

SECOND INTERIM AGREEMENT WITH THE  
 NORTHERN COLORADO WATER CONSERVANCY DISTRICT,  
 SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE,  
 FOR PARTICIPATION IN THE  
 SOUTHERN WATER SUPPLY PROJECT SECOND PIPELINE

This Agreement is made and entered into as of January 19, 2007, by and between the Northern Colorado Water Conservancy District (a quasi-municipal entity and political subdivision of the State of Colorado), acting by and through its Southern Water Supply Project Water Activity 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 220 Water Avenue, Berthoud, Colorado 80513 (the "SWSP Enterprise"), and the City of Boulder, whose address is P.O. Box 791, Boulder, Colorado 80306-0791 ("Participant").

Recitals

- A. The SWSP Enterprise operates a network of water pipelines, known as the Southern Water Supply Project, in northeastern Colorado that supply untreated water for municipal purposes from Carter Lake to a number of municipalities and water districts located within the Northern Colorado Water Conservancy District.
- B. The SWSP Enterprise has completed the First Phase in the development of a second water pipeline, to be known as the Southern Water Supply Project II (the "Project"), which would deliver additional untreated water for municipal purposes from Carter Lake to municipalities and water districts located within the Northern Colorado Water Conservancy District. The First Phase consisted of preliminary studies to evaluate Project routing and estimated costs. These studies indicate that the Project is feasible and within the means of the participants.
- C. The SWSP Enterprise is now commencing the Second Phase of the Project, which will consist of permitting, including but not limited to 1041 permitting in Boulder County, Larimer County Location and Extent Review and U.S. Army Corps of Engineers permitting.
- D. Overall Project costs will be divided among th
- E. Completion of the Second Phase of the Project further funding from the participants.

BFS INVOICE STAMP			
DOC. NO.	SUFFIX		
SAMT	\$ 131,250.00	INPUTTER'S INITIALS	
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DEPT.	OCA	OBJECT	
CDE	1/19/07	RAH	
APPR. SIGN	DATE	APPR. SIGN	DATE

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NORTHERN COLORADO WATER CONSERVANCY DISTRICT,  
SOUTHERN WATER SUPPLY PROJECT WATER ACTIVITY ENTERPRISE,  
FOR PARTICIPATION IN THE  
SOUTHERN WATER SUPPLY PROJECT SECOND PIPELINE

This Agreement is made and entered into as of \_\_\_\_\_, 20\_\_, by and between the Northern Colorado Water Conservancy District (a quasi-municipal entity and political subdivision of the State of Colorado), acting by and through its Southern Water Supply Project Water Activity 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 220 Water Avenue, Berthoud, Colorado 80513 (the "SWSP Enterprise"), and the City of Boulder, whose address is P.O. Box 791, Boulder, Colorado 80306-0791 ("Participant").

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- C. The SWSP Enterprise is now commencing the Second Phase of the Project, which will consist of permitting, including but not limited to 1041 permitting in Boulder County, Larimer County Location and Extent Review and U.S. Army Corps of Engineers permitting.
- D. Overall Project costs will be divided among the entities that participate in the Project.
- E. Completion of the Second Phase of the Project on behalf of the participants will require further funding from the participants.

## Agreement

1. Participant agrees to participate in the Second Phase to perform permitting for the Project. A description of the Second Phase is contained in Exhibit A attached hereto. Participation in the Second Phase of the Project in no way obligates Participant to subsequent phases of the Project or to continue involvement in the Project in any manner.
2. Participant's flow capacity in the Project for purposes of the Second Phase is 25 cubic feet per second (CFS). Participant may request a change in allocated flow capacity in subsequent phases, which will be implemented by the SWSP Enterprise so long as any increased costs resulting from the change are paid by the Participant.
3. Participant agrees to provide to the SWSP Enterprise funds for its pro rata share of the costs necessary to complete the Second Phase of the Project. The SWSP Enterprise estimates that Participant's pro rata share of the costs of the Second Phase of the Project is \$131,250. Participant will pay the SWSP Enterprise its pro rata share of the Second Phase costs on or before January 31, 2007. These estimated costs will not be increased or exceeded without the prior written approval of Participant. However, if the Second Phase of the Project cannot be completed within these estimated costs, the SWSP Enterprise is not obligated to complete the Second Phase of the Project for the benefit of Participant unless sufficient additional pro rata funds as determined by the SWSP Enterprise are provided by Participant. Attached hereto as Exhibit B is a table showing the pro rata share of the costs of the Project for each participant based upon current allocations of capacity in the Project. Any participant which joins the Project after this Agreement is executed and is not listed in Exhibit B will be charged the same cost per CFS of capacity for the Second Phase as all other participants. Participant funds that are not expended during the Second Phase will be rebated back to each participant pro rata based on each participant's contribution of funds to the Project in the Second Phase.
4. In the event that Participant fails to make the payment set forth above at the specified time, the SWSP Enterprise shall have the right to terminate this Agreement and cease all work on the Project for the benefit of Participant. The SWSP Enterprise shall give Participant thirty (30) days' advance written notice of its intention to terminate this Agreement and cease work on the Project for Participant's benefit under this paragraph. 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. Participant shall in any event be responsible for its pro rata share of costs of the Second Phase of the Project actually incurred by the SWSP Enterprise up to the date of termination of this Agreement.
5. The SWSP Enterprise agrees to diligently pursue the Second Phase of the Project in good faith to the extent that funds therefore are provided by the Participant under this Agreement and by other participants under similar agreements. By entering into this Agreement and accepting payments from Participant, the SWSP Enterprise does not obligate itself to, nor does the SWSP Enterprise warrant, that it will proceed with the Project beyond the Second Phase or that it will construct or operate the Project. At the

end of the Second Phase, the SWSP Enterprise will determine after consultation with the participants whether to proceed with the Project. The SWSP Enterprise agrees that, if the participants provide all required funding, if the SWSP Enterprise has the ability, and if the Project is feasible and practical, it will pursue the design, construction and operation of the Project if requested to do so by sufficient participants to fully fund the Project. In the event that the SWSP Enterprise decides not to proceed with the Project, it will so notify Participant and this Agreement will immediately and automatically terminate upon the giving of such notice.

6. In the event of termination of the Project, Participant shall not be entitled to any return of funds paid to the SWSP Enterprise for the Project, unless payments by participants exceed the SWSP Enterprise's costs, in which case a pro rata refund will be made. In the event of such termination, Participant shall be entitled to receive copies of any work products developed by the SWSP Enterprise or its consultants on behalf of Participant, and SWSP Enterprise shall convey to Participant, as a tenant in common with all other participants who have not been terminated under paragraph 4 above, a pro rata interest in all real and personal property acquired by the SWSP Enterprise for the Project with funds provided under this Agreement or similar agreements with other participants.
7. Participant shall have the right to assign this Agreement and Participant's rights hereunder, with the written consent of the SWSP Enterprise, which consent shall not be unreasonably withheld, to any person or entity that is eligible to receive water deliverable through the Project and that is financially able to perform this Agreement.
8. In the event that 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 Project, and the SWSP Enterprise shall have no further obligations to Participant, except as provided in paragraph 6 above for those participants who have not been terminated under paragraph 4 above.
9. Notwithstanding any other provision of this Agreement to the contrary, the Participant's maximum financial obligation under this Agreement shall be the payment of \$131,250 set forth in paragraph 3 above. The Participant shall have the right to terminate this Agreement at any time. In the event of such termination, each of the parties hereto shall be immediately released from all obligations recited herein as if this Agreement had not been entered into, except that Participant shall be entitled to a return of funds paid to the SWSP Enterprise as provided in paragraph 8 above.
10. This Agreement is the entire agreement between the SWSP Enterprise and Participant regarding participation in the Second Phase of the Project and shall be modified by the parties only by a duly executed written instrument approved by Participant and the SWSP Enterprise's Board of Directors.
11. This Agreement is subject to approval by the SWSP Enterprise's Board of Directors and shall become binding on the SWSP Enterprise only upon such approval.

**CITY OF BOULDER, a Colorado home rule city**

By: \_\_\_\_\_  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk on behalf of the  
Director of Finance and Record

Approved as to form:

\_\_\_\_\_  
City Attorney

**NORTHERN COLORADO WATER CONSERVANCE DISTRICT,  
ACTING BY AND THROUGH THE SOUTHERN WATER SUPPLY PROJECT  
WATER ACTIVITY ENTERPRISE**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A  
DESCRIPTION OF SECOND PHASE ACTIVITIES

A feasibility study is being prepared for the Southern Water Supply Project Second Pipeline (SWSP II). This study shows there are feasible pipeline routes available to meet the Project Participants needs. The next phase of the process is to go through the various federal, state, and local permitting processes for the proposed pipeline. At a minimum these include the following:

- U.S. Army Corps of Engineers Nationwide permits
- Larimer County Location and Extent Review
- Boulder County 1041

This second phase will involve the hiring of appropriate consulting firms along with participation by District staff and legal staff. The necessary documents will be prepared along with presentations at required meetings and public hearings. The work will include a pipeline from Carter Lake to Boulder along with a segment heading east to the Boulder/Weld county line. It is anticipated that the work will be completed by the end of 2007.

EXHIBIT B  
 ANTICIPATED COSTS AND COST BREAKDOWN  
 FOR SWSP II SECOND PHASE

Northern Colorado Water Conservancy District  
 SWSP II  
 Permitting Phase Cost Allocation

Cost Item	Amount
Integra	\$ 50,000
Environmental Cons.	\$ 120,000
District	\$ 50,000
TRMWF (Attorneys)	\$ 75,000
Contingency	\$ 20,000
<b>Total</b>	<b>\$ 315,000</b>

Participant	Capacity (cfs)	Capacity Allocation (percent)		
		North Segment	Middle Segment	East Segment
Little Thompson W.D.	3	6.7%		33.3%
Frederick	6	13.3%		66.7%
Left Hand W.D.	11	24.4%	30.6%	
Boulder	25	55.6%	69.4%	
<b>Total</b>	<b>45</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Participant	Capacity (cfs)	Cost Allocation			Total
		North Segment	Middle Segment	Eastern Segment	
Little Thompson W.D.	3	\$ 7,000		\$ 35,000	\$ 42,000
Frederick	6	\$ 14,000		\$ 70,000	\$ 84,000
Left Hand W.D.	11	\$ 25,667	\$ 32,083		\$ 57,750
Boulder	25	\$ 58,333	\$ 72,917		\$ 131,250
<b>Total</b>	<b>45</b>	<b>\$ 105,000</b>	<b>\$ 105,000</b>	<b>\$ 105,000</b>	<b>\$ 315,000</b>