

# WATER & SEWER BOARD AGENDA

Wednesday, September 18, 2019  
2:00 p.m.

## **GREELEY CITY CENTER**

**1001 11<sup>TH</sup> Avenue  
Greeley, CO 80631**

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

### **Consent Agenda**

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

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

### **End of Consent Agenda**

4. Any Pulled Items from Consent Agenda
5. Welcome New Employees
6. Review and Recommend to Council the Tri Districts IGA
7. Legal Report
8. Executive Session
  - Matters Related To Potential Acquisition Of Water Storage
  - Matters Related To Thayer Farm
9. Purchase and Sale Agreement for Thayer Farm
10. Director’s Report



*If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Ettie Arnold at 970-350-9812.*

11. Such Other Business That May Be Brought Before the Board and Added to This Agenda by Motion of the Board



*If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Ettie Arnold at 970-350-9812.*

**City of Greeley  
Water and Sewer Board  
Minutes of August 21, 2019  
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:01 p.m. on Wednesday, August 21, 2019.

**1. Roll Call**

The Clerk called the roll and those present included:

Board Members:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Robert Ruyle, Joe Murphy, Tony Miller, Manny Sisneros, Mayor Gates, Renee Wheeler and Roy Otto

Water and Sewer Department Staff:

Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water and Sewer Services Coordinator Chrissy Lutz, Plans Examiner Jamie Boelstler, Water Resources Engineer Terry Farrill, Office Manager Shannon Metcalf and Senior Administrative Assistant Ettie Arnold

Legal Counsel:

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

Guests:

Mark Goldstein, Jeff Donaldson, Morgan Kidder from Journey Homes

**2. Approval of Minutes**

Mr. Miller moved, seconded by Mr. Sisneros, to approve the July 17, 2019 Water and Sewer Board meeting minutes. The motion carried 7-0.

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

Mr. Chambers requested that the agenda be amended to remove agenda item 11 and add Matters Related to Potential Acquisition of Water Storage to Executive Session. Mr. Miller

moved, seconded by Mr. Sisneros to approve the agenda as amended. The motion carried 7-0.

**\*\*\*\*Consent Agenda\*\*\*\***

**No items on the consent agenda.**

**\*\*\*\*End of Consent Agenda\*\*\*\***

**4. Pulled Consent Agenda Items**

There were no items on the consent agenda.

**5. Welcome New Employees**

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

**6. Review and Recommend to Council Revisions to Title 14 of the Greeley Municipal Code**

Mr. Dial presented proposed revisions to the Greeley Municipal Code, subject to minor modifications based on feedback from the prior month's board meeting. The revisions made include a clarification that Greeley will accept raw water dedication before cash-in-lieu payments, and a supplemental cash-in-lieu payment will be required after two years of exceeding the raw water allocation.

Vice Chairman Todd moved, seconded by Mr. Miller, to recommend to City Council Revisions to Title 14 of the Greeley Municipal Code. The motion carried 7-0.

Terry Farrill and Chrissy Lutz left the meeting at 2:18 p.m.

**7. Approve Purchase and Sale Agreement for Star Pit Acquisition**

Mr. Jokerst presented information regarding the purchase of property known as Star Pit. He explained the Star Pit would provide Greeley with approximately 930 acre-feet of storage capacity that can be used to meet return flow obligations, service non-potable demands, and manage reusable wastewater effluent. The purchase and sale agreement also contemplates leasing the facility back to the current owner, and a lease of augmentation water supplies.

Vice Chairman Todd moved, seconded by Mr. Miller, to recommend the acquisition of the Star Pit from CER in accordance with the water and storage acquisition strategies set



forth in the Department's Master Plan and authorization for Director to enter into minor contract amendments, including but not limited to amendments to property descriptions and contract extensions; to make earnest money payments following due diligence review; and to close on the purchase. The motion carried 7-0.

Jamie Boelstler left the meeting at 2:44 p.m.

Mark Goldstein and Jeff Donaldson left the meeting at 2:52 p.m.

**8. Art-Water Demo Project**

Vice Chairman Todd presented information and a model regarding a future, joint art project that would engage artistic beauty, conservation, education and community.

**9. Legal Report**

Jim Noble of Welborn Sullivan Meck & Tooley reported that counsel does not recommend filing statements of opposition in any cases during the month of August.

**10. Director's Report**

Mr. Chambers gave a report on the following items:

- Debrief to Annual Summer Tour
- Board/Council Tour reminder
- CSU Ag Day
- Presented updated org chart
- Presented non-equalizer map
- Inquire about board members receiving electronic board packets vs. paper

Nina Cudahy left the meeting at 3:21, Renee Wheeler left the meeting at 4:00 p.m. and Mayor Gates left the meeting at 4:04 p.m.

**11. Executive Session**

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

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

The motion carried 7-0.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Robert Ruyle, Manual Sisneros, Tony Miller, Joe Murphy, Renee Wheeler, Roy Otto, Mayor Gates, Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water Resources Operations Manager Jennifer Petrzelka, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Aaron Goldman, Water and Sewer Board Counsel Jim Noble, and Senior Administrative Assistant Ettie Arnold

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

The Executive Session ended at 4:21 p.m. and the regular meeting resumed.

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

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

Chairman Evans adjourned the meeting at 4:25 p.m.

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Harold Evans, Chairman

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Ettie Arnold, Senior Administrative Assistant

**WATER & SEWER BOARD AGENDA SEPTEMBER 18, 2019**

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:               5

TITLE:                       WELCOME NEW EMPLOYEES

RECOMMENDATION:       INFORMATION ONLY

**ADDITIONAL INFORMATION:**

Staff to introduce and welcome new full-time employees starting employment in May within the department.

- Jason Clark – Boyd Lake WTP Superintendent
- Kelen Dowdy – Promotion to Water Resources Planning Manager
- Chad Brown – Transmission & Distribution Maintenance Tech.

**WATER & SEWER BOARD AGENDA    SEPTEMBER 18, 2019**

ENCLOSURE   X              NO ENCLOSURE       

ITEM NUMBER:                    6

TITLE:                                RECOMMEND TO COUNCIL APPROVAL OF  
THE INTERGOVERNMENTAL AGREEMENT  
FOR POTABLE WATER INTERCONNECT

RECOMMENDATION:        RECOMMEND TO COUNCIL APPROVAL OF  
THE INTERGOVERNMENTAL AGREEMENT FOR POTABLE WATER  
INTERCONNECT

ADDITIONAL INFORMATION:

THE INTERGOVERNMENTAL AGREEMENT FOR POTABLE WATER INTERCONNECT IS AN AGREEMENT BETWEEN CITY OF GREELEY, NORTH WELD COUNTY WATER DISTRICT, AND THE EAST LARIMER COUNTY WATER DISTRICT. THE AGREEMENT PROVIDES A FRAMEWORK FOR THE CONSTRUCTION OF A NEW MUNICIPAL GRADE POTABLE INTERCONNECTION THAT WILL GIVE THE PARTIES THE PHYSICAL AND LEGAL ABILITY TO TAKE RAW WATER FROM ANOTHER PARTY, TREAT THAT WATER AND DELIVERY SAID WATER BACK THROUGH THE NEW INTERCONNECTION OR OTHER EXISTING INTERCONNECTIONS UNDER THE LIMITED TERMS OF THE AGREEMENT.

**INTERGOVERNMENTAL AGREEMENT FOR**  
**POTABLE WATER INTERCONNECT**

**BETWEEN THE CITY OF GREELEY, COLORADO**  
**AND NORTH WELD COUNTY WATER DISTRICT**  
**AND EAST LARIMER COUNTY WATER DISTRICT**

This INTERGOVERNMENTAL AGREEMENT FOR POTABLE WATER INTERCONNECT (“Agreement”) is entered into as of \_\_\_\_ day of \_\_\_\_\_, 2019 (“Effective Date”), by and between **THE CITY OF GREELEY**, Colorado, a home rule municipality (“Greeley”) and **NORTH WELD COUNTY WATER DISTRICT, acting by and through the North Weld County Water District Enterprise** (“North Weld”) and **EAST LARIMER COUNTY WATER DISTRICT, acting by and through the East Larimer County Water District Water Activity Enterprise** (“ELCO”), water activity enterprises of special districts organized under Title 32, Article 1, Colorado Revised Statutes (jointly, “Districts”) (Greeley and the Districts are collectively referred to as “Parties” and individually as “Party”).

WHEREAS, pursuant to C.R.S. § 29-1-203, governmental entities 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, in accordance with Greeley Municipal Code § 2.07.040, Greeley has the authority to enter into cooperative or joint activities with other governmental bodies by intergovernmental agreement; and

WHEREAS, Greeley and Districts previously entered into that certain Potable Water Intergovernmental Agreement dated September 27, 2018, which expired on November 15, 2018 (“2018 IGA”); and

WHEREAS, Greeley and the Districts are neighboring water providers and believe it to be in the best interest of all Parties and their constituents to provide for an interconnection between their respective potable water treatment and distribution systems to facilitate potential cooperation in treating and delivering water in the event of a disruption of water service adversely impacting any Party as a result of emergencies and/or operational disruptions; and

WHEREAS, Greeley and Districts wish to cooperate with one another in the design, construction, operation, repair, and maintenance of an additional shared interconnection, as set forth more fully below; and

WHEREAS, Greeley and Districts desire to reduce their understandings, and the terms and conditions of this Agreement, in writing as set forth below;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged, and in further consideration of the mutual covenants contained herein, Greeley and each of the Districts agree as follows:

- 1. DEFINITIONS.** For purposes of this Agreement, the following terms shall have the following meanings:
- A. Authorized Representative: With respect to the Districts, the Managers thereof or other responsible party having authority to authorize the sale or purchase of water and, with respect to Greeley, the Director of Water & Sewer or any employee designated by the Director of Water & Sewer to authorize the sale or purchase of water under this Agreement.
  - B. Bellvue Treatment Plant: The water treatment plant owned by Greeley located in Bellvue, Colorado.
  - C. C-BT Unit: One (1) unit of Colorado-Big Thompson Project water available under an allotment contract with the Northern Colorado Water Conservancy District.
  - D. Confidential Information: All engineering and operational data provided by any Party to any other Party in connection with this Agreement whether conveyed orally, observed visually, or reduced to a tangible or electronic medium, such as written, computerized, graphic, photographic, video and/or audio recording, where said data constitutes or contains details of a Party's water treatment, transmission, and/or distribution infrastructure, including specific engineering, vulnerability, detailed design information, protective measures, emergency response plans or system operational data that would be useful to a person in planning an attack on critical infrastructure but that does not simply provide the general location of such infrastructure. "Confidential Information" shall not include information: (i) already known to the Receiving Party (defined below) without restriction on use or disclosure prior to receipt of such information from the Disclosing Party (defined below); (ii) that is or becomes generally known to the public by means other than breach of this Agreement by or wrongful act of the Receiving Party; (iii) created or developed by the Receiving Party independently of and without reference to the Disclosing Party's Confidential Information; or (iv) received by the Receiving Party from a third party who has no obligation to the Disclosing Party to maintain confidentiality.
  - E. Delivery Point: The location of a physical interconnect between the Greeley Potable Water System and the Districts' Potable Water System at which a Providing Party delivers potable water to the Requesting Party regardless of whether such delivery point is at the Mason Interconnect, the Mulberry Interconnect or the Lemay Interconnect.
  - F. Delivery Request: A request submitted under Section 5 by the Requesting Party to the Providing Party for Water Treatment Services and delivery of potable water to the Delivery Point.
  - G. Disclosing Party: The Party disclosing Confidential Information.

- H. Districts' Potable Water System: Districts' Water Treatment Plant(s), potable water transmission systems, potable water distribution systems, potable water storage systems, and related infrastructure for the treatment, transmission, distribution, and measurement of potable water.
- I. Emergency Disruption: An unplanned shut-down of all or a part of a Requesting Party's Potable Water System due to emergency circumstances, including, but not limited to: (i) emergency upgrades, repairs or maintenance; (ii) incapacitation or interruption in the Requesting Party's ability to provide potable water service to its own customers because of unanticipated damage to the Requesting Party's raw water supply infrastructure, raw water supply source or the Requesting Party's Potable Water System; and (iii) unanticipated threatened or actual imminent danger to human health or the environment because of damage to the Requesting Party's raw water supply infrastructure, raw water supply source or the Requesting Party's Potable Water System.
- J. Engineering Data:
- i. Existing schematics, data, know-how, and other information reasonably necessary for the proper operation, maintenance, and repair of the Mason Interconnect, Mulberry Interconnect and Lemay Interconnect.
  - ii. Existing and future schematics, data, know-how, and other information reasonably necessary for the proper design and construction of the Mason Interconnect.
  - iii. Existing or future schematics, data, know-how, and other information that the Parties voluntarily elect to exchange between themselves related to either the Greeley Potable Water System and/or the Districts' Potable Water System.
- K. Greeley Potable Water System: Greeley's Water Treatment Plant(s), potable water transmission systems, potable water distribution systems, potable water storage systems, and related infrastructure for the treatment, transmission, distribution, and measurement of potable water.
- L. Lemay Interconnect: The existing piping, valves and related infrastructure connecting ELCO's twenty-four (24) inch water line with the twenty-seven (27) inch water line of Greeley located approximately one hundred (100) feet east of the intersection of North Lemay Avenue and Conifer Street, in Fort Collins, Colorado, as generally depicted upon **Exhibit A** attached hereto and incorporated herein by reference.
- M. Mulberry Interconnect: The existing piping, valves and related infrastructure connecting North Weld's twenty-four (24) inch water line with the 27-inch water line of Greeley located near the intersection of Summit View Drive and Mulberry Street, in Fort Collins, Colorado, as generally depicted upon **Exhibit B** attached hereto and incorporated herein by reference.

- N. Mason Interconnect: The piping, valves, meter vault and related infrastructure to be installed connecting Greeley's 60-inch water line and the Districts' 42-inch water line approximately ninety (90) feet west of the intersection of North Mason Street and Pinon Street in Fort Collins, Colorado, as generally depicted upon **Exhibit C** attached hereto and incorporated herein by reference.
- O. Operational Disruption: A planned shut-down of all or part of a Requesting Party's Potable Water System under non-emergency circumstances, including, but not limited to: (i) non-emergency upgrades, repairs or maintenance; (ii) incapacitation or interruption in the Requesting Party's ability to provide potable water service to its own customers because of anticipated damage or impairment to the Requesting Party's raw water supply infrastructure, raw water supply source or the Requesting Party's Potable Water System; and (iii) future danger to human health or the environment because of anticipated damage or impairment to the Requesting Party's raw water supply infrastructure, raw water supply source or the Requesting Party's Potable Water System.
- P. Other Water: A physical supply of water yielded pursuant to any water rights, contractual entitlements to water, mutual ditch company shares, ditch company shares, ditch rights, other direct flow rights, reservoir rights, other storage rights, plans for augmentation, substitute water supply plans, interruptible water supply agreements, alternative transfer mechanisms, or combination of the above, which:
- i. is not a C-BT Unit; and
  - ii. under the terms and conditions of a water court decree, substitute water supply plan, interruptible water supply agreement, alternative transfer mechanism, or other administrative or judicial process, is legally available for: a) treatment at the Providing Party's Water Treatment Plant(s); b) transmission through the Providing Party Potable Water System to the Delivery Point; c) distribution from the Delivery Point throughout the Requesting Party Potable Water System; e) use within the Requesting Party's service area and the Providing Party's service area; and d) is of suitable quality in the judgment of the Providing Party.
- Q. Providing Party: The "Providing Party" as defined in Section 5(A) below.
- R. Providing Party Potable Water System: The Providing Party's Water Treatment Plant(s), potable water transmission systems, potable water distribution systems, and related infrastructure for the treatment, transmission, distribution, and measurement of potable water
- S. Receiving Party: The Party receiving Confidential Information.
- T. Requesting Party: The "Requesting Party" as defined in Section 5(A) below.
- U. Requesting Party Potable Water System: The Requesting Party's Water Treatment Plant(s), potable water transmission systems, potable water distribution systems, and related infrastructure for the treatment, transmission, distribution, and measurement of potable water
- V. Soldier Canyon Filter Plant: The water treatment plant owned by the Soldier Canyon Water Treatment Authority located in Fort Collins, Colorado.



