

RURAL WATER AUTHORITY OF DOUGLAS COUNTY CREATION AGREEMENT

THIS AGREEMENT ("Agreement") establishing the RURAL WATER AUTHORITY OF DOUGLAS COUNTY (the "Authority") is made and entered into this 1st day of October, 2008, by and between COUNTY OF DOUGLAS ("Douglas County"), a county duly organized and existing under Title 30, C.R.S., and Article XIV, of the Colorado Constitution, and GRANDVIEW ESTATES RURAL WATER CONSERVATION DISTRICT, duly organized and existing under Section 37-45-102, C.R.S. (individually "Party" and collectively "Parties"):

RECITALS

WHEREAS, the development and provision of an adequate, sustainable and reliable water supply is of vital importance to the health and welfare of the citizens of Douglas County; and

WHEREAS, rural water providers, as individuals, families, homeowners associations, private or mutual water companies or governmental entities are charged with providing adequate, sustainable, and reliable water supplies to themselves, the public or their rate payers in accordance with various enabling acts and reasonable standards of water supply practice; and

WHEREAS, Douglas County is charged with determining the adequacy and dependability of water supplies for citizens in unincorporated areas of the County; and

WHEREAS, the combined effects of population growth; the increased reliance on groundwater supplies from the Denver basin aquifers as a public water supply; periodic drought; increasing needs for water conservation and adequate, sustainable, and reliable water supplies; and the challenges that individuals and small water systems have in ensuring adequate, sustainable, and reliable water supplies must be recognized; and

WHEREAS, local, regional, intra and inter-watershed, and state-wide cooperation is necessary and essential for the timely development of adequate, sustainable, and reliable water supplies; and

WHEREAS, the Douglas County Board of County Commissioners and water interest groups across Colorado have declared and acknowledged the importance of the "Colorado 64 Water Principles" endorsed by the Colorado General Assembly in House Joint Resolution 03-1019; and

WHEREAS, Douglas County has encouraged and approved the utilization of individual domestic and household water wells as a water supply source in rural areas to facilitate the growth and development of a diverse economy and a diversity of lifestyles within the County; and

WHEREAS, various water providers including a number of special districts duly organized and existing under Title 32, Article I, C.R.S. (the "District Act"), other quasi-governmental agencies, homeowners associations, and mutual and private water companies are authorized to provide water facilities and services; and

WHEREAS, Douglas County is authorized to provide water and wastewater facilities and services pursuant to Title 30, Article 20, Parts 3 and 4, C.R.S. (the "County Act"); and

WHEREAS, a public improvement district may be organized and formed under Title 30, Article 20, C.R.S., to provide revenue and financing assistance for water supply services and the improvement of public water supply systems within the whole and/or portions of Douglas County; and

WHEREAS, the Board of Douglas County Commissioners, rural water users, water providers, and the Authority may seek the ability to create, and anticipate the creation of, additional public improvement districts, special districts and authorities and may seek to execute various intergovernmental agreements to facilitate the construction and financing of adequate, sustainable, and reliable water supplies and facilities of specific benefit to rural water users and for the general benefit of water users within the Authority; and

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

WHEREAS, pursuant to section 29-1-204.2, C.R.S., governmental entities are authorized to establish by contract a separate governmental entity to effect the planning and development of water resources and integrated water systems and their facilities, including acquiring easements and property for the purposes of the development of those facilities; and

WHEREAS, Section 29-1-203, C.R.S., authorizes governments to cooperate and contract with one another to provide any function, service, or facility lawfully authorized, and to establish a separate legal entity to do so; and

WHEREAS, the Parties are each lawfully authorized to establish, operate and provide the Services contemplated herein; and.

WHEREAS, the Parties desire to create the Authority by this Agreement to facilitate adequate, sustainable, and reliable water supplies throughout the Authority's Service Area (as defined herein).

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

I. Definitions. The following words and phrases, when used in this document, shall be understood to have the meaning stated in this Article I, as follows:

(A) Authority: The Rural Water Authority of Douglas County.

