



**Remote Meeting Instructions for the April 15, 2020 Water & Sewer Board Meeting:**

In order to comply with all health orders and guidelines, and the Governor's March 25, 2020, Stay-at-Home Order intended to stop the spread of the COVID-19 (Coronavirus), **no physical location, including the City Council Chambers, will be set up for viewing or participating in this Board meeting.**

The **only** way to view this board meeting is to follow the instructions below to watch the YouTube live stream.

- From your laptop or computer, click the following link or enter it manually into your Web Browser: ([www.youtube.com/CityofGreeley](http://www.youtube.com/CityofGreeley))
- Clicking the link above will take you to the City of Greeley's YouTube Channel.
- Once there, you will be able to view the board meeting!

Please contact Shannon Metcalf, Office Manager with any questions you might have at 970-350-9818. Thank you!

# WATER & SEWER BOARD AGENDA

Wednesday April 15, 2020  
2:00 p.m.

**MEETING WILL BE LIVE STREAMED ON YOUTUBE.COM DUE TO CITY CLOSURES  
RELATED TO COVID-19**

**Click on link below:**

<https://www.youtube.com/user/CityofGreeley>

1. Roll Call:                      \_\_\_\_\_ Chairman Harold Evans                      \_\_\_\_\_ Vice Chairman Mick Todd  
   \_\_\_\_\_ Mr. Bob Ruyle    \_\_\_\_\_ Mr. Fred Otis  
   \_\_\_\_\_ Mr. Joe Murphy    \_\_\_\_\_ Mr. Tony Miller  
   \_\_\_\_\_ Mr. Manuel Sisneros    \_\_\_\_\_ Mayor John Gates  
   \_\_\_\_\_ Mr. Roy Otto    \_\_\_\_\_ Mrs. Renee Wheeler
2. Approval of Minutes
3. Approval of and/or Additions to Agenda

## **Consent Agenda**

The Consent Agenda is a meeting management tool to allow the Board to handle several routine items with one action.

The Board or staff may request an item to be “pulled” off the Consent Agenda and considered separately under the next agenda item in the order they were listed.

4. No items on Consent Agenda

## **End of Consent Agenda**

5. Welcome New Employees
6. April 2020 Water Supply Update and Finding of Water Sufficient Year
7. Hasbrouck Farm Disposition
8. Colorado Department of Transportation Intergovernmental Agreement Update
9. 1<sup>st</sup> Quarter Water Court Update
10. Agricultural Land and Water Lease Policy



*If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Shannon Metcalf at CELL?.*

11. Preliminary 2021-2022 Budget Planning
12. Legal Report
13. Executive Session
  - Matters Related to Potential Acquisition of Water Storage
  - Matters Related to Potential Acquisition of Sorin Water Rights
  - Matters Related to Potential Acquisition of Fitz and Collyer Water Rights
14. Purchase and Sale Agreement and Lease Agreements for Sorin Water Rights
15. Purchase and Sale Agreement for Fitz and Collyer Water Rights
16. Director's Report
  - Board and City Council Water Infrastructure Tour – July 2020
  - Meadow Gold Pretreatment Update
  - COVID-19 W&S Response and Service Update
17. Such Other Business That May Be Brought Before the Board and Added to This Agenda by Motion of the Board-



*If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Shannon Metcalf at CELL?.*

**City of Greeley  
Water and Sewer Board  
Minutes of March 18, 2020  
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:01 p.m. on Wednesday, March 18, 2020.

**1. Roll Call**

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Bob Ruyle, Joe Murphy, Tony Miller, Manny Sisneros, and Roy Otto

Water and Sewer Department Staff:

Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water Resources Manager Jen Petrzela, Water Resources Planning Manager Kelen Dowdy, Special Projects Engineer Mary Gearhart, Water Resource Admin. I, Civil Engineer III Peter Champion, Leah Hubbard, Water Resource Admin. II Cole Gustafson, Water Compliance Manager Lauren Worley, and Senior Administrative Specialist Ettie Arnold and Office Manager Shannon Metcalf

Legal Counsel:

Counsel to Water & Sewer Board Attorney Jim Noble, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, Environmental and Water Resources Attorney Aaron Goldman

Guests:

Samantha Kepley with Brown and Caldwell and Cortney Brand with LRE Water

**2. Approval of Minutes**

Mr. Miller moved, seconded by Vice-Chairman Todd, to approve the February 19, 2020 Water and Sewer Board meeting minutes. The motion carried 6-0.



**3. Approval of and/or Additions to Agenda**

Mr. Chambers requested that Item 12 be moved after Item 8 to accommodate COVID-19 virtual meeting participants and the technical fluidity from regular session to executive session.

**4. Welcome New Employees**

Mr. Chambers provided an introduction of new Water and Sewer Department employees starting this month, noting the importance of Greeley building a strong water quality team to support all water & wastewater utility functions.

**5. 4<sup>th</sup> Quarter CIP Update**

Mr. Prior presented the 4<sup>th</sup> Quarter 2019 CIP report. He reported on the status of distribution, transmission, man-hole rehab and water treatment plant projects. Active projects include the WPCF Blower Repairs, Bellvue Needs Assessment and Phased Filter Replacement Project, Bellvue Road & Bridge Replacement and North Greeley Sewer Main Extension, Phase IIA.

**6. Farm and Water Lease Report**

Ms. Petrzelka explained that City manages an agricultural lease program that includes Water Leases and Water and Farm Leases in the Greeley-Loveland Irrigation Company, Water Supply and Storage Company, New Cache Irrigation Company and Cache la Poudre Reservoir Company, Windsor Reservoir and Canal Company, and Larimer and Weld Irrigation Company and Larimer and Weld Reservoir Company. A Water Lease involves leasing the water rights associated with historically irrigated lands for continued use of irrigation, often to the seller of the water rights. A Water and Farm lease includes a lease of both water and historically irrigated land for continued use of irrigation. Leases are frequently entered into after the acquisition of the water rights in order to support regional agriculture and to maintain beneficial water use on the property necessary for a future change case. Board gave direction to staff to incorporate feedback regarding performance and termination provisions, and present these revisions during April's Board meeting.

**7. Legal Report**

Jim Noble of Welborn, Sullivan, Meck & Tooley provided this month's legal report to the Board.

1. **Statements of Opposition:** Based on review of the January, 2020 Water Court Resume, Mr. Noble reported that staff and water counsel recommend that the Board authorize filing a statement of opposition in the following cases:
  - a. Case Number: **20CW3011** Application of Town of Johnstown for a change of water rights for 346.75 shares of the Consolidated Home Supply Ditch and Reservoir Company. The applicant is seeking to change the use of these shares for municipal uses. Applicant proposes to change the water rights based on a prior ditch-wide analysis. Mr. Noble recommended Greeley file a statement of opposition to ensure the applicable legal standards have been satisfied and to protect against any injury to Greeley's water rights on the Big Thompson River.
  - b. Case Number: **20CW3000** Application of Holcim (US) Inc. for approval of a plan for augmentation. This is an application for an augmentation plan to replace depletions to the Cache la Poudre River caused by several quarry ponds. The replacement supply comes from a lease from the City of Greeley of water supplies in storage at Milton Seaman Reservoir that are decreed for augmentation. Mr. Noble recommended that Greeley file a statement of opposition to ensure all the terms of the lease are complied with and that out of priority depletions are properly tracked in time, location, and amount.

Vice Chairman Todd made a motion, seconded by Mr. Miller, that the Board authorize the filing of a statement of opposition in Case Nos. 20CW3011, and 20CW3000, and for staff and legal counsel to seek resolution of issues raised by these cases consistent with Water and Sewer Board Resolution No. 3 (2015). The motion carried 7-0.

## 8. Director's Report

Mr. Chambers reported on the following items:

- Summer Tour Dates:
  - Board/Council Options
  - Citizen Tour – August 12<sup>th</sup> or August 21<sup>st</sup>
- Non-Potable Conversion Project at National Board of Chiropractic Examiners
- Life After Lawn turf replacement water conservation program participation update
- Bureau of Reclamation \$1.4M Water Smart Grant for Advanced Metering Project
- COVID 19 Workforce Safety and Customer Service Update

## 9. Executive Session

Vice Chairman Todd moved, seconded by Mr. Miller, to hold an executive session to address the following matters, as provided by C.R.S. § 24-6-402(4)(a), (b) and (e) and Greeley Municipal Code § 2.04.020(a) (1), (2) and (5):

1. To receive advice from their attorney and determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators on matters related to potential acquisition of water rights based on current water market.
2. To receive advice from their attorney and determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators on matters related to the potential acquisition of water storage.

The motion carried 7-0.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Manual Sisneros, Joe Murphy, Roy Otto, Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water Resources Operations Manager Jennifer Petrzelka, Water Resources Planning Manager Kelen Dowdy, Water Administrator II Cole Gustafson, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, Senior Administrative Specialist and Office Manager Shannon Metcalf

Present via video conference:

Tony Miller, Fred Otis, Counsel to Water and Sewer Board Jim Noble, Environmental and Water Resources Attorney Aaron Goldman, Civil Engineer III Peter Champion, Special Projects Engineer Mary Gearhart, Samantha Kepley, and Groundwater Engineer Cortney Brand

This executive session was authorized by Subsections (a),(b) and (e) of Section 24-6-402(4) of the Colorado Revised Statutes, and Subsections (1), (2) and (5) of Section 2.04.020 (a) of the Greeley Municipal Code.

The Executive Session ended at 4:49 p.m. and the regular meeting resumed.

**11. Such Other Business That May be Brought before the Board and Added to This Agenda by Motion of the Board**

There were no additional items brought before the Board and added to the agenda.

Chairman Evans adjourned the meeting at 4:51 p.m.

\*\*\*\*\*

\_\_\_\_\_  
Harold Evans, Chairman

\_\_\_\_\_  
Shannon Metcalf, Office Manager

**WATER & SEWER BOARD AGENDA   APRIL 15, 2020**

ENCLOSURE \_\_\_\_\_      NO ENCLOSURE   X  

ITEM NUMBER:                      5

TITLE:                                      WELCOME NEW EMPLOYEES

RECOMMENDATION:      INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

**WATER & SEWER BOARD AGENDA    APRIL 15, 2020**

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:                    6

TITLE:                            APRIL 2020 WATER SUPPLY UPDATE AND  
FINDING OF WATER SUFFICIENT YEAR

RECOMMENDATION:      APRIL 2020 WATER SUPPLY UPDATE AND  
FINDING OF WATER SUFFICIENT YEAR

**ADDITIONAL INFORMATION:**

Staff reports to the Water and Sewer Board (“Board”) in April, July, and November of each year on Greeley’s water supply status. In April, the Board makes a declaration concerning the adequacy of the Water Year. Projected storage is presently at 29,054 acre-feet exceeding the target storage volume of 20,000 acre-feet.

Based on projected storage, staff recommends that the Board declare an “Adequate Water Year,” with the normal three days a week watering schedule and authorize staff to rent out available excess water supply, so long as the target storage volume of 20,000 acre-feet is maintained.



# MEMORANDUM

---

TO: Sean Chambers, Water and Sewer Director  
FROM: Jen Petrzelka, Water Resources Operations Manager  
DATE: April 7, 2020  
RE: April 2020 Water Supply Update

---

## **ISSUE**

In accordance with the Drought Emergency Plan, staff will report the water supply status to the Greeley Water and Sewer Board ("Board") in April, July and November of each year. Previous modeling analysis has shown that the amount of water needed in storage to supply the citizens of Greeley through an extreme drought is approximately 20,000 acre-feet. When this target storage level is met, the Board can declare an "adequate water year" with normal watering restrictions.

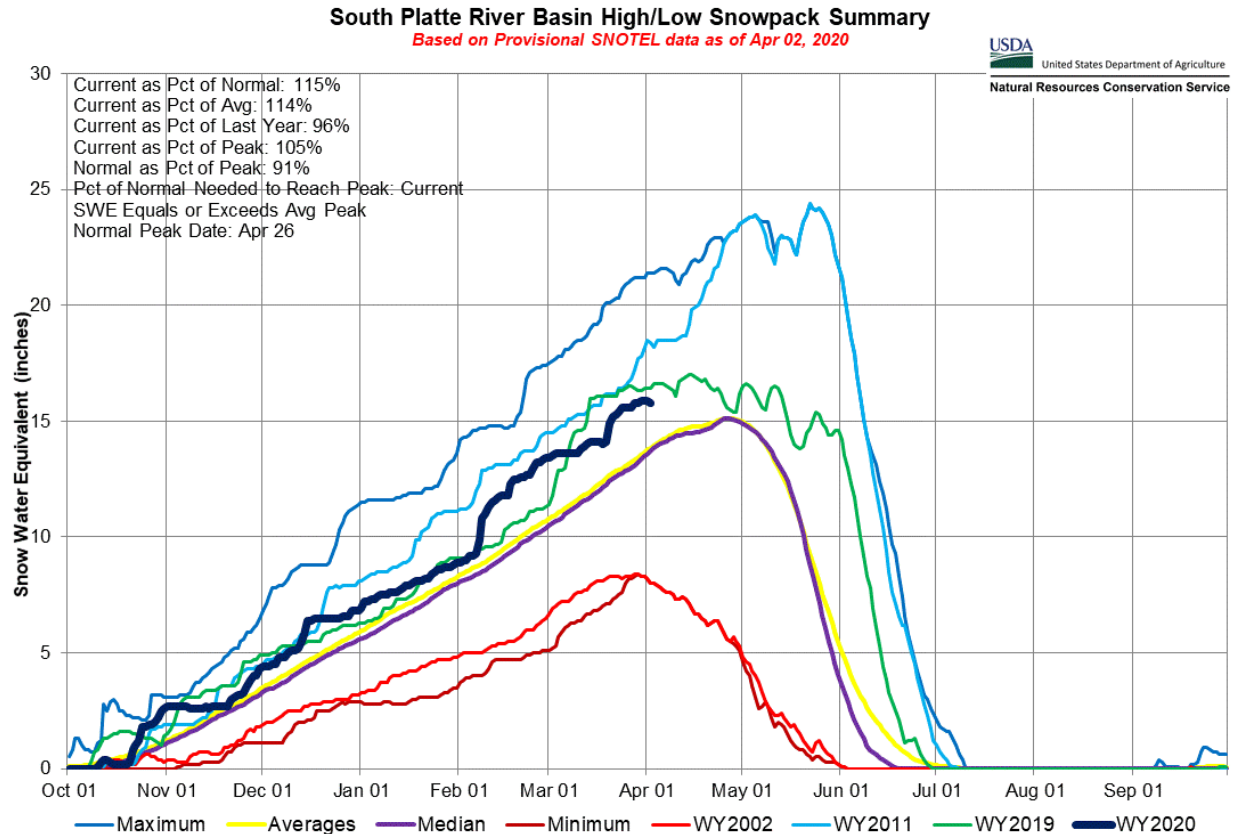
## **BACKGROUND**

The beginning of water year 2020 experienced several precipitation events resulting in an above average snowpack throughout the season with the South Platte River basin and Poudre River basin at 115% of average as of April 1. Statewide snowpack average is 106% of average. Water supply conditions are above average as indicated by a Colorado SWSI<sup>1</sup> value of 1.34 for the South Platte basin and reservoir storage in the South Platte basin at 82% of capacity. The Upper Colorado River basin reservoir storage is at 74%. Streamflows are also expected to be above average for the Cache la Poudre and Big Thompson River basins ('Northern Water Streamflow Forecasts'). Overall, snowpack and reservoir conditions are in good shape.

In November 2019, the majority of the northern Colorado was drought free, however drought conditions worsened towards the west and southwest. With the above average precipitation received so far, drought conditions have lessened with only abnormal dryness to moderate drought in the southern part of the state.

---

<sup>1</sup> The Surface Water Supply Index (SWSI) was developed by the Colorado Division of Water Resources and the U.S.D.A Natural Resources Conservation Service (NRCS). This is an indicator of mountain-based water supply conditions for the major river basins in Colorado. It is based on streamflow, reservoir storage, and precipitation. The SWSI scale goes from -4 (severe drought) to +4 (abundant supply) with 0 being near normal supply.



The Greeley System Storage Analysis table for Water Year 2020 shows the April 2021 storage level will be approximately 25,000 acre-feet. This is after collateralizing 4,000 acre-feet of C-BT for Windy Gap operations in the Northern system. Northern Water declared a 70% C-BT quota at its April 9<sup>th</sup> board meeting to satisfy demand for 2020 and possibly increase the amount of rental water available to farmers from municipalities.

The WY2020 projections for the Greeley Loveland Irrigation system are based on dry year yields. However, given the streamflow predictions, current snowpack conditions, and water currently in storage, it is likely Greeley Loveland Irrigation system will see average yields this year.

The April 2020 target storage volume relies on the following assumptions:

- Existing Greeley storage volumes (carryover)
- 70% quota allocation from the Northern District
- 31 AF/share LL, 6 AF/share 7L, 6 AF/share GL
- 2012 water demands
- 4,000 acre-feet of Windy Gap water collateralized with C-BT supplies
- High Mountain Reservoirs (HMR) will not come into priority

SERVING OUR COMMUNITY • IT'S A TRADITION

We promise to preserve and improve the quality of life for Greeley through timely, courteous and cost effective service.



## **RECOMMENDATION**

The projection for the April 1, 2021 storage volume exceeds the target storage volume. Staff recommends the Board declare an adequate water year and that supplies be made available for immediate rental to agriculture while assuring target storage does not fall below 20,000 acre-feet.

### **Greeley System Storage Analysis**

### **2020 Water Supply Update**

C-BT=70% HMR\*= 0 AF  
 Yields GL/LL/7L = 9/31/6

#### **Water Year 2020 Operations**

	Beginning Storage (1)	Estimated Yield (2)	Total Supplies (3)	Total WY 2019 Demands (4)	Early Season Spills and Collateralized (5)
NCWCD (C-BT)	6,267	17,470	23,737	(9,421)	(2,024)
WINDY GAP	0	0	1,565	(3,051)	3,589
POUDRE SYSTEM	9,108	9,500	18,608	(11,822)	0
GLIC SYSTEM	14,000	8,855	22,855	(8,406)	(2,000)
<b>TOTAL</b>	<b>29,375</b>	<b>35,825</b>	<b>65,200</b>	<b>(32,700)</b>	<b>(435)</b>
<b>Balance</b>					<b>32,065</b>

#### **Water Year 2021 Storage Volume**

	Ending WY '20 31-Oct-20 Storage (6)	1-Nov-20 Spills (7)	Beginning WY 2021 1-Nov-20 Storage (8)	Winter 2020 (Nov thru April) Demands on Storage and Shrink (9)	1-Apr-21 Carryover (10)
NCWCD (C-BT)	12,620	5,812	6,808	(681)	6,127
WINDY GAP	0	0	0	0	0
POUDRE SYSTEM	7,324	0	7,324	0	7,324
GLIC SYSTEM	12,122	0	12,122	0	12,122
<b>TOTAL</b>	<b>32,065</b>	<b>5,812</b>		<b>(681)</b>	<b>25,573</b>
<b>Target Storage Volume:</b>					<b>20,000</b>

**SERVING OUR COMMUNITY • IT'S A TRADITION**

We promise to preserve and improve the quality of life for Greeley through timely, courteous and cost effective service.

**WATER & SEWER BOARD AGENDA   APRIL 15, 2020**

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:                      7

TITLE:                                      HASBROUCK FARM DISPOSITION

RECOMMENDATION:      APPROVE AND RECOMMEND APPROVAL TO  
CITY COUNCIL THE DIVESTMENT OF THE  
HASBROUCK FARM

ADDITIONAL INFORMATION:

In 2016, the City of Greeley purchased a 282+/- acre farm in Weld County (known as the “Hasbrouck Farm”) along with 2.25 shares of the stock in the Water Supply and Storage Company (“WSSC Water Rights”). Since 2016, the City has leased the Hasbrouck Farm, along with the WSSC Water Rights, to a tenant farmer in order to maintain the use of the WSSC Water Rights on the historically irrigated land. In 2020, the City received an offer to purchase the Hasbrouck Farm. As part of the sale, Greeley would enter into a 10 year leaseback of the WSSC Water Rights to the buyer for continued irrigation on the Hasbrouck Farm. Staff recommends the divestment of the Hasbrouck Farm to the potential buyer. Additional details will be presented at the Water & Sewer Board Meeting.

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission.  
(CBS4-5-19) (Mandatory 7-19)

THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR  
OTHER COUNSEL BEFORE SIGNING.

**CONTRACT TO BUY AND SELL REAL ESTATE**  
**(LAND)**  
**(☒ Property with No Residences)**  
**(☐ Property with Residences-Residential Addendum Attached)**

Date: April 8, 2020

**AGREEMENT**

**1. AGREEMENT.** Buyer agrees to buy and Seller agrees to sell the Property described below on the terms and conditions set forth in this contract (Contract).

**2. PARTIES AND PROPERTY.**

**2.1. Buyer.** Arthur J. De Jager (Buyer) will take title to the Property described below as ☐ Joint Tenants ☐ Tenants In Common ☒ Other Tenancy in Severalty.

**2.2. No Assignability.** This Contract IS NOT assignable by Buyer unless otherwise specified in Additional Provisions.

**2.3. Seller.** The City of Greeley, a Colorado home rule municipal corporation (Seller) is the current owner of the Property described below.

**2.4. Property.** The Property is the following legally described real estate in the County of Weld, Colorado:  
See Exhibit A attached hereto.

known as No. Agricultural Land	Pierce	CO	N/A
Street Address	City	State	Zip

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded (Property).

**2.5. Inclusions.** The Purchase Price includes the following items (Inclusions):

**2.5.1. Inclusions.** The following items, whether fixtures or personal property, are included in the Purchase Price unless excluded under Exclusions:

All existing improvements, structures, and fixtures installed or located on the Property, including all irrigation sprinkler systems and all associated pipes, pumps, motors and electrical panels.

If any additional items are attached to the Property after the date of this Contract, such additional items are also included in the Purchase Price.

**2.5.2. Personal Property - Conveyance.** Any personal property must be conveyed at Closing by Seller free and clear of all taxes (except personal property taxes for the year of Closing), liens and encumbrances, except Tenant Farmer's personal property. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

**2.6. Exclusions.** The following items are excluded (Exclusions):

See Exhibit B attached hereto.

**2.7. Water Rights, Well Rights, Water and Sewer Taps.**

☒ **2.7.1. Deeded Water Rights.** The following legally described water rights:

See Exhibit C attached hereto.

Any deeded water rights will be conveyed by a good and sufficient Bargain and Sale Deed deed at Closing.

☐ **2.7.2. Other Rights Relating to Water.** The following rights relating to water not included in §§ 2.7.1, 2.7.3, 2.7.4 and 2.7.5, will be transferred to Buyer at Closing:

N/A

☒ **2.7.3. Well Rights.** Seller agrees to supply required information to Buyer about the well. Buyer understands that if the well to be transferred is a "Small Capacity Well" or a "Domestic Exempt Water Well" used for ordinary household purposes, Buyer must, prior to or at Closing, complete a Change in Ownership form for the well. If an existing well has not been registered with the Colorado Division of Water Resources in the Department of Natural Resources (Division), Buyer must complete a registration of existing well form for the well and pay the cost of registration. If no person will be providing a closing service in connection with the transaction, Buyer must file the form with the Division within sixty days after Closing. The Well Permits will be provided by Seller on or before the Off-Record Title Deadline.

☐ **2.7.4. Water Stock Certificates.** The water stock certificates to be transferred at Closing are as follows:

N/A

**2.7.5. Water and Sewer Taps.** The parties agree that water and sewer taps listed below for the Property are being conveyed as part of the Purchase Price as follows:

N/A

If any water or sewer taps are included in the sale, Buyer is advised to obtain, from the provider, written confirmation of the amount remaining to be paid, if any, time and other restrictions for transfer and use of the taps.

**2.7.6. Conveyance.** If Buyer is to receive any rights to water pursuant to § 2.7.2 (Other Rights Relating to Water), § 2.7.3 (Well Rights), § 2.7.4 (Water Stock Certificates), or § 2.7.5 (Water and Sewer Taps), Seller agrees to convey such rights to Buyer by executing the applicable legal instrument at Closing.

**2.8. Growing Crops.** With respect to growing crops, Seller and Buyer agree as follows:

The Tenant Farmer (defined below) shall be entitled to all growing crops for the year 2020.

### 3. DATES, DEADLINES AND APPLICABILITY.

#### 3.1. Dates and Deadlines.

Item No.	Reference	Event	Date or Deadline
1	§ 4.3	Alternative Earnest Money Deadline	3 Days after MEC
		<b>Title</b>	
2	§ 8.1, 8.4	Record Title Deadline	10 days after MEC
3	§ 8.2, 8.4	Record Title Objection Deadline	20 days after MEC
4	§ 8.3	Off-Record Title Deadline	30 days after MEC
5	§ 8.3	Off-Record Title Objection Deadline	40 days after MEC
6	§ 8.5	Title Resolution Deadline	45 days after MEC
7	§ 8.6	Right of First Refusal Deadline	N/A
		<b>Owners' Association</b>	
8	§ 7.2	Association Documents Deadline	N/A
9	§ 7.4	Association Documents Termination Deadline	N/A
		<b>Seller's Disclosures</b>	
10	§ 10.1	Seller's Property Disclosure Deadline	N/A
11	§ 10.10	Lead-Based Paint Disclosure Deadline (if Residential Addendum attached)	N/A
		<b>Loan and Credit</b>	
12	§ 5.1	New Loan Application Deadline	N/A
13	§ 5.2	New Loan Termination Deadline	N/A
14	§ 5.3	Buyer's Credit Information Deadline	N/A
15	§ 5.3	Disapproval of Buyer's Credit Information Deadline	N/A
16	§ 5.4	Existing Loan Deadline	N/A
17	§ 5.4	Existing Loan Termination Deadline	N/A

18	§ 5.4	Loan Transfer Approval Deadline	N/A
19	§ 4.7	Seller or Private Financing Deadline	N/A
		<b>Appraisal</b>	
20	§ 6.2	Appraisal Deadline	N/A
21	§ 6.2	Appraisal Objection Deadline	N/A
22	§ 6.2	Appraisal Resolution Deadline	N/A
		<b>Survey</b>	
23	§ 9.1	New ILC or New Survey Deadline	N/A
24	§ 9.3	New ILC or New Survey Objection Deadline	N/A
25	§ 9.3	New ILC or New Survey Resolution Deadline	N/A
		<b>Inspection and Due Diligence</b>	
26	§ 10.3	Inspection Objection Deadline	30 Days after MEC
27	§ 10.3	Inspection Termination Deadline	40 Days after MEC
28	§ 10.3	Inspection Resolution Deadline	50 days after MEC
29	§ 10.5	Property Insurance Termination Deadline	N/A
30	§ 10.6	Due Diligence Documents Delivery Deadline	N/A
31	§ 10.6	Due Diligence Documents Objection Deadline	30 days after MEC
32	§ 10.6	Due Diligence Documents Resolution Deadline	N/A
33	§ 10.6	Environmental Inspection Termination Deadline	N/A
34	§ 10.6	ADA Evaluation Termination Deadline	N/A
35	§ 10.7	Conditional Sale Deadline	N/A
36	§ 10.10	Lead-Based Paint Termination Deadline (if Residential Addendum attached)	N/A
37	§ 11.1,11.2	Estoppel Statements Deadline	N/A
38	§ 11.3	Estoppel Statements Termination Deadline	N/A
		<b>Closing and Possession</b>	
39	§ 12.3	Closing Date	60 Days after MEC
40	§ 17	Possession Date	at Closing
41	§ 17	Possession Time	N/A
42	§ 28	Acceptance Deadline Date	May 29 2020
43	§ 28	Acceptance Deadline Time	5:00 p.m.

**3.2. Applicability of Terms.** Any box checked in this Contract means the corresponding provision applies. If any deadline blank in § 3.1 (Dates and Deadlines) is left blank or completed with the abbreviation "N/A", or the word "Deleted," such deadline is not applicable and the corresponding provision containing the deadline is deleted. If no box is checked in a provision that contains a selection of "None", such provision means that "None" applies.

The abbreviation "MEC" (mutual execution of this Contract) means the date upon which both parties have signed this Contract.

#### 4. PURCHASE PRICE AND TERMS.

**4.1. Price and Terms.** The Purchase Price set forth below is payable in U.S. Dollars by Buyer as follows:

Item No.	Reference	Item	Amount	Amount
1	§ 4.1	Purchase Price	\$ 1,203,000	
2	§ 4.3	Earnest Money		\$ 25,000
3	§ 4.5	New Loan		\$ N/A
4	§ 4.6	Assumption Balance		\$ N/A
5	§ 4.7	Private Financing		\$ N/A
6	§ 4.7	Seller Financing		\$ N/A
7				
8				
9	§ 4.4	Cash at Closing		\$ 1,178,000
10		<b>TOTAL</b>	\$ 1,203,000	\$ 1,203,000

**4.2. Seller Concession.** At Closing, Seller will credit to Buyer \$\_\_\_\_\_ (Seller Concession). The Seller Concession may be used for any Buyer fee, cost, charge or expenditure to the extent the amount is allowed by the Buyer's lender and is included in the Closing Statement or Closing Disclosure at Closing. Examples of allowable items to be paid for by the Seller

Concession include, but are not limited to: Buyer's closing costs, loan discount points, loan origination fees, prepaid items and any other fee, cost, charge, expense or expenditure. Seller Concession is in addition to any sum Seller has agreed to pay or credit Buyer elsewhere in this Contract.

**4.3. Earnest Money.** The Earnest Money set forth in this Section, in the form of a Check, will be payable to and held by Land Title Guarantee Company (Earnest Money Holder), in its trust account, on behalf of both Seller and Buyer. The Earnest Money deposit must be tendered, by Buyer, with this Contract unless the parties mutually agree to an **Alternative Earnest Money Deadline** for its payment. The parties authorize delivery of the Earnest Money deposit to the company conducting the Closing (Closing Company), if any, at or before Closing. In the event Earnest Money Holder has agreed to have interest on Earnest Money deposits transferred to a fund established for the purpose of providing affordable housing to Colorado residents, Seller and Buyer acknowledge and agree that any interest accruing on the Earnest Money deposited with the Earnest Money Holder in this transaction will be transferred to such fund.

**4.3.1. Alternative Earnest Money Deadline.** The deadline for delivering the Earnest Money, if other than at the time of tender of this Contract, is as set forth as the **Alternative Earnest Money Deadline**.

**4.3.2. Return of Earnest Money.** If Buyer has a Right to Terminate and timely terminates, Buyer is entitled to the return of Earnest Money as provided in this Contract. If this Contract is terminated as set forth in § 25 and, except as provided in § 24 (Earnest Money Dispute), if the Earnest Money has not already been returned following receipt of a Notice to Terminate, Seller agrees to execute and return to Buyer or Broker working with Buyer, written mutual instructions (e.g., Earnest Money Release form), within three days of Seller's receipt of such form.

**4.4. Form of Funds; Time of Payment; Available Funds.**

**4.4.1. Good Funds.** All amounts payable by the parties at Closing, including any loan proceeds, Cash at Closing and closing costs, must be in funds that comply with all applicable Colorado laws, including electronic transfer funds, certified check, savings and loan teller's check and cashier's check (Good Funds).

**4.4.2. Time of Payment; Available Funds.** All funds, including the Purchase Price to be paid by Buyer, must be paid before or at Closing or as otherwise agreed in writing between the parties to allow disbursement by Closing Company at Closing **OR SUCH NONPAYING PARTY WILL BE IN DEFAULT**. Buyer represents that Buyer, as of the date of this Contract, ☒ **Does** ☐ **Does Not** have funds that are immediately verifiable and available in an amount not less than the amount stated as Cash at Closing in § 4.1.

**4.5. New Loan.**

**4.5.1. Buyer to Pay Loan Costs.** Buyer, except as otherwise permitted in § 4.2 (Seller Concession), if applicable, must timely pay Buyer's loan costs, loan discount points, prepaid items and loan origination fees as required by lender.

**4.5.2. Buyer May Select Financing.** Buyer may pay in cash or select financing appropriate and acceptable to Buyer, including a different loan than initially sought, except as restricted in § 4.5.3 (Loan Limitations) or § 30 (Additional Provisions).

**4.5.3. Loan Limitations.** Buyer may purchase the Property using any of the following types of loans:  
☐ **Conventional** ☐ **Other**

**4.6. Assumption.** Buyer agrees to assume and pay an existing loan in the approximate amount of the Assumption Balance set forth in § 4.1 (Price and Terms), presently payable at \$ \_\_\_\_\_ per \_\_\_\_\_ including principal and interest presently at the rate of \_\_\_\_\_ % per annum and also including escrow for the following as indicated: ☐ **Real Estate Taxes** ☐ **Property Insurance Premium** and ☐ \_\_\_\_\_.

Buyer agrees to pay a loan transfer fee not to exceed \$ \_\_\_\_\_. At the time of assumption, the new interest rate will not exceed \_\_\_\_\_ % per annum and the new payment will not exceed \$ \_\_\_\_\_ per \_\_\_\_\_ principal and interest, plus escrow, if any. If the actual principal balance of the existing loan at Closing is less than the Assumption Balance, which causes the amount of cash required from Buyer at Closing to be increased by more than \$ \_\_\_\_\_, or if any other terms or provisions of the loan change, Buyer has the Right to Terminate under § 25.1 on or before **Closing Date**.

Seller ☐ **Will** ☐ **Will Not** be released from liability on said loan. If applicable, compliance with the requirements for release from liability will be evidenced by delivery ☐ on or before **Loan Transfer Approval Deadline** ☐ at **Closing** of an appropriate letter of commitment from lender. Any cost payable for release of liability will be paid by \_\_\_\_\_ in an amount not to exceed \$ \_\_\_\_\_.

**4.7. Seller or Private Financing.**

**WARNING:** Unless the transaction is exempt, federal and state laws impose licensing, other requirements and restrictions on sellers and private financiers. Contract provisions on financing and financing documents, unless exempt, should be prepared by a licensed Colorado attorney or licensed mortgage loan originator. Brokers should not prepare or advise the parties on the specifics of financing, including whether or not a party is exempt from the law.

**4.7.1. Seller Financing.** If Buyer is to pay all or any portion of the Purchase Price with Seller financing, ☐ **Buyer** ☐ **Seller** will deliver the proposed Seller financing documents to the other party on or before \_\_\_\_\_ days before **Seller or Private Financing Deadline**.

**4.7.1.1. Seller May Terminate.** If Seller is to provide Seller financing, this Contract is conditional upon Seller determining whether such financing is satisfactory to Seller, including its payments, interest rate, terms, conditions, cost and

compliance with the law. Seller has the Right to Terminate under § 25.1, on or before **Seller or Private Financing Deadline**, if such Seller financing is not satisfactory to Seller, in Seller's sole subjective discretion.

**4.7.2. Buyer May Terminate.** If Buyer is to pay all or any portion of the Purchase Price with Seller or private financing, this Contract is conditional upon Buyer determining whether such financing is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions and cost. Buyer has the Right to Terminate under § 25.1, on or before **Seller or Private Financing Deadline**, if such Seller or private financing is not satisfactory to Buyer, in Buyer's sole subjective discretion.

## TRANSACTION PROVISIONS

### 5. FINANCING CONDITIONS AND OBLIGATIONS.

**5.1. New Loan Application.** If Buyer is to pay all or part of the Purchase Price by obtaining one or more new loans (New Loan), or if an existing loan is not to be released at Closing, Buyer, if required by such lender, must make an application verifiable by such lender, on or before **New Loan Application Deadline** and exercise reasonable efforts to obtain such loan or approval.

**5.2. New Loan Review.** If Buyer is to pay all or part of the Purchase Price with a New Loan, this Contract is conditional upon Buyer determining, in Buyer's sole subjective discretion, whether the New Loan is satisfactory to Buyer, including its availability, payments, interest rate, terms, conditions and cost. This condition is for the sole benefit of Buyer. Buyer has the Right to Terminate under § 25.1, on or before **New Loan Termination Deadline**, if the New Loan is not satisfactory to Buyer, in Buyer's sole subjective discretion. Buyer does not have a Right to Terminate based on the New Loan if the objection is based on the Appraised Value (defined below) or the Lender Requirements (defined below). **IF SELLER IS NOT IN DEFAULT AND DOES NOT TIMELY RECEIVE BUYER'S WRITTEN NOTICE TO TERMINATE, BUYER'S EARNEST MONEY WILL BE NONREFUNDABLE**, except as otherwise provided in this Contract (e.g., Appraisal, Title, Survey).

**5.3. Credit Information.** If an existing loan is not to be released at Closing, this Contract is conditional (for the sole benefit of Seller) upon Seller's approval of Buyer's financial ability and creditworthiness, which approval will be in Seller's sole subjective discretion. Accordingly: (1) Buyer must supply to Seller by **Buyer's Credit Information Deadline**, at Buyer's expense, information and documents (including a current credit report) concerning Buyer's financial, employment and credit condition; (2) Buyer consents that Seller may verify Buyer's financial ability and creditworthiness; and (3) any such information and documents received by Seller must be held by Seller in confidence and not released to others except to protect Seller's interest in this transaction. If the Cash at Closing is less than as set forth in § 4.1 of this Contract, Seller has the Right to Terminate under § 25.1, on or before Closing. If Seller disapproves of Buyer's financial ability or creditworthiness, in Seller's sole subjective discretion, Seller has the Right to Terminate under § 25.1, on or before **Disapproval of Buyer's Credit Information Deadline**.

**5.4. Existing Loan Review.** If an existing loan is not to be released at Closing, Seller must deliver copies of the loan documents (including note, deed of trust and any modifications) to Buyer by **Existing Loan Deadline**. For the sole benefit of Buyer, this Contract is conditional upon Buyer's review and approval of the provisions of such loan documents. Buyer has the Right to Terminate under § 25.1, on or before **Existing Loan Termination Deadline**, based on any unsatisfactory provision of such loan documents, in Buyer's sole subjective discretion. If the lender's approval of a transfer of the Property is required, this Contract is conditional upon Buyer obtaining such approval without change in the terms of such loan, except as set forth in § 4.6. If lender's approval is not obtained by **Loan Transfer Approval Deadline**, this Contract will terminate on such deadline. Seller has the Right to Terminate under § 25.1, on or before Closing, in Seller's sole subjective discretion, if Seller is to be released from liability under such existing loan and Buyer does not obtain such compliance as set forth in § 4.6.

### 6. APPRAISAL PROVISIONS.

**6.1. Appraisal Definition.** An "Appraisal" is an opinion of value prepared by a licensed or certified appraiser, engaged on behalf of Buyer or Buyer's lender, to determine the Property's market value (Appraised Value). The Appraisal may also set forth certain lender requirements, replacements, removals or repairs necessary on or to the Property as a condition for the Property to be valued at the Appraised Value.

**6.2. Appraisal Condition.** The applicable appraisal provision set forth below applies to the respective loan type set forth in § 4.5.3, or if a cash transaction (i.e. no financing), § 6.2.1 applies.

**6.2.1. Conventional/Other.** Buyer has the right to obtain an Appraisal. If the Appraised Value is less than the Purchase Price, or if the Appraisal is not received by Buyer on or before **Appraisal Deadline** Buyer may, on or before **Appraisal Objection Deadline**, notwithstanding § 8.3 or § 13:

**6.2.1.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

**6.2.1.2. Appraisal Objection.** Deliver to Seller a written objection accompanied by either a copy of the Appraisal or written notice from lender that confirms the Appraised Value is less than the Purchase Price (Lender Verification).

**6.2.1.3. Appraisal Resolution.** If an Appraisal Objection is received by Seller, on or before **Appraisal Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Appraisal Resolution Deadline**, this Contract will terminate on the **Appraisal Resolution Deadline**, unless Seller receives Buyer's written withdrawal of the Appraisal Objection before such termination, i.e., on or before expiration of **Appraisal Resolution Deadline**.

208 **6.3. Lender Property Requirements.** If the lender imposes any written requirements, replacements, removals or repairs,  
209 including any specified in the Appraisal (Lender Requirements) to be made to the Property (e.g., roof repair, repainting), beyond  
210 those matters already agreed to by Seller in this Contract, this Contract terminates on the earlier of three days following Seller's  
211 receipt of the Lender Requirements, or Closing, unless prior to termination: (1) the parties enter into a written agreement to satisfy  
212 the Lender Requirements; (2) the Lender Requirements have been completed; or (3) the satisfaction of the Lender Requirements is  
213 waived in writing by Buyer.

214 **6.4. Cost of Appraisal.** Cost of the Appraisal to be obtained after the date of this Contract must be timely paid by ☐ Buyer  
215 ☐ Seller. The cost of the Appraisal may include any and all fees paid to the appraiser, appraisal management company, lender's  
216 agent or all three.

217 **7. OWNERS' ASSOCIATION.** This Section is applicable if the Property is located within a Common Interest Community and  
218 subject to the declaration (Association).

219 ~~**7.1. Common Interest Community Disclosure.** THE PROPERTY IS LOCATED WITHIN A COMMON~~  
220 ~~INTEREST COMMUNITY AND IS SUBJECT TO THE DECLARATION FOR THE COMMUNITY. THE OWNER OF~~  
221 ~~THE PROPERTY WILL BE REQUIRED TO BE A MEMBER OF THE OWNERS' ASSOCIATION FOR THE~~  
222 ~~COMMUNITY AND WILL BE SUBJECT TO THE BYLAWS AND RULES AND REGULATIONS OF THE~~  
223 ~~ASSOCIATION. THE DECLARATION, BYLAWS AND RULES AND REGULATIONS WILL IMPOSE FINANCIAL~~  
224 ~~OBLIGATIONS UPON THE OWNER OF THE PROPERTY, INCLUDING AN OBLIGATION TO PAY ASSESSMENTS~~  
225 ~~OF THE ASSOCIATION. IF THE OWNER DOES NOT PAY THESE ASSESSMENTS, THE ASSOCIATION COULD~~  
226 ~~PLACE A LIEN ON THE PROPERTY AND POSSIBLY SELL IT TO PAY THE DEBT. THE DECLARATION, BYLAWS~~  
227 ~~AND RULES AND REGULATIONS OF THE COMMUNITY MAY PROHIBIT THE OWNER FROM MAKING~~  
228 ~~CHANGES TO THE PROPERTY WITHOUT AN ARCHITECTURAL REVIEW BY THE ASSOCIATION (OR A~~  
229 ~~COMMITTEE OF THE ASSOCIATION) AND THE APPROVAL OF THE ASSOCIATION. PURCHASERS OF~~  
230 ~~PROPERTY WITHIN THE COMMON INTEREST COMMUNITY SHOULD INVESTIGATE THE FINANCIAL~~  
231 ~~OBLIGATIONS OF MEMBERS OF THE ASSOCIATION. PURCHASERS SHOULD CAREFULLY READ THE~~  
232 ~~DECLARATION FOR THE COMMUNITY AND THE BYLAWS AND RULES AND REGULATIONS OF THE~~  
233 ~~ASSOCIATION.~~

234 **7.2. Association Documents to Buyer.** Seller is obligated to provide to Buyer the Association Documents (defined below),  
235 at Seller's expense, on or before ~~Association Documents Deadline~~. Seller authorizes the Association to provide the Association  
236 Documents to Buyer, at Seller's expense. Seller's obligation to provide the Association Documents is fulfilled upon Buyer's receipt  
237 of the Association Documents, regardless of who provides such documents.

238 **7.3. Association Documents.** Association documents (Association Documents) consist of the following:

239 **7.3.1.** All Association declarations, articles of incorporation, bylaws, articles of organization, operating agreements,  
240 rules and regulations, party wall agreements and the Association's responsible governance policies adopted under § 38-33.3-209.5,  
241 C.R.S.;

242 **7.3.2.** Minutes of: (1) the annual owners' or members' meeting and (2) any executive boards' or managers' meetings;  
243 such minutes include those provided under the most current annual disclosure required under § 38-33.3-209.4, C.R.S. (Annual  
244 Disclosure) and minutes of meetings, if any, subsequent to the minutes disclosed in the Annual Disclosure. If none of the preceding  
245 minutes exist, then the most recent minutes, if any (§§ 7.3.1 and 7.3.2, collectively, Governing Documents); and

246 **7.3.3.** List of all Association insurance policies as provided in the Association's last Annual Disclosure, including,  
247 but not limited to, property, general liability, association director and officer professional liability and fidelity policies. The list must  
248 include the company names, policy limits, policy deductibles, additional named insureds and expiration dates of the policies listed  
249 (Association Insurance Documents);

250 **7.3.4.** A list by unit type of the Association's assessments, including both regular and special assessments as  
251 disclosed in the Association's last Annual Disclosure;

252 **7.3.5.** The Association's most recent financial documents which consist of: (1) the Association's operating budget  
253 for the current fiscal year, (2) the Association's most recent annual financial statements, including any amounts held in reserve for  
254 the fiscal year immediately preceding the Association's last Annual Disclosure, (3) the results of the Association's most recent  
255 available financial audit or review, (4) list of the fees and charges (regardless of name or title of such fees or charges) that the  
256 Association's community association manager or Association will charge in connection with the Closing including, but not limited  
257 to, any fee incident to the issuance of the Association's statement of assessments (Status Letter), any rush or update fee charged for  
258 the Status Letter, any record change fee or ownership record transfer fees (Record Change Fee), fees to access documents, (5) list of  
259 all assessments required to be paid in advance, reserves or working capital due at Closing and (6) reserve study, if any (§§ 7.3.4 and  
260 7.3.5, collectively, Financial Documents);

261 **7.3.6.** Any written notice from the Association to Seller of a "construction defect action" under § 38-33.3-303.5,  
262 C.R.S. within the past six months and the result of whether the Association approved or disapproved such action (Construction  
263 Defect Documents). Nothing in this Section limits the Seller's obligation to disclose adverse material facts as required under § 10.2



(Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition) including any problems or defects in the common elements or limited common elements of the Association property.

**7.4. Conditional on Buyer's Review.** Buyer has the right to review the Association Documents. Buyer has the Right to Terminate under § 25.1, on or before **Association Documents Termination Deadline**, based on any unsatisfactory provision in any of the Association Documents, in Buyer's sole subjective discretion. Should Buyer receive the Association Documents after **Association Documents Deadline**, Buyer, at Buyer's option, has the Right to Terminate under § 25.1 by Buyer's Notice to Terminate received by Seller on or before ten days after Buyer's receipt of the Association Documents. If Buyer does not receive the Association Documents, or if Buyer's Notice to Terminate would otherwise be required to be received by Seller after **Closing Date**, Buyer's Notice to Terminate must be received by Seller on or before Closing. If Seller does not receive Buyer's Notice to Terminate within such time, Buyer accepts the provisions of the Association Documents as satisfactory and Buyer waives any Right to Terminate under this provision, notwithstanding the provisions of § 8.6 (Right of First Refusal or Contract Approval).

## **8. TITLE INSURANCE, RECORD TITLE AND OFF-RECORD TITLE.**

### **8.1. Evidence of Record Title.**

☒ **8.1.1. Seller Selects Title Insurance Company.** If this box is checked, Seller will select the title insurance company to furnish the owner's title insurance policy at Seller's expense. On or before **Record Title Deadline**, Seller must furnish to Buyer, a current commitment for an owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price, or if this box is checked, ☐ **an Abstract of Title** certified to a current date. Seller will cause the title insurance policy to be issued and delivered to Buyer as soon as practicable at or after Closing.

☐ **8.1.2. Buyer Selects Title Insurance Company.** If this box is checked, Buyer will select the title insurance company to furnish the owner's title insurance policy at Buyer's expense. On or before **Record Title Deadline**, Buyer must furnish to Seller, a current commitment for owner's title insurance policy (Title Commitment), in an amount equal to the Purchase Price. If neither box in § 8.1.1 or § 8.1.2 is checked, § 8.1.1 applies.

**8.1.3. Owner's Extended Coverage (OEC).** The Title Commitment ☐ **Will** ☒ **Will Not** contain Owner's Extended Coverage (OEC). If the Title Commitment is to contain OEC, it will commit to delete or insure over the standard exceptions which relate to: (1) parties in possession, (2) unrecorded easements, (3) survey matters, (4) unrecorded mechanics' liens, (5) gap period (period between the effective date and time of commitment to the date and time the deed is recorded) and (6) unpaid taxes, assessments and unredeemed tax sales prior to the year of Closing. Any additional premium expense to obtain OEC will be paid by ☒ **Buyer** ☐ **Seller** ☐ **One-Half by Buyer and One-Half by Seller** ☐ **Other** <sup>N/A</sup> \_\_\_\_\_ . Regardless of whether the Contract requires OEC, the Title Insurance Commitment may not provide OEC or delete or insure over any or all of the standard exceptions for OEC. The Title Insurance Company may require a New Survey or New ILC, defined below, among other requirements for OEC. If the Title Insurance Commitment is not satisfactory to Buyer, Buyer has a right to object under § 8.5 (Right to Object to Title, Resolution).

**8.1.4. Title Documents.** Title Documents consist of the following: (1) copies of any plats, declarations, covenants, conditions and restrictions burdening the Property and (2) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions (Exceptions) in the Title Commitment furnished to Buyer (collectively, Title Documents).

**8.1.5. Copies of Title Documents.** Buyer must receive, on or before **Record Title Deadline**, copies of all Title Documents. This requirement pertains only to documents as shown of record in the office of the clerk and recorder in the county where the Property is located. The cost of furnishing copies of the documents required in this Section will be at the expense of the party or parties obligated to pay for the owner's title insurance policy.

**8.1.6. Existing Abstracts of Title.** Seller must deliver to Buyer copies of any abstracts of title covering all or any portion of the Property (Abstract of Title) in Seller's possession on or before **Record Title Deadline**.

