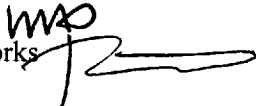


PUBLIC WORKS DEPARTMENT
MEMORANDUM #2011 – 02

DATE: January 13, 2011
TO: Honorable Mayor Joyce Downing and City Council Members
FROM: William A. Simmons, City Manager 
David H. Willett, Director of Public Works
SUBJECT: CR – 8, Standley Lake Water Quality IGA

BACKGROUND

In 1992, the City of Northglenn entered into a cost sharing intergovernmental agreement (IGA) with the City of Westminster to pay for legal, and water quality monitoring costs on Standley Lake. Subsequently, in 1995 the City of Northglenn renewed the IGA with the Cities of Westminster and Thornton to continue the water quality monitoring efforts on Standley Lake. This IGA has been renewed every five years since 1995. It continues to be a benefit to all three cities to share the cost of water quality monitoring of Standley Lake. Sharing these efforts reduces the budgetary costs for each city and provides excellent monitoring and protection of drinking water for the residents of all three cities. With the State's participation in federal source water protection planning programs, as well as development of nutrient standards for source and receiving waters, all three cities will be required to increase the monitoring of our drinking water sources to ensure that we continue to meet the requirements of the State of Colorado and the Environmental Protection Agency (EPA).

Currently, the three Cities meet once per month to discuss business related to the IGA. Shelley Stanley and Tami Moon-Carlson are assigned as Northglenn's representatives to this committee.

The IGA presented for renewal in 2011 is the same as presented in the year 2005. The cost sharing percentages that are noted in the IGA document have not changed and there is no change in Northglenn's obligation to this IGA.

BUDGET/TIME IMPLICATIONS

Cost sharing percentages: Northglenn – 20%, City of Thornton – 35%, City of Westminster – 45%. These percentages are the same as in the December 2005 renewal. The 2010 budget for this item was \$31,000; the approved 2011 budgeted amount is also \$31,000.

RECOMMENDATION

Staff recommends approval of this resolution.

STAFF REFERENCE

David H. Willett, P.E., Director of Public Works
Raymond Reling, Acting Utilities Superintendent

dwillett@northglenn.org or 303.450.8783
rreling@northglenn.org or 303.450.4049

SPONSORED BY: MAYOR DOWNING

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-8
Series of 2011

Series of 2011

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITIES OF NORTHGLENN, THORNTON AND WESTMINSTER CONCERNING SHARING OF COSTS RELATED TO STANDLEY LAKE AND CLEAR CREEK WATER QUALITY ISSUES

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Intergovernmental Agreement between the cities of Northglenn, Thornton and Westminster concerning the sharing of costs related to Standley Lake and Clear Creek water quality issues, attached hereto, is hereby approved by the City Council of the City of Northglenn, and the Mayor is authorized to enter into the Intergovernmental Agreement on behalf of the City of Northglenn, Colorado.

DATED, at Northglenn, Colorado, this _____ day of _____, 2011.

JOYCE DOWNING
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney

INTERGOVERNMENTAL AGREEMENT
AMONG THE CITIES OF NORTHGLENN, THORNTON, AND
WESTMINSTER CONCERNING SHARING OF COSTS RELATED TO
STANDLEY LAKE AND CLEAR CREEK WATER QUALITY ISSUES

THIS AGREEMENT is entered into this _____ day of _____, 20___, among the CITY OF THORNTON, hereinafter referred to as "Thornton," the CITY OF NORTHGLENN, hereinafter referred to as "Northglenn", and the CITY OF WESTMINSTER, hereinafter referred to as "Westminster" (Thornton, Northglenn, and Westminster together are hereinafter referred to as "Cities").

I. RECITALS

- A. The Cities each own rights to store water in Standley Lake and other important water rights that are essential to providing a domestic water supply to the residents of the Cities.
- B. Protection of these water rights and the water quality of these sources of domestic drinking water are of paramount importance to the Cities.
- C. Article XIV, Section 18, of the Colorado Constitution, Part 2 of Article 1 of Title 29, C.R.S., and 29-20-105, C.R.S., permit and encourage local governments to make the most efficient and effective use of their powers and responsibilities by cooperating and contracting with other local governments in order to provide any lawfully authorized functions, services, or facilities.
- D. Pursuant to an Intergovernmental Agreement dated June 28, 1989, and on August 24, 1995, December 18, 2000 and December 2005. (Prior Water Quality Agreements) the Cities have previously shared costs associated with water quality protection efforts involving Standley Lake and its tributaries.
- E. This agreement stipulates the intent of the Cities for administration of the Standley Lake Watershed Monitoring Program (Monitoring Program) which is used to protect and monitor the quality of water in Clear Creek and Standley Lake.
- F. It is beneficial and cost-effective for the Cities to mutually hire consultants and legal counsel, conduct water quality monitoring, implement water quality improvement projects, and to equitably share such costs related to water quality in Standley Lake and the Clear Creek Basin.
- G. It is prudent for the cities to execute a written agreement which sets forth the terms and guidelines for hiring consultants and legal counsel and sharing in the responsibility for the Monitoring Program.

- H. The Cities have developed the following Mission Statement. *To protect the quality of Standley Lake as a drinking water supply through the application of scientifically based and fiscally responsible management techniques. Optimize the health of Standley Lake and its watershed for current and future generations.*
- I. The Cities agree that it is mutually beneficial to cooperate with each other in order to improve the water quality in the Standley Lake Watershed by addressing stormwater flows into Standley Lake and environmental issues that may affect the high level of Standley Lake water quality.
- J. The Cities agree that it is mutually beneficial to continue joint participation in the Monitoring Program to assess the quality of water flowing into and within Standley Lake. Cooperative efforts may include costs for water quality monitoring, monitoring equipment, contract laboratory testing, legal services, consulting and engineering services, and capital costs associated with water quality improvement projects.

II. AGREEMENT

In consideration of the mutual promises and covenants in this Agreement, the Cities agree as follows:

A. Cooperative Efforts

- 1. The Cities agree to divide the staff workload of the Standley Lake Watershed Monitoring Program in the same percentages as the cost sharing percentages in Section II D 1. The Cities further agree that best efforts must be used to ensure that all monitoring data meets acceptable quality assurance/quality control (QA/QC) standards.
- 2. It is agreed that each City's participation in any particular water quality effort is strictly voluntary. Projects will not be initiated without the verbal or written consent of all three Cities.

B. Representation

- 1. The City Managers of each City will designate one representative to serve on a Standley Lake Water Quality Committee (Committee) which will be charged with administering the terms of the Agreement, developing work schedules, monitoring schedules, and budget needs for the next budget year, and evaluating the progress of the Monitoring Program. The Committee will meet quarterly, at a minimum, for the above stated purposes. At least one member of the Committee will be present at Standley Lake Operating Committee (SLOC) meetings, on a quarterly basis, to enhance communications concerning the operational and water quality aspects of Standley Lake and to provide technical support to SLOC.

C. Consultants, Technical Experts, and Legal Representation

1. The Cities hereby authorize their City Managers or designees to enter into contracts for legal, contractor and/or consulting services pursuant to this Agreement and in accordance with Charter and ordinance provisions of the Cities.
2. The Cities may mutually agree to hire consultants, technical experts, and/or legal counsel to provide additional expertise related to implementation of the Monitoring Program. Conflicts of interest will be given consideration as part of the selection process and may be the basis for not selecting any contractor/consultant/attorney. Should a conflict of interest be perceived by any City after a contract has been initiated, that City may request termination of the contractor/consultant's/attorney representation or terminate its participation in any contract at its sole discretion. Any confidential information obtained by any firm in the course of the joint representation shall remain confidential and not be used to the detriment of any City in any subsequent representation.
3. Prior to entering into any contract for consulting, technical, or legal services, the Committee shall approve in writing, the scope and amount of such contracts, which amount shall be within the Monitoring Program budget.

D. Payment Terms

1. The cost sharing ratios below shall be used for those expenses that are invoiced such as legal and consulting fees and for equipment used in the Monitoring Program. These ratios reflect negotiated levels of participation and are based on ownership and purchased storage rights.

City of Northglenn – 20%
City of Thornton – 35%
City of Westminster – 45%

The cost of in-kind work such as water sampling, laboratory testing, equipment calibration and maintenance, data processing, meeting attendance, report writing and other administrative costs cannot be assigned and carried out in strict accordance with the participation ratios identified in this section. Oversight required to adhere exactly to the participation ratios for in-kind services would be resource prohibitive. However, every attempt will be made to delegate in-kind work assignments in consideration of the participation ratios.

2. As per Section 6 of the November 28, 1994, Standley Lake Park Intergovernmental Agreement (Park Agreement), Westminster agrees to contribute \$10,000 annually to be used for water quality improvements which may include regular water quality testing and monitoring. The \$10,000 shall not be included in those costs used to apportion the participation ratios identified in section II.D I.

3. Legal counsel and technical experts or consultants hired by the Cities pursuant to this Agreement shall bill only one of the Cities. The Cities will agree, prior to contracting for legal or consulting services, which City will be billed. The billed City will in turn invoice the other Cities for reimbursement of their respective shares of the total invoiced costs. These invoiced Cities will have (30) days in which to remit payment to the City originally billed. Legal counsel and technical experts shall follow the purchasing procedures of the billed City. The billed City will not be reimbursed for administrative costs.
4. The billed City will provide, at the time of reimbursement invoicing, copies of itemized invoices from attorneys, consultants or vendors.

E. General Provisions

1. This Agreement shall be effective upon execution of this Agreement by the parties and shall terminate on December 31, 2015. Additionally, this Agreement may be terminated, at any time, for any reason, by any party, upon serving the other parties a thirty (30) day written notice of intent to terminate. The Agreement may also be terminated in the event that any party violates any of the terms of the Agreement and fails to cure the default within ten (10) days of receipt of written notice from the non-defaulting parties which specifies the nature of the default and its cure. Termination by any party shall not relieve that party of its share of costs already incurred [or committed to] by mutual agreement by the other parties pursuant to this Agreement.
2. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement shall not constitute a waiver of any prior, concurrent, subsequent breach of the same or any other of the terms or obligations of this Agreement. No waiver shall be effective unless made in writing.
3. This Agreement represents the entire and integrated Agreement between the parties and supersedes the Prior Water Quality Agreements. This Agreement may be amended only by a written instrument executed by the City Councils of the parties hereto.
4. If any clause, sentence, paragraph, or part of this Agreement or the application thereof to any party or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement or its application.

5. The Committee will review the Monitoring Program each year prior to each Cities budget preparation for the next fiscal year to assist with budget planning. The review will include, at a minimum:
 - Evaluation of sampling and testing schedules for all monitoring programs.
 - Assignment of sampling and laboratory testing for all monitoring programs, including adjustments from the previous year's program, in accordance with the participation ratios in Section II D 1.
 - Preparation of a budget which will include an estimate of legal/technical consultation costs, special studies that may be required, and new and replacement equipment costs that will be incurred during the upcoming year.
6. No documentation and/or correspondence prepared as a joint position by the Cities or a consultant, technical expert, or legal counsel retained pursuant to this Agreement shall be distributed to third parties without prior approval from each City's designee. Each City can distribute independent documentation and/or correspondence stating their individual position, provided the documentation and/or correspondence do not imply joint concurrence or commitment by any of the signatory parties.
7. It is expressly understood and agreed that enforcement of the terms and conditions of the Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Cities, and nothing contained in this Agreement shall be interpreted to give or allow any such claim or right of action to any other third person on such Agreement. It is the expressed intention of the Cities that any person other than the Cities receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
8. This Agreement is being executed and delivered and is intended to be performed in the State of Colorado, and the laws of Colorado shall govern the validity, construction, enforcement, and interpretation of this Agreement. Further, venue for any and all legal action at law or in equity regarding this Agreement shall be in the Adams County District Court, State of Colorado.
9. This Agreement does not authorize the Cities participation in any lawsuit.

10. Any notice which may be given under the terms of this Agreement shall be made in writing, and shall be deemed made upon personal service or upon mailing via the United States postal service, postage prepaid, to the other Cities, and unless amended by written notice, to the following:

CITY OF THORNTON
Jack Ethredge
City Manager/Utilities Director
9500 Civic Center Drive
Thornton, CO 80229

CITY OF WESTMINSTER
Brent McFall
City Manager
4800 West 92nd Avenue
Westminster, CO 80031

CITY OF NORTHGLENN
William Simmons
City Manager
11701 Community Center Drive
Northglenn, CO 80233

11. This Agreement may not be assigned by any party without the written consent of the other parties.
12. Three originals of this Agreement shall be signed by the parties.
13. This Agreement shall in no way obligate the Cities to budget funds to be spent pursuant to this Agreement. If a court of competent jurisdiction determines that the Agreement violates the multi-year contract restriction in Section 20, Article X of the Colorado Constitution, then the parties agree that the Agreement shall immediately be converted to a one year contract, with automatic annual renewal through December 2010, unless previously terminated.

IN WITNESS WHEREOF, the parties have hereto set their hand and seal on the dates indicated below.

ATTEST:

CITY OF THORNTON

City Clerk

Jack Ethredge, City Manager

APPROVED AS TO FORM:

City Attorney

Date

ATTEST:

CITY OF NORTHGLENN

City Clerk

Joyce Downing, Mayor

APPROVED AS TO FORM:

City Attorney

Date

ATTEST:

CITY OF WESTMINSTER

City Clerk

Nancy McNally, Mayor

APPROVED AS TO FORM:

City Attorney

Date