

**MEMORANDUM OF UNDERSTANDING REGARDING  
WATER QUALITY MONITORING ON THE LOWER CACHE LA POUDE RIVER  
(Lower Cache la Poudre River Monitoring Alliance Program)**

This Memorandum of Understanding (“Agreement”) is entered into by and between the following Parties: (1) the City of Fort Collins, Colorado, a Colorado municipal corporation (“Fort Collins”); (2) the City of Greeley, Colorado, a Colorado municipal corporation (“Greeley”); (3) the Town of Windsor, Colorado, a Colorado municipal corporation (“Windsor”); (4) Carestream Health, Inc., a Delaware corporation (“Carestream”); (5) Boxelder Sanitation District, a Colorado special district (“Boxelder”); (6) South Fort Collins Sanitation District, a Colorado special district (“South Fort Collins”); and (7) Leprino Foods Company, a Colorado corporation (“Leprino”) (collectively, the “Parties,” or “The Lower Cache La Poudre River Monitoring Alliance”).

**1. BACKGROUND.** The federal Clean Water Act, among other things, prohibits discharging pollutants to the waters of the United States without a National Pollution Discharge Elimination System (“NPDES”) permit. NPDES permits contain specific requirements including, but not limited to, discharge limits, sampling frequencies, and reporting requirements that are intended, among other things, to protect designated uses of receiving waters. The Colorado Department of Public Health and Environment (“CDPHE”) currently administers the NPDES permitting program in the State of Colorado.

Each of the Parties to this Agreement operates one or more NPDES-permitted wastewater treatment facilities along the lower Cache la Poudre River. For the purposes of this Agreement, the lower Cache la Poudre River is defined as the Cache la Poudre River from approximately Linden Street in Fort Collins downstream to Fern Avenue in Greeley. The Lower Cache la Poudre River Monitoring Alliance is a group that operates a collaborative Water Quality Monitoring Program (“Program”) among entities that operate NPDES-permitted wastewater treatment facilities that are focused on NPDES permit compliance, among other goals and objectives set forth in this Agreement. Benefits of this collaborative program to each participating Party include, but are not necessarily limited to: reduced water quality monitoring costs; access to certain water quality data collected pursuant to this Agreement; and an open forum for data and information exchange and communication between the Parties.

**2. WATER QUALITY MONITORING PROGRAM.** The goals of the Water Quality Monitoring Program are to: 1) provide data for the NPDES permitting processes; 2) pursuant to existing CDPHE policies, reduce the frequency of required effluent monitoring under NPDES-permits for interested Parties; and 3) maintain or improve the water quality of the lower Cache la Poudre River.

The specific Program objectives are to:

- (1) Collect physical, chemical, and/or biological water quality measurements at long-term monitoring sites within the lower Cache la Poudre River to develop data; and
- (2) Share among the Parties the data developed from the long-term monitoring sites for the Parties to provide ambient water quality data to be used in the NPDES permitting process and their respective requirements under CDPHE Water Quality Policy #20 (Baseline

Monitoring Frequency).<sup>1</sup>

**3 ANNUAL SCHEDULE.** The Program generally operates on flexible “Operating Years” that include: 1) the development of an Annual Operating Plan between January and March; 2) water quality monitoring from approximately April through March of the following year; 3) completion of laboratory analytical reports; and 4) data uploaded to the Ambient Water Quality Monitoring System (“AWQMS”) database by April 15<sup>th</sup> the following year.

**4 ANNUAL OPERATING PLAN.** Fort Collins will prepare and distribute a draft Annual Operating Plan for all Parties to review before the first quarterly meeting. Following discussion, necessary edits will be made to the draft and the Annual Operating Plan will be approved/disapproved by each Party at the 2<sup>nd</sup> quarterly meeting (see Meetings Section 9 (Meetings) below). It is not a requirement of this Agreement that the Annual Operating Plan be formally signed by the Parties to be approved for the Operating Year; however, some form of written documentation (e.g. an email) to all Parties is required. All Parties must approve the Annual Operating Plan for it to be effective for the Operating Year. If a proposed Annual Operating Plan is not approved by all Parties, nothing herein shall preclude any Party from performing any or all of the tasks contemplated under the Annual Operating Plan outside of this Agreement. The Annual Operating Plan will be consistent with the terms and conditions of this Agreement.

