

AGREEMENT AND PLAN OF MERGER

between Western Slope Environmental Resource Council and North Fork River Improvement Association

This Plan of Merger is between the Western Slope Environmental Resource Council (“WSERC”), a Colorado nonprofit corporation, and the North Fork River Improvement Association (“NFRIA”), a Colorado nonprofit corporation. In consideration of the mutual covenants herein and intending to be legally bound hereby, the parties agree as follows:

RECITALS

Whereas the Western Slope Environmental Resource Council is a 501(c)(3) non-profit corporation, incorporated under the laws of the State of Colorado; and

Whereas, the North Fork River Improvement Association is a 501(c)(3) non-profit corporation, incorporated under the laws of the State of Colorado; and

Whereas, the respective boards of WSERC and NFRIA have determined that it is advisable and in the best interests of their respective non-profit corporations that NFRIA merge with and into WSERC upon the terms and conditions of this Merger Agreement; and

Whereas, the Board of Directors of WSERC has, by resolution duly adopted, approved and adopted this Merger Agreement and has directed that this Merger Agreement be submitted to a vote of the Members of WSERC for approval as required under Section 7-131-102 of the Colorado Revised Statutes; and

Whereas, the Board of Directors of NFRIA has, by resolution duly adopted, approved and adopted this Merger Agreement and has directed that this Merger Agreement be submitted to a vote of the Members of NFRIA for approval as required by NFRIA’s Bylaws;

Now, therefore, in consideration of the promises and the mutual and dependent agreements set forth below, the parties agree as follows:

ARTICLE I **The Merger**

1.1 *Formation of NWCC.* At least fourteen days prior to the Effective Date, WSERC shall change its name to NFRIA-WSERC Conservation Center Inc (“NWCC”).

- 1.2 *The Merger.* Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the laws of the State of Colorado, NFRIA will be merged into NWCC at the Effective Date. As a result of the Merger, the separate corporate existence of NFRIA shall cease, and NWCC shall continue its existence under the laws of the State of Colorado as the surviving corporation, using the name set forth in Section 1.1.
- 1.3 *Effective Date.* As promptly as possible after the satisfaction of the conditions set forth in Article V below, the parties will cause the Merger to be consummated by causing the Statement of Merger to be executed and filed with the Office of the Secretary of State of Colorado. For purposes of this Agreement, the Effective Date of the Merger means the date at which the Statement of Merger is duly filed with the Secretary of State of Colorado.
- 1.3.1 *Effects of Merger.* From and after the Effective Date, NWCC shall succeed to, without necessity of other transfer, and shall possess and enjoy all the rights, privileges, immunities, and powers, and be subject to all the restrictions, obligations, disabilities, and duties of NFRIA, WSERC, and NWCC.
- 1.3.2 *Property.* All the property, real, personal and mixed, of NWCC and NFRIA and all debts due on whatever account to NFRIA and NWCC shall be taken and deemed to be transferred to and vested in NWCC by operation of law without further acts or deeds.
- 1.3.3 *Liabilities and obligations.* On the Effective Date, NWCC shall be responsible for all the liabilities and obligations of NWCC and NFRIA, but the liabilities of NWCC and NFRIA, or its directors or officers shall not be affected by the merger nor shall the rights of NWCC or NFRIA be affected by the merger.
- 1.3.4 *Transfer.* The officers and directors of NWCC and NFRIA, at the expense of NWCC, shall execute and deliver all such instruments and take all such actions as NWCC may determine to be necessary or desirable in order to vest in and confirm to NWCC title to and possession of all such properties, assets, rights, and privileges, and otherwise to carry out the purposes of this Plan of Merger.
- 1.3.5 *Tax Qualification.* The parties intend that NWCC, as the Surviving Corporation, be tax exempt under Section 501(c)(3) of the Internal Revenue Code of 1986, and its successors, and the Directors of NWCC are empowered and authorized to make such amendments to the Articles and Bylaws as they deem necessary, with the advice of counsel, to secure and maintain such exempt status, provided that no such amendment may change the requirements, rights or privileges of membership.

1.4 *Approval by Merging Organizations.* In order for this merger to be effective the following must occur:

1.4.1 WSERC or NWCC must hold a properly noticed meeting attended by a quorum of members, and there must be an affirmative vote of two-thirds of attending members at said meeting that approves this Merger Agreement.

1.4.2 NFRIA must, at a properly noticed meeting, and following the approval and recommendation of its Board of Directors, affirm this agreement by a majority of members entitled to vote on this measure in accordance with its Bylaws.

ARTICLE II

Representations and Warranties of WSERC

WSERC represents and warrants to NFRIA as follows, as of the date of this Agreement and as of the Effective Date:

2.1 *Organization and Standing.* NWCC is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Colorado, and has the corporate power and authority to enter into this Agreement, and to consummate the transactions contemplated by this Agreement.

