

INTERGOVERNMENTAL AGREEMENT  
FOR STORMWATER COOPERATION  
AND MANAGEMENT

AUG 13 2008

THIS INTERGOVERNMENTAL AGREEMENT FOR STORMWATER COOPERATION AND MANAGEMENT (this "Agreement"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and among THE BOARD OF COMMISSIONERS OF LARIMER COUNTY, COLORADO (the "County"), THE CITY OF FORT COLLINS, COLORADO, a municipal corporation (the "City"), and THE TOWN OF WELLINGTON, COLORADO, a statutory municipality (the "Town")

---

WITNESSETH

WHEREAS, recent growth in the Fort Collins Urban Growth Area (the "City UGA") and the Wellington Urban Growth Area (the "Town UGA") suggests that increased coordination and cooperation between the City, the Town and the County may result in better management, problem resolution, design, construction, maintenance and joint financing of stormwater facilities, and

WHEREAS, the City has established and currently operates its own stormwater utility and its own stormwater utility enterprise (hereinafter referred to jointly as the "City Stormwater Utility Enterprise") to provide and finance stormwater services within the City, and

WHEREAS, the Town has not established a stormwater utility but intends to do so and further intends to operate such stormwater utility as a stormwater utility enterprise (the "Town Stormwater Utility Enterprise") to provide and finance stormwater services within the Town, and

WHEREAS, the County currently collects a stormwater impact fee at the time of development of properties within the Boxelder Creek Basin ("Boxelder Basin" or the "Basin") below County Road 70, and

WHEREAS, the Boxelder Creek Floodplain (the "Boxelder Floodplain") is designated in a Flood Insurance Study prepared by the Federal Emergency Management Agency and dated December 19, 2006; and

WHEREAS, the County is authorized to establish, expand and operate a stormwater utility or stormwater utility enterprise throughout all portions of the Boxelder Basin that are located solely within the boundaries of the County and outside any municipality, pursuant to C R S Section 30-11-1-7(1)(w), Section 30-20-401, et seq, and Section 37-45 1-101, et seq, and

WHEREAS, a basin master plan titled "Boxelder Creek Regional Stormwater Master Plan" dated October 2006 and prepared by PBS&J Consulting Engineers (the "Plan") has been adopted by the City, the Town and the County, and

WHEREAS, recent engineering studies indicate that constructing stormwater facilities

within the Boxelder Floodplain to store stormwater would reduce the threat of floods for approximately 4,900 acres in the Boxelder Floodplain, which acres are located in portions of the City, portions of the Town and in unincorporated Larimer County and would reduce damages to public and private properties, reduce the risk to citizens, increase protection for public roads, bridges and other facilities in the Boxelder Basin, and

WHEREAS, the parties anticipate that areas in the Basin and in the unincorporated areas of the County will be annexed into the City or the Town in the future, subject to the urban growth area boundaries and standards of the City and the Town, and

WHEREAS, the elimination of such flood hazards, as well as the resulting relaxation of associated land use restrictions, would alleviate some of the financial hardships associated with developing those properties that are now located within the Boxelder Basin, and

WHEREAS, the various risks and hazards existing or anticipated to exist in the Basin can be alleviated most efficiently and at the least cost through a regional effort; and

WHEREAS, it appears that financing the construction of the needed stormwater facilities for the Boxelder Basin on a regional basis is best accomplished by the County and the other Members hereto forming an Authority as provided herein, to include those properties located within the Boxelder Basin, and

WHEREAS, the City currently charges a City-wide stormwater impact fee as a condition of issuance of a building permit or, if no building permit is required, upon commencement of construction for new development on those properties located within the City, and further charges an ongoing monthly stormwater fee to all developed properties within the City's boundaries, and

WHEREAS, the Town intends to charge a stormwater basin fee as a condition of issuance of a building permit or, if no building permit is required, upon commencement of construction for new development on those properties located within the Town, and

WHEREAS, as noted above, the County currently charges a stormwater basin impact fee at the time building permits are issued for new development on those properties located in the unincorporated areas of the County within a portion of the Boxelder Basin, and

WHEREAS, it appears that the financing, construction, maintenance and operation of the needed stormwater facilities in the Boxelder Basin are best accomplished by the County expanding or establishing a stormwater utility enterprise (hereinafter referred to jointly as the "County Stormwater Utility Enterprise") to work cooperatively with the Town's Stormwater Utility Enterprise and the City's Stormwater Utility Enterprise, and

WHEREAS, construction, operation and maintenance of said additional stormwater facilities for the Boxelder Basin in accordance with Urban Storm Drainage Criteria Manual Best Management Practices is necessary and beneficial to the public health, safety and welfare, and

