Authority in their sole discretion.

(B) Battle North and the District/Authority have entered into a separate agreement addressing, among Battle North and the District/Authority, the liabilities and obligations they will have under the AOC.

(iv) *Clear Title.* The Court has entered the Rule and Order in a form which, upon Recording, will vest in the District (or, if applicable at the District's direction, the Authority), free and clear of all real property ownerships, interests and encumbrances, including mineral interests, other than those set forth in the applicable patent ("**Clear Title**"):

(A) except for and subject to the Reserved Easements and, as applicable, the Recreational Use Covenant, fee simple title to the Land; and

(B) except for and subject to Battle North's fee ownership and Reserved Uses of the Easement Areas, and the inchoate lien for *ad valorem* taxes and assessments (due and payable in the subsequent year), the District's (or, if applicable at the District's direction, the Authority's) interest in the Easements that will encumber the Easement Areas in accordance with the terms and conditions of the Easement Agreements.

(v) *Water Rights Instruments.* The Parties have executed and the Rule and Order expressly requires, concurrently with Recording of the Rule and Order, delivery and, as applicable, Recording of the following instruments: (A) the special warranty deed conveying the Water Rights to the District/Authority pursuant to Section 4.2(b); and (B) the Perpetual Easement for the Cross Creek Parcel which incorporates the assignment of Bolts Ditch rights to the District/Authority as provided in Section 4.1(a)(iv)(A).

(b) Total Consideration Contingency. For Battle North's benefit and unless waived in writing, it will be a condition precedent to Recording of the Rule and Order that (collectively, the "**Total Consideration Contingency**"): (i) the applicable Parties have executed all instruments comprising and implementing the Non-Cash Consideration; and (ii) the Rule and Order expressly requires, concurrently with Recording of the Rule and Order, (A) disbursement of the Cash Compensation from the Court registry (or, if applicable, from the Title Company escrow); and (B) delivery and, as applicable,

Recording of all instruments affecting real property comprising the Non-Cash Consideration.

5.2 Good Faith Cooperation. The Parties agree and acknowledge that it is not possible to achieve the District's/Authority's intended use of the Land and Easement Areas without satisfying the Unencumbered Use Contingency, and that it is in the best interest of the Parties to cooperate with speed, diligence, good faith, and best efforts to accomplish the Unencumbered Use Contingency. Without limitation of the foregoing, Battle North will reasonably cooperate with the District/Authority, at no cost or expense to Battle North, in the District/Authority's effort to obtain any approvals, consultation or input of EPA, CDPHE, and any other entity which, in the District's/Authority's sole discretion, are appropriate in connection with any due diligence investigations during the Due Diligence Period, as needed by the District/Authority to determine the feasibility of constructing the Reservoir, to assess environmental conditions at the Land and Easement Areas, and/or to obtain bona fide prospective purchaser (BFPP) status for acquisition of any portion of the Land (which is not required to satisfy the Unencumbered Use Contingency but may be pursued by the District/Authority in their discretion pursuant to Section 6.8(d)). Battle North's cooperation includes, but is not limited to, pursuant to the License granted at Section 1.3 of the Agreement, consenting to all such investigations and providing all necessary access to the Land and Easement Areas or other property proximate thereto which is owned by Battle North.

5.3 Term; Termination. Except as otherwise provided in Section 4.10, this Agreement shall remain in effect for one year following the Effective Date. If the Rule and Order has not been Recorded prior to expiration of such one year period, any Party may elect to terminate this Agreement, or the Parties may mutually agree to extend its term in writing. Upon termination pursuant to this Section 5.3, pursuant to Section 2.2, or abandonment pursuant to Section 4.10, the District/Authority shall cause the Eminent Domain Action to be dismissed and this Agreement shall be null and void and of no further force and effect as it relates to the Acquisition; provided, however, that such abandonment and termination shall not have the legal effect of releasing the District/Authority from full performance of their respective obligations pursuant to the Water Service Commitment and shall not relieve the Parties of their respective obligations under any other provision of this Agreement which expressly survives termination.

ARTICLE VI.

Agencies Approvals; Work Plans

6.1 Response Action Notice. Promptly following the Effective Date if not previously accomplished, Battle North will deliver written notice to the Agencies of Battle North's intent to implement the remedial action described in the SOW within (i) the Trestle Area, including excavation of impacted soil, tailings and boulders as required to obtain Certification of RA Completion and Certification of Completion of the Work for the Trestle Area remediation in accordance with all requirements of the AOC and SOW for the land

comprising the Trestle Area (but excluding removal of physical improvements comprising the Trestle structure itself); and (ii) the OTP Area, including installation of a soil exposure barrier.

6.2 Communications; Coordination. In connection with satisfying the Agencies Approvals prong of the Unencumbered Use Contingency, Battle North will be the applicant and communicating entity with the Agencies. Battle North and the District/Authority will coordinate on scheduling, meeting, negotiating, and all communications with the Agencies. Battle North and the District/Authority will meet on a regularly scheduled periodic basis at a mutually agreed upon frequency as appropriate for the level of work being performed to provide updates regarding Battle North's development of the Trestle Area Work Plan and the OTP Work Plan (collectively, "**Work Plans**").

6.3 Authorization to Proceed. Battle North will solicit contract proposals from qualified contractors and will provide to the District/Authority a copy of, as and when applicable, the proposed contract for preparation of the Work Plans pursuant to Section 6.7, the proposed Trestle Area Contract pursuant to Section 6.8, and the proposed OTP Contract pursuant to Section 6.9(b), which contracts will describe the scope of work and the costs for performance of such work. The District/Authority will promptly review the costs for performing the scope of work under such contracts and provide their written authorization to proceed, not to be unreasonably withheld, conditioned or delayed.

6.4 Contract Costs. Subject to the exclusions listed in clauses (a) through (d) below, the District/Authority will be responsible for payment of all costs for which the District/Authority has issued authorization to proceed pursuant to Section 6.3 (including for approved "change order" pursuant to Section 6.5): (i) to prepare the Work Plans pursuant to Section 6.7, including the costs of contractors and consultants preparing the Work Plans; (ii) incurred with respect to the Trestle Area Contract pursuant to Section 6.8 (and additionally, if the District/Authority elects to pursue such activities, the matters described in Sections 6.8(c) and 6.8(d)); and (iii) incurred with respect to the OTP Contract pursuant to Section 6.9(b). The District/Authority foregoing payment obligations expressly exclude: (a) matters for which Battle North is responsible to pay as set forth in Section 6.9(b)(iv); (b) Battle North's attorneys' fees, and other legal costs relating to the matters addressed in the foregoing clauses (i) through (iii); (c) Agencies' past response costs prior to Battle North undertaking the matters addressed in the foregoing clauses (i) through (iii); and (d) future response costs of the Agencies resulting from Battle North's proposed development of the Battle North Property located within the Eagle Mine Superfund Site. For purposes of the foregoing, response costs has the meaning the AOC gives to such term, including direct and indirect costs incurred by EPA and its contractors, subcontractors, the State of Colorado and the United States Department of Justice.

6.5 Advance of Funds. Concurrently with delivering the applicable authorizations to proceed pursuant to Section 6.3, the District/Authority will advance to Battle North funds equal to the full contract amounts for the corresponding matters

pursuant to clauses (i) through (iii) of Section 6.4 All funds advanced with respect to the OTP Contract shall be placed in escrow in accordance with Section 6.9(b)(ii). The funds so advanced will be in addition to and not drawn from or offset against the Cash Compensation. Concurrently with receipt of such funds, Battle North will execute, and will promptly commence and diligently pursue completion of the scope of work under the applicable contract. Prior to authorizing any “change order” to such contracts that would result in an increase in the costs for which the District/Authority would be responsible to pay pursuant to this Section 6.5, Battle North will submit to and obtain written consent from the District/Authority, not to be unreasonably withheld, conditioned or delayed, for the proposed change order. Battle North will provide to the District/Authority copies of all paid invoices and billing statements, and the District/Authority will have the right to audit all such records and to provide detailed written objections to any such costs and expenses.

6.6 Qualified Contractor. The Parties will coordinate to identify prospective contractors who meet the Agencies’ requirements per the Administrative Order on Consent (AOC) as applicable to the Trestle Area and the OTP Area and who are eligible to enter into and perform the Trestle Area Contract and the OTP Contract (“**Qualified Contractor(s)**”) and to select one or more Qualified Contractors, and such other consultants as may be required, in connection with preparation of the Work Plans and performing the work under the Trestle Area Contract and the OTP Contract.

6.7 Preparation of Work Plans. Promptly following the Effective Date if not previously accomplished, the Parties will undertake the following steps to advance preparation, submittal and obtaining the Agencies Approvals of the Work Plans during the Due Diligence Period:

(a) Selection of Consultant. In consultation with the District/Authority, Battle North will develop a scope of work, solicit qualifications from consultants and will solicit fee proposals from the agreed upon consultants with the best qualifications to prepare the work. Subject to receipt of authorization to proceed pursuant to Section 6.3 and funds pursuant to Section 6.5, Battle North will execute a contract for preparation of the Work Plans.

(b) Trestle Area Work Plan; Unencumbered Use Contingency. In order to accomplish remediation of the Trestle Area, Battle North will account for separately and enter into a contract for preparation, and undertake to obtain Agencies Approval, of a work plan (“**Trestle Area Work Plan**”) for excavation, removal and processing of impacted soil, tailings and boulders from within the Trestle Area that is scoped to include the activities necessary to obtain the Agencies’ Certification of RA Completion and Certification of Completion of the Work for the Trestle Area remediation in accordance with all requirements of the AOC and SOW for the land comprising the Trestle Area, and otherwise is consistent with the District/Authority plans for the Reservoir Project. The Agencies Approvals of the Trestle Area Work Plan and, upon completion of the work

contemplated in the Trestle Area Work Plan and Trestle Area Contract, issuance of Certification of RA Completion and Certification of Completion of the Work for the Trestle Area remediation in accordance with all requirements of the AOC and SOW are requirements for satisfaction of the Unencumbered Use Contingency.

(c) OTP Work Plan; Unencumbered Use Contingency. Battle North will enter into a contract for preparation, and undertake to obtain Agencies provisional approval (subject to subsequent selection of a Qualified Contractor in connection with Battle North's later execution of the OTP Contract), of a work plan for remediation of the OTP Area ("**OTP Work Plan**"). The OTP Work Plan will be scoped to include all activities which, upon completion of such work, will be necessary to obtain the Agencies' Certification of RA Completion and Certification of Completion of the Work for the OTP Area remediation in accordance with all requirements of the AOC and SOW for the land comprising the OTP Area, and will be otherwise consistent with Battle North's plans for the BN Development and the District/Authority plans for the Reservoir Project. Without limitation of the foregoing, such matters will include processing of soils the District/Authority have caused to be excavated from the Reservoir Parcel and staged within the Processing Area Parcel ("**Excavated Soils**"), assessing the nature and extent of any hazardous substances therein, determining suitability for placement on the OTP Area, and placement and compaction of the Processed Soils on the OTP Area pursuant to the OTP Contract. The OTP Work Plan shall specify that Battle North will be responsible for implementation and performance of the OTP Work Plan and for ongoing operation and maintenance of all remedial features of the OTP Area, including any necessary long-term monitoring, sediment and erosion controls. Agencies provisional approval of the OTP Work Plan, subject to subsequent selection of a Qualified Contractor in connection with execution of the OTP Contract, is a requirement for satisfaction of the Unencumbered Use Contingency.

(d) Contract Administration. Battle North will be solely responsible for administration of the contract for preparation of the Work Plans, and will diligently pursue completion of the Work Plans, submittal of the Work Plans to the Agencies, and obtaining Agencies Approvals of the Work Plans.

6.8 Remediation of Trestle Area; Unencumbered Use Contingency. Promptly following the Effective Date if not previously accomplished, Battle North will select a Qualified Contractor and, subject to receipt of authorization to proceed pursuant to Section 6.3 and funds pursuant to Section 6.5, will enter into a contract for remediation of the Trestle Area in accordance with the terms and conditions of the Trestle Area Work Plan and all requirements of the AOC and SOW as applicable to the Trestle Area ("**Trestle Area Contract**"). Agencies approval of the work performed pursuant to the Trestle Area Contract, as evidenced by the Agencies' Certification of RA Completion and Certification of Completion of the Work for the Trestle Area remediation in accordance

with all requirements of the AOC and SOW, is a requirement for satisfaction of the Unencumbered Use Contingency.

(a) Scope. The Trestle Area Contract will cover all activities required to implement and complete the approved Trestle Area Work Plan. Removal of the improvements comprising the Trestle structure itself (and the pipe located on the Trestle structure) is not required under the terms of the AOC and is not required to be incorporated in the Trestle Area Work Plan but, at the District's/Authority's election, removal of the Trestle structure (and the pipe located on the Trestle structure) may be included within such scope of work.

(b) Contract Administration. Promptly upon selection of the Qualified Contractor for the Trestle Area Contract, Battle North will engage an owner's representative, and will be solely responsible, to oversee the Qualified Contractor's performance under the Trestle Area Contract and to otherwise administer the Trestle Area Contract. The District/Authority will have no responsibility for contract administration or oversight of the Qualified Contractor's performance under the Trestle Area Contract. Funds required for the Trestle Area Work Plan and Trestle Area Contract, estimated at a cost of \$100,000, have been deposited in a Trust Account and will be dispersed to Battle North as costs are incurred and accounted.

(c) Removal of Trestle Structure and Partial Deletion of Trestle Area. The Parties recognize that removal of the improvements comprising the Trestle structure will be required for construction of the Dam, and that a third-party is responsible for removal of the pipe located on the Trestle structure. Battle North will cooperate in good faith with the District/Authority's effort to coordinate with such third-party to effect the third party's removal of the Trestle pipe. If not already removed by such time as the District/Authority elects to remove the improvements comprising the Trestle structure, whether pursuant to the Trestle Area Contract or pursuant to a separate contract, the District/Authority will be solely responsible to pay all costs for all work to accomplish the removal of the Trestle structure, but neither Battle North nor the District/Authority have any obligation to remove the Trestle pipe or for the cost thereof. Not later than 60 days after completion of the scope of work under the Trestle Area Contract (but not included in the scope of work thereunder), Battle North will in good faith apply to the Agencies for "partial deletion" of the land comprising the Trestle Area by submitting to the Agencies a request for partial deletion in substantially the same form as the request attached as Exhibit 18. Neither completion of the "partial deletion" process nor removal of the Trestle structure (or pipe located thereon) are Contingencies.

(d) BFPP Status. The District/Authority, at their respective sole cost (and not as a Contingency), may conduct an ASTM Phase 1 Environmental Site Assessment and ASTM Phase II Environmental Site Assessment, and otherwise undertake to comply with applicable Agencies requirements in order to become a bona fide prospective purchaser (BFPP), either prior or subsequent to Recording of the Rule and Order. Battle

North will reasonably assist, support and cooperate in this process at no cost to Battle North.

6.9 Remediation of the OTP Area; Post-Acquisition Obligations. The Parties' rights and obligations pursuant to this Section 6.9 are Post-Acquisition Obligations, are a component of the Non-Cash Consideration that will be specifically enforceable, and will survive entry and Recording of the Rule and Order. Remediation of the OTP Area will be accomplished in accordance with the Agencies approved OTP Work Plan as follows:

(a) Excavation Contract. The District/Authority will have no obligation to Battle North to commence or complete the Reservoir Project within any specified time or at all. If and at such time as the District/Authority determine to proceed with the Reservoir Project, the District/Authority, at their sole expense, will enter into an agreement for construction of the Reservoir Project with a Qualified Contractor selected in accordance with the District/Authority's statutory requirements and standard procedures ("**Excavation Contract**"). The scope of the Excavation Contract will include: (I) excavation of material from the Reservoir Parcel as required for Reservoir construction; (II) de-watering of the excavated Reservoir Parcel, if necessary; (III) placement of the Excavated Soils within the Processing Area Parcel; and (IV) after Battle North has caused the Process Soils to be placed within the OTP Area (which placement will occur pursuant to the OTP Contract), restoration and revegetation of the Processing Area Parcel. The District/Authority will be solely responsible for payment of all costs and expenses for construction of the Reservoir Project.

(i) *Notice of Commencement.* In order to facilitate coordination of their respective contracting obligations (including coordination as to the Qualified Contractor to be utilized for the Excavation Contract and the OTP Contract), the District/Authority will provide written notice to Battle North at such time as the District/Authority determine to commence the Reservoir Project and prior to commencing the public bidding process for the Excavation Contract.

(ii) *Contract Administration.* The District/Authority will be solely responsible to oversee the Qualified Contractor's performance under the Excavation Contract and to otherwise administer the Excavation Contract. Battle North will have no responsibility for contract administration or oversight of the Qualified Contractor's performance under the Excavation Contract.

(b) OTP Contract. Upon receipt of the District/Authority written notice of determination to commence the process for selecting the Qualified Contractor and entering into the Excavation Contract, Battle North will commence the process for entering into a contract that covers all activities required to implement and complete the Agencies approved OTP Work Plan ("**OTP Contract**"), including processing and sorting of the Excavated Soils to the condition required for placement within the OTP Area ("**Processed Soils**"), permitted on-site or off-site disposal of any soils and materials not suitable for

placement within the OTP Area, removal of the Processed Soils from the Processing Area Parcel, and the placement, mass grading and compaction of the Processed Soils within the OTP Area. Bidding and selection of the Qualified Contractor to perform the OTP Contract will occur simultaneously with the District/Authority's selection of a contractor to construct the Reservoir. Subject to receipt of authorization to proceed pursuant to Section 6.3 and funds pursuant to Section 6.5, Battle North will enter into the OTP Contract with the same Qualified Contractor that the District/Authority have engaged to perform the Excavation Contract.

(i) *Final OTP Work Plan Approval.* Promptly following selection of the Qualified Contractor and in connection with execution of the OTP Contract, Battle North will undertake to obtain the Agencies' final and non-provisional approval of the OTP Work Plan and will thereafter promptly commence and diligently pursue completion of the OTP Work Plan in accordance with all requirements of the AOC and SOW applicable to the OTP Area.

(ii) *Escrow of Advanced Funds.* The funds the District/Authority advances for the OTP Contract pursuant to Section 6.9(b) will be deposited into escrow with an escrow agent and pursuant to escrow instructions mutually agreed upon by the Parties. The escrow agreement will provide that, subject to District/Authority approval, Battle North will be entitled to draw funds from the escrow account to timely make payments required by the OTP Contract and for the Battle North owner's representative, and will provide the District/Authority the right to receipt of any remaining escrow funds, and to control disbursement of payments under the OTP Contract upon an uncured Battle North default under the OTP Contract.

(iii) *Contract Administration.* Battle North will engage an owner's representative, and will be solely responsible to oversee the Qualified Contractor's performance under the OTP Contract and to otherwise administer the OTP Contract. The District/Authority will have no responsibility for contract administration or oversight of the Qualified Contractor's performance under the OTP Contract, but shall be entitled to have a representative observe the performance of the work. Notwithstanding the foregoing, prior to authorizing any "change order" to the OTP Contract that would result in an increase in the costs for which the District/Authority would be responsible to pay pursuant to Section 6.9(b)(iv), Battle North will submit to and obtain written approval from the District/Authority, not to be unreasonably withheld, conditioned or delayed, for the proposed change order.

(iv) *Costs Relating to BN Development; Long Term Maintenance and Monitoring.* As contemplated in clause (iii) of Section 6.4, Battle North will be solely responsible for payment of any incremental increase in costs under the OTP Contract for additional work Battle North requests (being an exception to the District/Authority otherwise applicable payment obligations) (A) to preserve the ability to incorporate specific portions of the OTP Area into the BN Development in the future (e.g., cost of

installation of a soil exposure barrier, additional compaction, material processing to create structural fill, over-excavation of unsuitable material, etc.); (B) for construction of roads and installation of utilities; and (C) resulting from a “change order” that Battle North makes to the original scope of work relating to the foregoing. Battle North shall also be solely responsible for all costs required for the long term operation, maintenance and monitoring of the OTP Area remedy.

(c) Additional Battle North Obligations. Upon completion of the scope of work under the OTP Contract, Battle North shall be responsible for promptly (i) applying for a Certification of Completion of the Work for the OTP Area; (ii) if necessary in the District’s/Authority’s sole judgement, and subject to Agencies Approval, obtaining a modified “Restrictive Notice” for the OTP Area acceptable to the District/Authority that will allow the District/Authority to complete construction of the pipeline and related infrastructure in the Eagle River Parcel and thereafter access, operate, maintain, repair and replace that pipeline and related infrastructure; and (iii) initiate partial deletion of the OTP Area by submitting a request to EPA in substantially the same form as attached at Exhibit 18.

ARTICLE VII.

Augmentation Water Option

7.1 Minimum Augmentation Water Option. Commencing on the Effective Date, the District/Authority shall reserve and grant to Battle North a 22-year option to obtain the right to the perpetual deliveries and use of water to augment the municipal diversions for the BN Development (“**Option**”), up to a maximum of 94 acre-feet of augmentation water (“**Minimum Augmentation Water**”). Due to the impacts construction of the Reservoir Project would have on areas of the BN Development proximate to the Reservoir, Battle North will not be able to develop such proximate areas until such time as the District/Authority has completed the Reservoir Project and for that reason may not be able to fully exercise the Option prior to completion of the Reservoir Project. Accordingly, if the District/Authority have not completed construction of the Reservoir Project by December 31, 2030 and Battle North has not yet exercised the Option for the full 94 acre-feet of Minimum Augmentation Water, the period of the Option will automatically extend for an additional 10 years (to a total of 32 years after the Effective Date). The Option shall not be subject to the “first come, first serve” policy of the District/Authority. The Minimum Augmentation Water is based on the assumption that Battle North will obtain land use approval for up to 400 SFEs.

7.2 Additional Option. If Battle North receives land use approval for density within the BN Development of more than 400 SFEs and up to a maximum of 700 SFEs, Battle North shall have the option (“**Additional Option**”) to obtain the right to perpetual deliveries and use of up to an additional 45 acre-feet of augmentation water (“**Additional Augmentation Water**”) for the BN Development. If applicable, the Additional Option will only become available to Battle North once the District/Authority have completed

construction of the Reservoir Project. The Additional Option shall be subject to the “first come, first serve” policy of the District/Authority and shall expire 10 years after construction of the Reservoir Project is completed. The Additional Option shall terminate upon termination of this Agreement pursuant to Section 5.3. The Additional Augmentation Water is based on the assumption that Battle North will obtain land use approvals for up to 700 SFEs.

7.3 Terms and Conditions. The Option, Additional Option, and purchase and use of the Minimum Augmentation Water and Additional Augmentation Water (collectively, the “**Augmentation Water**”) shall be subject to the following terms and conditions:

(a) The Augmentation Water shall be a mix of storage water and historic consumptive use credits chosen annually by the District/Authority in their sole discretion.

(b) Within 30 days of the Effective Date, the District/Authority will file, and will diligently process, a case with the water court to change the place of use and a plan for augmentation and exchange to enable the District/Authority to satisfy their Augmentation Water obligation from a mix of storage water and historic consumptive use credits chosen annually by the District/Authority in their sole discretion (the “**Change Case**”).

(c) If Minturn provides water service to the BN Development pursuant to Section 9.2(a)(i), the terms and conditions of Section 9.2(a)(i) will govern and control with respect to the required plan for augmentation and exchange.

(d) If the District/Authority provides water service to the BN Development pursuant to Section 9.2(a)(ii), the terms and conditions of Section 9.2(a)(ii) will govern and control with respect to the required plan for augmentation and exchange.

(e) Battle North’s purchase of Augmentation Water shall be subject to applicable provisions of the District/Authority Regulations to the extent not implicitly or explicitly in conflict with the terms and conditions of the Water Service Commitment. The price for the Augmentation Water shall be the cash in lieu fee of the District/Authority then in effect at the time Battle North exercises the Option or Additional Option, as applicable. Battle North may exercise its Option and Additional Option in individual increments; provided, however, no individual increment shall be less than 15 acre-feet, except that the final exercise of the Option and Additional Option can be in an increment of less than 15 acre-feet if the remaining amount for which the Option or Additional Option, as applicable, has not been exercised is less than 15 acre-feet or if less than 15 acre-feet is required to support the final phase of the BN Development.

(f) Battle North will not exercise the Option on its initial increment of Minimum Augmentation Water prior to the later of: (i) obtaining land use approval for the initial phase of the BN Development, which approval establishes the density of such phase for purposes of calculating the acre-feet of Minimum Option Water required to support such development; or (ii) the second (2nd) anniversary of the Effective Date.

(g) The Augmentation Water will not be conveyed to Battle North, and Battle North will have no ownership interest in the Augmentation Water; rather, as set forth in Sections 7.1 and 7.2, Battle North shall have the right to perpetual deliveries and use of water to augment the municipal diversions for the BN Development. The Augmentation Water will be made available pursuant to a separate water service contract to be entered into by Battle North and the District/Authority at such time as Water Service is physically provided pursuant to, as applicable, Section 9.2(a)(i) or Section 9.2(a)(ii) on the terms and conditions required by the applicable final plan for augmentation and otherwise not in conflict with the terms and conditions of the Water Service Commitment and this Agreement.

(h) If any of the Augmentation Water needs to be delivered to Cross Creek, Battle North shall pay for any facilities required to deliver the Augmentation Water to Cross Creek, including from the Reservoir if applicable.

(i) The District/Authority shall retain or claim the right to all return flows from the diversions augmented by the Augmentation Water to the extent entitled to do so pursuant to applicable law.

(j) Terms and conditions will be imposed on the SFEs constructed in the BN Development that require the imposition of lawn watering restrictions on the same terms and conditions that generally apply to other users within the Water Service Area pursuant to the District/Authority Regulations and/or the District's drought response plan.

(k) The Option will not terminate if the Agreement terminates due to the inability to accomplish the Contingencies or the failure of the Parties to agree to an extension of the initial one year term pursuant to Section 5.1(b); provided, however, in such event and if Battle North (or another party other than the District/Authority on Battle North's behalf) constructs a water storage reservoir in a location that incorporates all or any part of the Land within 50 years from the Effective Date, the District/Authority will have the option to purchase storage space in such reservoir up to the number of acre-feet of storage space equal to the number of acre-feet of Augmentation Water that Battle North has purchased under the Option (the "**Storage Option**"). The District/Authority must exercise such option, if at all, within 90 days after its receipt of notice that construction of such reservoir will be undertaken and in any event prior to completion of the reservoir design and engineering plans. The Parties may mutually agree to an increase in the amount of storage space available for purchase by the District/Authority. The District/Authority will pay a per acre-foot price equal to the then-present value of the pro rata share of the full

cost to construct such alternate reservoir and related conveyance and diversion structures, and will be responsible for all costs and expenses of additional conveyance and diversion structures and other infrastructure the District/Authority requires, if any, for its exclusive use in connection with its storage capacity in the reservoir. The District/Authority will be responsible for adjudicating their own storage rights in the reservoir and, unless the Parties otherwise agree in writing, will have no rights to the Battle North storage rights or any other Battle North water rights. Additionally, the District/Authority will be responsible for payment of its pro rata share of annual maintenance and operation costs for the reservoir and related conveyance and diversion structures that it uses in common with other parties.

7.4 Restricted to BN Development. The Augmentation Water may only be used to augment municipal water use within the Battle North Property, and may not be sold or assigned by Battle North or its successors or assigns for use on any other property or within another development (subject to, if applicable, Section 9.2(a)(i)).

7.5 Water Service Commitment. The Parties' rights and obligations pursuant to, and the terms and conditions set forth and described in, Article VII and Article IX collectively constitute the "**Water Service Commitment**". The Water Service Commitment (i) sets forth rights and obligations of the Parties which are legally binding and enforceable as of the Effective Date until fully performed; (ii) will survive, as applicable, termination of this Agreement, abandonment of the Eminent Domain Action and Recording of the Rule and Order; (iii) is a component of the Non-Cash Consideration; (iv) will not merge into title of the fee conveyances; and (v) is not contingent on entry or Recording of the Rule and Order or whether the District/Authority commence or complete the Reservoir Project.

ARTICLE VIII.

Land Use Matters

8.1 Reservoir Approvals. The District/Authority will need to obtain permits and other necessary approvals to allow the District/Authority to develop, construct, and operate the Reservoir and the associated diversion, pipelines, ditches, and outlet facilities for all decreed beneficial uses to meet the water requirements of their existing and future service areas (the "**Reservoir Approvals**"). The Reservoir Approvals include, but are not limited to approval from the Town of Minturn pursuant to Chapter 16, Article 25 of the Minturn Municipal Code "Areas and Activities of State Interest". The District/Authority may file application with Minturn and other appropriate agencies for such Reservoir Approvals at any time after the Effective Date. The Reservoir Approvals are not Contingencies.

8.2 Covenant Not to Sue. As a Post-Acquisition Obligation and prior to conveying the Battle North Property or any portion thereof (other than pursuant to the Acquisition), Battle North will Record a declaration of covenants that runs with title to the Battle North Property and is binding and enforceable against Battle North's successors as the fee owner or owner of any other interest in such property, including any homeowners'

association or similar owners' association (whether acting on such entity's behalf or on behalf of its members), which, among other matters, discloses that portions of the Battle North Property are a former Superfund site and effects a waiver by any party taking such title or interest in the Battle North Property of any and all rights to assert claims of any nature relating to such environmental matters, including any such claims against the District or Authority for any reason other than gross negligence by the District or Authority. Prior to Recording the declaration of covenants, Battle North will provide the proposed declaration of covenants to the District/Authority for its review and comment on the provisions thereof which implement the foregoing environmental disclosure and waiver of claims.

ARTICLE IX.

Sewer and Water Service

9.1 Sewer Service. As a part of the Non-Cash Consideration and without regard to whether included in the Sewer Service Area, Battle North will be entitled to receive, and the District will be legally obligated to provide, sanitary sewer service within the Battle North Property in accordance with the Water Service Commitment and generally applicable provisions of the District/Authority Regulations not in conflict therewith, for a minimum of 400 SFEs of future development and such additional SFEs, if any (up to a maximum of 700 SFEs), as correlate to the SFEs that are supported by the Additional Augmentation Water that Battle North has optioned ("**Sewer Service**"). Neither Battle North's right to receive nor the District's obligation to provide Sewer Service are contingent on whether the District/Authority commence or complete the Reservoir Project at any particular time or at all.

(a) Sewer Infrastructure. The District will provide Sewer Service by means of, whichever is most economically feasible, either: (i) a new wastewater treatment plant located within the Battle North Property; or (ii) a sanitary sewer trunk line that extends to and connects with the District's existing wastewater collection system.

(b) Construction, Ownership and Operation. Such facilities will be constructed in accordance with then-current design and technical standards, and other applicable requirements, under the District/Authority Regulations and the Colorado Department of Public Health and Environment's regulations. The District may elect to directly undertake construction of the wastewater treatment plant. As applicable, Battle North will dedicate and convey fee title to the land underlying the treatment plant or will dedicate easements for the trunk line, together with easements for any related conveyance facilities. Upon completion and the District's issuance of a construction acceptance letter (as defined in the District/Authority Regulations), the District will own, operate and maintain, as applicable, the treatment plant or the trunk line, together with related facilities, and Battle North will be entitled to obtain service connection to and receive Sewer Service from the District's wastewater collection and treatment system.

