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MEMORANDUM

April 25, 2014

TO: Metropolitan District
Board of Directors

FROM: James P. Collins

RE: **The Authority Agreement**



Attached for consideration at your next meeting is an Authority Agreement proposed to be adopted by all six Members of the Upper Eagle Regional Water Authority. This Agreement is the culmination of several years of effort in attempting to take the 1984 Establishing Agreement and the 1985 and 1998 Service Contracts and conform them to the Water Authority's current practice and needs.

For example, in the beginning the Water Authority constructed master meters at the entrance to each of the six Districts, and left the billing of water and maintenance of their system to each Contracting Party. That never did work right and, of course, those master meters have been removed and the Water Authority now is directly responsible for billing all customers, and for maintaining the entire system.

In addition to the changes throughout the Agreements that recognize the current practices (as summarized above and otherwise), there are five primary areas of special interest reflected in this Agreement. In order of presentation, these are:

Section 12, Water Rights.

In addition to allowing Parties to lease water rights to the Authority, each of the Contracting Parties would have the right to convey the water rights to the Authority, with a reverter. There is language recognizing that the Authority is adjudicating water rights to enhance each Member's water supply (such as storage), and to create a Water Rights Bank for future customers.

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Section 16, Dissolution.

Is largely the same as it was in the previous Agreements, but now recognizes the requirement for a successor entity.

Section 17, Withdrawal.

This was left as originally written, and essentially provides that if a Contracting Party withdraws it gets its own water system back and its own water rights back, plus any water rights that have been purchased for use within the Contracting Party's boundaries.

Section 22.a., Base Charge.

Provides that any increases in excess of the Consumer Price Index ("CPI") requires approval of a majority plus one of the governing bodies of each Contracting Party.

Section 23.a., Plant Investment Fee.

Requires that approval of increases in excess of the CPI requires a majority plus one of the Directors of the Authority, and requires thirty (30) days' prior written notice to the governing bodies of each of the Contracting Parties.

The only further change that is proposed at this time to the Authority Agreement you are receiving is to make it clear that any Withdrawing Party recovers the physical assets necessary to provide water within its area, with a provision that any facilities necessary to the operation of the regional system continuing to be made available to the Water Authority.

We recommend approval, with allowance for any minor changes that may come before your Representative at the Water Authority.

JPC/zah
Attachment

AUTHORITY AGREEMENT
AMENDING AND RESTATING THE
AGREEMENT ESTABLISHING THE
UPPER EAGLE REGIONAL WATER AUTHORITY
AND THE MASTER SERVICE CONTRACT

THIS AMENDED AND RESTATED AGREEMENT, (“Authority Agreement”) establishing the Upper Eagle Regional Water Authority (“Authority”) is made and entered into this _____ day of _____, 2014, by and among ARROWHEAD METROPOLITAN DISTRICT, TOWN OF AVON (its predecessor being the Avon Metropolitan District), BEAVER CREEK METROPOLITAN DISTRICT, BERRY CREEK METROPOLITAN DISTRICT, EAGLE-VAIL METROPOLITAN DISTRICT, and EDWARDS METROPOLITAN DISTRICT, all of which are municipal or quasi-municipal corporations of the State of Colorado, all of which are located in the County of Eagle, State of Colorado, and which shall hereinafter be referred to as “Contracting Parties.”

RECITALS

WHEREAS, each of the Contracting Parties is authorized to own and operate water systems or facilities and is empowered to supply water for domestic and other public and private purposes by any available means, and to provide all necessary property, diversion works, reservoirs, treatment works and facilities, equipment and appurtenances incident thereto; and

WHEREAS, any combination of municipalities, special districts or other political subdivisions of this state that are authorized to own and operate water systems or facilities may establish, by contract with each other, a separate governmental entity, to be known as a water authority, to be used by the contracting parties to effect the development of water resources, systems, or facilities in whole or in part for the benefit of the inhabitants of such contracting parties or others at the discretion of the board of directors of the water authority, C.R.S. § 29-1-204.2 (the “Act”); and

WHEREAS, such contractual relationships between local governments are encouraged by Section 18(2)(a) and (b), Article XIV of the Colorado Constitution, Section 29-1-203, C.R.S., and Section 32-1-1001, C.R.S., to provide intergovernmental services and facilities, when authorized by their governing bodies; and

WHEREAS, the Authority was established by the Contracting Parties as a political subdivision and a public corporation of the State of Colorado, separate from the Contracting Parties and having the duties privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate, by the Agreement Establishing the Upper Eagle Regional Water Authority made on September 18, 1984 and as amended on April 1, 1985 ("EA"); and

WHEREAS, the Contracting Parties entered into an Amended and Restated Master Service Contract ("MSC") made as of January 1, 1998 that remains in effect. The Contracting Parties and the Authority desire to amend and restate the Amended and Restated Master Service Contract and replace it by this Agreement to re-affirm the conveyance of their individual Water Systems to the Authority and for simplification and accommodation of changes in operation and law; and

WHEREAS, the establishment of the Authority by the Contracting Parties in Eagle County, Colorado, has served a public purpose and has promoted the health, safety, prosperity, security and general welfare of the inhabitants and taxpayers of the Contracting Parties, Eagle County, and the State of Colorado; and

WHEREAS, the Authority provides treated water to customers of third parties by contract under substantially the same terms, conditions and costs under which it provides treated water to its Water Service Customers, as hereinafter defined. The third parties presently so served are:

- A. EMD Limited Liability Company, PVRT NOTT I LLC, PVRT NOTT II LLC, and PVRT NOTT III LLC, per agreement with Eagle-Vail originally dated May 15, 1997, with a First Amendment dated June 22, 1999, under which the Town of Avon has been substituted for Eagle-Vail to provide water service to the Village at Avon that has now been annexed to the Town of Avon;
- B. Kensington Partners, Stag Gulch Partners, and Galena Partners (collectively known as the Partnerships), per an Amended and Restated Water Service Agreement with Cordillera Metropolitan District as successor to Squaw Creek Metropolitan District to provide water service to the Cordillera service area;
- C. Bachelor Gulch Metropolitan District, under Section 9(b) of an Exclusion Agreement between Beaver Creek and Vail Associates, Inc., dated January 4, 1995; and
- D. Chateau St. Claire (now known as The Ascent), per a Water Service Agreement with Eagle-Vail, dated December 12, 1996, which is now annexed to and served through the Town of Avon.

WHEREAS, it is the responsibility of the Authority to provide a dependable legal and physical supply of water to the Contracting Parties in all reasonably foreseeable hydrologic conditions; and

WHEREAS, it is the responsibility of the Authority to meet its water service obligations to any third party it serves by contract.

WHEREAS, the Contracting Parties and the Authority now wish to replace the EA and the MSC, which are hereby known as the "Authority Agreement."

NOW, THEREFORE, in consideration of the mutual performance of the covenants, agreements and promises set forth hereinafter, the Contracting Parties agree to replace, amend and restate Agreement Establishing the Upper Eagle Regional Water Authority made on September 18, 1984 and as amended on April 1, 1985, and the Amended and Restated Master Service Contract made and entered into as of January 1, 1998, by this Authority Agreement to read in its entirety as follows:

ESTABLISHMENT OF UPPER EAGLE REGIONAL WATER AUTHORITY

1. **Effective Date.** The effective date of this Agreement shall be January 1, 2014. As of the effective date of this Agreement, the Agreement Establishing the Upper Eagle Regional Water Authority made on September 18, 1984 and as amended on April 1, 1985, and the Amended and Restated Master Service Contract made and entered into as of January 1, 1998 are hereby superseded and all actions of the Authority taken prior to the Effective Date are hereby ratified and affirmed, and any contracts or stipulations entered into or decrees obtained remain in full force and effect, except as provided in Paragraph 49. The organization of the Authority pursuant to law and the obligations incurred by and the bonds of such Authority issued after September 18, 1984, and the proceedings related thereto, are hereby validated.
2. **Term.** This Agreement shall remain in effect until the Authority has no bonds, notes or other obligations outstanding in accordance with the terms of such obligations and the Contracting Parties unanimously consent to the dissolution of the Authority. The Initial Term of this Agreement shall be ten (10) years ending on December 31, 2023, but such term shall be subject to automatic renewal and extension for successive ten (10) year terms thereafter unless all of the Contracting Parties unanimously approve changes to this Agreement during any extended term to be effective on the first day of the extended term, including provision for payment of all bonds, notes and other obligations outstanding in accordance with their terms.
3. **Establishment of the Upper Eagle Regional Water Authority.** By contract with each other as authorized by the Act, the Contracting Parties do hereby ratify

and affirm the establishment of the Upper Eagle Regional Water Authority ("Authority") on September 18, 1984, a political subdivision and a public corporation of the State of Colorado, separate from the Contracting Parties and having the duties, privileges, immunities, rights, liabilities, and disabilities of a public body politic and corporate. Since its establishment, the Authority has been and shall be used by the Contracting Parties to effect the development of water resources, systems, and facilities in whole or in part for the benefit of their inhabitants or others at the discretion of the Board of Directors of the Authority.