Management Practices is necessary and beneficial to the public health, safety and welfare, and

WHEREAS, each of the parties has materially relied on the participation of all parties to this agreement and on the inclusion of all of the property within the defined Service Area to accomplish the purposes set forth in this Agreement, and

WHEREAS, the City, the Town and the County desire to enter into this Agreement in order to delineate the duties and responsibilities of each Member with respect to the proposed stormwater improvements for the Boxelder Basin, and

WHEREAS, C R S Section 29-1-203 authorizes the City, the Town and the County to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each of them, which cooperation may include the sharing of costs and the incurring of debt, and

WHEREAS, C R S Section 30-20-402(1)(h) authorizes the County to enter into and perform contracts with the City and the Town for or concerning the planning, construction, lease or other acquisition and the financing of stormwater facilities and the maintenance and operation thereof, and

WHEREAS, C R S Section 29-1-204 2(1) provides that a combination of municipalities or other political subdivisions of this State may establish, by contract with each other, a separate governmental entity, to be known as a drainage authority, to be used by such contracting Members to effect the development of stormwater and drainage facilities for the benefit of the inhabitants of such contracting Members or others at the discretion of the Directors, and

WHEREAS, C R S Section 29-1-204 2(4) and (5) provides that a drainage authority established by such contracting Members shall be a political subdivision and a public corporation of the State, separate from the members to the contract and that it shall have the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate, and

WHEREAS, the provisions of Articles 10 5 and 47 of Title 11, C R S., shall apply to moneys of the entity and the bonds, notes and other obligations of a water or drainage authority formed under the provisions of this Agreement shall not be the debts, liabilities or obligations of the original contracting Members or Members that may enter the establishing contract in the future, and

WHEREAS, C R S Section 29-1-204 2(6) provides that the contracting members may provide in the contract for payment to the separate governmental entity of funds from proprietary revenues for services rendered by the entity, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in the contract, and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the entity

NOW, THEREFORE, in consideration of the mutual covenants contained herein and

other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereto agree as follows

## ARTICLE I

### DEFINITIONS AND CONSTRUCTION

**Section 1.01.** Definitions In this Agreement, capitalized terms not otherwise defined shall have the meanings respectively assigned thereto in the Recitals to this Agreement or as provided in this Section 1.01, unless the context clearly requires a different meaning

~~“Agreement” means this Intergovernmental Agreement for Stormwater Cooperation and Management and any amendments hereto~~

“Authority” means the Boxelder Basin Regional Stormwater Authority.

“Boxelder Project” means acquisition and construction of the Project Improvements described in the Plan

“City” means the City of Fort Collins, Colorado

“County” means Larimer County, Colorado

“Directors” means the members of the Authority’s Board of Directors

“Fiscal Year” means the calendar year

“Flood Insurance Study” means the official report in which the Federal Emergency Management Agency (“FEMA”) has provided flood profiles, as well as the Flood Boundary-Floodway Map and water surface elevation of the base flood, in all or a part of the Service Area

“Member” means the City, the County, the Town and any additional member government added as a party to this Agreement by amendment after the date hereof

“Operation and Maintenance” means the ongoing maintenance, operation, repair and replacement of the Project Improvements.

“Plan” means the Boxelder Creek Regional Stormwater Master Plan dated October 2006, together with any amendments thereto approved by a unanimous vote of the Members.

“Project Improvements” means, without limitation, detention areas or flood storage facilities, reservoirs, open channels; irrigation canal overflow or spill structures, diversion or confinement berms; utility relocations, road and railroad crossing structures, water quality enhancement features, and landscaping of disturbed areas, to the extent contemplated by the Plan

"Service Area" means the area shown on Exhibit "A" hereto

"State" means the State of Colorado

"Stormwater Service Fee" means a recurring, monthly or quarterly fee charged to all customers of the Authority upon the basis of such customers' relative contributions to storm flows on a continuing basis, and applied to Operation and Maintenance and debt service requirements of the Authority

"System Development Fee" means a one-time charge imposed upon rezoning of property or the issuance of a building permit with respect to property in the Service Area, for the purpose of recovering a reasonable portion of the Authority's existing or future capital investment in the Project Improvements

"TABOR" means Article X, Section 20 of the Constitution of the State

"Town" means the Town of Wellington, Colorado

## **ARTICLE II**

### **CREATION AND GOVERNANCE OF THE AUTHORITY**

**Section 2.01.** Creation of Authority The City, the Town and the County, by this Agreement, hereby establish the Authority as a drainage authority pursuant to C.R.S. § 29-1-204 2(2). The Authority shall exist until dissolved or terminated in accordance with this Agreement.

