

**AGREEMENT FOR
SWSP II PARTICIPANTS TO REIMBURSE SWSP I PARTICIPANTS
FOR CARTER LAKE OUTLET WORKS MODIFICATION**

This Agreement is entered into this _____ of _____, 2019 by and between:

the Town of Berthoud, the City and County of Broomfield, the Town of Erie, the City of Fort Lupton, the City of Fort Morgan, the Town of Hudson, Little Thompson Water District, Central Weld County Water District, the City of Longmont, acting by and through its Water Utility, the City of Louisville, Morgan County Quality Water District, Platte River Power Authority, Superior Metropolitan Water District, and Tri-State Generation and Transmission, Inc. (collectively, "SWSP I Participants"); and

the Town of Berthoud, Left Hand Water District, the City of Boulder, and Longs Peak Water District (collectively, "SWSP II Participants" and, individually, "SWSP II Participant"); and

the Southern Water Supply Project Water Activity Enterprise ("the SWSP Enterprise"), a government-owned business within the meaning of Article X, Section 20(2)(d) of the Colorado Constitution, that is organized pursuant to C.R.S. §§ 37-45.1-101, *et seq.* and owned by the Northern Colorado Water Conservancy District (a quasi-municipal entity and political subdivision of the State of Colorado), and whose address is 220 Water Ave., Berthoud, Colorado 80513,

to provide for the undersigned SWSP II Participants' reimbursement for the initial construction of and the completion of certain upgrades and modifications to the Carter Lake Outlet Works ("Carter Lake Outlet Works Modification"). The SWSP I Participants, SWSP II Participants, and SWSP Enterprise shall be collectively referred to herein as the "Parties."

RECITALS

- A. The SWSP Enterprise operates the Southern Water Supply Project ("SWSP I"), a network of water pipelines in northeastern Colorado that supplies untreated water for municipal purposes from Carter Lake to a number of municipalities, water districts, and other entities ("SWSP I Participants") located within the Northern Colorado Water Conservancy District.
- B. The SWSP Enterprise is developing a second water pipeline ("SWSP II"), which will supply additional untreated water for municipal purposes from Carter Lake to municipalities, water districts, and other entities located within the Northern Colorado Water Conservancy District that did not participate in SWSP I.
- C. The Carter Lake Outlet Works Modification was completed as an update to the Carter Lake Dam No. 1 Outlet Works, a component of the Colorado-Big Thompson Project (a federally owned reclamation project) and included the replacement of a portion of the St.

Vrain Supply Canal and related works to allow for deliveries of water from the existing Carter Lake Dam No. 1 Outlet Works through the St. Vrain Supply Canal to the SWSP I Participants.

- D. Capacity in the Carter Lake Outlet Works Modification was expanded and allocated to the SWSP I Participants per Allotment Contracts for Additional Capacity in the Southern Water Supply Project Pipeline, entered into by the SWSP I Participants in August 2001.
- E. Costs for the original construction of the Carter Lake Outlet Works Modification and upgrades thereto were divided among the SWSP I Participants according to their pro rata allocation of capacity in the Carter Lake Outlet Works Modification.
- F. Deliveries of water from Carter Lake to the SWSP II Participants will be made through the Carter Lake Outlet Works Modification according to each SWSP II Participant's respective allotment contracts with the SWSP Enterprise.
- G. This Agreement provides for payment from the SWSP II Participants to the SWSP I Participants for the costs previously expended by the SWSP I Participants for the prior construction of and upgrades to the Carter Lake Outlet Works resulting in the Carter Lake Outlet Works Modification, which payment was calculated as a pro rata portion of the original costs for construction of the Carter Lake Outlet Works Modification and subsequent permanent improvements thereto, such as a SCADA system, which facilitated continued deliveries of water to the SWSP I Participants and from which the SWSP II Participants will benefit.

AGREEMENT

- 1. The undersigned SWSP II Participants agree to reimburse the SWSP I Participants for the costs of the original construction of the Carter Lake Outlet Works Modification as well as subsequent permanent improvements and upgrades thereto which permitted continued deliveries of water to the SWSP I Participants, in an amount equal to their respective pro rata allocation of capacity in the Carter Lake Outlet Works Modification and, hence, their pro rata share of such costs. The attached **Exhibit A** shows the pro rata allocation of capacity and resulting share of such costs for each SWSP II Participant that has been allocated capacity in the Carter Lake Outlet Works Modification for the SWSP II Project. Because the Town of Berthoud is only participating in SWSP II to obtain capacity in the SWSP II Pipeline, and is not obtaining additional capacity in the Carter Lake Outlet Works Modifications beyond its allocation of capacity by virtue of its participation in SWSP I, Berthoud is not obligated to reimburse the SWSP I Participants under this agreement in any amount.
- 2. Each SWSP II Participant agrees to make its respective payment set forth in **Exhibit A** within 60 days of signing this agreement. If SWSP II Participant fails to make such payment, the SWSP Enterprise shall give SWSP II Participant thirty (30) days' advance written notice of its intention to terminate this Agreement under this paragraph. SWSP II Participant shall have until the end of said 30-day period in which to make all past due

payments in full in order to cure its default hereunder.

3. In the event that the SWSP II Participant does not provide all payments pursuant to this Agreement within said thirty (30) day period, such failure to pay shall be treated as a default, and the SWSP II Participant shall automatically lose its allotted capacity in the Carter Lake Outlet Works Modification and SWSP II Pipeline, as set forth in **Exhibit A**; additionally, all other contracts including the SWSP II Participants' allotment contract shall be null and void. SWSP II Participant shall not be entitled to any reimbursement of any funds paid to the SWSP II Enterprise up to the date of default.
4. Both the SWSP I and SWSP II Participants agree to share on a pro rata basis all future reimbursement to SWSP I and SWSP II Participants for use of the Carter Lake Outlet Works Modification should new entities seek an additional allocation of capacity in the Carter Lake Outlet Works Modification to obtain deliveries of water from the SWSP I or II Pipeline system.
5. In accordance with Paragraph 8.A of the SWSP I and SWSP II Participants' respective allotment contracts with the SWSP Enterprise, both the SWSP I and SWSP II Participants agree to share the costs of annual administration, operation, and maintenance, including repair and replacement, which costs shall be allocated on the basis of each Participant's pro rata share of the allocated capacity in the Carter Lake Outlet Works Modification, as shown in the attached **Exhibit A**. As stated in the Participants' respective allotment contracts, such costs shall be subject to annual appropriation or budgeting by the Participant and shall not be a multiple fiscal year obligation of the Participant.
6. The SWSP I Participants have reviewed their respective pro rata allocations of capacity in the Carter Lake Outlet Works Modification set forth in the attached **Exhibit A** and approve of and consent to the capacity and reimbursement amount set forth therein.
7. This Agreement is the entire agreement between the Parties regarding the payment from SWSP II Participant for reimbursement for the costs for the construction of the Carter Lake Outlet Works Modification as well as subsequent improvements and upgrades thereto. This Agreement shall be modified by the parties only by a duly executed written instrument approved by the Board of Directors of the SWSP Enterprise.
8. Nothing in this Agreement shall constitute a waiver, in whole or in part, of the governmental immunities, rights, or protections provided to the Northern Colorado Water Conservancy District or the parties if applicable, by the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 to -120, or any successor or similar statutes of the State of Colorado.
9. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**SOUTHERN WATER SUPPLY
PROJECT WATER ACTIVITY
ENTERPRISE**

By: _____
Name: _____
Title: _____
Date: _____

**CITY AND COUNTY OF
BROOMFIELD**

By: _____
Name: _____
Title: _____
Date: _____

CITY OF FORT LUPTON

By: _____
Name: _____
Title: _____
Date: _____

**LITTLE THOMPSON WATER
DISTRICT**

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF BERTHOUD

By: _____
Name: _____
Title: _____
Date: _____

TOWN OF ERIE

By: _____
Name: _____
Title: _____
Date: _____

CITY OF FORT MORGAN

By: _____
Name: _____
Title: _____
Date: _____

**CENTRAL WELD COUNTY
WATER DISTRICT**

By: _____
Name: _____
Title: _____
Date: _____

**CITY OF LONGMONT
ACTING BY AND THROUGH
ITS WATER UTILITY**

By: _____

Name: _____

Title: _____

Date: _____

**MORGAN COUNTY QUALITY
WATER DISTRICT**

By: _____

Name: _____

Title: _____

Date: _____

**SUPERIOR METROPOLITAN
WATER DISTRICT**

By: _____

Name: _____

Title: _____

Date: _____

TOWN OF HUDSON

By: _____

Name: _____

Title: _____

Date: _____

CITY OF BOULDER

By: _____

Name: _____

Title: _____

Date: _____

CITY OF LOUISVILLE

By: _____

Name: _____

Title: _____

Date: _____

PLATTE RIVER POWER AUTHORITY

By: _____

Name: _____

Title: _____

Date: _____

**TRI-STATE GENERATION AND
TRANSMISSION, INC.**

By: _____

Name: _____

Title: _____

Date: _____

LEFT HAND WATER DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

LONGS PEAK WATER DISTRICT

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A
Southern Water Supply Project
Carter Lake Outlet Works Cost Allocation

3/22/2018
Revision 10/24/2018

SWSP Outlet Cost: \$ 3,665,000

SWSP Capacity Pre-SWSP II

SWSP Participant	Capacity (cfs)	Allocation Percentage	Cost Allocation
Berthoud (1)	7.2	4.1715%	\$ 152,885.28
Broomfield	22.3	12.9200%	\$ 473,519.70
Erie	5.5	3.1866%	\$ 116,787.37
Fort Lupton	9.5	5.5041%	\$ 201,723.64
Fort Morgan	17.1	9.9073%	\$ 363,102.55
Hudson	2.9	1.6802%	\$ 61,578.79
Little Thompson/Central Weld Co. W.D. (1)	45.0	26.0718%	\$ 955,533.02
Longmont	24.3	14.0788%	\$ 515,987.83
Louisville	7.2	4.1715%	\$ 152,885.28
Morgan County Quality W.D.	2.7	1.5643%	\$ 57,331.98
Platte River Power Authority (1)	18.0	10.4287%	\$ 382,213.21
Superior Metropolitan Water District	6.0	3.4762%	\$ 127,404.40
Tri-State Generation and Transmission	4.9	2.8389%	\$ 104,046.93
Total	172.6	100.0000%	\$ 3,665,000.00

New SWSP Capacity

Participant	Capacity (cfs)	Allocation Percentage	Cost Allocation	(Owed To) Payment Due
Berthoud (1)	7.2	3.27869%	\$ 120,163.93	\$ (32,721.35)
Broomfield	22.3	10.15483%	\$ 372,174.41	\$ (101,345.29)
Erie	5.5	2.50455%	\$ 91,791.89	\$ (24,995.48)
Fort Lupton	9.5	4.32605%	\$ 158,549.64	\$ (43,174.00)
Fort Morgan	17.1	7.78689%	\$ 285,389.34	\$ (77,713.20)
Hudson	2.9	1.32058%	\$ 48,399.36	\$ (13,179.43)
Little Thompson/Central Weld Co. W.D. (1)	45.0	20.49180%	\$ 751,024.59	\$ (204,508.43)
Longmont	24.3	11.06557%	\$ 405,553.28	\$ (110,434.55)
Louisville	7.2	3.27869%	\$ 120,163.93	\$ (32,721.35)
Morgan County Quality W.D.	2.7	1.22951%	\$ 45,061.48	\$ (12,270.51)
Platte River Power Authority (1)	18.0	8.19672%	\$ 300,409.84	\$ (81,803.37)
Superior Metropolitan Water District	6.0	2.73224%	\$ 100,136.61	\$ (27,267.79)
Tri-State Generation and Transmission	4.9	2.23133%	\$ 81,778.23	\$ (22,268.70)
City of Boulder	32.0	14.57195%	\$ 534,061.93	\$ 534,061.93
Left Hand Water District	12.0	5.46448%	\$ 200,273.22	\$ 200,273.22
Longs Peak Water District	3.0	1.36612%	\$ 50,068.31	\$ 50,068.31
Total	219.6	100.00000%	\$ 3,665,000.00	\$ -

Note (1): Platte River Power Authority has recently allocated 3 cfs to Berthoud and 10 cfs to Little Thompson/Central Weld with 5 cfs remaining in their ownership. Per their respective capacity transfer agreements, the reimbursement is based upon pre-transferred capacities for those three entities.

For purposes of cost allocations going forward, the allocation percentages shall be: Platte River Power Authority with 5.0 cfs, Berthoud with 10.2 cfs, and Little Thompson/Central Weld Co. W.D. with 55.0 cfs.