(c) Costs. Battle North will be responsible for payment of all costs for design, permitting and construction of, as applicable, the treatment plant or the trunk line, together with any related conveyance facilities and other improvements to the District's then-existing Sewer Service collection system, as required to comply with applicable regulatory requirements.

(d) Service Charges. Users within the BN Development will pay applicable Sewer Service impact, tap/connection and service fees to the District at the District's then-current in-District, subdistrict, or out-of-District rates, as applicable.

9.2 Water Service. As a part of the Non-Cash Consideration, upon request of Battle North pursuant to Section 9.2(a)(ii), and subject to the specific land use approvals received by Battle North, the Rules and Regulations for Water and Wastewater Service as adopted and amended from time to time by the District/Authority ("**District/Authority Regulations**"), and a contract for water service (the terms of which shall not conflict with the Water Service Commitment or this Agreement) to be entered into between Battle North and the District/Authority, the District/Authority shall be legally obligated to provide potable water service within the Battle North Property for, subject to obtaining land use approval for development of such density, up to a maximum of 700 SFEs or the lesser amount of total SFEs supported by the Augmentation Water which Battle North acquires pursuant to Article VII ("**Water Service**"). Neither Battle North's right to receive nor the District's/Authority's obligation to provide Water Service are contingent on whether the District/Authority commence or complete the Reservoir Project at any particular time or at all.

(a) Provision of Water.

(i) *Minturn.* If Minturn is willing and able to supply water to support development within the BN Development, then Minturn will treat and deliver potable water to support the BN Development. Battle North will have the unqualified right to assign its rights to the Augmentation Water that Battle North obtains from the District/Authority to Minturn; provided, however, that, as set forth in Section 7.3(g), Battle North will not have, and cannot assign to Minturn, any ownership interest in the Augmentation Water. The District/Authority will not oppose Minturn providing water service to the Battle North Property utilizing the Augmentation Water provided it is consistent with the terms and conditions of this Agreement. Notwithstanding the foregoing, to ensure such application does not injure the District's/Authority's water rights and to ensure that any decree implements, and does not conflict with, the terms and conditions of this Section 9.2(a)(i), Section 7.3 and other provisions of this Agreement pertaining to the Water Service Commitment, the District/Authority shall have the right to file a statement of opposition to any amendment to Minturn's augmentation plan or any other application that seeks to utilize the Augmentation Water to provide water service to the Battle North Property in accordance with the terms and conditions of this Section 9.2(a)(i) and Section 7.3.

(ii) *District/Authority*. Only if Minturn is unable or unwilling to supply potable water to support development within the Battle North Property as described in Section 9.2(a)(i) and on commercially reasonable terms and conditions, the District/Authority shall provide Water Service to the Battle North Property as follows:

(A) Battle North and the District/Authority shall enter into a water service contract that is consistent with the District/Authority Regulations, the land use approvals received for the Battle North Property, and the terms and conditions of the Water Service Commitment and this Agreement.

(B) The Water Service will be provided by means of water treatment and/or delivery facilities located on the Battle North Property at a location reasonably acceptable to the District/Authority and Battle North based on engineering and cost considerations, and impacts on planned development of the Battle North Property.

(C) If the District/Authority determine to provide the Water Service via a new water treatment plant, Battle North will be responsible for payment of all costs for design, permitting and construction of the water treatment plant and any required infrastructure to convey water to the treatment plant and to deliver treated water from the treatment plant to individual users. Such facilities will be constructed in accordance with then-current design and technical standards, and other applicable requirements, under the District/Authority Regulations and Colorado Department of Public Health and Environment regulations. Battle North will dedicate and convey fee title to the land underlying the treatment plant, together with easements for any related conveyance facilities. Upon completion, the District will own, operate and maintain the treatment plant and related facilities, and Battle North will be entitled to obtain service connection to and receive Water Service from the District's water system.

(D) The District/Authority will treat and deliver potable water to support the BN Development. Users within the BN Development will pay Water Service impact, tap/connection and service fees to the District/Authority at a rate to be determined by the District that appropriately recovers the cost of providing service to the BN Development.

9.3 Inclusion; Subdistrict.

(a) Although the District's/Authority's performance of their respective obligations of the Water Service Commitment are not contingent on whether all or any portion of the Battle North Property is included in the Water Service Area or the Sewer Service Area, Battle North acknowledges that there is value in including the Battle North Property into the District, including but not limited to lower rates and fees for in-District customers. If not earlier submitted, upon a written request by the District/Authority, Battle North will submit a petition for inclusion into the District pursuant to § 32-1-401(1), C.R.S. Battle North shall pay all costs associated with the submittal and processing of such

inclusion petitions. Alternatively, the District's Board of Directors may adopt a resolution initiating the inclusion any or all of the Battle North Property into the District, pursuant to § 32-1-401(2)(a)(II), C.R.S. If the Battle North Property is not included into the District and made subject to the District's mill levy, the BN Development may be subject to out-of-District water and sewer service charges to offset the District's loss of mill levy revenue in accordance with then-applicable District/Authority Regulations and policies of general applicability.

(b) If the District provides Water Service pursuant to Section 9.2(a)(ii), the Parties will cooperate to include the Battle North Property into a water subdistrict of the District, and Battle North will be responsible for all costs associated with such formation and inclusion.

9.4 Written Confirmation of Services. From and after the Effective Date, the District will be obligated to provide, upon receipt of a written request in connection with an application for development or any form of land use application for the Battle North Property, written confirmation of Battle North's right to Water Service and Sewer Service to support development within the Battle North Property pursuant to the Water Service Commitment.

9.5 Cooperation In District/Authority Water Court Actions. The District/Authority and Battle North will cooperate as follows with respect to certain District/Authority water court actions:

(a) Change Case. Upon submittal of invoices and other sufficient documentation of such costs, Battle North shall pay 50% of the District's/Authority's third-party legal, engineering and other consulting costs incurred to adjudicate the Change Case.

(b) Bolts Lake Augmentation Plan. The District/Authority will have the right to file with the water court, at any time after the Effective Date, an application for water rights and approval of a plan for augmentation and exchange to enable the future diversion, delivery, storage and direct flow of District/Authority water rights to, in and from the Reservoir (the "**Bolts Lake Augmentation Plan**"); provided, however, that the District/Authority shall not permit entry of a decree to occur prior to the District/Authority having acquired the Water Rights and other Property Interests in accordance with Section 4.1. If abandonment of the Eminent Domain Action and termination pursuant to Section 5.3 occur prior to entry of a decree, the District/Authority may continue with the Bolts Lake Augmentation Plan application for the sole purpose of securing a water right to utilize the Storage Option pursuant to Section 7.3(k); subject, however, to the requirement (which will survive such abandonment and termination) that the application shall be amended to, and as approved shall (i) exclude the Water Rights, (ii) establish a priority date for such District/Authority conditional water right of not earlier than 2021; and (iii) limit the water right to the maximum acre-feet of the Storage Option. In such event,

Battle North shall have the right to intervene and file a statement of opposition to the amended application to ensure that any decree does not injure the Water Rights and otherwise implements, and does not conflict with, the terms and conditions of this Section 9.5(b) and other provisions of this Agreement pertaining to the Water Service Commitment.

(c) No Opposition. Battle North shall not oppose the Change Case, the Bolts Lake Augmentation Plan (subject to the terms of Section 9.5(b)) or, so long as this Agreement has not been terminated pursuant to Section 5.3, any subsequent application filed by the District/Authority related to Water Service to the Battle North Property or related to the Reservoir. Provided the District/Authority has acquired the Water Rights and other Property Interests in accordance with Section 4.1, Battle North will not oppose any future District/Authority water uses which are unrelated to the Battle North Property, the District's/Authority's performance of its obligations pursuant to the Water Service Commitment, or the Reservoir.

ARTICLE X. Recreational Use Restrictions

10.1 Recreation Use Covenant; Post-Acquisition Obligations. Recreational uses shall be allowed at the Reservoir, if and when the District/Authority complete the Reservoir Project, subject to the terms and conditions set forth in this Article X ("**Recreational Use Covenant**"). The Recreational Use Covenant is a Post-Acquisition Obligations incorporated into the Post-Acquisition Agreement and which will survive entry and Recording of the Rule and Order until fully performed. If the District/Authority construct the Reservoir Project, recreational use shall be allowed at the Reservoir, subject to the following terms and conditions:

(a) Any recreational use shall be secondary and subordinate to the primary use of the Reservoir by the District/Authority for the existing and future decreed uses.

(b) Any recreational use shall be limited to: (i) non-motorized boating, (ii) fishing from shores, boats, or float tubes (i.e. belly boats), (iii) paddle boarding, (iv) picnicking, (v) hiking around lake, and (vi) other future uses approved by the District/Authority (collectively, the "**Permitted Recreational Uses**"). Except for the Permitted Recreational Uses, no other recreational uses shall be allowed on the Reservoir. Moreover, no recreation use of the Reservoir by a commercial operator shall be permitted.

(c) There shall be no right to maintenance of water levels in the Reservoir for the purpose of supporting the Permitted Recreational Use. No surface recreational use shall be allowed during the months of December through April, or when it would jeopardize the health, safety and welfare of users as determined by the District/Authority.

(d) One dock may be installed at the expense of Battle North to facilitate the Permitted Recreational Uses. The design of the dock shall be subject to review and approval by the District/Authority; provided that such approval may be withheld at their sole discretion.

(e) The District/Authority shall determine, in their sole discretion, the specific areas of the Reservoir that will be open to public access and the Permitted Recreational Uses, including the locations of any parking areas, trails, and the dock; and the means by which such access is granted, including but not limited to public rights of way, easements or licenses for the public to access the Reservoir.

(f) Should new water quality regulations be adopted in Colorado that would subject the Reservoir to increased water quality testing as a result of body contact with the water stored in the Reservoir, any Permitted Recreational Uses involving body contact may be discontinued as is reasonably needed to ensure that the recreational uses do not result in the District/Authority being subjected to increased testing and treatment costs.

(g) Battle North shall indemnify the District/Authority against any claims, demands and liabilities arising out of, resulting from or related to the recreational use of the Reservoir (both Permitted Recreational Uses and unauthorized recreational uses). The District/Authority will notify Battle North of any such claim or demand, when and if made, and Battle North shall defend against or participate in the defense against such claims. The District/Authority shall cooperate fully in the defense of such claims.

(h) Battle North must obtain and maintain appropriate insurance coverage related to the recreational use of the Reservoir. If necessary to obtain such insurance, the District/Authority shall grant a recreational use lease to Battle North for the Reservoir in a form mutually agreeable to the Parties.

(i) Upon providing written notice to Battle North, the District/Authority may prohibit any and all Permitted Recreational Uses if they determine in their sole discretion that any use (A) interferes with or in any manner restricts the use of the Reservoir as a water storage facility for its decreed uses; and/or (B) increases the cost of operating the Reservoir. Such notice shall specifically describe the Permitted Recreational Use(s) at issue and the reasons for prohibiting such use(s). Battle North shall have 60 days from receipt of such notice to cure the cause of such recreation use(s) prohibition identified by the District/Authority, or such other amount of time as the Parties mutually agree in writing is reasonably necessary to cure the cause of such recreation use prohibition; provided; however, that the District/Authority shall have sole discretion to determine whether to allow more than 60 days to achieve a cure. If Battle North is not able to achieve a cure to the satisfaction of the District/Authority within 60 days of receiving notice from the District/Authority (or such longer time as agreed to by the Parties), then the Permitted Recreation Use(s) that is/are being prohibited shall cease in whole or part if required by the District/Authority and shall no longer be considered a Permitted Recreational Use.

(j) Upon written notice to the District/Authority Battle North may assign the rights and obligations of this Recreational Use Covenant to a homeowner association or other assignee or successor of Battle North's rights and obligations hereunder; provided, however, that the indemnification obligation may not be assigned to an entity that is considered a "District" pursuant to Article X, Section 20 of the Colorado Constitution.

(k) The Reservoir Approvals may include all of the terms and conditions set forth in the Recreational Use Covenant. Nothing herein shall prevent the District/Authority from granting such recreation rights to the members of the general public.

ARTICLE XI.

Environmental Indemnification and Release

11.1 Battle North's Environmental Indemnification. Except to the extent any such losses, costs, damages, claims, penalties or liabilities are caused directly by the District's/Authority's negligent action or inaction, or failure to comply with Environmental Laws, Battle North shall indemnify, defend and hold harmless the District/Authority, the District's/Authority's directors, managers, officers, employees, agents or representatives, as applicable, from and against (i) all losses, costs, damages, claims, penalties and liabilities arising from or related to the presence on or beneath any portion of the Land and Easement Areas of any Hazardous Materials, the presence on or beneath any other property of any Hazardous Materials which have been released from the Land and Easement Areas, or arising out of, resulting from or related to Battle North's use of the Land prior to the Acquisition; (ii) any violation by Battle North of any Environmental Laws in connection with the Land and Easement Areas; (iii) any failure of Battle North to comply with any order, demand or other requirement of any state, federal or local authority relating to the presence or release of any Hazardous Materials at or from any portion of the Land and Easement Areas, including but not limited to any administrative order, amendment thereto, or any related requirement; and (iv) any failure by Battle North to investigate or remediate any Hazardous Materials at, or released from, the Land and Easement Areas. The District/Authority will notify Battle North of any such claim or demand, when and if made, and Battle North shall defend against or participate in the defense against such claims. The District/Authority shall cooperate fully in the defense of such claims. The foregoing provisions of this Section 11.1 shall survive the termination of this Agreement and Recording of the Rule and Order for a period of, as applicable: (i) ten (10) years after the Effective Date; or, (ii) if the District/Authority commence construction of the Reservoir Project prior to the 10th anniversary of the Effective Date, for a period of seven (7) years after commencement of construction. With respect to the Trestle Area and the OTP Area, respectively, Battle North shall, and shall cause the applicable Qualified Contractor to (or shall assign the same to the District/Authority), indemnify, defend and hold harmless the foregoing District/Authority parties, for work performed pursuant to the Trestle Area

Contract and the OTP Contract, for a period of not less than one (1) year from completion of the applicable contract.

11.2 Battle North's Environmental Release. Except to the extent any such losses, costs, damages, claims, penalties or liabilities are caused directly by the District's/Authority's negligent action or inaction, or failure to comply with Environmental Laws, Battle North does hereby forever release and discharge the District/Authority and the District's/Authority's directors, managers, officers, employees, agents and representatives from any and all claims, actions, judgments, liens, writs, damages, losses, costs, penalties and liabilities or demands arising from or related to: (i) the presence on or beneath any portion of the Land and Easement Areas of any Hazardous Materials, the presence on or beneath any other property of any Hazardous Materials which have been released from the Land and Easement Areas; (ii) any violation by Battle North of any Environmental Laws in connection with any portion of the Land and Easement Areas or any other property; (iii) any failure of Battle North to comply with any order, demand or other requirement of any state, federal or local authority relating to the presence or release of any Hazardous Materials at or from the Land and Easement Areas or any other Property, including but not limited to any administrative order, amendment thereto, or any related requirement; and (iv) any failure of Battle North to investigate or remediate any Hazardous Materials at, or released from, any portion of the Land and Easement Areas. The release specified in this Section 11.2 includes a release of all claims for injunctive relief, specific performance, declaratory judgment, accounting, compensatory damages, punitive damages, or damages or equitable relief of any nature, based on any theory of recovery, including claims for attorneys' fees and costs. The provisions of this Section 11.2 shall survive, as applicable, the termination of this Agreement or Recording of the Rule and Order.

ARTICLE XII.

General Provisions

12.1 Remedies. The terms of this Agreement shall be specifically enforceable from and after the Effective Date; provided, however, nothing contained herein shall obligate the District or the Authority to construct the Reservoir.

(a) Breach of Pre-Acquisition Obligations. Time is of the essence of the Parties' obligations with respect to satisfaction of the Contingencies and accomplishment of the Acquisition. If a Party fails to perform any of its pre-Acquisition obligations hereunder, or breaches any representation or warranty hereunder and such failure to perform or breach continues uncured for thirty (30) days after such Party receives notice thereof from the non-breaching Party, the non-breaching Party, as its sole and exclusive remedy, shall be entitled to terminate this Agreement and receive reimbursement from the breaching Party for all of the non-breaching Party's out-of-pocket expenses incurred in enforcement of the pre-Acquisition obligation, not to exceed \$100,000. The Parties hereby agree that such consideration is a fair and reasonable estimate of the total detriment that a

non-breaching Party would suffer in the event of breaching Party's uncured default and failure to duly complete the Acquisition. The Parties agree that it would be impractical and extremely difficult to estimate the damages which either Party would suffer in the event of the other Party's default.

(b) Breach of Post-Acquisition Obligations. Time is of the essence of the Parties' obligations with respect to the Water Service Commitment and other Post-Acquisition Obligations. If a Party fails to perform any of its Post-Acquisition Obligations and such failure to perform or breach continues uncured for thirty (30) days after such Party receives notice thereof from the non-breaching Party, the breaching Party's obligations pursuant to the Water Service Commitment and other Post-Closing Obligations shall be enforceable by specific performance of such Post-Closing Obligations.

(c) Attorneys' Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the substantially prevailing Party (or Parties) in such suit shall be entitled to recover its reasonable attorneys' fees and expenses from the non-prevailing Party (or Parties). The provisions of this Section 12.1 shall survive the term of this Agreement, entry and Recording of the Rule, and Recording of the instruments that effect the Acquisition.

12.2 Recording. This Agreement and all Exhibits attached to this Agreement shall be Recorded either by incorporation into the Recorded Rule and Order or separate recording if not incorporated into the Rule and Order. After the District has commenced the Eminent Domain Action and the Deposit has been deposited with the Court, the Parties may Record a short form memorandum of this Agreement which shall expire by its terms, unless extended by the Parties, if the Rule and Order is not Recorded within one (1) year after the Effective Date.

12.3 Assignment. Battle North may assign all or any portion of its interests and obligations under this Agreement, except as restricted by Section 7.4 and the Recreational Use Covenant, upon written approval by the District/Authority which shall not be unreasonably withheld, conditioned or delayed. The District/Authority may assign their interests and obligations under this Agreement to each other or to a successor consolidated district or authority. The terms of this Agreement will be binding on the Parties' successors and assigns.

12.4 Notice. The addresses of the Parties are listed below. Any and all notices allowed or required to be given in accordance with this Agreement will be deemed to have been given when delivered to the other Parties five (5) days following the date the same is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, addressed to the other Parties at the addresses noted, or such address as is subsequently endorsed in writing.

To District/Authority: Eagle River Water & Sanitation District
Upper Eagle Regional Water Authority
Attn: General Manager
864 Forest Road
Vail, CO 81657

with required copies to: Collins Cockrel & Cole, P.C.
390 Union Blvd., Suite 400
Denver, CO 80228
Attn: Kathryn G. Winn

To Battle North: Battle North, LLC
440 Eagle Street
P.O. Box 56
Minturn, CO 81645
Attn: Tim McGuire

with required copies to: Bassel Battle Investment, Corp.
3500 St. Jacques
Montreal, Quebec H4c1h2
Canada
Attn: Lorne Bassel

and to: Otten Johnson Robinson Neff & Ragonetti, P.C.
950 17th Street, Suite 1600
Denver, CO 80005
Attn: Munsey Ayers [020665-0007]

12.5 Severability. The Parties acknowledge and represent that the terms and provision of this Agreement have been bargained for based on the assumption that each and every provision is legally valid and enforceable. If any part, term, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining portions or provisions of this Agreement will continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining, or would substantially deprive such Party of the benefit of its bargain. A court order that invalidates, voids, or renders unenforceable any provision that concerns a material term of the Agreement, including but not limited to, monetary payments, warranties, representations, disclosures, indemnifications, remedies, water and sewer service, conveyance of real property, and conveyance of water rights, or otherwise renders the Agreement inequitable, shall require the Parties to amend the Agreement, or in the absence of mutual agreement to amend the Agreement any Party may seek a Court order to judicially reform the Agreement, in a manner which re-establishes the equities and benefits of the bargain and most fully implements the Parties' original intent and objective.

12.6 No Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties and their successors and assigns. Nothing contained in this Agreement will give or allow any claim or right of action by any other or third person under this Agreement. Any person other than the Parties or their successors and assigns, receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

12.7 Counterparts; Electronic Signatures. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement. The facsimile or pdf signature of any Party on this Agreement (and on any instrument required or permitted to be delivered to a Party pursuant to this Agreement) will be deemed an original for all purposes.

[Signature Pages and Exhibits Follow]

EAGLE RIVER WATER & SANITATION
DISTRICT

By: William Simmons
Name: William Simmons
Title: Chair
Date: Feb. 9, 2021

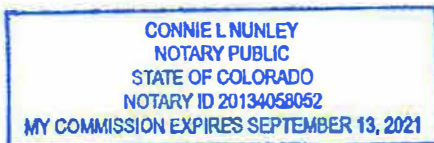
UPPER EAGLE REGIONAL WATER
WATER AUTHORITY

By: George Gregory
Name: George Gregory
Title: Chair
Date: Feb. 10, 2021

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 9th day of
February 2021, by William Simmons as Chair of the Eagle
River Water & Sanitation District.

Witness my hand and official seal. My commission expires 9/13/21.

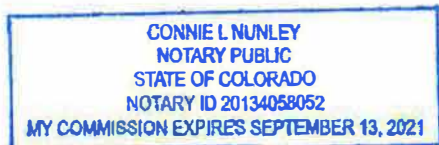


Connie L. Nunley
Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this 10th day of February
2021 by George Gregory as Chair of the Upper Eagle Regional
Water Authority.

Witness my hand and official seal. My commission expires 9/13/21.



Connie L. Nunley
Notary Public

BATTLE NORTH

Battle North, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By:  _____

Name: Lorne Bassel

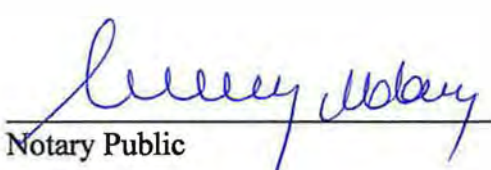
Title: President

Date: February 9, 2021

PROVINCE OF Quebec)
CITY OF Montreal) ss:

BE IT REMEMBERED, that on this 9 day of February, 2021, before me the undersigned, a notary public in and for the Province and the City aforesaid, came Lorne Bassel, in his capacity as President of Bassel Battle Investment, Corp., a Colorado corporation, as Manager of Battle North LLC, a Georgia limited liability company, who is personally known to me to be the same person who executed this instrument of writing, and said person fully acknowledged this instrument to be the free act and deed of said Lorne Bassel.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.



Notary Public

My appointment expires: For Life

Exhibit 1
Legal Description and Graphic Depiction of Battle North Property

Tract A Legal Description

A parcel of land located in Sections 1, 2, 11 and 12 of Township 6 South, Range 81 West of the Sixth Principal Meridian and Section 36 of Township 5 South, Range 81 West of the Sixth Principal Meridian and consisting of the following parcels: Mineral Survey 20712 - Treasury Vault Mill Site, Mineral Survey 20712 - Gold Star Mill Site, H.E.S. 41, Mineral Survey 20745 - Mars Mill Site; along with those portions of the following parcels situated westerly of the western right-of-way for U.S. Highway 24 as described in the Boundary Agreement recorded July 27, 2018 at reception number 201812787 and westerly of the western right-of-way for the Union Pacific Railroad as described in the D&RGW Right-of-Way and Track Map dated June 30, 1919: Nelson Addition (Book 131 Page 76), H.E.S. 46, Mineral Survey 19500 - Brooklyn Placer, Mineral Survey 20043 - May No. 5 Lode, Mineral Survey 20257 - May No. 14 and May No. 15, Mineral Survey 20461 - Ruby Lode, H.E.S. 40 and Mineral Survey 19856 - River Bend Mill Site; and excepting the parcel described in Book 380 Page 574; being more particularly described as follows:

Beginning at the Southwesterly corner of a parcel of land described in Book 131 page 76 said point also being the Southwest corner of said Section 36 being a 2-1/2 inch GLO Brass Cap found in place whence the South Quarter corner of said Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 89°58'35" E a distance of 2,694.09 feet; thence the following five courses along the northwesterly boundary of said parcel described in Book 131 page 76:

1. N 00°20'54" W a distance of 99.96 feet along the west line of said Section 36;
2. N 28°13'18" E a distance of 715.35 feet;
3. N 57°23'50" E a distance of 557.58 feet;
4. N 70°47'50" E a distance of 762.18 feet;
5. N 89°56'50" E a distance of 491.16 feet to a point on said westerly right-of-way of U.S. Highway 24;

thence the following four courses along said westerly right-of-way of U.S. Highway 24:

1. 57.85 feet along the arc of a non tangent curve to the left having a radius of 756.30 feet, a central angle of 04°22'58", and the chord bears S30°36'24" E a distance of 57.84 feet;
2. S 32°47'53" E a distance of 199.00 feet;
3. 228.45 feet along the arc of a non tangent curve to the right having a radius of 2,825.00 feet, a central angle of 04°38'00", and the chord bears S 30°28'53" E a distance of 228.39 feet;
4. S 28°09'53" E a distance of 895.89 feet to a point on the easterly boundary of said parcel described in Book 131 page 76;

thence along said easterly boundary S 00°10'02" W a distance of 77.04 feet to the South Quarter corner of said Section 36 being a 2-1/2 inch GLO Brass Cap found in place said point also being Angle Point 1 of Homestead Entry Survey (H.E.S.) No. 46, Township 6 South, Range 81 West of the Sixth Principal Meridian; thence along line 1-2 of said H.E.S. No. 46 S 89°38'32" E a distance of 41.61 feet to a point on said westerly right-of-way of U.S. Highway 24; thence the following two courses along said westerly right-of-way of U.S. Highway 24:

1. S 28°09'53" E a distance of 149.51 feet;
2. S 27°31'53" E a distance of 807.36 feet to a point on line 1-2 of Homestead Entry Survey (H.E.S.) No. 40 Township 6 South, Range 81 West of the Sixth Principal Meridian;

thence along said line 1-2 of H.E.S. No. 40 S 21°45'15" E a distance of 1,161.84 feet to a point on line 1-2 of Mineral Survey 20461 "Ruby Lode"; thence along said line 1-2 of Mineral Survey 20461 "Ruby Lode" N 59°21'27" E a distance of 100.96 feet to a point on said westerly right-of-way of U.S. Highway 24; thence the following six courses along said westerly right-of-way:

1. S 24°22'53" E a distance of 31.22 feet;
2. 76.61 feet along the arc of a tangent curve to the left having a radius of 800.00 feet, a central angle of 05°29'13", and the chord bears S 27°07'29" E a distance of 76.58 feet;
3. 75.27 feet along the arc of a tangent curve to the right having a radius of 800.00 feet, a central angle of 05°23'27", and the chord bears S 27°10'22" E a distance of 75.24 feet;
4. S 24°28'38" E a distance of 57.10 feet;
5. S 24°28'38" E a distance of 79.86 feet;
6. 436.38 feet along the arc of a non tangent curve to the right having a radius of 915.00 feet, a central angle of 27°19'32", and the chord bears S 10°48'52" E a distance of 432.26 feet to a point on line 2-3 of said Mineral Survey 20461 "Ruby Lode";

thence along said 2-3 line of Mineral Survey 20461 "Ruby Lode" N 53°55'33" W a distance of 74.99 feet to a point on said line 1-2 of H.E.S. No. 40; thence along said line 1-2 of H.E.S. No. 40 S 21°45'15" E a distance of 140.75 feet to a point on said westerly right-of-way of U.S. Highway 24; thence the following six courses along said westerly right-of-way of U.S. Highway 24:

1. 262.58 feet along the arc of a non tangent curve to the right having a radius of 915.00 feet, a central angle of 16°26'33", and the chord bears S16°31'05" W a distance of 261.68 feet;
2. S 24°44'22" W a distance of 216.35 feet;
3. S 35°45'52" W a distance of 205.41 feet;
4. S 14°36'41" W a distance of 532.15 feet;
5. S 01°15'08" E a distance of 429.27 feet;
6. S 01°25'41" W a distance of 268.53 feet to a point on line 3-4 of said H.E.S. No. 40;

thence along said 3-4 line of H.E.S. No. 40 S 33°56'45" W a distance of 246.93 feet to Angle Point 4 of said H.E.S. No. 40 said point also being Angle Point 8 of Homestead Entry Survey (H.E.S.) No. 41, Township 6 South, Range 81 West of the Sixth Principal Meridian; thence along line 7-8 of said H.E.S. No. 41 S 08°01'50" E a distance of 682.50 feet to Angle Point 8 of Mineral Survey 19856 "River Bend Mill Site"; thence along line 8-9 of said Mineral Survey 19856 "River Bend Mill Site" N 73°03'36" E a distance of 114.40 feet to Angle Point 9 of said Mineral Survey 19856 "River Bend Mill Site"; thence along line 1-9 of said Mineral Survey 19856 "River Bend Mill Site" N 00°06'36" E a distance of 101.02 feet to a point on the southwesterly right-of-way of U.S. Highway 24; thence along said southwesterly right-of-way of U.S. Highway 24, S 55°00'36" E a distance of 95.06 feet to a point on line 3-4 of said Mineral Survey 19856 "River Bend Mill Site"; thence along said line 3-4 of Mineral Survey 19856 "River Bend Mill Site" S 11°05'59" W a distance of 246.97 feet to a point on line 1-2 of Mineral Survey 20257 "May No. 14"; thence along said line 1-2 of Mineral Survey 20257 "May No. 14" N 38°38'30" E a distance of 23.65 feet to a point on the westerly right-of-way of Union Pacific Railroad as described in D&RGW Right-of-Way and Track Map dated June 30, 1919; thence the following four courses along said westerly right-of-way of Union Pacific Railroad, said right-of-way being parallel to and offset 50-feet westerly from the centerline of the main line of said Union Pacific Railroad:

1. S 14°36'28" W a distance of 130.66 feet;
2. 299.94 feet along the arc of a tangent curve to the right having a radius of 29,800.64 feet, a central angle of 00°34'36", and the chord bears S 14°53'46" W a distance of 299.94 feet;
3. 346.51 feet along the arc of a tangent curve to the right having a radius of 1,687.09 feet, a central angle of 11°46'05", and the chord bears S21°04'06" W a distance of 345.90 feet;
4. 117.33 feet along the arc of a tangent curve to the right having a radius of 2,298.64 feet, a central angle of 02°55'28", and the chord bears S 28°24'53" W a distance of 117.33 feet to a point on the 5-6 line of the unpatented Astor-Eureka Placer as described in the Location Certificate recorded in Book 8 Page 77;

Thence the following seven courses along said westerly right-of-way of the Union Pacific Railroad as described:

