

RESOLUTION NO. 011  
OF THE BOARD OF THE CITY OF FORT COLLINS WATER UTILITY ENTERPRISE  
AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE AN AMENDED AND  
RESTATED INTERGOVERNMENTAL AGREEMENT WITH THE NORTH WELD  
COUNTY WATER DISTRICT, THE NORTH WELD COUNTY  
WATER DISTRICT ENTERPRISE, AND THE CITY OF FORT COLLINS  
FOR THE DELIVERY OF POTABLE WATER

WHEREAS, the City owns a water system through which it treats, transmits and distributes potable water (the "City Water System"); and

WHEREAS, as part of the City Water System, Fort Collins operates a water treatment plant located at 4316 LaPorte Avenue, Fort Collins, Colorado (the "City Treatment Plant"); and

WHEREAS, the North Weld County Water District (the "District") is a special district organized and existing under Colorado law that also operates a water system (the "District Water System") to distribute potable water through a variety of water transmission facilities located within Larimer County, Colorado ("District Transmission Facilities"); and

WHEREAS, the City and the District have previously entered into that certain Intergovernmental Agreement for Delivery of Potable Water, dated June 1, 2000 (the "Water Delivery Agreement"), which provides for the delivery of treated water by the City and the District to each other on demand, as available, to meet day-to-day demands for delivery of potable water to their respective customers; and

WHEREAS, it is in the mutual interests of the City and the District to establish updated arrangements for the delivery of potable water by amending and updating the Water Delivery Agreement, to reflect the current needs and commitments of the parties, as well as current rates and requirements for service; and

WHEREAS, accordingly, the City and the District have negotiated the terms and conditions set forth in the Amended and Restated Intergovernmental Agreement for Delivery of Potable Water, attached hereto as Exhibit "A" and incorporated herein by this reference (the "Agreement"); and

WHEREAS, pursuant to C.R.S. §29-1-203(1), the City and the District are authorized to cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of them; and

WHEREAS, Article II, Section 16 of the Charter of the City of Fort Collins ("Charter") additionally provides that the City Council may, by resolution or ordinance, enter into contracts with other governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Article XII, Section 6 of the Charter provides that the City Council shall by ordinance from time to time fix, establish, maintain, and provide for the collection of such rates, fees or charges for water and electricity, as will produce revenues sufficient to pay the cost of operation and maintenance of the utilities in good repair and working order, and for other enumerated purposes; and

WHEREAS, the City's Water Utility Enterprise (the "City Enterprise") and the North Weld County Water District Enterprise (the "District Enterprise") were created by the City and the District, respectively, in order to comply with the provisions of Section 20, Article X of the Colorado Constitution and Article 45.1 of Title 37 of the Colorado Revised Statutes and to permit the City and the District, acting through their respective enterprise, to issue revenue bonds and enter into multi-year fiscal obligations in connection with their operation of a water utility; and

WHEREAS, the City Enterprise and the District Enterprise are made parties to the Agreement solely for the purpose of entering into any multi-year fiscal obligation imposed under this Agreement; and

WHEREAS, the City Enterprise is authorized in Section 26-43 of the Code of the City of Fort Collins to enter into contracts relating to the City's water system.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE CITY OF FORT COLLINS WATER UTILITY ENTERPRISE that the Board hereby approves the Agreement, and authorizes the President of the Board to execute the Agreement on behalf of the City Enterprise, in substantially the form attached hereto as Exhibit "A", together with such modifications and additions as the City Manager, in consultation with the City Attorney, determines necessary and appropriate to protect the interests of the City or further the purposes of this Resolution.

Passed and adopted at a regular meeting of the Board of the City of Fort Collins Water Utility Enterprise held this 1st day of July, A.D. 2014.

CITY OF FORT COLLINS, COLORADO,  
WATER UTILITY ENTERPRISE

  
\_\_\_\_\_  
Mayor, Ex-Officio President



ATTEST:

  
\_\_\_\_\_  
City Clerk, Ex-Officio Secretary

**AMENDED AND RESTATED  
INTERGOVERNMENTAL AGREEMENT  
FOR THE DELIVERY OF POTABLE WATER**

This Amended and Restated Intergovernmental Agreement for the Delivery of Potable Water (“Water Delivery Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2014, effective, *nunc pro tunc*, as of November 1, 2013, by and between the CITY OF FORT COLLINS, a Colorado municipal corporation, (hereinafter referred to as “the City”), the CITY OF FORT COLLINS WATER UTILITY ENTERPRISE, an enterprise of the City (hereinafter referred to as “the City Enterprise”), the NORTH WELD COUNTY WATER DISTRICT, a political subdivision of the State of Colorado, (hereinafter referred to as “the District”), and the NORTH WELD COUNTY WATER DISTRICT ENTERPRISE, an enterprise of the District (hereinafter referred to as “the District Enterprise”) (all collectively referred to as the “Parties”).

