

**APPENDIX 2A
SURPLUS WATER SERVICE AGREEMENT AMONG
NEWMONT AND THE CITIES**

SURPLUS WATER SERVICE AGREEMENT

among

NEWMONT USA LIMITED,

THE CITY OF WEST WENDOVER, NEVADA,

and

THE CITY OF WENDOVER, UTAH

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SURPLUS WATER SERVICE AGREEMENT
AMONG NEWMONT USA LIMITED, THE CITY OF WEST WENDOVER, NEVADA,
AND THE CITY OF WENDOVER, UTAH

THIS WATER SERVICE AGREEMENT ("Agreement") is entered into as of the Effective Date among Newmont USA Limited ("Newmont"), City of West Wendover, Nevada ("West Wendover"), and the City of Wendover, Utah ("Wendover"), each as undivided 50% owners of the water rights that are the subject of this Agreement. Newmont, West Wendover and Wendover are sometimes referred to herein individually as a "Party" and collectively, as the "Parties".

R E C I T A L S:

A. Newmont is in the process of obtaining permits and approvals for a mining project in the Pequop Mountains located on the west side of the Goshute Valley, Nevada, in the area of Long Canyon ("Long Canyon Project").

B. West Wendover is a Nevada municipality that provides retail water service to its citizens. Wendover is a Utah municipality that provides retail water service to its citizens.

C. West Wendover and Wendover each own an undivided 50% interest in the Cities Surplus Water and the Johnson Surplus Water, and are willing to provide water service to Newmont by agreeing to provide for Newmont's use the Cities Surplus Water and the Johnson Surplus Water described in Section 3 and Section 4, respectively.

D. Newmont is willing to complete Two New Wells and Associated Infrastructure in exchange for the Associated Infrastructure of the Johnson Surplus Water, excluding the 24" Johnson Spring Transmission Pipeline. Prior to and after termination of this Agreement, the Two New Wells will be owned by Cities, and subject to Section 4.9 of this Agreement, upon termination of this Agreement, Johnson Springs and the Associated Infrastructure shall be returned to the Cities by Newmont.

E. The revenue provided to the Cities pursuant to this Agreement will further their economic development.

NOW, THEREFORE, for valuable consideration including, without limitation, the obligations and covenants of the Parties set forth below, the Parties hereby agree as follows:

1. **Definitions.** As used in this Agreement, the following terms shall have the meanings ascribed to them in this section.

1.1 "Approval Date" means the date on which all required governmental approvals described in Section 3.3.3 occur and the date approval by Newmont occurs in order to commence mining operations at the Long Canyon Project, whichever is later.

1.2 "Associated Infrastructure" means all components attached to or in the proximity of a well which are in some manner utilized in connection with the operation of the well, including, but not limited to, water transmission lines, pipes, pumping stations, power facilities, permanent emergency power generators, security fencing and roads.

1.3 "Cities" means both West Wendover, Nevada and Wendover, Utah, jointly, unless otherwise indicated.

1.4 "Cities Surplus Water" means Surplus Water utilized pursuant to the Cities' groundwater rights located in the northern portions of the Goshute Valley groundwater basin, which are part of Permit 78451 issued by the Nevada State Engineer.

1.5 "Delivery Point(s)" means the point(s) at which the Associated Infrastructure from each of the well sites intersect(s) the existing Johnson Springs Transmission System pipeline.

1.6 "Effective Date" means the date of the last signature affixed hereto.

1.7 "Environmental Laws" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene or the environment, including, without limitation, the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Safe Drinking Water Act (SDWA).

1.8 "Hazardous Substance" shall mean all substances, materials and wastes that are or become regulated, or classified as hazardous or toxic, under any Environmental Laws.

1.9 "Johnson Surplus Water" means Surplus Water with Johnson Springs as its source.

1.10 "Long Canyon Project" means the mining operation being developed by Newmont which is located in the Pequop Mountains in the Goshute Valley Basin.

1.11 "Operational Period" means the ten (10) -year time period of this Agreement, and any extensions as provided herein, during which time Newmont is operating the Long Canyon Project.

1.12 "Permitting Period" means that period of time during which Newmont is obtaining regulatory approvals and permits for its Long Canyon Project including Newmont approval.

1.13 "Plan of Operations" ("PoO") means the Plan of Operations that is approved by the U.S. Bureau of Land Management for Newmont's Long Canyon Project.

1.14 "Surplus Water" means water that is not required by the inhabitants of the Cities in the foreseeable future and which will not be utilized by West Wendover or Wendover for a period of at least ten (10) years from the commencement of the Operational Period. Wendover's determination that these water rights constitute Surplus Water was made pursuant to the provisions of law described in Paragraph 7.

2. Two New Wells. In consideration of the covenants of the Cities as set forth in this Agreement, Newmont agrees to construct, two (2) new municipal wells completed to drinking water standards as required by the Utah Division of Drinking Water and the Nevada Bureau of Safe Drinking Water for culinary water production, together with the Associated Infrastructure (defined in Section 1.2), for the use of the Cities (collectively, the "Two New Wells"). Newmont, at its cost, is responsible for obtaining all necessary permits required by Environmental Laws and for obtaining all necessary State Engineer approvals to construct the Two New Wells which will be the points of diversion for a portion of the Cities existing Shafter wellfield area groundwater permits. The Cities will be responsible at its cost, to designate and obtain change applications from the State Engineer to include the Two New Wells as points of diversion for a portion of the Shafter wellfield area groundwater rights. The Cities hereby acknowledge that the State Engineer approval of these change applications to add or change points of diversion to the Two New Wells for some or all of their Shafter wellfield groundwater rights may be a condition precedent to the ability and authorization of Newmont by the State Engineer to construct the Two New Wells. As a consequence, the time period for Newmont to construct the Two New Wells pursuant to Section 2.2 will be extended to provide that the one (1) year period to construct will commence on the later of the Approval Date or the approval of the State Engineer of the Cities' change applications to include the Two New Wells as points of diversion for some or all of its groundwater rights.

2.1 Location. The Two New Wells will be located in Goshute Valley on land owned by Elko Land and Livestock Company or upon lands administered by the U.S. Bureau of Land Management ("BLM") at mutually agreeable sites. The Two New Wells will be sited in locations that do not cause any material adverse hydrological impact to the Shafter wellfield or to Johnson Spring (described in Section 4). Newmont agrees to diligently continue its efforts to locate sites for the Two New Wells with input from the Cities. The Cities agree to diligently

work with Newmont in an expeditious and cooperative manner to assist in the siting of the Two New Wells.

