

**RESOLUTION 2020-107
OF THE COUNCIL OF THE CITY OF FORT COLLINS
APPROVING A PARTIAL DEFERRAL OF PAYMENT OF WATER PLANT INVESTMENT
FEES AND SEWER PLANT INVESTMENT FEES ASSOCIATED WITH THE
LARIMER COUNTY JAIL EXPANSION AND AUTHORIZING THE CITY MANAGER TO
EXECUTE AN AGREEMENT REGARDING THE SAME**

WHEREAS, the City owns and operates Fort Collins Utilities (“Utilities”), which includes a Water Utility and a Wastewater Utility; and

WHEREAS, a water plant investment fee (“Water PIF”) is required as a prerequisite of water service from Utilities; and

WHEREAS, City Code Section 26-120(a) states that, except to the extent that the deferral of all or any portion of such payment has been approved by the City Council by resolution or except as provided in City Code Section 26-120(f), the Water PIF shall be paid in full at the time the water service connection permit is issued; and

WHEREAS, a sewer plant investment fee (“Sewer PIF”) is required as a prerequisite of wastewater service from Utilities; and

WHEREAS, City Code 26-283(a) states that, except to the extent that the deferral of all or any portion of such payment has been approved by the City Council by resolution, the SIF shall be paid in full at the time the sewer connection permit is issued; and

WHEREAS, Larimer County, a political subdivision of the State of Colorado (“County”), is planning to expand and make other modifications to its jail facilities (“Project”) located at 2405 Midpoint Drive in Fort Collins, which requires the payment of a Water PIF and a Sewer PIF for the additional water and wastewater service; and

WHEREAS, the County has indicated that it will grow into full use of its annual water allotment and corresponding use of sewer service, and thus, the County thus desires to now pay Utilities for a portion of the Water PIF and the Sewer PIF and to defer the payment of the remaining portions of the Water PIF and the Sewer PIF; and

WHEREAS, Utilities Staff has negotiated a proposed agreement for the partial deferment of the Water PIF and the Sewer PIF for the Project (“Agreement”), a copy of which is attached as Exhibit “A”; and

WHEREAS, in the unique facts of this situation, City Council determines that it is appropriate to defer the payment of a portion of the Water PIF and the Sewer PIF for the Project as set forth in the proposed Agreement and as set forth in this Resolution.

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 a portion of the Water PIF and the Sewer PIF for the Project are deferred as set forth on the proposed Agreement, provided however, that the Agreement is executed within six months of the date of this Resolution.

Section 3. That the City Manager is hereby authorized to execute an Agreement substantially in the form of Exhibit "A", with such 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 on at a regular meeting of the Council of the City of Fort Collins this 1st day of December, A.D. 2020.



Mayor

ATTEST:



City Clerk

**AGREEMENT BETWEEN THE CITY OF FORT COLLINS AND
LARIMER COUNTY REGARDING A PARTIAL DEFERRAL OF
PAYMENT OF WATER PLANT INVESTMENT FEES
AND PAYMENT OF SEWER PLANT INVESTMENT FEES
ASSOCIATED WITH THE LARIMER COUNTY JAIL EXPANSION**

This Agreement is entered into by and between the following Parties: the City of Fort Collins, Colorado, a home rule municipality (“City”), acting by and through its Fort Collins Utilities (“Utilities”); and Larimer County, a political subdivision of the State of Colorado (“County”).

RECITALS

A. The County is planning to expand and make other modifications to its jail facilities (“Project”) located at 2405 Midpoint Drive in Fort Collins, Colorado (“Parcel”). The County has a Utilities account and water service permit for a treated water tap on the Parcel (currently labeled as Account No. 345160-30262) (“Account”). There are also other accounts and water service permits for other water taps that served portions of the Parcel, though they are not the subject of this Agreement. In conjunction with the Project, pursuant to the requirements of City Code, the County must pay Utilities various fees for the Account, including water plant investment fees (“Water PIFs”) and sewer plant investment fees (“Sewer PIFs”).¹

B. In conjunction with the Project, pursuant to the requirements of City Code, the County must pay Utilities Water PIFs for its maximum daily demand (in million gallons per day (“MGD”)) under the Account.² The Account has an annual water allotment of 30,658,687 gallons.³ The County previously paid Water PIFs for the existing facilities associated with the Account when it had an annual water allotment of 16,292,600 gallons. The County will receive credit for these previously-paid Water PIFs on the Account.⁴ Pursuant to the requirements of City Code, the County is thus currently required to pay Utilities Water PIFs on the Account for the increase in the maximum daily demand associated with increasing the annual water allotment for the Account by 14,366,087 gallons.

C. In conjunction with the Project, pursuant to the requirements of City Code, the County also must pay Utilities Sewer PIFs for its maximum daily flow under the Account.⁵ As stated above, the Account has an annual water allotment of 30,658,687 gallons.⁶ The County previously paid Sewer PIFs for the existing facilities associated with the Account when it had an annual water allotment of 16,292,600 gallons. The County will receive credit for these previously-paid Sewer PIFs.⁷ Pursuant to the requirements of City Code, the County thus currently required to pay Utilities Sewer PIFs for the increase in the maximum daily flow associated with increasing the annual water allotment for the Account by 14,366,087 gallons.

¹ See City Code Sections 26-120, 26-128, 26-283, 26-284.

² See City Code Sections 26-120.

³ See City Code 26-149(d).

⁴ See City Code Section 26-120(d).

⁵ See City Code Sections 26-283.

⁶ See City Code 26-149(d).

⁷ See City Code Section 26-283(d).

D. The County has indicated that it will grow into full use of its annual water allotment and corresponding use of sewer service under the Account. According to the County's project engineer, the County has determined that, upon completion of the Project, the County will not exceed the annual use of 25,000,000 gallons of treated water under the Account for several years. For several years, the County will likewise not reach an increased maximum daily demand of treated water or an increased maximum daily flow of sewer water corresponding to the full use of its water allotment under the Account. The County thus desires to now pay Utilities Water PIFs and Sewer PIFs under the Account to increase its maximum daily demand of treated water and daily maximum flow of sewer water to correspond to an annual use of 25,000,000 gallons of treated water, and to defer the payment of Water PIFs and Sewer PIFs associated with an annual use of 30,658,687 gallons.

E. City Code Section 26-120(a) states: "Except to the extent that the deferral of all or any portion of such payment has been approved by the City Council by resolution or except as provided in Subsection (f) of this Section, this [water plant investment] fee shall be paid in full at the time the water service connection permit is issued."

F. City Code 26-283(a) states: "Except to the extent that the deferral of all or any portion of such payment has been approved by the City Council by resolution ... this fee shall be paid in full at the time the sewer connection permit is issued."

G. Pursuant to Resolution No. 2020- , City Code Section 26-120(a), and City Code 26-283(a), the City of Fort Collins City Council has authorized this Agreement by which the payment of Water PIFs and Sewer PIFs for the Project is partially deferred.

H. 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. **Water PIFs.**

2.1. **Immediate Payment of a Portion of the Water PIFs for the Account.** Under this Agreement, the County agrees to pay Utilities Water PIFs for a maximum daily demand associated with an annual use of 25,000,000 of treated water under the Account, which will increase the maximum daily demand by 23,855.8904 gallons.⁸ The dollar value

⁸ This maximum daily demand of treated water of 23,855.8904 gallons was calculated as follows. The increase in annual use of treated water under the Account for which Water PIFs will not have been paid was calculated (25,000,000 gallons – 16,292,600 gallons = 8,707,400 gallons). This increase in annual use of treated water for which Water PIFs will not have been paid was then converted to a maximum daily demand (8,707,400 gallons / 365 days = 23,855.8904 gallons per day). This calculation of the maximum daily demand as the quotient of the annual

of the Water PIFs has been calculated pursuant to the rates for Water PIFs in City Code Section 26-128. Within 14 days of the date of this Agreement, the County shall therefore pay Utilities _____ for Water PIFs for the Account. The County shall submit payment to Utilities (attn: Lance Smith and Phil Ladd), 700 Wood Street (P.O. Box 580) Fort Collins, Colorado 80522-0580.

2.2. **Deferred Payment of a Portion of the Water PIFs for the Account.** The City agrees to the deferral of the payment of Water PIFs under the Account for a maximum daily demand associated with an annual use of 30,658,687 gallons of treated water, which will increase the maximum daily demand by an additional 15,503 gallons.⁹

2.2.1. **Invoice.** Utilities shall issue an invoice to the County for the Water PIFs for an increase in the maximum daily demand of 15,503 gallons after a sum total of more than 25,000,000 gallons of treated water have been delivered under the Account in any calendar year (January 1 through December 31) (“Invoice”). The dollar value of the Invoice shall be calculated using the rate for Water PIFs in effect at the time when the Invoice is prepared.¹⁰ If there is an increase in Water PIF rates between the time of the Invoice and the actual payment of fees, the Water PIF rates in effect at the time of payment shall apply and the Invoice shall be updated accordingly. The Invoice for Water PIFs under this Agreement may be combined with the Invoice for Sewer PIFs under this Agreement.

2.2.2. **Payment.** The County shall pay the Invoice on or before the next March 1st after receiving the Invoice.

2.2.3. **Prepayment.** The County shall have the right to pay the Water PIFs for the additional 15,503 gallon maximum daily demand for the Account any time before the issuance of the Invoice by providing a letter to Utilities requesting the same at the contact information in Paragraph 9. If such a request is made, the dollar value of the payment shall be calculated using the rate for Water PIFs in existence at the date of the request.

demand divided by 365 days is unique to this Project, where water use will be consistent, with minor peaks resulting from periodic increased water use. This calculation of the maximum daily demand may or may not apply to other accounts, depending on the unique nature of water use on those other accounts.

⁹ This maximum daily demand of 15,503 gallons of treated water was calculated as follows. The increase in annual use of treated water under the Account for which Water PIFs will not have been paid was calculated (30,658,687 gallons – 25,000,000 gallons = 5,658,687 gallons). This increase in annual use of treated water for which Water PIFs will not have been paid was then converted to a maximum daily demand (5,658,687 gallons / 365 days = 15,503 gallons per day). This calculation of the maximum daily demand as the quotient of the annual demand divided by 365 days is unique to this Project, where water use will be consistent, with minor peaks resulting from periodic increased water use. This calculation of the maximum daily demand may or may not apply to other accounts, depending on the unique nature of water use on those other accounts.

¹⁰ For reference purposes only, the current Water PIF rate is set forth in City Code Section 26-128.

3. **Sewer PIFs.**

3.1. **Immediate Payment of a Portion of the Sewer PIFs for the Account.** Under this Agreement, the County agrees to pay Utilities Sewer PIFs for a maximum daily flow of sewer water associated with an annual use of 25,000,000 of treated water under the Account, which will increase the maximum daily flow by 23,855.8904 gallons.¹¹ The dollar value of the Sewer PIFs has been calculated pursuant to the rates for Sewer PIFs in City Code Section 26-283. Within 14 days of the date of this Agreement, the County shall therefore pay Utilities _____ for Sewer PIFs for the Account. The County shall submit payment to Utilities (attn: Lance Smith and Phil Ladd), 700 Wood Street (P.O. Box 580) Fort Collins, Colorado 80522-0580.

3.2. **Deferred Payment of a Portion of the Sewer PIFs for the Account.** The City agrees to the deferral of the payment of Sewer PIFs under the Account for a maximum daily flow of sewer water associated with an annual use of 30,658,687 gallons of treated water, which will increase the maximum daily flow by an additional 15,503 gallons.¹²

3.2.1. **Invoice.** Utilities shall issue an invoice to the County for the Sewer PIFs for an increase in the maximum daily flow of 15,503 gallons after a sum total of more than 25,000,000 gallons of treated water have been delivered under the Account in any calendar year (January 1 through December 31) (“Invoice”). The dollar value of the Invoice shall be calculated using the rate for Sewer PIFs in effect at the time when the Invoice is prepared.¹³ If there is an increase in Sewer PIF rates between the time of the Invoice and the actual payment of fees, the Sewer PIF rates in effect at the time of payment shall apply and the Invoice shall be updated accordingly. The Invoice for Sewer PIFs under this Agreement may be combined with the Invoice for Water PIFs under this Agreement.

¹¹ This maximum daily flow of sewer water of 23,855.8904 gallons was calculated as follows. The increase in annual use under the Account for which Sewer PIFs will not have been paid was calculated (25,000,000 gallons – 16,292,600 gallons = 8,707,400 gallons). This increase in annual use for which Sewer PIFs will not have been paid was then converted to a maximum daily demand (8,707,400 gallons / 365 days = 23,855.8904 gallons per day). This calculation of the maximum daily demand as the quotient of the annual demand divided by 365 days is unique to this Project, where water use will be consistent, with minor peaks resulting from periodic increased water use. This calculation of the maximum daily demand may or may not apply to other accounts, depending on the unique nature of water use of those other accounts.

¹² This maximum daily flow of 15,503 gallons of sewer water was calculated as follows. The increase in annual use under the Account for which Sewer PIFs will not have been paid was calculated (30,658,687 gallons – 25,000,000 gallons = 5,658,687 gallons). This increase in annual use for which Sewer PIFs will not have been paid was then converted to a maximum daily demand (5,658,687 gallons / 365 days = 15,503 gallons per day). This calculation of the maximum daily demand as the quotient of the annual demand divided by 365 days is unique to this Project, where water use will be consistent, with minor peaks resulting from periodic increased water use. This calculation of the maximum daily demand may or may not apply to other accounts, depending on the unique nature of water use on those other accounts.

¹³ For reference purposes only, the current Sewer PIF rate is set forth in City Code Section 26-284.

3.2.2. **Payment.** The County shall pay the Invoice on or before the next March 1st after receiving the Invoice.

3.2.3. **Prepayment.** The County shall have the right to pay the Sewer PIFs for the additional 15,503 gallon maximum daily demand for the Account any time before the issuance of the Invoice by providing a letter to Utilities requesting the same at the contact information in Paragraph 9. If such a request is made, the dollar value of the payment shall be calculated using the rate for Sewer PIFs in existence at the date of the request.

4. **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.

5. **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 28 days following receipt of such notice, may seek all such remedies available under Colorado law.

6. **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.

7. **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.

8. **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.

9. **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
epotyondy@fcgov.com

and: Fort Collins Utilities
Attn: Director of Finance
700 Wood Street
Fort Collins, Colorado 80521

To County: _____

With a copy to: Larimer County Attorney
224 Canyon Ave, #200
Fort Collins, CO 80521

10. **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.

11. **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.

12. **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.

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

14. **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

LARIMER COUNTY, a political subdivision of the State of Colorado

By: _____

Date: _____