

**AGREEMENT ESTABLISHING THE
BENNT CREEK REGIONAL WATER AUTHORITY**

THIS AGREEMENT ESTABLISHING THE BENNT CREEK REGIONAL WATER AUTHORITY (this “**Agreement**”) is made and entered into as of the Effective Date (defined in Section 8) by and between TODD CREEK VILLAGE METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (“**TCVMD**”), and the TOWN OF BENNETT, COLORADO, a statutory town duly organized and existing under the Constitution and laws of the State of Colorado (“**Bennett**”); TCVMD and Bennett are referred to herein individually as a “**Party**” and collectively as the “**Parties**”).

WITNESSETH

WHEREAS, TCVMD has been organized and is authorized pursuant to Sections 32-1-101, *et seq.*, C.R.S., to, among other purposes, supply water to its customers both within and outside of its service area currently within Adams County and Weld County, Colorado, as that service area may be expanded in the future, and to fulfill those functions, to finance, construct, acquire and operate water and irrigation public improvements, appropriate and adjudicate water rights, contract for and acquire water rights and take all other actions necessary or desirable to deliver water service within TCVMD’s service area and extraterritorially; and

WHEREAS, Bennett owns and operates a municipal water system, which includes, but is not limited to, water rights, water supplies, and water system facilities, including wells, treatment plant, and water mains and lines and related infrastructure for the distribution of raw and treated water within its boundaries and extraterritorially; and

WHEREAS, the Parties are authorized and empowered to supply water for all beneficial uses, including without limitation, municipal, domestic, commercial, recreational, irrigation and industrial purposes, including reuse and successive use, by direct use and storage, and including augmentation, substitution and exchange, by any lawful means, and to provide all necessary water rights, water supplies, property, diversion works, reservoirs, treatment works and facilities, and equipment and appurtenances incident thereto (collectively, and as more particularly described in Section 1.3, the “**Water Services**”); and

WHEREAS, political subdivisions of the State are authorized to enter into intergovernmental agreements pursuant to the provisions of Article XIV, Section 18(2)(a) of the Colorado Constitution and Part 2, Article 1, Title 29, C.R.S.; and

WHEREAS, Section 29-1-201, C.R.S., permits and encourages governments to make the most efficient and effective use of their respective powers and responsibilities by cooperating and contracting with other governments, and provides that such statutory provisions shall be liberally construed; and

WHEREAS, Section 29-1-203, C.R.S., authorizes governments to cooperate and contract with one another to provide any function, service or facility lawfully authorized to each of such contracting governments, including without limitation, the incurring of debt, and to establish a separate legal entity to do so; and

WHEREAS, pursuant to Section 29-1-204.2, C.R.S. (as amended from time to time, the “**Water Authority Act**”), political subdivisions of the State are authorized to establish by contract a separate governmental entity to effect the planning and development of water resources, water systems and water facilities, including acquiring easements and property for the purposes of the development of those facilities; and

WHEREAS, the Parties have a mutual interest and desire to establish a water authority as a separate governmental entity to make the best practicable use of their joint resources, to supply water to the Parties, their inhabitants and others, and to further develop their existing water resources, systems, and facilities; and

WHEREAS, the cost and scheduling to provide the Water Services may be substantially increased if provided individually by the Parties without considering the coordinated delivery and overall development needs of the Parties as a whole; and

WHEREAS, the establishment of a water authority by the Parties shall serve a public purpose and shall promote the health, safety, prosperity, security, and general welfare of the inhabitants of the Parties and others; and

WHEREAS, it is the best interest of the Parties and for the public health, safety and convenience, and the welfare and security of the inhabitants of Parties and others, that the Parties enter into this Agreement for the purpose of establishing a water authority to provide the Water Services and incur financial obligations on behalf of the respective Party as may be identified and agreed upon by the Parties from time to time.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and obligations set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. Establishment of the Water Authority.

1.1 Creation. Pursuant to and in accordance with the Water Authority Act, the Parties do hereby establish a separate governmental entity and political subdivision of the State to be known as the “BennT Creek Regional Water Authority” (the “**Authority**”). The Authority shall be an entity separate and distinct from the Parties.