2.2 Construction of Two New Wells. Within the later of one (1) year of the Approval Date or within one (1) year of the State Engineer's approval of the change applications approving the change of points of diversion of the Cities existing groundwater rights as described in Section 2, Newmont agrees to complete construction of the Two New Wells and Associated Infrastructure. All construction completion dates are subject to delays beyond the reasonable control of Newmont in the manner set forth in Section 10.22 (Force Majeure). Newmont may not initiate use of Johnson Surplus Water prior to completion of the Two New Wells. Newmont may initiate use of a new Production Well prior to completion of the Two New Wells, and conveyance of those wells to the Cities, if the new Production Well is located within either of the following two sections of land: T35N, R66E, Section 3, and T36N, R66E, Section 13. In the event Newmont needs to locate a Production Well in a different location, and utilize that well prior to completion of the Two New Wells and conveyance of the Two New Wells to the Cities, the parties agree to diligently work in good faith to find a mutually agreeable location for the new Production Well to avoid adverse and material impacts from the use of that new well on flows of water at Johnson Spring.

2.3 Design and Construction of Two New Wells. Each of the Two New Wells (i) will be designed by Newmont for municipal use in consultation with the Cities and the designs must be approved in writing by the Cities and the Utah Division of Drinking Water and the Nevada Bureau of Safe Drinking Water, prior to construction; (ii) will be constructed solely by Newmont, its contractors, and employees; (iii) will comply with all applicable Federal, State and local statutes and regulations; (iv) will meet or exceed all industry standards when completed; and (v) will produce water at or above the quality required for municipal drinking water use. During construction of the Two New Wells, City representatives may review the construction of the wells. The obligations in part (iii)-(v) of this Section survive the conveyance of the Two New Wells to the Cities, and the Two New Wells, when completed and throughout the term of this Agreement, will each have the capability to produce and sustain a minimum diversion rate of two (2) cubic feet per second (CFS) of groundwater and be equipped with a pump and electric motor to divert a minimum of one cubic foot per second (1 CFS).

2.4 Design and Construction of Associated Infrastructure. The Associated Infrastructure, (i) will be designed by Newmont in consultation with the Cities and the designs must be approved in writing by the Cities prior to construction; (ii) will be constructed solely by Newmont, its contractors, and employees; (iii) will comply with all applicable Federal, State and local statutes and regulations; and (iv) will meet or exceed all applicable industry standards when completed. The capacity of the Associated Infrastructure will meet the minimum sustainable diversion rate for the Two New Wells of four (4) CFS.

2.5 Costs of Design and Construction. Newmont will pay for all costs of the design and construction for the Two New Wells and Associated Infrastructure, to include all costs relating to any required governmental permits and/or approvals. Newmont will supply the Cities with "As Built" drawings of the Two New Wells and Associated Infrastructure promptly, but in no case more than sixty (60) days, after completion of construction.

2.6 Conveyance to Cities of Two New Wells, Associated Infrastructure and Easements. Within sixty (60) days of the acceptance of the "As Built" drawings by the Cities for each of the Two New Wells and Associated Infrastructure, Newmont shall convey to West Wendover and Wendover, each as to an undivided fifty percent (50%) interest, in and to each of the completed and accepted Two New Wells and Associated Infrastructure and Easements. The foregoing conveyances shall include the completion, execution, signing, filing and recording of all reports of conveyance, deeds, assignments and other documents necessary to provide the Cities with good and marketable title, and the right to use without hindrance or encumbrance, the Two New Wells. Such conveyance shall also include assignments of any rights-of-way or access rights that Newmont obtains from BLM for these Two New Wells.

2.6.1 Access Easement. The conveyances to the Cities will also include good and marketable title to an access easement or right of way ("Access Easement") along existing unimproved roads from each well site for each of the Two New Wells, to the Delivery Point(s). Improvements will be made to the existing roads by Newmont as needed in order to provide reasonable and necessary access from each of the Two New Wells to their Delivery Point(s).

2.6.2 Associated Infrastructure Easement. The conveyances by Newmont to the Cities will include an easement or right of way for the Associated Infrastructure, including the water transmission line, from each of the well sites to Delivery Point(s). Newmont will use diligent and commercially reasonable efforts to obtain in a timely and reasonable manner all necessary easements and rights of way described in this section, and will be responsible for all costs relating thereto.

2.7 Cost Differential for Power and Road Maintenance.

2.7.1 Payment for Power and Road Maintenance by Newmont. Newmont will pay to the Cities the annual sum of Twelve Thousand Dollars (\$12,000.00) as compensation for an inferred higher than normal cost of power to operate the Two New Wells and road maintenance outside the PoO Area. Newmont's payments will commence immediately upon the acceptance by the Cities of the Two New Wells and Associated Infrastructure.

2.7.2 Road Construction and Maintenance by Newmont. Newmont will improve existing unimproved roads as necessary on the Access Easement during its construction activities for each of the Two New Wells. Newmont will maintain, at its sole expense, any road which is located within the PoO Area for the Long Canyon Project, which area may change from time to time.

2.7.3 Road Maintenance by the Cities. The Cities will construct and maintain any other roads the Cities require. The maintenance of any other portion of the unimproved road located on the Access Easement on land not within the PoO Area will be the responsibility of the Cities at their sole cost.

2.7.4 Special Provision for Plan of Operations Area. The Cities acknowledge that to the extent any Access Easement granted to them is within the PoO Area, a federal law known as the "Mine Safety and Health Act," which is administered by the Mine Safety and Health Administration ("MSHA"), requires that Newmont provide MSHA-trained personnel to accompany West Wendover's personnel, employees, agents and contractors through the PoO Area. Newmont acknowledges that West Wendover requires access to the Two New Wells at any time of the day or night. Between the Effective Date and the termination of this Agreement, Newmont agrees to maintain a 24-hour line of communication with designated representatives of West Wendover and to accompany and provide access through the PoO Area to West Wendover's designated representatives, respectively, within one (1) hour of any notification of need for access.

2.7.5 Newmont to Covenant to Not Degrade Water Produced by Two New Wells. Newmont shall use diligent and commercially reasonable measures to prevent the degradation of the water produced by the Two New Wells in accordance with all applicable Federal, state and local laws, to include Nevada Revised Statutes (NRS) 445A.425 and 445A.465 and Nevada Administrative Code (NAC) Regulations 445A357, 445A.384, 445A.385, 445A.424 and 445A.433. Notwithstanding the foregoing, in no event shall Newmont degrade the Two New Wells so as to prevent or limit their use for public drinking water purposes. Newmont also agrees to indemnify and defend Cities from any claim made that is related to actions by Newmont that are alleged to degrade the drinking water supply of Cities. The obligations in this Section survive the conveyance of the Two New Wells to the Cities.

2.8 Sharing of Hydrogeology Information. Newmont and the Cities have conducted various tests and studies of the hydrogeology in the northern portion of Goshute Valley, including the drilling of monitoring wells and conducting of groundwater studies of this area. Newmont and the Cities agree to cooperate in a diligent and timely manner to share with each other, each Party's current understanding and analysis of the northern portion of the

Goshute Valley groundwater basin. Nothing herein shall obligate either party to undertake new tests or studies, or gather new data.

