

EXHIBIT A

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF FORT COLLINS
AND
LARIMER COUNTY BOARD OF HEALTH FOR PURCHASE AND USE OF AN OPTICAL GAS IMAGING (OGI)
CAMERA**

THIS AGREEMENT made and entered into this _____ day of _____, 2022 by and between the CITY OF FORT COLLINS, a Colorado home rule municipality (hereinafter referred to as “the City”) and LARIMER COUNTY BOARD OF HEALTH, Colorado (hereinafter referred to as “the Health Department”) (collectively the “Parties”).

WHEREAS, Oil and gas operations, including all preproduction, production, surface operations, and transport activities, exist within the incorporated City of Fort Collins, the Fort Collins Growth Management Area (GMA), and throughout Larimer County; and

WHEREAS, both inactive and active oil and gas operations have the potential to release harmful emissions into the air surrounding our communities impacting air quality, health and climate change; and

WHEREAS, uncontrolled leaks from oil and gas operations are prohibited by both State and County regulations; and

WHEREAS, the Larimer County Department of Health and Environment serves as duly delegated representatives of the Colorado Air Pollution Control Division of the Colorado Department of Public Health and Environment, including authority to support inspection, investigation of complaints, and reporting results of investigations to the APCD related to oil and gas operations; and

WHEREAS, optical gas imaging (OGI) cameras are monitoring tools that can help identify compliance issues such as leaking hydrocarbon emissions at oil and gas operations; and

WHEREAS, OGI cameras can also support education/outreach efforts for improving air quality in relation to other sources of hydrocarbon emissions like transportation and lawn and garden equipment; and

WHEREAS, air pollution is a matter of regional concern and the City and Health Department have interest in identifying and controlling emissions within and outside of their respective jurisdictional boundaries; and

WHEREAS, the City Council has appropriated the sum of \$100,000 in City funds for the City’s Air Quality Programs, which include furthering leak detection and enforcement of emissions from oil and gas operations; and

EXHIBIT A

WHEREAS, the agreements and understandings set forth below will promote increased coordination between the City and Health Department and result in better management, control and enforcement of oil and gas operations related emissions; and

WHEREAS, the Parties are authorized under C.R.S. §§ 29-1-201, *et seq.*, as amended, to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties, and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Article XIV, § 18(2) of the Colorado Constitution; and

WHEREAS, under the City Charter and City Code Section 1-22, and C.R.S. 29-20-101, this intergovernmental agreement is subject to the City Council's approval; and

WHEREAS, it is in the best interest of the Parties, their residents and public health and safety to cooperate in enhancing capacity to identify and control emissions from oil and gas operations as set forth in this Agreement.

NOW, THEREFORE, in consideration of mutual rights and obligations as set forth below, the City and County agree as follows:

1. Procurement, Operation and Maintenance of OGI Camera

- 1.1. The City will contribute up to \$100,000 to the Health Department to be applied toward the purchase price of one (1) OGI camera. The City shall issue a purchase order to the Health Department in the amount of \$100,000 no later than December 31, 2022. The Health Department will invoice the City for payment upon receipt of the OGI camera and payment shall be made Net 30 days from the date of the invoice. The Health Department's invoice shall include a copy of the invoice for the OGI camera as supporting documentation.
- 1.2. The Health Department will purchase the OGI camera and provide any funds necessary in excess of \$100,000 to complete such purchase; procurement will begin no later than March 31, 2023, and will adhere to Larimer County Procurement's competitive bid and other purchasing requirements.
- 1.3. The Health Department will have the exclusive right to own and operate the OGI camera; this Agreement is not intended to create a joint ownership or joint venture.
- 1.4. The Health Department will provide trained and certified staff to operate the OGI camera throughout the Term of the Agreement.
- 1.5. The Health Department will be responsible for any and all required calibration and routine maintenance of the camera throughout the Term of the Agreement.

2. Complaint Response, Inspections and Reporting

- 2.1. The Health Department will utilize the OGI camera according to applicable state or local standards as appropriate to assist in identification and documentation of hydrocarbon

EXHIBIT A

- leaks both as part of a complaint response and for routine inspections located in the City in addition to those located in their jurisdiction throughout the Term of the Agreement.
- 2.2. The City will notify the Health Department of any leak or odor complaints within City limits.
 - 2.3. The Health Department will use the camera to respond to complaints, including, but not limited to, those that are covered by the contract with the CDPHE for air quality monitoring, as well as complaints within the City, the Fort Collins GMA, and the remainder of the County throughout the Term of the Agreement.
 - 2.4. Throughout the Term of the Agreement, the Health Department will provide an annual report to the City regarding the complaints and the responses to those complaints.
 - 2.5. The Health Department and the City will work with the Air Pollution Control Division and the Colorado Oil and Gas Conservation Commission (COGCC), or other entity with regulatory authority when a leak or other potential compliance issue is detected within the City or the Fort Collins GMA to ensure appropriate compliance measures are taken, such as any necessary repairs per the applicable regulations.
3. **Term of Agreement.** The Health Department will maintain and operate the OGI camera for the useful life of the camera (“Useful Life”), or a period of at least 10 years, whichever comes first (the “Term”). The Useful Life of the camera shall be defined as such period the camera remains functional for its intended use and any repairs necessary to maintain the functionality of the camera are less than twenty (20) percent of the original cost of the camera.
 4. **Default.** Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this agreement, such party may be declared in default thereof.
 5. **Remedies.** In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) if the OGI Camera remains functional, treat the Agreement as continuing and require specific performance; or (c) avail himself of any other remedy at law or equity.
 6. **MISCELLANEOUS**
 - A. **Notice.** Any notice shall be sent to the parties listed below.
 1. If to Health Department: Director of Environmental Health
1525 Blue Spruce Drive
Fort Collins CO 80524
 2. If to Fort Collins: City Manager’s Office
PO Box 580
300 LaPorte Ave

EXHIBIT A

Ft. Collins, CO 80521

Copied to: City Attorney's Office

PO Box 580

300 LaPorte Ave

Ft Collins CO 80521

B. 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.

C. Entire Agreement. This Agreement is to be construed according to its fair meaning and as if prepared by all Parties hereto and is deemed to be and contain the entire understanding and agreement between the Parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this Agreement unless set forth in writing and signed by the Parties hereto.

D. Governing Law. This Agreement shall be governed by and its terms construed under the laws of the State of Colorado and venue for any action hereunder shall be in Larimer County District Court.

E. Nature of Relationship. The provisions of this Agreement shall not be construed as creating a partnership, joint venture, or other relationship between the Parties. Unless specifically provided, this Agreement shall not allow any Party to act as the agent of the other Party, nor permit any Party to have any authority to act for, or to assume any obligations or responsibilities on behalf of the other Party, nor in any manner limit the Parties in carrying out their respective separate businesses or activities. Employees, agents, consultants, and attorneys of one Party are not, and shall not be deemed to be, employees, agents, consultants, and attorneys of the other Party.

F. No Personal Liability. No elected official, director, officer, agent or employee of any of the Parties shall be charged personally by, or held contractually liable to, any Party under the terms and conditions of this Agreement or any breach thereof, or because of its or their execution, approval or attempted execution of this Agreement.

G. Third Party Beneficiaries. This Agreement is made for the sole and exclusive benefit of the Parties, and their successors and assigns, and it is not made for the

EXHIBIT A

benefit of any third party. The enforcement of the terms and conditions in this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties. No third-party beneficiary rights shall be created by this Agreement in favor of any person not a party to this Agreement, unless the Parties mutually agree otherwise in writing.

H. Counterparts. This Agreement may be signed by the Parties, electronically or otherwise, in counterparts.

I. 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.

J. Assignment. No Party may assign its interest in this Agreement without the written consent of the other Parties, which consent may be withheld at the sole discretion of each Party.

K. Amendment. This Agreement may be modified or amended from time to time to reflect the mutual agreements and understandings of the Parties regarding the subject matter hereof. However, no modification or amendment of the terms and conditions in this Agreement shall be valid or binding unless such modification or amendment is in writing and signed by all of the Parties or their respective successors in interest. The terms and conditions of any such modification or amendment shall be construed according to their fair meaning.

L. Waiver. A waiver of any term or condition of this Agreement must be in writing and executed by all the Parties. No waiver of any breach of any term or condition of this Agreement by any Party shall be deemed to imply or constitute a waiver of any other term or condition of this Agreement. The failure of any Party to insist on strict performance of any term or condition of this Agreement shall not constitute or be construed as a waiver of that Party's or any other Party's rights including, without limitation, the right thereafter to enforce any other default of such term or condition; neither shall such failure to insist upon strict performance be deemed sufficient grounds to enable any Party to forego or subvert or otherwise disregard any other term or condition of this Agreement.

M. 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

EXHIBIT A

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.

N. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, legal representatives, successors, executors, and permitted assigns.

O. Construction. Throughout this Agreement, the singular shall include the plural, the plural shall include the singular, and all genders shall be deemed to include other genders, wherever the context so requires. The terms “including,” “include” or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean “including, but not limited to,” or “including, by way of example and not limitation.”

P. 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.

Q. 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.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be ratified by their governing Boards or Councils or duly authorized officers as of the date first written.

EXHIBIT A

LARIMER COUNTY BOARD OF HEALTH

By: _____
Tom Gonzales, MPH
Public Health Director

CITY OF FORT COLLINS, COLORADO

By: _____
Kelly DiMartino, City Manager

ATTEST:

City Clerk

Approved as to form:

Judy Schmidt, Sr. Assistant City Attorney