

PURCHASE AND SALE AGREEMENT—WATER RIGHTS

THIS PURCHASE AND SALE AGREEMENT (“Agreement”) is made and entered into as of the Effective Date (as defined in Section 1.6 below) by and between PLATTE RIVER POWER AUTHORITY, a political subdivision of the State of Colorado (“Platte River,” as seller) and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, acting by and through its WATER ENTERPRISE (“Greeley,” as buyer) (Platte River and Greeley each being a “Party” and collectively the “Parties”).

RECITALS

A. Platte River owns the Rawhide Energy Station (“Rawhide”) located in portions of Sections 4, 5, 6, 7, 8, and 9, Township 10 North, Range 68 West of the 6th P.M., Larimer County, Colorado.

B. Platte River is the sole owner of the water right originally decreed in Division 1 Case No. W-9322-78, and made absolute in Division 1 Case No. 82CW318, named the “Rawhide Pipeline Water Right,” further described in Exhibit A, attached hereto and incorporated herein by reference, and the water right originally decreed in Division 1 Case No. 82CW319, named the “Rawhide Pipeline Enlargement Water Right,” further described in Exhibit A, attached hereto and incorporated herein by reference. Together, the Rawhide Pipeline Water Right and the Rawhide Pipeline Enlargement Water Right are referred to as the “Water Rights.”

C. Platte River is planning to retire Rawhide Unit 1 by December 31, 2029, and this retirement will have a substantial effect on the water supply needs at Rawhide. Prior to this retirement, Platte River has a need for water supplies from the Northern Colorado Water Conservancy District’s Colorado-Big Thompson Project to use as collateral for other projects.

D. Greeley is a Colorado home rule municipal corporation, which provides water service to its citizens, and has a need to acquire additional water supplies to prepare for long term increases to the demands on its system.

E. To further the goals of both Parties, in exchange for a lease-back of the Water Rights, and a lease of Colorado-Big Thompson Acre-Foot Units from Greeley to Platte River, as further described herein, Platte River desires to sell, and Greeley desires to purchase, the Water Rights.

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

AGREEMENT

ARTICLE 1
DEFINITIONS

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

- 1.1 “*Agreement*” means this purchase and sale agreement.
- 1.2 “*CBT AFUs*” has the meaning given in Section 6.1.
- 1.3 “*CBT Lease*” means the Lease Agreement attached to this Agreement as Exhibit B.
- 1.4 “*Closing*” means the closing of this transaction.
- 1.5 “*Closing Date*” means the date of the Closing.
- 1.6 “*Deed*” has the meaning given in Section 4.2.
- 1.7 “*Effective Date*” means the date upon which the last Party signs this Agreement in accordance with Sections 14.14 and 14.16 below.
- 1.8 “*Governmental Approval Period*” has the meaning given in Section 7.1.
- 1.9 “*Greeley Board*” means the Greeley Water and Sewer Board.
- 1.10 “*Inspections*” has the meaning given in Section 5.1.A.
- 1.11 “*Inspection Period*” has the meaning given in Section 5.1.A.
- 1.12 “*Material Part*” means a portion of the Water Rights that would have a material adverse effect on Greeley’s use of the Water Rights as determined by Greeley in its good faith judgment.
- 1.13 “*Northern Water*” means the Northern Colorado Water Conservancy District.
- 1.14 “*Off-Record Documents*” has the meaning given in Section 4.1.
- 1.15 “*Platte River Board*” means the Platte River board of directors.
- 1.16 “*Purchase Price*” has the meaning given in Section 3.1.
- 1.17 “*Rawhide*” has the meaning given in Recital A.
- 1.18 “*Rawhide Pipeline Water Right*” has the meaning given in Recital B.
- 1.19 “*Rawhide Pipeline Enlargement Water Right*” has the meaning given in Recital B.

- 1.20 “*Subcontracting Rule*” has the meaning given in Section 6.1.
- 1.21 “*Title Company*” means Land Title Guaranty [**or alternate title company**].
- 1.22 “*Title Documents*” has the meaning given in Section 4.1.A.
- 1.23 “*Water Rights*” has the meaning given in Recital B.
- 1.24 “*Water Rights Leaseback Agreement*” means the agreement attached as Exhibit C.

ARTICLE 2
SALE OF WATER RIGHTS

2.1 Purchase and Sale. Platte River agrees to sell, and Greeley agrees to buy, on the terms and conditions set forth in this Agreement, the Water Rights, by conveyance of the Deed described in Section 4.2 below.

2.2 Exclusions. There are no exclusions from the Water Rights.

ARTICLE 3
PURCHASE PRICE

3.1 Purchase Price. The total purchase price for the Water Rights (“Purchase Price”) shall be: (1) the execution of the CBT Lease, in the form attached hereto as Exhibit B, by Greeley and Platte River, and (2) the execution of the Water Rights Leaseback Agreement, in the form attached hereto as Exhibit C, by Greeley and Platte River.

3.2 Deposit. There shall be no deposit required pursuant to this Agreement.

3.3 Closing. At Closing, Platte River shall deliver the Water Rights Deed to Greeley, and the Parties shall deliver fully executed originals of the CBT Lease and the Water Rights Leaseback Agreement to each other.

ARTICLE 4
TITLE

4.1 Documentation. Within 14 days after the Effective Date of this Agreement, Platte River shall provide the following to Greeley for review: to the extent the same exist, true and correct copies of all: (1) documents that relate to the title, diversions, deliveries, use, quantity, quality and condition of the Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, and any directly relevant records maintained by Platte River; (2) contracts or other agreements relating to the development, operation, maintenance or leasing or otherwise affecting the Water Rights; and (3) any engineering, investigation or inspection document or reports related to the Water Rights (collectively referred to as “Off-Record Documents”).

4.2 Condition and Vesting of Title. At Closing, Platte River shall convey the Water Rights to Greeley by special warranty deed, in the form attached as Exhibit D free and clear of all liens and encumbrances (the “Deed”).

ARTICLE 5
INSPECTION PERIOD

5.1 Inspections.

A. Inspection Period; Right to Inspect. During a period of time commencing upon the Effective Date and continuing until 4:00 p.m., Mountain Time, on the **30th** day thereafter (“Inspection Period”), Greeley and its authorized agents, representatives and consultants shall be entitled to: (1) perform such inspections, as Greeley deems desirable, to allow Greeley to evaluate the Water Rights; and (2) contact and interview the managers, members, employees and agents of Platte River who have relevant substantive knowledge to assist Greeley in determining the historical use of the Water Rights (collectively referred to as “Inspections”). Platte River agrees to reasonably cooperate with any Inspections made by or at Greeley’s direction and work with Greeley to facilitate such interviews and/or the signing of any affidavits of use of the Water Rights by Platte River or to facilitate such contact and/or request for information or determination by Greeley. Greeley shall bear all costs of the Inspections.

B. Conditions of Inspection. Greeley anticipates that its Inspections shall not include physical access to the Rawhide, unless Platte River desires to provide any relevant information at that location. If Greeley does conduct an Inspection of any facilities owned or operated by Platte River, then, Greeley and its authorized agents, representatives and consultants (1) shall not unreasonably interfere with the operation and maintenance of the facilities used in connection with the Water Rights; (2) shall comply with all reasonable requirements imposed upon them in connection with such inspection by Platte River; (3) shall not injure or otherwise cause bodily harm to Platte River, their agents, contractors or employees; and (4) shall promptly pay when due the costs of all Inspections done.

C. Deadlines. The table below contains a non-exclusive list of the dates and deadlines for this Agreement.

Section	Deadline	Date
§ 4.1	Title Documents	14 days following the Effective Date
§ 4.1	Off-Record Documents	14 days following the Effective Date
§ 5.1	Inspection Period Expiration	30th day following the Effective Date
§ 5.2	Objections	On or before the expiration of the Inspection Period
§ 6.2	Request Northern Water Approval	14 days following the Effective Date

§ 7.2	Closing Date	14 days after Governmental Approval Period described in Section 7.1, or the approval of the CBT Lease by Northern Water, whichever occurs last.
§ 10.3.C	Default Cure Period	Within seven days of written notice of default from the other Party

5.2 Objections. If during the Inspection Period Greeley, for any reason, in Greeley’s sole discretion, judgment and opinion, disapproves or is dissatisfied with any aspect of the Water Rights or its Inspections relating thereto, Greeley shall be entitled to terminate this Agreement by giving written notice to Platte River on or before the expiration of the Inspection Period, whereupon all provisions of this Agreement (with the exception of those obligations which by their nature are intended to survive the termination of this Agreement) shall terminate.

5.3 No Guarantee of Yield. Platte River makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered pursuant to the Water Rights. Greeley shall not hold Platte River liable for any failure in delivery of the water pursuant to the Water Rights, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

ARTICLE 6
CBT LEASE APPROVAL; TERMINATION

6.1 Acknowledgment of Approval Requirement. The Parties acknowledge that Northern Water has adopted the “Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts,” effective August 11, 2016 (“Subcontracting Rule”). Section 3.1 of the Subcontracting Rule prohibits all subcontracts for acre-foot units of Colorado-Big Thompson Project water (“CBT AFUs”) with a term of two years or more without the approval of Northern Water. Section 5.3 of the Subcontracting Rule prohibits subcontracts with a term of greater than five years, unless such subcontracts qualify for an exception. The CBT Lease is contemplated to have a term of greater than five years.

6.2 Submission of CBT Lease for Approval. Within 14 days after the Effective Date, Greeley shall submit an application for Northern Water approval of the CBT Lease pursuant to the Subcontracting Rule. The Parties shall reasonably cooperate with each other to provide any necessary testimony and information to Northern Water in support of the application. If the CBT Lease is approved by Northern Water, then the Parties shall comply with all conditions of such approval and the Subcontracting Rule.

6.3 Effect of Denial of Approval. If Northern Water determines not to issue an unqualified approval of the CBT Lease for the full term thereof, then the Parties shall work together in good faith to determine if the CBT Lease can be revised to accomplish the objectives of the Parties and obtain Northern Water’s approval. If the Parties determine that such revision to the CBT Lease is appropriate, then Greeley shall submit the revised agreement to Northern Water for its approval. If the Parties do not agree to submit a revised CBT Lease within 30 days after Northern Water’s determination not to approve the original CBT Lease, then this Agreement shall

automatically terminate, whereupon all provisions of this Agreement (with the exception of those obligations which by their nature are intended to survive the termination of this Agreement) shall terminate.

6.4 Early Lease Termination by Northern Water Action. The Parties acknowledge the possibility that, upon completion of the Northern Water Subdistrict's Chimney Hollow Reservoir Project, Northern Water may view the Lease as no longer necessary despite having previously approved the CBT Lease as provided in Section 6.3. If this occurs before October 31, 2030 (the end of the CBT Lease term), and as a result Northern Water legally acts to revoke its approval of or otherwise terminate the CBT Lease, Greeley agrees that it shall enter into further one-year leases with Platte River, on terms consistent with those in the CBT Lease, as necessary to provide to Platte River rights to water derived from Greeley-owned CBT AFUs equivalent to what Platte River would have received had the CBT Lease continued through its agreed-upon expiration date of October 31, 2030. If Northern Water revokes its approval of or otherwise terminates the CBT Lease pursuant to this Section 6.4, the Parties' sole remedy for such action shall be the requirement to enter into further one-year leases as provided by this Section.

ARTICLE 7 CLOSING

7.1 **Required Governing Board Approvals.** **Closing on the transactions contemplated by this Agreement is contingent upon approval by the Greeley Board and the Platte River Board given within 28 days after the expiration of the Inspection Period ("Governmental Approval Period"). If either the Greeley Board or the Platte River Board has not authorized Closing on the Agreement prior to the expiration of the Governmental Approval Period, then, in such event, upon written notice by either Party to the other Party, this Agreement shall terminate, whereupon 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.**

7.2 Closing. The Closing shall occur at 1:30 p.m. at the Title Company, or at such other time and place as may be mutually agreed upon by the Parties, 14 days after the expiration of the Governmental Approval Period or final approval by Northern Water of the CBT Lease (including any revised version of the CBT Lease approved by the Parties pursuant to Section 6.3 above), whichever occurs later, or by mutual agreement at an earlier date.

7.3 Transactions at Closing.

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

(1) The Deed, in the form of Exhibit D, conveying the Water Rights free and clear of all liens and encumbrances.

(2) A certificate of non-foreign status pursuant to Section 1445 of the Internal Revenue Code of 1986, as amended, together with any certificates required pursuant to Colorado law.

(3) A statement of authority designating the persons who are authorized to execute the Deed and all other applicable documents on behalf of Platte River.

(4) A certificate as to Taxpayer Identification Number as required by law.

(5) The CBT Lease, in the form approved by Northern Water.

(6) The Water Rights Leaseback Agreement.

(7) A closing statement executed by Platte River.

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

B. On or before the Closing Date, Greeley shall deliver to the Title Company, acting as escrow agent, the following:

(1) Documentation in such form as may be satisfactory to Platte River and the Title Company, evidencing Greeley's full authority and capacity to purchase the Water Rights.

(2) The CBT Lease, in the form approved by Northern Water.

(3) The Water Rights Leaseback Agreement.

(4) A closing statement executed by Greeley.

(5) Such other documents as may be reasonably necessary and appropriate to complete the Closing of the transaction contemplated herein.¹

ARTICLE 8
PRORATIONS; CLOSING COSTS

Greeley shall pay for the cost of recording of the deed, and one-half of the Title Company Closing costs, if any. Platte River shall pay one-half of the Title Company closing costs. Each Party shall pay its own attorneys' fees and Greeley shall be solely responsible for the payment of any escrow fees to the Title Company.

¹ Note: Greeley is not required to execute a Real Property Transfer Declaration for water rights or land transfers under Colorado law. CRS 39-14-102 say that a Real Property Transfer Declaration is required when recording a "conveyance document" and CRS 39-14-101(2) defines a "conveyance document" as an instrument for which a documentary fee is required. Since the grantees are governmental entities, no documentary fee is required per . C.R.S. 39-13-104(1)(a) and thus no Real Property Transfer Declaration.

ARTICLE 9
REPRESENTATIONS AND WARRANTIES

9.1 Platte River Representations and Warranties. Platte River represents and warrants to Greeley as follows:

A. Ownership and Encumbrances. Platte River is now and will remain, until the conclusion of the Closing, the lawful owner of the Water Rights. To the best of Platte River's knowledge, the Water Rights are free of any liens, encumbrances and third-party claims except for those of Greeley. From the Effective Date of this Agreement until the Closing, Platte River shall not encumber the Water Rights or any interest in any way or grant any property or contract right relating to the Water Rights or any other interests without the prior written consent of Greeley.

B. Litigation. To Platte River's current actual knowledge, there is no dispute, action or litigation pending or threatened respecting the ownership or use of the Water Rights or other interests related thereto.

C. Contracts, Leases and Agreements. From the Effective Date of this Agreement until the Closing, unless accepted by Greeley in writing, Platte River shall not enter into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Water Rights by which Greeley would be obligated or liable to any third party.

D. Status. Platte River has all requisite legal power and authority to own and convey the Water Rights and perform all of the terms of this Agreement.

E. No Abandonment. The Water Rights have not been abandoned by Platte River.

F. Compliance with Law. To the best of Platte River's current actual knowledge, Platte River has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the Water Rights, and to Platte River's current actual knowledge there is no proposed order, judgment, decree, governmental taking or other proceeding applicable to Platte River that might have a material adverse effect on the Water Rights.

9.2 Closing Certificate. Platte River shall provide Greeley with a written certification at Closing confirming that the representations set forth in Section 9.1 are true and correct as of the Closing Date.

9.3 Water Rights Adjudication. The Parties acknowledge and agree that a change of Water Rights and/or other water rights adjudications may be necessary to allow Greeley's use of the Water Rights for their intended purpose. Unless this Agreement is terminated pursuant to the provisions herein, Platte River agrees that it shall not oppose, but shall reasonably cooperate with Greeley, in any actions Greeley files in water court or administrative or other proceedings for approval of the use of the Water Rights as part of an application for new water rights (including direct flow or storage rights), changes of water rights, exchanges or plans for augmentation or substitution or in connection with the Water Rights. Platte River shall not be required to file briefs in support of Greeley's application or take any affirmative action other than to appear and testify

honestly about the Water Rights and provide any documentation of use or other relevant historical use information. The terms and provisions set forth in this Section 9.3. and the covenants and obligations arising therefrom shall survive the Closing and shall not be deemed merged into the closing documents.

ARTICLE 10
CONDITIONS TO CLOSING; REMEDIES

10.1 Platte River's Conditions. The obligation of Platte River to sell and convey the Water Rights 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 Platte River):

- A. Satisfaction of the closing contingencies under Section 7.1.
- B. Delivery and execution by Greeley of all monies, items, and other instruments required to be delivered by Greeley to the Closing.
- C. All of the actions by Greeley required by this Agreement shall have been completed.
- D. There shall be no uncured default by Greeley of any of its obligations under this Agreement.

10.2 Greeley's Conditions. The obligation of Greeley to acquire the Water Rights 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. Satisfaction of the closing contingencies under Section 7.1.
- B. Delivery and execution by Platte River of all items and other instruments required to be delivered by Platte River to the Closing.
- C. All of the actions by Platte River required by this Agreement shall have been taken.
- D. There shall be no uncured default by Platte River of any of its obligations under this Agreement.
- E. The representations and warranties made by Platte River as specifically set forth herein shall be true and correct as of the Closing Date and shall not be deemed waived if Greeley elects to close pursuant to Section 10.3.A(2) below.

10.3 Failure of Condition.

A. Except as set forth in Section 10.3.B below, in the event of a failure of any condition contained in Section 10.2, Greeley may in its sole discretion:

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

(2) Waive such default or condition and close the transactions contemplated by this Agreement; or

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

B. In the event of a failure of any condition contained in Section 10.1 above, Platte River may in its sole discretion:

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

(2) Waive such default or condition and close the transactions contemplated by this Agreement.

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

C. Platte River hereby waives any rights it may have to specific performance in the event of a default by Greeley. Except for the giving of notices or the delivery of the Purchase Price, time being of the essence, neither Party shall be deemed in default hereunder unless such Party fails to cure such default within seven days of written notice of default from the other Party.

ARTICLE 11
BROKERAGE

Platte River and Greeley hereby warrant to each other that there are no real estate agents or other brokers or finders involved in this transaction who are entitled to receive a brokerage or finder's fee. Each Party (the indemnifying Party) agrees, to the extent permitted by law, to indemnify and hold harmless the other Party (the indemnified Party) from any loss, liability, damage, cost or expense (including, without limitation, reasonable attorneys' fees) paid or incurred by the indemnified Party by reason of any claim to any broker's, finder's or other fee in connection

with this transaction by any third party claiming by, through or under the indemnifying Party, excluding, however, any party claiming through the indemnified Party, its successors or assigns. These obligations shall survive the Closing.

ARTICLE 12
NOTICES

Any notice or other communication given by either Party to the other relating to this Agreement must 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: (1) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such address; or (2) 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 (3) 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:

If to Platte River:

Platte River Power Authority
Attention: Fuels and Water Manager
2000 East Horsetooth Road
Fort Collins, CO 80525
Telephone: (970) 229-4815

With a copy to:

Platte River Power Authority
Attention: General Counsel
2000 East Horsetooth Road
Fort Collins, CO 80525
Telephone: (970) 229-5225

If to Greeley:

City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812

With a copy to:

City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757

ARTICLE 13
MISCELLANEOUS

13.1 No Waiver of Governmental Immunity/No Third-Party Beneficiary. This Agreement shall not create any rights, duty of care or liability with respect to any person or entity not a Party, or waive any of the privileges or immunities either Party 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.

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

13.3 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.

13.4 No Waiver. The failure of either Party to enforce or insist upon compliance with or strict performance of any provision of this Agreement, or to take advantage of any right under this Agreement, shall not constitute a waiver or relinquishment of any such term, condition, or right. No waiver by either 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.

13.5 Entire Agreement. This Agreement, together with the CBT Lease and the Water Rights Leaseback Agreement, contains the entire agreement between the Parties regarding the Water Rights and supersedes all prior agreements, whether written or oral, between the Parties regarding its subject matter. This Agreement may be modified only by mutual written agreement duly authorized and executed by authorized representatives of both Parties.

13.6 Survival of Representations and Warranties. All representations, obligations, liabilities, warranties, covenants, agreements and monetary obligations of Platte River and Greeley as set forth in this Agreement shall survive the Closing and consummation of the transactions contemplated by this Agreement until the complete discharge thereof. All warranties of title set forth in the Deed or any assignment delivered or made hereunder shall survive without limit.

