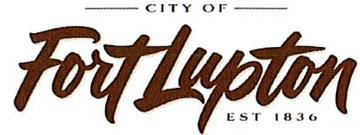


**CITY OF FORT LUPTON
CITY COUNCIL**



Shannon Rhoda, Ward 1
Chris Ceretto, Ward 2
Michael Sanchez, Ward 3

Zo Stieber, Mayor

David Crespin, Ward 1
Tommy Holton, Ward 2
Bruce Fitzgerald, Ward 3

AM 2020-044

APPROVE A LEASE AGREEMENT WITH CONSOLIDATED MUTUAL WATER COMPANY FOR WATER STORAGE OF 912 ACRE FEET FOR \$250/AF FOR A TOTAL AMOUNT FOR THE FIRST YEAR OF \$228,000

I. **Agenda Date:** Council Meeting – February 4th

II. **Attachments:** a. Agreement.

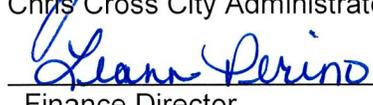
III. **Summary Statement:**

To accommodate efficient augmentation of various water sources for well water sales via the city system, allowing the City to maximize water resource efficiency and earnings potential for well water sales. This agreement will allow for releases to the South Platte River of Fulton Ditch, or other water sources annually. Water storage is necessary to fully utilize our non-potable water system, and maximize the system's reliability and revenue.

IV. **Submitted by:**


Chris Cross City Administrator

V. **Finance Reviewed**


Finance Director

VI. **Approved for Presentation:**


City Administrator

VII. **Attorney Reviewed**

Approved

Pending Approval

VIII. **Certification of Council Approval:**

City Clerk

Date

IX. Detail of Issue/Request:

To accommodate efficient augmentation of various water sources for well water sales via the city system, allowing the City to maximize water resource efficiency and earnings potential for well water sales. This agreement will allow for releases to the South Platte River of Fulton Ditch, or other water sources annually. Water storage is necessary to fully utilize our non-potable water system, and maximize the system's reliability and revenue. The City currently owns no water storage of its own. The City leases storage in the Perry Pit from The Consolidated Mutual Water Company under a lease that expires March 31, 2022. This agreement replaces and extends the current lease. The price per acre foot of storage is decreased from \$258.82 in 2019 under the current lease to \$250.00 in 2020 (and will escalate in future years in a manner that is similar to the current lease), and the term is extended for an additional 10 years (through 2032), with an option to extend 5 additional years (through 2037). The price for the City to lease any water owned by The Consolidated Mutual Water Company that is stored in the Perry Pit is increased from \$1,466 in 2019 under the current lease to \$1,694.43. The current lease also clarifies the conditions to split repair, maintenance and replacement costs between the parties

X. Legal/Political Considerations:

Both the Water and City Attorney have reviewed the agreement.

XI. Alternatives/Options:

- a. Authorize the lease agreement
- b. Authorize the agreement for a lessor acre foot amount.
- c. Not authorize the agreement and let the current one run out.

XII. Financial Considerations:

The 2020 Utility Fund budget for the Perry Pit lease is \$250,000. The 2019 lease for Perry Pit was \$236,043.

XIII. Staff Recommendation:

Staff recommends approval of the agreement with Consolidated Mutual Water Company.

PERRY PIT EAST RESERVOIR WATER STORAGE LEASE AGREEMENT

This Perry Pit East Reservoir Water Storage Lease Agreement (“Agreement”) is between **The Consolidated Mutual Water Company** (“LESSOR”), a Colorado non-profit corporation and the **City of Fort Lupton** (“LESSEE”) a municipality. LESSOR agrees to lease water diversion and storage capacity and sell available volumes of stored water in the Perry Pit East Reservoir facilities to the LESSEE and the LESSEE agrees to lease from the LESSOR available water diversion and storage capacity and that it may buy volumes of stored water when available in the Perry Pit East Reservoir facilities under the terms and conditions as described below. LESSOR and LESSEE are also referred to as “Party” or “Parties” in this Agreement.

1. **Term.** Unless earlier terminated as provided in this Agreement, this Agreement shall be for a term of twelve (12) years commencing _____, 2020 and ending on _____, 2032. LESSEE has the option to extend this Agreement, with no change of terms, by five (5) additional years. LESSEE must give notice of its desire to exercise this option at least 60 days before _____, 2032.

