

RESOLUTION NO. 19-17

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE APPROVING THE ST. VRAIN WATER AUTHORITY ESTABLISHING CONTRACT BY AND BETWEEN THE TOWN OF FIRESTONE AND THE LITTLE THOMPSON WATER DISTRICT PURSUANT TO C.R.S. § 29-1-204.2, *et. seq.*

WHEREAS, the Town of Firestone (“Firestone”) and the Little Thompson Water District (“LTWD”) are authorized by the provision of C.R.S. §29-1-204.2, *et seq.*, to establish a water authority to be used to effect the development of water resources, systems and facilities, for use, in whole or in part, to benefit of the inhabitants and service users of the contracting parties or others at the discretion of the board of directors of the authority; and

WHEREAS, Firestone desires to enter into an establishing contract with LTWD for the establishment of the St. Vrain Water Authority, as further described in the St. Vrain Water Authority Establishing Contract (the “Establishing Contract”) attached hereto; and

WHEREAS, Firestone wishes to appoint four initial Directors as described in the Establishing Contract.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO

Section 1. The proposed Establishing Contract between the Town of Firestone and Little Thompson Water District for the establishment of the St. Vrain Water Authority (the “Authority”) is hereby approved in essentially the same form as the copy of such Establishing Contract accompanying and made a part of this Resolution.

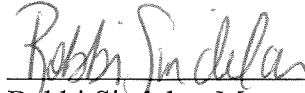
Section 2. The Mayor is hereby authorized to execute the Establishing Contract on behalf of the Town, except that the Mayor, and/or the Town Manager on the Mayor’s behalf is hereby granted the authority to negotiate and approve such revisions to the Establishing Contract as necessary or desirable for the protection of the Town, so long as the essential terms and conditions of the Establishing Contract are not altered.

Section 3. Pursuant to Article 3.1.1.1. of the Establishing Contract, Firestone is authorized to appoint four initial Directors to the Board of Directors for the Authority. The Board of Trustees hereby appoints Frank A. Jimenez , David Lindsay, Julie Pasillas and Julie Svaldi to act as initial Directors of the Authority. The Board of Trustees reserves the right to remove any of those Directors hereby appointed at any time with or without cause and appoint a replacement for such Director.

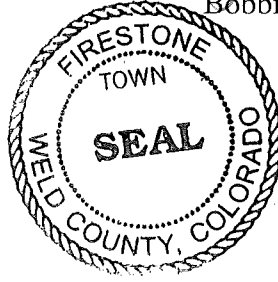
Section 4. Any obligations expressed in the Establishing Contract are subject to and conditioned upon execution of the Establishing Contract by LTWD.

PASSED AND ADOPTED THIS 24th DAY OF APRIL, 2019


TOWN OF FIRESTONE, COLORADO



Bobbi Sindelar, Mayor




ATTEST:



Leah Vanarsdall, Town Clerk

APPROVED AS TO FORM:



William H. Hayashi, Town Attorney

ST. VRAIN WATER AUTHORITY ESTABLISHING CONTRACT

THIS ST. VRAIN WATER AUTHORITY ESTABLISHING CONTRACT (“Contract”) is made and entered into, effective as of April 24, 2019 (“Establishment Date”) by and between the Town of Firestone, a Colorado municipal corporation and political subdivision of the State (“Firestone”), and Little Thompson Water District, a quasi-municipal corporation and political subdivision of State (“Little Thompson”), individually referred to herein as a “Member” and collectively referred to herein as the “Members.”

