

**City of Greeley
Water and Sewer Board
Minutes of September 20, 2017
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 1:58 p.m. on Wednesday, September 20, 2017.

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Robert Ruyle, Tony Miller, Manual Sisneros, Vic Runkle and Roy Otto

Water and Sewer Department staff:

Water and Sewer Director Burt Knight, Operations Manager Bob Neal, Business Manager-Utility Finance Erik Dial, Water Rights Manager Jennifer Petrzelka, Chief Engineer Adam Prior, Water Resources Manager John Thornhill, Senior Engineer Christie Coleman, Water Resources Engineer Justin Scholz, Office Manager Shannon Metcalf, Senior Administrative Assistant Ettie Arnold

Legal Counsel:

Environmental and Water Resources Attorney Jerrae Swanson, Water and Sewer Board Counsel Jim Witwer, Environmental and Water Resources Attorney Aaron Goldman

2. Approval of Minutes

Vice Chairman Todd moved and Mr. Miller seconded to approve the August 18, 2017 Water and Sewer Board meeting minutes as presented. The motion carried 5-0.

3. Approval of and/or Additions to Agenda

There were no changes or additions to the agenda.

4. Report: WETT Program update

Mr. Thornhill provided an update on the WETT program. This is a City Council work program designed to increase collaboration between city departments to help the city achieve a higher level of efficient water use. Mr. Thornhill highlighted several areas throughout the city that could benefit from efficiency upgrades. Staff and the Board agreed that the city should lead by example and the focus should be on city facilities first, rather than private residential areas or commercial areas. The Board also made clear that agreements should be in place prior to any installations or programs made available to the public for implementation.

5. Report: Ashcroft Draw Phase I Update

Mr. Scholz provided an update on the Ashcroft Draw project. This is a 3-phase project, originally identified in 2016. Phase 1 consists of 4,050 LF of 18" PVC pipe and 315 LF of 36" diameter bored crossing of Highway 34, which will provide sewer service to areas south of Highway 34. J-2 Contracting Company was appointed as CMAR. Phase 2 is scheduled to begin spring 2018 and includes 6,600 LF of 18" Pipe, a driver to widen 71st Avenue, and sewer projects. Phase 3 is pending development in future service area or approximately 2021. The 36" bored crossing of Highway 34 is complete. It is anticipated that the remainder of the project will be complete at the end of November.

6. Action: Approve Acquisition of Interests in Real Property for the Ashcroft Draw Basin Sanitary Sewer Phase II Project and Recommend to Council

Mr. Scholz presented the request for approval to obtain additional easements for construction of Phase II of the Ashcroft Draw Basin Sanitary Sewer Project. The proposed project will consist of 6,600 feet of 18" diameter pipe from 22nd Street and 71st Avenue to Sheep Draw. The project is scheduled to begin in the spring of 2018. The phase II project has been accelerated due to the road widening of 71st Avenue and the two projects are planned to be bid under one contract. Six properties have been identified where easements will be required to construct the project. This project would provide a future connection point for existing lots on septic.

Vice Chairman Todd made motion, seconded by Mr. Sisneros to Approve the Acquisition of Interests in Real Property for the Ashcroft Draw Basin Sanitary Sewer Phase II Project and Recommend to Council

Mr. Scholz left the meeting at 2:50 p.m.

7. Action: Approve the Colorado Department of Public Health and Environment Milton Seaman Water Supply Project, Billing Agreement for the Section 401 of the Clean Water Act, State Water Quality Certification

Mr. Knight presented the billing agreement in which CDPHE regulations stipulate that the City of Greeley is required to pay for review of 401 Certificate and coordination with the EIS. Yearly IGA's provide funds and the 2016 IGA was approved by the Water & Sewer Board. City Council then granted authorization for subsequent approvals.

Mr. Ruyle made motion, seconded by Mr. Miller to Approve the Colorado Department of Public Health and Environment Milton Seaman Water Supply Project, Billing Agreement for the Section 401 of the Clean Water Act, State Water Quality Certification. The motion carried 5-0.

8. Action: Approve the Intergovernmental Agreement for Backup Electrical Power at the Boyd Water Treatment Plant with Loveland and Recommend to Council

Mr. Prior presented information from Mr. Neal's presentation last month regarding the need for backup power to Boyd Lake Water Treatment Plant. He provided insight as to Boyd's current production, capabilities, history of power outages, and why entering into an IGA with the City of Loveland for backup electrical power is critical.

Mr. Ruyle made motion, seconded by Mr. Miller to Approve the Intergovernmental Agreement for Backup Electrical Power at the Boyd Water Treatment Plant with Loveland and Recommend to Council. The motion carried 5-0.

9. Report: Bellvue Transmission Pipeline Update

Mr. Neal presented updates on the completion of the Northern Segment of the Bellvue Pipeline, which will be operational next week. The transmission pipeline will allow water to flow from Bellvue WTP to Gold Hill storage facilities. The project started in early 2000's, the Gold Hill phase is in the process of planning and within 5 years of completion. The Project costs totaled approximately \$90m.

10. Report: Water Court Case Legal Update

Mr. Dial left meeting at 3:17 p.m.

Ms. Petrzelka gave the 4th quarter update on Water Court Cases. She explained since the last update in October, Greeley filed one statement of opposition, bringing the current number of pending Water Court cases where Greeley is an opposer to 19. This is a 30% decrease from the end of 2015 when Greeley was an opposer in 27 Water Court Cases.

The Water Resource Division's outside legal and engineering expenses for the 4th quarter of 2016 totaled \$113,906. The total spent for 2016 was \$408,896, which is 147% of the total spent in 2015 of \$276,449. This increase in costs was largely due to Greeley being

the Applicant in three cases, there were more acquisitions, and one case almost went to trial.

11. Action: Approve Purchase Price for Acquisition of Danielson Farm and WSSC Water Rights

Ms. Petrzelka presented to the Board on a Contract to purchase a total of 112AF firm yield from 1.5 Shares in the Water Supply and Storage Company (WSSC) and 40 acres of land on the Danielson property. The contract purchase price offer was \$1,241,920. An appraiser was hired to look at comparative sells in the area and appraised the property at \$1,235,000 which is \$6,920 lower than the contract price. The seller would not accept the difference in price. Ms. Petrzelka recommended the Board approve the purchase price of \$1,241,920.

Mr. Ruyle made motion, seconded by Mr. Miller to approve the Purchase Price of \$1,241,920 for this acquisition of the Danielson Farm and WSSC water rights, and delegate authority to the Director of Water and Sewer, or his designee, to (1) make minor amendments to the Purchase and Sale Agreement, including but not limited to, amendments to property descriptions and contract extensions, and to (2) take all necessary and appropriate steps in finalizing the transaction and closing on the purchase. The motion carried 5-0.

12. Executive Session

At 3:28 p.m., Chairman Evans made a motion to move into Executive Session to address the following matters:

1. Purchase, acquisition, lease, transfer, or sale of property under C.R.S. §24-6-402(4)(a) and Greeley Municipal Code 2.04.020(1).
2. Determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators, as authorized by C.R.S. §24-6-402(4)(e) and Greeley Municipal Code 2.04.020(5).

Chairman Evans identified the following topics for discussion:

Matters related to a pending land acquisition.

Mr. Miller seconded the motion. The motion carried 5-0.

Mayor Norton and Roy Otto left the meeting at 3:28 p.m.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Manual Sisneros, Robert Ruyle, Tony Miller, Director of Finance Vic Runkle, Director of Water and Sewer Burt Knight, Environmental and Water Resources Attorney Jerrae Swanson, Water and Sewer Counsel Jim Witwer, Environmental and Water Resources Attorney Aaron Goldman, Water Rights Manager Jennifer Petrzelka, Office Manager Shannon Metcalf and Senior Administrative Specialist Ettie Arnold

The Executive Session ended at 3:55p.m. and the regular meeting resumed.

13. Legal Report

There was no legal report.

14. Director's Report

Mr. Knight explained the following:

- Water bottle campaign with Helvetica
Labels have been created by Helveticka and will be shipped in the next month to prepare water bottles for promotional events.
- Helvetica summary on MSWP
A summary from Helveticka regarding the last quarter progress was included in this packet for the Board to review.

There being no further business, Chairman Evans adjourned the meeting at 4:08 p.m.

Harold Evans, Chairman

Shannon Metcalf, Office Manager

WATER & SEWER BOARD AGENDA OCTOBER 18, 2017

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 4

TITLE: ACTION: APPROVE CASH-IN-LIEU

RECOMMENDATION: APPROVE CASH-IN-LIEU POLICY AS
RECOMMDED

ADDITIONAL INFORMATION:

Please see the attached memorandum for details.



MEMORANDUM

To: Water and Sewer Board

From: Emily Carbone, Water Resources Analyst

Date: October 11, 2017

Re: Colorado Big Thompson (C-BT) project water applications for Change of Water Allotment Contracts

ISSUE:

The C-BT *Change of Water Allotment Contracts* for July, August, and September 2017 have been published. The average market price per C-BT unit over the last 36 months will be used as an indicator for the City of Greeley Water and Sewer Board at the October Board Meeting to set the City's cash in-lieu rate.

BACKGROUND:

In the month of **July 2017**, the NCWCD Board reviewed 8 applications for change of water allotment contracts, totaling 241 units. Transfers to cities, towns and rural domestic water providers totaled 241 units, of which 241 units were purchased.

Purchaser	Number of Units Purchased	Purchase Price per Unit	Total Purchase Price	Monthly Average Purchase Amount per Unit
<i>July 2017</i>				
Left Hand Water District	50	\$27,000.00	\$1,350,000.00	
Left Hand Water District	30	\$27,000.00	\$810,000.00	
Town of Frederick	15	\$26,500.00	\$397,500.00	
Fort Collins - Loveland Water District	25	\$26,500.00	\$662,500.00	
Fort Collins - Loveland Water District	23	\$26,500.00	\$609,500.00	
Central Weld County Water District	85	\$27,500.00	\$2,337,500.00	
Fort Collins - Loveland Water District	5	\$26,500.00	\$132,500.00	
Fort Collins - Loveland Water District	8	\$26,500.00	\$212,000.00	
July Totals	241		\$6,511,500.00	\$27,018.67

SERVING OUR COMMUNITY • IT'S A TRADITION

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

In the month of **August 2017**, the NCWCD Board reviewed 6 applications for change of water allotment contracts, totaling 81 units. Transfers to cities, towns and rural domestic water providers totaled 68 units, of which 64 units were purchased.