1. along said 5-6 line S 89°10'02" W a distance of 66.59 feet to the westerly right-of-way of said Union Pacific;
2. along the westerly right-of-way of said Union Pacific S 30°39'47" W a distance of 22.42 feet to the 6-1 line of said Astor-Eureka Placer, said right-of-way being along a line parallel to and offset 82.00 feet westerly from the centerline of the mainline of said Union Pacific Railroad;
3. along the 6-1 line of said Astor-Eureka Placer S 00°49'58" E a distance of 109.10 feet;
4. S 30°39'47" W a distance of 884.09 feet along a line which is parallel to and offset 25.00 feet westerly from the centerline of the main line of said Union Pacific Railroad to a point on the 1-2 line of the unpatented Henry Clay Lode as described in the Location Certificate recorded in Book 7 Page 298;
5. along said 1-2 line N 13°07'52" W a distance of 39.09 feet;
6. 37.95 feet along the arc of a non tangent curve to the left having a radius of 836.49 feet, a central angle of 02°35'59", and the chord bears S 13°13'46" W a distance of 37.95 feet, said curve being parallel to and offset 100.00-feet westerly from the centerline of the eastern corridor of said Union Pacific Railroad;
7. 47.98 feet along the arc of a tangent curve to the left having a radius of 3,919.72 feet, a central angle of 00°42'05", and the chord bears S 11°34'45" W a distance of 47.98 feet, said curve being parallel to and offset 100.00-feet westerly from the centerline of the eastern corridor of said Union Pacific Railroad;

Thence the following five courses along said westerly right-of-way of the Union Pacific Railroad, said right-of-way being parallel to and offset 25.00 feet westerly from the centerline of the western corridor of said Union Pacific Railroad:

1. S 30°39'47" W a distance of 44.76 feet;
2. 141.71 feet along the arc of a tangent curve to the left having a radius of 4,816.15 feet, a central angle of 01°41'09", and the chord bears S 29°49'13" W a distance of 141.71 feet;
3. 577.96 feet along the arc of a tangent curve to the left having a radius of 873.26 feet, a central angle of 37°55'13", and the chord bears S 10°01'01" W a distance of 567.46 feet;
4. 132.72 feet along the arc of a tangent curve to the left having a radius of 2,684.59 feet, a central angle of 02°49'57", and the chord bears S 10°21'34" E a distance of 132.70 feet;
5. S 11°46'32" E a distance of 338.53 to a point on line 5-6 of Mineral Survey 19500 "Brooklyn Placer";

thence along said line 5-6 of Mineral Survey 19500 "Brooklyn Placer" N 16°11'23" W a distance of 982.56 feet to Angle Point 6 of said Mineral Survey 19500 "Brooklyn Placer"; thence along line 6-7 of said Mineral Survey 19500 "Brooklyn Placer" N 12°07'10" W a distance of 494.47 feet to Angle Point 3 of Mineral Survey 20745 "Mars Mill Site"; thence along line 2-3 of said Mineral Survey 20745 "Mars Mill Site" N 45°47'44" W a distance of 1,091.01 feet to Angle Point 2 of said Mineral Survey 20745 "Mars Mill Site" said point also being on line 5-6 of said H.E.S. No. 41;

thence the following five courses along said H.E.S. No. 41:

1. along line 5-6 N 79°06'56" W a distance of 2,661.26 feet to Angle Point 5;
2. along line 4-5 N 38°40'30" W a distance of 385.83 feet to Angle Point 4;
3. along line 3-4 N 44°15'35" E a distance of 992.47 feet to Angle Point 3;
4. along line 2-3 S 82°15'42" E a distance of 1,508.05 feet to Angle Point 2;
5. along line 1-2 N 39°24'50" E a distance of 1,104.62 feet to Angle Point 1 said point also being Angle Point 5 of H.E.S. No. 40;

thence the following two courses along said H.E.S. No. 40:

1. along line 5-6 N 23°21'23" E a distance of 1,564.21 feet to Angle Point 6;
2. along line 6-7 N 25°10'25" W a distance of 707.61 feet to Angle Point 2 of Mineral Survey 20712 "Gold Star Mill Site";

thence along line 2-3 of said Mineral Survey 20712 "Gold Star Mill Site" N 67°56'00" W a distance of 967.24 feet to Angle Point 3 of said Mineral Survey 20712 "Gold Star Mill Site" said point also being Angle Point 3 of Mineral Survey 20712 "Treasury Vault Mill Site"; thence along line 3-4 of said Mineral Survey 20712 "Treasury Vault Mill Site" N 67°56'00" W a distance of 403.10 feet to Angle Point 4 of said Mineral Survey 20712 "Treasury Vault Mill Site" said point also being on line 3-4 of said H.E.S. No. 46; thence along line 3-4 of said H.E.S. No. 46 N 69°12'00" E a distance of 553.58 feet to a point on a parcel described in Book 380 Page 574;

thence the following four courses along the easterly boundary of said parcel described in Book 380 Page 574:

1. N 34°17'20" E a distance of 269.23 feet;
2. N 33°47'30" W a distance of 346.69 feet;
3. N 59°40'30" W a distance of 743.48 feet;
4. N 00°15'50" E a distance of 459.11 feet to a point on line 1-7 of said H.E.S. No. 46 said point also being on the South line of said Section 36;

thence along said line 1-7 of H.E.S. No. 46 S 89°58'35" W a distance of 420.19 feet to the point of beginning, Tract A containing 454.34 acres more or less.

Tract B Legal Description

A parcel of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian and consisting of that portion of Mineral Survey 20461 Ruby and Sapphire Lodes situated easterly of the eastern right-of-way for U.S. Highway 24 as described in the Boundary Agreement recorded July 27, 2018 at reception number 201812787 and westerly of the western right-of-way of the Union Pacific Railroad as described in D&RGW Right-of-Way and Track Map dated June 30, 1919; being more particularly described as follows:

Beginning at a point on the 1-2 line of Mineral Survey 20461 Sapphire Lode and the intersection of the western right-of-way of the Union Pacific Railroad, whence the Southwest corner of said Section 36 being a 2-1/2 inch GLO Brass Cap bears N 65°38'07" W a distance of 4,268.70 feet; thence the following three courses along said west right-of-way of the Union Pacific Railroad:

1. S 19°13'15" E a distance of 625.71 feet;
2. 147.39 feet along the arc of a tangent curve to the right having a radius of 3365.06 feet, a central angle of 02°30'34", and the chord bears S 17°57'58" E a distance of 147.37 feet;
3. 301.02 feet along the arc of a tangent curve to the right having a radius of 1,286.60 feet, a central angle of 13°24'19", and the chord bears S 10°00'31" E a distance of 300.34 feet to a point on the 2-3 line of said Mineral Survey 20461 Ruby Lode;

thence along said 2-3 line of Mineral Survey 20461 Ruby Lode N 53°55'33" W a distance of 246.47 feet to a point on the easterly right-of-way of U.S. Highway 24; thence the following five courses along said easterly right-of-way of U.S. Highway 24:

1. 526.06 feet along the arc of a non tangent curve to the left having a radius of 994.91 feet, a central angle of 30°17'42", and the chord bears N 09°19'47" W a distance of 519.95 feet;
2. N 24°28'38" W a distance of 137.00 feet;
3. 82.80 feet along the arc of a tangent curve to the left having a radius of 880.00 feet, a central angle of 05°23'27", and the chord bears N 27°10'22" W a distance of 82.77 feet;

4. 68.95 feet along the arc of a tangent curve to the right having a radius of 720.00 feet, a central angle of 05°29'13", and the chord bears N 27°07'29" W a distance of 68.92 feet;
5. N 24°22'53" W a distance of 40.00 feet to a point on the 1-2 line of Mineral Survey 20461 Ruby Lode;

thence along said 1-2 line of Mineral Survey 20461 Ruby Lode N 59°21'27" E a distance of 86.36 feet to corner number 1 of Mineral Survey 20461 Ruby Lode said point also being corner number 1 of Mineral Survey 20461 Sapphire Lode; thence along the 1-2 line of said Mineral Survey 20461 Sapphire Lode N 59°21'07" E a distance of 55.86 feet to the point of beginning, Tract B containing 2.81 acres more or less.

Tract C Legal Description

A parcel of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian and consisting of that portion of Homestead Entry Survey (H.E.S.) 40 and Mineral Survey 20461 Puritan Lode situated easterly of the eastern right-of-way for U.S. Highway 24 as described in the Boundary Agreement recorded July 27, 2018 at reception number 201812787 and westerly of the western right-of-way for Union Pacific Railroad, being more particularly described as follows:

Beginning at Corner No. 2 of said H.E.S. 40, whence the Southwest corner of said Section 36 being a 2-1/2 inch GLO Brass Cap bears N 52°43'19" W a distance of 5,128.97 feet; thence along the 2-3 line of said H.E.S. 40 S 20°12'45" W a distance of 192.30 feet to a point on the 1-2 line of Mineral Survey 20461 Puritan Lode; thence along said 1-2 line of said Mineral Survey 20461 Puritan Lode N 59°22'30" E a distance of 155.38 feet to a point on the western right-of-way of the Union Pacific Railroad as described in D&RGW Right-of-Way and Track Map dated June 30, 1919; thence along said western right-of-way of the Union Pacific Railroad the following two courses:

1. 26.42 feet along the arc of a non tangent curve to the right having a radius of 2408.63 feet, a central angle of 00°37'43", and the chord bears S 14°03'37" W a distance of 26.42 feet;
2. 184.39 feet along the arc of a tangent curve to the right having a radius of 58445.82 feet, a central angle of 00°10'51", and the chord bears S 14°27'54" W a distance of 184.39 feet to a point on the 2-3 line of the Mineral Survey 20461 Puritan Lode;

thence along said 2-3 line of the Mineral Survey 20461 Puritan Lode N 45°06'44" W a distance of 131.43 feet to the 2-3 line of said H.E.S. 40; thence along said 2-3 line of said H.E.S. 40 S 20°12'45" W a distance of 927.03 feet to a point on the eastern right-of-way of U.S. Highway 24; thence the following four courses along said eastern right-of-way of U.S. Highway 24:

1. N 01°30'38" W a distance of 546.66 feet;
2. 309.80 feet along the arc of a tangent curve to the right having a radius of 676.20 feet, a central angle of 26°15'00", and the chord bears N 11°36'52" E a distance of 307.10 feet;
3. N 24°44'22" E a distance of 422.47 feet;
4. 160.49 feet along the arc of a non tangent curve to the left having a radius of 994.91 feet, a central angle of 09°14'33", and the chord bears N 20°07'14" E a distance of 160.32 feet to a point on the 1-2 line of said H.E.S. 40;

thence along said 1-2 line of said H.E.S. 40 S 21°45'15" E a distance of 321.76 feet; to the point of beginning, Tract C containing 5.57 acres more or less.

Tract D Legal Description

A parcel of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian and consisting of that portion of Mineral Survey 19856 - River Bend Mill Site situated easterly of the eastern right-of-way for U.S. Highway 24 as described in the Boundary Agreement recorded July 27, 2018 at reception number 201812787 being more particularly described as follows:

Beginning at Corner No. 2 of said River Bend Mill Site, being a 2-1/2" U.S.D.A. Aluminum Cap marked "2 MS 19856 LS7235 1988", whence the Southwest corner of said Section 36 being a 2-1/2 inch GLO Brass Cap bears N 40°38'51" W a distance of 5,894.14 feet; thence along the 2-3 line of said River Bend Mill Site S 15°52'59" W a distance of 381.86 feet to a point on the eastern right-of-way of U.S. Highway 24; thence the following four courses along the easterly right-of-way of U.S. Highway 24:

1. 82.50 feet along the arc of a non tangent curve to the right having a radius of 646.20 feet, a central angle of 07°18'55", and the chord bears N05°10'06" W a distance of 82.45 feet;
2. N 01°30'38" W a distance of 282.09 feet;
3. S 88°29'22" W a distance of 30.00 feet;
4. N 01°30'38" W a distance of 4.26 feet to a point on the 1-2 line of said River Bend Mill Site;

thence S 89°53'21" E a distance of 149.47 feet along said 1-2 line of said River Bend Mill Site to the point of beginning, Tract D containing 0.52 acres more or less.

Tract E Legal Description

A parcel of land located in Sections 1, 11 and 12 of Township 6 South, Range 81 West of the Sixth Principal Meridian and consisting of that portion of Mineral Surveys 2367 John C. Godfrey, 5712 Rosa M. and Peru Lodes, 19500 Brooklyn Placer Lode, 19960 General Pershing Lode, 20043 May No. 5 Lode, 20257 May Nos. 13, 14, 15, I Have It and Lincoln Highway Lodes, 20292 Big Timber and St. Patrick Lodes, 20293 Cave Lode, and 20461 May Nos. 4 and 16 Lodes situated westerly and southerly of the western right-of-way for U.S. Highway 24 as described in the Boundary Agreement recorded July 27, 2018 at reception number 201812787 and easterly of the easternmost right-of-way for Union Pacific Railroad, being more particularly described as follows:

Beginning at Corner No. 2 of said Cave Lode from whence the Southwest corner of Section 36, Township 5 South, Range 81 West of the 6th P.M., being a 2-1/2 inch GLO Brass Cap found in place bears N 20°54'18" W a distance of 10659.37 feet; thence feet along the 2-3 line of said Cave Lode N 45°07'27" W a distance of 356.25 to a point on the eastern right-of-way for the Union Pacific Railroad; thence along said eastern right-of-way for the Union Pacific Railroad the following five courses:

1. N 77°36'39" E a distance of 20.62 feet along the southern boundary of the unpatented Cleveland No. 2 Lode;
2. N 18°04'49" W a distance of 301.49 feet along a line which is parallel to and offset 100-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;
3. S 77°36'39" W a distance of 75.37 feet along line 2-3 of said Peru Lode;
4. N 18°04'49" W a distance of 600.75 feet along a line which is parallel to and offset 25-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;
5. N 77°36'39" E a distance of 75.37 feet along the 6-7 line of said Rosa M Lode to a point on the eastern right-of-way for the Union Pacific Railroad, said point being on a line offset 100-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;

Thence continuing along the 6-7 line of said Rosa M Lode N 77°36'39" E a distance of 21.52 feet to Corner No. 3 of said St. Patrick Lode; thence N 17°11'16" W a distance of 2.67 feet along the 2-3 line of said St. Patrick Lode to Corner No. 3 of said Brooklyn Placer; thence S 76°33'32" W a distance of 21.53 feet along the 3-4 line of said Brooklyn Placer to a point on the eastern right-of-way for the Union Pacific Railroad, said point being 100-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad; thence along said eastern right-of-way for the Union Pacific Railroad the following twenty-two courses:

1. N 18°04'49" W a distance of 299.21 feet along a line which is parallel to and offset 100-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;
2. S 77°36'39" W a distance of 50.25 feet along the northerly boundary of the unpatented No. 33 Lode;

3. *N 18°04'49" W* a distance of 723.16 feet along a line which is parallel to and offset 50-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;
4. 135.32 feet along the arc of a *tangent* curve to the *right* having a radius of 2434.10 feet, a central angle of *03°11'07"*, and the chord bears *N 16°29'15" W* a distance of 135.30 feet, said curve being parallel to and offset 50-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;
5. 150.44 feet along the arc of a *tangent* curve to the *right* having a radius of 553.78 feet, a central angle of *15°33'54"*, and the chord bears *N 07°06'45" W* a distance of 149.98 feet said curve being parallel to and offset 50-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;
6. *N 13°07'52" W* a distance of 81.85 feet along the westerly boundary of the unpatented Henry Clay Lode;
7. 244.56 feet along the arc of a *non tangent* curve to the *right* having a radius of 3794.72 feet, a central angle of *03°41'33"*, and the chord bears *N 10°05'01" E* a distance of 244.52 feet, said curve being parallel to and offset 25-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;
8. 226.02 feet along the arc of a *tangent* curve to the *right* having a radius of 711.48 feet, a central angle of *18°12'05"*, and the chord bears *N 21°01'50" E* a distance of 225.07 feet, said curve being parallel to and offset 25-feet easterly from the centerline of the eastern corridor of said Union Pacific Railroad;
9. *N 76°52'08" E* a distance of 48.45 feet along the northerly boundary of the unpatented Henry Clay Lode;
10. *N 30°39'47" E* a distance of 58.25 feet along a line which is parallel to and offset 75-feet easterly from the centerline of the main line of said Union Pacific Railroad;
11. *S 82°41'41" W* a distance of 63.42 feet along the southerly boundary of the unpatented San Louis Lode;
12. *N 30°39'47" E* a distance of 190.27 feet along a line which is parallel to and offset 25-feet easterly from the centerline of the main line of said Union Pacific Railroad;
13. *N 82°41'41" E* a distance of 63.42 feet along the northerly boundary of the unpatented San Louis Lode;
14. *N 30°39'47" E* a distance of 184.78 feet along a line which is parallel to and offset 75-feet easterly from the centerline of the main line of said Union Pacific Railroad;
15. *S 00°49'58" E* a distance of 82.31 feet along the westerly boundary of the unpatented Astor Eureka Placer claim;
16. *N 30°39'47" E* a distance of 352.10 feet along a line which is parallel to and offset 118-feet easterly from the centerline of the main line of said Union Pacific Railroad;
17. 117.60 feet along the arc of a *tangent* curve to the *left* having a radius of 2441.64 feet, a central angle of *02°45'34"*, and the chord bears *N 29°17'00" E* a distance of 117.59 feet, said curve being parallel to and offset 118-feet easterly from the centerline of the main line of said Union Pacific Railroad;
18. *S 89°10'02" W* a distance of 49.17 feet along the southerly boundary of the unpatented Astor Eureka Placer claim;
19. 63.46 feet along the arc of a *non tangent* curve to the *left* having a radius of 2398.64 feet, a central angle of *01°30'57"*, and the chord bears *N 27°42'37" E* a distance of 63.46 feet, said curve being parallel to and offset 75-feet easterly from the centerline of the main line of said Union Pacific Railroad;
20. 367.05 feet along the arc of a *tangent* curve to the *left* having a radius of 1787.09 feet, a central angle of *11°46'05"*, and the chord bears *N 21°04'06" E* a distance of 366.41 feet, said curve being parallel to and offset 75-feet easterly from the centerline of the main line of said Union Pacific Railroad;

21. 300.95 feet along the arc of a *tangent* curve to the *left* having a radius of 29900.64 feet, a central angle of $00^{\circ}34'36''$, and the chord bears $N 14^{\circ}53'46'' E$ a distance of 300.95 feet, said curve being parallel to and offset 75-feet easterly from the centerline of the main line of said Union Pacific Railroad;
22. $N 14^{\circ}36'28'' E$ a distance of 309.21 feet along a line which is parallel to and offset 75-feet easterly from the centerline of the main line of said Union Pacific Railroad to a point on said western right-of-way of U.S. Highway 24;

thence the following nineteen courses along said western right-of-way of U.S. Highway 24:

1. $S 55^{\circ}00'36'' E$ a distance of 299.10 feet;
2. $N 56^{\circ}45'57'' E$ a distance of 216.37 feet;
3. $N 29^{\circ}39'07'' E$ a distance of 275.58 feet;
4. $N 02^{\circ}26'21'' E$ a distance of 269.62 feet;
5. $N 37^{\circ}48'55'' E$ a distance of 427.27 feet;
6. $S 61^{\circ}41'50'' E$ a distance of 114.28 feet;
7. $S 16^{\circ}35'49'' W$ a distance of 567.34 feet;
8. $S 48^{\circ}39'59'' W$ a distance of 175.60 feet;
9. $S 09^{\circ}52'34'' W$ a distance of 532.21 feet;
10. $S 47^{\circ}54'05'' W$ a distance of 673.50 feet;
11. $S 16^{\circ}36'56'' W$ a distance of 631.44 feet;
12. $S 42^{\circ}50'33'' E$ a distance of 206.37 feet;
13. $S 10^{\circ}21'25'' E$ a distance of 389.77 feet;
14. $S 47^{\circ}30'31'' E$ a distance of 350.91 feet;
15. $S 13^{\circ}25'37'' E$ a distance of 237.62 feet;
16. $S 47^{\circ}15'23'' W$ a distance of 356.18 feet;
17. $S 16^{\circ}21'06'' W$ a distance of 394.80 feet;
18. $S 06^{\circ}53'19'' E$ a distance of 612.04 feet;
19. $S 22^{\circ}20'58'' E$ a distance of 832.28 feet to a point on the 1-2 line of said Cave Lode;

thence along said 1-2 line of Cave Lode, $S 77^{\circ}36'39'' W$ a distance of 363.34 feet to the point of beginning. Tract E containing 71.84 acres more or less.

The total area of the eight parcels that comprise the Battle North Property is 535.08 acres more or less.

Legal Description Prepared by:
Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81601

EXHIBIT 1 - BATTLE NORTH PROPERTY

Five parcels of land located in Sections 1, 2, 11 and 12 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado and Section 36 of Township 5 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

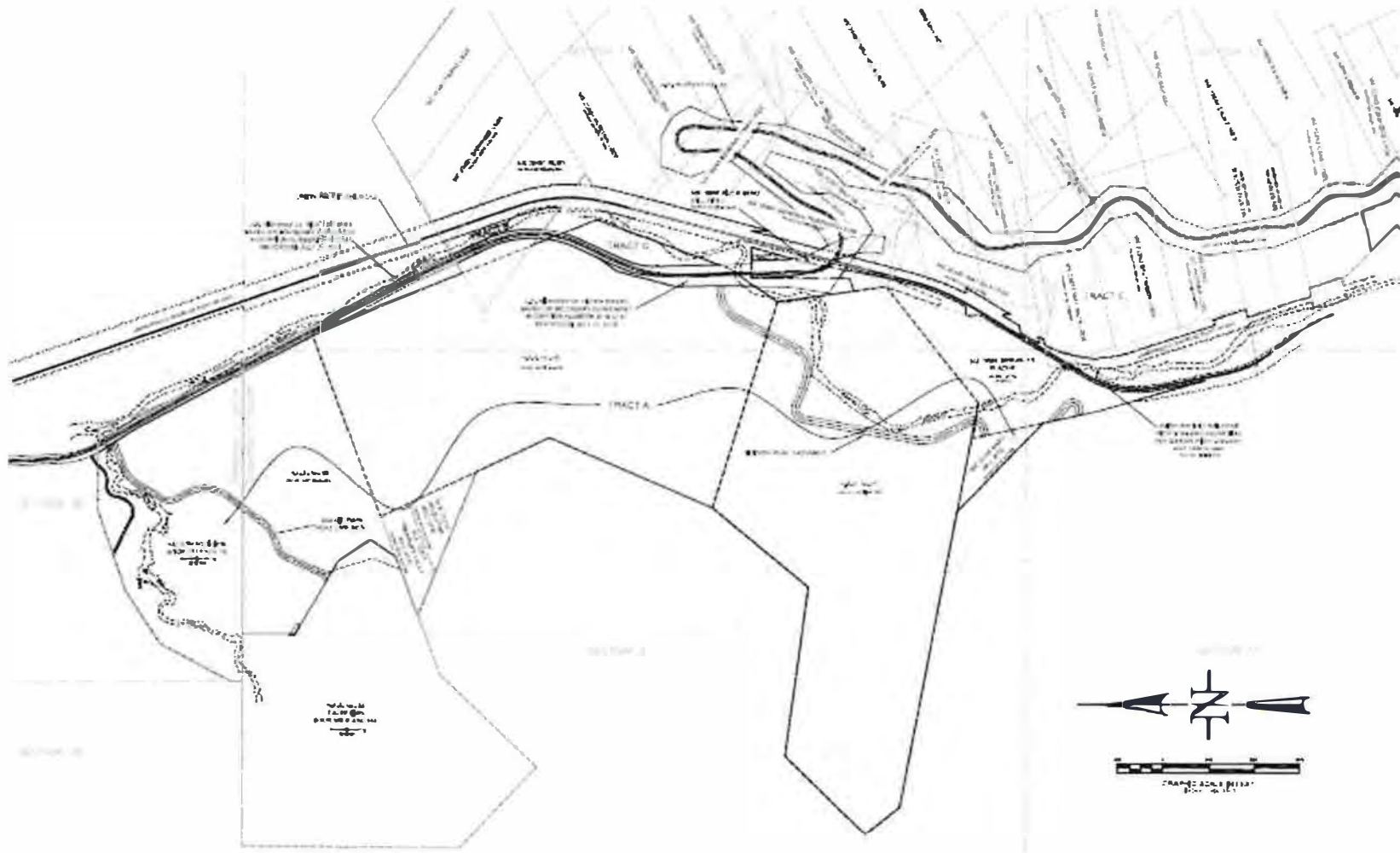


Exhibit 2 Consolidated Map

EXHIBIT 2 - CONSOLIDATED MAP

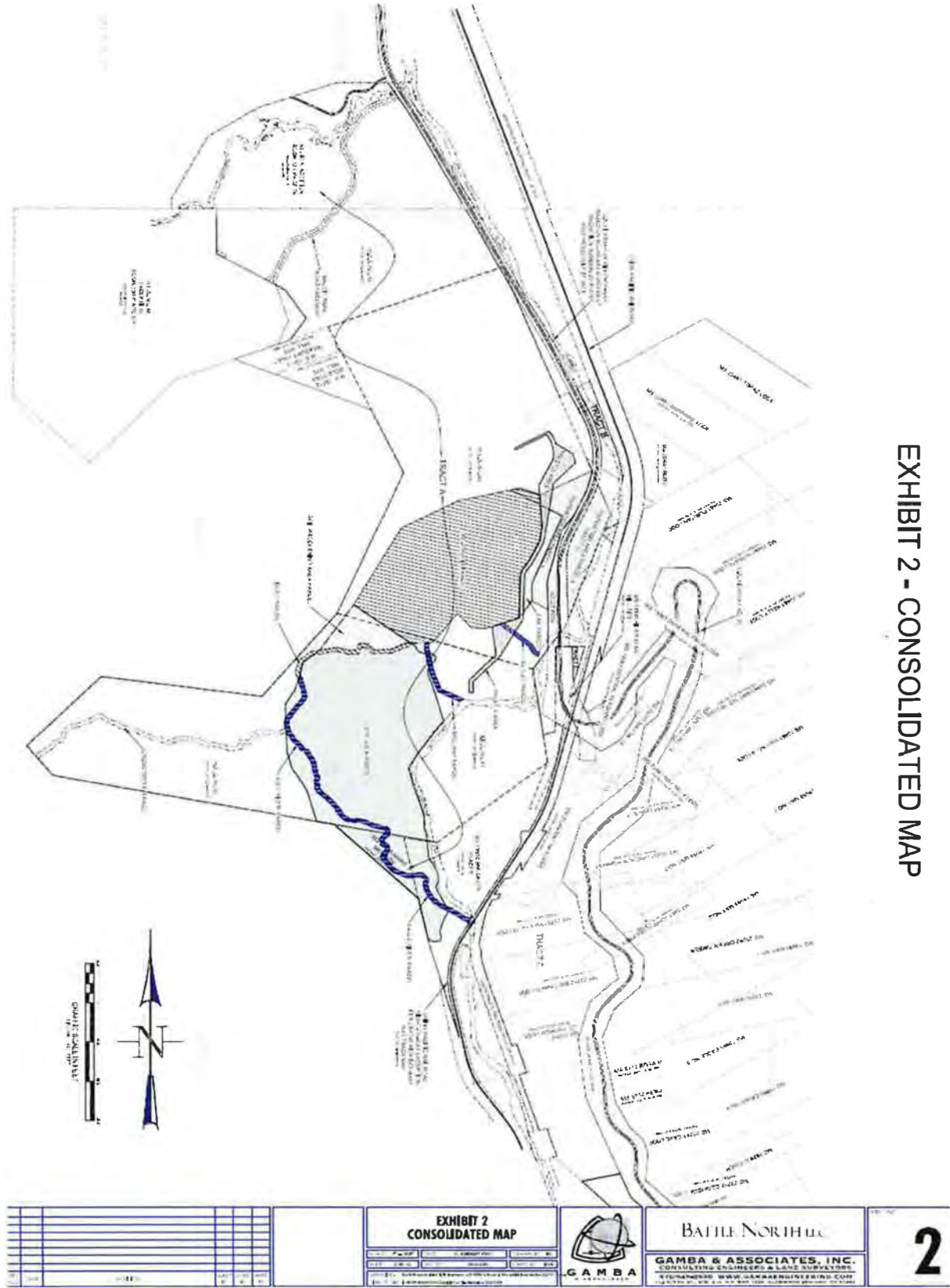


Exhibit 3
Legal Description and Graphic Depiction of Reservoir Parcel

An area of land located in Sections 1 and 2 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 37°39'01" W a distance of 5280.23 feet; thence S 70°24'37" W a distance of 321.43 feet; thence S 88°25'20" W a distance of 133.35 feet; thence N 40°19'27" W a distance of 209.57 feet; thence S 37°10'39" W a distance of 380.51 feet; thence S 88°48'40" W a distance of 208.38 feet; thence N 53°11'01" W a distance of 658.80 feet; thence N 29°33'21" E a distance of 904.04 feet; thence N 62°05'59" E a distance of 597.19 feet; thence N 77°20'34" E a distance of 590.72 feet; thence S 70°32'11" E a distance of 192.32 feet; thence S 03°57'24" E a distance of 329.65 feet; thence S 08°36'11" W a distance of 122.85 feet; thence 74.09 feet along the arc of a tangent curve to the right having a radius of 230.00, a central angle of 18°27'27", and the chord bears S17°49'54"W a distance of 73.77 feet; thence S27°03'38"W a distance of 170.68 feet; thence 22.79 feet along the arc of a tangent curve to the right having a radius of 180.00, a central angle of 7°15'16", and the chord bears S30°41'16"W a distance of 22.78 feet; thence S34°18'54"W a distance of 88.83 feet; thence 74.76 feet along the arc of a tangent curve to the left having a radius of 131.74, a central angle of 32°30'56", and the chord bears S18°03'26"W a distance of 73.76 feet; thence S01°47'58"W a distance of 431.39 feet to the point of beginning containing 41.29 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

