

**Minutes of the Regular Meeting of the  
Board of Directors of Berry Creek Metropolitan District on November 26, 2018**

The Regular Meeting of the Board of Directors of the Berry Creek Metropolitan District (BCMD), Eagle County, Colorado held on November 26, 2018, at 3:30 p.m., at the Singletree Community Center, 1010 Berry Creek Road, Edwards, Eagle County, Colorado, in accordance with the applicable statutes of the State of Colorado.

**ATTENDANCE**

The following BCMD Directors were present and acting:

- Dan Godec
- Karen Kern
- Melissa Nelson
- Mike Reisinger
- Katie Rothenberg

Also in attendance were:

- David Greher, Collins, Cockrel & Cole (by phone)
- Ken Marchetti, Marchetti & Weaver
- Nina Timm, Community Manager

**CALL TO ORDER**

Director Godec called the Regular Meeting of the Board of Directors of Berry Creek Metropolitan District to order on November 26, 2018, at 3:30 p.m. noting a quorum was present.

**DISCLOSURE MATTERS**

Pursuant to Colorado law, certain disclosures by the Board members may be required prior to taking official action at the meeting. The Board reviewed the agenda for the meeting, following which each Board member disclosed their conflicts of interest, stating the fact and summary nature of any matters as required under Colorado law, to permit official action be taken at the meeting. The Board determined that the participation of the member's present was necessary to obtain a quorum or otherwise enable the Board to act.

**AGENDA**

There were no changes to the agenda.

**PUBLIC INPUT**

There was no public input.

**RESOLUTION TO REFINANCE EXISTING BONDS**

The Board reviewed the proposed refinancing of existing bonds issued to fund the construction of the Winslow Road Underpass. The 2027 maturity date remains the same. JP Morgan Chase will retain the bonds in their portfolio. Multiple requests to reduce the fees associated with the transaction resulted in some legal fee savings. Following the discussion, by motion duly made and seconded, it was unanimously

**RESOLVED** to adopt the Resolution as presented, authorizing the refunding of existing general obligation bonds and to issue \$2,785,000 General Obligation Refunding Bond Series 2018.

**EXECUTIVE SESSION**

Pursuant to, (CRS 24-6-402(4) (C)) – developing strategy for negotiations, instructing negotiators, and determining positions relative to matters that may be subject to negotiations, a motion was made to move

**RESOLVED** to move into executive session at 3:52 p.m. to receive information and provide input to negotiators.

The board adjourned from executive session at 4:15 p.m.

**ADJOURNMENT**

There being no further business to come before the Board, by motion duly made and Seconded, it was unanimously

**RESOLVED** to adjourn the Regular Meeting of the Berry Creek Metropolitan District Board of Directors this 26<sup>th</sup> day of November 2018.

Respectfully submitted,

Nina Timm

**RESOLUTION**

**BE IT RESOLVED BY THE BOARD OF DIRECTORS OF BERRY CREEK METROPOLITAN DISTRICT, IN THE COUNTY OF EAGLE, STATE OF COLORADO:**

**Section 1. Definitions.** The terms defined in this section shall have the designated meanings for all purposes of this Resolution and of any amendatory or supplemental resolution, except where the context by clear implication requires otherwise.

**A. “Act” means Article 1 of Title 32, C.R.S.**

**B. “Board” means the Board of Directors of the District.**

**C. “Bonds” means the District’s General Obligation Refunding Bonds, Series 2018.**

**D. “Business Day” means a day on which banks located in the city or town in which the Principal Office of the Paying Agent are not required or authorized to be closed and on which the New York Stock Exchange is not closed and a day other than Saturday or Sunday.**

**E. “Code” means the Internal Revenue Code of 1986, as amended, and as in effect on the date of delivery of the Bonds.**

**F. “County” means Eagle County, Colorado.**

**G. “C.R.S.” means the Colorado Revised Statutes, as amended and supplemented as of the date hereof.**

**H. “District” means the Berry Creek Metropolitan District in Eagle County, Colorado.**

**I. “Event of Default” means any of the events specified in the Section hereof entitled “Events of Default.”**

**J. “Federal Securities” means only direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States (or ownership interests in any of the foregoing) and which are not callable prior to their scheduled maturities by the issuer thereof (or an ownership interest in any of the foregoing).**

**K. “Outstanding” means, as of any date of calculation, all Bonds executed, issued and delivered by the District except:**

**(1) Bonds canceled by the District, Paying Agent, or Registrar or surrendered to the District or Registrar for cancellation;**

(2) Bonds in lieu of, or in substitution for, which other Bonds shall have been executed, issued and delivered by the District and authenticated by the Registrar unless proof satisfactory to the Registrar is presented that any such Bonds are duly held by the lawful Registered Owners thereof; or

(3) Bonds deemed to have been paid within the meaning of Section 16 hereof.

**L. “Owner” or “Registered Owner” means any Person who is the registered owner of any Bond as shown on the registration books kept by the Registrar, initially the Purchaser.**

**M. “Paying Agent” means, initially, the Treasurer, or his or her successors in function.**

**N. “Person” means any natural person, firm, partnership, association, corporation, limited liability company, trust, public body, or other entity.**

**O. “President” means the Chairman of the Board of Directors and President of the District, or in his or her absence, the Vice President of the District.**

**P. “Principal Office” means the principal operations office of the Registrar or the Paying Agent, as the case may be, as designated in writing by the District.**

**Q. “Prior Bonds” means the District’s General Obligation Bonds, Series 2008, originally issued in the aggregate principal amount of \$3,500,000.**

**R. “Purchaser” means JPMorgan Chase Bank, NA.**

**S. “Record Date” means the fifteenth day (whether or not a Business Day) of the calendar month immediately preceding such interest payment date.**

**T. “Redemption Date” means the first date on which the Refunded Bonds may be called for redemption as specified in the Sale Certificate.**

**U. “Refunded Bond Requirements” means the payment of (i) the interest due on the Refunded Bonds, both accrued and not accrued, as the same become due on and after the date of delivery of the Bonds and on and before the Redemption Date; and (ii) principal of the Refunded Bonds upon maturity or prior redemption on the Redemption Date.**

**V. “Refunded Bonds” means any of the Prior Bonds which the District has determined to refund as designated in the Sale Certificate.**

W. “Refunding Project” means: (a) the payment of the Refunded Bond Requirements; and (b) the payment of the costs of issuing the Bonds.

