

RESOLUTION NO. 010
OF THE BOARD OF THE CITY OF FORT COLLINS WATER UTILITY ENTERPRISE
AUTHORIZING THE PRESIDENT OF THE BOARD TO EXECUTE THE FIRST
AMENDMENT TO THE AMENDED AND RESTATED
INTERGOVERNMENTAL AGREEMENT WITH THE FORT COLLINS-LOVELAND
WATER DISTRICT, THE FORT COLLINS-LOVELAND 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 Fort Collins-Loveland Water District (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 County, Colorado (hereinafter referred to as "the District's Transmission Facilities"); and

WHEREAS, in order to establish updated arrangements for the delivery of potable water by amending and updating previously existing agreements, the City and the District negotiated and presented for formal approval in late 2013 an Amended and Restated Intergovernmental Agreement for the Delivery of Potable Water (the "Agreement"), which was approved on October 15, 2013, by the City Council through its adoption of Ordinance No. 135, 2013; and

WHEREAS, the Agreement has been fully signed and implemented by the parties; and

WHEREAS, in the course of implementing the Agreement, staff has identified an ambiguity regarding the requirement to provide raw water to offset imbalances in water delivered under the Agreement, and recommends that this requirement be clarified and confirmed amongst the parties to the Agreement through the adoption of a First Amendment to the Agreement, attached hereto as Exhibit "A" and incorporated herein by this reference (the "Amendment"); 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 Fort Collins-Loveland 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

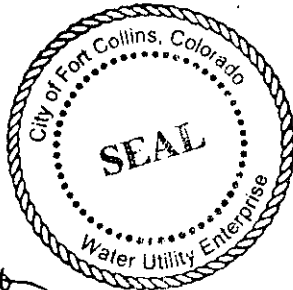
WHEREAS, the City Enterprise and the District Enterprise are made parties to the Amendment solely for the purpose of entering into any multi-year fiscal obligation imposed under this Agreement as amended; and

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 Amendment, and authorizes the President of the Board to execute the Amendment 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



ATTEST:

Wanda Nelson

City Clerk, Ex-Officio Secretary

Karen Weitzel

Mayor, Ex-Officio President

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

This First Amendment ("Amendment") to the Amended and Restated Intergovernmental Agreement for the Delivery of Potable Water ("Water Delivery Agreement" or "Agreement") is made and entered into this ___ day of _____, 2014, effective as of November 1, 2013, *nunc pro tunc*, 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 FORT COLLINS-LOVELAND WATER DISTRICT, a political subdivision of the State of Colorado, (hereinafter referred to as "the District"), and the FORT COLLINS-LOVELAND 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 Parties entered into the Water Delivery Agreement on September 13, 2013, effective as of November 1, 2013, in order to establish updated terms and conditions for the delivery of potable water; and

WHEREAS, the Parties have determined that the transfer of raw water for water delivery overages was intended by them to be an element of the Water Delivery Agreement; and

WHEREAS, in order to incorporate said additional term to the Water Delivery Agreement, the Parties desire to enter into, as of the effective date of said Agreement, this First Amendment.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties' mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and accuracy of which are hereby acknowledged, the Parties agree as follows:

1. Amendment to Paragraph 4.B. Paragraph 4.B of the Agreement is hereby amended to read as follows:

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 twelve million (12,000,000) 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 (in the form of payment and transfer of raw water) for the difference between the amount delivered in such month and the Carryover Limit (the "Overage") as described in paragraph C below:

2. Amendment to Paragraph 4.C. Paragraph 4.C of the Agreement is hereby amended to read as follows:

C. It is the intent of the Parties to adjust the rate payable for an Overage over approximately a three year period. The City is projecting rate increases of 4% annually over the next several years. The rate shall become equal to the full

treatment charges of the City beginning in calendar year 2017. For deliveries in all calendar years after 2017, the 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.

1. The schedule to step into the full rate shall be as follows:
 - a. For deliveries in the remainder of calendar year 2013 and the full 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 Thirty-Five and Zero Hundredths Cents (\$1.3500) per thousand gallons of metered flows.
 - b. For deliveries in calendar year 2015, 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.
 - c. For deliveries in calendar year 2016, treatment charges shall be due from the Owing Party to the Owed Party on the Overage calculated at the rate of Two Dollar and Three and Thirty-Eight Hundredths Cents (\$2.0338) per thousand gallons of metered flows.
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 shall transfer raw water from the Colorado-Big

Thompson Project ("CBT") to the Owed Party in an amount equal to the volume of the Overage, within ten (10) days after the issuance of the related invoice by the Owed Party. All transfers of CBT water shall be made in accordance with rules established by the Northern Colorado Water Conservancy District ("NCWCD").

4. No Further Modification. Except as expressly amended by this Amendment, the Water Delivery Agreement is unmodified and shall continue in full force and effect.

IN WITNESS WHEREOF, the said City has caused this agreement to be executed by its Mayor, attested to by its City Clerk with the corporate seal of said City hereunto affixed, the said District have caused this agreement to be executed by its president, and the City Enterprise and the District Enterprise have each cause this agreement to be executed by its respective president, as of the day and year first above written, in duplicate.

THE CITY OF FORT COLLINS
A Municipal Corporation

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Deputy City Attorney

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

By: _____
Enterprise President

ATTEST:

Enterprise Secretary

**FORT COLLINS-LOVELAND
WATER DISTRICT,**
A Political Subdivision of the State of Colorado

ATTEST:

By: _____
President

Secretary

**FORT COLLINS - LOVELAND
WATER DISTRICT ENTERPRISE,**
An Enterprise of the District

ATTEST:

By: _____
President

Secretary