**8.2. Record Title.** Buyer has the right to review and object to the Abstract of Title or Title Commitment and any of the Title Documents as set forth in § 8.5 (Right to Object to Title, Resolution) on or before **Record Title Objection Deadline**. Buyer's objection may be based on any unsatisfactory form or content of Title Commitment or Abstract of Title, notwithstanding § 13, or any other unsatisfactory title condition, in Buyer's sole subjective discretion. If the Abstract of Title, Title Commitment or Title Documents are not received by Buyer on or before the **Record Title Deadline**, or if there is an endorsement to the Title Commitment that adds a new Exception to title, a copy of the new Exception to title and the modified Title Commitment will be delivered to Buyer. Buyer has until the earlier of Closing or ten days after receipt of such documents by Buyer to review and object to: (1) any required Title Document not timely received by Buyer, (2) any change to the Abstract of Title, Title Commitment or Title Documents, or (3) any endorsement to the Title Commitment. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection, pursuant to this § 8.2 (Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to Title, Resolution). If Seller has fulfilled all Seller's obligations, if any, to deliver to Buyer all documents required by § 8.1 (Evidence of Record Title) and Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts the condition of title as disclosed by the Abstract of Title, Title Commitment and Title Documents as satisfactory.

**8.3. Off-Record Title.** Seller must deliver to Buyer, on or before **Off-Record Title Deadline**, true copies of all existing surveys in Seller's possession pertaining to the Property and must disclose to Buyer all easements, liens (including, without

limitation, governmental improvements approved, but not yet installed) or other title matters (including, without limitation, rights of first refusal and options) not shown by public records, of which Seller has actual knowledge (Off-Record Matters). This Section excludes any **New ILC** or **New Survey** governed under § 9 (New ILC, New Survey). Buyer has the right to inspect the Property to investigate if any third party has any right in the Property not shown by public records (e.g., unrecorded easement, boundary line discrepancy or water rights). Buyer's Notice to Terminate or Notice of Title Objection of any unsatisfactory condition (whether disclosed by Seller or revealed by such inspection, notwithstanding § 8.2 (Record Title) and § 13 (Transfer of Title)), in Buyer's sole subjective discretion, must be received by Seller on or before **Off-Record Title Objection Deadline**. If an Off-Record Matter is received by Buyer after the **Off-Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to such Off-Record Matter. If Seller receives Buyer's Notice to Terminate or Notice of Title Objection pursuant to this § 8.3 (Off-Record Title), any title objection by Buyer is governed by the provisions set forth in § 8.5 (Right to Object to Title, Resolution). If Seller does not receive Buyer's Notice to Terminate or Notice of Title Objection by the applicable deadline specified above, Buyer accepts title subject to such Off-Record Matters and rights, if any, of third parties not shown by public records of which Buyer has actual knowledge.

**8.4. Special Taxing Districts.** SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND TAX TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYERS SHOULD INVESTIGATE THE SPECIAL TAXING DISTRICTS IN WHICH THE PROPERTY IS LOCATED BY CONTACTING THE COUNTY TREASURER, BY REVIEWING THE CERTIFICATE OF TAXES DUE FOR THE PROPERTY AND BY OBTAINING FURTHER INFORMATION FROM THE BOARD OF COUNTY COMMISSIONERS, THE COUNTY CLERK AND RECORDER, OR THE COUNTY ASSESSOR.

A tax certificate from the respective county treasurer listing any special taxing districts that effect the Property (Tax Certificate) must be delivered to Buyer on or before **Record Title Deadline**. If the Property is located within a special taxing district and such inclusion is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may object, on or before **Record Title Objection Deadline**. If the Tax Certificate shows that the Property is included in a special taxing district and is received by Buyer after the **Record Title Deadline**, Buyer has until the earlier of Closing or ten days after receipt by Buyer to review and object to the Property's inclusion in a special taxing district as unsatisfactory to Buyer.

**8.5. Right to Object to Title, Resolution.** Buyer's right to object, in Buyer's sole subjective discretion, to any title matters includes those matters set forth in § 8.2 (Record Title), § 8.3 (Off-Record Title), § 8.4 (Special Taxing District) and § 13 (Transfer of Title). If Buyer objects to any title matter, on or before the applicable deadline, Buyer has the following options:

**8.5.1. Title Objection, Resolution.** If Seller receives Buyer's written notice objecting to any title matter (Notice of Title Objection) on or before the applicable deadline and if Buyer and Seller have not agreed to a written settlement thereof on or before **Title Resolution Deadline**, this Contract will terminate on the expiration of **Title Resolution Deadline**, unless Seller receives Buyer's written withdrawal of Buyer's Notice of Title Objection (i.e., Buyer's written notice to waive objection to such items and waives the Right to Terminate for that reason), on or before expiration of **Title Resolution Deadline**. If either the Record Title Deadline or the Off-Record Title Deadline, or both, are extended pursuant to § 8.2 (Record Title), § 8.3 (Off-Record Title) or § 8.4 (Special Taxing Districts), the Title Resolution Deadline also will be automatically extended to the earlier of Closing or fifteen days after Buyer's receipt of the applicable documents; or

**8.5.2. Title Objection, Right to Terminate.** Buyer may exercise the Right to Terminate under § 25.1, on or before the applicable deadline, based on any title matter unsatisfactory to Buyer, in Buyer's sole subjective discretion.

**8.6. Right of First Refusal or Contract Approval.** ~~If there is a right of first refusal on the Property or a right to approve this Contract, Seller must promptly submit this Contract according to the terms and conditions of such right. If the holder of the right of first refusal exercises such right or the holder of a right to approve disapproves this Contract, this Contract will terminate. If the right of first refusal is waived explicitly or expires, or the Contract is approved, this Contract will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing. If expiration or waiver of the right of first refusal or approval of this Contract has not occurred on or before **Right of First Refusal Deadline**, this Contract will then terminate.~~

**8.7. Title Advisory.** The Title Documents affect the title, ownership and use of the Property and should be reviewed carefully. Additionally, other matters not reflected in the Title Documents may affect the title, ownership and use of the Property, including, without limitation, boundary lines and encroachments, set-back requirements, area, zoning, building code violations, unrecorded easements and claims of easements, leases and other unrecorded agreements, water on or under the Property and various laws and governmental regulations concerning land use, development and environmental matters.

**8.7.1. OIL, GAS, WATER AND MINERAL DISCLOSURE.** THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE AND TRANSFER OF THE SURFACE ESTATE MAY NOT NECESSARILY INCLUDE TRANSFER OF THE MINERAL ESTATE OR WATER RIGHTS. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OTHER MINERALS, GEOTHERMAL ENERGY OR WATER ON OR UNDER THE SURFACE OF THE PROPERTY, WHICH INTERESTS MAY GIVE THEM

RIGHTS TO ENTER AND USE THE SURFACE OF THE PROPERTY TO ACCESS THE MINERAL ESTATE, OIL, GAS OR WATER.

8.7.2. SURFACE USE AGREEMENT. THE USE OF THE SURFACE ESTATE OF THE PROPERTY TO ACCESS THE OIL, GAS OR MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.

8.7.3. OIL AND GAS ACTIVITY. OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THE PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS AND GAS GATHERING AND PROCESSING FACILITIES.

8.7.4. ADDITIONAL INFORMATION. BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THE PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.

8.7.5. Title Insurance Exclusions. Matters set forth in this Section and others, may be excepted, excluded from, or not covered by the owner's title insurance policy.

8.8. Consult an Attorney. Buyer is advised to timely consult legal counsel with respect to all such matters as there are strict time limits provided in this Contract (e.g., Record Title Objection Deadline and Off-Record Title Objection Deadline).

## 9. NEW ILC, NEW SURVEY.

9.1. New ILC or New Survey. If the box is checked, a: 1) ☐ New Improvement Location Certificate (New ILC); or, 2) ☐ New Survey in the form of \_\_\_\_\_ NA \_\_\_\_\_; is required and the following will apply:

9.1.1. Ordering of New ILC or New Survey. ☐ Seller ☐ Buyer will order the New ILC or New Survey. The New ILC or New Survey may also be a previous ILC or survey that is in the above required form, certified and updated as of a date after the date of this Contract.

9.1.2. Payment for New ILC or New Survey. The cost of the New ILC or New Survey will be paid, on or before Closing, by: ☐ Seller ☐ Buyer or:

9.1.3. Delivery of New ILC or New Survey. Buyer, Seller, the issuer of the Title Commitment (or the provider of the opinion of title if an Abstract of Title) and \_\_\_\_\_ will receive a New ILC or New Survey on or before New ILC or New Survey Deadline.

9.1.4. Certification of New ILC or New Survey. The New ILC or New Survey will be certified by the surveyor to all those who are to receive the New ILC or New Survey.

9.2. Buyer's Right to Waive or Change New ILC or New Survey Selection. Buyer may select a New ILC or New Survey different than initially specified in this Contract if there is no additional cost to Seller or change to the New ILC or New Survey Objection Deadline. Buyer may, in Buyer's sole subjective discretion, waive a New ILC or New Survey if done prior to Seller incurring any cost for the same.

9.3. New ILC or New Survey Objection. Buyer has the right to review and object to the New ILC or New Survey. If the New ILC or New Survey is not timely received by Buyer or is unsatisfactory to Buyer, in Buyer's sole subjective discretion, Buyer may, on or before New ILC or New Survey Objection Deadline, notwithstanding § 8.3 or § 13:

9.3.1. Notice to Terminate. Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated; or

9.3.2. New ILC or New Survey Objection. Deliver to Seller a written description of any matter that was to be shown or is shown in the New ILC or New Survey that is unsatisfactory and that Buyer requires Seller to correct.

9.3.3. New ILC or New Survey Resolution. If a New ILC or New Survey Objection is received by Seller, on or before New ILC or New Survey Objection Deadline and if Buyer and Seller have not agreed in writing to a settlement thereof on or before New ILC or New Survey Resolution Deadline, this Contract will terminate on expiration of the New ILC or New Survey Resolution Deadline, unless Seller receives Buyer's written withdrawal of the New ILC or New Survey Objection before such termination, i.e., on or before expiration of New ILC or New Survey Resolution Deadline.

## DISCLOSURE, INSPECTION AND DUE DILIGENCE

## 10. PROPERTY DISCLOSURE, INSPECTION, INDEMNITY, INSURABILITY, DUE DILIGENCE AND SOURCE OF WATER.

10.1. Seller's Property Disclosure. On or before Seller's Property Disclosure Deadline, Seller agrees to deliver to Buyer the most current version of the applicable Colorado Real Estate Commission's Seller's Property Disclosure form completed by Seller to Seller's actual knowledge and current as of the date of this Contract.

**10.2. Disclosure of Adverse Material Facts; Subsequent Disclosure; Present Condition.** Seller must disclose to Buyer any adverse material facts actually known by Seller as of the date of this Contract. Seller agrees that disclosure of adverse material facts will be in writing. In the event Seller discovers an adverse material fact after the date of this Contract, Seller must timely disclose such adverse fact to Buyer. Buyer has the Right to Terminate based on the Seller's new disclosure on the earlier of Closing or five days after Buyer's receipt of the new disclosure. Except as otherwise provided in this Contract, Buyer acknowledges that Seller is conveying the Property to Buyer in an "As Is" condition, "Where Is" and "With All Faults."

**10.3. Inspection.** Unless otherwise provided in this Contract, Buyer, acting in good faith, has the right to have inspections (by one or more third parties, personally or both) of the Property and Inclusions (Inspection), at Buyer's expense. If (1) the physical condition of the Property, including, but not limited to, the roof, walls, structural integrity of the Property, the electrical, plumbing, HVAC and other mechanical systems of the Property, (2) the physical condition of the Inclusions, (3) service to the Property (including utilities and communication services), systems and components of the Property (e.g., heating and plumbing), (4) any proposed or existing transportation project, road, street or highway, or (5) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants is unsatisfactory, in Buyer's sole subjective discretion, Buyer may:

**10.3.1. Inspection Objection.** On or before the **Inspection Objection Deadline**, deliver to Seller a written description of any unsatisfactory condition that Buyer requires Seller to correct; or

**10.3.2. Terminate.** On or before the **Inspection Termination Deadline**, notify Seller in writing, pursuant to § 25.1, that this Contract is terminated due to any unsatisfactory condition. **Inspection Termination Deadline will be on the earlier of Inspection Resolution Deadline or the date specified in § 3.1 for Inspection Termination Deadline.**

**10.3.3. Inspection Resolution.** If an Inspection Objection is received by Seller, on or before **Inspection Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Inspection Resolution Deadline**, this Contract will terminate on **Inspection Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Inspection Objection before such termination, i.e., on or before expiration of **Inspection Resolution Deadline**.

**10.4. Damage, Liens and Indemnity.** Buyer, except as otherwise provided in this Contract or other written agreement between the parties, is responsible for payment for all inspections, tests, surveys, engineering reports, or other reports performed at Buyer's request (Work) and must pay for any damage that occurs to the Property and Inclusions as a result of such Work. Buyer must not permit claims or liens of any kind against the Property for Work performed on the Property. Buyer agrees to indemnify, protect and hold Seller harmless from and against any liability, damage, cost or expense incurred by Seller and caused by any such Work, claim, or lien. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to defend against any such liability, damage, cost or expense, or to enforce this Section, including Seller's reasonable attorney fees, legal fees and expenses. The provisions of this Section survive the termination of this Contract. This § 10.4 does not apply to items performed pursuant to an Inspection Resolution.

**10.5. Insurability.** Buyer has the right to review and object to the availability, terms and conditions of and premium for property insurance (Property Insurance). Buyer has the Right to Terminate under § 25.1, on or before **Property Insurance Termination Deadline**, based on any unsatisfactory provision of the Property Insurance, in Buyer's sole subjective discretion.

**10.6. Due Diligence.**

**10.6.1. Due Diligence Documents.** If the respective box is checked, Seller agrees to deliver copies of the following documents and information pertaining to the Property (Due Diligence Documents) to Buyer on or before **Due Diligence Documents Delivery Deadline**:

☐ **10.6.1.1.** All contracts relating to the operation, maintenance and management of the Property;  
☐ **10.6.1.2.** Property tax bills for the last N/A years;  
☐ **10.6.1.3.** As-built construction plans to the Property and the tenant improvements, including architectural, electrical, mechanical and structural systems; engineering reports; and permanent Certificates of Occupancy, to the extent now available;

☐ **10.6.1.4.** A list of all Inclusions to be conveyed to Buyer;  
☐ **10.6.1.5.** Operating statements for the past N/A years;  
☐ **10.6.1.6.** A rent roll accurate and correct to the date of this Contract;

☒ **10.6.1.7.** All current leases, including any amendments or other occupancy agreements, pertaining to the Property. Those leases or other occupancy agreements pertaining to the Property that survive Closing are as follows (Leases):  
The Farm Lease Agreement, dated June 9, 2016, between Seller and Double J Farms & Feeding, Inc. ("Tenant Farmer").

☐ **10.6.1.8.** A schedule of any tenant improvement work Seller is obligated to complete but has not yet completed and capital improvement work either scheduled or in process on the date of this Contract;

☐ **10.6.1.9.** All insurance policies pertaining to the Property and copies of any claims which have been made for the past N/A years;

☐ **10.6.1.10.** Soils reports, surveys and engineering reports or data pertaining to the Property (if not delivered earlier under § 8.3);

☒ **10.6.1.11.** Any and all existing documentation and reports regarding Phase I and II environmental reports, letters, test results, advisories and similar documents respective to the existence or nonexistence of asbestos, PCB transformers, or

other toxic, hazardous or contaminated substances and/or underground storage tanks and/or radon gas. If no reports are in Seller's possession or known to Seller, Seller warrants that no such reports are in Seller's possession or known to Seller;

☐ **10.6.1.12. Any Americans with Disabilities Act reports, studies or surveys concerning the compliance of the Property with said Act;**

☐ **10.6.1.13. All permits, licenses and other building or use authorizations issued by any governmental authority with jurisdiction over the Property and written notice of any violation of any such permits, licenses or use authorizations, if any; and**

☐ **10.6.1.14. Other documents and information:**

N/A

**10.6.2. Due Diligence Documents Review and Objection.** Buyer has the right to review and object to Due Diligence Documents. If the Due Diligence Documents are not supplied to Buyer or are unsatisfactory, in Buyer's sole subjective discretion, Buyer may, on or before **Due Diligence Documents Objection Deadline**:

**10.6.2.1. Notice to Terminate.** Notify Seller in writing, pursuant to § 25.1, that this Contract is terminated;

or

**10.6.2.2. Due Diligence Documents Objection.** Deliver to Seller a written description of any unsatisfactory Due Diligence Documents that Buyer requires Seller to correct.

**10.6.2.3. Due Diligence Documents Resolution.** If a Due Diligence Documents Objection is received by Seller, on or before **Due Diligence Documents Objection Deadline** and if Buyer and Seller have not agreed in writing to a settlement thereof on or before **Due Diligence Documents Resolution Deadline**, this Contract will terminate on **Due Diligence Documents Resolution Deadline** unless Seller receives Buyer's written withdrawal of the Due Diligence Documents Objection before such termination, i.e., on or before expiration of **Due Diligence Documents Resolution Deadline**.

**10.6.3. Zoning.** Buyer has the Right to Terminate under § 25.1, on or before **Due Diligence Documents Objection Deadline**, based on any unsatisfactory zoning and any use restrictions imposed by any governmental agency with jurisdiction over the Property, in Buyer's sole subjective discretion.

**10.6.4. Due Diligence – Environmental, ADA.** Buyer has the right to obtain environmental inspections of the Property including Phase I and Phase II Environmental Site Assessments, as applicable. ☐ Seller ☐ Buyer will order or provide ☐ **Phase I Environmental Site Assessment**, ☐ **Phase II Environmental Site Assessment** (compliant with most current version of the applicable ASTM E1527 standard practices for Environmental Site Assessments) and/or ☐ N/A, at the expense of ☐ Seller ☐ Buyer (Environmental Inspection). In addition, Buyer, at Buyer's expense, may also conduct an evaluation whether the Property complies with the *Americans with Disabilities Act* (ADA Evaluation). All such inspections and evaluations must be conducted at such times as are mutually agreeable to minimize the interruption of Seller's and any Seller's tenants' business uses of the Property, if any.

If Buyer's Phase I Environmental Site Assessment recommends a Phase II Environmental Site Assessment, the **Environmental Inspection Termination Deadline** will be extended by 0 days (Extended Environmental Inspection Termination Deadline) and if such Extended Environmental Inspection Termination Deadline extends beyond the **Closing Date**, the **Closing Date** will be extended a like period of time. In such event, ☐ Seller ☐ Buyer must pay the cost for such Phase II Environmental Site Assessment.

Notwithstanding Buyer's right to obtain additional environmental inspections of the Property in this § 10.6.4, Buyer has the Right to Terminate under § 25.1, on or before **Environmental Inspection Termination Deadline**, or if applicable, the Extended Environmental Inspection Termination Deadline, based on any unsatisfactory results of Environmental Inspection, in Buyer's sole subjective discretion.

Buyer has the Right to Terminate under § 25.1, on or before **ADA Evaluation Termination Deadline**, based on any unsatisfactory ADA Evaluation, in Buyer's sole subjective discretion.

**10.7. Conditional Upon Sale of Property.** This Contract is conditional upon the sale and closing of that certain property owned by Buyer and commonly known as N/A. Buyer has the Right to Terminate under § 25.1 effective upon Seller's receipt of Buyer's Notice to Terminate on or before **Conditional Sale Deadline** if such property is not sold and closed by such deadline. This Section is for the sole benefit of Buyer. If Seller does not receive Buyer's Notice to Terminate on or before **Conditional Sale Deadline**, Buyer waives any Right to Terminate under this provision.

**10.8. Source of Potable Water (Residential Land and Residential Improvements Only).** Buyer ☐ Does ☐ Does Not acknowledge receipt of a copy of Seller's Property Disclosure or Source of Water Addendum disclosing the source of potable water for the Property. ☐ There is No Well. Buyer ☐ Does ☐ Does Not acknowledge receipt of a copy of the current well permit. **Note to Buyer: SOME WATER PROVIDERS RELY, TO VARYING DEGREES, ON NONRENEWABLE GROUND WATER. YOU MAY WISH TO CONTACT YOUR PROVIDER (OR INVESTIGATE THE DESCRIBED SOURCE) TO DETERMINE THE LONG-TERM SUFFICIENCY OF THE PROVIDER'S WATER SUPPLIES.**

**10.9. Existing Leases; Modification of Existing Leases; New Leases.** Seller states that none of the Leases to be assigned to the Buyer at the time of Closing contain any rent concessions, rent reductions or rent abatements except as disclosed in the Lease or other writing received by Buyer. Seller will not amend, alter, modify, extend or cancel any of the Leases nor will Seller enter into any new leases affecting the Property without the prior written consent of Buyer, which consent will not be unreasonably withheld or delayed.

552 **11. ESTOPPEL STATEMENTS.**

553 **11.1. Estoppel Statements Conditions.** Buyer has the right to review and object to any Estoppel Statements. Seller must  
554 request from all tenants of the Property and if received by Seller, deliver to Buyer on or before **Estoppel Statements Deadline**,  
555 statements in a form and substance reasonably acceptable to Buyer, from each occupant or tenant at the Property (Estoppel Statement)  
556 attached to a copy of the Lease stating:

557 **11.1.1.** The commencement date of the Lease and scheduled termination date of the Lease;

558 **11.1.2.** That said Lease is in full force and effect and that there have been no subsequent modifications or  
559 amendments;

560 **11.1.3.** The amount of any advance rentals paid, rent concessions given and deposits paid to Seller;

561 **11.1.4.** The amount of monthly (or other applicable period) rental paid to Seller;

562 **11.1.5.** That there is no default under the terms of said Lease by landlord or occupant; and

563 **11.1.6.** That the Lease to which the Estoppel Statement is attached is a true, correct and complete copy of the Lease  
564 demising the premises it describes.

565 **11.2. Seller Estoppel Statement.** In the event Seller does not receive from all tenants of the Property a completed signed  
566 Estoppel Statement, Seller agrees to complete and execute an Estoppel Statement setting forth the information and documents  
567 required §11.1 above and deliver the same to Buyer on or before **Estoppel Statements Deadline**.

568 **11.3. Estoppel Statements Termination.** Buyer has the Right to Terminate under § 25.1, on or before **Estoppel**  
569 **Statements Termination Deadline**, based on any unsatisfactory Estoppel Statement, in Buyer's sole subjective discretion, or if  
570 Seller fails to deliver the Estoppel Statements on or before **Estoppel Statements Deadline**. Buyer also has the unilateral right to  
571 waive any unsatisfactory Estoppel Statement.

572 **CLOSING PROVISIONS**

573 **12. CLOSING DOCUMENTS, INSTRUCTIONS AND CLOSING.**

574 **12.1. Closing Documents and Closing Information.** Seller and Buyer will cooperate with the Closing Company to enable  
575 the Closing Company to prepare and deliver documents required for Closing to Buyer and Seller and their designees. If Buyer is  
576 obtaining a loan to purchase the Property, Buyer acknowledges Buyer's lender is required to provide the Closing Company, in a  
577 timely manner, all required loan documents and financial information concerning Buyer's loan. Buyer and Seller will furnish any  
578 additional information and documents required by Closing Company that will be necessary to complete this transaction. Buyer and  
579 Seller will sign and complete all customary or reasonably-required documents at or before Closing.

580 **12.2. Closing Instructions.** Colorado Real Estate Commission's Closing Instructions ☐ Are ☒ Are Not executed with  
581 this Contract.

582 **12.3. Closing.** Delivery of deed from Seller to Buyer will be at closing (Closing). Closing will be on the date specified as  
583 the **Closing Date** or by mutual agreement at an earlier date. The hour and place of Closing will be as designated by  
584 Seller \_\_\_\_\_.

585 **12.4. Disclosure of Settlement Costs.** Buyer and Seller acknowledge that costs, quality and extent of service vary between  
586 different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

587 **13. TRANSFER OF TITLE.** Subject to Buyer's compliance with the terms and provisions of this Contract, including the tender  
588 of any payment due at Closing, Seller must execute and deliver the following good and sufficient deed to Buyer, at Closing:

589 ☒ special warranty deed ☐ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's  
590 deed ☐ \_\_\_\_\_ deed. Seller, provided another deed is not selected, must execute and deliver a good  
591 and sufficient special warranty deed to Buyer, at Closing.

592 Unless otherwise specified in §30 (Additional Provisions), if title will be conveyed using a special warranty deed or a general  
593 warranty deed, title will be conveyed "subject to statutory exceptions" as defined in §38-30-113(5)(a), C.R.S.

594 **14. PAYMENT OF LIENS AND ENCUMBRANCES.** Unless agreed to by Buyer in writing, any amounts owed on any liens  
595 or encumbrances securing a monetary sum, including, but not limited to, any governmental liens for special improvements installed  
596 as of the date of Buyer's signature hereon, whether assessed or not and previous years' taxes, will be paid at or before Closing by  
597 Seller from the proceeds of this transaction or from any other source.

598 **15. CLOSING COSTS, CLOSING FEE, ASSOCIATION FEES AND TAXES.**

599 **15.1. Closing Costs.** Buyer and Seller must pay, in Good Funds, their respective closing costs and all other items required  
600 to be paid at Closing, except as otherwise provided herein.

601 **15.2. Closing Services Fee.** The fee for real estate closing services must be paid at Closing by ☒ Buyer ☐ Seller  
602 ☐ One-Half by Buyer and One-Half by Seller ☐ Other N/A.



15.3. **Status Letter and Record Change Fees.** At least fourteen days prior to **Closing Date**, Seller agrees to promptly request the Association to deliver to Buyer a current Status Letter. Any fees incident to the issuance of Association's Status Letter must be paid by ☐ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller. Any Record Change Fee must be paid by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

15.4. **Local Transfer Tax.** ☒ The Local Transfer Tax of 0.01 % of the Purchase Price must be paid at Closing by ☐ None ☒ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

15.5. **Private Transfer Fee.** Private transfer fees and other fees due to a transfer of the Property, payable at Closing, such as community association fees, developer fees and foundation fees, must be paid at Closing by ☐ None ☒ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller. The Private Transfer fee, whether one or more, is for the following association(s):  
None in the total amount of N/A % of the Purchase Price or \$ N/A.

15.6. **Water Transfer Fees.** The Water Transfer Fees can change. The fees, as of the date of this Contract, do not exceed \$ N/A for:

☐ Water Stock/Certificates ☐ Water District  
☐ Augmentation Membership ☐ Small Domestic Water Company ☐ N/A  
and must be paid at Closing by ☐ None ☒ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

15.7. **Sales and Use Tax.** Any sales and use tax that may accrue because of this transaction must be paid when due by ☒ None ☐ Buyer ☐ Seller ☐ One-Half by Buyer and One-Half by Seller.

15.8. **FIRPTA and Colorado Withholding.**

15.8.1. **FIRPTA.** The Internal Revenue Service (IRS) may require a substantial portion of the Seller's proceeds be withheld after Closing when Seller is a foreign person. If required withholding does not occur, the Buyer could be held liable for the amount of the Seller's tax, interest and penalties. If the box in this Section is checked, Seller represents that Seller ☐ IS a foreign person for purposes of U.S. income taxation. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's foreign person status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

15.8.2. **Colorado Withholding.** The Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing, if not otherwise exempt. Seller agrees to cooperate with Buyer and Closing Company to provide any reasonably requested documents to verify Seller's status. If withholding is required, Seller authorizes Closing Company to withhold such amount from Seller's proceeds. Seller should inquire with Seller's tax advisor to determine if withholding applies or if an exemption exists.

16. **PRORATIONS AND ASSOCIATION ASSESSMENTS.** The following will be prorated to the **Closing Date**, except as otherwise provided:

16.1. **Taxes.** Personal property taxes, if any, special taxing district assessments, if any and general real estate taxes for the year of Closing, based on ☐ Taxes for the Calendar Year Immediately Preceding Closing ☒ Most Recent Mill Levy and Most Recent Assessed Valuation, ☐ Other N/A.

16.2. **Rents.** See Paragraph 30. ☐ ☐

16.3. **Association Assessments.** Current regular Association assessments and dues (Association Assessments) paid in advance will be credited to Seller at Closing. Cash reserves held out of the regular Association Assessments for deferred maintenance by the Association will not be credited to Seller except as may be otherwise provided by the Governing Documents. Buyer acknowledges that Buyer may be obligated to pay the Association, at Closing, an amount for reserves or working capital. Any special assessment assessed prior to **Closing Date** by the Association will be the obligation of Buyer Seller. Except however, any special assessment by the Association for improvements that have been installed as of the date of Buyer's signature hereon, whether assessed prior to or after Closing, will be the obligation of Seller. Seller represents there are no unpaid regular or special assessments against the Property except the current regular assessments and Association Assessments are subject to change as provided in the Governing Documents.

16.4. **Other Prorations.** Water and sewer charges, propane, interest on continuing loan and N/A.

16.5. **Final Settlement.** Unless otherwise agreed in writing, these prorations are final.

17. **POSSESSION.** Possession of the Property will be delivered to Buyer on **Possession Date** at **Possession Time**, subject to the Leases as set forth in § 10.6.1.7.

If Seller, after Closing, fails to deliver possession as specified, Seller will be subject to eviction and will be additionally liable to Buyer for payment of \$ 200.00 per day (or any part of a day notwithstanding § 18.1) from **Possession Date** and **Possession Time** until possession is delivered.

**18. DAY; COMPUTATION OF PERIOD OF DAYS, DEADLINE.**

**18.1. Day.** As used in this Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings, as applicable).

**18.2. Computation of Period of Days, Deadline.** In computing a period of days (e.g., three days after MEC), when the ending date is not specified, the first day is excluded and the last day is included. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

**19. CAUSES OF LOSS, INSURANCE; DAMAGE TO INCLUSIONS AND SERVICES; CONDEMNATION; AND WALK-THROUGH.** Except as otherwise provided in this Contract, the Property, Inclusions or both will be delivered in the condition existing as of the date of this Contract, ordinary wear and tear excepted.

**19.1. Causes of Loss, Insurance.** In the event the Property or Inclusions are damaged by fire, other perils or causes of loss prior to Closing (Property Damage) in an amount of not more than ten percent of the total Purchase Price and if the repair of the damage will be paid by insurance (other than the deductible to be paid by Seller), then Seller, upon receipt of the insurance proceeds, will use Seller's reasonable efforts to repair the Property before **Closing Date**. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, if the Property is not repaired before **Closing Date**, or if the damage exceeds such sum. Should Buyer elect to carry out this Contract despite such Property Damage, Buyer is entitled to a credit at Closing for all insurance proceeds that were received by Seller (but not the Association, if any) resulting from damage to the Property and Inclusions, plus the amount of any deductible provided for in the insurance policy. This credit may not exceed the Purchase Price. In the event Seller has not received the insurance proceeds prior to Closing, the parties may agree to extend the **Closing Date** to have the Property repaired prior to Closing or, at the option of Buyer, (1) Seller must assign to Buyer the right to the proceeds at Closing, if acceptable to Seller's insurance company and Buyer's lender; or (2) the parties may enter into a written agreement prepared by the parties or their attorney requiring the Seller to escrow at Closing from Seller's sale proceeds the amount Seller has received and will receive due to such damage, not exceeding the total Purchase Price, plus the amount of any deductible that applies to the insurance claim.

**19.2. Damage, Inclusions and Services.** Should any Inclusion or service (including utilities and communication services), system, component or fixture of the Property (collectively Service) (e.g., heating or plumbing), fail or be damaged between the date of this Contract and Closing or possession, whichever is earlier, then Seller is liable for the repair or replacement of such Inclusion or Service with a unit of similar size, age and quality, or an equivalent credit, but only to the extent that the maintenance or replacement of such Inclusion or Service is not the responsibility of the Association, if any, less any insurance proceeds received by Buyer covering such repair or replacement. If the failed or damaged Inclusion or Service is not repaired or replaced on or before Closing or possession, whichever is earlier, Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, or, at the option of Buyer, Buyer is entitled to a credit at Closing for the repair or replacement of such Inclusion or Service. Such credit must not exceed the Purchase Price. If Buyer receives such a credit, Seller's right for any claim against the Association, if any, will survive Closing.

**19.3. Condemnation.** In the event Seller receives actual notice prior to Closing that a pending condemnation action may result in a taking of all or part of the Property or Inclusions, Seller must promptly notify Buyer, in writing, of such condemnation action. Buyer has the Right to Terminate under § 25.1, on or before **Closing Date**, based on such condemnation action, in Buyer's sole subjective discretion. Should Buyer elect to consummate this Contract despite such diminution of value to the Property and Inclusions, Buyer is entitled to a credit at Closing for all condemnation proceeds awarded to Seller for the diminution in the value of the Property or Inclusions but such credit will not include relocation benefits or expenses, or exceed the Purchase Price.

**19.4. Walk-Through and Verification of Condition.** Buyer, upon reasonable notice, has the right to walk through the Property prior to Closing to verify that the physical condition of the Property and Inclusions complies with this Contract.

**19.5. Home Warranty. [Intentionally Deleted]**

**19.6. Risk of Loss – Growing Crops.** The risk of loss for damage to growing crops by fire or other casualty will be borne by the party entitled to the growing crops as provided in § 2.8 and such party is entitled to such insurance proceeds or benefits for the growing crops.

**20. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** By signing this Contract, Buyer and Seller acknowledge that the respective broker has advised that this Contract has important legal consequences and has recommended the examination of title and consultation with legal and tax or other counsel before signing this Contract.

**21. TIME OF ESSENCE, DEFAULT AND REMEDIES.** Time is of the essence for all dates and deadlines in this Contract. This means that all dates and deadlines are strict and absolute. If any payment due, including Earnest Money, is not paid, honored or tendered when due, or if any obligation is not performed timely as provided in this Contract or waived, the non-defaulting party has the following remedies:

**21.1. If Buyer is in Default:**



☐ **21.1.1. Specific Performance.** Seller may elect to cancel this Contract and all Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money is not a penalty and the Parties agree the amount is fair and reasonable. Seller may recover such additional damages as may be proper. Alternatively, Seller may elect to treat this Contract as being in full force and effect and Seller has the right to specific performance, or damages, or both.

**21.1.2. Liquidated Damages, Applicable.** This § 21.1.2 applies unless the box in § 21.1.1. is checked. Seller may cancel this Contract. All Earnest Money (whether or not paid by Buyer) will be paid to Seller and retained by Seller. It is agreed that the Earnest Money specified in § 4.1 is LIQUIDATED DAMAGES and not a penalty, which amount the parties agree is fair and reasonable and (except as provided in §§ 10.4, 22, 23 and 24), said payment of Earnest Money is SELLER'S ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

**21.2. If Seller is in Default:** Buyer may elect to treat this Contract as canceled, in which case all Earnest Money received hereunder will be returned to Buyer and Buyer may recover such damages as may be proper. Alternatively, Buyer may elect to treat this Contract as being in full force and effect and Buyer has the right to specific performance, or damages, or both.

**22. LEGAL FEES, COST AND EXPENSES.** Anything to the contrary herein notwithstanding, in the event of any arbitration or litigation relating to this Contract, prior to or after **Closing Date**, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney fees, legal fees and expenses.

**23. MEDIATION.** If a dispute arises relating to this Contract (whether prior to or after Closing) and is not resolved, the parties must first proceed, in good faith, to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. Before any mediated settlement is binding, the parties to the dispute must agree to the settlement, in writing. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The obligation to mediate, unless otherwise agreed, will terminate if the entire dispute is not resolved within thirty days of the date written notice requesting mediation is delivered by one party to the other at that party's last known address (physical or electronic as provided in § 27). Nothing in this Section prohibits either party from filing a lawsuit and recording a *lis pendens* affecting the Property, before or after the date of written notice requesting mediation. This Section will not alter any date in this Contract, unless otherwise agreed.

**24. EARNEST MONEY DISPUTE.** Except as otherwise provided herein, Earnest Money Holder must release the Earnest Money following receipt of written mutual instructions, signed by both Buyer and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between Buyer and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to Buyer and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between Buyer and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to Buyer. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. The parties reaffirm the obligation of § 23 (Mediation). This Section will survive cancellation or termination of this Contract.

## **25. TERMINATION.**

**25.1. Right to Terminate.** If a party has a right to terminate, as provided in this Contract (Right to Terminate), the termination is effective upon the other party's receipt of a written notice to terminate (Notice to Terminate), provided such written notice was received on or before the applicable deadline specified in this Contract. If the Notice to Terminate is not received on or before the specified deadline, the party with the Right to Terminate accepts the specified matter, document or condition as satisfactory and waives the Right to Terminate under such provision.

**25.2. Effect of Termination.** In the event this Contract is terminated, all Earnest Money received hereunder will be returned to Buyer and the parties are relieved of all obligations hereunder, subject to §§ 10.4, 22, 23 and 24.

**26. ENTIRE AGREEMENT, MODIFICATION, SURVIVAL; SUCCESSORS.** This Contract, its exhibits and specified addenda, constitute the entire agreement between the parties relating to the subject hereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any right or obligation in this Contract that, by its terms, exists or is intended to be performed after termination or Closing survives the same. Any successor to a party receives the predecessor's benefits and obligations of this Contract.

## **27. NOTICE, DELIVERY AND CHOICE OF LAW.**

**27.1. Physical Delivery and Notice.** Any document, or notice to Buyer or Seller must be in writing, except as provided in § 27.2 and is effective when physically received by such party, any individual named in this Contract to receive documents or notices

for such party, Broker, or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm).

**27.2. Electronic Notice.** As an alternative to physical delivery, any notice, may be delivered in electronic form to Buyer or Seller, any individual named in this Contract to receive documents or notices for such party, Broker or Brokerage Firm of Broker working with such party (except any notice or delivery after Closing must be received by the party, not Broker or Brokerage Firm) at the electronic address of the recipient by facsimile, email or N/A.

**27.3. Electronic Delivery.** Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

**27.4. Choice of Law.** This Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

**28. NOTICE OF ACCEPTANCE, COUNTERPARTS.** This proposal will expire unless accepted in writing, by Buyer and Seller, as evidenced by their signatures below and the offering party receives notice of such acceptance pursuant to § 27 on or before **Acceptance Deadline Date** and **Acceptance Deadline Time**. If accepted, this document will become a contract between Seller and Buyer. A copy of this Contract may be executed by each party, separately and when each party has executed a copy thereof, such copies taken together are deemed to be a full and complete contract between the parties.

**29. GOOD FAITH.** Buyer and Seller acknowledge that each party has an obligation to act in good faith including, but not limited to, exercising the rights and obligations set forth in the provisions of **Financing Conditions and Obligations; Title Insurance, Record Title and Off-Record Title; New ILC, New Survey; and Property Disclosure, Inspection, Indemnity, Insurability, Due Diligence, and Source of Water.**

#### ADDITIONAL PROVISIONS AND ATTACHMENTS

**30. ADDITIONAL PROVISIONS.** (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

See Exhibit C attached hereto.

**31. OTHER DOCUMENTS.**

**31.1.** The following documents are a part of this Contract:

Exhibits A - F.

**31.2.** The following documents have been provided but are not a part of this Contract:

#### SIGNATURES

Buyer's Name: Arthur J. De Jager

Buyer's Name: \_\_\_\_\_

Buyer's Signature 

Date

3-8-2020

Buyer's Signature \_\_\_\_\_

Date \_\_\_\_\_

Address:

39301 CR 49

Address: \_\_\_\_\_

Eaton CO 80615

Phone No.: \_\_\_\_\_

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_

Email Address: \_\_\_\_\_

Email Address: \_\_\_\_\_

806 [NOTE: If this offer is being countered or rejected, do not sign this document.

Seller's Name: City of Greeley, a home rule municipal corporation

Seller's Name: \_\_\_\_\_

See Attached Signature Page

Seller's Signature

Date

Seller's Signature

Date

Address:

Attn: Director, Water and Sewer

Address:

1001 11th Street, 2nd Floor, Greeley, CO 80631

Email Address

Sean.Chambers@greeleygov.com

Phone No.:

Email Address:

w/copy to Cole.Gustafson@greeleygov.com

Fax No.:

Email Address:

w/copy to Jerree.Swanson@greeleygov.com

Email Address:

807

808

END OF CONTRACT TO BUY AND SELL REAL ESTATE

### 32. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Buyer)

Broker ☐ Does ☐ Does Not acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Buyer as a ☐ Buyer's Agent ☐ Transaction Broker in this transaction. ☐ This is a Change of Status.

☐ Customer. Broker has no brokerage relationship with Buyer. See § 33 for Broker's brokerage relationship with Seller.

Brokerage Firm's compensation or commission is to be paid by ☐ Listing Brokerage Firm ☐ Buyer ☐ Other \_\_\_\_\_.

Brokerage Firm's Name:

Brokerage Firm's License #:

Broker's Name:

Broker's License #:

Broker's Signature

Date

Address:

Phone No.:

Fax No.:

Email Address:

### 33. BROKER'S ACKNOWLEDGMENTS AND COMPENSATION DISCLOSURE.

(To be completed by Broker working with Seller)

Broker ☐ Does ☒ Does Not acknowledge receipt of Earnest Money deposit. Broker agrees that if Brokerage Firm is the Earnest Money Holder and, except as provided in § 24, if the Earnest Money has not already been returned following receipt of a Notice to Terminate or other written notice of termination, Earnest Money Holder will release the Earnest Money as directed by the written

mutual instructions. Such release of Earnest Money will be made within five days of Earnest Money Holder's receipt of the executed written mutual instructions, provided the Earnest Money check has cleared.

Although Broker is not a party to the Contract, Broker agrees to cooperate, upon request, with any mediation requested under § 23.

Broker is working with Seller as a ☐ Seller's Agent ☒ Transaction-Broker in this transaction. ☐ This is a **Change of Status**.

☐ **Customer**. Broker has no brokerage relationship with Seller. See § 32 for Broker's brokerage relationship with Buyer.

Brokerage Firm's compensation or commission is to be paid by ☒ Seller ☐ Buyer ☐ Other \_\_\_\_\_.

Brokerage Firm's Name: Terra West Real Estate Services, Inc.  
Brokerage Firm's License #: 088370  
Broker's Name: Wayne Howard  
Broker's License #: 1315976

*Wayne A. Howard*  
Broker's Signature

*4/8/2020*  
Date

Address: 6200 W 10th Street  
Greeley, CO 80634  
Phone No.: (970) 353 - 0982  
Fax No.: (970) 392 - 2646  
Email Address: wayne@terrawestusa.com

809

**CITY OF GREELEY SIGNATURE PAGE**  
**Contract to Buy and Sell Real Estate**

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

THE CITY OF GREELEY, COLORADO

By: \_\_\_\_\_  
John Gates, Mayor

ATTEST:

By: \_\_\_\_\_ (Seal)  
Cheryl Aragon, Interim City Clerk

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
Roy Otto, City Manager

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Doug Marek, City Attorney

AVAILABILITY OF FUNDS:

By: \_\_\_\_\_  
Renee Wheeler, Director of Finance

RECOMMENDED BY:

By: \_\_\_\_\_  
Harold Evans, Water and Sewer Board Chairman

Exhibit A to Contract to Buy and Sell Real Estate (Land)

Property Legal Description

- Parcel 1: The East 1/3 of the Northwest ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado.
- Parcel 2: Lot B of Recorded Exemption No. 0551-22-4-RE 620, recorded June 15, 1983 in Book 999 at Reception No. 01930309, being a part of the Southeast ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., County of Weld, State of Colorado
- Parcel 3: Lot B of Amended Recorded Exemption No. 0551-22-3-AMRE1907, recorded February 26, 2001 at Reception No. 2827884, being a part of the E ½ of the SW ¼ of Section 22, Township 8 North, Range 65 West of the 6<sup>th</sup> P.M., County of Weld, State of Colorado.

Also described as: The East Half of the Southwest Quarter of Section 22, Township 8 North, Range 65 West of the 6th Principal Meridian, County of Weld, State of Colorado, EXCEPT that parcel described as Lot A of Amended Recorded Exemption No. 0551-22-3-AMRE1907 recorded February 26, 2001 at Reception No. 2827884, being a part of the E ½ of the SW ¼ of Section 22, Township 8 North, Range 65 West of the 6th P.M., and EXCEPT that parcel described as Subdivision Exemption No. 593, recorded July 10, 1996 in Book 1555 at Reception No. 2500336, County of Weld, State of Colorado.

Exhibit B to Contract to Buy and Sell Real Estate (Land)

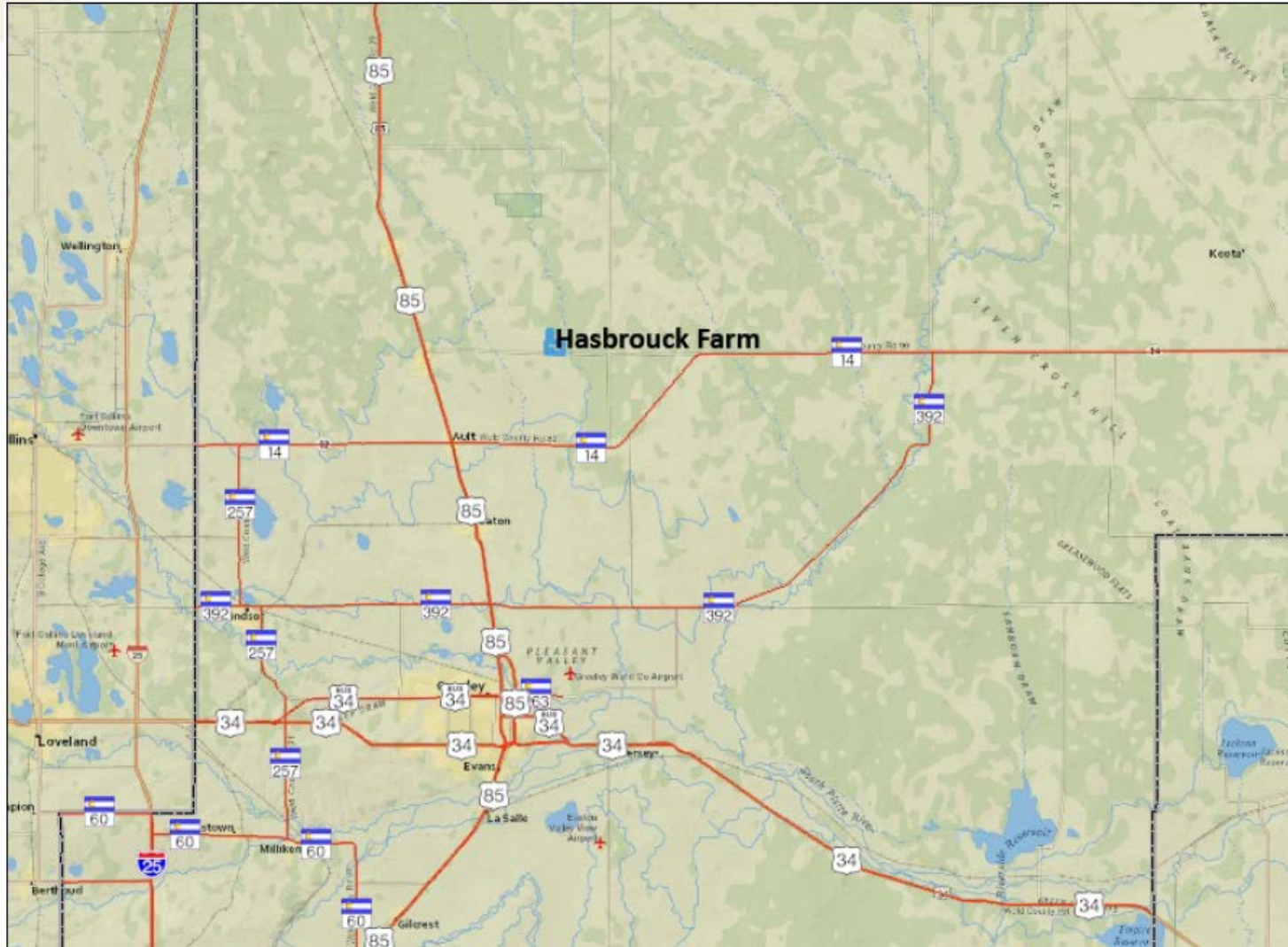
Exclusions

The following items are excluded:

All water, water rights, ditches, ditch rights, wells, well rights, reservoirs, and reservoir rights, including any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection therewith, represented by two and one-quarter ( $2\frac{1}{4}$ ) shares of stock in The Water Supply and Storage Company, evidenced by Stock Certificate No. 6698; two (2) shares of The Collins Ditch Company, represented by Stock Certificate No. 855; and three (3) shares of The Lone Tree Lateral Company, represented by Stock Certificate No. 251.

