

**DRY-UP AND REVEGETATION COVENANT; GRANT OF EASEMENT;
AND AGREEMENT**

THIS COVENANT, Easement, and Agreement (“Agreement”), are made and given the _____ day of _____, 2015, by Stephen B. Reamy, Brian S. Reamy and Lisa Reamy Heaton, a/k/a Lisa A. Reamy (hereinafter “Grantors”), and accepted by the City of Colorado Springs, acting by and through its enterprise, Colorado Springs Utilities (hereinafter “Buyer”) on the _____ day of _____, 2015.

WHEREAS, Buyer has entered into an agreement with Grantors dated _____, 2015, whereby Grantors have agreed to sell, and Buyer has agreed to buy one share of the Capital Stock of the Chilcott Ditch Company represented by Stock Certificate Number 318 (the “Share”). The Share represents, in part, a *pro rata* interest in the water rights of the Chilcott Ditch Company.

WHEREAS, the Grantors acknowledge that the water rights represented by the Share are intended to be utilized by Buyer for municipal water uses, and/or for augmentation, exchange or other purposes, and that in order to effect such uses, the water rights represented by the Share will need to be changed in an appropriate proceeding in Water Court Division 2 (“Water Court”), from irrigation to municipal, augmentation, exchange or other purposes (“Water Rights Change”).

WHEREAS, the water rights represented by the Share have historically been used for the irrigation of lands owned by Grantors located in El Paso County, Colorado (the “Property”). A description of the Property is attached to this Agreement as **Exhibit 1** and is incorporated fully herein by this reference.

WHEREAS, Grantors further understand that the Water Court may require, as a term and condition of the Water Rights Change, that the Property must be dried up and not further irrigated with the water rights represented by the Share and revegetated.

WHEREAS, Grantors and Buyer are entering into this Agreement for purposes of ensuring that the historically irrigated lands are “dried-up” upon the removal of the Share from irrigation of the Property, to ensure Buyer has the rights necessary to revegetate the historically irrigated land, and to take such other actions on the Property as are reasonable and necessary to effectuate the Water Rights Change.

THEREFORE, in consideration for the mutual benefits to the Parties as well as other good and valuable consideration, receipt of which is hereby acknowledged by Grantors, Grantors covenant and agree as follows:

1. From and after the date hereof, the water rights represented by the Share shall not be used in connection with the Property, except as may be set forth in and by a valid lease agreement (“Lease”) between the Parties, without the written consent of Buyer, or its successors or assigns, having been first obtained, which consent may be withheld in Buyer’s sole discretion.

2. Grantors shall take any action necessary to eliminate any consumptive use of water for irrigation purposes on the Property as may be determined and/or required by the Water Court or other court or tribunal of competent jurisdiction in the judgment and decree entered in any case involving the Water Rights Change and except as hereinafter may be specifically allowed, including as specifically allowed under the Lease, if any, the Property shall no longer be irrigated.

3. Unless otherwise required by any decree involving the Water Rights Change, this Agreement shall not prohibit the Grantors or Grantors' successors and assigns from irrigating lands that are the subject of this Agreement with water rights which may in the future be transferred to such lands and for such use through an appropriate Water Court proceeding, irrigating the lands with water from a well or wells to be constructed in the future which are authorized to pump pursuant to a Water Court-approved plan for augmentation, irrigating the lands with water which is not tributary to the Arkansas River or its tributaries, to include non-tributary water that is duly augmented, or irrigating the lands with treated water supplied by a municipality or a water district. Unless so irrigated, the Grantors agree that the Property will not be planted with crops which are capable of extending roots into the underlying groundwater including, but not necessarily limited to, the growing of alfalfa.

4. When the Grantors wish to permanently discontinue irrigation of some or all of the Property, and does not intend to use any other source of water to irrigate that land, Grantors shall provide Buyer written notice of its intent to discontinue irrigation and state whether the permanent cessation of irrigation applies to all or part of the Property. If the cessation of irrigation applies to only part of the Property, the notice shall describe the portion of the Property to be permanently dried-up. Notice of cessation of irrigation must be given to the Buyers at least 120 days before the intended cessation of irrigation.

5. The notice of cessation of irrigation must state the intended future use of the portion of the Property, including whether it will be used for dry-land farming, development, pasture, or other uses.

6. Upon receipt of notice of cessation of irrigation, Buyer will confer with the Grantors to determine whether the future use of the Property being removed from irrigation will require the Property to be revegetated in accordance with any applicable provisions of any decree involving the Water Rights Change or other applicable permits or law. If revegetation is required by any such decree, the provisions of part 7 below shall apply. If revegetation is not required by any such decree, the Parties shall have no further obligations concerning revegetation hereunder.

7. If Buyer is required to revegetate any portion of the Property by any decree involving the Water Rights Change, the following provisions shall apply:

7.1. Before commencing revegetation, Buyer and Grantors will meet and confer on the revegetation plan and attempt to coordinate the revegetation activities to minimize interference with any other activities on the Property. Buyer may, in its sole discretion, contract with the Grantors to have the Grantors perform the revegetation of the Property.

7.2. Buyer shall have unrestricted access to the Property for purposes of revegetation of the land permanently removed from irrigation. For purposes of revegetation of the land, Buyer

shall be entitled to use all irrigation ditches, laterals, headgates, flumes, measuring devices and other facilities, including the rights of way and easements, that were historically used to deliver water to the Property. Unless otherwise agreed, Buyer shall supply all seed, fertilizer, herbicide, and pesticide, and other material necessary for revegetation, and will provide all machinery and labor needed for planting and cultivating the land being revegetated, and will pay all costs of revegetation. Buyer shall also provide the supply of water to be used for revegetation and any irrigation facilities not already located on the Property that are necessary or desirable for revegetation of the Property.

7.3. Grantors will not interfere with Buyer's revegetation activities on the Property.

8. Limitations on Future Land Use.

8.1. Once Buyer has completed revegetation of the Property, Grantors may not engage in any land use practice that will kill all, or a material part, of the vegetation planted on the Property for the purposes of revegetation. This prohibition includes any tillage, cultivation, or grazing practices that will kill all, or a material part of, the revegetation plantings growing on the land or other native plant cover. Upon completion of the revegetation, the Grantors will control noxious weed growth on the Property and shall do so in a manner that does not materially harm the revegetation plantings and the vegetative ground cover resulting therefrom.

8.2. Grantors may graze livestock on the revegetated land, but only pursuant to a grazing plan approved in advance by Buyer.

8.3. Grantors shall be liable to Buyer for any and all damages or cost incurred by Buyer, including attorneys' fees, as a result of Grantors' killing, or other destruction, of the revegetation plantings.

8.4. The limitation on future land use shall not be interpreted to prohibit the subdivision of the Property and the construction of buildings or other improvements on the Property, provided that such development does not cause Buyer to be in violation of any of its revegetation obligations.

9. In addition to the foregoing, the Property shall also be subject to any reasonable requirements imposed on Buyer, with respect to the Property, by El Paso County, under any applicable provision of those entities Land Use Code, in connection with Buyer's use of the water rights represented by the Share.

10. Grantors hereby grant to Buyer a non-exclusive easement in gross for purpose of reasonable access to and over the Property as may be necessary to take actions to effectuate any decree involving the water Rights Change, implement any required dry-up of the Property, implement any required revegetation of the Property, implement the requirements of any permit or land use authorizations issued by El Paso County in connection with Buyer's use of the water rights represented by the Share, and to enforce this Agreement, including, but not limited to, to alter and remove the ditches, to perform any required revegetation of the Property, to conduct any monitoring or testing activity that may be necessary for changing to other uses the water rights represented by the Share, to implement any decree involving the Water Rights Change, and to comply with conditions that apply to the Property contained in any permits or land use

authorizations issued by El Paso County in connection with Buyer's use of the water rights represented by the Share.

11. In exercising its easement rights hereunder, Buyer shall not interfere with the access to the Property or the operations or other activities of Grantors or other parties occupying or conducting activities on the Property. Without limiting the generality of the foregoing, Buyer shall not interfere with Grantors' development of the Property and shall promptly relocate any monitoring or testing equipment or other activities on the Property as requested by Grantors to accommodate Grantors' development activities on or around the Property. Buyer shall be responsible to repair any damage done to the Property arising from or relating to the entry upon or use of the property pursuant to this easement and restore the Property to its condition existing prior to Buyer's work.

12. The easement granted herein shall terminate simultaneously with the termination of any period of retained jurisdiction ordered by the Water Court with regard to the change of the Share from agricultural to municipal use. Buyer shall record in the real estate records of El Paso County, Colorado, a termination of easement at such time as the period of retained jurisdiction expires.

13. Grantors warrant that Grantors have good and marketable title to the Property and have full power and authority to execute this Agreement. This Agreement and the covenants set forth herein, shall burden, attach to and run with the Property, and shall be binding not only upon the Grantors, but also upon Grantors' heirs, successors and assigns and any other persons or entities which may acquire an ownership or leasehold interest in all or any portion of the Property. The terms and provisions of this Agreement shall not expire and shall be perpetual unless specifically released in writing by Buyer or its successors and assigns or as set forth herein. This Agreement may be enforced by Buyer or by any party having any right, title or interest in the water rights represented by the Share or by the State Engineer of the State of Colorado, at any time in any action at law or in equity.

14. All notices and other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by express courier, or by first class U.S. mail, postage prepaid. Notice delivered in person or by courier shall be effective upon such delivery; notice provided through U.S. mail shall be effective three days after deposit in the U.S. mail. Notice shall be given to the receiving Party at the following addresses or to such other address as such Party may have given to the other by notice pursuant to this paragraph:

If to Grantors:

Stephen B. Reamy
2470 Faulkner Place
Colorado Springs, CO 80916

Brian S. Reamy
11250 Deer Creek Road
Littleton, CO 80127

Lisa Reamy Heaton
9376 Autumn Ash Place
Highlands Ranch, CO 80126

If to Grantee:

Colorado Springs Utilities
c/o Chief Water Services Officer
US Mail Delivery:
P.O. Box 1103
Colorado Springs, CO 80947

Hand Delivery:
121 S. Tejon, 5th floor
Colorado Springs, CO 80903.

15. This Agreement constitutes the entire agreement between Parties with respect to the subject matter and supersedes all prior agreements and understandings, written or oral, with respect to the subject matter. This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, personal representatives, assigns and successors of the Parties hereto.

16. Each Party agrees to be responsible for its own liability incurred as a result of its participation in the Agreement. In the event any claim is litigated, each Party will be responsible for its own expenses of the litigation or other costs associated with enforcing this Agreement. No provision of this Agreement shall be deemed or construed to be a relinquishment or waiver of any kind of the applicable limitations of liability provided to Utilities by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, and Article XI of the Colorado Constitution.

17. The failure of a Party to insist in one or more cases upon the strict observation of any of the terms of this Agreement shall not be construed as a waiver or relinquishment in any future case of any of the terms of this Agreement.

18. This Agreement cannot be modified orally, but only by an amendment in writing signed by the Parties. The captions of this Agreement are for convenience of reference only, are not a part of this Agreement, and shall not define or limit any of the terms of this Agreement. The exhibits to this Agreement are incorporated into the Agreement. Unless the context clearly

requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine, and neuter adjectives include one another. Each Party to this Agreement has engaged legal counsel, or has been advised to engage legal counsel, to negotiate, draft and/or review this Agreement. Therefore, in the construction and interpretation of this Agreement, the Parties acknowledge and agree that it shall not be construed against any Party on the basis of authorship.

19. The Agreement will be recorded in the records of the Clerk and Recorder of El Paso County, Colorado.

20. This Agreement shall be governed by the laws of the State of Colorado in all respects, including matters of validity, construction, performance, and enforcement. Venue on any action arising out of this Agreement will be proper only in the District Court of El Paso County, State of Colorado.

GRANTORS:

Stephen B. Reamy

Brian S. Reamy

Lisa Reamy Heaton, a/k/a
Lisa A. Reamy

ACKNOWLEDGMENT

STATE OF COLORADO)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, by Stephen B. Reamy.

WITNESS my hand and official seal.

NOTARY PUBLIC

My commission expires: _____

STATE OF COLORADO)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, by Brian S. Reamy.

WITNESS my hand and official seal.

NOTARY PUBLIC

My commission expires: _____

STATE OF COLORADO)
)ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, by Lisa Reamy Heaton, a/k/a Lisa A. Reamy.

WITNESS my hand and official seal.

NOTARY PUBLIC

My commission expires: _____

Accepted and agreed to by and on behalf of BUYER:

Title

Date: _____, 2015.