3. Cities Surplus Water.

3.1 Cities Surplus Water. The Cities own 0.8 CFS which is equal to 579.17 acre feet annually (AFA) of permitted surplus groundwater rights located in the northern portions of the Goshute Valley groundwater basin, which are part of Permit 78451 issued by the Nevada State Engineer.

3.2 Cities Surplus Water Service. For valuable consideration, including the covenants set forth in this Agreement, the Cities hereby agree to provide for Newmont's use the Cities Surplus Water, subject to the terms and conditions set forth in this Agreement ("Cities Surplus Water Service").

3.3 Cities Surplus Water Service Period. The "Cities Surplus Water Service Period" is the time during which the Cities Surplus Water is made available to Newmont, commencing immediately upon the Approval Date and terminating at the end of the Operational Period described below.

3.3.1 Permitting Period. The Permitting Period of the Cities Surplus Water Service Period commences upon the Effective Date and continues to the earlier of the Approval Date or the date which is five (5) years after the Effective Date. However, if the inability of Newmont to obtain the Approvals requisite to the Approval Date is caused by a force majeure, the Permitting Period for the Cities Surplus Water Service and the Permitting Period for the Johnson Surplus Water Service shall be extended by that amount of time caused by the delays. During the Permitting Period, the Cities may continue to use Johnson Springs, Johnson Surplus Water, and the Cities Surplus Water. Newmont shall not have rights to use such water until the Operational Period.

3.3.2 Reimbursement Expenses and Reservation Fee. In the event (i) Newmont, in its sole and absolute discretion, finally and conclusively decides not to proceed with the Long Canyon Project prior to the Approval Date and provides the Cities with written notification of its decision ("Cancellation Notice"), or (ii) if the Approval Date does not occur prior to the fifth (5th) anniversary of the Effective Date, the Operational Period of the Cities Surplus Water Service Period and the Operational Period of Johnson Surplus Water Service Period (as described in Section 4.4) shall not commence and this Agreement shall terminate and neither party shall have any further obligation under this Agreement except that Newmont shall pay to Cities the following:

(i) The sum of One Hundred and Fifty Thousand Dollars (\$150,000.00) to compensate Cities for their expenses for professional services associated with this Agreement ("Reimbursement Expenses"); and

(ii) The sum of Thirty Thousand Dollars (\$30,000.00), as a fee for reserving the use of the Cities Surplus Water and the Johnson Surplus Water ("Reservation Fee") during the Permitting Period for each year commencing upon the Effective Date and continuing thereafter until the earlier of the date that Newmont provides Cities with the Cancellation Notice or the date the Agreement is terminated because the Approval Date did not occur within five (5) years from the Effective Date. The Reservation Fee for any partial year of the Permitting Period will be a prorated portion of the annual Reservation Fee.

(iii) If such a decision is made by Newmont not to proceed with the Long Canyon Project as set forth above, after the Two New Wells, Associated Infrastructure and Access Easement are conveyed to Cities, Cities shall retain title to those assets thereafter.

(iv) The Reimbursement Expenses and Reservation Fee will be paid directly to West Wendover's Johnson Spring Enterprise Fund and West Wendover will reimburse the Enterprise Fund and then divide remaining moneys, if any, equally between the Cities.

3.3.3 Commencement of Operational Period. The Operational Period of the Cities Surplus Water Service Period ("Operational Period of the Cities Surplus Water Service Period") shall commence on the Approval Date. The Approvals which must be obtained prior to the Approval Date include, without limitation, (i) the BLM Record of Decision and PoO approval for Newmont's mining and mineral processing activities for the Long Canyon Project; (ii) the approval of the Nevada State Engineer of all necessary Applications to Change the Point of Diversion, Manner of Use and Place of Use, as applicable ("Change Applications"), for the (a) Cities Surplus Water, (b) the Johnson Surplus Water, (c) the Replacement Water Right (as defined in Section 4.9), and (d) the other groundwater rights of Newmont or its affiliates intended to be utilized for the Long Canyon Project; (iii) all other required approvals for the Long Canyon Project from all other governmental agencies or entities; (iv) the resolution of all appeals or lapse of all relevant appeal periods for these permits and approvals which resolution results in Newmont obtaining the required permits, Change Applications and other approvals from the necessary governmental entities and agencies; and (v) the approval by Newmont. Notwithstanding the foregoing, nothing herein shall be interpreted to require Newmont to proceed with the Long Canyon Project prior to the Approval Date.

3.3.4 Initial Operational Period for Cities Surplus Water Service Period.

The initial Operational Period of the Cities Surplus Water Service Period shall be ten (10) years from the Approval Date.

3.3.5 Options to Extend Cities Surplus Water Service Period. Subject to the restrictions of Art XI, §6 of the Constitution of Utah, and conditioned upon Newmont not being in material default in any way under this Agreement, Newmont may, at its sole and absolute discretion, exercise options to extend the Operational Period of the Cities Surplus Water Service Period for three (3) successive ten-year terms beyond the initial term. Each option to extend the Operational Period of the Cities Surplus Water Service Period shall (i) be subject to the availability of Cities Surplus Water as reasonably determined by the Cities at the time of the extension request and (ii) be exercised by Newmont by delivering to the Cities written notice of its election to exercise the option to extend at least sixty (60) days but no more than one hundred twenty (120) days prior to the expiration of the Operational Period of the Cities Surplus Water Service Period or any extension thereof. During all extensions of the Operational Period of the Cities Surplus Water Service Period, all provisions of the Agreement relating to the Cities Surplus Water, including, but not limited to, the Cities Surplus Water Payments, as increased by the CPI adjustment described herein, shall remain the same.

3.4 Newmont's Payments to the Cities for Cities Surplus Water. In exchange for the use of the Cities Surplus Water, Newmont agrees to make payments for the Cities Surplus Water ("Cities Surplus Water Payment") during the Operational Period as follows:

3.4.1 Payment for Cities Surplus Water during the Operational Period. As consideration for making the Cities Surplus Water available to Newmont for its use, and regardless of how much of that water Newmont actually uses in a given year, Newmont agrees to pay to the Cities an annual Payment of Three Hundred Ten Thousand and No/100ths Dollars (\$310,000.00) for Cities Surplus Water for each Year during the Operational Period of the Cities Surplus Water Service Period, or a prorated portion thereof for any partial Year in the Operational Period, and continuing each year during the Operational Period of the Cities Surplus Water Service Period, as may be extended. The first annual Payment is due sixty (60) days after the Approval Date. All other annual Payments for Cities Surplus Water during the Operational Period are due and payable on each anniversary of the Approval Date. Newmont shall make these payment to the Cities by dividing the payment, one half to West Wendover and one half to Wendover.

3.5 CPI Adjustment of Annual Payments. The Cities Surplus Water Service Payment for the Operational Period shall be adjusted at the expiration of every five (5) years during the Operational Period of the Cities Surplus Water Service Term, as may be extended.

