



Remote Meeting Instructions for the February 17, 2021, Water & Sewer Board Meeting:

In order to comply with all health orders and State guidelines 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 Water & Sewer Board meeting.**

You can view this Meeting by following the instructions below to watch the YouTube live stream. By utilizing this option to view the meeting, you will not be able to provide live input during the meeting. To provide live input, see the "In real time" instructions near the bottom of this page.

- From your laptop or computer, click the following link or enter it manually into your Web Browser: (<https://www.youtube.com/user/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 meeting!

Citizen input and public comment for items appearing on this agenda as public hearings/quasi-judicial are valuable and welcome!

Anyone interested in participating and sharing public comments have a few of options:

Via email? – Submit to Ettie.arnold@greeleygov.com

All comments submitted this way will be read into the record at the appropriate points during this meeting in real time. Comments can be submitted up to and throughout this meeting.

Via traditional Mail? - Address to the Water & Sewer Department's Office, 1001 11th Avenue, Attn: Shannon Metcalf, Greeley, CO 80631

All written comments must be received no later than the day of the meeting. Again, written comments received by mail will also be read into the record in real time.

In real time? – <https://greeleygov.zoom.us/j/88266699096>

Clicking the link above will give you access to the live meeting where you will become a virtual audience member and be able to speak under Citizen Input on items not already on the agenda or during a scheduled public hearing.

Please visit the City's website at <http://greeleygov.com/government/b-c/boards-and-commissions/water-and-sewer> to view and download the contents of the February 17th Water & Sewer Board Meeting. You are also welcome to call the Water & Sewer Department at 970-350-9801 with any special needs or questions that you may have.

WATER & SEWER BOARD AGENDA

Wednesday February 17, 2021
2:00 p.m.

MEETING WILL BE LIVE STREAMED ON YOUTUBE.COM DUE TO CITY CLOSURES

RELATED TO COVID-19

Public Comments, please use: <https://greeleygov.zoom.us/j/88266699096>

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	_____ Mr. John Karner
2. Approval of Minutes
3. Approval of and/or Additions to Agenda
4. Welcome New Employees
5. Public Comments
 - Public comments can be made in writing in advance of the meeting or in live stream. Public comments are limited to two minutes
6. Approve the Amended and Restated Master Purchase, Sale and Raw Water Credit Administration Agreement for Terry Ranch Water Rights and Storage
7. Approve a Resolution Authorizing Closing for Terry Ranch Water Rights and Storage and Recommend the Same to City Council
8. Approve a Resolution Rescinding Prior Water & Sewer Board Resolutions Concerning Dedication of Raw Water for City Water Service
9. Approve Colorado Water Conservation Board Water Delivery Agreement
10. 2020 Year End Water & Sewer Enterprise Financial Report
11. Legal Report
12. Director's Report
 - Windy Gap Farming Storage Project; appeal of the recent Federal District Court Order
 - City Charter Petitions



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 970-415-1307.

13. 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 970-415-1307.

**City of Greeley
Water and Sewer Board
Minutes of January 20, 2021
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:00 p.m. on Wednesday, January 20, 2021. Due to City Closures related to COVID-19, this meeting was held remotely and was aired via live stream for public viewing at <https://www.youtube.com/user/CityofGreeley>.

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, Tony Miller, Joe Murphy, Manuel Sisneros, Roy Otto, and John Karner

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 Petrzelka, Water Resources Asset Coordinator Cole Gustafson, Water Resources Planning Manager Kelen Dowdy, Rates and Budget Analyst Kalen Myers, Special Projects Engineer Mary Gearhart, Civil Engineer III Justin Scholz, 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

Other Guests:

Cortney Brand, Leonard Rice Engineering

2. Approval of Minutes

Mr. Otis made motion, seconded by Mr. Miller, to approve the January 20, 2021 Water and Sewer Board meeting minutes. The motion carried 7-0.

3. Approval of and/or Additions to Agenda

There were no changes to the agenda.

4. Public Comments

There were no comments from the Public.

5. Welcome New Employees

Mr. Chambers provided an introduction of new Water and Sewer Department employees starting this month.

6. Approve Resolution in Appreciation of Reagan Waskom

Mr. Chambers explained this is a resolution of appreciation to make known Greeley's sincere and heartfelt appreciation to Dr. Reagan Waskom for his distinguished career, service to the citizens of Colorado, exceptional leadership, commitment, service to the State of Colorado, and his friendship over the past years.

Mr. Miller made motion, seconded by Vice-Chairman Todd to approve the Resolution in Appreciation of Regan Waskom, as contained in the January 20, 2021 Board Packet. The motion carried 7-0.

7. Action: Election of Officers

Mr. Miller nominated Harold Evans for Chairman and Mick Todd for Vice-Chairman of the Water and Sewer Board for 2021. There were no further nominations. Mr. Miller made motion, seconded by Mr. Otis, to elect Harold Evans as Chairman and Mick Todd as Vice-Chairman. The motion carried 7-0.

8. Appoint Water Board Representative Position for Art Commission

Vice Chairman Todd made motion, seconded by Mr. Otis that the Board designate Tony Miller as its representative member on the Greeley Art Commission. Mr. Miller graciously agreed to serve if appointed. The motion carried 7-0.

9. Adopt Drought Emergency Plan and Recommend Code Revisions to City Council

Ms. Petrzalka explained that Greeley's current Drought Emergency Plan is more than 15 years old. Since the last update a lot has changed, the city has introduced a robust water

conservation program, there has been a decline in water use per account, a re-examination of future water needs and system drought performance, the conversion to a water budget rate structure for single-family residential customers, and the city is implementing an advanced metering infrastructure (AMI) project to replace all residential meters with infrastructure that can provide detailed data on water use. Therefore, a re-evaluation of the Drought Emergency Plan is necessary to ensure responsible water supply planning and drought response tools that can be used to respond based upon the severity of future droughts. Ms. Petrzelka gave an overview of the revised Drought Emergency Plan and associated revisions to the Code.

Vice-Chairman Todd made motion, seconded by Mr. Ruyle that the Board adopt the Drought Emergency Plan as presented, and recommend to City Council associated revisions to the Greeley Municipal Code in the form of the enclosed draft ordinance. The motion carried 7-0.

10. Non-Potable Development Policy Update

Mr. Dial explained that Greeley has a long history of utilizing non-potable water to irrigate turfed areas using the extensive ditch systems within the City. Meeting Greeley's long-term water resource needs will require further expansion of non-potable use. Greeley has significant capital investment planned to build out its non-potable system. Investments in non-potable water and infrastructure have a positive return on investment because they are more affordable and more easily developed than developing the same capacity to irrigate with potable rights that would be treated at one of the two treatment plants in Larimer County. However, the city needs non-potable to be utilized in new development at a much greater rate than it has been in the past. Staff has developed a proposal to accelerate the adoption of non-potable water systems for irrigation uses in new development by making non-potable expansion a cost benefit or cost neutral to the development community. After discussion between staff and Board members, the Board asked that staff present examples of how the policy would work at a future meeting.

11. Recommend to City Council the Johnson Subdivision Proposed Local Improvement District

Mr. Scholz gave a detailed overview of the Local Improvement District (LID) proposed for the construction of sanitary sewer collection infrastructure in and near the Johnson Subdivision. A majority of the properties within the subdivision have septic systems with some reaching the point of failure. The Water and Sewer Department would like to facilitate a cost-effective connection strategy by developing a Local Improvement District (LID) on the subdivision to facilitate the construction of a new sewer system for all residents. This strategy would include Engineering staff designing the new sewer system and then Operations staff constructing the sewer system. This strategy will help reduce costs to residents, utilize City resources for the most economical construction, and help with public health by eliminating septic systems as they fail.

Vice-Chairman Todd made motion, seconded by Mr. Miller that the Board recommend to City Council adoption of the enclosed ordinance to establish Local Improvement District 43840. The motion carried 7-0.

12. Overview of Proposed Consolidation and Revisions to Water Dedication Code

Mr. Jokerst explained that Greeley requires that developers dedicate certain water rights or make cash payments to the city in order to receive water service. Policies governing Raw Water Dedication are primarily located in the City of Greeley Municipal Code, but are also contained in several resolutions of the Greeley Water & Sewer Board. The Water & Sewer Department desires to consolidate all policies into Municipal Code to provide developers a single point of reference and to assist staff in administering Raw Water Dedication policies.

In addition, revisions to and consolidation of Raw Water Dedication policies are required by the Master Agreement for the Terry Ranch Project. The Terry Ranch Master Agreement created Raw Water Credits redeemable to meet Greeley's Raw Water Dedication requirements. A code revision is required to allow dedication of Credits and is a condition of closing on Terry Ranch water and storage rights. Furthermore, the Master Agreement prescribes certain defaults for changes to Raw Water Dedication policies that, among other reasons, restrict redemption of Credits or specifically disadvantage Credits relative to other sources of dedication. Consolidating Raw Water Dedication policies in Municipal Code allows Greeley staff and Credit-holders to ensure future changes conform to the Master Agreement.

In addition to consolidating policies, two revisions are proposed to the Raw Water Dedication code. The first codifies graduated raw water requirements for landscaping associated with commercial and multi-family development. Graduated water requirements for landscaping were included in the 2019 policy updates for non-residential and multi-family, but were not ultimately placed in Code. The second clarifies Raw Water Dedication for large parcel, single family developments. Currently, any single family lot that is one acre or larger and has a $\frac{3}{4}$ " tap is required to dedicate 3 acre-feet per acre, regardless of the number of acres that lot may be. The proposed revision aligns the Raw Water Dedication requirement for large parcel, single family developments with their projected water use by taking into consideration just the developed portion of the lot.

13. Terry Ranch Project Diligence Update

Mr. Jokerst explained that in June 2020, Greeley entered into a Master Purchase, Sale and Water Credit Agreement for acquisition of groundwater rights and associated storage underlying the Terry Grazing Association Ranch in northwest Weld County. Since that time, staff and consultants have undertaken extensive inspection and diligence activities

on the ranch. Such diligence is required per the Master Agreement, and will inform the City whether to close on the project.

14. 4th Quarter Water Court Update

Ms. Petrzelka gave an update on current Water Court cases. She explained since June, Greeley entered statements of opposition in four cases and stipulated to 3 cases bringing the current number of pending Water Court cases where Greeley is an opposer to 39. The Water Resource Division's outside legal and engineering expenses for 2020 is \$399,324.

15. Legal Report

Jim Noble of Welborn, Sullivan, Meck & Tooley stated Greeley's counsel and Water and Sewer Department staff had reviewed the resume of water court applications filed in November of 2020, and that they do not recommend for Greeley to file any statements of opposition in water court cases that would be due this month.

16. Director's Report

Mr. Chambers reported on the following items:

- The Water and Sewer Department has received the copyright for *Confluence, the Story of Greeley Water*
- Wildfire Recovery Update

16. 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 5:25 p.m.

Harold Evans, Chairman

Shannon Metcalf, Office Manager

WATER & SEWER BOARD AGENDA FEBRYARY 17, 2021

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 4

TITLE: WELCOME NEW EMPLOYEES

RECOMMENDATION:

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA FEBRUARY 17, 2021

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 5

TITLE: PUBLIC COMMENTS

RECOMMENDATION:

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA FEBRUARY 17, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 6

TITLE: APPROVE THE AMENDED AND RESTATED
MASTER PURCHASE, SALE AND RAW
WATER CREDIT ADMINISTRATION
AGREEMENT FOR TERRY RANCH WATER
RIGHTS AND STORAGE

RECOMMENDATION: APPROVE THE AMENDED AND RESTATED
MASTER PURCHASE, SALE AND RAW
WATER CREDIT ADMINISTRATION
AGREEMENT

ADDITIONAL INFORMATION:

Staff recommends that the Water & Sewer Board approve the enclosed Amended and Restated Master Purchase, Sale and Raw Water Credit Administration Agreement with Wingfoot Water Resources, LLC (“Wingfoot”) (“Amended and Restated Master Agreement”). In June 2020, Greeley entered into the Master Purchase, Sale and Raw Water Credit Administration Agreement (“Master Agreement”) for the purchase of groundwater rights and associated water storage underlying the Terry Grazing Association Ranch in northwest Weld County. Since that time, staff and internal and external legal counsel have identified certain minor revisions to Master Agreement they wish to adopt prior to the closing. The amendments do not substantively change the structure, deal terms, or obligations of either Greeley or Wingfoot. The amendments to the Master Agreement are attached to the Amended and Restated Master Agreement as Exhibit “S”. In brief, the amendments:

1. Changed the timeline for conveyance of the Access Easement to the Terry Grazing Association lands. Instead of including the Access Easement in the tenancy in common and periodically assigned along with the Water Rights, all of Wingfoot’s rights, title, and interest in the Access Easement will be conveyed to Greeley at closing.
2. Clarified the rights of a third-party assigned the Put Option under the Master Agreement. Wingfoot intends to assign the Put Option to an affiliated third-party and use said third-party to borrow against Put Option Credits placed in escrow (“Escrowed Credits”) in order to fund the initial

\$25 million payment to Greeley at Closing. This change allows the transfer of certain rights under Article 11 of the Master Agreement and the Credit Escrow from the third-party to an indenture trustee, to secure the lender's interest under Article 11 of the Master Agreement and the Credit Escrow.

3. Changed the date that Greeley must exercise the Call Option from July 1st of each year to June 8th to allow additional time for the third-party and the indenture trustee to determine whether or not the Put Option should be exercised.
4. Clarified the process for issuance and assignment of the Escrowed Credits at closing given Wingfoot's anticipated assignment of the Call Option at or shortly after closing.
5. Made clear that the rights and obligations under the Master Agreement have vested in the parties
6. Corrected typos, formatting, and other minor inconsistencies.

If approved, the exhibits to the Master Agreement will be revised to comport with the Amended and Restated Master Agreement.

**AMENDED AND RESTATED MASTER PURCHASE, SALE AND RAW WATER
CREDIT ADMINISTRATION AGREEMENT (TERRY RANCH)**

by and between

WINGFOOT WATER RESOURCES, a Delaware Limited Liability Company

and

**THE CITY OF GREELEY, COLORADO, acting by and through its WATER
ENTERPRISE**

Dated: _____, 2021

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AMENDED AND RESTATED MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT
(Terry Ranch)

This AMENDED AND RESTATED MASTER PURCHASE, SALE AND RAW WATER CREDIT ADMINISTRATION AGREEMENT (Terry Ranch) (this “Agreement”) dated _____, 2021, but effective for all purposes as of June, 23, 2020 (“Effective Date”), by and between WINGFOOT WATER RESOURCES LLC, a Delaware limited liability company, previously known as WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company (“Wingfoot”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, (“City”), acting by and through its WATER ENTERPRISE (“Greeley”) (Wingfoot and Greeley each being a “Party” and collectively the “Parties”). Wingfoot and Greeley entered into the Master Purchase, Sale and Raw Water Credit Agreement on June 23, 2020 (the “2020 Agreement”), and the Parties now wish to amend and restate the 2020 Agreement on the terms and conditions set forth herein. Revisions made to the 2020 Agreement and reflected in this Agreement, made and agreed to by and between the Parties, are provided in Exhibit S.

RECITALS

A. Wingfoot is the owner of nontributary deep aquifer ground water rights, underlying real property in Weld County, Colorado, legally described on Exhibit A-1 and depicted on Exhibit A-2 (“Terry Ranch”), adjudicated and quantified on June 14, 2018, in Case Number 11CW275, District Court, Water Division 1, Colorado, and further described in that certain Special Warranty Deed, dated September 30, 2016, recorded October 17, 2016 in the real property records of the Clerk and Recorder for Weld County, Colorado (the “Records”), at Reception Number 4245308, and that certain Special Warranty Deed, dated April 30, 2018, recorded May 1, 2018 in the Records at Reception Number 4394951 (collectively, the “Water Rights”). Terry Ranch is currently owned by the Terry Ranch Grazing Association (“Association”).

B. Wingfoot, as the owner of the Water Rights, holds an easement to access Terry Ranch for purposes more fully described therein, attached as Exhibit B (“Access Easement”).

C. Wingfoot has also entered into a Ground Water Production Lease with the State of Colorado, State Board of Land Commissioners, dated January 18, 2018, for purposes more fully described therein, attached as Exhibit C (“State Land Board Lease”).

D. The Parties desire to set forth the terms and conditions pursuant to which Wingfoot shall create a tenancy in common with Greeley for the Water Rights (defined below), and pursuant to which Wingfoot agrees to sell, and Greeley agrees to buy, an initial interest in the Water Rights together with a full assignment of Wingfoot’s rights to the Ancillary Assets (defined below) and the State Land Board Lease, and all other appurtenant property rights and water rights associated therewith, as more fully provided hereinafter.

E. The objective of this Agreement is to provide the terms upon which Wingfoot will convey the Assets (defined below) to Greeley and make certain cash contributions for the construction of Project Infrastructure (defined below) and the terms upon which Greeley will make payment to Wingfoot for such conveyance.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, Wingfoot and Greeley hereby agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

1.1 Definitions. In addition to words and terms elsewhere defined in this Agreement, including the recitals hereto, the following words and terms used in this Agreement shall have the following meanings:

“*Access Easement*” has the meaning given in Recital B.

“*Ancillary Assets*” means (i) the Access Easement, (ii) any and all other rights, privileges and appurtenances owned by Wingfoot, without warranty of any type, which relate to or are used in connection with the Water Rights and the assets listed in this paragraph, to the extent assignable, and (iii) all of Wingfoot’s right, title and interest, without warranty of any type, in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development or use of the assets described in this paragraph.

“*Assets*” means (i) the Water Rights, (ii) the Ancillary Assets, (iii) the Existing Improvements, and (iv) the State Land Board Lease and related agreements, if any.

“*Assignment and Assumption*” means the assignment and assumption of the State Land Board Lease, substantially in the form attached as Exhibit D.

“*Association*” has the meaning given in Recital A.

“*Base Amount*” has the meaning given in Section 10.5.B.

“*Call Notice*” has the meaning given in Section 11.1.A.

“*Call Option*” has the meaning given in Section 11.1.A.

“*Cash Contribution*” has the meaning given in Section 9.1.

“*Certificate*” means and refers to that document evidencing the ownership of a Raw Water Credit(s) (defined below), in the form attached as Exhibit E.

“*City*” has the meaning given in the preamble of this Agreement.

“*Closing*” has the meaning given in Section 6.2.

“*Claim*” has the meaning given in Section 5.6.

“*Closing Amount*” has the meaning given in Section 3.4.

“Closing Date” has the meaning given in Section 6.2.

“Closing Documents” has the meaning given in Section 6.3.B.

“Confidential” has the meaning given in Section 10.4.

“Construction Escrow Agreement” has the meaning given in Section 9.1.

“Construction Escrow” has the meaning given in Section 9.1.

“Contribution Deadline” has the meaning given in Section 9.1.A.

“Conveyance Documents” has the meaning given in Section 4.3.

“Credit Escrow” has the meaning given in Section 11.2.

“Credit Escrow Agent” has the meaning given in Section 11.2.

“Credit Escrow Transferee” has the meaning given in Section 11.7.

“Credit Event” means any of the following events or conditions: If a Party or any successor shall institute voluntary bankruptcy proceedings, or shall consent to the institution of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization or arrangement under the federal Bankruptcy Code or any similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or trustee in bankruptcy or insolvency of such Party or any successor or any of their properties, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due.

“Cure” has the meaning given in Section 4.4.

“Defect” has the meaning given in Section 5.4.

“Defect Notice” has the meaning given in Section 5.4.

“Department” has the meaning given in Section 10.3.A.

“Deposit” has the meaning given in Section 3.2.

“Deposit Obligations” has the meaning given in Section 9.1.B.

“Disapproved Matters” has the meaning given in Section 4.4.

“Effective Date” has the meaning given in the preamble to this Agreement.

“Enterprise” means the Water Enterprise.

“Environment” means any water or water vapor, land surface or subsurface, soil, air, fish, wildlife, biota and all other natural resources.

“Environmental Condition” means the presence in the Environment of any Hazardous Substances at a level which exceeds any applicable standard or threshold under any Environmental Law or otherwise requires investigation or remediation (including investigation, study, health or risk assessment, monitoring, removal, treatment or transport) under any applicable Environmental Laws.

“Environmental Laws” means all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances, permits, and codes relating to the protection of the Environment or governing the use, storage, treatment, generation, transportation, processing, handling, production, discharge or disposal of any Hazardous Substance and the rules, regulations, policies, guidelines, interpretations, decisions, orders, permit conditions, and directives of federal, state and local government agencies and authorities with respect thereto.

“Environmental Permits” means all permits, licenses, approvals, authorizations, consents or registrations, if any, required by any Environmental Laws in connection with the ownership, use or operation of the Assets for the storage, treatment, generation, transportation, processing, handling, production, discharge or disposal of any Hazardous Substance or the sale, transfer or conveyance of the Assets at Closing.

“Environmental Representations and Warranties” means the representations and warranties contained in Exhibits G and H.

“Escrowed Credits” has the meaning given in Section 11.2.

“Event of Default” means each of the events described in Section 14.1

“Exercise Event” has the meaning given in Section 11.5.

“Exercise Price” has the meaning given in Section 11.4.

“Exercised Credits” has the meaning given in Section 11.4.

“Existing Improvements” means any structures, facilities or other improvements existing on Terry Ranch on the Effective Date as shown on Exhibit I.

“General Representations and Warranties” means the representations and warranties contained in Exhibits J and K.

“Governmental Approval Period” has the meaning given in Section 6.1.A.

“Governing Bodies” has the meaning given in Section 6.1.A.

“Greeley” has the meaning given in the preamble of this Agreement, which refers to the City acting by and through its Water Enterprise.

“Greeley Environmental Covenants” has the meaning given in Section 5.5.

“Greeley’s Intended Use” means the use to which Greeley intends to put the Assets, which consists of the delivery of water to and from the nontributary aquifer underlying Terry Ranch, including the use of the Assets and Project Infrastructure as part of an aquifer supply, recharge and storage facility to be operated as a part of Greeley’s Water System.

“Greeley’s TIC Interest” means Greeley’s ownership interest, as it may exist from time to time, in the Water Rights held in the tenancy in common created pursuant to Section 2.1 and the Tenancy in Common Agreement.

“Hazardous Substance” means, without limitation, any flammable materials, explosives, radon, radioactive materials (including naturally occurring radioactive materials (“NORM”) that have been concentrated by industrial or commercial processes), asbestos, urea formaldehyde foam insulation, oil, polychlorinated biphenyls, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or pollutants or contaminants, including those defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) (“CERCLA”), the Clean Water Act, as amended (33 U.S.C. Section 1251 to 1387), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), any other applicable Environmental Law and regulations adopted thereunder, or any State or local law or ordinance relating to environmental risk or exposure.

“Improvements” means the Existing Improvements and any structures, facilities or other improvements installed by Greeley during the Inspection Period.

“Initial Contribution” has the meaning given in Section 9.1.A.

“Initial Credits” has the meaning given in Section 3.1.

“Initial Tenancy in Common Interest” means and refers to 10/12,121th interest in the Water Rights to be conveyed by Wingfoot to Greeley at Closing.

“Inspection Costs” has the meaning given in Section 5.2.

“Inspection Indemnification” has the meaning given in Section 5.6.

“Inspection Period” has the meaning given in Section 5.1.

“Inspections” has the meaning given in Section 5.1.

“Interim Period” has the meaning given in Section 8.2.A.

“Liquidated Damages” has the meaning given in Section 14.3.

“Losses” has the meaning given in Section 5.6.

“Material Adverse Effect” means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to

(a) the ability of Wingfoot or Greeley to perform the actions contemplated in this Agreement in a timely manner or (b) the identified property right, title or interest or right title or interest created by and through this Agreement, viewed together as a whole with all rights or interests of the applicable party arising from the transactions expressly set forth in this Agreement (including, but not limited to, with respect to (i) Greeley, the Assets transferred to Greeley hereunder, and (ii) Wingfoot, the market value of a Raw Water Credit or Wingfoot's right or ability to receive the cash price under Article 11 or exercise of the Put Option or Call Option hereunder).

"Material Part" has the meaning given in Article 15.

"Net Cash Proceeds" means, as the case may be, (a) the cash received by Wingfoot from (i) any Third Party Transfer as provided under Section 8.2.A (Conveyances), except for any cash proceeds from a Prohibited Transfer Fee; (ii) the sale of Raw Water Credits to third-parties as provided under Section 10.1.E (Limitations; Sales); or (iii) the portion of Net Revenue received by Wingfoot pursuant to Section 12.1.A (Revenue Sharing). *"Net Cash Proceeds"* excludes any portion of the Power Revenue Interest received by Wingfoot and amounts paid to Wingfoot pursuant to Section 12.1.B (Revenue Sharing; Outside Customers).

"Net Revenue" has the meaning given in Section 12.1.

"New Source" has the meaning given in Section 10.5.A(2).

"Notice to Construct" has the meaning given in Section 9.1.A.

"Objection" has the meaning given in Section 10.5.A(2).

"Off-Record Documents" has the meaning given in Section 4.1.B.

"Option Period" has the meaning given in Section 11.1.A.

"Option Price" means an amount equal to thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 or thirty thousand dollars (\$30,000) escalated at a rate of three percent (3%) compounded annually every year thereafter.

"Parties" and *"Party"* have the meanings given in the preamble of this Agreement.

"Payment Default" has the meaning given in Section 9.2.B.

"Payment Obligation" means the payment obligations of Greeley described in Section 17.18.

"Permissible Policy Change" has the meaning given in Section 10.5.A(2)(c)(i).

"Permitted Exceptions" has the meaning given in Section 4.2.

"Power Revenue Interest" has the meaning given in Section 12.1.A.

"Power Transaction" has the meaning given in Section 12.1.A.

“Power Valuation” has the meaning given in Section 12.1.A.

“Prevailing Party” has the meaning given under Section 17.6.

“Prohibited Transfer Fee” has the meaning given in Section 8.2.A.

“Project” means and refers to the acquisition and construction of groundwater wells, treatment and storage facilities, transmission system, and other improvements made or necessary to deliver water to and from the nontributary aquifer underlying Terry Ranch to and from Greeley’s Water System, including without limitation the use of the Assets and Project Infrastructure as part of an aquifer supply, recharge and storage facility to be operated by the Enterprise as a part of the Water System.

“Project Infrastructure” means and refers to all easements, rights of way, wells, pipeline, treatment facilities and other improvements, facilities and real or personal property deemed necessary, in the exclusive judgment of Greeley, to effectuate the Project or otherwise used in or relating to the Project.

“Project Infrastructure Costs” has the meaning given in Section 9.1.

“Property” means and refers to the (i) Water Rights and (ii) Ancillary Assets.

“Prorated Contribution” has the meaning given in Section 9.1.C.

“Prorated Escrow” has the meaning given in Section 9.1.C.

“Purchase Price” has the meaning given in Section 3.1.

“Put Notice” has the meaning given in Section 11.1.B.

“Put Option” has the meaning given in Section 11.1.B.

“Raw Water Credit” has the meaning given in Section 10.1.A. and for the avoidance of doubt is intended to relate to a Raw Water Dedication Credit as contemplated by Chapter 14.06 of the Greeley Municipal Code as in effect on the Closing Date.

“Raw Water Dedication Policy” means and refers to the policy with respect to dedications of raw water or cash payments in lieu thereof established by Chapter 14.06 of the Greeley Municipal Code as in effect on the Closing Date.

“Records” has the meaning giving in Recital A.

“Registry” has the meaning given in Section 10.3.A.

“Registry Default” has the meaning given in Section 10.4.B.

“Registered Owner” has the meaning given in Section 10.3.A.

“Registered Owner Committee” has the meaning given in Section 10.5.A.2.

“*Release*” has the meaning given to that term in CERCLA and the regulations promulgated thereunder.

“*Released Credits*” has the meaning given in Section 11.3.

“*Semester Total*” has the meaning given in Section 10.2.

“*Service Area*” means and refers to that area within which Greeley provides water services as of Closing, inclusive of any expansions of the Service Area subsequent to the Closing, as well as areas served by other water districts that accept Raw Water Credits in the future in accordance with the Raw Water Dedication Policy or any similar policy recognized by another water district.

“*Specified Difference*” has the meaning given in Section 10.5.B.

“*State Land Board Lease*” has the meaning given in Recital C.

“*Surplus Revenues*” has the meaning given in Section 17.18.B.

“*Surrendered Certificate*” has the meaning given in Section 11.5.

“*Tenancy in Common Agreement*” means and refers to that agreement substantially in the form attached as Exhibit L.

“*Tenancy in Common Conveyance Documents*” has the meaning given in Section 8.2.B.

“*Terry Ranch*” has the meaning given in Recital A.

“*Third Party Transfer*” has the meaning given in Section 8.2.A.

“*Title Commitment*” has the meaning given in Section 4.1.A.

“*Title Company*” has the meaning given in Section 3.2.

“*Title Documents*” has the meaning given in Section 4.1.A.

“*Title Policy*” has the meaning given in Section 4.6.

“*Water Enterprise*” or “*Enterprise*” means the water utility enterprise created pursuant to Greeley Code Section 14.04.050 to act as operator of the Water system.

“*Water Revenue Bond Ordinance*” has the meaning given in Section 17.18.B.

“*Water Rights Documents*” has the meaning given in Section 4.1.C.

“*Water System*” means Greeley’s municipal water system, operated by the Water Enterprise.

“*Water Rights*” means those water rights defined under Recital A.

“Wingfoot’s TIC Interest” means the balance of Wingfoot’s tenancy in common interest in the Water Rights.

ARTICLE 2

CREATION OF TENANCY IN COMMON; SALE OF PROPERTY

2.1 Water Rights; Creation of Tenancy in Common. Wingfoot agrees to create a tenancy in common for the Water Rights with Greeley and agrees to sell, and Greeley agrees to buy, the Initial Tenancy in Common Interest at Closing (defined below), subject to the terms and conditions set forth in this Agreement and the Special Warranty Deed substantially in the form attached as Exhibit M.

2.2 Improvements. In addition to the Initial Tenancy in Common Interest, Wingfoot agrees to sell and assign, and Greeley agrees to buy and assume, Wingfoot’s rights, title and interest, as well as its obligations, in and to the Existing Improvements at Closing, subject to the terms and conditions set forth in this Agreement and the Assignment and Bill of Sale substantially in the form attached as Exhibit O (the “General Assignment and Bill of Sale”).

2.3 State Land Board Lease and Related Agreements. Wingfoot agrees to sell and assign, and Greeley agrees to buy and assume, Wingfoot’s rights, title and interest, as well as its obligations, in, to and under the State Land Board Lease and any related agreements, if any, on or before ninety (90) days after Closing, subject to the terms and conditions set forth in this Agreement and the Assignment and Assumption of State Land Board Lease substantially in the form attached as Exhibit D. Notwithstanding the preceding sentence, the Parties acknowledge and agree that the form of the Assignment and Assumption attached hereto may be subject to revision as may be necessary or convenient to obtain consent to such assignment from the State of Colorado, State Board of Land Commissioners.

2.4 Ancillary Assets. In addition to the Initial Tenancy in Common Interest, Wingfoot agrees to sell and assign, and Greeley agrees to purchase and assume, all of Wingfoot’s rights, title and interest, as well as its obligations, in, to and under the Ancillary Assets, if any, at Closing, subject to the terms and conditions set forth in this Agreement and the Assignment and Assumption of Access Easement substantially in the form attached as Exhibit N.

ARTICLE 3

PURCHASE PRICE

3.1 Purchase Price. The total purchase price for the Initial Tenancy in Common Interest, Existing Improvements, Assignment and Assumption of the Access Easement, and the Assignment and Assumption of the State Land Board Lease shall be an amount equal to the sum of five hundred thousand dollars (\$500,000) (“Purchase Price”) plus ten (10) Raw Water Credits (“Initial Credits”).

3.2 Deposit and Release of Deposit. Within fifteen (15) days following the Effective Date of this Agreement, Greeley shall cause the amount of fifty thousand dollars (\$50,000) (“Deposit”) to be deposited with Land Title Guaranty (Heidi Crue: title officer; Donna Mancini: closing agent), (“Title Company”). The Deposit shall be held by the Title Company in a federally insured account to be credited toward the Purchase Price. The Deposit shall be fully refundable to

Greeley pursuant to and in accordance with Section 4.4 (Disapproved Title Matters), Section 5.4 (Defects Identified in Inspection), Section 6.1 (Closing Contingencies), Section 13.3 (Failure of Condition), Section 14.2.A(3) (Remedies, Generally) and Article 15 (Condemnation) below. Except as set forth in the preceding sentence, the Deposit shall be non-refundable to Greeley and shall be transferred to Wingfoot at Closing or upon termination of this Agreement.

3.3 Interest. Unless otherwise agreed to by Wingfoot and Greeley, the Title Company is not required to hold the Deposit in an interest-bearing account.

3.4 Payment at Closing. The Purchase Price (i) minus the Deposit; (ii) plus any other amounts required to be paid by Greeley at Closing (including Greeley's share of the closing costs); and (iii) plus or minus any prorations or credits pursuant to this Agreement ("Closing Amount"), shall be paid at Closing by Greeley to Wingfoot by cashier's check, wire transfer or other immediately available funds.

ARTICLE 4 TITLE

4.1 Title Documents. Within fifteen (15) days after the Effective Date of this Agreement, Wingfoot shall provide the following to Greeley for review:

A. A commitment for an owner's policy of title insurance ("Title Commitment"), issued by the Title Company covering the Access Easement and indicating the Title Company's willingness to issue to Greeley at Closing the Title Policy (defined below) in the amount of the Purchase Price, with such Title Commitment setting forth the status of title to the Access Easement and showing the Title Company's search results for all recorded liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the Access Easement (the copies of all recorded documents in the Title Commitment are collectively referred to as "Title Documents").

B. To the extent the same are in Wingfoot's possession and are not delivered in connection with the Title Documents provided by the Title Company, true and correct copies of the following documents: (i) well permits, together with any applications, approvals, engineering drawings or other documents related thereto; (ii) other agreements in Wingfoot's possession having a Material Adverse Effect upon the Assets; (iii) any surveys related to the Ancillary Assets, Existing Improvements, and the State Land Board Lease; (iv) any investigation or inspection documents or reports related to the Ancillary Assets, Existing Improvements, and the State Land Board Lease; (v) feasibility and design studies or engineering reports related to the Ancillary Assets, Existing Improvements, and the State Land Board Lease; and (vi) any as-built surveys of infrastructure or other improvements located on Terry Ranch (collectively referred to as "Off-Record Documents").

C. To the extent the same are in Wingfoot's possession and are not delivered in connection with the Title Documents provided by the Title Company, true and correct copies of the following documents: any documents, recorded or unrecorded, that relate to the title, planning and development, 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,

any testing reports, and any records maintained by Wingfoot pertaining to the Water Rights; and copies of all contracts or other agreements relating to the development, operation, maintenance or leasing of the Water Rights (collectively referred to as “Water Rights Documents”).

4.2 Condition of Title. At Closing, Wingfoot shall convey, and Greeley agrees to accept, title to the Access Easement free and clear of all liens and encumbrances subject only to each of the following (collectively, the “Permitted Exceptions”):

A. All covenants, easements, agreements, restrictions and other recorded documents set forth in the Title Commitment, EXCEPT FOR: (i) mortgages, mechanic’s liens and other financial encumbrances created by Wingfoot, which shall be discharged or, in the event of a mechanic’s lien, otherwise bonded off through a surety bond at Closing by Wingfoot and (ii) easements, rights of way, servitudes, licenses, permits, orders, authorizations, franchises, and related instruments or rights relating to the ownership, operation, or use of the Access Easement, that (x) Greeley has disapproved of as Disapproved Matters which Wingfoot has committed to Cure or (y) individually or in the aggregate have a Material Adverse Effect on the Access Easement as of the Closing Date, EXCEPT to the extent any of the foregoing were created by Greeley or arose out of Greeley’s access to or use of the Assets.

B. General property taxes, if applicable, for the year of the Closing, provided that such taxes shall be prorated to the Closing Date, as provided in Section 7.1 (Prorations) below.

C. Approvals, consents, notices, filings, permits, or other actions by or from a governmental authority or third party in connection with the contemplated sale or conveyance of the Assets under this Agreement prior to Closing, EXCEPT FOR such approvals, consents, notices, filings, permits, or other actions by or from a governmental authority or third party, individually or in the aggregate, that as of the Closing Date have a Material Adverse Effect on the Assets.

D. Rights reserved to or vested in any governmental authority to control or regulate any of the Assets in any manner, and all obligations and duties under all applicable laws or under any franchise, grant, license, or permit issued by any such governmental authority.

E. Any Disapproved Matter that becomes a Permitted Exception in accordance with the terms of this Agreement.

F. Any other matter created by or through Greeley or arising out of Greeley’s ownership of or access to or use of the Assets including, without limitation, any matter arising out of any inspections conducted by or for the benefit of Greeley during the Inspection Period.

4.3 Conveyance of the Initial Tenancy in Common Interest and Access Easement. At Closing, Wingfoot shall convey the Initial Tenancy in Common Interest to Greeley by executing the form attached hereto as Exhibit M (Special Warranty Deed) and the Access Easement by executing the form attached hereto as Exhibit N (Assignment and Assumption of Access Easement), free and clear of all liens except for the Permitted Exceptions (“Conveyance Documents”).

4.4 Disapproved Title Matters. Except for Permitted Exceptions, Greeley may disapprove of title exceptions (“Disapproved Matter”) by delivering written notice of objection to

Wingfoot either (i) prior to the expiration of the Inspection Period or (ii) if such notice is delivered after the expiration of the Inspection Period but prior to the Closing Date, then within ten days (10) days after receiving notice from Wingfoot or the Title Company. Any Disapproved Matter not objected to in writing prior to the expiration of the Inspection Period or within such ten (10) day period shall be deemed an additional Permitted Exception. Wingfoot may elect in its sole discretion (but shall not be obligated) to cure any Disapproved Matter by (i) removing or causing the Disapproved Matter to be removed or resolved at Wingfoot's expense; (ii) by obtaining title insurance insuring against the effect of the Disapproved Matter; or (iii) by any other means acceptable to Greeley (each a "Cure"). Within ten (10) days after Wingfoot's receipt of Greeley's notice of a Disapproved Matter, Wingfoot shall notify Greeley in writing whether Wingfoot elects to Cure such Disapproved Matter and, if it elects to do so, the method or means of the Cure. If Wingfoot elects, but fails or is unable to Cure a Disapproved Matter prior to Closing, then Greeley may, on the date of Closing, deliver written notice to Wingfoot that it elects to terminate this Agreement. If Wingfoot elects not to Cure one (1) or more Disapproved Matter, then within (i) ten (10) days after Greeley's receipt of Wingfoot's written notice regarding such election, or (ii) on the Closing Date, whichever occurs first in time, Greeley may elect to terminate this Agreement by delivering written notice to Wingfoot that it elects to terminate this Agreement. Upon termination of this Agreement pursuant to this Section 4.4, the Deposit shall be returned to Greeley and neither Wingfoot nor Greeley shall have any further obligation or liability to the other, provided, however, that where a Disapproved Matter would have a Material Adverse Effect on the Assets, and where such Disapproved Matter is not Cured, then the Deposit shall be returned to Greeley and Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, including but not limited to the Inspection Costs. If Greeley does not elect to terminate this Agreement pursuant to this Section 4.4, then Greeley shall be deemed to have accepted any outstanding Disapproved Matters and the Parties shall proceed to Closing, subject to the provisions of this Agreement, without any abatement of the Purchase Price or other remedy.

4.5 Representations and Warranties. On the Effective Date of this Agreement, Wingfoot shall execute and deliver to Greeley the certifications relating to the General Representations and Warranties and the Environmental Representations and Warranties substantially in the forms attached as Exhibits J and G. At the Closing, Wingfoot shall certify that the representations made in the General Representations and Warranties, and the Environmental Representations and Warranties, are true and correct in all material respects as of the Closing Date (defined below) substantially in the forms attached as Exhibits J and G. On the Effective Date of this Agreement, Greeley shall execute and deliver to Wingfoot the certifications relating to the General Representations and Warranties substantially in the form attached as Exhibit K. At Closing, Greeley shall (i) execute and deliver to Wingfoot the certifications relating to the Environmental Representations and Warranties and (ii) certify that the representations made in the General Representations and Warranties are true and correct in all material respects as of the Closing Date, substantially in the forms attached as Exhibits K and H.

4.6 Title Insurance. The Title Company shall commit at Closing that, as soon as reasonably practical after the Closing, the Title Company shall issue to Greeley an ALTA owner's form of title insurance policy, insuring that title to the Access Easement is vested in Greeley, subject to the Permitted Exceptions ("Title Policy").

ARTICLE 5 INSPECTION PERIOD

5.1 Inspection. During a period of time commencing upon the Effective Date and continuing until 4:00 p.m., Mountain Time, on the two hundred and tenth (210th) day thereafter (“Inspection Period”), subject to Section 5.3 (Conditions of Access), Greeley and its authorized agents, representatives and consultants shall be entitled to enter upon the areas covered by the Access Easement and State Land Board Lease at reasonable times, and upon reasonable prior written notice to Wingfoot, to inspect the Assets for the purpose of (i) conducting surveys, water quality and soils tests, environmental and ecological assessments, test borings, engineering tests, cost evaluations, environmental audits and tests, feasibility studies and any other inspections, investigations or analyses Greeley deems necessary or appropriate in connection with its intended acquisition, use and development of the Assets or (ii) performing the following specific activities: drilling and logging of not more than three additional test borings; collection and analysis of water quality samples from test borings and existing wells; depth-specific flow, Gamma ray spectroscopic surveys, and water quality sampling of existing wells; downhole video survey of existing wells; topographical surveys; environmental assessments and field surveys of environmental resources; and bench-scale testing of geochemical interactions between aquifer core samples and recharge water, which activities Greeley has deemed necessary to conduct in connection with its intended acquisition, use and development of the Assets (collectively referred to as the “Inspections”).

5.2 Cost; Cooperation. Greeley shall bear all costs of the Inspections (“Inspection Costs”). During the Inspection Period, Wingfoot agrees to reasonably cooperate with any Inspection activity, which includes but is not limited to attempts to obtain access and any necessary approval to conduct Inspections on Terry Ranch. In the event that Closing does not occur solely due to failure of a Closing condition in Section 13.3 (Failure of Condition) within Wingfoot’s control, then Wingfoot shall reimburse Greeley for its reasonable third party out-of-pocket Inspection Costs.

5.3 Conditions of Access. Greeley and its authorized agents, representatives and consultants shall (i) comply with the terms and conditions of the Access Easement and State Land Board Lease including but not limited to all required notices and submissions, as applicable, and all applicable laws, rules and regulations; (ii) not interfere with the operation and maintenance of the Terry Ranch by the Association or interfere with the business or operations of Wingfoot; (iii) comply with all Title Documents, all Permitted Exceptions, and any reasonable requirements imposed upon it by Wingfoot or the Association in connection with such Inspections; (iv) not injure or otherwise cause bodily harm to Wingfoot or the Association, their agents, contractors or employees; (v) promptly pay when due the costs of all Inspections; (vi) not permit any liens or encumbrances to attach to Terry Ranch or any of the Assets; (vii) restore Terry Ranch and/or the Assets to substantially the same condition in which such property was found before any such Inspections were undertaken, and at the election of Wingfoot (in its sole discretion), Greeley shall be required to remove (at Greeley’s sole cost and expense) any improvement that was installed, and/or reclaim any surface disturbance, including close or seal disturbances related to below grade improvements consistent with standard industry practice, in accordance with this Section 5.3 (or with the written approval of Wingfoot) by Greeley during the Inspection Period in accordance with the terms of the Access Easement or the State Land Board Lease, as the case may be, or with

Wingfoot's approval, except that Greeley shall not be required to remove any below grade improvements associated with test bores; and (viii) give reasonable advance notice (but no less than 24 hours) to Wingfoot and the Association prior to any entry onto Terry Ranch, the Access Easement, the State Land Board Lease or the Water Rights and shall permit Wingfoot to have representatives present during all Inspections. Upon the request of Wingfoot, Greeley shall supply Wingfoot with copies of the results of the Inspections.

5.4 Defects Identified in Inspection. If Greeley identifies any defect with the Assets during its Inspection, as determined by Greeley in its good faith judgment, including but not limited to the following items:

A. Matters disclosed in (i) the Title Documents, (ii) the Off-Record Documents, or (iii) the Water Rights Documents;

B. Greeley's ability to verify or obtain real property including but not limited to adequate sites for facilities or appropriate easements for ingress, egress and utilities from third parties as deemed reasonably necessary or appropriate by Greeley for Greeley's Intended Use of the Assets;

C. The suitability of the Assets for Greeley's Intended Use, including without limitation the capital and/or operational cost of effectuating such Intended Use;

D. Greeley's ability to obtain state, local or federal approval and/or permits to construct improvements for the operation of an aquifer storage facility;

(each a "Defect"). Greeley may terminate this Agreement if (i) Greeley provides written notice of any such Defect to Wingfoot on or before the expiration of the Inspection Period (a "Defect Notice") and (ii) Wingfoot fails to cure, to Greeley's reasonable satisfaction, any Defect identified in the Defect Notice within thirty (30) days of receipt of the applicable Defect Notice. If Greeley terminates this Agreement pursuant to this Section 5.4, the Deposit shall be returned to Greeley and neither Party shall have any further obligation to the other except as specifically provided in this Agreement.

If Greeley does not provide written notice of termination to Wingfoot prior to the expiration of the Inspection Period, then Greeley's right to terminate this Agreement pursuant to this Section 5.4 shall terminate and Greeley shall be deemed to have accepted any outstanding Defects. Except as provided under Section 4.4 (Disapproved Title Matters), Section 6.1 (Closing Contingencies), Section 13.3 (Failure of Condition), Section 14.2.A(3) (Remedies, Generally) and Article 15 (Condemnation), upon the expiration of Greeley's right to terminate this Agreement pursuant to this Section 5.4 the Deposit shall be non-refundable to Greeley.

5.5 Environmental Covenants During Inspection Period. During the Inspection Period, Greeley covenants as follows (collectively, "Greeley Environmental Covenants"):

A. Greeley and its agents shall not bring onto the Assets, or permit to be brought onto the Assets, any Hazardous Substances, except to the extent that the Hazardous Substances are of a type and quantity the presence, use, storage, release and handling of which does not constitute a violation of any applicable Environmental Law and is customarily employed

in the ordinary course of, or associated with, drilling for water and water treatment and construction of infrastructure relating to the same in the State of Colorado (and, to the extent that Greeley or its agents or representatives bring Hazardous Substances onto the Assets, they shall act prudently and use reasonable care relating thereto).

B. Greeley's use of and activities on or with respect to the Assets shall comply with all applicable laws, including Environmental Laws and Environmental Permits.

5.6 Liability During Inspection Period. Subject to Section 5.2(Cost; Cooperation), with respect to Greeley's Inspections during the Inspection Period only, Wingfoot shall defend, indemnify and hold harmless Greeley from and against any loss, cost, liability, or expense claimed by a third party arising out of or related to an Environmental Condition (collectively, "Losses"), but only to the extent that any such Environmental Condition was discovered by Greeley during the Inspection Period and disclosed to Wingfoot during the Inspection Period, and was not caused or contributed to by any negligent activity of Greeley or its agents (such indemnification obligation referred to as the "Inspection Indemnification"). If a Claim for Losses is asserted against Greeley by a third party prior to Closing, which may give rise to Inspection Indemnification, Greeley must promptly notify Wingfoot in writing and give Wingfoot the right to defend (or in Wingfoot's discretion, assist in the defense of) such Claim with counsel approved by Greeley, which approval shall not be unreasonably withheld, conditioned or delayed. The Inspection Indemnification shall terminate at Closing, and no claims for Inspection Indemnification can be made by Greeley after Closing; provided, however, that Wingfoot must still satisfy or resolve any outstanding Claim as may exist at Closing except to the extent caused by the negligence of Greeley or its agents. As used in this Section 5.6, "Claim" means any written demands, causes of action, or claims of any kind and character made by a third party. This Section 5.6 does not apply to any actions taken with respect to the Assets that does not occur during the Inspection Period and does not apply to any Claim to the extent caused by or arising from Greeley or its agents.

ARTICLE 6

CLOSING CONTINGENCIES; CLOSING

6.1 Closing Contingencies.

A. Governing Body Approval. Greeley's obligation to purchase the Assets is subject to the City Council's and the Greeley Water and Sewer Board's (the "Governing Bodies") authorization to close on the purchase and the appropriation of the Purchase Price at Closing for the acquisition of the Assets within sixty (60) days following the expiration of the Inspection Period ("Governmental Approval Period"). In the event that the Governing Bodies have not authorized the closing and appropriated the Purchase Price at Closing for the acquisition of the Assets prior to the expiration of the Governmental Approval Period (unless extended by written agreement of the Parties), then, in such event, upon written notice by either Party to the other, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley pursuant to Section 13.3 (Failure of Condition) and neither Party shall have any further obligation to the other except as provided in Section 17.9 (Survival).