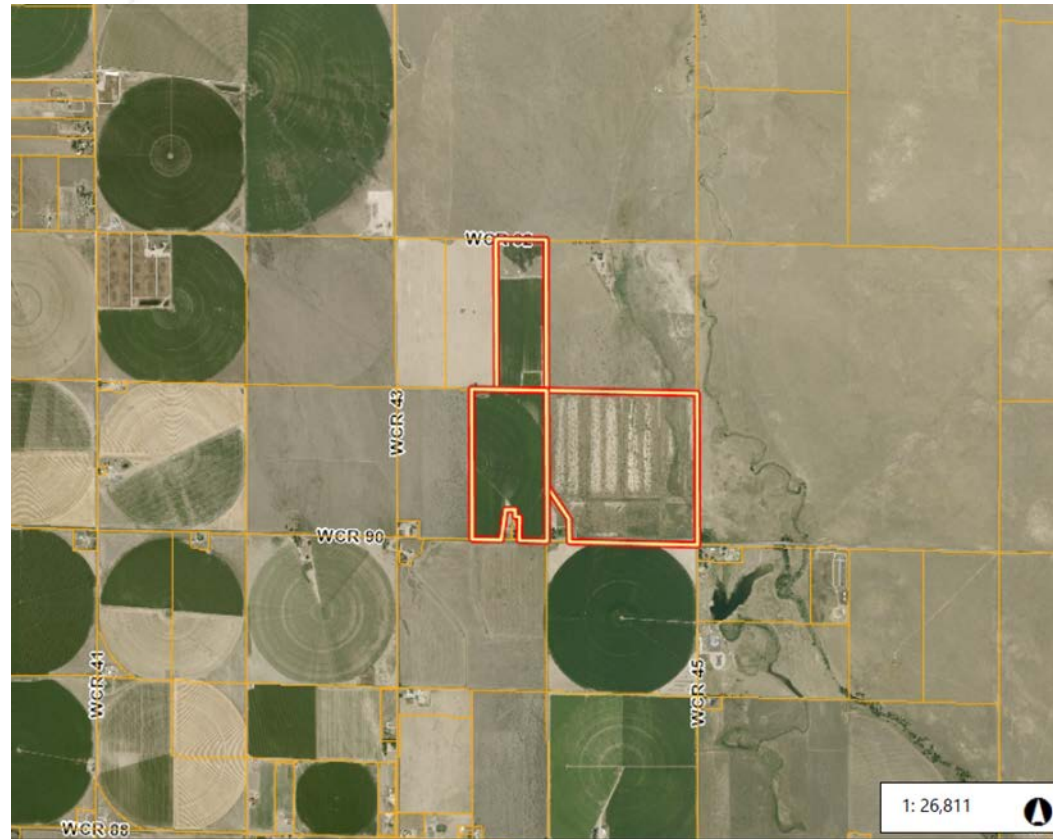


# Hasbrouck Farm Property





# Hasbrouck Farm Property Divestment



# Hasbrouck Farm Property Divestment

- 282 +/- acres of land along with irrigation wells and 2.25 shares of Water Supply and Storage (WSSC) was acquired for \$2,870,000.00 by the City of Greeley in 2016.
  - Farm was looked at as a potential recharge location
- 2016 Market Value of land only was \$1,030,000.00
- 2020 Market Value based on appraisal \$1,203,000.00
  - 107 +/- acres are irrigated land: \$716,900 (\$6,700/acre)
  - 175 +/- acres are dry land: \$485,975 (\$2,777/acre)
- Offer from Arthur J. De Jager, \$1,203,000.00



# Hasbrouck Farm Property Divestment

- City Receives \$25,000 Earnest Money
- 3% Broker fee
- Buyer is a Dairyman and will continue to use the property for agriculture
  - Will grow crops on the irrigated land
  - Is applying for a special use permit from Weld County to turn the dry land onto a feedlot to feed out heifers.
- Buyer Pays for Diligence
- City obtains Dry up and Revegetation Covenants
- City would provide a 10 year leaseback of the WSSC shares to Buyer.
  - Buyer will honor the current lease for the 2020 crop year
  - The current lease is year to year and would be terminated in fall 2020



- Benefits:
  - Land is maintained in agriculture
  - Reduces maintenance overhead
  - Could seek to re-appropriate sale proceeds for additional water acquisition

## Questions?



## Exhibit C to Contract to Buy and Sell Real Estate (Land)

### Deeded Water Rights

Roseberry Well No. 1-11260, together with the rights to tributary groundwater decreed on July 28, 1976, as Roseberry Well No. 1-11260 in Case No. W-2109, District Court, Water Division No. 1, Colorado, with an appropriation date of April 30, 1936, for irrigation in the amount of 1.01 cubic feet per second;

Roseberry Well No. 2-11261, together with the rights to tributary groundwater decreed on July 28, 1976, as Roseberry Well No. 2-11261 in Case No. W-2109, District Court, Water Division No. 1, Colorado, with an appropriation date of April 30, 1930, for irrigation in the amount of 0.444 cubic feet per second;

Roseberry Well No. 3-11262, together with the rights to tributary groundwater decreed on July 28, 1976, as Roseberry Well No. 3-11262 in Case No. W-2109, District Court, Water Division No. 1, Colorado, with an appropriation date of April 30, 1950, for irrigation in the amount of 0.70 cubic feet per second;

Dill Well No. 1-9303F, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 1-9303F in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of April 27, 1965, for irrigation in the amount of 0.222 cubic feet per second;

Dill Well No. 2-9304F, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 2-9304F in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of April 28, 1965, for irrigation in the amount of 0.222 cubic feet per second;

Dill Well No. 3-9305F, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 3-9305F in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of April 30, 1965, for irrigation in the amount of 0.433 cubic feet per second;

Dill Well No. 4-9306-F, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 4-9306-F in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of April 29, 1965, for irrigation in the amount of 0.433 cubic feet per second;

Dill Well No. 5, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 5 in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of December 31, 1944, for irrigation in the amount of 0.222 cubic feet per second;

Dill Well No. 6, together with the rights to tributary groundwater decreed on December 23, 1975, as Dill Well No. 6 in Case No. W-4379, District Court, Water Division No. 1, Colorado, with an appropriation date of December 31, 1944, for irrigation in the amount of 0.222 cubic feet per second;

Henry Dill Pumping System Plant No. 1, together with the rights to tributary groundwater decreed on September 10, 1953, as Henry Dill Pumping System Plant No. 1 (15361R) in

Case No. CA11217, District Court, Water Division No. 1, Colorado, with an appropriation date of December 31, 1945, for irrigation in the amount of 1.12 cubic feet per second;

Henry Dill Pumping System Plant No. 2, together with the rights to tributary groundwater decreed on September 10, 1953, as Henry Dill Pumping System Plant No. 2 (15362R) in Case No. CA11217, District Court, Water Division No. 1, Colorado, with an appropriation date of December 31, 1925, for irrigation in the amount of 0.55 cubic feet per second; and

Henry Dill Pumping System Plant No. 3, together with the rights to tributary groundwater decreed on September 10, 1953, as Henry Dill Pumping System Plant No. 3 (15363R) in Case No. CA11217, District Court, Water Division No. 1, Colorado, with an appropriation date of June 30, 1951, for irrigation in the amount of 0.77 cubic feet per second.

Exhibit D to Contract to Buy and Sell Real Estate (Land)

Additional Provisions

30.1. Approval. The obligation of the Seller to sell the Property to Buyer is contingent on the approval of this contract by the Greeley Water and Sewer Board and the City Council.

30.2. Restrictive Covenants. At closing, the Buyer shall deliver or cause to be delivered to the Seller the following documents, duly executed and acknowledged where appropriate: (1) Restrictive Covenants-No Irrigation and (2) Restrictive Covenants - Revegetation, substantially in the form attached hereto as Exhibits "E" and "F" respectively.

30.3. Lease Assignment. The Farm Lease Agreement, dated June 9, 2016, shall be partially assigned by Seller to Buyer. Seller shall retain the rights, obligations, duties, and agreements of the Seller under the Farm Lease relating to the rights excluded under Paragraph 2.6 and identified on Exhibit B; and Seller shall assign and Buyer shall assume the rights, obligations, duties, and agreements of the Seller under the Farm Lease relating to the Property. On or before the Closing Date, Seller agrees to provided Tenant Farm with notice of termination on December 31, 2020, pursuant to Paragraph 2 of the Farm Lease. Buyer shall be entitled to the second installment of rent due on December 15, 2020.

30.4. Water Lease. Seller agrees to lease the rights excluded under Paragraph 2.6 and identified on Exhibit B to the Buyer for the continued irrigation of the Property for a period of 10 years, beginning in the year 2021, subject to the City of Greeley, Colorado Charter Section 17-4(c). The annual lease amount to be paid by Buyer to Seller for such lease shall be equal to any ditch and reservoir company assessments or other charges and expenses attributable to the rights excluded under Paragraph 2.6 and identified on Exhibit B and an annual administrative fee equal to ten percent (10%) of the annual lease amount. Both parties agree to negotiate in good faith to enter into such lease agreement in satisfaction of this provision at or before Closing.

30.5. Special Use Permit. Buyer assumes all risk of obtaining a Special Use Permit from Weld County during the Due Diligence period. Seller agrees to cooperate with the Buyer in the authorization of any Special Use Permit application by the Buyer with Weld County Planning Department.

30.6. Broker Fee. Seller agrees to pay Transactional-Broker a 3% commission at Closing.

**Exhibit E to Contract to Buy and Sell Real Estate (Land)**

**Restrictive Covenant – No Irrigation**

(see attached)



## RESTRICTIVE COVENANTS (NO IRRIGATION)

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado municipal corporation, acting by and through its Water and Sewer Board (the "City"), with the maximum benefit available from the present and future use of water pursuant to the water rights acquired or to be acquired by the City and described in Exhibit A attached hereto and made a part hereof (the "Water Rights"), \_\_\_\_\_ (the "Declarant"), agrees, warrants and covenants, and the undersigned leaseholder and lienholder if any, acknowledge and approve, on Declarant's own behalf and on behalf of all successors in interest, that upon notice from the City, Declarant shall cease irrigation on the lands owned by Declarant and described in Exhibit B attached hereto and made a part hereof (the "Land").

Upon receipt of one hundred and eighty (180) days prior written notice from the City, thereafter Declarant and Declarant's successor in interest shall not irrigate or make other uses of water on the Land. These covenants shall not prohibit Declarant or Declarant's successor in interest from irrigating the Land (i) with water rights which may in the future be transferred to such lands and judicially approved for such use through an appropriate Water Court proceeding, and in accordance with any future water rights applications filed by the City or a successor in interest to the Water Rights; (ii) with water from a well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation; (iii) with water which is not tributary to the South Platte River or any of its tributaries; (iv) or with treated potable water supplied by a municipal or quasi-municipal government water provider. Unless so irrigated, Declarant agrees the Land subject to these covenants shall not be planted with crops which are capable of extending roots into the underlying groundwater, including but not limited to the growing of alfalfa.

The foregoing covenants of Declarant shall burden, attach to, and run with the Land and shall be binding upon Declarant's successors, assigns and any other person who acquires an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights and shall inure to the benefit of the City's successors, assigns, and any other person who acquire an ownership interest in the Water Rights. Declarant warrants and represents such covenants shall entitle the City to the first and prior right to claim credit for the dry-up or nonirrigation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by the City or its successor in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of the City or its successor in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: \_\_\_\_\_.

**IN WITNESS WHEREOF**, the Declarant have executed this instrument on the \_\_\_\_ day of \_\_\_\_\_, 2020.

Declarant:

By: \_\_\_\_\_

Subscribed under oath before me on \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT “A” TO RESTRICTIVE COVENANT (NO IRRIGATION)**

(Description of the Water Rights)

**EXHIBIT "B" TO RESTRICTIVE COVENANT (NO IRRIGATION)**  
(Description of the Land)

**Exhibit F to Contract to Buy and Sell Real Estate (Land)**  
**Restrictive Covenant – Revegetation**  
**(see attached)**

## RESTRICTIVE COVENANTS (REVEGETATION)

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado municipal corporation, acting by and through its Water and Sewer Board (the "City"), with the maximum benefit available from the present and future use of water pursuant to the water rights acquired or to be acquired by the City and described in Exhibit A attached hereto and made a part hereof (the "Water Rights"), \_\_\_\_\_ (the "Declarant"), agrees, warrants and covenants, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarant's own behalf and on behalf of all successors in interest, that upon notice from the City, Declarant shall revegetate the lands owned by Declarant and described in Exhibit B attached hereto and made a part hereof (the "Land").

Within two and one half (2 ½) years from receiving written notice from the City or from the expiration or termination of that Irrigation Water Lease dated \_\_\_\_\_, between the City and the Declarant, whichever date is the later, Declarant or Declarant's successors in interest shall establish, at Declarant's or Declarant's successors in interest's expense, a ground cover of plant life, as such is defined in C.R.S. § 37-92-103(10.5), on the undeveloped portions of the Land to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree obtained by the City, or a successor in interest to the Water Rights, from the District Court for Water Division No. 1, State of Colorado, or a successor court, changing certain water rights from agricultural irrigation purposes to other beneficial purposes, pursuant to C.R.S. § 37-92-305(4.5). Here, "undeveloped portions of the Land" means portions of the Land not occupied by roads, buildings, or other structures, or not otherwise being lawfully irrigated in accordance with the Restrictive Covenants (No Irrigation), dated \_\_\_\_\_ and recorded at Reception No. \_\_\_\_\_ in \_\_\_\_\_ County.

Should Declarant or Declarant's successor in interest fail to comply with its obligations hereunder, the City shall have the right to come upon the Land and take all measures necessary to accomplish revegetation and/or noxious weed management on the Land, provided that the City shall have the right to receive full reimbursement of all of its expenses of accomplishing such revegetation or weed management from Declarant or Declarant's successor in interest.

The foregoing covenants of Declarant shall burden, attach to, and run with the Land and shall be binding upon Declarant's successors, assigns, and any other person who acquires an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights, and shall inure to the benefit of the City's successors, assigns, and any other persons who acquire an ownership interest in the Water Rights. Declarant warrants and represents that such covenants shall entitle the City to the first and prior right to claim credit for the revegetation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by the City or its successor in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of the City or its successor in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: \_\_\_\_\_.

**IN WITNESS WHEREOF**, the Declarant has executed this instrument on the \_\_\_\_ day of \_\_\_\_\_, 2020.

Declarant:

By: \_\_\_\_\_

Subscribed under oath before me on \_\_\_\_\_, 2020, by  
\_\_\_\_\_ and \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT "A" TO RESTRICTIVE COVENANT (REVEGETATION)**

(Description of the Water Rights)



**EXHIBIT "B" TO RESTRICTIVE COVENANT (REVEGETATION)**  
(Description of the Land)

**WATER & SEWER BOARD AGENDA   APRIL 15, 2020**

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:                      8

TITLE:                                COLORADO DEPARTMENT OF  
TRANSPORTATION INTERGOVERNMENTAL  
AGREEMENT

RECOMMENDATION:      INFORMATIONAL

**ADDITIONAL INFORMATION:**

The Colorado Department of Transportation (CDOT) is implementing a project to make certain improvements to Interstate 25. This project will impact certain sections of Greeley's two existing 30" water pipeline to the extent that relocation will be required. Acquisition and dedication of new easements was covered by a previous agreement entered into between the City and CDOT on January 4, 2018.

The City will pay for engineering design, construction work, and construction inspection. These costs will be reimbursed to the City through the use of the attached intergovernmental agreement, known by CDOT as a Standard Utility Agreement (SUA). Construction is slated to begin immediately. Adequate funding is available in the Water New Construction fund for this project. The project estimate is \$4,749,043.26 which will be reimbursed by CDOT.

Due to scheduling constraints and the need to commence project construction, this item was approved by City Council on April 7, 2020. It is now presented to the Water & Sewer Board as an informational update.

# STATE OF COLORADO STANDARD UTILITY AGREEMENT (“SUA”)

## COVER PAGE

<b>State Agency</b> Department of Transportation	<b>Contract Number</b> 20-HA4-ZK-03015
<b>Utility Owner</b> City of Greeley	<b>Contract Performance Beginning Date</b> The Effective Date (Controller signature date; noted herein)
<b>Contract Maximum Amount</b> \$4,749,043.26	<b>Initial Contract Expiration Date</b> June 30, 2022
This Agreement is for: <input type="checkbox"/> Engineering Design <input checked="" type="checkbox"/> Construction Work <input checked="" type="checkbox"/> Construction Inspection	
<b>Project # IM 0253-255 &amp; FBR 0253-261 Subaccount/WBS # 21506 &amp; 22248</b>	
<b>Location: I-25 Express Lanes; Segment 7&amp;8</b> <b>SC #700105430 &amp; 700105432</b>	
<b>Contract Purpose</b> The Owner shall relocate the 30” Waterlines (1 & 3) in order to eliminate a construction conflict with the proposed roadway construction that will be impacted by the project bounds of the I-25 Express Lanes Project (Segments 7 & 8), located at Prospect Rd. and I-25.	
<b>Exhibits and Order of Precedence</b> The following Exhibits and attachments are included with this Contract: <ol style="list-style-type: none"><li>1. Exhibit A – Relocation Details (Agreement Details and Task Overview) and Owner’s Cost Estimate</li><li>2. Exhibit B – Owner’s Preliminary Plans</li><li>3. Exhibit C – Sample Option Letter</li><li>4. Exhibit D – Utility Relocation Agreement (18-HA4-XE-00015)</li></ol> In the event of a conflict or inconsistency between this Contract and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority: <ol style="list-style-type: none"><li>1. Title 23, Code of Federal Regulations, Part 645;</li><li>2. Colorado Special Provisions in §22 of the main body of this Contract and Mutual Governmental Immunity §22.;</li><li>3. Exhibit D, Utility Relocation Agreement, Effective January 4, 2018</li><li>4. 2 CCR 601-18 (“Highway Utility Accommodation Code) to the extent not preempted by the URA;</li><li>5. The provisions of the other sections of the main body of this Contract;</li><li>6. Exhibit A, Relocation Details and Owner’s Cost Estimate;</li><li>7. Exhibit B, Owner’s Preliminary Plans;</li><li>8. Exhibit C, Executed Option Letter(s).</li></ol>	
<b>Principal Representatives</b> For the State: <b>David Torrez</b> , Regional Utility Engineer Region 4, Utility Program 10601 10 <sup>th</sup> St. Greeley, CO 80634 Phone: 970.350.2111 Email: david.torrez@state.co.us  For Utility Owner: <b>Dan Moore</b> , Project Manager City of Greeley 1100 10 <sup>th</sup> St. Greeley, CO 80631 Phone: 970.350.9814 Email: dan.moore@greeleygov.com	

## SIGNATURE PAGE

### THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT

Each person signing this Contract represents and warrants that the signer is duly authorized to execute this Contract and to bind the Party authorizing such signature.

<p><b>City of Greeley, Colorado:</b></p> <p>APPROVED AS TO SUBSTANCE:</p> <p>By: _____</p> <p>Name: <u>Roy Otto</u></p> <p>Title: <u>City Manager</u></p> <p>APPROVED AS TO LEGAL FORM:</p> <p>By: _____</p> <p>Name: <u>Douglas Marek</u></p> <p>Title: <u>City Attorney</u></p> <p>APPROVED AS TO AVAILABILITY OF FUNDS:</p> <p>By: _____</p> <p>Name: <u>Renee Wheeler</u></p> <p>Title: <u>Director of Finance</u></p>	<p><b>STATE OF COLORADO</b></p> <p>Jared S. Polis, Governor Department of Transportation Shoshona M. Lew, Executive Director</p> <hr/> <p>By: Stephen Harelson, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>In accordance with §24-30-202, C.R.S., this Contract is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p><b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____ Department of Transportation</p> <p>Effective Date: _____</p>	

THIS "AGREEMENT" or "Contract" is between the State of Colorado acting by and through Colorado Department of Transportation ("State" or "CDOT") and City of Greeley ("Owner").

**RECITALS:**

1. It is necessary for CDOT to reimburse Owner for an early relocation within the State Highway System (the "Highway Improvements") which are located within Weld County, on Interstate Highway 25 at Prospect Rd.
2. This Agreement shall supplement the previously executed Utility Relocation Agreement ("URA"), number 18-HA4-XE-00015, 351001420, and supplement the Work Order process defined therein to outline the obligations between CDOT and the Owner defining the obligations to relocate, adjust, or install utility facilities ("the Work"), which is generally described as follows:

**The Owner shall relocate the 30" Waterline (1 & 3) in order to eliminate a construction conflict with the proposed roadway construction that will be impacted by the project bounds of the I-25 Express Lanes Project (Segments 7 & 8), located at Prospect Rd. and I-25.**

3. Authority exists in law and funds have been budgeted, appropriated, and otherwise made available by CDOT for the Work.
4. All citations to rules, codes, documents, and laws refer to the most recent versions.
5. The Owner's Preliminary Plans (see Exhibit B) outline the Work. The Owner shall prepare detailed plans in conformance with Part 645, Subpart A of Title 23, Code of Federal Regulations (23 CFR 645A).
6. CDOT is authorized to pay the Owner for the performance of the Work pursuant to Sections 43-1-225, CRS or 43-1-208, CRS.
7. CDOT and the Owner must comply with 23 CFR 645 and 2 CCR 601-18 ("Highway Utility Accommodation Code"); to obtain federal participation in the costs of the Work, to the extent not preempted by the URA and provisions contained therein.
8. CDOT and the Owner desire to complete the Work as soon as possible.

**NOW THEREFORE, THE PARTIES AGREE:**

1. **Intentionally Omitted.**
2. **Effective Date; Notice of Non-liability; Notice to Proceed.** This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (the "Effective Date"). The State shall not be liable to pay or reimburse Owner for any performance hereunder, including but not limited to, costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date. CDOT will issue a written notice to proceed ("Notice to Proceed") authorizing the Owner to proceed with the Work on or after the Effective Date. The Owner shall not begin performance of the Work until receipt of the written Notice to Proceed from CDOT. Upon receipt of written Notice to Proceed, the Owner shall diligently perform the Work without interfering with the Highway Improvements or causing avoidable delay. The Owner shall perform the Work in accordance with all terms and conditions of this Agreement.
3. **Timeframe for Completion of Work.** The Owner shall coordinate the Work with the Highway Improvements' construction, as directed by CDOT, and shall complete the Work no later than June 30, 2022. Any changes to the Timeframe shall be formalized in a bilaterally executed Amendment to this Agreement.
4. **Reimbursement.** In accordance with Exhibit D.
5. **Determination of Work Costs.** In accordance with Exhibit D.
6. **Work Costs In Excess of Original Estimate.** If during the performance of the Work, the Owner discovers that estimated Work Costs (see Exhibit A) are undervalued, the Owner must obtain an Option Letter (see Exhibit C) or other amendment to this Agreement. CDOT will not pay for Work or Work Costs incurred prior to that Work or Work Cost being authorized on a fully executed document, such as this Agreement, an Option Letter, or other amendment to this Agreement. The Owner must itemize all Work Cost increases on the final billing.
7. **Timeframe for Submission of Billings.** In accordance with Exhibit D.

8. **Separate Invoice for Easements.** In accordance with Exhibit D.
9. **Salvage Value of Materials Removed.** In accordance with Exhibit D.
10. **Recording Costs.** In accordance with Exhibit D.
11. **Records Retention.** In accordance with Exhibit D.
12. **Audit, Inspection of Records, and Monitoring.** In accordance with Exhibit D.
13. **Term of Agreement.** In accordance with Exhibit D.
14. **Early Termination in the Public Interest.** In accordance with Exhibit D.
15. **Early Termination for Cause.** In accordance with Exhibit D.
16. **Intentionally Omitted.**
17. **Option Letter.** CDOT may increase or decrease payment for Work Costs pursuant to this Agreement by using an Option Letter for this Agreement substantially similar to Exhibit C. Any other modifications not within the terms of this Paragraph must be executed by formal amendment to the Agreement.
18. **Federal/State Requirements.** In accordance with Exhibit D.
19. **Legal Authority.** In accordance with Exhibit D.
20. **Counterparts.** This Contract may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
21. **Mutual Governmental Immunity.** Liability for claims for injuries to persons or property arising from the negligence of the State and Owner, their respective departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.
22. **Special Provisions (effective, 11/1/2018).** These Special Provisions apply to all contracts except where noted in italics.

**A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

**B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the

State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

**D. INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

**E. COMPLIANCE WITH LAW.**

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

**[Not applicable to intergovernmental agreements]** Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.**

**[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

**THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK**



## **Exhibit A: Relocation Details and Owner's Estimate**

### **I: Utility Agreement Details:**

n/a	If an option in this chart is not applicable, mark "n/a" in the left column.		
This Agreement provides for reimbursement of the following costs:			
Cost Type	Work to be performed by:	Or: (Check both (owner & consultant), if applicable)	
<input type="checkbox"/> Preliminary Engineering	<input type="checkbox"/> Owner	<input type="checkbox"/> Consultant	
<input checked="" type="checkbox"/> Construction Traffic	<input type="checkbox"/> Owner	<input checked="" type="checkbox"/> Sub-Contractor (i.e. contractor working on behalf of Utility Owner)	
<input checked="" type="checkbox"/> Construction Engineering/Inspection	<input checked="" type="checkbox"/> Owner	<input type="checkbox"/> Consultant	
Existing utilities in conflict with highway construction are: <input type="checkbox"/> on an existing right of way <input type="checkbox"/> on right of way CDOT will acquire or has since acquired			
Adjusted and/or relocated utilities will be located: <input type="checkbox"/> within CDOT right of way <input type="checkbox"/> within an easement of the Owner			
Proof of real property interest or eligibility for reimbursement is: <input type="checkbox"/> Recorded title in County:                      book:                      page:			
<input type="checkbox"/> Affidavit (attached) Form #:			
<input type="checkbox"/> Local Ordinance #:			
<input type="checkbox"/> Easement (copies attached, include in Exhibit A)			
<input checked="" type="checkbox"/> Governmental subdivision (§43-1-225, C.R.S.)			
A consultant was retained through: <input type="checkbox"/> Competitive negotiation (attach certification of consultant) <input type="checkbox"/> Existing ongoing written Agreement (attach certification of consultant)			
A construction Sub-Contractor was or will be selected through: <input type="checkbox"/> Competitive bidding <input type="checkbox"/> existing ongoing written Agreement			
List any low-cost, incidental work (e.g. tree-trimming, x-ray weld inspection, etc.) to be reimbursed under this Agreement which will be awarded without competitive bidding (or check not applicable box):  <input checked="" type="checkbox"/> Not applicable			
If CDOT and the Owner are each responsible for a share of the total relocation costs, the estimate and subsequent billings will be based on (and option documented in Estimate): <input type="checkbox"/> Actual costs attributable to CDOT <input type="checkbox"/> Total work adjusted to CDOT's pro-rata share			
The work will involve: <input type="checkbox"/> Replacement of a building, pumping station, substation, or any other similar unit (include credit for expired service life in Estimate).			
<input type="checkbox"/> Betterment of a facility, other than one required by current industry codes or standards (include credit for betterment in Estimate).			
<input type="checkbox"/> Recovery of materials for later reuse by Owner (include credit in Estimate for salvage exceeding \$5,000 at current stock prices).			

II. Utility Task Overview and Details of Work Reimbursable by the Agreement (include any easements, if applicable)

City of Greeley shall relocate 30 inch Waterline (1 and 3) at Prospect Rd. These Waterlines are located at Prospect Rd. and I-25 and included within CDOT's Phase 7 & 8 of the North 25 Project. City of Greeley has hired a sub-contractor to complete the waterline relocation on its behalf, detailed in Part III of this Exhibit A, Owner Estimate.

Connell Resources, Inc.

7785 Highland Meadows Pkwy, #100

Fort Collins, CO 80528

Phone: (970) 223-3151

Fax: (970) 223-3191

Estimator: Roland Tremble

# Exhibit A, Part III: Owner Estimate



## BUDGET FOR COST

Date: 12/6/2019

<b>Submitted To:</b>	City Of Greeley	<b>Budget Title:</b>	Greeley Relocation Of Waterlines 1 And 3 At Prospect Road
<b>Address:</b>	1000 10th Street Greeley, CO 80631 UNITED STATES	<b>Budget Number:</b>	Revision 1.2
<b>Contact:</b>	Dan Moore	<b>Project Location:</b>	Prospect And I-25
<b>Phone:</b>	970-350-9826	<b>Project City, State:</b>	Fort Collins, CO
<b>Fax:</b>		<b>Engineer/Architect:</b>	

We have prepared for your information the following items for budget evaluation purposes for the referenced project. This budget includes conceptual quantities, resource costs, scope-of-work and schedules and therefore may not completely represent all items of work or cost ultimately necessary for completion of the project. This budget was prepared using reasonable skill and judgment, but is not an offer to perform the Work described.

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
<b>A. General Conditions</b>					
A-1	Mobilization / Demobilization: Includes Potholing, Staging Yard, Trailer, And Removal, Project Management And Onsite Management	1.00	LS	\$182,452.16	\$182,452.16
A-2	Permit Fees / Other Reimbursible Allowances Includes Survey And Compaction Testing For Construction	0.00	LS	\$1,000.00	\$0.00
A-3	Traffic Control For Frontage Road Only (excludes Mainline Highway Work)	1.00	LS	\$8,445.00	\$8,445.00
<b>Total Price for above A. General Conditions Items:</b>					<b>\$190,897.16</b>
<b>B. Earthwork</b>					
B-1	Erosion And Sediment Controls	1.00	LS	\$26,738.62	\$26,738.62
B-2	Clearing And Grubbing	1.00	LS	\$5,631.89	\$5,631.89
B-3	Topsoil Stripping And Storing	1.00	LS	\$17,234.40	\$17,234.40
<b>Total Price for above B. Earthwork Items:</b>					<b>\$49,604.91</b>
<b>C. Demolition</b>					
C-1	Demolition, Including Underground Pipe And Valve Removal	1.00	LS	\$10,143.92	\$10,143.92
C-2	Underground Pipe Abandonment In Place, Filled With Flashfill	3,955.00	LF	\$26.53	\$104,926.15
<b>Total Price for above C. Demolition Items:</b>					<b>\$115,070.07</b>
<b>D. Dewatering</b>					
D-1	Dewatering, Includes Deep Wells And Stabilization Gravel	1.00	LS	\$311,159.38	\$311,159.38
<b>Total Price for above D. Dewatering Items:</b>					<b>\$311,159.38</b>
<b>E. Tunnel Set Up</b>					
E-1	Tunnel Launch And Recieving Pits	1.00	LS	\$163,333.00	\$163,333.00
E-2	Cost For Monitoring And Engineering For Tunnel (utility Crossings Only, Excludes Highway Monitoring)	1.00	LS	\$42,259.53	\$42,259.53
<b>Total Price for above E. Tunnel Set Up Items:</b>					<b>\$205,592.53</b>
<b>F. Waterline</b>					
F-01	30" Diameter Steel Pipe Installed In Trenches (Leave Excess Material Onsite)	3,761.00	LF	\$299.25	\$1,125,479.25
F-02	30" Diameter Steel Pipe, Installed In Tunnel	350.00	LF	\$3,796.00	\$1,328,600.00
F-03	30" Steel Waterline Connection To 30" Ductile Iron Pipe	3.00	EACH	\$18,393.01	\$55,179.03
F-04	30" Steel Waterline Connection To 27" Ductile Iron Pipe	1.00	EACH	\$37,620.75	\$37,620.75
F-05	30" Diameter Steel Bends 10 Degree Or Smaller, Material Only	4.00	EACH	\$1,950.00	\$7,800.00
F-06	30" Steel Bends Larger Than 10 Degree, Material Only	14.00	EACH	\$3,771.43	\$52,800.02
F-07	Combination Air Vac Relief Valves And Vaults Including Appurtenances	6.00	EACH	\$17,117.98	\$102,707.88

# Exhibit A, Part III: Owner Estimate

Item #	Item Description	Estimated Quantity	Unit	Unit Price	Total Price
F-08	Blowoff Valves And Vaults Including Appurtenances	2.00	EACH	\$20,335.12	\$40,670.24
F-09	30" Gate Valves, Installed	3.00	EACH	\$52,637.98	\$157,913.94
F-10	24" Crossover Gate Valve Assembly Installed	1.00	LS	\$64,887.12	\$64,887.12
F-11	Cathodic Protection	1.00	LS	\$60,215.61	\$60,215.61
F-12	Pipeline Flushing And Pressure Testing	1.00	LS	\$24,287.03	\$24,287.03
F-13	Pipeline Disinfection	4,110.00	LF	\$6.22	\$25,564.20
<b>Total Price for above F. Waterline Items:</b>					<b>\$3,083,725.07</b>
<b>G. Surface Replacement</b>					
G-1	Asphalt Replacement	105.00	TON	\$176.23	\$18,504.15
G-2	Surface Restoration And Revegetation	1.00	LS	\$19,883.78	\$19,883.78
G-3	Fencing Replacement (Allowance)	1.00	LS	\$10,000.00	\$10,000.00
<b>Total Price for above G. Surface Replacement Items:</b>					<b>\$48,387.93</b>
<b>Z. CMAR Contingency, Markup, Bond</b>					
Z-01	Contract Contingency (0%) Applied To Total Cost Of Work	1.00	LS	\$0.00	\$0.00
Z-02	Contract Markup (17%) Applied To Cost + Contingency	1.00	LS	\$680,754.30	\$680,754.30
Z-03	Bond (1%) Applied To Cost + Contingency + Markup	1.00	LS	\$46,851.91	\$46,851.91
<b>Total Price for above Z. CMAR Contingency, Markup, Bond Items:</b>					<b>\$727,606.21</b>
<b>Total Bid Price:</b>					<b>\$4,732,043.26</b>

- Notes:**
- Pricing is based upon plans entitled "Greeley partial relocation of waterlines 1 and 3 North interstate 25 & Prospect road" dated July 2019, as prepared by AECOM, and Specifications dated July 13, 2019, as prepared by AECOM
  - The following are excluded from this proposal: Engineering; Drainage facility certification; Warrantee period in excess of Two years; Street cleaning for work performed by others; Maintenance of erosion control devices after final seeding; quality acceptance testing; prairie dog removal, relocation, or extermination; landscaping; more than 10 weekly monitoring trips for settlement monitoring.
  - Material prices for pipeline Items are guaranteed for a period of 30 days from the date shown on the top of this quote. After 30 days the material prices may change the unit prices quoted.
  - All work is contingent on the availability of construction water, access to the work, a mutually agreeable schedule, and a completed work order based on the current Greeley CMAR agreement.
  - Please provide a minimum of 4 weeks advanced notification of work requests to allow for scheduling the work. No work will be completed without a signed Contract Agreement
  - Frost removal or winter protection is not included. If requested, it will be billed either on a time and material basis or a lump sum amount that is mutually agreed upon.
  - Asphalt cement suppliers are adjusting pricing monthly. Asphalt cement prices are subject to adjustment.
  - Environmental site assessment / mitigation of hazardous or contaminated materials is excluded. Treatment or testing for contaminated groundwater is specifically excluded.

Total Bid Estimate **\$4,732,043.26**

Greeley Inspection and Oversight  
Inspection Estimate: 120 hours at \$75/hour \$9,000  
Project Oversight Estimate: 80 hours at \$100/hour \$8,000  
Estimate and Oversight Sub-Total **\$17,000**

**Grand Total SUA Estimate \$4,749,043.26**



## Exhibit B: Preliminary Plans

# AECOM

### PROJECT

Greeley Waterline  
Replacement  
North Interstate 25 &  
Prospect Road

### CLIENT



City of Greeley  
Water and Sewer Department  
1001 9<sup>th</sup> Ave.  
Greeley, CO 80631

### CONSULTANT

AECOM  
6200 S Quebec St.  
Greenwood Village, CO 80111  
T 1-303-740-2600 F 1-303-694-3926  
www.aecom.com

### REGISTRATION

### ISSUE/REVISION

I/R	DATE	DESCRIPTION
C	JULY 2019	100% ISSUE FOR BID, REVISION
B	MAY 2019	100% ISSUE FOR BID, REVISION
A	OCT. 2018	100% ISSUE FOR BID
I/R	DATE	DESCRIPTION

### PROJECT NUMBER

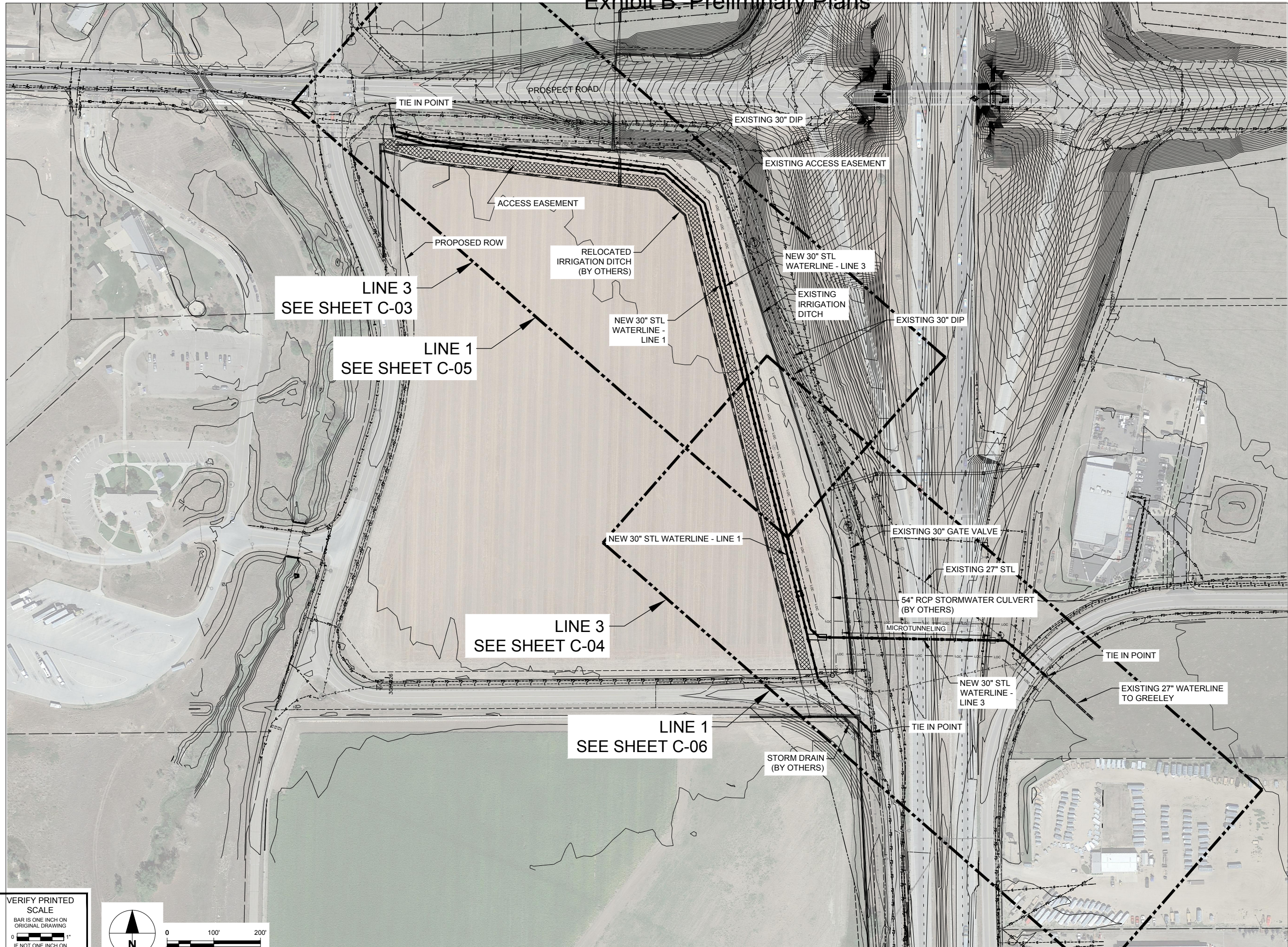
60555613

### SHEET TITLE

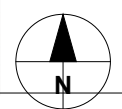
KEY MAP

### SHEET NUMBER

C-02



VERIFY PRINTED  
SCALE  
BAR IS ONE INCH ON  
ORIGINAL DRAWING  
0 1"  
IF NOT ONE INCH ON  
THIS SHEET ADJUST  
SCALE ACCORDINGLY



0 100' 200'  
1" = 100'



## Exhibit C: Sample Option Letter

PO #:  
Routing #:

### **SAMPLE OPTION LETTER**

*NOTE: This option is limited to the specific Agreement scenario listed below AND cannot be used in place of exercising a formal amendment.*

<b>FY:</b>	<b>Old Routing #</b>	<b>Old PO#</b>
<b>Option Letter No. 1</b>	<b>New Routing #</b>	<b>New PO# (if applicable)</b>

**A. FUNDING LEVEL UPDATE:** Revised OWNER'S COST ESTIMATE (see Exhibit A-1) is attached.

**B. REQUIRED PROVISIONS:** In accordance with Paragraph 17 of the original Agreement between the State of Colorado, acting by and through the Colorado Department of Transportation ("CDOT") and \_\_\_\_\_ (the "Owner"), dated \_\_\_\_\_ ("Agreement"), CDOT hereby exercises its option to increase/decrease Work Costs (as defined in Paragraph 5 of the Agreement) based on changes in the Work as specified on the attached revised Owner's Cost Estimate on Exhibit A-1. Exhibit C to the Agreement is hereby deleted in its entirety and Exhibit A-1 is hereby incorporated by reference into the Agreement.

The amount of Work Costs is increased by \$ \_\_\_\_\_ to a new Agreement value of \$ \_\_\_\_\_ as consideration for Work ordered under the Agreement. Paragraph 5 Determination of Work Costs in the Agreement is hereby modified accordingly. The total Agreement value including all previous amendments, option letters, etc is \$ \_\_\_\_\_.

The Effective date of this Option Letter is upon approval of CDOT Controller or delegate, whichever is later.

#### **STATE OF COLORADO**

Jared S. Polis, Governor

By: \_\_\_\_\_  
for the Executive Director  
Colorado Department of Transportation

#### **ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

§24-30-202, C.R.S. requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate. The Owner is not authorized to begin performance until such time. If the Owner begins performing prior thereto, the State of Colorado is not obligated to pay the Owner for such performance or for any goods and/or services provided hereunder.

#### **STATE CONTROLLER**

Robert Jaros, CPA, MBA, JD

By: \_\_\_\_\_  
Colorado Department of Transportation

Date: \_\_\_\_\_

## Exhibit D: Utility Relocation Agreement, Effective January 4, 2018

CMS No.: Routing #18-HA4-XE-00015  
OLA #351001420

### **CDOT NORTH I-25 EXPRESS LANES JOHNSTOWN TO FORT COLLINS PROJECT UTILITY RELOCATION AGREEMENT**

This UTILITY RELOCATION AGREEMENT ("URA") is made and entered into, effective as of the date of CDOT's signature, by and between the Colorado Department of Transportation, a division of the State of Colorado created pursuant to the Transportation Act, C.R.S. § 43-1-101, *et seq.*, ("Department" or "CDOT" or "State") and the City of Greeley, a municipal corporation ("Owner"). CDOT and Owner may hereinafter be referred to collectively as "Parties" or individually as "Party."

#### **RECITALS**

**WHEREAS**, CDOT is authorized under C.R.S. § 43-1-101, *et seq.* to plan, develop, construct, coordinate, and promote an integrated transportation system in cooperation with the federal, regional, local and other state agencies; and

**WHEREAS**, CDOT is undertaking the design, and construction, of the project identified as the North I-25 Express Lanes Johnstown to Fort Collins Project (the "Project"), in cooperation with the Design Build Contractor and CDOT, which Project will require certain utility relocation work; and

**WHEREAS**, in order to provide a saving of time, cost and administrative burden; improve quality expectations with respect to the schedule and budget of for the Project, and reduce the risks associated with the Project, including duplication of expenses and improved coordination of efforts of the various entities involved on the Project, CDOT will undertake all utility relocation work for the Project and

**WHEREAS**, C.R.S. § 43-1-1411 authorizes CDOT to enter into project specific utility relocations agreements on design-build projects; and

**WHEREAS**, increased coordination between Parties and prompt performance of such utility relocation work within an adopted plan schedule is in the public interest and will reduce delays and costs of construction for all Parties; and

**WHEREAS**, to accomplish that purpose, Parties now desire to enter into this URA, which is one of the utility relocation agreements which provides for the scheduling and timely performance of the Project construction and utility relocation work necessitated by construction of the Project; and

**WHEREAS**, CDOT and CDOT staff are authorized to act on behalf CDOT in all manners relating to this URA, including, but not limited to negotiating the cost of utility relocations, negotiating terms of Work Orders, accepting utility work if applicable and negotiating disputes and claims; and

**WHEREAS**, this URA does not commit any present funding by any Party and is subject to future budgeting, authorization and appropriation processes, as applicable, and is to be implemented through a work-order process.

**NOW THEREFORE**, the Parties hereto agree as follows:



## Exhibit D: Utility Relocation Agreement, Effective January 4, 2018

### AGREEMENTS

1) **DEFINITIONS.** Unless the context otherwise requires, initially capitalized terms shall have the meanings prescribed to them:

*Abandonment* means (i) the relinquishment by Owner of all right, title, claim and possession of a Utility and (ii) the Utility Work, as governed by Owner, CDOT, and industry procedures that is necessary to retire a Utility from service but not physically remove the Utility from its installed location. Owner may not Abandon Utilities within Project ROW or other CDOT property without CDOT's consent or within Public Lands without landowner's consent, as evidenced by CDOT's signature on the Work Order or written agreement of public landowner.

*Betterment* means the upgrading (e.g., increase in capacity) of a Utility that is not attributable to construction of a Project and is made solely for the benefit of and at the election of Owner (not including a technological improvement which is able to achieve such upgrade at costs equal to or less than the costs of a "like-for-like" replacement or Relocation). The use of new materials or compliance with Owner's Relocation Standards in the performance of Relocation is not considered a Betterment.

*Buy America Act* or *Buy America* refers to the requirements mandated by Buy America Act, 23 U.S.C. § 313 (FHWA statutory provisions) Buy America Regulations, 23 CFR § 635.410 (FHWA regulatory provisions), and FHWA memoranda interpreting Buy America or Buy America Requirements.

*Constructing Party* means the Party designated on the Work Order as being responsible for construction of a Relocation.

*Contractor(s)* means the contractors, consultants, and subcontractors, whether hired by CDOT, Design Build Contractor, or Owner, undertaking the design or construction of a Relocation.

*Cost of Relocation* means the entire amount to be paid for Utility Work that is properly attributable to the Relocation after deducting from that amount the cost of any Incidental Utility Work, Betterments, Excluded Environmental Work, Depreciation Value, and/or Salvage Value, as applicable.

*Depreciation Value* means the amount of credit to a Project required for the accrued depreciation of a Utility based upon the ratio between the period of actual length of service and total life expectancy applied to the original cost. For the purposes of Depreciation Value, "Utility" shall not be construed to include a segment of Owner's service, distribution and/or transmission lines.

*Design Build Contractor* means the organization(s) or consortium(s) contracted by either directly or through CDOT, to design/build the Project, and their contractors, successors, and assigns.

*Designing Party* means the Party designated on the Work Order as being responsible for design of Relocation.

*Discovery* means physical discovery of an undocumented utility communicated by CDOT or their contractors, agents, or employees verbally or in writing to the Owner's designated project representative or, if no representative has been designated, to the chief engineer or equivalent. Any verbal communication of a Discovery shall be followed by written notice.

*Documentary Evidence* means all documentation, including without limitation, photographs, maps, or Owner's records, showing installation, maintenance or operation of facilities by Owner or their predecessors in interest that is provided by Owner to support Owner claims of rights by prescription, adverse possession or other legal theory established by use.



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

*Environmental Laws* means all federal, state, county, municipal, local and other statutes, laws, ordinances, and regulations that relate to or deal with human health and the environment, as may be amended from time to time, and which govern handling of materials necessary for or generated by Utility Work and/or mandate removal of materials as a result of conditions discovered at the Utility site.

*Environmental Work* means tasks, duties and obligations necessary to comply with Environmental Laws.

*Excluded Environmental Work* has the meaning prescribed to it in Article 7(d)(iii).

*Force Majeure* means fire; explosion; action of the elements; strike; interruption of transportation; rationing; shortage of labor, equipment or materials; court action; illegality; unusually severe weather; act of God; act of war; terrorism; or any other event or cause that is beyond the reasonable control of the Party performing Utility Work on a Relocation (including the failure of the other Party (including their Contractors), a relevant permitting authority, or any other third-party contractor, to perform any task as the result of such a *Force Majeure* event, which task is prerequisite to the Party claiming *Force Majeure* timely performing under this URA) to the extent that the event or cause could not have been mitigated or prevented by that Party acting reasonably.

*Hazardous Materials* means petroleum products and fractions thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls, medical waste, radioactive materials, solid waste, and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, substances and wastes listed or identified in, or regulated by all applicable Environmental Laws, and any excavated soil, debris, or groundwater that is contaminated with such materials.

*Incidental Utility Work* means tasks performed by any Party that (i) are duplicative of Utility Work undertaken by the Designing or Constructing Party's Contractors (such as design review where the Designing Party's Contractor has created the design), including without limitation, each of the items referenced in (ii); or (ii) are staff or consultant time expended on: exchange and review of documentation with respect to identifying Utilities or unidentified utilities; meetings, whether internal or with the other Party or other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts or other affected third parties; procurement of and coordination with Contractors; coordination and interfacing of Owner's Relocation schedule with the Project design and construction schedules; cooperation with one another's staff or Contractors or with other Project stakeholders (including other affected utility owners, jurisdictions, federal and state agencies, organizations or special districts); preparation, negotiation and execution of Work Orders and Work Order exhibits; review of legal descriptions; review and acceptance of Relocation Plans; and construction inspection and acceptance. No Party shall be reimbursed for costs incurred or time expended in performing Incidental Utility Work.

*Permission* means any permission, including without limitation, temporary construction permissions, construction permits, regulatory permission, and/or local agency utility permit that may be necessary to construct, operate, and maintain Owner's utility facilities, including any appurtenances thereto, in any particular location.

*Project* means the North I-25 North Express Lanes Johnstown to Fort Collins Project between SH-402 and SH-14. The Project is deemed to include, without limitation, the highway construction, Intelligent Transportation System (ITS) facilities, bridges, interchanges, drainage and permanent water quality features, and certain system-wide improvements necessary for operation of the Project.

*Project Commencement* means the commencement of work on the Project by the Design Build Contractor.



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

*Project Plans* means the detailed maps, drawings, plans, and profiles of the Project.

*Project Right-of-Way* or *Project ROW* means real property (which term is inclusive of all estates and interests in real property, including Public Lands but exclusive of temporary construction Permissions) owned or controlled by CDOT or owned and controlled by the City of Ft. Collins, City of Loveland, Larimer County, Town of Johnstown, Town of Timnath and the Town of Windsor that is necessary for operation of the Project after such Project has been constructed.