The calculation of the adjustment in the Cities Surplus Water Service Payment based upon the CPI change is set forth more fully on Exhibit "A" attached hereto and made a part hereof.

4. Johnson Surplus Water.

4.1 Johnson Surplus Water. The Cities own sufficient water rights to use one (1) CFS (which is 723.97 AFA) of surplus water supply from Johnson Spring, described in Nevada Division of Water Resources Permit No. 28527 and Certificate 12918, and referred to herein as "Johnson Surplus Water."

4.2 Johnson Surplus Water Service. For valuable consideration, including the covenants set forth in this Agreement and including the payments described below, West Wendover and Wendover hereby agree (i) to provide Newmont the use of the Johnson Surplus Water and (ii) to exchange the Associated Infrastructure of the Johnson Surplus Water, excluding the 24" Johnson Spring Transmission Pipeline, for the Two New Wells and Associated Infrastructure, subject to the terms and conditions set forth below (hereinafter the "Johnson Surplus Water Service"). Newmont must complete the Two New Wells and complete its obligations pursuant to Section 2.6 before this exchange can occur, and specifically, it may not connect to the Johnson Spring surface water until completion of the Two New Wells and satisfaction of the obligations in Section 2.6. The Cities may continue to use the Johnson Surplus Water until Newmont completes these obligations.

4.3 Newmont's Payment to the Cities for the Johnson Surplus Water. In exchange for the use of the Johnson Surplus Water, Newmont agrees to make payment to the Cities for the Johnson Surplus Water ("Johnson Surplus Water Payment") commencing at the beginning of the Operational Period, as follows:

4.3.1 Payment for the Johnson Surplus Water during the Operational Period. Within sixty (60) days after the Approval Date, Newmont agrees to pay to West Wendover a one-time Johnson Surplus Water Payment of Two Million, One Hundred Seventy-Seven Thousand and No/100ths Dollars (\$2,177,000.00) for the provision of the Johnson Surplus Water for the entire ten year Operational Period of the Johnson Surplus Water Service Period (defined in Section 4.4). The Johnson Surplus Water Payment shall be paid directly to West Wendover. West Wendover will use all or a part of those funds to fully satisfy all current obligations of West Wendover and Wendover for the following bonds: (1) City of West Wendover, Nevada, Water Revenue Bond, Series 2000; and (2) City of West Wendover, Nevada, Water Revenue Bond, Series 2009. West Wendover will provide within sixty (60) days of the payment to West Wendover, or cause to be provided, written documentation to Newmont subsequent to the payment of such bonds which reflects that the bonds have been fully paid.

Any remaining balance of such funds, if any, after payment of the bonds shall be placed in the Johnson Springs Transmission System Fund.

4.4 Johnson Surplus Water Service Period. The Permitting Period of the Johnson Surplus Water Service Period commences on the Effective Date and continues to the Approval Date. The Permitting Period for the Johnson Surplus Water Service Period shall not exceed five (5) years from the Effective Date, during which time Newmont will diligently seek to obtain all Approvals for the Long Canyon Project as described in Section 3.3.3. Upon the Approval Date, the Operational Period of the Johnson Surplus Water Service Period shall commence and shall thereafter continue for an initial term of ten (10) years, which may thereafter be extended in the manner set forth below.

4.5 Option to Extend Johnson Surplus Water Service Period. Subject to the restrictions of Art XI, §6 of the Constitution of Utah, and conditioned upon Newmont not being in material default in any way under this Agreement, Newmont may, at its sole and absolute discretion, exercise options to extend the Operational Period of the Johnson Surplus Water Service Period for three (3) successive ten-year terms beyond the initial term. Each option to extend the Operational Period of the Johnson Surplus Water Service Period shall be (i) subject to the availability of Johnson Surplus Water as reasonably determined by West Wendover and Wendover at the time of the extension request and (ii) be exercised by Newmont by delivering to West Wendover and Wendover written notice of its election to exercise the option to extend the Johnson Surplus Water Service Period at least ninety (90) days but not more than one hundred eighty (180) days prior to the expiration of the Operational Period of the Johnson Surplus Water Service Period or any extension thereof. Payments to the Cities by Newmont for each extension of the Johnson Surplus Water Service Period of ten (10) years will be in the amount of Three Hundred Eighty-Seven Thousand, Five Hundred Four Dollars and no/100 (\$387,504.00) per annum (as adjusted by the CPI every five years in the manner shown at Exhibit "A" hereto), which amount is equal to the cost per acre-foot annually of Newmont's annual payment to West Wendover and Wendover for the Cities Surplus Water, as adjusted. Newmont shall make this payment to the Cities by dividing the payment, one half to West Wendover and one half to Wendover.

Upon expiration of the Operational Period of the Johnson Surplus Water Service Period or any extensions thereof, Newmont shall send written notice to the Cities inquiring as to whether the Cities elect to retain any or all of the Associated Infrastructure. The Cities must respond in writing within sixty (60) days indicating what, if any, Associated Infrastructure the Cities elect to retain. Newmont shall thereafter remove, at its own expense, any part of the Associated Infrastructure that the Cities do not elect to retain which is not located upon Newmont or BLM property and shall leave in place, in good working order, all other Associated Infrastructure. At the time the Operational Period of the Johnson Water Service Period expires, Johnson Springs

shall be in a condition that is suitable for use for municipal drinking water purposes subject to the provisions of Section 4.9.

4.6 Disconnection of Johnson Surplus Water. Within one hundred eighty (180) days of the Approval Date and provided: (i) that the Cities have accepted the As Built Drawings for the Two New Wells and Associated Infrastructure; and (ii) the Two New Wells are fully functional and operating in their intended manner, Newmont is hereby authorized by the Cities, and Newmont hereby agrees, at its cost and expense, to physically disconnect the Johnson Surplus Water and Associated Infrastructure from other drinking water sources of the Cities. Newmont shall comply with all applicable Environmental Laws, including the Safe Drinking Water Act, when it accomplishes such disconnection. At Newmont's sole cost and expense, Newmont shall maintain and operate the Johnson Surplus Water and Associated Infrastructure in a diligent and commercially reasonable manner during the Operational Period of the Johnson Surplus Water Service Period, as may be extended. Newmont shall take all commercially reasonable steps to put the Johnson Surplus Water to beneficial use and preserve and protect the entirety of the Johnson Surplus Water rights from abandonment or forfeiture based on non-use of that water. If Newmont fails to use the Johnson Surplus Water and it is declared abandoned or forfeited, Newmont will be obligated to replace the abandoned or forfeited water with the Replacement Water Right identified in section 4.9. In the event Newmont does not use the Johnson Surplus Water, the Cities have the right to cure such non-use to avoid a declaration of abandonment or forfeiture. Newmont intends to utilize existing pumps and electric motors for the Johnson Surplus Water. In the event Newmont elects to install new pumps or electric motors, Newmont agrees to allow the Cities to review and approve Newmont's new pumps and electric motors before they are installed. In the event new pumps and electric motors do not affect the existing pumps and electric motors, no review and approval by Cities is required.