1.2 Purposes. The purposes of the Authority are to provide the Water Services, including without limitation, to supply water for all beneficial uses, including but not limited to, municipal, domestic, commercial, recreational, irrigation and industrial purposes, including reuse and successive use, by direct use and storage, and including augmentation, substitution and exchange, by any lawful means, and to provide all necessary property, diversion works, reservoirs, treatment works and facilities, and equipment and appurtenances incident thereto; and to effect the development of water resources, systems, or facilities, in whole or in part, for the benefit of the Parties, their inhabitants and others.

1.3 Functions and Services. The function or service to be provided by the Authority is the provision of water to the Parties, their inhabitants and/or others, by:

- a. Acquiring, selling and delivering water;
- b. Developing water resources for the Parties' use;
- c. Acquiring, constructing, owning, repairing, operating, and maintaining, by way of illustration and not limitation, water diversion, transmission and storage facilities and water treatment facilities and treated water storage systems, together with any and all appurtenances thereto, and/or contracting with third parties to provide such facilities and services;
- d. Providing such other services or performing such other functions as may be authorized by law and determined by the Board (as more fully described in Section 3), to be in the best interests of the Parties, their inhabitants and others.

2. Powers of the Authority.

2.1 Delegation of Powers, Duties and Responsibilities. Each of the Parties delegates to the Authority the limited power, duty and responsibility to provide the Water Services, to employ the necessary personnel and to do any and all other things necessary or desirable to provide the Water Services and to incur financial obligations on behalf of the Parties. Notwithstanding the foregoing delegations, each of the Parties reserves and maintains for itself the power to provide water systems and services and to incur financial obligations related thereto, it being the Parties' understanding and agreement that this Agreement and provision of the Water Services hereunder is secondary and supplementary to the Parties' legal authority and authorization to separately provide water systems and services to their respective inhabitants and others, and to incur financial obligations in connection therewith.

2.2 Plenary Powers. Except as otherwise expressly limited by this Agreement, the Authority, in its own name and as provided in this Agreement, may exercise all powers lawfully authorized in the Water Authority Act, including without limitation, all incidental, implied, expressed or such other powers as necessary to effect the purposes of this Agreement. The Authority shall act through its Board (defined in Section 3.1), and its officers, agents, consultants and employees as authorized by the Board pursuant to any action, motion, resolutions and regulations of the Authority. The Authority shall not have the power to represent itself as, or act as an agent for or on behalf of, any individual Party without such Party's prior written consent.

2.3 Enumerated Powers. Without limiting the generality of the foregoing, to enable the Authority to carry out its functions and provide the services described in Section 1.3, the Authority shall have the following powers:

- a. To develop water resources, systems, or facilities in whole or in part, for the benefit of the inhabitants of the Parties and/or others at the discretion of the Board, subject to fulfilling the terms and conditions of this Agreement;
- b. To make and enter into contracts;

- c. To employ agents and employees;
- d. To acquire, construct, manage, maintain, or operate water systems, facilities, works, or improvements, or any interest therein;
- e. To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property utilized for the purposes of raw water diversion and storage, transmission, treatment, and distribution of treated water;
- f. To condemn property for use as rights of way, provided such property is not owned by any public utility and devoted to such public use pursuant to State authority;
- g. To incur debts, liabilities or obligations to the extent and in the manner permitted by law;
- h. To sue and to be sued in its own name;
- i. To have and use a corporate seal;
- j. To fix, maintain, and revise fees, rates, and charges for functions, services, or facilities provided by the Authority, with such fees, rates, and charges to be in such amount or amounts as necessary to provide for the acquisition or development of raw water, the operation and maintenance of Authority facilities, the maintenance of debt service and reserve requirements of the Authority, and the financing of capital improvements and other obligations and expenses of the Authority;
- k. To adopt, by resolution, bylaws for the conduct of the Authority so long as such bylaws are not in conflict with the provisions of this Agreement or applicable law;
- l. To adopt, by resolution, regulations respecting the exercise of its powers and the carrying out of its purpose so long as such regulations are not in conflict with the provisions of this Agreement or applicable law;
- m. To exercise any other powers which are necessary or desirable for the provision of functions, services, or facilities by the Authority and which are specified in this Agreement, including but not limited to:
 - (i) To own, operate and maintain real and personal property and facilities in common with others, to conduct joint, partnership, cooperative or other operations with others, and to exercise all powers granted herein in joint, partnership, or cooperative efforts and operations with others;
 - (ii) To acquire, appropriate, adjudicate, change, maintain, use and operate water rights and supplies, including plans for augmentation, substitute water supply plans, and contractual rights, and to provide measurement, accounting and reporting of such water rights and supplies as required by law and as required by the Authority; and