(B) Advisory Board(s): A panel created or selected by the Board to provide public and/or expert advice on any matter or subject of importance to the Board.

(C) Biennial Meeting: A meeting held by the Board every two years.

(D) Board: The Board of Directors of the Rural Water Authority of Douglas County .

(E) BOCC: Board of County Commissioners of Douglas County.

(F) BOCC Director: A member of the Board appointed or elected by the Douglas County Board of County Commissioners to represent the interests of Douglas County.

(G) Bylaws: Rules and regulations adopted by the Board that may further define, elaborate or supplement the provisions of this Agreement.

(H) Director: A person appointed or elected to a director seat on the Board pursuant to this Agreement and any Bylaws adopted by the Authority.

(I) Director District: A specific geographic area, as designated by the Board, within the Service Area

(J) Equivalent Residential Unit: A unit of measurement of water service, usage or demand based on an average single-family residential unit, to be further defined and quantified from time to time by the Board.

(K) Excluded Areas: Lands not within the Service Area of the Authority.

(L) Facilities: Any one or more of the Authority's existing or planned improvements for the evaluation, measurement, delivery, diversion, conveyance, storage, withdrawal, collection, treatment or distribution of water or wastewater, as well as the water rights needed for such improvements, to be used for all beneficial uses and purposes for which water has been or may be appropriated for any beneficial use, including but not limited to, domestic, municipal, irrigation, power, industrial, commercial, augmentation, piscatorial, recreation, environmental, and instream flow. Facilities may include any and all improvements necessary for the production and beneficial use of water, including but not limited to, head gates and collection systems, infiltration galleries, dams, water storage reservoirs, compensatory and replacement water storage reservoirs, water wells of any depth, groundwater or aquifer recharge facilities, ventilating systems, water measurement systems, tunnels, flumes, conduits, canals, pipelines and transmissions systems, water and wastewater treatment and filtration plans, distribution systems, and power plants, including all extensions, expansions, improvements, remodeling, replacement and alterations thereof, and all and any related improvements, land, and interests in land and property necessary or convenient for the supply of water or conveyance of wastewater.

(M) Individual Water Provider: A Person who lives within the Service Area and who owns a water well permitted or operated for domestic or household purposes or service located within the Service Area. The well shall provide raw or treated water for beneficial use by such Person or such Person's household, guests, livestock, pets, customers, or business.

(N) Individual Water Provider Director: A member of the Board appointed or elected by the Individual Water Providers who are Participants to represent their interests.

(O) Lame Water System: A water supply or distribution system that serves more than 500 equivalent residential units within the Service Area.

(P) Participant: Any Small Water System Provider, who is not a Party, who has executed a Participation Agreement, and any Individual Water Provider, who is not a Party, who has not withdrawn from this Agreement.

(Q) Participation Agreement: An agreement between a Participant and the Authority under which the Participant agrees to abide by the terms of this Agreement and all other rules and regulations the Authority may promulgate.

(R) Party or Parties: The governmental entities referenced on page one of this Agreement and any other governmental entity who has entered into an agreement with the Authority to be bound by this Agreement as a party to the Agreement.

(S) Person: A natural person, any body corporate or politic, firm, partnership, association, or any other type of business or legal entity, county, town, city, city and county, special district, improvement district or any other political subdivision of the State of Colorado including the State of Colorado and any agency of the United States of America.

(T) Project: The entirety of any discrete Facility, including, but not limited to, the Facility's planning, design, engineering, financing, public education, development, construction and operation.

(U) Rural Water User: A Person within the Service Area who uses water services provided by Small Water System Providers or Individual Water Providers.

(V) Services: The planning, design, engineering, financing, public education, Individual Water Provider and Small Water System water services, development, construction, and operation necessary to evaluate, measure, deliver, divert, convey, store, withdraw, collect, treat or distribute water or wastewater. Services also include the collection of any revenues related to the operation of any Facility, Project, or Works of the Authority.

