

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 60, SERIES 2023**

**A RESOLUTION APPROVING
AGREEMENT REGARDING OPERATION AND MAINTENANCE OF BOXELDER
CREEK WATERSHED DAMS (B DAMS B-2, B-3 AND B-4)**

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 Regarding Operation and Maintenance of Boxelder Creek Watershed Dams (B Dams B-2, B-3 and B-4) (the "Agreement");

WHEREAS, the watershed of Boxelder Creek includes various lands in northern Larimer County; from the headwaters, Boxelder Creek flows generally to the south and southeast, through farmlands and along the developed and developing Interstate 25 corridor through various political boundaries towards its confluence with the Cache la Poudre River in eastern Fort Collins, where 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; and

WHEREAS, to address potential flood risks in the Boxelder Creek watershed, several dams were constructed, including Dams known as B-2, B-3 and B-4 (the "B-Dams"); and

WHEREAS, based on recommendations by the Dam Safety Office, the City of Fort Collins, Larimer County, North Poudre Irrigation Company, the Town of Wellington and the Town have negotiated the Agreement to set forth responsibility for operation and maintenance of the B-Dams and the sharing of costs related thereto;

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:

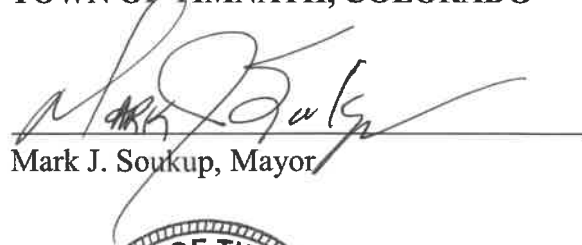
Section 1. Approval

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.

INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON OCTOBER 10, 2023.

TOWN OF TIMNATH, COLORADO

A handwritten signature in blue ink, appearing to read "Mark J. Soukup", written over a horizontal line.

Mark J. Soukup, Mayor

ATTEST:

A handwritten signature in blue ink, appearing to read "Milissa Peters-Garcia", written over a horizontal line.

Milissa Peters-Garcia, CMC

Town Clerk



EXHIBIT A

**AGREEMENT REGARDING OPERATION AND MAINTENANCE OF BOXELDER CREEK
WATERSHED DAMS (B DAMS B-2, B-3 AND B-4)**

**AGREEMENT REGARDING OPERATION AND MAINTENANCE OF
BOXELDER CREEK WATERSHED DAMS
(B DAMS B-2, B-3, and B-4)**

This Agreement, dated and effective 12/20/23, is entered into by the following Parties:

- Board of County Commissioners of Larimer County, a political subdivision of the State of Colorado;
- North Poudre Irrigation Company, a Colorado mutual ditch and reservoir company;
- City of Fort Collins, a Colorado municipal corporation;
- Town of Timnath, a Colorado municipal corporation; and
- Town of Wellington, a Colorado municipal corporation.

** See Paragraph 2 for a list of defined terms used in this Agreement **

RECITALS

Boxelder Creek Watershed

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, through 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.

B. 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).

General History of the Boxelder Creek Watershed Dams

C. Boxelder Creek is prone to potential flood risks. To help address these risks, the Boxelder Creek Watershed Dams B-2, B-3, B-4, B-5, and B-6 were constructed in or around the 1970s and 1980s, at a time when there was less development along Boxelder Creek and its floodplain downstream. This Agreement, however, is with respect to the Boxelder Creek Watershed Dams B-2, B-3, and B-4 only, hereinafter referred to as the "B Dams."

D. The original sponsors for the B Dams included the Fort Collins Soil Conservation District, the West Greeley Soil Conservation District, Larimer County, North Poudre, the Frontier Soil Conservation District, the Laramie Rivers Soil Conservation District, and the Colorado State Soil Conservation Board, with assistance from the U.S. Soil Conservation Service.

E. The purpose of the B Dams is described in the report entitled "Watershed Work Plan Boxelder Creek Watershed Larimer & Weld Counties, Colorado Albany & Laramie Counties, Wyoming dated February 1971." That report states: "[t]he project objectives are to reduce damages to agricultural land and crops, irrigation facilities, farmsteads, highways, embankments

and bridges from 10-year frequency storms or larger and to the town of Wellington from the 100-year frequency storms.”

Ownership and Operation of the B Dams

F. North Poudre holds fee simple ownership of the land around the B Dam B-2. *See* Larimer County Assessor Parcels 9024000945, 9024000949, 8027000936. Fee simple ownership of portions of the land encompassing the upstream impoundment area and portions of the land downstream of the outlet are owned by non-parties to this Agreement.

G. North Poudre holds fee simple ownership of the land for the spillway of the B Dam B-3. *See* Larimer County Assessor Parcel 8027000936. Fee simple ownership of portions of the land encompassing the upstream impoundment area, the dam, and portions of the land downstream of the outlet and spillway are owned by non-parties to this Agreement, and occupation and use of those lands is pursuant to applicable agreements and easements.

H. Fee simple ownership of the land encompassing the dam of B-Dam B-4, upstream impoundment areas outlet and land downstream is owned by non-parties to this Agreement, and occupation and use of the land is pursuant to applicable agreements and easements.

I. North Poudre entered into an agreement with the U.S. Soil Conservation Service for Operations and Maintenance of Floodwater Retarding Structure Dam B-2 and B-2 Diversion on January 4, 1980.

J. North Poudre entered into an agreement with the U.S. Soil Conservation Service for Operations and Maintenance of Floodwater Retarding Structure Dam B-3 on February 21, 1977.

K. North Poudre entered into an agreement with the U.S. Soil Conservation Service for Operations and Maintenance of Floodwater Retarding Structure Dam B-4 on June 30, 1976 and revised on September 16, 1980.

Dam Safety Office Reclassification of the B Dams

L. The Dam Safety Office changed the classification of the B Dams from “Moderate Hazard” to “High Hazard” on or around July 11, 2013 pursuant to the Dam Safety Regulations due to the increase in development along and in the Boxelder Creek floodplain below these flood control structures.¹

M. The Management Committee (originally called the technical advisory committee) was formed to provide technical input and representation of the Parties. Under direction from the Management Committee, consulting services were acquired from SEH and paid for by contributions from the Parties.

¹ The classification of B Dams B-5 and B-6 may be changed in the future, but at this time the Dam Safety Office had not communicated any intent to reclassify the hazard classifications of those two structures, which are not the subject of this Agreement.

N. NRCS contracted with Golder Engineering to study B Dams B-2 and B-3. The product of that engagement was the Golder Report. The Golder Report identified and recommended significant structural improvements to B Dams B-2 and B-3 for attaining compliance with Dam Safety Regulations. Under the direction of the Management Committee, SEH was engaged and identified and structural improvements to B Dam B-4 for purposes of compliance with the Dam Safety Regulations.

O. The Dam Safety Office performed a Qualitative Risk Assessment utilizing comprehensive dam safety evaluation tools and methodologies by plotting “Likelihood of Failure” against the “Consequence Category” for overtopping dam failure and found that the B Dams fall within an “Acceptable” risk range suggesting no immediate need for action to reduce the probability of failure.² With this additional assessment, the Dam Safety Office determined that the structural improvements identified in the Golder Report and the SEH Report would not be required for the B Dams to be in compliance with the Dam Safety Regulations.

P. The risk assessment performed by the Dam Safety Office assumed an up-to-date EAP would be developed and assumed appropriate warning and response to any hydrologic events in the Boxelder Creek basin would be in place and recommended the following for the B Dams:

1. Provide a clear designation of ownership and responsibility for operations and maintenance and decision making for the B Dams.
2. Available funding should be directed toward routine regular maintenance and repairs to ensure dam operation and reduce the likelihood of failure to the lowest level.
3. A robust emergency action planning program should be used to mitigate consequences associated with extreme spillway releases from the B Dams in addition to those associated with dam failures.
4. Existing available funding should be used for focused improvements to instrumentation, warning systems, and EAP activities to ensure reduction of consequences for a range of hydrologic events.
5. Inundation mapping for spillway flows should be part of the EAP for each of the B Dams.
6. While enlarging the spillways of the B Dams may further reduce the likelihood of an overtopping failure, enlarging beyond a certain point may result in adverse impacts. Larger spillway flows alone increase the risk to the populations currently at risk downstream. A sensitivity analysis should be used to identify

² The Analysis and Conclusions of the Qualitative Risk Assessment performed by the Dam Safety Office for B Dam B-2 is found in a memo entitled “Boxelder B-2 Dam - Spillway Adequacy and Hydrologic Hazard Analysis Memorandum” dated April 16, 2020.

The Analysis and Conclusions of the Qualitative Risk Assessment performed by the Dam Safety Office for B Dam B-3, is found in a memo entitled “Revised Spillway Adequacy and Hydrologic Hazard Analysis Workshop Results – Floodwater Ret. B-3 (aka Boxelder Dam B-3), DAMID 030415 SEH No. 152112” dated September 11, 2020.

The Analysis and Conclusions of the Qualitative Risk Assessment performed by the Dam Safety Office for B Dam B-4, is found in a memo entitled “Spillway Adequacy and Hydrologic Hazard Analysis Workshop Results – Floodwater Ret. B-4 (aka Boxelder Dam B-4), DAMID 030414 SEH No. 152112” dated September 21, 2020.

the appropriate level of spillway capacity increase along with other dam modifications that would convey a remote AEP storm and limit incremental risk downstream.

Parties' Desire to Address Certain B Dams Issues

Q. The B Dams provide various benefits to the Parties. The Parties value regional collaboration, especially in preparation for and response to disasters and emergencies. Following a thorough examination of the issues, the Parties desire to address certain concerns associated with the B Dams as set forth in this Agreement.³

R. Colo. Const. Art. XIV, §18(2) and C.R.S. § 29-1-201 *et seq.* authorize the Parties to enter into agreements, including agreements providing for cost-sharing as provided for in this Agreement.

S. In consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows.

AGREEMENT

1. **Incorporation of Recitals.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.

2. **Defined Terms.** The terms used in this Agreement shall be as defined in this Paragraph 2 and shall otherwise be given their ordinary meaning.

2.1. **"B Dams"** are the Boxelder Creek Watershed Dams (also known as the Boxelder Creek Watershed Floodwater Retarding Structures), comprising three dams, being B Dams B-2, B-3, and B-4.⁴

2.2. **"Cost Allocation Model"** is a model developed by the Parties to allocate costs related to this Agreement. The Cost Allocation Model is outlined in "SEH Memorandum Cost Allocation Model Update (Task 8.0)" dated December 11, 2020.

2.3. **"Dam Safety Office"** is the Colorado Division of Water Resources (also known as the Office of the State Engineer), Dam Safety Branch.

³ Final analysis and conclusions are found in the SEH Report titled "Project Development for Boxelder Watershed Dam Rehabilitation – Boxelder Watershed Dams B-2, B-3, B-4, B-5, and B-6 Larimer County, Colorado SHE PN 152112" dated May 10, 2021.

⁴ B Dams B-5 and B-6 and other improvements that were part of the original NRCS project associated with the B Dams are not the subject of this Agreement.

- 2.4. "Dam Safety Regulations" are the Rules and Regulations for Dam Safety and Construction, 2 CCR 402-1.
- 2.5. "EAP" is an emergency action plan.
- 2.6. "Fiscal Manager" is the Party designated under this Agreement (*see* Paragraph 7) to act as the fiscal agent on behalf of all Parties for funds under this Agreement.
- 2.7. "Fort Collins" is the City of Fort Collins, a Colorado municipal corporation.
- 2.8. "Golder Report" is a report, dated August 21, 2018, summarizing a study conducted by Golder Associates, which was initiated by North Poudre and NRCS
- 2.9. "Larimer County" is Larimer County, a political subdivision of the State of Colorado, acting through its Board of County Commissioners.
- 2.10. "Management Committee" is a committee comprising representatives of the Parties.
- 2.11. "Minimum Balance" is the smallest amount of money that is required to be in the O&M Fund.
- 2.12. "North Poudre" is the North Poudre Irrigation Company, a Colorado mutual ditch and reservoir company.
- 2.13. "NRCS" is the Natural Resources Conservation Service (formerly Soil Conservation Service, United States Department of Agriculture).
- 2.14. "O&M Fund" is the operation and maintenance fund created under this Agreement to fund the operation and maintenance of B Dams B-2, B-3, and B-4 and as set forth in this Agreement.
- 2.15. "Responsibility Percentages" are the percentages that each Party is responsible for regarding contributions to the O&M Fund, which are calculated pursuant to the Cost Allocation Model.
- 2.16. "Parties" are the Parties to this Agreement, being Fort Collins, Larimer County, North Poudre, Timnath, and Wellington.
- 2.17. "SEH" is Short Elliot Hendrickson, a consulting firm.
- 2.18. "SEH Report" is a study and report initiated by the Management Committee and conducted by SEH.
- 2.19. "Timnath" is the Town of Timnath, a Colorado municipal corporation.

2.20. "U.S. Soil Conservation Service" is the Soil Conservation Service, United States Department of Agriculture, which is currently known as NRCS.

2.21. "Wellington" is the Town of Wellington, a Colorado municipal corporation.

3. **Effective Date and Term.** This Agreement shall be effective as of the date that all Parties have executed this Agreement, which is stated above on the initial page. This Agreement shall continue in full force and effect as long as any of the B Dams exist, unless this Agreement is terminated in writing by mutual Agreement of the Parties or by court order following the procedures in Paragraph 15.

4. **Overview of Agreement.** This Agreement provides for the operation and maintenance of B Dams and the funding therefor. As described herein, this includes⁵ oversight by the Management Committee and cost sharing by the Parties.

5. **North Poudre as Operator of the B Dams.**

5.1. **Operation, Maintenance, and Reimbursement.** It is the intent of the Parties that North Poudre continue to operate and maintain the B Dams. North Poudre shall make routine, regular maintenance, and repairs to ensure the B Dams continue in good operating condition and in compliance with all legal requirements, to reduce the likelihood of failure to the lowest level, and shall prepare and submit any and all required reporting to the Dam Safety Office. As set forth in Paragraph 8.1 below, North Poudre shall prepare annual cost estimates for operation and maintenance of B Dams B-2, B-3, and B-4, for inclusion in the budget such that North Poudre will be reimbursed for such costs pursuant to the terms and conditions of this Agreement. North Poudre shall provide to the Management Committee copies of any and all notices from the Dam Safety Office and other non-privileged documents North Poudre receives that are related to this Agreement and shall notify the Management Committee of any known or anticipated legal or regulatory changes that will impact the B Dams.

No Effect on Other Agreements. Nothing in this Agreement changes ownership of the B Dams. *See* Recitals F, G, and H. Nothing in this Agreement amends existing contracts and agreements, including regarding North Poudre's operation of the B Dams. *See* Recitals I, J, and K.

6. **Management Committee.** To facilitate the implementation of and manage this Agreement and to provide technical and other recommendations related to this Agreement, the Management Committee is created.

6.1. **Representation.** Each Party shall designate one person to represent and act on the Party's behalf on the Management Committee, and one alternate. Each Party shall be entitled, at its sole discretion, to change its representative and alternate on the

⁵ In this Agreement, "include" signifies a list that is not necessarily exhaustive. *E.g., Lyman v. Town of Bow Mar*, 188 Colo. 216, 222, 533 P.2d 1129, 1133 (1975).

Management Committee, provided that the Party provides prompt notice of the same to the other Parties. When possible, appointees should have applicable technical knowledge and skills. Appointees shall be entitled to bring staff or consultants with applicable technical knowledge and skills to meetings.

- 6.2. **Meetings.** The Management Committee shall meet at least annually. The Management Committee may adopt rules to facilitate its conduct of business.
- 6.3. **Tasks.** The Management Committee shall provide advice and recommendations to the Parties, including to their staff and governing boards, regarding matters under this Agreement. The Management Committee shall also complete tasks delegated to it under this Agreement. This includes:
- direction and recommendations to the Fiscal Manager;
 - establishing the budgets; and
 - reviewing and updating the Cost Allocation Model.
- 6.4. **Consensus.** The Management Committee shall operate by consensus, with agreement from all Parties required for the Management Committee to act. To this end, Management Committee members shall make a good faith effort to reach consensus, propose alternative solutions, and otherwise work to resolve any issues that prevent consensus. In the event that no consensus can be reached, a Party may request mediation pursuant to Paragraph 15.

7. **Fiscal Manager.**

- 7.1. **Tasks.** The Fiscal Manager shall be the fiscal agent for all Parties for funds under this Agreement to, among other things: ensure compliance with Governmental Accounting Standards Board rules and regulations; and manage the O&M Fund. Upon request, the Fiscal Manager shall promptly provide the Management Committee or any Party copies of its records related to its tasks under this Agreement. The Fiscal Manager shall have a fiduciary responsibility to the Parties. The Fiscal Manager shall provide the Management Committee with an annual report on the O&M Fund and expenditures therefrom prior to setting the annual budget.
- 7.2. **Identification.** Any Party may be the Fiscal Manager. Pursuant to a separate agreement in writing, the Parties may identify a separate non-Party entity to act as the Fiscal Manager. Larimer County shall be the initial Fiscal Manager, subject to Paragraph 7.3.
- 7.3. **Changes to Fiscal Manager.** The Fiscal Manager may change over time, pursuant to agreement by the Parties in writing. The Fiscal Manager shall remain the Fiscal Manager unless and until a new Fiscal Manager is identified and tasks and funds have been transferred to the new Fiscal Manager.

8. **Annual Budget.** The Management Committee shall establish and approve an annual budget for tasks under this Agreement.

- 8.1. The annual budget shall consider and account for:
- North Poudre's cost estimate for operation and maintenance of the B Dams;
 - Larimer County's cost estimate for operation and maintenance of the portion of the Early Flood Warning System that relates to the B Dams;
 - the amount currently in the O&M Fund;
 - the amounts reasonably anticipated to come into the O&M Fund in the future; and
 - other relevant costs and matters.

- 8.2. Expenditures in the annual budget shall not exceed revenues. In the event that reimbursable expenditures by North Poudre or the Fiscal Manager are expected to exceed the amount set forth in the annual budget, they shall ask the Management Committee to call a meeting and consider an amendment to the annual budget.

9. **O&M Fund.** The operation and maintenance of the B Dams and the implementation of this Agreement will require funding to come from the Parties. The O&M Fund is thus created.

- 9.1. **Form.** The O&M Fund shall be a separate, designated, and restricted interest-bearing account will be held by the Fiscal Manager.

- 9.2. **O&M Fund Tasks.** The O&M Fund may be used for the operation and maintenance of the B Dams and the implementation of this Agreement. These tasks include: mowing; weed control; fences-related work; rodent/pest control; tree/shrub removal; surveying; engineering inspections/certifications; any and all required reporting to the Dam Safety Office; operation and maintenance of the Early Flood Warning System components related to the B Dams; sediment removal; rehabilitation / restoration of any flood control element of the B Dams, spillways, flood inundation areas, impacted public infrastructure, or other appurtenant facilities deemed necessary for the continued safe operation of the B Dams; and tasks required under this Agreement, including reviewing and updating the Cost Allocation Model. North Poudre, Larimer County, and the Fiscal Manager will submit invoices and supporting documentation to the Fiscal Manager for actual costs for work performed by staff and/or contractors related to the B Dams or this Agreement, and the Fiscal Manager shall reimburse them for such actual, reasonable costs up to the amount set forth in the annual budget.

- 9.3. **Annual Payments in Initial Five Years.** The Parties agree to fund the O&M Fund via five successive annual payments in the amounts as follows:

<u>Party</u>	<u>Annual Amount</u>	<u>5-Year Total</u>
Fort Collins	\$50,103	\$250,515
Larimer County	\$69,927	\$349,635
North Poudre	\$12,102	\$60,510
Timnath	\$28,770	\$143,850
Wellington	\$81,131	\$405,655
Sum Total	\$242,033	\$1,210,165

During the first five years while the O&M Fund is being established and funded, the Parties further agree to pay the minimum annual estimated operations and maintenance costs of \$37,000 per year as follows:

<u>Party</u>	<u>Annual Amount</u>
Fort Collins	\$7,659
Larimer County	\$10,690
North Poudre	\$1,850
Timnath	\$4,398
Wellington	\$12,403
Sum Total	\$37,000

- 9.4. **Minimum Balance.** The intent is that the O&M Fund creates interest earned that will fund the annual operation and maintenance of the B Dams. It is the Parties' intent that the Minimum Balance is sufficient to ensure the generation of adequate interest revenue to perpetually fund operation and maintenance of the B Dams. If the O&M Fund falls below the Minimum Balance, the Parties shall replenish the O&F Fund to meet the Minimum Balance as soon as practicable.

9.4.1. Initial Minimum Balance. The initial Minimum Balance of the O&M Fund shall be \$1,200,000.

9.4.2. Updates to the Minimum Balance. The Parties understand and agree that the actual and estimated annual operation and maintenance costs will change over time. The Minimum Balance will thus also need to increase accordingly. The Management Committee shall update the Minimum Balance when the Cost Allocation Model is reviewed and updated as described in Paragraph 10.2. The Management Committee may also recommend that the Minimum Balance otherwise be updated, which would require the amendment of this Agreement in writing.

10. Cost Allocation Model.

- 10.1. **Initial Responsibility Percentages.** Based on the Cost Allocation Model, responsibility for contributions to the O&M Fund shall be distributed among the Parties as follows:

<u>Party</u>	<u>Responsibility Percentages</u>
Fort Collins	20.7%
Larimer County	28.9%
North Poudre	5%
Timnath	11.9%
Wellington	33.5%

- 10.2. **Updates to Responsibility Percentages and Minimum Balance of the O&M Fund.** The Management Committee shall review and update the Cost Allocation Model a minimum of once every five years from the date of this Agreement. The Management Committee may consider retaining SEH or another consultant to perform the update under direction from the Management Committee. The Cost Allocation Model shall be reviewed and updated to include the most recent data describing assessed values, residential dwellings, population, and growth impact within the boundaries of each Party, and other relevant factors. Consistent with Paragraph 6.4, all updates to the Cost Allocation Model must be by consensus. Once the Cost Allocation Model has been updated pursuant to this Agreement, updated Responsibility Percentages and the Minimum Balance of the O&M Fund shall be calculated. Notice of the updated Responsibility Percentages and the Minimum Balance of the O&M Fund shall be provided to the Parties pursuant to Paragraph 22 and shall supersede previous Responsibility Percentages and Minimum Balance and shall be considered to be part of this Agreement.

11. **Emergency Flood Warning System.** The Parties will install an Early Flood Warning System described herein.

- 11.1. **Installation.** Larimer County shall procure, install, operate, and maintain in good operating condition three rain and stage gaging stations and one rain-only gage station around the B Dams in locations approved by North Poudre and incorporate these stations into Larimer County's existing Early Flood Warning System.
- 11.2. **Initial Costs.** The cost for initial procurement and installation of the Early Flood Warning System shall be funded by the Parties as follows. These amounts shall be due and payable within 28 days of the execution of this Agreement.

<u>Party</u>	<u>Amount</u>
Fort Collins	\$20,000
Larimer County	\$20,000
North Poudre	\$20,000
Timnath	\$20,000
Wellington	\$20,000
Sum	\$100,000

- 11.3. **Operation and Maintenance Costs.** The cost for operation and maintenance of the portions of the Early Flood Warning System related to the B Dams shall be

funded by the Parties via the O&M Fund and pursuant to the budgeting procedures described herein.

12. **Emergency Action Plan (EAP).** The Parties will work together to develop and implement the EAP consistent with the risk assessment performed by the Dam Safety Office. Costs for the development and implementation of the EAP shall come from the O&M Fund and pursuant to the budgeting procedures described herein.

13. **Dam Safety Office Regulations.** The Parties agree to work in good faith to comply with Dam Safety Regulations as set forth in this Agreement.

14. **Data Sharing.** The Parties agree that all data received from the Early Flood Warning System will be shared with the Parties, the National Weather Service, the Larimer County Emergency Management Office, and other departments of the Parties related to emergency services. The Parties may elect to have appropriate emergency response personnel receive the automated alerts generated by the system. It is each Party's own responsibility to keep the alert contact list up to date.

14.1. **Disclaimer.** Larimer County makes no representations or warranties as to the accuracy, timeliness, or completeness of the data provided by the Early Flood Warning System. LARIMER COUNTY MAKES NO WARRANTY OF MERCHANTABILITY OR WARRANTY FOR FITNESS OF USE FOR A PARTICULAR PURPOSE, EXPRESSED OR IMPLIED, WITH RESPECT TO THE DATA PROVIDED BY THE EARLY FLOOD WARNING SYSTEM. Any user of the data accepts the same AS IS, WITH FAULTS, and assumes all the responsibility for the use thereof, and further covenants and agrees to hold Larimer County harmless from and against all damage, loss, or liability arising from any use of this data, in consideration of Larimer County having made this information available.

15. **Remedies.**

15.1. If a Party ("Complaining Party") believes that another party ("Responding Party") has failed to comply with the provisions of this Agreement, the Complaining Party will provide written notification of the same to the Responding Party, which notice shall clearly identify the provisions of this Agreement at issue, and the actions or failure to act that the Complaining Party is alleging. The Responding Party shall have thirty-five days to provide a response, or to address the complaint. If the Complaining Party believes that the Responding Party has failed to achieve compliance after receiving the response, the Complaining Party may require mediation of the issue(s) under Paragraph 15.2.

15.2. If mediation is sought following the procedures of Paragraph 15.1, the Parties shall jointly select a mediator within 35 days following the Complaining Party's written notice to require mediation. The selection of the mediator shall be confirmed in writing. If the Parties cannot jointly select a mediator, each Party shall select a

mediator within 42 days following the Complaining Party's written notice to require mediation and the two selected mediators shall then jointly select a third person to mediate the issue(s) within 56 days following the Complaining Party's written notice to require mediation, who shall be impartial as to the Parties and the issue(s) and have mediation experience. The Parties agree to participate in good faith in such mediation.

- 15.3. Following the good faith completion of mediation under Paragraph 15.2 or if the two selected mediators are unable to jointly select a third person to mediate the issue(s), the Complaining Party may seek all such remedies available under Colorado law, excluding any exemplary and/or consequential damages.
- 15.4. This Agreement may be terminated by mutual consent of the Parties, in writing, including if the Agreement no longer serves the purposes of which it was executed.
16. **Annual Appropriations.** Any financial obligations of the Parties arising under this Agreement are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the respective governing bodies of the Parties in their sole discretion. No term or condition of this Agreement is intended nor shall be interpreted to create a multi-fiscal year obligation or debt of the Parties.
17. **Governmental Immunity.** No term or condition of this Agreement is intended nor shall be construed as a waiver, either express or implied, of the monetary limits, notice requirements, immunities, rights, benefits, defenses, limitations and protections available to the Parties under any applicable law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et. seq.*, as currently written or hereafter amended or implemented.
18. **Relationship of the Parties.** The Parties enter this Agreement as separate and independent entities and shall maintain such status at all times.
19. **No Third-Party Beneficiaries.** This Agreement is intended to describe rights and responsibilities only as between the Parties. It is not intended to and shall not be deemed to confer rights to any persons or entities not named as parties herein.
20. **Assignment.** The benefits and burdens under this Agreement may not be assigned by any Party without the unanimous written consent by all Parties.
21. **Amendment.** No amendment or other modification of this Agreement shall be valid unless pursuant to a written instrument signed by all Parties.
22. **Notices.** All notices provided for under this Agreement shall be effective when hand-delivered, sent by electronic mail- read receipt received, sent by registered or certified mail - return receipt requested, or sent by overnight commercial courier 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

and: Fort Collins Utilities
Executive Director
700 Wood Street; PO Box 580
Fort Collins, Colorado 80522

To County: County Manager
Larimer County Courthouse Offices
200 West Oak St, 2nd Floor; PO Box 1190
Fort Collins, CO 80522-1190

With copy to: Larimer County Attorney's Office
PO Box 1606
Fort Collins, CO 80522

With copy to: Larimer County Engineering Department
Attn: County Engineer
200 West Oak St., Suite 3000; PO Box 1190
Fort Collins, CO 80522-1190

To North Poudre: General Manager
North Poudre Irrigation
3729 Cleveland Ave
Wellington, CO 80549

To Timnath: Timnath Town Manager
4750 Signal Tree
Timnath, CO 80547

With copy to: Town Attorney
4750 Signal Tree
Timnath, CO 80547

With copy to: Justin Stone, Town Engineer
4750 Signal Tree
Timnath, CO 80547

To Wellington: Wellington Public Works
Attn: Robert Gowing
P.O. Box 127
Wellington, CO 80549

With copy to: Patti Garcia, Town Administrator
P.O. Box 127
Wellington, CO 80549

With copy to: March Olive and Sapienza, LLC
Attn: Dan Sapienza
1312 S College Ave
Fort Collins, CO 80524

Any Party hereto may at any time designate a different person or address for purposes of receiving notice by so informing the other parties in writing. Notice shall be deemed effective upon actual receipt thereof, or three (3) days after being deposited in the United States mail or accepted by an overnight delivery service, whichever first occurs.

23. **Counterparts.** This Agreement may be signed in counterparts.

24. **Governing Law.** This Agreement shall be governed by, construed under, and enforced in accordance with the laws of the State of Colorado. In addition, the Parties acknowledge that there are legal constraints imposed upon the Parties by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and that, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provisions of this Agreement to the contrary, in no event shall the Parties hereto exercise any power or take any action which shall be prohibited by applicable law. Whenever possible, each provision of this Agreement shall be interpreted in such a manner so as to be effective and valid under applicable law. Further, no term herein is intended nor shall be interpreted as a waiver of any rights, benefits, or other provisions of the Colorado Governmental Immunity Act, as now enacted and as may be amended, or other state or federal law that provides immunity or restrictions or limits of liability to local governments.

25. **Force Majeure.** No Party hereto shall be considered in default in the performance of an obligation hereunder to the extent that performance of such obligation is delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the defaulting Party which could not reasonably have been foreseen and guarded against. Force majeure includes, but is not limited to, acts of god, fires, riots, pandemics, incendiarism, interference by civil or military authorities, compliance with regulations or orders of military authorities, and acts of war (declared or undeclared), provided such cause could not have been reasonably foreseen and guarded against by the defaulting Party. Force majeure shall not include increases in labor, commodity, utility, material, supply, fuel, or energy costs, or compliance with regulations or orders of civil authorities.

26. **Severability.** If any provision of this Agreement is held to be invalid or unenforceable to any extent, the Parties shall meet, confer, and agree on appropriate modifications to this Agreement to ensure that the original intent, obligations, goals, and purposes of this Agreement are satisfied.

27. **Authority.** Each of the Parties represents to the other Parties that such Party has full power and authority to execute, deliver, and perform this Agreement, that such Party has taken the necessary steps that are lawfully required to execute, deliver, and perform this Agreement, and that the individual(s) executing this Agreement on behalf of such Party are fully empowered and authorized to do so.

28. **Venue.** Venue for all purposes shall be deemed proper only in the District Court of Larimer County, Colorado.

29. **Entire Agreement of the Parties.** This Agreement contains the entire agreement of the Parties as to the B Dams and shall be binding on them and their successors.

30. **All Other Agreements Unaffected.** All other agreements to which the Parties have previously agreed are unaffected by this Agreement. By way of example and not limitation, nothing in this Agreement shall affect North Poudre's agreements with the U.S. Soil Conservation Service regarding the B Dams that are referenced above.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed the day and year written below, and subject to the Effective Date as defined in Paragraph 3.

SIGNATURE PAGE FOLLOWS

CITY OF FORT COLLINS, COLORADO, a municipal corporation

DocuSigned by:
By: Kelly DiMartino
Kelly DiMartino, City Manager

Date: 12/20/2023

ATTEST:

DocuSigned by:
By: Cynthia [Signature]
City Clerk

APPROVED AS TO LEGAL FORM:

DocuSigned by:
By: [Signature]
City Attorney's Office

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

**BOARD OF COUNTY COMMISSIONERS
LARIMER COUNTY, COLORADO**

By: *John Kafalas*
Chair Pro-tem

Date: 10/31/23

ATTEST:

By: *D. Quinn*
Deputy Clerk

APPROVED AS TO LEGAL FORM:

By: *Frank Hay*
County Attorney's Office



NORTH POUDRE IRRIGATION COMPANY, a Colorado mutual ditch and reservoir company

By: John R. Maley Pres

Date: 10-11-28

TOWN OF TIMNATH, COLORADO, a municipal corporation

By: _____

Mark Soukup, Mayor

Date: _____

October 10, 2023

ATTEST:

By: _____

City Clerk

APPROVED AS TO LEGAL FORM:

By: _____

DocuSigned by:

Carolyn Steff

F4483993ECD949F

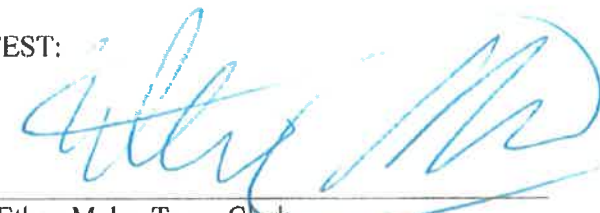
Town Attorney

TOWN OF WELLINGTON, COLORADO, a municipal corporation

By: 
Calar Chausee, Mayor

Date: October 24, 23

ATTEST:

By: 
Ethan Muhs, Town Clerk

APPROVED AS TO LEGAL FORM:

By: 
Town Attorney