

INTERGOVERNMENTAL AGREEMENT FOR EMERGENCY WATER UTILITY SERVICE

This Agreement is made and entered into this 1st day of December, 2017, by and between the TOWN OF ERIE, a Colorado municipal corporation ("Erie") and the CITY OF LAFAYETTE, a Colorado home rule municipal corporation ("Lafayette"). (Erie and Lafayette shall also be referred to singularly as "Party" and collectively as "Parties.")

RECITALS

WHEREAS, Article XIV, Section 18(2)(a) of the Constitution of the State of Colorado and Colorado Revised Statute Section 29-1-203 authorize municipalities to cooperate or contract with each other for the provision of functions or services; and

WHEREAS, Erie and Lafayette each own municipal water utility systems and provide potable water to their respective service areas; and

WHEREAS, each Party's municipal water utility system can through a previously constructed interconnection of the Parties water utility systems ("Point of Connection") convey potable water to portions of the service area of the other Party for emergency water service; and

WHEREAS, the Parties desire to enter into an Intergovernmental Agreement ("Agreement") whereby each Party can provide emergency water service to the other.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

1. Emergency Water Service. The delivery of potable water from one Party to the other using the Point of Connection shall be limited to times of emergency. For the purposes of this Agreement "emergency" is defined as a short term, generally not more than fourteen day event or situation that is reasonably unforeseeable during which a Party's water utility system is unable to provide potable water to those within the Party's service

area. Examples, include but are not limited to, catastrophic structural fires or wildfires, temporary disruption of a Party's ability to treat raw water, major water main break, temporary contamination of a Party's water source or damage to water storage facilities. It is the intent of the Parties to provide such service when requested , but only at such times as the requested provider in its sole discretion determines that water can be delivered without unduly disrupting the distribution of potable water within its service area.

2. Point of Connection Shared Costs . The costs to maintain, repair or replace the Point of Connection shall be shared equally between the Parties and the Parties shall enact a maintenance schedule and responsibility therefore which at a minimum ensures that the Point of Connection is flushed and the valves exercised on an annual basis. The terms and conditions of any other maintenance, repair or replacement of the Point of Connection shall be done as agreed upon by the Parties with the contracting Party to be repaid within thirty (30) days of a Party's final acceptance of the work.

3. Payment for Water. All water provided under this Agreement shall be billed at a rate of \$2.00 per thousand gallons. The Party providing the water shall submit an invoice for payment to the requesting Party, which shall be paid in full within thirty (30) days of its issuance.

4. Water Quality. Any potable water delivered to the Point of Connection shall meet or exceed the current Colorado Primary Drinking Water Regulations as established by the Colorado Department of Public Health and Environment ("CDPHE") . The receiving Party shall test the water prior to deliver to its system. The Party delivering potable water shall not be responsible for the quality once the water has been delivered to the other Party's system.

5. Term. This Agreement shall be in effect and binding upon execution and shall continue until December 1, 2022 and shall automatically renew for up to three (3) additional five year terms unless a Party provides written notice to the other on or before twelve (12) months prior to the expiration of any term.

6. Service Area. The Parties acknowledge that water provided under this Agreement shall be provided to the water service area of each Party as such water service area may be amended from time to time.

7. Procedure to Start and Stop Usage. In the event that either Party is experiencing an emergency and desires to obtain potable water from the other Party, the requesting Party shall immediately notify the other Party's designated recipient for notice by phone and/or email, followed up with a written request to determine the availability of water and schedule an on-site meeting at the Point of Connection to open the water valves and verify the then-current meter readings. At the end of each emergency, the requesting Party shall immediately notify the other Party's designated recipient for notice by phone and/or email followed up with written confirmation, that water deliveries can cease. The Parties shall immediately schedule an on-site meeting at the Point of Connection to close the water valves and read the meters to confirm the total volume of water delivered during the emergency.

8. Credit for Return Flows. The Party providing potable water to the other Party during an emergency shall retain all rights to the return flows resulting from the use of such water within the service area of the other Party.

9. Disconnection and Turn Off of Water Services. In the event that a Party fails to make timely payment for any services provided herein the other Party shall give written notice of such non-payment. The defaulting Party shall have fifteen (15) days after notice in which to cure the default. Interest on any unpaid balance shall accrue at the rate of 7.5 percent per annum. Disconnection under the terms of this paragraph shall consist of closing and securing the Point of Connection's valves to prohibit conveyance of water from one Party to the other Party.

10. Disconnection and Abandonment of Water Service. In the event that either Party terminates this Agreement the terminating Party shall, at its own expense, remove the Point of Connection. The Parties shall agree upon the method of removal and abandonment. At a minimum, it shall consist of separation, capping and returning the

systems to two distinct and separate systems. The Party conducting the removal of the Point of Connection shall be solely responsible for its removal and shall be liable for any damages to the other Party's system caused by or resulting from the removal of the Point of Connection.

11 Acknowledgement of Constraints on Ability to Deliver Water. Each Party acknowledges that there are now or may in the future be structural or operational constraints on the ability of the other Party to provide potable water during an emergency. Water that is subject to such constraints is not subject to conveyance pursuant to this Agreement.

12. Termination. This Agreement may be cancelled by either Party, without cause, by giving the other Party written notice at least ninety (90) days prior to the date of the termination.

13. Independent Contractor / Liability. Each Party shall be an independent contractor, and neither Party nor such Party's agents, officers, officials, and employees shall be deemed to be an agent of the other Party. Each Party, to the extent permitted by law, waives all claims and causes of action against the other Party for compensation, damages, personal injury or death, which may result or occur as a consequence, direct or indirect, of the performance of this Agreement. Each Party is responsible for its own negligence, and that of their agents, officers, officials, and employees, to the extent provided in the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 *et seq.* (CGIA). Nothing in this Agreement shall be construed as a waiver of monetary limitations or any other rights, immunities and protections afforded the Parties by the CGIA, as same may be amended from time to time or as otherwise available at law or equity.

14. Notice. Any notice, demand, or request pursuant to this Agreement shall be personally delivered or mailed via United States Postal Service to the Parties at the following addresses, which information the Parties shall update as necessary:

TOWN OF ERIE
645 Holbrook Street

PO Box 750
Erie, CO 80516
Attn: Gary Behlen, Director of Public Works
Tel: 303-926-2870
Email: gbehlen@erieco.gov

CITY OF LAFAYETTE
1290 South Public Road
Lafayette, CO 80026
Attn: Doug Short, Director of Public Works
Tel: 303-661-1282
Email: douglass@cityoflafayette.com

15. No Multi-Year Fiscal Obligation. Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provision of this Agreement, obligations under this Agreement are subject to the annual appropriation by each Parties governing body. Any failure of a governing body to annually to appropriate adequate monies to finance a Party's obligations under this Agreement shall terminate this Agreement at such time as such then-existing appropriations are depleted. Notice shall be given promptly to the other Party of any failure of a Party to appropriate adequate monies.

16. No Third Party Beneficiaries. The Parties are not obligated or liable under this Agreement to any party other than the signatories hereto. Each Party understands and agrees that it shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement.

17. Enforcement. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties named herein, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person. It is the express intention of the Parties that any person or entity other than the Parties named herein receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

18. Severability. It is understood and agreed by the Parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado or the United States, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

19. Integration. This Agreement is intended as the complete integration of all understandings between the Parties as to the subject matter of this Agreement, expressly superseding any and all prior agreements pertaining to provision of services by one Party within the other Party's jurisdiction. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors, and assigns.

20. Effective Date. This Agreement shall not be or become effective or binding, and shall not be dated, until it has been fully executed by all signatories of each Party.

21. Counterpart Execution. This Agreement may be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

22. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado with venue to be in the District Court for the County of Boulder.

23. Heading for Convenience Only. The headings, captions and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope of intent of any of the provisions of this Agreement.

IN WITNESS WHEREOF, the Parties have set forth their hand this _____ day of _____, 2017.

TOWN OF ERIE

By: _____
Tina Harris, Mayor

ATTEST:

Nancy Parker, CMC, Town Clerk

CITY OF LAFAYETTE

By: _____
Name: Christine Berg
Title: Mayor

ATTEST:

Susan Koster, CMC, City Clerk

APPROVED AS TO FORM:

David S. Williamson, City Attorney