

10. Legal Report

11. Director's Report

- Myers PSA
- Utility Billing and Water Budget Overview

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



If, to effectively and fully participate in this meeting, you require an auxiliary aid or other assistance related to a disability, please contact Shannon Metcalf at 970-415-1307.

**City of Greeley
Water and Sewer Board
Minutes of June 17, 2020
Regular Board Meeting**

Chairman Harold Evans called the Water and Sewer Board meeting to order at 2:00 p.m. on Wednesday, August 19, 2020. Due to City Closures related to COVID-19, this meeting was held remotely and was aired via live stream for public viewing at <https://www.youtube.com/user/CityofGreeley>.

1. Roll Call

The Clerk called the roll and those present included:

Board Members:

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

Water and Sewer Department Staff:

Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water Resources Manager Jen Petrzelka, Cole Gustafson, and Office Manager Shannon Metcalf

Legal Counsel:

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

Guests:

Doug Jeavons of BBC Research

2. Approval of Minutes

Mr. Sisneros moved, seconded by Mr. Miller, to approve the July 15, 2020 Water and Sewer Board meeting minutes. The motion carried 7-0.

3. Approval of and/or Additions to Agenda

Mr. Chambers noted that Item 7, City Tax Initiatives has been removed from the agenda.

******Consent Agenda******

- 4. Memorandum of Understanding Regarding Water Quality Monitoring in Northern Colorado (Compounds of Emerging Concern Monitoring Program)**
- 5. Amend Resolution No. 4, 2018 Frequency of Setting Cash in Lieu Fees**

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

Vice-Chairman Todd moved, seconded by Mr. Miller, to approve the items on Consent Agenda including staff recommendations. The motion carried 7-0.

6. Welcome New Employees

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

7. City Tax Initiatives

Removed from the agenda.

8. Dedication of Greeley Irrigation Company Water Rights

Mr. Jokerst explained that Water & Sewer Board Resolution 8, 1998 set forth criteria for dedication of Greeley Irrigation Company stock towards the satisfaction of Greeley's raw water dedication requirements. That resolution allows GIC water rights to be redeemed to meet up to two acre-feet per acre of Greeley's dedication requirements for both residential and commercial developments, and up to two-thirds of the total raw water dedication required for residential development.

GIC water cannot be treated for potable water supplies because its use is constrained to non-potable applications. New construction in Greeley is trending to denser developments with less irrigated area. This trend, among other causes, leads the current GIC dedication policy to under-collect potable water supplies.

Mr. Miller made motion, seconded by Vice-Chairman Todd to adopt the resolution to rescind and replace Resolution 8, 1998 concerning the City's acceptance of GIC water rights for raw water dedication. The motion carried 7-0.

9. Purchase and Sale Agreement for Myers Water Rights

Mr. Gustafson stated this Purchase and Sale Agreement contemplates the acquisition of one-half share of Water Storage and Supply Company. A dry-up covenant, revegetation covenant, and a leaseback are included in the Agreement. The total purchase price is \$1,050,000.00.

Vice-Chairman Todd made motion, seconded by Mr. Sisneros to approve the proposed Purchase and Sale Agreement for the Myers' Water Rights and delegate authority to the Director of Water and Sewer, or his designee, to close on the purchase and to make minor contract amendments, including, but not limited to, property descriptions and contract extensions. The motion carried 7-0.

10. Update on Drought Emergency Plan Revisions

Ms. Petrzelka and Doug Jeavons of BBC Research explained that Greeley's current Drought Emergency Plan is more than 15 years old. Since that time a lot has changed including a decline in water use per account, a re-examination of future water needs and system drought performance, and the conversion to a water budget rate structure for single-family residential customers. The revisions would create equity among all customer classes for reductions and restrictions on outdoor irrigation only. This approach also provides a suite of tools to achieve reductions.

11. Transfer of Greeley Customers to Evans Update

Ms. Petrzelka stated that the City of Greeley provides potable water to 17 customers that are now in the Evans service area. It is the interest of both Greeley and Evans to transfer these customers to Evans, along with an amount of raw water. This will provide large cost and staff time savings to Greeley by no longer needing to repair and maintain infrastructure associated with the delivery of water to these customers.

12. Legal Report

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

1. **Statements of Opposition:** Based on review of the June, 2020 Water Court Resume, Ms. Burr reported that staff and water counsel recommend that the Board authorize filing a statement of opposition in the following case:
 - a. Case Number: **20CW3093** Application of Raindance Metro District No. 1 for change in location of conditional storage rights, change of 24 shares of B.H. Eaton Ditch and quantification of lawn irrigation return flows. Ms. Burr recommended that Greeley file a statement of opposition to ensure that these claims do not cause injury to Greeley's water rights.

Vice Chairman Todd made a motion, seconded by Mr. Ruyle, that the Board authorize the filing of a statement of opposition in Case No. 20CW3093, for staff and legal counsel to seek resolution of issues raised by these cases consistent with Water and Sewer Board Resolution No. 3 (2015). The motion carried 7-0.

13. Executive Session

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

1. To receive advice from their attorney and determine positions relative to matters that may be subject to negotiations, developing strategy for negotiations and instructing negotiators on matters related to the Lower Latham Bypass Agreement.

The motion carried 7-0.

The Board left the public session and moved into a private, executive session. The live feed of the public session on YouTube stopped recording, but was still accessible to the public. While the Board conducted the executive session, the public was provided with a screenshot of the agenda and a message stating the Board was in Executive Session.

Present during the executive session were:

Chairman Harold Evans, Vice Chairman Mick Todd, Manual Sisneros, Joe Murphy, Tony Miller, Fred Otis, Bob Ruyle, Mayor Gates and Robert Miller, Director Sean Chambers, Deputy Director Water Resources Adam Jokerst, Deputy Director of Operations Nina Cudahy, Utility Finance Manager Erik Dial, Water Resources Operations Manager Jennifer Petrzelka, Water Resources Planning Manager Kelen Dowdy, Water Administrator II Cole Gustafson, Outside Legal Counsel Carolyn Burr, Environmental and Water Resources Attorney Jerrae Swanson, Environmental and Water Resources Attorney Dan Biwer, Environmental and Water Resources Attorney Aaron Goldman, and Office Manager Shannon Metcalf

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

The Executive Session ended at 3:51 p.m. The Board then left the private, executive session and moved back into the open, regular session. At that time, the live feed of the meeting resumed on YouTube.

14. Lower Latham Bypass Agreement

Mr. Gustafson explained that the Lower Latham ditch is a senior ditch on the South Platte between the confluence with the Big Thompson and Poudre Rivers. An agreement to utilize the bypass structure is essential to release water from the Greeley-Loveland Irrigation system to meet return flow obligations downstream of the South Platte and Poudre river confluence.

Vice-Chairman Todd made motion, seconded by Mr. Ruyle to approve the Lower Latham Bypass Agreement. The motion carried 7-0.

15. Director's Report

Mr. Chambers reported on the following items:

- Windy Gap Allotment Contract
- Terry Ranch Update
- Cameron Peak Fire Update

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

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

Chairman Evans adjourned the meeting at 4:17 p.m.

Harold Evans, Chairman

Shannon Metcalf, Office Manager

WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 4

TITLE: WELCOME NEW EMPLOYEES

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 5

TITLE: CITY TAX INITIATIVES

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

Staff will provide a presentation.

WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 6

TITLE: APPROVE AND RECOMMEND CITY
 COUNCIL APPROVE THE WINDY GAP
 FIRING PROJECT ALLOTMENT CONTRACT

RECOMMENDATION: APPROVE AND RECOMMEND APPROVAL TO
 CITY COUNCIL

ADDITIONAL INFORMATION:

Staff recommends that the Water and Sewer board approve the enclosed Allotment Contract Between The Windy Gap Firing Project Water Activity Enterprise, Municipal Subdistrict, Northern Colorado Water Conservancy District, and The City of Greeley, for a capacity in the Windy Gap Firing Project. The Windy Gap Firing Project proposes to construct a 90,000 Acre Foot firming storage reservoir on the east slope near Carter Lake for the benefit of the project participants. The project has not yet been financed or constructed, but has all appropriate permits, including a December 2011 Record of Decision from the US Bureau of Reclamation. The Allotment Contract defines the terms and conditions for Greeley's 10.21% participation in the Windy Gap Firing Project, its construction of Chimney Hallow Reservoir, post construction operational expenses, and future capital repairs or rehabilitations as necessary.

**ALLOTMENT CONTRACT BETWEEN THE WINDY GAP FIRING PROJECT
WATER ACTIVITY ENTERPRISE, MUNICIPAL SUBDISTRICT, NORTHERN
COLORADO WATER CONSERVANCY DISTRICT, AND THE CITY OF
GREELEY, COLORADO, A COLORADO HOME RULE MUNICIPAL
CORPORATION, ACTING BY AND THROUGH ITS WATER ENTERPRISE, FOR
CAPACITY IN THE WINDY GAP FIRING PROJECT**

This Allotment Contract (“Contract”) for an allotment of capacity in the hereinafter defined and described Windy Gap Firing Project is entered into this ____ day of _____, 2020, by and between the Windy Gap Firing Project Water Activity Enterprise (“WGFP Enterprise”) and The City of Greeley, Colorado, a Colorado home rule municipal corporation, acting by and through its Water Enterprise, whose address is 1000 10th Street, Greeley, Colorado 80631 (“Greeley”), pursuant to C.R.S. § 37-45-131 and C.R.S. §§ 37-45.1-103(4), 106(4).

RECITALS

A. The WGFP Enterprise is a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District (the “Subdistrict”), and whose address is 220 Water Avenue, Berthoud, Colorado 80513. The WGFP Enterprise is a water activity enterprise that will exercise the authorities granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, for the purpose of the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project.

B. Greeley is a Colorado home rule municipal corporation, acting by and through its Water Enterprise.

C. The Windy Gap Firing Project (“WGFP”) is described in general in the U.S. Bureau of Reclamation Record of Decision, together with supporting documents for the WGFP dated December 2011, as may be amended from time to time.

D. The WGFP has not, as of the date of this Contract, been financed, constructed, and completed. This Contract therefore includes provisions that address the WGFP before and after completion of construction and commencement of project operation. This Contract also includes provisions that apply only if and to the extent that Greeley satisfies all or a portion of its Capital C&E Funding Obligations through either Capital C&E Funding Cash Payments or participation in WGFP Financing.

- **PART I**, “Contract Definitions,” consists of **Section 1**, which includes definitions that apply to this entire Contract.
- **Part II**, “Provisions Applicable to All WGFP Allottees,” consists of Sections 2 through 6 and applies to Greeley regardless of its chosen means of satisfying its Capital C&E Funding Obligations, unless specifically provided otherwise. **Section 2** is an allotment by the WGFP Enterprise to Greeley of capacity in the WGFP. **Section 3** includes provisions that are applicable prior to WGFP Completion, as that term is defined herein. **Section 4** includes provisions that are relevant to the operation of the WGFP after

WGFP Completion. **Section 5** includes other general terms and conditions, including terms on Default and forfeiture under this Contract. **Section 6** includes provisions relating to Greeley’s obligations to pay for the WGFP.

- **PART III**, “Provisions Applicable to Cash Allottees,” consists of **Section 7**, which includes provisions that apply to Greeley only to the extent that it satisfies all or a portion of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, and then only for the term of any payments for Capital C&E using proceeds from such Capital C&E Funding Cash Payments.
- **PART IV**, “Provisions Applicable to Loan Allottees,” consists of **Section 8**, which includes provisions that apply to Greeley only to the extent that it satisfies all or a portion of its Capital C&E Funding Obligations through participation in a WGFP Financing, and then only for the term of repayment of the WGFP Financing (including any refinancing of the same) in which Greeley participates. The terms of Section 8 are not in effect at such times as there is no outstanding WGFP Financing in which Greeley participates.

The effective date and terms of each Section of this Contract are provided in Section 5.1.

AGREEMENT

THEREFORE, in consideration of the facts recited above and of the covenants, terms and conditions set forth herein, the parties agree as follows:

PART I – CONTRACT DEFINITIONS

1. **Definitions.** The following definitions shall apply to this Contract unless expressly modified herein.
 - 1.1. **“Acre-foot”** means 43,560 cubic feet of water.
 - 1.2. **“Capital C&E Funding Cash Payment”** means the payment by Greeley of any Capital C&E Funding Obligations in cash to the WGFP Enterprise.
 - 1.3. **“Capital C&E Funding Obligations”** means Greeley’s pro rata obligation, based on the WGFP Participation Percentages, to fund Capital C&E, which obligation shall equal the product of the Capital C&E multiplied by Greeley’s WGFP Participation Percentage. For reference purposes, each WGFP Allottee’s Capital C&E Funding Obligation for Initial C&E pursuant to Section 6.2.1 is set forth in **Exhibit A** opposite each WGFP Allottee’s name, which exhibit the WGFP Enterprise may update from time to time as needed. For reference purposes, the amount of each WGFP Allottee’s Capital C&E Funding Obligations for any additional Capital C&E under Sections 6.2.2 and 6.2.3 will be set out in **Exhibit B** (with separate tables for each additional Capital C&E), which exhibit the WGFP Enterprise may update from time to time as needed. Greeley may fulfill its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof.

- 1.4. **“Carriage Contract”** means that Amendatory Contract, 2014 Contract No. 15XX650003, entered into on December 19, 2014, between the Subdistrict, the District, and the United States of America for the purpose of utilizing the unused capacity of the facilities of the Colorado–Big Thompson Reclamation Project for the carriage of Windy Gap Project Water, and any subsequent amendments or successor contracts for the same purpose.
- 1.5. **“C-BT Project Water”** means water from the Colorado–Big Thompson Reclamation Project.
- 1.6. **“Chimney Hollow Reservoir”** means that reservoir to be located in Sections 4, 5, 8, and 9, T4N, R70W, and Sections 33 and 34, T5N, R70W, 6th P.M., Larimer County, Colorado, and generally described in the U.S. Bureau of Reclamation Record of Decision, together with supporting documents, for the WGFP.
- 1.7. **“Contract”** means this contract.
- 1.8. **“Costs and Expenses”** or **“C&E”** means any and all costs and expenses incurred for the WGFP, all of which are encompassed by one of the following defined terms:
 - 1.8.1. **“Capital C&E”** means and includes any and all Initial C&E, Completion C&E, and Future Extraordinary C&E, including if applicable any and all WGFP Financing Costs associated with the same.
 - 1.8.1.1. **“Initial C&E”** means the WGFP Enterprise’s initial estimated costs of construction and completion of the WGFP with approximately 90,000 acre-feet of usable water storage capacity to be funded by the WGFP Allottees under Section 6.2.1.
 - 1.8.1.2. **“Completion C&E”** means the WGFP Enterprise’s costs in excess of Initial C&E, if any, that are necessary for the construction and completion of the WGFP with approximately 90,000 acre-feet of usable water storage capacity to be funded by the WGFP Allottees under Section 6.2.2.
 - 1.8.1.3. **“Future Extraordinary C&E”** means the WGFP Enterprise’s costs of any individual repair, replacement, rehabilitation, improvement, or regulatory compliance activities incurred after Initial C&E and Completion C&E that are required to be undertaken under Section 6.2.3 for the continued safe operation of the WGFP and that, because of the large amount of such costs, cannot be paid (1) using the Operating Reserve Fund or (2) by the WGFP Allottees through an annual payment for Operating C&E.
 - 1.8.2. **“Operating C&E”** means any and all costs, exclusive of Initial C&E, Completion C&E, and Future Extraordinary C&E, incurred by the WGFP Enterprise (1) to administer, operate, maintain, repair, replace, rehabilitate, and improve the WGFP; (2) attributable to the delivery and storage of water in Chimney Hollow Reservoir that are not paid pursuant to a WGFP

Allottee's Windy Gap Project allotment contract, including, without limitation, pumping costs, carriage costs, and power interference costs; and (3) to meet regulatory requirements associated with the WGFP. Operating C&E specifically includes any and all "Costs and Expenses" that are not Capital C&E that may accrue after execution of this Contract.

- 1.9. **"Default"** means any event described in Sections 5.3.1 and 8.10 hereof.
- 1.10. **"District"** means the Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado created under and having the powers provided in the Water Conservancy Act, C.R.S. §§ 37-45-101 *et seq.*
- 1.11. **"Enterprise Board"** means the Board of Directors of the WGFP Enterprise.
- 1.12. **"Final Default"** has the meaning provided in Section 5.3.5.
- 1.13. **"Financing Document"** means any indenture, trust agreement, loan agreement, installment purchase agreement, or other financing document entered into by the WGFP Enterprise in connection with any WGFP Financing Obligation (as defined in Section 8.2).
- 1.14. **"Fiscal Year"** means the fiscal year of the WGFP Enterprise, which currently begins on October 1 of each calendar year and ends on September 30 of each calendar year, or such other twelve-month period which may be designated by the WGFP Enterprise as its Fiscal Year.
- 1.15. **"Interim Agreements"** means previously executed agreements between Greeley and the WGFP Enterprise under which Greeley agreed to pay a pro rata portion, based on the WGFP Participation Percentages, for the operation, maintenance, legal, administrative, improvement, and other costs of developing the WGFP before execution of this Contract.
- 1.16. **"Liquidity Fund"** means a reserve fund established under Section 8.4.1.
- 1.17. **"Loan Allottee Financing Obligation"** means the obligation of a Loan Allottee to pay a percentage of the total WGFP Financing Costs (as defined in Section 8.2) that is equal to the Loan Allottee's WGFP Financing Participation Percentage.
- 1.18. **"Operating Costs & Reserves"** means, collectively, Operating C&E and the amounts required to be deposited into the Operating Reserve Fund and such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E (if any) pursuant to Section 6.1.2.
- 1.19. **"Operating Fund"** means a fund established to provide for the payment of the Operating C&E of the WGFP.
- 1.20. **"Operating Reserve Fund"** means a reserve fund established to provide for the payment of Operating C&E if the moneys contained in the Operating Fund are insufficient to make such payments. The Operating Reserve Fund shall be

maintained such that the amount of money in the fund shall equal the aggregate of two years of Operating C&E, as estimated by the WGFP Enterprise based on a five-year rolling average (except in the first five years of the Operating Reserve Fund's existence, during which time the WGFP Enterprise will estimate based on available information) and taking into consideration the WGFP Enterprise's reasonable expectations as to future Operating C&E.

- 1.21. **“Prepositioned C-BT Project Water”** means C-BT Project Water stored in Chimney Hollow Reservoir pursuant to the Carriage Contract.
- 1.22. **“Prepositioned Windy Gap Project Water”** means Windy Gap Project Water stored in Chimney Hollow Reservoir as the result of C-BT Prepositioning pursuant to the Carriage Contract.
- 1.23. **“Subdistrict”** means the Municipal Subdistrict, Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado created under and having the powers provided in the Water Conservancy Act, C.R.S. §§ 37-45-101 *et seq.*
- 1.24. **“Water Year”** means the period from October 1 of one calendar year through September 30 of the next succeeding calendar year.
- 1.25. **“WGFP Allotment”** means the quantity of capacity in the WGFP, expressed in “WGFP Units,” granted to Greeley by this Contract, or if the context requires, granted to each WGFP Allottee by WGFP Allotment Contracts. Each WGFP Allottee's WGFP Allotment is shown in **Exhibit A**. A WGFP Allotment does not include an allotment of Windy Gap Project Water, which is granted by the Subdistrict in separate Windy Gap Project allotment contracts.
- 1.26. **“WGFP Allotment Contract”** means any contract between the WGFP Enterprise and a WGFP Allottee for a WGFP Allotment, including this Contract if the context requires.
- 1.27. **“WGFP Allottee”** means each entity that holds a WGFP Allotment pursuant to a WGFP Allotment Contract, including Greeley. **Exhibit A** lists all current WGFP Allottees.
 - 1.27.1. **“Cash Allottee”** means a WGFP Allottee that, under Section 6.2, satisfies all or a portion of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments pursuant to Section 7. A WGFP Allottee is a Cash Allottee to the extent that it satisfies its Capital C&E Funding Obligation through Capital C&E Funding Cash Payments, and then only for the term of any payments of Capital C&E using proceeds from Capital C&E Funding Cash Payments made by such WGFP Allottee.
 - 1.27.2. **“Loan Allottee”** means a WGFP Allottee that, under Section 6.2, satisfies all or a portion of its Capital C&E Funding Obligation through participation in a WGFP Financing pursuant to Section 8. A WGFP Allottee is a Loan Allottee to the extent that it satisfies its Capital C&E Funding Obligation

through participation in WGFP Financing, and then only during the term of such WGFP Financing.

- 1.28. **“WGFP Completion”** means the determination pursuant to Section 3.3 of this Contract.
- 1.29. **“WGFP Enterprise”** has the meaning assigned to the term in the introductory paragraph of this Contract.
- 1.30. **“WGFP Financing”** means a financing by the WGFP Enterprise of Capital C&E through one or more loans, lines of credit, notes, bond issues, or other forms of indebtedness, and any refinancing of the same, on behalf of the Loan Allottees participating in such WGFP Financing. WGFP Financing includes the CWCB Loan (as defined in Section 8.2) and any other lien borrowings that may be subordinated to other financing.
- 1.31. **“WGFP Financing Participation Percentage”** means the quotient of a Loan Allottee’s Capital C&E Funding Obligations that are to be paid through a WGFP Financing divided by the total amount of Capital C&E Funding Obligations to be paid by the WGFP Allottees through a WGFP Financing. To the extent a WGFP Allottee is a Loan Allottee for the Initial C&E, the WGFP Allottee’s WGFP Financing Participation Percentage that is applicable to the WGFP Financing for such Initial C&E is set forth in **Exhibit A** opposite each WGFP Allottee’s name. The amount of each WGFP Allottee’s WGFP Financing Participation Percentage that is applicable to additional Capital C&E under Sections 6.2.2 and 6.2.3 will be set out in **Exhibit B**.
- 1.32. **“WGFP Participation Percentage”** means the quotient of the number of WGFP Units held by a WGFP Allottee divided by the total number of WGFP Units, as such WGFP Participation Percentage may be modified in accordance herewith. The WGFP Participation Percentages for each WGFP Allottee are set forth in **Exhibit A** opposite each WGFP Allottee’s name.
- 1.33. **“WGFP Unit”** means 1/90,000th of the usable water storage and conveyance capacity in the WGFP. There are 90,000 WGFP Units total.
- 1.34. **“Winding-Up Agent”** means the agent appointed by the Enterprise Board in accordance with Section 3.4 hereof.
- 1.35. **“Winding-Up Resolution”** means a resolution adopted by the Enterprise Board in accordance with and after making the determination required by Section 3.4.
- 1.36. **“Windy Gap Firming Project”** or **“WGFP”** means Chimney Hollow Reservoir and related or ancillary features constructed, operated and maintained by the WGFP Enterprise for the purpose of providing storage and delivery of water for use pursuant to WGFP Allotment Contracts.
- 1.37. **“Windy Gap Project”** means that project (including the acquisition and perfection of water rights) constructed by the Subdistrict for the diversion, carriage, and delivery of water from the Colorado River pursuant to the Carriage Contract.

