



**City of Greeley  
Water and Sewer Board  
Minutes of August 16, 2017  
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:03p.m. on Wednesday, August 16, 2017.

**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, Tony Miller, Joe Murphy, Manual Sisneros, Vic Runkle and Roy Otto

Water and Sewer Department staff:

Water and Sewer Director Burt Knight, and Operations Manager Bob Neal, Water Rights Manager Jennifer Petrzelka, Chief Engineer Adam Prior, Water Resources Analyst Emily Carbone, Office Manager Shannon Metcalf, Senior Administrative Assistant Ettie Arnold

Legal Counsel:

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

**2. Approval of Minutes**

Mr. Miller moved and Mr. Otis seconded to approve the July 19, 2017 Water and Sewer Board meeting minutes as presented. The motion carried 7-0.

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

There were no changes or additions to the agenda.

**4. Report: Boyd and Bellvue Water Treatment Plants' Architectural Renderings and Project Design**

Mayor Norton joined the meeting at 2:11 p.m.

Mr. Neal presented the proposed improvements plans on the design for Bellvue and Boyd Lake Water Treatment Plants.

- Bellvue WTP
  - 60% design completion with Fall 2017 start on construction
  - Construct 20 MGD Treatment Train
  - Construct Yard Piping Improvements
- Boyd Lake WTP
  - 90% complete design with Fall 2017 start on construction
  - Provide Backup Electrical Power
  - Install New Chemical Feed Lines
  - Construct Sludge Pumping Facilities
- Loveland Electrical Backup Power
  - City of Loveland operates electrical power distribution system independent of Xcel
  - They are capable of providing redundant/backup electrical power to Boyd Lake WTP
  - We propose to enter into IGA with Loveland for backup electrical power
  - Draft IGA being prepared

Mr. Knight introduced Emily Carbone, the new Water & Sewer Resources Analyst.

**5. Executive Session**

At 2:30 p.m., Chairman Evans made a motion to move into Executive Session to address the following matters:

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

Chairman Evans identified the following topics for discussion:

1. Matters related to a pending water rights acquisition.

Joe Murphy seconded the motion. The motion carried 7-0.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Fred Otis, Manual Sisneros, Joe Murphy, Robert Ruyle, Mayor Tom Norton, Director of Finance Vic Runkle, City Manager Roy Otto, Director of Water and Sewer Burt Knight, Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, Water and Sewer Counsel Jim Witwer, Environmental and Water Resources Attorney Aaron Goldman, Water Rights Manager Jennifer Petrzelka, Office Manager Shannon Metcalf and Senior Administrative Specialist Ettie Arnold

Tony Miller recused himself due to a potential conflict of interest.

The Executive Session ended at 2:46 p.m. and the regular meeting resumed.

**6. Legal Report**

Mr. Witwer stated that there are no statements of opposition this month. He then introduced Aaron Goldman, the new Environmental and Water Resources Attorney. He also notified the Board that he and Andrea Bronson are joining the law firm of Davis, Graham and Stubbs, effective August 28<sup>th</sup>, 2017.

**7. Director's Report**

Mr. Knight explained the following:

- During the recent Board Tour it was noted that Horsetooth reservoir was at its fullest in recent years. NCWCD notified staff that Soldier Canyon has a leak and to repair the leak, the water level at Horsetooth will need to be reduced.

There being no further business, Chairman Evans adjourned the meeting at 2:51 p.m.

\*\*\*\*\*

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

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

**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE   X        NO ENCLOSURE     

ITEM NUMBER:            4

TITLE:                    REPORT: WETT PROGRAM UPDATE

RECOMMENDATION:      INFORMATION ONLY

ADDITIONAL INFORMATION:

Staff will provide a presentation.

**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           5

TITLE:                    REPORT: ASHCROFT DRAW PHASE I  
UPDATE

RECOMMENDATION:    INFORMATION ONLY

ADDITIONAL INFORMATION:

Staff will provide a presentation.

**WATER & SEWER BOARD AGENDA SEPTEMBER 20, 2017**

ENCLOSURE   X        NO ENCLOSURE     

ITEM NUMBER:            6

TITLE:                    ACTION: APPROVE ACQUISITION OF INTERESTS IN REAL PROPERTY FOR THE ASHCROFT DRAW BASIN SANITARY SEWER PHASE II PROJECT AND RECOMMEND TO COUNCIL

RECOMMENDATION:      APPROVE ACQUISITION AND RECOMMEND TO COUNCIL

ADDITIONAL INFORMATION:

Greeley will need to acquire exclusive permanent easements and temporary construction easements of varying widths as part of the Ashcroft Draw Basin Sanitary Sewer Phase II project.

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

RESOLUTION NO. \_\_\_\_\_, 2017

CONCERNING THE ACQUISITION OF INTERESTS IN REAL PROPERTY LOCATED IN WELD COUNTY, COLORADO FOR A SANITARY SEWER LINE BY PURCHASE OR EXERCISE OF THE POWER OF EMINENT DOMAIN PURSUANT TO SECTION 7 OF ARTICLE XVI, SECTION 15 OF ARTICLE II, AND SECTIONS 1 AND 6 OF ARTICLE XX OF THE COLORADO CONSTITUTION AND COLO. REV. STAT. § 38-1-101, et seq. (ASHCROFT DRAW BASIN SANITARY SEWER PHASE II)

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

**WHEREAS**, Section 15 of Article II and Section 7 of Article XVI of the Colorado Constitution further authorize the City to acquire sewer pipeline easements for domestic, irrigation, drainage, and other purposes; and

**WHEREAS**, Section 17-4 of the Charter of the City empowers and requires the City Water and Sewer Board (“the Board”) to acquire, develop, convey, lease, and protect water and sewer assets, supplies, and facilities; and

**WHEREAS**, the Board has determined that the development and use of additional sanitary sewer lines and associated facilities in the Ashcroft Draw Basin Area, generally depicted in Exhibit A, attached hereto and incorporated herein, are necessary for the operation of the water works and needed to increase the capacity of sanitary sewer service to the citizens of the City, and thereby, promote growth; and

**WHEREAS**, the Ashcroft Draw Basin Area where such additional sanitary sewer lines and associated facilities will be located is generally experiencing growth and redevelopment into more intensive land uses; and

**WHEREAS**, the City’s staff and counsel have determined that the sewer line will need to be installed in the ground at varying depths, and that, accordingly, real property is necessary to construct and maintain the sewer line within the Ashcroft Draw Basin Area; and

**WHEREAS**, the Board has determined that the acquisition of interests in real property, either through purchase or exercise of the City’s power of eminent domain, is necessary for the development and use of the sewer line within the Ashcroft Draw Basin Area.



**WHEREAS**, the Board supports the Water and Sewer Department working with other City departments when implementing water and sewer projects, where practicable.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD AS FOLLOWS:**

1. The Board hereby determines that it is necessary for the City to acquire, either through purchase or exercise of the power of eminent domain, real property interests, including permanent easements and temporary construction easements, for the installation, operation, maintenance, repair, and replacement of sanitary sewer lines for the operation of the water works to increase the capacity of sanitary sewer service to the citizens of the City and thereby promote growth.
2. The Board hereby determines that the acquisition of real property for the above-described purposes is necessary.
3. The City's staff and counsel are hereby authorized and directed to continue with the acquisition of the above-described interests in real property, either through purchase or exercise of the power of eminent domain. The Board hereby ratifies any previous actions by City staff in attempting to negotiate acquisition of the real property.
4. The Board hereby authorizes the City Water and Sewer Department staff and counsel, to the extent practicable, to coordinate efforts to acquire interests in real property in a manner that will also permit other City departments to promote the development of City infrastructure.