(W) Service Area: All of unincorporated Douglas County including lands served by a Party or a Participant to the Agreement as generally indicated on Exhibit A but excluding service areas of special districts providing water services that are not Parties or Participants.

(X) Small Water System: A water supply or distribution system that serves not more than 500 equivalent residential units within the Service Area.

(Y) Small Water System Director: A member of the Board appointed or elected by the Small Water System Providers who are Participants to represent their interests.

(Z) Small Water System Providers: A Person who operates or is permitted to operate a Small Water System. Such Person is not one who operates or is permitted to operate a Large Water System.

(AA) Special District Act: Sections 32-1-101, et seq., C.R.S., as amended from time to time.

(BB) Works of the Authority: Any Services, Facilities, Projects, or property interest of the Authority.

II. Establishment of the Authority; Purpose; Functions; Powers. The Rural Water Authority of Douglas County is hereby established as a separate legal entity, political subdivision and public corporation of the State of Colorado, separate from the Parties and any Participants. It shall have the powers, authorities, functions, duties, privileges, immunities, rights, liabilities and disabilities of a public body politic and corporate. The provisions of Articles 10.5 and 47 of Title 11, C.R.S., shall apply to monies of the Authority.

(A) Principal Place of Business. The principal place of business of the Authority shall be established by the Board at the initial organizational meeting of the Authority, and may be revised from time to time by the Board.

(B) Authority Purpose. The purpose of the Authority is to assist Parties and Participants through Works of the Authority in developing water resources, systems, in whole or in part, for the benefit of Rural Water Users and owners of land within the Service Area.

(C) Authority Functions and Services. The functions and services of the Authority include:

(i) Providing Services and Facilities related to the supply and distribution of water to Parties and Participants.

(ii) Collaborating and cooperating with other local, regional, and statewide water supply agencies in the development of water supply plans and conservation of water resources.

(iii) Educating and informing water users as to issues affecting an adequate, sustainable, and reliable water supply.

(iv) Taking reasonable and prudent actions necessary to protect important or valuable aquatic and riparian resources affected by the Authority's activities, and mitigating adverse impacts to such resources when the avoidance of adverse effects is unreasonable.

(v) Providing such other services or functions reasonably related to the provision of an adequate, sustainable, and reliable water supply to Rural Water Users as may be authorized by law to each of the Parties and as determined by the Board of Directors to be in the best interests of Rural Water Users.

(D) Existing Assets. All property, including financial assets, of the Parties and Participants hereto shall remain the property of such individual Parties and Participants unless transferred to the Authority by appropriate instrument.

(E) Powers of Authority. To enable the Authority to carry out its functions and provide the services described hereinabove, the Authority shall have the general powers enumerated in Sections 29-1-204.2(3) and (7), C.R.S., as such sections may be amended from time to time, and all lawful implied powers. Without limiting in any way the generality of the preceding sentence, the Authority shall have the following specific powers:

(i) To adopt Bylaws, which Bylaws may further define, elaborate, or supplement any of the provisions of this Agreement so long as such Bylaws are not inconsistent with the terms of this Agreement;

(ii) To operate as an enterprise under Article X, Section 20, of the Colorado Constitution and create one or more entities which qualify as an enterprise under Article X, Section 20, of the Colorado Constitution;

(iii) In general, to exercise all powers which are now or shall be conferred by law upon a separate legal entity organized pursuant to Section 29-1-204.2, C.R.S., in the manner and to the extent authorized by the Board;

(iv) To create Advisory Boards as deemed necessary by the Board;

(v) To receive contributions, gifts, bequests or other grants of cash, equipment or services for its own benefit or on behalf of any other Person; and

(vi) To exercise any other power lawfully authorized to each of the Parties.

III. Participation In The Authority.

(A) Intended Beneficiaries. The Authority serves the interests of all Rural Water Users.

