

RESOLUTION 2020-119
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE EXECUTION OF AN
INTERGOVERNMENTAL AGREEMENT AMONG LARIMER COUNTY, THE CITY OF
FORT COLLINS, AND THE CITY OF LOVELAND RELATED TO CORRECTIVE
MEASURES AT THE LARIMER COUNTY LANDFILL

WHEREAS, the Larimer County Solid Waste Facility at 5887 S. Taft Hill Road (“Landfill”) is a regional solid waste processing and disposal site operated and maintained by the Larimer County (“County”); and

WHEREAS, since 1967 the Landfill site has been and is currently owned in the following undivided interests: 50% Fort Collins, 25% Larimer County and 25% City of Loveland; and

WHEREAS, Fort Collins operated the Landfill from 1963 until January 1, 1975, after which the County operated the Landfill pursuant to an agreement among the City, the City of Loveland and the County (collectively the “Parties”) dated November 21, 1974, and remains the current operator; and

WHEREAS, the Parties have been collaborating since 2018 to assess and propose corrective measures for environmental contamination of groundwater detected at the Landfill and extending to the City’s adjacent Fromme Prairie Natural Area, in cooperation with the Colorado Department of Public Health and Environment (“CDPHE”); and

WHEREAS, the Parties desire to enter into an Intergovernmental Agreement formalizing the roles, responsibilities and financial commitments of Fort Collins, Larimer County, and Loveland with respect to planning and carrying out corrective measures to address such environmental contamination.

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

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

Section 2. That the Mayor is hereby authorized to execute the Intergovernmental Agreement 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 a regular meeting of the Council of the City of Fort Collins this 22nd day of December, A.D. 2020.



Mayor

ATTEST:



City Clerk



INTERGOVERNMENTAL AGREEMENT AMONG LARIMER COUNTY, THE CITY OF FORT COLLINS, AND THE CITY OF LOVELAND RELATED TO CORRECTIVE MEASURES AT THE LARIMER COUNTY LANDFILL

This Intergovernmental Agreement (“IGA”) is made by and among the Board of County Commissioners of Larimer County, Colorado (“County”), the City of Fort Collins, Colorado (“Fort Collins”), and the City of Loveland, Colorado (“Loveland”) as of the __ day of __, __ (“Effective Date”). The three entities are referred to in this IGA collectively as the “Parties” and individually as a “Party.” Fort Collins and Loveland are referred to collectively in this IGA as the “Cities” and individually as a “City.”

WHEREAS, the Larimer County Solid Waste Facility at 5887 S. Taft Hill Road (“Landfill”) is a regional solid waste processing and disposal site operated and maintained by the County; and

WHEREAS, the site on which the Landfill operates is described as the North one-half of Section 9, Township 6 North, Range 69 West of the 6th P.M. (“Landfill Site”), which is depicted on the map attached hereto as **Exhibit A**; and

WHEREAS, Fort Collins and the County entered into a Memorandum of Agreement dated October 17, 1963 (the “1963 MOA”) and all three Parties subsequently entered into a Memorandum of Agreement dated September 16, 1965 (the “1965 MOA”), related to the establishment and operation of the Landfill; and

WHEREAS, since 1967 the Landfill Site has been and is currently owned by the Parties in the following undivided interests: 50% Fort Collins, 25% County and 25% Loveland; and

WHEREAS, Fort Collins operated the Landfill from 1963 until January 1, 1975, after which the County operated the Landfill pursuant to an agreement among the Parties dated November 21, 1974 (the “1974 Agreement”) and remains the current operator as of the Effective Date; and

WHEREAS, the Landfill is forecasted to consume the available permitted air space capacity by the fourth quarter of the year 2024 at which time it will be closed; and

WHEREAS, environmental contamination has been detected at and emanating from the Landfill Site, which contamination extends onto some adjoining natural area property owned and/or managed by Fort Collins that is commonly referred to as the Cathy Fromme Prairie and the Franz Property (collectively, the “Natural Area”) and Fort Collins’ adjoining right-of-way for Taft Hill Road (the “Taft Hill ROW”); and

WHEREAS, in 2018, the CDPHE presented the Parties with a Draft Compliance Order on Consent related to an assessment of corrective measures and recommendation and implementation of a remedy for contamination at and from the Landfill to resolve alleged violations of the Colorado Solid Wastes Disposal Sites and Facilities Act and implementing regulations; and