**Section 2.02.** Name and Service Area The Authority shall be known as the Boxelder Basin Regional Stormwater Authority and the Authority shall carry out the Responsibilities set forth in this Article. The initial Service Area of the Authority shall include those portions of the Service Area in the City, the Town or the unincorporated areas of the County as of the date of this Agreement, as shown and described on Exhibit "A", which is attached to and made a part of this Agreement.

**Section 2.03.** Board of Directors The Authority shall be governed by a board of directors consisting of five (5) members (the "Directors"), consisting of one each selected by the City, the Town and the County, and two unaffiliated members, representing the public at large, one selected by the City and the County upon mutual agreement and one by the town and County upon mutual agreement. No more than one of such unaffiliated members shall be employed by or an elected official of any Member. Each director shall serve a three (3) year term, with terms staggered and expiring on the 1st day of April or as soon thereafter as the successor director is approved. The staggered terms of Directors shall expire each three (3) years with the first Directors' terms expiring as follows: The Town-appointed director – 2009, City-appointed director and County/Town-appointed director – 2010, County-appointed director and

County/City-appointed director -- 2011 Officers of the Authority shall consist of a president, secretary and treasurer, which shall be appointed by a majority of the board of Directors and shall be re-appointed on the 1st day of April of each year or as soon thereafter as successors may be qualified. Each board member shall have one (1) vote. The majority of the Directors shall constitute a quorum and a majority of the quorum shall be necessary to take any action by the board. The board shall comply with all obligations and may exercise all powers authorized by Title 29, Article 1, Part 2, C R S.

**Section 2.04.** Distribution of Property of the Authority Upon Dissolution. If the Authority is dissolved, property of the Authority shall pass jointly to the Members as tenants in common thereto, except as otherwise expressly agreed in writing.

**Section 2.05.** Actions of Board and Members. Generally, actions may be taken by the Authority upon majority approval the Directors, provided, however, that the following actions may only be taken with the following approvals:

(a) This Agreement may only be terminated or dissolved by unanimous vote of the Members, and only in the event that all bonds, notes and other financial obligations of the Authority and the obligation to operate, maintain, repair and replace any existing improvements of the Authority have been paid or duly provided for by escrow or otherwise,

(b) Fees, rates and other charges consistent with Article V of this Agreement may only be established by a majority vote of the Directors,

(c) Preliminary and final engineering studies for improvements to be constructed by the Authority in accordance with the Plan, including but not limited to the Boxelder Project, as hereinafter defined, may only be approved by a majority of the Directors,

(d) Any amendments to the Plan may only be approved by a unanimous vote of the Members;

(e) Any amendments to this Agreement may only be made on a unanimous vote of the Members; and

(f) Any borrowing, issuance of debt, or multiple fiscal year financial obligation may only be approved by a unanimous vote of the Members.

**Section 2.06.** Description of the Boxelder Project. The Boxelder Project may include, without limitation, any Project Improvements described in the Plan. The Members intend and acknowledge that implementation of the Plan will include the design of permanent natural habitat and other natural features as part of the stream stability and erosion control improvements to be constructed, and, to the extent practicable, as part of other improvements to be constructed by the Authority. All improvements of the Authority will be designed so as to minimize the

potential for introduction of human-caused pollutants in accordance with the Urban Storm Drainage Criteria Manual Volume III – Best Management Practices, or such other subsequently adopted standard as the Directors may approve. The Members further intend and acknowledge that the enhancement and restoration of native vegetation, wildlife habitat, naturally meandering stream channel topography, and other similar natural features are beneficial for the sustained maintenance of the Boxelder drainage.

**Section 2.07.** The Authority's Responsibilities. The Authority shall have the following responsibilities:

(a) Plan and establish a financial structure that equitably distributes among all properties within the Service Area the costs of the Boxelder Project. The financial structure will include both impact fees and service fees,

(b) Plan and arrange for the Operation and Maintenance of the Project Improvements,

(c) Plan and establish a financial structure that equitably distributes among all properties within the Service Area the costs of acquisition and construction of the Project Improvements, Operations and Maintenance of the Project Improvements and costs of administering and operating the Authority. The financial structure to fund said expenses will include service fees and such other sources of revenue as the Authority may determine to be appropriate and sufficient to support the acquisition and construction of the Project Improvements, the Operation and Maintenance of the Project Improvements and administration of the Authority, in a fiscally sustainable manner;

(d) Obtain any necessary Stormwater MS4 Permitting (stormwater quality) required for its undertakings within the Service Area,

(e) Comply with all local laws and requirements, including but not limited to land use and zoning laws and similarly applicable land use code provisions and floodplain and storm drainage regulatory requirements; and

(f) Cooperate and collaborate with the Members, other governmental entities and jurisdictions, nonprofit and private entities and persons and property owners, to incorporate into Authority project plans, to support, and to encourage the design of, development and use of Authority property and improvements, to provide for natural habitat preservation and restoration, preservation of viewsheds and aesthetic values, and transportation connections, and to advance other compatible public purposes and uses, insofar as the same are not in conflict with the primary stormwater objective of the Authority.