(B) Participant Status. Small Water System Providers and Individual Water Providers are eligible to be Participants in the Authority. Participants may be charged fair and equitable costs or fees by the Board. Participants may enter into agreements with the Authority regarding interest, right, or title in or to any assets or equity of the Authority. The Board may promulgate additional rules and regulations regarding procedures for reviewing Participant petitions.

(i) Individual Water Providers are Participants. They may request to withdraw from the Authority by following the procedure established by this Agreement.

(ii) Small Water System Providers may become a Participant by submitting a petition and a signed Participation Agreement to the Board. Admission of Participants shall be at the Board's sole discretion. Admission shall be granted when a majority of the duly elected Directors vote to admit an applicant.

(C) Party Status. Additional governmental entities may be added to this Agreement as a Party if approved by two-thirds (2/3) of the Directors then in office. However, most Large Water Systems are prohibited from becoming a Party. Large Water Systems that are allowed to become a Party include, and are limited to, Douglas County and any entity organized by Douglas County to facilitate the provision of Services by Small Water Systems. A Person added as a Party may enter into an agreement with the Authority regarding interest, right, or title in or to any assets or equity of the Authority. Such Person shall be subject to terms and conditions the Board, in its sole discretion, may determine.

(D) Withdrawal from the Authority. A Participant or Party may withdraw from the Authority as provided herein. Upon withdrawal, the property served by the Participant or Party shall be withdrawn from the Service Area.

(i) **Form of Notice.** An Individual Water Provider or its duly authorized representative shall deliver to the Board a duly executed and written notice of withdrawal. A Small Water System Provider or Party shall deliver to the Board a duly authorized resolution of its governing body.

(ii) **Timely Notice.** A Party or Participant may withdraw from the Authority by written notice to the Board no later than one hundred eighty (180) days prior to the withdrawal date. However, if this Agreement is amended, a Party may withdraw if it delivers written notice to the Authority within ninety (90) days of the date of such amendment.

(iii) **Obligations Upon Withdrawal.** A withdrawing Party or Participant shall remain liable for any and all of its obligations, financial or otherwise, existing on the date written notice is provided, to or on behalf of the Authority. Upon withdrawal, a withdrawing Party or Participant shall forfeit all interest, right or title in or to any assets or equity of the Authority, unless the Board approves a specific agreement to the contrary. Withdrawal by any Party or combination of Parties shall not cause termination of this Agreement as between the Parties not withdrawing.

(iv) **Re-Admission After Withdrawal.** Any former Participant who wishes to become a Participant after withdrawal from the Authority must submit a petition and a signed Participation Agreement to the Board. Admission shall be granted when at least two-thirds (2/3) of the duly elected Directors vote to re-admit an applicant. Any former Party who is a governmental entity who wishes to become a Party after withdrawal from the Authority may only do so with two-thirds (2/3) consent of the Board.

IV. **Governance.** The governing body of the Authority shall be the Board, in which all powers of the Authority are vested. Board Directors shall be appointed pursuant to this Agreement. The Authority shall have no more than nine Directors at any one time. There shall be one BOCC Director, up to five Individual Water Provider Directors, and up to three Small Water System Directors. Each Director shall be a natural person age 18 or older residing within the Service Area. Directors shall be a Participant or a member of the governing board of a Party.

(A) **Term.** Except as provided below, Directors shall serve terms of four years. A Director shall serve until his/her office is deemed to be vacant.

(B) **Initial Appointment and Term of Board Members.** The Douglas County Board of County Commissioners ("BOCC") shall appoint all of the initial Board of Directors at the initial organizational meeting of the Authority. The initial term for the BOCC Director shall be four years. The initial term for two of the Individual Water Provider Director seats shall be two years; the initial term for the three remaining Individual Water Provider Director seats shall be four years. The initial term for two of the Small Water System Director seats shall be two years; the initial term for the remaining Small Water System Director seats shall be four years. In the event that the BOCC is not able to appoint an initial Director to a seat at the organizational meeting of the Authority, such seat shall remain empty until the BOCC shall appoint an initial Director to serve in such seat for the remainder of the term.