2. **Leased Storage Capacity.** The water storage capacity in Perry Pit East Reservoir to be leased (“Leased Storage”) is owned by LESSOR as described in LESSOR’s Decree, issued in Case No. 97CW390, District Court, Water Division 1, and in that certain deed dated November 15, 2001 and recorded in the Weld County Public Records at Reception No. 2901461 on November 19, 2001. Upon the recent completion of excavation, the water storage capacity in Perry Pit East Reservoir is nine-hundred sixty-two (962) acre-feet at elevation 4929.5 feet above MSL. The storage capacity reserved for LESSOR’s use shall equal fifty (50) acre-feet (“LESSOR’S Reserved Storage”). The Leased Storage reserved for LESSEE’s use by this Agreement shall equal nine-hundred twelve (912) acre-feet.

3. **Leased Diversion Capacity.** Under LESSOR’s decrees in Case No. 97CW390 and Case No. 07CW30, three diversion structures known as Well Nos. 1, 2, and 3 were established, among others, for diverting water from the South Platte River into storage in Perry Pit East Reservoir. Subject to Paragraph 3(a), the water diversion capacity to be leased (“Leased Diversion Capacity”) shall total 100% of the total combined flow capacity of Well Nos. 1, 2, and 3 as currently equipped, which wells are owned and controlled by LESSOR and are located as described in LESSOR’s Case No. 07CW30 decree.

(a) The Leased Diversion Capacity is subject only to infrequent use on behalf of LESSOR at LESSOR’s direction for filling LESSOR’s Reserved Storage in accordance with the 07CW30 Decree. If LESSOR desires to fill LESSOR’s Reserved Storage, LESSOR shall be entitled to the first right to a maximum of 5.2% of the actual total diversion capacity when Well Nos. 1, 2 and 3 are all diverting water for that purpose at any time. If LESSEE is not using the balance of the diversion capacity,

LESSOR shall be entitled to utilize any such additional diversion capacity. LESSOR shall coordinate such diversions with LESSEE as described in Paragraph 12 herein and to ensure that LESSOR has adequate augmentation supplies available for replacement of lagged depletions, if any, incurred as a result of such diversions of water into LESSOR's Reserved Storage according to the terms of LESSOR's decrees.

4. **Water Stored by LESSEE.** The water stored ("Storage Water") by LESSEE shall be diverted, owned and used pursuant to LESSEE's Decrees issued in Case Nos. 03CW119 and 12CW180, or as otherwise allowed by administrative approval and/or subsequent water court decrees obtained by LESSEE. LESSEE shall be solely responsible for obtaining permission from state water administration officials for use of LESSOR's diversion and storage facilities under LESSEE's water right decrees. The amount of Storage Water placed into storage under the terms of this Agreement shall be determined as the total annual volume of water diverted through Well Nos. 1, 2, and 3 as measured by flow metering of such diversions less any amount pumped on behalf of LESSOR. Storage Water shall be diverted and delivered, stored, and accounted for by LESSEE in the manner required by state water administration officials. Any losses of Storage Water to evaporation, seepage or otherwise shall be born solely by LESSEE.

5. **LESSOR's Reserved Storage.** LESSOR shall be solely responsible for obtaining permission from state water administration officials for use of LESSOR's diversion and storage facilities and for augmenting lagged depletions, if any, incurred as a result of diversions into LESSOR's Reserved Storage according to LESSOR's water right decrees. In the event LESSOR exercises its first right to use 5.2% of the actual total diversion capacity when Well Nos. 1, 2 and 3 are all diverting water according to Paragraph 3(a) and stores water in LESSOR's Reserved Storage pursuant to water rights decreed in Case No. 07CW30, District Court, Water Division 1, State of Colorado ("LESSOR's Stored Water"), LESSOR shall coordinate such diversions with LESSEE as described in Paragraph 12 herein. LESSOR's Stored Water may also be leased by LESSEE on an "as available" basis. LESSEE shall be entitled to use LESSOR's Stored Water for a higher lease rate than the rate charged hereunder for LESSEE's use of the Storage Capacity. If LESSEE determines to use LESSOR's Stored Water, LESSEE shall measure the amount of such water by metering flow through LESSOR's or LESSEE's floating pumping equipment, or both of them, LESSEE shall report such amounts to LESSOR on a monthly basis, and LESSOR's Stored Water shall be released from Reserved Storage and accounted for by LESSEE in the manner required by state water administration officials. If LESSOR determines to use LESSOR's Stored Water, LESSOR shall coordinate releases of LESSOR's Stored Water with LESSEE as described in Paragraph 12 herein and with state water administration officials, LESSEE shall release LESSOR's Stored Water from Reserved Storage as directed by LESSOR, and LESSOR shall account for LESSOR's Stored Water in the manner required by state water administration officials.

6. **Payment Terms for Storage Capacity.**

(a) LESSEE has made its 2019 payment according to the 2012 Water Storage Lease Agreement described in Paragraph 15. Therefore, payments according to this Agreement shall commence in 2020. LESSEE shall pay for use of the Storage Capacity by LESSEE in LESSOR's Perry Pit East Reservoir pursuant to this Agreement at a rate of Two-hundred Fifty Dollars (\$250.00) per acre-foot for the year 2020, totaling \$228,000.

(b) The payment rate shall be increased every year, beginning on January 1, 2021 until the termination of this Agreement in accordance with the following formula:

$$AP=BP (LI/LB)$$

Where: AP is the adjusted price per acre-foot;

BP is the base price of \$250.00 per acre-foot;

LI is the Consumer Price Index for all urban consumers, all items, U.S. City Average as published for January of the year of adjustment; and

LB is the base value of the above described Index, which shall be a published value for January, 2019.

(c) On January 1, 2025, the 2024 payment rate shall be increased by 10% to establish a new BP for 2025, and then increased again by the formula shown in Paragraph 6(b) above.

(d) Beginning on January 1, 2026, the 2025 payment rate shall become the new BP, and the payment rate for 2026, and each year thereafter, shall be increased annually until the termination of this Agreement using the formula shown in Paragraph 6(b) above.

(e) In the event LESSEE exercises its option to extend this Agreement pursuant to Paragraph 1 for five (5) additional years, the annual payment rate beginning on January 1, 2033, the 2032 payment rate shall become the new BP, and the payment rate for 2033, and each year thereafter, shall be increased annually by the formula shown in Paragraph 6(b) above until the termination of this Agreement.

(f) If the Consumer Price Index is changed, the Index shall be converted in accordance with the conversion factor published by the Bureau of Labor Statistics. Should the Index be discontinued, the Parties agree to substitute another index generally recognized to be authoritative.

(g) Should the Consumer Price Index for all urban consumers, all items, U.S. City Average (LI in the above formula) decrease in any year, the payment rate per acre-foot will remain at the previous year's rate subject to the increase contemplated in Paragraph 6(c) above.

(h) Payment for all Storage Capacity will be due within 30 days after the date of monthly invoices issued to LESSEE by LESSOR. No discounts will be made for early payments. LESSEE shall not be permitted to cease payments on this Agreement for any reason.

7. **Payment Terms for LESSOR's Stored Water.** In the event LESSOR stores water in LESSOR's Reserved Storage pursuant to this Agreement, LESSEE shall be entitled to buy and use LESSOR's Stored Water for a rate equal to LESSOR's then existing treated water rate. As of the date of this Agreement, LESSOR's treated water rate is \$5.20 per 1000 gallons, resulting in a rounded bulk rate for LESSOR's Stored Water of \$1,694.43 per acre-foot. The rate for LESSEE's use of LESSOR's Stored Water shall at all times be equivalent to LESSOR's treated water rate, and is subject to increases during the term of this Agreement as such treated water rate is increased.

8. **Improvements Costing Less Than \$5,000.** LESSEE shall be responsible for all repairs, maintenance, and replacement of the facilities and equipment, including flow meters, comprising Well Nos. 1, 2, and 3 during the term of this Agreement that will cost less than \$5,000.

9. **Capital Improvements.** Any repair, maintenance, and/or replacement of the Perry Pit East Reservoir facilities and equipment, including Well Nos. 1, 2, and 3, during the term of this Agreement that will cost \$5,000 or more is hereby defined as a Capital Improvement that is subject to the conditions of this Paragraph 9. LESSEE will evaluate whether any State and/or Federal grants are available to finance all or a portion of a Capital Improvement, and to the extent any such grant is appropriate and approved to finance all or a portion of such Capital Improvement, any portion of the cost of such Capital Improvement not paid by such grant funds shall be split between the parties according to Paragraph 9(a) or 9(b), as applicable.

(a) Any Capital Improvement that cannot be removed from the site upon which the Perry Pit East Reservoir facilities and equipment are located shall be subject to the following requirements of this Paragraph 9(a):

(i) The Parties shall cooperate to obtain design and cost estimates for the Capital Improvement under Paragraph 9(a) that are acceptable to both Parties.

(ii) Except in an emergency which requires immediate repair and/or construction as described in Paragraph 9(c), the Parties shall confer with

each other regarding the repairs or replacement that must be performed and document their agreement on the same in writing prior to the performance of such repairs or replacement of the Capital Improvement.

(iii) For any such Capital Improvement under Paragraph 9(a) occurring within the first nine (9) years of the twelve (12) year term of this Agreement or during the first three (3) years of a five (5) year extension of the term of this Agreement, LESSEE and LESSOR shall split the cost of the Capital Improvement 50% by LESSEE and 50% by LESSOR.

(iv) For any such Capital Improvement under Paragraph 9(a) occurring within the final three (3) years of the twelve (12) year term of this Agreement or during the final two (2) years of a five (5) year extension of the term of this Agreement, LESSEE and LESSOR shall split the cost of the Capital Improvement 25% by LESSEE and 75% by LESSOR.

(b) For any Capital Improvement that can be removed from the site upon which the Perry Pit East Reservoir facilities and equipment are located, LESSEE will pay for the entire cost of repair or replacement, and shall be entitled to remove and retain the Capital Improvement at the termination of this Agreement if it so desires. Prior to repair or replacement of such Capital Improvement, LESSEE shall give LESSOR at least ten (10) days notice prior to beginning such repair or replacement so that LESSOR and LESSEE can coordinate loss of use for the period of time necessary for the replacement.

(c) In the event conditions are present which would cause damage to the Perry Pit East Reservoir facilities or equipment, including Well Nos. 1, 2 and 3, an immediate threat to public health and safety or would otherwise render the Perry Pit East Reservoir facilities or equipment, including Well Nos. 1, 2 and 3, unusable for their intended purpose ("Emergency Condition"), either Party shall, after inspection, notify the other of such Emergency Condition and both Parties will thereafter cause all water deliveries through or into the damaged portion of the facilities or equipment to cease until adequate repairs can be made. In an Emergency Condition, either Party shall identify the emergency repair(s) required and shall consult with the other Party on the extent, type, timing, materials and quality of repair (i.e. temporary versus permanent) within twenty-four (24) hours after receipt of such notice and shall commence such emergency repair within forty-eight (48) hours after receipt of such notice. If such repair is not commenced within such forty-eight (48) hour period, the other Party shall have the right to perform such repair. The Parties recognize temporary cessation of water deliveries may be necessary to facilitate the repairs. The Party commencing the emergency repairs shall notify the other Party of the expected length and duration of repair work and associated curtailment of use of the subject facilities or equipment. The costs of repair or replacement occurring under an Emergency Condition shall be split between the Parties according to Paragraph 9(a) or 9(b), as applicable.

10. **Incidental Costs.** LESSEE shall be responsible for all incidental costs of diversion, storage, use, and accounting for the Leased Diversion Capacity, Leased Storage, and LESSEE's use of LESSOR's Stored Water, including, but not limited to the following:

(a) All utility costs necessary for LESSEE's diversion into and use of the Leased Storage will be paid by LESSEE including, but not limited to, use of LESSOR's floating pump station in the reservoir, the use of any or all of LESSOR's three (3) river diversion structures (Well Nos. 1, 2, and 3), and any equipment that may be provided by LESSEE.

(b) Subject to Paragraph 9, any modification to or extension of LESSOR's existing electrical facilities must be approved by LESSOR in advance and the cost of said modifications or extensions shall be paid by LESSEE.

(c) Subject to Paragraph 9, any costs to install, maintain, repair, or replace meters necessary for measuring diversions into storage or releases from storage on equipment owned by LESSOR or LESSEE.

(d) Any approvals from the state Water Commissioner or other state water officials that are necessary to allow LESSEE to divert into, store water, or otherwise utilize the Leased Storage shall be the responsibility of the LESSEE. Likewise, any approvals from the state Water Commissioner or other state water officials that are necessary to allow LESSEE to use the LESSOR's Stored Water shall be the responsibility of the LESSEE.

(e) Any approvals from the state Water Commissioner or other state water officials that are necessary to allow LESSOR to divert into, store water, or otherwise use the Reserved Storage and/or LESSOR's Stored Water shall be the responsibility of the LESSOR.

11. **No Volume Guarantees.** LESSEE will share with LESSOR the information available to LESSEE as to the delivery of LESSEE's water, but LESSOR's sole obligation hereunder shall be to make available diversion and storage capacity in the amounts and under the conditions stated herein regardless of whether or not LESSEE's Storage Water is physically available.

12. **Lease Operating Conditions.**

(a) LESSEE shall provide at least forty-eight (48) hours of notice to LESSOR prior to any diversion of Storage Water into the Leased Storage or into LESSOR's Reserved Storage and prior to diversions for filling or releases for use of any of LESSOR's Stored Water. Likewise, LESSOR shall provide at least forty-eight (48)

hours of notice to LESSEE that LESSOR desires for LESSEE to divert for filling or releasing LESSOR's Reserved Storage pursuant to this Agreement.

(b) LESSEE shall notify LESSOR of any releases of water from Perry Pit East Reservoir on a monthly basis. LESSEE shall provide copies to LESSOR of any and all accounting submitted by LESSEE concerning LESSEE's use of the Leased Diversion Capacity, Leased Storage, and LESSOR's Stored Water.

(c) LESSOR shall provide copies to LESSEE of any and all accounting submitted by LESSOR concerning LESSOR's use of the Leased Diversion Capacity and LESSOR's Reserved Storage.

(d) Northern Colorado Constructors, Inc. ("NCC") is currently mining aggregate from the Perry Pit East Reservoir site through a contract with LESSOR ("NCC Contract"). LESSEE shall reasonably cooperate and coexist with the on-going mining operations.

(e) Under the NCC Contract, NCC is responsible for all weed control for all of LESSOR's property at Perry Pit East Reservoir. Upon termination of the NCC Contract, LESSOR will provide LESSEE written notice of termination of the NCC Contract within thirty (30) days of such termination. Upon receipt of such notice, LESSEE will become responsible for all weed control for all of LESSOR's property at Perry Pit East Reservoir for the remainder of the term of this Agreement. Upon termination of this Agreement, LESSOR shall be responsible for all weed control for all of LESSOR's property at the Perry Pit Reservoir. LESSEE shall have no obligation to satisfy or otherwise comply with other requirements of the Colorado Division of Reclamation, Mining and Safety.

13. **Indemnification and Insurance.**

(a) LESSOR shall not be liable or responsible for any consequential, incidental, or special damages related to the storage of LESSEE's water or services provided under this Agreement. LESSEE agrees to hold harmless and indemnify LESSOR from LESSEE's use of LESSOR's Perry Pit East Reservoir and any claims that may arise because of LESSEE's use of LESSOR's property and equipment.

(b) LESSEE must provide a Certificate of Liability Insurance with a minimum of \$2,000,000 coverage for commercial general liability and automobile liability. Said certificate must also show evidence of workers compensation and employer's liability with a minimum of \$1,000,000 coverage and LESSOR must be named as an additional insured with respect to general liability.

14. **No Assignment.** LESSEE shall not assign this Agreement or any interest therein without written consent from LESSOR, which consent will not be unreasonably withheld. Any request for consent to assignment shall be made by letter addressed to LESSOR

explaining the need for the request. In no event shall LESSOR include LESSEE's water right in any application for a water right in any water court without LESSEE's written consent. Likewise, in no event shall LESSEE, or any permitted assignee include LESSOR's water diversion or water storage rights in any application for a storage right in any water court proceeding without LESSOR's written consent. Notwithstanding the foregoing, LESSEE may enter into an agreement with Tri-State Generation and Transmission Association, Inc., a Colorado Cooperative Corporation, to sub-lease Leased Storage.

15. **Termination of Water Storage Lease Agreement.** LESSOR and LESSEE entered into a Water Storage Lease Agreement regarding the lease of water diversion and storage capacity in the Perry Pit East Reservoir facilities on June 26, 2012, the First Addendum to the Water Storage Lease Agreement on April 10, 2013, and the Second Addendum to the Water Storage Lease Agreement on October 17, 2016 (collectively "2012 Water Storage Lease Agreement"). Upon execution of this Agreement by the Parties, this Agreement shall terminate, supersede and replace in its entirety the 2012 Water Storage Lease Agreement.

16. **Independent Contractor.** The Parties expressly understand and agree that the LESSEE is acting as an independent contractor unrelated to LESSOR. Nothing in this Agreement is intended to create a relationship, express or implied, of employer-employee, joint ventures' or principal-agent between LESSOR and LESSEE.

17. **Compliance with Laws.** With respect to this Agreement, LESSEE shall (i) comply with any and all applicable federal, state, local or agency laws, regulations, rules, ordinances or other directives, and (ii) obtain all releases, licenses, permits or other authorizations required by any governmental body or authority.

18. **No Warranties.** LESSOR does not warrant that the Leased Storage Capacity or that LESSOR's Stored Water is suitable for any particular purpose. LESSOR does not warrant that any of LESSOR's equipment utilized by LESSEE is in operable condition or suitable for any particular purpose. LESSEE shall occupy and utilize the leased premises in an "as is" condition, without warranty by LESSOR.

19. **Notices.** Notices and inquires shall be made as follows:

LESSOR: President
The Consolidated Mutual Water Company
12700 West 27th Avenue
Lakewood, Colorado 80215

LESSEE: City Administrator
City of Fort Lupton
130 South McKinley Avenue

Fort Lupton, Colorado 80621

20. **Force Majeure.** Each Party shall be excused from performance under this Agreement while and to the extent that it is unable to perform, for any cause beyond its reasonable control, except that LESSEE's payment obligations hereunder shall not be delayed or excused by reason of force majeure. Such causes shall include, but not restricted to fire, drought, storm, flood, earthquake, explosion, war, labor disputes, total or partial failure of transportation or delivery facilities, shortage of labor, raw materials or supplies, interruption of utilities or power, and any act of government or military authority. In the event either Party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement then the Party affected by force majeure shall give written notice with explanation to the other Party immediately. Following such notice, the affected obligations of the Party giving notice shall be suspended for no longer than thirty (30) days; provided, however, if a force majeure cause extends beyond thirty (30) days, the obligations of both Parties under this Agreement shall cease until such time as the force majeure cause has ended.

21. **Breach.** The occurrence of any one or more of the following events shall constitute a breach and default of this Agreement:

(a) Failure by LESSOR or LESSEE to observe or perform any of its obligations, covenants, conditions, or representations pursuant to this Agreement, where such failure is not remedied immediately by a written notice thereof from the non-breaching Party to the breaching party; or

(b) Failure by LESSEE to make any payment due as required by this Agreement and such breach continues for a period of thirty (30) days after written notice thereof from LESSOR, or

(c) If LESSEE is insolvent, seeks protection from creditors, makes a general assignment for the benefit of creditors, or if a receiver is appointed for its business.

22. **Termination.** Except as otherwise provided herein, this Agreement may be terminated only under the following circumstances:

(a) By LESSEE, upon written notice to LESSOR 90-days prior to any anniversary date of this Agreement.

(b) By either Party, with cause (including a breach of this Agreement by the other Party beyond any notice and cure period), immediately upon written notice to such Party.

23. **Governing Law and Venue.** The laws of the State of Colorado shall govern this Agreement. Any litigation shall be brought in District Court, Weld County, State of

Colorado and each Party submits to the exclusive jurisdiction of said court and waives the right to change venue.

24. **No Waiver.** Either Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

25. **Amendments.** This Agreement may not be amended except in writing executed by the Parties hereto with the same formality as the Agreement. Except as specifically amended, this Agreement shall remain in full force and effect.

26. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision. Any invalid or unenforceable provision shall be deemed severed from this Agreement to the extent of its invalidity or unenforceability, and this Agreement shall be construed and enforced as if the Agreement did not contain that particular provision to the extent of its invalidity or unenforceability.

27. **No Waiver of Governmental Immunity.** LESSEE, its elected officials, officers, and employees are relying upon, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. Sec. 24-10-101, et seq, as amended or otherwise available to LESSEE. Nothing herein shall operate as a waiver of any right LESSEE has of governmental immunity under Colorado law which is specifically herein reserved.

28. **Approval required.** This Agreement is subject to the final approval of the Fort Lupton City Council and signature by the Mayor of Fort Lupton, Colorado. Once signed by the Mayor of Fort Lupton, this Paragraph 28 shall be satisfied and have no further effect.

29. **Entire Agreement.** These terms and conditions constitute the entire Agreement between the Parties. All discussions and negotiations are deemed merged in this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement this ____ day of _____, 2020.

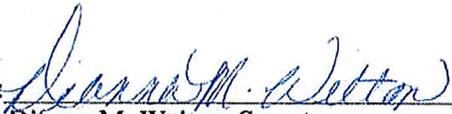
[SIGNATURE ON FOLLOWING PAGE]

LESSOR:
**THE CONSOLIDATED MUTUAL WATER
COMPANY**

By: 

John J. Boyle, President

Attest:

By: 

Dianna M. Welton, Secretary

LESSEE:
CITY OF FORT LUPTON

By: _____
Zo Stieber, Mayor

Attest:

By: _____
Maricela Peña, City Clerk