

**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; **Climax Molybdenum Company**, a foreign corporation incorporated in State of Delaware; the Board of Regents for the **Colorado School of Mines**, a body corporate; **Colorado Trout Unlimited**, a nonprofit corporation; 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; **Molson Coors Beverage Company**, a foreign corporation incorporated in the State of Delaware; the **City of Thornton**, a home rule corporation 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**, describing and 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 Executive (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 Executive 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, § 30(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. Executive Committee: The Executive Committee will be comprised of elected Members and shall include at a minimum a Chair and a Vice Chair. The Executive Committee will act as the main point of contact for the Partnership. Additional responsibilities of the Executive 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 ( ) Member representatives present.

## 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 Executive 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, Climax Molybdenum Company, Colorado School of Mines, Colorado Trout Unlimited, the Town of Empire, The County of Gilpin, the City of Golden, the County of Jefferson, Molson Coors Beverage Company, the City of Thornton, 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 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.

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.

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 \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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

**Exhibit A:**

**Geographical description and depiction of the Clear Creek Watershed**

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**Exhibit B:**  
**Upper Clear Creek Pre-Wildfire Planning Study**

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**Exhibit C:**  
**COCO's Affiliate Agreement Template**

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**Exhibit D:**

**Contact Information for Notices**

<b>City of Arvada – Program Contact</b>		<b>City of Arvada – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>City of Black Hawk – Program Contact</b>		<b>City of Black Hawk – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>Clear Creek County– Program Contact</b>		<b>Clear Creek County – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>Clear Creek Fire Authority – Program Contact</b>		<b>Clear Creek Fire Authority – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	

<b>Climax Molybdenum Company – Program Contact</b>		<b>Climax Molybdenum Company – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>Colorado School of Mines – Program Contact</b>		<b>Colorado School of Mines – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>Colorado Trout Unlimited – Program Contact</b>		<b>Colorado Trout Unlimited – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>Town of Empire – Program Contact</b>		<b>Town of Empire – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>Gilpin County – Program Contact</b>		<b>Gilpin County – Administrative Contact</b>	

Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>City of Golden – Program Contact</b>		<b>City of Golden – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>Jefferson County – Program Contact</b>		<b>Jefferson County – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>Molson Coors Beverage Company – Program Contact</b>		<b>Molson Coors Beverage Company – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>City of Thornton – Program Contact</b>		<b>City of Thornton – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	

City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	
<b>City of Westminster – Program Contact</b>		<b>City of Westminster – Administrative Contact</b>	
Name:		Name:	
Address:		Address:	
City, State, Zip:		City State, Zip:	
Telephone:		Telephone:	
Email:		Email:	

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**EXHIBIT E:  
EXECUTION**

<b>Member</b>	<b>Authorized Representative Name(s) and Title(s)</b>	<b>Authorized Representative Signature(s)</b>	<b>Date</b>
City of Arvada			
City of Black Hawk			
Clear Creek County			
Clear Creek Fire Authority			
Climax Molybdenum Company			
Colorado School of Mines			
Colorado Trout Unlimited			
Town of Empire			
Gilpin County			
City of Golden			
Jefferson County			
Molson Coors Beverage Company			
City of Thornton			

City of Westminster			

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