B. Raw Water Dedication Policy. Wingfoot's obligation to convey the Assets is subject to the Governing Bodies' approval of the Raw Water Dedication Policy, in a form

acceptable to Wingfoot, before the expiration of the Governmental Approval Period. In the event that the Governing Bodies have not approved the Raw Water Dedication Policy prior to the expiration of the Governmental Approval Period, then, in such event, upon written notice by Wingfoot to Greeley, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley pursuant to Section 13.3 (Failure of Condition) and neither Party shall have any further obligation to the other except as provided in Section 17.9 (Survival).

6.2 Closing. The closing of this transaction (the “Closing”) shall occur at 1:30 p.m. at the Greeley Office of the Title Company, fifteen (15) days after the expiration of the Governmental Approval Period or such other date as the Parties may mutually agree to in writing (the “Closing Date”). At or prior to the Closing, Greeley shall provide Wingfoot with a map of the Service Area as of the Closing Date.

6.3 Transactions at Closing.

A. On or before the Closing Date, Wingfoot shall deliver or cause to be delivered to the Title Company, acting as the escrow agent for the Closing, the following documents duly executed and acknowledged where appropriate:

- (1) The Conveyance Documents.
- (2) 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.
- (3) The Construction Escrow Agreement (defined below)
- (4) The Credit Escrow Agreement (defined below).
- (5) The Tenancy in Common Agreement (defined below).
- (6) The General Assignment and Bill of Sale.
- (7) Wingfoot’s Certification of the General Representations and Warranties, in the form attached hereto as Exhibit J.
- (8) Wingfoot’s Certification of the Environmental Representations and Warranties, in the form attached hereto as Exhibit G.
- (9) Wingfoot’s Amended and Restated Limited Liability Company Agreement, in the form attached hereto as Exhibit P.
- (10) A closing statement executed by Wingfoot.
- (11) Duly executed assignments of the Escrowed Credits (defined below) to the Escrow Credit Transferee (defined below), substantially in the form attached as Exhibit 2 (Form Transfer and Assignment of Raw Water Credits) to Exhibit E (Certificate).

(12) 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 the Closing escrow agent, the following documents duly executed and acknowledged where appropriate:

- (1) The Closing Amount.
- (2) Documentation in such form as may be satisfactory to Wingfoot and the Title Company, evidencing (i) the Governing Bodies' authorization of the issuance of Twelve Thousand One Hundred Twenty-one (12,121) Raw Water Credits and (ii) Greeley's authority to purchase the Assets.
- (3) The Assignment and Assumption of State Land Board Lease, in the form attached as Exhibit D.
- (4) Greeley's Certification of the General Representations and Warranties, in the form attached hereto as Exhibit K.
- (5) Greeley's Certification of the Environmental Representations and Warranties, in the form attached hereto as Exhibit H.
- (6) A certified copy of the Raw Water Dedication Policy (defined below).
- (7) The Construction Escrow Agreement.
- (8) The Credit Escrow Agreement.
- (9) The Tenancy in Common Agreement.
- (10) A closing statement executed by Greeley.
- (11) The Certificate evidencing Wingfoot's ownership of the Initial Credits.
- (12) Twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits, in the name of Wingfoot.
- (13) Twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits, in the name of the Credit Escrow Transferee.
- (14) Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

Collectively, except for the Initial Credits, all other documents identified under Sections 6.3.A and 6.3.B shall be referred to as the "Closing Documents."

C. Closing Agent. The Title Company shall record and/or distribute the Closing Documents and shall hold, in escrow, the Certificates evidencing Wingfoot's ownership of the Initial Credits until Wingfoot has satisfied its Initial Contribution obligation. The Parties shall instruct the Escrow Agent to release such Certificates to Wingfoot simultaneous with Wingfoot's satisfaction of its Initial Contribution, which enables Wingfoot to satisfy its obligation to make the Initial Contribution from the sale of the Initial Credits.

ARTICLE 7 PRORATIONS; CLOSING COSTS

7.1 Prorations. All real estate taxes attributable to the Assets, if any, for the calendar year in which the Closing occurs shall be prorated at the Closing on the basis of the most recent mill levy, unless the actual real estate taxes for the current year are known on the Closing Date. Wingfoot shall pay any special assessments against the Assets, if any, in full at the time of Closing. Prorations of taxes and assessments at Closing shall be a final settlement. All fees and payments for the current year due under the State Land Board Lease shall be prorated as of the Closing Date, based on the most recent payment provided by Wingfoot to the State of Colorado, State Board of Land Commissioners.

7.2 Closing Costs. Greeley shall pay for the cost of recording of all of the deeds, all title insurance endorsements and one-half (1/2) of the Title Company closing costs. Wingfoot shall pay the initial basic premium for the Title Policy, and one-half (1/2) of the Title Company closing costs. Each party shall pay its own attorneys' fees and Greeley shall be solely responsible for the payment of any real estate escrow fees to the Title Company.

ARTICLE 8 TENANCY IN COMMON

8.1 Tenancy in Common Agreement. The form of Tenancy in Common Agreement is attached hereto as Exhibit L.

8.2 Conveyance of the Tenancy in Common Interest.

A. Conveyances. Subject to Greeley's consent and except as otherwise provided in this Section 8.2.A, Wingfoot may convey all or any portion of Wingfoot's TIC Interest to a third-party (a "Third Party Transfer"), provided that the Third Party Transfer (1) identifies Greeley as a party to the agreement between Wingfoot and the third-party; (2) obligates the third-party to simultaneously convey its entire interest in the Water Rights to Greeley in exchange for a number of Raw Water Credits bearing the same proportion to the total number of Raw Water Credits as the fractional interest conveyed in the Water Rights bears to the entire interest in the Water Rights; (3) identifies the full cash consideration for such portion and such amount is certified to Greeley by Wingfoot and shown in the property declaration with respect to such Third Party Transfer; (4) shall not obligate Greeley to accept title to any property other than the Water Rights and (5) requires conveyance to Greeley consistent with the Tenancy in Common Conveyance Documents defined in Section 8.2.B (Form of Conveyance). If Wingfoot has not fully satisfied its Cash Contribution obligation on the date of the closing of any Third Party Transfer, then Wingfoot shall deposit in the Construction Escrow at closing the lesser of (a) its then remaining Cash

Contribution obligation, or (b) ninety percent (90%) of the Net Cash Proceeds. Notwithstanding the foregoing, Wingfoot may not convey Wingfoot's TIC Interest in a cashless exchange for like property. If and when the proposed Third Party Transfer is consistent with the conditions set forth in clauses (1) – (5) in all material respects, then Greeley shall present the same to the Greeley Water and Sewer Board for approval within forty-five (45) days after receipt by Greeley of a purchase and sale agreement relating to such Third Party Transfer (the "Interim Period"). If the Greeley Water and Sewer Board rejects or does not approve the proposed Third Party Transfer within the Interim Period, then within twenty (20) days after the earlier of (x) Greeley Water and Sewer Board's rejection of the proposed Third Party Transfer or (y) expiration of the Interim Period without Wingfoot's receipt of written approval of the proposed Third Party Transfer from Greeley, Greeley shall pay to Wingfoot one hundred twenty-five percent (125%) of the sales price relating to the proposed Third Party Transfer (the "Prohibited Transfer Fee") and Wingfoot shall concurrently transfer to Greeley Wingfoot's TIC Interest identified in the proposed Third Party Transfer. No portion of the Prohibited Transfer Fee shall be subject to the Deposit Obligation of Section 9.1.B (Source of Funds).

B. Form of Conveyance. Wingfoot shall convey Wingfoot's TIC Interest, and shall cause that portion of Wingfoot's TIC Interest conveyed to a third-party, if any, to be conveyed to Greeley, free and clear of all liens and encumbrances except for Permitted Exceptions, by executing the forms attached hereto as Exhibit Q (the "Tenancy in Common Conveyance Documents").

8.3 Termination of the Tenancy in Common; Ten-year limit. The Tenancy in Common shall terminate and ownership of the Water Rights shall vest entirely in Greeley (subject to any conveyances made by, through or under Greeley) upon the earlier of (i) the transfer of one hundred percent (100%) of the ownership of the Water Rights to Greeley or (ii) ten (10) years following the Closing Date, subject to Greeley's obligations and the other terms of this Agreement.

8.4 Use. Subject to the terms of the Tenancy in Common Agreement and Greeley's compliance with the terms of this Agreement, Wingfoot agrees that, after Closing, Greeley shall have the exclusive right to use the Water Rights, and Wingfoot shall not access or use the Water Rights without Greeley's written permission.

ARTICLE 9

CONSTRUCTION ESCROW

9.1 Construction Escrow. At Closing, the Parties shall execute an escrow agreement to manage the deposit and release of the Project Infrastructure funds substantially in the form attached hereto as Exhibit F (the "Construction Escrow Agreement"). Notwithstanding the preceding sentence, the Parties acknowledge and agree that the Construction Escrow Agreement attached hereto may be subject to revision as may be necessary or convenient to obtain approval from the escrow agent. Subject to the terms of this Agreement, Wingfoot shall deposit a total of one hundred twenty-five million dollars (\$125,000,000) ("Cash Contribution") in an escrow account established and maintained pursuant to the Construction Escrow Agreement (the "Construction Escrow"). The Cash Contribution is estimated to cover one-half of the estimated cost to plan, develop, permit and construct the Project Infrastructure ("Project Infrastructure Costs") and shall be funded and due as provided below, provided that "Project Infrastructure

Costs” shall not include debt service payable by Greeley. For federal, state and local income tax purposes, notwithstanding the funding mechanism set forth in this Agreement, the Parties acknowledge that Wingfoot intends to treat the Cash Contribution as a reduction in the amount realized by Wingfoot in respect of the transfer of Wingfoot’s TIC Interest or sale of Raw Water Credits, in order to reflect the fact that the Cash Contribution will reduce Wingfoot’s net economic gain derived from the transfer of Wingfoot’s TIC Interest or sale of Raw Water Credits, Wingfoot does not obtain any property or derive any separate benefit from the Cash Contribution, and the benefit of the Cash Contribution inures entirely to Greeley (in the form of Project Infrastructure owned by Greeley). For example, if the gross purchase price of a Raw Water Credit is thirty thousand dollars (\$30,000) and Wingfoot has not satisfied its Deposit Obligations under Section 9.2(B) (Source of Funds), then Wingfoot shall deposit ninety percent (90%) of such purchase price (twenty-seven thousand dollars (\$27,000)) to the Construction Escrow as a Deposit Obligation, reducing the amount realized by Wingfoot in respect to the sale of such Raw Water Credit to three thousand dollars (\$3,000). In furtherance of the foregoing, for federal, state, and local income tax purposes, (x) Wingfoot intends to treat the Initial Contribution (defined below) as an advance reduction in Wingfoot’s amount realized in respect of transfers of Wingfoot’s TIC Interest, and (y) Wingfoot may determine the extent to which a portion of the total reduction in the amount realized by Wingfoot (i.e., the total Cash Contribution, including the Initial Contribution) shall be attributed to any specific transfer of a portion of Wingfoot’s TIC Interest. It is the intent of the Parties that, to the greatest extent possible, Wingfoot shall not be treated as having an amount realized from the transfer of a portion of Wingfoot’s TIC Interest greater than the net amount of cash retained by Wingfoot in connection with that transfer, after the satisfaction of Wingfoot’s funding obligations as set forth herein. Neither Party shall take a position contrary to the positions and statements set forth in this Section 9.1.

A. Deposits Due. Within ninety (90) days after the Closing, Wingfoot shall deposit twenty-five million dollars (\$25,000,000) (“Initial Contribution”) in the Construction Escrow and provide written notice thereof to Greeley and the Title Company. The balance of the Cash Contributions shall be due on the earlier to occur of (i) twenty-four (24) months after Greeley provides written notice of its intent to construct the Project Infrastructure (“Notice to Construct”) or (ii) ten (10) years after the Closing Date (the “Contribution Deadline”). Greeley shall have no deadline or timeline to commence or complete construction of the Project Infrastructure. Notwithstanding the foregoing, Greeley may not issue the Notice to Construct sooner than two (2) years after the Closing Date unless Wingfoot has fully satisfied its Cash Contribution obligation within such time. Wingfoot shall have no obligation to fund the Construction Escrow or the Project Infrastructure in excess of the Cash Contribution and Greeley shall be solely responsible for all costs related to the Project Infrastructure exceeding the Cash Contribution.

B. Source of Funds. Until Wingfoot has fully satisfied its Cash Contribution obligation, Wingfoot shall deposit or arrange for the deposit of ninety percent (90%) of the Net Cash Proceeds received by Wingfoot (collectively, the “Deposit Obligations”). Notwithstanding anything to the contrary in this Section 9.1.B, Wingfoot shall retain one hundred percent (100%) of the proceeds from, and the Deposit Obligations shall not include, the sale of the Exercised Credits and the Released Credits pursuant to Article 11 (Put and Call Options) and from the Prohibited Transfer Fee. To track Wingfoot’s obligation under this Section 9.1.B Wingfoot shall, promptly after each such deposit of a Deposit Obligation, provide to Greeley (i) a settlement statement evidencing the purchase price and (ii) a statement evidencing that ninety percent (90%)

of the Net Cash Proceeds has been deposited in the Construction Escrow, along with the surrendered Certificate(s) or a copy of the deed transferring the Water Rights to a third-party pursuant to Section 8.2.A (Conveyance) until Wingfoot's obligation to fund the Cash Contribution has been fully satisfied. If the surrendered Certificate, or portion thereof, qualifies as a Released Credit, Wingfoot may retain one hundred percent (100%) of the proceeds.

C. Greeley's Contribution. No less than thirty (30) days before Greeley requests withdrawal of any amount from the Construction Escrow, Greeley shall deposit in an escrow account established and maintained pursuant to the Construction Escrow Agreement that is separate from the Construction Escrow ("Prorated Escrow"), an amount sufficient to maintain Greeley's aggregate, prorated share of contributions to the total Project Infrastructure Costs at the percentages shown in the table below (the "Prorated Contributions").

Project Infrastructure Costs			Wingfoot Portion		Greeley Portion	
From	To	Total Cost	Contribution to Total Cost	Percent of Total Cost	Contribution to Total Cost	Percent of Total Cost
\$0	\$78,125,000	\$78,125,000	\$62,500,000	80.00%	\$15,625,000	20.00%
\$78,125,000	\$203,125,000	\$125,000,000	\$62,500,000	50.00%	\$62,500,000	50.00%
Total		\$203,125,000	\$125,000,000	61.54%	\$78,125,000	38.46%

D. Release of Funds. Greeley may not draw upon the available Cash Contribution for Project Infrastructure construction costs less than ninety (90) days after the Closing Date. Any withdrawals after the 90-day period are subject to the following conditions: (i) Greeley must be in compliance with its obligation under Section 9.1.C (Greeley's Contribution) as of the date of withdrawal, and (ii) Greeley must (a) simultaneously withdraw an amount from the Prorated Escrow proportionate to Greeley's percent of total costs shown in the table in paragraph C of this Section 9.1.D and (b) use such funds from the Prorated Escrow and Construction Escrow solely for the planning, development, permitting and construction of Project Infrastructure. To track Greeley's compliance with this Section 9.1.D, Greeley shall provide Wingfoot with a copy of the statement evidencing withdrawal of a proportionate amount of funds from the Prorated Contribution, prior to the release of funds from the Construction Escrow to Greeley. Upon written request from Wingfoot, Greeley shall furnish evidence that the funds withdrawn have been spent on Project Infrastructure Costs. After substantial completion of the Project Infrastructure, or upon termination of this Agreement by operation of Section 14.2.B(3) (Remedies, Generally), the balance of the Cash Contribution in the Construction Escrow, if any, remaining shall be released to Wingfoot and the balance of the Prorated Contribution, if any, remaining shall be released to Greeley.

9.2 Failure to Fund.

A. Failure to Fund the Initial Contribution. If Wingfoot fails to deposit the Initial Contribution in the Construction Escrow within ninety (90) days of the Closing Date, then this Agreement shall automatically terminate, and pursuant to Section 14.2.A(3) (Remedies, General): (a) the Purchase Price shall be returned to Greeley; (b) the Initial Tenancy in Common Interest shall be conveyed back to Wingfoot, along with a reassignment of the Ancillary Assets and the State Land Board Lease; and (c) all documents deposited by Greeley or delivered to Wingfoot by Greeley, including without limitation the Initial Credits, shall be immediately returned to Greeley, if any, and all documents, deposited by Wingfoot or delivered to Greeley by Wingfoot shall be immediately returned to Wingfoot, if any. In addition, Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, which shall include, but not be limited to, the Inspection Costs. Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement, except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the termination of this Agreement to the extent set forth in Section 17.9, for the time period(s) specified therein.

B. Failure to Fund the Cash Contribution. If Wingfoot fails to fully satisfy its Cash Contribution obligation by the Contribution Deadline, and Greeley has not (i) breached any of its obligations under Section 10.5 (Material Change to Market Value); (ii) breached any of its obligations under Section 9.1.C (Greeley's Contributions) or Section 9.1.D (Release of Funds); or (iii) committed a default or otherwise breached this Agreement that prevented or interfered with or adversely affected Wingfoot's ability to fund the Cash Contribution, then Greeley shall provide Wingfoot with written notice of such failure to satisfy Wingfoot's Cash Contribution (a "Payment Default"). If Wingfoot does not cure such Payment Default within sixty (60) days after its receipt of written notice from Greeley of such Payment Default (not subject to any additional cure period under Section 14.2.D (Remedies, Generally), then pursuant to Section 14.2.A(4) (Remedies, Generally), Greeley may elect to require that Wingfoot convey the entirety of Wingfoot's TIC Interest to Greeley, and Wingfoot shall be obligated to effect such conveyance, and Wingfoot shall continue to be subject to its Deposit Obligation under Section 9.1.B (Source of Funds) until Wingfoot's Cash Contribution obligation is fully satisfied. Other than Raw Water Credits subject to the Put Option and Call Option as set forth in Article 11 (Put and Call Option), Greeley shall not be required to issue any additional Raw Water Credits (other than transfers of outstanding Raw Water Credits in the Registry) in exchange for a transfer of Wingfoot's TIC Interest pursuant to this Section 9.2.B.

ARTICLE 10 RAW WATER CREDITS

10.1 Raw Water Credit.

A. Authorization. At Closing, Greeley shall authorize the issuance of twelve thousand one hundred twenty-one (12,121) credits, with each credit representing the equivalent of, but not an interest in, one (1) acre foot of raw water (each a "Raw Water Credit").

B. Issuance. Simultaneous with or after Wingfoot satisfies its Initial Contribution pursuant to Section 9.1.A (Deposit Due), Wingfoot may request from Greeley the issuance to it of up to seven thousand nine hundred forty-six (7,946) Raw Water Credits (inclusive of the Initial Credits but less the Escrowed Credits) at any time prior to the date which is ten (10) years after the Closing Date. Within thirty (30) days of receipt of a request for Raw Water Credits from Wingfoot pursuant to this Section 10.1(B), Greeley shall issue the corresponding amount of Raw Water Credits to Wingfoot. If any Raw Water Credits remain unissued as of the date which is ten (10) years after the Closing Date, then all remaining unissued Raw Water Credits shall be issued to Wingfoot in consideration of Wingfoot transferring Wingfoot's TIC Interest to Greeley pursuant to Section 10.2 (Transfer of Tenancy in Common Interest) as of that date.

C. Form. The issuance of all Raw Water Credits shall be documented by the delivery of certificates in the form attached as Exhibit E (each a "Certificate"). A single Certificate may represent any whole number of Raw Water Credits. Each Certificate shall evidence the rights of the original or any subsequent Registered Owner (defined below) thereof with respect to the Raw Water Credits evidenced thereby.

D. Redemption Period. The form of Certificate shall provide that any Registered Owner may redeem a Raw Water Credit from Greeley through December 31, 2099, subject to the terms and conditions of the Certificate and the Raw Water Dedication Policy.

E. Limitations; Sales. All Raw Water Credits issued to Wingfoot shall be subject to Section 10.2 (Transfer of Tenancy in Common Interest). After issuance, Wingfoot may sell, convey, or transfer a Raw Water Credit to a third-party, subject to Section 9.1.B (Source of Funds). All Registered Owners, including Wingfoot, may freely sell, transfer, or convey Raw Water Credits to third-parties subject to compliance with Section 10.3 (Administration; Tracking).

10.2 Transfer of the Tenancy in Common Interest. Greeley's issuance of a Raw Water Credit to Wingfoot shall obligate Wingfoot to convey an amount of Wingfoot's TIC Interest to Greeley as described in this Section 10.2. Wingfoot shall satisfy this obligation on a semiannual basis. On February 1 and August 1 of each year, Greeley and Wingfoot shall calculate the total number of Raw Water Credits issued to Wingfoot and the total number of Raw Water Credits released from the Credit Escrow pursuant to Article 11 during the preceding six months, but excluding the amount issued to a third-party pursuant to Section 8.2A (Conveyance) (collectively, the "Semester Total"). By each February 15 and August 15, Wingfoot shall convey to Greeley a fraction of the total interests in the Water Rights (out of Wingfoot's TIC Interest) with the (i) numerator being equal to the Semester Total and (ii) denominator being twelve thousand one hundred twenty-one (12,121) (i.e., the total authorized number of Raw Water Credits). Wingfoot shall convey any portion of Wingfoot's TIC Interest to Greeley in accordance with the terms and conditions of the Tenancy in Common Agreement and Section 8.2.B (Form of Conveyance). Upon the issuance of all of the Raw Water Credits available to Wingfoot under this Agreement, Wingfoot shall convey all of Wingfoot's TIC Interest to Greeley, at which point the tenancy in common shall terminate and one hundred percent (100%) ownership in and to the Water Rights will vest in Greeley, except to the extent that Greeley has assigned or encumbered any of its interest in the Tenancy in Common or the Water Rights.

10.3 Administration; Tracking.

A. Issuance. Greeley's Water and Sewer Department, acting on behalf of Greeley, (the "Department") shall establish and maintain a written record of all issued and outstanding Certificates (the "Registry"). The Registry shall include, but is not limited to, (i) the name of the person or entity to whom a Certificate has been issued or transferred ("Registered Owner"), (ii) the date of issuance or transfer, as applicable, (iii) the Registered Owner's contact information as of the date of the issuance or transfer, (iv) the Certificate Number affixed thereto, and (v) the number of Raw Water Credits evidenced thereby.

B. Assignment. A Certificate may be transferred in the Registry, in whole or in part, but only in whole numbers of Raw Water Credits, by the Registered Owner upon presentation of the original Certificate with the form of assignment thereon, properly executed and acknowledged. If Wingfoot is the Registered Owner and Wingfoot has not fully satisfied its Cash Contribution obligation, then Wingfoot must submit documentation and deposit or arrange for the deposit of funds as required by Section 9.1.B (Source of Funds) along with the original Certificate and the properly executed and acknowledged assignment. Certificates for fractional Raw Water Credits will not be issued or accepted by Greeley. If a Registered Owner assigns only a portion of the Raw Water Credits evidenced by a Certificate, then the Department will issue the first Certificate to the assignee for the amount assigned and a second Certificate to the assignor (i.e., the original Registered Owner) for the amount retained. The Department shall not be obligated to: (i) recognize any person or entity as the owner of a Certificate, or having any interest therein, who does not appear as the Registered Owner thereof in the Registry or (ii) issue or reissue a Certificate to a Registered Owner, including Wingfoot, who has failed to comply with this Section 10.3 with respect to the Raw Water Credits evidenced or to be evidenced by such Certificate, until such failure to comply is remedied or cured.

C. Redemption; Cancellation of Credit. A Registered Owner may redeem a Raw Water Credit in satisfaction of any cash-in-lieu fee obligation associated with the Registered Owner's request for water service as prescribed by the Raw Water Dedication Policy. If a Registered Owner presents a Certificate to Greeley and redeems a Raw Water Credit in satisfaction of the Raw Water Dedication Policy or if Wingfoot surrenders a Certificate evidencing put or called Raw Water Credits pursuant to Section 11.5 (Release; Payment; Cancellation of Raw Water Credits), then the Raw Water Credits so presented or acquired shall be deemed exercised and the Certificate or Certificates evidencing the same shall be cancelled.

10.4 Audit of Registry and Sales.

A. Wingfoot's Records. Upon no less than ten (10) days' written notice to Wingfoot, Greeley may audit Wingfoot's non-Confidential records related to the sale of Raw Water Credits or transfer, disposition, or encumbrance of the Water Rights. As used in the preceding sentence, "Confidential" means any documents or other information that Wingfoot believes in good faith would create a risk of financial or other injury if disclosed; provided, however, that proposed sale price and accounting of the Net Cash Proceeds of proposed or completed Third Party Transfers shall not be considered Confidential. Greeley agrees that it will not request an audit more than once in a calendar year, unless (a) an audit or investigation is required by any governmental or regulatory authority or (b) Greeley reasonably believes that an audit is necessary to address a potential breach of this Agreement. If during the course of an audit Greeley reasonably determines that Wingfoot has sold Raw Water Credits or transferred, disposed

or encumbered the Water Rights in a manner that (x) either (i) violates this Agreement or (ii) constitutes an Event of Default by Wingfoot, and (y) individually or in the aggregate has a Material Adverse Effect on Greeley's interest in the Assets, then Greeley shall provide written notice to Wingfoot and an opportunity to cure such default in accordance with Article 14. Upon Wingfoot's failure to cure such default, Greeley may pursue any applicable or available remedy under this Agreement.

B. Greeley's Records. Upon no less than ten (10) days written notice to Greeley, Wingfoot may audit the Registry and Greeley's policies, procedures and records that relate to the maintenance of the Registry under this Agreement to ensure accurate and complete records consistent with Section 10.3 (Administration; Tracking). Wingfoot agrees that it will not request an audit more than once in a calendar year, unless (i) an audit or investigation is required by any governmental or regulatory authority or (ii) Wingfoot reasonably believes that an audit is necessary to address a potential breach of this Agreement. If during the course of an audit Wingfoot reasonably determines that the tracking of the Raw Water Credits in the Registry is deficient or that Greeley is in default of this Agreement (each, a "Registry Default"), then Wingfoot shall provide written notice to Greeley and an opportunity to cure such Registry Default in accordance with Article 14. If Greeley fails to cure such default, Wingfoot may pursue any applicable or available remedy under this Agreement including, but not limited to, the remedy in Section 10.4.C (Election to Require External Registrar) below. As used in this Section 10.4, "deficient" means that the administrator failed to (i) retain accurate records of ownership or redemption of Raw Water Credits, or (ii) record any transfer or issuance of Raw Water Credits within thirty (30) days of (x) receipt of the proper form of assignment, or (y) the date of such issuance, as the case may be.

C. Election to Require External Registrar. If, after notice and opportunity to cure, Greeley fails to cure either (i) a Registry Default, or (ii) an Event of Default arising from a breach of the provisions of Section 10.3 (Administration; Tracking), in each case, within thirty (30) days of receipt of notice from Wingfoot, and the Parties agree that this thirty (30) day period is the sole cure period under this Section 10.4.C and they shall disregard the application of any and all other cure periods set forth in this Agreement, then Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Wingfoot may require that Greeley retain at Greeley's cost a financial institution experienced in maintaining similar registries to act as the registrar and administer the Registry until the earlier of December 31, 2009, or the last day upon which any Raw Water Credits remain outstanding.

10.5 Material Change to Market Value.

A. Raw Water Dedication Policy Changes.

(1) Revocation. If the City revokes or rescinds the Raw Water Dedication Policy to deny acceptance of Raw Water Credits (except as provided under Section 10.5.A. of this Agreement) prior to the earlier of December 31, 2009, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may elect to terminate this Agreement and Wingfoot (and Credit Escrow Transferee) shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(2) Amendments.

(a) Adding New Sources. The City may amend the Raw Water Dedication Policy to accept a New Source (defined below) in dedication and satisfaction of its raw water requirements, provided that such amendment does not occur within ten (10) years of the Closing Date. A “New Source” shall mean raw water taken in dedication from a source other than water attributable to units or shares of the following: (i) Colorado Big-Thompson Project, (ii) Greeley-Loveland Irrigation Company, (iii) Seven Lakes Reservoir Company, (iv) Loveland and Greeley Reservoir Company, (v) Greeley Irrigation Company, and/or (vi) any other water right used to historically irrigate lands within the Service Area, provided that the dedication of such water rights is limited to the satisfaction of the non-potable demand and are used to continue irrigating the historically irrigated lands. If the City amends the Raw Water Dedication Policy to accept a New Source less than ten (10) years after the Closing Date, then Wingfoot may terminate this Agreement and Wingfoot (and Credit Escrow Transferee) shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(b) Limiting Redemption of Raw Water Credits. As of the Closing Date, the Raw Water Dedication Policy shall provide that a Registered Owner may satisfy up to one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation under the Raw Water Dedication Policy with Raw Water Credits. The City may amend the Raw Water Dedication Policy to limit a Registered Owner’s right to satisfy up to one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits, provided that such amendment does not (i) occur on or before fifteen (15) years after the Closing Date, and (ii) reduce the proportion of Raw Water Credits that may be redeemed in satisfaction of a Registered Owner’s cash-in-lieu fee obligation below seventy-five percent (75%) of such obligation. If the City (i) amends the Raw Water Dedication Policy to limit, or (ii) otherwise reduces, a Registered Owner’s right to satisfy one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits before fifteen (15) years after the Closing Date, then Wingfoot may terminate this Agreement and shall have the remedies provided in Section 14.2.B(3) (Remedies, Generally). If the City (i) amends the Raw Water Dedication Policy to limit, or (ii) otherwise reduces, a Registered Owner’s right to satisfy not less than seventy-five percent (75%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may terminate this Agreement and Wingfoot (and Credit Escrow Transferee) shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(c) Disadvantaging Raw Water Credits. Except as provided in Section 10.5.A(2)(c)(i) (Permissible Policy Change) and subject to Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), if the City amends or revises the Raw Water Dedication Policy or enters into an agreement pursuant to Section 14.06.190 of the City’s Municipal Code that has the effect of disadvantaging a Raw Water Credit relative to other sources or means of satisfying the City’s raw water dedication requirements prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may elect to terminate this Agreement and Wingfoot (and Credit Escrow Transferee) shall have the remedies provided in

either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(i) Permissible Policy Changes. Notwithstanding Section 10.5.A.(2)(c) (Disadvantaging Raw Water Credits) above and subject to Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), the City may amend or revise the Raw Water Dedication Policy to: (i) address non-substantive administrative, clerical, or procedural changes, including but not limited to any municipal code renumbering, that do not have the effect of disadvantaging a Raw Water Credit relative to other sources or means of satisfying the City's raw water dedication requirements; (ii) reflect or address a change in water use and/or consumption that is supported by economic or scientific analysis and is consistent with reasonable industry practice; or (iii) comply with applicable federal and state law (each a "Permissible Policy Change"). The intent of a Permissible Policy Change is to narrowly tailor such change to minimize a reduction or adverse change in the value of the Raw Water Credits. Subject to the process set forth in Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), if the City amends or revises the Raw Water Dedication Policy and such amendments or revisions do not qualify as a Permissible Policy Change prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may terminate this Agreement and Wingfoot (and Credit Escrow Transferee) may exercise the remedies under either Section 14.2.B(3) (Remedies, Generally) or Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(ii) Objection to a Proposed Change. If the City approves an agreement pursuant to Section 14.06.190 of the Greeley Municipal Code or adopts an amendment or revision to the Raw Water Dedication Policy in a manner that is inconsistent with or otherwise violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes) prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then the Certificate shall provide a means for all Registered Owners (including Wingfoot and Credit Escrow Transferee) to object to such amendments or revisions consistent with the following process. All Registered Owners will be deemed to have notice of any agreement approved pursuant to Section 14.06.190 or any amendment or revision to the Raw Water Dedication Policy adopted pursuant to such policy if the City follows its normal ordinance adoption, hearing and publication requirements in accordance with C.R.S. §24-6-402(2)(c), Section 3-17 of the City's Charter, and the Raw Water Dedication Policy. Registered Owners may object to the proposed final approval of any such agreement or the proposed final adoption of any such amendment or revision to the Raw Water Dedication Policy by providing written notice to the Department (an "Objection"), certified by a majority of the Registered Owners of the then-outstanding Raw Water Credits (through a duly-appointed "Committee Representative", the "Registered Owner Committee"), no less than five (5) days prior to the date of the public hearing of the ordinance approving an agreement pursuant to Section 14.06.190 or adopting an amendment or revision to the Raw Water Dedication Policy. In accordance with Section 3-17 and the Raw Water Dedication Policy, the date of the public hearing shall be published after the first reading and shall be set for a date no less than twenty-eight (28) days after the first reading. The Objection shall include the Registered Owner Committee's basis for the Objection and, to the extent possible, suggested modifications that would resolve the Objection. After receipt of such Objection, the Department shall remove the ordinance approving the agreement or adopting the amendment or revision to the Raw Water Dedication Policy from

the City Council's agenda. Thereafter, the Department, and the Committee Representative shall have thirty (30) days from the date of receipt of the Objection to resolve the Objection. If the Committee Representative does not withdraw the Objection, in writing, thirty (30) days from the date of receipt of the Objection, then the Department and the Committee Representative shall submit the agreement or amendments or revisions, along with each party's respective position, to an economist or engineer, agreeable to both parties, who is a Colorado based utility rate or policy expert, to determine whether the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or the amendment or revision qualifies as a Permissible Policy Change. The economist or engineer's findings shall be binding on Greeley and the Registered Owner Committee (acting by and through the Committee Representative). If the economist or engineer finds that the agreement does not violate Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or that the amendment or revision qualifies as a Permissible Policy Change, then the Registered Owners shall not be entitled to exercise the remedy defined in Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate) pursuant to Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes), as the case may be. If the economist or engineer finds (x) either (i) that the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or (ii) that the amendment or revision does not qualify as a Permissible Policy Change and (y) the City does not amend or reject the agreement or the ordinance amending or revising the Raw Water Dedication Policy to resolve or otherwise satisfy the Registered Owner Committee's Objection, then a Registered Owner may surrender all or a portion of the Raw Water Credits (but only in whole numbers of Raw Water Credits) held by such Registered Owner to the Department and exercise the remedy defined in Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate) pursuant to Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes), as the case may be. If the Registered Owner Committee, acting by and through a Committee Representative, does not provide an Objection to the Department, five (5) days prior to the date of the public hearing of the ordinance approving an agreement pursuant to Section 14.06.190 or adopting an amendment or revision to the Raw Water Dedication Policy, then each Registered Owner shall be deemed to have consented to the agreement or to have accepted the amendment or revision to the Raw Water Dedication Policy as a Permissible Policy Change. Nothing in this Section 10.5.A(2)(c)(ii) shall be read to limit the Registered Owner Committee or individual Registered Owners from participating in any public hearing on an ordinance approving an agreement pursuant to Section 14.06.190 or amending or revising the Raw Water Dedication Policy. In addition to the foregoing, if Wingfoot has not conveyed one hundred percent (100%) of Wingfoot's TIC Interest when the economist or engineer finds that (x) either (i) the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or (ii) that the amendment or revision does not qualify as a Permissible Policy Change, and (y) the City does not amend or reject the agreement or the ordinance amending the Raw Water Dedication Policy to resolve or otherwise satisfy the Registered Owner Committee's Objection, then Wingfoot may terminate this Agreement and Wingfoot (and Credit Escrow Transferee) may exercise the remedies under either Section 14.2.B(3) or Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(3) Reserved.

(4) Rights of Registered Owners Derived Solely from Certificate. The form of the Certificate shall include the terms of Section 10.5.A(1) (Revocations) and Section

10.5.A(2) (Amendments). If, prior to the earlier of December 31, 2099 or the date the last outstanding Raw Water Credit is redeemed, Greeley (i) revokes or rescinds the Raw Water Dedication Policy pursuant to Section 10.5.A(1) (Revocation), (ii) adds a new source in violation of Section 10.5.A(2)(a) (Adding New Sources), (iii) limits or reduces the redemption of the Raw Water Credits or otherwise is in violation of Section 10.5.A(2)(b) (Limiting Redemption of Raw Water Credits), (iv) enters into an agreement that violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits), or (v) approves an amendment or revision that does not qualify as a Permissible Policy Change pursuant to Section 10.5.A(2)(c)(ii), then, subject to Section 17.21 (Integrated Agreement), a Registered Owner's exclusive remedy shall be to have the option to surrender all or a portion of the Raw Water Credits (but only in whole numbers of Raw Water Credits) held by such Registered Owner to Greeley, and Greeley shall be obligated to buy back the surrendered Raw Water Credits at the greater of (a) thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 escalated three percent (3%) compounded annually thereafter, or (b) the three-year trailing average of Greeley's cash-in-lieu price, as defined by the Raw Water Dedication Policy. The form of the Certificate shall include the foregoing remedies and the instrument through which a Registered Owner shall exercise such rights and remedies, except that any rights and remedies of Wingfoot or a Credit Escrow Transferee shall not be limited or waived by this Section 10.5.A(4).

B. Cash-In-Lieu. If Greeley's calculated cash-in-lieu requirement, as provided in the Raw Water Dedication Policy, falls below thirty thousand dollars (\$30,000) per acre-foot ("Base Amount") in any year prior to the earlier of (i) December 31, 2099 or (ii) the date that Wingfoot transfers and assigns its last Raw Water Credit to a third-party as evidenced by the Registry, Greeley shall compensate Wingfoot by paying the Specified Difference to Wingfoot each year Greeley's calculated cash-in-lieu requirement falls below the Base Amount. The Specified Difference shall be an amount equal to the product of the number of Raw Water Credits (including the Released Credits) sold by Wingfoot to a third-party and the difference between the Base Amount and the cash-in-lieu requirement set for that year ("Specified Difference") which shall be considered liquidated damages pursuant to Section 14.2.C (Remedies, Generally). The Specified Difference shall be calculated one (1) year after each reduction in cash-in-lieu requirement becomes effective and shall be due and payable to Wingfoot thirty (30) days thereafter and shall only be payable to Wingfoot.

ARTICLE 11

PUT AND CALL OPTIONS

11.1 Options.

A. Call Option. Each calendar year, beginning in 2021 and expiring after July 15, 2045 ("Option Period"), Greeley may purchase (in its sole discretion), and Wingfoot shall sell, up to one hundred sixty-seven (167) Escrowed Credits (defined below) at the Option Price on an annual basis ("Call Option"), if Greeley timely delivers to Wingfoot and Credit Escrow Agent (defined below) the Call Notice (defined below). To exercise its Call Option, Greeley must provide written notice to Wingfoot and Credit Escrow Agent on or before June 8th of such calendar year ("Call Notice").

B. Put Option. Each calendar year, during the Option Period, Wingfoot may sell (in its sole discretion), and Greeley shall purchase, up to one hundred sixty-seven (167) Escrowed Credits at the Option Price on an annual basis (“Put Option”), if Wingfoot timely delivers to Greeley and Credit Escrow Agent the Put Notice (defined below). To exercise its Put Option, Wingfoot must provide written notice to Greeley and Credit Escrow Agent on or before July 15 of such calendar year (“Put Notice”). Wingfoot may also provide notice to Greeley and the Credit Escrow Agent at any date during the Option Period on or after June 8 of a commitment to not exercise the Put Option in any given year (a “Release Notice”) subject to any terms or conditions agreed by Wingfoot (or Credit Escrow Transferee) in any applicable indenture, assignment or pledge.

11.2 Escrowed Credits. For the purpose of reserving sufficient Raw Water Credits to support the Put Option and the Call Option, at Closing, the Parties shall execute an escrow agreement, substantially in the form attached hereto as Exhibit R (the “Credit Escrow”), with an escrow agent (the “Credit Escrow Agent”) to manage the deposit and release of twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits (“Escrowed Credits”) during the Option Period. Further, the Credit Escrow Agent will manage the deposit and release of an additional twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits deposited pursuant to Section 6.2, which shall not be considered Escrowed Credits for purposes of this Article 11. Notwithstanding the preceding sentence, the Parties acknowledge and agree that the Credit Escrow attached hereto may be subject to revision as may be necessary or convenient to obtain approval from the Credit Escrow Agent. Escrowed Credits held in escrow for the benefit of Wingfoot, or any duly-approved assignee hereunder (including Credit Escrow Transferee), shall be considered issued for all purposes.

11.3 Released Credits. To the extent that the Put Option and/or Call Option are not exercised in full in any calendar year with respect to all of the one hundred sixty seven (167) annual Escrowed Credits (such non-exercised credits being referred to as the “Released Credits”), then all Released Credits shall no longer be subject to the Put Option or the Call Option in future years. If neither the Put Option nor Call Option are exercised in any given calendar year, then on the earlier to occur of (i) the Credit Escrow Agent’s receipt of a Release Notice; or (ii) July 16 of such year, the Credit Escrow Agent shall promptly deliver a Certificate representing all such Released Credits to Wingfoot, and, prior to the date which is ten (10) years after the Closing Date, the same amount shall be added to the Semester Total under Section 10.2 (Transfer of Tenancy in Common Interest). If the Put Option and/or Call Option are exercised in part or in full in any calendar year, then Section 11.5 (Release; Payment; Cancellation of Raw Water Credits) shall also apply. Notwithstanding anything to the contrary, Wingfoot shall retain one hundred percent (100%) of the proceeds received by it from the sale of any Released Credits.

11.4 Contents of Notices; Acknowledgement. Each Call Notice and Put Notice shall contain (a) the number of Raw Water Credits to which the Call Option or Put Option is being exercised (“Exercised Credits”), (b) the Option Price, and (c) the product of the Option Price and Exercised Credits (the “Exercise Price”), with respect to such Call Option or Put Option being exercised.

11.5 Release; Payment; Cancellation of Raw Water Credits. On July 16 of each year, in the event that the Put Option and/or Call Option is properly exercised by providing a timely Put

Notice or Call Notice, respectively (each, an “Exercise Event”), then (i) the Credit Escrow Agent shall release one (1) Certificate evidencing one hundred sixty-seven (167) Raw Water Credits to Greeley (the “Surrendered Certificate”) and (ii) the same amount shall be added to the Semester Total under Section 10.2. (Transfer of Tenancy in Common Interest). If an Exercise Event occurs in any calendar year as described in the preceding sentence, Wingfoot shall provide Greeley with wire transfer instructions (which may be included in the Put Notice, if applicable) on or before August 1. On or before the fifth (5th) business day after receipt of both the wire transfer instructions and the Surrendered Certificate, Greeley shall (x) pay Wingfoot the Exercise Price under the Put Notice and/or Call Notice, as applicable, and (y) Greeley shall issue Wingfoot a Certificate for the total Released Credits, if any, not exercised as part of any Exercise Event. Notwithstanding anything to the contrary, in addition to proceeds received from sales of any Released Credits, Wingfoot may retain one hundred percent (100%) of the Exercise Price and none of the Exercise Price shall be required to be put into any escrow or otherwise withheld.

11.6 Annual Limit. The annual aggregate maximum amount of Raw Water Credits that can be sold and purchased under the Put Option and Call Option shall be one hundred sixty-seven (167). Greeley shall not be obligated to purchase, and Wingfoot shall not be obligated to sell, more than an aggregate of one hundred sixty-seven (167) Raw Water Credits in any one year under the combined Call Option and Put Option for such calendar year.

11.7 Assignment; Transfer. Wingfoot, or any of its duly-authorized successors or assigns, may assign all of its rights (or remaining rights) under this Article 11 to a third-party and the Credit Escrow (such third party, a “Credit Escrow Transferee”), provided that the form of assignment (and any subsequent reassignment) shall be approved by Greeley in its reasonable discretion. On or shortly after Closing, Wingfoot intends to assign all of its rights under this Article 11 to a third-party directly or indirectly owned or controlled by HA I, LLC, which entity, as Credit Escrow Transferee, intends to assign its rights, remedies and obligations under this Article 11, including an assignment of revenues derived from the rights and/or obligations, to an indenture trustee in connection with financing secured by Wingfoot. In anticipation of that assignment, the Parties have agreed that Greeley shall issue a series of twenty-five (25) Certificates in the name of Wingfoot and a second series of twenty-five (25) Certificates, which have been duly assigned by Wingfoot, in the name of the Credit Escrow Transferee and to deliver both series of Certificates to the Credit Escrow Agent at Closing. Upon assignment of Wingfoot’s rights under this Article 11 and the Credit Escrow to a Credit Escrow Transferee, the following shall occur: (i) the Credit Escrow Agent shall be directed to release to Greeley (for cancellation by Greeley) the twenty-five (25) Certificates held in the name of Wingfoot, each evidencing 167 Escrowed Credits, along with the duly executed assignment by Wingfoot to the Credit Escrow Transferee; (ii) the Credit Escrow Agent shall be directed to continue to maintain custody of the remaining twenty-five (25) Certificates evidencing the issued but unreleased Escrowed Credits in the name of and for the benefit of the Credit Escrow Transferee; (iii) the total number of Raw Water Credits (totaling 4,175 credits) that are in the name of Wingfoot and released to Greeley pursuant to 11.7(i) shall be added to the applicable Semester Total under Section 10.2 (Transfer of the Tenancy in Common Interest); (iv) the Credit Escrow Agent shall be directed to accept notices and instructions from the Credit Escrow Transferee (including the Put Notice, Release Notice, and rights to the Released Credits) as though it were a party (as if it was Wingfoot) to this Agreement and the Credit Escrow; and (v) Wingfoot shall covenant and agree, for itself, its successors and assigns, to indemnify, protect, defend and hold harmless Greeley, its successors and assigns, from and against any and

all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including without limitation reasonable attorneys' fees) which are imposed upon or incurred by Greeley, its successors or assigns, for claims by any Credit Escrow Transferee against Greeley for breaches by Wingfoot of the assignment (described in this Section 11.7) to any Credit Escrow Transferee. Wingfoot agrees that the foregoing covenants and agreements shall survive any subsequent assignment. The Parties expressly acknowledge that an assignment of Wingfoot's or Credit Escrow Transferee's rights, remedies and obligations under this Article 11, including an assignment of revenues derived from the rights and/or obligations under this Article 11, to an indenture trustee in connection with financing secured by Wingfoot or Credit Escrow Transferee shall be permitted, provided such assignment otherwise complies with this Section 11.7. Upon assignment of Wingfoot's (or any subsequent Credit Escrow Transferee's) rights under this Article 11, the Credit Escrow Transferee shall be entitled to enforce Wingfoot's rights and remedies pursuant to Article 14 (Post-Closing Defaults and Remedies) and Section 10.5 (Material Change to Market Value), as may be applicable and to the extent of the Escrowed Credits, (i) in the event of any Greeley breach of its obligations under this Article 11, any default by Greeley under Article 14 or as may be owed to the Credit Escrow Transferee, or (ii) to otherwise enforce the protections applicable to the Escrowed Credits (including protections generally inuring to the benefit of the Raw Water Credits) under this Agreement. In addition, the Credit Escrow Transferee shall have the rights applicable to a Registered Owner under the Escrowed Credits, and shall be treated as the Registered Owner of the Escrowed Credits for such purpose (including, without limitation, for purposes of enforcing its remedies under the terms of the Certificates). Following transfer or assignment of Wingfoot's obligations, rights, and remedies pursuant to this Section 11.7, all references to Wingfoot in Article 11 shall mean and refer to Credit Escrow Transferee and its duly authorized successors and assigns.

11.8 Termination of Article 11. Except as otherwise provided, this Article 11 shall terminate at expiration of the Option Period. Upon expiration of the Option Period, all rights, remedies, and obligations under this Article 11 shall terminate, except for such rights, remedies and obligations that are left unperformed as of the date of the end of the Option Period. Subject to the preceding sentence, on termination of Article 11, Credit Escrow Transferee shall have remedies only under the terms of the Certificates it holds as a Registered Owner and not under this Agreement.

11.9 Treatment of Semester Total Following Assignment. Notwithstanding anything to the contrary in this Article 11 (including but not limited to Sections 11.3 and 11.5), exercise or release of any Escrowed Credits under this Article 11 shall not impact the Semester Total subsequent to Wingfoot's transfer or assignment of this Article 11 to a Credit Escrow Transferee pursuant to Section 11.7, the intent being that Wingfoot has transferred the amount of Wingfoot's TIC Interest that corresponds to the Escrowed Credits upon assignment of this Article 11.

ARTICLE 12
REVENUE SHARING

12.1 Revenue Sharing.

A. Use; Outside Customers Non-Municipal. From the Closing Date until the earlier of December 31, 2055, or twenty-five (25) years after Greeley has certified completion of the Project Infrastructure, Wingfoot shall be entitled to receive an amount equal to fifty percent (50%) of the Net Revenue generated by Greeley from the sale or lease of the untreated, raw water attributable to the Water Rights or the State Land Board Lease to non-municipal, non-domestic customers, including but not limited to oil and gas operators and agricultural water users. For this purpose, “Net Revenue” means an amount equal to the net proceeds of such sales or leases after deduction of power costs for any pumping required to deliver such water. Wingfoot shall also receive an amount equal to fifty percent (50%) of any revenue derived from the operation of power generation facilities constructed as part of the Project Infrastructure for a period of twenty-five (25) years after completion of the Project Infrastructure (“Power Revenue Interest”). In the event power generating facilities are completed as part of the Project Infrastructure prior to December 31, 2055, then on or before December 31, 2055, Greeley and Wingfoot shall appoint an independent third-party expert, agreeable to both Greeley and Wingfoot, who is an expert in power generation and valuation, to perform a valuation of the obligation of Greeley to pay the remaining 25-year Power Revenue Interest to Wingfoot beyond December 31, 2055 in addition to any then unpaid Power Revenue Interests (the “Power Valuation”) and deliver a written report of the Power Valuation to Greeley and Wingfoot. Within thirty (30) days of receipt of such report, Greeley shall purchase the remaining, unpaid Power Revenue Interest for the amount of the Power Valuation (the “Power Transaction”). Greeley shall determine in its sole discretion whether to sell or lease the untreated, raw water attributable to the Water Rights and the State Land Board Lease, and at what rate, and whether to install power generating capabilities. This provision shall only apply to the untreated, raw water attributable to the Water Rights and the State Land Board Lease, but shall not apply to the revenue generated from the sale or lease of wholly consumable effluent associated with Greeley’s use of the water attributable to the Water Rights and/or the State Land Board Lease.

