

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 10, SERIES 2022**

A RESOLUTION APPROVING A CROSSING AGREEMENT FOR THE TROC TRAIL

WHEREAS, the Town Council of the Town of Timnath (“Town”) pursuant to C.R.S. § 31-15-103, has the power to pass resolutions; and

WHEREAS, the Town Council is familiar with the TROC Trail Project, its alignment, and the location of the Crossing of the TROC Canal with a Pedestrian Bridge; and

WHEREAS, the Town Council finds approving the Agreement for the Crossing to be in the best interest of the Town, its residents, and the general public;

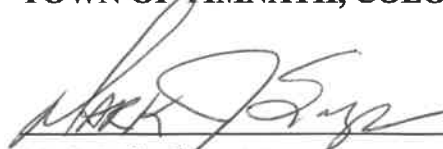
NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO as follows:

Section 1. Approval

The Agreement attached to this resolution is approved in form as depicted in the staff report and attached hereto, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Town Planner, Engineer, Legal Counsel, and other applicable staff or consultants. Furthermore, the Town Manager is authorized to enter into the agreement.


INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON FEBRUARY 22ND, 2022.

TOWN OF TIMNATH, COLORADO

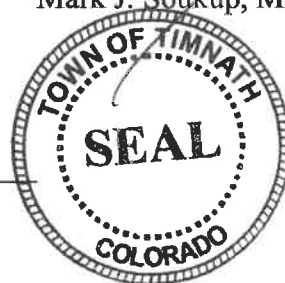


Mark J. Soukup, Mayor

ATTEST:



Milissa Peters-Garcia, CMC
Town Clerk



**CROSSING AGREEMENT
FOR
THE TOWN OF TIMNATH TRAIL PROJECT
(Cache La Poudre Reservoir Company)**

THIS AGREEMENT (“Agreement”), made this 22 day of February, 2022, by and between the TOWN OF TIMNATH (hereinafter “Town”), and THE CACHE LA POUFRE RESERVOIR COMPANY, a Colorado mutual irrigation company (hereinafter “Company”). Town and Company are hereinafter referred to as the “Parties” or individually as a “Party”.

FACTUAL RECITALS

A. The Company is the owner and operator of a ditch commonly known as the Timnath Reservoir Outlet Canal (TROC) (hereinafter called the “Ditch”). The Ditch transports water and a portion of the Ditch exists and travels through and across an area of land that is relevant to this Agreement in Section 1, Township 7 North Range 68 West of the 6th P.M. as depicted in **Exhibit A**, attached hereto and incorporated herein by this reference (the “Property”).

B. The Company has a valid and existing right-of-way and easement for the Ditch and sufficient lands on each side of the Ditch on the Property to allow the Company to fully enjoy and utilize the easement and right of way (the “Ditch Easement”) as stated in the First Amendment to the Agreement Granting the Town of Timnath a Perpetual Easement for the Use and Maintenance of A Recreational Trail Upon the Properties of the New Cache La Poudre Irrigation Company and The Cache La Poudre Reservoir Company.

C. The Town desires to cross the Ditch and Ditch Easement with a trail for public recreational purposes including motorized use by disabled persons and non-motorized public use including but not limited to bicycles, hikers, walkers, on, over, and across that portion of the Company easement with a pedestrian bridge, herein as the “Improvements.” The Improvements are generally depicted in **Exhibit B** and Titled TROC Trail Improvement Plans and the area of the Property impacted by the construction and existence of the Improvements is referred to herein as the “Crossing Area.” **Exhibit B** is attached hereto and incorporated herein by this reference.

D. The Company is willing to grant permission and otherwise consent to the Town crossing the Ditch Easement for the recreational purposes described above, and for the construction, replacement and on-going maintenance of the Improvements within the Crossing Area. The Company has reviewed and approved the plans and specifications for the Improvements and Town shall construct the Improvements in accordance with such approved plans and specifications.

E. The Company also consents to the Town obtaining from the owner of the Property a subordinate, perpetual, non-exclusive right-of-way for the Improvements within the Crossing Area and for on-going maintenance of the Improvements, as well as a temporary right-of-way to

construct and install, and as needed, replace the Improvements, provided that all plans and specifications for the Improvements are provided to and approved by the Company prior to construction and replacement as set forth below. The time period spent constructing and installing the Improvements is referred to herein as the "Construction Phase."

