

STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK

COUNCIL BILL NUMBER: CB7

ORDINANCE NUMBER: 2023-7

TITLE: AN ORDINANCE APPROVING AN AFFILIATION AGREEMENT WITH COALITIONS AND COLLABORATIVE (COCO) FOR FISCAL HOSTING SERVICES FOR PROJECTS FACILITATED THROUGH THE CLEAR CREEK WATERSHED & FOREST HEALTH PARTNERSHIP

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK, GILPIN COUNTY:

Section 1. The City of Black Hawk hereby approves an Affiliation Agreement with Coalition and Collaborative (COCO), as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference, and authorizes the Mayor to execute the same on behalf of the City of Black Hawk.


Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.


Section 3. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.


Section 4. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 8th day of March, 2023.

ATTEST:


Melissa A. Greiner, CMC, City Clerk



David D. Spellman, Mayor



COCO Affiliate Agreement

THIS Agreement is made and entered into by and between the Parties set forth in section I below, effective as of the Effective Date set forth in section 2 below.

I. PARTIES:

	COCO	Affiliate Member
Organization Name	Coalitions & Collaboratives, Inc. (COCO)	City of Black Hawk
Mailing Address	PO Box 746	PO Box 68
	40 Cherokee Ave.	201 Selak Street
	Lake George, CO 80827	Black Hawk, CO 80422
Principal Office Street Address	40 Lake George, CO 80827	201 Selak Street
Contact Number	719-412-3749	303-582-2237
Contact Email	Jonathan.Bruno@co-co.org	bdallam@cityofblackhawk.org
Contract Contact	Administration: Joy Reis / joy.reis@co-co.org Contract Manager(s) Jonathan Bruno & Esther Duke / esther.duke@co-co.org	Water Resource Engineer: Brad Dallam Mayor David D. Spellman
	SIGNATURE:	SIGNATURE: 
	Date:	Date: 3/8/2023

WHEREAS, COCO is a 501(c)(3) nonprofit organization whose mission is to foster on-the-ground conservation efforts that protect and restore natural resources and local communities, by supporting affiliate group who produce collective impacts through stakeholder-driven efforts;

WHEREAS, the Affiliate member is a part of a coalition or collaborative group, as defined by COCO's bylaws;

WHEREAS, the Affiliate member wishes to have support services from COCO;

WHEREAS, the Affiliate member agrees to abide by and support the COCO purpose and objectives to the fullest extent possible (see Exhibits), and to not adopt any purpose that detracts from or conflicts with COCO's tax exempt status;

WHEREAS, COCO and the Affiliate member both have a vested interest in the success and growth of both organizations at all levels; and

WHEREAS, COCO and the Affiliate member have determined that it is in their best interests to enter into this Agreement in order to set forth in writing the terms and conditions of their affiliation.

NOW THEREFORE, in consideration of the premises set forth above and the promises set forth below, the sufficiency and receipt of which are hereby acknowledged, the parties hereby agree as follows:

II. TERMS AND CONDITIONS OF THE Agreement

1. **Independent Affiliate Member, Relationship of the Parties.** The parties aver that:
 - A. The Affiliate member is not subject to COCO's control as to the means and methods of accomplishing their mission, but COCO may specify and control the result to be accomplished if COCO is providing funding, financial management/fiscal hosting, and/or HR services as appropriate, and as defined in an annual work plan;
 - B. This Agreement shall not be construed to create any partnership, joint venture, nor other agency relationship between the parties beyond the work to be completed pursuant to the annual work plan that COCO and the Affiliate member develop.
3. **Term.** This Agreement shall commence on the Effective Date, which shall be the later of the date it is signed by COCO's CEO; or a separate date as specified here: _____. This agreement shall terminate one year from the Effective Date, but may be renewed via email confirmation of both parties for up to three successive one-year terms.
4. **Cost of Service.** COCO invoices all affiliates and affiliate members monthly for actual costs incurred. Costs are described in COCO Fiscal Policy (Exhibit B)
5. **Liability & Representations.**
 - A. COCO and the Affiliate member expressly acknowledge and agree that COCO and the Affiliate member are, and intend to remain, separate entities and as such shall not incur any liability, obligation, or expense on behalf of the other, unless otherwise provided in writing by COCO's Chief Executive Officer or Executive Committee and an authorized representative of the Affiliate, pursuant to correspondence, agreements and approved work plans.
 - B. The Affiliate member may not enter into any affiliations, contracts, or other binding agreements with a third party on behalf of COCO, unless authorized in writing by COCO's COCO's Chief Executive Officer or Executive Committee and an authorized representative of the Affiliate, pursuant to correspondence, agreements and approved work plans.

- C. The conduct of the Affiliate member and its members and any other legal obligations, fees, costs, or other related financial fees and charges undertaken by the Affiliate member and outside of COCO's management are the sole responsibility of the individual Affiliate member and may not be passed onto COCO under any conditions. COCO retains no legal or financial liability for actions of the Affiliate member outside its relationship with COCO.
 - D. Affiliate member officers and officials shall speak only on behalf of the Affiliate member and recognize they may not speak or act on behalf of COCO.
6. **Force Majeure.** Neither the Affiliate member nor COCO shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this Agreement "force majeure" means acts of God; acts of the public enemy; acts of the any governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; public health emergencies, including conditions related to COVID-19; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. Notwithstanding the foregoing, in the event of a delay or failure of performance by the Affiliate member under this section exists for a period of 30 days, or for a shorter period if such delay or failure is not reasonably capable of being remedied within 30 days, COCO shall have the right to terminate this Agreement without further obligation.
7. **Default.** A party will be considered in default of its obligations under this Agreement if such party should substantially fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for ten (10) days after the non-defaulting party gives the defaulting party written notice thereof. Substantial failure to satisfy the Terms and Conditions set forth in this contract shall be defined to mean significant insufficient, incorrect or improper performance, activities, or inaction by the Affiliate member. In the event of default, the non-defaulting party, upon written notice to the defaulting party, may terminate this Agreement as of the date specified in the notice, and may seek such other and further relief as provided herein below.
8. **Remedies.** In addition to any other remedies provided for in this Agreement, and without limiting its remedies otherwise available at law, COCO may exercise the following remedial actions if the Affiliate member substantially fails to satisfy or perform the duties and obligations in this Agreement:
- a. Suspend the Affiliate member's performance pending necessary corrective action as specified by COCO without the Affiliate member's entitlement to adjustment in price/cost or schedule; and/or
 - b. Withhold payment to the Affiliate member until the necessary services or corrections in performance are satisfactorily completed and/or acceptable goods are provided; and/or
 - c. Request the removal from work on this Agreement of employees or agents of the Affiliate member whom COCO justifies as being incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued employment on this Agreement COCO deems to be contrary to the its interest; and/or
 - d. Deny payment for those services or obligations which have not been performed and/or for goods that have not been provided and which due to circumstances caused by the Affiliate member cannot be performed, or if performed would be of no value to COCO. Denial of the amount of payment must be reasonably related to the value of work or performance lost to COCO; and/or
 - e. Terminate this Agreement for default. The above remedies are cumulative and COCO, in its sole discretion, may exercise any or all of them individually or simultaneously.
9. **Termination for Convenience:** COCO or the Affiliate member may terminate this Agreement at any time by giving written notice of termination to the other party, and specifying the effective date thereof, at least fourteen (14) days before the effective date of such termination. Upon receipt of such notice:

- a. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared owed to the other party shall be completed within 60 days of termination effective date
- b. All payments shall be made to the other party within 60 days of termination effective date.

10. Representatives and Notice.

- a. Representatives. For the purpose of this Agreement, the individuals identified in Section I, PARTIES above are hereby designated representatives of the respective parties, referred to as "Contract Contacts" herein. Either party may from time to time designate in writing new or substitute representatives. With respect to the representative(s) of each party, the Contract Contact shall have the authority to inspect and reject services, approve invoices for payment, and act otherwise with regard to all legal matters and negotiations on behalf of the party.
- b. Notice. All notices required to be given under this Agreement shall be deemed given when actually delivered to the designated representative(s) of the party to be given notice by (i) certified mail, return receipt; or (ii) by hand delivery or courier service, if a signed receipt is obtained upon delivery.
- c. A party may change its designated representative(s) or address at any time by written notice in the same manner as for any other notice. The initial representatives of the parties shall be the persons whose names and addresses are set forth in Article I, Parties, herein above.

11. Legal Authority. The Affiliate member warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the Affiliate member to its terms. The person(s) executing this Agreement on behalf of the Affiliate member warrant(s) that such person(s) have full authorization to execute this Agreement.

12. Non-Assignment. The parties shall not assign this Agreement to a third party without written approval of the other party.

13. Binding effect; Third Party Beneficiaries. This Agreement is binding upon the heirs, personal representatives, successors, and permitted assigns of both parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to COCO and the Affiliate member. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of COCO and the Affiliate member that any such person or entity, other than COCO or the Affiliate member, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

14. Entire Agreement. This Agreement, including the exhibits incorporated herein by reference, constitutes the entire agreement between the parties, and supersedes any previous Agreements, understandings, or agreements of the parties, whether verbal or written, concerning the subject matter of this Agreement.

15. Amendment. No modification or amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the parties.

16. Survival of Certain Agreement Terms. Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance, or effect beyond the termination date of this Agreement shall survive such termination date and shall be enforceable as provided herein in the event of such failure to perform or comply by the Affiliate member.

17. **Waiver.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the same or other provision hereof.
18. **Severability.** In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
19. **Counterparts.** This Agreement may be executed with any number of counterparts, each of which, when executed and delivered will constitute an original, but all such counterparts will constitute one and the same instrument.
20. **Priority of Interpretation:** The provisions of this Agreement shall govern the relationship of COCO and the Affiliate member. In the event of conflicts or inconsistencies between this Agreement and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority: first, the Special Provisions if incorporated within this Agreement, second, the terms and provisions of this Agreement; third, the Exhibits listed above in the order they appear.
21. **COMPLIANCE WITH LAW.** Affiliate member shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, those laws applicable to discrimination and unfair employment practices. The laws of the State of Colorado, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution. E
22. **EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.** The signatories aver that to their knowledge, no employee of COCO, nor any other COCO official, including members of COCO's Board of Directors, has any personal or beneficial interest in the service or property described in this Agreement. Affiliate member has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Affiliate member's services and Affiliate member shall not employ any person having such known interests.

III. EXHIBITS INCORPORATED BY REFERENCE

The following exhibits are attached and hereby made a part of this Agreement:

Exhibit A: COCO Purpose & Objectives

Exhibit B: Fiscal Hosting Policy

Exhibit C: Federal Funds Addendum

Exhibit A: COCO Purpose & Objectives

COCO's purpose is to increase on-the-ground efforts to protect, enhance, and restore natural resources through collaborative conservation. Our objectives include:

1.) Capitalize on economies of scale:

- Employ a consistent and consolidated bookkeeping and financial management approach for all affiliates operating under the group determination, or affiliates utilizing financial management or human resources (HR) services;
- All affiliates operating under the group determination or utilizing financial management services will have their revenue and expenses tracked utilizing separate accounts so each affiliate member's funds are recognized separately and uniquely, and each affiliate member can "own" its own assets, seek its own grants and donations, and budget funds for its own mission, while still being accountable, transparent, and consistent with OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards; the Federal Single Audit Act; and the nonprofit requirements of the Internal Revenue Code;
- Reduce insurance costs through group purchased insurance for general liability, umbrella liability, and similar insurances. Each group will need its own Directors & Officers (D&O) policy, though affiliates utilizing HR services will benefit from lower cost D&O.
- Increase payroll efficiencies with more people in the system. Costs for certain employee benefits go down as group size increases, and better benefits can attract and increase the retention of employees. Administrative costs for the payroll function and other HR functions decrease slightly on a per employee basis by combining staffs.
- All staff working under the group determination or for affiliates utilizing HR services will be paid by the COCO payroll system.
- Although paid by COCO, staff and other expenses will be allocated to the respective affiliates (or affiliate members, as applicable) against their revenue class in order to assure that each affiliate is responsible for defining and complying with budget expectations and to assure each affiliate that the money they are raising is appropriately going to their own work;
- The opportunity for purchasing supplies in bulk, such as erosion control blankets or seed, to reduce the cost of projects.

2.) Provide a shared pool of experts and experience:

- Have the ability to hire certain staff that are shared among the group of member affiliates. For example, we may hire a staff Professional Engineer who is shared across projects and programs of the varying affiliates, or a full-time facilitator who can work with the various affiliates on things like strategic planning, developing Community Wildfire Protection Plans, Source Water Protection Plans, or other similar plans, through stakeholder-driven processes;
- Computer systems—COCO already has developed tools like cloud-based databases, and has a robust GIS program that will be shared across affiliates to provide consistent data development and outcome reporting to funders and stakeholders;
- Create a shared leadership training program that builds board and staff capacity and knowledge in a uniform fashion and creates shared apprenticeship and exchange of know-how between staff of the various organizations;

- Apply consistent policies and procedures across organizations for high accountability and transparency and utilized standardized forms, data sets, etc;
- And, act as a training ground for emerging professionals through internship programs, and association with Americorp and affiliated programs, such as VISTA, NCCC, youth corps, and veteran's green corps.

3.) Create a sense of community and support that helps people and businesses derive benefit from participating in collaborative conservation activities:

- Leveraging COCO's various partners, partnerships and networks between affiliates;
- Increases crew-member retention as positions are created across areas, and allows for upward growth for younger crew members;
- Engage funders with a new high-impact model that's based on a proven organizational model;
- Increase volunteerism opportunities for outdoor stewardship and public safety related to natural disasters and their recovery.

4.) Increase awareness for watershed-and other natural-resource-related issues across the country:

- Consistent messages from various affiliates;
- Engage more citizens on-the-ground activities;
- Increase recognition in the funder community;
- Create synergy and energy for new affiliates by connecting them to others.

5.) Provide start-up support to new organizations:

- COCO will be able to assist new affiliates with funding support during their formative period from donations made to COCO.
- Provide technical support and training to staff and boards of new organizations.

6.) Provide competitiveness for larger and different grants and donations to be shared across multiple entities.

- Many funders are looking for ways to increase the impact of their contributions by supporting the expansion of scalable, successful models, and COCO does that.

EXHIBIT B TO Affiliate Agreement

Fiscal Hosting

COCO was established to assist other collaborative-types of conservation organizations, and as such, may fiscally host or manage external coalitions (nonprofits) or collaborative groups. As such, COCO has the following financial policies related to our hosting of organizations:

- All funds for hosted organizations will be tracked by accounting staff in such fashion as to provide for clear accountability of each organization's assets, donations, funds, etc.
- Reports of finances will be provided at least quarterly, or monthly if volume of transactions warrants more frequent reporting, to the Contract Contact (Executive Director, treasurer, or other designated individual for the fiscally hosted organization).
- Contract Contact shall provide COCO accounting staff with information necessary for creating billing codes or classifications for tracking funding in the fashion they need for analysis of program outcomes and reporting back to funders and supporters.
- The Contract Contact may request a meeting to review financials with COCO CEO and accounting staff at any time.
- If the fiscally hosted organization is a 501(c)(3) nonprofit, Contract Contact is responsible for maintaining the organization's status with the Secretary of State, assuring submittals to the IRS, and other management duties, but COCO staff will work to assure that the Contract Contact has pertinent information in timely fashion to meet these obligations.
- COCO has a set 2% per annum charge against managed funds, which is calculated monthly, plus any direct fees charged by banks or other fund managers. This is charged on average funds of prior month (balance times 0.0016 per month). Managed funds are large funds that kept in an endowment or restricted account with an investment strategy to grow the principal.
- COCO will establish a separate money market account for managing funds in excess of \$2,000. Interest will be credited back to the organization. COCO will transfer funds as needed to cover bills and expenses paid out of COCO's accounts.
- If the organization has less than \$2,000 in cash assets, the funds may be commingled in COCO's checking account or savings account, but will still be tracked separately and fully documented.
- COCO will charge actual expenses to group through invoicing for payroll (program management services), supplies and materials, equipment, contracts and contractors, and other similar expenses that are incurred for the affiliate's program of work.
- COCO will charge a 5% indirect rate on the above charges, plus a prorated portion of insurance costs that are shared among organizations (includes life/disability for paid staff, general liability, umbrella liability, environmental liability). Proration of insurance will be based on percentage of payroll (either actual staff or contracted) for the previous period.
- Vehicles owned by COCO or CUSP and used by an affiliate organization are charged a daily usage fee of \$25, which covers auto insurance, depreciation, and general maintenance. Charges are also established on other equipment (and shared on Smartsheet), and will be reviewed with an affiliate prior to their using the equipment.
- If an organization no longer wishes to be fiscally hosted by COCO, they should notify us in writing, and we will close out their account and submit their money to another fiscal host or them directly if they have become a registered nonprofit, within 30 days of notification.

EXHIBIT C TO Affiliate Agreement

Federal Funds Addendum

The following provisions shall be deemed incorporated and made a part of the Agreement:

1. Certification:

a. Acceptance of this Agreement constitutes certification that the Affiliate member is not presently debarred, suspended, proposed for disbarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.

b. Acceptance of this Agreement constitutes certification that the Affiliate member is not delinquent on any Federal debt.

c. Acceptance of this Agreement constitutes certification that to the best of the Affiliate member's knowledge and belief:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Affiliate member, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Agreement, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Agreement, grant, loan, or cooperative agreement.

(2) If funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Agreement, grant, loan, or cooperative agreement, the Affiliate member shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Affiliate member shall require that the language of this certification be included in the award documents for all subcontracts, awards, and agreements.

(4) The Affiliate member has not, in a three-year period preceding this Agreement, been convicted of or had a civil judgment against them in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or an Agreement under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving property; and are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any offense; and, have not had one or more public transactions (federal, state or local) terminated for cause or default.

d. The Affiliate member agrees to notify COCO immediately if there is any change of status in a., b., c., or d. above.

2. Applicable Regulations; Audit:

The Uniform Administrative Requirements for Grants and Cooperative agreements, and the applicable OMB Circulars cited therein, shall govern the allowability and allocability of costs under this Agreement. COCO [and grant administrators] reserve the right to audit the Affiliate member's books and records for a period of three years after Agreement expiration or termination in order to validate the allowability of costs paid under this agreement, and any costs not allowable under the State and Federal procurement rules shall be reimbursed by the Affiliate member, or offset against current obligations due.