

## **Intergovernmental Agreement for Implementation of the Watershed Approach to Stream Health (WASH) Plan**

This Agreement, is made and entered into this **23rd day of January 2003** by and between BOULDER COUNTY, a body politic and corporate, and the CITIES OF BOULDER, LONGMONT, LOUISVILLE, and the TOWNS OF ERIE AND SUPERIOR, each a municipal corporation (the county, cities or towns may be referred to hereinafter individually as “PARTNER” or jointly as “PARTNERS”).

### **RECITALS:**

- A. In 1999, the WASH project was funded from the 104(b)(3) Water Quality Cooperation Agreement Grant. Boulder County used these funds to conduct a workshop on watershed approaches to stormwater quality issues. The grant was also used to support a coordination of jurisdictions within the watershed to facilitate initial exploratory meetings of potential PARTNERS.
- B. The PARTNERS are committed to the protection of stormwater quality within the Boulder Creek and St. Vrain watersheds, including Coal and Rock Creek, to meet both regulatory and community goals. The WASH Project was developed to provide a forum to identify these management and data gaps, create workable solutions for filling the gaps, and implement a county-wide system of sharing and using stormwater quality data and management approaches to improve stormwater quality in Boulder County.
- C. A Memorandum of Understanding was entered into on the 11<sup>th</sup> day of October, 2001 by and between Boulder County and the Cities of Boulder and Longmont and the Towns of Erie and Superior setting forth the shared goals of the PARTNERS.
- D. The federal Clean Water Act requires that stormwater discharges from certain types of facilities be authorized under stormwater discharge permits. (See 40 CFR 122.26.) The goal of the stormwater permits program is to reduce the amount of pollutants entering streams, lakes and rivers as a result of runoff from residential, commercial and industrial areas.
- E. In Colorado, stormwater discharge permits are issued by the Colorado Department of Public Health and Environment, Water Quality Control Division (the “Division”). Such permits are part of the Colorado Discharge Permit System, or CDPS, under Division Regulation No. 61. The Phase II municipal separate storm sewer systems (“MS4s”) will be covered under the Division’s General Permit for stormwater discharges.
- F. A PARTNER is an active supporting member of the WASH organization. PERMITTED PARTNER is a WASH member designated by the Division to meet Phase II stormwater quality permitting requirements. These PERMITTED PARTNERS include City of Boulder, Boulder County, City of Longmont, City of Louisville, Town of Erie,

and Town of Superior. A NON-PERMITTED PARTNER is a WASH member that is not designated by the Division to meet Phase II stormwater quality permitting requirements. The PERMITTED PARTNERS will submit a joint application for a Division General Permit (the "Permit"). A General Permit is a single permit that is written to cover multiple permittees.

G. The WASH Plan was developed by the PARTNERS to outline the programs required to meet the six minimum control measures ("MCM's") defined in the Division's Regulation No. 61, additional measures designed to improve stormwater quality, and the PARTNERS financial plan and management structure for the WASH Project.

H. The PARTNERS are authorized to enter into this Agreement pursuant to CRS 29-1-201 et. seq. The WASH Partnership is a voluntary and cooperative method to implement the requirements outlined in the Divisions Regulation No. 61 and to provide stormwater quality improvements within the Boulder Creek and St. Vrain watersheds, including Coal Creek and Rock Creek.

**THEREFORE, THE PARTNERS AGREE AS FOLLOWS:**

Section 1. The Watershed Approach to Stream Health Program

- 1.01 The PARTNERS have developed the Watershed Approach to Stream Health Plan ("Plan"), which includes county-wide stormwater quality programs designed to benefit all PARTNERS and which may be modified by the PARTNERS.
- 1.02 The implementation of the Plan will fulfill the requirements of the Division's Regulation No. 61.
- 1.03 The Plan includes WASH programs to meet the Division Regulation No. 61 Permit requirements, hereafter referred to as 1<sup>st</sup> Priority Programs. The Plan also includes programs not required by Division Regulation No. 61, hereafter referred to as 2<sup>nd</sup> Priority Programs. These 2<sup>nd</sup> Priority Programs are intended to provide additional stormwater quality benefits for all the PARTNERS.

Section 2. Steering Committee

- 2.01 The Steering Committee is the official management and oversight body for implementing the Plan. The Steering Committee shall consist of representatives from each PARTNER and shall direct and guide the shared components of the Plan and review and approve the Plan Budget. The Steering Committee shall consider Permit compliance as a primary objective in approving Plan tasks and corresponding budgets.
- 2.02 The Steering Committee shall periodically re-evaluate and make recommendations to the PARTNERS concerning reallocation of the proportions of the annual Plan contribution that each PARTNER shall pay.
- 2.03 The voting membership of the Steering Committee shall consist of one designated voting representative from each PARTNER. An alternative voting representative may be appointed by each PARTNER.

- 2.04 A quorum of the Steering Committee shall be achieved when at least one more than half of the voting representatives are present at any Steering Committee Meeting. Although it is anticipated that decisions will be made by group discussion to reach general agreement, any PARTNER may require that a formal vote be taken. A quorum must be present and-except for measures requiring a greater or lesser majority under this agreement- the affirmative vote of at least two-thirds of all voting representatives present of the Steering Committee are 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 by-laws with a two- thirds vote of a quorum of all voting representatives present.
- 2.06 The Steering Committee shall be responsible for selecting any consultant(s) or contractor(s) who are to be paid from Plan funds (“Outside Contractor”), and 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. Award of contracts to Outside Contractors will be administered according to procedures outlined in Section 4 of this Agreement.
- 2.07 The Steering Committee shall select an employee of a PARTNER or Outside Contractor to act as WASH Project Coordinator for the Plan. An individual PARTNER employee selected as Project Coordinator shall at all times be managed by the employee policies of such PARTNER. The WASH Project Coordinator shall be responsible for Plan management and administration, Permit management, and technical project management all in accordance with the Plan, this Agreement, the Steering Committee’s Bylaws, and as directed by the Steering Committee in the best interest of the PARTNERS as a whole and individually. The WASH Project Coordinator shall be paid from Plan funds in accordance with the adopted Plan budget for providing the services described hereunder. The WASH Project Coordinator shall not be responsible for providing program management services related to individual PARTNER’S 1st Priority programs, but may provide such services under a separate contract with any PARTNER or PARTNERS if allowed by personnel policies of the PARTNER where the project manager position resides.
- 2.08 The Steering Committee may select an attorney (“Plan Attorney”) that is experienced with the Clean Water Act and Municipal Stormwater Permits to provide legal advice to the Steering Committee on specific matters involving administration of the Plan and such other matters upon which the Steering Committee may seek legal advice or request legal representation. Plan Attorney shall not be responsible for providing legal advice related to permit compliance to individual PARTNERS, but may provide such services under separate contract with any PARTNER or PARTNERS. The WASH Project Coordinator may assist in coordination of activities with the Plan Attorney but shall not give direction without prior authorization from the Steering Committee.
- 2.09 The Steering Committee shall establish timelines and budgets for completion of Plan tasks. The Steering Committee shall rate the performance of the Plan, and in

turn rate the performance of the WASH Project Coordinator, based upon these approved timelines and budgets.

- 2.10 The Steering Committee, through its by-laws, shall establish procedures for tracking, accounting for and auditing the Plan fund.

### Section 3. Plan Budget

- 3.01 A collective budget for the shared portions of the Plan (“Plan Budget”) may be based upon a projection of two consecutive calendar year cycles, however, the Plan Budget shall be adopted for only one calendar year cycle.
- 3.02 Subject to annual appropriation, the PARTNERS shall each pay a yearly assessment into a fund established for the PLAN operations for their assigned portion of the Plan Budget. The proportional share of the Plan Budget that each PARTNER shall pay is shown in the schedule marked Exhibit A hereto and incorporated by reference herein. Nothing in this section is intended to create a multi-fiscal year obligation of any PARTNER, or a pledge or lien on any source of funds or accounts of any PARTNER.
- 3.03 It is the intention of the PARTNERS that each PARTNER will fund a prorated share of these costs proportional to the number of residents within each PARTNERS jurisdiction as defined in Exhibit A.
- 3.04 Except as provided in Section 6.03, after all program expenses have been accrued for each calendar year, the actual costs will be reconciled with the funds already provided by each PARTNER. Any differences will be reflected in assessments for the next calendar year. If a PARTNER does not wish to participate in future years, unused funds will be reimbursed or an additional payment for expenses accrued will be requested at that time. Nothing in this section is intended to create a multi-fiscal year obligation of any PARTNER, or a pledge or lien on any source of funds or accounts of any PARTNER.

### Section 4. Contracting/Fiscal Agent

- 4.01 The Contracting/Fiscal Agent shall be the treasurer of Plan funds. The Contracting/Fiscal Agent, in accordance with generally accepted accounting procedures, shall keep the Plan funds segregated from any other funds administered by the Contracting/Fiscal Agent; shall credit the Plan with appropriate interest income earned on Plan funds in each calendar year; and shall not expend any funds except in accordance with the annual Plan Budget approved by the Steering Committee or as otherwise directed by the Steering Committee.
- 4.02 Boulder County Health Department shall serve as the initial Contracting/Fiscal Agent for the Plan.
- 4.03 In the event that the Contracting/Fiscal Agent withdraws from providing Contracting/Fiscal services to the Plan or the WASH Steering Committee chooses to discontinue the services of the Contracting/ Fiscal Agent, another PARTNER may serve as a successor Contracting/Fiscal Agent. One-hundred and twenty (120) days written notice shall be provided by either party 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 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 Plan Budget, reimbursement for administrative costs incurred in providing the services described in this section and in the by-laws.

#### Section 5. Ancillary Rights and Duties of the PARTNERS

- 5.01 In addition to participation in the Steering Committee, each PERMITTED PARTNER accepts and agrees to perform the following duties:
  - 1. Perform both the operational and administrative tasks identified in the Plan for the PERMITTED PARTNER, including implementation of 1<sup>st</sup> Priority Programs outlined in the Plan.
  - 2. Ensure compliance with the terms and conditions of the Permit within their respective service areas, including the implementation and enforcement of the Municipal Stormwater Discharge Permit's conditions, monitoring, record keeping, and reporting as required.
  - 3. Choose to implement selected 2nd Priority Programs outlined in the Plan, as desired.
- 5.02 In addition to participation in the Steering Committee, each NON-PERMITTED PARTNER may or may not choose to implement selected programs, both 1<sup>st</sup> and 2nd Priority Programs, outlined in the Plan, as desired, including performing both the operational and administrative tasks identified in the Plan for each PARTNER.

#### Section 6. Effective Date and Term of Agreement

- 6.01 This Agreement shall take effect and commence on January 1, 2003, provided it has been executed by a duly authorized representative of each of the PARTNERS.
- 6.02 The initial term of this Agreement shall end five (5) years after the Division issues notification of WASH PARTNER's coverage under the Division's General Permit.
- 6.03 A new PARTNER 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 accepting their participation. Any PARTNER to this Agreement must be a government with authority to enter into this Agreement under C.R.S. 29-1-201 et seq. For any new PARTNER who initiates participation after December 31, 2002, the Steering Committee may request reimbursement of a portion of WASH costs incurred on or after January 1, 2003.

- 6.04 Any PARTNER may terminate its participation in this Agreement by giving the Steering Committee at least thirty (30) days written notice. Termination shall constitute forfeiture of all of the terminating PARTNER's share of the Plan Budget for the fiscal year in which the termination occurred (including both paid and obligated but unpaid amounts) and of the terminating PARTNER's share of any unexpended, unencumbered funds remaining from all previous fiscal years. In addition, if funds have been appropriated for the Plan Budget for the succeeding year and notice of termination is not provided by December 31 of the current calendar year, then the terminating PARTNER shall be responsible for its share of the Plan Budget for the succeeding calendar year. The cost allocations for the remaining PARTNERS may be recalculated for the following fiscal year by the remaining PARTNERS without the withdrawing PARTNER'S participation. Nothing in this section is intended to create a multi-fiscal year obligation of any PARTNER or a pledge or lien on any source of funds or accounts of any PARTNER.

## Section 7. General Legal Provisions

- 7.01 This Agreement may be amended or terminated by unanimous written agreement of the PARTNERS. All PARTNERS agree to bring any proposed amendment to this Agreement to their Council or Board, as applicable, within three (3) months following acceptance by the Steering Committee. No Plan Budget amendment which increases the Plan Budget will be effective unless approved by a unanimous vote of a quorum of the Steering Committee.
- 7.02 No PARTNER shall, by entering into this Agreement, participating in the Steering Committee, agreeing to serve as Fiscal/Contracting Agent or WASH Project Coordinator be deemed to assume responsibility for any other PARTNER's obligations to comply with the requirements of the Municipal Stormwater Discharge Permit. This Agreement is intended solely for the convenience and benefit of the PARTNERS 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 US 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 PARTNERS may possess.
- 7.04 The term "PARTNER", as used in this Agreement, is not meant to indicate that the signatories to this Agreement constitute a partnership, as that term is understood in the Uniform Partnership Law, §§ 7-60-101, C.R.S. et seq, or at common law. Nothing in this Agreement shall create any joint or several liability or joint and several exposure to any participating PARTNER 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 PARTNER 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 PARTNER under the Colorado Governmental Immunity Act, Section 24-10-101 et seq., C.R.S.

## EXHIBIT A

### WATERSHED APPROACH TO STREAM HEALTH (WASH) PLAN PROPORTIONAL SHARES OF FISCAL CONTRIBUTION BASED ON POPULATION WITHIN 2000 CENSUS DEFINED URBANIZED AREAS

<u>Jurisdiction</u>	<u>Population</u>	<u>Proportional Share</u>
Boulder County	22,344	10.16 %
Boulder	93,891	42.71 %
Erie	5,647	2.57 %
Longmont	70,525	32.08%
Louisville	18,523	8.43 %
Superior	8,897	4.05 %