

**FIRST AMENDMENT TO NON-POTABLE IRRIGATION SYSTEM
INTERGOVERNMENTAL AGREEMENT**

THIS FIRST AMENDMENT TO NON-POTABLE IRRIGATION SYSTEM INTERGOVERNMENTAL AGREEMENT (“First Amendment”) is made and entered into on this ___ day of _____, 2023, by and between THE TOWN OF JOHNSTOWN, COLORADO, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“Town” or “Johnstown”), and THOMPSON CROSSING METROPOLITAN DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado (“District No. 2”) (together, the “Parties”).

RECITALS

WHEREAS, on or about August 21, 2006, the Parties entered into that certain Non-Potable Irrigation System Intergovernmental Agreement recorded in the office of the Larimer County Clerk and Recorder at Reception No. 20070049189 (“IGA” or “Agreement”), wherein, upon terms and conditions stated therein, the Town agreed to allow District No. 2 to operate and maintain a non-potable irrigation system and related appurtenances designed, constructed, maintained and operated to provide non-potable irrigation water to the real property subject to the IGA (defined herein and in the IGA as the “Improvements”); and

WHEREAS, District No. 2 and the 2534 Master Association executed that certain Non-Potable System Operating Agreement, dated April 25, 2016 (“Non-Potable System Operating Agreement”) pursuant to which the 2534 Master Association, a Colorado nonprofit corporation (“2534 Master Association”), agreed to operate and maintain the non-potable irrigation system, which such Operating Agreement was approved by the Town; and

WHEREAS, to use the non-potable irrigation system, each user of the non-potable water system (each a “Water User” and collectively the “Water Users”) is first required to dedicate sufficient raw water to the Town to satisfy the non-potable raw water demands of such Water User (as to each Water User, the “Dedicated Water”); and

WHEREAS, after approval of the amount of Dedicated Water for a Water User, said Water User’s water dedication is memorialized in a water and sewer service agreement executed between the Town and such Water User; and

WHEREAS, subsequent to dedication, the IGA provides that District No. 2 shall be entitled to charge Water Users a fee based on cost of service rates and that, prior to establishing or modifying any costs of service rates, District No. 2 shall provide the Town with notice and an opportunity to comment; and

WHEREAS, the IGA further provides that, while District No. 2 shall be entitled to establish the water rates, the amount shall not be greater than Johnstown’s published non-potable irrigation water rates; and

WHEREAS, District No. 2 has become aware that certain Water Users are using non-potable water in an amount that exceeds the amount of said Water User’s Dedicated Water; and

WHEREAS, rather than require the Water User to dedicate additional raw water to the Town, which the Town may require pursuant to Town's Water Rights Dedication Ordinance, contained in Chapter 13 of the Johnstown Municipal Code, District No. 2 requests the opportunity to charge Water Users who use non-potable water in excess of their Dedicated Water a surcharge fee; and

WHEREAS, the Town agrees that the imposition of a surcharge fee is a reasonable means by which to incentivize a Water User not to exceed such Water User's Dedicated Water; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this First Amendment to the IGA.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this First Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals and Capitalized Terms. The Recitals set forth above are incorporated herein by reference. Capitalized terms used herein not otherwise defined shall have the meaning set forth in the IGA

2. Amendment to Add Section 4.4 to the IGA. Paragraph 4.4 is hereby added to the IGA and shall read as follows:

4.4 Surcharge Fee. Notwithstanding any other provision of this Agreement, District No. 2 shall be entitled to impose a surcharge fee on any Water User that uses more than the amount of said Water User's Dedicated Water (such excess as to a Water User being referred to herein as an "Overage") as follows: Ten and 00/100 US Dollars (\$10) for every one thousand (1,000) gallons of Overage during the 2023 calendar year ("Base Surcharge Fee"), with an annual increase of not more than five percent (5%) for each subsequent calendar year in which an Overage by any Water User occurs ("Annual Increases" and together with the Base Surcharge Fee, the "Surcharge Fee") as such Annual Increases will be determined using reasonable discretion. Annual Increases, if any, shall be applicable to all Water Users regardless of any Overage of said Water Users in previous calendar years. District No. 2 shall provide written notice to the Town of the amount of the Surcharge Fee on or before March 1 of each calendar year. At any time after five years from the imposition of the Surcharge Fee, as provided herein, the Town may, at its discretion, require renegotiation of the amount of the Surcharge Fee. If the Town and District No. 2 are not able to reach agreement on the amount of the Surcharge Fee, the Surcharge Fee shall remain at the then-existing level.

3. Consent to Amendment of Operating Agreement. The Town hereby consents to and approves amendment of the Operating Agreement to effectuate, contemplate, or otherwise accommodate the provisions of this First Amendment, including, but not limited to, the

amendment of the Operating Agreement to permit imposition of the Surcharge Fees in a manner that is consistent with this First Amendment.

4. Effect of Amendment. Except as expressly provided in this First Amendment, the IGA has not been amended, supplemented or altered in any way by this First Amendment and the IGA shall remain in full force and effect in accordance with its terms. If there is any inconsistency between the terms of the IGA and the terms of this First Amendment, the provisions of this First Amendment will govern and control.

IN WITNESS WHEREOF, the Parties have executed this First Amendment as of the set forth above.

THE TOWN OF JOHNSTOWN,
a home-rule municipality of the
State of Colorado

Date: _____

By: _____
Troy D. Mellon, Mayor

ATTEST:

Hannah Hill, Town Clerk

**THOMPSON CROSSING METROPOLITAN
DISTRICT NO. 2,**
a quasi-municipal corporation and political
subdivision of the State of Colorado

Date: _____

By: _____
_____, President

ATTEST:

_____, Secretary