

RESOLUTION 2019-097  
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 CITY OF GREELEY REGARDING A SUPPLEMENTAL MEANS TO  
DELIVER HORSETOOTH RESERVOIR WATER TO THE FORT COLLINS WATER  
TREATMENT FACILITY AND SOLIDER CANYON WATER TREATMENT PLANT  
(GREELEY INFRASTRUCTURE 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 Greeley 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 certain pipes and other infrastructure owned by Greeley at the Bellvue Water Treatment Plant.

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 City of Greeley)**

**(Greeley Infrastructure 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 City of Greeley, a home rule municipality (“Greeley”).

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”), 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. This Agreement concerns the ability of Fort Collins and the Tri-Districts to use certain pipes and other infrastructure owned by Greeley at the Bellvue Water Treatment Plant (“Greeley Infrastructure”) in the Project in the short and long-term.

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

I. The Parties acknowledge that implementing the Project may require various additional agreements, including those with Northern Water and potentially others, especially as they pertain to existing infrastructure and the property of others.

J. 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. **MODIFICATION OF A GREELEY PIPE.** Greeley hereby authorizes Fort Collins and the Tri-Districts to modify one of its pipes for the Project (“Greeley Pipe”) pursuant to the terms and conditions of this Agreement. With respect to the Greeley Pipe, the Project entails cutting the Greeley Pipe to add a “T” and a valve such that Horsetooth Water can be delivered from the Charles Hanson Supply Canal, into the Greeley Infrastructure, and out through the new “T” and valve, and ultimately into the Pleasant Valley Pipeline (“Project Greeley Pipeline Work”), as shown on Exhibit B.

2.1. **Cooperation.** Fort Collins, the Tri-Districts, and Greeley agree to cooperate in good faith to coordinate the Greeley Pipe Work.

2.2. **Plans.** The Greeley Pipe 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 Greeley Pipe 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 Greeley.

2.3. **Permits.** Fort Collins and the Tri-Districts shall obtain all necessary consents, authorizations, and permits, and shall perform the Greeley Pipe 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 work.

2.4. **Leakage.** Should the Greeley Pipe Work result in water seepage or leakage from the Greeley Pipe in the two years following the completion of the Greeley Pipe Work at a rate greater than what historically occurred before the Greeley Pipe Work was performed, Fort Collins and the Tri-Districts shall repair the Greeley Pipe as soon as possible to stop the seepage or leakage at a rate greater than what historically occurred before the Greeley Pipe Work was performed. Alternatively, by mutual agreement, Greeley may perform such repair and Fort Collins and the Tri-Districts shall reimburse Greeley for all costs and expenses incurred in repairing the Greeley Pipe.

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

2.6. **Inspections.** Greeley is permitted to inspect the Greeley Pipe Work during construction. Upon completion of the Greeley Pipe 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 Greeley Pipe Work, or any variation from the final construction plans, Fort Collins and the Tri-Districts shall forthwith remedy the same. Greeley's right to inspect the Greeley Pipe Work in no way relieves Fort Collins and the Tri-Districts of their liability for improper construction or design. Greeley's inspection is solely for the benefit of Greeley and creates no obligation to Fort Collins and the Tri-Districts.

2.7. **Ownership.** Greeley shall retain ownership of the Greeley Pipe and the new "T" and value installed in it under the Greeley Pipe Work.

2.8. **Temporary License.** Greeley 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 Greeley Pipe to access the structure for the purpose of the Greeley Pipe Work.

3. **LICENSE TO USE GREELEY INFRASTRUCTURE.** Greeley hereby grants to Fort Collins and the Tri-Districts a license to use the Greeley Infrastructure to convey Horsetooth Water through the Greeley Infrastructure, as modified under this Agreement, to the Horsetooth Water Treatment Plants.

4. **GREELEY'S DELAYED USE OF THE PLEASANT VALLEY PIPELINE IN 2020 OR 2021.** Greeley generally uses the Soldier Canyon Outlet and the Pleasant Valley Pipeline to deliver its Horsetooth Water to its Bellvue Water Treatment Plant from November 1<sup>st</sup> through March 31<sup>st</sup>. However, Northern's temporary shutdown the Soldier Canyon Outlet will run into November 2020 or November 2021, thus precluding Greeley's use of the Soldier Canyon Outlet and the Pleasant Valley Pipeline during that time. Greeley agrees that Fort Collins and the Tri-Districts may use the Pleasant Valley Pipeline to convey their Horsetooth Water. Except to the extent expressly stated in this Agreement, nothing herein shall affect the *Agreement for Use of Capacity in Soldier Canyon Dam Outlet Works*, dated December 27, 2000, between Fort Collins and Greeley.

5. **COMPENSATION.** \_\_\_\_\_.

6. **OPERATIONS.** The Parties desire to generally minimize the use of the New Infrastructure and the associated costs. The Parties shall confer as frequently as necessary before and during that period regarding the timing and amount of use of the New Infrastructure. If that the New Infrastructure needs to be used, the operations and maintenance of the New Infrastructure will be performed jointly by the City, the Tri-Districts, and Greeley through their respective staff and representatives.

7. **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 12.

8. **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.

9. **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.

10. **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.

11. **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.

12. **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: <a href="mailto:epotyondy@fcgov.com">epotyondy@fcgov.com</a>
and:	Fort Collins Utilities Attn: Director of Plant Operations 4316 LaPorte Ave. Fort Collins, Colorado 80521 E-mail: <a href="mailto:mkempton@fcgov.com">mkempton@fcgov.com</a>
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, 6<sup>th</sup> 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, 6<sup>th</sup> Floor (Zip Code: 80521)  
P.O. Box 2267  
Fort Collins, CO 80522  
Telephone: (970) 493-5070  
E-mail: JoeF@HFGLawfirm.com

To Greeley:

Greeley Water and Sewer Department  
Attn: Deputy Director of Water Resources



1001 11th Avenue, Second Floor  
Greeley, Colorado 80631

With copy to:

Greeley City Attorney's Office  
Attn: Environmental and Water Resources  
1100 10th Street, Suite 401  
Greeley, Colorado 80631  
daniel.biwer@greeleygov.com

13. **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.

14. **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.

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 all other Parties.

17. **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: \_\_\_\_\_

**CITY OF GREELEY, COLORADO, a home rule municipality**

By: \_\_\_\_\_  
Roy Otto, City Manager

Date: \_\_\_\_\_

AS TO LEGAL FORM:

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