

**INTERGOVERNMENTAL AGREEMENT
ESTABLISHING THE BOULDER COUNTY
HAZARDOUS MATERIALS RESPONSE AUTHORITY**

This INTERGOVERNMENTAL AGREEMENT ESTABLISHING THE BOULDER COUNTY HAZARDOUS MATERIALS RESPONSE AUTHORITY ("**Agreement**") is made and entered as of the Effective Date (defined below) by and among the following local governments that have signed this Agreement by the Effective Date, which are referred to individually as a "**Member**" and collectively as the "**Members**":

1. BOULDER COUNTY SHERIFF'S OFFICE, a public entity of the State of Colorado, hereinafter referred to as "**Boulder County**";
2. CITY OF BOULDER, a home rule municipality, incorporated and existing under the laws of the State of Colorado, hereinafter referred to as "**Boulder**";
3. CITY OF LAFAYETTE, a home rule municipality, incorporated and existing under the laws of the State of Colorado, hereinafter referred to as "**Lafayette**";
4. CITY OF LONGMONT, a home rule municipality, incorporated and existing under the laws of the State of Colorado, hereinafter referred to as "**Longmont**";
5. LOUISVILLE FIRE PROTECTION DISTRICT, a political subdivision of the State of Colorado;
6. LYONS FIRE PROTECTION DISTRICT, a political subdivision of the State of Colorado;
7. ROCKY MOUNTAIN FIRE PROTECTION DISTRICT, a political subdivision of the State of Colorado;
8. MOUNTAIN VIEW FIRE PROTECTION DISTRICT, a political subdivision of the State of Colorado; and,
9. TOWN OF WARD, a home rule municipality, incorporated and existing under the laws of the State of Colorado, hereinafter referred to as "**Ward**";
10. TOWN OF JAMESTOWN, a home rule municipality, incorporated and existing under the laws of the State of Colorado, hereinafter referred to as "**Jamestown**";
11. TOWN OF NEDERLAND, a home rule municipality, incorporated and existing under the laws of the State of Colorado, hereinafter referred to as "**Nederland**";

RECITALS

WHEREAS, Article XIV, Section 18(2)(a) of the Constitution of the State of Colorado and Part 2, Article 1, Title 29, C.R.S., encourages and authorizes intergovernmental agreements;

WHEREAS, Sections 29-1-203 and 29-1-203.5, C.R.S., authorize governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each, and to establish a separate political subdivision of the State to do so;

WHEREAS, Section 29-22-103(3), C.R.S., encourages mutual aid agreements between governing bodies, designated emergency response authorities and private entities, for the purpose of enhancing the response to a Hazardous Materials Incident (defined below), including procedures for utilizing equipment, personnel and technical assistance;

WHEREAS, Section 29-22-102, C.R.S., requires there to be a designated emergency response authority ("**DERA**") responsible for establishing the capacity to respond to a Hazardous Materials Incident within the jurisdiction of every town, city or county either through designation by the town, city or county or automatically through the default provisions of the statute;

WHEREAS, it is recognized that a Hazardous Materials Incident may arise within the jurisdiction one or more of the Members that exceed its capabilities in terms of personnel, equipment, training and/or expertise;

WHEREAS, the Members have agreed to share personnel, equipment, training and expertise necessary for an effective response to a Hazardous Materials Incident that may arise within the jurisdiction of one or more of the Members; and,

WHEREAS, the Members wish to establish a separate political subdivision that will be responsible for providing and maintaining the Members' combined capability for effective response to a Hazardous Materials Incident.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the Members agree as follows:

AGREEMENT

ARTICLE 1 - ORGANIZATION AND PRINCIPAL PLACE OF BUSINESS

- 1.1 **Organization.** There is hereby established the "Boulder County Hazardous Materials Response Authority" ("**Authority**"), which shall constitute a separate political subdivision of the State pursuant to Sections 29-1-203 and 29-1-203.5, C.R.S., an "emergency response authority" pursuant to Section 29-22-103, C.R.S., and a "public entity" within the meaning of the Colorado Governmental Immunity Act, Section 24-10-101, C.R.S., *et seq.* The Authority is established in conformity with Section 29-1-203.5, C.R.S. and the provisions of that statute shall apply to the Authority.
- 1.2 **Principal Place of Business.** The Board will establish the Authority's principal place of business, which initially will be 225 Kimbark, Longmont, CO 80501.

ARTICLE 2 -DEFINITIONS

As used in this Agreement, the following words and terms shall have the following meanings, except as specified otherwise:

- 2.1 "**Annual Budget**" means the fiscal plan adopted annually by the Board regarding anticipated revenues and expenditures, and the funding of or expenditure from the General Operating Fund, the Capital Improvement Fund and/or the Contingency Fund during the ensuing Fiscal Year.
- 2.2 "**Annual Contribution**" means funds contributed to the Authority by each Member, at a level determined by the Board as sufficient to fund the Authority's General Operating Fund, the Capital Improvement Fund and/or the Contingency Fund each Fiscal Year, to be calculated in accordance with Section 7.2.
- 2.3 "**Board**" means the Board of Directors for the Boulder County Hazardous Materials Response Authority, as established by this Agreement, or as may be adjusted from time to time by a Super Majority of the Board. All legislative power of the Authority is vested in the Board.
- 2.4 "**Capital Improvement Fund**" means a reserve fund established for the repair, replacement or purchase of Hazardous Materials Response Equipment.
- 2.5 "**Contingency Fund**" means a reserve fund of ten percent of the preceding Fiscal Year's actual expenditures from the General Operating Fund and the Contingency Fund (if any), which shall be used to defray the costs of unanticipated or unreimbursed operating expenses.
- 2.6 "**Director**" means a member of the Board.
- 2.7 "**Effective Date**" means September 1, 2017.
- 2.8 "**Fiscal Year**" means the fiscal year of the Authority, which is concurrent with the calendar year.
- 2.9 "**General Operating Fund**" means a fund into which all Annual Contributions, and all other revenues from any source, are deposited and from which all financial obligations and expenditures of the Authority are paid (except for the repair, replacement or purchase of Hazardous Materials Response Equipment that is paid for directly from the Capital Improvement Fund).
- 2.10 "**Hazardous Materials**" means any Materials, material, waste, or mixture designated as a hazardous material, waste, or Materials according to 49 Code of Federal Regulations Part 172, as amended, or by Section 18-13-112(2)(b), C.R.S., or as designated pursuant to the federal "Comprehensive Environmental Response, Compensation and Liability Act of 1980".

