

**INTERGOVERNMENTAL AGREEMENT CONCERNING WATER SERVICES FOR
SEVENTEEN CUSTOMERS**

**BETWEEN THE CITY OF GREELEY, COLORADO
AND THE CITY OF EVANS, COLORADO**

THIS INTERGOVERNMENTAL AGREEMENT CONCERNING WATER SERVICES (“Agreement”) is made and entered into this_ day of_, 2020, by and between the City of Greeley, Colorado, a home rule municipality (“Greeley”), and the City of Evans, Colorado, a home rule municipality (“Evans”). Greeley and Evans are collectively referred to as the Parties.

Recitals

WHEREAS, pursuant to C.R.S. § 29-1-203, governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to be provided by each of the cooperating or contracting units of government; and,

WHEREAS, Greeley and Evans entered into that certain intergovernmental agreement dated April 21, 1998 (“1998 Treated Water Service IGA”), which set the terms and conditions by which the parties entered into a long term contract for Greeley’s treatment of Evans’ raw water and delivery of treated water.

WHEREAS, by this Agreement, Greeley and Evans are not amending the 1998 Treated Water Service IGA; and,

WHEREAS, Greeley and Evans entered into that certain intergovernmental agreement dated October 1, 2002 (“2002 Sewer Service IGA”), which set the terms and conditions by which Evans provides wastewater treatment services to certain customers within the territorial bounds of Greeley, inside of the Ashcroft Draw drainage basin; and,

WHEREAS, by this Agreement, Greeley and Evans are not amending the 2002 Sewer Service IGA; and,

WHEREAS, the seventeen (17) specific water customers identified by street address below (“Seventeen Customers”), reside within the boundaries of Evans, but are currently listed as Greeley potable water service customers; and,

WHEREAS, Greeley currently provides potable water service to five (5) of the Seventeen Customers; and,

WHEREAS, Evans currently provides potable water service to twelve (12) of the Seventeen Customers; and,

WHEREAS, Evans is undertaking a road-widening project along 47th Avenue, which may impact water transmission infrastructure used to service some of the Seventeen Customers; and,

WHEREAS, Greeley desires to transfer the Seventeen Customers to Evans and disconnect the Seventeen Customers from its own potable water distribution infrastructure; and,

WHEREAS, Evans desires to accept the Seventeen Customers and connect them to its own distribution infrastructure, and requires the dedication of raw water to support the increased potable water demand generated by the Seventeen Customers; and,

WHEREAS, the Parties desire to enter into an agreement whereby Evans will accept the Seventeen Customers, along with the water distribution infrastructure used to service them, and in exchange, and in satisfaction of Evans' raw water requirements, Greeley will transfer to Evans eight (8) Colorado Big Thompson (CBT) Units and a one-half (.5) Greeley & Loveland Irrigation Company (GLIC) Share for the purpose of servicing the Seventeen Customers, along with the right to claim dry-up acreage over four and four-tenths (4.4) acres of land within the GLIC system; and,

THEREFORE, to effectuate the foregoing, the Parties desire to enter into this Agreement.

Agreement

NOW, THEREFORE, in consideration of the mutual agreements, covenants, promises, representations, and warranties hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals.** The Recitals are incorporated into the Agreement as if fully set forth herein.
2. **Transfer of Water Customers.** Upon the successful transfer of 8 CBT Units, One-Half GLIC Share (defined below), and 4.4 Acre Dry-Up Interest (defined below), Evans hereby agrees to accept the transfer of the Seventeen Customers and assume responsibility for providing potable water service to the Seventeen Customers identified by the property addresses as follows:

1. 3636 37th Street
2. 4350 37th Street
3. 3710 37th Street
4. 4355 37th Street
5. 3920 37th Street
6. 4367 37th Street
7. 3600 49th Street
8. 3630 49th Street
9. 3610 49th Street
10. 3631 49th Street
11. 3620 49th Street
12. 3750 54th Street Road
13. 3215 47th Avenue
14. 3220 47th Ave.
15. 3230 47th Ave.
16. 3240 47th Ave.
17. 3435 47th Ave.

Simultaneously, Evans shall also connect the Seventeen Customers to its potable water distribution and metering infrastructure ("Infrastructure"), and Greeley shall abandon its potable water distribution and metering infrastructure, described in Exhibit A. Upon the transfer of said Seventeen Customers to Evans, Greeley's legal obligations to

comply with state and federal drinking water standards, including 42 U.S.C. §§ 300f-300j27, C.R.S. § 25-1.5-202 *et seq.*, and 5 C.C.R. § 1002-11 *et seq.*, and all other legal obligations related to the provision of potable water, and Evans shall assume the same. Greeley and Evans shall coordinate in good faith to minimize any interruption in service to the Seventeen Customers, and to ensure that Evans' potable water infrastructure is fully connected and operational with respect to the Seventeen Customers by the date of Closing described in Section 4 below

3. **Water Exchange.** As consideration for Evans's agreement to provide water service to the Seventeen Customers, and to provide a viable water supply to Evans to satisfy such obligation, Greeley agrees to convey to Evans water interests, free and clear of liens or encumbrances, as follows:

- a. Eight (8) Colorado Big Thompson (CBT) Units; and,
- b. A one-half (.5) GLIC share of the 16 shares included in GLIC Certificate No. 3124 ("One-Half GLIC Share") and corresponding conveyance of a right to claim the benefits of 4.4 acres of dry-up ("4.4 Acre Dry-Up Interest") from a dry-up covenant burdening land within the GLIC system, which shall be a portion of the Restrictive "Dry Up" Covenant recorded with the Weld County Clerk and Recorded on July 2, 2002 (Reception No. 2966329). The Parties agree the identification of said 4.4 acres is for the purposes of allocating dry-up acreage and not for identifying the location of historically irrigated acreage.

Greeley makes no representations nor guarantees concerning the yield of the CBT Units, nor One-Half GLIC Share. Greeley makes no representations nor guarantees concerning the condition or suitability of the Infrastructure.

4. **Obligations at Closing.** The date of Closing, at or before which the transfer of the Seventeen Customers, 8 CBT Units, One-Half GLIC Share, and 4.4 Acre Dry-Up Interest shall occur, shall be ninety (90) days after mutual execution of this Agreement, or such other date and time as agreed upon by the Parties. At or before Closing:
 - a. Evans shall have connected the Seventeen Customers to its potable water distribution system, and Greeley shall have disconnected the same and abandoned those portions of its potable water distribution system specific to the delivery of potable water to the Seventeen Customers.
 - b. Greeley shall deliver, cause to be delivered, or cooperate in the delivery to Evans the following documents, in a form acceptable to both Parties, duly executed and acknowledged where appropriate:
 - i. Special Warranty Deed conveying title to the One-Half GLIC Share to Evans;

- ii. Stock Assignment Letter for the One-Half GLIC Share, Greeley shall also undertake any act required by GLIC, including surrendering the original stock Certificate No. 3124 to GLIC, to effectuate the transfer;
 - iii. Order from the Northern Colorado Water Conservancy District transferring the allotment contract interest in 8 CBT Units to Evans;
 - iv. Assignment of the 4.4 Acre Dry-Up Interest to Evans;
 - v. Any other documents contemplated under Section 7 of this Agreement; and
- c. Evans shall deliver, cause to be delivered, or cooperate in the delivery to Greeley the following documents, in a form acceptable to both Parties, duly executed and acknowledged where appropriate:
- i. Acknowledgement of Transfer of Customers for the Seventeen Customers;
 - ii. Order from the Northern Colorado Water Conservancy District decreasing an allotment contract held by Greeley by 8 CBT Units, or a reissuance of an allotment contract held by Greeley accomplishing the same; and
 - iii. Any other documents contemplated under Section 7 of this Agreement.

5. **Notice.** Greeley and Evans shall give any notice to one another, required under this Agreement using the contact information listed below. Such notice is adequate if (a) hand-delivered or (b) provided by certified mail, return receipt requested; or (c) on the date and at the time shown on the electronic mail (email) if emailed, with no undeliverable notice received within two (2) days. Greeley and Evans shall promptly notify the other party if the appropriate contact information for notice changes.

For the City of Greeley: City of Greeley Water and Sewer Department
 Attn: Director of Water and Sewer
 1001 11th Avenue, Second Floor
 Sean.Chambers@greeleygov.com
 Greeley, Colorado 80631

With copy to: City of Greeley City Attorney's Office
 Attn: Environmental and Water Resources
 1100 10th Street, Suite 401
 Aaron.goldman@greeleygov.com
 Greeley, Colorado 80631

For the City of Evans: City of Evans Public Works Department
 Attn: Assistant City Manager
 1100 37th Street

Evans, Colorado 80620

With copies to: Evans City Attorney
Attn: Scotty P. Krob
8400 E. Prentice Ave, Penthouse
Greenwood Village, CO 80111

6. **Effective Date.** This Agreement shall be effective on the date that it is executed by the authorized signatory.
7. **Additional Documents or Action.** The Parties agree to cooperate in drafting and executing any additional documents and taking any additional action reasonably necessary to carry out the terms of this Agreement, including but not limited to executing required documentation for conveyance of water interests; notification by Greeley and Evans to the Seventeen Customers of a transfer of service to Evans; Evans's inclusion of the Seventeen Customers into Evans's database of water service customers; installation, where necessary, of water meters by Evans.
8. **Liability.** Greeley and Evans are public entities, as that term is defined pursuant to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq. Nothing in this Agreement should be construed to limit or alter the benefits and responsibilities to which either Greeley or Evans is entitled pursuant to the Colorado Governmental Immunity Act. Greeley and Evans respectively shall defend any and all claims for injuries or damages, in accordance with the requirements and limitations of the Colorado Governmental Immunity Act, that occur as a result of the negligent or intentional acts or omissions of their own officers, agents, employees, contractors, or assigns in connection with the performance of this Agreement. Greeley and Evans respectively shall be responsible for all liability for injuries or damages caused by any negligent acts or omissions of their own officers, employees, agents, contractors, and assignees in connection with the performance of this Agreement. Greeley and Evans respectively shall provide adequate workmen's compensation insurance for all its own employees, agents and assigns engaged in activities and functions upon the property of the other party. Upon request from the other party, Greeley and Evans shall each furnish to the other current certificates of insurance stating that the coverages outlined above are in full force and effect.
9. **Default and Termination; Waiver.** In the event either Greeley or Evans fails to comply with the terms and conditions of this Agreement, such failure constitutes a default of this Agreement and the non-defaulting party may give notice of the perceived default. The defaulting party is then entitled to a period of fourteen (14) days from receipt of the notice within which to cure the default. Upon the cure of any such default during this period, this Agreement remains in full force and effect. If any declared default remains uncured after the fourteen-day cure period described above, or after any extension of the cure period mutually agreed to by the parties, the non-defaulting party may terminate this Agreement upon notice to the other party. The failure of either

Greeley or Evans to declare a default does not establish a precedent nor constitute an implied waiver of any subsequent breach of the terms and conditions in this Agreement. Any such waiver of breach must be made explicitly in writing.

10. **Jurisdiction and Venue.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any dispute arising out of this Agreement is the Weld County District Court.
11. **Third Party Beneficiaries.** The terms and conditions of this Agreement, and all rights of action related thereto, are strictly reserved to Greeley and Evans. Nothing in this Agreement should be construed to allow any claim, right, or cause of action by any person or entity not a party to this Agreement. Any person or entity other than Greeley or Evans that receives a service or benefit under this Agreement is an incidental beneficiary only.
12. **Counterparts.** The parties may execute this Agreement in counterparts, each of which and the combination of which when signed by both Greeley and Evans may be deemed original and together constitute a single contract.
13. **No Integrated System.** No term or condition of this Agreement or any Exhibits thereto shall be interpreted as creating an "integrated system" within the meaning of the Colorado Primary Drinking Water Regulations, 5 C.C.R. § 1002-11. This Agreement shall not be interpreted as creating an "integrated system" as that term is used in C.R.S. § 37-92-301(4)(b).
14. **No Public Utilities Commission Control.** Each Party agrees that it shall not assert nor support any statement, policy, petition, rulemaking, or legislation that would attempt to subject Evans or Greeley to the rate-making authority or jurisdiction of the Colorado Public Utilities Commission.
15. **Severability and Waiver.** If any term or condition of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or condition of this Agreement or invalidate or render unenforceable such term or condition in any other jurisdiction. Any single failure to exercise or partial exercise of any right, remedy, power, or privilege under this Agreement shall not preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
16. **Assignment.** No Party, without the prior written consent of the other Party, may assign, transfer, or delegate any or all of its rights or obligations under this Agreement. No assignment will relieve the assigning Party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing will be null and void. This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and permitted assigns.

17. **Survival.** In addition to any right or obligation of the Parties in this Agreement which, by its nature, should survive termination of this Agreement, the following Sections shall also so survive: 5, 8, 9, 10, 11, 13, 14, 15, 16, and this Section 17.

IN WITNESS WHEREOF, the City of Greeley and the City of Evans have authorized and executed this Intergovernmental Agreement Concerning Water Services for Seventeen Customers on the date set forth above.

THE CITY OF GREELEY,
a Colorado home rule municipality

By: _____
City Manager

By: _____
Chairman of the Water & Sewer Board

Approved as to Legal Form:

As to Availability of Funds:

By: _____
City Attorney

By: _____
Director of Finance

Attest:

By: _____
Mayor

By: _____
City Clerk

THE CITY OF EVANS
a Colorado home rule municipality

Attest:

By: _____
Mayor

By: _____
City Clerk

Approved as to Substance:

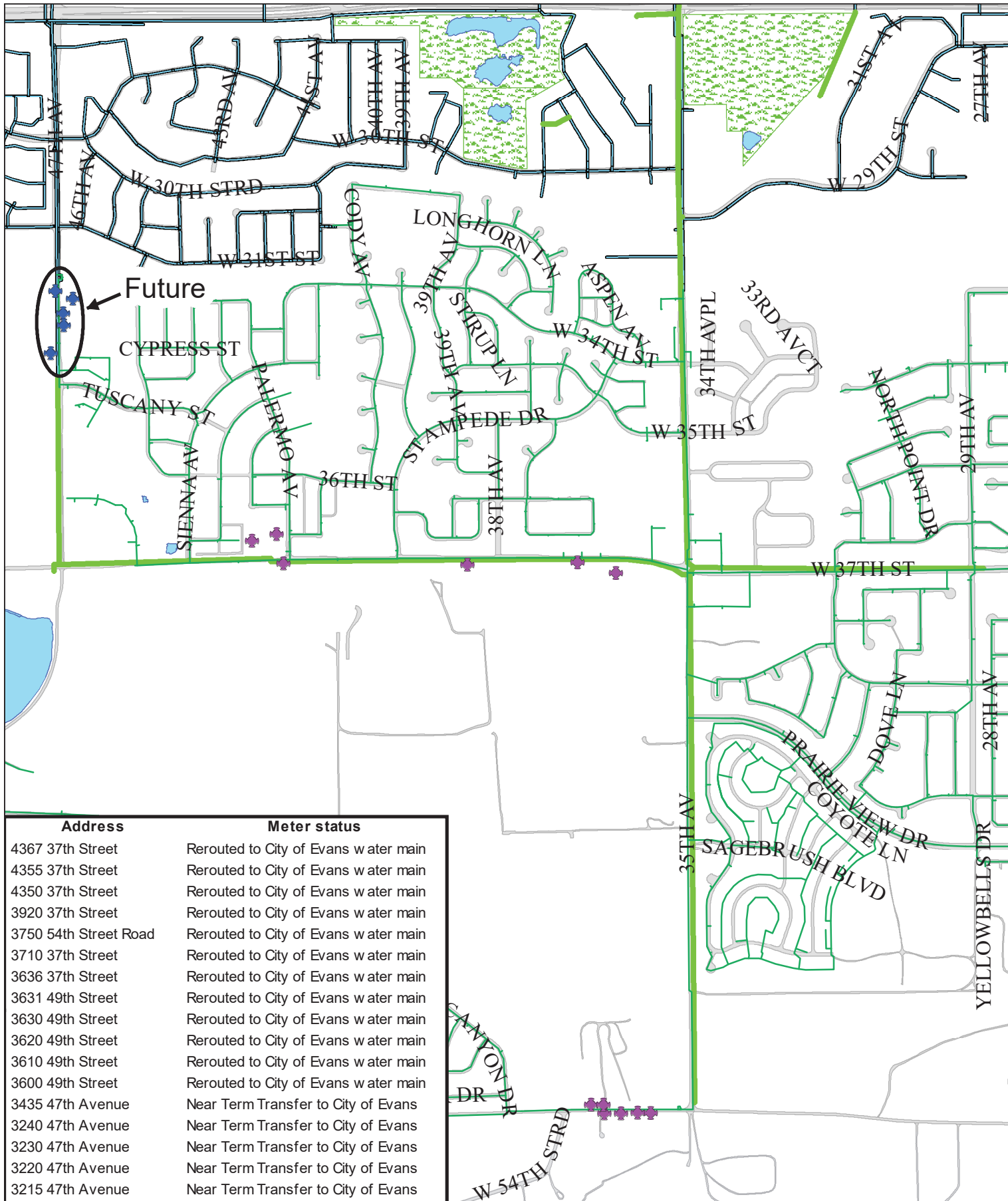
Approved as to Legal Form:

By: _____

By: _____

City Manager

City Attorney



Meter Transfers

File: Completed_and_Future_Meter_Transfers_3
 Date: 11/12/2020
 By: Tony Braun



- Legend**
- Future Removal from COG System
 - Removed from COG System
 - Water Lines
 - COG Abandoned Water Mains
 - COG Active Water Mains

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