PASSED AND ADOPTED, SIGNED AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

**ATTEST:**

\_\_\_\_\_  
Secretary to the Board

\_\_\_\_\_  
Board Chairman

**CITY OF GREELEY, COLORADO**

**ORDINANCE NO. \_\_\_, 2017**

AN ORDINANCE AUTHORIZING THE CITY OF GREELEY TO ACQUIRE INTERESTS IN REAL PROPERTY LOCATED IN WELD COUNTY, COLORADO FOR SANITARY SEWER LINES BY PURCHASE OR EXERCISE OF THE POWER OF EMINENT DOMAIN PURSUANT TO SECTION 7 OF ARTICLE XVI, SECTION 15 OF ARTICLE II, AND SECTIONS 1 AND 6 OF ARTICLE XX OF THE COLORADO CONSTITUTION AND COLO. REV. STAT. § 38-1-101, *et seq.* (ASHCROFT DRAW BASIN SANITARY SEWER PHASE II)

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

**WHEREAS**, Section 15 of Article II and Section 7 of Article XVI of the Colorado Constitution further authorize the City to acquire sewer pipeline easements for domestic, irrigation, drainage, and other purposes; and

**WHEREAS**, the Greeley City Council (the “Council”) has determined that the development and use of additional sanitary sewer lines and associated facilities in the Ashcroft Draw Basin Area, generally depicted in Exhibit A, attached hereto and incorporated herein are necessary for the operation of the water works and needed to increase the capacity of sanitary sewer service to the citizens of the City, and thereby, promote growth; and

**WHEREAS**, the Ashcroft Draw Basin Area where such additional sanitary sewer lines and associated facilities will be located is generally experiencing growth and redevelopment into more intensive land uses; and

**WHEREAS**, the City’s staff and counsel have determined that the sewer line will need to be installed in the ground at varying depths, and that, accordingly, real property is necessary to construct and maintain the sewer line within the Ashcroft Draw Basin Area; and

**WHEREAS**, the Council has determined that the acquisition of interests in real property, either through purchase or exercise of the City’s power of eminent domain, is necessary for the development and use of the sewer line within the Ashcroft Draw Basin Area.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF GREELEY, COLORADO:

Section 1. The Council hereby determines that it is necessary for the City to acquire, either through purchase or exercise of the power of eminent domain, real property interests, including permanent easements and temporary construction easements, for the installation, operation, maintenance, repair, and replacement of sanitary sewer lines for the operation of the water works to

increase the capacity of sanitary sewer service to the citizens of the City and thereby promote growth.

Section 2. The Council hereby determines that the acquisition of real property for the above-described purposes is necessary.

Section 3. The City's staff and counsel are hereby authorized and directed to continue with the acquisition of the above-described interests in real property, either through purchase or exercise of the power of eminent domain. The Council hereby ratifies any previous actions by City staff in attempting to negotiate acquisition of the real property.

Section 4. This Ordinance shall become effective on the fifth day following its final publication.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS \_\_\_ day of \_\_\_\_\_, 2017.

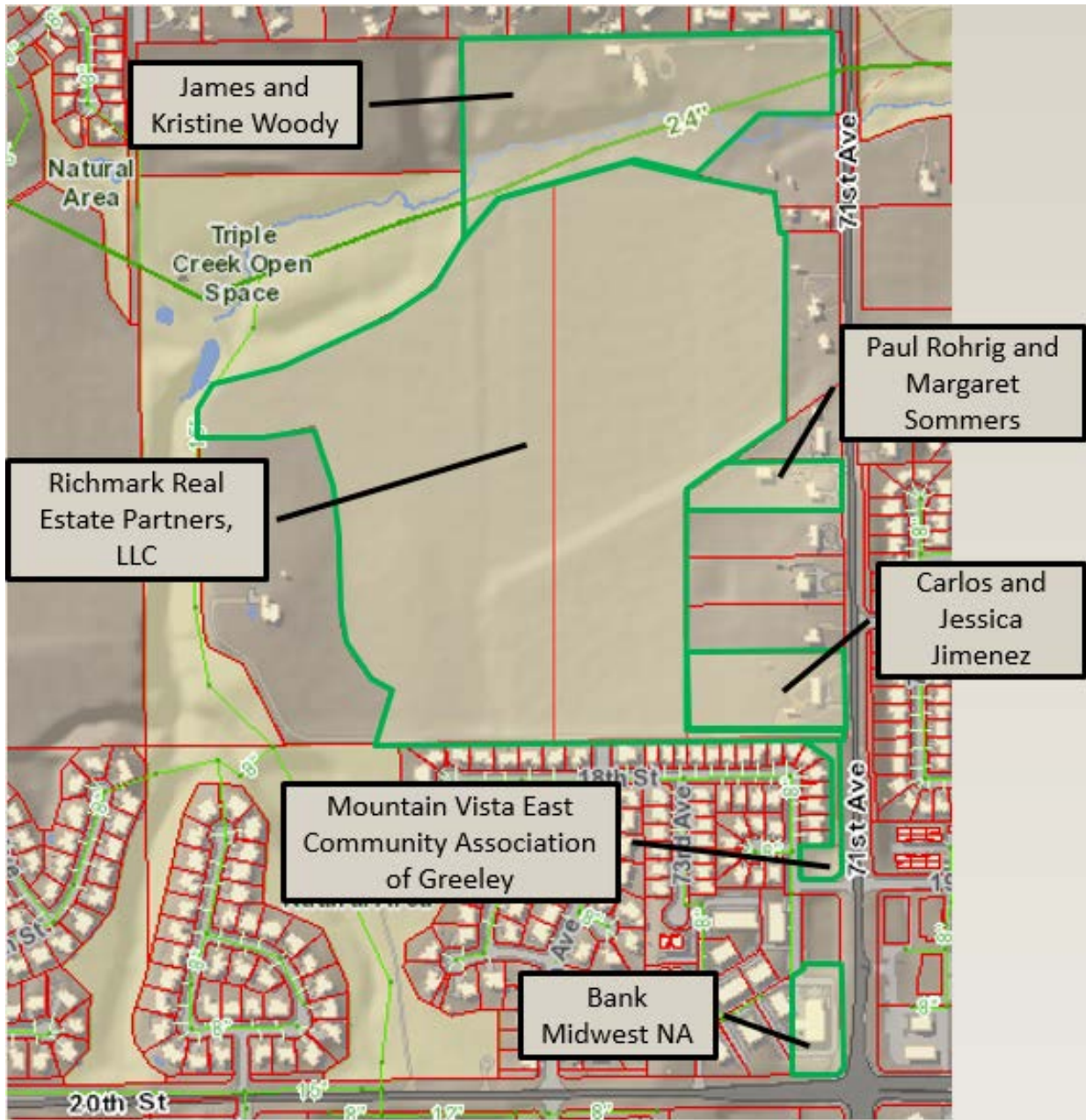
ATTEST:

THE CITY OF GREELEY, COLORADO

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

\_\_\_\_\_  
Mayor

### Exhibit A Property Locations



**WATER & SEWER BOARD AGENDA SEPTEMBER 20, 2017**

ENCLOSURES   X  

NO ENCLOSURE       

ITEM NUMBER:           7

TITLE:                   YEARLY COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT INTERGOVERNMENTAL AGREEMENT COVERING PARTICIPATION IN THE MILTON SEAMAN WATER SUPPLY PROJECT ENVIRONMENTAL IMPACT STATEMENT AND ASSOCIATED SECTION 401, OF THE CLEAN WATER ACT, STATE WATER QUALITY CERTIFICATION

ACTION:                 APPROVE THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT MILTON SEAMAN WATER SUPPLY PROJECT, BILLING AGREEMENT FOR THE SECTION 401 OF THE CLEAN WATER ACT, STATE WATER QUALITY CERTIFICATION

RECOMMENDATION:     STAFF RECOMENDS APPROVAL OF THE YEARLY COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT INTERGOVERNMENTAL AGREEMENT COVERING PARTICIPATION IN THE MILTON SEAMAN WATER SUPPLY PROJECT ENVIRONMENTAL IMPACT STATEMENT AND ASSOCIATED SECTION 401 WATER QUALITY CERTIFICATION.

**ADDITIONAL INFORMATION:**

Staff is requesting that the City of Greeley Water and Sewer Board both approve a yearly intergovernmental agreement (IGA) with the Colorado Department of Public Health and Environment, Water Quality Control Division (Division) and direct staff to perform the terms and conditions of that agreement. The Division has been asked to review the water quality data and modeling being used for the Milton Seaman Water Supply Project (MSWSP) Environmental Impact Statement (EIS) to ensure the information used in the analyses can also be used in pursuit of a 401 Water Quality Certification (401 Certification). This intergovernmental agreement provides funding for that work.

For projects requiring 401 Certification, the division is now required to categorize projects into a tier ranging from one through four based on project complexity pursuant to Colorado Regulation 25-8-502 C.R.S. and House Bill 15-1249 (1.2). The division has determined that due to the high degree of complexity, the increased potential for water quality impacts, and the significant level of public participation regarding this project, that the MSWSP 401 Certification review is a Tier 4 project. As such, the City of Greeley is required to provide funding for the actual review costs associated with the Division's participation in the MSWSP EIS and 401 Certification through the execution of a yearly IGA.

An IGA covering this work in 2016 was approved by the Water and Sewer Board and City Council. In Resolution 24, 2017, City Council delegated authority to approve subsequent yearly IGAs to the Water and Sewer Board and execution of the IGA to the Mayor until such time that the Division has issued or denied the 401 Certification.

Work associated with participation in the MSWSP EIS and 401 Certification will include the review of water quality models and data. The Division has estimated that costs will not exceed \$20,000 for this work over the next year. Hourly rates for staff time will be provided on a case-by-case basis. Last year, Division estimated that costs would not exceed \$20,000. The City was invoiced for \$3,700, which reimbursed the Division for 54 hours of staff time spent on the MSWSP project from August 2016 to July 2017.