**Section 2.08** Enterprise Status. To the extent practicable, the Authority shall be operated as an enterprise within the meaning of TABOR and the Water Activity Enterprise Law, Part 1 of Article 45 1, Title 37, C R S. For such purposes, payments to the Authority by

Members pursuant to Sections 5 03 or 6 03 hereof shall not constitute "grants "

**Section 2.09.** Particular Duties of the Board The Board shall diligently pursue the implementation of the Plan, and shall comply with the applicable provisions of Article 1, Title 29, C.R.S

### **ARTICLE III**

#### **POWERS OF THE AUTHORITY**

**Section 3.01.** Powers. The Authority shall have and may exercise the following powers ~~together with any additional powers conferred upon drainage authorities by C.R.S. Section 29-1-204 2 as it may be amended from time to time:~~

(a) Pursuant to the Plan to develop stormwater systems or facilities or drainage facilities in whole or in part for the benefit of the inhabitants of the contracting Members or others, at the discretion of the Directors, subject to fulfilling any conditions or requirements set forth in this Agreement or in any other contract concerning the Authority;

(b) To make and enter into contracts,

(c) To employ agents and employees,

(d) To acquire, construct, manage, maintain, fund, plan and operate drainage and flood control systems, facilities, works, or improvements, or any interest therein,

(e) To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property utilized only for the purposes of providing drainage, flood control, or stormwater quality control or for related or accessory purposes,

(f) To condemn property for public use;

(g) To incur debts, liabilities, or obligations, including without limitation by the issuance of bonds, notes and other financial obligations,

(h) To sue and be sued in its own name,

(i) To have and use a corporate seal,

(j) To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the Authority,

(k) To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purpose;



(l) To exercise any other powers which are essential to the provision of functions, services, or facilities by the Authority and which are specified in this Agreement or any other contract concerning the Authority,

(m) To do and perform any acts and things authorized by Section 29-1-204 2, C R S , and this Agreement under, through, or by means of an agent or by contracts with any person, firm, or corporation;

(n) To permit other municipalities, special districts, or political subdivisions of the State that are authorized to provide drainage facilities to become Members in the manner provided in this Agreement,

(o) To provide for the rehabilitation of any surfaces adversely affected by the construction of pipelines, facilities, or systems or of stormwater or other drainage facilities through the rehabilitation of plant cover, soil stability, and other measures appropriate to the subsequent beneficial use of such lands, and

(p) To the extent permitted by law, to justly indemnify property owners or others affected for any losses or damages incurred, including reasonable attorney fees, or that may subsequently be caused by or which result from actions of the Authority

**Section 3.02. Insurance** The Authority shall comply with all minimum insurance requirements of the Colorado Governmental Immunity Act, C R S Section 24-10-101, et seq Unless the Members vote unanimously to approve other insurance limits, the Authority shall maintain commercial general liability insurance with minimum limits of \$1,000,000 combined limit for each occurrence and \$2,000,000 general aggregate, including products/completed operations and personal injury So long as any obligation is owed to the Colorado Water Conservation Board ("CWCB") the company providing the insurance coverage shall be acceptable to the CWCB

**Section 3.03.** Authority Not a Taxing Entity The Authority shall not have the power of taxation

## **ARTICLE IV**

### **REPRESENTATIONS AND COVENANTS OF MEMBERS**

**Section 4.01.** The County's Representations and Covenants The County makes the following representations and covenants

(a) It will promptly transfer to the Authority all revenues, fund balances, improvements and responsibilities associated with the County's existing stormwater impact fee in the Service Area, and will transfer to the Authority any amounts representing fees applicable within its jurisdiction to the extent it elects to make payment

to the Authority in lieu of the collection of such fees pursuant to Section 5 04,

(b) It has adopted or will adopt the Plan,

(c) It will duly appoint initial and replacement Directors in accordance with Section 2 03 hereof,

(d) It will, to the extent it is necessary to locate certain stormwater improvements within the unincorporated areas of Larimer County and if requested by the Authority, cooperate with the Authority in any condemnation actions, including the County's use, with approval of the County Board of Commissioners in its sole discretion, ~~of its powers of eminent domain to acquire property as requested by the Authority,~~ so long as all costs of the County are reimbursed by the Authority, and the County is held harmless,

(e) It will allow the Authority, within the County's standards and specifications, to utilize easements and rights of way dedicated to the public for the Authority's purposes, subject to the primary use of the right of way and applicable police powers,

(f) It will cooperate in preparing all preliminary and final engineering services necessary for the design and construction of the Boxelder Project,

(g) It will establish and implement stormwater standards, to be applied in connection with subdivision, development and building review and approval, that are consistent with the analytical assumptions and objectives of the Plan, and

(h) It will cooperate with the Authority and other Members in seeking approval of changes to the Flood Insurance Study or underlying components, and consent to the Authority's submission of the same to FEMA

**Section 4.02.** The City's Representations and Covenants The City makes the following representations and covenants:

(a) To the extent permitted by any ordinances authorizing bonds and other obligations of the City Stormwater Utility Enterprise in effect or existing as of the effective date of this Agreement, it will transfer to the Authority any amounts representing fees applicable within its jurisdiction to the extent it elects to make payment to the Authority in lieu of the collection of such fees pursuant to Section 5 04,

(b) It has adopted or will adopt the Plan,

(c) It will duly appoint initial and replacement Directors in accordance with Section 2.03 hereof,

(d) It will, to the extent it is necessary to locate certain stormwater improvements within the City and if requested by the Authority, cooperate with the Authority in any condemnation actions, including the City's use, with approval of the City Council in its sole discretion, of its powers of eminent domain to acquire property as requested by the Authority, so long as all costs of the City are reimbursed by the Authority, and the City is held harmless,

(e) It will allow the Authority, within the City's standards and specifications, to utilize easements and rights of way dedicated to the public for the Authority's purposes, subject to the primary use of the right of way and applicable police powers,

(f) It will cooperate in preparing all preliminary and final engineering services necessary for the design and construction of the Boxelder Project,

(g) It will establish and implement stormwater standards, to be applied in connection with subdivision, development and building review and approval, that are consistent with the analytical assumptions and objectives of the Plan, and

(h) It will cooperate with the Authority and other Members in seeking approval of changes to the Flood Insurance Study or underlying components, and consent to the Authority's submission of the same to FEMA

**Section 4.03.** The Town's Representations and Covenants The Town makes the following representations and covenants

(a) It will transfer to the Authority any amounts representing fees applicable within its jurisdiction to the extent it elects to make payment to the Authority in lieu of the collection of such fees pursuant to Section 5 04,

(b) It has adopted or will adopt the Plan,

(c) It will duly appoint initial and replacement Directors in accordance with Section 2 03 hereof,

(d) It will, to the extent it is necessary to locate certain stormwater improvements within the Town and if requested by the Authority, cooperate with the Authority in any condemnation actions, including the Town's use, with approval of the Town Board in its sole discretion, of its powers of eminent domain to acquire property as requested by the Authority, so long as all costs of the Town are reimbursed by the Authority, and the Town is held harmless;

(e) It will allow the Authority, within the Town's standards and specifications, to utilize easements and rights of way dedicated to the public for the Authority's purposes, subject to the primary use of the right of way and applicable police powers,

(f) It will cooperate in preparing all preliminary and final engineering services necessary for the design and construction of the Boxelder Project,

(g) It will establish and implement stormwater standards, to be applied in connection with subdivision, development and building review and approval, that are consistent with the analytical assumptions and objectives of the Plan, and

(h) It will cooperate with the Authority and other Members in seeking approval of changes to the Flood Insurance Study or underlying components, and consent to the Authority's submission of the same to FEMA

## **ARTICLE V**

### **RATES AND CHARGES; PROJECT PAYMENTS**

**Section 5.01.** Power and Duty to Impose. The Authority shall be authorized and required to impose the following rates, fees and charges on property within the Service Area to fund regional improvements as described in the Plan (a) a Stormwater Service Fee and (b) a System Development Fee

**Section 5.02.** All rates, fees and charges shall be consistent with the terms of this Agreement The Members have obtained a financial feasibility study report prepared by Alex Brown Consulting, identified as Boxelder Creek Alliance Financial Analysis, and dated May 22, 2008 (the "Feasibility Study")

(a) In order to fund the Authority's projects and operations in accordance with the Feasibility Study, the Members agree that the Authority shall no later than January 1, 2009, establish a Stormwater Service Fee to be collected on an ongoing, regular, basis from owners of property within the Service Area The Stormwater Service Fee shall be set by the Authority generally based upon impervious area, and on average shall not exceed \$ 0 04 per square foot of impervious area per year or be less than \$ 0 03 per square foot of impervious area per year.

