

RESOLUTION 2019-095  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING THE CITY MANAGER TO EXECUTE AN  
AGREEMENT REGARDING USE OF THE MUNROE CANAL

WHEREAS, the Munroe Canal (also known as the North Poudre Supply Canal) diverts water from the Cache la Poudre River upstream of the canyon mouth and delivers water to, among other locations, the Pleasant Valley Pipeline for delivery to the City's Water Treatment Facility; and

WHEREAS, various other entities also have interests in the Munroe Canal, including: the Northern Colorado Water Conservancy District ("Northern Water"), which owns the Munroe Canal; the North Poudre Irrigation Company ("North Poudre"), which operates and maintains the Munroe Canal pursuant to agreements with Northern Water and uses it to deliver water to shareholders; and the East Larimer County Water District, the Fort Collins-Loveland Water District, and the North Weld County Water District (collectively, "Tri-Districts"), which, like the City, use the Munroe Canal and the Pleasant Valley Pipeline to deliver water to their Soldier Canyon Filter Plant; and

WHEREAS, the City, North Poudre, and the Tri-Districts (collectively, "Parties") each run water through the Munroe Canal but have not had an agreement to clarify various operational aspects the Parties' use of the Munroe Canal; and

WHEREAS, clarifying operations of the Munroe Canal will benefit ratepayers of the City's water utility by, among other reasons, improving the reliability of the Munroe Canal, and reducing the risk of future disagreements and potential water supply disruptions and additional costs; and

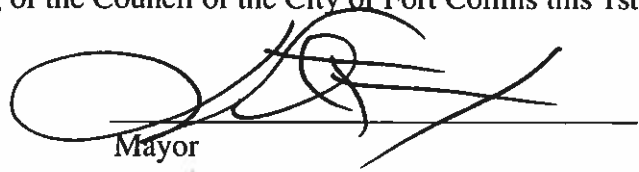
WHEREAS, staff from the Parties have negotiated an agreement regarding operations of the Munroe Canal, as set for the in draft Agreement attached hereto as Exhibit "A."

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

  
Mayor

ATTEST:

  
City Clerk



**AGREEMENT BETWEEN THE NORTH POUDBRE IRRIGATION COMPANY AND THE CITY OF FORT COLLINS, THE FORT COLLINS – LOVELAND WATER DISTRICT, THE EAST LARIMER COUNTY WATER DISTRICT AND THE NORTH WELD COUNTY WATER DISTRICT REGARDING USE OF THE MUNROE CANAL**

1. **PARTIES.** The parties to this Agreement are the North Poudre Irrigation Company (the “Company”), a Colorado mutual ditch and reservoir company; and the City of Fort Collins, a Colorado municipal corporation with home-rule authority (“Fort Collins”), the Fort Collins – Loveland Water District, the East Larimer County Water District and the North Weld County Water District (each of the three water districts are collectively referred to herein as the “Tri-Districts”), each of which is a political subdivision and a public corporation of the State of Colorado. The Company, Fort Collins and the Tri-Districts are referred to herein collectively as the “Parties”.

2. **RECITALS AND PURPOSE.**

WHEREAS, pursuant to the Company’s 1945 Petition and Order from the Northern Colorado Water Conservancy District (“Northern Water”), the Company has certain rights to use the North Poudre Supply Canal and Diversion Works (the “Munroe Gravity Canal”);

WHEREAS, the Company’s rights to use the Munroe Gravity Canal and its obligations to operate and maintain it were further defined in the December 9, 1987 Operating Agreement between the Company and Northern Water;

WHEREAS, the United States of America, acting by and through the Bureau of Reclamation, conveyed by Quitclaim Deed dated November 8, 2002 to Northern Water, among other real property, the Munroe Gravity Canal;

WHEREAS, the Company’s rights to use and its obligations to operate and maintain the Munroe Gravity Canal were further defined in the February 11, 2005 Amendment to Operating Agreement between the Company and Northern Water;

WHEREAS, the Company’s right to use and its obligations to operate and maintain the Munroe Gravity Canal, specifically includes that portion of the Munroe Gravity Canal commencing from the canal’s diversion structure off of the Cache la Poudre River to the turnout structure for the Pleasant Valley Pipeline (“PVP”) as each is depicted on **Figure No. 1** hereto (this portion of the Canal including the turn-out structure shall be hereinafter defined as the “PVP Reach”);

WHEREAS, Fort Collins entered into a series of agreements with Northern Water, acting by and through the Pleasant Valley Pipeline Water Activity Enterprise, including an interim agreement, dated May 18, 1999, an allotment contract, dated February 28, 2002, an amendment to the allotment contract dated May 30, 2006 and a supplement to the allotment contract dated January 1, 2014;

WHEREAS, the Tri-Districts, acting collectively through the Soldier Canyon Filter Plant, a political subdivision and public corporation of the State of Colorado, entered into a series of agreements with Northern Water, acting by and through the Pleasant Valley Pipeline Water Activity Enterprise, including an allotment contract, dated February 28, 2003 and an amendment to the allotment contract dated October 2, 2012;

WHEREAS, pursuant to their respective allotment contracts with Northern Water, Fort Collins and the Tri-Districts each obtained a perpetual right to utilize up to 93 cfs in the Munroe Gravity Canal and its diversion works to deliver water to the PVP to the extent that the capacity is not necessary for delivery of water for the Company under and pursuant to the rights granted to the Company in its 1945 Petition and Order from Northern Water;

WHEREAS, pursuant to their respective allotment contracts with Northern Water, Fort Collins' and the Tri-Districts' rights to utilize up to 93 cfs in the Munroe Gravity Canal and its diversion works for delivery to the PVP are co-equal in terms of priority;

WHEREAS, the February 11, 2005 Amendment to Operating Agreement between the Company and Northern Water permits the Company to enter into agreements with allottees of capacity in the PVP, like Fort Collins and the Tri-Districts, for reimbursement to the Company of any increased costs of operation and maintenance of the Munroe Canal caused by the diversion and carriage of water for such entities pursuant to their allotment agreements with Northern Water;

WHEREAS, Fort Collins and the Tri-Districts each currently own a substantial number (and collectively own more than half) of the Company's outstanding shares;

WHEREAS, notwithstanding the contractual rights to use of capacity in the Munroe Gravity Canal pursuant to their respective allotment contracts with Northern Water, the Company has, from time to time, pursuant to informal agreement(s), allowed Fort Collins and the Tri-Districts to utilize the Munroe Gravity Canal, from the diversion structure on the Cache la Poudre River to the PVP diversion structure to deliver non-share water, as the same is further defined in ¶ 4, below, to their respective water treatment facilities during the **Municipal Diversion Season** (defined herein to be April 1<sup>st</sup> – October 31<sup>st</sup> of each year);

WHEREAS, the Company and Fort Collins and the Tri-Districts each desire to share the capacity of the Munroe Gravity Canal available to them under their respective agreements with Northern Water to maximize the canal's value to each respective entity;

WHEREAS, through this Agreement, the Company and Fort Collins and the Tri-Districts agree to collaboratively strive to coordinate their respective water deliveries through the Munroe Gravity Canal so as to minimize the effect on each of the Parties' rights and on the Company's operations;

WHEREAS, the goal of this Agreement is to develop an operating agreement between the Parties to provide operational certainty to all of the Parties; and

WHEREAS, the Company desires to allow Fort Collins and the Tri-Districts to deliver non-share water through the PVP Reach in the Munroe Gravity Canal, in accordance with terms and conditions of this Agreement.

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED IN THIS AGREEMENT, THE PARTIES COVENANT AND AGREE TO THE TERMS AND CONDITIONS SET FORTH IN THE FOLLOWING PARAGRAPHS.**

3. **TERM.** The term of this Agreement will be five years from the date of complete execution by the Parties. This Agreement shall automatically renew for a second five (5) year term unless either Fort Collins or the Tri-Districts notify the Company in writing that they choose to terminate the Agreement prior to the first five-year anniversary of the Agreement. The Parties acknowledge and agree that they intend to continue working together in good faith on a long-term extension beyond the initial Term of this Agreement. Any such extension shall be in writing and shall be executed prior to this Agreement's expiration.

4. **FORT COLLINS' AND THE TRI-DISTRICTS' WATER AND EXCESS CAPACITY DEFINED.** Pursuant to their respective share ownership in the Company, Fort Collins and the Tri-Districts are each entitled to their pro-rata amount of water available pursuant to the Company's decreed water rights ("share water"). For the purpose of this Agreement, "Fort Collins' and the Tri-Districts' water" refers to any water other than share water to which Fort Collins and the Tri-Districts are lawfully entitled, and that may legally be diverted from the Cache La Poudre River at the headgate of the Munroe Gravity Canal. Pursuant to the Company's Amended Operating Agreement with Northern Water, and pursuant to Fort Collins' and the Tri-Districts' Allotment Contracts with Northern Water, both Fort Collins and the Tri-Districts have the perpetual right to utilize reasonable amounts of capacity in the Munroe Canal up to a maximum combined capacity of 186 cfs. For the purposes of this Agreement, "Excess Capacity" is defined to be the capacity existing in the Munroe Canal which may be utilized by the Company to safely deliver Fort Collins' and the Tri-Districts' water and which capacity is not required by the Company to deliver water it diverts on behalf of its' stockholders through the Munroe Gravity Canal under the allocation provision in ¶ 3 of the Company's Amended Operating Agreement with Northern Water, but not to exceed a maximum combined capacity of 186 cfs as defined in Fort Collins' and the Tri-Districts' allotment agreements with Northern Water.

Pursuant to this Agreement, the Company will make such determination(s) of the amount of Excess Capacity available at any given moment based upon its ability to safely convey water, its obligations to its stockholders, its contractual obligation to deliver Fort Collins' and the Tri-Districts' non-share water separate from their respective Company share water, and other operational considerations. For the purposes of this Agreement, the Parties acknowledge and agree that the current combined total flow capacity in the PVP Reach is approximately 250 cfs. The Parties further acknowledge and agree that, to the extent the Company determines that Excess Capacity exists, each of Fort Collins and the Tri-Districts will be entitled to use the remaining capacity in the Munroe Gravity Canal up to 93 cfs. To the extent that 186 cfs is not available, Fort Collins and the Tri-Districts agree that either one may use what capacity they need and what capacity the Company determines is

available, unless the combined need is greater than the available capacity in which case Fort Collins and the Tri-Districts will each be entitled to one-half of the capacity available. Finally, the Parties acknowledge and agree that Fort Collins and the Tri-Districts each have the contractual right, based on their agreements with Northern Water, to have reasonable amounts of their respective non-share water delivered through the PVP Reach, however, such rights may not exceed the limitations of those agreements, meaning that each is limited individually to a maximum instantaneous diversion and delivery rate of 93 cfs of non-share water through the PVP Reach.

**5. CAPACITY ALLOCATION/CANAL OPERATION.** Fort Collins and the Tri-Districts will coordinate with the Company all diversions of their respective non-share water through the PVP Reach. The primary objective of Fort Collins and the Tri-Districts is to utilize and make deliveries of their respective non-share water through the PVP Reach. Fort Collins and the Tri-Districts acknowledge that the Company may incur additional costs to operate the PVP Reach, and agree to work with the Company so as not to increase the reasonable costs of operation incurred by the Company including for those increased costs the Company incurs for the delivery of excessive water below the PVP.

Fort Collins and the Tri-Districts will each provide to the Company a proposed annual operating plan for anticipated non-share water diversions through the PVP Reach no later than March 1 of each year and will meet with Company staff, individually or jointly, to discuss such individual proposed annual operating plans no later than on March 15 of each year, or by/at such other date(s) as the Parties determine are necessary. Additionally, Fort Collins and the Tri-Districts will meet with Company staff, individually or jointly, after the Municipal Diversion Season, but no later than December 15 of each year, or by such other date(s) as the Parties determine are necessary, to discuss the preceding water year's operations and to review expenses which the Company has incurred in delivering non-share water for Fort Collins and the Tri-Districts through the PVP Reach.

The Company agrees that it will provide Fort Collins and the Tri-Districts information detailing future maintenance planned by the Company and, to the extent applicable, by Northern Water, in the PVP Reach. To the extent that planned maintenance by the Company and/or Northern Water will impact the abilities of Fort Collins or the Tri-Districts to deliver their respective non-share water to the PVP during the Municipal Diversion Season, the Company will provide notice of such impact(s) as soon as they are identified. Such notice will be communicated by the most expeditious means possible to the individuals identified in ¶ 10, below, as "**Emergency Contacts**". The Parties agree to update any and all modifications to the Emergency Contacts' information in writing as soon as practical, but in any event, to conform or update the information annually at the Company's annual stockholder meeting. The Company will take reasonable measures to minimize such impact(s).

**6. CONSIDERATION.** The diversion and delivery of Fort Collins' and the Tri-Districts' non-share water through the PVP Reach will result in additional operational, administrative, and maintenance costs ("**Additional Costs**") to the Company that are unrelated to the routine operational, administrative, and maintenance costs related to the Company's duty to deliver share water to its shareholders ("**Routine Costs**" are paid from the Company's operating

budget which is funded by assessments from shareholders, including Fort Collins and the Tri-Districts). There are two scenarios under which Additional Costs to the Company may arise:

- a. The Parties agree that the Company will incur Additional Costs at times during the Municipal Diversion Season when the Company delivers Fort Collins' and the Tri-Districts' non-share water through the PVP Reach and it is not concurrently delivering share water to its shareholders ("**Non-Share Delivery Periods**"). So that Additional Costs during Non-Share Delivery Periods are not borne by the Company's shareholders, Fort Collins and the Tri-Districts shall pay for the Additional Costs through the assessment of an **Additional Fee** in the amount of \$2,100 per month in the first full year of this Agreement, which Additional Fee shall be pro/rated for the number of days within each month when either the City of Fort Collins or the Tri-Districts are taking delivery of non-share water through the PVP Reach and the Company is not concurrently delivering share water to its shareholders. Based on the Company's experience gained through operating this Agreement, the Company may increase the Additional Fee in subsequent years to recover costs and prevent adverse impacts to the Company, but in no case will the Company increase the Additional Fee by more than 10% over the prior year's Additional Fee, nor will the Company decrease the Additional Fee. If the Company desires to increase the Additional Fee by more than 10% over the prior year's Additional Fee in order to recover costs and prevent adverse impacts to the Company, the Company shall be required to provide evidence to Fort Collins and the Tri-Districts establishing the clear need for such increase for the Company to recover costs and prevent adverse impacts to the Company.
- b. The Parties agree that the Company may also incur Additional Costs at times during the Municipal Diversion Season when the Company delivers Fort Collins' and the Tri-Districts' non-share water through the PVP Reach and it is concurrently delivering share water to its shareholders ("**Normal Delivery Periods**"). As Fort Collins and the Tri-Districts' shareholder assessments contribute to the Routine Costs the Company incurs from the delivery of share water to its shareholders during Normal Delivery Periods, any Additional Costs incurred during this time must be directly related to the delivery of the non-share water through the PVP Reach and must be documented by the Company to evidence that they are not part of the Routine Costs. Fort Collins and the Tri-Districts will pay for such documented, reasonable Additional Costs, provided that each of or both Fort Collins and the Tri-Districts have the opportunity to review a detailed summary of such Additional Costs and to dispute any such identified Additional Costs which may in fact be Routine Costs.

7. **NORTHERN WATER.** The Parties agree that Northern Water will be afforded the timely opportunity to review this Agreement prior to its execution. The Parties acknowledge and agree that review of this Agreement by Northern Water does not bind Northern Water to any provisions or representations in this Agreement. Nothing in this Agreement modifies, amends or otherwise impacts the existing contracts, allotments or agreements between Northern Water and each of the parties either individually or collectively. Any

representations made in this Agreement, including its recitals, are solely between the Parties themselves and not Northern Water.

8. **ASSIGNMENT.** This Agreement will not be assigned or delegated except with the prior written consent of the Parties.

9. **PRIOR AGREEMENTS.** The terms and conditions of any previous agreements between the Company and Fort Collins or between the Company and the Tri-Districts or between the Company and Fort Collins and the Tri-Districts are not affected or amended by this Agreement.

10. **NOTICES/CONTACTS.** Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing to the other party or parties. Such notice will be deemed to have been given when deposited in the U.S. Mail. The parties will, to the extent possible, communicate any modifications in their emergency contact information in writing to the other parties prior to the commencement of each Municipal Diversion Season or as soon as possible once such modification has been made.

**Emergency Contacts:**

North Poudre Irrigation Company:

Name: Tad Moen

Position: General Manager

Telephone #: (970) 218-8476

Email: [tmoen@npicwater.com](mailto:tmoen@npicwater.com)

Name: Torin Thorsguard

Position: Operations Manager

Telephone #: (303) 552-8225

Email: [tthorsgard@npicwater.com](mailto:tthorsgard@npicwater.com)

Fort Collins:

Position: Plant Director

Name: Mark Kempton

Telephone #: (970) 698-4988 or (970) 221-6690 ext. 0

Email: [mkempton@fcgov.com](mailto:mkempton@fcgov.com)

Tri-Districts:

Name: Chris Harris

Position: Plant Manager/SCFP

Telephone #: (970) 692-1807 (cell)

Email: [charris@scwtp.org](mailto:charris@scwtp.org)



**Regular Contacts for All Other Notice Requirements:**

**North Poudre Irrigation Company:**

Name: Torin Thorsguard  
Position: Operations Manager  
Address: P.O. Box 100, Wellington, CO 80549  
Telephone #: (303) 552-8225  
Email: [tthorsgard@npcwater.com](mailto:tthorsgard@npcwater.com)

**Fort Collins:**

Position: Plant Director  
Name: Mark Kempton  
Address: 4316 LaPorte Ave, Fort Collins CO 80521  
Telephone #: (970) 221-6692  
Email: [mkempton@fcgov.com](mailto:mkempton@fcgov.com)

**Tri-Districts:**

Name: Richard Raines  
Position: Water Resources Manager/SCFP  
Address: 4424 La Porte Avenue, Fort Collins, CO 80521  
Telephone #: (970) 218-2738 (cell)  
Email: [rraines@scwtp.org](mailto:rraines@scwtp.org)

11. **EXHIBITS.** All exhibits referred to in this Agreement are, by this reference, incorporated in this Agreement for all purposes.
12. **DELAYS.** Any delays in, or failure of, performance by any party of his or its obligations under this Agreement will be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.
13. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
14. **ADDITIONAL DOCUMENTS OR ACTION.** The Parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
15. **INTEGRATION AND AMENDMENT.** This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties.
16. **ALTERNATIVE DISPUTE RESOLUTION.** In the event of any dispute or claim arising under or related to this Agreement, including but not limited to the payment of any maintenance and repair amounts by the City of Fort Collins and the Tri-Districts, the Parties

will use their best efforts to settle such dispute or claim through good faith negotiations with each other. If such dispute or claim is not settled through negotiations within 30 days after the earliest date on which one party notifies the other party in writing of its desire to attempt to resolve such dispute or claim through negotiations, then the parties agree to attempt in good faith to settle such dispute or claim by mediation conducted under the auspices of a recognized established mediation service within the State of Colorado upon which the Parties can agree. Such mediation will be conducted within 60 days following either party's written request therefor. If such dispute or claim is not settled through mediation, then any party may initiate a civil action in the District Court for Larimer County.

**17. DEFAULT AND/OR TERMINATION.** All terms and conditions of this Agreement are considered material. In the event that any party defaults in the performance of any of the covenants or agreements to be kept, done or performed by and under the requirements of this Agreement, the non-defaulting party or parties will give the defaulting party 30 days written notice of such default, and if the defaulting party fails, neglects or refuses for a period of more than 30 days thereafter to make good or perform the default, then the non-defaulting party or parties, without further notice, may file an action for specific performance or damages or both.

**18. WAIVER OF BREACH.** The waiver by any party to this Agreement of a breach of any term or provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by any party.

**19. IMMUNITIES PRESERVED.** It is the intention of the Parties that this Agreement will not to be construed as a contractual waiver of any immunities or defenses provided by the Colorado Governmental Immunity Act, Section 24-10-101 and following, Colorado Revised Statutes.

**20. NO THIRD PARTY BENEFICIARIES.** None of the terms, conditions, or covenants set forth in this Agreement will give or allow any claim, benefit, or right of action by any third person not a party to this Agreement. Any person other than the parties to this Agreement who or which receive services or benefits under this Agreement will be only an incidental beneficiary.

**21. BINDING EFFECT.** This Agreement will inure to the benefit of, and be binding upon, the Parties, and their respective successors and assigns; provided, however, that nothing contained in this paragraph will be construed to permit the assignment of this Agreement except as otherwise specifically authorized in this Agreement.

**22. GOVERNING LAW.** This Agreement will be governed by the laws of the State of Colorado. Venue will be in the District Court for Larimer County.

**23. COUNTERPARTS.** This Agreement may be executed in several counterparts and, as so executed, will constitute one Agreement, binding on all the Parties even though all the Parties have not signed the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages, which altogether contain the signatures of all the

Parties, will be deemed a fully executed instrument for all purposes.

24. **SEVERABILITY.** If any provision of this Agreement is declared to be invalid, void or unenforceable by a court of competent jurisdiction, such provision will be deemed to be severable, and all other provisions of this Agreement will remain fully enforceable, and this Agreement will be interpreted in all respects as if such provision were omitted.

DATED. \_\_\_\_\_, 2019.

***[THE REST OF THIS PAGE IS LEFT BLANK INTENTIONALLY]***

IN WITNESS WHEREOF, the Parties have executed this Agreement Regarding Use of the  
Munroe Canal effective the day and year first written above.

**North Poudre Irrigation Company,  
a Colorado mutual ditch and reservoir company**

\_\_\_\_\_  
By: \_\_\_\_\_, President

Attest:

\_\_\_\_\_  
By: \_\_\_\_\_, Secretary

**City of Fort Collins,  
a Colorado municipal corporation with home-rule authority**

**By:** \_\_\_\_\_  
**Darln A. Atteberry, City Manager**

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

**ATTEST:**

**By:** \_\_\_\_\_  
**City Clerk**  
**Name:** \_\_\_\_\_  
**Title:** \_\_\_\_\_

**APPROVED AS TO LEGAL FORM:**

**By:** \_\_\_\_\_  
**Eric R. Potyondy, Assistant City Attorney II**

**Fort-Collins – Loveland Water District,  
a quasi-municipal corporation and a political subdivision of the State of Colorado**

\_\_\_\_\_  
By: \_\_\_\_\_, President

Attest:

\_\_\_\_\_  
By: \_\_\_\_\_, Secretary

**North Weld County Water District,  
a quasi-municipal corporation and a political subdivision of the State of Colorado**

\_\_\_\_\_  
By: \_\_\_\_\_, President

Attest:

\_\_\_\_\_  
By: \_\_\_\_\_, Secretary

**East Larimer County Water District,  
a quasi-municipal corporation and a political subdivision of the State of Colorado**

\_\_\_\_\_  
By: \_\_\_\_\_, President

Attest:

\_\_\_\_\_  
By: \_\_\_\_\_, Secretary