(iii) To receive contributions, gifts, bequests or other grants of cash, equipment or services from the Parties or other entities, individuals, or political subdivisions;

n. To do and perform any acts and things authorized by the Water Authority Act under, through, or by means of an agent or by contracts with any person, firm, or corporation;

o. To permit other municipalities, special districts, or political subdivisions of the State that are authorized to supply water to enter into this Agreement at the discretion of the Board, subject to fulfilling any and all conditions or requirements of this Agreement, except that rates need not be uniform between the Authority and the Parties;

p. To provide for the rehabilitation of any surfaces adversely affected by the construction of water pipelines, facilities, or systems through the rehabilitation of plant cover, soil stability, and other measures appropriate to the subsequent beneficial use of such lands;

q. To the extent permitted by law, to justly indemnify property owners or others affected for any losses or damages incurred or that may subsequently be caused by or which result from actions of the Authority; and

r. To exercise all powers which are now, or hereafter may be, conferred by law upon a water authority organized pursuant to the Water Authority Act, or necessary, incidental, convenient, or conducive to the attainment of its purposes and provision of its functions, services, and facilities, subject to such limitations as are, or may be, prescribed by law.

2.4 Limitation on Powers. Notwithstanding any provision of this Agreement to the contrary, the Authority shall not have the powers of taxation or imposition of *ad valorem* special assessments.

2.5 No Private Inurement. No portion of the assets or earnings, in whole or in part, of the Authority shall inure to the benefit of or be distributable to its directors, officers or other private persons, except the Authority shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make reimbursement for reasonable expenses actually incurred in exercising the powers or carrying out the purposes of the Authority.

3. Governing Body; Meetings.

3.1 Board of Directors. The governing body of the Authority shall be the board of directors (the “**Board**”), in which all legislative power of the Authority is vested, and which shall exercise and perform all powers, rights and duties vested in and imposed on the Authority by this Agreement and applicable law, including without limitation, the Water Authority Act. The initial number of the members of the Board (“**Directors**”) shall be four (4). Each Director shall be a natural person age 18 or older.

3.2 Appointment. Each Party shall be entitled to appoint two (2) Directors to serve on the Board, and each Director shall have one (1) vote on behalf of the Party he/she is appointed to represent. Each Party shall be entitled to appoint one (1) alternative Director to attend any meeting of the Board in the stead of a Director appointed by such Party in the event such Director is unable to attend the applicable Board meeting. No Director shall be required to be a member, shareholder, director, officer or employee of the appointing Party.

3.3 Term; Removal; Vacancies. Each Director shall serve a term of three (3) years; provided however, there shall be no limit on the number of terms a Director may serve. The initial terms shall be staggered, as set forth in the bylaws to be adopted by the Board. A Director shall serve until his/her office is deemed vacant. Each Director shall serve at the pleasure of the Party that appoints such Director, and a Director may be removed from office with or without cause by the appointing Party, upon written notice to such Director and the Board. A vacancy occurring in the Board, whether such vacancy be the result of resignation, death, removal or disability, shall be filled in the same manner of appointment or selection as provided in Section 3.2. If a vacancy is not filled as described in the preceding sentence, then the vote allocated to such vacant seat shall be deemed waived on any matter coming before the Board and the corresponding voting and quorum requirement shall be reduced by the number of vacant seats until such time as each vacancy is filled.

3.4 Reimbursement. The Board, by resolution, may provide for reimbursement to the Directors of their reasonable actual expenses incurred on behalf of the Authority.

3.5 Regular Meetings. The Board shall hold regular meetings. The time and place of such meetings shall be set by resolution adopted by the Board from time to time.