Purchaser	Number of Units Purchased	Purchase Price per Unit	Total Purchase Price	Monthly Average Purchase Amount per Unit
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August 2017

Fort Collins-Loveland Water District	2	\$26,500.00	\$53,000.00	
Fort Collins-Loveland Water District	52	\$26,500.00	\$1,378,000.00	
Town of Windsor	5	\$27,000.00	\$135,000.00	
Fort Collins-Loveland Water District	5	\$26,500.00	\$132,500.00	
Aug Totals	64		\$1,698,500.00	\$26,539.06

In the month of **September 2017**, the NCWCD Board reviewed 6 applications for change of water allotment contracts, totaling 43 units. Transfers to cities, towns and rural domestic water providers totaled 40 units, of which 40 units were purchased.

Purchaser	Number of Units Purchased	Purchase Price per Unit	Total Purchase Price	Monthly Average Purchase Amount per Unit
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September 2017

Town of Windsor	2	\$27,000.00	\$54,000.00	
Fort Collins-Loveland Water District	10	\$27,200.00	\$272,000.00	
Fort Collins-Loveland Water District	23	\$27,200.00	\$625,600.00	
Fort Collins-Loveland Water District	5	\$27,200.00	\$136,000.00	
September Totals	40		\$1,087,600.00	\$27,190.00

Over the 36 month period from **October 2014 through September 2017**, the Northern Colorado Water Conservancy District (NCWCD) Board reviewed 230 applications for change of water allotment contracts, totaling 4,858 units. Transfers to cities, towns and rural domestic water providers totaled 3,357 units, of which 3,339 units were purchased.

RECOMMENDATIONS:

Cash-in-lieu is currently set at \$34,000 per acre-foot. The total average cost over the 36 month period from October 2014 through September 2017 was \$26,027 per unit or approximately \$34,000 per acre-foot. Staff recommends to keep the cash-in-lieu rate at \$34,000 per acre-foot.

SERVING OUR COMMUNITY • IT'S A TRADITION

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WATER & SEWER BOARD AGENDA OCTOBER 18, 2017

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 5

TITLE: ACTION: APPROVE AND RECOMMEND TO
CITY COUNCIL THE FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE WITH WINDSOR

RECOMMENDATION: APPROVE AND RECOMMEND TO CITY
COUNCIL THE FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE WITH WINDSOR

ADDITIONAL INFORMATION:

The City of Greeley entered into an Intergovernmental Agreement with the Town of Windsor in January of 1996 to set the terms by which Greeley would treat and deliver potable water to Windsor. A copy of the existing 1996 IGA is enclosed for reference. This First Amendment to the 1996 IGA is for a term of 25 years, with 10-year renewal terms thereafter; it addresses the measurement and determination of peak demands and peaking errors, system development charges, and contains a bilateral process for termination in the absence of default. The terms and conditions of the 1996 IGA not modified by this First Amendment will remain in effect.

FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE

BETWEEN THE CITY OF GREELEY, COLORADO
AND THE TOWN OF WINDSOR, COLORADO

This FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR TREATED WATER SERVICE (“First Amendment”) is entered into this ____ day of _____, 2017, by and between **THE CITY OF GREELEY**, Colorado, a home rule municipality (“Greeley”) and **THE TOWN OF WINDSOR**, Colorado, a home rule municipality acting as the governing board of the Windsor Water Utilities Enterprise (“Windsor”), to set forth the terms and conditions by which Greeley will use its supply and treatment facilities to provide the treatment and delivery of potable water to Windsor.

WHEREAS, pursuant to C.R.S. §29-1-203, governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the following cooperating units of government; and

WHEREAS, Greeley and Windsor previously entered into that certain Intergovernmental Agreement for Treated Water Service on January 4, 1996 (“the 1996 IGA”); and

WHEREAS, authorized representatives of Greeley and Windsor have met on numerous occasions to review the 1996 IGA and discuss the possible modification of that agreement; and

WHEREAS, Greeley and Windsor have a continuing common interest in obtaining high-quality treated water in sufficient quantities to meet the present and future needs of their citizens and service areas; and

WHEREAS, Greeley and Windsor are agreeable to modifying the 1996 IGA under the terms and conditions of this First Amendment; and

WHEREAS, Greeley and Windsor desire to reduce their understandings, and the terms and conditions of this First Amendment, to writing;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in further consideration of the mutual covenants, undertakings, terms, and conditions contained herein, Greeley and Windsor agree as follows:

1. **OTHER TERMS IN FULL FORCE AND EFFECT.** Except as explicitly modified in this First Amendment, all terms and conditions of the 1996 IGA remain in full force and effect.
2. **AMENDMENTS.** The 1996 IGA is hereby amended as follows.
 - a. **Section 1.8 and 1.9 are incorporated as follows.**

1.8 “Peaking Error” means a discrete operational incident experienced by Windsor that causes a measured peaking factor increase, which incident is agreed by both Greeley and Windsor, in their sole respective discretions, to be a one-time event that is not anticipated to occur again in the future.

1.9 “Peaking Error Fee” means a one-time fee assessed to Windsor by Greeley in the event that an agreed upon Peaking Error occurs, in lieu of utilizing the increased measured peaking factor attributable to a Peaking Error in the calculation of rates under this agreement.

b. Section 12 of the 1996 IGA is amended in its entirety as follows.

12. PEAK DEMAND MEASUREMENT AND DETERMINATION.

12.1 Each year either Windsor or Greeley or both may register and record peak daily demands. Windsor’s peak daily demand factor will either be a flow-weighted average of several master meters, or it shall be derived from simultaneous readings from the several master meters, whichever method generates the highest demand factor. Peak hourly demand factors will be determined by dividing the peak daily demand reading by 24 (hours in the day), and then dividing that result by the average peak hourly demand for that calendar year.

Peak Hourly Demand Factor Calculation: Peak Daily Demand / 24 / Average Peak Hourly Demand

To modulate variations in peaking factors from year to year, and to thereby modulate fluctuations in the cost-of-service rates, peaking factors will be calculated based upon the average of the previous two years actual recorded peak flows. Notwithstanding the provisions regarding Peaking Error below, in no case will past year’s or current year’s water bills be adjusted for changes in the current peak demand factors. If peak daily demands are not registered in any given year, then the measurements used in the prior year’s rate study will be assumed constant in the next rate study.

12.2 Unanticipated Operational Peaking. If Windsor experiences an operational incident that causes its measured peaking factor to increase, it may request from Greeley that such increased measured peaking factor be deemed an error, and that the increased factor not be included in the forthcoming rate calculation. If Greeley agrees that the incident was a one-time event that is not anticipated to occur again in the future, the increased peaking measurement may be termed a Peaking Error. Mutual agreement by Windsor and Greeley that the increased factor constitutes a Peaking Error shall result in the assessment to Windsor of a Peaking Error Fee, as described below, and the increased factor shall not be included in the forthcoming rate calculation. If a Peaking Error occurs, the peaking factor used in the rate calculation shall be from the last two years, as described above, without the Peaking Error.

12.3 Peaking Error Fee. Upon mutual agreement by Windsor and Greeley that a Peaking Error has occurred, Windsor shall remit to Greeley a Peaking Error Fee and Greeley shall not utilize the increased peaking factor in the calculation of Windsor’s rate. The Peaking

Error Fee assessed to Windsor shall be in an amount equal to 20% of the total annual revenue paid by Windsor to Greeley pursuant to this agreement during the calendar year in which the Peaking Error occurred.

12.4 Water usage pursuant to an agreed upon Peaking Error shall not result in an increase in System Development Charges, nor an increase to the base rate as calculated pursuant to Section 8 of this agreement.

c. **Section 13 of the 1996 IGA is amended in its entirety as follows.**

13. SYSTEM DEVELOPMENT CHARGES.

13.1 Windsor shall pay to Greeley an annual system development charge (“SDC”) when the metered water delivered to Windsor in any year exceeds the acre-feet delivered in the base year. Payment of system development charges will create a new base year delivery. No system development charges will be due in subsequent years for metered delivery equal to or less than the new base year delivery. Payments of the system development charge will occur in twelve monthly increments following the calendar year in which the exceedance occurs. In no case shall system development charges be refunded. Windsor’s current base year volume at the time this First Amendment is executed is 651.33 acre-feet.

13.2 The SDC due shall be a percentage of the then current Inside the City Greeley ¾-inch tap plant investment fee (expressed in \$/acre-foot), to be multiplied by Windsor’s consumption in acre-feet of water metered in excess of the base year delivery. The SDC percentage is calculated as follows: The typical Windsor single-family customer benefits from 75% of Greeley Water System. To express Greeley’s plant investment fee in terms of \$/acre-foot, the average annual inside-the-City residential demand, as used in the annual update of the Greeley rate model, is divided into the plant investment fee.

13.3 ***THE FOLLOWING CALCULATION UTILIZES 2016 DATA TO DERIVE EXAMPLE FIGURES FOR THE SOLE PURPOSE OF DEMONSTRATING THE SDC METHODOLOGY. ANY ACTUAL SDC BORNE BY WINDSOR WILL VARY ANNUALLY, IN ACCORDANCE WITH THE METHODOLOGY DESCRIBED IN THIS SECTION 13.***

Example Conversion and Calculation of SDC Rate

Average Annual Demand:	135,000 gallons (0.414 acre-feet per ¾-inch tap)
Current Inside the City Greeley PIF:	\$10,800

Conversion of Greeley PIF: $(\$10,800) / (0.414 \text{ AF/year}) = \$26,087 \text{ per AF/year}$

Windsor SDC: $(75\%) * (\$26,087 \text{ per AF/year}) = \$19,565 \text{ per AF/year}$

Example Base Year and SDC Calculation

Windsor Base Year Volume: 651.33 acre-feet
Windsor Actual Metered Flow: 660 acre-feet (8.67 AF in excess of Base Year Volume)

Calculation of Total SDC Due: $(660-651.33) * (\$19,565) = \$169,628.55$

Windsor's Base Year Volume would then increase to become 660 AF.

d. Section 16 of the 1996 IGA is amended in its entirety as follows.

