

## TERMINATION OF AUGMENTATION WATER AGREEMENT

This Termination of Augmentation Water Agreement ("Agreement") is entered into this \_\_\_\_ day of October 2022, by and between the City of Greeley, a Colorado home rule municipal corporation acting by and through its Water Enterprise ("Greeley") and the Greeley Urban Renewal Authority ("GURA") (collectively, the "Parties").

**Background of Agreement.** The following background statements are made to aid in the understanding and interpretation of this Agreement:

- A. GURA owns the property described on Exhibit A, commonly known as the 8<sup>th</sup> Street Pit Property (the "Property").
- B. By the Sand, Gravel and Aggregate Mining Lease dated June 9, 1999 and subsequent amendments thereto, GURA leased the Property to certain third parties under a twenty-year lease.
- C. By the Perpetual Augmentation Water Agreement dated October 4, 2012, GURA entered into an agreement with Greeley by which the Greeley agreed to provide the permanent augmentation for the Property to GURA ("Augmentation Agreement"). The Augmentation Agreement was recorded on October 17, 2012, in the Weld County Clerk and Recorder's records at Reception No. 3881586.
- D. Among other agreements, and subject to the terms and conditions set forth therein, the Augmentation Agreement provided:
  - 1. Greeley would provide augmentation water for the depletions associated with up to a maximum of 23 exposed surface acres at the Property, in exchange for payment by GURA of \$21,739 per surface acre, with annual adjustments.
  - 2. Greeley would be responsible for filing the permanent augmentation plan with the Division 1 Water Court.
- E. Pursuant to the terms of the Augmentation Agreement, GURA paid to Greeley \$260,868 in 2012 and \$79,271.67 in 2016, for a total of \$349,140.67.
- F. GURA has contracted to sell the Property to The Ogilvy Irrigating and Land Company and H2 Investments, LLC ("Contract for Sale"), with a closing scheduled for the end of October 2022. Under the terms of the Augmentation Agreement and the Contract for Sale, if closing occurs, neither GURA nor Greeley will be obligated after the transfer to provide augmentation water to replace depletions associated with the Property.
- G. The Parties have agreed to memorialize their termination of the Augmentation Agreement under the terms specified in this Agreement, contingent on the closing of the Contract for Sale, and clarifying that neither GURA nor Greeley are obligated after the transfer to provide augmentation water to replace depletions associated with the Property.

- H. Certain disagreements and interpretations of the Augmentation Agreement have arisen between the Parties and the Parties have reached this Agreement to resolve their differences, contingent only on the closing and transfer of deed to the Property as provided in the Contract for Sale.

**NOW THEREFORE**, in consideration of the background statements that shall be deemed a substantive part of this Agreement, and the mutual promises and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto do hereby agree, as follows:

1. Agreement. If the Contract for Sale closes on or before December 31, 2022, the Parties agree:
  - A. The Augmentation Agreement shall be automatically terminated on the date and at the time of the closing and transfer of deed to the Property, with no obligation on the part of GURA or Greeley to provide permanent augmentation to the Property after the transfer. Effective as of this termination, neither GURA nor Greeley shall have any surviving obligations to the other associated with the Property or the Augmentation Agreement.
  - B. Greeley shall refund \$79,271.67 to GURA of the funds paid by GURA to Greeley within 10 days after the closing and transfer of deed.
2. Contingency. If the Contract for Sale does not close on or before December 31, 2022, the parties agree that this Agreement shall automatically terminate and the Augmentation Agreement shall remain in full force and effect. In such an event, nothing in this Agreement is intended or shall be construed to amend the terms of the Augmentation Agreement.
3. Miscellaneous.
  - A. Binding Effect; Benefit. This Agreement shall inure to the benefit of and be binding upon the Parties hereto, and their respective personal and legal representatives, and successors. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity other than GURA and Greeley any rights, remedies, obligations, or liabilities.
  - B. Amendment; Waiver. No provision of this Agreement may be amended, waived, or otherwise modified without the prior written consent of the Parties hereto. No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant, or agreement herein contained.
  - C. Section Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this

Agreement.

- D. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument.
- E. Applicable Law. This Agreement is made and entered into and shall be governed by and construed in accordance with, the laws of the State of Colorado.

IN WITNESS WHEREOF, the City of Greeley and the Greeley Urban Renewal Authority have authorized and executed this Agreement on the date first set forth above.

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

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

Approved as to Legal Form:

As to Water and Sewer Board Approval:

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

By: \_\_\_\_\_  
Water and Sewer Board Chairman

GREELEY URBAN RENEWAL AUTHORITY  
a Colorado urban renewal authority organized pursuant to C.R.S. §31-25-101, et seq.

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_