- 1.38. **“Windy Gap Project Water”** means water from the Windy Gap Project and also is referred to in the Windy Gap Project allotment contracts as “Subdistrict water.” Storage and conveyance of Windy Gap Project Water in the WGFP does not change such water’s status as Windy Gap Project Water.

PART II – PROVISIONS APPLICABLE TO ALL WGFP ALLOTTEES

2. **Allotment of WGFP Units.** The WGFP Enterprise hereby allots and confirms to Greeley a WGFP Allotment of 9,189 WGFP Units commencing as of the date of execution of this Contract and for so long thereafter as Greeley fully complies with all the terms, conditions and obligations hereinafter set forth. This WGFP Allotment is subject to C.R.S. § 37-45-101 *et seq.*, C.R.S. § 37-45.1-101 *et seq.*, the Carriage Contract, and the rules and regulations of the WGFP Enterprise, as may be established or amended from time to time. This Allotment is a complete substitute for the grant to Greeley of rights in the WGFP in any prior or current Interim Agreements between the WGFP Enterprise and Greeley. For reference purposes, each WGFP Allottee’s WGFP Allotment is shown in **Exhibit A**.
3. **Construction and Completion of WGFP.**
- 3.1. **Obligation of WGFP Enterprise to Construct and Complete the WGFP.** The WGFP Enterprise agrees to diligently pursue the WGFP in good faith and to pursue the construction, completion, and operation of the WGFP provided that the WGFP Allottees provide all required funding under their respective WGFP Allotment Contracts, the WGFP Enterprise has the ability, and the WGFP is feasible and practical. By entering into this Contract and accepting payments from Greeley, the WGFP Enterprise does not warrant that it will construct and complete the WGFP.
- 3.2. **Prior Agreements.** All prior Interim Agreements and amendments thereto, including the Fifth Amendment to the Fifth Interim Agreement, dated December 6, 2019, are terminated and of no further force and effect upon the effective date of this Contract under Section 5.1. Any unexpended funds made available to the WGFP Enterprise pursuant to such Interim Agreements shall be transferred into the Operating Fund and credited by the WGFP Enterprise to amounts payable by Greeley under this Contract for Operating C&E, or into the Operating Reserve Fund.
- 3.3. **WGFP Completion.** The WGFP shall be deemed to be complete for purposes of this Contract upon the Colorado State Engineer’s final certification of Chimney Hollow Reservoir for storage of water to its full capacity.
- 3.4. **WGFP Termination Before WGFP Completion.** The WGFP may be terminated before WGFP Completion in the following manner:
- 3.4.1. If the Enterprise Board determines that the WGFP will be terminated before WGFP Completion because of infeasibility, impracticality, inability, or failure of the WGFP Allottees to fund the WGFP as provided in Section 3.1, it shall first adopt a WGFP Winding-Up Resolution.

- 3.4.2. Upon the adoption of a WGFP Winding-Up Resolution by the Enterprise Board under Section 3.4.1, and consistent with the rights, if any, of Larimer County, the WGFP Enterprise shall first offer to the Subdistrict to sell to it, at fair market value as determined by a majority of a panel of three licensed appraisers (one selected by the WGFP Allottees, one selected by the Subdistrict, and the third selected by these two selected appraisers), (1) the Chimney Hollow Reservoir site, (2) any partially constructed or completed physical works or assets that divert water into or release water from the Chimney Hollow Reservoir site, and (3) any other non-physical rights, interests, or obligations related to the WGFP. If the Subdistrict accepts such offer for any or all of the offered interests, then it shall close upon such interests within 180 days of the appraiser panel's determination of fair market value. The WGFP Enterprise and Greeley specifically agree that the Subdistrict is a third-party beneficiary to this Contract for purposes of this Section 3.4.2 and Section 5.10.
- 3.4.3. Upon adoption of a Winding-Up Resolution by the Enterprise Board, the Enterprise Board shall appoint a WGFP Winding-Up Agent. The WGFP Winding-Up Agent shall, upon expiration of the time for the Subdistrict to accept the offer described in Section 3.4.2 above, prepare a plan for disposition of WGFP, and upon approval of the Enterprise Board, implement the disposition of WGFP assets pursuant to the plan, including the disposition of unexpended and unobligated funds of the WGFP Enterprise. Non-cash assets shall be liquidated by the Winding-Up Agent in a commercially reasonable manner. Proceeds from the disposition of WGFP Enterprise assets and any other cash or cash equivalents then held by the WGFP Enterprise shall be first used, based on the WGFP Participation Percentages, to distribute cash to the WGFP Allottees that satisfied their Capital C&E Funding Obligations through Capital C&E Funding Cash Payments and to repay debts of the WGFP Enterprise incurred for WGFP Financing; provided, however, that any moneys contributed by a Cash Allottee and held at the time of winding-up in such Cash Allottee's subaccount in a fund or reserve fund established under Section 6.1, or in such Cash Allottee's Escrow Fund under Section 7 and the terms of such Cash Allottee's Escrow Agreement, shall not be used to repay debts of the WGFP Enterprise incurred for WGFP Financing. Any remaining funds shall then be distributed to the WGFP Allottees based on their respective WGFP Participation Percentages. Greeley shall be entitled to copies of any work products developed by the WGFP Enterprise or its consultants on behalf of the WGFP Allottees, and the WGFP Enterprise shall convey to Greeley, as a tenant in common with all other WGFP Allottees who are not in Default of their respective WGFP Allotment Contracts, a pro rata interest in all real and personal property remaining after implementation of the plan for disposition of WGFP Assets pursuant to this Section 3.4.
- 3.4.4. Upon completion of the winding-up process described in this Section 3.4, the Enterprise Board shall adopt a resolution of termination of the WGFP. Upon the adoption of such resolution, all WGFP Allotments shall be terminated.

4. **WGFP Operation After WGFP Completion.**

- 4.1. **Use of WGFP Allotment.** Greeley agrees that its WGFP Allotment shall only be used for the storage and delivery of Windy Gap Project Water to which Greeley is entitled, storage of Prepositioned C-BT Project Water under the terms of the Carriage Contract, or storage and delivery of such other legally available water as the Enterprise Board shall authorize for storage and delivery in the WGFP, which authorization shall not be unreasonably withheld. Greeley's receipt and use of Windy Gap Project Water also is subject to the Carriage Contract and Greeley's Windy Gap Project allotment contract(s). Greeley shall have the right to assign or otherwise agree to the use of Greeley's WGFP Allotment by one or more WGFP Allottees.
- 4.2. **Prepositioning.** The Subdistrict shall have the right to preposition C-BT Project Water in any portion of the WGFP not used by Greeley for the storage of water in Greeley's WGFP Allotment under Section 4.1. Prepositioned C-BT Project Water shall become Prepositioned Windy Gap Project Water when Windy Gap Project Water is available and designated for storage in Chimney Hollow Reservoir. Prepositioned C-BT Project Water shall be allocated to WGFP Allottees that have ordered and paid for the delivery of Windy Gap Project Water into Chimney Hollow Reservoir in the then current Water Year. Further details of allocation of Prepositioned C-BT Project Water will be developed in the operating criteria described in Section 4.7.
- 4.3. **Estimate of Charges.** The WGFP Enterprise shall furnish Greeley with an estimated statement of anticipated C&E required to be paid in the following year under this Contract on or before the last business day in August of each year, which statement may be used by Greeley for budgeting purposes.
- 4.4. **Estimated Demand and Delivery Schedule.** On or before the last business day in September of each year, Greeley shall provide the WGFP Enterprise with an estimated demand and delivery schedule for Windy Gap Project Water that will be stored in or delivered from the WGFP for the following Water Year, which schedule will be used by the WGFP Enterprise for purposes of submitting a proposal to the U.S. Bureau of Reclamation in accordance with the Carriage Contract. The schedule shall contain the time, delivery points, and quantities of water which Greeley estimates it shall require. This schedule may be modified from time to time as the need warrants within the physical capabilities of the C-BT Project, Windy Gap Project, and WGFP.
- 4.5. **Billing Statement.** On or before the last business day of December of each year, the WGFP Enterprise shall render a billing statement to Greeley for C&E required to be paid in the following year under this Contract. The billing statement shall be based upon actual C&E incurred by the WGFP Enterprise during the current Water Year and planned C&E for the upcoming Water Year. Any credit from the previous Water Year or any additional C&E from the previous Water Year shall be included in the billing statement rendered. Each billing statement shall be accompanied by reasonable supporting documentation showing the basis and derivation of C&E shown in the billing statement. After receipt of the billing statement, Greeley shall

pay the net C&E charges shown on the billing statement of estimated C&E on or before the last business day of January of the succeeding calendar year.

- 4.6. **Billing Statement Dispute Resolution.** If Greeley disputes the correctness of any billing statement by the WGFP Enterprise, it shall pay the WGFP Enterprise the full amount billed when due and shall, before or contemporaneously with such payment, inform the WGFP Enterprise that such payment is made wholly or partially under protest and request an explanation of the billing statement from the WGFP Enterprise. If the bill is determined to be incorrect, the WGFP Enterprise shall issue a corrected billing statement to Greeley. Any overpayment shall be refunded to Greeley within sixty (60) days. If the WGFP Enterprise and Greeley fail to agree on the correctness of a bill within one hundred twenty (120) days after Greeley gives notice to the WGFP Enterprise that a payment is made wholly or partially under protest, then the parties may agree to submit the dispute to binding arbitration or, failing such agreement, proceed to protect and enforce their respective rights by appropriate judicial proceeding.
- 4.7. **Operating Criteria.** Greeley acknowledges and understands that the storage and delivery of water in the WGFP will require and will be implemented pursuant to operating criteria agreed upon between the WGFP Allottees and the WGFP Enterprise that will address additional operational, financial, and other details of the WGFP. Greeley's WGFP Allotment will be operated on substantially the same terms as all other WGFP Allottees. The operating criteria shall not modify or amend this Contract or result in a material adverse effect on Greeley's rights under this Contract to control its WGFP Allotment, or its ability to have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees.
- 4.8. **Delivery Points.** The WGFP Enterprise's liability and responsibility to Greeley to deliver a quantity of water ordered for delivery by release from the WGFP under this Contract shall end and cease at the moment that such quantity of water is released out of WGFP structures or facilities. The WGFP Enterprise agrees to cooperate with Greeley in the coordination and accomplishment of conveyance and delivery of water from that point to Greeley through structures or facilities not owned by the WGFP Enterprise.
- 4.9. **Capacity Limitations.** In the event that orders of water from the WGFP exceeds available delivery capacity at any WGFP structure or facility, the available capacity at such structure or facility shall be allocated between the WGFP Allottees requiring delivery through such structure or facility in proportion to their respective WGFP Participation Percentages.

5. Other General Terms.

- 5.1. **Effective Date and Term.** No provision of this Contract shall take effect until each WGFP Allottee identified in **Exhibit A** duly authorizes, executes, and delivers to the WGFP Enterprise its respective WGFP Allotment Contract, and the WGFP Enterprise duly authorizes, executes, and delivers to the WGFP Allottees their respective WGFP Allotment Contracts. Sections 1, 2, 4, 5, and 6 of this Contract shall be perpetual unless terminated pursuant to this Contract. Section 3 shall be in

effect until WGFP Completion. Section 7 of this Contract shall be in effect during the term of any payments of Capital C&E using proceeds from Capital C&E Funding Cash Payments made by such WGFP Allottee. Section 8 of this Contract shall be in effect during the term of any WGFP Financing in which Greeley participates.

5.2. Transfer of a WGFP Allotment.

5.2.1. **Transfer to Existing WGFP Allottee.** Subject to the terms and conditions set forth in any Financing Documents, the Enterprise Board shall approve a requested transfer of WGFP Units constituting all or a portion of Greeley's WGFP Allotment to one or more other WGFP Allottees that have a WGFP Allotment as of the time of the transfer if the Enterprise Board determines that (1) the WGFP Allottee receiving the additional WGFP Units has an existing or future need for additional WGFP Units, (2) the WGFP Allottee receiving the additional WGFP Units has sufficient financial capacity, and (3) the transfer will not create a material risk under applicable law.

5.2.2. **Transfer to Other Parties.** Greeley may transfer all or a portion of its WGFP Allotment to an entity that will use the WGFP Allotment within the Subdistrict that is not an existing WGFP Allottee at the time of the proposed transfer but that holds, or has the legal ability to acquire, an allotment of Windy Gap Project Water with the approval, in its discretion, of the Enterprise Board; provided, however, that the Enterprise Board shall disclose, in writing, the basis for a decision to not approve a proposed transfer under this Section 5.2.2.

5.2.3. If Greeley, with approval of the Enterprise Board as required by this Section 5.2, transfers a part of its WGFP Allotment to another entity, then Greeley shall be relieved of its obligations hereunder to the extent of said transfer, except as otherwise provided herein, specifically including in Section 8. If Greeley, with approval of the Enterprise Board as required by this Section 5.2, transfers all of its WGFP Allotment to another entity, then Greeley shall no longer participate in the WGFP and Greeley shall be relieved of its obligations, except as otherwise provided herein, specifically including in Section 8.

5.3. Default.

5.3.1. **Event of Default.** An event of Default shall occur upon any breach of this Contract, including, without limitation:

5.3.1.1. Capital C&E Funding Cash Payments. The failure of Greeley to pay when due amounts payable pursuant to Sections 6.2 and 7 of this Contract for Initial C&E. As provided in Section 6.2.2.1, if Greeley elects to pay its Capital C&E Funding Obligations for Completion C&E or Future Extraordinary C&E under this Contract through Capital C&E Funding Cash Payments, then failure to timely make its Capital C&E Funding Cash Payment for such Completion C&E or Future Extraordinary C&E after so

electing shall not constitute an event of Default, but in such event Greeley shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E or Future Extraordinary C&E through participation in a WGFP Financing in the same manner as provided in Section 6.2.2.2 and Section 8.

- 5.3.1.2. WGFP Financing. The failure of Greeley to pay when due amounts payable pursuant to Sections 6.2 and 8 of this Contract.
 - 5.3.1.3. Operating Costs & Reserves. The failure of Greeley to pay when due amounts payable pursuant to Section 6.3 of this Contract.
 - 5.3.1.4. The violation of C.R.S. § 37-45-101 *et seq.*, C.R.S. § 37-45.1-101 *et seq.*, or the rules and regulations of the WGFP Enterprise, as may be established or amended from time to time.
- 5.3.2. **Notice of Default.** Upon a Default, the WGFP Enterprise in the case of a Default by Greeley, or Greeley in the case of a Default by the WGFP Enterprise, shall give the defaulting party and all other WGFP Allottees written notice of the Default in accordance with Section 5.16 and, if applicable, Section 5.4.3 or Section 5.5.4, on or before the first business day of March following the Default.
- 5.3.3. **Use of WGFP Allotment While in Section 5.3.1 Default.** Beginning on the day notice is received under Section 5.3.2 and continuing for so long as Greeley is in Default under this Section 5.3, Greeley may place water into storage in its WGFP Allotment but shall have no rights to take water out of storage from or otherwise use any water stored therein; provided, however, that if Greeley is in Default under Section 5.3.1.4 for violation of a rule or regulation of the WGFP Enterprise and such rule or regulation authorizes a WGFP Allottee to take water out of storage from or otherwise use any water stored in its WGFP Allotment during the term of any Default for violation of the rule or regulation, those terms of the rule or regulation shall control. Greeley may continue to use and exercise its rights in the Windy Gap Project during any time it is in Default under this Section 5.3. Water in storage under Greeley's WGFP Allotment shall continue to be assessed evaporative and other losses during any period of Default under this Section 5.3. The Subdistrict may continue to use the WGFP Allotment of Greeley under this Section 5.3.3 for storage of Prepositioned C-BT Project Water; however, other WGFP Allottees shall have no right to use the WGFP Allotment of Greeley under this Section 5.3.3 for the term of the Default. Upon Greeley's cure of its Default under Section 5.3.4, Greeley's rights to use its WGFP Allotment and any water stored therein shall be restored, subject to any operational limitations that may exist.
- 5.3.4. **Cure.** For events of Default other than those Defaults under Sections 5.3.1.1 (Capital C&E Funding Cash payments), 5.3.1.2 (WGFP Financing payments), and 5.3.1.3 (payments of and into Operating Costs & Reserves), Greeley or the WGFP Enterprise, as the case may be, shall have 60 days

from receipt of a Notice of Default given under Section 5.3.2. to cure a Default by performance or acceptance by the non-defaulting party of an alternate means of or plan for cure of the Default. In the case of a proposed alternate means of or plan for cure of a Default by Greeley, the WGFP Enterprise shall give notice of the proposed alternate means or plan for cure to all other WGFP Allottees before taking formal action rejecting or accepting the same. A non-defaulting party's acceptance of a plan for cure of a Default under this Section 5.3.4 shall not constitute a waiver of any rights, claims, defenses, or remedies under this Contract. Greeley's rights to cure events of Default under (1) Sections 5.3.1.1 and 5.3.1.2 are as provided in Section 5.4.5 and (2) Section 5.3.1.3 are as provided in Section 5.5.5.

5.3.5. **Final Default.** For events of Default other than those Defaults under Sections 5.3.1.1 (Capital C&E Funding Cash payments), 5.3.1.2 (WGFP Financing payments), and 5.3.1.3 (payments of and into Operating Costs & Reserves), a Final Default shall occur upon (i) the expiration of the period for cure of a Default if Greeley or the WGFP Enterprise, as the case may be, does not cure the Default or the non-defaulting party does not accept, within the period for cure, a plan for an alternate means of or plan for cure of the Default, or (ii) failure of Greeley or the WGFP Enterprise, as the case may be, to perform under a duly accepted alternate means of or plan for cure of the Default. Notice of a Final Default under this Section 5.3.5 shall be given to the WGFP Enterprise and all WGFP Allottees no later than the first business day of the first February after the cure period terminates. Final Default with respect to events of Default under (1) Sections 5.3.1.1 and 5.3.1.2 shall occur as provided in Section 5.4.6, and (2) Section 5.3.1.3 shall occur as provided in Section 5.5.6.

5.3.6. **Consequences of Final Default.** The consequences of Final Default shall be as specified in this Contract.

5.3.6.1. Capital C&E Funding Cash Payments. The consequence of Greeley's Final Default under Section 5.3.1.1 shall be as described in Section 5.4 of this Contract.

5.3.6.2. WGFP Financing. The consequence of Greeley's Final Default under Section 5.3.1.2 shall be as described in Section 5.4 of this Contract.

5.3.6.3. Operating Costs & Reserves. The consequence of Greeley's Final Default under Section 5.3.1.3 shall be as described in Section 5.5 of this Contract.

5.3.6.4. The consequence of Greeley's Final Default for any breach of this Contract other than a failure to pay amounts due under this Contract shall be as described in Section 5.5.6 and Section 5.5.7 of this Contract, except that Final Defaults for violations of the rules and regulations of the WGFP Enterprise shall be remedied as provided in such rules and regulations and shall result in

forfeiture and termination of Greeley's WGFP Allotment in accordance with Section 5.5.6 and Section 5.5.7 only if the violated rule or regulation so provides.

5.3.6.5. A Final Default by Greeley shall not terminate any obligation to pay amounts due under this Contract as established by Sections 6, 7, and 8 of this Contract.

5.3.6.6. Upon a Final Default for any breach of this Contract by the WGFP Enterprise, Greeley and the WGFP Enterprise agree to confer in good faith to attempt to resolve the Final Default, and if conferral fails to resolve the Final Default, then to participate in nonbinding mediation.

5.3.7. **Enforcement of Remedies.** In addition to the other remedies set forth herein, including in this Section 5.3, upon the occurrence of a Final Default as defined herein, the WGFP Enterprise or Greeley, as the case may be, shall be entitled to proceed to protect and enforce the rights vested in such party by this Contract by such appropriate judicial proceeding as such party shall deem most effectual, either by action of law or by suit in equity, whether for the specific performance of any covenant or agreement contained herein or to enforce any other legal or equitable right vested in such party by this Contract or by law, and the prevailing party shall be entitled to an award of its reasonable costs and attorney fees.

5.4. **Default on Capital C&E Funding Obligations Under Sections 5.3.1.1 and 5.3.1.2.**

5.4.1. **Capital C&E Funding Obligations Default.** Failure of Greeley to pay amounts due under Section 6.2 and in accordance with Section 7 or Section 8, as applicable, shall constitute an event of Default under Section 5.3.1.1 or Section 5.3.1.2, as applicable.

5.4.2. **Grace Period.** If Greeley is in Default under Section 5.4.1 and fully pays its defaulted payments within 30 days after such payments are due, then Greeley shall no longer be considered in Default under Section 5.4.1 and no interest, penalties, or other Default obligations or consequences shall attach.

5.4.3. **Notice of Default.** On the first business day after the grace period under Section 5.4.2 runs, the WGFP Enterprise shall notify each WGFP Allottee of the names of all WGFP Allottees, if any, in Default under Section 5.4.1.

5.4.4. **WGFP Financing Liquidity Fund.** For each Loan Allottee in Default under Section 5.4.1, the WGFP Enterprise shall on the first business day after the grace period under Section 5.4.2 runs apply such Loan Allottee's Liquidity Fund to cover that Loan Participant's defaulted payment.

5.4.5. **Cure Period.** Greeley has until the last business day of January of the succeeding calendar year to cure any Default under Section 5.4.1. A Loan Allottee cures a Default under Section 5.4.1 by reimbursing the Liquidity

Fund, plus a late-fee penalty of 5%, and by reimbursing any other expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. A Cash Allottee cures a Default under Section 5.4.1 by paying the defaulted Capital C&E Funding Cash Payment and reimbursing any expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. If Greeley timely cures a Default under this Section 5.4.5, then no part of Greeley's WGFP Allotment shall be forfeited and reallocated under Section 5.4.6.

5.4.6. **Final Default; Penalties and Reallocation of WGFP Allotment.** If Greeley does not timely cure a Default under Section 5.4.5, then Final Default shall be deemed to have occurred and all or a portion of Greeley's WGFP Allotment shall be permanently forfeited and reallocated as follows:

5.4.6.1. For purposes of this Section 5.4.6, to the extent that Greeley is a Loan Allottee for Initial C&E and Completion C&E (if any) and in Default under Section 5.3.1.2, "**Vested Allotment**" shall mean that proportion of Greeley's WGFP Allotment attributable to its participation in a WGFP Financing for Initial C&E and Completion C&E (if any) that is equal to the quotient of the amount of its Capital C&E Funding Obligations (not including WGFP Financing Costs other than principal) paid by Greeley immediately prior to the date of the Default under Section 5.4.1 divided by the total amount of Greeley's Capital C&E Funding Obligations for Initial C&E and Completion C&E (if any) satisfied through participation in a WGFP Financing (not including WGFP Financing costs other than principal), rounded down to the nearest whole WGFP Unit; and "**Unvested Allotment**" shall mean the remainder of Greeley's WGFP Allotment attributable to Greeley's participation in a WGFP Financing for Initial C&E and Completion C&E (if any).

