

RESOLUTION 2017-106  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL  
AGREEMENT CONCERNING BOXELDER BASIN REGIONAL  
STORMWATER AUTHORITY PROJECT IMPROVEMENTS

WHEREAS, the City of Fort Collins (the "City"), Board of Commissioners of Larimer County, Colorado (the "County") and Town of Wellington, Colorado (the "Town") are the founding Members of the Boxelder Basin Regional Stormwater Authority ("BBRSA" or "Authority"), a separate governmental entity to be known as a drainage authority established pursuant to C.R.S. Section 29-1-204.2(1), under that certain Intergovernmental Agreement for Stormwater Cooperation and Management dated August 20, 2008, and First Amendment to Intergovernmental Agreement for Stormwater Cooperation and Management dated June 16, 2014, (collectively, the "Boxelder IGA"); and

WHEREAS, the Authority has, pursuant to the Boxelder IGA, financed, constructed and completed the Coal Creek/Clark Reservoir Flood Mitigation Project ("Clark Reservoir"), the Larimer and Weld Canal Crossing Structure, the County Road 52 Project and the East Side Detention Facility (the "ESDF," formerly known as the Gray Lakes Project) (each of which may be individually referred to as a "Project," or collectively as the "Projects"); and

WHEREAS, the Larimer and Weld Canal Crossing Structure is complete and is owned and operated by the Larimer and Weld Canal Company; and

WHEREAS, the County Road 52 Project was completed and paid for pursuant to a separate intergovernmental agreement and is owned and operated by the County; and

WHEREAS, financing for the Projects included three loans to the Authority by the Colorado Water Conservation Board ("CWCB"), which loans remain outstanding; and

WHEREAS, the Authority has also entered into an Intergovernmental Agreement dated November 15, 2012, (the "Timnath IGA") with the Timnath Development Authority of Colorado (the "TDA") which provides for TDA's participation in the cost of constructing and financing the ESDF; and

WHEREAS, although no further regional storm drainage projects are to be constructed by the Authority pursuant to the Boxelder IGA, the Authority owns, operates and maintains the ESDF, has long-term maintenance obligations for Clark Reservoir under an agreement dated January 5, 2011, with the North Poudre Irrigation Company and assesses fees to properties located within its service area, which are benefitted by the Projects; and

WHEREAS, pursuant to the First Amendment to the IGA, the Authority is to sunset and be dissolved no later than June 16, 2024, if certain conditions are met, including completion of the Projects, payment in full of all CWCB loans and agreement among the Members as to (i) performance of continuing obligations of the Authority, including operation and maintenance responsibilities for the Projects; (ii) reimbursement of matching funds provided by the Members

to the Authority for a FEMA Pre-Disaster Mitigation Grant in the total amount of one million dollars (\$1,000,000); and (iii) disbursement of any revenue remaining in the authority after termination and winding up of all financial and legal obligations of the Authority (the "Conditions"); and

WHEREAS, at its meeting on May 4, 2017, the Authority Board of Directors, which includes directors appointed by the Member entities who are parties to the Boxelder IGA (City, County, and Town), adopted a motion requesting that the Authority Manager submit a Preliminary Conceptual Outline for Transition Process prepared by the County (the "Framework") to the City, County, Town, and the TDA seeking their participation in working group to discuss and formulate recommendations; and

WHEREAS, on May 9, 2017, the City Council adopted Resolution 2017-041 supporting the Framework and the City-named representatives' participation in the working group; and

WHEREAS, on June 6, 2017, the City Council adopted Resolution 2017-054 expressing commitment to work in good faith through the working group in an effort to reach agreement allocating the Authority's long term obligations for perpetual maintenance and operation of the Projects, identifying recommended changes to the ongoing operation and maintenance costs related the operation of the Authority, and facilitating retention by the Authority of fee revenue to fill its ongoing obligations until payment in full of the CWCB loans, and

WHEREAS, a technical working group of representatives of the County (Eric Tracy), the Town (Ed Canon, Town Manager), and the City (Mike Beckstead, CFO) has now resolved longstanding questions regarding the appropriate and equitable assessment of fees among properties in the service area by the Authority; and

