

THIRD INTERIM AGREEMENT BETWEEN THE
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 Third Interim Agreement for Increasing the Capacity of the Southern Water Supply Project, Eastern Phase, is made and entered into this _____ day of _____, 2019, by and between THE TOWN OF ERIE, ACTING BY AND THROUGH ITS ERIE WATER ACTIVITY ENTERPRISE, whose address is P.O. Box 750, Erie, Colorado 80516-0750 (“Participant”), and the Southern Water Supply Project Water Activity Enterprise (“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. §§ 37-45-101, *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 2007.

- E. In 2017, the Second Interim Agreement for Increasing the Capacity of the Southern Water Supply Project, Eastern Phase, was executed with the SWSP Participants to commence the design of the Eastern Phase pump station. This work was completed in 2019.
- F. The SWSP has determined that it is necessary to commence construction of the Eastern Phase. 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 10, 2020, Participant shall pay the SWSP Enterprise \$177,077.00 as its pro rata portion of the estimated cost of the Work, which is estimated to total \$9,750,000. 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 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. Pursuant to paragraph 6.e of the Allotment Contract, Participant also shall pay the SWSP Enterprise an additional five percent (5%) of its pro rata portion of the funds necessary for the Work, equaling \$8,854.00 as provided in Exhibit B, to cover change orders under the construction contracts for the Work made necessary by changed or unforeseeable conditions, delays, or other claims by the contractors. The SWSP Enterprise shall, when the Work has been finally completed, all contractors have been finally paid, and all claims have been settled, refund to the Allottee any pro rata portion of the five percent (5%) paid to the SWSP Enterprise pursuant to this Paragraph that is not used.
- 4. 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 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.
- 5. 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 in the Southern Water Supply Project pipeline shall be automatically reduced in accordance with paragraph 8.c. of the Allotment Contract.

6. 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 May 2021.
7. 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 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.
8. 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.
9. 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 the 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.

10. 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.

SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE

By: _____

Name: Bradley D. Wind

Title: General Manager

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

By: _____

Name: _____

Title: _____

EXHIBIT A
DESCRIPTION OF THE WORK

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

- Construction of the Eastern Pump Station will consist primarily of construction of a booster pump station on the existing Fort Lupton/ Hudson Pipeline. The pump station will consist of a new 5,200 square foot metal building with concrete foundation. The pump station will house five new vertical turbine pumps to be installed in below grade cans, each with 700 horsepower motors powered by adjustable frequency drives (AFDs) powered by 4,160 kV power. Other appurtenances and work includes: relocation of the existing 30-inch diameter steel pipe within the pump station property, construction of a new check valve vault, flow meter vault, and isolation valve vaults, and site work including new fencing, paving, and a septic leach field.
- Electrical system improvements required by United Power to supply power to the Eastern Pump Station Site.
- Project review and oversight including engineering review, construction management, construction testing, administration, permitting, and inspection services.
- Temporary easement procurement and any necessary right-of-way work.
- Legal assistance, as required.

EXHIBIT B
ANTICIPATED COSTS AND COST ALLOCATION

Northern Colorado Water Conservancy District
Southern Water Supply Project - Eastern Pump Station
Summary of Total Construction Costs

8/30/2019

Construction Phase

Cost Item	Amount
Construction - Moltz	\$ 6,393,000
Pump, Motor & VFD Procurement	\$ 1,607,000
SCADA Equipment & Integration	\$ 100,000
United Power ¹	\$ 750,000
Black & Veatch	\$ 300,000
NCWCD/ CM/ Testing	\$ 500,000
Misc. (Legal/ ROW/ Env.)	\$ 100,000
Total	\$ 9,750,000

Participant	Allocation	Cost	
	Percent	Construction Cost	5% Change Order Account
Berthoud	0.24%	\$ 23,392	\$ 1,170
Longmont	4.32%	\$ 421,124	\$ 21,056
Fort Lupton/ Tri-State ²	33.77%	\$ 3,292,512	\$ 164,626
Hudson	6.75%	\$ 658,502	\$ 32,925
Fort Morgan ³	40.10%	\$ 3,909,858	\$ 195,493
Morgan C.Q.W.D.	6.33%	\$ 617,346	\$ 30,867
Louisville	1.49%	\$ 145,294	\$ 7,265
Superior	0.56%	\$ 54,485	\$ 2,724
Erie	1.82%	\$ 177,077	\$ 8,854
Broomfield	4.62%	\$ 450,411	\$ 22,521
Total	100.00%	\$ 9,750,000	\$ 487,500

Notes:

1) United Power electrical system will require updates to supply power to the Eastern Pump Station site with an approximate cost of \$750,000.

2) Northern Water's understanding is that Fort Lupton will be retaining all pumped capacity and Tri-State will stay at 4.9 cfs.

3) Fort Morgan has already paid \$500,000 which will be deducted from the construction balance.

Northern Colorado Water Conservancy District
 Southern Water Supply
 Project

8/30/2019

**Cost Allocation of Eastern Pump
 Station**

Participant	Original Cap. (cfs)	New Cap. (cfs)	Diff.	Flow Limits
Berthoud	4.0	7.2	3.2	
Longmont	13.5	24.3	10.8	
Fort Lupton/ Tri-State	8.0	14.4	6.4	13.1
Hudson	1.6	2.9	1.3	2.6
Fort Morgan	9.5	17.1	7.6	15.5
M.C.Q.W.D.	1.5	2.7	1.2	2.4
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	33.6

Pipe

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 Segment	Loss Factor K	Original Cap. (cfs)	New Cap. (cfs)	Original HL (feet)	New HL (feet)	Incremental HL (feet)	Percent 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	157.5	108.9	14.79%
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	79.28%
Total				328.7	1,065.0	736.3	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/ Tri-State	0.48%	2.08%	0.42%	30.79%	33.77%
Hudson	0.10%	0.42%	0.08%	6.16%	6.75%
Fort Morgan	0.57%	2.47%	0.50%	36.56%	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%	14.79%	2.28%	79.28%	100.00%

Participant	Current Flows (cfs)	Future Capacity (cfs)	Percent of Capacity
Berthoud	4.0	7.2	6.6%
Longmont	13.5	24.3	22.2%
Fort Lupton/ Tri-State	8.0	14.4	13.1%
Hudson	1.6	2.9	2.6%
Fort Morgan	9.5	17.1	15.6%
Morgan C.Q.W.D.	1.5	2.7	2.5%
Louisville	4.0	7.2	6.6%
Superior	4.8	8.6	7.9%
Erie	1.6	2.9	2.6%
Broomfield	12.4	22.3	20.4%
Total	60.9	109.6	100.0%