5.4.6.2. For purposes of this Section 5.4.6, to the extent that Greeley is a Cash Allottee for Initial C&E and in default under Section 5.3.1.1, "**Vested Allotment**" shall mean that proportion of Greeley's WGFP Allotment attributable to its satisfaction of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments that is equal to the quotient of the amount of such Capital C&E Funding Obligations for Initial C&E paid by Greeley through Capital C&E Funding Cash Payments, if any, immediately prior to the date of the Default under Section 5.4.1 divided by the total amount of such WGFP Allottee's Capital C&E Funding Obligations for Initial C&E satisfied through Capital C&E Funding Cash Payments, rounded down to the nearest whole WGFP Unit; and "**Unvested Allotment**" shall mean the remainder of Greeley's WGFP Allotment attributable to Greeley's satisfaction of such Capital C&E Funding Obligations through Capital C&E Funding Cash Payments.

- 5.4.6.3. Upon Greeley’s satisfaction of all Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 and Completion C&E under Section 6.2.2, Greeley’s “Vested Allotment” shall be considered to be all (100%) of Greeley’s WGFP Allotment, and any other Capital C&E Funding Obligations for Future Extraordinary C&E under Section 6.2.3 shall have no effect on Greeley’s “Vested Allotment.”
- 5.4.6.4. A WGFP Allottee in Final Default under this Section 5.4.6 shall forfeit any and all right, title, claim, or interest, whether express or implied, in or to its Unvested Allotment plus fifty percent (50%) of its Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment. The WGFP Enterprise shall give notice to all WGFP Allottees of such forfeiture by the first business day of February of the calendar year in which such forfeiture occurs. Greeley, by executing this Agreement, certifies that it has fully disclosed to the governing body of Greeley the existence and consequence of this Contract, and agrees that but for its acceptance of the forfeiture of a WGFP Allotment pursuant to this Section 5.4.6.4, the WGFP Enterprise would not have entered into this Contract or any other agreement related to WGFP. Greeley waives any and all legal or equitable claims, in any forum, to WGFP, WGFP Allotments, or WGFP assets, or against the WGFP Enterprise, arising out of a Final Default under this Section 5.4 by Greeley. Irrespective of such forfeiture, a WGFP Allottee shall remain liable to the WGFP Enterprise to pay the full amount of its Capital C&E Funding Obligations.
- 5.4.6.5. A defaulting Loan Allottee’s forfeited Unvested Allotment and Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment, shall be reallocated under Section 5.4.6.6 to all Loan Allottees that step up in proportion to the amounts each Loan Allottee stepped up thereunder. A defaulting Cash Allottee’s forfeited Unvested Allotment and Vested Allotment, including any water then in storage in such Unvested Allotment and Vested Allotment, shall be reallocated to all non-defaulting WGFP Allottees by the WGFP Enterprise under the terms of Section 5.5.7.
- 5.4.6.6. **Loan Allottee Step-Up.**
- 5.4.6.6.1. **Voluntary Step-Up.** By March 15 following any Final Default under Section 5.4.6 that is subject to this Section 5.4.6.6, any Loan Allottee may voluntarily step up to (1) make all or part of the defaulted payment (including replenishment of the Liquidity Fund), and (2) assume the obligation for all future annual debt service and Operating C&E payments for that portion of a defaulting Loan Allottee’s obligation. If two or more Loan Allottees

volunteer to step up under this Section 5.4.6.6, then each will assume a pro rata portion (based on their respective WGFP Financing Participation Percentages), or agreed upon amount, of the defaulted payment.

5.4.6.6.2. **Mandatory Step-Up.** If not all defaulted payments are covered by Loan Allottees who choose to voluntarily step up under Section 5.4.6.6.1, then for any portion of the defaulted payment not voluntarily assumed under Section 5.4.6.6.1, the following mandatory step-up process is initiated on the first business day of April.

5.4.6.6.3. All Loan Allottees, including all Loan Allottees who voluntarily stepped up under Section 5.4.6.6.1, shall be assessed pro rata, based on the WGFP Financing Participation Percentages of the Loan Allottees not then in Default, to make up the defaulted payment (plus late fees and other expenses) by payment to the WGFP Enterprise on or before the first business day of July and must make all future annual payments for that pro rata portion of the defaulting Loan Allottee's WGFP Allotment.

5.4.6.6.4. For each non-defaulting Loan Allottee, mandatory step-up in any single year under Section 5.4.6.6.2 shall not exceed thirty-five percent (35%) of the Loan Allottee's then-existing Loan Allottee Financing Obligation.

5.5. **Default on Operating C&E Payments Under Section 5.3.1.3.**

5.5.1. **Operating Costs & Reserves Default.** Greeley's failure to fully pay its payments due under Section 6.3.1 by the last business day of January of each calendar year shall constitute an event of Default.

5.5.2. **Operating Reserve Fund to Cover Deficiency.** In the event that Greeley fails to fully and timely pay its pro-rata share of Operating C&E under Section 6.3.1, the WGFP Enterprise may draw upon Greeley's portion of the Operating Reserve Fund or such other reserves as the Enterprise Board may establish and maintain in relation to Operating C&E pursuant to Section 6.1.2 to make up any deficiency as a result of the failure of Greeley to make a payment required under Section 6.3.

5.5.3. **Grace Period.** If Greeley is in Default under Section 5.5.1 and fully makes its payments due under Section 6.3 by the last business day of February, then Greeley shall no longer be considered in Default under Section 5.5.1 and no penalties or other Default obligations or consequences shall attach.

5.5.4. **Notice of Default.** On the first business day of March of each calendar year, the WGFP Enterprise shall notify Greeley of the names of all WGFP Allottees, if any, whose payments due under Section 6.3 remain in Default after the grace period provided in Section 5.5.3.

- 5.5.5. **Cure.** Greeley may cure a Default under this Section 5.5 by paying, on or before the last business day of January of the succeeding calendar year, an amount equal to (1) any Operating C&E then due or in Default; (2) a late-fee penalty of 1.5% of the amount of Operating C&E in Default for each month in Default after the grace period provided in Section 5.5.3 terminates, which shall be deposited into the Operating Reserve Fund in addition to any other amounts owed to such fund under this Contract; and (3) any other expenses incurred by the WGFP Enterprise or any other WGFP Allottee as a result of such Default. Alternatively, Greeley may cure a Default under this Section 5.5.5 by obtaining the WGFP Enterprise's acceptance, on or before the last business day of January of the succeeding calendar year, of an alternate means of or plan for cure of the Default and thereafter fully performing under such alternate means of or plan for cure; the WGFP Enterprise shall give notice of the proposed alternate means or plan for cure to all other WGFP Allottees before taking formal action rejecting or accepting the same. The WGFP Enterprise's acceptance of a plan for cure of a Default under this Section 5.5.5 shall not constitute a waiver of any rights, claims, defenses, or remedies under this Contract.
- 5.5.6. **Final Default and Forfeiture.** Final Default shall occur if Greeley fails to cure its defaulted payment under Section 5.5.5 by the date provided therein or fails to fully perform under a duly accepted alternate means of or plan for cure of the Default. If Greeley has committed a Final Default under this Section 5.5.6, then Greeley shall completely forfeit any and all right, title, claim, or interest, whether express or implied, in or to WGFP, including, without limitation, any and all WGFP Allotments or rights to WGFP assets under this Contract or any other agreement related to the WGFP. Any water in storage under a forfeited WGFP Allotment at the time of forfeiture shall not be available to the defaulting party and shall be reallocated along with the WGFP Allotment as provided in Section 5.5.7. Greeley, by executing this Contract, certifies that it has fully disclosed to the governing body of Greeley the existence and consequence of this Contract, and agrees that but for its acceptance of the termination of a WGFP Allotment and the consequences of Default, the WGFP Enterprise would not have entered into this Contract or any other agreement related to WGFP. Except for claims of breach under the express terms of this Contract, Greeley waives any and all legal or equitable claims, in any forum, to WGFP, WGFP Allotments, or WGFP Assets, or against the WGFP Enterprise, arising out of a Final Default under this Contract by Greeley. Irrespective of such termination, Greeley shall remain liable to the WGFP Enterprise to pay the full amount of its Capital C&E Funding Obligations under this Contract. The WGFP Enterprise shall send a notice of forfeiture under this Section 5.5.6 to all WGFP Allottees on the first business day of February in the calendar year in which the cure period terminates.
- 5.5.7. **Reallocation of Forfeited WGFP Allotment.** WGFP Allotments forfeited under Section 5.3.6.4 or Section 5.5.6 shall be reallocated by the WGFP Enterprise through a sealed-bid auction open to all non-defaulting WGFP Allottees. Auction bids to purchase all or a portion of the forfeited WGFP

Allotment shall be submitted to the WGFP Enterprise on or before the first business day of April of the calendar year in which the cure period terminates and the WGFP Allotment is forfeited. In the event that the WGFP Enterprise receives one or more successful bids, closing on the sale of WGFP Allotments to such successful bidders shall occur by the first day in July of the same calendar year. The proceeds of any auction sale shall be applied first to cover the cure amount described in Section 5.5.5, except any monthly penalty, and second to cover any Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment. Any excess proceeds shall be distributed to Greeley, less the monthly penalty provided in Section 5.5.5 if applicable. In the event the proceeds of any auction sale do not cover the cure amount described in Section 5.5.5, except any monthly penalty, and all Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment, the successful bidder(s) purchasing the WGFP Allotment shall pay the deficiency attributable to the amount of WGFP Units purchased at such auction sale.

5.5.7.1. In the event that the entire WGFP Allotment forfeited under Section 5.5.6 is not reallocated through the auction described in Section 5.5.7, the WGFP Enterprise shall in its discretion offer the remaining WGFP Allotment to other entities that are not existing WGFP Allotees at the time of the proposed transfer but that hold an allotment of Windy Gap Project Water. In the event that the WGFP Enterprise's offer is accepted by one or more entities under this Section 5.5.7.1, closing on the sale shall occur by the first business day in September of the same calendar year. The proceeds of any such sale shall be applied first to cover the cure amount described in Section 5.5.5, except any monthly penalty, and second to cover any Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment. Any excess proceeds shall be distributed to Greeley, less the monthly penalty provided in Section 5.5.5 if applicable. In the event the proceeds of any sale under this Section 5.5.7.1 do not cover the cure amount described in Section 5.5.5, except any monthly penalty, and all Operating C&E accrued during the disposition process that are attributable to the purchased WGFP Allotment, the purchaser(s) of the WGFP Allotment shall pay the deficiency attributable to the amount of WGFP Units purchased.

5.5.7.2. In the event that the entire WGFP Allotment forfeited under Section 5.5.6 is not reallocated through the auction described in Section 5.5.7 or under Section 5.5.7.1, the WGFP Enterprise shall reallocate such remaining WGFP Allotment to the non-defaulting WGFP Allotees pro rata based on the WGFP Participation Percentages. The WGFP Allotees who receive a portion of the reallocated WGFP Allotment under this Section 5.5.7.2 shall pay the amount then owing (except for the monthly cure penalty if applicable) on the WGFP Allotment on

or before the first business day of November of the same calendar year in which the WGFP Allotment is forfeited.

- 5.5.8. If, in a particular Fiscal Year, Greeley is in Default under the terms of this Section 5.5 with respect to payments to cover its pro-rata share of Operating C&E due under Section 6.3.1 and also in Default under the terms of Section 5.4, then the terms of this Section 5.5, and not Section 5.4, shall govern.

5.6. **Liability of WGFP Enterprise and Greeley.**

- 5.6.1. **WGFP Enterprise Liability.** Any and all obligations of the WGFP Enterprise that may arise under this Contract, whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by the WGFP Enterprise. Nothing herein shall be deemed to prevent the WGFP Enterprise from making any payments from any other legally available source. In no event shall the WGFP Enterprise be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Contract or which would cause the WGFP Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, neither the WGFP Enterprise, the Subdistrict, nor the District shall be required to expend any funds or impair any assets of the Subdistrict or the District in the performance of any of the WGFP Enterprise's obligations under this Contract. The obligations of the WGFP Enterprise under this Contract do not constitute a debt or indebtedness of the WGFP Enterprise, the Subdistrict, or the District within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of the WGFP Enterprise, the Subdistrict or the District.

- 5.6.2. **Allottee Liability.** Any and all obligations of Greeley that may arise under this Contract whether financial or otherwise, shall be payable solely from the revenues, income, rents and receipts earned by Greeley from the operation of its Greeley enterprise. Nothing herein shall be deemed to prevent Greeley from making any payments from any other legally available source. In no event shall Greeley be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Contract or which would cause Greeley to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, Greeley shall not be required to expend any funds or impair any assets of its parent entity in the performance of its obligations under this Contract. The obligations of Greeley under this Contract do not constitute a debt, indebtedness or multiple fiscal year obligation of its parent entity within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of Greeley or of its parent entity.

- 5.6.3. Greeley shall not be liable to another WGFP Allottee or to the WGFP Enterprise, and the WGFP Enterprise shall not be liable to the WGFP

Allottees, for consequential, indirect, punitive, or special damages arising under this Contract.

- 5.6.4. **Governmental Immunity.** The WGFP Enterprise and Greeley are each relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, defenses, or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.*, as amended from time to time.
- 5.7. **Amendments.** This Contract may be amended only with the written consent of (1) the WGFP Enterprise, (2) at least 75.0% of the WGFP Allottees, and (3) WGFP Allottees that collectively hold at least 75.0% of all WGFP Units; provided, however, that if any WGFP Financing is outstanding, any amendment to this Contract will be subject to the terms and conditions set forth in any Financing Documents; and further provided that this Contract may not be amended without Greeley's written consent in a manner that results in a material adverse impact on the rights of Greeley under this Contract to control its WGFP Allotment or have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees.
- 5.8. **Limitations on Rights of Allottee.** In addition to all the other terms, conditions and covenants contained herein, it is specifically understood and agreed by and between the parties hereto that the rights of Greeley hereunder are subject to the following terms, conditions and limitations, to all intents and purposes as though set forth verbatim herein, and made a part hereof by reference:
- 5.8.1. The Water Conservancy Act of Colorado, C.R.S. § 37-45-101 *et seq.*;
- 5.8.2. The water activity enterprise statute, C.R.S. § 37-45.1-101 *et seq.*;
- 5.8.3. The Carriage Contract; provided that if any amendment to the Carriage Contract is proposed which would affect the right of Greeley to use or reuse its full allotment of Windy Gap Project Water, the approval of such amendment shall first be obtained from Greeley;
- 5.8.4. The rules, regulations and policies of the Enterprise Board, as may be established and amended from time to time; provided, however, that any such rules, regulations or policies shall not result in a material adverse impact on the rights of Greeley under this Contract to control its WGFP Allotment or to have water diverted into, stored in, or released from the WGFP under its WGFP Allotment on a pro-rata and substantially similar basis with other WGFP Allottees; and
- 5.8.5. The requirements or conditions of any state or federal law, permits or regulatory approvals for the WGFP.
- 5.9. **Future Participation.** Nothing herein shall be construed in any manner that will obligate Greeley to participate in any future or other project of the Subdistrict or the WGFP Enterprise that is not a part of the WGFP or preclude Allottee from participation therein.

- 5.10. **Third Party Beneficiaries.** Any WGFP Allottee shall have the right as a third-party beneficiary to initiate and maintain suit to enforce the obligations of other WGFP Allottees hereunder. The Subdistrict shall have the right as a third-party beneficiary to initiate and maintain suit to enforce its rights under Section 3.4.2. Except as otherwise provided by this Section 5.10, Section 3.4.2, and Section 8.17, enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement shall be strictly reserved to the parties.
- 5.11. **Authorization.** Greeley attaches hereto a true and correct copy of Greeley's records authorizing the officers, whose names appear hereon, to enter into this Contract.
- 5.12. **Counterparts.** This Contract may be executed by the WGFP Enterprise and Greeley in separate counterparts, each of which when so executed and delivered shall be an original, and all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes.
- 5.13. **Entire Agreement; Merger of Prior Agreements.** This Contract, together with the statutes, contracts, rules, regulations and policies listed in Section 5.8, constitute the entire agreement and understanding of the parties and supersedes all prior agreements and understanding between the parties relating to the subject matter hereof. This Contract may not be interpreted, modified or changed by reference to other documents, understandings or agreements, whether written or oral, unless the interpretation, modification or change is subsequently agreed to in writing by the parties hereto.
- 5.14. **Severability.** If one or more clauses, sentences, Sections, paragraphs or provisions of this Contract shall be held to be unlawful, invalid or unenforceable, the remainder of this Contract shall not be affected thereby.
- 5.15. **Choice of Law; Venue.** This Contract shall be governed by the laws of the State of Colorado, and each party hereto consents and submits to venue in the District Court of Weld County, Colorado.
- 5.16. **Notices.** Notices authorized or required to be given under this Contract shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours, to the relevant party's address set forth in **Exhibit C**, or to such other address as a party may provide to the other party and all other WGFP Allottees from time to time. If specified herein, notice required to be given to all WGFP Allottees shall be given to the addresses set forth in **Exhibit C** or to such other addresses as the WGFP Allottees may provide to the WGFP Enterprise and the other WGFP Allottees from time to time.
- 5.17. **Construction Reports and Meetings.** The WGFP Enterprise will provide Greeley with written monthly reports, together with financial reports regarding payment of charges and costs and expenditures during construction of Chimney Hollow Reservoir, on the progress of construction and the expenditure of funds. Among other items, the monthly written reports will include a breakdown and sum total of

all known increases to the Chimney Hollow Reservoir construction contract amount due to projected, pending, or executed changes in work, including change orders, change directives, or field orders. In addition, the WGFP Enterprise shall schedule and hold meetings of all WGFP Allottees at the offices of the District at least quarterly at which time the WGFP Enterprise shall present and discuss the financial reports regarding payment of charges and costs by the WGFP Allottees and the expenditure of funds. Notwithstanding the foregoing, if any single Chimney Hollow Reservoir construction contract cost change will exceed two and a half percent (2.5%) of the initial Chimney Hollow Reservoir construction contract amount, the WGFP Enterprise will provide Greeley with written notice of such anticipated cost changes before the cost change is executed and will hold a meeting of all WGFP Allottees as soon as practicable to discuss the drivers for such cost change, possible remedies, and budget impacts. In addition, the WGFP Enterprise will provide monthly updates regarding costs and potential changes for construction management, mitigation, enhancement, and other WGFP costs not included in the Chimney Hollow Reservoir construction contract.

5.18. **Financial Reporting Requirements; Audits.** The WGFP Enterprise shall furnish to Greeley, as soon as available and in any event within one hundred eighty (180) days after the end of each Fiscal Year, the financial statements of the WGFP Enterprise as of the end of such Fiscal Year, all prepared in accordance with generally accepted accounting principles and in reasonable detail; provided that the WGFP Enterprise shall be in compliance with this reporting requirement when such information is published on the WGFP Enterprise's website or the Municipal Securities Rulemaking Board's Electronic Municipal Marketplace Access System (EMMA), or any service or services established by the Municipal Securities Rulemaking Board (or any of its successors) as a successor to EMMA. Greeley may request an independent audit of the WGFP Enterprise's financial statements for a Fiscal Year (as well as associated WGFP accounting records, supporting documentation, and billings to WGFP Allottees), to be paid for by Greeley, by sending a written audit request to the WGFP Enterprise before the end of the succeeding Fiscal Year. If more than one WGFP Allottee requests an independent audit for a given Fiscal Year, then only one audit shall occur, and the audit shall be paid for by the WGFP Allottees that requested the audit based on their respective WGFP Participation Percentages.

5.19. **Most Favored Party.** The terms and provisions of the WGFP Allotment Contracts for each of the WGFP Allottees will be substantially similar and in no event shall the WGFP Enterprise offer an Allotment Contract to another WGFP Allottee with more favorable provisions based on all of the terms and conditions of the WGFP Allotment Contract as a whole without first offering to Greeley the opportunity to amend this Contract to contain such favorable provisions.

6. WGFP Funding.

6.1. Establishment of Funds.

6.1.1. In addition to the funds established in Sections 7.4 and Section 8.4, the WGFP Enterprise shall establish and maintain an Operating Fund and an Operating Reserve Fund, with segregated accounts for each WGFP

Allottee, to be used for disbursements to pay for the Operating C&E of the WGFP under the WGFP Allotment Contracts.

- 6.1.2. The WGFP Enterprise may establish and maintain additional reserve funds as it shall determine are necessary for operation, maintenance, repair, replacement, rehabilitation, or improvement of WGFP structures or facilities, with segregated accounts for each WGFP Allottee.
- 6.2. **Payment of Capital C&E Funding Obligations.** Greeley agrees to pay its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments under the terms of Section 7, participation in a WGFP Financing under the terms of Section 8, or a combination thereof.
- 6.2.1. Initial C&E. The Initial C&E to be funded by the WGFP Allottees shall be \$600,000,000. Greeley agrees to pay its Capital C&E Funding Obligations for Initial C&E under this Section 6.2.1 through participation in a WGFP Financing under the terms of Section 8. **Exhibit A** indicates each WGFP Allottee's Capital C&E Funding Obligation for such Initial C&E and chosen means of payment for such Initial C&E.
 - 6.2.2. Completion C&E. If the WGFP Enterprise determines that the WGFP Allottees' payment of their respective Capital C&E Funding Obligations to fund Initial C&E under Section 6.2.1 will be depleted and Completion C&E must be incurred to complete construction of the WGFP, then the WGFP Enterprise shall give notice as soon as reasonably practicable to the WGFP Allottees of the need to pay additional Capital C&E Funding Obligations under this Section 6.2, the estimated total amount of Completion C&E to be incurred, and whether the WGFP Enterprise will undertake additional WGFP Financing for the Completion C&E. If the WGFP Enterprise offers the option to participate in additional WGFP Financing, then Greeley shall, within ninety (90) days of such notice, elect in writing to the WGFP Enterprise to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof. If no such election is made, Greeley shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E through participation in a WGFP Financing under Section 6.2.2.2. The WGFP Enterprise will update **Exhibit B** from time to time as needed under this Section 6.2.2.
 - 6.2.2.1. To the extent that Greeley elects to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through Capital C&E Funding Cash Payments, then it shall make such payments in accordance with Section 7 and on substantially the same terms as other WGFP Allottees making Capital C&E Funding Cash Payments, and agrees to execute any documents and agreements necessary to bind Greeley to such terms. If Greeley fails to timely make its Capital C&E Funding Cash Payment for such Completion C&E after so electing, then Greeley shall be obligated to pay its Capital C&E Funding Obligations for such Completion C&E through participation in

a WGFP Financing in the same manner as provided in Section 6.2.2.2.