*Project Site* means the land, spaces and surfaces, including the Project ROW, that are owned or controlled by CDOT or owned and controlled as Public Lands, and any temporary construction easements, licenses, permits, or similar land rights, held by CDOT or CDOT Contractors or held as Public Lands, that are necessary for construction of the Project.

*Protection in Place* or *Protect in Place* means activity necessary to ensure the safe operation and structural integrity of a Utility that will not be removed or transferred to another location, including without limitation, modification of location (such as lowering the Utility); construction staking of the Utility location during Project or Project-related construction; adjustment of Relocation Plans to avoid exposing a Utility to construction equipment; installing steel plating or concrete slabs; encasement of the Utility; temporarily de-energizing power lines; or installing physical barriers.

*Public Lands* means, solely for purposes of this URA, real property dedicated to or created as public right-of-way.

*Relocate* or *Relocation* means the adjustment of a Utility that is necessary for the continuous operation of Utility service, Project economy, sequencing of Project construction, or to bring the Utility into compatibility with the implementation of a Project, including without limitation: Protection in Place or Protect in Place, Removal and reinstallation, including necessary temporary facilities; transfer or modification of location; acquiring necessary right-of-way at a new location; moving, rearranging, or changing the type of Utility (exclusive of Betterments); Abandonment; Protection-In-Place; and construction of a replacement utility that is functionally equivalent.

*Relocation Plans* means the preliminary and final Utility Relocation design plans and construction documents. Relocation Plans shall comply with the Relocation Standards and with the terms of this URA.

*Relocation Standards* means the written standards, procedures, and criteria utilized by Owner and CDOT, as set forth in the project agreement Design Build Contractor. The Relocation Standards of each Party shall be utilized in determining whether a Utility is in conflict with the Project. The Relocation Standards in effect as of the execution date of the Work Order shall govern the Relocation covered by that Work Order and shall be either attached to the Work Order or incorporated therein by reference.

*Removal* means the removal of Utility materials, including the demolishing, dismantling, removing, transporting, or otherwise disposing of Utility materials and cleaning up to leave the Relocation site in a neat and presentable condition, all in accordance with federal, state, and local law.

*Responsible Party* means the Party responsible for the Cost of Relocation.

*Salvage Value* means the amount received from the sale of Utility material that has been removed or the amount at which the recovered material is charged to Owner's accounts if retained by Owner for use, in accordance with 23 C.F.R. § 645.

## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

*Utility or Utilities* means water and sanitary sewer piping and associated manholes, valves, meters and other underground facility or facilities, including necessary appurtenances, owned and/or operated by Owner that has been identified as potentially posing a conflict with the implementation of the Project and includes any such facility during and after Relocation.

*Utility Permit* means any license, permit, lease, easement, franchise or other use agreement issued by a party having jurisdiction over or ownership of the location in question and pursuant to which Owner operates their facilities in real property not owned in fee by Owner.

*Utility Work* means tasks, obligations and duties, exclusive of Incidental Utility Work and Excluded Environmental Work, required to either accomplish Relocation or confirm that no Relocation is required for a Utility, whether performed by CDOT or Owner, including:

- a) design of the Relocation, including the creation of Relocation Plans;
- b) should CDOT reimburse the utility owner for any portion of the construction the *Buy America Act* or *Buy America* must be followed for all acquired materials.
- c) construction of the Relocation, including labor, materials and equipment procurement, temporary Relocation, and Relocation of existing service lines connecting to any Utility, regardless of the ownership of such service lines or of the property served by such service lines; and
- d) activities undertaken to effectuate the Relocation, hereinafter collectively referred to as "Utility Coordination," including without limitation:
  - i) verification by survey, potholing or otherwise that a Utility is, or is not, in conflict with the Project;
  - ii) provision of survey coordinate data, field surveys, and construction staking in the field for the construction of a Relocation;
  - iii) acquisition of Permissions and property interests;
  - iv) public information;
  - v) traffic control;
  - vi) resurfacing and restriping of streets and reconstruction of curb and gutter and sidewalks as may be required by any relevant authority;
  - vii) development of and delivery to the non-Constructing Party of as-builts (or, in the alternative, drawings marked to show changes in the field) showing each Relocation; and
  - viii) activities performed to ensure and document that Utility Work is in accord with Relocation Plans, including, without limitation, materials handling; construction procedures; calibrations and maintenance of equipment; document control; production process control; and any sampling, testing, and inspection done for these purposes (collectively, "Quality Control").

*Work Order* means the document under which all Relocations shall be implemented and the Responsible Party designated, in accordance with Article 10.

- 2) LIST OF APPENDICES. The following appendices are attached hereto and incorporated herein by reference:

Appendix A

Form of No-Conflict Close-Out Form



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

Appendix B	Form of Utility Work Order
Appendix C	Form of Design of Relocation Acceptance Letter (DRAL)
Appendix D	Form of Construction of Relocation Acceptance Letter (CRAL)
Appendix E	Buy America Certification

### 3) SCOPE OF AGREEMENT.

- a) This URA provides for the scheduling and timely performance of Relocations necessitated by implementation of the Project and prescribes the process for determining, among other things, the Party responsible for the Cost of Relocation.
- b) This URA does not commit funding by any Party nor bind any Party to responsibility for the cost or performance of any Relocation. Each Relocation for the Project will be implemented by a Work Order to be negotiated and agreed by the Parties and which shall serve as the documentation binding the Parties as to responsibility for Cost of Relocation and performance of Utility Work. Until a Work Order is executed by a Party, that Party is not bound with respect to any matters represented therein, including responsibility for cost or performance of any Utility Work.
- c) A Work Order, which shall be consistent with this URA, shall be issued for each Relocation and will identify, among other things, the Parties, the Project, the Utility (by Project-specific identification number and general description) and the Relocation schedule in accordance with Article 10.

### 4) FEDERAL/STATE/LOCAL REQUIREMENTS.

- a) Notwithstanding any provision of this URA that may be to the contrary, all Relocation Plans, Relocation Standards, Cost of Relocation estimates, and billings for Relocation for which CDOT is the Responsible Party shall comply with the requirements of 23 C.F.R. § 645, as may hereafter be amended, which is incorporated herein by this reference. This URA is subject to and the Parties agree to comply with C.R.S. §§ 43-1-1411-12.
- b) The Parties intend that this URA be interpreted in a manner consistent with the provisions of C.R.S. § 43-1-1411.
- c) The Parties shall at all times in the performance of Utility Work, Incidental Utility Work and Excluded Environmental Work strictly adhere to, and comply with, all other applicable federal and state and local laws and their implementing regulations as each currently exists and may hereafter be amended.
- d) Buy America will not apply to Utility Relocation(s) where the Owner must fund the entire cost of relocation or are not included in the scope of work and paid as part of a Federal-Aid Project. If Owner must comply with Buy America, then Owner shall ensure that their subcontractors comply with Buy America. Owner may be exempt from Buy America when steel and iron materials used in a project "does not exceed one-tenth of one percent (0.1 percent) of the total contract cost or \$2,500, whichever is greater." 23 C.F.R. § 635.410(b)(4). CDOT may request a waiver of Buy America from the Federal Highway Administrator (23 C.F.R. 635.410(c)), however, CDOT is not



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

required to seek a waiver. Owner is not permitted to request a waiver from the Federal Highway Administrator, *see* 23 C.F.R. § 635.410(c), but Owner may request that CDOT seek a waiver from the Federal Highway Administrator pursuant to Article 18 of this URA. If CDOT elects to submit a waiver, then the Owner shall provide supporting materials related to submission and defense of the waiver as requested by CDOT and/or the Secretary of Transportation. Owner shall provide a Buy America certification of compliance upon request of CDOT and/or the Secretary of Transportation. The Buy America Certification of compliance is attached as Appendix E. The Buy America certification shall be submitted in accordance with Article 18 of this URA.

- e) The Parties shall require such compliance with all applicable laws, regulations and requirements in all Contractor agreements governing performance of Relocations under this URA.
- f) Each Party shall contractually require their Contractors to coordinate and cooperate with the other Parties and with other Contractors involved in Utility Work, Incidental Utility Work, and Excluded Environmental Work.

### 5) COORDINATION AND COOPERATION

- a) The Parties each agree to coordinate and cooperate with one another, the Design Build Contractor and with their other respective Contractors in order to ensure that Utility Work, Incidental Utility Work, and any Excluded Environmental Work are performed promptly, and in close coordination with the Project implementation.
- b) The Parties shall attempt to identify any Utilities that can reasonably be Relocated prior to Project Commencement; however, to the extent Owner facilities have not been identified, confirmed as conflicted, or Relocated prior to Project Commencement, the Parties will coordinate and cooperate with one another and with the Design Build Contractor to complete the Relocation of such utilities.
- c) CDOT may delegate certain of their rights and obligations hereunder, without limitation, to the Design Build Contractor, who shall be required to comply with the terms of this URA governing those rights and obligations delegated. Owner acknowledges that, except as specifically provided herein, CDOT can and will delegate to the Design Build Contractor any or all of CDOT's rights and obligations under this URA, including any Utility Work that Owner elects to have CDOT perform. Any such delegation shall not relieve CDOT of their duties under this URA or under statute.
- d) CDOT shall provide Owner with written notice of Project Commencement.

### 6) IDENTIFICATION OF UTILITIES.

- a) CDOT shall provide Owner with the Project Plans in electronic format at the conclusion of preliminary engineering, conclusion of final design, and at such other times that CDOT receives a formal design submittal from the Design Build Contractor. In addition, CDOT shall provide Owner, in hard-copy format, those portions of the Project Plans that show the location of Owner's Utilities. CDOT shall provide Owner with written notice of Owner's affected Utilities for the Project.
- b) CDOT, in coordination and cooperation with Owner, shall identify and track the Relocation status of Owner's Utilities on a Utility matrix ("Utility Matrix"). Utility Matrices shall be updated by CDOT as Utilities are identified and Relocated and will reflect changes, clarifications, corrections or developments with respect to each Utility's conflict status. Updated Owner-specific Utility Matrices will be provided to Owner upon request. CDOT and Owner shall meet regularly to verify whether, based upon then-current Project Plans, a Utility requires Relocation and to determine the possibility of Relocating any Utility prior to notice of Project Commencement. If



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

at any time a Utility Matrix provided to Owner fails to identify Owner utilities that Owner knows or should reasonably know may be in conflict with a Project, Owner shall notify CDOT of such unidentified Owner utility and provide all documentation with respect thereto, and the Owner utility will be added to the Utility Matrix.

- c) For any Discovery of utilities during construction that is not identified on documents provided to or in possession of CDOT, CDOT and the Owner shall confer within forty-eight hours of discovery to determine appropriate relocation procedures.
- d) Owner and CDOT will meet to confirm the conflict status of each of Owner's Utilities, which determination will be made by reference to the Relocation Standards. If a Utility is confirmed to be in conflict with the Project, CDOT and Owner shall coordinate to determine the nature of the Relocation required based upon the Relocation Standards, and CDOT shall update the Utility Matrix to reflect the recommended action and issue a Work Order. CDOT and Owner will work together to mitigate all impacts to the utility. If CDOT, the Design Build Contractor and Owner each agree that a Utility is not in conflict with the Project, the Design Build Contractor and Owner shall execute a document for each such Utility affirming that the Utility is not in conflict ("No Conflict Close-Out Form"), the form of which is attached as Appendix A.
- e) Populated Utility Matrices are informational documents utilized for CDOT's Utility tracking purposes only. Information contained in the Utility Matrix is non-binding until reflected on either an executed No-Conflict Close-Out Form or on an executed, mutually-agreed Work Order, which, in conjunction with the URA, serves as the binding documentation governing a Utility's Relocation status. All information contained in the Utility Matrix is subject to CDOT's receipt and review of documentation related to the Utilities. In addition, this URA is entered without prejudice to any aspect of any applicable environmental clearance process. All Project elements, including horizontal and vertical alignments, drainage, and right-of-way plans are subject to receipt of the environmental decision documents and any mitigation measures specified therein.

### 7) COST OF RELOCATION.

- a) Once a Utility is confirmed to be in conflict with the Project, the Parties shall, as soon as is reasonably possible and to the extent they have not already done so, exchange all documentation, including Utility Permits and/or Documentary Evidence, governing the location in question in order to determine the responsibility for the Cost of Relocation. If Owner submits Documentary Evidence to CDOT, CDOT shall have the right to utilize and have considered any additional documentation with respect to the claim that it obtains or has in their possession. The Parties shall mutually agree as to the nature of Owner's rights or, failing such agreement, shall treat the claim as a Dispute under Article 19.
- b) The Cost of Relocation shall be presumed to be borne by the Utility except in the following cases:
  - i) The Utility holds the fee, an easement, or other real property interest the damaging or taking of which is compensable in eminent domain or
  - ii) The facilities are owned by a governmental subdivision of the State of Colorado or an abutting landowner, as provided in §43-1-225, CRS or
  - iii) The facilities exist to serve a highway purpose or
  - iv) The provisions of §43-1-1411, CRS apply with respect to certain relocation costs associated with a Design-Build Contract
- c) Notwithstanding anything in this URA which may be interpreted to the contrary, if a Relocation of a Utility is required based upon information, surveys, plans or other information which is provided by a Party and the information is incorrect or revised causing additional Relocations of



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

the same Utility (or any part thereof), the Cost of Relocation for the second and each subsequent Relocation will be paid by the Party that provided the incorrect information or caused the revisions necessitating the subsequent Relocation.

### d) Environmental Work.

- i) If Hazardous Materials contamination unrelated to Owner's utility facilities is discovered on the Project Site by the Constructing Party, the Constructing Party shall promptly notify the other Parties of such Hazardous Materials contamination and, if Owner is the Constructing Party, Owner shall cease all construction of Relocation at the location in question until such time as Environmental Work at that location has been completed. Owner shall not be responsible to conduct or pay the costs of Environmental Work, except as specifically prescribed in this Article 7(d).
- ii) The previous paragraph notwithstanding, the Responsible Party is responsible for the cost of, and the Constructing Party shall perform, any Environmental Work necessitated by the removal of intact Owner Utility materials that happen to contain or constitute Hazardous Materials.
- iii) In addition, to the extent that any Environmental Work is required to remediate Hazardous Materials contamination caused by (A) the construction, operation, or maintenance of Owner's Utility in its existing location and/or (B) negligent or willful acts or omissions of Owner or their Contractors in constructing the Relocation ("Excluded Environmental Work"), Owner shall be responsible for the costs of all such Excluded Environmental Work and may be required to undertake such Excluded Environmental Work.
- iv) CDOT shall extend the deadline for completion of Relocations affected by Hazardous Materials contamination while Environmental Work and/or any Excluded Environmental Work described in Article 7(d)(iii)(A) is undertaken. Owner shall make reasonable efforts to redistribute their Relocation crews to other Relocation sites while unable to perform at any contaminated location.

## 8) REAL PROPERTY INTERESTS.

### a) Utilities Located By Utility Permit

Any Owner Utilities currently located or anticipated to be located in Project ROW or other CDOT property shall be permitted only by a CDOT Utility Permit or, if determined to be appropriate by CDOT, by permit from the local agency responsible for issuing Utility Permits, which Owner and CDOT shall have executed prior to commencement of construction of Relocation. If Owner currently holds an Utility Permit for Owner's facilities in Project ROW or other CDOT property, the terms and conditions of that Utility Permit, as may be amended by mutual agreement of the Parties, shall continue to govern Owner's facilities at that location, unless that Utility Permit is terminated. CDOT reserves the right to convert any such Utility Permit assigned to it in connection with the conveyance of Project ROW or CDOT property into a CDOT Utility Permit, provided that both CDOT and Owner shall enjoy substantially the same rights and obligations contained in the assigned Utility Permit.

### b) Permission to Perform Utility Work

- i) Owner shall not install any new facilities in Project ROW or CDOT property without first obtaining a CDOT Utility Permit or, if determined to be appropriate by CDOT, by permit from the local agency responsible for issuing Utility Permits.
- ii) If Owner's Utilities are located in Project ROW or other CDOT property pursuant to an effective Utility Permit, Owner's Relocation and permission to enter upon the Project ROW or CDOT property to undertake Relocation shall be governed by, and in accordance with, the



## Exhibit D: Utility Relocation Agreement, Effective January 4, 2018

terms of such Utility Permit. If the location of the Relocated Utility is materially changed, Owner's current Utility Permit shall be amended to reflect the revised location.

- iii) If Owner's Utilities are located in Project ROW or other CDOT property without an effective Utility Permit, Owner shall not commence construction of Relocation on Project ROW or other CDOT property without first obtaining a CDOT Utility Permit from CDOT or if determined to be appropriate by CDOT, by permit from the local agency responsible for issuing Utility Permits.
- iv) Notwithstanding (i) through (iii), above, CDOT's signature on a Work Order shall constitute permission for Owner and their employees, agents, and Contractors to enter upon Project ROW or other CDOT property for the sole purpose of performing activities necessary to design the Relocation, including without limitation, surveying and potholing, but excluding boring, sampling or other testing, all subject to each of the terms and conditions contained in this URA. Permission for Owner or its Contractors to traverse the property of any other property owners or interest-holders is the sole responsibility of Owner.

### c) Property Acquisition and Reimbursement

- i) Where reasonably possible, Utilities located within Public Lands shall be Protected-in-Place. Where a Utility is located in Public Lands and must be Relocated out of Public Lands, the Parties shall initially attempt to Relocate into Public Lands. If the Parties cannot so Relocate, the Parties shall meet to determine a suitable Relocation location and a schedule and plan to acquire any property interests necessary for the Utility's Relocation. The Party responsible to acquire Utility property interests shall be identified on the Work Order. Regardless of who performs acquisition of replacement property, both Parties shall have the right to examine and approve the property acquisition transaction contemplated for the new Utility location in order to confirm that a 'like-for-like' replacement of property interests is to be acquired. All property acquisition costs are Utility Work Costs of Relocation and shall, therefore, be borne by the Responsible Party. Property interests necessary for any Relocation must be obtained prior to commencement of construction of Relocation.
- ii) If Owner's Utility occupies real property pursuant to fee interest held by Owner as evidenced by documentary proof provided to and approved by CDOT ("Owner Property") and CDOT requires Owner Property for Project ROW or Project construction, the Parties shall, whenever reasonably possible, attempt to Protect the Utility in Place so that it will not be in conflict with the Project. However, if the Parties cannot Protect the Utility in Place, replacement property interests shall be acquired in accordance with Article 8(c)(i) hereof. Once the Utility has been Relocated into a new location and is in service, Owner shall convey to CDOT the Owner Property that is required for the Project. CDOT shall either reimburse Owner for the Fair Market Value of the Owner Property conveyed to CDOT or shall pay the costs to acquire replacement property interests at least as equal to the interests in the prior location for Owner.
- iii) If Owner's Utility occupies real property pursuant to a permanent easement (including proven prescriptive rights) held by Owner as evidenced by documentary proof provided to and approved by CDOT ("Owner Easement") and CDOT requires the Owner Easement for Project ROW or Project construction, the Parties shall, whenever reasonably possible, attempt to Protect in Place so that the Utility will not be in conflict with the Project. However, if the Parties cannot Protect in Place, replacement property interests shall be acquired in accordance with Article 8(c)(i) hereof. Once the Utility has been Relocated into a new location and is in service, Owner shall deed, assign, vacate, abandon or release the Owner Easement, as applicable, and, CDOT shall pay the cost of the replacement property interests, provided that CDOT shall be entitled to offset the cost of replacement property interests or the Cost of Relocation by the amount that Owner receives as compensation from any source for the transfer of rights in the Owner Easement. If CDOT has paid the cost of acquisition of



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

replacement property interests and has paid the Cost of Relocation, Owner shall be required to pay to CDOT any compensation received from any source for the transfer of rights in the Owner Easement.

- iv) This URA is not intended to waive Owner's rights to be paid just compensation in the event that CDOT should require Owner Property or Owner Easement for the Project. If no agreement is reached with respect to any particular Owner Property or Owner Easement needed for the Project, CDOT may bring an action to condemn if permitted by, and in accordance with, applicable law, and Owner retains its rights to bring an action for inverse condemnation.
- v) If necessary, Work Orders shall be revised to reflect the impact of property acquisition to the construction completion date shown on the Work Order. All real property acquired for the Project by CDOT, including for Utility Relocations, must be and shall be acquired pursuant to the Uniform Acquisition and Relocation Act, 42 U.S.C. § 4601 and applicable right-of-way procedures in 23 C.F.R. § 710.203.

9) PERMISSIONS. Owner shall obtain all Permissions for which Owner is required to be the named permittee. The Constructing Party shall obtain all other Permissions. The Parties agree to cooperate with one another in obtaining any Permission and to exchange copies promptly after obtaining any Permission.

10) WORK ORDER PROCESS. Relocations required by a Project shall be undertaken pursuant to a Work Order ("Work Order"), the form of which is attached as Appendix B. Once a Utility is confirmed to require Relocation and the Parties have agreed upon the Work Order content, the Parties shall negotiate a Work Order. For Relocations to be undertaken prior to Project Commencement, the Work Order shall be executed first by Owner and then by CDOT, and shall not require the Design Build Contractor signature. For Work Orders commenced after Project Commencement, the Work Order shall be executed first by Owner, then by the Design Build Contractor and finally by CDOT. Work Orders shall not be binding upon any Party until executed by that Party.

a) Work Order Content. Work Orders shall identify:

- i) The existing and proposed location of the Utility; concise description of Owner's property interests or Utility Permits where currently located; the agreed Relocation and detailed scope of work; the Designing Party; the Constructing Party; the Responsible Party; whether reimbursement, if any, is to be made on a lump sum or actual cost basis; the negotiated lump-sum or actual not-to-exceed Cost of Relocation, inclusive of any estimated Depreciation Value and Salvage Value credits and less the cost of any Betterments and/or Excluded Environmental Work; an indication of whether replacement property interests are required for Relocation and the Party responsible for acquisition thereof; the estimated actual not-to-exceed cost, if any, to acquire replacement property interests; the schedule for commencement and completion of both design and construction of the Relocation; the most-current CDOT Project Plans at the Utility location; the Relocation Standards applicable to the Relocation (hard copy or reference); and any other terms and conditions applicable to the Relocation, such as approved service interruptions or negotiated Betterments and payment arrangements therefor, (collectively, "Work Order Content").
- ii) The non-Designing Party shall be solely responsible to provide (hard-copy, electronically, or by reference) the Relocation Standards that it requires the Designing Party to apply to the Relocation covered in the Work Order.
- iii) If Relocation Standards are not so provided, the Designing Party shall not be responsible for the cost of any corrective Utility Work.



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

- b) Service Continuity. There shall be no shutdowns or temporary diversions of Owner's Utilities unless agreed by Owner and evidenced in detail on the Work Order. Owner shall have sole responsibility to operate any valves and/or switches, as applicable, unless Owner requests otherwise in writing. Owner's Utilities shall otherwise remain fully operational during all phases of Project construction. Except where due to *Force Majeure*, and without waiving any claims under applicable law that the Constructing Party may have against the Designing Party, the Constructing Party shall be responsible for the actual documented costs and damages incurred by Owner arising out of any unapproved interruption in Owner's Utility service resulting from performance of Utility Work or Project construction.
- c) Work Order Preparation. To the extent such documentation has not previously been exchanged, CDOT and Owner shall coordinate the exchange of all information necessary for preparation of the Work Order and shall promptly meet to resolve through good faith negotiation any comments or disagreements with respect to Work Order Content. If the Parties cannot reach agreement on the Work Order Content, the Work Order shall be handled as a Dispute in accordance with Article 19. Once the Parties have reached agreement on the Work Order Content, the Work Order shall be prepared by CDOT for execution by Owner and if applicable, the Design Build Contractor. Work Orders may be delivered by e-mail, facsimile, hand delivery, or by certified or registered first class mail. Owner shall respond within 14 calendar days after receipt of the Work Order either by executing the Work Order or providing comments.
- d) Work Order Conclusive. Once a Work Order is fully executed, that Work Order shall be conclusive as to all matters represented therein. Any material change to the Work Order scope of work and any change that will result in an increase in the time necessary to complete a Relocation or an increase to the Cost of Relocation above the amount authorized on the Work Order must be shown on a revised duly executed Work Order. Executed Work Orders, as they may be revised from time to time, are incorporated into this URA by this reference.

### 11) DESIGN AND REVIEW OF RELOCATION PLANS.

- a) Completed Relocation Plans shall be submitted to the non-Designing Party for review, who shall review the Relocation Plans solely for conformance with the URA and with the Relocation Standards provided by the non-Designing Party. Approval or rejection of Relocation Plans shall be returned to the Designing Party by no later than 14 calendar days after their submission, unless a different time period is expressly provided in the respective Work Order. The non-Designing Party's approval of Relocation Plans shall be evidenced by an executed design of relocation acceptance letter ("DRAL"), the form of which is attached as Appendix C. All DRALs shall be prepared by CDOT for execution by the non-Designing Party. Rejection of Relocation Plans shall be made in writing and shall specify the grounds for rejection as well as suggestions for correcting non-conformance. The revised Relocation Plans shall be re-reviewed and either approved or rejected not later than 7 calendar days after re-submission to the non-Designing Party. Prior to Project Commencement, CDOT's Project design Contractor shall execute DRALs for CDOT. After Project Commencement, the Design Build Contractor shall execute DRALs for CDOT.
- b) Any material change to the DRAL scope of work and any change that will result in an increase in the time necessary to complete a Relocation or an increase to the Cost of Relocation above the amount authorized on the DRAL must be shown on a revised duly executed DRAL.



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

### 12) CONSTRUCTION OF RELOCATION: INSPECTIONS.

- a) After execution of the DRAL, the Constructing Party shall determine whether all Permissions have been obtained and, if necessary, take steps to obtain any Permission that has not been obtained. The Constructing Party shall provide notice to the other Party of their anticipated construction of Relocation commencement date.
- b) Completed construction of Relocation shall be inspected immediately following completion for conformance with the URA and Relocation Plans. The non-Constructing Party's approval of construction of Relocation shall be evidenced by an executed construction of relocation acceptance letter ("CRAL"), the form of which is attached as Appendix D. All CRALs shall be prepared by CDOT for execution by the non-Constructing Party. If the construction of Relocation is approved, CRALs shall be executed immediately after inspection. Rejection of construction of Relocation shall be made in writing within 24 hours of inspection and shall specify the grounds for rejection as well as suggestions for correcting non-conformance. The revised Relocation shall be re-inspected for conformance with corrective suggestions immediately following corrective work and either approved or rejected after re-inspection. Provided that the non-Constructing Party approves the re-inspected construction of Relocation, CRALs shall be executed upon completion of re-inspection. A non-Constructing Party's inspection, approval and acceptance of any construction of Relocation performed shall not be construed as a waiver of any claim that the non-Constructing Party may have under applicable law. CDOT approval of construction of Relocation performed by Owner shall be limited to Utility Work performed within Project ROW or CDOT property. After Project Commencement, the Design Build Contractor shall execute CRALs for CDOT.
- c) If Relocations and Relocation inspections are directly coordinated with Project construction or are undertaken on the Project Site and the potential for conflicting traffic control operations exists, CDOT shall perform the required traffic control, regardless of whether the Relocation is performed by or on behalf of CDOT or Owner. CDOT shall perform construction staking on the Project Site for all Relocations.
- d) The Constructing Party shall provide the non-Constructing Party as-built plans or drawings marked to show changes in the field not later than 90 calendar days after the execution of the respective CRAL.

13) APPROVALS AND ACCEPTANCES. Approvals and acceptances shall not be unreasonably withheld or delayed. If approval or acceptance is withheld, such withholding shall be in writing and shall state with specificity the reason for withholding such approval or acceptance. Every effort shall be made to identify with as much detail as possible what changes are required for approval and acceptance.

### 14) OWNERSHIP, OPERATION, AND MAINTENANCE OF UTILITIES.

- a) If Owner is the Constructing Party, ownership and all responsibilities for operations and maintenance of the Utility shall be Owner's. If CDOT is the Constructing Party, Owner shall assume ownership and all responsibilities for operation and maintenance of the Utility upon execution of the CRAL.
- b) If Owner Utilities remain located within Project ROW after all Utility Work has been completed, Owner's access for maintenance and servicing of the Utilities shall be allowed exclusively pursuant to and in accordance with the Utility Permit governing that location.

### 16) REIMBURSEMENT.

- a) The Responsible Party shall be identified on the Work Order. The Designing or Constructing Party (if not the same as the Responsible Party) may invoice the Responsible Party no more than



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

monthly. Invoices shall cover all Utility Work performed since the prior invoice submission. The previous sentence notwithstanding, any costs incurred to acquire replacement property interests for Owner's utilities under this URA must be invoiced separately and must have been acknowledged as a cost on the Work Order.

- b) The Responsible Party shall make payment within 60 days of receipt of invoice. If the Responsible Party disputes any portion of the invoice, it may withhold payment for the disputed portion while timely remitting payment on the undisputed portion. All invoices for Utility Work must be submitted not later than one year after execution of the corresponding CRAL for that Utility Work. All invoices submitted to CDOT for reimbursement shall be reviewed for compliance with the cost eligibility and reimbursement standards contained in 23 CFR §§ 645.101, *et seq.*
- c) The Responsible Party will ensure that it has budgeted, authorized, and appropriated funds for all Utility Work costs specified in a Work Order. Neither Party will authorize any Work Order or Work Order revision that will cause the lump-sum or estimated not-to-exceed actual cost shown to increase beyond the previously appropriated amounts, unless the Responsible Party appropriates additional funds. Execution of a Work Order or Work Order revision by the Responsible Party is a representation that it has sufficient funds available for the Utility Work identified in the Work Order.

### 17) DEADLINES AND DELAYS.

- a) Except where due to *Force Majeure*, if CDOT or the Design Build Contractor fails to meet a deadline established herein or in the applicable Work Order, CDOT shall reimburse Owner for the actual documented costs and damages arising out of any such delay. CDOT shall not be liable to Owner for any delay in, or failure of performance of, any covenant or promise contained in this URA, nor shall any delay or failure constitute default or give rise to any liability for damages if and only to the extent that such delay or failure is caused by *Force Majeure* and CDOT has provided Owner notice of such *Force Majeure*.
- b) Time is of the essence in the performance of all Utility Work specified in all Work Orders. Where Owner has elected to perform Utility Work, Owner shall be liable to CDOT, through their agreement with the Design Build Contractor, only for actual damages suffered by CDOT as a direct result of Owner's delay in the performance of any Utility Work or as a direct result of Owner's interference with the performance of the Project construction by other contractors, except to the extent where those damages were caused by CDOT or their employees, contractors or agents or *Force Majeure* and Owner has provided CDOT notice of such *Force Majeure*.
- c) In addition to, and without limiting any rights or remedies available under this URA or otherwise, if Owner has elected to perform the Utility Work described in a Work Order and Owner fails to complete that Utility Work on or before the deadline established in the applicable Work Order, or if CDOT reasonably determines that Owner will be unable to timely complete such Utility Work, CDOT shall, after providing Owner 14 days to cure or provide a plan to cure, issue a Dispute Notice in accordance with Article 19. If the Parties are unable to resolve the Dispute, CDOT or Owner shall proceed to court in accordance with C.R.S § 24-4-106. The venue for all disputes shall be in state District Court for the City and County of Denver, Colorado except, if applicable for condemnation or inverse condemnation claims, which will be filed in the State District Court for the County where the real property at issue is located. Owner shall be responsible for delay damages to CDOT in accordance with Article 17(b).
- d) In the event of a Dispute, the Parties agree that they will continue their respective performance as required hereunder, including paying invoices, and that such continuation of efforts and payment of invoices shall not be construed as a waiver of any legal right or power: (a) of any Party under



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

this URA, any Work Order, or any other agreement executed pursuant hereto; or (b) otherwise available pursuant to applicable law.

### 18) NOTICES: REPRESENTATIVES AND AUTHORITY.

- a) Notices. Any and all notices required to be given by CDOT or Owner pursuant to this URA must be provided in writing, deliverable by e-mail, facsimile, hand delivery, or by certified or registered first class mail, to the Party representatives identified herein. Notice shall not be deemed given if not provided in the manner prescribed in this Article 18. Once Owner receives notice of Project Commencement, all notices to CDOT shall be concurrently given to the Design Build Contractor identified therein.
- b) Party Representatives. For the purpose of this URA, the individuals identified below are hereby-designated representative of CDOT and Owner. Either Party may from time to time designate in writing new or substitute representatives.

#### FOR CDOT:

Tim Bilobran  
CDOT Region 4 Utility Permit Manager  
10601 West 10th Street  
Greeley, CO 80634  
Phone: (970) 350-2163  
e-mail: [timothy.bilobran@state.co.us](mailto:timothy.bilobran@state.co.us)

#### FOR OWNER:

Dan Moore  
Water and Sewer Division Engineer  
Greeley Water  
1100 10<sup>th</sup> St, Suite 300  
Greeley, CO. 80631  
e-mail: [Dan.Moore@greeleygov.com](mailto:Dan.Moore@greeleygov.com)

- c) Authority. Party representatives shall each have the authority to negotiate, approve and execute Work Orders, DRALs, CRALs, Work Order revisions, and, where applicable, No-Conflict Close-Out Forms; review and approve or reject Relocation Plans; inspect and approve or reject construction of Relocation; review invoices for payment; and otherwise act for the Party represented. Either Party may limit the signature authority of their Party representative by submission to the other Party of written notice specifically identifying the extent of and limitations of the Party representative's authority.

### 19) DISPUTE RESOLUTION.

- a. Dispute Notice. In the event of any dispute, claim, or controversy arising out of or relating to this URA, any Work Order, or any Utility Work involving or otherwise relating to the Project or the Utility Work ("Dispute"), the complaining Party shall provide a notice of Dispute ("Dispute Notice") to the other Party except where the non-complaining Party waives the requirement to receive a Dispute Notice in writing. The Dispute Notice shall describe the facts surrounding the Dispute in sufficient detail to apprise the other Party of the nature of the complaint. The complaining Party may, but will not be required to, aggregate the Dispute with other Disputes into one Dispute Notice.

## Exhibit D: Utility Relocation Agreement, Effective January 4, 2018

- b. Good Faith Negotiation. CDOT, for itself and on behalf of Design Build Contractor and Design Build Contractor's Contractors, and Owner shall attempt to settle all Disputes. To this effect, CDOT and Owner shall conduct at least one face-to-face meeting between the Party representatives identified herein to attempt to reach a solution satisfactory to both CDOT and Owner. Such meeting shall take place within 7 calendar days following delivery of a Dispute Notice. If that meeting does not resolve the Dispute, CDOT and Owner shall each designate an official, at a level no lower than CDOT Project manager and Owner's chief engineer, to resolve the Dispute.
- c. Legal Remedies. If CDOT and Owner fail to resolve a Dispute in accordance with Article 19, either Party may proceed to court in accordance with C.R.S § 24-4-106. The venue for all disputes shall be in state District Court for the City and County of Denver, Colorado except, if applicable for condemnation or inverse condemnation claims, which will be filed in the State District Court for the County where the real property at issue is located and may pursue any remedies that may be available to it at law or in equity.

20) DAMAGE TO PERSONS AND PROPERTY. Each Party shall be responsible for any damage, including environmental damage, to any persons and property, including Project ROW, other CDOT property, Owner Property, adjacent property, utilities, adjacent structures, and other third person real or personal property, that is caused by it or its Contractor's activities associated with the Project or any Relocation. The Parties shall require their Contractors, employees and agents to exercise due precaution and care to avoid causing such damage and the occurrence of any such damage shall immediately be repaired at the expense of the Party that caused the damage to the reasonable satisfaction of the party injured, unless otherwise agreed by the party injured. The Parties shall notify one another of any such damage and any claims filed against either Party arising out of such damage.

### 21) INSURANCE.

a) CDOT shall require the Design Build Contractor to obtain Commercial General Liability (Bodily Injury and Property Damage) insurance with limits of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; Workers Compensation and Automobile Liability insurance as required by statute; and an excess or Umbrella policy in the amount of \$10,000,000. CDOT shall also require the Design Build Contractor to obtain coverage for Builder's Risk, Pollution Liability, and Professional Liability coverage.

#### b) By Owner.

- i) Whenever Owner is the Constructing Party and it (or its Contractor) will be present on the Project Site, or on any CDOT property, and whether or not a Work Order has been executed, Owner shall maintain (and/or require any Contractors performing activities hereunder to maintain): (a) Commercial General Liability (Bodily Injury and Property Damage) insurance with limits of liability of not less than \$1,000,000 per occurrence and aggregate, including the following coverages : i) Contractual Liability to cover liability assumed under this URA; ii) Personal Injury with the "employee" and "contractual" exclusions deleted, and iii) Product and Completed Operations Liability Insurance; (b) automobile liability insurance covering owned, non-owned and hired automobiles in an amount not less than \$1,000,000; and (c) Workers' Compensation insurance as required by law. Owner shall cause CDOT, Design Build Contractor(after project commencement date), as well as their governing bodies, and respective officers, employees and authorized agents to be named as additional insured as respects their interest under this agreement on the above general liability insurance.
- ii) Whenever Owner is the Designing Party of a Relocation to be constructed in or on the Project Site, Owner shall also maintain (and/or cause any Contractors performing design of



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

Relocation to maintain) professional liability coverage for design professionals with limits of liability not less than \$1,000,000 per occurrence and aggregate.

- iii) Where Owner or its Contractor is required to obtain insurance under (i) and (ii) of this provision, Owner shall cause a certificate (or certificates) evidencing the insurance required to be delivered to CDOT as a condition precedent to commencement of Utility Work by Owner and by each other party required to provide such insurance, and shall cause such insurance to be maintained in full force and effect until all such Utility Work is completed. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered to CDOT in accordance with policy provisions. If requested by CDOT from time to time, Owner shall provide CDOT with verification by a properly qualified representative of the insurer that Owner's and/or their Contractors' insurance complies with this paragraph and shall cause all other parties required to provide insurance pursuant to this paragraph to do the same. All contracts shall be required to have commercial insurance from a provider with a Best's A- rating.
- iv) Without in any way limiting any applicable indemnification under Article 22, Owner shall have the right to comply with and satisfy any or all of its insurance obligations under this URA in lieu of actually obtaining the applicable insurance policy(ies) by notifying CDOT of Owner's election to be self-insured as to the applicable insurance coverage. The same coverages and limitations prescribed herein shall apply. If requested by CDOT at any time, Owner shall provide CDOT with a letter of such self-insurance in a form reasonably acceptable to CDOT.

### 22) INDEMNIFICATION.

Each Party shall require its Contractor(s) to defend, indemnify, save, and hold harmless the other Party, CDOT, as well as their directors, employees, Contractors, and agents against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by the indemnifying Contractor, or their employees, agents, subcontractors, or assignees, and arising out of the terms of this URA or any Work Order executed pursuant hereto to the same extent and limits to which the indemnifying Contractor indemnifies the contracting Party. If Owner performs design or construction of Relocation with force account labor, Owner shall indemnify CDOT, as well as its directors, employees, Contractors and agents to the same extent that Owner's Contractors indemnify Owner, to the extent allowed by law.

### 23) TERMINATION.

- a) CDOT may terminate any Utility Work required by a Work Order at any time that it determines the purposes of the distribution of funds under that Work Order would no longer be served by completion of the Utility Work (a "Termination for Convenience"). CDOT shall effect such termination by giving written notice of termination to Owner at least 20 calendar days before the effective date of such termination. CDOT will reimburse Owner in accordance with the terms of the URA for Utility Work duly performed and reasonable costs duly incurred prior to the date of termination and for which CDOT is the Responsible Party.
- b) Subject to the preceding paragraph, all provisions of this URA that create rights or provide responsibilities for either Party after any termination of Utility Work shall survive such termination with respect to that Utility Work.
- c) All data, studies, surveys, maps, models, photographs and reports or other materials relating to Utilities or property rights or interests or rights of Owner that are provided to CDOT by Owner solely for work performed under this URA shall be returned to Owner.



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

**24) SETTLEMENT OF CLAIMS.** Neither Owner, nor CDOT shall be entitled to reimbursement for any Utility Work covered by this URA, including costs with respect to real property interests (either acquired or relinquished), except as set forth in the URA and in the Work Order. Consistent with applicable law, this URA, including all executed Work Orders, is intended as a full settlement of all claims regarding CDOT's, and Owner's responsibility for the Cost of Relocations. Except for obligations undertaken by CDOT, and Owner pursuant to this URA and consistent with applicable law, Owner, and CDOT each waives, releases, and forever discharges the other Party, its members, officers, directors, agents, employees, successors and assigns from any and all claims for reimbursement, whether known or unknown, which each Party ever had or now has, regarding liability for the cost of the Utility Work necessitated by the Project and identified in the Work Order. This paragraph is intended to address only the issue of responsibility for the Cost of Relocation and does not extend to any contractual or tort claims that might arise out of the performance of the Utility Work except as specifically provided herein.

**25) NO LIENS.** Each Party shall keep the Project Site and any other CDOT, or Owner property free from any statutory or common law lien arising out of any Utility Work performed by it, materials furnished to it, or obligations incurred by it, its agents, or Contractors.

**26) RETENTION OF RECORDS.**

a) Each Party shall keep and maintain all books, papers, records, accounting records, files, reports and other material relating to the Utility Work it performs (or has performed) pursuant to this URA, including detailed records to support all invoices submitted by each Party, for a period of six (6) years after final payment. Each Party and any other party or agency providing funding to CDOT (including its respective auditors) shall have access to and shall be entitled to audit all such records, or copies thereof, during normal business hours upon reasonable notice to the Party maintaining such records throughout the Term of this URA.

b) CDOT and Owner shall mutually agree upon any financial adjustments found necessary by any audit undertaken.

c) The Parties shall insert subparagraph (a) into any contracts entered for performance of Utility Work and shall also include in such contracts a clause requiring all Contractors to include subparagraph (a) in any subcontracts or purchase orders.

**27) TERM.** This URA is effective as of the date of CDOT's signature below and will continue to govern the Project until acceptance by CDOT and Owner of all Utility Work shown on the Work Order(s) for the Project, or until final payment owing from either Party for the Project has been made, whichever is later. Certain provisions that provide rights or create responsibilities for either Party after expiration or termination of any Utility Work, must, by their terms, survive.

**28) APPROPRIATIONS.** CDOT's obligations under this URA or any renewal shall extend only to monies appropriated for the purpose of this URA by CDOT and encumbered for the purposes of this URA. CDOT does not by this URA irrevocably pledge present cash reserves for payments in future fiscal years, and this URA is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of CDOT.

**29) LEGAL AUTHORITY.** Each Party warrants that it possesses the legal authority to enter into this URA and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this URA and to be bound to its terms. The person(s) executing this URA on behalf of each Party warrant(s) that such person(s) have full authorization to execute this URA.



## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

**30) SEVERABILITY.** If any provision or provisions of this URA shall be held to be invalid, illegal, unenforceable or in conflict with federal or Colorado state law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, unless the deletion of invalid, illegal or unenforceable provision or provisions would result in such a material change as to cause completion of the transactions contemplated herein to be unreasonable.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK**

# Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

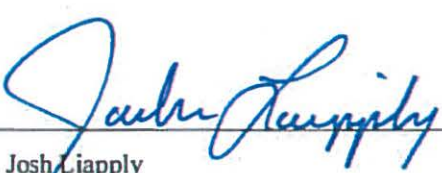
In witness whereof, Owner and CDOT have executed this URA.

FOR OWNER (The City of Greeley):

COLORADO DEPARTMENT OF TRANSPORTATION:


Approved as to substance:


By:   
Name: Roy Otto  
City Manager  
Date:

By:   
Josh Liapply  
Chief Engineer  
Date: 1/4/2018

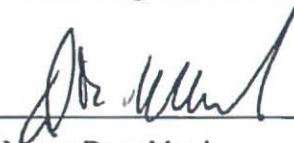
Reviewed for availability of funds:

Approved as to legal form for CDOT:

By:   
Name: Victoria Runkle  
Title: Director of Finance  
Date:

By:   
Name: Gregg E. Carson, 25460  
Title: Senior Assistant Attorney General  
Date:

Approved as to legal form for Owner (if necessary):

By:   
Name: Doug Marek  
Title: City Attorney  
Date:

## Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

### Appendices 7A-E

# Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

## Exhibit A Utility No-Conflict Closeout Form

This Utility No-Conflict Closeout Form ("No-Conflict Form") is executed by the Utility Owner and the CDOT Contractor in connection with the I-25 North Express Lanes Project Utility Relocation Agreement ("URA") entered into by the Utility Owner and CDOT. Unless the context clearly otherwise requires, initially capitalized terms shall have the meaning prescribed to them in the URA.

A fully-executed No-Conflict Form indicates the Parties' concurrence that, as of the Project plans current at the date of Utility Owner's execution hereof, no Relocation is required for Utility Owner's Utility referenced herein. Utility Owner and the CDOT Contractor acknowledge that future modifications to the Project may require Relocation of the referenced Utility in accordance with the URA. Two originals shall be executed and a copy shall be forwarded to CDOT by the CDOT Contractor.

Utility Owner	
Utility Identification No.:	
Location	
Comments (attach pages as necessary)	

### FOR UTILITY OWNER

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name:  
 Title:

### FOR CDOT CONTRACTOR

By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Name:  
 Title:

If this form is not signed by the Utility Owner, the Utility Owner shall state below its basis for disagreement with the No-Conflict designation for this Utility:

---



---



---



---



---

(Attach pages as necessary)

# Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

## Exhibit B Form of Utility Work Order

<b>Utility Owner:</b> _____			
<b>Utility Identification No.:</b> _____			
<b>Work Order No.:</b> _____		<b>Work Order Revision No.:</b> _____	
<b>Work Breakdown Structure No.:</b> _____			
<b><u>LOCATION:</u></b> _____			
<b><u>DESCRIPTION:</u></b> _____			
<b><u>OPERATING RIGHTS:</u></b> _____			
<b>DESIGN</b>			
	<input type="checkbox"/> No Design Required		
Performing Party	<input type="checkbox"/> Contractor	<input type="checkbox"/> Owner	
Responsible Party	<input type="checkbox"/> Contractor	<input type="checkbox"/> Owner	
Contractor pays Owner	Lump Sum: _____	Actual Cost Not to Exceed:	_____
Owner pays Contractor	Lump Sum: _____	Actual Cost Not to Exceed:	_____
Comments	_____		
<b>CONSTRUCTION</b>			
	<input type="checkbox"/> No Construction Required		
Performing Party	<input type="checkbox"/> Contractor	<input type="checkbox"/> Owner	
Responsible Party	<input type="checkbox"/> Contractor	<input type="checkbox"/> Owner	
Contractor pays Owner	Lump Sum: _____	Actual Cost Not to Exceed:	_____
Owner pays Contractor	Lump Sum: _____	Actual Cost Not to Exceed:	_____
Comments	_____		
<b>CONSTRUCTION INSPECTION</b>			
	<input type="checkbox"/> No Construction Inspection Required		
Performing Party	<input type="checkbox"/> Contractor	<input type="checkbox"/> Owner:	
Responsible Party	<input type="checkbox"/> Contractor	<input type="checkbox"/> Owner:	
Contractor pays Owner	Lump Sum: _____	Actual Cost Not to Exceed:	_____
Owner pays Contractor	Lump Sum: _____	Actual Cost Not to Exceed:	_____
Comments	_____		
<b>PROPERTY ACQUISITION</b>			
	<input type="checkbox"/> No Property Acquisition Required		
Performing Party	<input type="checkbox"/> Contractor	<input type="checkbox"/> Owner:	
Responsible Party	<input type="checkbox"/> Contractor	<input type="checkbox"/> Owner:	
Contractor pays Owner	Lump Sum: _____	Actual Cost Not to Exceed:	_____
Owner pays Contractor	Lump Sum: _____	Actual Cost Not to Exceed:	_____
Comments	_____		



# Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

<b><u>SCHEDULE (THIS WORK ORDER ONLY)</u></b>	
<b><u>Design</u></b>	<b><u>Construction</u></b>
Start Date: _____	Start Date: _____
Completion Date: _____	Completion Date: _____
Comments: _____	
<b><u>CHANGE ORDER</u></b>	
If this section is signed by the CDOT representative, then this Work Order will function as a Change Order.	
_____ CDOT Representative	_____ Date
<b><u>WORK ORDER TERMS AND CONDITIONS</u></b>	
<p>SCOPE OF WORK ORDER. This Work Order is entered into by and among Utility Owner and CDOT, and, where applicable, the CDOT Contractor in order to implement in part the URA identified herein, as the same may be amended from time to time, and which is incorporated herein by this reference. All work undertaken pursuant to this Work Order shall be performed in accordance with the requirements of the URA, which shall govern to the extent of any conflict between its terms and the terms of this Work Order. Relocation Standards specifically identified in the URA are incorporated herein by this reference. Unless otherwise defined herein, all initially capitalized terms and conditions shall have the meaning prescribed to them in the URA.</p> <p>WORK ORDER ATTACHMENTS. This Work Order and any attachments hereto contain information specific to the Relocation to be performed hereunder. Attached and/or referenced Relocation Standards are incorporated herein by this reference and shall be considered a part of this Work Order. This Work Order governs only the Utility Work specifically identified herein and shall be conclusive as to all matters represented herein.</p> <p>ORDER OF EXECUTION. This Work Order shall be executed first by Utility Owner, then by the CDOT Contractor (if applicable) and finally by CDOT.</p> <p>IN WITNESS WHEREOF, CDOT, the Utility Owner, and where applicable, the CDOT Contractor have executed this Work Order, which shall be effective as of the date of the CDOT's signature.</p>	
<div style="display: flex; justify-content: space-between;"> <div style="width: 30%;"> <p>Utility Owner:</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>CDOT Contractor:</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> <p>CDOT:</p> <p>By: _____</p> <p>Print Name: _____</p> <p>Title: _____</p> <p>Date: _____</p> </div> <div style="width: 65%;"> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> </div> </div>	

# Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

<b>Utility Identification No.:</b>													
<b>SECTION A</b>	<b>SCOPE</b>												
<b>SECTION B</b>	<b>REQUIRED PERMITS</b>												
<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 60%; text-align: center; border-bottom: 1px solid black;">Permit Type</th> <th style="width: 40%; text-align: center; border-bottom: 1px solid black;">Permit Responsibility</th> </tr> <tr><td style="border-bottom: 1px solid black;"></td><td style="border-bottom: 1px solid black;"></td></tr> <tr><td style="border-bottom: 1px solid black;"></td><td style="border-bottom: 1px solid black;"></td></tr> <tr><td style="border-bottom: 1px solid black;"></td><td style="border-bottom: 1px solid black;"></td></tr> <tr><td style="border-bottom: 1px solid black;"></td><td style="border-bottom: 1px solid black;"></td></tr> <tr><td style="border-bottom: 1px solid black;"></td><td style="border-bottom: 1px solid black;"></td></tr> </table>		Permit Type	Permit Responsibility										
Permit Type	Permit Responsibility												
<b>SECTION C</b>	<b>LIST OF ATTACHMENTS</b>												
<div style="display: flex; align-items: flex-start;"> <div style="flex: 1;"> <input type="checkbox"/> Owner Design Sheet  <input type="checkbox"/> Project Design Sheet  <input type="checkbox"/> Cost Estimate  <input type="checkbox"/> Property Rights  <input type="checkbox"/> Other:         </div> <div style="flex: 2;"> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> <div style="border-bottom: 1px solid black; margin-bottom: 5px;"></div> </div> </div>													

# Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

## Exhibit C Form of Design of Relocation Acceptance Letter (DRAL)

This DESIGN OF RELOCATION ACCEPTANCE LETTER ("DRAL") is executed by the non-Designing Party in connection with the I-25 North Express Lanes Project Utility Relocation Agreement (URA), entered into by the Utility Owner and CDOT. Execution of this DRAL indicates the non-Designing Party's acceptance and approval of the design of the Relocation, as attached to this DRAL, performed and completed by the Designing Party. Unless otherwise defined herein, initially capitalized terms shall have the meaning prescribed to them in the URA. Two originals shall be executed and a copy shall be forwarded to CDOT by the CDOT Contractor.