4.7 Use of Johnson Surplus Water and Associated Infrastructure. After commencement of the Operational Period of the Johnson Surplus Water Service Period, the Cities agree to discontinue all of their use of Johnson Surplus Water and Associated Infrastructure, excluding the 24" Johnson Springs Transmission Pipeline.

4.8 Newmont's Required Actions at Expiration of the Operational Period of the Johnson Surplus Water Service Period. At the time of the expiration of the Operational Period of the Johnson Surplus Water Service Period, as may be extended by Newmont pursuant to this Agreement, Newmont will take the following actions:

4.8.1 Reconnection. Newmont will pay all reasonable and necessary costs and be responsible for physically reconnecting the Johnson Surplus Water (1 CFS) and Associated Infrastructure to the 24" Johnson Spring Transmission Pipeline, subject to written approval of the reconnection design by the Cities, and pay all reasonable and necessary costs of

such physical reconnection. Newmont shall also assure that these connection works are in a commercially suitable condition for municipal purposes, as reasonably determined by the Cities.

4.8.2 Expiration Document. Newmont will execute such documents as are reasonable and necessary to evidence the expiration of the Operational Period of the Johnson Surplus Water Service Period and the return to the Cities of the right to use the Johnson Surplus Water and Associated Infrastructure.

4.9 Contingent Action. In the event that within one (1) year of the end of the Johnson Surplus Water Service Period (as may be extended pursuant to Section 4.5), the Johnson Spring (i) does not produce at least 1 CFS annually of Johnson Surplus Water, or (ii) Johnson Surplus Water fails to meet all applicable drinking water standards (each a "Contingency Event"), Newmont will take the following actions as the sole and exclusive remedy of the Cities:

4.9.1 Conveyances to Cities. Subject to all provisions of Section 4.9, Newmont agrees to convey to the Cities all of its right, title and interest in and to 1 CFS which is 723.97 AFA (or a portion thereof in the event that this alternative is selected by the Cities pursuant to Section 4.9.1.3), of one of Newmont's groundwater rights in the Goshute Valley groundwater basin having a base right with a non-mining manner of use ("Replacement Water Right"). Newmont agrees to encumber the Replacement Water Right, as follows:

4.9.1.1 Selection of Replacement Water Right. Within thirty (30) days of the Effective Date of this Agreement, Newmont will provide the Cities with a list of the groundwater rights in Goshute Valley that are owned or controlled by Newmont. Within ten (10) days thereafter, the Cities shall select a water right from that list, and provide notice to Newmont of the Replacement Water Right that will be subject to the conveyance described in Section 4.9.1.

4.9.1.2 Water Right Change Applications. Newmont agrees to file, jointly with the Cities and utilize diligent and commercially reasonable efforts to obtain approval of, a Change Application for the Replacement Water Right. The Change Application will request that the Replacement Water Right have a municipal manner of use providing water to Newmont for its mining and milling operations, with the place of use to include the Cities' existing municipal place of use and the Long Canyon Project area, and the point of diversion to be located at Newmont's Production Well. The Cities role as co-applicant is not a conveyance of any right, title or ownership interest in the Replacement Water Right and the Cities are gaining no interest in the Replacement Water Right until after a Contingency Event. Newmont and the Cities agree that the provisions of Section 4.9 provide the required protection to the Cities in order for the Cities to provide Johnson Water Surplus Service to Newmont for the Long Canyon Project.

4.9.1.3 Conveyance to Cities and Conveyance to Newmont. In the event that either of the Contingency Events occurs within the time period described in Section 4.9, the Cities may elect one of the following remedies pursuant to Section 4.9, and shall provide written notice to Newmont of the Cities' election of the below remedies within fifteen (15) days of the Contingency Event.

(a) Within forty-five (45) days of the date of the occurrence of the first Contingency Event described in Section 4.9, Newmont will convey a portion of the Replacement Water Right which portion will be equal to the difference between the actual flow of Johnson Spring on the date of this Contingency Event and 1 cfs ("Described Portion"). Newmont will convey that Described Portion of the Replacement Water Right to the Cities, each as to an undivided one-half interest, and the Cities will, in exchange, concurrently convey to Newmont the same Described Portion of the water right for the Johnson Surplus Water and the Cities will retain ownership of the remainder of the water right for the Johnson Surplus Water. The Cities remaining portion of the water right for the Johnson Surplus Water shall be senior in priority to Newmont's Described Portion of the water right for the Johnson Surplus Water.

(b) Within forty-five (45) days of the date of the occurrence of the first Contingency Event, Newmont will convey the entire Replacement Water Right to the Cities, each as to an undivided one-half interest, and the Cities agree to exchange with Newmont the water right for the Johnson Surplus Water described in Section 4.1 with Newmont's concurrent conveyance to the Cities of the Replacement Water Right.

5. Change Applications for Cities Surplus Water and Johnson Surplus Water. During the Permitting Period of the Cities Surplus Water Service Period and the Permitting Period of the Johnson Surplus Water Service Period Newmont, and the Cities, utilizing diligent and commercially reasonable efforts, will jointly prepare and file Change Applications with the State Engineer's Office as follows:

(i) Cities Surplus Water: to amend the point of diversion of the Cities Surplus Water to include Newmont's Production Well as a point of diversion and to amend the place of use for the Cities Surplus Water to include the Long Canyon Project area as described by the PoO; and

(ii) Johnson Surplus Water: to change the place of use for the Johnson Surplus Water to include the Long Canyon Project area as defined in the PoO.

No change will be requested as to the Cities' municipal manner of use of the water rights which is necessary to maintain for the Cities Surplus Water Service and the Johnson Surplus Water Service pursuant to this Agreement. It is understood and agreed that the water provided by the Cities will be used by Newmont in the Long Canyon Project area for mining and milling purposes. Upon expiration of the Cities Surplus Water Service Period and the Johnson Surplus Water Service Period, the Cities will continue to use its Cities Surplus Water and Johnson Surplus Water for municipal purposes in its service territories.

The Change Applications will be filed in the name of Cities and Newmont as co-applicants, and both Cities and Newmont will have the right to review the applications before they are filed. Newmont's role as co-applicant pursuant to this Section is not intended to result in the conveyance of an ownership interest in those water rights other than obtaining the Cities Surplus Water and Johnson Surplus Water as provided in this Agreement. Newmont is gaining no greater interest in the subject water rights than the right to service that is included in the terms of this Agreement. At the expiration or termination of the term of this Agreement, all right, title and interest in the Cities Surplus Water Rights and Johnson Surplus Water Rights will remain with Cities except as otherwise provided in Section 4.9.