W. Water Treatment Plant: The Bellvue Treatment Plant, Soldier Canyon Filter Plant or other water treatment facilities, as applicable, of the Providing Party providing treated water to the Requesting Party.

X. Water Treatment Services: The Providing Party's act of treating the Requesting Party's raw water, as provided under this Agreement, and delivering the resultant potable water to the Requesting Party through a Delivery Point(s)

**2. INTENT OF AGREEMENT.** The Parties acknowledge that the purpose of this Agreement is to provide for the design, installation, operation, maintenance, repair of and payment for the Mason Interconnect, and the operation, maintenance, repair, and cost sharing for the Lemay, and Mulberry Interconnect to facilitate future potential cooperation of the Parties in the event of an Emergency Disruption and/or Operational Disruption to the water supply of any Party. However, no Party shall have any obligation to any other Party to provide potable water in the event of such Emergency Disruption and/or Operational Disruption unless authorized by an Authorized Representative of the Parties as set forth in Section 5 below. Notwithstanding the execution of this Agreement, the Parties acknowledge that the installation of the Mason Interconnect does not create an obligation among the Parties with respect to the use, treatment or delivery of water by one (1) Party to any other Party absent approval by an Authorized Representative of such Party pursuant to Section 5.

**3. FEES, PAYMENT TERMS, AND CONSTRUCTION AND DESIGN OF INTERCONNECTS.**

A. Unless otherwise mutually agreed upon in writing:

- i. each Party shall be responsible for one-third (1/3) of the total expenses of designing, constructing, operating, repairing, and maintaining the common components of the Mason Interconnect. In addition, Greeley and North Weld shall each be responsible for one-half (1/2) of the total expenses of operating, repairing, and maintaining the common components of the Mulberry Interconnect and Greeley and ELCO shall each be responsible for one-half (1/2) of the total expenses of operating, repairing, and maintaining the common components of the Lemay Interconnect. To the extent that a Party has participated in the operation, repair and maintenance (but not the design or construction) of the three (3) Interconnects, such Party shall receive a credit for in-kind services, staff-time, labor, parts, components, and travel time provided by such Party against any expenses for operation, repair and maintenance of the Interconnects otherwise payable by such Party, with such credit to be established based upon such Party's customary rates for time and materials provided ("Service and Material Credit"). Any Party seeking a Service and Material Credit in lieu of a cash payment of an invoice for the operation, repair and maintenance of the Interconnects shall furnish to the other Parties a statement in reasonable detail outlining the time and materials provided by the Party seeking to receive such Service and Material Credit. In the event the Service and Material Credit of a Party shall exceed such Party's pro rata share of the cost of the operation, repair and maintenance of the Interconnects, the other Parties shall reimburse such Party on a pro rata basis the amount in excess of such Service and Material Credit which exceeded such Party's pro rata share of such expenses;

- ii. Greeley shall be responsible at its sole expense for maintaining, repairing, and operating the infrastructure and components necessary for the delivery and metering of potable water from the Greeley Potable Water System to the Delivery Points;
  - iii. Districts shall be responsible at their sole expense for maintaining, repairing, and operating the infrastructure and components necessary for the delivery and metering of potable water from the Districts' Potable Water System to the Delivery Points;
  - iv. within one (1) year following the Effective Date of this Agreement, the Parties shall develop a written schedule for all three (3) Delivery Points detailing the type of maintenance required (*e.g.* telemetry testing, valve turning, record keeping for maintenance time, materials, labor, and costs, and meter calibration), timeline for conducting maintenance activities, required prior notice for maintenance and repair activities, and responsible Party or Parties for maintenance at each of the three (3) Delivery Points;
  - v. the acquisition of property interests, if any, shall be governed by separate written agreement; and
  - vi. promptly following receipt of invoices for expenses incurred in the design and construction of the Mason Interconnect, Greeley will invoice Districts for construction expenses and Districts will invoice Greeley for design expenses, in an amount equal to their respective pro rata share of such expenses; payment terms shall be net thirty (30) days following receipt of such invoice.
- B. Greeley shall have decision-making authority, management, and control over the contractor(s) selected to construct the Mason Interconnect. Greeley shall make a good faith effort to incorporate feedback, suggestions, and input from Districts concerning construction of the Mason Interconnect and shall consult with the design engineer as appropriate during construction of the Mason Interconnect. Districts shall have decision-making authority, management, and control over the consultant selected to design the Mason Interconnect. Districts shall make a good faith effort to incorporate feedback, suggestions, and input from Greeley concerning design of the Mason Interconnect and shall consult with the construction contractor as appropriate during the design and construction of the Mason Interconnect. In the event the Parties reach an impasse concerning the design or construction of the Mason Interconnect, where said impasse has a monetary value in excess of ten percent (10%) of the total construction and design cost of the Mason Interconnect, within fifteen (15) days of reaching said impasse, each Party shall appoint one (1) representative and the three (3) representatives shall vote as to the preferred design and/or construction solution to the impasse. For the sake of avoiding delays in construction or design completion, the Parties agree to promptly instruct the design consultant and/or construction contractor, as appropriate, to implement the solution receiving a simple majority of the representatives' votes. If any Party desires a change in the design or construction of the Mason Interconnect that is solely for the operational benefit of that Party, and will not materially injure the rights or infrastructure of the other Parties, the Party desiring such a change may elect to pay one-hundred percent (100%) of the costs associated with such a change and proceed forward regardless of any

representative vote. Notwithstanding any provision in this Section 3(B), the Parties' rights to pursue any legal course of action shall not be relinquished, waived, abridged or curtailed.

- C. In the event that Greeley sends written notice to Districts that it has determined that it is unable or unwilling to exercise its decision-making authority, management, and control over the construction of the Mason Interconnect, ELCO is designated by the Parties as an alternate to undertake such action, having the same authority as previously delegated to Greeley. Furthermore, in the event that ELCO determines that it is unable or unwilling to exercise decision-making authority, management, and control over the construction of the Mason Interconnect, North Weld is designated by the Parties as an alternate to undertake such action, having the same authority as initially delegated to Greeley.
  - D. The fee for the measured volume of potable water conveyed to a Party through a Delivery Point shall be one hundred five percent (105%) of the actual cost of treating the water at the Providing Party's Water Treatment Plant, based upon the Providing Party's reasonable and good faith determination of the cost per one thousand (1,000) gallons of water treated during the previous six (6) month period. The requirement for payment of one hundred five percent (105%) of the actual cost of water treatment by the Providing Party is equal to one hundred percent (100%) of the good faith determination of the cost of water treatment incurred by the Providing Party plus an additional allowance of five percent (5%) to cover delivery costs incurred by the Providing Party for the delivery of water to the Delivery Point for the Requesting Party.
  - E. In the event that Water Treatment Services are provided to a Requesting Party by a Providing Party pursuant to this Agreement for a period in excess of thirty (30) consecutive days, the Providing Party will send an invoice therefor to the Requesting Party at monthly intervals until the Providing Party terminates Water Treatment Services to the Requesting Party. In the event that Water Treatment Services are provided pursuant to this Agreement for a period less than thirty (30) consecutive days, the Providing Party will send an invoice therefor within thirty (30) days after the cessation of Water Treatment Services. The Requesting Party shall pay such invoices within thirty (30) days following its receipt thereof. The Parties agree not to invoice one another for water that delivered through a Delivery Point in connection with maintenance and repair activities.
  - F. The bi-directional water meters at any Delivery Point 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.
- 4. GRANT OF LICENSE.** To the extent necessary to carry out the respective duties and obligations of the Parties under this Agreement, each Party ("Licensor") grants to the other Parties (each, a "Licensee") and their respective employees, agents, representatives, contractors and subcontractors, a limited, non-exclusive license to enter upon, occupy and use that part of the Licensor's property ("Licensed Area") necessary for the limited purpose of performing the obligations of the Licensees under this Agreement. As a condition to the exercise of the license herein granted, the Licensees and those acting under their authority shall undertake all safety precautions and other requirements in accordance with applicable local, state and federal laws, rules, regulations and directives, including, but not limited to:

- i. The regulation of traffic flow in and out of the Licensed Area used by or on behalf of the Licensee.
- ii. The obligation to comply with all rules and regulations of the municipality, county and state with respect to the use of the Licensed Area being utilized by or on behalf of the Licensee.

Each Licensor shall have the right to utilize the Licensed Area and authorize others to use the Licensed Area on a non-exclusive basis for all purposes which the Licensor determines necessary in connection with its ownership of the Licensed Area. The license granted hereunder shall be personal in nature and shall not be assignable by a Licensee in whole or in part, and any such purported assignment shall be void.

## **5. PROVIDING POTABLE WATER.**

A. In the event that any one (1) or more Party(ies) (individually or jointly, a “Requesting Party”) requests delivery from any one (1) or more Party(ies) (individually or jointly, a “Providing Party”) and subject to final approval, as provided for in this Section 5, of an Authorized Representative of the Requesting Party and the Providing Party and any required consents or approvals from the Northern Colorado Water Conservancy District and/or providers of Other Water, the Requesting Party shall make available to the Providing Party at the Water Treatment Plant, C-BT Units in accordance with the rules and regulations of the Northern Colorado Water Conservancy District and/or providers of Other Water, which is acceptable to the Providing Party in its sole discretion, for the treatment and delivery by the Providing Party upon the following terms:

- i. In the event of an Emergency Disruption in the water supply of a Requesting Party, the Delivery Request may be made verbally by an Authorized Representative of the Requesting Party and the delivery of potable water by the Providing Party may be authorized verbally by the Authorized Representative of the Providing Party, subject to the following:
  - a) As soon as reasonably practical following the determination of an Emergency Disruption, the Requesting Party shall provide such information as is then available to it, including, to the extent then known and available:
    - 1) The daily volume of potable water requested and any anticipated fluctuations in such volume of water;
    - 2) The anticipated time period of the Emergency Disruption;
    - 3) The anticipated number of C-BT Units, Other Water or a combination of both, which is acceptable to the Providing Party in its sole discretion to be made available to the Providing Party for treatment at the Providing Party’s Water Treatment Plant;
    - 4) The designation of the Delivery Point desired for the delivery of potable water.
  - b) At its sole discretion, the Providing Party may provide Water Treatment Services in response to an Emergency Disruption Delivery Request. As soon as

reasonably practical following delivery of water pursuant to an Emergency Disruption, the Parties shall work together to create a written retroactive accounting of the raw water requirements of the measured volume of treated water delivered to the Requesting Party through the Delivery Point(s) and the total payments due to the Providing Party under Section 3(D) above.

- ii. In the event of an Operational Disruption in the water supply of a Requesting Party, an Authorized Representative of the Requesting Party shall submit a preliminary Delivery Request (“Preliminary Delivery Request”) to an Authorized Representative of the Providing Party as soon as reasonably possible prior to the occurrence of the Operational Disruption providing, to the extent then known and available, the following information:
  - a) The requested commencement date and time that the Requesting Party desires to receive water and the anticipated end date and time;
  - b) The circumstances causing the Operational Disruption;
  - c) The daily volume of potable water requested and any anticipated fluctuations in such volume of water;
  - d) The anticipated number of C-BT Units, Other Water, or both which is acceptable to the Providing Party in its sole discretion to be made available to the Providing Party for treatment at the Providing Party’s Water Treatment Plant;
  - e) The designation of the Delivery Point desired for the delivery of potable water.
- iii. Within ten (10) days following receipt of the Preliminary Delivery Request, the Providing Party shall respond with a preliminary Delivery Response (“Preliminary Delivery Response”) as to whether it intends to deliver potable water to the Requesting Party from its Water Treatment Plant in accordance with the Preliminary Delivery Request.
- iv. In the event the Delivery Point designated by the Requesting Party is the Mason Interconnect, the Providing Party and the Requesting Party shall notify a non-participating Party, if any, in order to address any potential impact which such water delivery may have upon the non-participating Party. In no event shall the delivery of water from the Mason Interconnect materially adversely affect the operation of the Potable Water System of the non-participating Party without the prior written consent of the non-participating Party.
- v. The Parties acknowledge that it is to the mutual benefit of both the Providing Party and the Requesting Party to be notified of an Operational Disruption of water service of the Requesting Party at the earliest possible time prior to full and complete knowledge of all of the details associated with the Requesting Party’s need for additional or supplemental water from a Providing Party. Consequently, the Requesting Party may modify its Preliminary Delivery Request and the Providing Party may modify its Preliminary Delivery Response from time to time as additional information becomes

available prior to the date upon which treated water is to be provided during the Operational Disruption. When the Requesting Party has sufficient details that it identifies its Delivery Request as “final” (“Final Delivery Request”), the Providing Party shall provide its final Delivery Response identified as “final” and not subject to further unilateral change (“Final Delivery Response”), whereupon, the Requesting Party and the Providing Party shall be bound by the terms and conditions of the Final Delivery Request and the Final Delivery Response.

- vi. Notwithstanding the provisions of Section 5(A)(v), after the initiation of Water Treatment Services the Parties may extend, supplement, modify or otherwise change any aspect of Water Treatment Services by mutual written agreement in the case of Operational Disruptions and by mutual verbal agreement in the case of Emergency Disruptions. The Parties’ Authorized Representatives shall have the authority necessary to enter into any such agreements.
- B. Unless specifically authorized by the Providing Party, the Requesting Party shall not cause any water from the Requesting Party’s Water System to flow into the Providing Party’s Water System. Upon scheduled termination of Water Treatment Services, the Providing Party or the Requesting Party with the consent of the Providing Party shall shut off the physical interconnect at the Delivery Point.

## **6. RAW WATER REQUIREMENTS.**

- A. In the event the Requesting Party solely designates C-BT Units in the Delivery Request to satisfy its raw water requirements, the following provisions apply:
- i. Subject to any required consents or approvals from, and in accordance with the Rules and Regulations of the Northern Colorado Water Conservancy District, the Requesting Party shall make available to the Providing Party at the Providing Party’s Water Treatment Plant, raw water in the form of C-BT Units, in the amount of one-hundred ten percent (110%) of total volume of potable water to be delivered to the Delivery Point under the terms of the Final Delivery Response. This requirement is equal to one-hundred percent (100%) of the potable water delivered to the Delivery Point, plus an additional allowance of ten percent (10%) to account for shrinkage due to treatment and system delivery losses.
  - ii. The Requesting Party’s act of making C-BT Units available at the Providing Party’s Water Treatment Plant under this Agreement shall not be considered, nor constitute, a Section 131 Contract, a Temporary Use Permit, a permanent transfer of C-BT Units, or a permanent transfer of any other interest under an allotment contract with the Northern Colorado Water Conservancy District.
  - iii. Any fees related to making C-BT Units available at the Providing Party’s Water Treatment Plant under this Agreement shall be the responsibility of the Requesting Party.
- B. In the event the Requesting Party designates Other Water in the Delivery Request to satisfy its raw water requirements in whole or in part, and the Providing Party, in its sole discretion, accepts the designation of Other Water, the following provisions apply:

- i. Subject to any required consents or approvals from water court, State Engineer's Office, or Division Engineer's Office governing the Other Water, the Requesting Party shall make available to the Providing Party at the Providing Party's Water Treatment Plant, raw water in the form of Other Water, in the amount of one-hundred ten percent (110%) of total volume of potable water to be delivered to the Delivery Point under the terms of the Final Delivery Response. This requirement is equal to one-hundred percent (100%) of the potable water delivered to the Delivery Point, plus an additional allowance of ten percent (10%) to account for shrinkage due to treatment and system delivery losses.
  - ii. The Requesting Party's act of making Other Water available at the Providing Party's Water Treatment Plant under this Agreement shall not be considered, nor constitute, a sale or permanent transfer of the water rights, contractual entitlements to water, mutual ditch company shares, ditch company shares, ditch rights, other direct flow rights, reservoir rights, other storage rights, plans for augmentation, substitute water supply plans, interruptible water supply agreements, alternative transfer mechanisms, or combination of the above that underlie the Other Water.
  - iii. Any fees related to making Other Water available at the Providing Party's Water Treatment Plant under this Agreement shall be the responsibility of the Requesting Party.
- C. In the event the Requesting Party designates a combination of Other Water and C-BT Units in the Final Delivery Request to satisfy its raw water requirements, then the provisions of Sections 6(A) and 6(B) shall both apply, except for the following modification: the total volume of raw water to be made available to the Providing Party at the Providing Party's Water Treatment Plant shall cumulatively equal one-hundred ten percent (110%) of total volume of potable water to be delivered to the Delivery Point under the terms of the Final Delivery Response.
- 7. WATER QUALITY.** The treated water delivered to the Delivery Point by the Providing Party shall be potable water of a quality which complies with all applicable federal and state laws and regulations regarding water quality.
- 8. FORCE MAJEURE.**
- A. Any delay or failure of either Party to perform its obligations under this Agreement will be excused to the extent that the delay or failure was caused directly by an event beyond such Party's control, without such Party's fault or negligence, and that by its nature and despite the exercise of reasonable due diligence and foresight, was unforeseeable by such Party or if unforeseeable was unavoidable.
  - B. Such excusable events shall not include a Party's financial inability to cover any cost or make any payment required under this Agreement.
  - C. Such excusable events may have natural or man-made causes, and include, without limitation, the following examples: floods; earthquakes; storms; lightening; fire; epidemics; embargoes; riots; labor disturbances; acts of terrorism; riots; failure of the Providing Party Potable Water System notwithstanding the provisions of Section 10(A); breach of a construction contract by a third party; or restraint by a court order.