WHEREAS, a second working group of Member representatives has discussed the Framework and resolution of long-term financial and ownership issues and long-term operation and maintenance of the Projects that are intended to, over the remaining period of the CWCB loans, address the Conditions to dissolution of the Authority set forth in the First Amendment to the IGA; and

WHEREAS, the Members wish to address their participation in the Authority and the Members and Timnath wish to provide for participation in the long-term maintenance of the Projects in the manner set forth in the Intergovernmental Agreement Concerning Boxelder Basin Regional Stormwater Authority Project Improvements among the County, City and Town as Members and parties to the Boxelder IGA, and Timnath attached hereto as Exhibit "A" and incorporated by this reference (the "Member/Timnath IGA") to facilitate satisfaction of the Conditions over the remaining period of the CWCB loans and prepare for the eventual termination and dissolution of the Authority at or about the date when the CWCB loans are paid in full; and

WHEREAS, Article II, Section 16 of the City of Fort Collins Charter empowers the City Council, by ordinance and resolution, to enter into contracts with governmental bodies to furnish governmental services and make charges for such services, or enter into cooperative or joint activities with other governmental bodies; and

WHEREAS, Section 29-1-203 of the Colorado Revised Statutes and as to the County, Article XIV, Section 18 of the Colorado Constitution, provides that governments may cooperate or contract with one another to provide certain services or facilities when such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve; and

WHEREAS, under Section 1-22 of the City code, intergovernmental agreements and other cooperative arrangements between the City and other governmental entities are to be submitted to the City Council for review, unless they fit within one of the exceptions that permit execution by the City Manager; and

WHEREAS, the City Council finds that it is in the best interests of the City and its citizens to approve and finalize the Member/Timnath IGA.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That the City Council hereby makes all determinations and findings contained in the recitals set forth above.

Section 2. That the Mayor is hereby authorized to execute the Member/Timnath IGA substantially in the form attached hereto as Exhibit "A," with such modifications and additions as the City Manager, in consultation with the City Attorney, determines to be necessary and appropriate to protect the interests of the City or effectuate the purposes set forth herein and not otherwise inconsistent with this Resolution.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 12th day of December, A.D. 2017.



Mayor

ATTEST:



City Clerk



## **AGREEMENT**

### **CONCERNING BOXELDER BASIN REGIONAL STORMWATER AUTHORITY**

#### **PROJECT IMPROVEMENTS**

This Agreement (“Agreement”) is effective this \_\_\_\_\_ day of \_\_\_\_\_, 2017 among the Board of County Commissioners of Larimer County (“County”); City of Fort Collins (“City”), Town of Wellington (“Town”), and the Timnath Development Authority of Colorado (“Timnath”). These entities may collectively be referred to as “Parties” or individually as a “Party”. The County, City, and Town may collectively be referred to as “Members” or individually as a “Member”.

#### **I. RECITALS**

A. The County, City, and Town are the founding Members of the Boxelder Basin Regional Stormwater Authority (“Authority”), a separate governmental entity known as a drainage authority established pursuant to C.R.S. Section 29-1-204.2(1), under that certain Intergovernmental Agreement for Stormwater Cooperation and Management dated August 20, 2008 (“Boxelder IGA” or “IGA”), and First Amendment to Intergovernmental Agreement for Stormwater Cooperation and Management dated June 16, 2014 (“First Amendment”).

B. The Authority financed, constructed and completed regional stormwater facilities, including those known as the Coal Creek/Clark Reservoir Project (“Clark Reservoir Project”), the Larimer and Weld Canal Crossing Structure (“L&W Crossing Structure”); the County Road 52 Project, and the East Side Detention Facility (“ESDF”) (which may be collectively referred to as the “Projects”). The financing for the Clark Reservoir, Larimer and Weld Crossing Structure, and ESDF Projects included three loans to the Authority by the Colorado Water Conservation Board (“CWCB Loans”), which loans remain outstanding. The debt service on the CWCB Loans is referred to as the “CWCB Debt Service.”