X. “Registrar” means, initially the Treasurer, or his or her successor in function.

Y. “Resolution” means this Resolution of the District which provides for the issuance and delivery of the Bonds.

Z. “Sale Certificate” means a certificate executed by the Sale Delegate dated on or before the date of delivery of the Bonds, setting forth (i) that portion of the Prior Bonds, if any, which will be refunded by the Bonds; (ii) the principal amount and maturities of the Prior Bonds to be refunded; (iii) the rates of interest on the Bonds; (iv) the conditions on which and the prices at which the Bonds may be called for redemption; (v) the price at which the Bonds will be sold; (vi) the aggregate principal amount of the Bonds, and the denominations of the Bonds; (vii) the amount of principal of the Bonds maturing on each date; and (viii) the dates on which principal and interest will be paid and the first interest payment date, all subject to the parameters and restrictions contained in this Resolution.

AA. “Sale Delegate” means any member of the Board.

BB. “Secretary” means the Secretary or Assistant Secretary of the District.

CC. “Special Record Date” means a special date fixed by the Registrar to determine the names and addresses of Registered Owners of the Bonds for purposes of paying interest on a special interest payment date for the payment of defaulted interest.

DD. “State” means the State of Colorado.

EE. “Supplemental Act” means the Supplemental Public Securities Act, constituting Title 11, Article 57, Part 2, C.R.S.

FF. “Term Bond” means Bonds that are payable on or before their specified maturity date **from sinking fund payments established for that purpose and calculated to retire such Bonds on or before their specified maturity date.**

GG. “Treasurer” means the Treasurer or Assistant Treasurer of the District, or his or her successor in function.

**Section 2. Recitals.**

**A. The District is a quasi-municipal corporation and political subdivision of the State duly organized and existing under the Constitution and laws of the State of Colorado, in particular the Act.**

**B. The members of the Board have been duly elected or appointed, chosen and qualified.**

**C. The District previously issued the Prior Bonds.**

**D. The Prior Bonds are subject to redemption prior to maturity at the option of the District on the Redemption Date or on any date thereafter, upon payment of the principal amount so redeemed plus interest to the Redemption Date, without a redemption premium.**

**E. The District is not delinquent in the payment of any of the principal of or interest on the Prior Bonds.**

**F. The Board has determined, and does hereby determine, that the interest of the District and the public interest and necessity require the refunding, paying and discharging of the Refunded Bonds as described in the Sale Certificate, and the issuance of the Bonds to the Purchaser for the Refunding Project pursuant to the Act.**

**G. The District reasonably believes that Purchaser is (a) an “accredited investor,” as defined in Rule 501(a)(1), (2), (3) or (7) of Regulation D promulgated under the Securities Act of 1933, as amended (an “Institutional Accredited Investor”) or (b) a “qualified institutional buyer,” as defined in Rule 144A promulgated under the Securities Act of 1933, as amended (a “Qualified Institutional Buyer”).**

**H. Section 32-1-1302 of the Act authorizes the District to issue refunding bonds without an election to refund, pay, or discharge all or any part of its outstanding general obligation bonds for the purpose of reducing interest costs or effecting other economies.**

**I. Pursuant to Article X, Section 20(4) of the State Constitution, refunding bonds may be issued without an election if they are issued at a lower interest rate than the Refunded Bonds.**

**J. The Board has found and determined, and does hereby find and determine, that, provided that the Bonds are sold within the parameters and restrictions contained in Section 5 of this Resolution, the net effective interest rate on the Bonds will be**

less than the net effective interest rate of the Refunded Bonds and the net interest cost on the Bonds will be less than the net interest cost of the Refunded Bonds.

**K.** The Board has determined, and does hereby determine, that the limitations of the Act imposed upon the issuance of refunding bonds have been met and that the Refunding Project serves a valid and governmental purpose and is necessary, expedient and in the best interests of the District and its taxpayers and residents.

**L.** The creation of the indebtedness authorized by this Resolution will not cause the District to exceed the maximum general obligation indebtedness authorized by State law.

**M.** The Bonds, when combined with other general obligation debt of the District, do not exceed the greater of \$2,000,000 or 50% of the valuation for assessment of the taxable property in the District as certified by the Eagle County Assessor and the Bonds are therefore exempt from registration under Section 11-59-110(1)(a) of the Colorado Municipal Bond Supervision Act.

**N.** The Board has determined, and does hereby determine, that it is necessary and in the best interest of the District that the Bonds now be authorized to be issued and delivered, and the Board hereby determines to use the proceeds of the Bonds authorized by this Resolution to effect the Refunding Project.

**Section 3. Ratification.** All action not inconsistent with the provisions of this Resolution heretofore taken by the Board, the officers and agents of the District directed toward effecting the Refunding Project and the sale and issuance of the Bonds for such purposes be, and the same is hereby ratified, approved and confirmed.

**Section 4. Authorization and Delegation.**

**A.** In accordance with the Constitution and laws of the State and the provisions of this Resolution, and for the purpose of defraying the cost of the Refunding Project, the District hereby authorizes to be issued its “Berry Creek Metropolitan District, Eagle County, Colorado, General Obligation Refunding Bonds, Series 2018,” in the aggregate principal amount provided in the Sale Certificate, subject to the parameters and restrictions contained in this Resolution.

**B.** Section 11-57-204 of the Supplemental Act provides that a public entity, including the District, may elect in an act of issuance to apply all or any of the provisions of the Supplemental Act. The Board hereby elects to apply all of the provisions of the Supplemental Act to the Bonds.

The Sale Delegate is authorized and directed to execute and deliver the Sale Certificate, to determine and approve the final determinations contained therein for the Bonds, subject to the parameters and restrictions of this Resolution.

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**Section 5. Bond Details.**

**A. The Bonds shall be issued in fully registered form (i.e., registered as to payment of both principal and interest) initially registered in the name of the Purchaser. The Bonds shall be dated as of their date of delivery and shall be issued in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof (provided that no Bond may be in a denomination which exceeds the principal coming due on any maturity date and no individual Bond may be issued for more than one maturity and interest rate). The Bonds shall be numbered in such manner as the Registrar may determine.**

**B. The Bonds shall mature, be payable, bear interest (computed on the basis of a 360-day year of twelve 30-day months) payable to the Registered Owners of the Bonds from their date to maturity, in accordance with the mandatory sinking fund schedule, and be sold, all as provided in the Sale Certificate, provided that:**

(1) the Bonds shall mature no later than December 1, 2027;

(2) the aggregate principal amount of the Bonds may not exceed \$2,785,000;

(3) the interest rate on the Bonds shall not exceed 4.05% (the net effective interest rate on the Refunded Bonds);

(4) the maximum annual repayment cost shall not exceed \$450,000;

(5) the Bonds are not subject to optional redemption prior to maturity;

and

(6) the purchase price of the Bonds shall not be less than 100% of the original principal amount of the Bonds.

**C. Interest on the Bonds shall be payable semiannually on June 1 and December 1, commencing on the date provided in the Sale Certificate. The principal of and premium, if any, on any Bond, shall be payable to the Registered Owner thereof as shown on the registration books kept by the Registrar, upon maturity or prior redemption of the Bonds, and upon presentation and surrender at the Principal Office. If any Bond**

shall not be paid upon such presentation and surrender at maturity, it shall continue to draw interest at the rate borne by said Bond until the principal thereof is paid in full. If only a portion of the principal amount of a Bond is being redeemed pursuant to mandatory sinking fund redemption, such Bond shall not be required to be presented or surrendered in order to receive such payment.

Payment of any mandatory sinking fund redemption payment or interest on any Bond shall be made to the Registered Owner thereof by check, draft or wire, sent by the Paying Agent, on or before such mandatory sinking fund redemption date or each interest payment date, as applicable (or, if such mandatory sinking fund redemption date or interest payment date is not a Business Day, on or before the next succeeding Business Day), to the Registered Owner thereof at his or her address as it last appears on the registration books kept by the Registrar on the Record Date; but, any such interest not so timely paid or duly provided for shall cease to be payable to the Person who is the Registered Owner thereof on the Record Date and shall be payable to the Person who is the Registered Owner thereof at the close of business on a Special Record Date for the payment of any such defaulted interest. Such Special Record Date and the date fixed for payment of such defaulted interest shall be fixed by the Registrar whenever moneys become available for payment of the defaulted interest, and notice of the Special Record Date shall be given to the Registered Owners of the Bonds not less than ten days prior to the Special Record Date by first-class mail to each such Registered Owner as shown on the Registrar's registration books on a date selected by the Registrar, stating the date of the Special Record Date and the date fixed for the payment of such defaulted interest.

The Paying Agent may make payments of the amount of any mandatory sinking fund redemption or of interest on any Bond by such alternative means as may be mutually agreed to between the Registered Owner of such Bond and the Paying Agent (provided, however, that the District shall not be required to make funds available to the Paying Agent prior to the dates specified in the Registrar Agreement). All such payments of the principal of, premium, if any, and interest on any Bond shall be made in lawful money of the United States of America, without deduction for services of the Registrar or Paying Agent.

**Section 6. Prior Redemption and Mandatory Sinking Fund Redemption.**

**A. The Bonds are not subject to redemption prior to maturity at the option of the District.**

**B. The Term Bonds, if any, shall be subject to mandatory sinking fund redemption at the times, in the amounts, and at the prices set forth in the Sale Certificate. On or before the thirtieth day prior to each sinking fund redemption date, the Registrar will proceed to call the Term Bonds (or any Term Bond or Bonds issued to replace such**

**Term Bonds) for redemption from the sinking fund on the next December 1, and give notice of such call without further instruction or notice from the District.**

At its option, to be exercised on or before the sixtieth day next preceding each sinking fund redemption date, the District may (1) deliver to the Registrar for cancellation Term Bonds subject to mandatory sinking fund redemption on such date in an aggregate principal amount desired or (2) receive a credit in respect of its sinking fund redemption obligation for any Term Bonds subject to mandatory sinking fund redemption on such date which, prior to said date, have been redeemed (otherwise than through the operation of the sinking fund) and canceled by the Registrar and not theretofore applied as a credit against any sinking fund redemption obligation. Each Term Bond so delivered or previously redeemed will be credited by the Registrar at the principal amount thereof on the obligation of the District on such sinking fund redemption date and the principal amount of Term Bonds to be redeemed by operation of such sinking fund on such date will be accordingly reduced. The District will on or before the sixtieth day next preceding each sinking fund redemption date furnish the Registrar with its certificate indicating whether or not and to what extent the provisions of (1) and (2) above are to be availed with respect to such sinking fund payment. Failure of the District to deliver such certificate shall not affect the Registrar's duty to give notice of sinking fund redemption as provided in this Section.

**C. In the case of Bonds of a denomination larger than \$100,000, a portion of such Bond (any integral multiple of \$5,000 in excess thereof) may be redeemed. In such an instance, the Bond shall not be required to be presented or surrendered in order to receive such payment and a replacement Bond need not be issued for the unredeemed portion thereof.**

**D. In the event that there is more than one Registered Owner of the Bonds, notice of any redemption shall be given by the Paying Agent in the name of the District by sending a copy of such notice by electronic mail or by first-class, postage prepaid mail, not more than 60 days and not less than 30 days prior to the redemption date to each Registered Owner of any Bond all or a portion of which is called for redemption at his or her address as it last appears on the registration books kept by the Registrar. Failure to give such notice by mailing to the Registered Owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any other Bonds. All official notices of redemption shall be dated and shall state:**

- (1) The redemption date;
- (2) the redemption price;
- (3) if less than all Outstanding Bonds are to be redeemed, the identification of the Bonds (and, in the case of partial redemption, the respective principal amounts and interest rate) to be redeemed;

(4) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date; and

(5) the place where such Bonds are to be surrendered, if necessary, for payment of the redemption price, which place of payment shall be the Principal Office or such other office as shall be designated by the Paying Agent.

Prior to any redemption date, the District shall deposit with the Paying Agent an amount of money sufficient to pay the redemption price of all the Bonds or portions of Bonds which are to be redeemed on that date.

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**E. Official notice of redemption having been given as aforesaid, the Bonds or portions of Bonds so to be redeemed shall, on the redemption date, become due and payable at the redemption price therein specified, and from and after such date (unless the District shall default in the payment of the redemption price) such Bonds or portions of Bonds shall cease to bear interest. Upon surrender, if necessary, of such Bonds for redemption in accordance with said notice, such Bonds shall be paid by the Paying Agent at the redemption price. Installments of interest due on or prior to the redemption date shall be payable as herein provided for payment of interest. Upon surrender, if necessary, for partial redemption of any Bond, there shall be prepared for the Registered Owner a new Bond or Bonds of the same maturity and interest rate in the amount of the unpaid principal. All Bonds which have been redeemed or surrendered shall be cancelled and destroyed by the Registrar and shall not be reissued.**

*A Registered Owner shall not be required to surrender their Bond to the Paying Agent to receive payment in connection with a mandatory sinking fund redemption, but shall be required to surrender such Bond on the final maturity date thereof to receive payment of the final principal payment thereof.*

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**Section 7. Execution and Authentication.** The Bonds shall be executed in the name of and on behalf of the District and signed by the manual or facsimile signature of the President, sealed with a manual or facsimile impression of the seal of the District and attested by the manual or facsimile signature of the Secretary. The Bonds bearing the manual or facsimile signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the District (subject to the requirement of authentication by the Registrar as hereinafter provided) notwithstanding that before the delivery of the Bonds, or before the issuance of the Bonds upon transfer or exchange, any or all of the Persons whose facsimile signatures appear on the Bonds shall have ceased to fill their respective offices. The President and Secretary

may, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their respective signatures the facsimiles thereof appearing on the Bonds. At the time of the execution of the signature certificate, the President and Secretary may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Bonds.