(b) To provide additional funding for the Authority's projects and operations, the Members agree that the Authority shall no later than January 1, 2009, establish a System Development Fee to be collected in connection with development of property within the Service Area no later than at the time of issuance of a building permit The System Development Fee shall be generally based upon impervious area, and on average shall not exceed \$ 0 30 per square foot of new impervious area or be less than \$ 0 20 per square foot of new impervious area

(c) The Authority shall review the Stormwater Service Fee and System Development Fee on a biennial basis, and shall adjust the System Development Fee to reflect the investment in the value of assets of the Authority and depreciation of those assets. Modifications of the permitted average range of Stormwater Service Fee and the System Development Fee parameters

may be made by adoption of an amendment to this Agreement

**Section 5.03** Uniformity and Rates and Charges. The rates, fees and charges collected by the Authority shall be uniform within the Service Area, and shall as nearly as practicable result in similar charges to similarly-situated properties. Such rates and charges shall be imposed in sufficient amounts to provide for the Operation and Maintenance expenses of the Authority, and to defray, or provide a reasonable reserve for the payment of, its capital requirements. The Authority is authorized to pledge all or any portion of the revenues derived from its rates, fees and charges, including amounts received from Members pursuant to Section 5.03 hereof in lieu of rates, fees and charges, to the payment of the principal of and interest on the obligations of the Authority issued pursuant to Section 3.01(g) hereof.

**Section 5.04.** Option of Members to Contribute in Lieu of Authority Collection of Rates and Charges. It is not intended that this Agreement shall deprive any Member of its inherent power to charge for stormwater services and facilities within its boundaries. As to any fiscal year a Member may at its discretion elect to pay directly to the Authority an amount equal to the total of the Authority's rates, fees and charges imposed on property within such Member's jurisdiction, in which case the Authority shall credit the account of each such property and refrain from billing and collection in the affected area. Direct payments of such amounts shall be made by a Member so electing no later than the dates upon which payments by property owners to the Authority would have been due if the Authority had billed such property owners directly. A Member electing to make such payments shall file a written notice with the Authority not later than November 1 of the year preceding the fiscal year as to which it makes such election, stating the fiscal year as to which such election is effective and the specific rates, fees or charges affected, together with evidence satisfactory to the board of the Authority of the appropriation and assignment of funds by such Member's governing body sufficient to fully provide for all payments due as the result of such election. In any case where a Member so elects, nothing shall prevent it from imposing and collecting rates, fees and charges to customers within its boundaries which differ from the Authority's prevailing rates, fees and charges, provided that the Authority does not thereby receive less revenue than it would if it were directly imposing and collecting its own prevailing rates.

**Section 5.05.** Enforcement/Unpaid Charges a Lien. Any charge due hereunder which shall not be paid when due may be recovered in an action at law by the Authority. All rates, fees and charges imposed pursuant to this Article shall be a lien upon the property to which such fee is associated from the date the fee becomes due until such fee is paid. The owner of every building, premises, lot or house shall be obligated to pay the fee for all service provided for the premises which obligation may be enforced by the Authority by action at law or suit to enforce the lien. In the case that a tenant in possession of any premises or buildings shall pay the charges, it shall relieve the landowner from such obligation and lien but the Authority shall not be required to look to any person whatsoever other than the owner for the payment of such charges. No changes of ownership or occupation shall affect the application of this Article and the failure of any owner to learn that he or she purchased property against which a lien for stormwater authority rates, fees or charges exists shall in no way affect the responsibility for such payment. Any delinquent amount may be enforced by assessment upon the property and premises served.

and certification to the County Treasurer for collection under and pursuant to the authority and procedure provided in by applicable law

**Section 5.06.** Initial FEMA Grant Funding      The Members have applied for, and received preliminary notice of award of, a FEMA Pre-Disaster Mitigation grant in the approximate amount of \$3 million, for design and construction of certain improvements described in the Plan (the "PDM Grant"). The Members anticipate that the Authority will receive the PDM Grant and use the PDM Grant funds, together with local matching funds in the approximate amount of \$1 million, to design and construct the grant-funded improvements and administer the PDM Grant. The Members agree to share the local match obligation among them, and cash funds or in-kind services in the following approximate proportions: the County – 50%, the Town – 30%; the City – 20%. Such Member contributions shall be made to carry out and complete the PDM Grant project in the specific manner mutually agreed by the Members.

**Section 5.07**    Repayment to Member Entities      The Authority shall be obligated to, and hereby covenants to repay in full, any amounts advanced or obligations incurred by Member entities on behalf of or under agreement with, the Authority, except as expressly waived in writing by the Member to which such repayment would otherwise be due.

## **ARTICLE VI**

### **FINANCIAL RECORDS AND ACCOUNTING**

**Section 6.01.** Annual Audit. The books and financial records of the Authority shall be examined annually by an independent auditor, whose report thereon shall be completed and filed for public inspection at the office of the Authority not later than July 1 of the calendar year following the close of the fiscal year for which such records are examined.

**Section 6.02.** Budget. The Authority shall propose and adopt an annual budget for each ensuing fiscal year, not later than September 1 of the year preceding the fiscal year for which such budget is prepared. The budget shall contain a complete plan for the financial operations of the Authority for such ensuing fiscal year, including an estimate of revenues based upon the then current or most recently adopted schedule of rates, fees and charges and including any other anticipated source of funds for operating or capital purposes, an estimate of the cost of Operation and Maintenance, an estimate of the cost of capital additions and the debt service requirements of bonds, notes or financial obligations issued in connection therewith and a five-year capital improvements plan.

**Section 6.03.** Payments to and Contributions by Members. Nothing in this Agreement shall prevent any one or more Members from acquiring or constructing all or any portion of the Boxelder Project by agreement with the Authority. Any such agreement may provide either for a cash payment by the Authority to such Member or Members or for a credit in kind against amounts owing by such Member or Members to the Authority, the amount thereof in either case being based upon the actual amounts expended by such Member or Members upon such acquisition or construction. The Authority shall not enter into agreements to extend credit in

kind to such an extent that its funds available for Operation and Maintenance and debt service requirements are impaired

## **ARTICLE VII**

### **ADMINISTRATION**

**Section 7.01.** Authority Staff, Attorney, Auditor and Other Staff and Services The Authority, through its board, shall hire or retain the following:

(a) Authority Manager The Authority shall retain a manager on a full or part time basis to manage the Authority, or shall contract for management services. The manager shall be answerable to the Directors and may be an employee of any of the Members and, if an employee paid by a Member, the Authority shall enter into a separate contract with the Member which employs the manager, according to the separate agreement to be entered into between the Authority and the Member employing the manager.

(b) Attorney. The Authority shall retain an attorney or shall contract for legal services as needed. The attorney shall be answerable to the Directors

(c) Auditor The Authority shall retain an auditor or shall contract for auditing services as needed. The auditor shall be answerable to the Directors

(d) Other Authority Administrative and Professional Staff and Staff The Authority shall retain such additional administrative or professional staff on a full or part time basis, or shall contract for administrative or professional services as needed. Any such employees shall be answerable to the Directors and may be an employee of any of the Members and, if an employee paid by a Member, the Authority shall enter into a separate contract with the Member who employs the employee, according to the separate agreement to be entered into between the Authority and the Member employing the employee

**Section 7.02.** Due Diligence The Members agree to exercise due diligence in performing their duties under this Agreement

## **ARTICLE VIII**

### **MISCELLANEOUS**

**Section 8.01.** Notice Any notice or other communication given by any Member to the other Members relating to this Agreement shall be hand delivered or sent by certified mail, return receipt requested, addressed to the other Members, at their respective addresses as set forth below, and such notice or other communication shall be deemed given, when so hand delivered or three (3) days after so mailed

If to the City  
Utilities Executive Director  
City of Fort Collins  
P O Box 580  
Fort Collins, CO 80522

With a copy to  
City Attorney  
City Attorney's Office  
300 LaPorte Avenue  
P O Box 580  
Fort Collins, CO 80522

If to the County.  
Public Works Director  
Larimer County  
Storm Drainage Engineer  
P O. Box 1190  
Fort Collins, CO 80522

With a copy to  
George Haas  
Larimer County Attorney's Office  
224 Canyon Ave , Ste. 200  
P O. Box 1606  
Fort Collins, CO 80522-1606

If to the Town  
Town Administrator  
Town of Wellington  
P O Box 127  
Wellington, CO 80549

With a copy to  
J Brad March  
Wellington Town Attorney  
March, Olive & Pharris, LLC  
110 E Oak St , Ste 200  
Fort Collins, CO 80524

**Section 8.02.** Annexation In the event that any parcel of real property currently located in unincorporated Larimer County and in the Service Area is annexed into the City or the Town, the Authority, County and annexing entity shall work cooperatively to ensure that the fees, rates and charges collected from or attributable to the annexed property are equitably apportioned. Upon completion of the construction of the Project Improvements, all such Improvements shall be owned by the Authority, except as otherwise expressly agreed and documented in writing by all Members. It is the intent of the Members that annexation of property within the Authority boundaries by a non-Member municipality will not alter the Authority's power or the rates, fees or other charges imposed by the Authority upon such property, except as expressly agreed in writing by the Authority and such annexing municipality