F. The Company's consent and permission is granted on the understanding of the Parties that the public's use of the Crossing Area is considered a "recreational purpose" within the meaning of C.R.S. § 33-41-102(5) and the Company's liability is limited in accordance with C.R.S. § 33-41-101, *et. seq.*, and any other applicable law.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Company, the parties mutually agree as follows:

1. The above Factual Recitals are incorporated herein as if fully set forth.
2. For the sum of Ten Thousand dollars (\$10,000), paid upon the execution of this Agreement and, the Company hereby grants permission to and otherwise consents to the Town crossing the Ditch Easement for recreational purposes described in the recitals above, but not to exceed "recreational purpose" as defined in C.R.S. § 33-41-102(5).
3. The Company also consents to the Town obtaining a permanent, non-exclusive right-of-way for the use, existence and maintenance of the Improvements within the Crossing Area from the owner of the Property provided such right-of-way is subordinate to the Company's Ditch easement and otherwise consistent with this Agreement. The Company further consents to Town obtaining from the owner of the Property a temporary right-of-way on, over and across the Crossing Area for the purpose of constructing, replacing and installing the Improvements in the manner and at the location designated and described in this Agreement and shown on **Exhibit A** (the "Construction Easement") provided such temporary right-of-way is subordinate to the Ditch Easement and otherwise consistent with this Agreement.
4. Town shall obtain all necessary consents, authorizations and permits and shall perform the construction and installation or replacement of the Improvements in accordance with all applicable laws, rules, regulations, plans and specifications for the design, construction, repair and/or maintenance of the Improvements. Prior to any construction, maintenance, repair or replacement of the Improvements, Town shall provide final plans and specifications and obtain the Company's written approval of such plans and specifications and any contemplated work prior to exercising its rights pursuant to this Agreement, which approval will not be unreasonably withheld. The Company's review and any approval of such plans and specifications and the contemplated work shall not constitute an engineering review or supervision and does not affect, release and/or limit Town from any obligation, responsibility or liability to conduct such work in accordance with this Agreement and with all applicable governmental rules and regulations, or for the design, construction, repair and/or maintenance of the Improvements. All construction,

maintenance and repair of the Improvements thereto shall be done by Town, entirely without cost to the Company.

5. The Company makes no representation or warranties beyond the consent and permission granted herein to the Town to cross the Ditch Easement; and it is the Town's sole obligation to obtain any additional grants or consents from the owners or interest holders in the lands underlying and surrounding the Ditch, Ditch Easement, Crossing Area and/or the Property generally, or the owners of any existing pipelines, utility lines or other structures on, over, across or under the Property or other lands surrounding the Ditch, Ditch Easement and/or Crossing Area prior to commencing construction of the Improvements. The Company shall be without liability for any damage to said owners or interest holders as a result of Town's exercise of its rights pursuant to this Agreement, except as to such damage as may be caused by the gross negligence or willful misconduct of the Company.

6. The Improvements shall be constructed, replaced, maintained and repaired by Town, at its expense, upon notice to the Company as recited above; however, in the event any sum is expended by the Company, after reasonable attempts to notify Town, for emergency repairs and maintenance of the Improvements that are necessary to maintain or restore proper functioning of the Ditch, Town shall reimburse the Company for such reasonable costs, fees and/or expenses related to such repairs and maintenance. In the event that the Company finds it necessary to make any emergency repairs and maintenance to the Improvements, the Company shall be without liability for damage to Town, its agents, employees and/or other third parties, including without limitation all landowners, homeowners and business owners in or surrounding the Ditch, Ditch Easement and Crossing Area, except as to such damage as may be caused by the gross negligence or wanton and willful misconduct of the Company.

