Intergovernmental Agreement for Implementation of the Keep it Clean Partnership Plan

This Intergovernmental Agreement ("Agreement"), is made and entered into this **9th day of March, 2023**, by and between BOULDER COUNTY, a body politic and corporate, and the CITIES OF BOULDER, LAFAYETTE, LONGMONT, and LOUISVILLE; and the TOWN OF SUPERIOR, each a municipal corporation, collectively known as the "KEEP IT CLEAN PARTNERSHIP" and referred to herein individually as a "PARTY" or collectively as the "PARTIES."

RECITALS:

A. WHEREAS, the Code of Federal Regulations (CFR) Section 40 CFR 122.26 requires that operators of small municipal separate storm sewer systems ("MS4s") obtain permits for discharging stormwater from their systems. The PARTIES are all small MS4 operators, as defined in the Code of Federal Regulations. In Colorado, stormwater discharge permits are issued by the Water Quality Control Division (the "Division") of the Colorado Department of Public Health and Environment (CDPHE) under Water Quality Control Regulation No. 61, "Colorado Discharge Permit System Regulations" (CDPS). Small MS4s are covered under the Division's General Permit for stormwater discharges ("MS4 permit."); and

B. WHEREAS, the PARTIES have all been issued certifications to discharge stormwater under the general stormwater permit issued by the CDPHE; and

C. WHEREAS, the PARTIES have agreed to collaborate as the KEEP IT CLEAN PARTNERSHIP ("KICP"), in jointly developing and implementing a plan to assist the PARTIES in complying with the requirements of their MS4 permits and protecting water quality in the Boulder Creek and St. Vrain Creek watersheds; and

D. WHEREAS, on January 23, 2003, the initial Intergovernmental Agreement ("IGA") for implementation of the WATERSHED APPROACH TO STREAM HEALTH (which subsequently became the KICP) Plan was entered into by and between Boulder County; the cities of Boulder, Longmont, and Louisville; and the towns of Erie and Superior and

E. WHEREAS, on January 1, 2008, the second IGA became effective for a term of five years; and

F. WHEREAS, on April 1, 2011, the third IGA became effective with the inclusion of the City of Lafayette; and

G. WHEREAS, on March 9, 2013, the fourth IGA became effective for an initial term of five years and was automatically renewed for an additional five year term on March 9, 2018; and

H. WHEREAS, on January 12, 2022, the TOWN OF ERIE submitted notice of its termination from the IGA; and

I. WHEREAS, the PARTIES are individually responsible for ensuring compliance with the terms and conditions of their MS4 permits within their respective jurisdictions; and

J. WHEREAS, the PARTIES are authorized to enter into this Agreement pursuant to Colorado Revised Statutes (C.R.S.) §29-1-201, *et seq*.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

SECTION 1. The Keep it Clean Partnership

1.01 The PARTIES will participate in the KICP to jointly identify and address stormwater quality requirements in each of their MS4 permits.

1.02 The PARTIES will participate in implementation of annual KICP work plans, which shall conform, generally, to the KICP mission, goals, and description of work as outlined in the Scope of Work attached hereto as Exhibit A. Annual work plans identify the joint activities and programs that can help meet the minimum control measures in the PARTIES' respective MS4 permits and, if agreed upon by the PARTIES, may also address other stormwater-related water quality issues in the PARTIES' jurisdictions. Annual work plans will be reviewed by the PARTIES to reflect changes in MS4 permit requirements or new or modified strategies or programs agreed to by the PARTIES. Annual work plans will be approved by the Steering Committee as defined in Section 2 of this Agreement.

1.03 The PARTIES will jointly develop annual work plans and budgets, identify funding needs and apportionment of funds, and define and maintain a management structure for the KICP.

SECTION 2. Steering Committee

2.01 The Steering Committee is the official management and oversight body for the KICP. The Steering Committee shall consist of representatives from each of the PARTIES and shall direct and guide the annual work plan and review and approve the annual budget. The Steering Committee shall consider permit compliance as a primary objective in approving work plans and corresponding budgets.

2.02 The Steering Committee shall evaluate the implementation of the annual work plans and review and approve the annual contributions of each PARTY calculated by KICP staff in funding the KICP and related administrative costs.

2.03 The voting membership of the Steering Committee shall consist of one designated voting representative from each of the PARTIES. An alternate voting representative may be appointed by each of the PARTIES.

2.04 A quorum of the Steering Committee shall consist of more than fifty percent of the voting membership. Although it is anticipated that decisions will be made by group discussion to reach general agreement, any of the PARTIES may require that a formal vote be taken. A formal vote requires that a quorum must be present, and except for measures requiring a greater or lesser majority under this Agreement, the affirmative vote of a majority of all total voting representatives of the Steering Committee shall be required to approve any measure brought to a formal vote before the Steering Committee.