August 4, 2017

City of Greeley  
Attn: Eric Reckentine, Deputy Director of Water Resources  
1100 10th Street, Suite 300  
Greeley, CO 80631

Re: Milton Seaman Water Supply Project, Billing Agreement for the Section 401 of the Clean Water Act, State Water Quality Certification

Dear Mr. Reckentine:

The Colorado Department of Public Health and Environment, Water Quality Control Division (Division), has been asked to review the water quality data analysis and modeling being used for the Milton Seaman Water Supply Project (MSWSP) Environmental Impact Statement (EIS) to ensure the information used in the analysis can also be used for the 401 Water Quality Certification (401 Certification). For projects requiring 401 Certification, the Division is now required to categorize projects into a tier ranging from one through four based on project complexity pursuant to Colorado regulation 25-8-502 C.R.S. and House Bill 15-1249 (1.2). The Division has determined that, due to the high degree of complexity, the increased potential for water quality impacts, and the significant level of public participation regarding this project, the MSWSP qualifies as a Tier 4 project.

The MSWSP will require Division staff time to become familiar with the project and basic project operations, develop sampling strategy and review technical information and reports in support of the 401 certification review. For Tier 4 projects, the applicant is required to pay a fee that is based on the actual cost of Division staff time, which includes the time necessary to review technical information such as data and reports as well as administration. The exact amount of Division staff time is unknown at this time but estimates that costs will not exceed \$20,000 for the time period of July 1, 2017 through June 30, 2018. The Division spent approximately 65 hours during our last 2016-2017 fiscal year. The Division will provide Greeley hourly rates for division staff and the estimated times to complete reviews on a case by case basis.

Greeley, as the applicant, agrees to pay the fees invoiced by the Division. Those fees are based on the division's participation in the MSWSP EIS process and its coordination and eventual submittal of the 401 Certification application. The Division will invoice Greeley on a monthly basis when work is performed on the MSWSP EIS or the 401 Certification processes. If payment is not received within 30 days, the Division will cease participation in the MSWSP EIS and review of the 401 Certification application process. The Division will revisit, on a quarterly basis the expected costs associated with the project to determine if an adjustment is warranted. If an adjustment is warranted during the time period of July 1, 2017 through



June 30, 2018, an updated cost estimate will be provided to Greeley. After June 30, 2018, the Division will prepare a new cost estimate and billing agreement.

If you wish for the Division to withdraw from participation in the MSWSP EIS process and review of the 401 Certification, please send the Division a separate notice to that effect and we will discontinue the review.

Sincerely,

Aimee Konowal  
Watershed Section Manager  
Water Quality Control Division

The undersigned represents that the City of Greeley hereby agrees to pay the fees associated with the Divisions' participation in the MSWSP EIS process and its' review of the 401 Certification, subject to the terms stated above.

THE CITY OF GREELEY, COLORADO, a  
Colorado home rule municipal corporation

ATTEST:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: City Clerk  
Date: \_\_\_\_\_

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





THE CITY OF GREELEY, COLORADO

RESOLUTION 24, 2017

**A RESOLUTION OF THE GREELEY CITY COUNCIL AUTHORIZING THE MILTON SEAMAN WATER SUPPLY PROJECT, BILLING AGREEMENT FOR THE SECTION 401 OF THE CLEAN WATER ACT, STATE WATER QUALITY CERTIFICATION, BETWEEN THE CITY OF GREELEY AND THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, WATER QUALITY CONTROL DIVISION.**

WHEREAS, the City of Greeley (“Greeley”) is requesting a permit from the United States Army Corps of Engineers to enlarge Milton Seaman Reservoir under Section 404 of the Clean Water Act, *see* 33 U.S.C. §1251 *et seq.* (“Section 404”) and the National Environmental Policy Act, *see* 42 U.S.C. §4321 *et seq.* (“NEPA”). The project is known as the Milton Seaman Water Supply Project (“MSWSP”); and,

WHEREAS, the Colorado Department of Public Health and Environment, Water Quality Control Division (“Division”), has been asked to review the water quality data analysis and modeling to be used in the preparation of the MSWSP Environmental Impact Statement (“EIS”) and to confirm the water quality data analysis and modeling is sufficient for the Division to review and issue a water quality certification under Section 401 of the Clean Water Act (“Section 401 Certification”) for the MSWSP; and,

WHEREAS, pursuant to § 25-8-502 C.R.S. and House Bill 15-1249 (1.2), the Division is now required to categorize projects requiring Section 401 Certification into a tier ranging from one through four based on project complexity. The Division has determined that the MSWSP is a Tier 4 project due to the high degree of complexity, the increased potential for water quality impacts, and the significant level of public participation regarding this project; and,

WHEREAS, as the applicant of a Tier 4 project, Greeley is required to pay a fee that is based on the actual cost of Division staff time, which includes administrative time and the time necessary to review technical information; and,

WHEREAS, the parties wish to record their mutual understanding in an intergovernmental agreement; and,

WHEREAS, Greeley may enter into this intergovernmental agreement with the Division pursuant to the provisions of § 29-1-203, C.R.S; and,

WHEREAS, pursuant to Section 02.07.040, *Greeley Municipal Code*, Greeley has the authority to enter into cooperative or joint activities with other governmental bodies if approved by resolution; and,

WHEREAS, On February 15, 2017, the Greeley Water and Sewer Board approved the Billing Agreement for the Section 401 of the Clean Water Act, State Water Quality Certification (“Billing Agreement”), between Greeley and the Division, and recommended that the Greeley City Council approve the same; and,

WHEREAS, it is in the best interest of the citizens of Greeley for the parties to enter into this intergovernmental agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREELEY, COLORADO:

Section 1. The City Council hereby authorizes the Mayor to execute Exhibit A, the Billing Agreement between Greeley and the Division.

Section 2. City Council hereby authorizes City staff to perform all terms and conditions of the Billing Agreement.

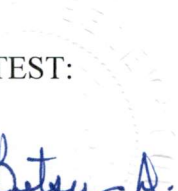
Section 3. City Council hereby delegates authority to the Greeley Water and Sewer Board to approve and authorize subsequent billing agreements with the Division until the Division has reviewed and issued or denied a Section 401 Certification for the MSWSP and for the Mayor to execute the same.

Section 4. This Resolution shall become effective immediately upon its passage, as provided by the Greeley City Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS 21<sup>st</sup> day of March, 2017.

ATTEST:

City Clerk

  
*Betsy A. Holder*

THE CITY OF GREELEY, COLORADO

Mayor

*Francis J. Holder*

**WATER & SEWER BOARD AGENDA** September 20, 2017

ENCLOSURE   X        NO ENCLOSURE     

ITEM NUMBER:            8

TITLE:                    APPROVE THE INTERGOVERNMENTAL  
AGREEMENT FOR BACKUP ELECTRICAL  
POWER AT THE BOYD WATER TREATMENT  
PLANT WITH LOVELAND AND RECOMMEND  
TO COUNCIL

RECOMMENDATION:      APPROVE AND RECOMMEND TO CITY  
COUNCIL

ADDITIONAL INFORMATION:

The City of Greeley is recommending an Intergovernmental Agreement with the City of Loveland to provide backup electrical power. The City of Loveland has the capacity to provide such power. The City of Greeley has a water treatment plant known as the Boyd Lake Water Treatment Plant (Boyd WTP) that lies within the City of Loveland boundaries and Growth Management Area. The Boyd WTP receives its primary electrical power from the Public Service Company of Colorado and Greeley desires a backup source of electrical power from the City of Loveland.

**INTERGOVERNMENTAL AGREEMENT CONCERNING THE PROVISION OF  
BACKUP ELECTRICAL POWER FOR THE BOYD LAKE WATER TREATMENT  
PLANT**

This INTERGOVERNMENTAL AGREEMENT CONCERNING THE PROVISION OF BACKUP ELECTRICAL POWER FOR THE BOYD LAKE WATER TREATMENT PLANT (“Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between THE CITY OF LOVELAND, COLORADO, a home rule municipality, (“Loveland”) and THE CITY OF GREELEY, a home rule municipality ( “Greeley”) (each a “Party” and collectively, the “Parties”).