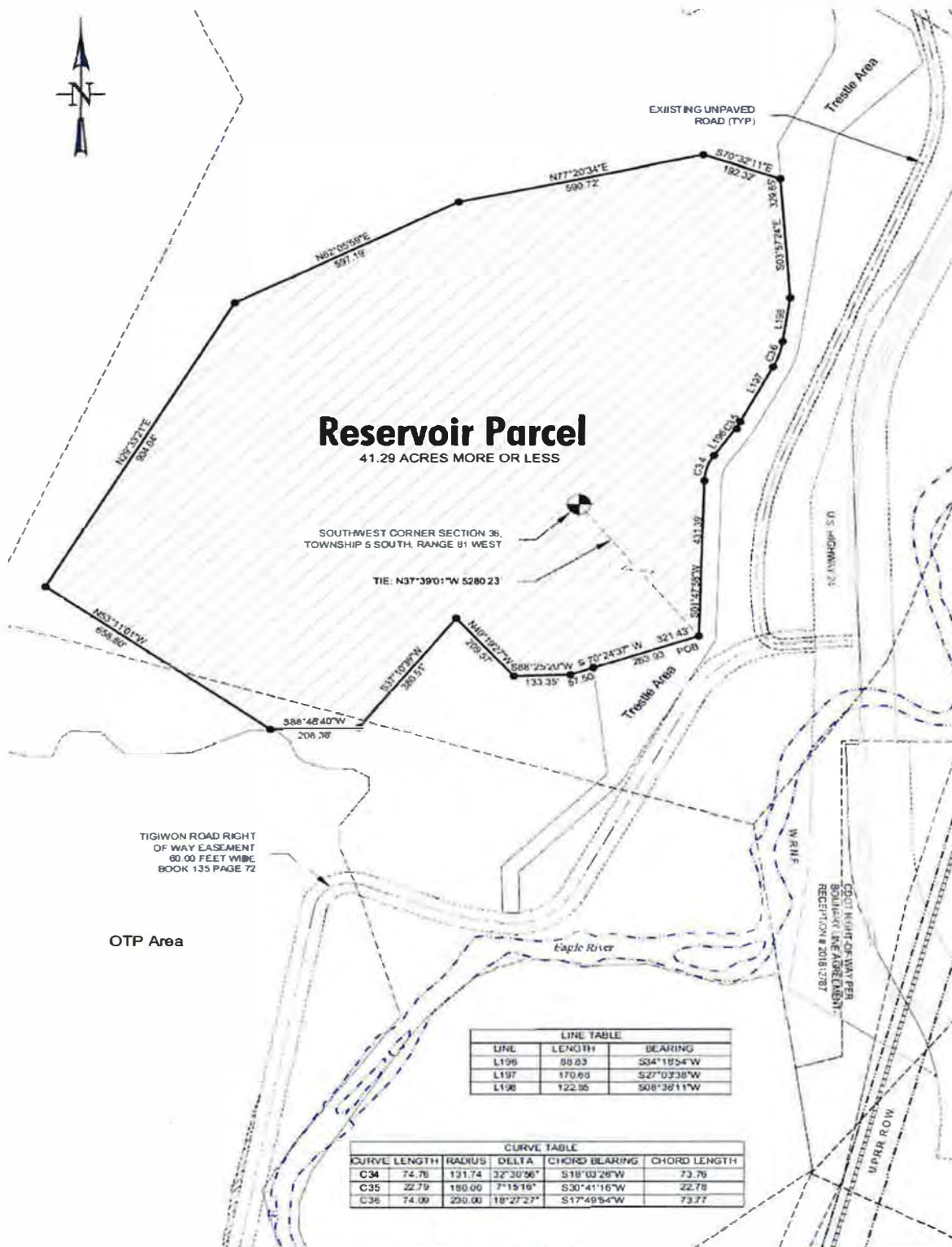


Exhibit 3 - Reservoir Parcel



BATTLE NORTH LLC

SCALE: 1" = 300'
SHEET: 3 of 13
DATE: DECEMBER 14, 2020
PROJECT: 05554-04
DRAWING: North Property Outlot T21a Survey 20181128 rev'd to 20200621.dwg
PROJECTOR: KGVW/KVW/06/01/2011 Outlot Title North Property Survey 20181128

GAMBA & ASSOCIATES

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970/945-2550 WWW.GAMBAENGINEERING.COM
112 NINTH ST., STE. 214 P.O. BOX 1438 GLENWOOD SPRING, CO 81602

Exhibit 4
Legal Description and Graphic Depiction of Dam Parcel

An area of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 48°36'05" W a distance of 4568.24 feet; thence S 61°06'46" E a distance of 234.05 feet; thence S 22°22'09" W a distance of 746.23 feet; thence S 00°00'00" E a distance of 181.43 feet; thence S 34°56'03" W a distance of 213.62 feet; thence N 01°47'58" E a distance of 431.39 feet; thence 74.76 feet along the arc of a tangent curve to the right having a radius of 131.74 feet, a central angle of 32°30'56", and the chord bears S 18°03'26" W a distance of 73.76 feet; thence N 34°18'54" E a distance of 88.83 feet; thence 22.79 feet along the arc of a tangent curve to the left having a radius of 180.00 feet, a central angle of 07°15'16", and the chord bears S 30°41'16" W a distance of 22.78 feet; thence N 27°03'38" E a distance of 170.68 feet; thence 74.09 feet along the arc of a tangent curve to the left having a radius of 230.00 feet, a central angle of 18°27'27", and the chord bears S 17°49'54" W a distance of 73.77 feet; thence N 08°36'11" E a distance of 122.85 feet; thence N 03°57'24" W a distance of 222.27 feet to the point of beginning containing 3.06 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

Exhibit 5
Legal Description and Graphic Depiction of Inlet Parcel

A Parcel of land 40 feet in width located in H.E.S. No. 41 as patented March 7, 1912 in Section 2, Township 6 South, Range 81 West, 6th P.M., for the purpose of constructing, operating and maintaining a water supply conveyance structure consisting of open channels and/or pipelines to supply water to Bolts Lake Reservoir from the Eagle River and from Cross Creek, more particularly described as follows:

Beginning at a point on the westerly boundary of the OTP Area as described on an Exhibit prepared by Gamba & Associates, Inc., dated January 18, 2018 on behalf of Battle Mountain, whence Corner No. 2 of said H.E.S. 41, being an original stone monument found in place, bears S64°05'11"W a distance of 376.68 feet;

Thence from the Point of Beginning the following 15 courses along the northerly boundary of said 40-ft wide Easement:

1. thence N24°43'37"W a distance of 57.52 feet;
2. thence N02°34'28"W a distance of 50.51 feet;
3. thence N17°36'42"E a distance of 57.23 feet;
4. thence N23°06'54"E a distance of 15.58 feet;
5. thence N10°13'05"E a distance of 33.85 feet;
6. thence N51°21'28"E a distance of 144.42 feet;
7. thence N80°01'14"E a distance of 245.49;
8. thence N75°30'49"W a distance of 122.70 feet;
9. thence S89°25'59"W a distance of 54.63 feet;
10. thence N22°13'41"W a distance of 55.35 feet;
11. thence N51°17'35"E a distance of 30.98 feet;
12. thence S87°20'19"E a distance of 69.22 feet;
13. thence S43°32'09"E a distance of 86.00 feet;
14. thence N87°52'49"E a distance of 154.45 feet;
15. thence N66°03'04"E a distance of 185.03 feet to a point on the southerly boundary of the Bolts Lake Reservoir Area as described on an Exhibit prepared by Gamba & Associates, Inc., dated February 1, 2019 on behalf of Battle North LLC;

Thence the following two courses along said southerly boundary of the Bolts Lake Reservoir Area;

1. thence S53°11'01"E a distance of 19.42 feet;
2. thence N88°48'40"E a distance of 59.59 feet ;

Thence leaving said southerly boundary of the Bolts Lake Reservoir Area the following 16 courses along the southerly boundary of said 40-ft wide Easement:

1. thence S66°03'04"W a distance of 257.18 feet;
2. thence S87°52'49"W a distance of 180.21 feet;
3. thence N43°32'09"W a distance of 87.98 feet;
4. thence N87°20'19"W a distance of 40.88 feet;
5. thence S22°13'41"W a distance of 75.43 feet;
6. thence S89°25'59"W a distance of 86.49 feet;
7. thence N75°30'49"W a distance of 119.31 feet;
8. thence S80°01'14"W a distance of 226.60 feet;
9. thence S51°21'28"W a distance of 119.19 feet;
10. thence S10°13'05"W a distance of 23.36 feet;
11. thence S23°06'54"W a distance of 18.18 feet;
12. thence S17°36'42"W a distance of 48.19 feet;
13. thence S02°34'28"E a distance of 35.56 feet;
14. thence S24°43'37"E a distance of 4.16 feet;
15. thence S10°13'05"W a distance of 16.93 feet;

16. thence S19°01'53"W a distance of 43.82 feet,
to the Point of Beginning, containing 1.23 acres more or less.

Legal Description Prepared By:
Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81601

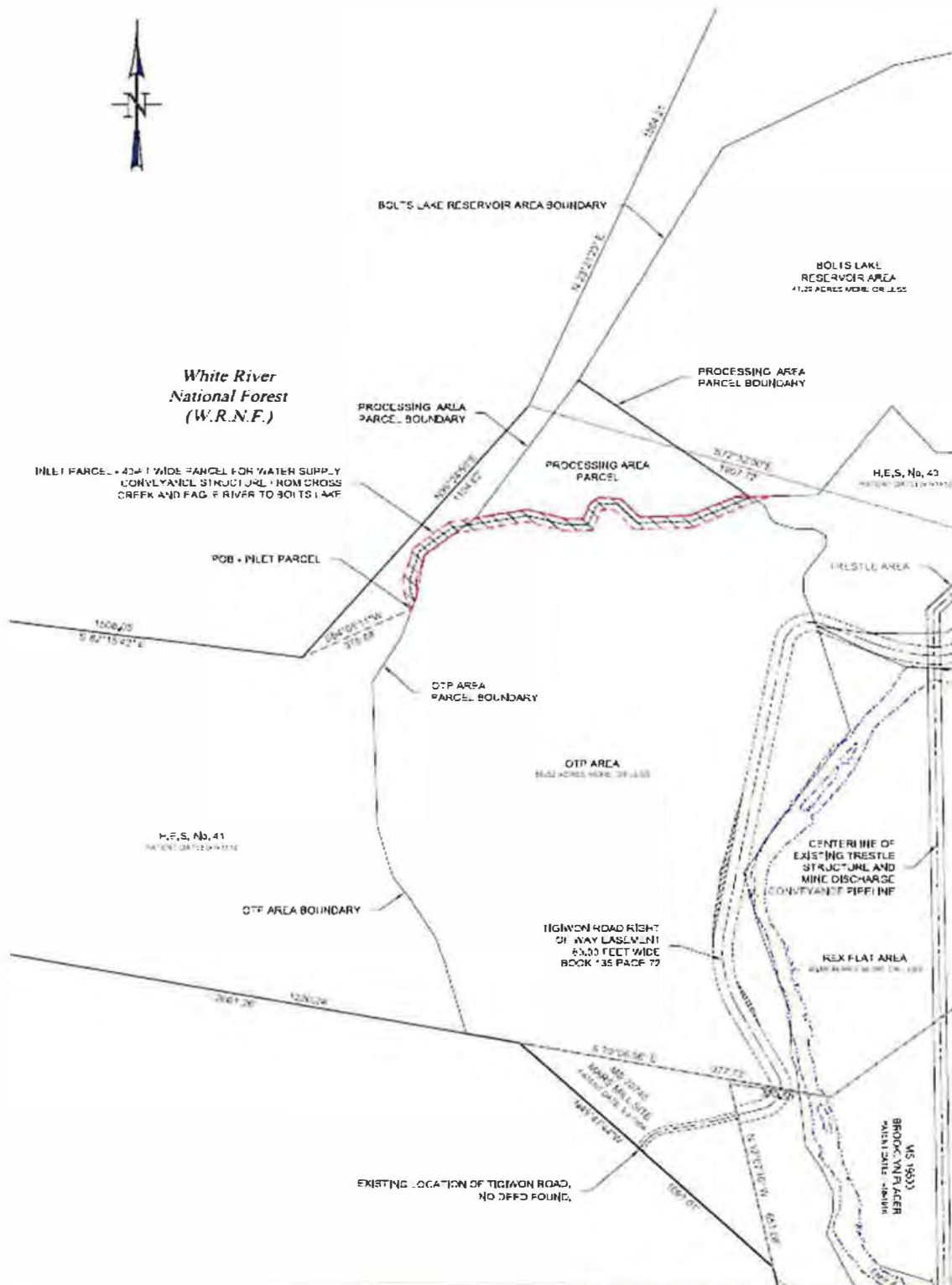


Exhibit 5 - Inlet Parcel

DATE	JANUARY 1, 2021	DRAWN BY	JAC
PROJECT	B5551404	CHECKED BY	JAC

PROJECT: Battle Property Survey Title Boundary for Battle Lake Exhibit 5 20210101 01.01.21
 MAP SCALE: 1" = 400'



GAMBA & ASSOCIATES

BATTLE NORTH LLC

GAMBA & ASSOCIATES, INC.
 CONSULTING ENGINEERS & LAND SURVEYORS
 8700 13TH AVE. S.W. SUITE 1000, BURNING WOOD, CO 80604
 303.447.4747 WWW.GAMBAENGINEERING.COM

Exhibit 6
Legal Description and Graphic Depiction of Cross Creek Parcel

A parcel of land 40 feet in width located in H.E.S. No. 41 as patented March 7, 1912 in Section 2, Township 6 South, Range 81 West, 6th P.M., for the purpose of constructing, operating and maintaining a water supply conveyance structure consisting of open channels and/or pipelines to supply water to Bolts Lake Reservoir from Cross Creek, more particularly described as follows:

Beginning at a point on the 4-5 line of said H.E.S. No. 41 whence Corner No. 5 of said H.E.S. 41, being an original stone monument found in place, bears S38°40'30"E a distance of 209.77 feet; thence from the Point of Beginning N38°40'30"W a distance of 42.22 feet along said 4-5 line of said H.E.S. No. 41;

thence leaving said 4-5 line the following 52 courses along the northern boundary of said 40-ft wide Parcel:

1. thence N32°39'21"E a distance of 27.83 feet;
2. thence N51°22'40"E a distance of 60.49 feet;
3. thence N57°17'27"E a distance of 81.86 feet;
4. thence N28°51'58"E a distance of 17.48 feet;
5. thence N37°59'43"E a distance of 40.08 feet;
6. thence N59°32'43"E a distance of 36.90 feet;
7. thence N79°41'59"E a distance of 25.11 feet;
8. thence N59°28'21"E a distance of 12.12 feet;
9. thence N29°00'22"E a distance of 9.26 feet;
10. thence N01°30'29"E a distance of 7.78 feet;
11. thence N15°41'15"W a distance of 25.00 feet;
12. thence N30°19'19"E a distance of 60.07 feet;
13. thence N45°20'15"E a distance of 69.82 feet;
14. thence N80°43'22"E a distance of 64.07 feet;
15. thence N74°01'07"E a distance of 79.28 feet;
16. thence N59°31'42"E a distance of 161.00 feet;
17. thence S76°40'51"E a distance of 30.12 feet;
18. thence S50°54'02"E a distance of 73.00 feet;
19. thence S65°50'54"E a distance of 48.74 feet;
20. thence S72°43'32"E a distance of 44.10 feet;
21. thence S55°22'06"E a distance of 56.36 feet;
22. thence S71°34'21"E a distance of 81.30 feet;
23. thence S81°19'48"E a distance of 52.56 feet;
24. thence S57°21'03"E a distance of 52.70 feet;
25. thence S64°54'54"E a distance of 53.72 feet;
26. thence S69°30'00"E a distance of 56.02 feet;
27. thence S46°49'29"E a distance of 34.38 feet;
28. thence N71°56'14"E a distance of 44.33 feet;
29. thence S58°11'01"E a distance of 65.31 feet;
30. thence S74°03'40"E a distance of 24.97 feet;
31. thence N77°15'36"E a distance of 54.42 feet;
32. thence N47°40'31"E a distance of 25.21 feet;
33. thence N89°12'17"E a distance of 62.32 feet;
34. thence S87°39'42"E a distance of 140.68 feet;
35. thence S59°38'48"E a distance of 57.24 feet;
36. thence S71°30'33"E a distance of 27.33 feet;
37. thence S82°12'51"E a distance of 54.26 feet;
38. thence S77°43'20"E a distance of 106.59 feet;
39. thence S70°35'49"E a distance of 65.95 feet;

40. thence S87°25'05"E a distance of 55.95 feet;
41. thence N76°07'16"E a distance of 27.53 feet;
42. thence N13°39'39"E a distance of 66.59 feet;
43. thence S85°50'53"E a distance of 72.54 feet;
44. thence N50°35'41"E a distance of 22.66 feet;
45. thence N34°29'42"E a distance of 101.73 feet;
46. thence N69°09'13"E a distance of 31.70 feet;
47. thence S86°10'16"E a distance of 83.45 feet;
48. thence N84°39'57"E a distance of 56.51 feet;
49. thence S53°23'43"E a distance of 29.64 feet;
50. thence N88°59'36"E a distance of 17.27 feet;
51. thence N65°07'19"E a distance of 39.81 feet;
52. thence N54°04'58"E a distance of 36.08 feet to a point on the westerly boundary of a 40-ft wide Easement for a water supply conveyance structure from the Eagle River to Bolts Lake;

thence S14°44'58"E a distance of 4.99 feet along the westerly boundary of a 40-ft wide Easement for a water supply conveyance structure from the Eagle River to Bolts Lake; thence S11°51'41"E a distance of 38.71 feet along said westerly boundary of a 40-ft wide Easement for a water supply conveyance structure from the Eagle River to Bolts Lake;

thence leaving said westerly boundary the following 52 courses along the southern boundary of said 40-ft wide Parcel:

1. thence S54°04'58"W a distance of 22.36 feet;
2. thence S65°07'19"W a distance of 52.13 feet;
3. thence S88°59'36"W a distance of 39.34 feet;
4. thence N53°23'43"W a distance of 27.94 feet;
5. thence S84°39'57"W a distance of 44.39 feet;
6. thence N86°10'16"W a distance of 77.90 feet;
7. thence S69°09'13"W a distance of 10.47 feet;
8. thence S34°29'42"W a distance of 94.91 feet;
9. thence S50°35'41"W a distance of 44.30 feet;
10. thence N85°50'53"W a distance of 54.66 feet;
11. thence S13°39'39"W a distance of 56.99 feet;
12. thence S76°07'16"W a distance of 57.57 feet;
13. thence N87°25'05"W a distance of 67.65 feet;
14. thence N70°35'49"W a distance of 69.37 feet;
15. thence N77°43'20"W a distance of 102.54 feet;
16. thence N82°12'51"W a distance of 56.44 feet;
17. thence N71°30'33"W a distance of 35.23 feet;
18. thence N59°38'48"W a distance of 51.42 feet;
19. thence N87°39'42"W a distance of 129.61 feet;
20. thence S89°12'17"W a distance of 46.06 feet;
21. thence S47°40'31"W a distance of 20.60 feet;
22. thence S77°15'36"W a distance of 75.21 feet;
23. thence N74°03'40"W a distance of 40.77 feet;
24. thence N58°11'01"W a distance of 52.28 feet;
25. thence S71°56'14"W a distance of 49.41 feet;
26. thence N46°49'29"W a distance of 50.03 feet;
27. thence N69°30'00"W a distance of 49.60 feet;
28. thence N64°54'54"W a distance of 57.96 feet;
29. thence N57°21'03"W a distance of 46.85 feet;

30. thence N81°19'48"W a distance of 47.48 feet;
31. thence N71°34'21"W a distance of 90.41 feet;
32. thence N55°22'06"W a distance of 55.95 feet;
33. thence N72°43'32"W a distance of 40.40 feet;
34. thence N65°50'54"W a distance of 56.39 feet;
35. thence N50°54'02"W a distance of 69.09 feet;
36. thence N76°40'51"W a distance of 4.89 feet;
37. thence S59°31'42"W a distance of 150.01 feet;
38. thence S74°01'07"W a distance of 86.71 feet;
39. thence S80°43'22"W a distance of 53.65 feet;
40. thence S45°20'15"W a distance of 51.79 feet;
41. thence S30°19'19"W a distance of 37.81 feet;
42. thence S15°41'15"E a distance of 14.06 feet;
43. thence S01°30'29"W a distance of 23.62 feet;
44. thence S29°00'22"W a distance of 29.94 feet;
45. thence S59°28'21"W a distance of 30.15 feet;
46. thence S79°41'59"W a distance of 25.13 feet;
47. thence S59°32'43"W a distance of 22.18 feet;
48. thence S37°59'43"W a distance of 29.27 feet;
49. thence S28°51'58"W a distance of 24.41 feet;
50. thence S57°17'27"W a distance of 89.93 feet;
51. thence S51°22'40"W a distance of 51.83 feet;
52. thence S32°39'21"W a distance of 34.75 feet; to the Point of Beginning, containing 2.496 acres more or less.

Legal Description Prepared By:
Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81601

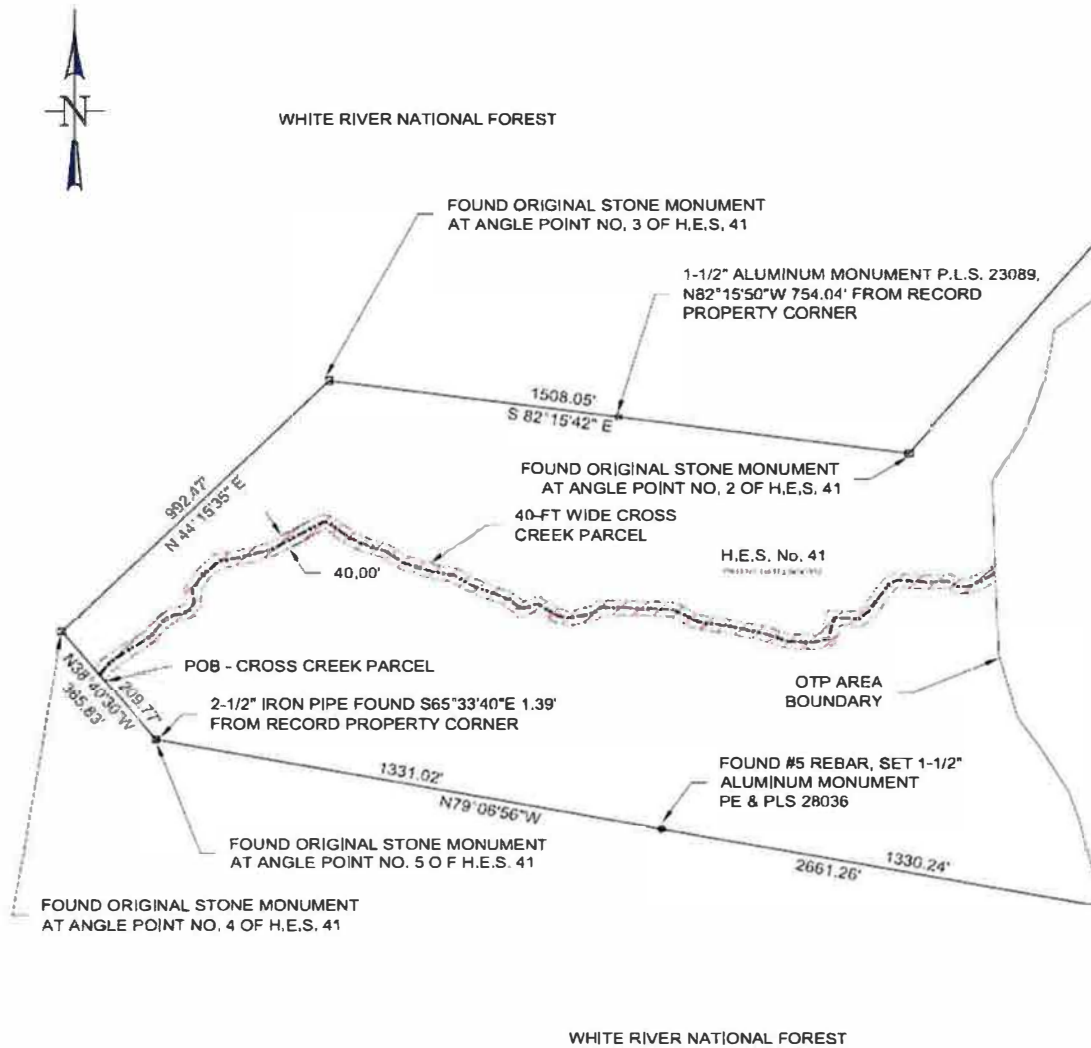


Exhibit 6 -Cross Creek Parcel			 GAMBA & ASSOCIATES	BATTLE NORTH LLC
SCALE: 1" = 400'	DATE: JANUARY 11, 2021	DRAWN BY: DK		
SHEET: 1 of 4	PROJECT: 05554-04	CHECK BY: AUG		
DRAWING: North Property Order Title Boundary for Battle North Exhibit - 20210125 DR-4mg DIRECTORY: I:\P\WP\05554\2018\Battle North				

Exhibit 6
Page 4

Exhibit 7
Legal Description and Graphic Depiction of Eagle River Parcel

A Parcel of land 40 feet in width located in H.E.S. No. 41 as patented March 7, 1912 in Section 2, Township 6 South, Range 81 West, 6th P.M., for the purpose of constructing, operating and maintaining a water supply conveyance structure consisting of open channels and/or pipelines to supply water to Bolts Lake Reservoir from the Eagle River and Cross Creek, more particularly described as follows:

Beginning at a point on the westerly boundary of the OTP Area as described on an Exhibit prepared by Gamba & Associates, Inc., dated January 18, 2018 on behalf of Battle Mountain, whence Corner No. 2 of said H.E.S. 41, being an original stone monument found in place, bears S64°05'11"W a distance of 376.68 feet;

Thence from the Point of Beginning N19°01'53"E a distance of 43.82 feet along the westerly boundary of said OTP Area; thence N10°13'05"E a distance of 16.93 feet along the westerly boundary of said OTP Area;

Thence leaving said OTP boundary the following 126 courses along the easterly boundary of said 40-ft wide Easement:

1. thence S24°43'37"E a distance of 60.91 feet;
2. thence S13°24'19"E a distance of 138.63 feet;
3. thence S07°07'34"E a distance of 27.87 feet;
4. thence S10°26'49"W a distance of 27.14 feet;
5. thence S25°46'25"W a distance of 42.27 feet;
6. thence S47°14'31"W a distance of 37.23 feet;
7. thence S35°58'05"W a distance of 54.58 feet;
8. thence S36°19'31"W a distance of 83.31 feet;
9. thence S32°06'55"W a distance of 61.31 feet;
10. thence S12°22'03"W a distance of 26.39 feet;
11. thence S10°40'42"E a distance of 32.29 feet;
12. thence S14°44'58"E a distance of 11.68 feet;
13. thence S11°51'41"E a distance of 35.42 feet;
14. thence S30°55'20"E a distance of 109.61 feet;
15. thence S56°45'23"E a distance of 22.96 feet;
16. thence S42°01'46"E a distance of 29.36 feet;
17. thence S31°22'50"E a distance of 26.60 feet;
18. thence S32°52'51"E a distance of 22.49 feet;
19. thence S45°30'06"E a distance of 17.96 feet;
20. thence S72°22'32"E a distance of 26.78 feet;
21. thence S36°03'25"E a distance of 32.07 feet;
22. thence S33°05'41"E a distance of 27.03 feet;
23. thence S24°39'07"E a distance of 25.12 feet;
24. thence S32°32'17"E a distance of 24.49 feet;
25. thence S27°39'38"E a distance of 28.23 feet;
26. thence S14°10'21"E a distance of 27.51 feet;
27. thence S13°16'01"E a distance of 25.61 feet;
28. thence S10°33'27"E a distance of 26.22 feet;
29. thence S06°03'59"E a distance of 23.99 feet;
30. thence S16°36'21"E a distance of 22.65 feet;
31. thence S19°19'05"E a distance of 25.93 feet;
32. thence S11°04'39"E a distance of 30.81 feet;
33. thence S13°33'11"W a distance of 26.24 feet;
34. thence S04°03'10"E a distance of 20.78 feet;
35. thence S10°17'54"E a distance of 27.44 feet;
36. thence S09°46'48"W a distance of 21.99 feet;

37. thence S26°45'23"E a distance of 15.41 feet;
38. thence S43°44'45"E a distance of 22.66 feet;
39. thence S39°57'01"E a distance of 25.13 feet;
40. thence S42°47'35"E a distance of 22.70 feet;
41. thence S53°04'24"E a distance of 23.76 feet;
42. thence S49°39'54"E a distance of 27.12 feet;
43. thence S40°48'48"E a distance of 26.25 feet;
44. thence S42°26'54"E a distance of 24.64 feet;
45. thence S42°50'17"E a distance of 25.77 feet;
46. thence S37°47'19"E a distance of 25.04 feet;
47. thence S42°42'02"E a distance of 26.98 feet;
48. thence S26°06'00"E a distance of 26.00 feet;
49. thence S36°59'13"E a distance of 25.54 feet;
50. thence S22°47'30"E a distance of 24.58 feet;
51. thence S39°38'39"E a distance of 21.03 feet;
52. thence S44°58'49"E a distance of 23.31 feet;
53. thence S49°09'37"E a distance of 21.29 feet;
54. thence S66°00'16"E a distance of 18.67 feet;
55. thence S85°09'28"E a distance of 21.05 feet;
56. thence S88°25'19"E a distance of 24.57 feet;
57. thence S87°37'24"E a distance of 26.06 feet;
58. thence S82°08'26"E a distance of 25.84 feet;
59. thence S82°38'13"E a distance of 26.66 feet;
60. thence S72°34'05"E a distance of 27.85 feet;
61. thence S66°11'49"E a distance of 26.57 feet;
62. thence S63°21'02"E a distance of 25.18 feet;
63. thence S65°03'01"E a distance of 23.77 feet;
64. thence S70°17'43"E a distance of 24.17 feet;
65. thence S69°37'16"E a distance of 24.08 feet;
66. thence S75°21'52"E a distance of 23.26 feet;
67. thence S79°23'21"E a distance of 23.72 feet;
68. thence S82°32'54"E a distance of 12.05 feet;
69. thence S81°50'12"E a distance of 30.78 feet;
70. thence S36°50'12"E a distance of 48.90 feet;
71. thence S08°09'48"W a distance of 57.57 feet;
72. thence S53°09'48"W a distance of 53.47 feet;
73. thence S29°09'31"W a distance of 11.99 feet;
74. thence S15°50'29"E a distance of 31.69 feet;
75. thence S60°50'29"E a distance of 36.98 feet;
76. thence S15°50'29"E a distance of 32.32 feet;
77. thence S06°59'31"W a distance of 24.39 feet;
78. thence S08°59'31"W a distance of 28.63 feet;
79. thence S53°59'31"W a distance of 22.21 feet;
80. thence S03°44'11"E a distance of 23.20 feet;
81. thence S45°50'44"W a distance of 17.59 feet;
82. thence S33°33'27"E a distance of 7.16 feet;
83. thence S40°23'14"E a distance of 24.03 feet;
84. thence S38°56'53"E a distance of 25.39 feet;
85. thence S37°36'41"E a distance of 27.83 feet;
86. thence S22°27'59"E a distance of 23.61 feet;
87. thence S45°17'19"E a distance of 57.94 feet;