B. Outside Customers. From the Closing Date until the earlier of December 31, 2050, or twenty-five (25) years after Greeley has certified completion of the Project Infrastructure, Wingfoot shall be entitled to receive an amount equal to fifty cents (\$0.50) per one-thousand (1,000) gallons of treated water attributable to the Water Rights and/or the State Land Board Lease and delivered by Greeley to municipal and domestic water users located outside of the Service Area. Greeley shall maintain and make available to Wingfoot on request, flow records and water rights accounting for any deliveries outside the Service Area.

ARTICLE 13
CONDITIONS OF CLOSING

13.1 Wingfoot’s Conditions. Wingfoot’s obligation to sell, convey and assign, as applicable, the Assets at Closing 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 Wingfoot). If Wingfoot elects not to close this transaction for failure of a condition, this Agreement shall terminate.

A. Delivery and execution by Greeley of all monies, items, and other instruments required to be delivered by Greeley at or prior to the Closing.

B. All of the actions contemplated by this Agreement to have been performed by Greeley at or before Closing shall have been completed.

C. There being no uncured default by Greeley of any of its obligations under this Agreement resulting in a Material Adverse Effect.

D. The pre-closing conditions under Section 6.1.A (Governing Body Approval) and B (Raw Water Dedication Policy) have been satisfied.

E. The warranties and representations made by Greeley as specifically set forth in Greeley's General Representations, attached as Exhibit K, shall be true and correct in all material respects as of the Closing Date, and the warranties and representations made by Greeley as specifically set forth in the Environmental Representations and Warranties, attached as Exhibit H, shall be true and correct in all material respects as of the Closing Date.

F. No Credit Event shall have occurred and be continuing with respect to Greeley.

13.2 Greeley's Conditions. The obligation of Greeley to acquire and assume, as applicable, the Assets at Closing 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). If Greeley elects not to close this transaction for failure of a condition, this Agreement shall terminate.

A. Delivery and execution by Wingfoot of all items and other instruments required to be delivered by Wingfoot at or prior to the Closing.

B. All of the actions contemplated by this Agreement to have been performed by Wingfoot at or prior to Closing shall have been completed.

C. There being no uncured default by Wingfoot of any of its material obligations under this Agreement resulting in a Material Adverse Effect.

D. No Credit Event shall have occurred and be continuing with respect to Wingfoot.

E. That the pre-closing condition under Section 6.1.A (Governing Body Approval) has been satisfied.

F. That the warranties and representations made by Wingfoot as specifically set forth in Wingfoot's General Representations and Warranties, attached as Exhibit J, and the Environmental Representations and Warranties, attached as Exhibit G, shall be true and correct in

all material respects as of the Closing Date and shall not be deemed waived in the event Greeley shall elect to close pursuant to Section 13.3.A(3) (Failure of Condition) below.

13.3 Failure of Condition.

A. Except (i) as set forth in subparagraph B below and (ii) for failure of the condition set forth in Section 13.2.E (Greeley's Conditions) which shall be subject to Section 6.1.A (Governing Body Approval), in the event of a failure of any condition contained in Section 13.2 (Greeley's Conditions), Greeley may in its sole discretion:

(1) Terminate this Agreement by written notice to Wingfoot, in which event: (a) all funds deposited by Greeley under this Agreement as of such date shall be immediately returned to Greeley and (b) Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, out-of-pocket costs incurred by Greeley subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement, which shall include but is not limited to the Inspection Costs; or

(2) Greeley may waive such default or condition and effectuate the Closing; or

(3) If the failure of condition consists of a default by Wingfoot that can be cured by action within the reasonable control of Wingfoot, Greeley may elect to treat this Agreement as being in full force and effect and Greeley shall have the right to specific performance, monetary damages arising out of such default, or both, EXCEPT THAT GREELEY SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

B. In the event of a failure of any condition contained in Section 13.1 (Wingfoot's Conditions) above, Wingfoot may in its sole discretion:

(1) Terminate this Agreement by written notice to Greeley, in which event Wingfoot shall retain the Deposit, as liquidated damages pursuant to Section 13.4 (Pre-Closing Liquidated Damages), in addition to reimbursements from Greeley of all of Wingfoot's reasonable, out-of-pocket costs incurred by Wingfoot subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement; or

(2) Wingfoot may waive such default or condition and effectuate the Closing and Wingfoot shall have the right to recover monetary damages arising out of such default, EXCEPT THAT WINGFOOT SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

WINGFOOT HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO SPECIFIC PERFORMANCE IN THE EVENT OF A DEFAULT BY GREELEY.

13.4 Pre-Closing Liquidated Damages. If Greeley defaults in any of its obligations under this Agreement prior to Closing and Wingfoot does not waive the default, Wingfoot's sole remedy shall be to terminate this Agreement and retain the amount of the Deposit as liquidated damages in addition to reimbursements from Greeley of all of Wingfoot's reasonable, out-of-

pocket costs incurred by Wingfoot subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement. WINGFOOT AND GREELEY ACKNOWLEDGE THAT WINGFOOT'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE DEPOSIT AND REIMBURSEMENTS IS A REASONABLE ESTIMATE OF WINGFOOT'S DAMAGES.

ARTICLE 14
POST-CLOSING DEFAULTS AND REMEDIES

14.1 Events of Default. After Closing, each of the following shall constitute an “Event of Default”:

- A. Failure by either Party to make any payment or deposit when due.
- B. Default by either Party in the due and punctual performance of any of its covenants, conditions, agreements or other provisions contained in this Agreement on its part to be performed, if such default continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by the non-defaulting Party; provided that if such default cannot be cured within such thirty (30) days, and during such thirty (30) day period the defaulting Party has taken commercially reasonable efforts to remedy such default and subsequently is diligently pursued to the completion of such performance, an Event of Default shall not be deemed to have occurred until ninety (90) days after written notice has been delivered.
- C. Subject to the survival provisions of Section 17.9 (Survival), any of the representations or warranties made by a Party shall prove to have been materially incorrect under the circumstances when made.
- D. The occurrence and continuation of a Credit Event with respect to either Party.

14.2 Remedies, Generally. Upon the occurrence and continuation of an Event of Default, the following remedies shall be available to the Parties:

A. Except as provided in Section 14.3.A (Special Provisions for Liquidated Damages) below, if an Event of Default by Wingfoot, Greeley may in its sole discretion:

- (1) Waive such default or condition; or
- (2) If the Event of Default by Wingfoot can be cured by action within the reasonable control of Wingfoot, then Greeley may elect to treat this Agreement as being in full force and effect and Greeley may suspend its obligation to issue, reissue, acquire or buy Raw Water Credits, except as may be required by Article 11 (Put and Call Options) (which obligations may not be suspended by Greeley, subject to Section 11.8), until the default is cured, and shall have the right to specific performance, damages, or both, EXCEPT THAT GREELEY SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES; or

(3) If the Event of Default by Wingfoot consists of a failure under Section 9.1.A (Deposit Due) to deposit the Initial Contribution within ninety (90) days of the Closing Date, then this Agreement shall automatically terminate, in which event: (a) the Purchase Price shall be returned to Greeley; (b) the Initial Tenancy in Common Interest shall be conveyed back to Wingfoot, along with a re-assignment of the Ancillary Assets and the State Land Board Lease; and (c) all documents deposited by Greeley or delivered to Wingfoot by Greeley shall be immediately returned to Greeley, if any, and all documents deposited by Wingfoot or delivered to Greeley by Wingfoot shall be immediately returned to Wingfoot, if any. In addition, Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, which shall include but not be limited to the Inspection Costs. Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement, except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement, for the time period(s) specified therein, and the rights and obligations of the Registered Owners of any Certificates remaining outstanding.

(4) If the Event of Default consists of a default by Wingfoot under Section 9.2.B (Failure to Fund the Cash Contribution) or Section 14.1.D (Credit Event) then Greeley may elect to terminate this Agreement by delivering written notice to Wingfoot, in which event, as Liquidated Damages pursuant to Section 14.3.A (Special Provision for Liquidated Damages), Greeley may elect to require that Wingfoot convey the entirety of Wingfoot's TIC Interest to Greeley, and, in the event of a default by Wingfoot under Section 9.2.B (Failure to Fund the Cash Contribution), Wingfoot shall continue to be subject to its Deposit Obligation under Section 9.1.B (Source of Funds) until Wingfoot's Cash Contribution obligation is fully satisfied (as provided in Section 9.2.B (Failure to Fund the Cash Contribution)). Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement, for the time period(s) specified therein, and the obligations, liabilities, covenants, agreements and monetary obligations contained in following Article(s), Section(s) or term(s) which shall survive the Termination of this Agreement: (i) Article 11 (Put and Call Options) subject to Section 11.8; (ii) Wingfoot's Deposit Obligation under Section 9.1.B (Source of Funds), which shall survive until the Cash Contribution is satisfied as provided in Section 9.1.B (Source of Funds); and (iii) Section 17.18 (Limited Source of Payments by Greeley), which shall survive as long as Greeley has obligations to Wingfoot or any assignee or Credit Escrow Transferee hereunder; and (iv) Section 10.5 (Material Change to Market Value), which shall survive (a) as long as Wingfoot remains a Registered Owner and (b) until Article 11 terminates pursuant to Section 11.8.

B. If the Event of Default consists of a default by Greeley under Section 14.1.B or C (Events of Default) above, Wingfoot may in its sole discretion:

(1) Waive such default or condition; or

(2) If the default by Greeley can be cured by action within the reasonable control of Greeley, then Wingfoot may elect to treat this Agreement as being in full force and effect and Wingfoot shall have the right to specific performance, damages, or both,

EXCEPT THAT WINGFOOT SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

(3) If the default consists of a default by Greeley under Section 10.5.A.(1) (Revocation) or (2) (Amendments), 17.11 (Assignment), 14.1.A. or 14.1.D (Events of Default), then, as Liquidated Damages pursuant to Section 14.3.B (Special Provision for Liquidated Damages), Wingfoot may elect to terminate this Agreement by delivering written notice to Greeley, in which event, (i) Wingfoot (or the Credit Escrow Transferee, as the case may be) shall have the option to sell to Greeley, and Greeley shall be obligated to purchase, all unissued Raw Water Credits and all current Escrowed Credits (i.e., all Raw Water Credits remaining to be issued to Wingfoot or remaining with the Credit Escrow Agent pursuant to the Credit Escrow as of the date of such termination and whether or not considered issued under this Agreement) at the greater of (a) a price of thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 escalated three percent (3%) compounded annually thereafter, or (b) the 3-year trailing average of Greeley's cash-in-lieu price; and (ii) Wingfoot shall be entitled to all funds remaining in the Construction Escrow as of the date of default by Greeley. If Wingfoot exercises such election, then upon receipt of the full cash payment, Wingfoot shall concurrently convey its entire TIC Interest to Greeley in accordance with Section 10.2 (Transfer of the Tenancy in Common Interest) as if the unissued Raw Water Credits had been issued to Wingfoot and the Escrowed Credits released. Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement for the time period(s) specified therein. For the avoidance of doubt, Credit Escrow Transferee may elect to terminate that portion of this Agreement duly assigned to it pursuant to Section 11.7, and be entitled to sell to Greeley (and obligate Greeley to purchase) such assigned, unreleased Escrowed Credits pursuant to this Section 14.2.B(3). For purposes of exercising its rights under this Section, a Credit Escrow Transferee shall only have the right to terminate Article 11 of this Agreement (and only to the extent of its assignment and assumption of such Article pursuant to the terms of this Agreement), by delivering written notice to Greeley pursuant to this Section 14.2.B.(3), and provided that such termination by a Credit Escrow Transferee shall (i) be without regard to Wingfoot's election to terminate, and (ii) not affect the rights, obligations or remedies retained by Wingfoot pursuant to this Agreement.

(4) If the Event of Default consists of a default by Greeley under Section 10.3 (Administration; Tracking), then Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Wingfoot may require that Greeley retain a financial institution, reasonably acceptable to Greeley and experienced in maintaining similar registries, to act as the registrar and administer the Registry until December 31, 2099 or such earlier date as the last outstanding Raw Water Credit has been redeemed.

C. If the Event of Default consists of a default by Greeley under Section 10.5.B (Cash-in-Lieu), then, as Liquidated Damages pursuant to Section 14.3.C (Special Provisions for Liquidated Damages), Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Greeley shall be obligated to pay the Specified Difference.

D. If a cure period for an Event of Default is not otherwise expressly provided in this Agreement then, except for the giving of notices, neither party shall be deemed in default hereunder with respect to such Event of Default unless such Party fails to cure such default within thirty (30) days after written notice stating such default and requiring the same to be remedied is given by the non-defaulting Party; provided that if such default cannot be cured within such thirty (30) days, and during such thirty (30) day period the defaulting Party has taken commercially reasonable efforts to remedy such default and subsequently is diligently pursued to the completion of such performance (a full cure), an Event of Default shall not be deemed to have occurred until ninety (90) days after written notice has been delivered. If a cure period for an Event of Default is expressly provided in this Agreement, then such express cure period will control and be given effect.

14.3 Special Provisions for Liquidated Damages. The following provisions shall apply to Events of Default by either Party which result in the following liquidated damages (each referred to as “Liquidated Damages”):

A. If Wingfoot defaults in any of its obligations under Section 9.1.A (Deposits Due) and Greeley elects to terminate this Agreement, then Greeley’s sole remedy shall be the terms of Section 14.2.A.(3) (Remedies, Generally). WINGFOOT AND GREELEY ACKNOWLEDGE THAT GREELEY’S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE TERMS OF SECTION 14.2.A.(3) (Remedies, Generally) ARE A REASONABLE ESTIMATE OF GREELEY’S DAMAGES.

B. If Greeley defaults in any of its obligations under Section 10.5.A(1) (Revocation) and (2) (Amendments) of this Agreement and Wingfoot elects to terminate this Agreement, then Wingfoot’s sole remedy shall be the terms of Section 14.2.B(3) (Remedies, Generally). WINGFOOT AND GREELEY ACKNOWLEDGE THAT WINGFOOT’S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THE TERMS OF SECTION 14.2.B(3) (REMEDIES, GENERALLY) ARE A REASONABLE ESTIMATE OF WINGFOOT’S DAMAGES.

C. If Greeley defaults in any of its obligations under Section 10.5.B (Cash-in-Lieu) of this Agreement, Wingfoot’s sole remedy shall be to the Specified Difference as provided in Section 10.5.B. WINGFOOT AND GREELEY ACKNOWLEDGE THAT WINGFOOT’S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED DIFFERENCE IS A REASONABLE ESTIMATE OF WINGFOOT’S DAMAGES.

ARTICLE 15 CONDEMNATION

If prior to Closing all or a Material Part (defined below) of the Property are subject to a proposed taking by any public authority other than Greeley, Wingfoot shall promptly notify Greeley of such proposed taking and Greeley may terminate this Agreement by notice to Wingfoot within fifteen (15) days after written notice thereof. In the event Greeley elects to terminate this Agreement, the Deposit shall be returned to Greeley and neither Party shall have any further obligation to the other except as provided in Section 17.9 (Survival). If Greeley does not terminate this Agreement, or if the taking is as to a non-Material Part of the Property, Greeley shall accept

title to the Property subject to the taking without a reduction in the Purchase Price and shall receive at Closing an assignment of all of Wingfoot's rights to any condemnation award and Greeley shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. A "Material Part" of the Property for purposes of this Article 15 shall mean a portion that would have a Material Adverse Effect on Greeley's use of the Property to deliver water and as an aquifer supply, recharge and storage facility as determined by Greeley in its good faith judgment.

ARTICLE 16
NOTICES

Any notice statement, demand, claim, offer or other written instrument required or permitted to be given pursuant to this Agreement shall be in writing signed by the Party giving such notice and shall be sent by electronic mail, hand messenger delivery, overnight courier service or certified mail (receipt requested) to each other Party at the address set forth below 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; (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; (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; (iv) if a facsimile number is specified, on the date and at the time shown on the facsimile; or (v) if an e-mail address is specified, on the date and at the time shown on the sent e-mail message if sent to the e-mail address specified below:

If to Wingfoot: Wingfoot Water Resources LLC
800 8th Ave, Ste 122
Greeley, CO 80631
Telephone: (720) 544-3932
Email: cdietzler@wingfootwaterresources.com

With a copy to: Hogan Lovells US LLP
1601 Wewatta St, Ste. 900
Denver, CO 80202
Telephone: (303) 899-7300
Email: scot.anderson@hoganlovells.com
ana.gutierrez@hoganlovells.com
mark.heimlich@hoganlovells.com

and a copy to: Christopher P. Dietzler
Email: cdietzler@poudrevalleycapital.com

If to Greeley: City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor

Greeley, CO 80631
Telephone: (970) 350-9812
Facsimile: (970) 350-9805
Email: Sean.Chamber@greeleygov.com
Adam.Jokerst@greeleygov.com
WSAdmin@Greeleygov.com

With a copy to: City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
Facsimile: (970) 350-9763
Email: Douglas.Marek@Greeleygov.com
Jerrae.Swanson@Greeleygov.com
CityAttorney@Greeleygov.com

ARTICLE 17 MISCELLANEOUS

17.1 Termination. Except as otherwise provided, this Agreement shall terminate at the later of the end of the Option Period or the expiration of the revenue sharing obligation of Greeley under Section 12.1 (Revenue Sharing). Upon termination of this Agreement, all other rights and obligations of the Parties shall be terminated under this Agreement except for the representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations contained in following Article(s), Section(s) or term(s) which shall survive the Termination of this Agreement in addition to those identified in Section 17.9 (Survival): (i) Section 10.5.A(2) (Amendments); (ii) Article 11 (Put and Call Options) subject to Section 11.8; and (iii) Section 10.5.B (Cash-In-Lieu), which shall terminate on the dates specified therein.

17.2 No Third Party Beneficiary; No Waiver of Governmental Immunity. This Agreement shall not create any duty of care or liability with respect to any person or entity not a Party to this Agreement, including without limitation any Registered Owner (except for Wingfoot), 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.

17.3 Limits on Governmental Immunity. Greeley represents that, pursuant to C.R.S. §24-10-106, its governmental immunity is limited to claims for injury that lie in tort or could lie in tort. Under existing law, Greeley is not entitled to raise the defense of sovereign immunity in connection with any legal proceeding to enforce or collect upon contractual obligations, including this Agreement, or any amendments or exhibits to this Agreement, including the payment of any amounts due thereunder, provided however that no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the privileges or immunities of Greeley or its officers, employees, successors or 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.

17.4 Mediation. If any dispute arises under this Agreement (including as to whether any Party has breached this Agreement or whether an Event of Default has occurred), then either Party may require that the other engage in nonbinding dispute resolution processes upon delivery of a written notice (a “Dispute Notice”) setting forth the disputed matter. Upon receipt by the other party of such Dispute Notice, the Parties shall use their commercially reasonable efforts to negotiate a resolution of the dispute for a period of thirty (30) days (the “Dispute Resolution Period”) which may include mediation using a mediator chosen by the Parties. During the Dispute Resolution Period, no Party may bring a claim or commence legal action related to or in connection with the matter set forth in the Dispute Notice until the Dispute Resolution Period ends. This Section 17.4 shall not alter any date in this Agreement, unless otherwise agreed.

17.5 Time. Except as otherwise provided in this Agreement, time is of the essence as to each provision of this Agreement and the performance of each Party’s obligations hereunder.

17.6 Attorneys’ Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of this Agreement, the Prevailing Party (defined below) 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.

17.7 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. Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

17.8 Entire Agreement. This Agreement and its Exhibits contain the entire agreement among the Parties regarding the subject matter hereof and supersedes all prior agreements, whether written or oral, among the Parties regarding the same. This Agreement may only be modified by mutual written agreement duly authorized and executed by the Parties.

17.9 Survival. The following representations and warranties shall survive until Closing (and they shall terminate and be of no further force and effect after Closing), unless otherwise specified below, but if the Closing does not occur, the following representations and warranties shall terminate upon termination of this Agreement:

A. All warranties of title set forth in this Agreement shall merge with any deed or assignment delivered at Closing.

B. All representations and warranties contained in the General Representations and Warranties of both Parties shall survive for six months from the Closing Date, if the Closing Occurs.

C. All representations and warranties contained in the Environmental Representations and Warranties.

D. All other representations and warranties hereunder.

All covenants and agreements (including monetary obligations) shall continue until the earlier of: (i) performance of such covenants or agreements or (ii) this Agreement terminates (except for the covenants and agreements contained in Article 11 (Put and Call Options), subject to Section 11.8, Section 14.2.A(4) (Remedies, Generally), 14.2.B(3) (Remedies, Generally) and Section 17.18 (Limited Source of Payments by Greeley) which shall survive termination).

17.10 Successors. Subject to Section 17.11 (Assignment), Section 8.2 (Conveyance of Tenancy in Common Interest) and Section 11.7 (Assignment; Transfer of Put and Call) this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by, the Parties, their successors and permitted assigns and the Parties hereto and their respective successors and permitted assigns.

17.11 Assignment. 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. The sale, pledge, or other disposition of greater than a fifty percent (50%) ownership interest in Wingfoot (a “Change of Control”) to a third party not directly or indirectly owned or controlled by HA I, LLC shall require the written consent of Greeley, which consent shall not be unreasonably conditioned, withheld or delayed. Except as otherwise provided in this Agreement, neither this Agreement, nor any right hereunder, may be assigned by either Party without the prior written consent of the other Party, and any attempt to do so will be void. Notwithstanding anything to the contrary in this Agreement, in the event that Greeley unreasonably conditions, withholds or delays approval of any request for a Change of Control, Wingfoot may elect to terminate this Agreement and shall have the remedies provided in Section 14.2.B(3) (Remedies, Generally).

17.12 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.

17.13 Governing Law and Construction. This Agreement, including any instrument or agreement required hereunder, and all matters arising out of or in connection with this Agreement (whether in contract, tort or otherwise) shall be construed in accordance with and governed by the laws of the State of Colorado without giving effect to any conflict of law principles that would require the application of the laws of another jurisdiction. 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.

17.14 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one Party than against any other Party.

17.15 Review by Counsel. The Parties acknowledge that each Party and its legal counsel have reviewed and approved this Agreement.

17.16 Calendar Days. In the event any time period set forth in this Agreement commences, expires or is determined from a date which falls on a Saturday, Sunday or legal

holiday of the State of Colorado, the date of such commencement, performance, expiration or determination shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday of the State of Colorado.

17.17 Counterparts; Electronic Signatures. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Agreement, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

17.18 Limited Source of Payments by Greeley.

A. This Agreement does not constitute the debt, indebtedness or multiple fiscal year financial obligation of the City within the meaning of the constitution or laws of the State of Colorado or the home rule Charter of the City.

B. Any obligation of Greeley for the payment of money hereunder (each a “Payment Obligation”) shall be solely the special and limited obligations of the Enterprise. Any Payment Obligation shall be payable solely from the net revenues of the Water System remaining in each year after payment of or provision for (1) all standard operation and maintenance expenses of the Water System and the principal of, interest on and reserve requirements of its first-lien “Parity Obligations” (as that term is defined in the Water Revenue Bond Ordinance) issued and outstanding from time to time permitted by Ordinance No. 41, 2018 (the “Water Revenue Bond Ordinance”), (2) a reserve for operation and maintenance expenses equal to twenty five percent (25%) of the previous year’s operation and maintenance expenses, and (3) reserves for depreciation and other amounts with respect to the Water System specifically required by the City Charter as in effect on the Closing Date (such net revenues being referred to herein as the “Surplus Revenues”). Each Payment Obligation shall constitute a “Subordinate Obligation” (as that term is defined in the Water Revenue Bond Ordinance) of the City, acting by and through the Enterprise, provided that notwithstanding the provisions of Sections 22 and 25(c) of the Water Revenue Bond Ordinance, Greeley shall not be required in any year to apply more than seventy percent (70%) of its Surplus Revenues to the payment of all Payment Obligations.

C. In the event that Greeley fails to pay any Payment Obligations in full in the year incurred, then, and without limiting Wingfoot’s other remedies under this Agreement or applicable law, the unpaid portion of the Payment Obligation shall continue to be due and shall be payable as provided in this Section 17.18. Greeley shall issue to Wingfoot a subordinate promissory note (each a “Subordinate Revenue Note”), in a principal amount equal to each such unpaid portion. The parties agree and acknowledge that any such Subordinate Revenue Note constitutes a “Security” as defined at C.R.S. §11-57-203(5), and is subject to the provisions of the Supplemental Public Securities Act, C.R.S. §11-57-201 et seq. Any such Subordinate Revenue Note shall mature not more than fifteen (15) years from issuance and shall be payable solely from Surplus Revenues semiannually on the first day of February and the first day of August in each year in substantially level installments of principal and interest, with simple interest accruing on the unpaid principal amount at the rate of ten percent (10%) per annum, and shall be subject to prepayment by Greeley in whole or in part, without prepayment penalty, upon not less than thirty (30) days’ notice. Greeley shall set water rates during the term of any Subordinate Revenue Note

at a level to assure repayment of the Subordinate Revenue Note within the fifteen year maturity period of the Subordinate Revenue Note.

D. Pursuant to C.R.S. §11-57-208, the Surplus Revenues are hereby pledged as security for the Payment Obligations, if any. This pledge shall be specifically confirmed by the City Council of the City in connection with each issuance of a Subordinate Revenue Note. The creation, perfection and priority of such pledge shall be governed by such Section, this Agreement (which is, and shall be deemed to be, a security agreement for all purposes under sections 922(d) and 928(a) of the federal Bankruptcy Code) and the acts of issuance by the City Council taken in connection with the issuance of each Subordinate Revenue Note. Whether or not for whatever reason (i) a Subordinate Revenue Note is issued to evidence any Payment Obligation or (ii) the City Council of the City confirms the pledge, the Surplus Revenues are hereby subject to the lien of such pledge without any physical delivery, filing or further act on the part of the City, the Enterprise or Wingfoot, and such pledge shall have priority over any and all other obligations and liabilities of Greeley, except as limited in this Section 17.18 by the Charter or by the Water Revenue Bond Ordinance. In addition, any breach of or noncompliance with this Section 17.18 shall not limit Wingfoot's rights or remedies under this Agreement or applicable law. The lien of each such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the public entity irrespective of whether such persons have notice of such liens. Greeley agrees that it will authorize and issue all Subordinate Revenue Notes in the manner and according to the procedures provided by its Charter and the Water Revenue Bond Ordinance, including advertisement for public sale to the extent then required by the Charter.

E. Greeley hereby represents and warrants, as of the Effective Date, that there are no other currently outstanding Subordinate Obligations, as that term is used in the Water Revenue Bond Ordinance. Greeley further covenants that it shall not create, nor cause to be created, any Subordinate Obligations other than (1) Subordinate Obligations or Subordinate Revenue Notes owed or issued to Wingfoot; (2) Subordinate Obligations or Subordinate Revenue Notes issued to persons other than Wingfoot for the purpose of paying or refinancing Subordinate Revenue Notes or Subordinate Obligations held by or owed to Wingfoot; or (3) Subordinate Obligations secured on a basis expressly junior to the Subordinate Obligations or Subordinate Revenue Notes owed to or held by Wingfoot.

17.19 Interest. Any Payment Obligation owed by Greeley under this Agreement and not paid when due shall bear simple interest at the rate of ten percent (10%) per annum on the unpaid amount until paid, provided that any such amount shall be subject to prepayment at any time in whole or in part, together with the interest accrued on the amount so prepaid.

17.20 Fiscal Contingency. The City shall include in its budget and appropriation measures for each fiscal year the estimated amount of revenues available for Payment Obligations pursuant to Section 17.18 (Limited Source of Payments by Greeley) hereof.

17.21 Integrated Agreement. This Agreement, including all exhibits referenced herein, constitutes the complete, unseverable, unitary, integrated agreement between Greeley and Wingfoot concerning the subject matter hereof. This Agreement constitutes the entire understanding between the parties hereto and supersedes and cancels all prior written and oral

agreements and understandings, including the 2020 Agreement, with respect to the subject matter of this Agreement. The parties hereto acknowledge that they negotiated this Agreement, including all exhibits, as a single transaction and would not have entered into any portion of the Agreement without the rights and obligations conferred by the Agreement as a whole. In the event that (i) there is a conflict between the terms of this Agreement and any exhibits, or (ii) this Agreement provides additional or more specific rights or remedies than those described in the exhibits (including, for purposes of an example only, those under Article 17), the terms of this Agreement shall control; provided, however, that any such remedies shall not be cumulative. The rights created hereunder are intended by the parties to be presently vested and fully enforceable according to their terms. The provisions of this Agreement were negotiated as, and constitute, parts of an integrated whole, and the inability of either party to enforce any of such provisions or to consummate any of the transactions contemplated hereby due to changes in law, whether by amendments to the State or federal constitutions, the Charter, the Code or any applicable statute or regulation, or by regulatory or judicial action, would result in substantial and irreparable harm to both parties and an impairment of their vested contractual rights.

17.22 Approval. THE OBLIGATIONS OF GREELEY ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY GREELEY CITY COUNCIL AND WATER AND SEWER BOARD PURSUANT TO SECTION 6.1.A (GOVERNING BODY APPROVAL) ABOVE.

17.23 Requirement of Good Faith and Reasonable Judgment. Unless otherwise expressly provided in this Agreement, all decisions (including, for the avoidance of doubt, any determinations, approvals, and findings) to be made by a Party shall be interpreted to require the exercise of that Party's reasonable judgment, acting in good faith, in rendering such decision.

17.24 Venue. All actions or proceedings arising out of or relating to this Agreement and any dispute shall be litigated in any court in Weld County, Colorado. Each Party accepts for itself, generally and unconditionally, the exclusive jurisdiction and venue of the aforesaid courts, submits itself to the personal jurisdiction of such courts and waives any defense of *forum non conveniens* or any similar defense. Each Party hereby waives its respective right to a trial by jury for any claim or cause of action based upon or arising out of or related to this Agreement in any action, proceeding, or other litigation of any type brought by any Party against any other Party, whether with respect to contract claims, tort claims, or otherwise. Each Party agrees that any such claim or cause of action will be tried by a court trial without a jury.

17.25 Severability. In case any one or more of the provisions contained in this Agreement for any reason is held to be invalid or unenforceable, the invalidity or unenforceability will not affect any other provision of this Agreement, which will be construed as if the invalid or unenforceable provision had not been contained in this Agreement and, in lieu of each invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to the invalid or unenforceable provision as may be possible and be valid and enforceable.

17.26 Amendments and Waivers. This Agreement may not be amended except by a writing signed by all of the Parties hereto. No term or provision of this Agreement shall be deemed waived except in a writing executed by the waiving party.

17.27 No Warranty of Tax Treatment. Each party is relying solely on itself and its own tax advisors regarding the tax treatment of the transactions contemplated under this Agreement. Greeley does not give any assurance that any of the transactions contemplated by this Agreement will be treated for federal or state income tax purposes in any particular manner. Wingfoot shall be solely responsible for any tax consequences to it or to its owners, successors or assigns resulting from the execution, delivery and performance of this Agreement.

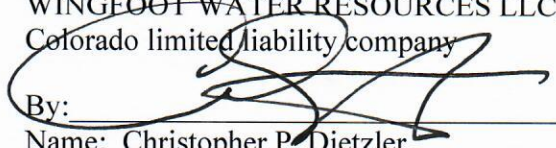
17.28 Cooperation. At the request of the other Party, each Party, on its own behalf, covenants that it shall reasonably cooperate with the other Party, at no cost to the cooperating Party, in obtaining permits or other governmental approvals which are required to implement the Project and use it as an aquifer and storage recovery facility; provided that after Closing, the parties agree that Wingfoot shall not be required to spend more than a de minimis amount of time assisting Greeley obtaining permits or other governmental approvals.

[Signatures on following pages]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set opposite their respective signatures below.

Date: February 11, 2021

WINGFOOT WATER RESOURCES LLC, a
Colorado limited liability company

By: 
Name: Christopher P. Dietzler
Title: Chief Executive Officer

Date: _____

THE CITY OF GREELEY, COLORADO, a
Colorado home rule municipal corporation,
acting by and through its WATER
ENTERPRISE

By: _____
Name: Harold Evans
Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By: _____
City Manager

By: _____
City Attorney

AVAILABILITY OF FUNDS:

By: _____
Director of Finance

RECOMMENDED:

By: _____
Director of Water and Sewer Department

**EXHIBIT A-1 TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Legal Description of Terry Ranch

(See Attached)

**EXHIBIT A-2 TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Depiction of Terry Ranch

(See attached Map)

**EXHIBIT B TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Access Easement

(See Attached)

**EXHIBIT C TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

State Land Board Lease

(See Attached)

**EXHIBIT D TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Assignment and Assumption of State Land Board Lease

(See Attached)

**EXHIBIT E TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Certificate Form

(See Attached)

**EXHIBIT F TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Form of Construction Escrow Agreement

(See Attached)

**EXHIBIT G TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Wingfoot Environmental Representations and Warranties

(See Attached)

**EXHIBIT H TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Greeley Environmental Representatives and Warranties

(See Attached)

**EXHIBIT I TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Existing Improvements

(See Attached)

**EXHIBIT J TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Wingfoot General Representations and Warranties

(See Attached)

**EXHIBIT K TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Greeley General Representations and Warranties

(See Attached)

**EXHIBIT L TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Tenancy in Common Agreement

(See Attached)

**EXHIBIT M TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Conveyance Document: Special Warranty Deed

(See Attached)

**EXHIBIT N TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Conveyance Document: Assignment and Assumption of Access Easement

(See Attached)

**EXHIBIT O TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

General Assignment and Bill of Sale

(See Attached)

**EXHIBIT P TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Form of Wingfoot's Amended and Restated Limited Liability Company Agreement

(See Attached)

**EXHIBIT Q TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Form of Tenancy in Common Conveyance Document

(See attached)

**EXHIBIT R TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Credit Escrow Agreement

(See attached)

**EXHIBIT S TO MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT (TERRY RANCH)**

Revisions to 2020 Agreement

(See attached)

**AMENDED AND RESTATED MASTER PURCHASE, SALE AND RAW WATER
CREDIT ADMINISTRATION AGREEMENT (TERRY RANCH)**

by and between

WINGFOOT WATER RESOURCES, a ~~Colorado~~Delaware Limited Liability Company

and

**THE CITY OF GREELEY, COLORADO, acting by and through its WATER
ENTERPRISE**

Dated: ~~June~~ , ~~2020~~2021

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AMENDED AND RESTATED MASTER PURCHASE, SALE AND RAW WATER CREDIT
ADMINISTRATION AGREEMENT
(Terry Ranch)

This AMENDED AND RESTATED MASTER PURCHASE, SALE AND RAW WATER CREDIT ADMINISTRATION AGREEMENT (Terry Ranch) (this “Agreement”) dated _____, 2021, but effective for all purposes as of June, 23, 2020 (“Effective Date”), by and between WINGFOOT WATER RESOURCES LLC, a Delaware limited liability company, previously known as WINGFOOT WATER RESOURCES LLC, a Colorado limited liability company (“Wingfoot”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, (“City”), acting by and through its WATER ENTERPRISE (“Greeley”) (Wingfoot and Greeley each being a “Party” and collectively the “Parties”). Wingfoot and Greeley entered into the Master Purchase, Sale and Raw Water Credit Agreement on June 23, 2020 (the “2020 Agreement”), and the Parties now wish to amend and restate the 2020 Agreement on the terms and conditions set forth herein. Revisions made to the 2020 Agreement and reflected in this Agreement, made and agreed to by and between the Parties, are provided in Exhibit S.

RECITALS

A. Wingfoot is the owner of nontributary deep aquifer ground water rights, underlying real property in Weld County, Colorado, legally described on Exhibit A-1 and depicted on Exhibit A-2 (“Terry Ranch”), adjudicated and quantified on June 14, 2018, in Case Number 11CW275, District Court, Water Division 1, Colorado, and further described in that certain Special Warranty Deed, dated September 30, 2016, recorded October 17, 2016 in the real property records of the Clerk and Recorder for Weld County, Colorado (the “Records”), at Reception Number 4245308, and that certain Special Warranty Deed, dated April 30, 2018, recorded May 1, 2018 in the Records at Reception Number 4394951 (collectively, the “Water Rights”). Terry Ranch is currently owned by the Terry Ranch Grazing Association (“Association”).

B. Wingfoot, as the owner of the Water Rights, holds an easement to access Terry Ranch for purposes more fully described therein, attached as Exhibit B (“Access Easement”).

C. Wingfoot has also entered into a Ground Water Production Lease with the State of Colorado, State Board of Land Commissioners, dated January 18, 2018, for purposes more fully described therein, attached as Exhibit C (“State Land Board Lease”).

D. The Parties desire to set forth the terms and conditions pursuant to which Wingfoot shall create a tenancy in common with Greeley for the ~~Property~~ Water Rights (defined below), and pursuant to which Wingfoot agrees to sell, and Greeley agrees to buy, an initial interest in the Water Rights, ~~related property, and Access Easement,~~ together with a full assignment of Wingfoot’s rights to the Ancillary Assets (defined below) and the State Land Board Lease, and all other appurtenant property rights and water rights associated therewith, as more fully provided hereinafter.

E. The objective of this Agreement is to provide the terms upon which Wingfoot will convey the ~~Property~~Assets (defined below) to Greeley and make certain cash contributions for the construction of Project Infrastructure (defined below) and the terms upon which Greeley will make payment to Wingfoot for such conveyance.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, Wingfoot and Greeley hereby agree as follows:

AGREEMENT

ARTICLE 1 DEFINITIONS

1.1 Definitions. In addition to words and terms elsewhere defined in this Agreement, including the recitals hereto, the following words and terms used in this Agreement shall have the following meanings:

“*Access Easement*” has the meaning given in Recital B.

“*Ancillary Assets*” means (i) the Access Easement, (ii) any and all other rights, privileges and appurtenances owned by Wingfoot, without warranty of any type, which relate to or are used in connection with the Water Rights and the assets listed in this paragraph, to the extent assignable, and (iii) all of Wingfoot’s right, title and interest, without warranty of any type, in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development or use of the assets described in this paragraph.

“*Assets*” means (i) the ~~Property~~Water Rights, (ii) the Ancillary Assets, (iii) the Existing Improvements, and (~~iii~~iv) the State Land Board Lease and related agreements, if any.

“*Assignment and Assumption*” means the assignment and assumption of the State Land Board Lease, substantially in the form attached as Exhibit D.

“*Association*” has the meaning given in Recital A.

“*Base Amount*” has the meaning given in Section 10.5.B.

“*Call Notice*” has the meaning given in Section 11.1.A.

“*Call Option*” has the meaning given in Section 11.1.A.

“*Cash Contribution*” has the meaning given in Section 9.1.

“*Certificate*” means and refers to that document evidencing the ownership of a Raw Water Credit(s) (defined below), in the form attached as Exhibit E.

“*City*” has the meaning given in the preamble of this Agreement.

“*Closing*” has the meaning given in Section 6.2.

“*Claim*” has the meaning given in Section 5.6.

“*Closing Amount*” has the meaning given in Section 3.4.

“*Closing Date*” has the meaning given in Section 6.2.

“*Closing Documents*” has the meaning given in Section 6.3.B.

“*Confidential*” has the meaning given in Section 10.4.

“*Construction Escrow Agreement*” has the meaning given in Section 9.1.

“*Construction Escrow*” has the meaning given in Section 9.1.

“*Contribution Deadline*” has the meaning given in Section 9.1.A.

“*Conveyance Documents*” has the meaning given in Section 4.3.

“*Credit Escrow*” has the meaning given in Section 11.2.

“*Credit Escrow Agent*” has the meaning given in Section 11.2.

[“*Credit Escrow Transferee*” has the meaning given in Section 11.7.](#)

“*Credit Event*” means any of the following events or conditions: If a Party or any successor shall institute voluntary bankruptcy proceedings, or shall consent to the institution of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking reorganization or arrangement under the federal Bankruptcy Code or any similar applicable federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or trustee in bankruptcy or insolvency of such Party or any successor or any of their properties, or shall make an assignment for the benefit of its creditors, or shall admit in writing its inability to pay its debts generally as they become due.

“*Cure*” has the meaning given in Section 4.4.

“*Defect*” has the meaning given in Section 5.4.

“*Defect Notice*” has the meaning given in Section 5.4.

“*Department*” has the meaning given in Section 10.3.A.

“*Deposit*” has the meaning given in Section 3.2.

“*Deposit Obligations*” has the meaning given in Section 9.1.B.

“*Disapproved Matters*” has the meaning given in Section 4.4.

“*Governing Bodies*” has the meaning given in Section 6.1.A.

“*Greeley*” has the meaning given in the preamble of this Agreement, which refers to the City acting by and through its Water Enterprise.

“*Greeley Environmental Covenants*” has the meaning given in Section 5.5.

“*Greeley’s Intended Use*” means the use to which Greeley intends to put the Assets, which consists of the delivery of water to and from the nontributary aquifer underlying Terry Ranch, including the use of the Assets and Project Infrastructure as part of an aquifer supply, recharge and storage facility to be operated as a part of Greeley’s Water System.

“*Greeley’s TIC Interest*” means Greeley’s ownership interest, as it may exist from time to time, in the ~~Property~~Water Rights held in the tenancy in common⁺ created pursuant to Section 2.1 and the Tenancy in Common Agreement.

“*Hazardous Substance*” means, without limitation, any flammable materials, explosives, radon, radioactive materials (including naturally occurring radioactive materials (“NORM”) that have been concentrated by industrial or commercial processes), asbestos, urea formaldehyde foam insulation, oil, polychlorinated biphenyls, methane, hazardous materials, hazardous wastes, hazardous or toxic substances or pollutants or contaminants, including those defined in or pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) (“CERCLA”), the Clean Water Act, as amended (33 U.S.C. Section 1251 to 1387), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), any other applicable Environmental Law and regulations adopted thereunder, or any State or local law or ordinance relating to environmental risk or exposure.

“*Improvements*” means the Existing Improvements and any structures, facilities or other improvements installed by Greeley during the Inspection Period.

“*Initial Contribution*” has the meaning given in Section 9.1.A.

“*Initial Credits*” has the meaning given in Section 3.1.

“*Initial Tenancy in Common Interest*” means and refers to 10/12,121th interest in the ~~Property~~Water Rights to be conveyed by Wingfoot to Greeley at Closing.

“*Inspection Costs*” has the meaning given in Section 5.2.

“*Inspection Indemnification*” has the meaning given in Section 5.6.

“*Inspection Period*” has the meaning given in Section 5.1.

⁺ ~~Note to Greeley: TIC was not a defined term, but we have now included Tenancy in Common Agreement as defined term and revised this to fix that issue.~~

“Payment Obligation” means the payment obligations of Greeley described in Section 17.18.

“Permissible Policy Change” has the meaning given in Section 10.5.A(2)(c)(i).

“Permitted Exceptions” has the meaning given in Section 4.2.

“Power Revenue Interest” has the meaning given in Section 12.1.A.

“Power Transaction” has the meaning given in Section 12.1.A.

“Power Valuation” has the meaning given in Section 12.1.A.

“Prevailing Party” has the meaning given under Section 17.6.

“Prohibited Transfer Fee” has the meaning given in Section 8.2.A.

“Project” means and refers to the acquisition and construction of groundwater wells, treatment and storage facilities, transmission system, and other improvements made or necessary to deliver water to and from the nontributary aquifer underlying Terry Ranch to and from Greeley’s Water System, including without limitation the use of the Assets and Project Infrastructure as part of an aquifer supply, recharge and storage facility to be operated by the Enterprise as a part of the Water System.

“Project Infrastructure” means and refers to all easements, rights of way, wells, pipeline, treatment facilities and other improvements, facilities and real or personal property deemed necessary, in the exclusive judgment of Greeley, to effectuate the Project or otherwise used in or relating to the Project.

“Project Infrastructure Costs” has the meaning given in Section 9.1.

“Property” means and refers to the (i) Water Rights and (ii) Ancillary Assets.

“Prorated Contribution” has the meaning given in Section 9.1.C.

“Prorated Escrow” has the meaning given in Section 9.1.C.

“Purchase Price” has the meaning given in Section 3.1.

“Put Notice” has the meaning given in Section 11.1.B.

“Put Option” has the meaning given in Section 11.1.B.

“Raw Water Credit” has the meaning given in Section 10.1.A. and for the avoidance of doubt is intended to relate to a Raw Water Dedication Credit as contemplated by Chapter 14.06 of the Greeley Municipal Code as in effect on the Closing Date.

“*Title Documents*” has the meaning given in Section 4.1.A.

“*Title Policy*” has the meaning given in Section 4.6.

~~“*Transferee*” has the meaning given in Section 11.7.~~

“*Water Enterprise*” or “*Enterprise*” means the water utility enterprise created pursuant to Greeley Code Section 14.04.050 to act as operator of the Water system.

“*Water Revenue Bond Ordinance*” has the meaning given in Section 17.18.B.

“*Water Rights Documents*” has the meaning given in Section 4.1.C.

“*Water System*” means Greeley’s municipal water system, operated by the Water Enterprise.

“*Water Rights*” means those water rights defined under Recital A.

“*Wingfoot’s TIC Interest*” means the balance of Wingfoot’s tenancy in common interest in the ~~Property~~Water Rights.

ARTICLE 2

CREATION OF TENANCY IN COMMON; SALE OF PROPERTY

2.1 Water Rights; Creation of Tenancy in Common. Wingfoot agrees to create a tenancy in common for the ~~Property~~Water Rights with Greeley and agrees to sell, and Greeley agrees to buy, the Initial Tenancy in Common Interest at Closing (defined below), subject to the terms and conditions set forth in this Agreement and the Special Warranty Deed substantially in the form attached as Exhibit M ~~and the Assignment and Assumption of Access Easement substantially in the form attached as Exhibit N.~~

2.2 Improvements. In addition to the Initial Tenancy in Common Interest, Wingfoot agrees to sell and assign, and Greeley agrees to buy and assume, Wingfoot’s rights, title and interest, as well as its obligations, in and to the Existing Improvements at Closing, subject to the terms and conditions set forth in this Agreement and the Assignment and Bill of Sale substantially in the form attached as Exhibit O (the “General Assignment and Bill of Sale”).

2.3 State Land Board Lease and Related Agreements. Wingfoot agrees to sell and assign, and Greeley agrees to buy and assume, Wingfoot’s rights, title and interest, as well as its obligations, in, to and under the State Land Board Lease and any related agreements, if any, on or before ninety (90) days after Closing, subject to the terms and conditions set forth in this Agreement and the Assignment and Assumption of State Land Board Lease substantially in the form attached as Exhibit D. Notwithstanding the preceding sentence, the Parties acknowledge and agree that the form of the Assignment and Assumption attached hereto may be subject to revision as may be necessary or convenient to obtain consent to such assignment from the State of Colorado, State Board of Land Commissioners.

2.4 Ancillary Assets. In addition to the Initial Tenancy in Common Interest, Wingfoot agrees to sell and assign, and Greeley agrees to purchase and assume, all of Wingfoot's rights, title and interest, as well as its obligations, in, to and under the Ancillary Assets, if any, at Closing, subject to the terms and conditions set forth in this Agreement and the Assignment and Assumption of Access Easement substantially in the form attached as Exhibit N.

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price. The total purchase price for the Initial Tenancy in Common Interest ~~and, Existing Improvements,~~ Assignment and Assumption of the Access Easement, and the Assignment and Assumption of the State Land Board Lease shall be an amount equal to the sum of ~~Five Hundred Thousand Dollars~~ five hundred thousand dollars (\$500,000) ("Purchase Price") plus ten (10) Raw Water Credits ("Initial Credits").

3.2 Deposit and Release of Deposit. Within fifteen (15) days following the Effective Date of this Agreement, Greeley shall cause the amount of ~~Fifty Thousand Dollars~~ fifty thousand dollars (\$50,000) ("Deposit") to be deposited with Land Title Guaranty (Heidi Crue: title officer; Donna Mancini: closing agent), ("Title Company"). The Deposit shall be held by the Title Company in a federally insured account to be credited toward the Purchase Price. The Deposit shall be fully refundable to Greeley pursuant to and in accordance with Section 4.4 (Disapproved Title Matters), Section 5.4 (Defects Identified in Inspection), Section 6.1 (Closing Contingencies), Section 13.3 (Failure of Condition), Section 14.2.A(3) (Remedies, Generally) and Article 15 (Condemnation) below. Except as set forth in the preceding sentence, the Deposit shall be non-refundable to Greeley and shall be transferred to Wingfoot at Closing or upon termination of this Agreement.

