

CONTRACT FOR PURCHASE OF WATER RIGHTS

THIS Agreement, effective upon and as of the ____ day of September, 2019 (“Effective Date”), is by and between the Zorich Family Limited Partnership (“Seller” or “Zorich”), and the City of Brighton, a Colorado municipal corporation whose at 500 South 4th Avenue, Brighton, County of Adams, State of Colorado 80233 (“Buyer” or “Brighton”). Seller and Buyer may collectively be referred to herein as the “Parties” or individually as a “Party.”

WHEREAS, Seller owns the following water rights (the “Water Rights”):

a. Spickerman Ditch, 2.3144 cubic feet per second of Priority No. 12, decreed by the District Court of the Second Judicial District for Arapahoe County in Case No. 6832 on February 4, 1884, with an appropriation date of November 1, 1862, located in the NW ¼ of Section 7, Township 5 South, Range 69 West, 6th P.M., Jefferson County, Colorado, and the source of the water is Turkey Creek, as changed and quantified in Case No. 82CW473 (“82CW473 Decree”);

b. Middle Spickerman Ditch, 2.907 cubic feet per second of Priority No. 22, decreed by the District Court of the Second Judicial District for Arapahoe County in Case No. 6832 on February 4, 1884, with an appropriation date of November 1, 1862, located in the NW ¼ of Section 7, Township 5 South, Range 69 West, 6th P.M., Jefferson County, and the source of the water is Turkey Creek, as changed and quantified in the 82CW473 Decree; and

WHEREAS, Buyer desires to purchase the Water Rights from Seller, and Seller is willing to sell and convey the Water Rights to Buyer on the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the foregoing, and the mutual agreements set forth below, the Parties agree as follows:

1. Purchase and Sale. Subject to the terms of this Agreement, Seller shall sell to Buyer and Buyer shall buy all of the Water Rights. Seller agrees to convey to Buyer good and marketable title to the Water Rights for a total Purchase Price of Sixty-Eight Thousand, Eight Hundred and Eighty Dollars and NO/100 (\$68,880.00) payable at closing.

2. Documents. To the extent such documents have not already been provided to Buyer, within seven (7) days after the Effective Date, Seller agrees to furnish to Buyer accurate copies of any and all deeds, contracts, or abstracts it has pertaining to its title to and historic use of the Water Rights including, but not limited to, all farm lease and share-cropping agreements, crop-production records, water-use records, engineering or soil reports, maps or surveys of historically-irrigated acreages.

3. Closing Date. The closing of this Agreement shall take place within 15 days of the end of the due diligence period set forth in paragraph 8 below. Closing shall take place at the

offices of the City of Brighton, or at such other time and place as may be mutually agreed upon by the parties.

4. Closing. On the date of closing Seller shall deliver a special warranty deed in the form attached as Exhibit A, conveying to Buyer all of Seller's interests in the Spickerman Ditch and the Middle Spickerman Ditch rights described above, together with its associated historical consumptive use credits and subject to the terms and conditions in the 82CW473 Decree.

5. Title. Title to the Water Rights shall be merchantable in Seller. Consistent with the special warranty deed to be executed pursuant to Paragraph 4, above Seller warrants title against all persons claiming under Seller and represents that they are, and on the closing date will be, the lawful owners of the respective Water Rights and has full authority to sell and deliver the same to Buyer in accordance with this Agreement; Seller further warrants and represents, that at the time of transfer to Buyer, the Water Rights will be free and clear of all liens, mortgages, assessments, claims and encumbrances of any type. Any encumbrance existing at the time of closing may be paid at the closing from the proceeds of this transaction or from any other source. Seller represents that they have full right, power and authority to execute this Agreement. Seller further warrants and represents, to the best of their actual knowledge or information, that there are no present pending actions or claims which might give rise to any court proceedings or contingent claims affecting ownership of the water.

6. Historic Use. Seller warrants and represents that to the best of its actual knowledge or information, the Water Rights have not been abandoned.

7. Retirement of Property from Irrigation. Seller warrants and represents that to the best of its actual knowledge or information, no other person or entity has any legal or equitable right to use the Water Rights. Seller warrants and represents that the historically irrigated acreage served by the Water Rights is dried up in fact, because these lands were condemned for development of Bear Creek Lake and the 470/285 Highway and Interchange, and the lands can no longer be irrigated.

8. Due Diligence Period and Inspection of Shares. The Buyer shall have the right to conduct, at its expense, all appropriate due diligence, investigations and inspections regarding the quantity and quality of the Water Rights, their historical use, dry up and related items necessary for a change of water rights, and may terminate this Agreement by giving written notice of termination to Seller during the Due Diligence Period (defined below) without penalty or forfeiture if any condition unsatisfactory to Purchaser is discovered through such inspections. The Seller agrees to reasonably cooperate with Buyer in conducting such investigations and hereby appoints and authorizes Buyer to complete research as necessary at the various ditch and reservoir companies' offices, as further defined above, and shall reasonably assist Buyer in securing the necessary historical data for every water right that is subject to this Agreement. The Buyer shall have thirty (30) days after the Effective Date in which to inspect the shares and otherwise conduct appropriate due diligence and investigations with respect thereto and to terminate the Agreement pursuant to this paragraph if Buyer so desires.

9. Contingencies. This Agreement is expressly contingent upon approval by the Brighton City Council. If the Brighton City Council does not approve this Agreement within thirty (30) days after the Effective Date, this Agreement shall be null and void and of no force or effect, and all parties shall be released from all obligations hereunder.

10. Remedies. There shall be the following remedies:

A. If Seller is in default, (1) Buyer may elect to treat this Agreement as terminated and Buyer may recover such damages as may be proper, or (2) Buyer may treat this Agreement as being in full force and effect and Buyer shall have the right to an action for specific performance or damages or both.

B. If Buyer is in default, (1) Seller may elect to treat this Agreement as terminated and Seller may recover such damages as may be proper, or (2) Seller may treat this Agreement as being in full force and effect and Seller shall have the right to an action for specific performance or damages or both.

11. Indemnification. Seller indemnifies Buyer and holds Buyer harmless from any claim, demand, cause of action, suit, loss, damage, and expense of any nature whatsoever, which may arise directly or indirectly from the inaccuracy, invalidity, misrepresentation, or breach of any representation, warranty, or covenant made by Seller in or pursuant to this contract. This indemnification includes the obligation of Seller to deliver to Buyer unencumbered title to the Water Rights as warranted in paragraph 5, in the event Buyer's title to the Water Rights is defeated. If any dispute arises between the parties over any part of this agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection therewith from the other party.

12. Survivability. Each and every warranty, covenant, and promise contained herein shall survive any deed or document conveying the Water Rights and shall not merge therein.

13. Successors and Assigns. This contract shall be binding upon and inure to the benefit of the heirs, successors, assigns, and legal representatives of the parties hereto.

14. Legal and Tax Advice. All parties are advised to consult legal counsel, tax counsel or other counsel before signing.

15. Notice. Any notice to Buyer shall be effective when received by Buyer or its broker and any notice to Seller shall be effective when received by Seller.

16. Counterpart Copies. This Agreement and other documents executed pursuant to this Agreement may be executed in several counterpart copies and all such counterparts taken together shall be deemed one Agreement or document.

17. Agents. Buyer and Seller warrant and represent that they have not retained any real

estate broker or real estate agent who would be due a commission or other fee as a result of the closing of this transaction and the Parties agree to indemnify each other against any such claims.

IN WITNESS WHEREOF, the parties have executed this document to be effective as of the day and year first above written.

BUYER:

CITY OF BRIGHTON:

By: _____
Marvin Falconburg, Acting City Manager

Date: _____

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Jack D. Bajorek, City Attorney

SELLER:

ZORICH FAMILY LIMITED
PARTNERSHIP

By: _____