- D. The Party unable to perform due to an excusable event will use all diligent efforts to end the event and ensure that the effects of any event are minimized. During the excusable event, the non-affected Party may suspend its obligations until such time as the affected Party resumes performance.

## **9. ENGINEERING DATA EXCHANGE.**

- A. Within ninety (90) days after the effective date of this Agreement, the Parties shall exchange with one another those categories of Engineering Data defined under Sections 1(J)(i) and (ii) which are reasonably necessary for the proper design, construction, operation and maintenance of the Mason Interconnect and the operation, maintenance and repair of the Mulberry Interconnect and Lemay Interconnect. In addition, the Parties may exchange such additional Engineering Data as they determine to be mutually beneficial to the Parties.
- B. The Parties agree that any Engineering Data exchanged under this Section 9 constitutes Confidential Information pursuant to Section 1 and shall be subject to the confidentiality provisions of Section 11.

**10. TERM OF AGREEMENT.** The term of this Agreement shall continue indefinitely unless terminated as provided below.

## **11. CONFIDENTIAL INFORMATION.**

- A. The Receiving Party agrees:
- i. not to disclose or otherwise make available Confidential Information of the Disclosing Party to any third party at any time without the prior written consent of the Disclosing Party, provided however that the Receiving Party may disclose the Confidential Information of the Disclosing Party to its officers, employees, consultants, contractors, and legal advisors who have a need to know, who have been apprised of this restriction, and who are themselves bound by nondisclosure obligations at least as restrictive as those set forth in this Section;
  - ii. to take all reasonable precautions to protect Confidential Information from unauthorized access and accidental disclosure, including, without limitation, all measures the Receiving Party takes with respect to its own Confidential Information;
  - iii. not to use the Disclosing Party's Confidential Information for any purpose except as permitted under this Agreement;
  - iv. to use the Disclosing Party's Confidential Information only for the purposes of performing its obligations under this Agreement and to allow contractors and consultants to use the Disclosing Party's Confidential Information only to the extent necessary to assist the Receiving Party in performing its obligations under this Agreement; and
  - v. to immediately notify the Disclosing Party in the event it becomes aware of any loss or disclosure of any of the Confidential Information of the Disclosing Party.
- B. If the Receiving Party receives a request under law for the Disclosing Party's Confidential Information, the Receiving Party shall notify the Disclosing Party. Furthermore, the Receiving



Party shall provide reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.

- C. If the Receiving Party becomes legally compelled to disclose any Confidential Information, the Receiving Party will reasonably attempt to provide:
  - i. prompt notice of such requirement so that the Disclosing Party may seek, at its sole cost and expense, a protective order or other remedy;
  - ii. reasonable assistance, at the Disclosing Party's sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure; and
  - iii. if, after providing such notice and assistance as required herein, the Receiving Party remains legally required to disclose any Confidential Information, the Receiving Party will disclose no more than the portion of the Confidential Information the Receiving Party is legally required to disclose.
- D. The Parties are political subdivisions, as that term is defined in the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* As such, the Parties are subject to the Colorado Open Records Act. To the extent compliance with the Colorado Open Records Act is in conflict with the obligations of the Parties under this Section 9, a Party's compliance with the Colorado Open Records Act will not be considered a breach of this Agreement. To the extent a Party holds information that the other Party is required to disclose pursuant to the Colorado Open Records Act, the holding Party agrees to cooperate with the other Party to comply with such disclosure requirements.
- E. The Parties acknowledge that a breach of this Section may cause the non-breaching Party irreparable damages, for which an award of damages would not be adequate compensation. Notwithstanding the provisions of Section 14, the Parties agree that in the event of an actual or threatened breach of this Section, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching Party may be entitled at law or in equity. Such remedies will not be deemed to be exclusive but will be in addition to all other remedies available at law or in equity.

## **12. LIMIT OF OBLIGATIONS AND NO RIGHTS IN EITHER WATER SYSTEM.**

- A. The Greeley Potable Water System and Greeley's non-potable water conveyance and storage infrastructure are assets of the Greeley Water Enterprise, as established under Section 17-1 of the Greeley City Charter and Section 14.04.050 of the Greeley City Code. An enterprise is defined under Article X, Section 20 of the Colorado Constitution. Accordingly, all of the aforementioned are owned by the citizens of Greeley. Similarly, the Districts Potable Water System, Districts' non-potable water conveyance and storage infrastructure, and the Districts' transmission and treatment systems are owned by the citizens of Districts.
- B. Districts specifically acknowledges and agrees that it acquires no rights nor ownership in the Greeley Potable Water System as a result of the water treatment service under this Agreement. Greeley specifically acknowledges and agrees that it acquires no rights nor ownership in the Districts Potable Water System as a result of the water treatment service under this Agreement. No Party shall, by reason of any provision in this Agreement or use of water hereunder or otherwise, acquire any vested or adverse right, in law or in equity, in the water rights or water

systems of the other Party. Neither the assignment, use, rental, nor license of Other Water or C-BT Units by any Party, nor costs covered or payments made under Section 3, shall be deemed to initiate, create, or vest any rights or ownership by either Greeley or Districts in the other Party's water rights or systems. Further, no Party shall assert or claim any vested rights to continued service, other than as established by the terms of this Agreement.

- C. This Agreement does not obligate any Party to provide Water Treatment Services to any other Party and the decision to provide Water Treatment Services shall be at the sole discretion of the Providing Party.
- D. Notwithstanding any term in this Agreement to the contrary, under no circumstances shall the Providing Party be required to undertake capital improvements to the Providing Party Potable Water System in order to provide potable water to the Requesting Party under this Agreement. However, in the event Greeley desires that meters be installed on the Mulberry Interconnect and the Lemay Interconnect to measure the volume of water transferred from the Districts' Potable Water System to the Greeley Potable Water System, the Districts shall in good faith consider the feasibility of the installation of such meters, provided that the cost for such design and installation shall be borne solely by Greeley inasmuch as the Mulberry Interconnect and the Lemay Interconnect are not bi-directional and are primarily intended for delivery of water to the Greeley Potable Water System and not to the Districts' Potable Water System.

### **13. NOTICE.**

- A. Except for the provisions of Section 5(A)(i)(a) and Section 5(A)(vi) to the extent it applies to Emergency Disruptions, all notices, requests, responses, consents, claims, demands, waivers, and other communications under this Agreement will be in writing and will be deemed to have been given:
  - i. on the date and at the time of delivery if delivered personally to the party to whom notice is given;
  - ii. on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is given, or attempted to be given, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed;
  - iii. on the date and at the time shown on the facsimile if telecopied, provided that receipt thereof is acknowledged by the intended recipient thereof;
  - iv. on the date and at the time shown on the electronic mail (email) if emailed, provided that receipt thereof is acknowledged by the intended recipient thereof; or
  - v. on the date shown on the delivery acknowledgment provided by the courier if sent by a nationally-recognized overnight courier service that provides evidence of delivery.
- B. Such notices must be sent to the Parties at the respective addresses, facsimile numbers, and e-mail addresses indicated below (or to updated contact information for a Party as specified in a notice given in accordance with this Section):

- i. **City of Greeley**

1001 11th Avenue, 2nd Floor  
Greeley, CO 80631  
Attention: Water & Sewer Department  
Email: [adam.prior@greeleygov.com](mailto:adam.prior@greeleygov.com)  
Facsimile: 970-350-9805

*With a copy to:*

1100 10th Street, Suite 401  
Greeley, CO 80631  
Attention: Office of the City Attorney  
Email: [Aaron.Goldman@Greeleygov.com](mailto:Aaron.Goldman@Greeleygov.com)  
Facsimile: 970-350-9763

ii. **North Weld County Water District**

32825 CR 39  
P.O. Box 56  
Lucerne, CO 80646  
Attention: Eric Reckentine, Manager  
Email: [ericr@nwcwd.org](mailto:ericr@nwcwd.org)  
Telephone: (970) 356-3020  
Facsimile: (970) 395-0997

*With a copy to:*

Hasler, Fonfara and Goddard LLP  
125 S. Howes Street, 6<sup>th</sup> Floor (Zip Code: 80521)  
P.O. Box 2267  
Fort Collins, CO 80522  
Attention: Joseph H. Fonfara  
Email: [JoeF@HFGLawfirm.com](mailto:JoeF@HFGLawfirm.com)  
Telephone: (970) 493-5070  
Facsimile: (970) 493-9703

iii. **East Larimer County Water District**

232 S. Link Lane (Zip Code: 80524)

P.O. Box 2044

Fort Collins, CO 80522

Attention: Mike Scheid, Manager

Email: mikes@elcowater.org

Telephone: (970) 493-2044

Facsimile: (970) 493-1801

*With a copy to:*

Hasler, Fonfara and Goddard LLP

125 S. Howes Street, 6<sup>th</sup> Floor (Zip Code: 80521)

P.O. Box 2267

Fort Collins, CO 80522

Attention: Joseph H. Fonfara

Email: JoeF@HFGLawfirm.com

Telephone: (970) 493-5070

Facsimile: (970) 493-9703

#### **14. TERMINATION.**

- A. In the event any Party fails to meet its obligations under this Agreement, such failure shall constitute a default of this Agreement and the non-defaulting Party(ies) may give notice of the perceived default. Any Party may cure an asserted default during the ninety (90) days immediately following the notice. Upon a mutually agreed upon cure in writing of an asserted default, this Agreement shall remain in full force and effect. Upon receipt of notice of perceived default, a defaulting Party may invoke the dispute resolution process described in Section 23.
- B. If the default consists of the failure to design and/or construct the Mason Interconnect and after the ninety (90) day cure period described above, or after a mutually agreed upon written extension thereof, the non-defaulting party(ies) reasonably determine(s) that the default has not been cured, the non-defaulting party(ies) may terminate this Agreement. Except as provided in the preceding sentence, if any other default hereunder has not been cured within the ninety (90) day cure period described above, or after a mutually agreed upon written extension thereof, then any Party shall have the right to commence an action against the defaulting Party(ies) for specific performance or damages, or both.
- C. Concerning Confidential Information, in the event this Agreement is terminated, the Disclosing Party shall have the right to require the destruction of Confidential Information in possession or control of the Receiving Party as set forth in this Section 14(C). Such right shall expire three (3) years after the termination of this Agreement. Upon written request by the Disclosing Party, the Receiving Party will, as soon as practicable but in no event later than one-hundred eighty (180) days, destroy, erase, or de-identify all Confidential Information in the Receiving Party's possession or control.

- 15. NO INTEGRATED SYSTEM.** No term or condition of this Agreement or any Exhibits thereto shall be interpreted as creating an “integrated system” within the meaning of the Colorado Primary Drinking Water Regulations, 5 C.C.R. § 1002-11. This Agreement shall not be interpreted as creating an “integrated system” as that term is used in C.R.S. § 37-92-301(4)(b).
- 16. NO PUBLIC UTILITIES COMMISSION CONTROL.** Each Party agrees that it shall not assert nor support any statement, policy, petition, rule making, or legislation that would attempt to subject the Districts or Greeley to the rate-making authority or jurisdiction of the Colorado Public Utilities Commission.
- 17. GOVERNMENTAL IMMUNITY.** No term or condition of this Agreement or any Exhibits thereto shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections and limitations provided by common law or state statute, including the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*
- 18. NO THIRD PARTY BENEFICIARIES.** The terms and conditions of this Agreement, enforcement of the same, and any claim, suit, action, petition, or proceeding relating to such enforcement, are strictly reserved to the Parties. Nothing in this Agreement or any Exhibits thereto shall be construed or interpreted as giving or allowing any claim, suit, action, petition, or proceeding to any third party. It is the express intention of the Parties that any third party receiving any services or benefits under this Agreement shall be deemed at most an incidental beneficiary only.
- 19. GOVERNING LAW AND VENUE.** This Agreement will be governed by and construed in accordance with the internal laws of the State of Colorado without giving effect to any choice or conflict of law provision or rule (whether of the State of Colorado or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Colorado. Any legal suit, action, or proceeding arising out of, related to, or resulting from this Agreement will be instituted exclusively in the 19th Judicial District of the State of Colorado located in the County of Weld, City of Greeley, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Any legal suit, action, or proceeding so commenced shall be maintained and remain exclusively in the aforementioned court and any courts having appellate jurisdiction over them.
- 20. ENTIRE AGREEMENT.** This Agreement and any Exhibits thereto constitute the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.
- 21. SEVERABILITY AND WAIVER.** If any term or condition of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or condition of this Agreement or invalidate or render unenforceable such term or condition in any other jurisdiction. Any single failure to exercise or partial exercise of any right, remedy, power, or privilege under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 22. ASSIGNMENT.** No Party, without the prior written consent of the other Parties, may assign, transfer, or delegate any or all of its rights or obligations under this Agreement. No assignment

will relieve the assigning Party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing will be null and void. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

**23. ALTERNATIVE DISPUTE RESOLUTION.** Except as otherwise provided in Sections 3(B) and 3(C) above, in the event of a disagreement regarding the interpretation of any term or condition of this Agreement, the Parties agree to attempt resolution of such disagreement through negotiation, first at the staff level and second through the respective board of directors, Water Boards, and/or City Councils. Procedures for such negotiations shall be established by written mutual agreement at the time and may, with the concurrence of the Parties, involve the use of qualified outside mediators. Any resolution reached therefrom must be in writing and within the legal authority granted to each Party by their respective City Charter, organizational documents and applicable State law.

**24. SURVIVAL.** In addition to any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, the following Sections shall also so survive: 1, 11, 12, 13, 14, 15, 17, 18, 19, 20, 22 and 23.

[Remainder of Page Intentionally Blank]

**IN WITNESS WHEREOF**, the Parties have authorized and executed this Intergovernmental Agreement for Potable Water Interconnect as of the Effective Date first written above.