For 30 years the Contracting Parties have developed water resources, systems and facilities for the benefit of their inhabitants which are now owned or leased by and operated by the Authority to provide water service directly to Authority Water Service Customers residing within and without the jurisdictional boundaries of the Contracting Parties. The Authority operates as the largest water service provider in Eagle County and is governed by a board of directors appointed by the governing bodies of the Contracting Parties. The legislative power of the Authority is vested in its Board of Directors. The Board of Directors operates by a majority vote on some items, a super-majority (majority plus one) vote on other items and unanimous consent to add a Contracting Party or to modify this Agreement. The Authority may continue to operate in perpetuity until rescinded or terminated by the Contracting Parties, except that such contract may not be rescinded or terminated 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. Under the Act, the Authority's powers include, but are not limited to the power to make and enter into contracts; to employ agents and employees; to acquire, construct, manage, maintain, or operate water systems, facilities, works or improvements, or any interest therein; to condemn property for public use as rights-of-way; to incur debts, liabilities, or obligations; to sue and be sued in its own name; to have and use a corporate seal; to fix, maintain, and revise fees, rates, and charges for functions, services or facilities provided by the Authority; to adopt, by resolution, rules and regulations respecting the exercise of its powers and the carrying out of its purposes; to exercise any other powers which are essential to the provision of functions, services or facilities by the entity and which are specified in this Authority Agreement; to do and perform any acts and things authorized by the Act under, through, or by means of an agent or by contracts with any person, firm or corporation; to permit other municipalities, special districts, or political subdivisions of this state that are authorized to provide water to enter the contract at the discretion of the Board of Directors, subject to fulfilling any and all conditions or requirements of the contract establishing the Authority, except that rates need not be uniform between the Authority and the Contracting Parties; and 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.

4. **Definitions.** The terms listed in this Paragraph shall have the meanings herein specified for all purposes of this Agreement, and of any instrument or document appertaining hereto, except where the context, by clear implication otherwise requires.
- a. “**Act**” shall mean C.R.S. § 29-1-204.2, as amended, which provides for creation of, and establishes powers attendant to, water authorities.
 - b. “**Annual Budget**” shall mean, with respect to a Contract Year, the budget of the Authority prepared in accordance with Paragraph 25 hereof for such Contract Year, or, in the case of an amended Annual Budget, for the remainder of such Contract Year.
 - c. “**Annual Costs**” shall mean, with respect to a Contract Year, and to the extent not paid or to be paid from the proceeds of Obligations or other funds legally available to the Authority, the Cost of Authority Assets, and all costs and expenses of the Authority that are paid or incurred during such Contract Year and are allocable to Authority Assets, including, but not limited to, the payment of the Debt Service, the Operation and Maintenance Expenses, and all Depreciation and Replacement Expenses.
 - d. “**Authority**” shall mean the Upper Eagle Regional Water Authority.
 - e. “**Authority Assets**” shall mean the water rights and facilities owned by the Authority on the effective date of this Agreement, including the Contracting Parties’ former Water Systems, and the shares in the Eagle Park Reservoir Company representing up to 579 acre-feet of Eagle Park Reservoir Project Yield water. Definition and scope of Authority Assets shall automatically be further modified in the future by water rights and facilities acquired by or disposed of by the Authority during the term of this Agreement.
 - f. “**Base Charge**” shall mean the amount charged each SFE irrespective of quantity of water used, which charge may be modified as provided in subparagraph a of paragraph 22 of this Authority Agreement.
 - g. “**Cash-in-Lieu of Water Rights Fee**” shall mean a payment of cash in lieu of the dedication of water rights, in the discretion of the Authority’s Board of Directors, sufficient to serve the applicant’s proposed water demands and uses as required by the Authority’s Board of Directors.

- h. **“Contract Year”** shall mean a year coterminous with the fiscal year of the Authority for the purpose of calculating Annual Costs.
- i. **“Costs of Authority Assets”** shall mean the Authority’s capital costs properly attributable to the construction and other acquisition of Authority Assets, including, but not limited to:
- (1) the cost of acquisition by or for the Authority of real or personal property or any interest therein;
 - (2) costs of physical construction, engineering, inspection, fiscal, and legal expenses relating to Authority Assets;
 - (3) interest which is estimated will accrue during the construction or other acquisition period and for a period not exceeding one (1) year thereafter on Obligations;
 - (4) any discount on the sale of the Obligations; costs of financial, professional, and other estimates relating to Authority Assets;
 - (5) any administrative, operating, and other expenses of the Authority prior to and during any acquisition period and for a period not exceeding one (1) year thereafter, attributable to Authority Assets as may be determined by the Board of Directors;
 - (6) all other expenses as may be necessary or incident to the financing, acquisition, improvement, equipping, and completion of Authority Assets and the placing of the same in operation; and
 - (7) provision of reserves for working capital, Operation and Maintenance Expenses or for payment or security of principal or interest on the Obligations as the Board of Directors may determine.
- j. **“Debt Service”** shall mean, with respect to any period, the aggregate of the amounts of principal, interest and redemption premium, if any, required to be paid from revenues of the Authority during said period on any Obligations then outstanding in accordance with their terms.
- k. **“Debt Service Rate/Fees”** shall mean a billing rate that when applied to the Customer account’s SFE factor, results in a portion of the charges due from the Customer to the Authority. Revenues collected by the Authority from Debt Service Fees are used by the Authority specifically to pay debt service on borrowed funds. Any increase in the Debt Service Fee for a new bond issue must be approved by a majority, plus 1 (currently at least 5 of 6) of the governing bodies of the Contracting Parties to be effective.

- l. **“Depreciation and Replacement Expenses”** shall mean a charge to operations of the Cost of Authority Assets based on the calculated useful life of such Assets.
- m. **“Dwelling Unit”** shall mean a habitation of an average size.
- n. **“Obligations”** shall mean bonds, notes, or other evidences of borrowing by the Authority for purposes of acquiring or constructing Authority Assets.
- o. **“Operation and Maintenance Expenses”** shall mean all expenses incurred in the operation and maintenance of the Authority’s Water System and normally recurring expenses incurred by the Authority in the conduct of its activities which are properly Authority costs under generally accepted accounting principles as applied to governmental units. Such term does not include Depreciation and Replacement Expenses or reserves therefor, or Debt Service on the Authority’s Obligations, or principal of or interest on any other borrowing of the Authority.
- p. **“Plant Investment Fee”** shall mean the one time charge per SFE for each property served by the Authority as a pro-rata share of the capital costs necessary to serve new development. Receipts from Plant Investment Fees may offset the Debt Service Fee unless the Board of Directors reserves such revenues for capital improvements in a Restricted Reserve Fund. Plant Investment Fee is subject to increases by the Board of Directors of the Authority as provided in subparagraph a of paragraph 23 of this Authority Agreement.
- q. **“Service Charge”** shall be the charge to each customer for Water Service by the Authority, which charge shall be calculated as provided in subparagraph b of paragraph 22 of this Authority Agreement. As so calculated, the Service Charge may be identified as the Water Usage Charge in Statements issued by the Authority.
- r. **“Single Family Equivalent Unit (SFE)”** shall mean a use which is estimated to have an impact upon the Water System equal to that of the average usage of a Dwelling Unit, as determined by the Authority.
- s. **“Surcharge”** shall mean a charge unilaterally imposed by a Contracting Party or the Authority on a customer within any Contracting Party’s jurisdictional boundaries.
- t. **“Treated Water Storage Fee”** shall mean a fee charged to a customer for water storage facilities for property which is newly included into a Contracting Party, either by annexation, inclusion or contract, or property

which has received an increase in its allowed density, which action has resulted in a need for additional treated water storage.