Utility Owner: \_\_\_\_\_

Utility Identification No.: \_\_\_\_\_

Work Order No.: \_\_\_\_\_ Work Order Date: \_\_\_\_\_

Work Order Rev. No.: \_\_\_\_\_ Rev. Date: \_\_\_\_\_

Designing Party: \_\_\_\_\_

Now, therefore, the non-Designing Party executes this DRAL to indicate that it has reviewed the design of the Relocation completed by the Designing Party and has found the design of the Relocation to have been designed in accordance with the non-Designing Party's Relocation Standards duly provided to the Designing Party:

### Non-Designing Party

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

☐ The non-Designing Party declines execution of this DRAL at this time for the following reasons:

\_\_\_\_\_  
 \_\_\_\_\_

(attach pages as necessary)

☐ The Constructing Party may proceed with construction of the Relocation.

\_\_\_\_\_



# Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

## Exhibit D Form of Construction of Relocation Acceptance Letter (CRAL)

This CONSTRUCTION OF RELOCATION ACCEPTANCE LETTER ("CRAL") is executed by the non-Constructing Party in connection with the I-25 North Express Lanes Project Utility Relocation Agreement (URA) entered into by the Utility Owner and CDOT. Execution of this CRAL indicates the non-Constructing Party's Inspection and acceptance of the construction of the Relocation performed and completed by the Constructing Party. Unless otherwise defined herein, initially capitalized terms shall have the meaning prescribed to them in the URA. Two originals shall be executed and a copy shall be forwarded to CDOT by the CDOT Contractor.

The construction of the Relocation inspected and accepted by execution hereof is described below:

Utility Owner: \_\_\_\_\_

Utility Identification No.: \_\_\_\_\_

Work Order No.: \_\_\_\_\_ Work Order Date: \_\_\_\_\_

WO Revision No.: \_\_\_\_\_ WO Revision Date: \_\_\_\_\_

Constructing Party: \_\_\_\_\_

Now, therefore, the non-Constructing Party executes this CRAL to indicate that it has inspected the construction of the Relocation completed by the Constructing Party and has found the construction of the Relocation has been performed in accordance with the Relocation Plans:

### NON-CONSTRUCTING PARTY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

☐ The non-Constructing Party declines execution of this CRAL at this time for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Attach pages as necessary)

# Exhibit D: Utility Relcation Agreement, Effective January 4, 2018

## Exhibit E Form of Buy America Certification

(To be signed by authorized signatory(ies) of Utility Owner

The undersigned certifies that only domestic steel and iron will be used for the construction portion of the Project.

To be considered domestic, all steel and iron used and all products manufactured from steel and iron must be produced in the United States and manufacturing processes, including application of a coating, for these materials must occur in the United States. Coating includes all processes, which protect or enhance the value of the material to which the coating is applied. This requirement does not preclude a minimal use of foreign steel and iron materials, provided the cost of such material does not exceed 0.1 percent of the total of the total contract cost or \$2,500, whichever is greater.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Title: \_\_\_\_\_

# **Greeley-CDOT Special Use Agreement (SUA) for the Partial Relocation of the Bellvue Transmission Pipelines**



**April 15, 2020**



# CDOT Requests Special Use Agreement (SUA) with Greeley

## Background

- CDOT is enlarging the intersection at Prospect Street and I-25 near Fort Collins. Greeley has 2-27” Water Transmission Pipelines adjacent to the southwest corner of this intersection that would be impacted by this project.
- Project is time sensitive



# CDOT Requests Special Use Agreement (SUA) with Greeley

## Issue

- CDOT is requesting that Greeley relocate these pipelines to avoid conflict and will pay for the cost of relocation. The Special Use Agreement is the means to provide the reimbursement.
- Greeley has approved the design paid for by CDOT, and CDOT has procured the necessary new easements. Greeley and CDOT have agreed on a contractor to do this work. CDOT also agrees to pay for Greeley's administrative and inspection costs as part of this agreement.





# CDOT Requests Special Use Agreement (SUA) with Greeley

## Staff Recommendation and Council Action:

- The terms of the agreement have been negotiated over the past 10 months with many iterative drafts shared among the parties to refine the terms and legal protections.
- Staff is confident that this SUA will protect Greeley's financial interests, therefore staff recommended approval to Council;
- **City Council Formally Approved the Special Use Agreement (SUA) with CDOT on Tuesday, April 7th**



# CDOT Requests Special Use Agreement (SUA) with Greeley

## QUESTIONS



**WATER & SEWER BOARD AGENDA   APRIL 15, 2020**

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:                      9

TITLE:                                1<sup>ST</sup> QUARTER WATER COURT UPDATE

RECOMMENDATION:      INFORMATIONAL ONLY

**ADDITIONAL INFORMATION:**

This item intends to update the Board on the current status of Greeley's Water Court cases including statements of opposition and cases where Greeley is the applicant or will soon be filing an application for change of water rights, as well as a summary of the Water Resources Division's legal costs.



# Water & Sewer Department MEMORANDUM

---

TO: Greeley Water & Sewer Board  
FROM: Jen Petrzela, Water Rights Manager/Water Resources Operations Manager  
DATE: April 8, 2020  
RE: 1<sup>st</sup> Quarter Water Court Cases Update

---

This memorandum is a review of the Water and Sewer Department's legal activities from January of 2020 through March of 2020. The review includes an update on Greeley's current Water Court cases and a summary of the Water Resources Division's legal expenses.

## **STATEMENTS OF OPPOSITION**

Since the last update in January, Greeley has filed six statements of opposition and stipulated in four cases. Therefore, the current number of pending Water Court cases where Greeley is an opposer is 35.

Statements of Opposition filed:

- 19CW3225 (City of Fort Collins)
- 19CW3226 (Raindance Metropolitan District No. 1)
- 19CW3246 (Fort Morgan Farms and High Plains Grazing)
- 19CW3253 (Parker Water and Sanitation District)
- 20CW3000 (Holcim Inc.)
- 20CW3011 (Town of Johnstown)

## **GREELEY AS APPLICANT**

A summary of Greeley's pending Water Court cases where Greeley is the applicant is as follows:

### 17CW3020 (Leprino)

Greeley and Leprino Foods, Inc. ("Leprino") filed an application for quantification of reusable return flows and appropriative rights of substitution and exchange on February 2017. Statements of Opposition were filed by fifteen parties. We received a stipulation from the last opposer, Central Colorado Water Conservancy District on April 3<sup>rd</sup> and a final decreed was entered on April 8<sup>th</sup>.

SERVING OUR COMMUNITY • IT'S A TRADITION

We promise to preserve and improve the quality of life for Greeley through timely, courteous and cost-effective service.

19CW3164 (Linn Grove Diligence, Case No. 11CW60)

On August 28, 2019, Greeley filed an application for a finding of reasonable diligence for the conditional groundwater rights, conditional storage rights, and conditional exchanges decreed to operate in conjunction with the plan for augmentation in Case Number 11CW60. These water rights are decreed for irrigation and other related uses at Linn Grove Cemetery. In this application, Greeley is also seeking a determination that certain of the water rights should be made partially absolute, in the amount of 36.9 gpm for the groundwater right decreed to Well B, 0.05 acre-feet of storage in Linn Grove Pond No. 1, and 5.6 acre-feet of storage in Linn Grove Pond No. 2. The rights decreed in 11CW60 not made absolute will remain conditional. A statement of opposition was filed by the Cache la Poudre Water Users Association ('CLPWUA') and Greeley circulated a draft decree on January 10<sup>th</sup>. CLPWUA has agreed to stipulate to that form of the decree and we are awaiting their execution of the stipulation.

19CW3191 (Equalizer diligence, Case No. 05CW326)

On September 30, 2019 Greeley filed its application for a finding of reasonable diligence for conditional surface rights and right of exchange, including storage, of its Lower Equalizer rights decreed in Case No. 05CW326. No absolute claims are being made in this application and all rights remain conditional. No statements of opposition were filed, however, the Greeley Irrigation Company filed a motion to intervene which was granted by the court. They have until May 22<sup>nd</sup> to provide comments on the proposed decree.

19CW3239 (Overland Ponds Diligence, Case No. 00CW251)

On December 20<sup>th</sup>, 2019 Greeley filed its application for a finding of reasonable diligence to make a conditional water right partially absolute. This application concerns the conditional water storage right and conditional appropriative rights of exchanges decreed in Case No. 00CW251. In this application, Greeley and the Tri-districts ('Applicants') are claiming 18.6 cfs diversion rate and 283.58 acre-feet of storage absolute. Seven statements of opposition were filed. Applicants will circulate a draft decree by April 17<sup>th</sup> and opposers have until June 30<sup>th</sup> to provide comments.

20CW3009 (Rockwell Diligence, Case No. W-8695-77)

On January 31<sup>st</sup>, 2020, Greeley filed its application for a finding of reasonable diligence toward appropriation of the conditional water storage right originally decreed for its proposed use of Rockwell Reservoir in Case No. W-8695-77, as well as appropriation of certain conditional appropriative rights of exchange originally decreed to Rockwell Reservoir in W-9385-78. Greeley changed the Rockwell Reservoir Storage Right and certain of the Rockwell Reservoir Exchanges in Case No. 15CW3162 to facilitate the storage and subsequent operation of water attributable to the rights in and from Milton Seaman Reservoir. Four statements of opposition have been filed thus far.

20CW3004 (GLIC Exchange Diligence, Case No. 87CW329)

On January 28<sup>th</sup>, 2020, Greeley filed its application for a finding of reasonable diligence toward the conditional appropriative right of exchange originally decreed in Case No. 87CW329. Greeley may divert excess municipal return flows from GLIC, Seven Lakes, and Lake Loveland water rights changed in Case No. 87CW329 released from Greeley's WTRF and the Lone Tree



wastewater treatment plant by exchange to the headgates of the ditch companies. Two statements of opposition have been filed thus far.

**LEGAL & ENGINEERING EXPENSES:**

The Water Resource Division's outside legal and engineering expenses through March of 2020 totaled \$60,635 which is within 1% of what we had spent at this time last year and 11% of the \$569,061 total spent in 2019 (see summary table on following page).

*2020 Water Resources Legal and Engineering Costs*

<u>1st quarter</u>	
Legal	\$18,257
Engineering	\$42,378
<i>Total</i>	<i>\$60,635</i>
<u>2nd quarter</u>	
Legal	\$0
Engineering	\$0
<i>Total</i>	<i>\$0</i>
<u>3rd quarter</u>	
Legal	\$0
Engineering	\$0
<i>Total</i>	<i>\$0</i>
<u>4th quarter</u>	
Legal	\$0
Engineering	\$0
<i>Total</i>	<i>\$0</i>
<b><i>Annual Total</i></b>	<b><i>\$60,635</i></b>

# 1<sup>st</sup> Quarter Water Court Cases Update

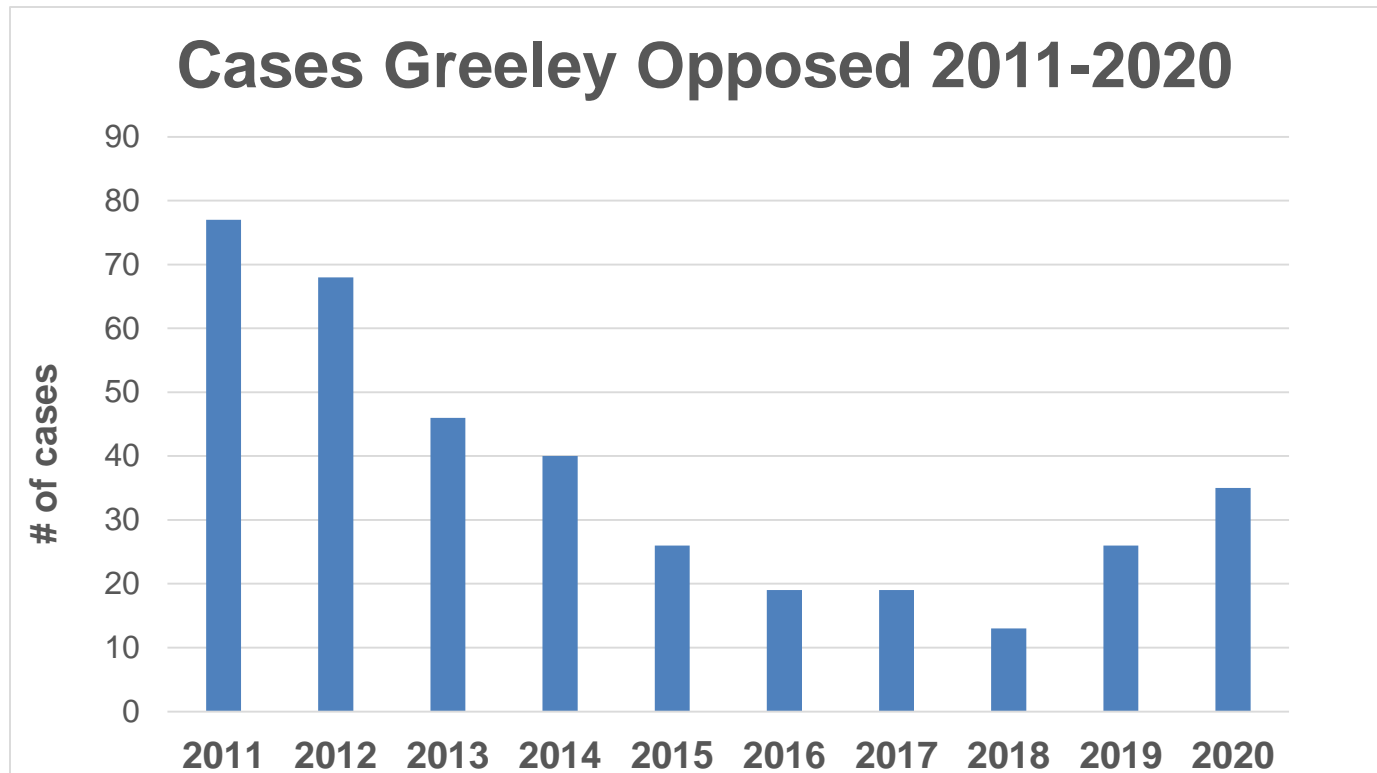


Jen Petrzelka, Water Resources Operations Manager  
April 15<sup>th</sup>, 2020



# Statements of Opposition

- Since October filed 6 SOO, stipulated to 4 cases
- Number of cases Greeley is an opposer: 26
- Up 9 cases since end of 2019



# Greeley as Applicant

- ***Leprino (17CW3020)***
  - Quantification of reusable dairy bi-product water and appropriative rights of substitution and exchange
  - 14 opposers, 1 entry of appearance
  - **Final decree was entered April 8<sup>th</sup>**



# Greeley as Applicant

## ***Linn Grove Cemetery Diligence (19CW3164)***

- Filed application on August 28
- Conditional groundwater rights, storage rights and exchange rights
- Seeking absolute claims for:
  - 36.9 gpm pumping rate decreed to Well B
  - 0.05 acre-feet storage into Linn Grove Pond No. 1
  - 5.6 acre-feet storage into Linn Grove Pond No.2
- 1 Opposer (Cache la Poudre Water Users Association)
- Agreed to stipulate to that form of the decree and we are awaiting their execution of the stipulation.





# Greeley as Applicant

## ***Lower Equalizer Diligence (19CW3191)***

- Conditional surface rights, storage rights and exchange rights
- Not seeking absolute claims in this application
- 1 Opposer (GIC)
- Circulated draft decree
- Opposer has until May 22<sup>nd</sup> to provide comments



# Greeley as Applicant

## ***Overland Ponds Diligence (19CW3239)***

- Filed application December 31<sup>st</sup>
- Conditional storage rights and exchange rights
- Seeking absolute claims for:
  - 18.6 cfs diversion rate
  - 283.58 acre-feet storage
- 7 statements of opposition were filed
- Applicants will circulate draft decree by April 17<sup>th</sup>



# Greeley as Applicant








## ***Rockwell Diligence (20CW3009)***

- Filed application January 31<sup>st</sup>
- Conditional storage right and appropriative rights of exchange in W-8695-77 and W-9385-78
- 4 statements of opposition have been filed





## Rockwell Reservoir Water Rights Location Map

-  Creeks
-  Rivers
-  Transbasin Ditch/Tunnel
-  River Basins
-  National Forest System
-  Rocky Mountain National Park
-  Continental Divide



**EXHIBIT A**

Date: 10/02/2020  
 By: GCM/MSB  
 Rockwell\_Reservoir\_Location.mxd  
 Author: GCM/MSB/Tragety, 2016  
 This map is for reference only.



# Greeley as Applicant

## ***GLIC Exchange Diligence (20CW3004)***

- Filed application January 28<sup>th</sup>
- Finding of reasonable diligence toward the conditional appropriative right of exchange originally decreed in Case No. 87CW3294
- Exchange of effluent from Greeley's WWTP and Lone Tree WWTP to the GLIC system
- 2 statements of opposition have been filed





# Legal & Engineering Expenses

## 2020 Costs to date

Legal	\$ 18,257
Engineering	\$ 42,378
<b>Total</b>	<b>\$ 60,635</b>

This is 11% of the \$569,061 spent in 2019





Questions?



**WATER & SEWER BOARD AGENDA    APRIL 15, 2020**

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:                    10

TITLE:                            APPROVE AGRICULTURAL LAND AND  
WATER LEASE POLICY

RECOMMENDATION:      APPROVE THE AGRICULTURAL LAND AND  
WATER LEASE POLICY AND DELEGATE  
AUTHORITY TO STAFF TO NEGOTIATE  
LEASES CONSISTENT WITH THE TERMS  
LISTED THEREIN

**ADDITIONAL INFORMATION:**

The City of Greeley manages an agricultural lease program that includes Water Leases and Water and Farm Leases in the Greeley-Loveland Irrigation Company, Water Supply and Storage Company, New Cache Irrigation Company and Cache la Poudre Reservoir Company, Windsor Reservoir and Canal Company, and Larimer and Weld Irrigation Company and Larimer and Weld Reservoir Company. A Water Lease involves leasing the water rights associated with historically irrigated lands for continued use of irrigation, often to the seller of the water rights. A Water and Farm Lease includes a lease of both water, irrigation improvements such as a center pivot system and historically irrigated land for continued use of irrigation.

In order to provide consistency in developing lease agreements, this policy outlines the general terms and conditions leases should contain. All Water Leases and Water and Farm Leases that do not substantially conform to the terms of this policy would need to be approved by the City of Greeley Water and Sewer Board.

Consistent with direction from Board at the March meeting, Staff has made changes to this policy and is now bringing this item back for approval.



## **CITY OF GREELEY AGRICULTURAL LEASE PROGRAM**

### **POLICY**

*Effective April 15, 2020*

The City of Greeley manages an agricultural lease program that includes Water Leases and Water and Farm Leases in the Greeley-Loveland Irrigation Company, Water Supply and Storage Company, New Cache Irrigation Company and Cache la Poudre Reservoir Company, Windsor Reservoir and Canal Company, and Larimer and Weld Irrigation Company and Larimer and Weld Reservoir Company. A Water Lease involves leasing the water rights associated with historically irrigated lands for continued use of irrigation, often to the seller of the water rights. A Water and Farm Lease includes a lease of both water, irrigation improvements such as a center pivot system and historically irrigated land for continued use of irrigation. Leases are frequently entered into after the acquisition of the water rights in order to support regional agriculture and to maintain beneficial water use on the property necessary for a future change case. In order to provide consistency in developing lease agreements, this policy outlines the general terms and conditions leases should contain. Leases negotiated as part of an acquisition of water rights are recommended, but not required, to follow these policies. All Water Leases and Water and Farm Leases that do not substantially conform to the terms of this policy must be approved by the City of Greeley Water and Sewer Board.

### **Water Leases**

- Term:
  - The initial lease term for Water Leases will be no more than ten (10) years.
  - After the initial term, Greeley and the lessee may renew the Water Lease annually for up to five (5) additional years.
  - Renewals will be automatic.
- Termination:
  - No Cause, Initial Term
    - The lessee may terminate the Water Lease during the initial term, prior to any irrigation season, for any reason, by delivering two years' advance written notice to Greeley.
    - Greeley may terminate the Water Lease during the initial term, prior to any irrigation season, by delivering advance written notice to lessee on or before November 1 of the preceding calendar year, if Greeley determines in its sole discretion that the water rights are needed for any municipal



purpose, or if Greeley is required to cease irrigation with the water rights by the terms and conditions of a water court decree.

- No Cause, Renewal Term
  - The lessee may terminate the Water Lease during the renewal term, prior to any irrigation season, for any reason, by delivering written notice to Greeley on or before November 1 of the preceding calendar year.
  - Greeley may terminate the Water Lease during the renewal term, prior to any irrigation season, for any reason, by delivering written notice to the lessee on or before November 1 of the preceding calendar year.
- For Cause, Immediate Termination
  - Greeley may immediately terminate the Water Lease for cause in the event the lessee fails to make its payments, fails to comply with its obligations regarding the use of the water rights, or attempts to assign the lease without Greeley's approval.
- For Cause, Opportunity to Cure
  - Greeley or lessee may otherwise terminate the Water Lease for cause in the event of a default of either party's obligations, whereupon the non-defaulting party has fifteen (15) days to cure the default. If the default remains uncured thereafter, the non-defaulting party may terminate the Water Lease immediately by written notice.
- Payments:
  - Annual payment for a Water Lease will equal annual ditch assessments plus an administration fee that is 10% of the total assessment cost up to \$500.

## **Water and Farm Leases**

- Term:
  - The initial lease term for Water and Farm Leases will be no more than 5 years.
  - After the initial term, Greeley and the Lessee may renew the Water and Farm Lease annually for up to an additional five (5) additional years by automatic renewal.
- Termination:
  - No Cause, Initial Term
    - The lessee may terminate the Water and Farm Lease during the initial term, prior to any irrigation season, for any reason, by delivering two years' advance written notice to Greeley.
    - Greeley may terminate the Water and Farm Lease during the initial term, prior to any irrigation season, by delivering advance written notice to lessee





on or before November 1 of the preceding calendar year, if Greeley determines in its sole discretion that the water rights are needed for any municipal purpose, or if Greeley is required to cease irrigation with the water rights by the terms and conditions of a water court decree.

- No Cause, Renewal Term
  - The lessee may terminate the Water and Farm Lease during the renewal term, prior to any irrigation season, for any reason, by delivering written notice to Greeley on or before November 1 of the preceding calendar year.
  - Greeley may terminate the Water and Farm Lease during the renewal term, prior to any irrigation season, for any reason, by delivering written notice to the lessee on or before November 1 of the preceding calendar year.
- For Cause, Immediate Termination
  - Greeley may immediately terminate the Water and Farm Lease for cause, upon written notice, in the event the lessee is in default of its obligations.
- Sale of Property
  - Greeley may terminate the Water and Farm Lease prior to any irrigation season, by delivering advance written notice to lessee on or before November 1 of the preceding calendar year, in the event Greeley enters into a contract to sell or actually sells the water rights or land.
- Payments:
  - Bi-annual payments equal to \$150 per gross acre plus an annual 2% increase per year during the lease term.
  - 50% of the payment is due by March 31<sup>st</sup> and the remaining 50% is due December 15<sup>th</sup>.
  - Annual Ditch Assessments and administration fees are included in the price per acre.

### **Changed versus unchanged shares**

- The City will require lessees to fill out a historical use affidavit each year for leases of water rights that have not already been changed in a water court proceeding.
- If water is needed for municipal use, leases for changed shares will be terminated first since this water has the legal ability to be used in Greeley's potable system.

*This document is intended to reflect current Greeley W&S Department policy, and may be subject to change.*

**FARM LEASE AGREEMENT**  
**(\_\_\_\_\_Farm)**

This FARM LEASE AGREEMENT ("Lease Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water and Sewer Board, whose address is 1001 11<sup>th</sup> Avenue, Second Floor, Greeley, Colorado 80631 ("City") and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Lessee").

**RECITALS**

WHEREAS, City owns agricultural property consisting of approximately \_\_\_\_ acres of irrigated cropland located at \_\_\_\_\_ (street address if available), which is legally described on Exhibit A, attached hereto and made a part hereof, (the "Real Estate"); and,

WHEREAS, City owns those certain water rights represented by \_\_\_\_\_ Shares of capital stock in \_\_\_\_\_ represented by Stock Certificate No. \_\_\_\_\_; \_\_\_\_\_ Shares of capital stock in \_\_\_\_\_ represented by Stock Certificate No. \_\_\_\_\_; and \_\_\_\_\_ Shares of capital stock in \_\_\_\_\_ represented by Stock Certificate No. \_\_\_\_\_ (collectively the "Water Rights"), which have been historically used to irrigate the Real Estate; and,

WHEREAS, City desires to lease, under the terms of this Lease Agreement, the Water Rights, Real Estate, and all improvements located thereon, (collectively, the "Property") to Lessee for agricultural purposes; and,

THEREFORE, for and in good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Lessee agree as follows:

**LEASE AGREEMENT**

1. FARM LEASE. City does hereby lease to Lessee the above-described Property, together with all included Improvements (defined below) located thereon, for agricultural purposes, subject to the terms and conditions of this Lease Agreement.

2. TERM OF LEASE. This lease of the Property shall begin on the effective date of the Lease Agreement set forth above, and end on \_\_\_\_\_ (insert 5 year initial term - ensure expiration does not fall within irrigation season) (the "Initial Term"). At the end of this Initial Term, this Lease Agreement shall renew automatically for \_\_\_\_\_ (insert renewal period, not to exceed 5 annual renewals) (the "Renewal Term"), unless City or Lessee transmits written notice of nonrenewal on or before November 1 of the preceding calendar year. The Initial Term and Renewal Term are collectively referred to as the "Lease Term." The Lessee may terminate this Lease Agreement during the Initial Term, prior to any irrigation season, for any reason by delivering two years advance written notice to the City. The City may terminate this Lease Agreement during the Initial Term, prior to any irrigation season, by delivering an advance written notice to Lessee on or before November 1 of the preceding calendar year, if the City determines in its sole discretion that the Water Rights are needed for any municipal purpose or the City is required to cease irrigation with the Water Rights on the Real Estate by the terms and conditions of a water court decree. Additionally, refer to Section 11 for provisions relating to termination for cause and 14(j) for provisions relating to termination due to sale of the Property in whole or in part.

3. LEASE AMOUNT.

a. Lessee shall annually pay to City, \_\_\_\_\_ (“Lease Amount”) for the use and occupancy of the Property, which is equal to One Hundred Fifty Dollars (\$150) per acre for approximately \_\_\_\_\_ acres of irrigated cropland. The Lease Amount shall be due and payable in two equal installments. The first installment of \_\_\_\_\_ shall be due March 31<sup>st</sup> of each year during the Lease Term. The second installment \_\_\_\_\_ shall be due December 15<sup>th</sup> of each year during the Lease Term.

b. Each year this Lease Agreement is in effect, the Lease Amount shall increase at a rate of two percent (2%) per annum.

Commented [AG1]: Use of a price escalator other than CPI

4. IMPROVEMENTS; CONDITION OF PROPERTY. The Property includes all existing improvements, structures, and fixtures placed, constructed, installed or located on the Real Estate except for the residential dwellings. Prior to signing this Lease Agreement, Lessee has inspected or caused to be inspected the Property and acknowledges that the Property is being leased “as-is.” No additional representations, statements or warranties, express or implied, have been made by or on behalf of City as to the condition of the Property or of any improvement located thereon and used in connection with the Property. In no event shall City be liable for any defect in the Property or for any limitation on the use of the Property as irrigated cropland. In addition, Lessee acknowledges that the minerals may have been severed from the surface rights, and the surface rights may be subject to the development of the mineral rights by others.

5. WATER RIGHTS.

a. City shall be responsible for any ditch, reservoir, or augmentation company assessments or other charges and expenses attributable to the Water Rights.

b. Lessee shall have no right to any rebates or other payments from City for the lease of transmountain return flows associated with the Water Rights.

c. Lessee agrees to use the Water Rights, and the water delivered pursuant to this Lease Agreement, only for agricultural irrigation of the Real Estate. Lessee shall not use the Water Rights for any other uses, or on any other lands.

d. Lessee agrees to take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action which could be construed as an abandonment in part or in whole of the Water Rights or could cause in part or in whole a reduction in the use of the Water Rights. Lessee shall ensure that the use of any lateral ditches, easements, rights of way, and entitlements necessary to use the Water Rights for the purpose of conveying or delivering any water other than the water delivered pursuant to the Water Rights shall not interfere with Lessee’s obligation to take and use the water delivered pursuant to the Water Rights first and to the fullest extent possible.

e. Absent written permission from the City, Lessee shall not use any water, water rights, ditches, ditch rights, wells, well rights, well permits, carriage rights, reservoirs, or reservoir rights to irrigate the Real Estate, other than water yielded pursuant to the Water Rights.

f. Lessee shall provide advance written notice, on or before February 1 of any year, to Greeley if Lessee no longer intends to irrigate the Real Estate, or any portion thereof, with the Water Rights during the following irrigation season.

g. [For Unchanged Shares Only] Lessee agrees to deliver to the City, on or before May 15 of each calendar year, a completed Historical Use Affidavit and Questionnaire, in the form

attached as Exhibit B. Lessee acknowledges that the City may file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Lease Agreement. Lessee agrees to cooperate with the City and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from the City, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Real Estate during and in preparation for any proceeding before the Division 1 Water Court.

h. Lessee shall not sublease or rent the Water Rights to others or allow others to use the Water Rights or water delivered pursuant to said Water Rights on lands or for uses other than those described in this Section 5, absent written consent by City.

i. Lessee shall comply with all of the rules, regulations, and policies of the ditch and reservoir companies that deliver the Water Rights.

j. Lessee shall comply with Title 14 of the Greeley Municipal Code, and all rules, regulations, and laws of the State of Colorado pertaining to use of the Water Rights.

k. Greeley makes no warranties or guarantees of, or representations about, the amount of water that will be yielded or delivered pursuant to the Water Rights.

l. Greeley shall not be liable for any failure of delivery of water pursuant to the Water Rights due to drought or other force of nature or failure of any ditch and/or reservoir delivery systems.

6. AUTHORIZED USE OF THE PROPERTY

**Commented [AG2]:** Addresses concerns raised at March Board meeting concerning lessees' use of best farming practices.

a. Lessee shall occupy and use the Property solely for agricultural purposes.

b. Lessee shall be responsible for the proper care of the Property consistent with sound agricultural practices.

c. Lessee shall apply all weed control chemicals and fertilizers in compliance with applicable federal, state, and local regulations.

d. The Lessee shall maintain in a serviceable condition all access roadways used for agricultural purposes on the Real Estate and, except for the Lessee's ingress or egress, shall keep all gates closed and locked at all times.

e. The Lessee shall make any necessary repairs at the Lessee's expense to all existing perimeter fencing around the Real Estate and shall be responsible for the maintenance of all fencing and gates on the Real Estate throughout the Lease Term.

f. The Lessee shall not place, dispose of or permit placement or disposal of any garbage, refuse, or other waste on the Real Estate, including, but not limited to: tires, non-functioning vehicles, non-functioning agricultural implements, and parts for vehicles and agricultural implements.

g. The Lessee shall regularly collect any trash deposited on the Real Estate by wind, roads, or farming activities and properly dispose such trash offsite in a timely manner.

h. Lessee shall furnish, at Lessee's sole expense, all labor, machinery, fertilizer, weed spray, and other items needed for farming the Real Estate.

7. LESSEE'S COVENANTS AND AGREEMENTS.

a. Lessee shall maintain and make any necessary repairs, to (i) any lateral ditches, headgates, and other personal property necessary to deliver the Water Rights to the Real Estate and (ii) the irrigation system, which includes but is not limited to, the pivots, wells, siphons, and pumping lagoons necessary to irrigate the Real Estate with the Water Rights. Lessee shall be solely responsible for all maintenance and repairs up to Seven Hundred Fifty Dollars (\$750.00), per incident. If the cost of a repair exceeds Seven Hundred Fifty Dollars (\$750.00) Greeley shall pay the balance, subject to prior approval. Before making any repairs that exceed Seven Hundred Fifty Dollars (\$750.00), Lessee shall provide City, in writing, a description of the repairs and a cost estimate for its approval. Notwithstanding the foregoing, if any necessary repairs are the result Lessee's negligence, then the Lessee shall be responsible for the entire cost of the repair or replacement.

b. The Lessee shall not assign this Lease Agreement nor sublet the Property or any part thereof, nor assign, pledge, or mortgage the Lessee's interest in this Lease Agreement or any crops herein without the prior written consent of the City, which consent shall be in the sole discretion of the City.

c. Lessee shall not construct, nor permit construction of any structure, building or other improvement, temporary or otherwise, on the Property without Greeley's prior written consent, which consent shall be in the sole discretion of Greeley.

d. Lessee shall not erect, paint, or maintain any signs on the Property without securing the prior written consent of Greeley, which consent shall be in the sole discretion of Greeley.

e. Lessee shall not allow any noise, odors, fumes, or vibrations on the Property other than those caused by normal agricultural practices that would cause disruption of normal activities on adjacent properties.

f. Lessee shall not use or permit to be used any insecticide, pesticide, rodenticide, herbicide, or other chemical substance on the Property for weed, pest, or rodent control or fertilization which is prohibited by any federal, state or local statute, ordinance, resolution, rule or regulation.

g. The Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property or any crops grown thereon.

h. Lessee agrees, covenants, and warrants to maintain the Property throughout the term of the Lease in as good repair and condition as at the commencement of this Lease Agreement.

i. Lessee agrees to deliver up and surrender to City possession of the Property at the expiration or termination of this Lease Agreement.

j. Lessee agrees to pay all utilities, including but not limited to, gas, water, electricity, and trash, that are used in connection with the Property.

8. INDEMNIFICATION.



a. Lessee assumes the risk of loss or damage to any crops on the Property whether from windstorm, fire, earthquake, snow, water run-off, soil conditions, or any other causes whatsoever.

b. Lessee releases and agrees to indemnify, defend and hold harmless City, its agents, officers, employees, and volunteers from and against all damages, claims, actions, causes of action, demands, judgments, costs, expenses of every kind and nature, predicated upon injury to or death of any person or loss of or damage to any property, arising, in any manner, from Lessee's operations or use of the Property under this Lease Agreement.

c. Nothing in this Lease Agreement is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as applicable now or hereafter amended.

#### 9. HAZARDOUS WASTE.

a. Lessee shall not cause or permit any "Hazardous Material" (defined below) to be brought upon, kept, or used in or about the Property by Lessee, its agents, employees, contractors, or invitees without the prior written consent of City. City shall not unreasonably withhold consent so long as Lessee demonstrates to City's reasonable satisfaction that such Hazardous Material is necessary or useful to Lessee's use of the Property for agricultural purposes, so long as any chemicals (including without limitation fertilizer, herbicides, insecticides) are applied in conformance with good farming methods, applicable rules and regulations and the label directions of each chemical and kept, and stored in a manner that complies with all laws regulating such chemicals.

b. If Lessee breaches the obligations stated herein, or if the presence of Hazardous Material on the Property caused or permitted by Lessee results in contamination of the Property, or if contamination of the Property by Hazardous Material otherwise occurs for which Lessee is legally liable to City for damage resulting therefrom, then Lessee shall indemnify, defend, and hold City harmless from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses which arise during or after the Lease Term as a result of such contamination. This indemnification of City by Lessee includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, state, or local governmental agency or political subdivision because of Hazardous Material present in the soil or groundwater on or under the Property.

c. Without limiting the foregoing, if the presence of any Hazardous Material on the Property caused or permitted by Lessee results in any contamination of the Property, Lessee shall promptly take all actions at its sole expense as are necessary to return the Property to the condition existing prior to the introduction of any such Hazardous Material to the Property; provided that City's approval of such actions shall first be obtained, which approval shall not be unreasonably withheld so long as such actions would not potentially have any material adverse effect on the Property.

d. As used herein, the term "Hazardous Material" means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority, the State of Colorado, or the United States Government. The term "Hazardous Material" includes, without limitation, any material or substance that is (i) defined as a "hazardous substance" under appropriate state law provisions; (ii) petroleum; (iii) asbestos; (iv) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321; (v) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. § 6903; (vi) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive

Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601; or (vii) defined as a "regulated substance" pursuant to Subchapter IX, Solid Waste Disposal Act (Regulation of Underground Storage Tanks), 42 U.S.C. § 6991.

10. RESERVATIONS. City reserves its rights under this Lease Agreement to (i) have its officers, employees, and representatives enter and inspect or protect the Property at any time; (ii) use any portion of the Property for public utilities and as ingress and egress for public use and rights of way; (iii) use, repair, install, replace, and maintain public utilities and rights-of-way on, over, or under the Property; and (iv) use any portion of the Property as a site for the application of digested biosolids.

11. TERMINATION FOR CAUSE.

a. Lessee agrees to observe and perform the terms and conditions of this Lease Agreement. If Lessee fails to make payment of the Lease Amount, or any part thereof, or if Lessee fails to observe or perform any term or condition of this Lease Agreement, including but not limited to Lessee's obligation to maintain the Property under Sections 6 and 7, put the Water Rights to beneficial use under Section 5, and to cause or permit Hazardous Material to be brought upon, kept, or used in or about the Property under Section 9, then City, upon written notice to Lessee, may in its sole discretion terminate this Lease Agreement and re-enter and repossess the Property, with or without legal proceedings, using such force as may be necessary, and remove any property belonging to Lessee without prejudice to any claim for rent or for the breach of covenants hereof. Lessee agrees to indemnify and hold City harmless from and against any costs for the removal and storage of Lessee's property incurred by City under the provisions of this section.

b. If City determines that Lessee has created a public safety hazard, then City may immediately take action to secure the safe operation of the Property, including without limitation, terminating this Lease Agreement and/or removing Lessee and any of Lessee's equipment or crops from the Property.

c. If Lessee, after the expiration or termination of this Lease Agreement, shall remain in possession of the Property without a written agreement, the holding over shall constitute a month-to-month tenancy at a monthly rental rate equivalent to one-twelfth of the Lease Amount as adjusted in accordance with Section 3(b) above, payable in advance on the first day of each month. No payments of money by Lessee after the expiration or termination of this Lease Agreement shall constitute a renewal of this Lease Agreement in the absence of a written mutual agreement.

12. INSURANCE REQUIREMENTS.

a. Lessee shall purchase and maintain for the full period of this Lease Agreement, including any additional extension periods, at Lessee's sole expense, insurance policies providing coverage as follows:

i. Farm liability insurance, including coverage for bodily injury, property damage, contractual liability, and broad-form property damage and owner/contractor's protective coverage, with a minimum coverage of not less than One Million Dollars (\$1,000,000) or as approved by the City of Greeley Risk Manager; and

ii. Workers' compensation and employers' liability insurance, if applicable, which shall cover the obligations of Lessee in accordance with the provisions of the Workers' Compensation Act of Colorado, as amended.

b. Before commencement of the Lease Term, Lessee must present all applicable insurance policies, certificates of insurance, and endorsements, along with a signed copy of this Lease Agreement, to the City of Greeley Risk Manager, and receive the Risk Manager's written approval as to the adequacy of such insurance coverage.

c. The insurance policies shall contain an endorsement naming the City of Greeley, Colorado, a municipal corporation, and its council members, officers, agents, employees, and volunteers as additional insured parties with respect to all activities Lessee may perform under this Lease Agreement. Moreover, such endorsement shall include a notice provision requiring 30 days written notice to City before any cancellation.

d. Only insurance companies with authority to issue policies in the State of Colorado shall provide insurance coverage under this Lease Agreement.

e. For the term of this Lease Agreement, Lessee shall not cancel, materially change, or fail to renew the insurance coverage, and Lessee shall notify City of any material reduction or exhaustion of aggregate policy limits. If Lessee fails to purchase or maintain the insurance coverage stated in this Lease Agreement, City shall have the right to procure such insurance coverage at Lessee's expense.

f. Nothing in this Section 12 shall limit the extent of Lessee's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from Lessee's occupancy, use, or control of the Property or Lessee's performance or nonperformance under this Lease Agreement.

13. NO VESTED INTEREST IN SHARES OR JOINT VENTURE. This Lease Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. City grants no interest in the Property to Lessee other than as explicitly set forth in this Lease Agreement. Lessee shall make no claim to any rights, title, or interest in the Property other than as explicitly set forth in this Lease Agreement. This Lease Agreement does not create a partnership or joint venture of any kind between the Parties, and Lessee shall bear the entirety of any loss, cost, or expense incurred through its use of the Property.

14. MISCELLANEOUS PROVISIONS.

a. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

b. No waiver or default by City of any of the terms, covenants, warranties, or conditions hereof to be performed, kept, or observed by Lessee shall be construed as, or operate as, a waiver by City of any of the terms, covenants, warranties, or conditions herein contained, to be performed, kept, or observed by Lessee.

c. Lessee agrees that City shall be under no obligation to maintain the Property in a particular condition or for a particular use, and Lessee waives all claims for damages of any kind or nature, whatsoever, resulting therefrom.

d. Article and section headings shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this Lease Agreement.

e. The provisions of this Lease Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party of the language in question.

f. Lessee shall perform all obligations under this Lease Agreement in strict compliance with all applicable laws, rules, charters, ordinances and regulations, as now exist or are later enacted or amended, of City, and all county, state and federal entities having jurisdiction over the Property.

g. None of the terms, conditions, or covenants in this Lease Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than City or Lessee receiving services or benefits under this Lease Agreement shall be only an incidental beneficiary.

h. Invalidation of any specific provisions of this Lease Agreement shall not affect the validity of any other provision of this Lease Agreement.

i. Lessee shall not record this Lease Agreement in the real property records of any jurisdiction. This Lease Agreement is not intended to run with the land as a covenant burdening real property.

j. This Lease Agreement shall extend to and be binding upon the heirs, successors, and permitted assigns of the parties. Notwithstanding the foregoing, Lessee acknowledges that City may sell the Property in whole or in part. In the event the City enters into a contract to sell, or sells the Property in whole or in part, City may assign or terminate, in full or in part, the Lease Agreement prior to any irrigation season, by delivering written notice to the Lessee on or before November 1 of the preceding calendar year.

k. This Lease Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. No representations, warranties, or certifications, expressed or implied, shall exist as between the parties, except as specifically set forth in this Lease Agreement. The parties shall only amend this Lease Agreement in writing with the proper official signatures attached thereto.

15. NOTICE. Any notice or payment required by this Lease Agreement shall be provided by U.S. mail or hand delivery to City or to Lessee at the addresses set forth above, unless the party to receive such notice or payment provides to other party written notice of a change of the address listed above.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the date stated in the preamble.

CITY OF GREELEY  
a Colorado home rule municipal corporation  
acting by and through its Water and Sewer Board

Attest:

By: \_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF COLORADO            )  
  ) ss.  
COUNTY OF WELD            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
by \_\_\_\_\_.

Witness my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public



EXHIBIT A TO FARM LEASE AGREEMENT

Legal Description of the Real Estate

---

---

EXHIBIT B TO FARM LEASE AGREEMENT

Historical Use Affidavit and Questionnaire)

(See attached)

**AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS**

**WATER RIGHTS:**

Ditch or Reservoir Company: \_\_\_\_\_  
Shares or Interest: \_\_\_\_\_

Ditch or Reservoir Company: \_\_\_\_\_  
Shares or Interest: \_\_\_\_\_

Herein after collectively referred to as the "Water Rights."

Name and address of owner and user of Water Rights:

Owner: City of Greeley  
Water and Sewer Department  
1100 10<sup>th</sup> Street, Suite 300  
Greeley, Colorado 80631

User(s): \_\_\_\_\_  
\_\_\_\_\_

Year water rights were used as described: \_\_\_\_\_

**IRRIGATED LAND:**

Legal description and size/acreage of land irrigated by above-mentioned Water Rights:

\_\_\_\_\_.

Name and address of owner(s) of above-mentioned irrigated land if different from owner or user of the Water Rights: City of Greeley.

During my period of use, I used the water delivered pursuant to the Water Rights to the fullest extent possible, and did not undertake any action which could be construed as abandonment of, intent to abandon, or a reduction in consumptive use of the Water Rights. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned \_\_\_\_\_, having personal knowledge of the irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands with the Water Rights, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

[Signature Page Follows]

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

By: \_\_\_\_\_  
\_\_\_\_\_

STATE OF COLORADO     )  
                                  ) ss.  
COUNTY OF WELD        )

The foregoing Affidavit of Historical Use of Water Rights was acknowledged before me by  
\_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Witness my hand and Official Seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

## QUESTIONNAIRE REGARDING USE OF WATER SHARES

*The person completing this questionnaire need not necessarily be the Lessee,  
but must have personal knowledge of the information provided.*

1. Name of person completing this questionnaire: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email Address: \_\_\_\_\_
2. The information provided below pertains to \_\_\_\_\_ represented by Stock Certificate No. \_\_\_\_\_; \_\_\_\_\_ Shares of capital stock in the \_\_\_\_\_ represented by Stock Certificate No(s). \_\_\_\_\_; and \_\_\_\_\_ of capital stock in the \_\_\_\_\_ represented by Stock Certificate No. \_\_\_\_\_ (hereinafter "Shares").  
  
Did you use the Shares pursuant to a Lease Agreement? \_\_\_\_\_  
Date of the Lease: \_\_\_\_\_  
Name of Lessee (if different from Question 1): \_\_\_\_\_  
Name of Lessor: \_\_\_\_\_ City of Greeley
3. The information in this questionnaire relates to my use of the Shares during the 20\_\_ irrigation season (hereinafter "Lease Year").
4. Do you still own the farm or parcel irrigated by these Shares? N/A
5. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company?  
\_\_\_\_\_
6. What is the legal description of the farm or parcel on which these Shares were used?  
  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.
7. What is the total size of the farm or parcel? \_\_\_\_ acres.
8. What is the size of the area(s) on the farm or parcel that was irrigated? \_\_\_\_ acres.
9. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? \_\_\_\_ acres.
10. Please provide the following information regarding how the water from these Shares is delivered.
  - Location and ID Number of the head gate at the main ditch: \_\_\_\_\_  
\_\_\_\_\_.
  - Name and general location of any lateral(s) delivering the water to the land historically irrigated: \_\_\_\_\_.



- Identification of any carrier or lateral ditch stock required to deliver these rights: \_\_\_\_\_.
  - Approximate location of pumps, if used: \_\_\_\_\_.
  - Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: \_\_\_\_\_.
11. How was water applied during the Lease Year?      Sprinkler \_\_\_\_      Furrow \_\_\_\_  
Flood \_\_\_\_ Other/Combination (Describe): \_\_\_\_\_.

12. What was the irrigation season for the Lease Year?      Start Date: \_\_\_\_\_ Stop      Date: \_\_\_\_\_

13. During the Lease Year, did you divert and irrigate with all water available under the Shares?  
\_\_\_\_\_.

If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

14. Other than the Shares leased, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used during the Lease Year? If so, please provide the following information.

- Number of shares: \_\_\_\_\_.
- Ditch Company: \_\_\_\_\_
- Number of any Irrigation Wells: \_\_\_\_\_.
- Identification and Permit No. of any Irrigation Wells: \_\_\_\_\_  
\_\_\_\_\_.
- Capacity of Irrigation Wells: \_\_\_\_\_.
- Approximate location of Irrigation Wells: \_\_\_\_\_  
\_\_\_\_\_.
- Any other water used: \_\_\_\_\_
- Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: \_\_\_\_\_  
\_\_\_\_\_.