16. INTEGRATION, MERGER, AND SUPERSESSION. This First Amendment incorporates and renews the terms and conditions of the 1996 IGA not explicitly modified herein, and supersedes all terms and conditions of any other agreements regarding water supply previously existing between Greeley and Windsor. This First Amendment contains all agreements and understandings, whether written or oral, between Greeley and Windsor regarding the subject matter herein.

e. Section 17 of the 1996 IGA is amended in its entirety as follows.

17. TERM. In the interest of reliability and security, this First Amendment shall be for an initial term of twenty-five years from the date of execution set forth above. At the expiration of this initial term, this agreement shall automatically renew for successive ten-year terms, unless terminated in accordance with Section 18 below.

f. Section 18 of the 1996 IGA is amended in its entirety as follows.

18. DEFAULT AND TERMINATION. In the event either party fails to meet the terms and conditions of this agreement, such failure shall constitute a default of this agreement and the non-defaulting party may immediately terminate this agreement, the effective day of termination being thirty days after the receipt of written notice of default by the defaulting party. Notice shall be given either to the Windsor Town Manager or the Greeley City Manager. Either party may cure the default during the aforesaid 30-day cure period. Upon cure of any default, this agreement shall remain in full force and effect. Nothing herein shall limit either party from collecting damages and amounts due from the other party upon termination of this agreement by default. Notwithstanding the above, this agreement may otherwise be terminated at will by either Greeley or Windsor by giving an advance written notice to the other party of no less than seven years.

IN WITNESS WHEREOF, the City of Greeley and the Town of Windsor have authorized and executed this First Amendment to Intergovernmental Agreement for Treated Water Service on the date first written above.

THE TOWN OF WINDSOR, COLORADO

WINDSOR WATER BOARD:

By: _____
Mayor

By: _____
Chairman

ATTEST:

By: _____
Town Clerk

DRAFT

THE CITY OF GREELEY, COLORADO

ATTEST:

By: _____
Mayor

By: _____
City Clerk

WATER AND SEWER BOARD:

AS TO SUBSTANCE:

By: _____
Chairman

By: _____
City Manager

AS TO LEGAL FORM:

AS TO AVAILABILITY OF FUNDS:

By: _____
City Attorney

By: _____
Director of Finance

DRAFT

**INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE
BETWEEN THE CITY OF GREELEY, COLORADO
AND THE TOWN OF WINDSOR, COLORADO**

THIS AGREEMENT is made this 4th day of January, 1998⁶, by and between **THE CITY OF GREELEY**, Colorado, a home rule municipality ("Greeley") and **THE TOWN OF WINDSOR**, a Colorado statutory town acting as the governing board of the Windsor Water Utilities Enterprise ("Windsor"), for the treatment and delivery of potable water to the Town of Windsor by and through the treatment facilities and transmission lines of the City of Greeley, Colorado.

WHEREAS, pursuant to § 29-1-203, C.R.S., governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units of government; and

WHEREAS, the Town of Windsor and the City of Greeley are neighboring municipalities which have a common interest in obtaining high-quality water in sufficient quantity to meet present and future needs; and

WHEREAS, the citizens of Windsor are desirous of long-term reliability in treated water; and

WHEREAS, Windsor and Greeley can cost-effectively combine their demand for treated water through one system of treatment, transmission and treated water storage thereby achieving economies of scale; and

WHEREAS, in addition to its own needs and demand, Greeley has the capacity and the facilities to meet the needs of Windsor for water treatment and transmission as are more fully set forth herein; and

WHEREAS, Windsor and Greeley shall and will continue to own their water rights individually and separately, each municipality relying upon the yield of its own water rights to provide the raw water necessary for treatment proposed under this agreement; and

WHEREAS, Greeley and Windsor are agreeable to entering into a long-term contract for the treatment and delivery of potable water to Windsor through an intergovernmental agreement; and

WHEREAS, the parties are desirous of reducing the understandings, terms and conditions of said agreement to writing.

NOW THEREFORE, IN CONSIDERATION of the mutual covenants, undertakings, terms and conditions contained herein, the parties agree as follows:

1. DEFINITIONS. The terms used herein are defined as follows:

1.1 "Greeley" shall refer to the City of Greeley and any authorized representative thereof.

1.2 "Greeley water system" or "Greeley water system enterprise" shall refer to Greeley's raw water and water rights, raw water storage and conveyance systems, water treatment plants, treated water conveyance and storage systems, pump stations and related appurtenances for the collection, distribution and measurement of water.

1.3 "Peak daily demand" means the greatest rate of treated water delivered by Greeley to Windsor over a twenty-four hour period, beginning at midnight, in a given calendar year.

1.4 "Peak hourly demand" means the greatest rate of treated water delivered by Greeley to Windsor over a one-hour period for any given day of the calendar year.

1.5 "Windsor" shall refer to the Town of Windsor as the governing board of the Windsor Water Utilities Enterprise and any authorized representative thereof.

1.6 "Windsor system" or "Windsor water system" shall refer to the pipes, pump stations, treated water storage reservoirs, and related appurtenances for the distribution of water (a) inside the Windsor town limits (b) downstream of master meters gauging Greeley's delivery to Windsor.

1.7 "Year" means a calendar year beginning on January 1.

2. USE. Pursuant to the terms of this intergovernmental agreement, Greeley agrees to treat water for Windsor in the manner and in such amounts as are more fully set forth herein.

It is understood and agreed that in reliance upon providing water to Windsor, the Town has appropriated certain funds for the construction of transmission lines capable of receiving and transporting such water. The parties acknowledge that the construction of these transmission lines is a condition precedent to delivery of water to Windsor. Water shall be made available to Windsor upon the completion of the transmission lines. Commencing with the first full year that this agreement is in effect and continuing annually for the term of this agreement Greeley shall make available not less than 600 acre feet of treated water. During each full year that this agreement is in effect Windsor shall take a minimum of 400 acre feet of treated water. If in any year treated water is available to Windsor and Windsor fails to take and use 400 acre feet of treated water Windsor shall nonetheless pay for this minimum allotment of treated water.

The parties further acknowledge that the initial year of this agreement will likely not be a full year. In this event, Windsor will be relieved of the 400 acre feet minimum requirement and will be required to pay only for the treated water actually delivered in this first year.

Nothing herein shall limit Windsor from taking treated water in excess of 600 acre feet subject to the availability thereof. All treated water in excess of 600 acre feet shall be expressly conditioned upon Greeley having the excess capacity to provide such water, and Windsor shall pay for the same.

3. POINT OF DELIVERY.

3.1 Treated water from Greeley's transmission and distribution system shall be delivered to Windsor through multiple master meters, the location of which will be mutually established and agreed upon by both municipalities.

3.2 Unless otherwise agreed upon between the parties, Greeley shall construct, own and maintain treated water meter vaults, meters, back-flow prevention devices and all associated facilities located at the delivery points. All of the costs of the metering facilities attributable to service to Windsor shall be paid by Windsor by and through inclusion in the Windsor rate base charged by Greeley and more fully described in paragraph eight of this agreement. Greeley agrees to design, construct and maintain all metering facilities in a prudent and cost effective manner. Each water meter shall be operated and maintained so as to record both cumulative flow and, as needed, maximum hourly and maximum daily flow within the accuracy prescribed by current American Water Works Standards. Each municipality will give the other seven calendar days notice prior to any routine or independent meter test. Windsor shall have the ability to valve the line downstream of a master meter for operation, maintenance and repair purposes.

4. ALTERNATE SOURCES. It is understood and agreed that as of the date of this agreement Windsor is receiving treated water from Greeley, the North Weld County Water District and the Fort Collins Loveland Water District. Nothing in this agreement shall be construed as limiting Windsor from continuing to receive treated water from sources other than Greeley during the term of this agreement, in whatever amounts Windsor deems appropriate.

5. POTABLE WATER PROJECTION REQUIREMENTS. No later than March 1 of each year, Windsor shall provide written notice to Greeley of its projected treated water requirements for the current calendar year and the five consecutive years following the year in which such notice is given. The projections in the notice shall include, at a minimum, both total annual consumption and maximum day and maximum hourly usage. Any actual usage in excess of projected peak demands which has a cost impact, excepting fire flow and other emergencies, shall result in supplemental demand charges as determined by the cost-of-service rate study and approved by the Greeley Water and Sewer Board.

6. WATER RIGHTS. Windsor shall acquire sufficient water rights which shall be usable in the Greeley water system and approved for municipal use in the Greeley water system under Colorado law in order to satisfy the treated water requirements of Windsor, expressly subject to the following conditions:

(a) On or before April 1 of each year, Windsor shall make raw water available to Greeley's water treatment plants equal to 130% of Windsor's projected potable water use for that calendar year.

(b) Windsor shall pay all assessment costs on any of the water provided for treatment by Greeley under this agreement.

(c) Windsor shall be responsible for meeting all return flow requirements of the raw water provided to Greeley for treatment, or other requirements of State or Federal law.

7. WATER SHORTAGE. In the event of a shortage of treated water, caused by the inability of a component of the Greeley water system to function, Windsor and Greeley shall share proportionally in water use reductions. Windsor and Greeley staff shall meet and mutually agree to a schedule and method of reducing water demand, with initial emphasis on reducing all nonessential uses such as lawn and parks irrigation. If a shortage persists, Windsor and Greeley agree to impose emergency rates which may be different for each customer category and which are intended to reduce discretionary consumption of treated water. The impact of the emergency rates shall be fairly and equally distributed among both Windsor and Greeley water customers. In a prolonged shortage, Windsor and Greeley agree to adopt a uniform set of enforcement tools and penalties to curtail usage. In any event, Greeley will make every effort feasible to continue to meet both Windsor's and Greeley's water demand, including obtaining treated water from other providers. In the event of a shortage, nothing shall prevent Windsor from independently using an alternate source of treated water in whatever amount Windsor deems necessary, until Greeley can again bring its facilities on line. In the event of a shortage caused by the inability of the Greeley water system to function, Windsor is relieved of the 400 acre-feet take-or-pay requirement specified in paragraph 2.