5.1 Use of Water. Newmont will be solely responsible, at its sole cost and expense, for diverting, transporting, storing and treating the Cities Surplus Water, including, but not limited to, constructing the Newmont Production Well for the Long Canyon Project area. In addition, Newmont shall also pay all costs and expenses to divert, transport, store and treat the Johnson Surplus Water as set forth in Section 4.

5.2 Change Applications Joint Effort. The parties hereto acknowledge and agree that if any of the Change Applications are protested in any proceedings before the State Engineer, the Cities and Newmont will jointly pursue and defend against any such protest in any administrative hearing or appeal as may be required to obtain the necessary entitlements and permits for the Cities Surplus Water and the Johnson Surplus Water. Newmont shall pay all engineering, legal and other costs that the Cities incur in such defense of the Change Applications.

5.3 Reversionary Change Applications. In the event this Agreement is terminated prior to commencement of the Operational Periods, Change Applications may be necessary to revert the Cities Surplus Water and Johnson Surplus Water to their status on the Effective Date of this Agreement. Further, if this Agreement terminates by its own terms at the end of the Operational Periods, Change Applications may be necessary to revert the Cities Surplus Water and Johnson Surplus Water to their status on the Effective Date of this Agreement. In either event, Cities shall determine whether such Reversionary Change Applications are necessary, and if they are, Cities will file such Reversionary Change Applications at Newmont's sole cost and expense.

5.4 Costs and Fees. Newmont shall be responsible for all legal, administrative and engineering costs and fees, including permit fees, associated with the Change Applications and maintenance of the water rights for the Cities Surplus Water and the Johnson Surplus Water.

5.5 Annual Filings for Cities Surplus Water and Johnson Surplus Water. Newmont will file, as necessary, applications for extensions of time, proofs and other appropriate documents for the purpose of maintaining the validity of the Change Applications and for obtaining the maximum use of the subject water rights. Newmont will provide copies to the Cities of all such filings that are made by Newmont. Newmont shall not be responsible for any act, omission, condition, event or State Engineer decision that affects the validity of the approved Change Applications if such act, omission, event or State Engineer decision is not reasonably foreseeable or outside of the control of Newmont and the Cities. In the event that extraordinary actions, including an administrative hearing or appeal, are necessary to maintain the validity of the Change Applications, and to obtain the maximum use of the subject water rights, Newmont shall be responsible for the costs associated with such actions. All direct costs and filing fees, including permit fees, shall be paid by Newmont, as provided in Section 5.4 above.

5.6 Failure to Obtain Water Right Approvals. As set forth in Section 3.3.3, in the event that the Change Applications for the Cities Surplus Water, Johnson Surplus Water and Replacement Water Right are not approved by the State Engineer or any appeals or actions are not resolved in a manner which approves the Change Applications in the form and manner set forth in this Agreement, the Approvals required to achieve the Approval Date shall be deemed to not be obtained unless Newmont specifically waives in writing such variance from the requirements of this Agreement. In addition, if any approval of the Change Applications by the State Engineer results in a material and adverse change in Newmont's ability to utilize the Cities Surplus Water and Johnson Surplus Water for its Long Canyon Project for mining, mineral processing and related uses, Newmont may terminate this Agreement without any further obligation or liability under this Agreement.

Except as to the provisions of Section 3.3.2, all payments and other obligations of Newmont in this Agreement are subject to the condition precedent that the municipal use in the Change Applications concerning the Johnson Surplus Water and the Cities Surplus Water allows Newmont to use the Johnson Surplus Water and Cities Surplus Water as provided by the Cities for mining and mineral processing purposes.

6. Representations and Warranties by Newmont and Cities. Newmont agrees to accept Surplus Water "as is, where is" and the Cities make no representations or warranties as to the quality or quantity of the water or water rights, other than the following representations and warranties:

(a) Except as otherwise allowed for in this Agreement, during the Permitting Period, Newmont represents and warrants that it will not perform any work or other

activities on any property which would have a material and adverse impact on any water supply used by West Wendover or Wendover or on any property owned by West Wendover or Wendover without the prior written notification of the Cities.

(b) That West Wendover and Wendover each represent and warrant that together they hold all right, title and interest in the Cities Surplus Water and Johnson Surplus Water;

(c) That the Cities have not encumbered prior to the Effective Date, and will not encumber after the Effective Date until expiration of this Agreement, the Cities Surplus Water or the Johnson Surplus Water and Associated Infrastructure in any manner except those existing encumbrances on the Johnson Surplus Water and the Cities Surplus Water which will be paid and satisfied by the Cities upon Newmont's direct payment of the Johnson Surplus Water Payment for the initial Operational Period of the Johnson Surplus Water Service Period;

(d) West Wendover and Wendover have not conveyed or transferred, and will not convey, transfer or agree to convey or transfer, any interest in the Cities Surplus Water or Johnson Surplus Water to any third party during the term of this Agreement;

(e) That the Cities have maintained the Cities Surplus Water and Johnson Surplus Water in good standing with the State Engineer's Office. The Cities agree to maintain these water rights in good standing until such time as the Change Applications described in Section 3.3.3 are approved by the State Engineer, and thereafter subject to Section 5.5 above.

7. Compliance with Utah Law by Wendover. The Parties acknowledge as follows:

(a) That Utah Constitution, Article 11, Section 6 provides as follows:

No municipal corporation, shall directly or indirectly, lease, sell, alienate or dispose of any waterworks, water rights or sources of water supply now, or hereafter to be owned or controlled by it; but all such water works, water rights and sources of water supply now owned or hereafter to be acquired by any municipal corporation, shall be preserved, maintained and operated by it for supplying its inhabitants with water at reasonable charges: Provided, That nothing herein contained shall be construed to prevent any such municipal corporation from exchanging water-rights, or sources of water supply, for other water-rights or sources of water supply of equal value, and to be devoted in like manner to the public supply of its inhabitants.

(b) That Utah Code Ann. § 10-8-14 as amended provides as follows:

(1) A city may:

(a) construct, maintain, and operate waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telecommunications lines, cable television lines, or public transportation systems;

(b) authorize the construction, maintenance and operation of the works or systems listed in Subsection (1)(a) by others;

(c) purchase or lease the works or systems listed in Subsection (1)(a) from any person or corporation; and

(d) sell and deliver the surplus product or service capacity of any works or system listed in Subsection (1)(a), not required by the city or the city's inhabitants, to others beyond the limits of the city, except the sale and delivery of cable television services or public telecommunications services is governed by Subsection (3).

(2) If any payment on a contract with a private person, firm, or corporation to construct waterworks, sewer collection, sewer treatment systems, gas works, electric light works, telecommunications lines, cable television lines, or public transportation systems is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

(3) A city's actions under this section related to works or systems involving public telecommunications services or cable television services are subject to the requirements of Chapter 18, Municipal Cable Television and Public Telecommunications Services Act.