15. During the Lease Year, what crops were grown on the land irrigated by the Shares?

1. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_
2. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_

3. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_

4. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_

16. Were the lands on which the Shares were used subirrigated? Yes \_\_\_\_\_ No \_\_\_\_\_

17. If possible, please provide a map, sketch, or aerial photograph showing locations of *(check if included)*:

\_\_\_\_\_ Farm or Parcel

\_\_\_\_\_ Areas irrigated by the Shares during the Lease Year

\_\_\_\_\_ Areas irrigated with other water

\_\_\_\_\_ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

I understand that I may be required to sign an affidavit attesting to the accuracy, to the best of my knowledge, of the information provided herein.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

## **IRRIGATION WATER LEASE AGREEMENT**

This IRRIGATION WATER LEASE AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2020, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water and Sewer Board, whose address is 1001 11<sup>th</sup> Avenue, Second Floor, Greeley, Colorado 80631 ("City"), and \_\_\_\_\_, whose address is \_\_\_\_\_ ("Lessee").

### **Recitals**

WHEREAS, the City owns those certain water rights represented by \_\_\_\_ share of capital stock in the [Water Supply and Storage Company] (one of three total shares attributable to \_\_\_\_\_) ("Water Rights"); and

WHEREAS, the Lessee desires to lease the Water Rights from the City for agricultural irrigation on \_\_\_\_\_, a parcel of real property consisting of approximately \_\_\_\_ acres located at \_\_\_\_\_ (insert street address) ("Property");

WHEREAS, the City is willing to lease the Water Rights to the Lessee for agricultural irrigation on the Property;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Lessee agree as follows.

### **Agreement**

1. Water Rights Lease. The City hereby leases to the Lessee, and the Lessee hereby leases from the City, the above-described Water Rights for the purpose of agricultural irrigation on the Property.

2. Term of Lease. The term of this Agreement begins on the date of mutual execution and ends on \_\_\_\_ (insert 10 year initial term – ensure expiration does not fall within irrigation season) ("Initial Term"). At the end of this Initial Term, this Agreement shall renew automatically for \_\_\_\_ (insert renewal period, not to exceed five (5) one (1) year renewals) ("Renewal Term"), unless City or Lessee transmits written notice of nonrenewal on or before November 1 of the preceding calendar year. The Lessee may terminate this Agreement during the Initial Term, prior to any irrigation season, for any reason by delivering two years' advance written notice to the City. The City may terminate this Agreement during the Initial Term, prior to any irrigation season, by delivering advance written notice to Lessee on or before November 1 of the preceding calendar year, if the City determines in its sole discretion that the Water Rights are needed for any municipal purpose, or if the City is required to cease irrigation with the Water Rights by the terms and conditions of a water court decree. Additionally, refer to Section 12 for provisions relating to termination for cause.

**Commented [AG1]:** Term, renewal, and termination without cause provisions, reflecting direction from Board during March meeting.

3. Annual Lease Amount and Administrative Fee. The Lessee shall pay to the City an Annual Lease Amount equal to all assessments, charges, and other expenses due and attributable to the Water Rights paid by the City to the [Water Supply and Storage Company]. The Annual Lease Amount shall not be reduced to reflect rebates or other credits attributable to leasing transmountain return flows associated with the Water Rights. Lessee shall also pay to the City an Annual Administrative Fee equal to ten percent (10%) of that year's Annual Lease Amount, provided, however, that the Annual Administrative Fee shall not exceed five-hundred dollars (\$500.00). The City will provide an invoice of the Annual Lease Amount and Annual Administrative Fee to the Lessee, and Lessee shall deliver payment of that total amount to the

**Commented [AG2]:** New Annual Administrative Fee as discussed during March Board presentation.

City no later than (i) May 15 of the then current irrigation year, or (ii) within fifteen days of receipt of such invoice from the City. The Lessee shall also remit to the City an additional charge equal to fifteen percent of the Annual Lease Amount for every thirty days that payment required under this Agreement is late.

4. Use of Water Rights. Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property. Lessee shall not use the Water Rights for any other uses. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws and policies of the [Water Supply and Storage Company]. Lessee shall comply with Title 14 of the Greeley Municipal Code, and all rules, regulations, and laws of the State of Colorado pertaining to use of the Water Rights. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action that could be construed as abandonment of the Water Rights or could cause in part or in whole a reduction in the use of the Water Rights. Lessee shall provide advance written notice to the City of at least thirty days if they no longer intend to irrigate the entirety of the Property with the Water Rights. Absent written consent from the City, Lessee shall not use any water, water rights, ditches, ditch rights, wells, well rights, well permits, carriage rights, reservoirs, or reservoir rights to irrigate the Property, other than water yielded pursuant to the Water Rights.

5. [For Unchanged Shares Only] Affidavit of Beneficial Use and Water Court Proceedings. Lessee agrees to deliver to the City, on or before May 15 of each calendar year, a completed Historical Use Affidavit and Questionnaire, in the form attached as Exhibit. Lessee acknowledges that the City may file an application to change the use of the Water Rights with the Division 1 Water Court for the State of Colorado during the term of this Lease Agreement. Lessee agrees to cooperate with the City and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from the City, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court.

**Commented [AG3]:** Historical Use Affidavit needed for unchanged shares, as discussed during March Board Meeting.

6. Restriction on Sublease and Assignment. Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from the City. Lessee shall request consent from the City prior to any purported assignment of this Agreement by advance written notice of at least thirty days. Such consent may be given or withheld in the sole discretion of the City.

7. No Vested Interest in Shares or Joint Venture. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. The City grants no interest in the Water Rights to the Lessee other than as explicitly set forth in this Agreement. Lessee shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind between the parties, and the Lessee shall bear the entirety of any loss, cost, or expense incurred through their use of the Water Rights on the Property.

8. No Guarantee of Yield. Lessee is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. The City makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee shall not hold the City liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

9. Maintenance of Infrastructure. Lessee shall maintain the lateral ditches, headgates, and other personal property necessary to deliver water pursuant to the Water Rights at Lessee's own cost and expense. Lessee shall make all repairs and restorations necessary to keep the lateral ditches, headgates, and other personal property in good working condition during the term of this Agreement.

10. Indemnification; Immunity. Lessee agrees to exercise Lessee's rights under this Agreement at Lessee's own risk. Lessee shall indemnify and hold harmless the City from and against any cost, expense, or liability arising out of this Agreement or related activities. Nothing in this Agreement is intended to constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as applicable now or hereafter amended.

11. Notice. All notices to be given under this Agreement shall be (1) sent by certified or registered mail, return receipt requested, or (2) hand-delivered at the addresses set forth above. The Lessee shall provide written notice to the City if the appropriate contact information changes.

12. Default and Termination. If either the City or the Lessee fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the parties, the non-defaulting party may declare the Agreement terminated by written notice in accordance with Paragraph 11 above.

~~1.~~ \_\_\_\_\_

~~(b)~~(a) Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraphs 3, 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, the City may immediately terminate this Agreement by written notice to Lessee.

~~(a)~~(b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

~~12,13.~~ Cessation of Irrigation. Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property with the Water Rights.

~~13,14.~~ No Third Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than the Lessee and the City, or their respective permissible successors in interest.

~~14,15.~~ Recovery of Costs and Fees. In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

~~15,16.~~ Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.



~~16~~17. Severability. In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the parties.

~~17~~18. Integration. This Agreement constitutes a complete integration of the understanding and agreement between the City and Lessee with respect to the subject matter herein, and supersedes all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties, express or implied, exist between the City and Lessee except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by the City and Lessee.

~~18~~19. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by electronic means. The parties agree to accept and be bound by signatures hereto delivered by electronic means.

~~19~~20. Recording. Lessee shall not record this Agreement in the real property records of any jurisdiction. This Agreement is not intended to run with the land as a covenant burdening real property.

IN WITNESS WHEREOF, the undersigned parties have executed this Irrigation Water Lease Agreement on the date first set forth above.

**CITY OF GREELEY**

**ATTEST:**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

**LESSEE**

\_\_\_\_\_

By: \_\_\_\_\_

STATE OF COLORADO       )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_, whose signature appear above as the Lessee.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

# Agricultural Lease Policy

April 15, 2020 W&S Board

Jennifer Petrzelka

Water Resources Operations Manager



# Water Only Leases



# Current 'Water Only' Leases

- 41 total leases in WSSC, GLIC, New Cache and L&W
- Terms vary
  - Varies between 10-16 years
  - 10 of the 41 the leases have annual renewals
- Termination Provisions vary
- Annual cost of assessments plus \$150 administration fee

Year of expiration	No. of leases
2021	1
2023	1
2025	4
2026	3
2027	18
2028	8
2030	1
2031	1
2032	1

# Recommended 'Water Only' Lease Terms

- **Term**

- Fixed term not to exceed 10 years with fixed number of annual renewals not to exceed 5 years

- **Termination Provisions**

- During Initial Term:

- Greeley may terminate prior to irrigation season by Nov. 1 if needed for any municipal purposes or as part of a water court decree.
- Lessee may terminate with 2 years advance written notice.
- Greeley may immediately terminate the Water Lease for cause in the event the lessee fails to make its payments, fails to comply with its obligations regarding the use of the water rights, or attempts to assign the lease without Greeley's approval.

- During Annual Renewal Period: Greeley or lessee may transmit a written notice of nonrenewal on or before November 1 of the preceding calendar year.



# Recommended 'Water Only' Lease Terms

- **Payments**

- Annual ditch assessments plus an administration fee that is 10% of the total assessment cost up to \$500

- **Unchanged vs. changed shares**

- Leases of unchanged shares will require lessee to fill out an affidavit declaring irrigation use
- If water is needed for municipal use, leases for changed shares will be terminated first since this water has the legal ability to be used in Greeley's potable system

# Water and Farm Leases



# Current 'Water and Farm' Leases

- 3 leases in the WSSC system, 2 pending in L&W
- Term
  - One lease with fixed 10 year + subsequent 5 years (expiring 2028)
  - Two leases with annual renewals (expiring 2025)
- Termination Provisions
  - Two can be terminated without cause by either party
  - One can only be terminated if there is a breach of terms
- Payments
  - One lease charges \$85/acre + CPI increase
  - Two leases charge \$85/acre, no CPI increase

# Recommended 'Water and Farm' Lease Terms

- Term

- Fixed term not to exceed 5 years with fixed number of annual renewals not to exceed 5 years



# Recommended 'Water and Farm' Lease Terms

- Termination Provisions

- During Fixed Term:

- Greeley may terminate at anytime with cause
  - **Best Farming Practices (paragraph 6)-discuss in detail on next slide**
- Greeley may terminate by Nov. 1 prior to any irrigation season if
  - Water is needed to address critical municipal need (drought, infrastructure failure, etc.)
  - Greeley sells all or part of the leased property
  - Required as part of a term or condition in a water court decree
- Lessee may terminate with 2 years advance written notice

- During Annual Renewal Period:

- Greeley may terminate at any time for cause
- Greeley or lessee may transmit a written notice of nonrenewal on or before November 1 of the preceding calendar year.

# Recommended 'Water and Farm' Lease Terms

- **Best Farming Practices**

- Lessee shall occupy and use the Property solely for agricultural purposes.
- Lessee shall be responsible for the proper care of the Property consistent with sound agricultural practices.
- Lessee shall apply all weed control chemicals and fertilizers in compliance with applicable federal, state, and local regulations.
- The Lessee shall maintain roadways and keep all gates closed and locked.
- The Lessee shall make any necessary repairs and be responsible for perimeter fencing.
- The Lessee shall not place, dispose of or permit placement or disposal of any garbage, refuse, or other waste on the Real Estate
- The Lessee shall regularly collect any trash deposited on the Real Estate
- Lessee shall furnish, at Lessee's sole expense, all labor, machinery, fertilizer, weed spray, and other items needed for farming the Real Estate.



# Recommended 'Water and Farm' Lease Terms

- Payments

- \$150 per gross acre
- 2% increase per year during the lease term
- Bi-annual payments; 50% of the payment is due by March 31<sup>st</sup> and remaining 50% is due December 15th
- Annual Ditch Assessments and administration fees are included in \$/acre

- Unchanged vs. changed shares

- Leases for unchanged shares will require an affidavit declaring irrigation use



# Recommendation

- Staff requests approval of this Agricultural Lease Policy
  - Policy will be updated periodically
  - Exceptions include leases negotiated as part of water acquisitions
- Additionally staff requests that Board delegate authority to W&S Director to approve, and the Mayor to sign, leases consistent with the terms listed in the Policy.

**WATER & SEWER BOARD AGENDA   APRIL 15, 2020**

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:            11

TITLE:                    PRELIMINARY 2021-2022 BUDGET  
                                PLANNING

RECOMMENDATION:      INFORMATIONAL ONLY

**ADDITIONAL INFORMATION:**

Staff will provide a high level overview of the process for developing the 2021-2022 operating budget and five year capital budget. Topics to be discussed will include the department's accomplishments over the last year, recent revenue and expenditure trends, current economic conditions, and significant budget drivers. No action is being requested but staff welcomes Board input into the development of the Water and Sewer Department's capital and operating budgets.

# 2021/2022 Water and Sewer Preliminary Budget Framework

April 15, 2020

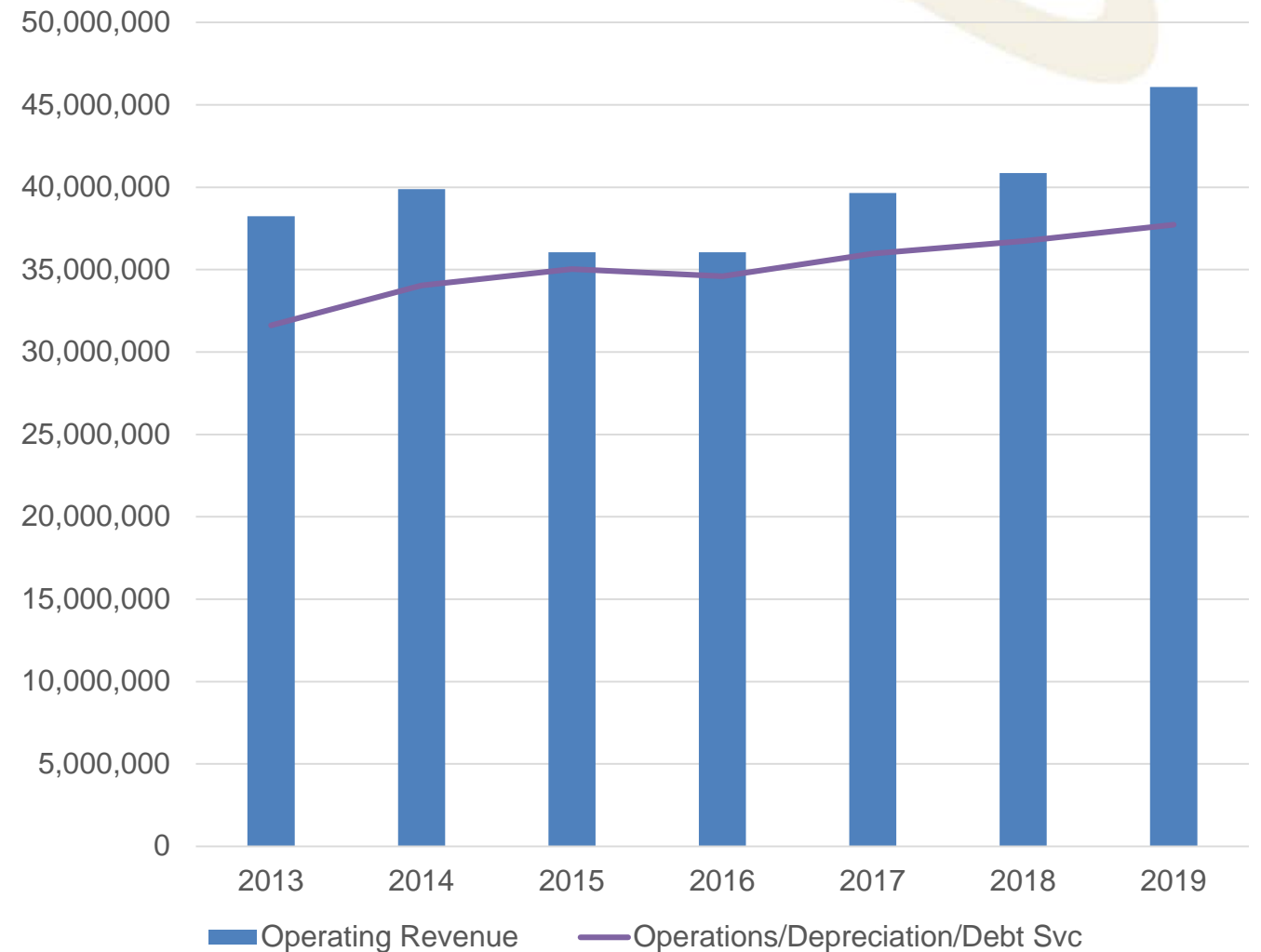


# Where We Were

- Looking back at 2020 budget and rate setting
  - 8.5% rate increase for water, 7.0% rate increase for sewer
  - Significant CIP items
    - Windy Gap firming
    - Bellvue 20 MGD filters
    - Milton Seaman expansion or alternative
    - Wastewater Treatment & Reclamation Facility (WTRF) Nitrification phase 2
  - Operating: 3 new positions

# Water Operating Fund and Expenses

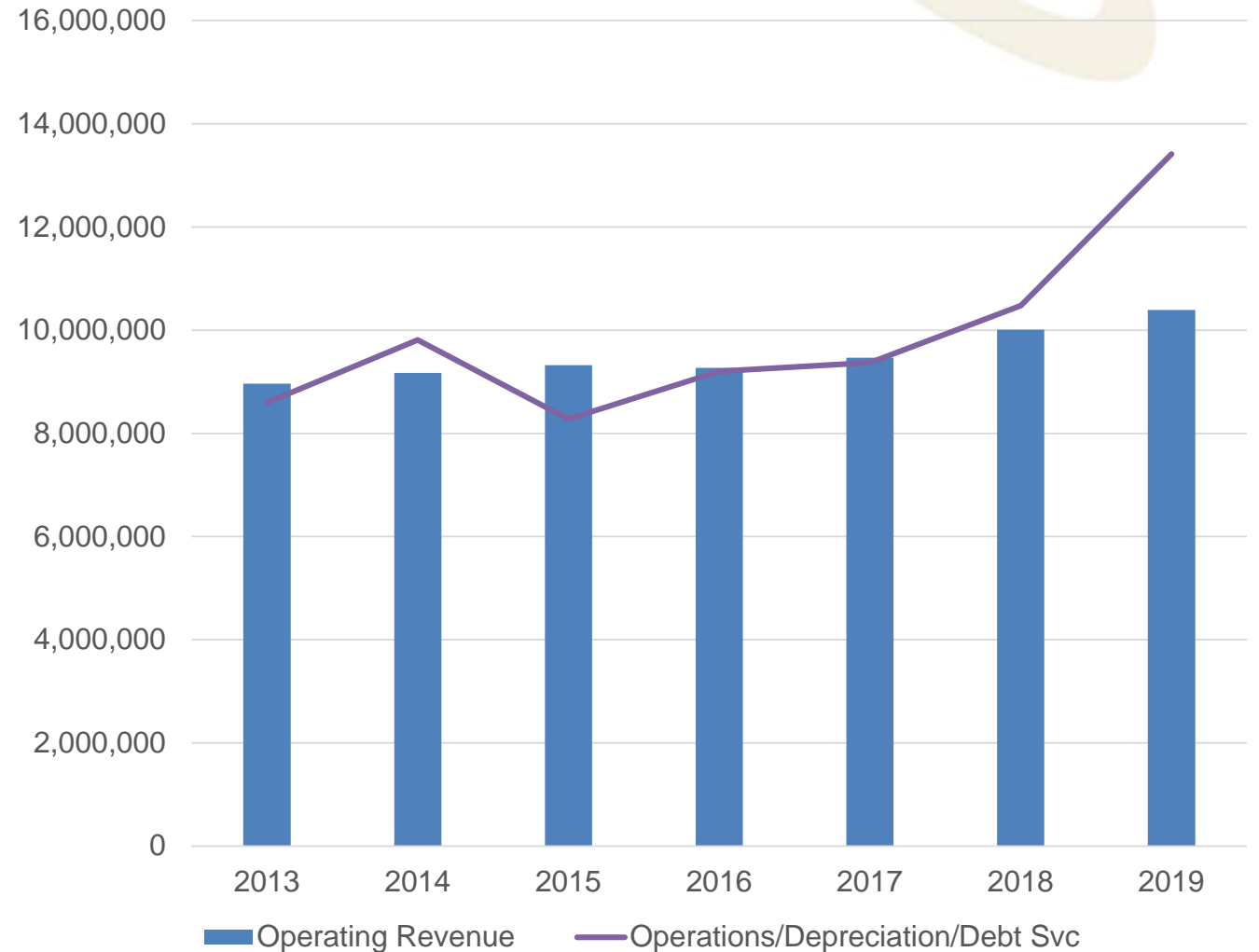
	Operating Revenue	Operations, Depreciation & Debt Svc
2013	38,238,419	31,613,280
2014	39,889,553	34,041,080
2015	36,052,172	35,033,241
2016	36,052,172	34,590,830
2017	39,643,117	35,966,615
2018	40,863,941	36,723,277
2019	46,086,422	37,719,770





# Sewer Operating Fund and Expenses

	Operating Revenue	Operations, Depreciation & Debt Svc
2013	8,965,518	8,594,554
2014	9,169,231	9,812,879
2015	9,324,992	8,278,979
2016	9,272,219	9,206,602
2017	9,468,679	9,368,715
2018	10,011,565	10,473,874
2019	10,394,878	13,415,558



# What We Accomplished in 2019

- Bellvue 20 MGD filters
- Milton Seaman expansion alternatives identified/analyzed
- 400 acre feet of water acquired
- WTRF nitrification phase 2 – 60% design (finished 3/20)
- Raw water requirements updated for new development



# Looking Forward – Economic Conditions



# Looking Forward – Economic Conditions

- Pandemic uncertainty – job losses/recession
  - General fund impacted
  - Impacts to account growth, water usage
  - Customer ability to pay a concern
- Conservative revenue assumptions appropriate for budgeting



# Looking Forward – Capital

- Water capital program – some flexibility
  - Windy Gap Firming legal issues – construction in 2021?
  - Milton Seaman or alternative
  - Water acquisition program
  - Non-potable expansion
    - Equalizer split into components



# Looking Forward – Capital

- Wastewater treatment capital costs increasing significantly
  - Driven by regulations, end of asset life
  - Limited ability to adjust the capital plan
- Developing local improvement districts – reimbursement for capital expenses that serve a specific region
  - Wastewater is the driver, but possibly for water





# Looking Forward – Operating

- Two year budget
  - Opportunity to refine how budget is allocated
- 10 year staffing plan developed
  - Staff was “optimistic” in their 2021 requests
- Tough decisions to be made during budgeting
  - Budget cuts? – Unknown
  - Ongoing conversations with City Budget staff



# Rate Projections

- 2020 modeling projected 2021 rate increases of 6% for water and 7% for sewer
- Conservative revenue projections for 2021 modeling will pressure rates upward
  - Will have to balance with decreased expenditures





# Discussion and Water and Sewer Board Input

**WATER & SEWER BOARD AGENDA   APRIL 15, 2020**

ENCLOSURE \_\_\_\_\_ NO ENCLOSURE \_\_X\_\_

ITEM NUMBER:                      12

TITLE:                                      LEGAL REPORT

RECOMMENDATION:

ADDITIONAL INFORMATION:

**WATER & SEWER BOARD AGENDA    APRIL 15, 2020**

ENCLOSURE \_\_\_\_\_      NO ENCLOSURE   X  

ITEM NUMBER:                      13

TITLE:                                EXECUTIVE SESSION

RECOMMENDATION:      INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- Matters Related to Potential Acquisition of Water Storage
- Matters Related to Potential Acquisition of Sorin Water Rights
- Matters Related to Potential Acquisition of Fitz and Collyer Water Rights

**WATER & SEWER BOARD AGENDA** April 15, 2020

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:                      14

TITLE:                                      PURCHASE AND SALE AGEEMENT AND  
LEASE AGREEMENTS FOR SORIN WATER  
RIGHTS

RECOMMENDATION:      APPROVE SORIN PURCHASE AND SALE  
AGREEMENT

**ADDITIONAL INFORMATION:**

Staff recommends that the Water and Sewer Board approve the enclose Purchase and Sale Agreement for water rights with Sorin Natural Resource Partners, LLC (“Sorin”). The agreement, along with accompanying leases, contemplate Greeley’s purchase of 54.5 shares of stock in the New Cache La Poudre Irrigation Company and 58 shares of stock in the Cache la Poudre Reservoir Company. The subject water rights have been previously changed from agricultural use to augmentation and replacement for industrial and commercial uses via Water Court Case 2014CW3046. Dry-up and revegetation covenants associated with the shares have been executed.

Consideration for the purchase includes \$4,999,583 to Sorin along with leases of the subject water rights and of Greeley’s augmentation water supplies. The leases grant Sorin continued use of the subject water rights for augmentation and replacement over a seven year term and grant Sorin use of 350 AF of Greeley’s augmentation water and/or Colorado-Big Thompson water. Lease of Greeley’s augmentation supplies incur a \$550 per acre-foot annual payment.

The purchase price will be paid in two installments: \$2,499,791.50 at Closing and \$2,499,791.50 escalated 1.6% per annum due on or before January 8, 2021.



## PURCHASE AND SALE AGREEMENT FOR WATER RIGHTS

Sorin Natural Resource Partners, LLC

This PURCHASE AND SALE AGREEMENT ("Agreement") is entered into this \_\_\_\_\_ day of April, 2020 ("Effective Date") by and between SORIN NATURAL RESOURCE PARTNERS, LLC, a Colorado limited liability corporation ("Sorin") and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation ("City"), acting by and through its Water Enterprise ("Greeley").

### RECITALS

A. Sorin owns those certain water rights, which are more particularly described on the attached Exhibit A, consisting of 54.5 shares of stock in The New Cache la Poudre Irrigating Company, 58.0 shares of stock in The Cache la Poudre Reservoir Company, and 4.5 shares in the Sand Creek Lateral Ditch Company ("Water Rights").

B. The Water Rights were historically associated with and used to irrigate six separate farms under the "New Cache System", totaling approximately 534 acres, which farms are more particularly described on the attached Exhibit B ("Land"). Sorin owns only the portion of the Land so identified on Exhibit B.

C. Sorin changed the use of the Water Rights in Case No. 14CW3046 to add uses for augmentation and replacement for industrial and commercial uses, by direct use, storage for later use, recharge, or exchange, with the right to totally consume the consumable portion of the water by first use.

D. Sorin desires to sell, and Greeley desires to purchase, the Property (consisting of the Water Rights and Sorin's rights and interests in the Restrictive Covenants, as defined below).

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Sorin and Greeley hereby agree as follows.

### AGREEMENT

#### ARTICLE 1 DEFINITIONS

For purposes of this Agreement, the following defined terms have the following meanings:

1.1 "Closing Payment" shall mean the payment to be made by Greeley pursuant to Section 3.3.

1.2 "Company" or "Companies" means the New Cache la Poudre Irrigating Company and/or the Cache la Poudre Reservoir Company.

1.3 “Escrow Agreement” shall mean the escrow agreement to be delivered at Closing, as described in Section 6.3(A)(1).

1.4 “Land” means the real property historically irrigated by the Water Rights, more particularly described on Exhibit B. Sorin believes, but makes no representations or warranties, that the Land has been fully dried up and revegetated, as contemplated in the decree issued in Case No. 14CW3046.

1.5 “Property” means the Water Rights and Sorin’s rights, interests and obligations under the Restrictive Covenants.

1.6 “Restrictive Covenants” means the Declarations of Dry-Up Covenant and Easement that burden the Land and benefit the Water Rights, as shown on the attached Exhibit C.

1.7 “Subject Shares Leaseback” means the lease agreement between Sorin and Greeley to be executed at Closing whereby Sorin will lease the Water Rights back from Greeley, substantially in the form attached as Exhibit D.

1.8 “Supplemental Water Lease Agreement” means the other lease agreement between Sorin and Greeley to be executed at Closing whereby Sorin will lease additional water from Greeley for augmentation, replacement, and exchange purposes, substantially in the form attached as Exhibit E.

1.9 “Water Rights” means the water rights represented by 54.5 shares of stock in The New Cache la Poudre Irrigating Company, 58.0 shares of stock in The Cache la Poudre Reservoir Company, and 4.5 shares in the Sand Creek Lateral Ditch Company, as referenced in Recital B above and more particularly described on the attached Exhibit A.

## ARTICLE 2 SALE OF PROPERTY

Sorin agrees to sell, and Greeley agrees to purchase, on the terms and conditions set forth in this Agreement, the Property.

## ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price. The total purchase price for the Property (“Purchase Price”) is four million, nine hundred and ninety-nine thousand, five hundred and eighty-three dollars (\$4,999,583.00).

3.2 Earnest Money Deposit and Release. Within fifteen (15) days after the Effective Date of this Agreement, Greeley shall cause the amount of \$50,000.00 (“Earnest Money Deposit”) to be deposited with Land Title Guarantee Company, 4617 West 20<sup>th</sup> Street, Greeley, Colorado 80634 (“Title Company”). If the Title Company cannot or will not provide the services necessary to execute this transaction, Sorin and Greeley may mutually agree upon and confirm a replacement title company in writing. The Earnest Money Deposit is fully refundable to Greeley

at any time prior to the expiration of the Inspection Period (defined in Article 5 below) if Greeley is not satisfied with the Property, and is only otherwise subject to return to Greeley upon termination of this Agreement by Greeley pursuant to Section 4.3, Article 5, Section 6.1, Section 8.1, Section 9.3, or as otherwise explicitly stated herein.

3.3 Funds Due at Closing. Greeley shall pay to Title Company, to be held by Title Company as Escrow Agent under the Escrow Agreement, an amount equal to one-half of the Purchase Price (\$2,499,791.50) at Closing by cashier's check, wire transfer or other immediately available funds; (i) minus the Earnest Money Deposit, (ii) plus any other amounts reasonably required to be paid by Greeley at Closing, and (iii) plus or minus any other necessary adjustments agreed to by the parties.

3.4 Second Payment. As more fully set forth in the Escrow Agreement, on or before January 8, 2021, Greeley shall deliver to Escrow Agent, for distribution to Sorin in accordance with the terms of the Escrow Agent, an amount equal to the balance of the Purchase Price (\$2,499,791.50) plus an escalator equal to 1.6% per annum. As an example only, if Closing were to occur on July 1, 2020, and the second payment were to be made on January 1, 2021, then the second payment to be made by Greeley would be \$2,519,789.83.

3.5 Limited Source of Payment by Greeley. This Agreement does not create a debt, indebtedness, or a multi-year fiscal obligation of the City within the meaning of the Constitution or other applicable law of the State of Colorado, or within the meaning of the home rule Charter of the City. Any obligation of Greeley for the payment of money pursuant to this Agreement shall be solely the special and limited revenue obligation of its Water Enterprise, and shall be payable solely from the revenues of the Water Enterprise remaining in each year after payment of all operation and maintenance expenses of the Water Enterprise and the principal of, interest on, and reserve requirements of its water bonds. In the event that such funds are insufficient in any year to make a payment or payments required to be made by Greeley pursuant to this Agreement, the unpaid portion of such payment or payments shall continue to be due and payable only from this limited source to the extent that such revenues are available in succeeding years. Except as otherwise explicitly provided in this Agreement, the obligations of Greeley shall not be secured by a lien on any City properties or revenues.

## ARTICLE 4 TITLE

4.1 Title Commitment. Within fifteen (15) days after the Effective Date of this Agreement, Sorin shall cause the following to be delivered to Greeley for review:

A. A commitment for an owner's policy of title insurance ("Title Commitment") issued by the Title Company to cover the Land in the amount of the Purchase Price, such Title Commitment setting forth the status of title to the Land and showing all liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the Land.

B. Copies of all recorded documents referred to in the Title Commitment as exceptions to title to the Land ("Title Documents").

C. To the extent the same exist and are in the possession of Sorin, true and correct copies of all non-privileged documents related to the Water Rights and Restrictive Covenants, including but not limited to, stock certificates and delivery records.

D. To the extent the same exist, and are in the possession of Sorin, true and correct copies of all: (i) documents that relate to the title, use, quantity, quality and condition of the Water Rights and Restrictive Covenants, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, and any records maintained by Sorin related to the Water Rights; (ii) contracts or other agreements relating to the development, operation, maintenance or leasing or otherwise affecting the Property and Land; (iii) any engineering, investigation or inspection document or reports related to the Water Rights, (collectively referred to as “Off-Record Documents”).

4.2 Condition of Title. Sorin shall convey the Water Rights to Greeley free and clear of all liens and encumbrances, and upon such delivery Greeley shall accept such title, subject only to the following (“Permitted Exceptions”):

- A. The matters shown in the Title Commitment; and
- B. Any other matters created by or through Greeley.

Sorin shall assign all of its rights, interests and obligations under the Restrictive Covenants, and Greeley shall accept the same, pursuant to an assignment agreement to be executed at Closing, substantially in the form attached as Exhibit J.

4.3 Vesting of Title. At Closing, Sorin shall deliver to Title Company, as Escrow Agent under the Escrow Agreement, Seller’s special warranty deed in favor of Greeley, conveying the Water Rights to Greeley, subject only to the Permitted Exceptions. If Sorin or the Title Company gives Greeley notice of a title exception that is not a Permitted Exception and that arose subsequent to the execution of this Agreement, or was not disclosed in the Title Commitment, then Greeley shall disapprove of such exceptions, if at all, by giving written notice of objection to Sorin within fifteen (15) days after receiving notice from Sorin or the Title Company. Any such exception not objected to in writing within such fifteen (15) day period shall be deemed an additional Permitted Exception. Sorin may elect (but shall not be obligated) to remove, or cause to be removed at its expense, any such disapproved exceptions (collectively, “Disapproved Matters”). Sorin shall notify Greeley in writing within seven (7) business days after receipt of Greeley’s notice of Disapproved Matters if Sorin elects to remove such matters. If Sorin fails or is unable to remove any such Disapproved Matters prior to Closing, Greeley may, upon seven (7) days’ prior written notice to Sorin, elect to terminate this Agreement. Upon termination of this Agreement pursuant to this Section, and except as otherwise provided herein, the Deposit shall be returned to Greeley and neither Sorin nor Greeley shall have any further obligation or liability to the other except for those obligations which by their nature are intended to survive the termination of this Agreement.

4.4 Title Insurance. The purpose of the Title Commitment is to enable Greeley to conduct a title review as described in Article 5 below, and said Title Commitment shall be

updated as necessary up to the Closing. However, neither Sorin nor Greeley shall have any obligation under this Agreement to purchase a title insurance policy after Closing.

## ARTICLE 5 INSPECTION PERIOD

### 5.1 Inspections.

A. Inspection Period and Right to Inspect. During the period which commences on the Effective Date and continues until 4:00 p.m. Mountain Time sixty (60) days from the Effective Date ("Inspection Period"), Greeley and its authorized agents, representatives and consultants shall be entitled to: (i) to perform such inspections as Greeley deems desirable, to allow Greeley to evaluate the Water Rights and the condition of the Property; (ii) contact and interview the managers, members, employees and agents of Sorin to assist Greeley in evaluating the historical use of the Water Rights; and (iii) contact the officers, directors, attorneys, and shareholders of the Companies to inspect any Company records and/or determine under what conditions the Company may approve another change in the place of delivery or use, or the point of diversion, of the Water Rights and other Company shares obtained or to be obtained by Greeley, pursuant to the bylaws of the Company or other applicable law (collectively referred to as "Inspections"). Sorin agrees to cooperate with Greeley to facilitate such Inspections, but Greeley shall bear all costs of the Inspections. Sorin agrees to reasonably cooperate, at no material cost to Sorin, with any such Inspections made by or at Greeley's direction so long as such cooperation does not cause Sorin any material expense.

B. Conditions of Access. Greeley and its authorized agents, representatives and consultants (i) shall comply with all reasonable requirements imposed upon them in connection with such Inspections by Sorin; (ii) shall not injure or otherwise cause bodily harm to Sorin, its agents, contractors or employees; (iii) shall promptly pay when due the costs of all Inspections done with regard to the Property; (iv) shall not permit any liens to attach to the Property by reason of the exercise of its rights under this Agreement; and (v) shall not enter the Land, unless a certificate of insurance naming Sorin as an insured party, has first been provided to Sorin. Notwithstanding anything in this Agreement suggestive to the contrary, Sorin does not purport to unilaterally grant to Greeley any access to real property that it does not own or rightfully occupy.

5.2 Objections. If during the Inspection Period, Greeley, for any reason in Greeley's sole discretion, judgment and opinion, disapproves or is dissatisfied with any aspect of the Property or its Inspections relating thereto, including, but not limited to, the following items, Greeley shall be entitled to terminate this Agreement by giving written notice to Sorin on or before the expiration of the Inspection Period, whereupon the Earnest Money Deposit shall be returned to Greeley and all provisions of this Agreement (with the exception of those obligations which by their nature are intended to survive the termination of this Agreement) shall terminate:

A. Matters disclosed in (i) the Title Documents or (ii) the Off-Record Documents.

B. Greeley's ability to obtain other real property interests or water rights determined by Greeley to be necessary for the use of the Water Rights for municipal purposes.

C. Greeley's ability to change the Water Rights for municipal use.

If Greeley does not provide written notice of termination to Sorin prior to the expiration of the Inspection Period, the Earnest Money Deposit shall not be refunded to the Greeley if, for any reason other than a default by Sorin, or a circumstance contemplated by Section 4.3, Section 6.1, Section 8.1, or Section 9.3, the Closing of this transaction does not occur.

ARTICLE 6  
CLOSING CONTINGENCIES; CLOSING

6.1 Closing Contingencies; Governing Body Approval. The obligations of Greeley under this Agreement, including, without limitation, the obligation to purchase the Property, are expressly subject to approval of this Agreement by the Greeley Water and Sewer Board ("Board") and the sufficient appropriation of funds by the Greeley City Council for purchase of the Property. Greeley shall provide Sorin with reasonable advance notice of any public meetings at which this Agreement will be formally discussed or considered by the Greeley Water and Sewer Board. In the event that the Board has not approved this Agreement within fifteen (15) days after expiration of the Inspection Period, then, in such event, upon written notice by Greeley to Sorin, this Agreement shall terminate, whereupon the Earnest Money Deposit shall be returned to Greeley and neither party shall have any further obligation to the other except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

6.2 Closing. The closing of this transaction ("Closing" or "Closing Date") shall occur at 1:30 p.m. at the Title Company, thirty (30) days after the expiration of the Inspection Period, unless Greeley and Sorin mutually agree to an earlier date in writing.

6.3 Transactions at Closing.

A. On or before the Closing Date, Sorin shall deliver or cause to be delivered to the Title Company, acting as Escrow Agent under the Escrow Agreement, the following documents duly executed and acknowledged where appropriate:

(1) Three (3) fully executed counterparts of that certain escrow agreement by and among Sorin, Greeley and Title Company, as Escrow Agent in the form attached hereto as Exhibit F, pursuant to which Title Company will hold the other Seller deliverables enumerated below in escrow, subject to the terms and conditions of such agreement.

(2) A special warranty deed conveying the Water Rights to Greeley, free and clear of all liens and encumbrances except the Permitted Exceptions, substantially in the form attached hereto as Exhibit H.

(3) Original copies of all share certificates representing the Water Rights, which certificates are more particularly described on Exhibit A, along with stock assignments transferring ownership of all shares representing the Water Rights to Greeley, in a form acceptable to the Companies.



(4) Two (2) original counterparts of an assignment and assumption agreement relating to the assignment of all of Sorin's rights, interests, and obligations under the Restrictive Covenants to Greeley, substantially in the form attached hereto as Exhibit J.

(5) A certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, together with any certificates required pursuant to Colorado law.

(6) A statement of authority designating the persons who are authorized to execute all documents related to this Agreement on behalf of Sorin.

(7) A certificate as to Taxpayer Identification Number, as required by law.

(8) Two (2) original counterparts of the Subject Shares Leaseback, substantially in the form attached hereto as Exhibit D.

(9) Two (2) original counterparts of the Supplemental Water Lease Agreement, substantially in the form attached hereto as Exhibit E.

(10) A closing statement, and such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

B. On or before the Closing Date, Greeley shall deliver to the Title Company, acting as escrow agent, the following:

(1) The Closing Payment.

(2) Documentation, in a form satisfactory to Sorin and the Title Company, evidencing Greeley's full authority and capacity to purchase the Property.

(3) Two (2) original counterparts of the duly executed assignment and assumption agreement relating to the acceptance by Greeley of all of Sorin's rights, interests, and obligations under the Restrictive Covenants, substantially in the form attached hereto as Exhibit J.

(4) Two (2) original counterparts of the Subject Shares Leaseback, duly executed and substantially in the form attached hereto as Exhibit D.

(5) Two (2) original counterparts of the Supplemental Water Lease Agreement, duly executed and substantially in the form attached hereto as Exhibit E.

(6) A closing statement, and such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

## ARTICLE 7 PRORATIONS; CLOSING COSTS

7.1 Prorations. Greeley and Sorin do not anticipate the necessary proration of any items to the Closing Date. Any assessments associated with the Water Rights, owed at the time of Closing, shall be paid in full by Sorin at or before Closing.

7.2 Closing Costs. Greeley shall pay the cost to record all deeds and restrictive covenants, as well as any water stock transfer fees and one-half (1/2) of the Title Company closing costs and costs of establishing the escrow under the Escrow Agreement. Sorin shall pay the other one-half (1/2) of the Title Company closing costs and costs of establishing and administering the escrow under the Escrow Agreement. Each party shall pay its own attorneys' fees.

## ARTICLE 8 REPRESENTATIONS; WARRANTIES; COVENANTS

8.1 Sorin represents, warrants and covenants to Greeley as follows:

A. Encumbrances. From the Effective Date of this Agreement until the Closing, and except for the Permitted Exceptions defined above, Sorin shall not encumber the Water Rights in any manner, grant any property or contract right relating to the Water Rights, nor undertake any action to undermine the efficacy of the Restrictive Covenants, without the express prior written consent of Greeley.

B. Litigation. To the current actual knowledge of Sorin, there is no dispute, action or litigation pending or threatened respecting the ownership or use of the Property or other interests related thereto.

C. Contracts, Leases and Agreements. From the Effective Date of this Agreement until the Closing, unless accepted by Greeley in writing, Sorin shall not enter into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Water Rights by which Greeley would be obligated or liable to any third party.

D. Status. Sorin has all requisite legal power and authority to own and convey the Property and perform all of the terms of this Agreement.

E. Compliance with Law. To the best of Sorin's current actual knowledge, Sorin has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the Property, and to Sorin's current actual knowledge there is no proposed order, judgment, decree, governmental taking or other proceeding applicable to Sorin which might adversely affect the Property.

F. Sorin shall provide Greeley with a written certification at Closing confirming that the foregoing representations are true and correct in all material respects as of the Closing Date, in the form attached hereto as Exhibit I. If Sorin discovers, after the Effective Date of this Agreement, that any such representations are not true and correct, Sorin shall promptly provide written notice to Greeley describing the nature and details of such changes. If such statement discloses changes in any of Sorin's representations and such changes were not created or consented to by Greeley after the Effective Date of this Agreement, then Sorin shall notify Greeley and Greeley, as its sole remedy, shall have the option to terminate this Agreement, in which event the Earnest Money Deposit will be returned to Greeley. Notwithstanding the foregoing, if Sorin provides such notice at any time that is less than twenty (20) days prior to the Closing Date, Greeley may, without waiving its right to terminate this Agreement as provided for above, extend the Closing Date by twenty (20) days to provide additional time for Greeley's review of the identified changes. If Greeley elects not to terminate this Agreement and to proceed to Closing, then the identified changes shall be listed and attached as an exhibit to the certification provided at Closing.

G. Any representations and warranties made in this Agreement "to Sorin's current actual knowledge" or "to the best of Sorin's current actual knowledge" shall not be deemed to imply any duty of inquiry.

8.2 Water Rights Adjudication. The parties acknowledge and agree that a change of Water Rights and/or other water rights adjudications may be necessary to allow Greeley's use of the Property for its intended purposes; provided, however, that no such action may be filed prior to the delivery to Greeley under the Escrow Agreement, of the documents placed into escrow by Sorin. Unless this Agreement is terminated pursuant to the provisions herein, Sorin agrees that it shall not oppose, but shall reasonably cooperate with Greeley, at no material cost to Sorin, in any actions Greeley files in Water Court or administrative or other proceedings for approval of the use of the Water Rights as part of an application for new water rights (including direct flow or storage rights), changes of water rights, exchanges or plans for augmentation or substitution or in connection with the Water Rights. Sorin shall not be required to file briefs in support of Greeley's application or take any affirmative action other than to appear and testify honestly about the Water Rights and provide any documentation of use or other relevant historical use information in Sorin's possession at that time. The terms and provisions set forth in this Section 8.2 and the covenants and obligations arising therefrom shall survive the Closing through the term of the Subject Shares Leaseback, shall be binding upon Sorin or, in the event of a permitted assignment of the Subject Shares Leaseback, upon Sorin's assignee, and shall not be deemed merged into the closing documents.

## ARTICLE 9 CONDITIONS TO CLOSING; REMEDIES

9.1 Sorin's Conditions. The obligation of Sorin to sell and convey the Property under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Sorin):

A. Delivery and execution by Greeley of all monies, items, and other instruments required to be delivered by Greeley to the Closing.

B. All actions by Greeley contemplated by this Agreement shall have been completed.

C. No uncured default by Greeley of any of its obligations under this Agreement.

9.2 Greeley's Conditions. The obligation of Greeley to acquire the Property under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Greeley):

A. Approval of this Agreement by the Greeley Water and Sewer Board.

B. Delivery and execution by Sorin of all items and other instruments required to be delivered by Sorin to the Closing.

C. All actions by Sorin contemplated by this Agreement shall have been completed.

D. No uncured default by Sorin of any of its obligations under this Agreement.

E. The covenants, warranties and representations made by Sorin as specifically set forth herein shall be true and correct as of the Closing Date and shall not be deemed waived in the event Greeley elects to close pursuant to Section 9.3A(3) below.

9.3 Failure of Condition.

A. In the event of a failure of any condition contained in Section 9.2, Greeley may in their sole discretion:

(1) Terminate this Agreement by notice to Sorin, in which event: (a) all funds deposited by Greeley under this Agreement as of such date shall be immediately returned to Greeley; and (b) all documents deposited by Greeley or delivered to Sorin by Greeley shall be immediately returned to Greeley, and all documents deposited by Sorin or delivered to Greeley by Sorin shall be immediately returned to Sorin; or

(2) Greeley may waive such default or condition in writing and close the transaction; or

(3) If the failure of condition consists of a default by Sorin which can be cured by action within the reasonable control of Sorin, Greeley may elect to treat this Agreement as being in full force and effect and Greeley shall have the right to either specific performance, or damages. Greeley agrees that any claim or award of damages under this section shall not exceed the Purchase Price.

B. In the event of a failure of any condition contained in Section 9.1 above, Sorin may in its sole discretion:

(1) Terminate this Agreement by notice to Greeley, in which event Sorin shall retain the Earnest Money Deposit as liquidated damages and all documents deposited by Greeley or delivered to Sorin by Greeley shall be immediately returned to Greeley, and all documents deposited by Sorin or delivered to Greeley by Sorin shall be immediately returned to Sorin; or

(2) Sorin may waive such default or condition in writing and close the transaction.

C. Sorin hereby waives any rights it may have to specific performance in the event of a default by Greeley. Except for the giving of notices or the delivery of the Earnest Money Deposit or the Purchase Price, time being of the essence for the foregoing, neither party shall be deemed in default hereunder unless such party fails to cure such default within seven (7) days of written notice of default from the other party.

9.4 Liquidated Damages. If Greeley defaults in any of its obligations under this Agreement, Sorin shall be entitled to terminate this Agreement and retain the amount of the Earnest Money Deposit described in Section 3.2 ("Specified Sum"), as liquidated damages. SORIN AND GREELEY ACKNOWLEDGE THAT SORIN'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED SUM IS A REASONABLE ESTIMATE OF SORIN'S DAMAGES.

ARTICLE 10  
CONDEMNATION  
[*INTENTIONALLY OMITTED*]

ARTICLE 11  
BROKERAGE

Sorin and Greeley hereby warrant to each other that there are no real estate agents or other brokers or finders involved in this transaction who are entitled to receive a brokerage or finder's fee. Sorin agrees to indemnify Greeley and hold Greeley harmless from any loss, liability, damage, cost or expense (including, without limitation, reasonable attorneys' fees) paid or incurred by Greeley by reason of any claim to any broker's, finder's or other fee in connection with this transaction by any third party claiming by, through or under Sorin, excluding, however, any party claiming through Greeley, their successors or assigns. This obligation shall survive the Closing of this transaction.

ARTICLE 12  
NOTICES

Any notice or other communication given by any of the parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Article: (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at such address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at such address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; or (iv) if an e-mail address is specified, on the date and at the time shown on the e-mail message if sent to the e-mail address specified below and receipt of such e-mail message is acknowledged in writing by the intended recipient:

If to Sorin:

Sorin Natural Resource Partners, LLC  
Attn: Manager  
1400 16<sup>th</sup> Street, Suite 320  
Denver, Colorado 80202  
Telephone: 720.723.2850

With copies to:

Mark Goldstein  
2850 McClelland Drive #2400  
Fort Collins, Colorado 80525  
Telephone: 303.396.9889  
Email: mark@geiresources.com

Christopher L. Thorne, Esq.  
Greenberg Traurig, LLP  
1144 15<sup>th</sup> Street, Suite 3300  
Denver, Colorado 80202  
Telephone: 303.572.6519  
Email: thornech@gtlaw.com



If to Greeley:

City of Greeley  
Attention: Deputy Director of Water Resources  
1001 11<sup>th</sup> Avenue, 2nd Floor  
Greeley, Colorado 80631  
Telephone: (970) 350-9209  
Email: adam.jokerst@greeleygov.com

With a copy to:

Greeley City Attorney's Office  
Attention: Environmental and Water Resources  
1100 10<sup>th</sup> Street, Suite 401  
Greeley, Colorado 80631  
Telephone: (970) 350-9757  
Email: daniel.biwer@greeleygov.com

ARTICLE 13  
MISCELLANEOUS

13.1 No Waiver of Governmental Immunity/No Third Party Beneficiary. This Agreement shall not create any duty of care or liability with respect to any person or entity not a party to this Agreement, or waive any of the privileges or immunities Greeley or their officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as amended.

