

FIRST AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR SEWAGE TREATMENT SERVICES

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

This FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR SEWAGE TREATMENT SERVICES (“Agreement”) is entered into this ____ day of _____ 202__, by and between THE CITY OF GREELEY, COLORADO, a home rule municipality (“Greeley”) and THE CITY OF EVANS, COLORADO, a home rule municipality (“Evans”).

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 October 1, 2002 (“2002 Sanitary Sewer IGA”), which set the terms and conditions by which Evans would provide sanitary sewer treatment services to customers within a portion of the Greeley service area commonly known as the Ashcroft Draw Drainage Basin; and

WHEREAS, Greeley and Evans have a continued common interest in cost-effectively combining their sanitary sewer demand and providing high-quality sanitary sewer treatment services sufficient to meet present and future needs for residential, commercial, and industrial uses in the general vicinity of the Ashcroft Draw Drainage Basin; and

WHEREAS, Greeley plans to construct a new lift station to assist in providing sanitary sewage treatment services to customers in portions of the Ashcroft Draw Drainage Basin, which it anticipates will accommodate 2.9 million gallons per day of peak flow at full build-out; and

WHEREAS, Greeley and Evans desire to establish terms and conditions by which they will coordinate the service of sanitary sewer customers in this area into the future; and

WHEREAS, Evans remains agreeable to providing sanitary sewage treatment services to customers in the Ashcroft Draw Drainage Basin until the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and able to facilitate service by Greeley in this area; and

WHEREAS, Greeley and Evans have reached an understanding regarding their continued coordination on sanitary sewer treatment services, and desire to reduce their understanding to writing;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Greeley and Evans agree as follows.

Agreement

1. Definitions. The terms used in this Agreement are defined as follows.
 - 1.1 Evans. The City of Evans and any duly authorized representative thereof.
 - 1.2 Evans Ashcroft Draw Sanitary Sewer Trunk Line. The sanitary sewer trunk line owned and operated by Evans that is located generally along the north side of the Ashcroft Draw from 49th Street northwesterly to 65th Avenue, as shown on the map attached hereto as Exhibit A.

1.3 Evans Consolidated Wastewater Treatment Facility. The wastewater treatment facility owned and operated by Evans that is located generally at 49th Street and 35th Avenue, which treatment facility was previously known as the Hill-N-Park wastewater treatment plant.

1.4 Evans Sanitary Sewer System. Interceptor sewers and all other sanitary sewer treatment facilities and infrastructure owned and operated by Evans.

1.5 Greeley. The City of Greeley and any duly authorized representative thereof.

1.6 Greeley Ashcroft Draw Sanitary Sewer Lift Station. The sanitary sewer lift station planned to be constructed, owned, and operated by Greeley in the SW ¼ of Section 21, Township 5 North, Range 66 West of the 6th P.M. in Weld County, the anticipated general location of which is shown on Exhibit A.

1.7 Greeley Ashcroft Draw Service Area. That certain geographical area within the city limits of Greeley to which Evans can provide sanitary sewer services via the Evans Ashcroft Draw Sanitary Sewer Trunk Line, as shown on Exhibit A.

2. Term of Agreement. The initial term of this Agreement commences on the date it is mutually executed by Greeley and Evans and expires after a period of ten (10) years. Upon expiration of the initial ten-year term, the Agreement will automatically renew for successive terms of five (5) years each, unless terminated by either Greeley or Evans in accordance with section 20 below.

3. General Sanitary Sewer Treatment Services. Greeley and Evans anticipate further development and a corresponding demand for sanitary sewer services within the Greeley Ashcroft Draw Service Area, a geographic area now broader than contemplated by the 2002 Sanitary Sewer IGA that will be served in the future by the Greeley Ashcroft Draw Sanitary Sewer Lift Station. Greeley may deliver sanitary sewage produced by its customers within the Greeley Ashcroft Draw Service Area to the Evans Sanitary Sewer System, and Evans shall treat such sanitary sewage for Greeley, until the Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational. Greeley may deliver such sanitary sewage via one or more terminal manholes at or close to the Greeley city limits, and Greeley and Evans shall mutually establish all such points of delivery in writing.

