

## STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement (this “Agreement”) is entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by the CITY OF GREELEY, COLORADO (“Greeley”), THE TAYLOR & GILL DITCH COMPANY, a Colorado corporation (the “Company”), WILLIAM O. SEAWORTH, an individual, PAULETTE M. SEAWORTH, an individual, and HF2M, INC., a Texas corporation. All of the foregoing parties are referred to individually as a “Party” and collectively as the “Parties.”

### Recitals

- A. Greeley commenced Case No. 21CV30881 (Dist. Ct., Larimer County, Colorado) (the “Litigation”) alleging various claims related to that certain Right of First Refusal Agreement dated December 9, 2014 between Greeley and the Company (the “ROFR”), that certain Excess Capacity Carriage Agreement between the Company and the Seaworths dated December 4, 2018 (the “2018 Excess Capacity Carriage Agreement”), and that certain Augmentation Water Agreement and Deeded Easement and Agreement, both dated December 29, 2020, by which Seaworths assigned to HF2M an interest in their 2018 Excess Capacity Carriage Agreement (the “Seaworths-HF2M Agreements”).
- B. The Parties desire to enter into this Agreement to fully resolve the Litigation.

### Agreement

NOW THEREFORE, in consideration of the foregoing recitals, the covenants, obligations and agreement set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Settlement Consideration. Concurrent with execution of this Agreement, the Company and Greeley shall execute the Excess Capacity Carriage Agreement attached as **Exhibit A**, and the Company, the Seaworths, and HF2M shall execute the Excess Capacity Carriage Agreement attached as **Exhibit B**. Full execution of this Agreement and the Carriage Agreements shall be a condition concurrent to the effectiveness of each of the other agreements. The Parties expressly recognize the validity of HF2M’s interest to share in Seaworth’s use of excess carriage capacity pursuant to the new Excess Capacity Carriage Agreement. Further, Greeley agrees it shall not object to HF2M’s and Seaworths’ rights to rely upon that excess carriage capacity in HF2M’s pending Case No. 20CW3208, Water Division No. 1.
2. Dismissal of Litigation. Upon full execution of this Agreement and the Carriage Agreements attached as Exhibits A and B, the Parties, through counsel, shall file a stipulation of dismissal of the Litigation, with prejudice, in a form substantially the same as **Exhibit C** hereto.
3. Costs and Attorney Fees. The Parties shall pay their own costs and attorney’s fees related to or arising from the Litigation, including the drafting of this Agreement and any related negotiations.
4. General Release. Each Party, for itself, and for its managers, trustees, members, agents,

attorneys, successors, and assigns, completely, unconditionally and forever releases, acquits and discharges each other Party and such other Party's current and former agents, attorneys, successors, and assigns of and from any and all actions, causes of action, claims, counterclaims, cross claims, debts, demands, liabilities, losses and damages, whether known or unknown, which arise out of or relate to the allegations in the Complaint filed in the Litigation, the ROFR, the 2018 Excess Capacity Carriage Agreement, or the Seaworths-HF2M Agreements. Notwithstanding the foregoing, nothing contained in this paragraph 4 shall release any Party from complying with the terms and conditions of this Agreement. The Parties agree that the individuals and entities released by this paragraph are intended beneficiaries of this Agreement.

5. No Admission of Liability. The Parties' agreement to the terms and conditions set forth herein shall in no manner be deemed an admission, express or implied, of: (a) liability by any Party to any other person or entity; (b) any fact, other than the facts set forth in this Agreement; or (c) the merits of the position taken by any Party with respect to any matter other than those expressly set forth herein.

6. No Assignment of Claims. Each of the Parties represents and warrants to the other that it has not heretofore assigned or transferred, or purported to assign or transfer to any person or entity any claims that it might have against any other Party.

7. Complete Agreement; Modification; and Waiver. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous agreements, representations, warranties, and understandings of the Parties regarding the same. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all Parties. No waiver of any of the provisions of this Agreement shall be deemed or constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

8. Review; Investigation; Etc. Each Party acknowledges and represents that:

a. The Party has fully and carefully read and considered this Agreement prior to its execution and has discussed its contents and legal effect with counsel of its choosing;

b. The Party has had the opportunity to make whatever investigation or inquiry the Party deems necessary or appropriate in connection with the subject matter of this Agreement;

c. The Party is executing this Agreement voluntarily and free from any undue influence, coercion, duress or fraud of any kind; and

d. The Party is knowingly and voluntarily waiving and releasing all claims against the other Parties to the full extent provided in this Agreement.

9. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and the Parties' respective representatives, agents, successors, and assigns.

10. No Third Party Beneficiaries. This Agreement is not intended to benefit, and does not

benefit, any person or entity who is not specifically identified or referenced herein as a Party to, or intended beneficiary of, this Agreement.

11. Specific Enforcement. The Agreement shall be specifically enforceable. In order to enable a court to grant specific enforcement or other equitable relief in connection with this Agreement, each Party to this Agreement waives any contention that there is an adequate remedy at law or any like doctrine that might otherwise preclude injunctive relief to enforce this Agreement. The remedy of specific enforcement shall be cumulative to, and not in lieu of, any other remedy available to the Parties at law or in equity.

12. Attorneys' Fees in Enforcement Action. If any Party brings any action to enforce this Agreement, the prevailing Party shall be entitled to recover all reasonable attorneys' fees and costs from the non-prevailing Party or Parties.

13. Interpretation. The Section headings used in this Agreement are for purposes of identification only and shall not be considered in construing this Agreement. Furthermore, this Agreement shall be deemed to have been prepared with the full and equal participation of each Party, and shall not be construed by any Party against any other Party.

14. Choice of Law; Jurisdiction; Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, and the Parties agree that the state courts located in Larimer County, Colorado, and the District Court, Water Division 1, shall have exclusive jurisdiction over, and shall be the exclusive venue for, any action arising out of, or related to, this Agreement.

15. Further Assurances. Each Party will cooperate with the other and execute such further instruments and documents as the other Party shall reasonably request to carry out the transactions contemplated by this Agreement.

16. Non-Severability. Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties will immediately negotiate valid alternative portion(s) that as near as possible give effect to any stricken portion(s).

17. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

18. Authority to Sign. Each person signing the Agreement represents and warrants that s/he has been authorized and empowered to sign this Agreement on behalf of the Party the person purports to represent and that this Agreement is lawful and binding upon the Party on whose behalf the person is signing.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

[Signatures appear on the following page.]

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

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

ATTEST: \_\_\_\_\_  
Name: \_\_\_\_\_  
Secretary for The Taylor & Gill  
Ditch Company

William O. Seaworth and Paulette M. Seaworth

\_\_\_\_\_  
By: \_\_\_\_\_  
William O. Seaworth

\_\_\_\_\_  
By: \_\_\_\_\_  
Paulette M. Seaworth

HF2M, Inc., a Texas corporation

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

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

APPROVED AS TO AVAILABILITY OF  
FUNDS:

By: \_\_\_\_\_  
Harold Evans  
Chairman, Greeley Water & Sewer Board

By: \_\_\_\_\_  
John Karner  
Finance Director

APPROVED AS TO SUBSTANCE:

APPROVED AS TO LEGAL FORM:

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

By: \_\_\_\_\_  
Douglas Marek  
City Attorney