RECITALS

WHEREAS, the Town of Firestone is a duly organized and existing Colorado municipal corporation and is authorized to own and operate water systems or facilities; and

WHEREAS, Little Thompson Water District is a duly organized and existing quasi-municipal corporation and is authorized to own and operate water systems or facilities; and

WHEREAS, Firestone and Little Thompson are authorized by the provisions of Colo. Const. Art. XIV, §18, C.R.S. 29-1-201, *et seq.*, and C.R.S. §31-35-402 to enter into contracts with other political subdivisions of the State of Colorado; and

WHEREAS, Firestone and Little Thompson are authorized by the provision of C.R.S. §29-1-204.2, *et seq.*, to establish a water authority to be used to effect the development of water resources, systems and facilities, in whole or in part, for the benefit of the inhabitants and service users of the contract parties or others at the discretion of the board of directors of the authority; and

WHEREAS, Firestone and Little Thompson have determined it is in the best interests of their constituents and service users to establish a water authority.

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated by reference into this Contract, and in consideration of the mutual promises and undertakings herein, the Parties agree as follows:

ARTICLE 1. NAME OF AUTHORITY

- 1.1. Name. The name of the entity hereby established shall be the St. Vrain Water Authority (“Authority”).

ARTICLE 2. PURPOSE AND TERM OF AUTHORITY

- 2.1. Purpose. The purpose of the Authority is to effect the development of systems and facilities for purposes of furnishing a potable water supply for the benefit of the Members and their constituents and service users. By this Contract, the Members intend to establish an entity for the purposes of financing, designing, constructing, acquiring,

operating, maintaining, and utilizing water resources, facilities and services of such Authority in conjunction and cooperation with the Members.

- 2.2. Term. In accordance with C.R.S. §29-1-204.2(2)(d), this Contract shall continue until terminated pursuant to a written resolution and unanimous vote of the Board of Directors of the Authority in favor of termination and by ratification of such termination by the governing bodies of each of the Members. However, this Contract may not be 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 by the Board of Directors pursuant to terms of such obligations at the time of termination.
- 2.3. Termination. In the event of the termination of this Contract and dissolution of the Authority, all rights, title and interest of the Authority in the General Assets (as hereinafter defined) of the Authority shall be conveyed to the Members who are at the time of the termination, tenants-in-common subject to any outstanding liens, mortgages or other pledges of such General Assets. The interest in the General Assets of the Authority conveyed to each Member shall be that proportion of the Defined System Capacity to which each Member is dedicated as described in Article 5. The term "General Assets" as used herein shall include all legal and equitable interests in real or personal property, tangible or intangible, of the Authority.

ARTICLE 3. GOVERNING BODY

- 3.1. Board of Directors. The Board of Directors (the "Board" and the "Directors") shall consist of five (5) Directors. Each Member shall be entitled to appoint at least one (1) Director. Each Member with at least 0.5 million gallons per day (MGD) of Defined System Capacity shall be entitled to appoint at least three (3) Directors. The remaining Director(s) shall be appointed by Members proportionate to the percentage of the Defined System Capacity to which the Member is dedicated as described in Article 5¹. The Directors appointed by the Members may include any or all of the Directors of the governing bodies of each of the Members.
- 3.1.1. Term of Directors. Each Director shall serve a term of three years. However, the terms of the Board of Directors shall be staggered so that the first term of each Director shall be as follows: the first Director appointed by each Member shall serve a full three year term; the next two (2) Directors appointed by the Members, as apportioned pursuant to 3.1 above shall serve two year terms; the last Director appointed by the Members shall serve a one-year term. Upon expiration of a term, a Director shall continue to serve until a successor Director has been appointed by the Member entitled to make such appointment. Nothing herein shall preclude re-appointment of a Director by a Member for consecutive terms.

¹ Any Defined System Capacity not attributable to Members pursuant to Plant Investment Fees made by Members shall not be included when determining the number of Directors each Member is entitled to appoint to the Board. This is intended to exclude any portions of the Defined System Capacity used to serve Non-Member Contractees.

