

RESOLUTION 2021-037
OF THE COUNCIL OF THE CITY OF FORT COLLINS
AUTHORIZING THE CITY MANAGER TO SIGN AN
INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF GREELEY AND
LARIMER COUNTY TO FACILITATE COST-SHARING PROCESSES FOR
POST-FIRE WATERSHED RECOVERY ACTIVITIES

WHEREAS, the City operates through the Water Utility Enterprise a municipal potable water system which relies in part on water obtained from the Cache La Poudre River and the Colorado-Big Thompson (CB-T) watershed treated at City facilities located near Horsetooth Reservoir; and

WHEREAS, during the 2020 wildfire season, nearly 400,000 acres of landscape burned in critical watersheds through which the Cache La Poudre River, the CB-T system, and associated high mountain reservoirs supply water to Northern Colorado communities, including Fort Collins, Greeley, and Larimer County; and

WHEREAS, following forest fires like the 2020 Cameron Peak and East Troublesome wildfires, flash flooding is more frequent, leading to increased ash deposits and sedimentation in rivers, debris flows, and overall degradation of water quality, requiring municipal water systems operators incur significant additional water treatment expenses for remediation measures; and

WHEREAS, Utilities staff estimated \$1,000,000 in unanticipated operating and capital costs for the City's Water Treatment Facility to address the impacts of the 2020 wildfires, which total is anticipated to be adjusted as the impacts of the Cameron Peak and East Troublesome fires on the City's water quality and water supply are revealed, priority work is identified, and projects are scheduled; and

WHEREAS, after the 2020 wildfire season, regional stakeholders, including Fort Collins and Greeley, prepared an initial watershed assessment to identify priority areas for regional post-fire treatments and to explore options to reduce impacts on municipal water systems; and

WHEREAS, based on the watershed assessment, Greeley and Larimer County engaged the Natural Resources Conservation Service and entered into agreements for federal financial assistance through the Emergency Watershed Protection (EWP) assistance program; and

WHEREAS, to facilitate timely completion of the post-fire treatments approved under the EWP assistance program, Fort Collins Utility, Greeley, and Larimer County staff negotiated an intergovernmental agreement, a copy of which is attached hereto as Exhibit "A" and incorporated herein by reference, to establish a cost-sharing arrangement (the "IGA"); and

WHEREAS, the proposed IGA is drafted to accommodate including in-kind and other contributions from additional regional water providers and partners for portions of the EWP assistance program work, though Fort Collins, Greeley, and Larimer County will remain managing entities for the overall IGA work scope; and

WHEREAS, on March 16, 2021, City Council approved Ordinance No. 046, 2021 on First Reading to appropriate \$4,000,000 for post-fire emergency watershed treatments and costs under the proposed IGA; and

WHEREAS, Utilities staff has recommended that the City execute this agreement to enable deployment of Fort Collins Utility, Greeley, and Larimer County resources, in furtherance of a timely and successful completion of the work approved under the EWP assistance program; and

WHEREAS, Article II, Section 16 of the City of Fort Collins Charter empowers the City Council, by ordinance or resolution, to enter 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 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, Section 1-22 of the City Code provides that intergovernmental agreements and other cooperative arrangements between the City and other governmental entities are to be submitted to the City Council for review and approval, unless they fit within one of the exceptions that permit execution by the City Manager; and

WHEREAS, the City Council has determined that the IGA is in the best interests of the City and its residents.

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

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

Section 2. That the City Manager is hereby authorized to execute the IGA substantially in the form attached hereto as Exhibit "A", with such modifications and additional terms and conditions 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 of this Resolution.

Passed and adopted on at a regular meeting of the Council of the City of Fort Collins this 20th day of April, A.D. 2021.


