City of Louisville
COLORADO • SINCE 1878

CITY COUNCIL COMMUNICATION
AGENDA ITEM 7E

SUBJECT: APPROVAL OF RESOLUTION NO. 20, SERIES 2024 – A RESOLUTION APPROVING TWO WATER LEASE AGREEMENTS

DATE: MAY 7, 2024

PRESENTED BY: KURT KOWAR, P.E., PUBLIC WORKS DIRECTOR

SUMMARY:
Staff recommends approval of two long-term water leases of the City's excess return flow credits.

The City has executed annual leases of unused or excess return flow credits discharged from the Wastewater Plant as far back as 2008. These leases provide a small revenue offset for water that was beyond the City needs or difficult to recapture. The proposed agreements extend the lease period to 10 years with an optional renewal for another 10 years. The City has reserved the option to terminate at any time and may impose restrictions under emergencies. The lease price will be adjusted annually to reflect the City's actual costs and to align with market conditions.

The agreements were drafted and created by the City's water attorneys (White & Jankowski formerly Hill & Pollock).

FISCAL IMPACT:
The two water leases will generator approximately $5,000 a year.

PROGRAM/SUB-PROGRAM IMPACT:
One of the objective for the Water Utility Sub-Program is to maintain facilities efficiently, allowing for reasonable and equitable rates. Lease revenue assist in maintaining equitable rates.

RECOMMENDATION:
Staff recommends City Council approval of the Resolution to approve two water lease agreements. The Resolution would further authorize the Mayor and City Clerk to sign and execute the Agreement and certain other documents on behalf of the City.

ATTACHMENTS:
1. Resolution
2. Three Leaf Farms Water Lease Agreement
3. Schultz Water Lease Agreement

STRATEGIC PLAN IMPACT:

☒	**Financial Stewardship & Asset Management**	☒	**Reliable Core Services**
☐	**Vibrant Economic Climate**	☐	**Quality Programs & Amenities**
☐	**Engaged Community**	☐	**Healthy Workforce**
☐	**Supportive Technology**	☐	**Collaborative Regional Partner**

RESOLUTION NO. 20
SERIES 2024

A RESOLUTION APPROVING TWO WATER LEASE AGREEMENTS

WHEREAS, the City owns unused or excess return flow credits from its Wastewater Plant that are available to be leased to farms and other property owners; and

WHEREAS, by this resolution the City Council desires to approve, and authorize the Mayor to execute, two Water Lease Agreements related to these credits.

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

Section 1. The City Council hereby approves: (1) the Water Lease Agreement by and between the City of Louisville and Jay and Kristen Schultz; and (2) the Water Lease Agreement by and between the City of Louisville and Three Leaf Farm, LLC (collectively, the Agreements), in essentially the same form as the copies of such Agreements that accompany this resolution.

Section 2. The Mayor is hereby authorized to execute the Agreements on behalf of the City, and the Mayor is hereby further authorized to negotiate and approve such revisions to such Agreements as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of such Agreements are not altered.

PASSED AND ADOPTED this 7th day of May, 2024.

____
Christopher M. Leh, Mayor

ATTEST:

____
Meredyth Muth, City Clerk

WATER LEASE AGREEMENT

THIS WATER LEASE AGREEMENT ("Lease") is made and entered into this 1st day of April, 2024 ("Effective Date") by and between the City of Louisville ("Lessor"), a Colorado municipal corporation, whose address is 749 Main Street, Louisville, Colorado 80027, and Three Leaf Farm, LLC ("Lessee"), whose address is 445 S. 112th Street, Lafayette, Colorado 80026. Lessor and Lessee are sometimes referred to individually herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Lessee owns land located as depicted on Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, Lessee intends to use the Leased Water, as defined herein, for direct use or by replacing out-of-priority depletions on Coal Creek associated with irrigation of a small farm located at 445 S. 112th Street, Lafayette, Colorado, in the amounts set forth in the Replacement Schedule, attached hereto as Exhibit B, and incorporated herein by this reference; and

WHEREAS, Lessee has filed an application in Case No. 23CW3154, Water Division No. 1, dated November 29, 2023 ("Lessee's Application"), which includes a claim for approval of a plan for augmentation using Leased Water as a replacement source that Lessee anticipates will result in a final decree approving that claim; and

WHEREAS, Lessor is willing to lease to Lessee water owned by the Lessor for the purposes described in Lessee's Application, and consistent with the terms and conditions described herein; and

WHEREAS, pursuant to the terms and conditions of the decree entered in Case No. 92CW079, Application of the City of Louisville, Water Division No. 1 (the "Marshall Decree"), the Lessor can make additional and successive uses of its municipal return flow credits from the fully consumable portion of the Lessor's decreed water rights and "[a]ny future plan for such use, reuse, successive use, augmentation, replacement, substitution, exchange, replacement of return flows or otherwise shall be approved by the State Engineer's Office or Water Court prior to its implementation;" and

WHEREAS, the water rights associated with Lessor's Farmers Reservoir and Irrigation Company, Marshall Division shares described in the Marshall Decree shall be defined herein as the "Lessor's Water Rights" or the "Leased Water"; and

WHEREAS, the water use that is the subject of this Lease is within Lessor's regular rate schedule established by the Lessor for water leases.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed between the Parties as follows:

AGREEMENT

1. Grant of Lease. Subject to legal and physical availability, the terms and conditions of this Lease, and the terms and conditions of the Decrees described herein, the Lessor hereby leases to the Lessee the right to use the Lessor's Water Rights, the amount of which shall be limited pursuant to paragraph 10 herein.

2. Term of Lease.

   2.1. This Lease is for an initial term commencing on the Effective Date and terminating on December 31, 2034. If the Lessee wishes to lease the Lessor's Water Rights for an additional term commencing at the end of the initial term, the Lessee shall give the Lessor written notice of its desire to enter into a subsequent lease agreement at least six (6) months prior to the end of the initial term. Lessee may terminate this Lease at any time if it determines that it no longer needs the Leased Water.

