

**MEMORANDUM OF UNDERSTANDING ESTABLISHING THE
CLEAR CREEK WATERSHED & FOREST HEALTH PARTNERSHIP FOR
COLLABORATION AND COORDINATION IN WILDFIRE RISK MITIGATION AND
FOREST HEALTH PROJECTS WITHIN THE CLEAR CREEK WATERSHED**

1.0 **PARTIES.** This Memorandum of Understanding ("**MOU**") Establishing the Clear Creek Watershed & Forest Health Partnership ("**Partnership**") is entered into by and between the **City of Arvada**, a home rule municipal corporation of the State of Colorado; the **City of Black Hawk**, a home rule corporation and political subdivision of the State of Colorado; the **County of Clear Creek**, a body politic and corporate and political subdivision of the State of Colorado; the **Clear Creek Fire Authority**, a consolidated fire protection and emergency service agency; the **Town of Empire**, a statutory corporation and political subdivision of the State of Colorado; the **County of Gilpin**, a body politic and corporate and political subdivision of the State of Colorado; the **City of Golden**, a home rule corporation and political subdivision of the State of Colorado; the **County of Jefferson**, a body politic and corporate and political subdivision of the State of Colorado; and the **City of Westminster**, a home rule municipality, hereinafter referred to collectively as the "**Parties**" or "**Members**," or individually as a "**Party**" or "**Member**."

2.0 **BACKGROUND.**

2.1. The Clear Creek Watershed ("**Watershed**") spans from its western edge at the Continental Divide to the urbanized plains outside of Denver where Clear Creek joins the South Platte River. The entire Watershed covers an area of 575 square miles, with 400 square miles located in the 'upper' watershed in the mountains west of Golden. Nearly two-thirds of the upper Watershed lies within the Arapaho and Roosevelt National Forests and is administered by the Clear Creek Ranger District. The rest of this mountainous region is covered by a patchwork of private, municipal, county, and state lands. Clear Creek and its tributaries act as the primary drinking water supply for multiple towns and municipalities, serving nearly 450,000 Colorado residents. This forested area and the creek corridor also act as a critical area for recreation, cultural and historical values, and transportation. See **Exhibit A**, depicting the geographical area of the Watershed.

2.2. The Clear Creek watershed is vulnerable to catastrophic wildfire and post-wildfire flooding and water quality impairments, debris flows, and economic impacts. Historical fire suppression policies, development in the wildland-urban interface, and climate change have combined to elongate the wildfire season and to make contemporary wildfires hotter and larger. The communities in the watershed and the people who depend on Clear Creek for water resources are facing increasing wildfire risks.

2.3. An engineering study for the upper Clear Creek watershed was conducted between the Fall of 2019 and Spring 2021 (the "**Upper Clear Creek Watershed Pre-Wildfire Planning Study**", or "**Study**"), attached hereto as **Exhibit B**. The Upper Clear Creek

Pre-Wildfire Planning Study identifies and assesses sustainability and resiliency in a post-fire scenario relative to changes in hydrology and hydraulics at critical, high priority locations or stream segments. This study also analyzed a suite of options to manage forests and fuels, restore and improve stream channels, assess and mitigate the Wildland-Urban Interface (“WUI”), and form multi-objective partnerships around critical resources and infrastructure values. From this effort, the impacted Parties have agreed to create a collaborative group, to implement a wildfire risk mitigation program for the Clear Creek basin based on the pre-fire study recommendations.

3.0 STATEMENT OF MUTUAL BENEFIT AND INTERESTS.

- 3.1. The Parties recognize, accept, and respect the differences in missions, goals, and objectives of each other. However, wildfire does not recognize or respect jurisdictional boundaries. The Parties therefore agree to work collaboratively and in a coordinated fashion to achieve the mission and objectives sought and described herein.
- 3.2. The Parties acknowledge that any Party to this MOU may participate in local activities or implement decisions related to forestry management as part of their site-specific obligations, responsibilities, and authorities. This MOU is not meant to supplant any Party's discretionary authority to make decisions about forest management or wildfire response associated with their individual jurisdictions.
- 3.3. This MOU is non-binding and does not obligate any funds of the Parties. As funding and resources are available and authorized (as determined in each Party's sole discretion), the Parties will provide technical, human, and/or financial support to the Partnership.
- 3.4. In consideration for the premises set forth above, each Party commits to:
 - 3.4.1. Work within their own statutory and regulatory authorities, including planning and decision-making requirements where applicable.
 - 3.4.2. Collaborate and coordinate to implement this MOU to achieve the mission and objectives expressed herein.

4.0 STATEMENT OF MUTUAL UNDERSTANDING.

- 4.1. This MOU creates no right, benefit, or trust responsibility, substantive or procedural, enforceable by law or equity. The Parties shall manage their respective resources and activities in a separate, coordinated and mutually beneficial manner to achieve the outcomes sought and described within the MOU. Nothing in this MOU authorizes any of the Parties to obligate or transfer anything of value.
- 4.2. Specific prospective projects or activities that involve the transfer of funds, services, property, and/or anything of value to a Party or other entity, requires the execution of separate agreements and are contingent upon numerous factors, including, as applicable,

but not limited to: agency availability of appropriated funds and other resources; Party availability of funds and other resources; agency and Party administrative and legal requirements (including agency authorization by statute); etc. This MOU neither provides, nor meets these criteria. If the Parties elect to enter into an obligation agreement that involves the transfer of funds, services, property, and/or anything of value to a Party or other entity, then the applicable criteria above must be met. Additionally, under a prospective agreement, each Party operates under its own laws, regulations, and/or policies. The negotiation, execution, and administration of these prospective agreements for the Partnership must comply with all applicable law.

- 4.3. Nothing in the MOU is intended to alter, limit, or expand the statutory and regulatory authority of any Party. Nothing herein shall be construed or interpreted as a waiver, express or implied, of any of the notice requirements, defenses, immunities and limitations of liability that the Parties and their respective officers and employees may have under the Colorado Governmental Immunity Act (C.R.S. Section 24-10-101, et seq.) and under any other law.