No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly manually executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer or representative of the Registrar, but it shall not be necessary that the same officer or representative sign the certificate of authentication on all of the Bonds issued hereunder. By authenticating any of the Bonds initially delivered pursuant to this Resolution, the Registrar shall be deemed to have assented to the provisions of this Resolution.

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**Section 8. Registration, Transfer and Exchange of Bonds.**

**A. The Bonds shall initially be registered in the name of the Purchaser or such name or names as the Purchaser shall direct and shall not be registered in book-entry form. When the Bonds have been duly executed by appropriate District officers and authenticated by the Registrar, the District shall cause the Bonds to be delivered to the Purchaser on receipt of the agreed purchase price. The Bonds shall be delivered in such denominations as the Purchaser shall direct. The Bonds shall mature on December 1, in the years and amounts and subject to mandatory sinking fund redemption as set forth herein and in the Sale Certificate. The Bonds shall bear interest from the most recent interest payment date to which interest has been paid, or if no interest has been paid, from their date until their respective maturities or mandatory sinking fund redemption dates at the rates set forth in the Sale Certificate. No interest shall accrue on any Bonds owned by or on behalf of the District.**

**B. Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer of any Bond at the Principal Office of the Registrar, duly endorsed for transfer or accompanied by an assignment duly executed by the Registered Owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver in the name of the transferee or transferees a new Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not previously assigned. Bonds may be exchanged at the Principal Office of the Registrar for an equal aggregate principal amount of Bonds of the same maturity and interest rate of other authorized denominations. The Registrar shall**

authenticate and deliver a Bond or Bonds which the Registered Owner making the exchange is entitled to receive, bearing a number or numbers not previously assigned. The Registrar may impose reasonable charges in connection with exchanges or transfers of Bonds, which charges (as well as any tax or other governmental charge required to be paid with respect to such transfer) shall be paid by the Owner of any Bond requesting such exchange or transfer.

C. The Registrar shall not be required (1) to transfer or exchange all or a portion of any Bond subject to prior redemption during the period beginning at the opening of business 15 days next preceding the mailing of notice calling any Bonds for prior redemption as herein provided or (2) to transfer or exchange all or a portion of a Bond after the mailing of notice calling such Bond or portion thereof for prior redemption, except for the unredeemed portion of Bonds being redeemed in part.

D. The Person in whose name any Bond shall be registered, on the registration books kept by the Registrar, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the Registered Owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

E. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such evidence, information and indemnity relating thereto as it may reasonably require, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate bearing a number or numbers not previously assigned. If such lost, stolen, destroyed or mutilated Bond shall have matured or is about to become due and payable, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

F. The officers of the District are authorized to deliver to the Registrar fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar pending use as herein provided.

G. Whenever any Bond shall be surrendered to the Paying Agent upon payment thereof, or to the Registrar for transfer, exchange or replacement as provided

herein, such Bond shall be promptly cancelled by the Paying Agent or Registrar, and counterparts of a certificate of such cancellation shall be furnished by the Paying Agent or Registrar to the District.

**Section 9. Uniform Commercial Code.** [The holder or holders of the Bonds](#) shall possess all rights enjoyed by the holders of investment securities under the provisions of the Uniform Commercial Code – Investment Securities. The Bonds shall constitute the general obligations of the District and the full faith and credit of the District shall be, and hereby is, pledged to the payment thereof.

**Section 10. Form of Bond, Certificate of Authentication, and Registration Panel.** The Bond, Registrar’s certificate of authentication, assignment, and prepayment panel shall be in substantially the following forms:

(Form of Bond)

**THIS BOND MAY NOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF EXCEPT TO AN “ACCREDITED INVESTOR,” AS THAT TERM IS DEFINED UNDER THE FEDERAL “SECURITIES ACT OF 1933” BY REGULATION ADOPTED THEREUNDER BY THE SECURITIES AND EXCHANGE COMMISSION.**

**UNITED STATES OF AMERICA**

**STATE OF COLORADO**

**COUNTY OF EAGLE**

**BERRY CREEK METROPOLITAN District  
GENERAL OBLIGATION REFUNDING BOND  
SERIES 2018**

No. 1 \$2,785,000

INTEREST RATE	MATURITY DATE	DATED AS OF
3.06% per annum	December 1, 2027	December 3, 2018

REGISTERED OWNER: JPMORGAN CHASE BANK, NA

PRINCIPAL AMOUNT: TWO MILLION SEVEN HUNDRED EIGHTY FIVE THOUSAND DOLLARS

On the full faith and credit and on behalf of Berry Creek Metropolitan District (the “District”), in Eagle County, State of Colorado, the Board of Directors of the District (the “Board”) hereby acknowledges the District indebted and promises to pay to the Registered Owner specified above, or registered assigns, the Principal Amount specified above, on the Maturity Date specified above and in accordance with the mandatory sinking fund redemption provisions, interest thereon payable on June 1 and December 1 in each year commencing on June 1, 2019, at the Interest Rate per annum specified above, until the Principal Amount is paid or payment has been provided therefor. This Bond bears interest (computed on the basis of a 360-day year of twelve 30-day months) payable to the Registered Owner at the Interest Rate specified above from the most recent interest payment date to which interest has been paid or provided for, or, if no interest has been paid, from the date of this Bond.

This Bond is one of an authorized series of Bonds in the aggregate principal amount of \$2,785,000 issued pursuant to a resolution of the Board adopted on November 26, 2018 (the “Resolution”). This Bond bears interest, matures, is payable, and is transferable as provided in

the Resolution and a Sale Certificate executed by any member of the Board of Directors of the District prior to the delivery of the Bonds. To the extent not defined herein, terms used herein are used as defined in the Resolution.

This Bond is not subject to redemption at the option of the District.

This Bond is subject to mandatory sinking fund redemption at a price equal to the principal amount thereof plus accrued interest to the redemption date. Bonds subject to mandatory sinking fund redemption shall be selected by lot in such manner as the Registrar shall determine (giving proportionate weight to Bonds in denominations of \$5,000 in excess of \$100,000).

As and for a sinking fund for the Bonds maturing on December 1, 2027, the District will deposit into the Bond Fund on or before December 1, 2019 and on or before each December 1 thereafter, through and including December 1, 2027, a sum, which together with other moneys available in the Bond Fund, is sufficient to redeem (after credit as provided in the Resolution) the following principal amounts of the Bonds maturing on December 1, 2027:

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<u>Redemption Date</u> <u>(December 1)</u>	<u>Principal</u> <u>Amount</u>
2019	\$280,000
2020	290,000
2021	300,000
2022	310,000
2023	325,000
2024	335,000
2025	350,000
2026	360,000
2027 (1)	235,000

(1) Final Maturity

Reference is made to the Resolution and to all resolutions supplemental thereto, with respect to the nature and extent of the security for the Bonds, rights, duties and obligations of the District, the rights of the owners of the Bonds, the rights, duties and obligations of the Paying Agent and Registrar, the circumstances under which any Bond is no longer Outstanding, the ability to amend the Resolution, and to all the provisions of which the Registered Owner hereof by the acceptance of this Bond assents.