**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

**North Weld County Water District,  
acting by and through the North Weld  
County Water District Enterprise**

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

President

**East Larimer County Water District,  
acting by and through the East Larimer  
County Water District Water Activity Enterprise**

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

President



**EXHIBIT A**

Depiction of Lemay Interconnect

[Attached on Following Page]



# City of Greeley Water Transmission System

## Depiction of Lemay Interconnect



Parcels Larimer

Water Main

Air Release

Gate

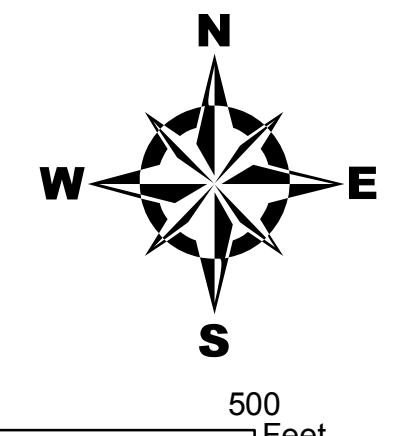
Ball

Blow Off

Butterfly

Fire LineHydrant ValveTapping0250500

Feet





**EXHIBIT B**

Depiction of Mulberry Interconnect

[Attached on Following Page]



# City of Greeley Water Transmission System

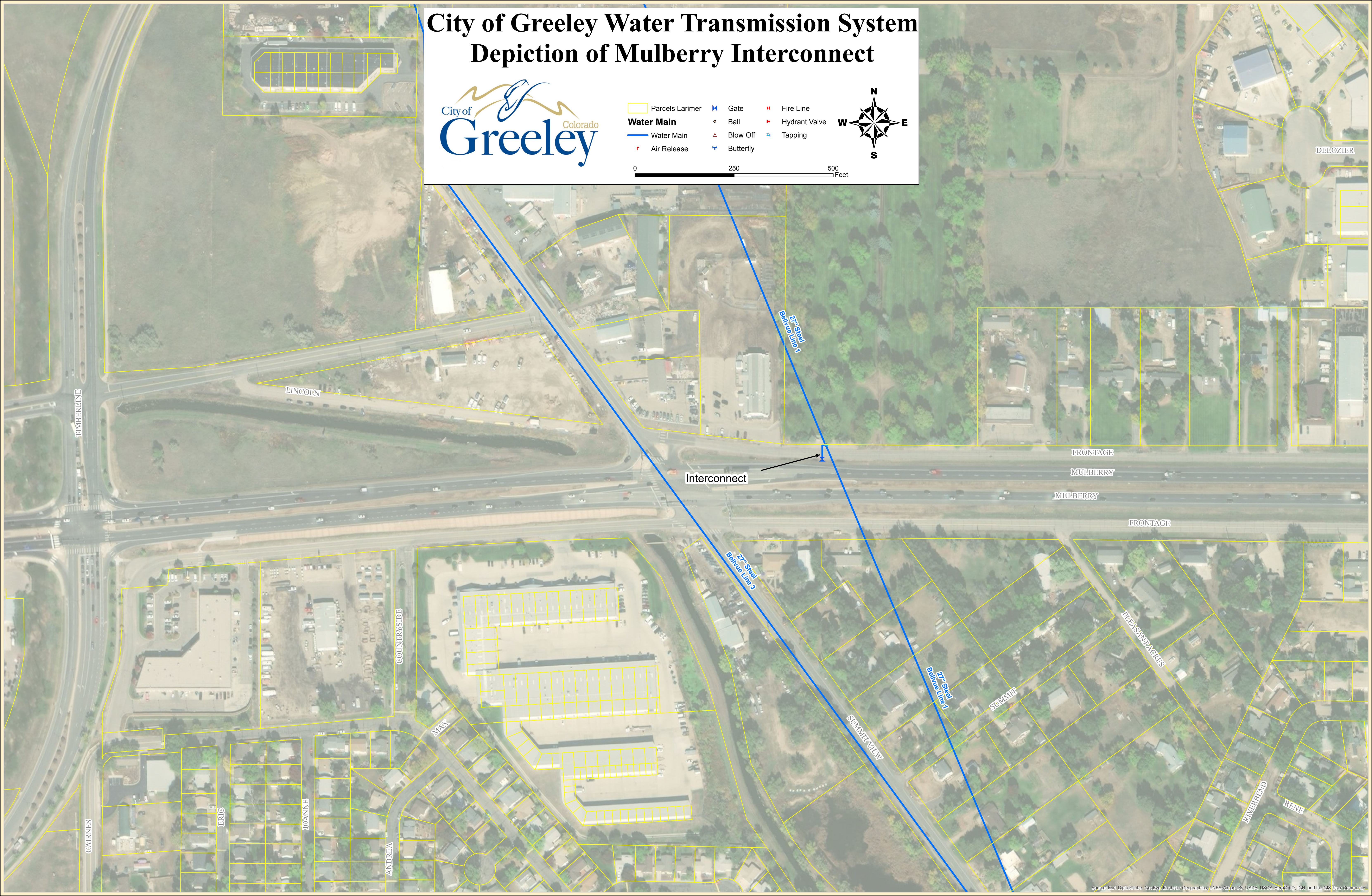
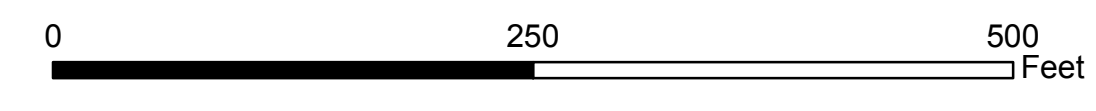
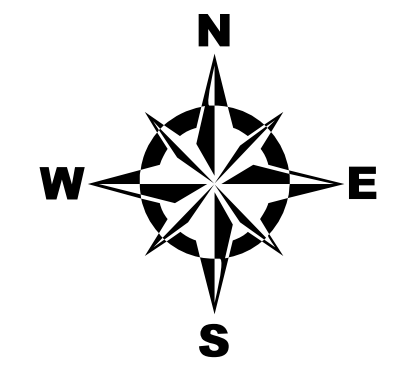
## Depiction of Mulberry Interconnect



- Parcels Larimer
- Water Main**
- Water Main
  - Air Release

- Gate
- Ball
- Blow Off
- Butterfly

- Fire Line
- Hydrant Valve
- Tapping





## **EXHIBIT C**

### Depiction of Mason Interconnect

[Attached on Following Page]



# City of Greeley Water Transmission System

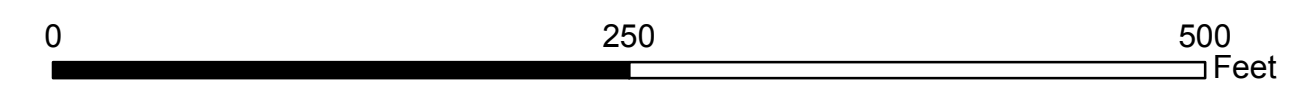
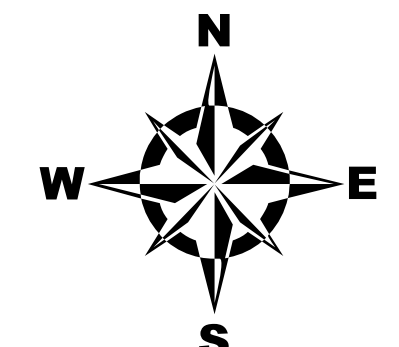
## Depiction of Mason Interconnect



- Parcels Larimer
- Water Main**
- Water Main
- Air Release

- Gate
- Ball
- Blow Off
- Butterfly

- Fire Line
- Hydrant Valve
- Tapping



HEMLOCK

MASON

PINON

Approximate location  
of future interconnect

COLLEGE

ALPINE

WOODLAWN

JEROME

OSIANDER

CAJETAN

PASCAL



# Greeley-ELCO-NWCWD IGA for Potable Water Interconnect



September 18, 2019

# Value of the Proposed IGA for Potable Water Interconnection and Water Service

- Potable Water Interconnections Create Value for Greeley:
  - Potable Supply Delivery Redundancy and Resiliency
  - Operational Flexibility for Major Maintenance
  - Potential Operational Efficiency
  - Emergency Response - Regional Resiliency
- Existing Interconnects are not large capacity nor are they equipped with metering
- Currently there is no agreement authorizing staff level implementation of treat and deliver terms
  - Important for managing issues like Horsetooth gate maintenance, Bellvue WTP construction shutdowns, a major case of contamination in the Boyd/LL system or similar emergency





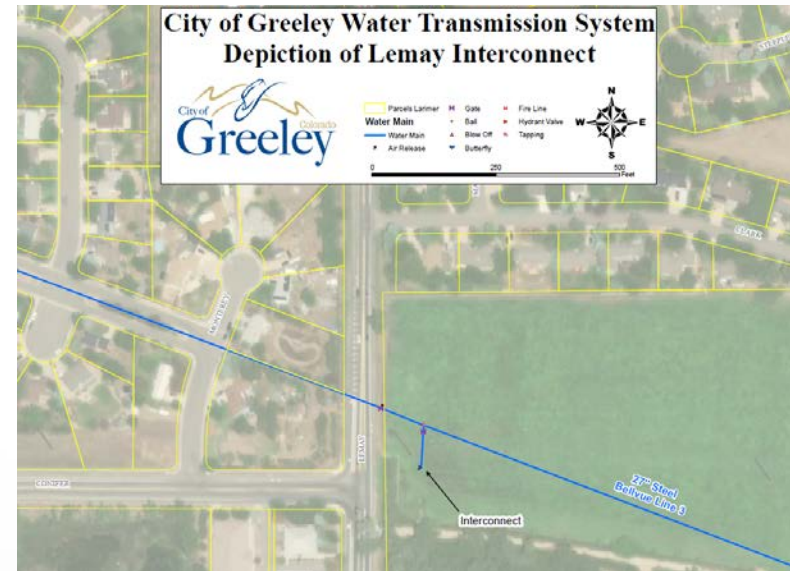
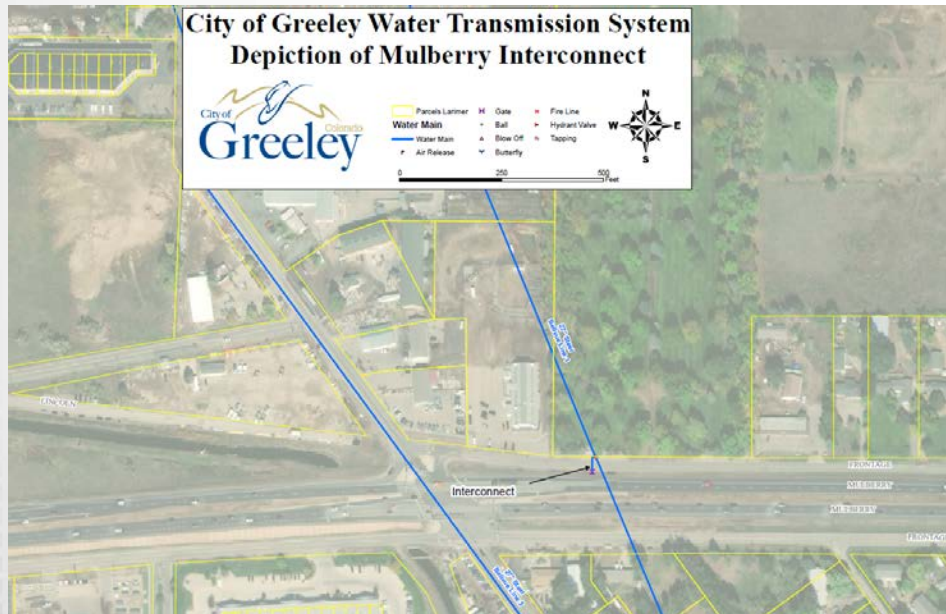
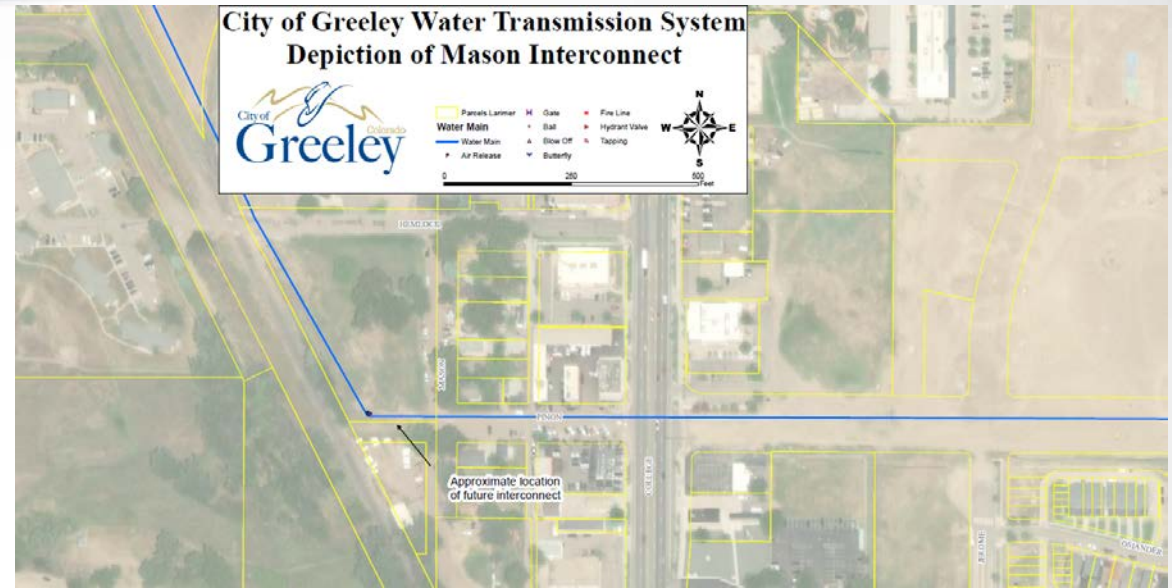
# Attributes of the Potable Water IGA

- IGA also Governs the process for requesting use of treatment and interconnection delivery from interconnects
  - Lemay interconnects Greeley's 27" Main with ELCO's 24" Potable Main
  - Mulberry interconnects Greeley's 27" Main with NWCWD's 24" Potable Main
  - Mason proposes to interconnect Greeley's 60" Main with the District's 42" Potable Main
- Each request for treatment and delivery is to be evaluated by the Providing Party
  - Acceptance of request is at the sole discretion of the providing party
  - Available treatment, conveyance and financial capacities are all potential criteria for evaluation by the providing party



# Interconnections Between Greeley and the Districts

1. Mason
2. Lemay
3. Mulberry



# Terms of Use for Providing Potable Water via Interconnects

- For a party to request treatment and delivery through one of the interconnections, they should provide the following to all parties:
  1. The proposed source of supply legally available for diversion and delivery
  2. The daily volume of potable water requested and any anticipated fluctuations in the volume
  3. The anticipated duration of the treat and delivery arrangement
  4. The anticipated amount of water, number of CBT Units or other supply units required for transfer to the treating party
  5. Designation of the delivery point (location of the interconnect)

# **Staff Recommended Action:**

The terms of the agreement have been negotiated over the past 10 months with many iterative drafts shared among the parties to refine the terms and legal protections.

Staff is confident in the value and system resiliency this IGA and the interconnect project bring to Greeley, therefore staff recommends the following action;

**Recommend to City Council Approval of the Intergovernmental Agreement for Potable Water Interconnect**



# QUESTIONS?

**WATER & SEWER BOARD AGENDA    SEPTEMBER 18, 2019**

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:                7

TITLE:                        LEGAL REPORT

POSSIBLE ACTION:            STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION:        INFORMATION ONLY

ADDITIONAL INFORMATION:  
LEGAL STAFF WILL UPDATE.

Legal Report  
Greeley Water and Sewer Board Meeting  
September 18, 2019

I. Statements of Opposition:

None

II. Case Update

- a. **Linn Grove Diligence Application:** Greeley filed a diligence application at the end of August for the conditional groundwater, surface storage rights and exchanges originally decreed in Case No. 11CW260. These water rights are decreed for irrigation at the Linn Grove Cemetery. Greeley is seeking to make a portion of the Linn Grove Well B and the Linn Grove Pond No. 1 & No. 2 water rights absolute. Statements of opposition are will be due at the end of October.