(C) **Appointment of Board.** With the exception of the initial appointment of Directors by the BOCC, Directors shall be appointed as follows:

(i) **BOCC Director.** The BOCC shall elect the BOCC Director by vote, with each Commissioner having one vote.

(ii) **Individual Water Provider Directors.** Individual Water Providers who are Participants shall elect an Individual Water Provider Director to represent the Director District in which the Individual Water Provider resides, subject to the following terms.

i. There shall be five Director Districts, the boundaries of which shall be designated by the Board from time to time. One Individual Water Provider Director shall be elected in each Director District.

ii. Elections shall be held at the Biennial Meeting.

iii. The Board shall publish notice of all elections for Individual Water Directors in a paper of general circulation within Douglas County and as further deemed necessary by the Board.

iv. Only Individual Water Providers who are Participants may be elected to an Individual Water Provider Director seat. A Director shall be a resident of the Director District he/she is elected to serve.

v. Individuals desiring to be elected to an Individual Water Provider Director seat for the Director District within which they reside shall file a self nomination and acceptance form or letter in conformance with the provisions of Section 32-1-804.3, C.R.S.

vi. Each Individual Water Provider who is a Participant is allowed to cast one vote to elect a candidate to the Individual Water Provider Director seat that represents the Director District in which the Individual Water Provider resides.

vii. The Board shall maintain a register of Individual Water Providers who are Participants and credentials for eligibility to vote at the Biennial Meeting.

viii. The Board shall adopt other Bylaws, rules and regulations as necessary to facilitate procedures for such elections.

(iii) **Small Water System Directors.** Small Water System Providers, who are Participants or Parties, shall elect the Small Water System Directors. Each Small Water System Director must be a member of the governing body of a Small Water System who is a Participant or Party. No two Directors may serve on the governing body of any one Small Water System. Each Small Water System Participant or Party shall have one vote for each Small Water System Director seat. The Board may adopt other rules and regulations as necessary to facilitate procedures for such elections.

(D) Director's Office Deemed Vacant. A Director's office shall be deemed vacant upon the occurrence of any one of the following events prior to the expiration of the term of office:

(i) If for any reason a properly qualified person is not elected to a Director's office by the electors as required at a regular election;

(ii) If a person who was duly elected or appointed submits a written resignation to the Board;

(iii) If the person who was duly elected or appointed ceases to be qualified for the office to which he was elected;

(iv) If a person who was duly elected or appointed is convicted of a felony;

(v) If a court of competent jurisdiction voids the election or appointment or removes the person duly elected or appointed for any cause whatsoever, but only after his right to appeal has been waived or otherwise exhausted; or

(vi) If the person who was duly elected or appointed dies during his/her term of office.

(E) Removal. A Director may be removed from office by a vote of the majority of the Board upon a showing of due cause. An appointment to the unexpired portion of the term of a removed Director shall be made as provided herein or in the Bylaws.

(F) Filling a Director Vacancy. Any vacancy on the Board shall be filled by appointment by the remaining Director or Directors, the appointee to serve until the next regular election, at which time, the vacancy shall be filled by election for any remaining unexpired portion of the term.

(G) Director Districts. The Board may revise the boundaries of Director Districts upon a two-thirds (2/3) vote of the Board. The purpose of the Director Districts is to ensure a degree of geographic and hydrographic diversity on the Board. The boundaries of any Director District shall be drawn at the discretion of the Board. No Person shall have a fundamental right in the location of or process through which such boundaries are drawn. Accordingly, no Person shall be allowed to challenge the boundaries of a Director District based on the principle of "one person, one vote."

(H) Compensation. The Board may, in its discretion, direct that Directors shall receive compensation for their services at a rate fixed by the Board.

(I) Decisions. Decisions of the Board may be made only at regular or special meetings, called upon notice as required herein, at which a quorum is present. Except as otherwise provided in this Agreement, decisions of the Board of Directors shall be made by a majority of the Directors attending such a meeting. No Director shall be allowed more than one vote on any issue or matter.

(J) Matters Requiring Super-Majority. The following matters shall not be authorized unless they are approved by at least two-thirds (2/3) of all Directors then in office: incurring debt, amending this Agreement, changing the Bylaws, condemning property and granting Participant status to a Small Water System Provider or an Individual Water Provider who formerly withdrew from the Authority, and setting the boundaries of Director Districts. The addition of a governmental entity as a Party to this Agreement also requires two-thirds (2/3) approval of the Directors then in office.

(K) Meetings.

(i) **Quorum.** A quorum for the conduct of business at meetings of the Board shall be a simple majority of the Directors, except as required for actions requiring a two-thirds (2/3) vote. If less than a quorum is present, the Directors present may continue the meeting to another time.

(ii) **Regular Meetings.** The Board may hold regular monthly meetings within Douglas County, Colorado. Regular meetings shall require notice by resolution, adopted from time to time, providing the time and place of such meetings.

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

(iv) **Notice of Meetings.** Notice of meetings shall be posted in a designated public place within the Service Area no less than twenty-four hours prior to the meeting. The public place or places for posting such notice shall be designated annually at the Board's first regular meeting of each calendar year. The Secretary shall also notify each Director of the meeting by telephonic or electronic means not less than twenty-four hours prior to the meeting.

(L) Biennial Meeting. The Authority shall hold a Biennial Meeting at least once every two years for the purpose of electing Directors and conducting other necessary business.

(M) Duties of the Board. The duties of the Board shall be:

(i) To govern the business and affairs of the Authority.

(ii) To exercise all powers of the Authority.

(iii) To comply with the provisions of Parts 1, 5 and 6 of Article 1, Title 29, C.R.S., regarding budget preparation, accounting, and auditing.

- (iv) To invest the funds of the Authority.
- (v) To govern the financial transactions of the Authority, including the receipt, custody and disbursement of its funds, securities and other assets.
- (vi) To provide for the services of a firm of independent certified public accountants to examine, at least annually, the financial records and accounts of the Authority, and to report thereupon to the Board.
- (vii) To keep records of the Authority's proceedings.
- (viii) To adopt such Bylaws as appropriate for the conduct of its business not in conflict herewith.

V. Officers.

(A) 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 from time to time, to perform such duties as may be approved by the Board. The Chairman, Vice-Chairman and Treasurer shall be members of the Board, but the other officers of the Authority need not be members of the Board.

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

(i) Chairman. The Chairman shall be a member of the Board and preside at all meetings of the Board and, except as otherwise delegated by the Board of Directors, shall execute all legal instruments of the Authority.

(ii) Vice-Chairman. The Vice-Chairman shall be a member of the Board and, in the absence of the Chairman or, in the event of his/her inability or refusal to act, shall 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.

(iii) Secretary. The Secretary need not be a member of the Board and shall maintain the official records of the Authority, including this Agreement, Bylaws, rules and regulations established by the Board, 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. A separate recording secretary may be appointed by the Board for taking and preparing meeting minutes.

(iv) **Treasurer.** The Treasurer shall be a member of the Board and serve as financial official of the Authority, and pursuant to the fiscal resolution adopted by the Board governing the financial transactions of the Authority and the restrictions imposed by law, be responsible for the receipt, custody, disbursement and accounting of the Authority's funds and securities, and duties incident to the office of Treasurer, but not the investment of the Authority's funds. The accounting function shall be provided by an Authority employee or independent contractor under the supervision of the Treasurer and shall be reviewed monthly by the Board.

(v) **Miscellaneous.** The duties and functions of the Secretary and the Treasurer may be performed by a single individual. If the person performing the duties of Secretary is not a member of the Board, such person shall receive such compensation as is deemed appropriate by the Board.