WHEREAS, on October 8, 2020, the CDPHE issued a final Notice of Violation and Cease and Desist Order related to alleged surface water quality contamination caused by the Landfill to all three Parties; and

WHEREAS, the Parties desire to monitor and remediate contamination at and from the Landfill in a manner consistent with law to protect human health and the environment; and

WHEREAS, the Parties desire to enter into this IGA to establish the Parties' agreement concerning assessing, selecting, and implementing corrective measures necessary to remediate the environmental contamination at and from the Landfill, and sharing certain costs for same all as set forth in this IGA; and

WHEREAS, the County and Loveland understand and acknowledge that Fort Collins is also the owner and/or manager of the Natural Area that has to some extent been contaminated by the Landfill; and that, notwithstanding this dual status, the County and Loveland agree to reasonably accommodate Fort Collins' interests as an adjacent landowner in the cleanup of such contamination at the Natural Area in accordance with this IGA; and

WHEREAS, Fort Collins has cooperated and intends to continue cooperating with the County's efforts to monitor and remediate contamination on the Natural Area by providing access and easements as reasonably necessary to conduct such activities; and

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

WHEREAS, each of the Parties has satisfied all applicable notice and hearing requirements prior to entering into this IGA.

NOW THEREFORE, in consideration of the above-recited premises, the terms and conditions of this IGA, all of which the Parties acknowledge are material; and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged; the Parties agree as follows:

I. DEFINITIONS AND PURPOSE

A. As used in this IGA, the following definitions will apply:

1. “Environmental Contamination” means all currently known and subsequently discovered contamination of soil, air and surface and ground water at or emanating from the Landfill.
 2. “Landfill Corrective Measures Work” means monitoring, investigation, assessment, planning, designing of remedies, and remediation of any Environmental Contamination that is: (a) consistent with a plan approved by CDPHE or EPA or in furtherance of seeking CDPHE or EPA approval of a plan; (b) directed or ordered by CDPHE or EPA; (c) required by, or necessary to comply with, CDPHE regulations (as interpreted by CDPHE or as finally interpreted by a court, including an administrative court) pertaining to the Environmental Contamination; or (d) otherwise as mutually agreed to in writing by the Parties. The County shall independently (from the Cities) perform remedial work to address the Environmental Contamination as required by law. For clarity, this IGA does not prevent the County from challenging decisions and actions of CDPHE or the EPA, and this IGA does not obligate the County to comply with interpretations of regulations or directives or orders from CDPHE or the EPA that it deems invalid or inapplicable, and the County pursues a resolution in a responsible manner to that disagreement. If a cost is determined to not be a shared cost, the Cities shall not be obligated to reimburse under the cost sharing provisions of this IGA and the remaining terms shall continue in effect.
- B. The purpose of this IGA is to:
- A. Establish a framework for the allocation of responsibilities and sharing of costs between the owners of the Landfill Site to address the Environmental Contamination and perform the Landfill Corrective Measures Work. In the event that the CDPHE or EPA does not approve Landfill Corrective Measures Work to address the Environmental Contamination, the Parties agree to negotiate remediation efforts to address the Environmental Contamination.
 - B. Clarify the responsibilities for the costs of closure and post-closure care for the Landfill (as if it were not contaminated) distinct from the Landfill Corrective Measures Work.
 - C. Establish a framework for timely communication and necessary coordination regarding the Landfill Corrective Measures Work.
 - D. Clarify the roles and responsibilities of the Parties with respect to the Landfill Corrective Measures Work, including coordination and cooperation between Fort Collins and the County with respect to the review and selection of corrective measures that may be implemented on or around the Natural Area.

II. TERM

The Effective Date listed above is the date on which all Parties to this IGA have fully executed this IGA. This IGA shall become effective on the Effective Date and shall remain in effect until such time as it is terminated: 1) by written agreement of all Parties, or 2) when the Parties agree in writing that the remediation of the Environmental Contamination is completed, whichever first occurs.