The Bonds of the series of which this is one are issued by the District, upon its behalf and upon the credit thereof, for the purpose of defraying wholly or in part the costs of the Refunding Project (as defined in the Resolution), all under the authority of and in full conformity with the Constitution of the State of Colorado and the laws of the State of Colorado, Article 1 of Title 32, Colorado Revised Statutes, and pursuant to the Resolution of the Board duly adopted and made a law of the District prior to the issuance of this Bond. The Bonds are also issued pursuant to the Supplemental Public Securities Act, Title 11, Article 57, Part 2, Colorado Revised Statutes (the "Supplemental Act"). Pursuant to Section 11-57-210 of the Supplemental Act, this recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

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It is hereby certified, recited and warranted that all the requirements of law have been complied with by the proper officers of the District in the issuance of this Bond; that the

total indebtedness of the District, including that of this Bond, does not exceed any limit of indebtedness prescribed by the Constitution, the laws of the State of Colorado or the Service Plan of the District; and that provision has been made for the levy and collection of a direct ad valorem tax on all taxable property within the District sufficient to pay the interest on and the principal of this Bond when the same become due.

The full faith and credit of the District are hereby irrevocably pledged for the punctual payment of the principal of and the interest on this Bond.

FOR PURPOSES OF SECTION 265(b) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED, THE DISTRICT HAS DESIGNATED THIS BOND AS A QUALIFIED TAX-EXEMPT OBLIGATION UNDER SECTION 265(b)(3)(B) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED.

This Bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the certificate of authentication herein.

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IN WITNESS WHEREOF, the Board of Directors of Berry Creek Metropolitan District, in Eagle County, Colorado, has caused this Bond to be signed and executed on behalf of the District by the manual or facsimile signature of its President and to be subscribed and attested with the manual or facsimile signature of its Secretary and with a manual or facsimile impression of the seal of the District affixed hereto, as of the date specified above.

(Manual or Facsimile Signature)  
Chairman of the Board of Directors  
and President of the  
Berry Creek Metropolitan District  
Eagle County, Colorado

(MANUAL OR FACSIMILE SEAL)

Attest:

(Manual or Facsimile Signature)  
Secretary, Board of Directors  
Berry Creek Metropolitan District  
Eagle County, Colorado

(End of Form of Bond)

(Form of Registrar's Certificate of Authentication)

Date of authentication and registration: December 3, 2018

This is one of the Bonds described in the within-mentioned Resolution, and this Bond has been duly registered on the registration books kept by the undersigned as Registrar for such Bonds.

BERRY CREEK METROPOLITAN  
DISTRICT, as Registrar

By \_\_\_\_\_  
Treasurer

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

For value received, the undersigned hereby sells, assigns and transfers unto \_\_\_\_\_ the within Bond and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

Address of Transferee:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Social Security or other tax  
identification number of transferee:  
\_\_\_\_\_

**NOTE:** The signature to this Assignment must correspond with the name as written on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

EXCHANGE OR TRANSFER FEES MAY BE CHARGED

(End of Form of Assignment)

**Section 11. Delivery of Bonds.** When the Bonds have been duly executed and authenticated, they will be delivered to the Purchaser on receipt of the agreed purchase price. The Registrar shall initially register the Bonds in the name of the Purchaser, or such name or names as the Purchaser shall direct. The funds realized from the sale of the Bonds shall be applied solely to defray the costs of the Refunding Project, to pay interest on the Bonds, and for no other purposes whatsoever. The Purchaser shall in no manner be responsible for the application or disposal by the District, or any of its officers, of any of the funds derived from the sale of the Bonds.

**Section 12. Disposition of Bond Proceeds.** The net proceeds of the sale of the Bonds shall be applied in the following manner:

**A. First, an amount shall be credited from the proceeds of the Bonds to a JPMorgan Chase Bank, as the Owner of the Prior Bonds, an amount which is sufficient, together with other District funds available for such purpose, to fully redeem, pay and discharge all of the Prior Bonds on December 3, 2018.**

**B. Second, the balance of the proceeds shall be applied by the District solely for the payment of all issuance expenses, or after adequate provision therefor is made, any unexpended proceeds shall be deposited into the General Obligation Refunding Bonds, Series 2018, Bond Fund (the “Bond Fund”) hereby created.**

**Section 13. Payment of Principal and Interest – Tax Levy.**

**A. The interest and principal, if any, falling due on the Bonds prior to the time when sufficient proceeds of a levy therefor are available shall be paid out of the general revenues of the District or other moneys available therefor. For the purpose of reimbursing any such general revenues so used for principal and interest and to meet the principal and interest payments accruing thereafter, as the same shall become due, there shall be levied by the Board of Directors for the District, on all taxable property in the District, in addition to all other taxes, direct ad valorem taxes unlimited as to rate and in an amount sufficient to pay principal and interest on the Bonds when due, promptly as the same respectively become due. The taxes when collected shall be deposited in the Bond Fund, to be applied solely for the purpose of the payment of interest and principal on the Bonds, and for no other purpose whatever, until the indebtedness so contracted under this Resolution, principal and interest, shall have been fully paid, satisfied, and discharged; the District may apply any other funds that may be available for that purpose to the payment of interest or principal as the same respectively become due, and to that extent the levy or levies herein provided for may thereupon be diminished. The levies may also be**

**diminished to the extent that funds are not needed as a result of defeasance or payment of principal and interest in accordance with the mandatory sinking fund redemption schedule and the terms of this Resolution.**

Said direct ad valorem taxes levied to pay said principal and interest shall be in addition to any and all other taxes levied to effect the purposes of the District. No statutory or constitutional provision enacted after the issuance of the Bonds shall in any manner be construed as limiting or impairing the obligation of the District to levy ad valorem taxes on property within the District, without limitation of rate and in an amount sufficient to pay the principal of and interest on the Bonds when due. Any changes in the boundaries of the District subsequent to the delivery of the Bonds shall be effected in such a manner as to fully preserve and protect the rights of the Owners of the Bonds.

It shall be the duty of the Board annually at the time and in the manner provided by law for levying other taxes, if such action shall be necessary to effectuate the provisions of this Resolution, to ratify and carry out the provisions hereof with reference to the levy and collection of taxes; and the Board shall require the officers of the District to levy, extend and collect such taxes on property within the District, in the manner provided by law for the purpose of creating a fund for the payment of the principal of the Bonds and the interest accruing thereon. Such taxes, when collected, shall be kept for and applied only to the payment of the interest and principal of the Bonds as hereinbefore specified.

