

RESOLUTION 10-03

A RESOLUTION AUTHORIZING AND APPROVING THE EXCHANGE OF MUNICIPAL IRRIGATION WATER SHARES.

WHEREAS, Hyrum City (CITY) owns 617 shares of stock in the Porcupine High Line Canal Company, Inc.; and

WHEREAS, said shares of stock represent water available to the CITY through the High Line Canal located on the bench above CITY; and

WHEREAS, at present the CITY has no direct piped connection to the High Line Canal, therefore use of water represented by the High Line Canal shares is accomplished through a complex exchange providing conveyance of this water down the main canal leading to the CITY'S irrigation diversion ponds and pump stations; and

WHEREAS, Gary, Michael, and Jared Clawson and Alan Nielsen (CLAWSON) own shares in Hyrum Irrigation Company, which water is currently delivered through the main canal and a branch thereof known as the O'Berry Canal; and

WHEREAS, CLAWSON currently uses this water to flood irrigate certain agricultural lands owned by or under control of CLAWSON; and

WHEREAS, CLAWSON desires to exchange water represented by 53 shares of Hyrum Irrigation Company stock with CITY for 212 shares of Porcupine High Line Canal stock in order to water said agricultural lands by pressurized piped irrigation made possible by the elevation of the High Line Canal rather than continue flooding with water provided by Hyrum Irrigation Company stock; and

WHEREAS, in a special meeting held April 7, 2009, the CITY agreed in principle to exchange water shares based on a proposal submitted by CLAWSON; and

WHEREAS, said exchange benefits CLAWSON by allowing the conversion of certain agricultural properties owned or controlled by CLAWSON from flood irrigation to pressurized piped irrigation made possible by the elevation of water in the High Line Canal; and

WHEREAS, said exchange benefits CITY by allowing CITY a purportedly equal amount of water represented by its Porcupine High Line Canal Company, Inc. stock to be conveyed to the CITY'S irrigation system pump station through the main canal, as well as recovery of an undetermined amount of water saved through the

efficiencies of sprinkling rather than flood irrigating from the CLAWSON properties.

NOW, THEREFORE, BE IT RESOLVED by the City Council of Hyrum City, Cache County, State of Utah, that the agreements attached hereto as Exhibit A and Exhibit B are hereby accepted and approved to consummate the conditional exchange of water shares and associated rights between the CITY and Gary, Michael, and Jared Clawson and Alan Nielsen under the terms and conditions set forth in said agreements.

THIS RESOLUTION shall become effective upon adoption.

ADOPTED AND PASSED by the Hyrum City Council this 7th day of January, 2010.

HYRUM CITY

BY: _____
Dean Howard
Mayor

ATTEST:

Stephanie Fricke
City Recorder

WATER SHARE EXCHANGE AND SECURITY AGREEMENT

This WATER SHARE EXCHANGE AND SECURITY AGREEMENT (the "Agreement") is made and entered into this the ____ day of _____, 2009, by and between Hyrum City (the "City") and Gary Clawson, Jared Clawson and [other son] (collectively "Clawsons").