- u. **Water Rights Cash-in-Lieu Fee** shall mean a cash payment made in lieu of water rights dedication where water rights are not available to the developer to dedicate and payment of such Fee has been specifically and formally approved by the Board of Directors of the Authority.
 - v. **Water Rights Fund** shall mean the fund or escrow of monies received for water rights purchases and expenses. Water Rights Cash-in-Lieu Fees and related revenues shall be deposited to this Fund.
 - w. **Water Service** shall mean the Authority's construction and other acquisition of Authority Assets, its diversion, storage, treatment, transmission of water for use by inhabitants of the Authority's service area or others, and its maintenance of Authority Assets at all times in good and workable condition and available for such transmission.
 - x. **Water Service Customer** shall mean customers of the Authority residing within and without the jurisdictional boundaries of the Contracting Parties receiving water service from the Authority.
 - y. **Water System** shall mean all facilities and properties, real, personal, mixed or otherwise, now owned or hereafter acquired for provision of Water Service by any Contracting Party or the Authority through purchase, construction, or otherwise, and in any way appertaining thereto, whether situated within or without the limits of the Contracting Parties, or both within or without the limits of the Contracting Parties, excluding water rights.
 - z. **Water Tap Fee** shall mean the impact fee or similar development charge that may be imposed by a Contracting Party pursuant to C.R.S. § 29-20-104.5 to fund expenditures by such local government on water capital facilities needed to serve new development within its jurisdictional boundaries. Water Tap Fees shall, unless formally requested not to, be collected by the Authority and remitted to the Contracting Party imposing the Water Tap Fee for expenditure on capital facilities needed to serve the new development for which the Water Tap Fee was imposed.
5. **Purposes.** The purposes of the Authority are to supply water for domestic and other public and private purposes; to provide all necessary water diversion works, reservoirs, treatment works and facilities, equipment and appurtenances incident thereto; to effect the development of water resources, systems or facilities, in whole or in part, for the use and benefit of the Contracting Parties, their

inhabitants, and others; and to provide efficient, effective, and reliable water service.

6. **Functions or Services.** The functions or services to be provided by the Authority are the provision of treated water to persons residing within the boundaries of the Contracting Parties and to others residing within the Service Area of the Authority and having a water tap served by the Authority's water distribution system (collectively "Water Service Customers"), by:
 - a. Acquiring raw water from the Contracting Parties, from others with whom the Authority contracts to furnish treated water, and from those persons or entities who have raw water available for treatment and use by the Contracting Parties or others.
 - b. Acquiring, constructing, owning, reconstructing, improving, rehabilitating, repairing, operating, and maintaining by way of illustration and not limitation, the following: raw water diversion, transmission and storage facilities; water treatment facilities and treated water storage systems, together with any and all appurtenances thereto; or interests in any of the above-described facilities, for the purpose of diverting and delivering raw water to the treatment facilities, treating such water, and delivering treated water from the treatment facilities to the Authority's Water Service Customers.
 - c. Acquiring water rights and developing water resources for treatment, augmentation and use by the Contracting Parties, their inhabitants, and others.
 - d. Selling treated water to the Authority's Water Service Customers.
 - e. Providing such other services or functions as may be authorized by law and determined by the Authority Board of Directors, to be in the best interests of the Contracting Parties and the Authority's Water Service Customers.
7. **Powers of the Authority.** To enable the Authority to carry out its functions and provide the services described herein, the Authority, acting by and through its Board of Directors, shall have the following general powers:
 - a. To develop water resources, systems and facilities, in whole or in part, for the benefit of the Contracting Parties and the Authority's Water Service Customers or others, at the discretion of the Board of Directors, subject to fulfilling the terms and conditions of this Agreement.
 - b. To acquire, own, construct, manage, maintain, or operate water systems, facilities, works, or improvements, or any interest therein.

- c. To acquire, hold, lease (as lessor or lessee), sell or otherwise dispose of any legal or equitable interest in real or personal property, including water rights, utilized for the purposes of raw water diversion, storage, transmission and treatment, storage and distribution of treated water, in the discretion of the Authority's Board of Directors.
- d. To conduct its business and affairs for the benefit of the Contracting Parties and its Water Service Customers, in the discretion of the Authority's Board of Directors.
- e. To enter into, make and perform contracts of every kind with other local governmental entities, the State of Colorado, or any political subdivision thereof, the United States, or any political subdivision thereof, and any individual, firm, association, partnership, corporation or any other organization of any kind.
- f. To hire agents, including, but not limited to, engineers, attorneys, architects and consultants, and employees.
- g. To incur debts, liabilities or obligations to the extent and in the manner permitted by law, and borrow money and, from time to time, to make, accept, endorse, execute and deliver bonds, notes and other obligations of the Authority for moneys borrowed; or in payment for property acquired, or for any of the other purposes, services or functions of the Authority, as provided by law; and to the extent permitted by law, to secure the payment of any such obligations by mortgage, pledge, deed, indenture, agreement or other collateral instrument, or by other lien upon or assignment of all or any part of the properties, rights, assets, contracts, easements, revenues and privileges of the Authority; provided, however, in no event shall the Authority be authorized to encumber any interest in water rights assigned or leased to the Authority by a Contracting Party, unless authorized by the Contracting Party.
- h. To own, operate and maintain real and personal property and facilities in common with others, and 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.
- i. To condemn property for public use as rights-of-way for the Authority's facilities, including, but not limited to pipelines, vaults, valves, pumps, water storage tanks, treatment facilities, electric utility services, and all appurtenances thereto; provided such property is not owned by any public utility and devoted to public use pursuant to State authority.

- j. To adjudicate, operate and administer changes of water rights and plans for augmentation, and to keep appropriate records in connection therewith. The water rights held by or leased to the Authority shall be used in an integrated fashion for the benefit of all Authority members and contractees, such an integrated water system being one of the purposes for which the Authority was formed.
- k. To sue, and to be sued, in its own name.
- l. To have and use a corporate seal.
- m. To fix, maintain and revise fees, rates and charges for all water functions, services or facilities provided by the Authority; such 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, debt service and reserves, capital improvements and other obligations and expenses of the Authority. All Water Service Customers shall be charged at the same rate for treated water delivered to their water meter, unless non-uniformity of rates is required by bond covenants, and in such case, the non-uniformity of rates shall be subject to the approval of the Authority's Board of Directors. The requirement for uniform rates for the Water Service Customers shall not prohibit the Authority from a rate structure incorporating peak period pricing concepts or an increasing block or tier rate based upon per capita consumption rates. The Authority shall not utilize a declining block rate structure. The requirement for uniform rates for the Water Service Customers shall not prohibit the Authority from entering into water service agreements with third parties providing for different fees, rates and charges in the discretion of the Board of Directors.
- n. To adopt, by resolution, rules and regulations respecting the exercise of its powers and carrying out of its purposes.
- o. To receive contributions, gifts, bequests or other grants of cash, equipment or services from the Contracting Parties or other entities, individuals, or political subdivisions.
- p. To do and perform any acts and things authorized by the Act under, through, or by means of an agent or by contracts with any person, firm, corporation or special district.
- q. Subject to approval of the governing bodies of the Contracting Parties as hereinafter provided, to permit other municipalities, special districts, or political subdivisions of this State that are authorized to supply water to enter the Agreement as an additional Contracting Party at the discretion of

the Board of Directors, subject to fulfilling any and all conditions or requirements of the Agreement or requirements established by the Board of Directors; except that rates need not be uniform between the Authority and an additional Contracting Party.

- r. To provide for, if required, the rehabilitation of any surfaces adversely affected by the Authority's construction of water pipelines, facilities or systems through the rehabilitation of plant cover, soil stability, pavement, and other measures appropriate to the subsequent beneficial use of such lands.
- s. In general, to exercise all powers which are now, or hereinafter may be, conferred by law upon a water authority organized pursuant to the Act, or its contracting parties, 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 or this Agreement.

8. **Board of Directors.** The governing body of the Authority shall be the Board of Directors in which all legislative power of the Authority is vested.

- a. **Number:** The number of Directors shall be equal to the number of Contracting Parties (currently six). Each Contracting Party shall be entitled to fill one Director's position which shall be by appointment made by the governing body of that Contracting Party. Each Director shall be entitled to cast one (1) vote. The Director representing a Contracting Party in default under the Agreement shall lose voting rights until the default is cured.
- b. **Appointment:** The governing body of each Contracting Party shall appoint one (1) principal member of the Board of Directors, and one or more alternate members who, in the discretion of the Contracting Party, may or may not be an elected official of that Contracting Party. Such alternate member shall act and vote only in the absence of the principal member appointed by the same body.
- c. **Term:** Each Director shall serve at the pleasure of the governing body of the Contracting Party by whom he or she was appointed until replaced at the pleasure of that governing body.
- d. **Vacancies:** A vacancy occurring in the Board of Directors, whether such vacancy be the result of loss of eligibility, resignation, death, removal or disability, shall be filled in the same manner of appointment or selection as provided above.