**RECITALS**

**WHEREAS**, Greeley has a water treatment plant known as the Boyd Lake Water Treatment Plant (“Boyd WTP”) that lies within Loveland’s corporate boundaries and its Growth Management Area; and

**WHEREAS**, the Boyd WTP receives its primary electrical power from the Public Service Company of Colorado (“PSC”) and Greeley desires a backup source of electrical power; and

**WHEREAS**, Loveland is willing to provide backup electrical power and has the capacity to provide such power; and

**WHEREAS**, Greeley agrees it will continue to own its distribution equipment and the auto throw switch (“ATS”) and Loveland will continue to own all equipment up to the meter; and

**WHEREAS**, the Parties agree that this Agreement will benefit both Parties such that Greeley will obtain reliable backup electrical power and Loveland will receive an additional source of revenue; and

**WHEREAS**, the Parties have negotiated and desire to enter into this Agreement to set forth their rights and obligations with respect to the provision of backup electrical power for Greeley at the Boyd WTP.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Construction. The Parties agree that Greeley will be responsible for all costs of construction and installation of infrastructure to connect to Loveland’s electric utility infrastructure from the end of 15<sup>th</sup> Street to the Boyd WTP. The cost of any electric utility infrastructure extended to the end of 15<sup>th</sup> Street will be proportionally allocated between the Parties.
2. Ownership. Greeley will own all infrastructure and equipment on its property related to electrical distribution including the ATS, and Loveland will continue to own all electrical

distribution infrastructure up to the meter. Any infrastructure owned by PSC will continue to be owned by PSC, and this Agreement will not change any rights or ownership held by PSC.

3. **Peak Load:** Greeley will provide Loveland with the peak load value; Loveland agrees to reserve capacity on the system for this amount. If on a case by case basis, more load is requested by Greeley, Loveland will evaluate at that time whether the system can handle the load requested. The peak load value will be attached as Exhibit A and may be modified if mutually agreed to by both parties. The city managers for each Party will only be required to sign an updated Exhibit A, without affecting this Agreement, to notify and accept peak load changes. The signed and updated Exhibit A will be added to the Appendix.

4. **Rates.** Loveland will charge the standby rate, and Greeley will pay the monthly base charge, per kW and kWh. The standby rate is a monthly fee. The rate to be charged is attached as Exhibit B and may be modified by Loveland. Whenever Loveland has a change in rate, Greeley will be notified. The city managers for each Party will only be required to sign an updated Exhibit B, without affecting this Agreement, to notify and accept rate changes. The signed and updated Exhibit B will be added to the Appendix. Generally, Loveland will inform Greeley of any changes to the rates in October, and Greeley will accept the rate by November 30<sup>th</sup> to allow Loveland to plan for the upcoming year.

a. **Daily Demand Charge.** In addition to the standby base charge rate, Greeley agrees to pay a usage daily demand charge. This will be calculated by the average daily demand charge rate divided by 30. The daily demand charge is published in Loveland's Rates, Fees and Charges adopted by the City Council. When Loveland's City Council adopts a new Rates, Fees and Charges Schedule such changes will be as if adopted herein without further action by the Parties.

4. **Payments.** Loveland will invoice monthly, and Greeley will make payments within 30 days.

5. **Term.** The term of this Agreement shall begin as of the date first set forth above and shall renew annually unless terminated by either Party as set forth in paragraph 6 below.

6. **Termination.** This Agreement may be terminated by either Party, in whole or in part, upon the provision of written notice of termination by the terminating Party to the other Party at least sixty (60) days prior to the effective date of such termination. Any termination notice provided pursuant to this Paragraph shall specify the effective date of termination. The Parties shall work together to shut off and disconnect the electrical power to the Boyd WTP upon receiving notice of termination.

7. **Multi-Fiscal Year Obligations.** To the extent this Agreement constitutes a multiple fiscal year debt or financial obligation of either Party, it shall be subject to annual appropriation pursuant to Loveland's Municipal Charter Section 11-6 and Article X, Section 20 of the Colorado Constitution. Neither Party shall have any obligation to continue this Agreement in any fiscal year in which no such appropriation is made.

8. Governmental Immunity Act. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*

9. Amendment. This Agreement may not be amended, modified, or changed, in whole or in part, without a written agreement executed by the Parties.

10. Assignment. This Agreement, in whole or in part, may not be assigned or transferred to any other party without the prior written consent of the non-assigning Party. Any attempted assignment in violation of this paragraph shall be immediately void and of no effect.

11. Notices. Written notices required under this Agreement and all other correspondence between the Parties shall be directed to the following and shall be deemed received when hand-delivered, emailed, or three(3) days after being sent by certified mail, return receipt requested:

**If to Greeley:** Adam Prior, Chief Engineer  
Water & Sewer Department  
1100 10th Street, 3rd Floor  
Greeley, CO 80631  
Email: adam.prior@greeleygov.com

**With a copy to:** City Attorney  
1100 10th Street, Suite 401  
Greeley, CO 80631  
Email: susan.henderson@greeleygov.com

**If to Loveland:**

**With a Copy to:** City Attorney's Office  
Attn: City Attorney  
500 East 3<sup>rd</sup> Street, Suite 330  
Loveland, Colorado 80530  
Email: cityattorney@cityofloveland.org

12. Waiver. No waiver by any Party of any term or condition of this Agreement shall be deemed to be or shall be construed as a waiver of any other term or condition of this Agreement, nor shall any waiver of a breach of any provision of this Agreement be deemed to constitute a waiver or any subsequent breach of the same provision.

13. Severability. If any clause or provision of this Agreement is adjudged invalid or unenforceable or both by a court of competent jurisdiction or by operation of any law, such clause

or provision shall not affect the validity of this Agreement as a whole, but shall be severed herefrom, leaving the remaining Agreement intact and enforceable.

14. Headings. Paragraph headings used in this Agreement are for convenience of reference only and do not define, control, limit or otherwise affect the meaning or interpretation of any provision of this Agreement.

15. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective successors and permitted assigns.

16. Entire Agreement. This Agreement, including any and all exhibits attached hereto, constitutes the entire agreement of the Parties with respect to the subject matter set forth herein and supersedes all prior agreements, understandings, discussions, representations or warranties made by any Party.

17. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument. Facsimile or electronically transmitted signatures shall be deemed as original signatures.

(Remainder of page intentionally left blank)

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date first above written.

**CITY OF LOVELAND, COLORADO**

By: \_\_\_\_\_  
Stephen C. Adams, City Manager

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney



**CITY OF GREELEY, COLORADO**

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

ATTEST:

By: \_\_\_\_\_ (Seal)  
City Clerk

APPROVED AS TO LEGAL FORM

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

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
City Manager

REVIEWED FOR AVAILABILITY OF FUNDS:

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

CITY OF GREELEY, COLORADO  
RESOLUTION \_\_\_\_\_, 2017

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF GREELEY, COLORADO AND THE CITY OF LOVELAND, COLORADO FOR THE PROVISION OF BACKUP ELECTRICAL POWER FOR THE BOYD WATER TREATMENT PLANT

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

WHEREAS, the City of Greeley has a water treatment plant known as the Boyd Lake Water Treatment Plant (Boyd WTP) that lies within the City of Loveland boundaries and Growth Management Area; and

WHEREAS, the Boyd WTP receives its primary electrical power from the Public Service Company of Colorado and Greeley desires a backup source of electrical power; and

WHEREAS, Loveland is willing to provide backup electrical power and has the capacity to provide such power; and

WHEREAS, the Parties have negotiated and desire to enter into an Intergovernmental Agreement to set forth their rights and obligations with respect to the provision of backup electrical power for Greeley at the Boyd WTP.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GREELEY, COLORADO:

Section 1. The Mayor is hereby authorized to enter into the Intergovernmental Agreement Concerning the Provision of Backup Electrical Power for the City of Greeley Water Treatment Plant, attached hereto as Exhibit A.

Section 2. This Resolution shall become effective immediately upon its passage, as provided by the City of Greeley Charter.

PASSED AND ADOPTED, SIGNED AND APPROVED THIS \_\_\_\_ day of \_\_\_\_\_, 2017.

ATTEST:

THE CITY OF GREELEY, COLORADO

By: \_\_\_\_\_  
City Clerk

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

**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           9

TITLE:                   REPORT: BELLVUE TRANSMISSION  
PIPELINE UPDATE

RECOMMENDATION:    INFORMATION ONLY

**ADDITIONAL INFORMATION:**

Staff will provide a presentation regarding the completion of construction of the Bellvue Northern Pipeline.

**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE   X        NO ENCLOSURE     

ITEM NUMBER:            10

TITLE:                    REPORT: WATER COURT CASE LEGAL  
UPDATE

RECOMMENDATION:      INFORMATION ONLY

**ADDITIONAL INFORMATION:**

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



# Water & Sewer Department

## MEMORANDUM

---

TO: Greeley Water & Sewer Board  
FROM: Jen Petrzelka, Water Rights Manager  
DATE: September 11, 2017  
RE: Water Court Cases Update, 3<sup>rd</sup> Quarter

---

This memorandum is a review of the Water and Sewer Department's legal activities from April to August of 2017. The review includes an update on Greeley's current Water Court cases and a summary of the Water Resources Division's legal expenses.

### **STATEMENTS OF OPPOSITION**

Since the last update in April, Greeley has stipulated to decrees in two cases and filed two statements of opposition. Therefore the current number of pending Water Court cases where Greeley is an opposer remains 21. This is a slight increase from the end of 2016, when Greeley was an opposer in 19 Water Court Cases.