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

VI. Advisory Boards. Pursuant to a resolution, the Board may create and maintain a water resources management committee, a citizens' advisory board, and/or any other advisory boards it deems advisable.

VII. Indemnification.

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

advance, or reimburse each Director for the cost of a policy insuring each Director against losses resulting from the actions and claims and costs against which such Director is indemnified under the provision of this Article.

(B) Employees. Employees, if any, shall be indemnified pursuant to the provisions of the Governmental Immunity Act, Section 24-10-101, et seq., C.R.S., as amended.

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

IX. Assets Held in Trust. All assets and properties of the Authority shall be held in trust for the purposes herein mentioned, including payment of liabilities of the Authority.

X. Non-Impairment of Water Providers' Powers. Nothing in this Agreement shall be deemed to restrain any of the powers of any Party or Participant including, but not limited to, the sale or furnishing of water and wastewater service by any Party or Participant to any entity, public or private, within or outside the boundaries of such Party or Participant, except as otherwise limited by law or by contract.

XI. Term and Termination.

(A) Term. This Agreement shall become effective when it has been duly executed by all Parties referenced on page one of this Agreement. The term of this Agreement shall be unlimited, and shall extend until terminated as provided herein.

(B) Termination. This Agreement may be terminated at any time by written agreement of all Parties at the time of such termination.

(C) Consolidation by a Party. Consolidation by a Party with another Party or non-Party to form a single legal entity shall not terminate this Agreement nor cause a withdrawal by the consolidating Party or Parties. All rights and obligations of such consolidating Party or Parties shall inure to the consolidated entity created by such Party or Parties, except that no consolidation by a Party shall increase any non-consolidating Party's share of any required capital contributions without the written consent of such non-consolidating Party.

(D) Distribution on Termination. In the event of the rescission or termination of this Agreement and the dissolution of the Authority, all of the assets of the Authority shall immediately vest in the entities that are Parties at the time of rescission or termination, subject to any outstanding liens, mortgages, distributions to prior withdrawing Participants or Parties, or other pledges of such assets. The interest in the general assets of the Authority conveyed to each Party shall be that proportion

which the total amount paid by such Party to the Authority for such assets bears to the total dollar

amount of all payments made to the Authority by all Parties. The Parties may, however, otherwise provide, by unanimous agreement, for disposition of any and all interests of the Authority to any successors to the Authority, or for any alternative disposition among the Parties or to third parties upon payment of adequate consideration therefore.

XII. Financial.

(A) Initial Funding. The initial Services of the Authority may be funded by revenues paid to the Authority by Douglas County in an amount determined at the sole discretion of the BOCC.

(B) Douglas County Rural Water Public Improvement District. The ongoing Works of the Authority including development, exploration and evaluation of water supply plans, Services, Projects or Facilities may be funded in whole, or in part, by a public improvement district, which may be organized and formed under Article 20, Title 30, C.R.S.

(C) Project Public Improvement Districts. The Authority anticipates that additional project-specific public improvement districts may be formed to facilitate the construction and financing of Projects and Facilities of specific benefit to Parties and Participants and for the general benefit of Rural Water Users.

(D) Negotiable Instruments. All checks, drafts or other orders for payment of money shall be issued in the name of the Authority, and in such manner as, from time to time, shall be determined by motion of the Board, except that all notes, bonds, or other evidences of indebtedness shall be issued by resolution.

(E) Budget. The Authority shall comply with the requirements of the Colorado Local Government Budget Law, Article 1, Title 29, C.R.S. The Treasurer shall have the duty to prepare and recommend an annual operating budget to the Board no later than October 15th of each year for the next succeeding calendar year.

(F) 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 or other financial institutions as the Board may select.

(G) Fiscal Years. The fiscal year of the Authority shall be January 1 through December 31.

(H) Debt Not That of Parties. The bonds, notes and other obligations of the Authority shall not be the debts, liabilities or obligations of the Parties or Persons which may become future Parties, unless provided by written consent of the Parties in compliance with law.