- e. Compensation: Directors may receive compensation for their services within statutory limits, if any, as may be provided by resolution of the Board of Directors, and the Board of Directors, by resolution, shall provide for reimbursement to the Directors of their actual expenses incurred on behalf of the Authority.
- f. Regular Meetings: The Board of Directors, from time to time, may provide by resolution for the time and place of holding regular meetings without notice to the Directors, other than such resolution.
- g. Special Meetings: Special meetings of the Board of Directors may be held as often as the needs of the Authority require, upon notice to each Director as hereinafter provided.
- h. Notice of Meetings: Notice of the time and place designated for all regular meetings shall be posted in at least three public places within the Service Area of the Authority, and, in addition, one such notice shall be posted in the office of the Eagle County Clerk and Recorder. Such notices shall remain posted and shall be changed in the event that the time or place of such regular meetings is changed. Special meetings may be called by any director by informing the other directors of the date, time, and place of such special meeting, and the purpose for which it is called, and by posting notice as provided by law at least seventy-two hours prior to said meeting. Notice of any regular or special meeting may also be posted on the Authority's website. All official business of the Board of Directors shall be conducted only during said regular or special meetings at which a quorum is present, and all said meetings shall be open to the public.
- i. Waiver: Whenever any notice is required to be given to any Director of the Authority 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 of Directors 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.
- j. 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. Unless otherwise provided herein, 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 of Directors.

k. Duties of the Board: The duties of the Board of Directors shall be:

- (1) To govern the business and affairs of the Authority.
- (2) To exercise all powers of the Authority.
- (3) To comply with the provisions of Part 1 (Local Government Budget Law of Colorado), Part 5 (Local Government Uniform Accounting Law) and Part 6 (Local Government Audit Law) of Article 1, Title 29 of C.R.S., as amended.
- (4) To adopt a budget which complies with statutory and other restrictions imposed by law on the affairs of the Authority.
- (5) To monitor, accept, authorize and/or approve the financial transactions of the Authority.
- (6) To provide for the services of a firm of independent certified public accountants to audit and examine, at least annually, the financial records and accounts of the Authority, and to report thereupon to the Board of Directors.
- (7) To keep records of the Authority's proceedings.
- (8) To adopt such by-laws as appropriate for the conduct of its business not in conflict herewith.

9. Officers. The Officers of the Authority shall be a Chairman, Vice-Chairman, Secretary, Treasurer, and such other officers and assistant officers as may be authorized by the Board of Directors from time to time, to perform such duties as may be approved by the Board of Directors. The Chairman, Vice-Chairman and Treasurer shall be principal members of the Board of Directors, but the other Officers of the Authority need not be members of the Board.

- a. Regular Elections and Term of Office: At the first regularly scheduled meeting after regular special district elections, the members of the Board of Directors shall elect Officers who shall serve as Officers of the Authority until the next succeeding election of Officers or until their successors are elected and qualified. Vacancies or new offices may be filled at any meeting of the Board of Directors.
- b. Removal: Any officer or agent elected or appointed by the Board of Directors may be removed by the Board of Directors, with or without cause, whenever in its judgment the best interests of the Authority will be served thereby.

- c. Duties of Officers: In addition to duties designated by the Board of Directors, the duties of the officers shall include the following:
- (1) Chairman. The Chairman shall preside at all meetings of the Board of Directors and, except as otherwise delegated by the Board of Directors, shall execute all legal instruments of the Authority.
 - (2) Vice-Chairman. The Vice-Chairman shall, in the absence of the Chairman, or in the event of his inability or refusal to act, perform the duties of the Chairman, and when so acting, shall have all the powers of, and be subject to all restrictions upon, the Chairman.
 - (3) Secretary. The Secretary shall maintain the official records of the Authority, including this Agreement, by-laws, rules and regulations established by the Board of Directors, minutes of the meetings of the Board of Directors, 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.
 - (4) Treasurer. The Treasurer shall serve as financial official of the Authority, and pursuant to the budget adopted by the Board of Directors 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.
 - (5) General Manager; Legal Counsel, Auditor and Special Consultants. The Board of Directors may appoint a General Manager or contract with an administrator to serve in such capacity for such term and upon such conditions, including compensation, as the Board may establish, or the Board of Directors may enter into an Operations Agreement for management services as authorized by Section 28 of this Authority Agreement. The General Manager or administrator shall report directly to the Board of Directors of the Authority. Such General Manager or administrator shall have general supervision over the administration of the affairs, employees and business of the Authority and shall be charged with the hiring and discharging of employees and the management of the Authority properties. Such General Manager or administrator shall have the care and custody of the general funds of the Authority and shall deposit or cause to be deposited the same in the name of Authority in such banks or savings associations as the Board of Directors may select. Such General Manager or administrator will approve all vouchers, orders and checks for payment, and shall keep or cause to be kept regular

books of account of all Authority transactions and shall obtain, at the Authority's expense, such bond for the faithful performance of his or her duties as the Board of Directors may designate. The Board of Directors may delegate such powers and duties to the General Manager or administrator as it deems appropriate, and authorize its General Manager to execute any contracts approved by the Board of Directors in each Contract Log, or otherwise in a formal meeting.

The Board of Directors may also engage the services of General Counsel, Water Counsel, Special Counsel, the Auditor, and any special consultants as necessary to the management and operations of the Authority.

- (6) Assistant Secretaries and Assistant Treasurers. The Board may appoint such assistants as it deems necessary and appropriate.
- (7) Miscellaneous. The duties and functions of the Secretary and the Treasurer may be performed by a single individual who shall be a principal member of the Board. If the individual performing the duties of Secretary is not a member of the Board of Directors, such individual may receive such compensation as is deemed appropriate by the Board of Directors.

- d. Bonds of Offices. 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 shall give bond in such sum and with such surety as the Board of Directors shall determine. The Board of Directors, 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.

10. **Indemnification of Directors, Officers and Employees.**

- a. Directors, Officers and Employees: Each Director, Officer or Employee of the Authority, whether or not then in office, and his or her personal representatives, shall be indemnified by the Authority to the extent permitted by law against all costs and expenses actually and necessarily incurred by him or her in connection with the defense of any action, suit or proceeding in which he or she may be involved or to which he or she may be made a party by reason of his or her being, or having been, such Director, Officer or Employee, except in relation to matters as to which he or she shall be finally adjudged in such action, suit or proceeding to be liable for willful negligence or misconduct in the performance of his or her duties. The Authority shall pay the costs and expenses actually and

reasonably incurred by a Director, Officer or Employee in connection with the defense of any allegation, action and proceeding arising out of an act or omission of such person during the performance of such person's duties within the scope of such person's service or appointment, including reasonable attorneys' fees, where the action lies or could lie in tort, including any such action brought pursuant to Federal law in any court of this State, in accordance with the Colorado Governmental Immunity Act. As a prerequisite to such payment, the Director, Officer or Employee must furnish the District with an affidavit stating that the action against him or her is not purely personal; that, to his or her reasonable belief, the act or omission upon which the claim is based reasonably relates to the business affairs of the Authority; and that the Director, Officer or Employee acted in good faith and in a manner which a reasonable person would have acted under the circumstances and which was not opposed to the best interests of the Authority. However, the Authority shall not pay such judgment or settlement and shall seek reimbursement from the Director, Officer or Employee for the actual costs of his or her defense, including actual attorneys' fees, where it is determined by a court of competent jurisdiction (a) that the injuries did not arise out of an act or omission of the Director, Officer or Employee occurring during his or her term of appointment or employment with the Authority and within his or her scope of duties or employment, or (b) that, unless otherwise expressly authorized by the Board of Directors of the Authority, the Director's, Officer's or Employee's act or omission was willful and wanton. Such costs and expenses shall include amounts reasonably paid in settlement for the purpose of curtailing the cost of litigation in the reasonable discretion of the Board. The foregoing right of indemnification shall not be exclusive of other rights to which the Director, Officer or Employee may be entitled as a matter of law or by agreement.

- b. Payment: All claims to be paid as a result of the indemnification provided hereunder shall be paid by the Authority or its insurer up to, but not to exceed the applicable limitations under the Colorado Governmental Immunity Act. The Authority specifically reserves any defenses which are available to any Director, Officer or Employee under the Colorado Governmental Immunity Act or by common law. The Authority may pay judgments and settlements in accordance with the Colorado Governmental Immunity Act even if sovereign immunity bars the action against the Authority.

- 11. **Prior Conveyances of Water Systems.** Except for certain golf course water systems, the Contracting Parties and other parties served by contract have previously conveyed to the Authority their individual water systems. The

customers of the Contracting Parties thereby became Water Service Customers of the Authority. The Authority shall make Rules and Regulations concerning the operation of the Authority's Water System, except as to the amount of the Water Tap Fees and Surcharges. These Water Systems were accepted by the Authority in "as is" condition and (subject to any contract obligations) all future maintenance, repair and upgrade expenses became the obligations of the Authority, and not the obligations of the Contracting Parties or the third party served by contract.

