

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 28

DATE: February 7, 2006

STAFF: Jim Hibbard
Roger Buffington

SUBJECT

Resolution 2006-013 Authorizing an Intergovernmental Agreement with the Grove Metropolitan Districts Numbers 1 through 3 for the Provision of Wastewater Treatment Services by the City's Wastewater Utility.

RECOMMENDATION

Staff recommends adoption of the Resolution.

FINANCIAL IMPACT

The agreement requires the Districts to pay a wastewater plant investment fee and monthly service charges for wastewater service based on a cost of service study. A payment-in-lieu-of-tax ("PILOT") contribution to the General Fund at the generally applicable PILOT rate will be added to the monthly service charge, totaling an estimated \$10,000 per year at build-out of the Laporte Planning Area. Additional one-time revenues estimated at \$2,400,000 will be collected over time as administrative surcharges for Parks, Library and Street Oversizing.

EXECUTIVE SUMMARY

Resolution 2005-018 authorized the City Manager to negotiate an agreement with new development near the town of Laporte for the provision of wastewater treatment services by the City's Wastewater Utility. As directed by City Council, the City Manager has negotiated an agreement, has approved a schedule of surcharges for projected usage of City streets, community parks and libraries by the new development and has included such surcharges in the proposed agreement with the Grove Metropolitan Districts Numbers 1 through 3.

BACKGROUND

In January 2004, Larimer County adopted the Laporte Area Plan. Portions of the Laporte Area Plan include approximately 2000 dwelling units shown to develop at urban level densities. These densities will necessitate service from a public sewer system.

Staff believed it was important for the City to provide wastewater treatment service to reduce the potential of new wastewater treatment facilities upstream from Fort Collins and to protect water quality in the Poudre River.

After discussion in late 2004 and early 2005, City Council adopted Resolution 2005-018, designating an Approved Service Area and directing City staff to:

- Cooperate with interested parties in the formation of a special district for the collection of wastewater,
- Negotiate an agreement for the provision of wastewater treatment services by the City's Wastewater Utility and present the proposed agreement to City Council for approval, and
- Develop a schedule of surcharges for usage of City streets, community parks and libraries by new development in the Approved Service Area, and to include such surcharges in any arrangement for the provision of utility services by the City.

Property owners have been successful with the formation of The Grove Metropolitan Districts Numbers 1 through 3. The Districts provide the means for constructing and financing public improvements to serve The Grove development located within the Districts' boundaries as contemplated in their Service Plan and to serve such additional areas in the Laporte area as may in the future be added to the Districts' service territory. The Grove development will be located on 70 acres that constitute a portion of the Approved Service Area.

Staff has negotiated a proposed intergovernmental agreement with the Districts (Attachment 1). The Districts will provide for the construction and financing of the capital improvements as well as the ownership, operation and maintenance of the sanitary sewer collection system as deemed necessary for the phased growth of the Districts. The City will provide wastewater treatment services and programs associated with treatment such as laboratory services and the industrial pre-treatment program.

The City used the services of Red Oak Consulting, a firm that recently completed a review of utility plant investment fees, to determine the portion of the City's wastewater plant investment fee and monthly service charge attributable to the Districts. Red Oak recommended a plant investment fee of \$6.00 per gallon per day of capacity. The recommended monthly service fee is \$1.362 per 1000 gallons. The numbers are approximately 72% and 79% of standard City wastewater rates respectively, due to the facilities and services included in the standard rates that will not be used to provide treatment services to the Districts.

City staff developed a schedule of administrative surcharges for street oversizing, community parks, and libraries in the Laporte Planning Area (Attachment 2) as requested by City Council and authorized by City Code Sec 7.5-3, Establishment of special surcharges. The street oversizing surcharge of \$649 per single family home was determined by looking at the component of the Street Oversizing Program that is attributable to regional growth. The proposed surcharge is less than the comparable \$2,319 per single family home inside the city. The parkland surcharge was set at \$669 per single family dwelling unit, and is the same as the amount collected by the County for development inside the Growth Management Area but outside the city limits. This proposed surcharge is less than the comparable inside city community parkland amount of \$1,473. The library surcharge was set at \$508 for a single

family home, and is the same charge as inside the city for a comparably sized home. These administrative surcharges have been included in the proposed agreement.

The Wastewater Enterprise Board is also being asked to authorize the intergovernmental agreement at its meeting scheduled for immediately after the February 7th City Council meeting. The Enterprise is included as a party to the agreement solely for the purpose of making the Enterprise responsible for any multiple fiscal year obligations embodied in the agreement.