**Section 8.03.** Financial Obligations of Members At the option of any Member obligated to make any payment hereunder, such payment may, at such Member's discretion, constitute an obligation of such Member or its respective Stormwater Utility Enterprise. Obligations of the Members pursuant to this Agreement are hereby made expressly contingent upon the respective governing bodies of the County, Town or the City appropriating annually any funds necessary for the fulfillment of such obligations

**Section 8.04.** Miscellaneous.

(a) This Agreement shall be binding upon and inure to the benefit of the Members hereto (including their respective Stormwater Utility Enterprises) and their respective successors and assigns



(b) This Agreement is made in and shall be construed and interpreted in accordance with the laws of the State of Colorado

(c) This Agreement shall not be assigned by any of the Members without the prior written consent of the other Members

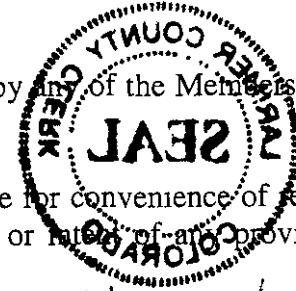
(d) The paragraph headings used herein are for convenience of reference and in no way shall define, limit or prescribe the scope or extent of any provision of this Agreement

(e) This Agreement shall be construed according to its fair meaning and as if prepared by all Members and shall be deemed to be and contain the understanding and agreement among the Members with respect to the subject matter of this Agreement. There shall be deemed to be no other terms, conditions, promises, understandings, except as expressly agreed in writing by the Members

(f) Statements or representations, either expressed or implied, concerning this Agreement shall not be binding on any Member except as set forth in any official action or subsequent writing signed by all of the Members. Amendment of this Agreement shall require unanimous consent of all Members

(g) The Members agree to cooperate in good faith in fulfilling the terms of this Agreement. The Members agree that they will attempt to resolve, by good faith negotiations before reverting to litigation, any disputes concerning the interpretation of this Agreement and any unforeseen questions and difficulties which may arise in implementing this Agreement

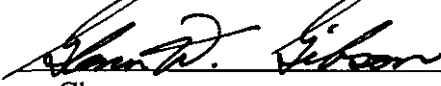
(h) Notwithstanding any other provision of this Agreement or any other incorporated provision, the Members recognize that there are legal constraints imposed upon each of the Members as governmental entities by the constitutions, statutes, and rules and regulations of the State of Colorado and of the United States, and by the respective charters and codes of such Members. Each Member agrees that, subject to such constraints, such Member expects to carry out the terms and conditions of this Agreement. Such constraints include, without limitation, the constraints of TABOR relating to governmental entities incurring multi-year fiscal obligations. Therefore, notwithstanding any other provision of this Agreement to the contrary, in no event shall any Member exercise any power or take any action that 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



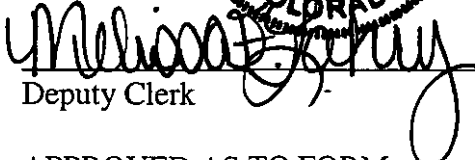
IN WITNESS WHEREOF, the Members have executed this Agreement as of the date and year first above written.



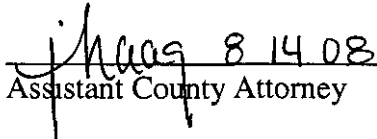
BOARD OF COUNTY COMMISSIONERS,  
LARIMER COUNTY, COLORADO

By   
Chair

ATTEST

  
Deputy Clerk

APPROVED AS TO FORM

 8 14 08  
Assistant County Attorney

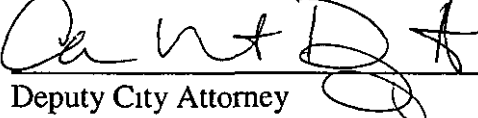
THE CITY OF FORT COLLINS, COLORADO,  
a Municipal Corporation

By \_\_\_\_\_  
Mayor

ATTEST

\_\_\_\_\_  
City Clerk

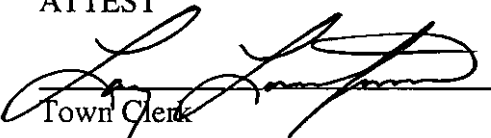
APPROVED AS TO FORM

  
Deputy City Attorney

THE TOWN OF WELLINGTON, COLORADO,  
a Statutory Municipality

By   
Mayor

ATTEST

  
Town Clerk

APPROVED AS TO FORM

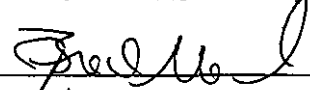
  
Town Attorney

Exhibit A

