

**SECOND AMENDMENT TO
INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE**

**BETWEEN THE CITY OF GREELEY, COLORADO
AND THE TOWN OF WINDSOR, COLORADO**

This SECOND AMENDMENT TO INTERGOVERNMENTAL AGREEMENT FOR TREATED WATER SERVICE (“Second Amendment”) is entered into this ____ day of _____ 2021, by and between THE CITY OF GREELEY, COLORADO, a home rule municipality (“Greeley”) and THE TOWN OF WINDSOR, COLORADO, a home rule municipality acting as the governing board of the Windsor Water Utilities Enterprise (“Windsor”), to set forth the terms and conditions by which Greeley will use its supply and treatment facilities to provide the treatment of potable water and provision of leased water to Windsor.

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 each of the following cooperating units of government; and

WHEREAS, Greeley and Windsor previously entered into that certain Intergovernmental Agreement for Treated Water Service dated January 4, 1996 (“1996 IGA”), which was amended by that certain First Amendment to Intergovernmental Agreement for Treated Water Service, dated November 13, 2017 and attached hereto as Exhibit A (“First Amendment”); and

WHEREAS, Greeley and Windsor have a continuing common interest in obtaining high-quality treated water in sufficient quantities to meet the present and future needs of their citizens and service areas; and

WHEREAS, Greeley and Windsor are agreeable to further amending the 1996 IGA under the terms and conditions of this Second Amendment; and

WHEREAS, Greeley and Windsor desire to reduce their understandings, and the terms and conditions of this Second Amendment, to writing;

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in further consideration of the mutual covenants, undertakings, terms, and conditions contained herein, Greeley and Windsor agree as follows:

1. OTHER TERMS IN FULL FORCE AND EFFECT. Except as explicitly modified in this Second Amendment, all terms and conditions of the 1996 IGA, as amended by the First Amendment, remain in full force and effect.

2. AMENDMENTS. The 1996 IGA, as amended, is hereby further amended as follows.

a. Section 6 of the 1996 IGA is amended and replaced in its entirety as follows.

6. WATER RIGHTS. Windsor shall make available to Greeley for treatment water attributable to water rights that are decreed or otherwise approved for municipal use under Colorado

law and usable in the Greeley water system. Windsor shall remain responsible for all assessments due on the water rights made available to Greeley for treatment pursuant to this agreement. Windsor shall remain responsible for compliance with all requirements of local, State, or Federal law associated with the water rights made available to Greeley for treatment pursuant to this agreement, including, without limitation, for meeting the return flow obligations associated with changed water rights.

Windsor shall make such water available to Greeley in sufficient quantities to meet the potable water use projections described in Section 5 above, including sufficient quantities beyond its projections to cover the shrinkage associated with the delivery of such water. Greeley and Windsor will cooperate in the calculation and assessment of shrinkage based on agreed shrinkage factors for the sources of supply provided by Windsor and the treatment plant at which the water is treated.

b. Section 12.1 of the 1996 IGA is amended and replaced in its entirety as follows.

12.1 Each year either Windsor or Greeley or both may register and record peak daily and peak hourly demands. Windsor's peak daily and peak hourly demand factors will either be flow-weighted averages of several master meters, or shall be derived from simultaneous readings from the several master meters, whichever method generates the highest demand factors.

To modulate variations in peaking factors from year to year, and to thereby modulate fluctuations in the cost-of-service rates, peaking factors will be calculated based upon the average of the previous five years' actual recorded peak flows. Notwithstanding the provisions regarding Peaking Error set forth in Sections 12.2, 12.3, and 12.4, in no case will past year's or current year's water bills be adjusted for changes in the current peak demand factors. If peak daily or peak hourly demands are not registered in any given year, then the measurements used in the prior year's rate study will be assumed constant in the next rate study.

c. Section 13.1 of the 1996 IGA is amended and replaced in its entirety as follows.

13.1 Windsor shall pay to Greeley a system development charge ("SDC") when the metered water delivered to Windsor in any year, excluding Interim Water delivered pursuant to Section 22 below, exceeds the acre-feet delivered in the base year. Payment of system development charges will create a new base year delivery. No system development charges will be due in subsequent years for metered delivery equal to or less than the new base year delivery. Payments of the system development charge will occur in twelve monthly increments following the calendar year in which the exceedance occurs. In no case shall system development charges be refunded. Windsor's current base year volume at the time this Second Amendment is executed is 651.33 acre-feet.

d. The 1996 IGA is amended by the addition of a new Section 22 as follows.

22. INTERIM WATER SUPPLY LEASE. In addition to the treated water service provided pursuant to the 1996 IGA, as amended, Greeley will also provide to Windsor an interim supplemental supply of raw water during certain times of water shortage more particularly

described in Paragraph 22.2 below that Windsor may (but shall not be required to) itself treat and deliver to its customers (“Interim Water”), pursuant to the terms of this Section 22 (“Interim Water Supply Lease”). Though this Section 22 may expire or be terminated independent of the 1996 IGA, as amended, in its entirety, all other terms and conditions of the 1996 IGA, as amended, not explicitly superseded in this Section 22 remain applicable to the conduct of the parties under the Interim Water Supply Lease.

22.1 Term. The initial term of the Interim Water Supply Lease commences on November 1, 2021 and expires after a period of ten (10) years. Upon the mutual agreement in writing of Greeley and Windsor, the Interim Water Supply Lease may be extended for one (1) subsequent term of five (5) years.

22.2 Amount of Interim Water and Projection Schedule. For purposes of this Interim Water Supply Lease, a Water Year shall run from November 1 through October 31 of the following calendar year. In the event that the Board of Directors for the Northern Colorado Water Conservancy District (“Northern Water”) sets a C-BT Quota of less than sixty-five percent (65%) in any Water Year during the term of this Interim Water Supply Lease, Greeley agrees to provide up to three hundred and fifty (350) acre-feet of Interim Water to Windsor for that Water Year. In such an event, Windsor shall provide to Greeley a projection schedule within thirty (30) days after the date that Northern Water sets a C-BT Quota of less than sixty-five percent (65%), detailing the amount of Interim Water in acre-feet needed per month for the remainder of that Water Year (“Projection Schedule”). Notwithstanding the total maximum amount of three hundred and fifty (350) acre-feet of Interim Water per Water Year set forth above, Greeley shall not be obligated under any circumstances to provide more than one hundred and twenty-five (125) acre-feet of Interim Water to Windsor in any calendar month, or more than one million, five hundred thousand (1,500,000) gallons of Interim Water to Windsor on any calendar day.

22.3 Payment for Interim Water. Windsor shall pay to Greeley an annual payment on or before March 1 of each Water Year during the term of this Interim Water Supply Lease, regardless of whether the obligation described in Paragraph 22.2 above is triggered, as consideration for making its water resources available (“Annual Payment”). The Annual Payment shall be sixty thousand dollars (\$60,000.00) for Water Year 2022. Each Water Year thereafter, the Annual Payment shall increase by three percent (3%). Windsor shall also pay to Greeley the Greeley non-agricultural water rental rate in effect on the first day of then-current Water Year, as established by the Greeley Water and Sewer Board according to its Non-Agricultural Water Rental Policy, per acre-foot of Interim Water provided to Windsor during each Water Year this Interim Water Supply Lease is triggered (“Lease Payment”). Windsor shall remit Lease Payments to Greeley within thirty (30) days of receiving an invoice from Greeley, and in no event shall Windsor be entitled to a refund of either Annual Payments or Lease Payments.

22.4 Sources of Interim Water Supply. Greeley may, in its sole discretion, allocate any of its sources of water supply that are available and decreed for municipal use to meet its

obligations under this Interim Water Supply Lease. Windsor shall be solely responsible for all accounting and administration of the Interim Water applicable to its use in the Windsor water system, after such water is made available by Greeley. Windsor shall be solely responsible for any transit losses assessed on the Interim Water. Greeley shall remain entitled to the use of any return flows attributable to Interim Water provided to Windsor under this Interim Water Supply Lease.

22.5 Limitations on Obligation to Provide Interim Water. Greeley may curtail deliveries of Interim Water to Windsor if Greeley imposes, in Greeley's sole discretion, mandatory city-wide water use restrictions to address drought conditions, infrastructure failure, or other catastrophic circumstance limiting the ability of Greeley to satisfy the indoor water usage needs of its citizens, so long as, and to the extent that, deliveries under this Agreement are prevented or delayed by such cause. Greeley also may curtail deliveries of Interim Water to Windsor if an accident, act of war, natural catastrophe, fire, explosion, or other cause beyond the reasonable control of Greeley prevents or delays its ability to deliver Interim Water, so long as, and to the extent that, deliveries under this Interim Water Supply Lease are prevented or delayed by such cause.

22.6 Restriction on Assignment. Windsor shall not rent, sublet, or otherwise convey in any manner the right to use the Interim Water. Neither Greeley nor Windsor shall assign any of their rights or delegate any of their obligations under this Interim Water Supply Lease.

22.7 Default and Termination of Interim Water Supply Lease. This Interim Water Supply Lease may expire, or be terminated in accordance with the provisions of this Section, without terminating the 1996 IGA, as amended, in its entirety. If either Greeley or Windsor fails to comply with a term or condition of this Section 22, including, without limitation, the obligation to timely make the Annual Payment, such failure constitutes a default of the Interim Water Supply Lease only. The non-defaulting party may declare the default by providing written notice to the Greeley Water Resources Operations Manager or the Windsor Community Development Director. Upon receipt of this notice of default, the defaulting party will have fifteen days within which to cure the default. If, in the sole discretion of the non-defaulting party, the default remains uncured after the aforementioned fifteen-day cure period, or after any written extension thereof mutually agreed upon by Greeley and Windsor, the non-defaulting party may declare the Interim Water Supply Lease terminated. The failure of either Greeley or Windsor to declare a default of this Section 22 does not establish a precedent nor constitute an implied waiver of any subsequent breach of the Interim Water Supply Lease. This Interim Water Supply Lease shall automatically terminate in the event either Greeley or Windsor terminates the 1996 IGA, as amended, in accordance with Section 18 above.

e. The 1996 IGA is amended by the addition of a new Section 23 as follows.

23. VESTED CONTRACTUAL RIGHTS. The contract rights created pursuant to the 1996 IGA, as amended, are intended by Greeley and Windsor to be presently vested and fully

enforceable according to their terms. The provisions of the 1996 IGA, as amended, were negotiated as, and constitute, parts of an integrated whole, and the inability of either party to enforce any of such provisions or to consummate any of the transactions contemplated hereby due to changes in law, whether by amendment of the State or federal constitutions, the respective charters or municipal codes of either municipality, or of any other applicable statute or regulation, or by other regulatory or judicial action, would result in substantial and irreparable harm to both parties and constitute an impairment of their vested contractual rights.

IN WITNESS WHEREOF, the City of Greeley and the Town of Windsor have authorized and executed this Second Amendment to Intergovernmental Agreement for Treated Water Service on the date first written above.

THE TOWN OF WINDSOR, COLORADO

ATTEST:

By: _____
Paul Rennemeyer, Mayor

By: _____
Karen Frawley, Town Clerk

[Seal]

THE CITY OF GREELEY, COLORADO

ATTEST:

By: _____
John Gates, Mayor

By: _____
Anissa Hollingshead, City Clerk

AS TO SUBSTANCE:

AS TO AVAILABILITY OF FUNDS:

By: _____
Raymond Lee, Acting City Manager

By: _____
John Karner, Director of Finance

AS TO LEGAL FORM:

By: _____
Doug Marek, City Attorney