8. RATES. The initial rates for treated water delivered to Windsor shall be based upon the 1995 water rate cost-of-service model approved by the Greeley Water and Sewer Board. The Windsor rates shall be cost-of-service plus ten percent. The cost-of-service rates shall be reviewed annually and adjusted as needed by the Greeley Water and Sewer Board in accordance with section 17-4 of the Greeley City Charter.

9. BILLING. Bills shall be paid within thirty days of receipt, after which time interest penalties shall begin to accrue at the rate of one percent per month, or fraction thereof, during the period in which the bill remains unpaid.

10. NO ACQUIRED RIGHTS OR VESTING IN WATER RIGHTS OR IN WATER SYSTEM. As contained in section 17-1 of the Greeley City Charter, the Greeley water system is an Enterprise, as that term is defined pursuant to article X, section 20 of the Colorado Constitution. The Greeley water system Enterprise is owned by the citizens of Greeley.

Windsor Water Utilities Enterprise has been designated by Windsor as an Enterprise Fund as that term is defined pursuant to article X, section 20 of the Colorado Constitution.

Windsor specifically acknowledges and agrees that no rights or ownership of the Greeley water system shall become vested as a result of such service. Neither Greeley nor Windsor shall, by reason of any provision of this agreement or the use of water hereunder or otherwise, acquire any vested or adverse right, in law or in equity, in the water rights or water system owned by the other municipality. Neither the assignment, use, rental, or license of water or water rights nor the payment of system development charges shall be deemed to initiate, create, or vest any rights or ownership by either Greeley or Windsor in the other's water rights or water system. Further, Windsor shall not assert or claim any vested rights to continued service other than as established by the terms and conditions of this agreement.

11. POTABLE WATER. The treated water delivered by Greeley to the Windsor master meters shall be potable water which complies with applicable potable water law.

12. PEAK DEMAND MEASUREMENTS AND DETERMINATION. Each year either Windsor or Greeley or both may register and record peak daily and peak hourly demands. Windsor's peak daily and peak hourly demand factors will either be flow-weighted averages of the several master meters, or it shall be derived from simultaneous readings from the several master meters, whichever method generates the highest demand factor. To modulate variations in peaking factors year to year, and to thereby modulate fluctuations in the cost-of-service rates, peaking factors will be calculated based upon the average of the previous two years actual recorded peak flows. If the average of the peak hourly or the peak daily demand factors in the two immediately preceding years averages more than the factors used in the most current water rate study, then the next rate study will use the highest recorded peak daily or peak hourly factor from those two preceding years. If the average of the peak hourly or the peak daily demand factors in the two immediately preceding years averages less than the factors used in the most current water rate study, then the next rate study will use the highest recorded peak daily or peak hourly factor from those two preceding years. In no case will past year's or current year's water bills be adjusted for changes in current peak demand factors.

If peak daily or peak hourly demands are not registered in any given year, then the measurements used in the prior year's rate study will be assumed constant into the next rate study.

13. SYSTEM DEVELOPMENT CHARGES. This agreement allows Windsor's demand in any year to grow to an initial allowance of 600 acre-feet without payment of a system development charge. Water which is demanded by Windsor and delivered by Greeley to Windsor in any given calendar year which exceeds 600 acre-feet shall incur payment by Windsor to Greeley of a system development charge. This charge will be calculated as the current inside-Greeley plant 3/4-inch tap investment fee multiplied by every acre-foot of water consumed in excess of 600 acre-feet. Payments of this system development charge will occur in twelve monthly increments following the calendar year in which the excess occurs. The excess resulting in payment of a system development charge will create a new allowance. System development charges will not be refunded. No system development charges will be

paid in subsequent years for consumption equal to or less than the new allowance. Increased demand and delivery above the new maximum allowance in subsequent years will again cause payment of system development charges as calculated in this paragraph.

14. **RELEASE, HOLD HARMLESS, INDEMNIFICATION.** Both Windsor and Greeley are public entities, as that term is defined pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.* The parties to this agreement have the benefits and responsibility enumerated in the Colorado Governmental Immunity Act. Each party shall defend any and all claims for injuries or damages pursuant to and in accordance with the requirements and limitations of the Colorado Governmental Immunity Act occurring as a result of negligent or intentional acts or omissions of the parties, their agents, employees and assigns.

In addition, Greeley shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of Greeley, its officers, employees and agents, performing functions or activities upon the property of Windsor. Greeley shall provide adequate workmen's compensation insurance for all of its employees, agents and assigns engaged in activities and functions upon the property of Windsor.

Windsor shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of Windsor, its officers, employees and agents, performing functions or activities upon the property of Greeley. Windsor shall provide adequate workmen's compensation insurance for all of its employees, agents and assigns engaged in activities and functions upon the property of Greeley.

Each party shall furnish the other party current certificates of insurance stating the coverages outlined above are in full force and effect.

15. **NO PUBLIC UTILITIES COMMISSION CONTROL.** The Town of Windsor, its employees and elected or appointed officials, agree neither to assert nor support any statement, policy, petition, rule making, or legislation attempting to place the Greeley water system under the rate making authority or jurisdiction of the Colorado Public Utilities Commission by virtue of this intergovernmental agreement or otherwise.

16. **THIS AGREEMENT CONTROLS AND SUPERSEDES PREVIOUS AGREEMENTS.** This agreement shall supersede any and all terms and conditions of water supply agreements previously existing between Greeley and Windsor.

17. **TERM.** In the interest of reliability and security, this agreement shall be for an initial term of twenty-five years from the date of its execution. After its initial term, this agreement shall be automatically renewed for successive ten-year terms, unless terminated as provided below.

18. **DEFAULT AND TERMINATION.** In the event either party fails to meet the terms and conditions of this agreement, such failure shall constitute a default of this agreement

and the non-defaulting party may immediately terminate this agreement, the effective day of termination being thirty days after the receipt of written notice of default by the defaulting party. Notice shall be either to the Windsor Town Administrator or the Greeley City Manager. Either party may cure any default during the aforesaid cure period. Upon cure of any default, this agreement shall remain in full force and effect. Nothing herein shall limit either party from collecting damages and amounts due from the other party upon termination of this agreement by default.

19. JURISDICTION AND VENUE. This agreement shall be interpreted pursuant to the laws of the State of Colorado. Venue to enforce this agreement shall be in Weld County.

20. AMENDMENT. This agreement shall be amended only in writing with the approval of the governing bodies of each municipality. No amendment or modification shall be effective unless in writing signed by the aforesaid persons. This agreement shall be governed by, construed and enforced in accordance with Colorado law.

21. DISPUTE RESOLUTION. Should disagreements arise regarding the interpretation of any portion of this agreement the parties agree to make efforts to resolve such disputes through negotiation; first, at the staff level; and second, with the respective Water Boards and/or City Councils. Procedures for such negotiations shall be established by mutual agreement at the time and may, with the concurrence of the parties, involve the use of qualified outside mediators. Any negotiations and resolution agreements reached therefrom must be within the legal authority granted to the parties by appropriate City Charters and/or State statutes, or shall be null and void. Notwithstanding anything to the contrary in this agreement, it is expressly agreed between the parties that this provision for dispute resolution does not apply to the authority granted the Greeley Water and Sewer Board pursuant to § 17-4 of the Greeley City Charter, including but not limited to, the establishment of minimum water rates.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

ATTEST:

THE CITY OF GREELEY, COLORADO

By: Betsey D. Felder
City Clerk

By: Steven Carlson
Mayor

Approved as to Substance:

By: *Paul M. Hottel*
City Manager

Approved as to Legal Form:

By: *Richard P. Rhy*
City Attorney

As to Availability of Funds:

By: *Timothy W. ...*
Director of Finance

GREELEY WATER AND SEWER BOARD

By: *MR. ...*
Chairman

ATTEST:

By: *Doranne Nazarenko*
Town Clerk

THE TOWN OF WINDSOR, COLORADO

By: *Robert ...*
Mayor

WINDSOR WATER BOARD

By: *W. Wayne Miller*
Chairman

njw:120695

WATER & SEWER BOARD AGENDA OCTOBER 18, 2017

ENCLOSURE X

NO ENCLOSURE

ITEM NUMBER: 6

TITLE: ACTION: APPROVE ACQUISITION OF WATER RIGHTS FROM WESTERN EQUIPMENT & TRUCK, INC.

RECOMMENDATION: APPROVE CONTRACT TO BUY & SELL WATER RIGHTS WITH WESTERN EQUIPMENT & TRUCK, INC.

ADDITIONAL INFORMATION:

The Contract to Buy & Sell Water Rights (“Contract”) is proposed between Western Equipment & Truck, Inc., (“Seller”) and the City of Greeley, Colorado (“City”). The Seller owns twelve (12) shares of stock in The New Cache la Poudre Irrigating Company, four (4) shares of stock in The Cache la Poudre Reservoir Company, and four (4) shares of stock in The Windsor Reservoir and Canal Company (collectively “Water Rights”). The Water Rights shall also include any and all lateral ditches, easements, rights of way, and entitlements appurtenant to or used in connection with the Water Rights. The total purchase price for the Property shall be one million, eight hundred thousand dollars and zero cents (\$1,800,000.00) (“Purchase Price”).

CONTRACT TO BUY AND SELL WATER RIGHTS
(Western Equipment & Truck, Inc.)

Date: _____

1. AGREEMENT. Buyer agrees to buy and Seller agrees to sell the Property, defined below, on the terms and conditions set forth in this Contract.