6.2.2.2. To the extent that Greeley is obligated to pay its Capital C&E Funding Obligations for such Completion C&E under this Contract through participation in a WGFP Financing, then it shall make such payments and participate in such WGFP Financing in accordance with Section 8 and any applicable Financing Document and on substantially the same terms as any other WGFP Allottees participating in the WGFP Financing, and agrees to execute any documents and agreements necessary to bind Greeley to such terms.

6.2.3. Future Extraordinary C&E. If the WGFP Enterprise determines that Future Extraordinary C&E must be incurred, then the WGFP Enterprise shall give notice as soon as reasonably practicable to Greeley of the need to pay additional Capital C&E Funding Obligations under this Section 6.2 and the estimated total amount of Future Extraordinary C&E to be incurred. The Enterprise Board, in consultation with the WGFP Allottees, shall set a timeline for the WGFP Allottees to elect in writing to pay the Capital C&E Funding Obligations for such Future Extraordinary C&E under this Contract through Capital C&E Funding Cash Payments, participation in a WGFP Financing, or a combination thereof in accordance with the process described in Sections 6.2.2.1 and 6.2.2.2, and for the WGFP Allottees to make such payments of their respective Capital C&E Funding Obligations for such Future Extraordinary C&E to the WGFP Enterprise. If no such election is made, Greeley shall be obligated to pay its Capital C&E Funding Obligations for such Future Extraordinary C&E through participation in a WGFP Financing in accordance with the process described in Section 6.2.2.2.

6.2.3.1. Notwithstanding the foregoing in Section 6.2.3, if an emergency or natural disaster imminently threatens life, health, safety, or damage to the WGFP, the WGFP Enterprise may incur Future Extraordinary C&E to make reasonably necessary emergency repairs to mitigate threatened damage, provided that the WGFP Enterprise shall notify Greeley of such emergency and the need for such expenditures in advance (or if not possible in advance, then as soon as practicable), and whether the WGFP Enterprise will undertake additional WGFP Financing for the future Extraordinary C&E. In the event that the WGFP Enterprise incurs such emergency Future Extraordinary C&E, and if the WGFP Enterprise offers the option to participate in additional WGFP Financing, then Greeley shall have thirty (30) days to elect in writing to pay its Capital C&E Funding Obligations for such emergency Future Extraordinary C&E through Capital C&E Funding Cash Payments in accordance with the process described in Section 6.2.2.1. If no such election is made, then Greeley shall be obligated to pay its Capital C&E Funding Obligations for such emergency Future Extraordinary C&E

through participation in a WGFP Financing in accordance with the process described in Section 6.2.2.2.

6.2.4. To the extent Greeley satisfies any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, other than Capital C&E Funding Cash Payments for emergency Future Extraordinary C&E incurred by the WGFP Enterprise prior to the giving of notice to Greeley, the WGFP Enterprise may require that Greeley provide adequate assurance in advance of closing on the corresponding WGFP Financing that it will be able to provide the required Capital C&E Funding Cash Payment on the date such Capital C&E Funding Cash Payments are due to the WGFP Enterprise under Section 7.3 or such other date as is agreed to by the WGFP Enterprise and Greeley.

6.3. Payment of Operating C&E and into Reserve Funds.

6.3.1. To the extent that Greeley meets its Capital C&E Funding Obligations under Section 6.2 through participation in WGFP Financing, Greeley hereby agrees to fund all of its portion of Operating Costs & Reserves during the term(s) of any debt incurred for WGFP Financing in which Greeley participates in accordance with Section 8 hereof. When Greeley is not participating in any WGFP Financing or no debt is outstanding on WGFP Financing in which Greeley participates, Greeley agrees to fund its portion of Operating Costs & Reserves by paying to the WGFP Enterprise, on or before the last business day of January of each calendar year, the following amounts:

6.3.1.1. An amount equal to the product obtained by multiplying Greeley's WGFP Participation Percentage by the total amount of all Operating C&E estimated by the WGFP Enterprise to be incurred by the WGFP Enterprise in the then current calendar year, which the WGFP Enterprise shall deposit in the Operating Fund to be drawn upon in proportion to the WGFP Greeley's WGFP Participation Percentages to pay for Operating C&E as they are incurred;

6.3.1.2. Any amount needed to replenish any draws theretofore made on Greeley's subaccount in the Operating Reserve Fund, which the WGFP Enterprise shall deposit in the Operating Reserve Fund;

6.3.1.3. An amount equal to the product obtained by multiplying Greeley's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in the Operating Reserve Fund to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20, which the WGFP Enterprise shall deposit in the Operating Reserve Fund to be drawn upon when the moneys contained in Greeley's subaccount in the Operating Fund are insufficient to make payments on Operating C&E; and

6.3.1.4. An amount equal to the product obtained by multiplying Greeley's WGFP Participation Percentage by the total amount needed to replenish and maintain such other reserves as the Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2.

6.4. **Funding.** In order to meet Greeley's obligations under this Contract to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, Greeley agrees as follows:

6.4.1. Greeley shall to the fullest extent permitted by law fix rates, charges, or assessments so that Greeley will at all times have sufficient money to meet its obligations hereunder, and confirms (1) that, in accordance with C.R.S. § 31-35-402(1)(h), payments of its outstanding obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract (i) constitute special obligations of Greeley, payable solely from the revenues and other moneys derived by Greeley from its Water Enterprise, and (ii) shall be treated as expenses of operating such Water Enterprise; and (2) that there are either (i) no liens, charges or encumbrances on the revenues and other moneys derived by Greeley from its Water Enterprise, or (ii) no liens, charges or encumbrances on the revenues and other moneys derived by Greeley from its Water Enterprise that include priority of payments with respect thereto that are prior to the payment of the expenses of operating such Water Enterprise, including amounts hereunder. Greeley represents that it constitutes an "enterprise" within the meaning of Article X, Section 20 of the Colorado Constitution (TABOR) and does not have the legal authority to levy a tax. Greeley's outstanding obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations if any, under this Contract do not constitute a general obligation debt or indebtedness of Greeley within the meaning of any constitutional or statutory debt limitations or provisions, and are not payable in whole or in part from the proceeds of ad valorem property or other taxes of Greeley.

6.4.2. Nothing herein shall be construed as prohibiting Greeley from (1) using any other funds and revenues legally available therefor for purposes of satisfying any provisions of this Contract or (2) incurring obligations payable on a parity with the obligations under this Contract so long as Greeley's obligations to pay its pro rata share of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract continue to constitute special obligations of Greeley, payable solely from the revenues and other moneys derived by Greeley from its Water Enterprise, and are treated as expenses of operating such Water Enterprise.

6.4.3. Greeley shall make payments required by this Contract whether or not the WGFP is permitted, undertaken, completed, operable, operated or retired and notwithstanding the suspension, interruption, interference, reduction, or curtailment of operation of the WGFP in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by the WGFP

Enterprise or any other WGFP Allottee under this Contract or any other agreement.

- 6.4.4. Greeley shall take all reasonable steps to maintain its status as an enterprise as defined in Section 20 of Article X of the Colorado Constitution.
- 6.4.5. Greeley shall not be liable under this Contract for the obligations of any other WGFP Allottee except as otherwise expressly set forth herein. Each WGFP Allottee shall be solely responsible and liable for performance of its obligations under its respective WGFP Allotment Contract. The obligation of each WGFP Allottee to make payments under its respective WGFP Allotment Contract is a several obligation and not a joint obligation with those of the WGFP Allottees.
- 6.5. **Security.** Greeley hereby represents and warrants that the revenues of its Water Enterprise are pledged to pay the operation and maintenance expenses of such Water Enterprise along with any indebtedness incurred by Greeley for the purpose of financing or refinancing improvements to its Water Enterprise. Furthermore, Greeley hereby represents and warrants that, in accordance with C.R.S. § 31-35-402(1)(h), Greeley's obligations to pay its pro rata portion of Operating C&E and its Loan Allottee Financing Obligations, if any, under this Contract constitute special obligations of Greeley, payable solely from the revenues and other moneys derived by Greeley from its Water Enterprise, and shall be treated as expenses of operating such Water Enterprise. Greeley hereby covenants that it will not issue or otherwise incur any indebtedness or other obligation that has a lien on the revenues of its Water Enterprise prior or superior to its obligation to pay the operating expenses of its Water Enterprise.
- 6.6. **Cooperation, Disclosure and Documents.** Greeley shall cooperate with the WGFP Enterprise for the purpose of expediting the issuance of WGFP Financing Obligations (as defined in Section 8.2) to finance the applicable portion of Capital C&E by providing such information and disclosure as may be reasonably required for such purpose, and by delivering all closing documents reasonably required by the WGFP Enterprise's counsel at the closing of each series of WGFP Financing Obligations. The WGFP Enterprise and Greeley will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to effect any financing and refinancing of Capital C&E and to allow the WGFP Enterprise to comply with reporting obligations, to assure the WGFP Enterprise of Greeley's intention to perform hereunder and for the better assuring and confirming unto the WGFP Enterprise and any Lender (as defined in Section 8.2) the rights and benefits provided to them herein.
- 6.7. **Maintenance of Tax-Exempt Status of WGFP Financing Obligations.** Notwithstanding any other provision of this Contract, no WGFP Allottee will take any action or omit to take any action, directly or indirectly, in any manner, which would result in any of the WGFP Financing Obligations (as defined in Section 8.2), the interest on which was intended to be excludable from gross income for federal income tax purposes, being treated as an obligation not described in Section 103(a) of the Internal Revenue Code of 1986, as amended, by reason of classification of such WGFP Financing Obligations as a "private activity bond" within the meaning

of Section 141 of said Code, by reason of classification of such WGFP Financing Obligations as an “arbitrage bond” within the meaning of Section 148 of said Code, or for any other reason.

PART III – PROVISIONS APPLICABLE TO CASH ALLOTTEES

7. Provisions Applicable to Cash Allottees.

7.1. **Applicability.** This Section 7 shall, unless modified by express language in a subsequent agreement, be applicable to Greeley to the extent that it meets its Capital C&E Funding Obligations under Section 6.2 through Capital C&E Funding Cash Payments. Greeley is referred to herein as a Cash Allottee to the extent that it meets its Capital C&E Funding Obligations under Section 6.2 through Capital C&E Funding Cash Payments.

7.2. **Additional Definitions.** In addition to the definitions in Section 1, the following definitions shall apply to this Section 7.

7.2.1. **“Escrow Agreement”** means the escrow agreement between the WGFP Enterprise and Cash Allottee as more particularly described in this Section 7.

7.2.2. **“Escrow Fund”** means the escrow fund established under the Escrow Agreement.

7.3. Payment of Capital C&E Funding Obligations.

7.3.1. **Initial C&E.** To the extent Greeley meets its Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 through Capital C&E Funding Cash Payments, Greeley hereby agrees to provide its Capital C&E Funding Cash Payment for such Initial C&E to the WGFP Enterprise on or before the date of sale of any WGFP Financing, exclusive of a CWCB Loan (as defined in Section 8.2), for such amount of Capital C&E.

7.3.1.1. In the event that the WGFP Enterprise, in consultation with the WGFP Allottees, determines that a portion of the Initial C&E should be incurred before the date of sale of any WGFP Financing (exclusive of a CWCB Loan) and paid for using the CWCB Loan and Capital C&E Funding Cash Payments, the WGFP Enterprise shall give notice to the WGFP Allottees of its intent to incur such Capital C&E and, to the extent Greeley meets its Capital C&E Funding Obligations for Initial C&E under Section 6.2.1 through Capital C&E Funding Cash Payments, Greeley agrees to provide a portion of its Capital C&E Funding Cash Payment corresponding to the proportion of the Initial C&E to be incurred before the date of sale of any WGFP Financing (exclusive of a CWCB Loan) to the WGFP Enterprise within sixty (60) days after WGFP Enterprise sends the notice described herein; in such event, the remainder of Greeley’s Capital C&E Funding Obligations for Initial C&E

under Section 6.2.1 shall still be due to the WGFP Enterprise on or before the date of sale of any WGFP Financing for such amount of Capital C&E, exclusive of a CWCB Loan.

- 7.3.2. **Completion C&E and Future Extraordinary C&E.** To the extent Greeley elects to meet its Capital C&E Funding Obligations for Completion C&E under Section 6.2.2 or its additional Capital C&E Funding Obligations for Future Extraordinary C&E under Section 6.2.3, other than Capital C&E Funding Cash Payments for emergency Future Extraordinary C&E incurred by the WGFP Enterprise prior to the giving of notice to Greeley, through Capital C&E Funding Cash Payments, Greeley hereby agrees to provide its Capital C&E Funding Cash Payment to the WGFP Enterprise on or before the date of sale of any associated WGFP Financing, or on such other date as agreed to by the WGFP Enterprise and Greeley.
- 7.3.3. For sixty (60) days immediately before a Capital C&E Funding Cash Payment associated with Capital C&E is due to the WGFP Enterprise in accordance with this Section 7.3, Cash Allottee agrees to place the funds to be provided to WGFP Enterprise in an escrow account and schedule such funds for release to the WGFP Enterprise on the date such Capital C&E Funding Cash Payments are due to the WGFP Enterprise, except that Cash Allottee may release and provide such funds to the WGFP Enterprise in advance of such due date in its discretion.
- 7.3.4. To the extent Greeley meets any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, Greeley hereby represents, warrants, and covenants that such Capital C&E Funding Cash Payments shall and will be delivered to the WGFP Enterprise free and clear of any prior lien, including any pledge of the revenues of its Water Enterprise.
- 7.4. **Escrow Agreement; Escrow Fund.** In addition to the funds established under Section 6.1, the WGFP Enterprise shall establish and maintain an Escrow Fund pursuant to an Escrow Agreement between the WGFP Enterprise and Cash Allottee in the form attached hereto as **Exhibit D**, with segregated accounts for each WGFP Allottee required to make payments into such Escrow Fund. The WGFP Enterprise shall deposit the proceeds of Cash Allottees' Capital C&E Funding Cash Payments into the Escrow Fund
- 7.5. **Disbursements From Escrow Fund to Pay for Capital C&E.** Pursuant to the terms of the Escrow Agreement, the WGFP Enterprise shall disburse amounts from the Escrow Fund on a periodic basis for the payment of amounts due and owing on account of the Cash Allottee's Capital C&E Funding Obligations attributable to its Capital C&E Funding Cash Payment. Pursuant to the terms of the Escrow Agreement, such periodic disbursements from the Escrow Fund shall occur simultaneously with disbursements from the funds and accounts funded with proceeds provided by all other WGFP Allottees, whether through the provision of Capital C&E Funding Cash Payments or through participation in WGFP Financing, and each disbursement from the Escrow Fund shall be in an amount where the ratio of such amount to the total disbursements for Capital C&E Funding Obligations for such period is equal to the Cash Allottee's pro-rata share of Capital C&E Funding

Obligations attributable to its Capital C&E Funding Cash Payment at the time of any such disbursement.

- 7.6. To the extent Greeley satisfies any of its Capital C&E Funding Obligations through Capital C&E Funding Cash Payments, if the WGFP Enterprise holds any proceeds from Greeley's payment of its Capital C&E Funding Obligations after the WGFP Enterprise determines that all Capital C&E have been paid in full, then the WGFP Enterprise shall, at Greeley's option, either reimburse such proceeds to Greeley or transfer and credit such proceeds to Greeley's payment of other C&E due under this Contract.

PART IV – PROVISIONS APPLICABLE TO LOAN ALLOTTEES

8. WGFP Financing.

- 8.1. **Applicability.** This Section 8 shall, unless modified by express language in a subsequent agreement, be applicable to Greeley to the extent that it participates in a WGFP Financing and for the term of repayment of any such WGFP Financing in which Greeley participates. Greeley is referred to herein as a Loan Allottee to the extent that it participates in any WGFP Financing.
- 8.2. **Additional Definitions.** In addition to the definitions in Section 1, the following definitions shall apply to WGFP Financing and this Section 8.
 - 8.2.1. **“CWCB Loan”** means a loan or loans issued or to be issued to the WGFP Enterprise by the Colorado Water Conservation Board under an intergovernmental loan contract.
 - 8.2.2. **“Debt Service Fund”** means a fund established under any Financing Document to provide for the payment of WFGP Financing Obligations.
 - 8.2.3. **“Debt Service Reserve Fund”** means a reserve fund established under any Financing Document to provide for the payment of WFGP Financing Obligations when the moneys contained in the Debt Service Fund for such WGFP Financing Obligations are insufficient to make such payments.
 - 8.2.4. **“Lender”** means any lender, bondholder, noteholder, lessee or other holder of any other obligation or indebtedness (including the State of Colorado, the United States of America, or any department, bureau or other affiliated entity thereof) issued in connection with a WGFP Financing of the WGFP Enterprise which constitutes a WGFP Financing Obligation.
 - 8.2.5. **“Revenue Fund”** means a fund established to provide for the disbursement of annual payments made by Loan Allottees under the terms of Section 8.6.
 - 8.2.6. **“Subordinated Lien Loan Fund”** means a fund established hereunder to provide for the payment of any lien borrowings that are subordinate to WGFP Financing Obligations, including the CWCB Loan.

- 8.2.7. **“Subordinated Lien Loan Reserve Fund”** means a reserve fund established under Section 8.4.
- 8.2.8. **“WGFP Financing Costs”** means any and all costs associated with a WGFP Financing, including but not limited to (a) the principal of and interest on all WGFP Financings, (b) fees payable to Lenders and others related to the issuance and administration of a WGFP Financing, and (c) reserves required in connection with a WGFP Financing, if any. WGFP Financing Costs are included in the definition of Capital C&E.
- 8.2.9. **“WGFP Financing Obligation”** means the obligation of the WGFP Enterprise to repay an amount of money borrowed from a Lender through a WGFP Financing.
- 8.3. **Issuance or Incurrence of WGFP Financing Obligations.** The WGFP Enterprise will use its best efforts to issue or cause to be issued WGFP Financing Obligations. The WGFP Enterprise may obtain such WGFP Financing in one or more transactions and by one or more means. The WGFP Financing Obligations shall be issued, in one or more issuances, only upon approval of the Enterprise Board. To the extent Greeley participates in any WGFP Financing, Greeley authorizes an initial WGFP Financing for the Initial C&E (less that amount funded by Capital C&E Funding Cash Payments) as described in Section 6.2.1 and defined in **Exhibit A**, and such WGFP Financing for Completion C&E or Future Extraordinary C&E as determined by the Enterprise Board to be necessary under Section 6.2.2 and Section 6.2.3, respectively.
- 8.4. **WGFP Financing Funds.** In addition to the funds established in Section 6.1, there shall be established and maintained either by the WGFP Enterprise or under any Financing Documents the following funds and reserve funds, with segregated accounts for each Loan Allottee, to be used under the terms of this Section 8: a Revenue Fund; a Debt Service Fund; a Debt Service Reserve Fund; a Subordinated Lien Loan Fund; a Subordinated Lien Loan Reserve Fund; and a Liquidity Fund.
- 8.4.1. **Liquidity Fund.** For each WGFP Financing undertaken by the WGFP Enterprise, whether senior lien or subordinate lien, in which Greeley participates, and to the extent of such participation, Loan Allottees shall, on a due date or due dates set by the WGFP Enterprise in its discretion and noticed to the WGFP Allottees, deposit with the WGFP Enterprise an amount equal to the product of Loan Allottee’s WGFP Financing Participation Percentage multiplied by 30% of the maximum annual debt service on such WGFP Financing, which the WGFP Enterprise shall deposit in the Liquidity Fund in segregated accounts for each Loan Allottee. Such Liquidity Fund shall be held by the WGFP Enterprise to be applied separately from any reserves required for the borrowings. Upon full repayment of a WGFP Financing, the WGFP Enterprise shall return the amount each Loan Allottee deposited in the Liquidity Fund for such WGFP Financing to such Loan Allottee. Any interest accrued by the Liquidity Fund shall be transferred to the Operating Fund and credited, based on the WGFP Financing Participation Percentages, to each Loan Allottee’s payment of amounts due to such fund under this Contract.