C. The County Road 52 Project was completed and paid for pursuant to a separate intergovernmental agreement pursuant to which the County owns and operates the improvements, which are integrated into and within the County’s right of way for County Road 52; and

D. The L&W Canal Crossing Structure is also complete and is owned and operated by the L&W Canal Company; and

E. The Authority has entered into an Intergovernmental Agreement dated November 15, 2012 with Timnath which provides for Timnath’s participation in the construction and financing costs for the ESDF (“Timnath Agreement”); and

F. The Authority has also entered into the Coal Creek Flood Mitigation and Operation Agreement with the North Poudre Irrigation Company (“NPIC”) dated January 5, 2011, (“Coal Creek/Clark Reservoir Agreement”) to provide funding and performance of the long-term maintenance obligations for the Clark Reservoir Project.

G. Pursuant to the Boxelder IGA and First Amendment, the Authority owns, operates and maintains the ESDF, has long-term maintenance obligations for the Clark Reservoir Project under the Coal Creek/Clark Reservoir Agreement, and assesses fees to properties located within its Service Area and benefitted by the Projects; and

H. Pursuant to the First Amendment, the Authority is to be dissolved no later than June 16, 2034, if certain conditions are met, including completion of the Projects, payment in full of all CWCB Loans and agreement among the Members as to (i) performance of continuing obligations of the Authority, including operation and maintenance responsibilities for the Projects; (ii) reimbursement of matching funds provided by the Members to the Authority for a FEMA Pre-Disaster Mitigation Grant in the amount of one million dollars (\$1,000,000); and (iii) disbursement of any revenue remaining in the Authority after termination and winding up of all financial and legal obligations of the Authority (the “Conditions”); and

I. In response to the Projects being completed and to plan for and facilitate the eventual termination of the Authority, the Parties wish to set out in this Agreement the commitments and obligations of the Parties to address existing financial and ownership issues and long-term operation and maintenance of the Project improvements that will, over the remaining period of the CWCB Loans, address the Conditions to dissolve the Authority; and

J. Since no additional improvements are to be constructed by the Authority in its Service Area, it is the intent of the Members to work with Timnath and the Authority to continue collecting development and services fees from fee payers within each Member’s jurisdiction in an annual and total amount not less than those fees set by the Authority and sufficient over the remaining period of the CWCB Loans (the “Remaining Loan Repayment Period”) to fund (i) the CWCB Debt Service; (ii) a separate designated and restricted account to be held by the Authority for ongoing operation and maintenance of the ESDF in the ultimate amount of one million two hundred thousand dollars (\$1,200,000) (the “ESDF O&M Fund”); (iii) a separate designated and restricted account to be held by the Authority for ongoing operation and maintenance of the Clark Reservoir Project in the ultimate amount of one million dollars (\$1,000,000) (the “Clark Reservoir O&M Fund”); and (iv) the annual administrative and operating costs of the Authority, such as legal fees, accounting fees, office administration and office supplies, which are estimated not to exceed eighty five thousand dollars (\$85,000) per year commencing January 1, 2019, with an estimated annual adjustment for inflation of three percent (3%) per annum commencing on January 1, 2020 (the “Authority Annual Operating Costs”) (the CWCB Debt Service, ESDF O&M Fund, Clark Reservoir O&M Fund and Authority Annual Operating Costs may collectively be referred to and the “Authority Continuing Obligations”); and

K. Relating to the construction of the ESDF, the Authority entered into a settlement agreement in Larimer County District Court Case 2014CV31057, *Boxelder Basin Regional Stormwater Authority v. John W. Day Family Partnership* calling for payment of compensation in the total amount of one million six hundred seventy-five thousand dollars (\$1,675,000) (the “Day Settlement”), which is also to be funded by revenues of the Authority.

## II. CONSIDERATION

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration received and accepted, the Parties agree as follows:

### **III. TERMS**

#### **A. Financial Obligations of Boxelder Fee Payers within County**

1. The Authority shall continue to collect from fee payers within the County geographical area of the Boxelder Stormwater Basin Service Area service fees, in an amount not less than the service fees as set by the Authority. The County shall continue to collect from fee payers within the County geographical area of the Boxelder Stormwater Basin Service Area development fees, in an amount not less than the fees as set by the Authority.