88. thence S80°17'31"E a distance of 8.89 feet;
 89. thence S64°45'49"E a distance of 25.90 feet;
 90. thence S74°58'05"E a distance of 25.18 feet;
 91. thence S63°37'39"E a distance of 26.78 feet;
 92. thence S64°34'29"E a distance of 22.34 feet;
 93. thence S78°35'39"E a distance of 19.31 feet;
 94. thence N83°10'09"E a distance of 20.60 feet;
 95. thence N76°32'24"E a distance of 24.79 feet;
 96. thence N82°06'16"E a distance of 25.86 feet;
 97. thence N81°33'03"E a distance of 20.30 feet;
 98. thence N90°00'00"E a distance of 29.76 feet;
 99. thence S45°00'00"E a distance of 28.28 feet;
 100. thence S45°00'00"E a distance of 45.54 feet;
 101. thence S02°58'35"E a distance of 19.31 feet;
 102. thence S00°24'30"W a distance of 28.23 feet;
 103. thence S15°29'32"W a distance of 21.68 feet;
 104. thence S17°40'05"E a distance of 19.95 feet;
 105. thence S12°22'19"E a distance of 24.36 feet;
 106. thence S21°16'15"E a distance of 22.46 feet;
 107. thence S26°47'54"E a distance of 23.83 feet;
 108. thence S27°39'00"E a distance of 23.53 feet;
 109. thence S35°10'36"E a distance of 22.05 feet;
 110. thence S44°29'34"E a distance of 23.98 feet;
 111. thence S40°53'42"E a distance of 24.63 feet;
 112. thence S46°38'36"E a distance of 22.68 feet;
 113. thence S54°12'56"E a distance of 23.38 feet;
 114. thence S55°54'47"E a distance of 24.43 feet;
 115. thence S57°25'25"E a distance of 23.16 feet;
 116. thence S66°26'38"E a distance of 23.79 feet;
 117. thence S64°15'05"E a distance of 24.62 feet;
 118. thence S68°40'29"E a distance of 27.15 feet;
 119. thence S52°04'40"E a distance of 26.27 feet;
 120. thence S61°30'48"E a distance of 23.72 feet;
 121. thence S59°22'38"E a distance of 26.28 feet;
 122. thence S54°11'23"E a distance of 26.51 feet;
 123. thence S50°41'12"E a distance of 25.32 feet;
 124. thence S52°21'58"E a distance of 19.56 feet;
 125. thence S81°08'16"E a distance of 26.17 feet;
 126. thence S46°08'39"E a distance of 27.51 feet to a point on the westerly boundary of the Union Pacific Railroad Right-of-Way as depicted on the Right-of-way and Track Map for the Denver & Rio Grande Railroad operated by the Denver & Rio Grande Railroad – Second Division – Station 4513-00 to Station 4691+20, Dated June 30, 1919, C.E. 46611 02-10-14-41 and the Supplemental Map for the Denver & Rio Grande Railroad – Second Division – Station 4459+75 to Station 4513+00, Dated June 30, 2019, C.E. 46610 02-10-14-40;

thence the following two courses along said westerly boundary of the Union Pacific Railroad Right-of-Way:

1. thence 36.31 feet along the arc of a non-tangent curve to the left having a radius of 3919.72 feet, a central angle of 00°31'51", and the chord bears S11°29'38"W a distance of 36.31 feet;
2. thence S30°39'47"W a distance of 21.93 feet;

Thence leaving said Railroad Right-of-Way the following 126 courses along the westerly boundary of said 40-ft wide Easement:

1. thence N20°37'24"W a distance of 27.89 feet;
2. thence N46°08'39"W a distance of 14.16 feet;
3. thence N81°08'16"W a distance of 23.83 feet;
4. thence N52°21'58"W a distance of 30.41 feet;
5. thence N50°41'12"W a distance of 24.68 feet;
6. thence N54°11'23"W a distance of 23.48 feet;
7. thence N59°22'38"W a distance of 23.72 feet;
8. thence N61°30'48"W a distance of 26.27 feet;
9. thence N52°04'40"W a distance of 23.73 feet;
10. thence N68°40'29"W a distance of 22.86 feet;
11. thence N64°15'05"W a distance of 25.40 feet;
12. thence N66°26'38"W a distance of 26.18 feet;
13. thence N57°25'25"W a distance of 26.84 feet;
14. thence N55°54'47"W a distance of 25.55 feet;
15. thence N54°12'56"W a distance of 26.62 feet;
16. thence N46°38'36"W a distance of 27.33 feet;
17. thence N40°53'42"W a distance of 25.38 feet;
18. thence N44°29'34"W a distance of 25.99 feet;
19. thence N35°10'36"W a distance of 27.94 feet;
20. thence N27°39'00"W a distance of 26.46 feet;
21. thence N26°47'54"W a distance of 26.06 feet;
22. thence N21°16'15"W a distance of 27.51 feet;
23. thence N12°22'19"W a distance of 25.62 feet;
24. thence N17°40'05"W a distance of 30.01 feet;
25. thence N15°29'32"E a distance of 28.29 feet;
26. thence N00°24'30"E a distance of 24.36 feet;
27. thence N45°00'00"W a distance of 30.41 feet;
28. thence N45°00'00"W a distance of 11.72 feet;
29. thence S90°00'00"W a distance of 10.24 feet;
30. thence S81°33'03"W a distance of 17.54 feet;
31. thence S82°06'16"W a distance of 24.11 feet;
32. thence S76°32'24"W a distance of 25.16 feet;
33. thence S83°10'09"W a distance of 29.33 feet;
34. thence N78°35'39"W a distance of 30.64 feet;
35. thence N64°34'29"W a distance of 27.59 feet;
36. thence N63°37'39"W a distance of 23.14 feet;
37. thence N74°58'05"W a distance of 24.78 feet;
38. thence N64°45'49"W a distance of 24.01 feet;
39. thence N80°17'31"W a distance of 16.05 feet;
40. thence N45°17'19"W a distance of 78.62 feet;
41. thence N22°27'59"W a distance of 26.36 feet;
42. thence N37°36'41"W a distance of 22.04 feet;
43. thence N38°56'53"W a distance of 24.42 feet;
44. thence N40°23'14"W a distance of 25.91 feet;
45. thence N33°33'27"W a distance of 42.76 feet;
46. thence N45°50'44"E a distance of 32.32 feet;
47. thence N03°44'11"W a distance of 26.78 feet;
48. thence N53°59'31"E a distance of 27.69 feet;

49. thence N08°59'31"E a distance of 11.37 feet;
50. thence N06°59'31"E a distance of 15.61 feet;
51. thence N15°50'29"W a distance of 7.68 feet;
52. thence N60°50'29"W a distance of 36.98 feet;
53. thence N15°50'29"W a distance of 64.82 feet;
54. thence N29°09'31"E a distance of 37.07 feet;
55. thence N53°09'48"E a distance of 45.40 feet;
56. thence N08°09'48"E a distance of 24.43 feet;
57. thence N36°50'12"W a distance of 15.76 feet;
58. thence N81°50'12"W a distance of 13.96 feet;
59. thence N82°32'54"W a distance of 12.91 feet;
60. thence N79°23'21"W a distance of 26.23 feet;
61. thence N75°21'52"W a distance of 26.67 feet;
62. thence N69°37'16"W a distance of 25.85 feet;
63. thence N70°17'43"W a distance of 25.77 feet;
64. thence N65°03'01"W a distance of 26.19 feet;
65. thence N63°21'02"W a distance of 24.78 feet;
66. thence N66°11'49"W a distance of 23.35 feet;
67. thence N72°34'05"W a distance of 22.10 feet;
68. thence N82°38'13"W a distance of 23.31 feet;
69. thence N82°08'26"W a distance of 24.10 feet;
70. thence N87°37'24"W a distance of 23.87 feet;
71. thence N88°25'19"W a distance of 25.43 feet;
72. thence N85°09'28"W a distance of 28.94 feet;
73. thence N66°00'16"W a distance of 31.34 feet;
74. thence N49°09'37"W a distance of 28.67 feet;
75. thence N44°58'49"W a distance of 26.63 feet;
76. thence N39°38'39"W a distance of 28.82 feet;
77. thence N22°47'30"W a distance of 25.53 feet;
78. thence N36°59'13"W a distance of 24.38 feet;
79. thence N26°06'00"W a distance of 23.98 feet;
80. thence N42°42'02"W a distance of 22.86 feet;
81. thence N37°47'19"W a distance of 24.99 feet;
82. thence N42°50'17"W a distance of 24.14 feet;
83. thence N42°26'54"W a distance of 25.35 feet;
84. thence N40°48'48"W a distance of 23.72 feet;
85. thence N49°39'54"W a distance of 22.84 feet;
86. thence N53°04'24"W a distance of 26.17 feet;
87. thence N42°47'35"W a distance of 27.29 feet;
88. thence N39°57'01"W a distance of 24.80 feet;
89. thence N43°44'45"W a distance of 27.31 feet;
90. thence N26°45'23"W a distance of 34.59 feet;
91. thence N09°46'48"E a distance of 28.11 feet;
92. thence N10°17'54"W a distance of 22.54 feet;
93. thence N04°03'10"W a distance of 29.16 feet;
94. thence N13°33'11"E a distance of 23.70 feet;
95. thence N11°04'39"W a distance of 19.20 feet;
96. thence N19°19'05"W a distance of 24.00 feet;
97. thence N16°36'21"W a distance of 27.28 feet;
98. thence N06°03'59"W a distance of 26.12 feet;
99. thence N10°33'27"W a distance of 23.71 feet;

100.thence N13°16'01"W a distance of 24.35 feet;
101.thence N14°10'21"W a distance of 22.46 feet;
102.thence N27°39'38"W a distance of 21.79 feet;
103.thence N32°32'17"W a distance of 25.54 feet;
104.thence N24°39'07"W a distance of 24.92 feet;
105.thence N33°05'41"W a distance of 23.04 feet;
106.thence N36°03'25"W a distance of 17.92 feet;
107.thence N72°22'32"W a distance of 23.22 feet;
108.thence N45°30'06"W a distance of 31.94 feet;
109.thence N32°52'51"W a distance of 27.43 feet;
110.thence N31°22'50"W a distance of 23.39 feet;
111.thence N42°01'46"W a distance of 20.46 feet;
112.thence N56°45'23"W a distance of 26.97 feet;
113.thence N30°55'20"W a distance of 125.50 feet;
114.thence N11°51'41"W a distance of 41.13 feet;
115.thence N14°44'58"W a distance of 12.09 feet;
116.thence N10°40'42"W a distance of 41.86 feet;
117.thence N12°22'03"E a distance of 41.51 feet;
118.thence N32°06'55"E a distance of 69.74 feet;
119.thence N36°19'31"E a distance of 84.66 feet;
120.thence N35°58'05"E a distance of 58.40 feet;
121.thence N47°14'31"E a distance of 33.60 feet;
122.thence N25°46'25"E a distance of 29.30 feet;
123.thence N10°26'49"E a distance of 15.58 feet;
124.thence N07°07'34"W a distance of 19.50 feet;
125.thence N13°24'19"W a distance of 132.47 feet;
126.thence N24°43'37"W a distance of 11.43 feet;

to the Point of Beginning, containing 3.312 acres more or less.

Legal Description Prepared By:

Michael J. Gamba, P.E. & P.L.S. 28036

For and on behalf of Gamba & Associates, Inc.

113 Ninth Street, Suite 214

Glenwood Springs, CO 81602

Exhibit 8
Legal Description and Graphic Depiction of Spillway Parcel

An Easement 40 feet in width located in H.E.S. No. 41 as patented March 7, 1912 in Section 2, Township 6 South, Range 81 West, 6th P.M., for the purpose of constructing, operating and maintaining an emergency spillway structure for Bolts Lake Reservoir from Bolts Lake Reservoir to the Eagle River, more particularly described as follows:

Beginning at a point on the southerly boundary of the Bolts Lake Reservoir Area as described on an Exhibit prepared by Gamba & Associates, Inc., dated February 1, 2019 on behalf of Battle North LLC; whence an original stone monument found in place at Corner No. 4 of H.E.S. 40 and Corner No. 8 of said H.E.S. 41 bears S 74°27'58" E a distance of 1004.62 feet;

Thence from the Point of Beginning the following 5 courses along the easterly boundary of said 40-ft wide Easement:

1. thence S 00°16'22" W a distance of 48.17 feet;
2. thence S 10°26'57" E a distance of 181.12 feet;
3. thence S 14°11'53" E a distance of 106.47 feet;
4. thence S 21°05'26" E a distance of 154.07 feet;
5. thence S 64°08'02" E a distance of 246.93 feet to a point on the westerly bank of the Eagle River;

Thence the following 4 courses along said westerly bank of the Eagle River:

1. thence N 81°26'06" W a distance of 8.63 feet;
2. thence S 77°57'16" W a distance of 16.82 feet;
3. thence S 42°39'38" W a distance of 19.10 feet;
4. thence S 30°40'02" W a distance of 8.85 feet;

Thence leaving said westerly bank of the Eagle River the following 5 courses along the westerly boundary of said 40-ft wide Easement:

1. thence N 64°08'02" W a distance of 234.94 feet;
2. thence N 21°05'26" W a distance of 172.26 feet;
3. thence N 14°11'53" W a distance of 110.18 feet;
4. thence N 10°26'57" W a distance of 186.19 feet;
5. thence N 00°16'22" E a distance of 50.90 feet to a point on said southerly boundary of the Bolts Lake Reservoir Area;

thence along said southerly boundary of the Bolts Lake Reservoir Area N 88°48'40" E a distance of 40.01 feet to the point of beginning. Said Easement containing 0.67 acres more or less.

Legal Description Prepared By:

Michael J. Gamba, P.E. & P.L.S. 28036

For and on behalf of Gamba & Associates, Inc.

113 Ninth Street, Suite 214

Glenwood Springs, CO 81601

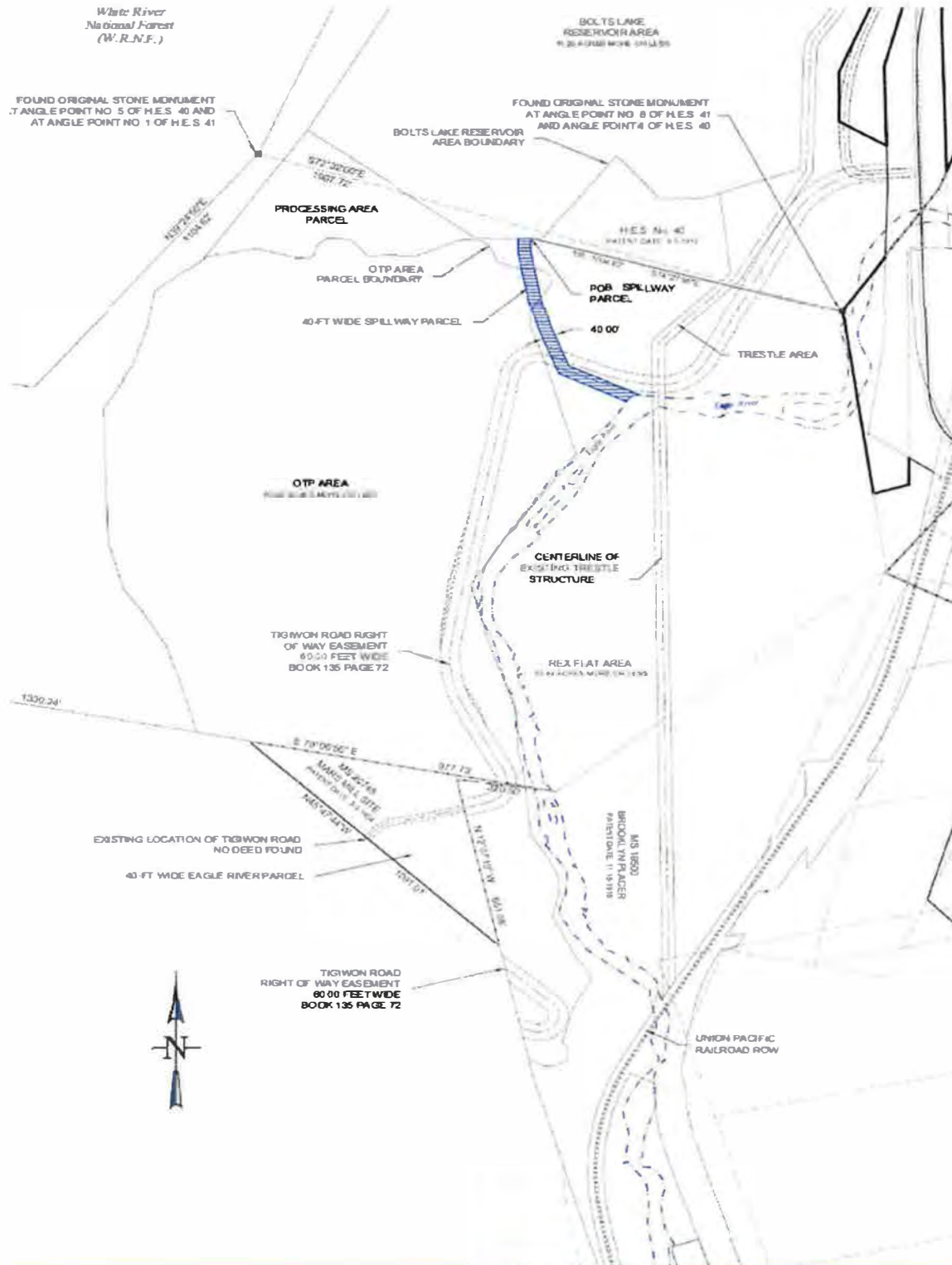


Exhibit 8 - Spillway Parcel					BATTLE NORTH LLC
SCALE: 1" = 400'	DATE: JANUARY 15, 2021	DRAWN BY: BM	 GAMBA & ASSOCIATES, INC. CONSULTING ENGINEERS & LAND SURVEYORS 2700 S. 2800 W. SUITE 100, SALT LAKE CITY, UT 84119 801.488.8800 WWW.GAMBAENGINEERING.COM		
SHEET: 1 of 2	PROJECT: 80514-3H	ORD BY: BM			
DRAWING: North Property Survey Title Boundary for Battle Lake Subdivision - 20210115-Battle Lake PROJECT: 80514-3H (Battle Lake Subdivision)					



Exhibit 9
Legal Description and Graphic Depiction of Outlet Parcel

An Easement 40 feet in width located in H.E.S. No. 40 as patented March 7, 1912 in Sections 1 and 2, Township 6 South, Range 81 West, 6th P.M., for the purpose of constructing, operating and maintaining a reservoir outlet structure for Bolts Lake Reservoir from Bolts Lake Reservoir to the Eagle River, more particularly described as follows:

Beginning at a point on the southerly boundary of the Bolts Lake Reservoir Area as described on an Exhibit prepared by Gamba & Associates, Inc., dated February 1, 2019 on behalf of Battle North LLC; whence an original stone monument found in place at Corner No. 4 of said H.E.S. 40 and Corner No. 8 of H.E.S. 41 bears S 34°16'58" E a distance of 555.62 feet;

Thence from the Point of Beginning along said southerly boundary of the Bolts Lake Reservoir Area N 70°24'37" E a distance of 46.55 feet;

Thence leaving said southerly boundary of the Bolts Lake Reservoir Area the following 3 courses along the easterly boundary of said 40-ft wide Easement:

1. thence S 50°21'25" E a distance of 313.97 feet;
2. thence 83.07 feet along the arc of a tangent curve to the right having a radius of 156.56 feet, a central angle of 30°24'12", and the chord bears S 35°09'18" E a distance of 82.10 feet;
3. thence 56.45 feet along the arc of a tangent curve to the left having a radius of 53.24 feet, a central angle of 60°45'08", and the chord bears S 50°19'46" E a distance of 53.85 feet to a point on the westerly bank of the Eagle River;

Thence along said westerly bank of the Eagle River S 07°44'40" W a distance of 40.01 feet;

Thence leaving said easterly bank of the Eagle River the following 3 courses along the westerly boundary of said 40-ft wide Easement:

1. thence 99.95 feet along the arc of a non tangent curve to the right having a radius of 93.24 feet, a central angle of 61°25'02", and the chord bears N 50°39'43" W a distance of 95.23 feet;
2. thence 61.85 feet along the arc of a tangent curve to the left having a radius of 116.56 feet, a central angle of 30°24'12", and the chord bears N 35°09'18" W a distance of 61.13 feet;
3. thence N 50°21'25" W a distance of 337.78 feet to the point of beginning.

Said Easement containing 0.43 acres more or less.

Legal Description Prepared By:
Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81601

A detailed map of the White River National Forest area. The map shows various land parcels with labels such as "BOLTS LAKE RESERVOIR AREA", "PROCESSING AREA PARCEL", "OTP AREA", "TRESTLE AREA", "REX FLAT AREA", and "BROOKLYN PLACER". It also indicates the location of the "FOUND ORIGINAL STONE MONUMENT AT ANGLE POINT NO. 6 OF H.E.S. 40 AND AT ANGLE POINT NO. 1 OF H.E.S. 41". A north arrow is present on the left side. The map includes numerous boundary lines, some solid and some dashed, representing different types of land ownership or easements. Specific survey points and measurements are noted throughout the map.

A diagram showing a blue sphere representing Earth. A black elliptical line represents the orbit of a satellite. A small satellite is shown at one point on the orbit. A dashed line indicates the path of the satellite as it moves around the Earth.

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970-648-2550 WWW.GAMBAENGINEERING.COM
11800 E. 27th Ave. Suite 210 Denver, CO 80231

Exhibit 10
Legal Description and Graphic Depiction of Inundation Area Parcel

Parcel A

An area of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 47°41'11" W a distance of 4262.01 feet; thence N 77°20'34" E a distance of 88.42 feet; thence S 69°53'17" E a distance of 201.61 feet; thence N 62°59'59" E a distance of 540.15 feet to a point on the westerly right-of-way of U.S. Highway 24 as depicted on the U.S. Highway 24 Boundary Line Agreement deposited February 19, 2019 in Book 2 of the Eagle County Surveyor's Land/Rights-of-Way Surveys at Pages 1099 through 1107; thence along said westerly right-of-way the following five courses:

- 1) 262.58 feet along the arc of a curve to the left having a radius of 915.00, a central angle of 16°26'33", and a chord which bears S16°31'05"W a distance of 261.68 feet;
- 2) S 24°44'22" W a distance of 216.35 feet;
- 3) S 35°45'52" W a distance of 205.41 feet;
- 4) S 14°36'41" W a distance of 532.15 feet;
- 5) S 01°15'09" E a distance of 290.80 feet;

Thence leaving said westerly right-of-way of U.S. Highway 24, N 59°13'47" W a distance of 172.15 feet; thence N 00°00'00" E a distance of 181.43 feet; thence N 22°22'09" E a distance of 746.23 feet; thence N 61°06'46" W a distance of 548.29 feet to the point of beginning containing 5.34 acres more or less.

Parcel B (AKA Tract C)

An area of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado and consisting of that portion of Homestead Entry Survey (H.E.S.) 40 and Mineral Survey 20461 Puritan Lode situated easterly of the eastern right-of-way for U.S. Highway 24 as described in the Boundary Agreement recorded July 27, 2018 at reception number 201812787 and westerly of the western right-of-way for Union Pacific Railroad, being more particularly described as follows:

Beginning at Corner No. 2 of said H.E.S. 40, whence the Southwest corner of said Section 36 being a 2-1/2 inch GLO Brass Cap bears N 52°43'19" W a distance of 5,128.97 feet; thence along the 2-3 line of said H.E.S. 40 S 20°13'02" W a distance of 191.72 feet to a point on the 1-2 line of Mineral Survey 20461 Puritan Lode; thence along said 1-2 line of said Mineral Survey 20461 Puritan Lode N 59°22'30" E a distance of 155.24 feet to a point on the western right-of-way of the Union Pacific Railroad as described in D&RGW Right-of-Way and Track Map dated June 30, 1919; thence along said western right-of-way of the Union Pacific Railroad the following two courses:

- 1) 26.42 feet along the arc of a non tangent curve to the right having a radius of 2408.63 feet, a central angle of 00°37'43", and the chord bears S14°03'37" W a distance of 26.42 feet;
- 2) 184.39 feet along the arc of a tangent curve to the right having a radius of 58445.82 feet, a central angle of 00°10'51", and the chord bears S14°27'54" W a distance of 184.39 feet to a point on the 2-3 line of the Mineral Survey 20461 Puritan Lode;

Thence along said 2-3 line of the Mineral Survey 20461 Puritan Lode N 45°06'47" W a distance of 131.33 feet to the 2-3 line of said H.E.S. 40; thence along said 2-3 line of said H.E.S. 40 S 20°13'02" W a distance of 927.03 feet to a point on the eastern right-of-way of U.S. Highway 24; thence the following four courses along said eastern right-of-way of U.S. Highway 24:

- 1) N 01°30'38" W a distance of 546.70 feet;
- 2) 309.80 feet along the arc of a tangent curve to the right having a radius of 676.20 feet, a central angle of 26°15'00", and the chord bears N 11°36'52" E a distance of 307.10 feet;
- 3) N 24°44'22" E a distance of 422.47 feet;

4) 160.15 feet along the arc of a non tangent curve to the left having a radius of 994.91 feet, a central angle of $09^{\circ}13'21''$, and the chord bears $N\ 20^{\circ}07'49''\ E$ a distance of 159.97 feet to a point on the 1-2 line of said H.E.S. 40;

Thence along said 1-2 line of said H.E.S. 40 $S\ 21^{\circ}44'58''\ E$ a distance of 321.90 feet; to the point of beginning containing 5.57 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

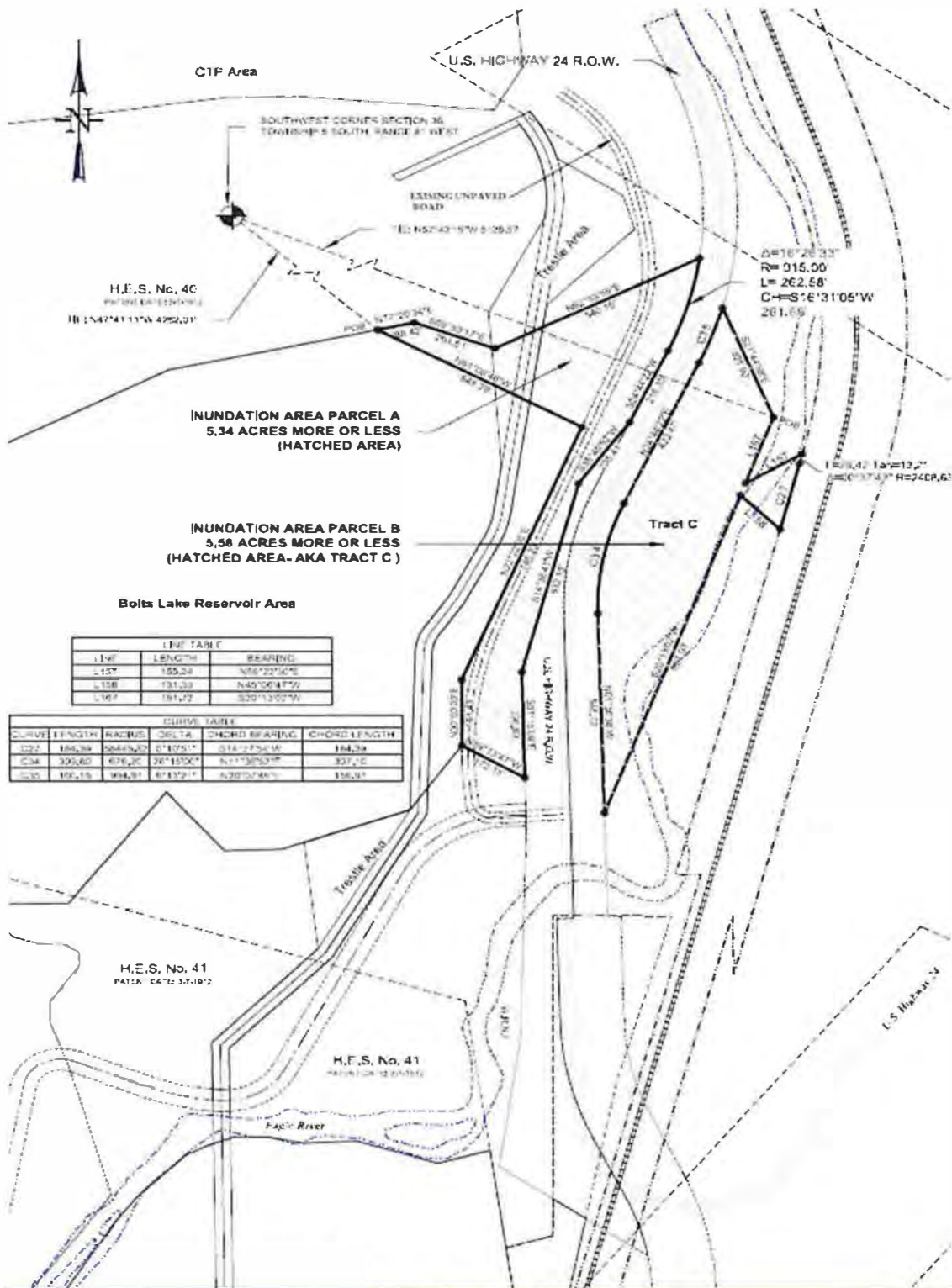


Exhibit 10 - Inundation Area Parcel

SCALE: 1"=200'	DRAWN: January 04, 2021	DESIGNED BY: BR
SHEET: 3 of 2	PROJECT: 00024636	CHECKED BY: BJS
DRAWING: North Property Cede Title Boundary 22111114 01/04/21		
CLIENT: CPT 8/27/2019/35554/2019/John Loney		



BATTLE NORTH LLC

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
870-945-2850 WWW.GAMBAENGINEERING.COM
115 NORTH ST. STE. 214 P.O. BOX 1494 BIRMINGHAM, AL 35202

Exhibit 11
Legal Description and Graphic Depiction of Processing Area Parcel

An area of land located in Section 2 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 22°39'01" W a distance of 4383.08 feet; thence S 53°11'01" E a distance of 639.38 feet; thence S 66°03'04" W a distance of 185.03 feet; thence S 87°52'49" W a distance of 154.45 feet; thence N43°32'09" W a distance of 86.00 feet; thence N 87°20'19" W a distance of 69.22 feet; thence S 51°17'35" W a distance of 30.98 feet; thence S 22°13'41" W a distance of 55.35 feet; thence S89°25'59" W a distance of 54.63 feet; thence N 75°30'49" W a distance of 122.70 feet; thence S 80°01'14" W a distance of 162.09 feet; thence N 34°16'04" E a distance of 565.04 feet to the point of beginning containing 4.46 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