**WATER & SEWER BOARD AGENDA** SEPTEMBER 18, 2019

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           8

TITLE:                   EXECUTIVE SESSION

RECOMMENDATION:    INFORMATION ONLY

ADDITIONAL INFORMATION:

- MATTERS RELATED TO POTENTIAL ACQUISITION OF WATER STORAGE
- MATTERS RELATED TO THAYER FARM

**WATER & SEWER BOARD AGENDA    SEPTEMBER 18, 2019**

ENCLOSURE   X              NO ENCLOSURE       

ITEM NUMBER:                    9

TITLE:                            PURCHASE AND SALE AGREEMENT FOR  
   THAYER

RECOMMENDATION:    APPROVE AND RECOMMEND TO COUNCIL  
THE PURCHASE AND SALE AGREEMENT FOR THAYER FARM

ADDITIONAL INFORMATION:

STAFF RECOMMENDS THAT THE WATER AND SEWER BOARD APPROVE THE PURCHASE AND SALE AGREEMENT FOR WATER RIGHTS AND LAND WITH THE WYNONA B. THAYER REVOCABLE TRUST (THAYER FARM). THE PURCHASE WILL INCLUDE 4 SHARES OF WINDSOR RESERVOIR AND CANAL COMPANY, 3 SHARES OF LARIMER AND WELD IRRIGATION COMPANY AND +/- 129 ACRES OF LAND. THE TOTAL PURCHASE PRICE IS \$2,770,000.00.

PURCHASE AND SALE AGREEMENT  
(Thayer Farm)

THIS PURCHASE AND SALE AGREEMENT ("this Agreement") is made and entered into by and between the WYNONA B. THAYER REVOCABLE TRUST ("Seller"), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its Water and Sewer Board ("City" or "Greeley").

RECITALS

A. Seller owns the real property, which is legally described on Exhibit "A-1" and depicted on Exhibit "A-2", attached hereto and incorporated herein by reference (the "Entire Property"). The Entire Property consists of two (2) adjacent platted lots, Lot A and Lot B, on which various improvements and irrigation equipment are located.

B. Seller has agreed to process through the Weld County Planning Department an Application for an Amended Recorded Exemption in order to change the configuration and boundaries of Lots A and B. The Application will request Weld County approval of an Amended Recorded Exemption, creating (i) an amended legal lot consisting of approximately seven (7) acres located in the northeast corner of the Entire Property (the "Retained Property"), and (ii) an amended legal lot for the remainder of the Entire Property consisting of approximately one hundred thirty (130) acres (the "Land"). The Land is generally described on Exhibit "B-1" and depicted on Exhibit "B-2", attached hereto and incorporated herein by reference.

C. Seller owns four shares of stock in the Windsor Reservoir and Canal Company; three shares of stock in the Larimer and Weld Irrigation Company; and one-half share of stock in the Roullard Lateral Company, more fully described on Exhibit "C-1," with copies of the stock certificates attached to Exhibit "C-2", attached hereto and incorporated herein by reference ("Water Shares"). Said Water Shares have been used to irrigate the Land.

D. Subject to Weld County's approval of the Amended Recorded Exemption, and the other terms and conditions set forth in this Agreement, Seller desires to sell to Greeley, and Greeley desires to purchase from Seller, the Land and the Water Shares, with Seller retaining the Retained Property.

E. The parties desire to set forth the terms and conditions whereby Seller shall sell and Greeley shall purchase the Land and the Water Shares, together with other appurtenant property rights and water rights associated therewith, as more fully provided hereinafter.

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

## AGREEMENT

### ARTICLE 1 DEFINITIONS

For purposes of this Agreement, and unless defined elsewhere in this Agreement, the following terms shall have the following meanings

1.1 "City" or "Greeley" shall mean and refer to the City of Greeley, Colorado, a Colorado home rule municipal corporation, acting by and through its Water and Sewer Board.

1.2 "Effective Date" shall mean and refer to the date upon which the last party hereunder signs this Agreement.

1.3 "Entire Property" shall have the meaning set forth in Recital A hereinabove.

1.4 "Improvements" shall have the meaning set forth in Section 2.2 hereinafter.

1.5 "Land" shall have the meaning set forth in Recital B hereinabove.

1.6 "Water Shares" shall have the meaning set forth in Recital C hereinabove.

The above definitions are in addition to the various definitions subsequently set forth in this Agreement.

### ARTICLE 2 SALE OF PROPERTY

Seller agrees to sell, and Greeley agrees to purchase, on the terms and conditions set forth in this Agreement, the Property (defined below). Except as excluded in Section 2.6 below, the "Property" shall include, and Seller shall convey to Greeley at "Closing" (defined below), the following:

2.1 Land. The Land, together with all rights, title and interest of Seller in and to all reversions, remainders, easements, rights of way, appurtenances (including all plants, trees, landscaping and other appurtenances), licenses, tenements and hereditaments appertaining to or otherwise benefiting or used in connection with the Land or the "Improvements" (defined below) located thereon.

2.2 Improvements. All existing improvements, structures, pipes and fixtures placed, constructed, installed or located on the Land; all irrigation equipment currently located on and used for the irrigation of the Land, including but not limited to the existing center-pivot sprinkler system and all associated pumps, motors, pipes, and fuel injection systems and other similar irrigation equipment located on the Land; and all fences, gates and other improvements, if any, upon, over or under the Land (the "Improvements"). The irrigation equipment is roughly described on Exhibit "D" attached hereto and incorporated herein by reference.

The Land and the Improvements are sometimes hereinafter jointly referred to as the "Real Estate."

2.3 Water Rights. All of the following water rights and related interests to be conveyed hereunder include the following (collectively the "Water Rights"):

A. The Water Shares, described in Recital C, together with all rights, title, and interest of Seller in and to the water and water rights, ditches and ditch rights, reservoirs and reservoir rights, easements, and any other assets and interests represented by the Water Shares; and

B. All rights, title, and interest of Seller in and to any and all other water, water rights, ditches, ditch rights, wells, well rights, well permits, reservoirs and reservoir rights, and related rights and interests that are appurtenant to, or used on or in connection with, the Land, whether tributary, nontributary or not nontributary. The water rights covered by this provision shall also include all rights, title, and interest of Seller in and to any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Land.

2.4 Permits, Licenses, Etc. All rights, title and interest of Seller, without warranty of any type, in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development, use or operation of the Property.

2.5 Other Rights. Any and all other rights, privileges and appurtenances owned by Seller, without warranty of any type, which relate to or are used in connection with the Property to the extent that they are assignable.

2.6 Exclusions. The Property does not include, and Seller expressly excepts and reserves, the following:

A. All irrigation and farming equipment and other items of personal property belonging to the "Existing Tenants" (as hereinafter defined).

### ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price. The purchase price for the Property shall be the sum of \$2,770,000.00 ("Purchase Price"). The Purchase Price shall be payable as follows:

3.2 Deposit and Release of Deposit. Within fourteen (14) days following the Effective Date, Greeley shall cause the amount of Twenty-five Thousand Dollars (\$25,000.00) ("Deposit") to be deposited with Land Title Guarantee Company, 772 Whalers Way, Suite 100, Fort Collins, Colorado (title officer: Heidi Crue; closing officer: Donna Mancini) (the "Title Company"). The Deposit shall be held by the Title Company in a federally insured account to be credited toward the Purchase Price. The Deposit shall be refundable to Greeley at any time prior to the expiration

of the "Inspection Period" (defined below) if Greeley is not satisfied with the Property, and shall be subject to return to Greeley upon termination of this Agreement by Greeley pursuant to Article 4, Article 5, Section 6.1, Section 11.3 and Article 12 below. Except as set forth in the preceding sentence, the Deposit shall be non-refundable to Greeley.

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

3.4 Payable at Closing. The Purchase Price (i) minus the Deposit; (ii) plus any other amounts required to be paid by Greeley at Closing; and (iii) plus or minus any prorations or credits, shall be paid at Closing by wire transfer of immediately available funds.

#### ARTICLE 4 TITLE

4.1 Title Documents. Within the time periods set forth below, Seller shall provide to Greeley the following:

A. Within fourteen (14) days after the Effective Date, Seller shall provide a commitment for an owner's policy of title insurance ("Title Commitment"), issued by the Title Company covering the Real Estate and indicating the Title Company's willingness to issue to Greeley at Closing the "Title Policy" (defined below) in the amount of the Purchase Price, with such Title Commitment setting forth the status of title to the Real Estate and showing all liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the Real Estate.

B. Within fourteen (14) days after the Effective Date, Seller shall provide copies of all recorded documents referred to in the Title Commitment as exceptions to title to the Property ("Title Documents").

C. Within fourteen (14) days after the Effective Date, Seller shall provide, to the extent the same are in Seller's possession, copies of all (i) governmental permits, licenses, certificates and authorizations relating to the construction, development, use or operation of the Property; (ii) well permits relating to the exposure of groundwater to evaporation and/or consumption, together with any "substitute water supply plans" describing methods used to replace evaporative and consumptive groundwater losses; (iii) 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, the stock certificates for the Water Shares, records regarding electrical use and crop and livestock production, and any records provided to or maintained by the ditch companies concerning the Water Shares, including without limitation share certificate records, delivery records, and assessment records (or, in the alternative, Seller shall exercise reasonable diligence to obtain for Greeley the right to inspect and copy the respective ditch companies' records); (iv) material and current contracts or other agreements relating to the operation, maintenance or leasing of the Property or any portion thereof; and (v) other material agreements affecting the Property which are not included in the Title Documents provided by the Title Company.



D. Within fourteen (14) days after the Effective Date, Seller shall complete and execute a historical use questionnaire and affidavit for the Water Shares in the form attached hereto as Exhibit "E."

E. As soon as practicable, Seller shall provide Greeley with copies, in substantially final form, of the Amended Recorded Exemption plat and any other documents which Seller intends to record in connection with the subdivision of the Entire Property (collectively, "Amended Recorded Exemption Documents"). Upon receipt of the Amended Recorded Exemption Documents, and subject to Greeley's approval of the same, this Agreement will be deemed amended to incorporate the legal description of the Land on Exhibit "B-1" and to replace depiction of the Land on Exhibit "B-2." The Parties will enter into a written amendment to document the same. If there are any amendments to the Amended Recorded Exemption Documents between the initial delivery of the Amended Recorded Exemption Documents to Greeley under this Section 4.1 and the date of "County Approval" (defined below), Seller shall promptly notify and provide the same to Greeley. If Greeley does not approve the modified Amended Recorded Exemption Documents, then Greeley may elect to terminate this Agreement by giving written notice to Seller within seven (7) days after Greeley's receipt of the modified Amended Recorded Exemption Documents. Upon termination of this Agreement and except as otherwise provided herein, the Deposit shall be returned to Greeley and neither Seller nor Greeley shall have any further obligation or liability to the other hereunder, except for those obligations that, by their nature, are intended to survive the termination of this Agreement.

4.2 Survey. Not less than seven (7) days prior to the expiration of the Inspection Period, Greeley shall have prepared a ALTA/ACSM Land Title Survey, in substantially final form, of the Real Estate ("Survey") containing the Minimum Standard Detail Requirements required by the Title Company to delete preprinted standard Title Exceptions 1 through 5 in the Title Commitment. Greeley shall take commercially reasonable efforts to have the Survey finalized and certified for the benefit of Greeley and the Title Company within fourteen (14) days of the "Recording Date" (defined below). In order to prepare and finalize the Amended Recorded Exemption Documents and the Survey within the limited timeframe contemplated by this Agreement, the Parties have agreed to use King Surveyors, located at 650 E Garden Dr, Windsor, CO 80550, to prepare both the Amended Recorded Exemption plat and the Survey.

4.3 Condition of Title. Title to the Property shall be delivered to Greeley and Greeley agrees to accept such title free and clear of all liens and encumbrances subject only to each of the following ("Permitted Exceptions"):

A. All exceptions, reservations, covenants, easements, agreements, restrictions and other recorded documents set forth in the Title Commitment, except for mortgages, mechanic's liens and other financial encumbrances, which shall be discharged by Seller at Closing.

B. General property taxes for the year of Closing, provided that such taxes shall be prorated to the "Closing Date" (defined below").

C. Any state of facts as may be shown on the Survey.

D. The Amended Recorded Exemption Documents.

E. Any matters created by or through Greeley.

Greeley expressly acknowledges that the Property is subject to an existing written lease (the "Existing Lease") in which Milt Bartmann and Coleen Bartmann are the tenants (the "Existing Tenants"). The Existing Lease includes the Entire Property (i.e., both the Retained Property and the Land). Seller has the right to terminate the Existing Lease as of December 31, 2019, by giving written notice to the Existing Tenants prior to October 1, 2019 (the "Lease Termination Notice"). Seller expressly agrees to give the Lease Termination Notice to the Existing Tenants on or before October 1, 2019. The annual rent payable by the Existing Tenants for calendar year 2019 shall be retained by Seller (i.e., shall not be prorated between Seller and Greeley at Closing).

4.4 Vesting of Title. At Closing, Seller shall convey fee simple title to: (i) the Real Estate to Greeley by Special Warranty Deed (substantially in the form attached hereto as Exhibit "F"), free and clear of all liens and encumbrances, subject only to the Permitted Exceptions, and (ii) the Water Rights to Greeley by Special Warranty Deed (substantially in the form attached hereto as Exhibit "G"), free and clear of all liens and encumbrances.

4.5 Exceptions to Title; Notice. If Seller or the Title Company gives Greeley notice of a title exception that is not a Permitted Exception and that arose subsequent to the Effective Date, or was not disclosed in the Title Commitment, then Greeley shall disapprove of such exceptions, if at all, by giving written notice of objection to Seller within fourteen (14) days after receiving notice from Seller or the Title Company. Any such exception not objected to in writing within such fourteen (14) day period shall be deemed an additional Permitted Exception. Seller may elect (but shall not be obligated) to remove, or cause to be removed at its expense, any such disapproved exceptions (collectively, "Disapproved Matters") or, with Greeley's approval, Seller may elect (but shall not be obligated) to obtain title insurance insuring against the effect of the Disapproved Matters. Seller shall notify Greeley in writing within seven (7) days after receipt of Greeley's notice of Disapproved Matters if Seller elects to remove or obtain insurance for such matters. If Seller fails or is unable to remove or (with approval of Greeley) cause the Title Company to endorse over any such Disapproved Matters prior to Closing, or if Seller elects not to remove one (1) or more Disapproved Matters, or if Greeley does not approve endorsing over such matter, Greeley may, upon seven (7) days' prior written notice to Seller, elect to terminate this Agreement. Upon termination of this Agreement and except as otherwise provided herein, the Deposit shall be returned to Greeley and neither Seller nor Greeley shall have any further obligation or liability to the other hereunder, except for those obligations that, by their nature, are intended to survive the termination of this Agreement.

4.6 Title Insurance. As soon as practicable at or after Closing, the Title Company shall issue to Greeley an ALTA owner's form of title insurance policy, insuring that fee simple title to the Real Estate is vested in Greeley subject to the Permitted Exceptions ("Title Policy"). Greeley shall be entitled to request that the Title Company delete preprinted standard Title Exceptions 1 through 5 from the Title Policy, the cost thereof to be paid for by Seller, and any other endorsements to the Title Policy as Greeley may reasonably require, provided that such



other endorsements shall be at Greeley's sole cost and expense and at no cost or additional liability to Seller and that Closing shall not be delayed as a result of Greeley's request.

## ARTICLE 5 INSPECTION PERIOD

5.1 Inspection Period. During the period that commences upon the Effective Date and continues until and including 5:00 p.m., Mountain Time on the sixtieth (60<sup>th</sup>) day after the Effective Date, or the fourteenth (14<sup>th</sup>) day after the Amended Recorded Exemption Documents are provided to and received by Greeley pursuant to Section 4.1 E above, whichever is later ("Inspection Period"), Greeley and its authorized agents, representatives and consultants shall be entitled to enter upon the Property at all reasonable times to inspect the Property for the purpose of making surveys, soils tests, permeability tests, test borings, engineering tests, environmental audits and tests, feasibility studies and any other inspections, investigations or analyses Greeley deems necessary or appropriate in connection with its intended acquisition, use and development of the Property. Greeley shall bear the cost of all such inspections and tests. Seller agrees to reasonably cooperate with any such inspections, investigations and surveys or studies made by or at Greeley's direction so long as such cooperation is at no material expense to Seller.