Cases stipulated:

- 14CW3176 Fort Collins Natural Areas
- 13CW3026 ACWWA, ECCV, United

Cases entered:

- 17CW3031 Sorin Natural Resources
- 17CW3057 North Weld Water District

### **GREELEY AS APPLICANT**

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

#### *15CW3162 (Rockwell Reservoir)*

Greeley owns a conditional storage right in the amount of 4,900 acre feet, originally decreed to the Rockwell Reservoir in Case No. W-8675. Greeley also owns certain conditional appropriative rights of exchange originally decreed to the Rockwell Reservoir from a number of other structures in Case No. W-9385-78.

SERVING OUR COMMUNITY • IT'S A TRADITION

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

In December 2015 Greeley filed its application seeking to make Milton Seaman Reservoir an alternate place of storage for the Rockwell Reservoir conditional storage right, as well as adding Milton Seaman Reservoir as an exchange-to point for certain associated rights of exchange.

Statements of Opposition were filed by:

- Water Supply and Storage Company
- Linda A. McMurry Trust and Murry R. McMurry Trust
- Lake Canal Reservoir Company
- City of Fort Collins
- CO Parks and Wildlife
- Cache La Poudre Water Users Association
- North Poudre Irrigation Company
- CO State Board of Land Commissioners-stipulated
- City of Thornton
- Northern Colorado Water Conservancy District

Greeley amended the application in June 2016 to include the Fort Collins Pipeline diversion as an alternate point of diversion and exchange-to point for the Rockwell Reservoir water rights, which would allow Greeley to pump the Rockwell rights from the mainstem of the Poudre for storage in Milton Seaman Reservoir.

Greeley submitted additional engineering and a revised proposed decree on March 31<sup>st</sup> and has since met with a few of the opposers in person to discuss their concerns. The State Board of Land Commissioners stipulated to a proposed decree in april, and further comments are due from the remaining opposers by the end of September. Greeley's Rule 26(a)(2) (expert report) disclosures are due in October but we intend to continue conversations with opposers concerning potential settlement.

15CW3163 (GIC change case)

In December 2015 Greeley filed an application for the change of use for 77.8 of its Greeley Irrigation Company (GIC) shares. GIC owns 5/8ths of Greeley Canal No. 3 and its water rights (Greeley owns the other 3/8ths separate from its GIC share ownership). The application generally tracks Greeley's first GIC share change application (99CW232) and GIC change applications filed by others.

Statements of Opposition were filed by:

- East Cherry Creek Valley Water and Sanitation District
- Greeley Irrigation Company
- Martin Marietta Materials-stipulated
- United Water and Sanitation District
- City of Thornton
- North Poudre Irrigation Company
- Ogilvy Irrigating and Land Company
- Cache La Poudre Water Users Association

- City of Fort Collins-stipulated
- Central CO Water Conservancy District

We received stipulations from Martin Marietta Materials and the City of Fort Collins and are continuously working to resolve the remaining opposers' issues. We circulated a revised proposed decree at the end of March and received comments on May 15. We have been in communication with the remaining opposers and are moving towards settlement.

16CW3047 (application to make absolute, and for reasonable diligence, for 99CW231 conditional rights)

In March 2016 Greeley filed its application for a finding of reasonable diligence on the rights decreed in Case No. 99CW231, which include conditional groundwater rights, a conditional surface water right, and conditional exchanges. Greeley is claiming a number of groundwater rights and exchanges absolute, as well as the North Ridge Enlargement surface water right.

Statements of Opposition were filed by:

- Greeley Irrigation Company-stipulated
- Cache La Poudre Water Users Association

We received comments on our first draft decree and received a stipulation from the GIC. We are close to stipulating with the Cache La Poudre Water Users Association's and will request entry of a final decree upon reaching that stipulation.

17CW3020 Leprino

Greeley has been working with Leprino Foods, Inc. ("Leprino") on a water court application for quantification of reusable return flows and appropriative rights of substitution and exchange. Our application was filed in February.

Statements of Opposition were filed by

- GIC
- Thornton
- Sorin (entry of appearance)
- Northern Water
- Central
- New Cache
- Ogilvy
- Bijou Irrigation Co.
- Martin Marietta Materials
- City of Evans
- Cache la Poudre Water Users
- United
- Farmer's Reservoir and Irrigation Co.
- ACWWA

- ECCV

A draft engineering report and a proposed ruling was circulated in July. Opposer comments are due September 21<sup>st</sup>.

Larimer & Weld Irrigation Company change case

Greeley now owns and will seek to change its shares under the Larimer and Weld system. Greeley and the Companies entered into a cost reimbursement agreement in November and are cooperating to review their records in anticipation of a future change case. We have begun preparing a draft engineering report

**LEGAL & ENGINEERING EXPENSES:**

The Water Resource Division's outside legal and engineering expenses through August of 2017 totaled \$322,985 which is 79% of the total spent in 2016 of \$408,896.

*2017 Water Resources Legal and Engineering Costs*

<u>1st quarter</u>	
Legal	\$12,542
Engineering	\$51,914
<i>Total</i>	<i>\$64,455</i>
<u>2nd quarter</u>	
Legal	\$98,976
Engineering	\$45,161
<i>Total</i>	<i>\$144,137</i>
<u>3rd quarter</u>	
Legal	\$89,734
Engineering	\$34,659
<i>Total</i>	<i>\$124,393</i>
<u>4th quarter</u>	
Legal	
Engineering	
<i>Total</i>	
<b><i>Annual Total</i></b>	<b><i>\$332,985</i></b>



**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE   X        NO ENCLOSURE     

ITEM NUMBER:            11

TITLE:                    ACTION: APPROVE PURCHASE PRICE FOR  
ACQUISITION OF DANIELSON FARM AND  
WSSC WATER RIGHTS

RECOMMENDATION:      APPROVE PURCHASE PRICE

**ADDITIONAL INFORMATION:**

At its May 17, 2017 meeting, the Water and Sewer Board approved the acquisition of a parcel of real property containing approximately forty ( $\pm 40.32$ ) acres of land, along with one and one-half shares in the Water Supply and Storage Company (WSSC), from Jack C. Danielson, Brent R. Danielson and Ray Danielson, Inc. The total purchase price for this acquisition is \$1,241,920.

The appraisal obtained by Greeley from Foster Valuation Company estimates the market value of the property (land and water rights) to be \$1,235,000. Because the purchase price for this property exceeds its appraised value, Section 6.1(A) of the purchase agreement requires an additional Board approval prior to closing on the acquisition.

Pursuant to two extensions of the purchase agreement inspection period, Greeley has completed its investigations into the condition of the land, the historic consumptive use of the water rights, and the associated dry-up for these rights. Based on the findings of these investigations, Greeley staff and counsel recommend that the Board approve the purchase price of \$1,241,920 for this acquisition, which is \$6,920 above the appraised value of the property.

PURCHASE AND SALE AGREEMENT

(Danielson II)

This PURCHASE AND SALE AGREEMENT ("this Agreement") is made and entered into by and between JACK C. DANIELSON and BRENT R. DANIELSON, in their joint individual capacities, and RAY DANIELSON, INC., a Colorado corporation (collectively referred to as "Sellers"), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation ("City" or "Greeley").

RECITALS

A. Jack C. Danielson and Brent R. Danielson shall be separately referred to as "Danielsons." Ray Danielson, Inc. shall be separately referred to by its actual corporate name, Ray Danielson, Inc. As aforesaid, Danielsons and Ray Danielson, Inc. shall be collectively referred to as "Sellers."

B. Danielsons own the parcel of real property, consisting of approximately 40.32 acres of land (the acreage is approximate and is not guaranteed by Sellers), which is located at 39509 WCR 31, Ault, Colorado, in Section 16, Township 7 North, Range 66 West of the 6<sup>th</sup> P.M., in Weld County Colorado, and which is more particularly described on Exhibit A (the "Land").

C. Danielsons also own one-half (1/2) share of The Water Supply & Storage Company, represented by Stock Certificate No. 6736, which has historically been used to irrigate the Land (separately the "Included One-Half Water Supply Share"). Ray Danielson, Inc. owns two (2) shares of The Water Supply & Storage Company, represented by Stock Certificate No. 6740, of which one (1) share shall be referred to as the "Included One Water Supply Share," and the other share shall be referred to as the "Retained One Water Supply Share." The Included One-Half Water Supply Share and the Included One Water Supply Share shall be jointly referred to as the "WSSC Water Rights."