2. DEFINED TERMS.

a. Buyer. The City of Greeley, Colorado, a Municipal Corporation, acting by and through its Water and Sewer Board.

b. Seller. Western Equipment & Truck, Inc., a Colorado Corporation.

c. Water Rights. The Water Rights are described as follows:

all water and water rights, ditches and ditch rights, and reservoirs and reservoir rights represented by twelve (12) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in The Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 756), which have historically irrigated the real property described on Exhibit A attached hereto. The Water Rights shall also include any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Water Rights. The Water Rights shall not include any interest in any appropriation of the McClellan Seepage Ditch out of Lone Tree Ditch.

d. Land. Seller shall retain the real property, including all minerals of whatsoever kind or character in, under, and upon or that might be produced therefrom, more particularly described on Exhibit A ("Land"). The parties agree that (i) within ten (10) days after the Title Objection Deadline, defined below, if the title documents reflect any discrepancy in the legal description set forth on Exhibit A and the legal description of the real property owned by Seller as disclosed by the Title Documents described in Section 4, and/or (ii) if Buyer, at its expense, obtains a survey of the Land, the parties will modify Exhibit A and amend this Contract to reflect the legal description of the Land owned by Seller, and use the amended legal description at the Closing. The Land shall include sufficient acreage historically irrigated by the Water Rights to enable Buyer to obtain judicial approval of a change of use of the Water Rights when the Land is subject to Restrictive Covenants (No Irrigation), described on Exhibit B attached hereto and to Restrictive Covenants (Revegetation), described on Exhibit C attached hereto.

e. Property. The Property consists of the Water Rights, together with the Restrictive Covenants (No Irrigation) and the Restrictive Covenants (Revegetation) on the Land, described on Exhibits B and C, respectively, attached hereto and incorporated by reference herein.

f. Company. The Company shall individually and/or collectively refer to The New Cache la Poudre Irrigating Company, The Cache la Poudre Reservoir Company, and The Windsor Reservoir and Canal Company.

g. Dates and Deadlines. The abbreviation “DSS” (Director and Seller Signatures) means the latest date upon which Seller and the Director of the Greeley Water and Sewer Department have signed this Contract. DSS does not refer to nor constitute Contract formation, but is solely used for calculating the dates and deadlines in the table below. See Sections 25 and 26 for contract formation.

Item No.	Reference	Event	Date or Deadline
1	§ 4a	Title Deadline	10 Days after DSS
2	§ 5b	Off-Record Matters Deadline	15 Days after DSS
3	§ 5a	Title Objection Deadline	75 Days after DDS
4	§ 5b	Off-Record Matters Objection Deadline	75 Days after DDS
5	§ 6c	Inspection Objection Deadline	75 Days after DDS
6	§ 6d	Resolution Deadline	85 Days after DDS
7	§ 8	Closing Date	90 Days after DDS
8	§ 13	Possession Date	Closing Date
9	§ 13	Possession Time	Completion of Closing

h. Attachments. The following exhibits, attachments and addenda are a part of this Contract: Exhibit A, Legal Description of Land; Exhibit B, Restrictive Covenants (No Irrigation); Exhibit C, Restrictive Covenants (Revegetation); Exhibit D, Special Warranty Deed; and Exhibit E, Irrigation Water Lease Form.

3. PURCHASE PRICE AND TERMS. The total Purchase Price for the Property shall be one million, eight hundred thousand dollars and zero cents (\$1,800,000.00), payable by Buyer as follows:

a. A portion of the Purchase Price, which shall be considered earnest money, shall be paid by Buyer prior to Closing (“Earnest Money”). The Earnest Money, in the amount of twenty-five thousand dollars and zero cents (\$25,000.00), shall be due and payable to and held by Unified Title Company, located at 1275 58th Avenue, Unit C, Greeley, CO 80634 (“Title Company”), in its trust account, five (5) days after the Contract is approved in accordance with Section 25 and the supplemental signature page herein has been fully executed. The Earnest Money deposit shall be credited against the Purchase Price if the Closing occurs. The Earnest Money shall be refundable to Buyer at any time prior to the expiration of the Title Objection, Off-Record Matters Objection, or Inspection Objection Deadlines if Buyer is not satisfied with the Property. The Earnest Money shall be subject to return to Buyer upon termination of this Contract by Buyer pursuant to Sections 5, 6, and 18. Except as set forth in the preceding two (2) sentences, the Earnest Money shall be non-refundable to Buyer.

b. At Closing, Buyer shall pay to Seller the Purchase Price, less the Earnest Money, by cashier's check, wire transfer or other immediately available funds; plus any other amounts required to be paid by Buyer at Closing; plus or minus any prorations or credits.

c. All financial obligations of Buyer arising under this Contract that are payable after the current fiscal year are contingent upon funds for that purpose being annually appropriated, budgeted and otherwise made available by the City Council of the City of Greeley.

4. EVIDENCE OF TITLE.

a. Evidence of Title. On or before the Title Deadline, Seller shall cause to be furnished to Buyer, at Buyer's expense, a current commitment for owner's title insurance policy covering the Land, in an amount equal to the Purchase Price, setting forth ownership, lienholders and any restrictions. The purpose of the title commitment is to enable Buyer to conduct the title review described in Section 5, and said commitment shall be updated as necessary up to the Closing; however, neither Seller nor Buyer shall have any obligation under this Contract to purchase the title insurance policy after Closing. Buyer may elect to acquire this insurance (limited to the covenants attached hereto as Exhibits B and C) at its expense.

b. Copies of Exceptions. On or before the Title Deadline, Seller, at Seller's expense, shall furnish to Buyer (i) a copy of any plats, declarations, covenants, conditions and restrictions burdening the Property, and (ii) copies of any other documents (or, if illegible, summaries of such documents) listed in the schedule of exceptions ("Exceptions"). The title insurance commitment and any copies or summaries of such documents furnished pursuant to this Section constitute the title documents ("Title Documents").

5. TITLE.

a. Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents which, in Buyer's opinion, may prevent Buyer from receiving the Water Rights and the covenants attached hereto as Exhibits B and C, shall be signed by or on behalf of Buyer and given to Seller on or before the Title Objection Deadline, or within five (5) days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the title commitment together with a copy of the Title Document adding new Exception(s) to title. If Seller does not receive Buyer's notice by the date(s) specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

b. Matters not Shown by the Public Records. Seller shall deliver to Buyer, on or before the Off-Record Matters Deadline, true copies of all lease(s), survey(s) and other agreement(s) in Seller's possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Seller has actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(ies) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Seller or revealed by such inspection shall be signed by or on behalf of

Buyer and given to Seller on or before the Off-Record Matters Objection Deadline. If Seller does not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

c. Right to Cure. If Seller receives notice of unmerchantability of title or any other unsatisfactory title condition(s) or commitment terms as provided in Sections 5a or 5b, Seller shall use reasonable effort to correct said items and bear any nominal expense to correct the same prior to the Resolution Deadline. If such unsatisfactory title condition(s) are not corrected on or before the Resolution Deadline, this Contract shall then terminate one (1) day after the Resolution Deadline, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

6. PROPERTY DISCLOSURE AND INSPECTION.

a. Additional Documents to be Provided by Seller. Supplementing the provisions of Section 5, Seller shall deliver the following items to Buyer on or before the Off-Record Matters Deadline, to the extent they exist and are in Seller's possession or control:

(i) Copies of any documents that relate to the title, use, quantity, quality and condition of the Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, and any records maintained by the Company concerning the Water Rights, including without limitation share certificate records, delivery records, and assessment records (or, in the alternative, Seller shall obtain for Buyer the right to inspect and copy such Company records); and

(ii) Copies of all contracts or other agreements relating to the operation, maintenance or leasing of the Property or any portion thereof.

b. Right to Inspect.

(i) Buyer, at its sole cost and expense, shall have the right to enter upon the Property from time to time to perform such tests or inspections as Buyer deems desirable to allow Buyer to evaluate the Water Rights and the condition and use of the Property. Such inspections or testing shall be conducted in a manner to minimize or avoid any disruption to Seller's business or operation of the Property.

(ii) Buyer and its employees, contractors and attorneys shall have the opportunity from time to time to interview the managers, members, employees and agents of Seller to assist Buyer in determining the historical use of the Water Rights. Seller agrees to cooperate with Buyer to facilitate such interviews and to sign affidavits of use of the Water Rights. Buyer and its employees, contractors and attorneys may also meet with the officers, directors, attorneys, and shareholders of the Company to determine under what conditions the Company will approve a change in the place of delivery or use, or the point of diversion, of the Water Rights and other Company shares obtained or to be obtained by Buyer, pursuant to the bylaws of the Company or other applicable law.

c. Inspection Objection Deadline. If Buyer is not satisfied with the results of its inspection of the Property and its review of the information described in this Section 6 for any reason whatsoever, including but not limited to Buyer's determination, in its subjective discretion, that the Land is not capable of supporting needed dry-up requirements, Buyer may, on or before the Inspection Objection Deadline, (i) notify Seller in writing that this Contract is terminated or (ii) provide Seller with a written description of any unsatisfactory condition which Buyer requires Seller to correct ("Notice to Correct"). If written notice is not received by Seller on or before Inspection Objection Deadline, the condition of the Property shall be deemed to be satisfactory to Buyer. If Seller fails to provide Buyer with copies of any of the documents or information set forth above in this Section, the Inspection Objection Deadline shall be extended by the number of days equal to the delay in delivery of such documents beyond the original deadline.

d. Resolution Deadline. If a Notice to Correct is received by Seller and if Buyer and Seller have not agreed in writing to a settlement thereof on or before Resolution Deadline, this Contract shall terminate one (1) day after the Resolution Deadline, unless before such termination Seller receives Buyer's written withdrawal of the Notice to Correct.

e. Damage; Liens. Buyer is responsible for payment for all inspections, surveys, and engineering reports or for any other work performed at Buyer's request and shall pay for any damage which occurs to the Property as a result of such activities. Buyer shall not permit claims or liens of any kind against the Property for inspections, surveys, engineering reports and for any other work performed on the Property at Buyer's request. The provisions of this Subsection shall survive the termination of this Contract.

