

RESOLUTION NO. 110-15

A RESOLUTION AUTHORIZING THE PURCHASE OF CHILCOTT DITCH COMPANY STOCK AND ASSOCIATED WATER RIGHTS OWNED BY STEPHEN B. REAMY, BRIAN S. REAMY, AND LISA REAMY HEATON, A/K/A LISA A. REAMY, FOR COLORADO SPRINGS UTILITIES; AND AUTHORIZING THE EXECUTION OF CLOSING DOCUMENTS

WHEREAS, the City Charter of the City of Colorado Springs, § 6-50 provides: "The City shall have the authority to buy, exchange, augment, lease, own and control water and water rights"; and

WHEREAS, the City of Colorado Springs on behalf of its enterprise, Colorado Springs Utilities, and Stephen B. Reamy, Brian S. Reamy, and Lisa Reamy Heaton, a/k/a Lisa A. Reamy, entered into that certain Contract for Purchase of Chilcott Ditch Company Stock (the "Purchase Agreement") for purchase of one (1) share of stock in the Chilcott Ditch Company ("Chilcott") that represents an ownership interest in senior Fountain Creek water rights (the "Subject Water Rights") and is anticipated to yield approximately 24.61 acre-feet of renewable and reusable water per year; and

WHEREAS, upon execution of the closing documents described herein and on behalf of and in coordination with its enterprise, Colorado Springs Utilities, the City of Colorado Springs will hold title to stock certificates representing one (1) share of stock in Chilcott purchased from Stephen B. Reamy, Brian S. Reamy, and Lisa Reamy Heaton, a/k/a Lisa A. Reamy (the "Subject Stock") and the water rights represented by the Subject Stock in accordance with the Purchase Agreement; and

WHEREAS, the Subject Stock in Chilcott is currently represented by Chilcott stock certificate number 318, which such certificate is attached hereto and incorporated herein by reference; and

WHEREAS, the Subject Stock shall be transferred to the City of Colorado Springs following closing after the purchase upon request of the City and Stephen B. Reamy, Brian S. Reamy, and Lisa Reamy Heaton, a/k/a Lisa A. Reamy by Chilcott; and

WHEREAS, the acquisition of the Subject Stock and Subject Water Rights is in the public interest as the acquisition of new water rights is required to meet Colorado Springs Utilities' water customers' long-term water demands; and

WHEREAS, the acquisition of the Subject Stock and Subject Water Rights is further supported by Executive Limitation 10, which provides that the Colorado Springs Utilities' Chief Executive Officer "may not fail to protect and optimize existing water resources and aggressively seek to develop new water sources"; and

WHEREAS, such acquisitions are not subject to the procedures of *The City of Colorado Springs Procedure Manual for the Acquisition and Disposition of Real Property Interest* ("Real Estate Services Manual"), however, Colorado Springs Utilities

has attempted to follow the Real Estate Services Manual to the greatest extent possible; and

WHEREAS, the purchase price to be paid by Colorado Springs Utilities for the Subject Stock is \$160,375.00 for the Chilcott share; and

WHEREAS, Colorado Springs Utilities requests approval to proceed with closing on the purchase of the Subject Stock, to execute all necessary closing documents, and to accept the Subject Stock for the City of Colorado Springs on behalf of Colorado Springs Utilities; and

WHEREAS, pursuant to Chapter 4 and Chapter 7, of Real Estate Services Manual and City Code §7.7.1802, the City Council shall authorize the purchase and acceptance of real property subject to appropriate terms, conditions, and compliance with the provisions of the Real Estate Services Manual.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. City Council authorizes the purchase of the Subject Stock from Stephen B. Reamy, Brian S. Reamy, and Lisa Reamy Heaton, a/k/a Lisa A. Reamy, for the agreed upon amount of \$160,375.00 with additional closing costs, in accordance with the Purchase Agreement entered into between the parties.

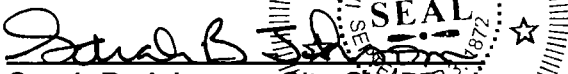
Section 2. In accordance with Chapter 4 and Chapter 7 of the Real Estate Services Manual, and City Code §7.7.1802, City Council hereby finds that there is a public purpose for the purchase of the Subject Stock and authorizes the purchase and acceptance of the Subject Stock by deed and Stock transfer.

Section 3. The City's Real Estate Services Manager is authorized to execute all documents necessary to complete the acquisition of the Subject Stock.

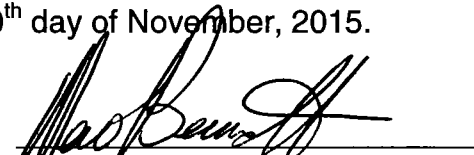
Section 4. Upon execution of all documents necessary to complete the purchase of the Subject Stock, Colorado Springs Utilities is authorized to take all steps necessary for transfer of the Subject Stock to the City of Colorado Springs from Stephen B. Reamy, Brian S. Reamy, and Lisa Reamy Heaton, a/k/a Lisa A. Reamy.

DATED at Colorado Springs, Colorado, this 10th day of November, 2015.

ATTEST:


Sarah B. Johnson, City Clerk




Council President

**CONTRACT FOR PURCHASE
OF CHILCOTT DITCH COMPANY STOCK**

This Contract for Purchase of Chilcott Ditch Company stock ("Contract") is entered into and effective as of the Effective Date (as defined in Section 1.6 below), by and between Stephen B. Reamy, Brian S. Reamy, and Lisa Reamy Heaton, a/k/a Lisa A. Reamy ("Sellers"), and the City of Colorado Springs, 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").

RECITALS AND REPRESENTATIONS

WHEREAS, Sellers represent that Sellers are the owners of unencumbered marketable title to one share of stock in the Chilcott Ditch Company represented by stock certificate number 318; and

WHEREAS, Sellers represent that the Subject Water Rights represented by the Subject Stock have been used to irrigate the Historically Irrigated Land; and

WHEREAS, Buyer is a municipal water utility, and as such has a need and necessity for the Subject Water Rights for the purposes of supplying water for municipal and other uses to the inhabitants of the City of Colorado Springs, Colorado (the "City") and other water customers within its water service territory; and

WHEREAS, Buyer desires to purchase the Subject Stock and associated Subject Water Rights upon the terms and conditions hereinafter described.

NOW THEREFORE, in consideration of the foregoing recitals and representations and the covenants, promises, payments, and agreements herein set forth, the adequacy, sufficiency, and receipt of which are hereby acknowledged, the parties agree as follows:

1. **Definitions.** For purposes of this Contract, the following terms shall have the following meanings, unless the context clearly requires otherwise:

1.1. "Closing" means those activities described herein that are required for consummation of the purchase and sale of the Subject Stock.

1.2. "Closing Date" means the date identified in Section 6 of this Contract by which all Closing activities will be completed.

1.3. "Ditch Company" means the Chilcott Ditch Company.

1.4. "Dry-Up Covenant" means a legal document signed by the owner of the Historically Irrigated Land attesting that the Subject Water Rights are no longer required, and will no longer be used, for irrigation or watering of the Historically Irrigated Land.

1.5. "Due Diligence Period" means the period described in Section 5 during which Buyer may conduct due diligence activities related to the purchase and sale of the Subject Stock.

1.6. "Effective Date" means the date on which this Contract (1) has been executed by an authorized representative of Buyer; and (2) has been executed by the Sellers.

1.7. "Historically Irrigated Land" means the real property (identified in the deed attached hereto as Exhibit A-1) which Sellers own and which Sellers have historically irrigated with the Subject Water Rights.

1.8. "Partial Designation" means any limited assignment by Buyer of its right to take title to the Subject Stock and Subject Water Rights in accordance with Section 22.

1.9. "Partial Designee" means a person or entity identified by Buyer pursuant to the provisions of Section 22 of this Agreement to whom Buyer makes a Partial Designation of its right to take title to the Subject Stock and Subject Water Rights.

1.10. "Purchase Price" means the price agreed to between Buyer and Sellers in Section 3 of this Contract for the purchase and sale of the Subject Stock.

1.11. "Subject Stock" means the one share of stock represented by Chilcott Ditch Company stock certificate number 318.

1.12. "Subject Water Rights" means the water rights represented by the Subject Stock, 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 Subject Stock. The Subject Water Rights do not include water obtained or derived from the well currently operating on the Historically Irrigated Land (or to future water obtained or derived from repair or replacement of the current well).

2. Sale and Purchase. Subject to the terms and conditions hereinafter provided, Sellers hereby agree to sell and Buyer agrees to buy the Subject Stock, the Subject Water Rights, and any other interests in real or personal property of the Ditch Company represented by or derived from ownership of, the Subject Stock.

3. Purchase Price. The Purchase Price for the Subject Stock, Subject Water Rights and Sellers' covenants and obligations hereunder to be paid at Closing, subject to the terms and conditions set forth herein, is:

3.1 For the Chilcott Ditch Company Share:

Price Per Share: \$160,375.00

Number of Shares: 1

Total Price : \$160,375.00

This price per share is based upon an assumed historical consumptive use of the Subject Water Rights of 24.61 acre feet per share of the subject Chilcott Ditch Company stock.

4. Title, Title Review, and Diligence.

4.1. The parties agree that in order to consummate the transaction contemplated by this Contract, title to the Subject Stock must be unencumbered and marketable in Sellers so that the Subject Stock may be delivered free, clear, and unencumbered to Buyer, and that Buyer's obligations under this Contract are specifically conditioned and contingent on Sellers possessing such title prior to Closing. The parties further agree that Sellers must have sufficient right, title, and interest in the Historically Irrigated Land (identified by the deed attached hereto as Exhibit A-1) 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 Buyer prior to Closing. Notwithstanding any other provisions of this Contract, if Sellers do not have such free and unencumbered and marketable title in the Subject Stock, or are unable to deliver satisfactory Dry-Up Covenants, as required in Section 9, to Buyer as of the Closing Date, Buyer may terminate this Contract by providing notice to Sellers. In the event of such termination, Sellers and Buyer shall be relieved of all obligations hereunder.

4.2. On or before five (5) business days after the Effective Date, Sellers shall deliver to Buyer complete and legible copies of all documents or reports in the possession of Sellers or Sellers' agents, engineers, and/or consultants, or under Sellers' control, or otherwise reasonably available to Sellers or Sellers' agents, engineers, and/or consultants: (1) a complete copy of the certificates for the Subject Stock (front and back); (2) a legal description of the Historically Irrigated Land; (3) for any share or share certificate that is held or issued in the name of the Sellers or of some other person or entity, proof of Sellers' authority to assign and convey the other named person's or entity's interest in the Subject Stock; (4) for any share or share certificate that is held or issued in the name of the Sellers and of an encumbrance holder, a copy of any deed of trust, mortgage, pledge, lien, or other encumbrance on the Subject Stock, together with (a) proof of the prior release of the encumbrance on the Subject Stock, 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 Subject Stock, and (ii) that it will release any encumbrance upon the Subject Stock at closing; (5) documents describing the Subject Water Rights associated with the Subject Stock (if such exist); (6) such other documents as Buyer may reasonably request to prove that Sellers own the Subject Stock 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 Historically Irrigated Land, the Subject Stock or the Subject Water Rights that are in Sellers' possession (if such exist), and written disclosure of any such document of which Sellers have knowledge but not possession; (8) information and documents concerning the historical use of the Subject Water Rights including the historical consumptive use and the historical stream depletions of such water rights; (9) any title commitments, title opinions, surveys, drawings, legal descriptions, aerial or other photographs related to the Subject Water Rights; (10) any reports evaluating the Subject Stock or Subject Water Rights, or any diversion records or engineering reports, court decrees, administrative agency documents, or appraisals pertaining to the Subject Stock or Subject Water Rights; (11) any operating agreements and/or ditch agreement related to the Subject Stock or Subject Water Rights; (12) any and all communications regarding the Subject Stock or Subject Water Rights with a ditch company or a state agency; (13) any engineering reports, engineering design, cost estimates, bids, or other documentation regarding the infrastructure used with respect to the Subject Stock or Subject Water Rights; and (14) if the Sellers are not natural persons, proof that the person acting for the Sellers is authorized by the Sellers (a) to enter into this Agreement on behalf of the shareholder(s) whose name appears on

the share certificate, and (b) to execute the share assignments and special warranty deed on its behalf. As to the items identified in paragraphs (9) through (11) and (14) of this Section 4.2, Sellers shall produce such to Buyers, only if such items exist presently to the knowledge of Sellers

4.3. Sellers hereby consent to Buyer's review of the Ditch Company records as they relate to the ownership and status of the Subject Stock and Subject Water Rights. Buyer agrees it will be responsible for the costs of evaluating any materials necessary to determine the status of the Subject Stock, Subject Water Rights and Historically Irrigated Land. Sellers hereby further consent to Buyer's lawful actions in obtaining information related to notes, mortgages, deeds of Sellers, encumbrances, liens, taxes, or any other claims upon the Subject Stock, the Subject Water Rights, or the Historically Irrigated Land.

4.4. If in Buyer's sole opinion after review of the documents described in Section 4.2, Sellers' title to the Subject Stock is not unencumbered and merchantable, Buyer shall give notice thereof in writing to Sellers within ten (10) business days after the end of the Due Diligence Period established in Section 5, or any extensions thereof. Upon receipt of such notice, Sellers will then have ten (10) business days to correct the defects. If at the end of such ten (10) business day period title cannot be rendered unencumbered and merchantable in Buyer's sole good faith opinion, then Buyer shall have the right, in its sole discretion, in addition to its remedies under law and equity, either to: (1) terminate this Contract; or (2) proceed to Closing and either (a) waive such objections or defects in writing; and/or (b) apply such portion of the Purchase Price (in an amount to be mutually agreed upon by Buyer and Sellers) to pay off or otherwise cure any such defect or encumbrance at Closing. Buyer shall make its election among the options described above on or before the fifth business day following the end of such ten (10) business day period and shall provide notice of such election to Sellers. In the event that Buyer elects to proceed to Closing, the date scheduled for the Closing shall be extended by a reasonable number of days. No such defect or objection shall be deemed cured or waived unless Buyer so specifies in writing. In the event Buyer elects to terminate this Contract pursuant to this Section 4.4, Sellers and Buyer shall be relieved of all obligations hereunder.

5. Due Diligence Period.

5.1 The Due Diligence Period shall run for a period of sixty (60) days beginning on the date Sellers provide the documents set forth in Section 4 to Buyer. During the Due Diligence Period, Buyer may terminate this Contract by Buyer's notice delivered to Sellers. In the event of such termination by Buyer, Sellers and Buyer shall be relieved of all obligations hereunder. Buyer's twenty percent (20%) down payment of the Purchase Price (described in Section 5.3) shall be non-refundable following execution of this Agreement.

5.2. During the Due Diligence Period, Buyer may complete an engineering analysis of the historical consumptive use of the Subject Water Rights to determine whether the annual historical consumptive use of the Subject Water Rights is equal to the amounts set forth in Section 3 above ("HCU Analysis"). Buyer shall have the duty to timely inform Sellers of the results of the HCU Analysis, if prepared, and provide Sellers with a copy of the results of the

HCU Analysis. Sellers shall have thirty (30) days from their receipt of the HCU Analysis to review the HCU Analysis and determine if they agree with the findings of the analysis. If the HCU Analysis indicates that the average annual historical consumptive use of the Subject Water Rights is less than the amounts set forth in Section 3 above, the parties agree to negotiate in good faith for a reduction in the Purchase Price for the Subject Shares based on the average annual historical use for the Subject Water Rights determined by the HCU Analysis. If the parties cannot agree on a reduced Purchase Price, Buyer may terminate this Contract by providing notice to Sellers, with no further obligation to Sellers, or may choose to close on the purchase of the Subject Shares based on the price set forth in Section 3, above. The parties agree that the Due Diligence Period shall be extended as necessary to effectuate the intent of this Section 5.2.

5.3. Upon execution of this Contract, Buyer agrees to immediately deliver to Sellers' counsel good funds equal to twenty percent (20%) of the Purchase Price as a down payment. The down payment will be applied to the Purchase Price of the Subject Shares. One-third (1/3) of the down payment shall be payable to each of the three (3) individuals identified as the Sellers in the preamble to this Contract. One-third (1/3) of the balance due at Closing to Sellers shall be payable in good funds to each of the three (3) individuals identified as the Sellers in the preamble to this Contract.

6. Closing.

6.1. Closing Contingent on City Council Approval. Buyer's obligation to close on the purchase of the Subject Stock is contingent on Buyer receiving approval of the purchase from the Colorado Springs City Council. Buyer shall attempt to obtain approval of the purchase of the Subject Stock from the Colorado Springs City Council within sixty (60) days of the close of the Due Diligence Period. If Buyer does not obtain such approval within the sixty (60) day time period, then the parties may agree to delay Closing for a mutually agreed upon period of time, or may terminate this Contract by providing notice to the other party in which case neither party shall have any further obligations hereunder. Buyer's obligation to pay the twenty percent (20%) purchase price down payment upon execution of this Contract is not contingent on such approval or on appropriation of funds by the City Council, as described in Section 23 of this Contract, since funds for the down payment have been appropriated.

6.2. Closing Date. The Closing on this Contract shall occur on the date that is at least twenty (20) days following the date when Buyer receives approval of the purchase of the Subject Stock from the Colorado Springs City Council, or such other date as mutually agreed to by the parties as the same may be extended by the parties in writing, at the offices of Colorado Springs Utilities. The Closing Date will occur before February 29, 2016.

6.3. Closing Deliveries.

6.3.1. Buyer shall deliver or cause to be delivered to the parties' designated closing agent the following items:

(1) The Purchase Price (subject to all debits, credits and adjustments provided for hereunder); and

(2) Such affidavits, instruments, agreements or other documents as may reasonably be required to complete the transactions contemplated under this Contract.

6.3.2. On or before the Closing Date, Sellers shall deliver or cause to be delivered to the parties' designated closing agent, each of the following items:

(1) The original certificate for the Subject Stock endorsed to Buyer;

(2) Special warranty deed for the Subject Water Rights and any other real property interests represented by the Subject Stock from Sellers free and clear of any encumbrance, as applicable, to Buyer (and, as applicable, to Buyer's Partial Designee pursuant to Section 23) substantially in the form attached hereto as Exhibit A-2;

(3) Share assignment agreement from Sellers, as applicable, to Buyer and, if applicable, Buyer's Partial Designees pursuant to Section 23, for the Subject Stock in a form mutually agreed upon by the parties and acceptable to the Ditch Company, which assignment shall include the appointment of an officer of the Ditch Company as attorney-in-fact with authority to change the ownership records of the Ditch Company with respect to the Subject Stock;

(4) Executed Dry-Up Covenants for the Historically Irrigated Land as required under this Contract.

(5) Documentation from the Ditch Company in a form acceptable to Buyer and approved during Buyer's Due Diligence Period certifying that: (a) all assessments due for the current water year with respect to the Subject Stock have been paid in full; (b) the Subject Stock is validly issued and outstanding in the name of Sellers; (c) Sellers are the owners of record of the Subject Stock; (d) the Subject Stock is entitled to receive its *pro rata* share of the water associated with the Subject Water Rights and Subject Stock; (e) the Ditch Company shall permit the transfer of the Subject Stock to Buyer; and (f) the Ditch Company shall allow Buyer's proposed uses of the water including municipal, augmentation and exchange uses.

(6) Valid releases of any encumbrances on the Subject Stock and the Subject Water Rights; and

(7) Such affidavits, instruments, agreements or other documents as may be reasonably required by Buyer to complete the transactions contemplated under this Contract.

6.3.3. Each party shall further execute and deliver such documentation as may be reasonably requested by the parties and by any closing agent as mutually selected by the parties in order to effectuate Closing.

7. Ditch Assessments. Sellers agree to fully pay and continue to pay any and all ditch assessments associated with and accruing on the Subject Stock from the Effective Date up to and including the Closing Date. Any ditch assessments incurred prior to the Closing Date that have not been paid at the time of Closing, including any late payment fees, will be withheld from the Purchase Price and paid by the Buyer to the Ditch Company at Closing. From and after Closing,

Buyer agrees to assume any such future obligations for assessments incurred after the Closing Date.

8. Use of Subject Water Rights. Prior to Closing, Sellers shall consult with Buyer and shall make full use of the Subject Water Rights, and shall maintain and provide Buyer with complete records of such use including types of use, place of use, the acres irrigated, crops grown, water applied and such other information as Buyer requests, at such times as Buyer requests (to the extent any such records exist). Sellers agree to provide written authorization to the Ditch Company to release to Buyer any records in the possession of the Ditch Company which relate to the use of the Subject Water Rights.

9. Dry-Up Covenant. Sellers acknowledge that Buyer intends to change the use of the Subject Water Rights to allow them to be used by Buyer. Such changes in use require judicial approval, and such judicial approval may require that the Historically Irrigated Land be permanently removed from irrigation and be revegetated. In order to help ensure that Buyer may use the Subject Water Rights, including the historical consumptive use attributable to the Subject Water Rights, the Sellers agree to deliver to Buyer Dry-Up Covenants for the Historically Irrigated Land that set forth the assurances deemed necessary by the Buyer in its sole discretion to establish that the Subject Water Rights are no longer required or used to provide water to the Historically Irrigated Land; provided that, in the event Buyer determines that such Dry-Up Covenants are not necessary, it may waive this requirement in writing. If Buyer requires Dry-up Covenants, but seller has not delivered them prior to the Closing date, the parties may proceed as set forth in Section 4.1, above.

10. Change of Water Rights. Buyer intends to prosecute a change of the Subject Water Rights with the main purpose of adding as permitted uses of the Subject Water Rights represented by the Subject Stock all beneficial uses for which Buyer may use water. Buyer 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 Subject Water Rights ("Change Proceedings"). Sellers on behalf of themselves, their officers, directors, employees, agents or any party controlling, controlled by, or under common control with Sellers shall have the right to participate, at their own expense, in any Change Proceedings; provided, however, that the Sellers will cooperate fully with the Buyer in any such proceeding, and will not take any action to impair, impede, or interfere with the Buyer's ability to obtain any such required authorization.

11. Commissions. The Sellers shall be responsible for payment of all brokers' fees or commissions due any broker or other agent representing the Seller.

12. Transfer Fees. Sellers shall pay the transfer costs imposed by the Ditch Company with respect to the transfer of the Subject Stock and any applicable recording costs.

13. Closing Costs. Sellers and Buyer shall share equally in the payment of all closing costs and applicable recording costs. Should the closing costs exceed \$400.00, Seller agrees to pay \$200.00 towards closing costs and the Buyer agrees to pay the remainder.

14. Status and Authority of Seller. Sellers hereby individually represent and warrant the following:

14.1. They have full power and authority to enter into this Contract and to carry out the transactions contemplated by this Contract, and

14.2. This Contract and its execution and delivery to Buyer will not result in a breach of, or constitute a default under, any indenture, loan or credit agreement, mortgage, deed, or other agreement of Sellers to which they are a party or otherwise bound.

15. Additional Representations and Warranties of Sellers. In addition to Sellers' other representations and warranties contained in this Contract, Sellers hereby individually represent, warrant, and agree that as of the Effective Date, and on the date of Closing:

15.1. Sellers affirm their representations and warranties made elsewhere in this Contract, including those contained in the Recitals and Representations to this Contract;

15.2. Sellers are the sole owners of the unencumbered marketable title to the Subject Stock and the Subject Water Rights;

15.3. The water derived from the Subject Stock has been historically used to irrigate the Historically Irrigated Land;

15.4. There is no litigation pending, or to the best of Sellers' knowledge threatened, that in any manner affects the Subject Stock;

15.5. The execution and delivery of this Contract and the performance of all obligations hereunder by Sellers do not and will not require any consent or approval of any third party and do not and will not result in a breach of, or constitute a default under, any indenture, loan or credit agreement, mortgage, deed or other agreement of Sellers;

15.6. To the knowledge of the Sellers, the Subject Stock is not subject to any conservation easement or other limitations or restrictions not stated in the Articles of Incorporation or Bylaws or applicable governing documents of the Ditch Company;

15.7. To the knowledge of the Sellers, there are no third party claims to any right, title, or interest in or to all or any portion of the Subject Stock or Subject Water Rights; and

15.8. Sellers have received no notice of any violations of any law, code, ordinance, rule or regulation or insurance policy affecting the Subject Stock.

16. Sellers' Covenants.

16.1. From the Effective Date through the Closing Date, Sellers shall cooperate with the Buyer's investigation into the historical use of the Subject Stock and Subject Water Rights. Such cooperation shall include, but is not limited to, identifying the Historically Irrigated Land; allowing Buyer and its agents to inspect the Historically Irrigated Land and all facilities used for delivery of water to and irrigation of said lands; providing general information on crops

historically grown on those lands; identifying all sources of water used to irrigate those lands and persons with knowledge of the historical cropping patterns and irrigation practices on those lands; and providing any other information reasonably available to the Sellers that will assist the Buyer in its evaluation of the historical use of the Subject Stock, and the historical irrigation practices on the Historically Irrigated Lands.

16.2. Sellers shall provide information and records of water use (in Sellers' possession or reasonably available to Sellers of which Sellers are aware) concerning the Subject Water Rights to be used by Buyer in any Change Proceeding. Sellers shall testify truthfully at the request of Buyer without subpoena or payment of witness or expert witness fees at any deposition, motions hearing, or trial involving the Subject Water Rights.

16.3. From the effective date of this Agreement, and until five (5) years following the Closing date, the Sellers shall retain all records in their possession concerning the historical use of the Subject Stock and the Historically Irrigated Land, including crop production records.

16.4. Between the Effective Date and the Closing Date, Sellers shall promptly (but prior to the Closing) notify Buyer in writing of any fact, event, circumstance or action known to Sellers (a) that, if known on the Effective Date, would have been required to be disclosed or (b) that the existence or occurrence of which would cause any of Sellers' representations or warranties under this Contract not to be correct and complete. Buyer may elect, within three (3) business days after receipt of Sellers' Notice under this Section, but prior to the Closing, to terminate this Contract by giving notice to Sellers.

17. Notices. All notices, requests, demands, or other communications (collectively, "Notices") hereunder 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 as the parties may designate by Notice in the above manner.

To Buyer:

Courier Service Address:

Colorado Springs Utilities
ATTN: Wayne Vanderschuere
121 S. Tejon St., 3rd Floor
Colorado Springs, CO 80903

United States Postal Service Address:

Colorado Springs Utilities
ATTN: Wayne Vanderschuere
P.O. Box 1103
Colorado Springs, CO 80947-0950

With copies to:

Courier Service Address:

City Attorney's Office – Utilities Division
30 S. Nevada Ave, Suite 501
Colorado Springs, CO 80903

United States Postal Service Address:

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

To Sellers:

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

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

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

Notices shall be effective (1) the next day following the date sent by an established express overnight delivery service that maintains delivery records requiring a signed receipt; (2) upon receipt by the addressee of a hand delivery; or (3) upon signature confirmation of receipt following mailing via certified or registered mail, postage prepaid.

18. Amendment. This Contract may be extended, modified, amended, or changed in whole or in part only by written agreement duly authorized and executed by each of the parties with the same formality as this Contract.

19. Waiver. Any waiver of any breach of any provision of this Contract by any party shall not constitute a continuing waiver of any subsequent breach of either the same or any other provision of this Contract.

20. Entire Agreement. This Contract represents the entire agreement of the parties 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 Contract.

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

22. Binding Effect and Assignability. This Contract and the rights and obligations created hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, if any. Sellers may not assign their rights or delegate their duties hereunder without the prior written consent of Buyer, which Buyer may withhold in its sole discretion. Buyer shall be entitled to assign its rights and obligations hereunder without the consent of Sellers.

23. Partial Designation. Without limiting the generality of Buyer's right to assign its interests under this Contract pursuant to Section 21, Sellers hereby acknowledge and agree that Buyer may, but shall not be required to, make a Partial Designation to one or more third parties in such proportions as Buyer desires. In the event that Buyer elects to make a Partial Designation, Buyer shall give notice to Sellers prior to the Closing and Sellers shall execute such additional conveyance documents as may be necessary to convey title to the Subject Stock to Buyer's Partial Designee(s).

24. Appropriations. In accordance with the Colorado Springs City Charter, performance of Buyer's obligations under this Contract is expressly subject to appropriation of funds by the Colorado Springs City Council. In the event funds are not appropriated in whole or in part sufficient for performance of Buyer's obligations under this Contract, or appropriated funds may not be expended due to City Charter spending limitations, then this Contract will thereafter become null and void by operation of law, and Buyer will thereafter have no liability for compensation or damages to Sellers in excess of Buyer's authorized appropriation for this Contract or the applicable spending limit, whichever is less and Sellers will be released from any obligation to perform the terms of this Contract. Buyer will notify Sellers as soon as reasonably practicable in the event of non-appropriation or in the event a spending limit becomes applicable. This Section 23 shall not apply to the twenty percent (20%) purchase price down payment (described in Section 5.3) as funds for the down payment have been appropriated.

25. Governing Law and Venue. This Contract and its application shall be construed in accordance with the law 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 initiate court proceedings concerning this Contract, the parties agree that venue shall be in the District Court for El Paso County, Colorado.

26. Survival of Representations. Each and every representation, warranty, covenant, promise, and payment contained in this Contract 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.

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

28. 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 a 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.

29. Defaults and Remedies. Remedies available to both parties regarding any action concerning this Contract will include, but not be limited to, the remedy of specific performance; provided that both parties expressly waive the right to seek consequential or punitive damages.

30. No Attorneys Fees and Costs. In the event of any litigation, mediation, arbitration or other dispute resolution proceedings arising out of or related to this Contract, each party agrees to be responsible for its own attorney's fees and other professional fees, costs and expenses associated with any such proceedings.

31. Non-Severability; Effect of Invalidity. Each Section in this Contract is intertwined with the others and not severable unless by mutual consent of Buyer and Sellers or as provided for below. If any provision or portion of this Contract 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 Contract, or the application of such provisions to persons or circumstances other than those which are held invalid or unenforceable, shall not be affected thereby.

32. Intent of Contract. This Contract is intended to describe the rights and responsibilities of and between Buyer and Sellers and are not intended to, and shall not be deemed to, confer rights upon any person or entities or signatories hereto, or to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of Buyer or any other governmental entity not a party hereto.

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

34. Recitals and Exhibits. The recitals and exhibits attached hereto are hereby incorporated into this Contract.

35. No Joint and Several Liability. Sellers have provided representations and warranties and have agreed to certain covenants and obligations regarding its individual shares of the Subject Stock included in this Contract, and shall be liable for its representations, warranties, covenants and other obligations under this Contract.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year indicated below.

BUYER:

By: Wayne Vanderschuere
Wayne Vanderschuere
Title: General Manager, Planning
Engineering and Resource
Management

APPROVED AS TO FORM:
M. H. [Signature]
CITY ENGINEER'S OFFICE
UTILITIES DIVISION

SELLERS:

Stephen B. Reamy
Stephen B. Reamy

Brian S. Reamy

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

EXHIBITS:

Deed to Historically Irrigated Land
Form of Special Warranty Deed

IN WITNESS WHEREOF, the parties have set their hands and seals this day and year indicated below.

BUYER:

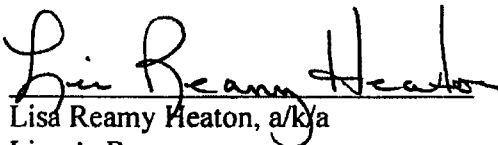
By: _____
Wayne Vanderschuere
Title: General Manager, Planning
Engineering and Resource
Management

SELLERS:

Stephen B. Reamy



Brian S. Reamy



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

EXHIBITS:

Deed to Historically Irrigated Land
Form of Special Warranty Deed

Exhibit – A-2
to
Contract for Purchase

Form of
Special Warranty Deed

WHEN RECORDED RETURN TO:

SPECIAL WARRANTY DEED
(Water Rights)

THIS DEED, made this 26th day of October, 2015, between Stephen B. Reamy, Brian S. Reamy and Lisa Reamy Heaton, a/k/a Lisa A. Reamy (collectively "**Grantors**"), and the _____, whose address is _____ ("**Grantee**").

WITNESSETH, that Grantors, for the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, have granted, bargained, sold, and conveyed, and by theses presents do grant, bargain, sell, convey, and confirm unto Grantee, Grantee's successors and assigns forever all of the water rights described below (the "**Water Rights**"):

- (a) The water rights represented by one (1) share of the capital stock of the Chilcott Ditch Company, which share(s) are evidenced by Stock Certificate No. 318 (the "**Shares**") and the water derived therefrom.
- (b) All beneficial right, title, and interest, if any, in all water, water rights, ditches, ditch rights, reservoirs, reservoir rights, canals, canal rights, headgates, and all other assets, rights, title or interests represented by said Shares, and in addition, and in no way limited by the foregoing, any and all other right, title, or interest in the Chilcott Ditch Company represented by said Shares or otherwise held by the Grantors.

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 Grantors, either in law or equity, of, in, and to the above bargained Water Rights, with their hereditaments and appurtenances.

TO HAVE AND TO HOLD the said Water Rights above bargained and described with their appurtenances, unto the Grantee, the Grantee's successors and assigns forever. And the Grantors, for the Grantors, the Grantors' successors and assigns, does covenant and agree that Grantors shall **WARRANT AND FOREVER DEFEND** the above-bargained Water Rights in the quiet and peaceable possession of the Grantee, and the Grantee's successors and assigns, against

all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantors.

IN WITNESS WHEREOF, the Grantors have executed this Deed on the date set forth above.

GRANTORS:

Stephen B. Reamy
Stephen B. Reamy

Brian S. Reamy

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

ACKNOWLEDGMENT

STATE OF COLORADO)
)ss
COUNTY OF El Paso)

The foregoing Special Warranty Deed was acknowledged before me this 26 day of October 2015, by Stephen B. Reamy.

WITNESS my hand and official seal.

Zackary Spiller
NOTARY PUBLIC

My commission expires: 06/22/2016

ZACKARY SPILLER
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires 06/22/2016

all and every person or persons claiming the whole or any part thereof, by, through, or under the Grantors.

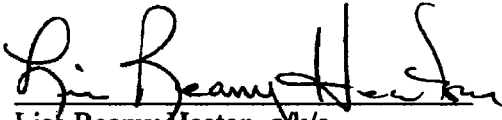
IN WITNESS WHEREOF, the Grantors have executed this Deed on the date set forth above.

GRANTORS:

Stephen B. Reamy



Brian S. Reamy



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

ACKNOWLEDGMENT

STATE OF COLORADO)
)ss
COUNTY OF _____)

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

WITNESS my hand and official seal.

NOTARY PUBLIC

My commission expires: _____

STATE OF COLORADO

)

COUNTY OF Arapahoe

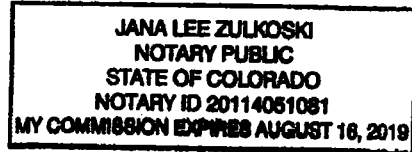
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)

The foregoing Special Warranty Deed was acknowledged before me this 26th day of October 2015, by Brian S. Reamy.

WITNESS my hand and official seal.

Jana Lee Zulkoski
NOTARY PUBLIC



My commission expires: 8/16/2019

STATE OF COLORADO

)

COUNTY OF Arapahoe

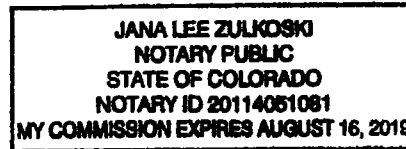
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The foregoing Special Warranty Deed was acknowledged before me this 20th day of October 2015, by Lisa Reamy Heaton, a/k/a Lisa A. Reamy.

WITNESS my hand and official seal.

Jana Lee Zulkoski
NOTARY PUBLIC



My commission expires: 8/16/2019