3.6 Special Meetings. Special meetings of the Board may be called by the Chair or any two Directors, and it shall thereupon be the duty of the Secretary to cause notice of such meeting to be given as hereinafter provided. Special meetings of the Board shall be held at such time and place as shall be fixed by the Chair or Directors calling the meeting.

3.7 Notice of Meetings. Notice of meetings shall be posted electronically online at the Authority's website no less than twenty-four (24) hours prior to the meeting. The Board shall also designate one or more public places within the service area of the Authority which it may post such notice if electronic on-line posting is not available in exigent or emergency circumstances. If the Board does not designate a new physical posting place in a calendar year, the physical posting place for that year shall be the physical posting place in the prior calendar year. The Secretary shall also notify each Director of the meeting by telephonic or electronic means not less than three (3) business days prior to the meeting.

3.8 Waiver. Whenever any notice is required to be given to any Director under the provisions of law or this Agreement, a waiver thereof in writing signed by such Director, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Attendance of a Director at any meeting of the Board shall constitute a waiver by such Director of notice of such meeting, except when such Director attends such meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully convened.

3.9 Quorum. A majority of the Directors then in office shall constitute a quorum for the transaction of business; provided that, if less than a quorum is present, the Directors present may adjourn the meeting from time to time, provided, further, that the Secretary shall notify any absent Directors of the time and place of such adjourned meeting.

3.10 Decisions; Actions by Board. Decisions of the Board may be made only at regular or special meetings, called upon notice as required herein, at which a quorum is present either in person, telephonically or electronically. Voting by proxy is prohibited. The act of a majority of the Directors present at a meeting at which a quorum is present shall be an act of the Board.

3.11 Duties of the Board. The duties of the Board shall be:

- a. To govern the business and affairs of the Authority;
- b. To exercise all powers of the Authority;
- c. To comply with the provisions of Parts 1, 5 and 6 of Article 1, Title 29 of C.R.S., as amended, regarding, among other matters, budget preparation, accounting and auditing;
- d. To invest the funds of the Authority;
- e. To govern the financial transactions of the Authority, including the receipt, custody and disbursement of its funds, securities and other assets;
- f. To provide for the services of a firm of independent certified public accountants to examine, at least annually, the financial records and accounts of the Authority, and to report thereupon to the Board;
- g. To keep records of the Authority's proceedings; and
- h. To adopt such bylaws as appropriate for the conduct of its business not in conflict with the terms of this Agreement.

3.12 Annual Budget. Not later than September 15 of each year, the Board shall cause a proposed budget for the next fiscal year to be prepared and shall submit a copy of such proposed budget to all Parties. Annual budgets adopted by the Board shall conform to the requirements of Sections 29-1-101, et seq., C.R.S., as amended. The annual budget shall provide that all general administrative expenses of the Authority shall be prorated equally among the Parties (which may be by assessment of a service fee in connection with the Authority's delivery of water) and all direct project costs of the Authority shall be prorated among the applicable Parties based on each Party's participation in such Authority project. The Board may amend its annual budget in accordance with Sections 29-1-101, et seq., C.R.S., as amended. The Authority shall make available to each Party a detailed statement of the final costs and expenses for the prior fiscal year allocated in the same manner as estimated expenses were allocated, as soon as reasonably practical after the close of each fiscal year.

3.13 Conflicts of Interest. All Directors shall disclose from time to time, in writing, conflicts of interest as required by applicable law.

4. Officers.

4.1 Offices. The officers of the Authority shall be a Chair, Vice-Chair, Secretary, Treasurer, and such other officers and assistant officers as may be authorized by the Board from time to time, to perform such duties as may be approved by the Board.

4.2 Regular Elections and Term of Office. At the first meeting of the Board following the Effective Date, the Directors shall elect officers who shall serve as officers of the Authority until the next succeeding annual election of the Board, or until their successors are elected and qualified. Thereafter, officers shall be elected annually by the Board at the Board's last regularly scheduled meeting for each calendar year. Each officer shall hold office until the next succeeding election of the Board, or until his successor is elected and qualified. Vacancies or new offices may be filled at any meeting of the Board.

