

**INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICE BETWEEN
DOMINION WATER AND SANITATION DISTRICT, ACTING IN ITS CAPACITY AS
A WATER ACTIVITY ENTERPRISE AND THE TOWN OF CASTLE ROCK ACTING
THROUGH THE TOWN OF CASTLE ROCK WATER ENTERPRISE**

THIS INTERGOVERNMENTAL AGREEMENT (“IGA”) is executed this ____ day of _____, 2016, by and between Dominion Water and Sanitation District, acting in its capacity as a Water Activity Enterprise (“Dominion”), and the Town of Castle Rock, a Colorado home rule municipal corporation by and on behalf of the Town of Castle Rock Water Enterprise (the “Town”) (jointly “Parties”).

RECITALS

WHEREAS, Dominion is a quasi-municipal corporation and political subdivision of the State of Colorado formed and organized pursuant to Title 32 of the Colorado Revised Statutes; and

WHEREAS, the Town is a home rule municipal corporation; and

WHEREAS, Dominion is authorized, pursuant to its service plan, to provide water services to customers located both within and outside of its boundaries for multiple uses, including for human consumption and household use, commercial, irrigation, industrial and other uses; and

WHEREAS, Dominion plans to provide wholesale water service to the Sterling Ranch development northwest of the Town; and

WHEREAS, pursuant to its municipal charter, Title 31, C.R.S. and the Castle Rock Municipal Code the Town is authorized to provide water services to customers located both within and outside of its boundaries; and

WHEREAS, pursuant to the Colorado Constitution, Article XIV, Section 18(2)(a) and Section 29-1-203, local governments may cooperate or contract with each other to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the Town and Dominion support regional water supply projects, recognizing such projects benefit participants by reducing duplication of facilities and operations, thereby reducing the costs to the Town’s citizens and Dominion’s customers; and

WHEREAS, Dominion and the Town seek to identify infrastructure that they may use jointly or cooperatively to facilitate efficient and cost-effective delivery of water to their customers; and

WHEREAS, Dominion has opportunities to acquire water from various sources which can be incorporated into the Town’s potable water system, including surface and ground water rights in various locations; and

WHEREAS, both the Town and Dominion are members of the South Metro WISE Authority and participants in the WISE Project under the South Metro WISE Authority Formation and Organizational Intergovernmental Agreement (“South Metro WISE IGA”) and the Amended and Restated WISE Partnership – Water Delivery Agreement (“WDA”), a cooperative regional water supply project and this is the first phase of the WISE Project; and

WHEREAS, this Agreement will enhance the ability of Dominion, in the initial phases of the Sterling Ranch development, to use 700 acre feet (“WISE 700”) of its current WISE subscription of 1325 acre feet in accordance with the WDA and the 2014 IGA (described below). Dominion remains responsible for securing the means to firm and deliver any portion of its WISE subscription in excess of the WISE 700 or any additional WISE project subscription obtained hereafter by Dominion; and

WHEREAS, Dominion’s WISE Project water and other water will be delivered through the Town’s system and other shared facilities, for which Dominion is sharing costs, resulting in conjunctive use, additional capacity available to the Town, additional renewable water to the Town, reduced capital for required infrastructure and lower operating costs to both parties; and

WHEREAS, the Town will maintain supplies and capacity in its water system sufficient to enable it to meet its commitment under this Agreement provided Dominion meets all of its commitments under this Agreement; and

WHEREAS, both the Town and Dominion are committed to an adequate water supply in terms of quality, quantity, and dependability through the conjunctive use of water combining renewable supplies with ground water, supported by aggressive demand management, conservation and reuse; and

WHEREAS, the Town and Dominion are parties to various mutually beneficial intergovernmental agreements under which they share capacity in water treatment and delivery facilities, including the Intergovernmental Agreement for Water Service dated January 7, 2014 (the “2014 IGA”) pursuant to which Dominion acquired the right to transmit WISE Project water and other water resources through the Town’s system; and

WHEREAS, this Agreement in conjunction with the the 2014 IGA will supplement and firm Dominion’s WISE 700; and

WHEREAS, this agreement authorizes Dominion to convey surface and/or ground water rights to the Town or to deliver treated water, which may include supplementary WISE project water, into the Town’s potable water system at designated locations in exchange for the Town’s commitment to provide wholesale potable water service to Dominion with delivery at designated locations; and

