TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 40, SERIES 2019

A RESOLUTION APPROVING AN AGREEMENT BETWEEN NUMEROUS
STAKEHOLDERS REGARDING A JOINT STUDY OF THE BOXELDER CREEK
WATERSHED DAMS

WHEREAS, the Town Council of the Town of Timnath ("Town") pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, attached hereto as Exhibit A is the Agreement; and

WHEREAS, the study of these dams is critical to the protection to the Town’s investment in the Boxelder Floodplain improvements; and

WHEREAS, the Town Council is familiar with the Agreement and finds it to be in the best interest of the Town, its residents, and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOW:

Section 1. Approval
The Agreement is hereby approved in substantially the form as attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants, and the Town Manager is Authorized to enter into said agreement.


TOWN OF TIMNATH, COLORADO

[Signature]
Aaron Pearson, Mayor Pro Tem

ATTEST:

[Signature]
Milissa Peters-Garcia, CMC
Town Clerk
July 1, 2019

AGREEMENT BETWEEN NUMEROUS STAKEHOLDERS REGARDING A JOINT STUDY OF THE BOXELDER CREEK WATERSHED DAMS

This Agreement is entered into by and between the following Parties: the City of Fort Collins, Colorado, a municipal corporation ("Fort Collins"); Larimer County, Colorado, a political subdivision of the State of Colorado ("County"); the North Poudre Irrigation Company, a Colorado corporation ("North Poudre"); the Town of Timnath, Colorado, a municipal corporation ("Timnath"); and the Town of Wellington, Colorado, a municipal corporation ("Wellington").

Fort Collins, North Poudre, Timnath, and Wellington are collectively referred to as the "Non-County Parties." The County, Fort Collins, Timnath, and Wellington are collectively referred to as the "Governmental Parties."

RECITALS

A. The watershed of Boxelder Creek includes various lands in northern Larimer County. From the headwaters, Boxelder Creek flows generally to the south and southeast, though farmlands and along the developed and developing Interstate 25 corridor through various political boundaries (including those of some of the Parties) towards its confluence with the Cache la Poudre River in eastern Fort Collins. Water from Boxelder Creek then flows down the Cache la Poudre River generally to the east through more farmlands, developed and developing lands, and additional political boundaries (including those of some of the Parties).

B. Like all streams, Boxelder Creek is prone to potential flood risks. To help address these risks, there is a series of dams known as the Boxelder Creek Watershed Dams, and commonly referred to as the "B Dams," which includes dams B-2, B-3, B-4, B-5, and B-6. The B Dams were constructed in or around the 1970s and 1980s, at a time when there was less development along Boxelder Creek downstream of the B Dams.

C. The Colorado Department of Water Resources, Dam Safety Division, has recently changed the classification of the B-2, B-3 and B-4 Dams from "significant" to "high" hazard, due to the increase in development along Boxelder Creek below these B Dams. The classification on the other dams, such as the B-5 and B-6 dams, may be changed in the future, but at this time there is no intention of reclassifying the hazard classifications. See Office of the State Engineer Rules and Regulations for Dam Safety and Dam Construction, 2 CCR 402-1. This has prompted a wider, regional conversation regarding B Dams, including their operation and future.

D. Each of the Parties to this Agreement has significant interests related to the B Dams and is interested in performing a joint study of the B Dams in order to, among other things, gather the data, facts, and analyses necessary to fully evaluate the B Dams and issues related to flood risks along Boxelder Creek. The Parties therefore desire a joint study of the B Dams ("Study") as set forth in detail below. The Study will primarily focus on the B-2, B-3, and B-4 Dams based on the recent modified classification and provide insight and guidance on the potential for additional classification changes to the other B Dams. The study will also consider if land use changes...
downstream of B-5 and B-6 and upstream of B-2 could trigger potential upgrades to the B-5 and B-6 dams.

E. The County intends to utilize an engineering firm that the County already has under contract ("Consultant"), to perform the Study. The Non-County Parties will reimburse the County for their portion of the Study as described below.

F. The Parties intend to utilize the Study as a basis for subsequent discussions and potential agreements related to the B Dams and the associated capital improvements that are needed for these facilities. Options for the long-term operations and maintenance needs and responsibilities will also be considered, including potential reallocation of operation and maintenance responsibilities.

G. The Governmental Parties are authorized into enter into the following intergovernmental agreement pursuant to C.R.S. §29-1-203. As a corporation organized under Colorado law, North Poudre is authorized to enter into this Agreement.

AGREEMENT

1. INCORPORATION OF RECITALS. The foregoing recitals are hereby incorporated as if fully restated in their entirety.

2. THE SCOPE. The scope of the Study ("Scope") shall include:
   • Coordination of the relevant activities of the Parties and the United States Department of Agriculture, Natural Resources Conservation Service related to improvements and funding of capital improvements and maintenance needs for the B-2, B-3 and B-4 Dams required because of the classification change;
   • An analysis of potential cost-share approaches to future capital and operation and maintenance costs of the B-2, B-3, and B-4 Dams. The Consultant will review and update available cost estimates for the B-2 and B-3 dams and develop a cost estimate for the B-4 dam. The cost estimate for the B-4 dam will be a planning level estimate based on current data available;
   • Conduct an assessment of the potential reclassification of the B-5 and B-6 dams including a high-level risk and financial implications and make recommendation(s) for potential improvements needed.
   • An assessment of the B Dams, including the liabilities and risks associated with potential future reclassification and therefore needing future improvements.
   • The Parties will meet with the Consultant to further jointly develop and modify the Scope as may be necessary. Before the Consultant begins the Study, each of the Parties shall confirm in writing (such as by email or otherwise) that any modifications to the Scope are acceptable. The total costs of the Study shall be limited to $250,000.

3. OUTCOME OF PROJECT AND SCOPE OF WORK. The intent of this scope of work is to gather data and facts to develop recommendations for a second phase agreement that will identify a methodology to fund the capital improvements of the appropriate dams. The scope
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of work will also evaluate alternatives for meeting long-term operations and maintenance responsibilities between the Parties, to be part of a second phase agreement. The stakeholders will need to actively participate and shape recommendations for the second phase IGA, so that it can be supported for implementation.

4. **COOPERATION WITH THE STUDY.** The County shall be responsible for engaging the Consultant to conduct the study. The Non-County Parties agree to cooperate in good faith with the County and the Consultant for the Study, including: developing and modifying the Scope, as necessary; reviewing and providing comments on draft analyses and reports generated by the Consultant as part of the Study in its development and completion; and providing information needed to complete the Study to the Consultant, in a timely manner. The County agrees to work in good faith to ensure that the Non-County Parties have a meaningful opportunity to review and provide comments as discussed above, and to address comments.

5. **OWNERSHIP OF THE STUDY.** Each of the Parties will be an owner of the Study and all other deliverables provided by the Consultant on the Study (including, but not limited to, analyses, analytical tools, data, models, and reports and drafts thereof). The County shall provide the Non-County Parties with a copy of the draft and final reports, as well as the data, analytical tools, and all other information generated by the Consultant in association with the Study that are related to their systems within 14 days of the County’s receipt of the same, subject to the terms and conditions of this Agreement.

6. **REIMBURSEMENT TO THE COUNTY.** Each of the Non-County Parties shall pay the County 1/5th of the total cost of the Study, up to a maximum of $50,000, within 45 days of receiving an invoice from the County for the same. The County may withhold providing any of the documents identified in Paragraph 5 to any Non-County Party until payment has been made by that Non-County Party.

7. **FISCAL CONTINGENCY.** Notwithstanding any other provisions of this Agreement to the contrary, the obligations of the Governmental Parties in fiscal years after the fiscal year of this Agreement shall be subject to appropriation of funds sufficient and intended therefor, with the Party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement. The failure of a Governmental Part to appropriate such funds shall be grounds for termination of this Agreement as to such Party upon written notice pursuant to Paragraph 11.

8. **REMEDIIES.** If any Party fails to comply with the provisions of this Agreement, the other Parties, after providing prompt written notification to the noncomplying Party, and upon the failure of the noncomplying Party to achieve compliance within 35 days following receipt of such notice, may seek all such remedies available under Colorado law.

9. **NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into between the Parties for the purposes set forth herein. It is the intent of the Parties that they are the only beneficiaries of this Agreement and the Parties are only benefitted to the extent provided under the express terms and conditions of this Agreement.

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10. GOVERNING LAW AND ENFORCEABILITY. This Agreement shall be construed in accordance with the laws of the State of Colorado. The Parties recognize that the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, as well as the Parties’ respective bylaws, city charters and codes, and rules and regulations, impose certain legal constraints on each Party and that the Parties intend to carry out the terms and conditions of this Agreement subject to those constraints. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law.

11. WAIVER. A waiver of a breach of any of the provisions of this Agreement shall not constitute a waiver of any subsequent breach of the same or another provision of this Agreement. Nothing in this Agreement shall be construed as any waiver of governmental immunity of the Parties who are governments or any other governmental provisions of State law. Specifically, by entering into this Agreement, neither Party waives the monetary limitations on liability or any other rights, immunities, or protections provided by the Colorado Government Immunity Act, C.R.S. § 24-10-101, et seq., or any successor or similar statutes of the State of Colorado.

12. NOTICES. All notices or other communications hereunder shall be sufficiently given and shall be deemed given (i) when personally delivered; (ii) on the date and at the time of delivery or refusal of acceptance of delivery if delivered or attempted to be delivered by an overnight courier service to the party to whom notice is given at the address specified below; (iii) on the date and at the time shown on the electronic mail if sent by electronic transmission at the e-mail addresses set forth below and receipt of such electronic mail is acknowledged by the intended recipient thereof; or (iv) after the lapse of five business days following mailing by certified mail-return receipt requested, postage prepaid, addressed as follows:

To Fort Collins:  
City Manager  
City Hall West  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580

With copy to:  
Fort Collins City Attorney  
300 LaPorte Avenue; P.O. Box 580  
Fort Collins, Colorado 80522-0580  
E-mail: epotyondy@fcgov.com

and:  
Fort Collins Utilities  
Attn: WEFS Deputy Director  
700 Wood Street; PO Box 580  
Fort Collins, Colorado 80522  
E-mail: tconnor@fcgov.com

To County:  
County Manager  
Larimer County Courthouse Offices  
200 West Oak St, 2nd Floor; PO Box 1190  
Fort Collins, CO 80522-1190
13. **CONSTRUCTION.** This Agreement shall be construed according to its fair meaning as it was prepared by the Parties. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

14. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein. This Agreement binds and benefits the Parties and their respective successors. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

15. **REPRESENTATIONS.** Each Party represents to the other parties that it has the power and authority to enter into this Agreement and the individual signing below on behalf of that Party has the authority to execute this Agreement on its behalf and legally bind that Party.

16. **ASSIGNMENT.** No Party may assign any rights or delegate any duties under this Agreement without the written consent of all other Parties.

17. **SEVERABILITY.** If any provision of this Agreement shall prove to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

[Remainder of Page Intentionally Blank]
July 1, 2019

CITY OF FORT COLLINS, COLORADO, a municipal corporation

By: ___________________________ Date: ___________________________
    Darin A. Atteberry, City Manager

ATTEST:

By: ___________________________
    City Clerk

APPROVED AS TO LEGAL FORM:

By: ___________________________
    City Attorney’s Office
July 1, 2019

LARIMER COUNTY, COLORADO, a political subdivision of the State of Colorado

By: ___________________________ Date: ________________
July 1, 2019

NORTH POUDRE IRRIGATION COMPANY, a Colorado corporation

By: _______________________________ Date: ___________________
July 1, 2019

TOWN OF TIMNATH, COLORADO, a municipal corporation

By: ___________________________ Date: ___________________________

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TOWN OF WELLINGTON, COLORADO, a municipal corporation

By: _______________________________ Date: _______________________________