- 2.11 "**Hazardous Materials Incident**" means any emergency circumstance involving the discharge of a Hazardous Materials which threatens immediate and irreparable harm to the environment or the health and safety of any individual other than individuals exposed to the risks associated with Hazardous Materials in the normal course of their employment. The term "Hazardous Materials Incident" includes "Bioterrorism" and "Disaster", as defined in Section 24-33.5-703, C.R.S.
- 2.12 "**Hazardous Materials Response Equipment**" means equipment that has been specifically designed and outfitted for use in a Hazardous Materials Incident, including mobile equipment, such as vans and other vehicles; personal protective equipment; and, detection/monitoring devices.
- 2.13 "**Hazardous Materials Response Team**" means those personnel specifically trained and equipped, pursuant to this Agreement, to respond to, and then remove, contain and mitigate, a Hazardous Materials Incident. These personnel may be deployed as a single team or as multiple teams, depending upon the operational criteria determined through the governance process established below.
- 2.14 "**Majority**" means one more than half the Directors present at a regular, special or emergency meeting where a quorum of Directors are present in-person, telephonically or by any other media by which each Director can hear and be heard by the other Directors and the audience.
- 2.15 "**Quorum**" means more than one-half the number of Directors serving on the Board at the time of the regular, special or emergency meeting, whether participating in-person, telephonically or by any other media by which each Director can hear and be heard by the other Directors and the audience. A vacant Director position will not be counted for purposes of determining if a quorum is present. A Director who abstains from a vote will still be counted for purposes of determining if a quorum is present.
- 2.16 "**Responsible Party**" means the person, business, agency, firm, corporation, or other such organization by any other name that is deemed financially responsible for a Hazardous Materials Incident under Colorado or Federal law and includes the "person or persons who have care, custody, and control" as described in Section 29-22-104, C.R.S., as may be amended.
- 2.17 "**Service Area**" means, all areas where the signatory agencies are the DERA, as may be adjusted from time to time by a Super Majority of the Board.
- 2.18 "**Super Majority**" means at least sixty-six percent (66%) of the Directors at the time of a regular or special meeting where a quorum of Directors are present in-person, telephonically or by any other media by which each Director can hear and be heard by the other Directors and the audience.

ARTICLE 3 – PURPOSE, DESIGNATIONS, FUNCTIONS AND SERVICES

- 3.1 **Purpose.** The purpose of the Authority is to provide the Service Area with the organized administration and operation of a Hazardous Materials response program ("**Program**"). The Authority's primary focus will be to promote the safety of the public within the Service Area and to promote the safety of the Members' personnel.
- 3.2 **Designation.** Each Member shall designate a DERA as required by Section 29-22-102, C.R.S., as may be amended. The Authority cannot be the DERA designated by the individual Members pursuant to Section 29-22-102, C.R.S., as may be amended. The individual DERAs shall retain all responsibilities under Section 29-22-102, C.R.S., as may be amended.
- 3.3 **Functions and Services.** The Authority, through its Board, shall have the following powers, and shall perform the following functions and services:
 - 3.3.1 Establish, administer and operate the Program. The Program shall be provided in addition to, and not in place of, any already existing Hazardous Materials equipment and personnel within a Member's jurisdiction.
 - 3.3.2 Acquire, lease, operate, maintain, repair, replace or sell real and personal property, systems, equipment and other materials necessary to facilitate the administration and operation of the Program, including all real and personal property transferred or leased to it by Members.
 - 3.3.3 Acquire, lease, operate, maintain, repair, replace or sell Hazardous Materials Response Equipment.
 - 3.3.4 Train and deploy personnel to maintain and operate the Hazardous Materials Response Equipment throughout the Service Area.
 - 3.3.5 Maintain and follow the Incident Command System as provided for by the National Incident Management System.
 - 3.3.6 Enter into mutual aid or similar agreements with any governing body, emergency response authority or private entity, whether for-profit or non-profit, as anticipated by Section 29-22-102, C.R.S., as may be amended.
 - 3.3.7 Establish a Hazardous Materials Response Team for the purposes of training, education, coordination, and rapid deployment of qualified personnel in the event of a Hazardous Materials Incident. All team members shall at all times remain employees or volunteers of their respective participating Members, and under no circumstance shall any personnel of the Hazardous Materials Response Team be deemed to be an employee or volunteer of the Authority.
 - 3.3.8 Collect and disburse all funds related to administering and operating the Program and establish such banking accounts and relationships necessary for this purpose.