13.2 Time. Time is of the essence as to each provision of this Agreement and the performance of each party's obligations hereunder.

13.3 Attorneys' Fees. If any legal action, arbitration or other proceeding is commenced to enforce or interpret any provision of this Agreement or to enforce any indemnity, the prevailing party shall be awarded its attorneys' fees and expenses, in addition to any other relief granted. The phrase "prevailing party" shall include a party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise. This provision shall survive the termination of this Agreement.

13.4 No Waiver. No waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder.

13.5 Entire Agreement. This Agreement contains the entire agreement among the parties regarding the Property and supersedes all prior agreements, whether written or oral, among the parties regarding this purchase and sale transaction. This Agreement may only be modified by mutual written agreement duly authorized and executed by the parties.

13.6 Survival of Representations and Warranties. All representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations of Sorin and Greeley as set forth in this Agreement, except those described in paragraph 8.2 above, shall survive the Closing and consummation of the transaction contemplated by this Agreement for a period of one year from the date of Closing.

13.7 Successors. Subject to Section 13.8 below, this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

13.8 Assignment. This Agreement is not assignable by Sorin or Greeley without first obtaining the prior written approval of the other party. No assignment shall relieve either of the parties from its respective obligations hereunder if such obligations are not properly discharged by the assignee of such party.

13.9 Relationship of the Parties. The parties acknowledge that neither party is an agent for the other party, and that neither party shall or can bind or enter into agreements for the other party.

13.10 Governing Law and Construction. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Colorado. The parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

13.11 Possession. Sorin shall deliver to Greeley possession of the Property, subject to the Permitted Exceptions, on the Closing Date, upon release from escrow of all items to be delivered by Greeley to the Closing, including, without limitation, one-half of the Purchase Price.

13.12 Review by Legal Counsel. The parties acknowledge that each party and its legal counsel have reviewed and approved this Agreement.

13.13 Calendar Days. In the event any time set forth in this Agreement commences, expires or is determined from a date which falls on a Saturday, Sunday, legal holiday of the State of Colorado or other non-business day, the date of such commencement, performance, expiration or determination shall automatically be extended to the next business day which is not a Saturday, Sunday, legal holiday of the State of Colorado or other non-business day.

13.14 Counterparts. This Agreement may be executed in any number of counterparts each of which, when taken together, shall constitute one agreement. This Agreement shall only be effective when counterparts are signed by both Sorin and Greeley.


13.15 Acceptance. Upon execution and delivery of this Agreement by Sorin or Greeley, this Agreement shall constitute an offer to purchase the Property on the terms and conditions set forth herein. The foregoing notwithstanding, any party may revoke its execution and delivery at any time prior to the execution and delivery by the other party, by delivering oral or written notice (which need not conform with the requirements of Article 12 hereof) of such revocation to the other party.

13.16 Approval. THE OBLIGATIONS OF THE CITY OF GREELEY HEREUNDER ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE CITY OF GREELEY WATER AND SEWER BOARD.

*(Remainder of page intentionally blank. Signature page follows.)*

IN WITNESS WHEREOF, the City of Greeley and Sorin Natural Resource Partners, LLC have executed this Purchase and Sale Agreement for Water Rights on the dates set opposite their respective signatures below, and effective as of the date set forth in the caption above.

**SORIN NATURAL RESOURCE PARTNERS, LLC**

By:  \_\_\_\_\_  
Name: Aaron M. Patsch \_\_\_\_\_  
Title: Authorized Representative \_\_\_\_\_

Date: 4/8/2020 \_\_\_\_\_

**THE CITY OF GREELEY, COLORADO**  
**A Colorado home rule municipal corporation,**  
**acting by and through its Water Enterprise**

By: \_\_\_\_\_  
City Manager

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

AS TO AVAILABILITY OF FUNDS:

By: \_\_\_\_\_  
City Attorney

By: \_\_\_\_\_  
Director of Finance

**EXHIBIT A**  
**Description of Water Rights**

All of Sorin's rights, title, and interest in and to any and all water, water rights, rights to receive water, and all other rights represented by 54.5 shares of capital stock in the New Cache la Poudre Irrigating Company (Certificate Nos. 4872 (as to 12 shares), 4874 (as to 19 shares), 4875 (as to 15 shares), 4876 (as to 4.5 shares), and 4920 (as to 4 shares)); 58 shares of capital stock in the Cache la Poudre Reservoir Company (Certificate Nos. 4106 (as to 24 shares), 4107 (as to 10 shares), and 4108 (as to 24 shares)); and 4.5 shares of capital stock in the Sand Creek Lateral Ditch Company (Certificate No. 117). The Water Rights covered by this provision shall also include all of Sorin's rights, title, and interest in and to any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the shares described above.

## **EXHIBIT B**

### **Description of Historically Irrigated Land**

#### **1. Not Owned by Sorin.**

##### **Tipton Farm**

Approximately 77.6 acres located in the SW  $\frac{1}{4}$  of Section 26, Township 6 North, Range 65 West of the 6<sup>th</sup> P.M. in Weld County.

##### **Martin Farm**

Approximately 36.2 acres located in the W  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of and the W 80 feet of the E  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  of Section 2, Township 5 North, Range 65 West of the 6<sup>th</sup> P.M. in Weld County.

##### **Benson Farm**

Approximately 15.1 acres located in the E  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of Section 2, Township 5 North, Range 65 West of the 6<sup>th</sup> P.M. in Weld County, lying north of the County Road.

##### **Davis-West Farm**

Approximately 84.4 acres located in parts of the NE  $\frac{1}{4}$  of Section 4, Township 5 North, Range 65 West of the 6<sup>th</sup> P.M. in Weld County.

##### **Kirby Farm**

Approximately 214.5 acres located in a portion of Section 16, Township 6 North, Range 67 West of the 6<sup>th</sup> P.M. in Weld County.

#### **2. Currently Owned by Sorin.**

##### **Bickling Farm**

Approximately 106.0 acres located in the E  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  and the W  $\frac{1}{2}$  of the E  $\frac{1}{2}$  of the SW  $\frac{1}{4}$  of Section 34, Township 6 North, Range 65 West of the 6<sup>th</sup> P.M. in Weld County.

Collectively totaling approximately 534 acres.



## **EXHIBIT C**

### **Restrictive Covenants**

1. Declaration of Dry-Up Covenant and Easement, September 22, 2015, agreed to by Sorin Natural Resource Partners, LLC (recorded with Weld County Clerk and Recorder on September 23, 2015, at 4144401). **(Tipton Farm)**
2. Declaration of Dry-Up Covenant and Easement, September 30, 2015, between Greeley-Weld County Airport Authority and Sorin Natural Resource Partners, LLC (recorded with Weld County Clerk and Recorder on October 1, 2015, at 4146926). **(Tipton Farm)**
3. Declaration of Dry-Up Covenant and Easement, September 25, 2015, agreed to by Sorin Natural Resource Partners, LLC (recorded with Weld County Clerk and Recorder on September 28, 2015, at 4145503). **(Bickling Farm)**
4. Declaration of Dry-Up Covenant and Easement, June 10, 2015, between Greater Front Range Homes, LLC and Sorin Natural Resource Partners, LLC (recorded with Weld County Clerk and Recorder on June 16, 2015, at 4116151). **(Martin Farm)**
5. Declaration of Dry-Up Covenant and Easement, August 14, 2015, by and between Global Asset Recovery, LLC and Sorin Natural Resource Partners, LLC (recorded with Weld County Clerk and Recorder on August 20, 2015, at 4135285). **(Davis-West Farm )**
6. Declaration of Dry-Up Covenant and Easement, February 25, 2004, by and between Ground Water Management Subdistrict of the Central Colorado Water Conservancy District and Water Resources, LLC (recorded with Weld County Clerk and Recorder on March 12, 2004, at 3161329). **(Kirby Farm)**

## **EXHIBIT D**

### **Water Leaseback Agreement**

#### **WATER LEASEBACK AGREEMENT**

This WATER LEASEBACK AGREEMENT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between SORIN NATURAL RESOURCE PARTNERS, LLC, a Colorado limited liability company (“Sorin”), and the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation (“City”), acting by and through its Water Enterprise (“Greeley”).

#### **Recitals**

A. Pursuant to that certain Purchase and Sale Agreement for Water Rights between Sorin and Greeley dated \_\_\_\_\_, 2020 (“Purchase Agreement”), Greeley owns the water rights represented by 50.5 shares of capital stock in the New Cache la Poudre Irrigating Company (Certificate Nos. 4872, 4874, 4875, and 4876), 58 shares of capital stock in the Cache la Poudre Reservoir Company (Certificate Nos. 4106, 4107, and 4108), and 4.5 shares of stock in the Sand Creek Lateral Ditch Company (Certificate No. 117) (“Water Rights”).

B. As contemplated by the Purchase Agreement, Greeley is willing to lease the Water Rights back to Sorin, on the terms and conditions of this Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Sorin and Greeley agree as follows.

#### **Agreement**

1. **Lease of Water Rights.** Subject to the terms, conditions, and limitations defined herein, Greeley hereby leases the Water Rights to Sorin.

2. **Term of Agreement.** The initial term of this Agreement commences on the date it is mutually executed and expires on December 31, 2026 (“Initial Term”). Sorin may thereafter renew this Agreement for up to 5 subsequent one-year periods beyond the Initial Term, on the same terms and conditions, by delivering written notice to Greeley at least 90 days prior to the end of the previous term. Sorin and Greeley shall mutually execute documentation evidencing any such renewal beyond the Initial Term at the request of either party. Sorin may terminate this Agreement during the Initial Term by delivering an advance written notice to Greeley of at least 12 months. Sorin and Greeley shall mutually execute documentation evidencing any such early termination during the Initial Term at the request of either party. In the event that Sorin terminates this Agreement early pursuant to this paragraph 2, Sorin is not entitled to any credit or refund for amounts paid.

3. **Lease Payment.** Greeley will pay all assessments, charges, and other expenses due and attributable to the Water Rights to the New Cache la Poudre Irrigating Company and the

# Sorin Natural Resource Partners, LLC Water Rights Acquisition

April 15, 2020



# Purchase & Sale Overview

- 54.5 shares of the New Cache la Poudre Irrigation Company
- 58 shares of the Cache la Poudre Reservoir Company
- 4.5 shares of the Sand Creek Lateral Ditch Company



# Purchase & Sale Overview

- Shares previously changed in 2014CW3046
- Will require future change for municipal water use
- Purchase price: \$4,999,583, paid in two installments



# Leases

- No-cost leaseback of shares for continued augmentation use
  - 7-year initial term with 5, 1-year renewals
- Water lease of up to 350 acre-feet per year
  - 7-year initial term with 5, 1-year renewals
  - \$550 per acre-foot



# Diligence & Closing



- \$50,000 earnest money
- 60-day inspection period
  - Minimal diligence since shares already changed
- 30-day closing period

# Recommendation

Staff recommends acquisition of the 54.5 shares of stock in the New Cache la Poudre Irrigation Company, 58 shares of stock in the Cache la Poudre Reservoir Company, and 4.5 shares of stock in the Sand Creek Lateral Ditch Company in accordance with the water acquisition strategies set forth in the Department's Master Plan and Future Water Account plan.



# Questions?



Cache la Poudre Reservoir Company each year during the term of this Agreement (“Annual Lease Amount”), and Sorin shall annually reimburse Greeley in full for the Annual Lease Amount in exchange for its use of the Water Rights. Sorin shall also pay to Greeley an annual administrative fee in the amount of one hundred and fifty dollars (\$150.00) per year (“Annual Administrative Fee”). Greeley shall provide a written invoice of the Annual Lease Amount and Annual Administrative Fee to Sorin each year, and Sorin shall pay that amount in full to Greeley within fifteen (15) days of its receipt of the invoice.

4. Use of Water Rights. In the event Sorin decides, in accordance with its water supply needs and in its sole discretion, to put the Water Rights to beneficial use during the term of this Agreement, such use shall be made in accordance with the decree entered in Case No. 14CW3046, Water Division 1, and with any subsequent decree obtained by Greeley concerning the Water Rights. In addition, Sorin shall use the Water Rights in accordance with all rules, regulations, bylaws and policies of the companies that issued the shares. Sorin acknowledges that Greeley may seek a change of the Water Rights during the term of this Agreement, shall undertake no affirmative action which could be construed as abandonment of the Water Rights, and shall reasonably cooperate with and assist Greeley, at no material cost to Sorin, in a future Water Court case to change the rights for municipal uses by Greeley. Greeley shall provide written notice and a copy of the draft application for Sorin’s review and comment no later than twenty one (21) days prior to filing any Water Court application to change the Water Rights.

a. Sorin shall not pursue any Water Court case related to the Water Rights or the terms of their permissible use, including, without limitation, any amendment of the decree entered in Case No. 14CW3046, during the term of this Agreement. Sorin may seek administrative approval from the State Engineer’s Office for temporary changes in the permissible use of the Water Rights, but only with prior written consent of Greeley. Greeley may give or withhold such consent in its reasonable sole discretion. Greeley agrees to reasonably cooperate with and assist Sorin with obtaining the administrative approvals necessary to store the Water Rights in the Star Pit during the term of this Agreement.

b. Sorin shall bear sole responsibility for meeting the return flow obligations associated with the Water Rights, which obligations are more particularly described in the decree entered in Case No. 14CW3046, during the term of this Agreement. Greeley shall assume any remaining return flow obligations associated with use of the Water Rights by Sorin under this Agreement immediately following the expiration or termination of this Agreement. The parties shall, at that time, work together in good faith to mutually agree upon the volume of water necessary to meet any remaining return flow obligations associated with use of the Water Rights by Sorin under this Agreement, and Sorin shall compensate Greeley for meeting such obligations at a rate of five hundred and fifty dollars (\$550.00) per acre-foot. In the event, the parties are unable to reach agreement on such volume, the parties shall mutually select a third-party, neutral water engineer to determine this volume. This determination shall be binding upon the parties.

c. The parties acknowledge that the decree entered in Case No. 14CW3046 encompasses other rights and operations beyond the Water Rights acquired by Greeley

that are the subject of this Agreement. Sorin shall retain sole responsibility for all obligations in the decree entered in Case No. 14CW3046 not explicitly assumed by Greeley via its acquisition of the Water Rights and the related Restrictive Covenants, including, without limitation, the obligation to replace depletions from the wells covered by the augmentation plan decreed in Case No. 14CW3046. During the term of this Agreement, Sorin shall bear sole responsibility for maintaining and submitting to the Division of Water Resources adequate accounting and projections for the Water Rights, as required by the decree in Case No. 14CW3046. Sorin shall provide copies of the same to Greeley on a monthly basis.

d. In addition to the terms and conditions set forth in the decree entered in Case No. 14CW3046 to which its use of the Water Rights is subject, Sorin shall limit its cumulative diversions of water attributable to the Water Rights during the term of this Agreement to the 7-Year Cumulative Monthly and Annual Canal Gate Delivery Limits set forth in the table below, which limits are based on historical average deliveries of water attributable to the Water Rights.

AVERAGE								
7-Year Cumulative Monthly and Annual Canal Gate Delivery Limits (acre-feet)								
Shares	Apr	May	Jun	Jul	Aug	Sep	Oct	Total
NCLPIC (50.5 shares)	43.2	863.3	1,390.9	1,228.7	394.0	77.9	29.2	4,027.2
CLPRC (58 shares)	4.5	9.6	23.5	288.8	450.8	98.1	15.6	890.8

Note:

- Based on 20-year volumetric limits listed in the decree in Case No. 14CW3046.
- Kirby Farm Deliveries not included.

5. Restriction on Sublease and Assignment. Sorin shall not rent, sublet, or otherwise convey the right to use the Water Rights, and shall not assign this Agreement, without prior written consent from Greeley. Sorin shall request such consent from Greeley by advance written notice of at least thirty days, and such consent shall not be unreasonably withheld.

6. No Vested Interest in Shares or Joint Venture. Greeley grants no interest in the Water Rights to Sorin other than as explicitly set forth in this Agreement. Sorin shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind between the parties, and Sorin shall bear the entirety of any loss, cost, or expense incurred through its use of the Water Rights.

7. No Guarantee of Yield. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Sorin is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. Greeley makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Sorin shall not hold Greeley liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

8. Maintenance of Infrastructure. Sorin shall maintain any lateral ditches, headgates, and other personal property necessary to deliver water pursuant to the Water Rights at its own cost and expense. Sorin shall make all repairs and restorations necessary to keep any such lateral ditches, headgates, and other personal property in good working condition during the term of this Agreement.

9. Indemnification. Sorin agrees to exercise its rights under this Agreement at its own risk. Sorin shall indemnify and hold Greeley harmless from and against any cost, expense, or liability arising out of or in connection with this Agreement, including, without limitation (a) the negligent acts, omissions, or willful misconduct of Sorin, its agents, or contractors with respect to this Agreement; (b) the violation by Sorin of any applicable law, and (c) the breach by Sorin of any provision of this Agreement. Nothing in this Agreement is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as applicable now or hereafter amended.

10. Notice. All notices to be given under this Agreement shall be in writing and shall be deemed sufficient when given by delivery to the addresses provided below, or such other address if changed by Greeley or Sorin via notice consistent with this paragraph: (i) on the date and at the time of delivery if hand-delivered personally to the party to whom notice is given at such address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at such address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by properly addressed first-class mail, sent registered or certified, with return receipt requested and postage prepaid.

For Greeley: Greeley Water and Sewer Department  
Attn: Director of Water and Sewer  
1001 11<sup>th</sup> Avenue, Second Floor  
Greeley, Colorado 80631

with a copy to: Greeley City Attorney's Office  
Attn: Environmental and Water Resources  
1100 10th Street, Suite 401  
Greeley, Colorado 80631

For Sorin: Sorin Natural Resource Partners, LLC  
Attn: Manager  
1400 16<sup>th</sup> Street, Suite 320  
Denver, Colorado 80202  
Telephone: 720.723.2850

with copies to: Mark Goldstein  
2850 McClelland Drive #2400  
Fort Collins, Colorado 80525  
Telephone: 303.396.9889



Email: mark@geiresources.com

Christopher L. Thorne, Esq.  
Greenberg Traurig, LLP  
1144 15<sup>th</sup> Street, Suite 3300  
Denver, Colorado 80202  
Telephone: 303.572.6519  
Email: thornech@gtlaw.com

11. Default and Termination; Waiver. If either Greeley or Sorin fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 10 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by the parties, the non-defaulting party may declare the Agreement immediately terminated by written notice in accordance with Paragraph 10 above. Nothing in this Agreement should be construed to limit either party from seeking damages or pursuing available remedies upon the termination of this Agreement for default, including the recovery of reasonable costs and attorneys' fees. The failure of either party to declare a default does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

12. No Third Party Beneficiaries. The terms and conditions of this Agreement, and all rights of action related thereto, are strictly reserved to Greeley and Sorin. Nothing in this Agreement should be construed to allow any claim, right, or cause of action by any person or entity not a party to this Agreement. Any person or entity other than Greeley or Sorin that realizes a service or benefit under this Agreement is an incidental beneficiary only.

13. Restriction on Recording. Neither Greeley nor Sorin shall record this Agreement in the real property records of any jurisdiction, but may disclose this Agreement with price terms redacted if necessary to obtain an administrative approval, as contemplated by paragraph 4 above. This Agreement is not intended to run with the land as a covenant burdening any real property.

14. Governing Law and Venue. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

15. Severability. In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the parties.

16. Integration. This Agreement constitutes a complete integration of the understanding and agreement between Greeley and Sorin with respect to the leaseback of Water Rights described herein, and supersedes all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties, express or implied, exist between Greeley and Sorin except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by Greeley and Sorin.

17. Counterparts. The parties may execute this Agreement in counterparts, each of which and the combination of which when signed by both Greeley and Sorin may be deemed original and together constitute a single contract.

IN WITNESS WHEREOF, the City of Greeley and Sorin Natural Resource Partners have executed this Agreement on the date first written above.

**SORIN NATURAL RESOURCE PARTNERS, LLC**  
a Colorado limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE CITY OF GREELEY, COLORADO**  
a Colorado home rule municipal corporation  
acting by and through its Water and Sewer Board

ATTEST:

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

## **EXHIBIT E**

### **Supplemental Water Lease Agreement**

#### **WATER LEASE**

This WATER LEASE ("Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between SORIN NATURAL RESOURCE PARTNERS, LLC, a Colorado limited liability company ("Sorin"), and the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its Water and Sewer Enterprise ("Greeley").

#### **Recitals**

A. As contemplated by that certain Purchase and Sale Agreement for Water Rights between Sorin and Greeley dated \_\_\_\_\_, 2020 ("Purchase Agreement"), Greeley is willing to lease to Sorin certain fully consumable water on the terms and conditions of this Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Sorin and Greeley agree as follows.

#### **Agreement**

1. **Lease of Water.** Subject to the terms, conditions, and limitations defined herein, Greeley hereby leases Sorin up to three hundred and fifty (350) acre-feet of certain wholly consumable water per year during the term of this Lease ("Leased Water").

2. **Term of Lease.** The initial term of this Lease commences on the date it is mutually executed and expires on December 31, 2026 ("Initial Term"). Sorin may thereafter renew this Lease for up to five (5) subsequent one-year periods beyond the Initial Term, on the same terms and conditions, by delivering written notice to Greeley at least ninety (90) days prior to the end of the previous term. Sorin and Greeley shall mutually execute documentation evidencing any such renewal beyond the Initial Term at the request of either party. Sorin may terminate this Lease during the Initial Term by delivering an advance written notice to Greeley of at least 12 months. Sorin and Greeley shall mutually execute documentation evidencing any such early termination during the Initial Term at the request of either party. In the event that Sorin terminates this Lease early pursuant to this paragraph 2, Sorin is not entitled to any credit or refund for amounts paid.

3. **Water Delivery Schedule and Administration.** Greeley shall make the Leased Water available to Sorin pursuant to this Lease at a consistent daily delivery volume, in accordance with a schedule of monthly delivery volumes projected by Sorin and submitted to Greeley on an annual basis ("Annual Delivery Schedule"). Sorin shall submit to Greeley its initial Annual Delivery Schedule for the remainder of the 2020 calendar year within fourteen (14) days of the mutual execution of this Lease. Thereafter, Sorin shall submit an Annual Delivery Schedule to Greeley no later than October 1 of every year during the term of this Lease,

detailing the monthly volumes projected necessary by Sorin for the following calendar year. Sorin may amend a previously submitted Annual Delivery Schedule by providing an advance written notice to Greeley of thirty (30) days. Greeley agrees to consider in good faith a request made by Sorin to amend the Annual Delivery Schedule with an advance notice of less than thirty (30) days. Notwithstanding the total maximum amount of three hundred and fifty (350) acre-feet annually available to Sorin under this Lease, Greeley shall not be obligated to deliver more than thirty (30) acre-feet of Leased Water in any month or more than one (1) acre-foot of Leased Water in any day.

4. Annual Lease Payment. Sorin shall pay to Greeley, for each year during the term of this Lease and any subsequent extensions, five hundred and fifty dollars (\$550.00) per acre-foot of Leased Water projected by Sorin in its Annual Delivery Schedule for that calendar year ("Annual Lease Payment"). Sorin shall remit payment to Greeley for the remainder of the 2020 calendar year within thirty (30) days of the mutual execution of this Lease and, thereafter, by January 1 of every year during the term of this Lease. Failure by Sorin to timely pay the Annual Lease Payment may result in suspension of Leased Water deliveries and termination of this Lease, as described more particularly in paragraph 12 below. If Greeley curtails deliveries of Leased Water pursuant to paragraph 6 below, it shall refund Sorin for any water undelivered but previously paid for pursuant to the Annual Lease Payment.

5. Delivery of Leased Water. Greeley may make the Leased Water available to Sorin, according to the then current Delivery Schedule, at one or more of the following locations, in its sole discretion: (1) the Cache la Poudre River ("Poudre River") at (a) the outlet of Greeley's Water Pollution Control Facility; (b) the outlet of the Flatiron Reservoir Nos. 1-5 (a/k/a the Poudre Ponds at Greeley); (c) Release Structures for Greeley Canal No. 3 including, but not limited to: (i) the 23rd Avenue Spillway; (ii) the 16th Street Release Structure; and (iii) the F Street Release Structure; and (vi) the 35<sup>th</sup> Avenue Drainage Ditch; or (2) the Big Thompson River at any delivery stations or release structures under the Greeley and Loveland Irrigation Company's irrigation canal system, or any other company's canal that is associated therewith; or (3) at such other point or points on which the Parties mutually agree in writing. Leased Water shall be deemed delivered at such times and in such volumes as required in the Annual Delivery Schedule, as measured at the following locations: (i) for water delivered to either the Poudre River or the Big Thompson River, at the actual point of delivery; and (ii) for water delivered at a mutually agreed alternative point, at such location as agreed by the Parties. Once it has made the Leased Water available to Sorin at the delivery points identified herein, Greeley shall have no further obligation. Sorin shall bear sole responsibility for ensuring the administration of the Leased Water beyond such delivery points, and for any transmission or evaporative losses charged by State water officials beyond such delivery points. Greeley will identify the point or points of delivery by e-mail notice and make reasonable efforts to provide such notice of any change to the delivery points no later than 7:00 a.m. on the date of such change.

6. Limitations on Obligation to Deliver Leased Water. Greeley's obligation to deliver the Leased Water is irrevocable for the term of this Lease, but deliveries may be curtailed under the following circumstances:

a. Greeley may curtail deliveries of Leased Water to Sorin if it imposes, in Greeley's sole discretion, mandatory city-wide water use restrictions to address drought conditions, dam or pipeline failure, or other catastrophic circumstance limiting Greeley's ability to satisfy the indoor water usage needs of its citizens, so long as, and to the extent that, deliveries under this Lease are prevented or delayed by such cause.

b. Greeley may curtail deliveries of Leased Water to Sorin if an accident, act of war, natural catastrophe, fire, explosion, or other cause beyond the reasonable control of Greeley prevents or delays its ability to deliver Leased Water, so long as, and to the extent that, deliveries under this Lease are prevented or delayed by such cause.

7. Use of the Leased Water. Greeley may, in its sole discretion, utilize water from any of its wholly consumable sources to fulfill its Leased Water obligations under this Lease, including, without limitation, water attributable to the Colorado-Big Thompson ("C-BT") Project. Greeley shall provide notice to Sorin, no later than January 1 of every year during the term of this Agreement, of whether Greeley intends to utilize C-BT water to fulfill its Leased Water obligations under this Lease for that calendar year. If Greeley does not utilize C-BT water to fulfill its Leased Water obligations under this Lease, it will utilize a source of water that may be used by Sorin for augmentation, replacement and exchange purposes ("Permitted Uses"). Sorin may use the Leased Water for industrial purposes at any location where it can be lawfully delivered, in addition to the Permitted Uses, provided such industrial use is approved administratively by the Colorado State Engineer's Office or the Division Engineer (collectively "SEO"), and in the case of C-BT water, by the Northern Colorado Water Conservancy District ("Northern Water"). Subject to such administrative approval from the SEO, Sorin may also store the Leased Water in water storage facilities owned, controlled or leased by Sorin. Sorin shall bear sole responsibility for obtaining, at its own cost, all necessary approvals for its diversions and use of the Leased Water, whether pursuant to the rules and policies of Northern Water, a water court application and decree, a substitute water supply plan filed in connection with a water court application, or as otherwise approved by the SEO (each an "Approved Diversion or Exchange"). Greeley shall reasonably cooperate with Sorin, at no material cost to Greeley, in Sorin's efforts to obtain the administrative and other approvals necessary to use the Leased Water; provided, however, that Greeley may object to or oppose Sorin's inclusion and use of the Leased Water in a water court application, decree, or a substitute water supply plan application to ensure Sorin's use of the Leased Water is consistent with this Lease. Sorin shall provide Greeley with a copy of any accounting submitted (a) to the SEO that includes the Leased Water as a source of substitute supply, or (b) to Northern Water for the use of C-BT water. In the event that Sorin is not able to obtain administrative or other legal approval for industrial uses of the Leased Water, or another Approved Diversion or Exchange, or if any such approval is subsequently revoked, Sorin's sole remedy shall be early termination of this Lease pursuant to paragraph 2 above.

8. Assignment of Lease Rights. Sorin's shall not assign its leasehold interest under this Lease without the prior consent of Greeley. However, Sorin may freely rent or sublease all or any portion of the Leased Water leased herein for use by third parties without Greeley's consent, provided such uses are consistent with the terms of this Lease. Sorin shall

provide advance notice to Greeley of any rent or sublease of any portion of the Leased Water to any third party. This Lease is intended to describe the rights and responsibilities of Greeley and Sorin only. This Lease is not intended and shall not be deemed to confer any rights on any person or entity not named as a party to this Lease, and Greeley shall have no obligation to or relationship with any third parties and such third parties shall have no rights against Greeley as third-party beneficiaries to this Lease. Sorin shall indemnify and hold Greeley harmless from any and all liabilities or claims made by third parties related to any rental or sublease of Leased Water by Sorin to such third parties.

9. No Vested Interest in Shares or Joint Venture. Greeley grants no interest in the Leased Water to Sorin other than as explicitly set forth in this Lease. Sorin shall make no claim to any rights, title, or interest in the Leased Water other than as explicitly set forth in this Lease. This Lease does not create a partnership or joint venture of any kind between the parties, and Sorin shall bear the entirety of any loss, cost, or expense incurred through its use of the Leased Water.

10. Indemnification. Sorin agrees to exercise its rights under this Lease at its own risk. Sorin shall indemnify and hold Greeley harmless from and against any cost, expense, or liability arising out of or in connection with this Lease, including, without limitation (a) the negligent acts, omissions, or willful misconduct of Sorin, its agents, or contractors with respect to this Lease; (b) the violation by Sorin of any applicable law, and (c) the breach by Sorin of any provision of this Lease. Nothing in this Lease is intended constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as applicable now or hereafter amended.

11. Notice. All notices to be given under this Lease shall be in writing and shall be deemed sufficient when given by delivery to the addresses provided below, or such other address if changed by Greeley or Sorin via notice consistent with this paragraph: (i) on the date and at the time of delivery if hand-delivered personally to the party to whom notice is given at such address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at such address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by properly addressed first-class mail, sent registered or certified, with return receipt requested and postage prepaid.

For Greeley:

Greeley Water and Sewer Department  
Attn: Director of Water and Sewer  
1001 11<sup>th</sup> Avenue, Second Floor  
Greeley, Colorado 80631

with a copy to:

Greeley City Attorney's Office  
Attn: Environmental and Water Resources  
1100 10th Street, Suite 401  
Greeley, Colorado 80631

For Sorin:

Sorin Natural Resource Partners, LLC  
Attn: Manager  
1400 16<sup>th</sup> Street, Suite 320  
Denver, Colorado 80202  
Telephone: 720.723.2850

with copies to:

Mark Goldstein  
2850 McClelland Drive #2400  
Fort Collins, Colorado 80525  
Telephone: 303.396.9889  
Email: mark@geiresources.com

Christopher L. Thorne, Esq.  
Greenberg Traurig, LLP  
1144 15<sup>th</sup> Street, Suite 3300  
Denver, Colorado 80202  
Telephone: 303.572.6519  
Email: thornech@gtlaw.com

12. Default and Termination; Waiver. If either Greeley or Sorin fails to comply with a term or condition herein, such failure constitutes a default of this Lease. The non-defaulting party may declare the default by providing written notice to the defaulting party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the fifteen-day cure period, or after any written extension thereof mutually agreed upon by the parties, the non-defaulting party may declare the Lease immediately terminated by written notice in accordance with Paragraph 11 above. Nothing in this Lease should be construed to limit either party from seeking damages or pursuing available remedies upon the termination of this Lease for default, including the recovery of reasonable costs and attorneys' fees. The failure of either party to declare a default does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Lease.

13. No Third Party Beneficiaries. The terms and conditions of this Lease, and all rights of action related thereto, are strictly reserved to Greeley and Sorin. Nothing in this Lease should be construed to allow any claim, right, or cause of action by any person or entity not a party to this Lease. Any person or entity other than Greeley or Sorin that realizes a service or benefit under this Lease is an incidental beneficiary only.

14. Restriction on Recording. Neither Greeley nor Sorin shall record this Lease in the real property records of any jurisdiction, but may disclose this Lease with price terms redacted if necessary to obtain an administrative approval, as contemplated by paragraph 7 above. This Lease is not intended to run with the land as a covenant burdening any real property.

15. Governing Law and Venue. This Lease shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this



Lease is the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

16. Severability. In the event a provision of this Lease is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Lease should be interpreted in accordance with the intent of the parties.

17. Integration. This Lease constitutes a complete integration of the understanding and agreement between Greeley and Sorin with respect to the lease of Leased Water described herein, and supersedes all other lease agreements regarding the Leased Water. No representations, negotiations, or warranties, express or implied, exist between Greeley and Sorin except as explicitly set forth in this Lease. This Lease may only be modified in a written form duly authorized, approved, and executed by Greeley and Sorin.

18. Counterparts. The parties may execute this Lease in counterparts, each of which and the combination of which when signed by both Greeley and Sorin may be deemed original and together constitute a single contract.

IN WITNESS WHEREOF, the City of Greeley and Sorin Natural Resource Partners have executed this Lease on the date first written above.

**SORIN NATURAL RESOURCE PARTNERS, LLC**

a Colorado limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE CITY OF GREELEY, COLORADO**

a Colorado home rule municipal corporation  
acting by and through its Water and Sewer Enterprise

ATTEST:

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

## **EXHIBIT F**

### **Escrow Agreement**

#### **ESCROW AGREEMENT**

THIS ESCROW AGREEMENT ("Agreement") is dated as of this \_\_\_\_ day of July, 2020, and is entered into by and among **THE CITY OF GREELEY, COLORADO**, a home rule municipal corporation ("City") acting by and through its Water Enterprise ("Greeley"), **SORIN NATURAL RESOURCE PARTNERS, LLC**, a Colorado limited liability company ("Sorin"), and \_\_\_\_\_, a \_\_\_\_\_ ("Escrow Agent").

#### **RECITALS**

A. Greeley and Sorin are parties to that certain Purchase and Sale Agreement for Water Rights ("Purchase Agreement") pursuant to which Purchase Agreement, the parties have agreed to establish the escrow ("Escrow") hereinafter described in connection with the acquisition by Greeley of certain Water Rights (as defined in Section 2 below) owned by Sorin.

B. Escrow Agent agrees to hold the deliverables received by Escrow Agent in escrow, upon the terms and subject to the conditions set forth herein.

In consideration of the foregoing recitals, and of the covenants, promises and agreements of the parties contained herein, the receipt and sufficiency of which is hereby acknowledged by each of the parties hereto, Sorin and Greeley do hereby covenant and agree as follows:

#### **AGREEMENT**

1. Defined Terms. Capitalized terms used but not defined in this Agreement shall have the respective meanings given such terms in the Purchase Agreement.

2. Water Rights. For purposes of this Agreement, the "Water Rights" shall mean and are comprised of: (a) 54.5 shares of capital stock in the New Cache la Poudre Irrigating Company (Certificate Nos. 4872 (as to 12 shares), 4874 (as to 19 shares), 4875 (as to 15 shares), 4876 (as to 4.5 shares), and 4920 (as to 4 shares)); (b) 58 shares of capital stock in the Cache la Poudre Reservoir Company (Certificate Nos. 4106 (as to 24 shares), 4107 (as to 10 shares), and 4108 (as to 24 shares)); and (c) 4.5 shares of capital stock in the Sand Creek Lateral Ditch Company (Certificate No. 117), together with all of Sorin's right, title, and interest in and to any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the shares described above.

3. Deliveries. At the Closing: (a) Sorin shall deliver to and deposit with Escrow Agent the deliverables contemplated in subsections 6.3(A)(2) through (4), (8) and (9) of the Purchase Agreement; and (b) Greeley shall deliver to and deposit with Escrow Agent the Closing Payment and Greeley's counterparts of the assignment and assumption, Subject Shares Leaseback, and Supplemental Water Lease contemplated in Section 6.3(B)(3)–(5) of the Purchase Agreement.

4. Escrow; Provisions for Release. Escrow Agent shall hold the deliverables and deposits received by Escrow Agent pursuant to Section 3 above, with the Closing Payment placed in an interest-bearing escrow account (with interest to accrue for the benefit of the party entitled to the Closing Payment, or the majority thereof, as applicable) and release the same in accordance with the following:

(a) If Greeley delivers to Escrow Agent the second payment contemplated in Section 3.4 of the Purchase Agreement on or before January 8, 2021, then Escrow Agent shall deliver both said second payment and the Closing Payment to Sorin, including any accrued interest on the Closing Payment, shall release Sorin's deliverables and deposits to Greeley (including, without limitation, one fully compiled original of the assignment and assumption of Sorin's rights, interests, and obligations under the Restrictive Covenants), and shall distribute one fully compiled original of the aforementioned assignment and assumption to Sorin.

(b) If Greeley does not deliver the second payment contemplated in Section 3.4 of the Purchase Agreement on or before January 8, 2021, then Escrow Agent shall thereafter: (i) return Sorin's deliverables and deposits to Sorin; (ii) deliver Five Hundred Thousand and No/100ths Dollars (\$500,000.00) of the Closing Payment to Sorin as liquidated damages; and (iii) return the balance of the Closing Payment and Greeley's other deliverables and deposits to Greeley. In such event, upon the distributions contemplated above, the parties acknowledge and agree that Greeley shall have no further rights with respect to the Water Rights, and Sorin shall not have any right to any further payment, other than the above-described payment (which amount Sorin and Greeley acknowledge and agree constitutes liquidated damages intended to compensate Sorin for the delays and economic harm caused Sorin by Greeley's failure to consummate the transaction; it being further acknowledged by SORIN AND GREELEY THAT SORIN'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED SUM IS A REASONABLE ESTIMATE OF SORIN'S DAMAGES).

4.2 Indemnification of Escrow Agent. If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Greeley and Sorin shall, jointly and severally, and to the extent allowed by law, hold Escrow Agent free and harmless from any loss or expense, including attorneys' fees, that may be suffered by it by reason thereof other than as a result of Escrow Agent's breach of this Agreement, gross negligence or willful misconduct. In the event conflicting demands are made or notices served upon Escrow Agent with respect to this Agreement, or if there shall be uncertainty as to the meaning or applicability of the terms of this Agreement, Greeley and Sorin expressly agree that Escrow Agent shall be entitled to file a suit in interpleader and to obtain an order from the court requiring Greeley and Sorin to interplead and litigate their several claims and rights among themselves. Upon the filing of the action in interpleader and the deposit of the Funds into the registry of the court, Escrow Agent shall be fully released and discharged from any obligations imposed upon it by this Agreement with respect to the amount so deposited with the court.

4.3 Liability of Escrow Agent. Escrow Agent shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument

deposited with it, nor as to the identity, authority or rights of any person executing such instrument. It is agreed that the duties of Escrow Agent are purely ministerial in nature, and that Escrow Agent's duties hereunder shall be limited to the safekeeping of the deliverables received by it as contemplated in Section 3 above, and for disposition thereof in accordance with the terms of this Agreement. Greeley and Sorin hereby release Escrow Agent from any act done or omitted to be done by Escrow Agent in good faith in the performance of its duties hereunder. Escrow Agent may seek the advice of independent legal counsel in the event of any dispute or question as to the construction of any of the provisions of this Agreement or its duties hereunder, and it shall incur no liability and shall be fully protected in respect of any action taken or suffered by it in good faith in accordance with the opinion of such counsel.

4.4 Compliance with Court Order. Greeley and Sorin hereby authorize and direct Escrow Agent to accept, comply with, and obey any and all writs, orders, judgments or decrees entered or issued by any court with or without jurisdiction; and in the event Escrow Agent obeys or complies with any such writ, order, judgment or decree of any court, it shall not be liable to any of the parties hereto or any other person, by reason of such compliance, notwithstanding any such writ, order, judgment or decree be entered without jurisdiction or be subsequently reversed, modified, annulled, set aside or vacated. In the event Escrow Agent is made a party defendant to any suit or proceedings regarding this escrow trust, Greeley and Sorin, for themselves and their successors and assigns, jointly and severally, and to the extent allowed by law, agree to pay to said Escrow Agent, upon written demand, all costs, reasonable attorney's fees, and expenses incurred with respect thereto.

4.5 Resignation or Removal of Escrow Agent. Escrow Agent may not resign from its duties and responsibilities hereunder until the earlier to occur of (a) a substitute being appointed or (b) sixty (60) days following the date of written notice to Greeley and Sorin of such termination. Greeley and Sorin, acting together, may remove the Escrow Agent at any time by jointly by furnishing to the Escrow Agent a written notice of its removal together with instructions on how and where to deliver the deposits held by it under this Agreement. Such removal shall be effective upon delivery of such notice to the Escrow Agent. Upon such removal, Escrow Agent shall deliver the deposits as directed by both Greeley and Sorin in the written notice of removal.

5. Miscellaneous.

5.1 Waiver. Any waiver, permit, consent or approval of any kind or character on the part of Sorin or Greeley of any breach or default or other requirement of this Agreement or any such waiver of any provision or condition of this Agreement must be in writing and shall be effective only to the extent specifically set forth in such writing.

5.2 Prevailing Party. In the event of any dispute arising under the terms of this Agreement, or relating to the subject matter hereof, the prevailing party in such dispute shall be awarded, in addition to other damages or costs, its reasonable attorneys' fees and other reasonable costs from the non-prevailing party.

5.3 Counterparts. This Agreement shall take effect immediately upon execution by each of the undersigned. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which when taken together shall constitute one and the same instrument.

5.4 Notices. Any notice or other communication given by any of the parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Article: (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at such address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at such address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; or (iv) if an e-mail address is specified, on the date and at the time shown on the e-mail message if sent to the e-mail address specified below and receipt of such e-mail message is acknowledged in writing by the intended recipient:

If to Sorin: Sorin Natural Resource Partners, LLC  
Attention: Manager  
1400 16<sup>th</sup> Street, Suite 320  
Denver, Colorado 80202  
Telephone: 720.723.2850

With copies to:

Mark Goldstein  
2850 McClelland Drive #2400  
Fort Collins, Colorado 80525  
Telephone: 303.396.9889  
Email: mark@geiresources.com

Christopher L. Thorne, Esq.  
Greenberg Traurig, LLP  
1144 15<sup>th</sup> Street, Suite 3300  
Denver, Colorado 80202  
Telephone: 303.572.6519  
Email: thornech@gtlaw.com

If to Greeley: City of Greeley Water and Sewer Department  
Attention: Director of Water and Sewer  
1001 11<sup>th</sup> Avenue, 2nd Floor  
Greeley, Colorado 80631  
Telephone: (970) 350-9209  
Email: adam.jokerst@greeleygov.com

With a copy to:

Greeley City Attorney's Office  
Attention: Environmental and Water Resources  
1100 10<sup>th</sup> Street, Suite 401  
Greeley, Colorado 80631  
Telephone: (970) 350-9757  
Email: daniel.biwer@greeleygov.com

If to Escrow Agent: \_\_\_\_\_  
Attention: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

5.5 Governing Law. This Agreement shall be governed by and construed in accordance with the laws, including the conflict of laws and rules, of the State of Colorado. Any legal action or proceeding arising out of or relating to this Agreement will be instituted in the courts of the State of Colorado, and each of the undersigned hereby irrevocably submits to the jurisdiction of each such court in any such action or proceeding.

*(remainder of page intentionally left blank)*

IN WITNESS WHEREOF, each of the undersigned has executed this Agreement as of the day first written above.

**GREELEY:**

**THE CITY OF GREELEY,**  
a Colorado home rule municipal corporation  
acting by and through its Water Enterprise

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

**SORIN:**

**SORIN NATURAL RESOURCE PARTNERS, LLC,**  
a Colorado limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ESCROW AGENT:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT G**

**Intentionally Omitted**

**EXHIBIT H**

**Form of Deed**

**WATER RIGHTS DEED  
(Special Warranty)**

This SPECIAL WARRANTY DEED is made this \_\_\_\_ day of \_\_\_\_\_, 2020 by SORIN NATURAL RESOURCE PARTNERS, LLC, whose address is 1400 16<sup>th</sup> Street, Suite 320, Denver, Colorado 80202 (“Grantor”), to THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Greeley, Colorado 80631 (“Grantee”).

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does hereby grant, bargain, sell, convey, and confirm unto the Grantee, its successors and assigns forever, the water rights and other rights identified in Exhibit A attached hereto and incorporated herein by this reference (“Water Rights”), associated with or previously used upon the lands described in Exhibit B attached hereto and incorporated herein by this reference, all located in the County of Weld, State of Colorado.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the Water Rights, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the Water Rights with the appurtenances, unto the Grantee, its successors and assigns, forever. The Grantor, for itself, its successors and assigns, does covenant and agree that it shall and will warrant and forever defend the Water Rights in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

IN WITNESS WHEREOF, the Grantor has executed and delivered this Special Warranty Deed as of the day and year first set forth above.

SORIN NATURAL RESOURCE  
PARTNERS, LLC

By: \_\_\_\_\_

STATE OF COLORADO    }  
COUNTY OF WELD        } ss

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_  
as \_\_\_\_\_ of \_\_\_\_\_.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT I**

**Certification as of Closing Date**

**WATER & SEWER BOARD AGENDA   APRIL 15, 2020**

ENCLOSURE   X        NO ENCLOSURE       

ITEM NUMBER:                      15

TITLE:                                      PURCHASE AND SALE AGREEMENT FOR  
FITZ AND COLLYER WATER RIGHTS

RECOMMENDATION:      APPROVE FITZ AND COLLYER PURCHASE  
AND SALE AGREEMENT

ADDITIONAL INFORMATION:

Staff recommends that the Water and Sewer Board approve the purchase and sale agreement for water rights with Darrick Fitz and Elizabeth Collyer. The agreement contemplates Greeley's purchase of 2 shares of Windsor Reservoir and Canal Company and 8 shares of New Cache La Poudre Irrigation Company. A dry-up covenant and leaseback are included in the purchase and sale agreement. The total purchase price is \$1,175,000.00.

## **EXHIBIT J**

### **Form of Assignment and Assumption of Restrictive Covenants**

#### **ASSIGNMENT AND ASSUMPTION AGREEMENT** (Restrictive Covenants)

This ASSIGNMENT AND ASSUMPTION AGREEMENT (“Assignment”) is made this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between SORIN NATURAL RESOURCE PARTNERS, LLC, whose address is 1400 16<sup>th</sup> Street, Suite 320, Denver, Colorado 80202 (“Assignor”), to THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11<sup>th</sup> Avenue, 2<sup>nd</sup> Floor, Greeley, Colorado 80631 (“Assignee”).

#### **RECITALS**

WHEREAS, the Assignor has this day conveyed to the Assignee those certain water rights represented by shares in The New Cache la Poudre Irrigating Company, The Cache la Poudre Reservoir Company, and the Sand Creek Lateral Ditch Company, which rights are more particularly described on Exhibit A, attached hereto and incorporated herein by reference (“Water Rights”); and

WHEREAS, the Assignor, or its predecessor in interest, previously entered into and obtained those certain Declarations of Dry-Up Covenant and Easement for the benefit of the Water Rights and the owner thereof, which covenants against the real property historically irrigated by the Water Rights are more particularly described on Exhibit B, attached hereto and incorporated herein by reference (“Restrictive Covenants”); and

WHEREAS, the Assignor accordingly desires to convey all of its right, title, and interest in the Restrictive Covenants to the Assignee, as part of the Assignee’s acquisition of the Water Rights from the Assignor.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Assignor and the Assignee agree as follows.

#### **ASSIGNMENT AND ASSUMPTION**

1. Assignment of Restrictive Covenants. Assignor hereby assigns, transfers and conveys to the Assignee all of its right, title, and interest in and to the Restrictive Covenants, including, without limitation, all of the benefits and rights of the Assignor and subject to all of the obligations and burdens of the Assignor thereunder.

2. Assumption of Restrictive Covenants. Assignee hereby assumes and agrees to be bound by the provisions of the Restrictive Covenants, and hereby assumes each and every of the Assignor’s obligations and burdens thereunder as of the date first set forth above.

3. Warranties of the Assignor. Assignor hereby represents and warrants (a) that the Restrictive Covenants are valid, in full force and effect, and have not been amended; (b) that, to the best of Assignor's knowledge, Assignor is not in default under the Restrictive Covenants; and (c) that the rights and interests of the Assignor under the Restrictive Covenants are free and clear of any other encumbrance, assignment, or other conveyance to third parties.

IN WITNESS WHEREOF, this Assignment and Assumption of Agreement has been entered into by Sorin Natural Resource Partners, LLC and the City of Greeley, Colorado as of the date first set forth above.

**ASSIGNOR**

SORIN NATURAL RESOURCE  
PARTNERS, LLC

By: \_\_\_\_\_

STATE OF COLORADO    }  
COUNTY OF WELD        } ss

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_,  
as \_\_\_\_\_ and authorized representative of Sorin Natural Resource Partners, LLC.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**ASSIGNEE**

CITY OF GREELEY, COLORADO

By: \_\_\_\_\_  
Director of Water and Sewer

WHEN RECORDED RETURN TO:  
City of Greeley Water and Sewer Department  
Attn: Water Resources Division  
1001 11<sup>th</sup> Avenue, Second Floor  
Greeley, Colorado 80631



**PURCHASE AND SALE AGREEMENT FOR WATER RIGHTS**  
**(Darrick Fitz and Elizabeth Collyer)**

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into effective this \_\_\_\_ day of March, 2020 (the "Effective Date") by and between Darrick Fitz and Elizabeth Collyer (collectively referred to as "Seller"), and the City of Greeley, a Colorado home rule municipality, acting by and through its Water and Sewer Board ("Buyer").