- 8.5. **Payment of Loan Allottee's Capital C&E Funding Obligations and Operating C&E.** To the extent Greeley participates in any WGFP Financing and for the term of any such WGFP Financing, Loan Allottee hereby agrees to pay, on or before the last business day of January of each calendar year, an amount equal to the sum of the following:
- 8.5.1. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount of all Operating C&E estimated by the WGFP Enterprise to become due in the then current calendar year;
 - 8.5.2. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount of principal of and interest to become due, on or prior to January 14 of the following calendar year, on all WGFP Financing;
 - 8.5.3. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Operating Reserve Fund;
 - 8.5.4. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in the Operating Reserve Fund to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20;
 - 8.5.5. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Debt Service Reserve Fund;
 - 8.5.6. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount needed to increase the amount on deposit in the Debt Service Reserve Fund to equal the amount required to be on deposit therein under any Financing Document;
 - 8.5.7. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccount in the Subordinated Lien Loan Reserve Fund;
 - 8.5.8. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Financing Participation Percentage by the total amount needed to increase the amount on deposit in the Subordinated Lien Loan Reserve Fund to equal the amount required to be on deposit therein under any Financing Document;
 - 8.5.9. Any amount needed to replenish any draws theretofore made on Loan Allottee's subaccounts in such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2;

- 8.5.10. An amount equal to the product obtained by multiplying Loan Allottee's WGFP Participation Percentage by the total amount needed to increase the amount on deposit in such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2 to equal the amount determined by the Enterprise Board to be necessary to be on deposit therein;
 - 8.5.11. An amount equal to Loan Allottee's obligation to contribute funds into the Liquidity Fund as provided in Section 8.4.1; and
 - 8.5.12. Any amount due from Loan Allottee pursuant to Voluntary Step-Up or Mandatory Step-Up under Section 5.4.6.6.
- 8.6. **Revenue Fund.** The WGFP Enterprise shall deposit all amounts paid by Loan Allottee under Section 8.5 into the Revenue Fund and credit such amounts to Loan Allottees' subaccounts therein. Monies in the Revenue Fund shall be disbursed periodically by the WGFP Enterprise to the following funds in the following order of priority:
- 8.6.1. To the Operating Fund, the full amount of the current Operating C&E attributable to all Loan Allottees;
 - 8.6.2. To the Debt Service Fund, an amount equal to the WGFP Financing Costs for such period, except for financing costs for any subordinated lien borrowing, including the CWCB Loan;
 - 8.6.3. To the Subordinated Lien Loan Fund, an amount necessary to pay the debt service for such period on all subordinated lien borrowings, including the CWCB Loan;
 - 8.6.4. To the Operating Reserve Fund, an amount necessary to replenish any prior draws made in respect of any and all Loan Allottees and to increase the amount on deposit therein to equal the aggregate of the following two years of Operating C&E as estimated by the WGFP Enterprise under Section 1.20;
 - 8.6.5. To the Debt Service Reserve Fund, an amount necessary to replenish any prior draws made in order to pay WGFP Financing Costs and to increase the amount on deposit therein to equal the amount required to be on deposit therein under any Financing Document;
 - 8.6.6. To the Subordinated Lien Loan Reserve Fund, an amount necessary to replenish any prior draws made in order to pay any subordinated lien borrowings, including the CWCB Loan, and to increase the amount on deposit therein to equal the amount required to be on deposit therein under any Financing Document;
 - 8.6.7. To such other reserves as the Enterprise Board may determine are necessary to establish and maintain in relation to Operating C&E, if any, pursuant to Section 6.1.2, an amount necessary to replenish any prior draws made in

order to pay Operating C&E and to increase the amount on deposit therein to equal the amount determined by the Enterprise Board to be necessary to be on deposit therein;

- 8.6.8. To the Liquidity Fund, an amount necessary to maintain such fund at the amount described in Section 8.4.1; and
- 8.6.9. If any amount remains, to a surplus fund established and maintained by the WGFP Enterprise to be used by the WGFP Enterprise in its discretion for any lawful purpose of the WGFP Enterprise.
- 8.7. **Billing Statement and Payment of WGFP Financing Costs and Operating C&E.** As a component of the Billing Statement described in Section 4.5, the WGFP Enterprise shall furnish Loan Allottee with a written statement of the estimated WGFP Financing Costs for each succeeding Fiscal Year, if any, taking into account applicable credits received by the WGFP Enterprise and estimated investment earnings on moneys, if any, related to WGFP Financing Obligations and held by the WGFP Enterprise. Allottee shall pay, or cause to be paid, to the WGFP Enterprise, on or before the last business day of January of each calendar year, 100% of the WGFP Financing Costs billed to Allottee in such written statement.
- 8.8. **Interest on Late Payment.** Any amount of the WGFP Financing Costs billed in a Fiscal Year by the WGFP Enterprise under Section 8.7 which remains unpaid after the last business day of February shall bear interest from such day at the per annum interest rate of eighteen percent (18%) until paid. To the extent Greeley is a Loan Allottee, interest paid by Loan Allottee shall not change the WGFP Participation Percentage or WGFP Financing Participation Percentage of Loan Allottee but shall be applied to the payment of WGFP Financing Costs of the Loan Allottees other than the Loan Allottee paying such interest in accordance with the applicable Financing Documents.
- 8.9. **WGFP Enterprise Responsibility Regarding Collected Funds.** The WGFP Enterprise shall apply the funds paid by Loan Allottee pursuant to Section 8.5 solely as provided in Section 8.6. The WGFP Enterprise shall keep amounts collected under this Contract from Loan Allottee in a designated account for the WGFP Financing Obligations, promptly pay when due the WGFP Financing Costs, provide WGFP Financing accounting and payment information to all WGFP Allottees, and take such other reasonable actions as may be requested by Loan Allottee and agreed to by the WGFP Enterprise; provided, that failure of the WGFP Enterprise or of Loan Allottee to make payment required by Section 8 of a WGFP Allotment Contract shall not relieve Loan Allottee of its obligation to pay all amounts owed under this Contract.
- 8.10. **Loan Allottee Bankruptcy or Insolvency.** In addition to a failure to pay any amounts due under Section 8.5, Default under Section 5.3.1.2 shall also include, without limitation, Loan Allottee's act of filing any petition or instituting any proceedings under any act or acts, state or federal, dealing with or relating to the subject of bankruptcy or insolvency or under any amendment of such act or acts, either as a bankrupt or as an insolvent or as a debtor or in any similar capacity, wherein or whereby Loan Allottee asks or seeks or prays to be adjudicated a

bankrupt, or to be discharged from any or all of its debts or obligations, or offers to its creditors to effect a composition or extension of time to pay its debts, or asks, seeks or prays for a reorganization or to effect a plan of reorganization or for a readjustment of its debts or for any other similar relief, or Loan Allottee's act of making a general or any assignment for the benefit of its creditors. A Default under this Section 8.10 shall be subject to the Default, forfeiture, and other provisions of Section 5.4.

- 8.11. **Future Financings.** In the event Greeley participates in any future borrowing or refinancing authorized by this Contract, Greeley agrees to undertake the same obligations as are set forth in this Section 8.
- 8.12. **Obligation Is Not Subject to Reduction.** Loan Allottee shall make payments under Section 8.5 of this Contract whether or not WGFP is permitted, undertaken, completed, operable, operated or retired and notwithstanding the suspension, interruption, interference, reduction, or curtailment of operation of WGFP or of water or storage contracted for in whole or in part for any reason whatsoever. Such payments are not subject to any reduction, whether offset or otherwise, and are not conditioned upon performance by the WGFP Enterprise or any other Loan Allottee under this Contract or any other agreement. If and to the extent Loan Allottee transfers all or a part of its WGFP Allotment associated with any WGFP Financing under the terms of Section 5.2, Loan Allottee shall remain liable for its obligations to pay the WGFP Enterprise for the WGFP Financing associated with the transferred WGFP Allotment in the event and to the extent not paid by the transferee acquiring such WGFP Allotment.
- 8.13. **Severable Obligation.** No Loan Allottee shall be liable under its respective WGFP Allotment Contract for the obligations of any other Loan Allottee except as expressly set forth in Section 5.4 hereof. Each Loan Allottee shall be solely responsible and liable for performance of its obligations under its respective WGFP Allotment Contract. The obligation of each Loan Allottee to make payments under its respective WGFP Allotment Contract is a several obligation and not a joint obligation with those of the other WGFP Allottees.
- 8.14. **Limited Obligations of WGFP Enterprise.** WGFP Financing Obligations incurred by the WGFP Enterprise pursuant to this authorization are special revenue obligations of the WGFP Enterprise payable solely from the amounts received by the WGFP Enterprise from the Loan Allottees under the WGFP Allotment Contracts. WGFP Financing Obligations do not constitute a general obligation debt or indebtedness of the WGFP Enterprise within the meaning of any constitutional or statutory debt limitations or provisions. The WGFP Enterprise does not have the legal authority to levy a tax.
- 8.15. **Allocation of Project Expenses; Disbursements.** Allottee agrees that all WGFP Financing Costs are to be paid solely from the amounts received by the WGFP Enterprise from the Loan Allottees under the WGFP Allotment Contracts, and are not the responsibility of the WGFP Enterprise, the WGFP Allottees that did not participate in WGFP Financing to the extent that they did not participate, or the District.

- 8.15.1. The Financing Documents relating to WGFP Financing Obligations shall provide that simultaneously at the time of the disbursement of any proceeds of WGFP Financing Obligations there will be a disbursement of proceeds from the funds holding cash payments made by WGFP Allottees not participating in WGFP Financing, and that in each instance the disbursement of proceeds of WGFP Financing Obligations and the disbursement of proceeds from the funds holding cash payments made by WGFP Allottee not participating in WGFP Financing shall be in proportion to the applicable WGFP Participation Percentage of each WGFP Allottee.
- 8.16. **Pledge or Assignment to Lender.** The WGFP Enterprise may pledge and assign to any Lender all or any portion of the payments received under this Contract from Allottee. Such pledge and assignment by the WGFP Enterprise shall be made effective for such time as the WGFP Enterprise shall determine and provide that the Lender shall have the power to enforce this Contract if an event of default occurs under the applicable Financing Document.
- 8.17. **Lender is Third Party Beneficiary.** Any Lender shall have the right as a third-party beneficiary to initiate and maintain suit to enforce this Contract to the extent provided in any Financing Document.

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DATED: _____

THE CITY OF GREELEY, Colorado, a Colorado home rule municipal corporation, acting by and through its Water Enterprise,

By: _____
Roy H. Otto, City Manager

APPROVED AS TO LEGAL FORM:

By: _____
Doug Marek, City Attorney

AS TO AVAILABILITY OF FUNDS:

By: _____
Director of Finance

RECOMMENDED:

By: _____
Chairman, Water and Sewer Board

DATED: _____

**WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE
MUNICIPAL SUBDISTRICT, NORTHERN COLORADO WATER CONSERVANCY
DISTRICT**

By: _____

Name: Dennis Yanchunas

Title: President

ATTEST:

By: _____

Name: Bradley D. Wind

Title: Secretary

EXHIBIT A
Initial C&E

WGFP Allottee	WGFP Allotment (WGFP Units)	WGFP Participation Percentage	Capital C&E Funding Obligation (Initial C&E)	Capital C&E Funding Cash Payment (Initial C&E)	WGFP Units Attributable to Capital C&E Funding Cash Payment (Initial C&E)	WGFP Financing (Initial C&E)	WGFP Units Attributable to WGFP Financing (Initial C&E)	WGFP Financing Participation Percentage (Initial C&E)
Broomfield	26,464	29.40%	\$176,400,000	\$22,000,000	3,300	\$154,400,000	23,164	32.26%
Platte River Power Authority	16,000	17.78%	\$106,680,000	\$27,000,000	4,049	\$79,680,000	11,951	16.64%
Loveland	10,000	11.11%	66,660,000	\$20,000,000	3,000	\$46,660,000	7,000	9.75%
Greeley	9,189	10.21%	61,260,000		0	\$61,260,000	9,189	12.80%
Longmont	7,500	8.33%	49,980,000	\$49,980,000	7,500	0.00		0.00%
Erie	6,000	6.67%	40,020,000		0	\$40,020,000	6,000	8.36%
Little Thompson Water District	4,850	5.40%	32,400,000		0	\$32,340,000	4,850	6.75%
Superior	4,726	5.25%	31,500,000		0	\$31,500,000	4,726	6.58%
Louisville	2,835	3.15%	18,900,000		0	\$18,900,000	2,835	3.95%
Fort Lupton	1,190	1.32%	7,920,000		0	\$7,920,000	1,190	1.66%
Lafayette	900	1.00%	6,000,000		0	\$6,000,000	900	1.25%
Central Weld County Water District	346	0.38%	2,280,000	\$2,280,000	346	0.00	0	0.00%
Totals	90,000	100%	\$600,000,000	\$121,260,000	18,195	\$478,680.00	71,805	100.00%

EXHIBIT B
Completion C&E/Future Extraordinary C&E

WGFP Allottee	Capital C&E Funding Obligation	Capital C&E Funding Cash Payment	WGFP Units Attributable to Capital C&E Funding Cash Payment	WGFP Financing	WGFP Units Attributable to WGFP Financing	WGFP Financing Participation Percentage
Broomfield	\$0.00	\$0.00	0	\$0.00	0	0.00%
Platte River Power Authority	0.00	0.00	0	0.00	0	0.00%
Loveland	0.00	0.00	0	0.00	0	0.00%
Greeley	0.00	0.00	0	0.00	0	0.00%
Longmont	0.00	0.00	0	0.00	0	0.00%
Erie	0.00	0.00	0	0.00	0	0.00%
Little Thompson Water District	0.00	0.00	0	0.00	0	0.00%
Superior	0.00	0.00	0	0.00	0	0.00%
Louisville	0.00	0.00	0	0.00	0	0.00%
Fort Lupton	0.00	0.00	0	0.00	0	0.00%
Lafayette	0.00	0.00	0	0.00	0	0.00%
Central Weld County Water District	0.00	0.00	0	0.00	0	0.00%
Totals	\$ 0.00	\$ 0.00	0	\$ 0.00	0	100.00%

EXHIBIT C

IF TO:	MAILING ADDRESS
Windy Gap Firming Project Water Activity Enterprise	c/o WGFP Project Manager 220 Water Avenue Berthoud, CO 80513
Broomfield	c/o David F. Allen Director of Public Works 1 DesCombes Drive Broomfield, CO 80020-2495
Central Weld County Water District	c/o Stan Linker District Manager 2235 2 nd Avenue Greeley, CO 80631-7203
Greeley	c/o Sean Chambers Director of Water & Sewer 1100 10 th Street, Ste 300 Greeley, CO 80631-3863
Erie	c/o Todd Fessenden Deputy Public Works Director PO Box 750 Erie, CO 80516-0750
Fort Lupton	c/o Chris Cross Assistant City Administrator 130 S McKinley Avenue Fort Lupton, CO 80621-0134
Lafayette	c/o Jeff Arthur Public Works Director 1290 S Public Road Lafayette, CO 80026-2706
Little Thompson Water District	c/o Amber Kauffman District Manager 835 E State Hwy 56 Berthoud, CO 80513-9237
Longmont	c/o Ken Huson Water Resources Engineer 1100 S. Sherman Street Longmont, CO 80501-6550
Louisville	c/o Cory Peterson Water Resources Engineer 749 Main Street Louisville, CO 80027-1136

IF TO:	MAILING ADDRESS
Loveland	c/o Larry D. Howard Senior Civil Engineer – Water Resources 200 N. Wilson Avenue Loveland, CO 80537-6017
Platte River Power Authority	c/o Heather Banks Fuels & Water Manager 2000 E Horsetooth Road Fort Collins, CO 80525-5721
Superior	c/o Jim Widner Utilities Superintendent 124 E Coal Creek Drive Superior, CO 80027-9626

EXHIBIT D

[Form of Escrow Agreement]

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made effective as of _____, by and between the Windy Gap Firing Project Water Activity Enterprise (the “**WGFP Enterprise**”), and [Name of Cash Allottee] (the “**Cash Allottee**”), and is made with reference to the following facts:

RECITALS

A. The WGFP Enterprise is a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.* that is owned by the Municipal Subdistrict, Northern Colorado Water Conservancy District, and whose address is 220 Water Avenue, Berthoud, Colorado 80513. The WGFP Enterprise is a water activity enterprise that will exercise the authorities granted by C.R.S. §§ 37-45-101 *et seq.*, 37-45.1-101 *et seq.*, 31-35-401 *et seq.*, and any other relevant grant of statutory authority, for the purpose of the planning, financing, acquisition, construction, operation, administration, maintenance, repair, replacement, rehabilitation, and improvement of the Windy Gap Firing Project (“WGFP”).

B. Cash Allottee is a [add description*].

C. Pursuant to the WGFP Allotment Contract between the WGFP Enterprise and Cash Allottee, Cash Allottee has elected to make an upfront cash payment (the “Capital C&E Funding Cash Payment”) to the WGFP Enterprise for the purpose of paying [a portion of] Cash Allottee’s pro rata obligation, based on the WGFP Participation Percentages, to fund [Initial C&E] (“Capital C&E Funding Obligations”). Specifically, Cash Allottee has elected to make a Capital C&E Funding Cash Payment of \$[XXXXXXXXXX], which is equal to [X%] of its Capital Funding Obligations for [Initial C&E].

D. In accordance with the WGFP Allotment Contract, the WGFP Enterprise has established and agreed to maintain an Escrow Fund with segregated accounts for each WGFP Allottee required to make a Capital C&E Funding Cash Payment into such Escrow Fund.

AGREEMENT

THEREFORE, in consideration of the facts recited above and of the covenants, terms, and conditions set forth herein, the parties agree as follows:

1. Definitions. Each and every definition set forth in the foregoing “introduction” and “recitals” is hereby incorporated into this Escrow Agreement by this reference. Capitalized terms not defined herein shall have the meanings assigned those terms in the WGFP Allotment Contract. To the extent the definition of a capitalized term herein conflicts with the definition of such term in the WGFP Allotment Contract, the definition in the WGFP Allotment Contract shall prevail.

2. Establishment of [Name of Cash Allottee] Proceeds Fund. Within the Escrow Fund, there is hereby created and established a special fund designated “[Name of Cash Allottee] – Capital C&E Funding Cash Payment Proceeds Fund” (the “[Name of Cash Allottee] Proceeds Fund”), which shall be held in trust by the WGFP Enterprise separate and apart from all other

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

funds of the WGFP Enterprise. The [Name of Cash Allottee] Proceeds Fund shall be a separate account from any other funds or accounts in the Escrow Fund funded with proceeds provided by other WGFP Allottees.

3. Deposit of Capital C&E Funding Cash Payment. The proceeds of the Capital C&E Funding Cash Payment paid by Cash Allottee to the WGFP Enterprise pursuant to the WGFP Allotment Contract shall be deposited in the [Name of Cash Allottee] Proceeds Fund and applied to the Cash Allottee's Capital Funding Obligations set forth under the WGFP Allotment Contract.

4. Disbursements From [Name of Cash Allottee] Proceeds Fund. The WGFP Enterprise shall disburse amounts from the [Name of Cash Allottee] Proceeds Fund on a periodic basis for the payment of amounts due and owing on account of the Cash Allottee's Capital C&E Funding Obligations. Such periodic disbursements from the [Name of Cash Allottee] Proceeds Fund shall occur simultaneously with disbursements from the funds and accounts funded with proceeds provided by all of the WGFP Allottees, whether through the provision of cash, through the participation in a financing by the WGFP Enterprise, or through both. Each disbursement from the [Name of Cash Allottee] Proceeds Fund shall be in an amount where the ratio of such amount to the total disbursement for [Initial C&E] at such time is equal to the Cash Allottee's WGFP Participation Percentage attributable to its Capital Funding Cash Payment at the time of any such disbursement.

5. Investment of Proceeds. Any moneys in the [Name of Cash Allottee] Proceeds Fund not presently needed for payment of the Cash Allottee's Capital Funding Obligations as set forth above may be invested in any legal investments for monies of the WGFP Enterprise maturing or otherwise available not later than the date upon which such moneys will be needed according to a schedule of anticipated payments from the [Name of Cash Allottee] Proceeds Fund prepared by the WGFP Enterprise in connection with the WGFP. Any such investments shall be made in accordance with the investment policies adopted by the WGFP Enterprise and shall be held by the WGFP Enterprise, in trust, for the account of the [Name of Cash Allottee] Proceeds Fund until maturity or until sold, and at maturity or upon such sale the proceeds received therefrom including accrued interest and premium, if any, shall be immediately deposited in the [Name of Cash Allottee] Proceeds Fund and shall be disposed of in the manner and for the purposes provided in the WGFP Allotment Contract.

6. Reporting. The WGFP Enterprise shall provide Cash Allottee with periodic reports regarding the disbursement of funds from the [Name of Cash Allottee] Proceeds Fund under the terms of this Escrow Agreement.

7. Reimbursement or Transfer After [Initial C&E] Paid in Full. If the WGFP Enterprise holds any moneys in the [Name of Cash Allottee] Proceeds Fund after the WGFP Enterprise determines that all [Initial C&E] has been paid in full, then the WGFP Enterprise shall, at Cash Allottee's option, either reimburse such proceeds to Cash Allottee or transfer and credit such proceeds to Cash Allottee's payment of other costs due under its WGFP Allotment Contract.

8. Counterparts. This Escrow Agreement may be executed by the WGFP Enterprise and the Cash Allottee in separate counterparts, each of which when so executed and delivered shall

EXHIBIT D TO WGFP ALLOTMENT CONTRACT

be an original, but all such counterparts shall together constitute but one and the same instrument. Facsimile and electronic signatures shall be binding for all purposes

9. Severability. If one or more clauses, sentences, paragraphs or provisions of this Escrow Agreement shall be held to be unlawful, invalid or unenforceable, the remainder of this Escrow Agreement shall not be affected thereby.

10. Choice of Law. This Agreement shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, the WGFP Enterprise and the Cash Allottee, pursuant to resolutions duly and regularly adopted by their respective governing bodies, have caused their names to be affixed by their proper and respective officers as of the date set forth above.

