

RESOLUTION 2016-005  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE CITY MANAGER TO EXECUTE AN  
INTERGOVERNMENTAL AGREEMENT WITH THE  
EAST LARIMER COUNTY WATER DISTRICT  
REGARDING THE COY MEASUREMENT STATION

WHEREAS, the City and the East Larimer County Water District (the "District") each own fifty percent of the water right decreed to the John G. Coy Ditch (the "Coy Ditch") by the Larimer County District Court on April 11, 1882, in Civil Action No. 320 (the "Coy Ditch Water Right"); and

WHEREAS, the District owns and operates a water measurement station located in the vicinity of the head and headgate of the Coy Ditch (the "Measurement Station") that the District uses for the administration of its fifty percent of the Coy Ditch Water Right; and

WHEREAS, the City desires to use the Measurement Station for the administration of its fifty percent of the Coy Ditch Water Right; and

WHEREAS, the City and the District have previously entered into stipulations, which are identified in Exhibit "A", that provide, among other things, that the District is willing to make the Measurement Station available to the City for its use, provided that the City and the District agree upon the details for doing so; and

WHEREAS, the City and the District have agreed upon the details for the City's use of the Measurement Station, as set forth in the Intergovernmental Agreement attached hereto as Exhibit "A" (the "Agreement"); and

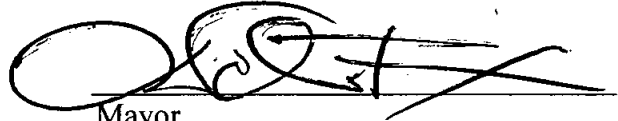
WHEREAS, the City Manager and City staff have recommended that the City Council approve the Agreement as set forth herein.

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 the Agreement substantially in the form of Exhibit "A" with such modifications and 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 at a regular meeting of the Council of the City of Fort Collins this 19th day of January, A.D. 2016.



Mayor

ATTEST:

*W Winkelmann*  
City Clerk



**AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND  
THE EAST LARIMER COUNTY WATER DISTRICT  
REGARDING THE COY MEASUREMENT STATION**

This Agreement is entered into by and between the following Parties: the City of Fort Collins, Colorado, a home rule municipality ("City"); and the East Larimer County Water District, a political subdivision of the State of Colorado ("District").

**RECITALS**

A. The head and headgate of the John G. Coy Ditch ("Coy Ditch") is located on the Cache la Poudre River in the NW1/4 of Section 12, Township 7 North, Range 69 West of the 6<sup>th</sup> P.M., Larimer County, Colorado. A water right was decreed to the Coy Ditch by the Larimer County District Court on April 11, 1882, in Civil Action No. 320 ("Coy Ditch Water Right"). The City and the District each own one half (1/2) of the Coy Ditch Water Right.

B. In Case No. 2009CW282, the District Court for Water Division 1 ("Water Court") approved certain changes to thirty-five percent (35%) of the Coy Ditch Water Right owned by the District. *See* Findings of Fact, Conclusions of Law, Judgment and Decree of the Water Court, Case No. 2009CW282, dated June 29, 2012 ("09CW282 Decree"). In that case, the City and the District entered into a stipulation, dated May 16, 2012, which was approved by Water Court order, dated May 22, 2012 ("09CW282 Stipulation"). The 09CW282 Stipulation concerns, among other things, a water measurement station constructed by the District located in the vicinity of the head and headgate of the Coy Ditch ("Measurement Station").

C. In Case No. 2012CV1690, the Larimer County District Court made determinations regarding title to certain lands, including the lands where the head and headgate of the Coy Ditch is located. In that case, the City and the District entered into a stipulation, dated May 20, 2015, which was approved and made an order of the Court on June 4, 2014 ("12CV1690 Stipulation"). The 12CV1690 Stipulation concerns, among other things, the Measurement Station.

D. In Case No. 2013CW3166, the Water Court approved certain changes to fifteen percent (15%) of the Coy Ditch Water Right owned by the District. *See* Findings of Fact, Conclusions of Law, Judgment and Decree of the Water Court, Case No. 2013CW3166, dated July 1, 2015 ("13CW3166 Decree"). In that case, the City and the District entered into a stipulation, dated April 22, 2015, which was approved by Water Court order, dated April 23, 2015 ("13CW3166 Stipulation"). The 13CW3166 Stipulation concerns, among other things, the Measurement Station.

E. In Case No. 2014CW3176, the City seeks Water Court approval of certain changes to its fifty percent (50%) of the Coy Ditch Water Right. The City desires to share in the use of the Measurement Station for its purposes, including with respect to certain operations pursuant to its pending Case No. 2014CW3176.

F. The 09CW282, 12CV1290, and 13CW3166 Stipulations each contemplate the addition of the City's use of the Measurement Station, subject to a subsequent agreement between the City

and the District regarding the terms and conditions of such use. The District desires to permit the City to share in the use of the Measurement Station pursuant to the terms and conditions of this Agreement.

G. The City is pursuing its Poudre River Downtown Project ("Project"), which may involve work in the Poudre River on and around the head and headgate of the Coy Ditch and its diversion dam and the Measurement Station. The Parties desire to identify the Project's impacts on the Measurement Station, the City's obligations relating to such impacts, and the Parties' shared use of the Measurement Structure.

### **AGREEMENT AND UNDERSTANDING**

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

2. **CITY'S RIGHT TO USE THE MEASUREMENT STATION.** The District hereby grants the City the right to share in the use of the Measurement Station pursuant to the terms and conditions of this Agreement.

3. **TERMS AND CONDITIONS FOR THE PARTIES' SHARED USE OF THE MEASUREMENT STATION.**

- a. **ANNUAL OPERATING AND MAINTENANCE CONFERRAL AND PLANNING.** Each year, on or before the third Friday of November, one or more representatives of the District shall confer with one or more representatives of the City. The Parties shall review the operation and maintenance of the Measurement Station during the previous water year and plan for the operation and maintenance of the Measurement Station during the current and future water years including, but not limited to, agreeing upon any foreseeable maintenance of the Measurement Station in the current water year. For the purposes of this Agreement, the water year shall be the November 1 through the following October 31.
- b. **MEASUREMENT STATION TO BE KEPT IN GOOD AND WORKING ORDER.** The District shall keep the Measurement Station in good and working order, subject to Paragraph 3.g. For the purposes of this Agreement, good and working order means that data can be collected from the Measurement Station and that the Parties agree that such data, in their collective opinion, is sufficiently accurate, precise, and reliable so that it reasonably should be acceptable to the State Engineer and Division Engineer for Water Division 1 for the purposes of supporting both the City's and the District's water rights accounting.
- c. **COLLECTION AND TRANSMISSION OF DATA.** The District shall collect all available data from the Measurement Station, subject to Paragraph 3.g. Such data shall include all measurements reasonably available from the Measurement Station on a daily or more frequent basis. The District shall provide copies of all

such data to the City in electronic format no less frequently than monthly, or as more frequently requested by the City. The City shall designate a person or persons to whom the data shall be sent. The initial such designated person for the City is Daylan Figgs ([dfiggs@fcgov.com](mailto:dfiggs@fcgov.com)). The City may change the designated person or add additional designed persons upon written notice to the District pursuant to Paragraph 11. The City shall be responsible for fifty percent (50%) of the costs associated with such recording and transmission of such data, which costs shall be reimbursed to the District pursuant to Paragraph 3.i.

- d. **MAINTENANCE, REPAIR, AND REPLACEMENT.** In the event that the Parties agree that the Measurement Station is not in good and working order, the District shall take such maintenance, repair, and replacement actions as are reasonably necessary to restore the Measurement Station to good and working order. Such maintenance, repair, and replacement actions shall be those previously agreed upon pursuant to Paragraph 3.a, unless additional or different maintenance, repair, and replacement actions are reasonably necessary due to events or occurrences that were not foreseen during the annual conferral pursuant to Paragraph 3.a. The District shall confer with the City regarding such actions before they are taken, unless the exigencies of the circumstances make such conferral impractical, in which case the District shall confer with the City regarding such actions as soon as practicable. The City shall be responsible for fifty percent (50%) of the costs associated with such maintenance, repair, and replacement actions, which costs shall be reimbursed to the District pursuant to Paragraph 3.i.
- e. **RATING.** The obligation to keep the Measurement Station in good and working order includes, but is not limited to, work associated with developing a cross section of the river at the Measurement Station and a rating curve such that the physical measurements taken at the Measurement Station can be transposed to flow rates and volumes. The District has retained a consultant to develop such a cross section of the river at the Measurement Station and a corresponding rating curve based on current conditions. The City agrees to be responsible for one-hundred percent (100%) of such costs, which costs shall be reimbursed to the District pursuant to Paragraph 3.i. If similar work needs to be performed in the future for the Measurement Station in order to keep it in good and working order, the District shall confer with the City pursuant to Paragraph 3.a regarding how such work is to be performed. The City shall be responsible for fifty percent (50%) of such costs, which costs shall be reimbursed to the District pursuant to Paragraph 3.i.
- f. **ALTERATIONS TO MEASUREMENT STATION.** The Measurement Station currently consists of a stilling well, a pipe, and a Sutron measuring device. Photographs of the Measurement Station, as it exists around the time of this Agreement, are attached hereto as Exhibit 1. The Measurement Station may be altered pursuant to Paragraph 4 below. If one or both of the Parties desire to modify the Measurement Station from the configuration described in this paragraph or the configuration resulting from an alteration under Paragraph 4 below, or to change

its location described above or the location resulting from an alteration under Paragraph 4 below, such alteration may only occur if both Parties agree and such agreement is reduced to writing and approved by each of the Parties.

- g. **FORCE FLUVIAL.** The Parties recognize that the physical realities of operating a measurement structure in the Cache la Poudre River using the technology and means currently available may be compromised by unavoidable and/or unpredictable weather and hydrological events beyond the District's control during which periods data cannot be collected. When such events occur, as soon as practicable, the District shall take actions as are reasonably necessary to restore the Measurement Station to good and working order pursuant to Paragraph 3.d.
- h. **PREVIOUS STIPULATIONS.** Nothing herein is intended to alter or amend the 09CW282, 12CV1290, and 13CW3166 Stipulations. Nevertheless, to the extent that there are any inconsistencies between this Agreement and the terms of the 09CW282, 12CV1290, and 13CW3166 Stipulations, the terms and conditions of this Agreement shall control.
- i. **REIMBURSEMENT AND PAYMENT.** On or before the third Friday of November, the District shall provide the City with an itemized invoice for all costs associated with the Measurement Station as described in this Paragraph 3 and the costs for which the City is responsible under this Agreement for the previous water year. The District shall further provide the City documentation supporting the amount charged in said invoice. The City shall have sixty-three (63) days from the receipt of said invoice to pay the District.

4. **POUDRE RIVER DOWNTOWN PROJECT.** In the 09CW282, 12CV1290, and 13CW3166 Stipulations, the Parties entered into an agreement regarding certain aspects of possible changes to the Coy Ditch diversion dam. In the event the City desires to make such a change, the City shall provide the District with at least one hundred twenty (120) days notice of its intent to alter the diversion dam before beginning any physical work. The City shall be responsible for the costs associated with any necessary modifications to, relocations of, and/or replacement of the Measurement Station. The City agrees to coordinate with the District regarding any such modifications to, relocations of, and/or replacement of the Measurement Station.

5. **TERM.** This Agreement shall be perpetual unless and until it is modified otherwise by the Parties entering into a written agreement regarding the same.

6. **REMEDIES.** If either Party fails to comply with the provisions of this Agreement, the other Party, after providing written notification to the noncomplying Party, and upon the failure of the noncomplying Party to achieve compliance within thirty-five (35) days, may seek all such remedies available under Colorado law. In addition, if the District is unwilling or unable to keep the Measurement Station in good working order, following reasonable conferral with the District, the City may take such actions as are reasonably necessary to return the Measurement Station in good working order, and may thereafter provide the District with an itemized invoice for all costs

associated therewith, together with documentation supporting the amount charged in said invoice, and the District shall have sixty-three (63) days from the receipt of said invoice to pay the District.

7. **FISCAL CONTINGENCY.** Notwithstanding any other provision of this Agreement to the contrary, the obligations of the City in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the City having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement, and the failure of the City to appropriate such funds shall be grounds for termination of this Agreement upon ninety-one (91) days written notice of the failure to appropriate such funds.

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. The Parties recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as the parties respective bylaws, city charters and codes, and rules and regulations, impose certain legal constraints on each Party and that the Parties intend to carry out the terms and conditions of this Agreement subject to those constraints. 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](mailto:epotyondy@fcgov.com)

and: Fort Collins Utilities  
Attn: Water Resources Manager

700 Wood Street P.O. Box 580  
Fort Collins, Colorado 80522-0580

and:

Natural Areas Department  
745 Hoffman Mill Road  
Fort Collins, Colorado 80524  
[jstokes@fcgov.com](mailto:jstokes@fcgov.com); [dfiggs@fcgov.com](mailto:dfiggs@fcgov.com)

To the District:

East Larimer County Water District  
Attn. Mike Scheid, General Manager  
232 South Link Lane  
Fort Collins, CO 80524  
[mikes@elcowater.org](mailto:mikes@elcowater.org)

With copy to:

Lyons Gaddis Kahn Hall  
Jeffers Dworak & Grant, LLC  
Attn: Scott Holwick  
PO Box 978  
Longmont, CO 80502-0978  
[sholwick@lgkhlaw.com](mailto:sholwick@lgkhlaw.com)

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. This Agreement binds and benefits the Parties and their respective successors. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

14. **CAPTIONS.** The captions of the paragraphs of this Agreement are for convenience only and shall not govern or influence the interpretation of the Agreement

15. **REPRESENTATIONS.** Each Party represents to the other parties 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.

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

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

By: \_\_\_\_\_  
Darin A. Atteberry, City Manager

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney's Office

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**EAST LARIMER COUNTY DISTRICT, a  
political subdivision of the State of Colorado**

By: \_\_\_\_\_  
Mike Scheid, General Manger

ATTEST:

By: \_\_\_\_\_

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