RECITALS

- A. WHEREAS, the City owns water shares in the High Line Canal Company ("High Line Shares") and Clawsons own water shares in the Hyrum Irrigation Company ("Hyrum Irrigation Shares");
- B. WHEREAS, Clawsons desires to convey the Hyrum Irrigation Shares to the City in exchange for the High Line Shares for purposes of irrigating the Clawsons' 88 acre farm located at 327 South 800 East, Hyrum, Utah ("Farm");
- C. WHEREAS, Clawsons desire to convey to the City 44 Shares of Hyrum Irrigation Shares which are described as **Exhibit "A"** attached to this Agreement and the City desires to convey to Clawsons 176 High Line Shares which are described as **Exhibit "B"** attached to this Agreement;
- D. WHEREAS, Clawsons desire to give the City a security interest in the High Line Shares conveyed by the City which, based upon the occurrence of certain events stated herein, would give the City the right to repossess the High Line Shares; City will perfect its security interest in the High Line Shares through possession of the shares;
- E. WHEREAS, the parties desire to give each other the option to repurchase the respective water shares based upon the occurrence of certain events stated herein;
- F. WHEREAS, the City Council approved the material terms of the exchange of the water shares between the City and Clawsons in a public meeting held on April 7, 2009;
- G. WHEREAS, the parties wish to define their relative duties and obligations with respect to the exchange of the High Line Shares and Hyrum Irrigation Shares and the parties' continued beneficial use of these shares contemplated by this Agreement;
- H. WHEREAS, the City and Clawsons have each reviewed this Agreement and the terms and conditions herein. The City, by resolution, has duly and legally adopted and approved this Agreement and has authorized its respective representatives to execute and deliver this Agreement for and in its behalf. Likewise, Clawsons have approved this Agreement.

WITNESSETH

NOW, THEREFORE, in consideration of the foregoing, and the promises, representations and mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1 CLAWSONS' OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

- 1.1 **Conveyance of Hyrum Irrigation Shares.** Clawsons, in consideration of the covenants and agreements of the City as set forth herein, agrees, upon the performance of the City of those covenants and agreements specified herein, to convey to the City 44 Hyrum Irrigation Shares described in **Exhibit "A"** attached to this Agreement. The Hyrum Irrigation Shares shall be in proper form and shall be duly executed and acknowledged by Clawsons, so as to convey to the City the Hyrum Irrigation Shares free of all encumbrances, except as stated in this Agreement.

- 1.2 Grant of Security Interest and Perfection.** Clawsons grant to the City a security interest pursuant to Utah Code Ann. § 70A-9a et. seq. in all of Clawsons' rights, title, and interests in the High Line Shares. Clawsons further agree to transfer possession, duly indorsed to City, of these shares to the City for purposes of perfecting the City's security interest therein.
- 1.3 Representations and Warranties.** Clawsons represent and warrant as follows:
- 1.3.1 No Encumbrances on Hyrum Irrigation Shares.** There is no effecting security interests, liens, claims, encumbrances or financing statement on file covering the Hyrum Irrigation Shares;
- 1.3.2 Beneficial Use of Hyrum Irrigation Shares.** Within the previous year of the date of this Agreement, Clawsons have made beneficial use of all of the water rights associated with the Hyrum Irrigation Shares and there is no claim of forfeiture of those rights;
- 1.3.3 Authorization to Enter Agreement.** Clawsons are fully authorized to make contractual obligations relative to the Hyrum Irrigation Shares and the High Line Shares that are fully binding on Clawsons;
- 1.3.4 Name.** Clawsons are Utah residents currently residing at the address noted below. Clawsons are is generally known as Gary Clawson, Jared Clawson and [REDACTED] and uses such names on official documents and no other names, nicknames, or aliases;
- 1.3.5 Valid Security Interest.** The security interest granted to the City in the High Line Shares constitutes a valid security interest in the High Line Shares. Once the City takes possession of the High Line Shares, the City's security interest in the High Line Shares shall constitute a perfected security interest;
- 1.3.6 Value Received.** Clawsons acknowledge that they received value in receipt of the High Line Shares.
- 1.4 No Encumbrances.** Clawsons agree that, except as covered by this Agreement, they will not permit any security interest, lien, claim or any other encumbrance to be filed, recorded or asserted against the High Line Shares.
- 1.5 City's Option to Reacquire High Line Shares/Events of Default.** Clawsons hereby grant the City an option to reacquire the High Line Shares for \$100.00 if any of the events identified below occur. The following events also constitute events of default enabling the City to exercise its right to repossess the High Line Shares under the security agreement. The parties agree that the City may exercise its discretion in electing to reacquire the High Line shares through utilizing the option or through repossessing the shares pursuant to the security agreement and has no obligation to the Clawsons to in utilizing one method over the other.
- 1.5.1 Transfer of Farm Property.** Clawsons transfer, voluntarily or involuntarily, any of the Farm property that is serviced by the water rights associated with the High Line Shares. In the event that the Clawsons transfer a portion of the Farm property, the City has the right to repossess or exercise the option to repurchase a proportionate share of the High Line Shares that service that portion of Farm property transferred. For example, if the Clawsons transfer forty four (44) acres of the Farm property, the City may repossess 88 High Line Shares or obtain the

88 High Line Shares through the exercise its option in the Shares and payment of \$50.00 to Clawsons.

1.5.2 Cessation of Farming Activities. Clawsons cease to use the Farm property for agricultural activities. The parties agree that the Farm property will cease to be used for agricultural activities under this Agreement if the Farm property fails to qualify for agricultural use assessment under the Utah Farmland Assessment Act, Utah Code Ann. § 59-2-501 *et. seq.*

1.5.3 Insolvency or Bankruptcy. Clawsons become insolvent or file bankruptcy for any cause whatsoever.

1.5.4 Other. Clawsons breach any covenant enumerated in this Agreement, make any material false or misleading warranties or representations associated with this Agreement, or the City, in any way, believes itself to be insecure relative to its security interest in the High Line Shares.

1.6 Beneficial Use/Forfeiture. Clawsons agree that they will make continued beneficial use of the water rights associated with the High Line Shares for purposes of avoiding any claim of forfeiture of those rights. In the event that an action relating to Clawsons' beneficial use of these water rights is filed, Clawsons will provide the City with notice of the action and, at their own expense, will protect and defend against the forfeiture of these rights. Clawsons agree to provide the City with proof of beneficial use upon the City's request.

SECTION 2. CITY'S OBLIGATIONS AND REPRESENTATIONS

2.1 Conveyance of the High Line Shares. The City, in consideration of the covenants and agreements of Clawsons as set forth herein, agrees, upon the performance of Clawsons of those covenants and agreements specified herein, to convey to Clawsons 176 High Line Shares described in **Exhibit "B"** attached to this Agreement. The High Line Shares shall be in proper form for record and shall be duly executed and acknowledged by the City, so as to convey to Clawsons the High Line Water Shares free of all encumbrances, except as stated in this Agreement.

2.2 Beneficial Use of High Line Shares. Within the previous year of the date of this Agreement, the City has made beneficial use of all of the water rights associated with the High Line Shares and there is currently no claim of forfeiture of those rights.

2.3 Clawsons' Option to Reacquire Hyrum Irrigation Shares. In the event that the City exercises its option to reacquire the High Line Irrigation Shares, Clawsons are hereby given the option to reacquire the Hyrum Irrigation Shares for One Hundred Dollars \$100.00.

2.4 Beneficial Use/Forfeiture. The City agrees that it will make continued beneficial use of the water rights associated with the Hyrum Irrigation Shares for purposes of avoiding any claim of forfeiture of those rights. In the event that an action relating to the City's beneficial use of these water rights is filed, the City will provide Clawsons with notice of the action and, at its expense, will protect and defend against the forfeiture of these rights. The City agrees to provide Clawsons with proof of beneficial use upon Clawsons' request.

SECTION 3 GOVERNING LAW. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

SECTION 4 ATTORNEYS' FEES. In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful part, in addition to all the sums that either party may be required to pay, a reasonable sum for the successful party's attorney fees.

SECTION 5 ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the parties. Any prior written or oral understanding or representation of any kind preceding the date of this Agreement, is replaced by this Agreement and shall not be binding upon either party except to the extent expressly set forth in this Agreement.

SECTION 6 AMENDMENT OF AGREEMENT. Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing executed by each party or an authorized representative of each party.

SECTION 7 AGREEMENT NOT TO BE CONSTRUED AGAINST ANY PARTY. The parties to this Agreement agree that each of them have reviewed and/or participated in the drafting of this Agreement and had an opportunity to get assistance from counsel, and therefore the wording of this Agreement shall not be construed against any party hereto as the drafter.

SECTION 8 NOTICE. Any notice or other communication required by this Agreement shall be in writing and may be personally served, or sent by facsimile, or sent by United States mail with return receipt requested, and shall be deemed delivered upon receipt. Electronic mail, voicemail, or any other forms of communication not enumerated in the prior sentence will be deemed ineffectual.

SECTION 9 SEVERABILITY. The provisions of this Agreement are severable and should any provision be void, voidable, unenforceable or invalid, such provision shall not affect the remaining provisions of this Agreement.

DATED ____ day of _____, 2010.

HYRUM CITY, a Utah Municipal Corporation

ATTEST:

By _____
Mayor Dean Howard

By _____
Stephanie Fricke, City Recorder

DATED ____ day of _____, 2010.

DATED ____ day of _____, 2010.

By _____
Gary Clawson

By _____

DATED ____ day of _____, 2010.

By _____
Jared Clawson

WATER SHARE EXCHANGE AND SECURITY AGREEMENT

This WATER SHARE EXCHANGE AND SECURITY AGREEMENT (the "Agreement") is made and entered into this the ____ day of _____, 2010, by and between Hyrum City (the "City") and Alan Nielsen and Julie Nielsen (collectively "Nielsen").

RECITALS

- A. WHEREAS, the City owns water shares in the High Line Canal Company ("High Line Shares") and Nielsen own water shares in the Hyrum Irrigation Company ("Hyrum Irrigation Shares");
- B. WHEREAS, Nielsen desire to convey the Hyrum Irrigation Shares to the City in exchange for the High Line Shares for purposes of irrigating the Nielsen's 10 acre farm located at 415 South 800 East, Hyrum, Utah ("Farm");
- C. WHEREAS, Nielsen desire to convey to the City 9 Shares of Hyrum Irrigation Shares which are described as **Exhibit "A"** attached to this Agreement and the City desires to convey to Nielsen 36 High Line Shares which are described as **Exhibit "B"** attached to this Agreement;
- D. WHEREAS, Nielsen desire to give the City a security interest in the High Line Shares conveyed by the City which, based upon the occurrence of certain events stated herein, would give the City the right to repossess the High Line Shares; City will perfect its security interest in the High Line Shares through possession of the shares;
- E. WHEREAS, the parties desire to give each other the option to repurchase the respective water shares based upon the occurrence of certain events stated herein;
- F. WHEREAS, the City Council approved the material terms of the exchange of the water shares between the City and Nielsen in a public meeting held on **[insert date]**;
- G. WHEREAS, the parties wish to define their relative duties and obligations with respect to the exchange of the High Line Shares and Hyrum Irrigation Shares and the parties' continued beneficial use of these shares contemplated by this Agreement;
- H. WHEREAS, the City and Nielsen have each reviewed this Agreement and the terms and conditions herein. The City, by resolution, has duly and legally adopted and approved this Agreement and has authorized its respective representatives to execute and deliver this Agreement for and in its behalf. Likewise, Nielsen have approved this Agreement.

WITNESSETH

NOW, THEREFORE, in consideration of the foregoing, and the promises, representations and mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1 NIELSEN'S OBLIGATIONS, REPRESENTATIONS AND WARRANTIES

- 1.1 **Conveyance of Hyrum Irrigation Shares.** Nielsen, in consideration of the covenants and agreements of the City as set forth herein, agree, upon the performance of the City of those covenants and agreements specified herein, to convey to the City nine (9) Hyrum Irrigation Shares described in **Exhibit "A"** attached to this Agreement. The Hyrum Irrigation Shares shall be in proper form and shall be duly executed and acknowledged by Nielsen, so as to convey to the City the Hyrum Irrigation Shares free of all encumbrances, except as stated in this Agreement.

- 1.2 Grant of Security Interest and Perfection.** Nielsens grant to the City a security interest pursuant to Utah Code Ann. § 70A-9a *et. seq.* in all of Nielsens' rights, title, and interests in the High Line Shares. Nielsens further agree to transfer possession, duly indorsed to City, of these shares to the City for purposes of perfecting the City's security interest therein.
- 1.3 Representations and Warranties.** Nielsens represent and warrant as follows:
- 1.3.1 No Encumbrances on Hyrum Irrigation Shares.** There is no effecting security interests, liens, claims, encumbrances or financing statement on file covering the Hyrum Irrigation Shares;
- 1.3.2 Beneficial Use of Hyrum Irrigation Shares.** Within the previous year of the date of this Agreement, Nielsens have made beneficial use of all of the water rights associated with the Hyrum Irrigation Shares and there is currently no claim of forfeiture of those rights;
- 1.3.3 Authorization to Enter Agreement.** Nielsens are fully authorized to make contractual obligations relative to the Hyrum Irrigation Shares and the High Line Shares that are fully binding on Nielsens;
- 1.3.4 Name.** Nielsens are Utah residents currently residing at the address noted below. Nielsens are generally known as Alan Nielsen and Julie Nielsen and uses such names on official documents and no other names, nicknames, or aliases;
- 1.3.5 Valid Security Interest.** The security interest granted to the City in the High Line Shares constitutes a valid security interest in the High Line Shares. Once the City takes possession of the High Line Shares, the City's security interest in the High Line Shares shall constitute a perfected security interest;
- 1.3.6 Value Received.** Nielsens acknowledge that they received value in receipt of the High Line Shares.
- 1.4 No Encumbrances.** Nielsens agree that, except as covered by this Agreement, they will not permit any security interest, lien, claim or any other encumbrance to be filed, recorded or asserted against the High Line Shares.
- 1.5 City's Option to Reacquire High Line Shares/Events of Default.** Nielsens hereby grant the City an option to reacquire the High Line Shares for \$100.00 if any of the following events occur. The following events also constitute events of default enabling the City to exercise its rights to repossess the High Line shares under the security agreement. The parties agree that the City may exercise its discretion in electing to reacquire the High Line shares through utilizing the option to repurchase or by repossessing the shares pursuant to the security agreement and has no obligation to the Nielsens in utilizing one method over the other.
- 1.5.1 Transfer of Farm Property.** Nielsens transfer, voluntarily or involuntarily, any of the Farm property that is serviced by the water rights associated with the High Line Shares. In the event that the Nielsens transfer a portion of the Farm property, the City has the right to repossess or exercise the option to repurchase a proportionate share of the High Line Shares that service that portion of Farm property transferred. For example, if the Nielsens transfer five (5) acres of the Farm property, the City may repossess 18 High Line Shares or obtain the 18 High Line Shares through the exercise its option in the Shares and payment of \$50.00 to Nielsens.

- 1.5.2 Cessation of Farming Activities.** Niensens cease to use the Farm property for agricultural activities. The parties agree that the Farm property will cease to be used for agricultural activities under this Agreement if the Farm property fails to qualify for agricultural use assessment under the Utah Farmland Assessment Act, Utah Code Ann. § 59-2-501 *et. seq.*
- 1.5.3 Insolvency or Bankruptcy.** Alan Nielsen and/or Julie Nielsen become insolvent or files bankruptcy for any cause whatsoever.
- 1.5.4 Other.** Niensens breach any covenant enumerated in this Agreement, make any material false or misleading warranties or representations associated with this Agreement, or the City, in any way, believes itself to be insecure relative to its security interest in the High Line Shares.
- 1.6 Beneficial Use/Forfeiture.** Niensens agree that they will make continued beneficial use of the water rights associated with the High Line Shares for purposes of avoiding any claim of forfeiture of those rights. In the event that an action relating to Niensens' beneficial use of these water rights is filed, Niensens will provide the City with notice of the action and, at their own expense, will protect and defend against the forfeiture of these rights. Niensens agree to provide the City with proof of beneficial use upon the City's request.

SECTION 2. CITY'S OBLIGATIONS AND REPRESENTATIONS

- 2.1 Conveyance of the High Line Shares.** The City, in consideration of the covenants and agreements of Niensens as set forth herein, agrees, upon the performance of Niensens of those covenants and agreements specified herein, to convey to Niensens Thirty Six (36) High Line Shares described in **Exhibit "B"** attached to this Agreement. The High Line Shares shall be in proper form for record and shall be duly executed and acknowledged by the City, so as to convey to Niensens the High Line Water Shares free of all encumbrances, except as stated in this Agreement.
- 2.2 Beneficial Use of High Line Shares.** Within the previous year of the date of this Agreement, the City has made beneficial use of all of the water rights associated with the High Line Shares and there is currently no claim of forfeiture of those rights.
- 2.3 Nielsen's Option to Reacquire Hyrum Irrigation Shares.** In the event that the City exercises its option to reacquire the High Line Irrigation Shares or exercises its right repossesses the High Line Shares pursuant to the security interest granted herein, Niensens are hereby given the option to reacquire the Hyrum Irrigation Shares for One Hundred Dollars \$100.00.
- 2.4 Beneficial Use/Forfeiture.** The City agrees that it will make continued beneficial use of the water rights associated with the Hyrum Irrigation Shares for purposes of avoiding any claim of forfeiture of those rights. In the event that an action relating to the City's beneficial use of these water rights is filed, the City will provide Niensens with notice of the action and, at its expense, will protect and defend against the forfeiture of these rights. The City agrees to provide Niensens with proof of beneficial use upon Niensens' request.

SECTION 3 GOVERNING LAW. It is agreed that this Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Utah.

SECTION 4 ATTORNEYS' FEES. In the event that any action is filed in relation to this agreement, the unsuccessful party in the action shall pay to the successful part, in addition to all the sums that either party may be required to pay, a reasonable sum for the successful party's attorney fees.

SECTION 5 ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the parties. Any prior written or oral understanding or representation of any kind preceding the date of this Agreement, is replaced by this Agreement and shall not be binding upon either party except to the extent expressly set forth in this Agreement.

SECTION 6 AMENDMENT OF AGREEMENT. Any modification of this Agreement or additional obligations assumed by either party in connection with this Agreement shall be binding only if evidenced in a writing executed by each party or an authorized representative of each party.

SECTION 7 AGREEMENT NOT TO BE CONSTRUED AGAINST ANY PARTY. The parties to this Agreement agree that each of them have reviewed and/or participated in the drafting of this Agreement and had an opportunity to get assistance from counsel, and therefore the wording of this Agreement shall not be construed against any party hereto as the drafter.

SECTION 8 NOTICE. Any notice or other communication required by this Agreement shall be in writing and may be personally served, or sent by facsimile, or sent by United States mail with return receipt requested, and shall be deemed delivered upon receipt. Electronic mail, voicemail, or any other forms of communication not enumerated in the prior sentence will be deemed ineffectual.

SECTION 9 SEVERABILITY. The provisions of this Agreement are severable and should any provision be void, voidable, unenforceable or invalid, such provision shall not affect the remaining provisions of this Agreement.

DATED ____ day of _____, 2010.

HYRUM CITY, a Utah Municipal Corporation

ATTEST:

By _____
Mayor Dean Howard

By _____
Stephanie Fricke, City Recorder

DATED ____ day of _____, 2010.

By _____
Alan Nielsen

DATED ____ day of _____, 2010.

By _____
Julie Nielsen