3.3 Interest. Unless otherwise agreed to by Wingfoot and Greeley, the Title Company is not required to hold the Deposit in an interest-bearing account.

3.4 Payment at Closing. The Purchase Price (i) minus the Deposit; (ii) plus any other amounts required to be paid by Greeley at Closing (including Greeley's share of the closing costs); and (iii) plus or minus any prorations or credits pursuant to this Agreement ("Closing Amount"), shall be paid at Closing by Greeley to Wingfoot by cashier's check, wire transfer or other immediately available funds.

ARTICLE 4 TITLE

4.1 Title Documents. Within fifteen (15) days after the Effective Date of this Agreement, Wingfoot shall provide the following to Greeley for review:

A. A commitment for an owner's policy of title insurance ("Title Commitment"), issued by the Title Company covering the Access Easement and indicating the Title Company's willingness to issue to Greeley at Closing the Title Policy (defined below) in the amount of the Purchase Price, with such Title Commitment setting forth the status of title to the Access Easement and showing the Title Company's search results for all recorded liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and

notices, filings, permits, or other actions by or from a governmental authority or third party, individually or in the aggregate, that as of the Closing Date have a Material Adverse Effect on the Assets.

D. Rights reserved to or vested in any governmental authority to control or regulate any of the Assets in any manner, and all obligations and duties under all applicable laws or under any franchise, grant, license, or permit issued by any such governmental authority.

E. Any Disapproved Matter that becomes a Permitted Exception in accordance with the terms of this Agreement.

F. Any other matter created by or through Greeley or arising out of Greeley's ownership of or access to or use of the Assets including, without limitation, any matter arising out of any inspections conducted by or for the benefit of Greeley during the Inspection Period.

4.3 Conveyance of the Initial Tenancy in Common Interest and Access Easement. At Closing, Wingfoot shall convey the Initial Tenancy in Common Interest to Greeley by executing the ~~forms~~form attached hereto as Exhibit M (Special Warranty Deed) and the Access Easement by executing the form attached hereto as Exhibit N (Assignment and Assumption of Access Easement), free and clear of all liens except for the Permitted Exceptions ("Conveyance Documents").

4.4 Disapproved Title Matters. Except for Permitted Exceptions, Greeley may disapprove of title exceptions ("Disapproved Matter") by delivering written notice of objection to Wingfoot either (i) prior to the expiration of the Inspection Period or (ii) if such notice is delivered after the expiration of the Inspection Period but prior to the Closing Date, then within ten days (10) days after receiving notice from Wingfoot or the Title Company. Any Disapproved Matter not objected to in writing prior to the expiration of the Inspection Period or within such ten (10) day period shall be deemed an additional Permitted Exception. Wingfoot may elect in its sole discretion (but shall not be obligated) to cure any Disapproved Matter by (i) removing or causing the Disapproved Matter to be removed or resolved at Wingfoot's expense; (ii) by obtaining title insurance insuring against the effect of the Disapproved Matter; or (iii) by any other means acceptable to Greeley (each a "Cure"). Within ten (10) days after Wingfoot's receipt of Greeley's notice of a Disapproved Matter, Wingfoot shall notify Greeley in writing whether Wingfoot elects to Cure such Disapproved Matter and, if it elects to do so, the method or means of the Cure. If Wingfoot elects, but fails or is unable to Cure a Disapproved Matter prior to Closing, then Greeley may, on the date of Closing, deliver written notice to Wingfoot that it elects to terminate this Agreement. If Wingfoot elects not to Cure one (1) or more Disapproved Matter, then within (i) ten (10) days after Greeley's receipt of Wingfoot's written notice regarding such election, or (ii) on the Closing Date, whichever occurs first in time, Greeley may elect to terminate this Agreement by delivering written notice to Wingfoot that it elects to terminate this Agreement. Upon termination of this Agreement pursuant to this Section 4.4, the Deposit shall be returned to Greeley and neither Wingfoot nor Greeley shall have any further obligation or liability to the other, provided, however, that where a Disapproved Matter would have a Material Adverse Effect on the Assets, and where such Disapproved Matter is not Cured, then the Deposit shall be returned to Greeley and Greeley shall be entitled to

reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, including but not limited to the Inspection Costs. If Greeley does not elect to terminate this Agreement pursuant to this Section 4.4, then Greeley shall be deemed to have accepted any outstanding Disapproved Matters and the Parties shall proceed to Closing, subject to the provisions of this Agreement, without any abatement of the Purchase Price or other remedy.

4.5 Representations and Warranties. On the Effective Date of this Agreement, Wingfoot shall execute and deliver to Greeley the certifications relating to the General Representations and Warranties and the Environmental Representations and Warranties substantially in the forms attached as Exhibits J and G. At the Closing, Wingfoot shall certify that the representations made in the General Representations and Warranties, and the Environmental Representations and Warranties, are true and correct in all material respects as of the Closing Date (defined below) substantially in the forms attached as Exhibits J and G. On the Effective Date of this Agreement, Greeley shall execute and deliver to Wingfoot the certifications relating to the General Representations and Warranties substantially in the form attached as Exhibit K. At Closing, Greeley shall (i) execute and deliver to Wingfoot the certifications relating to the Environmental Representations and Warranties and (ii) certify that the representations made in the General Representations and Warranties are true and correct in all material respects as of the Closing Date, substantially in the forms attached as Exhibits K and H.

4.6 Title Insurance. The Title Company shall commit at Closing that, as soon as reasonably practical after the Closing, the Title Company shall issue to Greeley an ALTA owner's form of title insurance policy, insuring that title to the Access Easement is vested in Greeley ~~and Wingfoot, as tenants in common~~, subject to the Permitted Exceptions ("Title Policy").

ARTICLE 5 INSPECTION PERIOD

5.1 Inspection. During a period of time commencing upon the Effective Date and continuing until 4:00 p.m., Mountain Time, on the ~~Two Hundred~~two hundred and ~~Tenth~~tenth (210th) day thereafter ("Inspection Period"), subject to Section 5.3 (Conditions of Access), Greeley and its authorized agents, representatives and consultants shall be entitled to enter upon the areas covered by the Access Easement and State Land Board Lease at reasonable times, and upon reasonable prior written notice to Wingfoot, to inspect the Assets for the purpose of (i) conducting surveys, water quality and soils tests, environmental and ecological assessments, test borings, engineering tests, cost evaluations, environmental audits and tests, feasibility studies and any other inspections, investigations or analyses Greeley deems necessary or appropriate in connection with its intended acquisition, use and development of the Assets or (ii) performing the following specific activities: drilling and logging of not more than three additional test borings; collection and analysis of water quality samples from test borings and existing wells; depth-specific flow, Gamma ray spectroscopic surveys, and water quality sampling of existing wells; downhole video survey of existing wells; topographical surveys; environmental assessments and field surveys of environmental resources; and bench-scale testing of

geochemical interactions between aquifer core samples and recharge water, which activities Greeley has deemed necessary to conduct in connection with its intended acquisition, use and development of the Assets (collectively referred to as the “Inspections”).

5.2 Cost; Cooperation. Greeley shall bear all costs of the Inspections (“Inspection Costs”). During the Inspection Period, Wingfoot agrees to reasonably cooperate with any Inspection activity, which includes but is not limited to attempts to obtain access and any necessary approval to conduct Inspections on Terry Ranch. In the event that Closing does not occur solely due to failure of a Closing condition in Section 13.3 (Failure of Condition) within Wingfoot’s control, then Wingfoot shall reimburse Greeley for its reasonable third party out-of-pocket Inspection Costs.

5.3 Conditions of Access. Greeley and its authorized agents, representatives and consultants shall (i) comply with the terms and conditions of the Access Easement and State Land Board Lease including but not limited to all required notices and submissions, as applicable, and all applicable laws, rules and regulations; (ii) not interfere with the operation and maintenance of the Terry Ranch by the Association or interfere with the business or operations of Wingfoot; (iii) comply with all Title Documents, all Permitted Exceptions, and any reasonable requirements imposed upon it by Wingfoot or the Association in connection with such Inspections; (iv) not injure or otherwise cause bodily harm to Wingfoot or the Association, their agents, contractors or employees; (v) promptly pay when due the costs of all Inspections; (vi) not permit any liens or encumbrances to attach to Terry Ranch or any of the Assets; (vii) restore Terry Ranch, ~~the Property, the State Land Board Lease,~~ and/or the Assets to substantially the same condition in which such property was found before any such Inspections were undertaken, and at the election of Wingfoot (in its sole discretion), Greeley shall be required to remove (at Greeley’s sole cost and expense) any improvement that was installed, and/or reclaim any surface disturbance, including close or seal disturbances related to below grade improvements consistent with standard industry practice, in accordance with this Section 5.3 (or with the written approval of Wingfoot) by Greeley during the Inspection Period in accordance with the terms of the Access Easement or the State Land Board Lease, as the case may be, or with Wingfoot’s approval, except that Greeley shall not be required to remove any below grade improvements associated with test bores; and (viii) give reasonable advance notice (but no less than 24 hours) to Wingfoot and the Association prior to any entry onto Terry Ranch, the Access Easement, the State Land Board Lease, ~~the Property~~ or the ~~Assets~~Water Rights and shall permit Wingfoot to have representatives present during all Inspections. Upon the request of Wingfoot, Greeley shall supply Wingfoot with copies of the results of the Inspections.

5.4 Defects Identified in Inspection. If Greeley identifies any defect with the Assets during its Inspection, as determined by Greeley in its good faith judgment, including but not limited to the following items:

A. Matters disclosed in (i) the Title Documents, (ii) the Off-Record Documents, or (iii) the Water Rights Documents;

B. Greeley’s ability to verify or obtain real property including but not limited to adequate sites for facilities or appropriate easements for ingress, egress and utilities

Losses is asserted against Greeley by a third party prior to Closing, which may give rise to Inspection Indemnification, Greeley must promptly notify Wingfoot in writing and give Wingfoot the right to defend (or in Wingfoot's discretion, assist in the defense of) such Claim with counsel approved by Greeley, which approval shall not be unreasonably withheld, conditioned or delayed. The Inspection Indemnification shall terminate at Closing, and no claims for Inspection Indemnification can be made by Greeley after Closing; provided, however, that Wingfoot must still satisfy or resolve any outstanding Claim as may exist at Closing except to the extent caused by the negligence of Greeley or its agents. As used in this Section 5.6, "Claim" means any written demands, causes of action, or claims of any kind and character made by a third party. This Section 5.6 does not apply to any actions taken with respect to the Assets that does not occur during the Inspection Period and does not apply to any Claim to the extent caused by or arising from Greeley or its agents.

ARTICLE 6 CLOSING CONTINGENCIES; CLOSING

6.1 Closing Contingencies.

A. Governing Body Approval. Greeley's obligation to purchase the Assets is subject to the City Council's and the Greeley Water and Sewer Board's (the "Governing Bodies") authorization to close on the purchase and the appropriation of the Purchase Price at Closing for the acquisition of the Assets within sixty (60) days following the expiration of the Inspection Period ("Governmental Approval Period"). In the event that the Governing Bodies have not authorized the closing and appropriated the Purchase Price at Closing for the acquisition of the Assets prior to the expiration of the Governmental Approval Period (unless extended by written agreement of the Parties), then, in such event, upon written notice by either Party to the other, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley pursuant to Section 13.3 (Failure of Condition) and neither Party shall have any further obligation to the other except as provided in Section 17.9 (Survival).

B. Raw Water Dedication Policy. Wingfoot's obligation to convey the Assets is subject to the Governing Bodies' approval of the Raw Water Dedication Policy, in a form acceptable to Wingfoot, before the expiration of the Governmental Approval Period. In the event that the Governing Bodies have not approved the Raw Water Dedication Policy prior to the expiration of the Governmental Approval Period, then, in such event, upon written notice by Wingfoot to Greeley, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley pursuant to Section 13.3 (Failure of Condition) and neither Party shall have any further obligation to the other except as provided in Section 17.9 (Survival).

6.2 Closing. The closing of this transaction (the "Closing") shall occur at 1:30 p.m. at the Greeley Office of the Title Company, fifteen (15) days after the expiration of the Governmental Approval Period or such other date as the Parties may mutually agree to in writing (the "Closing Date"). At or prior to the Closing, Greeley shall provide Wingfoot with a map of the Service Area as of the Closing Date.

6.3 Transactions at Closing.

A. On or before the Closing Date, Wingfoot shall deliver or cause to be delivered to the Title Company, acting as the escrow agent for the Closing, the following documents duly executed and acknowledged where appropriate:

- (1) The Conveyance Documents.
- (2) 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.
- (3) The Construction Escrow Agreement (defined below)
- (4) The Credit Escrow Agreement (defined below).
- (5) The Tenancy in Common Agreement (defined below).
- (6) The General Assignment and Bill of Sale.
- (7) Wingfoot's Certification of the General Representations and Warranties, in the form attached hereto as Exhibit J.
- (8) Wingfoot's Certification of the Environmental Representations and Warranties, in the form attached hereto as Exhibit G.
- (9) Wingfoot's Amended and Restated Limited Liability Company Agreement, in the form attached hereto as Exhibit P.
- (10) A closing statement executed by Wingfoot.
- (11) Duly executed assignments of the Escrowed Credits (defined below) to the Escrow Credit Transferee (defined below), substantially in the form attached as Exhibit 2 (Form Transfer and Assignment of Raw Water Credits) to Exhibit E (Certificate).
- (12) ~~(11)~~ 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 the Closing escrow agent, the following documents duly executed and acknowledged where appropriate:

- (1) The Closing Amount.
- (2) Documentation in such form as may be satisfactory to Wingfoot and the Title Company, evidencing (i) the Governing Bodies' authorization of the issuance of Twelve Thousand One Hundred Twenty-one (12,121) Raw Water Credits and (ii) Greeley's authority to purchase the Assets.

(3) The Assignment and Assumption of State Land Board Lease, in the form attached as Exhibit D.

(4) ~~(3)~~ Greeley's Certification of the General Representations and Warranties, in the form attached hereto as Exhibit K.

(5) ~~(4)~~ Greeley's Certification of the Environmental Representations and Warranties, in the form attached hereto as Exhibit H.

(6) ~~(5)~~ A certified copy of the Raw Water Dedication Policy (defined below).

(7) ~~(6)~~ The Construction Escrow Agreement.

(8) ~~(7)~~ The Credit Escrow Agreement.

(9) ~~(8)~~ The Tenancy in Common Agreement.

(10) ~~(9)~~ A closing statement executed by Greeley.

(11) ~~(10)~~ The ~~Certificates~~Certificate evidencing Wingfoot's ownership of the Initial Credits.

(12) ~~(11)~~ ~~The~~Twenty-five (25) Certificates, each evidencing ~~all of the Escrowed~~ one hundred sixty-seven (167) Raw Water Credits ~~(defined below), in the name of Wingfoot.~~

(13) Twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits, in the name of the Credit Escrow Transferee.

(14) ~~(12)~~ Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

Collectively, except for the Initial Credits, all other documents identified under Sections 6.3.A and 6.3.B shall be referred to as the "Closing Documents."

C. Closing Agent. The Title Company shall record and/or distribute the Closing Documents and shall hold, in escrow, the Certificates evidencing Wingfoot's ownership of the Initial Credits until Wingfoot has satisfied its Initial Contribution obligation. ~~When Wingfoot has satisfied its Initial Contribution obligation, the~~The Parties shall instruct the Escrow Agent to release such Certificates to Wingfoot simultaneous with Wingfoot's satisfaction of its Initial Contribution, which enables Wingfoot to satisfy its obligation to make the Initial Contribution from the sale of the Initial Credits.

ARTICLE 7 PRORATIONS; CLOSING COSTS

7.1 Prorations. All real estate taxes attributable to the Assets, if any, for the calendar year in which the Closing occurs shall be prorated at the Closing on the basis of the most recent mill levy, unless the actual real estate taxes for the current year are known on the Closing Date. Wingfoot shall pay any special assessments against the Assets, if any, in full at the time of Closing. Prorations of taxes and assessments at Closing shall be a final settlement. All fees and payments for the current year due under the State Land Board Lease shall be prorated as of the Closing Date, based on the most recent payment provided by Wingfoot to the State of Colorado, State Board of Land Commissioners.

7.2 Closing Costs. Greeley shall pay for the cost of recording of all of the deeds, all title insurance endorsements and one-half (1/2) of the Title Company closing costs. Wingfoot shall pay the initial basic premium for the Title Policy, and one-half (1/2) of the Title Company closing costs. Each party shall pay its own attorneys' fees and Greeley shall be solely responsible for the payment of any real estate escrow fees to the Title Company.

ARTICLE 8 TENANCY IN COMMON

8.1 Tenancy in Common Agreement. The form of Tenancy in Common Agreement is attached hereto as Exhibit L.

8.2 Conveyance of the Tenancy in Common Interest.

A. Conveyances. Subject to Greeley's consent and except as otherwise provided in this Section 8.2.A, Wingfoot may convey all or any portion of Wingfoot's TIC Interest to a third-party (a "Third Party Transfer"), provided that the Third Party Transfer (1) identifies Greeley as a party to the agreement between Wingfoot and the third-party; (2) obligates the third-party to simultaneously convey its entire interest in the ~~Property~~Water Rights to Greeley in exchange for a number of Raw Water Credits bearing the same proportion to the total number of Raw Water Credits as the fractional interest conveyed in the ~~Property~~Water Rights bears to the entire interest in the ~~Property~~Water Rights; (3) identifies the full cash consideration for such portion and such amount is certified to Greeley by Wingfoot and shown in the property declaration with respect to such Third Party Transfer; (4) shall not obligate Greeley to accept title to any property other than the ~~Property~~Water Rights and (5) requires conveyance to Greeley consistent with the Tenancy in Common Conveyance Documents defined in Section 8.2.B (Form of Conveyance). If Wingfoot has not fully satisfied its Cash Contribution obligation on the date of the closing of any Third Party Transfer, then Wingfoot shall deposit in the Construction Escrow at closing the lesser of (a) its then remaining Cash Contribution obligation, or (b) ninety percent (90%) of the Net Cash Proceeds. Notwithstanding the foregoing, Wingfoot may not convey Wingfoot's TIC Interest in a cashless exchange for like property. If and when the proposed Third Party Transfer is consistent with the conditions set forth in clauses (1) – (5) in all material respects, then Greeley shall present the same to the Greeley Water and Sewer Board for approval within forty-five (45) days after receipt by Greeley of a purchase and sale agreement relating to such Third Party Transfer (the "Interim Period"). If the Greeley Water and Sewer Board rejects or does not approve the proposed Third Party Transfer within the Interim Period, then within twenty (20) days after the earlier of (x) Greeley Water and Sewer Board's rejection of the proposed Third Party Transfer or (y) expiration of the Interim Period without Wingfoot's

receipt of written approval of the proposed Third Party Transfer from Greeley, Greeley shall pay to Wingfoot one hundred twenty-five percent (125%) of the sales price relating to the proposed Third Party Transfer (the “Prohibited Transfer Fee”) and Wingfoot shall concurrently transfer to Greeley Wingfoot’s TIC Interest identified in the proposed Third Party Transfer. No portion of the Prohibited Transfer Fee shall be subject to the Deposit Obligation of Section 9.1.B (Source of Funds).

B. Form of Conveyance. Wingfoot shall convey Wingfoot’s TIC Interest, and shall cause that portion of Wingfoot’s TIC Interest conveyed to a third-party, if any, to be conveyed to Greeley, free and clear of all liens and encumbrances except for Permitted Exceptions, by executing the forms attached hereto as Exhibit Q (the “Tenancy in Common Conveyance Documents”).

8.3 Termination of the Tenancy in Common; Ten-year limit. The Tenancy in Common shall terminate and ownership of the ~~Property~~Water Rights shall vest entirely in Greeley (subject to any conveyances made by, through or under Greeley) upon the earlier of (i) the transfer of one hundred percent (100%) of the ownership of the ~~Property~~Water Rights to Greeley or (ii) ten (10) years following the Closing Date, subject to Greeley’s obligations and the other terms of this Agreement.

8.4 Use. Subject to the terms of the Tenancy in Common Agreement and Greeley’s compliance with the terms of this Agreement, Wingfoot agrees that, after Closing, Greeley shall have the exclusive right to use the ~~Property~~Water Rights, and Wingfoot shall not access or use the ~~Property~~Water Rights without Greeley’s written permission.

ARTICLE 9 CONSTRUCTION ESCROW

9.1 Construction Escrow. At Closing, the Parties shall execute an escrow agreement to manage the deposit and release of the Project Infrastructure funds substantially in the form attached hereto as Exhibit F (the “Construction Escrow Agreement”). Notwithstanding the preceding sentence, the Parties acknowledge and agree that the Construction Escrow Agreement attached hereto may be subject to revision as may be necessary or convenient to obtain approval from the escrow agent. Subject to the terms of this Agreement, Wingfoot shall deposit a total of ~~One Hundred Twenty Five Million Dollars~~one hundred twenty-five million dollars (\$125,000,000) (“Cash Contribution”) in an escrow account established and maintained pursuant to the Construction Escrow Agreement (the “Construction Escrow”). The Cash Contribution is estimated to cover one-half of the estimated cost to plan, develop, permit and construct the Project Infrastructure (“Project Infrastructure Costs”) and shall be funded and due as provided below, provided that “Project Infrastructure Costs” shall not include debt service payable by Greeley. For federal, state and local income tax purposes, notwithstanding the funding mechanism set forth in this Agreement, the Parties acknowledge that Wingfoot intends to treat the Cash Contribution as a reduction in the amount realized by Wingfoot in respect of the transfer of Wingfoot’s TIC Interest or sale of Raw Water Credits, in order to reflect the fact that the Cash Contribution will reduce Wingfoot’s net economic gain derived from the transfer of Wingfoot’s TIC Interest or sale of Raw Water Credits, Wingfoot does not obtain any property or derive any separate benefit from the Cash Contribution, and the benefit of the Cash Contribution

inures entirely to Greeley (in the form of Project Infrastructure owned by Greeley). For example, if the gross purchase price of a Raw Water Credit is ~~Thirty Thousand Dollars~~thirty thousand dollars (\$30,000) and Wingfoot has not satisfied its Deposit Obligations under Section 9.2(B) (Source of Funds), then Wingfoot shall deposit ninety percent (90%) of such purchase price (~~Twenty Seven Thousand Dollars~~twenty-seven thousand dollars (\$27,000)) to the Construction Escrow as a Deposit Obligation, reducing the amount realized by Wingfoot in respect to the sale of such Raw Water Credit to ~~Three Thousand Dollars~~(three thousand dollars (\$3,000)). In furtherance of the foregoing, for federal, state, and local income tax purposes, (x) Wingfoot intends to treat the Initial Contribution (defined below) as an advance reduction in Wingfoot's amount realized in respect of transfers of Wingfoot's TIC Interest, and (y) Wingfoot may determine the extent to which a portion of the total reduction in the amount realized by Wingfoot (i.e., the total Cash Contribution, including the Initial Contribution) shall be attributed to any specific transfer of a portion of Wingfoot's TIC Interest. It is the intent of the Parties that, to the greatest extent possible, Wingfoot shall not be treated as having an amount realized from the transfer of a portion of Wingfoot's TIC Interest greater than the net amount of cash retained by Wingfoot in connection with that transfer, after the satisfaction of Wingfoot's funding obligations as set forth herein. Neither Party shall take a position contrary to the positions and statements set forth in this Section 9.1.

A. Deposits Due. Within ~~Ninety~~ninety (90) days after the Closing, Wingfoot shall deposit ~~Twenty-five Million Dollars~~twenty-five million dollars (\$25,000,000) ("Initial Contribution") in the Construction Escrow and provide written notice thereof to Greeley and the Title Company. The balance of the Cash Contributions shall be due on the earlier to occur of (i) twenty-four (24) months after Greeley provides written notice of its intent to construct the Project Infrastructure ("Notice to Construct") or (ii) ten (10) years after the Closing Date (the "Contribution Deadline"). Greeley shall have no deadline or timeline to commence or complete construction of the Project Infrastructure. Notwithstanding the foregoing, Greeley may not issue the Notice to Construct sooner than two (2) years after the Closing Date unless Wingfoot has fully satisfied its Cash Contribution obligation within such time. Wingfoot shall have no obligation to fund the Construction Escrow or the Project Infrastructure in excess of the Cash Contribution and Greeley shall be solely responsible for all costs related to the Project Infrastructure exceeding the Cash Contribution.

B. Source of Funds. Until Wingfoot has fully satisfied its Cash Contribution obligation, Wingfoot shall deposit or arrange for the deposit of ninety percent (90%) of the Net Cash Proceeds received by Wingfoot (collectively, the "Deposit Obligations"). Notwithstanding anything to the contrary in this Section 9.1.B, Wingfoot shall retain one hundred percent (100%) of the proceeds from, and the Deposit Obligations shall not include, the sale of the Exercised Credits and the Released Credits pursuant to Article 11 (Put and Call Options) and from the Prohibited Transfer Fee. To track Wingfoot's obligation under this Section 9.1.B Wingfoot shall, promptly after each such deposit of a Deposit Obligation, provide to Greeley (i) a settlement statement evidencing the purchase price and (ii) a statement evidencing that ninety percent (90%) of the Net Cash Proceeds has been deposited in the Construction Escrow, along with the surrendered Certificate(s) or a copy of the deed transferring the ~~Property~~Water Rights to a third-party pursuant to Section 8.2.A (Conveyance) until Wingfoot's obligation to fund the Cash Contribution has been fully satisfied. If the surrendered

9.2 Failure to Fund.

A. Failure to Fund the Initial Contribution. If Wingfoot fails to deposit the Initial Contribution in the Construction Escrow within ninety (90) days of the Closing Date, then this Agreement shall automatically terminate, and pursuant to Section 14.2.A(3) (Remedies, General): (a) the Purchase Price shall be returned to Greeley; (b) the Initial Tenancy in Common Interest shall be conveyed back to Wingfoot, along with a reassignment of the Ancillary Assets and the State Land Board Lease; and (c) all documents deposited by Greeley or delivered to Wingfoot by Greeley, including without limitation the Initial Credits, shall be immediately returned to Greeley, if any, and all documents, deposited by Wingfoot or delivered to Greeley by Wingfoot shall be immediately returned to Wingfoot, if any. In addition, Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, which shall include, but not be limited to, the Inspection Costs. Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement, except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the ~~Termination~~termination of this Agreement to the extent set forth in Section 17.9, for the time period(s) specified therein.

B. Failure to Fund the Cash Contribution. If Wingfoot fails to fully satisfy its Cash Contribution obligation by the Contribution Deadline, and Greeley has not (i) breached any of its obligations under Section 10.5 (Material Change to Market Value); (ii) breached any of its obligations under Section 9.1.C (Greeley's Contributions) or Section 9.1.D (Release of Funds); or (iii) committed a default or otherwise breached this Agreement that prevented or interfered with or adversely affected Wingfoot's ability to fund the Cash Contribution, then Greeley shall provide Wingfoot with written notice of such failure to satisfy Wingfoot's Cash Contribution (a "Payment Default"). If Wingfoot does not cure such Payment Default within sixty (60) days after its receipt of written notice from Greeley of such Payment Default (not subject to any additional cure period under Section 14.2.D (Remedies, Generally)), then pursuant to Section 14.2.A(4) (Remedies, Generally), Greeley may elect to require that Wingfoot convey the entirety of Wingfoot's TIC Interest to Greeley, and Wingfoot shall be obligated to effect such conveyance, and Wingfoot shall continue to be subject to its Deposit Obligation under Section 9.1.B (Source of Funds) until Wingfoot's Cash Contribution obligation is fully satisfied. Other than Raw Water Credits subject to the Put Option and Call Option as set forth in Article 11 (Put and Call Option), Greeley shall not be required to issue any additional Raw Water Credits (other than transfers of outstanding Raw Water Credits in the Registry) in exchange for a transfer of Wingfoot's TIC Interest pursuant to this Section 9.2.B.

ARTICLE 10 RAW WATER CREDITS

10.1 Raw Water Credit.

A. Authorization. At Closing, Greeley shall authorize the issuance of ~~Twelve Thousand One Hundred Twenty-one~~twelve thousand one hundred twenty-one (12,121)

credits, with each credit representing the equivalent of, but not an interest in, one (1) acre foot of raw water (each a “Raw Water Credit”).

B. Issuance. ~~—After~~Simultaneous with or after Wingfoot satisfies its Initial Contribution pursuant to Section 9.1.A (Deposit Due), Wingfoot may request from Greeley the issuance to it of up to ~~Twelve Thousand One Hundred Twenty One (12,121)~~seven thousand nine hundred forty-six (7,946) Raw Water Credits (inclusive of the Initial Credits ~~and~~but less the Escrowed Credits) at any time prior to the date which is ten (10) years after the Closing Date. Within thirty (30) days of receipt of a request for Raw Water Credits from Wingfoot pursuant to this Section 10.1(B), Greeley shall issue the corresponding amount of Raw Water Credits to Wingfoot. If any Raw Water Credits remain unissued as of the date which is ten (10) years after the Closing Date, then all remaining unissued Raw Water Credits shall be issued to Wingfoot in consideration of Wingfoot transferring Wingfoot’s TIC Interest to Greeley pursuant to Section 10.2 (Transfer of Tenancy in Common Interest) as of that date.

C. Form. The issuance of all Raw Water Credits shall be documented by the delivery of certificates in the form attached as Exhibit E (each a “Certificate”). A single Certificate may represent any whole number of Raw Water Credits. Each Certificate shall evidence the rights of the original or any subsequent Registered Owner (defined below) thereof with respect to the Raw Water Credits evidenced thereby.

D. Redemption Period. The form of Certificate shall provide that any Registered Owner may redeem a Raw Water Credit from Greeley through December 31, 2099, subject to the terms and conditions of the Certificate and the Raw Water Dedication Policy.

E. Limitations; Sales. All Raw Water Credits issued to Wingfoot shall be subject to Section 10.2 (Transfer of Tenancy in Common Interest). After issuance, Wingfoot may sell, convey, or transfer a Raw Water Credit to a third-party, subject to Section 9.1.B (Source of Funds). All Registered Owners, including Wingfoot, may freely sell, transfer, or convey Raw Water Credits to third-parties subject to compliance with Section 10.3 (Administration; Tracking).

10.2 Transfer of the Tenancy in Common Interest. Greeley’s issuance of a Raw Water Credit to Wingfoot shall obligate Wingfoot to convey an amount of Wingfoot’s TIC Interest to Greeley as described in this Section 10.2. Wingfoot shall satisfy this obligation on a semiannual basis. On February 1 and August 1 of each year, Greeley and Wingfoot shall calculate the total number of Raw Water Credits issued to Wingfoot and the total number of Raw Water Credits released from the Credit Escrow pursuant to Article 11 during the preceding six months, but excluding the amount issued to a third-party pursuant to Section 8.2A (Conveyance) (“collectively, the “Semester Total”). By each February 15 and August 15, Wingfoot shall convey to Greeley a fraction of the total interests in the ~~Property~~Water Rights (out of Wingfoot’s TIC Interest) with the (i) numerator being equal to the Semester Total and (ii) denominator being twelve thousand one hundred twenty-one (12,121) (i.e., the total authorized number of Raw Water Credits). Wingfoot shall convey any portion of Wingfoot’s TIC Interest to Greeley in accordance with the terms and conditions of the Tenancy in Common Agreement and Section 8.2.B (Form of Conveyance). Upon the issuance of all of the Raw Water Credits available to Wingfoot under this Agreement, Wingfoot shall convey all of Wingfoot’s TIC Interest to

Greeley, at which point the tenancy in common shall terminate and one hundred percent (100%) ownership in and to the ~~Property~~Water Rights will vest in Greeley, except to the extent that Greeley has assigned or encumbered any of its interest in the Tenancy in Common or the ~~Property~~Water Rights.

10.3 Administration; Tracking.

A. Issuance. Greeley's Water and Sewer Department, acting on behalf of Greeley, (the "Department") shall establish and maintain a written record of all issued and outstanding Certificates (the "Registry"). The Registry shall include, but is not limited to, (i) the name of the person or entity to whom a Certificate has been issued or transferred ("Registered Owner"), (ii) the date of issuance or transfer, as applicable, (iii) the Registered Owner's contact information as of the date of the issuance or transfer, (iv) the Certificate Number affixed thereto, and (v) the number of Raw Water Credits evidenced thereby.

B. Assignment. A Certificate may be transferred in the Registry, in whole or in part, but only in whole numbers of Raw Water Credits, by the Registered Owner upon presentation of the original Certificate with the form of assignment thereon, properly executed and acknowledged. If Wingfoot is the Registered Owner and Wingfoot has not fully satisfied its Cash Contribution obligation, then Wingfoot must submit documentation and deposit or arrange for the deposit of funds as required by Section 9.1.B (Source of Funds) along with the original Certificate and the properly executed and acknowledged assignment. Certificates for fractional Raw Water Credits will not be issued or accepted by Greeley. If a Registered Owner assigns only a portion of the Raw Water Credits evidenced by a Certificate, then the Department will issue ~~one~~the first Certificate to the assignee for the amount assigned and a second Certificate to the assignor (i.e., the original Registered Owner) for the amount retained. The Department shall not be obligated to: (i) recognize any person or entity as the owner of a Certificate, or having any interest therein, who does not appear as the Registered Owner thereof in the Registry or (ii) issue or reissue a Certificate to a Registered Owner, including Wingfoot, who has failed to comply with this Section 10.3 with respect to the Raw Water Credits evidenced or to be evidenced by such Certificate, until such failure to comply is remedied or cured.

C. Redemption; Cancellation of Credit. A Registered Owner may redeem a Raw Water Credit in satisfaction of any cash-in-lieu fee obligation associated with the Registered Owner's request for water service as prescribed by the Raw Water Dedication Policy. If a Registered Owner presents a Certificate to Greeley and redeems a Raw Water Credit in satisfaction of the Raw Water Dedication Policy or if Wingfoot surrenders a Certificate evidencing put or called Raw Water Credits pursuant to Section 11.5 (Release; Payment; Cancellation of Raw Water Credits), then the Raw Water Credits so presented or acquired shall be deemed exercised and the Certificate or Certificates evidencing the same shall be cancelled.

10.4 Audit of Registry and Sales.

A. Wingfoot's Records. Upon no less than ten (10) days' written notice to Wingfoot, Greeley may audit Wingfoot's non-Confidential records related to the sale of Raw Water Credits or transfer, disposition, or encumbrance of the ~~Property~~Water Rights. As used in the preceding sentence, "Confidential" means any documents or other information that Wingfoot

believes in good faith would create a risk of financial or other injury if disclosed; provided, however, that proposed sale price and accounting of the Net Cash Proceeds of proposed or completed Third Party Transfers shall not be considered Confidential. Greeley agrees that it will not request an audit more than once in a calendar year, unless (a) an audit or investigation is required by any governmental or regulatory authority or (b) Greeley reasonably believes that an audit is necessary to address a potential breach of this Agreement. If during the course of an audit Greeley reasonably determines that Wingfoot has sold Raw Water Credits or transferred, disposed or encumbered the ~~Property~~Water Rights in a manner that (x) either (i) violates this Agreement or (ii) constitutes an Event of Default by Wingfoot, and (y) individually or in the aggregate has a Material Adverse Effect on Greeley's interest in the Assets, then Greeley shall provide written notice to Wingfoot and an opportunity to cure such default in accordance with Article 14. Upon Wingfoot's failure to cure such default, Greeley may pursue any applicable or available remedy under this Agreement.

B. Greeley's Records. Upon no less than then ten (10) days written notice to Greeley, Wingfoot may audit the Registry and Greeley's policies, procedures and records that relate to the maintenance of the Registry under this Agreement to ensure accurate and complete records consistent with Section 10.3 (Administration; Tracking). Wingfoot agrees that it will not request an audit more than once in a calendar year, unless (i) an audit or investigation is required by any governmental or regulatory authority or (ii) Wingfoot reasonably believes that an audit is necessary to address a potential breach of this Agreement. If during the course of an audit Wingfoot reasonably determines that the tracking of the Raw Water Credits in the Registry is deficient or that Greeley is in default of this Agreement (each, a "Registry Default"), then Wingfoot shall provide written notice to Greeley and an opportunity to cure such Registry Default in accordance with Article 14. If Greeley fails to cure such default, Wingfoot may pursue any applicable or available remedy under this Agreement including, but not limited to, the remedy in Section 10.4.C (Election to Require External Registrar) below. As used in this Section 10.4, "deficient" means that the administrator failed to (i) retain accurate records of ownership or redemption of Raw Water Credits, or (ii) record any transfer or issuance of Raw Water Credits within thirty (30) days of (x) receipt of the proper form of assignment, or (y) the date of such issuance, as the case may be.

C. Election to Require External Registrar. If, after notice and opportunity to cure, Greeley fails to cure either (i) a Registry Default, or (ii) an Event of Default arising from a breach of the provisions of Section 10.3 (Administration; Tracking), in each case, within thirty (30) days of receipt of notice from Wingfoot, and the ~~parties~~Parties agree that this thirty (30) day period is the sole cure period under this Section 10.4.C and they shall disregard the application of any and all other cure periods set forth in this Agreement, then Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Wingfoot may require that Greeley retain at Greeley's cost a financial institution experienced in maintaining similar registries to act as the registrar and administer the Registry until the earlier of December 31, 2099, or the last day upon which any Raw Water Credits remain outstanding.

10.5 Material Change to Market Value.

A. Raw Water Dedication Policy Changes.

(1) Revocation. If the City revokes or rescinds the Raw Water Dedication Policy to deny acceptance of Raw Water Credits (except as provided under Section 10.5.A. of this Agreement) prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may elect to terminate this Agreement and [Wingfoot \(and Credit Escrow Transferee\)](#) shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(2) Amendments.

(a) Adding New Sources. The City may amend the Raw Water Dedication Policy to accept a New Source (defined below) in dedication and satisfaction of its raw water requirements, provided that such amendment does not occur within ten (10) years of the Closing Date. A “New Source” shall mean raw water taken in dedication from a source other than water attributable to units or shares of the following: (i) Colorado Big-Thompson Project, (ii) Greeley-Loveland Irrigation Company, (iii) Seven Lakes Reservoir Company, (iv) Loveland and Greeley Reservoir Company, (v) Greeley Irrigation Company, and/or (vi) any other water right used to historically irrigate lands within the Service Area, provided that the dedication of such water rights is limited to the satisfaction of the non-potable demand and are used to continue irrigating the historically irrigated lands. If the City amends the Raw Water Dedication Policy to accept a New Source less than ten (10) years after the Closing Date, then Wingfoot may terminate this Agreement and [Wingfoot \(and Credit Escrow Transferee\)](#) shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(b) Limiting Redemption of Raw Water Credits. As of the Closing Date, the Raw Water Dedication Policy shall provide that a Registered Owner may satisfy up to one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation under the Raw Water Dedication Policy with Raw Water Credits. The City may amend the Raw Water Dedication Policy to limit a Registered Owner’s right to satisfy up to one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits, provided that such amendment does not (i) occur on or before fifteen (15) years after the Closing Date, and (ii) reduce the proportion of Raw Water Credits that may be redeemed in satisfaction of a Registered Owner’s cash-in-lieu fee obligation below seventy-five percent (75%) of such obligation. If the City (i) amends the Raw Water Dedication Policy to limit, or (ii) otherwise reduces, a Registered Owner’s right to satisfy one hundred percent (100%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits before fifteen (15) years after the Closing Date, then Wingfoot may terminate this Agreement and shall have the remedies provided in Section 14.2.B(3) (Remedies, Generally). If the City (i) amends the Raw Water Dedication Policy to limit, or (ii) otherwise reduces, a Registered Owner’s right to satisfy not less than seventy-five percent (75%) of the Registered Owner’s cash-in-lieu fee obligation with Raw Water Credits prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may terminate this Agreement and [Wingfoot \(and Credit Escrow Transferee\)](#) shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(c) Disadvantaging Raw Water Credits. Except as provided in Section 10.5.A(2)(c)(i) (Permissible Policy Change) and subject to Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), if the City amends or revises the Raw Water Dedication Policy or enters into an agreement pursuant to Section 14.06.190 of the City's Municipal Code that has the effect of disadvantaging a Raw Water Credit relative to other sources or means of satisfying the City's raw water dedication requirements prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then Wingfoot may elect to terminate this Agreement and Wingfoot (and Credit Escrow Transferee) shall have the remedies provided in either Section 14.2.B(3) (Remedies, Generally) or 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(i) Permissible Policy Changes. Notwithstanding Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) above and subject to Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), the City may amend or revise the Raw Water Dedication Policy to: (i) address non-substantive administrative, clerical, or procedural changes, including but not limited to any municipal code renumbering, that do not have the effect of disadvantaging a Raw Water Credit relative to other sources or means of satisfying the City's raw water dedication requirements; (ii) reflect or address a change in water use and/or consumption that is supported by economic or scientific analysis and is consistent with reasonable industry practice; or (iii) ~~to~~ comply with applicable federal and state law (each a "Permissible Policy Change"). The intent of a Permissible Policy Change is to narrowly tailor such change to minimize a reduction or adverse change in the value of the Raw Water Credits. Subject to the process set forth in Section 10.5.A(2)(c)(ii) (Objection to a Proposed Change), if the City amends or revises the Raw Water Dedication Policy and such amendments or revisions do not qualify as a Permissible Policy Change prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then ~~the Registered Owner (including Wingfoot in its capacity as a Registered Owner) shall have~~ Wingfoot may terminate this Agreement and Wingfoot (and Credit Escrow Transferee) may exercise the remedies ~~provided in~~ under either Section 14.2.B(3) (Remedies, Generally) or Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(ii) Objection to a Proposed Change. If the City approves an agreement pursuant to Section 14.06.190 of the Greeley Municipal Code or adopts an amendment or revision to the Raw Water Dedication Policy in a manner that is inconsistent with or otherwise violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes) prior to the earlier of December 31, 2099, or the date the last outstanding Raw Water Credit is redeemed, then the Certificate shall provide a means for all Registered Owners (including Wingfoot and Credit Escrow Transferee) to object to such amendments or revisions consistent with the following process. All Registered Owners will be deemed to have notice of any agreement approved pursuant to Section 14.06.190 or any ~~amendments or revisions~~ amendment or revision to the Raw Water Dedication Policy adopted pursuant to such policy if the City follows its normal ordinance adoption, hearing and publication requirements in accordance with C.R.S. §24-6-402(2)(c), Section 3-17 of the City's Charter, and the Raw Water Dedication Policy. Registered Owners may object to the proposed final approval of ~~such agreements or any such agreement or the~~ any such amendment or revision proposed final adoption of ~~such amendments or revisions~~ any such amendment or revision to the Raw Water Dedication Policy by providing written notice to the Department (an "Objection"), certified by a majority of the

Registered Owners of the then-outstanding Raw Water Credits (through a duly-appointed “Committee Representative”, the “Registered Owner Committee”), no less than five (5) days prior to the date of the public hearing of the ordinance approving an agreement pursuant to Section 14.06.190 or adopting an amendment or revision to the Raw Water Dedication Policy. In accordance with Section 3-17 and the Raw Water Dedication Policy, the date of the public hearing shall be published after the first reading and shall be set for a date no less than twenty-eight (28) days after the first reading. The Objection shall include the Registered Owner Committee’s basis for the Objection and, to the extent possible, suggested modifications that would resolve the Objection. After receipt of such Objection, the Department shall remove the ordinance approving the agreement or adopting the amendment or revision to the Raw Water Dedication Policy from the City Council’s agenda. Thereafter, the Department, and the Committee Representative shall have thirty (30) days from the date of receipt of the Objection to resolve the Objection. If the Committee Representative does not withdraw the Objection, in writing, thirty (30) days from the date of receipt of the Objection, then the Department and the Committee Representative shall submit the agreement or amendments or revisions, along with each party’s respective position, to an economist or engineer, agreeable to both parties, who is a Colorado based utility rate or policy expert, to determine whether the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or the ~~amendments or revisions~~ qualify amendment or revision qualifies as a Permissible Policy Change. The economist or engineer’s findings shall be binding on Greeley and the Registered Owner Committee (acting by and through the Committee Representative). If the economist or engineer finds that the agreement does not violate Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or that the ~~amendments or revisions~~ qualify amendment or revision qualifies as a Permissible Policy Change, then the Registered Owners shall not be entitled to exercise the remedy defined in Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate) pursuant to Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes), as the case may be. If the economist or engineer finds (x) either (i) that the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or (ii) that the ~~amendments or revisions~~ do amendment or revision does not qualify as a Permissible Policy Change and (y) the City does not amend or reject the agreement or the ordinance amending or revising the Raw Water Dedication Policy to resolve or otherwise satisfy the Registered Owner Committee’s Objection, then a Registered Owner may surrender all or a portion of the Raw Water Credits (but only in whole numbers of Raw Water Credits) held by such Registered Owner to the Department and exercise the remedy defined in Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate) pursuant to Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or Section 10.5.A(2)(c)(i) (Permissible Policy Changes), as the case may be. If the Registered Owner Committee, acting by and through a Committee Representative, does not provide an Objection to the Department, five (5) days prior to the date of the public hearing of the ordinance approving an agreement pursuant to Section 14.06.190 or adopting an amendment or revision to the Raw Water Dedication Policy, then each Registered Owner shall be deemed to have consented to the agreement or to have accepted the ~~amendments or revisions~~ amendment or revision to the Raw Water Dedication Policy as a Permissible Policy Change. Nothing in this Section 10.5.A(2)(c)(ii) shall be read to limit the Registered Owner Committee or individual Registered Owners from participating in any public hearing on an ordinance approving an agreement pursuant to Section 14.06.190 or amending or revising the Raw Water Dedication Policy. In addition to the foregoing, if Wingfoot has not conveyed one

hundred percent (100%) of Wingfoot's TIC Interest when the economist or engineer finds that (x) either (i) the agreement violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits) or (ii) that the amendment or revision does not qualify as a Permissible Policy Change, and (y) the City does not amend or reject the agreement or the ordinance amending the Raw Water Dedication Policy to resolve or otherwise satisfy the Registered Owner Committee's Objection, then Wingfoot may terminate this Agreement and Wingfoot (and Credit Escrow Transferee) may exercise the remedies under either Section 14.2.B(3) or Section 10.5.A(4) (Rights of Registered Owners Derived Solely from Certificate), or both, as applicable.

(3) Reserved.

(4) Rights of Registered Owners Derived Solely from Certificate. The form of the Certificate shall include the terms of Section 10.5.A(1) (Revocations) and Section 10.5.A(2) (Amendments). If, prior to the earlier of December 31, 2009 or the date the last outstanding Raw Water Credit is redeemed, Greeley (i) revokes or rescinds the Raw Water Dedication Policy pursuant to Section 10.5.A(1) (Revocation), (ii) adds a new source in violation of Section 10.5.A(2)(a) (Adding New Sources), (iii) limits or reduces the redemption of the Raw Water Credits or otherwise is in violation of Section 10.5.A(2)(b) (Limiting Redemption of Raw Water Credits), (iv) enters into an agreement that violates Section 10.5.A(2)(c) (Disadvantaging Raw Water Credits), or (v) approves an amendment or revision that does not qualify as a Permissible Policy Change pursuant to Section 10.5.A(2)(c)(ii), then, subject to Section 17.21 (Integrated Agreement), a Registered Owner's exclusive remedy shall be to have the option to surrender all or a portion of the Raw Water Credits (but only in whole numbers of Raw Water Credits) held by such Registered Owner to Greeley, and Greeley shall be obligated to buy back the surrendered Raw Water Credits at the greater of (a) thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 escalated three percent (3%) compounded annually thereafter, or (b) the three-year trailing average of Greeley's cash-in-lieu price, as defined by the Raw Water Dedication Policy. The form of the Certificate shall include the foregoing remedies and the instrument through which a Registered Owner shall exercise such rights and remedies, except that any rights and remedies of Wingfoot or a Credit Escrow Transferee shall not be limited or waived by this Section 10.5.A(4).

B. Cash-In-Lieu. If Greeley's calculated cash-in-lieu requirement, as provided in the Raw Water Dedication Policy, falls below thirty thousand dollars (\$30,000) per acre-foot ("Base Amount") in any year prior to the earlier of (i) December 31, 2009 or (ii) the date that Wingfoot transfers and assigns its last Raw Water Credit to a third-party as evidenced by the Registry, Greeley shall compensate Wingfoot by paying the Specified Difference to Wingfoot each year Greeley's calculated cash-in-lieu requirement falls below the Base Amount. The Specified Difference shall be an amount equal to the product of the number of Raw Water Credits (including the Released Credits) sold by Wingfoot to a third-party and the difference between the Base Amount and the cash-in-lieu requirement set for that year ("Specified Difference") which shall be considered liquidated damages pursuant to Section 14.2.C (Remedies, Generally). The Specified Difference shall be calculated one (1) year after each reduction in cash-in-lieu requirement becomes effective and shall be due and payable to Wingfoot thirty (30) days thereafter and shall only be payable to Wingfoot.