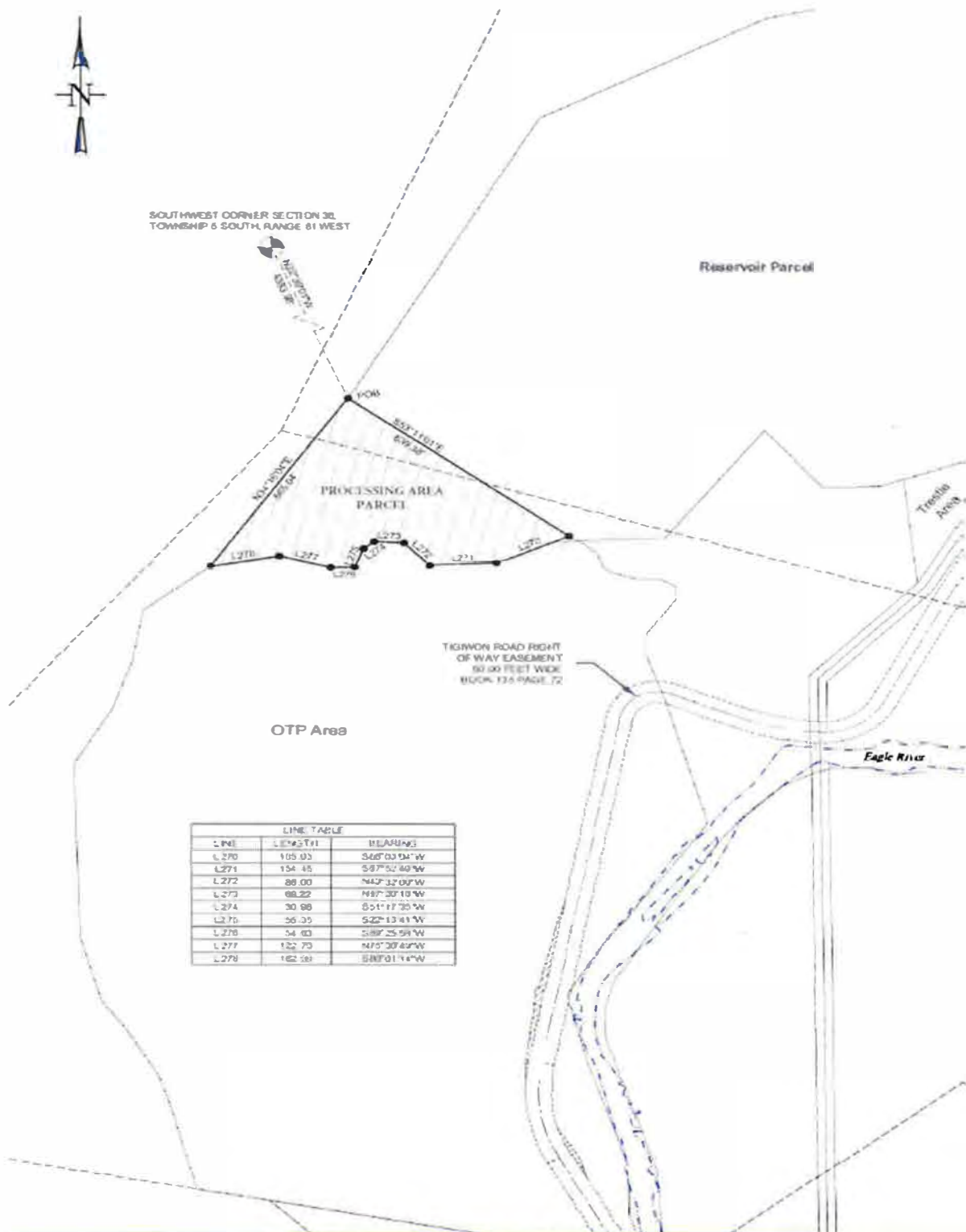


Exhibit 11 - Processing Area Parcel

SCALE: 1" = 300'
SHEET 2 of 2
DATE: September 18, 2020
PROJECT: 05154-04
DRAWN BY: [Signature]
CHECKED BY: [Signature]
PROJECT: [Signature]



BATTLE NORTH LLC

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
7705-250 WWW.GAMBAENGINEERING.COM
1000 100th St. NW, P.O. Box 1000, Everett, WA 98203

Exhibit 12
Legal Description and Graphic Depiction of Trestle Area

An area of land located in Sections 1 and 2 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 34°53'12" W a distance of 5204.45 feet; thence N 70°24'37" E a distance of 263.93 feet; thence N 01°47'58" E a distance of 431.39 feet; thence 74.76 feet along the arc of a tangent curve to the right having a radius of 131.74 feet, a central angle of 32°30'56", and the chord bears N 18°03'26" E a distance of 73.76 feet; thence N 34°18'54" E a distance of 88.83 feet; thence 22.79 feet along the arc of a tangent curve to the left having a radius of 180.00 feet, a central angle of 07°15'16", and the chord bears N 30°41'16" E a distance of 22.78 feet; thence N 27°03'38" E a distance of 170.68 feet; thence 74.09 feet along the arc of a tangent curve to the left having a radius of 230.00 feet, a central angle of 18°27'27", and the chord bears N 17°49'54" E a distance of 73.77 feet; thence N 08°36'11" E a distance of 122.85 feet; thence N 03°57'24" W a distance of 422.83 feet; thence N 27°09'22" E a distance of 288.98 feet; thence N 08°36'11" E a distance of 4.83 feet; thence 262.85 feet along the arc of a tangent curve to the left having a radius of 345.33 feet, a central angle of 43°36'37", and the chord bears N 13°12'08" W a distance of 256.55 feet; thence S 61°46'23" W a distance of 323.62 feet; thence N 45°00'00" W a distance of 20.89 feet; N 61°49'23" E a distance of 359.94 feet; N 54°33'32" E a distance of 7.22 feet; thence 143.34 feet along the arc of a non tangent curve to the right having a radius of 385.33 feet, a central angle of 21°18'50", and the chord bears S 26°46'36" E a distance of 142.52 feet; thence S 56°45'44" E a distance of 185.20 feet; thence S 16°17'50" E a distance of 96.07 feet; thence S 44°48'26" W a distance of 293.69 feet; thence S 08°36'11" W a distance of 574.19 feet; thence 86.98 feet along the arc of a tangent curve to the right having a radius of 270.00 feet, a central angle of 18°27'27", and the chord bears S 17°49'54" W a distance of 86.60 feet; thence S 27°03'38" W a distance of 170.68 feet; thence 27.85 feet along the arc of a tangent curve to the right having a radius of 220.00 feet, a central angle of 07°15'16", and the chord bears S 30°41'16" W a distance of 27.84 feet; thence S 34°18'54" W a distance of 88.83 feet; thence 52.06 feet along the arc of a tangent curve to the left having a radius of 91.74 feet, a central angle of 32°30'56", and the chord bears S 18°03'26" W a distance of 51.37 feet; thence S 01°47'58" W a distance of 441.29 feet; thence S 29°36'11" W a distance of 453.22 feet; thence S 44°11'09" W a distance of 347.60 feet; thence S 00°46'30" E a distance of 113.65 feet to a point on the northerly right-of-way of Tigiwon Road as recorded in Book 135 page 72; thence along said right-of-way the following three courses:

1. 21.31 feet along the arc of a non tangent curve to the right having a radius of 129.20 feet, a central angle of 09°27'01", and the chord bears S 89°13'41" W a distance of 21.29 feet;
2. thence N 86°02'00" W a distance of 4.69 feet;
3. thence 14.10 feet along the arc of a tangent curve to the right having a radius of 543.00 feet, a central angle of 01°29'17", and the chord bears N 85°17'22" W a distance of 14.10 feet;

thence leaving said northerly right-of-way N 00°46'30" W a distance of 128.46 feet; thence N 44°11'09" E a distance of 359.03 feet; thence N 06°16'44" W a distance of 294.28 feet to the point of beginning containing 5.31 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

Exhibit 13
Legal Description and Graphic Depiction of OTP Area

An area of land located in Sections 2 and 11 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point on the west bank of the Eagle River whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 20°59'33" W a distance of 6125.51 feet; thence the following twelve courses along said west bank of the Eagle River:

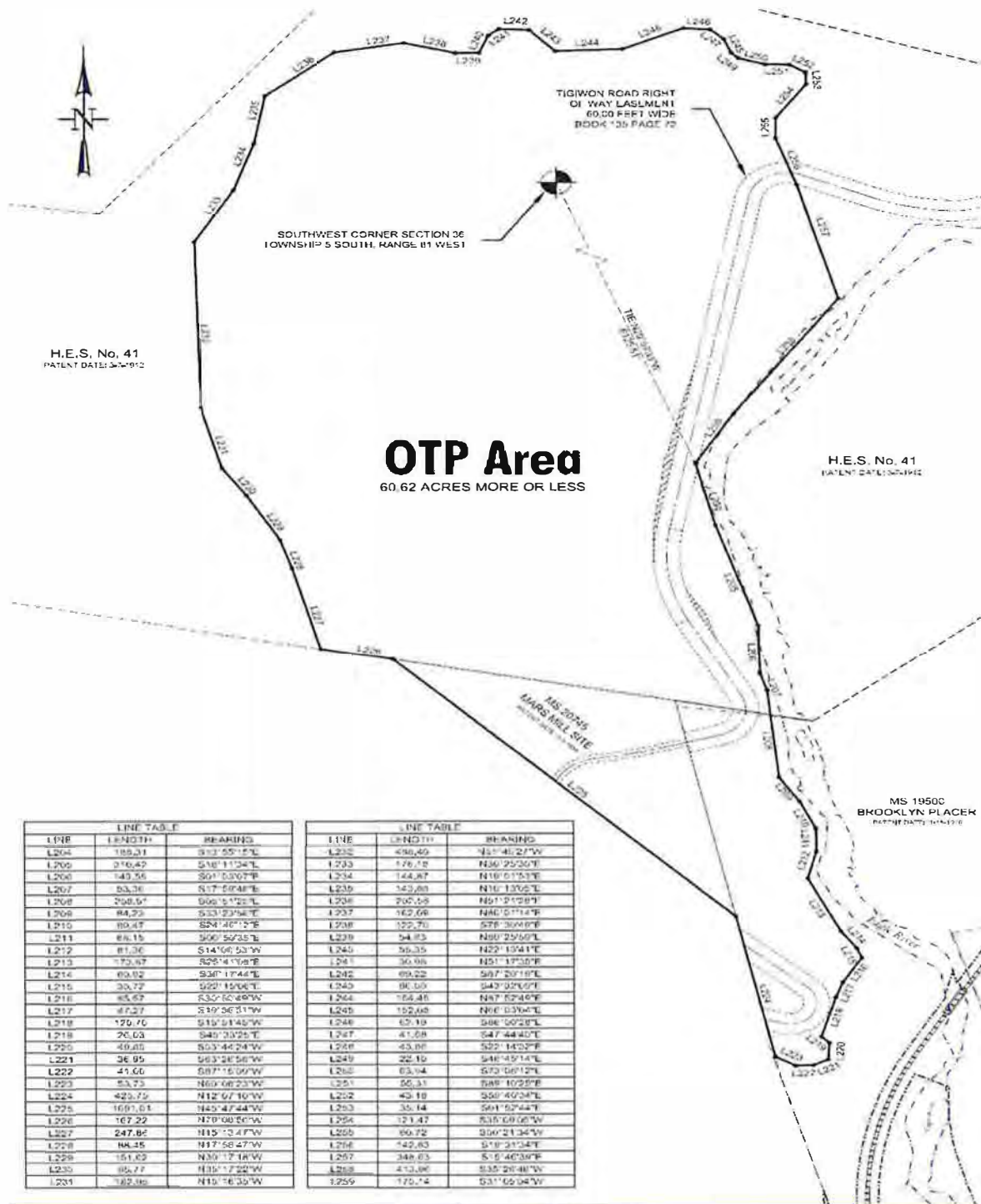
1. S 13°55'15" E a distance of 188.31 feet;
2. thence S 18°11'34" E a distance of 310.42 feet;
3. thence S 01°03'07" E a distance of 143.55 feet;
4. thence S 17°59'46" E a distance of 53.36 feet;
5. thence S 05°51'20" E a distance of 258.51 feet;
6. thence S 33°23'56" E a distance of 84.23 feet;
7. thence S 24°46'12" E a distance of 89.47 feet;
8. thence S 00°50'35" E a distance of 68.15 feet;
9. thence S 14°06'53" W a distance of 81.36 feet;
10. thence S 25°41'08" E a distance of 173.87 feet;
11. thence S 36°17'44" E a distance of 60.92 feet;
12. thence S 22°15'06" E a distance of 30.72 feet;

thence leaving said west bank of the Eagle River S 30°50'49" W a distance of 85.57 feet; thence S19°56'51" W a distance of 47.27 feet; thence S 15°51'45" W a distance of 120.70 feet; thence S 45°33'25" E a distance of 26.03 feet; thence S 03°44'24" W a distance of 49.80 feet; thence S 63°26'58" W a distance of 36.95 feet; thence S 87°15'09" W a distance of 41.00 feet; thence N 60°08'23" W a distance of 53.73 feet to a point on the 6-7 line of MS 19500 Brooklyn Placer; thence along said 6-7 line of Brooklyn Placer N 12°07'10" W a distance of 425.75 feet to the corner 3 of MS 20745 Mars Mill Site; thence along the 2-3 line of said Mars Mill Site N 45°47'44" W a distance of 1091.01 feet to corner 2 of said Mars Mill Site said point also being on the 5-6 line of H.E.S. No. 41; thence along said 5-6 line of said H.E.S. No. 41 N 79°06'56" W a distance of 167.22 feet; thence leaving said 5-6 line of H.E.S. No. 41 N 15°13'47" W a distance of 247.86 feet; thence N 17°58'47" W a distance of 88.45 feet; thence N 30°17'18" W a distance of 151.62 feet; thence N 35°17'22" W a distance of 95.77 feet; thence N 15°16'35" W a distance of 182.95 feet; thence N 01°40'17" W a distance of 488.40 feet; thence N 30°25'30" E a distance of 176.18 feet; thence N 19°01'53" E a distance of 144.87 feet; thence N 10°13'05" E a distance of 143.88 feet; thence N 51°21'28" E a distance of 202.58 feet; thence N 80°01'14" E a distance of 162.09 feet; thence S 75°30'49" E a distance of 122.70 feet; thence N 89°25'59" E a distance of 54.63 feet; thence N 22°13'41" E a distance of 55.35 feet; thence N 51°17'35" E a distance of 30.98 feet; thence S 87°20'19" E a distance of 69.22 feet; thence S 43°32'09" E a distance of feet; thence N 87°52'49" E a distance of 154.45 feet; thence N 66°03'04" E a distance of 152.08 feet; thence S 86°00'28" E a distance of 62.19 feet; thence S 47°44'40" E a distance of 41.58 feet; thence S 22°14'32" E a distance of 43.86 feet; thence S 46°45'14" E a distance of 22.10 feet; thence S 73°08'12" E a distance of 63.94 feet; thence S 89°10'25" E a distance of 55.31 feet; thence S 59°40'34" E a distance of 43.18 feet; thence S 01°52'44" E a distance of 35.14 feet; thence S 35°09'05" W a distance of 121.47 feet; thence S 00°21'34" W a distance of 60.72 feet; thence S 19°31'34" E a distance of 142.83 feet to a point on the southerly right-of-way of Tigiwon Road as recorded in Book 135 Page 72; thence leaving said southerly right-of-way, thence S 15°46'39" E a distance of 348.63 feet; to a point on the west bank of the Eagle River; thence along said west bank of the Eagle River the following two courses:

1. thence S 35°26'46" W a distance of 413.96 feet;
2. thence S 31°05'04" W a distance of 170.14 feet to the point of beginning.

Containing 60.62 acres more or less.

Exhibit 13 Legal Description and Graphic Depiction of OTP Area



LINE	LENGTH	BEARING
L201	189.31	S 17° 55' 13" E
L202	216.42	S 16° 11' 36" E
L203	143.36	S 61° 33' 07" E
L204	83.36	S 17° 59' 48" E
L205	298.51	S 66° 15' 12" E
L206	84.23	S 33° 23' 54" E
L207	89.47	S 24° 46' 12" E
L208	86.15	S 60° 50' 35" E
L209	81.06	S 14° 06' 53" W
L210	172.67	S 25° 41' 09" E
L211	69.82	S 30° 17' 44" E
L212	35.72	S 22° 15' 06" E
L213	83.67	S 30° 50' 49" W
L214	47.27	S 19° 36' 31" W
L215	120.76	S 15° 51' 45" W
L216	20.63	S 48° 33' 25" E
L217	49.88	S 53° 44' 24" W
L218	36.95	S 63° 28' 56" W
L219	41.66	S 87° 15' 00" W
L220	53.73	N 60° 08' 23" W
L221	423.75	N 12° 07' 10" W
L222	1691.61	N 45° 47' 44" W
L223	167.22	N 70° 08' 50" W
L224	247.86	N 85° 13' 47" W
L225	14.35	N 17° 56' 47" W
L226	151.69	N 30° 17' 18" W
L227	86.77	N 35° 17' 22" W
L228	182.88	N 15° 16' 35" W

LINE	LENGTH	BEARING
L229	496.49	N 31° 41' 27" W
L230	176.12	N 36° 25' 30" E
L231	144.87	N 16° 01' 51" E
L232	143.88	N 10° 13' 02" E
L233	200.58	N 91° 51' 28" E
L234	162.68	N 40° 51' 14" E
L235	122.70	S 78° 30' 00" E
L236	54.83	N 80° 25' 50" E
L237	55.35	N 22° 13' 41" E
L238	36.95	N 51° 17' 50" E
L239	69.22	S 67° 20' 18" E
L240	96.55	S 43° 02' 07" E
L241	166.48	N 47° 53' 45" E
L242	152.88	N 60° 03' 00" E
L243	65.19	S 68° 50' 28" E
L244	41.68	S 47° 44' 40" E
L245	43.88	S 22° 14' 22" E
L246	22.19	S 46° 45' 14" E
L247	63.94	S 73° 06' 12" E
L248	55.31	S 88° 10' 25" E
L249	40.18	S 50° 40' 34" E
L250	35.14	S 61° 52' 44" E
L251	121.47	S 35° 08' 02" W
L252	69.72	S 60° 21' 34" W
L253	442.83	S 18° 21' 34" W
L254	348.63	S 18° 46' 39" W
L255	413.86	S 35° 28' 48" W
L256	175.74	S 31° 05' 04" W

**Exhibit 13- OTP Area
OLD TAILINGS PILE**

SCALE: 1" = 300'
SHEET: 2 of 2

DATE: JANUARY 18, 2012
PROJECT: 65554-01

DRAWN BY: BB
CHECKED BY: AUG

North Property Outlet Title, Enclosure 20110118.dwg
1:\6VWF\55554\01\Survey\2011 Outlet Title\North Property\Survey\Updated North Property Survey 20110604.dwg



GAMBA

BATTLE MOUNTAIN

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970/945-2930 WWW.GAMBAENGINEERING.COM
112 NINTH ST. SUITE 212 P.O. BOX 1488 SLENNWOOD SPRING, CO 80662

Exhibit 14
Form of Water Rights Special Warranty Deed

SPECIAL WARRANTY DEED

This Deed, dated _____, 202__, is from Battle North, LLC, a Georgia limited liability company (“**Grantor**”), to the Eagle River Water & Sanitation District and the Upper Eagle Regional Water Authority (collectively, “**Grantees**”) whose address is 846 Forest Road, Vail, CO 81657.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby grant, bargain, sell, convey and transfer to Grantees, their successors and assigns forever, the water rights decreed by the District Court in and for Water Division No. 5, in Case No. 06CW264, and in Case Nos. 16CW3122 and 16CW3123.

Grantor warrants title to the same against all and every person or persons claiming the whole or any part thereof, by, through, or under Grantor, free and clear of all liens, taxes and other encumbrances.

Executed as of the date first set forth above.

BATTLE NORTH, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By: _____
Lorne Bassel
President

Exhibit 15
Form of Perpetual Easement Agreement

PERPETUAL EASEMENT AGREEMENT
([Eagle River Parcel, Spillway Parcel, Outlet Parcel or Inundation Area Parcel,
as applicable])

THIS PERPETUAL EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this ____ day of _____, 20__ (“**Effective Date**”), by and between Battle North, LLC, a Georgia limited liability company (together with its successors and assigns, “**Grantor**”), and Eagle River Water & Sanitation District (together with its successor and assigns, “**Grantee**”).

RECITALS

This Agreement is made with respect to the following facts:

A. Grantor and Grantee (collectively, the “**Parties**”) are parties to that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project (“**Reservoir Agreement**”) having an effective date of _____, 2021, and recorded in the real property records of the Eagle County clerk and recorder’s office (“**Record(ed)(ing)**”) on _____, 20__ at Reception No. _____.

B. Capitalized terms used but not defined in this Agreement have the meanings set forth in Exhibit 19 of the Reservoir Agreement.

C. As described in the Reservoir Agreement, Grantor owns certain property anticipated for development of residential and commercial uses that will comprise the BN Development, and Grantee intends to own, construct and operate a water storage facility together with certain water conveyance structures and related improvements comprising the Reservoir Project.

D. Pursuant to and in accordance with the terms and conditions set forth in the Reservoir Agreement, the Parties agreed to execute, deliver and Record certain Perpetual Easement Agreements which would establish Perpetual Easements encumbering certain Perpetual Easement Areas for specified purposes relating to Grantee’s construction and operation of the Reservoir Project, subject to potential future Relocation of the Perpetual Easement Areas under the circumstances described in the Reservoir Agreement and to be described in such Perpetual Easement Agreements.

E. This Agreement constitutes the Perpetual Easement Agreement for the **[Eagle River Parcel, Spillway Parcel, Outlet Parcel or Inundation Area Parcel, as applicable]** as contemplated in the Reservoir Agreement.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Grant of Perpetual Easement; Easement Area. Grantor hereby grants, bargains, sells and conveys to Grantee, for its use and the use of its employees, contractors, subcontractors and consultants, a perpetual, non-exclusive easement (the “**Perpetual Easement**”) in, through, over, under and across the real property that is legally described and graphically depicted in Exhibit A attached hereto and incorporated herein by this reference (the “**Easement Area**”).

2. Permitted Uses. The scope of Grantee’s permitted uses of the [Processing Area Parcel or Inundation Area Parcel, as applicable] will be limited to the following (“**Permitted Uses**”) [Parties to confirm and refine scope at time of execution and delivery]:

a. **[Alternative provisions:]**

- i. **[For the Eagle River Parcel:** Grantee’s planning, design, construction, operation, maintenance, repair and replacement of structures to convey water supply from the Eagle River to the Inlet Parcel.] **or**
- ii. **[For the Spillway Parcel:** Grantee’s planning, design, construction, operation, maintenance, repair and replacement of emergency spillway structures to convey water from the Reservoir to the Eagle River.] **or**
- iii. **[For the Outlet Parcel:** Grantee’s planning, design, construction, operation, maintenance, repair and replacement of outlet structures to convey water from the Reservoir to the Eagle River.] **or**
- iv. **[For the Inundation Area Parcel:** Grantee’s planning, design, construction, operation, maintenance, repair and replacement of improvements related to the Reservoir Project, including but not limited to the Dam and other improvements locate within the Dam Parcel and the Reservoir Parcel.]

- b. a right of vehicular and pedestrian ingress and egress, including construction vehicles, over the Easement Area in connection with the foregoing.

3. Reserved Uses. The grant of the Perpetual Easement is expressly subject to the Reserved Uses, which Grantor expressly reserves for its use and the use of its employees, contractors, subcontractors and consultants, consisting of the rights to use the Easement Area and to grant further easements and other interests in, and permit others to use, the Easement Area so long as such grants and uses do not unreasonably interfere or conflict with Grantee’s exercise of its rights to undertake and engage in the Permitted Uses. The Reserved Uses include but are not limited to Grantor’s performance of its obligations pursuant to the Reservoir Agreement that require activities with the Easement Area, if any, and Grantor’s construction, ownership, operation, maintenance, repair and replacement of existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements in connection with development of the BN Development. Without limitation of the foregoing:

- a. The design and construction of any such to-be-constructed Grantor improvements will comply with applicable technical requirements (e.g., depth, separation, etc.) of the Rules and Regulations for Water and Wastewater Service as adopted and amended from time to time.
- b. Grantor will submit to Grantee, prior to commencing the construction or installation thereof, plans and specifications for such improvements for Grantee's review and written confirmation of compliance with the foregoing technical requirements, such confirmation not to be unreasonably withheld, conditioned or delayed.
- c. **[Additional provision for Inundation Area Parcel:** For the benefit of Grantee, Grantor hereby grants and subjects the Inundation Area Parcel to a perpetual restrictive covenant ("**Inundation Covenant**"), which restricts the Reserved Uses of the Inundation Area Parcel to only those uses allowed by The Rules and Regulations for Dam Safety and Dam Construction promulgated pursuant to the authority granted the State Engineer in C.R.S. §§ 37-87-102, 37-87-105, 37-80-102(11K), and 24-4-103, including but not limited to the Reserved Uses for existing and to-be-constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar non-habitable improvements.

4. Relocation. If applicable, to the extent and at such time as the final "as built" locations of the Easement Area may be established as contemplated in the Reservoir Agreement, the Parties will cooperate to Relocate the Easement Area by executing, delivering and Recording an amendment to this Permanent Easement Agreement that replaces and supersedes the Easement Area legal description and graphic depiction originally attached to this Permanent Easement Agreement with an amended Exhibit A that reflects Relocation and modification of the Easement Area based on final engineering designs for the Reservoir Project and related considerations.

5. Cooperation. Grantee, in the conduct of the Permitted Uses, and Grantor, in the conduct of the Reserved Uses, will in good faith coordinate their respective activities within the Easement Area. If and when applicable, the Parties will in good faith cooperate to mutually agree to the amended legal description and graphic depiction for Relocation of the Easement Area pursuant to Paragraph 4 above.

6. Restoration. Promptly upon completion of any construction or other activities, Grantor (with respect to its Reserved Uses) and Grantee (with respect to the Permitted Uses) will have the obligation to restore the Easement Area, and any improvements therein which are the other Party's property, to the condition as existed prior to such Party's entry thereon, except as necessarily modified for the Reserved Uses or Permitted Uses (as applicable), and will repair any damage resulting from entry on the Easement Area in connection with this Agreement. The Party having such obligation hereunder will reimburse the other Party on demand for all expenses such Party incurs in repairing any damage resulting directly from activities pursuant to this Agreement if such obligated Party does not promptly repair such damage.

7. Compliance with Laws. Each Party, at its sole cost and expense, will comply with all federal, state and local requirements, regulations, ordinances and laws regarding the Permitted Uses or the Reserved Uses, as applicable, conducted within the Easement Area, and will be solely

responsible for any fines, fees or costs relating to the same. Without limiting the foregoing, such Party will be solely responsible, at its expense, to obtain all necessary governmental approvals relating to the Permitted Uses or the Reserved Uses, as applicable.

8. Insurance. During the term of this Agreement, Grantee will, at no cost or expense to Grantor: (i) cause Grantor to be named an additional insured on a primary non-contributory basis under its policy of commercial general liability insurance (or equivalent), in an amount not less than the limits under the Colorado Governmental Immunity Act, which are currently (I) [\$387,000 (confirm/update as applicable)] for each occurrence, and (II) [\$1,093,000 (confirm/update as applicable)] in the general aggregate, against claims for bodily injury, personal injury, advertising injury, death or property damage, occurring in, on or about the Easement Area; and (ii) require its contractors and other third parties who enter the Easement Area pursuant to the Permitted uses to (A) cause Grantor to be named an additional insured on a primary non-contributory basis under their respective policies of commercial general liability insurance, in an amount of at least (I) \$1,000,000 for each occurrence, (II) \$1,000,000 for personal injury, and (III) \$2,000,000 in the general aggregate; and (B) procure and maintain workers' compensation coverage, meeting the statutory requirements of the State of Colorado. Prior to any entry upon the Easement Area, Grantee will cause written evidence to be delivered to Grantor of such insurance coverages being in effect.

9. Indemnity. Solely to the extent arising directly from Grantee's conduct of the Permitted Uses, or from Grantor's conduct of the Reserved Uses, such Party will, to the maximum extent permitted by law, indemnify, defend, and hold harmless the other Party from any and all claims, demands, liens, costs, expenses, damages and liabilities, including reasonable attorneys' fees and costs, that are asserted against indemnified Party, the Easement Area or the indemnified Party's improvements located within the Easement Area, or which the indemnified Party may suffer or incur, to the extent arising out of any claims for property damage or personal injury, or claims from materialmen or laborers.

10. Mechanics' Liens. Grantee will not cause or allow any mechanics' or materialmen's liens to be filed against the Easement Areas or any adjacent property owned by Grantor as a result of any work performed or material furnished on behalf of Grantee (a "Lien"). If a Lien is filed, Grantee will, at its sole cost and expense, cause the Lien to be discharged or bonded off of record not later than 45 days after Grantee's receipt of notice of the filing of such Lien. In the event that such Lien is not discharged or bonded off of record within such 45 days, Grantor may, but will have no obligation to, defend, prosecute or pursue any action that Grantor deems reasonably necessary to discharge the Lien, and Grantee will promptly reimburse Grantor's out-of-pocket expenses incurred in connection therewith upon demand therefor by Grantor, subject to Grantor's delivery to Grantee of reasonable documentation (i.e., invoices, receipts, etc.) of such expenses. The provisions of this Paragraph 10 will survive termination of this Agreement for a period of one year.

11. Default; Remedies. In the event of default in the performance of any of the obligations set forth herein which the defaulting Party does not cure within 15 days after written notice of such default from the non-defaulting Party (or in the case of a default that would reasonably take more than 15 days to cure, if the defaulting Party will fail to undertake substantial action to cure such default within such 15 days after written notice of default and thereafter

diligently pursue completion of such cure), the non-defaulting Party will have all remedies that may be available to it in law or equity.

12. Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of actual delivery (or refused delivery) after deposit with Federal Express or a similar national overnight courier service that provides evidence of receipt, addressed as follows below:

If to Grantor:

Battle North, LLC
440 Eagle Street
P.O. Box 56
Minturn, CO 81645
Attn: Tim McGuire

Bassel Battle Investment, Corp.
3500 St. Jacques
Montreal, Quebec H4c1h2
Canada
Attn: Lorne Bassel

If to Grantee:

Eagle River Water & Sanitation District
Upper Eagle Regional Water Authority
Attn: General Manager
864 Forest Road
Vail, CO 81657

A Party may change its address or contact information by the giving of written notice to the other Party in accordance with this Paragraph 12.

13. Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties and their successors and assigns. Nothing contained in this Agreement will give or allow any claim or right of action by any other or third person under this Agreement. Any person other than the Parties or their successors and assigns, receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

14. Attorneys' Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the substantially prevailing Party in such suit will be entitled to

recover its reasonable attorneys' fees and expenses from the non-prevailing Party. The provisions of this Paragraph 14 shall survive the term of this Agreement.

15. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

16. Binding Effect; Recordation. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Grantee may, at its expense, Record this Agreement and, upon such recordation, this Agreement will run with title to the Easement Area.

17. Entire Agreement; Modification. This Agreement, together with applicable provisions of the Reservoir Agreement implemented hereby, sets forth the entire understanding between the Parties regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement will not be amended except by written instrument signed by all Parties.

18. Headings. The headings which appear in the Paragraphs of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Paragraphs in which they appear.

19. Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement. The facsimile or pdf signature of any Party on this Agreement (and on any instrument required or permitted to be delivered to a Party pursuant to this Agreement) will be deemed an original for all purposes.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GRANTOR:

Battle North, LLC,
a Georgia limited liability company

**By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager**

By: _____
Name: Lorne Bassel
Title: President
Date: _____, 20____

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Lorne Bassel, President of Bassel Battle Investment, Corp., a Colorado corporation, as Manager of Battle North, LLC, a Georgia limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

GRANTOR SIGNATURE PAGE TO PERPETUAL EASEMENT AGREEMENT

Exhibit 15
Page 7

EAGLE RIVER WATER & SANITATION DISTRICT

Date: _____

Notary Public

1873914.14

EXHIBIT A
Legal Description and Graphic Depiction of the Easement Area

[Insert either Eagle River Parcel, Spillway Parcel, Outlet Parcel or Inundation Area Parcel, as applicable]

Exhibit A, Page 1

Exhibit 15
Page 9

Exhibit 16
Form of Temporary Easement Agreement

TEMPORARY EASEMENT AGREEMENT
([Processing Area Parcel or Inundation Area Parcel, as applicable])

THIS TEMPORARY EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this ____ day of _____, 20__ (“**Effective Date**”), by and between Battle North, LLC, a Georgia limited liability company (together with its successors and assigns, “**Grantor**”), and Eagle River Water & Sanitation District (together with its successor and assigns, “**Grantee**”).

RECITALS

This Agreement is made with respect to the following facts:

F. Grantor and Grantee (collectively, the “**Parties**”) are parties to that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project (“**Reservoir Agreement**”) having an effective date of _____, 2021, and recorded in the real property records of the Eagle County clerk and recorder’s office (“**Record(ed)(ing)**”) on _____, 20__ at Reception No. _____.

G. Capitalized terms used but not defined in this Agreement have the meanings set forth in Exhibit 19 of the Reservoir Agreement.

H. As described in the Reservoir Agreement, Grantor owns certain property anticipated for development of residential and commercial uses that will comprise the BN Development, and Grantee intends to own, construct and operate a water storage facility together with certain water conveyance structures and related improvements comprising the Reservoir Project.

I. Pursuant to and in accordance with the terms and conditions set forth in the Reservoir Agreement, the Parties agreed to execute, deliver and Record certain Temporary Easement Agreements which would establish Temporary Easements encumbering certain Temporary Easement Areas for specified purposes relating to Grantee’s construction and operation of the Reservoir Project, subject to potential future Relocation of the Temporary Easement Areas under the circumstances described in the Reservoir Agreement and to be described in such Temporary Easement Agreements.

J. This Agreement constitutes the Temporary Easement Agreement for the **[Processing Area Parcel or Inundation Area Parcel, as applicable]** as contemplated in the Reservoir Agreement.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Grant of Temporary Easement; Easement Area. Grantor hereby grants, bargains, sells and conveys to Grantee, for its use and the use of its employees, contractors, subcontractors

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and consultants, a temporary, non-exclusive easement (the “**Temporary Easement**”) in, through, over, under and across the real property that is legally described and graphically depicted in Exhibit A attached hereto and incorporated herein by this reference (the “**Easement Area**”).

2. Permitted Uses. The scope of Grantee’s permitted uses of the [**Processing Area Parcel or Inundation Area Parcel, as applicable**] will be limited to the following (“**Permitted Uses**”) [**Parties to confirm and refine scope at time of execution and delivery**]:

a. [**Alternative provisions:**]

- i. **For the Processing Area:** construction access for Grantee’s planning, design and construction of the Reservoir Project, and the deposit and storage of Excavated Materials in accordance with the Excavation Contract pursuant to Section 6.9(a) of the Reservoir Agreement.] or
- ii. [**For the Inundation Area:** construction access and staging for Grantee’s planning, design and construction of the Reservoir Project.]

b. Grantee’s performance of its restoration obligations pursuant to Paragraph 6 above.

c. a right of vehicular and pedestrian ingress and egress, including construction vehicles, over the Easement Area in connection with the foregoing.

3. Reserved Uses. The grant of the Temporary Easement is expressly subject to the Reserved Uses, which Grantor expressly reserves for its use and the use of its employees, contractors, subcontractors and consultants, consisting of the rights to use the Easement Area and to grant further easements and other interests in, and permit others to use, the Easement Area so long as such grants and uses do not unreasonably interfere or conflict with Grantee’s exercise of its rights to undertake and engage in the Permitted Uses. The Reserved Uses include but are not limited to Grantor’s performance of its obligations pursuant to the Reservoir Agreement that require activities with the Easement Area, if any, and Grantor’s construction, ownership, operation, maintenance, repair and replacement of existing and to be constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements in connection with development of the BN Development.

4. Relocation. If applicable, to the extent and at such time as the final “as built” locations of the Easement Area may be established as contemplated in the Reservoir Agreement, the Parties will cooperate to Relocate the Easement Area by executing, delivering and Recording an amendment to this Temporary Easement Agreement that replaces and supersedes the Easement Area legal description and graphic depiction originally attached to this Temporary Easement Agreement with an amended Exhibit A that reflects Relocation and modification of the Easement Area based on final engineering designs for the Reservoir Project and related considerations.

5. Cooperation. Grantee, in the conduct of the Permitted Uses, and Grantor, in the conduct of the Reserved Uses, will in good faith coordinate their respective activities within the Easement Area. If and when applicable, the Parties will in good faith cooperate to mutually agree to the amended legal description and graphic depiction for Relocation of the Easement Area pursuant to Paragraph 4 above.

6. Restoration. Promptly upon completion of the Permitted Uses, Grantee will restore the Easement Area to the condition as existed prior to Grantee's entry thereon, except as necessarily modified for the Permitted Uses, and will repair any damage resulting from entry on the Easement Area in connection with this Agreement. Grantee will reimburse Grantor on demand for all expenses Grantor incurs in repairing any damage resulting directly from the Grantee's activities pursuant to this Agreement if Grantee does not promptly repair such damage. Grantee's obligations pursuant to this Paragraph 6 above will survive termination of this Agreement for a period of one year.

7. Compliance with Laws. Grantee, at its sole cost and expense, will comply with all federal, state and local requirements, regulations, ordinances and laws regarding the Permitted Uses conducted within the Easement Area, and will be solely responsible for any fines, fees or costs relating to the same. Without limiting the foregoing, Grantee will be solely responsible, at its expense, to obtain all necessary governmental approvals relating to the Permitted Uses.

8. Insurance. During the term of this Agreement, Grantee will, at no cost or expense to Grantor: (i) cause Grantor to be named an additional insured on a primary non-contributory basis under its policy of commercial general liability insurance (or equivalent), in an amount not less than the limits under the Colorado Governmental Immunity Act, which are currently (I) **[\$387,000 (confirm/update as applicable)]** for each occurrence, and (II) **[\$1,093,000 (confirm/update as applicable)]** in the general aggregate, against claims for bodily injury, personal injury, advertising injury, death or property damage, occurring in, on or about the Easement Area; and (ii) require its contractors and other third parties who enter the Easement Area pursuant to the Permitted uses to (A) cause Grantor to be named an additional insured on a primary non-contributory basis under their respective policies of commercial general liability insurance, in an amount of at least (I) \$1,000,000 for each occurrence, (II) \$1,000,000 for personal injury, and (III) \$2,000,000 in the general aggregate; and (B) procure and maintain workers' compensation coverage, meeting the statutory requirements of the State of Colorado. Prior to any entry upon the Easement Area, Grantee will cause written evidence to be delivered to Grantor of such insurance coverages being in effect.

9. Indemnity. Solely to the extent arising directly from Grantee's conduct of the Permitted Uses, Grantee will, to the maximum extent permitted by law, indemnify, defend, and hold harmless Grantor from any and all claims, demands, liens, costs, expenses, damages and liabilities, including reasonable attorneys' fees and costs, that are asserted against Grantor, the Easement Area or Grantor's property that is proximate to the Easement Area, or which Grantor may suffer or incur, to the extent arising out of any claims for property damage or personal injury, or claims from materialmen or laborers. Grantee's obligations pursuant to this Paragraph 9 above will survive termination of this Agreement for a period of one year.

10. Mechanics' Liens. Grantee will not cause or allow any mechanics' or materialmen's liens to be filed against the Easement Areas or any adjacent property owned by Grantor as a result of any work performed or material furnished on behalf of Grantee (a "**Lien**"). If a Lien is filed, Grantee will, at its sole cost and expense, cause the Lien to be discharged or bonded off of record not later than 45 days after Grantee's receipt of notice of the filing of such Lien. In the event that such Lien is not discharged or bonded off of record within such 45 days, Grantor may, but will have no obligation to, defend, prosecute or pursue any action that Grantor

deems reasonably necessary to discharge the Lien, and Grantee will promptly reimburse Grantor's out-of-pocket expenses incurred in connection therewith upon demand therefor by Grantor, subject to Grantor's delivery to Grantee of reasonable documentation (i.e., invoices, receipts, etc.) of such expenses. The provisions of this Paragraph 10 will survive termination of this Agreement for a period of one year.

11. Term. The term of this Agreement will commence on the Effective Date and will automatically, and without the requirement of further action, demand or notice, terminate upon the earlier of (i) Grantee's completion of the Reservoir Project; (ii) Grantee's completion of the scope of Permitted Uses prior to completion of the Reservoir Project; and (iii) unless such date is extended by written amended of this Agreement, **[insert appropriate outside date]** after the Effective Date.

12. Default; Remedies. In the event of default in the performance of any of the obligations set forth herein which the defaulting Party does not cure within 15 days after written notice of such default from the non-defaulting Party (or in the case of a default that would reasonably take more than 15 days to cure, if the defaulting Party will fail to undertake substantial action to cure such default within such 15 days after written notice of default and thereafter diligently pursue completion of such cure), the non-defaulting Party will have all remedies that may be available to it in law or equity.

13. Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of actual delivery (or refused delivery) after deposit with Federal Express or a similar national overnight courier service that provides evidence of receipt, addressed as follows below:

If to Grantor:

Battle North, LLC
440 Eagle Street
P.O. Box 56
Minturn, CO 81645
Attn: Tim McGuire

Bassel Battle Investment, Corp.
3500 St. Jacques
Montreal, Quebec H4c1h2
Canada
Attn: Lorne Bassel

If to Grantee:

Eagle River Water & Sanitation District
Upper Eagle Regional Water Authority
Attn: General Manager
864 Forest Road
Vail, CO 81657

A Party may change its address or contact information by the giving of written notice to the other Party in accordance with this Paragraph 12.

14. Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties and their successors and assigns. Nothing contained in this Agreement will give or allow any claim or right of action by any other or third person under this Agreement. Any person other than the Parties or their successors and assigns, receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

15. Attorneys' Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the substantially prevailing Party in such suit will be entitled to recover its reasonable attorneys' fees and expenses from the non-prevailing Party. The provisions of this Paragraph 14 above shall survive the term of this Agreement.

16. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

17. Binding Effect; Recordation. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Grantee may, at its expense, Record this Agreement and, upon such recordation, this Agreement will run with title to the Easement Area. Upon termination of the term of this Agreement pursuant to Paragraph 11, Grantor may unilaterally Record a termination notice instrument; provided, however, failure to so Record a termination notice instrument will in no way affect or negate a valid termination of this Agreement and release of the Easement Area from the encumbrance of this Agreement pursuant to Paragraph 11.

18. Entire Agreement; Modification. This Agreement, together with applicable provisions of the Reservoir Agreement implemented hereby, sets forth the entire understanding between the Parties regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement will not be amended except by written instrument signed by all Parties.

19. Headings. The headings which appear in the Paragraphs of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Paragraphs in which they appear.

20. Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one

and the same agreement. The facsimile or pdf signature of any Party on this Agreement (and on any instrument required or permitted to be delivered to a Party pursuant to this Agreement) will be deemed an original for all purposes.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GRANTOR:

Battle North, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By: _____
Name: Lorne Bassel
Title: President
Date: _____, 20__

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Lorne Bassel, President of Bassel Battle Investment, Corp., a Colorado corporation, as Manager of Battle North, LLC, a Georgia limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

GRANTOR SIGNATURE PAGE TO TEMPORARY EASEMENT AGREEMENT

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EAGLE RIVER WATER & SANITATION DISTRICT

Name: _____

Title: _____

Date: _____

The foregoing instrument was acknowledged before me this ____ day of _____
20__, by _____ as _____ of the Eagle River Water &
Sanitation District.

Notary Public

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EXHIBIT A
Legal Description and Graphic Depiction of the Easement Area

[Insert either Eagle River Parcel, Spillway Parcel, Outlet Parcel or Inundation Area Parcel, as applicable]

Exhibit A, Page 1

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Exhibit 17

Anticipated Timeline

As more particularly described in and subject to applicable provisions of the Agreement:

- Within 5 days business days of the Effective Date, Battle North will provide its disclosures pursuant to Section 1.1.
- Within 10 business days of the Effective Date:
 - District/Authority will reserve for use by Battle North the Minimum Augmentation Water of up to 94 acre-feet.
- From and after the Effective Date, the Due Diligence Period begins and will run until the Agreement is terminated or the Rule and Order is Recorded. During this period or sooner:
 - Battle North:
 - Cooperates fully with the District and Authority
 - Remediates the Trestle Area
 - Prepares and obtains approval of the OTP Work Plan
 - The District and Authority:
 - Obtain necessary approvals for and complete investigations necessary for bona fide prospective purchaser (BFPP) status and other investigations of the physical characteristics of the Land and Easement Areas to confirm its suitability for construction of the Reservoir.
 - Determine the feasibility of becoming a party to the AOC and takes the necessary steps to do so.
 - Obtain other assurances and protections determined to be appropriate.
 - Both Parties:
 - Enter into the separate settlement agreement referenced in Section 5.1(a)(iii)(B) of the Agreement to address responsibilities and liabilities under the AOC;
 - Cooperate to obtain any other necessary approvals for construction of the Reservoir.
- Within 90 days of the Effective Date, or such earlier date by which the District/Authority complete their review of matters affecting title to the Land and Easement Areas and identify the parties to be named as respondents therein:
 - District/Authority commence the Eminent Domain Action in Eagle County District Court.
- Estimated within 12 months of the Effective Date, complete the Eminent Domain Action and receive the Rule and Order representing Clear Title. The Rule and Order is not to be Recorded until all Contingencies are met.
- Within 1 year of the Effective Date:
 - Complete the Contingencies, terminate the Agreement, or agree to extend the term.

Following notice by the District and Authority, Battle North will proceed with remediation (capping) in the OTP Area in accordance with the OTP Work Plan and simultaneously with construction of the Reservoir. Following completion of remediation in the OTP Area, Battle North will obtain Certification of Completion of the Work for the OTP Area and request partial deletion of that portion of the OTP Area.

Exhibit 18
Form of Request for Deletion

[Battle North Letterhead]

Jamie Miller
Remedial Project Manager
Mail Code: 8EPR-SR
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202

Kayleen Castelli
Enforcement Attorney
Mail Code 8ENF-L
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202

Dustin McNeil
State Project Manager
Colorado Department of Public Health & Environment
4300 Cherry Creek Drive South
Denver, Colorado 80246

Jason King
Assistant Attorney General
Office of Attorney General
1300 Broadway
Denver, CO 80202

Re: Eagle Mine Superfund Site; Partial Deletion of [Trestle Parcel] [Old Tailings Pile]
Subarea from National Priorities List

Dear Ms. Miller, Ms. Castelli, Mr. McNeil and Mr. King:

In accordance with 40 CFR 300.425(e) and consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List set forth in 60 FR 55466, November 1, 1995 (EPA's Partial Deletions Rule), Battle North is writing to initiate the partial deletion of that certain portion of the Eagle Mine Superfund Site ("Site") in Eagle County, Colorado known as

the [Trestle Parcel] [Old Tailings Pile], and more specifically described in the attached map and legal description.

As required under that certain Administrative Settlement Agreement and Order on Consent for Response Action and Release entered into on July 27, 2018 among Battle North LLC, Battle South LLC, the United States Environmental Protection Agency and the State of Colorado, Dkt. No. CERCLA-08-2018-0009 (the "AOC"), all appropriate and required response actions for this subarea of the Site have been implemented and the releases of hazardous substances there pose no significant threat to public health, welfare or the environment. Accordingly, EPA has certified that no further remedial response is appropriate in the subarea under the Comprehensive Environmental Response, Compensation, and Liability Act.

Given EPA's certification and the completion of cleanup activities within the subarea, Battle North requests that EPA, with the State of Colorado's concurrence, initiate all necessary action to accomplish the expeditious deletion of the [Trestle Parcel Subarea] [Old Tailings Pile Subarea] from the National Priorities List in accordance with the Partial Deletions Rule. Please contact Battle North's representatives as set forth in Article XXXIII of the AOC should you require any additional information.

Sincerely yours,

[BATTLE NORTH REPRESENTATIVE]

Exhibit 19
Schedule of Defined Terms

Acquisition has the meaning stated in Recital G.

Actual Knowledge has the meaning stated in Section 2.6(a).

Additional Augmentation Water has the meaning set forth in Section 7.2.

Additional Option has the meaning set forth in Section 7.2.

Agencies has the meaning stated in Recital I.

Agencies Approvals has the meaning set forth in Section 5.1(a)(i).

Agreement has the meaning stated in the introductory paragraph of page 1 of the Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project to which this Exhibit 19 is attached.

AOC has the meaning stated in Recital I.

Articles(s) means and refers to a numbered article or numbered articles of the Agreement unless otherwise stated.

Augmentation Water has the meaning set forth in Section 7.3.

Authority has the meaning stated in the introductory paragraph of page 1 of the Agreement.

Battle North has the meaning stated in the introductory paragraph of page 1 of the Agreement.

Battle North Property has the meaning stated in Recital C.

Battle North's Disclosures has the meaning state in Section 1.1

BN Development has the meaning stated in Recital D.

Bolts Lake Augmentation Plan has the meaning stated in Section 9.5(b).

Cash Compensation has the meaning stated in Section 4.6(a).

CDPHE has the meaning stated in Recital I.

CERCLA has the meaning stated in Section 2.6(b).

Change Case has the meaning stated in Section 7.3(b).

Clear Title has the meaning stated in Section 5.1(a)(iv).

Consolidated Map has the meaning stated in Recital G.1.

Contingency(ies) has the meaning stated in Section 5.1.

County has the meaning stated in Recital B.

Court has the meaning stated in Recital K.

Cross Creek Parcel has the meaning stated in Section 4.1(a)(iv).

Dam has the meaning stated in Section 4.1(a)(ii).

Dam Parcel has the meaning stated in Section 4.1(a)(ii).

Dam Safety Rules has the meaning stated in Section 4.1(b)(iv)(A).

Deposit has the meaning stated in Section 4.5.

District has the meaning stated in the introductory paragraph of page 1 of the Agreement.

District/Authority has the meaning stated in the introductory paragraph of page 1 of the Agreement.

District/Authority Regulations has the meaning stated in Section 9.2.

Due Diligence Period has the meaning stated in Section 1.2.

Eagle River Parcel has the meaning stated in Section 4.1(b)(i).

Easement Agreements has the meaning stated in Section 4.2(c).

Easement Areas has the meaning stated in Section 4.2(c).

Easements has the meaning stated in Section 4.2(c).

Effective Date has the meaning stated in the introductory paragraph of page 1 of the Agreement.

Eminent Domain Action has the meaning stated in Recital K.

Environmental Documents has the meaning stated in Section 1.1(d).

Environmental Laws has the meaning stated in Section 2.6(c).

EPA has the meaning stated in Recital I.

Excavated Soils has the meaning stated in Recital 6.7(c).

Excavation Contract has the meaning stated in Section 6.9(a).

Exhibit(s) means, individually or collectively, as applicable, the exhibits listed at page iii of the Agreement, which exhibits are attached to, incorporated into and made a part of the Agreement

Hazardous Materials has the meaning stated in Section 2.6(b).

Inlet Parcel has the meaning stated in Section 4.1(a)(iii).

Inundation Area Parcel has the meaning stated in Section 4.1(b)(iv).

Inundation Covenant has the meaning stated in Section 4.1(b)(iv)(A).

Land has the meaning stated in Section 4.1(a).

License has the meaning stated in Section 1.3(a).

Licensee(s) has the meaning stated in Section 1.3(a).

Minimum Augmentation Water has the meaning stated in Section 7.1.

Minturn has the meaning stated in Recital B.

Non-Cash Consideration has the meaning stated in Section 4.6(b).

Option has the meaning stated in Section 7.1.

OTP Area has the meaning stated in Recital H.

OTP Contract has the meaning stated in Section 6.9(b).

OTP Work Plan has the meaning stated in Section 6.7(c).

Outlet Parcel has the meaning stated in Section 4.1(b)(iii).

Party(ies) has the meaning stated in the introductory paragraph of page 1 of the Agreement.

Permitted Recreational Uses has the meaning stated in Section 10.1(b).

Perpetual Easement(s) has the meaning stated in Section 4.1(b).

Perpetual Easement Agreement(s) has the meaning stated in Section 4.2(c)(i).

Perpetual Easement Area(s) has the meaning stated in Section 4.1(b).

Post-Acquisition Agreement has the meaning stated in Section 4.12.

Post-Acquisition Obligation(s) has the meaning stated in Section 4.12.

Processed Soils has the meaning stated in Section 6.9(b).

Processing Area Parcel has the meaning stated in Section 4.1(c)(i).

Property Interests has the meaning stated in Section 4.1.

Qualified Contractor has the meaning stated in Section 6.6.

Recital(s) means and refers to the referenced provision(s) of the “Recitals” stated in the Agreement.

Record(ed)(ing) has the meaning stated in Recital K.

Reloca(table)(te)(tion) has the meaning stated in Section 4.3.

Recreational Use Covenant has the meaning stated in Section 10.1.

Reserved Easement(s) has the meaning stated in Section 4.2(d).

Reserved Uses has the meaning stated in Section 4.2(e).

Reservoir has the meaning stated in Recital F.

Reservoir Approvals has the meaning stated in Section 8.1.

Reservoir Parcel has the meaning stated in Section 4.1(a)(i).

Reservoir Project has the meaning stated in Recital F.

Rule and Order has the meaning stated in Recital K.

Section(s) means and refers to a numbered section or numbered sections of the Agreement unless otherwise stated.

Sewer Service has the meaning stated in Section 9.1.

Sewer Service Area has the meaning stated in Recital B.

SFEs has the meaning stated in Recital D.

SOW has the meaning stated in Recital I.

Spillway Parcel has the meaning stated in Section 4.1(b)(ii).

Storage Option has the meaning stated in Section 7.3(k).

Temporary Easement(s) has the meaning stated in Section 4.1(c).

Temporary Easement Area(s) has the meaning stated in Section 4.1(c).

Temporary Easement Agreement(s) has the meaning stated in Section 4.2(c)(ii).

Title Company has the meaning stated in Section 4.5.

Total Consideration has the meaning stated in Section 4.6.

Total Consideration Contingency has the meaning stated in Section 5.1(b).

Trestle Area has the meaning stated in Recital H.

Trestle Area Contract has the meaning stated in Section 6.8.

Trestle Area Work Plan has the meaning stated in Section 6.7(b).

Unencumbered Use Contingency has the meaning stated in Section 5.1(a).

Water Rights has the meaning stated in Section 4.1(d).

Water Service has the meaning stated in Section 9.2.

Water Service Area has the meaning stated in Recital B.

Water Service Commitment has the meaning stated in Section 7.5.

Work Plans has the meaning stated in Section 6.2.

EXHIBIT C, DESCRIPTION OF TRESTLE AREA

Legal Description and Graphic Depiction of Trestle Area

An area of land located in Sections 1 and 2 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 34°53'12" W a distance of 5204.45 feet; thence N 70°24'37" E a distance of 263.93 feet; thence N 01°47'58" E a distance of 431.39 feet; thence 74.76 feet along the arc of a tangent curve to the right having a radius of 131.74 feet, a central angle of 32°30'56", and the chord bears N 18°03'26" E a distance of 73.76 feet; thence N 34°18'54" E a distance of 88.83 feet; thence 22.79 feet along the arc of a tangent curve to the left having a radius of 180.00 feet, a central angle of 07°15'16", and the chord bears N 30°41'16" E a distance of 22.78 feet; thence N 27°03'38" E a distance of 170.68 feet; thence 74.09 feet along the arc of a tangent curve to the left having a radius of 230.00 feet, a central angle of 18°27'27", and the chord bears N 17°49'54" E a distance of 73.77 feet; thence N 08°36'11" E a distance of 122.85 feet; thence N 03°57'24" W a distance of 422.83 feet; thence N 27°09'22" E a distance of 288.98 feet; thence N 08°36'11" E a distance of 4.83 feet; thence 262.85 feet along the arc of a tangent curve to the left having a radius of 345.33 feet, a central angle of 43°36'37", and the chord bears N 13°12'08" W a distance of 256.55 feet; thence S 61°46'23" W a distance of 323.62 feet; thence N 45°00'00" W a distance of 20.89 feet; N 61°49'23" E a distance of 359.94 feet; N 54°33'32" E a distance of 7.22 feet; thence 143.34 feet along the arc of a non tangent curve to the right having a radius of 385.33 feet, a central angle of 21°18'50", and the chord bears S 26°46'36" E a distance of 142.52 feet; thence S 56°45'44" E a distance of 185.20 feet; thence S 16°17'50" E a distance of 96.07 feet; thence S 44°48'26" W a distance of 293.69 feet; thence S 08°36'11" W a distance of 574.19 feet; thence 86.98 feet along the arc of a tangent curve to the right having a radius of 270.00 feet, a central angle of 18°27'27", and the chord bears S 17°49'54" W a distance of 86.60 feet; thence S 27°03'38" W a distance of 170.68 feet; thence 27.85 feet along the arc of a tangent curve to the right having a radius of 220.00 feet, a central angle of 07°15'16", and the chord bears S 30°41'16" W a distance of 27.84 feet; thence S 34°18'54" W a distance of 88.83 feet; thence 52.06 feet along the arc of a tangent curve to the left having a radius of 91.74 feet, a central angle of 32°30'56", and the chord bears S 18°03'26" W a distance of 51.37 feet; thence S 01°47'58" W a distance of 441.29 feet; thence S 29°36'11" W a distance of 453.22 feet; thence S 44°11'09" W a distance of 347.60 feet; thence S 00°46'30" E a distance of 113.65 feet to a point on the northerly right-of-way of Tigiwon Road as recorded in Book 135 page 72; thence along said right-of-way the following three courses:

1. 21.31 feet along the arc of a non tangent curve to the right having a radius of 129.20 feet, a central angle of 09°27'01", and the chord bears S 89°13'41" W a distance of 21.29 feet;
2. thence N 86°02'00" W a distance of 4.69 feet;
3. thence 14.10 feet along the arc of a tangent curve to the right having a radius of 543.00 feet, a central angle of 01°29'17", and the chord bears N 85°17'22" W a distance of 14.10 feet;

thence leaving said northerly right-of-way N 00°46'30" W a distance of 128.46 feet; thence N 44°11'09" E a distance of 359.03 feet; thence N 06°16'44" W a distance of 294.28 feet to the point of beginning containing 5.31 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C34	74.76	131.74	32°30'56"	N18°03'26"E	73.76
C35	22.79	180.00	7°15'16"	N30°41'16"E	22.78
C36	74.09	230.00	18°27'27"	N17°49'54"E	73.77
C37	262.85	345.33	43°36'37"	N13°12'08"W	256.55
C38	143.34	385.33	21°18'50"	N26°46'36"W	142.52
C39	86.98	270.00	18°27'27"	N17°49'54"E	86.60
C40	27.85	220.00	7°15'16"	S30°41'16"W	27.84
C41	52.06	91.74	32°30'56"	S18°03'26"W	51.37
C42	21.31	129.20	9°27'01"	N89°13'41"E	21.29
C43	14.10	543.00	1°29'17"	N85°17'22"W	14.10

LINE TABLE		
LINE	LENGTH	BEARING
L196	88.83	N34°18'54"E
L197	170.68	N27°03'38"E
L198	122.85	N08°36'11"E
L199	96.07	S16°17'50"E
L200	170.68	S27°03'38"W
L201	88.83	S34°18'54"W
L202	113.65	S00°46'30"E
L203	128.46	N00°46'30"W

H.E.S. 40
PATENT DATE: 3-7-1912

SOUTHWEST CORNER SECTION 36,
TOWNSHIP 5 SOUTH, RANGE 81 WEST

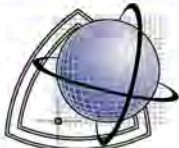
H.E.S. No. 41
PATENT DATE: 3-7-1912

TIGIWON ROAD RIGHT
OF WAY EASEMENT
60.00 FEET WIDE
BOOK 135 PAGE 72

EXISTING UNPAVED
ROAD (TYP)

CDOT RIGHT-OF-WAY
PER PLAT FAP No. BRF 024-1(24)

Exhibit 12 -Trestle Area



BATTLE MOUNTAIN

SCALE: 1" = 300'
SHEET: 2 of 2
DATE: OCTOBER 20, 2020
PROJECT: 05554-04
DRAWN BY: BK
CHKD BY: MJG

DRAWING: North Property Quiet Title Boundary 20181128 revisited 20200621.dwg
DIRECTORY: I:\GVWF\05554\04\Survey\2011 Quiet Title\North Property\Survey\Updated North Property Survey 20130604

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970/945-2550 WWW.GAMBAENGINEERING.COM
113 NINTH ST., STE. 214 P.O. BOX 1458 GLENWOOD SPRINGS, CO 81602

EXHIBIT D, ADDENDUM

TEMPORARY EASEMENT AGREEMENT (Inundation Area Parcel)

THIS TEMPORARY EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this 9th day of February, 2022 (“**Effective Date**”), by and between Battle North, LLC, a Georgia limited liability company (together with its successors and assigns, “**Grantor**”), and Eagle River Water & Sanitation District (together with its successor and assigns, “**Grantee**”).

RECITALS

This Agreement is made with respect to the following facts:

A. Grantor and Grantee (collectively, the “**Parties**”) are parties to that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project having an effective date of February 10, 2021, and that certain Supplement to Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project having an effective date of January 28, 2022 (collectively, the “**Reservoir Agreement**”).

B. Capitalized terms used but not defined in this Agreement have the meanings set forth in the Reservoir Agreement.

C. As described in the Reservoir Agreement, Grantor owns certain property anticipated for development of residential and commercial uses that will comprise the BN Development, and Grantee intends to own, construct and operate a water storage facility together with certain water conveyance structures and related improvements comprising the Reservoir Project.

D. Pursuant to and in accordance with the terms and conditions set forth in the Reservoir Agreement, the Parties agreed to execute, deliver and Record certain Temporary Easement Agreements which would establish Temporary Easements encumbering certain Temporary Easement Areas for specified purposes relating to Grantee’s construction and operation of the Reservoir Project, subject to potential future Relocation of the Temporary Easement Areas under the circumstances described in the Reservoir Agreement and to be described in such Temporary Easement Agreements.