Said taxes shall be levied, assessed, collected, and enforced at the time and in the form and manner and with like interest and penalties as other general taxes in the State of Colorado, and when collected said taxes shall be paid to the District as provided by law. In the event any of said levies or the charges that may be made by the District shall fail to produce an amount sufficient for the purposes aforesaid, the deficit shall be made up in the next levy.

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**B. The foregoing provisions of this Resolution and the Sale Certificate are hereby declared to be the certificate of the Board to the Board of County Commissioners of the County, showing the aggregate amount of taxes to be levied by the Board of County Commissioners from time to time, as required by law, for the purpose of paying the principal of the bonded indebtedness and the interest thereon as the same shall hereafter accrue. The sums herein provided to pay the interest on the Bonds and to discharge the principal thereof for each year are hereby appropriated and shall be included in the annual budget to be adopted and passed by the Board in each year.**

**Section 14. Covenants with Registered Owners.**

**A. The District covenants for the benefit of the Owners that it will not take any action or omit to take any action with respect to the Bonds, the proceeds thereof, any other funds of the District or any facilities financed or refinanced with the proceeds of the Bonds if such action or omission (i) would cause the interest on the Bonds to lose its exclusion from gross income for federal income tax purposes under Section 103 of the Code, or (ii) would cause interest on the Bonds to lose its exclusion from alternative**

minimum taxable income as defined in Section 55(b)(2) of the Code except to the extent such interest is required to be included in the adjusted current earnings adjustment applicable to corporations under Section 56 of the Code in calculating corporate alternative minimum taxable income, or (iii) would cause interest on the Bonds to lose its exclusion from Colorado taxable income and Colorado alternative minimum taxable income under present State law. The foregoing covenant shall remain in full force and effect notwithstanding the payment in full or defeasance of the Bonds until the date on which all obligations of the District in fulfilling the above covenant under the Code have been met.

B. The District hereby determines that neither the District nor any entity subordinate thereto reasonably anticipates issuing more than \$10,000,000 face amount of tax-exempt governmental bonds (including bonds issued on behalf of a 501(c)(3) organization, but not other private activity bonds) or any other similar obligations during the calendar year 2018, which obligations are taken into account in determining if the District can designate the Bonds as a qualified tax-exempt obligation as provided in the following sentence. For the purpose of Section 265(b) of the Code, the District hereby designates the Bonds as qualified tax-exempt obligations under Section 265(b)(3)(B) of the Code.

C. The District covenants for the benefit of the Registered Owners of the Bonds from time to time that it will annually prepare or cause to be prepared a budget and an audit report, will annually file or cause to be filed with the appropriate State agency a copy of the adopted budget, the appropriation resolution and audit report all in accordance with State law. The District shall provide a copy of such budget to the Purchaser within 30 days of adoption or any amendment. The District further covenants to provide (i) the Registered Owners a copy of its annual audit report, prepared by an independent Certified Public Accountant, within 270 days of the end of each fiscal year, and (ii) so long as the Purchaser or any affiliate or successor thereto is the sole Registered Owner of all of the Outstanding Bonds, such additional information concerning the business affairs and financial condition of the District as the Registered Owner may reasonably request from time to time, including any long-term capital improvement plans.

D. For so long as the Purchaser is the sole Owner of the Bonds, the District shall also, at the time that it files its annual audit with the Purchaser, use commercially reasonable efforts to provide the Purchaser with other such information that

the Purchaser shall reasonably request, which may include but is not limited to annual certified assessed valuation of the District, amount of overlapping general obligation debt of other governmental entities within the District's boundaries, property tax collection rates, and the top ten property taxpayer information.

E. The District covenants that it will not take any action or fail to take any action which action or failure to act would release any property which is included within the boundaries of the District at any time from liability for the payment of direct ad valorem taxes levied by the District for the payment of the principal of and interest on the Bonds.

F. The District covenants that it shall not take any action or that it shall not fail to take any action which action or failure to act would result in a material impairment of the rights of the Owners or the security for the Bonds and that it will diligently, in good faith, and with commercially reasonable best efforts seek to prevent, to the fullest extent permitted by law, the taking of such action.

**Section 15. Investment of Funds.** Any moneys in any fund or account established by this Resolution may be deposited, invested or reinvested in any manner permitted by law. Such deposits or investments shall either be subject to redemption at any time at face value by the District at the option of the District, or shall mature at such time or times as shall most nearly coincide with the expected need for moneys from the fund in question.

**Section 16. Defeasance.** When the principal and interest due in connection with any Bond have been duly paid, all obligations hereunder with respect to such Bond shall be discharged, and such Bond shall no longer be deemed to be Outstanding for any purpose of this Resolution. Payment of such Bond or any portion thereof shall be deemed made when the District has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Federal Securities in which such amount may be wholly or in part initially invested) to meet all requirements of principal of, premium, if any, and interest on such Bond as the same become due to maturity or to the applicable mandatory sinking fund redemption date. The Federal Securities shall become due or be callable at the option of the owner at or prior to the respective times on which the proceeds thereof shall be needed, in accordance with a schedule agreed upon between the District and such bank at the time of creation of the escrow.

**Section 17. Events of Default.** Each of the following events constitutes an Event of Default:

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(a) ***Nonpayment of Principal or Interest.*** Failure to make any payment of principal of or interest on the Bonds when due;

(b) ***Breach or Nonperformance of Duties.*** Breach by the District of any material covenant set forth herein or failure by the District to perform any material duty imposed

on it hereunder and continuation of such breach or failure for a period of 60 days after receipt by the District of written notice thereof from the Owners of at least 50% of the aggregate principal amount of the Bonds then Outstanding; provided that such 60-day period shall be extended so long as the District has commenced and continues a good faith effort to remedy such breach or failure; or

(c) ***Bankruptcy or Receivership.*** An order of decree by a court of competent jurisdiction declaring the District bankrupt under federal bankruptcy law or appointing a receiver of all or any material portion of the District's assets or revenues is entered with the consent or acquiescence of the District or is entered without the consent or acquiescence of the District but is not vacated, discharged or stayed within 30 days after it is entered.

**Section 18. Remedies on Default.**

(a) ***Remedies.*** Upon the occurrence and continuance of any Event of Default, the Owners of not less than 50% of the aggregate principal amount of the Bonds then Outstanding, including, without limitation, a trustee or trustees therefor, may proceed against the District to protect and to enforce the rights of any Owners under this Resolution by proper legal or equitable remedy deemed most effectual, including mandamus, specific performance of covenants, the appointment of a receiver (the consent of such appointment being hereby granted), injunctive relief, or requiring the Board to act as if it were the trustee of an express trust, or any combination of such remedies, or by other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction: (i) for the payment of interest on any installment of principal of any Bond or interest that was not paid when due at the interest rate borne by such Bond; (ii) for the specific performance of any covenant contained herein; (iii) to enjoin any act that may be unlawful or in violation of any right of any Owner of any Bond; (iv) for any other proper legal or equitable remedy; or (v) any combination of such remedies or as otherwise may be authorized by applicable law; provided, however, that acceleration of any amount not yet due on the Bonds according to their terms shall not be an available remedy. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all Owners of Bonds then Outstanding. Nothing herein shall be construed to create a right by the Owners to pursue punitive or consequential damages against the District.