Mayor

ATTEST:


City Clerk



**INTERGOVERNMENTAL AGREEMENT
REGARDING REHABILITATION WORK FOR THE CAMERON PEAK FIRE**

THIS AGREEMENT dated _____, 2021, is entered into by and between the following Parties: the City of Fort Collins, Colorado, a Colorado municipal corporation (“Fort Collins”); the City of Greeley, a Colorado municipal corporation (“Greeley”); and Larimer County, Colorado (together, “Managing Entities”).

RECITALS

- A. The 2020 Cameron Peak Fire (“Fire”) has burned over 200,000 acres in the watersheds of the Cache la Poudre (“Poudre”) River and Big Thompson River.
- B. The Fire has also burned large areas in and impacting private properties, and public infrastructure serving such properties, including roadways, bridges, culverts, and other public service facilities outside of the public right of ways.
- C. Greeley and the Water Supply and Storage Company immediately undertook measures to mitigate hazards and damages to drinking water supplies at the Chambers Reservoir.
- D. The Managing Entities each divert and treat, and/or take deliveries of water from the Poudre River watershed and the Colorado Big Thompson (“CBT”) Project, and/or maintain public infrastructure supporting private properties located in the basins affected by the Fire.
- E. Through the Emergency Watershed Protection Program, administered by the Natural Resources Conservation Service (“NRCS”), United States Department of Agriculture, Greeley and Larimer County separately received funding for post-fire mitigation and infrastructure protection efforts related to the Fire (“EWP funds”).
- F. In addition to EWP funds, various funds, grants, programs, and other monetary and other resources may be or become available to assist the Managing Entities to address and mitigate damages from the Fire in the Poudre River and CBT Project watersheds (“non-EWP funds”).
- G. Use of EWP funds may be restricted to pre-approved scopes of services and a local government “cost-share”, with EWP funds applied to a percentage of the project’s costs, and the entity(s) awarded the funds being responsible for the remaining percentage. Terms and scopes of services applicable to use of non-EWP funds will be set forth in a separate agreement(s).
- H. The Managing Entities desire to coordinate efforts to acquire the most funding possible and to efficiently and effectivity utilize EWP funds to address and mitigate damages from the Fire in the Poudre River and CBT Project watersheds.
- I. Greeley and Larimer County agree to be the main contacts and contracting parties for EWP funds.

J. All Parties agree to independently engage other federal and state agencies as practical, for the purposes of seeking and acquiring non-EWP funds, as defined below. As set forth herein, Greeley and Larimer County will coordinate with Fort Collins and other contributing parties to this Agreement to acquire and seek reimbursements under grant and program funding requirements.

K. Fort Collins and other water users that become contributing parties to this Agreement will also contribute matching funds to the cost-share portion of certain projects, as may be required by the terms associated with EWP funds applied under this Agreement.

L. The Managing Entities desire to work with the Coalition for the Poudre River Watershed (“CPRW”), a Colorado nonprofit corporation, to manage certain projects undertaken under this Agreement, as set forth in Paragraph .

M. The Managing Entities also desire to include other impacted water users in these efforts, including water providers and local governmental entities that may desire to become Parties in the future. The pressing need for this Agreement, and the shifting nature of Fire impacts have made it difficult for these other water users and entities to complete their internal evaluations and processes regarding whether to become a Party. Consequently, this Agreement includes a process to add “Contributing Parties” to this Agreement.

N. The Managing Entities desire to enter into an intergovernmental agreement to coordinate emergency stabilization and restoration services, e.g., hillslope mulching, debris catchment systems, vegetation matting, seeding, rock netting, on the targeted public and private lands burned by the Fire.

O. The Managing Entities wish to record their mutual understanding in intergovernmental agreements.

P. The Managing Entities enter this into agreement pursuant as permitted §29-1-203, C.R.S.

Q. Pursuant to Art. II, § 16 of the Fort Collins City Charter, the Fort Collins City Council, may, by ordinance or resolution, enter into contracts with other governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies.

R. Pursuant to Section 02.07.040, Greeley Municipal Code, Greeley may enter into contracts with other governmental bodies to furnish governmental services and make charges for such services or enter into cooperative or joint activities with other governmental bodies, the entry into such contracts being subject to the approval of the Greeley City Council under certain circumstances.

S. The authority for this Agreement is, without limitation, Section 18 of Article XIV of the Colorado Constitution; Section 6 of Article XX of the Colorado Constitution; Section 29-1-203,

C.R.S., and provisions of the Colorado Disaster Emergency Act, Section 24-33.5-701, et seq., C.R.S., as amended.

T. It is in the best interest of the citizens of Fort Collins, Greeley, and Larimer County for the parties to enter into this intergovernmental agreement.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter set forth, it is agreed by and between Fort Collins, Greeley, and Larimer County as follows:

AGREEMENT

1. **AUTHORITY.** This Agreement has been duly adopted by the Parties' governing bodies and the undersigned representatives are authorized to execute this Agreement on behalf of each respective Party.

2. **INCORPORATION OF RECITALS.** The foregoing recitals are hereby incorporated as if fully restated in their entirety.

3. **PARTIES TO THIS AGREEMENT.**

3.1. **Principals.** For purposes of completing the work described in this Agreement, portions will be delivered within the scopes of the respective funding award contracts secured by Greeley and Larimer County, and each funding recipient will take the lead in preparing and submitting reimbursements for costs associated with such work, as follows:

1. Category 1 – watershed work. Greeley will take the lead for purposes of initiating access to EWP funds and establishing the initial scope of qualifying watershed work, including hillslope and stream channel stabilization, erosion control, water supply infrastructure protection, and water quality work.

2. Category 2 – property and infrastructure work. Larimer County will take the lead for purposes of initiating access to EWP funds and establishing the initial scope of qualifying services for addressing impacts to private residences, roads, bridges, culverts and other public facilities outside of the public right of ways.

3. The Managing Entities will share responsibilities for mutually beneficial portions of qualifying Category 1 and 2 services and coordinating with third party project management services for Category 1 work.

3.2. **Addition of Parties.** Any other water user or local agency in the Poudre River watershed or that takes delivery of CBT Project water may become a “Contributing Party” to this Agreement by completing the Schedule of Participants addendum to this Agreement in the form of Exhibit B to be signed by all Parties.

3.3. **Withdrawal of Parties.** Any Party may withdraw itself from this Agreement by providing written notice pursuant to Paragraph 12. The withdrawing Party shall continue to be responsible for any commitments or contributions made prior to withdrawal.

4. **FUNDING.**

4.1. **EWP Technical Assistance Funds.** The EWP Sponsors, Greeley and Larimer County, will initially pay costs associated with NCRS-approved Technical Assistance Work under this Agreement, initial estimates for which and the associated work scoped are set forth in Exhibit A, attached hereto ("TA Funds"). EWP Sponsors may also pursue additional TA Funds for work later approved by NRCS, the work scopes for which will be incorporated in Exhibit A as amendments. Costs associated with approved TA Funds Work are ultimately 100% reimbursable.

4.2. **EWP Construction Funds.** In 2020, NRCS also awarded Financial Assistance funds ("FA Funds") to Greeley and Larimer County, respectively, for aerial mulching and enhanced mitigation efforts. Initial FA Funds awards and the associated work scopes approved by NRCS are set forth in Exhibit A.

4.3. **Local Matching Funds.** Under the respective FA Funds notices of award (a/k/a EWP funds) the Parties are required to expend certain local matching funds, anticipated to be 20 percent of the EWP funds. The Parties anticipate total funding for the Work during the Term will increase from the initial amount described in Exhibit A, as additional EWP funds become available, Contributing Parties join this Agreement, and project work orders are developed.

4.4. **Other funding.** The Parties may also pursue non-EWP funds and resources to complete projects associated with the Work, the costs for which the Parties will work in good faith to equitably share, based on a "percent of Poudre River water use" cost-share model, or as may be identified in separate agreements for such projects and as referenced in amendments to Exhibit A.

5. **APPORTIONMENT OF COSTS AND DUTIES.**

5.1. **Project Cost Allocation.**

1. Project costs will be allocated as follows for individual projects the Parties agree to pursue under this Agreement:
 - EWP funds will be used first to the maximum extent possible towards project costs, including submittal of reimbursement applications against the initial NRCS award amounts described in Paragraph 4;
 - Any remaining costs will be allocated among the Managing Entities that would benefit directly and indirectly from the project, according to criteria mutually agreed to by the participating parties at the time of project commencement ("Benefit Cost Allocation Methodology").
2. For projects Greeley agrees to pursue directly with Contributing Parties who are also water service users, project costs will be allocated based on the

participating parties' respective average annual percent municipal diversions from the Cache La Poudre river for the years 2015 to 2019 ("Water User Cost Allocation Methodology").

5.2. Category 1 Project Management.

1. Greeley may advertise and request bid proposals ("Proposal") for post-fire aerial mulching services and other post-fire mitigation services for Category 1 Work, and Greeley and Fort Collins will select a general contractor based on the criteria set forth in the Proposal.
2. Upon selection of a general contractor to perform the designated Category 1 Work, Greeley shall execute a contract with the selected general contractor ("Cat 1 Contract") and will be identified as the owner therein for such projects, which may include work designed by or with a shared benefit for Fort Collins and/or Larimer County.
3. As specified in the terms of the Cat 1 Contract, the selected general contractor will first invoice Greeley directly, up to and not to exceed any amount to which Greeley has agreed pursuant to an executed NRCS notice of award, for the designated Category 1 Work. After receiving EWP reimbursements, Greeley will divide non-reimbursable Category 1 Work project costs among the project partners, including Fort Collins and benefited Contributing Parties, pursuant to either the Benefit or Water User Cost Allocation Methodology as appropriate.

5.3. Category 2 Project Management.

1. Larimer County may advertise and request bid proposals ("Proposal") for post-fire aerial mulching services and other post-fire mitigation services for Category 2 Work and will select a general contractor based on the criteria set forth in the Proposal.
2. Upon the selection of a general contractor to perform the designated Category 2 Work, Larimer County shall execute a contract with the selected general contractor ("Cat 2 Contract") and will be identified as owner therein for such projects, which may include work designed by or with a shared benefit for county partners.

6. **PROJECTS.** The projects ("Work") performed under this Agreement and subject to the EWP fund reimbursement conditions shall fall within the objectives outlined in the scope of services and contract between the local government entity and NRCS, as described in Exhibit A, attached hereto, and incorporated by this reference. Reimbursement obligations for such Work shall be subject to cost distributions and conditions set forth in the respective funding contract. Any (additional) Work requested by a Party that NRCS may subsequently approve for reimbursement with EWP funds will be set forth in an amendment to Exhibit A.

7. PROJECT PLANNING.

7.1. **Decision Making.** In making decisions on which projects fall under Category 1 or Category 2 to pursue and the allocation of project costs, the Parties shall operate by consensus. To this end, the Parties shall make a good faith effort to reach consensus, propose alternative solutions, and otherwise work to resolve any issues that prevent consensus. Any decisions involving the use of a particular Parties' lands or structures may only be made with the consent of that Party in its sole discretion.

7.2. **Project Identification and Prioritization.** The Parties will identify potential projects on which to use the EWP funds. The Parties' identification of potential projects and the order in which they are taken on and completed will be guided by the following considerations:

- The need and expected benefit of the project;
- The entities that would benefit directly and indirectly from the project;
- The cost of the project, including whether EWP funds can be applied towards the project's costs;
- Accessibility of the project location; and
- Administrative, legal, and/or regulatory steps associated with the project, including receiving approval for the project to be eligible for funds, such as necessary permits; and

7.3. **Project Selection.** For projects the Parties agree to pursue under this Agreement, Greeley and Larimer County will provide a written summary, including: a description of the project work; a timeline; and the project cost allocation ("Project Summary"), which may be initially prepared by a third-party contractor. A scope of work provided by the contractor hired to undertake such project may be used as the Project Summary, if it contains the information described in this paragraph.

- **Category 1 Projects:** Greeley will circulate a draft Project Summary to the Contributing Parties for review and comment. Greeley and the Contributing Parties must mutually approve the Project Summary in writing prior to project commencement. After the Project Summary is approved, Work may commence, and as projects under this Agreement are completed, Greeley will invoice the Contributing Parties for project costs not reimbursed by EWP funds, according to the Project Summary. Greeley will prepare an annual work summary for projects completed under this Agreement and submit the summary to the Parties by December 31. The annual summary will exclude any projects that Greeley or Larimer County take on independently or without involvement of other Parties.
- **Category 2 Projects:** Larimer County will circulate a draft Project Summary to the Contributing Parties for review and comment. Larimer County and the Contributing Parties must mutually approve the Project Summary in writing prior to project commencement. After the Project Summary is approved, Work may commence, and as projects under this Agreement are completed, Larimer County

epotyondy@fcgov.com

and:

Fort Collins Utilities
Attn: Water Resources Manager
700 Wood Street
Fort Collins, Colorado 80521
ddustin@fcgov.com

To Greeley:

Greeley Water and Sewer Department
Attn: Director of Water and Sewer
1001 11th Avenue, Second Floor
Greeley, Colorado 80631
sean.chambers@greeleygov.com;
jennifer.petrzelka@greeleygov.com

With a copy to:

Greeley City Attorney's Office
Attn: Environmental and Water Resources
1100 10th Street, Suite 401
Greeley, Colorado 80631
daniel.biwer@greeleygov.com

To Larimer County:

County Manager
200 W. Oak Street
Fort Collins, CO 80522

With copy to:

Office of Emergency Management
Attn: Director OEM
200 W. Oak Street
Fort Collins, Colorado 80522

13. **NO WAIVER OF IMMUNITY. NO WAIVER OF IMMUNITY.** Nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §24-10-101, et seq., or the Federal Tort Claims Act ("FTCA") 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement. Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the CGIA or the FTCA as applicable, as now or hereafter amended.

14. **NON-LIABILITY AND INSURANCE-GENERAL.** This Agreement shall not be construed to create a duty as a matter of law, contract, or otherwise for any Party to assume any liability for injury, property damage, or any other loss or damage that may occur by any action, or non-action taken, or service provided, to the public or any person, as a result of this Agreement. Each Party shall take all necessary precautions in performing the work hereunder to prevent injury to persons and property as a result of any act or omission of a Party, or its employees, agents, or assignees pursuant to the terms of this Agreement, Each Party retains all obligations and

protections afforded by the provisions of the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et. seq., as the same may be amended from time to time.

15. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, except for conflicts of laws provisions. The forum for any dispute regarding this Agreement shall be in the Weld County District Court, State of Colorado.

16. **CONSTRUCTION.** This Agreement shall be construed according to its fair meaning as it was prepared by the Parties. Headings in this Agreement are for convenience and reference only and shall in no way define, limit, or prescribe the scope or intent of any provision of this Agreement.

17. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement of the Parties regarding the matters addressed herein. This Agreement binds and benefits the Parties and their respective successors. Covenants or representations not contained in this Agreement regarding the matters addressed herein shall not bind the Parties.

18. **AMENDMENTS.** Any amendments or modifications to this Agreement must be in writing and executed by all parties to be valid and binding.

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

20. **ASSIGNMENT.** No Party may assign any rights or delegate any duties under this Agreement without the written consent of all other Parties.

21. **SEVERABILITY.** If any provision of this Agreement shall be found illegal, invalid, unenforceable, or impossible to perform by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

CITY OF FORT COLLINS, COLORADO, a Colorado municipal corporation

By: _____
Darin Atteberry, City Manager

Date: _____

ATTEST:

City Clerk's Office
Printed Name: _____
Title: _____

APPROVED AS TO FORM:

Printed Name: _____
Assistant City Attorney

CITY OF GREELEY, COLORADO, a home rule municipal corporation

By: _____
Roy Otto, City Manager

Date: _____

AS TO LEGAL FORM:

By: _____
City Attorney

AS TO AVAILABILITY OF FUNDS:

By: _____
Director of Finance

LARIMER COUNTY, COLORADO, a county subdivision of the State of Colorado

By: _____
Chairman of Board of County Commissioner

Date: _____

AS TO LEGAL FORM:

By: _____
County Attorney

AS TO AVAILABILITY OF FUNDS:

By: _____
Director of Finance

Exhibit A
Scope of Coordinated Services

Greeley and Larimer County intend to use EWP funds for the implementation of recovery measures, which left undone, pose a threat to life and or property. Example recovery projects may include, but are not limited to, erosion and sedimentation prevention, debris removal, and structure protection from the threat of future flooding due to the Cameron Peak Fire.

Examples of Project Types:

I. Direct Remediation

a. Category 1 services.

- Mulching of hillslopes
- Hillslope stabilizations such as waddles, tree welling, etc.
- Sedimentation basins
- Erosion Control Measures
- Stream Channel Stabilization
- Seeding/ Revegetation / Reforestation

b. Category 2 services.

- Repair or upgrades to culverts, bridges, and roads
- Debris removal
- Flooding prevention structures
- Hazard Tree Removal
- Hillslope protection / stabilization
- Warning Signage
- Stream channel stabilization
- Seeding/ Revegetation / Reforestation

II. Project Management

As needed, Greeley and Fort Collins will jointly select and coordinate through Greeley a third-party project manager (“PM Work”) to oversee organization of Projects under this Agreement and related work, including Category 2 services for which Larimer County may be involved. The Managing Entities will equitably apportion the cost of PM Work, based on the respective benefits realized by the Parties, to be paid from individual resources without seeking NRCS reimbursement.

Exhibit B
Participating Parties

The following local governmental entities are the principal parties to this Agreement, “Managing Entities”:

- CITY OF FORT COLLINS, COLORADO a home-rule municipality (“Fort Collins”) with principal offices at 300 LaPorte Avenue, Fort Collins, Colorado 80521
- CITY OF GREELEY, COLORADO, a home-rule municipality (“Greeley”) with principal offices of its Water and Sewer Department at 1001 11th Avenue, Second Floor, Greeley, Colorado 80631
- LARIMER COUNTY, COLORADO, a county subdivision of the State of Colorado (“Larimer County”) with principal offices at [...], Fort Collins, Colorado [...]

The following entities are Contributing Parties to this Agreement, whose obligations and contributions to the Work described in this Agreement may be different than those of the Managing Entities, as set forth in addenda to this Exhibit B:

- _____, with principal offices at [...]
(Organization Name)
- _____, with principal offices at [...]
(Organization Name)

(Form of Addendum to Add a Party)

**CONTRIBUTING PARTY ADDENDUM TO
AGREEMENT REGARDING REHABILITATION WORK
FOR THE CAMERON PEAK FIRE**

This Addendum, dated _____, 2020, is entered into by and between the Parties to the Agreement Regarding Rehabilitation Work for the Cameron Peak Fire (“Agreement”) and _____, a _____ (“New Party”).

1. The New Party has reviewed the Agreement as desires to become a “Contributing Party” thereto. The Parties to the Agreement agree to permit the New Party to become a Contributing Party to the Agreement for purposes of the following Category 1; Category 2 services:

[...]

2. The New/Contributing Party represents to the other Parties that it has the power and authority to enter into this Agreement and the individuals signing below on behalf of the New/Contributing Party have the authority to execute this Agreement on its behalf and legally bind the New/Contributing Party.

3. For purposes of Paragraph 12 of the Agreement, the contact information of the New/Contributing Party is:

To _____:

_____, a _____

By: _____

Date: _____

[Insert signature pages of other Parties]