[ALLOTTEE]

By: _____
[NAME]
[TITLE]

ATTEST:

By: _____
Title: _____

WINDY GAP FIRING PROJECT WATER ACTIVITY ENTERPRISE

By: _____
[NAME]
[TITLE]

SUMMARY OF WINDY GAP FIRING PROJECT ALLOTMENT CONTRACT DEFAULT PROVISIONS

	Timing/Type of Default			
	Initial Budgeted Construction Costs	Overbudget Construction Costs	Post-Construction Capital Costs	O&M Costs
Participant	Lose 50% of vested allotment (if any); lose 100% of unvested. {Section 5.4.6.4}	Option to contribute cash; failure shifts Participant into pooled financing group. {Sections 5.3.1.1, 6.2.2.1}	Option to contribute cash; failure shifts Participant into pooled financing group; allotment fully vested; lose 50% of vested allotment. {Section 5.3.1.1}	100% forfeiture. {Sections 5.3.6.3, 5.5.6}
Loan Financing Participant	Lose 50% of vested allotment; lose 100% of unvested. {Section 5.4.6.4}	Same as for initial construction costs.	Lose 50% of vested allotment. {Section 5.4.6}	100% forfeiture. {Sections 5.3.6.3, 5.5.6}
Reallocation of Participants' Forfeited Allotments	Forfeited allotment (1) offered to non-defaulting participants, then (2) offered to other Windy Gap participants, then (3) allocated to non-defaulting participants. Whoever takes on the forfeited allocation must fill the financial "hole" caused by the default. {Sections 5.4.6.5, 5.5.7}	Same as for initial construction costs.	Same as for construction costs.	Forfeited allotment is allocated to non-defaulting participants, who take on overdue and future O&M payment obligations. {Section 5.5.7}
Step-Up for Loan Participants' Forfeited Allotment	Forfeited allotment (1) offered to non-defaulting loan participants (voluntary step-up), then (2) any unsubscribed amount is allocated to non-defaulting loan participants (mandatory step-up). Mandatory step-up obligations in any single year limited to 35% of existing allotment. Whoever takes on the forfeited allocation must fill the financial "hole" caused by the default. {Section 5.4.6.6}	Same as for initial construction costs.	Same as for construction costs.	Forfeited allotment is allocated to non-defaulting participants, who take on overdue and future O&M payment obligations. {Section 5.5.7}
Other Default Tools	<ul style="list-style-type: none"> • A defaulting participant remains liable for all unfulfilled payment obligations. {Section 5.3.6.5} • Available legal and equitable remedies apply to defaulting participants (or the Enterprise, if it defaults). {Section 5.3.7} • Prevailing party in litigation can recover its costs and attorneys' fees. {Section 5.3.7} • Any participant can enforce the obligations of another participant. {Section 5.10} 			

Windy Gap Firming Allotment Contract

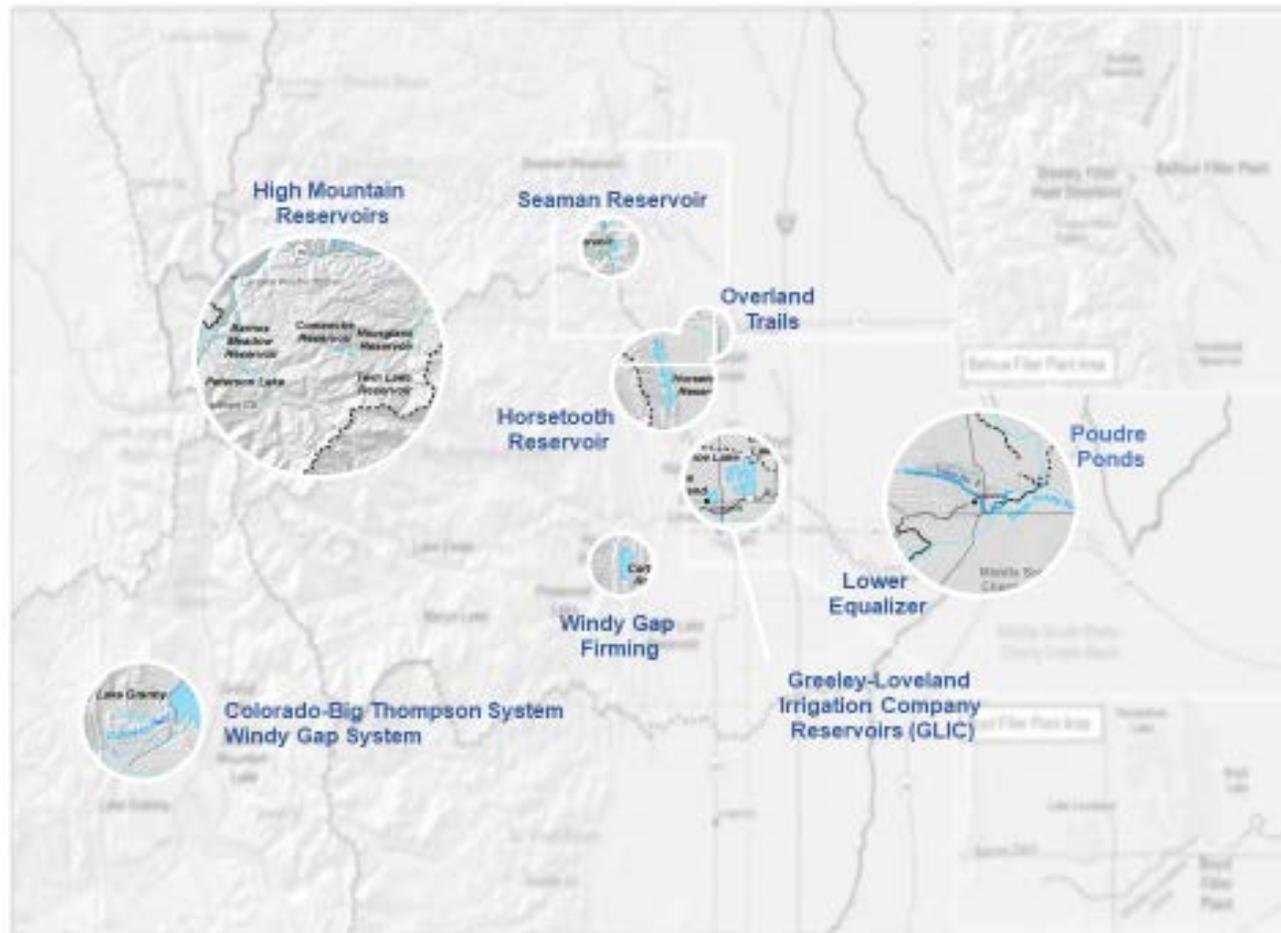


**Presented to
Greeley Water &
Sewer Board**

September 16, 2020



WG Firming's Role in a Resilient System



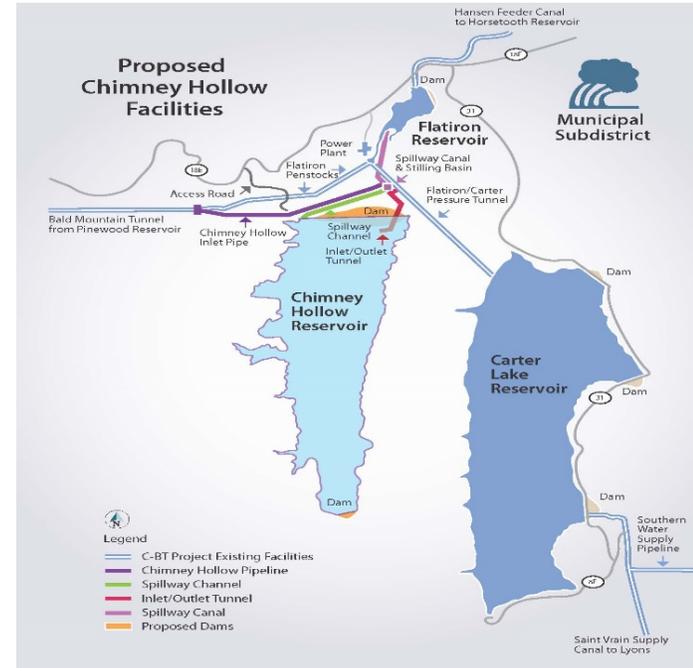
Windy Gap Water Firming Project Summary

- 90,000-AF of new Storage Capacity to be built at Chimney Hollow Reservoir
 - Greeley Current WGF Storage Allotment = 9,189 AF
 - 10.21% of firming project
 - Greeley has owned Windy Gap shares for decades
 - Leverage existing infrastructure

Windy Gap Firming Project Overview

Windy Gap Water Firming Project Summary

- Uses Established Colorado River Rights and Ties into C-BT Under Carriage Agreement. Windy Gap uses C-BT Facilities and is secondary to C-BT needs
- Project / Dam Design has been completed and approved by State Engineer's Office and Chimney Hollow Project Review Board
- All local, state and federal permits have been approved
- Barnard Construction Inc. of Bozeman, Mont., entered into a \$485.5 M contract for the construction of the asphalt-core dam and related Firming facilities
 - Construction pending resolution of litigation and financing



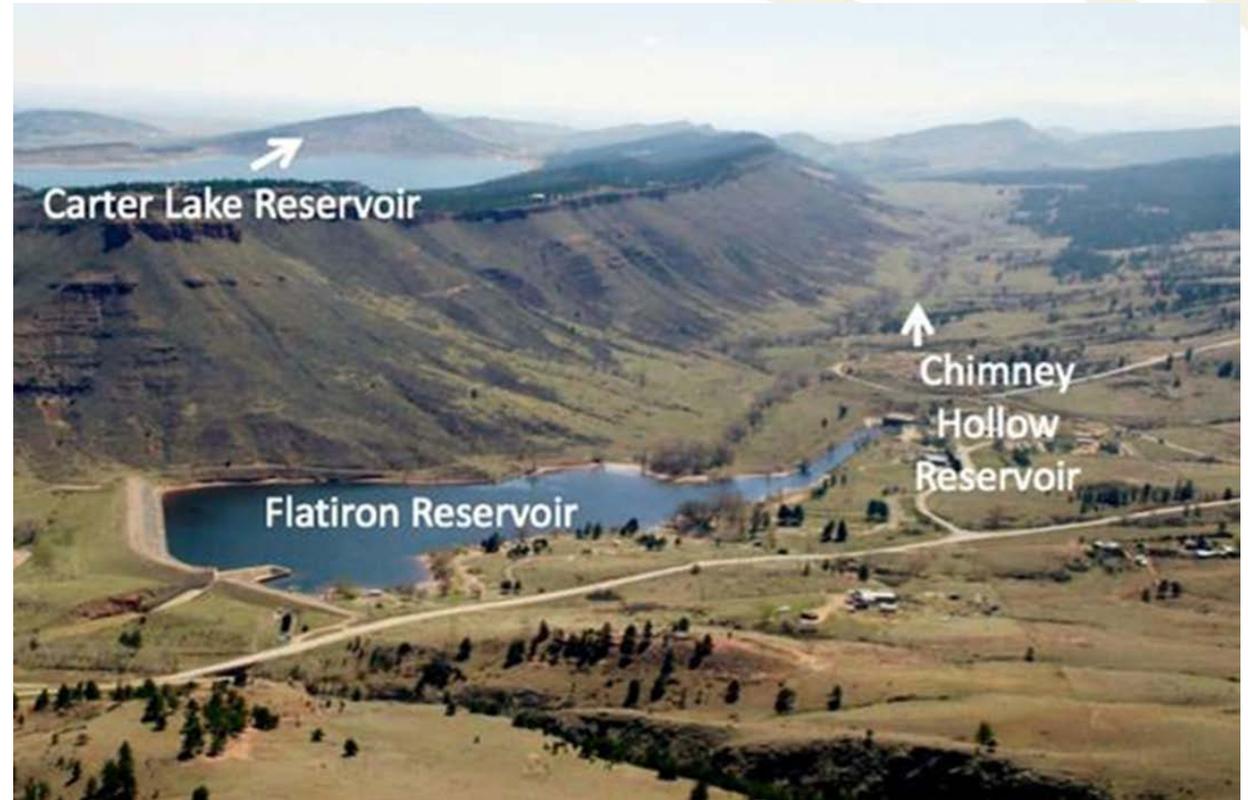
Windy Gap Firming

Fiscal Impacts to Greeley

Firming Costs and Expenses:

Windy Gap Firming Total Project Costs:
= Approx. \$600M

- Greeley's 10.21%
- Greeley projects our construction contributions to total \$60M
- Greeley intends to issue bond debt for the entire construction costs and expenses
 - Approx. \$10M via CWCB Loan
 - Pooled Finance Revenue Bond for approx. \$50M



Core Terms of the Allotment Contract

- Financial and other obligations related to the construction and completion of the Windy Gap Firming Project Infrastructure
- Terms governing the Operation After Windy Gap Firming Project Completion
- Terms governing the Transfer of a Windy Gap Firming Allotment
- Default terms and conditions ([see attached default table](#))
 - Defaults and remedies pertaining to Project Construction and Completion
 - Defaults pertaining to Loan Allottees
 - Remedies including mandatory step up provisions
- Defaults on Operating Cost and Expenses Payments
 - Including terms for Final Default and Forfeiture
 - CAO and Dan Lynch, Esq. of Kutak Rock available for consultation
 - Executive session available if necessary



Core Terms of the Allotment Contract (Continued)

- Windy Gap Firming Project Funding
 - Payment of Initial Costs and Expense Finding Obligations
 - Project Completion Costs and Expense Obligations
 - Future Extraordinary Costs and Expense Terms
- Payment of Operating Costs and Expenses and Reserve Funds
- Provisions Applicable to Cash Allottees
- Provisions Applicable to Loan Allottees
 - Issuance of WG Firming Financing Obligations
 - Liquidity Fund
 - Revenue Fund



Staff Recommendation

- Staff have been engaged in Windy Gap Firming Project for approximately 2 decades with the intention of firming existing Windy Gap Shares and creating additional storage, portfolio diversity, firm yield and system resiliency
- Allotment Contracts are critical to the moving the project forward and securing financing
- The Allotment Contract was negotiated amongst the participants and their attorney's
 - Some provisions that would allow participants to elect either a 20 year or 30 year Loan Term remain in refinement, the material terms of the contract will not change.

Greeley Staff recommend Board support and approval of the contract terms and recommendation of the agreement to Greeley City Council

- Item will be heard by Council on 10/6
- NCWCD Municipal Subdistrict Board intents to take affirmative action on the contract on Thursday, 10/8/2020



Questions



WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 7

TITLE: EXECUTIVE SESSION

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

- Lowell Acquisition

WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 8

TITLE: APPROVE ACQUISITION OF LOWELL FARM
AND GIC WATER RIGHTS

RECOMMENDATION: APPROVE ACQUISITION

ADDITIONAL INFORMATION:

Staff recommends that the Water and Sewer board approve the enclosed Purchase and Sale Agreement for GIC water rights and the lands historically irrigated by those rights, known as the Lowell Properties. The purchase includes 14.4 shares in the Greeley Irrigation Company (GIC) and +/- 135 acres of land. The total purchase price is \$3,108,000.00.

PURCHASE AND SALE AGREEMENT FOR LAND AND WATER RIGHTS
(Lowell Properties – GIC Rights)

This PURCHASE AND SALE AGREEMENT FOR LAND AND WATER RIGHTS ("Agreement") is entered into this ____ day of September 2020 ("Effective Date"), by and between LOWELL ONE LLC ("Lowell One"), LOWELL TWO LLC ("Lowell Two"), LOWELL THREE LLC ("Lowell Three"), LOWELL FOUR LLC ("Lowell Four"), all Colorado limited liability companies, **MARILYN LOWELL BUNN, in her individual capacity**, DAVID LOWELL BUNN, in his individual capacity, and **MARILYN LOWELL BUNN and DAVID LOWELL BUNN, TRUSTEES U/W DAVID A. BUNN DATED 11-20-98 ("Bunn Trustees")** (collectively "Sellers"); and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its Water and Sewer Board ("City" or "Greeley").

RECITALS

A. Lowell One owns an undivided one-half ($\frac{1}{2}$) interest in that certain real property consisting of approximately 2.34 acres located on F Street between 35th and 59th Avenues in Weld County, Colorado, which property is more particularly described on the attached Exhibit A-1 and A-2, incorporated herein by reference ("Parcel One"), and an undivided one-half ($\frac{1}{2}$) interest in that certain real property consisting of approximately 81.77 acres located on F Street between 35th and 59th Avenues in Weld County, Colorado, which property is also more particularly described on Exhibits A-1 and A-2 ("Parcel Two").

B. Lowell Two owns the other undivided one-half ($\frac{1}{2}$) interest in Parcel One, and the other undivided one-half ($\frac{1}{2}$) interest in Parcel Two.

C. Lowell Three owns an undivided five-sixths ($\frac{5}{6}$) interest in that certain real property consisting of approximately 18.372 acres located on F Street between 35th and 59th Avenues in Weld County, Colorado, which property is also more particularly described on Exhibits A-1 and A-2 ("Parcel Three"), an undivided five-sixths ($\frac{5}{6}$) interest in that certain real property consisting of approximately 11.628 acres located on F Street between 35th and 59th Avenues in Weld County, Colorado, which property is also more particularly described on Exhibits A-1 and A-2 ("Parcel Four"), and an undivided five-sixths ($\frac{5}{6}$) interest in that certain real property consisting of approximately 20.855 acres located on F Street between 35th and 59th Avenues in Weld County, Colorado, which property is also more particularly described on Exhibits A-1 and A-2 ("Parcel Five").

D. Lowell Four owns the other undivided one-sixth ($\frac{1}{6}$) interest in Parcel Three, the other undivided one-sixth ($\frac{1}{6}$) interest in Parcel Four, and the other undivided one-sixth ($\frac{1}{6}$) interest in Parcel Five.

E. Parcel One, Parcel Two, Parcel Three, Parcel Four, and Parcel Five are referred to collectively throughout this Agreement as the "Land."

F. **Marilyn Lowell Bunn** owns those certain water rights represented by seven (7) shares of capital stock in the Greeley Irrigation Company (represented by Stock Certificate No.

2456 as to five (5) shares and Stock Certificate No. 2594 as to two (2) shares), David Lowell Bunn owns those certain water rights represented by one (1) share of capital stock in the Greeley Irrigation Company (represented by Stock Certificate No. 3129), and **the Bunn Trustees** own those certain water right represented by six and two-fifths (6.4) shares of capital stock in the Greeley Irrigation Company (represented by Stock Certificate No. 3212), which water rights (14.4 shares in total) historically irrigated the Land and are more particularly described on the attached Exhibit B, incorporated herein by reference (collectively “Water Rights”).

G. The parties desire to set forth the terms and conditions by which the Sellers will sell and Greeley will purchase the Land and the Water Rights, together with all other appurtenant property rights and water rights associated therewith. The parties acknowledge that a fundamental basis of this Agreement is that Greeley desires to purchase the entirety of the Land and Water Rights, rather than any lesser portion or interest thereof.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is acknowledged, the Sellers and Greeley agree as follows.

AGREEMENT

ARTICLE 1 SALE OF PROPERTY

Sellers agree to sell, and Greeley agrees to purchase, on the terms and conditions set forth in this Agreement, the Land, Water Rights, and associated rights and interests described in this Article 1 (collectively “Property”). Except as excluded in Section 1.6 below, the Property includes, and Sellers shall convey to Greeley at Closing, the following:

1.1 Land. The Land, together with all rights, title and interests of the Sellers in and to all reversions, remainders, easements, rights of way, appurtenances (including all plants, trees, landscaping and other appurtenances), licenses, tenements and hereditaments appertaining to or otherwise benefiting or used in connection with the Land, and including the Improvements located thereon. The Land does not include, and the Sellers expressly except and reserve, any interests in oil, gas, hydrocarbons, sand, gravel, or other mineral interests of any kind.

1.2 Improvements. All existing improvements, structures, dwellings, pipes and fixtures placed, constructed, installed or located on the Land; all irrigation equipment currently located on and used for the irrigation of the Land, including but not limited to any existing wells, sprinkler systems and associated pumps, motors, pipes, and fuel injection systems, and other similar irrigation equipment located on the Land; all fences, gates and other improvements, if any, upon, over or under the Land (collectively “Improvements”).

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

A. The Water Rights described in Recital F above and more particularly on Exhibit B, including all water and water rights, ditches and ditch rights, reservoirs and reservoir

rights, easements, and any other assets and interests represented by the Water Rights; and

B. All rights, title, and interests of 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 Land, whether tributary, nontributary or not nontributary. The water rights covered by this provision shall also include all rights, title, and interests of Sellers in and to any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the Land or Water Rights, and any groundwater rights associated with the domestic well located on the Land.

1.4 Permits, Licenses, Etc. All rights, title and interests 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 Property.

1.5 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 Property, to the extent that the same are assignable.

1.6 Exclusions. The Property does not include, and the Sellers expressly except and reserve, the following: any interests in oil, gas, hydrocarbons, sand, gravel, or other mineral interests of any kind.

ARTICLE 2

[INTENTIONALLY OMITTED]

ARTICLE 3 PURCHASE PRICE

3.1 Purchase Price. The total purchase price for the Property ("Purchase Price") is three million, one hundred and eight thousand dollars (\$3,108,000.00).

3.2 Deposit and Release of Deposit. Within fourteen (14) days following the Effective Date of this Agreement, Greeley shall cause the amount of fifty thousand dollars (\$50,000.00) ("Deposit") to be deposited with Land Title Guarantee Company, 4617 West 20th Street, Greeley, Colorado 80634 ("Title Company"). If the Title Company cannot or will not provide the services necessary to execute this transaction, the Sellers and Greeley may mutually agree upon and confirm a replacement title company in writing. The Deposit shall be held by the Title Company in a federally insured account to be credited toward the Purchase Price at Closing. The Deposit is fully refundable to Greeley at any time prior to the expiration of the Inspection Period (defined in Article 5 below) if Greeley is not satisfied with the Property, and shall be returned to Greeley upon termination of this Agreement by Greeley pursuant to Section 4.5, Article 5, Section 6.1, Section 11.3, Article 13, or as otherwise explicitly stated herein.

3.3 Interest. Unless otherwise agreed to by the Sellers and Greeley, the Title

Company is not required to hold the Deposit in an interest-bearing account.

3.4 Payable at Closing. Greeley shall pay to the Title Company at Closing, by cashier's check, wire transfer, or other immediately available funds, the Purchase Price (i) minus the Deposit, (ii) plus any other amounts reasonably required to be paid by Greeley at Closing; and (iii) plus or minus any other necessary adjustments agreed to in writing by the parties.

ARTICLE 4 TITLE

4.1 Title Documents. Within fourteen (14) days following the Effective Date of this Agreement, the Sellers shall cause the following to be delivered to Greeley for review:

A. A commitment for an owner's policy of title insurance ("Title Commitment"), issued by the Title Company to cover the Property and indicating the Title Company's willingness to issue to Greeley at Closing the Title Policy (defined below) in the amount of the Purchase Price, such Title Commitment setting forth the status of title to the Land and showing all liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to the Land.

B. Copies of all recorded documents referred to in the Title Commitment as exceptions to title to the Property ("Title Documents").

C. To the extent the same exist and are in 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 Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, stock certificates for the Water Rights, records regarding electrical use and crop and livestock production, and any records provided to or maintained by the Greeley Irrigation Company concerning the Water Rights, including, without limitation, share certificate records, delivery records, and assessment records (in the alternative, Sellers shall make reasonable efforts to obtain for Greeley the right to inspect and copy relevant records from the Greeley Irrigation Company); (iv) contracts or other agreements relating to the operation, maintenance or leasing of the Property or any portion thereof; and (v) any other agreements affecting the Property that are not included in the Title Documents provided by the Title Company.

D. A complete and executed historical use questionnaire and affidavit for the Water Rights, substantially in the form attached hereto as Exhibit C.

4.2. Survey. Not less than seven (7) days prior to the expiration of the Inspection Period, Greeley shall have prepared a ALTA/ACSM Land Title Survey of the Property ("Survey"), in substantially final form, containing the Minimum Standard Detail Requirements

required by the Title Company to delete the preprinted standard Title Exceptions 1 through 5 listed on the Title Commitment. Greeley shall make reasonable efforts to have the Survey finalized and certified for the benefit of Greeley and the Title Company within fourteen (14) days prior to Closing. Greeley shall provide a copy of the Survey to Sellers at the time it is received by Greeley.

4.3 Condition of Title. Sellers shall convey title to the Property to Greeley, and Greeley agrees to accept such title, free and clear of all liens and encumbrances and 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 to be discharged by Sellers at or before Closing.

B. General property taxes for the year of Closing, provided that such taxes shall be prorated to the Closing Date.

C. Any state of facts shown on the Survey.

D. Any matters created by or through Greeley.

Without limiting the foregoing, Sellers shall convey title to the Property to Greeley free and clear of any leases or other physical occupation of the Property.

4.4 Vesting of Title. At Closing, Sellers shall convey fee simple title to the Land, free and clear of all liens and encumbrances except the Permitted Exceptions, to Greeley by special warranty deeds, substantially in the form attached hereto as Exhibit D. At Closing, Sellers shall also convey the Water Rights, free and clear of all liens and encumbrances, to Greeley by special warranty deeds, substantially in the form attached hereto as Exhibit E.