2. The County feepayers shall ultimately be responsible for the following cumulative equitable share of the Authority Continuing Obligations over the period commencing January 1, 2018 through the termination of the Authority:

a. Twenty-five percent (25%) of the total CWCB Debt Service, including principal and interest, over the Remaining Loan Repayment Period.

b. Twenty-five percent (25%) the Clark Reservoir O&M Fund.

c. Thirty-three percent (33%), of the ESDF O&M Fund.

d. Twenty-five percent (25%) of the Authority Annual Operating Costs.

3. It is the County's intent to contract separately with the Authority to collect service fees and to pay the cost of obtaining such services from the Authority and to self-collect the development fees from fee payers within the County portion of the Service Area and to pay the cost of obtaining such services from the Authority; such costs shall not be included in the Authority Annual Operating Costs.

#### **B. Financial Obligations of Boxelder Fee Payers within City**

1. Commencing January 1, 2018 and thereafter, the City elects pursuant to Section 5.04 of the IGA to collect from fee payers within the City geographical area of the Boxelder Stormwater Basin Service Area or otherwise remit to the Authority service and development fees, in an amount not less than the fees as set by the Authority.

2. The City feepayers shall ultimately be responsible for the following cumulative equitable share of the Authority Continuing Obligations over the period commencing January 1, 2018 through the termination of the Authority:

a. Twenty-five percent (25%) of the CWCB Debt Service, including principal and interest, over the Remaining Loan Repayment Period.

b. Twenty-five percent (25%) of the Clark Reservoir O&M Fund.

- c. Thirty-three percent (33%) of the ESDF O&M Fund.
- d. Twenty-five percent (25%) of the Authority Annual Operating Costs.

3. It is the City's intent to collect and remit development fees and service fees from fee payers within the City portion of the Service Area and to pay the cost of such collection; such costs shall not be included in the Authority Annual Operating Costs.

**C. Financial Obligations of Boxelder Fee Payers within Town**

1. Commencing January 1, 2018 and thereafter, the Town elects pursuant to section 5.04 of the IGA to collect from fee payers within the Town's geographical area of the Boxelder Stormwater Basin Service Area or otherwise remit to the Authority service and development fees, in an amount not less than the fees as set by the Authority.

2. The Town feepayers shall ultimately be responsible for the following cumulative equitable share of the Authority Continuing Obligations over the period commencing January 1, 2018 through the termination of the Authority:

- a. Twenty-five percent (25%) of the CWCB Debt Service, including principal and interest, during the Remaining Loan Repayment Period.
- b. Fifty percent (50%) of the Clark Reservoir O&M Fund.
- c. Twenty-five percent (25%) of the Authority Annual Operating Costs.

3. It is the Town's intent to collect development fees and service fees from fee payers within the Town portion of the Service Area and to pay the cost of such collection; such costs shall not be included in the Authority Annual Operating Costs.

**D. Financial Obligations of Timnath**

1. Commencing on January 1, 2018, Timnath shall pay to the Authority the following in consideration of benefits it receives because of the Authority's construction of the ESDF:

- a. Funding and reimbursements as specified in the Timnath Agreement, which amounts shall be billed annually and shall be paid until Timnath has paid twenty five percent (25%) of the construction costs and financing costs of the ESDF as defined in the Timnath Agreement.
- b. Thirty-three percent (33%) of the ESDF O&M Fund, which amounts shall be billed annually
- c. Twenty-five percent (25%) of the Authority Annual Operating Costs, which amounts shall be billed annually.

## **E. Operation and Maintenance of Clark Reservoir**

1. Beginning January 1, 2018 and thereafter, the County agrees to provide general administration of the Coal Creek/Clark Reservoir Agreement at no cost to the Authority, Town, City or Timnath. Such administration includes staff site visits and scheduling/tracking/invoicing.

2. The Authority shall pay for needed maintenance and repairs to the Clark Reservoir Project in an amount not exceeding the funds in the Clark Reservoir O&M Fund. This includes the Authority's obligations under the Coal Creek/Clark Reservoir Agreement. Notwithstanding the foregoing, the Clark Reservoir O&M Fund must be fully funded in the amount of one million dollars (\$1M) prior to termination of the Authority, as set forth in Section III.O.1. below.