Each Annual Operating Plan must include:

- 1) Study site locations (directions to site, description, coordinates, and map(s));
- 2) The Party or Parties responsible for each study site;
- 3) A list of all water quality parameters to be collected at each location;
- 4) The dates of sampling, for each parameter and site;
- 5) The duration and frequency of monitoring, for each parameter, at each site;
- 6) Sample collection and laboratory analytical methods;
- 7) The entity collecting and analyzing data for each parameter;
- 8) Estimated costs for collection and analysis of each parameter at each study site;
- 9) Estimated costs attributed to each Party during Operating Year;
- 10) Contact information for each Party; and
- 11) Any other pertinent information agreed upon by the Parties during the development of each Annual Operating Plan

**5 DATA COLLECTION.** The chemical, physical, and biological measurements are to be collected using scientifically-defensible field methods and associated quality assurance/quality control (“QA/QC”) across all study sites, among other reasons, to ensure high quality data results. Field methods and QA/QC will be determined during the development of each Annual Operating Plan. The Parties agree that Fort Collins will select a contractor to collect fish and macroinvertebrate samples for the Program.

**6 DATA ANALYSES.** The specific water quality parameters to be analyzed at each site in any Operating Year will be determined by the responsible Party or Parties and set forth in the Annual Operating Plan. In an effort to maximize comparability between sites, data will be collected

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<sup>1</sup> Currently available at: <https://www.colorado.gov/pacific/sites/default/files/WQP20.pdf>

and analyzed using scientifically-defensible methods, including QA/QC.

All chemical and physical laboratory analyses must be performed by a CDPHE-certified laboratory using USEPA approved methods (Title 40 §136 of the Code of Federal Regulations).

The Parties agree that Fort Collins will coordinate all fish and macroinvertebrate data analyses for the Program.

**7. REPORTING.** Electronic laboratory data reports will be completed for all parameters and sites included under each Annual Operating Plan. All data generated under this Agreement that have passed QA/QC shall be submitted to CDPHE through the Colorado Data Sharing Network (“CDSN”). All Parties under this agreement as well as the public have access to data generated by the Program through the CDSN and AWQMS.

**8. PROVISIONAL DATA.** Data that have not passed a QA/QC review shall be considered provisional. To the extent permitted by law, only data developed under this Agreement that have passed a QA/QC review will be made available to the public. Each Party shall ensure that data uploaded to the CDSN have passed a QA/QC review. Parties may choose to provide provisional data generated under this Agreement directly to a Party’s consultant(s) or third-party contractor(s) of a federal agency for a Party’s purposes; providing data in this manner is not considered dissemination to the public under this Agreement.

Nothing herein shall affect the obligations of a Party to make disclosures to the extent required by law or court order, including, but not limited to, requirements under the Colorado Open Records Act, C.R.S. §24-72- 201 *et seq.*, and other Colorado and federal statutes, court rules, and administrative rules and regulations.

**9. 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 telephone. Should the representative(s) be changed, a Party shall provide 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.

**10. COSTS.** The Party or Parties responsible for each study site, as set forth in the Annual Operating Plan for each Operating Year, shall be responsible for all laboratory and support costs. Costs of field sampling, laboratory analyses and network support costs at shared sites will generally be split evenly between the responsible Parties, except for costs associated with monitoring and data analyses that are not relevant to a particular Party.

**11. TERM, WITHDRAWAL AND TERMINATION.** This Agreement will be in effect on the last date it is signed by the Parties and shall be perpetual unless all but one of the Parties withdraw. Any Party may withdraw from this Agreement by providing written notice to the other Parties within fourteen (14) days after the first quarterly meeting in any Operating Year. Any Party may also withdraw from this agreement for failure to appropriate funds pursuant to Section 11. Withdrawal from this Agreement shall not 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 laboratory data reports resulting from the Party's previous participation in the Agreement.

**12 REMEDIES.** If a Party fails to comply with the provisions of this Agreement, the other Parties, after providing written notice to the noncomplying Party, and upon the failure of the noncomplying Party to achieve compliance within twenty-eight (28) days, may seek to recover any costs for which the noncomplying Party is responsible and specific performance.

**13 FISCAL CONTINGENCY.** Notwithstanding any other provision of this Agreement to the contrary, the obligations of the Parties in fiscal years following the fiscal year in which this Agreement is signed by the Parties shall be subject to appropriation of funds sufficient and intended therefore, with each Party having the sole discretion to determine whether the subject funds are sufficient and intended for use under this Agreement. Should any Party fail to appropriate such funds, this Agreement shall be terminated or the Party withdrawn from the Agreement upon ninety (90) days written notice of the failure to appropriate such funds, unless sufficient funds are thereafter appropriated prior to the termination of this Agreement.

**14 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.

**15 NOTICES.** All notices will be given to the following listed below. Each Party may change its address or contact information for notices under this Agreement upon fourteen (14) days written notice to the other Parties.

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  
                                  epotyondy@fcgov.com

and to Staff:           Fort Collins Utilities  
                                  Attn: Watershed Program Manager  
                                  700 Wood Street  
                                  P.O. Box 580  
                                  Fort Collins, Colorado 80522-0580  
                                  rthorp@fcgov.com

To Greeley: City Manager  
City Hall  
1000 10<sup>th</sup> Street  
Greeley, Colorado 80631

With copy to: Greeley City Attorney  
City Center North  
1100 10th Street, Ste 400  
Greeley, Colorado 80631  
cityattorney@greeleygov.com

and to Staff: Greeley Water Pollution Control Facility  
Attn: Technical Services Manager  
300 East 8<sup>th</sup> Street  
Greeley, Colorado 80631  
joe.kunovic@greeleygov.com

To Windsor: Town Manager  
301 Walnut Street  
Windsor, CO 80550

With copy to: Town Attorney  
301 Walnut Street  
Windsor, CO 80550

and to Staff: Town of Windsor Public Works  
Attn: Wastewater Services Superintendent  
301 Walnut Street  
Windsor, CO 80550  
dmarkham@windsorgov.com

To Carestream: Carestream Health, Inc.  
Site Manager  
2000 Howard Smith Ave. West  
Windsor, CO 80550

With copy to: Carestream Health, Inc.  
EHS Manager  
2000 Howard Smith Ave. West  
Windsor, CO 80550

and to Staff Carestream Health, Inc.  
Attn: EHS Specialist/ORC  
2000 Howard Smith Ave. West  
Windsor, CO 8055

john.dinges@carestream.com

To Boxelder: District Manager  
3201 E. Mulberry, Unit Q  
P.O. Box 1518  
Ft. Collins, CO 80522

To South Fort Collins: Chris Matkins  
5150 Snead Dr.  
Fort Collins CO 80525

To Leprino: Bryan Wischer  
bwischer@leprinofoods.com

With a copy to: Leprino Foods Company  
Attn: General Counsel  
1830 W. 38<sup>th</sup> Avenue  
Denver, Co 80211

**16 ASSIGNMENT.** No assignment of this Agreement shall be made by any Party without written approval by the remaining Party or Parties.

**17 CONSTRUCTION.** This Agreement shall be construed according to its fair meaning as it was intended by the Parties. Captions and 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. The invalidity or unenforceability of any provision of the Agreement shall not affect any other provision of this Agreement, which shall thereafter be construed in all respects as if the invalid or unenforceable provision were omitted.

**18 ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein.

**19 REPRESENTATIONS.** Each Party represents to the other Parties that it has the power and authority to enter into this Agreement and the individuals signing below on behalf of each Party have the authority to execute this Agreement on its behalf and legally bind that Party.

**[Remainder of Page Left Blank Intentionally]**

**CITY OF FORT COLLINS, COLORADO, a Colorado municipal corporation**

By: \_\_\_\_\_  
Darin A. Atteberry, City Manager

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
City Clerk

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
City Attorney's Office

Date: \_\_\_\_\_

**THE CITY OF GREELEY, COLORADO, a Colorado municipal corporation,**

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
Roy Otto, City Manager

Date: \_\_\_\_\_

AVAILABILITY OF FUNDS:

By: \_\_\_\_\_  
Renee Wheeler, Director of Finance

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM

By: \_\_\_\_\_  
Doug Marek, City Attorney

Date: \_\_\_\_\_



**THE CITY OF WINDSOR, COLORADO, a Colorado municipal corporation,**

APPROVED AS TO SUBSTANCE:

By: \_\_\_\_\_  
Shane Hale, City Manager

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:

By: \_\_\_\_\_  
Ian McCargar, City Attorney

Date: \_\_\_\_\_

**CARESTREAM HEALTH, INC., a Delaware corporation**

By: \_\_\_\_\_  
Christopher Schmachtenberger, Site Manager

Date: \_\_\_\_\_

**BOXELDER SANITATION DISTRICT, a Colorado special district**

By: \_\_\_\_\_  
Brian Zick , District Manager

Date: \_\_\_\_\_

**SOUTH FORT COLLINS SANITATION DISTRICT, a Colorado special district**

By: \_\_\_\_\_  
Chris Matkins, General Manager

Date: \_\_\_\_\_

**LEPRINO FOODS COMPANY, a Colorado corporation**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Steve Fritzler, Plant Manager Leprino Foods – Greeley