The duly elected officials of the City of Wendover, Utah expressly acknowledge and agree that the City of Wendover, Utah is exchanging with Newmont the Associated Infrastructure of the Johnson Surplus Water for the Two New Wells and Associated Infrastructure pursuant to Utah Constitution, Article 11, Section 6. Furthermore, the City of Wendover, Utah expressly acknowledge and agree that the City of Wendover, Utah is providing Cities Surplus Water and Johnson Surplus Water pursuant to Utah Code Ann. § 10-8-14 as amended. Upon termination of this Agreement, Johnson Springs and the Associated Infrastructure shall be returned to the Cities by Newmont.

(c) Pursuant to Article XI, Section 6 of the Constitution of the State of Utah and Utah Code Ann., §10-8-14(1)(d), Wendover shall retain the sole and absolute right to recall its 50% share of the Cities Surplus Water at any time Wendover determines in its sole and absolute discretion that its 50% share of the Cities Surplus Water or any part thereof is no longer surplus to the needs of Wendover. The Parties agree, however, that Wendover shall not recall all or any part of the Surplus Water except to the extent of a legitimate shortage condition whether caused by drought or by system failures. The

Parties further agree that in the event Wendover declares a shortage condition and elects to recall all or part of the Cities Surplus Water, Newmont shall be entitled to a refund of amounts paid for use of the Cities Surplus Water in direct proportion to the percentage of Cities Surplus Water recalled hereunder. Upon the elimination of the shortage condition, if it occurs during the term of this Agreement or any extension thereof, Wendover will again provide water it determines to be surplus to its then current needs from its 50% share of the Cities Surplus Water in accordance with law and the terms and conditions of this Agreement.

8. Compliance with Statutory Requirements by West Wendover. This Agreement is conditioned upon the City of West Wendover, Nevada complying with, and having the ability to comply with, Nevada statutory requirements for providing water to Newmont. The Cities represent that they have made good faith efforts to comply with these legal mandates.

9. Covenant of No Protests or Appeals. Provided Newmont is not in default of this Agreement and any act or omission, by Newmont as described below, does not adversely affect or have the potential to adversely affect the health, safety or welfare of the citizens of the Cities, or the existing and future sources of the Cities' water supply or water rights, West Wendover and Wendover each hereby covenant that for the duration of the Agreement, as may be extended, they will not protest, appeal or oppose in any manner, any permitting or approval process of any federal, state, or county or other governmental entities or regulatory agencies applications, approvals, permits, rulings, and decisions including, but not limited to, the Nevada State Engineer and the BLM regarding the Long Canyon Project including, but not limited to, the water rights Change Applications or environmental impact statements, record of decision, or plan of operations approvals. Notwithstanding the foregoing, nothing in this section shall be interpreted to in any manner preclude, limit or restrict any governmental function of the Cities and any provision which operates in such manner shall be void.

10. General Provisions.

10.1 Term of Agreement. Except as otherwise set forth herein, the term of this Agreement will expire upon the expiration of both the Cities Surplus Water Service Period and its extensions and the Johnson Surplus Water Service Period, and its extensions. All unsatisfied obligations which accrued during the term of this Agreement shall survive the termination or expiration of the Agreement and continue until fully performed and satisfied. Unless first rejected in writing by Cities, at the closure of all Newmont's mining and mineral processing activities for the Long Canyon Project which activities of Newmont, utilizing its own water rights, may extend past the expiration or earlier termination of this Agreement, as determined by Newmont in its sole and absolute discretion, Newmont will convey to West Wendover and Wendover, each as to an undivided one-half interest, the following: all of its right, title and interest in the Newmont Production Well and the Associated Infrastructure which shall be

designed and built to municipal standards, meet applicable drinking water standards and capable of producing up to 4.5 CFS. If during the term of this Agreement, a Contingency Event occurs and Newmont conveys the Replacement Water Right to the Cities and concurrently the Cities exchange with Newmont the water right for the Johnson Surplus Water, then at closure of all of Newmont's mining and mineral processing activities, Newmont agrees to physically connect the Newmont Production Well to the Cities 24" Johnson Springs transmission line at its sole cost and expense, subject to written approval of the connection design by the Cities. Newmont will satisfy all governmental requirements and required approvals for this connection and Newmont shall provide an easement to the Cities for access to the Production Well.

10.2 Notices. All notices, requests, demands and other communications given, or required to be given under this Agreement, shall be in writing, duly addressed to the parties shown below. Any notices properly addressed, sent by registered or certified mail, return receipt requested, shall be deemed to have been duly given and received seventy-two (72) hours after they are deposited in the United States mail, postage prepaid. Notices shall be deemed delivered and received at the time delivered if properly addressed and delivered to the addresses set forth in this Section during normal business hours or personally delivered to the person to whose attention they are addressed or sent by telecopy to a party's regular business telecopier during regular business hours. Notice sent by any other manner shall be effective upon actual receipt of the addressee. Any party may change its address for purposes of this Section by giving notice to the other party and to Escrow Holder, as provided in this Section.

If to Newmont: Newmont Mining Corporation
 1655 Mountain City Hwy.
 Elko, Nevada 89801
 Attention: Legal Department

If to West Wendover: City Manager
 P.O. Box 2825
 West Wendover, Nevada 89883

With Copy to: City Attorney
 Goicoechea, Di Grazia, Coyle & Stanton, Ltd.
 530 Idaho Street
 Elko, Nevada 89801

If to Wendover: City Administrator
 P.O. Box 430
 Wendover Utah 84083

With Copy to: City Attorney : Joel Linares
 429 East Main Street
 Grantsville, Utah 84029

10.3 No Assignment. This Agreement may not be assigned in any manner by any Party to any third party, except that Newmont's interest may be assigned and the obligations delegated to its related and affiliated entities with the Cities' prior written approval, which approval shall not be unreasonably withheld.

10.4 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument.

10.5 Memorandum. The Parties agree to execute a Memorandum of Agreement at the same time as the Effective Date of the Agreement, which Memorandum of Agreement shall be recorded by Newmont in the Official Records of Elko County, Nevada.

10.6 Time of Essence. Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.

10.7 Further Assurances. The parties agree to execute such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement.

10.8 Severability. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but, if any provision of this Agreement shall be invalid or prohibited thereunder, such invalidity or prohibition shall be construed as if such invalid or prohibited provision had not been inserted herein and shall not affect the remainder of such provision or the remaining provisions of this Agreement.

10.9 Interpretation. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any of the parties hereto. Section headings of this Agreement are solely for convenience of reference and shall not govern the interpretation of any of the provisions of this Agreement. References to "Sections" are to sections of this Agreement, unless otherwise specifically provided.

10.10 Successors and Assigns. Subject to Section 10.3, this Agreement shall be binding upon and inure to the benefit of each of the parties hereto and to their respective successors, and assigns.

10.11 No Third-Party Beneficiaries. No third party shall have any rights hereunder.

10.12 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nevada.

