

## COMMON INTEREST AND CONFIDENTIALITY AGREEMENT

This Common Interest and Confidentiality Agreement (the “Agreement”) is entered into and effective this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ (“Effective Date”), by and among the City of Thornton, Colorado, a home rule municipality (“Thornton”), the City of Northglenn, Colorado, a home rule municipality (“Northglenn”), and the City of Westminster, Colorado, a home rule municipality (“Westminster”) (each, a “Party,” and collectively, the “Parties”).

### RECITALS

A. The Parties are shareholders in the Farmers Reservoir and Irrigation Company, a nonprofit mutual ditch company formed under Colorado law (FRICO).

B. The Parties and FRICO’s management have entered into discussions regarding the future of FRICO’s “Standley Lake Division,” including the possibility of severing the Standley Lake Division from FRICO and becoming a separate entity under the management of the Parties.

C. To determine the feasibility of severing the Standley Lake Division from FRICO, the Parties have engaged a consultant, Haynie and Company (“Haynie”), to conduct an assessment of FRICO’s various assets and liabilities (“FRICO Assessment”).

D. The Parties share a common interest in the information and documentation garnered via the FRICO Assessment as such information will inform the Parties’ mutual and individual evaluations of the financial and logistical resources and obligations of the Standley Lake Division and the propriety of assuming financial and organizational control thereof.

E. Consequently, the Parties anticipate sharing among each other, including their respective governing bodies, management and attorneys, through oral, written, electronic or other means, certain privileged and/or confidential information, including, without limitation, documents, data compilations, electronically-stored information, factual material, mental impressions, memoranda information, drafts of documents, correspondence among the Parties and/or their attorneys related to the FRICO Assessment (collectively, “FRICO Materials”), which information may include legal opinions and other material that may be of a confidential nature and are protected by one or more privileges, doctrines or immunities, including without limitation, the attorney-client privilege, the work-product doctrine, the common interest privilege, the deliberative process privilege, the allied lawyer doctrine and the attorney duty of confidentiality to clients, as well as any applicable exemptions under the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.* (“CORA”) or other state law making such information immune from disclosure.

F. The Parties also share a common interest in ensuring the FRICO Materials remain shielded from disclosure, to the extent legally permissible, in order to protect FRICO’s confidential financial and commercial information from being publicly disseminated.

G. This Agreement is made to memorialize the past and prospective intention of the Parties to share confidential and privileged information as part of a cooperative effort to further their common interests in the Standley Lake Division without waiving the confidentiality or privileged nature of any such information so disclosed.

NOW, THEREFORE, in consideration of the foregoing, and of the mutual promises set forth herein, the Parties agree as follows:

1. Purpose; Confidentiality and Privilege. Although the Parties believe that they already have a common interest recognized by Colorado law regarding the FRICO Materials, the purpose of this Agreement is to establish formal terms, conditions, and provisions for the formation of this Agreement memorializing the Parties' common interest and confidentiality agreement concerning the FRICO Materials. Accordingly, and to advance their common interests, the Parties may, from and after the Effective Date, exchange such FRICO Materials as set forth herein. Unless expressly stated in writing to the contrary, the Parties shall presume that each and every future oral or written communication solely among or between them concerning the FRICO Materials is subject to this Agreement and constitutes Shared Information as defined in Section 2 of this Agreement.

2. Information Sharing. All FRICO Materials provided to the Parties may be shared among all the Parties. However, nothing herein obligates a Party to share its own confidential information, and each Party retains the right not to share such information in its sole discretion. Except as provided below, all FRICO Materials and communications relating thereto (collectively, "Shared Information") between and among the Parties, including their legal counsel, employees and governing bodies, will remain privileged and confidential.

3. No Waiver of Applicable Privileges. The Parties confirm that, by communicating among the Parties, including their legal counsel, employees and governing bodies, they do not waive any applicable privilege, and they intend to preserve to the maximum extent permitted by applicable law all such privileges they may have. The Parties shall endeavor to mark all written Shared Information as "CONFIDENTIAL – COMMON INTEREST" prior to sharing. However, any failure to so mark such written Shared Information shall be neither dispositive of confidentiality nor constitute waiver of any privilege.

4. Disclosure of Shared Information. The Parties may not disclose to any person or entity not a party to this Agreement any Shared Information obtained from or shared by Haynie or another Party in pursuit of the common interests, except as required by court order, or unless such Shared Information is already in the public domain or generally known, or unless the owner(s) of the Shared Information have waived the privilege in writing. Notwithstanding the foregoing, in the event of a request for records made pursuant to CORA, a Party may disclose any Shared Information, with the exception FRICO Materials, as such Party determines to be public records under CORA, but only after giving at least one (1) working day notice to the other Parties through their undersigned legal counsel.

5. Confidentiality. The Parties will maintain the confidentiality of all FRICO Materials, and all other Shared Information obtained from another Party under this Agreement, with the same degree of care and diligence they would use with respect to their own confidential or privileged information and documents. The Parties will cooperate to defend against any challenge to the privileged nature of the Shared Information.

6. Non-Privileged Information. This Agreement does not prevent a Party from using non-privileged information learned or derived from Shared Information obtained from another Party under this Agreement or information that is in the public domain.

7. Use Against Parties. The Parties agree that they will not use Shared Information in any actions against each other unless the information is obtained from a Party during discovery procedures, whether formal or informal, so that appropriate privileges can be asserted during the discovery process. Nothing herein prevents the Parties from being adverse against each other in other actions.

8. No Attorney-Client Relationship Created. The execution of this Agreement and the exchange of Shared Information among the Parties will not create any attorney-client relationship between any Party and the counsel for any other Party. Nothing in this Agreement shall be construed to affect the separate and independent representation of the Parties by their respective counsel. Each of the participating attorneys, law firms, and legal departments/offices will continue to have obligations only to their existing clients under the relevant Rules of Professional Conduct, subject to the separate confidentiality obligations created by this Agreement. Each Party expressly waives any claim it might have for disqualification of counsel for other Parties in litigation or any other proceedings that might be based upon access to Shared Information. Nothing in this Agreement shall be deemed to create a partnership, joint venture, and/or principal and agent relationship between the Parties and/or their respective Counsel.

9. Termination. Unless otherwise agreed to by the Parties in writing, the term of this Agreement shall be from the stated effective date hereof until the earlier of i) the date on which the Parties mutually agree to terminate this Agreement, or ii) three years from the date of execution of this Agreement, unless mutually agreed to extend. However, nothing herein shall be construed as a waiver of the confidential and privileged nature of Shared Information communicated between the Parties prior to the stated effective date. An individual Party may terminate its participation in this Agreement by giving written notice to the other Parties. Termination of this Agreement as to that Party will be prospective and this Agreement shall remain binding for all Shared Information received or communicated prior to the receipt of written notice of termination. At the request of a terminating Party, all Shared Information provided by such Party under this Agreement shall be returned to that Party or destroyed. This Agreement shall terminate automatically in the event there are less than two Parties to this Agreement.

10. No Third Party Beneficiaries. This Agreement creates no rights or benefits in third parties. Certain other parties may also have common interests with the Parties to this Agreement with respect to the Issues, and such other entities may desire to assist the Parties hereto in pursuing such common interests. Such other entities may become parties to this Agreement with the written consent of all Parties hereto and upon execution of a written agreement of such entity to be bound by the terms of this Agreement.

11. Notices. All notices required under this Agreement shall be in writing and shall be hand delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties. All notices so given shall be considered effective seventy-two (72) hours after deposit in the United States Mail. Whenever such notice is provided under this Agreement, a notice shall also be sent to the receiving Party via email. Notices shall be sent to the following addresses, or such other addresses as the Parties may specify in writing:

To Thornton:	City of Thornton
	9500 Civic Center Drive
	Thornton, Colorado 80229

Attn: \_\_\_\_\_

With copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

To Northglenn:

City of Northglenn  
11701 Community Center Drive  
Northglenn, Colorado 80233  
Attn: \_\_\_\_\_

With copy to:

Hoffmann, Parker, Wilson & Carberry, PC  
511 16th Street, Suite 610  
Denver, CO 80202  
Attn: Corey Y. Hoffmann, Esq.

To Westminster:

City of Westminster  
4800 W 92nd Avenue  
Westminster, Colorado 80331  
Attn: City Manager

With copy to:

Carlson, Hammond & Paddock, L.L.C.  
1900 Grant Street, Suite 1200  
Denver, Colorado 80203  
Attn: Lee H. Johnson, Esq.

12. Binding. The provisions of this Agreement shall apply to and be binding upon each of the Parties, their legal counsel, employees, and governing bodies. Each Party shall take all necessary and appropriate measures to ensure that any person who is granted access to Shared Information is familiar with and complies with the terms of this Agreement.

13. Warranties and Representations. Each Party warrants and represents to the other Parties that such Party has taken all actions necessary to make this Agreement a valid obligation binding upon the Party, and that all requirements of any applicable charter, ordinance, statute, or constitutional provision regarding the approval and execution of this Agreement have been met, including, if required, approval by the Party's board of directors.

14. Remedy. To the extent permitted by law, specific performance shall be the exclusive remedy available for any claims arising out of this Agreement.

15. Counterparts; Electronic Signatures; Disposition. This Agreement may be executed in counterparts, all of which taken together shall be considered one instrument. The Parties agree that signature pages may be executed via ink signature or electronic mark, and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means. Further, the Parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device and that any printout or other

output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

16. Entire Agreement. This Agreement constitutes the entire Agreement among the Parties relating to the subject matter contained herein. This Agreement is executed by each of the undersigned without reliance upon any promise, warranty, or representation by any Party or any representative of any Party other than those expressly contained herein.

17. Amendments. The Agreement may not be altered, amended, modified or otherwise changed unless agreed to by the Parties in writing.

18. Execution. This Agreement shall not become effective unless and until executed by all the Parties.

*[Remainder of page intentionally blank – signatures follow]*

In witness whereof, the Parties have executed this Agreement effective as of the date set forth above.

**CITY OF THORNTON, COLORADO**

**ATTEST:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to legal form:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF NORTHGLENN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to legal form:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY OF WESTMINSTER, COLORADO**

**ATTEST:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**Approved as to legal form:**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_