

**YAMPA RIVER FUND**  
**COLLABORATION AND ADMINISTRATION AGREEMENT**

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## YAMPA RIVER FUND

### COLLABORATION AND ADMINISTRATION AGREEMENT

AUGUST 26, 2019

This non-binding Collaboration and Administration Agreement (“*Agreement*”) by and among the parties listed below, expresses the intention of the parties to cooperate in this matter. The terms of these understandings, as set forth below, are an expression of the parties’ intent and are not intended to and shall not create a binding obligation of any party. None of the parties shall be bound by the terms of this Agreement and a binding agreement relating to the subject matter hereof will not occur unless and until the parties have approved, executed and delivered appropriate definitive documents.

A. The Colorado Water for the 21st Century Act (2005-HB-1177) created nine permanent basin roundtables. Among such roundtables is the Yampa-White-Green Basin Roundtable (“*YWG Roundtable*”).

B. The YWG Roundtable adopted the Basin Implementation Plan (the “*BIP*”) in April 2015 with the purpose of ensuring that existing consumptive, environmental and recreational uses are met.

C. The BIP sets forth the following goals (the “*BIP Goals*”) for the protection of the Yampa River, White River and Green River basins in the state of Colorado (the “*Yampa River Basin*”):

- protect the Yampa River Basin from compact curtailment of existing decreed water uses and some increment of future uses;
- improve agricultural water supplies to increase irrigated land and reduce shortages;
- identify and address municipal and industrial water shortages;
- quantify and protect non-consumptive water uses;
- maintain and consider the existing natural range of water quality that is necessary for current and anticipated water uses;
- restore, maintain and modernize water storage and distribution infrastructure; and
- develop an integrated system of water use, storage, administration and delivery to reduce water shortages and meet environmental and recreational needs.

D. In furtherance of the BIP Goals, the Yampa Basin Integrated Water Management Plan (the “*IWMP*”), Yampa River Health Assessment and Streamflow Management Plan (the

“*Stream Management Plan*”) and the Management Plan for Endangered Fishes in the Yampa River Basin (the “*Endangered Fishes Plan*”), the Yampa River Fund (the “*YRF*”) will, among other things, identify conservation projects and programs that enhance and benefit the agricultural, industrial, environmental and recreational users of the Yampa River Basin and secure sustainable funding for such projects and programs.

E. The YRF is established and the parties hereto agree to support the efforts of the YRF to protect the Yampa River Basin.

F. The Yampa River Fund Endowment (the “*Endowment*”) has been established to provide financial resources to protect the Yampa River Basin through regular grants issued by the YRF to execute the purposes and projects described herein.

For the purpose of providing for the orderly conduct and carrying on of the business, objects and affairs of the YRF, the parties hereto agree as follows:

## ARTICLE 1

### YRF PURPOSES AND POWERS

**1.1 General Purpose.** The general purpose of the YRF is to advance the goals of the BIP, the IWMP, the Stream Management Plan and the Endangered Fishes Plan by establishing a sustainable fund to be used for grants that will be issued to support projects and programs that will enhance water security for communities, agriculture, the economy and the natural environment in the Yampa Valley, in compliance with applicable laws.

**1.2 Primary Purposes.** The primary purpose of the YRF is to enhance water security for communities, agriculture, industry, the economy and the natural environment in the Yampa River Basin (the “*Intent*”) by providing funding and supporting the efforts of other organizations and individuals to implement (i) voluntary, market-based water leases and releases from reservoirs that will enhance river flows; (ii) restoration actions (on private and public land) that will improve riparian, in-channel, streambank and aquatic habitat; and (iii) improvements or enhancements to water storage, distribution, management and infrastructure in the Yampa River Basin that will generate combined agricultural, industrial, environmental and recreational benefits as well as to undertake fundraising activities with the objective of building, managing and administering a substantial fund (the “*Fund*”), the principal and earnings of which shall be dedicated to and expended by the YRF pursuant to this Agreement to support such efforts.

**1.3 Limitations.** The YRF does not plan, nor shall it have the power, to distribute any gains, profits or dividends to the Directors or their respective affiliates, officers or any other private individuals, except to make payments and distributions in furtherance of the general and primary purposes of the YRF as set forth in this Agreement. No part of the activities of the YRF shall consist of carrying on propaganda or otherwise attempting to influence legislation, nor shall the YRF participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

## ARTICLE 2

### DEDICATION OF THE YRF ASSETS

**2.1 Irrevocable Dedication.** The property, assets, profits and net income within the control of the YRF are irrevocably dedicated to charitable purposes as defined by this Agreement and shall not inure to the benefit of any Director (as defined below) or any affiliate of any Director.

## ARTICLE 3

### YRF ORGANIZATION

**3.1 Structure, Roles and Responsibilities.** The YRF shall consist of four separate bodies whose interactions, roles and responsibilities are outlined herein. The four bodies are (i) The YRF Board of Directors (the “**Board**”), (ii) the Steering Committee (as defined below), (iii) the Management Entity (as defined below) and (iv) the Financial Partner (as defined below).

**3.2 YRF Board.** The activities and affairs of the YRF shall be overseen by or under the ultimate direction of a Board.

**3.3 Composition of the Board.** The Board shall initially be composed of the entities listed on **Schedule 3.3**, known as directors (the “*Directors*”).

