

RESOLUTION 24-05

A RESOLUTION AUTHORIZING AND APPROVING THE REACQUIRING A PORTION OF MUNICIPAL IRRIGATION WATER SHARES WITH ALAN NIELSEN AS PER RESOLUTION 10-03.

WHEREAS, on January 21, 2010, Hyrum City approved Resolution 10-03 approving a water share exchange and security agreements "Agreement" with Gary, Michael, and Jared Clawson (collectively the "Clawsons"), and Alan and Julie Nielsen (collectively the "Nielsens"); and

WHEREAS, on January 27, 2010, the City and the Nielsens entered into a Water Share and Security Agreement ("Agreement") authorizing, approving, and effectuating the exchange of 9 shares of Hyrum Irrigation (which water is delivered through the O'Berry Canal) owned by Alan Nielsen and Julie Nielsen for 36 shares of Highline Irrigation owned by Hyrum City; and

WHEREAS, as per the Agreement in Section 1.4, No Encumbrances, Nielsens agreed that, except as covered by the Agreement, they will not permit any security interest, lien, claim, or any other encumbrances to be filed, recorded or asserted against the High Line Shares; and

WHEREAS, as per the Agreement in Section 1.5, City's Option to Require High Line Shares/ Events of Default, the City has an option to Reacquire High Line Shares for events listed in the Agreement, including events of default enabling the City to exercise its rights to repossess the High Line shares under the security agreement. The parties also agreed that the City may exercise its discretion in electing to require the High Line shares through utilizing the option to repurchase or by repossessing the share pursuant to the security agreement and has not obligation the Nielsens in utilizing one method over the other; and

WHEREAS, as per the Agreement in Section 1.5.1, Transfer of Farm Property, if Nielsens transfer voluntarily or involuntarily, any of the farm property that is serviced by the water rights associated with the High Line shares, the City has the right to repossess or exercise the option to repurchase a proportionate share of the High Line shares that service that portion of the farm property transferred; and

WHEREAS, as per the Agreement in Section 1.5.2, Cessation of Farming Activities, if Nielsens cease to the use the farm property for agriculture activities, the City may exercise its option to

repurchase the water shares. The parties agree that the farm property will cease to be used for agricultural activities under the Agreement if the property fails to qualify; and

WHEREAS, Alan Nielsen passed away on or about June 22, 2023 and Julie Nielsen ("Nielsen") exclusively manages and owns the High Line Canal Company Shares;

WHEREAS, Nielsen has informed the City of her intent to sale a portion of the irrigation shares traded to Hyrum City (4 shares of Hyrum Irrigation equivalent to 16 shares of High Line shares); and

WHEREAS, Hyrum City now elects to exercise its rights to reacquire the 16 shares of High Line Shares from Nielsen and reconvey 4 shares of Hyrum Irrigation to Nielsen; and

WHEREAS, after the exchange of shares as described above it will leave Nielsen with 20 shares of High Line Canal and Hyrum City with 5 shares of Hyrum Irrigation that will remain under all terms as set forth in the Water Share Exchange and Security Agreement including but not limited to the reacquisition of High Line Shares by Hyrum City dated and signed by Alan and Julie Nielsen on February 8, 2010 the same terms for reacquisition.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hyrum City, Cache County, State of Utah, to approve the reacquisition of 16 shares of High Line from Nielsen in exchange for 4 shares of Hyrum Irrigation from Hyrum City with the condition that Nielsens sign the following Addendum attached hereto as "ADDENDUM A" to the Water Share Exchange and Security Agreement approved in Resolution 10-03 dated February 8, 2010. The Mayor is authorized to execute the Addendum A to effectuate this transaction.

THIS RESOLUTION shall become effective upon adoption.

ADOPTED AND PASSED by the Hyrum City Council this 15th day of February, 2024.

HYRUM CITY

BY: _____
Stephanie Miller
Mayor

ATTEST:

Stephanie Fricke
City Recorder

ADDENDUM “A”**TO THE****WATER SHARE EXCHANGE AND SECURITY AGREEMENT**

THIS ADDENDUM “A” (the “Addendum”) is made by and between Hyrum City (the “City”) and Julie Nielsen (“Nielsen”) as of the date set forth below to the WATER SHARE AND EXCHANGE AND SECURITY AGREEMENT (the “Agreement”) entered into on January 27, 2010, by and between Hyrum City (the “City”) and Alan and Julie Nielsen (collectively “Nielsens”).

RECITALS

- A. WHEREAS, on January 27, 2010, the City and Alan Nielsen and Julie Nielsen (collectively “Nielsens”) entered into the Agreement for the exchange of certain water shares between the City and the Nielsens;
- B. WHEREAS, in the Agreement, the Nielsens transferred 9 shares in the Hyrum Irrigation Company to the City in exchange for the City transferring 36 shares in the High Line Canal Company to the City;
- C. WHEREAS, the Agreement allowed for the City or the Nielsens to repurchase or retransfer water shares under certain circumstances set forth in the Agreement;
- D. WHEREAS, the Parties desire to exercise the retransfer provision of the Agreement and have the City transfer 4 shares in the Hyrum Irrigation Company to the Nielsens and the Nielsens transfer 16 in the High Line Canal Company to the City;
- E. WHEREAS, Alan Nielsen passed away on or about June 22, 2023,
- F. WHEREAS, Julie Nielsen has full authorization and authority to effectuate the transfer described in this Addendum and is the sole and exclusive owner of the shares of water herein described;
- G. WHEREAS, the Parties intend for all other provisions of the Agreement, including the restrictions related to the City’s 5 remaining shares in the Hyrum Irrigation Company and Nielsen’s 20 remaining shares in the High Line Canal Company.

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NOW THEREFORE, in consideration of the foregoing, and the promises, representation and mutual covenant contained herein, the receipt and sufficiency of which are hereby acknowledge, the Parties agree as follows:

1. NIELSEN’S OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

- a. **Conveyance of High Line Canal Company Shares.** Nielsen, in consideration of the covenant and agreement of the City as set forth herein, agree, upon the performance of the City of those covenants and agreement specified herein, to convey to the City sixteen (16) shares in the High Line Canal Company described in Exhibit A attached to this Agreement. The High Line Canal Company Shares shall be in proper form and shall be duly executed and acknowledged by Niensens, so as to convey to the City the High Line Canal Company Shares free of all encumbrances, except as stated in the Agreement.
- b. **Representations and Warranties.** Nielsen represents and warrants as follows:
 - i. Julie Nielsen is the sole owner of the water shares in Exhibit A and is fully authorized to transfer said water shares free of encumbrances or disputes related to ownership;
 - ii. Nielsen reaffirms all other Representations and Warranties made in the Agreement and there has been no material change character or use of the water shares as described in the Agreement.
- c. **City's Option to Reacquire Remaining High Line Shares/Events of Default.** Nielsen further reaffirms the City's right to require the remaining twenty (20) High Line Canal Company shares and the events of default as contained in the Agreement remain in full force and effect.
- d. **Security Agreement.** Other than the release of the security agreement as to the transferred water shares, the security agreement in place on the remaining shares shall remain in full force and effect.
- e. **Reaffirmation of Agreement.** In all respects and to the fullest extend allowed by law, Nielsen reaffirms the Agreement and all rights, obligations, warranties, representations, and covenants required thereunder.

2. CITY'S OBLIGATIONS AND REPRESENTATIONS

- a. **Conveyance of Hyrum Irrigation Company Shares.** The City, in consideration of the covenant and agreement of Nielsen as set forth herein, agree, upon the performance of Nielsen of those covenants and agreement specified herein, to convey to the Nielsen four (4) shares in the Hyrum Irrigation Company described in Exhibit B attached to this Agreement. The Hyrum Irrigation Company Shares shall be in proper form and shall be duly executed and acknowledged by the City, so as to convey to Nielsen the Hyrum Irrigation Company Shares free of all encumbrances, except as stated in the Agreement.

- b. **Release of Security Interest.** The City hereby, upon the transfer described above, releases its security interest in the four (4) shares in the Hyrum Irrigation Company and shall execute any necessary documents to release the security interest as described in the Agreement.
- c. **Representations and Warranties.** The City represents and warrants as follows:
 - i. The City reaffirms all other Representations and Warranties made in the Agreement and there has been no material change character or use of the water shares as described in the Agreement.
- d. **Nielsen's Option to Reacquire Remaining Hyrum Irrigation Company Shares/Events of Default.** The City further reaffirms Nielsen's right to require the remaining five (5) Hyrum Irrigation Company shares and the events of default as contained in the Agreement remain in full force and effect.
- e. **Reaffirmation of Agreement.** In all respects and to the fullest extent allowed by law, the City reaffirms the Agreement and all rights, obligations, warranties, representations, and covenants required thereunder.

DATED this ____ day of _____, 2024.

HYRUM CITY

NIELSEN

Stephanie Miller, *Mayor*

Julie Nielsen

Attest:

Stephanie Fricke, *Recorder*