4.5 Exceptions to Title; Notice. If the Sellers or Title Company give Greeley notice of a title exception that is not a Permitted Exception and that arose subsequent to the Effective Date, or that 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 fourteen (14) days after receiving such notice from Sellers or the Title Company. Any such exception not objected to in writing within such fourteen (14) day period shall be deemed an additional Permitted Exception. Sellers may elect (but shall not be obligated) to remove, or cause to be removed at its expense, any disapproved exceptions (collectively "Disapproved Matters") or, with Greeley's approval, Sellers may elect (but shall not be obligated) to obtain title insurance insuring against the effect of the Disapproved Matters. Sellers shall notify Greeley in writing within seven (7) days after receipt of Greeley's notice of Disapproved Matters if Sellers elect to remove or obtain insurance for such matters. If Sellers fail, are unable to remove, or (with approval of Greeley) cause the Title Company to endorse over any such Disapproved Matters prior to Closing, or if Sellers elect not to remove one (1) or more Disapproved Matters, or if Greeley does not approve endorsing over such matter, Greeley may, upon seven (7) days' prior written notice to Sellers, elect to immediately terminate this Agreement. Upon such termination of this Agreement and

except as otherwise provided herein, the Deposit shall be returned to Greeley and neither Sellers nor Greeley shall have any further obligation or liability to the other hereunder, except for those obligations that, by their nature, are intended to survive the termination of this Agreement.

4.6 Title Insurance. As soon as practicable at or after Closing, the Title Company shall issue to Greeley an ALTA owner's form of title insurance policy, insuring that fee simple title to the Land is vested in Greeley, subject only to the Permitted Exceptions ("Title Policy"). Greeley may request that the Title Company delete preprinted standard Title Exceptions 1 through 5 from the Title Policy, the cost thereof to be paid by Sellers, and any other endorsements to the Title Policy as Greeley may reasonably require, provided that the cost to remove such other endorsements is borne by Greeley at no cost or additional liability to Seller, and that Closing shall not be delayed as a result of Greeley's request.

ARTICLE 5 INSPECTION PERIOD AND APPRAISAL

5.1 Inspection Period. During the period that commences upon the Effective Date and continues until and including 4:00 p.m. Mountain Time on the ninety-first (91st) day after the Effective Date, Greeley and its authorized agents, representatives and consultants shall be entitled to: (i) enter upon the Land at all reasonable times to inspect the Property for the purposes 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, (ii) contact and interview the managers, members, employees, agents, and tenants of Sellers to assist Greeley in evaluating the historical use of the Water Rights; and (iii) contact the officers, directors, attorneys, and shareholders of the Greeley Irrigation Company to inspect any Company records and/or determine under what conditions the Company may approve another change in the place of delivery or use, or the point of diversion, of the Water Rights and other Company shares obtained or to be obtained by Greeley, pursuant to the bylaws of the Company or other applicable law (collectively referred to as "Inspections"). Greeley shall bear the cost of all such Inspections. Sellers agree to reasonably cooperate with any and all such inspections, investigations, surveys, or studies made by or at Greeley's direction, so long as such cooperation is at no material expense to Sellers.

5.2 Conditions of Inspections Access. Greeley and its authorized agents, representatives and consultants shall (i) not unreasonably interfere with the operation and maintenance of the Property; (ii) shall comply with any reasonable requirements imposed upon Greeley in connection with such Inspections; (iii) shall not injure or otherwise cause bodily harm to Sellers, their agents, tenants, contractors, or employees; (iv) shall promptly pay when due the costs of all Inspections; (v) shall not permit any liens to attach to the Property by reason of the exercise of its rights hereunder; and (vi) shall restore the Property as nearly as practicable to substantially the same condition in which the Property was found before any such Inspections were undertaken. Notwithstanding any provision to the contrary herein, Greeley's obligations pursuant to this Article 5 shall survive termination of this Agreement.

5.3 Termination. If during the Inspection Period, Greeley, for any reason in Greeley's

sole discretion, judgment, and opinion, disapproves of or is dissatisfied with any aspect of the Property or its Inspections related thereto, Greeley may terminate this Agreement by giving written notice to 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 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 provide written notice of termination to the Sellers prior to expiration of the Inspection Period, Greeley shall not be entitled to return of the Deposit if, for any reason other than a default by Sellers or termination pursuant to Section 4.5, Section 6.1, Section 11.3 or Article 13, or as otherwise explicitly stated herein, the Closing of this transaction does not occur.

5.4 Continuing Inspections. Following expiration of the Inspection Period, Greeley shall continue to be authorized to enter upon the Land at all reasonable times, subject to the conditions of Section 5.2 above.

ARTICLE 6 CLOSING CONTINGENCIES; CLOSING

6.1 Closing Contingencies; Governing Body Approval. The obligations of Greeley under this Agreement, including, without limitation, the obligation to purchase the Property, are expressly subject to approval of this Agreement by the Greeley Water and Sewer Board ("Board") and the appropriation of funds by the Greeley City Council, sufficient and intended for the purchase of the Property. In the event that the Board has not ratified or approved this Agreement, or the City Council has not appropriated funds sufficient and intended for the purchase of the Property, within fifteen (15) days after expiration of the Inspection Period, then Greeley shall provide written thereof to the Sellers and this Agreement shall automatically terminate. In such event, 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 Title Company, twenty-eight (28) days after the expiration of the Inspection Period, or at an alternate time or earlier date established by mutual agreement of the Sellers and Greeley.

6.3 Transactions at Closing.

A. On or before the Closing, Sellers shall deliver or cause to be delivered to the Title Company the following documents duly executed and acknowledged where appropriate:

(1) A special warranty deed executed by Lowell One and Lowell Two conveying fee simple title to Parcel One and Parcel Two to Greeley, free and clear of all liens and encumbrances except the Permitted Exceptions, substantially in form attached hereto as

Exhibit D.

(2) A special warranty deed executed by Lowell Three and Lowell Four conveying fee simple title to Parcel Three, Parcel Four, and Parcel Five to Greeley, free and clear of all liens and encumbrances except the Permitted Exceptions, substantially in form attached hereto as Exhibit D.

(3) A special warranty deed executed by Marilyn Lowell Bunn, conveying his/her rights, title, and interest in the Water Rights (7 shares) to Greeley free and clear of all liens and encumbrances, substantially in the form attached hereto as Exhibit E.

(4) A special warranty deed executed by David Lowell Bunn, conveying his right, title, and interest in the Water Rights (1 share) to Greeley free and clear of all liens and encumbrances, substantially in the form attached hereto as Exhibit E.

(5) A special warranty deed executed by the Bunn Trustees, conveying their right, title, and interest in the Water Rights (6.4 shares) to Greeley free and clear of all liens and encumbrances, substantially in the form attached hereto as Exhibit E.

(6) Stock assignments, in a form acceptable to the Greeley Irrigation Company, transferring ownership of the Water Rights from each of the respective Sellers who are owners thereof to Greeley, along with any other documents required by the Greeley Irrigation Company to effect such transfer, including, without limitation, standard Company stock transfer information sheets for each certificate.

(7) The original Stock Certificate No. 2456 representing five (5) shares, the original Stock Certificate No. 2594 representing two (2) shares, the original Stock Certificate No. 3129 representing one (1) share, and the original Stock Certificate No. 3212 representing six and two-fifths (6.4) shares, all in the Greeley Irrigation Company.

(8) Bills of sale, warranting title to the Improvements, and assignments, without warranty of any type, of all Sellers' rights, title and interest in and to all governmental permits, licenses, certificates and authorizations relating to the construction, development, use or operation of the Property and any other right, privilege and appurtenances owned or otherwise held by Sellers which relate to or are used in connection with the Property.

(9) Certificates of non-foreign status to confirm that Sellers are not required to withhold any part of the Purchase Price pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, together with any other certificates required by Colorado law.

(10) Statements of authority designating the persons who are authorized to execute documents related to this Agreement on behalf of Sellers.

(11) 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.

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

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

B. On or before the Closing, Greeley shall deliver or cause to be delivered to the Title Company the following, duly executed and acknowledged where appropriate:

(1) The Purchase Price (i) minus the Deposit, (ii) plus any other amounts reasonably required to be paid by Greeley at Closing; and (iii) plus or minus any other necessary adjustments agreed to in writing by the parties.

(2) Documentation in a form satisfactory to Sellers and the Title Company, evidencing approval of this Agreement by the Greeley Water and Sewer Board (e.g., Board meeting minutes) and evidencing Greeley's full authority and capacity to purchase the Property.

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

ARTICLE 7 PRORATIONS; CLOSING COSTS

7.1 Prorations. All real estate taxes attributable to the Property for the calendar year in which the Closing occurs shall be prorated at the Closing on the basis of the most recent mill levy for the Property and the current assessed value for the Property, unless the actual real estate taxes for the current year are known on the Closing Date. Assessments on the Water Rights for the calendar year in which the Closing occurs shall be paid by Seller and shall not be prorated between Sellers and Greeley. Any special assessments against the Property shall be paid in full by Sellers at or before Closing. Prorations of taxes and assessments at Closing shall be a final settlement.

7.2 Closing Costs. Greeley shall pay the cost to record all deeds, all title insurance endorsements (excluding the cost for deletion of preprinted standard Title Exceptions 1 through 5) and one-half (1/2) of the Title Company closing costs. Greeley shall also pay the water stock transfer fee for the Water Rights. 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 (1/2) of the Title Company closing costs. Each party shall pay its own attorneys' fees.

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

ARTICLE 8
REPRESENTATIONS AND WARRANTIES OF SELLER

8.1. Representations and Warranties. To Sellers' actual knowledge, Sellers represent and warrant to Greeley as follows:

A. Encumbrances. From the Effective Date until the Closing, and except for the Permitted Exceptions, Sellers shall not encumber the Property in any manner, nor grant any property or contract right relating to the Property or any other interests therein, without the express and prior written consent of Greeley.

B. Compliance with Governmental Regulations; Condemnation. To the best of Sellers' current actual knowledge, there are no orders nor directives of any city, county, state, or federal authority, for repairs, maintenance work or improvements to be performed on the Property. Sellers have received no written notice from any municipal, state, or other authority relating to defects in any improvements, or non-compliance with any building code or restriction, applicable to the Property that has not been corrected, or any written notice of or impending expropriation or condemnation of the Property.

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

D. Contracts, Leases and Agreements. From the Effective Date until the Closing, unless accepted by Greeley in writing, 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 the Property, by which Greeley would be obligated or liable to any third party. Without limiting the foregoing, Sellers warrant that any existing leases or occupation of the Property shall be terminated by Sellers in advance of Closing.

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

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

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

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

ARTICLE 9
COVENANTS

Continuing Covenants of Sellers: Water Rights Adjudication. The parties acknowledge and agree that a change of the Water Rights and/or other water rights adjudications or administrative processes may be necessary to allow Greeley's use of the Property for its intended purposes. Unless this Agreement is terminated pursuant to the provisions herein, Sellers agree that they shall not oppose, but shall cooperate with Greeley, in any actions filed in Water Court or any administrative proceedings initiated for approval of Greeley's intended use of the Water Rights. Sellers' obligations pursuant to this Article 9 shall survive the Closing. Sellers shall not be obligated to incur any expense in furtherance of Sellers' cooperation pursuant to this Article 9. In the event Greeley requests Sellers' cooperation under this Article 9, and if and to the extent such cooperation requires Sellers to incur any expenses, including attorney's fees, Greeley shall be obligated to reimburse Sellers for all such expenses within 30 days after delivery of Sellers' request.

ARTICLE 10
ENVIRONMENTAL CONDITIONS

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

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

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

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

D. "Hazardous Substance" means, without limitation, any toxic, corrosive, or flammable materials, explosives radon, radioactive materials (including naturally occurring radioactive materials ["NORM"] that have been concentrated by industrial or commercial processes), asbestos, urea formaldehyde foam insulation, oil, gas and other petroleum products,

polychlorinated biphenyls, methane pollutants, hazardous materials, hazardous wastes, hazardous or toxic substances or related materials, including those defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, et seq.) ("CERCLA"), the Clean Water Act, as amended (33 U.S.C. Section 1251 to 1387), the Hazardous Materials Transportation Act, as amended (49 U.S.C. Section 1801, et seq.), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, et seq.), the Toxic Substances Control Act, as amended (15 U.S.C. Section 2601, et seq.), and any other applicable Environmental Law and regulations adopted thereunder.

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

10.2 Representations and Warranties. To Sellers' actual knowledge, Sellers represent and warrant to Greeley as follows:

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

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

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

D. Other than minor incidental spills of hydraulic or petroleum products from farm equipment, there has been no Release nor is there the threat of a Release of any Hazardous Substances on, at or from the Land, or any facilities located thereon, and Seller has not received any form of notice or inquiry from any federal, state or local government agency or authority, any operator, tenant, subtenant, licensee or occupant of the Land or any other person with regard to a Release or the threat of a Release of any Hazardous Substances on, at or from the Land, or any facilities located thereon.

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

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

G. There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Property which require any change in the present condition of the Land or

any work, repairs, construction, containment, clean up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Property.

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

I. 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 Seller or its agent were transported, delivered or came to be located (i) has been, or is now the subject of any Release or threatened Release; (ii) has been, or is now, subject to any threatened or pending federal, state or local investigation relating to compliance with any Environmental Law; or (iii) has been, or is now, subject to any threatened or pending enforcement or remedial action.

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

Sellers shall provide Greeley with a written certification at Closing confirming that the foregoing representations are true and correct as of the Closing Date. Greeley acknowledges, however, that Sellers have not occupied the Land for a period of years prior to the Closing Date. Except as expressly provided under this Article 10.2, Sellers make no representations or warranties as to the environmental condition of the Land.

10.3 Covenants. During its period of ownership of the Land, Sellers covenant and agree as follows:

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

C. Sellers shall not cause or permit any change to be made in the present or intended use of the Land that would (i) involve the management, storage, treatment, generation, transportation, processing, handling, production, discharge or disposal of any Hazardous Substances or the use of the Land as a landfill or other waste disposal site or for military, manufacturing or industrial purposes or for the storage of petroleum or petroleum-based

products, (ii) violate any applicable Environmental Law (iii) constitute non-compliance with any Environmental Permit, or (iv) increase the risk of a Release.

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

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

ARTICLE 11 CONDITIONS TO CLOSING; REMEDIES

11.1 Sellers' Conditions. The obligation of 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 Sellers):

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

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

C. No uncured default by Greeley of any 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 Greeley Water and Sewer Board and appropriation of funds by the Greeley City Council sufficient and intended for the purchase of the Property.

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

C. All actions by Sellers contemplated by this Agreement shall have been completed.

D. No uncured default by Sellers of any obligations under this Agreement.

E. The covenants, warranties and representations made by 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 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 Sellers by Greeley shall be immediately returned to Greeley, and all documents deposited by Sellers or delivered to Greeley by Sellers shall be immediately returned to Sellers; or

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

(3) If the failure of condition consists of a default by Sellers that can be cured by action within the reasonable control of 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, Sellers may in their sole discretion:

(1) Terminate this Agreement by notice to Greeley, in which event 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 Sellers by Greeley shall be immediately returned to Greeley, and all documents deposited by Sellers or delivered to Greeley by Sellers shall be immediately returned to Sellers; or

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

C. Sellers hereby waive any rights to specific performance in the event of a default by Greeley. Except for the giving of notices or the delivery of the Deposit or the Purchase Price, time being of the essence for the foregoing, neither party shall be deemed in default hereunder unless such party fails to cure such default within seven (7) days of written notice of default from the other party.

ARTICLE 12 CONDEMNATION

If prior to Closing all or a Material Part of the Property is subject to a proposed taking by

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

ARTICLE 13 LIQUIDATED DAMAGES

If Greeley defaults in any of its obligations under this Agreement, 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. SELLERS AND GREELEY ACKNOWLEDGE THAT SELLERS' DAMAGES WOULD BE DIFFICULT TO DETERMINE AND THAT THE SPECIFIED SUM IS A REASONABLE ESTIMATE OF SELLERS' DAMAGES.

ARTICLE 14 BROKERAGE

Sellers and Greeley hereby warrant to each other that there are no real estate agents, other brokers, or finders involved in this transaction who are entitled to receive a brokerage or finder's fee. 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 Sellers, excluding, however, any party claiming through Greeley, their 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 by delivery to the respective addresses provided below, or such other address changed by the recipient by notice consistent with this Article: (i) on the date and at the time of delivery if delivered personally to the party to whom notice is given at such address; or (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at such address; or (iii) on the date of delivery or attempted delivery shown on the return receipt if mailed to the party to whom

notice is to be given by first-class mail, sent by registered or certified mail, return receipt requested, postage prepaid and properly addressed to such address; or (iv) on the date and at the time shown on the e-mail message if sent to an e-mail address specified below and no bounce back or other notice of non-delivery is received by the sender within three (3) days:

If to Sellers: Martha Coleman
Email: mart119@gmail.com

David Lowell Bunn
9309 Emory Grove Road
Gaithersburg, Maryland 20877
Email: dbunnster@gmail.com

With a copy to:

Brandon B. Houtchens
822 7th St. Suite 270
Greeley, CO 80631
Telephone: 970-353-9195
Email: brandon@houtchens.com

If to Greeley: City of Greeley Water and Sewer Department
Attn: Water Resources Division
1001 11th Street, 2nd Floor
Greeley, Colorado 80631
Telephone: (970) 350-9811
Email: adam.jokerst@greeleygov.com;
cole.gustafson@greeleygov.com

With a copy to:

Greeley City Attorney's Office
Attn: Environmental and Water Resources
1100 10th Street, Suite 401
Greeley, Colorado 80631
Telephone: (970) 350-9291
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. Time. Except as described in paragraph 11.3(C), time is of the essence as to each provision of this Agreement and the performance of each party's obligations hereunder.

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

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

16.5. Entire Agreement. This Agreement contains the entire agreement among the parties regarding the Property and supersedes all prior agreements, whether written or oral, among the parties regarding this purchase and sale transaction. This Agreement may only be modified by mutual written agreement duly authorized and executed by all parties.

16.6. Survival of Representations and Warranties. All representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations of the Sellers and Greeley set forth in this Agreement, except as described in Articles 8 and 10, shall survive the Closing and consummation of this transaction contemplated by this Agreement until the complete discharge thereof.

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

16.8. Restriction on Assignment. This Agreement is not assignable by Sellers or by Greeley without first obtaining the prior written approval of all other parties. No assignment shall relieve any of the parties from its respective obligations hereunder if such obligations are not properly discharged by the assignee of such party.

16.9. Relationship of the Parties. The parties acknowledge that neither Sellers nor Greeley are an agent for the other and that neither Sellers nor Greeley shall or can bind or enter into agreements for the other.

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

16.11. Possession. Sellers shall deliver to Greeley possession of the Property on the Closing Date. Damages shall accrue in the amount of \$500 per day after Closing until such

possession is delivered by the Sellers to Greeley. Sellers shall be considered in violation of Sellers' obligation to deliver possession of the Property on the Closing Date if personal property of Sellers' former tenant remains on the Property.

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

16.13. 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.

16.14. Counterparts. This Agreement may be executed in any number of counterparts each of which, when taken together, shall constitute one contract. This Agreement shall only be effective when counterparts are signed by all parties.

16.15. Acceptance. Upon execution and delivery of this Agreement by Sellers or Greeley, this Agreement shall constitute an offer to purchase or sell 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).

16.16. Governing Body Approval. THE OBLIGATIONS OF THE CITY OF GREELEY HEREUNDER ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE CITY OF GREELEY WATER AND SEWER BOARD.

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

SELLERS

LOWELL ONE, LLC,
a Colorado limited liability company

By: _____

Date: _____

Name: _____

LOWELL TWO, LLC,
a Colorado limited liability company

By: _____

Date: _____

Name: _____

LOWELL THREE, LLC,
a Colorado limited liability company

By: _____

Date: _____

Name: _____

LOWELL FOUR, LLC,
a Colorado limited liability company

By: _____

Date: _____

Name: _____

MARILYN LOWELL BUNN

By: _____

Date: _____

DAVID LOWELL BUNN

By: _____

Date: _____

**MARILYN LOWELL BUNN AND DAVID LOWELL BUNN,
TRUSTEES U/W DAVID A. BUNN DATED 11-20-98**

By: _____

Date: _____

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

By: _____
City Manager

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney

AS TO AVAILABILITY OF FUNDS:

By: _____
Director of Finance

DRAFT

EXHIBIT A-1
PURCHASE AND SALE AGREEMENT

Description of Land

Parcel One – ID No. 095902200020

PT NW4 2-5-66 BEG NE COR NW4 S89D22'W 121.74 TO POB TH S0D19'W 86.84' S59D46'W 174.56' N72D40'W 338.32' S74D21'W 280.71' N62D34'W 304.79'M/L TO N LN NW4 TH N89D28'E 1015.17'M/L TO POB

Parcel Two – ID No. 080535300002

S2SW4 35-6-66 EXC BEG SE COR SW4 N01D31'E 1357.95' S89D28'W 26.07' S0D19'W 1357.92' TH E21.14' TO BEG ALSO EXC BEG NE COR S2SW4 S89D28'W 26.07 S0D19'W 30' TO POB TH CONT S0D19'W 1327.92' TO S LN SEC TH S89D28'W 121.74' M/L TH N0D19'E 1327.92' TO N LN S2SW4 TH E TO POB

Parcel Three – ID No. 080534400009

PT SW4SE4 34 6 66 COMM E1/16 N00D35E 605.65 S48D23W 119.40 S84D28W 58.25 N74D40W 209.87 N66D08W 154.87 N80D03W 136.32 N79D59W 106.30 N82D48W 325.64 S32D28W 135 S89D42W 170 S568 M/L TO S4 COR E1275 M/L TO POB

Parcel Four – ID No. 080534400008

PT SW4SE4 34 6 66 COMM E 1/16 COR N00D35E 1312.28 TO POB S55D13W 500.67 S66.17W 95 S74.57W 95 S83.28W 203 S79D35W 102 N10.27W 553 N79D55E 576.5 N78D22E 426.15 M/L S01D12E 340.73 M/L TO POB EXC BEG SE 1/16 S0D15E 401.95 S55D33W 24.18 N0D15W 343.67 N35D17W 40.17 S78D41W 309.12 S79D54W 639.26 S75D52W 109.79 S56D23W 336.20 S57D43W 96.81 S33D08W 54.66 S39D16W 132.37 N0D19W 47.06 N39D16E 94.50 N33D08E 59.59 N57D43E 103.00 N56D23E 341.00 N75D52E 116.00 N79D54E 640 N78D41E 358.52 TO POB

Parcel Five – ID No. 080534300007

PT W2SE4 & PT E2SW4 34-6-66 BEG SW COR E2SW4 N ALONG 1/4 1/4 LN 1023' TO CEN OF POUFRE RIVER S74D40'E 280' S85D38'E 175' N74D38'E 272' S70' TO S BANK POUFRE RIVER AT C/L WASTEWAY #3 CANAL N74D38'E 116' N66D40'E 186' N49D07'E 71.3' N39D36'E 94.5' N45D28'E 101' N55D10'E 246' N60D34'E 131' N78D00'E 118' S10D27'E 553' S31D15'W 405' S89D42'W 170' S568' TO SE COR SW4 W ALONG S SIDE OF SEC 1320' TO BEG EXC BEG ON PT ON S BANK #3 CANAL FROM WHENCE S 1/4 1/4 COR SW4 34 6 66 BEARS S18D18'W 768' E120' N50' W77' N18D18'E 131' TO S BANK OF POUFRE RIVER W53' S18D18'W 184' TO S BANK #3 CANAL E26.5' TO BEG ALSO EXC 15.231A DESC IN BK 631 REC #1552883 EXC BEG CENTER 1/4 COR ON S SIDE SEC 34 S0D15E 401.95' S55D33W 24.18' N0D15W 343.67' N35D17W 40.17' S78D41W 309.12' S79D54W 639.26' S75D52W 109.79' S56D23W 336.20' S57D43W 96.81' S33D08W 54.66' S39D16W 132.37' N0D19W 47.06' N39D16E 94.50' N33D08E 59.59' N57D43E 103.00' N56D23E 341.00' N75D52E 116.00' N79D54E 640' N78D41E 358.52' TO POB

EXHIBIT A-2
PURCHASE AND SALE AGREEMENT

Location Map - Land

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EXHIBIT B
PURCHASE AND SALE AGREEMENT

Description of Water Rights

Any and all water and water rights, ditches and ditch rights, reservoirs and reservoir rights, rights to receive water, and other rights and interests of any kind represented by fourteen and two-fifths (14.4) shares of capital stock in the Greeley Irrigation Company (represented by Stock Certificate No. 2456 as to five (5) shares, Stock Certificate No. 2594 as to two (2) shares, Stock Certificate No. 3129 as to one (1) share, and Stock Certificate No. 3212 as to six and two-fifths (6.4) shares). The Water Rights covered by this provision shall also include all of the Sellers' rights, title, and interest in and to any and all lateral ditches, easements, rights of way and entitlements appurtenant to or used in connection with the shares described above.