ATTACHMENTS

1. Proposed Intergovernmental Agreement for Wastewater Treatment Services
2. Administrative Surcharges for the Laporte Planning Area

DRAFT
January 30, 2006

INTERGOVERNMENTAL AGREEMENT FOR
WASTEWATER TREATMENT SERVICES

BETWEEN THE CITY OF FORT COLLINS, COLORADO
AND THE GROVE METROPOLITAN DISTRICTS NOS. 1 THROUGH 3

This AGREEMENT is made this ____ day of _____, 2006, by and between THE CITY OF FORT COLLINS WATER UTILITY ENTERPRISE, a government-owned business within the meaning of Article X, Section 20(2)(d), of the Colorado Constitution, organized pursuant to C.R.S. §§ 37-45.1-101 et seq., whose address is 700 Wood Street, Fort Collins, Colorado 80521 (the "Enterprise"), and THE CITY OF FORT COLLINS, Colorado, a home rule municipality (the "City") (collectively referred to hereinafter as "Fort Collins") and THE GROVE METROPOLITAN DISTRICT NO. 1, THE GROVE METROPOLITAN DISTRICT NO. 2, and THE GROVE METROPOLITAN DISTRICT NO. 3 (collectively referred to hereinafter as the "Districts"), quasi-municipal corporations and political subdivisions of the State of Colorado, for wastewater treatment services by Fort Collins. Collectively Fort Collins and the Districts 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, Fort Collins is a home rule municipality that operates and maintains a wastewater treatment system for the benefit of its residents, which system includes collection and transmission lines and a wastewater treatment plant, along with other associated and accessory facilities and structures (the "City's Wastewater System"); and

WHEREAS, on March 1, 2005, the City Council of the City of Fort Collins adopted Resolution 2005-018, which identified a portion of the Laporte area designated as "Approved Wastewater Service Area" and depicted on Exhibit "A", attached hereto and incorporated herein by this reference (the "Approved Service Area") to which the City would be authorized to provide wastewater services through the City's Wastewater System; and

WHEREAS, Resolution 2005-018 authorized and directed City staff to proceed with negotiations in an effort to cooperate in the formation of a special district that would provide wastewater collection and customer service in the Approved Service Area, to which the City would propose to provide wastewater treatment services by agreement with said district; and

WHEREAS, the Districts were organized as a means of constructing and providing for public improvements to serve The Grove development (the "Project") located within the Districts' boundaries (the "Districts' Service Area") as contemplated in their Consolidated Service Plan ("Service Plan"), and to serve such additional areas in the Laporte area as may in the future be added to the Districts' service territory; and

WHEREAS, the Service Plan contemplates that the Districts will provide for the construction and financing of the capital improvements as well as the ownership, operation and maintenance of sanitary sewer collection system as deemed necessary for the phased demand of the Project (the "Districts' System"); and

WHEREAS, the Districts' System is intended to flow to a public entity with sanitary sewer treatment facilities that would provide sanitary sewer treatment; such services being provided by Fort Collins or another public entity which is willing and capable of providing such service as the requirements of the Project require pursuant to an agreement upon mutually agreeable terms and conditions; and

WHEREAS, Fort Collins and the Districts have determined that it is in the interests of their respective taxpayers, residents and property owners to enter into this Agreement and desire to set forth in this Agreement their agreements and understandings regarding the construction, ownership, operations and maintenance of the Districts' System and regarding the treatment of wastewater collected by the Districts within the Districts' Service Area by the City's Wastewater System; and

WHEREAS, accordingly, the parties have negotiated the terms and conditions set forth in this Intergovernmental Agreement for Wastewater Treatment Services.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements herein contained, the services to be rendered by the City and the payments to be made by the Districts to the City as herein set forth, and the satisfactory performance of all conditions and requirements set forth herein, it is hereby agreed by and between the parties hereto as follows:

1. Term. This Agreement shall be effective as of the date of signing by all parties, and shall continue in effect until terminated in accordance with Paragraph 13, hereinafter, by court order or by operation of law.

2. Services Provided. The City agrees to permit the connection of the Districts' wastewater collection system to the City's Wastewater System at locations shown on **Exhibit B**, which is attached hereto and incorporated herein by this reference, and at additional connection locations that may in the future be approved by the City as provided in this Paragraph, consistent with all reasonable requirements and specifications of the City, and to permit the discharge of wastewater from the Districts' wastewater collection system (the "District System") into the City's Wastewater System subject to all applicable requirements of the Code of the City of Fort Collins ("City Code"), including,

without limitation, Chapter 26, Article IV (Wastewater), during the term of this Agreement.

A. Connections to the City's Wastewater System. The Districts shall submit to the City a complete application for a Wastewater Connection Permit ("Permit") for each connection of the District System to the City's Wastewater System, and shall have obtained such a Permit prior to connection of and any discharge from each such connection. Such application shall be processed and reviewed by the City consistent with its general operating practices and policies, including, without limitation, the development and imposition of any conditions and requirements for the proposed discharge, such as numeric and/or narrative discharge limits, self-monitoring requirements, data reporting, notification requirements, and such other requirements as the City may, in its reasonable discretion, determine to be appropriate.

B. Metering. Each point of connection between the District System and the City's Wastewater System shall be made with a flow measurement and monitoring station, including a manhole in which said measuring devices shall be located ("Metering Station") designed by the Districts consistent with the City's requirements and subject to the City's approval, which shall not be unreasonably withheld or delayed. Each such Metering Station shall be installed and operate so as to continuously: 1) measure and record wastewater flows; 2) transmit flow information to the Districts and the City for monitoring and billing; and 3) provide for periodic sampling. Each Metering Station shall, upon installation and final inspection and acceptance by the City, become the property of the City and part of the City's Wastewater System. In the event of Metering Station failure, the quantity and quality of flows from the District System may be extrapolated from the available data and any related information, including but not limited to prior observations and measurements or contemporaneous data regarding flows in the City's Wastewater System. The costs of operation and maintenance of each of the Metering Stations shall be taken into account in the Cost of Service analysis to be conducted by the City, as set forth below.

