

RESOLUTION 2019-098
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 SUPPLEMENTAL MEANS TO DELIVER
HORSETOOTH RESERVOIR WATER TO THE FORT COLLINS WATER TREATMENT
FACILITY AND SOLIDER CANYON WATER TREATMENT PLANT (PROJECT WORK –
NEW INFRASTRUCTURE – NEW PROPERTY RIGHTS)

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 and the Tri-Districts 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 rights and responsibilities of the City and the Tri-Districts related to the design and construction work for this Project and rights and responsibilities of Fort Collins and the Tri-Districts related to the ownership, operation, and maintenance of certain infrastructure and property rights related to the Project.

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 and the Tri-Districts)

(Project Work – New Infrastructure – New Property Rights)

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”); 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”), 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 rights and responsibilities of Fort Collins and the Tri-Districts related to the design and construction work for this Project (“Project Work”). Fort Collins will retain a contractor (“Contractor”) to perform the Project Work. Fort Collins currently intends to retain as the Contractor an on-call contractor that Fort Collins already has under contract. If this on-call contractor cannot be utilized, the City will issue a request for proposals to select another Contractor. The selection committee for the Contractor will include City and Tri-Districts personnel. The Tri-Districts will reimburse Fort Collins for their portion of the Project Work as described below.

H. This Agreement also concerns rights and responsibilities of Fort Collins and the Tri-Districts related to the ownership, operation, and maintenance of certain infrastructure and property rights related to the Project (defined and described below as “New Infrastructure” and “New Property Rights”).

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

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. **PROJECT WORK.**

2.1. **The Scope of the Project Work.** The Parties will meet with the Consultant to jointly develop the scope of the Project Work to be completed (“Scope”), which shall include a total cost estimate for the Project Work and a proportional allocation of costs to

each Party based on the amount of the Project Work attributed to each Party's needs. The Scope shall also identify, in detail, the New Infrastructure and New Property Rights that are required for the Project. Before the Consultant begins the Project Work under the Scope, each of the Parties shall confirm in writing (such as by email or otherwise) that the Scope is acceptable.

2.2. **Cooperation with the Project Work.** The Tri-Districts agree to cooperate in good faith with Fort Collins and the Consultant for the Project Work, including: developing the Scope; reviewing and providing comments on drafts designs and plans generated by the Consultant; and providing information needed to complete the Project Work to the Consultant, in a timely manner. Fort Collins agrees to work in good faith to ensure that the Tri-Districts have a meaningful opportunity to review, supervise, and provide comments.

2.3. **Reimbursement to Fort Collins.** Each of the Tri-Districts shall pay Fort Collins for that district's portion of the Project Work as set forth in the agreed-upon Scope within 45 days of receiving an invoice from Fort Collins 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.

3. **NEW INFRASTRUCTURE.** The Project will require certain new infrastructure, including pipes, wet wells, and pumps (collectively, "New Infrastructure"), as identified in the Scope. Greeley has, and as will be at forth in a separate agreement, require ownership of any new values or connections on its pipes, which will thus not be New Infrastructure under this Agreement. Northern Water, acting by and through the Pleasant Valley Pipeline Water Activity Enterprise, likewise has, and as will be at forth in a separate agreement, require ownership of any new values or connections on the Pleasant Valley Pipeline, which will this not be New Infrastructure under this Agreement.

3.1. **Ownership and Capacity of the New Infrastructure.** The Parties shall jointly own the New Infrastructure, with such ownership being: Fort Collins (___%); ELCO (___%); FCLWD (___%); NWCWD (___%). Each Party shall be entitled to use a portion of the New Infrastructure up to its pro-rata ownership. To the extent that a Party does not need to use its full capacity in the New Infrastructure, the other Parties may use such capacity proportionate to their ownership of the New Infrastructure.

3.2. **Costs Associated with the New Infrastructure.**

3.2.1. Each of the Tri-Districts shall pay Fort Collins for that district's portion of the initial construction costs associated with the New Infrastructure as part of the Project Work, pursuant to Paragraph 2.3.

3.2.2. The City and the Tri-Districts shall jointly maintain the New Infrastructure during the period when Northern Water temporarily shuts down the Soldier Canyon Outlet during 2020. To the extent that there are monetary costs associated with such maintenance, the City shall pay for such costs and be reimbursed by the Tri-

Districts. Maintenance costs (including any repair and replacement costs) associated with the New Infrastructure shall be shared by the Parties pro-rata based on their ownership identified in Paragraph 3.1. Each of the Tri-Districts shall pay Fort Collins for that district's portion of the maintenance costs within 45 days of receiving an invoice from Fort Collins 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.

3.2.3. The City shall jointly operate the New Infrastructure during the period when Northern Water temporarily shuts down the Soldier Canyon Outlet during 2020. To the extent that there are monetary costs associated with such operation, the City shall pay for such costs and be reimbursed by the Tri-Districts identified in Paragraph 3.1. Operational costs (including pumping costs) associated with the New Infrastructure shall be allocated based on the amount of Horsetooth Water each Party delivers through the New Infrastructure. Each of the Tri-Districts shall pay Fort Collins for that district's portion of the maintenance costs within 45 days of receiving an invoice from Fort Collins 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.

4. **NEW PROPERTY RIGHTS.** In order to construct, operate, and maintain the New Infrastructure, easements and other property rights ("New Property Rights") will be required, as identified in the Scope.

4.1. **Ownership of the New Property Rights.** The Parties shall jointly own the New Property Rights, with such ownership being: Fort Collins (___%); ELCO (___%); FCLWD (___%); NWCWD (___%).

4.2. **Costs Associated with the New Property Rights.** Costs associated with the New Property Rights (including acquisition costs) shared by the Parties pro-rata based on their ownership.

4.3. **Reimbursement to Fort Collins.** Each of the Tri-Districts shall pay Fort Collins for that district's portion of the New Property Rights as set forth in the agreed-upon Scope within 45 days of receiving an invoice from Fort Collins 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.

5. **OPERATIONS.** The Parties desire to generally minimize the use of the New Infrastructure and the associated costs during period when Northern Water temporarily shuts down the Soldier Canyon Outlet during 2020. 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 during period when Northern Water temporarily shuts down the Soldier Canyon Outlet during 2020, the operations and maintenance of the New Infrastructure will be performed jointly by the City and the Tri-Districts through their respective staff and representatives.

6. **DECISION-MAKING.** Decisions related to the Project Work, New Infrastructure, New Property Rights, and Operations shall operate by consensus among the Parties. To this end, the Parties shall make a good faith effort to reach consensus, propose alternative solutions, and otherwise work to resolve any issues that prevent consensus. The Parties' actions and decisions shall be guided by the Parties' individual and collective desire to deliver a reliable supply of high-quality water to the Horsetooth Water Treatment Plants at a reasonable cost to the Parties' respective ratepayers.

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: 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

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

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.

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: _____