3. Payment.

   3.1. The Lessee agrees to pay to the Lessor an initial annual lease payment equal to Five-hundred Dollars ($500.00) per acre-foot of the Lessor's Water Rights used by Lessee, provided that the Lessee's use of the Lessor's Water Rights are within the monthly volumetric limits set forth in Exhibit B and paragraphs 9 and 10 herein.

   3.2. Subsequent payments under this Lease shall be made annually on or before April 1 of each year preceding the City's delivery of the Leased Water. The Lease Price following 2024 shall be adjusted each year based upon the Lessor's determination of the Lease Price. The Lease Price will reflect the City's then going rate for long-term leases of fully reusable effluent. If the Lessee objects to any Lease Price set by Lessor following 2024, Lessee shall have the right to terminate this Lease and all obligations hereunder.

4. Use of the Lessor's Water Right. The Lessee agrees that, during the term of this Lease, the Lessee will use the Lessor's Water Rights: (i) only pursuant to the claims in Lessee's Application and any substitute water supply plan obtained during the pendency of Lessee's Application or resulting final decree; and (ii) consistently with the terms and conditions of Lessor's water court decrees, including the Marshall Decree.

5. Delivery of the Lessor's Water Rights. The water to which the Lessee is entitled to shall be available to the Lessee at Lessor's discharge point on Coal Creek, or at other points in the Boulder Creek Basin designated by the Lessor and acceptable to the District 6 Water Commissioner to meet the requested needs of Lessee, per the Exhibit B Replacement Schedule. The Lessor's obligation to provide Leased Water to Lessee at any time during the term of this Lease is at Lessor's sole discretion, and is also expressly conditioned on the legal and physical availability of reuse water under the Lessor's decrees and water rights and shall be subordinate to the Lessor's water needs.

6. The fully consumable, reusable water can be provided from any of the Lessor's decreed water rights that contain fully consumable and reusable credits, at Lessor's sole discretion. Monthly deliveries will be accounted for daily during the irrigation season. Deliveries will be

made in hundredths (0.00) of an acre-foot increment. The Lessor will provide the Lessee with monthly accounting for the reuse water delivered to the system on behalf of the Lessee. Lessee is solely responsible for meeting the terms, conditions, and reporting requirements of any final decree resulting from Lessee's Application.

7. Lessee is responsible for calculating transit losses, including transit losses in the replacement schedule.

8. Lessee shall be responsible for the maintenance and repair costs of any structures from which water is diverted for Lessee's benefit, in addition to the operation and maintenance charges described herein, including paragraph 12.

9. Augmentation Credits and Diversions.

9.1. The Lessee has determined the current time and amount of water sought from Lessor, which is attached as Exhibit B. Lessee shall notify the Lessor, in writing, if the time and amount of water sought from Lessor under this Lease changes. If the Lessor is able to provide the water, Lessor shall release the water, and notify Lessee of the amount, location and time of the release. Lessor shall account for any provision of augmentation water in Lessor's accounting. Lessor shall notify Lessee, in writing, at any time Lessor is unable to provide augmentation water.

10. Volumetric Limits.

10.1. Lessor has agreed, subject to its discretion to determine whether water is available, to provide 4.34 acre-feet per year. The parties acknowledge that Lessee's Application includes up to seven (7) acre-feet per year of augmentation water available from Lessor. Lessee may request additional amounts up to seven acre-feet per year; however, Lessor is under no obligation to provide additional amounts.

11. Operational Requirements.

11.1. The Lessee shall keep detailed records and evidence of its use of the Lessor's Water Rights as will be required under the Lessee's final decree resulting from the Lessee's Application, including daily measurements of amounts requested using measuring devices approved by the Water Commissioner.

11.2. The Lessee shall provide Lessor with copies of its required reports to the Division Engineer regarding water use by the 15th following each proceeding month.

12. Maintenance and Operation. The Lessee shall be responsible for all expenses relating to the Lessee's use of the Lessor's Water Right. The Lessee shall install, operate, maintain, and repair all structures required for it to use the Lessor's Water Rights in good and safe condition at its own cost and expense. The Lessor may inspect all structures required for the Lessee's use of the Lessor's Water.

13. Title to Water Rights. Nothing in this Lease is to be interpreted as giving the Lessee any legal or equitable title in or to the Lessor's Water Rights.

14. Disclaimer of Warranties.

14.1. The Lessor makes no representations and warranties concerning the legal or physical availability of the Lessor's Water Rights and is under no duty or obligation to undertake any actions to otherwise perfect, deliver, or provide the Lessor's Water Rights to the Lessee. The Lessor expressly disclaims all representations and warranties to the Lessee concerning the availability or quality of the water under this Lease Agreement, express or implied, including the usefulness or fitness for a particular purpose.

14.2. The Lessee acknowledges that water availability and quality may be determined by many factors beyond the Lessor's control, including, but not limited to, drought or the need to ensure that the Lessor can utilize the maximum diversions for future augmentation use.

15. Waiver of Liability. The Parties agree that the Lessor is not liable in tort or contract under this Lease for any failure to accurately anticipate the availability of water supply or for an actual failure to supply water due to inadequate runoff or inadequate storage, or any conditions arising from an occurrence beyond the reasonable control of the Lessor, including, but not limited to, act of God, strike, war, insurrection, or inability to serve arising out of the order of any court, including a change of water rights decree, or the lawful order of any governmental administrative body or agency clothed with authority to regulate matters pertaining to water, public utilities, public health, or pollution control.

16. Indemnification. Lessee hereby indemnifies and holds the Lessor harmless from and against any and all demands, claims, actions, arbitrations, and lawsuits or other circumstances arising out of or connected in any way to exercise of the Lessor's Water Rights by the Lessee, including its employees, contractors, agents, or related Parties of interest. This indemnification includes, but is not limited to, any and all judgments, fines, liability, settlements, loss, damage, payments, injury, costs and expenses, of any nature whatsoever, including attorneys' fees, thereby incurred by the Lessor arising out of or connected in any way to use of the Lessor's Water Rights by the Lessee pursuant to this Lease.

17. Emergency Water Shortages. The Parties agree that from time-to-time emergency situations, such as water shortage, may arise where it is necessary for the Lessor to limit the use of water by contract customers, including the Lessee. The Parties agree that the determination of whether an emergency situation exists necessitating such limitation is a fact to be determined by the Lessor in the exercise of its discretion. It is hereby agreed that the Lessor may adopt, in the situation of shortage, such restrictions on uses or priorities for curtailment of use, as may be necessary to adapt to such emergency conditions or shortage, including reductions in water deliveries under this Lease. The Lessee agrees that the Lessor is not liable in tort or contract under this Lease on account of the necessity for adopting and implementing such policies to meet emergency conditions or shortage. In the event that the Lessor is unable to make the deliveries of water to the Lessee specified in this Lease, then the Lessee's payment for water shall be reduced or refunded in proportion to any reduction of deliveries by the Lessor.

18. Not a Permanent Supply. The Parties understand and agree that this Lease is not to be interpreted as any commitment on the part of the Lessor to furnish water to the Lessee on a permanent basis, but rather is for the initial term of this Lease.

19. Requests for Subsequent Lease Terms. Prior to entering into this Lease, the Lessor determined, based upon its present understanding of its current water supplies and the historical availability of water to its various sources of supply, that it will not need the water that is the subject of this Lease during the term of the Lease to supply the inhabitants or customers of the Lessor. The Parties to this Lease recognize, however, that the water supply for the Lessor and its water customers is dependent upon sources from which the supply is variable in quantity and beyond the control of the Lessor.

19.1. While it is the Lessor's purpose to maintain a water supply adequate to meet the needs of the Lessor's customers for water supply and to permit it to supply other temporary contract customers, there are many elements that make it uncertain whether the water supply can always be adequate for all such users.

20. Assignment. The Lessee agrees to not to sell, lease, give, sublease, assign, or otherwise provide any portion of the Lessor's Water Rights to any other person or entity without the express written consent of the Lessor. The Lessee shall not encumber or pledge the Lessor's Water Rights for any purpose.

21. Heirs, Successors and Assigns. The reservations, covenants and restrictions and the rights, duties and obligations stated and declared herein shall be binding upon and shall inure to the benefit of and shall be a burden upon the successors and assigns of the Parties and shall be enforced by each Party against any of the other Parties.

22. Notice: All notices to be given with respect to this Lease shall be in writing. Each notice may be sent by United States mail, first class postage prepaid, to the Party to be notified at the address set forth herein or at such other address as either Party may from time-to-time designate in writing, or sent to the email addresses provided by each party. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein, or sent by email. Nothing herein shall be construed to preclude personal service of any notice in the manner prescribed for personal services of a summons or other legal process.

All notices required to be given to the Lessor hereunder shall be delivered to:

Cory Peterson
Deputy Director of Utilities
City of Louisville
749 Main Street
Louisville, Colorado 80027
cpeterson@louisvilleco.gov

or at such other address as the Lessor may direct in accordance with this paragraph.

All notices required to be given to the Lessee hereunder shall be delivered to:

Three Leaf Farm, LLC ("Applicant")
445 S. 112th Street
Lafayette, Colorado 80026
Email: lenny@threeleafconcepts.com; jax@threeleafconcepts.com

Copy to:
Gunnar Paulsen
Bushong & Holleman P.C.
1525 Spruce Street, Suite 200
Boulder, CO 80302
Telephone: (303) 431-9141
Email: gpaulsen@bh-lawyers.com

or at such other address as the Lessee may direct in accordance with this paragraph.

23. Miscellaneous.

23.1. Waiver. Failure of either Party to this Lease to exercise any right hereunder shall not be deemed a waiver of such Party's right and shall not affect the right of said Party to exercise, at some future time, said right or rights or any other right it may have hereunder. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

23.2. No Exclusive Right or Privilege. Nothing in this Lease is to be construed as a grant by the Lessor of any exclusive right or privilege.

23.3. Remedies. In the event that either Party defaults in the performance of any of its obligations under this Lease, each Party shall have all remedies provided in this Lease or by law or equity, but neither Party shall have the right of specific performance against the other. In the event of litigation, the prevailing Party shall be entitled to its litigation costs, including reasonable attorney's fees.

23.4. Default, Right to Cure. In the event that either Party believes that the other is in default of any obligation under this Lease, the non-defaulting Party shall promptly give written notice of the default to the defaulting Party. If a notice of default is provided, the Party accused of the default shall either cure it or provide a written statement explaining why it is not in default. If the alleged default is not cured or otherwise resolved within thirty (30) days, the Parties may resort to their remedies.

23.5. Right to Enter into Lease. Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Lease.

23.6. Governing Law. This Lease shall be governed by the laws of the State of Colorado in all respects, with jurisdiction and venue restricted to a court of competent jurisdiction in Boulder County, Colorado.

23.7. Entire Agreement, Modification. This Lease constitutes the entire agreement between the Parties pertaining to the subject matter described in it and supersedes any and all prior contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Lease shall be binding unless executed in writing by all Parties.

23.8. Severability. Wherever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Lease shall be found invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Lease, and the remaining provisions shall remain in full force and effect.

23.9. Liberal Interpretation. The provisions of this Lease shall be liberally construed as a whole to effectuate the purpose of this Lease.

23.10. No Further Rights; No Third-Party Rights. This Lease is intended to affect, benefit or burden only the Parties to this Lease and no rights or obligations are created for any third Parties by this Lease.

23.11. Counterparts. This Lease may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission of a signed copy of this Lease shall be considered valid and constitute a signed original. Copies of this Lease may also be delivered among the Parties by facsimile transmission or other electronic means, such as by means of internet utilizing PDF format, and such transmitted copies displaying facsimile duplications of the signature of a Party shall have the same force and effect as an original, originally signed in ink by the Party, which has been personally delivered to the recipient.

23.12. No Construction Against Drafter. This Lease was drafted by both Parties with review and comment from each Party's attorney. Accordingly, the Parties agree the legal doctrine of construction against the drafters will not be applied should any dispute arise concerning this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease as of the Effective Date.

LESSOR:

THE CITY OF LOUISVILLE, a Colorado municipal corporation

By: ______________________________

____

STATE OF COLORADO

COUNTY OF BOULDER

Acknowledged, subscribed and sworn to before me this _____ day of _______________, 2027, by ______________________________.

Witness my hand and official seal.

My commission expires:

____________________ ______________________________
Notary Public

LESSEE:

Three Leaf Farm

By: ______________________________
Lenny Martinelli, Owner

STATE OF COLORADO

COUNTY OF BOULDER

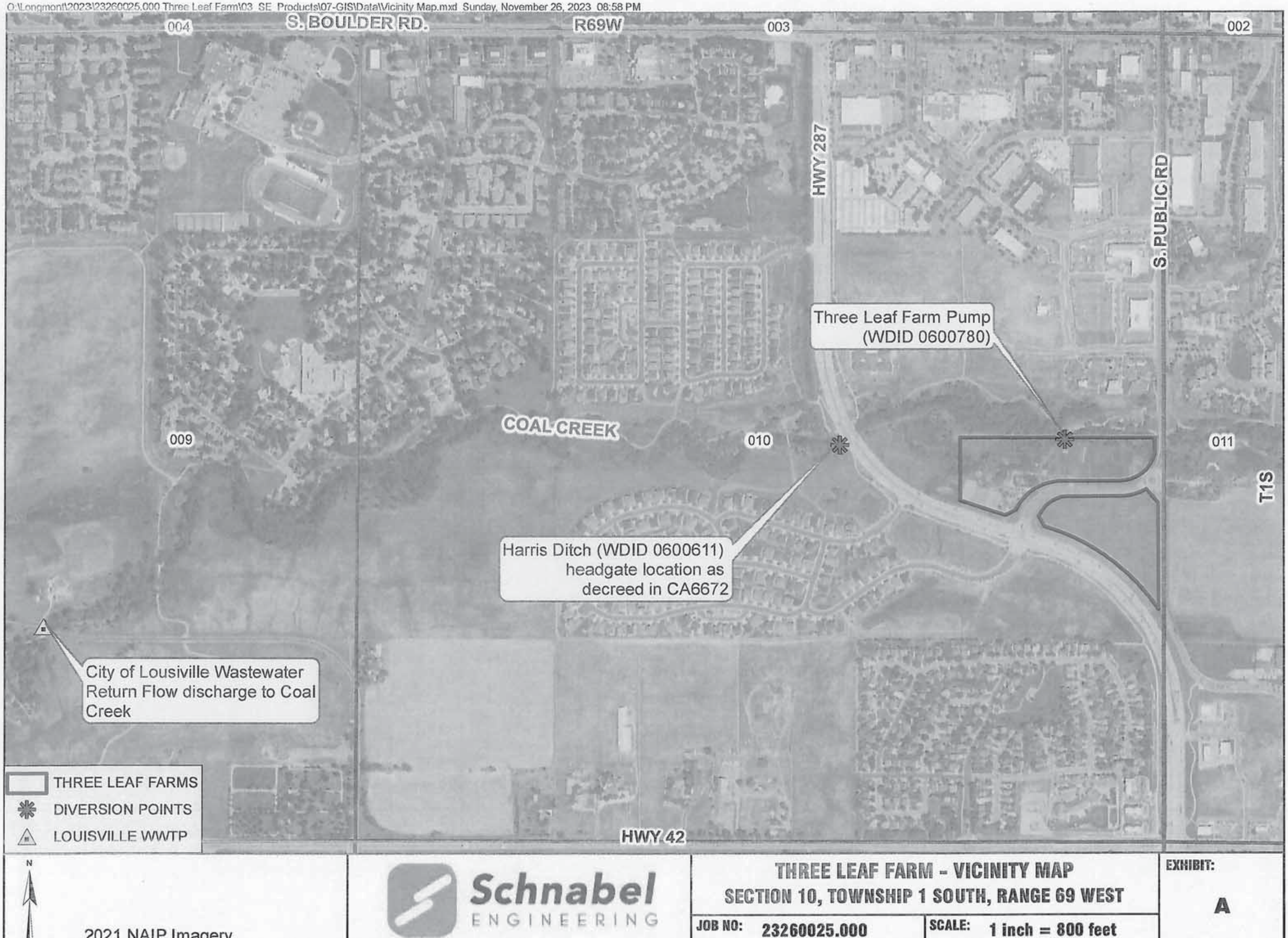
Acknowledged, subscribed and sworn to before me this 1 day of April, 2024, by Lenny Anthony Martinelli.

Witness my hand and official seal.

My commission expires:
Feb. 06, 2028 ______________________________
Notary Public

HUA HUI LI
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20204005125
MY COMMISSION EXPIRES FEB 6, 2028

O:\Longmont\2023\23260025.000 Three Leaf Farm\03_SE_Products\07-GIS\Data\Vicinity Map.mxd Sunday, November 26, 2023 08:58 PM



2021 NAIP Imagery

Schnabel ENGINEERING

THREE LEAF FARM - VICINITY MAP
SECTION 10, TOWNSHIP 1 SOUTH, RANGE 69 WEST

JOB NO: 23260025.000 | SCALE: 1 inch = 800 feet

EXHIBIT: A

EXHIBIT B

THREE LEAF FARM

REPLACEMENT SCHEDULE

Three Leaf Farm, Located in Boulder County, Colorado

Month	Required Deliveries (including 15% Transit Loss) [acre-ft]	Price per acre-foot [acre-ft]	Total Price [$]	
Janruary-24	0.00	$	$	Non-
February	0.00	$	$	Irrigation
March	0.00	$500	$0.00	
April	0.13	$500	$65.00	
May	0.45	$500	$225.00	
June	0.84	$500	$420.00	Irrigation
July	1.08	$500	$540.00	Season
August	0.99	$500	$495.00	
September	0.63	$500	$315.00	
October	0.22	$500	$110.00	
November	0.00	$	$	
December-24	0.00	$	$	
TOTAL (AF)	**4.34**		**$2,170.00**	

NOTES:

(1) Replacement Schedule proved by Three Leaf Farm.

(2) Amounts returned are in hundredth of a unit (0.00) acre-foot (AF).

(3) Requires Deliveries is the total amount to be returned, including transit losses and all other required amounts

(4) Amounts returned will equal monthly total divided by the number of days deliveries and rounded up to the nearest hundredth (0.00) acre-foot (AF).

DAILY DELIVERY SCHEUDLE:

- April deliveries of 0.01 AF/delivery will occur on Monday, Wednesday, and Friday (three times a week).
- May deliveries of 0.02 AF/delivery will occur on Monday and Wednesday and deliveries of 0.03 AF/delivery will occur on Tuesday and Friday (four times a week).
- June deliveries of 0.04 AF/delivery will occur on Monday, Tuesday, Wednesday, Friday, and Saturday (five times a week).
- July deliveries of 0.04 AF/delivery will occur on Monday through Saturday (six times a week).
- August deliveries of 0.04 AF/delivery will occur on Monday, Wednesday, Friday, and Saturday, and 0.03 AF/delivery on Tuesday and Thursday (six times a week).
- September deliveries of 0.03 AF/delivery will occur on Monday, Wednesday, and Friday, and 0.02 AF/delivery on Tuesday, Thursday, and Saturday (six times a week).
- October deliveries of 0.02 AF/delivery will occur on Monday and Wednesday, as well as 0.01 AF/delivery on Friday (three times a week).

WATER LEASE AGREEMENT

THIS WATER LEASE AGREEMENT ("Lease") is made and entered into this 22 day of April, 2024 ("Effective Date") by and between the City of Louisville ("Lessor"), a Colorado municipal corporation, whose address is 749 Main Street, Louisville, Colorado 80027, and Jay and Kristen Schultz (collectively "Lessee"), whose address is 355 Orion Circle, Erie, Colorado 80516. Lessor and Lessee are sometimes referred to individually herein as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, Lessee owns land located as depicted on Exhibit A, attached hereto and incorporated herein by this reference; and

WHEREAS, Lessee intends to use the Leased Water, as defined herein, for direct use by exchange or by replacing out-of-priority depletions on Coal Creek associated with irrigation and filling a pond located at 10064 Empire Road, Lafayette, Colorado 80026, in the amounts set forth in the Replacement Schedule, attached hereto as Exhibit B, and incorporated herein by this reference; and

WHEREAS, Lessee has obtained a decree in Case No. 20CW3207, Water Division No. 1, dated January 3, 2024 ("Lessee's Decree"), which includes approval of a plan for augmentation and an appropriative right of exchange using Leased Water as an augmentation source and replacement source; and

WHEREAS, Lessor is willing to lease to Lessee water owned by the Lessor for the purposes described in Lessee's Decree, and consistent with the terms and conditions described herein; and

WHEREAS, pursuant to the terms and conditions of the decree entered in Case No. 92CW079, Application of the City of Louisville, Water Division No. 1 (the "Marshall Decree"), the Lessor can make additional and successive uses of its municipal return flow credits from the fully consumable portion of the Lessor's decreed water rights and "[a]ny future plan for such use, reuse, successive use, augmentation, replacement, substitution, exchange, replacement of return flows or otherwise shall be approved by the State Engineer's Office or Water Court prior to its implementation;" and

WHEREAS, the water rights associated with Lessor's Farmers Reservoir and Irrigation Company, Marshall Division shares described in the Marshall Decree shall be defined herein as the "Lessor's Water Rights" or the "Leased Water"; and

WHEREAS, the water use that is the subject of this Lease is within Lessor's regular rate schedule established by the Lessor for water leases; and therefore, the Parties agree that all of the terms of the Lease for the Lessees' use set forth below are provided by this Lease.

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed between the Parties as follows:

AGREEMENT

1. Grant of Lease. Subject to legal and physical availability, the terms and conditions of this Lease, and the terms and conditions of the Decrees described herein, the Lessor hereby leases to the Lessee the right to use the Lessor's Water Rights, the amount of which shall be limited pursuant to paragraph 10 herein.

2. Term of Lease.

    2.1. This Lease is for an initial term commencing on the Effective Date and terminating on December 31, 2034. If the Lessee wishes to lease the Lessor's Water Rights for an additional term commencing at the end of the initial term, the Lessee shall give the Lessor written notice of its desire to enter into a subsequent lease agreement at least six (6) months prior to the end of the initial term.

3. Payment.

    3.1. The Lessee agrees to pay to the Lessor an initial annual lease payment equal to Five-hundred Dollars ($500.00) per acre-foot of the Lessor's Water Rights used by Lessee, provided that the Lessee's use of the Lessor's Water Rights are within the monthly volumetric limits set forth in Exhibit B and paragraphs 9 and 10 herein.

    3.2. Subsequent payments under this Lease shall be made annually on or before April 1 of each year preceding the City's delivery of the Leased Water. The Lease Price following 2024 shall be adjusted each year based upon the Lessor's determination of the Lease Price. The Lease Price will reflect the City's then going rate for long-term leases of fully reusable effluent. If the Lessee objects to any Lease Price set by Lessor following 2024, Lessee shall have the right to terminate this Lease and all obligations hereunder.

4. Use of the Lessor's Water Right. The Lessee agrees that, during the term of this Lease, the Lessee will use the Lessor's Water Rights: (i) only pursuant to Lessee's Decree; and (ii) consistently with the terms and conditions of Lessee's Decree and Lessor's water court decrees, including the Marshall Decree.

5. Delivery of the Lessor's Water Rights. The water to which the Lessee is entitled to shall be available to the Lessee at Lessor's discharge point on Coal Creek, or at other points in the Boulder Creek Basin designated by the Lessor and acceptable to the District 6 Water Commissioner to meet the requested needs of Lessee, per the Exhibit B Replacement Schedule and the Lessee's Decree. The Lessor's obligation to provide Leased Water to Lessee at any time during the term of this Lease is at Lessor's sole discretion, and is also expressly conditioned on the legal and physical availability of reuse water under the Lessor's decrees and water rights and shall be subordinate to the Lessor's water needs.

6. The fully consumable, reusable water can be provided from any of the Lessor's decreed water rights that contain fully consumable and reusable credits, at Lessor's sole discretion. Monthly deliveries will be accounted for daily during the irrigation season. Deliveries will be made in hundredths (0.00) of an acre-foot increment. The Lessor will provide the Lessee with

monthly accounting for the reuse water delivered to the system on behalf of the Lessee. Lessee is solely responsible for meeting the terms, conditions, and reporting requirements of Lessee's Decree.

7. Lessee is responsible for calculating transit losses, including transit losses in the replacement schedule.

8. Lessee shall be responsible for the maintenance and repair costs of any structures from which water is diverted for Lessee's benefit, in addition to the operation and maintenance charges described herein, including paragraph 12.

9. Augmentation Credits and Diversions.

9.1. The Lessee has determined the current time and amount of water sought from Lessor, which is attached as Exhibit B. Lessee shall notify the Lessor, in writing, if the time and amount of water sought from Lessor under this Lease changes. If the Lessor is able to provide the water, Lessor shall release the water, and notify Lessee of the amount, location and time of the release. Lessor shall account for any provision of augmentation water in Lessor's accounting. Lessor shall notify Lessee, in writing, at any time Lessor is unable to provide augmentation water.

10. Volumetric Limits.

10.1. Lessor has agreed, subject to its discretion to determine whether water is available, to provide five (5) acre-feet per year. The parties acknowledge that Lessee's Decree includes up to ten (10) acre-feet per year of augmentation and exchange water available from Lessor. Lessee may request additional amounts up to ten acre-feet per year; however, Lessor is under no obligation to provide additional amounts.

11. Operational Requirements.

11.1. The Lessee shall keep detailed records and evidence of its use of the Lessor's Water Rights as required under the Lessee Decree, including daily measurements of amounts requested using measuring devices approved by the Water Commissioner.

11.2. The Lessee shall provide Lessor with copies of its required reports to the Division Engineer regarding water use by the 15th following each proceeding month.

12. Maintenance and Operation. The Lessee shall be responsible for all expenses relating to the Lessee's use of the Lessor's Water Right. The Lessee shall install, operate, maintain, and repair all ditches and structures required for it to use the Lessor's Water Rights in good and safe condition at its own cost and expense. The Lessor may inspect all ditches and structures required for the Lessee's use of the Lessor's Water.

13. Title to Water Rights. Nothing in this Lease is to be interpreted as giving the Lessee any legal or equitable title in or to the Lessor's Water Rights.

14. Disclaimer of Warranties.

14.1. The Lessor makes no representations and warranties concerning the legal or physical availability of the Lessor's Water Rights and is under no duty or obligation to undertake any actions to otherwise perfect, deliver, or provide the Lessor's Water Rights to the Lessee. The Lessor expressly disclaims all representations and warranties to the Lessee concerning the availability or quality of the water under this Lease Agreement, express or implied, including the usefulness or fitness for a particular purpose.

14.2. The Lessee acknowledges that water availability and quality may be determined by many factors beyond the Lessor's control, including, but not limited to, drought or the need to ensure that the Lessor can utilize the maximum diversions for future augmentation use.

15. Waiver of Liability. The Parties agree that the Lessor is not liable in tort or contract under this Lease for any failure to accurately anticipate the availability of water supply or for an actual failure to supply water due to inadequate runoff or inadequate storage, or any conditions arising from an occurrence beyond the reasonable control of the Lessor, including, but not limited to, act of God, strike, war, insurrection, or inability to serve arising out of the order of any court, including a change of water rights decree, or the lawful order of any governmental administrative body or agency clothed with authority to regulate matters pertaining to water, public utilities, public health, or pollution control.

16. Indemnification. Lessee hereby indemnifies and holds the Lessor harmless from and against any and all demands, claims, actions, arbitrations, and lawsuits or other circumstances arising out of or connected in any way to exercise of the Lessor's Water Rights by the Lessee, including its employees, contractors, agents, or related Parties of interest. This indemnification includes, but is not limited to, any and all judgments, fines, liability, settlements, loss, damage, payments, injury, costs and expenses, of any nature whatsoever, including attorneys' fees, thereby incurred by the Lessor arising out of or connected in any way to use of the Lessor's Water Rights by the Lessee pursuant to this Lease.

17. Emergency Water Shortages. The Parties agree that from time-to-time emergency situations, such as water shortage, may arise where it is necessary for the Lessor to limit the use of water by contract customers, including the Lessee. The Parties agree that the determination of whether an emergency situation exists necessitating such limitation is a fact to be determined by the Lessor in the exercise of its discretion. It is hereby agreed that the Lessor may adopt, in the situation of shortage, such restrictions on uses or priorities for curtailment of use, as may be necessary to adapt to such emergency conditions or shortage, including reductions in water deliveries under this Lease. The Lessee agrees that the Lessor is not liable in tort or contract under this Lease on account of the necessity for adopting and implementing such policies to meet emergency conditions or shortage. In the event that the Lessor is unable to make the deliveries of water to the Lessee specified in this Lease, then the Lessee's payment for water shall be reduced or refunded in proportion to any reduction of deliveries by the Lessor.

18. Not a Permanent Supply. The Parties understand and agree that this Lease is not to be interpreted as any commitment on the part of the Lessor to furnish water to the Lessee on a permanent basis, but rather is for the initial term of this Lease.

19. Requests for Subsequent Lease Terms. Prior to entering into this Lease, the Lessor determined, based upon its present understanding of its current water supplies and the historical availability of water to its various sources of supply, that it will not need the water that is the subject of this Lease during the term of the Lease to supply the inhabitants or customers of the Lessor. The Parties to this Lease recognize, however, that the water supply for the Lessor and its water customers is dependent upon sources from which the supply is variable in quantity and beyond the control of the Lessor.

19.1. While it is the Lessor's purpose to maintain a water supply adequate to meet the needs of the Lessor's customers for water supply and to permit it to supply other temporary contract customers, there are many elements that make it uncertain whether the water supply can always be adequate for all such users.

20. Assignment. The Lessee agrees to not to sell, lease, give, sublease, assign, or otherwise provide any portion of the Lessor's Water Rights to any other person or entity without the express written consent of the Lessor. The Lessee shall not encumber or pledge the Lessor's Water Rights for any purpose.

21. Heirs, Successors and Assigns. The reservations, covenants and restrictions and the rights, duties and obligations stated and declared herein shall be binding upon and shall inure to the benefit of and shall be a burden upon the successors and assigns of the Parties and shall be enforced by each Party against any of the other Parties.

22. Notice: All notices to be given with respect to this Lease shall be in writing. Each notice may be sent by United States mail, first class postage prepaid, to the Party to be notified at the address set forth herein or at such other address as either Party may from time-to-time designate in writing, or sent to the email addresses provided by each party. Every notice shall be deemed to have been given at the time it shall be deposited in the United States mail in the manner prescribed herein, or sent by email. Nothing herein shall be construed to preclude personal service of any notice in the manner prescribed for personal services of a summons or other legal process.

All notices required to be given to the Lessor hereunder shall be delivered to:

Cory Peterson
Deputy Director of Utilities
City of Louisville
749 Main Street
Louisville, Colorado 80027
cpeterson@louisvilleco.gov

or at such other address as the Lessor may direct in accordance with this paragraph.

All notices required to be given to the Lessee hereunder shall be delivered to:

Jay and Kristen Schultz
355 Orion Circle
Erie, CO 80516

Telephone: (805) 870-5719
Email: jaytaylorschultz@gmail.com; kmw.schultz@gmail.com

Copy to:
Gunnar Paulsen
Bushong & Holleman P.C.
1525 Spruce Street, Suite 200
Boulder, CO 80302
Telephone: (303) 431-9141
Email: gpaulsen@bh-lawyers.com

or at such other address as the Lessee may direct in accordance with this paragraph.

23. Miscellaneous.

23.1. Waiver. Failure of either Party to this Lease to exercise any right hereunder shall not be deemed a waiver of such Party's right and shall not affect the right of said Party to exercise, at some future time, said right or rights or any other right it may have hereunder. No waiver of any of the provisions of this Lease shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver.

23.2. No Exclusive Right or Privilege. Nothing in this Lease is to be construed as a grant by the Lessor of any exclusive right or privilege.

23.3. Remedies. In the event that either Party defaults in the performance of any of its obligations under this Lease, each Party shall have all remedies provided in this Lease or by law or equity, but neither Party shall have the right of specific performance against the other. In the event of litigation, the prevailing Party shall be entitled to its litigation costs, including reasonable attorney's fees.

23.4. Default, Right to Cure. In the event that either Party believes that the other is in default of any obligation under this Lease, the non-defaulting Party shall promptly give written notice of the default to the defaulting Party. If a notice of default is provided, the Party accused of the default shall either cure it or provide a written statement explaining why it is not in default. If the alleged default is not cured or otherwise resolved within thirty (30) days, the Parties may resort to their remedies.

23.5. Right to Enter into Lease. Each Party hereby warrants and represents that it has the full right and lawful authority to enter into this Lease.

23.6. Governing Law. This Lease shall be governed by the laws of the State of Colorado in all respects, with jurisdiction and venue restricted to a court of competent jurisdiction in Boulder County, Colorado.

23.7. Entire Agreement, Modification. This Lease constitutes the entire agreement between the Parties pertaining to the subject matter described in it and supersedes any and all prior contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Lease shall be binding unless executed in writing by all Parties.

23.8. Severability. Wherever possible, each provision of this Lease shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Lease shall be found invalid or unenforceable, this shall not affect the validity of the remaining provisions of this Lease, and the remaining provisions shall remain in full force and effect.

23.9. Liberal Interpretation. The provisions of this Lease shall be liberally construed as a whole to effectuate the purpose of this Lease.

23.10. No Further Rights; No Third-Party Rights. This Lease is intended to affect, benefit or burden only the Parties to this Lease and no rights or obligations are created for any third Parties by this Lease.

23.11. Counterparts. This Lease may be executed in multiple counterparts or by legible facsimile copy, each of which shall constitute an original, but all of which, taken together, shall constitute one and the same instrument. The facsimile transmission of a signed copy of this Lease shall be considered valid and constitute a signed original. Copies of this Lease may also be delivered among the Parties by facsimile transmission or other electronic means, such as by means of internet utilizing PDF format, and such transmitted copies displaying facsimile duplications of the signature of a Party shall have the same force and effect as an original, originally signed in ink by the Party, which has been personally delivered to the recipient.

23.12. No Construction Against Drafter. This Lease was drafted by both Parties with review and comment from each Party's attorney. Accordingly, the Parties agree the legal doctrine of construction against the drafters will not be applied should any dispute arise concerning this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Lessor and the Lessee have executed this Lease as of the Effective Date.

LESSOR:

THE CITY OF LOUISVILLE, a Colorado municipal corporation

By: ______________________________

____

STATE OF COLORADO

COUNTY OF BOULDER

Acknowledged, subscribed and sworn to before me this _____ day of _______________, 2027, by ______________________________.

Witness my hand and official seal.

My commission expires: ____________________

____
Notary Public

LESSEE:

____

By: ______________________________
Jay Schultz

STATE OF COLORADO

COUNTY OF BOULDER

JAHIRABBAS K MANSURI
NOTARY PUBLIC - STATE OF COLORADO
NOTARY ID 20234039368
MY COMMISSION EXPIRES OCT 17, 2027

Acknowledged, subscribed and sworn to before me this 22 day of April, 2024, by Jay Schultz.

Witness my hand and official seal.

My commission expires: Oct 17, 2027

Jahirabbas mansuri
Notary Public

EXHIBIT A

G:\2020\Longmont\20C26029.00 Schultz Property\03_SE_Products\07_GIS\Data\Work\Vicinity Map.mxd Friday, April 23, 2021 03:56 PM

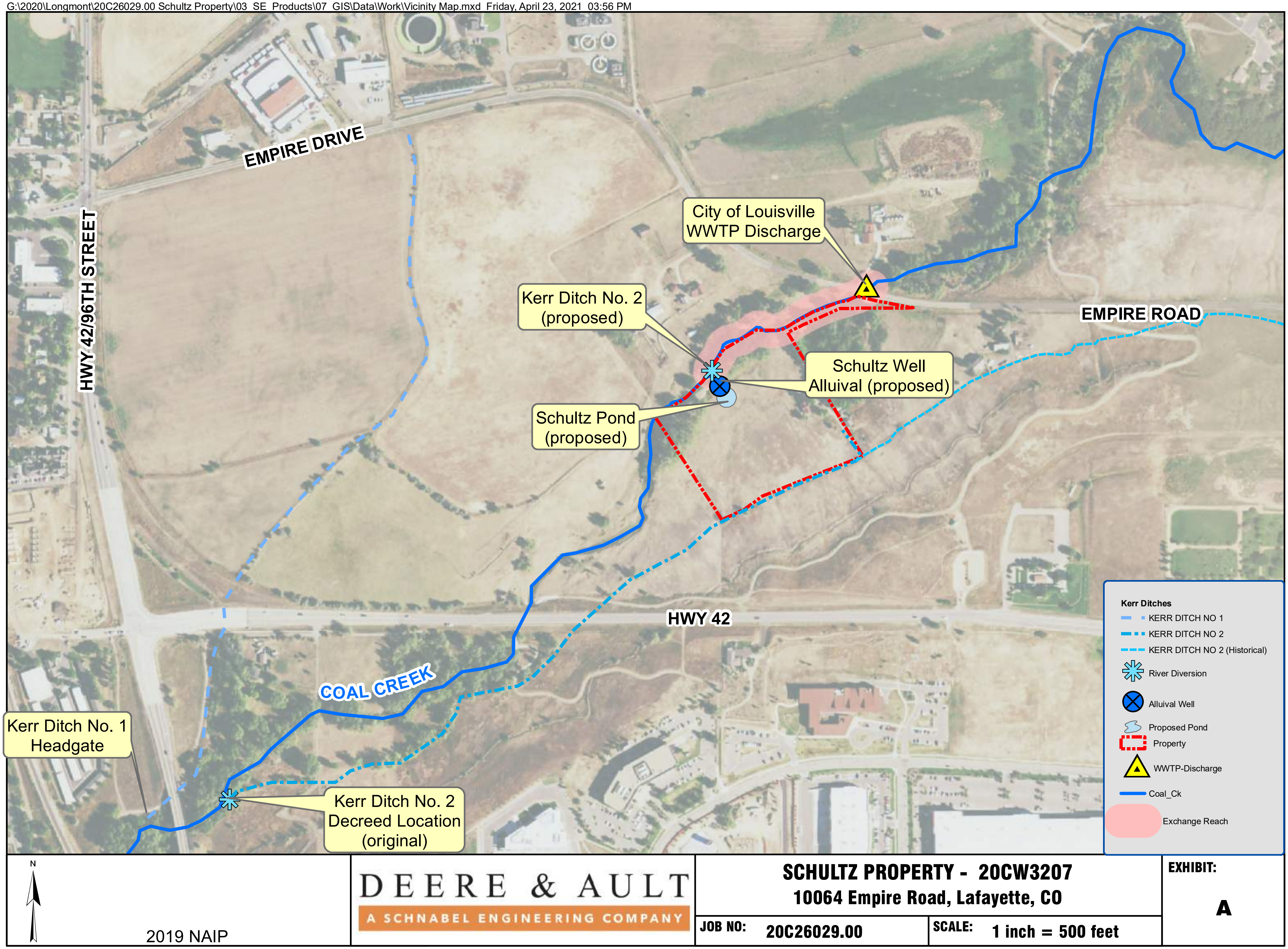


EXHIBIT B

Jay and Kristen Schultz

REPLACEMENT SCHEDULE

10064 Empire Road, Located in Boulder County, Colorado

Month	Required Deliveries (including Transit Loss) [acre-ft]	Price per acre-foot [acre-ft]	Total Price [$]	
Janruary-24	0.00	$	$	Non-
February	0.00	$	$	Irrigation
March	0.00	$500	$0.00	
April	0.00	$500	$0.00	
May	1.00	$500	$500.00	
June	0.00	$500	$0.00	Irrigation
July	1.70	$500	$850.00	Season
August	1.70	$500	$850.00	
September	0.5	$500	$250.00	
October	0.1	$500	$50.00	
November	0.00	$	$	
December-24	0.00	$	$	
TOTAL (AF)	**5.0**		**$2,500.00**	

NOTES:
(1) Replacement Schedule provided by Jay and Kristen Schultz
(2) Amounts returned are in hundredth of a unit (0.00) acre-foot (AF).
(3) Required Deliveries is the total amount to be returned, including transit losses and all other required amounts
(4) Amounts delivered will equal monthly total divided by the number of days deliveries and rounded up to the nearest hundredth (0.00) acre-foot (AF).