C. Industrial and/or Categorical Discharges. If, in the reasonable discretion of the City, it is determined that proposed discharges from the District System into the Wastewater System may cause pass through of pollutants, interfere with the operation or performance of the Wastewater System, whether due to the partial or complete obstruction of flow in that System, or any other cause, the Districts shall make such modifications and impose such controls and improvements to the District System as the City may reasonably require in order to allow for the issuance of the permit required for said discharge. The Districts will not permit the connection of any customer that requires an Industrial Discharge Permit, unless and until an Industrial Discharge Permit for said discharge has been requested by the discharging customer and approved by the City and all permit fees and other associated charges have been paid in full. In the event that any such categorical discharge results in increased costs to the City,

the City shall be entitled to increase the fees and charges to be paid pursuant to this Agreement commensurate with said increased costs.

3. Payment for Services. In exchange for the use of the Wastewater System as provided herein, the Districts shall pay to the City each of the fees and charges set forth in this Agreement. The fees and charges for wastewater services set forth herein shall be as established by the City from time to time based upon an analysis of the cost to the City of providing services hereunder, including but not limited to administrative and other indirect costs related thereto. The initial rates and charges shall be determined by an initial cost of service study. The City may update and revise as necessary said cost of service study, but shall in any event update and revise the same no less frequently than one (1) time every five (5) years. The Districts may request that the City conduct additional cost of service studies and analyses, but said additional studies and analyses shall be at the Districts' sole cost and expense. As applied in this Agreement, the term "Cost of Service Data" is intended to mean the most recently completed cost of service study hereunder. The initial Cost of Service Data shall be based upon estimated wastewater flow rates provided by the Districts and wastewater strength consistent with normal domestic strength wastewater as defined in City Code.

A. The City shall determine in connection with its approval of each Permit a **Plant Investment Fee** based on Cost of Service Data. Said Plant Investment Fee amount shall be calculated by the City at the time of connection and paid at the time of issuance of each Permit based upon an analysis by the City of the characteristics and requested peak day flow rate of the District System discharges and other associated considerations, and the Cost of Service Data. The Plant Investment Fee for the connections identified in Exhibit B shall be as set forth in Exhibit C, attached hereto and incorporated herein by this reference, until such time as the City updates its Cost of Service Data or modifications in wastewater flows result in increases as otherwise described herein. In the event that the Districts determine that wastewater discharges from the District System may exceed the peak day flow rate for which a Plant Investment Fee has been paid, or either the City or the Districts determine that the characteristics of said discharges have materially changed or are expected to materially change, and as a result additional Plant Investment Fee charges are applicable, the District shall pay such additional Plant Investment Fee as applicable. Upon a determination by the City that the discharges from the District System have reached ninety-five percent (95%) of the peak day flow rate for which Plant Investment Fee has been paid by the Districts, the Districts shall at that time be prohibited from permitting any additional connections to the District System until such time as the Districts have paid additional Plant Investment Fees sufficient for increased wastewater flows based upon the most accurate and currently available projections for the demand created by the District System.

B. A **Monthly Service Charge** for the discharges shall be determined based upon the Cost of Service Data, consistent with the rate applicable to the category H rate set forth in Section 26-280 of the City Code. The initial Monthly

Service Charge shall be as set forth in Exhibit C, until such time as the City updates its Cost of Service Data or modifications in wastewater flows result in increases as otherwise described herein.

C. In the event the peak day flow rate of discharges from the District System exceeds the flow rate for which Plant Investment Fees have been paid, a **System Lease Charge** shall be applicable to said excess flows. This System Lease Charge shall be equivalent to one-twelfth (1/12) of the total amount calculated by the City as the Plant Investment Fee amount otherwise due for said excess wastewater discharge. The System Lease Charge shall not apply toward the total of Plant Investment Fees paid by the Districts, and shall be payable whether or not the City has provided notice to the Districts that wastewater flows have exceeded the ninety-five percent (95%) threshold described in subparagraph A, above. Upon payment of additional Plant Investment Fees, the System Lease Charge shall cease to apply except to wastewater flows in excess of the increased peak day flow rate for which new Plant Investment Fees have been paid.

D. In the event that the wastewater strength exceeds normal domestic wastewater strength or deviates from the basis for the Cost of Service Data, then a **Wastewater Surcharge** shall be added to the Monthly Service Charge, which shall be based upon deviations from the strength and composition projections for the District System that have been used to determine the charges otherwise set forth herein, and shall be determined by applying applicable wastewater strength surcharge rates as set forth in Section 26-281 and Section 26-282 of the City Code.

E. In the event the Districts request or require any services not included in the Monthly Service Fee, the Districts shall pay to the City **miscellaneous fees and charges** based upon the City's costs, time and materials plus the overhead percentage at the rate provided in the City Code for like overhead charges by the City's Wastewater System. Such miscellaneous fees and charges shall be based upon the then applicable method for calculation of miscellaneous fees and charges as set forth in Section 26-289 of the City Code, but shall not include the Administrative Surcharge described in Paragraph 6, below.

F. A **Payment In Lieu of Taxes ("PILOT")** amount equal to an additional six percent (6%) of the total of the Monthly Service Charge, System Lease Charge and Wastewater Surcharge, or such additional or different amount as may otherwise be established as the PILOT rate in Section 26-277(c) of the City Code.

4. **Pretreatment Requirements and Enforcement.** The parties acknowledge and agree that the City's U.S. Environmental Protection Agency-approved Industrial Pretreatment Program shall apply in full within the District System, and shall be enforceable by the City throughout said System. The Districts agree to cooperate with

the System in connection with any inspection, investigation, corrective or enforcement action, or other action required to implement said Industrial Pretreatment Program. In particular, the Districts agree that as a condition of service to all customers of the Districts and as a condition of service to the Districts, the City shall be entitled to inspect, monitor and take or require such corrective action within the District System as may be necessary for the purpose of implementation or enforcement of said Industrial Pretreatment Program. As noted in Paragraph 2.C, above, no categorical discharge to the District System or the City's Wastewater System shall be allowed except in accordance with the City's requirements for an Industrial Discharge Permit, the terms of which shall be fully enforceable by the City. The Districts shall notify the City no less than thirty (30) days in advance of the connection to the District System of any nonresidential customer or change of use by a new or existing customer that will result in the connection of a nonresidential use to the District System that has not been expressly reviewed and approved by the City.

5. Performance Standards for District System. The Districts shall establish and enforce design and performance standards reasonably satisfactory to the City for all service lines, collector lines and other components of the District System. Such standards shall address, but not be limited to, prevention and control of infiltration, inflow, pretreatment requirements and system reliability, and shall meet generally accepted engineering standards for public wastewater collection systems.

6. Administrative Surcharges. As a condition of the services to be provided to the Districts hereunder, the Districts shall no later than January 10th and July 10th of each year of this Agreement remit to the City the then applicable City **Administrative Surcharge** for each new service connection for which the Districts have issued approval during the six (6) month period ending at the end of the prior month. The Districts shall also provide at the time of said payment an accounting of the Administrative Surcharges collected, including the service address and amount collected for each such address. The Administrative Surcharge shall be collected pursuant to a schedule of the same to be provided to the Districts by the City and updated from time to time by the City Manager pursuant to City Code. The initial Administrative Surcharge represents the estimated burden upon the City to provide street, library and community parklands expected to result from the new development to which wastewater service will be provided hereunder. The initial Administrative Surcharges shall be as set forth in Exhibit C, attached hereto and incorporated herein by this reference. In no event shall any such Administrative Surcharge be increased in the future so as to exceed the comparable fee then imposed by the City upon new development within the limits of the City of Fort Collins.

7. Annual Reporting by Districts. No later than January 10th of each year of this Agreement, the Districts shall provide to the City a complete and accurate list of the Districts' wastewater customers as of the end of the prior year, including customer name, service address, billing address and category of customer. The Districts agree to cooperate with the City and provide such additional information as the City may require in order to reconcile the records of the City and the Districts, and to confirm the nature,

extent and circumstances of wastewater generated at or discharged from any property served by the District System or connected to the City Wastewater 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 the City shall, as a condition of receipt of such information, protect the same from public disclosure to the extent required by law.

8. Extension of the District System. The parties acknowledge that the Districts may choose to extend the District System in order to provide wastewater services to areas not within the defined boundaries of the Districts as of the date of this Agreement. Subject to the terms and conditions set forth herein, Fort Collins intends that such extensions shall be allowed hereunder, provided that the District System is within the Approved Service Area, or within an additional area for which service has been expressly authorized or approved by the City Council or other appropriate City official in accordance with the City Code.

9. Force Majeure. The City shall provide the services as set forth herein, subject to the general requirements applicable to the Wastewater System by law, including the Code of the City of Fort Collins, as the same may from time to time be modified or amended. The City shall not be liable for any failure, default or delay in any service provided for under this Agreement caused by strikes, acts of God, unavoidable accidents or contingencies of any nature whatsoever beyond its control.

10. Liability for Costs, Fees and Damages. The Districts shall be liable to the City for any expense, loss or damage caused to the City by reason of the violation of any applicable law, permit requirement or condition hereunder, and for any direct or indirect damages incurred by the City as a result of the discharge of wastewater into the Wastewater System, including any court costs or other costs of enforcement by the City of its rights hereunder.

11. Default/Remedies. If any party fails to comply with the provisions of this Agreement, the other parties, or any of them, after providing written notification to the noncomplying party and upon the failure of the noncomplying party to achieve compliance within ninety (90) days, may seek all such remedies as are available under Colorado law, including but not limited to termination of this Agreement, actual damages, specific performance and injunctive relief, or forfeiture of investment and all rights of said party to further service by the City's Wastewater System or to discharges from the District System, as applicable, but excluding any exemplary and/or consequential damages. In the event litigation is required to enforce this Agreement, the prevailing party(ies) shall be entitled to payment by the defaulting party of its/their actual attorneys' fees and costs incurred. Nothing in this Paragraph 11 or any other provision of this Agreement shall, however, be construed as a waiver of the notice requirements, defenses, immunities, and limitations any of the Parties may have under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, et seq., or any other defenses, immunities, or limitations of liability available by law. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties

hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed by law or regulation, and the provisions of this paragraph will be as effective as if repeated specifically in the Agreement in connection with each particular duty, obligation, right, and remedy to which they apply.

12. System Responsibilities. The Districts shall not be responsible for operation and maintenance of the City's Wastewater System. Fort Collins shall not be responsible for the operation and maintenance of the District System. At each point of connection and division between the District System and the City's Wastewater System, the City shall own the Metering Station (as set forth in Paragraph 2.B, above). All collection and treatment improvements downstream of said Metering Station shall be part of the City's Wastewater System and all collection system improvements upstream of said Metering Station shall be a part of the District System except as expressly and specifically agreed by parties in writing. Continuation of wastewater treatment service by the City shall be contingent upon full payment by the Districts of all amounts due, including without limitation all plant investment fees, monthly charges for service and administrative surcharges and compliance by the Districts with all requirements and conditions set forth herein. The parties acknowledge that this Agreement is intended to document the conditions and requirements to be met by the Districts in order for the City to provide wastewater service as described herein, and that this Agreement is not intended to, and does not, impose upon Fort Collins any obligations to the Districts except for those obligations that Fort Collins has as a general matter to its wastewater utility customers.

13. Termination/Transfer. This Agreement shall continue in effect unless and until terminated: 1) by operation of law; or 2) by the Districts upon the provision of written notice of termination to Fort Collins no less than one (1) year in advance of the date of termination; or 3) by mutual agreement of the parties. 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 wastewater treatment services consistent with the terms of the Agreement and all applicable laws. In no event shall the Districts be entitled to a refund of Plant Investment Fees or other fees or charges paid to the City hereunder.

14. Applicable Law. The laws of the State of Colorado and rules and regulations issued pursuant thereto will be applied in the interpretation, execution and enforcement of this Agreement. Any provision of this Agreement, whether or not incorporated herein by reference, which provides for arbitration by an extra-judicial body or person or which is otherwise in conflict with said laws, rules and regulations will be considered null and void. In addition, the parties hereto recognize that there are legal constraints imposed upon them by the constitution, statutes, and rules and regulations of the State of Colorado and of the United States, and imposed upon them by their respective governing statutes, charters, ordinances, rules and regulations, and that, subject to such constraints, the parties intend to carry out the terms and conditions of this Contract. Notwithstanding any other provision of this Agreement to the contrary, in no

event shall either of the parties exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

15. Notice. Any notice, request, demand, consent or approval, or other communication required or permitted hereunder will be in writing and will be deemed to have been given when personally delivered or deposited in the United States mail with proper postage and address as follows:

Districts:

The Enterprise or
City: Utilities General Manager
 City of Fort Collins
 P.O. Box 580
 700 Wood Street
 Fort Collins, CO 80522-0580

16. Complete Agreement. This Agreement, including all exhibits, supersedes any and all prior written or oral agreements and there are no covenants, conditions, or agreements between the parties except as set forth herein. No prior or contemporaneous addition, deletion, or other amendment hereto will have any force or affect whatsoever unless embodied herein in writing.

17. No Third Party Beneficiary. The terms and conditions of this Agreement, and all rights of action relating thereto, are strictly reserved to the parties, and nothing in this Agreement shall give or allow any claim or right or cause of action whatsoever by any other person not included in this Agreement. Any person and/or entity, other than the parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

18. No Beneficial Interest. The signatories aver that to their knowledge, no employee of their respective entities has any personal or beneficial interest whatsoever in the service or property described herein and that no Bribery and Corrupt Influences or Abuse of Public Office under the Colorado Criminal Code is present.

19. No Waiver. The waiver or delay of enforcement of one or more terms of this Agreement shall not constitute a waiver of the remaining terms. The waiver or delay in enforcement regarding any breach of this Agreement shall not constitute a waiver of any terms of the Agreement.

20. Relationship of Parties. This Agreement does not create and shall not be construed as creating a relationship of joint ventures, partners, or employer-employee, between the Parties. The Parties intend that this Agreement be interpreted as creating an independent contractor relationship. Pursuant to that intent, it is agreed that the conduct and control of the duties required by the Agreement shall lie solely with each Party respectively, and each Party shall be free to exercise reasonable discretion in the performance of its individual duties under this Agreement. Neither Party shall, with respect to any activity, be considered an agent or employee of the other Party.

21. Modification of Agreement. This Agreement may be modified, amended, changed or terminated, except as otherwise provided herein, in whole or in part, only by an agreement in writing duly authorized and executed by both Parties. No consent of any third party shall be required for the negotiation and execution of any such agreement.

22. Assignment. No transfer or assignment of this Agreement or of any rights hereunder shall be made by either Party without the prior written consent of the other, which consent shall not be unreasonably withheld.

23. Severability. In the event any court of competent jurisdiction shall hold any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

24. Venue For Enforcement Actions. In the event of a dispute between the parties which results in litigation, the exclusive venue for such action shall be the District Court in and for the County of Larimer, State of Colorado.

25. Instruments of Further Assurance. The Parties each covenant that they will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered, such acts, instruments, and transfers as may be reasonably required for the performance of their obligations hereunder.

26. Binding Agreement. The terms, provisions and covenants of this agreement shall be binding upon the parties hereto, their successors and assigns.

27. Financial Obligations/Future Fiscal Years. This Agreement is not intended to create or constitute a debt or indebtedness, whether direct or indirect, of the City or the Enterprise within the meaning of any constitutional, charter or statutory provision or limitation. Obligations of Fort Collins payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

IN WITNESS WHEREOF, the said City has caused this agreement to be executed by its Mayor, attested to by its City Clerk with the corporate seal of said City hereunto affixed, and the said Districts have caused this agreement to be executed by their presidents, as of the day and year first above written, IN DUPLICATE.

CITY OF FORT COLLINS WATER
UTILITY ENTERPRISE
An Enterprise of the City

By: _____
Enterprise President

ATTEST:

Enterprise Secretary

THE CITY OF FORT COLLINS
A Municipal Corporation

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Sr. Assistant City Attorney

IN WITNESS WHEREOF, the said City has caused this agreement to be executed by its Mayor, attested to by its City Clerk with the corporate seal of said City hereunto affixed, and the said Districts have caused this agreement to be executed by their presidents, as of the day and year first above written, IN DUPLICATE.

CITY OF FORT COLLINS WATER
UTILITY ENTERPRISE
An Enterprise of the City

By: _____
Enterprise President

ATTEST:

Enterprise Secretary

THE CITY OF FORT COLLINS
A Municipal Corporation

By: _____
Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Sr. Assistant City Attorney

EXHIBIT C

Schedule of Fees, Charges & Surcharges

(as of February 7, 2006)

Wastewater Plant Investment Fee	\$6.00 per gallon per day of capacity
Monthly Service Charge	\$280 plus \$1.362 per 1000 gallons
System Lease Charge	One-twelfth (1/12) of the plant investment fee due on the portion of the peak day flow rate which exceeds the flow rate for which plant investment fee have been paid
Wastewater Surcharge	As set forth in Section 26-281 and Section 26-282 of the City Code
Miscellaneous Fees and Charges	As set forth in Section 26-289 of the City Code
Payment in Lieu of Taxes	An additional six percent (6%) of the total of the Monthly Service Charge, System Lease Charge and Wastewater Surcharge

Administrative Surcharges:

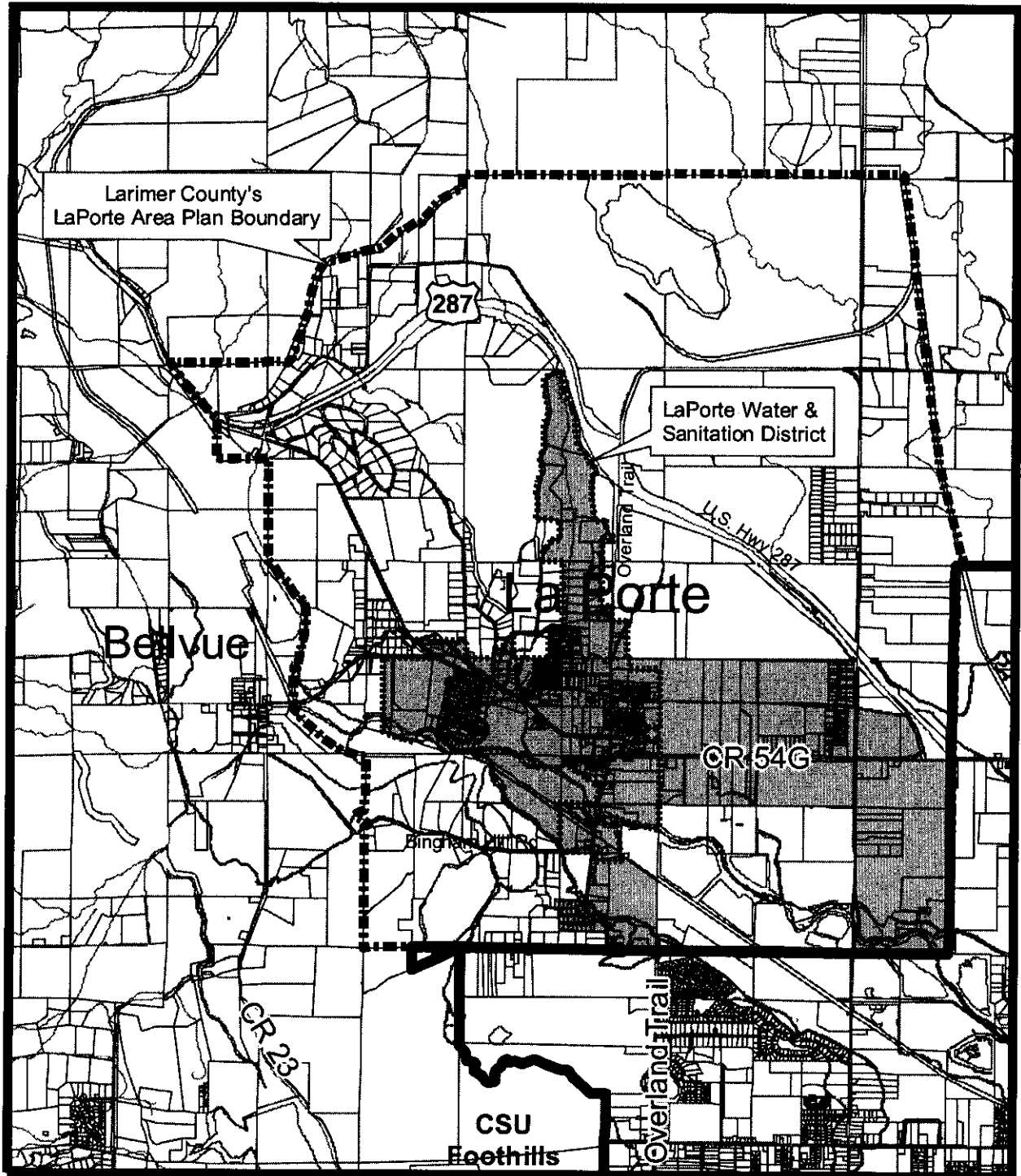
	<i>Per Single Family Dwelling Unit</i>	<i>Per Multi Family Dwelling Unit</i>	<i>Commercial</i>
Community Parks	\$669	\$435	n/a
Library	\$508	\$376	n/a
Street Oversizing	\$649	\$448	See Below
Total	\$1,826	\$1,259	n/a

Street Oversizing for Commercial

Industrial	\$0.46 per square foot of building
Office	\$0.77 per square foot of building
Commercial	\$0.96 per square foot of building
Retail Commercial	\$1.61 per square foot of building

Exhibit A

Approved Wastewater Service Area for LaPorte



Legend

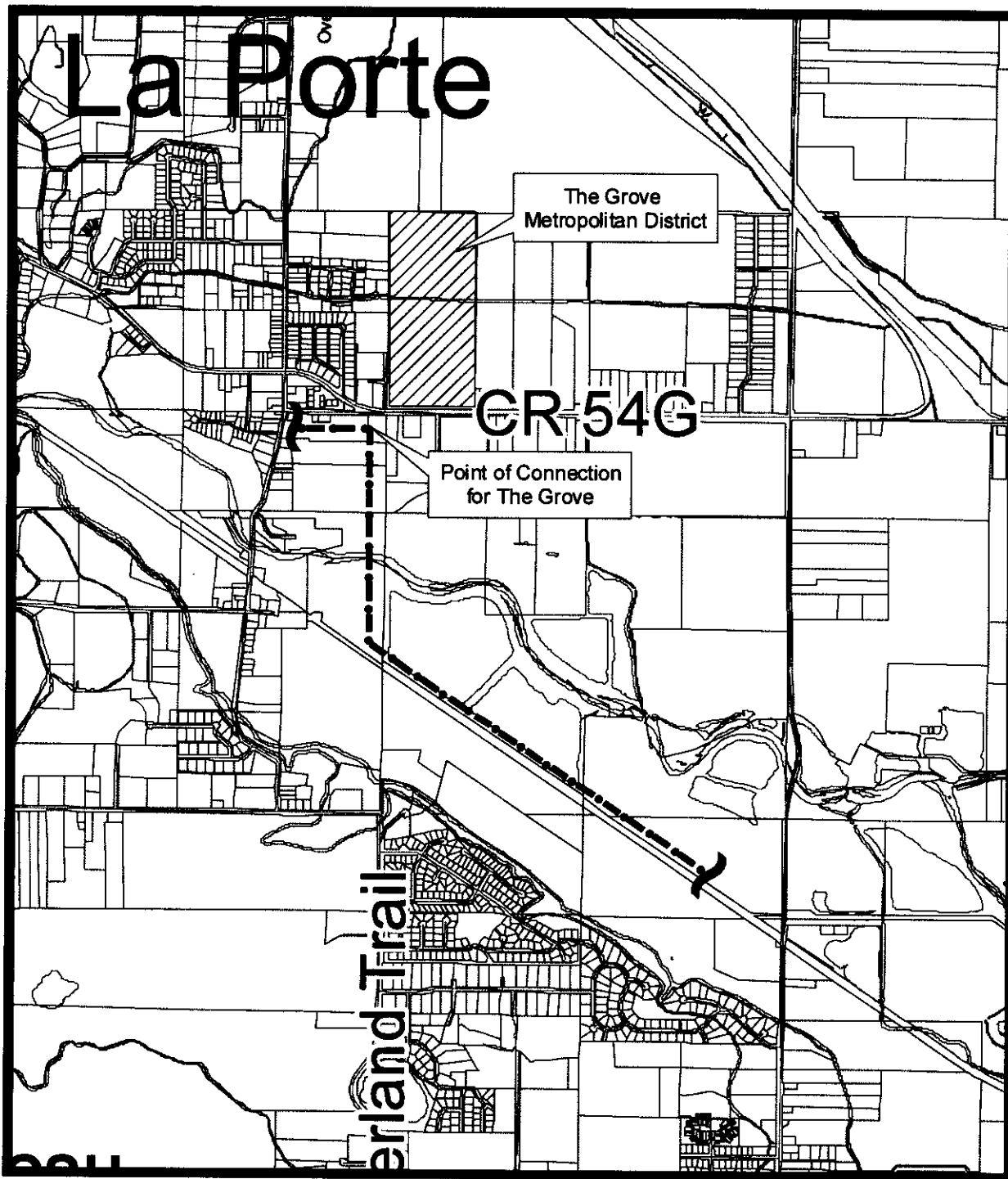
- Growth Management Area
- Larimer County's LaPorte Area Plan Boundary
- Approved Wastewater Service Area
- LaPorte Water & Sanitation District



Prepared by
City of Fort Collins
Community Planning and
Environmental Services
Advance Planning Department
February 2, 2005

Exhibit B

Connection Point to City's Wastewater System



Legend

--- Existing Sanitary Sewer



Prepared by
City of Fort Collins
Community Planning and
Environmental Services
Advance Planning Department
February 2, 2008

Administrative Surcharges
For the LaPorte Planning Area

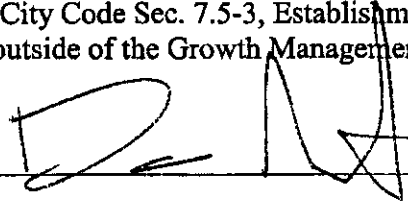
	<i>Per Single Family Dwelling Unit</i>	<i>Per Multi Family Dwelling Unit</i>	<i>Commercial</i>
Community Parks	\$669	\$435	n/a
Library	\$508	\$376	n/a
Street Oversizing	\$649	\$448	See Below
Total	\$1,826	\$1,259	n/a

Street Oversizing for Commercial

Industrial	\$0.46 per square foot of building
Office	\$0.77 per square foot of building
Commercial	\$0.96 per square foot of building
Retail Commercial	\$1.61 per square foot of building

Authorized by City Code Sec. 7.5-3, Establishment of special surcharges for utility service outside of the Growth Management Area.

Approved by: _____



Date: _____

1/25/06

RESOLUTION NO. 2006-013
OF THE CITY COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING AN INTERGOVERNMENTAL AGREEMENT
WITH THE GROVE METROPOLITAN DISTRICTS NUMBERS 1 THROUGH 3
FOR THE PROVISION OF WASTEWATER TREATMENT SERVICES
BY THE CITY'S WASTEWATER UTILITY

WHEREAS, Larimer County has recently adopted the 2004 Laporte Area Plan, which establishes general planning and zoning standards for the unincorporated area of Larimer County northwest of Fort Collins generally referred to as "Laporte", which is outside of the City limits and outside of the City's approved Growth Management Area ("GMA"); and

WHEREAS, the adoption of the Laporte Area Plan, which identifies areas for possible future development that will require the provision of public wastewater services, has generated substantial interest in and discussion of the source of public wastewater collection and treatment services for that future development; and

WHEREAS, among the alternatives under discussion is the formation of one or more new special districts to provide wastewater collection and treatment services, most likely through the development of small package treatment plants; and

WHEREAS, the City of Fort Collins provides water service and wastewater collection and treatment services to certain properties in the Laporte area as a result of prior agreements with the Laporte Water and Sanitation District and pursuant to existing individual out-of-city service agreements; and

WHEREAS, applicable City Plan policies discourage the extension of City utility services in a manner that may encourage development on the edges of the City's GMA, except when special benefits will accrue to the City for providing such services; and

WHEREAS, because of Laporte's position upstream of Fort Collins on the Poudre River, the development of the Laporte area and the treatment in Laporte of wastewater from such development has raised concerns regarding potential water quality impacts upon the Poudre River, the residents of Fort Collins and the City's wastewater treatment facilities; and

WHEREAS, on March 1, 2005, the City Council adopted Resolution 2005-018, approving an Approved Service Area in Laporte so as to allow the City to provide utility services in that area, and authorizing the City Manager to arrange for and negotiate agreements related to the provision of wastewater treatment services in the Approved Service Area; and

WHEREAS, several developers planning developments in the Laporte area have formed three metropolitan districts to provide wastewater services, along with other public improvements and services, for a planned development known as The Grove; and

WHEREAS, the new districts, named The Grove Metropolitan Districts Numbers 1 through 3 (the "Grove Districts"), have been planned and established with the expectation of acquiring wastewater treatment services from the City, thus eliminating the water quality impact concerns noted above; and

WHEREAS, based on the Council's prior policy direction, staff has negotiated an intergovernmental agreement with the Grove Districts under which the City would provide wastewater treatment services in exchange for payment of certain fees, rates and other charges by the Grove Districts, together with other terms, conditions and requirements; and

WHEREAS, Section 7.5-3 of the City Code authorizes the City Manager to collect from new out-of-GMA utility customers administrative charges based upon the estimated demand on City services to result from the development to be served by City utility services; and

WHEREAS, the terms and conditions for provision of said wastewater treatment services, and for payment for fees, rates and other charges by the Districts in exchange for said services are set forth in the Intergovernmental Agreement for Wastewater Treatment Services," a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference (the "Agreement"); and

WHEREAS, the City is authorized to enter into intergovernmental agreements to provide any function, service or facility, such as a grant agreement, as provided in Article II, Section 16 of the Charter of the City of Fort Collins and Section 29-1-203, C.R.S.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS that the Council hereby approves the Agreement and authorizes the Mayor to execute the Agreement on behalf of the City, in substantially the form set forth on Exhibit "A", subject to such modifications, amendments or additions thereto as may be determined by the City Manager, in consultation with the City Attorney, to be necessary or appropriate to protect the interests of the City.

Passed and adopted at a regular meeting of the City Council held this 7th day of February, A.D. 2006.

Mayor

ATTEST:

City Clerk