7. In the event that the Company finds it necessary to make repairs and maintenance to the Ditch and/or the Ditch Easement, either now or at any future time, the Company shall be wholly without liability for damage to the Improvements, as the result of the making of such maintenance and repairs, except as to such damage as may be caused by the Company's gross negligence or wanton and willful misconduct; prior to performing any such repair or maintenance that is reasonably expected to adversely impact the Improvements, the Company will notify Town and will cooperate with the Town to minimize the risk of damage to the Improvements. In the event the Company determines repair or maintenance of the Ditch or the Ditch Easement is required or advisable, and such repair or maintenance is necessitated by the existence, construction, installation, surveying, inspection, operation, maintenance, repair or replacement of the Improvements, the Town will promptly repair and maintain the Ditch and the Ditch Easement to the reasonable satisfaction of the Company, or alternatively, if the Town fails to perform the work, the Company shall perform or cause to be performed such repair and maintenance and Town shall promptly reimburse the Company for the reasonable costs and expenses of such repair and maintenance. Determination of whether repair or maintenance to the Ditch and the Ditch Easement is necessary or advisable and the nature and extent of such repair or maintenance shall be in the Company's sole discretion.

8. The Company's consent and permission is strictly conditioned upon the Company retaining full power to operate, maintain, alter, enlarge, relocate, clean and manage the Ditch and Ditch Easement as if this Agreement had not been made, and any expense and/or damages caused thereby to Town shall not be chargeable to the Company, except as to such damage as may be caused by Company's gross negligence or wanton and willful misconduct. In the event, however, that any such action on the part of the Company could reasonably be expected to affect the Improvements, except in the event of emergency repairs, the Company agrees to give prior notice to Town and to reasonably cooperate with Town to avoid injuries or damages to the Improvements. In the event that the Company finds it necessary to perform emergency repairs to the Ditch and Ditch Easement, either now or at any future time, the Company shall be wholly without liability for damages to the Improvements as the result of the performance of said repairs, except as to such damage as may be caused by gross negligence or wanton and willful misconduct. Determination of whether an emergency exists shall be at the sole discretion of the Company.

9. The Construction Phase shall be completed by May 1st, 2022 unless written consent by the Company for an extension is granted, and shall be accomplished during the non-irrigation season, unless otherwise agreed to by the Company. In the event the Improvements are replaced in the future, an additional Construction Phase that also is during the non-irrigation season shall be negotiated to by the parties, unless the Company agrees in writing to a Construction Phase during the irrigation season.

10. The Construction Phase, and any subsequent maintenance, repair and/or replacement of the Improvements shall be entirely without disturbance of the flow of water into the Ditch, unless permission in writing is first received from the Company for such disturbance. Without waiving any requirements, limitations, immunities and benefits of the Colorado Governmental Immunity Act, now in effect and as may be amended, and only to the extent permitted by law, Town expressly agrees that it shall be liable to the Company and/or its shareholders for actual damages, including without limitation crop damages of its shareholders, for any unauthorized use or disturbance of the flow of water through the Ditch caused by the Town or the Improvements, without the Company's prior written permission. Upon completion of any activity upon the Crossing Area by Town, Town shall clean the Ditch and ditch bank area to cause it to be in substantially the same or better condition than existed prior to commencement of such activity, including the compacting of any disturbed soils.

11. Upon the completion, repair or replacement of the Improvements, Town shall promptly notify the Company, and the Parties shall jointly inspect the Ditch at the location of the Improvements. If there are any deficiencies in the work of Town or any variation from the plans, Town shall forthwith remedy the same. In so doing, Town shall meet all reasonable requirements of the Company for the protection of the Ditch comparable to conditions prior to the construction of the project.

12. The Improvements shall be owned by Town. Installation, construction, repair, replacement and/or maintenance of the Improvements shall be entirely without cost to the Company.

13. Without waiving any requirements, limitations, immunities and benefits of the Colorado Governmental Immunity Act, now in effect and as may be amended, and to the extent permitted by law, Town shall be liable for actual damages and reasonable attorney's fees incurred by the Company, its officers, directors, employees, shareholders and successors and assigns, arising from Town's wrongful or negligent acts or omissions related to installation, maintenance, repair, replacement, or malfunction of the Improvements or arising out of the Town's (including its employees) use of the Crossing, Crossing Area or Improvements including, but not limited to, any personal injuries, deaths, property damage, mechanic's liens or other claims and causes of action of any kind. It is the Parties understanding and agreement that the Company's consent and permission granted herein does not include any recreational uses beyond a "recreational purpose" as defined in of C.R.S. § 33-41-102(5), and the Company's liability is limited in accordance with C.R.S. § 33-41-101, *et. seq.*, and any other applicable law.

