

WATER LEASE AGREEMENT

This WATER LEASE AGREEMENT (“Agreement”), dated this ____ day of _____, is entered into between TOWN OF ERIE (“Erie”) and CITY OF BOULDER, a Colorado municipal corporation and home rule city (“Boulder”).

RECITALS

- A. Erie’s water service area is located within the boundaries of the Northern Colorado Water Conservancy District (“District”).
- B. Erie is an owner of contractual rights to use water delivered through the Colorado-Big Thompson Project (“CBT”) by the District, and a participant in the Northern Integrated Supply Project and Windy Gap Firming Project, and is actively developing additional water supplies to meet its growing water demand.
- C. Erie is seeking a lease to provide emergency water supply while the Northern Integrated Supply Project and Windy Gap Firming Project are being developed; and while Erie’s only emergency water supply, Erie Lake, is drained to accommodate seep repair work on Erie Lake Dam, which is anticipated to be completed within four years from the date of this Agreement.
- D. Boulder is the owner of contractual rights to use water delivered through the CBT by the District.
- E. Pursuant to the Agreement for Settlement of Water Court Application in Case No. 20CW3053 between Erie and Boulder dated August 28, 2024 (“Settlement Agreement”), Boulder agreed to provide Erie with an option to lease up to 370 acre-feet of CBT water per year, subject to the terms and conditions of the Settlement Agreement.
- F. Boulder and Erie desire to enter into this Agreement for Boulder to lease CBT water to Erie for municipal purposes.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and in further consideration of the mutual covenants and agreements set forth below, the parties agree as follows:

AGREEMENT AND LEASE

1. Lease of CBT Water. Boulder hereby agrees to lease to Erie up to 370 acre-feet of CBT water per CBT Water Year as available and pursuant to the water schedule in Paragraph 3 below, to be delivered at times and amounts specified by the water commissioner and the District for municipal use within Erie’s service area (“Leased Water”). Boulder shall transfer the Leased Water to Erie’s District account. It shall be the sole responsibility of Erie to arrange delivery of the Leased Water from the District, subject to any capacity limitations in the Boulder Creek Supply Canal or otherwise, and to arrange any approvals necessary to deliver such water. Erie shall bear any losses

associated with conveyance of the Leased Water as assessed by the District from the delivery point to the location where Erie may use the water.

2. Term of Lease. The term of this Agreement shall begin on the date of this Agreement and expire on October 31, 2035. It is understood by Erie that the Leased Water may not be available to Erie in any future CBT Water Year and Erie specifically waives any claim, legal or equitable, for renewal of this Agreement and specifically disclaims any expectation for such renewal. The parties further agree that the lease provided by Boulder to Erie pursuant to this Agreement fully satisfies the provisions of Section 2.a. of the Settlement Agreement.

3. Water Schedule and Administration. On or before September 1 of each year of this Agreement, Erie shall submit to Boulder a Projection Notice, which shall include the annual volume of Leased Water demand projected by Erie for the following CBT Water Year, up to the annual total amount of 370 acre-feet. On or before June 1 of each year of this Agreement, Erie shall submit to Boulder a Lease Request for the current CBT Water Year up to the annual total amount of 370 acre-feet. Upon receipt of said Lease Request, Boulder will transfer the Leased Water to Erie, via the District's online portal, as promptly as reasonably possible, but no later than 30 days after receipt of said Lease Request. Erie is obligated to pay the per-acre foot charge set forth in Paragraph 5 below based on the amounts transferred by Boulder to Erie pursuant to this Paragraph 3, regardless of whether or not Erie uses the Leased Water. To the extent that the amount specified in the Lease Request totals less than the maximum annual amount of 370 acre-feet, Boulder reserves the right to use the balance for its own purposes during such CBT Water Year.

Projection Notices and Lease Requests required by this Agreement may be provided by telephone if followed up by email. Boulder's designated contact for such operational notices is Isabelle Lheritier, Water Resources Project Manager; telephone number: (303) 441-3055; email address: lhéritieri@bouldercolorado.gov. Erie's designated contact for such operational notices is Bruce Chamero, Water & Wastewater Division Manager; telephone number: (303) 591-8536; email address: bchamero@erieco.gov. Either party may change the contact information for their contact person by notice given pursuant to Paragraph 6 below.

4. Obligation to Deliver Lease Water. Boulder's obligation to transfer the Leased Water under this Agreement may be suspended under the following circumstances:

a. If, in Boulder's sole discretion, it imposes mandatory city-wide water use restrictions to address drought conditions, dam or pipeline failure, or other catastrophic circumstance limiting Boulder's ability to satisfy the water usage needs of its customers, Boulder may suspend its transfer of Leased Water to Erie under this Agreement so long as and to the extent that, availability is limited, prevented or delayed by such cause.

b. If an accident, act of war, natural catastrophe, fire, explosion, or other cause beyond the reasonable control of Boulder prevents or delays its ability to make available the Leased Water pursuant to this Agreement, Boulder may suspend its transfer of the Leased Water so long as, and to the extent that, availability is limited, prevented or delayed by such cause.

c. In the event that Boulder suspends its Leased Water transfer obligation under this Agreement in accordance with these provisions, it shall provide Erie with a minimum of 30 days written notice to the extent reasonably possible.

d. Suspension of Boulder's transfer obligation pursuant to these provisions shall not give rise to any liability or claim against Boulder for damages or restitution.

1. Lease Payments. In full consideration for all rights and interests granted, costs incurred, and services rendered or to be rendered or performed by Boulder hereunder, Erie shall make an annual lease payment to Boulder for every acre-foot of Leased Water made available and transferred to Erie each CBT Water Year under this Agreement. The lease payment amount per acre-foot owed by Erie will be \$600 per acre foot unless amended by future code changes as specified in Section 4-20-25(d) of the Boulder Revised Code (1981), as the same may be amended from year to year. Boulder shall invoice Erie for the lease payment on December 1 for water leased during the previous CBT Water Year, and Erie shall submit payment to Boulder within 30 days of receipt of said invoice. Failure to timely pay the annual lease payment shall result in termination of this Agreement if such payment is not cured within 30 days after Boulder provides a written notice of non-payment to Erie pursuant to Paragraph 6 below.

5. Notices. Except as otherwise provided herein, any notices or other documents required by this Agreement shall be sent to the following addresses, or such other addresses as the parties may indicate in writing, by postage prepaid, certified or registered mail, or electronic mail:

To Erie:

Town of Erie
Attention: Todd Fessenden, Utilities Director
645 Holbrook Street
PO Box 750
Erie, CO 80516
Telephone: 303-926-2895
tfessenden@erieco.gov

With copy to:

Peter C. Johnson
Lyons Gaddis
950 Spruce Street, Suite 1B
Louisville, CO 80027Office: 303-678-6514

To Boulder:

City of Boulder, Utilities Department
Attn: Kim Hutton, Water Resources Manager
P. O. Box 791
Boulder, CO 80306

Telephone: (303) 441-3115
Email: huttonk@bouldercolorado.gov

With copy to:

Boulder City Attorney's Office
Attention: Jessica Pault-Atiase, Senior Counsel – Water Attorney
P.O. Box 791
1777 Broadway
Boulder, CO 80302
Telephone: (303) 441-4016
Email: pault-atiasej@bouldercolorado.gov

6. Use of Lease Rights. The Lease Water leased herein is non-transferable by Erie and may not be subleased, assigned, or used by Erie for purposes other than those specifically described in this Agreement. Erie agrees not to issue any new water service tap commitments using said Leased Water and must base any new taps issued during the term of this Agreement on the availability of its other water supplies. Further, Erie agrees that during the time Erie is using Lease Water in any given CBT Water Year, it shall not lease out other water supplies that it owns or controls that could be used directly in its municipal system, except that this paragraph shall not be interpreted to prevent Erie from leasing its own water supplies to agricultural water users for a duration of one CBT Water Year or less.

7. No Acquired Rights or Vesting in Water Rights or in Water System. Erie shall not, 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 equity, in the water rights or water system owned by Boulder. Erie shall not assert or claim any vested rights to the continued use of water owned by the Boulder. Erie's use of Boulder-owned water and Boulder's obligations hereunder are expressly subject to Section 121 of the Boulder Home Rule Charter and § 11-1-32 of the Boulder Revised Code 1981. Erie shall comply with all rules and regulations of the City of Boulder and the State of Colorado pertaining to the use of the Leased Water.

8. Authority and Suitability. Boulder hereby represents that it is the owner of the Leased Water but does not make any express or implied warranties or representations concerning the quality of the Leased Water or its suitability for Erie's uses.

9. Compliance with District Rules and Regulations. Erie's use of the Leased Water under this Agreement is subject to applicable District Rules and Regulations, specifically including but not limited to the Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts, effective August 11, 2016, and the related procedural rule. It shall be the sole responsibility of Erie to arrange delivery of the Leased Water from the District and to arrange any approvals necessary to deliver the water. It shall also be the sole responsibility of Erie to complete all arrangements with the District, make all payments required to be made to the District, and comply with all rules and regulations set by the District for use of the Leased Water.

10. Liability. Erie agrees to exercise its rights under this Agreement at its own risk. Erie shall indemnify and hold harmless Boulder from and against any cost, expense, or liability arising out of this Agreement or related activities.

11. Preservation of Boulder's Decrees. Erie will not jeopardize Boulder's water rights decrees by taking any action that causes, or could potentially cause, a reopening of any of Boulder's water rights decrees.

12. No Third-Party Beneficiaries/No Waiver of Governmental Immunity. This Agreement shall not create any duty of care or liability with respect to any person or entity not a party to this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, or other protections provided Boulder under the provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as amended.

13. Breach and Default. An event of default hereunder shall not be deemed to have occurred unless the non-defaulting party provides written notice of default to the defaulting party setting forth the nature of the default and the curative actions required, and the defaulting party does not cure such default within 30 days of such notice.

14. Remedies. Upon an event of default hereunder, the non-defaulting party (a) may terminate this Agreement by written notice to the other party, or (b) shall have the right to specific performance of the defaulting party's obligations under this Agreement.

15. Captions. The captions of the paragraphs of this Agreement are for convenience only and shall not govern or influence the interpretation of the Agreement.

16. Computation of Time. In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. Unless expressly indicated otherwise, all days shall be "calendar days," which means consecutive days including all holidays, Saturdays and Sundays. "Business days" exclude federal holidays, Saturdays and Sundays. If a deadline under this Agreement falls on a federal holiday, Saturday, or Sunday, the deadline shall be the next business day.

17. Colorado Law. This Agreement shall be governed by and enforced in accordance with the laws of the State of Colorado. Proper venue for any action arising out of this Agreement is the District Court for Boulder County or the Division 1 Water Court for the State of Colorado.

18. Entire Agreement. The making, execution and delivery of this Agreement by the parties has been induced by no representations, statements, warranties or agreements other than those expressed in this Agreement. This Agreement embodies the entire understanding of the parties as to the subject matter hereof and there are no further or other agreements or understandings, written or oral, in effect between the parties relating to its subject matter unless expressly referred to in this Agreement. Modification of this Agreement by the parties may be made only by a writing signed by the party or parties to be bound by the modification.

19. Severability. The invalidity or unenforceability of any of the provisions of the Agreement shall not affect any other provision of this Agreement which shall thereafter be constructed in all respects as if such invalid or unenforceable provision were omitted.

20. Duplicate Originals. This Agreement may be executed in duplicate originals and each duplicate original shall be valid and enforceable against each party.

21. Binding Effect. This Agreement shall bind the parties hereto, their agents, successors, and assigns.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Water Lease Agreement.

TOWN OF ERIE

Malcolm Fleming
Town Manager

Date: _____

ATTEST:

Town Clerk

CITY OF BOULDER

City Manager

Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney's Office