(b) ***Failure To Pursue Remedies Not a Release; Rights Cumulative.*** The failure of any Owner of any Outstanding Bond to proceed in accordance with paragraph (a) of this Section shall not relieve the District of any liability for failure to perform or carry out its

duties under this Resolution. Each right or privilege of any such Owner (or trustee therefor) is in addition and is cumulative to any other right or privilege available to such Owner, and the exercise of any right or privilege by or on behalf of any Owner shall not be deemed a waiver of any other right or privilege of such Owner.

**Section 19. Exercise of Option.** The Board has elected and does hereby declare its intent to exercise on the behalf and in the name of the District its option to redeem the Prior Bonds on the Redemption Date.

**Section 20. Direction to Take Authorizing Action.** The President, Secretary and other officers and agents of the District are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Resolution including without limiting the generality of the foregoing, the original or additional printing of the Bonds in such quantities as may be convenient, the execution of such certificates as may reasonably be required by the Purchaser and Bond Counsel, including, without limitation, certificates relating to the execution of the Bonds, the tenure and identity of the District officials, the assessed valuation and indebtedness of the District, the rate of taxes levied against taxable property within the District, the delivery of the Bonds, the expectations of the District with respect to the investment of the proceeds of the Bonds, the receipt of the purchase price and the absence of litigation, pending or threatened, if in accordance with the facts, affecting the validity thereof.

The Sale Delegate is hereby authorized and directed to execute and deliver the Sale Certificate and to determine and approve the final determinations contained therein for the Bonds. The Sale Delegate also has the authority to accept the proposal of the Purchaser to purchase the Bonds in connection therewith, as well as the authority to make determinations in relation to the Bonds contained in the Sale Certificate subject to the parameters and restrictions contained in Section 5 of this Resolution.

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**Section 21. Approvals, Authorizations, and Amendments.** The President and Secretary are authorized to execute and authenticate such documents, instruments or certificates as are deemed necessary or desirable by Bond Counsel in order to issue and secure the Bonds. Copies of all of the documents shall be delivered, filed and recorded as provided therein. The Sale Delegate is hereby authorized to enter into any related documents or agreements subject to the Supplemental Act to secure the payment of principal of and interest on the Bonds.

The proper officers of the District are hereby authorized and directed to prepare and furnish to Bond Counsel certified copies of all proceedings and records of the District relating to the Bonds and such other affidavits and certificates as may be required to show the facts relating to the authorization and issuance thereof as such facts appear from the books and records in such officers' custody and control or as otherwise known to them.

The approval hereby given to the various documents referred to above includes an approval of such additional details therein as may be necessary and appropriate for their completion, deletions therefrom and additions thereto as may be approved by Bond Counsel prior to the

execution of the documents. The execution of any instrument by the appropriate officers of the District herein authorized shall be conclusive evidence of the approval by the District of such instrument in accordance with the terms hereof.

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**Section 22. Successor Registrar or Paying Agent.** The District Treasurer is hereby appointed as the initial Registrar and Paying Agent for the Bonds. The District may, with approval of the Board, hereafter appoint a successor Registrar or Paying Agent. Any successor Registrar or Paying Agent may resign at any time on 30 days' prior written notice to the District and to the Registered Owners of the Bonds. The District may remove said Registrar or Paying Agent upon 30 days' prior written notice to the Registrar and/or Paying Agent, as the case may be, or the Registered Owners of a majority in aggregate principal amount of the Outstanding Bonds may remove the Registrar or Paying Agent by an instrument or concurrent instruments signed by such Registered Owners. No resignation or removal of the Registrar or Paying Agent shall take effect until a successor has been appointed; provided, that if no successor is appointed by the end of 90 days, the Paying Agent or Registrar may petition a court of competent jurisdiction to appoint a successor. If the Registrar or Paying Agent initially appointed shall resign, or if the District or the Registered Owners shall remove said Registrar or Paying Agent, the District may, upon notice mailed to each Registered Owner of any Bond at the address last shown on the registration books, appoint a temporary successor Registrar or Paying Agent, or both. In the event that the temporary Registrar or Paying Agent appointed by the District shall not be superseded by a Registrar or Paying Agent appointed by the Registered Owners of a majority in aggregate principal amount of Outstanding Bonds within 90 days from the effective date of appointment by the District, the Registrar or Paying Agent appointed by the District shall be deemed to be the Registrar or Paying Agent hereunder. Every such successor Registrar or Paying Agent (other than the District Treasurer) shall be a commercial bank authorized to execute corporate trust powers or a trust company located in and in good standing in the United States and having a shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than \$10,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the District shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder. Any company or national banking association into which the Registrar or Paying Agent may be merged or converted or with which it may be consolidated or any company or national banking association resulting from any merger, conversion or consolidation to which it shall be a party or any company or national banking association to which the Registrar or Paying Agent may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible, shall be the successor to such Registrar or Paying Agent without the execution or filing of any paper or further act, anything herein to the contrary notwithstanding.

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**Section 23. Contract with Registered Owners; Supplemental Resolutions.** After the Bonds authorized hereby have been issued, this Resolution shall constitute a contract between the District and the Registered Owner or Owners of the Bonds, and shall be and remain irrevocable and unalterable until the Bonds and the interest accruing thereon shall have been fully paid, satisfied, and discharged.

**B. The District may adopt one or more resolutions supplemental hereto, without the consent of the Registered Owners, which supplemental resolutions shall thereafter form a part hereof, for any one or more of the following purposes:**

(1) To cure any ambiguity, or to cure, correct or supplement any formal defect or omission or inconsistent provision contained in this Resolution, to make any provision necessary or desirable due to a change in law, to make any provisions with respect to matters arising under this Resolution, or to make any provisions for any other purpose if, in each case, such provisions are necessary or desirable and do not adversely affect the interests of the Owners;

(2) To pledge additional revenues, properties or collateral as security for the Bonds;

(3) To grant or confer upon the Registered Owners any additional rights, remedies, powers or authorities that may lawfully be granted to or conferred upon the Registered Owners; or

(4) To qualify this Resolution under the Trust Indenture Act of 1939.

**C. Any other provision of this Section notwithstanding, so long as the Purchaser or any affiliate or successor thereto is the sole Registered Owner of all of the Outstanding Bonds, no amendment or supplement to this Resolution shall become effective without the prior written consent of such Registered Owner**

**D. Except for amendatory or supplemental resolutions adopted pursuant to paragraphs B and C of this Section, the Owners of not less than a majority in aggregate principal amount of the Bonds then Outstanding shall have the right, from time to time, to consent to and approve the adoption by the District of such resolutions amendatory or supplemental hereto as shall be deemed necessary or desirable by the District for the purpose of modifying, altering, amending, adding to, or rescinding, in any particular, any of the terms or provisions contained in this Resolution; provided however, that without the consent of the Owners of all the Outstanding Bonds, nothing herein contained shall permit, or be construed as permitting:**

(1) a change in the terms of the maturity of any Bond, in the principal amount of any Bond or the rate of interest thereon, the date of payment of principal and interest, or the terms of prior redemption;

(2) an impairment of the right of the Owners to institute suit for the enforcement of any payment of the principal of or interest on the Bonds when due;

(3) a privilege or priority of any Bond or any interest payment over any other Bond or interest payment; or

(4) a reduction in the percentage in principal amount of the Bonds the consent of whose Owners is required for any such amendatory or supplemental resolution.

If at any time the District shall desire to adopt an amendatory or supplemental resolution for any of the purposes of this paragraph D, the District shall cause notice of the proposed adoption of such amendatory or supplemental resolution to be given by mailing such notice by first-class mail to the Paying Agent and to each Owner at the address shown on the registration books of the Registrar, at least thirty days prior to the proposed date of adoption of any such amendatory or supplemental resolution. Such notice shall briefly set forth the nature of the proposed amendatory or supplemental resolution and shall state that copies thereof are on file at the offices of the District or some other suitable location for inspection by all Owners. If, within sixty days or such longer period as shall be prescribed by the District following the giving of such notice, the Owners of not less than a majority, or with respect to the matters specified in subparagraphs (1) through (4) of this paragraph D, 100% of the Owners of the Outstanding Bonds at the time of the execution of any such amendatory or supplemental resolution shall have consented to and approved the execution thereof as herein provided, no Owner shall have any right to object to any of the terms and provisions contained therein, or the operation thereof, or in any manner to question the propriety of the adoption and effectiveness thereof, or to enjoin or restrain the District from adopting the same or from taking any action pursuant to the provisions thereof.

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**Section 24. Pledge of Revenues.** The creation, perfection, enforcement, and priority of the pledge of direct ad valorem tax revenues to secure or pay the Bonds as provided herein shall be governed by Section 11-57-208 of the Supplemental Act and this Resolution. The direct ad valorem tax revenues levied for the payment of the Bonds, as received by or otherwise credited to the District, shall immediately be subject to the lien of such pledge without any physical delivery, filing, or further act. The lien of such pledge and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities of the District, except for any general obligation indebtedness issued on a parity with the Bonds. The lien of such pledge shall be valid, binding, and enforceable as against all Persons having claims of any kind in tort, contract, or otherwise against the District irrespective of whether such Persons have notice of such liens.

**Section 25. No Recourse Against Officers and Agents.** Pursuant to Section 11-57-209 of the Supplemental Act, if a member of the Board, or any officer or agent of the District acts in good faith, no civil recourse shall be available against such member, officer, or agent for payment of the principal or interest on the Bonds. Such recourse shall not be available either directly or indirectly through the Board or the District, or otherwise, whether by virtue of any constitution, statute, rule of law, enforcement of penalty, or otherwise. By the acceptance of the Bonds and as a part of the consideration of their sale or purchase, any Person purchasing or selling such Bonds specifically waives any such recourse.

**Section 26. Conclusive Recital.** Pursuant to Section 11-57-210 of the Supplemental Act, the Bonds shall contain a recital that they are issued pursuant to the Supplemental Act. Such recital shall be conclusive evidence of the validity and the regularity of the issuance of the Bonds after their delivery for value.

**Section 27. Limitation of Actions.** Pursuant to Section 11-57-212 of the Supplemental Act, no legal or equitable action brought with respect to any legislative acts or proceedings of the District in connection with the authorization or issuance of the Bonds, including but not limited to the adoption of this Resolution, shall be commenced more than thirty days after the authorization of the Bonds.

**Section 28. Severability.** If any section, paragraph, clause, or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Resolution.

**Section 29. Repealer.** All acts, orders, and resolutions and parts thereof, in conflict with this Resolution be, and the same hereby are, rescinded.

**Section 30. Holidays.** If the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in this Resolution, shall be a legal holiday or on a day which banking institutions in the city in which is located the Principal Office of the Registrar and Paying Agent are authorized by law to remain closed, such payment may be made or act performed or right exercised on the next succeeding day not a legal holiday or a day on which such banking institutions are authorized by law to remain closed, with the same force and effect as if done on the nominal date provided in this Resolution, and no interest shall accrue for the period after such nominal date.

**Section 31. Effective Date.** This Resolution shall be effective immediately upon its adoption.

ADOPTED, AND APPROVED this 26th day of November, 2018.

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Chairman of the Board and President  
Berry Creek Metropolitan District

(SEAL)

Attest:

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Secretary

STATE OF COLORADO            )  
   ) )  
 COUNTY OF EAGLE            ) SS.                    CERTIFICATE OF SECRETARY  
   ) )  
 BERRY CREEK                 )  
 METROPOLITAN DISTRICT    )

I, Katie Rothenberg, Secretary of the Berry Creek Metropolitan District, Eagle County, Colorado (the “District”), do hereby certify:

1. The foregoing pages are a true and correct copy of a resolution (the “Resolution”) passed and adopted by the Board of Directors (the “Board”) of the District at a special meeting held on November 26, 2018.

2. The Resolution was duly moved and seconded and the Resolution was adopted at the special meeting of November 26, 2018, by an affirmative vote of a majority of the members of the Board as follows:

Name	“Yes”	“No”	Absent	Abstain
Dan Godec, Chair and President				
Karen Kern, Vice President				
Melissa Nelson, Vice President				
Michael P. Reisinger, Vice President				
Katie Rothenberg, Secretary/Treasurer				

3. The members of the Board were present at such meeting and voted on the passage of such Resolution as set forth above.

4. The Resolution was approved and authenticated by the signature of the Chairman of the Board and President, sealed with the District seal, attested by the Secretary and recorded in the minutes of the Board.

5. There are no bylaws, rules or regulations of the Board which might prohibit the adoption of said Resolution.

6. Notice of the special meeting of November 26, 2018, in the form attached hereto as Exhibit A, was posted in at least three places within the limits of the District, and, in addition, such notice was posted at least 72 hours in advance in the office of the Eagle County Clerk and Recorder in accordance with law.

WITNESS my hand and the seal of said District affixed this 26th day of November, 2018.

(SEAL)

\_\_\_\_\_

Secretary

EXHIBIT A

(Attach Meeting Notice)