14. Town hereby covenants and agrees:

A. Town shall not install a fence, plant trees, brush or vegetation that obstructs access to the Ditch, the Ditch Easement or the Crossing Area, or construct any building within the Ditch, the Ditch Easement or Crossing Area, unless written authorization is first received from the Company, except as indicated on the plans attached to this agreement.

B. Town shall promptly backfill any excavations made by it on the Ditch and Ditch Easement and repair any damage it shall do within the Ditch and Ditch Easement to the satisfaction of the Company.

C. Town shall not spill dirt, debris or other foreign material into the Ditch. In the event that dirt, debris or other foreign material is spilled into the Ditch by Town or its contractors, Town agrees to completely clean and restore the affected area of the Ditch to the Company's satisfaction.

D. If at any time the Improvements or any work by Town causes any settling in the Ditch embankments, the roads thereon, the Crossing Area or any part of the Ditch Easement, Town will upon notification from the Company, immediately make all repairs reasonably required by the Company to remedy such settling, at Town's expense.

E. The Town shall not use the Crossing Area for purposes other than set forth herein, or authorize or permit any other party to use the Crossing Area for any purpose without the written consent of the Company.

15. To protect the Ditch during construction and installation of the Improvements, Town hereby covenants and agrees to the following:

A. Any trench or other excavation in connection therewith shall be backfilled, compacted and stabilized by the Town to the satisfaction of the Company.

B. Town shall remove any hazardous materials and debris that may result from the construction and installation of the Improvements and shall prevent any such hazardous materials and debris from flowing into the Ditch.

C. Should any water seepage and/or leakage from the Ditch occur as a result of Town's construction and installation of the Improvements, Town shall repair the Ditch to stop the seepage and/or leakage to the satisfaction of the Company. In the event the Town fails to perform such repair, the Company may perform such repair and Town shall reimburse the Company for any reasonable expenses incurred in repairing the Ditch in order to stop the water seepage and/or leakage.

16. In the event either Town or the Company shall be in default in any of their covenants herein, so as to require the Party not in default to retain counsel to attempt to enforce said covenants and to commence legal or equitable action against the defaulting Party, upon a determination by the court of default, the defaulting Party shall be liable for all reasonable expenses of said litigation incurred by the enforcing Party, including, but not limited to docket fees, discovery and reasonable attorney's fees.

18. Any notice required or permitted hereunder shall be deemed effective when deposited in the United States mail, postage prepaid, first class and addressed to the party to whom notice is to be given, as follows:

If to Company: New Cache La Poudre Irrigating Company

33040 Railroad Avenue
P.O. Box 104,
Lucerne, CO 80646
Phone: 970-352-0222

If to Town: Town of Timnath

In the event a different person or entity other than the person or entity listed above shall be given notice, the other party shall be notified of this change in writing pursuant to this paragraph.

19. This Agreement, and any grant by the Company, is subject to all restrictions, reservations, rights-of-way, easements, documents or Agreements existing or of record in the Clerk and Recorder's office in Larimer County, Colorado at the time this Agreement is recorded. The Company makes absolutely no representations or warranties (including, without limitation, warranties of title) in or by this Agreement or any grant herein.

20. This Agreement shall be interpreted and enforced under the laws of the State of Colorado. In the event of arbitration or litigation, venue shall be exclusively proper in Larimer County, Colorado.

21. As provided in Section 4 above, Town's construction, repair and replacement of the Improvements shall not occur until the Company has been provided with final plans and specification for such construction, repair or replacement and said plans and specifications have been approved by the Company. The Company may make suggested revisions to the plans and specifications, and if such revisions are fully agreed to by Town in writing, with notice of such acceptance being given to the Company, then such revised plans/specifications shall be deemed approved upon receipt by the Company of such notice.

22. In the event of breach by a party, the non-breaching party shall give written notice of the breach to the other party in accordance with §18, and the notified party shall have 60 days to cure said breach.

23. A copy of this Agreement may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be duly executed by the proper officers or agents and have affixed their seals hereto on the day and year first above written.

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