2.2 *Corporate Power and Authority.* This Agreement has been duly authorized by all necessary corporate action on the part of NWCC. Upon execution and delivery of this Agreement by NWCC, this Agreement will constitute the legal, valid and binding obligation of NWCC, enforceable against NWCC in accordance with its terms.

2.3 *Conflicts.* To NWCC's knowledge, the execution, delivery and performance of this Agreement will not (i) constitute a breach of NWCC's Articles of Incorporation, Bylaws, or any law, rule or regulation, or any material agreement, indenture, deed of trust, mortgage, loan agreement or other material instrument to which NWCC is a party or to which NWCC is bound; or (ii) constitute a violation of any order, judgment or decree to which NWCC is a party or by which NWCC's assets or properties are bound or affected.

2.4 *Litigation.* To NWCC's knowledge, there are no claims, actions, suits, proceedings or investigations pending or, to NWCC's knowledge, threatened in any court, or before any arbitrator or governmental authority, by or against or affecting or relating to NWCC. To NWCC's knowledge, there are no judgments, injunctions orders or other judicial or administrative mandates outstanding, or to NWCC's knowledge, threatened against NWCC.

2.5 *Contracts, Assets and Liabilities.* Schedule 1 to this Agreement lists, as of the date of this Agreement, all written and oral contracts, agreements, guarantees, leases and

executory commitments of NWCC. Schedule 2 to this Agreement lists all assets of NWCC that, in its reasonable judgment, exceed \$5,000 each as of the date of this Agreement. Schedule 3 to this Agreement lists all liabilities of NWCC as of the date of this Agreement. Schedule 4 to this Agreement constitutes, as of the date of this Agreement, a true and accurate Profit and Loss Statement and Balance Sheet of NWCC.

2.6 Board Recommendation. The Board of Directors of WSERC or NWCC, at a meeting duly called and held has by a majority vote determined that this Agreement and the transactions that it contemplates, including the Merger, taken together, are fair to and in the best interests of NWCC.

ARTICLE III

Representations and Warranties of NFRIA

NFRIA represents and warrants to NWCC as follows, as of the date of this Agreement and as of the Effective Date:

3.1 Organization and Standing. NFRIA is a non-profit corporation duly organized, validly existing and in good standing under the laws of the State of Colorado, and has the corporate power and authority to enter into this Agreement, and to consummate the transactions contemplated by this Agreement.

3.2 Corporate Power and Authority. This Agreement has been duly authorized by all necessary corporate action on the part of NFRIA. Upon execution and delivery of this Agreement by NFRIA, this Agreement will constitute the legal, valid and binding obligation of NFRIA, enforceable against NFRIA in accordance with its terms.

3.3 Conflicts. To NFRIA's knowledge, the execution, delivery and performance of this Agreement will not (i) constitute a breach of NFRIA's Articles of Incorporation, Bylaws, or any law, rule or regulation, or any material agreement, indenture, deed of trust, mortgage, loan agreement or other material instrument to which NFRIA is a party or to which NFRIA is bound; or (ii) constitute a violation of any order, judgment or decree to which NFRIA is a party or by which NFRIA's assets or properties are bound or affected.

3.4 Litigation. To NFRIA's knowledge, there are no claims, actions, suits, proceedings or investigations pending or, to NFRIA's knowledge, threatened in any court, or before any arbitrator or governmental authority, by or against or affecting or relating to NFRIA. To NFRIA's knowledge, there are no judgments, injunctions orders or other judicial or administrative mandates outstanding, or to NFRIA's knowledge, threatened against NFRIA.

3.5 Contracts, Assets and Liabilities. Schedule 5 to this Agreement lists, as of the date of this Agreement, all written and oral contracts, agreements, guarantees, leases and executory commitments of NFRIA. Schedule 6 to this Agreement lists all assets of NFRIA that, in its reasonable judgment, exceed \$5,000 each as of the date of this Agreement. Schedule 7 to this Agreement lists all liabilities of NFRIA as of the date of

this Agreement. Schedule 8 to this Agreement constitutes, as of the date of this Agreement, a true and accurate Profit and Loss Statement and Balance Sheet of NFRIA.

3.6 *Board Recommendation.* The Board of Directors of NFRIA, at a meeting duly called and held has by a majority vote determined that this Agreement and the transactions that it contemplates, including the Merger, taken together, are fair to and in the best interests of NFRIA.

ARTICLE IV

Covenants of the Parties

4.1 *Conduct Through the Effective Date.* NWCC and NFRIA will not:

(a) operate other than in the ordinary course of business;

(b) enter into any transaction, take any action, or fail to take any action, which would result in, or could reasonably be expected to result in, any of NWCC's or NFRIA's respective representations, warranties, disclosures or agreements in this Agreement, or the Schedules and Exhibits to this Agreement, to not be true and complete in all material respects immediately after the occurrence of such transaction;

(c) fail to use reasonable efforts to preserve NWCC's and NFRIA's respective present business organization and goodwill intact, including the present business relationships and goodwill with customers, employees, contractors, suppliers, governmental authorities and others having business dealings with NWCC or NFRIA;

(d) change or amend the Articles of Incorporation or Bylaws of NWCC or NFRIA;

(e) sell, assign, transfer, convey, lease, mortgage, pledge or otherwise dispose of or encumber any material assets or any interests therein, except in the ordinary course of business;

(f) fail to maintain the respective assets of NWCC or NFRIA in substantially their current state of repair, excepting normal wear and tear, or fail to replace, consistent with past practice, inoperable, worn-out or obsolete or destroyed assets;

(g) make any material loans or advances to or investments in any person or entity;

(h) enter into an agreement, or otherwise become obligated, to do any action prohibited under this Agreement.

4.2 *Other Actions.* NWCC and NFRIA will take all such other and further actions, consistent with this Agreement, as the other may reasonably request.

4.3 *Conduct After the Effective Date.* After the Effective Date, the Board of NWCC (the surviving organization) shall review the organization's name and make recommendations for changes to better reflect the needs of the merged organization. These recommendations shall be put to the membership for action as per Section 7-131-102, C.R.S. within one year of the Effective Date.

4.4 *Conduct After the Effective Date.* After the Effective Date, the Board of NWCC (the surviving organization) shall review the organization's articles of incorporation, bylaws,

mission statement, and other elements of the organization's vision and objectives, and make recommendations for changes to better reflect the needs of the merged organization. These recommendations shall be put to the membership for action as per Section 7-131-102, C.R.S. within two years of the Effective Date.

ARTICLE V

Conditions Precedent

5.1 *WSERC's Conditions Precedent.* WSERC's obligations under this Agreement are subject to the satisfaction as of the Closing Date of each of the following conditions (the fulfillment of any of which may be waived in writing by NWCC):

(a) All terms, covenants and conditions of this Agreement applicable to NFRIA will have been complied with and performed by NFRIA in all material respects, prior to the Effective Date, including NFRIA's timely taking of all actions and delivery of all documents required to be taken and delivered by it under this Agreement.

(b) All representations, warranties, disclosures and statements of NFRIA contained in this Agreement will be true and complete in all material respects as of the date of this Agreement and the Effective Date.

5.2 *NFRIA's Conditions Precedent.* NFRIA's obligations under this Agreement are subject to the satisfaction as of the Closing Date of each of the following conditions (the fulfillment of any of which may be waived in writing by NFRIA):

(a) All terms, covenants and conditions of this Agreement applicable to NWCC will have been complied with and performed by NWCC in all material respects, prior to the Effective Date, including NWCC's timely taking of all actions and delivery of all documents required to be taken and delivered by it under this Agreement.

(b) All representations, warranties, disclosures and statements of NWCC contained in this Agreement will be true and complete in all material respects as of the date of this Agreement and the Effective Date.

ARTICLE VI

Bylaws and Articles of Incorporation

6.1 *Articles of Incorporation.* The Articles of Incorporation of NWCC, filed with the Secretary of State, as amended, at the effective date of the merger shall be and remain the Articles of Incorporation of the surviving corporation until amended according to law.

6.2 *Bylaws.* The Bylaws of NWCC shall be the Bylaws of the surviving corporation, until such Bylaws shall be altered or amended in accordance with the provisions

thereof. No provision of or amendment to the Bylaws of NWCC may include any provision which will constitute reason for the Internal Revenue Service to revoke the status of NWCC as a charitable organization exempt from federal income tax as described in Section 501(c) (3) of the Internal Revenue Code of 1954 or any other corresponding provision of any future United States Internal Revenue Law.

ARTICLE VII

Board of Directors and Membership

7.2 *Board of Directors.* The elected directors of NWCC whose terms have not expired at the Effective Date of the merger shall be and remain the directors of NWCC until their respective successors are elected and qualify.

Directors Nominated by NFRIA. The NFRIA Board of Directors shall nominate three people to sit on the board of the merged organization and shall present their names in writing to the Board of Directors of NWCC prior to the Effective Date. Within 30 days after the Effective Date, the Board of Directors of the merged organization shall appoint the three nominees to fill positions on the Board of Directors. Two of these nominees shall fill three-year terms; the third nominee shall fill a two-year term.

The three-year terms shall end on the day fixed for the annual meeting in the third calendar year following the board member's appointment. The two-year term shall end on the day fixed for the annual meeting in the second calendar year following the board members' appointments. After these terms are completed, directors shall be elected to fill the vacant positions according to Article VI of the NWCC Bylaws.

Board Officers. The incumbent officers of NWCC shall be and remain the officers of NWCC until such time as new officers are elected under the bylaws in effect at the time of election.

7.3 *Members.* The members of NWCC and NFRIA at the Effective Date of the merger shall be and remain members of NWCC on the same basis as each other in every respect under the Articles of Incorporation and Bylaws of the surviving corporation.

ARTICLE VIII

Organization Structure

8.1 *Division Structure.* The organization shall have two divisions, one division being the North Fork River Improvement Association, one being the Western Slope Environmental Resource Council. Each name will be used, as allowed by law, in public communications and fund-raising so as to maintain the public identity of the two divisions until such time

as NWCC's Board of Directors chooses to unite all organizational activities under a common name.

8.2 *Staff Structure.* NWCC's executive director shall be Executive Director of the merged organization. NFRIA's current executive director shall report to the Executive Director as Associate Director of the NFRIA Division.

ARTICLE IX

Amendment, Termination and Abandonment

9.1 *Amendment.* NWCC and NFRIA may, at any time prior to the effective date, by agreement in writing authorized by their respective boards of directors, amend this Plan of Merger at any time before or after approval hereof by the members of either or all. If any such amendment substantially changes the terms hereof, then such amendment shall not be made without further approval by such members if such approval is required under Section 7-131-102, C.R.S.

9.2 *Termination.* This Plan of Merger is expressly conditioned upon approval by the Board of Directors and members of NWCC and NFRIA. The Board of Directors of either NWCC or NFRIA, at any time prior to the filing of Statement of Merger with the Department of State, may vote to terminate this Plan of Merger and submit that decision for approval of the members if such approval is required under Section 7-131-102, C.R.S.

ARTICLE X

Miscellaneous

10.1 *Successors and Assigns.* Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned by any of the parties to this Agreement without the prior written consent of the other party. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by NWCC and NFRIA and their respective successors and assigns.

10.2 *No Third-Party Beneficiaries.* There are no third party beneficiaries of this Agreement.

10.3 *Entire Agreement.* This Agreement sets forth the entire understanding of the parties with respect to its subject matter; it supersedes any and all previous communications, understandings, oral or written, and cannot be amended or changed except in writing, signed by the parties.

10.4 *Interpretation.* This Agreement has been reviewed by the parties and their counsel. Therefore, any ambiguous language in this Agreement will not necessarily be construed against any particular party as the drafter of such language.

10.5 *Severability.* The provisions of this Agreement will be deemed severable, and if any provision or part of this Agreement is held illegal, void or invalid under applicable law,

such provision or part may be changed to the extent reasonably necessary to make the provision or part, as so changed, legal, valid and binding. If any provision of this Agreement is held illegal, void or invalid in its entirety, the remaining provisions of this Agreement will not in any way be affected or impaired but will remain binding in accordance with their terms.

10.6 *Counterparts.* This Agreement may be executed in counterparts, which together shall constitute one and the same Agreement. The parties may execute more than one copy of the Agreement, each of which shall constitute an original.

10.7 *Governing Law.* This Agreement shall be governed by the laws of the State of Colorado, without regard to its conflict of laws principles.

10.8 *Knowledge.* For purposes of this Agreement, “knowledge” means to the actual knowledge of the respective Board of Directors of NWCC and NFRIA as of the date of this Agreement or as of any date specified in this Agreement.

IN WITNESS WHEREOF, NWCC and NFRIA, pursuant to the approval and authority duly given by resolutions adopted by their respective Boards of Directors, and the plan having been approved by each party’s respective members, have caused this Agreement and Plan of Merger to be executed by an authorized representative of each party to this Agreement.

Western Slope Environmental Resource Council

By: _____ Date: _____

Its: _____

North Fork River Improvement Association

By: _____ Date: _____

Its: _____

SCHEDULES

Schedule 1. Lists and describes all written and oral contracts, agreements, guarantees, leases and executory commitments of NWCC as of the date of this Agreement. Contracts are to be appended.

Schedule 2. Lists all assets of NWCC that, in its reasonable judgment, exceed \$5,000 each, as of the date of this Agreement.

Schedule 3. Lists all liabilities of NWCC as of the date of this Agreement.

Schedule 4. Is a true and accurate Profit and Loss Statement and Balance Sheet of NWCC as of the date of this Agreement.

Schedule 5. Lists and describes all written and oral contracts, agreements, guarantees, leases and executory commitments of NFRIA as of the date of this Agreement. Contracts are to be appended.

Schedule 6. Lists all assets of NFRIA that, in its reasonable judgment, exceed \$5,000 each, as of the date of this Agreement.

Schedule 7. Lists all liabilities of NFRIA as of the date of this Agreement.

Schedule 8. Is a true and accurate Profit and Loss Statement and Balance Sheet of NFRIA as of the date of this Agreement.