7. EXTENSION OF DEADLINES BY BUYER. If Buyer, after exercising reasonable good faith efforts, is unable to complete the title review and/or inspections described in Sections 5 and 6 by the Title Objection Deadline and/or the Off-Record Matters Objection Deadline and/or the Inspection Objection Deadline, respectively, Buyer shall have the right, prior to expiration of such deadline(s), to extend such deadline(s) for an additional period not to exceed fifteen (15) days, by sending Seller notice of such fact which describes such additional period. Upon the sending of such notice, (i) the Resolution Deadline and Closing Date shall be automatically extended by a similar period or by such other period as the parties may determine, and (ii) Seller shall be entitled to payment of the Earnest Money, regardless of whether Buyer closes upon the purchase described herein.

8. CLOSING. Delivery of deed(s) from Seller to Buyer shall be at Closing ("Closing" or "Closing Date"). Closing shall be on the date specified as the Closing Date or by mutual agreement at an earlier or later date. The hour and place of Closing shall be as designated by mutual agreement, or absent such agreement at 10:00AM at the offices of the Title Company.

9. TRANSFER OF TITLE. Subject to tender or payment at Closing as required herein and compliance by Buyer with the other terms and provisions hereof, Seller shall execute and deliver a good and sufficient Special Warranty Deed to Buyer, at Closing, conveying the Water Rights free and clear of all encumbrances or restrictions, and an assignment of the portion of the Water Rights represented by shares in the Company in a form and manner acceptable to

the Company. Seller shall also execute the Restrictive Covenants with respect to the Land. If there are lienholders or leaseholders in the Land, such parties shall acknowledge and approve the Restrictive Covenants (No Irrigation) as shown on Exhibit B and the Restrictive Covenants (Revegetation) as shown on Exhibit C.

10. PAYMENT OF ENCUMBRANCES. Any encumbrance against the Water Rights or against the Land, where the lienholder does not execute the restrictive covenants pursuant to Subsections 14f and 14g, shall be paid at or before Closing from the proceeds of this transaction or from any other source.

11. CLOSING COSTS; DOCUMENTS AND SERVICES. Buyer and Seller shall pay, in Good Funds, their respective Closing costs and all other items required to be paid at Closing, except as otherwise provided herein. Buyer and Seller shall sign and complete all customary or reasonably required documents at or before Closing. Fees for real estate closing services shall be paid at Closing by One-Half by Buyer and One-Half by Seller. Buyer shall pay the transfer fees for the portion of the Water Rights represented by shares in the Company.

12. PRORATIONS. The following shall be prorated to Closing Date, except as otherwise provided: None.

13. POSSESSION. Possession of the Water Rights shall be delivered to Buyer on Possession Date and Possession Time.

If Seller, after Closing, fails to deliver possession as specified, Seller shall be subject to eviction and shall be additionally liable to Buyer for payment of five hundred dollars and zero cents (\$500.00) per day from the Possession Date until possession is delivered.

14. OBLIGATIONS AT CLOSING. The following shall occur at Closing, each being a condition precedent to the others and all being considered as occurring simultaneously:

a. Seller shall execute, have acknowledged, and deliver to Buyer a Special Warranty Deed, in the form of Exhibit D, attached hereto and incorporated by this reference herein, and all other documents necessary to transfer to Buyer the Water Rights, including assignments of the portion of the Water Rights represented by shares in the Company in a form and manner acceptable to the Company.

b. Seller shall execute and deliver to Buyer an affidavit stating that Seller is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations).

c. Seller shall execute a Certificate as to Taxpayer Identification Number as required by law.

d. Seller shall have delivered to Buyer possession of the Water Rights.

e. Buyer shall execute a Real Property Transfer Declaration as required by Colorado law.

f. Seller and the holders of any deed of trust or other lien in the Land, which lien will not be released pursuant to Section 10, shall execute the Restrictive Covenants (No Irrigation) for the Land satisfactory to Buyer and substantially as shown on Exhibit B, attached hereto and incorporated by this reference herein, that will prohibit the irrigation or other use of water on the Land except as authorized by a valid decree of the District Court for Water Division No. 1, State of Colorado, or a successor court and in accordance with any future water rights applications filed by Buyer.

g. Seller and the holders of any deed of trust or other lien in the Land, which lien will not be released pursuant to Section 10, shall execute Restrictive Covenants (Revegetation) for the Land satisfactory to Buyer and substantially as shown on Exhibit C, attached hereto and incorporated by this reference herein, that will require revegetation of the Land upon written notice from Buyer to satisfy any applicable revegetation and noxious weed management provisions as may be required in a final decree obtained by Buyer from the District Court for Water Division No. 1, State of Colorado, or a successor court, changing certain water rights from agricultural irrigation purposes to other beneficial purposes.

h. Buyer and Seller shall execute the Irrigation Water Lease defined below in Section 15, in the form of Exhibit E attached hereto.

i. Seller and Buyer shall each execute and deliver settlement statements, showing adjustments and the payment of costs of the Closing.

j. Each party shall deliver to the other such other documents, certificates, and the like as may be required herein or as may be necessary or helpful to carry out its obligations under this Contract.

15. LEASE OF IRRIGATION WATER. Seller and Buyer agree that, upon Closing, Seller will lease the Water Rights from Buyer for a period of up to fifteen (15) years after Closing (“Irrigation Water Lease”). The annual lease amount to be paid by Seller to Buyer for the Irrigation Water Lease shall be equal to any Company assessments and/or other charges and expenses attributable to the Water Rights, paid each year of the Irrigation Water Lease by Buyer. The form of the Irrigation Water Lease are contained in Exhibit E, Irrigation Water Lease Form.

16. NOT ASSIGNABLE. This Contract shall not be assignable without prior written consent, which shall not be unreasonably withheld. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

17. RECOMMENDATION OF LEGAL AND TAX COUNSEL. BY SIGNING THIS DOCUMENT, BUYER AND SELLER ACKNOWLEDGE THAT THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES AND IT IS RECOMMENDED THAT THEY

CONSULT WITH LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING THIS CONTRACT.

18. TIME OF ESSENCE AND REMEDIES. Time is of the essence hereof. In the event any time period expires on a Saturday, Sunday, or legal holiday of the State of Colorado, the date of performance shall be the next day which is not a Saturday, Sunday, or legal holiday of the State of Colorado. If any note or check received as Earnest Money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed or waived as herein provided, there shall be the following remedies:

a. If Buyer is in Default: All payments and things of value received hereunder shall be forfeited by Buyer and retained on behalf of Seller and both parties shall thereafter be released from all obligations hereunder. It is agreed that such payments and things of value are LIQUIDATED DAMAGES and (except as provided in Subsection 18c) are SELLER'S SOLE AND ONLY REMEDY for Buyer's failure to perform the obligations of this Contract. Seller expressly waives the remedies of specific performance and additional damages.

b. If Seller is in Default: Buyer may elect to treat this Contract as canceled, in which case all payments and things of value received hereunder shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this Contract as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

c. Costs and Expenses. In the event of any arbitration or litigation relating to this Contract, the arbitrator or court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

19. TERMINATION. In the event this Contract is terminated, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to Subsections 6e and 7.

20. ENTIRE AGREEMENT; SUBSEQUENT MODIFICATION; SURVIVAL. This Contract constitutes the entire Contract between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Contract. No subsequent modification of any of the terms of this Contract shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties. Any obligation in this Contract which, by its terms, is intended to be performed after termination or Closing shall survive the same.

21. SIGNATURES. Signatures may be evidenced by copies transmitted via facsimile or electronic mail. Documents with original signatures shall be provided to the other party at Closing, or earlier upon request of any party.

22. NOTICE. Any notice or other communication given by any of the parties hereto to another relating to this Contract shall be in writing and shall be deemed to have been duly given (i) on the date and at the time of delivery if delivered personally to the party to whom

notice is given at the address specified below; or (ii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified below; or (iii) on the date and at the time shown on the facsimile if telecopied to the number specified below and receipt of such telecopy is acknowledged; or (iv) on the date and at the time shown on the electronic mail (email) if emailed to the email address specified below and receipt of such email is acknowledged; or (v) on the date shown on the delivery acknowledgment provided by the courier if sent by a nationally-recognized overnight courier service (such as Federal Express) that provides evidence of delivery:

If to Seller to: Western Equipment & Truck, Inc.
Attention: Craig Sparrow
2055 1st Ave.
Greeley, CO 80631
Telephone: 970-353-6682
Facsimile: 970-352-7315
Email: sales@wvetrucks.com

If to Buyer, to: City of Greeley Water and Sewer Department
Attention: Jennifer Petrzelka, Water Rights Manager
1100 Tenth Street, 3rd Floor
Greeley, CO 80631
Telephone: 970-350-9815
Facsimile: 970-350-9805
Email: Jennifer.Petrzelka@Greeleygov.com

With a copy to: Greeley City Attorney's Office
Attention: Aaron Goldman, Environmental & Water Resources Attorney
1100 Tenth Street, Suite 401
Greeley, CO 80631
Telephone: 970-350-9757
Facsimile: 970-350-9763
Email: Aaron.Goldman@Greeleygov.com

23. BROKERAGE COMMISSIONS. No brokerage commissions shall be payable by Buyer for the closing of this purchase, and Buyer specifically disclaims any obligation to pay any such commission. Seller agrees to indemnify and hold Buyer harmless from and against any and all costs, expenses, claims, losses, or damages, including reasonable attorneys' fees, resulting from or arising out of any claim for brokerage commissions incurred or made through Seller.

24. SELLER 1031 EXCHANGE. At the request of Seller, Buyer shall cooperate with Seller in the achievement of a tax-deferred real estate exchange pursuant to Section 1031 of the Internal Revenue Code and the Treasury Regulations promulgated thereunder. Buyer shall not be required to incur any additional liability or expense in connection with Seller's tax-

deferred exchange transaction nor shall Buyer be required to accept title to any real property other than the Property described hereinabove.

