

**INTERGOVERNMENTAL AGREEMENT FOR
TREATED WATER SERVICE**

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

This Intergovernmental Agreement for Treated Water Service ("Agreement") is made this _____ day of _____, 2023, by and between **THE CITY OF GREELEY**, a Colorado home rule municipality acting by and through its Water Enterprise ("Greeley") and **THE CITY OF EVANS**, Colorado, a home rule municipality ("Evans"), for the treatment and delivery of potable water to Evans by and through the treatment facilities and transmission lines of Greeley.

WHEREAS, pursuant to Article XX, Section 6 of the Colorado Constitution and Section 29-1-203, C.R.S., governments may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units of government; and

WHEREAS, Evans and Greeley previously entered into that certain IGA for Treated Water Service dated April 21, 1998, which set the terms and conditions by which Greeley would provide potable water treatment and transmission services to Evans ("1998 IGA"); and

WHEREAS, the initial term of the 1998 IGA expires on April 21, 2023, and Evans and Greeley desire to amend and renew the 1998 IGA; and

WHEREAS, Evans and Greeley remain neighboring municipalities that have a common interest in obtaining high-quality water in sufficient quantity to meet the present and future needs of their citizens; and

WHEREAS, the citizens of Evans desire long-term reliability in their supply of treated water; and

WHEREAS, Evans and Greeley can cost-effectively combine their demand for treated water through one system of supply, treatment, transmission, and treated water storage thereby achieving economies of scale; and

WHEREAS, in addition to the water treatment and transmission capacity necessary to meet the needs and demand of its own citizens, Greeley currently has the capacity and facilities to meet the needs of Evans and its citizens, as is more fully described herein; and

WHEREAS, Evans and Greeley will continue to own their respective water rights individually and separately, with Evans relying upon the yield of its own water rights to provide

the raw water necessary for the treatment and delivery of potable to Evans as proposed under this agreement; and

WHEREAS, Evans and Greeley are agreeable to entering into another long-term contract for the treatment and delivery of potable water to Evans through an intergovernmental agreement; and

WHEREAS, Evans and Greeley have reached an agreement concerning the amendment and renewal of the 1998 IGA, and desire to reduce the understandings, terms, and conditions of said agreement to writing;

NOW THEREFORE, for good and valuable consideration, including the mutual covenants, undertakings, terms and conditions contained herein, Evans and Greeley agree as follows.

1. DEFINITIONS. The terms used herein are defined as follows:

1.1 "Greeley" shall refer to the City of Greeley and any authorized representative thereof.

1.2 "Greeley Water System" or "Greeley Water System Enterprise" shall refer to Greeley's water treatment plants, treated water conveyance and storage systems, pump stations and related appurtenances for the collection, distribution and measurement of water.

1.3 "Peak Daily Demand" means the greatest rate of treated water delivered by Greeley to Evans over a twenty-four hour period, beginning at midnight, in a given day.

1.4 "Peak Hourly Demand" means the greatest rate of treated water delivered by Greeley to Evans over sixty consecutive minutes for any given day of the calendar year.

1.5 "Evans" shall refer to the City of Evans and any authorized representative thereof.

1.6 "Evans Water System" or "Evans Water System Enterprise" shall refer to Evans' treated water conveyance and storage systems, pump stations, and related appurtenances for the distribution of water downstream of the master meters gauging Greeley's delivery of potable water to Evans.

1.7 "Year" means a calendar year beginning on January 1 unless otherwise noted.

2. USE. Pursuant to the terms of this Agreement, Greeley agrees to treat the raw water supplies provided by Evans that are usable in the Greeley Water System and approved for

municipal use in the Evans System under Colorado law, for Evans in the manner and in such amounts as are more fully set forth herein

3. POINTS OF DELIVERY.

3.1 Greeley shall deliver treated water from the Greeley Water System to Evans through multiple master meters, the location of which will be mutually established and agreed upon in writing by both municipalities.

