

**AGREEMENT REGARDING A WILDFIRE READY WATERSHED ACTION PLAN
FOR THE JOE WRIGHT CREEK, PETERSON LAKE, AND
UPPER MICHIGAN RIVER WATERSHEDS**

This Agreement (“Agreement”) is entered into by and between the following Parties:

- City of Fort Collins, a municipal corporation (“Fort Collins”);
- City of Greeley, a municipal corporation (“Greeley”); and
- Water Supply and Storage Company, a Colorado mutual ditch and reservoir company (“WSSC”).

RECITALS

A. The Joe Wright Creek Watershed comprises the lands drained by Joe Wright Creek and its tributaries. The Joe Wright Creek Watershed has Fort Collins’ Joe Wright Reservoir, Greeley’s Barnes Meadows Reservoir, and WSSC’s Chambers Lake Reservoir.

B. The Peterson Lake Watershed is located just southeast of the Joe Wright Creek Watershed and comprises the lands drained by a small, unnamed tributary to the Cache la Poudre River that flows through Peterson Lake Reservoir. The Peterson Lake Watershed includes Greeley’s Peterson Lake Reservoir.

C. The Upper Michigan River Watershed comprises the lands drained by the Michigan River and its tributaries above Gould. At Cameron Pass, water from the Michigan River and its tributaries is delivered into the Joe Wright Creek Watershed via Fort Collins’ Michigan Ditch and WSSC’s Cameron Pass Ditch.

D. The Joe Wright Creek, Peterson Lake, and Upper Michigan River Watersheds (together, “Watersheds”) are and have historically been a source of raw water for Fort Collins, Greeley, and WSSC. By way of example, water from the Watersheds flows down the Cache a Poudre River to the Parties’ other various points of diversion.

E. Water supplies and infrastructure in the Watersheds face various challenges, including¹ risks associated with wildfires. Protecting water supplies and infrastructure within the Watersheds is a high priority for the Parties to, among other things, ensure all current and future water demands are met, and to continue providing their communities, customers, and shareholders with reliable, safe, and high-quality water.

F. The State of Colorado, through the Colorado Water Conservation Board (“CWCB”), has a program to assist in the development of wildfire ready watershed action plans, including via grant funding. Such plans are generally intended to help stakeholders develop actionable plans to address the impacts from wildfires through actions that may be taken both before and after wildfires.

¹ 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).

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G. The Parties desire to develop a wildfire ready watershed action plan for the Watersheds (“Plan”), pursuant to the terms and conditions of this Agreement. Nothing in this Agreement shall be interpreted to impose any obligation on the Parties to implement any portions of the Plan to be developed hereunder.

H. The purpose of this Agreement is to coordinate the Parties’ joint efforts related to developing the Plan, including funding a consultant to assist with the development of the Plan.

I. As governmental entities, Fort Collins and Greeley are authorized to enter into the following intergovernmental agreement pursuant to their respective home rule charters, municipal codes, and C.R.S. §29-1-203.

AGREEMENT

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

2. **Meetings and Schedule.**

2.1. **Meetings.** The Parties will meet at least quarterly at an agreed upon time and place. Each Party will designate at least one representative who will attend the meetings, either in person or by teleconference when available. Should the representative(s) be changed, a Party shall provide fourteen (14) calendar days written notice of the change to the other Parties. Party representatives will, when possible, be staff members and not members of the governing body of a Party. Persons associated with the Parties other than the representative may attend the meetings upon invitation by the appropriate Party. If a Party desires to not participate in a meeting and has no objection to the other Parties meeting under this Agreement, the non-attending Party may do so by notifying the other Parties of the same.

2.2. **Schedule.** The Parties currently intend to follow the schedule set forth in the Scope of Work, attached as Exhibit A. The Parties may modify the schedule of tasks as appropriate to effectuate the purposes of this Agreement.

2.3. **Consensus Decision-Making.** The Parties shall operate by consensus in making decisions for the purposes of this Agreement. To this end, the Parties shall make a good faith effort to reach consensus, propose alternative solutions, and otherwise work to resolve any issues that prevent consensus.

3. **Funding.** The Parties intend to budget \$200,000 for the retention of a consultant to assist with the development of the Plan.