25. WATER AND SEWER BOARD APPROVAL REQUIRED. THE OBLIGATIONS OF BUYER ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS CONTRACT BY THE CITY OF GREELEY WATER AND SEWER BOARD AS EVIDENCED BY EXECUTION OF THE SUPPLEMENTAL SIGNATURE PAGE BELOW.

26. NOTICE OF ACCEPTANCE; COUNTERPARTS. Acceptance must be in writing by Buyer and Seller, as evidenced by their signatures below and Buyer's execution of the supplemental signature page below, and the offering party must receive notice of acceptance pursuant to Section 22. If accepted, this document shall become a Contract between Seller and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete Contract between the parties.

SELLER:

**WESTERN EQUIPMENT & TRUCK,
INC., a Colorado Corporation.**

By: *Ering JMMW PRES*

Date: *10-12-2017*

BUYER:

**CITY OF GREELEY, COLORADO, a
Municipal Corporation, acting by and
through its Water and Sewer Board**

By: _____
Director of Water & Sewer

Date: _____

**THE FOLLOWING SUPPLEMENTAL SIGNATURE PAGE SHALL BE EXECUTED
BY BUYER SUBSEQUENT TO APPROVAL BY THE CITY OF GREELEY WATER
AND SEWER BOARD PURSUANT TO SECTION 25 HEREINABOVE.**

By: _____
Board Chairman

By: _____
Mayor

APPROVED AS TO SUBSTANCE:

ATTEST:

By: _____
City Manager

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

AS TO AVAILABILITY OF FUNDS:

By: _____
City Attorney

By: _____
Director of Finance

**EXHIBIT A TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

The Land shall include the real property legally described as follows:

The Northeast Quarter (NE $\frac{1}{4}$) of Section Sixteen (16), Township Six (6) North, Range Sixty-Five (65) West of the 6th P.M., County of Weld, State of Colorado, EXCEPTING therefrom, (a) Parcel conveyed to August C. Boye by Deed recorded in Book 211, Page 511 Weld County records, (b) That tract of 32.5 acres described in Deed by Elizabeth Cozzens to John L. Cozzens of record in Book 1064, Page 441, Weld County Records, ALSO, All that part of the East Half (E $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{2}$) of said Section Sixteen (16) described as follows: Beginning at a point on the North line of said East Half (E $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$), 17 feet East of the Northwest corner thereof; thence South 53° East 978 feet; thence North 600 feet to a point on the North line of said East Half (E $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$) of said Section, 795 feet East of the Northwest corner thereof; thence Westerly along said North line of said East Half (E $\frac{1}{2}$) of the Southeast Quarter (SE $\frac{1}{4}$), 778 feet to The Point Of Beginning; ALSO all that part of the Southeast Quarter (SE $\frac{1}{4}$) of the Northwest Quarter (NW $\frac{1}{4}$) of said Section Sixteen (16) which lies South and East of what is commonly known as "No. 2 Ditch" of The New Cache la Poudre Irrigation Company, BUT ALSO EXCEPTING all minerals of whatsoever kind or character in, under, and upon or that might be produced therefrom.

**EXHIBIT B TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Restrictive Covenants (No Irrigation))

RESTRICTIVE COVENANTS (NO IRRIGATION)

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

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

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

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by the City or its successor in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of the City or its successor in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: 2055 1st Avenue, Greeley, Colorado 80631.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the ____ day of _____, 2017.

Declarant:

By: _____

Subscribed under oath before me on _____, _____, by _____
_____.

My commission expires: _____

Notary Public

**EXHIBIT C TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Restrictive Covenants (Revegetation))

RESTRICTIVE COVENANTS (REVEGETATION)

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

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

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

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

The terms and provisions of these covenants shall not expire and shall be perpetual unless specifically released in writing by the City or its successor in interest. The terms and provisions of these covenants may not be terminated, modified, or amended without prior written consent of the City or its successor in interest. Any notice may be sent to the Declarant by prepaid U.S. Mail to the Declarant at: 2055 1st Avenue, Greeley, Colorado 80631.

IN WITNESS WHEREOF, the Declarant has executed this instrument on the ____ day of _____, 2017.

Declarant:

By: _____

Subscribed under oath before me on _____, 20__, by _____.

My commission expires: _____

Notary Public

**EXHIBIT D TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Special Warranty Deed)

SPECIAL WARRANTY DEED
(Western Equipment & Truck, Inc. - Water Rights)

THIS DEED, is made this ____ day of _____ 2018, by and WESTERN EQUIPMENT & TRUCK, INC., a Colorado Corporation, whose legal address is 2055 1st Avenue, Greeley, Colorado 80631 (“Grantor”) and the CITY OF GREELEY, COLORADO, a Colorado Municipal Corporation, acting by and through its Water and Sewer Board, whose address is 1000 10th Street, Greeley, Colorado 80631 (“Grantee”).

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, Grantee’s heirs and assigns forever, all of the water rights represented by the following shares (“Water Rights”):

twelve (12) shares of stock in The New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in The Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in The Windsor Reservoir and Canal Company (represented by Share Certificate No. 756), which have historically irrigated the real property described on Exhibit A attached hereto. The Water Rights shall also include any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Water Rights. The Water Rights shall not include any interest in any appropriation of the McClellan Seepage Ditch out of Lone Tree Ditch.

TOGETHER with all beneficial right, title and interest, if any, in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates and all other assets, rights, title or interests represented by said shares;

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of the Grantor, either in law or equity, of, in, and to the above bargained Water Rights, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said Water Rights above bargained and described with the appurtenances, unto the Grantee, Grantee’s successors and assigns forever. The Grantor, for Grantor, Grantor’s successors and assigns, does covenant and agree that Grantor shall and will warrant and forever defend the above bargained Water Rights in the quiet and peaceable possession of the Grantee, Grantee’s successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

**EXHIBIT E TO
CONTRACT TO BUY AND SELL WATER RIGHTS**

(See attached Irrigation Water Lease Form)

IRRIGATION WATER LEASE FORM

**(Western Equipment & Truck, Inc.: New Cache - 5056; Cache la Poudre Reservoir - 4243;
Windsor Reservoir & Canal - 756)**

This IRRIGATION WATER LEASE (“Agreement”) is entered into this ____ day of _____ 20__, by and between the CITY OF GREELEY, a municipal corporation of the State of Colorado, acting by and through its Water and Sewer Board, (“City”), whose legal address is 1100 10th Street, Greeley, Colorado 80631 and WESTERN EQUIPMENT & TRUCK, INC., a Colorado Corporation, whose address is 2055 1st Ave. Greeley, CO 80631 (“Lessee”). The City and Lessee are also referred to collectively as the “Parties.”

WHEREAS, the Lessee is the owner and legal occupant of certain real property located in Weld County, Colorado comprising approximately one hundred forty-seven (147) acres, which property is more particularly described in Exhibit A, attached hereto and incorporated herein by reference (“the Property”); and

WHEREAS, the City owns those certain water rights represented by twelve (12) shares of stock in the New Cache la Poudre Irrigating Company (represented by Share Certificate No. 5056), four (4) shares of stock in the Cache la Poudre Reservoir Company (represented by Share Certificate No. 4243), and four (4) shares of stock in the Windsor Reservoir and Canal Company (represented by Share Certificate No. 756) (collectively the “Water Rights”), which have historically been used to irrigate the Property; and

WHEREAS, Lessee desires to lease the Water Rights from the City for agricultural irrigation on the Property, subject to the terms and conditions herein; and

WHEREAS, the City desires to lease the Water Rights to the Lessee for agricultural irrigation on the Property, subject to the terms and conditions herein;

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

1. **Lease of Water Rights.** The City hereby leases to Lessee, and Lessee hereby leases from the City, the Water Rights for the purpose of agricultural irrigation on the Property during the Irrigation Season, defined as the period from April 1 through October 31 of each calendar year.

2. **Term of Lease.** The initial term of this Agreement begins on April 1, 2018 and expires on March 31, 2033. The Lessee may request to renew the Agreement beyond this initial term for subsequent terms of one (1) year each (from April 1 until March 31), by providing

written notice to the City. Written request of renewal for the following Irrigation Season must be received by the City on or before December 31. The obligations of the City are made expressly subject to Section 17-4(c) of the Charter of the City of Greeley.

3. **Annual Lease Amount and Administrative Fee.** The City shall pay all assessments, charges, and other expenses due and attributable to the Water Rights (the “Annual Lease Amount”) to the New Cache la Poudre Irrigating Company, the Cache la Poudre Reservoir Company, and the Windsor Reservoir and Canal Company. The Lessee shall annually reimburse the City in full for payment of the Annual Lease Amount. Lessee shall also pay the City an Annual Administrative Fee in the amount of one hundred and fifty dollars (\$150.00) per year. The City shall provide written notice of the Annual Lease Amount and Annual Administrative Fee to the Lessee, and Lessee shall pay that amount in full to the City within fifteen (15) days of the notice.

4. **Use of Water Rights.** Lessee shall use the water delivered pursuant to the Water Rights only for agricultural irrigation on the Property. Lessee shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Lessee shall use the Water Rights in accordance with all rules, regulations, bylaws, and policies of the New Cache la Poudre Irrigating Company, Cache la Poudre Reservoir Company, and Windsor Reservoir and Canal Company. Lessee shall comply with Chapter 14.08 of the Greeley Municipal Code, and all rules and regulations of the State of Colorado pertaining to use of the Water Rights. Lessee shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible, and shall undertake no action which could be construed as abandonment of the Water Rights. Notwithstanding the notice period described in Paragraph 12, Lessee shall provide advance written notice to the City of at least thirty (30) days if Lessee no longer intends to irrigate the entirety of the Property with the Water Rights.

5. **Historical Use Investigation.** On or before December 31 of each calendar year, Lessee shall deliver to the City a completed Historical Use Affidavit and Questionnaire, in the form attached hereto as Exhibit B. Lessee acknowledges that the City may file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Agreement. Lessee shall cooperate with the City and its agents or representatives in the review and analysis of the historical use of the Water Rights. Upon request from the City, Lessee shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court.