(a) **Additional Directors.** Additional Directors may be appointed in the manner provided herein (the “*Additional Directors*”). The appointment of Additional Directors shall be determined from time to time by a 4/5<sup>th</sup> supermajority of the Steering Committee (as defined below). Any increase or decrease in the number of Directors constituting the Board shall be determined by the Steering Committee.

(b) **Selection.** All Directors shall be legal entities and Directors may authorize in writing one or more individuals to vote on their behalf. Representatives to the Board (“*Director Representatives*”) shall be determined by each participating entity’s respective procedures for appointing Director Representatives. Each Director is entitled to one vote, irrespective of the number of Director Representatives from that entity who may participate in a meeting of the YRF. Notwithstanding the forgoing, the qualifications for membership to the YRF will be determined from time to time by resolution of the Steering Committee.

**3.4 Transfer of Memberships.** YRF membership or any rights arising therefrom are not transferable or assignable. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the Directors any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

### **3.5 Removal; Vacancies.**

(a) **Resignation.** A Director may resign its directorship at any time by notifying the Steering Committee.

(b) **Removal of Director Representatives.** The Steering Committee, acting in good faith and by a 4/5<sup>th</sup> supermajority vote, may suspend or remove a Director Representative in its sole discretion, with or without cause, by the written resolution of the Steering Committee. The Steering Committee shall give the Director Representative fifteen (15) days' prior notice of the suspension or removal and the reason for removal. The Director Representative shall have an opportunity in the manner specified in the notice to rectify the reasons for removal and be heard orally or in writing, by a person or body authorized by the Steering Committee to hear such Director Representative and decide that the proposed action not take place, not less than five (5) days before the expulsion, suspension or termination is effective.

(c) **Removal of Directors.** The Steering Committee, acting in good faith and by a 4/5<sup>th</sup> supermajority vote, may suspend or remove a Director from the Board for Cause by the written resolution of the Steering Committee. The Steering Committee shall give the Director fifteen (15) days' prior notice of the suspension or removal and the reason for removal. Such Director shall have an opportunity in the manner specified in the notice to rectify the reasons for removal and be heard orally or in writing, by a person or body authorized by the Steering Committee to hear such Director and decide that the proposed action not take place, not less than five (5) days before the expulsion, suspension or termination is effective. As used herein, "**Cause**" means that a Director or SC Director, or an authorized representative thereof, has (i) failed to attend either (x) three sequential regular meetings or (y) at least 75% of the regular and special meetings in any twelve calendar month period, of the Board or Steering Committee, as the case may be; (ii) committed an act of gross negligence or willful and/or illegal misconduct that materially impaired the ability of the Board or Steering Committee, as the case may be, or of YRF as a whole, to fulfill its responsibilities, exercise its authority, or conduct its business in the ordinary course; (iii) taken any other action reasonably likely to result in material discredit to or material loss of business, reputation or goodwill of the Board or Steering Committee, as the case may be, or YRF as a whole; or (iv) in the case of an authorized representative, has been convicted of or plead no contest to a felony involving violence, moral turpitude or breach of trust.

(d) **Vacancies.** The Steering Committee may fill any vacancies caused by the resignation or removal of a Director.

**3.6 Performance of Duties.** Each Director shall perform all duties of a Director, including duties as a member of any committee of the YRF upon which such Director may serve, in good faith, in a manner that such Director reasonably believes to be in the best interests of the YRF, subject to Section 8.1 below. A person who so performs duties as a Director Representative shall not have any liability by reason of being or having been a Director Representative of the YRF. Each Director entity will be deemed to owe the same fiduciary duties to the YRF as directors and officers of a nonprofit organization owe to such organization. Each Director Representative will be deemed to owe primary fiduciary duty to the Director entity that appointed such Representative, but where not inconsistent with such primary duty, shall also owe fiduciary duty to the YRF. Notwithstanding anything herein to the contrary, the Directors and Director Representatives will not be required to manage the YRF as their sole and exclusive function and will be entitled to and may have business interests and may engage in other business activities in addition to those relating to the YRF and may engage in the ownership, operation and management of businesses and activities for their own account and for the account

of others, without having or incurring an obligation to offer any interest in such properties, businesses or activities to the YRF or any other Director and no other provision of this Agreement will be deemed to prohibit any Director from conducting such other businesses or activities.

## **ARTICLE 4**

### **MEETINGS OF THE BOARD**

**4.1 Regular Meetings.** Regular meetings shall be held without notice at such time as may be fixed by the Steering Committee at least once during each fiscal year of the YRF. Directors are expected to attend all regular meetings.

**4.2 Special Meetings and Notice.** Special meetings may be called by the Chair (as defined in **Section 5.1(d)** of this Agreement) or, if requested in a writing delivered to the Chair, by at least five (5) Directors. Notice of the time and place of any special meeting shall be delivered either personally or by telephone to each Director at least forty-eight (48) hours before the time of such meeting.

**4.3 Place of Meetings and Meetings by Telephone.** Any meeting, regular or special, may be held at any place within the State of Colorado that has been designated from time to time by the Board or the Steering Committee. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another and all such Directors shall be deemed to be present in person at the meeting.

**4.4 Waiver of Notice.** The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes. The waiver of notice or consent need not specify the purpose of any such meeting. All such waivers, consents and approvals shall be filed with the Board records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting, before or at its commencement, the lack of notice to that Director.