ARTICLE 11
PUT AND CALL OPTIONS

11.1 Options.

A. Call Option. Each calendar year, beginning in ~~2022~~2021 and expiring after ~~calendar year 2047~~July 15, 2045 (“Option Period”), Greeley may purchase (in its sole discretion), and Wingfoot shall sell, up to one hundred sixty-seven (167) ~~Raw Water~~Escrowed Credits (defined below) at the Option Price on an annual basis (“Call Option”), if Greeley timely delivers to Wingfoot and Credit Escrow Agent (defined below) the Call Notice (defined below). To exercise its Call Option, Greeley must provide written notice to Wingfoot and Credit Escrow Agent on or before ~~July 1st~~June 8th of such calendar year (“Call Notice”).

B. Put Option. Each calendar year, during the Option Period, Wingfoot may sell (in its sole discretion), and Greeley shall purchase, up to one hundred sixty-seven (167) ~~Raw Water~~Escrowed Credits at the Option Price on an annual basis (“Put Option”), if Wingfoot timely delivers to Greeley and Credit Escrow Agent the Put Notice (defined below). To exercise its Put Option, Wingfoot must provide written notice to Greeley and Credit Escrow Agent on or before July 15~~th~~ of such calendar year (“Put Notice”). Wingfoot may also provide notice to Greeley and the Credit Escrow Agent at any date during the Option Period on or after June 8 of a commitment to not exercise the Put Option in any given year (a “Release Notice”) subject to any terms or conditions agreed by Wingfoot (or Credit Escrow Transferee) in any applicable indenture, assignment or pledge.

11.2 Escrowed Credits. For the purpose of reserving sufficient Raw Water Credits to support the Put Option and the Call Option, at Closing, the Parties shall execute an escrow agreement, substantially in the form attached hereto as Exhibit R (the “Credit Escrow”), with an escrow agent (the “Credit Escrow Agent”) to manage the deposit and release of twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits (“Escrowed Credits”) during the Option Period. Further, the Credit Escrow Agent will manage the deposit and release of an additional twenty-five (25) Certificates, each evidencing one hundred sixty-seven (167) Raw Water Credits deposited pursuant to Section 6.2, which shall not be considered Escrowed Credits for purposes of this Article 11. Notwithstanding the preceding sentence, the Parties acknowledge and agree that the Credit Escrow attached hereto may be subject to revision as may be necessary or convenient to obtain approval from the Credit Escrow Agent. Escrowed Credits held in escrow for the benefit of Wingfoot, or any duly-approved assignee hereunder (including Credit Escrow Transferee), shall be considered issued for all purposes.

11.3 Released Credits. To the extent that the Put Option and/or Call Option are not exercised in full in any calendar year with respect to all of the one hundred sixty seven (167) annual Escrowed Credits (such non-exercised credits being referred to as the “Released Credits”), then all Released Credits shall no longer be subject to the Put Option or the Call Option in future years. If neither the Put Option nor Call Option are exercised in any given calendar year, then on the earlier to occur of (i) the Credit Escrow Agent’s receipt of a Release Notice; or (ii) July 16 of such year, the Credit Escrow Agent shall promptly deliver a Certificate representing all such Released Credits to Wingfoot, and, prior to the date which is ten (10) years after the Closing Date, the same amount shall be added to the Semester Total under Section 10.2

(Transfer of Tenancy in Common Interest). If the Put Option and/or Call Option are exercised in part or in full in any calendar year, then Section 11.5 (Release; Payment; Cancellation of Raw Water Credits) shall also apply. Notwithstanding anything to the contrary, Wingfoot shall retain one hundred percent (100%) of the proceeds received by it from the sale of any Released Credits.

11.4 Contents of Notices; Acknowledgement. Each Call Notice and Put Notice shall contain (a) the number of Raw Water Credits to which the Call Option or Put Option is being exercised (“Exercised Credits”), (b) the Option Price, and (c) the product of the Option Price and Exercised Credits (the “Exercise Price”), with respect to such Call Option or Put Option being exercised.

11.5 Release; Payment; Cancellation of Raw Water Credits. On July 16 of each year, in the event that the Put Option and/or Call Option is properly exercised by providing a timely Put Notice or Call Notice, respectively (each, an “Exercise Event”), then (i) the Credit Escrow Agent shall release one (1) Certificate evidencing one hundred sixty-seven (167) Raw Water Credits to Greeley (the “Surrendered Certificate”) and (ii) the same amount shall be added to the Semester Total under Section 10.2. (Transfer of Tenancy in Common Interest). If an Exercise Event occurs in any calendar year as described in the preceding sentence, Wingfoot shall provide Greeley with wire transfer instructions (which may be included in the Put Notice, if applicable) on or before August 1st. On or before the fifth (5th) business day after receipt of both the wire transfer instructions and the Surrendered Certificate, Greeley shall (x) pay Wingfoot the Exercise Price under the Put Notice and/or Call Notice, as applicable, and (y) Greeley shall issue Wingfoot a Certificate for the total Released Credits, if any, not exercised as part of any Exercise Event. Notwithstanding anything to the contrary, in addition to proceeds received from sales of any Released Credits, Wingfoot may retain one hundred percent (100%) of the Exercise Price and none of the Exercise Price shall be required to be put into any escrow or otherwise withheld.

11.6 Annual Limit. The annual aggregate maximum amount of Raw Water Credits that can be sold and purchased under the Put Option and Call Option shall be one hundred sixty-seven (167). Greeley shall not be obligated to purchase, and Wingfoot shall not be obligated to sell, more than an aggregate of one hundred sixty-seven (167) Raw Water Credits in any one year under the combined Call Option and Put Option for such calendar year.

11.7 Assignment; Transfer. Wingfoot, or any of its duly-authorized successors or assigns, may assign all of its rights (or remaining rights) under this Article 11 to a third-party, ~~or assign all of its rights under this Agreement pursuant to Section 17.11 (Assignment) (in either case, such third party, a “Transferee”) and the following: (i) that~~ and the Credit Escrow (such third party, a “Credit Escrow Transferee”), provided that the form of assignment (and any subsequent reassignment) shall be approved by Greeley in its reasonable discretion. On or shortly after Closing, Wingfoot intends to assign all of its rights under this Article 11 to a third-party directly or indirectly owned or controlled by HA I, LLC, which entity, as Credit Escrow Transferee, intends to assign its rights, remedies and obligations under this Article 11, including an assignment of revenues derived from the rights and/or obligations, to an indenture trustee in connection with financing secured by Wingfoot. In anticipation of that assignment, the Parties have agreed that Greeley shall issue a series of twenty-five (25) Certificates in the name of Wingfoot and a second series of twenty-five (25) Certificates, which have been duly assigned by Wingfoot, in the name of the Credit Escrow Transferee and to deliver both series of Certificates

to the Credit Escrow Agent at Closing. Upon assignment of Wingfoot's rights under this Article 11 and the Credit Escrow to a Credit Escrow Transferee, the following shall occur: (i) the Credit Escrow Agent shall be directed to release to Greeley (for cancellation by Greeley) the twenty-five (25) Certificates held in the name of Wingfoot, each evidencing 167 Escrowed Credits, along with the duly executed assignment by Wingfoot to the Credit Escrow Transferee; (ii) the Credit Escrow Agent shall be directed to continue to maintain custody of the remaining twenty-five (25) Certificates evidencing the issued but unreleased Escrowed Credits in the name of and for the benefit of the Credit Escrow Transferee; (iii) the total number of ~~unreleased Escrowed~~ Raw Water Credits (totaling 4,175 credits) that are in the name of Wingfoot and released to Greeley pursuant to 11.7(i) shall be added to the applicable Semester Total under Section 10.2 (Transfer of the Tenancy in Common Interest); ~~(iiiv) that~~ the Credit Escrow Agent shall be directed to ~~release the Escrowed Credits pursuant to Section 11.5 (Release; Payment; Cancellation of Raw Water Credits) to Greeley, instead of Wingfoot or the Transferee, with instruction to the Registrar to authenticate and deliver a Certificate or Certificates representing~~ accept notices and instructions from the Credit Escrow Transferee (including the Put Notice, Release Notice, and rights to the Released Credits ~~in the name of the Transferee, (iii) that the form of assignment (and any subsequent reassignment) be approved by Greeley in its reasonable discretion and include the Transferee's express assumption of all obligations of Wingfoot pursuant to such Credits or~~ as though it were a party (as if it was Wingfoot) to this Agreement and ~~(iv) that~~ the Credit Escrow; and (v) Wingfoot ~~covenants~~ shall covenant and agrees agree, for itself, its successors and assigns, to indemnify, protect, defend and hold harmless Greeley, its successors and assigns, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including without limitation reasonable attorneys' fees) which are imposed upon or incurred by Greeley, its successors or assigns, for claims by ~~the any Credit Escrow~~ Transferee against Greeley for breaches by Wingfoot of the assignment (described in this Section 11.7) to ~~the any Credit Escrow~~ Transferee. Wingfoot agrees that the foregoing covenants and agreements shall survive any subsequent assignment. ~~Wingfoot and any subsequent Transferee is prohibited from assigning only a portion of its~~ The Parties expressly acknowledge that an assignment of Wingfoot's or Credit Escrow Transferee's rights, remedies and obligations under this Article 11, including an assignment of revenues derived from the rights and/or obligations under this Article 11, to ~~a third party, and any attempt~~ an indenture trustee in connection with financing secured by Wingfoot or ~~a subsequent~~ Credit Escrow Transferee ~~to do so shall be void~~ shall be permitted, provided such assignment otherwise complies with this Section 11.7. Upon assignment of Wingfoot's (or any subsequent Credit Escrow Transferee's) rights under this Article 11, the Credit Escrow Transferee shall be entitled to enforce Wingfoot's rights and remedies pursuant to Article 14 (Post-Closing Defaults and Remedies) and Section 10.5 (Material Change to Market Value), as may be applicable and to the extent of the Escrowed Credits, (i) in the event of any Greeley breach of its obligations under this Article 11, any default by Greeley under Article 14 or as may be owed to the Credit Escrow Transferee, or (ii) to otherwise enforce the protections applicable to the Escrowed Credits (including protections generally inuring to the benefit of the Raw Water Credits) under this Agreement. In addition, the Credit Escrow Transferee shall have the rights applicable to a Registered Owner under the Escrowed Credits, and shall be treated as the Registered Owner of the Escrowed Credits for such purpose (including, without limitation, for purposes of enforcing its remedies under the terms of the Certificates). Following transfer or

assignment of Wingfoot's obligations, rights, and remedies pursuant to this Section 11.7, all references to Wingfoot in Article 11 shall mean and refer to Credit Escrow Transferee and its duly authorized successors and assigns.

11.8 Termination of Article 11. Except as otherwise provided, this Article 11 shall terminate at expiration of the Option Period. Upon expiration of the Option Period, all rights, remedies, and obligations under this Article 11 shall terminate, except for such rights, remedies and obligations that are left unperformed as of the date of the end of the Option Period. Subject to the preceding sentence, on termination of Article 11, Credit Escrow Transferee shall have remedies only under the terms of the Certificates it holds as a Registered Owner and not under this Agreement.

11.9 Treatment of Semester Total Following Assignment. Notwithstanding anything to the contrary in this Article 11 (including but not limited to Sections 11.3 and 11.5), exercise or release of any Escrowed Credits under this Article 11 shall not impact the Semester Total subsequent to Wingfoot's transfer or assignment of this Article 11 to a Credit Escrow Transferee pursuant to Section 11.7, the intent being that Wingfoot has transferred the amount of Wingfoot's TIC Interest that corresponds to the Escrowed Credits upon assignment of this Article 11.

ARTICLE 12
REVENUE SHARING

12.1 Revenue Sharing.

A. Use; Outside Customers Non-Municipal. From the Closing Date until the earlier of December 31, 2055, or twenty-five (25) years after Greeley has certified completion of the Project Infrastructure, Wingfoot shall be entitled to receive an amount equal to fifty percent (50%) of the Net Revenue generated by Greeley from the sale or lease of the untreated, raw water attributable to the Water Rights or the State Land Board Lease to non-municipal, non-domestic customers, including but not limited to oil and gas operators and agricultural water users. For this purpose, “Net Revenue” means an amount equal to the net proceeds of such sales or leases after deduction of power costs for any pumping required to deliver such water. Wingfoot shall also receive an amount equal to fifty percent (50%) of any revenue derived from the operation of power generation facilities constructed as part of the Project Infrastructure for a period of twenty-five (25) years after completion of the Project Infrastructure (“Power Revenue Interest”). In the event power generating facilities are completed as part of the Project Infrastructure prior to December 31, 2055, then on or before December 31, 2055, Greeley and Wingfoot shall appoint an independent third-party expert, agreeable to both Greeley and Wingfoot, who is an expert in power generation and valuation, to perform a valuation of the obligation of Greeley to pay the remaining 25-year Power Revenue Interest to Wingfoot beyond December 31, 2055 in addition to any then unpaid Power Revenue Interests (the “Power Valuation”) and deliver a written report of the Power Valuation to Greeley and Wingfoot. Within thirty (30) days of receipt of such report, Greeley shall purchase the remaining, unpaid Power Revenue Interest for the amount of the Power Valuation (the “Power Transaction”). Greeley shall determine in its sole discretion whether to sell or lease the untreated, raw water attributable to the Water Rights and the State Land Board Lease, and at what rate, and whether to install power generating capabilities. This provision shall only apply to the untreated, raw water attributable to the Water Rights and the State Land Board Lease, but shall not apply to the revenue generated from the sale or lease of wholly consumable effluent associated with Greeley’s use of the water attributable to the Water Rights and/or the State Land Board Lease.

B. Outside Customers. From the Closing Date until the earlier of December 31, 2050, or twenty-five (25) years after Greeley has certified completion of the Project Infrastructure, Wingfoot shall be entitled to receive an amount equal to fifty cents (\$0.50) per one-thousand (1,000) gallons of treated water attributable to the Water Rights and/or the State Land Board Lease and delivered by Greeley to municipal and domestic water users located outside of the Service Area. Greeley shall maintain and make available to Wingfoot on request, flow records and water rights accounting for any deliveries outside the Service Area.

ARTICLE 13
CONDITIONS OF CLOSING

13.1 Wingfoot’s Conditions. Wingfoot’s obligation to sell, convey and assign, as applicable, the Assets at Closing under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be

and correct in all material respects as of the Closing Date and shall not be deemed waived in the event Greeley shall elect to close pursuant to Section 13.3.A(3) (Failure of Condition) below.

13.3 Failure of Condition.

A. Except (i) as set forth in subparagraph B below and (ii) for failure of the condition set forth in Section 13.2.E (Greeley's Conditions) which shall be subject to Section 6.1.A (Governing Body Approval), in the event of a failure of any condition contained in Section 13.2 (Greeley's Conditions), Greeley may in its sole discretion:

(1) Terminate this Agreement by written notice to Wingfoot, in which event: (a) all funds deposited by Greeley under this Agreement as of such date shall be immediately returned to Greeley and (b) Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, out-of-pocket costs incurred by Greeley subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement, which shall include but is not limited to the Inspection Costs; or

(2) Greeley may waive such default or condition and effectuate the Closing; or

(3) If the failure of condition consists of a default by Wingfoot that can be cured by action within the reasonable control of Wingfoot, Greeley may elect to treat this Agreement as being in full force and effect and Greeley shall have the right to specific performance, monetary damages arising out of such default, or both, EXCEPT THAT GREELEY SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

B. In the event of a failure of any condition contained in Section 13.1 (Wingfoot's Conditions) above, Wingfoot may in its sole discretion:

(1) Terminate this Agreement by written notice to Greeley, in which event Wingfoot shall retain the Deposit, as liquidated damages pursuant to Section 13.4 (Pre-Closing Liquidated Damages), in addition to reimbursements from Greeley of all of Wingfoot's reasonable, out-of-pocket costs incurred by Wingfoot subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement; or

(2) Wingfoot may waive such default or condition and effectuate the Closing and Wingfoot shall have the right to recover monetary damages arising out of such default, EXCEPT THAT WINGFOOT SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

WINGFOOT HEREBY WAIVES ANY RIGHTS IT MAY HAVE TO SPECIFIC PERFORMANCE IN THE EVENT OF A DEFAULT BY GREELEY.

13.4 Pre-Closing Liquidated Damages. If Greeley defaults in any of its obligations under this Agreement prior to Closing and Wingfoot does not waive the default, Wingfoot's sole remedy shall be to terminate this Agreement and retain the amount of the Deposit as liquidated

damages in addition to reimbursements from Greeley of all of Wingfoot's reasonable, out-of-pocket costs incurred by Wingfoot subsequent to the Effective Date and prior to the termination arising from or in connection with this Agreement. WINGFOOT AND GREELEY ACKNOWLEDGE THAT WINGFOOT'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE DEPOSIT AND REIMBURSEMENTS IS A REASONABLE ESTIMATE OF WINGFOOT'S DAMAGES.

ARTICLE 14
POST-CLOSING DEFAULTS AND REMEDIES

14.1 Events of Default. After Closing, each of the following shall constitute an "Event of Default":

- A. Failure by either Party to make any payment or deposit when due.
- B. Default by either Party in the due and punctual performance of any of its covenants, conditions, agreements or other provisions contained in this Agreement on its part to be performed, if such default continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by the non-defaulting Party; provided that if such default cannot be cured within such thirty (30) days, and during such thirty (30) day period the defaulting Party has taken commercially reasonable efforts to remedy such default and subsequently is diligently pursued to the completion of such performance, an Event of Default shall not be deemed to have occurred until ninety (90) days after written notice has been delivered.
- C. Subject to the survival provisions of Section 17.9 (Survival), any of the representations or warranties made by a Party shall prove to have been materially incorrect under the circumstances when made.
- D. The occurrence and continuation of a Credit Event with respect to either Party.

14.2 Remedies, Generally. Upon the occurrence and continuation of an Event of Default, the following remedies shall be available to the Parties:

A. Except as provided in Section 14.3.A (Special Provisions for Liquidated Damages) below, if an Event of Default by Wingfoot, Greeley may in its sole discretion:

- (1) Waive such default or condition; or
- (2) If the Event of Default by Wingfoot can be cured by action within the reasonable control of Wingfoot, then Greeley may elect to treat this Agreement as being in full force and effect and Greeley may suspend its obligation to issue, reissue, acquire or buy Raw Water Credits, except as may be required by Article 11 (Put and Call Options) (which obligations may not be suspended by Greeley, subject to Section 11.8), until the default is cured, and shall have the right to specific performance, damages, or both, EXCEPT THAT

GREELEY SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES; or

(3) If the Event of Default by Wingfoot consists of a failure under Section 9.1.A (Deposit Due) to deposit the Initial Contribution within ninety (90) days of the Closing Date, then this Agreement shall automatically terminate, in which event: (a) the Purchase Price shall be returned to Greeley; (b) the Initial Tenancy in Common Interest shall be conveyed back to Wingfoot, along with a re-assignment of the [Ancillary Assets and the](#) State Land Board Lease; and (c) all documents deposited by Greeley or delivered to Wingfoot by Greeley shall be immediately returned to Greeley, if any, and all documents deposited by Wingfoot or delivered to Greeley by Wingfoot shall be immediately returned to Wingfoot, if any. In addition, Greeley shall be entitled to reimbursements from Wingfoot and Wingfoot shall be obligated to pay Greeley for all reasonable, third party out-of-pocket costs incurred by Greeley subsequent to the Effective Date but prior to the termination, which shall include but not be limited to the Inspection Costs. Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement, except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement, for the time period(s) specified therein, and the rights and obligations of the Registered Owners of any Certificates remaining outstanding.

(4) If the Event of Default consists of a default by Wingfoot under Section 9.2.B (Failure to Fund the Cash Contribution) or Section 14.1.D (Credit Event) then Greeley may elect to terminate this Agreement by delivering written notice to Wingfoot, in which event, as Liquidated Damages pursuant to Section 14.3.A (Special Provision for Liquidated Damages), Greeley may elect to require that Wingfoot convey the entirety of Wingfoot's TIC Interest to Greeley, and, in the event of a default by Wingfoot under Section 9.2.B (Failure to Fund the Cash Contribution), Wingfoot shall continue to be subject to its Deposit Obligation under Section 9.1.B (Source of Funds) until Wingfoot's Cash Contribution obligation is fully satisfied (as provided in Section 9.2.B (Failure to Fund the Cash Contribution)). Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement, for the time period(s) specified therein, and the obligations, liabilities, covenants, agreements and monetary obligations contained in following Article(s), Section(s) or term(s) which shall survive the Termination of this Agreement: (i) Article 11 (Put and Call Options) ~~and~~ [subject to Section 11.8](#); (ii) Wingfoot's Deposit Obligation under Section 9.1.B (Source of Funds), which shall survive until the Cash Contribution is satisfied as provided in Section 9.1.B (Source of Funds); ~~and~~ [and \(iii\) Section 17.18 \(Limited Source of Payments by Greeley\), which shall survive as long as Greeley has obligations to Wingfoot or any assignee or Credit Escrow Transferee hereunder; and \(iv\) Section 10.5 \(Material Change to Market Value\), which shall survive \(a\) as long as Wingfoot remains a Registered Owner and \(b\) until Article 11 terminates pursuant to Section 11.8.](#)

~~(5) If the Event of Default consists of a default by Greeley under Section 10.3 (Administration; Tracking), then Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Wingfoot may require that Greeley retain a financial institution, reasonably acceptable to Greeley and experienced in~~

~~maintaining similar registries, to act as the registrar and administer the Registry until December 31, 2099 or such earlier date as the last outstanding Raw Water Credit has been redeemed.~~

B. If the Event of Default consists of a default by Greeley under Section 14.1.B or C (Events of Default) above, Wingfoot may in its sole discretion:

(1) Waive such default or condition; or

(2) If the default by Greeley can be cured by action within the reasonable control of Greeley, then Wingfoot may elect to treat this Agreement as being in full force and effect and Wingfoot shall have the right to specific performance, damages, or both, EXCEPT THAT WINGFOOT SPECIFICALLY WAIVES ANY SPECIAL, CONSEQUENTIAL, PUNITIVE, SPECULATIVE OR INDIRECT DAMAGES.

(3) If the default consists of a default by Greeley under Section 10.5.A.(1) (Revocation) or (2) (Amendments), 17.11 (Assignment), 14.1.A. or 14.1.D (Events of Default), then, as Liquidated Damages pursuant to Section 14.3.B (Special Provision for Liquidated Damages), Wingfoot may elect to terminate this ~~Agreement by~~ Agreement by delivering written notice to Greeley, in which event, (i) Wingfoot (or the Credit Escrow Transferee, as the case may be) shall have the option to sell to Greeley, and Greeley shall be obligated to purchase, all unissued Raw Water Credits ~~including~~ and all current Escrowed Credits (i.e., all Raw Water Credits remaining to be issued to Wingfoot or ~~deposited~~ remaining with the Credit Escrow Agent pursuant to the Credit Escrow as of the date of such termination and whether or not considered issued under this Agreement) at the greater of (a) a price of thirty thousand dollars (\$30,000) per Raw Water Credit in 2020 escalated three percent (3%) compounded annually thereafter, or (b) the ~~three-year~~ 3-year trailing average of Greeley's cash-in-lieu price; and (ii) Wingfoot shall be entitled to all funds remaining in the Construction Escrow as of the date of default by Greeley. If Wingfoot exercises such election, then upon receipt of the full cash payment, Wingfoot shall concurrently convey its entire TIC Interest to Greeley in accordance with Section 10.2 (Transfer of the Tenancy in Common Interest) as if the unissued Raw Water Credits had been issued to Wingfoot and the Escrowed Credits released. Upon termination, all other rights and obligations of the Parties shall be terminated under this Agreement except for the covenants, agreements and monetary obligations contained in Section 17.9 (Survival) which shall survive the Termination of this Agreement for the time period(s) specified therein. For the avoidance of doubt, Credit Escrow Transferee may elect to terminate that portion of this Agreement duly assigned to it pursuant to Section 11.7, and be entitled to sell to Greeley (and obligate Greeley to purchase) such assigned, unreleased Escrowed Credits pursuant to this Section 14.2.B(3). For purposes of exercising its rights under this Section, a Credit Escrow Transferee shall only have the right to terminate Article 11 of this Agreement (and only to the extent of its assignment and assumption of such Article pursuant to the terms of this Agreement), by delivering written notice to Greeley pursuant to this Section 14.2.B.(3), and provided that such termination by a Credit Escrow Transferee shall (i) be without regard to Wingfoot's election to terminate, and (ii) not affect the rights, obligations or remedies retained by Wingfoot pursuant to this Agreement.

(4) If the Event of Default consists of a default by Greeley under Section 10.3 (Administration; Tracking), then Wingfoot may elect to treat this Agreement as

being in full force and effect and, upon delivering written notice to Greeley, Wingfoot may require that Greeley retain a financial institution, reasonably acceptable to Greeley and experienced in maintaining similar registries, to act as the registrar and administer the Registry until December 31, 2009 or such earlier date as the last outstanding Raw Water Credit has been redeemed.

C. If the Event of Default consists of a default by Greeley under Section 10.5.B (Cash-in-Lieu), then, as Liquidated Damages pursuant to Section 14.3.C (Special Provisions for Liquidated Damages), Wingfoot may elect to treat this Agreement as being in full force and effect and, upon delivering written notice to Greeley, Greeley shall be obligated to pay the Specified Difference.

D. If a cure period for an Event of Default is not otherwise expressly provided in this Agreement then, except for the giving of notices, neither party shall be deemed in default hereunder with respect to such Event of Default unless such Party fails to cure such default within thirty (30) days after written notice stating such default and requiring the same to be remedied is given by the non-defaulting Party; provided that if such default cannot be cured within such thirty (30) days, and during such thirty (30) day period the defaulting Party has taken commercially reasonable efforts to remedy such default and subsequently is diligently pursued to the completion of such performance (a full cure), an Event of Default shall not be deemed to have occurred until ninety (90) days after written notice has been delivered. If a cure period for an Event of Default is expressly provided in this Agreement, then such express cure period will control and be given effect.

14.3 Special Provisions for Liquidated Damages. The following provisions shall apply to Events of Default by either Party which result in the following liquidated damages (each referred to as “Liquidated Damages”):

A. If Wingfoot defaults in any of its obligations under Section 9.1.A (Deposits Due) and Greeley elects to terminate this Agreement, then Greeley’s sole remedy shall be the terms of Section 14.2.A.(3) (Remedies, Generally). WINGFOOT AND GREELEY ACKNOWLEDGE THAT GREELEY’S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE TERMS OF SECTION 14.2.A.(3) (Remedies, Generally) ARE A REASONABLE ESTIMATE OF GREELEY’S DAMAGES.

B. If Greeley defaults in any of its obligations under Section 10.5.A(1) (Revocation) and (2) (Amendments) of this Agreement and Wingfoot elects to terminate this Agreement, then Wingfoot’s sole remedy shall be the terms of Section 14.2.B(3) (Remedies, Generally). WINGFOOT AND GREELEY ACKNOWLEDGE THAT WINGFOOT’S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THE TERMS OF SECTION 14.2.B(3) (REMEDIES, GENERALLY) ARE A REASONABLE ESTIMATE OF WINGFOOT’S DAMAGES.

C. If Greeley defaults in any of its obligations under Section 10.5.B (Cash-in-Lieu) of this Agreement, Wingfoot’s sole remedy shall be to the Specified Difference as provided in Section 10.5.B. WINGFOOT AND GREELEY ACKNOWLEDGE THAT

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ana.gutierrez@hoganlovells.com
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and a copy to: Christopher P. Dietzler
Email: cdietzler@poudrevalleycapital.com

If to Greeley: City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812
Facsimile: (970) 350-9805
Email: Sean.Chamber@greeleygov.com
Adam.Jokerst@greeleygov.com
WSAdmin@Greeleygov.com

With a copy to: City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
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Email: Douglas.Marek@Greeleygov.com
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ARTICLE 17 MISCELLANEOUS

17.1 Termination. Except as otherwise provided, this Agreement shall terminate at the later of the end of the Option Period or the expiration of the revenue sharing obligation of Greeley under Section 12.1 (Revenue Sharing). Upon termination of this Agreement, all other rights and obligations of the Parties shall be terminated under this Agreement except for the representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations contained in following Article(s), Section(s) or term(s) which shall survive the Termination of this Agreement in addition to those identified in Section 17.9 (Survival): (i) Section 10.5.A(2) (Amendments); (ii) Article 11 (Put and Call Options) subject to Section 11.8; and (iii) Section 10.5.B (Cash-In-Lieu), which shall terminate on the dates specified therein.

17.2 No Third Party Beneficiary; No Waiver of Governmental Immunity. This Agreement shall not create any duty of care or liability with respect to any person or entity not a Party to this Agreement, including without limitation any Registered Owner (except for Wingfoot), 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.

17.3 Limits on Governmental Immunity. Greeley represents that, pursuant to C.R.S. §24-10-106, its governmental immunity is limited to claims for injury that lie in tort or could lie in tort. Under existing law, Greeley is not entitled to raise the defense of sovereign immunity in connection with any legal proceeding to enforce or collect upon contractual obligations, including this Agreement, or any amendments or exhibits to this Agreement, including the payment of any amounts due thereunder, provided however that no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the privileges or immunities of Greeley or its officers, employees, successors or 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.

17.4 Mediation. If any dispute arises under this Agreement (including as to whether any Party has breached this Agreement or whether an Event of Default has occurred), then either Party may require that the other engage in nonbinding dispute resolution processes upon delivery of a written notice (a “Dispute Notice”) setting forth the disputed matter. Upon receipt by the other party of such Dispute Notice, the Parties shall use their commercially reasonable efforts to negotiate a resolution of the dispute for a period of thirty (30) days (the “Dispute Resolution Period”) which may include mediation using a mediator chosen by the Parties. During the Dispute Resolution Period, no Party may bring a claim or commence legal action related to or in connection with the matter set forth in the Dispute Notice until the Dispute Resolution Period ends. This Section 17.4 shall not alter any date in this Agreement, unless otherwise agreed.

17.5 Time. Except as otherwise provided in this Agreement, time is of the essence as to each provision of this Agreement and the performance of each Party’s obligations hereunder.

17.6 Attorneys’ Fees. If any legal action or other proceeding is commenced to enforce or interpret any provision of this Agreement, the Prevailing Party (defined below) 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.

17.7 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. Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

17.8 Entire Agreement. This Agreement and its Exhibits contain the entire agreement among the ~~parties~~Parties regarding the subject matter hereof and supersedes all prior agreements,

whether written or oral, among the ~~parties~~Parties regarding the same. This Agreement may only be modified by mutual written agreement duly authorized and executed by the ~~parties~~Parties.

17.9 Survival. The following representations and warranties shall survive until Closing (and they shall terminate and be of no further force and effect after Closing), unless otherwise specified below, but if the Closing does not occur, the following representations and warranties shall terminate upon termination of this Agreement:

A. All warranties of title set forth in this Agreement shall merge with any deed or assignment delivered at Closing.

B. All representations and warranties contained in the General Representations and Warranties of both ~~parties~~Parties shall survive for six months from the Closing Date, if the Closing Occurs.

C. All representations and warranties contained in the Environmental Representations and Warranties.

D. All other representations and warranties hereunder.

All covenants and agreements (including monetary obligations) shall continue until the earlier of: (i) performance of such covenants or agreements or (ii) this Agreement terminates (except for the covenants and agreements contained in Article 11 (Put and Call Options), subject to Section 11.8, Section 14.2.A(4) (Remedies, Generally), 14.2.B(3) (Remedies, Generally) and Section 17.18 (Limited Source of Payments by Greeley) which shall survive termination).

17.10 Successors. Subject to Section 17.11 (Assignment), Section 8.2 (Conveyance of Tenancy in Common Interest) and Section 11.7 (Assignment; Transfer of Put and Call) this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by, the Parties, their successors and permitted assigns and the ~~parties~~Parties hereto and their respective successors and permitted assigns.

17.11 Assignment. 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. The sale, pledge, or other disposition of greater than a fifty percent (50%) ownership interest in Wingfoot (a “Change of Control”) to a third party not directly or indirectly owned or controlled by HA ~~III~~II, LLC shall require the written consent of Greeley, which consent shall not be unreasonably conditioned, withheld or delayed. Except as otherwise provided in this Agreement, neither this Agreement, nor any right hereunder, may be assigned by either Party without the prior written consent of the other Party, and any attempt to do so will be void. Notwithstanding anything to the contrary in this Agreement, in the event that Greeley unreasonably conditions, withholds or delays approval of any request for a Change of Control, Wingfoot may elect to terminate this Agreement and shall have the remedies provided in Section 14.2.B(3) (Remedies, Generally).

17.12 Relationship of the Parties. The ~~parties~~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.

17.13 Governing Law and Construction. This Agreement, including any instrument or agreement required hereunder, and all matters arising out of or in connection with this Agreement (whether in contract, tort or otherwise) shall be construed in accordance with and governed by the laws of the State of Colorado without giving effect to any conflict of law principles that would require the application of the laws of another jurisdiction. The ~~parties~~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.

17.14 Joint Effort. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not be construed more severely against one Party than against any other Party.

17.15 Review by Counsel. The ~~parties~~Parties acknowledge that each Party and its legal counsel have reviewed and approved this Agreement.

17.16 Calendar Days. In the event any time period set forth in this Agreement commences, expires or is determined from a date which falls on a Saturday, Sunday or legal holiday of the State of Colorado, the date of such commencement, performance, expiration or determination shall automatically be extended to the next business day which is not a Saturday, Sunday or legal holiday of the State of Colorado.

17.17 Counterparts; Electronic Signatures. The Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. The Agreement, including all component parts set forth above, may be executed and delivered by electronic signature by any of the parties and all parties consent to the use of electronic signatures.

17.18 Limited Source of Payments by Greeley.

A. This Agreement does not constitute the debt, indebtedness or multiple fiscal year financial obligation of the City within the meaning of the constitution or laws of the State of Colorado or the home rule Charter of the City.

B. Any obligation of Greeley for the payment of money hereunder (each a “Payment Obligation”) shall be solely the special and limited obligations of the Enterprise. Any Payment Obligation shall be payable solely from the net revenues of the Water System remaining in each year after payment of or provision for (1) all standard operation and maintenance expenses of the Water System and the principal of, interest on and reserve requirements of its first-lien “Parity Obligations” (as that term is defined in the Water Revenue Bond Ordinance) issued and outstanding from time to time permitted by Ordinance No. 41, 2018 (the “Water Revenue Bond Ordinance”), (2) a reserve for operation and maintenance expenses equal to twenty five percent (25%) of the previous year’s operation and maintenance expenses, and (3) reserves for depreciation and other amounts with respect to the Water System specifically

required by the City Charter as in effect on the Closing Date (such net revenues being referred to herein as the “Surplus Revenues”). Each Payment Obligation shall constitute a “Subordinate Obligation” (as that term is defined in the Water Revenue Bond Ordinance) of the City, acting by and through the Enterprise, provided that notwithstanding the provisions of Sections 22 and 25(c) of the Water Revenue Bond Ordinance, Greeley shall not be required in any year to apply more than seventy percent (70%) of its Surplus Revenues to the payment of all Payment Obligations.

C. In the event that Greeley fails to pay any Payment Obligations in full in the year incurred, then, and without limiting Wingfoot’s other remedies under this Agreement or applicable law, the unpaid portion of the Payment Obligation shall continue to be due and shall be payable as provided in this Section 17.18. Greeley shall issue to Wingfoot a subordinate promissory note (each a “Subordinate Revenue Note”), in a principal amount equal to each such unpaid portion. The parties agree and acknowledge that any such Subordinate Revenue Note constitutes a “Security” as defined at C.R.S. §11-57-203(5), and is subject to the provisions of the Supplemental Public Securities Act, C.R.S. §11-57-201 et seq. Any such Subordinate Revenue Note shall mature not more than fifteen (15) years from issuance and shall be payable solely from Surplus Revenues semiannually on the first day of February and the first day of August in each year in substantially level installments of principal and interest, with simple interest accruing on the unpaid principal amount at the rate of ten percent (10%) per annum, and shall be subject to prepayment by Greeley in whole or in part, without prepayment penalty, upon not less than thirty (30) days’ notice. Greeley shall set water rates during the term of any Subordinate Revenue Note at a level to assure repayment of the Subordinate Revenue Note within the fifteen year maturity period of the Subordinate Revenue Note.

D. Pursuant to C.R.S. §11-57-208, the Surplus Revenues are hereby pledged as security for the Payment Obligations, if any, ~~and this~~. This pledge shall be specifically confirmed by the City Council of the City in connection with each issuance of a Subordinate Revenue Note. The creation, perfection and priority of such pledge shall be governed by such Section, this Agreement (which is, and shall be deemed to be, a security agreement for all purposes under sections 922(d) and 928(a) of the federal Bankruptcy Code) and the acts of issuance by the City Council taken in connection with the issuance of each Subordinate Revenue Note. Whether or not for whatever reason (i) a Subordinate Revenue Note is issued to evidence any Payment Obligation or (ii) the City Council of the City confirms the pledge, the Surplus Revenues ~~shall immediately be~~ are hereby subject to the lien of such pledge without any physical delivery, filing or further act on the part of the City, the Enterprise or Wingfoot, and such pledge shall have priority over any and all other obligations and liabilities of Greeley, except as limited in this Section 17.18 by the Charter or by the Water Revenue Bond Ordinance. In addition, any breach of or noncompliance with this Section 17.18 shall not limit Wingfoot’s rights or remedies under this Agreement or applicable law. The lien of each such pledge shall be valid, binding, and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the public entity irrespective of whether such persons have notice of such liens. Greeley agrees that it will authorize and issue all Subordinate Revenue Notes in the manner and according to the procedures provided by its Charter and the Water Revenue Bond Ordinance, including advertisement for public sale to the extent then required by the Charter.

E. Greeley hereby represents and warrants, as of the Effective Date, that there are no other currently outstanding Subordinate Obligations, as that term is used in the Water Revenue Bond Ordinance. Greeley further covenants that it shall not create, nor cause to be created, any Subordinate Obligations other than (1) Subordinate Obligations or Subordinate Revenue Notes owed or issued to Wingfoot; (2) Subordinate Obligations or Subordinate Revenue Notes issued to persons other than Wingfoot for the purpose of paying or refinancing Subordinate Revenue Notes or Subordinate Obligations held by or owed to Wingfoot; or (3) Subordinate Obligations secured on a basis expressly junior to the Subordinate Obligations or Subordinate Revenue Notes owed to or held by Wingfoot.

17.19 Interest. Any Payment Obligation owed by Greeley under this Agreement and not paid when due shall bear simple interest at the rate of ten percent (10%) per annum on the unpaid amount until paid, provided that any such amount shall be subject to prepayment at any time in whole or in part, together with the interest accrued on the amount so prepaid.

17.20 Fiscal Contingency. The City shall include in its budget and appropriation measures for each fiscal year the estimated amount of revenues available for Payment Obligations pursuant to Section 17.18 (Limited Source of Payments by Greeley) hereof.

17.21 Integrated Agreement. This Agreement, including all exhibits referenced herein, constitutes the complete, unseverable, unitary, integrated agreement between Greeley and Wingfoot concerning the subject matter hereof. This Agreement constitutes the entire understanding between the parties hereto and supersedes and cancels all prior written and oral agreements and understandings, including the 2020 Agreement, with respect to the subject matter of this Agreement. The parties hereto acknowledge that they negotiated this Agreement, including all exhibits, as a single transaction and would not have entered into any portion of the Agreement without the rights and obligations conferred by the Agreement as a whole. In the event that (i) there is a conflict between the terms of this Agreement and any exhibits, or (ii) this Agreement provides additional or more specific rights or remedies than those described in the exhibits (including, for purposes of an example only, those under Article 17), the terms of this Agreement shall control; provided, however, that any such remedies shall not be cumulative. The rights created hereunder are intended by the parties to be presently vested and fully enforceable according to their terms. The provisions of this Agreement were negotiated as, and constitute, parts of an integrated whole, and the inability of either party to enforce any of such provisions or to consummate any of the transactions contemplated hereby due to changes in law, whether by amendments to the State or federal constitutions, the Charter, the Code or any applicable statute or regulation, or by regulatory or judicial action, would result in substantial and irreparable harm to both parties and an impairment of their vested contractual rights.

17.22 Approval. THE OBLIGATIONS OF GREELEY ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY GREELEY CITY COUNCIL AND WATER AND SEWER BOARD PURSUANT TO SECTION 6.1.A (GOVERNING BODY APPROVAL) ABOVE.

17.23 Requirement of Good Faith and Reasonable Judgment. Unless otherwise expressly provided in this Agreement, all decisions (including, for the avoidance of doubt, any

Terry Ranch Project

Amended & Restated Master Agreement

February 17, 2021



Agenda

Approval of the Terry Ranch Project requires three separate Water & Sewer Board Actions:

1. Approve Amended and Restated Master Agreement
2. Resolution authorizing closing
3. Resolution rescinding prior raw water dedication resolutions for consolidation in Municipal Code



Project Overview

Milton Seaman Enlargement

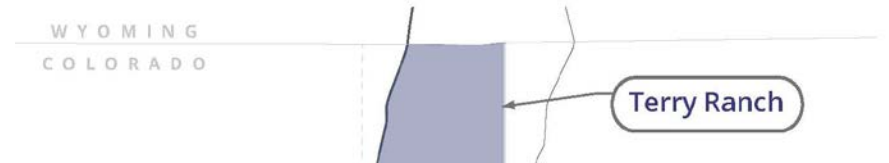
- ✓ Large impacts to wetlands, streams, and habitat
- ✓ Inundation of Forest Service, State, Larimer County, and Fort Collins lands
- ✓ Many federal, state, & local permits needed - 15 years and \$19M to date

Unlikely that Greeley would ever receive necessary permits

Storage Alternatives

- ✓ W&S Board asked for “deep dive” in late 2018 - “Refined Alternatives Screening”
 - ✓ Re-evaluated supply and demand projections with third-party peer review
 - ✓ Evaluated alternatives with fewer environmental impacts, reduced permitting risk, & lower cost
 - ✓ Off-channel reservoirs, plains reservoirs, contract storage, underground storage
 - ✓ Considered options not previously available
- ✓ Selection Panel ranked alternatives
 - ✓ W&S Board, City Manager, City Attorney, senior staff, outside experts, & legal counsel
 - ✓ Used a Decision Support Tool
 - ✓ Identified **Terry Ranch Project** as top option

Terry Ranch Project



- Terry Ranch is for droughts
- Supplements, does not replace Greeley's surface water

needs for generations to come





Overview of Agreement

With Wingfoot Water Resources



Unique Transaction

- ✓ Purchase with raw water “credits” rather than cash
 - ✓ Credits redeemable to meet Greeley’s water dedication requirement
 - ✓ 12,121 Credits, each Credit = 1 acre-foot dedication
- ✓ Adds third source for developers to meet dedication
- ✓ Greeley forgoes future water dedication fees
- ✓ Greeley sets Credit price ceiling with cash-in-lieu rate
- ✓ Wingfoot sells Credits to developers or other 3rd parties



Policy Changes

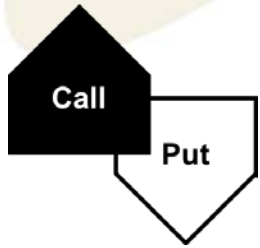
- ✓ Credit value affected by raw water dedication policy
- ✓ Greeley defaults if it enacts certain policy changes
 1. Disallowing Credit redemption
 2. Adding new sources of dedication within 10-years
 3. Limiting percent of dedication met by Credits
 4. Disadvantaging Credits relative to other sources
- ✓ Can address changes in usage if based on consumption data and best practice



Tenancy In Common

- ✓ Transfer method: for each Credit issued to Wingfoot, Greeley receives $1/12,121^{\text{st}}$ of the Assets
- ✓ 10-year maximum
- ✓ Wingfoot cannot control or operate during tenancy-in-common
- ✓ Third-party conveyance allowed with simultaneous transfer of property interest to Greeley for Credits

Put & Call Options



Annual Credit purchase options

#

167 Credits per year



\$30,000 per Credit, escalated 3% annually



25 years

Construction Escrow

- ✓ Wingfoot contribution: \$125M
 - \$25M at close
 - \$100M prior to construction
 - 90% of Wingfoot's revenue deposited to escrow until obligation is met in full
- ✓ Cost splits
 - 80/20 for first \$78M
 - 50/50 for next \$125M



Revenue Sharing & Royalties

- ✓ \$0.50/kgal for outside treated water sales
- ✓ 50/50 revenue split for outside untreated sales & hydropower
- ✓ Sharing ends 25-years after infrastructure is constructed



Transaction Recap

Greeley Receives:

1. Non-tributary Decree
2. Access easement
3. State Land Board lease
4. Five existing wells
5. \$125M towards infrastructure
6. Option to buy-back Credits

Wingfoot Receives:

1. 12,121 Credits
2. Revenue sharing
3. Option to sell Credits to Greeley

Transaction

- ✓ **Agreement DOES NOT**
 - ✓ Give Wingfoot control
 - ✓ Benefit any other city
 - ✓ Sacrifice existing water
 - ✓ Restrict buying other water
 - ✓ Create any obligation to Wingfoot other than to accept & not devalue credits



Purchase Timeline

Purchase
Agreement
(Jun 2020)

Inspection
(Jun-Jan)

Review
Findings
(Dec-Feb)

Decide
whether to
Close
(Feb-Mar)

Collect Community Feedback



Master Agreement Amendments

Amendments

- ✓ **Amendments are non-substantive**
- ✓ Amendments made:
 1. Changed timeline for conveyance of Access Easement (now at closing)
 2. Clarified the rights of the Credit Escrow Transferee upon assignment of Put Option
 3. Clarified the issuance and assignment of the Escrowed Credits
 4. Made clear the vested rights of the parties
 5. Corrected minor typos, corrections, and formatting changes



Staff recommends approval of the Amended and Restated Master Purchase, Sale and Raw Water Credit Administration Agreement



Questions?

WATER & SEWER BOARD AGENDA FEBRUARY 17, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 7

TITLE: APPROVE A RESOLUTION AUTHORIZING
CLOSING FOR TERRY RANCH WATER
RIGHTS AND STORAGE AND RECOMMEND
THE SAME TO CITY COUNCIL

RECOMMENDATION: APPROVE A RESOLUTION AUTHORIZING
CLOSING OF THE PURCHASE OF
GROUNDWATER RIGHTS, GROUNDWATER
STORAGE, AND APPURTENANCES
CONTEMPLATED BY THE TERRY RANCH
PROJECT

ADDITIONAL INFORMATION:

In June 2020, Greeley entered into a Master Purchase, Sale and Raw Water Credit Administration Agreement (“Master Agreement”) with Wingfoot Water Resources, LLC for acquisition of groundwater rights and associated water storage underlying the Terry Grazing Association Ranch in northwest Weld County (the “Terry Ranch Project”). Since that time, staff and consultants have undertaken extensive inspection and diligence activities to confirm the water resources offered in this purchase are safe and reliable. This item presents 1) a summary findings of the diligence and inspection studies conducted over the past eight months, 2) results of peer reviews by third-party experts, and 3) final recommendations of staff and consultants.

The scientific and engineering reports on the inspection of Terry Ranch groundwater and underground storage are technical and voluminous. All reports are linked to the Terry Ranch website: greeleygov.com/terryranch. The reports can be found under the “Test Results and Transparency” and “Terry Ranch Water Quality” subpages. An online Story Map has been prepared that presents some of the key results, and can be found on the Terry Ranch website or directly at <https://storymaps.arcgis.com/stories/5c6250273ba0494d9bb90c4c80df2887>

In summary, the inspection activities found that:

- The Terry Ranch groundwater can safely and reliably be used as a new potable water supply source for the City of Greeley.

- The Upper Laramie Aquifer underlying Terry Ranch is suitable for injection and storage of surface water.
- Acting as a drought supply, the Terry Ranch Project can supplement Greeley's surface water supply system and meet projected 2065 water demands.
- Quality of Terry Ranch groundwater is high. It contains low-levels of naturally occurring uranium, but the uranium can be removed below detection with ion exchange treatment.
- No adverse water quality reactions are expected by blending Terry Ranch water with Greeley's existing treated water sources.
- Introduction of Terry Ranch water into Greeley's existing water supply system is not anticipated to cause corrosion to or release of metals from distribution system piping.
- The risk of contamination to the Upper Laramie Aquifer is at present very low.
- The Terry Ranch Project requires pumping and treatment, the operational costs of which will be higher than Greeley's existing water treatment and conveyance systems. However, the higher operational costs are vastly outweighed by lower capital costs.
- The expected cost to Greeley of building the Terry Ranch Project infrastructure for the 2065 planning horizon is \$256 million in escalated, 2020 dollars.
- Additional testing and monitoring is recommended to refine design, costs, operations, and treatment processes.
- No fatal flaws were identified in due diligence.

Greeley hired third-party engineering firms to independently peer-review the due diligence and study data. The peer reviewers generally concurred with the diligence efforts and did not identify any fatal flaws.

As a result of the diligence and third-party reviews, Greeley staff and consultants recommend the Water & Sewer Board approve closing of the purchase of the Terry Ranch groundwater water rights, groundwater storage, and related assets.

