

# AGENDA ITEM #10.

## CITY COUNCIL COMMUNICATION FORM

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**FROM:** Michelle Carr, Distribution & Collection Manager  
Jon Snyder, Public Works Director

**THROUGH:** Gary Suiter, City Manager

**DATE:** March 13, 2018

**ITEM:** Ordinance approving a filtration bay lease to Mt. Werner Water.

**FORM OF MOTION:** Move to introduce on first reading an ordinance approving a filtration bay lease to Mt. Werner Water.

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DIRECTION  
 INFORMATION ONLY  
 ORDINANCE  
 MOTION  
 RESOLUTION

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### **I. REQUEST/ISSUE & BACKGROUND INFORMATION:**

This is a request for a second filtration bay stand-by lease of capacity between the City and the Mt. Werner Water and Sanitation District (the District), effectively extending an initial lease that was first executed in 2007 and which expired in 2017. The term of this second lease begins retroactively on July 1, 2017 and expires on June 30, 2037.

Currently, approximately half of the water used within the City of Steamboat Springs is used by the City's water district, and the other half is used by the Mt. Werner Water District. There are ten filtration bays at the Fish Creek Water Filtration Plant, of which the City owns six of the bays and the District owns four of the bays. This agreement effectively leases the capacity of one of the City's bays back to the District such that the City has the capacity to use five of the bays and the District has the capacity to use five of the bays.

Though the term of the agreement is for twenty years, the agreement is written such that it can be terminated by either party with 30 months' notice. Should the City's water demands increase to the point that a sixth bay is necessary to serve the City's customers' demands, the City has the option of terminating the lease. 30 months was chosen for the termination clause because it represents a reasonable time period for the District to design, permit, and construct additional bays to meet their peak demands.

The annual lease payments from the Mt. Werner Water District to the City for the duration of the lease are provided in the terms of the lease and are based on the declining balance of the 2007 Present Value of one filter bay plus 4.5% interest on the balance of the principal.

## **II. ALTERNATIVES:**

1. Adopt the ordinance approving the lease.
2. Request changes to the proposed lease to be negotiated with Mt. Werner Water.
3. Discontinue lease of the filter bays to Mt. Werner Water.

## **III. STAFF RECOMMENDATION:**

Staff recommends alternative number 1 - approve the filtration bay lease to Mt. Werner Water. Staff recommends this alternative because the City does not currently need this capacity, whereas our neighbors in Mt. Werner do need this capacity, and it provides an additional revenue stream for the City.

## **IV. FISCAL IMPACTS:**

**Proposed Expenditure:** There are no proposed expenditures for the City associated with approving the filtration bay lease with Mt. Werner Water.

**Revenue:** Should the lease be approved, the City would collect annual payments from Mt. Werner Water. The payment amounts are shown on the second page of the lease agreement.

**Risk Assessment:** The known risks to the City for approving this lease are minimal and unlikely, as growth in water demands can be anticipated well in advance.

## **V. LEGAL ISSUES:**

An attempt by the City to discontinue lease of the filter bays to Mt. Werner Water could elicit a legal challenge from the District. The outlines of such a potential challenge are unknown at this time.

**VI. CONFLICTS OR ENVIRONMENTAL ISSUES:**

There are no known conflicts or environmental issues related to approving this lease.

**VII. CONSISTENCY WITH COUNCIL GOALS AND POLICIES**

**ATTACHMENTS:**

Attachment 1: Ordinance.

**CITY OF STEAMBOAT SPRINGS, COLORADO**

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE APPROVING A SECOND FILTRATION BAY STAND-BY LEASE OF CAPACITY, AND PROVIDING AN EFFECTIVE DATE AND SETTING A HEARING DATE.**

**WHEREAS**, the City of Steamboat Springs is the owner of certain real property known as the filtration bays at the Fish Creek Water Filtration Plant located on Clearwater Trail in Steamboat Springs, Colorado 80487; and

**WHEREAS**, the City has leased to Mt. Werner Water & Sanitation District (hereafter "District") stand-by availability of 50% of two filtration bays for the past ten years; and

**WHEREAS**, the City and the District desire to enter into a Second Lease of the bays upon mutual terms; and

**WHEREAS**, the City Council finds that a lease agreement for the filtration bays will facilitate reliable water service in Steamboat Springs.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF STEAMBOAT SPRINGS, COLORADO:**

Section 1. That the attached Second Filtration Bay Stand-By Lease of Capacity ("Exhibit 1") is hereby authorized.

Section 2. That pursuant to Section 7-11 of the Charter of the City of Steamboat Springs, Colorado, the second publication of this ordinance may be by reference, utilizing the ordinance title.

Section 3. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portion of this Ordinance.

Section 4. The City Council hereby finds, determines and declares that this ordinance is necessary for the immediate preservation of the public peace, health, and safety.

Section 5. This Ordinance shall take effect upon the expiration of thirty (30) days from and after its publication following final passage as provided in Section 13.6 of the Steamboat Springs Home Rule Charter.

Section 6. A public hearing on this ordinance shall be held April 3, 2018 at 5:00 P.M. in the Citizens' Hall meeting room, Centennial Hall, Steamboat Springs, Colorado.

**INTRODUCED, READ AND ORDERED** published, as provided by law, by the City Council of the City of Steamboat Springs, at its regular meeting held on the \_\_\_ day of \_\_\_ 2018.

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**Jason Lacy, President**  
**Steamboat Springs City Council**

**ATTEST:**

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**Julie Franklin, CMC**  
**City Clerk**

**FINALLY READ, PASSED AND APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

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**Jason Lacy, President**  
**Steamboat Springs City Council**

**ATTEST:**

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**Julie Franklin, CMC**  
**City Clerk**

# Exhibit 1

## Second Filtration Bay Stand-By Lease of Capacity

This **Second Filtration Bay Stand-By Lease of Capacity** (hereafter "Second Lease") is entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between the City of Steamboat Springs (hereafter "City" or "Lessor") and the Mt. Werner Water & Sanitation District (hereafter "District" or "Lessee").

### Recitals:

A. By approximately 1983, the District had constructed 2 filtration bay units, #1 and #2, at the site of the Filtration Plant, which is immediately east of Steamboat Blvd. on Clearwater Trail.

B. In approximately 1983, the City and the District agreed that the City would build and own 4 filtration bays, each having a capacity of treating .75 million gallons per day by filtration, together with a 2 million gallon filtered water storage tank. The bays would be known as #3, #4, #5, and #6.

C. In or around 2000, the District built 2 new bays, #7 and #8, and the City roughed out 2 additional bays, #9 and #10.

D. Prior to 2006, the demands for filtered water had, on certain peak days, exceeded the 85% threshold of the District's treatment capacity.

E. The City and the District negotiated in 2006 and entered into an agreement in early 2007 whereby the City would complete bays #9 and #10 and the District would make annual payments to the City for the stand-by availability of 50% of the capacity of bays #9 and #10 during the term of such agreement, such water to be used by the District as and when needed or appropriate including in the event demands for filtered water exceed the District's current capacity. Such agreement was titled the Filtration Bay Stand-By Lease of Capacity (the "Lease"), which was executed and entered into in early 2007 and which was approved by Ordinance of the City Council of Steamboat Springs adopted January 16, 2007, and by resolution of the board of directors of the District.

F. The Lease was for a term of 10 years commencing upon the Completion Date of the two bays #9 and #10 (hereinafter referred to as the "Bays") and expired in 2017. The parties acknowledge that the Completion Date was approximately July 1, 2007.

G. The City and the District desire now to enter into this Second Lease of the Bays upon mutual terms.

Now therefore, the City and the District, in consideration of the mutual promises and other covenants contained in this Second Lease, agree as follows:

1. The City hereby leases unto the District an undivided one-half of the Bays, and fifty percent (50%) of the output and capacity of the Bays will be available and delivered to the District for distribution through the District's water supply system, as and when called for by the District, throughout the term of this Second Lease. The District may in its discretion choose to use and deliver the water output from all of one Bay only, or from any combination of use of both Bays so long as the combined usage does not exceed fifty percent of the maximum output capacity of both Bays.

2. The term of this Second Lease shall commence on July 1, 2017, and shall be for a 20-year term ending June 30, 2037. Notwithstanding such 20-year term, this Second Lease may be terminated earlier by either party effective as of the last day of the 30<sup>th</sup> month after the month in which written notification of such earlier termination is given from one party to the other party, such notice specifying that this Second Lease shall be terminated upon such effective date. By way of example only, if the City notifies the District within May of calendar year 2020 that the City is terminating this Second Lease, then this Second Lease would terminate on November 30, 2022.

3. Within 30 days after execution of this Second Lease, the District shall pay to the City the annual lease payment of \$46,023 for the fiscal year of July 1, 2017, through June 30, 2018. Thereafter, on or before July 1 of each year during this Second Lease, commencing on July 1 of 2018, the District shall pay an annual lease payment to the City for the benefits of this Second Lease. Each annual lease payment shall be as follows, based upon the schedule attached as Exhibit "A":

<u>Due Date of Payment:</u>	<u>Amount of Annual Lease Payment:</u>
30 Days after execution (payment for current 2017-2018 term)	\$46,023
July 1, 2018	\$44,933
July 1, 2019	\$43,843
July 1, 2020	\$42,753
July 1, 2021	\$41,663
July 1, 2022	\$40,573
July 1, 2023	\$39,483
July 1, 2024	\$38,393
July 1, 2025	\$37,303
July 1, 2026	\$36,213
July 1, 2027	\$35,123
July 1, 2028	\$34,033
July 1, 2029	\$32,943
July 1, 2030	\$31,853

July 1, 2031	\$30,763
July 1, 2032	\$29,673
July 1, 2033	\$28,583
July 1, 2034	\$27,493
July 1, 2035	\$26,403
July 1, 2036	\$25,313

4. The District or the City may elect, each in its own and sole discretion, to terminate this Second Lease at any time by written notice to the other party, signed by the President of the terminating entity after adoption of a Resolution authorizing such termination, which termination would become effective on the last day of the 30<sup>th</sup> month after the month in which such termination notice is given.

5. Each party shall continue to pay its share of operating costs as defined in the 1983 Water Treatment Plant Agreement and its attachments and exhibits. The parties also acknowledge that (a) the annual lease payment does not include any of the ongoing costs to produce filtered water or to maintain the bays or any of the Filtration Plant, and (b) nothing in this Agreement shall be construed to imply a lease of water rights or storage rights.

6. If any legal action is brought for the enforcement of this Second Lease, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Second Lease, the prevailing party shall be entitled to recover its costs of litigation including reasonable attorneys' fees.

**IN WITNESS WHEREOF**, the District and the City have executed this Second Lease on the respective dates set forth below, and this Second Lease shall be and become effective only when executed below after approval hereof by final ordinance of the City Council and by resolution of the Board of Directors of the District.

**THE CITY OF STEAMBOAT SPRINGS**

By: \_\_\_\_\_  
 Jason Lacy  
 President, City Council

**ATTEST:**

\_\_\_\_\_  
 City Clerk

STATE OF COLORADO                    )  
   ) ss.





