

RESOLUTION 2019-096
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, THE NORTH WELD COUNTY WATER
DISTRICT, AND THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT
ACTING BY AND THROUGH THE PLEASANT VALLEY PIPELINE WATER ACTIVITY
ENTERPRISE REGARDING A SUPPLEMENTAL MEANS TO DELIVER HORSETOOTH
RESERVOIR WATER TO THE FORT COLLINS WATER TREATMENT FACILITY AND
SOLIDER CANYON WATER TREATMENT PLANT (PLEASANT VALLEY PIPELINE
MODIFICATIONS AND USE)

WHEREAS, Horsetooth Reservoir is a water storage reservoir operated by the Northern Colorado Water Conservancy District (“Northern Water”), which is created by the Soldier Canyon Dam and other infrastructure; and

WHEREAS, the Soldier Canyon Outlet is a pipe and related infrastructure that conveys water from Horsetooth Reservoir under and through Soldier Canyon Dam; and

WHEREAS, 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 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 (together, “Horsetooth Water Treatment Plants”); and

WHEREAS, Northern Water intends to temporarily shut down the Soldier Canyon Outlet during 2020 for approximately 45 to 60 days for inspection, maintenance, and related purposes, which will result in a water supply disruption for the City and the Tri-Districts and a potential need to convey water in Horsetooth Reservoir (“Horsetooth Water”) to the Horsetooth Water Treatment Plants by a means other than the Soldier Canyon Outlet; and

WHEREAS, the City and the Tri-Districts are likewise interested in developing supplemental infrastructure to deliver their Horsetooth Water to the Horsetooth Water Treatment Plants in order to build redundancy and resiliency into their water treatment and delivery systems; and

WHEREAS, pursuant to Resolution 2019-055 and the *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*, dated May 24, 2019 (“Study IGA”), Fort Collins and the Tri-Districts investigated ways to address this water supply disruption and alternative ways to deliver their Horsetooth Water to the Horsetooth Water Treatment Plants; and

WHEREAS, following the completion of the study under the Study IGA, the City and the Tri-Districts, in consultation with other stakeholders including Northern Water and the City of Greeley ("Greeley"), have concluded that a project involving the use of existing and some new infrastructure ("Project") would best address these objectives; and

WHEREAS, this Project involves Horsetooth Water being delivered out of Horsetooth Reservoir and into the Charles Hansen Supply Canal, then through a headgate on that canal operated by Greeley at its Bellvue Water Treatment Plant, then through Greeley's pipes and infrastructure and certain new pipes, then through certain wet wells and pumps, then through new pipes and into the Pleasant Valley Pipeline to the Horsetooth Water Treatment Plants; and

WHEREAS, staff from the City, the Tri-Districts, and Northern Water have negotiated an agreement regarding certain aspects of this Project, as set forth in the form of Agreement attached hereto as Exhibit "A," which primarily concerns the ability of the City and the Tri-Districts to use the Pleasant Valley Pipeline.

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 1st day of October, A.D. 2019.


Mayor

ATTEST:


City Clerk



AGREEMENT REGARDING A PROJECT FOR A SUPPLEMENTAL MEANS TO DELIVER HORSETOOTH RESERVOIR WATER TO THE FORT COLLINS WATER TREATMENT FACILITY AND SOLIDER CANYON WATER TREATMENT PLANT

(City of Fort Collins, the Tri-Districts, and the Northern Colorado Water Conservancy District acting by and through the Pleasant Valley Pipeline Water Activity Enterprise)

(Pleasant Valley Pipeline Modifications and Use)

This Agreement is entered into by and between the following Parties:

- the City of Fort Collins, Colorado, a home rule municipality (“Fort Collins”);
- 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”);
- the North Weld County Water District, a political subdivision of the State of Colorado (“NWCWD”); and
- the Northern Colorado Water Conservancy District (“Northern Water”), a quasi-municipal entity and political subdivision of the State of Colorado, acting by and through the Pleasant Valley Pipeline Water Activity Enterprise (“PVP Enterprise”).

ELCO, FCLWD, and NWCWD are collectively referred to as the “Tri-Districts.”

RECITALS

A. Horsetooth Reservoir is a water storage reservoir that Northern Water operates, which is created by the Soldier Canyon Dam and other infrastructure. The Soldier Canyon Outlet is a pipe and related infrastructure that conveys water from Horsetooth Reservoir under and through Soldier Canyon Dam.

B. Water delivered through the Soldier Canyon Outlet is ultimately delivered to, among other locations: Fort Collins’ 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 (together, “Horsetooth Water Treatment Plants”).

C. Northern Water intends to temporarily shut down the Soldier Canyon Outlet during 2020 for approximately 45 to 60 days for inspection, maintenance, and related purposes. This will result in a water supply disruption for Fort Collins and the Tri-Districts and a potential need to convey water in Horsetooth Reservoir (“Horsetooth Water”) to the Horsetooth Water Treatment Plants by a means other than the Soldier Canyon Outlet.

D. Fort Collins and the Tri-Districts are likewise interested by developing supplemental infrastructure to deliver their Horsetooth Water to the Horsetooth Water Treatment Plants in order to build redundancy and resiliency into their water treatment and delivery systems.

Nothing in this Agreement is intended to affect in any way Fort Collins' and the Tri-Districts' rights to the Soldier Canyon Outlet.

E. Pursuant to the *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*, dated May 24, 2019 ("Study IGA"), Fort Collins and the Tri-Districts investigated ways to address this water supply disruption and alternative ways to deliver their Horsetooth Water to the Horsetooth Water Treatment Plants.

F. Following the completion of the study under the Study IGA, Fort Collins and the Tri-Districts, in consultation with other stakeholders including Northern Water and the City of Greeley ("Greeley"), have concluded that a project involving the use of existing and some new infrastructure ("Project") would best address these objectives. This Project involves Horsetooth Water being delivered out of Horsetooth Reservoir and into the Charles Hansen Supply Canal, then through a headgate on that canal operated by Greeley at its Bellvue Water Treatment Plant, then through Greeley's pipes and infrastructure and certain new pipes, then through certain wet wells and pumps, then through new pipes and into the Pleasant Valley Pipeline to the Horsetooth Water Treatment Plants. Exhibit A contains diagrams illustrating the key physical attributes of the Project.

G. Northern Water, acting by and through the PVP Enterprise, constructed and operates the Pleasant Valley Pipeline ("PV Pipeline"), which delivers untreated water from the Munroe Canal to the Fort Collins and the Tri-Districts.

H. Fort Collins has an Allotment Contract with the PVP Enterprise for capacity in the PV Pipeline, with the original contract dated February 28, 2003, an amendment dated May 30, 2006, and a supplement dated January 20, 2014 (collectively, "Fort Collins Allotment Contract").

I. The Soldier Canyon Water Treatment Authority as successor in interest to the Soldier Canyon Filter Plant has an Allotment Contract with the PVP Enterprise for capacity in the PV Pipeline, with the original contract dated February 28, 2003, an amendment dated October 2, 2012 and supplement dated February 10, 2014 (collectively, "Tri-Districts Allotment Contract").

J. Pursuant to the Fort Collins Allotment Contract and the Tri-Districts Allotment Contract, the PV Pipeline shall only be used for the transmission of certain water, including "District water or Subdistrict water from Horsetooth Reservoir" and "any other water deliverable from Horsetooth Reservoir with the special approval of the Board and the approval of the Secretary of the Interior of the United States of America or his designee (if Secretarial approval is required by law or contract)."

K. This Agreement concerns the ability of Fort Collins and the Tri-Districts to use the PV Pipeline in the Project in the short and long-term.

L. The Parties acknowledge that implementing the Project will require various additional agreements.

M. As governmental entities, the Parties are authorized into enter into the following intergovernmental agreement pursuant to C.R.S. §29-1-203.

AGREEMENT

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

2. **USE OF THE PV PIPELINE TO CONVEY HORSETOOTH WATER.** The Parties confirm that, under the Fort Collins Allotment Contract and the Tri-Districts Allotment Contract, Fort Collins and the Tri-Districts are entitled to deliver their Horsetooth Water through the PV Pipeline.

3. **MODIFICATION OF THE PV PIPELINE.** The PVP Enterprise hereby authorizes Fort Collins and the Tri-Districts to modify the PV Pipeline for the Project pursuant to the terms and conditions of this Agreement. With respect to the PV Pipeline, the Project entails cutting the PV Pipeline to add a “T” and a valve such that Horsetooth Water can be delivered from the Charles Hanson Supply Canal and into the PV Pipeline (“PV Pipeline Work”), as shown on Exhibit B.

3.1. **Cooperation.** Fort Collins, the Tri-Districts, and the PVP Enterprise agree to cooperate in good faith to coordinate the PV Pipeline Work.

3.2. **Plans.** The PV Pipeline Work shall be completed pursuant to final construction plans. Any other work, materials, equipment or machinery not specifically described or expressly covered herein, but which is required or necessary to perform or complete the PV Pipeline Work, which is contemplated, shall be deemed to be, and is, covered by this Agreement. The Parties agree to confer and coordinate during the development of the construction plans; it shall ultimately be the responsibility of Fort Collins and the Tri-Districts to develop and pay for all costs and expenses related to the construction plans. The construction plans shall not be final until agreed to by Fort Collins, the Tri-Districts, and the PVP Enterprise.

3.3. **Permits.** Fort Collins and the Tri-Districts shall obtain all necessary consents, authorizations, and permits, and shall perform the PV Pipeline Work in a good and workmanlike manner, in accordance with sound and acceptable industry or professional practices and standards, and in accordance with all applicable laws, rules, regulations, codes, standards, plans, and specifications for the replacement of the work.

3.4. **Leakage.** Should the PV Pipeline Work result in water seepage or leakage from the PV Pipeline in the two years following the completion of the PV Pipeline Work at a rate greater than what historically occurred before the PV Pipeline Work was performed, Fort Collins and the Tri-Districts shall repair the PV Pipeline as soon as possible to stop the seepage or leakage at a rate greater than what historically occurred before the PV Pipeline Work was performed. Alternatively, by mutual agreement, the PVP Enterprise

may perform such repair and Fort Collins and the Tri-Districts shall reimburse the PVP Enterprise for all costs and expenses incurred in repairing the PV Pipeline.

3.5. **Construction Schedule.** Fort Collins and the Tri-Districts shall provide a written construction schedule for review and approval by the PVP Enterprise at least 28 days prior to the planned start of construction. Fort Collins and the Tri-Districts agree that the PV Pipeline Work shall proceed expeditiously with reasonable diligence from the commencement of construction to its completion.

3.6. **Inspections.** The PVP Enterprise is permitted to inspect the PV Pipeline Work during construction. Upon completion of the PV Pipeline Work, Fort Collins and the Tri-Districts shall promptly notify the PVP Enterprise, and the Parties shall jointly inspect the PV Pipeline where the work occurred. If there are any deficiencies in the PV Pipeline Work, or any variation from the final construction plans, Fort Collins and the Tri-Districts shall forthwith remedy the same. The PVP Enterprise's right to inspect the PV Pipeline Work in no way relieves Fort Collins and the Tri-Districts of their liability for improper construction or design. The PVP Enterprise's inspection is solely for the benefit of the PVP Enterprise and creates no obligation to Fort Collins and the Tri-Districts.

3.7. **Ownership.** The PVP Enterprise shall retain ownership of the PV Pipeline and the new "T" and valve installed in it under the PV Pipeline Work.

3.8. **Temporary License.** The PVP Enterprise hereby grants to Fort Collins and the Tri-Districts and their contractors and consultants associated with the Project a temporary license on, over, and across the PV Pipeline to access the structure for the purpose of the PV Pipeline Work.

4. **NO FURTHER AMENDMENTS.** Except to the extent expressly stated in this Agreement, nothing in this Agreement shall affect the Allotment Contracts of Fort Collins and the Tri-Districts with the PVP Enterprise.

5. **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 10.

6. **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.

7. **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

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

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 Northern and PVP Enterprise: _____

With a copy to:

11. **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.

12. **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.

13. **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.

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

15. **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

Name: _____

Title: _____

APPROVED AS TO LEGAL FORM:

By: _____
Eric R. Potyondy, Assistant City Attorney II

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: _____

**NORTHERN COLORADO WATER CONSERVANCY DISTRICT, a quasi-municipal
entity and political subdivision of the State of Colorado, ACTING BY AND THROUGH
THE PLEASANT VALLEY PIPELINE WATER ACTIVITY ENTERPRISE**

By: _____
Brad Wind, General Manager

Date: _____