

SECOND INTERIM AGREEMENT BETWEEN THE
NORTHERN COLORADO WATER CONSERVANCY DISTRICT,
ACTING BY AND THROUGH ITS
SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE,
AND
THE TOWN OF ERIE ACTING BY AND THROUGH
ITS ERIE WATER ACTIVITY ENTERPRISE
FOR INCREASING THE CAPACITY OF THE
SOUTHERN WATER SUPPLY PROJECT,
EASTERN PHASE

This Second Interim Agreement for Increasing the Capacity of the Southern Water Supply Project, Eastern Phase, is made and entered into this _____ of _____, 2018, by and between the Town of Erie, acting by and through its Erie Water Activity Enterprise, whose address is PO Box 750, Erie, CO 80516-0750 (hereinafter called “Participant”) and the Southern Water Supply Project Water Activity Enterprise (hereinafter termed “the SWSP 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.* 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. Participant and the SWSP Enterprise are hereinafter referred to collectively as the “Parties,” and individually as a “Party.”

Recitals

- A. The SWSP Enterprise operates a municipal water supply conveyance system known as the Southern Water Supply Project to provide untreated water from Carter Lake Reservoir to entities located within the Northern Colorado Water Conservancy District and its Municipal Subdistrict.
- B. In 2001, the SWSP Enterprise began a project to add pumping plants to the Southern Water Supply Project pipeline, known as the Pump Project. The Pump Project is being constructed in two phases. The first phase is known as the West Longmont Phase, which has been completed. The second phase is known as the Eastern Phase and consists of the Eastern Pumping Plant.
- C. Pursuant to the Allotment Contract for Additional Capacity in the Southern Water Supply Project Pipeline, dated August 3, 2001 (“Allotment Contract”), the Participant holds an allotment of capacity in the Pump Project. Pursuant to the Allotment Contract, costs for the completion of the Eastern Phase shall be divided among the entities that participate in the Pump Project, according to their pro rata portion of the capacity in that Project.
- D. In 2005, the Eastern Phase Interim Contract was executed with the SWSP Participants to perform a siting study, prepare a preliminary design of the pump station, and to purchase

the site. This work was completed in 2006.

- E. The SWSP Enterprise has determined that it is necessary to commence the design of the Eastern Phase pump station. Under paragraph 6.e. of the Allotment Contract, Participant has an obligation to pay its share of the cost of planning, designing, and constructing the Eastern Pumping Plant.

Agreement

1. The SWSP Enterprise agrees to undertake the Work, at the expense of Participant and other similar participants under and pursuant to the terms and conditions of this Agreement. A description of the Work is provided in Exhibit A.
2. Pursuant to paragraph 6.e of the Allotment Contract, Participant shall provide the SWSP Enterprise with its pro rata portion of the funds necessary for the Work. On or before January 15, 2018, Participant shall pay the SWSP Enterprise \$12,979.62 as its portion of the estimated cost of the Work, which is anticipated to total \$715,000. The allocation of the estimated total cost of the Work is provided in Exhibit B. The SWSP Enterprise does not warrant or represent that the Work can be fully completed for this estimated total amount. If the Work cannot be completed within this amount, the SWSP Enterprise is not obligated to complete the Work unless sufficient additional funds, as determined by the SWSP Enterprise, are provided by Participant and other similar participants.
3. In the event that additional funds are needed by the SWSP Enterprise to complete the Work hereunder, the SWSP Enterprise shall give Participant a written notice and explanation of the need for the additional funds, including the amount. Participant shall have thirty (30) days from receipt of the written notice in which to pay the requested additional funds to the SWSP Enterprise.
4. In the event that Participant fails to make the initial payment or any requested additional payment described above, the SWSP Enterprise shall have the right to terminate this Agreement and cease all Work for the benefit of Participant. As provided in paragraph 8.c of the Allotment Contract, the SWSP Enterprise shall give Participant thirty (30) days' advance written notice of its intention to terminate this Agreement and cease the Work under this paragraph. Participant shall have until the end of said thirty (30) day period in which to make all past due payments in full in order to cure its default hereunder. Participant shall in any event be responsible for its portion of all costs of the Work actually incurred by the SWSP Enterprise as of the date of termination of this Agreement. In the event that this Agreement is terminated because of Participant's failure to make the required payments, Participant's allocation of Additional Capacity, as such capacity is defined in the Allotment Contract, in the Southern Water Supply Project pipeline shall be automatically reduced in accordance with paragraph 8.c. of the Allotment Contract.
5. The SWSP Enterprise agrees to diligently pursue the Work in good faith so long as

adequate funding therefor is provided by Participant and other similar participants. The SWSP Enterprise anticipates completion of the Work in December 2018.

6. If this Agreement is terminated for any reason, Participant shall not be entitled to any return of any funds paid to the SWSP Enterprise for the Work, unless payments by Participant and other similar participants exceed the SWSP Enterprise's costs, in which case a pro rata refund will be made to each participant. In addition, in the event of the termination of the Eastern Phase of the Pump Project, Participant shall be assigned an undivided interest (with other similar participants) in all of the SWSP Enterprise's right, title and interest in all of the Work, and all documentation related to the Work. The SWSP Enterprise shall have no further obligations to Participant upon termination of this Agreement.
7. This Agreement constitutes the entire agreement between the SWSP Enterprise and Participant regarding the Work and shall be modified by the Parties hereto only by a duly executed and approved written instrument.
8. Any and all obligations of the SWSP Enterprise under this Agreement, whether financial or otherwise, shall be payable solely from the revenues, income, rents, and receipts earned by the SWSP Enterprise. Nothing herein shall be deemed to prevent the SWSP Enterprise from making any payments from any other legally available source. In no event shall the SWSP Enterprise be required to spend any money from taxes in violation of Section 20(4) of Article X of the Colorado Constitution in the performance of its obligations under this Agreement or which would cause the SWSP Enterprise to lose its enterprise status as such status is defined in the Colorado Constitution. In addition, the SWSP Enterprise shall not be required to expend any funds or impair any assets of Northern Colorado Water Conservancy District ("District") in the performance of its obligations under this Agreement. The obligations of the SWSP Enterprise under this Agreement do not constitute a debt or indebtedness of the District within the meaning of any constitutional, charter or statutory provision or limitation, and shall not be considered or held to be a general obligation of the District.
9. Both the SWSP Enterprise and Participant shall have the right to terminate this Agreement at any time upon a failure to perform by the other party. The non-breaching party shall give the other party written notice of its intent to terminate this Agreement for failure to perform and the other party shall have thirty (30) days after the date of said notice in which to cure the breach. In the event of such termination, the breaching party shall not be relieved of its obligations hereunder and the other party shall have the right to seek damages or other relief as a result of the breach.

The authorized representatives of the SWSP Enterprise and Participant have executed this Agreement as of the day and year first set forth above.

NORTHERN COLORADO WATER CONSERVANCY
DISTRICT, ACTING BY AND THROUGH ITS
SOUTHERN WATER SUPPLY PROJECT
WATER ACTIVITY ENTERPRISE

By: _____
Title: _____

TOWN OF ERIE, ACTING BY AND THROUGH
ITS ERIE WATER ACTIVITY ENTERPRISE

By: _____
Title: _____

EXHIBIT A
DESCRIPTION OF THE WORK

The Work associated with this Second Interim Agreement includes the following:

- Update by Black&Veatch of the SWSP System hydraulics and transient analysis.
- Update by Black&Veatch of the Eastern Pump Station Preliminary Design.
- Preparation by Black&Veatch of 30 percent, 60 percent, 90 percent, and Final Plans and Specification.
- Assistance by Black&Veatch in bidding services.
- Preparation by SWSP Enterprise of SCADA design.
- Station electrical utility service analysis.
- Project review and oversight.
- Legal assistance.

EXHIBIT B
ANTICIPATED COSTS AND COST ALLOCATION

Northern Colorado Water Conservancy District		
Southern Water Supply Project		
Eastern Pump Station		
Design Phase		
Cost Item	Amount	
Black & Veatch	\$ 625,000	
NCWCD	\$ 40,000	
Attorneys	\$ 20,000	
Contingency	\$ 30,000	
Total	\$ 715,000	
Participant	Percent	Amount
Berthoud	0.24%	\$ 1,714.71
Longmont	4.32%	\$ 30,868.86
Fort Lupton	33.77%	\$ 241,467.31
Tri-State G&T	0.00%	\$ -
Hudson	6.75%	\$ 48,293.46
Fort Morgan	40.10%	\$ 286,742.43
Morgan C.Q.W.D.	6.33%	\$ 45,275.12
Louisville	1.49%	\$ 10,649.94
Superior	0.56%	\$ 3,993.73
Erie	1.82%	\$ 12,979.62
Broomfield	4.62%	\$ 33,014.82
Total	100.00%	\$ 715,000.00

Northern Colorado Water Conservancy District						11/16/2017	
Southern Water Supply Project							
Cost Allocation of Eastern Pump Station							
		Main line	Main line				
	Original	New	Incr.				
	Cap.	Cap.	New Cap.				
Participant	(cfs)	(cfs)	(cfs)				
Berthoud	4.0	7.2	3.2				
Longmont	13.5	24.3	10.8				
Fort Lupton	3.1	9.5	6.4				
Tri-State	4.9	4.9	0.0				
Hudson	1.6	2.9	1.3				
Fort Morgan	9.5	17.1	7.6				
Morgan C.Q.W.D.	1.5	2.7	1.2				
Louisville	4.0	7.2	3.2				
Superior	4.8	6.0	1.2				
Erie	1.6	5.5	3.9				
Broomfield	12.4	22.3	9.9				
Total	60.9	109.6	48.7				
Pipe							
Segment	Location						
B1	Outlet to Berthoud Turnout						
B2	Berthoud Turnout to Longmont Turnout						
B3	Longmont Turnout to Ft.Lupton/Hudson Pipeline Turnout						
F1	Ft. Lupton Pipeline from Broomfield Pipeline to Morgan Pipeline						
Pipe	Loss Factor	Original	New	Original	New	Incremental	Percent
Segment	K	Cap. (cfs)	Cap. (cfs)	HL (feet)	HL (feet)	HL (feet)	of HL
B1	0.003236	60.9	109.6	12.0	38.9	26.9	3.65%
B2	0.015011	56.9	102.4	48.6	157.4	108.8	14.78%
B3	0.003982	43.4	78.1	7.5	24.3	16.8	2.28%
F1	0.614101	20.6	37.1	260.6	844.3	583.7	79.29%
			Total	328.7	1,064.9	736.2	100.00%
Note: K is the loss factor to compute Headloss based upon $HL=Q^2 \cdot K$							
Design Participant Percentages							
Participant	B1	B2	B3	F1	Total		
Berthoud	0.24%	0.00%	0.00%	0.00%	0.24%		
Longmont	0.81%	3.51%	0.00%	0.00%	4.32%		
Fort Lupton	0.48%	2.08%	0.42%	30.79%	33.77%		
Tri-State G&T	0.00%	0.00%	0.00%	0.00%	0.00%		
Hudson	0.10%	0.42%	0.08%	6.16%	6.75%		
Fort Morgan	0.57%	2.47%	0.50%	36.57%	40.10%		
Morgan C.Q.W.D.	0.09%	0.39%	0.08%	5.77%	6.33%		
Louisville	0.24%	1.04%	0.21%	0.00%	1.49%		
Superior	0.09%	0.39%	0.08%	0.00%	0.56%		
Erie	0.29%	1.27%	0.26%	0.00%	1.82%		
Broomfield	0.74%	3.22%	0.65%	0.00%	4.62%		
Total	3.65%	14.78%	2.28%	79.29%	100.00%		