**4.5 Quorum.** A majority of the Directors, shall constitute a quorum for the transaction of business, except to adjourn as provided in **Section 4.6** of this Agreement. Every act or decision done or made by a 4/5ths supermajority of the Directors present and voting at a meeting duly held at which a quorum is present shall be regarded as an act of the Board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a 4/5ths supermajority of the remaining voting Directors for that meeting.

**4.6 Adjournment.** A majority of the Directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

**4.7 Action Without Meeting.** Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board and shall be filed with the minutes of the proceedings of the Board. Directors may provide their written consent (i) in writing, which shall be deemed effectively given upon actual receipt or (ii) by electronic mail or facsimile, which shall be deemed effective if delivered during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day.

## ARTICLE 5

### COMMITTEES OF THE BOARD

**5.1 Steering Committee.** Authority and responsibility for management of the affairs and activities of the YRF shall be delegated by the Board to an executive committee known as the Steering Committee (the "*Steering Committee*").

(a) **General Powers.** The Steering Committee is constituted, authorized and empowered by delegation from the Board to exercise all powers and to perform all functions that the Steering Committee may determine to be necessary or appropriate to implement the purposes set forth in **Article 1** of this Agreement and the goals, objectives and Intent thereof, but subject always to conformance with the Semi-Annual Plans (as defined below), as amended or modified from time to time, reviewed by the Board as contemplated by **Section 5.1(b)** of this Agreement and to the ultimate control and direction of the Board. The Steering Committee will have certain roles and responsibilities, including but not limited to the following:

(i) evaluating and voting on requests for funding pursuant to the Funding Guidelines (as defined below);

(ii) awarding funding by a 4/5<sup>th</sup> supermajority vote;

(iii) authorizing the Management Entity (as defined below) and the Financial Partner (as defined below) to disburse funds and enter into grant agreements with awardees;

(iv) nominating candidate SC Directors (as defined below) for vote by the Board;

(v) holding in-person meetings at least twice annually; and

(vi) overseeing and evaluating the performance of the Management Entity and the Financial Partner.

(b) **Semi-Annual Plans.** In the performance of its responsibilities and the exercise of its powers, the Steering Committee shall approve and submit to the Board for its approval on **December 1<sup>st</sup>** and **May 1<sup>st</sup>** of each year or the next business day should such day fall on a weekend or holiday, a semi-annual plan (the "*Semi-Annual Plan*") setting forth in reasonable detail: (i) the goals, objectives and anticipated programs of the YRF; (ii) a description

of the general manner and principal means by which the Steering Committee intends to achieve its objectives and implement its programs; (iii) a projected budget generated by the Management Entity; and (iv) performance reviews of the Management Entity and the Financial Partner. Once the Semi-Annual Plan has been reviewed and approved by the Board, the Steering Committee shall make reasonable efforts to not make material deviations from the objectives and programs set forth in the Semi-Annual Plan or materially modify the Semi-Annual Plan, without the prior approval of such deviation or modification by the Board, except in circumstances where the Steering Committee reasonably determines that it would be impractical to obtain such approval in a timely manner or would otherwise be materially disadvantageous to the YRF or any Director.

(c) **Composition of Steering Committee.** The Steering Committee shall be composed of at least nine Directors as set forth on **Schedule 3.3** hereto (the “**SC Directors**”). The Board may (i) in its sole discretion by a 4/5<sup>th</sup> supermajority vote, appoint SC Directors to the Steering Committee or (ii) remove SC Directors from the Steering Committee pursuant to **Section 5.1(f)** of this Agreement, and in each case shall update **Schedule 3.3** to reflect such addition or removal. Additionally, if an Additional Director appointed following the date of this Agreement donates at least \$250,000 in the aggregate to the YRF Endowment (as defined below), then such Additional Director shall be invited, but shall not be required, to join the Steering Committee as an SC Director. If such Additional Director accepts the invitation to join the Steering Committee, then the Board shall appoint such Additional Director as an SC Director and shall update **Schedule 3.3** to reflect such addition. As Steering Committee and Board membership changes over time, the Board and Steering Committee shall make a good faith effort to maintain roughly balanced proportions between representation from agricultural, recreation, conservation, and business/funder interest groups – as well as between Lower Basin, Upper Basin, and Regional entities.

(d) **Chair.** The SC Directors shall appoint, by a 4/5<sup>th</sup> supermajority vote, a Chair of the Board (who shall also be the Chair of the Steering Committee) (the “**Chair**”). The Chair shall preside at all meetings of the Board and the Steering Committee. The Chair shall have the general powers and duties usually vested in the office of chair of a nonprofit organization with respect to the activities and affairs of the YRF and shall have such other powers and duties as may be prescribed by the Board, the Steering Committee or this Agreement. Additionally, any dispute arising under this Agreement that cannot be readily resolved shall be submitted to the Chair. The Chair shall work in good faith to resolve such dispute through negotiation or other forms of nonbinding dispute resolution processes.

(e) **Term.** The SC Directors shall serve on the Steering Committee so long as they are Directors under this Agreement or until their removal or resignation pursuant to the terms of this Agreement. The Chair may serve a maximum of two (2) consecutive three-year terms.