5.0 PURPOSE.

- 5.1. The Parties are entering into this MOU to establish the Partnership as an informal, unincorporated collaborative organization, in which the members set mutual goals and priorities, utilize existing forest management tools and legal authorities, and align their decisions on where to make the investments needed to achieve the mission and objectives set forth for the Clear Creek Watershed.
- 5.2. The Partnership would like to become an affiliate organization of Coalitions & Collaboratives, Inc. (“COCO”), or a like entity, in order to access their resources, which include financial management and human resource services, reduced insurance costs, access to a shared pool of experts and experience, and organizational start-up support. COCO’s Affiliate Agreement Template is attached to this MOU as **Exhibit C**, as an example of what the affiliate agreement may entail. Should the Parties decide to enter into such an Affiliate agreement, the Parties must comply with section 4.2 of this MOU.

6.0 MISSION, VALUES, AND OBJECTIVES.

- 6.1. MISSION. The mission of the Partnership is to engage in collaborative, cross-jurisdictional planning of wildfire risk mitigation and forest health projects within the Clear Creek Watershed.
- 6.2. VALUES. The Parties maintain the following values:
 - 6.2.1. **Safety**: Protecting life, health, and public safety. Protecting homes and critical infrastructure. Ensuring emergency access and egress. Providing clear water in adequate supply. Hazard mitigation for fires, floods, and debris flows.

- 6.2.2. **Resiliency:** Healthy forests and riparian systems. Strong partnerships and diverse funding sources. Infrastructure and operational redundancy. Changing environmental conditions and system assumptions.
- 6.2.3. **Feasibility:** Finding funding. Landscape and terrain access. NEPA and other environmental requirements. Value, meeting multiple objectives.
- 6.2.4. **Environment:** Natural floodplain functions of storage, infiltration, energy dissipation, and resistance. Protecting and enhancing aquatic habitats. WWTF effluent quality. Treatable water supply. Threatened and endangered species and species of special concern.
- 6.2.5. **Community:** Protecting and enhancing tourism. Education, outreach, and communication. Equity of projects. Recreations and access.
- 6.2.6. **Sustainability:** Self-maintaining streams and ecosystems. Full life-cycle costs across triple bottom line. Locally available and/or recycled materials. Science-based decision making.

6.3. OBJECTIVES. The Parties share the following objectives in entering into this Partnership:

- 6.3.1. To coordinate and collaborate pre-wildfire and post-wildfire mitigation projects within the Clear Creek Watershed.
- 6.3.2. Pool resources (technical, human, and monetary) to accomplish the goals of the Partnership.
- 6.3.3. Support and promote active management of forest health to reduce wildfire risk, especially with on-the-ground activities using best available technologies and strategies.
- 6.3.4. Procure grant funding to enhance pre-wildfire and post-wildfire mitigation projects.
- 6.3.5. Increase public outreach and education related to watershed health, forest health, and fuels mitigation.
- 6.3.6. Develop a partnership response system, plan/network for how to respond should a wildfire occur.
- 6.3.7. Improve the long-term resilience of communities dependent on the Clear Creek Watershed.

6.3.8. Leverage resources, funding, and expertise to accomplish landscape-scale projects.

6.3.9. Engage in mid- and long- term planning for Partnership projects and as an organization as a whole.

7.0 ORGANIZATION OF THE PARTNERSHIP.

7.1. MEMBERSHIP.

7.1.1. The Partnership shall consist of voting Member representatives, as defined in this section, with an elected Steering Committee which shall include at a minimum a Chair and a Vice Chair, whose roles and duties will be defined in the Bylaws.

7.1.2. Eligibility: Any local government, county, state agency, Front Range water provider or other stakeholder is eligible to become a Member. New members must agree and sign on to the terms of this MOU, must be approved by the Steering Committee, and must meet any other requirement that may be established in Partnership bylaws.

7.1.2.1. *County* means any county, city and county, or agency of such county whose territorial boundaries include land area within the Watershed.

7.1.2.2. *Local Government* means any home rule or statutory city, town, territorial charter city, or a city and county, including a government-owned business within the meaning of Article X, § 20(2)(d) of the Colorado Constitution, organized pursuant to state law that either: (1) owns any land area for any reason that is located entirely or partially within the Watershed; and/or (2) relies on water from the Watershed.

7.1.2.3. *Front Range Water Provider* means any special district organized pursuant to C.R.S. § 31-1-101 *et. seq.*, or any private entity that owns any land area for utilities purposes located entirely, or partially, within the Watershed.

7.1.2.4. *State Agency* shall mean any board, bureau, commission, department, institution, division, section, or officer of the state, except those in the legislative branch or judicial branch and except any county agency.

7.1.2.5. *Stakeholders* shall mean any business entity, corporation, organization, including any independent, formal 501(c)(3) organization or informal group or collaborative, or interested individual that is impacted by the risk of wildfire in the Clear Creek Watershed, that has an interest in supporting the mission outlined in Section 6.0 of this MOU, and that supports fuel reduction and

wildfire mitigation projects that would reduce the risk of catastrophic wildfire in the Watershed.

7.1.3. Members: Members means the original signing Parties. New signatories may become a Party to the MOU, and thus a Member, at any time in accordance with provisions in paragraph 7.1.2 of this MOU.

7.1.4. Steering Committee: The Steering Committee will be comprised of elected Members and shall include at a minimum a Chair and a Vice Chair. The Steering Committee will act as the main point of contact for the Partnership. Additional responsibilities of the Steering Committee will be defined in the Bylaws.

7.1.5. Bylaws: The Members will draft and adopt bylaws for the Partnership. The Bylaws must comply with this MOU and must be non-bonding. Adoption of any bylaws will require a simple majority vote by the Members in favor of the bylaws.

7.1.6. Responsibilities of all Members:

7.1.6.1. Uphold the Mission, Values, Objectives, and Bylaws of the Partnership.

7.1.6.2. Members will establish their representatives for the Partnership.

7.1.6.3. Only one representative from any one Member group may vote on any given issue.

7.1.6.4. No votes shall be made without a quorum.

7.1.6.5. A quorum shall consist of at least one half (1/2) of the total number of Members of the entire Partnership.

7.2. MEETINGS.

7.2.1. The Partnership will meet no less than four (4) times a year to gauge progress under this MOU. Notice, in accordance with paragraph 12 of this MOU, will be provided to all Members, by the Steering Committee, no less than thirty (30) calendar days prior to each meeting.