III. LANDFILL SITE

- A. The Landfill Site shall continue to be used for regional solid waste purposes consistent with this IGA, the 1974 Agreement, and the Intergovernmental Agreement for Solid Waste Programming and Infrastructure Improvements made by the parties in 2019 (“2019 Agreement”). Except as explicitly described herein with specific reference to the agreement or plan being amended or altered, this IGA does not in any way amend or otherwise alter the 1974 Agreement or any other agreements, management plans or closure plans not prepared as part of Landfill Corrective Measures Work, or the continued operation of the Landfill by the County. To the extent provisions in the 1974 Agreement allocates responsibility for Environmental Contamination among the Parties and Closure Costs (as defined below), those provisions are amended by this IGA’s provisions on allocation of responsibility for Environmental Contamination. Environmental Contamination is addressed by this IGA and the 1974 Agreement addresses landfill operation issues as if there were no Environmental Contamination. In the event of any conflict between or among any of the terms and conditions stated in this IGA and those stated in any of the agreements and plans listed in the prior sentence which cannot be resolved so as to give full effect to both or all provisions, then, as between the Parties, the terms and conditions contained in this IGA shall control.
- B. No Party shall sell or otherwise dispose of its ownership interest in the Landfill or Landfill Site without the prior written approval of all Parties which approval may be withheld or conditioned in any Party’s sole discretion.

IV. FUNDING OF CLOSURE AND POST-CLOSURE CARE OF THE LANDFILL, AND LANDFILL CORRECTIVE MEASURES WORK

- A. Cost Responsibilities:
1. “Closure Costs” are those costs of closure and post-closure care activities, known and unknown, that would be required for the Landfill, consistent with law, as if there was no Environmental Contamination. The Parties agree that these activities generally consist of the requirements and items listed by the County’s third-party consultant and approved by CDPHE for

- 2019, with such list attached as **Exhibit B**. The County shall pay 100% of the Closure Costs.
2. “Remediation Costs” are those costs directly related to analyzing, developing, implementing, and monitoring the Landfill Corrective Measures Work, including without limitation the costs of consultants associated therewith, that are incurred for Landfill Corrective Measures Work on or after the Effective Date of this IGA.
 3. Costs shall be allocated and shared among the Parties as follows:
 - a. The County shall pay 100% of the first \$3,000,000.00 (\$3M) of Remediation Costs (the “Initial Remediation Costs”).
 - b. If Remediation Costs exceed \$3,000,000.00, the Parties shall apportion such Remediation Costs that exceed \$3,000,000.00 (the “Shared Remediation Costs”) as follows:
 - i. The County shall pay sixty percent (60%).
 - ii. Fort Collins shall pay thirty percent (30%)
 - iii. Loveland shall pay ten percent (10%).
 4. The Parties acknowledge that CDPHE, pursuant to C.R.S § 30-20-104.5, and relevant CDPHE regulations, may require the Landfill to post financial assurance for the Remediation Costs in addition to the Closure Costs. The incorporation of the Remediation Costs into the required financial assurance shall not change the distinction herein between Closure Costs and Remediation Costs. For any financial assurance required by CDPHE for Remediation Costs, the County shall be responsible for satisfying the first \$3,000,000.00. Any required financial assurance for Remediation Costs above \$3,000,000.00 shall be shared 60% County, 30% Fort Collins, and 10% Loveland. The Parties each retain full discretion to satisfy their portion of the assurance obligation by any means acceptable to CDPHE. The financial assurance obligation is in addition to the obligation to pay Remediation Costs, and any unused assurance funds shall be returned to the party that posted it. The County will coordinate with CDPHE on the posting requirements for any Remediation Cost assurances and keep the Cities apprised of all available posting options with sufficient time to choose the option each prefers.
 5. “Litigation Costs” include the costs of litigation in judicial or administrative forums, and include the costs of legal fees, expert witness fees, and consultant fees for litigation, and any costs imposed against any Party as a result of litigation. All Parties shall be responsible for their respective Litigation Costs. If, however, all Parties agree that there should be action to challenge a regulatory decision, the Parties in agreement with

the challenge to a regulatory decision will share Litigation Costs for such challenge.

6. “Penalties and Fines” include any assessment of penalties, fines, charges, or costs for failing to comply with any CDPHE requirement pertaining to the Environmental Contamination. Penalties and Fines shall be independent of Remediation Costs and Litigation Costs. The County will be solely responsible for Penalties and Fines unless they are assessed notwithstanding the County’s diligent efforts to comply with any regulatory requirement pertaining to the Environmental Contamination, in which case the Penalties and Fines will be shared as follows: County pays 60%, Fort Collins pays 30%, Loveland pays 10%. Any disagreement regarding the County’s diligent efforts for the purpose of this subsection shall be considered a “dispute” and shall be resolved in accordance with the Dispute Resolution provision in Section IX of this IGA.
7. “Internal Costs” are the salaries and overhead for the Parties’ employees and out of pocket expenditures for outside legal counsel retained by a Party for matters covered by the cost sharing provisions of this IGA. Each Party shall be responsible for its own Internal Costs.