(f) **Removal and Resignations.** The SC Directors and the Chair shall serve at the pleasure of the Board. Any SC Director or the Chair may be removed for Cause, at any time by a 4/5<sup>th</sup> supermajority vote of the Directors present at any regular or special meeting at which a quorum is present. Any SC Director or the Chair may resign at any time upon written notice to the Steering Committee. Any resignation shall take effect when the notice is received by the

Steering Committee or at any later time specified in the notice and, unless otherwise specified in the notice, acceptance of such resignation shall not be necessary to make it effective.

(g) **Representatives and Vacancies.** Each SC Director must appoint a representative. Any vacancy on the Steering Committee caused by the death, resignation or removal of such representative shall be filled by a new representative appointed by such SC Director.

**5.2 Funding Guidelines.** The Steering Committee will evaluate and award funding to proposed projects in accordance with the guidelines set forth in this **Section 5.2** (the “**Funding Guidelines**”) and the evaluation and ranking criteria provided in the Yampa River Fund Eligibility and Project Ranking Criteria – Phase I and Yampa River Fund Conservation Objectives attached hereto as **Exhibit A**:

(a) Any activity eligible for funding from the YRF Endowment (as defined below) must:

(i) align with the Intent; and

(ii) adhere to the overall goals of the YRF, the BIP, the IWMP, the Stream Management Plan and the Endangered Fishes Plan, including providing benefits to agriculture while improving river health in the Yampa River Basin for aquatic health or recreation or some combination of these goals in compliance with state water laws, interstate compacts and the Endangered Species Act of 1973.

(b) The Steering Committee is limited to awarding funding to proposed projects that meet one or more of the following objectives (the “**Approved Project Types**”):

(i) voluntary, market-based water leases and releases from reservoirs that will enhance river flows for both aquatic health and agriculture in the Yampa River Basin;

(ii) restoration actions (on private and public land) that will improve riparian, in-channel, streambank and aquatic habitat in the Yampa River Basin; and

(iii) improvements or enhancements to water storage, distribution, management and infrastructure in the Yampa River Basin that will generate combined agricultural, industrial, environmental and recreational benefits.

(c) At any meeting of the Board, any Director may initiate a vote to amend the list of Approved Project Types. Adoption of any such amendment shall require the unanimous consent of the Board.

(d) The Steering Committee’s selection of a project for funding shall not require any of the Directors to appropriate or make funding available for, or to implement, such project. The Steering Committee must base its decision to fund or implement projects on available funding, as determined and reported to the Steering Committee by the Management Entity and the Financial Partner.

**5.3 Non-voting Advisory Technical Committee.** The Steering Committee shall convene a non-voting advisory technical committee (the “*Advisory Technical Committee*”) and invite participation from the Colorado Water Conservation Board, the United States Fish and Wildlife Service, Colorado Parks and Wildlife, Trout Unlimited, Dinosaur National Monument (U.S. National Park Service), Upper Yampa River Working Group and any other members as may be necessary or proper to conduct the affairs of the YRF. This Advisory Technical Committee shall be non-voting and may advise both the Steering Committee and the Board.

**5.4 Creation of Committee by the Chair.** The Chair may create such additional committees and appoint members thereof, who need not be Directors, as may be necessary or proper to conduct the affairs of the YRF, provided that no such committees shall exercise the authority of the Board or the Steering Committee.

**5.5 Creation of Committees by the Steering Committee.** The Steering Committee, by a 4/5<sup>th</sup> supermajority vote, may create one or more committees, each consisting of a minimum of three (3) Directors and any number of non-directors, to serve at the pleasure of the Steering Committee. The Steering Committee may appoint one or more Directors as alternate members of any committee, who may replace any absent member at any meeting of such committee. Appointments of members or alternate members to such committees shall be by a 4/5<sup>th</sup> supermajority vote of the SC Directors. No such committee, except to the extent approved by a 4/5<sup>th</sup> supermajority vote of the Board, shall exercise the authority of the Board.

**5.6 Working Groups.** Each of the Board and the Steering Committee may establish and oversee additional working groups that it deems necessary or appropriate to implement the purposes set forth in **Article 1** of this Agreement.

**5.7 Meetings and Actions of Committees.** Except as may be otherwise provided in this Agreement or in a resolution regarding a particular committee, meetings and actions of committees (including the Steering Committee) shall be governed by and held and taken in accordance with, the provisions of **Article 4** of this Agreement regarding the time, place and notice of regular and special meetings, meetings by telephone, waiver of notice, quorum, adjournment, notice of adjournment and actions without meetings, with such changes in the context of those provisions as are necessary to substitute the committee and its members for the Board and its Directors. The Steering Committee may adopt rules for the governance of any committee not inconsistent with the provisions of this Agreement.

## ARTICLE 6

### MANAGEMENT ENTITY

**6.1 Management Entity.** The management entity (the “*Management Entity*”) shall be a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code, as now in effect or as may hereafter be amended (the “*Code*”).