- 3.1.1.1. Initial Directors. For the first appointments made to the Board by the Members, Firestone shall be entitled to appoint four Directors to the Board of Directors and Little Thompson shall be entitled to appoint one Director to the Board of Directors. The length of the terms of the Directors shall be in accordance with the term lengths described above. The number of Directors shall be re-apportioned at the end of Director terms as described in this Article 3.
- 3.1.2. Vacancy. A vacancy occurring on the Board, for reasons other than expiration of the outgoing Director's term of office shall be filled by the selection of a successor Director by the Member for which the outgoing Director was appointed, or the successor to such Member. Vacancies other than by expiration of term of office shall be filled for the remainder of the unexpired term. Any Member may remove a Director which it appointed with or without cause. At the expiration of any term of office for a Director(s), any vacant seat on the Board shall be allocated to Members as described in Paragraph 3.1 above and a Director shall be appointed by the Member entitled to do so.
- 3.1.3. Board Shall Conduct Business of the Authority. The Board shall conduct the business of the Authority in good faith and utilizing a reasonable businessperson standard.
- 3.1.4. Expansion of Board of Directors. Upon the increase in Membership of the Authority as provided by Article 6, or upon Amendments to this Contract approved by the current Members as provided in Article 7, the number of Directors of the Authority's Board of Directors may be increased. However, no such Amendment shall result in the number of Directors being an even number.
- 3.2. Meetings. Regular meetings of the Board shall be held at such place, on such day, and at such hour as the Board shall, by resolution, from time to time establish. Special meetings may be held at any time and at any place within the State of Colorado provided at least seventy-two (72) hours notice is delivered to the home or place of employment of each Director and the address of each Member provided below. The President or Vice President may, and on the written request of three (3) Directors, shall, call a special meeting of the Board. Any director may include an item for discussion or action on the Board agenda, provided that such item or action is included at least seventy-two (72) hours prior to the commencement of the meeting. The Authority is a political subdivision and public corporation of the State of Colorado, separate from the Members, within the meaning of the Colorado Open Meeting Law, C.R.S. §24-6-401, *et seq.*
- 3.2.1. Quorum. A quorum of the Board of Directors is more than one-half of the number of Directors serving on the Board. A quorum shall be necessary for any action to be taken by the Board.
- 3.2.2. Voting. Unless otherwise specifically provided for herein, a vote of a majority of the directors in attendance at a meeting of the Authority shall be sufficient for action

to be taken by the Board, provided a quorum is in attendance and available to vote on the action.

- 3.3. Officers and Duties. The Directors shall elect annually at the first meeting of each calendar year, a President, a Vice-President, a Secretary and a Treasurer, provided however, that the Secretary may be a person other than a Director, and provided further that the same person may serve as both Secretary and Treasurer (provided that such Secretary/Treasurer is a Director). The President shall chair all meetings. Whenever the President is absent, the Vice-President shall assume all duties of the President. The Secretary shall keep in a visual text format that may be transmitted electronically, a record of all the Authority's proceedings, minutes of all meetings, certificates, contracts, bonds given by employees, and all corporate acts. The Treasurer shall keep strict and accurate accounts of all money received by or disbursed for and on behalf of the Authority in permanent records.
- 3.4. Budgets, Accounting and Audits. The Board shall comply with C.R.S. §29-1-204.2(20)(b)(IV) and all other applicable State and Federal laws and shall make provisions for annual budgets, and audits when required, in accordance with local government accounting standards including Parts 1, 5 and 6, Article 1, Title 29, C.R.S., as amended. Annual budgets and the results of any audits shall be presented to each Member no more than 30 days after review by the Board.
- 3.5. Indemnification. The Authority shall, to the extent permitted by law, indemnify and defend each Director, 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 his or her official capacity by reason of his or her being or having been such Director or officer, or by reason or any action or omission by him or her in any such capacity. The Authority shall have no obligation to indemnify and defend any such Director or officer for any claim, suit, action or proceeding arising out of criminal offenses or willful and wanton misconduct of such Director or officer.

