

11/15/2016

WATER LEASE – DRAFT SUBJECT TO REVISION

THIS WATER LEASE ("Lease") is made and entered into this ____ day of _____, 2016, by and between the CITY OF LOVELAND, COLORADO, a home rule municipality, whose address is 500 East Third Street, Loveland, Colorado 80537 ("City"), and Town of Firestone, a Colorado municipal corporation, acting by and through its Town of Firestone Water Activity Enterprise organized and existing as a "water activity enterprise" under C.R.S. 37-4.I-101 et seq, whose address is 151 Grant Ave., Firestone, Colorado 80520 ("Firestone").

WHEREAS, Firestone desires to lease units of Windy Gap ("Windy Gap") for municipal uses within its water service area; and

WHEREAS, the City is the owner of Windy Gap units which may be used for municipal purposes and is willing to lease said water to Firestone on the terms and conditions set forth herein. This lease is limited to municipal water use by Firestone and may not be further subleased to another entity;

WHEREAS, all parties acknowledge that this lease is temporary in nature and **is not a permanent water supply for the Town**. The City is only obligated to provide water as stated in this lease and has no obligation extending beyond the terms of this lease.

WHEREAS, Firestone acknowledges that this lease does not constitute a transfer in ownership of these water rights. The City maintains complete and total ownership of these water rights.

WHEREAS, Firestone will pursue developing other water sources during this ten year lease term. Firestone is currently participating in the Northern Integrated Supply Project (NISP) for 1,300 acre-feet which is expected to be completed in 2025. This lease will serve as a bridge until NISP becomes feasible. In the event NISP water does not become available for use, Firestone shall pursue other projects to increase or provide municipal water sources such as, but not limited, non-potable irrigation of parks and a water treatment plant that can treat well water or other native water rights that they acquire.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

1. Term. a. This Lease shall be effective for a term of ten (10) years commencing January 1, 2017 and ending December 31, 2026, unless sooner terminated as provided herein. b. No later than July 1, 2026, Firestone may send written notice of its desire to extend this lease for a second term, not to exceed five (5) years, said election being based on a delay in final completion of NISP. The City will respond in writing and agree or decline the extension after a review of its water supplies and water availability.

2. Water. a. The City owns 40 shares of Windy Gap project water and shall supply Windy Gap water of no more than 300 acre-feet per year to Firestone for its municipal purposes. Water shall be delivered to Carter Lake unless otherwise specified. b. Delivery of the water

shall be subject to restrictions and terms of Northern Colorado Water Conservancy District which relies on CBT storage and conveyance infrastructure. c. Firestone shall have authority to utilize second and any subsequent use of water delivered by City for the term of this Lease.

3. Annual Lease Payment.

a. The annual lease price per share is \$750.00 per acre-foot the first year, with an increase of 5% every five (5) years thereafter. Firestone shall pay the City an annual payment per acre-foot for the water delivered up to a maximum of three hundred acre feet under this Lease.

b. Firestone shall provide to the City, the amount of water that it desires to lease for that season no later than February 1st.

c. The City will submit an annual bill to Firestone for all municipal water supplied for that year, in accordance with this Lease.

d. Firestone shall pay said amount to the City within thirty (30) days of receiving the City's bill.

4. Termination or Suspension by City. In the event the City has an urgent need for water for consumption by City water customers, as determined in the sole discretion of the City, for reasons including, but not limited to, drought, natural disaster or major failure of the CBT delivery system, the City may terminate or suspend this Lease. If suspended, the City will resume water delivery at such time as the disruption issue has been resolved to the satisfaction of the City. The City will endeavor to give Firestone thirty (30) days' notice of such termination or suspension, but shall not be required to do so.

5. Termination by Firestone. After the 2017 irrigation season, Firestone may terminate this Lease by providing written notice to the City of the year in which the Lease is intended to be terminated or suspended. Firestone shall not be obligated to pay the Annual Lease payment for the year in which the Lease is terminated or suspended and any subsequent year.

6. Termination of Delivery for Nonpayment. In the event Firestone fails to pay for Lease water when payment is due as set forth in paragraph 3, above, the City, in addition to seeking recovery of sums due, may terminate delivery of municipal water to Firestone.

7. Lease Contingent upon Northern Water Approval. The parties understand and agree that this Lease shall be contingent upon the Northern Colorado Water Conservancy District ability to deliver the water.

8. Subdistrict. Firestone agrees to become part of the Municipal Subdistrict of the Northern Colorado Water Conservancy District.

9. No Warranties. Delivery of water by the City under this Lease shall be on an "as is" basis only, and the City neither expressly nor impliedly warrants the quality of the water. The water leased hereunder is not warranted as suitable for any particular purpose.

10. Progress Updates. Firestone will provide written communication to the City annually by February 1st an update on the progress being made with the NISP project or other water sources.

11. Notices. Written notices required under this Lease and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested:

If to the City: City of Loveland Water and Power Department
Attention: Larry Howard, Senior Civil Engineer – Water Resources
200 North Wilson Avenue
Loveland, Colorado 80537

If to Lessee: Town of Firestone
Attention: Julie Pasillas, Resource and Sustainability Coordinator
151 Grant Ave., PO Box 100
Firestone, Colorado 80520

12. Governing Law and Venue. This Lease shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

13. Severability. In the event a court of competent jurisdiction holds any provision of this Lease invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Lease.

14. Headings. Paragraph headings used in this Lease are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Lease.

15. Assignability. Firestone shall not assign this Lease without the City's prior written consent.

16. Binding Effect. This Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors, and assigns.

17. Entire Agreement. This Lease contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

CITY OF LOVELAND, COLORADO

By: _____
Gretchen Stanford
Director of Loveland Water and Power

ATTEST:

City Clerk

APPROVED AS TO FORM:

Assistant City Attorney

TOWN OF FIRESTONE, COLORADO

By: _____
Mayor

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

The foregoing Lease was acknowledged before me this ____ day of _____, 2016, by
_____.

Witness my hand and official seal.

Notary Public

My commission expires _____.