7.3. EFFECTIVE DATE. The Effective Date of this MOU shall be when the last of the original Members signs this MOU. The original members include the City of Arvada, the City of Black Hawk, the County of Clear Creek, the Clear Creek Fire Authority, the Town of Empire, the County of Gilpin, the City of Golden, the County of Jefferson, and the City of Westminster. The Partnership shall form on the Effective Date.

8.0 PROJECT FUNDING.

- 8.1. Any funds contributed to the Partnership by the Parties are completely voluntary and at the discretion of each Party and their associated procedures.
- 8.2. The Parties understand that funds contributed for work done through an affiliate agreement may be subject to service fees, which may include, but are not limited to, insurance, billing for services, human resources, etc.
- 8.3. No Party will be excluded from participation or input on Partnership matters based on ability or inability to fund projects.
- 8.4. Other in-kind contributions from the Parties (i.e., human, technical, etc.) are accepted as valuable contribution to the success of this MOU.
- 8.5. All income and assets of the Partnership shall at all times be dedicated to the exclusive benefit of the Parties. No such income or assets shall ever accrue to the benefit of any person, firm, corporation, or other entity except such participating Parties.
- 8.6. All funds collected by the Partnership shall be deposited either directly to specified Partnership projects or in the name and to the credit of the Partnership in such financial institutions as are authorized by law to hold such funds and shall be used solely for the object of this Partnership and in accordance with this MOU and Applicable Laws.

9.0 SEPARATE AGREEMENTS.

- 9.1. The Parties may enter into separate agreements, including but not limited to affiliate agreements, as resources allow, to accomplish agreed upon projects to help achieve the mission and objectives of this MOU. Should the Parties decide to enter into any separate agreement, the Parties must comply with section 4.2 of this MOU.
- 9.2. Entering into this MOU does not grant authority to any Party to enter into any affiliations, contracts, or other binding agreements on behalf of another Party.
- 9.3. No Party to this MOU may enter into any affiliations, contracts, or other binding agreements on behalf of another Party, without first obtaining that Party's written consent.

10.0 TERM.

- 10.1. TERM. The term of this MOU shall commence on the Effective Date and shall continue for a period of five (5) years from the Effective Date and shall remain in full

force and effect until that date, subject to amendments to this MOU, unless terminated earlier as provided herein.

- 10.2. **TERMINATION OF PARTNERSHIP.** This MOU may be terminated at any time upon the written consent and approval of at least two thirds (2/3) of the then existing Members to this MOU. Any Member wishing to initiate termination of this MOU shall submit a written proposal thereof to all Members no later than six (6) months prior to the date upon which the Member proposes to terminate this MOU.
- 10.3. **EFFECT OF TERMINATION.** In the event of the termination of this MOU, the Partnership shall automatically dissolve. All the cash and other liquid assets of the Partnership shall immediately vest in and be transferred to the entities that are Members at the time of termination, such that each Member receives an amount that bears a direct relationship to the amount contributed to the support of the Partnership by the participating Members.
- 10.4. **TERMINATION BY A PARTY.** A Party may terminate their commitment to this MOU at any time before the date of expiration, by sending written notice to all then existing Member representatives. Termination by a Party or Parties will not result in termination of the MOU itself.
- 10.5. **RENEWAL.** After the initial five year term, the Parties may re-adopt this MOU in writing, signed and dated by all properly authorized, signatory officials.
- 11.0 **MODIFICATIONS.** Modifications within the scope of this MOU must be made by consent of all the Parties, by the issuance of a written modification signed and dated by all properly authorized, signatory officials, prior to any changes being accepted. Requests for modification should be made, in writing, at least thirty (30) calendar days prior to implementation of the requested change.
- 12.0 **NOTICE.** Any notice permitted or required by this MOU shall be in writing and shall be hand delivered or sent via certified or registered mail, postage prepaid and return receipt requested to the Members as indicated in **Exhibit D**, attached hereto and incorporated herein by this reference. The notice shall be deemed to have been given when received.
- 13.0 **DEBARMENT AND SUSPENSION.** If any Party or any of the Party's principals are presently excluded, debarred, or suspended from entering into covered transactions with the federal government according to the terms of 2 CFR Part 180, such Party shall immediately inform the Parties of this MOU. Additionally, should a Party or any of the Party's principals receive a transmittal letter or other official Federal notice of debarment or suspension, then the Party shall notify the Parties of this MOU without undue delay. This applies whether the exclusion, debarment, or suspension is voluntary or involuntary.

14.0 MISCELLANEOUS.

- 14.1. **Indemnification by a County, City, Town or School District Forbidden.** Article XI, Section 1 of the Colorado Constitution forbids any County, City, Town or School District from indemnifying anyone.
- 14.2. **Non-Appropriation.** Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20, and all direct and indirect financial obligations of a Member under this MOU are subject to annual appropriation, budgeting, and availability of funds to discharge such obligations.
- 14.3. **Third-party beneficiaries.** This MOU is not intended to, and shall not, confer rights on any person or entity not a party to this MOU.
- 14.4. **Governing Law.** Colorado law shall govern this MOU. Jurisdiction and venue shall lie exclusively in the Jefferson County District Court, in the State of Colorado.
- 14.5. **Counterparts.** This MOU may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. In addition, the Members specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.
- 14.6. **Liabilities of the Members.** The Members shall have no obligation whatsoever to pay any debt, financial obligation, or liability for another Member. By entering into this MOU, no Member is assuming liability for the acts or omission of any other Member or third party/parties.
- 14.7. **Force Majeure.** No Member shall be liable for any delay in or failure of performance of any obligation, nor shall any delay or failure constitute default or give rise to any liability, if and only to the extent that such delay or failure is caused by a “force majeure” event. “Force majeure” means acts of God, acts of the public enemy, unusually severe weather, fires, floods, epidemics, including COVID-19, quarantines, strikes, labor disputes and freight embargoes, or other causes that are not within such Member's control, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed Member.
- 14.8. **Waiver.** No covenant or term of this MOU shall be deemed to be waived by any Member except in a writing signed by a person authorized by such Member, and any waiver of a right shall not be construed to be a waiver of any other right or to be a continuing waiver.

- 14.9. **Section Headings**. The section headings in this MOU are used only for convenience of reference and in no way shall they define, limit, or describe the scope or intent of any provision of this MOU.
- 14.10. **Assignment**. No Member shall assign this MOU without the prior written consent of all other Members.
- 14.11. **No Employment Relationship**. By entering into and performing under this MOU, no Member is acting as an agent, servant, or employee of any other Member.
- 15.0 **AUTHORIZATION**. The signing of this MOU is not a formal undertaking. It implies that the signatories will strive to reach, to the best of their ability, the objectives stated in this MOU.
- 16.0 **AUTHORIZED REPRESENTATIVES**. By signature below, each Party certifies that the individuals listed in this document as representatives of the individual Parties are authorized to act in their respective areas for MOU related matters. This MOU may be executed in counterpart(s), each of which shall be deemed to be an original, and all of which, taken together, shall constitute one instrument

DATED this 12 day of September, 2022.

*(See Separate Signature Page, attached and incorporated hereto as **Exhibit E**.)*

EXHIBIT A: Geographical depiction of the Clear Creek Watershed

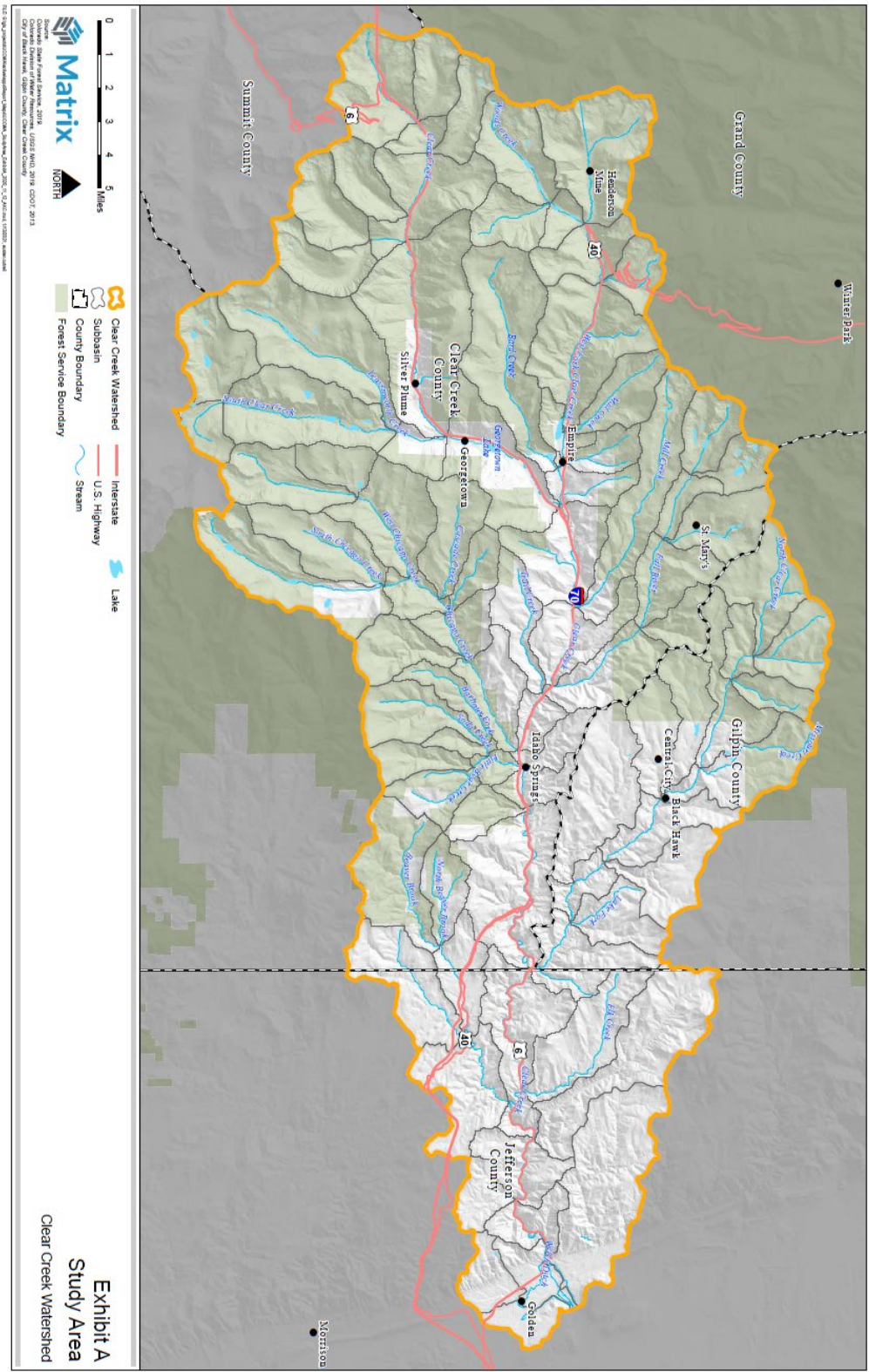


EXHIBIT B:

Upper Clear Creek Pre-Wildfire Planning Study

To access the report, please go to: <https://www.clearcreekpartnership.org/wildfire-planning>

EXHIBIT C:
COCO's Affiliate Agreement Template

COCO Affiliate Agreement

THIS Agreement is made and entered into by and between the Parties set forth in section I below, effective as of the Effective Date set forth in section 2 below.

I. PARTIES:

COCO	Affiliate
Affiliates & Collaboratives, Inc (COCO)	
PO Box 165	
38000 Cherokee Ave.	
Lake George, CO 80827	
719-748-0033	
carol.ekarius@co-co.org	
<u>Agreemental Contact:</u> Carol Ekarius, CEO	
SIGNATURE:	SIGNATURE:
Date:	Date:

WHEREAS, COCO is a 501(c)3 nonprofit organization whose mission is to *foster on-the-ground conservation efforts that protect and restore natural resources and local communities, by supporting affiliate group who produce collective impacts through stakeholder-driven efforts*;

WHEREAS, the Affiliate is a coalition or collaborative group, as defined by COCO’s bylaws;

WHEREAS, the Affiliate wishes to have support services from COCO;

WHEREAS, the Affiliate agrees to abide by and support the COCO purpose and objectives to the fullest extent possible (see Exhibits), and to not adopt any purpose that detracts from or conflicts with COCO’s tax exempt status;

WHEREAS, COCO and the Affiliate both have a vested interest in the success and growth of both organizations at all levels; and

WHEREAS, COCO and the Affiliate have determined that it is in their best interests to enter into this Agreement in order to set forth in writing the terms and conditions of their affiliation.

NOW THEREFORE, in consideration of the premises set forth above and the promises set forth below, the sufficiency and receipt of which are hereby acknowledged, the parties hereby agree as follows:

II. TERMS AND CONDITIONS OF THE Agreement

1. **Independent Affiliate, Relationship of the Parties.** The parties aver that:
 - A. The Affiliate is not subject to COCO's control as to the means and methods of accomplishing their mission, but COCO may specify and control the result to be accomplished if COCO is providing funding, financial management/fiscal hosting, and/or HR services as appropriate, and as defined in an annual work plan;
 - B. This Agreement shall not be construed to create any partnership, joint venture, nor other agency relationship between the parties beyond the work to be completed pursuant to the annual work plan that COCO and the Affiliate developed.
2. **Term.** This Agreement shall commence on the Effective Date, which shall be the later of the date it is signed by COCO's CEO; or a separate date as specified here: _____. This agreement shall terminate one year from the Effective Date, but may be renewed via email confirmation of both parties for up to three successive renewals.
3. **Cost of Service.** COCO invoices all affiliates on a regular basis for actual costs incurred. Costs are described in COCO Fiscal Policy (Exhibit B)
4. **Liability & Representations.**
 - A. COCO and the Affiliate expressly acknowledge and agree that COCO and the Affiliate are, and intend to remain, separate entities and as such shall not incur any liability, obligation, or expense on behalf of the other, unless otherwise provided in writing by COCO's Chief Executive Officer or Executive Committee and an authorized representative of the Affiliate, pursuant to correspondence, agreements and approved work plans.
 - B. The Affiliate may not enter into any affiliations, contracts, or other binding agreements with a third party on behalf of COCO, unless authorized in writing by COCO's COCO's Chief Executive Officer or Executive Committee and an authorized representative of the Affiliate, pursuant to correspondence, agreements and approved work plans..
 - C. The conduct of the Affiliate and its members and any other legal obligations, fees, costs, attrition clauses, or other related financial fees and charges undertaken by the Affiliate and outside of COCO's management are the sole responsibility of the individual Affiliate and may not be passed onto COCO under any conditions. COCO retains no legal or financial liability for actions of the Affiliate outside its relationship with COCO.
 - D. Affiliate officers and officials shall speak only on behalf of the Affiliate and recognize they may not speak or act on behalf of COCO.
 - E. Should violation of this Agreement occur, the Affiliate shall hold harmless, including but not limited to COCO, its subsidiaries, affiliates, officers, directors, employees, members, and other agents acting on behalf of or in relation to COCO. Costs and/or expenses incurred due to violations may result in COCO requiring the Affiliate to incur costs related to the legal and/or financial resolution of any violations.

5. **Force Majeure.** Neither the Affiliate nor COCO shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this Agreement "force majeure" means acts of God; acts of the public enemy; acts of the any governmental entity in its sovereign or Agreemental capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Notwithstanding the foregoing, in the event of a delay or failure of performance by the Affiliate under this section exists for a period of 30 days, or for a shorter period if such delay or failure is not reasonably capable of being remedied within 30 days, COCO shall have the right to terminate this Agreement without further obligation.
6. **Default.** A party will be considered in default of its obligations under this Agreement if such party should substantially fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. Substantial failure to satisfy the duties and obligations shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Affiliate. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as provided herein below.
7. **Remedies.** In addition to any other remedies provided for in this Agreement, and without limiting its remedies otherwise available at law, COCO may exercise the following remedial actions if the Affiliate substantially fails to satisfy or perform the duties and obligations in this Agreement:
 - a. Suspend the Affiliate's performance pending necessary corrective action as specified by COCO without the Affiliate's entitlement to adjustment in price/cost or schedule; and/or
 - b. Withhold payment to the Affiliate until the necessary services or corrections in performance are satisfactorily completed and/or acceptable goods are provided; and/or
 - c. Request the removal from work on this Agreement of employees or agents of the Affiliate whom COCO justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this Agreement COCO deems to be contrary to the its interest; and/or
 - d. Deny payment for those services or obligations which have not been performed and/or for goods that have not been provided and which due to circumstances caused by the Affiliate cannot be performed, or if performed would be of no value to COCO. Denial of the amount of payment must be reasonably related to the value of work or performance lost to COCO; and/or
 - e. Terminate this Agreement for default. The above remedies are cumulative and COCO, in its sole discretion, may exercise any or all of them individually or simultaneously.
8. **Termination for Convenience:** COCO or the Affiliate may terminate this Agreement at any time by giving written notice of termination to the other party, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon receipt of such notice:
 - a. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared owed to the other party shall be completed as quickly as reasonably possible.
 - b. All payments shall be made to the other party as quickly as reasonably possible.
9. **Representatives and Notice.**

- a. **Representatives.** For the purpose of this Agreement, the individuals identified in Section I, PARTIES, herein above are hereby designated representatives of the respective parties. Either party may from time to time designate in writing new or substitute representatives. With respect to the representative(s) of each party, the Signatory shall have the authority to inspect and reject services, approve invoices for payment, and act otherwise with regard to all legal matters and negotiations on behalf of the party.
 - b. **Notice.** All notices required to be given under this Agreement shall be deemed given when actually delivered to the designated representative(s) of the party to be given notice by (i) certified mail, return receipt; or (ii) by hand delivery or courier service, if a signed receipt is obtained upon delivery; or (iii) by facsimile transmission, if confirmation of receipt of the transmission is obtained.
 - c. A party may change its designated representative(s) or address at any time by written notice in the same manner as for any other notice. The initial representatives of the parties shall be the persons whose names and addresses are set forth in Article I, Parties, herein above.
10. **Legal Authority.** The Affiliate warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Affiliate to its terms. The person(s) executing this Agreement on behalf of the Affiliate warrant(s) that such person(s) have full authorization to execute this Agreement.
11. **Non-Assignment.** The parties shall not assign this Agreement to a third party without written approval of the other party.
12. **Binding effect; Third Party Beneficiaries.** This Agreement is binding upon the heirs, personal representatives, successors, and permitted assigns of both parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to COCO and the Affiliate. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of COCO and the Affiliate that any such person or entity, other than COCO or the Affiliate, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
13. **Entire Agreement.** This Agreement, including the exhibits incorporated herein by reference, constitutes the entire agreement between the parties, and supersedes any previous Agreements, understandings, or agreements of the parties, whether verbal or written, concerning the subject matter of this Agreement.
14. **Amendment.** No modification or amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the parties.
15. **Survival of Certain Agreement Terms.** Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of this Agreement shall survive such termination date and shall be enforceable as provided herein in the event of such failure to perform or comply by the Affiliate.
16. **Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
17. **Severability.** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

18. **Counterparts.** This Agreement may be executed with any number of counterparts, each of which, when executed and delivered will constitute an original, but all such counterparts will constitute one and the same instrument.
19. **Priority of Interpretation:** The provisions of this Agreement shall govern the relationship of COCO and the Affiliate. In the event of conflicts or inconsistencies between this Agreement and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: first, the Special Provisions incorporated within this Agreement, second, the terms and provisions of this Agreement; third, the Exhibits listed above in the order they appear.
20. **COMPLIANCE WITH LAW.** Affiliate shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, those laws applicable to discrimination and unfair employment practices. The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution. E
21. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** The signatories aver that to their knowledge, no employee of COCO, nor any other COCO official, including members of COCO's Board of Directors, has any personal or beneficial interest in the service or property described in this Agreement. Affiliate has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Affiliate's services and Affiliate shall not employ any person having such known interests.
22. **EMPLOYEE ELIGIBILITY.** Affiliate certifies, warrants, and agrees that it does not knowingly employ or Agreement with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement; shall notify the subAffiliate and the Agreeing State agency within three days if Affiliate has actual knowledge that a subAffiliate is employing or Agreeing with an illegal alien for work under this Agreement; shall terminate the subAgreement if a subAffiliate does not stop employing or Agreeing with the illegal alien within three days of receiving the notice; and shall comply with reasonable requests made in the course of an investigation, undertaken pursuant by the Colorado Department of Labor and Employment. If Affiliate or any subAffiliate is in breach of this paragraph, the Agreement will be terminated, and the Affiliate shall be liable for damages.

III. EXHIBITS INCORPORATED BY REFERENCE

The following exhibits are attached and hereby made a part of this Agreement:

Exhibit A: COCO Purpose & Objectives

Exhibit B: Fiscal Hosting Policy

Exhibit C: Federal Funds Addendum

SAMPLE

Exhibit A: COCO purpose & objectives

COCO's purpose is to increase on-the-ground efforts to protect, enhance, and restore natural resources through collaborative conservation. Our objectives include:

1.) Capitalize on economies of scale:

- Employ a consistent and consolidated bookkeeping and financial management approach for all affiliates operating under the group determination, or affiliates utilizing financial management or human resources (HR) services;
- All affiliates operating under the group determination or utilizing financial management services will have their revenue and expenses tracked utilizing separate accounts so each affiliates funds are recognized separately and uniquely, and each group can “own” its own assets, seek its own grants and donations, and budget funds for its own mission, while still being accountable, transparent, and consistent with OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; the Federal Single Audit Act; and the nonprofit requirements of the Internal Revenue Code;
- Reduce insurance costs through group purchased insurance for general liability, umbrella liability, and similar insurances. Each group will need its own Directors & Officers (D&O) policy, though affiliates utilizing HR services will benefit from lower cost D&O.
- Increase payroll efficiencies with more people in the system. Costs for certain employee benefits go down as group size increases, and better benefits can attract and increase the retention of employees. Administrative costs for the payroll function and other HR functions decrease slightly on a per employee basis by combining staffs.
- All staff working under the group determination or for affiliates utilizing HR services will be paid by the COCO payroll system.
- Although paid by COCO, staff and other expenses will be allocated to the respective affiliates against their revenue class in order to assure that each affiliate is responsible for defining and complying with budget expectations and to assure each affiliate that the money they are raising is appropriately going to their own work;
 - The opportunity for purchasing supplies in bulk, such as erosion control blankets or seed, to reduce the cost of projects.

2.) Provide a shared pool of experts and experience:

- Have the ability to hire certain staff that are shared among the group of member affiliates. For example, we may hire a staff Professional Engineer who is shared across projects and programs of the varying affiliates, or a full-time facilitator who can work with the various affiliates on things like strategic planning, developing Community Wildfire Protection Plans, Source Water Protection Plans, or other similar plans, through stakeholder-driven processes;
- Computer systems—COCO already has developed tools like cloud-based databases, and has a robust GIS program that will be shared across affiliates to provide consistent data development and outcome reporting to funders and stakeholders;
- Create a shared leadership training program that builds board and staff capacity and knowledge in a uniform fashion and creates shared apprenticeship and exchange of know-how between staff of the various organizations;

- Apply consistent policies and procedures across organizations for high accountability and transparency and utilized standardized forms, data sets, etc;
- And, act as a training ground for emerging professionals through internship programs, and association with Americorp and affiliated programs, such as VISTA, NCCC, youth corps, and veteran's green corps.

3.) Create a sense of community and support that helps people and businesses derive benefit from participating in collaborative conservation activities:

- Leveraging COCO's various partners, partnerships and networks between affiliates;
- Increases crew-member retention as positions are created across areas, and allows for upward growth for younger crew members;
- Engage funders with a new high-impact model that's based on a proven organizational model;
- Increase volunteerism opportunities for outdoor stewardship and public safety related to natural disasters and their recovery.

4.) Increase awareness for watershed-and other natural-resource-related issues across the country:

- Consistent messages from various affiliates;
- Engage more citizens on-the-ground activities;
- Increase recognition in the funder community;
- Create synergy and energy for new affiliates by connecting them to others.

5.) Provide start-up support to new organizations:

- COCO will be able to assist new affiliates with funding support during their formative period from donations made to COCO.
- Provide technical support and training to staff and boards of new organizations.

6.) Provide competitiveness for larger and different grants and donations to be shared across multiple entities.

- Many funders are looking for ways to increase the impact of their contributions by supporting the expansion of scalable, successful models, and COCO does that.

Activities of affiliates operating under COCO, include, but are not limited to:

- Environmental education for K12, and college students.
- Public education and outreach around natural resource and emergency response topics, such as watershed health; forest-to-faucet connections; insect, disease, and invasive species impacts; water and energy conservation, etc.
- Stakeholder-driven plan development for a variety of planning purposes.
- Forest health and fuel mitigation projects to reduce the spread and impact of wildfires.
- Operation of red-carded wildland fire team that works in conjunction with local fire protection districts, state and federal fire management agencies, and other nonprofit fire teams.
- Wildfire and flood rehabilitation programs to protect life and property, and downstream values at risk.
- Emergency response activities such as coordinating volunteer efforts following a fire or flood, and assisting local government Emergency Managers during the disaster.
- Implementation of river restoration and habitat projects to improve water quality and wildlife habitat.
- Implementation of environmental BMPs.
- Abandoned mines clean up projects to improve water quality and public safety.

- Recreational development, improvement, or maintenance projects in partnership with public land managers in order to support public access and enjoyment of our great outdoors.
- Monitoring (or research) of water quality, air quality, habitat, forest health, or other natural resource values.

SAMPLE

EXHIBIT B TO Affiliate Agreement**Fiscal Hosting**

COCO was established to assist other collaborative-types of conservation organizations, and as such, may fiscally host or manage external coalitions (nonprofits) or collaborative groups. As such, COCO has the following financial policies related to our hosting of organizations:

- All funds for hosted organizations will be tracked by accounting staff in such fashion as to provide for clear accountability of each organization's assets, donations, funds, etc.
- Reports of finances will be provided at least quarterly, or monthly if volume of transactions warrants more frequent reporting, to the key contact (Executive Director, treasurer, or other designated individual for the fiscally hosted organization).
- Key contact shall provide COCO accounting staff with information necessary for creating billing codes or classifications for tracking funding in the fashion they need for analysis of program outcomes and reporting back to funders and supporters.
- Key contact may request a meeting to review financials with COCO CEO and accounting staff at any time.
- If the fiscally hosted organization is a 501(c)3 nonprofit, key contact is responsible for maintaining the organization's status with the Secretary of State, assuring submittals to the IRS, and other management duties, but COCO staff will work to assure that the key contact has pertinent information in timely fashion to meet these obligations.
- COCO has a set 2% per annum charge against managed funds, which is calculated monthly, plus any direct fees charged by banks or other fund managers. This is charged on average funds of prior month (balance times 0.0016 per month). Managed funds are large funds that kept in an endowment or restricted account with an investment strategy to grow the principal.
- COCO will establish a separate money market account for managing funds in excess of \$2,000. Interest will be credited back to the organization. COCO will transfer funds as needed to cover bills and expenses paid out of COCO's accounts.
- If the organization has less than \$2,000 in cash assets, the funds may be commingled in COCO's checking account or savings account, but will still be tracked separately and fully documented.
- COCO will charge actual expenses to group through invoicing for payroll (program management services), supplies and materials, equipment, contracts and contractors, and other similar expenses that are incurred for the affiliate's program of work.
- COCO will charge a 5% indirect rate on the above charges, plus a prorated portion of insurance costs that are shared among organizations (includes life/disability for paid staff, general liability, umbrella liability, environmental liability). Proration of insurance will be based on percentage of payroll (either actual staff or contracted) for the previous period.
- Vehicles owned by COCO or CUSP and used by an affiliate organization are charged a daily usage fee of \$25, which covers auto insurance, depreciation, and general maintenance. Charges are also established on other equipment (and shared on Smartsheet), and will be reviewed with an affiliate prior to their using the equipment.
- If an organization no longer wishes to be fiscally hosted by COCO, they should notify us in writing, and we will close out their account and submit their money to another fiscal host or them directly if they have become a registered nonprofit, within 30 days of notification.

EXHIBIT C TO Affiliate Agreement

Federal Funds Addendum

The following provisions shall be deemed incorporated and made a part of the Agreement:

1. Certification:

a. Acceptance of this Agreement constitutes certification that the Affiliate is not presently debarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

b. Acceptance of this Agreement constitutes certification that the Affiliate is not delinquent on any Federal debt.

c. Acceptance of this Agreement constitutes certification that to the best of the Affiliate's knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Affiliate, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative agreement.

(2) If funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Affiliate shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Affiliate shall require that the language of this certification be included in the award documents for all subcontracts, awards, and agreements.

(4) The Affiliate has not, in a three year period preceding this Agreement, been convicted of or had a civil judgement against them in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or a Agreement under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving property; and are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense; and, have not had one or more public transactions (federal, state or local) terminated for cause or default.

d. The Affiliate agrees to notify COCO immediately if there is any change of status in a., b., c., or d. above.

2. Applicable Regulations; Audit:

The Uniform Administrative Requirements for Grants and Cooperative agreements, and the applicable OMB Circulars cited therein, shall govern the allowability and allocability of costs under this Agreement. COCO [and grant administrators] reserve the right to audit the Affiliate's books and records for a period of three years after Agreement expiration or termination in order to validate the allowability of costs paid under this agreement, and any costs not allowable under the State and Federal procurement rules shall be reimbursed by the Affiliate, or offset against current obligations due.


EXHIBIT D:**Contact Information for Notices**

City of Arvada – Member Contact #1		City of Arvada – Member Contact #2	
Name:	Evelyn Rhodes	Name:	Suresh Niraula
Title:	Water Quality Administrator	Title:	Water Quality Analyst
Address:	8101 Ralston Rd	Address:	8101 Ralston Rd
City, State, Zip:	Arvada, CO 80002	City, State, Zip:	Arvada, CO 80002
Telephone:	720-898-7802	Telephone:	720-898-7806
Email:	erhodes@arvada.org	Email:	sniraula@arvada.org
City of Black Hawk – Member Contact #1		City of Black Hawk – Member Contact #2	
Name:	Tom Isbester	Name:	
Title:	Public Works Director	Title:	
Address:	987 Miners Road	Address:	
City, State, Zip:	Black Hawk, CO 80422	City, State, Zip:	
Telephone:	303-582-1324	Telephone:	
Email:	tisbester@cityofblackhawk.org	Email:	
Clear Creek County – Member Contact #1		Clear Creek County – Member Contact #2	
Name:	Suzanne Boccia	Name:	Lisa Leben
Title:	Director of OEM	Title:	Special Projects Manager
Address:	405 Argentine St	Address:	401 Argentine St
City, State, Zip:	Georgetown, CO 80444	City, State, Zip:	Georgetown, CO 80444
Telephone:	303-679-2320	Telephone:	303-679-2434
Email:	sboccia@clearcreeksherrif.us	Email:	lleben@clearcreekcounty.us
Clear Creek Fire Authority – Member Contact #1		Clear Creek Fire Authority – Member Contact #2	
Name:	Jeremy Jones	Name:	
Title:	Assistant Fire Chief	Title:	
Address:	681 CR 308	Address:	
City, State, Zip:	Dumont, CO 80436	City, State, Zip:	


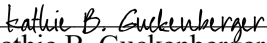
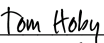
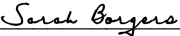
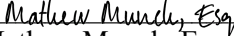
Telephone:	303-567-4342 x110	Telephone:	
Email:	jjones@clearcreekfire.com	Email:	
Town of Empire – Member Contact #1		Town of Empire – Member Contact #2	
Name:	Sally Rush	Name:	
Title:	Planning Commission Chair	Title:	
Address:	PO Box 100	Address:	
City, State, Zip:	Empire, CO 80438	City, State, Zip:	
Telephone:	720-361-9725	Telephone:	
Email:	sally.kate.rush@gmail.com	Email:	
Gilpin County – Member Contact #1		Gilpin County – Member Contact #2	
Name:	Jennifer Cook	Name:	Brad Benning
Title:	Gilpin County Ext Director & Agent	Title:	Gilpin County Attorney
Address:	230 Norton Dr	Address:	PO Box 366
City, State, Zip:	Black Hawk, CO 80422	City, State, Zip:	Central City, CO 80427
Telephone:	303-582-9106	Telephone:	303-951-3671
Email:	Jennifer.Cook@colostate.edu	Email:	bbenning@gilpincounty.org
City of Golden – Member Contact #1		City of Golden – Member Contact #2	
Name:	Kerry Major	Name:	Brian Tracy
Title:	Water Quality Lab Manager	Title:	Deputy Director Public Works
Address:	1409 10 th St	Address:	1409 10 th St
City, State, Zip:	Golden, CO 80401	City, State, Zip:	Golden, CO 80401
Telephone:	303-384-8182	Telephone:	303-384-8135
Email:	kmajor@cityofgolden.net	Email:	btracy@cityofgolden.net
Jefferson County – Member Contact #1		Jefferson County – Member Contact #2	
Name:	Steve Germain	Name:	Patrick O’Connell
Title:	Natural Resources Supervisor	Title:	Engineering Geologist, P&Z
Address:	700 Jefferson County Pkwy, #100	Address:	100 Jefferson County Pkwy, #3550
City, State, Zip:	Golden, CO 80401	City, State, Zip:	Golden, CO 80419

Telephone:	303-271-5986	Telephone:	303-271-8707
Email:	sgermain@jeffco.us	Email:	poconnel@co.jefferson.co.us
City of Westminster – Member Contact #1		City of Westminster – Member Contact #2	
Name:	Kelly Cline	Name:	Sarah Borgers
Title:	Water Quality Administrator	Title:	Interim Director PW & U
Address:	8900 Pierce St	Address:	6575 W 88 th Ave
City, State, Zip:	Westminster, CO 80021	City, State, Zip:	Westminster, CO 80031
Telephone:	303-658-2576	Telephone:	303-658-2182
Email:	kcline@cityofwestminster.us	Email:	sborgers@cityofwestminster.us

EXHIBIT E:
SIGNATURE PAGE
(1 of 2)

Member	Authorized Representative Name, Title, Email	Date
City of Arvada	<p><u>Sharon Israel</u> Sharon Israel, PE Director of Utilities sisrael@arvada.org</p> <p>ATTEST: <u>Kristen R. Rush, City Clerk</u> City Clerk</p> <p>APPROVED AS TO FORM: Rachel A. Morris, City Attorney</p> <p>By: <u>Jessica Morales</u></p> 	
City of Black Hawk	<p><u>David D Spellman</u> David D Spellman Mayor dspellman@cityofblackhawk.org</p>	
Clear Creek County	<p><u>Suzanne Boccia</u> Suzanne Boccia Director, Office of Emergency Management sboccia@clearcreeksherrif.us</p>	
Clear Creek Fire Authority	<p><u>Jeremy Jones</u> Jeremy Jones Assistant Fire Chief jjones@clearcreekfire.com</p>	
Town of Empire	<p><u>Wendy Koch</u> Wendy Koch Mayor mayor@empirecolorado.us cc: Jeannette Piel, Clerk clerk@empirecolorado.us</p>	
Gilpin County	<p><u>Sandy Hollingsworth</u> Sandy Hollingsworth County Commissioner Chair shollingsworth@gilpincounty.org</p>	

(2 of 2)

City of Golden	 Laura Weinburg Mayor c/o Monica Mendoza, City Clerk mmendoza@cityofgolden.net APPROVED AS TO FORM:  Kathie B. Guckenberger, Esq. Attorney for the City of Golden kathie@mcm-legal.com	
Jefferson County	 Tom Hoby Director, Parks and Conservation thoby@co.jefferson.co.us	
City of Westminster	 Sarah Borgers, PE Interim Director of Public Works & Utilities sborgers@cityofwestminster.us APPROVED AS TO FORM:  Mathew Munch, Esq. Assistant City Attorney mmunch@CityofWestminster.us	