- 3.3.9 Maintain separate asset inventory schedules for all real or personal property transferred from a Member or acquired by the Authority, whether through purchase, donation, grant or otherwise.
- 3.3.10 Determine the level of service to be provided to the citizens and property within the Service Area.
- 3.3.11 Enter into, make and perform contracts of every kind as authorized by law with other local governmental entities, the State of Colorado or any political subdivision thereof, the United States, or any political subdivision thereof, and any individual, firm, association, partnership, corporation, or any other organization of any kind.
- 3.3.12 Employ personnel and hire agents, including, but not limited to, accountants, auditors, attorneys, and consultants as it deems appropriate.
- 3.3.13 Receive contributions, gifts, donations, bequests, or grants of any type or nature, including but not limited to cash, real or personal property, equipment, or services.
- 3.3.14 Adopt policies and procedures with respect to the exercise of its powers and carrying out of its purposes.
- 3.3.15 Obtain and maintain general liability and management liability insurance coverage, and such other insurance as it deems appropriate or as may be required by law.
- 3.3.16 Exercise any other powers that are necessary for the Authority to perform the functions and services set forth in this Agreement, or implied or inherent to the powers granted the Authority by this Agreement or by law.
- 3.3.17 Provide such other services or functions reasonably related to the administration and operation of the Authority, and implementation of the Program, as may be authorized by law to the Members, and as determined by the Board to be in the best interest of the Members, and the citizens and property within the Service Area.

ARTICLE 4 – MEMBERSHIP

4.1 **Member Assets.** Upon Board approval, a Member may retain, transfer or lease to the Authority Hazardous Materials Response Equipment, or other equipment that would assist in the Authority's administration and/or operation, under the following terms:

4.1.1 **Member Retained Equipment.** A Member may retain ownership of any Hazardous Materials Response Equipment it owns or acquires as part of its

operations ("**Retained Equipment**"). The Member shall maintain general liability and property insurance on the Retained Equipment. With the Member's consent, the Retained Equipment may be used as a resource to the Authority to assist in the Authority's administration and/or operation. The Authority will reimburse the Member for all reasonable repair and maintenance costs associated with the Retained Equipment provided that the Retained Equipment is available for use by the Authority.

- 4.1.2 Title Transfer. Subject to Board approval, a Member may transfer to the Authority legal title to Hazardous Materials Response Equipment, or other equipment that would assist in the Authority's administration and/or operation ("**Transferred Equipment**"). The Member shall execute the necessary documents to transfer full legal title to the Authority. The Member will provide any supporting documentation contained in the Member's regularly maintained business records relating to the Transferred Equipment including, but not limited to, purchase contracts, maintenance records, inspection reports, and/or title history. Once title is transferred to the Authority, the Member shall have no further interest, right or title to the Transferred Equipment other than the rights as set forth in Article 8 upon termination of this Agreement.
- 4.1.3 Leased Equipment. Subject to Board approval, a Member may, for a nominal fee, lease to the Authority Hazardous Materials Response Equipment, or other equipment that would assist in the Authority's administration and/or operation ("**Leased Equipment**"). The Member shall execute the necessary documents to create a binding agreement that includes lease terms that have been mutually agreed on by the Member and the Board ("**Lease**"). The Member shall maintain general liability and property insurance on the Leased Equipment. The Board, in its sole discretion, may obtain any insurance it deems necessary to insure the Leased Equipment. Upon termination of this Agreement pursuant to Article 8, the Lease shall immediately terminate and the Leased Equipment shall revert back to the Member.
- 4.2 Involuntary Termination of Member. The Board may terminate a Member upon the occurrence of either the Member's breach of this Agreement ("**Breach**") or the Member's failure to pay in full at the required time its Annual Contribution ("**Failure to Pay**"). The procedure for such termination shall be as follows:
 - 4.2.1 Super Majority Vote. Termination shall require a Super Majority vote of the Board at a regular or special meeting during which the accused Member shall have the opportunity to present relevant evidence in its defense as determined by the Board.
 - 4.2.2 Opportunity to Cure. If the Board votes to terminate a Member as set forth above, the Member shall have thirty calendar days to cure a Breach, or ten calendar days to cure a Failure to Pay, as applicable.

- 4.2.3 **Economic Hardship.** The Members to this Agreement recognize that there may be circumstances that would cause a Member to be unable to meet the full extent of its financial obligations as set forth in this Agreement for reasons including, but not limited to, a material decrease in revenues ("***Economic Hardship***"). A Member's failing to pay at the required time its full Annual Contribution due to Economic Hardship shall not constitute a Failure to Pay shall if the Member (a) appropriates as much of its Annual Contribution each Fiscal Year as reasonably practicable and (b) develops a three year financial action plan to resume meeting its full Annual Contribution, which will be reviewed and approved by the Board. If a Member experiencing Economic Hardship fails to satisfy the requirements set forth in subparagraphs (a) and (b) above, and to resume meeting its full Annual Contribution by the end of the three year financial action plan, it shall constitute a Failure to Pay.
- 4.2.4 **Final Termination Vote.** At a regular or special meeting, the Board shall determine whether the accused Member cured the violation within the applicable cure period. The Board may review such evidence as it determines is reasonable and necessary and shall thereafter vote on the matter. Whether the accused Member successfully cured the violation shall be determined by a Majority vote. If this meeting is to evaluate the cure of a Breach, this meeting shall be held not less than thirty days nor more than sixty days after a Super Majority vote to terminate a Member. If the meeting is to evaluate the cure of a Failure to Pay, this meeting shall be held not less than ten days nor more than thirty days after a Super Majority vote to terminate a Member. If the Board determines that the accused Member did not cure the violation, the accused Member's participation in the Authority shall immediately terminate.
- 4.2.5 **Effect of Termination.**
- (a) Upon termination, the Member shall have no further interest, right or title in or to any assets or equity of the Authority.
 - (b) Termination of one or more Members shall not cause termination of this Agreement.
- 4.3 **Consolidation by Members.** Consolidation by a Member with another Member or non-Member to form a single legal entity will neither terminate this Agreement nor constitute a withdrawal by the consolidating Member or Members. All rights and obligations of such consolidating Member or Members will inure to the newly created single legal entity, except that no consolidation by a Member will increase any non-consolidating Member's share of the Annual Contributions required under this Agreement without the written consent of such non-consolidating Member.
- 4.4 **Withdrawal of Members.** A Member may withdraw from this Agreement at the end of any calendar year by written notice authorized by the governing body of such Member that is given to the Board and every other Member no later than January 15th of that