**CITY OF GREELEY, COLORADO
ACTING BY AND THROUGH ITS WATER AND SEWER BOARD**

RESOLUTION ____, 2021

A RESOLUTION AUTHORIZING THE CLOSING OF THE TRANSACTION CONTEMPLATED BY THE AMENDED AND RESTATED MASTER PURCHASE, SALE AND RAW WATER CREDIT ADMINISTRATION AGREEMENT (TERRY RANCH) AND TAKING RELATED ACTIONS

WHEREAS, the City of Greeley ("City") is a Colorado home rule municipality empowered pursuant to Sections 1 and 6 of Article XX of the Colorado Constitution to, *inter alia*, construct, purchase, acquire, lease, add to, maintain, conduct, and operate water works and everything required therefor, within or without its territorial limits, for use of the City; and

WHEREAS, Section 17-4 of the City Charter and Section 14.04.110 of the Greeley Municipal Code authorize and require the Water and Sewer Board ("Board") to, *inter alia*, acquire water and sewer assets for the City; and

WHEREAS, the City, acting by and through its Water Enterprise (the "Enterprise"), and pursuant to Board approval, has previously entered into a Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch), dated June 23, 2020, with Wingfoot Water Resources, a Colorado limited liability company (now known as Wingfoot Water Resources, a Delaware limited liability company) ("Wingfoot") for the purchase and sale of water rights and related property rights (the "Asset"), the consideration for which includes the City's issuance and acceptance of raw water dedication credits until December 31, 2099 (the "Transaction"); and

WHEREAS, on February 17, 2021, the Board authorized the City, acting by and through its Enterprise, to enter into the Amended and Restated Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch), effective June 23, 2020 (the "Master Agreement"); and

WHEREAS, pursuant to the terms of the Master Agreement, Water and Sewer staff and the City's consultants have conducted and reported the findings of various surveys, water quality and soils tests, environmental and ecological assessments, test borings, engineering tests, cost evaluations, environmental audits and tests, feasibility studies and other inspections, investigations and analyses deemed necessary or appropriate in connection with the City's intended acquisition, use and development of the Asset ("Inspection"); and

WHEREAS, the Board has considered the results of the Inspection and is satisfied with the condition of the Asset; and

WHEREAS, Section 6.1.A of the Master Agreement requires, as a condition of closing, that the Board and City Council authorize closing on the Asset after the Inspection has been completed; and

WHEREAS, the Board finds that closing on the Asset is in the best interest of the citizens of Greeley; and

WHEREAS, Pursuant to Section 18-8-308, Colorado Revised Statutes ("C.R.S."), all known potential conflicting interests, if any, with respect to the Transaction have been disclosed to the Board and to the Colorado Secretary of State. No member of the Board has a personal or private interest, as such terms are used in Section 24-18-109, C.R.S., in the Transaction or any other subject matter of this resolution.

NOW THEREFORE, BE IT RESOLVED BY THE WATER AND SEWER BOARD OF GREELEY, COLORADO, AS FOLLOWS.

1. The Board hereby approves and authorizes the closing of the Transaction and recommends that City Council approve and authorize the same.

2. All actions previously taken by the City, City Council, the Board, and officers, agents and employees of the City directed toward the undertaking of the Transaction are hereby ratified, approved and confirmed.

3. The officers, employees and agents of the City are hereby authorized and directed to take all necessary or appropriate action to effectuate the provisions of this Resolution, including, without limitation, the preparation and delivery of the documents required for closing pursuant to the Master Agreement.

4. This Resolution shall become effective immediately upon its passage and signature.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS ____ DAY OF FEBRUARY 2021.

ATTEST

CITY OF GREELEY
WATER AND SEWER BOARD

Roy Otto
Secretary to the Board

Harold Evans
Chairman, Water and Sewer Board

Terry Ranch Project

Water & Sewer Board

February 17, 2021



Agenda

1. Introductions
2. Consultant Findings and Recommendations
3. Third-Party Reviews
4. Staff Recommendations
5. Outreach Summary



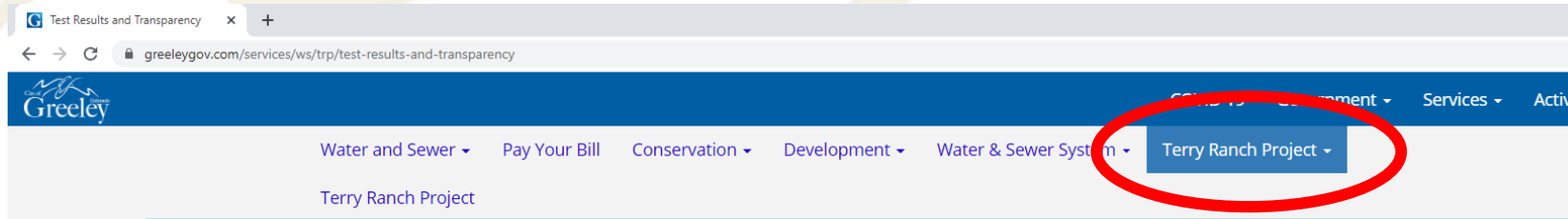


Introduction

Sean Chambers, Water & Sewer Director



Diligence Results



All diligence reports

Staff and consultants have provided monthly diligence findings to the Water & Sewer Board since July 2020.

treatment professionals work hard to ensure this water is the most pristine before it makes it to Greeley customers. That idea has not changed with Terry Ranch. The city has undertaken extensive testing (more than 7,000 data points) on the water to ensure it can be treated to the high standards we've come to trust, and the results have been peer-reviewed by third party consultants to ensure accuracy. The following is the results of that testing.

[Engineering Report Vol. I](#)

securing Greeley's water future. Terry Ranch is an innovative project to meet the City's future water needs.





Consultant Findings & Recommendations

Brown & Caldwell and LRE Water



LRE Overview of Due Diligence Activities

1. WWR Well video surveys
2. Aquifer testing and water quality analysis (>7,000 individual analyses, 577 water quality constituents)
3. Drilled/tested two monitoring wells (EB-1 and EB-2)
4. Spectral gamma logging
5. Hydrophysical logging and depth-specific sampling/analysis
6. Bench-scale testing (water-rock column tests)
7. Geochemical modeling
8. Mineralogical characterization and trace metal analysis
9. Water treatment pilot study sampling/analysis
10. ASR pilot testing
11. Water compatibility testing (physical mixing tests)
12. Groundwater contamination vulnerability assessment



LRE Findings

Well Condition:

- WWR wells are generally in **good condition** but need maintenance

Aquifer Productivity:

- Sustainable well yields range from **110 to 590 gpm**
- Well yields are generally **higher in the north** and lower in the south
- Aquifer has **two producing zones** – upper and lower. The upper zone contributes 60%-90% of the yield to wells.
- The **aquifer can accommodate** the City's anticipated supply and storage needs

Water Quality:

- Groundwater is **high quality** and suitable for municipal supply after **treatment for uranium**
- **Uranium is not stratified**, so it cannot be avoided through selective well design/construction
- No groundwater contamination was identified, and the risks of anthropogenic contamination are low.

LRE Findings

Groundwater Treatability:

- Ion exchange is effective at removing uranium and gross alpha to below detection limits
- Variations can be made to the media for prolonged arsenic removal

Aquifer Response to Recharge:

- The groundwater and Bellvue water appear to be compatible (confirmed by mixing tests)
- Modeling predicts minor mineral precipitation may occur during ASR, but the magnitude is small relative to the aquifer pore space
- Bench-scale testing indicates some potential for mobilization of uranium and arsenic during ASR (contrary to modeling and pilot testing)
- There was no evidence of mobilizing uranium or arsenic during ASR pilot testing, which is consistent with geochemical modeling predictions

LRE did not identify any “fatal flaws” as part of its due diligence testing activities

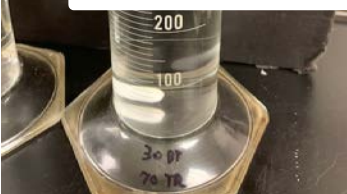
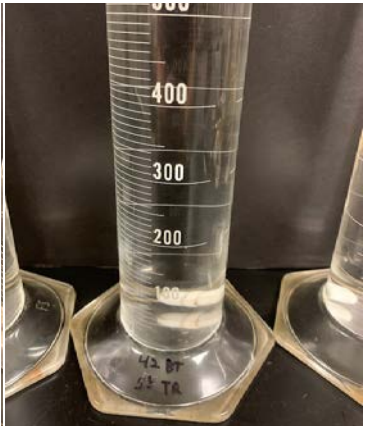
LRE Recommendations

1. Treat the groundwater to remove uranium.
2. Adjust the ion-exchange filtration media to achieve treatment of constituents other than uranium, as desired.
3. Clean, redevelop, and disinfect the existing production wells. Operate them intermittently while the project is under development.
4. Drill/test exploratory boreholes at proposed well sites to evaluate production potential and water quality prior to constructing a well.
5. Further evaluate the yield and water quality tradeoffs of the upper and lower aquifer zones. Consider completing future wells solely in the upper aquifer.

LRE Recommendations

6. Conduct longer-term ASR pilot testing when the Terry Ranch pipeline is completed and larger volumes of Bellvue water are available.
7. Focus ASR activities in the northern half of the property where the aquifer properties are more favorable and static water levels are deeper.
8. Develop and refine a 3-dimensional geologic model of the aquifer as additional geologic and hydrogeologic data are collected.

Brown & Caldwell Overview of Due Diligence Activities



1. Water quality sampling & analysis
2. Treatment evaluation
3. Pilot treatment test
4. Distribution system corrosion, metal release, and disinfection study
5. Concept design
6. Cost estimate
7. Environmental assessment
8. Ecological and cultural resources evaluations

B&C: Distribution System Water Quality Analyses

- Evaluate impacts of the Terry Ranch groundwater added to the existing water supply
- Analyses conducted
 - Review of City's lead and copper sampling data (2014 onward)
 - Evaluate ~10 parameters to assess corrosion, metal release and water aggressiveness
 - Assess the stability of the existing distribution system corrosion scales against the new Terry Ranch groundwater source
 - Review indices of corrosion and aggressiveness
 - Evaluate the need for alternative treatment to control corrosion
 - Scenarios evaluated:



Scenario 1

*Individual
sources*



Scenario 2

*Bellvue +
Terry Ranch*



Scenario 3

*Bellvue + Boyd +
Terry Ranch*

B&C: Distribution System Water Quality Analyses

Study Result and Observations

- **Lead release is not expected.** Corrosion control treatment of Terry Ranch water is not necessary, based on data provided. Existing lead corrosion scales are not expected to change when Terry Ranch water is introduced.
- Some results indicate that Terry Ranch groundwater may be corrosive to copper piping. **Blending with water from existing plants (Bellvue and Boyd WTPs) decreases corrosiveness.**
- Under certain conditions, Terry Ranch groundwater can be aggressive towards cement-mortar and asbestos-cement pipes. These trends are similar in waters from the Bellvue and Boyd Lake WTPs. **Changes in aggressiveness are not expected once Terry Ranch groundwater is introduced.**
- Adjustments at existing Boyd WTP would help reduce the aggressiveness of this water supply.
 - The Boyd WTP pH is lower when compared to other sources. Increasing the target pH, which can be accomplished through minor additions of caustic soda, would reduce aggressiveness.
 - The adjustment allows the 3 water sources (Terry Ranch, Bellvue, and Boyd) to have a similar pH, limiting fluctuations in the distribution system.

Brown & Caldwell Recommendations

- BC has assisted the City of Greeley in several key areas
- Water quality at Terry Ranch is of good quality, and suitable for potable use with appropriate treatment
- Recommendations for moving forward:
 - Further studies are warranted (i.e., source water protection plan)
 - Continue to collect water quality data and confirm trends observed
 - Look for opportunities to enhance existing system (i.e., increase pH at Boyd WTP)
 - Continue to look for opportunities to reduce costs or further improve the current plan
 - Permitting efforts are underway and should be pursued efficiently



Ecological



Water quality



Treatment



Environmental



Brown & Caldwell Recommendations

Greeley can succeed with Terry Ranch as a new water supply

- Terry Ranch is a viable source of water for the future
- The current Project plan is a cost-effective, efficient solution
- Considerations identified can be remedied with tried-and-true technologies

Brown and Caldwell recommends approval.





Third-Party Reviews

Daniel B. Stephens & Associates and Carollo Engineers



Terry Ranch ASR Project Review

Chris Wolf

Daniel B. Stephens & Associates

2/17/2021



DBS&A
Daniel B. Stephens & Associates, Inc.

Terry Ranch ASR

- ◆ DBS&A reviewed project information related to the hydrogeology and geochemistry of the Upper Laramie Aquifer including
 - ◆ aquifer hydraulics
 - ◆ water chemistry
- ◆ DBS&A performed an independent evaluation of the geochemistry



Terry Ranch ASR Investigation

- ◆ Feasibility study addresses data needs for making project decisions
- ◆ Investigation assessed existing data and performed site specific testing
- ◆ Follows guidelines for ASR projects:
 - ◆ American Society of Civil Engineers (ASCE)
 - ◆ National Ground Water Association (NGWA)
 - ◆ American Water Works Association (AWWA)

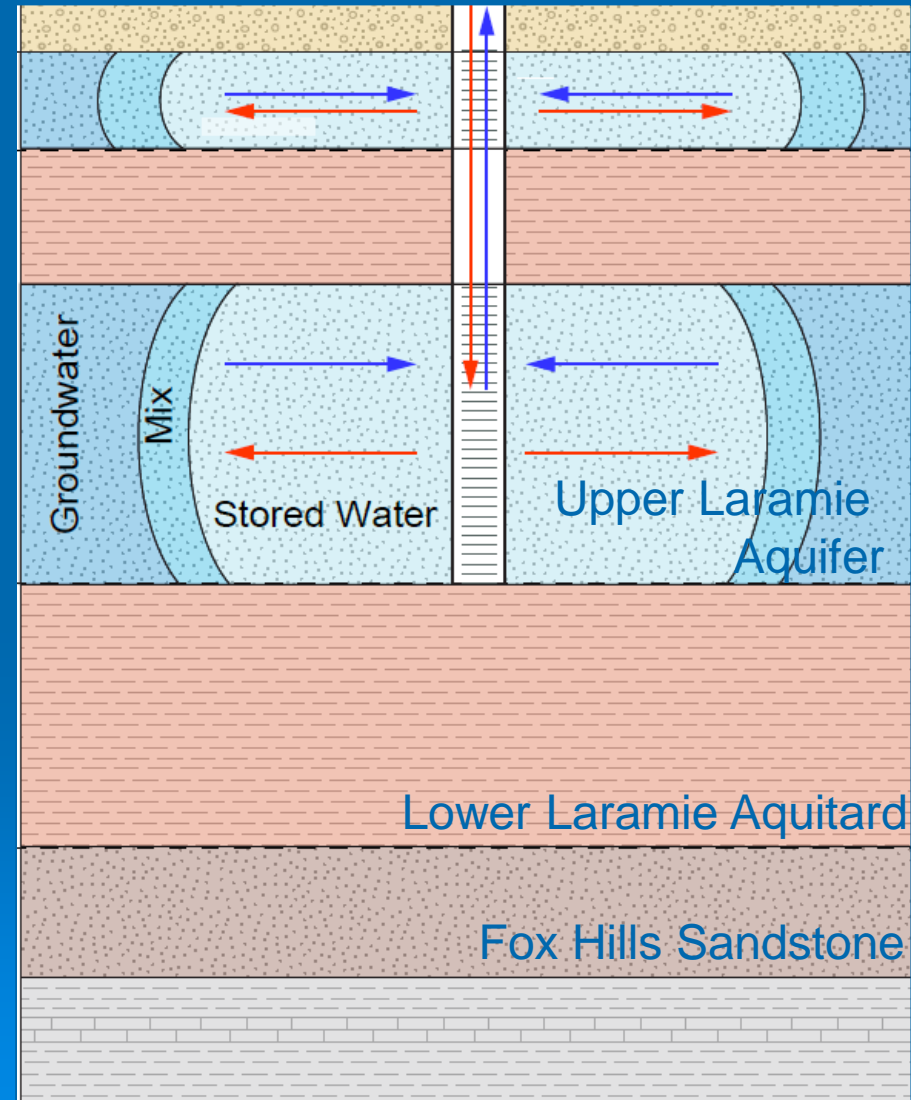


Conceptual ASR at Terry Ranch

Treated surface water from Bellvue WTP: is injected into the Upper Laramie Aquifer (red arrows)

Treated water displaces groundwater creating a storage zone near the ASR well---during extraction this water is recovered first (blue arrows)

Low permeability aquitards help keep water in storage zone and separate from deeper aquifers



Terry Ranch ASR Hydrogeology

- ◆ Investigation included adequate testing to determine aquifer hydraulics and response during ASR
- ◆ Upper Laramie Aquifer is a good ASR candidate
 - ◆ sandstones have suitable permeability
 - ◆ flow rates tested up to 600 gpm
 - ◆ aquifer and cycle tests demonstrate hydraulics will work for ASR



Terry Ranch ASR Geochemistry

- ◆ Water chemistry is high quality for both surface water and groundwater
 - ◆ waters are chemically compatible so no adverse reactions are likely to occur during ASR
 - ◆ groundwater does have some elevated uranium
 - ◆ both waters have similar pH and oxidizing potentials that control uranium behavior in water
- ◆ Uranium Chemistry
 - ◆ uranium naturally occurs dissolved in groundwater
 - ◆ uranium is not expected to leach from aquifer during storage
 - ◆ uranium in stored and recovered water should not exceed water quality standards



Carollo Engineers: Peer Review Analysis and Recommendations

Documents Carollo Reviewed

- Carollo reviewed conceptual design documents prepared by Brown and Caldwell
 - Treatment Concept Design Technical Memorandum
 - Water Quality Evaluation (corrosion and disinfection)
 - Uranium Removal Pilot Study Technical Memorandum
 - Water quality database

Summary of Carollo's Peer Review

- Carollo concurs with the recommendations of the conceptual design
- Terry Ranch is a viable potable water source
 - The baseline water quality coupled with appropriate treatment can provide safe potable water supply
- The proposed treatment process can meet the water quality goals established for the project
 - Initial pilot data suggest the IX resin can be effective at removing uranium and gross alpha
- Through further studies and evaluations, the treatment process can be fine-tuned

Carollo's Suggestions for Further Consideration

- Carollo agrees with the recommendations for subsequent evaluations
 - Long-term pilot testing
 - Collect and analyze water quality
 - Process refinement and optimization
 - In-depth distribution system analysis
 - Bench top corrosion study
 - Disinfection byproduct formation potential
 - Risks
 - Operating costs and IX resin life
 - Requirements for manganese treatment



Staff Recommendations

Financial Recommendations

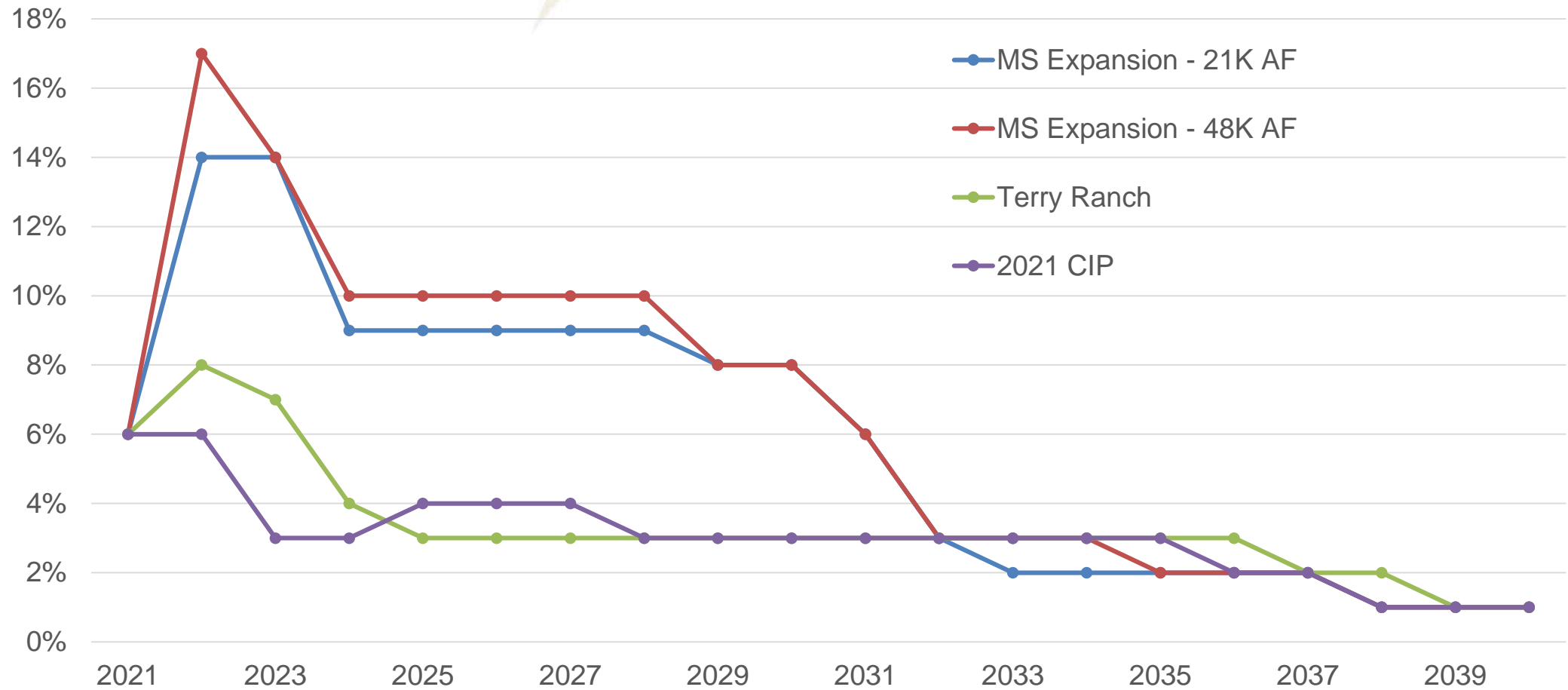
Erik Dial, Utility Finance Manager

- Big picture
 - Decreased financial risk to City water customers
 - Milton Seaman Expansion: Large bond upfront and rate payers responsible for debt service
 - Dependent on cash-in-lieu of raw water revenue (new growth) to help pay debt...**RISKY**
 - Securing enough bonding capacity requires large rate increases
 - Terry Ranch development: Can be phased and built as needed
 - Minimizes rate impacts to customers



Rate Comparison

Annual Rate Impacts



Rates calculated with future, escalated project costs.

Operational Recommendations

Nina Cudahy, Deputy Director for Operations

- Flexibility and reliability in treated water delivery
- Minimize risk and vulnerability to threats with added diversity of source water located in distinctly different locations
- Expand our existing operational expertise to wellfield management and ion exchange treatment technology
- Leverage our technological advancements in automation
- Instills confidence in operations that we can provide an adequate supply of treated water for public health and fire fighting even in drought conditions
- Consistent water quality versus surface water that changes significantly throughout the year and causes operational challenges

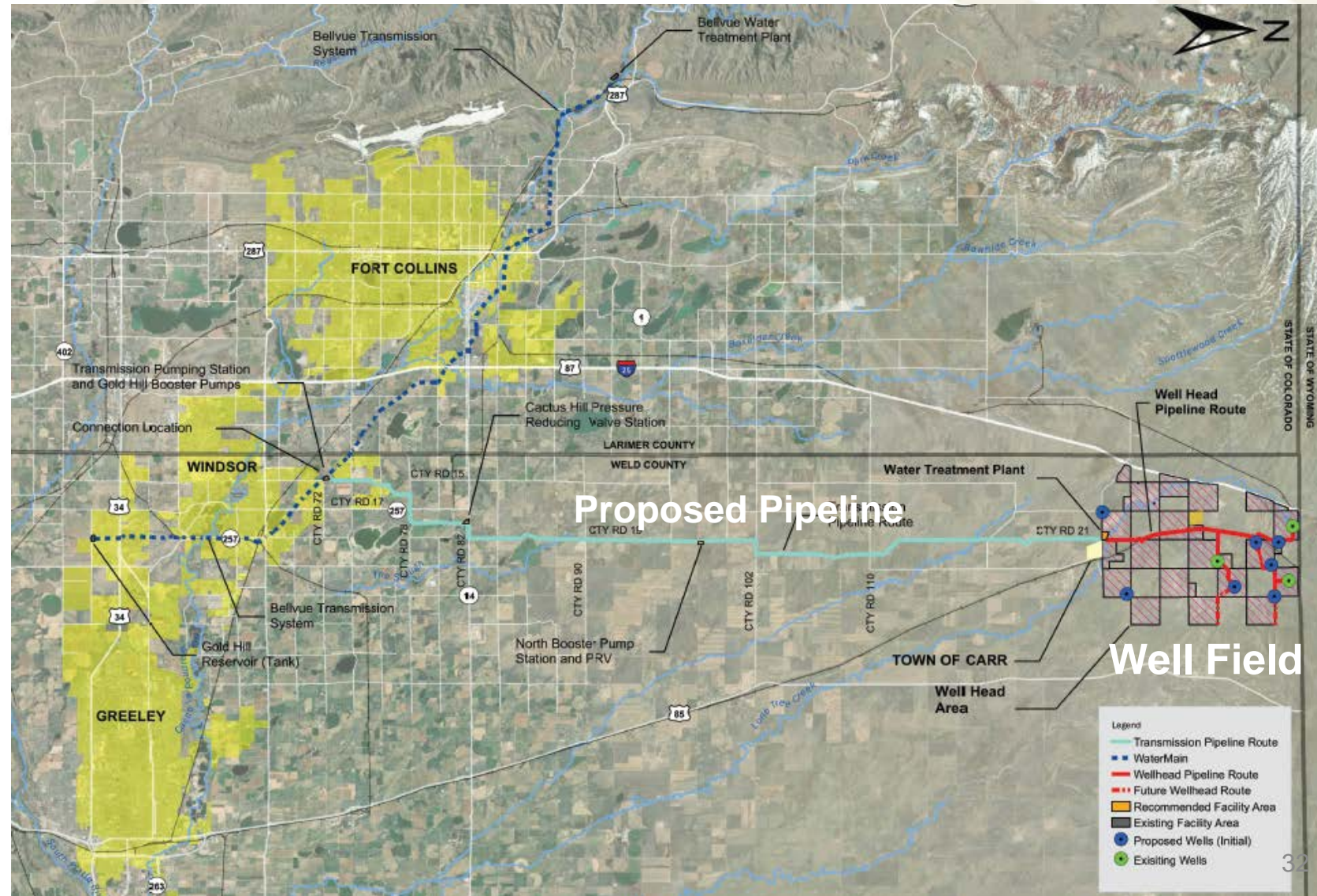
Engineering Recommendations

Adam Prior, W&S Chief Engineer

- ✓ Cost effectively provide Terry Ranch water to the Citizen's of Greeley
- ✓ Evaluation of water quality parameters and mixing with water from Bellvue & Boyd WTP
- ✓ Uranium can be removed efficiently with treatment
- ✓ Feasible plan for well field, transmission, and treatment plant construction
- ✓ Supply of power to treatment plant and well field
- ✓ Minimize O&M costs to City
- ✓ Aquifer recharge does not impact water quality of aquifer

System Design Feasibility

- ✓ Preliminary design of well field
- ✓ Preliminary design of transmission pipeline
- ✓ Preliminary design of treatment plant



Water Treatment

- ✓ Uranium treatment is common and technology for treatment reliability is proven
- ✓ Greeley currently removes uranium from water supplies at both Bellvue and Boyd Lake WTPs
- ✓ 30-day pilot test: Successful uranium removal to below detection



Engineering Recommendation

- ✓ Based on the extensive engineering studies, engineering peer reviews, and preliminary design:
- ✓ Engineering Team Recommends Closing on the Terry Ranch Aquifer



Water Resource Recommendations

Adam Jokerst, Deputy Director for Water Resource

- Terry Ranch meets 2065 demands (planning horizon)
- Injection/storage at Terry Ranch needed for post-2065 demands – Terry Ranch provides adequate storage
- Additional water acquisitions required to store at Terry Ranch



Water Resource Operations

- During wet years Terry Ranch will store reusable and wholly consumable sources – changed agricultural rights, tunnel, Windy Gap, CBT, storage decrees, etc.
- Rights will be retimed with existing storage to match periods of excess treatment capacity at Bellvue Water Treatment Plant
- Terry Conditional storage decrees can be moved



Summary

Summary

- ✓ Developing new water supplies is extremely difficult in today's regulatory environment and highly competitive water market
- ✓ Milton Seaman enlargement is unlikely to receive authorization
- ✓ Terry Ranch has fewer environmental impacts and requires fewer (and less complicated) permits – can begin construction immediately
- ✓ Of the 100s of alternatives evaluated to date, Terry Ranch is least costly and most certain




Summary

- ✓ Greeley conducted extensive diligence of Terry Ranch
- ✓ No fatal flaws found
- ✓ Peer reviews confirmed findings
- ✓ Terry Ranch will provide a safe, reliable, and redundant water source

Summary

- ✓ Requires pumping - operational costs will be higher than existing system
- ✓ Higher operational costs are vastly outweighed by lower capital costs
- ✓ Purchase structure, while complicated, reduces risk and secures third-party funding



Staff recommends the Water & Sewer Board authorize the closing for Terry Ranch water rights and storage and recommend the same to the Greeley City Council



Outreach & Next Steps

Outreach

City Boards & Commissions

Citizen Budget Advisory Committee
Parks and Recreation Board
Planning Commission
Golf Advisory Board
Greeley Arts Commission
Downtown Development Authority Board
Museum Advisory Board
Stormwater Board
Island Grove Board
Union Colony Civic Center Board
Historic Preservation Commission
Greeley Urban Renewal Authority
Human Relations Committee
ACE Board

Community Organizations

NOCO Homebuilders Association
Greeley Chamber of Commerce
Greeley Chamber, Local Affairs
Centennial Rotary
Greeley Rotary
UNC Leadership Team
Poudre Learning Center
Greeley Kiwanis
Northern Water
Save Greeley's Water
Weld Air and Water
Greeley Realtor Association
Weld Co. Apartment Association
Redeye Rotary

Outreach

- ✓ Community Open Houses - December 2 and February 10
- ✓ Social Media — Facebook, Twitter, YouTube, NextDoor
- ✓ City Council Meetings - October 13, January 12, February 16, March 2
- ✓ Media — KFKA, Tribune, BizWest, CBS4, Denver Channel 7, KUNC
- ✓ City Chats, City Scoop, W&S Newsletter
- ✓ Monthly Water & Sewer Board Meetings
- ✓ Website - greeleygov.com/terryranch



Endorsements



- ✓ Tribune Editorial Board
- ✓ Greeley Chamber of Commerce
- ✓ NOCO Homebuilders Association
- ✓ William Hoyt, emeritus professor of Earth Sciences, UNC
- ✓ Rebecca Safarik, former Assistant City Manager, City of Greeley
- ✓ Bryan Guest, group president, Great Western Bank
- ✓ Poudre Learning Center

Next Steps

Event	Date
W&S Board Consideration of Closing	Today
City Council Consideration of Closing & Second Reading of Code Change	March 2
Government Approval Deadline	March 22
Closing Deadline	April 5



More information at:
greeleygov.com/terryranch



WATER & SEWER BOARD AGENDA FEBUARY 17, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 8

TITLE: APPROVE A RESOLUTION RESCINDING
PRIOR WATER & SEWER BOARD
RESOLUTIONS CONCERNING DEDICATION
OF RAW WATER FOR CITY WATER SERVICE

RECOMMENDATION: APPROVE A RESOLUTION RESCINDING
WATER & SEWER BOARD RESOLUTION 14,
2014; RESOLUTION 2, 2016; RESOLUTION 1,
2019; AND RESOLUTION 3, 2020

ADDITIONAL INFORMATION:

The City Greeley requires that developers dedicate certain water rights or make cash payments to the City in order to receive City water service (“Raw Water Dedication”). Raw Water Dedication policies are primarily located in the City of Greeley Municipal Code Chapter 6, Title 14, but are also contained in several resolutions of the Greeley Water & Sewer Board. The Water & Sewer Department desires to consolidate all policies into Municipal Code to provide developers and staff a single point of reference. In addition, consolidation ensures adequate public notice of future Raw Water Dedication policy changes pursuant to the Master Purchase, Sale and Raw Water Credit Administration Agreement (“Master Agreement”) for the purchase of groundwater rights, groundwater storage, and appurtenances contemplated by the Terry Ranch Project. The Terry Ranch Project and Master Agreement are detailed in Agenda Items 6 and 7 of this February 17, 2021 Water & Sewer Board packet.

Revisions to Municipal Code concerning Raw Water Dedication policies will incorporate Water & Sewer Board Resolution 14, 2014; Resolution 2, 2016; Resolution 1, 2019; and Resolution 3, 2020. Once incorporated in Municipal Code, the listed Water & Sewer Board Resolutions must be rescinded so as to not duplicate Raw Water Dedication Requirements. Staff recommends the Water & Sewer Board rescind the listed resolutions.

On February 16, 2021, the Greeley City Council will hear the First Reading of an ordinance amending Chapter 6, Title 14 of the Municipal Code, which will, among other actions, consolidate the above referenced Water & Sewer Board resolutions. A Second Reading and Public Hearing of the ordinance is scheduled for March 2, 2021. Rescinding

the listed Water & Sewer Board resolutions is contingent upon the Greeley City Council approving the ordinance.

In addition to consolidation, the City Council ordinance makes three revisions to Greeley's Raw Water Dedication policies. The first revision is necessitated by the Terry Ranch Master Agreement. The Master Agreement creates Raw Water Credits ("Credits") redeemable to meet Greeley's Raw Water Dedication requirements. A code revision is required to allow dedication of Credits and is a condition of closing on the Terry Ranch Project. The second revision codifies graduated raw water requirements for landscaping associated with commercial and multi-family developments, and third clarifies that Raw Water Dedication for large parcel, single family developments is only required for the developed portion of the lot.

**CITY OF GREELEY, COLORADO
ACTING BY AND THROUGH ITS WATER AND SEWER BOARD**

RESOLUTION ____, 2021

A RESOLUTION REPEALING WATER AND SEWER BOARD RESOLUTION 14, 2014 (CONCERNING THE CRITERIA AND STANDARDS TO BE FOLLOWED BY THE WATER AND SEWER DEPARTMENT IN ACCEPTANCE OF RAW WATER FOR DEVELOPMENT); WATER AND SEWER BOARD RESOLUTION 2, 2016 (CONCERNING THE RESIDENTIAL RAW WATER CALCULATION METHOD); WATER AND SEWER BOARD RESOLUTION 1, 2019 (CONCERNING YIELD VALUES OF GREELEY-LOVELAND SYSTEM WATER RIGHT YIELDS); AND WATER AND SEWER BOARD RESOLUTION 3, 2020 (CONCERNING THE ACCEPTANCE OF GREELEY IRRIGATION COMPANY WATER RIGHT AND DEDICATION REQUIREMENTS)

WHEREAS, the City of Greeley ("City") is a Colorado home rule municipality empowered pursuant to Sections 1 and 6 of Article XX of the Colorado Constitution to, *inter alia*, construct, purchase, acquire, lease, add to, maintain, conduct, and operate water works and everything required therefor, within or without its territorial limits, for use of the City; and

WHEREAS, Section 17-4(c) of the Greeley City Charter and Section 14.04.110 of the Greeley Municipal Code authorize the Greeley Water and Sewer Board (the "Board") to acquire, develop, convey, lease and protect the water and sewer assets, supplies and facilities needed to fully use the water supplies decreed, adjudicated or contracted for the City; and

WHEREAS, Chapter 14.06 (Water Service) of the Greeley Municipal Code sets forth certain requirements related to the initiation of water service from the City; and

WHEREAS, the Board has previously established, by resolution, certain raw water dedication requirements for water service, including but not limited to, identifying water rights suitable for potable and non-potable use within the City's water system and the yield of certain water rights ("Raw Water Dedication Policy"); and

WHEREAS, the City, acting by and through its Water Enterprise (the "Enterprise"), and pursuant to Board approval, has previously entered into a Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch), dated June 23, 2020, with Wingfoot Water Resources, a Colorado limited liability company (now known as Wingfoot Water Resources, a Delaware limited liability company) ("Wingfoot") for the purchase and sale of water rights and related property rights (the "Asset"), the consideration for which includes the City's issuance and acceptance of raw water dedication credits until December 31, 2099 (the "Transaction"); and

WHEREAS, on February 17, 2021, the Board authorized the City, acting by and through its Enterprise, to enter into the Amended and Restated Master Purchase, Sale and Raw Water Credit Administration Agreement (Terry Ranch), effective June 23, 2020 (the "Master Agreement"); and

WHEREAS, in order to comply with certain provision under the Master Agreement, the City must incorporate the Raw Water Dedication Policy into Chapter 14.06 of the Greeley Municipal Code; and

WHEREAS, on January 20, 2021, Water and Sewer staff presented a near final version of the proposed amendments to Chapter 14.06, attached hereto as Appendix A (the "Amended Chapter 14.06"), incorporating the Raw Water Dedication Policy; and

WHEREAS, Water and Sewer staff has recommended that City Council adopt the Amended Chapter 14.06 in satisfaction of the Master Agreement and to consolidate the Raw Water Dedication Policy within Chapter 14.06 of the Greeley Municipal Code; and

WHEREAS, Water and Sewer staff recommends that, upon the effective date of the Amended Chapter 14.06, the Raw Water Dedication Policy be repealed.

NOW THEREFORE, BE IT RESOLVED BY THE WATER AND SEWER BOARD OF GREELEY, COLORADO, AS FOLLOWS.

1. The Board hereby recommends that City Council approve and adopt the Amended Chapter 14.06, attached hereto as Appendix A.

2. Upon the effective date of the Amended Chapter 14.06, the following Board Resolutions shall be repealed:

- a. RESOLUTION 14, 2014, A RESOLUTION OF THE GREELEY WATER AND SEWER BOARD AMENDING AND RESTATING THE CRITERIA AND STANDARDS TO BE FOLLOWED BY THE WATER AND SEWER DEPARTMENT ("DEPARTMENT ") IN ACCEPTANCE OF RAW WATER FOR DEVELOPMENT, AND THE DEPARTMENT' S AUTHORITY TO ACCEPT PAYMENTS OF CASH -IN -LIEU OF RAW WATER
- b. RESOLUTION 2, 2016, RESIDENTIAL RAW WATER CALCULATION METHOD
- c. RESOLUTION 1, 2019, A RESOLUTION AMENDING YIELD VALUES FOR GREELEY-LOVELAND SYSTEM WATER RIGHTS TRANSFERRED TO THE CITY IN SATISFACTION OF RAW WATER DEDICATION REQUIREMENTS
- d. RESOLUTION 3, 2020, A RESOLUTION CONCERNING ACCEPTANCE OF GREELEY IRRIGATION COMPANY WATER RIGHTS IN SATISFACTION OF RAW WATER DEDICATION REQUIREMENTS (RESCINDING AND REPLACING RESOLUTION 8, 1998)

3. This Resolution shall become effective immediately upon its passage and signature.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS ____ DAY OF FEBRUARY 2021.

ATTEST

CITY OF GREELEY
WATER AND SEWER BOARD

Roy Otto
Secretary to the Board

Harold Evans
Chairman, Water and Sewer Board

APPENDIX A
ORDINANCE AMENDING CHAPTER 6, TITLE 14
GREELEY MUNICIPAL CODE

Section 1. Section 14.06.040 contained in Chapter 14.06, Water Service, shall be amended to update part (b) to read as follows:

14.06.040 - Taps required; service line extensions prohibited.

(a) Each detached single-family residential building, multi-family residential building, and non-residential building shall be served by a minimum of one (1) separate water tap and service line. Buildings with mixed residential and non-residential uses shall be served by separate water taps for the residential and non-residential components of the development.

(b) A separate and additional landscape irrigation tap and service line shall be required for all non-residential buildings and multi-family residential buildings with more than four (4) units within the City limits, including, without limitation, commercial, industrial, and group housing (apartment buildings, condominiums, nursing homes, hotels, and motels). The Director of Water and Sewer has the authority to grant a variance to the landscape irrigation tap requirement in this Section upon a written finding that the subject property can be served by a single tap due to minimal landscaping irrigation demand.

(c) It is unlawful for a person or entity to extend a service line to serve any other buildings, lots or premises contrary to the requirements of this Section. Notwithstanding the foregoing, the Director of Water and Sewer has the discretionary authority to grant variances when appropriate for accessory uses on the same property or an adjoining lot.

(d) A prohibited service line extension that was installed prior to September 1, 2019, may remain in effect so long as it does not create a sanitation, public health or public nuisance problem. If, in the discretion of the Director of Water and Sewer, a prohibited service line extension creates a sanitation, public health or public nuisance problem, the subject property owner(s) shall separate the compound tap at their own expense.

(e) The owner of a property to which a new water service line is installed after the associated separation of a compound tap shall be required to pay all fees applicable to the initiation of water service to the subject property, including, without limitation, the costs required to install another water tap and service line. Plant investment fees that would otherwise be due and payable for a new water service line installed pursuant to this Section shall be waived upon a written finding of the Director of Water and Sewer that there will be no increase in water service to the subject property.

(f) The use of a common service line by abutting property owners shall not alter the maintenance responsibility of the users of the common service line. The common service shall not constitute a public responsibility and the Director of Water and Sewer

shall not perform maintenance or repair on the separate or combined service lines that may serve abutting properties.

Section 2. Section 14.06.050 of the above-entitled ordinance shall be amended to read as follows:

14.06.050 - Water rights dedication; amounts and criteria.

(a) All applicants for water service within the City limits shall (i) dedicate to the City, as a prerequisite to and as part of the consideration for City water service to the subject property, water rights, if any, that the City, in its sole discretion, can use in its potable water supply system or non-potable irrigation system and (ii) if the applicant cannot satisfy the raw water dedication requirements through the dedication of water rights, shall furnish to the City a cash-in-lieu fee (or satisfy the same pursuant to Section 14.06.050(e)) to fulfill all or the remainder of the dedication requirement associated with a request for water service as a prerequisite to and as part of the consideration for City water service to the subject property. All water rights approved for dedication shall be conveyed to the City on or before the date the final plat for the development is approved. All cash-in-lieu fees shall be due and payable to the City no later than the date on which the building permit is issued.

(b) The City has determined (i) that the water rights represented by shares of stock in the Greeley & Loveland Irrigation Company and the Seven Lakes Reservoir Company, and rights in the Loveland and Greeley Reservoir Company (Lake Loveland) can be used within its potable water supply system and non-potable irrigation system and (ii) that the water rights represented by units of Colorado-Big Thompson Project Water can be used within its potable water supply system. The water rights represented by shares of stock in the Greeley Irrigation Company can only be used within non-potable irrigation systems. Therefore, the City will accept such water rights only in satisfaction of the raw water dedication requirements associated with non-potable water service on property historically irrigated by the subject water rights. The City shall use the following yield values to determine the amount of raw water transferred by an applicant toward the satisfaction of any raw water dedication requirement:

<u>Company</u>	<u>Yield/Share</u>
<u>The Greeley & Loveland Irrigation Company</u>	<u>8 acre feet/share</u>
<u>The Seven Lakes Reservoir Company</u>	<u>8 acre feet/share</u>
<u>The Loveland And Greeley Reservoir Company (Lake Loveland)</u>	<u>20 acre feet/right</u>
<u>Colorado-Big Thompson Project Water (C-BT)</u>	<u>0.75 acre feet/unit</u>
<u>Greeley Irrigation Company (Greeley No. 3 Canal)</u>	<u>10.3 acre feet/share</u>

~~(b)(c)~~ All dedications of water rights proposed to satisfy the requirements of this Section are subject to approval by the Director of Water and Sewer. Water rights approved for dedication shall. Except for water rights represented by units of Colorado-Big Thompson Project Water, the City will not accept the dedication of any water rights under Section 14.06.050(b) for use within its potable water supply system or non-potable irrigation system unless the Director of Water and Sewer determines that the subject water rights meet the requisite criteria under Colorado law for conversion of the water to municipal use by the City, including, without limitation, sustained historical consumptive use. Such water rights shall also meet the criteria for dedication of water rights to the City set forth by resolution of the Water and Sewer Board. The transfer of water rights approved for dedication to the City shall be made by the applicant for water service no later than the date on which a final plat for the development is approved. that: (i) the water rights have a history of use on the property being developed; (ii) the property being developed was historically and consistently irrigated under the ditch system from which such water rights are being dedicated; (iii) the owner and all lienholders of the property being developed execute a restrictive covenant in a form acceptable to the City requiring the cessation of irrigation on the historically irrigated property with the subject water rights except under conditions authorized by the City; and (iv) the applicant provides any documents and materials reasonably required by the City to ensure consistency with any prior decrees, including but not limited to, decrees adjudicating changes of the Greeley & Loveland Irrigation Company, the Seven Lakes Reservoir Company, the Loveland and Greeley Reservoir Company (Lake Loveland), and the Greeley Irrigation Company water rights.

(d) An applicant for water service may request that the City accept or permit the use of (i) water rights other than the water rights identified in Section 14.06.050(b) or (ii) water rights that do not satisfy the requirements of Section 14.06.050(c) in partial satisfaction or reduction of the applicant's raw water dedication requirement. The City, in its sole discretion, may accept or permit the use of such water rights based on certain terms and conditions set by the Director of Water and Sewer but only in partial satisfaction or reduction of the raw water dedication requirement associated with non-potable water service on property that has been historically irrigated by the subject water rights.

(e) On or before December 31, 2009, an applicant for water service, who is also the registered owner of a certificate issued by the department to evidence one (1) or more raw water dedication credits, may redeem such credit(s) in whole or in part (but only in whole numbers) toward the satisfaction of any cash-in-lieu fee obligation associated with the applicant's request for water service in accordance with Sections 14.06.060, 14.06.070, 14.06.080, and 14.06.110. One (1) raw water dedication credit represents the equivalent of, but not an interest in, one (1) acre-foot of raw water that an applicant would otherwise have to satisfy by furnishing to the City a cash-in-lieu fee.

~~(c)(f)~~ Applicants for water service to single-family residential and multi-family residential developments with four (4) units or less within the City limits shall dedicate raw water and, if the applicant cannot dedicate raw water, furnish to the City any applicable cash-in-lieu fee in accordance with Section 14.06.060 in the amount of three (3) acre-feet per acre, or fraction thereof, of property to which water service will be provided. Streets, rights-of-way, driveways, sidewalks, outbuildings, and any other part

of the property that has been or will be developed shall be included in the calculation of the total gross acreage of the property, regardless of whether such areas have been dedicated to public use. The City may, in its sole discretion, exclude area(s) from the total gross acreage, provided that irrigating such area is legally prohibited by plat or deed.

~~(d)~~(g) Applicants for water service to non-residential and multi-family residential developments with more than four (4) units within the City limits, including, without limitation, commercial, industrial, and group housing (apartment buildings, condominiums, nursing homes, hotels, and motels), shall dedicate raw water and, if the applicant cannot dedicate raw water, furnish to the City the applicable cash-in-lieu fee in accordance with Section 14.06.070 in the amount of the water service demand for the subject development. The water service demand for non-residential and large multi-family residential developments shall be determined by multiplying the total units proposed by the applicant by the average unit use, as set forth in the business category and water use table below. The water service demand for industrial developments and commercial developments of a type not specifically identified in the business category and water use table below shall be determined by the Director of Water and Sewer on a case-by-case basis, utilizing the projected volume of total water use by the subject development.

<i>Business Category and Water Use</i>		
<i>Category</i>	<i>Units</i>	<i>Average Unit Use (Gallons Per Unit Per Year)</i>
Auto Service and Repair	SF	12
Car Wash	Bay	1,350,000
Childcare	SF	47
Church	SF	4.5
Grocery Store	SF	20
Gas Station Without Car Wash	SF	93
Hospital	SF	21
Hotel/Motel	Room	30,300
Medical Office	SF	25
Multi-Family Residential (Greater than 4 units)	Unit	35,500

Office	SF	14
Recreation With Pool	SF	122
Recreation Without Pool	SF	25
Restaurant (Outdoor Seating Areas 50%)	SF	188
Retail	SF	16
School	SF	11
Warehouse	SF	5
Industrial and Other Commercial	Demand determined on case-by-case basis	
<u>"SF" = Square Feet of Gross Floor Space Within the Building Area</u>		

(h) Applicants for water service to non-residential and multi-family residential developments with more than four (4) units within the City limits, including, without limitation, commercial, industrial, and group housing (apartment buildings, condominiums, nursing homes, hotels, and motels), for which a separate and additional landscape irrigation tap and service line is required in accordance with section 14.06.040, shall also dedicate raw water and, if the applicant cannot dedicate raw water, furnish to the City the applicable cash-in-lieu fee in accordance with section 14.06.070 in the amount of the landscape irrigation demand for the subject development. Landscape irrigation demand shall be determined based on (i) the total gross acreage of property to which water service will be provided and (ii) the type of landscape as set forth in the landscape water use table below. landscape plans with more than seventy-five percent (75%) high water use vegetation are assumed to be entirely high water use and shall be calculated as such. streets, rights-of-way, driveways, sidewalks, outbuildings and any other part of the property that has been or will be developed shall be included in the calculation of the total gross acreage of property, regardless of whether such areas have been dedicated to public use. the City may, in its sole discretion, exclude area(s) from the total gross acreage, provided that irrigating such area(s) is legally prohibited by plat or deed.