D. The parties desire to set forth the terms and conditions by which the Sellers will sell and Greeley will purchase the Land and the WSSC Water Rights, together with all 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 contained herein and other good and valuable consideration, the receipt and adequacy of which are acknowledged, the Sellers and Greeley agree as follows:

AGREEMENT

ARTICLE 1  
DEFINITIONS

For purposes of this Agreement, the following terms shall have the following meanings:

1.1 "Land" is the real property referenced in Recital B above and legally described on Exhibit A, attached hereto and incorporated herein by reference.

1.2 "Effective Date" is the date upon which the Sellers and Greeley's Water and Sewer Director have both signed this Agreement, which will trigger commencement of diligence activities and the Inspection Period. The execution date of the supplemental signatures page required under Section 16.17 will not be used in calculating the Effective Date, and the Agreement shall become final and effective only upon authorization of this Agreement by the City of Greeley Water and Sewer Board.

## ARTICLE 2 SALE OF PROPERTY

The Sellers agree to sell, and Greeley agrees to buy, on the terms and conditions set forth in this Agreement, the "Property" defined in this Article 2. Except as excluded in Section 2.6 below, the Property shall include, and the Sellers shall convey to Greeley at "Closing" (defined below), the following:

2.1 Land. The Land, together with all rights, title and interest of the Sellers in and to all reversions, remainders, easements, rights of way, 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 and structures located on the Land; and all fences, gates, plants, trees, landscaping and other improvements, if any, upon, over or under the Land (the "Improvements").

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

2.3 Water Rights. The water rights and related interests to be conveyed hereunder include the following:

A. The WSSC Water Rights described in Recital C above, represented by Stock Certificate No. 6736 (for the Included One-Half Water Supply Share) and Stock Certificate No. 6740 (for the Included One Water Supply Share), together with the water and water rights, ditches and ditch rights, reservoirs and reservoir rights, easements, and any other assets and interests represented by the WSSC Water Rights.

B. All rights, title, and interest of the Sellers 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 Real Estate, whether tributary, nontributary or not nontributary, including particularly, but not by way of limitation, all rights, title, and interest in and to the water and water rights, irrigation wells, well rights, and well permits. The water rights covered by this provision shall also include all

rights, title, and interest of the Sellers in and to any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Land. All of the foregoing water rights and related interests to be transferred to Greeley are referred to as the "Transferable Water Rights."

2.4 Permits, Licenses, Etc. All rights, title and interest of the Sellers, 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 Transferable Water Rights and the Property.

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

2.6 Exclusions. The Property does not include, and the Sellers expressly except and reserve, the following:

A. All rights, title, and interest of the Sellers in and to all oil and gas mineral rights located in, on, or under the surface of the Property (the "Reserved Mineral Rights"). The Reserved Mineral Rights do not include, and the Sellers shall convey to Greeley at Closing, all rights, title and interest of the Sellers in and to all sand, rock, gravel, coal, phosphate, uranium, precious metals, and all other minerals located in, on, under the Property that requires mining.

B. All items of personal property owned by Sellers and used in the business of farming and caring for livestock.

### ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price. The total purchase price for the Property is One Million Two Hundred Forty-One Thousand Nine Hundred Twenty Dollars (\$1,241,920.00) ("Purchase Price"), which shall be allocated as follows:

\$ 566,920.00	-	For the Real Estate and the Included One-Half Water Supply Share
<u>\$ 675,000.00</u>	-	For the Included One Water Supply Share
\$1,241,920.00	-	Total Purchase Price

The Purchase Price is payable as follows:

3.2 Deposit and Release of Deposit. Within 14 days following the Effective Date, Greeley shall cause the amount of Ten Thousand Dollars (\$10,000.00) ("Deposit") to be deposited with Land Title Guarantee Company, 772 Whalers Way, Suite 100, Fort Collins, Colorado (title officer: Heidi Crue; closer: Donna Mancini) ("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 Section 3.5, Section 4.3, 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 Sellers 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.

3.5 Appraisal. Within 14 days after the Effective Date, Greeley shall request an appraisal of the Property to confirm that the Property's valuation is equal to or greater than the Purchase Price. The cost of the appraisal shall be paid for by Greeley. If the Property's valuation is less than the Purchase Price, then Greeley has the sole option and election to terminate this Agreement. Upon termination of this Agreement by Greeley pursuant to this Section 3.5, and except as otherwise provided herein, the Deposit shall be returned to Greeley and neither the Sellers 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 4 TITLE

4.1 Title Commitment. Within the time periods set forth below, the Sellers shall provide to Greeley for its review the following:

A. Within 14 days after the Effective Date, a commitment for an owner's policy of title insurance ("Title Commitment"), issued by the Title Company covering the Land and indicating the Title Company's willingness to issue to Greeley at Closing the "Title Policy" (defined below) in the amount of Five Hundred Sixty-Six Thousand Nine Hundred Twenty Dollars (\$566,920.00), with such Title Commitment setting forth the status of title to the Land and showing all liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the Land. The amount of the Title Insurance Commitment may be updated after appraisal.

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

C. Within 14 days after the Effective Date, to the extent the same are in the Sellers' 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 Transferable Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, the Sellers' actual Stock Certificates for the WSSC Water Rights, records regarding electrical use and crop and livestock production, and any records provided to or maintained by WSSC concerning the WSSC Water Rights, including without limitation share certificate records, delivery records, and assessment records (or, in the alternative, the Sellers shall exercise reasonable diligence to obtain for Greeley the right to inspect and copy such WSSC 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.

4.2 ALTA/ACSM Land Title Survey. Not less than 14 days prior to the expiration of the Inspection Period, Greeley shall have prepared a final ALTA/ACSM Land Title Survey 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, which Survey shall be certified to the Sellers, Greeley, and the Title Company. Promptly after receipt thereof, Greeley shall provide two copies of the Survey to the Seller's attorney, Timothy W. Hasler, at 125 South Howes, Sixth Floor, Fort Collins, Colorado 80521.

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 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 the Sellers 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. Any matters created by or through Greeley.

4.4 Vesting of Title. At Closing, the Sellers shall convey fee simple title to: (1) the Real Estate to Greeley by Special Warranty Deed, free and clear of all liens and encumbrances, subject only to the Permitted Exceptions and (2) the Transferable Water Rights to Greeley by Special Warranty Deed, free and clear of all liens and encumbrances. As aforesaid, the Property does not include, and the Special Warranty Deed for the Real Estate shall except and reserve to the Sellers, the Reserved Mineral Rights. If the Sellers or the Title Company gives Greeley notice of a title exception that is not a Permitted Exception and that arose subsequent to the execution of this Agreement, or was not disclosed in the Title Commitment, then Greeley shall disapprove of such exceptions, if at all, by giving written notice of objection to the Sellers within 14 days after receiving notice from the Sellers or the Title Company. Any such exception not objected to in writing within such 14-day period shall be deemed an additional Permitted

Exception. The Sellers may elect (but shall not be obligated) to remove, or cause to be removed at their expense, any such disapproved exceptions (collectively, "Disapproved Matters") or, with Greeley's approval, the Sellers may elect (but shall not be obligated) to obtain title insurance insuring against the effect of the Disapproved Matters. The Sellers shall notify Greeley in writing within 7 days after receipt of Greeley's notice of Disapproved Matters if the Sellers elect to remove or obtain insurance for such matters. If the Sellers fail 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 the Sellers elect not to remove one or more Disapproved Matters, or if Greeley does not approve endorsing over such matter, Greeley may, upon 7 days' prior written notice to the Sellers, 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 the Sellers 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.

4.5 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 the Sellers, 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 the Sellers 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 which commences upon the Effective Date and continues until and including 4:00 p.m., Mountain Time, on Tuesday, August 1, 2017 ("Inspection Period"), Greeley and its authorized agents, representatives and consultants shall be entitled to enter upon the Real Estate at all reasonable times to inspect the Real Estate 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 costs of all such inspections and tests. The Sellers agree 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 the Sellers.

5.2 Inspection. Greeley and its authorized agents, representatives and consultants shall (i) not unreasonably interfere with the operation and maintenance of the Real Estate; (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 the Sellers, their agents, contractors or employees; (iv) shall promptly pay when due the costs of all tests, investigations and examinations done with regard to the Real Estate; (v) shall not permit any liens to attach to the Real Estate by reason of the exercise of its rights hereunder; and (vi) shall restore the Real

Estate as nearly as practicable to substantially the same condition in which the Real Estate 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 due to Inspection. 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 the Sellers 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 the Sellers 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 written notice of termination is not given by Greeley to the Sellers prior to the expiration of the Inspection Period, the Deposit shall not be refunded to Greeley if, for any reason other than as a result of a default by the Sellers or pursuant to Section 3.5, Section 4.3, 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 the Sellers 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.