calendar year. Upon withdrawal, a Member will have no further interest, right, or title in or to any assets or equity of the Authority, unless there is a specific written agreement to the contrary approved by the governing body of the withdrawing Member and a Super Majority vote of the Board. Withdrawal by any Member or combination of Members will not cause termination of this Agreement. A Member's non-appropriation of funds pursuant Section 7.5, will constitute a withdrawal pursuant to this Section 4.4; provided however, that the three hundred fifty (350) calendar days prior notice period will not apply and, instead, the Member will be deemed withdrawn as of January 1 of the Fiscal Year for which funds are not appropriated. A non-appropriating Member must notify every other Member as soon as reasonably practical when it is certain that its governing body will fail to appropriate the funds necessary for the Member to meet its financial obligations for the ensuing year.

ARTICLE 5 – GOVERNANCE

- 5.1 **Appointment of Board of Directors.** The Board shall consist of five Directors (exclusive of any Member that withdraws or is involuntarily terminated) to be selected by the following individual Members or groups of Members ("***Individual/Group Board Designating Member***"):
- 5.1.1 Longmont shall designate one Director.
 - 5.1.2 Boulder shall designate one Director.
 - 5.1.3 Mountain View Fire Protection District shall designate one Director.
 - 5.1.4 Boulder County Sheriff's Office and Boulder County shall designate one Director.
 - 5.1.5 Lafayette, Louisville Fire Protection District and Rocky Mountain Fire Protection District shall collectively designate one Director by joint agreement.

Directors may be appointed to serve consecutive terms on the Board.

- 5.2 **Alternate Directors.** Each Individual/Group Board Designating Member will appoint an alternative representative to serve as the Director when the Director is absent or unable to perform his/her Director duties ("***Alternate Director***"). When used in this Agreement, the terms "Director" or "Directors" shall mean the Director or, in his/her absence, the Alternate Director of each Individual/Group Board Designating Member.
- 5.3 **Appointment.** The Director and Alternate Director will serve at the pleasure of the governing body of the Individual/Group Board Designating Member and either or both may be replaced at any time and for any reason by the governing body of the Individual/Group Board Designating Member. An Alternate Director will act and vote only in the absence of the Director.

- 5.4 **Additional Board Seats.** The Board may create additional Board seats by the affirmative vote of a Super Majority at a properly noticed regular or special meeting at which a quorum is present. The Board seats shall be odd in number and shall not exceed thirteen (13) total seats.
- 5.5 **Vacancies.** A vacancy occurring on the Board, whether such vacancy be the result of resignation, death, removal or disability, will be filled in the same manner as appointment of a Director as hereinabove provided within thirty (30) days of the vacancy.
- 5.6 **Compensation.** Directors will not receive compensation for their services. The Board may provide for reimbursement to the Directors of their actual and reasonable expenses incurred on behalf of the Authority.
- 5.7 **Board Action.** Final actions or decisions of the Board (including ratification or rescission of action taken by the Board at an emergency meeting) may be taken or made only at regular or special meetings of the Board, called upon notice as required herein, at which a quorum is present. Except as set forth below or as otherwise provided in this Agreement, final actions or decisions of the Board shall be made by the affirmative vote of a Majority at a properly-noticed regular or special meeting at which a quorum is present.
- 5.8 **Meetings.**
- 5.8.1 **All Meetings Public.** All regular, special and emergency meetings of the Board will be open to the public and subject to the Colorado Sunshine Law, Part 4 of Article 6 of Title 24 of the Colorado Revised Statutes ("*Sunshine Law*").
- 5.8.2 **Regular Meetings.** Regular meetings shall be held a minimum of quarterly. A schedule of regular meetings of the Board may be set by resolution of the Board, which resolution will identify the dates, times, and location(s) of said regular meetings to be held within the boundaries of Boulder County, Colorado. Following adoption of said resolution scheduling regular meetings of the Board, no additional notice to the Directors will be required. Regular meetings of the Board will be posted in accordance with the Sunshine Law. Directors may participate in any regular meeting in-person, telephonically or by any other media by which each Director can hear and be heard by the other Directors and the audience.
- 5.8.3 **Special Meetings.** Special meetings of the Board may be called by any two (2) or more Directors, so long as the Directors calling the special meeting include at least one Director representing a Member providing fire services and at least one Director representing a Member providing law enforcement services. Thereupon it will be the duty of the Board Secretary to cause notice of such meeting to be given as hereinafter provided. Work/study sessions will constitute a special meeting. Special meetings of the Board will be held at the time and place fixed by the Directors calling the meeting. Special meetings of the Board will be

posted in accordance with the provisions of the Sunshine Law. Directors may participate in any special meeting in-person, telephonically or by any other media by which each Director can hear and be heard by the other Directors and the audience.

- 5.8.4 Notice of Special Meeting. Written notice of any special meeting of the Board shall be delivered to each Director not less than 72 hours before the date and time fixed for such meeting. Notice may be delivered in person, by facsimile or by electronic mail at the direction of the Board Secretary, or upon the Board Secretary's default, by the Directors calling the meeting.
- 5.8.5 Waiver of Notice. Whenever any notice is required to be given to any Director under the provisions of law or this Agreement, a waiver thereof in writing by such Director, whether before or after the time stated therein, will be equivalent to the giving of such notice. Attendance of a Director at any meeting of the Board will constitute a waiver by such Director of notice of such meeting, except when such Director attends such meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully convened.
- 5.8.6 Emergency Meetings. A quorum of the Board may call an emergency meeting at any time and without 72 hours prior notice in the event of an emergency that requires the immediate action of the Board in order for the Authority to carry out its services and related functions. The Board Secretary, or upon the Board Secretary's default, the Directors calling the emergency meeting, shall cause notice of the emergency meeting to be given immediately to all Directors and Members. Notice may be given in-person, by facsimile or by electronic mail at the direction of the Board Secretary, or upon the Board Secretary's default, by the Directors calling the emergency meeting. To the extent practicable, public notice of an emergency meeting will be posted in the same locations as for regular meetings. At the emergency meeting, the Board by affirmative vote of a Majority of the Directors present, may take any action within the express or implied powers of the Authority to carry out its services and related functions; provided, however, any action taken at an emergency meeting will be effective only until the first to occur of: (a) the next regular meeting, or (b) the next special meeting of the Board at which the emergency issue is on the public notice of such meeting. At such subsequent meeting, the Board may ratify any emergency action taken. If any emergency action taken is not ratified, it shall be deemed rescinded. Emergency meetings of the Board shall be open to the public.
- 5.8.7 Procedural Rules Governing Meetings. The Board shall develop procedural rules for conducting regular and special meetings, provided that such rules will include the following: (a) the reading of the text of minutes, financial statements or proposed Resolutions into the record is not required; and (b) the Chairperson may make a motion and may vote on a motion. In the absence of an established procedural rule, the Board will, to the extent practicable, follow the latest edition of *Robert's Rules of Order*.

5.8.8 Location of Meetings. All regular, special meetings or emergency meetings shall be held within the Service Area.

5.9 **Officers.** The officers of the Authority will be a President, Vice-President, and Secretary. All officers shall be Board members.

5.9.1 Election and Term of Office. The term of office for all officers will be two Fiscal Years; provided, however, that the first President elected after the Effective Date shall serve an initial term of three Fiscal Years. The initial officer of each position also will serve for the remainder of the Fiscal Year in which he/she was elected. Thereafter, at its last regular or special meeting during a Fiscal Year in which an officer's term is expiring, the Board, by Majority vote, will elect a new officer to that position. Vacancies occurring in any officer position may be filled by Majority vote at any regular or special meeting of the Board at the time the vacancy occurs.

5.9.2 Removal. Any officer elected by the Board may be removed by the Board, with or without cause, at any time by Majority vote at any regular or special meeting of the Board at which a quorum is present.

5.9.3 Duties and Authority of Officers.

(a) **President.** Except as otherwise directed by a Majority of the Board, the President will execute all legal instruments of the Authority and will represent the Board at any meeting, event, or other activity at which a Board representative is permitted, requested, or required to be in attendance. The President will perform such additional duties and have such additional authority as directed by a Majority of the Board from time to time. The President will serve as the Chairperson and preside at all Board meetings.

(b) **Vice-President.** Except as otherwise directed by the Board, the Vice-President will perform the duties, and have the authority of, the President in the President's absence or inability or refusal to perform his/her duties. The Vice-President will perform such additional duties and have such additional authority as directed by a Majority of the Board from time to time so long as such duties are not inconsistent with the duties and authority of the President. The Vice-President will serve as the Chairperson at any Board meeting where the President is absent or is unable or refuses to serve as the Chairperson.

(c) **Secretary.** The Secretary will (i) maintain the official records of the Authority, including this Agreement, policies, procedures and protocols established by the Board, minutes of Board meetings, and a register of the names and addresses of the Members, Directors, Alternate Directors and officers; and (ii) issue meeting notices, attest documents as necessary or

appropriate, and prepare the minutes of all Board meetings. The Secretary will perform such additional duties and have such additional authority as directed by a Majority of the Board from time to time.

- 5.9.4 Bonds of Officers, Employees and Agents. The officers, employee or agent of the Authority charged with the responsibility for the custody of any of its funds or property shall give a bond in such sum and with such surety, if any, as the Board will determine. The Board, in its discretion, also may require any other officer, employee or agent of the Authority to give a bond in such amount and with such surety as will be determined. The cost of such bond will be an expense of the Authority.
- 5.10 Governmental Immunity. Every Director, officer, and employee of the Authority, while performing his/her duties and functions on behalf of the Authority, whether such duties and functions have been expressly assigned or are reasonably implied based on his/her expressly assigned duties and functions, will constitute a public employee for the purposes of the Colorado Governmental Immunity Act, including but not limited to C.R.S. § 24-10-110, as may be amended.
- 5.11 Execution of Contracts. Except as otherwise provided by law, the President with approval of the Board may authorize any Director, officer, employee, or agent to enter into any contract, or execute and deliver any instrument in the name and on behalf of the Authority.
- 5.12 Assets Held In Trust. All assets of the Authority will be held in trust for the purposes stated in this Agreement, including payment of liabilities of the Authority.

ARTICLE 6 - COMMITTEES

- 6.1 Advisory Committee: There is hereby established an advisory committee that will be responsible for advising the Board on all operational matters, standard operating procedures, equipment requirements, and other matters related to the operations of the Hazardous Materials Response Team ("*Advisory Committee*").
 - 6.1.1 The Majority of the Board shall determine the size of the Advisory Committee and shall select the individuals that will serve on the Advisory Committee.
 - 6.1.2 The Advisory Committee shall establish the rules and procedures for its governance.
 - 6.1.3 The Advisory Committee shall meet at least quarterly.
 - 6.1.4 The Advisory Committee shall develop and recommend to the Board the criteria for membership on the Hazardous Materials Response Team.

- 6.1.5 The Advisory Committee will review on an as-needed basis the policies, procedures, protocols, and operations of the Authority. The Advisory Committee will report to the Board in writing any perceived performance deficiencies and any recommendations for improvement.
- 6.1.6 The Advisory Committee will perform such other duties as may be assigned by the Board from time to time.

ARTICLE 7 - FISCAL ADMINISTRATION

The Authority will be subject to the Local Government Budget Law of Colorado, Part 1 of Article 1, Title 29 of the Colorado Revised Statutes, as may be amended. The provisions of Article 10.5 of Title 11, C.R.S., as may be amended, will apply to all monies of the Authority.

7.1 Initial and Annual Budget and Contributions.

- 7.1.1 **Initial Budget.** The initial budget for the Authority, which will take effect on the Effective Date and will continue through December 31 of the Fiscal Year immediately following the Effective Date, is attached to this Agreement as ***Exhibit A*** ("***Initial Budget***"). Each Member shall pay its share of the Initial Budget, as set forth therein, within forty-five calendar days of the Effective Date.
- 7.1.2 **Annual Budget.** The Annual Budget for the next Fiscal Year will be adopted by a Majority of the Board on or before July 1 of each Fiscal Year. The Annual Budget shall set forth the projected revenues needed for, and the projected expenditures from, the General Operating Fund, the Capital Improvement Fund, and the Contingency Fund for the next Fiscal Year.
- 7.1.3 **Capital Improvement Fund.** Each Fiscal Year, the Board will determine the total amount of revenue that must be deposited in the Capital Improvement Fund, taking into consideration the need to repair, replace, or purchase Hazardous Materials Response Equipment. The contribution to the Capital Improvement Fund from each Member may vary depending upon the total amount of revenue received in the preceding Fiscal Year.
- 7.1.4 **Contingency Fund.** Each Fiscal Year, the Board will determine the total amount of revenue that must be deposited in the Contingency Fund, which shall be at least ten percent of the preceding Fiscal Year's actual expenditures from the General Operating Fund and the Contingency Fund. Any surplus funds generated from the yearly operation of the Authority may be used to fund the Contingency Fund. Contingency Fund monies may be used to defray the costs of unanticipated or unreimbursed operating expenses or for other reasons as determined by the Board.

7.2 Contributions.

- 7.2.1 **Calculation of Contributions.** Each Member's Annual Contribution shall be determined by calculating an individual Member's total population included within its jurisdictional boundaries in proportion to the total population within the Service Area. Population of a Member, and the total population within the Service Area, shall be determined by the United States Census Bureau, Population Estimates Program. Each Member shall be responsible for paying its proportionate percentage share as determined by the Board.
- 7.2.2 **Payment of Contributions.** Each Member's Annual Contribution shall be paid in full within ninety (90) days of January 1 of each Fiscal Year or on such other schedule as may be determined by the Board.
- 7.3 **Late Payments.** Any undisputed payment required under this Agreement that is not paid when due will accrue compound interest in the amount of one percent (1%) per month until paid.
- 7.4 **Annual Audit.** The Authority's revenues and expenditures shall be subject to an annual audit in accordance with Colorado law, which will be performed by a certified public accountant.
- 7.5 **Non-Appropriation.** All direct and indirect financial obligations of a Member under this Agreement are subject to the annual appropriation of funds by its governing body. No provision of this Agreement will be construed or interpreted: (a) to directly or indirectly obligate a Member to make any payment in any Fiscal Year in excess of amounts appropriated by such Member for such Fiscal Year; or (b) as creating a debt or multiple fiscal year direct or indirect debt or other financial obligation whatsoever of a Member within the meaning of Article X, Section 20 of the Colorado Constitution or any other constitutional or statutory limitation or provision.
- 7.6 **General Financial Matters.**
- 7.6.1 **Negotiable Instruments.** All checks, drafts, or other orders for payment of money will be issued in the name of the Authority, and in such manner as, from time to time, will be determined by the Board.
- 7.6.2 **Financial Obligations and Debt Not That of Members.** All financial obligations of the Authority will not be the debts, liabilities, or obligations of the Members, unless provided by written consent of the governing body of each of the Members in compliance with law.
- 7.6.3 **Financial Support.** The Authority may receive financial support from any source, including public or private donations, gifts, or grants.
- 7.6.4 **Compliance with State Laws Related to Deposit and Investment of Authority Funds.** Under the general oversight of the Board, the Board will ensure all funds of the Authority placed in bank deposit accounts, including checking, savings,

bank money-market, and certificate of deposit (CD) accounts, comply with the requirements of the Public Deposit Protection Act, Colorado Revised Statutes, §11-10.5-101, *et. seq.*, as may be amended. The Board will establish the investment policies of the Authority funds, which policies will comply with the federal and state constitutional and statutory laws governing the investment of public funds, including but not limited Colorado Revised Statutes, § 24-75-601, *et seq.*, as may be amended. Under the general oversight of the Treasurer, all investments of Authority funds shall comply with the investment policies established by the Board.

- 7.6.5 Records Subject to Inspection. All of the Authority's financial records will be available for inspection by any Member upon reasonable notice during normal business hours.

ARTICLE 8 - TERM, TERMINATION AND DISTRIBUTION

8.1 Term, Termination, and Distribution.

- 8.1.1 Term. The term of this Agreement shall be unlimited, and shall continue until terminated as provided herein.
- 8.1.2 Termination. This Agreement may be terminated at any time by written agreement of all Members, or all Members except one, who are a Member to this Agreement at the time of such termination.
- 8.1.3 Distribution or Transfer of Assets Upon Termination. If this Agreement is terminated pursuant to Section 8.1.2, the Board by unanimous affirmative vote of all, or one less than all, of the Directors serving on the Board at the time of termination, will determine whether all of the Authority's tangible and intangible property and assets ("*Assets*") are distributed to the Members or transferred to a successor entity(ies).
- (a) Transfer to Successor Entity(ies). If the Assets are to be transferred to a successor entity(ies), the Assets will be transferred in such manner as is determined by unanimous affirmative vote of all, or one less than all, of the Directors serving on the Board at the time of termination, subject to any outstanding liens, mortgages, or other pledges of such Assets.
- (b) Transfer to Members. If the Assets are to be distributed to the Members, they will be distributed pro rata to each Member as follows:
- (i) All monies remaining in the General Operating Fund will be distributed to each Member based on the percentage that its last Annual Contribution bears to the total amount of that General Operating Fund.

- (ii) With respect to the Transferred Equipment, each Member will be paid for the depreciated value of any equipment it transferred to the Authority out of the Capital Improvement Fund. If there are insufficient funds in the Capital Improvement Fund to pay each Member for the depreciated value of the Transferred Equipment, then the Member will receive a prorated portion of the monies in the Capital Improvement Fund based on the percentage that the depreciated value of its equipment bears to the total of all depreciated Transferred Equipment by the Members. If there are any monies remaining in the Capital Improvement Fund after each Member has been reimbursed for the depreciated value of the Transferred Equipment, each Member will receive a prorated portion of those monies based on the percentage that its last Annual Contribution bears to the total amount of that General Operating Fund.
- (iii) With respect to equipment purchased by the Authority with monies from the Capital Improvement Fund, the Board may, in its discretion, choose to allow Members to purchase the equipment from the Authority at a reasonable depreciated value or to auction or otherwise dispose of the equipment, with the proceeds distributed to the Members pro rata based on the percentage that each Member's last Annual Contribution bears to the total amount of that General Operating Fund.
- (iv) All Leased Equipment will revert back to the Member owner with no penalty to the Authority.
- (v) By Super Majority vote of all Directors serving on the Board at the time of termination, the Board may provide for an alternate disposition of the Authority's Assets between and among the Members.

ARTICLE 9 – RESPONSIBLE PARTY PAYMENT

9.1 Reimbursement from Responsible Party.

9.1.1 DERA Responsibility. It is the responsibility of the DERA for the Member of the jurisdiction where the Hazardous Materials Incident occurred to pursue reimbursement from the Responsible Party for all costs associated with the response to that incident pursuant to Section § 29-22-104, C.R.S. If the DERA for that Member fails to pursue reimbursement within a reasonable period of time, the Authority may pursue reimbursement on its behalf and that of all other Members and its participants, or may assign the right to pursue reimbursement to another Member participant in the response to the Hazardous Materials Incident as approved by the Board.

9.1.2 Time and Materials Billing. All time and material costs incurred in responding to

a Hazardous Materials Incident, including, but not limited to, salary, fuel, special laboratory testing, packaging, shipping, and equipment replacement, incurred by the Authority, shall be billed to the Member of the jurisdiction where the Hazardous Materials Incident occurred. The Authority shall support the DERA of the Member in pursuing reimbursement for the response to a Hazardous Materials Incident, pursuant to Section § 29-22-104, C.R.S., by producing such documentation and providing testimony, reports and other information as required.

- 9.1.3 **Time Limits for Billing.** The Authority shall bill the DERA for the costs incurred in responding to a Hazardous Materials Incident within a reasonable time within the same Fiscal Year. The DERA may only be billed in a different Fiscal Year if approved by the Board. If the DERA is a current Member of the Authority and has pursued good faith efforts to receive payment from all Responsible Parties, then that DERA would be responsible for payment to the Authority within a reasonable period of time only to the extent that it received payment from all Responsible Parties.

ARTICLE 10 - MISCELLANEOUS

- 10.1 **Notices.** Except for notice of a special or emergency meeting sent by United States mail, facsimile or electronic mail in accordance with this Agreement, any notice, demand or request required by or relating to this Agreement shall be in writing and shall be given by personal delivery, by facsimile, or sent by registered or certified mail, postage prepaid, to each Member at the address set forth on the signature page(s) attached hereto, unless a Member has provided another address to the Authority.
- 10.2 **No Third Member Beneficiaries.** Nothing in this Agreement shall be deemed to create any third party benefits or beneficiaries, or create a right or cause of action for the enforcement of its terms, in any entity or person not a Member to this Agreement.
- 10.3 **Amendments.** This Agreement may be amended only by a written document approved by formal authority of the governing bodies of all of the Members at the time of the amendment; provided, however, that such amendment will not affect other obligations outstanding of the Authority unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to such obligations. Course of conduct, no matter how long, shall not constitute an amendment to this Agreement.
- 10.4 **No Assignment.** This Agreement may not be assigned by any Member.
- 10.5 **Severability.** In the event that any of the terms, covenants or conditions of this Agreement, or their application, shall be held invalid as to any person, corporation or circumstances of any court having competent jurisdiction, the remainder of this Agreement and the application in effect of its terms, covenants or conditions to such persons, corporations or circumstances shall not be affected thereby.

- 10.6 **Governmental Immunity.** This Agreement is not intended, and shall not be construed, as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Members, and their past and present directors, officers, council members, employees and volunteers, under federal or state constitutional, statutory or common law, including but not limited to the Colorado Governmental Immunity Act, Section § 24-10-101, C.R.S., et seq, as may be amended.
- 10.7 **Preexisting Claims.** This Agreement is not intended to, nor should it be construed to, modify preexisting legal obligations including service contracts, or to waive any claims or legal rights which may arise as a result of a Hazardous Materials Incident, including but not limited to claims for reimbursement from a Responsible Party for a Hazardous Materials Incident or from any emergency response funds created under state or federal law.
- 10.8 **Governing Law, Jurisdiction and Venue.** Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the District Court for Boulder County.
- 10.9 **Waiver of Breach.** A Member's waiver of another Member's breach of any term or provision of this Agreement will not operate or be construed as a waiver of any subsequent breach by any Member.
- 10.10 **Dispute Resolution.** Any dispute or claim arising under or relating to this Agreement shall be submitted first to the Board for possible resolution. If the Board is unable to resolve the dispute or claim, or if one or more of the Members to the dispute or claim are not satisfied with the Board's proposed resolution, the dispute or claim shall be submitted to mediation. The Members to the dispute or claim shall share equally the cost of the mediation, provided that each Member shall pay its own attorneys' fees, costs and expenses incurred in preparing for and participating in the mediation. If the Members are unable to resolve their dispute or claim through mediation, any Member to the dispute or claim may bring a civil action in the District Court for Boulder County. Each Member waives its right to a jury trial. The Court shall make a determination as to the prevailing Member.
- 10.11 **Workers Compensation Insurance.** Nothing in this Agreement is intended to create a Member employment or volunteer relationship with the Authority. As a result, the Members agree that that the Member and its individual agents, employees, and volunteers are not covered by any workers' compensation insurance through the Authority.
- 10.12 **Execution.** This Agreement may be executed in several counterparts, and by facsimile or electronic pdf, each of which will be an original, and all of which together will constitute one in the same instrument.
- 10.13 **Statutory Amendments.** All statutory references in this Agreement shall include any subsequent statutory amendments or reenactments.
- 10.14 **Independent Counsel.** Each of the undersigned Members acknowledges that this

Agreement was prepared by legal counsel representing the Louisville Fire Protection District. Further, each of the undersigned recognizes that such legal counsel was acting solely on behalf of the Louisville Fire Protection District and not on behalf of any other Members, individually or collectively. Each of the undersigned represents and warrants that he, she or it has been advised by the Louisville Fire Protection District to seek independent legal counsel and that he, she or it has had the opportunity to do so. Each of the undersigned agrees that the statements, representations and warranties made in this paragraph may be relied upon by the Louisville Fire Protection District (and by its attorneys) and its successors in interest.


IN WITNESS WHEREOF, the Members have caused to be executed this Intergovernmental Agreement Establishing the Boulder County Hazardous Materials Response Authority.

[SIGNATURE PAGES IMMEDIATELY FOLLOW]

BOULDER COUNTY Designated Emergency
Response Authority; Sheriff Joe Pelle


By: Sheriff Joe Pelle

ATTEST:


By: MICHAEL N. CNAM

CITY OF BOULDER, a home rule municipality,
incorporated and existing under the laws of the
State of Colorado

Deputy City Manager
Tama Ariz for

By: *Jane S. Brautigam, City Manager*

ATTEST:

[Signature]
By: _____

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

[Signature]

CITY OF LONGMONT, a home rule municipality,
incorporated and existing under the laws of the
State of Colorado

Dennis L Coombs

By: Dennis Coombs, Mayor

ATTEST:

Valeria H. Skell

CITY CLERK

8/9/17

DATE



APPROVED AS TO FORM:

Jessica Suforato

ASSISTANT CITY ATTORNEY

8/1/17

DATE

Cristi Campbell

PROOFREAD

8/1/17

DATE

APPROVED AS TO FORM AND SUBSTANCE:

[Signature]

ORIGINATING DEPARTMENT

8-15-08

DATE

APPROVED AS TO INSURANCE PROVISIONS:

Dag Sjo

RISK MANAGER

8/3/17

DATE

CA File: 10375


CITY OF LAFAYETTE, a home rule municipality,
incorporated and existing under the laws of the
State of Colorado


By: Christine Berg, Mayor

ATTEST:



By: Susan Barker, CMC, City Clerk

APPROVED AS TO FORM:



By David S. Williamson, City Attorney



LOUISVILLE FIRE PROTECTION DISTRICT, a
political subdivision of the State of Colorado


By: AC Schmidt

ATTEST:


By: Jackie Fry

LYONS FIRE PROTECTION DISTRICT, a
political subdivision of the State of Colorado

Board President

By:

 7/13/2017

ATTEST:

Board Vice President

By: Margaret Davidson

ROCKY MOUNTAIN FIRE PROTECTION
DISTRICT, a political subdivision of the State of
Colorado



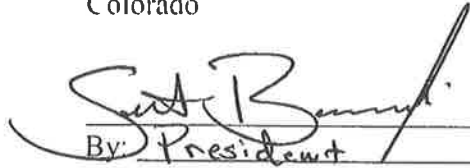
By: Jeremy DeBacker - President

ATTEST:

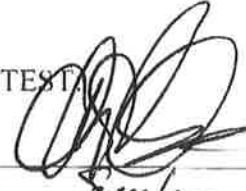


By: Pamela Owens, Administrator

MOUNTAIN VIEW FIRE PROTECTION
DISTRICT, a political subdivision of the State of
Colorado


By: President

ATTEST


By: Secretary

TOWN OF JAMESTOWN, a home rule
municipality, incorporated and existing under the
laws of the State of Colorado


By: Tara Schordinger

ATTEST:


By: Kristi Rutledge, Town Clerk

TOWN OF WARD, a home rule municipality,
incorporated and existing under the laws of the
State of Colorado

Karelle Schuyff
By: Karelle Schuyff
07/31/17

ATTEST:

[Signature]
By: [Signature]

07-31-17

TOWN OF NEDERLAND, a home rule
municipality, incorporated and existing under the
laws of the State of Colorado

WALTER L. LINDEN
By: _____

ATTEST:

John Kegan
By: Town Clerk



EXHIBIT A