5.2 Inspection. Greeley and its authorized agents, representatives and consultants shall (i) not unreasonably interfere with the operation and maintenance of the Property (ii) shall comply with any reasonable requirements imposed upon Greeley in connection with such inspection; (iii) shall not injure or otherwise cause bodily harm to Seller, the Existing Tenants, or their agents, contractors or employees; (iv) shall promptly pay when due the costs of all tests, investigations and examinations done with regard to the Property; (v) shall not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (vi) shall restore the Property as nearly as practicable to substantially the same condition in which the Property was found before any such investigations or tests were undertaken. Notwithstanding any provision of this Agreement to the contrary, no termination of this Agreement shall terminate Greeley's obligations pursuant to this Article 5.

5.3 Termination. If during the Inspection Period, Greeley, for any reason, in Greeley's sole discretion, judgment, and opinion, disapproves of or is dissatisfied with any aspect of the Property or its investigations relating thereto, Greeley shall be entitled to terminate this Agreement by giving written notice to Seller on or before the expiration of the Inspection Period. Upon termination of this Agreement prior to the expiration of the Inspection Period, and except as otherwise provided herein, the Deposit shall be returned to Greeley and neither Seller nor Greeley shall have any further obligation or liability to the other hereunder except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

If Greeley does not provide written notice of termination to Seller prior to the expiration of the Inspection Period, Greeley shall not be entitled to the Deposit if, for any reason other than as a result of a default by Seller or pursuant to Article 4, this Article 5, Section 6.1, Section 11.3 or Article 12, the Closing of this transaction does not occur. The Title Company shall be authorized to release the Deposit to Seller after the expiration of the Inspection Period.

5.4 Continuing Inspections. Following the Inspection Period, Greeley shall continue to be authorized to enter upon the Real Estate at all reasonable times and subject to the terms and conditions of Section 5.2.

5.5 Appraisal. Greeley may request an appraisal of the Property to confirm that the appraised value of the Property is equal to or greater than the Purchase Price. The cost of the appraisal shall be paid for by Greeley. In addition to Section 6.1, if the Property is appraised for less than the Purchase Price, then Greeley has the sole option and election to terminate this Agreement on or before the end of the Inspection Period. Upon termination of this Agreement by Greeley pursuant to this Section 5.5, and except as otherwise provided herein, the Deposit shall be returned to Greeley and neither Seller nor Greeley shall have any further obligation or liability to the other hereunder except for those obligations, which, by their nature, are intended to survive the termination of this Agreement.

## ARTICLE 6 CLOSING CONTINGENCIES; CLOSING

6.1 Closing Contingencies. The obligation of Greeley to purchase the Property is subject to satisfaction of the following contingencies:

A. Governing Body Approval. Unless waived, Greeley's obligation to purchase the Property is subject to the approval of this Agreement by the Greeley Water and Sewer Board ("Board") and the appropriation of funds for the purchase of the Property within thirty (30) days following the expiration of the Inspection Period ("Governmental Approval Period"). In the event that the Board has not ratified and approved this Agreement and appropriated funds for the purchase of the Property prior to the expiration of the Governmental Approval Period, then, in such event, upon written notice by Greeley to Seller, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley and neither party shall have any further obligation to the other hereunder except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

B. Appraisal. Unless waived, Greeley's obligation to purchase the Property is subject to the appraised value of the Property being equal to or greater than the Purchase Price. In the event that the Property is appraised for less than the Purchase Price, and the difference between the appraised value of the Property and the Purchase Price is not approved and this contingency is not waived by the Board within the Governmental Approval Period, then, in such event, upon written notice by Greeley to Seller, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley and neither party shall have any further obligation to the other hereunder except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

C. County Approval. Unless waived, Greeley's obligation to purchase the Property is subject to Weld County approval of the Amended Recorded Exemption Documents in the form provided to and approved by Greeley under Section 4.1 E. ("County Approval"). Immediately prior to County Approval and recording of the Amended Recorded Exemption Documents ("Recording Date"), Seller shall provide Greeley copies of the Amended Recorded

Exemption Documents to confirm that the same are in the form provided to and approved by Greeley pursuant to Section 4.1 E. Seller shall act diligently and in good faith to accomplish County Approval and take commercially reasonable efforts to establish the Recording Date within seven (7) days of the expiration of the Governmental Approval Period. After recording the Amended Recorded Exemption Documents, Seller shall provide copies of the recorded Amended Recorded Exemption Documents to Greeley at which time this Agreement will be deemed amended to define the Land consistent with the Amended Recorded Exemption Documents without any further written action. If any changes are made to the Amended Recorded Exemption Documents between the initial delivery under Section 4.1. E. and County Approval, and Greeley does not waive or approve such changes, then, in such event, upon written notice by Greeley to Seller, this Agreement shall terminate, whereupon the Deposit shall be returned to Greeley and neither party shall have any further obligation to the other hereunder except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

6.2 Closing. The closing of this transaction ("Closing" or "Closing Date") shall occur at 1:30 p.m. at the Law Offices of Hasler, Fonfara and Goddard LLP, 125 South Howes, Sixth Floor, Fort Collins, Colorado, on the later of the first business day which is at least (i) twenty-eight (28) days after the expiration of the Governmental Approval Period, or (ii) seven (7) days after the Survey has been finalized and certified for the benefit of Greeley and the Title Company ("Certification Date"), or (iii) by mutual agreement at an alternate time or earlier date. The Certification Date shall be the date identified within the surveyor's stamp affixed to the Survey. A representative of the Title Company shall attend the Closing and shall provide closing and settlement services.

6.3 Transactions at Closing. On the Closing Date:

A. Seller shall deliver or cause to be delivered to Greeley the following documents duly executed and acknowledged where appropriate:

(1) A Special Warranty Deed (substantially in the form attached hereto) conveying the Real Estate to Greeley free and clear of all liens and encumbrances and subject only to the applicable Permitted Exceptions.

(2) A Special Warranty Deed (substantially in the form attached hereto) conveying the Water Rights to Greeley free and clear of all liens and encumbrances, and all other documents necessary to transfer the Water Rights to Greeley.

(3) The original Windsor Reservoir and Canal Company Stock Certificate No. 714 for two (2) shares; the original Windsor Reservoir and Canal Company Stock Certificate No. 790 for two (2) shares; the original Larimer and Weld Irrigation Company Stock Certificate No. 6395 for three (3) shares; and the original Roullard Lateral Company Stock Certificate No. 416 for one-half (1/2) share, together with all other documents necessary to transfer the Water Shares, including an assignment to Greeley of the Water Shares represented by the foregoing shares in a form and manner acceptable to the companies.

(4) A Bill of Sale, warranting title to the Improvements, and an assignment, without warranty of any type, of Seller's rights, title and interest in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development, use or operation of the Real Estate and any other right, privilege and appurtenances owned by Seller which relate to or are used in connection with the Real Estate.

(5) If applicable, a partial assignment of the Existing Lease (the "Partial Lease Assignment"). The Partial Lease Assignment shall only assign to Greeley the provisions of the Existing Lease that are applicable to the Property, not to the provisions that are applicable to the Retained Property. As aforesaid, Seller shall cause the Existing Lease to terminate as of December 31, 2019.

(6) A certificate of non-foreign status to confirm that Buyer is not required to withhold part of the Purchase Price pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, together with any certificates required pursuant to Colorado law.

(7) A mechanic's lien affidavit in favor of the Title Company in a form sufficient for the Title Company to delete preprinted standard Title Exceptions 1 through 5.

(8) A statement certifying that the representations and warranties of the Seller contained in Articles 8 and 10 of this Agreement are true, correct and complete in all material respects, and are unmodified or amended as of the Closing Date as though such representations and warranties were made at and as of the Closing Date.

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

B. Greeley shall deliver to Seller the following:

(1) The Purchase Price, subject to credits and adjustments as herein provided, and such additional sums as are necessary to pay Greeley's share of closing costs, prorations and any fees as more particularly set forth herein.

(2) Documentation in such form as may be satisfactory to Seller and the Title Company, evidencing Greeley's full authority and capacity to purchase the Property.

(3) A mechanic's lien affidavit in favor of the Title Company in a form reasonably acceptable to Greeley.

(4) Such additional documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.

#### ARTICLE 7 PRORATIONS; CLOSING COSTS

7.1 Prorations. All real estate taxes attributable to the Property for the calendar year



in which the Closing occurs shall be prorated at the Closing on the basis of the most recent mill levy for the Property and the current assessed value for the Property, unless the actual real estate taxes for the current year are known on the Closing Date. Assessments on the Water Rights for 2019 shall be paid by Seller and shall not be prorated between Seller and Greeley. As aforesaid, annual rent payable by the Existing Tenants for calendar year 2019 shall not be prorated between Seller and Greeley. Any special assessments against the Property shall be paid in full by Seller at the time of Closing. Prorations of taxes and assessments at Closing shall be a final settlement.

7.2 Closing Costs. Greeley shall pay for the cost of recording of all of the deeds, all title insurance endorsements (excluding the cost for deletion of preprinted standard Title Exceptions 1 through 5) and one-half (1/2) of the Title Company closing fee. Greeley shall also pay the transfer fee for the Water Shares. Seller shall pay the basic premium for the Title Policy, the cost for deletion of preprinted standard Title Exceptions 1 through 5 and one-half (1/2) of the Title Company closing fee. Each party shall pay its own attorneys' fees.

7.3 Utilities. Utilities, if any, serving the Property shall be prorated between the parties to the Closing Date.

## ARTICLE 8 REPRESENTATIONS AND WARRANTIES OF SELLER

8.1 Representations and Warranties. Seller represents and warrants to Greeley as follows:

A. Encumbrances. From the Effective Date until the Closing, and except for the Permitted Exceptions, and except as may be necessary to obtain approval of the Amended Recorded Exemption, Seller shall not encumber the Property or any interest in any way nor grant any property or contract right relating to the Property or any other interests without the prior written consent of Greeley.

B. Compliance with Governmental Regulations. To the best of Seller's current actual knowledge, there are no orders or directives of any city, county, state or federal authority, for repairs, maintenance work or improvements to be performed on the Property. Seller has received no written notice from any municipal, state or other statutory authority relating to defects in any improvements, or non-compliance with any building code or restriction, applicable to the Property that has not been corrected, or any written notice of or impending expropriation or condemnation of the Property.

C. Litigation. To the best of Seller's current actual knowledge, there is no dispute, action or litigation pending or threatened respecting the ownership or use of the Property or other interests related thereto.

D. Contracts, Leases and Agreements. From the Effective Date until the Closing, unless accepted by Greeley in writing, Seller shall not enter into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Property or the performance of services on the Property by which Greeley would be obligated or liable to any

third party.

E. Status. Seller has all requisite legal power and authority to own and convey the Property and other interests and perform all of the terms of this Agreement.

F. Compliance with Law. To the best of Seller's current actual knowledge, Seller has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the Property, and Seller has no current actual knowledge of any proposed order, judgment, decree, governmental taking or other proceeding applicable to Seller, which might adversely affect the Property.

G. Zoning. Seller has not requested, applied for, or given its consent to, and to the best of Seller's current actual knowledge, there are no pending requests for, zoning variances or changes with respect to the Property or its zoning. The Amended Recorded Exemption Documents shall not be interpreted to be a prohibited activity under this Section.

H. Right of First Refusal. Seller has confirmed that the conveyance of the Water Shares, pursuant to the terms of this Agreement, is not subject to the right of first refusal contained in Article 11, Section 7, of the Amended and Restated Bylaws of the Larimer and Weld Irrigation Company or Article 11, Section 7, of the Amended and Restated Bylaws of WRCC, Inc.

8.2 Certificate. Seller shall provide Greeley with a written certification at Closing confirming that the foregoing representations are true and correct as of the Closing Date.

## ARTICLE 9 COVENANTS

9.1 Continuing Covenants of Seller: Water Rights Adjudication. The parties acknowledge and agree that changes of water rights and/or other water rights adjudications may be necessary to allow Greeley use of the Water Rights for municipal and other uses. Unless this Agreement is terminated pursuant to the provisions herein, Seller agrees that it shall not oppose, but shall cooperate with Greeley, in any actions filed in Water Court or administrative or other proceedings for approval of Greeley's use of the Water Rights. Seller's obligations pursuant to this Section 9.1 shall survive the Closing.

## ARTICLE 10 ENVIRONMENTAL CONDITIONS

10.1 Definitions. For purposes of this Article 10, the following terms shall have the following meanings:

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

B. "Environmental Laws" means all federal, state and local environmental,

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

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

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

E. "Release" has the meaning given to that term in CERCLA and the regulations promulgated thereunder.

10.2 Representations and Warranties. Except as set forth in "Seller's Disclosure" which appears at the end of this Section 10.2, Seller represents and warrants to Greeley, to Seller's knowledge, as follows:

A. Other than fertilizers and pesticides used in connection with the use of the Property as a farm, the Land is not being and has not been used for the storage, treatment, generation, transportation, processing, handling, production, discharge or disposal of any Hazardous Substance or as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum-based products.

B. No storage tanks for Hazardous Substances are, were, or will be located on, in or under the Land at any time prior to the Closing Date.

C. The soil, subsoil, bedrock, surface water and groundwater of the Land are free of any Hazardous Substances.

D. Other than minor incidental spills of hydraulic or petroleum products from farm equipment, there has been no Release nor is there the threat of a Release of any Hazardous

Substances on, at or from the Land, or any facilities located thereon, and Seller has not received any form of notice or inquiry from any federal, state or local government agency or authority, any operator, tenant, subtenant, licensee or occupant of the Land or any other person with regard to a Release or the threat of a Release of any Hazardous Substances on, at or from the Land, or any facilities located thereon.

E. All required Environmental Permits have been obtained and are in full force and effect.

F. No event has occurred with respect to the Property that, with the passage of time, would constitute a violation of any currently applicable Environmental Law or non-compliance with any Environmental Permit.

G. There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Property which require any change in the present condition of the Land or any work, repairs, construction, containment, clean up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Property.

H. There are no pending actions, suits, claims or proceedings which could cause the incurrence of expenses or costs or which seek money damages, injunctive relief, remedial action or any other remedy that arise out of, relate to or result from (i) a violation or alleged violation of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (ii) the presence of any Hazardous Substance or a Release or the threat of a Release on, at or from the Land or any facilities located thereon or (iii) human exposure to any Hazardous Substance, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Land or the ownership, use, operation, sale, transfer or conveyance thereof.

I. Seller has not received notice that any treatment, storage or disposal facility, or any other place to which Hazardous Substances generated from the Land by Seller or its agent were transported, delivered or came to be located (i) has been, or is now the subject of any Release or threatened Release; (ii) has been, or is now, subject to any threatened or pending federal, state or local investigation relating to compliance with any Environmental Law; or (iii) has been, or is now, subject to any threatened or pending enforcement or remedial action.

J. There are no studies or surveys indicating the presence on the Land of any species listed as endangered or threatened pursuant to Section 4 of the Endangered Species Act (16 U.S.C. Section 1533).

Seller shall provide Greeley with a written certification at Closing confirming that the foregoing representations are true and correct as of the Closing Date.

SELLER'S DISCLOSURE. SELLER HEREBY DISCLOSES TO GREELEY THAT OIL AND/OR GAS PRODUCTION FACILITIES WERE PREVIOUSLY LOCATED ON THE



LAND, INCLUDING ASSOCIATED STORAGE TANKS AND PIPELINES. SELLER IS UNAWARE AS TO WHETHER ALL SUCH FACILITIES WERE PROPERLY REMOVED FROM THE LAND AND/OR WHETHER ANY OIL OR GAS SPILLS OCCURRED.

10.3 Covenants. During its period of ownership of the Land, Seller covenants and agrees to and with Greeley as follows:

A. Seller shall keep the Land free of all Hazardous Substances and shall not cause or permit the Land or any part thereof to be used for the management, storage, treatment, generation, transportation, processing, handling, production, discharge or disposal of any Hazardous Substances.

B. Seller shall comply with all applicable Environmental Laws and shall obtain and comply with all Environmental Permits.

C. Seller shall not cause or permit any change to be made in the present or intended use of the Land that would (i) involve the management, storage, treatment, generation, transportation, processing, handling, production, discharge or disposal of any Hazardous Substances or the use of the Land as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum-based products, (ii) violate any applicable Environmental Law (iii) constitute non-compliance with any Environmental Permit, or (iv) increase the risk of a Release.

D. Seller shall promptly provide Greeley with a copy of all written notifications given or received with respect to any past or present Release or the threat of a Release on, at or from the Land or any facilities located thereon.

E. Seller shall at all times allow Greeley and its officers, employees, agents, representatives, contractors and subcontractors, upon reasonable notice and at reasonable times, access to the Land for the purpose of ascertaining site conditions, including, but not limited to, subsurface conditions.

10.4 Intentionally Deleted.

10.5 Intentionally Deleted.

10.6 Survival of Environmental Representations, Warranties, and Covenants. Seller's environmental representations, warranties, and covenants under this Article 10 shall survive the Closing for a period of two years after the Closing Date.

10.7 Seller's Knowledge. Any representations or warranties made "to Seller's knowledge," "Seller's actual knowledge," or similar term shall not be deemed to imply any duty of inquiry. For purposes of this Agreement, the term Seller's "knowledge" shall mean and refer only to the actual knowledge of Jill S. Cook, but shall not be construed to impose upon Jill S. Cook any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon Jill S. Cook any individual personal liability, except for any

liabilities related to the non-disclosure of such knowledge.

ARTICLE 11  
CONDITIONS TO CLOSING; REMEDIES

11.1 Seller's Conditions. The obligation of Seller to sell and convey the Property under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Seller):

A. Delivery and execution by Greeley of all monies, items, and other instruments required to be delivered by Greeley to Seller.

B. All of the actions by Greeley contemplated by this Agreement shall have been completed.

C. There shall be no uncured default by Greeley of any of its obligations under this Agreement.

11.2 Greeley's Conditions. The obligation of Greeley to acquire the Property under this Agreement is subject to the satisfaction of the following conditions precedent or conditions concurrent (the satisfaction of which may be waived only in writing by Greeley):

A. Delivery and execution by Seller of all items and other instruments required to be delivered by Seller to Greeley.

B. All of the actions by Seller contemplated by this Agreement shall have been taken.

C. There shall be no uncured default by Seller of any of its obligations under this Agreement.

D. The covenants, warranties and representations made by Seller as specifically set forth herein shall be true and correct as of the Closing Date and shall not be deemed waived in the event Greeley shall elect to close pursuant to Section 11.3.A.(3) below.

11.3 Failure of Condition.

A. Except as set forth in subparagraph B below, in the event of a failure of any condition contained in Section 11.2, Greeley may in its sole discretion:

(1) Terminate this Agreement by notice to Seller, in which event: (a) all funds deposited by Greeley under this Agreement shall be immediately returned to Greeley; and (b) all documents deposited by Greeley or delivered to Seller by Greeley shall be immediately returned to Greeley, and all documents deposited by Seller or delivered to Greeley by Seller shall be immediately returned to Seller; or

(2) Greeley may waive such default or condition and close the transaction; or

(3) If the failure of condition consists of a default by Seller that can be cured by action within the reasonable control of Seller, Greeley may elect to treat this Agreement as being in full force and effect and Greeley shall have the right to specific performance or damages, or both.

B. In the event of a failure of any condition contained in Section 11.1 above, Seller may in its sole discretion:

(1) Terminate this Agreement by notice to Greeley, in which event Seller shall retain the Deposit as liquidated damages, as is further described in Article 13 below, and all documents deposited by Greeley or delivered to Seller by Greeley shall be immediately returned to Greeley, and all documents deposited by Seller or delivered to Greeley by Seller shall be immediately returned to Seller; or

(2) Seller may waive such default or condition and close the transaction.

#### ARTICLE 12 CONDEMNATION

If prior to Closing all or a "Material Part" (defined below) of the Property is subject to a proposed taking by any public authority, Seller shall promptly notify Greeley of such proposed taking and Greeley may terminate this Agreement by notice to Seller within fourteen (14) days after written notice thereof. If Greeley so elects, and following the return of the Deposit to Greeley, this Agreement (with the exception of those obligations which by their nature are intended to survive the termination of this Agreement) shall be of no further force and effect. If Greeley does not so terminate this Agreement, Greeley shall accept title to the Property subject to the taking without a reduction in the Purchase Price and shall receive at Closing an assignment of all of Seller's rights to any condemnation award and Greeley shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. A "Material Part" of the Property for purposes of this Article 12 shall mean a portion that would have a material adverse effect on Greeley's use of the Property as determined by Greeley in its good faith judgment.

#### ARTICLE 13 LIQUIDATED DAMAGES

If Greeley defaults in any of its obligations under this Agreement, Seller's exclusive remedy shall be to terminate this Agreement and retain the amount of the Deposit described in Sections 3.2 and 3.3 ("Specified Sum"), as liquidated damages. SELLER AND GREELEY ACKNOWLEDGE THAT SELLER'S DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED SUM IS A REASONABLE ESTIMATE OF SELLER'S DAMAGES.

ARTICLE 14  
BROKERAGE

Hayden Outdoors, LLC, which represents Seller, is entitled to payment of a brokerage commission by Seller from the proceeds of this transaction in accordance with the terms of a separate written agreement ("Brokerage Commission"). Hayden Outdoors, LLC has agreed to share the Brokerage Commission with HydroSource, Inc., which represents Greeley, in accordance with the terms of a separate written agreement. Aside from the foregoing Brokerage Commission, Seller and Greeley hereby warrant to each other that there are no other real estate agents or other brokers or finders involved in this transaction who are entitled to receive a brokerage or finder's fee. Seller agrees to indemnify Greeley and hold Greeley harmless from any loss, liability, damage, cost or expense (including, without limitation, reasonable attorneys' fees) paid or incurred by Greeley by reason of any claim to any broker's, finder's or other fee in connection with this transaction by any third party claiming by, through or under Seller, excluding, however, any party claiming through Greeley, its successors or assigns. This obligation shall survive the Closing of this transaction.

ARTICLE 15  
NOTICES

Any notice or other communication given by any of the parties hereto to another relating to this Agreement shall be in writing and shall be deemed to have been duly given (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 and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at the address specified below; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed as specified below; (iv) 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 in writing by the intended recipient; or (v) on the date and at the time shown on the e-mail message if acknowledged in writing by the intended recipient:

If to Seller:

Wynona B. Thayer Revocable Trust  
Attention: Jill S. Cook  
5450 East County Road 32E  
Fort Collins, Colorado 80528  
Telephone: (970) 420-9332  
Email: cookdvm4@gmail.com

With a copy to:

Timothy W. Hasler, Esq.  
Hasler, Fonfara and Goddard LLP  
125 South Howes Street, 6th Floor  
Fort Collins, Colorado 80521  
Telephone: (970) 493-5070  
Facsimile: (970) 493-9703  
Email: timh@hfglawfirm.com

If to Greeley:

City of Greeley, Water and Sewer Department  
Attention: Cole Gustafson, Ag Water & Farm Asset Coordinator  
1001 11<sup>th</sup> Street, 2nd Floor  
Greeley, CO 80631  
Telephone: (970) 350-9816  
Facsimile: (970) 350-9805  
Email: cole.gustafson@greeleygov.com

With a copy to:

City of Greeley  
Attention: Senior Assistant City Attorney  
1100 10<sup>th</sup> Street, Ste. 401  
Greeley, CO 80631  
Telephone: (970) 350-9762  
Facsimile: (970) 350-9763  
Email: jerrae.swanson@greeleygov.com

#### ARTICLE 16 MISCELLANEOUS

16.1 No Waiver of Governmental Immunity/No Third Party Beneficiary. This Agreement shall not create any duty of care or liability with respect to any person or entity not a party to this Agreement, or waive any of the privileges or immunities Greeley or its officers, employees, successors and assigns may present pursuant to law, including, but not limited to, the Colorado Governmental Immunity Act, C.R.S. 24-10-101, et seq., as amended.

16.2 Seller 1031 Exchange. At the request of Seller, Greeley 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. A material part of the consideration to Seller is Greeley's promise of cooperation. Greeley shall not be required to incur any additional liability or expense in connection with Seller's tax-deferred exchange transaction nor shall Greeley be required to accept title to any real property other than the



Property described hereinabove.

16.3 Time. Time is of the essence as to each provision of this Agreement and the performance of each party's obligations hereunder.

16.4 Attorneys' Fees. If any legal action, arbitration or other proceeding is commenced to enforce or interpret any provision of this Agreement or to enforce any indemnity, the prevailing party shall be awarded its attorneys' fees and expenses, in addition to any other relief granted. The phrase "prevailing party" shall include a party who receives substantially the relief desired whether by dismissal, summary judgment, judgment or otherwise. This provision shall survive the termination of this Agreement.

16.5 No Waiver. No waiver by any party of the performance or satisfaction of any covenant or condition shall be valid unless in writing and shall not be considered to be a waiver by such party of any other covenant or condition hereunder.

16.6 Entire Agreement. This Agreement contains the entire agreement among the parties regarding the Property and supersedes all prior agreements, whether written or oral, among the parties regarding the same subject. This Agreement may only be modified by mutual written agreement duly authorized and executed by the parties.

16.7 Survival of Representations and Warranties. Except as otherwise provided in Articles 8 and 10, all representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations of Seller and Greeley as set forth in this Agreement shall survive the Closing and consummation of this transaction contemplated by this Agreement until the complete discharge thereof.

16.8 Successors. Subject to Section 16.9, this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

16.9 Assignment. Seller and Greeley shall have the right to assign all or any part of their interests in this Agreement and the Property as they shall determine without the prior written consent of the other party, provided that no such assignment shall relieve either of the parties from its respective obligations hereunder if such obligations are not properly discharged by the assignee of such party. In the event either of the parties shall elect to exercise their right of assignment as set forth in this Section 16.9, such party shall give not less than fourteen (14) days' prior written notice to the other party of such assignment and, without releasing the assignor from its liabilities hereunder, the assignee shall agree to assume and discharge any then remaining duties and obligations under this Agreement.

16.10 Relationship of the Parties. The parties acknowledge that neither party is an agent for the other party, and that neither party shall or can bind or enter into agreements for the other party.

16.11 Governing Law and Construction. This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the laws of the State of Colorado. The parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

16.12 Possession. Seller shall deliver to Greeley possession of the Property on the Closing Date, subject to the Permitted Exceptions, including the Existing Lease, if applicable.

16.13 Review by Counsel. The parties acknowledge that each party and its legal counsel have reviewed and approved this Agreement.

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

16.15 Counterparts. This Agreement may be executed in any number of counterparts each of which, when taken together, shall constitute one agreement. This Agreement shall only be effective when counterparts are signed by both Seller and Greeley.

16.16 Acceptance. Upon execution and delivery of this Agreement by Seller or Greeley, this Agreement shall constitute an offer to purchase the Property on the terms and conditions set forth herein. The foregoing notwithstanding, any party may revoke its execution and delivery at any time prior to the execution and delivery by the other party(ies), by delivering oral or written notice (which need not conform with the requirements of Article 15 hereof) of such revocation to the other party(ies).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

SELLER:

WYNONA B. THAYER REVOCABLE TRUST

By:   
Name: Bill S. Cook  
Title: Trustee

Date: September 10, 2019

[GREELEY'S SIGNATURE PAGE FOLLOWS]



GREELEY: THE CITY OF GREELEY,  
COLORADO, a Colorado home rule  
municipal corporation, acting by and  
through the Greeley Water and Sewer  
Board.

By \_\_\_\_\_  
Name: Harold Evans  
Title: Chairman of the Water and Sewer  
Board

Date: September \_\_\_\_\_, 2019

ATTESTED AND APPROVED AS TO  
SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By \_\_\_\_\_  
Secretary of the Water and Sewer Board and  
City Manager

By \_\_\_\_\_  
City Attorney

AVAILABILITY OF FUNDS:

RECOMMENDED:

By \_\_\_\_\_  
Director of Finance

By \_\_\_\_\_  
Director of Water and Sewer

**EXHIBIT "A-1" TO PURCHASE AND SALE AGREEMENT**  
**(Thayer Farm)**

**Legal Description of the Entire Property**

Lots A and B of Amended Recorded Exemption No. 0805-18-4 AMRE-2877, recorded April 22, 2004, at Reception No. 3172843, being a part of the Southeast 1/4 of Section 18, Township 6 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado.

**EXHIBIT "A-2" TO PURCHASE AND SALE AGREEMENT**  
**(Thayer Farm)**

**Depiction of the Entire Property**  
**(See attached Plat)**



**EXHIBIT "B-1" TO PURCHASE AND SALE AGREEMENT**  
**(Thayer Farm)**

**Legal Description of the Land**

That newly created lot of the Amended Recorded Exemption that will be comprised of Lot A and Lot B, less a seven (7) acre parcel located in the northeast corner, of Amended Recorded Exemption No. 0805-18-4 AMRE-2877, recorded April 22, 2004, at Reception No. 3172843, being a part of the Southeast 1/4 of Section 18, Township 6 North, Range 66 West of the 6th P.M., County of Weld, State of Colorado, and as generally depicted on Exhibit "B-2."

**[To be revised upon completion of the Amended Recorded Exemption pursuant to Sections 4.1 and 6.1 C of the Agreement, respectively]**

**EXHIBIT “B-2” TO PURCHASE AND SALE AGREEMENT**  
(Thayer Farm)

Depiction of the Land  
(See Attached Map)



EXHIBIT "C-1" TO PURCHASE AND SALE AGREEMENT  
(Thayer Farm)

Description of Water Shares

Four (4) shares of stock in The Windsor Reservoir and Canal Company, represented by Stock Certificate No. 714 (for two [2] shares) and Stock Certificate No. 790 (for two [2] shares), three (3) shares of stock in The Larimer and Weld Irrigation Company, represented by Stock Certificate No. 6395, and one-half (1/2) share of stock in The Roullard Lateral Company, represented by Stock Certificate No. 416, together with all rights, title, and interest of Grantor in and to the water rights, structures and all other interests represented thereby.



**EXHIBIT "C-2" TO PURCHASE AND SALE AGREEMENT**  
(Thayer Farm)

Stock Certificates for the Water Shares  
(See attached)

714

INCORPORATED UNDER THE LAWS OF THE STATE OF COLORADO

2

# The Windsor Reservoir and Canal Company

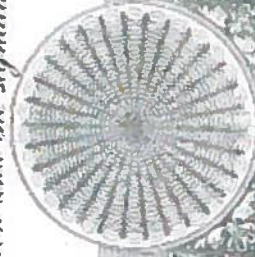
**TOTAL AUTHORIZED ISSUE**  
1,000 SHARES PAR VALUE \$100.00 EACH  
CLASS A COMMON STOCK

Not Return to  
Entity Division

This is to Certify that Wmoma B Thayer Revocable Trust is the owner of

TWO fully paid and  
non-assessable shares of the above Corporation transferable only on the books of the  
Corporation by the holder hereof in person or by duly authorized Attorney upon  
surrender of this Certificate properly endorsed.

**Witness, the seal of the Corporation and the signatures of its duly authorized officers.**  
**Dated** February 25, 2016



Timothy M. Nelson  
SECRETARY

David A. Hoff  
PRESIDENT

790

INCORPORATED UNDER THE LAWS OF THE STATE OF COLORADO

2

# The Windsor Reservoir and Canal Company

TOTAL AUTHORIZED ISSUE  
1,000 SHARES PAR VALUE \$100.00 EACH  
CLASS A COMMON STOCK

Get Ready for  
Crisis Testimony

This is to Certify that The Wynona B. Thayer Revocable Trust is the owner of

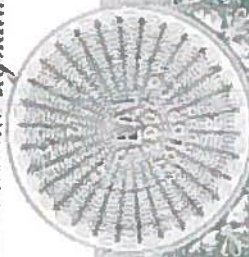
-TWO-

non-assessable shares of the above Corporation transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

Witness, the seal of the Corporation and the signatures of its duly authorized officers.

Dated March 26, 2019

*Stanley M. Lyle*  
SECRETARY



*Barry J. Lyle*  
PRESIDENT





# The Larimer & Weld Irrigation Company

SHARES \$100.00 Each

THIS CERTIFIES THAT The Wynona B. Thayer Revocable Trust

THREE share s at ONE HUNDRED Dollars each in the Capital Stock of THE LARIMER AND WELD IRRIGATION COMPANY, organized under the Laws of the State of Colorado. Stock transferable upon the books of the company, in person or by attorney, on surrender of this Certificate.

WITNESS, the seal of the Company, and the signatures of the President and Secretary, at Eaton, Colorado 26 day of March A.D. 20 19

Secretary

President







EXHIBIT "D" TO PURCHASE AND SALE AGREEMENT  
(Thayer Farm)

Description of Irrigation Equipment

Seven tower Valley center-pivot sprinkler system 6000 series, including boost pump and other associated equipment.

**EXHIBIT "E" TO PURCHASE AND SALE AGREEMENT**  
(Thayer Farm)

Historical Use Questionnaire and Affidavit  
(See attached)

### AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

*(Please use separate sheet for each water source,  
and additional sheets to provide information if necessary)*

#### WATER RIGHTS:

Ditch or Reservoir Company \_\_\_\_\_

Shares or interest \_\_\_\_\_ Certificate No. \_\_\_\_\_

Deed Book/Page, if applicable: \_\_\_\_\_

Name, address and telephone number of owner(s) and user(s) of water rights:

Owner(s) \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

\_\_\_\_\_

Years water rights were used as described: \_\_\_\_\_ through \_\_\_\_\_

#### IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights (should be the same as stated in the "Water History Questionnaire" referenced below):

\_\_\_\_\_

\_\_\_\_\_

Name and address of owner(s) of above-mentioned irrigated land if different from owner(s) of water rights: \_\_\_\_\_

\_\_\_\_\_

No subirrigation has occurred. I have not intended to abandon the water rights during the period of my ownership and/or use. I state that the information contained in Exhibit 1, the "Water History Questionnaire," which is attached hereto and incorporated herein by this reference, is known to me and is correct.

\_\_\_\_\_

The undersigned, \_\_\_\_\_

having personal knowledge of the irrigation of the above-described lands by virtue of being the owner(s) and/or person(s) who have farmed and irrigated those lands, being first duly sworn, hereby state that the information that I have provided in this statement is accurate and true.



Signed and dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

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

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN to before me in the County of \_\_\_\_\_, State of  
Colorado, by \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

Witness my hand and official seal.

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

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

## Exhibit 1

### Water History Questionnaire

1. Name of person completing this questionnaire: \_\_\_\_\_  
Mail Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
E-mail: \_\_\_\_\_
2. The information to be provided below pertains to \_\_\_\_\_ shares of \_\_\_\_\_  
\_\_\_\_\_  
Certificate No (s). \_\_\_\_\_  
  
*[For the remainder of this questionnaire, the term "Shares" refers specifically to the shares identified in Question 2]*
3. What is your relationship to the owner of the Shares?  
Owner \_\_\_\_\_ Tenant \_\_\_\_\_  
Other *[Please state nature of relationship]* \_\_\_\_\_
4. If you are not the owner of the Shares, please identify the owner here and skip to Question 9: \_\_\_\_\_
5. When did you acquire ownership of these Shares? \_\_\_\_\_
6. If you know the names of prior owners of any of the Shares and how they may be contacted, please provide this information  
  - Number of shares \_\_\_\_\_  
Owner's name: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_
  - Number of shares \_\_\_\_\_  
Owner's name: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_
  - Number of shares \_\_\_\_\_  
Owner's name: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Address: \_\_\_\_\_

7. Do you still own the farm or parcel historically irrigated by these Shares?  
Yes \_\_\_\_\_ No \_\_\_\_\_
- If you do not still own the historically-irrigated land, did you obtain a Dry-up Covenant at the time of sale? Yes \_\_\_\_\_ No \_\_\_\_\_
8. To your knowledge, did the previous owner of the Shares and the historically irrigated land use the Shares to irrigate in the same manner, time and place as you have used them?  
Yes \_\_\_\_\_ No \_\_\_\_\_ Don't know \_\_\_\_\_
9. If you have ever leased any of the Shares to another party, please provide the following information: *[Use additional sheets, if necessary.]*
- Number of shares leased \_\_\_\_\_  
When leased \_\_\_\_\_  
Shares were used on your property \_\_\_\_\_ or tenant's \_\_\_\_\_  
Lessee's name, address & telephone number: \_\_\_\_\_  
\_\_\_\_\_
  - Number of shares leased \_\_\_\_\_  
When leased \_\_\_\_\_  
Shares were used on your property \_\_\_\_\_ or tenant's \_\_\_\_\_  
Lessee's name, address & telephone number: \_\_\_\_\_  
\_\_\_\_\_
  - Number of shares leased \_\_\_\_\_  
When leased \_\_\_\_\_  
Shares were used on your property \_\_\_\_\_ or tenant's \_\_\_\_\_  
Lessee's name, address & telephone number: \_\_\_\_\_  
\_\_\_\_\_
10. During which years do you have personal knowledge of how, where, and when water from the Shares was used: \_\_\_\_\_
11. What is the legal description of the farm or parcel on which the Shares were used?  
*[Attach separate sheet, if convenient]* \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. What is the total size of the farm or parcel? \_\_\_\_\_ Acres
13. What is the size of the area(s) on farm or parcel that was irrigated? \_\_\_\_\_ Acres
14. What is the size of the area(s) on farm or parcel that was irrigated using water from the

Shares? \_\_\_\_\_ Acres

15. Please provide the following information regarding how the Share water is/was delivered:

- Name of the irrigation ditch through which the water was delivered: \_\_\_\_\_
- Location and ID number of the head gate at the main ditch: \_\_\_\_\_
- Name and general location of any lateral(s) delivering the water to the land historically irrigated: \_\_\_\_\_
- Identification of any carrier or lateral ditch stock required to deliver these rights: \_\_\_\_\_
- Approximate location of pumps, if used: \_\_\_\_\_
- Approximate location and size of storage ponds/reservoirs, including tail water ponds, if used: \_\_\_\_\_

16. How was water applied?

Sprinkler \_\_\_\_\_ Furrow \_\_\_\_\_ Flood \_\_\_\_\_ Other \_\_\_\_\_

17. When is the normal irrigation season?

Start date: \_\_\_\_\_ Stop date: \_\_\_\_\_

18. Other than the Shares, has any other water been used to irrigate the farm or parcel on which the Shares are/were used? If so, please provide the following information:

- Number(s) of shares: \_\_\_\_\_
- Ditch company: \_\_\_\_\_
- Number of any irrigation wells: \_\_\_\_\_
- Identification and permit numbers of any irrigation wells: \_\_\_\_\_
- Capacity of identified irrigation wells: \_\_\_\_\_
- Approximate location of irrigation wells: \_\_\_\_\_
- Any other water used: \_\_\_\_\_
- Describe how this water has been used, including the estimated percentage of the total irrigation supply provided by such water: \_\_\_\_\_

19. Have any of the rights identified in Section 18 been sold or transferred to others?

If yes,

- Which rights: \_\_\_\_\_
- To whom were these rights sold or transferred: \_\_\_\_\_
- When were the rights sold or transferred: \_\_\_\_\_
- How and where are these rights now being used: \_\_\_\_\_

20. In general, what crops were grown on the land irrigated by the Shares, with percentages?

1. \_\_\_\_\_ 2. \_\_\_\_\_ 3. \_\_\_\_\_  
4. \_\_\_\_\_ 5. \_\_\_\_\_ 6. \_\_\_\_\_

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

22. How much of the land irrigated by the Shares is no longer irrigated because of:

- Permanent cessation of irrigation: \_\_\_\_\_
- Development: \_\_\_\_\_
- Gravel mining: \_\_\_\_\_
- Previous sale, transfer, or dry-up commitment to other parties: \_\_\_\_\_
- Other reasons (*please specify reasons*): \_\_\_\_\_

23. Please provide a map, sketch or aerial photograph showing the locations of :

[Please check if included]

- \_\_\_\_ Farm or parcel
- \_\_\_\_ Areas historically irrigated by the Shares
- \_\_\_\_ Areas irrigated with other water
- \_\_\_\_ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tailwater ponds

24. Please attach copies of stock certificate(s) for the Shares, any carrying-stock certificates associated with the Shares, and any previously executed dry-up covenants or agreements pertaining to the lands historically irrigated by the Shares.

I understand that I will be required to sign an affidavit attesting to the accuracy and correctness, to the best of my knowledge, of the information provided herein.

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

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

EXHIBIT "F" TO PURCHASE AND SALE AGREEMENT  
(Thayer Farm)

Special Warranty Deed for the Real Estate  
(See attached)

**Actual consideration paid - \$000,000.00. Exempt from state documentary fee pursuant to C.R.S. 39-13-104(1)(a). Grantee is a home rule municipal corporation and quasi-municipal corporation/political subdivision of the State of Colorado.**

**SPECIAL WARRANTY DEED**  
(Thayer Farm)

THIS SPECIAL WARRANTY DEED is made and entered as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between WYNONA B. THAYER REVOCABLE TRUST, the address of which, for purposes of this Deed, is 5450 East County Road 32E, Fort Collins, Colorado 80528 ("Grantor"), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, the address of which, for purposes of this Deed, is 1001 11th Avenue, 2nd Floor, Greeley, Colorado 80631 ("Grantee").

WITNESSETH:

That Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does hereby grant, bargain, sell, convey and confirm unto Grantee, its successors and assigns, forever, all the real property, together with improvements, if any, situate, lying, and being in the County of Weld, State of Colorado, legally described on Exhibit "A" ("Land") attached hereto and incorporated herein by reference.

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 Land, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the Land with the appurtenances unto the Grantee, its successors and assigns, forever. The Grantor, for itself, its successors and assigns, does covenant and agree that it shall and will warrant and forever defend the Land in the quiet and peaceable possession of the Grantee, its successors and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor, subject to those matters set forth on Exhibit "B" attached hereto and incorporated herein by reference.

[Intentionally left blank]

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed as of the day and year first above written.

WYNONA B. THAYER REVOCABLE TRUST

By: \_\_\_\_\_  
Jill S. Cook, Trustee

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF LARIMER     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Jill S. Cook, Trustee of the WYNONA B. THAYER REVOCABLE TRUST.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

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



EXHIBIT "A" ATTACHED TO AND MADE A PART OF SPECIAL WARRANTY DEED BY  
AND BETWEEN WYNONA B. THAYER REVOCABLE TRUST ("GRANTOR") AND THE  
CITY OF GREELEY ("GRANTEE")

LEGAL DESCRIPTION OF THE LAND

EXHIBIT "B" ATTACHED TO AND MADE A PART OF SPECIAL WARRANTY DEED BY  
AND BETWEEN WYNONA B. THAYER REVOCABLE TRUST ("GRANTOR") AND THE  
CITY OF GREELEY ("GRANTEE")

LIST OF PERMITTED EXCEPTIONS

[TO BE ADDED]

EXHIBIT "G" TO PURCHASE AND SALE AGREEMENT  
(Thayer Farm)

Special Warranty Deed for the Water Rights  
(See attached)

SPECIAL WARRANTY DEED  
(Water Rights)

THIS SPECIAL WARRANTY DEED is made and entered as of the \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between WYNONA B. THAYER REVOCABLE TRUST, the address of which, for purposes of this Deed, is 5450 East County Road 32E, Fort Collins, Colorado 80528 ("Grantor"), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, the address of which, for purposes of this Deed, is 1001 11th Avenue, 2nd Floor, Greeley, Colorado 80631 ("Grantee").

WITNESSETH:

That Grantor, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does hereby grant, bargain, sell, convey and confirm unto Grantee, its successors and assigns, forever, the water rights described below ("Water Rights"):

Four (4) shares of stock in The Windsor Reservoir and Canal Company, represented by Stock Certificate No. 714 (for two [2] shares) and Stock Certificate No. 790 (for two [2] shares), three (3) shares of stock in The Larimer and Weld Irrigation Company, represented by Stock Certificate No. 6395, and one-half (1/2) share of stock in The Roullard Lateral Company, represented by Stock Certificate No. 416, together with all rights, title, and interest of Grantor in and to the water rights, structures and all other interests represented thereby; and

With respect to the real estate described on Exhibit "A" attached hereto and incorporated herein by reference, located in Weld County, Colorado (the "Land"), all rights, title, and interest of Grantor in and to any and all other water, water rights, ditches, ditch rights, wells, well rights, well permits, reservoirs and reservoir rights, and related rights and interests that are appurtenant to, or used on or in connection with, the Land, whether tributary, nontributary, or not nontributary [subject to all matters shown on Exhibit "B" attached hereto], including all rights, title, and interest of Grantor in and to any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Land.

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

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

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed as of the day and year first above written.

WYNONA B. THAYER REVOCABLE TRUST

By: \_\_\_\_\_  
Jill S. Cook, Trustee

STATE OF COLORADO    )  
                                  ) ss.  
COUNTY OF LARIMER    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by Jill S. Cook, Trustee of the WYNONA B. THAYER REVOCABLE TRUST.

Witness my hand and official seal.

My Commission Expires: \_\_\_\_\_

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

EXHIBIT "A" ATTACHED TO AND MADE A PART OF SPECIAL WARRANTY DEED BY  
AND BETWEEN WYNONA B. THAYER REVOCABLE TRUST ("GRANTOR") AND THE  
CITY OF GREELEY ("GRANTEE")

LEGAL DESCRIPTION OF THE LAND

EXHIBIT "B" ATTACHED TO AND MADE A PART OF SPECIAL WARRANTY DEED BY  
AND BETWEEN WYNONA B. THAYER REVOCABLE TRUST ("GRANTOR") AND THE  
CITY OF GREELEY ("GRANTEE")

LIST OF PERMITTED EXCEPTIONS

[TO BE ADDED]



**L&WIC and WRCC Water Rights  
and  
Farm Acquisition (Thayer)**

September 18, 2019



# Purchase & Sale Overview

- 3 shares of stock in the Larimer and Weld Irrigation Company
- 4 shares of stock in the Windsor Reservoir and Canal Company
- 129+/- Acre Farm
- Residence and structures in the NW corner of property are being partitioned off and will not be part of the purchase
- Total Purchase Price is \$2,770,00.00

# Map Thayer Wynona B. Revocable Trust Farm



Weld Co. Thayer  
Farm

Farm is located 3  
Miles East of  
Windsor

Adjacent to HWY  
392

# Recommendation

- W&S Staff Recommend the Acquisition of the 129+/- Ac Farm and associated 3 shares of L&WIC stock and 4 WRCC shares of in accordance with the water acquisition strategies set forth in the Dept.'s Master Plan and Future Water Account plan

# Questions?

**WATER & SEWER BOARD AGENDA**    SEPTEMBER 18, 2019

ENCLOSURE   X  

NO ENCLOSURE       

ITEM NUMBER:                    10

TITLE:                             DIRECTOR'S REPORT

RECOMMENDATION:     INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- Greeley Water Conservation Program Brochure
- Invite to South Platte Forum – Oct. 24 & 25, Westminster, CO
- W&S to purchase and provide laptops to Board members



# Save the date for the 30th annual South Platte Forum!

**When: October 23rd & 24th, 2019**

**New Location: The Westin, Westminster, CO**

We are so excited to announce the 2019 South Platte Forum. Join us in celebrating 30 years of bringing thousands of people together to exchange information and ideas about resource management and other topics in the South Platte Basin and beyond.

Please save the date, or better yet, [register now!](#)



We are now in a new venue, The Westin Westminster! We decided to move to The Westin to be closer to many of our attendees, to have more capacity to grow the conference, and to utilize their brand new space which will allow us to set up the conference more cohesively this year.

Sponsoring the South Platte Forum gives great exposure to your business, and offers amazing networking opportunities.

We would be grateful for your support! [Click here for more information.](#)



***Registration is already open! Save your spot today and take advantage of the early bird rates.***

**Register Today**

Over the next several months we will be announcing the keynote speakers, panelists, sponsors, and everything else we have lined up for the conference this year. We have a lot in store and hope you will be there to celebrate 30 years of the South Platte Forum with us.



**WATER & SEWER BOARD AGENDA**    SEPTEMBER 18, 2019

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: