

WATER RIGHTS TRADE AGREEMENT  
(Calven T. Goza)

This WATER RIGHTS TRADE AGREEMENT (“Agreement”) is entered into as of the Effective Date by and between CALVEN T. GOZA, a natural person residing in Colorado (“Goza”), and THE CITY OF GREELEY, COLORADO, a Colorado home rule municipal corporation acting by and through its Water Enterprise (“Greeley”). Goza and Greeley are each referred to in this Agreement as a “Party” and collectively as the “Parties.”

RECITALS

A. Goza owns those certain storage rights represented by four and one half (4.5) shares of capital stock in THE CACHE LA POUDDRE RESERVOIR COMPANY (“CLPRC”), evidenced by Stock Certificate No. 4192, issued in the name of Goza (“CLPRC Certificate”) and those certain water rights represented by three (3) shares of stock in THE NEW CACHE LA POUDDRE IRRIGATING COMPANY (“New Cache”), evidenced by Stock Certificate No. 4993, issued in the name of Goza (“New Cache Certificate”) (collectively “Goza Water Rights”).

B. To the best of the Parties’ knowledge and belief, the Goza Water Rights have historically been used for irrigation of the real property described on Exhibit A (“Goza Property”),

C. Greeley owns those certain water rights represented by three (3) shares of capital stock in THE DELTA IRRIGATION COMPANY (“Delta”), evidenced by Stock Certificate No. 270 (“Delta Certificate”), which water rights have historically been delivered via the Patterson Ditch (“Greeley Delta Water Rights”).

D. To the best of the Parties’ knowledge and belief, the Greeley Delta Water Rights have historically been used for the irrigation of the real property located at 1734 Holly Avenue in unincorporated Weld County and identified as Parcel No. 096111400010 (“Greeley Property”).

E. Goza desires to convey to Greeley the Goza Water Rights, and in exchange for such conveyance, Greeley desires to convey to Goza the Greeley Delta Water Rights.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Goza and Greeley agree as follows.

AGREEMENT

ARTICLE 1  
DEFINITIONS

In addition to words and terms elsewhere defined in this Agreement, including the Recitals above, the following words and terms used in this Agreement have the following meanings:

- 1.1 “*Agreement*” means this Water Rights Trade Agreement.
- 1.2 “*Closing*” means the closing of this transaction.
- 1.3 “*Closing Date*” means the date upon which the Closing occurs.
- 1.4 “*CLPRC*” means THE CACHE LA POUDRE RESERVOIR COMPANY.
- 1.5 “*CLPRC Certificate*” means the stock certificate described in Recital A above.
- 1.6 “*City Council*” means the City of Greeley City Council.
- 1.7 “*Delta*” means THE DELTA IRRIGATION COMPANY.
- 1.8 “*Delta Certificate*” means the stock certificate described in Recital C above.
- 1.9 “*Diligence*” has the meaning given in Section 4.1.C.
- 1.10 “*Effective Date*” means the date upon which the last signatory has executed this Agreement and the Agreement takes legal effect.
- 1.11 “*Governing Body Approvals*” has the meaning given in Section 5.1.
- 1.12 “*Goza Off-Record Documents*” has the meaning given in Section 3.1.D.
- 1.13 “*Goza Water Rights*” means the New Cache and CLPRC water rights described in Recital A above, all of which Goza will convey to Greeley at Closing.
- 1.14 “*Goza Title Documents*” has the meaning given in Section 3.1.A.
- 1.15 “*Greeley Delta Water Rights*” means the Delta water rights described in Recital D above, which Greeley will convey to Goza at Closing.
- 1.16 “*Greeley Off-Record Documents*” has the meaning given in Section 3.3.C.
- 1.17 “*Greeley Title Documents*” has the meaning given in Section 3.3.A.
- 1.18 “*Inspections*” has the meaning given in Sections 4.1.A.
- 1.19 “*Inspection Period*” means the 45-day period from the Effective Date during which the Parties may conduct their due diligence, as described in Section 4.1.A.
- 1.20 “*Material Part*” means a portion of either the Greeley Delta Water Rights or the Goza Water Rights that would have a material adverse effect on the use of such property as determined by the acquiring Party in its sole good faith judgment, as described in Article 9 below.
- 1.21 “*New Cache*” means the THE NEW CACHE LA POUDRE IRRIGATING COMPANY.

1.22 “*New Cache Certificate*” means the stock certificate described in Recital A above.

1.23 “*New Cache and CLPRC Water Rights*” means the water rights represented by the New Cache Certificate and CLPRC Certificate and described in Recital A above.

1.24 “*Permitted Exceptions*” has the meaning given in Section 3.5.

1.25 “*Title Company*” means Land Title Guarantee Company, located at 4617 West 20<sup>th</sup> Street, Suite B, Greeley, Colorado 80634, or such other substitute title company upon which Goza and Greeley mutually agree if necessary.

1.26 “*Water and Sewer Board*” means the City of Greeley Water and Sewer Board.

## ARTICLE 2 TRADE OF WATER RIGHTS

2.1 Conveyance of Goza Water Rights to Greeley. Goza agrees to convey to Greeley, on the terms and conditions set forth in this Agreement, the Goza Water Rights.

A. Exclusions. There are no exclusions from the Goza Water Rights.

2.2 Conveyance of Greeley Delta Water Rights to Goza. Greeley agrees to convey to Goza, on the terms and conditions set forth in this Agreement, the Greeley Delta Water Rights.

A. Exclusions. There are no exclusions from the Greeley Delta Water Rights.

## ARTICLE 3 TITLE

3.1 Within fourteen (14) days after the Effective Date of this Agreement, Goza shall provide the following to Greeley for review:

A. A commitment for an owner’s policy of title insurance (“New Cache and CLPRC Title Commitment”) issued by the Title Company to cover the real property historically irrigated by the Goza Water Rights, with such New Cache and CLPRC Title Commitment setting forth the status of title to such historically irrigated real property and showing the Title Company’s search results for all recorded liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to such real property (the copies of all recorded documents in the New Cache and CLPRC Title Commitment are collectively referred to as the “Goza Title Documents”).

B. A fully executed historical consumptive use affidavit and questionnaire describing the historical use of the Goza Water Rights, in the form of the affidavit and questionnaire attached hereto as Exhibit B.

C. To the extent the same exist, true and correct copies of all New Cache and CLPRC documents related to the Goza Water Rights, including but not limited to, delivery records and share traces. Goza agrees that such documents, including but not limited to the share traces, are a necessary component of Greeley's inspection activities. Goza shall request such documents as soon as is reasonably possible after the Effective Date of this Agreement. The Parties acknowledge that these documents may not be available within fourteen days of the Effective Date of this Agreement. If the Company provides such documents less than seven (7) days before expiration of the Inspection Period, then the Inspection Period shall be automatically extended for an additional fourteen (14) days.

D. To the extent the same exist, true and correct copies of all: (i) documents that relate to the title, use, quantity, quality and condition of the Goza Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, and any records maintained by Goza; (ii) contracts or other agreements relating to the development, operation, maintenance or leasing or otherwise affecting the Goza Water Rights and/or historically irrigated property; and (iii) any engineering, investigation or inspection documents or reports related to the Goza Water Rights and/or historically irrigated property, (collectively referred to as "Goza Off-Record Documents").

3.2 Condition and Vesting of Title to the Goza Water Rights; Conveyance. At Closing, Goza shall convey the Goza Water Rights to Greeley, free and clear of all liens and encumbrances, by a special warranty deed in the form attached hereto as Exhibit C.

3.3 Within fourteen (14) days after the Effective Date of this Agreement, Greeley shall provide the following to Goza for review:

A. A commitment for an owner's policy of title insurance ("Delta Title Commitment") issued by the Title Company to cover the real property historically irrigated by the Greeley Delta Water Rights, with such Delta Title Commitment setting forth the status of title to such historically irrigated property and showing the Title Company's search results for all recorded liens, claims, encumbrances, easements, rights of way, encroachments, reservations, restrictions and other matters of record affecting title to such real property (the copies of all recorded documents in the Delta Title Commitment are collectively referred to as "Greeley Title Documents").

B. A fully executed historical consumptive use affidavit and questionnaire describing the historical use of the Greeley Delta Water Rights, in the form of the affidavit and questionnaire attached hereto as Exhibit B.

C. To the extent the same exist, true and correct copies of all Delta Irrigation Company documents related to the Greeley Delta Water Rights, including but not limited to, delivery records and share traces. Greeley agrees that such documents, including but not limited to the share traces, are a necessary component of Goza's inspection activities. Greeley shall request such documents as soon as is reasonably possible after the Effective Date of this Agreement. The Parties acknowledge that these documents may not be

available within fourteen days of the Effective Date of this Agreement. If the companies provides such documents less than seven (7) days before expiration of the Inspection Period, then the Inspection Period shall be automatically extended for an additional fourteen (14) days.

D. To the extent the same exist, true and correct copies of all: (i) documents that relate to the title, use, quantity, quality and condition of the Greeley Delta Water Rights, including, but not limited to, any deeds or other conveyances, assignments, permits, adjudications or court orders, any testing reports, and any records maintained by Greeley; (ii) contracts or other agreements relating to the development, operation, maintenance or leasing or otherwise affecting the Greeley Delta Water Rights and/or historically irrigated property; and (iii) any engineering, investigation or inspection documents or reports related to the Greeley Delta Water Rights and/or historically irrigated property, (collectively referred to as “Greeley Off-Record Documents”).

3.4 Condition and Vesting of Title to Greeley Delta Water Rights; Conveyance. At Closing, Greeley shall convey the Greeley Delta Water Rights to Goza, free and clear of all liens and encumbrances, by a special warranty deed in the form attached hereto as Exhibit C.

3.5 Disapproved Title Matters. Greeley or Goza may disapprove of any exceptions to title (“Disapproved Matter”) by delivering written notice of objection to other party either (i) prior to the expiration of the Inspection Period or (ii) if notice of such title exception is delivered after the expiration of the Inspection Period but prior to the Closing Date, then within ten days (10) days after receiving such notice from the other party or the Title Company. Any Disapproved Matter not objected to in writing prior to the expiration of the Inspection Period or within such ten (10) day period shall be deemed a Permitted Exception. Greeley or Goza may elect (but shall not be obligated) to cure any Disapproved Matter by (i) removing or causing the Disapproved Matter to be removed or resolved at curing party’s expense; (ii) by obtaining title insurance insuring against the effect of the Disapproved Matter; or (iii) by any other means acceptable to the other party (each a “Cure”). Within ten (10) days after receipt of such notice of a Disapproved Matter, the receiving party shall notify the other party in writing whether it elects to Cure such Disapproved Matter and, if it elects to do so, the method or means of the Cure. If the receiving party elects but fails or is unable to Cure a Disapproved Matter prior to the Closing Date, then the other party may, on the date of Closing, deliver written notice to the receiving party that it objects to the condition of the Goza Water Rights or Greeley Delta Water Rights in accordance with the terms and conditions of Article 8 below. If a Party does not exercise its rights pursuant to this Section 3.5, then it shall be deemed to have accepted any outstanding Disapproved Matters and the Parties shall proceed to Closing, subject to the provisions of this Agreement.

3.6 Title Insurance for the Water Rights. The purpose of the title commitments described above is to enable Greeley and Goza respectively to conduct the title review described in Article 4 below and said title commitments shall be updated as necessary up to the Closing. However, neither Goza nor Greeley shall have any obligation under this Agreement to purchase a title insurance policy after Closing. Either Greeley or Goza may elect to acquire this insurance if available at their own expense.

ARTICLE 4  
INSPECTION PERIOD

4.1 Inspections.

A. Inspection Period; Greeley Right to Inspect. During the period of time commencing upon the Effective Date and continuing until 4:00 p.m., Mountain Time, on the forty-fifth (45<sup>th</sup>) day thereafter (“Inspection Period”), unless automatically extended in accordance with Section 3.1.C. or 3.3.B. above, Greeley and its authorized agents, representatives and consultants shall be entitled to: (i) contact and interview the employees, agents, or tenants of Goza to assist Greeley in determining the historical use of the New Cache Water Rights and CLPRC Water Rights; (ii) contact the officers, directors, attorneys, and shareholders of New Cache and CLPRC to inspect any company records and/or determine under what conditions New Cache and CLPRC will approve a change in the place of delivery or use, or the point of diversion, of the Goza Water Rights and other New Cache or CLPRC shares obtained or to be obtained by Greeley, pursuant to the bylaws of the companies or other applicable law (collectively referred to as “Inspections”). Goza agrees to cooperate with Greeley to facilitate such interviews and/or the signing of any affidavits of use of the Goza Water Rights or to facilitate such contact and/or request for information or determination by New Cache or CLPRC. Greeley shall bear all costs of such Inspections. Goza agrees to reasonably cooperate with any such Inspections made by or at Greeley’s direction.

B. Conditions of Greeley’s Access. Greeley and its authorized agents, representatives and consultants (i) shall not unreasonably interfere with the operation and maintenance of the Goza Property; (ii) shall comply with all reasonable requirements imposed upon them in connection with such inspections by Goza; (iii) shall not injure or otherwise cause bodily harm to Goza, their agents, contractors, tenants, or employees; (iv) shall promptly pay when due the costs of all Inspections done with regard to the Goza Property; and (v) shall not permit any liens to attach to the Goza Property by reason of the exercise of its rights hereunder.

C. Goza Right to Inspect. During the Inspection Period, and any extension thereof, Goza and its authorized agents, representatives and consultants shall be entitled to conduct the activities described as Inspections above with respect to the Greeley Water Rights on the Greeley Property, as Goza deems desirable, to allow Goza to evaluate the condition and use of the Greeley Water Rights (collectively referred to as “Diligence”). Goza shall bear all costs of the Diligence. Greeley agrees to reasonably cooperate with any such Diligence made by or at Goza’s direction.

D. Conditions of Goza’s Access. Goza and its authorized agents, representatives and consultants (i) shall not unreasonably interfere with the operation and maintenance of the Greeley Property; (ii) shall comply with all reasonable requirements imposed upon them in connection with such Diligence by Greeley or Greeley’s lessees; (iii) shall not injure or otherwise cause bodily harm to Greeley, their agents, contractors, employees or lessees; (iv) shall promptly pay when due the costs of all Diligence done with regard to the Greeley Property; (v) shall not permit any liens to attach to the Greeley

Property by reason of the exercise of its rights hereunder; and (vi) shall restore the Greeley Property as nearly as practicable to substantially the same condition in which it was found before any such Diligence activities were undertaken. Notwithstanding anything in this Agreement to the contrary, Goza shall not be permitted to perform any invasive tests without Greeley's prior written consent, which consent may be withheld in Greeley's sole discretion.

#### 4.2 Objections.

A. Greeley's Objections. If during the Inspection Period, Greeley shall, for any reason, in Greeley's sole discretion, judgment and opinion, disapprove or be dissatisfied with any aspect of the Goza Water Rights or its Inspections relating thereto, Greeley shall be entitled to terminate this Agreement by giving written notice to Goza on or before the expiration of the Inspection Period, whereupon all materials exchanged by the Parties shall be returned and 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.

B. If during the Inspection Period, Goza shall, for any reason, in Goza's sole discretion, judgment and opinion, disapprove or be dissatisfied with any aspect of the Greeley Delta Water Rights or its Diligence relating thereto, Goza shall be entitled to terminate this Agreement by giving written notice to Greeley on or before the expiration of the Inspection Period, whereupon all materials exchanged by the Parties shall be returned and 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.

### ARTICLE 5 CLOSING CONTINGENCIES; CLOSING

5.1 Closing Contingencies. Sections 5.1.A and 5.1.B are collectively referred to as the "Governing Body Approvals."

A. Board Approval of Transaction. Greeley's obligation to close on the acquisition of the Goza Water Rights and conveyance of the Greeley Delta Water Rights is contingent upon authorization of this transaction by the City of Greeley Water and Sewer Board ("Board"). In the event that the Board has not authorized closing this transaction prior to expiration of the Inspection Period, then, in such event, upon Greeley's written notice to Goza, this Agreement shall terminate, whereupon all materials exchanged by the Parties shall be returned and neither Party shall have any further obligation to the other hereunder except for those obligations which, by their nature, are intended to survive the termination of this Agreement.

B. City Council Authorization to Convey. Greeley's obligation to convey the Greeley Delta Water Rights is also subject to authorization by the City of Greeley City Council ("City Council"). In the event City Council does not authorize the conveyance

prior to expiration of the Inspection Period, then, in such event, upon Greeley's written notice to Goza, this Agreement shall terminate, whereupon all materials exchanged by the Parties shall be returned 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.

5.2 Closing. The Closing shall occur at 1:30 p.m. at the Title Company, fourteen (14) days after the expiration of the Inspection Period, or by mutual agreement of the Parties at an alternate date and time.

5.3 Transactions at Closing.

A. On or before the Closing Date, Goza 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) A special warranty deed conveying the Goza Water Rights to Greeley, free and clear of all liens and encumbrances except the Permitted Exceptions, in the form attached as Exhibit C.

(2) The original New Cache Certificate and CLPRC Certificate.

(3) Stock assignments transferring ownership of the New Cache Certificate and CLPRC Certificate, and the Goza Water Rights represented thereby, in a form acceptable to the companies.

(4) A final closing settlement statement.

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

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

(1) A special warranty deed conveying the Greeley Delta Water Rights free and clear of all liens and encumbrances except the Permitted Exceptions, in the form attached as Exhibit C.

(2) The original Delta Certificate.

(3) A stock assignment transferring ownership of the Delta Certificate, and the Greeley Delta Water Rights represented thereby, in a form acceptable to the company.

(4) Water and Sewer Board meeting minutes and the City Council ordinance evidencing Greeley's full authority and capacity close on this transaction.

(5) A final closing settlement statement.



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

ARTICLE 6  
PRORATIONS; CLOSING COSTS

6.1 Ditch Assessments. Greeley agrees to fully pay and continue to pay any and all assessments, including special assessments, levied by the companies (or lateral or augmentation companies) associated with and accruing to the Greeley Delta Water Rights up to and including the Closing Date. Goza agrees to fully pay and continue to pay any and all assessments, including special assessments, levied by the companies (or lateral or augmentation companies) associated with and accruing to the Goza Water Rights up to and including the Closing Date. Greeley and Goza agree to assume any such future obligations for assessments associated with the rights respectively acquired by each Party and incurred after the Closing Date.

6.2 Closing Costs. Greeley shall pay for the cost of recording of the deed for the Goza Water Rights, water stock transfer fees for the Goza Water Rights, the cost of the title commitment described in Section 3.1.A. above, and one-half (1/2) of the Title Company closing and/or escrow costs. Goza shall pay for the cost of recording the deed for the Greeley Delta Water Rights, water stock transfer fees for the Greeley Delta Water Rights, the cost of the title commitment described in Section 3.3.A. above, and one-half (1/2) of the Title Company closing and/or escrow costs. Each Party shall pay its own attorneys' fees.

ARTICLE 7  
REPRESENTATIONS AND WARRANTIES

7.1 Goza represents and warrants to Greeley as follows:

A. Ownership and Encumbrances. Goza is now and will remain, until the conclusion of the Closing, the lawful owner of the Goza Water Rights. To the best of Goza's knowledge, the Goza Water Rights are free of any liens, encumbrances and third party claims except those of Greeley pursuant to this Agreement. From the Effective Date of this Agreement until the Closing, Goza shall not encumber the Goza Water Rights or any interest therein in any way nor grant any property or contract right relating to the Goza Water Rights or any other interests without the prior written consent of Greeley.

B. Litigation. To Goza's current actual knowledge, there is no dispute, action or litigation pending or threatened respecting the ownership or use of the Goza 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, Goza shall not enter into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Goza Water Rights by which Greeley would be obligated or liable to any third party.

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

E. No Abandonment. The New Cache and CLPRC Water Rights have not been abandoned by Goza.

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

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

7.2 Greeley represents and warrants to Goza as follows:

A. Ownership and Encumbrances. Greeley is now and will remain, until the conclusion of the Closing, the lawful owner of the Greeley Delta Water Rights. To the best of Greeley's knowledge, the Greeley Water Rights is free of any liens, encumbrances and third party claims except the Permitted Exceptions and those of Goza pursuant to this Agreement. From the Effective Date of this Agreement until the Closing, and except for the Permitted Exceptions, Greeley shall not encumber the Greeley Delta Water Rights or any interest therein in any way nor grant any property or contract right relating to the Greeley Delta Water Rights or any other interests without the prior written consent of Goza.

B. Litigation. To Greeley's current actual knowledge, there is no dispute, action or litigation pending or threatened respecting the ownership or use of the Greeley Delta 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 Goza in writing, Greeley shall not enter into any contracts, leases, licenses, commitments or undertakings respecting the use or maintenance of the Greeley Delta Water Rights by which Goza would be obligated or liable to any third party.

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

E. No Abandonment. The Greeley Delta Water Rights have not been abandoned by Greeley.

F. Compliance with Law. To the best of Greeley's current actual knowledge, Greeley has complied in all material respects with all laws, rules, regulations, ordinances, orders, judgments and decrees applicable to the Greeley Delta Water Rights, and to Greeley's current actual knowledge there is no proposed order, judgment, decree,

governmental taking or other proceeding applicable to Greeley which might adversely affect the Greeley Delta Water Rights.

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

7.3 Greeley Water Rights Adjudication. The Parties acknowledge and agree that a change of the Goza Water Rights and/or other water rights adjudications may be necessary to allow Greeley's use of the Goza Water Rights for its intended purposes. Unless this Agreement is terminated pursuant to the provisions herein, Goza agrees that it shall not oppose, but shall cooperate with Greeley, in any actions Greeley files in Water Court or administrative or other proceedings for approval of the use of the Goza 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 Goza Water Rights. Goza agrees that Greeley may include the Goza Water Rights in any such application before the Closing Date, provided that Greeley promptly withdraws the Goza Water Rights from any such application if this Agreement is terminated and Closing does not occur. Goza 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 Goza Water Rights and provide any documentation of use or other relevant historical use information. The terms and provisions set forth in this Section 7.3 and the covenants and obligations arising therefrom shall survive the Closing and shall not be deemed merged into the closing documents.

7.4 Goza Water Rights Adjudication. The Parties acknowledge and agree that a change of the Greeley Delta Water Rights and/or other water rights adjudications may be necessary to allow Goza's use of the Greeley Delta Water Rights for its intended purposes. Unless this Agreement is terminated pursuant to the provisions herein, Greeley agrees that it shall not oppose, but shall cooperate with Goza, in any action Goza files in Water Court or administrative or other proceedings for approval of the use of the Greeley Delta 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 Greeley Delta Water Rights. Greeley shall not be required to file briefs in support of Goza's application or take any affirmative action other than to appear and testify honestly about the Greeley Delta Water Rights and provide any documentation of use or other relevant historical use information. The terms and provisions set forth in this Section 7.4 and the covenants and obligations arising therefrom shall survive the Closing and shall not be deemed merged into the closing documents.

## ARTICLE 8 CONDITIONS TO CLOSING; REMEDIES

8.1 Goza Conditions. The obligation of Goza to convey the Goza 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 Goza):

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

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

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

D. The representations and warranties made by Greeley as specifically set forth herein shall be true and correct as of the Closing Date.

8.2 Greeley Conditions. The obligation of Greeley to acquire the Goza Water Rights and convey the Greeley Delta 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 all closing contingencies in Article 5 above.

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

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

D. There shall be no uncured default by Goza of any of its obligations under this Agreement.

E. The representations and warranties made by Goza as specifically set forth herein shall be true and correct as of the Closing Date.

8.3 Failure of Condition.

A. Except as set forth in Section 8.3B below, in the event of a failure of any condition contained in Section 8.2, Greeley may in its sole discretion:

(1) Terminate this Agreement by notice to Goza, in which event all materials exchanged by the Parties shall be returned 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.; or

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

(3) If the failure of condition consists of a default by Goza which can be cured by action within the reasonable control of Goza, 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 8.1 above, Goza may in its sole discretion:

(1) Terminate this Agreement by notice to Greeley, in which event all materials exchanged by the Parties shall be returned 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; or

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

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

8.4 Except for the giving of notices, time being of the essence, 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 9 CONDEMNATION

If prior to Closing all or a Material Part of the Goza Water Rights is subject to a proposed taking by any public authority, Goza shall promptly notify Greeley of such proposed taking and Greeley may terminate this Agreement by notice to Goza within fourteen (14) days after written notice thereof. If prior to Closing all or a Material Part of the Greeley Delta Water Rights is subject to a proposed taking by any public authority, Greeley shall promptly notify Goza of such proposed taking and Goza may terminate this Agreement by notice to Greeley within fourteen (14) days after written notice thereof. If either Party so elects to terminate pursuant to this Article 9, and following the return all materials exchanged by the Parties, 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 this Article 9 is triggered and a Party elects not to terminate this Agreement, or if the taking is as to a non-Material Part of the Property, that party shall accept title to the property subject to the taking without a reduction or modification to the consideration herein, and shall receive at Closing an assignment of all rights to any condemnation award. Such Party shall have the sole right after the Closing to negotiate and otherwise deal with the condemning authority in respect of such matter. A Material Part of the Property for purposes of this Article 9 shall mean a portion that would have a material adverse effect on use of the property by the acquiring Party, as determined by that Party in its sole good faith judgment.

#### ARTICLE 10 BROKERAGE

Goza 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.

ARTICLE 11  
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) if an e-mail address is specified, on the date and at the time shown on the e-mail message if sent to the e-mail address specified below, with no bounce-back or other deliver failure is received within twenty-four (24) hours:

If to Goza:                    Calven T. Goza  
   274 1<sup>st</sup> Avenue  
   Greeley, Colorado 80631  
   Telephone: (970) 381-9629  
   Email: Calven.Goza@gmail.com

If to Greeley:                City of Greeley Water and Sewer Department  
   Attention: Water Resources Division  
   1001 11<sup>th</sup> Avenue, 2<sup>nd</sup> Floor  
   Greeley, Colorado 80631  
   Telephone: (970) 350-9812  
   Email: cole.gustafson@greeleygov.com

With a copy to:                City of Greeley City Attorney's Office  
   Attention: Environmental and Water Resources Practice Group  
   1100 10<sup>th</sup> Street, Suite 401  
   Greeley, Colorado 80631  
   Telephone: (970) 350-9757  
   Email: daniel.biwer@greeleygov.com  
   arthur.sayre@greeleygov.com

ARTICLE 12  
MISCELLANEOUS

12.1 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 existing now or otherwise amended.

12.2 Time. Time is of the essence as to each provision of this Agreement and the performance of each Party's obligations hereunder, except where explicitly described to the contrary.

12.3 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.

12.4 No Waiver. No waiver by either Party of the performance or satisfaction of any covenant or condition of this Agreement is valid unless in writing and shall not be considered to be a waiver by such Party of any other covenant or condition.

12.5 Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter herein and supersedes all prior agreements, whether written or oral, among the Parties regarding this transaction, excluding only the closing documents executed in connection therewith. This Agreement may only be modified by mutual written agreement duly authorized and executed by the Parties.

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

12.7 Successors. Subject to Section 12.8 below, this Agreement shall bind and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

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

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

12.10 Governing Law and Construction. This Agreement and the legal relations between the Parties hereto shall be governed by the laws of the State of Colorado. Goza and Greeley acknowledge that each Party had the opportunity to consult with legal counsel, and that the Agreement should not be construed nor interpreted against a drafting Party.

12.11 Possession. Goza shall deliver to Greeley possession of the Goza Water Rights, on the Closing Date, upon release from escrow of all items to be delivered by Greeley at Closing. Greeley shall deliver to Goza possession of the Greeley Water Rights, subject to the Permitted Exceptions, on the Closing Date, upon release from escrow of all items to be delivered by Goza at Closing.

12.12 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.

12.13 Counterparts. This Agreement may be executed in any number of counterparts each of which, when taken together, shall constitute one agreement. This Agreement shall only be effective when counterparts are signed by both Goza and Greeley. Executed copies of this Agreement may be delivered by electronic means. The Parties agree to accept and be bound by signatures hereto delivered by electronic means.

12.14 Approval Required by Board and City Council. THE OBLIGATIONS OF GREELEY UNDER THIS AGREEMENT ARE EXPRESSLY CONTINGENT UPON THE APPROVAL OF THIS AGREEMENT BY THE CITY OF GREELEY WATER AND SEWER BOARD AND CITY COUNCIL.

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

CALVENT. GOZA

By: 

Date: 6-12-23

Name: Calven Goza

Title: Owner

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

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

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



As to Availability of Funds:

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

As to Legal Form:

By: \_\_\_\_\_  
City Attorney's Office

As to Water and Sewer Board Approval:

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

EXHIBIT A  
Description of Goza Property

Parcel No. 080520300015, which is located at 13483 County Road 66 in Weld County, Colorado and legally described as follows:

Lot A, Recorded Exemption No. 0805-20-03-RECX15-0051, being a portion of the East Half (E $\frac{1}{2}$ ) of the Southwest Quarter (SW $\frac{1}{4}$ ) of Section 20, Township 6 North, Range 68 West of the 6<sup>th</sup> P.M., according to plat recorded August 5, 2015 at Reception No. 4131357.

EXHIBIT B  
Historical Use Affidavit and Questionnaire

ANNUAL AFFIDAVIT OF BENEFICIAL USE OF WATER RIGHTS

DESCRIPTION OF WATER RIGHTS:

Ditch or Reservoir Company: \_\_\_\_\_  
Shares or Interest: \_\_\_\_\_

Name and address of owner and user of water rights:

Owner:           City of Greeley  
                    Water and Sewer Department  
                    1001 11<sup>th</sup> Avenue, Second Floor  
                    Greeley, Colorado 80631

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

Year water rights were used as described: \_\_\_\_\_

DESCRIPTION OF IRRIGATED LAND:

Legal description and size/acreage of land irrigated by above-mentioned water rights:  
\_\_\_\_\_.

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

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 irrigation of the above described lands by virtue of being the owner and/or person who has farmed and irrigated those lands, being first duly sworn, hereby states that the information provided in this statement is true and accurate.

Signed and dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
[AFFIANT]

ACKNOWLEDGMENT

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

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ by \_\_\_\_\_.

Witness my hand and official seal.

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

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

QUESTIONNAIRE REGARDING USE OF WATER SHARES

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

1. Name: \_\_\_\_\_  
Mailing Address: \_\_\_\_\_  
  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_  
Email Address: \_\_\_\_\_
  
2. The information provided below pertains to \_\_\_\_\_ shares of the \_\_\_\_\_ Company, represented by Certificate No. \_\_\_\_\_ (hereinafter "Shares").
  
3. Did you use the Shares pursuant to a Lease Agreement? \_\_\_\_\_  
Date of the Lease: \_\_\_\_\_  
Name of Lessee (if different from Question 1): \_\_\_\_\_  
Name of Lessor: \_\_\_\_\_
  
4. The information in this questionnaire relates to my use of the Shares during the [20\_\_] irrigation season (hereinafter "Lease Year").
  
5. Do you still own the farm or parcel irrigated by these Shares? \_\_\_\_\_
  
6. Was your use of the Shares during the Lease Year consistent with all terms and conditions of the Lease Agreement and with the bylaws, rules, regulations, and policies of the ditch company? \_\_\_\_\_
  
7. What is the legal description of the farm or parcel on which these Shares were used? \_\_\_\_\_
  
8. What is the total size of the farm or parcel? \_\_\_\_\_ acres.
  
9. What is the size of the area(s) on the farm or parcel that was irrigated? \_\_\_\_\_ acres.
  
10. What is the size of the area(s) on the farm or parcel that was irrigated using water from the Shares? \_\_\_\_\_ acres.
  
11. Please provide the following information regarding how the water from these Shares is 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 or reservoirs, including tail water ponds, if used: \_\_\_\_\_
  
12. How was water applied during the Lease Year? Sprinkler \_\_\_\_\_ Furrow \_\_\_\_\_ Flood \_\_\_\_\_  
Other/Combination (Describe): \_\_\_\_\_

13. What was the irrigation season for the Lease Year? Start Date: \_\_\_\_\_ Stop Date: \_\_\_\_\_

14. During the Lease Year, did you divert and irrigate with all water available under the Shares? \_\_\_\_\_. If no, please explain the reason why all water was not taken, approximately how much was not taken, and for how long: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

15. Other than the Shares leased, was any other water (including other shares that are in the same Company as the Shares that are the subject of this questionnaire) used to irrigate the farm or parcel on which the Shares are/were used 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: \_\_\_\_\_

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

17. During the Lease Year, what crops were grown on the land irrigated by the Shares?

1. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_
2. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_
3. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_
4. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_
5. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_
6. Crop: \_\_\_\_\_ Percentage: \_\_\_\_\_ Location: \_\_\_\_\_

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

19. 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 C  
Form Special Warranty Deed

**DO NOT EXECUTE**

SPECIAL WARRANTY DEED  
(Water Rights)

This SPECIAL WARRANTY DEED is made this \_\_\_\_ day of \_\_\_\_\_ 2023 by \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (“Grantor”), to \_\_\_\_\_, a \_\_\_\_\_, whose address is \_\_\_\_\_ (“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 portions of the lands identified and described in Exhibit B attached hereto and incorporated herein by this reference, all located in the County of \_\_\_\_\_, 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, 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.

[GRANTOR]

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

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

Acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2022, by \_\_\_\_\_, as \_\_\_\_\_ and authorized representative of \_\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

EXHIBIT A  
TO SPECIAL WARRANTY DEED

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 \_\_\_ (\_\_\_) shares of capital stock in The \_\_\_\_\_ Company (evidenced by Stock Certificate No. \_\_\_\_\_). The Water Rights covered by this provision shall also include all of the Grantors' 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 B  
TO SPECIAL WARRANTY DEED

Description of Land