**6.2 Powers of the Management Entity.** The Management Entity is constituted, authorized and empowered by delegation from the Board to exercise all powers and to perform all functions that the Board and/or the Steering Committee may determine to be necessary or

appropriate to implement the purposes set forth in **Article 1** of this Agreement and the goals, objectives and Intent thereof, but subject always to the ultimate control and direction of the Board and the Steering Committee (as authorized by the Board). The Management Entity will have certain roles and responsibilities, including but not limited to the following:

- (i) conducting the day-to-day business and management of the YRF;
- (ii) acting as the liaison between the Board, the Steering Committee, the Financial Partner, grant applicants, grantees, contractors and implementing entities;
- (iii) soliciting grant applications and issuing requests-for-proposals;
- (iv) providing technical advising to the Steering Committee and the Board on matters including: governance, project evaluation and selection, fundraising and budgeting;
- (v) providing reports to the Board on YRF activities, impact and the status of projects, fundraising and budgeting;
- (vi) drafting, negotiating and entering into contracts for the award of YRF funds;
- (vii) securing and monitoring, in collaboration with grantees, project implementation;
- (viii) monitoring grantee performance to ensure compliance with the terms of the respective grant agreements;
- (ix) managing, monitoring and evaluating YRF projects, in accordance with the Monitoring and Evaluation Plan that will be completed in coordination with the Yampa Integrated Water Management Planning process sponsored by the YWG Roundtable. A finalized copy of this plan shall be attached to this Agreement upon its completion;
- (x) facilitating, scheduling and organizing annual Board meetings and quarterly Steering Committee meetings;
- (xi) preparing the annual review of the Steering Committee and the Management Entity and circulating the review materials to the Board;
- (xii) requesting an annual review from the Board;
- (xiii) responding to the requests of the Board;
- (xiv) monitoring ethical compliance;
- (xv) communicating, managing and working with the Financial Partner;
- (xvi) acting as the liaison between the Steering Committee and the Financial Partner;

(xvii) managing the corporate sponsorship program including recruiting, cultivating and stewarding corporate partners and sponsors;

(xviii) planning and facilitating an annual corporate partner and sponsor meeting or event;

(xix) executing the Communications and Marketing Plan, attached hereto as **Exhibit B** and revising as appropriate;

(xx) fundraising for operating and direct project expenses in accordance with the Fundraising Plan attached as **Exhibit C**; and

(xxi) conducting outreach and coordinating with corporate partners, local interest groups, the YWG Roundtable, efforts associated with the IWMP and other government agencies.

### **6.3 Reporting.**

(a) **Press Releases.** The Management Entity shall review and discuss with the Steering Committee any material press releases regarding YRF's results of operations.

(b) **Quarterly Report.** The Management Entity shall review and discuss with the Board the results of operation, including, but not limited to: (i) financial information, including fundraising reports; (ii) the status of material contracts; (iii) measurable impact of the YRF on the BIP Goals; and (iv) the status of material projects. The Management Entity shall cause a quarterly financial report to be made available to the Board within ten (10) business days of the quarter end.

(c) **Ethical Compliance.** The Management Entity shall review the results of the Board's efforts to monitor compliance with YRF's programs and policies adhering to applicable laws and rules, including **Section 8** of this Agreement. The Management Entity shall notify the Board upon determination of any breach in compliance and maintain a written record of each breach, along with the action taken by the Management Entity or the Board, as applicable.

(d) **Risk Management and Identification.** The Management Entity shall annually review and discuss with the Board its processes and policies on risk identification, management and assessment in all areas of YRF's business, including financial and accounting. Areas of focus shall include YRF's policies and other matters relating to YRF's investments, cash management, financial risk exposures and the steps taken by the Management Entity to monitor and mitigate or otherwise control these exposures and to identify future risks. The Management Entity will provide regular reports to the Board about such risk assessment, material issues affecting the quality or integrity of YRF's financial statements, compliance with legal or regulatory requirements and other matters as the Board deems appropriate.

(e) **Performance.** The Management Entity shall annually evaluate its performance under this Agreement and provide the Board a written report of its evaluation.

**6.4 Selection; Termination and Resignation.** The Management Entity shall be selected by a 4/5<sup>th</sup> supermajority vote of the members of the Board by written consent. The Management Entity may be removed with cause by a 4/5<sup>th</sup> supermajority vote of the Board at any time. The Management Entity may resign at any time by providing sixty (60) days written notice to the Board. If the Management Entity provides notice to the Board of its resignation, the Board shall select, by a 4/5<sup>th</sup> supermajority vote of the Board, a new entity to fill the role of the Management Entity.

## ARTICLE 7

### FINANCIAL PARTNER

**7.1 Financial Partner.** The financial partner (the “*Financial Partner*”) shall be a 501(c)(3) tax-exempt organization under Section 7-121-101 of the Colorado Revised Nonprofit Corporation Act, as now in effect or as may hereafter be amended or a governmental entity. The Financial Partner shall have the care and custody of all endowment monies belonging to the YRF and shall be solely responsible for such monies or securities of the YRF.

**7.2 Powers of the Financial Partner.** The Financial Partner is constituted, authorized and empowered by delegation from the Board to exercise all powers and to perform all functions that the Board and/or the Steering Committee may determine to be necessary or appropriate to implement the purposes set forth in **Article 1** of this Agreement and the goals, objectives and intent thereof, but subject always to the ultimate control and direction of the Board. The Financial Partner shall have certain roles and responsibilities, including but not limited to the following:

- (i) managing funds received from donors (the “*YRF Endowment*”) in accordance with the Intent;
- (ii) accounting for financial contributions and distributions;
- (iii) preparing quarterly reports on the accounting and financial status of the YRF;
- (iv) communicating and cooperating with the Management Entity to transfer funds from YRF Endowment interest disbursements necessary for the Management Entity to execute contracts and other agreements, as approved by the Steering Committee; and
- (v) receiving donations into the YRF Endowment that reflect the Intent.

