

RESOLUTION 2016-062
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS BETWEEN
THE CITY OF FORT COLLINS AND THE NORTHERN COLORADO WATER
CONSERVANCY DISTRICT REGARDING THE SHARING OF WATER
QUALITY MODELING FOR THE HALLIGAN WATER SUPPLY PROJECT

WHEREAS, the City is pursuing the Halligan Water Supply Project (“Halligan Project”) and has applied for a permit from the United States Army Corps of Engineers (“Corps”) under Section 404 of the Clean Water Act; and

WHEREAS, the City is currently working with the Corps and its third-party contractors in its preparation of an environmental impact statement (“EIS”), pursuant to the Clean Water Act and the National Environmental Policy Act (“NEPA”); and

WHEREAS, the Northern Colorado Water Conservancy District (“Northern Water”) is pursuing the Northern Integrated Supply Project (“NISP”) and has applied for a permit from the Corps under Section 404 of the Clean Water Act; and

WHEREAS, Northern Water is currently working with the Corps and its third-party contractors in its preparation of an EIS, pursuant to the Clean Water Act and NEPA; and

WHEREAS, certain water quality modeling and analyses (which includes temperature modeling and analyses, for the purposes of this Resolution) must be completed for the Halligan Project as part of its permitting processes with the Corps; and

WHEREAS, certain water quality modeling and analyses must be completed for NISP as part of its permitting processes with the Corps; and

WHEREAS, the coordination of the water quality modeling and analytical efforts for the Halligan Project and for NISP, including, but not limited to, the integration of the various water quality models developed for the Cache la Poudre River Basin, will result in substantial cost savings for the City, consistency, and in more accurate modeling and analyses; and

WHEREAS, the City and Northern Water have negotiated an Agreement for the sharing of certain models and the coordination of such efforts, a copy of which is attached as Exhibit “A”; and

WHEREAS, the City’s execution of the Agreement is not intended to express support for NISP or to change the City’s position with respect to NISP, and the City is not hereby altering or amending its comments on the NISP draft and supplemental draft environmental impact statements, which comments were submitted pursuant to Resolution 2008-002 and Resolution 2015-082.

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.

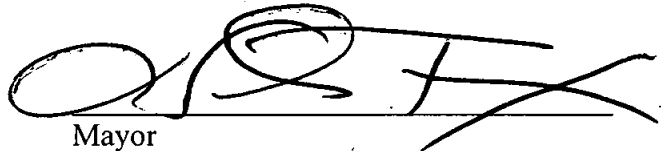
Section 2. That the City Manager is hereby authorized to execute an Agreement substantially in the form of Exhibit "A", with such additional terms and conditions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City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

Section 3. That the City Manager is hereby authorized to execute additional agreements between the Parties regarding the sharing of water quality models as contemplated in Paragraphs 3, 4, and 5 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 16th day of August, A.D. 2016.



ATTEST:


Mayor


City Clerk

**AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND
THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT
REGARDING THE SHARING OF WATER QUALITY MODELING**

This Agreement is entered into by and between the following Parties: the City of Fort Collins, Colorado, a home rule municipality ("City"); and the Northern Colorado Water Conservancy District (a quasi-municipal entity and political subdivision of the State of Colorado), acting by and through its Northern Integrated Supply Project Water Activity Enterprise (a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. §§ 37-45.1-101 *et seq.*) ("Northern Water").

RECITALS

A. The City is pursuing the Halligan Water Supply Project ("Halligan Project"). The City has applied for a permit from the United States Army Corps of Engineers ("Corps") under Section 404 of the Clean Water Act. The Corps is currently preparing an environmental impact statement ("EIS"), pursuant to the Clean Water Act and the National Environmental Policy Act ("NEPA"), for the Halligan Project.

B. In this permitting process for the Halligan Project, the Corps directs third-party contractors to assist in the preparation of the EIS. The third-party contractor working on water quality modeling and analyses for the Halligan Project is CDM Smith, Inc. ("CDM Smith").

C. For the Halligan Project, the Corps and CDM Smith are developing a mass balance water quality model for the main stem and North Fork of the Cache la Poudre River ("Halligan Mass Balance Model") and a dynamic temperature model for the North Fork of the Cache la Poudre River ("North Fork Temperature Model").

D. Northern Water is pursuing the Northern Integrated Supply Project ("NISP"). Northern Water has applied for a permit from the Corps under Section 404 of the Clean Water Act. The Corps is currently preparing an EIS, pursuant to the Clean Water Act and NEPA, for NISP.

E. In this permitting process for NISP, the Corps directs third-party contractors to assist in the preparation of the EIS. The third-party contractor working on water quality modeling and analyses for NISP is Hydros Consulting, Inc. ("Hydros").

F. For NISP, the Corps and Hydros are developing a mass balance water quality model for the main stem of the Cache la Poudre River ("NISP Mass Balance Model") and a dynamic temperature model for the main stem of the Cache la Poudre River ("Main Stem Temperature Model").

G. Certain water quality modeling and analyses must be completed for the Halligan Project for both the North Fork and the main stem of the Cache la Poudre River as part of its permitting processes with the Corps. Water temperature is considered to be an aspect of water quality in such modeling and analyses for the Halligan Project. Similarly, certain water quality modeling

and analyses must be completed for NISP as part of its permitting processes with the Corps. Water temperature is considered to be an aspect of water quality in such modeling and analyses for NISP. NISP water quality modeling and analyses is currently focused on the main stem of the Cache la Poudre River, but may also consider certain water quality aspects of the North Fork of the Cache la Poudre River.

H. The coordination of the water quality modeling and analytical efforts for the Halligan Project and for NISP, including, but not limited to, the integration of the various models for the North Fork of the Cache la Poudre River with those for the main stem of the Cache la Poudre River, will result in cost savings for each entity, consistency, and in more accurate modeling and analyses.

I. The City and Northern Water desire to enter into an agreement regarding the coordination of some of their water quality modeling and analytical efforts, as set forth in this Agreement.

AGREEMENT

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

2. **SHARING OF THE MAIN STEM TEMPERATURE MODEL.** The Parties agree to the following terms and conditions pursuant to which the Main Stem Temperature Model developed for NISP may be used for the Halligan Project.

2.1. The Main Stem Temperature Model is not currently in the possession or control of Northern Water; it will be made available when the results of the model are publicly released by the Corps. It is the understanding of the Parties that the Corps intends to release the results of the model in a future NEPA document for NISP. When the Corps publicly releases results of the model, the Main Stem Temperature Model will be made available to the third-party contractors for the water temperature modeling and analyses for the Halligan Project.

2.2. The Main Stem Temperature Model will be made available in advance of the Corps' public release of the model results (as soon as it is calibrated) in the event that Hydros is used as the third-party contractor for the main stem modeling portion of the water temperature modeling and analyses (including the integration of results from the North Fork Temperature Model) for the Halligan Project and its alternatives.

2.3. Regardless of whether the Main Stem Temperature Model is made available under Paragraph 2.1 or Paragraph 2.2, neither City staff nor any other party associated with the City (which excludes the third-party contractors for the Halligan Project) will have access to the Main Stem Temperature Model until such time (if or when) the Corps makes the model publicly available.

2.4. Until such time that the Main Stem Temperature Model is publicly available, the model will be made available for the sole purpose of the third-party contractors' water temperature studies pertaining to the Halligan Project.

2.5. Neither the City nor the third-party contractors for the Halligan Project will share the Main Stem Temperature Model with other persons, entities, or their consultants, or other third-party contractors in a Clean Water Act or NEPA process other than NISP or the Halligan Project.

2.6. Other persons or entities interested in accessing the Main Stem Temperature Model must address this issue directly through the Corps and Northern Water.

2.7. The City agrees not to submit comments during federal or state permitting processes for NISP on the configuration, inputs, and assumptions used to construct the Main Stem Temperature Model. However, the City retains the right to comment on the outputs, findings, and implications of the water temperature analyses of the Main Stem Temperature Model as they are presented in or derived from the NEPA documentation or other Corps' public information releases and may relate to NISP's impacts on City assets and interests.

2.8. Subject to oversight by and direction from the Corps, if the third-party contractors for the Halligan Project temperature analyses are other than Hydros, and if such third-party contractors identify questions or concerns in the course of reviewing the Main Stem Temperature Model and/or integrating the Main Stem Temperature Model and the North Fork Temperature Model, those will be brought to the attention of Hydros with the intent to resolve the issue informally.

2.9. The Parties will acknowledge that the Main Stem Temperature Model, as developed for NISP, is not appropriate for use in analyzing the Halligan Project or its alternatives without appropriate project-specific modifications, potentially including recalibration and revalidation.

3. **SHARING OF THE NORTH FORK TEMPERATURE MODEL.** The Parties agree to the following terms and conditions pursuant to which the North Fork Temperature Model developed for the Halligan Project may be used for NISP.

3.1. Northern Water does not know at this time if it will be necessary for the North Fork Temperature Model developed for the Halligan Project to be used for NISP. However, if Northern Water or the Corps at a later date determines that the North Fork Temperature Model is necessary for NISP analyses, Northern Water will notify the City in writing, pursuant to Paragraph 16, that it desires to use the North Fork Temperature Model for NISP. In the event of such notification, the provisions in Paragraphs 3.2 through 3.9 shall apply.

3.2. The North Fork Temperature Model is not currently in the possession or control of the City. Upon notification from Northern Water according to Paragraph 3.1, the City

will support the sharing of the North Fork Temperature Model, including its configurations, output data, and any analyses related to cumulative effects, with the third-party contractors for NISP once that model has been calibrated.

3.3. Neither Northern Water staff nor any other party associated with Northern Water (which excludes the third-party contractors for NISP) will have access to the North Fork Temperature Model until such time (if or when) the Corps makes the model publicly available.

3.4. Until such time that the North Fork Temperature Model is publicly available, the model will be made available for the sole purpose of the third-party contractors' water quality studies pertaining to NISP.

3.5. Neither Northern Water nor the third-party contractors for NISP will share the North Fork Temperature Model with other persons, entities, or their consultants, or other third-party contractors in a Clean Water Act or NEPA process other than NISP or the Halligan Project. Other persons or entities interested in accessing the North Fork Temperature Model must address this issue directly through the Corps and the City.

3.6. The City retains the right to share the North Fork Temperature Model and outputs with other persons and entities without the consent of Northern Water, subject to Corps approval.

3.7. In the event the North Fork Temperature Model is shared with and executed by the third-party contractor for the NISP analyses, Northern Water agrees not to submit comments during federal or state permitting processes for the Halligan Project on the configuration, inputs, and assumptions used to construct the North Fork Temperature Model. However, Northern Water retains the right to comment on the outputs, findings, and implications of the North Fork water temperature analyses as they are presented in or derived from the EIS or other Corps' public information releases and may relate to the Halligan Project's impacts on Northern Water's assets and interests.

3.8. Subject to oversight by and direction from the Corps, if the third-party contractors for NISP identify questions or concerns on the North Fork Temperature Model, those will be brought to the attention of CDM Smith with the intent to resolve the issue informally.

3.9. The Parties acknowledge that the North Fork Temperature Model, as developed for the Halligan Project, may not be appropriate for use in analyzing NISP or its alternatives without appropriate project-specific modifications, potentially including recalibration and revalidation.

4. **SHARING OF THE NISP MASS BALANCE MODEL.** The Parties agree to the following terms and conditions regarding sharing of the NISP Mass Balance Model.

4.1. The City does not know at this time if it will be necessary or desirable to use the NISP Mass Balance Model for the Halligan Project. However, if the City or the Corps at

a later date determines that the NISP Mass Balance Model is necessary for the Halligan Project analyses, the City will notify Northern Water in writing, pursuant to Paragraph 16, that it desires to use the NISP Mass Balance Model for the Halligan Project. In the event of such notification, the provisions in Paragraphs 4.2 through 4.9 shall apply.

4.2. The NISP Mass Balance Model is not currently in the possession or control of Northern Water. Upon notification from the City according to Paragraph 4.1, Northern Water will support the sharing of the NISP Mass Balance Model, including its configurations, output data, and any analyses related to cumulative effects, with the third-party contractors for Halligan Project, as follows:

4.2.1. It is the understanding of the Parties that the Corps intends to release the results of the NISP Mass Balance Model in a future NEPA document for NISP. When the Corps publicly releases results of the model, the NISP Mass Balance Model will be made available to the third-party contractors for the Halligan Project.

4.2.2. The NISP Mass Balance Model will be made available in advance of the Corps' public release of the model results (as soon as it is calibrated) in the event that Hydros is used as the third-party contractor for the main stem modeling portion of the mass balance modeling and analyses for the Halligan Project.

4.3. Regardless of whether the NISP Mass Balance Model is made available under Paragraph 4.2.1 or Paragraph 4.2.2, neither City staff nor any other party associated with the City (which excludes the third-party contractors for the Halligan Project) will have access to the NISP Mass Balance Model until such time (if or when) the Corps makes the model publicly available.

4.4. Until such time that the NISP Mass Balance Model is publicly available, the model will be made available for the sole purpose of the third-party contractors' water quality studies pertaining to the Halligan Project.

4.5. Neither the City nor the third-party contractors for the Halligan Project will share the NISP Mass Balance Model with other persons, entities, or their consultants, or other third-party contractors in a Clean Water Act or NEPA process other than NISP or the Halligan Project. Other persons or entities interested in accessing the NISP Mass Balance Model must address this issue directly through the Corps and Northern Water.

4.6. Northern Water retains the right to share the NISP Mass Balance Model and outputs with other persons and entities without the consent of the City.

4.7. In the event the NISP Mass Balance Model is shared with and executed by the third-party contractor for the Halligan analyses, the City agrees not to submit comments during federal or state permitting processes for NISP on the configuration, inputs, and assumptions used to construct the NISP Mass Balance Model. However, the City retains

the right to comment on the outputs, findings, and implications of the NISP Mass Balance Model analyses as they are presented in or derived from the NEPA documentation or other Corps' public information releases and may relate to NISP's impacts on the City's assets and interests.

4.8. Subject to oversight by and direction from the Corps, if the third-party contractors for the Halligan Project identify questions or concerns on the NISP Mass Balance Model, those will be brought to the attention of Hydros with the intent to resolve the issue informally.

4.9. The Parties acknowledge that the NISP Mass Balance Model, as developed for NISP, may not be appropriate for use in analyzing the Halligan Project or its alternatives without appropriate project-specific modifications, potentially including recalibration and revalidation.

5. **SHARING OF THE HALLIGAN MASS BALANCE MODEL.** The Parties agree to the following terms and conditions regarding sharing of the Halligan Mass Balance Model.

5.1. Northern Water does not know at this time if it will be necessary for the Halligan Mass Balance Model developed for the Halligan Project to be used for NISP. However, if Northern Water or the Corps at a later date determines that the Halligan Mass Balance Model is necessary for NISP analyses, Northern Water will notify the City in writing, pursuant to Paragraph 16, that it desires to use the Halligan Mass Balance Model for NISP. In the event of such notification, the provisions in Paragraphs 5.2 through 5.9 shall apply.

5.2. The Halligan Mass Balance Model is not currently in the possession or control of the City. Upon notification from Northern Water according to Paragraph 5.1, the City will support the sharing of the Halligan Mass Balance Model, including its configurations, output data, and any analyses related to cumulative effects, with the third-party contractors for NISP once that model has been calibrated.

5.3. Neither Northern Water staff nor any other party associated with Northern Water (which excludes the third-party contractors for NISP) will have access to the Halligan Mass Balance Model until such time (if or when) the Corps makes the model publicly available.

5.4. Until such time that the Halligan Mass Balance Model is publicly available, the model will be made available for the sole purpose of the third-party contractors' water quality studies pertaining to NISP.

5.5. Neither Northern Water nor the third-party contractors for NISP will share the Halligan Mass Balance Model with other persons, entities, or their consultants, or other third-party contractors in a Clean Water Act or NEPA process other than NISP or the Halligan Project. Other persons or entities interested in accessing the Halligan Mass Balance Model must address this issue directly through the Corps and the City.

5.6. The City retains the right to share the Halligan Mass Balance Model and outputs with other persons and entities without the consent of Northern Water, subject to Corps approval.

5.7. In the event the Halligan Mass Balance Model is shared with and executed by the third-party contractor for the NISP analyses, Northern Water agrees not to submit comments during federal or state permitting processes for the Halligan Project on the configuration, inputs, and assumptions used to construct the Halligan Mass Balance Model. However, Northern Water retains the right to comment on the outputs, findings, and implications of the Halligan Mass Balance Model analyses as they are presented in or derived from the EIS or other Corps' public information releases and may relate to the Halligan Project's impacts on Northern Water's assets and interests.

5.8. Subject to oversight by and direction from the Corps, if the third-party contractors for NISP identify questions or concerns on the Halligan Mass Balance Model, those will be brought to the attention of CDM Smith with the intent to resolve the issue informally.

5.9. The Parties acknowledge that the Halligan Mass Balance Model, as developed for the Halligan Project, may not be appropriate for use in analyzing NISP or its alternatives without appropriate project-specific modifications, potentially including recalibration and revalidation.

6. **MEETING TO DISCUSS MODELING ASSUMPTIONS.** In the interest of promoting consistency in the assumptions underlying the water temperature analyses in the North Fork Temperature Model, the Main Stem Temperature Model, the Halligan Mass Balance Model, and the NISP Mass Balance Model, prior to making the models available, the Corps, the City, Northern Water, and the respective third-party contractors for the Halligan Project and NISP will meet one or more times to discuss key assumptions, including those for cumulative effects, related to the North Fork and the main stem of the Cache la Poudre River.

7. **DELEGATION OF RESPONSIBILITIES BETWEEN THIRD-PARTY CONTRACTORS.** The Parties acknowledge that the Corps is delegating the specific tasks and responsibilities among third-party contractors in developing the Halligan Project water temperature models and analysis. However, it is the desire of the Parties that if Hydros is used as the third-party contractor to perform water temperature modeling and analyses for the Halligan Project, that: (1) Hydros will work cooperatively with CDM Smith to integrate the North Fork Temperature Model with the Main Stem Temperature Model; (2) Hydros will lead the effort to modify the Main Stem Temperature Model to be able to analyze the Halligan Project; (3) Hydros will execute the Main Stem Temperature Model for all alternatives identified for the Halligan Project; (4) CDM Smith will execute the North Fork Temperature Model for all alternatives identified for the Halligan Project; and (5) CDM Smith will produce the final documentation of all water temperature modeling and analyses for the Halligan Project EIS in accordance with established Halligan Project EIS reporting standards.

8. **STATE PERMITTING PROCESSES.** Nothing in this Agreement precludes a Party from requesting that the Corps release water temperature or water quality modeling and analysis information to the State in support of a 401 water quality certification application or the State fish and wildlife mitigation planning process before such information is made publicly available. The requesting Party shall coordinate in good faith with the other Party to this Agreement prior to making any such request of the Corps.

9. **PAYMENT FOR WORK.** The Parties agree to the following terms and conditions regarding payment for work on the models.

9.1. The City will contribute \$100,000 to the Northern Integrated Supply Project Water Activity Enterprise toward the cost of the present modeling work by Hydros to develop the Main Stem Temperature Model.

9.2. If the North Fork Temperature Model, whether alone or integrated with the Main Stem Temperature Model, is executed for any NISP analysis pursuant to Paragraph 3, the Northern Integrated Supply Project Water Activity Enterprise will contribute to the City \$40,000 toward the cost of the modeling work by CDM Smith to develop the North Fork Temperature Model.

9.3. If the NISP Mass Balance Model is executed for any Halligan Project analyses pursuant to Paragraph 4, the City will contribute to the Northern Integrated Supply Project Water Activity Enterprise \$70,000 toward the cost of the modeling work by Hydros to develop the NISP Mass Balance Model.

9.4. If the Halligan Mass Balance Model is executed for any NISP analyses pursuant to Paragraph 5, the Northern Integrated Supply Project Water Activity Enterprise will contribute to the City \$30,000 toward the cost of the modeling work by CDM Smith to develop the Halligan Mass Balance Model.

9.5. The City and Northern Water will mutually agree on cost allocation for any future work, if required, on the North Fork Temperature Model, the Main Stem Temperature Model, the Halligan Mass Balance Model, and the NISP Mass Balance Model that is beyond the current scope of work.

10. **RIGHT TO TERMINATE DUE TO UNACCEPTABLE DELAY.** This arrangement assumes that any work undertaken by Hydros as a third-party contractor for the Halligan Project will not interfere with the timely performance of Hydros' existing obligations as a third-party contractor for the NISP analysis. In the event this arrangement presents an unacceptable delay to either Party, either Party may terminate this arrangement prior to the sharing of any of the models, upon written notice to the other Party.

11. **FISCAL CONTINGENCY.** Notwithstanding any other provision of this Agreement to the contrary, the obligations of Fort Collins and Northern Water ("Public Entity" in this paragraph) in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the Public Entity having the sole discretion to

and:

Fort Collins Utilities
Attn: Water Resources Manager
700 Wood Street P.O. Box 580
Fort Collins, Colorado 80522-0580
ddustin@fcgov.com; ajokerst@fcgov.com

To Northern Water:

General Manager
220 Water Avenue
Berthoud, Colorado 80513

17. **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.

18. **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.

19. **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.

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

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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

**NORTHERN COLORADO WATER
CONSERVANCY DISTRICT, a political
subdivision of the State of Colorado, acting by
and through its NORTHERN INTEGRATED
SUPPLY PROJECT WATER ACTIVITY
ENTERPRISE**

By: _____
Eric Wilkinson, General Manger

ATTEST:

By: _____