13.7 Successors. Subject to Section 13.8, this Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

13.8 Assignment. This Agreement is not assignable by either Party without first obtaining the prior written approval of the other Party. No assignment shall relieve either of the Parties from its respective obligations hereunder if such obligations are not properly discharged by the assignee of such Party.

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

13.10 Governing Law and Construction. This Agreement and the legal relations between the Parties 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.

13.11 Possession. Platte River shall deliver to Greeley possession of the Water Rights upon release from escrow of all items to be delivered by Greeley to the Closing, including, without limitation, the Purchase Price.

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

13.13 Calendar Days. If any time period set forth in this Agreement commences, expires or is determined from a date that 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 day that is not a Saturday, Sunday, legal holiday of the State of Colorado or other non-business day.

13.14 Counterparts. This Agreement may be executed in counterparts both of which, when taken together, shall constitute one agreement. This Agreement shall be effective only when counterparts are signed by authorized representatives of both Platte River and Greeley.

13.15 Acceptance. Upon execution and delivery of this Agreement by Platte River and Greeley, as approved in accordance with Section 7.1, this Agreement shall constitute an agreement to for Platte River to sell and Greeley to purchase the Water Rights on the terms and conditions set forth herein.

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

[Remainder of this page intentionally left blank. See next page for signatures.]

PLATTE RIVER POWER AUTHORITY,
a political subdivision of the State of Colorado

Date: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By _____

General Counsel

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

Date: _____

By _____

Name: _____

Title: Water and Sewer Board Chairman

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

By _____

City Manager

By _____

City Attorney

AVAILABILITY OF FUNDS:

By _____

Director of Finance

RECOMMENDED:

By _____

Director of Water and Sewer

EXHIBIT A TO PURCHASE AND SALE AGREEMENT

Description of the Water Rights

Rawhide Pipeline Water Right: That water right originally decreed in Division 1 Case No. W-9322-78 on August 18, 1978, and made absolute in the decree entered in Division 1 Case No. 82CW318 having the following characteristics:

Legal Description of Structure: Located in the NE ¼ SE ¼, Section 20, Township 7 North, Range 68 West of the 6th P.M., Larimer County, at a point approximately 1830 feet North and 65 feet West of the SE Corner, Section 20. Then pumped through a 24” pipeline to Rawhide Reservoir in portions of Sections 5, 6, and 8, Township 10 North, Range 68 West of the 6th P.M.

Source of Water: Cache la Poudre River

Date of Appropriation: December 31, 1977

Amount of Water: 15.19 cubic feet per second, absolute

Use of Water: Industrial: Cooling water and sluice water, stockwater, irrigation of land in parts of W ½, Section 4 and Section 5; E ½, Section 6, E ½, Section 7 and Section 8; W ½, Section 9, all Township 10 North, Range 68 West of the 6th P.M. and S ½, Section 31, Township 11 North, Range 68 West of the 6th P.M., and dust suppression all at Rawhide Energy Station site.

Rawhide Pipeline Enlargement Water Right: That water right originally decreed in Division 1 Case No. 82CW319 in February of 1984 having the following characteristics:

Legal Description of Structure: Located in the NE ¼ SE ¼, Section 20, Township 7 North, Range 68 West of the 6th P.M., Larimer County, at a point approximately 1830 feet North and 65 feet West of the SE Corner, Section 20. Then pumped through a 24” pipeline to Rawhide Reservoir in portions of Sections 5, 6, and 8, Township 10 North, Range 68 West of the 6th P.M.

Source of Water: Cache la Poudre River

Date of Appropriation: June 22, 1982 (application filed in 1982)

Amount of Water: 1.6 cubic feet per second

Use of Water: Industrial: Cooling water and sluice water, stockwater, irrigation of land in parts of W ½, Section 4 and Section 5; E ½, Section 6, E ½, Section 7 and Section 8; W ½, Section 9, all Township 10 North, Range 68 West of the 6th P.M. and S ½, Section 31, Township 11 North, Range 68 West of the 6th P.M., and dust suppression all at Rawhide Energy Station site.

EXHIBIT B TO PURCHASE AND SALE AGREEMENT

**AGREEMENT FOR LEASE OF
COLORADO-BIG THOMPSON PROJECT WATER**

This AGREEMENT FOR LEASE OF COLORADO-BIG THOMPSON PROJECT WATER (“Lease”) is entered into this ____ day of _____ 2022, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 (“Greeley”), and PLATTE RIVER POWER AUTHORITY, a political subdivision of the State of Colorado, whose address is _____ (“Platte River”) (Platte River and Greeley each being a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, Greeley owns Acre Foot Units of Colorado–Big Thompson Project water, as administered by the Northern Colorado Water Conservancy District (“Northern”), pursuant to allotment contracts (“CBT AFUs”); and

WHEREAS, Greeley and Platte River entered into a separate “Purchase and Sale Agreement – Water Rights,” (the “PSA”) pursuant to which Platte River conveyed the water right originally decreed in Division 1 Case No. W-9322-78, and made absolute in Division 1 Case No. 82CW318, named the “Rawhide Pipeline Water Right,” and the water right originally decreed in Division 1 Case No. 82CW319, named the “Rawhide Pipeline Enlargement Water Right,” (collectively, the “Water Rights”), and the consideration for the PSA included the execution of this Lease, among other things; and

WHEREAS, Platte River desires to lease four hundred acre feet of water derived from Greeley’s CBT AFUs per year from Greeley for delivery to Hamilton Reservoir and use at the Rawhide Energy Station, located in portions of Sections 4, 5, 6, 7, 8, and 9, Township 10 North, Range 68 West of the 6th P.M., Larimer County, Colorado (“Property”); and

WHEREAS, Greeley is willing to lease the water to Platte River for use on the Property.

WHEREAS, Northern rules applicable to the Parties require Northern approval of any long-term leases of CBT AFUs and the Parties intend to seek Northern approval of this Lease.

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

AGREEMENT

1. Water Lease. Greeley hereby leases to Platte River, and Platte River hereby leases from Greeley, sufficient rights to Greeley's CBT AFUs to yield no less than 400 acre-feet of water per year (the "Leased CBT Water"). Because Northern Water sets its quota for the amount of water per CBT AFU on an annual basis, the number of CBT AFUs necessary to yield 400 acre-feet pursuant to this Lease will vary from year to year. Each April, after the Northern Water board of directors sets the final annual quota for the water year, Greeley shall identify the number of CBT AFUs needed to provide 400 acre-feet of Leased CBT Water to Platte River. For example, if the annual quota for a particular water year is 80%, then Greeley shall allocate 500 CBT AFUs for that water year to provide 400 acre feet of Leased CBT Water to Platte River. Platte River shall use the Leased CBT Water as collateral for Northern's "in lieu" process in accordance with all applicable rules, regulations, and guidelines of Northern or its Municipal Subdistrict.

2. Term of Lease; Compliance with Northern Subcontracting Rule.

A. The term of this Lease begins on the date of mutual execution and ends on October 31, 2030 ("Term").

B. The Parties acknowledge that Northern has adopted the "Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts," effective August 11, 2016 ("Subcontracting Rule"). Section 3.1 of the Subcontracting Rule prohibits all subcontracts for CBT AFUs with a term of two years or more without Northern approval. Section 5.3 of the Subcontracting Rule prohibits subcontracts with a term of greater than five years, except for subcontracts that qualify for an exception. Because this Lease has a term of greater than five years, the Parties agree that (1) this Lease is valid only if duly approved by Northern, (2) the Subcontracting Rule is by this provision made a part of this Lease, and (3) they shall comply with the requirements (including without limitation Sections 5.4 through 5.6) of the Subcontracting Rule.

3. Lease Consideration. Platte River shall not be required to make any annual payment of money for use of the Leased CBT Water. Platte River's consideration for entering this Lease is Platte River's concurrent conveyance of the Water Rights pursuant to the PSA described in the Recitals above. Platte River agrees that it shall be Platte River's responsibility to promptly pay to Northern for the Rule 11 charges associated with the transfer of the Leased CBT Water to Platte River for Platte River's use, and/or any other fees or charges payable to Northern associated with the use of the Leased CBT Water during each year.

4. Potential Assessments for Transit Losses; Compliance Obligations. Platte River acknowledges that state water administration officials may assess transit losses for delivery of the Leased CBT Water to Platte River's point of delivery. Greeley and Platte River shall cooperate for making all necessary arrangements with Northern and with state water administration officials to secure delivery of the Leased CBT Water for Platte River's use. Platte River's use of the Leased CBT Water shall comply with all policies, rules, and regulations of Northern, and the Colorado Division of Water Resources.

5. Emergency Use of Leased CBT Water by Greeley

A. In the unanticipated event of a water supply emergency or other situation necessitating use of the Leased CBT Water by Greeley for its customers, as determined by Greeley in its sole discretion, Greeley may withdraw the Leased CBT Water from use by Platte River. In such event, Greeley shall provide notice to Platte River of this reduction or elimination of the Leased CBT Water by November 1st of the calendar year preceding the year during which Greeley intends to withdraw Leased CBT Water from use by Platte River.

B. If Greeley provides the notice described in Paragraph 5(A) above, then Greeley shall either: (1) convey the Water Rights back to Platte River, or (2) retain the Water Rights and pay to Platte River \$483.31 per acre foot for any amount of Leased CBT Water that is withdrawn from use by Platte River and cannot be replaced by diversions from the Water Rights for each year the deliveries under this Lease are reduced.

C. By way of example, if Greeley opts to reduce the amount of Leased CBT Water available for use by Platte River from 400 acre feet to 100 acre feet pursuant to clause (2) of Paragraph 5(B) above, and the Water Rights yield 100 acre feet to Platte River, then Greeley would pay Platte River \$96,992.50 (300 acre foot reduction in Leased CBT Water – 100 acre feet from Water Rights = 200 acre feet x \$483.31 per acre foot = \$96,662.50.)

6. Accounting for Leased CBT Water. Platte River shall maintain any required accounting of diversions and use of the Leased CBT Water, and shall provide a copy of such accounting for the previous calendar year to Greeley by May 15th of each year.

7. Sublease and Assignment. Subject to all applicable rules, regulations, and guidelines of Northern Water or its Municipal Subdistrict, Platte River may rent or sublease the right to use any portion of the Leased CBT Water, upon the condition that if Platte River obtains a bona fide offer to sublease any portion of the Leased CBT Water that Platte River desires to accept, then Platte River shall notify Greeley in writing of the bona fide offer, stating the amount and the terms of the offer. Greeley shall then have 30 days following receipt of the written notice within which to notify Platte River in writing as to whether Greeley desires to lease back such Leased CBT Water at the same price and on the same terms as provided in the bona fide offer received by Platte River. The failure on the part of Greeley to respond to Platte River's notice of the bona fide offer as provided herein shall be conclusively deemed to be an election not to exercise the right of first refusal conferred by this Paragraph 7. Platte River shall not assign this Lease, except to a successive owner or operator of the Property for use on the Property, and only with written consent from Greeley. Platte River shall request consent from Greeley prior to any purported assignment of this Lease by advance written notice of at least 30 days. Such consent may be given or withheld in the sole discretion of Greeley.

8. No Vested Interest in Shares or Joint Venture. This Lease is made expressly subject to Section 17-4 of the Charter of Greeley. Greeley grants no interest in the Leased CBT Water to Platte River other than as explicitly set forth in this Lease. Platte River shall make no claim to any rights, title, or interest in the Leased CBT Water other than as explicitly set forth in this Lease. This Lease does not create a partnership or joint venture of any kind between the parties, and Platte River shall bear the entirety of any loss, cost, or expense incurred by Platte

River through its use of the Leased CBT Water on the Property, except to the extent the loss, cost, or expense is attributable to the act or omission of Greeley in breach of this Lease.

9. Yield of CBT AFUs. Platte River is entitled to receive 400 acre-feet per water year from the Leased CBT Water, subject to the terms and conditions in this Lease. Although Greeley makes no warranty, guarantee, or representation of any kind regarding the quality or physical yield of water to be delivered by any specific quantity of Greeley's CBT AFUs, Greeley is obligated by this Lease to make available sufficient CBT AFUs to yield 400 acre-feet of Leased CBT Water based on Northern Water's annual quota. Platte River shall not hold Greeley liable for any inability to deliver the Leased CBT Water, including, but not limited to, that caused by force of nature or failure of water supply infrastructure.

10. Maintenance of Infrastructure. Platte River shall maintain the infrastructure and other personal property necessary to deliver water pursuant to the Leased CBT Water at Platte River's own cost and expense. Platte River shall make all repairs and restorations necessary to keep the infrastructure and other personal property in good working condition during the term of this Lease.

11. Indemnification; Immunity. Platte River agrees to exercise Platte River's rights under this Lease at Platte River's own risk. To the extent permitted by law, Platte River shall indemnify and hold harmless Greeley from and against any cost, expense, or liability arising out of this Lease or related activities provided the cost, expense, or liability is not attributable to the act or omission of Greeley in breach of this Lease. Nothing in this Lease is intended to constitute a waiver by either Party, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as applicable now or hereafter amended.

12. Default. If either Greeley or Platte River fails to comply with a term or condition herein, such failure constitutes a default of this Lease. The non-defaulting Party may declare the default by providing written notice to the defaulting Party in accordance with Paragraph 13 below. Upon receipt of this notice of default, the defaulting Party will have 15 days within which to cure the default. If, in the sole discretion of the non-defaulting Party, the default remains uncured after the 15-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting Party may seek any and all available remedies, including damages and specific performance.

13. Notices. Any notice or other communication given by either of the Parties to another relating to this Lease must 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 Paragraph: (1) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such address; or (2) 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 (3) 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:

If to Greeley:

City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812

With a copy to:

City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
If to Platte River:

Platte River Power Authority
Attention: Fuels and Water Manager
2000 East Horsetooth Road
Fort Collins, CO 80525
Telephone: (970) 229-4815

With a copy to:

Platte River Power Authority
Attention: General Counsel
2000 East Horsetooth Road
Fort Collins, CO 80525
Telephone: (970) 229-5225

14. No Third-Party Beneficiaries. Nothing in this Lease, express or implied, confers any rights or remedies upon any parties other than Platte River and Greeley, or their respective permissible successors in interest.

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

16. Governing Law and Venue; Compliance with Law. This Lease shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Lease is the District Court for Weld County or Larimer County, Colorado. Platte River, as lessee of the Leased CBT Water, acknowledges that it is bound by and must comply with all federal, state, and local water laws, orders, and regulations that pertain to

the use of the Leased CBT Water, including all applicable rules and regulations of Northern Water.

17. Severability. If a provision of this Lease is held invalid or unenforceable by a court of competent jurisdiction, such holding will not invalidate any other provision herein, and the remainder of the Lease should be interpreted in accordance with the intent of the Parties.

18. Integration. This Lease, together with the PSA and the Water Rights Leaseback Agreement (as defined in the PSA) constitutes a complete integration of the understanding and agreement between Greeley and Platte River with respect to its subject matter, and supersedes all other lease agreements regarding the Leased CBT Water. No representations, negotiations, or warranties, express or implied, exist between Greeley and Platte River except as explicitly set forth in this Lease. This Lease may be modified only in a written form duly authorized, approved, and executed by Greeley and Platte River.

19. Counterparts. This Lease may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument. Executed copies of this Lease may be delivered by electronic means. The Parties agree to accept and be bound by signatures hereto delivered by electronic means.

20. Recording. Platte River shall not record this Lease in the real property records of any jurisdiction. This Lease is not intended to run with the land as a covenant burdening real property.

[Remainder of this page intentionally left blank. Signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Lease, effective on the date shown in the preamble to this Lease.

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

Date: _____

By _____

Name: _____

Title: Mayor

ATTEST:

By: _____

Name: _____

Title: City Clerk

PLATTE RIVER POWER AUTHORITY,
a Political Subdivision of the State of Colorado

Date: _____

By: _____

Name: _____

Title:

Approved as to form:

By: _____

General Counsel

EXHIBIT C TO PURCHASE AND SALE AGREEMENT

[Form of Water Rights Leaseback Agreement]

WATER RIGHTS LEASEBACK AGREEMENT

This WATER RIGHTS LEASEBACK AGREEMENT (“Leaseback”) is entered into this ____ day of _____ 2022, by and between the CITY OF GREELEY, a Colorado home rule municipal corporation acting by and through its Water Enterprise, whose address is 1001 11th Avenue, Second Floor, Greeley, Colorado 80631 (“Greeley”), and PLATTE RIVER POWER AUTHORITY, a political subdivision of the State of Colorado, whose address is _____ (“Platte River”) (Platte River and Greeley each being a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, Greeley and Platte River entered into a separate “Purchase and Sale Agreement – Water Rights,” (the “PSA”) pursuant to which Platte River conveyed the water right originally decreed in Division 1 Case No. W-9322-78, and made absolute in Division 1 Case No. 82CW318, named the “Rawhide Pipeline Water Right,” and the water right originally decreed in Division 1 Case No. 82CW319, named the “Rawhide Pipeline Enlargement Water Right,” (collectively, the “Water Rights”), and the consideration for the PSA included the execution of this Leaseback, among other things; and

WHEREAS, Platte River desires to lease the Water Rights from Greeley for use at the Rawhide Energy Station, located in portions of Sections 4, 5, 6, 7, 8, and 9, Township 10 North, Range 68 West of the 6th P.M., Larimer County, Colorado (“Property”);

WHEREAS, Greeley is willing to lease the Water Rights to Platte River for use on the Property;

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

AGREEMENT

1. Water Rights Lease. Greeley hereby leases to Platte River, and Platte River hereby leases from the Greeley, the above-described Water Rights for use on the Property.

2. Term of Lease. The term of this Leaseback begins on the date of mutual execution and ends on October 31, 2030 (“Term”). Platte River may terminate this Leaseback during the Term, prior to any year, for any reason by delivering 12 months’ advance written notice to Greeley. Additionally, refer to Section 12 for provisions relating to termination for cause.

3. No Annual Lease Amount. Platte River shall not be required to make any annual payment of money for use of the Water Rights. Platte River’s consideration for entering this Leaseback is Platte River’s concurrent conveyance of the Water Rights pursuant to the PSA described in the Recitals above.

4. Use of Water Rights. Platte River shall use the water delivered pursuant to the Water Rights only for industrial, cooling water, sluice water, stockwater, irrigation, and dust suppression on the Property. Platte River shall not use the Water Rights for any other uses. Platte River shall not use the water delivered pursuant to the Water Rights on any land other than the Property. Platte River shall comply with all rules, regulations, and laws of the State of Colorado pertaining to use of the Water Rights. Platte River shall take and use the water delivered pursuant to the Water Rights to the fullest extent possible by delivering the water to the Property for beneficial use whenever needed for Platte River's purposes, and shall not intentionally undertake any action that could be construed as abandonment of the Water Rights or could cause in part or in whole a reduction in the use of the Water Rights. Platte River shall provide advance written notice to Greeley of at least 30 days if Platte River no longer intends to use the Water Rights on the Property.

5. Affidavit of Beneficial Use, Accounting, and Water Court Proceedings. Platte River shall maintain daily accounting records of all diversions and use of the Water Rights. Platte River agrees to deliver to Greeley, on or before May 15 of each calendar year, a completed Beneficial Use Affidavit and Questionnaire, in the form attached as Attachment A along with daily accounting records of Platte River's diversions and use of the Water Rights. Platte River acknowledges that Greeley may elect, but is not obligated, to file an application to change the use of the Water Rights with the Division 1 Water Court for the State Colorado during the term of this Leaseback. Platte River agrees that it shall not oppose, but shall reasonably cooperate with Greeley, in any such action provided the action does not impair the rights granted to Platte River under this Leaseback. Seller shall not be required to file briefs in support of Greeley's application or take any affirmative action other than to appear and testify honestly about the Water Rights and provide any documentation of use or other relevant historical use information. Upon request from Greeley, Platte River shall provide information regarding use of the Water Rights and reasonable access to the Property during and in preparation for any proceeding before the Division 1 Water Court. Any access by Greeley or any authorized agent, representative, or consultant to the Property shall be subject to Section 5.1.B of the PSA.

6. Restriction on Sublease and Assignment. Platte River shall not rent, sublet, or otherwise convey the right to use the Water Rights. Platte River shall not assign this Leaseback, except to a successive owner or operator of the Property for use on the Property, and only with written consent from Greeley. Platte River shall request consent from Greeley prior to any purported assignment of this Leaseback by advance written notice of at least 90 days. Such consent may be given or withheld in the sole discretion of Greeley.

7. No Vested Interest in Shares or Joint Venture. This Leaseback is made expressly subject to Section 17-4 of the Charter of Greeley. Greeley grants no interest in the Water Rights to Platte River other than as explicitly set forth in this Leaseback. Platte River shall make no claim to any rights, title, or interest in the Water Rights other than as explicitly set forth in this Leaseback. This Leaseback does not create a partnership or joint venture of any kind between the Parties, and Platte River shall bear the entirety of any loss, cost, or expense incurred through its use of the Water Rights on the Property, except to the extent the loss, cost, or expense is attributable to the act or omission of Greeley in breach of this Leaseback.

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

9. Maintenance of Infrastructure. Platte River shall maintain the infrastructure and other personal property necessary to deliver water pursuant to the Water Rights at Platte River's own cost and expense. Platte River shall make all repairs and restorations necessary to keep the infrastructure and other personal property in good working condition during the term of this Leaseback. If the infrastructure is damaged or otherwise made inoperable, Platte River shall make all reasonable efforts to restore its functionality as soon as practicable to resume beneficial use of the Water Rights.

10. Indemnification; Immunity. Platte River agrees to exercise Platte River's rights under this Leaseback at Platte River's own risk. To the extent permitted by law, Platte River shall indemnify and hold harmless Greeley from and against any cost, expense, or liability arising out of this Leaseback or related activities provided the cost, expense, or liability is not attributable to the act or omission of Greeley in breach of this Lease. Nothing in this Leaseback is intended to constitute a waiver by either Party, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as applicable now or hereafter amended.

11. Notice. Any notice or other communication given by either of the Parties to another relating to this Lease must 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 Paragraph: (1) on the date and at the time of delivery if delivered personally to the Party to whom notice is given at such address; or (2) 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 (3) 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:

If to Greeley:

City of Greeley
Attention: Director, Water and Sewer
1001 11th Street, 2nd Floor
Greeley, CO 80631
Telephone: (970) 350-9812

With a copy to:

City of Greeley
Attention: City Attorney
1100 10th Street, Ste. 401
Greeley, CO 80631
Telephone: (970) 350-9757
If to Platte River:

Platte River Power Authority
Attention: Fuels and Water Manager
2000 East Horsetooth Road
Fort Collins, CO 80525
Telephone: (970) 229-4815

With a copy to:

Platte River Power Authority
Attention: General Counsel
2000 East Horsetooth Road
Fort Collins, CO 80525
Telephone: (970) 229-5225

12. Default and Remedies. If either Greeley or Platte River fails to comply with a term or condition herein, such failure constitutes a default of this Leaseback. The non-defaulting Party may declare the default by providing written notice to the defaulting Party in accordance with Paragraph 11 above. Upon receipt of this notice of default, the defaulting Party will have 15 days within which to cure the default. If, in the sole discretion of the non-defaulting Party, the default remains uncured after the 15-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting Party may seek any and all available remedies, including damages and specific performance.

- (a) Notwithstanding the above, failure by Platte River to comply with the terms and conditions of Paragraphs 4 or 6 of this Leaseback constitutes a material breach. In the event that Platte River commits a material breach, Greeley may immediately terminate this Leaseback by written notice to Platte River.
- (b) The failure of either party to declare a default or material breach does not establish a precedent or constitute an implied waiver of any subsequent breach of the terms and conditions in this Leaseback.

13. No Third-Party Beneficiaries. Nothing in this Leaseback, express or implied, confers any rights or remedies upon any parties other than Platte River and Greeley, or their respective permissible successors in interest.

14. Recovery of Costs and Fees. In addition to any remedies otherwise available, a Party that is successful in a legal action commenced against the other due to a default or material

breach of this Leaseback may recover from the defaulting Party reasonable costs and attorneys' fees incurred during the course of such legal action.

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

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

17. Integration. This Leaseback, together with the PSA and the CBT Lease (as defined in the PSA), constitute a complete integration of the understanding and agreement between Greeley and Platte River with respect to their subject matter, and supersedes all other agreements regarding Greeley's lease of the Water Rights to Platte River. No representations, negotiations, or warranties, express or implied, exist between Greeley and Platte River except as explicitly set forth in this Leaseback. This Leaseback may be modified only in a written form duly authorized, approved, and executed by Greeley and Platte River.

18. Counterparts. This Leaseback may be executed in counterparts, each of which shall be deemed an original, and both of which together shall constitute one and the same instrument. Executed copies of this Leaseback may be delivered by electronic means. The Parties agree to accept and be bound by signatures hereto delivered by electronic means.

19. Recording. Platte River shall not record this Leaseback in the real property records of any jurisdiction. This Leaseback is not intended to run with the land as a covenant burdening real property.

IN WITNESS WHEREOF, the undersigned Parties have executed this Leaseback on the date set forth in the preamble to this Leaseback.

[Signature pages follow]

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

Date: _____

By _____

Name: _____

Title: Mayor

ATTEST:

By _____

Name: _____

Title: City Clerk

PLATTE RIVER POWER AUTHORITY,
a Political Subdivision of the State of Colorado

Date: _____

By _____

Name: _____

Title: _____

Approved as to form:

By: _____

General Counsel

ATTACHMENT A TO WATER LEASE AGREEMENT

(See Attached Beneficial Use Affidavit and Questionnaire)

ANNUAL AFFIDAVIT OF BENEFICIAL USE OF WATER RIGHTS

DESCRIPTION OF WATER RIGHTS:

Rawhide Pipeline Water Right, decreed in Division 1 Case No. W-9322-78, and made absolute in Division 1 Case No. 82CW318, and the Rawhide Pipeline Enlargement Water Right decreed in Division 1 Case No. 82CW319.

Name and address of owner and user of water rights:

Owner: City of Greeley
 Water and Sewer Department
 1100 10th Street, Suite 300
 Greeley, Colorado 80631

User(s): Platte River Power Authority
 2000 E. Horsetooth Road
 Fort Collins, Colorado 80525

Year water rights were used as described: _____

I have not intended to abandon the aforementioned water rights during my period of use. I state that the information contained here and in the attached Questionnaire Regarding Use of Water Shares, which is incorporated herein by reference, is known to me and is correct.

The undersigned _____, having personal knowledge of the use of the above-described water rights by virtue of being the person who has been responsible for tracking water uses, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

[Signature Page Follows]

QUESTIONNAIRE REGARDING USE OF WATER RIGHTS

*The person completing this questionnaire need not necessarily be Platte River,
but must have personal knowledge of the information provided*

1. Name: _____
Mailing Address: _____
Telephone: _____
Facsimile: _____
Email Address: _____

2. The information provided below pertains to the Rawhide Pipeline Water Right and the Rawhide Pipeline Enlargement Water Right (hereinafter "Water Rights").

3. Did you use the Water Rights pursuant to the Lease Agreement?

4. The information in this questionnaire relates to my use of the Water Rights during the [20__] water year (hereinafter "Lease Year").

5. Do you own the land where the Water Rights are used? _____

6. Was your use of the Water Rights during the Lease Year consistent with all terms and conditions of the Lease Agreement? _____

7. What is the total monthly and annual amount of water from the Water Rights that was delivered for any use? _____

8. What is the monthly and annual amount of water from the Water Rights that was delivered for industrial use? _____

9. If there were any uses other than industrial or irrigation uses, please describe those uses and the monthly and annual amounts here: _____

10. If there was any return flow or discharge from the Rawhide Plant attributable to the Water Rights, please describe the monthly and annual amounts here: _____

11. During the Lease Year, did you divert all water available under the Water Rights? _____. If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: _____

_____.

The remainder of this questionnaire only applies if water from the Water Rights was delivered for irrigation use. If the Water Rights were not used for irrigation purposes, then questions 12-21 may be left blank.

12. If part of the water was used for irrigation, what is the legal description of the farm or parcel on which the Water Rights were used?

13. If applicable, what is the size of the area(s) on the parcel that was irrigated? _____ acres.

14. If applicable, what is the size of the area(s) on the farm or parcel that was irrigated using water from the Water Rights? _____ acres.

15. Please provide the following information regarding how the water from these Water Rights is delivered.

▪ Location and ID Number of the pipeline inlet: _____

_____.

▪ Name and general location of any lateral(s) delivering the water to the land:

_____.

▪ Approximate location of pumps, if used: _____

_____.

▪ Approximate location and size of storage ponds or reservoirs, including tail water ponds, if used: _____.

16. If applicable, how was water applied for irrigation during the Lease Year? Sprinkler _____ Furrow _____ Flood _____ Other/Combination (Describe):

_____.

17. If applicable, what was the irrigation season for the Lease Year? Start Date: _____ Stop Date: _____

18. Other than the Water Rights leased, was any other water used to irrigate the farm or parcel on which the Shares are/were used for irrigation during the Lease Year? If so, please provide the following information.

- Number of shares: _____
- Ditch Company: _____
- Number of any Irrigation Wells: _____
- Identification and Permit No. of any Irrigation Wells: _____

- Capacity of Irrigation Wells: _____
- Approximate location of Irrigation Wells: _____

- Any other water used: _____

19. Describe how the water has been used, including the estimated percentage of the total irrigation supply provided by such water: _____

20. During the Lease Year, what crops were grown on the land irrigated by the Water Rights?

1. Crop: _____ Percentage: _____ Location: _____
2. Crop: _____ Percentage: _____ Location: _____
3. Crop: _____ Percentage: _____ Location: _____
4. Crop: _____ Percentage: _____ Location: _____
5. Crop: _____ Percentage: _____ Location: _____
6. Crop: _____ Percentage: _____ Location: _____

21. If possible, please provide a map, sketch, or aerial photograph showing locations of *(check if included)*:

- _____ Farm or Parcel
- _____ Areas irrigated by the Shares during the Lease Year
- _____ Areas irrigated with other water
- _____ Lateral ditches, wells, pumps, pipelines, storage reservoirs, or tail water ponds

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

Signature: _____ Date: _____

EXHIBIT D TO PURCHASE AND SALE AGREEMENT

[See attached Special Warranty Deed]

EXAMPLE DO NOT EXECUTE

WHEN RECORDED RETURN TO:

SPECIAL WARRANTY DEED (Water Rights)

THIS DEED, made this ____ day of _____, 202_, between PLATTE RIVER POWER AUTHORITY, a political subdivision of the State of Colorado, whose address is 2000 E. Horsetooth Road, Fort Collins, Colorado 80525 (“Grantor”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation, whose address, for purposes of this Deed, 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 sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, Grantee’s heirs and assigns forever all of the water rights described below (the “Water Rights”):

The water right originally decreed in Division 1 Case No. W-9322-78, and made absolute in Division 1 Case No. 82CW318, named the “Rawhide Pipeline,” further described in Appendix A, attached hereto, and the water right originally decreed in Division 1 Case No. 82CW319, named the “Rawhide Pipeline Enlargement,” further described in Appendix A attached hereto and the water derived therefrom.

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

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

IN WITNESS WHEREOF, the Grantor has executed this deed on the ____ day of _____, 20__.

Grantor:

By:_____

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____ 20__ by _____, whose signature appear above as the Grantor.

Witness my hand and official seal.

Notary Public

My commission expires: _____

APPENDIX A TO SPECIAL WARRANTY DEED

Description of the Water Rights

Rawhide Pipeline: That water right originally decreed in Division 1 Case No. W-9322-78 on August 18, 1978, and made absolute in the decree entered in Division 1 Case No. 82CW318 having the following characteristics:

Legal Description of Structure: Located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 20, Township 7 North, Range 68 West of the 6th P.M., Larimer County, at a point approximately 1830 feet North and 65 feet West of the SE Corner, Section 20. Then pumped through a 24" pipeline to Rawhide Reservoir in portions of Sections 5, 6, and 8, Township 10 North, Range 68 West of the 6th P.M.

Source of Water: Cache la Poudre River

Date of Appropriation: December 31, 1977

Amount of Water: 15.19 cubic feet per second, absolute

Use of Water: Industrial: Cooling water and sluice water, stockwater, irrigation of land in parts of W $\frac{1}{2}$, Section 4 and Section 5; E $\frac{1}{2}$, Section 6, E $\frac{1}{2}$, Section 7 and Section 8; W $\frac{1}{2}$, Section 9, all Township 10 North, Range 68 West of the 6th P.M. and S $\frac{1}{2}$, Section 31, Township 11 North, Range 68 West of the 6th P.M., and dust suppression all at Rawhide Energy Station site.

Rawhide Pipeline Enlargement: That water right originally decreed in Division 1 Case No. 82CW319 in February of 1984 having the following characteristics:

Legal Description of Structure: Located in the NE $\frac{1}{4}$ SE $\frac{1}{4}$, Section 20, Township 7 North, Range 68 West of the 6th P.M., Larimer County, at a point approximately 1830 feet North and 65 feet West of the SE Corner, Section 20. Then pumped through a 24" pipeline to Rawhide Reservoir in portions of Sections 5, 6, and 8, Township 10 North, Range 68 West of the 6th P.M.

Source of Water: Cache la Poudre River

Date of Appropriation: June 22, 1982 (application filed in 1982)

Amount of Water: 1.6 cubic feet per second

Use of Water: Industrial: Cooling water and sluice water, stockwater, irrigation of land in parts of W $\frac{1}{2}$, Section 4 and Section 5; E $\frac{1}{2}$, Section 6, E $\frac{1}{2}$, Section 7 and Section 8; W $\frac{1}{2}$, Section 9, all Township 10 North, Range 68 West of the 6th P.M. and S $\frac{1}{2}$, Section 31, Township 11 North, Range 68 West of the 6th P.M., and dust suppression all at Rawhide Energy Station site.