WHEREAS, this Agreement provides Town with additional renewable water supplies in compensation for service, and as first right of refusal for WISE deliveries that Dominion may not elect to take; and

WHEREAS, the Parties' systems will be interconnected, giving them the ability by future agreement to participate in additional mutually beneficial cooperative activities.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and benefits described herein, the adequacy and sufficiency of which are hereby acknowledged, Dominion and the Town hereby agree as follows:

1. Town Water Service Commitment to Dominion.

1.1 **Service Commitment.** Subject to Dominion meeting its financial commitments and other obligations under this Agreement, the Town shall furnish Dominion water service on the terms and conditions provided in this Agreement (the "Firming Service Commitment or "FSC"). The Firming Service Commitment supplements but does not replace the Service Commitment under the 2014 IGA, the latter of which remains in force and effect except as expressly modified by this Agreement. The Town will transmit WISE 700 water through the Town's system pursuant to the Service Commitment under the 2014 IGA, and deliver additional water to firm the WISE 700 water pursuant to this Firming Service Agreement. The Town will meet the Firming Service Commitment by using the Town's proprietary water storage and distribution system, facilities, water rights, and technical and administrative support as necessary (the "Town System"). Deliveries of water under this agreement, from the Town's water system, will occur when the volume of water delivered in a month exceeds the volume of Dominion's WISE 700 direct and retimed deliveries through that month. Retimed deliveries are any deliveries associated with WISE deliveries from a previous month. The Dedicated Water (as hereinafter defined) will be a part of the Town's water supply system. In any given year, the deliveries of water from the Town's water system will range from 0 to 700 acre-feet, and will not exceed 700 acre-feet. Deliveries shall be at a daily rate of not more than the Initial Maximum Delivery Rate (defined in section 2.3), or if additional capacity is purchased the Maximum Delivery Rate (defined in section 2.5). This Agreement and Service Commitment operates in conjunction with the 2014 IGA.

1.2 **Priority of Water Deliveries.** All WISE 700 deliveries are subject to the 5% loss in Section 5 of the 2014 IGA. To extent possible, Dominion will first take its WISE 700 water that is subject to the take or pay provision as direct deliveries on a monthly basis. If Dominion's WISE 700 water exceeds its direct deliveries, then the additional WISE 700 water will be retimed by the Town and delivered to Dominion. All monthly retimed WISE 700 water will be assessed an additional 10% reduction for Castle Rock's use and reuse to extinction of the renewable water.

1.3 **Maximum Deliveries.** Total deliveries under both Agreements shall not exceed the delivery rate as defined in Sections 1 and 5 of the 2014 IGA. Any volume of water delivered to Dominion up to the amount of Dominion's WISE 700 delivery to Town shall be considered delivery of WISE 700 under the 2014 IGA. Maximum delivery rates of water provided under this IGA, including WISE 700 water not delivered through the 2014 IGA, are set forth in Section 3 of this IGA.

1.4 **Excess WISE Project Water.** In any year the Offered Delivery Amount (as defined in the WDA) for the WISE 700 exceeds 700 acre feet (“Excess WISE Delivery”), and Dominion does not accept any part of the Excess WISE Delivery, Town shall have the first right to accept and use the Excess WISE Delivery, provided Town shall pay charges for such amounts under the WDA and South Metro WISE IGA.

2. **Conditions to Service Commitment.** The Town shall provide the Firming Service Commitment upon Dominion’s satisfaction of the following:

2.1 **Dominion Dedication to Town.** Dominion’s conveyance and Town’s acceptance of rights to an average of 400 acre feet of water per year from one or more sources acceptable in all respects to Town, delivered to one or more locations acceptable to Town (“Dedicated Water”). Within 360 days of mutual execution of this Agreement, Dominion shall identify and notify Town of the source or sources of its proposed Dedicated Water (the “Offer Date”).

Town shall accept or refuse to accept the source(s) within 60 days of the Offer Date (the “Acceptance Date”). The Acceptance Date may be extended upon mutual agreement of both parties. Within such 60-day period Dominion will provide to Town confirmation that Dominion is able to convey to Town good and marketable title to the Dedicated Water and respond in a timely manner as to any due diligence inquiries by the Town. If some or all of the Dedicated Water is nontributary or not nontributary Denver Basin ground water, Dominion’s entitlement under this Agreement for such Dedicated Water is subject to adjustment as provided in Appendix B. Town may use the Dedicated Water for any of its uses as part of its overall water supply.

2.2 **Conveyance of Dedicated Water.** Within 120 days after acceptance by Town of the Dedicated Water (the “Conveyance Date”), Dominion shall convey by special warranty deed at no cost to Town good and marketable title to the Dedicated Water free of liens and encumbrances or other title defects other than those matters of record the Town accepts, together with any appurtenant easements necessary for diversion and delivery of the Dedicated Water to Town. The Conveyance Date may be extended upon mutual agreement of both parties. As a condition to closing on the Dedicated Water, Dominion shall furnish Town with an opinion from a qualified water counsel that the special warranty deed will convey good and marketable title to the Dedicated Water to the Town. Town’s obligation to close on the Dedicated Water shall be dependent on Town’s acceptance of title as evidenced by such title opinion and Dominion’s tender of funds required under section 2.

2.3 **Infrastructure Fee.** The Parties acknowledge that the Firming Service Commitment is dependent on the installation of certain capital improvements described on **Appendix A** attached hereto and incorporated herein by reference (the “Infrastructure”). The Town shall be responsible, at its sole cost and expense, to design, contract for and install the Infrastructure. To compensate the Town for such Infrastructure, Dominion shall pay a one-time infrastructure fee (the “Infrastructure Fee”). The Town acknowledges and agrees that the Infrastructure Fee shall be used solely for the Infrastructure and for no other purpose. Following payment of the Infrastructure Fee as set forth herein, no additional capital improvement infrastructure fees shall be payable by Dominion hereunder, the costs of any operations,

maintenance or reserve costs will be accounted for in the Dominion Water Rate. The Infrastructure Fee shall be calculated and paid as follows:

2.3.1 **Initial Payment.** An initial payment of \$3,000,000.00 of the Infrastructure Fee (“Initial Payment”) shall be due on the Conveyance Date. If the actual cost of the Infrastructure is more or less than \$3,000,000 (not including treatment) or as a result of further design of the Infrastructure the Town identifies additional infrastructure necessary to implement this Agreement not set forth on **Appendix A**, Town shall notify Dominion of the additional or reduced cost after associated Infrastructure construction bid(s) (the “Updated Cost”). Dominion shall have twenty (20) days following receipt of the Updated Cost to review and approve the same. If Dominion does not agree to the Updated Cost, Dominion shall have the right, in its sole discretion, to terminate this Agreement, whereupon the Town shall re-convey the Dedicated Water and the Initial Payment less the design costs of the Infrastructure incurred by the Town to Dominion and each Party shall be relieved of any further liability or obligation hereunder. If Dominion accepts the Updated Cost, then Dominion shall pay the additional cost, or Town shall refund the saved cost within 60 days of invoice from Town. The initial maximum delivery rate in million gallons per day (mgd) shall be set to the limiting capacity of the Infrastructure (the “Initial Maximum Delivery Rate”).

2.4 **Initial Treatment Fee.** Initial treatment capacity shall be equal to the lesser of the Initial Maximum Delivery Rate or 1 mgd (“Initial Treatment Capacity”). Dominion shall pay for Initial Treatment Capacity (the “Initial Treatment Fee”) in ten (10) annual payments with the first annual payment made 60 days prior to 2022, or Initial Delivery date, whichever is sooner. Subsequent annual payments shall be made _____ (*insert date*) of each year. The Initial Treatment Fee shall be calculated as: Initial Treatment Capacity (mgd) X \$2,200,000. Thus, the annual payment shall be equal to 1/10th of the Initial Treatment Fee.

2.5 **Expansion Fees.** Prior to January 1, 2022, Dominion may elect to (a) increase the Initial Maximum Delivery Rate (“Additional Maximum Delivery Rate”) up to a maximum delivery rate of 2.1 mgd (the “Maximum Delivery Rate”); and (b) increase the Treatment Capacity (“Additional Treatment Capacity”) up to a maximum treatment capacity of 2.1 mgd of capacity (“Maximum Treatment Capacity”). The right to increase either the Additional Maximum Delivery Rate or Additional Treatment Capacity, or both is referred to as the “Dominion Option.”. Expansion may occur in more than one phase, up to the 2.1 mgd limit. To exercise Dominion Option, Dominion shall be required to pay a Reserve Fee and Expansion Fees (as hereinafter defined) as follows:

2.5.1 Dominion shall pay annual reserve payments of \$100,000 payable December 20, 2016 and December 20, 2017 and four annual payments of \$200,000 beginning December 20, 2018 through December 20, 2021 (the “Reserve Payment”), which Reserve Payment shall secure Dominion’s ability to elect for either Additional Treatment Capacity, Additional Maximum Delivery Rate or both, and shall be applied to Expansion fees in 2.5.3 provided however that reserve payments will terminate upon election of the Additional Treatment Capacity and such reserve payments previously paid shall be applied to the Expansion fees in 2.5.3;

2.5.2 If Dominion elects to increase its Maximum Delivery Rate and such election requires additional facilities to produce the required water for the Additional Maximum Delivery Rate, Castle Rock shall design and obtain bids for the expansion of the Town System necessary to support such additional diversion capacity (the “System Expansion”). Prior to design of the System Expansion, the Town shall deliver an estimate of the costs to design the System Expansion (the “Design Costs”). Dominion shall have ten (10) days following receipt of such estimate to accept the same. Upon Dominion’s acceptance and payment to Town of the Design Costs, the Town shall cause the design of the System Expansion to be commenced. Following the design of the System Expansion, the Town shall cause the same to be bid (the “System Expansion Costs”). The Town shall deliver the System Expansion Costs to Dominion for review and acceptance. If Dominion does not accept the System Expansion Costs, then Dominion shall have the right to rescind its election to obtain Additional Maximum Delivery Rate. If Dominion accepts the System Expansion Costs, then the Town shall proceed with such construction and Dominion shall pay into escrow the System Expansion Cost to be drawn upon to pay the construction cost of the System Expansion.

2.5.3 If Dominion elects to increase its Treatment Capacity, Dominion shall pay ten annual payments starting upon notice of Dominion’s election and subsequently paid on the same date as the Initial Treatment Fee is paid of each year after Dominion’s election, for a total of Additional Treatment Capacity (mgd) X \$2,200,000 (“Capacity Expansion Fee” and collectively with the Delivery Rate Expansion Fee, the “Expansion Fees”) less total reserve fees paid in 2.5.1. By way of example, if Dominion elects Additional Treatment Capacity in 2021, they shall pay ten annual payments equal to \$2,200,000 less Total Reserve Fees Paid divided by ten.

2.6 Payment of Recurring Fees.

2.6.1 **Rates and Fees for Service.** Dominion shall pay for all water delivered under this Agreement at the Delivery Point(s) (defined in section 3.1) at the rates in effect for that year as prescribed in this Section (“Dominion Water Rate” expressed per 1000 gallons). The Dominion Water Rate may be adjusted no more often than annually, effective January 1st, except in the event of an emergency in the Town System.

2.6.2 **Rate Calculation.** The Dominion Water Rate shall consist of the Town’s Winter Season Block 1 residential average winter monthly consumption rate and Irrigation Season Block 1 residential rate, where the Dominion Water Rate will be calculated based on the sum of sixty percent of the Town’s Winter Season Block 1 and forty percent of the Irrigation Season Block 1 residential rates multiplied by 1.35 such that:

Dominion Water Rate = 1.35 (0.6 Town’s Winter Season Block 1 residential rate + 0.4 Town’s Irrigation Block 1 residential rate)

2.6.3 **Notice of Changed Water Rate.** Town shall notify Dominion of the Dominion Water Rate for the upcoming Water Year by November 1 of each year together with an explanation of the basis for the adjustment. If requested by Dominion, Town shall make

accommodation for public comment by Dominion representatives and ratepayers on the Dominion Water Rate at a designated Town Council meeting.

2.6.4 **Monthly Billing.** The Town shall read the meter(s) on the Delivery Point(s) once each month and shall bill Dominion for all potable water delivered by the Town during the preceding month at the applicable rate. Dominion shall pay to Town the amount of such statement within sixty (60) days after receipt.