ARTICLE 4. POWERS OF THE AUTHORITY

- 4.1. The Authority shall have all general powers of an authority organized and operating pursuant to C.R.S. §29-1-204.2, which include the following:
 - 4.1.1. To develop water resources, systems or facilities or conveyance and drainage facilities in connection to water treatment, in whole or in part for the benefit of the inhabitants or service users of the Members, at the discretion of the Board of Directors of the Authority, subject to fulfilling any conditions or requirements set forth in this Contract;
 - 4.1.2. To make and enter into contracts;
 - 4.1.3. To employ agents and employees;
 - 4.1.4. To acquire, construct, manage, maintain, or operate water systems, facilities, works, or improvements, or drainage facilities, or any interest therein;

- 4.1.5. To acquire, hold, lease (as lessor or lessee), sell, or otherwise dispose of any real or personal property utilized for the purposes of water treatment, distribution, and wastewater disposal, or of conveyance and drainage;
 - 4.1.6. To condemn property for use as rights-of-way only if such property is not owned by any public utility and devoted to such public use pursuant to state authority;
 - 4.1.7. To incur debts, liabilities, or obligations;
 - 4.1.8. To sue and be sued in its own name;
 - 4.1.9. To have and use a corporate seal;
 - 4.1.10. To fix, maintain, and revise fees, rates, and charges for functions, services or facilities provided by the entity;
 - 4.1.11. To adopt, by resolution, regulations respecting the exercise of its powers and carrying out its purpose;
 - 4.1.12. To exercise any other powers which are essential to the provisions of functions, services, or facilities by the entity and which are specified in this contract;
 - 4.1.13. To do and perform any acts and things authorized by this Contract, under, through, or by means of an agent or by contracts with any person, firm, or corporation;
 - 4.1.14. To provide for the rehabilitation of any surfaces adversely affected by the construction of water pipelines, facilities, or systems or of drainage facilities through the rehabilitation of plant cover, soil stability, and other measures appropriate to the subsequent beneficial use of such lands;
 - 4.1.15. To operate as an "Enterprise" under Colorado Constitution Article X, Section 20.
- 4.2. Financial Powers. The Authority is a political subdivision and a political corporation of the State of Colorado, separate from the Members. It shall have the duties, privileges, immunities, rights and liabilities of a public body politic and corporate. The provision of Articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of the Authority.
- 4.2.1. The bonds, notes, and other obligations of the Authority shall not be the debts, liabilities, or obligations of the Members.
 - 4.2.2. The Authority is authorized to receive funds from proprietary revenues for services rendered by the Authority, from proprietary revenues or other public funds as contributions to defray the cost of any purpose set forth in this Contract and from proprietary revenues or other public funds as advances for any purpose subject to repayment by the Authority.
 - 4.2.3. The Authority shall operate as an "Enterprise" as that term is defined under Colorado Constitution Article X, Section 20.
 - 4.2.4. To carry out the purposes for which the Authority is established, the Authority is authorized to issue bonds, notes, or other obligations payable solely by the revenues

derived from the function, service, system or facility or the combined functions, services, systems, or facilities of the entity or from any other available funds of the Authority. The terms, conditions, and details of said bonds, notes, and other obligations, the procedures related thereto, and the refunding thereof shall be set forth in the resolution authorizing said bonds, notes or other obligations.

ARTICLE 5. SERVICES OF THE AUTHORITY

- 5.1. Standards of Service. Any improvements operated by the Authority shall substantially comply with all applicable federal, state and local statutes, regulations, ordinances, permits and orders, including without limitation, the Federal Clean Water Act and Safe Drinking Water Act. Where applicable, the Authority shall promulgate water quality standards, treatment standards and discharge standards for all Authority improvements.
- 5.2. Water Treatment for Members. The Authority shall treat and deliver water to Members from supplies, including augmentation supplies, furnished to the Authority by Members. Members shall enter into a separate contract with the Authority, as authorized pursuant to C.R.S. § 29-1-203, which shall define the terms and extent of the service provided by the Authority to the Member(s) and the obligations of each Member for delivery of water supplies (the "Member's IGA"). Each Member's IGA with the Authority shall be amended from time to time as necessary to reflect changes in the Authority's service responsibilities and capabilities. Each original Member shall enter into a Member IGA with the Authority within ninety-one (91) days after the Establishment Date of the Authority.
- 5.3. Water Treatment for Non-Members. The Authority may enter into contracts to treat and deliver water to Non-Members from supplies, including augmentation supplies, dedicated to the Authority by the Non-Member Contractees, or otherwise available to the Authority. The Board may determine the terms and conditions of such service to Non-Member Contractees, including the assessment of any fees which the Authority must levy in order to build additional Defined System Capacity necessary to serve Non-Member Contractees. Such additional Defined System Capacity shall not be dedicated to Members unless and until the Authority no longer has an obligation to supply water to the Non-Member Contractees.
- 5.4. Rates and Charges. The Authority shall impose and collect reasonable and equitable operating rates and charges to recover the costs of operating, maintaining, repairing, replacing, and as necessary, expanding infrastructure and improvements. Such rates and charges shall be established by the Board and modified as necessary. Rates and charges may include reasonable allocations of general and administrative overhead expenses. The Board may establish different rates and charges for Members and Non-Member Contractees.
- 5.5. Allocation of Capacity in Authority's Infrastructure. Any infrastructure used by the Authority to provide services to Members and Non-Member Contractees, which is owned, leased or otherwise controlled by the Authority shall be the Defined System

Capacity of the Authority². The Defined System Capacity shall be determined by the Board each year and each Member shall be notified of such determination. Each Member shall be entitled to that portion of the Defined System Capacity which is dedicated to that Member by that Member's IGA. A Member's dedicated Defined System Capacity shall corresponds to the Plant Investment Fee made by such Member. Plant Investment Fees may be made in kind or in cash. In kind contributions shall have the value agreed upon between the Member and the Authority. A minimum Plant Investment Fee sufficient for at least 0.25 MGD of Defined System Capacity, as determined by the Authority, shall be required by each Member in the Member's IGA. Payment of a Member's Plant Investment Fee may be deferred until such date(s) the Member intends to acquire and utilize the Member's Defined System Capacity.

5.5.1. In addition to a Plant Investment Fee, each Member shall pay a Subscription Fee, reserving the amount of Defined System Capacity for the exclusive use of the Member. The Subscription Fee shall be described in the Member's IGA. The intent of the Subscription Fee is to cover those amounts of Non-Construction Costs³ related to the treatment plant, paid by the Authority and/or its Members. As with the Plant Investment Fee, payments can be paid in kind or in cash. Members may be credited for funds spent on behalf of the Authority prior to its creation.

5.5.2. Within thirty (30) days of receipt of the annual Defined System Capacity, each Member shall provide the Authority with an estimate of the maximum water supply the Member intends to deliver to the Authority for treatment. The Authority shall treat and deliver to each Member the proportionate amount of water supply delivered to the Authority by each Member, less system losses attributable to the treatment and conveyance process. Nothing herein shall require the Authority to deliver treated water to any Member in excess of the Member's dedicated portion of the Defined System Capacity.

ARTICLE 6. ASSIGNMENT AND ADDITION OF MEMBER ENTITIES

6.1. Assignment of Membership. Each Member shall be entitled to assign their interest in this Contract to another political subdivision of the State of Colorado authorized to own and operate water systems or facilities, which entity is not already a Member to this Contract. Any such assignment must be approved by the Board prior to transfer of interest, including any terms and conditions the Board finds necessary and proper. No partial assignment shall be recognized. In event of an assignment of Membership, the governing body of the new Member shall ratify the then current terms of this Contract and cause an addendum to this Contract to be executed.

² Defined System Capacity is meant to describe the total output of treated water the Authority can provide to its Members and Non-Member Contractees on a daily basis and shall be measured in millions of gallons per day of treated water.

³ Non-Construction Costs include, but are not limited to: administrative and professional costs of creating the authority, designing the treatment plant, water quality testing, permitting etc.

- 6.2. Additional Members. Additional political subdivisions of the State of Colorado authorized to own and operate water systems or facilities may become Members upon unanimous approval by the Board. Any Member added shall be required to make a Plant Investment Fee in the amount required for the Authority to dedicate Defined System Capacity which is required to the new Member, without detriment to any existing Member's dedicated Defined System Capacity. In the event a new Member is approved by the Board, this Contract shall be amended to acknowledge the new Member and make additional changes as may be needed. Any such amendment must be ratified by the governing body of each Member.
- 6.3. Deletion of Member. Until there are more than two parties to this contract, the provisions for termination of the Authority shall govern the deletion of a party from this Contract. If an additional Member is added, the amendment to this Contract adding the new Member shall determine the procedure for deleting a Member.

ARTICLE 7. GENERAL PROVISIONS

- 7.1. Amendment. No amendment to this Contract, including an amendment adding parties to the Contract in the future, shall be effective unless it is in writing and signed by the Authority and each Member of the Authority. An amendment to add a Member to this Contract shall specify the conditions and requirements to be fulfilled by the new Member.
- 7.2. Partial Invalidity. If any portion of this Contract is determined by a court having jurisdiction to be invalid or unenforceable, such judgment shall not affect, impair or invalidate the remaining portions of this Contract, the intention being that the various provisions of this Contract are severable.
- 7.3. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Colorado and applicable federal law.
- 7.4. Fiscal Year. The fiscal year of the Authority shall begin on the 1st day of January in each year.
- 7.5. Authority. Each party hereto represents and warrants that it has all requisite power, corporate or otherwise, to execute, deliver and perform their obligations pursuant to this Contract. Each party hereto represents and warrants to the other that the execution, delivery and performance of this Contract has been duly authorized by it, and that upon execution and delivery, this Contract will constitute a legal, valid and binding obligation, enforceable against it in accordance with the terms of this Contract.
- 7.6. Notices. If under the terms of this Contract, or as needed in the regular business of the Authority, notice is to be provided to any member, said notice shall be deemed provided upon personal delivery or three (3) business days after the mailing of the same by registered or certified mail, upon receipt requested. The names or address to whom notice is to be sent may be modified by the affected Member by a written notice in writing to the Authority. Until so modified, the persons to receive notice are as follows:

The Town of Firestone

PO Box 100
Firestone, CO 80520
Attn: Julie Pasillas

Little Thompson Water District

835 East Highway 56
Berthoud, CO 80513
Attn: District Manager

- 7.7. No Third Party Beneficiaries. Nothing herein shall be construed to create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent or contractor of the Authority. No third party beneficiaries are intended by this Contract. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.
- 7.8. Notice. Notice shall be deemed to be given if provided by hand delivery, electronic mail, Federal Express (or other similar overnight service) or by registered or certified mail, with postage and fees prepaid.
- 7.9. Entire Agreement. This Contract constitutes the entire agreement among the parties pertaining to the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings of the parties as to the subject matter of this Contract. No representation, warranty, covenant, agreement or condition not expressed in this Contract shall be binding upon the parties or shall change or restrict the provisions of this Contract.
- 7.10. Amendment. This Contract may be amended from time to time upon a unanimous vote of the Board of Directors and ratification by the governing body of each Member.
- 7.11. Governmental Immunity Nothing in this Contract shall be construed as a waiver of the rights and privileges of the Members pursuant to the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*
- 7.12. Counterparts. This Contract may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned Members have caused this instrument to be executed as of this ___ day of _____, 2019.

TOWN OF FIRESTONE

By: Robbi Sindilan
Title, Mayor

ATTEST: Name
Title

Leah Vonnardall
Town Clerk



[Seal]

LITTLE THOMPSON WATER DISTRICT

By: [Signature]
Title DISTRICT MANAGER
4/22/2019

ATTEST: Name
Title

[Signature]
Nancy Koch
Water Resources Manager

[Seal]