12. **Water Rights.** The Contracting Parties have leased to the Authority all of the Contracting Parties' right, title and interests in and to the Contracting Parties' water rights ("Water Rights"), including the right to use all diversion ditches, pipelines, headgates and structures, reservoirs or other storage structures, pumps, casings, and other improvements and easements associated or used in connection with the Water Rights (the "Associated Improvements"), for the Authority's use in carrying out its functions and providing Water Service in accordance with the terms hereof. The Authority shall maintain the Associated Improvements. The Contracting Parties shall have the right to continue to own their individual water rights and Associated Improvements, or to convey them to the Authority. The Authority shall be solely responsible for future adjudication and diligence proceedings for the Water Rights. The Contracting Parties affirmatively consent to the Authority's adjudication of any changes to the Water Rights that are deemed appropriate by the Authority, including, but not limited to, the type of use, place of use, points of diversion, and quantification of historic use.
13. **Assets Held in Trust.** All assets and properties of the Authority shall be held in trust by the Authority for the Contracting Parties for the purposes herein mentioned, including the payment of liabilities of the Authority.
14. **Financial Obligations of the Authority.** The bonds, notes, and other obligations issued by the Authority shall not be the debts, liabilities, or obligations of the Contracting Parties because the Contracting Parties have provided for payment to the Authority of funds from proprietary revenues for water services rendered by the Authority; from proprietary revenues or other public funds as contributions to defray the costs of any its purposes; and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the Authority. The Authority is authorized to issue bonds, notes, or other obligations payable solely from the revenues derived from the function, service, system or facility or the combined functions, services, systems, or facilities of the Authority or from any other available funds of the Authority.

The terms, conditions and details of any bonds, notes, and other obligations of the Authority, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes, or other obligations and, as

nearly as may be practicable, shall be substantially the same as those provided in part 4 of article 35 of title 31, C.R.S., relating to water and sewer revenue bonds; except that the purposes for which the same may be issued shall not be so limited and except that said bonds, notes, and other obligations may be sold at public or private sale. Bonds, notes, or other obligations so issued by the Authority shall not constitute an indebtedness of any Contracting Party within the meaning of any constitutional or statutory limitations or other provision. Each bond, note, or other obligation so issued by the Authority shall recite in substance that said bond, note, or other obligation, including the interest thereon, is payable solely from the revenues and other available funds of the Authority pledged for the payment thereof and that said bond, note, or other obligation does not constitute a debt of the Authority or the Contracting Parties within the meaning of any constitutional or statutory limitation or provision. Notwithstanding any statutory provision to the contrary, such bond, notes, and other obligations of the Authority may be issued to mature at such times not beyond forty years from their respective issue dates, shall bear interest at such rates, and shall be sold at, above, or below the principal amount thereof, all as shall be determined by the Board of Directors of the Authority.

The resolution, trust indenture, or other security agreement under which any bonds, notes, or obligations of the Authority are issued shall constitute a contract with the holders thereof, and it may contain such provisions as shall be determined by the Board of Directors of the Authority to be appropriate and necessary in connection with the issuance thereof and to provide security for the payment thereof, including, without limitation, any mortgage or other security interest in any revenues, funds, rights, or properties of the Authority. To the extent permitted by law, the bonds, notes, and other obligations of the Authority and the income therefrom shall be exempt from taxation by the State of Colorado, except inheritance, estate, and transfer taxes.

15. **Consolidation of Two or More Contracting Parties.** If any two (2) or more of the Contracting 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 Contracting Parties which have been so consolidated. Upon issuance of a court order establishing a consolidated entity, those Contracting Parties consolidating shall no longer be entitled to separate representation on the Authority's Board of Directors. Instead, the consolidated entity shall be entitled to one (1) principal member on the Board of Directors whose selection and term shall be as provided herein. As successor in interest, the consolidated entity shall have all rights, powers, duties, and obligations hereunder as the original Contracting Parties.

16. **Dissolution of the Authority.** Dissolution (including any sale of Authority Assets) shall require the unanimous consent of the Contracting Parties and provision for a successor entity or entities that will continue to provide service to the Water Service Customers. If the Authority then has financial obligations or outstanding bonds, any provision for dissolution shall specifically provide either that all such financial obligations shall be paid in full by the Authority or that funds or securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., shall be placed in escrow, prior to dissolution, in a state or national bank within this state having trust powers and which is a member of the federal deposit insurance corporation and stating that such funds or securities will be sufficient for the payment of the financial obligations and outstanding bonds of the Authority and all expenses related thereto, including charges of any escrow agent.
17. **Adding or Deleting Parties.** No party may be added to this Agreement as a Contracting Party without the unanimous consent of all Contracting Parties authorized by a written document formally approved by the governing body of each Contracting Party. A party added as a Contracting Party shall be subject to such terms and conditions as the Board of Directors, in its sole discretion, may determine; provided, however, that a new Contracting Party shall be assessed a capital investment fee to cover its pro rata share of the costs of those capital assets previously purchased or constructed by the Authority for joint use by all Contracting Parties. A Contracting Party may withdraw from this Agreement by written document authorized by the governing body of such Contracting Party, which shall be presented to the Authority not earlier than June 1st or later than July 15th of any calendar year; provided, however, such withdrawing Contracting Party shall remain liable for any and all financial obligations and all indebtedness incurred pursuant to any contract between the Authority and the Contracting Party pursuant to which the Authority provides service to the Contracting Party. Upon withdrawal, a withdrawing Contracting Party shall have no further interest, right or title in or to any assets or equity of the Authority, and shall forfeit its status as a "Contracting Party" with regard to its Board of Directors position and voting rights inherent therein, unless there is a specific agreement to the contrary; provided, however, that the following shall immediately vest in such withdrawing Contracting Party:
- a. Any water rights conveyed, assigned, leased or otherwise contributed to the Authority by such withdrawing Contracting Party which shall vest in the withdrawing Contracting Party by the Authority reconveying or reassigning such water rights to the withdrawing Contracting Party or terminating the lease to such water rights.

- b. Any direct flow or storage water rights that are owned by the Authority and originally conveyed, assigned or otherwise contributed or paid for by a third party or otherwise allocated by the Authority to any withdrawing Contracting Party in return for a commitment to provide water service to a given parcel or parcels of property located within the boundaries of the withdrawing Contracting Party shall immediately vest in the withdrawing Contracting Party. Such vesting shall occur by the Authority reconveying or reassigning such water rights to the withdrawing Contracting Party.
 - c. The amount of Eagle Park Reservoir water owned by the Authority and allocated to any withdrawing Contracting Party in the Eagle Park Reservoir Agreement dated October 23, 1996, among the Authority and the Contracting Parties shall immediately vest in any withdrawing Contracting Party. Such vesting shall occur by the Authority assigning the shares of stock in the Eagle Park Reservoir Company for such amount of Eagle Park Reservoir water to the withdrawing Contracting Party.
 - d. The amount of Green Mountain Reservoir water available to the Authority under a valid contract with the Bureau of Reclamation and allocated to any withdrawing Contracting Party, if any, in the decree of the District Court in and for Water Division No. 5 in Case No. 92CW291 shall be assigned by the Authority to the withdrawing Contracting Party. The Authority shall request such assignment and implement the effect of such assignment as soon as possible after the date of withdrawal.
18. **Water Right Report.** The foregoing categories of water rights shall be identified in the water right report entitled the "Analysis of Water Rights, Future Water Use, and Related Water Rights Issues" prepared for each Contracting Party and updated every two years by the Authority's water counsel and water resource engineer (the "Water Right Reports"). The Water Right Reports shall also identify any other direct flow water rights that are owned by the Authority and not originally conveyed by a Contracting Party, and any other storage water rights that are owned or leased by the Authority and not originally conveyed or assigned by a Contracting Party (the "Unallocated Water Rights"). The Unallocated Water Rights shall not be conveyed or assigned to a withdrawing Contracting Party and shall be retained by the Authority for its use and for the benefit of the remaining Contracting Parties.

WATER SERVICE BY THE AUTHORITY

19. **Water Service.** The Authority agrees to sell and furnish to persons and entities which are present and future customers of the Water System, all Water Service as these Water Service Customers shall reasonably require, subject to any use limitations then in effect and to the extent that the Authority shall have the

capacity to provide such Water Service. The Water Service Customers shall pay the Authority the Base Charge, Debt Service Charge and Service Charges for all Water Service provided by the Authority; provided, however, that the obligation to pay for all such Water Service shall be and is an obligation of the Water Service Customers during the term hereof and, except as provided in Paragraph 49, is not a lien, charge or liability against the Contracting Parties or against any property or funds of the Contracting Parties, and the obligations to pay the Authority for all Water Service furnished hereunder does not constitute a debt, liability or obligation of the Contracting Parties and the Contracting Parties are not required to pay such obligation. The Water Service Customers shall make and pay for all connections to the Authority's Water System.

The Contracting Parties shall have the obligation continuously to provide rights to raw water to the Authority, in amounts which are adequate to allow provision of Water Service to present and future customers of the Authority who connect to the portion of the Authority's Water System within each Contracting Party's jurisdictional boundaries. It is mutually understood the Authority will acquire or design and construct such Authority Assets and all necessary appurtenances thereto, so as to enable it reasonably to provide all Water Service to its Water Service Customers, present and future as part of an integrated water supply system.