6. **Restriction on Sublease and Assignment.** Lessee shall not rent, sublet, or otherwise convey the right to use the Water Rights. Lessee shall not assign this Agreement, except to a successive owner or operator of the Property for agricultural irrigation of the Property, and only

with written consent from the City. Lessee shall request consent from the City prior to any purported assignment of this Agreement by advance written notice of at least thirty (30) days. Such consent may be given or withheld in the sole discretion of the City.

7. **No Vested Interest in Shares or Joint Venture.** The City grants no interest in the Water Rights to the Lessee other than as explicitly set forth in this Agreement. Lessee shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Agreement. This Agreement does not create a partnership or joint venture of any kind between the Parties, and the Lessee shall bear the entirety of any loss, cost, damages, or expense incurred through its use of the Water Rights on the Property.

8. **No Guarantee of Yield.** Lessee is entitled to receive the amount of water yielded by the Water Rights, subject to the terms and conditions in this Agreement. The City makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Lessee shall not hold the City liable for any failure in delivery of water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

9. **Maintenance of Infrastructure.** Lessee shall maintain the lateral ditches, headgates, infrastructure, and other personal property necessary to deliver water pursuant to the Water Rights at its own cost and expense. Lessee shall make all repairs and restorations necessary to keep the lateral ditches, headgates, infrastructure and other personal property in good working condition during the term of this Agreement.

10. **Indemnification.** Lessee agrees to exercise its rights under this Agreement at its own risk. Lessee shall indemnify and hold harmless the City from and against any cost, expense, or liability arising out of this Agreement or related activities. Nothing in this Agreement is intended to constitute a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101 et seq., as applicable now or hereafter amended.

11. **Notice.** All notices to be given under this Agreement shall be (1) sent by certified or registered mail, return receipt requested, or (2) hand-delivered at the following addresses. The Parties shall provide written notice to the other if the appropriate contact or address changes.

For the City of Greeley:

Greeley Water and Sewer Department
Attn: Jennifer Petrzelka
1100 10th Street, 3rd Floor
Greeley, Colorado 80631

With a Copy to:

Greeley City Attorney's Office

Environmental and Water Resources Practice Group
1100 10th Street, Suite 401
Greeley, Colorado 80631

For Lessee:

Western Equipment & Truck, Inc.
Attention: Craig Sparrow
2055 1st Ave.
Greeley, CO 80631

12. **Default and Termination.** If either of the Parties fails to comply with a term or condition herein, such failure constitutes a default of this Agreement. The non-defaulting party may declare the default by providing written notice to the defaulting party. Upon receipt of this notice of default, the defaulting party shall have fifteen (15) days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned 15-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting party may declare the Agreement terminated by written notice.

- (a) Notwithstanding the above, failure by the Lessee to comply with the terms and conditions of Paragraph 4 or Paragraph 6 of this Agreement constitutes a material breach. In the event that the Lessee commits a material breach, the City may immediately terminate this Agreement by written notice to the Lessee.
- (b) This Agreement may otherwise be terminated for any reason by the Lessee or the City prior to the Irrigation Season by delivering written notice to the other party on or before March 1.
- (c) The failure of either party to declare a default or material breach does not establish a precedent or course of dealing. The failure of either party to declare a default or material breach does not constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement.

14. **Cessation of Irrigation.** Upon expiration or termination of this Agreement, Lessee shall immediately cease agricultural irrigation of the Property, except as expressly allowed by the Restrictive Covenants (No Irrigation), attached hereto as Exhibit C and incorporated herein by reference.

15. **Revegetation.** Notwithstanding any term or condition herein to the contrary, and subject to water availability in the sole discretion of the City, the Lessee may rent from the City an adequate amount of irrigation water at market price to be used to establish a native grass ground cover for purposes of accomplishing revegetation on the Property pursuant to the

Restrictive Covenants (Revegetation), attached hereto as Exhibit D and incorporated herein by reference.

16. **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any rights or remedies upon any parties other than the Lessee and the City, or their respective successors in interest.

17. **Recovery of Costs and Fees.** In addition to any remedies otherwise available, a party that is successful in a legal action commenced against the other due to a default or material breach of this Agreement may recover from the defaulting party reasonable costs and attorneys' fees incurred during the course of such legal action.

18. **Governing Law and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement shall be the District Court for Weld County, Colorado, or the Division 1 Water Court for the State of Colorado.

19. **Severability.** In the event a provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate any other provision herein, and the remainder of the Agreement should be interpreted in accordance with the intent of the Parties.

20. **Integration.** This Agreement and incorporated Exhibits constitute a complete integration of the understanding and agreement between the Parties with respect to the subject matter herein, and supersede all other lease agreements regarding the Water Rights. No representations, negotiations, or warranties exist between the Parties except as explicitly set forth in this Agreement. This Agreement may only be modified in a written form duly authorized, approved, and executed by both Parties.

21. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile, .pdf, or other electronic means. The Parties agree to accept and be bound by signatures hereto delivered by facsimile, .pdf, or other electronic means.

22. **Recording.** The Parties shall not record this Agreement, except Exhibit C (Restrictive Covenants - No Irrigation) and Exhibit D (Restrictive Covenants - Revegetation), in the real property records of any jurisdiction.

IN WITNESS WHEREOF, the undersigned Parties have executed this Irrigation Water Lease Form on the date first set forth above.

LESSEE
WESTERN EQUIPMENT & TRUCK, INC.,
a Colorado Corporation

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____ 2017 by _____.

Witness my hand and official seal.

Notary Public
My commission expires: _____

[The City's Signature Page Follows]

CITY OF GREELEY, a Colorado
Municipal Corporation, Acting By and
Through its Water and Sewer Board

ATTEST

By: _____
Mayor

By: _____
City Clerk

Draft

WATER & SEWER BOARD AGENDA OCTOBER 18, 2017

ENCLOSURE X

NO ENCLOSURE X

ITEM NUMBER: 7

TITLE: EXECUTIVE SESSION

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA OCTOBER 18, 2017

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 8

TITLE: ACTION: CONSIDERATION OF AN
EXCEPTION TO RESOLUTION 3, 1995 RAW
WATER DEDICATION STANDARDS –
GRAPEVINE MINOR DEVELOPMENT

RECOMMENDATION:

ADDITIONAL INFORMATION:

WJY Enterprises, LLC is proposing a residential development on a parcel located just west of 47th Avenue and south of 24th Street that is historically dry land. The Suburban Ditch Company is willing to sell 3 shares of GLIC System water to the developer, which shares the developer would like to dedicate to the City in order to satisfy its raw water obligation for the proposed development. Because the shares were not historically used to irrigate the property being developed, acceptance of the shares in dedication by the City requires approval by the Water & Sewer Board of an exception to the standards set forth in Resolution 3, 1995.

A copy of Resolution 3, 1995 is enclosed for reference, and additional information regarding this item will be provided at or before the Board meeting.

WATER AND SEWER BOARD

RESOLUTION NO. 3, 1995

WHEREAS, The City of Greeley recently purchased shares in the Greeley Loveland Irrigation Company and the Seven Lakes Irrigation Company and rights in Lake Loveland; and

WHEREAS, most of the water rights purchased remain in agricultural production, contributing to the economic vitality of the region; and

WHEREAS, all agricultural water rights received by the City in satisfaction of the Board's raw water requirement must be transferred to municipal use through water court adjudication; and

WHEREAS, the change of use costs are controlled, and the yield of the changed water right improved, by adopting criteria governing the acceptability of agricultural water rights by the City for future domestic use;

NOW, THEREFORE, BE IT RESOLVED BY THE WATER AND SEWER BOARD OF THE CITY OF GREELEY, COLORADO, THAT THE FOLLOWING CRITERIA AND STANDARDS SHALL BE FOLLOWED BY THE WATER AND SEWER DEPARTMENT IN ACCEPTANCE OF RAW WATER FOR DEVELOPMENT:

1. The agreements wherein the City purchased Greeley Loveland, Lake Loveland, or Seven Lakes Irrigation Companies water rights contain a five-year provision for the seller to satisfy the Board's raw water requirement for development at the prices established in the purchase agreement. The five-year period in which this option may be exercised shall not be extended.
2. The five-year option to satisfy the City's raw water requirement for development by payment to the City at the prices established in the water purchase program shall be exercised only for development of the land identified in the water purchase agreement.
3. All agricultural water rights accepted by the City in satisfaction of the raw water requirements for development shall have a history of use on the land being developed and shall meet all of the following criteria:
 - a. The land being developed was historically irrigated under the ditch system from which water stock is proffered to the City prior to 1969.
 - b. The land being developed was consistently irrigated under the same ditch company system since 1969.
 - c. The water stock dedicated was used to irrigate the farm being developed.

- d. The water stock must be usable by the City of Greeley at the City's determination for domestic treatment and delivery.

Agricultural water stock will not be accepted by the City if it was not historically used to irrigate the land being developed.

4. Land which has not been continuously irrigated by agricultural water rights according to the criteria set forth above and elsewhere and which is undergoing development must satisfy the City's raw water requirement either by the transfer of Colorado-Big Thompson Project units or the payment of cash-in-lieu. Cash-in-lieu payments in excess of \$10,000 must be approved by the Water and Sewer Board.

5. In the event of any conflict between this Resolution and the raw water requirements codified in Municipal Code Section 14.24.100 through 14.24.190 Municipal Code shall prevail.

W. D. Farr, Chairman

Paul M. Grattet, Secretary

Date of Signature

WATER & SEWER BOARD AGENDA OCTOBER 18, 2017

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 9

TITLE: LEGAL REPORT

POSSIBLE ACTION: STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA OCTOBER 18, 2017

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 10

TITLE: DIRECTOR'S REPORT

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- South Platte Forum to be held on October 25th & 26th at Embassy Suites in Loveland

WATER & SEWER BOARD AGENDA OCTOBER 18, 2017

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 11

TITLE: SUCH OTHER BUSINESS THAT MAY BE
 BROUGHT BEFORE THE BOARD AND
 ADDED TO THIS AGENDA BY MOTION OF
 THE BOARD

RECOMMENDATION: TO BE DETERMINED

ADDITIONAL INFORMATION: