

AGREEMENT

This Excess Capacity Carriage Agreement ("Agreement"), made this ____ of _____, 2022, between The Taylor & Gill Ditch Company, a Colorado nonprofit mutual ditch company ("Company"), and the City of Greeley ("Greeley"). Greeley and the Company each individually a "Party," and collectively may be referred to as the "Parties."

RECITALS

- A. Whereas, the Company owns and manages The Taylor & Gill Ditch (the "Ditch"); and
- B. Whereas, the Company operates the Ditch to deliver water to its shareholders pursuant to water rights owned by the Company ("Share Water"); and
- C. Whereas, Greeley desires to use any excess capacity in the ditch to transport other sources of water owned by Greeley through the Ditch ("Greeley Water"); and
- D. Whereas, in addition to Share Water, there is capacity in the Ditch to divert and carry other sources of water at a flow rate of up to 13.81 cfs, including but not limited to the Greeley Water ("Excess Capacity"); and
- E. Whereas, the Company is willing to grant Greeley the right to use a portion of the Excess Capacity in the Ditch for diversion and conveyance of the Greeley Water;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

AGREEMENT

1. The Company agrees that Greeley shall have the right to use up to 13.81 cfs of the Excess Capacity ("Greeley Excess Capacity") for delivery of Greeley Water through the Ditch. Greeley's right to divert and carry Greeley Water is subordinate to the Company's use of the Ditch for diversion and carriage of Share Water. The Parties understand that 13.81 cfs is the approximate maximum capacity of certain segments of the Ditch. Greeley acknowledges that there are segments of the Ditch with a capacity of less than 13.81 cfs, and Greeley shall have no right to make any modifications to the Ditch to increase its capacity without prior written consent of the Company.

2. In addition to the subordination in ¶ 1, the Greeley Excess Capacity shall be junior to any right to use Excess Capacity that was in existence as of December 3, 2018, if any, as evidenced by a written agreement with the Company ("Senior Excess Capacity"). If owners of Senior Excess Capacity are not diverting and carrying water in the Excess Capacity, then Greeley may divert Greeley Water in the Excess Capacity. If owners of Senior Excess Capacity are diverting and carrying water in the Excess

Capacity but there is still remaining Excess Capacity ("Additional Excess Capacity"), then Greeley may divert Greeley Water in the Excess Capacity up to the Additional Excess Capacity.

3. Greeley Excess Capacity shall be senior to any right to use Excess Capacity that arises after any agreements for Senior Excess Capacity, if any, as evidenced by a written agreement with the Company ("Junior Excess Capacity"). Specifically, and without admission of the validity of such, Greeley Excess Capacity shall be senior to that purported agreement for excess capacity between the Company and William and Paulette Seaworth dated December 4, 2018. If the owners of Excess Capacity described in ¶ 2 are either not diverting or are fully satisfied and there is still Additional Excess Capacity, then an owner of Junior Excess Capacity may divert water in the Excess Capacity up to the Additional Excess Capacity, as provided in any separate agreements.

4. If the owners of Excess Capacity described in ¶¶ 2 and 3 are either not diverting or are fully satisfied and there is still Additional Excess Capacity, others may use Additional Excess Capacity pursuant to written or verbal agreements with the Company.

5. The Company reserves the right to lease, transfer, or otherwise utilize the Additional Excess Capacity not used by Greeley pursuant to this Agreement at its discretion.

6. Greeley may run the Greeley Water to turnouts on the Ditch. The Company makes no representation regarding Greeley's rights or ability to utilize infrastructure behind such turnouts, which shall be the sole responsibility of Greeley.

7. In partial consideration of this Agreement, Greeley shall pay the Company twelve thousand dollars (\$12,000) upon execution of this Agreement which shall be due within forty-five (45) days of the Company approving this Agreement.

8. In partial consideration of this Agreement, Greeley shall pay the Company the amount of \$13.50 for every acre-foot of Greeley Water delivered to Greeley through the Ditch ("Running Charge") during the Water Year. For purposes of this Agreement, the Water Year shall be from April 1 through March 31. Beginning on April 1, 2027, and each succeeding five-year anniversary thereafter, the amount of the Running Charge shall be adjusted by a rate of three percent (3%), compounded annually (15.93% over five years).

9. After the end of each water year, the Running Charges for the previous year shall be payable annually within thirty (30) days of the Company delivering its bill for same to Greeley at the following address:

City of Greeley Department of Water and Sewer
1001 11th Avenue, 2nd Floor

Greeley, Colorado 80631
ATTN: Deputy Director, Water Resources

10. In the event of a storm, sudden flooding of the Ditch, or any other emergency circumstance that prevents the Company from delivering water through the Ditch, the Company shall have the right to shut off any or all of the Greeley Water. In such instances, the Company shall not be liable for the failure to deliver Greeley Water to Greeley.

11. Greeley will have the right to begin using Excess Capacity at any time within thirty (30) years from the date of this Agreement ("Start Date"), and its right to continue using Excess Capacity will extend for twenty (20) years from the Start Date. If Greeley desires to renew this Agreement beyond the expiration of this twenty-year period, it will give the Company written notice of its intent no later than 180 days prior to expiration of the twenty-year term. The Parties shall have the option to extend the term of this Agreement for another twenty-year term at that time, and at the end of each succeeding twenty (20) year period. Consent to such renewal shall not be unreasonably withheld by the Company. However, nothing in this paragraph obligates the Parties to renew this Agreement.

12. The Company shall be responsible for the day-to-day operation of the Ditch. Greeley shall notify the Company's superintendent at least forty-eight (48) hours in advance of their intent to begin running Greeley Water.

13. Greeley shall only be entitled to assign its rights in this Agreement to the successors in ownership of all or part of Greeley's water rights. No other assignment of the rights granted herein shall be authorized. Greeley, and any assignee of Greeley, shall not assign its rights under this Agreement to more than one assignee. Any assignment in violation of this Agreement is void.

14. Conditions: Use of the Excess Capacity by Greeley is conditioned upon:
- a. Greeley entering into any separate agreements necessary for delivery of Greeley Water into the Ditch;
 - b. Acknowledgment by the District 3 Water Commissioner that Greeley may exercise its carriage rights described herein; and
 - c. Full compliance with this Agreement by the Greeley at the time it desires to use the Excess Capacity.

15. Governmental Immunity. This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties, and their past and present directors, officers, employees and volunteers, under federal or state constitutional, statutory or common law, including but not limited to the Colorado Governmental Immunity Act, Section 24-10-101, C.R.S., *et seq.*, as may be amended.

16. This Agreement is binding upon the Parties, and their respective successors and assigns.

17. This document represents the complete agreement between the Parties hereto. No verbal modifications shall be recognized. Any amendments or additions shall be made in writing and signed by the Parties.

18. The Company affirms that the undersigned, Vice President to the Company, has authorization to bind the Company to the terms set forth herein. Greeley affirms that upon execution of this Agreement by the undersigned, the Agreement will constitute a valid and binding Agreement upon Greeley.

19. Following execution of this Agreement, Greeley will record this document in the official Property Records of Larimer County, State of Colorado.

DATED the date and year first written above.

**THE TAYLOR & GILL DITCH COMPANY,
a Colorado non-profit corporation**

ATTEST:

By: _____
Name: _____
Vice-President for The Taylor & Gill
Ditch Company

By: _____
Name: _____
Secretary for The Taylor & Gill
Ditch Company

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, Vice-President, and _____, Secretary, for The Taylor & Gill Ditch Company.

Witness my hand and seal.

Notary Public
My commission expires: _____

THE CITY OF GREELEY
Acting by and through its Water & Sewer Board

By: _____
Harold Evans
Chairman, Greeley Water & Sewer Board

APPROVED AS TO SUBSTANCE:

By: _____
Raymond C. Lee, III
City Manager
[Or designee]

APPROVED AS TO AVAILABILITY OF FUNDS:

By: _____
John Karner
Finance Director

APPROVED AS TO LEGAL FORM:

By: _____
Douglas Marek
City Attorney