**7.3 Deposits, Funds and Securities.** The Financial Partner, with oversight by the Steering Committee and the Board, shall designate the banks, trust companies or other depositories in which all funds of the YRF not otherwise employed shall be deposited from time to time.

**7.4 Checks, Drafts and Evidences of Indebtedness.** All checks, drafts, orders for payment of money, notes or other evidences of indebtedness, issued in the name of or payable to

the YRF, shall be signed or endorsed by such person or persons and in such manner as shall be determined by the Financial Partner with oversight by the Steering Committee and the Management Entity.

**7.5 Approval and Payment Authorization Limits.** The entry into all contractual or disbursement obligations related to the YRF Endowment monies must be approved by the Financial Partner in accordance with the Intent and direction from the Steering Committee. All contractual or disbursement obligations from the YRF Endowment must be approved by a 4/5<sup>th</sup> supermajority vote of the Steering Committee. Notwithstanding the foregoing, no further Steering Committee approvals for contractual or disbursement obligations are required if the Steering Committee and Board have previously approved a specific budget within which the contractual or disbursement obligation is included. The Financial Partner may not receive or disburse donations that are intended for immediate disbursement for project execution (and not intended for investment in the YRF Endowment) unless the intended project has been approved by the Steering Committee as a YRF project.

**7.6 Reporting.** The Financial Partner shall provide quarterly reports to the Steering Committee on all significant disbursement activities including reporting on any new expenditures, as well as report on financial performance and significant variances from budgets.

**7.7 Selection; Termination and Resignation.** The Financial Partner shall be selected by a 4/5<sup>th</sup> supermajority vote of the members of the Board by written consent. The Financial Partner may be removed with or without cause by a 4/5<sup>th</sup> supermajority vote of the Board at any time. The Financial Partner may resign at any time by providing ninety (90) days written notice to the Board. If the Financial Partner provides notice to the Board of its resignation, the Board shall select, by a 4/5<sup>th</sup> supermajority vote of the Board, a new entity to fill the role of the Financial Partner. It is recognized that any agreement for direction or return of funds between a donating entity and the Financial Partner will supersede directions by the Board under this paragraph.

## ARTICLE 8

### CONFLICTS

**8.1 Disclosure of Conflicts.** At times the Directors, the Director Representatives, the SC Directors, the Financial Partner and/or the Management Entity (collectively, an “Interested Party”) may be associated with other entities that have adverse interests to the interests of the YRF (an “*Adverse Party*”). Such Interested Party shall not disclose or use confidential information received as an Interested Party contrary to the YRF’s interests without approval of the Steering Committee. If an Interested Party acts or intends to act for an Adverse Party on a matter in which there are, or reasonably are expected to be, adverse interests between that Adverse Party and the YRF, the Interested Party shall recuse itself from participating in the YRF’s confidential discussions of that matter and decline to receive confidential YRF information about that matter. Such Interested Party also shall not vote on any actions affecting the matter. In such a situation, the Interested Party shall promptly notify the Chair of its decision or intention to act on behalf of the Adverse Party and the Chair shall act to ensure that thereafter confidential information shall not be provided to such Interested Party about the matter. Any

transaction or vote involving a potential conflict of interest shall be disclosed to the Board and approved only when a majority of disinterested Directors determine that it is in the best interest of the YRF to do so. The minutes of meetings at which such votes are taken shall record such disclosure, abstention and rationale for approval.

**8.2 Code of Ethics.** An Interested Party shall not: (i) disclose or use confidential information acquired in the course of its official duties in order to further substantially its financial interests or (ii) accept a gift of substantial value or a substantial economic benefit tantamount to a gift of substantial value: (1) that would tend improperly to influence the Interested Party to depart from the faithful and impartial discharge of its duties; or (2) that the Interested Party knows or that a reasonable person in its position should know under the circumstances is primarily for the purpose of rewarding it for action it has taken or will take.

## ARTICLE 9

### RECORDS, REPORTS AND INSPECTION RIGHTS

**9.1 Records.** The YRF shall keep complete and correct books of accounts and minutes of the proceedings of the Board, the Steering Committee and any other committees.

**9.2 Annual Report.** The Steering Committee shall make available annually to each Director a report containing in appropriate detail the following information:

- (a) the assets and funding expenditures of the YRF as of the end of the calendar year;
- (b) the principal changes in assets and liabilities, during the calendar year;
- (c) the revenue or receipts of the YRF, both unrestricted and restricted to particular purposes, for the fiscal year; and
- (d) the expenses or disbursements of the YRF, for both general and restricted purposes, during the fiscal year.

**9.3 Inspection Rights.** Every Director shall have the absolute right at any reasonable time to inspect, copy and make extracts of all books, records and documents of every kind of the YRF. Such inspection may be made in person or by an agent or attorney.

## ARTICLE 10

### DISSOLUTION; LIQUIDATION AND TERMINATION

**10.1 No Dissolution.** Only the events set forth in **Section 10.2** hereof shall cause the dissolution of the YRF.

**10.2 Events Causing Dissolution.** The YRF shall be dissolved and its affairs shall be wound up as follows: (i) by written recommendation to the Board by a 4/5<sup>th</sup> supermajority of the Steering Committee and (ii) by written approval of a 4/5<sup>th</sup> supermajority of the Board.

**10.3 Liquidation.** Upon dissolution of the YRF, the Steering Committee will oversee the Management Entity which shall immediately commence to wind up the YRF's affairs in an orderly fashion. The proceeds of liquidation shall be disbursed as follows:

(a) first, to secure management and disbursement of the funds in the YRF Endowment in accordance with the Intent and with any agreements with the Financial Partner;

(b) second, to make payment of all debts and liabilities owing to creditors and the expenses of dissolution or liquidation;

(c) third, to establish such reserves as reasonably deemed necessary by the Board, Steering Committee and the Management Entity for any contingent or unforeseen liabilities or obligations of the YRF;

(d) fourth, as required by any fund agreements between donors and the Financial Partner; and

(e) fifth, to distribute any remaining funds to such nonprofit funds, foundations or corporations that are organized and operated for charitable purposes consistent with the Intent that have established and maintained tax-exempt status under Section 501(c)(3) of the Code, as may be selected by a 4/5<sup>th</sup> supermajority of the last incumbent Board.

**10.4 Fund Assets.** If, at the time of any such dissolution, liquidation, winding up, termination or abandonment, the YRF or any person acting on its behalf holds any assets in trust, they shall be transferred to a successor trustee designated by the YRF to be held in trust for substantially the same purpose as the original trust purpose.

## ARTICLE 11

### MISCELLANEOUS

**11.1 Amendments.** This Agreement shall be reviewed annually by the Board and may be altered, amended, repealed or replaced by a new Agreement by the Directors at any annual, regular or special meeting of the Board. Amendments must be approved by a 4/5<sup>th</sup> supermajority of the Board.

**11.2 Authorized Representatives.** By executing this Agreement, or any amendment thereto, each Director represents that the signatory to this Agreement is acting as its authorized representative, to take such action on behalf of the Director. A Director may designate a successor or alternate representative, as well as any additional persons necessary to act on its behalf with respect to the activities contemplated by this Agreement as it deems necessary (including Director Representatives).

**11.3 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which shall be considered one and the same instrument. Either or all parties may execute this Agreement by facsimile signature or scanned signature in .pdf format and any such facsimile signature or scanned signature, if identified,

legible and complete, shall be deemed an original signature and each of the parties is hereby authorized to rely thereon.

**11.4 Entire Agreement.** This Agreement is intended to be the sole agreement of the parties as it relates to the subject matter hereof and such documents hereby supersede all other agreements of the parties relating to the subject matter hereof.

**11.5 Fiscal Year.** The tax year for 2019 shall be a partial fiscal year, beginning on the first day of [Month of Adoption] and ending on December 31, 2019. Beginning on January 1, 2020, the YRF's fiscal year shall be the calendar year.

**11.6 Force Majeure.** No Director shall be liable for any delay or failure to perform due solely to conditions or events of Force Majeure, as defined below; provided that (i) the non-performing Director gives the Board prompt written notice describing the particulars of the Force Majeure condition or event; (ii) the suspension of performance is of no greater scope and of no longer duration than required by the Force Majeure event or condition; and (iii) the non-performing Director proceeds with reasonable diligence to remedy its inability to perform and provides bi-weekly progress reports to the Board describing the remedial actions taken. In the case of a Force Majeure event, the Board shall meet and agree, in writing, upon an appropriate modification of obligations identified herein, so as to address the unanticipated conditions associated with such Force Majeure event. As used in this **Section 11.6**, "*Force Majeure*" shall mean any delay or failure of a Director to perform its obligations under this Agreement caused by events beyond the Director's reasonable control and without the fault or negligence of the Director, including, without limitation: (i) acts of God; (ii) sudden actions of the elements such as floods, earthquakes or tornadoes; (iii) sabotage; (iv) vandalism beyond that which can be reasonably prevented by the Director; (v) terrorism; (vi) war; (vii) riots; (viii) fire; (ix) explosion; (x) blockades; (xi) insurrection or (xii) strike, slow down or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group).

**11.7 Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Colorado.

**11.8 Liability.** Each Director agrees that it will be solely liable for personal injury and property damage for which it is found legally responsible, subject to Section 11.12 below. By executing this Agreement, issuing a letter indicating support for the purposes underlying it or serving on a working group, the entities serving as Directors, Director Representatives (the individual(s) authorized to represent that entity), and other parties neither assume new liabilities nor expand their existing liabilities under law or in equity. This Agreement shall not be construed as conferring any rights on any party against another party, or on any third person. Any liability that a Director may incur in connection with this Agreement is subject to the immunities and limitations of the statutes and common or tribal law governing each individual party. A party shall not be responsible for liability incurred as a result of any other parties acts or omissions in connection with this Agreement.

**11.9 Reimbursement.** Directors shall not be reimbursed by other Directors for work performed to carry out the purposes of this Agreement. Each Director shall absorb the costs it incurs in performing any work performed pursuant to this Agreement, including all costs

associated with participating in the Steering Committee or working groups established to facilitate this Agreement.

**11.10 Relationship of the Parties.** Each Director is and shall remain independent and nothing herein shall be construed to create a partnership, agency or joint venture between any of the Directors.

**11.11 Uniformity of Interpretation; Severability.** This Agreement shall be so interpreted and construed in accordance with the laws of the State of Colorado and where conflict between this Agreement and a statute has arisen or shall arise, the Agreement shall be considered to be modified to the extent, but only to the extent, conformity shall require. If any Agreement provision or its application shall be deemed invalid by reason of any such nonconformity, the remainder of this Agreement shall remain operable in that the provisions set forth in this Agreement are severable.

**11.12 No Waiver of Governmental Immunity.** The parties hereto understand and agree that each Director that is a Colorado governmental entity (each such Director, a “*Governmental Director*”) relies on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, as amended from time to time, or any other law or limitation of liability otherwise available to each Governmental Director, its officers or its employees.

**11.13 Waiver of Notice.** Whenever any notice is required to be given to any Director, under the provisions of this Agreement, or under the provisions of the applicable laws of the State of Colorado, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before, at or after the time stated therein, shall be deemed equivalent to the giving of such notice.

\* \* \*

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**CITY OF CRAIG**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**CITY OF STEAMBOAT SPRINGS**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**COLORADO RIVER DISTRICT**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**COLORADO WATER TRUST**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**COMMUNITY AG ALLIANCE**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**FRIENDS OF THE YAMPA**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**MOFFAT COUNTY**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**MOFFAT COUNTY CATTLEMEN'S  
ASSOCIATION**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**MOUNT WERNER WATER AND SANITATION  
DISTRICT**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**PARROT HEADS**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**ROUTT COUNTY**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**SMARTWOOL**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**STEAMBOAT SKI RESORT**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**THE NATURE CONSERVANCY**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**TOWN OF DINOSAUR**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**TOWN OF HAYDEN**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**TOWN OF OAK CREEK**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**TOWN OF YAMPA**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**TRI-STATE GENERATION AND TRANSMISSION**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**TROUT UNLIMITED**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**UPPER YAMPA CONSERVANCY DISTRICT**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**YAMPA VALLEY LAND TRUST**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**YAMPA VALLEY SUSTAINABILITY COUNCIL**

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

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

Date: \_\_\_\_\_

**IN WITNESS WHEREOF**, the Directors hereto have caused this Collaboration and Administration Agreement to be executed as of the date first above written by their duly authorized representatives.

**YAMPATIKA**

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

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

Date: \_\_\_\_\_

**SCHEDULE 3.3**

**DIRECTORS**

**[PROPOSED LIST OF DIRECTORS:**

**CITY OF CRAIG**

**CITY OF CRAIG WATER PROVIDER**

**CO RIVER DISTRICT**

**CO WATER TRUST**

**COMMUNITY AG ALLIANCE**

**DINOSAUR**

**FRIENDS OF THE YAMPA**

**HAYDEN**

**MOFFAT COUNTY**

**MOFFAT COUNTY CATTLEMEN'S ASSOCIATION**

**MOFFAT COUNTY IRRIGATION DISTRICT REP (JUNIPER CONSERVATION DISTRICT)**

**MOFFAT COUNTY IRRIGATION DISTRICT REP (COLORADO FIRST CONSERVATION  
DISTRICT)**

**MT WERNER WATER AND SANITATION DISTRICT**

**OAK CREEK**

**PARROT HEADS**

**ROUTT COUNTY**

**SMARTWOOL**

**STEAMBOAT SKI RESORT**

**STEAMBOAT SPRINGS**

**TNC**

**TOWN OF YAMPA**

**TRI-STATE GENERATION AND TRANSMISSION**

**TROUT UNLIMITED**

**UPPER YAMPA CONSERVATION DISTRICT**

**YAMPA VALLEY SUSTAINABILITY COUNCIL**

**YAMPATIKA]**

**SCHEDULE 5.1**

**STEERING COMMITTEE DIRECTORS**

**[CURRENT LIST OF INVITEES:**

**AGRICULTURE COMMUNITY AT-LARGE REPRESENTATIVE**

**BUSINESS COMMUNITY AT-LARGE REPRESENTATIVE**

**CITY OF CRAIG**

**CITY OF CRAIG WATER PROVIDER**

**CITY OF STEAMBOAT SPRINGS**

**COMMUNITY AG ALLIANCE**

**ENVIRONMENTAL COMMUNITY AT-LARGE REPRESENTATIVE**

**FRIENDS OF THE YAMPA**

**MOFFAT COUNTY**

**MOFFAT COUNTY IRRIGATION DISTRICT REPRESENTATIVE (COLORADO FIRST**

**CONSERVATION DISTRICT)**

**MOFFAT COUNTY IRRIGATION DISTRICT REPRESENTATIVE (JUNIPER CONSERVATION**

**DISTRICT)**

**MOUNT WERNER WATER AND SANITATION DISTRICT**

**RECREATION COMMUNITY AT-LARGE REPRESENTATIVE**

**ROUTT COUNTY**

**SMARTWOOL (PENDING DISCUSSION)**

**STEAMBOAT SKI RESORT**

**THE NATURE CONSERVANCY**

**TRI-STATE GENERATION & TRANSMISSION (PENDING DISCUSSION)**

**YAMPA / WHITE / GREEN BASIN ROUNDTABLE REPRESENTATIVE]**

**EXHIBIT A**

**TECHNICAL GUIDELINES**

**EXHIBIT B**

**COMMUNICATIONS AND MARKETING PLAN**

**EXHIBIT C**

**FUNDRAISING PLAN**