**RECITALS**

A. The Seller owns real property located in part of Section 27, Township 6 North, Range 66 West of the 6<sup>th</sup> Principal Meridian, more particularly described in Exhibit A hereto (the "Land"); and

B. The Seller owns certain water rights, more particularly described in Section 2(c) below (the "Water Rights"), comprising of eight (8) shares of stock in The New Cache la Poudre Irrigating Company, and two (2) shares of stock in The Windsor Reservoir and Canal Company; and

C. The Water Rights have historically been used as a combined supply to irrigate all of the Land by Seller, such that all of the Water Rights have been necessary to provide a complete irrigation water supply for the Land; and

D. By this Agreement, Buyer agrees to buy, and Seller agrees to sell, all of the Water Rights, on terms and conditions as are set forth herein, and to grant restrictive covenants for no further irrigation of the Land and revegetation of the Land; and

E. Seller and Buyer (collectively "Parties") acknowledge that a fundamental basis of this Agreement is that all of the Water Rights are conveyed together, because any part of the Water Rights would not be useful for irrigation of the Land if all of the Water Rights are not available for such use by Seller, and because it will be necessary to impose a restrictive covenant regarding irrigation of all of the Land at such time that the Water Rights are changed to other uses in the future;

**AGREEMENT**

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

**1. AGREEMENT OF SALE.** Buyer agrees to buy and Seller agrees to sell the Property, defined below, on the terms and conditions set forth in this Agreement.

**2. DEFINED TERMS.**

**a. Buyer.** The City of Greeley, a Colorado home rule municipality, acting by and through its Water and Sewer Board.

**b. Seller.** Darrick Fitz and Elizabeth Collyer.

**c. Water Rights.** The Water Rights are described as follows:

all water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by eight (8) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5074), and two (2) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 777), which have historically irrigated the real property described on Exhibit A attached hereto. The Water Rights shall also include any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Water Rights. The Water Rights shall not include any interest in any wells, well rights, well permits, whether tributary, nontributary, or not nontributary.

**d. Land.** Seller shall retain the real property, including all minerals of whatsoever kind or character in, under, and upon or that might be produced therefrom, more particularly described on Exhibit A ("Land"). The parties agree that within ten (10) days after the Title Objection Deadline, defined below, (i) if the Title Documents described in Section 4 reflect any discrepancy between the legal description set forth on Exhibit A and the legal description of the real property owned by Seller as disclosed by the Title Documents, (ii) if Buyer, at its expense, obtains a survey of the Land, or (iii) subject to the provisions of Section 3(d) below, if any matter discovered pursuant to Sections 4, 5 or 6 reflects any inaccuracy in the description of the Water Rights, then the parties will modify Exhibit A and/or Subsection 2(c) above and amend this Agreement to reflect the legal description of the Land and/or Water Rights owned by Seller, and use the amended legal description(s) at the Closing. The Land shall include sufficient acreage historically irrigated by the Water Rights to enable Buyer to obtain judicial approval of a change of use of the Water Rights when the Land is subject to Restrictive Covenants (No Irrigation), described on Exhibit B attached hereto and to Restrictive Covenants (Revegetation), described on Exhibit C attached hereto.

**e. Property.** The Property consists of the Water Rights, together with the Restrictive Covenants (No Irrigation) and the Restrictive Covenants (Revegetation) on the Land, described on Exhibits B and C, respectively, attached hereto and incorporated by reference herein.

**f. Company.** The Company shall individually and/or collectively refer to the New Cache la Poudre Irrigating Company and the Windsor Reservoir and Canal Company.

**g. Dates and Deadlines.** Mutual execution of contract ("MEC") means the latest date upon which Seller and Buyer have signed this Agreement in accordance with Sections 25 and 26 below. See Sections 25 and 26 for contract formation. The table below contains a non-exclusive list of the transactional dates and deadlines for this Agreement.

Item No.	Reference	Event	Date or Deadline
1	§ 3(a)	Earnest Money Deposit	5 Days after MEC
2	§5(d)	Right of First Refusal Notice	5 Days after MEC
3	§ 4a	Title Deadline	10 Days after MEC
4	§ 5b	Off-Record Matters Deadline	15 Days after MEC
5	§ 5a	Title Objection Deadline	60 Days after MEC
6	§ 5b	Off-Record Matters Objection Deadline	60 Days after MEC
7	§ 6c	Inspection Objection Deadline	60 Days after MEC
8	§ 6d	Resolution Deadline	70 Days after MEC
9	§ 8	Closing Date	90 Days after MEC
10	§ 13	Possession Date	Closing Date
11	§ 13	Possession Time	Completion of Closing

**h. Attachments.** The following exhibits, attachments and addenda are a part of this Agreement: Exhibit A, Legal Description of Land; Exhibit B, Restrictive Covenants (No Irrigation); Exhibit C, Restrictive Covenants (Revegetation); Exhibit D, Special Warranty Deed; Exhibit E, Irrigation Water Lease Form; and Exhibit F, Historical Use Affidavit.

**3. PURCHASE PRICE AND TERMS.** The total Purchase Price for the Property shall be one-million, one-hundred seventy-five thousand dollars and zero cents (\$1,175,000.00), payable by Buyer as follows:

**a.** A portion of the Purchase Price, which shall be considered earnest money, shall be paid by Buyer prior to Closing (“Earnest Money”). The Earnest Money, in the amount of fifty-thousand dollars and zero cents (\$50,000.00), shall be due, payable to, and held by Unified Title Company, located at 1275 58th Avenue, Unit C, Greeley, CO 80634 (“Title Company”), in its trust account, five (5) days after MEC. The Earnest Money deposit shall be credited against the Purchase Price if the Closing occurs. The Earnest Money shall be refundable to Buyer at any time prior to the expiration of the Title Objection, Off-Record Matters Objection, or Inspection Objection Deadlines if Buyer is not satisfied with the Property. The Earnest Money shall also be subject to return to Buyer in the event of termination of this Agreement by Buyer under Sections 5, 6, and 18. Except as set forth in the preceding two (2) sentences, the Earnest Money shall be non-refundable to Buyer. In the event of an exercise of the right of first refusal as referenced in Subsection 5(d), the return and refund provisions of Sections 3(a), 18(b), and 19 shall nonetheless apply and inure only to the benefit of the City of Greeley, Colorado, acting by and through its Water and Sewer Board.

**b.** At Closing, Buyer shall pay to Seller the Purchase Price, less the Earnest Money, by cashier’s check, wire transfer, or other immediately available funds; plus any other amounts required to be paid by Buyer at Closing; plus or minus any prorations or credits.

c. All financial obligations of Buyer arising under this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council of the City of Greeley.

d. Buyer and Seller agree that the sale of shares in each Company comprising the Water Rights is interdependent upon the sale of shares in each other Company. In furtherance of the foregoing, this Agreement shall not be amended to change the legal description of the Water Rights to entirely exclude shares in any one Company.

#### **4. EVIDENCE OF TITLE.**

a. **Evidence of Title.** On or before the Title Deadline, Seller shall cause to be furnished to Buyer, at Buyer's expense, a current commitment for owner's title insurance policy covering the Land, in an amount equal to the Purchase Price, setting forth ownership, lienholders, and any restrictions. The purpose of the title commitment is to enable Buyer to conduct the title review described in Section 5 and said commitment shall be updated as necessary up to the Closing. However, neither Seller nor Buyer shall have any obligation under this Agreement to purchase the title insurance policy after Closing. Buyer may elect to acquire this insurance (limited to the covenants attached hereto as Exhibits B and C) at its expense.

b. **Copies of Exceptions.** On or before the Title Deadline, Seller, at Buyer's expense, shall furnish to Buyer (i) a copy of any plats, declarations, covenants, conditions, and restrictions burdening the Property, and (ii) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions ("Exceptions"). The title insurance commitment and any copies or summaries of such documents furnished pursuant to this Section constitute the title documents ("Title Documents").

#### **5. TITLE.**

a. **Title Review.** Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents which, in Buyer's opinion, may prevent Buyer from receiving the Water Rights and the covenants attached hereto as Exhibits B and C, shall be signed by or on behalf of Buyer and given to Seller on or before the Title Objection Deadline, or within five (5) days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title. If Seller does not receive Buyer's notice by the date(s) specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

b. **Matters not Shown by the Public Records.** Seller shall deliver to Buyer, on or before the Off-Record Matters Deadline, true copies of all lease(s), survey(s), and other agreement(s) in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory

condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of Buyer and given to Seller on or before the Off-Record Matters Objection Deadline. If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

**c. Right to Cure.** If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided in Subsections 5(a) or 5(b), Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to the Resolution Deadline, but shall have no obligation to correct said items. If such unsatisfactory title condition(s) are not corrected on or before the Resolution Deadline to Buyer's satisfaction, this Agreement shall then terminate one (1) day after the Resolution Deadline, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

**d. Right of First Refusal.** The Parties agree that the entirety of the Water Rights shall be conveyed together. It is understood that the Windsor Reservoir and Canal Company has rights of first refusal over its shares upon the same terms as the original offer. Seller must submit this Agreement to the Windsor Reservoir and Canal Company within five (5) days of MEC according to the terms of the bylaws of those Companies. If the Windsor Reservoir and Canal Company exercises its right of first refusal and elects to purchase under the same terms and conditions as this Agreement, then this Agreement shall terminate, and the Earnest Money shall be returned to Buyer pursuant to Sections 3(a) and 19. If the rights of first refusal are waived explicitly or expire, this Agreement will remain in full force and effect. Seller must promptly notify Buyer in writing of the foregoing.

## **6. PROPERTY DISCLOSURE AND INSPECTION.**

**a. Additional Documents to be Provided by Seller.** Supplementing the provisions of Section 5, Seller shall deliver the following items to Buyer on or before the Off-Record Matters Deadline, to the extent they exist and are in Seller's actual possession:

(i) Copies of any documents that relate to the title, use, quantity, quality, and condition of the Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, and testing reports and records maintained by the Company concerning the Water Rights, including without limitation share certificate records, delivery records, and assessment records (or, in the alternative, Seller shall obtain for Buyer the right to inspect and copy such Company records); and

(ii) Copies of all contracts or other agreements relating to the operation, maintenance or leasing of the Land or Property.

### **b. Right to Inspect & Cooperation.**

(i) Buyer, at its sole cost and expense, shall have the right to enter upon the Land from time to time to perform such tests or inspections as Buyer deems desirable to allow Buyer to evaluate the Water Rights and the condition and use of the Land. Such

inspections or testing shall be conducted in a manner to minimize or avoid any disruption to Seller's business or operation of the Land.

(ii) Buyer and its employees, contractors and attorneys shall have the opportunity from time to time to interview Seller, and its employees, contractors and agents, to assist Buyer in determining the historical use of the Water Rights. Seller agrees to cooperate with Buyer to facilitate such interviews and to sign affidavits of use of the Water Rights. Buyer and its employees, contractors, and attorneys may also meet with the officers, directors, attorneys, and shareholders of the Company to determine under what conditions the Company will approve a change in the place of delivery or use, or the point of diversion, of the Water Rights and other Company shares obtained or to be obtained by Buyer, pursuant to the bylaws of the Company or other applicable law.

(iii) Buyer represents it may file an application in the District Court, Water Division No. 1, State of Colorado to, among other purposes, change the use of the Water Rights ("Change of Use Application"). The Seller agrees to support and reasonably cooperate with the Buyer in the Buyer's activities in furtherance of the Change of Use Application, including but not limited to producing any and all documents in Seller's possession and disclosing in writing any and all known facts relating to ownership, restriction or use of the water associated with the Shares supporting the historic use of the water rights on the Land. The Seller further agrees not to oppose the Buyer's Change of Use Application. The provisions of this Subsection 6(b)(iii) shall survive the termination of this Agreement.

**c. Inspection Objection Deadline.** If Buyer is not satisfied with the results of its inspection of the Property and its review of the information described in this Section 6 for any reason whatsoever, including but not limited to Buyer's determination, in its subjective discretion, that the Land is not capable of supporting needed dry-up requirements, Buyer may, on or before the Inspection Objection Deadline, (i) notify Seller in writing that this Agreement is terminated or (ii) provide Seller with a written description of any unsatisfactory condition which Buyer requires Seller to correct ("Notice to Correct"). If a Notice to Correct is not received by Seller on or before Inspection Objection Deadline, the condition of the Property shall be deemed to be satisfactory to Buyer

**d. Resolution Deadline.** If a Notice to Correct is received by Seller, and if Buyer and Seller have not agreed in writing to a settlement thereof on or before the Resolution Deadline, this Agreement shall terminate one (1) day after the Resolution Deadline, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

**e. Damage; Liens.** Buyer is responsible for payment for all inspections, surveys, engineering reports, and any other work performed at Buyer's request and shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, engineering reports, and for any other work performed on the Property at Buyer's request. The provisions of this Subsection shall survive the termination of this Agreement.

**7. EXTENSION OF DEADLINES BY BUYER.** If Buyer, after exercising reasonable good faith efforts, is unable to complete the title review and/or inspections described

in Sections 5 and 6 by the Title Objection Deadline and/or the Off-Record Matters Objection Deadline and/or the Inspection Objection Deadline, respectively, Buyer shall have the right, prior to expiration of such deadline(s), to extend such deadline(s) for an additional period not to exceed fifteen (15) days, by sending Seller notice of such fact which describes such additional period. Upon the sending of such notice, the Resolution Deadline and Closing Date shall be automatically extended by a similar period or by such other period as the parties may determine.

**8. CLOSING.** Delivery of all closing documents described in Section 14 below from Seller to Buyer shall be at Closing (“Closing” or “Closing Date”). Closing shall be on the date specified as the Closing Date or by mutual agreement at an earlier or later date. The hour and place of Closing shall be as designated by mutual agreement, or absent such agreement at 10:00 A.M. at the offices of the Title Company.

**9. TRANSFER OF TITLE.** Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient Special Warranty Deed, in the form of Exhibit D, to Buyer, at Closing, conveying the Water Rights free and clear of all encumbrances or restrictions, an assignment of the portion of the Water Rights represented by shares in the Company in a form and manner acceptable to the Company, and the original stock certificates for the shares described in Section 2(c) above. Seller shall also execute the Restrictive Covenants with respect to the Land. If there are lienholders or leaseholders in the Land, such parties shall acknowledge and approve the Restrictive Covenants (No Irrigation) as shown on Exhibit B and the Restrictive Covenants (Revegetation) as shown on Exhibit C.

**10. PAYMENT OF ENCUMBRANCES.** Any encumbrance against the Land, where the lienholder does not execute the restrictive covenants pursuant to Subsections 14(f) and 14(g), shall be released by said lienholder. Any encumbrance against the Water Rights shall be released at or before Closing by said lienholder.

**11. CLOSING COSTS; DOCUMENTS AND SERVICES.** Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate closing services shall be paid at Closing at one-half (½) by Buyer and one-half (½) collectively by Seller. Buyer shall pay the transfer fees for the assignments of the shares in the Company, if any.

**12. PRORATIONS.** The following shall be prorated to Closing Date, except as otherwise provided: None.

**13. POSSESSION.** Possession of the Water Rights shall be delivered to Buyer on Possession Date and Possession Time.

**14. OBLIGATIONS AT CLOSING.** The following shall occur at Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:



**a.** Seller shall execute, have acknowledged, and deliver to Buyer: (i) a Special Warranty Deed, in the form of Exhibit D, attached hereto and incorporated by this reference herein; (ii) all other documents necessary to transfer to Buyer the Water Rights, including assignments of the shares in the Company in a form and manner acceptable to the Company; and (iii) the original stock certificates for the shares in the Company.

**b.** Seller hereby consents to the recording of the Restrictive Covenants (No Irrigation) in the form attached hereto as Exhibit B, and the Restrictive Covenants (Revegetation) in the form attached hereto as Exhibit C by Buyer.

**c.** Seller shall execute and deliver to Buyer an Affidavit regarding historical use of the Water Rights, with sufficient information provided by Seller prior to Closing, incorporated into the form attached hereto as Exhibit F.

**d.** Seller shall execute and deliver to Buyer an affidavit stating that Seller is not a foreign person, a foreign corporation, a foreign partnership, a foreign trust, or a foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

**e.** Seller shall execute a Certificate as to Taxpayer Identification Number as required by law.

**f.** Seller shall have delivered to Buyer possession of the Water Rights.

**g.** Seller shall deliver to Buyer a Release of Deed of Trust or other lien executed by the holder of any deed of trust or other lien in the Water Rights.

**h.** Seller and the holders of any deed of trust or other lien in the Land, which lien will not be released pursuant to Section 10, shall execute the Restrictive Covenants (No Irrigation) for the Land satisfactory to Buyer and substantially as shown on Exhibit B, attached hereto and incorporated by this reference herein, that will prohibit the irrigation or other use of water on the Land except as authorized by a valid decree of the District Court for Water Division No. 1, State of Colorado, or a successor court and in accordance with any future water rights applications filed by Buyer.

**i.** Seller and the holders of any deed of trust or other lien in the Land, which lien will not be released pursuant to Section 10, shall execute Restrictive Covenants (Revegetation) for the Land satisfactory to Buyer and substantially as shown on Exhibit C, attached hereto and incorporated by this reference herein, which will require revegetation of the Land upon written notice from Buyer to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree entered upon the Change of Use Application or another application seeking to change certain water rights from agricultural irrigation purposes to other beneficial purposes.

**j.** Buyer and Seller shall execute the Irrigation Water Lease defined below in Section 15, in substantially the same form as Exhibit E attached hereto.

**k.** Seller and Buyer shall each execute and deliver settlement statements, showing adjustments and the payment of costs of the Closing.

**l.** Each party shall deliver to the other such other documents, certificates, and the like as may be required herein or as may be necessary or helpful to carry out its obligations under this Agreement.

**15. LEASE OF IRRIGATION WATER.** Seller and Buyer agree that upon Closing, Seller will lease the Water Rights from Buyer for an initial term of ten (10) years after Closing (“Irrigation Water Lease”), with the option to renew upon mutual written agreement for two (2) consecutive five (5) year renewal terms. The Buyer shall pay all assessments, charges, and other expenses due and attributable to the Water Rights (the “Annual Lease Amount”) to the Company. The Seller shall annually reimburse the Buyer in full for payment of the Annual Lease Amount. Seller shall also pay the City an annual administrative fee in the amount of one-hundred fifty dollars and zero cents (\$150.00) per year (“Annual Administrative Fee”). The form of the Irrigation Water Lease is contained in Exhibit E, Irrigation Water Lease Form.

**16. NOT ASSIGNABLE.** Except as provided in Section 24 below, this Agreement shall not be assignable by either Party, and any purported assignments shall be void. Except as so restricted, this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors, and assigns of the parties.

**17. RECOMMENDATION OF LEGAL AND TAX COUNSEL.** BY SIGNING THIS DOCUMENT, BUYER AND SELLER ACKNOWLEDGE THAT THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES AND IT IS RECOMMENDED THAT THEY CONSULT WITH LEGAL, TAX, AND OTHER COUNSEL BEFORE SIGNING THIS AGREEMENT.

**18. TIME OF ESSENCE AND REMEDIES.** Time is of the essence hereof. In the event any time period expires on a Saturday, Sunday or legal holiday of the State of Colorado, the date of performance shall be the next day which is not a Saturday, Sunday or legal holiday of the State of Colorado. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

**a. If Buyer is in Default:** Seller may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and Seller may recover such damages as may be proper, or Seller may elect to treat this Agreement as being in full force and effect, and Seller shall have the right to specific performance, damages, or both.

**b. If Seller is in Default:** Buyer may elect to treat this Agreement as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Agreement as being in full force and effect, and Buyer shall have the right to specific performance, damages, or both.

**c. Costs and Expenses.** In the event of any arbitration or litigation relating to this Agreement, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

**19. TERMINATION.** In the event this Agreement is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to Subsections 6(e) and 3(a).

**20. ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL.** This Agreement constitutes the entire Agreement between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Agreement which, by its terms or nature, is intended to be performed after termination or Closing shall survive the same.

**21. SIGNATURES.** Signatures may be evidenced by copies transmitted via facsimile or electronic mail. Documents with original signatures shall be provided to the other party at Closing, or earlier upon request of any party.

**22. NOTICE.** Any notice or other communication given by any of the parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified below; or (ii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified below; or (iii) on the date and at the time shown on the facsimile if telecopied to the number specified below and receipt of such telecopy is acknowledged; or (iv) on the date and at the time shown on the electronic mail (email) if emailed to the email address specified below and no bounce-back email is received within three (3) days; or (v) on the date shown on the delivery acknowledgment provided by the courier if sent by a nationally-recognized overnight courier service (such as Federal Express) that provides evidence of delivery:

If to Seller to: Darrick Fitz  
2203 N. 47<sup>th</sup> Ave.  
Greeley, CO 80631  
Email: [lizz\\_perr\\_1@yahoo.com](mailto:lizz_perr_1@yahoo.com)

Elizabeth Collyer  
2203 N. 47<sup>th</sup> Ave.  
Greeley, CO 80631  
Email: [lizz\\_perr\\_1@yahoo.com](mailto:lizz_perr_1@yahoo.com)

With a copy to:

Witwer, Oldenburg, Barry & Groom, LLP  
822 7<sup>th</sup> St., Ste. 760  
Greeley, CO 80634  
Telephone: 970-352-3161  
Attn: Patrick M. Groom  
Email: [pgroom@wobjlaw.com](mailto:pgroom@wobjlaw.com)

If to Buyer, to:

City of Greeley Water and Sewer Department  
Attention: Cole Gustafson, Water Resources Administrator II  
Water & Sewer Department  
1001 11th Ave, 2nd Floor  
Greeley, CO 80631  
Telephone: 970-350-9815  
Facsimile: 970-350-9805  
Email: [Cole.Gustafson@greeleygov.com](mailto:Cole.Gustafson@greeleygov.com)

With a copy to:

Greeley City Attorney's Office  
Attention: Aaron Goldman, Environmental & Water Resources Attorney  
1100 Tenth Street, Suite 401  
Greeley, CO 80631  
Telephone: 970-350-9757  
Facsimile: 970-350-9763  
Email: [Aaron.Goldman@Greeleygov.com](mailto:Aaron.Goldman@Greeleygov.com)

**23. BROKERAGE COMMISSIONS.** Buyer and HydroSource, Inc. ("Broker") agree that the Broker has brought about the above sale and that for such services the Buyer agrees to pay the Broker a commission pursuant to the agreement between Buyer and Broker. The Broker's commission payment shall not be considered to be earned, due, or payable unless and until title to the Water Rights passes, the Restrictive Covenants (No Irrigation) and the Restrictive Covenants (Revegetation) are fully executed and recorded, and the Agreement is performed in full.

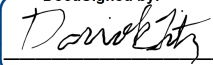
**24. SELLER 1031 EXCHANGE.** At the request of Seller, Buyer shall cooperate with Seller in the achievement of a tax-deferred real estate exchange pursuant to Section 1031 of the Internal Revenue Code and the Treasury Regulations promulgated thereunder. Seller will complete and file the necessary documentation with the Internal Revenue Service to effectuate the exchange. Buyer agrees that, if directed by Seller in writing, Buyer will submit that portion of the Purchase Price to be used to acquire like kind property of Seller, to the qualified intermediary as designated by Seller. Seller shall indemnify and hold Buyer harmless from any and all claims, costs, liabilities, or delays in time resulting from Seller's exchange of property described herein, or resulting from Buyer's submittal of a portion of the Purchase Price to the Seller's designated qualified intermediary. Buyer shall not be required to incur any additional liability or expense in connection with Seller's tax-deferred exchange transaction nor shall Buyer be required to accept title to any real property other than the Property described hereinabove.

**25. WATER AND SEWER BOARD APPROVAL REQUIRED.** THE OBLIGATIONS OF BUYER ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE CITY OF GREELEY WATER AND SEWER BOARD AS EVIDENCED BY EXECUTION OF THE SUPPLEMENTAL SIGNATURE PAGE BELOW.

**26. NOTICE OF ACCEPTANCE; COUNTERPARTS.** Acceptance must be in writing by Buyer and Seller, as evidenced by Seller's signatures below and Buyer's execution of the supplemental signature page below, and the offering party must receive notice of acceptance pursuant to Section 22. If accepted, this document shall become an Agreement between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete Agreement between the parties.

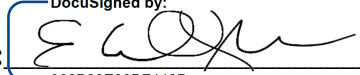
**SELLER:**

Darrick Fitz

DocuSigned by:  
By:   
962B23E93BF442D...

Date: 4/8/2020

Elizabeth Collyer

DocuSigned by:  
By:   
962B23E93BF442D...

Date: 4/8/2020

**THE FOLLOWING SUPPLEMENTAL SIGNATURE PAGE SHALL BE EXECUTED BY BUYER SUBSEQUENT TO APPROVAL BY THE CITY OF GREELEY WATER AND SEWER BOARD PURSUANT TO SECTION 25 HEREINABOVE.**

**BUYER’S SUPPLEMENTAL SIGNATURE PAGE**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Water & Sewer Board Chairman Mayor

APPROVED AS TO SUBSTANCE: ATTEST:

By: \_\_\_\_\_ By: \_\_\_\_\_  
City Manager City Clerk

APPROVED AS TO LEGAL FORM: AS TO AVAILABILITY OF FUNDS:

By: \_\_\_\_\_ By: \_\_\_\_\_  
City Attorney Director of Finance

Date Supplemental Signature Page Fully Executed : \_\_\_\_\_

**EXHIBIT A TO  
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Legal Description of Land)



THE LAND SHALL INCLUDE THE REAL PROPERTY LEGALLY DESCRIBED AS FOLLOWS:

THE N 1/2 OF THE SE 1/4 OF SECTION 27, TOWNSHIP 6 NORTH, RANGE 66 WEST OF THE 6TH P.M.,COUNTY OF WELD, STATE OF COLORADO, EXCEPT THAT PORTION DESCRIBED IN DEED RECORDED NOVEMBER 26,1980 AT RECEPTION NO. 1842716 IN BOOK 921.

**EXHIBIT B TO  
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Restrictive Covenants (No Irrigation))

## **RESTRICTIVE COVENANTS (NO IRRIGATION)**

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado municipal corporation, acting by and through its Water and Sewer Board (the “City”), with the maximum benefit available from the present and future use of water pursuant to the water rights acquired or to be acquired by the City and described in Exhibit A attached hereto and made a part hereof (the “Water Rights”), Darrick Fitz and Elizabeth (“Declarants”), agree, warrant, and covenant, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarants’ own behalf and on behalf of successors in interest, that upon notice from the City, Declarants shall cease irrigation on the lands owned by Declarants and described in Exhibit B attached hereto and made a part hereof (the “Land”).

Upon receipt of one hundred and eighty (180) days prior written notice from the City, thereafter Declarants shall not irrigate the Land. The City shall not send said notice during the initial term of that Irrigation Water Lease dated \_\_\_\_\_, between the City and Declarants. These covenants shall not prohibit Declarants from irrigating the Land (i) with water rights which may in the future be transferred to such lands and judicially approved for such use through an appropriate Water Court proceeding, and in accordance with any future water rights applications filed by the City or a successor in interest to the Water Rights; (ii) with water from a well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation; (iii) with treated potable water supplied by a municipal or quasi-municipal government water provider; (iv) water which is not tributary to the South Platte River or any of its tributaries; (v) water yielded pursuant to well WDID 0305843; or (vi) on “Parcel II” of the Land, as described in Exhibit B, water yielded pursuant to well permit nos. 79638-F and 55240-F. Unless so irrigated, Declarants agree the Land subject to these covenants shall not be planted with any crops. Subject to the foregoing exceptions, Declarants further covenant and agree to take those actions reasonably necessary to eliminate any consumptive use of water for irrigation purposes on those portions of the Land which were historically irrigated, or such lesser portion thereof as determined by the Water Court in the judgment and decree entered in any case involving the change, plan for augmentation, or exchange of any of the Water Rights.

Any and all fees and costs incurred in any necessary action to enforce these Restrictive Covenants by City, including reasonable attorney fees, shall be paid by Declarants.

The foregoing covenants of Declarants shall burden, attach to, and run with the Land and shall be binding upon Declarants’ successors, assigns and any other persons who acquire an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights and shall inure to the benefit of the City’s successors, assigns, and any other persons who acquire an ownership interest in the Water Rights. Declarants warrant and represents such covenants shall entitle the City to the first and prior right to claim credit for the dry-up or nonirrigation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by the City or its successor in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of

the City or its successor in interest. Any notice may be sent to the Declarants by prepaid U.S. Mail to the Declarants at: 2203 N. 47<sup>th</sup> Ave., Greeley, CO 80631.

**IN WITNESS WHEREOF**, the Declarants have executed this instrument on the \_\_\_\_ day of \_\_\_\_\_, 2020.

Declarants:

By: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Subscribed under oath before me on \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT C TO  
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Restrictive Covenants (Revegetation))

## **RESTRICTIVE COVENANTS (REVEGETATION)**

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, and in order to provide the City of Greeley, a Colorado home rule municipality, acting by and through its Water and Sewer Board (the “City”), with the maximum benefit available from the present and future use of water pursuant to the water rights acquired or to be acquired by the City and described in Exhibit A attached hereto and made a part hereof (the “Water Rights”), Darrick Fitz and Elizabeth (“Declarants”), agree, warrant and covenant, and the undersigned leaseholders and lienholders if any, acknowledge and approve, on Declarants’ own behalf and on behalf of successors in interest, that upon notice from the City, Declarants shall revegetate the lands owned by Declarants and described in Exhibit B attached hereto and made a part hereof (the “Land”).

Within two and one half (2½) years from receiving written notice from the City or from the expiration or termination of that Irrigation Water Lease dated \_\_\_\_\_, between the City and Declarants, whichever date is the later, Declarants shall establish, at Declarants’ expense, a ground cover of plant life, as such is defined in C.R.S. § 37-92-103(10.5) or successor statute, on the undeveloped portions of the Land that had been irrigated to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree obtained by the City, or a successor in interest to the Water Rights, from the District Court for Water Division No. 1, State of Colorado, or a successor court, changing certain water rights from agricultural irrigation purposes to other beneficial purposes, pursuant to C.R.S. § 37-92-305(4.5) or successor statute. Here, “undeveloped portions of the Land” means portions of the Land not occupied by roads, buildings, or other structures, or not otherwise being lawfully irrigated in accordance with the Restrictive Covenants (No Irrigation), dated \_\_\_\_\_ and recorded at Reception No. \_\_\_\_\_ in Weld County.

Should Declarants fail to comply with its obligations hereunder, the City shall have the right to come upon the Land and take all measures necessary to accomplish revegetation and/or noxious weed management on the Land, provided that the City shall have the right to receive full reimbursement of all of its expenses of accomplishing such revegetation or weed management from Declarants. Any and all fees and costs incurred in any necessary action to enforce these Restrictive Covenants by City, including reasonable attorney fees, shall be paid by Declarants.

The foregoing covenants of Declarants shall burden, attach to, and run with the Land and shall be binding upon Declarants’ successors, assigns, and any other persons who acquire an ownership or leasehold interest in all or part of the Land; such covenants also shall benefit, attach to, and run with the Water Rights, and shall inure to the benefit of the City’s successors, assigns, and any other persons who acquire an ownership interest in the Water Rights. Declarants warrant and represent that such covenants shall entitle the City to the first and prior right to claim credit for the revegetation of the Land.

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by the City or its successor in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of

the City or its successor in interest. Any notice may be sent to the Declarants by prepaid U.S. Mail to the Declarants at: 2203 N. 47<sup>th</sup> Ave., Greeley, CO 80631.

**IN WITNESS WHEREOF**, the Declarants have executed this instrument on the \_\_\_\_ day of \_\_\_\_  
\_\_\_\_\_, 2020.

Declarants:

By:\_\_\_\_\_

Name: \_\_\_\_\_

By:\_\_\_\_\_

Name: \_\_\_\_\_

Subscribed under oath before me on \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_  
\_\_\_\_\_ and \_\_\_\_\_.

My commission expires:\_\_\_\_\_

\_\_\_\_\_  
Notary Public



**EXHIBIT D TO  
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Special Warranty Deed)

**SPECIAL WARRANTY DEED**  
**(Darrick Fitz and Elizabeth Collyer)**

**THIS DEED**, is made this \_\_\_\_ day of \_\_\_\_\_ 2020, by DARRICK FITZ AND ELIZABETH COLLYER, whose address is 2203 N. 47<sup>th</sup> Ave. Greeley, CO 80631, (“Grantors”) and the CITY OF GREELEY, COLORADO, a Colorado home rule municipality, acting by and through its Water and Sewer Board, whose address is 1000 10th Street, Greeley, Colorado 80631 (“Grantee”).

**WITNESSETH**, that Grantors, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, Grantee’s heirs and assigns forever, all of the water rights represented by the following shares (“Water Rights”):

all water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by eight (8) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5074), and two (2) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 777), which have historically irrigated the real property described on Exhibit A attached hereto. The Water Rights shall also include any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Water Rights. The Water Rights shall not include any interest in any wells, well rights, well permits, whether tributary, nontributary, or not nontributary.

**TOGETHER** with all beneficial right, title and interest, if any, in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates and all other assets, rights, title or interests represented by said shares;

**TOGETHER** with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of the Grantors, either in law or equity, of, in, and to the above bargained Water Rights, with the hereditaments and appurtenances;

**TO HAVE AND TO HOLD** the said Water Rights above bargained and described with the appurtenances, unto the Grantee, Grantee’s successors and assigns forever. The Grantors, for Grantors, Grantors’ successors and assigns, do covenant and agree that Grantors shall and will warrant and forever defend the above bargained Water Rights in the quiet and peaceable possession of the Grantee, Grantee’s successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantors.

**IN WITNESS WHEREOF**, the Grantors have executed this Deed on the date set forth above.

**GRANTORS:  
DARRICK FITZ AND ELIZABETH COLLYER,**

By:\_\_\_\_\_

Name: \_\_\_\_\_

By:\_\_\_\_\_

Name: \_\_\_\_\_

## ACKNOWLEDGMENT

STATE OF COLORADO )  
 ) ss.  
COUNTY OF WELD )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2020,  
by \_\_\_\_\_ and \_\_\_\_\_.

Witness my hand and official seal.

Notary Public  
My commission expires: \_\_\_\_\_

**EXHIBIT E TO  
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Irrigation Water Lease Form)



# Water Rights Acquisition Fitz and Collyer

April 15<sup>th</sup>, 2020



# Purchase & Sale Overview

- Water Only Purchase
- Water shares being purchased
  - 2 shares of Windsor Reservoir and Canal Company (WRCC)
  - 8 Shares of New Cache La Poudre Irrigation Company (NCLPIC)
- Both Potable and Non Potable supplies
- Lease Back
  - 10 year primary lease back of water rights that may be extended for up to 2 additional 5 year terms was part of negotiation.
- Covenant for future dry up and revegetation will be included in purchase
- Total Purchase price of \$1,175,000.00



# Due Diligence & Path Forward

- PSA accounts for WRCC's right of first refusal (ROFR)
  - ROFR period begins as soon as Mutually executed contract is given to WRCC
  - WRCC then has 30 days to respond
- 60 days of Due Diligence will run concurrently with ROFR period
  - Much due diligence has already been done with from previous effort to acquire.
- Update diligence (share trace, title work, etc.)
- Finalize preliminary engineering by Martin & Wood
- Broker Commission





# Recommendation

- W&S staff recommend the acquisition of the 2 shares of WRCC stock, and 8 shares of New Cache La Poudre Irrigation Company in accordance with the water acquisition strategies set forth in the Department's Master Plan and Future Water Account Plan



# Questions?



**IRRIGATION WATER LEASE FORM**  
**(Darrick Fitz and Elizabeth Collyer)**

This IRRIGATION WATER LEASE (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between the CITY OF GREELEY, a Colorado home rule municipality, acting by and through its Water and Sewer Board, (“Lessor”), whose legal address is 1100 10<sup>th</sup> Street, Greeley, Colorado 80631 and DARRICK FITZ AND ELIZABETH COLLYER, whose address is 2203 N. 47<sup>th</sup> Ave., Greeley, CO 80631 (collectively referred to as “Lessee”). Lessor and Lessee are also referred to collectively as the “Parties.”

WHEREAS, Lessee is the owner and legal occupant of certain real property located in Section 27, Township 6 North, Range 66 West of the 6<sup>th</sup> Principal Meridian, comprising approximately seventy-nine (79) acres, which property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference (“the Property”); and

WHEREAS, Lessor owns those certain water rights represented by all water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by eight (8) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5074), and two (2) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 777), (collectively the “Water Rights”), which have historically been used to irrigate the Property; and

WHEREAS, Lessee desires to lease the Water Rights from Lessor for agricultural irrigation on the Property, subject to the terms and conditions herein; and

WHEREAS, Lessor desires to lease the Water Rights to Lessee for agricultural irrigation on the Property, subject to the terms and conditions herein;

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

**1. Lease of Water Rights.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Water Rights for the purpose of agricultural irrigation on the Property during the Irrigation Season, defined as the period from April 1 through October 31 of each calendar year.

**2. Term of Lease.** The term of this Agreement begins on \_\_\_\_\_, 2020 and expires on March 31, 2030 (the “Term”). The Parties may renew this Agreement for two (2) consecutive (5) year renewal terms by mutual written agreement, executed by Lessor and Lessee no later than thirty (30) days before the expiration of the then current term. The obligations of Lessor are made expressly subject to Section 17-4(c) of the Charter of the City of Greeley.

**3. Annual Lease Amount and Administrative Fee.** Lessor shall pay all assessments, charges, and other expenses due and attributable to the Water Rights (the “Annual Lease Amount”) to the New Cache la Poudre Irrigating Company and the Windsor Reservoir and Canal Company. Lessee shall annually reimburse Lessor in full for payment of the Annual Lease Amount. Lessee shall also pay Lessor an annual administrative fee in the amount of one-hundred and fifty dollars (\$150.00) per year (“Annual Administrative Fee”). Lessor shall provide written notice of the Annual Lease Amount and Annual Administrative Fee to Lessee, and Lessee shall pay that amount in full to Lessor within fifteen (15) days of the notice.

**4. Use of Water Rights.** Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee shall not permit any other water source to be used on the Property for agricultural irrigation, unless Lessee has first obtained written consent from Lessor. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action which could be construed as abandonment or could lead to or cause in part or in whole a reduction in the consumptive use of the Water Rights. Lessee shall ensure that the use of any lateral ditches, easements, rights of way, and entitlements used to convey or deliver any other water than the water delivered pursuant to the Water Rights shall not interfere with Lessee’s obligation to take and use the water delivered pursuant to the Water Rights to the fullest extent possible. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws, and policies of the New Cache la Poudre Irrigating Company and the Windsor Reservoir and Canal Company. Lessee shall comply with the applicable provisions of Chapter 14.08 of the Greeley Municipal Code, and all rules and regulations of the State of Colorado pertaining to use of the Water Rights and the use of any water on the Property.

Notwithstanding the notice period described in Paragraph 12, Lessee shall provide advance written notice to Lessor of at least thirty (30) days if Lessee no longer intends to irrigate any part of the irrigable area of the Property with the Water Rights.

**5. Historical Use Investigation.** On or before November 30 of each calendar year, Lessee shall deliver to Lessor a completed Historical Use Affidavit and Questionnaire for the preceding irrigation season, in the form attached hereto as Exhibit B. Lessee acknowledges that Lessor may file an application to change the use of the Water Rights with the Division 1 Water Court for the State of Colorado during the Term of this Agreement. Lessee shall cooperate with Lessor and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from Lessor, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court. The provisions of this Paragraph 5 shall survive the expiration or termination of this Agreement.

**6. Restriction on Sublease and Assignment.** Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only with written consent from Lessor. Lessee shall request consent from Lessor prior to any purported assignment of this Agreement by advance written notice of at least thirty (30) days. Such consent may be given or withheld in the sole discretion of Lessor. If Lessee conveys the Property to a third party, such conveyance shall be subject to assignment of this Agreement to such third party in compliance with this Paragraph 6, and such third party shall acknowledge full assumption of all rights and obligations under this Agreement. In the event that Lessee enters into a contract to convey the Property to a third party, Lessee shall provide a copy of this Agreement to such third party, inform them of the obligation to assume this Agreement as a condition of closing, and shall assign this Agreement to such third party.

**7. No Vested Interest in Shares or Joint Venture.** Lessor grants no interest in the Water Rights to Lessee other than as explicitly set forth in this Agreement. Lessee shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind between the Parties, and Lessee shall bear the entirety of any loss, cost, damages, or expense incurred through its use of the Water Rights on the Property.

**8. No Guarantee of Yield.** Lessee is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. Lessor makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee shall not hold Lessor liable for any failure in delivery of water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

**9. Maintenance of Infrastructure.** Lessee shall maintain the lateral ditches, headgates, infrastructure, and personal property necessary to deliver water pursuant to the Water Rights at its own cost and expense. Lessee shall make all repairs and restorations necessary to keep the lateral ditches, headgates, infrastructure and other personal property in good working condition during the term of this Agreement.

**10. Indemnification.** Lessee agrees to exercise its rights under this Agreement at its own risk. Lessee shall indemnify and hold harmless Lessor from and against any cost, expense, or liability arising out of Lessee's breach of this Agreement or related activities. Nothing in this Agreement is intended to constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as applicable now or hereafter amended.

**11. Notice.** All notices to be given under this Agreement shall be in writing and (i) sent by certified or registered mail, return receipt requested, (ii) hand-delivered at the following addresses, or (iii) sent via electronic mail. All notices to be given under this Agreement shall be deemed to have been duly given on the date and at the time of delivery if delivered personally to the party to whom notice is given at the address specified below, on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by registered or certified mail, return receipt requested, or on the date and at the time shown on the electronic mail (email) if emailed to the email address specified below, provided no bounce-back email is received within three (3) days. The Parties shall provide written notice to each other if the appropriate contact name, address, or email address changes.

a. For Lessor:

Greeley Water and Sewer Department  
Attn: Director of Water & Sewer  
1100 10<sup>th</sup> Street, Suite 301

Greeley, Colorado 80631  
[wsadmin@greeleygov.com](mailto:wsadmin@greeleygov.com)

b. With a Copy to:

Greeley City Attorney's Office  
Environmental and Water Resources Practice Group  
1100 10<sup>th</sup> Street, Suite 401  
Greeley, Colorado 80631  
[cityattorney@greeleygov.com](mailto:cityattorney@greeleygov.com)

For Lessee:

Darrick Fitz  
2203 N. 47<sup>th</sup> Ave.  
Greeley, CO 80631  
Email: lizz\_perr\_1@yahoo.com

Elizabeth Collyer  
2203 N. 47<sup>th</sup> Ave.  
Greeley, CO 80631  
Email: lizz\_perr\_1@yahoo.com

**12. Default and Termination.** If Lessee fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The Lessor may declare the default by providing written notice to the Lessee. Upon receipt of this notice of default, the Lessee shall have fifteen (15) days within which to cure the default. If, in the sole discretion of Lessor, the default remains uncured after the aforementioned fifteen (15) day cure period, or after any written extension thereof mutually agreed upon by the Parties, the Lessor may declare the Agreement terminated by written notice.

- a. Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraph 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, the City may immediately terminate this Agreement by written notice to the Lessee.

- b. This Agreement may otherwise be terminated for any reason by Lessor or Lessee prior to the Irrigation Season by delivering written notice to Lessee on or before March 1st of each year this Agreement is in effect.
- c. The failure of either party to declare a default or material breach does not establish a precedent or course of dealing. The failure of either party to declare a default or material breach does not constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

**13. Cessation of Irrigation.** Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property, except as expressly allowed by the Restrictive Covenants (No Irrigation), attached hereto as Exhibit C and incorporated herein by reference, and Paragraph 14 below.

**14. Revegetation.** Notwithstanding any term or condition in this Agreement to the contrary, and subject to water availability in the sole discretion of Lessor, Lessee may rent from Lessor an adequate amount of irrigation water at market price to be used to establish a native grass ground cover for purposes of accomplishing revegetation on the Property pursuant to the Restrictive Covenants (Revegetation), attached hereto as Exhibit D and incorporated herein by reference.

**15. No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than Lessee and Lessor, or their respective successors in interest.

**16. Recovery of Costs and Fees.** In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting or breaching party reasonable costs and attorneys' fees incurred during the course of such legal action.

**17. Governing Law and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement shall be the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado. The Parties agree any action so commenced shall be maintained and remain exclusively in the aforementioned courts and any courts having appellate jurisdiction over them.



**18. Severability.** In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the Parties.

**19. Integration.** This Agreement and incorporated Exhibits constitute a complete integration of the understanding and agreement between the Parties with respect to the subject matter herein, and supersede all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties exist between the Parties except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by both Parties.

**20. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile, .pdf, or other electronic means. The Parties agree to accept and be bound by signatures hereto delivered by facsimile, .pdf, or other electronic means.

**21. Recording.** The Parties shall not record this Agreement or any of its exhibits, except Exhibit C (Restrictive Covenants - No Irrigation) and Exhibit D (Restrictive Covenants - Revegetation), in the real property records of any jurisdiction.

**22. Force Majeure.** Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent the affected Party complies with the notification and diligent effort provisions of this Paragraph 22, and that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence, and that by its nature could not have been foreseen by such Party or, if it could have been foreseen, was unavoidable (each, a "Force Majeure Event") (which events may include natural disasters, embargoes, explosions, riots, wars, or acts of terrorism). Lessee's financial inability to perform, changes in cost, availability of work force, market conditions, or contract disputes will not excuse performance by Lessee under this Paragraph. Lessee will give Lessor prompt written notice of any event or circumstance that is reasonably likely to result in a Force Majeure Event, and the anticipated duration of such Force Majeure Event. Lessee will use all diligent efforts to end the Force Majeure Event, ensure that the effects of any Force Majeure Event are minimized, and resume full performance under this Agreement. During the Force Majeure Event, the non-affected

Party may suspend its performance obligations until such time as the affected Party resumes performance. All financial obligations of Lessor arising under this Agreement that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted, and otherwise made available by the City Council of the City of Greeley.

## Page 10 of 11

**CITY OF GREELEY**, a Colorado  
Home Rule Municipality, Acting By and  
Through its Water and Sewer Board

**ATTEST**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
City Clerk

**EXHIBIT F TO  
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Historical Use Affidavit)

**AFFIDAVIT OF DARRICK FITZ**

STATE OF COLORADO     )  
  )ss.  
COUNTY OF WELD         )

I, Darrick Fitz (“Affiant”), being of lawful age and first duly sworn upon oath, state and aver as follows:

1.     I am a resident of the State of Colorado.
2.     My address is 2203 N. 47<sup>th</sup> Ave., Greeley, CO 80631.
2.     I have farmed a parcel of property consisting of approximately 79 acres further described in Exhibit A hereto (the “Land”).
3.     I own eight (8) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5074), and two (2) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 777), (the “Irrigation Shares”). I have applied the Irrigation Shares to irrigate by [method] of irrigation, [number] acres of the Land since approximately [date] (the “\_\_\_ Acres”).
4.     The Irrigation Shares have been delivered to the Land by [describe conveyance structures].
5.     [description of whether the Irrigation Shares were sufficient to supply all of the \_\_\_ Acres].
6.     [Description of crops grown]
7.     [Season of Use Information for each of the shares]
8.     [Other sources of water on the lands]
10.    Further Affiant sayeth not.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
Darrick Fitz

**ACKNOWLEDGMENT**

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF WELD         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2020,  
by \_\_\_\_\_ and  
\_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires:

**AFFIDAVIT OF ELIZABETH COLLYER**

STATE OF COLORADO     )  
   )ss.  
 COUNTY OF WELD         )

I, Elizabeth Collyer ("Affiant"), being of lawful age and first duly sworn upon oath, state and aver as follows:

1. I am a resident of the State of Colorado.
2. My address is 2203 N. 47<sup>th</sup> Ave., Greeley, CO 80631.
2. I have farmed a parcel of property consisting of approximately 79 acres further described in Exhibit A hereto (the "Land").
3. I own eight (8) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5074), and two (2) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 777), (the "Irrigation Shares"). I have applied the Irrigation Shares to irrigate by [method] of irrigation, [number] acres of the Land since approximately [date] (the "\_\_\_ Acres").
4. The Irrigation Shares have been delivered to the Land by [describe conveyance structures].
5. [description of whether the Irrigation Shares were sufficient to supply all of the \_\_\_ Acres].
6. [Description of crops grown]
7. [Season of Use Information for each of the shares]
8. [Other sources of water on the lands]
10. Further Affiant sayeth not.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
 Elizabeth Collyer



**ACKNOWLEDGMENT**

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF WELD         )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2020,  
by \_\_\_\_\_ and  
\_\_\_\_\_.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**WATER & SEWER BOARD AGENDA   APRIL 15, 2020**

ENCLOSURE \_\_\_\_\_      NO ENCLOSURE   X  

ITEM NUMBER:                      16

TITLE:                                DIRECTOR'S REPORT

RECOMMENDATION:      INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- Board and City Council Water Infrastructure Tour – July 2020
- Meadow Gold Pretreatment Update
- COVID-19 W&S Response and Service Update

**WATER & SEWER BOARD AGENDA    APRIL 15, 2020**

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:                    17

TITLE:                                SUCH OTHER BUSINESS THAT MAY BE  
   BROUGHT BEFORE THE BOARD AND  
   ADDED TO THIS AGENDA BY MOTION OF  
   THE BOARD

RECOMMENDATION:        TO BE DETERMINED

ADDITIONAL INFORMATION: