

SUBJECT: RESOLUTION NO. 94, SERIES 2025 – A RESOLUTION
APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF LOUISVILLE AND THE CITY AND
COUNTY OF BROOMFIELD FOR LEASES FOR FULLY
CONSUMABLE WATER TO EACH OTHER

DATE: NOVEMBER 18, 2025

PREPARED BY: CORY PETERSON, PUBLIC WORKS DEPARTMENT

PRESENTED BY: KURT KOWAR, PUBLIC WORKS DEPARTMENT

SUMMARY:

Staff recommends approval of the attached intergovernmental agreement (IGA) with the City and County of Broomfield (Broomfield) for the lease of fully consumable water.

BACKGROUND / PRIOR DISCUSSIONS:

Broomfield is the owner of certain water rights that are useful and advantageous to Louisville. Reciprocal to this, Louisville owns certain water rights that serve a need for Broomfield. The proposed IGA provides a mutually beneficial lease option for each community to utilize their existing water rights in trade to satisfy unmet water right requirements without relinquishing ownership. This is the first time the arrangement is being brought forward, as there have been no prior discussions with Council.

ANALYSIS:

The need for leased water will vary year to year and is based on the operations of each community's water rights portfolio. Leased water will be offset on a 1 to 1 basis as delivered and used. If one party uses more water over any consecutive two-year period, then that community will provide financial compensation to the other. A theoretical maximum annual lease payment, based on the 2025 rate, would be approximately \$75,000 with one party using the maximum amount of lease water and the other using none.

It is anticipated that in most years usage will be balanced and neither party will be required to make a lease payment. Any future lease payment will be projected based on need and will be included as an operational expense or as miscellaneous revenue within the Water Fund.

The proposed lease term is set at five years, with the option for mutual automatic renewal every five years thereafter. Staff discussions on this cooperative arrangement began around 2021 to address long standing operational challenges from as far back as 1992. The proposed IGA represents the first formal step toward establishing a durable and equitable framework for managing these water rights need.

2025 COUNCIL WORK PLAN:

This proposed IGA does not have a direct connection to the 2025 Council Work Plan. Nonetheless the IGA looks to support the City's Core Services by strengthening the reliability and resiliency of its water supply portfolio. Ensuring access to adequate replacement water is fundamental to delivering safe, consistent and compliant water service. By leveraging existing water rights assets through a mutually beneficial lease structure, the City can maintain operational continuity and reduce potential future risks associated with shortages or water supply gaps.

FISCAL IMPACT:

A series of temporary short-term leases have already been executed for 2024 and 2025. Broomfield is projected to make an approximate \$5,000 lease payment within the next month related to these short-term leases. There will be no fiscal impact in 2026 under the terms of the two-year provision within the IGA. For 2027, a new operational budget line item will be defined and coordinated with Finance as part of the 2027 budget process next year in preparation for a possible lease expense.

ALTERNATIVE(S):

Council may choose not to enter into the proposed IGA and continue operating under existing conditions. Under this option, the City incurs no new commitments or financial obligations, and current service levels and operational arrangements remain unchanged. City staff are actively engaged in negotiating at least two other potential water rights replacement opportunities, with the goal of securing multiple options to maintain operational flexibility and reliability. If these alternatives remain unsecured, long term water supply availability would decrease, and the City would need to identify and acquire supplemental replacement water to meet utility system buildout requirements with high level cost estimate exceeding \$1 million.

RECOMMENDATION:

Staff recommends approval of Resolution No. 94, Series 2025 for an intergovernmental agreement with the City and County of Broomfield to lease fully consumable water to each other.

ATTACHMENTS:

1. Resolution No. 94, Series 2025
2. Intergovernmental Agreement

**RESOLUTION NO. 94
SERIES 2025**

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF LOUISVILLE AND THE CITY AND COUNTY OF
BROOMFIELD FOR LEASES OF FULLY CONSUMABLE WATER TO EACH OTHER**

WHEREAS, an Intergovernmental Agreement has been proposed between Louisville and the City and County of Broomfield for leases of fully consumable water to each other; and

WHEREAS, the City is authorized to enter into this Agreement pursuant to state law, including but not limited to C.R.S. § 29-1-201 et seq., and the City Council by this Resolution desires to approve said Intergovernmental Agreement and authorize its execution.

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

Section 1. The Intergovernmental Agreement between the City of Louisville and the City and County of Broomfield for Leases of Fully Consumable Water to Each Other (the "Agreement"), is hereby approved in essentially the same form as the copy of such Agreement accompanying this Resolution.

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

PASSED AND ADOPTED this 18th day of November 2025.

Christopher M. Leh, Mayor

ATTEST:

Genny Kline, City Clerk

INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND THE CITY AND COUNTY OF BROOMFIELD FOR LEASES OF FULLY CONSUMABLE WATER TO EACH OTHER

This INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LOUISVILLE AND THE CITY AND COUNTY OF BROOMFIELD FOR LEASES OF FULLY CONSUMABLE WATER TO EACH OTHER (the "IGA") is made and entered into this 12 day of August, 2025, between the City of Louisville, a Colorado home rule municipality ("Louisville"), and the City and County of Broomfield, a Colorado county, home rule city and municipal corporation ("Broomfield"). Each entity may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the Parties are authorized to enter into this IGA pursuant to C.R.S. Section 29-1-201, *et. seq.*; and

WHEREAS, Broomfield owns and operates a municipal water system which supplies potable and non-potable water within its service area, as it may be revised from time to time, and extraterritorially by contract; and

WHEREAS, in furtherance of the development of water supplies for its municipal water system, Broomfield obtained a decree in Case No. 20CW3216, District Court, Water Division No. 1, for a change of water rights represented by 157.14 shares owned by Broomfield in the Marshall Lake Division of The Farmers Reservoir and Irrigation Company ("Broomfield's Marshall Shares"). The decree also confirms conditional rights to store or detain water for the purpose of appropriating waters of the State that are made available to the stream from the historical return flows associated with the subject Marshall Shares (referred to in the 20CW3216 decree and herein as the "Paragraph 15 Rights"); storage rights and underground water rights for ponds and reservoirs in which the changed Marshall shares and the Paragraph 15 Rights may be stored or detained; and a plan for augmentation including appropriative rights of substitution and exchange to replace out-of-priority stream depletions caused by the ponds and reservoirs; and

WHEREAS, Louisville filed a statement of opposition to Broomfield's application in Case No. 20CW3216 to ensure that the final decree contained terms and conditions that protect Louisville's interests; and

WHEREAS, Broomfield owns Siena Reservoir, whose legal description is in the S 1/2 of the NW 1/4, Section 8, Township 1 South, Range 68 West. The UTM coordinates (NAD83, Zone 13S) are 497349.35 m Easting and 4425608.80 m Northing. Pursuant to the 20CW3216 decree, Broomfield has an underground water right for Siena Reservoir, which intercepts groundwater, tributary to an unnamed tributary to Coal Creek (also known as and referred to herein as the "Tri-County Airport Drainage"). Siena Reservoir also stores local surface inflows that are tributary to the Tri-County Airport Drainage; and

WHEREAS, Broomfield also owns various ponds (“Anthem Ponds”) down gradient of Siena Reservoir on the Tri-County Airport Drainage and is also proposing to construct Broomfield Reservoir on another tributary of Coal Creek, slightly west of and south of Siena Reservoir; and

WHEREAS, Broomfield needs replacement water to meet augmentation obligations to Coal Creek associated with out-of-priority inflows to Siena Reservoir and out-of-priority depletions resulting from evaporation of groundwater in Siena Reservoir; and

WHEREAS, Broomfield also needs replacement water to augment the Anthem Ponds and the proposed Broomfield Reservoir; and

WHEREAS, Louisville owns and operates a municipal water system which supplies potable and non-potable water within its service area, as it may be revised from time to time, and extraterritorially by contract; and

WHEREAS, Louisville owns at least a total of 354.294 shares in the Marshall Lake Division of The Farmers Reservoir and Irrigation Company (“Louisville’s Marshall Shares”); and

WHEREAS, Louisville obtained decrees in Case Nos. 92CW79 and 07CW310, District Court, Water Division No. 1, changing Louisville’s Marshall Shares. The decrees in Case Nos. 92CW79 and 07CW310 quantified and granted Louisville the right to make additional and successive uses of its municipal return flow credits from the fully consumable portion of Louisville’s Marshall Shares that are discharged to Coal Creek from Louisville’s Wastewater Treatment Plant (“Louisville’s Fully Consumable Marshall Water”). Louisville has the right to use or lease, or will obtain the right to use or lease, its Fully Consumable Marshall Water consistent with the terms of Broomfield’s decree entered in Case No. 20CW3216 and Louisville’s decrees entered in Case Nos. 92CW79 and 07CW310; and

WHEREAS, in addition, Louisville can make additional and successive uses of certain of its municipal return flow credits from the fully consumable portion of Louisville’s decreed water rights and deliver those return flow credits to Coal Creek at the outfall of its wastewater treatment plant. Water delivered may include those return flow credits described in the decrees entered in Case Nos. W-8500-77, W-9193-77, 80CW451, 82CW305, 82CW375, 82CW376, 82CW467, 83CW319, 87CW327, and 99CW230, all in Water Division 1 (“South Boulder Creek Water Rights”) and CA 1768, W-4001, and 80CW108, adjudicated in Water Division 5 (“Windy Gap Water Rights”) (collectively, “Louisville’s Fully Consumable Water”). Prior to the use of water described in several of the decrees, Louisville may be required to seek additional approval either by the Water Court or the State Engineer’s Office prior to future reuse, successive use, augmentation, replacement, substitution, exchange, replacement of return flows or otherwise. Louisville will seek the approvals needed to facilitate the lease of such water to Broomfield pursuant to this IGA.

WHEREAS, the 92CW79 and 07CW310 decrees, among other things, require Louisville to meet historical return flow obligations to Big Dry Creek; and

WHEREAS, Louisville may seek changes of additional Marshall shares, which may also require Louisville to meet historical return flow obligations to Big Dry Creek; and

WHEREAS, Louisville needs replacement water to meet its present and potential future historical return flow obligations on Big Dry Creek; and

WHEREAS, Broomfield's Wastewater Treatment Facility discharges fully consumable effluent to Big Dry Creek. Broomfield's Fully Consumable Water that is the subject of this IGA is presently derived from Windy Gap Units, and may in the future include Broomfield's Marshall Shares and possibly additional shares in the Marshall Lake Division of The Farmers Reservoir and Irrigation Company, water rights that Broomfield changed in Case No. 05CW290, District Court, Water Division No. 1, and other water rights that may be changed or acquired by Broomfield ("Broomfield's Fully Consumable Water"). Broomfield has the right to use or lease Broomfield's Fully Consumable Water; and

WHEREAS, in settlement of Louisville's opposition in Broomfield's Case No. 20CW3216, the Parties agreed to enter into this IGA whereby Louisville leases Louisville's Fully Consumable Water to Broomfield to help meet Broomfield's present and future augmentation obligations on Coal Creek and Broomfield leases Broomfield's Fully Consumable Water to Louisville to help meet Louisville's present and potential future replacement obligations on Big Dry Creek; and

WHEREAS, this IGA will be of mutual benefit and convenience to Louisville and Broomfield.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, Louisville and Broomfield hereby agree as follows:

AGREEMENT

- 1. Effective Date and Term.** This Agreement shall be deemed effective as of the date it is signed by both Parties ("Effective Date"). The Agreement shall be for an initial term of five (5) years from the Effective Date. The Agreement shall automatically renew for an additional five year term upon the expiration date of the initial term, and for additional five year terms upon expiration of each additional term, unless and until one of the Parties provides written notice to the other party at least one year in advance of such expiration date that the party does not intend to renew the Agreement. In the event that one party provides such notice, this Agreement shall terminate at the end of the then-current term. The Parties may also terminate the Agreement upon mutual written agreement.

2. **Anthem Ponds Augmentation.** Broomfield shall file a request for approval of a Substitute Water Supply Plan ("SWSP") with the Colorado State Engineer and/or an application for approval of a plan for augmentation for the Anthem Ponds within five years of the Effective Date.
3. **Water Year.** For purposes of this Agreement, a Water Year shall commence on November 1 of one year and end on October 31 of the year immediately following.
4. **Louisville's Deliveries.** Subject to the terms and conditions more fully described herein, Louisville will deliver to Coal Creek, for Broomfield's benefit, a maximum of one hundred fifty (150) acre feet per Water Year of Louisville's Fully Consumable Water, subject to the monthly volumetric limits in Table 1, below.

Table 1

Monthly Volumetric Limits (acre-feet)												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
4.5	5.25	8.25	13.5	18	21.75	22.5	20.25	15	10.5	6	4.5	150

- a. **Use and Approvals for Use.** Broomfield's use of the water shall be limited to: the augmentation requirements for Siena Reservoir set forth in the final decree issued in Case No. 20CW3216; and the augmentation requirements for the Anthem Ponds to be temporarily determined by the State Engineer pursuant to a request for SWSP approval and to be permanently determined by the water court pursuant to an application to be filed by Broomfield, and any decrees obtained by Broomfield in the future for Marshall shares that require return flow replacement to Coal Creek. If not already obtained, Broomfield shall be responsible for obtaining all necessary authorizations, approvals, water court decrees, and permits from any and all private entities, and local, state, and federal agencies, as may be required to effectuate use of the water delivered by Louisville pursuant to this Agreement. Louisville agrees that Broomfield may include and use such water supplied by Louisville in existing and/or future requests for SWSP approvals and water court applications and decrees for the purposes allowed by this Agreement. Louisville may oppose such requests and/or applications as necessary to protect its interests, provided that no such opposition shall assert any lack of right to use such water supplied by Louisville.
- b. **Location of Deliveries and Transit Loss.** The location at which Louisville currently delivers water to Coal Creek is the outfall of Louisville's Wastewater Treatment Plant ("Louisville WWTP"), which discharges to Coal Creek in the NW1/4 SE1/4 Section 9, Township 1 South, Range 69 West of the 6th P.M. The UTM coordinates (NAD83, Zone 13S) are 490050 m Easting and 4425135 m Northing. Broomfield shall be solely responsible for the carriage of water provided to it under this Agreement after release of the water from the Louisville

WWTP, including all evaporation and transmission losses. Louisville reserves the right to change the location of the above referenced delivery point; provided, however, that (1) if in the good faith exercise of its discretion Broomfield concludes that any such changed location does not comply with the final decree in Case No. 20CW3216 and that it is not reasonable or feasible to amend the decree to bring the changed location into decree compliance, then Broomfield may invoke the modification or termination provisions of Paragraph 1, above; and (2) if a new, decree-compliant location is more than one mile upstream of the current location, and Broomfield incurs additional stream transportation charges as a result of the change, Louisville shall be responsible for such additional stream transportation charges.

- c. **Request for Deliveries.** Broomfield must give Louisville 24 hours advance notice of the rate, volume, and timing of Louisville's Fully Consumable Water it wishes Louisville to deliver to Coal Creek. Within 24 hours of Broomfield's request, Louisville shall notify Broomfield of the rate, volume, and timing of the delivery it can and will provide, using best efforts to deliver the rates and volumes requested by Broomfield at the requested time. However, requests by Broomfield made with less than a 24-hour notice may be accommodated by Louisville at the discretion of Louisville. Broomfield anticipates that "calls" may be made by the State and Division Engineer's offices that require deliveries of Louisville's Fully Consumable Water in less than 24 hours. Broomfield is responsible for placing orders with Louisville for deliveries of Louisville's Fully Consumable Water based upon Broomfield's daily needs. In the absence of a change order, Broomfield shall be deemed to have ordered a delivery of Louisville's Fully Consumable Water at the rate, volume, and time last specified.
- d. **Broomfield's Accounting.** Broomfield shall report and account for deliveries of Louisville's Fully Consumable Water as required by its water court decree(s), SWSP approval(s), the Colorado State Engineer, the Division Engineer for Water Division 1, the Water Commissioner for Water District 6, or any other lawful authority. In connection therewith, on a monthly basis during the Water Year, Louisville shall provide Broomfield, and State water administration officials as may be required, with a written summary of the days during the month when Louisville's Fully Consumable Water was delivered to Coal Creek for Broomfield's benefit, as well as the daily rate(s) and volume. Louisville will provide such information by the fifteenth day of the month following the month when such water deliveries are made.
- e. **Quality of Water; No Guarantees or Representations.** Louisville does not warrant or guarantee any water quality standards with respect to Louisville's Fully Consumable Water to be delivered as provided for in this Agreement, and Broomfield hereby waives any such warranty or guarantee. Broomfield acknowledges that Louisville is providing no guarantees and makes no representations that the delivery of Louisville's Fully Consumable Water to Coal Creek, as described herein, will allow Broomfield to satisfy the replacement

obligations determined or to be determined by Broomfield's water court decrees and/or SWSP approvals. Broomfield is proceeding with this Agreement solely on the basis of its own investigations.

- f. **Future Water.** If after the Effective Date Broomfield requests inclusion of Broomfield Reservoir in the Agreement, the Parties agree to discuss such request, and Louisville agrees to consider making additional amounts of Louisville Fully Consumable Water available for Broomfield Reservoir. However, the Parties agree that Louisville is under no obligation to agree to include Broomfield Reservoir in the Agreement or to provide additional water for it and that the terms and conditions under which Broomfield Reservoir may be included and/or any additional water may be provided for it may be different from those contained in this Agreement.

5. **Broomfield's Deliveries.** Subject to the terms and conditions more fully described herein, Broomfield will deliver to Big Dry Creek, for Louisville's benefit, a maximum of one hundred fifty (150) acre feet per Water Year of Broomfield's Fully Consumable Water.

Table 2

Monthly Volumetric Limits (acre-feet)												
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
1.40	1.40	1.40	1.40	16.50	26.00	33.00	35.50	20.5 0	10.00	1.45	1.45	150

- a. **Use and Approvals for Use.** Louisville's use of the water shall be limited to the return flow replacement requirements associated with Louisville's changed Marshall shares as set forth in the final decrees issued in Case Nos. 92CW79 and 07CW310, and any decrees obtained by Louisville in the future for Marshall shares that require return flow replacement to Big Dry Creek. If not already obtained, Louisville shall be responsible for obtaining all necessary authorizations, approvals, water court decrees, and permits from any and all private entities, and local, state, and federal agencies, as may be required to effectuate use of the water delivered by Broomfield pursuant to this Agreement. Broomfield agrees that Louisville may include and use such water supplied by Broomfield in existing and/or future requests for SWSP approvals and water court applications and decrees for the purposes allowed by this Agreement. Broomfield may oppose such requests and/or applications as necessary to protect its interests, provided that no such opposition shall assert any lack of right to use such water supplied by Broomfield.
- b. **Location of Deliveries and Transit Loss.** The location at which Broomfield currently delivers water to Big Dry Creek is the outfall of Broomfield's Wastewater Treatment Facility, which is located in the NW1/4 of the SE1/4 of

Section 32, T1S, R68W of the 6th P.M. (the UTM coordinates (NAD83, Zone 13S) are 498156.0 m Easting and m 4418914.0 Northing. Louisville shall be solely responsible for the carriage of water provided to it under this Agreement after release of the water from Broomfield's Wastewater Treatment Facility outfall, including all evaporation and transmission losses. Broomfield reserves the right to change the location of the above referenced delivery point; provided, however, that (1) if in the good faith exercise of its discretion Louisville concludes that any such changed location does not comply with the final decrees in Case Nos. 92CW79 and 07CW310 and that it is not reasonable or feasible to amend the decrees to bring the changed location into decree compliance, then Louisville may invoke the modification or termination provisions of Paragraph 1, above; and (2) if a new, decree-compliant location is more than one mile upstream of the current location, and Louisville incurs additional stream transportation charges as a result of the change, Broomfield shall be responsible for such additional stream transportation charges.

- c. **Request for Deliveries.** Louisville must give Broomfield 24 hours advance notice of the rate, volume, and timing of Broomfield's Fully Consumable Water it wishes Broomfield to deliver to Big Dry Creek. Within 24 hours of Louisville's request, Broomfield shall notify Louisville of the rate, volume, and timing of the delivery it can and will provide, using best efforts to deliver the rates and volumes requested by Louisville at the requested time. However, requests by Louisville made with less than a 24-hour notice may be accommodated by Broomfield at the discretion of Broomfield. Louisville anticipates that "calls" may be made by the State and Division Engineer's offices that require deliveries of Broomfield's Fully Consumable Water in less than 24 hours. Louisville is responsible for placing orders with Broomfield for deliveries of Broomfield's Fully Consumable Water based upon Louisville's daily needs. In the absence of a change order, Louisville shall be deemed to have ordered a delivery of Broomfield's Fully Consumable Water at the rate, volume, and time last specified.
- d. **Louisville's Accounting.** Louisville shall report and account for deliveries of Broomfield's Fully Consumable Water as required by its water court decree(s), SWSP approval(s), the Colorado State Engineer, the Division Engineer for Water Division 1, the Water Commissioner for Water District 2, or any other lawful authority. In connection therewith, on a monthly basis during the Water Year, Broomfield shall provide Louisville, and State water administration officials as may be required, with a written summary of the days during the month when Fully Consumable Water was delivered to Big Dry Creek for Louisville's benefit, as well as the daily rate(s) and volume. Broomfield will provide such information by the fifteenth day of the month following the month when such water deliveries are made.
- e. **Quality of Water; No Guarantees or Representations.** Broomfield does not warrant or guarantee any water quality standards with respect to Broomfield's Fully Consumable Water to be delivered as provided for in this Agreement, and

Louisville hereby waives any such warranty or guarantee. Louisville acknowledges that Broomfield is providing no guarantees and makes no representations that the delivery of Broomfield's Fully Consumable Water to Big Dry Creek, as described herein, will allow Louisville to satisfy the replacement obligations determined or to be determined by Louisville's water court decrees and/or SWSP approvals. Louisville is proceeding with this Agreement solely on the basis of its own investigations.

- f. **Future Water.** If after the Effective Date Louisville requests additional amounts of Broomfield's Fully Consumable Water from Broomfield for the purpose of meeting return flow obligations to Big Dry Creek or Little Dry Creek required by a future decree or decrees changing additional Marshall shares of Louisville, the Parties agree to discuss such request, and Broomfield agrees to consider making additional amounts of Broomfield's Fully Consumable Water available for such purpose. However, the Parties agree that Broomfield presently has no ability to provide Broomfield's Fully Consumable Water to Little Dry Creek for Louisville's benefit and is under no obligation to provide additional amounts of Broomfield's Fully Consumable Water to Big Dry Creek or any amounts of Broomfield's Fully Consumable Water to Little Dry Creek for Louisville's benefit and that the terms and conditions under which additional amounts of Broomfield's Fully Consumable Water may be provided may be different from those contained in this Agreement.

- 6. **Reconciliation of Different Annual Delivery Amounts.** If one party provides more Fully Consumable Water to the other party ("Higher Delivering Party") over a period of two consecutive Water Years, then the other party ("Lower Delivering Party") shall pay the Higher Delivering Party for the difference in deliveries for those two Water Years in an amount set forth below in paragraph 6.b. Commencing February, 2027, and continuing every two years thereafter, the Parties shall calculate the amount of Fully Consumable Water provided by each Party for the previous two years and what amount, if any, is owed by the Lower Delivering Party to the Higher Delivering Party for the previous two years. The amount determined by the reconciliation is referred to herein as the "Make-Up Payment."

- a. **Price.** The price per acre-foot for the Make-Up Payment shall be the price per acre-foot that Broomfield charges its water reuse customers, and shall be adjusted periodically based on changes in the price that Broomfield charges its reuse water customers. In January of each year, after price changes, if any, have taken effect, Broomfield will notify Louisville of the current price per acre-foot that Broomfield charges its water reuse customers.
- b. **Invoice.** The Party that is owed the Make-Up Payment will bill the other Party for the Make-Up Payment by March 31 of the Water Year in which the Make-Up Payment is calculated, commencing 2027 and every two years thereafter. The invoice will explain the basis of the Make-Up Payment. The Party owing the Make-Up Payment shall pay the invoice within thirty (30) days of receipt. In the

event that any portion of any invoice is in dispute, the undisputed amount shall be paid. The Parties shall attempt to resolve the dispute amicably and promptly. Upon determination of the correct billing or payment amount, the proper adjustment shall be paid or refunded within thirty (30) days of the determination.

7. **Force Majeure.** Neither Party shall be liable for any delay or failure to perform its obligations under this Agreement to the extent that such delay or failure is caused by events beyond the reasonable control of, and without the fault or negligence of the Party, including, without limitation drought, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, contamination, war, terrorist act, riot, civil disturbance, labor disturbance, accidents, sabotage, or restraint by court or restrictions by other public authority which delays or prevents performance (including but not limited to the adoption or change in any rule, policy, or regulation or environmental constraints imposed by federal, state or local governments), which the Party could not reasonably have avoided by exercise of due diligence and foresight. In such circumstances, the obligation of the Party shall be excused and suspended without penalty or damages.
8. **Notices and Payments.** All notices, payments and other communications under this Agreement shall be in writing, except as otherwise provided for in this Agreement. All such notices and communications and all payments shall be deemed to have been duly given on the date of service, if delivered and served personally, or served via electronic means (with respect to notices and communications only) on the person to whom notice is given; on the next business day after deposit for overnight delivery by a courier service such as Federal Express; or on the third day after mailing, if mailed to the Party to whom payment and notice is to be given by first class mail, postage prepaid, and properly addressed as follows:

CITY AND COUNTY OF BROOMFIELD:

Water Utilities Director
3951 West 144th Avenue
Broomfield, CO 80023

CITY OF LOUISVILLE:

Deputy Director of Utilities
749 Main Street
Louisville, CO 80027

Persons and addresses to which notices or payments are to be sent may be changed by the same method.

9. **Assignment.** Neither Party may assign its rights and obligations under this Agreement without the consent of the other Party, which consent may be conditioned or withheld in the sole discretion of said other Party.

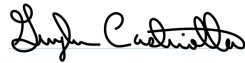
10. **Liability.** Each Party shall bear all responsibility for its use of the water delivered to it under this Agreement, together with the costs associated therewith.
11. **Default Remedies.** A default shall be deemed to have occurred if either Party breaches its obligations hereunder and fails to cure such breach within 30 days of written notice from the non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default or defaults shall not be construed as condoning or acquiescing to any continuing or subsequent default.
12. **Enforcement.** This Agreement shall be construed and governed in accordance with the laws of the State of Colorado, and it shall be deemed performable in Boulder County and the City and County of Broomfield. This Agreement may be enforced in an action for specific performance, injunctive relief, or damages in the Boulder County District Court or the District Court, Broomfield County, State of Colorado, whichever is applicable. Neither Party shall be liable to the other Party for any consequential damages for its breach of this Agreement.
13. **Integration.** This instrument embodies the whole agreement for the Parties with respect to the subject matter contained herein. This Agreement shall supersede all previous communications, representations, or agreements, whether verbal or written, between the parties hereto. There shall be no modification of this Agreement nor waiver of any of its provisions except upon mutual agreement of the Parties expressed in writing, executed with the same formalities as this instrument.
14. **Authority.** The Parties warrant that they have taken all actions necessary or required by their own procedures, bylaws, or applicable law, to authorize their respective signatories to sign this Agreement for them and to bind them to its terms.
15. **Governmental immunity.** Nothing in this Agreement shall be construed to waive either Party's protection from liability or the limitations on its liability due to its sovereign immunity under the Colorado Governmental Immunity Act or otherwise.
16. **No beneficiaries.** This Agreement is for the sole benefit of and binds the Parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any person besides the Parties hereto receiving services or benefits under this Agreement is only an incidental beneficiary.
17. **Appropriations.** Notwithstanding anything to the contrary in this Agreement, each Party's financial obligations hereunder are subject to annual appropriations therefor under the Taxpayer Bill of Rights (TABOR), Colorado Constitution, Article X, Section 20.
18. **Non-severability; Effect of Invalidity.** Each paragraph and section in this Agreement is intertwined with the others and are not severable unless by mutual consent of the Parties or as provided below. If any provision or portion of this Agreement or the application thereof to any person or circumstance shall, at any time or to any extent, be declared invalid or unenforceable for any reason by a Court of competent jurisdiction, and the

basis for the transaction contemplated under this Agreement is not destroyed or rendered ineffective thereby, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which is held invalid or unenforceable, shall not be affected thereby. In such event, the Parties shall negotiate in good faith to replace such invalidated provision if necessary to carry out the intent of the Parties in entering into this Agreement.

- 19. Attorneys' Fees.** In the event of an action to enforce the terms hereof or declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to an award of its reasonable attorney's fees and costs as determined by the Court.
- 20. Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Electronic/facsimile signatures shall be acceptable and binding upon all Parties.
- 21. Headings.** All paragraph headings used herein are for the convenience of the Parties and shall have no meaning in the interpretation or effect of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused to be executed by their duly authorized officials, two duplicate originals of this Agreement, each of which shall be deemed an original, on the date first written above.

THE CITY AND COUNTY OF BROOMFIELD,
a Colorado municipal corporation and county



Mayor

ATTEST:



City & County Clerk



APPROVED AS TO FORM:



City & County Attorney

LOUISVILLE'S SIGNATURE BLOCK TO BE PROVIDED

THE CITY OF LOUISVILLE,
a Colorado municipal corporation

By: _____
Christopher M. Leh, Mayor

ATTEST:

Genny Kline, City Clerk

APPROVED AS TO FORM:



City Water Attorney