2.05 The Steering Committee shall have the authority to adopt and amend bylaws with a majority vote of all total voting representatives.

2.06 The Steering Committee, or a sub-set of Steering Committee members or their delegates as agreed to by the Steering Committee, shall participate on the selection committee for any consultant(s) or contractor(s) to be paid from KICP funds ("Outside Contractor"), and shall be responsible for reviewing and approving contracts with Outside Contractors, including the scope(s) of work, schedules of performance, use of subcontractors, and compensation for such

Outside Contractors. Legal review and award of contracts to Outside Contractors will be administered according to procedures outlined in Section 4.02 and 4.03 of this Agreement.

2.07 The Steering Committee shall select at least one employee of one of the PARTIES or an Outside Contractor to act as KICP Staff. Any increase in staffing will require approval of a majority of the Steering Committee members as outlined in section 2.04 of this Agreement.

2.08 Employees selected as KICP Staff shall at all times be managed by the employee policies of the respective PARTY. KICP Staff shall be responsible for management and administration and technical project management in accordance with the annual work plan, this Agreement, the Steering Committee's bylaws, and as directed by the Steering Committee in the best interest of the PARTIES as a whole and individually. KICP Staff shall be paid from KICP funds in accordance with the adopted KICP Budget for providing the services described hereunder. KICP Staff shall not be responsible for providing program management services related to individual PARTY'S programs, but may provide such services under a separate contract with any one or more of the PARTIES if allowed by personnel policies of the PARTY employing KICP Staff.

2.09 The Steering Committee shall review timelines and budgets for completion of annual work plan tasks. The Steering Committee shall evaluate the annual work plan and the performance of the activities and programs, including those performed by Outside Contractors, in meeting the goals and objectives of the KICP. The annual work plan and annual budget will be revised as necessary to meet the goals and objectives.

2.10 The Steering Committee shall annually rate the performance of the KICP staff in managing the annual work plan, including directing the activities defined in the annual work plan, coordinating the PARTIES' joint responsibilities and meeting the timelines and annual budget. For KICP staff that are employees of one of the PARTIES, the Steering Committee's rating shall be submitted to that PARTY for consideration in the performance review of the KICP staff.

2.11 The Steering Committee, through its bylaws, shall establish procedures for tracking, accounting for, and auditing the KICP funds.

SECTION 3. KICP Budget

3.01 The PARTIES will jointly develop and fund an annual KICP Budget to implement the annual work plan. The KICP Budget may be based upon a projection of two consecutive calendar year cycles, but shall be adopted for only one calendar year cycle.

3.02 Subject to annual appropriation, the PARTIES shall each pay a yearly assessment into a fund established for the annual work plan operations for their assigned portion of the then current year KICP Budget. The share of the KICP Budget that each PARTY shall pay is the prorated share of the costs proportional to the population within each PARTY'S permitted area based on the most current U.S. Census Bureau Population Estimates.

3.03 In addition to the KICP Budget, individual PARTIES may also contract for additional services through the KICP if the additional administrative fees are also allocated from the requesting PARTY.

3.04 Except as provided in Section 6.03 of this Agreement, after all program expenses have been accrued for each calendar year, the actual costs will be reconciled with the funds already provided by each PARTY. Any differences will be reflected in assessments for the next calendar year.

3.05 Nothing in this Agreement is intended to create a multiple year fiscal obligation of any PARTY, or a pledge or lien on any source of funds or accounts of any PARTY.

3.06 All financial obligations of the PARTIES are subject to annual budgeting and appropriation by the PARTIES' respective governing boards in their discretion. Upon non-appropriation by a PARTY'S governing board, all benefits accruing to such non-appropriating PARTY hereunder shall cease immediately, and such PARTY shall be relieved from all future fiscal-year financial obligations; provided, however, that, such non-appropriating PARTY shall forfeit all funds already contributed by such PARTY to the KICP.

SECTION 4. Contracting/Fiscal Agent

4.01 The Contracting/Fiscal Agent shall be the treasurer of KICP funds. The Contracting/Fiscal Agent, in accordance with generally accepted accounting procedures, shall keep the KICP funds segregated from any other funds administered by the Contracting/Fiscal Agent; shall credit the KICP with appropriate interest income earned on KICP funds in each calendar year; and shall not expend any funds except in accordance with the annual KICP Budget approved by the Steering Committee or as otherwise directed by the Steering Committee.

4.02 Unless otherwise decided by a majority vote of the Steering Committee, or as otherwise outlined in this Agreement, BOULDER COUNTY shall serve as the Contracting/Fiscal Agent for the Plan.

4.03 In the event that the Contracting/Fiscal Agent withdraws from providing Contracting/Fiscal services to the KICP or the Steering Committee chooses to discontinue the services of the Contracting/Fiscal Agent, another PARTY may serve as a successor Contracting/Fiscal Agent. One hundred and twenty (120) days written notice shall be provided to the PARTIES in the event of withdrawal or discontinuation of the services of the Contracting/Fiscal Agent. Selection of a Contracting/Fiscal Agent must be by majority vote of the entire Steering Committee.

4.04 The Contracting/Fiscal Agent shall execute contracts which have been requested and approved by the Steering Committee.

4.05 The governing body of the Contracting/Fiscal Agent, at its discretion, may delegate the authority to execute agreements and contracts approved by the Steering Committee to a designated employee. Notice of any such delegation of authority shall be provided to the Steering Committee.

4.06 The Contracting/Fiscal Agent may request, as part of the annual KICP Budget, reimbursement for administrative costs incurred in providing the services described in this section and in the bylaws.

SECTION 5. Ancillary Rights and Duties of the PARTIES

5.01 In addition to participation in the Steering Committee, each PARTY accepts and agrees to perform the operational and administrative tasks specific to the PARTY identified in the annual work plan.

SECTION 6. Effective Date and Term of Agreement

6.01 This Agreement shall take effect and commence on **March 9, 2023**, provided it has been executed by a duly authorized representative of each of the PARTIES. This Agreement supersedes and replaces any prior KICP agreements between the PARTIES.

6.02 The initial term of this Agreement shall be for five years from the date of its execution. After the initial term, this Agreement shall be automatically renewed for an additional five-year term, unless terminated as provided in Section 6.04.

6.03 A new party may initiate its participation in this Agreement by giving the Steering Committee at least ninety (90) days' written notice and upon a formal vote of the Steering Committee ac-

cepting their participation. Any new party to this Agreement must be a governmental agency with authority to enter into this Agreement under C.R.S. §29-1-201, *et seq*. and must execute this Agreement prior to commencing participation. A new party shall be admitted to participation only upon approval of the Steering Committee, under such conditions as the Steering Committee in each case or from time-to-time establishes in furtherance of the purposes and provisions of this Agreement.

6.04 Any PARTY, including any new party participating in this Agreement under Paragraph 6.03,may terminate its participation in this Agreement by giving the Steering Committee at least thirty (30) days' written notice. Termination shall constitute forfeiture of the terminating PARTY'S entire share of the KICP Budget for the fiscal year in which the termination occurred (including both paid and obligated but unpaid amounts) and of the terminating PARTY'S share of any unexpended, unencumbered funds remaining from all previous fiscal years. The cost allocations for the remaining PARTIES shall be recalculated for the following fiscal year by the remaining PARTIES without the withdrawing PARTY'S participation.

SECTION 7. General Legal Provisions

7.01 This Agreement may be amended or terminated by unanimous written agreement of the PARTIES. All PARTIES agree to submit to their Council or Board for approval of any proposed amendments to this Agreement, as applicable, within three (3) months following acceptance by the Steering Committee. No KICP Budget amendment which increases the KICP Budget will be effective unless approved by a unanimous vote of the Steering Committee.

7.02 No PARTY shall, by entering into this Agreement, participating in the Steering Committee, or agreeing to serve as Fiscal/Contracting Agent or Coordinator, be deemed to assume responsibility for any other PARTY'S obligations to comply with the requirements of the that PARTY'S MS4 permit. This Agreement is intended solely for the convenience and benefit of the PARTIES hereto and shall not be deemed to be for the benefit of any third party and may not be enforced by any third party, including, but not limited to, the U.S. Environmental Protection Agency, the Division, or any person acting on their behalf or in their stead.

7.03 Nothing in this Agreement shall be construed to waive or cede any jurisdiction that any of the PARTIES may possess.

7.04 Nothing in this Agreement shall create any joint or several liability or joint and several exposure to any participating PARTY for statutory or administrative violations associated with illicit discharges or compliance responsibilities. Joint action under this Agreement is strictly limited to the permitting, planning, and other related processes as described herein, unless otherwise agreed.

7.05 By entering into this Agreement, no PARTY waives or intends to waive, as to any person not a party to this Agreement, the monetary limitations or any other rights, immunities, and protections which are provided to the PARTY under the Colorado Governmental Immunity Act, Section 24-10-101, *et seq*., C.R.S.

7.06 This Agreement may be executed in any number of counterparts each of which, when taken together, shall constitute one agreement. This Agreement shall only be effective when counterparts are signed by all the PARTIES.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement as of the dates shown below.

BOULDER COUNTY

_____

_____Title

_____Date

ATTEST:

_____

TOWN OF SUPERIOR

Matthew G. Magel

Town Manager Title

3/30/2023 Date

ATTEST:

THE TOWN OF SUPERIOR SEAL COLORADO