10.13 Rights and Remedies. The Parties shall have all rights and remedies provided under Nevada law for a breach of this Agreement, these rights and remedies shall not be mutually exclusive, and the exercise of one or more of these rights and remedies shall not preclude the exercise of any other rights and remedies.

10.14 Entire Agreement. This Agreement shall constitute the entire agreement between the Parties and supersedes any prior understanding, representation, or agreement of the Parties regarding the subject matter hereof.

10.15 Modification of Agreement. Any modification of this Agreement or additional obligation assumed by any Party in connection with this Agreement shall be binding only if evidenced in writing signed by each Party or an authorized representative of each Party.

10.16 No Waiver. No delay or failure by any Party to exercise any right under this Agreement, and no partial or single exercise of that right shall constitute waiver of that or any other right, unless expressly provided herein. Any Party may, by notice delivered in the manner provided in this Agreement, but shall not be under obligation to, waive any of its rights or any conditions to its obligations hereunder, or any covenant or duty of any other Party. No waiver shall affect or alter the remainder of this Agreement, and each and every covenant, duty and condition hereof shall continue in full force and effect with respect to any other then existing or subsequently occurring breach.

10.17 Authorization. Each individual executing this Agreement does thereby represent and warrant to each other so signing that he or she has been duly authorized to sign this Agreement in the capacity and for the entity set forth where he or she signs.

10.18 Exhibits. All Exhibits attached hereto are incorporated herein by reference.

10.19 Recitals. All Recitals set forth on page 1 are hereby incorporated into this Agreement.

10.20 Attorney's Fees. Should any party be required to seek legal action to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney fees and costs.

10.21 Jurisdiction/Venue. Jurisdiction and venue for any action to interpret or enforce any terms and conditions of this Agreement shall be in the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, or in the Federal District Court of Nevada, Northern Division.

10.22 Force Majeure. Neither party shall be liable for damages due to delay or failure to perform any obligation under this Agreement, or any agreement between the Parties arising from or in relation to this Agreement, if such delay or failure results directly or indirectly from circumstances beyond the control of such Party. Such circumstances shall include, but shall not be limited to, acts of God, acts of war, civil commotions, riots, strikes, lockouts, acts of the government in either its sovereign or contractual capacity, perturbation in telecommunications transmissions, inability to obtain suitable equipment or components, accident, fire, water damages, flood, earthquake, or other natural catastrophes. In addition and without limitation, except as otherwise provided in this Agreement, neither Party shall be liable to the other for delays or defaults due to unforeseeable contingencies beyond the Party's reasonable control and without its fault or negligence. Notwithstanding the foregoing, this Section 10.22 (Force Majeure) shall not apply to any obligation consisting solely of the payment of money by one Party to the other Party.

10.23 No Partnership or Joint Venture. The relationship between Newmont and the Cities that is created by this Agreement is strictly contractual and does not constitute a partnership or joint venture.

10.24 No Liability. Notwithstanding any other provision of this Agreement, under no circumstances shall any of the Parties be liable to the other(s) for consequential, incidental, punitive, or exemplary damages arising under or with respect to this Agreement, irrespective of the theory upon which the claim is brought.

10.25 Indemnification. The parties, together with their successors and assigns, undertake to indemnify the other parties and to defend them against any and all liabilities, losses, damages, expenses, suits, fees, fines, penalties, attorney fees, claims, actions, debts, charges, demands, costs (including court costs) or judgments, and against all liability, losses and damages of any nature whatever, against such parties and which such parties shall or may at any time sustain or be put to by reason of or in relation to the acts or omissions of the other party(ies). This covenant includes, but is not limited to, Newmont's agreement to indemnify and defend Cities from any claim made that is related to actions by Newmont that are alleged to degrade the

drinking water supply of Cities. Notwithstanding the foregoing, nothing in this section shall be interpreted so as to in any way limit any governmental or other immunity which would otherwise be available to the Cities.

10.26 Hazardous Substances.

(a) Newmont shall not use, produce, store, release, dispose or handle in or about the vicinity of the Newmont Production Well, Johnson Springs or any other water sources described in this Agreement any Hazardous Substance unless it does so in compliance with all applicable Environmental Laws.

(b) Newmont agrees to indemnify and defend Cities from any claim of non-compliance of applicable Environmental Laws caused by Newmont in connection with Newmont carrying out the terms of this Agreement, including but not limited to degrading the drinking water supply of Cities.

10.27 Liens and Encumbrances. Newmont shall at all times keep any property owned by the Cities that is the subject of this Agreement free and clear of any and all liens or claims. Within ten (10) days following the imposition of any lien resulting from any repair, addition or improvement, Newmont shall cause such lien to be released of record by payment of money or posting of a proper bond. Newmont hereby agrees to indemnify, defend and hold harmless the Cities from and against any liens, claims, demands, causes of action, proceedings, fines, penalties, costs and expenses (including reasonable attorneys' fees) relating in any way to or arising out of any labor, material, equipment, services or work performed on or provided to any property of the Cities properly utilized by Newmont under this Agreement, owned by Newmont, or in any manner utilized by Newmont in connection with the Long Canyon Project, during the term of this Agreement.

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed on the date set forth next to their respective signature.

NEWMONT:

NEWMONT USA LIMITED

Dated: 10-28-13

By: 
Name: THOMAS KERIR
Title: President

WEST WENDOVER:

CITY OF WEST WENDOVER, NEVADA

Dated: 10-15-13

By: Emily Carter
Name: EMILY CARTER
Title: MAYOR

Attest: Anna E. Bertomeo
Anna E Bertomeo
CITY OF WENDOVER, UTAH

WENDOVER:

Dated: 10-17-13

By: Mike Crawford
Name: Mike Crawford
Title: mayor

Attest: Mariah L. Murphy
Mariah L. Murphy

EXHIBIT "A"
CPI Adjustment for Cities Payments

Newmont's payments to the Cities, as described in Sections 3.5 and 4.5, shall be adjusted as follows: The base for computing the adjustment is the Consumer Price Index for All Urban Consumers (CPI-U) for Western Region, All Items (1982-1984=100), published by the United States Department of Labor, Bureau of Labor Statistics ("Index"), which is in effect on the Approval Date ("Beginning Index"). The Index published most immediately prior to the current Adjustment Date in question ("Extension Index") is to be used in determining the amount of the adjustment. If the Extension Index has changed from the Beginning Index, the adjustment to the Cities Payments shall be determined by multiplying the Cities Payments for the month immediately preceding the Adjustment Date by a fraction, the numerator of which is the Extension Index and the denominator of which is the Beginning Index.

If the Index is changed so that the base year differs from that used as of the month immediately preceding the month in which the Approval Date occurs, the Index shall be converted in accordance with the conversion factor published by the United States Department of Labor, Bureau of Labor Statistics. If the Index is discontinued or revised, such other government index or computation with which it is replaced shall be used in order to obtain substantially the same result as would be obtained if the Index had not been discontinued or revised.