

INTERGOVERNMENTAL AGREEMENT

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this ____ day of _____ 2023 (“Effective Date”), between the **TOWN OF JOHNSTOWN, COLORADO**, a Colorado municipality, hereinafter referred to as the “Town,” and the **LITTLE THOMPSON WATER DISTRICT**, a special district organized pursuant to Colorado law, hereinafter referred to as the “District.” The Town and the District may individually be referred to as “party” or together as “parties.”

RECITALS

A. WHEREAS, the parties, as separate governmental entities, are authorized and encouraged to enter into intergovernmental agreements for the purpose of providing efficient service to the citizens and residents that the respective governmental entities-serve and represent; and

B. WHEREAS, the Town provides treated water service to customers residing within the boundaries of the Town and to customers outside the boundaries of the Town through facilities and infrastructure that the Town owns and maintains; and

C. WHEREAS, the District provides treated water services to customers in certain portions of Larimer, Weld, and Boulder Counties through facilities and infrastructure that the District owns and maintains;

D. WHEREAS, by the terms hereof, among other purposes, the Town and the District desire to establish procedures for the delivery of water to the other’s customers and water service boundaries to help guide each entity in planning infrastructure and treatment capacity;

E. WHEREAS, on or about October 21, 2002, the Town and the District entered into that certain Intergovernmental Agreement concerning, among other matters, the establishment of emergency and temporary water service (“2002 Agreement”), whose term was extended by action of both the Town and the District on our about August 15, 2002, April 17, 2023 and June 19, 2023;

F. WHEREAS, on or about January 21, 2009, the Town and the District entered into that certain Intergovernmental Agreement concerning, among other matters, the designation of water providers for properties within the Town and recognition of revenue lost for transfer of service to properties between the Parties (“2009 Agreement”);

G. WHEREAS, the Town and the District intend that this Agreement shall supersede and replace the 2002 Agreement and the 2009 Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and mutual covenants set forth herein and pursuant to the provisions of Section 29-1-203, Colorado Revised Statutes, the parties agree as follows:

1. Purpose and Authority. By enacting Titles 31 and 32, including, Section 31-35-402(1)(b), C.R.S., and pursuant to Article XIV, Section 18, of the Colorado Constitution, the Colorado General Assembly has:

- (a) determined that the State of Colorado has a valid interest in providing water for its citizens;
- (b) articulated and affirmatively expressed the State of Colorado's policy to allow municipalities and special service districts to provide water by utilizing cooperative agreements and to reduce and eliminate competition in areas where each party is capable of providing service;
- (c) developed a structure to actively supervise municipalities and special districts if the districts and municipalities choose to utilize such agreements; and
- (d) provided that there shall be no overlapping service territories for municipal corporations and/or special districts providing water service.

Taking into consideration the foregoing factors: (i) the parties have established, and desire to continue providing, water service to the other party; (ii) desire to restrict the duplication and overlapping of facilities; and (iii) have the need to undertake long-range planning prior to initiating costly capital expansion programs, which affect the quality and cost of water service.

2. Statement of Intent. The Town and the District agree to act in good faith and to the best of their ability in taking all steps necessary to fully implement the terms of this Agreement for the purposes outlined herein. The Town and the District acknowledge the mutual goal and benefits of continuing the cooperation between the parties that has been established since execution of the 2002 Agreement.

3. Sale and Delivery of Potable Water.

3.01 Emergency Sale of Potable Water.

3.01.1 For purposes of this Agreement, an *emergency* shall mean any occurrence, condition, or event that results in the Town or the District being unable to deliver treated water for use to their customers. Emergency conditions have a finite duration linked to a formal schedule agreed upon by the parties to fix, repair, or replace the root cause of the emergency condition and return the systems to normal service.

3.01.2 During an emergency, the Town is desirous of obtaining water from the District for use by the Town. The Town agrees to pay the District the water rate for such water service as prescribed from time to time by the Board of Directors of the District.

3.01.2 During an emergency, the District is desirous of obtaining water from the Town for use by the District. The District agrees to pay the Town the water rate for such water service as prescribed from time to time by the Town Council of the Town.

3.01.3 The Town Council of the Town and the Board of Directors of the District, at such intervals as each shall deem appropriate, but in any event no less frequently than once each calendar year, shall review the rate for water furnished hereunder and, if warranted, shall revise such rates so that the rates produce revenues that are sufficient, with the revenues from all other sources, to maintain and operate their respective water systems and establish and maintain reasonable reserves. Each party shall provide revised rates to the other party no less than sixty (60) days prior to such revised rates being effective.

3.01.4 Each party shall be responsible for its own system pressure. The party selling water to the other party shall not guarantee any minimum pressure in its delivery, except that such party shall endeavor to guarantee that that pressure will be reasonable to satisfy the purposes of this Agreement.

3.01.5 Provided that neither party shall be liable for loss to the other party resulting from a *force majeure* event (defined below), each party shall endeavor to repair all breaks promptly on their respective water lines.

3.02 *Construction of interconnection facilities.*

3.02.1 The parties agree to determine, by separate agreement, the terms of payment of the cost of any new interconnection of the parties' respective water systems, recognizing generally that the party desiring to purchase water through an interconnection shall be responsible for the cost of payment of the facilities necessitated by the interconnection.

3.02.2 The party desiring any new interconnection (purchasing party) to be able to accept delivery of water from the other party (selling party) shall install such facilities, including the metering vault, meter, valves, and fittings, so that the purchasing party may connect its water facilities to the selling party's system. The parties shall jointly agree upon the design of the main and other facilities prior to the commencement of construction. Unless otherwise agreed at the time of construction, the purchasing party shall construct the main and other facilities at its expense based on the agreed-upon design plans. The selling party shall have a right to observe and inspect the construction at its expense. The purchasing party agrees to grant to or obtain for the selling party such easements on property as are deemed reasonably necessary by the selling party in order to complete the construction of the facilities. The selling party shall provide the design requirements of the metering vault and shall, subsequent to construction, own and maintain the metering vault.

3.02.3 If facilities to construct an interconnection cannot be installed because of a *force majeure* event (defined below), such party shall not be liable therefor or for damages caused thereby.

3.03 *Temporary Transfer of Water Rights.* The party selling water shall notify the party purchasing water in writing, on a monthly basis, of the number of gallons used by the purchasing

party. The purchasing party agrees to temporarily transfer to the selling party, without expense to the selling party, the number of acre-feet of Colorado-Big Thompson water rights, held by Northern Colorado Water Conservancy District, Berthoud, Colorado, or such other form of water rights agreeable to the selling party sufficient to provide one hundred fifteen percent (115%) of the number of gallons used by the purchasing party to accommodate the water usage as well as the typical losses through the selling party's treatment and transmission/distribution system. The transfer shall be completed within thirty (30) days of notification by the selling party, except if additional time is required due to no fault of the purchasing party..

4. *Quality of Treated Water and Service.* Each party acknowledges that the other party is capable of providing quality water service at a reasonable cost to the parties' customers located in the parties' respective service areas. Each party acknowledges that it is subject to the same drinking water quality standards as applicable to the other party. Each party agrees that the quality of the treated water delivered to the other party pursuant to the terms of this Agreement shall be in accordance with all federal and state water quality standards.

5. *Service to Overlap Areas; Annexations.*

5.01 Service areas within the District that are also within the Town's defined service area shall be known as "overlap areas." The Town and District agree to the following process for approval of water taps within overlap areas.

Any person or entity requesting water service within an overlap area shall first make the following determination:

1. Is the real property to be provided water service ANNEXED into the Town?
 - a. If yes, the Town is the designated water utility and the requestor must comply with all of the then current requirements for water service from the Town.
2. Is the real property to be provided water service NOT ANNEXED into the Town AND the person or entity requesting water service does not have any present or future plans to request annexation into the Town?
 - a. If yes, the DISTRICT is the designated water utility for that property and the requestor must comply with all of the then current requirements for water service from the District.
 - b. In addition, the requestor must send a certified letter to the Town and District indicating their intention NOT to pursue annexation into the Town.
3. Does the real property to be provided water service INTEND TO ANNEX into the Town in the next three (3) years?

- a. If yes, the parties agree to confer to determine who will serve the property.

Notwithstanding the foregoing, nothing shall prevent either party from providing water service to customers in the other party's service area upon written authorization from, as appropriate, the Town Manager of the Town or the District Manager of the District.

5.02 As capital improvements to the parties' respective distribution systems are constructed, the parties shall endeavor to address the upgrading of the systems in a manner that meets the governing fire district's minimum fire flow and other service requirements for such area.

5.03 The Town and the District shall cooperate to reduce and eliminate overlapping service territories and eliminate duplication of facilities for the service of water.

5.04 The Town and District shall cooperate in the protection of each party's facilities to ensure continued service to each party's customers. Facilities shall include any property or infrastructure that each party respectively owns and operates for its customers or residents. The Town and District recognize the rights associated with the easements that have been acquired by each party and the responsibility to protect infrastructure. These rights shall apply when a development, annexed to the Town, constructs improvements, or is required to dedicate rights-of-way or easements, over the top of District easements or facilities. These rights shall also apply when a development, served by the District, constructs improvements, or is required to dedicate easements, over the top of Town easements and facilities. Nothing in this Agreement shall prevent a party from crossing the other party's facilities situated in an easement, including but not limited to utility pipelines, using best engineering practices nor shall it obligate a party to make infrastructure improvements to the other party's facilities situated in an easement or elsewhere; however, the proposed crossing shall be reviewed and approved by the other party no less than thirty days prior to installation. Each party shall not permit, provide, or allow for change in ground cover over, or conditions around, the other party's facilities that negatively impact the other party's reasonable service of the impacted infrastructure without approval from the impacted party. Such approval of the party whose infrastructure is to be crossed is not to be unreasonably withheld but may require mitigation of adverse condition. The mitigation for the impacted facility shall be completed by the party allowing, permitting or providing for the impact. Such mitigation may include but not be limited to relocation of the facility impacted, purchase and conveyance of property for easements, or other methods, any of which do not provide an enhanced benefit, condition, or capacity to the existing facility. The Parties agree that they will not charge a fee for any crossing as long as the party making the crossing requests the approval of the party being crossed and such crossing is approved with or without mitigation.

5.05 The Town and the District shall cooperate in the design and location of major water facilities of each of the parties to reduce and eliminate duplication of major water facilities (water transmission lines, water tanks and water pumps).

5.06 The Town shall provide notice to the District of any proposed annexation within a reasonable time after the Town's officials become aware of the proposed annexation. The notice shall contain a legal description of the annexation and a map showing the area proposed to be

annexed as well as the surrounding area. The map may also indicate locations of natural landmarks and all existing utilities and contain other information pertinent to the annexation. Upon written request of the District, the Town will provide the District a copy of an annexation impact report, if any, furnished to the appropriate County Commissioners pursuant to Section 31-12-108.5, C.R.S. The District shall be given the opportunity to comment in all planning relative to the location of utilities, roads, drainage easements, ditch rights-of-way and utility easements that impact the District facilities. Such opportunity to comment shall be that which is accorded to the District by law. The Town may consider comments provided by the District and will work with the District to the extent possible to reasonably address the comments received but will have no legal or financial obligation to mandate or perform any comments received by the District.

5.07 To the extent possible, the Town and the District shall work to resolve issues and conflicts related to water service infrastructure already installed and maintained by either party at the time of this Agreement when annexation or de-annexation occurs in such a way as to not materially affect the parties.

6. Cooperation.

6.01 The Town and the District agree to continue the cooperative exchange of information to provide operational assistance and emergency aid to the other party.

6.02 If, in the maintenance of their respective water systems and other water systems from which either party may obtain water service, it becomes necessary by reason of any emergency or extraordinary condition for either party to request the other party to furnish personnel, materials, tools or equipment for the accomplishment thereof, the party so requested agrees to cooperate with the other party and render such assistance as the party so requested may determine to be available. The party making such request, upon receipt of a properly itemized invoice from the other party, shall reimburse the party rendering such assistance for all costs properly and reasonably incurred by it in such performance including, but not limited to, an amount not to exceed ten percent (10%) thereof for administrative and general expenses, such costs to be determined on the basis of the then current charges or rates used in the operations of the party rendering the assistance.

6.03 The parties shall promptly take all necessary action to obtain approvals necessary to consummate this Agreement and render to each other such assistance in cooperation as the parties may reasonably request of the other in order to expeditiously carry out the terms and provisions set forth herein.

7 **Prior Agreements.** This Agreement shall supersede and replace the 2002 Agreement and the three extensions to the 2002 Agreement and the 2009 Agreement, which agreements shall be deemed terminated as of the effective date of this Agreement.

8 **Term.** This Agreement shall remain in full force and effect until twenty (20) years from the Effective Date of this Agreement. The Town and District agree, not less than one (1) year prior to the expiration of the Agreement, to jointly review the Agreement for the purpose of considering the advisability of extending, altering or modifying the Agreement. Nothing in this

Agreement shall prohibit the parties from modifying this Agreement prior to the expiration of the twenty (20) year term if the parties agree in writing to amendments.

9 ***Enforceability.*** The parties recognize that there are legal constraints imposed upon the Town and the District by the Constitution, statutes and laws of the State of Colorado and the United States and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any of the provisions of the Agreement to the contrary, in no event shall any of the parties exercise any powers or undertake any actions which are prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

10. *Miscellaneous*

10.01 Neither party shall be considered in default with respect to any obligation hereunder if prevented from fulfilling such obligations by reason of a *force majeure* event. For purposes of this Agreement, a *force majeure* event means and includes any cause beyond the reasonable control of the party affected including, but not limited to, failure of facilities, floods, earthquake, storm, lightning, fire, epidemic or riot, civil disturbance, labor disturbance, sabotage, acts of God and restraint by court or public authority which, by due diligence and foresight, such party could not reasonably have been expected to avoid. A party rendered unable to fulfill any obligation by reason of a *force majeure* event shall exercise due diligence to remove such inability with all reasonable dispatch.

10.02 To the extent permitted by law, each party shall defend and hold harmless the other party from any actions or claims for damages or injuries suffered or alleged to be suffered by third parties, arising directly or indirectly from the negligence of such indemnifying party. By such agreement to indemnify and hold each other harmless, neither party waives any defenses and immunities to third parties which it would otherwise be entitled under the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time.

10.03 The parties will act according to the terms of this Agreement and in good faith with respect to its provisions.

10.04 The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement and venue for all actions shall be in Weld County. In the event of any dispute arising under this Agreement, except in the case of an action for injunctive relief, the parties shall submit the matter to mediation prior to commencing legal action and shall share equally in the cost of the mediation.

10.05 This Agreement may not be amended or modified except by a subsequent written instrument signed by the parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

10.06 The invalidity or unenforceability of any provisions of this Agreement shall not affect or impair any other provisions.

10.07 The provisions of this Agreement represent the entire and integrated agreement

between the Town and the District and supersede all prior negotiations, representations and agreements, whether written or oral.

10.08 The parties agree that the provisions of this Agreement may be specifically enforced in a court of competent jurisdiction, and, to the extent permitted by law, the parties agree that the defaulting party shall pay all costs of such action as actually incurred by the non-defaulting party, including attorney fees.

10.09 Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or a partnership or a joint venture between the parties hereto.

10.10 Wherever herein the singular number is used, the same shall include the plural and neutral gender and shall include the masculine and feminine genders when the context so requires.

10.11 The covenants, agreements, and obligations herein contained, except as herein otherwise specifically provided, shall extend to, bind, and inure to the benefit of the parties hereto and their respective successors and assigns.

10.12 Neither party may assign or transfer all or any part of this Agreement without the prior written consent of the non-assigning party.

10.13 The parties agree that they are relying on, and do not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time to time, or otherwise available to the Town and the District, their elected officials, employees or agents.

10.14 Any waiver at any time by either party hereto of its rights with respect to a default or any other matter arising in connection with this Agreement shall not be deemed to be a waiver with respect to any subsequent default or matter.

10.15 All notices, demands or requests required or authorized pursuant to this Agreement shall be in writing and shall be: 1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth; or 3) sent by electronic mail (“email”) return receipt or written acknowledgment requested and received. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. All notices by email shall be effective upon acknowledgment of receipt by the intended recipient. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO THE TOWN:
Town of Johnstown
Attn: Matt LeCerf
450 S. Parish Avenue
P.O. Box 609

Johnstown, CO 80534
Email: MLeCerf@JohnstownCO.gov

TO THE DISTRICT:
Little Thompson Water District
Attn: District Manager_____

835 East State Highway 56
Berthoud, Colorado 80513
Email: _akauffman@ltwd.org_____

10.16 This Agreement may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

ATTEST:

LITTLE THOMPSON WATER DISTRICT

By: _____
Amber Kauffman, Secretary

By: _____
Emily McMurtrey, President