## 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, either or both of which may be waived by Greeley at its option:

A. Appraisal. The Property's valuation 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 valuation of the Property and the Purchase Price is not approved by the Greeley Water and Sewer Board a minimum of 7 days prior to the Closing Date, then, in such event, upon written notice by Greeley to the Sellers, 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. Water Rights Lease. The parties agreeing to the specific terms of the "Water Rights Lease" (defined below) in accordance with Section 6.4 at or before Closing. In the event that the parties do not agree to the specific terms of the Water Rights Lease prior to the Closing Date, then, in such event, this Agreement shall automatically 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 first business day which is at least 14 days after the expiration of the Inspection Period, or at such other reasonable time, date, or location as the parties may mutually agree. 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. The Sellers shall deliver or cause to be delivered to Greeley the following documents duly executed and acknowledged where appropriate:

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

(2) An assignment, without warranty of any type, of the Sellers' right, 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.

(3) A Special Warranty Deed conveying title to the Transferable Water Rights to Greeley free and clear of all liens and encumbrances.

(4) The original Water Supply & Storage Company Stock Certificate No. 6736, evidencing the Included One-Half Water Supply Share, and the original Water Supply & Storage Company Stock Certificate No. 6740, evidencing the Included One Water Supply Share, together with all other documents necessary to transfer the WSSC Water Rights, including an assignment of the WSSC Water Rights represented by foregoing shares in a form and manner acceptable to WSSC, to Greeley.

(5) An assignment, without warranty of any type, of all other rights, privileges and appurtenances owned by the Sellers which relate to or are used in connection with the Property to the extent that they are assignable.

(6) Certificates of non-foreign status to confirm that Greeley 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) The Water Rights Lease in accordance with Section 6.4 below.

(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 the Sellers 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 the Sellers 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) A Real Property Transfer Declaration as required by Colorado law.

(5) The Water Rights Lease in accordance with Section 6.4 below.

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

6.4 Water Rights Lease. Ray Danielson, Inc. shall have the right to lease from Greeley the Included One Water Supply Share and the water attributable thereto (the "Leased Water Rights"), for a period of up to 12 years after Closing, subject to the City of Greeley, Colorado Charter Section 17-4(c). Ray Danielson, Inc. and Greeley agree to negotiate in good faith to enter into a lease agreement (the "Water Rights Lease") for continued use of the Leased Water Rights of Ray Danielson, Inc. in satisfaction of this provision at or before Closing. In the event that the parties do not reach a mutual agreement regarding the leaseback of the Leased Water Rights, this Agreement and Ray Danielson, Inc.'s right to lease, as described above, shall immediately terminate.

## ARTICLE 7 PRORATIONS; CLOSING COSTS

7.1 Prorations. All real estate taxes attributable to the Real Estate 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 Real Estate and the current assessed value for the Real Estate, unless the actual real estate taxes for the current year are known on the Closing Date. Annual assessments on the WSSC Water Rights shall be prorated in accordance with local practice. Any special assessments against the Real Estate shall be paid in full by the Sellers 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 (½) of the Title Company closing fee. Greeley shall also pay the transfer fees for the WSSC Water Rights. The Sellers shall pay the basic premium for the Title Policy, the cost for deletion of preprinted standard Title Exceptions 1 through 5 and one-half (½) of the Title Company closing fee. Each party shall pay its own attorneys' fees.

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

## ARTICLE 8 GENERAL REPRESENTATIONS AND WARRANTIES OF SELLERS

The Sellers represent and warrant to Greeley as follows:

8.1 Encumbrances. From the Effective Date until the Closing, and except for the Permitted Exceptions, the Sellers 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.

8.2 Compliance with Governmental Regulations. To the best of the Sellers' 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 Real Estate. The Sellers have 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.

8.3 Litigation. To the best of Sellers' 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.

8.4 Contracts, Leases and Agreements. From the Effective Date until the Closing, unless accepted by Greeley in writing, the Sellers 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 or relating to the Property by which Greeley would be obligated or liable to any third party.

8.5 Status. The Sellers have all requisite legal power and authority to own and convey the Property and other interests and perform all of the terms of this Agreement.

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

8.7 Zoning. The Sellers have not requested, applied for, or given their consent to, and to the best of the Sellers' current actual knowledge, there are no pending requests for, zoning variances or changes with respect to the Real Estate or its zoning.

8.8 Duty to Disclose. Until Closing, the Sellers shall disclose to Greeley in writing any conditions or events that arise or occur subsequent to the Effective Date that become known to the Sellers and which contradict or modify any representation or warranty of the Sellers set forth herein. In the event prior to Closing Greeley obtains knowledge contrary to the Sellers' representations and warranties, Greeley shall promptly notify the Sellers of the same. Greeley's sole remedies in the event of a breach of any representation or warranty by the Sellers known to Greeley before the Closing shall be to either terminate this Agreement and receive a refund of the Deposit or to proceed with the Closing, in which case the Sellers shall have no liability for such breach. In further clarification, Greeley shall not have the right to make a claim against the Sellers under any representation or warranty of the Sellers to the extent that, prior to Closing, Greeley became aware that the representation or warranty was not accurate and Greeley elected to complete the Closing. At Closing, the Sellers shall certify to Greeley in writing that all representations and warranties of Sellers as set forth in this Article 8 are true and correct as of the Closing Date except as amended or modified by facts or circumstances discovered by the Sellers subsequent to the Effective Date and disclosed to Greeley as provided herein. Except as otherwise provided herein, the Sellers' representations and warranties in this Article 8 shall survive the Closing for a period of one year after the Closing Date.

## ARTICLE 9 COVENANTS

9.1 Continuing Covenants of Sellers: 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 Transferable Water Rights for municipal and other uses. Unless this Agreement is terminated pursuant to the provisions herein, the Sellers agree that they shall not oppose, but shall cooperate with Greeley, in all reasonable respects, in any actions filed in Water Court or administrative or other proceedings for approval of Greeley's use of the Transferable Water Rights. The Sellers' 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 Land.

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 Environmental Representations and Warranties. The Sellers represent and warrant to Greeley, to the Sellers' 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 underground 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 or aboveground storage tanks, 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 the Sellers have 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 which, 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. Sellers have not received notice that any treatment, storage or disposal facility, or any other place to which Hazardous Substances generated from the Land by the Sellers or their 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).

10.3 Covenants. During their period of ownership of the Land, the Sellers covenant and agree to and with Greeley as follows:

A. The Sellers 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. The Sellers shall comply with all applicable Environmental Laws and shall obtain and comply with all Environmental Permits.

C. The Sellers shall not cause or permit any change to be made in the present or intended use of the Land which 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. The Sellers 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. The Sellers shall at all times allow Greeley and their 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 Survival of Environmental Representations, Warranties, and Covenants. The Sellers' environmental representations, warranties, and covenants under this Article 10 shall survive the Closing for a period of two years after the Closing Date.

10.5 Intentionally Deleted.

10.6 Sellers' Knowledge. Any representations or warranties made "to Sellers' knowledge," "Sellers' actual knowledge," or similar term shall not be deemed to imply any duty of inquiry. For purposes of this Agreement, the term Sellers' "knowledge" shall mean and refer only to the actual knowledge of Danielsons or any other officer or director of Ray Danielson, Inc., but shall not be construed to impose upon Danielsons or any such officer or director any duty to investigate the matter to which such actual knowledge or the absence thereof pertains, or to impose upon Danielsons or other officer or director any individual personal liability, except for any liabilities related to the non-disclosure of such knowledge.

## ARTICLE 11 CONDITIONS TO CLOSING; REMEDIES

11.1 Sellers' Conditions. The obligation of the Sellers 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 the Sellers):

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

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. APPROVAL OF THIS AGREEMENT BY THE CITY OF GREELEY WATER AND SEWER BOARD.

B. Delivery and execution by the Sellers of all items and other instruments required to be delivered by the Sellers to Greeley.

C. All of the actions by the Sellers contemplated by this Agreement shall have been taken.

D. There shall be no uncured default by the Sellers of any of their obligations under this Agreement.

E. The Sellers' covenants, warranties and representations made by the Sellers 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 the Sellers, 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 the Sellers by Greeley shall be immediately returned to Greeley, and all documents deposited by the Sellers or delivered to Greeley by the Sellers shall be immediately returned to the Sellers; 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 the Sellers which can be cured by action within the reasonable control of the Sellers, 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, the Sellers may in their sole discretion:

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

(2) The Sellers 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 Real Estate is subject to a proposed taking by any public authority, the Sellers shall promptly notify Greeley of such proposed taking and Greeley may terminate this Agreement by notice to the Sellers within 14 days after written notice thereof. Upon termination of this Agreement and except as otherwise provided herein, the Deposit shall be returned to Greeley and neither the Sellers 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 so terminate this Agreement, Greeley shall accept title to the Real Estate subject to the taking without a reduction in the Purchase Price and shall receive at Closing an assignment of all of the Sellers' 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 Real Estate 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, the Sellers' 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. THE SELLERS AND GREELEY ACKNOWLEDGE THAT THE SELLERS' DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED SUM IS A REASONABLE ESTIMATE OF THE SELLERS' DAMAGES.