4. Issuance of Taps for General Sanitary Sewer Treatment Services. At the time this Agreement is executed, there are approximately 450 sanitary sewer taps in the Greeley Ashcroft Draw Service Area. From the execution of this Agreement, Greeley agrees that it will not issue more than 200 additional residential sanitary sewer taps within the Greeley Ashcroft Draw Service Area without providing advance written notice to Evans. Greeley shall provide such notice to Evans at least one year in advance of issuing any sanitary sewer taps beyond the cumulative total of 650 taps, so that Evans can plan for any necessary expansion of the Evans Sanitary Sewer System to accommodate increased demand. Greeley shall keep Evans apprised of annexations to Greeley within the Ashcroft Draw Drainage Basin, so that Evans can anticipate the need to treat sanitary sewage produced within the Greeley Ashcroft Draw Service Area, and plan for any necessary expansion of the Evans Sanitary Sewer System to accommodate increased demand.

5. System Development Charges. Greeley shall pay to Evans the following system development charges for general sanitary sewer treatment services provided pursuant to section 3 above, until the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational. System development charges are not refundable.

5.1 For each new sanitary sewer tap installed in the Greeley Ashcroft Draw Service Area and served by Evans pursuant to section 3 above, Greeley shall pay to Evans a monthly system development charge (“SDC”) in the amount of 4.17 percent (i.e., one-twelfth of one-half) of the plant investment fee charged by Evans for sanitary sewer customers outside its own city limits at the time such tap is installed.

5.2 Greeley shall be responsible for the monthly SDC payments described in section 5.1 above only until the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational, and only up to a maximum of twelve (12) monthly SDC payments for each new sanitary sewer tap installed in the Greeley Ashcroft Draw Service Area and served by Evans (i.e., a total maximum amount for each tap equal to one-half of the plant investment fee charged by Evans for sanitary sewer customers outside its city limits at the time such tap is installed).

5.3 In the event that the Greeley Ashcroft Draw Sanitary Sewer Lift Station is not constructed and operational within five (5) years from the execution of this Agreement, Greeley shall be responsible for twelve (12) additional monthly SDC payments to Evans for each new sanitary sewer tap installed in the Greeley Ashcroft Draw Service Area and served by Evans (i.e., a total maximum amount for each tap equal to the entire plant investment fee charged by Evans for sanitary sewer customers outside its city limits at the time such tap is installed).

6. Emergency and Operational Disruption Sanitary Sewer Treatment Services. After the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational, Greeley may deliver sanitary sewage produced by its customers within the Greeley Ashcroft Draw Service Area to the Evans Ashcroft Draw Sanitary Sewer Trunk Line in the event of an emergency or as otherwise contemplated by this section 6, and Evans shall treat such sanitary sewage for Greeley. Delivery of any such sanitary sewage after the Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational will occur only in the event of an emergency or other event of operational necessity, including, without limitation, the disruption of power to, malfunction of, or shutdown for necessary maintenance of, the Greeley Ashcroft Draw Sanitary Sewer Lift Station. Failure by Greeley to construct the Greeley Ashcroft Draw Sanitary Sewer Lift Station within five (5) years, as contemplated by this Agreement, shall not constitute an emergency.

6.1 Greeley may deliver sanitary sewage to the Evans Ashcroft Draw Sanitary Sewer Trunk Line in the event of an emergency or operational disruption for up to four (4) hours without a requirement to obtain further authorization from Evans. Greeley shall provide notice of such an event to Evans as soon as reasonably practicable. The volume of sanitary sewage flow to be necessarily delivered by Greeley in such an event is estimated to be an average daily flow of 483,000 gallons. This figure is an estimate for planning purposes only and should not be construed as a limit on deliveries of sanitary sewage by Greeley beyond the Evans Sanitary Sewer System treatment capacity limitations described below, or as a contractual reservation of capacity in the Evans Sanitary Sewer System.

6.2 Greeley shall obtain further authorization from Evans to deliver sanitary sewage in the event of an emergency lasting longer than four (4) hours. Notwithstanding the standards for notice set forth in section 18 below, such authorization may be requested by Greeley and granted by Evans verbally. Greeley shall provide the anticipated duration of the emergency event and anticipated peak and daily volume of sanitary sewage flow to be necessarily delivered to Evans as soon as reasonably practicable.

6.3 Greeley shall obtain further authorization from Evans to deliver sanitary sewage in the event of a foreseeable operational disruption lasting longer than four (4) hours. Greeley shall

make the request for such authorization in writing, providing a description of the operational disruption, the anticipated duration of the operational disruption, the anticipated peak and daily volume of sanitary sewage flow to be necessarily delivered, and the desired commencement and end dates for the deliveries. Evans shall respond to such a request within ten (10) days of receipt.

7. Treatment Capacity before Greeley Ashcroft Draw Lift Station is Operational. Before the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational and at such time that the Evans Consolidated Wastewater Treatment Facility is using eighty (80) percent of its treatment capacity, or at such time that Evans reasonably determines that the Evans Consolidated Wastewater Treatment Facility will soon be at or over eighty (80) percent of its treatment capacity, Evans may limit the number of additional sanitary sewer taps that may be issued by Greeley in the Greeley Ashcroft Draw Service Area before the facility will use ninety-five (95) percent of its treatment capacity. In such an event, Evans shall determine the total number of additional sanitary sewer taps that may be issued by both parties before the Evans Consolidated Wastewater Treatment Facility will use ninety-five (95) percent of its capacity. Evans may then issue up to seventy (70) percent, and Greeley may issue up to the remaining thirty (30) percent, of the total additional sanitary sewer taps that Evans determines issuable before the Evans Consolidated Wastewater Treatment Facility will use ninety-five (95) percent of its treatment capacity. Issuance of sanitary sewer taps by Greeley pursuant to this allocation remains subject to the advance notice requirements of section 4 above.

7.1 At such time that the Evans Consolidated Wastewater Treatment Facility is using ninety-five (95) percent of its capacity, or at such time that the Colorado Department of Public Health and Environment or other responsible agency directs Evans that it may not issue any additional sanitary sewer taps, Greeley shall also cease issuing additional sanitary sewer taps in the Greeley Ashcroft Draw Service Area unless otherwise permitted by the Colorado Department of Public Health and Environment or other responsible agency.

7.2 Greeley and Evans agree to cooperate to anticipate sanitary sewer treatment demand in the Ashcroft Draw Drainage Basin, and to plan for any resulting necessary expansion of the Evans Sanitary Sewer System to accommodate increased demand.

7.3 Evans shall make reasonable efforts to provide treatment capacity for sanitary sewage from Greeley, including reasonable efforts to expand the Evans Consolidated Wastewater Treatment Facility when the plant is at ninety-five (95) percent capacity. If Evans fails to commence such capacity expansion as described when the Evans Consolidated Wastewater Treatment Facility is at ninety-five (95) percent capacity, Greeley may build or expand upon such sanitary sewer treatment facilities at the current Evans Consolidated Wastewater Treatment Facility site at its own expense. However, nothing in this Agreement should be construed to grant to Greeley an ownership interest in the Evans Sanitary Sewer System. Evans shall credit any expenses borne by Greeley to construct the sanitary sewer facilities contemplated by this paragraph against amounts otherwise due and payable under this Agreement.

8. Rates. Greeley shall pay to Evans the following rates for sanitary sewer treatment services provided pursuant to this Agreement.

8.1 General Sanitary Sewer Treatment Services. Greeley shall pay rates for sanitary sewage delivered by Greeley and treated by Evans pursuant to section 3 above, which rates shall be consistent with those charged by Evans to its own customers. Greeley shall pay the flat monthly rate charged by Evans for sanitary sewage attributable to residential customers, and the applicable flow rate charged by Evans to similar customer classes for every 1,000 gallons of sanitary sewage

attributable to commercial customers (e.g., the Class II commercial rate for schools, churches, warehouses, and offices). Evans shall review and may adjust these rates annually in accordance with section 2.24.081 of the Evans Municipal Code, but shall keep the rates consistent with those charged by Evans for similar service to its own sanitary sewer customers. Rates for any commercial sanitary sewer accounts shall be based on actual water usage, as determined by Evans using an industry standard cost-of-service methodology.

8.2 Emergency and Operational Disruption Sanitary Sewer Treatment Services. Greeley shall pay a rate equal to the Evans Class II commercial rate for every 1,000 gallons of sanitary sewage delivered by Greeley and treated by Evans pursuant to section 6 above. Evans shall review and may adjust this rate annually, in accordance with section 2.24.081 of the Evans Municipal Code, but shall keep the rate consistent with that charged by Evans for similar service to its own sanitary sewer customers.

9. Billing and Payment. Greeley shall remain responsible for billing and collecting all applicable fees and rates from its sanitary sewer customers in the Greeley Ashcroft Draw Service Area, including, without limitation, plant investment fees.

9.1 System Development Charges. Greeley shall commence payment to Evans of the monthly SDC associated with each new sanitary sewer tap, as described in section 5 above, upon its receipt of a sanitary sewer plant investment fee from that customer. Greeley shall provide a monthly report to Evans summarizing all new sanitary sewer taps installed in the Greeley Ashcroft Draw Service Area and associated SDCs due, and remit payment to Evans for SDCs due within thirty (30) days after receipt from Evans of the invoices described in section 9.2 below.

9.2 Usage Charges. Greeley shall collect the meter readings necessary to measure General and Emergency and Operational Sanitary Sewer Treatment Services provided pursuant to this Agreement, which will determine the amounts owed to Evans for such services as described in section 8 above. Greeley shall submit meter readings for commercial customers and a residential customer count to Evans for General Sanitary Sewer Treatment Services monthly, and shall submit meter readings to Evans for total Emergency or Operational Disruption Sanitary Sewer Treatment Services within thirty (30) days after such services have concluded. Evans shall submit invoices to Greeley within thirty (30) days of receiving meter readings, and Greeley shall remit payment to Evans within thirty (30) days of receiving an invoice. Any invoiced amounts remaining due after such thirty-day period shall accrue interest at a rate of one (1) percent per month, or fraction thereof, during the period in which the invoice remains unpaid.

10. Sanitary Sewer Service to 3695 65th Avenue Property. The Greeley Ashcroft Draw Sanitary Sewer Lift Station is planned to be constructed upon property currently located within the parcel identified as Parcel No. 095921300003 and located at 3695 65th Avenue, which parcel is currently in unincorporated Weld County (“3695 65th Avenue Property”) and within the Long Range Expected Growth Area of the City of Greeley. Sanitary sewage produced on the 3695 65th Avenue Property currently flows to the Evans Ashcroft Draw Sanitary Sewer Trunk Line, and its owner is an Evans customer. Greeley and Evans do not anticipate that the Greeley Ashcroft Draw Sanitary Sewer Lift Station will be able to receive by gravity sanitary sewage produced on the 3695 65th Avenue Property. In the event that the 3695 65th Avenue Property annexes to the City of Greeley and its owner accordingly becomes a Greeley customer, Greeley may continue to deliver sanitary sewage produced thereon to the Evans Ashcroft Draw Sanitary Sewer Trunk Line after the Greeley Ashcroft Draw Sanitary Sewer Lift Station is constructed and operational. Greeley shall pay rates to Evans for the service of sanitary sewage produced on the Lift Station Property as set forth in section 8.1 above. Greeley and Evans acknowledge that this paragraph is intended to apply to the 3695 65th Avenue Property as it is currently developed, and agree to renegotiate this section

10 in good faith if the 3695 65th Avenue Property is producing significantly higher volumes of sanitary sewage at the time the provisions of this section 10 are triggered.

11. Industrial Pretreatment. Greeley shall continue to operate and enforce an industrial pretreatment program approved by the Environmental Protection Agency to prevent any discharge of sanitary sewage into the Evans Sanitary Sewer System in a manner inconsistent with applicable legal or regulatory authority.

12. Dominion and Control of Water. Greeley shall maintain dominion and control of its water in the sanitary sewer that is generated within the city limits of Greeley and delivered by Greeley into the Evans Sanitary Sewer System. Greeley acknowledges that a portion of its water in sanitary sewer delivered to the Evans Sanitary Sewer System pursuant to this Agreement may be consumed prior to discharge due to treatment or evaporation, and that Evans cannot guarantee that any specific percentage of the water in the sanitary sewer delivered by Greeley will be discharged after treatment in the Evans Sanitary Sewer System.

13. Maintenance of Infrastructure. Greeley and Evans shall each maintain, repair, replace, and rehabilitate the sanitary sewer infrastructure that each municipality respectively owns and operates.

14. Sanitary Sewer Metering. Greeley shall purchase, construct, install, and maintain any metering stations and associated facilities necessary to meter the general and emergency sanitary sewer treatment services provided pursuant this Agreement.

15. Acquisition of Right of Way. Greeley shall bear sole responsibility for the acquisition of any property interests necessary for the construction, operation, and maintenance of emergency collection lines from the Greeley Ashcroft Draw Sanitary Sewer Lift Station.

16. Permitting. Greeley shall bear sole responsibility for obtaining any local, state, or federal approvals necessary prior to or during the construction of emergency collection lines from the Greeley Ashcroft Draw Sanitary Sewer Lift Station.

17. No Public Utilities Commission Regulation. Greeley and Evans, including their employees and elected or appointed officials, shall not assert nor support any statement, policy, petition, rule-making, or legislative attempt to place the Greeley or Evans sanitary sewer treatment systems under the authority or jurisdiction of the Colorado Public Utilities Commission by virtue of this Agreement or otherwise.

18. Notice. Greeley and Evans shall give any notice 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. 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
Greeley, Colorado 80631

With copy to:

City of Greeley City Attorney's Office
Attn: Environmental and Water Resources
1100 10th Street, Suite 401
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: City of Evans Wastewater Department
Attn: Robby Porsch
1100 37th Street
Evans, Colorado 80620

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

19. Indemnification and 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 its own officers, agents, employees, or assigns. Greeley and Evans respectively shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of its own officers, employees, agents, and assignees performing functions or activities upon the property of the other party. Greeley and Evans respectively shall provide adequate workmen's compensation insurance for all of 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.

20. 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 in accordance with section 18 above. The defaulting party is then entitled to a period of ninety (90) days from receipt of the notice within which to cure the default, and may invoke the provisions regarding dispute resolution set forth in section 23 below. Upon the cure of any such default during this period, this Agreement remains in full force and effect.

20.1 If any declared default remains uncured after the ninety-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 with an advance notice of one (1) year to the defaulting party. Nothing in this Agreement should be construed to limit either party from seeking damages or pursuing available remedies upon the termination of this Agreement for default, including the recovery of reasonable costs and attorneys' fees.

20.2 Notwithstanding the foregoing, Greeley or Evans may terminate this Agreement, in the absence of default, for any or no reason whatsoever, by providing an advance notice of termination to the other party of two (2) years. Termination under this Subsection 20.2 shall be effective two (2) years after the date that notice of such termination is provided under section 18 above.

20.3 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.

21. 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.

22. 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.

23. Dispute Resolution. Prior to the commencement of litigation, Greeley and Evans shall make reasonable efforts in good faith to negotiate and resolve any dispute that arises out of this Agreement (a) first at the staff level, and then (b) through the Water and Sewer Boards and City Councils for both municipalities. Procedures for such negotiation and resolution shall be established by mutual agreement in writing at that point in time, and may include the use of outside mediators if deemed appropriate. Any agreement for negotiation and resolution of disputes pursuant to this paragraph must be within the legal authority held by Greeley and Evans pursuant to the Colorado Revised Statutes, their respective city charters, and respective municipal codes. Notwithstanding any term in this Agreement to the contrary, Greeley and Evans agree that the provisions for dispute resolution in this paragraph do not apply to the authority granted to the City of Greeley Water and Sewer Board by Section 17-4 of the Greeley City Charter, which authority includes, but is not limited to, the authority to establish minimum water and sewer rates.

24. Integration and Amendment. This Agreement constitutes a complete integration of the understandings and agreement between Greeley and Evans with respect to the subject matter herein, and supersedes the 2002 Sanitary Sewer IGA in its entirety. This Agreement is not intended, and shall not be construed, to amend the existing and separate 2011 IGA between Evans and Greeley regarding emergency sewage treatment services for the T-Bone Sewage Lift Station, dated June 7, 2011. No representations, negotiations, or warranties, express or implied, exist between Greeley and Evans except as explicitly set forth in this Agreement. This Agreement may only be amended in a writing duly authorized and executed by Greeley and Evans.

25. 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.

IN WITNESS WHEREOF, the City of Greeley and the City of Evans have authorized and executed this First Amendment to Intergovernmental Agreement for Sewage Treatment Services on the date set forth above.

THE CITY OF GREELEY,
a Colorado home rule municipality

By: _____
City Manager

Approved as to Legal Form:

By: _____
City Attorney

As to Availability of Funds:

By: _____
Director of Finance

THE CITY OF EVANS
a Colorado home rule municipality

Attest:

By: _____
Mayor

By: _____
City Clerk

Approved as to Substance:

By: _____
City Manager

Approved as to Legal Form:

By: _____
City Attorney