20. **Covenants and Representations of the Authority and the Contracting Parties.**

- a. The Authority shall use reasonable diligence to provide Water Service hereunder and shall maintain the Authority's Water System in good condition at all times. It is the intent of this Agreement that the Authority provide water to the present and future Water Service Customers of the Authority and third parties which is treated to meet State and/or Federal Safe Drinking Water Standards and in compliance with environmental laws and regulations. If operation of the Water System shall be interrupted, or become defective by reason of *force majeure*, the Authority shall not be liable therefor or for damages caused thereby.
- b. The Authority shall diligently enforce and take all reasonable steps, actions and proceedings necessary for the enforcement of all terms, covenants and provisions of this Agreement.
- c. The Authority covenants and agrees that it will operate, maintain and manage the Authority's Water System or cause the same to be operated, maintained and managed in an efficient and economical manner, consistent with sound municipal utility practice and in accordance with standards normally used by municipal utilities owning like properties to provide efficient, effective, and reliable water service.

- d. The Contracting Parties covenant to provide to the Authority adequate rights to raw water from their Water Rights or any other source, to allow continuous provisions of adequate Water Service to the present and future Water Service Customers of the Authority, and to meet Authority's obligations under this Agreement. The Contracting Parties represent that their Water Rights and related interests are free and clear of all liens and encumbrances and, subject to physical availability of water, are sufficient to provide for all water needs of the Contracting Parties within their present boundaries, but recognize the Authority may use their water rights throughout the Authority's integrated water service system.
 - e. The provisions of this Agreement are covenants of the Contracting Parties and the Authority for the benefit and protection of the Authority, the Contracting Parties and the owners and holders of Obligations, it being recognized that the owners and holders of such Obligations shall be third-party beneficiaries of such covenants, and it is understood by the Contracting Parties that the initial purchaser of any issue of Obligations has and will agree to the purchase of Obligations conditioned upon these covenants.
 - f. For and in consideration of the payments to be made by the present and future Water Service Customers of the Authority under this Agreement, the Authority agrees to use reasonable diligence to provide Water Service to the present and future Water Service Customers of the Authority under the terms of this Agreement, and such payments by the present and future Water Service Customers of the Authority shall be in consideration for the Authority's agreement to provide such Water Service.
21. **Rate Covenant.** The Board of Directors of the Authority shall establish, maintain and collect from present and future Water Service Customers of the Authority and third parties, reasonable Plant Investment Fees, Water Storage Fees, Base Fees and Service Charges for the Water Service provided which shall produce revenues at least sufficient, together with other revenues legally available to the Authority, to enable the Authority to provide Water Service to present and future Water Service Customers of the Authority and third parties and to comply with any rate maintenance covenants of Obligations.
22. **Water Use Fees.** Periodic fees and charges imposed by the Authority for the use of water may include the following:
- a. **Base Charge.** The Board of Directors of the Authority shall establish the Base Charge to be paid monthly by every Water Service Customer and which shall mean the amount charged each SFE irrespective of quantity of water used. The Base Charge is subject to increases by the Board of

Directors of the Authority, provided that such increases do not exceed the increase(s) in the Denver-Boulder-Greeley Consumer Price Index since December 31 of the calendar year in which the Base Charge was previously increased. If the proposed increase exceeds the increases in the Denver-Boulder-Greeley Consumer Price Index since December 31 of the calendar year in which the Base Charge was previously increased, such increase must be approved by a majority plus one (currently at least five of the six) of the governing bodies of the Contracting Parties to be effective.

b. **Service Charge.** The Service Charge of the Authority to its Water Service Customers shall be:

- (1) non-discriminatory;
- (2) fair and reasonable; and
- (3) adequate (after taking into consideration other moneys available or anticipated to be received) in each Contract Year so that the Service Charges in each Contract Year shall be at least equal to:
 - (i) Operation and Maintenance Expenses;
 - (ii) An amount equal to 110% of the debt service requirements for such Contract Year on or with respect to the outstanding Obligations payable from the revenue of the Authority unless the debt service is otherwise provided for;
 - (iii) An amount equal to any payments required to be made to any reserve fund, on or with respect to the outstanding Obligations payable from the revenues of the Authority;
 - (iv) An amount equal to current costs of improvements to the Authority's Water System, excluding major capital additions, made in the ordinary course of business; and
 - (v) Any amounts required to meet then existing deficiencies pertaining to any fund or account relating to any outstanding Obligations, including any deficiencies in any bond reserve funds and any operations reserve funds.
- (4) The Service Charge shall be determined by dividing the estimated Annual Costs to treat and deliver water by the estimated annual amount of water treated and delivered to all the Parties and third parties served by the Authority. The resulting average water cost is then used to establish the rates to be charged for each tier in the

Authority's tiered rate structure where the rate charged for water use increases as more water is used. The objective is to recover the Annual Costs through the sale of water to all customers.

- (5) If the Board of Directors of the Authority proposes to establish a new Service Charge, other than in connection with an Annual Budget, it shall give the Contracting Parties and third parties written notice that it is establishing a new Service Charge for Water Service, setting forth such Charge, on a date certain which shall not be less than thirty (30) days from the mailing of the notice of each Contracting Party and third party, all such notices to be mailed simultaneously.
 - c. **Debt Service Fees.** The Board of Directors of the Authority shall establish a debt service billing rate that when applied to the Customer account's SFE factor, results in collection of the charges due from the Customer to the Authority for its proportionate share of the Authority's Debt Service. Revenues collected by the Authority from Debt Service Fees shall be used by the Authority specifically to pay debt service on borrowed funds.
 - d. **Differential Service Charge.** The Board of Directors of the Authority may establish and unilaterally impose a Differential Service Charge on a customer or an area served by the Authority to accommodate a differential cost of service or capital facility needs of said area. Notice of such Differential Service Charge shall be given in writing to the Contracting Party whose territory includes the area in which the Differential Service Charge shall be imposed.
 - e. **Surcharges.** A charge may be unilaterally imposed by a Contracting Party or the Authority on a customer within that Contracting Party's jurisdictional boundaries that is to be collected by the Authority.
23. **New Development / Facility Expansion Fees.** Fees and charges imposed or collected by the Authority may include the following:
- a. **Plant Investment Fee.** The Board of Directors of the Authority shall establish a Plant Investment Fee which shall be the one time charge per SFE to each property served by the Authority required to be paid to connect to the Authority's Water System. The Plant Investment Fee is imposed for recovery of capital investments associated with major components of the Water System. The assessment is based on the particular impact of the facility being connected. The Plant Investment Fee is subject to increases by the Board of Directors of the Authority, provided that such increases do not exceed the increase(s) in the Denver-Boulder-Greeley Consumer Price

Index since December 31 of the calendar year in which the Plant Investment Fee was previously increased. If the proposed increase exceeds the increases in the Denver-Boulder-Greeley Consumer Price Index since December 31 of the calendar in which the Plant Investment Fee was previously increased, such increase must be approved by a majority plus one (currently at least five of the six) of the directors of the Authority to be effective; provided, however, any proposal to increase the Plant Investment Fee shall be introduced at least forty-five (45) days prior to the date of its approval by the Board of Directors and written notice of such change shall be given to the governing body of each Contracting Party at least thirty (30) days prior to approval by the Board of Directors.

- b. **Treated Water Storage Fees.** The Contracting Parties have adopted a system of assessing Treated Water Storage Fees. Such Fees shall be assessed by and collected and retained by the Authority as provided by the Rules and Regulations of the Authority.
 - c. **Cash-in-Lieu of Water Rights Fee.** A Cash-in-Lieu of Water Rights Fee may be established by the Board of Directors as a payment of cash in lieu of the dedication of water rights, in the discretion of the Authority's Board of Directors, sufficient to serve the proposed water demands and uses of an applicant for water service from the Authority.
 - d. **Water Tap Fee.** A Water Tap Fee may be established unilaterally by a Contracting Party as herein provided (see Definitions) for a specific period of time and may be collected by and remitted to that Contracting Party by the Authority to fund expenditures by such local government on water capital facilities needed to serve new development within its jurisdictional boundaries.
 - e. **Line Extensions and System Additions.** Extensions of existing lines and construction of System additions may be approved by the Authority and the cost of the extension or construction may be passed on to developers. When constructed and accepted by the Authority, such line extensions and system additions shall become part of the Authority's Water System.
24. **Easements.** The Contracting Parties mutually agree that the Authority or its agent shall have full access to or over any easement, right-of-way or property granted to or held by the Contracting Parties for purposes of water mains and all appurtenances thereto if, and to the extent, required by the Authority for any and all purposes required for the Authority Assets.
25. **Annual Budget.** In compliance with the provisions of Part 1 (Local Government Budget Law of Colorado), Part 5 (Local Government Uniform Accounting Law)

and Part 6 (Local Government Audit Law) of Article 1, Title 29 of C.R.S., as amended,