4.3 Removal. Any officer or agent elected or appointed by the Board may be removed by the Board, with or without cause, whenever in its judgment the best interests of the Authority shall be served thereby.

4.4 Duties of Officers. In addition to duties designated by the Board, the duties of the officers shall include the following:

a. Chair. The Chair shall be a Director and shall preside at all meetings of the Board and, except as otherwise delegated by the Board, shall execute all legal documents and instruments of the Authority.

b. Vice-Chair. The Vice-Chair shall be a Director and, in the absence of the Chair, or in the event of his or her inability or refusal to act, shall perform the duties of the Chair, and when so acting, shall have all the powers of, and be subject to all restrictions upon, the, Chair.

c. Secretary. The Secretary need not be a Director, and shall maintain the official records of the Authority, including this Agreement, by-laws, rules and regulations established by the Board, minutes of the meetings of the Board, and a register of the names and addresses of the Directors and officers, and shall issue notice of meetings, and attest and affix the corporate seal to all documents of the Authority. A separate recording secretary may be appointed by the Board for taking and preparing meeting minutes.

d. Treasurer. The Treasurer shall be a Director and shall serve as financial official of the Authority, and pursuant to the fiscal resolution adopted by the Board governing the financial transactions of the Authority and the restrictions imposed by law, be responsible for the receipt, custody, investment and disbursement of the Authority's funds and securities, and for duties incident to the office of Treasurer. The accounting function shall be provided by the Treasurer, an Authority employee or an independent contractor under the supervision of the Treasurer and shall be reviewed at all regular Board meetings of the Board.

e. Miscellaneous. The duties and functions of the Secretary and the Treasurer may be performed by a single individual who shall be a Director. If the individual performing the duties of Secretary is not a Director, such individual shall receive such compensation as is deemed appropriate by the Board.

4.5 Bonds of Officers. The Treasurer and any other officer or agent of the Authority charged with the responsibility for the custody of any of its funds or property may give bond in such sum and with such surety, if any, as the Board shall determine. The Board, in its discretion, may also require any other officer, agent or employee of the Authority to give bond in such amount and with such surety as shall be determined. The cost of such bond shall be an expense payable by the Authority.

4.6 Advisory Boards. Pursuant to a resolution, the Board may create and maintain a water resources management committee and/or any other advisory board(s) it deems advisable. Any such committee or board shall serve solely in an advisory capacity to the Board, and the members thereof shall serve at the pleasure of the Board.

5. Indemnification of Officers, Directors and Employees.

5.1 Directors and Officers. The Authority shall, to the extent permitted by law and within the limitations of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended, indemnify and defend each Director and officer of the Authority, in connection with any claim or actual or threatened suit, action, or proceeding in which he or she may be involved, in either his or her individual or in his or her official capacity, by reason of his or her being or having been such Director or officer, or by reason of any action or omission by him or her in any such capacity (an "**Indemnified Claim**"), and shall protect, save and hold each Director and officer harmless from any loss, cost or expense arising from or growing out of such Indemnified Claim, and shall advance and pay the reasonable fees of any previously authorized independent counsel and other expenses related to the defense of such claim promptly upon receipt of proper billing therefor. The Authority shall have no obligation to indemnify and defend any such Director or officer for any claim, suit, action or proceeding arising out of criminal offenses, a civil rights violation or any other willful and wanton misconduct ("**Excluded Claims**"), but shall be obligated to defend and timely pay the cost of defense against Excluded Claims until final judgment of guilt of such criminal offense or civil liability for such claim.

5.2 Employees. Employees shall be indemnified pursuant to the provisions of the Colorado Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended.

6. Assets Held in Trust.

All assets and properties of the Authority shall be held in trust for the purposes provided for in this Agreement, including the payment of liabilities of the Authority.

7. Adding or Removing Members.

7.1 New Member. No entity may be added to this Agreement as a Party without the unanimous consent of all Parties authorized by a written document formally approved by the

governing body of each Party. An entity added as a Party shall be subject to such terms and conditions as the Board, in its sole discretion, may determine.

7.2 Member Withdrawal. A Party may withdraw from this Agreement by written document authorized by the governing body of such Party; provided, however, such withdrawing Party shall remain liable for any and all of its obligations, financial or otherwise, existing on the date of withdrawal, to or on behalf of the Authority. Upon withdrawal, a withdrawing Party shall have no further interest, right or title in or to any assets or equity of the Authority, unless the Board approves a specific agreement to the contrary. Withdrawal by any Party or combination of Parties shall not cause termination of this Agreement as between the Parties not withdrawing.

7.3 Dissolution of Member. If a Member is dissolved or otherwise ceases to exist then either (i) the plan for dissolution for such Member shall contain adequate provisions reasonably acceptable to the Authority for the performance of all of such Member's obligations to the Authority; or (ii) all such obligations shall be fully paid and performed prior to the effective date of dissolution.

8. Term; Termination.

This Agreement shall become effective on the date of the last of the Parties to duly execute this Agreement (the "**Effective Date**"), as indicated by each Party's signature below. This Agreement may be terminated at any time by written agreement of all Parties; provided however, that this Agreement may not in any event be terminated or rescinded so long as the Authority has bonds, notes, or other obligations outstanding, unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to the terms of such obligation.

9. Distribution on Termination.

9.1 Distribution of Assets. In the event of the rescission or termination of this Agreement and the dissolution of the Authority, all of the assets of the Authority shall immediately vest in the entities that are Parties at the time of rescission or termination, subject to any outstanding liens, mortgages, distributions to prior withdrawing Parties, or other pledges of such assets. The interests in the general assets of the Authority conveyed to each Party shall be that proportion which the average annual amount of treated water sold to each Party bears to the average annual total amount of all treated water sold by the Authority to all Parties; provided however, the Parties may otherwise provide, by unanimous written agreement, for disposition of any and all interests of the Authority to any successors to the Authority, or for any alternative disposition among the Parties or to third parties upon payment of adequate consideration therefor.

9.2 Distribution of Water Rights. In the event of the rescission or termination of this Agreement and the dissolution of the Authority, all right, title and interest of the Authority in any water rights of the Authority shall immediately vest in the Parties as follows:

- a. As to any water rights or interest therein conveyed, assigned, leased or otherwise contributed to the Authority by a Party, such water rights shall immediately vest in the Party which conveyed, assigned, leased or otherwise contributed such water rights to the Authority.

b. As to any other water rights of the Authority, the interests in such water rights conveyed to each Party shall be distributed in accordance with the provisions of Section 9.1.

10. Execution of Contracts.

Except as otherwise provided by law, the Board may authorize any officer or officers, agent or agents, to enter into any contract, or execute and deliver any instrument in the name and on behalf of the Authority.

11. Negotiable Instruments.

All checks, drafts or other orders for payment of money and all notes, bonds, or other evidences of indebtedness issued in the name of the Authority shall be signed by such officer or officers, agent or agents, employee or employees of the Authority, and in such manner as, from time to time, shall be determined by resolution of the Board.

12. Deposits.

All funds of the Authority shall be deposited, from time to time, to the credit of the Authority, pursuant to law, in such bank or banks as the Board may select.

13. Fiscal Year.

The fiscal year of the Authority shall be the calendar year, unless otherwise determined by a resolution of the Board.

14. Principal Place of Business.

The principal place of business of the Authority shall be established by the Board. Annually, on or before the first day of February of each year, and within thirty (30) days following any change, the Authority shall file with the Division of Local Government the name of agent for service of process on the Authority, and the address of the principal place of business of the Authority.

15. Political Subdivision.

Pursuant to C.R.S. Section 29-1-204.2(4), the Authority shall be a political subdivision and public corporation of the State, separate from the Parties. It shall have the duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate. The provisions of Article 10.5 and 47 of Title 11, C.R.S., as amended, shall apply to monies of the Authority.

16. Annual Appropriation; Debt Not That of Parties.

Each Party acknowledges and agrees that its own and each other Party's obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by each Party and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed

or interpreted as a delegation of governmental powers by any Party, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of any Party or statutory debt limitation, including, without limitation, Article X, Section 20, or Article XI, Sections 1, 2 or 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of funds of any Party, nor shall any provision of this Agreement restrict the future issuance of bonds or obligations payable from any class or source of funds of a Party. Without limiting the generality of the foregoing, pursuant to C.R.S. Section 29-1-204.2(5), the bonds, notes and other obligations of the Authority shall not constitute the debts, liabilities or obligations of the Parties.

17. Governmental Immunity.

No provision of this Agreement shall be construed as a waiver of the rights and privileges of any Party pursuant to the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S., as amended from time to time.

18. Consolidation.

If any two (2) or more of the Parties consolidate either their water service function or all of their respective functions, then, in that event, the entity in existence, after court approval of such consolidation, shall be the successor in interest to all those Parties which have been so consolidated. Upon issuance of a court order establishing a consolidated entity, those Parties consolidating shall no longer be entitled to separate representation on the Board. Instead, the consolidated entity shall be entitled to appoint two (2) Directors, whose selection and term shall be as provided in Sections 3.2 and 3.3. As successor in interest, the consolidated entity shall have all rights, powers, duties, and obligations hereunder as the original Parties.

19. Notices.

Any notices and demands required or permitted by this Agreement shall be given in writing addressed to the Parties as set forth below, and delivered by (i) reputable overnight carrier (such as FedEx, DHL or UPS) for next business day receipt by the addressee; (ii) United States certified mail, postage prepaid, return receipt requested; or (iii) email. Notice shall be deemed given on the next business day if sent in accordance with clause (i) above, or two (2) business days following the date deposited in the United States mail if sent in accordance with clause (ii) above, or as of the machine-stamped date and time on the sent message if sent in accordance with clause (iii) above. If a notice is sent in accordance with clause (iii) above, the notice shall also be promptly sent by at least one of the other methods provided above, and in such case the date upon which the notice is deemed to be given shall be the date as determined under clause (iii).

If to TCVMD:

Otten Johnson Robinson Neff and Ragonetti, P.C.
Attn: Kimberly Martin, Esq.
950 17th Street, Suite 1600
Denver, Colorado 80202
kmartin@ottenjohnson.com

With a copy to:

White Bear Ankele Tanaka & Waldron
Attn: Blair M. Dickhoner, Esq.
2154 East Commons Avenue, Suite 2000
Centennial, Colorado 80122
bdickhoner@wbapc.com

If to Bennett:

Town of Bennett
Attn: Trish Stiles, Town Administrator
207 Muegge Way
Bennett, Colorado 80102
tstiles@bennett.com

With a copy to:

Butler Snow
Attn: Dee Wisor, Esq.
1801 California Street, Suite 5100
Denver, Colorado 80202
Dee.wisor@Butlersnow.com

A Party may change its notice information by the delivery of such modified notice information to the other Party(ies) in accordance with this Section 19.

20. Amendments.

This Agreement may be amended only by written instrument approved by formal action and authority of the governing bodies of all of the Parties; provided, however, that such amendment shall not affect other obligations outstanding of the Authority unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to such obligations.

21. Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

22. No Third Party Beneficiaries.

Nothing in this Agreement shall be deemed to create any third party beneficiaries or create a right or cause of action for the enforcement of its terms, in any entity or person not a Party to this Agreement, including without limitation, the inhabitants of the Parties and others.

23. Severability.

In the event that any of the terms, covenants or conditions of this Contract or their application shall be held invalid as to any person, corporation or circumstance of any court having competent jurisdiction, the remainder of this Agreement, and the application in effect of its terms, covenants or conditions to such persons, corporations or circumstances shall not be affected thereby.

24. Counterparts; Electronic Signatures.


This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. Electronic and PDF signatures to this Agreement shall be binding as original.

[signature pages follow this page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed effective as of the Effective Date.

TCVMD:

TODD CREEK VILLAGE METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado

By: 
Name: GEORGE HANKOV
Title: PRESIDENT
Date: 1/2/20

ATTEST:


Secretary

BENNETT:

TOWN OF BENNETT, COLORADO, a statutory town duly organized and existing under the Constitution and laws of the State of Colorado



(SEAL)

ATTEST:

Suzette Swartz
Clerk

By: *Royce Pindell*
Name: ROYCE PINDELL
Title: MAYOR
Date: JANUARY 7, 2020