(I) Fees. The Board may establish general and/or special fees, rates, and charges for the use of the Authority's Services. The Authority may use any method legally available to collect such fees, rates, and charges and may terminate any Services or automatically exclude a person or affected land for failure to pay.

(J) Funds of Parties and Participants. The Authority may receive from the Parties and Participants funds as contributions to defray the costs incurred under this Agreement, and as advances for any purpose allowed under this Agreement, subject to terms of repayment as agreed to by the Board.

(K) Revenue Bonds and Other. The Authority is authorized to evaluate all legal financing options and may recommend and utilize any legal financing option(s). This includes, but is not limited to, the ability to issue revenue bonds, payable from rates, fees and charges, for the purpose of financing costs of Projects and Facilities.

XIII. Eminent Domain.

(A) General Powers. The Authority shall have, and may exercise in the manner provided by law, the power of eminent domain and to condemn property for public use within the limits of and subject to the following limitations:

(B) Resolution of the Board. The power of eminent domain shall be used only upon a finding, approved at a public hearing by at least two-thirds (2/3) of the Directors, that acquisition of a specified property, or interest therein, is essential, necessary and vital to the provision of public water supplies to Persons within the Service Area of the Authority and that the acquisition of such specified property has an overriding public purpose. Prior to making such findings, the Board shall require that all reasonable efforts were previously made to negotiate a purchase price, that there is an impasse, and that further negotiation would be futile. Property or an interest therein which is subject to, or burdened by, a conservation easement, shall not be acquired by means of the power of eminent domain or condemnation except in the most extreme necessity when no other reasonable route for the pipeline can be utilized to avoid utilizing the surface of the conserved property for construction and maintenance of the pipeline, such as routing the pipeline around the perimeter of the conserved property or directionally drilling the pipeline from a drillsite outside the conserved property. In an instance where the development of water and the placement of facilities have been considered in the creation of the conservation easement, Works of the Authority shall abide by the terms of said conservation easement. The Board shall make such finding by resolution setting forth the basis of public need for the property prior to authorizing the use of the power of eminent domain.

(C) Property Owner Notification & Hearing. The Authority shall, in all cases where the power of eminent domain is or may be applied, notify the reasonably identified owner(s) of such property to be condemned by certified mail at least thirty-five (35) calendar days in advance of the date and time of the public hearing at which time the resolution specified in Section B above is to be considered by the Board. Mailing of the hearing notice along with a copy of the proposed resolution to the owner(s) shall constitute notice under the provisions of this article.

(D) Eminent Domain Process Shall Follow State Law. Notwithstanding specific requirements contained in this Section, the Authority shall follow all procedures and processes specified in the law of the State of Colorado with respect to the matters of eminent domain. However, the Authority shall not be permitted to exercise its power of eminent domain within the boundaries and/or service area of a Party or a Small Water System Provider Participant without their consent.

(E) No Impairment. The actions, activity or authority of any Party or Participant within Douglas County shall not be impaired or affected by the provision of this Article XIII.

XIV. Miscellaneous.

(A) 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, by facsimile, or sent by registered or certified mail, postage prepaid to the Parties at the addresses as set forth on each signature page attached hereto, unless another address is certified to the Authority.

(B) No Third Party Beneficiaries. Nothing in this Agreement shall be deemed to create any third party benefits or beneficiaries, or create a right or cause of action for the enforcement of its terms, in any entity or person not a Party to this Agreement.

(C) Amendments. This Agreement may be amended only by affirmative vote of two-thirds (2/3) of the Directors then in office; provided, however, that such amendment shall not affect other obligations outstanding of the Authority unless provision for full payment of such obligations, by escrow or otherwise, has been made pursuant to such obligations. Upon any amendment to this Agreement, a Party may withdraw if it delivers written notice to the Authority within ninety (90) days of the date of such amendment. Upon timely delivery of such written notice, such withdrawal shall be effective thirty (30) days from the date of such notice.