ARTICLE 14  
BROKERAGE

The Sellers and Greeley hereby warrant to each other that there are no real estate agents or other brokers or finders involved in this transaction who are entitled to receive a brokerage or finder's fee. The Sellers agree 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 the Sellers, 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; or (iv) on the date and at the time shown on the e-mail message acknowledged in writing by the intended recipient:

If to the Sellers:

Brent R. Danielson  
41390 North Pinefield Circle  
Parker, Colorado 80138  
Telephone: (303) 319-9802  
Email: danielsonbrent@gmail.com

Jack C. Danielson  
39376 WCR 31  
Ault, Colorado 80610  
Telephone: (970) 834-2520  
Email: jd31cm@thinairnet.com

Ray Danielson, Inc.  
Attn: Jack C. Danielson  
39376 WCR 31  
Ault, Colorado 80610  
Telephone: (970) 834-2520  
Email: jd31cm@thinairnet.com

With a copy to:

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

If to Greeley:

Greeley Water and Sewer Department  
Attn: Eric Reckentine, Deputy Director of Water Resources  
1100 10<sup>th</sup> Street, Suite 300  
Greeley, Colorado 80631  
Telephone: (970) 350-9811  
Email: eric.reckentine@greeleygov.com

With a copy to:

Greeley City Attorney's Office  
Attn: Environmental and Water Resources Practice Group  
1100 10<sup>th</sup> Street, Suite 401  
Greeley, Colorado 80631  
Telephone: (970) 350-9757  
Email: daniel.biwer@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 Sellers 1031 Exchange. At the request of the Sellers, Greeley shall cooperate with the Sellers 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 the Sellers is Greeley's promise of cooperation. Greeley shall not be required to incur any additional liability or expense in connection with the Sellers' 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 the Sellers 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. All warranties of title set forth in any deed or assignment delivered or made hereunder shall survive without limit.

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. The Sellers 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 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. The Sellers shall deliver to Greeley possession of the Property on the Closing Date, subject to the Permitted Exceptions.

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 the Sellers and Greeley.

16.16 Acceptance. Upon execution and delivery of this Agreement by the Sellers 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).

16.17 Supplemental Greeley Signatures Required. As provided in Section 1.2 above, the signatures of the Seller and Greeley's Water and Sewer Director will trigger the "Effective Date" hereunder and allow Greeley to make the Deposit and begin inspection of the Property. However, the effectiveness of this Agreement and the obligations of Greeley hereunder are expressly contingent upon the formal approval of the Agreement by the City of Greeley Water and Sewer Board. The supplemental signature page herein must be duly executed to confirm such approval. In the event that the Water and Sewer Board does not approve this Agreement, the Deposit shall be returned in full to Greeley, and neither the Sellers nor Greeley shall have any further obligations or liability to the other hereunder, except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

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

**SELLERS**

**JACK C. DANIELSON and BRENT R. DANIELSON**

By: Jack C. Danielson Date: 5/12/17  
Jack C. Danielson

By: Brent R. Danielson Date: 5/11/2017  
Brent R. Danielson

**RAY DANIELSON, INC., a Colorado corporation**

By: Jack C. Danielson Date: 5/12/17

Name: Jack C. Danielson

Title: Pres.

**GREELEY**

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

By: Burt Knight Date: 5/30/17  
Burt Knight  
Director of Water and Sewer

THE FOLLOWING SUPPLEMENTAL SIGNATURE PAGE IS TO BE EXECUTED BY  
GREELEY AFTER APPROVAL OF THIS AGREEMENT BY THE CITY OF GREELEY  
WATER AND SEWER BOARD PURSUANT TO SECTION 16.17 ABOVE

SUPPLEMENTAL SIGNATURE PAGE

**GREELEY**

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

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

AS TO SUBSTANCE:

By: Roy Otto  
Roy Otto  
City Manager

APPROVED AS TO LEGAL FORM:

By: Doug Marek  
Doug Marek  
City Attorney

AS TO AVAILABILITY OF FUNDS:

By: Victoria Runkle  
Victoria Runkle  
Director of Finance

**EXHIBIT A TO**  
**PURCHASE AND SALE AGREEMENT**  
(Danielson II)

LEGAL DESCRIPTION

A tract of land located in the South Half of the Northeast Quarter (S1/2NE1/4) of Section 16, Township 7 North, Range 66 West of the 6<sup>th</sup> P.M., Weld County, Colorado, being more particularly described as follows:

Commencing at the East Quarter Corner (E1/4 Cor) of Section 16, said point being the TRUE POINT OF BEGINNING, and considering the East line of said Section 16 as bearing North 00°09'27" West, with all other bearings contained herein relative thereto; Thence South 89°18'24" West, 2626.22 feet; Thence North 00°25'17" West, 662.15; Thence North 87°15'43" East, 1785.40 feet; Thence South 89°59'31" East, 269.82 feet; Thence South 61°31'43" East, 655.95 feet to the point on the East line of said Section 16; Thence South 00°09'27" East along said East section line 402.90 feet to the TRUE POINT OF BEGINNING.

Said described parcel contains 40.32 acres, more or less, and is subject to any rights-of-way or other easements as recorded by instruments of record or as now existing on said described parcel of land.



**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           12

TITLE:                   EXECUTIVE SESSION

RECOMMENDATION:      INFORMATION ONLY

ADDITIONAL INFORMATION:

**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE   X  

ITEM NUMBER:           13

TITLE:                   LEGAL REPORT

POSSIBLE ACTION:       STATEMENTS OF OPPOSITION, IF ANY

RECOMMENDATION:      INFORMATION ONLY

ADDITIONAL INFORMATION:

**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE   X        NO ENCLOSURE     

ITEM NUMBER:            14

TITLE:                    DIRECTOR'S REPORT

RECOMMENDATION:      INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

- Proposed labels for water bottles created by Helveticka

You hold in your hands the finest-tasting water in all of North America, sourced from the snowcapped Rocky Mountains and brought to perfection by the dedicated employees of the Greeley Water Department. Hard to believe something this exquisite comes right out of our taps.

For more information, visit [GreeleyGold.com](http://GreeleyGold.com)

Bottled by Greeley's award-winning municipal water system.

**Greeley!**  
GOLD

16.9 FL OZ (500ml)

winner, American Water Works Association  
"Best of the Best," 2017

**Nutrition facts**

Serving size: 1 bottle

Amount per serving

**Calories 0**

		% DV*
<b>Total Fat</b>	0g	0%
<b>Sodium</b>	0mg	0%
<b>Total Carb.</b>	0g	0%
<b>Protein</b>	0g	0%

\*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Contains 100% of the U.S. RDA of deliciousness.

helvetica

You hold in your hands the finest-tasting water in all of North America, sourced from the snow capped Rocky Mountains and brought to perfection by the dedicated employees of the Greeley Water Department. Hard to believe something this exquisite comes right out of our taps – that's why we call it Greeley Gold.

GreeleyGold.com

Bottled by Greeley's award-winning municipal water system.

**Greeley!**  
GOLD

16.9 FL OZ (500ml)

winner, American Water Works Association  
"Best of the Best," 2017

**Nutrition facts**  
Serving size: 1 bottle

Amount per serving	
<b>Calories 0</b>	
	% DV*
<b>Total Fat</b>	0g <b>0%</b>
<b>Sodium</b>	0mg <b>0%</b>
<b>Total Carb.</b>	0g <b>0%</b>
<b>Protein</b>	0g <b>0%</b>

\*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Contains 100% of the U.S. RDA of deliciousness.

helvetica

You hold in your hands the finest-tasting water in all of North America, sourced from the snowcapped Rocky Mountains and brought to perfection by the dedicated employees of the Greeley Water Department. Hard to believe something this exquisite comes right out of our taps – that's why we call it Greeley Gold.

GreeleyGold.com

Bottled by Greeley's award-winning municipal water system.

**Greeley!**  
GOLD

16.9 FL OZ (500ml)

winner, American Water Works Association  
"Best of the Best," 2017

**Nutrition facts**

Serving size: 1 bottle

Amount per serving

**Calories 0**

		% DV*
<b>Total Fat</b>	0g	<b>0%</b>
<b>Sodium</b>	0mg	<b>0%</b>
<b>Total Carb.</b>	0g	<b>0%</b>
<b>Protein</b>	0g	<b>0%</b>

\*Percent Daily Values (DV) are based on a 2,000 calorie diet.

Contains 100% of the U.S. RDA of deliciousness.

helvetica



**WATER & SEWER BOARD AGENDA** SEPTEMBER 20, 2017

ENCLOSURE \_\_\_\_\_

NO ENCLOSURE \_\_X\_\_

ITEM NUMBER: 15

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: