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MEMORANDUM

DATE: September 30, 2013

TO: Mayor Weitkunat and City Councilmembers
(as City Council and as Water Enterprise Board)

THRU: Darin Atteberry, City Manager 
Brian Janonis, Utilities Executive Director 

FROM: Jon Haukaas, Water Engineering & Field Services Manager 
Lance Smith, Utilities Strategic Financial Planner 
Kevin Gertig, Water Resources and Treatment Manager 

RE: **Agenda Item #13 and Water Utility Enterprise Board Agenda Item #4**
– Items Relating to the Fort Collins-Loveland Water District Intergovernmental Agreements

The Leadership Planning Team requested a summary of the Finance Committee discussion on these items. The following is an extract from the “Council Audit & Finance Committee Minutes”:

Jon Haukaas and Lance Smith presented potential water sharing and capacity sales agreements with Fort Collins Loveland Water District. Jon noted that, for the past year, Utilities Staff has been negotiating with FCLWD to restructure the existing water sharing agreement and amend it to include the sale of excess water treatment capacity. With the current agreement, FCLWD is able to take excess water from Fort Collins Utilities during peak times then replenish the water in the shoulder seasons. Staff is suggesting revising the agreement to insure that FCLWD pays for the water they take on a month by month basis, meaning they will have to pay for the excess water they take during the peak season. The suggested revisions to this agreement will benefit the customers of Fort Collins Utilities (FCU) through incremental revenues and the customers of FCLWD by increasing the amount of water that can be delivered through the agreement to them. The Water Board has reviewed the proposed amendments and recommends approval.

Darin Atteberry noted that the City has partnered with FCLWD because they have been a good steward of their resources. The revisions to this agreement are for the benefit of both parties.

In addition, this memorandum provides information on two minor changes to the proposed Intergovernmental Agreements between the City of Fort Collins Utilities and the Fort Collins-Loveland Water District (FCLWD).

The first change is to City Council Agenda Item #13 A – Ordinance No. 135, 2013 and Water Utility Enterprise Board Agenda Item #4 A - Resolution No. 008 relating to the **Delivery of Potable Water**. The changes include:

1. Changing the termination notice requirement in Section 10 of the Agreement from five years to ten years. These Agreements reflect a significant investment in infrastructure for both parties. The longer timeframe allows either party to fund and construct any infrastructure changes necessary that result from the termination of this Agreement.

The second change is to City Council Agenda Item #13 B – Ordinance No. 136, 2013 and Water Utility Enterprise Board Agenda Item #4 B – Resolution No. 009 relating to Water Treatment Services. The changes include:

2. Changing the effective date from November 1, 2013 to January 1, 2014. This is necessary for the appropriation of adequate funds in the FCLWD budget to pay the Plant Investment Fee due with this agreement.
3. Changing the termination notice requirement in Section 10 of the Agreement from five years to ten years. These Agreements reflect a significant investment in infrastructure for both parties. The longer timeframe allows either party to fund and construct any infrastructure changes necessary that result from the termination of this Agreement.

Attachments:

1. FCLWD IGA for Water Treatment-revisions Pages 1, 3, 5, 7
2. FCLWD IGA for Water Delivery-revision Page 16

**INTERGOVERNMENTAL AGREEMENT FOR
WATER TREATMENT SERVICE CAPACITY**

**BETWEEN THE CITY OF FORT COLLINS, COLORADO
AND THE FORT COLLINS-LOVELAND WATER DISTRICT**

This AGREEMENT is **entered into made** this _____ day of _____, 2013, by and between the CITY OF FORT COLLINS, Colorado, a home rule municipality (the "City"), the CITY OF FORT COLLINS WATER UTILITY ENTERPRISE (the "City Enterprise") (together referred to hereinafter as "Fort Collins") the FORT COLLINS-LOVELAND WATER DISTRICT, a political subdivision of the State of Colorado, (hereinafter referred to as "the District"), the FORT COLLINS-LOVELAND WATER DISTRICT ENTERPRISE, an enterprise of the District (hereinafter referred to as "the District Enterprise"). Collectively Fort Collins and the District may be referred to herein as "Parties" or each a "Party."

WHEREAS, pursuant to Article XIV, Section 18 of the Constitution of the State of Colorado, Article II, Section 16 of the Charter of the City of Fort Collins, and Section 29-1-203(1) and Section 32-1-1001 of the Colorado Revised Statutes, the Parties may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating or contracting units of government; and

WHEREAS, the City is a home rule municipality organized and existing under Colorado law that owns a water system through which it treats, transmits and distributes potable water (the "City Water System"); and

WHEREAS, as part of the City Water System, Fort Collins operates a water treatment plant located at 4316 LaPorte Avenue, Fort Collins, Colorado (the "City Treatment Plant"); and

WHEREAS, the District is a special district organized and existing under Colorado law that also operates a water system (the "District Water System") to distribute potable water through a variety of water transmission facilities located within Larimer County, Colorado ("District Transmission Facilities"); and

WHEREAS, the City Enterprise and the District Enterprise were created by the City and the District, respectively, in order to comply with the provisions of Section 20, Article X of the Colorado Constitution and Article 45.1 of Title 37 of the Colorado Revised Statutes in order to permit the City and the District, acting through their respective enterprise, to issue revenue bonds and enter into multi-year fiscal obligations in connection with their operation of a water utility; and

WHEREAS, the City Enterprise and the District Enterprise are made parties to this Agreement solely for the purpose of entering into any multi-year fiscal obligation required under this Agreement; and

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1. City Code. All terms and conditions of water treatment service between the District and Fort Collins will be as described in this Agreement and the City of Fort Collins City Code.

2. Term. This Agreement shall be effective as of **January 1, 2014 (the "Effective Date")** ~~the date of signing by all parties~~, and shall continue in effect until terminated in accordance with paragraph 10, hereinafter, by court order or by operation of law.

3. Services Provided. Fort Collins agrees to sell and provide water treatment service to delivery points from the City Water System to the District Transmission Facilities that are described below in paragraph 4. The Parties agree that the District will be solely responsible for any expenses or costs associated with the connections. The provision of such water treatment service by Fort Collins to the District is expressly contingent upon payment by the District for service, transfer of raw water as more fully described in paragraph 8 below, and the District's compliance with regulatory requirements applicable to the delivery of potable water. Further, any obligation by Fort Collins to provide water treatment service to the District is subject to reductions, restrictions, limitations and surcharges, if any, that the City may establish in the future to manage its water supply or water system capacity that may be imposed on any other customer of the City.

4. Points of Delivery. For the purposes of water deliveries under this Agreement, as well as water sales under the Water Sales Agreement, all water deliveries from the City to the District shall be at one of the following delivery points, as shown on Exhibit A, attached hereto and incorporated herein by this reference:

A. The cross-tie connection between the City's Treatment Plant and the Soldier Canyon Treatment Plant located at the City's Treatment Plant (the "Cross-Tie");

B. The connection between the District's Transmission Facilities and the City's Transmission Facilities located in Fort Collins, Colorado, together with associated pumping facilities, north of the intersection of Elizabeth St and Overland Trail (the "Overland Pump Station").

C. The connection between the City's Transmission Facilities and the District's Transmission Facilities located in Fort Collins, Colorado, at the southeast corner of the intersection of Harmony Road and Taft Hill Road (the "Southwest Delivery Point;" also referred to as the "Taft Hill Pumping Station");

D. The connection between the City's Transmission Facilities and the District's Transmission Facilities located in Fort Collins, Colorado, near the southwest corner of the intersection of Willow Springs Way/Kechter Road and Timberline Road (the "Timberline Meter Station");

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Fort Collins as more fully described in paragraph 8 below. The fees and charges for water treatment service set forth herein shall be as established by Fort Collins from time to time as more fully described below. The initial rates and charges are outlined below. Fort Collins approves its rate modifications in October/November of each year with the effective date the immediately following January 1. Fort Collins shall include the District in all rate adjustment communications provided to other customers and Key Accounts of the Utility.

A. The approach used to determine the level for the District's permanent allocation of water treatment service is based on Water Plant Investment Fees paid by the District. The District shall pay Water Plant Investment Fees at a rate consistent with the fee amount determined to be appropriate by Fort Collins in its annual or semi-annual review of such fees conducted most recent to the time at issue. The Water Plant Investment Fee for the District at the time of execution of this Agreement is \$2.52 per gallon of peak day use. Fort Collins' obligation to provide water treatment services pursuant to this paragraph 7A is contingent upon payment of Water Plant Investment Fees. Payment of such fees will not allow the District to increase the maximum service limit without amendment of this Agreement as described in paragraph 6.

B. The Water Plant Investment Fee shall be Twelve million Six hundred thousand dollars (\$12,600,000). The District will pay the City Two million Five hundred Twenty thousand dollars (\$2,520,000) prior to any deliveries under this Agreement, but in no event later than January 15, 2014 upon approval of this agreement. The remainder of the Water Plant Investment Fee, Ten million Eight thousand dollars (\$10,080,000) shall be amortized over a period of twenty (20) years at an annual percentage rate of five percent (5%). Payments shall be made on a monthly basis in the amount of Sixty-six thousand Five hundred and twenty-four dollars (\$66,524).

C. The negotiated rate for all deliveries during calendar year 2013, after the effective date of this Agreement, the District will pay Fort Collins a for water treatment and transmission service at rate of \$2.1093 per one thousand gallons. Fort Collins may adjust the water treatment service rate for years after 2013 in accordance with the results of any cost of service study Fort Collins may conduct or in accord with overall rate changes made by the City Council of Fort Collins to the entire customer base of the City. The parties acknowledge and agree that the water treatment and transmission charges established pursuant to this subparagraph incorporate surcharges, payments in lieu of taxes, and other similar additional charges at the rates established generally for City Utility customers, which will not be separately charged to the District.

D. Fort Collins may apply any other direct and indirect charges for incidental services requested by the District and normally applied for water treatment service as provided in Section 26-712 of the City Code.

B. The parties acknowledge and agree that metering of flows at each of the delivery points is critical for the effective operation of this Agreement. In the event that a District-owned meter is not properly functioning to accurately measure flows, the parties agree to first attempt to cooperatively determine the flow estimation. If agreement on estimation cannot be reached, the City reserves the right to close or require the District to close the affected connection between the District's System and the City's System, until such time as a meter that will accurately measure the flows at that delivery point is installed and operable.

C. In order to enhance the efficiency and reliability of the metering of deliveries, the Parties agree that the City may, at its option, install new meters at the delivery points that will measure real-time usage. If installed by the City, upon installation said meters will be operated and maintained by the City. The flow information from these meters will be used for determining the volumes of water delivered to the District and in the water accounting, instead of the water meters currently installed and owned by the District, which will no longer be in use under the Existing Agreements. In the event that a dispute regarding volumes delivered for a monthly or annual billing as to an amount that exceeds 2% of the metered volumes, the City agrees to calibrate the meter at that time (if not in the usual maintenance schedule). The City will provide volume information in real time to the District in a format compatible with the District's data collection system. In such event the District will no longer be obligated to operate and maintain its own meters in such locations for the purposes of this Agreement.

10. Termination/Transfer. This Agreement shall continue in effect for so long as Fort Collins continues to provide treated water unless and until terminated: 1) by operation of law; or 2) by the District upon the provision of written notice of termination to Fort Collins no less than ten (10) five (5) years in advance of the date of termination; 3) by mutual agreement of the parties or 4) in the event Fort Collins discontinues operation of its treated water system. The parties acknowledge and agree that the obligations of Fort Collins may be assigned or transferred by Fort Collins to any successor-in-interest capable of providing water service consistent with the terms of the Agreement and all applicable laws. In no event shall the District be entitled to a refund of fees or charges paid to Fort Collins hereunder. Capacity of Treated Water purchased by the District at the time of termination shall be adjusted to reflect the sum of amortized payment received by the City.

11. District Information. The District agree to cooperate with Fort Collins to provide such information as Fort Collins may require in order to reconcile the records of Fort Collins and the District, and request information in order to confirm the nature, extent and circumstances of water treatment service utilized or accessed by the District or connected to the Fort Collins water system. The parties acknowledge that all or portions of the information provided hereunder may constitute confidential information pursuant to the Colorado Open Records Act or other applicable law, and agree that Fort Collins shall, as a condition of receipt of such information, protect the same from public disclosure to the extent required by law.

non-breaching party.

11. Termination/Transfer. This Agreement shall continue in effect for so long as Fort Collins continues to provide treated water unless and until terminated: 1) by operation of law; or 2) by either party upon the provision of written notice of termination no less than ten (10) five (5) years in advance of the date of termination; 3) by mutual agreement of the parties or 4) in the event Fort Collins discontinues operation of its treated water system. The parties acknowledge and agree that the obligations of Fort Collins may be assigned or transferred by Fort Collins to any successor-in-interest capable of providing water service consistent with the terms of the Agreement and all applicable laws.

12. Force Majeure. Notwithstanding anything contained herein to the contrary, it is agreed that in the event and to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, war, illegality, act of God, or any other cause beyond the control of any party hereto, or strikes or labor troubles (whether or not within the power of the party affected to settle the same) prevents or delays performance by any party to this Agreement, such party shall be relieved of the consequences thereof without liability, so long as and to the extent that performance is prevented by such cause; provided, however, that such party shall exercise due diligence in its efforts to resume performance within a reasonable period of time.

13. Cooperation of the Parties. The City and the District acknowledge that it is difficult to anticipate all of the activities, situations and other factors which may be relevant to them in satisfying their respective obligations under this Agreement. Therefore, the parties acknowledge that it will be necessary for them to cooperate with each other relative to any such unforeseen situations. In furtherance thereof, the City and the District agree that at the end of every Water Year, their representatives shall meet to discuss, in good faith, any modifications that any party

