

RESOLUTION 2017-069
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT
BETWEEN THE CITY OF FORT COLLINS AND NEW BELGIUM
BREWING COMPANY, INC. REGARDING TEMPORARY AUTHORIZATION
TO USE A PORTION OF PRETREATED WASTEWATER IN COOLING TOWERS

WHEREAS, the City owns and operates Fort Collins Utilities, which includes a water utility and a wastewater utility that provide water and wastewater service to customers pursuant to Fort Collins City Code and other applicable law, rules, and regulations; and

WHEREAS, New Belgium Brewing Company, Inc. ("New Belgium") is a water and wastewater customer of Utilities that owns and operates a brewery in Fort Collins; and

WHEREAS, New Belgium owns and operates a process wastewater treatment plant ("New Belgium PWTP") at the brewery that discharges "pretreated" wastewater into the City's sewer system; and

WHEREAS, pursuant to Resolution 2016-016, the City entered into an agreement with New Belgium, by which the City authorized New Belgium to use up to 250,000 gallons of such pretreated wastewater in cooling towers at the brewery over a 30-day period; and

WHEREAS, New Belgium has now requested authorization to use up to 7 million gallons of such pretreated wastewater in cooling towers at the brewery over a one year period; and

WHEREAS, City Code does not authorize Utilities customers to use pretreated wastewater from process wastewater treatment plants; and

WHEREAS, the City is willing to authorize New Belgium's temporary use of pretreated effluent from the New Belgium PWTP as described herein in order to acquire data, information, and practical experience related to whether a Utilities-wide permanent program concerning the use of pretreated wastewater onsite from process water treatment plants is desirable, feasible, and otherwise consistent with the prudent management and operation of Utilities in light of all concerns including, but not necessarily limited to, financial considerations and all applicable law.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Manager is hereby authorized to execute an Agreement substantially in the form of Exhibit "A", with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes of this Resolution.

Passed and adopted on at a regular meeting of the Council of the City of Fort Collins this 18th day of July, A.D. 2017.



Mayor Pro Tem

ATTEST:

City Clerk

**AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND
NEW BELGIUM BREWING COMPANY, INC. REGARDING
TEMPORARY AUTHORIZATION TO USE A PORTION OF
PRETREATED WASTEWATER IN COOLING TOWERS**

This Agreement is entered into this ___ day of _____, 2017, by the following Parties: the City of Fort Collins, Colorado, a home rule municipality (“City”); and New Belgium Brewing Company, Inc., a Colorado corporation (“New Belgium”).

RECITALS

A. The City owns and operates Fort Collins Utilities (“Utilities”), which includes a water utility and a wastewater utility that provide water and wastewater service to customers pursuant to Fort Collins City Code and other applicable law, rules, and regulations.

B. New Belgium is a water and wastewater customer of Utilities. New Belgium owns and operates a brewery in Fort Collins, on Lots 1 and 2 of the Final Plat of the New Belgium Brewery Fourth Filing, reordered with the Larimer County Clerk and Recorder at Reception No. 2006-0045463 on June 19, 2006, the address of which is 500 Linden Street, Fort Collins, Colorado 80524 (“New Belgium Site”).

C. New Belgium owns and operates a process wastewater treatment plant (“New Belgium PWTP”) at the New Belgium Site that discharges treated wastewater into the City’s sewer system pursuant to Industrial Discharge Permit No. 16002, revised April 15, 2016 (“pretreated wastewater”).

D. The wastewater sent to the New Belgium PWTP comprises wastewater from the brewery, such as used process water, spent yeast, out-of-specification beer, and used cleaning chemicals. The wastewater sent to the New Belgium PWTP does not include domestic wastewater or other wastewater from the New Belgium Site.

E. Pursuant to Resolution No. 2016-061, the City and New Belgium entered into the *Agreement Between the City of Fort Collins and New Belgium Brewing Company, Inc. regarding Temporary Authorization to Use a Portion of Pretreated Wastewater in a Cooling Tower*, dated August 18, 2016, by which the City authorized New Belgium to use up to 250,000 gallons of pretreated wastewater in a cooling tower on the New Belgium Site for a 30-day period.

F. New Belgium has requested authorization to use up to 7 million gallons of its pretreated wastewater in cooling towers on the New Belgium Site over a 1 year period. Such use would be effectuated by pumping a portion of the pretreated wastewater from the New Belgium PWTP to the cooling towers.

G. City Code does not authorize Utilities customers to use pretreated wastewater from process wastewater treatment plants. New Belgium’s various permits from Utilities likewise do not purport to authorize New Belgium to use pretreated wastewater from its PWTP. New Belgium thus requires authorization from the City to use any of its pretreated wastewater.

H. The City is willing to authorize New Belgium's temporary use of pretreated wastewater from the New Belgium PWTP as described herein in order to acquire data, information, and practical experience related to whether a Utilities-wide permanent program concerning the use of pretreated wastewater onsite from process water treatment plants is desirable, feasible, and otherwise consistent with the prudent management and operation of Utilities in light of all concerns including, but not necessarily limited to, financial considerations and all applicable law.

AGREEMENT

1. **INCORPORATION OF RECITALS.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.

2. **APPROVAL FOR USE OF PRETREATED WASTEWATER.** The City hereby authorizes New Belgium to use up to a total of 7 million gallons of pretreated wastewater from the New Belgium PWTP in cooling towers on the New Belgium Site over a 1 year period during the term of this Agreement, pursuant to the terms and conditions of this Agreement. No other use of pretreated wastewater from the New Belgium PWTP or otherwise is authorized hereby. New Belgium expressly acknowledges that this Agreement creates no entitlement or expectation of further analogous or similar authorizations.

3. **TERMS AND CONDITIONS.** The following terms and conditions shall apply to New Belgium's use of its pretreated wastewater.

3.1. **METERING.** New Belgium shall continuously meter all pretreated wastewater delivered from the New Belgium PWTP to the cooling towers. Such metering shall be made with a totalizing flow meter approved by Utilities. The metering of the pretreated wastewater delivered to the cooling towers shall be made before the remainder of pretreated wastewater is metered and delivered to the City's water reclamation facilities pursuant to Industrial Discharge Permit No. 16002. Such metering shall, at minimum, measure and account for the continuous flow rate and the daily volume (in gallons) of pretreated wastewater delivered from the New Belgium PWTP to the cooling towers.

3.2. **REPORTING.** New Belgium shall deliver all metering data to Dan Clark at dclark@fcgov.com within ten days of the completion of the 12 month period, as well as included with the monthly reports to Utilities Billing Group, and further reported to Utilities as may otherwise be requested by Utilities. Such data shall be delivered in the format in which it was collected, and shall also include any summaries of such data prepared by New Belgium.

3.3. **INSPECTIONS.** New Belgium shall allow Utilities staff to inspect any facilities associated with the use of the pretreated wastewater within 24 hours of when such a request is made.

3.4. **INFORMATION SHARING.** New Belgium agrees to cooperate, in good faith, with Utilities regarding the evaluation of the use of pretreated wastewater pursuant to this

Agreement. New Belgium further agrees that any and all information provided to the City under this Agreement may be shared publically.

3.5. **REPORTING LEAKS OR SPILLS.** New Belgium shall report any leaks or spills of pretreated wastewater to Utilities immediately upon discovery irrespective of the size of the leak or spill. New Belgium shall prepare a spill response plan, which must be approved by Utilities in writing, prior to using pretreated wastewater pursuant to this Agreement.

3.6. **REVOCATION OF AUTHORIZATION.** Utilities shall have the right, at its sole discretion, to revoke this authorization and require New Belgium to immediately cease any and all use of any and all pretreated wastewater. Notice of such revocation shall be provided to New Belgium pursuant to Paragraph 11, and to Nick Ampe, at the following contact information: 500 Linden Street, Fort Collins, CO 80524, (970) 494-7805, nampe@newbelgium.com.

4. **REPRESENTATIONS.** New Belgium hereby represents that it has acquired, or will acquire prior to the use of any pretreated wastewater pursuant to this Agreement, any and all approvals, authorizations, and permits needed to use pretreated wastewater pursuant to this Agreement including, but not necessarily limited to, those from the State of Colorado and its various agencies (such as, by way of example, the Colorado Department of Public Health and Environment) and the United States and its various agencies (such as, by way of example, the Environmental Protection Agency). New Belgium shall provide to the City copies of any and all approvals, authorizations, and permits as soon as practicable pursuant to Paragraph 11.

5. **TERM.** This Agreement shall be in effect from the date it is last signed by the Parties, which shall be written on the first paragraph of this Agreement above, for a period of one year. Any and all use of pretreated wastewater shall thereafter cease.

6. **INDEMNIFICATION.** New Belgium agrees to indemnify the City (which includes Utilities), its officers, agents, employees, and representatives, from all claims and liability, including but not limited to the City's reasonable legal fees and costs, including attorneys' fees, for any and all claims made by third persons (including, but not limited to, administrative and other actions brought by governmental agencies) associated with New Belgium's activities under this Agreement and for any and all actions or omissions by New Belgium in violation of this Agreement.

7. **REMEDIES.** If either Party fails to comply with the provisions of this Agreement, the other Party may seek all such remedies available under Colorado law.

8. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and the Parties are only benefitted to the extent provided under the express terms and conditions of this Agreement.

9. **GOVERNING LAW AND ENFORCEABILITY.** This Agreement shall be construed in accordance with the laws of the State of Colorado, insofar as any matter is not regulated by applicable laws of the United States. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

10. **WAIVER.** A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement.

11. **NOTICES.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given when personally delivered, or after the lapse of five (5) business days following mailing by certified mail-return receipt requested, postage prepaid, addressed as follows:

To the City: City Manager
City Hall West
300 LaPorte Avenue; P.O. Box 580
Fort Collins, Colorado 80522-0580

With copy to: Fort Collins City Attorney
300 LaPorte Avenue; P.O. Box 580
Fort Collins, Colorado 80522-0580
epotyondy@fcgov.com

and: Fort Collins Utilities
Attn: Water Resources Manager
700 Wood Street P.O. Box 580
Fort Collins, Colorado 80522-0580

To New Belgium: New Belgium
Attn: Nick Ampe
500 Linden Street
Fort Collins, CO 80524

12. **CONSTRUCTION.** This Agreement shall be construed according to its fair meaning as it was prepared by the Parties. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

13. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

14. **REPRESENTATIONS.** Each Party represents to the other Party that it has the power and authority to enter into this Agreement and the individual signing below on behalf of that Party has the authority to execute this Agreement on its behalf and legally bind that Party.

15. **ASSIGNMENT.** No Party may assign any rights or delegate any duties under this Agreement without the written consent of the other Party.

[Remainder of Page Left Blank Intentionally]

CITY OF FORT COLLINS, COLORADO, a Colorado home rule city

By: _____
Darin A. Atteberry, City Manager

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney's Office

NEW BELGIUM BREWING COMPANY, INC., a Colorado Corporation

By: _____

Date: _____

ATTEST:

By: _____