<u>Landscape Water Use</u>	
<u>Water Use</u>	<u>Dedication Requirement</u>
<u>High water use (>14 gals/sf annual use)</u>	<u>Three (3) acre-feet/acre</u>

<u>Medium water use (10-14 gal/sf annual use)</u>	<u>Two and one-third (2.33) acre-feet/acre</u>
<u>Low water use (<10 gals/sf annual use)</u>	<u>One and two-thirds (1.67) acre-feet/acre.</u>
<u>No irrigation</u>	<u>No raw water requirement for landscape</u>

Section 3. Section 14.06.060 of the above-entitled ordinance shall be amended to read as follows:

14.06.060 - Cash in lieu of raw water required; single-family and small multi-family residential.

(a) Any applicant for water service to single-family residential and multi-family residential developments with four (4) units or less within the City limits that cannot satisfy the requirements of Section 14.06.050 ~~in full~~ through the dedication of water rights shall furnish to the City a cash-in-lieu fee to fulfill all or the remainder of the dedication requirement associated with its request for water service.

(b) The cash-in-lieu fee for single-family residential and multi-family residential developments with four (4) units or less shall be set by resolution of the Water and Sewer Board and calculated as the cash equivalent of three (3) acre-feet of water per acre, or fraction thereof, of property to which water service will be provided, using the fair market value of water per acre-foot.

Section 4. Section 14.06.070 of the above-entitled ordinance shall be amended to read as follows:

14.06.070 - Cash in lieu of raw water required; non-residential and large multi-family residential.

(a) Any applicant for water service to non-residential and multi-family residential developments with more than four (4) units within the City limits, including, without limitation, commercial, industrial, and group housing (apartment buildings, condominiums, nursing homes, hotels, and motels), that cannot satisfy the requirements of Section 14.06.050 ~~in full~~ through the dedication of water rights shall furnish to the City a cash-in-lieu fee to fulfill all or the remainder of the dedication requirement associated with its request for water service.

(b) The cash-in-lieu fee for non-residential and large multi-family residential developments shall be set by resolution of the Water and Sewer Board and calculated by multiplying the water service demand for the subject property, as determined in accordance with Section 14.06.050 ~~(de) above~~, and the landscape irrigation demand, as determined in accordance with section 14.06.050(h), by the fair market value of water per acre-foot.

Section 5. Section 14.06.080 of the above-entitled ordinance shall be amended to read as follows:

14.06.080 - Exception for large parcel single-family residential.

(a) The water rights dedication and cash-in-lieu fee requirements set forth in Sections 14.06.050 through 14.06.070 shall not apply to applications for ~~domestic~~ water service to a large parcel single-family residential development, defined as a parcel, of land and property exceeding one (1) acre that contain only one (1) single-family residence. ~~Any application for water service to such a parcel through a tap larger than three-quarters of an inch (3/4") in diameter is not considered domestic, and therefore ineligible for the exception in this Section.~~

(b) ~~All applicants for large parcel single family residential water service pursuant to this Section shall dedicate to the City raw water in the amount of three (3) acre feet per three quarter inch (3/4") domestic tap, as a prerequisite to, and as a part of the consideration for, City water service to the subject property.~~ All applicants for water service to a large parcel single-family residential development shall dedicate raw water and, if the applicant cannot dedicate raw water, furnish to the City the applicable cash-in-lieu fee in accordance with section 14.06.080(c) in the amount of the water service demand for the subject development. The water service demand for large parcel single-family residential developments shall be determined by (i) the total gross acreage, or fraction thereof, of property to which water service will be provided and (ii) the type of landscape as set forth in the landscape water use table in section 14.06.050(h) above. Landscape plans with more than seventy-five percent (75%) high water use vegetation are assumed to be entirely high water use and shall be calculated as such. Streets, rights-of-way, driveways, sidewalks, outbuildings and any other part of the property that has been or will be developed shall be included in the calculation of the total gross acreage of property, regardless of whether such areas have been dedicated to public use. The City may, in its sole discretion, exclude area(s) from the total gross acreage, provided that irrigating such area(s) is legally prohibited by plat or deed.

(c) Any applicant for large parcel single-family residential water service pursuant to this Section that cannot satisfy the requirement of Section 14.06.080(b) ~~in full~~ through the dedication of water rights shall furnish to the City a cash-in-lieu fee to fulfill all or the remainder of the dedication requirement associated with its request for water service.

(d) The cash-in-lieu fee for large parcel single-family residential water service pursuant to this Section shall be set by resolution of the Water and Sewer Board and calculated as the cash equivalent of ~~three (3) acre feet of water per three quarter inch (3/4") domestic tap,~~ the calculated water service demand using the fair market value of water per acre-foot.

Section 6. Section 14.06.110 of the above-entitled ordinance shall be amended to read as follows:

14.06.110 - Raw water surcharge and supplemental cash in lieu of raw water; exception.

(a) A non-residential or large multi-family residential customer whose metered water use in a calendar year exceeds its annual allotment shall be required to pay a raw water surcharge on the volume of water used in excess of such allotment, as set forth in its service commitment agreement.

(b) Non-residential and large multi-family residential customers who initiated water service prior to the enactment of the ordinance codified in this Section and have not executed a service commitment agreement shall be entitled to an annual allotment in accordance with the raw water dedicated or cash in lieu of raw water it paid upon initiation of service. Any such customer whose metered water use in a calendar year exceeds its annual allotment shall be required to pay a raw water surcharge on the volume of water used in excess of such allotment.

(c) Large parcel single-family residential customers shall be entitled to an annual allotment ~~of three (3) acre feet per three quarter inch (3/4") domestic tap equal to the water service demand calculated in accordance with Section 14.06.080.~~ Any such customer whose metered water use in a calendar year exceeds its annual allotment shall be required to pay a raw water surcharge on the volume of water used in excess of such allotment.

(d) The raw water surcharge applicable to customers pursuant to this Section shall be set by resolution of the Water and Sewer Board. Any customer whose metered water use in a calendar year exceeds its annual allotment may also furnish to the City a separate supplemental cash-in-lieu fee to increase its annual allotment. Any such supplemental cash-in-lieu fee shall be calculated using the fair market value of water per acre-foot, as set by the Water and Sewer Board and in place when the raw water surcharge payment is due and payable, and shall result in a corresponding increase to the annual allotment for that customer, whether as determined in accordance with this Section or as set forth in its service commitment agreement.

(e) Any non-residential, large multi-family residential, or large parcel single-family residential customer who initiates or modifies its water service after the enactment of the ordinance codified in this Section and whose metered water use in a calendar year exceeds the annual allotment set forth in its service commitment agreement in any two (2) consecutive calendar years shall be required to pay a supplemental cash-in-lieu fee to increase its annual allotment, as described in Section 14.06.110(d) above.

(f) Any customer whose metered water use during its first full calendar year of water service exceeds its annual allotment shall be exempt from the raw water surcharge and supplemental cash-in-lieu fee requirements of this Section for that first year only.

Section 7. Section 14.06.130 of the above-entitled ordinance shall be amended to read as follows:

14.06.130 - Plant investment fees for water service; inside and outside the City.

(a) All applicants for water service, whether inside or outside the City limits, shall furnish to the City a water plant investment fee based on the diameter of the tap as a prerequisite to, and as a part of the consideration for, City water service to the subject property. The water plant investment fee shall be the minimum amount set by resolution of the Water and Sewer Board, unless subsequently increased by resolution of the City Council. The diameter of a service line water tap installed for fire suppression purposes shall not be considered when calculating plant investment fees due pursuant to this Section.

(b) Upon approval of the Director of Water and Sewer, plant investment fees may be based on the volume of a customer's annual allotment rather than the diameter of ~~its~~the tap. When the Director of Water and Sewer authorizes a plant investment fee based on ~~size of service~~the volume of a customer's annual allotment, then the schedule of tap fees set by resolution of the Water and Sewer Board shall be applied in accordance with the size of service line.

Section 8. Section 14.06.170 of the above-entitled ordinance shall be amended to read as follows:

14.06.170 - Water service outside the City limits.

The Director of Water and Sewer may consider applications for extraterritorial water service from persons or entities located outside the City limits. Any such extraterritorial water service authorized shall be contingent upon receipt by the City of written consent to the service from the jurisdiction in which the extraterritorial customer is located, if so required. Any person or entity granted such extraterritorial water service shall agree to ~~transfer~~comply with this Chapter 14.06 when a request for City water is made, at no cost to the City, ~~certain water rights, including Northern Colorado Water Conservancy District allotments, irrigation water and carriage rights of such water, to the City~~ before receiving water service from the City.

Section 9. Section 14.06.180 of the above-entitled ordinance shall be amended to read as follows:

14.06.180 - Transfer of water rights upon annexation.

Any petitioners requesting annexation of their ~~land~~and property to the City shall agree, as a prerequisite to receiving approval of such annexation and on behalf of themselves and all successors in interest to the ~~land~~and property to be annexed, to ~~transfer~~comply with this Chapter 14.06 at no cost to the City, ~~water rights, including Northern Colorado Water Conservancy District allotments, irrigation water and carriage rights upon subdividing and/or requesting domestic water service to the City,~~ before receiving the approval of the annexation.

Section 10. Section 14.06.190 of the above-entitled ordinance shall be amended to read as follows:

14.06.190 - Special agreements approved by City Council.

The provisions of this Chapter 14.06 shall not preclude the City Council from approving special agreements with applicants for water service ~~regarding~~modifying the requirements for development within the City, provided that such agreements are approved by ordinance.

Section 11. Chapter 14.06 of the Greeley Municipal Code shall be amended by adding thereto a new Section 14.06.240 to read as follows:

14.06.240 – Public Hearing; Scheduling.

If the City Council introduces and approves on first reading an ordinance to either (i) amend Sections 14.06.050 through 14.06.120, Sections 14.06.170 through 14.06.190, or this Section 14.06.240 or (ii) approve a special agreement in accordance with Section 14.06.190, then the City Council shall schedule the public hearing and final approval to take place no sooner than twenty-eight (28) days thereafter. The City Council shall provide notice of the public hearing and final approval by publishing the proposed ordinance along with the day, hour, and place as required by the City Charter.

Rescission of Prior Water & Sewer Board Resolutions Concerning Raw Water Dedication

February 17, 2021



Background

- Raw Water Dedication is payment in form of water rights or cash required to receive city water service
- Greeley's raw water dedication policies prescribe:
 - The amount of water required for specific development types
 - The sources of water or other means to meet dedication requirements
 - Process and procedures for dedication
- Staff recommend both revising certain Raw Water Dedication policies and consolidating all policies to single source

Proposed Revisions

1. Allow acceptance of Terry Ranch Raw Water Credits
 - Closing condition
2. Graduated requirements for landscaping in commercial and multi-family developments
 - Included in 2019 policy updates, but ultimately not incorporated in Code
3. Revised requirements for large parcel, single-family developments
 - Clarify that 3 acre-feet per acre dedication required only for developed portion of lot

Proposed Consolidation

- Need for consolidation
 1. Best practice – single source of policies for developers and staff
 2. Terry Ranch Master Agreement - consolidation ensures adequate public notice of future Raw Water Dedication changes

Proposed Consolidation

- Policies to consolidate:
 - Municipal Code Chapter 14 Title 6
 - Board Resolution 14, 2014 – Dedication Requirements
 - Board Resolution 2, 2016 – Gross Area Calculation
 - Board Resolution 1, 2019 – GLIC Water Right Yields
 - Board Resolution 3, 2020 – GIC Water Right Yields and Requirements
 - Sections 6.1 and 10.5 of Terry Ranch Master Agreement – Raw Water Credits



Resolutions

- Rescind previous Board resolutions being consolidated to code
- Contingent on City Council approval of Code amendments
- Timeline:
 - January 20 – presentation to Board of proposed revisions/consolidations
 - February 16 – City Council first reading of Ordinance amending Code
 - Today – Board rescinds prior resolutions
 - March 2 – City Council second reading and public hearing of Code amendments

Recommendation

Staff recommends the Water & Sewer Board rescind Resolution 14, 2014; Resolution 2, 2016; Resolution 1, 2019; and Resolution 3, 2020 contingent on City Council's approval of related Municipal Code amendments





Questions?



WATER & SEWER BOARD AGENDA FEBRUARY 17, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 9

TITLE: APPROVE COLORADO WATER
CONSERVATION BOARD WATER DELIVERY
AGREEMENT

RECOMMENDATION: STAFF RECOMMENDS APPROVAL OF THE
COLORADO WATER CONSERVATION
BOARD WATER DELIVERY AGREEMENT

ADDITIONAL INFORMATION: In 2014, a subcommittee of the ‘Poudre River Runs through It’ Group developed an innovative way to increase flows in the Poudre River through an Instream Flow Augmentation Plan. Through the coordination and cooperation of the City of Greeley, City of Fort Collins, City of Thornton, Northern Water, CO Water Trust, Colorado Water Conservation Board (CPRW) and the CO Parks and Wildlife, the plan was approved by the CWCB at their January Board meeting. The Instream Flow Augmentation plan requires Water Delivery Agreements with the CWCB which defines the water rights that will be dedicated as instream flows to the plan. The Water Delivery agreement that staff is recommending for approval does not obligate Greeley to an amount to be used in the plan year to year.

WATER DELIVERY AGREEMENT
AGREEMENT REGARDING THE USE OF
CERTAIN CITY OF GREELEY WATER RIGHTS
IN THE POUDRE RIVER AUGMENTATION PLAN

(Changed Greeley Irrigation Company Water Rights)

This Agreement Regarding the Use of Certain City of Greeley Water Rights in the Poudre River Augmentation Plan ("Agreement") is entered into this ____ of _____ 2021, by and between the CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation acting by and through its Water and Sewer Board ("Greeley") and the COLORADO WATER CONSERVATION BOARD, an agency of the State of Colorado ("CWCB"). Greeley and the CWCB are also collectively referred to herein as the "Parties."

RECITALS

A. Greeley and the CWCB, along with the Colorado Water Trust and several water users on the Cache la Poudre River, are seeking judicial approval, pursuant to House Bill 20-1037, of a plan for augmentation in order to, among other things, increase the supply of water in the channel of the Cache la Poudre River between the canyon mouth and its confluence with the South Platte River to preserve and/or improve the natural environment to a reasonable degree ("Poudre River Augmentation Plan"). The Poudre River Augmentation Plan will be administered pursuant to the decree approving the Poudre River Augmentation Plan and will be implemented and managed pursuant to various contractual arrangements among the CWCB and others. Collectively, the relevant agreements outline a program for the CWCB to protect water, water rights, and interests of water under a decreed plan for augmentation through stream reaches of the Cache la Poudre River from the canyon mouth to its confluence with the South Platte River.

B. CWCB is authorized by sections 37-92-102(3) C.R.S. and 37-92-102(4.5) C.R.S., to acquire from any person, such water, water rights, or interests in water as CWCB determines may be required for minimum stream flows to preserve and/or improve the natural environment to a reasonable degree, to take actions to ensure such stream flows remain in the river, and to obtain decreed plans for augmentation to augment stream flows and protect augmentation deliveries at rates the CWCB determines appropriate for such purposes.

C. Greeley owns certain water rights represented by shares in the Greeley Irrigation Company ("GIC") for which the historical consumptive use has been quantified and a change to include augmentation use has been judicially approved, as is described more particularly in the decrees entered by the District Court for Water Division 1 in Case No. 1999CW232 on June 29, 2004 ("99CW232 Decree") and in Case No. 2015CW3163 on June 25, 2018 ("15CW3163 Decree"). These water rights are collectively referred to in this Agreement as the "Greeley GIC Water Rights."

D. CWCB desires to use, and Greeley desires to allow the CWCB to use, water attributable to the Greeley GIC Water Rights for augmentation use in the Poudre River Augmentation Plan, to augment stream flows in the channel of the Cache la Poudre River, pursuant to House Bill 20-1037 and section 37-92-102(4.5) C.R.S. and the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the mutual and dependent covenants contained herein, the Parties agree as follows.

AGREEMENT

1. Term. This Agreement begins upon the date of mutual execution by the Parties set forth above and will last for a term of fifteen (15) years, unless terminated prior to the expiration of this term by Greeley or the CWCB in accordance with the terms and conditions herein.

2. Available Shares. Greeley agrees during the term of this Agreement to make water attributable to the Greeley GIC Water Rights available for use by the CWCB in the Poudre River Augmentation Plan. Greeley shall provide notice to CWCB no later than April 15 of each year, detailing the amount of water that CWCB will be entitled to use in the Poudre River Augmentation Plan for that year (i.e., April 15 through April 14 of the following calendar year). CWCB is not entitled by this Agreement to use any water attributable to the Greeley GIC Water Rights but not identified by Greeley as available to the Poudre River Augmentation Plan for that year. Greeley shall include the following information in its annual notice to CWCB:

a. The total number of GIC shares under the 99CW232 Decree and the 15CW3163 Decree that CWCB may use in the Poudre River Augmentation Plan that year ("Available Shares").

b. An estimation of the total volume of water that the Available Shares will generate for use in the Poudre River Augmentation Plan, and the anticipated timing of the Available Shares.

Greeley retains the sole discretion to determine the number of Available Shares that CWCB may use in the Poudre River Augmentation Plan each year. CWCB acknowledges that the amount of water available for use in the Poudre River Augmentation Plan pursuant to this Agreement may vary and is dependent on a variety of factors, including without limitation the hydrological conditions and calls on the river that affect the Greeley GIC Water Rights. CWCB acknowledges further that the amount of water available for use in the Poudre River Augmentation Plan each year may not be known by Greeley with certainty prior to the requisite notice and anticipated date of Available Shares use. If Available Shares identified by Greeley are not needed for use in the Poudre River Augmentation Plan on a particular day, Greeley reserves the right to use the Available Shares for other permissible uses under the 99CW232 Decree or 15CW3163 Decree. Greeley may, in its sole discretion, determine that it cannot make any water attributable to the Greeley GIC Water Rights available for use in the

Poudre River Augmentation Plan in a given year. Greeley shall give notice of such a determination to CWCB no later than April 15, as described above.

3. No Payment for Use of Available Shares. CWCB is not required to remit payment to Greeley for its use of Available Shares in the Poudre River Augmentation Plan under this Agreement. However, nothing herein shall preclude Greeley and CWCB from amending this Agreement or subsequent agreements concerning the use of the Greeley GIC Water Rights to include monetary compensation for Greeley or other additional consideration.

4. Use of Available Shares by CWCB. To facilitate use of the Available Shares by CWCB under this Agreement, Greeley will legally divert water attributable to the Greeley GIC Water Rights at the decreed point of diversion for the Greeley Canal No. 3.¹ Greeley will then measure and return the volume of water attributable to the Available Shares to the Cache la Poudre River at the F Street Release Structure, located just east of 59th Avenue in Segment F.² From that point of introduction downstream to the confluence of the Cache la Poudre and South Platte Rivers at the end of Segment F, CWCB shall use the Available Shares for augmentation use in the Poudre River Augmentation Plan to increase the supply of water to the Cache la Poudre River stream flow to preserve and/or improve the natural environmental to a reasonable degree. At the confluence of the Cache la Poudre and South Platte Rivers (i.e., the end of Segment F), CWCB shall cease its use of the Available Shares and all dominion and control over the Available Shares will return to Greeley.

5. Emergency Use of Available Shares by Greeley. In the unanticipated event of a water supply emergency or other situation necessitating use of the Available Shares by Greeley for its customers, or for other purposes as may be determined by Greeley in its sole discretion, Greeley may withdraw the Available Shares from use by CWCB in the Poudre River Augmentation Plan. In such an event, Greeley shall provide notice to CWCB of this reduction or elimination of the Available Shares as soon as is practicable under the circumstances. For the purposes of this provision, a water supply emergency means an extraordinary drought condition or other emergency condition involving the loss or shortage of water in the Greeley municipal system due to catastrophic events (including, but not limited to, failure of conveyance or treatment facilities), provided however, that extraordinary drought conditions or emergency conditions shall be deemed to exist only if Greeley has implemented or is in anticipation of implementing a water supply shortage response and only if Greeley has maximized its diversions of water under all direct flow water rights other than the Available Shares that are available for municipal use during such conditions.

¹ The decreed location of the Canal No. 3 headgate is on the south side of the Cache la Poudre River in the Southeast quarter of Section 32, Township 6 North, Range 66 West, at a point 35 degrees 30 minutes West from the Southeast corner of said Section 32.

² The F Street Release Structure is located in the SE ¼ of the SW ¼ of Section 34, Township 6 North, Range 66 West, of the 6th P.M. in Weld County.

6. Return Flow Obligations. Greeley shall remain responsible for the maintenance of return flow obligations associated with the Greeley GIC Water Rights, as described in the 99CW232 and 15CW3163 Decrees.

7. Transit Losses on Use of Available Shares. Greeley shall bear any transit losses assessed by the Colorado Division of Water Resources on the use of Available Shares by CWCB in the Poudre River Augmentation Plan.

8. Administration of Available Shares. Greeley and CWCB shall coordinate with the Colorado Division of Water Resources on the administration of Available Shares in the Poudre River Augmentation Plan. Greeley and CWCB shall coordinate on the installation of any measuring devices deemed necessary by the Division Engineer to administer the operations contemplated by this Agreement.

9. Accounting and Reporting. Greeley and CWCB shall coordinate on all accounting and reporting requirements associated with use of the Available Shares in the Poudre River Augmentation Plan. Greeley shall remain responsible for all accounting and reporting requirements set forth in the 99CW232 and 15CW3163 Decrees. The responsibility for any accounting and reporting requirements imposed by the decree approving the Poudre River Augmentation Plan shall be determined by a separate agreement.

10. Share Assessments. Greeley shall remain responsible for the payment of assessments to the Greeley Irrigation Company on all Available Shares used by CWCB in the Poudre River Augmentation Plan, and on any other shares representing the Greeley GIC Water Rights.

11. No Vested Interest in Greeley GIC Water Rights. This Agreement is made expressly subject to Section 17-4 of the Charter of the City of Greeley. Greeley grants no interest in the Greeley GIC Water Rights to CWCB other than as explicitly set forth in this Agreement. CWCB shall make no claim to any right, title, or interest in the Greeley GIC Water Rights other than as explicitly set forth in this Agreement.

12. Termination. This Agreement expires at the end of its 15-year term, as described above. However, Greeley may terminate this Agreement at any time it reasonably believes in its sole discretion that the Greeley GIC Water Rights are at risk, or if the District Court for Water Division 1 or the Colorado Supreme Court denies the issuance of a decree for the Poudre River Augmentation Plan. Greeley shall provide written notice of such termination to CWCB as described below. Greeley or CWCB may terminate this Agreement if the Poudre River Augmentation Plan application is dismissed or withdrawn from Water Court, or if the Poudre River Augmentation Plan is not otherwise implemented, by providing written notice as described below.

13. Notice. All written notices or other communications pursuant to this Agreement shall be deemed sufficiently given when delivered in person, via email, or by

certified mail of the U.S. Postal Service, postage pre-paid and return receipt requested, and addressed as follows:

To Greeley: Greeley Water and Sewer Department
Attn: Water Resources Operations Manager
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
jennifer.petrzelka@greeleygov.com

And to: Greeley City Attorney's Office
Attn: Environmental and Water Resources
1100 10th Street, Suite 401
Greeley, Colorado 80631
daniel.biwer@greeleygov.com

To CWCB: Chief, Stream and Lake Protection Section
Colorado Water Conservation Board
1313 Sherman Street, Room 718
Denver, Colorado 80203
dnr_cwcbisf@state.co.us

With copy to: Office of the Attorney General
Water Conservation Unit
1300 Broadway, 7th Floor
Denver, Colorado 80220
jen.mele@coag.gov

14. Amendments. This Agreement may be amended only by written agreement duly authorized and executed by both Parties.

15. Attorney's Fees. If any suit, action, or alternative dispute resolution is instituted in connection with a controversy arising out of this Agreement or to enforce any rights hereunder, the Parties shall bear their own costs and fees associated with such proceeding.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

17. No Waiver of Governmental Immunity. Nothing in this Agreement shall be construed as a waiver, express or implied, by either Greeley or CWCB 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.

18. No Third Party Beneficiaries. This Agreement does not and is not intended by Greeley or CWCB to confer any rights or remedies upon any person or entity other than the Parties.

19. Fiscal Contingency. Notwithstanding any other provisions of this Agreement to the contrary, the obligations of the Parties in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the Party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement, and the failure of the Party to appropriate such funds shall be grounds for the Party to terminate this Agreement with written notice pursuant to Paragraph 13.

20. No Waiver of Breach. The failure of either Greeley or CWCB to declare a breach of this Agreement does not establish a precedent nor constitute an implied waiver of subsequent breach of any of the terms and conditions in this Agreement. The failure of either Greeley or CWCB to require performance of a provision of this Agreement does not limit the right of that Party to enforce that provision in the future.

21. Complete Agreement. This Agreement contains the entire agreement and understanding of the Parties. All prior negotiations, discussions, or agreements related thereto, whether oral or written, express or implied, are integrated herein.

22. Severability. If any term or provision of this Agreement is found to be invalid, illegal, or unenforceable by a court of competent jurisdiction, such invalidity, illegality or unenforceability does not invalidate or render unenforceable any other term or provision of this Agreement. The remainder of the Agreement shall be interpreted in accordance with the intent of the Parties.

IN WITNESS WHEREOF, Greeley and CWCB have executed this Agreement Regarding the Use of Certain City of Greeley Water Rights in the Poudre River Augmentation Plan as of the date first set forth above.

**CITY OF GREELEY, COLORADO,
a Colorado municipal corporation**

By: _____
Mayor

Date: _____

ATTEST:

By: _____
City Clerk

**COLORADO WATER CONSERVATION BOARD,
an agency of the STATE OF COLORADO**

By: _____

Date: _____

Rebecca Mitchell, CWCB Director

Colorado Water Conservation Board Water Delivery Agreement

Jen Petrzelka, Water Resources Operations Manager
February 17, 2021



Background



- ‘Poudre River Runs through It’ goal to **improve flows** in the river
- In 2015, subcommittee formed with Cache la Poudre Water Users, Fort Collins, Greeley, Thornton, CO Water Trust, CO Water Conservation Board (CWCB), CO Parks and Wildlife (CPW), and Northern Water
- Developed a novel concept of an **instream flow augmentation plan**
 - Requires agreement with CWCB where Greeley determines the amount and timing of water that has been decreed for augmentation to be dedicated but no need to change water rights
- C.R.S. §37-92-103(9) states a plan for augmentation may be used to “**increase the supply of water available for beneficial use...or by any other appropriate means**”

Background

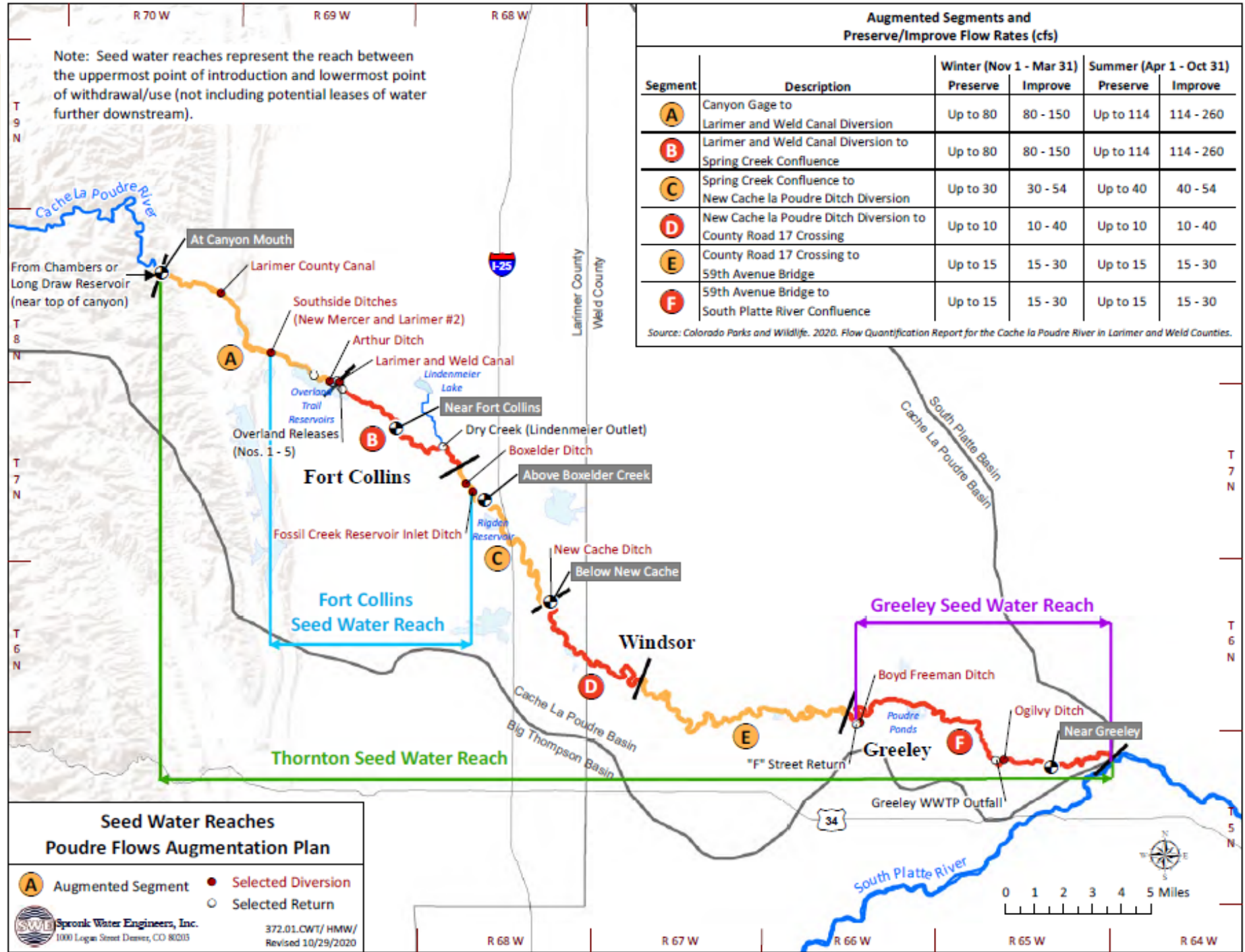
- Phase I MOU approved at February 2016 W&S Board meeting
 - *Completed draft engineering and feasibility study*
- Phase II MOU approved at March 2019 W&S Board meeting
 - *Obtain approval from CWCB*
 - *Obtain leases for Seed Water with CWCB*
 - *Prepare and prosecute a water court application*



Background

- CPW recommended flow rates to preserve and protect
- Completed draft engineering of the plan
 - *Includes 'Seed Water' from Greeley, Fort Collins and Thornton*
 - *How much and when additional water is needed*

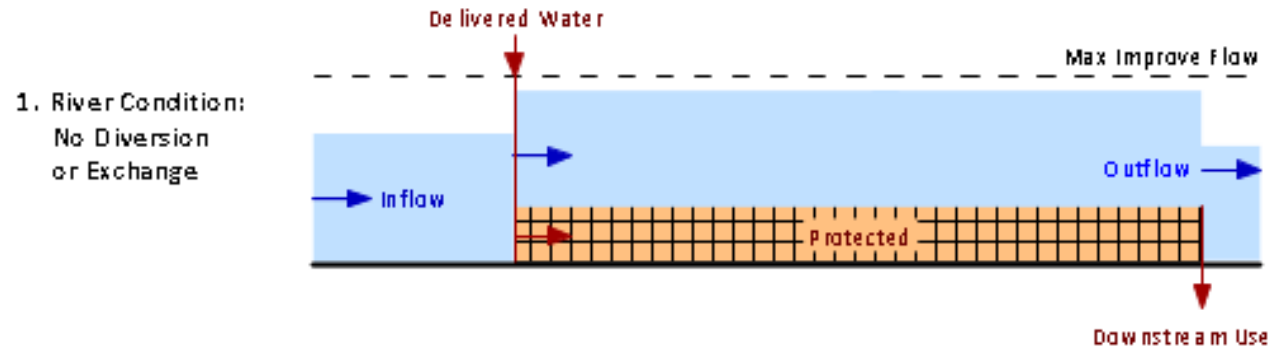




Background

Seed Water Rights to be dedicated

- Fort Collins' Southside ditch shares
 - *Segments A, B, and C*
 - *~54 cfs*
- Thornton's WSSC shares
 - *Segments A-F*
 - *9.52 cfs; 2,268 AF/yr*
- Greeley's GIC shares
 - *Segment F*
 - *18.75 cfs; 2,194 AF/yr*
- Augmentation plan contains process to add additional water rights



Background

- Numerous meetings with the State Engineer's Office to address concerns
- Legislation was passed in 2020 to clarify the statute to include instream flow purposes (HB 20-1037)
- Met with CWCB
 - November 18, 2020 Board meeting
 - Workshop on January 22, 2021
 - Final approval of plan and dedication of water rights at January 26, 2021 Board meeting
- Requires a Water Delivery Agreement with the CWCB
 - Allows CWCB to use Greeley's GIC shares
 - Greeley determines how much and when to dedicate
 - 15 year term
- Next steps are to file a water court application



Recommendation

- The Instream Flow Augmentation plan is a collaborative way to increase flows and improve the health of the Poudre River
- Staff recommends Board approval of the CWCB Water Delivery Agreement



WATER & SEWER BOARD AGENDA FEBRUARY 17, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 10

TITLE: 2020 YEAR END WATER & SEWER
ENTERPRISE FINANCIAL REPORT

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

Please see the attached memorandum and supporting materials.



MEMORANDUM

TO: Water and Sewer Board
 FROM: Kalen Myers, Rates and Budget Analyst
 DATE: February 17, 2021
 RE: 2020 Year-End Financial Report

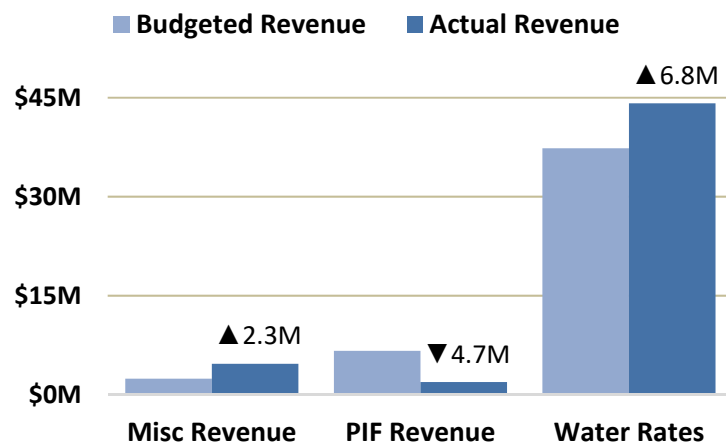
Overview

The year-end 2020 water and sewer financial report is enclosed with all additional detail available in the attached appendices. Water rate revenues were strong, coming in 18% over budgeted targets due to increased water use in the hot and dry summer months. Conversely, sewer rate revenues were 4% shy of budgeted targets with decreases in some commercial and industrial classes. Plant investment fee revenue fell considerably below budgeted targets due to a sharp decrease in development amidst the COVID-19 pandemic. Operating expenditures were within budget for both water and sewer.

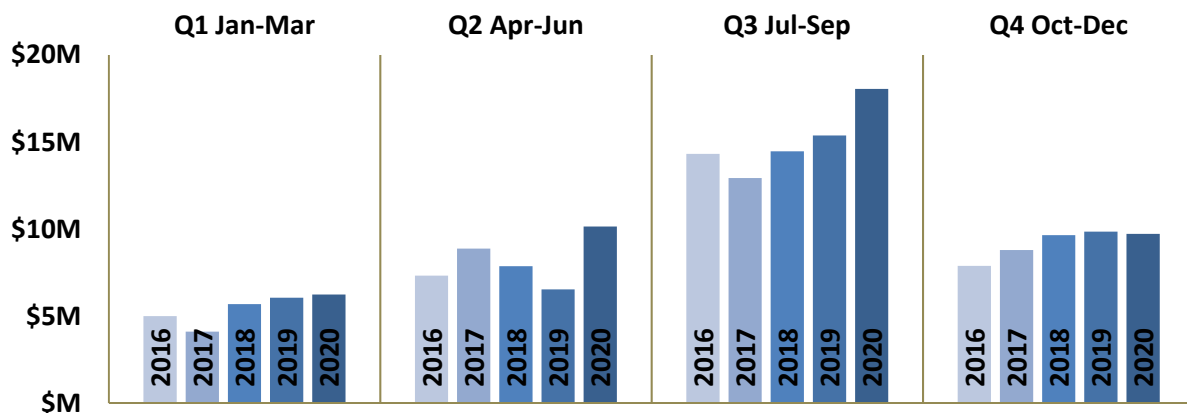
Water Revenues

Water revenues can be grouped into three main categories: Water Rates which made up 87% of total 2020 water revenue, Miscellaneous Revenue like water rentals and augmentation sales which made up 9% of total water revenue, and Plant Investment Fees (PIFs) which made up 4% of total water revenue. 2020 year-end revenue compared to budget for each of these categories can be seen in the chart to the right.

Despite Plant Investment Fee revenue coming in 71% under budgeted targets (-\$4.7M), a hot and dry summer yielded 18% more rate revenue than anticipated. The net total for water revenues compared to budgeted targets was + \$4.3M.

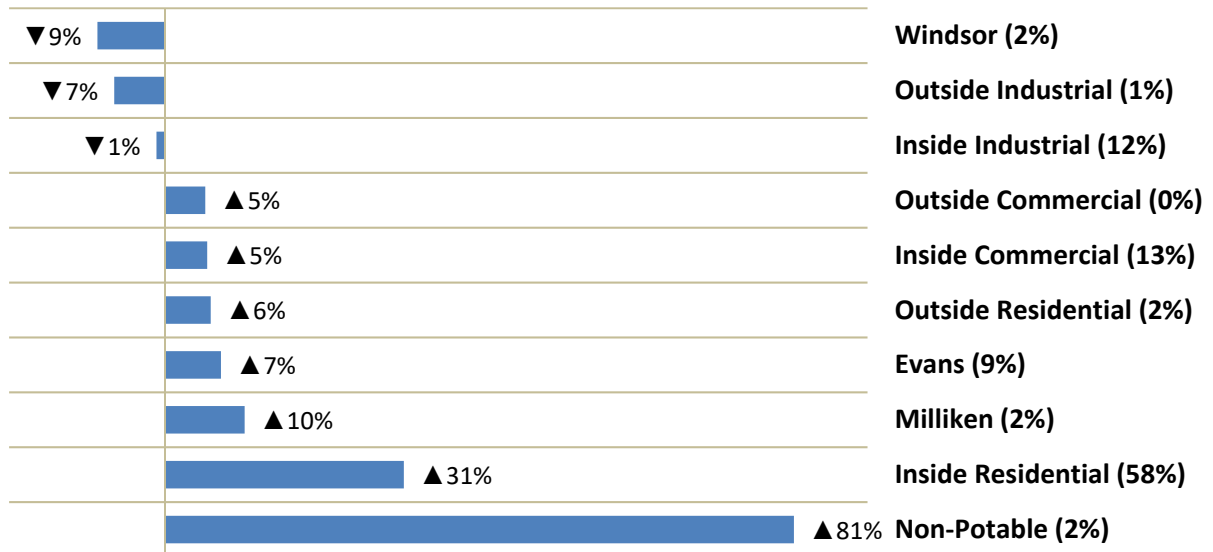


The 5-yr rate revenue chart below shows how water demand spiked more than normal in Q2 and Q3 2020.

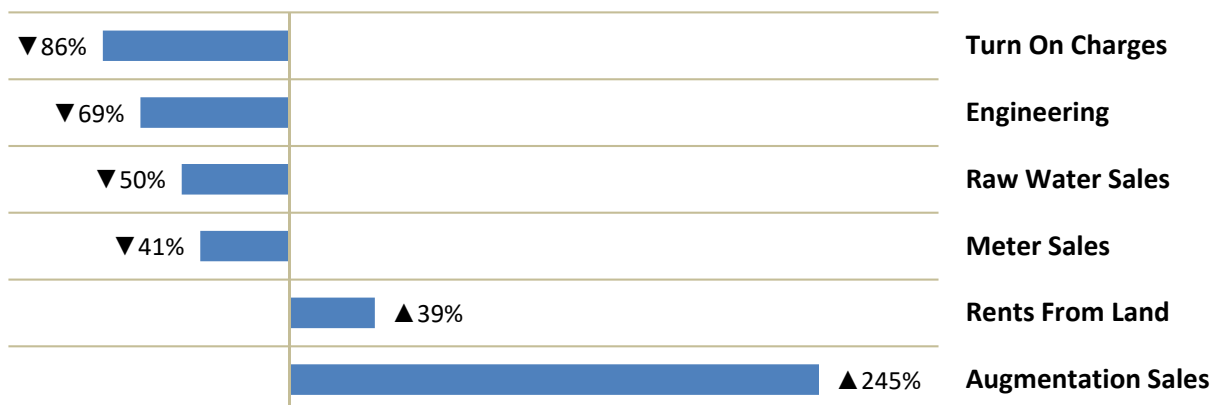


Water Rate Revenue Detail:

The following chart shows 2020 water rate revenue at the customer class level compared to budgeted targets. Each customer class' percentage share of total 2020 rate revenue can be found in the legend. Three customer classes produced less revenue than budgeted: the Town of Windsor, Inside Industrial and Outside Industrial. Overall, 2020 water rate revenues were \$44M which is \$6.8M over the budgeted target.

2020 Water Rate Revenue Variance from BudgetMiscellaneous Water Revenue Detail:

Miscellaneous revenues are budgeted conservatively due to their variable nature. For this reason, and because water sales were strong, the miscellaneous revenue category was up 93% over budgeted targets. With that said, the impacts of COVID-19 can be seen in the revenues related to construction activities like engineering inspections and meter sales which came in under-budget and were down significantly from last year. Additionally, turn-on charge revenue was down due to the fact that water turn-offs were halted at the start of the pandemic. The chart below highlights a few notable revenues as compared to year-end 2019. A full listing of miscellaneous revenues is available in Appendix B.

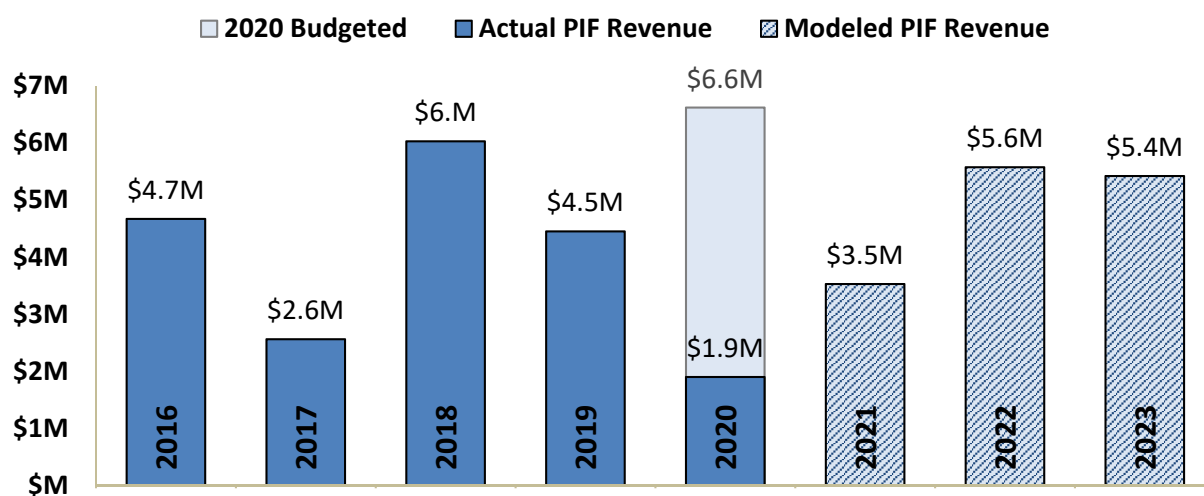
Select Miscellaneous Revenues, Change from 2019

Cash-in-Lieu of Raw Water Revenue Detail:

Cash-in-lieu revenue, counted in the miscellaneous group and labeled in the chart above as “Raw Water Sales” was down 50% from 2019, but due to conservative budgeting was still well above the targeted budget amount. In 2020, 14 taps paid cash-in-lieu with a total volume of water sold at 22.63 acre feet which generated \$722,467 in revenue.

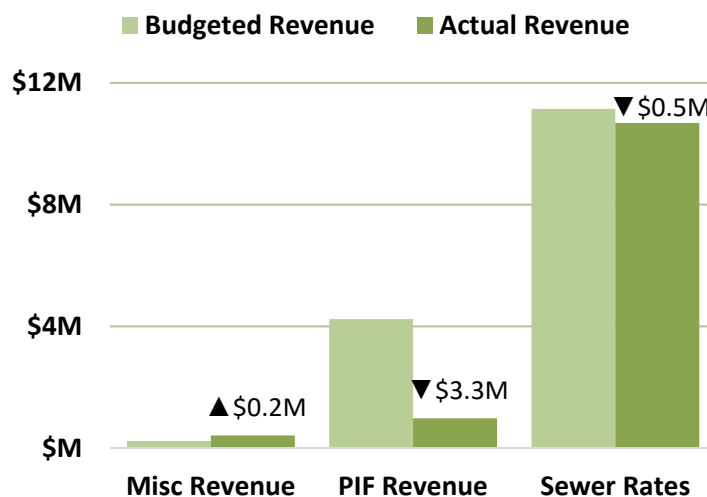
Water Plant Investment Fee Revenue Detail:

2020 Plant Investment Fee (PIF) revenue was the most impacted by the COVID-19 pandemic, coming in 71% under the budgeted target and generating 57% less revenue than in 2019. Due to the uncertainty surrounding COVID-19 and the development environment, the anticipated PIF revenue for 2021 was reduced early in the budget process with an assumption that development will re-bounce in 2022. The chart below shows actual PIF revenue for the past five years with a look ahead at modeled figures. The PIF revenue estimates for 2022 on will be re-evaluated during the modeling process this spring.

Sewer Revenues

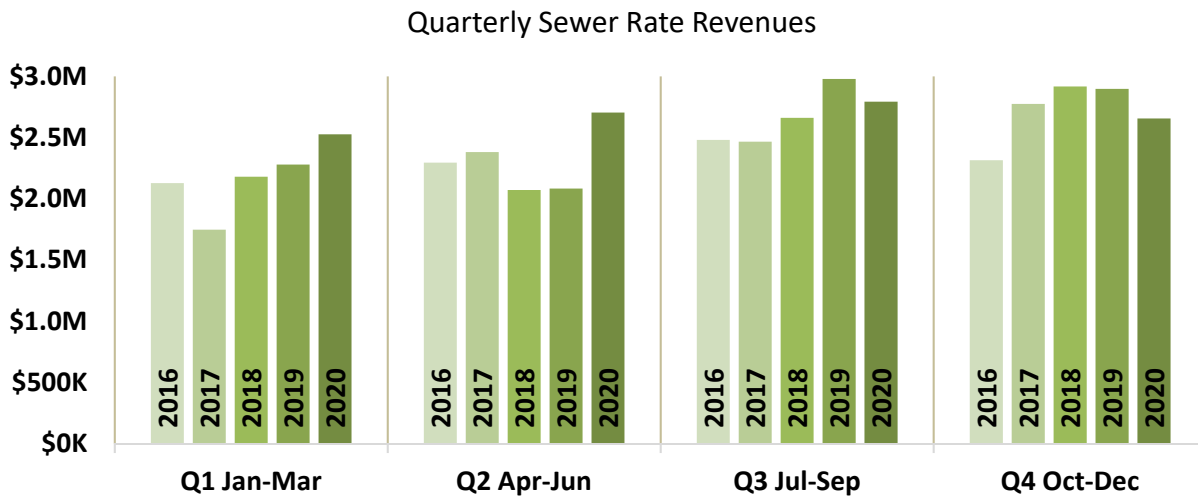
Similar to water revenues, sewer revenues can be grouped into the same three categories which comprise similar percentage shares of total revenue. Sewer rates made up 88% of total 2020 revenue while miscellaneous made up 4% and plant investment fees made up 8%. 2020 year-end revenue compared to budget for each category is shown in the chart to the right.

Unlike on the water side, sewer production is not impacted by hot, dry temperatures and thus didn't see the same revenue gains as water did from increased irrigation. In total, sewer revenues were down 23% (\$3.5M) from budgeted targets, with plant investment fees accounting for most of the shortfall.