EXHIBIT C
PURCHASE AND SALE AGREEMENT

Historical Use Questionnaire and Affidavit

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AFFIDAVIT OF HISTORICAL USE OF WATER RIGHTS

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

WATER RIGHTS:

Ditch or Reservoir Company _____

Shares or interest _____ Certificate No. _____

Deed Book/Page, *if applicable*: _____

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

Owner(s) _____

User(s) _____

Years water rights were used as described: _____ through _____

IRRIGATED LAND:

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

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

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

The undersigned, _____

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

Exhibit 1

Water History Questionnaire

1. Name of person completing this questionnaire: _____
Mail Address: _____

Telephone: _____

Facsimile: _____

E-mail: _____

2. The information to be provided below pertains to _____ shares of _____
_____ Certificate No (s). _____

[For the remainder of this questionnaire, the term "Shares" refers specifically to the shares identified in Question 2]

3. What is your relationship to the owner of the Shares?

Owner _____ Tenant _____

Other [*Please state nature of relationship*] _____

4. If you are not the owner of the Shares, please identify the owner here and **skip to Question 9**: _____

5. When did you acquire ownership of these Shares? _____

6. If you know the names of prior owners of any of the Shares and how they may be contacted, please provide this information

• Number of shares _____
Owner's name: _____
Telephone: _____
Address: _____

• Number of shares _____
Owner's name: _____
Telephone: _____
Address: _____

• Number of shares _____
Owner's name: _____
Telephone: _____
Address: _____

7. Do you still own the farm or parcel historically irrigated by these Shares?
 Yes _____ No _____
- If you do not still own the historically-irrigated land, did you obtain a Dry-up Covenant at the time of sale? Yes _____ No _____
8. To your knowledge, did the previous owner of the Shares and the historically irrigated land use the Shares to irrigate in the same manner, time and place as you have used them?
 Yes _____ No _____ Don't know _____
9. If you have ever leased any of the Shares to another party, please provide the following information: [*Use additional sheets, if necessary.*]
- Number of shares leased _____
 When leased _____
 Shares were used on your property _____ or tenant's _____
 Lessee's name, address & telephone number: _____

 - Number of shares leased _____
 When leased _____
 Shares were used on your property _____ or tenant's _____
 Lessee's name, address & telephone number: _____

 - Number of shares leased _____
 When leased _____
 Shares were used on your property _____ or tenant's _____
 Lessee's name, address & telephone number: _____

10. During which years do you have personal knowledge of how, where, and when water from the Shares was used: _____
11. What is the legal description of the farm or parcel on which the Shares were used?
 [*Attach separate sheet, if convenient*] _____

12. What is the total size of the farm or parcel? _____ Acres
13. What is the size of the area(s) on farm or parcel that was irrigated? _____ Acres
14. What is the size of the area(s) on farm or parcel that was irrigated using water from the

Shares? _____ Acres

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

- Name of the irrigation ditch through which the water was delivered:

- Location and ID number of the head gate at the main ditch: _____

- Name and general location of any lateral(s) delivering the water to the land historically irrigated: _____

- Identification of any carrier or lateral ditch stock required to deliver these rights:

- Approximate location of pumps, if used: _____

- Approximate location and size of storage ponds/reservoirs, including tail water ponds, if used: _____

16. How was water applied?
Sprinkler _____ Furrow _____ Flood _____ Other _____

17. When is the normal irrigation season?
Start date: _____ Stop date: _____

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

- Number(s) of shares: _____
- Ditch company: _____
- Number of any irrigation wells: _____
- Identification and permit numbers of any irrigation wells: _____

- Capacity of identified irrigation wells: _____
- Approximate location of irrigation wells: _____

- Any other water used: _____
- Describe how this water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____

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

If yes,

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

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

1. _____ 2. _____ 3. _____
4. _____ 5. _____ 6. _____

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

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

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

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

[*Please check if included*]

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

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

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

Signature: _____

Date: _____

EXHIBIT D
PURCHASE AND SALE AGREEMENT

Form of Special Warranty Deed (Land)

SPECIAL WARRANTY DEED

This SPECIAL WARRANTY DEED is made this ____ day of January 2021 by _____, whose address is _____ (“Grantor”), to THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11th Avenue, 2nd Floor, Greeley, Colorado 80631 (“Grantee”).

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does hereby grant, bargain, sell, convey, and confirm unto the Grantee, its successors and assigns forever, the real property identified in Exhibit A attached hereto and incorporated herein by this reference (“Property”), located in the County of Weld, State of Colorado. The Property does not include any interests in oil, gas, hydrocarbons, sand, gravel, or other mineral interests of any kind.

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

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

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

[GRANTEE]

By: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Acknowledged before me this ____ day of January 2021, by

_____, as an authorized representative of
_____.

My Commission Expires: _____

Notary Public

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EXHIBIT E
PURCHASE AND SALE AGREEMENT

Form of Special Warranty Deed (Water Rights)

WATER RIGHTS DEED
(Special Warranty)

This SPECIAL WARRANTY DEED is made this ____ day of January 2021 by _____, whose address is _____ (“Grantor”), to THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11th Avenue, 2nd Floor, Greeley, Colorado 80631 (“Grantee”).

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does hereby grant, bargain, sell, convey, and confirm unto the Grantee, its successors and assigns forever, the water rights and other rights identified in Exhibit A attached hereto and incorporated herein by this reference (“Water Rights”), associated with or previously used upon the lands described in Exhibit B attached hereto and incorporated herein by this reference, all located in the County of Weld, State of Colorado.

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

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

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

[GRANTEE]

By: _____

STATE OF COLORADO)
) ss.

COUNTY OF _____)

Acknowledged before me this ____ day of January 2021, by _____, as an authorized representative of _____.

My Commission Expires: _____

Notary Public

DRAFT



Lowell

Water Rights & Land Acquisition

(Greeley Irrigation Company)

September 16th, 2020



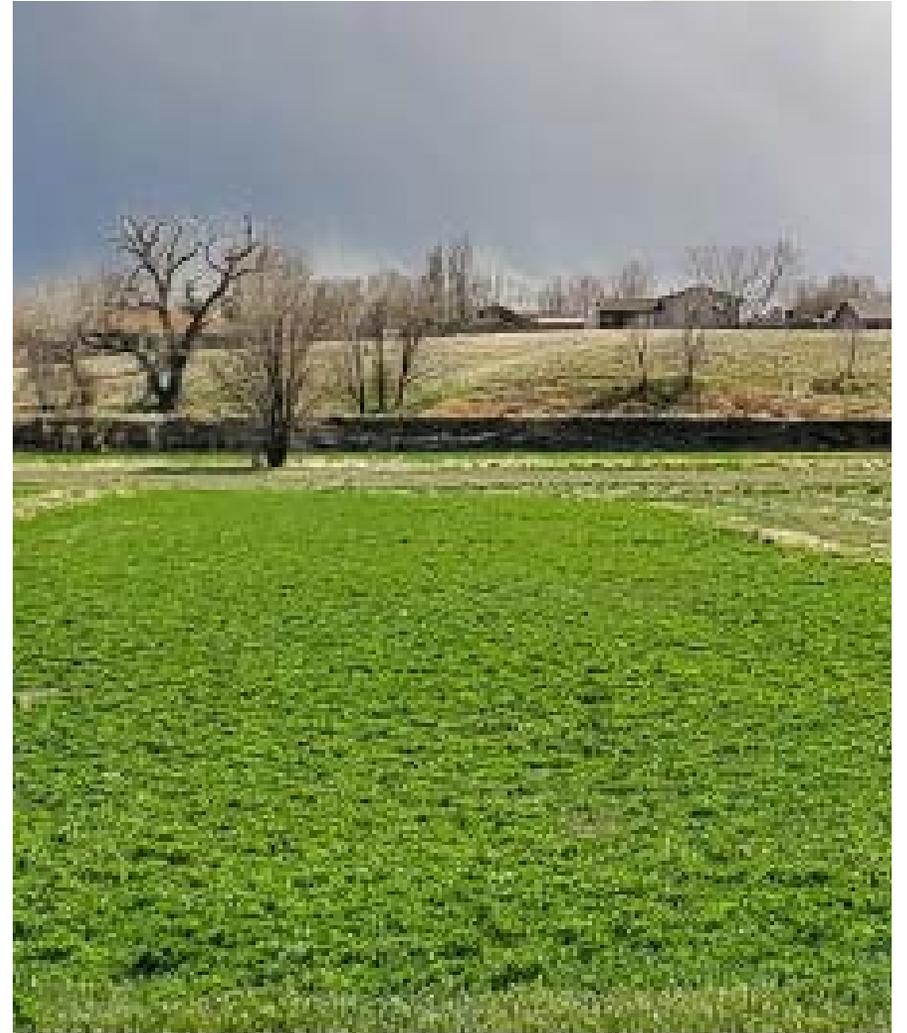
Purchase & Sale Overview



Property is located North of Greeley off of F street between North 35th Avenue and North 59th Avenue

Purchase & Sale Overview

- Water and land purchase
- 14.4 shares of Greeley Irrigation Company (GIC)
 - Non-potable supply
 - No leaseback
- +/- 135 acres
 - Valueless house
- \$3,108,000.00

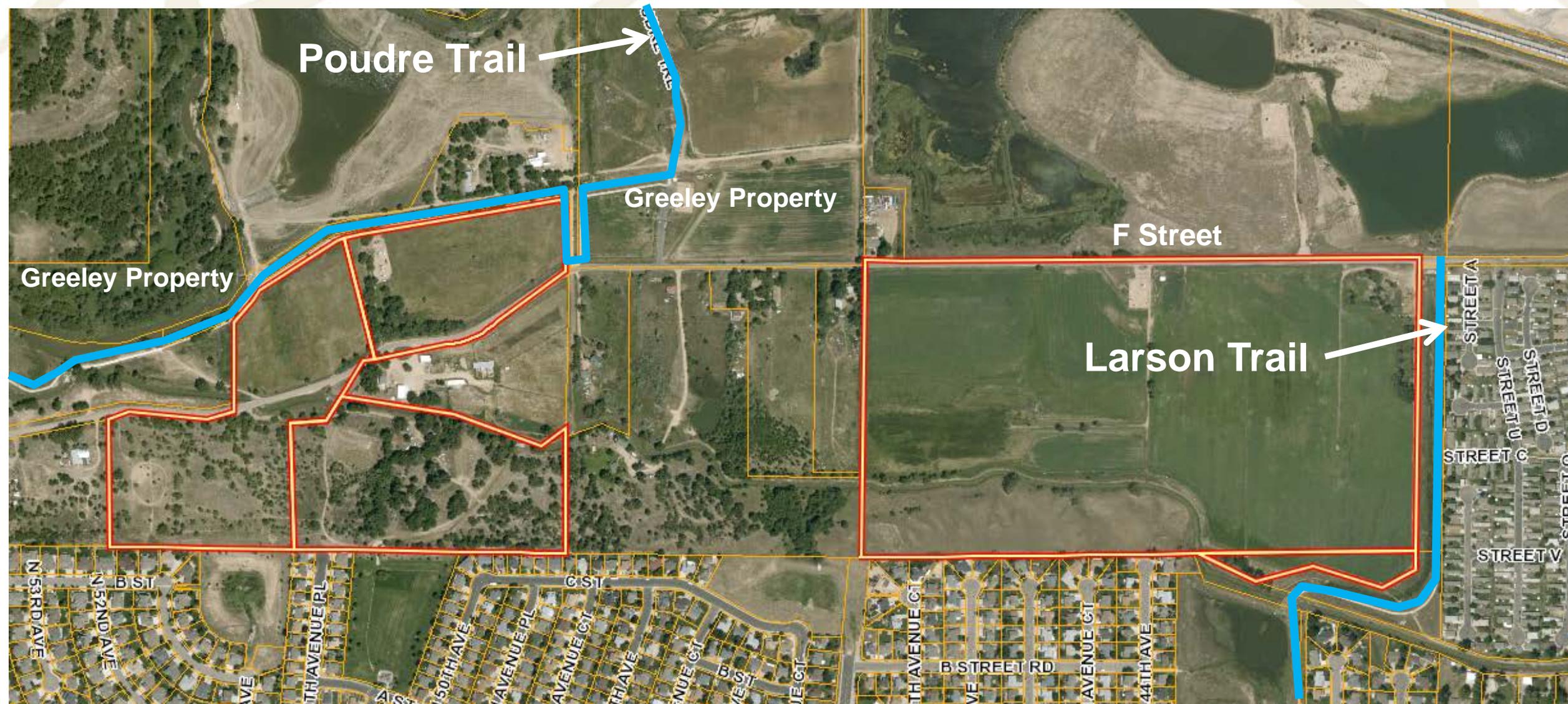


Potential Land Uses



- Multiple options
 - Trail connection(s)
 - Open space (Poudre Trail corridor)
 - Municipal facilities (shops for crews)
 - Residential, etc.
- Staff recommends reselling property not needed for City uses ASAP

Trail Connections



Due Diligence & Path Forward

- 90 days of Due Diligence
 - Title review
 - HCU analysis
 - Appraisal (completed)
 - Phase 1 Environmental Site Assessment
 - ALTA Survey
- Closing anticipated in early January 2021



Recommendation

W&S staff recommend the acquisition of 14.4 shares of Greeley Irrigation Company and the associated +/- 135 acres of land, in accordance with the water acquisition strategies set forth in the Department's Master Plan and Future Water Account Plan

Note: Staff and legal counsel will verify vested ownership of the water rights with the Greeley Irrigation Company and update seller parties prior to execution of the purchase and sale agreement.



Questions?



WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 9

TITLE: TERRY RANCH PROJECT DILIGENCE
UPDATE

RECOMMENDATION: INFORMATIONAL ONLY

ADDITIONAL INFORMATION:

In June 2020, Greeley entered into a Master Agreement for acquisition of groundwater rights and associated storage underlying the Terry Grazing Association Ranch in northwest Weld County (the “Terry Ranch Project”). Since that time, staff and consultants have undertaken extensive inspection and diligence activities on the ranch. Such diligence is required per the Master Agreement, and will inform the City whether to close on the project, with closing anticipated for the first quarter of 2021. This item presents a summary update of diligence activities conducted to date for the Terry Ranch Project, along with preliminary findings.

Terry Ranch Project

Diligence Update

September 16, 2020



Diligence Plan



1. Environmental
2. Hydrogeology
3. Water Quality
4. Design & Cost Estimate
5. Title, Permitting, Legal, Etc.

Environmental Inspection

- ✓ Environmental Surveys
 - ✓ Endangered species
 - ✓ Wetlands
 - ✓ Hazardous materials
 - ✓ Cultural resources



Environmental Inspection



- ✓ All site work complete
- ✓ Desktop studies ongoing
- ✓ Avoidance areas heat map
- ✓ Chemical usage sites
- ✓ Cultural resource identification

Exploratory Wells

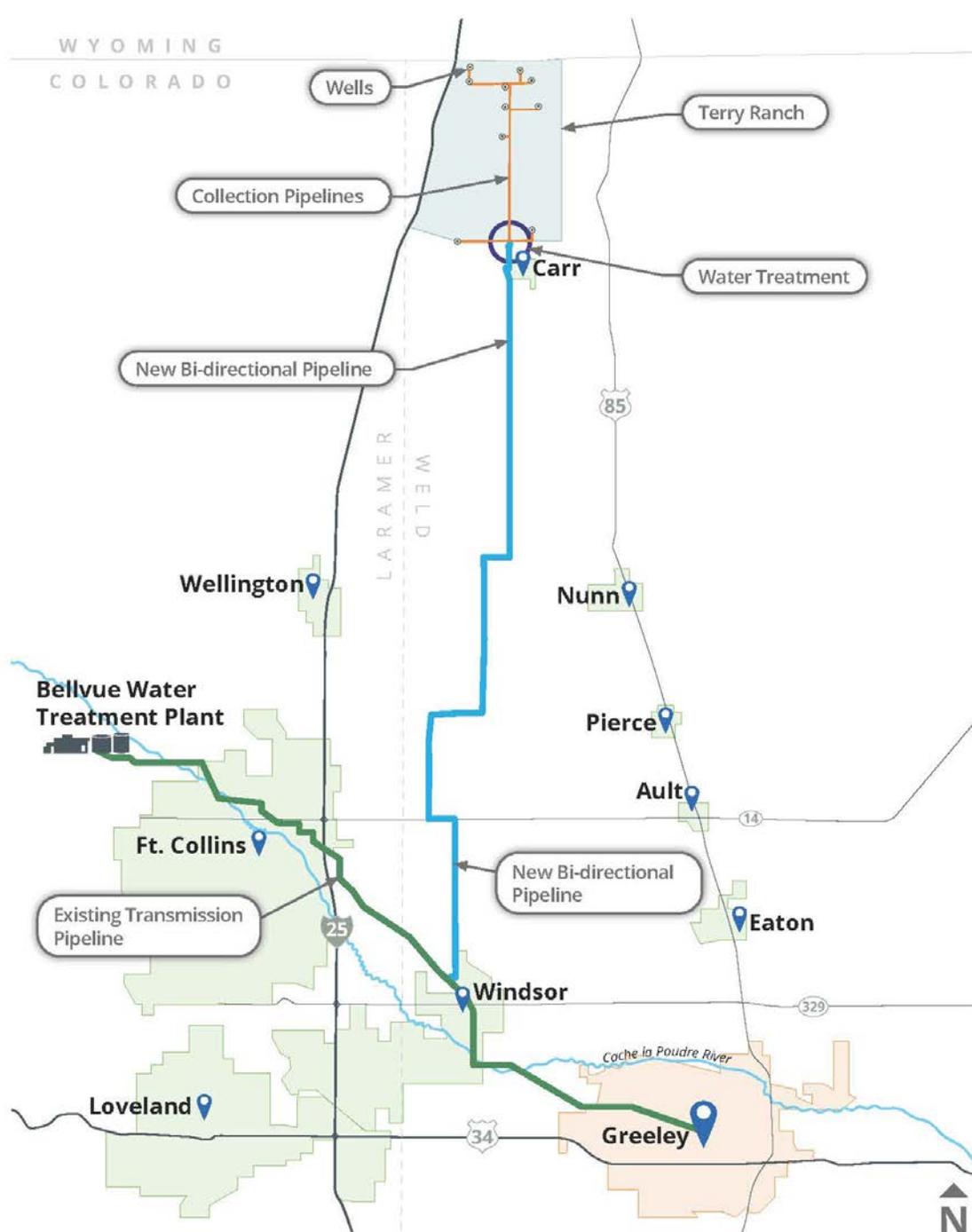
- ✓ Two exploratory bores drilled
- ✓ Well collapse & re-drill
- ✓ Similar geology and yields as existing wells
- ✓ Testing ongoing



Inspection Activities



- ✓ Hydrophysical logging completed
- ✓ Pump testing existing wells
- ✓ Water quality sampling (1,000s of samples)



Concept Design

- ✓ Preliminary pipeline layout
- ✓ Land acquisition
- ✓ Hydraulics and instrumentation
- ✓ Power
- ✓ Treatment design after new water quality data is analyzed

Inspection Timeline

- ✓ Currently on schedule
- ✓ Initial water quality results in mid-fall
- ✓ Water quality data is key



Thank you.



WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE X NO ENCLOSURE

ITEM NUMBER: 10

TITLE: LEGAL REPORT

RECOMMENDATION:

ADDITIONAL INFORMATION:

Legal Report
Greeley Water and Sewer Board Meeting
September 16, 2020

- I. **Statements of Opposition:** Based on review of the July, 2020 Water Court Resume, staff and water counsel recommend that the Board file statements of opposition in the following cases:
 - a. Case Number: **20CW3096** Application of East Cherry Creek Water and Sanitation District, and United Water and Sanitation District, for a change of water rights conditional appropriation of return flows, and a plan for augmentation. This case involves a change of water rights for 60.3 shares in the Fulton Ditch, and is interrelated with several other water court cases involving these applicants in which Greeley is a party. We recommend that Greeley file a statement of opposition ensure that appropriate terms and conditions are included in the water court decree and that Greeley’s water rights are not adversely affected.
 - b. Case Number: **20CW3113** Application of Lazy D Grazing Association for nontributary underground water rights from the Upper Laramie aquifer. This case involves an application to withdraw 23,145 acre-feet per year from the Upper Laramie aquifer. We recommend that Greeley file a statement of opposition to evaluate the nontributary claims and to ensure that Greeley’s water rights are not adversely affected.

- II. **Proposed Motion Language:** “I move that the Board authorize the filing of statements of opposition in Case Nos. 20CW3096 and 20CW3113, and for staff and legal counsel to seek resolution of issues raised by these cases consistent with Water and Sewer Board Resolution No. 3-15.”

WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 11

TITLE: DIRECTOR'S REPORT

RECOMMENDATION: INFORMATION ONLY

ADDITIONAL INFORMATION:

- Myers PSA
- Utility Billing and Water Budget Overview

WATER & SEWER BOARD AGENDA SEPTEMBER 16, 2020

ENCLOSURE _____

NO ENCLOSURE X

ITEM NUMBER: 12

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: