

**SUBJECT: RESOLUTION NO. 64, SERIES 2024 – A RESOLUTION
APPROVING AN AGREEMENT FOR LEASE OF COLORADO-
BIG THOMPSON PROJECT WATER**

DATE: DECEMBER 17, 2024

PRESENTED BY: KURT KOWAR, P.E., PUBLIC WORKS DIRECTOR

SUMMARY:

Staff recommends approval of the Colorado-Big Thompson (CBT) water rights lease agreement.

In September, a water tap expansion agreement was executed for a tenant of 1775 Cherry Street, Fresca Holding Company, LLC. (Fresca). The agreement was used as a water lease alternative in lieu of water tap fees during the building permit process for proposed modifications at 1775 Cherry Street that triggered a water tap fee expansion. This approach allows large water users to optimize cash flow while paying their equitable share of demands on the water system.

Upon approval, this 5-year lease of CBT units that will increase the City's water supply an equal amount to Fresca water use needs.

FISCAL IMPACT:

The water expansion fee of approximately \$80,000 was paid to City in September. The lease payments and associated charges are approximately \$12,000 to \$14,000 a year which will be fully reimbursed. Legal services were required in the drafting of the agreement and is anticipated for subsequent future water lease extension. Staff time will be also be required in the tracking of the water lease and coordinating payments between the involved parties. These should be incidental to City operations.

PROGRAM/SUB-PROGRAM IMPACT:

One of the main objective for the Water Utility Sub-Program is to allowing for reasonable and equitable rates while maintaining optimal quality. These efforts also allowed a collaborative alignment with the Economic Prosperity goal of promoting a business climate that facilitates investment.

RECOMMENDATION:

Staff recommends City Council approval of the Resolution to approve the agreement for lease of Colorado-Big Thompson Project Water. The Resolution would further authorize the Mayor and City Clerk to sign and execute the Agreement and certain other documents on behalf of the City.

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ATTACHMENTS:

1. Resolution No. 64, Series 2024
2. Agreement for Lease of Colorado-Big Thompson Project Water

STRATEGIC PLAN IMPACT:

☐	 Financial Stewardship & Asset Management	☒	 Reliable Core Services
☐	 Vibrant Economic Climate	☐	 Quality Programs & Amenities
☐	 Engaged Community	☐	 Healthy Workforce
☐	 Supportive Technology	☐	 Collaborative Regional Partner

CITY COUNCIL COMMUNICATION

**RESOLUTION NO. 64
SERIES 2024**

**A RESOLUTION APPROVING AN AGREEMENT FOR LEASE OF COLORADO-BIG
THOMPSON WATER**

WHEREAS, the City and Fresca Holding Company, LLC (“Fresca”) are parties to a Water Tap Expansion Agreement (“WTEA”) concerning Fresca’s use of municipal water at a unit of property located at 1775 Cherry Street, Louisville, Colorado (the “Property”); and

WHEREAS, the WTEA requires Fresca to procure supplemental water for use in the City’s water system to counterbalance the temporary increase in annual water demand during the remainder of Fresca’s tenancy of the Property, which such supplemental water may be provided through a lease of Colorado Big Thompson (“C-BT”) Project water; and

WHEREAS, the parties have identified four (4) Acre Foot Units of C-BT Project water available to lease to the City, and a lease agreement has been prepared for such purpose; and

WHEREAS, by this resolution, the City Council desires to approve the lease agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LOUISVILLE, COLORADO:

Section 1. The City Council hereby approves the Agreement for Lease of Colorado-Big Thompson Project Water (the “Lease”), by and between the City of Louisville and Christen and Kyle Kolb, in essentially the same form as the copy of such Lease that accompanies this resolution.

Section 2. The Mayor is hereby authorized to execute the Lease on behalf of the City, and the Mayor is hereby further authorized to negotiate and approve such revisions to the Lease as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of such instruments are not altered.

PASSED AND ADOPTED this 17th day of December 2024.

Christopher M. Leh, Mayor

ATTEST:

Genny Kline, Interim City Clerk

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AGREEMENT FOR LEASE OF COLORADO-BIG THOMPSON PROJECT WATER

This LEASE of the beneficial use of water yielded from the Colorado-Big Thompson (“**C-BT**”) Project (the “**Lease**”) is entered into this ____ day of December 2024 (the “**Effective Date**”), by and between the City of Louisville, a Colorado home rule municipal corporation, acting by and through the City of Louisville Water and Wastewater Activity Enterprise, whose address is 749 Main Street, Louisville, Colorado 80027-1829 (herein after referred to as “**Louisville**”), and Christen and Kyle Kolb, whose address is 11820 Niwot Road, Longmont, CO 80504 (hereinafter collectively referred to as “**Lessor**”) (Louisville and Lessor each being a “**Party**” and collectively the “**Parties**”).

RECITALS

WHEREAS, Lessor owns 20 Acre Foot Units of C-BT Project water (“**C-BT AFUs**”), as administered by the Northern Colorado Water Conservancy District (“**Northern Water**”), and pursuant to Allotment Contract No. 9419 between the Northern Water and Lessor.

WHEREAS, Louisville owns and operates a municipal water supply system that provides water service to its citizens, which requires Louisville to ensure that it has sufficient water supplies to prepare for long-term increases to the demands on its system.

WHEREAS, Louisville entered into a separate “**Water Tap Expansion Agreement**” with Fresca Holding Company, LLC (“**Fresca**”) that specifies the terms and conditions for Fresca to increase its annual water usage for the duration of Fresca’s tenancy at 1775 Cherry Street, Louisville, Colorado 80027 (the “**Property**”).

WHEREAS, pursuant to the Water Tap Expansion Agreement, Fresca is required to procure supplemental water for use in Louisville’s municipal water system to counterbalance the temporary increase in the annual water demand during the remainder of Fresca’s tenancy of the Property.

WHEREAS, the Water Tap Expansion Agreement provides that a lease or bridge supply subcontract of C-BT Project water may be the mechanism by which supplemental water is obtained for use in Louisville’s municipal water system, provided that the lease payments are made by Fresca.

WHEREAS, subject to the terms and conditions of this Agreement, Louisville desires to lease 4 C-BT AFUs per year from Lessor for use in its municipal water supply system located within the Northern Water boundaries.

WHEREAS, Lessor is willing to lease 4 C-BT AFUs to Louisville in accordance with the terms and conditions of this Lease.

WHEREAS, Northern Water rules applicable to the Parties require Northern Water approval of any long-term leases of C-BT AFUs and the Parties intend to seek Northern Water approval of this Lease.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Louisville and Lessor agree as follows.

AGREEMENT

1. Water Lease. Lessor hereby leases to Louisville, and Louisville hereby leases from Lessor, the beneficial use of the water allocated to Lessor's 4 C-BT AFUs during the term of this Lease (the "**Leased C-BT Water**"). Because Northern Water sets its quota for the amount of water per C-BT AFU on an annual basis, the amount of water yielded from Lessor's 4 C-BT AFUs may vary based on the final annual quota for the water year that is set by the Northern Water Board for the then-current water year.

2. Term of Lease. The term of this Lease begins on the January 1, 2025 and ends on December 31, 2029 ("**Term**").

3. Lease Payment.

3.1. Initial Lease Year. Louisville shall pay to Lessor \$3,000.00 per C-BT AFU, for a total lease payment of \$12,000.00, for the first (2025) year of the Lease Term. The first year's payment is due in full on or before January 15, 2025.

3.2. Subsequent Lease Years. If Northern Water approves the 5-Year Term for this Lease, the lease rate and total payment shall increase 3.0% over the least rate and the total lease payment for the preceding year of the 5-Year Term, rounded to the nearest whole dollar. The annual inflation adjustment for subsequent lease years is set forth below:

Lease Year	Price Per CBT AFU	Total Lease Payment	Payment Due Date
2025	\$3,000.00	\$12,000.00	Jan. 15, 2025
2026	\$3,090.00	\$12,360.00	Jan. 15, 2026
2027	\$3,183.00	\$12,732.00	Jan. 15, 2027
2028	\$3,279.00	\$13,116.00	Jan. 15, 2028*
2029	\$3,378.00	\$13,512.00	Jan. 15, 2029**

* Jan. 15, 2028 falls on a Saturday and Jan. 17, 2028 is a holiday.

** Jan. 15, 2029 falls on a Monday which is a holiday.

3.3 Additional Charges and Fees. Louisville shall pay for any administrative fees, temporary transfer costs, charges for services, Northern Water's Rule 11 charges, and any periodic charges or assessments related to the Leased Water. To the extent that Northern Water imposes a Rule 11 charge, special assessments, and/or any other fee or charge on Lessor related to the Leased Water, Lessor shall provide a copy of the invoice(s) for such fees and/or charges from Northern Water to Louisville upon receipt. Louisville shall pay

such charges and/or fees attributable to the Leased Water directly to Northern Water not less than twenty-one (21) days after receipt of the invoice(s) from Lessor.

4. Compliance with Northern Subcontracting Rule.

4.1. Northern Water Subcontracting Rule. The Parties acknowledge that Northern Water has adopted the “Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts” (“**Subcontracting Rule**”) (defining a “subcontract” as any type of agreement [contract, lease, or otherwise] that transfers the beneficial use of C-BT Project water to another for two or more years). Section 3.1 of the Subcontracting Rule requires all subcontracts with a term of two years or more to obtain Northern Water approval. Because this Lease has a term of greater than two years, the Parties agree that: (1) this Lease is valid only if duly approved by Northern Water, (2) the Subcontracting Rule is by this provision made a part of this Lease, and (3) the Parties shall comply with the requirements (including without limitation Sections 5.4 through 5.6) of the Subcontracting Rule.

4.2. Submission of Lease for Approval. No later than December 18, 2024, Lessor shall submit an application for Northern Water approval of the Lease pursuant to the Subcontracting Rule. The Parties shall reasonably cooperate with each other to provide any necessary testimony and information to Northern Water in support of the application. If the Lease is approved by Northern Water, then the Parties shall comply with all conditions of such approval and the Subcontracting Rule.

4.3. Revisions to Lease for Northern Water Approval. The Parties acknowledge the possibility that Northern Water may not approve this Lease or may require the Parties to resubmit a modified lease agreement for approval. If Northern Water does not approve this Lease, then the Parties shall work together in good faith to revise the Lease to accomplish the objectives of the Parties and obtain Northern Water’s approval.

5. Potential Assessments for Transit Losses; Compliance Obligations. Louisville acknowledges that state water administration officials may assess transit losses for delivery of the Leased C-BT Water to Louisville’s point of delivery. Lessor and Louisville shall cooperate for making all necessary arrangements with Northern Water and with state water administration officials to secure delivery of the Leased C-BT Water for Louisville’s use. Louisville’s use and accounting of the Leased C-BT Water shall comply with all policies, rules, and regulations of Northern Water and the Colorado Division of Water Resources.

6. No Guaranteed Firm Yield. This Lease grants Louisville the right to receive delivery of C-BT Project water that is allocated to Lessor’s 4 C-BT AFUs under the variable quota declared annually by Northern Water’s Board, subject to the terms and conditions in this Lease. Louisville acknowledges that the annual volume of water delivered pursuant to this Lease may vary from year to year, depending on the quota established by the Northern Water Board during any given water year. Although Lessor makes no warranty, guarantee, or representation of any kind regarding the specific quantity of physical water each AFU will yield annually, Lessor is obligated

by this Lease to make available the entire annual yield, as established by Northern Water's annual quota declarations, of C-BT Project water allocated to Lessor's 4 C-BT AFUs.

7. Default. If either Lessor or Louisville fails to comply with a term or condition herein, such failure constitutes a default of this Lease. The non-defaulting Party may declare the default by providing written notice to the defaulting Party in accordance with Paragraph 8, below. Upon receipt of this notice of default, the defaulting Party will have 15 days within which to cure the default. If, in the sole discretion of the non-defaulting Party, the default remains uncured after the 15-day cure period, or after any written extension thereof mutually agreed upon by the Parties, the non-defaulting Party may seek any and all available remedies, including damages and specific performance.

8. Notices. Any notice required to be given hereunder to either Party shall be in writing and shall be sent to the following addresses unless written notice of a change of address has been previously given pursuant hereto:

If to Louisville: City Manager
City of Louisville
749 Main Street
Louisville, CO 80027

With copy to: Alan G. Hill
Ashley Pollock Zahedi
Curtis, Justus, & Zahedi, LLC
1333 W. 120th Ave., Suite 302
Westminster, CO 80234
alanh@cjzwaterlaw.com
ashleyz@cjzwaterlaw.com

If to Lessor: Christen and Kyle Kolb
11820 Niwot Road
Longmont, CO 80504
kyle@yccs.com
(303) 319-6992

All notices shall be transmitted either by personal delivery, reliable overnight courier (such as Federal Express or UPS), or through the facilities of the United States Post Office, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be effective upon delivery, if delivered by personal delivery or overnight courier, and seventy-two (72) hours after dispatch, if mailed in accordance with the above.

9. Additional Provisions.

9.1. Entire Agreement. This Lease constitutes the entire agreement between the Parties. No supplement, modification, or amendment of this Lease is binding unless executed in writing by the Parties.

9.2. Counterparts. This Lease may be executed in counterparts, each of which will be considered to be an original, but all of which together constitute one and the same instruments.

9.3. Severability: In the event any Court of competent jurisdiction declares any part of this Agreement to be unenforceable, such declaration shall not affect the enforceability of the remaining parts of this Agreement.

9.4. Applicable Law and Venue: The laws of the State of Colorado shall be applicable in the enforcement, interpretation, and execution of this Lease. Exclusive venue shall be in the Boulder County District Court.

9.5. Amendment: This Agreement may be amended by mutual agreement of the Parties only if the amendment is in writing, signed by both Parties.

EXECUTED to be effective as of the date set forth above.

LESSOR: **CHRISTEN AND KYLE KOLB**

By: Christen Kolb
Christen Kolb

By: Kyle Kolb
Kyle Kolb

**LESSEE: CITY OF LOUISVILLE, COLORADO, Acting by and through the City of
Louisville Water and Wastewater Activity Enterprise**

By: _____
Christopher M. Leh

Title: Mayor

ATTEST

Genny Kline, Interim City Clerk