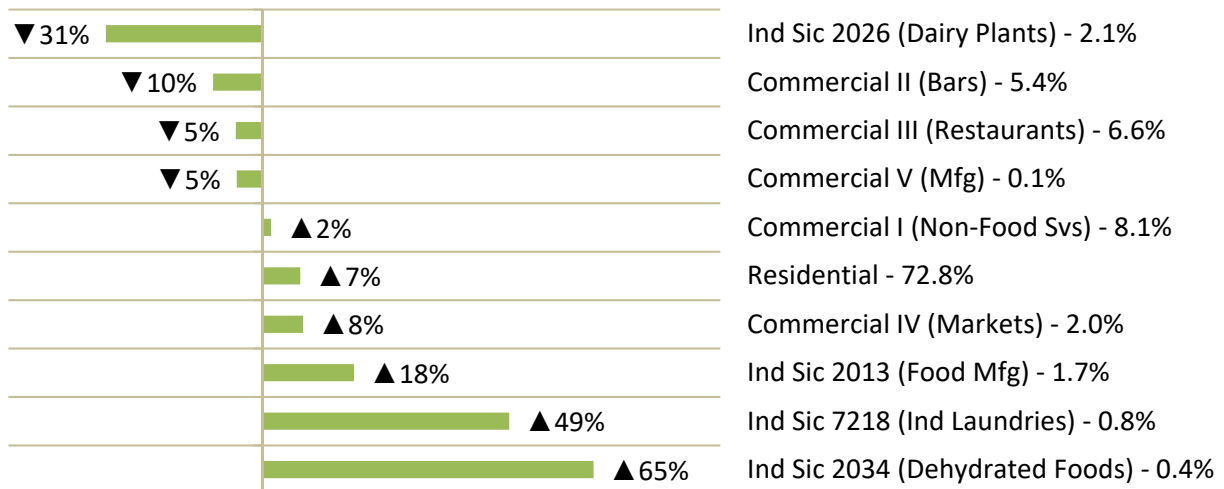


Sewer Rate Revenue Detail:

The chart below shows quarterly sewer rate revenue over the past 5 years. Notice the quarterly distribution of sewer revenues is much more stable as compared to the same chart for water. This is because sewer production isn't subject to the same seasonal influences as water consumption. 2020 sewer rate revenue, while under budgeted targets, was up 4% over last year.



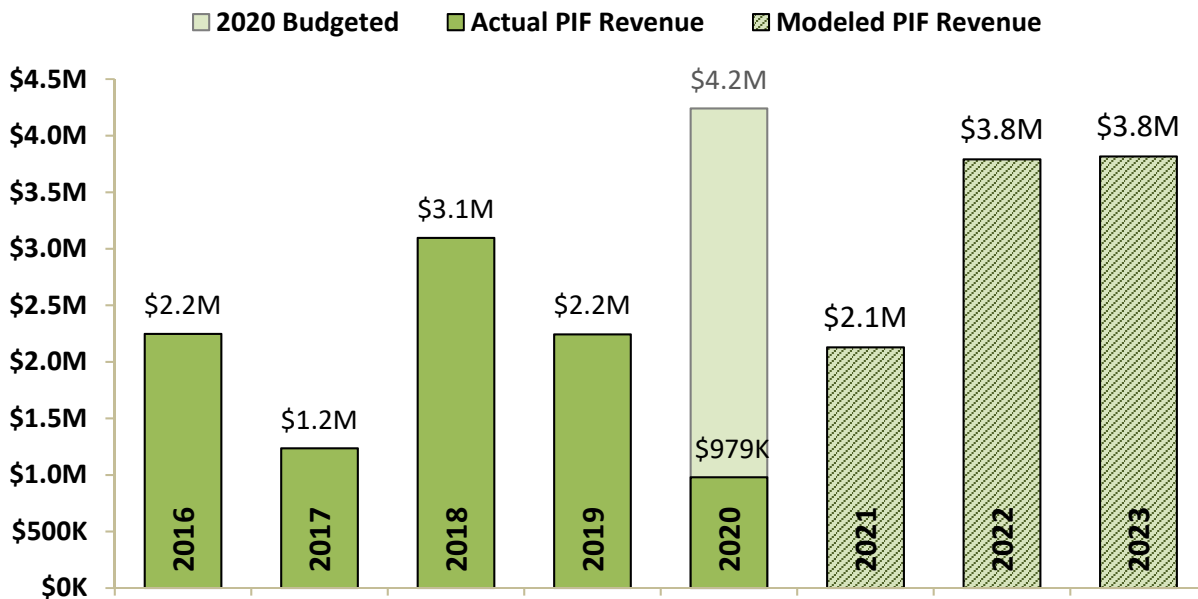
The following chart is a more detailed look at sewer rate revenue at the customer class level as compared to year-end 2019. Each customer class' percentage share of 2020 rate revenue can be found in the legend. Note: Commercial I and II (bars and restaurants) saw a combined 15% decrease in revenue from 2019 to 2020, likely an impact of the COVID-19 pandemic.

Sewer Rate Revenue Change from 2019Miscellaneous Sewer Revenue Detail:

Like on the water side, miscellaneous sewer revenues are budgeted conservatively. This category was up 81% over the targeted budget amount, but down from 2019. Full detail on miscellaneous sewer revenues is available in Appendix C.

Sewer Plant Investment Fee Revenue Detail:

Sewer PIF revenue was down 77% from the 2020 budgeted target and down 56% from 2019. This is normally a variable revenue, as evidenced in the chart below, but COVID-19 had a particularly severe impact. The following chart shows actual PIF revenue for the past five years with a look ahead at modeled figures. The PIF revenue estimates for 2022 on will be re-evaluated during the modeling process this spring.

Water and Sewer Operating Expenditures:

Both water and sewer operations expenditures were within budget. Full details are available for review in Appendices D and E.

Year-End 2020 Water & Sewer Finance Report

Appendix A: Water Demands

Prepared February 2021

2020 Actual Water Demand v Modeled Demand								2020 Water Demand v 2019	
	% Total Water Use	Water Use (Kgal)	Taps	Use/Tap	Modeled Use/Tap	Modeled Use (Kgal)	% Change Total Use v Modeled	Kgal Change v 2019	% Change v 2019
Inside Residential	37%	3,193,620	23,447	136	124	2,860,418	12%	506,041	19%
Inside Commercial	12%	1,072,196	1,902	564	582	1,043,954	3%	(22,657)	-2%
Inside Multi-Family	12%	1,069,981	2,213	483	462	1,023,684	5%	83,887	9%
Industrial User	9%	757,847	2	378,924	350,000	700,000	8%	71,664	10%
Industrial User	8%	704,372	3	234,791	238,333	715,000	-1%	(103,614)	-13%
Public Uses	5%	413,050	248	1,666	1,000	237,589	74%	89,680	28%
Inside-City Sub-Total:	83%	7,211,066	27,815			6,580,645	+ 10% ▲	625,001	+ 9% ▲
Evans	10%	891,311	14	63,665	58,631	822,544	8%	70,228	9%
Windsor	2%	200,710	3	66,903	70,700	209,811	-4%	(3,776)	-2%
Outside Industrial User	2%	172,219	1	172,219	190,000	188,483	-9%	(8,489)	-5%
Milliken	1%	119,899	1	119,899	85,000	108,130	11%	20,773	21%
Outside Residential	1%	51,471	484	106	101	45,992	12%	5,216	11%
Ag-Special Contract	0%	34,840	58	601	539	30,373	15%	1,373	4%
Outside Commercial	0%	11,734	114	103	111	11,452	2%	205	2%
Outside Multi-Family	0%	4,536	18	252	280	5,000	-9%	(89)	-2%
Outside-City Sub-Total:	17%	1,486,720	693			1,421,785	+ 5% ▲	85,441	+ 6% ▲
Total Water Demand:		8,697,786	28,508			8,002,430	+ 9% ▲	710,442	+ 9% ▲

Year-End 2020 Water & Sewer Finance Report

Appendix B: Water Revenues

Prepared February 2021

	2020 Water Revenues v Budget				2020 Revenues v 2019	
	% of Total Rev	\$ Revenue	\$ Budget	% Change v Budget	\$ Change v 2019	% Change v 2019
Inside Residential	50.2%	25,439,699	19,480,170	31%	4,630,331	22%
Inside Commercial	11.3%	5,727,838	5,434,783	5%	295,221	5%
Inside Industrial	10.1%	5,104,379	5,161,544	(1%)	274,532	6%
City of Evans	7.5%	3,805,457	3,551,207	7%	575,391	18%
Town of Windsor	1.7%	855,117	936,225	(9%)	12,424	1%
Non-Potable	1.6%	812,565	450,001	81%	209,086	35%
Outside Residential	1.5%	746,280	705,042	6%	112,034	18%
Town of Milliken	1.4%	701,057	636,170	10%	197,945	39%
Outside Industrial User	1.2%	612,279	655,000	(7%)	2,388	0%
Ag-Special Contract	0.4%	184,709	159,126	16%	19,701	12%
Outside Commercial	0.3%	162,383	154,440	5%	18,175	13%
Rate Revenue Sub-Total:	87%	44,151,762	37,323,708	+ 18% ▲	6,347,227	+ 17% ▲
Re-Rent From Purchase	2.3%	1,148,450	250,000	359%	204,695	22%
Raw Water Sales	1.4%	722,467	500,000	44%	(717,322)	(50%)
Expense Reimbursement	1.3%	681,908	-		532,705	357%
Other Water Rentals	1.0%	522,169	375,000	39%	(182,671)	(26%)
Raw Water Surcharge	0.7%	331,291	350,000	(5%)	(17,793)	(5%)
Augmentation Sales	0.6%	317,431	125,000	154%	225,365	245%
Rents From Equipment	0.3%	174,070	85,000	105%	21,115	14%
Sale To Other Departments	0.3%	130,000	175,000	(26%)	(19,141)	(13%)
Sales To Outside Agencies	0.2%	115,495	75,000	54%	74,355	181%
Royalties	0.2%	104,521	-		(88,716)	(46%)
Other	0.2%	100,088	-		19,813	25%
Rents From Land	0.2%	87,815	65,000	35%	24,832	39%
Meter Sales	0.2%	81,614	85,000	(4%)	(57,299)	(41%)
Labor Reimbursement	0.1%	60,076	250,000	(76%)	(191,544)	(76%)
Other Miscellaneous	0.0%	22,228	-		(43,763)	(66%)
Mountain Plains Rental	0.0%	19,221	19,000	1%	0	
Labor & Materials	0.0%	19,151	10,000	92%	(1,734)	(8%)
Engineering	0.0%	15,087	-		(33,471)	(69%)
Turn On Charges	0.0%	5,940	45,000	(87%)	(37,327)	(86%)
Misc Revenue Sub-Total:	9%	4,659,021	2,409,000	+ 93% ▲	(287,900)	(6%) ▼
Development Fees (PIFs)	3.8%	1,903,192	6,618,712	(71%)	(2,547,412)	(57%)
Promontory PIF Surcharge	0.0%	1,575	-		1,575	
Dev Revenue Sub-Total:	4%	1,904,767	6,618,712	(71%) ▼	(2,545,837)	(57%) ▼
Total Water Revenues:		50,715,550	46,351,420	+ 9% ▲	3,513,490	+ 7% ▲

Year-End 2020 Water & Sewer Finance Report

Appendix C: Sewer Revenues

Prepared February 2021

	2020 Sewer Revenues v Budget				2020 Revenues v 2019	
	% of Total Rev	\$ Revenue	\$ Budget	% Change v Budget	\$ Change v 2019	% Change v 2019
Residential	64.3%	7,768,520	7,483,276	4%	536,231	7%
Commercial I (Non-Food Svs)	7.2%	865,766	1,439,860	(40%)	14,331	2%
Commercial II (Bars)	4.8%	575,087	664,372	(13%)	(62,033)	(10%)
Commercial III (Restaurants)	5.9%	709,000	799,172	(11%)	(39,358)	(5%)
Commercial IV (Markets)	1.8%	215,361	141,791	52%	15,925	8%
Commercial V (Mfg)	0.1%	13,802	5,644	145%	(736)	(5%)
Ind Sic 2026 (Dairy Plants)	1.8%	219,860	369,481	(40%)	(97,937)	(31%)
Ind Sic 2013 (Food Mfg)	1.5%	184,054	154,179	19%	28,067	18%
Ind Sic 7218 (Ind Laundries)	0.7%	88,882	59,992	48%	29,041	49%
Ind Sic 2034 (Dehydrated Foods)	0.3%	37,592	22,766	65%	14,824	65%
Rate Revenue Sub-Total:	88.4%	10,677,925	11,140,533	(4%) ▼	438,355	+ 4% ▲
Engineering	0.1%	16,311	32,000	(49%)	(20,555)	(56%)
Labor & Materials	0.0%	4,434	-		(7,107)	(62%)
Expense Reimbursement	0.1%	10,237	-		(78,856)	(89%)
Labor Reimbursement	0.2%	28,188	30,000	(6%)	(43,773)	(61%)
Private Liquid Waste Dis	0.0%	631	15,000	(96%)	(2,713)	(81%)
Other Sewer Charges	1.8%	221,310	-		206,630	1408%
Rents From Land	0.1%	10,000	5,000	100%	7,600	317%
Royalties	1.1%	128,973	150,000	(14%)	(282,410)	(69%)
Sales Of Other City Asset	0.0%	54	-		(246)	(82%)
Misc Revenue Sub-Total:	3.5%	420,136	232,000	+ 81% ▲	(221,430)	(35%) ▼
Development Revenue:	8.1%	979,155	4,240,825	(77%) ▼	(1,264,145)	(56%) ▼
Total Sewer Revenues:		12,077,217	15,613,358	(23%) ▼	(1,047,219)	(8%) ▼

Year-End 2020 Water & Sewer Finance Report

Appendix D: Water Operating Expenditures

Prepared February 2021

	% of Total Budget	\$ Budget	\$ Spent + Encumbered	\$ Remaining	% Budget Utilized
Administration	9%	1,762,948	1,632,104	130,844	93%
Engineering	2%	426,998	378,715	48,283	89%
Computer/Phone User Chrgs	2%	374,626	374,626	0	100%
Liability Insurance	1%	207,301	207,301	0	100%
General Management:	14%	2,771,873	2,592,746	179,127	94%
Service And Meters	2%	494,832	384,792	110,040	78%
Transmission-Reservoir	5%	914,130	907,195	6,935	99%
Distribution	11%	2,295,321	1,793,314	502,007	78%
Inventory	1%	275,000	183,429	91,571	67%
Non-Potable Operations	4%	837,689	701,909	135,780	84%
Instrument & Control	3%	686,495	654,056	32,439	95%
Transmission & Distribution:	27%	5,503,467	4,624,695	878,772	84%
Water Resources	25%	4,968,150	4,570,055	398,095	92%
High Mountain Reservoirs	2%	464,434	453,157	11,277	98%
Water Conservation Prgm	3%	647,049	523,131	123,918	81%
Cameron Fire Mitigation	4%	750,000	300,533	449,467	40%
Water Resources:	34%	6,829,633	5,846,876	982,757	86%
Bellvue Filter Plant	11%	2,189,965	2,041,257	148,708	93%
Boyd Lake Filter Plant	12%	2,405,851	2,177,363	228,488	91%
Water Quality	2%	345,450	205,665	139,785	60%
Treatment:	25%	4,941,266	4,424,284	516,982	90%
Total Water Operating:		20,046,239	17,488,601	2,557,638	87%

Year-End 2020 Water & Sewer Finance Report
Appendix E: Sewer Operating Expenditures

Prepared February 2021

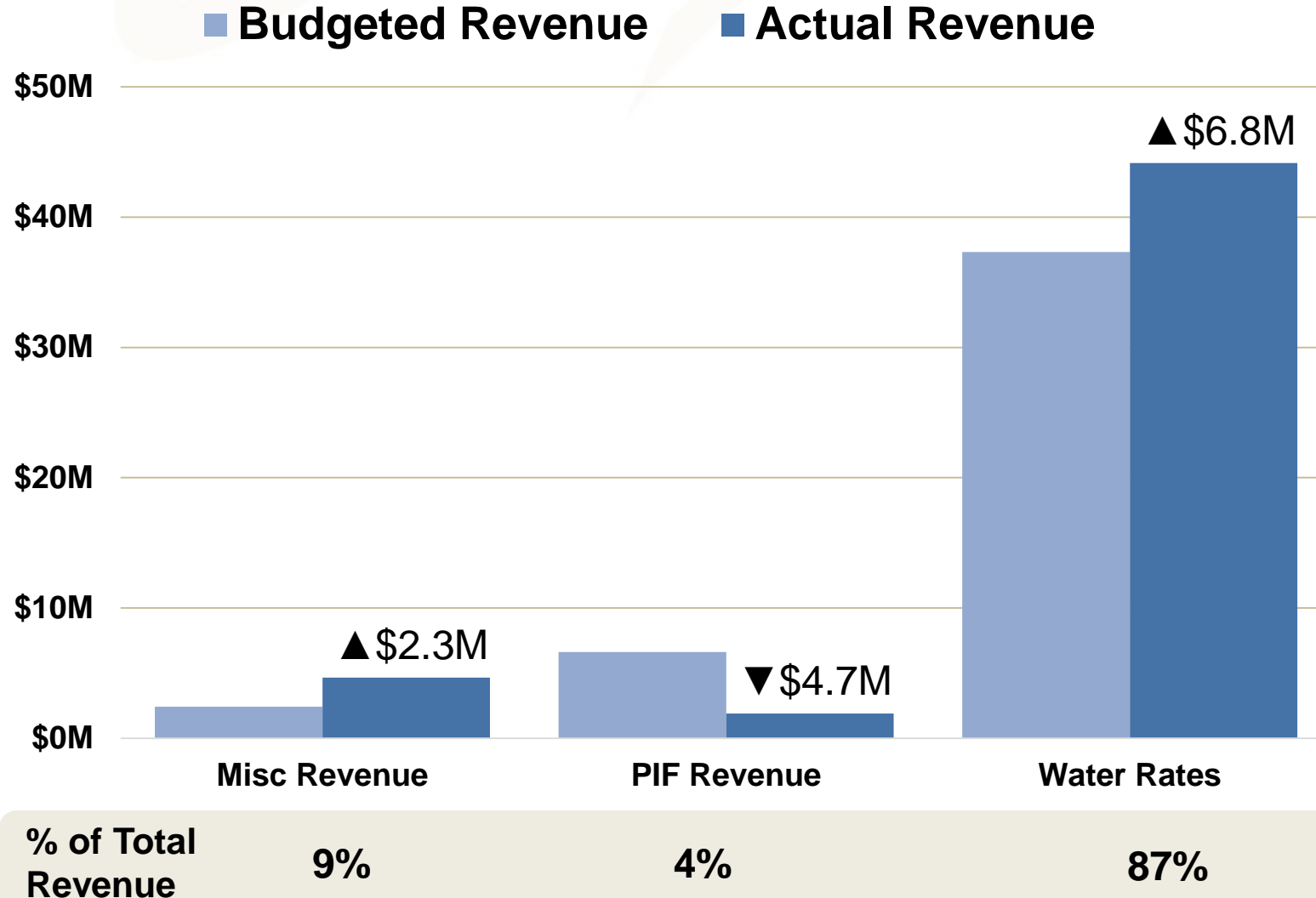
	% of Total Budget	\$ Budget	\$ Spent + Encumbered	\$ Remaining	% Budget Utilized
Engineering	6%	386,118	197,603	188,515	51%
Sewer Administration	4%	293,150	343,918	(50,768)	117%
Computer/Phone User Chrgs	2%	147,622	147,622	0	100%
Liability Insurance	3%	207,300	207,300	0	100%
General Management:	15%	1,034,190	896,443	137,747	87%
WTRF Administration	8%	554,097	910,556	(356,459)	164%
Laboratory	6%	396,343	261,335	135,008	66%
Maintenance	12%	835,301	670,570	164,731	80%
Operations	34%	2,289,785	1,969,849	319,936	86%
Industrial Pretreatment	5%	338,606	240,752	97,854	71%
Wastewater Treatment:	66%	4,414,132	4,053,062	361,070	92%
Wastewater Collection:	19%	1,283,809	1,026,089	257,720	80%
Total Sewer Operating:		6,732,131	5,975,593	756,538	89%

Water and Sewer Finance Report Year-End 2020

Water and Sewer Board
February 17, 2021



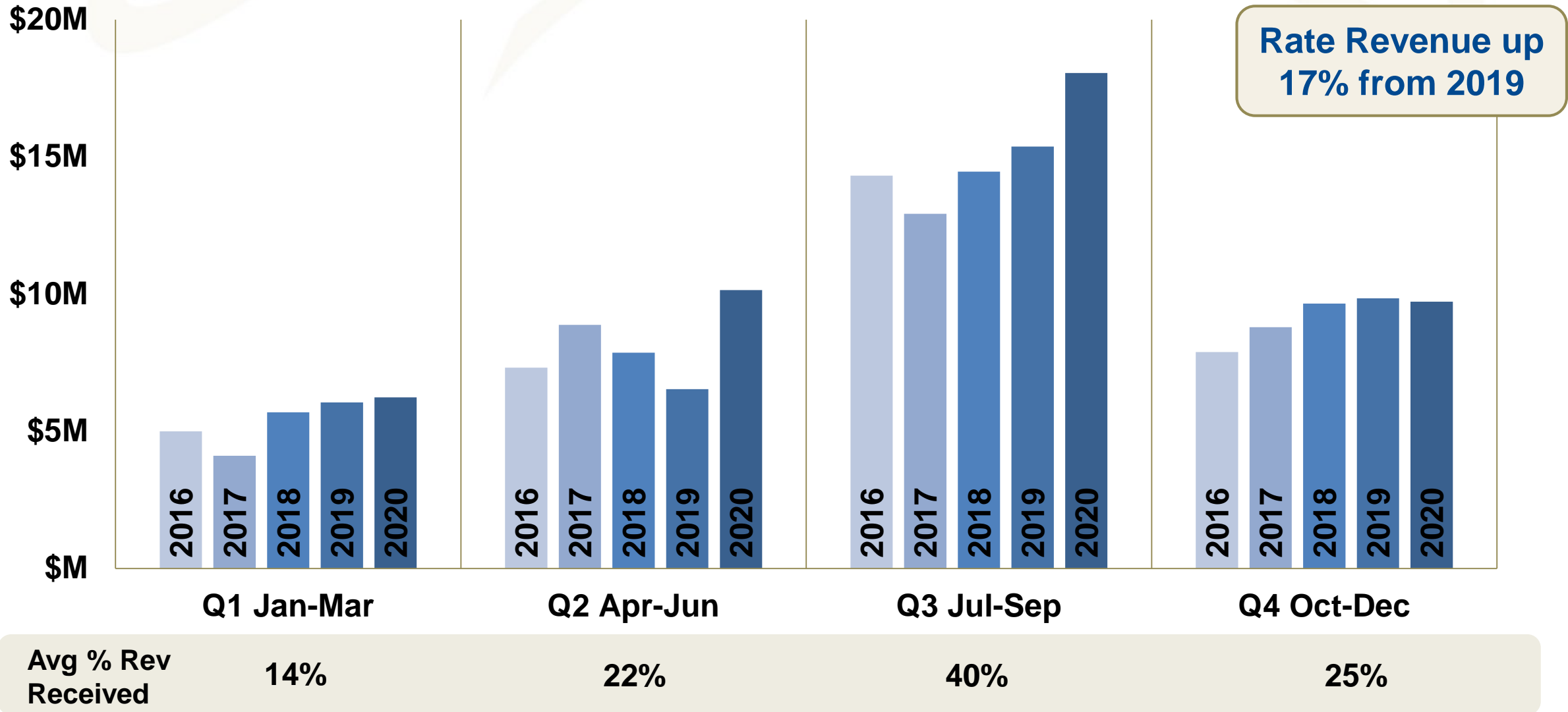
2020 Water Revenue At A Glance



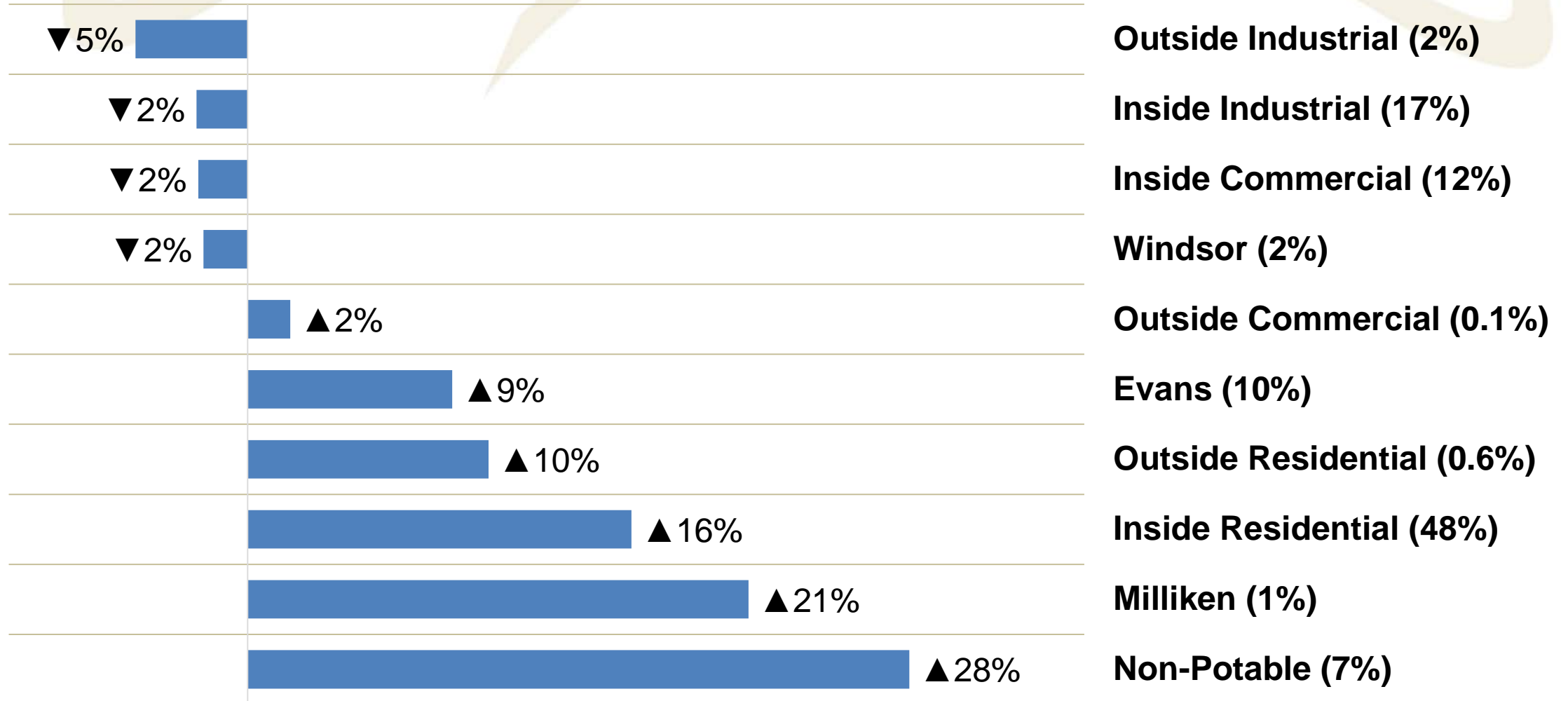
Budget: \$46.4M
Actual: \$50.7M
Net: + \$4.3M



Rate Revenue: 5 Year Compare



Water Demand up 9% from 2019

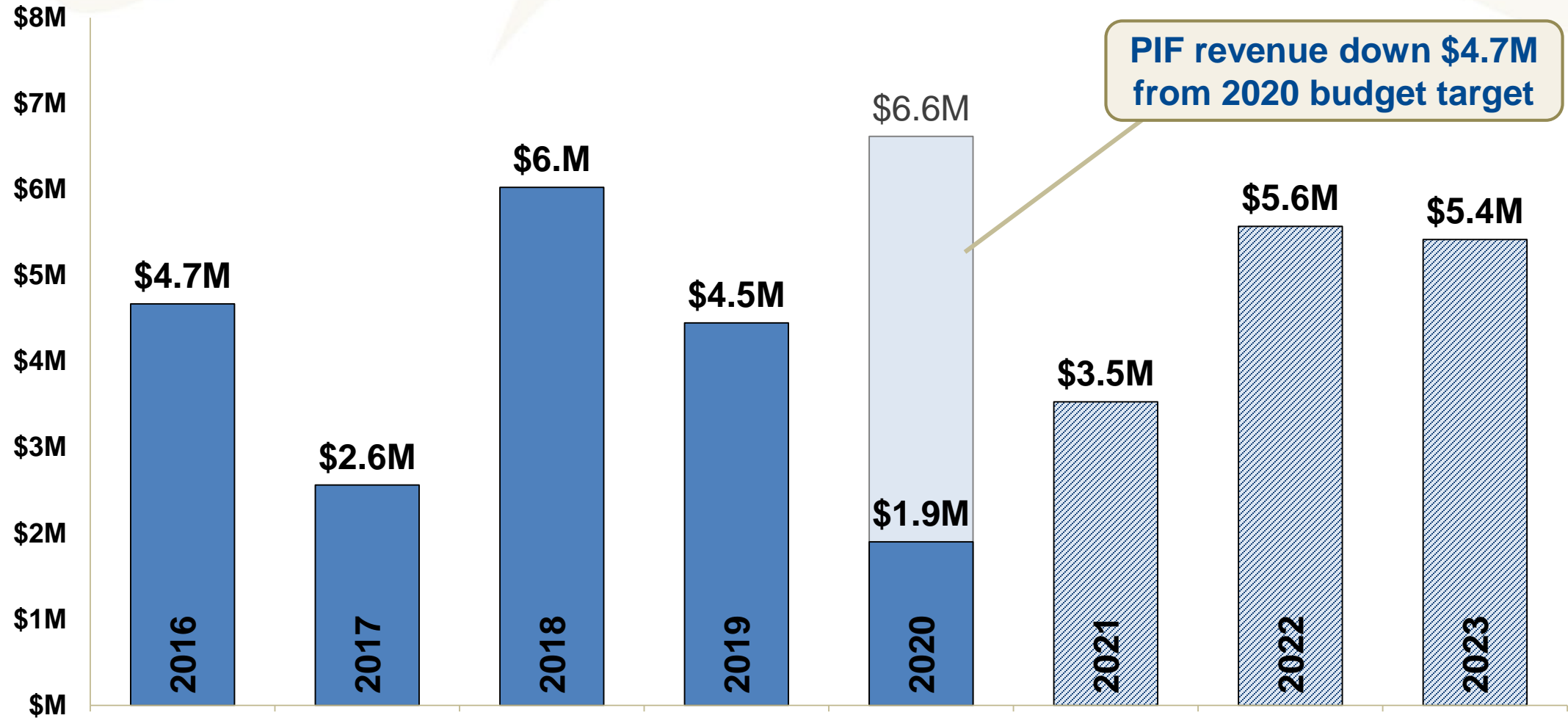


Water PIF Revenue

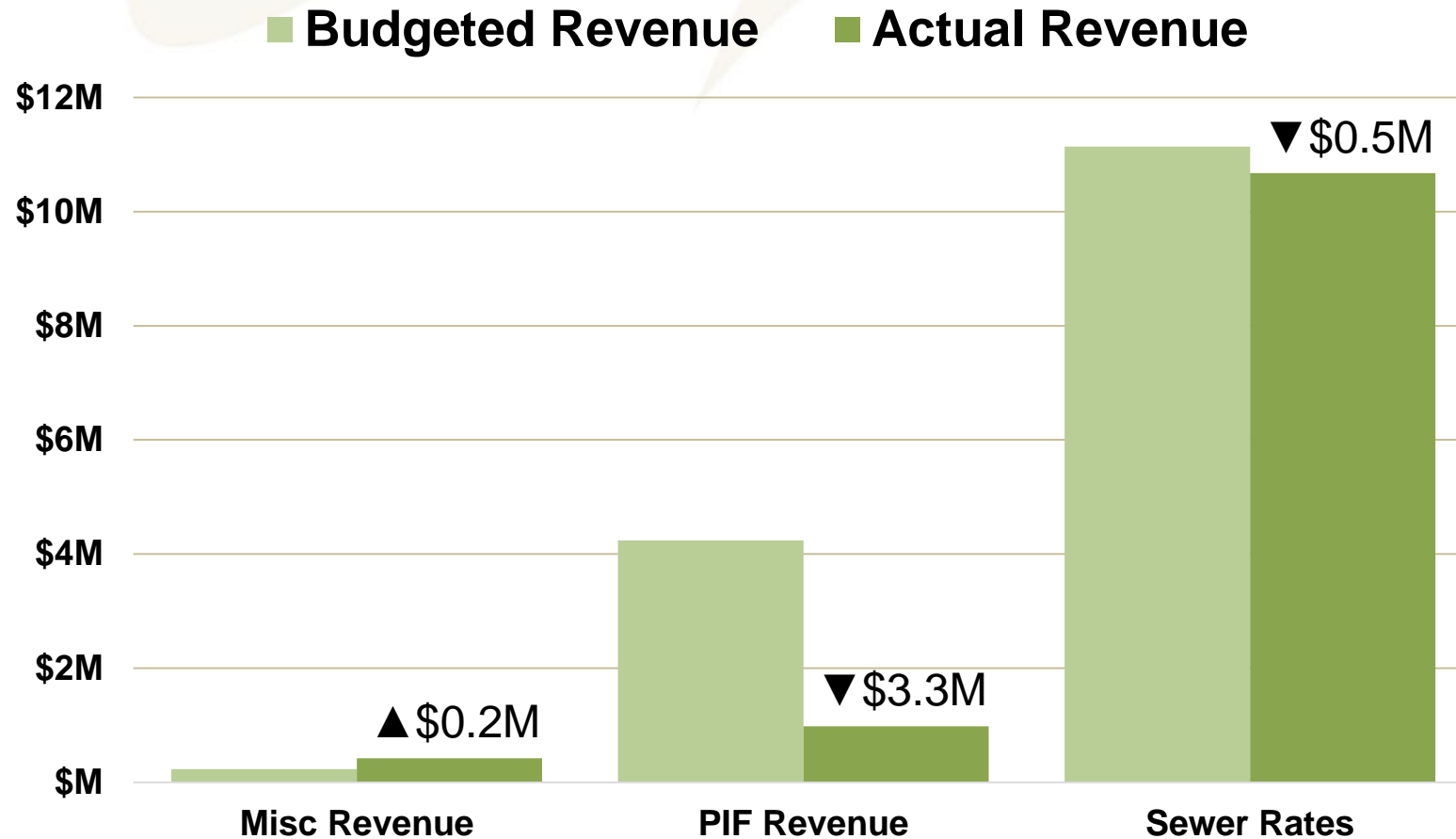
2020 Budgeted

Actual PIF Revenue

Modeled PIF Revenue



2020 Sewer Revenue At A Glance



Budget: \$15.6M
Actual: \$12.1M
Net: - (\$3.5M)

% of Total
Revenue

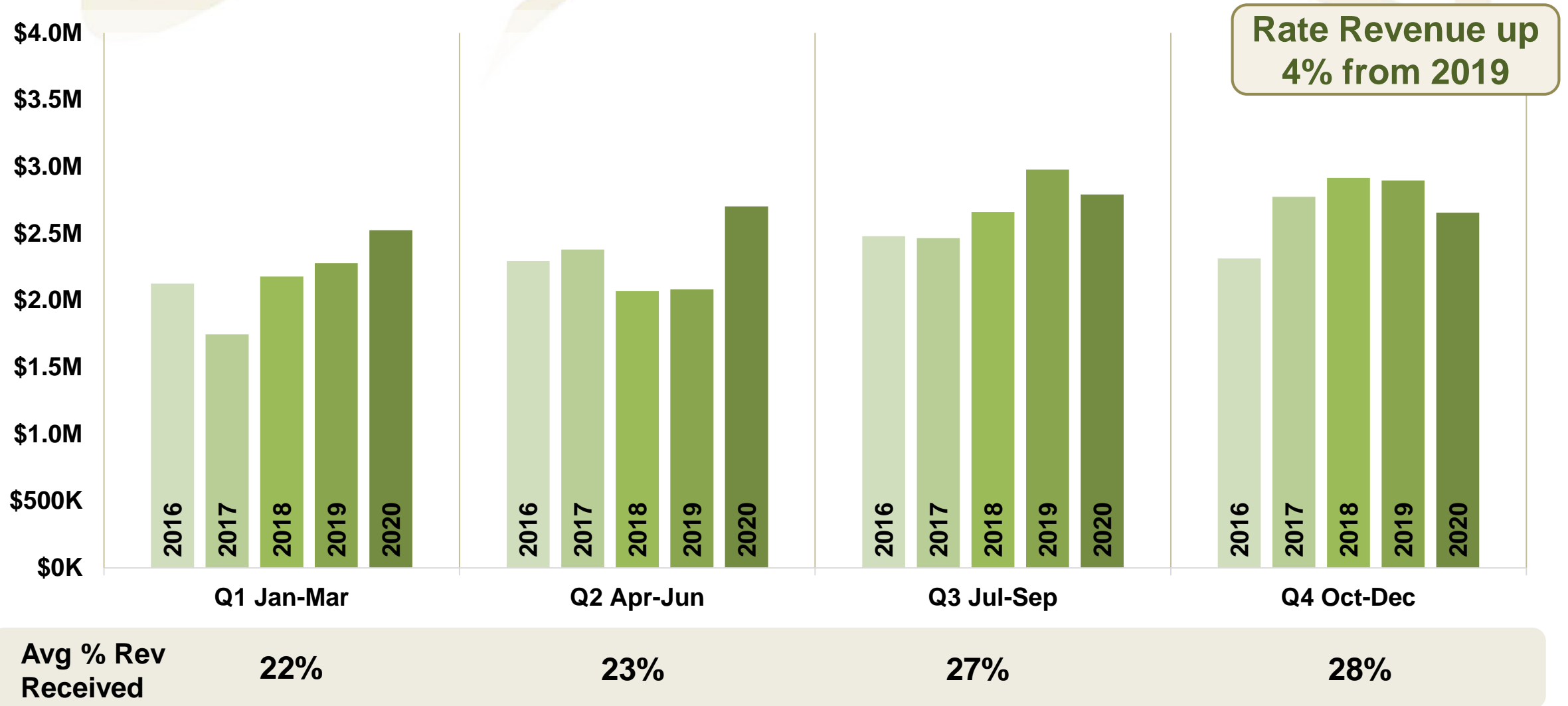
4%

8%

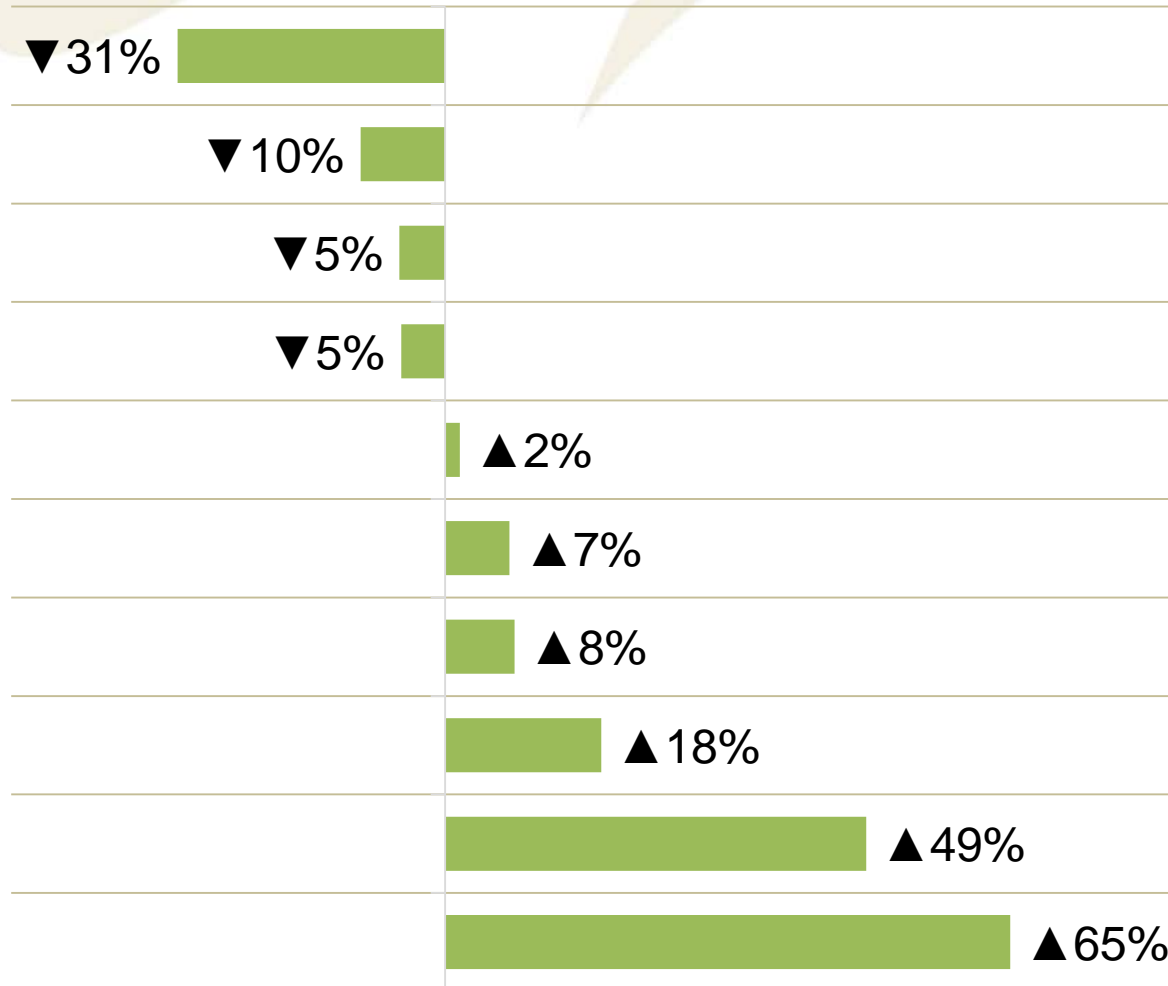
88%



Rate Revenue: 5 Year Compare



Sewer Rate Revenue 2020 v 2019



Ind SIC 2026 (Dairy Plants) - 2%

Commercial II (Bars) - 5%

Commercial III (Restaurants) - 7%

Commercial V (Mfg) - 0.1%

Commercial I (Non-Food Svs) - 8%

Residential - 73%

Commercial IV (Markets) - 2%

Ind SIC 2013 (Food Mfg) - 2%

Ind SIC 7218 (Ind Laundries) - 0.8%

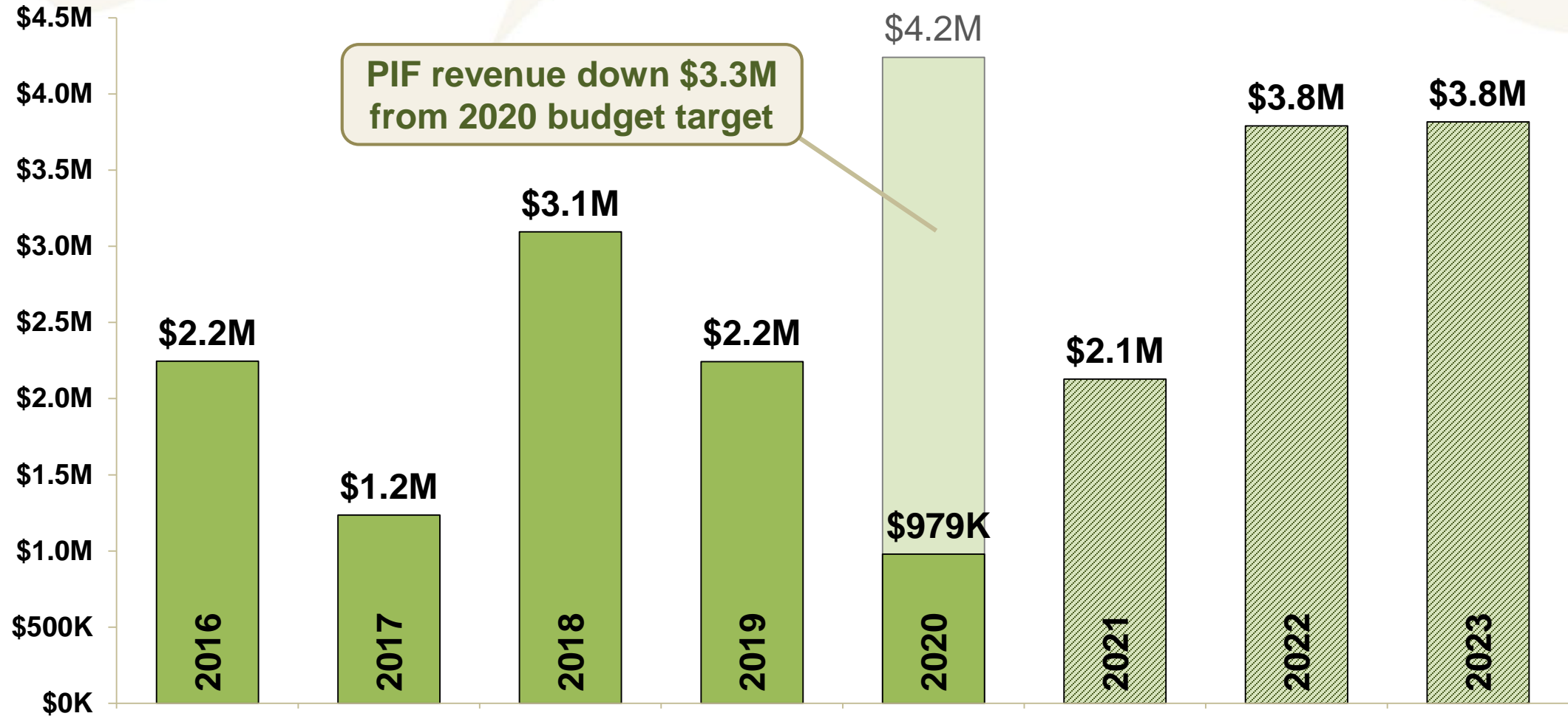
Ind SIC 2034 (Dehydrated Foods) - 0.4%

Sewer PIF Revenue

2020 Budgeted

Actual PIF Revenue

Modeled PIF Revenue



Thank you!

Water and Sewer Board
February 17, 2021



WATER & SEWER BOARD AGENDA FEBRUARY 17, 2021

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 11

TITLE: LEGAL REPORT

RECOMMENDATION:

ADDITIONAL INFORMATION:

Statements of Opposition: Based on our review of the December, 2020 Water Court Resume, staff and water counsel recommend that the Water and Sewer Board file statements of opposition to the following water court applications that would be due in the month of January, 2021:

1. **Case number 20CW3208**, Application of HF2M, Inc. for water rights, change of water rights, plan for augmentation, and appropriative rights of exchange on the Cache la Poudre River. The claims are for the Montava West/East Wellfield: 900 gpm conditional, Seaworth Augmentation Pond No. 2: 140 af (filled via Taylor and Gill Ditch: 13.81 cfs & Seaworth River Diversion: 5.0 cfs). The applicant is seeking water rights to supply potable water to a 1,000 acre development east of Fort Collins. There are several different components to this application. However, most concerning to Greeley is the change of 1.5 shares in WSSC (Cert No. 6573, 6464).
2. **Case number 20CW3213**, Applicant of TH Ranch for conditional surface, storage and groundwater rights, change of water right, request to renew irrigation of lands previously removed from irrigation, appropriation of return flows, and for approval of plan for augmentation on the South Platte River. The claims are for the TH 17 Ranch River Pump: 5,000 gpm conditional, Helton Reservoir: 99.75 acre-feet conditional, TH Ranch River Well: 950 gpm conditional, and Lower Latham Ditch: change 1 share of ditch stock. The conditional surface, storage and groundwater rights in the application are outside of Greeley's reach of interest. However, the applicant is seeking to change 1 share (certificate No. 1637) in the Lower Latham Ditch that was previously removed from irrigation via a dry-up covenant. Greeley should get involved to insure a change in use will not affect the call regime on the South Platte River and/or Greeley's current operations.
3. **Case number 20CW3215**, Application of BennT Creek Regional Water Authority and SP Regional Water Company, LLC; Town Bennett and Todd Creek Village Metropolitan District for conditional surface water rights and water storage rights on the South Platte river. The claims are for SP Diversions: 200 cfs cumulative, conditional; GB-1 Reservoir: 9,520 af, conditional; Beaver Creek Surface Reservoir: 80,900 af, conditional; Sand Arroyo Reservoir: 22,400 af, conditional; Bennet Reservoir: 300 af, conditional; Signal Reservoir No. 3: 1,970 af, conditional; Signal Reservoir No. 4: 4,824 af, conditional; Mann Lakes Reservoir: 3,741 af, conditional; Beaver Creek Porosity Reservoir: 81,216 af, conditional. The application appears to be highly speculative and involves very large claims that would deplete water from the South Platte River in Morgan & Washington Counties. Greeley's involvement should be similar to the Parker case (19CW3253) to protect river flows, agriculture, and guard against speculative water claims in adjacent communities.

WATER & SEWER BOARD AGENDA FEBRUARY 17, 2021

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 12

TITLE: DIRECTOR'S REPORT

RECOMMENDATION:

ADDITIONAL INFORMATION:

- Windy Gap Firing Storage Project; appeal of the recent Federal District Court Order
- City Charter Petitions

WATER & SEWER BOARD AGENDA FEBRUARY 17, 2021

ENCLOSURE _____ NO ENCLOSURE X

ITEM NUMBER: 13

TITLE: SUCH OTHER BUSINESS

RECOMMENDATION:

ADDITIONAL INFORMATION: