

**CITY OF DELTA, COLORADO
RESOLUTION NO. 9, 2021**

**A RESOLUTION OF THE CITY OF DELTA, COLORADO, APPROVING
A WATER LEASE AND AGREEMENT FOR THE LEASE OF CERTAIN
WATER RIGHTS OWNED BY THE CITY.**

WHEREAS, the City of Delta (“City”) is the owner of various water rights tributary to the Howard Reservoir (the “Water Rights”); and

WHEREAS, the Town of Orchard City desires to lease the Water Rights from the City on the terms and conditions set forth in the Water Lease and Agreement attached hereto as Exhibit A (the “Lease”); and

WHEREAS, the lease of the Water Rights will not extend beyond the time of the term of office of a majority of the current members of City Council; and

WHEREAS, the City Council is authorized by C.R.S. § 31-15-713(2) and the City Charter to lease the Water Rights pursuant to the terms of the Lease; and

WHEREAS, City Council now desires to approve the Lease.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Delta, Colorado as follows:

1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the City Council.

2. Lease Approval. The City Council hereby approves the Lease, authorizes the lease of the Water Rights pursuant to the terms set forth in the Lease, and authorizes the Mayor to sign and execute the Lease on behalf of the City.

ADOPTED this 6th day of July, 2021.

CITY OF DELTA, COLORADO

Mayor

ATTEST:

Jolene E. Nelson, City Clerk

EXHIBIT A
Lease Agreement

WATER LEASE AND AGREEMENT

This WATER LEASE AND AGREEMENT (hereinafter “Agreement”) is made and entered into this 6th day of July, 2021, by and between the CITY OF DELTA, COLORADO, a Colorado home rule municipality (hereinafter the “City” or “Lessor”), and TOWN OF ORCHARD CITY, COLORADO a Colorado municipality (hereinafter “Lessee”); WITNESSETH:

WHEREAS, the City is the owner of various water rights tributary to the Howard Reservoir; and

WHEREAS, Lessee desires to lease a portion of the Water Rights from the City for its use; and

WHEREAS, the parties desire by this Agreement to set forth the terms and conditions of the City’s lease of a portion of its Water Rights to Lessee.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are incorporated herein as if set forth in full.

2. Lease. The City hereby leases to Lessee up to 7.69 cfs of water available in the Howard Reservoir under the Water Rights (the “Leased Water”), subject to the terms and conditions of this Agreement. The term of the lease shall commence upon execution of this Agreement and shall run through December 31, 2021. In consideration hereof, Lessee shall pay \$400 per cfs for a total of \$3076. Lessee shall pay such rent to the City, within ten days of invoice therefor by the City.

3. Use of Leased Water by Lessee. The City expressly discloses and Lessee hereby acknowledges and agrees that the Leased Water is non-potable. Lessee shall use the Leased Water lawfully and in accordance with the requirements and limitations of the decrees, and Lessee shall cooperate with the Division Engineer and Water Commissioner in the administration of the Leased Water, including Lessee’s diversions and use thereof. Lessee shall also comply with all federal, state, and local laws that may be applicable to Lessee’s use of the Leased Water.

4. Reservations; Limitations. The City expressly reserves the right to all historical use and credit associated with Lessee’s use of the Leased Water, none of which may be claimed by Lessee. This Agreement is not and shall not be construed as a conveyance to Lessee of the Leased Water or the consumptive use therefrom, title and ownership of which shall remain with the City. By this Agreement, Lessee merely leases the right to use water available under the Leased Water for the term hereof. Lessee shall not initiate or prosecute any water court application relating to the Leased Water. Further, Lessee shall not initiate any water appropriation or prosecute any water rights application from or in reliance on any water collection or conveyance facilities owned by the City, and Lessee shall not utilize the Delta Pipeline or any other water collection or conveyance facilities owned by the City for the transmission of water rights owned or claimed by

Lessee.

5. No Representations or Warranties. The City makes no representation or warranty, express or implied, concerning the viability, quality, or quantity of the Leased Water, the legal or physical availability of the Leased Water, or the suitability of the Leased Water for Lessee's desired uses, or any other representation or warranty concerning the Leased Water. Lessee accepts the Leased Water "as is."

6. Indemnification. Lessee agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, agents, and employees from and against any actual or threatened loss, claim, demand, cause of action, liability, cost, expense (including attorney fees and litigation expenses), or damages of any kind or nature arising from or relating to Lessee's use of the Leased Water, including, but not limited to, any failure by Lessee to comply with federal, state, or local laws applicable to Lessee's use of the Leased Water.

7. Breach; Remedies. In the event Lessee fails to make any payments in the amounts and at the times required under this Agreement, or if Lessee breaches any of the other terms, conditions, or provisions of this Agreement, the City may terminate the Agreement and may exercise its legal remedies, including but not limited to an action to collect all amounts due to the City hereunder.

8. Attorney Fees. In the event either party commences legal action to enforce any of the terms, conditions, or provisions of this Agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs of such action. This provision shall survive any termination of the Agreement or expiration of the lease term.

9. Notices. All notices required under this Agreement shall be in writing and shall be hand delivered or sent by United States First Class Mail, postage prepaid, to the addresses of the parties herein set forth. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Mail with the proper address as set forth below. Either party by notice so given may change the address to which future notices shall be sent.

Notice to the City: City of Delta
Attn: City Manager
360 Main Street
Delta, CO 81416

with copy to: David McConaughy, Esq.
Garfield & Hecht, P.C.
901 Grand Avenue, Suite 201
Glenwood Springs CO 81601

Notice to Lessee: Town of Orchard City of Delta
Attn: Melissa Oelke
9661 2100 Road
Austin, CO 81410

10. No Waiver of Immunity. The parties hereto understand and agree that the City is relying on and, by this Agreement or any provision hereof, does not waive or intend to waive the monetary limitations and any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 et seq., as amended from time to time, or otherwise available to the City.

11. Construction of Language. The language used in this Agreement, and all parts thereof, shall be construed as a whole according to its plain meaning, and not strictly for or against any party. All parties have equally participated in the preparation of this Agreement.

12. Section Headings. The section or paragraph headings contained within this Agreement are inserted for convenience only and shall not be construed to vary or add to the meaning of the Agreement.

13. Severability. If any covenant, term, condition, or provision contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such covenant, term, condition, or provision shall be severed or modified to the extent necessary to make it enforceable, and the resulting Agreement shall remain in full force and effect.

14. Complete Agreement. This document embodies the entire and complete agreement of the parties on the subject matter herein. No promise or undertaking has been made by any party, and no understanding exists with respect to the transaction contemplated, except as expressly set forth herein. All prior and contemporaneous negotiations and understandings between the parties are integrated and merged into this Agreement.

15. Governing Law. This Agreement shall be governed by the laws of the State of Colorado, which state shall also be deemed the place where this Agreement was entered into and the place of performance and transaction of business of the parties. In the event of litigation pertaining to this Agreement, the exclusive forum, venue, and place of jurisdiction shall be Delta County District Court.

16. Authority. Each person executing this Agreement represents and warrants that he or she has been duly authorized by one of the parties to execute this Agreement and has authority to bind said party to the terms and conditions hereof.

WHEREFORE, the parties have executed this Water Lease and Agreement on the day and year first written above.

LESSOR:

CITY OF DELTA, COLORADO

Mayor

ATTEST:

City Clerk

LESSEE:
TOWN OF ORCHARD CITY, COLORADO

By: _____

Name: _____

Title: _____