

RESOLUTION 2019-055
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE
CITY OF FORT COLLINS, THE EAST LARIMER COUNTY WATER DISTRICT, THE
FORT COLLINS-LOVELAND WATER DISTRICT, AND THE NORTH WELD COUNTY
WATER DISTRICT REGARDING A STUDY RELATED TO A TEMPORARY SHUTDOWN
OF THE HORSETOOTH RESERVOIR SOLDIER CANYON OUTLET

WHEREAS, Horsetooth Reservoir is a water storage reservoir operated by the Northern Colorado Water Conservancy District ("Northern Water"), and the Soldier Canyon Outlet is a pipe and related infrastructure that conveys water from Horsetooth Reservoir under and through the Soldier Canyon Dam; and

WHEREAS, water delivered through the Soldier Canyon Outlet is ultimately delivered to, among other locations: the Soldier Canyon Filter Plant, which is owned and operated by the East Larimer County Water District; the Fort Collins-Loveland Water District; and the North Weld County Water District (collectively, "Tri-Districts") through the Soldier Canyon Water Treatment Authority and the City's Water Treatment Facility; and

WHEREAS, Northern Water intends to temporarily shut down the Soldier Canyon Outlet during late 2019 or 2020 for approximately 30 to 45 days for inspection, maintenance, and related purposes, which will result in a temporary water supply disruption for the City and the Tri-Districts; and

WHEREAS, the City and the Tri-Districts desire to investigate ways to address this temporary water supply disruption and would each perform such investigations separately in the absence of any collaboration as contemplated in this Resolution; and

WHEREAS, because of the overlapping of interests among the City and the Tri-Districts, a joint investigation through a study of the various options for the Parties (the "Study") would result in cost savings for each and be to their benefit; and

WHEREAS, the City intends to use an engineering consulting firm the City already has under contract to perform the Study pursuant to a scope of work for the Study that will be developed by jointly the City and the Tri-Districts, with the Tri-Districts to reimburse the City for their portion of the Study which will reduce the City's costs to investigate ways to address the temporary water supply disruption identified above; and

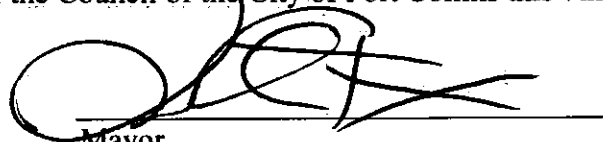
WHEREAS, staff from the City and the Tri-Districts have negotiated an agreement regarding such a Study, as set forth in the draft Agreement attached hereto as Exhibit "A".

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

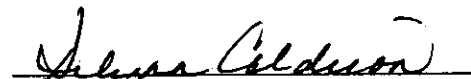
Section 1. That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

Section 2. That the City Manager is hereby authorized to execute an agreement substantially in the form of Exhibit "A", with such 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 7th day of May, A.D. 2019.


Mayor

ATTEST:


City Clerk



**AGREEMENT BETWEEN THE CITY OF FORT COLLINS,
THE EAST LARIMER COUNTY WATER DISTRICT, THE FORT COLLINS-
LOVELAND WATER DISTRICT, AND THE NORTH WELD COUNTY WATER
DISTRICT REGARDING A STUDY RELATED TO A TEMPORARY SHUTDOWN OF
THE HORSETOOTH RESERVOIR SOLDIER CANYON OUTLET**

This Agreement is entered into by and between the following Parties: the City of Fort Collins, Colorado, a home rule municipality ("City"); the East Larimer County Water District, a political subdivision of the State of Colorado ("ELCO"); the Fort Collins-Loveland Water District, a political subdivision of the State of Colorado ("FCLWD"); and the North Weld County Water District, a political subdivision of the State of Colorado ("NWCWD"). ELCO, FCLWD, and NWCWD are collectively referred to as the "Tri-Districts."

RECITALS

- A. Horsetooth Reservoir is a water storage reservoir operated by the Northern Colorado Water Conservancy District ("Northern Water"). The Soldier Canyon Outlet is a pipe and related infrastructure that conveys water from Horsetooth Reservoir under and through the Soldier Canyon Dam.
- B. Water delivered through the Soldier Canyon Outlet is ultimately delivered to, among other locations: the City's Water Treatment Facility and the Soldier Canyon Filter Plant, which is owned and operated by the Tri-Districts through the Soldier Canyon Water Treatment Authority.
- C. Northern Water intends to temporarily shut down the Soldier Canyon Outlet during late 2019 or 2020 for approximately 30 to 45 days for inspection, maintenance, and related purposes. This will result in a temporary water supply disruption for the Parties.
- D. The Parties desire to investigate ways to address this temporary water supply disruption. Because of the overlapping of interests among the Parties, a joint investigation through a study of the various options for the Parties ("Study") would result in cost savings for each of the Parties and be to their benefit. The Parties thus desire to work together on the Study as set forth herein.
- E. The City intends to use HDR, an engineering consulting firm the City already has under contract ("Consultant"), to perform the Study. The Tri-Districts will reimburse the City for their portion of the Study as described below.
- F. As governmental entities, the Parties are authorized into enter into the following intergovernmental agreement pursuant to C.R.S. §29-1-203.

(03/08/19)

AGREEMENT

1. **INCORPORATION OF RECITALS.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.
2. **THE SCOPE.** The Parties will meet with the Consultant to jointly develop the scope of the Study to be completed ("Scope"), which shall include a total cost estimate for the Study and a proportional allocation of costs to each Party based on the amount of the Study attributed to each Party's needs. Before the Consultant begins the Study, each of the Parties shall confirm in writing (such as by email or otherwise) that the Scope is acceptable.
3. **COOPERATION WITH THE STUDY.** The Tri-Districts agree to cooperate in good faith with the City and the Consultant for the Study, including: developing the Scope; reviewing and providing comments on draft analyses and reports generated by the Consultant as part of the Study in its development and completion; and providing information needed to complete the Study to the Consultant, in a timely manner. The City agrees to work in good faith to ensure that the Tri-Districts have a meaningful opportunity to review and provide comments as discussed above, and to address comments.
4. **OWNERSHIP OF THE STUDY.** Each of the Parties will be an owner of the Study and all other deliverables provided by the Consultant on the Study (including, but not limited to, analyses, analytical tools, data, models, and reports and drafts thereof). The City shall provide the Tri-Districts with a copy of the draft and final reports, as well as the data, analytical tools, and all other information generated by the Consultant in association with the Study that are related to their systems within 14 days of the City's receipt of the same, subject to the terms and conditions of this Agreement.
5. **REIMBURSEMENT TO THE CITY.** Each of the Tri-Districts shall pay the City for that district's portion of the Study as set forth in the agreed-upon Scope within 45 days of receiving an invoice from the City for the same. Each of the Tri-Districts shall submit payment to Fort Collins Utilities (attn: Lance Smith and Phil Ladd), 700 Wood Street (P.O. Box 580) Fort Collins, Colorado 80522-0580.
6. **FISCAL CONTINGENCY.** Notwithstanding any other provisions of this Agreement to the contrary, the obligations of the Parties in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the Party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement. The failure of a Party to appropriate such funds shall be grounds for termination of this Agreement as to such Party upon written notice pursuant to Paragraph 11.
7. **REMEDIES.** If any Party fails to comply with the provisions of this Agreement, the other Parties, after providing prompt written notification to the noncomplying Party, and upon the failure of the noncomplying Party to achieve compliance within 35 days following receipt of such notice, may seek all such remedies available under Colorado law.

(03/08/19)

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. 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. Nothing in this Agreement shall be construed as any waiver of governmental immunity of the Parties who are governments or any other governmental provisions of State law. Specifically, by entering into this Agreement, neither Party waives the monetary limitations on liability or any other rights, immunities, or protections provided by the Colorado Government Immunity Act, C.R.S. § 24-10-101, *et seq.*, or any successor or similar statutes of the State of Colorado.

11. **NOTICES.** All notices or other communications hereunder shall be sufficiently given and shall be deemed given (i) when personally delivered; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at the address specified below; (iii) on the date and at the time shown on the electronic mail if sent by electronic transmission at the e-mail addresses set forth below and receipt of such electronic mail is acknowledged by the intended recipient thereof; or (iv) after the lapse of five business days following mailing by certified mail-return receipt requested, postage prepaid, addressed as follows:

To Fort Collins:

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
E-mail: epotyondy@fcgov.com

and: Fort Collins Utilities
Attn: Director of Plant Operations
4316 LaPorte Ave.
Fort Collins, Colorado 80521
E-mail: mkempton@fcgov.com

To ELCO: East Larimer County Water District
Attn: District Manager
232 S. Link Lane (Zip Code: 80524)
P.O. Box 2044
Fort Collins, Colorado 80522
Telephone: (970) 493-2044
Email: mikes@elcowater.org

With copy to: Hasler, Fonfara and Goddard LLP
Attn: Joseph H. Fonfara
125 S. Howes Street, 6th Floor (Zip Code: 80521)
P.O. Box 2267
Fort Collins, CO 80522
Telephone: (970) 493-5070
E-mail: JoeF@HFGLawfirm.com

To FCLWD: Fort Collins-Loveland Water District
Attn: District Manager
5150 Snead Drive
Fort Collins, Colorado 80525
Telephone: (970) 226-3104
E-mail: chrism@fclwd.com

With copy to: Collins Cockrel & Cole, P.C.
Attn: Robert G. Cole
390 Union Boulevard, Ste. 400
Denver, Colorado 80228-1556
Telephone: (303) 218-7197
E-mail: rcole@cccfirm.com

To NWCWD: North Weld County Water District
Attn: District Manager
32825 CR 39
P.O. Box 56
Lucerne, Colorado 80646
Telephone: (970) 356-3020
E-mail: water@nwcwd.org

(03/08/19)

With copy to:

Hasler, Fonfara and Goddard LLP
Attn: Joseph H. Fonfara
125 S. Howes Street, 6th Floor (Zip Code: 80521)
P.O. Box 2267
Fort Collins, CO 80522
Telephone: (970) 493-5070
E-mail: JoeF@HFGLawfirm.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. **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.

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

16. **SEVERABILITY.** If any provision of this Agreement shall prove to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

[Remainder of Page Intentionally Blank]

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

By: _____
Darin A. Atteberry, City Manager

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO LEGAL FORM:

By: _____
City Attorney's Office

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

By: _____
Mike Scheid, General Manager

Date: _____

FORT COLLINS-LOVELAND WATER DISTRICT, a political subdivision of the State of Colorado

By: _____
Chris Matkins, General Manager

Date: _____

NORTH WELD COUNTY WATER DISTRICT, a political subdivision of the State of Colorado

By: _____
Eric Reckentine, General Manager

Date: _____

(03/08/19)