

CONFIDENTIAL

CONTRACT FOR PURCHASE OF WATER RIGHTS

THIS Agreement, effective upon and as of _____, 2018 ("Effective Date"), is by and between the Mount Carbon Metropolitan District, a quasi-municipal corporation organized under Title 32 of the Colorado Revised Statutes ("Seller" or "Mt. Carbon"), 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. all water rights and interests, including storage rights, represented by Six and One-Half (6.5) shares of capital stock in the Soda Lakes Reservoir and Mineral Water Company ("Soda Lakes"), together with all appurtenances thereto, represented by Stock Certificate Nos. 250 and 285;

b. Spickerman Ditch, 3.14 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. 04CW197 ("04CW197 Decree");

c. Lower Spickerman Ditch, 5.13 cubic feet per second of Priority No. 18, 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 June 1, 1865, located in the SW ¼ of Section 6, 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 the 04CW197 Decree; and

d. 179.525 inches, 4.675 cubic feet per second, of the Robert Lewis Ditch, Priority 19, originally decreed by the District Court of the Second Judicial District in Civil Action 6832 on February 4, 1884 ("Civil Action 6832"), as changed and quantified in Case No. 84CW221, District Court, Water Division No. 1, State of Colorado ("84CW221 Decree"); and

WHEREAS, Buyer desires to purchase the Water Rights from Seller, and Seller is willing to sell and assign 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. Seller agrees to sell and assign, and Buyer agrees to purchase and accept assignment from Seller of the Water Rights on the terms and conditions set forth in this Agreement.

2. Purchase Price. 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 Two Million, Three Hundred Twenty-One Thousand, Seven Hundred and Fifty Dollars and NO/100 (\$2,321,750) payable at closing. This price reflects a reduction based upon approximated yields in the available annual average historical consumptive use amount of the Water Rights, conveyance costs transit losses and related factors.

3. Deposit. Unless Brighton elects to terminate this Agreement during the Due Diligence Period as set forth in Section 10 herein, Brighton will make a deposit (the "Deposit") of Fifty Thousand Dollars (\$50,000) within three days after the expiration of said Due Diligence Period into an escrow account designated by Seller. The Deposit will be applied to the Purchase Price at closing if closing occurs. Otherwise, the Deposit will be refundable to Brighton upon termination of this Agreement except as provided for herein.

4. 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.

5. 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 10 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.

6. Closing. On the date of closing:

6.1. Seller shall deliver to Buyer an assignment of the 6.5 shares of stock that are a portion of the 5.15 shares of stock evidenced by Stock Certificate No. 250 and the 2.0 shares of stock evidenced by Stock Certificate No. 285 of the Soda Lakes Reservoir and Mineral Water Company (the "Company") together with a special warranty deed for the same. Seller will surrender said certificates to the Company, properly endorsed by Seller, and irrevocably constitute and appoint the Secretary of said Company as attorney to issue a new stock certificate to Brighton for the six and 50/100 (6.5) shares of the total of seven and 15/100 (7.15) shares standing in the name of Mt. Carbon, and to issue a new stock certificate to Mt. Carbon for the remaining 0.65 shares on the books of said Company. The assignment from Seller to Buyer will be free and clear from all liens, mortgages, encumbrances, ditch assessments, or adverse claims, except any ditch assessments now due and owing, and subject to the Articles of Incorporation, Bylaws, and Rules and Regulations of the Soda Lakes Reservoir and Mineral Water Company.

6.2. Seller shall deliver a special warranty deed conveying to Buyer all of Seller's interests in the Spickerman Ditch, Lower Spickerman Ditch, and Robert Lewis Ditch rights described above, together with its associated historical consumptive use credits and subject to the terms and conditions in the 04CW197 Decree and the 84CW221 Decree.

6.3. Seller shall deliver to Buyer the documents specified in Section 9 below.

6.4 Buyer shall deliver the amount of the Purchase Price, less any amount provided for in paragraph 13.1 below, in the form of wired funds to the verified bank account of Seller.

7. Title. Title to the Water Rights shall be merchantable in Seller. Seller warrants and represents that the Seller is, and on the closing date will be, the lawful owner of the respective Water Rights and has full authority to sell and deliver the same to Buyer in accordance with this Agreement. To the best actual knowledge and understanding of Seller, the Water Rights are 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 it has full right, power and authority to execute this Agreement and to endorse over the stock certificates to Buyer pursuant to the statutory requirements of the State of Colorado. Seller further warrants and represents, to the best of its 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.

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

9. 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. Upon the closing of the purchase contemplated by this Agreement, to the extent not already completed, Seller agrees to take those steps necessary to demonstrate that the property historically irrigated with Seller's interests in the Spickerman Ditch, Lower Spickerman Ditch, and Robert Lewis Ditch has been dried up by virtue of the construction of Bear Creek Reservoir, Highway 285, and Highway C-470 as may be required by a court or other tribunal of competent jurisdiction as a condition of any change of the Water Rights to any use or location desired by the Buyer or its successors and assigns.

10. 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.

11. Remedies. There shall be the following remedies:

11.1. If Seller is in default, (1) Buyer may elect to treat this Agreement as terminated and Seller shall release the Deposit to Buyer, 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.

11.2. If Buyer is in default, (1) Seller may elect to treat this Agreement as terminated and Seller may retain the Deposit.

12. Disputes. 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.

13. Additional Provisions.

13.1 Burlington Bypass. The closing of this Agreement is contingent upon Brighton securing an agreement with the Burlington Ditch, Reservoir and Land Company to use the Burlington bypass structures and any related appurtenances for the conveyance of the Water Rights to Brighton's water structures and service area ("Bypass Structure"). The deadline for securing such agreement will be the expiration of the due diligence period set forth in paragraph 10 above. The Purchase Price described in Section 3 of this Agreement shall be reduced by the cost to Brighton of the securing use and/or interest in the Bypass Structure in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000).

13.2 Stream Gauge. During the Due Diligence Period, the parties shall jointly investigate and determine the location and estimated costs to install a stream gauge on Turkey Creek as required in the 04CW197 Decree. At Closing, Buyer shall receive a credit against the Purchase Price in the amount of the to-be-agreed-upon estimated installation cost, but in no circumstances more than \$20,000. Seller shall have no post-Closing obligations nor responsibility regarding the installation and operation of this stream gauge.

13.3. Survivability. The representations and warranties made pursuant to this Agreement shall not survive closing and delivery of conveyance documents, provided that the Covenant to be executed and delivered at closing shall survive closing pursuant to their terms.

13.4 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.

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

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

13.7. Agents. Seller has retained the services of HydroSource to act as its agent, and Seller will be solely responsible for payment of any commission and/or fees of HydroSource.

Otherwise, the Parties agree to indemnify each other against any claims for commission or other fees from any other broker or real estate agent.

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: _____
Philip Rodriguez, City Manager

Date: May 1, 2018

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

SELLER:

MOUNT CARBON METROPOLITAN
DISTRICT

By: _____