3. To the extent there are insufficient monies in the Clark Reservoir O&M Fund to pay for needed maintenance and repairs to the Clark Reservoir whether during the remaining existence of the Authority or after its termination, the County shall fund 25%, the City shall fund 25% and the Town shall fund 50% of the cost of the work. This cost participation shall apply to future expenses associated with the Coal Creek/Clark Reservoir Agreement during the Remaining Loan Repayment Period and shall survive and continue after termination of the Authority. The future fiscal obligations for such amounts are contingent upon annual appropriations by the County, City and Town.

4. Any expenditures pursuant to the Coal Creek/Clark Reservoir Agreement in excess of \$10,000 must be unanimously approved by the County, City, and Town, which approval shall not be unreasonably withheld. The County's adopted purchasing policy shall apply and, when required, a competitive bid process will be used to select a contractor for the work unless the County, City and Town mutually agree otherwise. The County, City and Town must approve the award of a contract, which approval shall not be unreasonably withheld. In the event unanimous approval is not achieved for any proposed expenditure in excess of \$10,000, or for an award of contract, the City and County will jointly select a professional engineer licensed in Colorado and the Town will select a professional engineer licensed in Colorado. The two engineers will then resolve the disagreement.

5. At least thirty (30) days before the date on which the Authority is terminated, the County agrees to accept assignment of the Coal Creek/Clark Reservoir Agreement and assume the Authority's management obligations thereunder. This assignment is conditioned on:

a. NPIC's consent to the assignment if required.

b. Amendment of the Coal Creek/Clark Reservoir Agreement to state that future fiscal obligations under the Agreement are contingent on annual appropriations by the County, Town and City.

c. A transfer of the Clark Reservoir O&M Fund held by the Authority to the County, with said funds being placed by the County in a dedicated interest earning account for future costs associated with Clark Reservoir.



**F. Operation and Maintenance of East Side Detention Facility**

1. Beginning January 1, 2018 and thereafter, the County agrees to provide general administration and management of the ESDF at no cost to the Authority, City, Town or Timnath. Such administration includes staff site visits and scheduling/tracking/invoicing for routine maintenance work.

2. The Parties acknowledge that the Authority is obligated to pay the Day Settlement and will incur costs to further modify the ESDF to minimize water augmentation requirements resulting from construction of the ESDF (the "ESDF Modifications"). The Parties agree that the existing estimated cost to complete the ESDF Modification in the amount of three hundred and fifty thousand dollars (\$350,000) is already included in the expenditures to be funded by the Authority's anticipated fee revenues during 2018 and 2019 as a part of the construction costs of the ESDF to borne equally by the Parties. Notwithstanding the foregoing, fee payers in the Town shall have no obligation for the payment of any such costs in excess of eighty-seven thousand five hundred dollars (\$87,500) (based on 25% of \$350,000) and shall have no responsibility for other augmentation costs or operation and maintenance costs of the ESDF in 2018.

3. Beginning January 1, 2018 and thereafter, the Town shall have no further obligations or expectations with respect to the ESDF, except as set forth in Section III.F.2. above and the Town will have the continued right to divert and deliver stormwater flows into the ESDF not to exceed the historic flows for the 100-year storm event.

4. Commencing January 1, 2018 and thereafter, the County shall pay for maintenance and repairs of the ESDF in an amount not to exceed \$1,000.00 in any given calendar year.

5. Should required maintenance, repairs or restoration (collectively "work") of the ESDF improvements exceed \$1,000.00 in calendar year 2018 or any calendar year thereafter, the costs of such work shall be paid from the available fund balance in the ESDF O&M Fund. Notwithstanding the foregoing, the ESDF O&M Fund must be fully funded in the amount of one million two hundred thousand dollars (\$1.2M) prior to termination of the Authority, as set forth in Section III.O.1. below.

6. To the extent there are insufficient monies in the ESDF O & M Fund, the County shall pay 33.4%, the City shall pay 33.3% and Timnath shall pay 33.3% of the cost of the work. This cost participation distribution shall apply to future expenses associated with the ESDF during the Remaining Loan Repayment Period and shall survive and continue after termination of the Authority. The future fiscal obligations for such amounts are contingent upon annual appropriations by the County, City and Timnath.

7. The County's adopted purchasing policy shall apply and, when required, a competitive bid process will be used to select a contractor for the work unless the County, City and Timnath mutually agree otherwise. The County, City and Timnath must approve the award of a contract, which approval shall not be unreasonably withheld. In the event unanimous approval is not achieved, the City and County will jointly select a professional engineer licensed in Colorado

and Timnath will select a professional engineer licensed in Colorado. The two engineers will then jointly select the contractor to whom the contract will be awarded.

8. At least thirty (30) days before the date on which the Authority is terminated, the County will accept transfer of ownership of the ESDF from the Authority and the Authority's ESDF O&M Fund shall be transferred to the County and placed in a dedicated, interest earning fund for future costs associated with the ESDF.

#### **G. Local Match Reimbursement**

The County, City and Town waive reimbursement by the Authority to them of the local match contributions made by each for the Pre-Disaster Mitigation Disaster Grant that would otherwise be due under the Boxelder IGA in the following estimated amounts: County: \$500,000; City: \$200,000 and Town: \$300,000.

#### **H. Town 2016 Fees**

1. Within 24 hours after approval of this Agreement by the governing bodies of all of the Parties, the Town will remit to the Authority all of the Stormwater Service Fees and System Development Fees collected in 2016 and payable to the Authority in 2017.

2. Such 2016 fees are estimated to total \$462,399.73.

#### **I. Ratification by Town**

The Town hereby ratifies and approves (i) all modifications and extensions of the CWCB Loans accomplished prior to the execution of this Agreement; and (ii) the Day Settlement.

#### **J. Prepayment of Fees**

To enable the Authority to meet its fiscal obligations for any calendar year, the County, City and Town may, but are not required to, remit to the Authority all or a portion of the fees each such entity collected in for such year and which are otherwise payable in the following calendar year, so long as there is no additional cost to the Authority for such prepayment. All Members hereby ratify and approve of all prepayments accomplished prior to the execution of this Agreement.

#### **K. Role of Authority**

Based on the completion of the Projects and the County's assumption of administrative functions for the Clark Reservoir Project and ESDF, the Members will direct that the operation of the Authority be limited to determining and assessing fees, paying the CWCB Debt Service, holding meetings as required or needed, obtaining legal advice as needed, and completing required audits or other reports. Notwithstanding the foregoing, or any other provision of this Agreement,

nothing contained herein shall modify or constrain the Authority or power of the Authority under the Boxelder IGA.

**L. Due Date for Fees/Payments in Lieu**

All fees and/or payments in lieu of fees required to be made by the Parties to the Authority shall be paid on or before May 1 of each calendar year.

**M. Stormwater Service Fee**

1. The Stormwater Service Fee shall be calculated and paid to the Authority pursuant to billing policies and fee schedules adopted by the Authority.

2. The Stormwater Service Fee will continue to be collected by the Authority on behalf of the County. The County will reimburse the Authority for costs of collection from properties located within unincorporated Larimer County and such costs shall not be included in the Authority Annual Operating Costs.

3. Pursuant to section 5.04 of the IGA, the City and Town elect to collect the Stormwater Service Fees due from fee payers within their respective boundaries and remit such Service Fees to the Authority.

**N. System Development Fee**

1. The System Development Fee shall be calculated and paid to the Authority pursuant to billing policies and fee schedules adopted by the Authority.

2. Pursuant to section 5.04 of the IGA, the County, City and Town elect to collect the Stormwater System Development Fees due from fee payers within their respective boundaries and remit such Development Fees to the Authority.

