

**MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE CITY OF FRUITA AND MESA COUNTY, COLORADO FOR THE
FUNDING OF LEGAL SERVICES FOR THE APPEAL OF THE TOTAL MAXIMUM
DAILY LOADS (TMDL) BY THE COLORADO DEPARTMENT OF PUBLIC HEALTH
AND ENVIRONMENT (CDPHE)**

This MOU is made and entered into effective the _____ day of _____ 2022 by and between The City of Fruita, and Mesa County (individually and collectively referred to as the “Common Interest Entity” and Mesa County (County) and provides as follows:

WHEREAS, the County provides a consolidated Colorado Discharge Permit System (CDPS), Municipal Separate Stormwater System (MS4) and related stormwater permitting services to entities within its jurisdictional boundaries that are necessary for compliance with CDPS MS4 Stormwater Phase II regulations; and

WHEREAS, CDPHE has proposed a Grand Valley TMDL for 11 Colorado River Tributaries and the CDPHE believes these stream segments are impaired. The TMDL encompasses about 138 square miles from Lewis Wash in Clifton to Salt Creek in western Mesa County; and

WHEREAS, the Common Interest Entities have great concern about the accuracy of the allocation of pollution loads between point sources and nonpoint sources in 11 tributaries; and

WHEREAS, the Common Interest entities desire to appeal the CDPHE decision regarding the TMDL’s implementation measures; and

WHEREAS, legal services will be needed to address this appeal with a cost associated with the work; and

WHEREAS, for the reasons set forth herein, the parties hereto desire to memorialize their on-going and joint effort to establish a common legal strategy for the purposes enumerated herein and to further memorialize their intent that their communications on matters governed by this MOU be privileged communications under the common interest doctrine.

NOW THEREFORE, in consideration of the recitals, terms, conditions and promises contained in this Agreement, the City of Fruita and the County agree as follows:

1. County Responsibility. The County shall procure legal services on behalf of itself and oversee the legal work for the appeal and initially pay all invoices for this work.
2. Billing Quarterly, the County will bill the Common Interest Entities a percent of all invoices for legal fees and costs incurred during that time as follows:

Mesa County 40%
City of Grand Junction 40%
City of Fruita 10%
Grand Valley Water Users Association 5%
School District 51 5%

3. Relationship between Parties. The County is contracted only for the purpose and to the extent set forth in this Agreement and for the purpose of carrying out the joint effort to set up a common legal strategy and all communications between the parties.
4. Assignment. Neither party shall assign such party's rights or interest under this Agreement without the prior written consent of the other.
5. Entire Agreement. This Agreement shall constitute the entire agreement between Common Interest Entity and the County. Any prior understanding or representation of any kind preceding the effective date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.
6. Amendment. Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if in writing signed by each party.
7. Non-Waiver. The failure of either party to this Agreement to insist on the performance of any of the terms and conditions of this Agreement or the waiver of any breach of any of the terms and conditions of this agreement shall not be construed as thereafter waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.
8. Venue. This Agreement is formed in accordance with laws of the State of Colorado and venue for any action hereunder shall be in the State District Court in Mesa County, Colorado.
13. Cooperation. In providing services in regards to the subject matter of this agreement, the parties agree to work cooperatively and in good faith.
14. Agreement Provisions Severable. If any of the provisions of this Agreement are deemed to be invalid or unenforceable, such provisions shall be deemed severable from the remainder of this Agreement and shall not cause the invalidity or unenforceability of the remainder of this Agreement. If any provisions are

deemed invalid because of its scope. This provision shall be deemed valid to the extent of the scope permitted by law.

AGREED TO EFFECTIVE THE DATE FIRST WRITTEN ABOVE.

MESA COUNTY

By _____
Cody Davis, Chair of Board of County Commissioners

ATTEST: _____
Tina Peters, Clerk and Recorder

The City of Fruita

By _____
NAME

ATTEST _____
NAME