

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“PSA”) is entered into and is effective as of the Effective Date (as defined in Section 2.7 below) by and between the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise, Colorado Springs Utilities (“Utilities”), and Alan Dean (“Seller”). Utilities and Seller may be referred to herein, individually, as a “Party”, and, collectively, as the “Parties”.

RECITALS

A. WHEREAS, Seller owns certain real property in Bent County, Colorado, as legally described in Exhibit A, hereto (the “Farm”);

B. WHEREAS, the Farm has been historically flood irrigated with, among other things, four hundred and fifty (450) shares of capital stock in the Fort Lyon Canal Company (“FLCC”) currently represented by stock certificate number 9803 (“FLCC Shares”);

C. WHEREAS, Seller has installed center pivot sprinklers, including support infrastructure (e.g., ponds, pumps, piping, etc.) on the Farm (the “Center Pivot Sprinklers”);

D. WHEREAS, with the Center Pivot Sprinklers installed, Seller will no longer irrigate the parcel corners on the Farm (the “Parcel Corners”) with water attributable to the FLCC Shares;

E. WHEREAS, because Seller will no longer irrigate the Parcel Corners with water attributable to the FLCC Shares, one hundred and eleven (111) of the FLCC Shares, including the historical consumptive use (“HCU”) of these shares, (the “Corner Shares”) will be available for other uses;

F. WHEREAS, because the Corner Shares are available for other uses, Seller desires to sell to Utilities and Utilities desires to purchase the Corner Shares according and subject to the terms and conditions of this PSA;

G. WHEREAS, Utilities is, among other things, a municipal water utility, and as such has a need and necessity for the Corner Shares for the purposes of supplying water for municipal and other uses to, among others, the inhabitants of the City of Colorado Springs, Colorado and other water customers;

H. WHEREAS, in order for Utilities to receive the benefit of the water derived from the Corner Shares, Utilities will need to construct and operate return flow and augmentation facilities to ensure that the water attributable to the Corner Shares can be delivered to the FLCC ditch system and/or the Arkansas River and its tributaries, as Utilities determines for municipal use by Utilities and the replacement of historical return flows;

I. WHEREAS, as further consideration for the Purchase Price, the Parties will agree upon the terms of Dry-Up Covenants as defined in Section 7.1.2 of this PSA and Seller agrees to

convey to Utilities Return Flow and Augmentation Facility Easements as defined in Section 7.1.3 of this PSA;

J. WHEREAS, the Corner Shares, and the Return Flow and Augmentation Facility Easements, are collectively referred to as the “Purchased Property”.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

TERMS AND CONDITIONS

1. The above recitals are hereby incorporated into the terms and conditions of this PSA as if fully set forth herein.

2. Definitions. For the purposes of this PSA, the following terms shall have the following meanings, unless the context clearly requires otherwise:

2.1 “Closing” means those activities described herein that are required to complete the purchase and sale of the Purchased Property from Seller to Utilities.

2.2 “Closing Date” means on or before August 16, 2024, unless otherwise mutually agreed in writing by the Parties, and is the date by which all Closing activities will be completed.

2.3 “Closing Deliveries” means those items Seller and Utilities are required to deliver to the Title Company under Sections 7.4 and 7.5, respectively.

2.4 “Corner Shares” means one hundred and eleven (111) of the FLCC Shares that will be assigned to the Parcel Corners.

2.5 “Corner Share Water Rights” means the water rights represented by the Corner Shares and all beneficial rights, title, and interests in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates, and all other assets, rights, title, or interests derived from or represented by the Corner Shares.

2.6 “Dry-Up Covenant” means a legal document signed by Seller attesting that the Corner Shares and Corner Share Water Rights are no longer required, and will no longer be used, for irrigation or watering of the Farm and that the portions of the Farm no longer irrigated by the Corner Shares are dried-up, as necessary.

2.7 “Effective Date” means the last date on which this PSA has been mutually executed by Utilities and Seller.

2.8 “FLCC” shall mean The Fort Lyon Canal Company, a Colorado non-profit corporation.

2.9 “Purchase Price” means the price agreed to between Utilities and Seller in Section 4 of this PSA for the purchase and sale of the Purchased Property.

2.10 “Title Company” means a third party selected by Utilities pursuant to Section 7.6 below who will hold funds and documents in pending completion of Closing, in accordance with this PSA.

3. Sale and Purchase. Subject to the terms and conditions of this PSA, Seller hereby agrees to sell, and Utilities agrees to purchase the Purchased Property, and any other interests in real or personal property of Seller represented by or derived from ownership of the Purchased Property.

4. Purchase Price.

4.1 Purchase Price. The Purchase Price for Purchased Property Seller’s covenants and obligations hereunder to be paid at Closing, subject to the terms and conditions of this PSA, is:

Corner Shares Price Per Share:	\$6,500.00
Irrigation Improvement Price Per Share:	\$1,500.00
Number of Corner Shares:	111
Total Purchase Price for Corner Shares and Irrigation Improvements:	\$888,000.00

Utilities shall deliver the Total Purchase Price for Corner Shares and Irrigation Improvements (the “Total Purchase Price”) to the Title Company to be held in an escrow account (the “Escrow Account”) on or before the Closing Date. On the Closing Date, provided the PSA has not been terminated in accordance with Sections 5.1, 5.2, 5.3, 6.3, 6.4, 7.2, and 15 (or becomes null and void pursuant to Section 16), and upon satisfaction of all Closing Contingencies in Section 7.1 and receipt of Seller’s Closing Deliveries in Section 7.4 , the Title Company shall remit the total Purchase Price to Seller, subject to satisfaction of any financial encumbrances as required to deliver marketable title, free, clear and unencumbered, to the Corner Shares and the Corner Share Water Rights to Utilities.

5. Title.

5.1 Corner Shares. The Parties agree that in order to consummate the transaction contemplated by this PSA, marketable title to the Corner Shares must be held by Seller so that Seller may convey marketable title to the Corner Shares to

Utilities free, clear, and unencumbered, and Utilities' obligations under this PSA are specifically conditioned and contingent on Seller possessing such title prior to Closing. Notwithstanding any other provisions of this PSA, if Seller does not have such marketable title in the Corner Shares as of the Closing Date, Utilities may terminate this PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

5.2 Dry-Up Covenants. The Parties agree that Seller must have sufficient right, title, and interest in the Farm so as to be able to deliver sufficient and appropriate Dry-Up Covenants that will be subject only to those matters of title approved by Utilities prior to Closing. Notwithstanding any other provisions of this PSA, if Seller is unable to deliver satisfactory Dry-Up Covenants, as required in Section 7.1.2, to Utilities as of the Closing Date, Utilities may terminate this PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

5.3 Farm. The Parties agree that in order to consummate the transaction contemplated by this PSA, Seller must own the Farm in fee simple so that the Center Pivot Sprinklers can be installed, the Parcel Corners can be removed from irrigation, and the necessary easements, encumbrances and restrictions can be placed on the Farm, and that Utilities' obligations under this PSA are specifically conditioned and contingent on Seller possessing such title prior to Closing. Notwithstanding any other provisions of this PSA, if Seller does not own the Farm in fee simple as of the Closing Date, Utilities may terminate this PSA by providing notice to Seller. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

6 Due Diligence.

6.1 Due Diligence. Utilities shall have up to and including July 16, 2024 (the "Due Diligence Period") to perform, at its expense, due diligence on the Purchased Property and the Farm ("Due Diligence"). Notwithstanding the foregoing, Utilities may extend the Due Diligence Period one time at its sole discretion by thirty (30) days upon notice to Seller at least ten (10) days prior to the expiration of the Due Diligence Period. Due Diligence may include, but is not limited to, investigating the title to the Corner Shares and the Farm; investigations and inspections of the Farm; appraisal of the Corner Shares; HCU analysis of the Corner Share Water Rights; review of encumbrances against the Corner Shares and the Farm; review of contracts related to the Corner Shares or the Farm; and environmental site assessments of the Farm. To the extent they are able, Seller shall provide Utilities, its agents and contractors, reasonable access to the Farm to perform such Due Diligence.

6.2 Due Diligence Documents. On or before the date that is ten (10) days after the Effective Date, Seller shall deliver to Utilities complete and legible copies of all documents or reports in the possession of Seller or Seller's agents, engineers, and/or

consultants, or under Seller's control, or otherwise reasonably available to Seller or Seller's agents, engineers, and/or consultants including without limitation the following to the extent that such documents exist: (1) a complete copy of the certificates for the Corner Shares (front and back); (2) a legal description of the Farm and the Parcel Corners, if available; (3) for any share or share certificate of the Corner Shares that is held or issued in the name of Seller or of some other person or entity, proof of Seller's authority to assign and convey the other named person's or entity's interest in the Corner Shares; (4) for any share or share certificate of the Corner Shares that is held or issued in the name of Seller and of an encumbrance holder, a copy of any deed of trust, mortgage, pledge, lien, or other encumbrance on the Corner Shares, together with (a) proof of the prior release of the encumbrance on the Corner Shares, or (b) a written statement from the encumbrance holder stating (i) the amount of any payment required to be made to allow the release of the encumbrance on the Corner Shares, and (ii) that it will release any encumbrance upon the Corner Shares at Closing; (5) documents describing the Corner Share Water Rights; (6) such other documents as Utilities may reasonably request to prove that Seller owns the Corner Shares and can deliver the same free and clear of all encumbrances at Closing; (7) a copy of any and all documents (such as leases) establishing or identifying possessory interests held by third parties in the Farm, the Corner Shares or the Corner Share Water Rights that are in Seller's possession, and written disclosure of any such document of which Seller have knowledge but not possession; (8) information and documents concerning the historical use of the Corner Share Water Rights including the historical consumptive use and the historical stream depletions of such water rights; (9) any title commitments, title opinions, title abstracts, surveys, drawings, legal descriptions, aerial or other photographs related to the Corner Shares, the Corner Share Water Rights, and/or the Farm; (10) any reports evaluating the Corner Shares, the Corner Share Water Rights, or any diversion records or engineering reports, court decrees, administrative agency documents, or appraisals pertaining to the Corner Shares or the Corner Share Water Rights; (11) any operating agreements and/or ditch agreement related to the Corner Shares or Corner Share Water Rights; (12) any and all communications regarding the Corner Shares and the Corner Share Water Rights, with a ditch company or a state agency; and (13) any engineering reports, engineering design, cost estimates, bids, or other documentation regarding the infrastructure used with respect to the Corner Shares, or the Corner Share Water Rights, (collectively the "Due Diligence Documents"). The Due Diligence Documents shall also include any information known to Seller or in Seller's control or possession or which may be reasonably obtained by Seller related to future or expectant encumbrances on the Corner Shares and/or the Farm and encumbrances that will come into being upon Seller taking title to the Farm, and the Corner Shares. During the Due Diligence Period, Seller shall cooperate with Utilities to have a land survey plat of the Farm and an as built survey of the Center Pivot Sprinklers prepared by a professional land surveyor at Utilities cost at least thirty (30) days prior to the expiration of the Diligence Period. The surveys will be considered Due Diligence Documents. In addition, if Seller comes into possession or control or receives knowledge of any Due Diligence Documents that have not been disclosed to Utilities, Seller will provide copies of such Due Diligence Documents to Utilities within three (3) business days of such Due Diligence Documents coming into Seller's possession and/or control. Seller will request copies of any such information not within Seller's

possession or control within three (3) business days of becoming aware of such Due Diligence Documents.

6.3 Objections. Utilities shall have the right to object, in its sole subjective discretion, by providing written notice to Seller (each a “Notice of Objection”) to any title defect or other unsatisfactory condition revealed by Due Diligence and/or the Due Diligence Documents (each an “Objection”) before expiration of the Due Diligence Period or if Seller provides a Due Diligence Document to Utilities after the expiration of the Due Diligence Period, then Utilities may provide such Notice of Objection within ten (10) business days of receiving such Due Diligence Document(s) from Seller. In the event of a Notice of Objection, Seller shall have ten (10) days from the receipt of notice within which to take such actions (if any) which Seller deems appropriate to cure such Objections. Utilities’ failure to deliver a Notice of Objection within the time periods described in this Section 6.3 shall be deemed to establish Utilities’ satisfaction with any title commitments, surveys, Due Diligence and Due Diligence Documents. If at the end of Seller’s cure period Seller has not corrected to Utilities’ satisfaction the Objections, Utilities may (1) waive its Objections and consummate the transaction without a reduction in the Purchase Price, (2) extend Closing for a reasonable period of time for Seller to correct the Objections, if Seller confirms to Utilities in writing that Seller intends to continue to diligently pursue the necessary corrective action or (3) terminate this Agreement. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

6.4 Termination during Due Diligence Period. Notwithstanding any other provisions of this PSA, Utilities, in its sole subjective discretion, may terminate this PSA at any time during the Due Diligence Period by providing notice to Seller prior to the expiration of the Due Diligence Period. In the event of such termination, Utilities and Seller shall be relieved of all obligations under this PSA.

7 Closing.

7.1 Closing Contingencies. The Parties agree that in order to consummate the transaction contemplated by this PSA, the following must occur (collectively the “Closing Contingencies”) prior to or at Closing:

7.1.1 Resolution of Objections: A written Resolution of Objections to any Notice of Objections provided by Utilities, if any.

7.1.2 Dry-Up Covenants. Utilities and Seller will enter into dry-up covenants (the “Dry-Up Covenants”) substantially in the form attached hereto as Exhibit B. The Dry-Up Covenants will be recorded in the real property records of Bent County, Colorado.

7.1.3 Return Flow and Augmentation Facility Easements. Seller shall grant easements to Utilities, in a form substantially the form attached hereto as Exhibit C (the “Return Flow Easements”). In the event the location of the Return Flow Easements cannot be determined prior to Closing, the Return Flow Easements will be blanket

easements covering the entire Farm parcel(s) and will include a mechanism and timeline for reducing the size of the Return Flow Easements to locations on the Farm where the facilities will be located once built. The Return Flow Easements will be recorded in the real property records of Bent County, Colorado.

7.1.4 FLCC Approval. The transfer of ownership of the Corner Shares from Seller to Utilities as contemplated by this PSA must be approved in writing by the FLCC Board of Directors, in their discretion, to the extent that the FLCC articles of incorporation, bylaws, or other rules and regulations give the FLCC Board of Directors approval authority over the transaction contemplated by this PSA.

7.1.5 City Council Approval. The transaction contemplated by this PSA must be approved by the City Council of the City of Colorado Springs, Colorado (“City Council), in the City Council’s sole discretion, by resolution prior to Closing.

7.1.6 Historic Consumptive Use Analysis. Utilities will conduct an analysis of the HCU of the Corner Shares and the Corner Share Water Rights, as part of its Due Diligence. Utilities, in its sole discretion, must be satisfied with the results of this historic consumptive use analysis of the Corner Shares and the Corner Share Water Rights to complete the transaction contemplated by this PSA.

7.2 Utilities’ Obligation to Close. Utilities’ obligation to close the transaction contemplated in this PSA is contingent on the satisfaction or Utilities’ waiver of the Closing Contingencies. If these Closing Contingencies are not met or waived by Utilities as of the Closing Date, then the Parties may agree to delay Closing for a mutually agreed upon period of time, or Utilities may terminate this PSA by providing notice to Seller in which case neither Party shall have any further obligations under this PSA. In the event not all Closing Contingencies are satisfied, Utilities shall provide written notice of the satisfaction, rejection, or waiver of each of the Closing Contingencies not yet satisfied on or before the date that is two (2) business days prior to the Closing Date. Utilities’ failure to provide notice with respect to any of the unsatisfied Closing Contingencies shall be deemed Utilities’ waiver of such unsatisfied Closing Contingencies. In the event one or more Closing Contingencies is not satisfied or waived (or deemed waived) on or before the Closing Date, this PSA shall terminate and neither Party shall have any further obligations under this PSA.

7.3 Closing Date. The Closing on this PSA shall occur at the office of the Title Company (or other mutually agreeable location) on the Closing Date as defined in paragraph 2.2 above.

7.4 Seller Closing Deliveries. On or before the Closing Date, Seller shall deliver or cause to be delivered to the Title Company the following items:

7.4.1 Signed special warranty deed for the Corner Shares and any other real property interest represented by the Corner Sharers from Seller free and clear of any

liens and encumbrances, except those permitted by Utilities, to Utilities substantially in the form attached hereto as Exhibit D (the “Special Warranty Deed”).

7.4.2 As required by FLCC bylaws, the original certificate(s) numbered 9803 for the Shares, with the 111 Corner Shares endorsed to Utilities.

7.4.3 One or more separate share assignments from Seller to Utilities for the Corner Shares substantially in the form attached hereto as Exhibit E, and acceptable to FLCC, which assignment shall, if necessary, include the appointment of an officer of FLCC as attorney-in-fact with authority to change the ownership records of FLCC with respect to the Corner Shares (the “Corner Share Assignments”).

7.4.4 Either (a) valid releases of any encumbrances on the Corner Shares and the Corner Share Water Rights; (b) valid joinders subordinating the encumbrances to Utilities’ interest in such shares and water rights; or (c) newly issued stock certificates without any such encumbrances. The releases or joinders must be in a form reasonably acceptable to Utilities.

7.4.5 Either (a) valid releases of any encumbrances on the Farm, or (b) valid joinders subordinating the encumbrances to the Return Flow Easements and Dry-Up covenants. The releases or joinders must be in a form reasonably acceptable to Utilities.

7.4.6 Signed Dry-Up Covenants.

7.4.7 Signed Return Flow Easements.

7.4.8 Any assignment and assumption agreements necessary to assign existing easements from Seller to Utilities executed by the individuals required and authorized to execute such agreements, including any required consents of property owners.

7.4.9 Other such affidavits, instruments, agreements or other documents that may be reasonably required to complete the transaction contemplated by this PSA.

7.5 Utilities’ Closing Deliveries. On or before the Closing Date, Utilities shall deliver or cause to be delivered to the Title Company the following items:

7.5.1 The Purchase Price in good funds.

7.5.2 The Special Warranty Deed (as defined above) countersigned by the individuals authorized to accept such deed from Seller.

7.5.3 The Corner Share Assignments and assumption agreements signed by the individuals authorized to accept such assignments from Seller.

7.5.4 The Dry-Up Covenants countersigned by the individuals authorized to accept such covenants from Seller.

7.5.5 The Return Flow Easements countersigned by the individuals authorized to accept such easements from Seller.

7.5.6 Any assignment and assumption agreements necessary to assign existing easements from Seller to Utilities countersigned by the individuals authorized to execute such agreements.

7.5.7 Other such affidavits, instruments, agreements or other documents that may reasonably be required to complete the transactions contemplated under this PSA.

7.6 **Title Company**. Utilities will select the Title Company who shall be a third-party commercially reputable title company or financial institution. The Closing Deliveries will be made to the Title Company. Seller and Utilities will cooperate with the Title Company to enable the Title Company to prepare and deliver documents required for Closing including, without limitation, delivering to the Title Company any and all affidavits, instruments, and documents as are customarily required in connection with a transfer of water rights and real property in Bent County, Colorado.

8 **Assessments**. Seller agrees to fully pay and continue to pay any and all assessments imposed by FLCC on the Corner Shares up to and including the Closing Date, even if such assessments are not due until after Closing. Any unpaid assessments incurred prior to the Closing Date and remaining unpaid at the time of Closing, including any late payment fees and interest, if any, shall be withheld from the Purchase Price and paid to FLCC by the Title Company. Utilities shall assume responsibility for any and all assessments imposed by FLCC on the Corner Shares after the Closing Date.

9 **Change of Water Rights**. Utilities intends to seek administrative approval of a temporary change of use or file a water rights change case in water court for the Corner Share HCU or apply to the water court to change the Corner Share Water Rights HCU, which will have the primary purpose of adding as permitted uses of the Corner Share Water Rights all beneficial uses for which Utilities may use the water, and to prosecute an exchange application in water court (in the same or different proceedings) to exchange or otherwise use the applicable HCU in Utilities' municipal system. Utilities shall be solely responsible for all costs associated with the proceedings required to obtain any required approvals, permits, or decrees to permit it to change the type, time, and place of use of the Corner Share Water Rights ("Change Proceedings"). Seller shall have the right to participate, at its own expense, in any Change Proceedings, provided, however, that Seller will cooperate fully with Utilities in any such proceedings, and will not take any action to impair, impede, or interfere with Utilities' ability to obtain any such required authorization.

10 **Regulatory Approvals**. Seller acknowledges that Utilities' use of the Corner Shares may require approval from the FLCC, Bent County, or other federal, state, and/or local government authorities. Seller will cooperate fully with Utilities to obtain any necessary FLCC,

Bent County, and other regulatory and administrative approvals and will not take any action to impair, impede, or interfere with Utilities' ability to obtain any required approval. Seller's obligations pursuant to this Section 10 shall survive and be enforceable after Closing.

11 **Shared Lateral Agreements.** Seller acknowledges and agrees that the Corner Shares as well as other FLCC shares that are owned by Utilities may be delivered through a shared lateral ditch that crosses and/or abuts the Farm. Seller further acknowledges that Utilities may seek to remove the Corner Shares and the other FLCC shares it owns from laterals or otherwise utilize laterals to transport the water associated with said shares to other properties or the Arkansas River, which may require Utilities to enter into agreements with Seller, third parties who utilize laterals and/or the FLCC. Seller will cooperate and negotiate with Utilities in good faith to obtain any such agreements, and/or agreements to repair, maintain, and or improve laterals so long as the proposed agreements do not unduly impact Seller's Farm, farming operations, or water rights. Seller's obligations pursuant to this Section 10 shall survive and be enforceable after Closing.

12 **Commissions.** Utilities and Seller both represent and warrant to each other that they have not entered into an agreement with a broker or other party requiring the payment of fees or commissions with respect to the transaction contemplated by this PSA. Notwithstanding the foregoing, Seller shall be responsible for any brokers', finders', or similar fees from any third-party claiming under Seller and Utilities shall be responsible for any brokers', finders', or similar fees from any third-party claiming under Utilities.

13 **Transfer Fee and Closing Costs.** Utilities will pay the transfer costs imposed by FLCC with respect to the transfer of the Corner Shares. The Parties shall share equally in the payment of all closing costs, including Title Company costs, and recording fees.

14 **Warranties and Representations of Seller.** In addition to Seller's other representation and warranties contained in this PSA, Seller hereby represents, warrants, and agrees, jointly and severally, that:

14.1 Seller has full power to enter into this PSA and to carry out the transactions contemplated by this PSA.

14.2 This PSA and its execution and delivery to Utilities will not result in a breach of, or constitute a default under, any indenture, loan or credit agreement, mortgage, deed or other agreement of Seller to which it is a party or otherwise bound. Seller affirms its representations and warranties made elsewhere in this PSA, including those contained in the recitals to this PSA.

14.3 As of the Effective Date, Seller is the owner of the Farm in fee simple, and the FLCC Shares.

14.4 There is no litigation pending or threatened that in any manner affects the Corner Shares.

14.5 The execution and delivery of this PSA and the performance of all obligations hereunder by Seller does not and will not require the consent of any third party other than FLCC.

14.6 Seller will not enter into any agreements or contracts concerning the Corner Shares between the Effective Date and Closing or termination of this PSA that will impact Seller's ability to consummate the transaction contemplated herein.

14.7 By proceeding with Closing the transaction contemplated herein, Seller will be deemed to have represented, warranted, and agreed, jointly and severally, that the following are true and accurate as of the Closing Date:

14.7.1 Seller owns the Farm in fee simple.

14.7.2 Seller is the sole owner of the Corner Shares free and clear of any encumbrances.

14.7.3 The Corner Shares are not subject to a conservation easement or any other limitations or restrictions not stated in the FLCC articles of incorporation, bylaws, and/or rules and regulations.

14.7.4 No third-party claims any right, title, or interest in or to all or any portion of the Corner Shares or Corner Share Water Rights.

14.7.5 Seller has received no notice of any violations of any law, code, ordinance, rule or regulation or insurance policy affecting the Corner Shares.

14.7.6 There is no litigation pending or, to the best of Seller's knowledge, threatened that in any manner affects the Purchased Property.

15 **Seller Covenants**. Between the Effective Date and the Closing Date, Seller shall promptly (and in all cases, prior to the Closing) notify Utilities in writing of any fact, event, circumstance or action that is or becomes known to Seller that: (a) if known on the Effective Date, would have been required to be disclosed; or (b) the existence or occurrence of any circumstance which would cause Seller's representations or warranties under this PSA to not be correct or complete. Utilities may elect within three (3) business days after receipt of Seller's notice under this Section, but prior to the Closing, to terminate this PSA by giving notice to Seller (and the Title Company as applicable). In the event Utilities elects to terminate the PSA, the Parties shall have no further obligation to each other under this PSA.

16 **Appropriations**. This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any

financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term “appropriation” shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

- 17 **Notices.** Any and all notices, requests, demands, or other communications (collectively, “Notices”) under this PSA shall be in writing and given by (1) an established express delivery service that maintains delivery records requiring a signed receipt; (2) hand delivery; or (3) certified or registered mail, postage prepaid, return receipt requested to the Parties at the following address, or at such other address that the Parties may designate by Notice in the above manner:

To Utilities:

Colorado Springs Utilities
ATTN: Manager, Water Resources
P.O. Box 1103, Mail Code 1825
Colorado Springs, CO 80947-0950

With copies to:

City Attorney’s Office – Utilities Division
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575

To Seller:

Alan Dean
31452 County Road 12
Las Animas, CO 81054

- 18 **Publicity.** The Parties (including any representatives, agents or affiliates) shall not issue any press release, statement, or other public communication concerning the transaction contemplated herein without the prior written consent of the other Party.

- 19 **Amendment.** This PSA may be extended, modified, amended, or changed, in whole or part, only by written amendment duly authorized and executed by both Parties with the same formality as this PSA.

- 20 **Waiver.** Any waiver of any breach of any provision of this PSA by any Party shall not constitute a continuing waiver of any subsequent breach of either the same or any other provision of this PSA.

21 **Entire Agreement.** This PSA represents the entire agreement of the Parties with respect to the purchase and sale of the Corner Shares and neither Party has relied upon any fact or representation not expressly set forth herein. All prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof, are merged in this PSA.

22 **Headings for Convenience Only.** Section headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this PSA.

23 **Binding Effect and Assignability.** This PSA and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the Parties hereto and their respective representatives, heirs, and assigns, if any. Seller may not assign their rights or delegate their duties under this PSA without the prior written consent of Utilities, which Utilities may withhold in its sole discretion. Utilities shall be entitled to assign its rights and obligations under this PSA without the consent of Seller.

24 **Governing Law and Venue.** This PSA and its application shall be construed in accordance with the laws of the State of Colorado and the Charter, City Code, Ordinances, Rules and Regulations of the City of Colorado Springs. Should it be necessary to institute court proceedings concerning this PSA, venue shall be in the District Court for El Paso County, Colorado.

25 **Survival of Representations.** Each and every representation, warranty, covenant, promise, and payment contained in this PSA shall not merge in any deed, assignment, covenant, escrow agreement, easement, lease or any other document, but shall survive at the Closing, and be binding and obligatory upon each of the Parties hereto.

26 **Multiple Originals.** This PSA may be executed in any number of counterparts, each of which shall be deemed an original, but all of which constitute the same agreement.

27 **Interpretation.** Except as otherwise provided herein, nouns, pronouns, and variations thereof shall be deemed to refer to the singular or plural, and masculine or feminine, as the context may require. Any reference to policy, procedure, law, regulation, rule, or document shall mean such policy, procedure, law, regulation, rule, or document as it may be amended from time to time.

28 **Defaults and Remedies.** In the event Seller fails to perform their obligations under this PSA, Utilities may avail itself of any legal and/or equitable remedies available, including without limitation the remedy of specific performance. In the event Utilities fails to perform its obligations under this PSA, Seller may avail themselves of any legal remedies available. Provided, however, that both Parties expressly waive the right to seek consequential or punitive damages.

29 **No Attorney's Fees and Costs.** In the event of any litigation, mediation, or other dispute resolution proceeding arising out of or related to this PSA, each Party agrees to be

responsible for its own attorney's fees and other professional fees, costs, and expenses associated with such proceedings.

30 **Non-Severability; Effect of Invalidity.** Each Section of this PSA is intertwined with the others and not severable unless by mutual consent of Utilities and Seller or as provided for below. If any provision or portion of this PSA or the application thereof to any person or circumstance shall, at any time or to any extent, be held invalid or unenforceable for any reason by a court of competent jurisdiction, and the basis of the bargain between the Parties hereto is not destroyed or rendered ineffective thereby, the remainder of this PSA, or the application of such provisions to persons or circumstances other than those which are held invalid or unenforceable, shall not be affected thereby.

31 **Intent of Contract.** This PSA is intended to describe the rights and responsibilities of and between Utilities and Seller and is not intended to, and shall not be deemed to, confer rights upon any person or entities not signatories hereto, or to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of Utilities or any governmental entity not a party hereto.

32 **Non-Business Days.** If any date for any action under this PSA falls on a Saturday, Sunday, or day that is a "holiday" as such term is defined in C.R.C.P. 6, then the relevant date shall be extended to the next business day.

33 **Confidentiality.** Seller acknowledges that Utilities is a public entity subject to the provisions of the Colorado Open (Public) Records Act, C.R.S. § 24-72-201 *et seq.*, Any confidential and/or proprietary information that either Party discloses to the other with respect to this PSA shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure.

34 **Exhibits.** The exhibits attached to this PSA are hereby incorporated into this PSA.

35 **Counterparts and Electronic Signatures.** This PSA and other documents/agreements required thereby may be executed in multiple counterparts by the parties. All counter parts so executed shall constitute one agreement that is binding on all Parties. Each counterpart shall be deemed an original of this PSA. Documents executed, scanned and signed electronically shall be deemed original signatures for the Purposes of this PSA.

36 **Attorney Representation.** Each Party has been represented by and has had an opportunity to consult legal counsel in connection with the negotiation and execution of this PSA. No provision of this PSA shall be construed against or interpreted to the disadvantage of either Party by reason of such Party having drafted or being deemed to have drafted such provision.

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IN WITNESS WHEREOF, the Parties have executed this PSA as of the Effective Date defined above.

**THE CITY OF COLORADO SPRINGS, COLORADO
ON BEHALF OF ITS ENTERPRISE
COLORADO SPRINGS UTILITIES**

Travas Deal

Travas Deal (May 24, 2024 09:23 MDT)

Travas Deal
Chief Executive Officer

Date: May 24, 2024

APPROVED AS TO FORM:



City Attorney's Office - Utilities Division

SELLER:



Alan Dean

5-1-2024

Date:

Exhibit A
Legal Description of Farm

Township 22 South, Range 52, West of the 6th P.M.

Section 22: S/2NW/4, N/2SW/4, SE/4SW/4, W/2SE/4, SW/4NE/4,
EXCEPT a tract of land containing 20 ACRES, more or less, as described in Deed between
Edward P. Dean, Grantor, and the State of Colorado, for the use and benefit of the Department of
Natural Resources, acting by and through the Wildlife Commission and Division of Wildlife,
Grantee, recorded April 28, 1983 in Book 370, Page 305, Bent County, Colorado Records.

Section 27: E/2

EXHIBIT B

Form Dry-Up Covenants

DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT

THIS DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT (“Agreement”) is entered into this _____ day of _____, 2024, by and between Alan Dean (“Dean”), for himself and his successors, heirs, and assigns, as Grantor, and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation on behalf of its enterprise, Colorado Springs Utilities (“Utilities”), its successors, heirs, and assigns, as Grantee (together, the “Parties”).

Recitals

WHEREAS, Dean owns certain real property in Bent County, Colorado, legally described on Exhibit A, attached hereto (the “Farm”);

WHEREAS, the Farm was historically flood irrigated with, among other things, 450 shares of capital stock in The Fort Lyon Canal Company, a Colorado non-profit corporation (“FLCC”), currently represented by stock certificate number 9803 (the “FLCC Shares”);

WHEREAS, Dean has installed center pivot sprinklers, including support infrastructure (e.g., ponds, pumps, piping, etc.), which will be used to irrigate the Farm (the “Center Pivot Sprinklers”);

WHEREAS, with the Center Pivot Sprinklers installed, Dean will no longer irrigate the corners of the Farm (the “Parcel Corners”) with water attributable to the FLCC Shares.

WHEREAS, Dean and Utilities entered into that certain purchase and sale agreement signed by the Parties on _____, 2024, under which Dean agreed to sell and Utilities agreed to purchase one hundred and eleven (111) of the FLCC Shares which were previously utilized to irrigate the Parcel Corners (the “Corner Shares”);

WHEREAS, Dean and Utilities enter into this Agreement as additional consideration for Dean’s sale of the Corner Shares to Utilities;

WHEREAS, concurrent with the execution of this Agreement, Dean has transferred and conveyed the Corner Shares to Utilities as part of the consummation of the Purchase and Sale Agreement;

WHEREAS, FLCC will issue new stock certificate(s) to Utilities to represent the Corner Shares;

WHEREAS, once the new stock certificate(s) have been issued, this Agreement will include or be amended to include the stock certificate number(s) associated with the Corner Shares;

WHEREAS, Dean acknowledges that Utilities intends to change the use of the Corner Shares to include all municipal and industrial uses in a change of water rights proceeding before the Water Court for Division 2 (the “Water Court Change Case”), and temporarily pursuant to a substitute water supply plan (“SWSP”) or interruptible water supply agreement (“IWSA”), Arkansas River Replacement Plan pursuant to Rule 14 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Groundwater in the Arkansas River Basin (“Rule 14 Plan”), and/or Compact Compliance Plan pursuant to Rule 10 of the Compact Rules Governing Improvements to Surface Water Irrigation Systems in the Arkansas River Basin in Colorado (“Rule 10 Plan”) approved by the Office of the State Engineer (collectively the “Water Court Approvals”);

WHEREAS, Dean further acknowledges that Utilities’ use of the Corner Shares may require approval (the “Regulatory Approvals”) from the FLCC, Bent County, or other federal, state, and/or local government authorities (collectively, the “Regulatory Authorities”);

WHEREAS, Dean further acknowledges that the Water Court Approvals and/or the Regulatory Approvals may require, as terms and conditions of such approvals that the Parcel Corners be dried up and revegetated; and

WHEREAS, Dean desires to grant Utilities the covenants contained herein (the “Covenants”) to affirm Dean’s agreement to permanently cease all use of the Corner Shares on the Parcel Corners, to confirm Dean’s obligation to dry-up and revegetate the Parcel Corners, and to provide for a right of entry and easements for the Regulatory Authorities, Utilities and its agents, and for Utilities’ successors and assigns, upon the Farm for the purposes of enforcing this Agreement and any Water Court Approvals or Regulatory Approvals.

NOW, THEREFORE, in consideration of Utilities’ purchase of the Corner Shares, Dean hereby covenants, agrees, and grants as follows:

Section 1. Real Covenant for Dry-Up.

(A) Dean covenants and agrees to cease irrigating the Parcel Corners with any of the remaining FLCC Shares after installation of the Center Pivot Sprinklers, except to the extent permitted by the terms of this Agreement. Furthermore, Dean agrees to cease any and all use of the Corner Shares for any purposes whatsoever after installation of the Center Pivot Sprinklers.

(B) Dean covenants and agrees that the Parcel Corners will not be irrigated, including for purposes of revegetation, with any source of water unless the water (a) is water available to Dean from sources other than the FLCC; and (b) is specifically authorized by a decree of the Water Court for Water Division No. 2, a SWSP or replacement plan, or well permit approved by the Colorado State Engineer. Dean shall provide Utilities with advance notice of its intent to irrigate the Parcel Corners under this subsection 1(B). If Dean continues to irrigate the Parcel Corners in accordance with this subsection, Dean shall control noxious weeds on the Parcel Corners in accordance with subsection 2(K) and plant a cover crop when the Parcel Corners are fallowed for one year or more.

(C) Dean shall comply with all terms and conditions included in the *Kansas v. Colorado* Operating Procedures for Administration of Parcels Claimed for Augmentation Credit (“*Kansas v. Colorado* Dry-Up Agreement”), a copy of which is attached as Exhibit B.

(D) Dean covenants and agrees that in addition to the dry-up requirements set forth above, Dean also shall meet any dry-up obligations imposed by any Water Court Approvals or Regulatory Approvals.

(E) Successful completion of dry-up of the Parcel Corners will be determined by Utilities in its reasonable discretion, or by the Regulatory Authorities as required by the Regulatory Approvals or other law. In the event the Water Court retains jurisdiction in the Water Court Change Case to certify successful completion of dry-up of the Parcel Corners as a condition of transferring the consumptive use credit available to Utilities for the Corner Shares, then the determination of whether dry-up of the Parcel Corners has been successfully completed will be made by the Water Court.

Section 2. Real Covenant for Revegetation.

(A) As used in this Agreement, the term “revegetation” means ground cover of plant life demonstrated to be, without irrigation, reasonably capable of sustaining itself under the climatic conditions, soils, precipitation and terrain prevailing on the Parcel Corners, with weeds adequately controlled.

(B) In the event Dean is irrigating the Parcel Corners in accordance with the terms and conditions in subsection 1(B) above, the revegetation obligations described in this Section 2 do not apply.

(C) Dean shall permanently discontinue irrigation of some portion or all of the Parcel Corners.

(D) Within 180 days of executing this Agreement, Utilities will confer with Dean regarding the intended future use of the dried-up Parcel Corners or portions thereof, including whether the dried up Parcel Corners or portions thereof will be used for development, pasture, or other uses. Utilities and Dean will determine whether the future use of the Parcel Corners, or portions thereof, being removed from irrigation will require the dried-up Parcel Corners, or portions thereof, to be revegetated in accordance with the terms of this Agreement. If Utilities determines revegetation is required or if revegetation is required by the Water Court Approvals or Regulatory Approvals, Utilities and Dean will coordinate in the development of a revegetation and weed control plan setting forth the requirements for revegetation of and noxious weed control on the dried-up portions of the Parcel Corners (the “Revegetation and Weed Control Plan”). The Revegetation and Weed Control Plan will be prepared by a qualified expert(s) chosen by Utilities in its sole discretion and expense and shall be in accordance with the requirements of any Water Court Approval or Regulatory Approval and at a minimum contain the information and requirements set forth in Exhibit C. Utilities shall establish revegetation and control noxious weeds on the Parcel Corners in accordance with the Revegetation and Weed Control Plan at its expense. Utilities and Dean agree to work cooperatively to establish revegetation and control

noxious weeds on the Parcel Corners in accordance with the revegetation and Weed Control Plan. Dean shall in no way be obligated to perform any work to establish revegetation or control noxious weeds on the Parcel Corners, however, after conferral with Utilities, Dean may agree to perform work to establish revegetation and control noxious weeds on the Parcel Corners in accordance with the Revegetation and Weed Control Plan, and Utilities shall reimburse Dean for the reasonable costs of such work. Dean shall not undertake any work in accordance with the Revegetation and Weed Control Plan before consulting with, and without Utilities Approval.

(E) To the extent that successful establishment and maintenance of revegetation may require water for an interim period, Utilities and Dean shall coordinate to provide such water. If the Parties agree to use Dean's water, Utilities shall reimburse Dean for the reasonable costs of such water, including the cost power for pumping any wells used by Dean to provide such water. If the Parties agree to use Utilities water, Utilities shall reimburse Dean for the reasonable costs to convey such water using Dean's infrastructure. Potential sources of such water are limited to those sources approved and used pursuant to subsection 1(B) above, or the Corner Shares. Dean agrees that any irrigation of the Corner Parcels for revegetation shall be accomplished using a metered irrigation system that is not the Center Pivot Sprinklers. Utilities will determine whether water is required for an interim period to establish and maintain revegetation. Until satisfaction of the requirements of the Revegetation and Weed Control Plan, neither Dean nor Utilities shall remove or alter laterals, headgates, or other structures necessary to accomplish irrigation of all or a portion of a Parcel Corner during the establishment of revegetation.

(F) No later than the end of the tenth growing season after irrigation for agricultural purposes has permanently ceased on the Parcel Corners or portion thereof (the "Revegetation Deadline"), revegetation shall be established by Utilities, and Dean shall maintain revegetation on the Parcel Corners in accordance with the Revegetation and Weed Control Plan. For revegetation to be "maintained" on the Parcel Corners, such revegetation must have been established for more than one growing season. Utilities shall pay all costs of revegetation. Dean shall pay all costs of weed control and maintaining revegetation except for the costs of any water required for establishing and maintaining revegetation in accordance with Section 2(E) of this Agreement.

(G) The species of grass or other plants used for revegetation may not include grasses or other plants defined as "noxious" under the provisions of the Colorado Noxious Weed Act, Article 5.5 of Title 35, C.R.S., and may not include alfalfa or other highly water-consumptive species.

(H) Dean covenants and agrees that in addition to the revegetation requirements imposed by this Agreement, Dean shall meet any lawful revegetation obligations imposed by any Water Court Approvals or Regulatory Approvals. If a decree is entered in the Water Court Change Case or a requirement imposed under a Regulatory Approval related to revegetation and weed control on the Parcel Corners that are not included in the Plan, the Parties shall negotiate in good faith regarding any amendments to the Plan.

(I) Successful satisfaction of the requirements of the Revegetation and Weed Control Plan will be determined by Utilities in the exercise of reasonable discretion, or the Water Court or other regulatory body, as applicable. The Revegetation Deadline may be extended by agreement

of the Parties upon a showing that efforts to establish and maintain revegetation have been materially hindered due to circumstances beyond the Parties' control, including fire, hail storms, wind storms, tornadoes, flooding, extreme drought and freezes after May 15 and before September 15 of any year from the year of execution of this Agreement and including the year of the Revegetation Deadline, so long as such extension is not in conflict with any Water Court Approval or Regulatory Approval.

(J) As an alternative to meeting the obligations imposed by this Section 2 or any Revegetation and Weed Control Plan, Dean may demonstrate to Utilities' satisfaction that the Parcel Corners have been developed with structures and improvements such that the Parcel Corners are not susceptible to erosion or noxious weeds.

(K) Once Utilities has completed revegetation of the Parcel Corners, Dean shall maintain the revegetation and may not engage in any land use practice that will kill all or a substantial or material part of the vegetation planted on the Parcel Corners for the purposes of revegetation. This prohibition includes any tillage, or other mechanical means to break the soil, cultivation, or grazing practices including, but not limited to, dry-land farming, that will kill all or a substantial or material part of the revegetation plantings growing on the land or other native plant cover. Upon completion of the revegetation, Dean will control noxious weed growth on the Parcel Corners, and shall do so in a manner that does not materially harm the revegetation plantings and the vegetative ground cover resulting from the revegetation and is in compliance with the Revegetation and Weed Control Plan and all Water Court Approvals and Regulatory Approvals.

(L) Dean may graze livestock on the revegetated land, but only pursuant to a grazing plan approved in advance by Utilities and the Regulatory Authorities to the extent required by the Regulatory Approvals or other law.

(M) Dean shall be liable to Utilities for any and all damages or costs incurred by Utilities, as a result of Dean's negligent destruction or failure to maintain the revegetation plantings.

(N) This Agreement shall not be interpreted to prohibit the subdivision of the Parcel Corners or the construction of buildings, residences, ponds, pumping forebays, water storage structures, or other improvements on the Parcel Corners.

Section 3. Continued Operation of the Farm.

(A) Dean covenants and agrees that in addition to the other requirements imposed by this Agreement, Dean shall continue to use the Farm for agricultural purposes.

(B) If Dean conveys a Conservation Easement pursuant to C.R.S. § 38-30.5-101 et seq., which contains the requirement that the Farm, and the remaining 339 FLCC Shares belonging to Dean and historically used to irrigate the Farm, shall continue to be operated solely for agricultural purposes, then the Parties will amend and re-record this Agreement to remove this Section 3. The Conservation Easement must at a minimum be perpetual in nature, encumber the entirety of the Farm and Dean's remaining 339 FLCC Shares, and be recorded in the Real

Property Records of Bent County, Colorado. The Conservation Easement must explicitly ratify Utilities property interests in the Farm including but not limited to this Agreement, and any future amendments to or restatements thereof. The Conservation Easement must be conveyed to an organization that is qualified to hold conservation easements under the laws of the State of Colorado. Pursuant to C.R.S. 38-30.5-104(5) Dean must give the FLCC Board of Directors sixty (60) days' notice in accordance with the articles of incorporation and bylaws of the FLCC before conveying a Conservation Easement which encumbers Dean's remaining 339 FLCC Shares. Dean shall provide Utilities an opportunity to review the Conservation Easement at least 120 days before conveyance, and Utilities shall have the opportunity to comment on the Conservation Easement. If, in Utilities sole discretion, the Conservation Easement extinguishes or frustrates Utilities' interest in the Farm, then Utilities shall not be required to amend this Agreement to remove this Section 3.

Section 4. Right of Entry and Easements.

(A) Dean hereby grants to Utilities, its successors, assigns, representatives, agents, and its invitees, including but not limited to, the Colorado Division of Water Resources, the Water Court, and any other regulatory or administrative body with jurisdiction over dry-up and revegetation of the Corner Parcels, including the Regulatory Authorities, a perpetual non-exclusive access easement to enter the Farm in order to access the Parcel Corners for the purpose of evaluating whether Dean has and continues to comply with its obligations under this Agreement, the Revegetation and Weed Control Plan, and any Water Court Approvals or Regulatory Approvals. The easement rights granted in this subsection include, the right to conduct site inspections; install and maintain piezometers, or lysimeters; perform soil evaporation and plant transpiration tests; and perform vegetative studies and surveys. Utilities, its successors, assigns, representatives, agents, and its invitees shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across the Farm for access to and from any established roads, highways, streets, or alleys, in order to perform Utilities rights under this Agreement. Utilities will provide Dean with reasonable notice prior to accessing or allowing its employees, contractors, representatives, or agents to access the Farm pursuant to this Section 4(A).

(B) The easements granted in subsection (A) entitle Utilities, its successors, assigns, representatives, agents, and its invitees to take all actions Utilities deems necessary to accomplish the dry-up and revegetation of the Parcel Corners including, without limitation, constructing drainage and conveyance ditches, monumenting dried-up acreage, revegetating with drought-resistant plants, removing alfalfa and other deep-rooted plants, trees, phreatophytes, and tamarisk, and removing and filling in all or portions of irrigation ditches and/or farm laterals. In the event that Dean fails to perform its obligations for dry-up and revegetation hereunder, as determined by Utilities in its reasonable discretion, Dean will reimburse Utilities for all expenses Utilities incurs, up to a maximum of \$200 per acre, to dry-up and revegetate the Parcel Corners, provided further, that this expense limitation does not include or apply to any costs Utilities may incur in relation to Dean's provision of water for revegetation purposes pursuant to subsection 2(E) above. Upon completion of all actions necessary for Utilities to accomplish the dry-up and revegetation of the Corner Parcels, Utilities shall provide Dean with an invoice for the expenses. Dean shall make payment on such invoice within 30 days of receipt.

(C) Utilities shall replace, repair, or reimburse Dean for the reasonable cost of replacement or repair of physical damage to Dean's improvements on the Parcel Corners, to the extent such damage is caused by Utilities' use of the Farm pursuant to this Agreement.

Section 5. General Provisions.

(A) This Agreement, with the burdens and benefits it imposes, is binding upon, touches and concerns, and will run with the Farm in perpetuity, and is forever enforceable against the Parties and their successors, heirs, and assigns.

(B) Dean warrants that it has good and marketable title to the Farm and has full right and lawful authority to make the covenants and grant the easements contained in this Agreement. Further, Dean warrants, promises, and agrees to defend Utilities in the exercise of Utilities' rights hereunder against any defect in Dean's title to the Farm or Dean's right to make the covenants and/or grant the easements in this Agreement. This Agreement may be enforced by Utilities or by any party having any right, title or interest in the water rights represented by the Corner Shares or by the State Engineer of the State of Colorado, at any time in any action at law or in equity, including, without limitation specific performance and injunctive relief.

(C) Dean is and will be entitled to use the Parcel Corners for any purpose not inconsistent with this Agreement including, but not limited to, the mining and removal of sand, gravel, and other materials; water storage and water delivery infrastructure, approved dry-land grazing; and recreational, residential, commercial, and industrial purposes.

(D) Notwithstanding anything else in this Agreement, Dean is prohibited from irrigating, using, developing, or conducting any activities on the Parcel Corners in any manner that reduces the consumptive use credit available to Utilities from the Corner Shares in the Water Court Change Case or any Water Court Approval.

(E) Dean shall reasonably cooperate with Utilities to demonstrate the dry-up and revegetation of the Parcel Corners, including but not limited to, providing affidavits or testimony at no cost to Utilities.

(F) Upon Utilities' transfer of the Corner Shares to any party, that party will succeed to Utilities' interest in this Agreement and will have the right to enforce the terms of the Agreement against Dean or Dean's successors in interest to the Farm.

(G) All recitals and attached exhibits to this Agreement are incorporated herein by this reference.

(H) Utilities will record this Agreement in the real property records of the Clerk and Recorder of Bent County, Colorado.

(I) 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 subsection:

FOR ALAN DEAN

Alan Dean
31452 County Road 12
Las Animas, CO 81054

FOR UTILITIES

Manager, Water Resources and Demand Management
Colorado Springs Utilities
P.O. Box 1103 Mail Code 1825
Colorado Springs, CO 80947

With a Copy to:

City Attorney's Office
Colorado Springs Utilities
ATTN: Utilities Division
P.O. Box 1575, MC 510
Colorado Springs, CO 80901-1575

(J) The failure of the Parties to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of Parties in any one or more instances to exercise any option, privilege, or right herein contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by the Parties of any default hereunder shall in any manner be construed as constituting a waiver of such default.

(K) This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, unless the dispute concerns a water matter within the water court's jurisdiction. In such a case, venue will be in the Water Court for Water Division 2.

(L) Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the parties hereto and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action or other right.

(M) The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

(N) This Agreement represents the entire agreement between the parties hereto regarding the matters contained herein and no additional or different oral representation, promise or agreement, oral or otherwise, shall be binding on any of the parties hereto with respect to the subject matter of this instrument, unless stated in writing explicitly referring to this Agreement and signed by the parties.

(O) In the event Dean fails to perform any of its obligations under this Agreement, Utilities may avail itself of any legal and/or equitable remedies available, including without limitation, the remedy of specific performance.

(P) This Agreement may be modified, amended, or changed, in whole or part, only by written amendment duly authorized and executed by both Parties. As set forth in the recitals, the Parties intend, and will cooperate, to amend this Agreement upon issuance of new stock certificates to Utilities representing the Corner Shares, and upon the installation of the Center Pivot Sprinklers and survey of the Parcel Corners.

IN WITNESS WHEREOF, ALAN DEAN HAS EXECUTED THIS DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT on the date set forth above.

ALAN DEAN

By: Alan Dean

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** was acknowledged before me this ____th day of _____, 2024 by Alan Dean.

Witness my hand and official seal.

My Commission Expires: _____

[SEAL]

Notary Public

**THE CITY OF COLORADO SPRINGS, COLORADO
A HOME RULE CITY AND COLORADO
MUNICIPAL CORPORATION, ON BEHALF OF
ITS ENTERPRISE COLORADO SPRINGS UTILITIES**

Jessica Davis
Land Resource Manager
Colorado Springs Utilities

Date: _____

STATE OF COLORADO)
)
) ss.
COUNTY OF EL PASO)

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** Subscribed and sworn to before me this _____ day of _____, 2024, by Jessica Davis, as Land Resource Manager of Colorado Springs Utilities, an enterprise of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

Notary Public

My commission expires _____

**THE CITY OF COLORADO SPRINGS, COLORADO
A HOME RULE CITY AND COLORADO
MUNICIPAL CORPORATION, ON BEHALF OF
ITS ENTERPRISE COLORADO SPRINGS UTILITIES**

Darlene Kennedy
Real Estate Services Manager
City of Colorado Springs

Date: _____

STATE OF COLORADO)
)
) ss.
COUNTY OF EL PASO)

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** Subscribed and sworn to before me this _____ day of _____, 2024, by Darlene Kennedy, as Real Estate Services Manager of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

Notary Public

My commission expires _____

APPROVED AS TO FORM:

City Attorney's Office – Utilities Division

Dry Up Covenant Draft Exhibit A

Legal Description of Farm

Township 22 South, Range 52, West of the 6th P.M.

Section 22: S/2NW/4, N/2SW/4, SE/4SW/4, W/2SE/4, SW/4NE/4,
EXCEPT a tract of land containing 20 ACRES, more or less, as described in Deed between
Edward P. Dean, Grantor, and the State of Colorado, for the use and benefit of the Department of
Natural Resources, acting by and through the Wildlife Commission and Division of Wildlife,
Grantee, recorded April 28, 1983 in Book 370, Page 305, Bent County, Colorado Records.

Section 27: E/2

Dry Up Covenant Draft Exhibit B
Kansas v. Colorado Dry-Up Agreement

**Operating Procedures For
Administration Of Parcels Claimed For
Augmentation Credit**

Plans Approved by the Colorado State
Engineer Pursuant to the Amended Rules
and Regulations Governing the Diversion
and
Use of Tributary Ground Water
in the Arkansas River Basin,
Colorado

September 2005



I. Selection and Approval of Parcels for Augmentation Credit

A. Colorado's Evaluation of Acreage

The Colorado Division of Water Resources (CDWR) has conducted several studies of irrigated lands in the Lower Arkansas Basin over a period of several decades. During the Kansas v. Colorado court case George Moravec developed mapping of irrigated acreage and assignments to ditch service areas using 1985 aerial photos for the area between Pueblo and the Kansas-Colorado stateline. Similarly, Spronk Water Engineers evaluated 1980 aerial photos for the State of Kansas and developed mapping of irrigated lands in the same area. Experts also reviewed historic aerial photos and data to assess changes in acreage during the period just prior to the Arkansas River Compact through 1980.

In 1998 and again in 2002 and 2003, the CDWR conducted studies of irrigated lands in the same areas using satellite imagery to classify irrigated and non-irrigated lands. Additionally, the CDWR has developed an ongoing data collection system to determine the lands irrigated by wells as a sole source of supply or as a supplemental source to surface water by conducting farm verification interviews each winter with farm operators in the lower basin. The work done by Colorado to identify and map irrigated lands has been critiqued by Kansas and by Colorado water right owners and ditch companies and corrected as applicable.

The Colorado State Engineer believes that the result of these studies is a comprehensive set of mapping that should be relied upon for evaluating claims for augmentation credit derived from the removal of pre-compact water rights for replacement of stream depletions caused by post-compact well pumping.

B. Nomination of Parcels for Dry-up Credits in Replacement Plans

Beginning with the 2006-07 Replacement Plan year, plan proponents will need to select parcels for dry-up credit utilizing the mapping developed by the CDWR for any dry-up credit to be claimed under the provisions of Rule 6 of the Amended Rules and Regulations Governing the Diversion and Use of Tributary Ground Water in the Arkansas River Basin, Colorado (Amended Use Rules). The CDWR mapping will include areas shown as irrigated in either the 1985 aerial photos evaluated by Colorado or the 1980 aerial photos evaluated by Kansas. Parcels identified within this mapped area that have not had shares moved to different locations will be eligible for dry-up crediting under Rule 6 provisions.

Mapped parcels shall be provided in GIS format compatible with the ArcView software used by the CDWR unless provisions are made to coordinate mapping with the Division 2 Office in Pueblo. Mapping for nominated parcels must be provided with the March 1, 2006 Replacement Plan submittals in order to ensure timely approval of replacement sources for the 2006-07 Plan Year and by March 1st of each succeeding plan year.

Example of CDWR Mapping



Plan proponents seeking to nominate any lands they believe were historically irrigated that do not lie within the mapped irrigated lands developed by the CDWR must seek a change of water right for the associated shares in Division 2 Water Court prior to approval in any plan approved pursuant to the Amended Use Rules.

C. Minimum Standards for Parcel Selection

Dry-up parcels must be at least five acres unless they comprise all of an existing DWR parcel that is already less than five acres. Parcels that represent a portion of an existing field can only be split with the

direction of historic irrigation unless a means of physical separation is approved by the Division Engineer. A physical separation must exist between any irrigated portion of a parcel and the dry-up portion unless prior approval by the Division Engineer's Office is received. Waiver of the physical separation criteria will only occur for areas adjacent to sprinkler or drip systems and not for flood and furrow irrigation. For dry-up fields left fallow or with a dryland cover crop without permanent root system (that is, not alfalfa or pasture grass for example), the separation can be a ditch or tilled strip at least ten feet in width that prevents irrigation application from reaching the dry-up parcel. For partial fields containing deep-rooted crops such as alfalfa or pasture grass a deep tilled separation of at least 25 feet must be maintained along with any ditches necessary to ensure no irrigation application to the dry-up portion. For any dry-up parcel that is planted with a dryland crop (haygrazer, milo, millet, etc.), the crop should either be drilled at an angle to normal irrigation direction or a tilled strip maintained at the top of the field that clearly separates the crop from any possible irrigation source (preferably both).

***Example of Physical Separation Between
Irrigated Parcel and Dry-up Parcel***



***Example of Tilled Strip at Dry-up
Parcel Header for Dryland Crop***



D. Dry-up Parcels Irrigated by Sole Source Wells

For any parcel from which surface water has been removed and claimed for augmentation credit, but which will be irrigated by a sole source well (e.g. drip systems or sprinkler systems or sole source flood), the following information must be provided with each March 1st Plan submittal:

1. Well ID Number(s) serving the parcel
2. Method of irrigation (Drip, Sprinkler, Flood, Etc.)
3. Description of how parcel will be separated from surface water irrigation and storm runoff from areas adjacent to the parcel
 - a) Removal of header ditch
 - b) Plug in header ditch or in feeder from surface water lateral
 - c) Other method (describe)

E. Parcels Formerly Containing Alfalfa or Alfalfa-Grass Stands

Beginning with the 2006-07 Replacement Plan Year parcels containing alfalfa or mixed alfalfa stands must be deep tilled or chemically killed by no later than April 1st of each Plan Year unless the CDWR field staff have inspected the parcel and the Division Engineer has agreed that the alfalfa stand will not produce any significant growth due to either precipitation or

sub-irrigation. Notwithstanding these provisions, for any parcel that exhibits sustained growth (i.e. plant growth to a height of more than 6 inches) during the dry-up year, the CDWR field staff shall require either immediate chemical kill or deep tillage or shall deem the parcel to be disqualified for augmentation credit.

F. Parcels with Areas of High Ground Water or Seepage

Fields containing areas of high ground water or areas effected by seepage from ditches or natural water courses, ponds or reservoirs may be disqualified or required to be chemically killed or deep tilled if significant crop growth continues to occur during the irrigation season absent irrigation supply.

G. Plan Year and H-I Model Year Dry-up Claims

Due to the conflict between Replacement Plan years (April 1st through March 31st) and H-I Modeling periods (January 1st through December 31st), replacement plan proponents shall indicate whether a dry-up claim is for the Plan Year of calendar year. For any dry-up parcel irrigated during the period January through March of any year, but nominated for dry-up credit after April 1st (e.g. winter wheat), the plan proponent must provide a consumptive use analysis consistent with the methodology used for H-I Model crediting prepared by a registered professional engineer to determine how to pro-rate the dry-up acreage

for the partial H-I Model year. This analysis must be submitted by no later than May 1st of the year in which the partial credit is being claimed. An estimate of the reduction in consumptive credit to be used in the Replacement Plan shall be provided with the March 1st plan submittal for purposes of plan evaluation and approval.

H. Mapping by Division of Water Resources for Approved Parcels

Using GIS data provided by the plan proponents, Division 2 staff will prepare dry-up shapefiles and mapping of the parcels approved in the replacement plan. This data and mapping will be used by CDWR field staff and Kansas to monitor dry-up fields. Division 2 staff will attempt to make this mapping available by April 15th of each year. Final mapping for dry-up affidavits will be produced at the conclusion of the credit period (January 15th for calendar year dry-up and April 15th for replacement year dry-up).

II. Parcel Identification

A. Parcel Identification

Parcels shall normally be identified using the Parcel ID established by CDWR unless another parcel identification system is approved by the Division Engineer. Mapping of approved parcels and data collection by CDWR field staff while monitoring parcels will rely on the Parcel ID to relate parcel information. The typical Parcel ID is in the format

Township Number, Range Number, Section Number and a two-digit field number (e.g. 21573607).

B. Physical Identification of Dry-up Parcels

1. Permanent Dry-up Parcels

For parcels that have been approved for dry-up for at least three consecutive years, or that are intended for permanent removal of all types of irrigation, a sign shall be placed in a prominent location near the most logical point of observation near a public road way or the commonly used access point to the parcel. The sign shall be securely mounted on a 4" x 4" or 6" by 6" timber post and shall be at least 9" wide by 12" high, made of durable material, and with minimum 1" lettering. Signs shall state "Dry-Up Parcel ID XXXXXXXX."

2. Temporary Dry-up Parcels

For parcels that are nominated for only temporary dry-up (less than three consecutive years), a sign shall be placed in a prominent location near the most logical point of observation near a public road way or the commonly used access point to the parcel. The sign shall be securely mounted on a steel tee-post or 4" x 4" or 6" by 6" timber post and shall be at least 12" wide by 6" high, made of durable material, and with minimum 1" lettering.

Signs shall state:

“Dry-Up Parcel ID XXXXXXXX”
“No Irrigation”

or

“Dry-Up Parcel ID XXXXXXXX”
“Irrigated by Well ID XXXXXXX”

3. Installation of Signs

Signs shall be installed by no later than April 1st of each year and signs on permanent dry-up fields shall be inspected for damage and possible replacement by April 1st of each year. Mapping showing sign locations or GPS locations of signs shall be provided by no later than April 15th of each year.

III. Field Monitoring of Dry-up Parcels

A. *Colorado Division of Water Resources’ Role*

Division of Water Resources field staff shall visit dry-up parcels on a periodic basis during each irrigation season to determine adequacy of dry-up provisions and sources of irrigation supply for parcels that have ongoing irrigation by sole source wells. Data will be collected for each parcel as shown on the attached field inspection form. Data collected will be maintained in the Division 2 Office and periodically provided to Kansas and interested parties upon request. Problems discovered during the periodic inspections

Dryup Field Verification Form

Date: _____

Verified By: _____

will be communicated to the designated person for each plan so that the problem can be resolved or credits forfeited for the specific parcel.

Shares attributable to any parcel deemed by the Division Engineer as not actually being in a dried up condition shall be immediately removed from computations of augmentation credits.

The CDWR personnel will also conduct joint field inspections as requested with personnel from Kansas and will coordinate on communication about problems with any dry-up parcels that will affect the H-I Model input data.

B. Role of Plan Proponent and Well Owners

Each replacement plan shall designate with the March 1st Plan Application a contact person or person(s) for communications related to dry-up parcels. The contact person shall be responsible for ensuring that all mapping, signage and owner information is provided as described above. The contact person will also be responsible for contacting any owners for parcels with restricted access to arrange periodic field inspections and will be available to participate on field inspections by CDWR field staff upon request. The contact person will be responsible for communicating with owners of tracts where problems with dry-up conditions have been encountered to correct dry-up deficiencies. The plan proponent contact will also be responsible for ensuring that all dry-up affidavits are submitted in a timely manner and with

complete documentation as may be required by plan approval conditions.

Owners of dry-up parcels will be responsible for notifying CDWR when any spill or irrigation occurs on a parcel that may disqualify the parcel or portions thereof from dry-up crediting. Timely notification will facilitate remediation activities that may preserve most dry-up credit for a parcel. When required by CDWR staff to take corrective actions on a parcel the owner or contact person will prepare a report to document actions taken and submit the report to the Division 2 Office within ten days of remediation activities.

C. Resolution of Problems with Tracts

When a problem is discovered on a tract the Division Engineer or designated representative will determine whether an acreage reduction or consumptive use reduction is necessary. For parcels where dry-up has been unobtainable for the majority of a season on a discreet portion of a parcel an acreage deduction will be made for the dry-up crediting to eliminate that portion.

For parcels that experience continued growth of permanent vegetation, such as alfalfa, despite efforts to chemically kill or deep till the parcel, partial dry-up credit will only be considered if a consumptive use analysis prepared as described in Paragraph I-G above is submitted with the dry-up affidavit.

D. Dry-up Affidavits

At the conclusion of each dry-up period (either April through December or April through the following March), an affidavit shall be submitted signed by a person having knowledge of the dry-up activities and historic irrigation of the parcel. An example of the dry-up affidavit is attached. Affidavits will normally be due by January 15th for April through December dry-up or by April 15th for April through March dry-up.

Affidavits for each plan shall be submitted with a summary tabulation indicating for each parcel whether the claim is made for full credit, partial credit or whether the tract was irrigated by a sole source well. Summary tabulations shall total the claimed acreage by category under each ditch.

Affidavit of _____
(Name of individual having personal knowledge of dry up)

State of Colorado)
) SS.
County of Otero)

I _____, being sworn, state as follows:
Name

B.51

1. I am _____ (describe the position that you are in or the circumstance, which allows you to have a personal knowledge of the dry up of the parcel of land described in paragraph 3 below).

2. I reside at _____.
Address (Street/P.O., City, State ZIP)

3. The parcels of land shown on the attached map in the dried up acreage section of the Arkansas River Replacement Plan Application for CWPDA was irrigated by water from the Holbrook Canal prior to the dry up of the land for augmentation credit.

4. Based on my personal knowledge, the parcels of land shown on the attached map and described in the dried up acreage section of the Arkansas River Replacement Plan Application for CWPDA was not irrigated from the Holbrook Canal or from any other water source in 2003.

Further, the affiant sayeth not.

Signature
Name _____
Address _____

of Affiant

Subscribed and sworn to before me on _____
Date

My commission expires _____.
NOTARY PUBLIC

Signature
Name _____
Address _____

Dry Up Covenant Draft Exhibit C
Minimum Revegetation and Weed Control Plan Requirements

- (1) A report by a qualified independent expert evaluating the species, character and density of existing vegetation on the site and summary of potential impacts to vegetation as a result of the Project, and
- (2) A revegetation plan, prepared by a qualified independent expert, that includes/provides for:
 - (a) A procedure for Utilities to extend the Revegetation Deadline at Utilities' sole discretion;
 - (b) A procedure for Utilities to make the determination that Alan Dean has successfully completed revegetation of the Corner Parcels in accordance with the Agreement and the Water Court or Regulatory Approvals;
 - (c) Removal of existing vegetation no more than thirty (30) days prior to commencement of initial site grading;
 - (d) Revegetation of areas that have been filled, covered or graded as soon as practicable;
 - (e) Use of site-specific native seed mix, with the exception of any landscaped areas and use of mulching to support vegetation growth;
 - (f) Topsoil from disturbed areas stripped and stockpiled on site for redistribution over the completed final grade; stockpiling that conforms to best management practices and ensures that soil organisms in stockpiled soil remain viable until completion of the redistribution process.
- (3) A weed control plan, prepared by a qualified independent expert, that addresses all State and County-listed noxious weeds found on site and includes:
 - (a) Inventory and map showing the locations of State and County listed noxious weeds; and
 - (b) Ongoing weed control at all locations disturbed by the Project and along access roads during construction and operational phases.
 - (c) A requirement that Alan Dean controls the Parcel corners, or dried up portions thereof, noxious weeds from "B" and "C" species lists of the Colorado Noxious Weed List, and eradicate from the Parcel Corners, or dried-up portions thereof, any noxious weeds from the "A" species list, as those lists may be amended or replaced from time to time.

- (4) A rehabilitation plan, prepared by an independent qualified expert, for all land areas from which historic irrigation will cease, including the following:
- (a) Description of all lands included;
 - (b) Description of plant and seed material to be used and the method, amounts and timing of their application;
 - (c) Source, amount, timing and seasonal duration of irrigation water to be applied to establish the intended Revegetation, and that such water is available until successful establishment of Revegetation is completed, or such other period as the Permit Authority shall require;
 - (d) Whether the plan is required as a part of any Water Court decree, or Division of Water Resources Rule 14 plan or Substitute Water Supply Plan, and if so whether the plan has been approved by the Water Court, or the Division of Water Resources (include a copy of the decree and plan as so approved);
 - (e) Description of the costs of preparing the soil, seeding and planting vegetation and irrigating the same, costs of removal of noxious weeds and maintaining weed control throughout the applicable Revegetation establishment period, and revising and repeating the Revegetation plan in the event the plan fails in whole or in part; and, as part of the security required by Chapter 5, proposed security to guarantee successful implementation and completion of such Revegetation shall include bonding, based on a minimum presumptive cost of \$750.00 per acre for Rehabilitation plans involving municipal use or more than 160 acres, which presumptive amount may be revised from time to time by the Permit Authority;
 - (f) Description of a continuing monitoring and maintenance plan for implementation following the certification of establishment on the revegetated lands; such description shall include the estimated costs to be incurred in monitoring by the County and the Applicant/Permit Holder as well as the expected costs in maintenance of the revegetation on these fields; and, to the extent a grazing plan is to be implemented, a description of the parameters for utilizing a grazing plan and the compliance procedures must be described;
 - (g) Description of the methods and costs to control and prevent animal species infestations, including without limitation, prairie dogs.

EXHIBIT C

Form Return Flow Easement

NON-EXCLUSIVE PERMANENT RETURN FLOW EASEMENT AGREEMENT

For and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, Alan Dean ("Grantor") who owns certain parcels of real property located in Bent County, Colorado, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Premises"), hereby bargains, sells, grants and conveys to the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation on behalf of its enterprise, Colorado Springs Utilities ("Utilities"), its successors and assigns, a permanent non-exclusive easement (the "Easement") to enter, occupy, and use the portion of the Premises described in **Exhibit B** and graphically depicted by the shaded area in **Exhibit C** (the "Easement Area"), both such exhibits are attached hereto and incorporated herein by this reference, to construct, reconstruct, install, operate, use, maintain, repair, replace, upgrade and/or remove any augmentation stations, headgates, laterals, turnouts, divide boxes, conveyance structures, recharge ponds, monitoring equipment, measuring flumes and/or other facilities and related appurtenances that are necessary, in Utilities' reasonable discretion, to ensure that the water attributable to certain shares in the Fort Lyon Canal Company ("FLCC") owned by Utilities or that Utilities has an interest in that were historically used to irrigate a portion of the Premises can be delivered to the FLCC ditch and/or the Arkansas River and its tributaries, as for municipal use by the City of Colorado Springs and the replacement of historical return flows (the "Improvements"). Utilities and Grantor may be referred to herein collectively as the "Parties" and each individually as a "Party". Such Easement is granted by the Grantor and is accepted by Utilities pursuant to the terms and conditions contained in this Return Flow Easement Agreement (the "Agreement"):

1. Utilities, its agents, successors, and assigns, shall have the perpetual right of reasonable ingress and egress in, to, through, over, under, and across the Premises for access to and from any roads, highways, streets, alleys, or any other point to the Easement Area, in order to perform Utilities' rights in the Easement Area.

2. Utilities shall have the right to survey, construct, install, reconstruct, operate, use, maintain, repair, patrol, replace, upgrade, and remove at any time and from time to time the Improvements, and one more additional Improvements, within the Easement Area and shall further have the right to use the Easement Area for the flow of water to and from the Improvements. Such right shall be perpetual, and Grantor shall not stop, hinder, or impede construction of such additional Improvements or limit the same within the Easement Area. In addition to delivering water attributable to those certain shares in FLCC owned by Utilities or that Utilities has an interest in, Utilities may use the Improvements to deliver any other ground or surface water that Utilities owns or acquires in the future to the FLCC ditch and/or Arkansas River and its tributaries, provided that Utilities does not unreasonably enlarge the burden of the Easement.

3. Except as provided in paragraph 4 below, Grantor shall retain the right to make full use of the Premises, except for such use as might endanger or unreasonably interfere with the rights

of Utilities in the Easement Area. Grantor shall only perform or permit other persons or entities to perform construction or other work within the Easement Area after receiving prior written approval by Utilities and only if such construction or other work is performed in accordance with the terms of this Agreement and all applicable laws, rules, and regulations, as they may be modified from time to time.

4. Grantor shall not modify, relocate, or remove any of the Improvements without the express prior consent of Utilities. Grantor shall not construct or place any permanent structure or building on any part of the Easement Area without Utilities' prior written consent, including, but not limited to: posts, poles, fences (except posts, poles, or fences that can be easily removed and erected again), dwellings, garages, barns, sheds, storage structures of any kind, lean-tos, playhouses, or other play structures, outbuildings, gazebos, hot tubs, swimming pools, concrete patios, decks, basketball/sports courts, retaining walls, permanent or invasive landscaping design features, or any edifice projections such as balconies, verandas, porches, building overhangs, or bay windows. Without liability for damages, Utilities may remove any such structure or building constructed or placed within the Easement Area without Utilities' prior written consent. If Grantor constructs, places, or permits any such structure or building within the Easement Area without Utilities' prior written consent, then Grantor shall reimburse Utilities for all expenses (including, but not limited to, removal, court, collection, and attorneys' fees and costs) associated with or arising from removing such structure or building. Moreover, in no event shall Grantor: (a) construct or place, longitudinally within the Easement Area any tree, underground pipeline, cable, wire, conduit, valve, stub, storm water drainage pipeline facilities, or other utility facility or appurtenance without Utilities' prior written consent; or (b) materially change, by excavation or filling, the present grade or ground level of the Easement Area without the prior written consent of Utilities.

5. Grantor shall prevent the construction or alteration of landfills, wetlands, land excavations, water impoundments including storm water quality features or facilities, and other land uses within the Easement Area by Grantor or other persons acquiring an interest in the Premises unless Utilities has consented to such uses. Additionally, Grantor shall not construct any new or alter any existing landfills, wetlands, water impoundments, and other similar uses within the Easement Area which might, in Utilities' reasonable discretion, unreasonably endanger or interfere with any Improvements or Utilities' rights in the Easement including, but not limited to, Utilities' rights of maintenance and reasonable access, without Utilities' prior written consent.

6. Utilities shall replace, repair, or reimburse Grantor for the reasonable cost of replacement or repair of physical damage to Grantor's improvements on the Premises, whether or not within the Easement Area if and to the extent such damage is caused by Utilities' construction, reconstruction, use, operation, maintenance, repair, patrol, replacement, upgrading, removal, or other use of Utilities' Improvements. In the construction, reconstruction, installation, use, operation, maintenance, repair, patrol, replacement, upgrading, or removal of its Improvements, Utilities shall promptly restore, replace, or repair the surface of the Easement Area to as close to its condition immediately prior to such work as may be reasonably possible. Despite anything contained herein to the contrary, Utilities shall not be liable for damage to, nor shall it be obligated to repair or replace any structures, buildings, or any other articles whatsoever, which are constructed, installed, or otherwise existing within the Easement Area in violation of the terms of

this Agreement including, but not limited to, any tree(s) that interfere with the Improvements or Utilities' rights in the Easement.

7. Grantor shall be responsible for the surface maintenance of the Easement Area; however, Utilities shall have the perpetual right, but not the obligation, to cut, trim, mechanically or chemically control, and remove trees, brush, and other obstructions which unreasonably injure or interfere with Utilities' use, occupation or enjoyment of the Easement Area, or Utilities' right to construct, reconstruct, install, use, operate, maintain, repair, patrol, replace, upgrade, or remove its Improvements, without liability for damages arising therefrom.

8. Grantor, its successors, heirs, and assigns, shall not take any action which would unreasonably impair the lateral or subjacent support for the Improvements.

9. The Easement is perpetual and runs with the land. It also is deemed to touch and concern the land. Utilities' exercise of any rights pursuant to the Easement, other than those retained by Grantor shall be within the sole discretion of Utilities. Utilities shall use the Easement consistent with Utilities' uses described herein.

10. Grantor warrants that it has good and merchantable title to the Premises and has the full right and lawful authority to grant the Easement. Further, Grantor warrants, promises, and agrees to defend Utilities in the exercise of Utilities' rights hereunder against any defect in Grantor's title to the Property or Grantor's right to grant the Easement.

11. Grantor hereby releases Utilities and shall fully protect, defend, indemnify and hold harmless Utilities, the City of Colorado Springs, the Colorado Springs City Council, the Utilities Board of Directors, and their respective officers, employees, agents, and representatives from and against any and all claims, costs, and fees (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature (including, but not limited to environmental) arising from or in connection with the Easement, Grantor's improvements, or the Improvements to the extent arising from or due to Grantor's action(s) or failure(s) to act.

12. Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, administrators, successors and assigns of the Grantor and Utilities.

13. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of Bent County, Colorado, and, if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

14. The failure of either Party to insist, in any one or more instances, upon a strict performance of any of the obligations, covenants, or agreements herein contained, or the failure of either Party in any one or more instances to exercise any option, privilege, or right herein

contained, shall in no way be construed to constitute a waiver, relinquishment or release of such obligations, covenants, or agreements, and no forbearance by either Party of any default hereunder shall in any manner be construed as constituting a waiver of such default.

15. Except as expressly provided otherwise, this Easement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action, or other right.

16. The provisions of this Agreement are severable. Illegality or unenforceability of any provision herein shall not affect the validity or enforceability of the remaining provisions in this Agreement.

17. This Agreement shall be recorded in the real property records of Bent County, Colorado.

18. This Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

19. Any notice provided in accordance with this Agreement, shall be in writing and shall be sent by delivery service, or mailed by certified mail, postage prepaid, and return receipt requested to either Party's address as shown below or to the property owner of record ("Notice"). Such Notice shall be effective upon the date received and acknowledged by signature of the Party that receives Notice. Either Party may change its address to which any Notice is to be delivered under this Agreement by giving Notice as provided herein.

To Utilities:

Colorado Springs Utilities:
Manager, Water Resources and Demand Management
P.O. Box 1103, Mail Code 1825
Colorado Springs, CO 80947

With a copies to:

City of Colorado Springs
Attn. Real Estate Services
30 S. Nevada Avenue, Suite 502
Colorado Springs, CO 80903

City Attorney's Office
Colorado Springs Utilities
ATTN: Utilities Division
P.O. Box 1575, MC 510
Colorado Springs, CO 80901-1575

To Grantor:

Alan Dean
31452 County Road 12
Las Animas, CO 81054

20. This Agreement represents the entire agreement between the Parties and no additional or different oral representation, promise or agreement, oral or otherwise, shall be binding on any of the Parties hereto with respect to the subject matter of this instrument, unless stated in writing explicitly referring to this Agreement and signed by the Parties.

IN WITNESS WHEREOF, the parties have executed this Agreement to become effective as of the ____ day of _____, 2024.

GRANTOR: Alan Dean

Alan Dean

STATE OF _____)

) ss.

COUNTY OF _____)

Subscribed and sworn to before me on this _____ day of _____, 2024, by Alan Dean as Grantor.

Notary Public

My commission expires _____

**THE CITY OF COLORADO SPRINGS, COLORADO
A HOME RULE CITY AND COLORADO
MUNICIPAL CORPORATION, ON BEHALF OF
ITS ENTERPRISE COLORADO SPRINGS UTILITIES**

Jessica Davis
Land Resource Manager
Colorado Springs Utilities

Date: _____

STATE OF COLORADO)
)
) ss.
COUNTY OF EL PASO)

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** Subscribed and sworn to before me this _____ day of _____, 2024, by Jessica Davis, as Land Resource Manager of Colorado Springs Utilities, an enterprise of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

Notary Public

My commission expires _____

**THE CITY OF COLORADO SPRINGS, COLORADO
A HOME RULE CITY AND COLORADO
MUNICIPAL CORPORATION, ON BEHALF OF
ITS ENTERPRISE COLORADO SPRINGS UTILITIES**

Darlene Kennedy
Real Estate Services Manager
City of Colorado Springs

Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing **DRY-UP AND REVEGETATION COVENANTS AND EASEMENT AGREEMENT** Subscribed and sworn to before me this _____ day of _____, 2024, by Darlene Kennedy, as Real Estate Services Manager of the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation.

Notary Public

My commission expires _____

APPROVED AS TO FORM:

City Attorney's Office – Utilities Division

[Form Return Flow Easement Exhibit A]

Legal Description of Real Property

Township 22 South, Range 52, West of the 6th P.M.

Section 22: S/2NW/4, N/2SW/4, SE/4SW/4, W/2SE/4, SW/4NE/4,
EXCEPT a tract of land containing 20 ACRES, more or less, as described in Deed between
Edward P. Dean, Grantor, and the State of Colorado, for the use and benefit of the Department of
Natural Resources, acting by and through the Wildlife Commission and Division of Wildlife,
Grantee, recorded April 28, 1983 in Book 370, Page 305, Bent County, Colorado Records.

Section 27: E/2

[Form Return Flow Easement Exhibit B]

Easement Legal Description

[Form Return Flow Easement Exhibit C]

Depiction of the Easement Area

EXHIBIT D

Form Special Warranty Deed

SPECIAL WARRANTY DEED (WATER RIGHTS)

THIS DEED, made this ____th day of _____, 2024, between Alan Dean (“Grantor”) and the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs, CO 80947-1015 (“Grantee”).

WITNESSETH, that Grantor, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, and conveys, to Grantee the following described water rights, as real property and personal property, specifically described as follows:

(a) One hundred and eleven (111) of the four hundred and fifty (450) shares of capital stock of The Fort Lyon Canal Company, a Colorado nonprofit corporation, (the “Company”), which shares are evidenced by Stock Certificate Number 9803, (the “Shares”); and

(b) All of Grantor's beneficial right, title and interest in and to all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, augmentation facilities, headgates and all other assets, rights, title or interests represented by said Shares, and in addition to and in no way limited by the foregoing, any and all other right, title or interest in the Company represented by said Shares, (together, with the Shares, the “Water Rights”).

TOGETHER with all and singular, the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title interest, claim, and demand whatsoever of the Grantor, either in law or equity, of, in and to the above-bargained Water Rights, with the hereditaments and appurtenances.

TO HAVE AND TO HOLD the said Water Rights above-bargained and described with the appurtenances, unto the Grantee, the Grantee's successors and assigns forever. And the Grantor **WARRANTS** the title to the above-bargained Water Rights against all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantor.

Remainder of this page intentionally left blank.

IN WITNESS WHEREOF, the Grantor has executed this **SPECIAL WARRANTY DEED** on the date set forth above.

GRANTOR:

Alan Dean

STATE OF COLORADO)
)ss.
COUNTY OF _____)

The foregoing **SPECIAL WARRANTY DEED** was acknowledged before me this ____th day of _____, 2024 by Alan Dean.

Witness my hand and official seal.

My Commission Expires: _____

[SEAL]

Notary Public

ACCEPTED BY THE BUYER, CITY OF COLORADO SPRINGS, COLORADO
A HOME RULE CITY AND COLORADO MUNICIPAL CORPORATION
ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES

By: Travas Deal Travas Deal (May 24, 2024 09:23 MDT) this this 24 th day of May, 2024
Travas Deal
Chief Executive Officer

Approved as to Form:

By: _____ Date: _____
City Attorney's Office—Utilities Division

Exhibit E

Form of Corner Share Assignments

STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE

(The Fort Lyon Canal Company)

THIS STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE ("Assignment") is made this ____th day of _____, 2024, by Alan Dean ("Seller"), to the City of Colorado Springs, Colorado, a home rule city and Colorado municipal corporation, on behalf of its enterprise Colorado Springs Utilities, whose address is P.O. Box 1103, Colorado Springs, Colorado, 80947-1015 ("Buyer"). FOR VALUE RECEIVED, Seller hereby sells, assigns and transfers one hundred and eleven (111) of the four hundred and fifty (450) shares of the capital stock of The Fort Lyon Canal Company, a Colorado nonprofit corporation, to Buyer, which stock is outstanding in the name of Seller on the books of The Fort Lyon Canal Company, and represented by Certificate No. 9803 (a copy of which is attached), together with all of Seller's beneficial rights, title, and interest to the property of The Fort Lyon Canal Company represented by said shares, whether inchoate, choate, real or personal. Said one hundred and eleven (111) shares have historically been used to irrigate the "parcel corners" of the property described in Exhibit A, which will be irrigated by center pivot irrigation systems installed on said property. Seller does hereby irrevocably constitute and appoint the Secretary of The Fort Lyon Canal Company as its attorney-in-fact to transfer said stock on the books of The Fort Lyon Canal Company to the Buyer with full power of substitution in the premises.

Alan Dean

STATE OF COLORADO)
)
)ss.
COUNTY _____)

The foregoing **STOCK ASSIGNMENT SEPARATE FROM CERTIFICATE** was acknowledged before me this ____th day of _____, 2024 by Alan Dean.

Witness my hand and official seal.

My Commission Expires: _____

[SEAL]

Notary

ACCEPTED BY THE BUYER, CITY OF COLORADO SPRINGS, COLORADO

A HOME RULE CITY AND COLORADO MUNICIPAL CORPORATION
ON BEHALF OF ITS ENTERPRISE COLORADO SPRINGS UTILITIES

By: Travas Deal
Travas Deal (May 24, 2024 09:23 MDT) this this 24 th day of May, 2024
Travas Deal
Chief Executive Officer

Approved as to Form:

By: _____ Date: _____
City Attorney's Office—Utilities Division

Lisa Barbato

E-signed 2024-05-20 10:47AM MDT
lbarbato@csu.org
COLORADO SPRINGS UTILITIES


Abigail Ortega

E-signed 2024-05-20 09:02AM MDT
ajortega@csu.org


PSA - Alan Dean - Final

Final Audit Report

2024-05-24

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"PSA - Alan Dean - Final" History

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Signature Date: 2024-05-24 - 3:23:25 PM GMT - Time Source: server

 Agreement completed.

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