**O. Termination of Authority**

1. Upon payment in full of the CWCB Loans, availability of the minimum amount of \$1M in the Clark Reservoir O&M Fund and \$1.2M in the ESDF O&M Fund, and collection of sufficient fees to accomplish the equalization as set forth in section III O. 3. below (the "Equalization Payments"), the County, City and Town shall cooperate to cause the Authority's assignment of the Coal Creek Agreement to the County and transfer of fee ownership of the ESDF to the County pursuant to Sections III(E)(5) and III(F)(7) of this Agreement, transfer funds in the ESDF O&M Fund and the Clark Reservoir O&M Fund to the County if not already accomplished, transfer of the funds to Parties as necessary to accomplish the "Equalization Payments" and terminate the Authority in accordance with Article X of the First Amendment. The funds in the Authority's General Fund shall be used to make the Equalization Payments provided that the use of the Equalization Payments by all Parties shall be restricted as set forth in section III O. 3. below.

2. Nothing herein is intended to prevent or authorize the County, City or Town from independently assessing and collecting fees or taxes related to the Projects after the Authority is terminated, as such matters are beyond the scope of this Agreement.

3. Before termination of the Authority, the Members shall cause each Party to receive Equalization Payments from the Authority in an amount equal to the fees each Party or its fee payers have paid in excess of such Party's percentage of the Authority's Continuing Obligations set forth in section III A, B, C and D, as adjusted by section III.P and subject to the limit identified in section III F 2. The result of these payments shall be that the amounts contributed by each Party or the fee payers within each Party's jurisdiction shall equal the percentages set forth in section III. A, B, C, and D, as adjusted by section III. P and subject to the limit in section III F 2. The Members may cause the Authority to make the Equalization Payments from funds in the Authority's General Fund. Any Equalization Payments received by the Parties pursuant to this section shall be utilized for the long-term operation and maintenance of the Clark Reservoir Project and the ESDF.

**P. Annexation Adjustments**

Should land area within the Authority's Service Area be annexed from the County to the City, Town or Timnath, the Parties agree to adjust the financial commitments and cost participation percentages for the County set forth in this Agreement based on the changes in land area, revenue, and other financial impact upon the Parties in order to maintain a fair and equitable allocation of the Authority's Continuing Obligations among the Parties or their fee payers if the annexation occurs prior to termination of the Authority, or a fair and equitable allocation of the ongoing costs of operation and maintenance of Clark Reservoir and the ESDF if the annexation occurs after termination of the Authority.

**Q. Audit Committee**

Each Party to this Agreement shall appoint one person to sit on a committee (the "Audit Committee") to meet at least annually following the completion of the annual Authority audit and at additional appropriate times to review compliance with this Agreement and compare all contributions to the Authority from the Parties or the fee payers within each Parties' boundaries with the percentages set forth in section III above. The Audit Committee shall make recommendations to the Authority on whether to prepay the CWCB Loans, add to the Clark Reservoir and ESDF O&M Funds, and/or add to cash balances sufficient to make the Equalization Payments based on the availability of funds and synchronization of the schedule for satisfying these three conditions before termination of the Authority as outlined in Section III. O. No Party shall appoint a member of the Authority Board of Directors to the Audit Committee.

**R. Counterparts & Signatures**

This Agreement may be executed in several identical counterparts, all of which taken together shall constitute one single agreement between the parties. Facsimile signatures and

signatures transmitted via portable document format (PDF) shall be considered as original signatures.

**S. Survival**

The Parties agree that the terms of this Agreement shall continue and survive the termination of the Authority.

**T. Timnath's Role**

The Parties agree that Timnath, by its signature of this Agreement, does not become a Member or a party to the Boxelder IGA. Timnath shall have no obligations under the Boxelder IGA and Timnath's rights and obligations shall be limited to those set forth in this Agreement and those set forth in the Timnath Agreement.

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*Signature Page Follows*

**BOARD OF COUNTY COMMISSIONERS  
OF LARIMER COUNTY**

By: \_\_\_\_\_  
Chair DATE

Attest: \_\_\_\_\_  
Deputy Clerk

**CITY OF FORT COLLINS, COLORADO**

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

ATTEST:

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

Approved as to form:

\_\_\_\_\_  
Sr. Assistant City Attorney

**TOWN OF WELLINGTON, COLORADO**

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

Attest:

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

By: \_\_\_\_\_  
Town Clerk



**TIMNATH DEVELOPMENT AUTHORITY  
OF COLORADO**

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

Attest:

By: \_\_\_\_\_  
Chairperson

By: \_\_\_\_\_  
Secretary