3.1. **CWCB Grant.** Fort Collins will seek a grant from the CWCB for \$171,875 of the budgeted amount, which would be held by Fort Collins for the purposes of this Agreement. If such a grant is not acquired on or before December 30, 2024, any Party may terminate this Agreement and Fort Collins will return Greeley’s and WSSC’s monetary contributions

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identified in Paragraph 3.2.2. The Parties may, in writing, extend the deadline included in this subparagraph.

3.2. **Matching Contributions.** The CWCB grant will require a match of 25% of the project cost from the Parties. The Parties will provide this match with monetary (12.5%) and in-kind (12.5%) contributions as stated below.

3.2.1. **Monetary Contributions.** On or before February 1st, 2025, Greeley and WSSC will contribute the following dollar amounts to Fort Collins for the purposes of Paragraph 3.2: Greeley, \$9,062.50; and WSSC, \$10,000. Fort Collins will contribute \$9,062.50 for purposes of Paragraph 3.2.

3.2.2. **In-Kind Contributions.** Fort Collins will provide in-kind contributions towards the CWCB grant of a total value of \$28,125 for purposes of Paragraph 3.2. Fort Collins will track and account the in-kind contributions.

4. **Fort Collins' Role.**

4.1. **Funds.** Fort Collins will hold the budgeted funds described in Paragraph 3 for purposes of this Agreement. If there are any unused funds, they will be returned to the Parties in amounts proportionate to their contributions (Fort Collins 30%, Greeley 30%, WSSC 40%).

4.2. **Consultant.** Fort Collins will retain the consultant to assist with the development of the Plan. The Parties will jointly select which consultant will be retained and managed the same, pursuant to Paragraph 2.3. The Parties acknowledge that Fort Collins will contract with and have sole responsibility for directing the selected consultant, consistent with the determination of the Parties pursuant to Paragraph 2.3 and the objectives of this Agreement.

4.3. **Sharing Consultant Work Product.** Fort Collins will provide to the other Parties copies of all reports, data, drawings, computer programs, or other reproducible, tangible things developed by the consultant in connection with this Agreement ("Consultant Work Product"). Each Party will be entitled to review and provide feedback on the Consultant Work Product, which Fort Collins will communicate to the consultant. Fort Collins will obtain the consultant's agreement for each Party to use Consultant Work Product for purposes connected to this Agreement.

5. **Term, Withdrawal, and Termination.**

5.1. **Term and Termination.** This Agreement will be in effect on the last date it is signed by the Parties until:

- (1) December 30, 2026;
- (2) Fort Collins withdraws;
- (3) all but one of the Parties withdraws;
- (4) the Parties otherwise agree in writing to terminate this Agreement; or

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(5) The Plan is completed.

5.2. **Withdrawal.** Any Party may withdraw from this Agreement by providing written notice to the other Parties. Any Party may also withdraw from this Agreement for failure to appropriate funds pursuant to Paragraph 7. Withdrawal from this Agreement shall not: entitle the withdrawing Party to reimbursement for previously contributed funds; or relieve the withdrawing Party from any obligations resulting from the Party's previous participation, including responsibilities for costs, and shall not waive the withdrawing Party's right to the receipt of documents resulting from the Party's previous participation.

6. **Claimed Confidential Information.**

6.1. **CORA.** The Parties acknowledge that the majority of documents and communications created under this Agreement will be subject to the Colorado Open Records Act, C.R.S. §§24-72-101 *et seq.* ("CORA").

6.2. **Confidential Information Procedures.** If a Party ("Providing Party") desires to provide documents or information to the other Parties ("Receiving Parties") that the Providing Party claims to be confidential ("Confidential Information"), the Providing Party may invoke the terms and conditions of this Paragraph 6.2.

6.2.1. If the Providing Party intends to claim that certain information is confidential under this Paragraph 6.2 and desires to have the Receiving Parties take certain precautions under this Agreement with such claimed Confidential Information, then within three calendar days of when the Providing Party provides the claimed Confidential Information to the Receiving Parties, the Providing Party shall provide written notice to the Receiving Parties containing the following:

- (i) an identification of each piece of information that is claimed to be Confidential Information;
- (ii) for each piece of such information, an identification of the documents, files, or other forms of communication provided to the Receiving Parties in which the claimed Confidential Information is located; and
- (iii) for each piece of such information, a brief statement identifying the basis for which the Providing Party may claim the information to be confidential.

6.2.2. With respect to the claimed Confidential Information identified pursuant to Paragraph 6.2.1, the Receiving Parties hereby agree:

- (i) to hold the claimed Confidential Information in confidence and to take all reasonable precautions to protect such Confidential Information from inadvertent or accidental disclosure; and
- (ii) to not disclose any such claimed Confidential Information to any third person, except pursuant to Paragraph 0.

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In the normal course of business, the Receiving Parties may also dispose of any documents containing claimed Confidential Information.

6.2.3. The obligations of the Receiving Parties with respect to claimed Confidential Information under this Paragraph 6.2 shall not apply to:

- (i) claimed Confidential Information that remains in the possession of a Receiving Party six months after the termination of this Agreement pursuant to Paragraph 5.1;
- (ii) claimed Confidential Information that the Receiving Party can document:
 - (A) is or has become (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public;
 - (B) was in its possession prior to receipt from the Providing Party under Paragraph 6.2.1, except to the extent that such information was unlawfully appropriated by the Receiving Party;
 - (C) was independently developed by the Receiving Party without use of any claimed Confidential Information of the Providing Party under Paragraph 6.2.1; or
 - (D) was disclosed pursuant to the requirements of law, subject to Paragraph 0.

6.2.4. Nothing herein shall affect the obligations of a Receiving Party to either make disclosures or preserve the confidentiality of claimed Confidential Information to the extent required by law or court order, including, but not limited to, requirements under the Colorado Open Records Act, CRS §24-72-201 *et seq.*, and other Colorado and federal statutes, court rules, and administrative rules and regulations. If a Receiving Party receives a request under law for the Providing Party's claimed Confidential Information, or if a Receiving Party would otherwise be required to disclose the Providing Party's claimed Confidential Information pursuant to law, the Receiving Party shall notify the Providing Party as soon as practicable of the request or pending disclosure, and in such event, upon the request of the Receiving Party, the Providing Party may take such timely action as may be required to obtain a declaratory judgment as to the confidential status of the Confidential Information, and, if the Providing Party elects not to do so, then the Receiving Party's obligation to preserve that Confidential Information shall have been waived hereunder, except as otherwise provided by law.

6.2.5. The Providing Party shall have the right to require the return and destruction of claimed Confidential Information in the possession of a Receiving Party as set forth in this paragraph. Such right shall exist from the effective date of this Agreement through six months after the date of termination of this Agreement pursuant to Paragraph 5.1. If claimed Confidential Information has been copied or transcribed into another document, such documents will be destroyed, erased, or modified to remove the claimed Confidential Information.

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7. **Fiscal Contingency.** Notwithstanding any other provisions of this Agreement to the contrary, the obligations of Fort Collins and Greeley in fiscal years after the initial 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 Party to appropriate such funds shall be grounds for termination of this Agreement as to such Party upon written notice pursuant to Paragraph 1111.

8. **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 that the Parties are benefitted only to the extent provided under the express terms and conditions of this Agreement.

9. **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.

10. **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, no 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.

11. **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 email 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

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epotyondy@fcgov.com

and:

Fort Collins Utilities
Attn: Sr. Director of Water Planning and Sciences
4316 LaPorte Ave.
Fort Collins, Colorado 80521

To Greeley:

City of Greeley
Attn: Director of Water & Sewer
1001 11th Ave, 2nd Floor,
Greeley, Colorado 80631

With a copy to:

City Attorney
1100 10th Street, Suite 401
Greeley, Colorado 80631
daniel.biwer@greeleygov.com

To WSSC:

2319 E Mulberry Street (P.O. Box 2017)
Fort Collins, CO 80524 (80524)

12. **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.

13. **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.

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

15. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, unenforceable or impossible of performance, the remainder of this Agreement shall remain in full force and effect.

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CITY OF FORT COLLINS, a municipal corporation

By: _____
Kelly DiMartino, City Manager

Date: _____

ATTEST:

By: _____
Title: _____
Name: _____

APPROVED AS TO FORM:

By: _____
City Attorney's Office

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CITY OF GREELEY, a municipal corporation

APPROVED AS TO SUBSTANCE:

By: _____ Date: _____
City Manager

AVAILABILITY OF FUNDS:

By: _____ Date: _____
Director of Finance

APPROVED AS TO LEGAL FORM

By: _____ Date: _____
City Attorney's Office

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WATER SUPPLY AND STORAGE COMPANY, a Colorado mutual ditch and reservoir company

By: _____
Don Frick, General Manager

Date: _____