3.2 Unless otherwise agreed upon between the parties in writing, Greeley shall design, construct, own, and maintain the treated water meter vaults, meters, back-flow prevention devices and all associated facilities located at the delivery points in a prudent and cost-effective manner. The cost of maintenance of such metering facilities attributable to service provided to Evans under this Agreement shall be paid by Evans by and through inclusion in the Evans monthly service fee charged by Greeley. Evans agrees to secure and provide such easements as may be required by Greeley for metering facilities, and to guarantee access to metering facilities for Greeley. Each water meter shall be operated and maintained so as to record both cumulative flow, maximum hourly and maximum daily flow within the accuracy prescribed by current American Water Works Standards.

4. POTABLE WATER PROJECTIONS AND SYSTEM CAPACITY.

4.1 Within thirty (30) days after execution of this Agreement and then no later than April 15 of each year thereafter, Evans shall provide written notice to Greeley of its projected treated water requirements for the then current calendar year and for the four consecutive years following the year in which such notice is given. The notice shall include, at a minimum: estimated total annual consumption, estimated maximum day consumption, estimated maximum hourly consumption, planned system facility changes, and proposed additional points of delivery to Evans from Greeley.

4.2 If Greeley determines the Greeley water system will be unable to meet Evans' projected demands, Greeley will give Evans notice five years prior to the projected capacity limitation. Greeley will make its reasonable best efforts to avoid such a capacity limitation.

5. RAW WATER REQUIREMENTS. Evans shall possess sufficient water rights that are usable in the Greeley Water System and approved for municipal use in the Evans System under Colorado law in order to satisfy the treated water requirements of Evans, expressly subject to the following conditions:

5.1 Evans shall make such water available to Greeley in sufficient quantities to meet the potable water use projections described in Section 4.1 above, including sufficient quantities beyond its projections to cover the shrinkage associated with the delivery of such water. Greeley and Evans will cooperate in the calculation and assessment of shrinkage based on agreed shrinkage factors for the sources of supply provided by Evans and the treatment plant at which the water is treated.

5.2 Evans shall pay all assessment costs and running charges on any of the water provided for treatment by Greeley under this Agreement.

5.3 Evans shall be responsible for meeting all return flow requirements associated with the raw water provided to Greeley for treatment, state decree accounting, and any other requirements of local, State, or Federal law associated with such raw water. Evans shall retain dominion and control over its water, and Greeley shall maintain complete and unilateral control over Greeley's system operations.

5.4 Greeley shall be obligated to treat for Evans only that amount of water delivered for treatment under this Section 5. If metered usage by Evans exceeds the amount delivered by Greeley less losses, Greeley shall notify Evans of the shortage. Upon written notification, Evans will have twenty (20) days to transfer additional raw water to Greeley for treatment.

6. EMERGENCY OPERATIONS. In the event of a shortage of treated water, caused by the inability of a component of the Greeley Water System to function, Evans and Greeley shall share proportionally in water use reductions. Greeley and Evans shall independently develop a schedule and method of reducing water demand, with initial emphasis on reducing all nonessential uses such as lawn and parks irrigation. In a prolonged shortage, Evans and Greeley agree to independently develop a uniform set of enforcement tools and penalties to curtail usage. In any such event, Greeley will make every reasonable effort to continue to meet both Evan's and Greeley's water demand, including attempting to obtain treated water from other providers. In the event of a shortage, nothing shall prevent Evans from independently using an alternate source of treated water in whatever amount Evans deems necessary, until Greeley can again bring its facilities online.

7. RATES. The rates for treated water delivered to Evans shall be based upon Greeley's water rate cost-of-service model. Evans agrees to pay the rate of cost-of-service plus ten percent. The cost-of-service rates (rates charged to Evans for treated water delivery) shall be reviewed annually and adjusted in accordance with section 17-4 of the Greeley City Charter. Evans shall be given 90 day notice of rate changes. Cost-of-service includes a cost to provide peak demands. The parties agree that the cost-of-service model and the percentage over cost-of-service paid by Evans will be reviewed every five years.

8. BILLING AND PAYMENT. Greeley shall invoice Evans for amounts due and payable under this Agreement. Evans shall remit payment within thirty (30) days after the date of invoice.

9. NO ACQUIRED RIGHTS OR VESTING IN WATER RIGHTS OR IN WATER SYSTEM. As described in Section 17-1 of the Greeley City Charter, the Greeley Water System is owned and operated by its Water Enterprise, as that term is defined pursuant to Article X, Section 20 of the Colorado Constitution. The Greeley Water Enterprise is owned by the citizens of Greeley. Similarly, the Evans System is an Enterprise, owned by the citizens of Evans.

Evans specifically acknowledges and agrees that no rights or ownership in the Greeley Water System shall become vested as a result of service provided under this Agreement. Neither Greeley nor Evans shall, by reason of any provision of this Agreement or the use of water hereunder or otherwise, acquire any vested or adverse right, in law or in equity, in the water rights or water system owned by the other municipality. Neither the assignment, use, rental, or license of water or water rights nor the payment of system development charges shall be deemed to initiate, create, or vest any rights or ownership by either Greeley or Evans in the other's water rights or water system.

10. POTABLE WATER QUALITY. The treated water delivered by Greeley to the Evans master meters shall be water of a sufficient quality that complies with applicable potable water law.

11. PEAK DEMAND MEASUREMENTS AND DETERMINATION. Each year Greeley's Rates and Budget Analyst shall register and record Peak Daily and Peak Hourly Demands through the Evan master meters. Peaking factors will be calculated based upon the average of the preceding five (5) years.

12. SYSTEM DEVELOPMENT CHARGES.

12.1 Evans' current base year delivery volume as of the date of this Agreement is 2,766.41 acre-feet. Evans shall pay to Greeley a system development charge ("SDC") in the event that the total volume of metered water delivered by Greeley to Evans in any year pursuant to this Agreement exceeds the then current base year delivery volume. After Evans incurs an SDC, its base year delivery volume shall be increased by the amount it exceeded the previous volume to create a new base year delivery volume. No SDCs will be due in subsequent years for metered delivery equal to or less than the new base year delivery volume. Payment of any SDCs incurred shall be made by Evans in twelve (12) equal monthly installments, beginning in January, immediately following the calendar year in which the exceedance occurs. In no case shall SDCs be refunded.

12.2 The SDC rate to be paid by Evans under this Agreement shall be calculated using a formula based on three values: 1) The then current Greeley Inside the City residential $\frac{3}{4}$ -inch tap plant investment fee (“PIF”), 2) the then current Greeley Inside the City annual average residential demand and (3) the approximate percentage the Greeley Water System that benefits Evans.

To express the SDC rate in terms of \$/acre-foot, the then current Greeley Inside the City PIF will be divided by the then current average annual residential demand (expressed in acre-feet), and then multiplied by 75%, which is the approximate percentage of Greeley’s Water System that benefits Evans.

$$\text{PIF} / \text{Avg. Annual Residential Demand} \times 75\%.$$

13. RELEASE, HOLD HARMLESS, INDEMNIFICATION. Both Evans and Greeley 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 shall be construed to waive or modify in any respect the benefits and protections to which Evans and Greeley are entitled by the Colorado Governmental Immunity Act. Each party respectively shall defend any and all claims for injuries or damages, pursuant to and 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 themselves and their own agents, employees, and assigns.

In addition, Greeley shall be responsible for any and all liability for injuries or damages caused by any negligent acts or omissions of Greeley, its officers, employees and agents, performing functions or activities upon the property of Evans. Greeley shall provide adequate workmen's compensation insurance for all of its employees, agents and assigns engaged in activities and functions upon the property of Evans.

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

Each party shall furnish the other party current certificates of insurance, or evidence of adequate self-insurance, if applicable, demonstrating that the coverages outlined above are in full force and effect.

14. NO PUBLIC UTILITIES COMMISSION CONTROL. Evans, its employees and elected or appointed officials, agree neither to assert nor support any statement, policy, petition, rule making, or legislation attempting to place the Greeley Water System under the authority or

jurisdiction of the Colorado Public Utilities Commission, whether by virtue of the activities contemplated under this Agreement or otherwise.

15. INTEGRATION AND SUPERSESSION. This Agreement contains all agreements and understandings, whether written or oral, between Evans and Greeley concerning the subject matter described, and shall supersede any and all terms and conditions of treated water supply agreements previously existing between Evans and Greeley, including, without limitation, the 1998 IGA. This Agreement supersedes the 1998 IGA in its entirety.

16. TERM. In the interest of reliability and security, this Agreement shall be for an initial term of ten (10) years from the date of its execution. After its initial term, this Agreement shall automatically renew for successive five-year terms, unless duly amended or terminated as provided in Section 17 below.

17. DEFAULT AND TERMINATION.

17.1 In the event either party fails to meet the terms and conditions of this Agreement, such failure shall constitute a default of this Agreement and the non-defaulting party may give notice of the perceived default. Notice shall be given in writing either to the Evans City Manager or the Greeley City Manager. Either party may cure any perceived default during the ninety (90) days following the notice. Upon cure of any default, this Agreement shall remain in full force and effect. Upon its receipt of any notice of perceived default, the defaulting party may invoke dispute resolution as provided in Paragraph 20 below.

17.2 If after the cure period above, or any mutually agreed-to extensions thereof, the non-defaulting party determines the default has not been cured, such party may give two (2) years' notice of its termination of this Agreement. Nothing herein shall limit either party from collecting damages and amounts due from the other party upon termination of this Agreement by default.

17.3 This Agreement may be terminated, with or without cause, by either party by giving an advance written notice to the other party no less than two (2) years before the end of the initial ten-year term, or at least two (2) years before the end of any subsequent terms.

18. JURISDICTION AND VENUE. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue to enforce this Agreement shall be in Weld County.

19. AMENDMENT. This Agreement shall be amended only in writing with the requisite approval of each municipality, which includes their respective City Councils. No amendment or

modification of this Agreement shall be effective unless made in a writing approved and signed by the duly authorized representatives of each party.

20. DISPUTE RESOLUTION. Should disagreements arise regarding the interpretation of any portion of this Agreement, the parties agree to make reasonable efforts to resolve such disputes through negotiation; first at the staff level, and second among the respective Water Boards and/or City Councils. Procedures for such negotiations shall be established by mutual agreement at the time and may, with the concurrence of the parties, involve the use of qualified outside mediators. Any negotiations and agreements to resolve such a dispute reached therefrom must be within the legal authority granted to the parties by their Charters and/or applicable State statutes, otherwise such agreements shall be null and void. Notwithstanding anything to the contrary in this Agreement, it is expressly agreed between the parties that this provision for dispute resolution does not apply to disputes over the authority granted to the Greeley Water and Sewer Board by Section 17-4 of the Greeley City Charter, including, but not limited to, its authority to establish of minimum water rates.

IN WITNESS WHEREOF, the City of Greeley and the City of Evans have executed this Intergovernmental Agreement for Treated Water Service as of the date first set forth above.

THE CITY OF GREELEY, COLORADO

As to Water and Sewer Board Approval:

By: _____
City Manager

By: _____
Water and Sewer Board Chairman

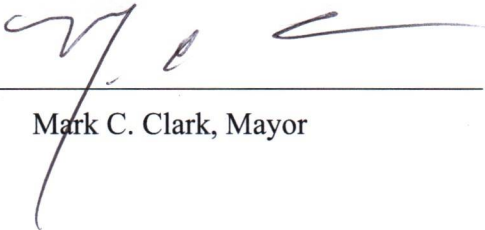
As to Legal Form:

As to Availability of Funds:


By: _____
City Attorney's Office

By: _____
Director of Finance

THE CITY OF EVANS, COLORADO

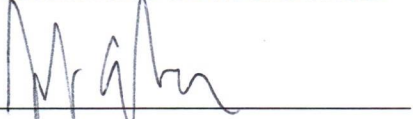
By: 
Mark C. Clark, Mayor

ATTEST:

By: 
Julie Kamka, City Clerk



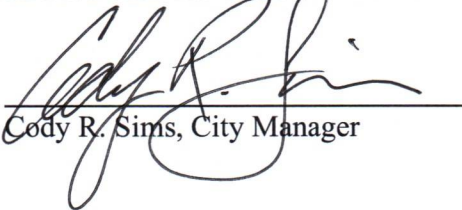
EVANS WATER AND SEWER BOARD

By: 
Jeffrey Oyler, Chairman

APPROVED AS TO FORM:


Scott Krob, City Attorney

APPROVED AS TO CONTENT:


Cody R. Sims, City Manager