

**AGREEMENT REGARDING THE
UPPER POUUDRE WATERSHED SOURCE WATER PROTECTION PLAN
(Phase 1 – Plan Development)**

This Agreement (“Agreement”) is entered into by and between the following Parties, which are listed in no particular order:

- Northern Colorado Water Conservancy District, a quasi-municipal entity and political subdivision of the State of Colorado (“Northern Water”);
- City of Fort Collins, a municipal corporation (“Fort Collins”);
- City of Greeley, a municipal corporation (“Greeley”);
- City of Thornton, a municipal corporation (“Thornton”); and
- Soldier Canyon Water Treatment Authority, a political subdivision of the state of Colorado (“Soldier Canyon”).

RECITALS

A. The Cache la Poudre Watershed (“Poudre Watershed”) headwaters begin within the Arapaho-Roosevelt National Forest and drains through Fort Collins and urban areas of the Front Range until its confluence with the South Platte River, east of Greeley. The Poudre Watershed is a valuable asset to local municipalities, agriculture, and recreational stakeholders due to, among other reasons, the large geographic area of the watershed, prominence through urban areas, and high-quality drinking water supply.

B. The upper portions of the Poudre Watershed are those portions above the canyon mouth (“Upper Poudre Watershed”). The Upper Poudre Watershed are and have historically been a principal source of raw water for Fort Collins, Greeley, and Soldier Canyon. Northern Water and Thornton also rely on the Upper Poudre Watershed to meet future demand.

C. Water quality in the Upper Poudre Watershed faces various challenges, including¹ risks from wildfires and climate change. Protecting water quality within the Poudre Watershed is a high priority for the Parties to, among other things, ensure all current and future water demands are met, and to continue providing communities with reliable, safe, and high-quality drinking water.

D. The State of Colorado has a Source Water Assessment and Protection Program, which is a voluntary, non-regulatory program intended to assist water utilities with conducting assessments and developing targeted Source Water Protection Plans for water quality. Related to the State’s program, the Parties are pursuing a Source Water Protection Plan for the Upper Poudre Watershed (“Plan”).

E. The Parties’ efforts comprise two general phases:

- Phase 1 – Plan Development
- Phase 2 – Plan Implementation

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).

EXHIBIT A TO RESOLUTION 2024-003

This Agreement concerns Phase 1. The Parties anticipate that a separate agreement may be desirable for Phase 2.

F. 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.

G. As governmental entities, the Parties are authorized to enter into the following intergovernmental agreement pursuant to 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.

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 \$150,000 for the retention of a consultant to assist with the development of the Plan.

3.1. **Party Contributions and CDPHE Grants.** On or before April 1st, 2024, each of the five Parties will contribute \$20,000 to Northern Water for the purposes of this Agreement. The Parties will seek grants from the State of Colorado Department of Public Health and Environment ("CDPHE") for funds to comprise a portion of these contributions. The CDPHE grants will be attributed equally to the five Parties. The CDPHE grants are currently anticipated to total \$50,000 (i.e., half of the sum total of \$100,000 of contributions from the Parties), with a pro rata \$10,000 attributed to each of the Parties. The Parties may, in writing, extend the deadline included in this paragraph.

3.2. **CWCB Grant.** The Parties will seek a grant from the Colorado Water Conservation Board (“CWCB”) for the remaining \$50,000 of the budgeted amount, which would be held by Northern Water. If such a grant is not acquired on or before April 1st, 2024, each of the Parties will contribute an additional \$6,000, unless the Parties identify another source of funding or agree that the Plan can be completed without the funds contemplated in this paragraph. The Parties may, in writing, extend the deadline included in this subparagraph.

4. **Northern Water’s Role.**

4.1. **Funds.** Northern Water 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 equal amounts, or may be retained by Northern Water for Phase 2 pursuant to an amendment to this Agreement or subsequent agreement regarding such funds.

4.2. **Consultant.** Northern Water will retain the consultant to assist with the development of the Plan. The Parties will jointly select which consultant will be retained and manage the same, pursuant to Paragraph 2.3. The Parties acknowledge Northern Water 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.** Northern Water 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 Northern Water will communicate to the consultant. Northern Water 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) September 30, 2025;
- (2) Northern Water withdraws;
- (3) all but one of the parties withdraws;
- (4) the Parties otherwise agree in writing to terminate this Agreement; or
- (5) Phase 1 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 5. 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 6.2.4.

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 beginning six months after the termination of this Agreement pursuant to Paragraph 5.1;

EXHIBIT A TO RESOLUTION 2024-003

- (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 6.2.4.

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.

7. **Fiscal Contingency.** Notwithstanding any other provisions of this Agreement to the contrary, the obligations of the Parties 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 11.

EXHIBIT A TO RESOLUTION 2024-003

To Northern Water: Northern Colorado Water Conservancy District
Attn: Kimberly Mihelich
220 Water Avenue
Berthoud, CO 80513

With copy to: Northern Water Counsel
Trout Raley
1120 Lincoln Street, Suite 1600
Denver, CO 80203

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
Jerrae.Swanson@greeleygov.com

To Thornton: City Manager
9500 Civic Center Dr
Thornton CO, 80029

With a copy to: City of Thornton Senior Assistant Attorney Water
9500 Civic Center Dr
Thornton CO, 80029
Kara.Godbehere@ThorntonCO.gov

To Soldier Canyon: Soldier Canyon Water Treatment Authority
Attn: Authority Manager
4424 LaPorte Ave
Fort Collins, CO 80521
Telephone: (970) 482-3143
mkempton@soldiercanyon.com

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 shall prove 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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NORTHERN COLORADO WATER CONSERVANCY DISTRICT, a quasi-municipal entity and political subdivision of the State of Colorado

By: _____

Date: _____

CITY OF FORT COLLINS, a municipal corporation

By: _____
Kelly DiMartino, City Manager

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney's Office

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

CITY OF THORNTON, a Colorado home-rule municipal corporation

By: _____
Kevin Woods, City Manager

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

Temi Yellico, City Attorney

By: _____
Senior Assistant City Attorney - Water

SOLDIER CANYON WATER TREATMENT AUTHORITY, a political subdivision of the state of Colorado

By: _____

Date: _____