- a. The Authority shall prepare, or cause to be prepared, an Annual Budget which shall itemize estimates of Annual Costs and all revenues, income or other funds to be applied to such Annual Costs for and applicable to each Contract Year. The Authority shall prepare such Annual Budget in a timely fashion, which will allow the Contracting Parties and the Authority to comply with applicable budget laws.
 - b. The Authority, prior to the beginning of each Contract Year, shall adopt the Annual Budget for such Contract Year, and the Service Charges for such Contract Year, and shall cause copies of such Annual Budget and the schedule of Service Charges to be promptly delivered to the Contracting Parties.
 - c. If at any time or from time to time after the adoption of the Annual Budget in accordance with subparagraphs a. and b. of this paragraph, the Authority estimates that the actual Annual Costs or revenues for the Contract year, or any part thereof for which such Annual Budget applies, will be greater or less than the Annual Costs or revenues set forth in the Annual Budget, then the Authority may prepare an amended Annual Budget. The amended Annual Budget shall be timely adopted by the Authority and promptly transmitted to the Contracting Parties.
 - d. In the event the Annual Budget for the ensuing Contract Year has not been adopted on or before the first day of any Contract Year, the total amount budgeted for the preceding Contract Year shall be the total amount of the temporary budget for such purposes for the ensuing Contract Year. Such temporary budget shall be effective only until such time as a permanent Annual Budget has been finally adopted and approved. The Board of the Authority shall be responsible for the allocation for expenditure of the total amount of the temporary budget until a permanent budget is adopted and approved.
26. **Billing.** The Contracting Parties hereby delegate to the Authority all rights to collect fees, charges, penalties and interest payable to the Authority. The Authority shall directly read the meters and bill the present and future Water Service Customers of the Authority and third parties for Service Charges, Surcharges if applicable, and other charges monthly.
27. **Records and Accounts.** The Authority shall keep accurate records and accounts of Authority Assets and of the transactions relating thereto, as well as of the operations of the Authority, in accordance with generally accepted accounting

principles as applied to governmental units. Within one hundred twenty (120) days after close of each Contract Year, the Authority shall cause such records and accounts, and all transactions of the Authority with respect to such Contract Year to be subject to an annual audit by an independent certified public accountant. A copy of each such annual audit shall be sent by the Authority to the Contracting Parties. The Authority shall comply with the provisions of Part 1 (Local Government Budget Law of Colorado), Part 5 (Local Government Uniform Accounting Law) and Part 6 (Local Government Audit Law) of Article 1, Title 29 of C.R.S., as amended.

OPERATIONS AND ADMINISTRATION

28. **Operations Agreement.** The Board of Directors of the Authority may enter into an Operations Agreement with any third party water utility operator, including but not limited to the Eagle River Water and Sanitation District, to provide management, annual capital plan management, engineering, operations and preventive, predictive and corrective maintenance, meter reading and billing, accounting and financial requirements, laboratory activities, and quality assurance necessary to manage and operate Authority's Facilities in compliance with this Agreement and legal and regulatory requirements and at levels which meet or exceed those generally accepted standards customary to the industry. In lieu of an Operations Agreement with a third party utility operator, the Board of Directors of the Authority may determine to provide some or all of the foregoing services by hiring and employing sufficient highly-trained, qualified and experienced personnel, including management, engineering, maintenance, financial, accounting, customer service and billing, technical, laboratory and administrative staff who meet applicable State of Colorado certification and/or licensing requirements, to manage, operate, maintain and otherwise administer the Authority's Facilities. An Operations Agreement shall not be required and the Board of Directors may choose to provide for operations and administration of the Authority solely through Authority employees and consultants.
29. **Execution of Contracts.** Except as otherwise provided by law, the Board of Directors may authorize any officer or officers, agent or agents, or the General Manager to enter into any contract, or execute and deliver any instrument in the name and on behalf of the Authority.
30. **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 of Directors.

31. **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 of Directors may select.
32. **Fiscal Year.** The fiscal year of the Authority shall be the calendar year.
33. **Principal Place of Business.** The principal place of business of the Authority shall be 846 Forest Road, Vail, CO 81657, unless changed. Annually, on or before the 1st 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 the agent for service of process on the Authority, and the address of the principal place of business of the Authority.
34. **Debt Not That of Contracting Parties.** Pursuant to Section 29-1-204.2(5), C.R.S., the bonds, notes and other obligations of the Authority shall not be the debts, liabilities or obligations of the Contracting Parties or parties which may be future Contracting Parties.
35. **Notices.** Any formal notice, demand or request provided for in this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid (provided that bills sent hereunder may be sent by first class mail) to the Contracting Parties.
36. **Default.**
- a. It is an event of default by a Contracting Party hereunder if:
 - (1) the Contracting Party defaults in the punctual performance or observation of any covenants, agreements, or conditions on the part of the Contracting Party in this Agreement for a period of thirty (30) days after the notifying Party or the Authority shall have given the Contracting Party notice thereof in the manner provided in paragraph 35;
 - (2) a voluntary or involuntary petition under federal or state bankruptcy laws by or against a Contracting Party is filed or a receiver for any of the Contracting Party's assets is appointed; or
 - (3) a Contracting Party is dissolved and this Agreement is not assigned by the Party in accordance with paragraph 47.
 - b. It is an event of default by the Authority hereunder if the Authority fails or defaults in the punctual performance or observation of the covenants, agreements or conditions on the part of the Authority in this Agreement, except that the Authority will only be in default of its covenants to use

reasonable diligence to provide Water Services contained in paragraph 20 if it has totally failed to provide any Water Services for a period of two (2) days or more after the notifying Contracting Party shall have given the Authority notice thereof in the manner provided in paragraph 35.

37. Remedies Upon Default.

- a. Upon the occurrence and continuance of an event of default by any party to this Agreement, the non-defaulting party or parties may take one or more of the following remedial actions:
 - (1) utilize the defaulting party's water rights to provide the Water Service contemplated under this Agreement.
 - (2) proceed against the defaulting party, its governing body, and its agents, officers, and employees to protect the rights of the non-defaulting party or parties hereunder by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for appointment of a receiver (the consent to such appointment being expressly hereby granted by the defaulting party) or for the specific performance of any covenant or agreement contained herein or an award of execution of any power herein granted for the enforcement of any proper legal or equitable remedy as the non-defaulting party or parties may deem most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any right of the non-defaulting party or parties, or to require the governing body of the defaulting party to act as if it were the trustee of an express trust, or any combination of such remedies.
- b. Upon the occurrence and continuance of an event of default by a party, the non-defaulting party or parties or any receiver appointed in any proceedings to protect the rights of the non-defaulting party or parties hereunder may prescribe fees, rates and other charges and may collect, receive and apply all amounts arising thereafter in the same manner as the defaulting party itself might do.
- c. Upon the occurrence and continuance of an event of default by a party to this Agreement, the non-defaulting party or parties shall have all of the rights and remedies provided at law and in equity, except that in no event shall the defaulting party or parties be relieved of their obligations hereunder.

- d. The failure of a party to this Agreement to proceed in any manner herein provided shall not relieve any other party or any of its officers, agents or employees of any liability for failure to perform or carry out any duty, obligation or other commitment. Each right or privilege of each party is in addition and is cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of such party.
38. **Existing Debt of Contracting Parties.** Any debt of any Contracting Party for construction of the Water System of the Contracting Party shall remain and be the obligation of that Contracting Party and not of the Authority.
39. **Force majeure.**
- a. If for any reason of *force majeure* any of the Contracting Parties hereto or the Authority shall be rendered unable, wholly or in part, to carry out its obligations under this Agreement and, subject to physical availability of water, to provide rights to raw water to the Authority as herein provided, then if such party shall give notice, and the full particulars of such reasons in writing to the Contracting Parties and the Authority within a reasonable time after the occurrence of the event or cause relied on, the obligations of the party giving such notice, so far as it is affected by such *force majeure*, shall be suspended during the continuance of the inability then claimed, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term *force majeure*, as employed herein, shall mean acts of God; strikes; lockouts, or other industrial disturbances; acts of the public enemy; orders or actions of any kind of the government of the United States or of the State of Colorado or any civil or military authority; insurrections; riots; epidemics; landslides; lightning; earthquakes; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraints of government and people; civil disturbances; explosions; breakage or accident to dams, machinery, pipelines, or canals or other structures or machinery; on account of any other cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulties, and that the above requirement that any *force majeure* shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demand of the opposing parties when such settlement is unfavorable in the judgment of the party having the difficulty.
 - b. No damage shall be recoverable from the Authority or any Contracting Party by reason of the causes above mentioned.
40. **Insurance.**

- a. The Authority shall maintain, or cause to be maintained in force for the benefit of the Authority, such insurance as shall be reasonably available and as is usually carried by municipal water utilities constructing and operating water treatment, storage and transmission facilities. In addition, the Authority shall maintain general liability insurance coverage in an amount not less than \$350,000 per person/\$990,000 per occurrence, and \$1,000,000 aggregate, or any such higher amounts as may be called for under the Colorado Governmental Immunities Act, Section 24-10-101, *et seq.*, C.R.S.; provided, however, in any event, the Authority shall maintain, or cause to be maintained, in force, insurance in such amounts and against such risks as required by any bond resolution.
 - b. The Authority will secure and maintain fidelity insurance or bonds in the amount of at least Twenty-Five Thousand Dollars (\$25,000.00) on the treasurer and any officer or agent of the Authority charged with the responsibility for the custody of any of its funds or property. The Board of Directors, 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. Costs of such bond shall be an expense payable by the Authority.
 - c. The Authority may establish and create a special fund for the purpose of providing a self-insurance fund. Amounts to be deposited in, or credited to, such fund in any Contract Year shall be accounted for as Operation and Maintenance Expenses. To the extent that moneys are deposited in such fund, if created, such moneys shall be invested in Investment Securities, as defined in any bond resolution. To the extent of the amounts held in such fund, the face amount of appropriate insurance policies may be reduced.
41. **Reports.** The Authority shall prepare and issue to the Contracting Parties the following reports for each Contract Year:
- a. financial and operating statements relating to Authority Assets;
 - b. status of construction of Authority Assets during construction; and
 - c. analysis of operations relating to the Authority.
42. **Access.** The Contracting Parties shall at all times have reasonable access to examine any and all books and records of the Authority and to inspect the Authority's Water System. The Authority and the Contracting Parties each give the other the right to enter the premises of the other at all reasonable times for the purpose of repairing or removing facilities and performing work incidental to delivery and receipt of Water Service furnished hereunder.

43. **Governmental Rates, Regulations and Laws.** This Agreement shall be subject to all valid rules, regulations and laws applicable thereto, as promulgated by the United States of America, the State of Colorado, or any other governmental body or agency having lawful jurisdiction or any authorized representative or agency of any of them, which rules, regulations and laws shall not impair the obligation of contracts, including this Authority Agreement.
44. **Merger.** This Agreement constitutes the entire agreement among the parties, and all prior and contemporaneous conversations, negotiations, possible alleged agreements, representations, covenants, and warranties concerning the subject matter hereof are merged herein, except as provided in paragraph 49.
45. **Severability.** The parties hereto agree that if any provision, or part of a provision, of this Agreement should contravene or be held invalid under the laws of the State of Colorado by any court having competent jurisdiction, such contravention or invalidity shall not invalidate the whole Agreement, but it shall be construed as though not containing that particular provision, or part thereof, and the rights and obligations of the parties shall be construed and in force accordingly.
46. **Amendments.** This Agreement may be amended only by written document approved by formal authority of the governing bodies of all of the Contracting Parties; provided, however, that such amendment will 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.
47. **Assignment; Successors and Assigns.** This Agreement shall not be assignable by a Contracting Party unless the Authority consents in writing to such assignment, provided that such assignment does not materially and adversely affect the rights or security of owners of the Authority's Obligations, and shall not be assignable by the Authority without the written consents of all the Contracting Parties. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors, assigns and legal representatives of the parties hereto.
48. **Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.
49. **Savings Provision.** In the event that,
- a. any provision of this Agreement shall violate any covenant in or constitute a default under any document authorizing Obligations of the Authority or the Contracting Parties' existing bond resolutions;
 - b. this Agreement, in whole or in part, is held to be unenforceable; or

c. if a Contracting Party withdraws from the Authority,

then the provisions of the Agreement Establishing the Upper Eagle Regional Water Authority made on September 18, 1984 and as amended on April 1, 1985, and the Amended and Restated Master Service Contract made and entered into as of January 1, 1998, shall apply to the extent necessary to avoid violation of any such covenant or constituting such default and to establish the relationship and rights and obligations of the withdrawing Contracting Party and the Authority.

IN WITNESS WHEREOF, the Contracting Parties have caused this Agreement to be executed effective the date first above written.

ARROWHEAD METROPOLITAN DISTRICT

By: _____
_____, President

Attest:

_____, Secretary

TOWN OF AVON, COLORADO, successor to
the Avon Metropolitan District

By: _____
_____, Mayor

Attest:

_____, Town Clerk

BEAVER CREEK METROPOLITAN
DISTRICT

By: _____
_____, President

Attest:

_____, Secretary

BERRY CREEK METROPOLITAN
DISTRICT

By: _____
_____, President

Attest:

_____, Secretary

EAGLE-VAIL METROPOLITAN DISTRICT

By: _____
_____, President

Attest:

_____, Secretary

EDWARDS METROPOLITAN DISTRICT,
formerly known as the Edwards Water District

By: _____
_____, President

Attest:

_____, Secretary

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2014 by _____ as President and _____ as Secretary of the ARROWHEAD METROPOLITAN DISTRICT.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2014 by _____ as Mayor and _____ as Town Clerk of the TOWN OF AVON, COLORADO.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2014 by _____ as President and _____ as Secretary of the BEAVER CREEK METROPOLITAN DISTRICT.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2014 by _____ as President and _____ as Secretary of the BERRY CREEK METROPOLITAN DISTRICT.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged before me this ____ day of _____, 2014 by _____ as President and _____ as Secretary of the EAGLE-VAIL METROPOLITAN DISTRICT.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF EAGLE)

The foregoing Agreement was acknowledged before me this _____ day of _____, 2014 by _____ as President and _____ as Secretary of the EDWARDS METROPOLITAN DISTRICT.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Marijuana in EagleVail

By: Jeff Layman, Community Manager

Issue

This is an update on the state of the legalized sale of marijuana in EagleVail.

Background

In my April 3, 2014 "Manager's Update", I reported on the information that I had received from Eagle County Attorney Bryan Treu. In that report, I noted that Bryan would be willing to address the BOG to address any questions. He will be here at our May 15 Board meeting.

Discussion

In the above-mentioned Manager's Update, I reported the following. New information has come to light (IN CAPS BELOW):

- There are eight licenses available in Eagle County. Six of those are in the Eagle Valley and two in the Roaring Fork.
- EC gave existing medical marijuana shops first priority on obtaining those six licenses. Three of those shops are in EV and they have all obtained these licenses. (THEY HAVE NOT YET OBTAINED THEM, BUT THE APPLICATIONS ARE IN PROCESS)
- Of the three remaining retail licenses, there are eight applicants. All eight propose to operate in EV. (SIX OF THE APPLICANTS HAVE PROPOSED TO OPERATE IN EV, THE OTHER TWO IN EDWARDS).
- This means that we will most certainly have six retail marijuana shops and one medical marijuana shop in EV. (IF I UNDERSTAND CORRECTLY, THIS WILL BE THREE OR FOUR IN EV).
- Currently, the only other place in the county to have a retail pot shop is in Edwards. There are no applications there. (THERE ARE TWO RETAIL APPLICATIONS IN EDWARDS).
- The county has declared a moratorium on "social clubs" until the state comes out with more well defined rules governing their operation.
- Eagle County has invited our community to be involved in the evaluation of the applications for retail marijuana shops in EV. EV BOG member Mike Charles has expressed interest in participating. The BOG is asked to provide feedback on whether more participation is desired. This evaluation is anticipated to occur later this month. (MIKE CHARLES AND KEN MARCHETTI HAVE BEEN INVITED TO JOIN THE COMMITTEE).
- Bryan is willing to address the BOG in a future board meeting to address any questions or concerns. (I'M SURE BRYAN WILL HAVE MORE UP TO DATE INFORMATION FOR THIS UPCOMING MEETING).

The BOG directed me to write a letter to the EC BoCC expressing its concerns about the topic. That letter is attached.



April 25, 2014

Board of County Commissioners
Eagle County

Sara Fisher, Commissioner
Jill Ryan, Commissioner
Kathy Chandler-Henry, Commissioner

Dear Commissioners,

A recent conversation with Eagle County officials revealed to us that it is likely that most of the eight retail marijuana licenses available in Eagle County will be granted to businesses located in EagleVail. Given that all of Eagle County voted in favor of Amendment 64, it seems peculiar to us that the trade will be concentrated in one very small geographic area of our 1800 square miles.

We encourage the Board of County Commissioners to reconsider how licensed areas are determined before granting the licenses still up for grabs. Perhaps the Board would consider establishing limits on how many marijuana businesses are allowed in any given area.

We're concerned that EagleVail will be identified solely with the marijuana trade, having a negative impact on other businesses, and on our community as a whole.

Thanks for your consideration,

Louise Funk
EagleVail Metro District
Chair

Mike Charles
EagleVail Business Association
President

Chris Romer
EV Property Owners Association
President

Tracy Walters
Jane Ross
Steven Kirchner
Leah Mayer

George Brodin
Skip Moss

Cindy Gilbert
Skip Moss
Mike Kieler
Betsy Laughlin

C: Keith Montag
Scot Hunn
Bryan Treu