E. This Agreement constitutes the Temporary Easement Agreement for the Inundation Area Parcel as contemplated in the Reservoir Agreement.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Grant of Temporary Easement; Easement Area. Grantor hereby grants, bargains, sells and conveys to Grantee, for its use and the use of its employees, contractors, subcontractors and consultants, a temporary, non-exclusive easement (the “**Temporary Easement**”) in, through,

over, under and across the real property that is legally described and graphically depicted in Exhibit A attached hereto and incorporated herein by this reference (the “**Easement Area**”).

2. Permitted Uses. The scope of Grantee’s permitted uses of the Easement Area will be limited to the following (“**Permitted Uses**”):

- a. Construction access and staging for Grantee’s planning, design and construction of the Reservoir Project.
- b. Grantee’s performance of its restoration obligations pursuant to Paragraph 6 below.
- c. A right of vehicular and pedestrian ingress and egress, including construction vehicles, over the Easement Area in connection with the foregoing.

3. Reserved Uses. The grant of the Temporary Easement is expressly subject to the Reserved Uses, which Grantor expressly reserves for its use and the use of its employees, contractors, subcontractors and consultants, consisting of the rights to use the Easement Area and to grant further easements and other interests in, and permit others to use, the Easement Area so long as such grants and uses do not unreasonably interfere or conflict with Grantee’s exercise of its rights to undertake and engage in the Permitted Uses. The Reserved Uses include but are not limited to Grantor’s performance of its obligations pursuant to the Reservoir Agreement that require activities with the Easement Area, if any, and Grantor’s construction, ownership, operation, maintenance, repair and replacement of existing and to be constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements in connection with development of the BN Development.

4. Relocation. If applicable, to the extent and at such time as the final “as built” locations of the Easement Area may be established as contemplated in the Reservoir Agreement, the Parties will cooperate to Relocate the Easement Area by executing, delivering and Recording an amendment to this Temporary Easement Agreement that replaces and supersedes the Easement Area legal description and graphic depiction originally attached to this Temporary Easement Agreement with an amended Exhibit A that reflects Relocation and modification of the Easement Area based on final engineering designs for the Reservoir Project and related considerations.

5. Cooperation. Grantee, in the conduct of the Permitted Uses, and Grantor, in the conduct of the Reserved Uses, will in good faith coordinate their respective activities within the Easement Area. If and when applicable, the Parties will in good faith cooperate to mutually agree to the amended legal description and graphic depiction for Relocation of the Easement Area pursuant to Paragraph 4 above.

6. Restoration. Promptly upon completion of the Permitted Uses, Grantee will restore the Easement Area to the condition as existed prior to Grantee’s entry thereon, except as necessarily modified for the Permitted Uses, and will repair any damage resulting from entry on the Easement Area in connection with this Agreement. Grantee will reimburse Grantor on demand for all expenses Grantor incurs in repairing any damage resulting directly from the Grantee’s activities pursuant to this Agreement if Grantee does not promptly repair such damage. Grantee’s obligations pursuant to this Paragraph 6 will survive termination of this Agreement for a period of one year.

7. Compliance with Laws. Grantee, at its sole cost and expense, will comply with all federal, state and local requirements, regulations, ordinances and laws regarding the Permitted Uses conducted within the Easement Area, and will be solely responsible for any fines, fees or costs relating to the same. Without limiting the foregoing, Grantee will be solely responsible, at its expense, to obtain all necessary governmental approvals relating to the Permitted Uses.

8. Insurance. During the term of this Agreement, Grantee will, at no cost or expense to Grantor: (i) cause Grantor to be named an additional insured on a primary non-contributory basis under its policy of commercial general liability insurance (or equivalent), in an amount not less than the limits under the Colorado Governmental Immunity Act, which as of the Effective Date are (I) **[\$424,000]** for each occurrence, and (II) **[\$1195,000]** in the general aggregate, against claims for bodily injury, personal injury, advertising injury, death or property damage, occurring in, on or about the Easement Area; and (ii) require its contractors and other third parties who enter the Easement Area pursuant to the Permitted uses to (A) cause Grantor to be named an additional insured on a primary non-contributory basis under their respective policies of commercial general liability insurance, in an amount of at least (I) \$1,000,000 for each occurrence, (II) \$1,000,000 for personal injury, and (III) \$2,000,000 in the general aggregate; and (B) procure and maintain workers' compensation coverage, meeting the statutory requirements of the State of Colorado. Prior to any entry upon the Easement Area, Grantee will cause written evidence to be delivered to Grantor of such insurance coverages being in effect.

9. Indemnity. Solely to the extent arising directly from Grantee's conduct of the Permitted Uses, Grantee will, to the maximum extent permitted by law, indemnify, defend, and hold harmless Grantor from any and all claims, demands, liens, costs, expenses, damages and liabilities, including reasonable attorneys' fees and costs, that are asserted against Grantor, the Easement Area or Grantor's property that is proximate to the Easement Area, or which Grantor may suffer or incur, to the extent arising out of any claims for property damage or personal injury, or claims from materialmen or laborers. Grantee's obligations pursuant to this Paragraph 9 will survive termination of this Agreement for a period of one year.

10. Mechanics' Liens. Grantee will not cause or allow any mechanics' or materialmen's liens to be filed against the Easement Areas or any adjacent property owned by Grantor as a result of any work performed or material furnished on behalf of Grantee (a "**Lien**"). If a Lien is filed, Grantee will, at its sole cost and expense, cause the Lien to be discharged or bonded off of record not later than 45 days after Grantee's receipt of notice of the filing of such Lien. In the event that such Lien is not discharged or bonded off of record within such 45 days, Grantor may, but will have no obligation to, defend, prosecute or pursue any action that Grantor deems reasonably necessary to discharge the Lien, and Grantee will promptly reimburse Grantor's out-of-pocket expenses incurred in connection therewith upon demand therefor by Grantor, subject to Grantor's delivery to Grantee of reasonable documentation (i.e., invoices, receipts, etc.) of such expenses. The provisions of this Paragraph 10 will survive termination of this Agreement for a period of one year.

11. Term. The term of this Agreement will commence on the Effective Date and will automatically, and without the requirement of further action, demand or notice, terminate upon the earlier of (i) Grantee's completion of the Reservoir Project; (ii) Grantee's completion of the scope

of Permitted Uses prior to completion of the Reservoir Project; and (iii) unless such date is extended by written amended of this Agreement, no more than 365 days after the Effective Date.

12. Default; Remedies. In the event of default in the performance of any of the obligations set forth herein which the defaulting Party does not cure within 15 days after written notice of such default from the non-defaulting Party (or in the case of a default that would reasonably take more than 15 days to cure, if the defaulting Party will fail to undertake substantial action to cure such default within such 15 days after written notice of default and thereafter diligently pursue completion of such cure), the non-defaulting Party will have all remedies that may be available to it in law or equity.

13. Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of actual delivery (or refused delivery) after deposit with Federal Express or a similar national overnight courier service that provides evidence of receipt, addressed as follows below:

If to Grantor:

Battle North, LLC
164 Railroad Ave.
P.O. Box 56
Minturn, CO 81645
Attn: Tim McGuire

With required copies to:

Battle North, LLC
c/o Bassel Battle Investment, Corp.
3500 St. Jacques
Montreal, Quebec H4c1h2
Canada
Attn: Lorne Bassel

Battle North, LLC
c/o Lubert Adler Real Estate Funds
3284 Northside Parkway, NW, Suite 570
Atlanta, GA 30327

If to Grantee:

Eagle River Water & Sanitation District
Upper Eagle Regional Water Authority
864 Forest Road
Vail, CO 81657
Attn: General Manager

A Party may change its address or contact information by the giving of written notice to the other Party in accordance with this Paragraph 13.

14. Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties and their successors and assigns. Nothing contained in this Agreement will give or allow any claim or right of action by any other or third person under this Agreement. Any person other than the Parties or their successors and assigns, receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

15. Attorneys' Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the substantially prevailing Party in such suit will be entitled to recover its reasonable attorneys' fees and expenses from the non-prevailing Party. The provisions of this Paragraph 15 shall survive the term of this Agreement.

16. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

17. Binding Effect; Recordation. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Grantee may, at its expense, Record this Agreement and, upon such recordation, this Agreement will run with title to the Easement Area. Upon termination of the term of this Agreement pursuant to Paragraph 11, Grantor may unilaterally Record a termination notice instrument; provided, however, failure to so Record a termination notice instrument will in no way affect or negate a valid termination of this Agreement and release of the Easement Area from the encumbrance of this Agreement pursuant to Paragraph 11.

18. Entire Agreement; Modification. This Agreement, together with applicable provisions of the Reservoir Agreement implemented hereby, sets forth the entire understanding between the Parties regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement will not be amended except by written instrument signed by all Parties.

19. Headings. The headings which appear in the Paragraphs of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Paragraphs in which they appear.

20. Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one

and the same agreement. The facsimile or pdf signature of any Party on this Agreement (and on any instrument required or permitted to be delivered to a Party pursuant to this Agreement) will be deemed an original for all purposes.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GRANTOR:

Battle North, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By: _____
Name: Lorne Bassel
Title: President
Date: _____, 20__

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Lorne Bassel, President of Bassel Battle Investment, Corp., a Colorado corporation, as Manager of Battle North, LLC, a Georgia limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

GRANTOR SIGNATURE PAGE TO TEMPORARY EASEMENT AGREEMENT

EAGLE RIVER WATER & SANITATION DISTRICT

Date: _____

Notary Public

EXHIBIT A
Legal Description and Graphic Depiction of the Easement Area

Parcel A

An area of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 47°41'11" W a distance of 4262.01 feet; thence N 77°20'34" E a distance of 88.42 feet; thence S 69°53'17" E a distance of 201.61 feet; thence N 62°59'59" E a distance of 540.15 feet to a point on the westerly right-of-way of U.S. Highway 24 as depicted on the U.S. Highway 24 Boundary Line Agreement deposited February 19, 2019 in Book 2 of the Eagle County Surveyor's Land/Rights-of-Way Surveys at Pages 1099 through 1107; thence along said westerly right-of-way the following five courses:

- 1) 262.58 feet along the arc of a curve to the left having a radius of 915.00, a central angle of 16°26'33", and a chord which bears S16°31'05" W a distance of 261.68 feet;
- 2) S 24°44'22" W a distance of 216.35 feet;
- 3) S 35°45'52" W a distance of 205.41 feet;
- 4) S 14°36'41" W a distance of 532.15 feet;
- 5) S 01°15'09" E a distance of 290.80 feet;

Thence leaving said westerly right-of-way of U.S. Highway 24, N 59°13'47" W a distance of 172.15 feet; thence N 00°00'00" E a distance of 181.43 feet; thence N 22°22'09" E a distance of 746.23 feet; thence N 61°06'46" W a distance of 548.29 feet to the point of beginning containing 5.34 acres more or less.

Parcel B (AKA Tract C)

An area of land located in Section 1 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado and consisting of that portion of Homestead Entry Survey (H.E.S.) 40 and Mineral Survey 20461 Puritan Lode situated easterly of the eastern right-of-way for U.S. Highway 24 as described in the Boundary Agreement recorded July 27, 2018 at reception number 201812787 and westerly of the western right-of-way for Union Pacific Railroad, being more particularly described as follows:

Beginning at Corner No. 2 of said H.E.S. 40, whence the Southwest corner of said Section 36 being a 2-1/2 inch GLO Brass Cap bears N 52°43'19" W a distance of 5,128.97 feet; thence along the 2-3 line of said H.E.S. 40 S 20°13'02" W a distance of 191.72 feet to a point on the 1-2 line of Mineral Survey 20461 Puritan Lode; thence along said 1-2 line of said Mineral Survey 20461 Puritan Lode N 59°22'30" E a distance of 155.24 feet to a point on the western right-of-way of the Union Pacific Railroad as described in D&RGW Right-of-Way and Track Map dated June 30, 1919; thence along said western right-of-way of the Union Pacific Railroad the following two courses:

- 1) 26.42 feet along the arc of a non tangent curve to the right having a radius of 2408.63 feet, a central angle of 00°37'43", and the chord bears S14°03'37" W a distance of 26.42 feet;
- 2) 184.39 feet along the arc of a tangent curve to the right having a radius of 58445.82 feet, a central angle of 00°10'51", and the chord bears S14°27'54" W a distance of 184.39 feet to a point on the 2-3 line of the Mineral Survey 20461 Puritan Lode;

Thence along said 2-3 line of the Mineral Survey 20461 Puritan Lode N 45°06'47" W a distance of 131.33 feet to the 2-3 line of said H.E.S. 40; thence along said 2-3 line of said H.E.S. 40 S 20°13'02" W a distance of 927.03 feet to a point on the eastern right-of-way of U.S. Highway 24; thence the following four courses along said eastern right-of-way of U.S. Highway 24:

- 1) N 01°30'38" W a distance of 546.70 feet;
- 2) 309.80 feet along the arc of a tangent curve to the right having a radius of 676.20 feet, a central angle of 26°15'00", and the chord bears N 11°36'52" E a distance of 307.10 feet;
- 3) N 24°44'22" E a distance of 422.47 feet;

EXHIBIT A
Legal Description and Graphic Depiction of the Easement Area

4) 160.15 feet along the arc of a non tangent curve to the left having a radius of 994.91 feet, a central angle of 09°13'21", and the chord bears N 20°07'49" E a distance of 159.97 feet to a point on the 1-2 line of said H.E.S. 40;

Thence along said 1-2 line of said H.E.S. 40 S 21°44'58" E a distance of 321.90 feet; to the point of beginning containing 5.57 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

EXHIBIT A

Legal Description and Graphic Depiction of the Easement Area

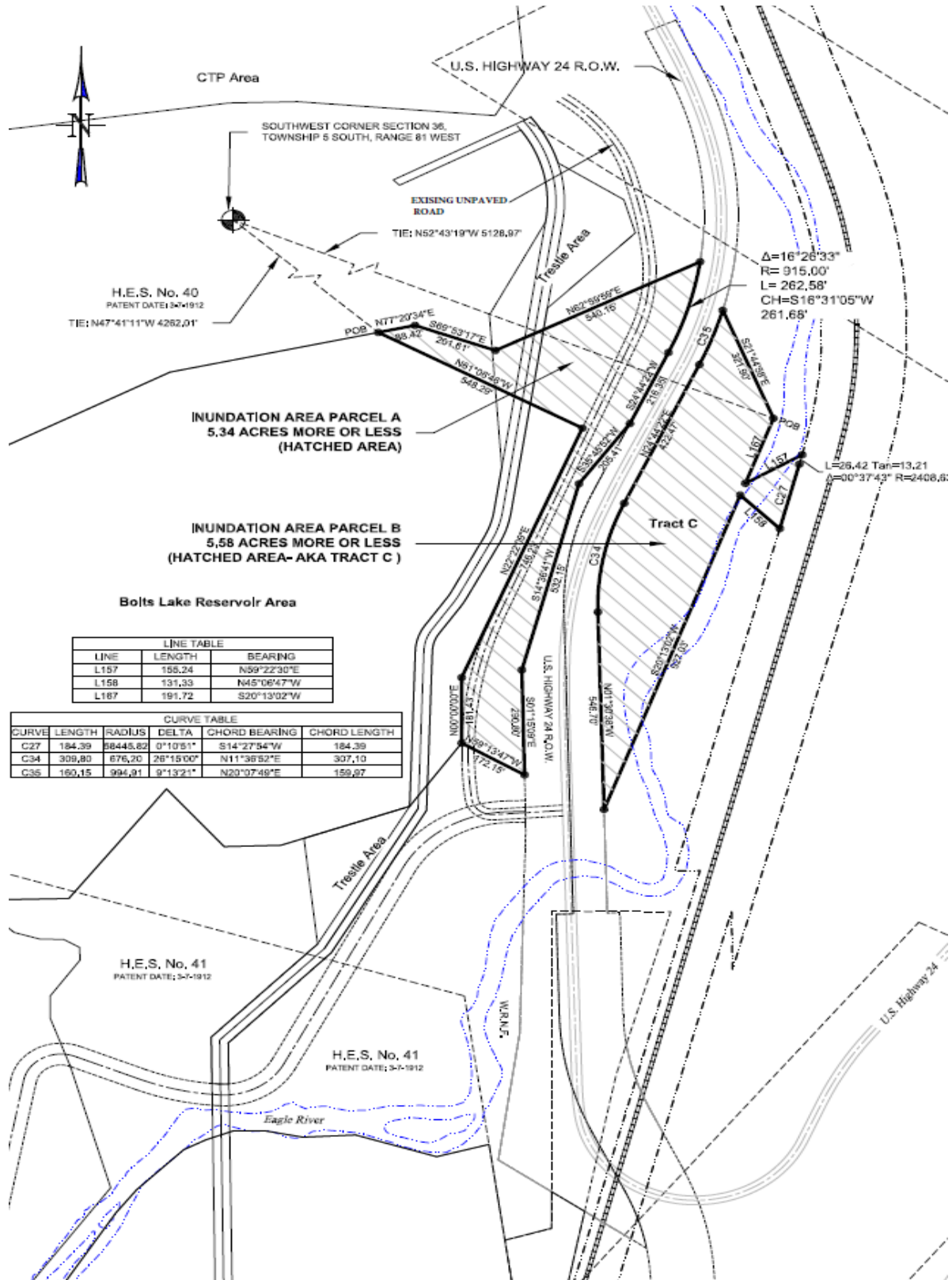


Exhibit 10 - Inundation Area Parcel

SCALE: 1" = 300'

DATE: January 04, 2021

PROJECT: 05554-04

DRAWN BY: BIE

CHECKED BY: MUG

DRAWING: North Property Quiet Title Boundary 20210104 BK.dwg

Notes: 1. 05554-04 (2018) Bolts Lake



BATTLE NORTH LLC

GAMBA & ASSOCIATES, INC.
CONSULTING ENGINEERS & LAND SURVEYORS
970-945-8850 WWW.GAMBAENGINEERING.COM
112 NINTH ST., STE. 210 P.O. BOX 1048 GLENWOOD SPRINGS, CO 81602

**TEMPORARY EASEMENT AGREEMENT
(Processing Area Parcel)**

THIS TEMPORARY EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of this 9th day of February, 2022 (“**Effective Date**”), by and between Battle North, LLC, a Georgia limited liability company (together with its successors and assigns, “**Grantor**”), and Eagle River Water & Sanitation District (together with its successor and assigns, “**Grantee**”).

RECITALS

This Agreement is made with respect to the following facts:

A. Grantor and Grantee (collectively, the “**Parties**”) are parties to that certain Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project having an effective date of February 10, 2021, and that certain Supplement to Agreement Pertaining to Acquisition for Bolts Lake Reservoir Project having an effective date of January 28, 2022 (collectively, the “**Reservoir Agreement**”).

B. Capitalized terms used but not defined in this Agreement have the meanings set forth in the Reservoir Agreement.

C. As described in the Reservoir Agreement, Grantor owns certain property anticipated for development of residential and commercial uses that will comprise the BN Development, and Grantee intends to own, construct and operate a water storage facility together with certain water conveyance structures and related improvements comprising the Reservoir Project.

D. Pursuant to and in accordance with the terms and conditions set forth in the Reservoir Agreement, the Parties agreed to execute, deliver and Record certain Temporary Easement Agreements which would establish Temporary Easements encumbering certain Temporary Easement Areas for specified purposes relating to Grantee’s construction and operation of the Reservoir Project, subject to potential future Relocation of the Temporary Easement Areas under the circumstances described in the Reservoir Agreement and to be described in such Temporary Easement Agreements.

E. This Agreement constitutes the Temporary Easement Agreement for the Processing Area Parcel as contemplated in the Reservoir Agreement.

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Grant of Temporary Easement; Easement Area. Grantor hereby grants, bargains, sells and conveys to Grantee, for its use and the use of its employees, contractors, subcontractors and consultants, a temporary, non-exclusive easement (the “**Temporary Easement**”) in, through,

over, under and across the real property that is legally described and graphically depicted in Exhibit A attached hereto and incorporated herein by this reference (the “**Easement Area**”).

2. Permitted Uses. The scope of Grantee’s permitted uses of the Easement Area will be limited to the following (“**Permitted Uses**”):

- a. Construction access for Grantee’s planning, design and construction of the Reservoir Project, and the deposit and storage of Excavated Materials in accordance with the Excavation Contract pursuant to Section 6.9(a) of the Reservoir Agreement.
- b. Grantee’s performance of its restoration obligations pursuant to Paragraph 6 below.
- c. A right of vehicular and pedestrian ingress and egress, including construction vehicles, over the Easement Area in connection with the foregoing.

3. Reserved Uses. The grant of the Temporary Easement is expressly subject to the Reserved Uses, which Grantor expressly reserves for its use and the use of its employees, contractors, subcontractors and consultants, consisting of the rights to use the Easement Area and to grant further easements and other interests in, and permit others to use, the Easement Area so long as such grants and uses do not unreasonably interfere or conflict with Grantee’s exercise of its rights to undertake and engage in the Permitted Uses. The Reserved Uses include but are not limited to Grantor’s performance of its obligations pursuant to the Reservoir Agreement that require activities with the Easement Area, if any, and Grantor’s construction, ownership, operation, maintenance, repair and replacement of existing and to be constructed utilities, roads, pedestrian crossings, sidewalks, bike paths and similar improvements in connection with development of the BN Development.

4. Relocation. If applicable, to the extent and at such time as the final “as built” locations of the Easement Area may be established as contemplated in the Reservoir Agreement, the Parties will cooperate to Relocate the Easement Area by executing, delivering and Recording an amendment to this Temporary Easement Agreement that replaces and supersedes the Easement Area legal description and graphic depiction originally attached to this Temporary Easement Agreement with an amended Exhibit A that reflects Relocation and modification of the Easement Area based on final engineering designs for the Reservoir Project and related considerations.

5. Cooperation. Grantee, in the conduct of the Permitted Uses, and Grantor, in the conduct of the Reserved Uses, will in good faith coordinate their respective activities within the Easement Area. If and when applicable, the Parties will in good faith cooperate to mutually agree to the amended legal description and graphic depiction for Relocation of the Easement Area pursuant to Paragraph 4 above.

6. Restoration. Promptly upon completion of the Permitted Uses, Grantee will restore the Easement Area to the condition as existed prior to Grantee’s entry thereon, except as necessarily modified for the Permitted Uses, and will repair any damage resulting from entry on the Easement Area in connection with this Agreement. Grantee will reimburse Grantor on demand for all expenses Grantor incurs in repairing any damage resulting directly from the Grantee’s activities pursuant to this Agreement if Grantee does not promptly repair such damage. Grantee’s

obligations pursuant to this Paragraph 6 will survive termination of this Agreement for a period of one year.

7. Compliance with Laws. Grantee, at its sole cost and expense, will comply with all federal, state and local requirements, regulations, ordinances and laws regarding the Permitted Uses conducted within the Easement Area, and will be solely responsible for any fines, fees or costs relating to the same. Without limiting the foregoing, Grantee will be solely responsible, at its expense, to obtain all necessary governmental approvals relating to the Permitted Uses.

8. Insurance. During the term of this Agreement, Grantee will, at no cost or expense to Grantor: (i) cause Grantor to be named an additional insured on a primary non-contributory basis under its policy of commercial general liability insurance (or equivalent), in an amount not less than the limits under the Colorado Governmental Immunity Act, which as of the Effective Date are (I) [\$424,000] for each occurrence, and (II) [\$1195,000] in the general aggregate, against claims for bodily injury, personal injury, advertising injury, death or property damage, occurring in, on or about the Easement Area; and (ii) require its contractors and other third parties who enter the Easement Area pursuant to the Permitted uses to (A) cause Grantor to be named an additional insured on a primary non-contributory basis under their respective policies of commercial general liability insurance, in an amount of at least (I) \$1,000,000 for each occurrence, (II) \$1,000,000 for personal injury, and (III) \$2,000,000 in the general aggregate; and (B) procure and maintain workers' compensation coverage, meeting the statutory requirements of the State of Colorado. Prior to any entry upon the Easement Area, Grantee will cause written evidence to be delivered to Grantor of such insurance coverages being in effect.

9. Indemnity. Solely to the extent arising directly from Grantee's conduct of the Permitted Uses, Grantee will, to the maximum extent permitted by law, indemnify, defend, and hold harmless Grantor from any and all claims, demands, liens, costs, expenses, damages and liabilities, including reasonable attorneys' fees and costs, that are asserted against Grantor, the Easement Area or Grantor's property that is proximate to the Easement Area, or which Grantor may suffer or incur, to the extent arising out of any claims for property damage or personal injury, or claims from materialmen or laborers. Grantee's obligations pursuant to this Paragraph 9 will survive termination of this Agreement for a period of one year.

10. Mechanics' Liens. Grantee will not cause or allow any mechanics' or materialmen's liens to be filed against the Easement Areas or any adjacent property owned by Grantor as a result of any work performed or material furnished on behalf of Grantee (a "**Lien**"). If a Lien is filed, Grantee will, at its sole cost and expense, cause the Lien to be discharged or bonded off of record not later than 45 days after Grantee's receipt of notice of the filing of such Lien. In the event that such Lien is not discharged or bonded off of record within such 45 days, Grantor may, but will have no obligation to, defend, prosecute or pursue any action that Grantor deems reasonably necessary to discharge the Lien, and Grantee will promptly reimburse Grantor's out-of-pocket expenses incurred in connection therewith upon demand therefor by Grantor, subject to Grantor's delivery to Grantee of reasonable documentation (i.e., invoices, receipts, etc.) of such expenses. The provisions of this Paragraph 10 will survive termination of this Agreement for a period of one year.

11. Term. The term of this Agreement will commence on the Effective Date and will automatically, and without the requirement of further action, demand or notice, terminate upon the earlier of (i) Grantee's completion of the Reservoir Project; (ii) Grantee's completion of the scope of Permitted Uses prior to completion of the Reservoir Project; and (iii) unless such date is extended by written amended of this Agreement, no more than 365 days after the Effective Date.

12. Default; Remedies. In the event of default in the performance of any of the obligations set forth herein which the defaulting Party does not cure within 15 days after written notice of such default from the non-defaulting Party (or in the case of a default that would reasonably take more than 15 days to cure, if the defaulting Party will fail to undertake substantial action to cure such default within such 15 days after written notice of default and thereafter diligently pursue completion of such cure), the non-defaulting Party will have all remedies that may be available to it in law or equity.

13. Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; or as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or as of actual delivery (or refused delivery) after deposit with Federal Express or a similar national overnight courier service that provides evidence of receipt, addressed as follows below:

If to Grantor:

Battle North, LLC
164 Railroad Ave.
P.O. Box 56
Minturn, CO 81645
Attn: Tim McGuire

With required copies to:

Battle North, LLC
c/o Bassel Battle Investment, Corp.
3500 St. Jacques
Montreal, Quebec H4c1h2
Canada
Attn: Lorne Bassel

Battle North, LLC
c/o Lubert Adler Real Estate Funds
3284 Northside Parkway, NW, Suite 570
Atlanta, GA 30327

If to Grantee:

Eagle River Water & Sanitation District
Upper Eagle Regional Water Authority
864 Forest Road
Vail, CO 81657
Attn: General Manager

A Party may change its address or contact information by the giving of written notice to the other Party in accordance with this Paragraph 13.

14. Third-Party Beneficiaries. Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, will be strictly reserved to the Parties and their successors and assigns. Nothing contained in this Agreement will give or allow any claim or right of action by any other or third person under this Agreement. Any person other than the Parties or their successors and assigns, receiving services or benefits under this Agreement will be deemed to be an incidental beneficiary only.

15. Attorneys' Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the substantially prevailing Party in such suit will be entitled to recover its reasonable attorneys' fees and expenses from the non-prevailing Party. The provisions of this Paragraph 15 shall survive the term of this Agreement.

16. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado.

17. Binding Effect; Recordation. This Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Grantee may, at its expense, Record this Agreement and, upon such recordation, this Agreement will run with title to the Easement Area. Upon termination of the term of this Agreement pursuant to Paragraph 11, Grantor may unilaterally Record a termination notice instrument; provided, however, failure to so Record a termination notice instrument will in no way affect or negate a valid termination of this Agreement and release of the Easement Area from the encumbrance of this Agreement pursuant to Paragraph 11.

18. Entire Agreement; Modification. This Agreement, together with applicable provisions of the Reservoir Agreement implemented hereby, sets forth the entire understanding between the Parties regarding the matters addressed herein, and supersedes any previous communications, representations or agreement, whether oral or written. This Agreement will not be amended except by written instrument signed by all Parties.

19. Headings. The headings which appear in the Paragraphs of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Paragraphs in which they appear.

20. Counterparts. The Parties may execute this Agreement in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one

and the same agreement. The facsimile or pdf signature of any Party on this Agreement (and on any instrument required or permitted to be delivered to a Party pursuant to this Agreement) will be deemed an original for all purposes.

[Signature pages follow.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

GRANTOR:

Battle North, LLC,
a Georgia limited liability company

By: Bassel Battle Investment, Corp.,
a Colorado corporation, its Manager

By: _____
Name: Lorne Bassel
Title: President
Date: _____, 20__

STATE OF COLORADO)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by Lorne Bassel, President of Bassel Battle Investment, Corp., a Colorado corporation, as Manager of Battle North, LLC, a Georgia limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

GRANTOR SIGNATURE PAGE TO TEMPORARY EASEMENT AGREEMENT

GRANTEE:

EAGLE RIVER WATER & SANITATION
DISTRICT

By: _____

Name: Bill Simmons

Title: Chair

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing instrument was acknowledged before me this ____ day of _____
20__, by _____ as _____ of the Eagle River Water &
Sanitation District.

Witness my hand and official seal. My commission expires _____.

Notary Public

EXHIBIT A
Legal Description and Graphic Depiction of the Easement Area

An area of land located in Section 2 of Township 6 South, Range 81 West of the Sixth Principal Meridian, Eagle County, Colorado.

Beginning at a point whence the Southwest corner of Section 36 being a 2-1/2 inch GLO Brass Cap found in place bears N 22°39'01" W a distance of 4383.08 feet; thence S 53°11'01" E a distance of 639.38 feet; thence S 66°03'04" W a distance of 185.03 feet; thence S 87°52'49" W a distance of 154.45 feet; thence N43°32'09" W a distance of 86.00 feet; thence N 87°20'19" W a distance of 69.22 feet; thence S 51°17'35" W a distance of 30.98 feet; thence S 22°13'41" W a distance of 55.35 feet; thence S89°25'59" W a distance of 54.63 feet; thence N 75°30'49" W a distance of 122.70 feet; thence S 80°01'14" W a distance of 162.09 feet; thence N 34°16'04" E a distance of 565.04 feet to the point of beginning containing 4.46 acres more or less.

Michael J. Gamba, P.E. & P.L.S. 28036
For and on behalf of Gamba & Associates, Inc.
113 Ninth Street, Suite 214
Glenwood Springs, CO 81602

EXHIBIT A

Legal Description and Graphic Depiction of the Easement Area