B. Accounting and Reimbursement for Shared Remediation Costs.

1. The County will be responsible for tracking all financial information needed to determine and track the Remediation Costs.
2. On or before March 1 of each year, the County shall provide to the Cities:
 - a. A detailed itemization and accounting of the Remediation Costs incurred and paid during the prior calendar year (“Statement”), with an invoice, if any, to each City for reimbursement to the County of that City’s share of any Shared Remediation Costs (“Invoice”); and
 - b. A detailed projection of the estimated Remediation Costs and Shared Remediation Costs to be incurred in the current calendar year. The projection of costs shall consider the likely schedule for implementing the required Landfill Corrective Measures Work based on all legal requirements.
3. Review and Payment of Remediation Costs. The Cities may request additional information, clarification, or documentation regarding the County’s Statement and Invoice, as necessary to verify and agree to the stated and invoiced amounts. The Cities shall have thirty days to review the County’s Statement and Invoice for conformance with the IGA, and object to them, except that said thirty days shall not commence until a City

requesting additional information, clarification, or documentation has received the requested information, clarification, or documentation, to the extent the same may reasonably be made available. As for each City:

- a. If no objection is made, the City will be deemed to have accepted the Statement and Invoice presented to that City, and shall, within forty-five days after receipt of such Statement and Invoice, pay the County the amount stated in the Invoice.
- b. If any objections are made to any Statement or Invoice presented to that City, the objections shall be considered a “dispute” and shall be resolved in accordance with the Dispute Resolution provisions in Section X of this IGA; provided, however, that all Remediation Costs set forth in the Statement that are not objected to shall be deemed accepted by that City and that City shall, within forty-five days after receipt of such Statement and Invoice, if any, pay the County the amount stated in the Invoice less any amounts attributable to the Remediation Costs that City has objected to. Once the dispute over the objections is resolved, that City shall, within forty-five days after resolution of the dispute, pay the County the amount agreed upon as part of the dispute resolution process.

V. RESPONSIBILITY FOR IMPLEMENTATION OF CLOSURE AND POST-CLOSURE AND LANDFILL CORRECTIVE MEASURES WORK AND COMMUNICATION AND COORDINATION WITH STATE AND FEDERAL REGULATING AGENCIES

A. County Responsibilities

1. The County shall independently (from the Cities) perform the Landfill Corrective Measures Work and negotiate and correspond with the CDPHE and any other regulatory governmental entities concerning the Landfill Corrective Measures Work.
2. Pursuant to the 1974 Agreement, the County shall continue to independently manage Landfill closure and post-closure care.
3. The County will not request Fort Collins or Loveland be included or otherwise be named by CDPHE or any other regulating entity as a party to a compliance order or any other action related to the Environmental Contamination. The County will use reasonable efforts to avoid naming Fort Collins or Loveland as a party to any proceeding and will not argue in any proceeding that Fort Collins or Loveland is an indispensable party to the proceeding. The County will request in negotiations with CDPHE or

other regulating entity that the County be the sole responsible party to implement any required action to address the Environmental Contamination or for any enforcement action, administrative proceeding, or regulatory agreement pertaining to the Environmental Contamination.

4. The County will negotiate with CDPHE appropriate terms of any consent order or a unilateral order between the County and CDPHE as the only named respondent for Landfill Corrective Measures Work. In the event that a Division of CDPHE names Fort Collins or Loveland as parties to any administrative or judicial enforcement action or order related to the Landfill, the County will promptly and formally request the CDPHE's dismissal of both Cities as parties to any such action based on the County's responsibility to perform the Landfill Corrective Measures Work set forth in this IGA. It is the Parties' intent and agreement that neither Fort Collins nor Loveland shall be named as a party to any administrative or judicial enforcement action or order addressing the Landfill Corrective Measures Work unless a Court of lawful jurisdiction determines Fort Collins or Loveland to be an indispensable party to the action.
5. If despite all reasonable efforts by the County, Fort Collins and/or Loveland are named parties to any administrative or judicial enforcement action or order related to the Landfill, the County will coordinate with the named City(ies) about responses to the actions; provided, however that each named City shall have the right to communicate with and independently participate in any administrative or judicial enforcement action or order with respect to which it is a named party about the subject matter of such action.

B. The Cities' Responsibilities

1. Neither City will communicate directly or indirectly with CDPHE or other regulatory entity regarding the County's performance of the Landfill Corrective Measures Work, the Environmental Contamination, closure and post-closure activities, and negotiations with CDPHE or other regulatory entity, unless otherwise allowed under this IGA.
2. Unless specifically named as a party to any administrative or judicial enforcement action, order, or otherwise the recipient of a communication from the CDPHE requesting an independent response, Fort Collins and Loveland shall not communicate with the CDPHE or other regulatory entity regarding the closure and post-closure activities and the Landfill Corrective Measures Work except to respond to CDPHE inquiries directed specifically to that City regarding such matters. In the limited circumstances in which Fort Collins or Loveland is reasonably required

and permitted by this IGA to communicate with regulatory authorities concerning Landfill matters, including remediation of Environmental Contamination or the Landfill Corrective Measures Work, Fort Collins or Loveland will use reasonable efforts to discuss the subject of such communication with the County prior to such communication with the regulatory authority.

3. The limitation in paragraph V.B.2, above, as to communication with CDPHE, shall not apply to:
 - a. Notifying CDPHE about the terms of this IGA.
 - b. As permitted by Section V.B.2, above.
 - c. Any circumstance that presents a threat of immediate and serious physical harm to human health or immediate and serious harm to the environment about which either City may communicate with CDPHE directly, with concurrent notice to the County. The parties intend this exception will not apply to the present circumstances addressed by this IGA and reasonably related circumstances, and instead is limited to matters of an urgent and serious nature that are currently unknown.
 - d. Any reporting or notice required by federal or state law, with concurrent notice to the County.
 - e. Any communication with CDPHE regarding the Natural Area and unrelated to the Landfill Corrective Measures Work and related contaminants, with concurrent notice to the County.
4. If despite all reasonable efforts by the County, Fort Collins and/or Loveland are named parties to any administrative or judicial enforcement action or order related to the Landfill, Fort Collins and Loveland will work with representatives of the County to coordinate responses to the actions.

C. Coordination and Communication

1. The County shall use reasonable efforts to keep Fort Collins and Loveland apprised of significant events, submittals, and decisions regarding communications with CDPHE related to Landfill closure and post-closure care activities and the Landfill Corrective Measures Work.
2. The Parties shall meet to discuss the Environmental Contamination, closure and post-closure care activities, and the Landfill Corrective Measures Work following the Effective Date of this IGA. The agenda for these regular meetings will cover any subject related to Environmental

Contamination, Landfill closure or post-closure care activities, and Landfill Corrective Measures Work if requested by a City. The County will provide relevant information before the meeting but is not required to provide information the County does not already have, including collecting additional data, testing, analysis, or other assembly or compilation. Unless otherwise mutually agreed to by the Parties, the County will convene such meetings on a regular schedule as follows:

- a. Once every other month for the first two years after the Effective Date of this IGA.
- b. Once every three months beginning three years after the Effective Date of this IGA through five years after the Effective Date of this IGA.
- c. After five years following the Effective Date of this IGA, once every six months.

3. Public Outreach

- a. The Parties agree to coordinate in advance, through their respective Project Managers and necessary public information staff, the release of any public information or outreach related to this IGA, the Environmental Contamination, or the Landfill Corrective Measures Work, including public disclosures, public comment processes, or press releases.
- b. Prior to the date of publication of any related public notice, each Party agrees to provide advance notice to the other Parties of any public meeting of its governing body at which the governing body is scheduled to publicly discuss or act on any matter related to the Environmental Contamination or the Landfill Corrective Measures Work.

D. Remediation of Environmental Contamination at Natural Area

1. All Parties will rely on a CDPHE approval of a remediation plan to set the standards (numeric or descriptive) for environmental cleanup of the Natural Area.
2. The County will use its best reasonable efforts to avoid any disturbance of the Natural Area.
3. If notwithstanding the requirement in subparagraph 2 above, the Natural Area must be disturbed:

- a. The County will protect (in its proposal to CDPHE) all Natural Area values stated in the Fort Collins Natural Areas and Conserved Lands Easement Policy for the Natural Area, which is attached hereto as **Exhibit C**.
- b. The County proposal to CDPHE for approval will describe (1) the Natural Area values underlying or impacted by its proposal, and (2) how the strategies in the proposal attain and protect those values.
- c. Fort Collins will accept a CDPHE approval that is based on Natural Area values as determined by CDPHE after CDPHE's review of the County proposal.
- d. In January 2021, the Fort Collins City Manager will present to and recommend for approval to the Fort Collins City Council an ordinance authorizing the easement that is required for the County to implement the Landfill Corrective Measures Work, consistent with this Section 4. This ordinance will confirm that any easement as required for the remediation plan developed and approved in accordance with this Section V.D is authorized and shall be granted (without payment of real estate-related charges) in accordance with this Section, subject only to the general resource protection standards, and standards and guidelines for restoration in the Fort Collins Natural Areas and Conserved Lands Easement Policy. Any costs incurred by the County in complying with these objective requirements of the Easement Policy shall be Remediation Costs. If the ordinance referenced in this paragraph is not approved in January, 2021 and has not been authorized at such time as a need for an easement arises in the future, the failure to approve such an ordinance shall be considered a breach.
- e. By way of example but not limitation, although Fort Collins strongly disfavors phytoremediation on the Natural Area, if the Landfill Corrective Measures Work as approved by CDPHE requires such phytoremediation after consideration of the matters set forth in this Section 4, the easement will include authorization for phytoremediation.

VI. PAYMENT OF LANDFILL FEES AND CHARGES: AMENDMENT OF 1974 IGA

The Parties agree that Paragraph 5 of the 1974 Agreement, entitling the Cities' to use the Landfill without charge for "disposal of trees, limbs, and other refuse (*sic* - refuse) related to such City's governmental operations" is hereby terminated effective January 1, 2021.

VII. WAIVERS AND RESERVATIONS

- A. Comprehensive Environmental Response, Cost, Liability Act (CERCLA). All Parties expressly agree that they will not pursue any CERCLA or other similar federal or state law remedies against each other **related to the Environmental Contamination or the Landfill Corrective Measures Work**.
- B. Each Party reserves all rights and duties to respond to any emergency that will cause an immediate harm to the public health or environment. Each Party acknowledges that no such circumstance is known to exist as of the Effective Date of this IGA.
- C. In consideration of the mutual promises and undertakings set forth in this IGA, each Party waives and releases all claims, demands, damages, costs, causes of action, suits at law or in equity, of whatever kind or nature, known or unknown, accrued or un-accrued, contingent or non-contingent, arising from the beginning of time up until the Effective Date of this IGA, that such Party may have against any other Party arising from or related to the Landfill, including but not limited to contribution or other claims under CERCLA.

VIII. ALLEGED BREACH OF MATERIAL OBLIGATION OF THIS IGA

- A. If any Party believes another Party is in breach of any material obligation under this IGA, the non-breaching Party shall provide written notice and a description of the alleged breach to the other Parties. The Party alleged to be in breach shall have 30 days to cure such breach. After the cure period, if the alleged breach remains uncured, the Parties **agree that the uncured breach** shall be considered a “dispute” and shall be resolved in accordance with the Dispute Resolution provisions in Section IX of this IGA. After completion of the Dispute Resolution process, any Party may seek specific performance of the IGA and/or damages for the alleged breach to the extent and in any manner authorized by law.
- B. Each Party specifically agrees to waive and forego any right it may have to **unilaterally** terminate this IGA as a remedy for the breach by another Party of any material obligation under this IGA.

IX. DISPUTE RESOLUTION

In the event of any dispute among the Parties arising out of this IGA including, without limitation, whether there has been a breach of any material obligation under this IGA, the following dispute resolution process shall be followed:

- A. Notice of Dispute. If any Party asserts a claim, dispute, or controversy arising out of this IGA or alleges that any other Party has failed to comply with, or is in default of, any term or condition in this IGA including, without limitation, the failure to comply with any provision of this IGA in good faith (collectively

“Claim”), the Party asserting the Claim shall provide written notice within a reasonable period after learning of the same. The Parties agree that they shall endeavor to resolve all Claims in good faith either informally under Subsection B or through non-binding mediation under Subsection C.

- B. Informal Dispute Resolution. Upon delivery of a notice of a Claim pursuant to Subsection A, the Parties agree that their respective Project Managers shall meet in person or hold a telephone conference within five (5) business days to confer in good faith about the Claim and its resolution. If the Project Managers are unable to resolve the Claim within said five (5) business-day period, then the Parties agree to submit the matter to the City and County managers who, unless otherwise mutually agreed, shall have fifteen (15) business days to resolve the Claim before triggering mandatory non-binding mediation set out in Subsection C.
- C. Mediation. Any Claim that has not been resolved pursuant to Subsection B, shall be submitted to non-binding mediation. All such mediated settlement conferences shall take place at a mutually acceptable time and place within sixty-three (63) days after the mandatory non-binding mediation is triggered under Subsection B. The mediator shall be selected by mutual agreement of the Parties; or, if the Parties cannot agree on a mutually acceptable mediator, then each Party shall designate a person who it believes to be qualified to mediate the Claim, and those three people shall then appoint a mediator that they believe is qualified to fairly and diligently conduct the mediation. The Parties shall share the mediator’s fee and any filing fees equally but shall be responsible for payment of their own attorneys’ and consultants’ fees; unless one of the Parties does not have a dispute in which case the two Parties in dispute will share the mediation fees. To the extent an agreement pertaining to the Claim is reached during the mediation, that agreement shall be enforceable as a settlement agreement in any court having jurisdiction thereof.
- D. Litigation. Any Claim that has not been resolved pursuant to Subsections B or C may be brought as a claim in the District Court in and for County of Larimer, State of Colorado, or the federal District Court in Denver if federal issues may be involved, and venue, for all such actions shall lie only in such courts. The Parties expressly and irrevocably waive any objections or rights that may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise.
- E. Remedies Cumulative. In addition to any other remedies provided in this IGA, each Party shall be entitled to seek any legal or equitable relief authorized under law for a failure of any other Party to comply with any term or condition in this IGA that is not inconsistent with the Claim resolution provisions set out in this Article. By signing this IGA, no Party is waiving any other legal or equitable rights it might have concerning actions by any other Party that are not described in this IGA.

X. MISCELLANEOUS

- A. Confidentiality. The Common Interest Agreement previously executed by the Parties applies to the work performed pursuant to this IGA.

- B. Calculation of days. Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding holidays and weekends and excluding the day on which the period commences and by including the day on which the period ends.

- C. Notice. Any notice, request, demand, consent, or approval required or permitted under this IGA shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, or by overnight commercial courier, addressed below. Such notice or other communication shall be deemed given when so hand-delivered or three (3) business days after so mailed, or the next business day after being deposited within an overnight commercial courier. This provision shall not apply to documents provided pursuant to Section V (C).

- 1. If to County:
County Manager
PO Box 1190
Fort Collins, CO 80522

- County Attorney
224 Canyon Avenue
Suite 200
Fort Collins, CO 80522

- Larimer County Solid Waste Department
5887 S. Taft Hill Road
Fort Collins, CO 80526

- 2. If to Fort Collins:
City Manager
300 Laporte Avenue
P.O. Box 580,
Fort Collins, CO 80522

- City Attorney
300 Laporte Avenue
P.O. Box 580,
Fort Collins, CO 80522

- 3. If to Loveland:
Public Works Director
2525 W. First St.

Loveland, CO 80537

Environmental Compliance Administrator
Human Resources Department
500 E. Third St.
Loveland, CO 80537

City Attorney
500 E. Third St, Ste. 220
Loveland, CO 80537

- D. Annual Appropriations. Any financial obligations of the Parties arising under this IGA are contingent upon funds for that purpose being appropriated, budgeted and otherwise made available by the respective governing bodies of the Parties in their sole discretion. No term or condition of this IGA is intended nor shall be interpreted to create a multi-fiscal year obligation or debt of the Parties.
- E. Entire Agreement. This IGA is to be construed according to its fair meaning and as if prepared by all Parties hereto and is deemed to be and contain the entire understanding and agreement between the Parties hereto. There shall be deemed to be no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning this IGA unless set forth in writing and signed by the Parties hereto.
- F. Governing Law. This IGA shall be governed by and its terms construed under the laws of the State of Colorado.
- G. Nature of Relationship. The provisions of this IGA shall not be construed as creating a partnership, joint venture, or other relationship between the Parties. Unless specifically provided, this IGA shall not allow any Party to act as the agent of the other Party, nor permit any Party to have any authority to act for, or to assume any obligations or responsibilities on behalf of the other Party, nor in any manner limit the Parties in carrying out their respective separate businesses or activities. Employees, agents, consultants, and attorneys of one Party are not, and shall not be deemed to be, employees, agents, consultants, and attorneys of the other Party.
- H. Rule Against Perpetuities. If any property interest under this IGA would be void or voidable by application of the rule against perpetuities, it is the Parties' intent that the time for vesting of such interest shall be modified to be the longest available term that would be allowed under Colorado law without any applicable rule against perpetuities.
- I. No Personal Liability. No elected official, director, officer, agent or employee of any of the Parties shall be charged personally by, or held contractually liable to,

any Party under the terms and conditions of this IGA or any breach thereof, or because of its or their execution, approval or attempted execution of this IGA.

- J. Third Party Beneficiaries. This IGA is made for the sole and exclusive benefit of the Parties, and their successors and assigns, and it is not made for the benefit of any third party. The enforcement of the terms and conditions in this IGA and all rights of action relating to such enforcement shall be strictly reserved to the Parties. No third-party beneficiary rights shall be created by this IGA in favor of any person not a party to this IGA, unless the Parties mutually agree otherwise in writing.
- K. Counterparts. This IGA may be signed by the Parties, electronically or otherwise, in counterpart.
- L. Governmental Immunity. No term or condition of this IGA is intended nor shall be construed as a waiver, either express or implied, of the monetary limits, notice requirements, immunities, rights, benefits, defenses, limitations and protections available to the Parties under any applicable law, including but not limited to the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et. seq.*, as currently written or hereafter amended or implemented.
- M. Assignment. No Party may assign its interest in this IGA without the written consent of the other Parties, which consent may be withheld at the sole discretion of each Party.
- N. Amendment. This IGA may be modified or amended from time to time to reflect the mutual agreements and understandings of the Parties regarding the subject matter hereof. However, no modification or amendment of the terms and conditions in this IGA shall be valid or binding unless such modification or amendment is in writing and signed by all of the Parties or their respective successors in interest. The terms and conditions of any such modification or amendment shall be construed according to their fair meaning.
- O. Waiver. A waiver of any term or condition of this IGA must be in writing and executed by all the Parties. No waiver of any breach of any term or condition of this IGA by any Party shall be deemed to imply or constitute a waiver of any other term or condition of this IGA. The failure of any Party to insist on strict performance of any term or condition of this IGA shall not constitute or be construed as a waiver of that Party's or any other Party's rights including, without limitation, the right thereafter to enforce any other default of such term or condition; neither shall such failure to insist upon strict performance be deemed sufficient grounds to enable any Party to forego or subvert or otherwise disregard any other term or condition of this IGA.
- P. Force Majeure. No Party hereto shall be considered in default in the performance of an obligation hereunder to the extent that performance of such obligation is

delayed, hindered, or prevented by force majeure. Force majeure shall be any cause beyond the control of the defaulting Party which could not reasonably have been foreseen and guarded against. Force majeure includes, but is not limited to, acts of God, fires, riots, pandemics, incendiarism, interference by civil or military authorities, compliance with regulations or orders of military authorities, and acts of war (declared or undeclared), provided such cause could not have been reasonably foreseen and guarded against by the defaulting Party. Force majeure shall not include increases in labor, commodity, utility, material, supply, fuel, or energy costs, or compliance with regulations or orders of civil authorities.

- Q. Binding Effect. This IGA shall be binding upon and inure to the benefit of the Parties hereto and to their respective heirs, legal representatives, successors, executors, and permitted assigns.
- R. Construction. Throughout this IGA, the singular shall include the plural, the plural shall include the singular, and all genders shall be deemed to include other genders, wherever the context so requires. The terms “including,” “include” or derivatives thereof, unless otherwise specified, shall be interpreted in as broad a sense as possible to mean “including, but not limited to,” or “including, by way of example and not limitation.”
- S. Authority. Each of the Parties represents to the other Parties that such Party has full power and authority to execute, deliver, and perform this IGA, that such Party has taken the necessary steps that are lawfully required to execute, deliver, and perform this IGA, and that the individual(s) executing this IGA on behalf of such Party are fully empowered and authorized to do so.
- T. Severability. If any provision of this IGA is held to be invalid or unenforceable to any extent, the Parties shall meet, confer, and agree on appropriate modifications to this IGA to ensure that the original intent, obligations, goals, and purposes of this IGA are satisfied.

IN WITNESS WHEREOF, the Parties have caused this IGA to be ratified by resolution of their governing Boards or Councils as evidenced by the minutes of their governing Boards or Councils and executed by their duly authorized officers as of the date first written.

[SIGNATURE PAGES TO FOLLOW]

BOARD OF COUNTY COMMISSIONERS OF
LARIMER COUNTY, COLORADO

By: _____
Chair

ATTEST:

Approved as to form:

County Attorney

CITY OF FORT COLLINS, COLORADO

By: _____
Darin Atteberry, City Manager

ATTEST:

City Clerk

Approved as to form:

City Attorney

CITY OF LOVELAND, COLORADO

By: _____
Stephen C. Adams, City Manager

ATTEST:

City Clerk

Approved as to form:

City Attorney