**WITNESSETH:**

WHEREAS, the City is a home rule municipality organized and existing under Colorado law that owns a water utility which acquires, treats, transmits and distributes potable water (hereinafter referred to as “the City Water Utility”); and

WHEREAS, in doing so, the City owns and the City Water Utility operates a water treatment plant located at 4316 LaPorte Avenue, Fort Collins, Colorado (hereinafter referred to as “the City’s Treatment Plant”); and

WHEREAS, the City Water Utility distributes potable water to its customers through a variety of water transmission facilities located within the City (hereinafter referred to as “the City’s Transmission Facilities”); and

WHEREAS, the District is a special district organized and existing under Colorado law that also operates a water utility which distributes potable water through a variety of water

transmission facilities located within Larimer and Weld Counties, Colorado (hereinafter referred to as “the District’s Transmission Facilities”); and

WHEREAS, the City Enterprise and the District Enterprise were created by the City and the District, respectively, in order to comply with the provisions of Section 20, Article X of the Colorado Constitution and Article 45.1 of Title 37 of the Colorado Revised Statutes in order to permit the City and the District, acting through their respective enterprise, to issue revenue bonds and enter into multi-year fiscal obligations in connection with their operation of a water utility; and

WHEREAS, the City Enterprise and the District Enterprise are made parties to this Agreement solely for the purpose of entering into any multi-year fiscal obligation required under this Agreement; and

WHEREAS, the District has previously entered into that certain “Amended Intergovernmental Agreement” dated December 9, 1995, (hereinafter referred to as “the Soldier Canyon IGA”) with the East Larimer County Water District (hereinafter referred to as “ELCO”) and the Fort Collins-Loveland Water District (hereinafter referred to as “FCLWD”); and

WHEREAS, the Soldier Canyon IGA by its terms created Soldier Canyon as a separate governmental entity pursuant to C.R.S. Section 29-1-203; and

WHEREAS, the Soldier Canyon IGA provides that Soldier Canyon shall be responsible for the operation, maintenance and management of the water treatment plant located at 4424 LaPorte Avenue, Fort Collins, Colorado, which is jointly owned by the District, ELCO and FCLWD (hereinafter referred to as “the Soldier Canyon Treatment Plant”); and

WHEREAS, pursuant to C.R.S. Section 29-1-203(1), governmental entities in Colorado are authorized to cooperate or contract with one another to provide any function, service or

facility lawfully authorized to each of the cooperating or contracting governmental entities; and

WHEREAS, the City and the District have been exploring the possibility of sharing the use of their respective water facilities in order to avoid expensive duplication of these facilities, as well as to find ways to optimize the use of their respective water resources; and

WHEREAS, the parties, together with Soldier Canyon, have previously entered into that certain Intergovernmental Agreement for Delivery of Potable Water, dated June 1, 2000 (“Water Delivery Agreement”), which provides for the delivery of treated water by the City and the District to each other on demand, as available, to meet day-to-day demands for delivery of potable water to their respective customers; and

WHEREAS, it is in the mutual interests of the City and the District to establish updated arrangements for the delivery of potable water by amending and updating the Water Delivery Agreement, to reflect the current needs and commitments of the parties; and

WHEREAS, in order to update the terms of service for the delivery of potable water, the parties have negotiated the terms and conditions set forth herein, which the parties agree amend and restate the Water Delivery Agreement; and

WHEREAS, it is the intent of the parties, with the consent of Soldier Canyon, to remove Soldier Canyon as a party to the Water Delivery Agreement.

NOW, THEREFORE, in consideration of the parties’ mutual promises and agreements contained herein, and other good and valuable consideration, the receipt and accuracy of which are hereby acknowledged, the parties hereto agree as follows:

1. Term of Agreement. The obligations of the parties under this Agreement shall be effective as of November 1, 2013, with rates, charges and raw water requirements applied retroactively to that date, and shall be perpetual in duration and shall not expire unless terminated

as provided in paragraph 10 or 11 below.

2. Delivery of Potable Water to the District.

- A. It is the understanding of the parties that due to the configuration of the District's Transmission Facilities, and the manner in which potable water flows into the District's System from the City's Transmission Facilities, it is not necessary for the District to request deliveries from the City. Instead, through its operations, the District will coordinate with the City for the normal operation of its System so as to allow for delivery of potable water from the City's System to the District's System on an ongoing basis, at levels consistent with the terms of this Agreement and in accordance with the terms and conditions set forth herein. The District will notify the City in advance of any infrastructure or operational changes in the District's System that affect the interconnection of the systems covered under this Agreement, except in the event of emergency circumstances, in which case the District shall notify the City as early as reasonably possible of the emergency and related System changes.
- B. The City shall only be obligated to deliver water to the District to the extent it legally and physically has surplus potable water available after meeting all the needs of the customers of the City Water Utility and provided that it is reasonably practicable for the City to operate its System so as to provide water to the delivery points as requested and as specified in this Agreement;
- C. In no event, however, shall the City be obligated under this Agreement to deliver to the District more than nine (9) million gallons of potable water in any given day or more than 1.25 billion (1,250,000,000) gallons of potable water in any Water

Year (a “Water Year”, for purposes of this Agreement, shall mean November 1 of a year to October 31 of the following year). ; and

D. For the purposes of water deliveries under this Agreement, all water deliveries from the City to the District shall be at one of the following delivery points:

1. The cross-tie connection between the City’s Treatment Plant and the Soldier Canyon Treatment Plant located at the City’s Treatment Plant (the “Cross-Tie”); and
2. The existing connection between the District’s Transmission Facilities and the City’s Transmission Facilities located in Fort Collins, Colorado, on Summit View Drive, approximately 2,400 feet north of Vine Drive (hereinafter referred to as the “Northeast Delivery Point”).

3. Delivery of Potable Water to the City. It is the understanding of the Parties that the City’s need for delivery of potable water from the District has generally declined over time relative to the District’s need for potable water from the City. The Parties do not anticipate that the City will request water deliveries from the District to exceed any amounts beyond that necessary to offset or balance deliveries to the District under this Agreement. To the extent that the City desires that the District deliver potable water to the City, the City shall specifically request such delivery and designate the date, location and amount of water to be delivered, and the District shall deliver the potable water as requested, subject to the limitations set forth herein. The District shall only be entitled to credit for water requested by the City and actually delivered by the District pursuant to a City request.

A.. It is the understanding of the Parties that unplanned deliveries of water into the City’s Transmission Facilities have the potential to disrupt the functioning of the

City's System and operation of the City's Water Treatment Plant. Water deliveries to the City other than those requested have the potential to disrupt the operation of the City's Treatment Plant, and are not permitted. In the event that deliveries from the District to the City begin to exceed that necessary to balance previous deliveries from the City to the District, NWCWD shall immediately inform the Soldier Canyon Treatment Plant to reduce production into the Transmission Systems to a level that does not create a surplus to the City.

- B. In responding to the City's request for the delivery of water, the District shall only be obligated to honor the City's request to the extent it legally and physically has surplus potable water available after meeting all the needs of its customers and provided that it is reasonably practicable for the District to operate its System so as to provide the water to the delivery points as requested and as specified in this Agreement.
- C. In no event, however, shall the District be obligated under this Agreement to deliver to the City more than nine (9) million gallons of potable water in any given day or more than 1.25 billion (1,250,000,000) gallons of potable water in any Water Year; and
- D. For the purposes of water deliveries under this Agreement, all water deliveries from the District to the City shall be at one of the following delivery points:
  - 1. The Cross-Tie; and
  - 2. The Northeast Delivery Point.

4. Compensation for Water Delivered. No more than ten (10) days after the end of every month in each Water Year, and no more than fifteen (15) days after the end of every Water Year,



for all annual charges, the City and the District shall perform an accounting to determine the amount of potable water delivered by each party to the other during the applicable billing period. The parties acknowledge and agree that the rates and charges established pursuant to this paragraph 4 incorporate surcharges, payments in lieu of taxes, and other similar additional charges at the rates established generally for City Utility customers, which will not be separately charged to the District. The charges shall be as set forth herein below.

- A. The District shall pay annual transmission charges to the City for delivery of water under this Agreement.
  1. The District Enterprise shall pay annual transmission charges, as follows:
    - a. Transmission charges at a rate of Fourteen Thousand Seven Hundred Fifty Dollars (\$14,750.00) for each million gallons, or portion thereof, delivered to the Northeast Delivery Point on the day of the highest peak delivery during the preceding twelve (12) month period.
  2. No less frequently than after each Water Year, the City shall invoice the District Enterprise for the total transmission charges under this Agreement and the District Enterprise. In the City's discretion, the City may from time to time modify the frequency of billings and payment of the transmission charges by providing no less than two (2) months advance written notice to the District.
- B. For all water delivered under this Agreement, in any given month within a Water Year that the respective amounts requested by and delivered to each of the parties differ by no more than nine million (9,000,000) gallons (the "Carryover Limit"),

then the calculation of applicable overage charges under this subparagraph B will be carried over and incorporated into the calculation and related billing for overage charges for the succeeding month. In any month that the respective amounts requested by and delivered to each of the parties, adjusted by any carryover from the preceding month as set forth above, differ by more than the Carryover Limit, the party receiving the greater amount (the "Owing Party") shall owe to the other party (the "Owed Party") compensation for the difference between this monthly amount delivered and the Carryover Limit (the "Overage") as described in paragraph C and D below:

- C. The rate payable for an Overage shall be determined by the City's Cost of Service Study. The Overage charge shall reflect all costs to produce treated water at the City's Treatment Plant. This rate for overage charges shall be adjusted annually on a calendar year basis at a rate consistent with the overall rate increase to the entire customer base of the City
- D. It is the intent of the Parties to adjust the rate payable for an Overage over the 2014 calendar year.
  - 1. The schedule to step into the full rate shall be as follows:
    - a. For deliveries after the effective date and in the remainder of calendar year 2014, treatment charges shall be due from the Owing Party to the Owed Party on the Overage calculated at the rate of One Dollar and Sixty-Nine and Twenty Hundredths Cents (\$1.6920) per thousand gallons of metered flows.
    - b. The rate shall become equal to the full treatment charges of the City

beginning in calendar year 2015 and beyond. The rate for future years shall be adjusted as described in paragraph C above.

2. Such compensation shall be paid within thirty (30) days after the issuance of the related invoice by the Owed Party and it shall be paid by the City Enterprise or the District Enterprise, as applicable, solely from the net revenues of their respective water utilities.
3. The Owing Party agrees to transfer raw water from the Colorado-Big Thompson Project ("CBT") to the Owed Party in an amount equal to the volume of the Overage. The transfer of the Raw Water Amount for each month shall take place no later than ten (10) days after the end of such previous calendar month. All transfers of CBT water shall be made in accordance with rules established by the Northern Colorado Water Conservancy District ("NCWCD").

E. Financial obligations of the City in this paragraph 4 are intended and deemed to be the legal obligation of the City Enterprise, and financial obligations of the District in this paragraph 4 are intended and deemed to be the legal obligation of the District Enterprise.

F. It is the intent of the parties that overages or imbalances in water delivery amounts will be reconciled on a monthly basis, and no balances will be carried forward from Water Year to Water Year.

5. Water Quality. All potable water delivered to the City by the District and by the District to the City under this Agreement shall meet or exceed all quality standards for potable water that are required by the Environmental Protection Agency (hereinafter referred to as "the EPA"), the Colorado Department of Public Health and Environment (hereinafter referred to as "the

CDPHE")(hereinafter referred to collectively as "the Water Quality Standards"). Responsibility for ensuring that the Water Quality Standards are met for water delivered under this Agreement shall rest upon the party delivering the water up to the point of delivery and upon the party receiving the water after the point of delivery. In the event the EPA CDPHE imposes a water quality standard on the City or the District that is stricter than the standard required of the other, each party shall be required to meet that stricter standard for all potable water it delivers under this Agreement.

In the event the City or the District discovers that any water delivered, being delivered or to be delivered by it under this Agreement does not meet in any respect the Water Quality Standards, it shall immediately notify the other party of the problem by telephone, followed by written notice of the problem. Regardless of the foregoing, if at any time and for any reason the City or the District has a good faith concern about whether the potable water to be delivered or being delivered to it under this Agreement meets all of the Water Quality Standards, it may refuse to accept such water. Such refusal shall not be considered as a breach of or default under this Agreement. The City and the District further agree to notify the other party in writing of any proposed change to their respective water treatment processes before implementing such change if it could affect the quality of potable water delivered under this Agreement.

6. Metering and Infrastructure. In order to accurately account for the potable water delivered under this Agreement, metering, recording and telemetry devices shall be installed and maintained at the points of delivery specified in this Agreement. The City and the District agree to share with each other the data from their respective metering devices.

- A. The City may freely inspect each meter and metering point for any delivery point for water under this Agreement in its discretion. The City may provide testing and

calibration of meters as it determines necessary to maintain accurate meter readings.

- B. The parties acknowledge and agree that metering of flows at each of the delivery points is critical for the effective operation of this Agreement. In the event that a District-owned meter is not properly functioning to accurately measure flows, the parties agree to first attempt to cooperatively determine the flow estimation. If agreement on estimation cannot be reached, the City reserves the right to close the affected connection between the District's System and the City's System, until such time as a meter that will accurately measure the flows at that delivery point is installed and operable.
- C. In order to enhance the efficiency and reliability of the metering of deliveries, the Parties agree that the City may, at its option, install new meters at the delivery points that will measure real-time usage. If installed by the City, upon installation said meters will be operated and maintained by the City. The flow information from these meters will be used for determining the volumes of water delivered to the District and in the water accounting, instead of the water meters currently installed and owned by the District, which will no longer be in use under the Water Agreements. In the event that a dispute regarding volumes delivered for a monthly or annual billing as to an amount that exceeds the allowed nine million (9,000,000) gallons, the City agrees to calibrate the meter at that time (if not in the usual maintenance schedule). The City will provide volume information in real time to the District in a format compatible with the District's data collection systems.
7. Maintenance and Repairs. If the City or the District anticipates that any scheduled

maintenance or repair of its respective facilities could significantly interfere with the delivery of potable water under this Agreement, that party shall give the other party, if reasonably practicable, at least seven (7) calendar days prior written notice of the scheduled maintenance or repairs. Also, when reasonably practicable, the City and the District shall attempt to schedule such maintenance and repairs during periods of low demand by the other party for potable water under this Agreement. If, however, an unscheduled interruption of service under this Agreement occurs and in order to restore such service it is necessary to make repairs to the affected facilities, the party whose facilities are affected shall promptly notify the other party of the problem and proceed with due diligence to make the needed repairs.

8. District's Obligations with respect to Soldier Canyon Filter Plant (Soldier Canyon). The parties acknowledge and agree that the District may perform its obligations under this Agreement through Soldier Canyon to the extent they involve or relate to the delivery of water to the City, including, without limitation: (a) satisfying the Water Quality Standards and the testing, monitoring and reporting requirements and standards set forth in paragraph 5, above; (b) furnishing, installing and maintaining metering, recording and telemetry devices at the Soldier Canyon Treatment Plant pursuant to paragraph 6, above; and (c) physically controlling the delivery of water to the City in accordance with paragraph 3, above., provided, however, that the District will remain responsible for satisfactory performance of its obligations as a condition of the enjoyment by the District of the benefits of this Agreement.

9. Future Cooperative Intergovernmental Agreements. The parties acknowledge that the City and the District are currently in the process of evaluating opportunities for future coordination, collaboration and shared services in order to provide efficient and cost-effective services to their respective customers. Accordingly, the parties acknowledge that the

arrangements set forth in this Agreement may be superseded or modified in the future to reflect the outcome of those efforts.

10. Termination for Breach. Both the City and the District may terminate this Agreement upon a material breach by the other party of any term or condition of this Agreement if such breach continues for a substantial and unreasonable period of time, but in any event if the breach has continued for a period of sixty (60) days after receipt by the breaching party from the non-breaching party of a written notice of the existence of such breach. Notwithstanding any provision contained herein to the contrary, in no event shall the City or the District terminate this Agreement if the party at fault proceeds, after receiving said notice, with due diligence to correct or rectify the material breach regardless of the duration of such breach. Termination of this Agreement shall not, however, be the sole remedy of either party and any exercise of this right to terminate shall not preclude the pursuit of any other remedy available in law or in equity to the non-breaching party.

11. Termination/Transfer. This Agreement shall continue in effect for so long as Fort Collins continues to provide treated water unless and until terminated: 1) by operation of law; or 2) by either party upon the provision of written notice of termination no less than two (2) years in advance of the date of termination; 3) by mutual agreement of the parties or 4) in the event Fort Collins discontinues operation of its treated water system. The parties acknowledge and agree that the obligations of Fort Collins may be assigned or transferred by Fort Collins to any successor-in-interest capable of providing water service consistent with the terms of the Agreement and all applicable laws.

12. Force Majeure. Notwithstanding anything contained herein to the contrary, it is agreed that in the event and to the extent that fire, flood, earthquake, natural catastrophe, explosion,

accident, war, illegality, act of God, or any other cause beyond the control of any party hereto, or strikes or labor troubles (whether or not within the power of the party affected to settle the same) prevents or delays performance by any party to this Agreement, such party shall be relieved of the consequences thereof without liability, so long as and to the extent that performance is prevented by such cause; provided, however, that such party shall exercise due diligence in its efforts to resume performance within a reasonable period of time.

13. Cooperation of the Parties. The City and the District acknowledge that it is difficult to anticipate all of the activities, situations and other factors which may be relevant to them in satisfying their respective obligations under this Agreement. Therefore, the parties acknowledge that it will be necessary for them to cooperate with each other relative to any such unforeseen situations. In furtherance thereof, the City and the District agree that at the end of every Water Year, their representatives shall meet to discuss, in good faith, any modifications that any party believes necessary or appropriate to this Agreement in order to avoid an inequitable situation. In the event that the parties shall mutually agree to any such modification, it shall only be effective if set forth in writing and signed by all of the parties hereto.

14. Governing Law and Enforceability. This Agreement shall be construed in accordance with the laws of the State of Colorado. In addition, the parties hereto recognize that there are legal constraints imposed upon the City and the District by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon them by the City Charter and City Code, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, in no event shall any of the parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this



Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

15. Indemnification.

- A. In connection with the City's performance of its obligations under this Agreement, the City agrees, to the extent permitted by law, to indemnify and hold harmless the District, and their respective officers and employees, against all liabilities, claims and demands which arise from any negligent act or omission of the City, or of its officers or employees, provided that such act or omission by the City's officers or employees occurred during the performance of their duties and within the scope of their employment. In addition, the City agrees, to the extent permitted by law, to indemnify the District, and their respective officers and employees, from all costs and expenses related to defending such liabilities, claims and demands, including but not limited to, litigation costs and reasonable attorney's fees whether or not any such liabilities, claims and demands are groundless, frivolous, false or fraudulent.
- B. In connection with the District's performance of its obligations under this Agreement, the District agrees, to the extent permitted by law, to indemnify and hold harmless the City, and their respective officers and employees, against all liabilities, claims and demands which arise from any negligent act or omission of the District, or of its officers or employees, provided that such act or omission by the District's officers or employees occurred during the performance of their duties and within the scope of their employment. In addition, the District agrees, to the extent permitted by law, to indemnify the City, and their respective

officers and employees, from all costs and expenses related to defending such liabilities, claims and demands, including but not limited to, litigation costs and reasonable attorney's fees, whether or not such liabilities, claims and demands are groundless, frivolous, false or fraudulent. To the extent the District will rely on third parties, such as Soldier Canyon, to carry out elements of the District's performance hereunder, the District shall be responsible for ensuring any such third parties provide adequate insurance, warranties and performance to protect the City from loss or damage from any such performance, and the District shall be liable to the City for claims, demands or losses of or by the City that are not cured or remedied by, or for which the District has not secured full recourse for the benefit of the City against such third parties.

16. Inspection of Records. Each party agrees to allow each of the other parties to this Agreement to inspect and copy at reasonable times, with reasonable advance notice, all of its relevant records needed by any other party to verify the quantities of potable water delivered under this Agreement and to verify compliance with the standards and requirements of this Agreement.

17. Assignment. This Agreement shall not be assigned by any of the parties hereto without the prior written consent of all the other parties hereto, each in its sole discretion.

18. Default/Remedies/Immunity. If any party fails to comply with the provisions of this Agreement, the other party or parties, after providing written notification to the noncomplying party and upon the failure of the noncomplying party or parties to achieve compliance within thirty (30) days, may seek all such remedies as are available under Colorado law, including but not limited to termination of this Agreement, or actual damages, but excluding any exemplary and/or consequential damages. In the event litigation is required to enforce this Agreement, the

prevailing party or parties shall be entitled to payment by the defaulting party or parties of actual attorneys' fees and costs incurred. Nothing in this paragraph 18 or any other provision of this Agreement shall, however, be construed as a waiver of the notice requirements, defenses, immunities, and limitations any of the Parties may have under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., or any other defenses, immunities, or limitations of liability available by law. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed by law or regulation, and the provisions of this paragraph will be as effective as if repeated specifically in the Agreement in connection with each particular duty, obligation, right, and remedy to which they apply.

19. Applicable Law. The laws of the State of Colorado and rules and regulations issued pursuant thereto, except for choice of law principles, will be applied in the interpretation, execution and enforcement of this Agreement.

20. Notices. Other than invoice billings which may be sent by first class mail or electronic mail, any notice, request, demand, consent or approval, or other communication required or permitted hereunder will be in writing and may be personally delivered, or deposited in the United States mail or accepted for delivery by an overnight delivery service, with proper postage and address as follows:

District:                      District Manager  
   North Weld County Water District  
   33247 Highway 85  
   Lucerne, CO 80646

City: Utilities Executive Director  
City of Fort Collins  
P.O. Box 580  
700 Wood Street  
Fort Collins, CO 80522-0580

Any party hereto may at any time designate a different person or address for purposes of receiving notice by so informing the other parties in writing. Notice shall be deemed effective upon actual receipt thereof, or three (3) days after being deposited in the United States mail or accepted by an overnight delivery service, whichever first occurs:

21. Complete Agreement. To the extent provided herein, this Agreement supersedes any and all prior written or oral agreements and there are no covenants, conditions, or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto will have any force or affect whatsoever unless embodied herein in writing.

22. No Third Party Beneficiary. The terms and conditions of this Agreement, and all rights of action relating thereto, are strictly reserved to the parties, and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Agreement. Any person and/or entity, other than the parties receiving services or benefits under this Agreement, shall be deemed an incidental beneficiary only.

23. Relationship of Parties. This Agreement does not create and shall not be construed as creating a relationship of joint ventures, partners, or employer-employee, between the Parties. The Parties intend that this Agreement be interpreted as creating an independent contractor relationship. Pursuant to that intent, it is agreed that the conduct and control of the duties required by the Agreement shall lie solely with each Party respectively, and each Party shall be free to exercise reasonable discretion in the performance of its individual duties under this Agreement. Neither Party shall, with respect to any activity, be considered an agent or employee of the other

Party.

24. Waiver. No waiver or delay of enforcement by any of the parties hereto of any of the terms and conditions of this Agreement shall be deemed to be or shall be construed as a waiver of any other term or condition, nor shall a waiver of any breach of this Agreement be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

25. Construction. This Agreement shall be construed according to its fair meaning and as if it was prepared by all the parties hereto and shall be deemed to be and contain the entire agreement between the parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements or representations, expressed or implied, concerning this Agreement, unless set forth in writing and signed by all of the parties hereto. Paragraph headings in this Agreement are for convenience of reference only and shall in no way define, limit or prescribe the scope or intent of any provision of this Agreement.

26. Severability. If any provision of this Agreement, or the application of such provision to any person, entity or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities or circumstances other than those in which it was held invalid, shall not be affected.

27. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Parties have each executed this Agreement as of the date and year set forth above.

**THE CITY OF FORT COLLINS, COLORADO,**  
A Municipal Corporation

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy City Attorney

By:

Karen Weitkunat, Mayor

**CITY OF FORT COLLINS**  
**WATER UTILITY ENTERPRISE,**  
An Enterprise of the City

ATTEST:

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

By:

Karen Weitkunat, President

**NORTH WELD COUNTY  
WATER DISTRICT,**  
A Political Subdivision of the State of Colorado

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

By: \_\_\_\_\_, President

**NORTH WELD COUNTY  
WATER DISTRICT ENTERPRISE,**  
An Enterprise of the District

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

By: \_\_\_\_\_, President

By its signature below, the Soldier Canyon Filter Plant agrees that it is no longer a party to this Agreement and has no further rights or responsibilities hereunder.

**SOLDIER CANYON FILTER PLANT,**  
A Governmental Entity Created by  
Intergovernmental Agreement

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, Secretary

By: \_\_\_\_\_, President