2.6.5 **Annual Reconciliation of Rates.** Any volume of water delivered in a month that exceeds the volume of WISE 700 deliveries through that month shall be billed as delivery under this Agreement. If under Section 1.2 above, additional WISE 700 water is delivered to the Town (i.e. monthly WISE deliveries to Town exceed Town monthly deliveries to Dominion), the next deliveries up to the volume of WISE Project water delivered shall be considered deliveries under the 2014 IGA. The bill for May deliveries each year shall reconcile for the preceding year the volume of WISE Project water delivered under the 2014 IGA and the volume of water delivered under this Agreement and shall bill or credit amounts required to allocate all deliveries properly.

2.7 **Payment of Replacement Fee.** In the event all or any portion of the Dedicated Water consists of nontributary ground water, Dominion shall also be subject to payment of a Renewable Replacement Fee calculated and payable in accordance with Appendix B attached hereto and incorporated herein by reference.

3. **Mechanics of Service Commitment.**

3.1 **Delivery Point(s).** Dominion shall take deliveries under this Agreement at the Delivery Point(s) identified in the 2014 IGA. Dominion shall design to Town specifications and construct the connection(s) to the Town System at the Delivery Point(s). Dominion shall be responsible for all infrastructure, permits and approvals to take delivery and to distribute the water to its customers. The Town will cooperate in Dominion's efforts and responsibilities to secure permits and approvals for such infrastructure.

3.2 **Reuse Rights.** Dominion shall have the right to reuse, successively use, and dispose of any water delivered pursuant to the Firming Service Commitment. Provided, however, that the Town shall have the right to reuse, successively use, and dispose of any water retained by Town pursuant to the terms of this Agreement.

3.3 **Deliveries.** Deliveries to Dominion shall begin the later of either June 1, 2019, or one year after the date on which Dominion has paid applicable Infrastructure Fees, provided Town has accepted the Dedicated Water. Deliveries shall be the Initial Maximum Delivery Rate. If pursuant to Dominion's election Dominion elects both Additional Maximum Delivery Rate and Additional Treatment Capacity, the delivery shall be equal to the Maximum Delivery Rate.

3.4 **Will-Serve Letter.** If requested by Dominion, Town s will provide a will-serve letter or other assurances of the Firming Service Commitment which may be used in connection with land use applications for the Sterling Ranch development.

4. **Term.** The term of the Firming Service Commitment and this Agreement shall be perpetual unless the Parties mutually agree to terminate the same by written instrument or this Agreement terminates by the terms and conditions expressly stated hereunder

5. **Potable Water Quality.** Town shall deliver water to Dominion at the Delivery Points of the same water quality as Town delivers to its retail customers. The use of the term “potable water” in this Agreement means water of a quality prescribed in this Section.

6. **Miscellaneous Provisions.**

6.1. Amendment. This IGA is in perpetuity. Except as otherwise provided herein, this IGA may be modified, amended, changed, or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by both parties.

6.2. Enforcement-Generally. Subject to the provisions of Sections 6.3 and 6.4, this IGA may be enforced in law or equity, damages, or such other legal and equitable relief as may be available to a Party. Except as otherwise provided herein, each party waives any right to special, indirect, consequential and punitive damages, including lost revenue. Prior to commencing such legal action, the non-defaulting party shall give notice to the defaulting party. The defaulting party shall have 30 days to cure such default.

6.3. Remedies for Monetary Defaults. If Dominion does not timely satisfy any of its payment obligations under this IGA, Town may give Dominion a notice of default. If Dominion does not cure the default by making full payment within 120 days from receipt of the default notice, Town, in addition to pursuing any other remedies available to it at law or in equity, may suspend deliveries to Dominion. Provided further, if the express terms of this Agreement provide a specific consequence to the failure of Dominion to tender funds to Town within a prescribed term, such contractual consequence shall be effective.

6.4 Dispute Resolution. In the case of any dispute hereunder, including, but not limited to, Infrastructure Fees under Section 2.3, prior to commencing legal action, the parties shall meet within 30 days to attempt to resolve the issues. Participants in the meeting shall include the Director of Utilities for the Town and the President of Dominion. In the event the Parties are unable to resolve their differences following such meeting, either Party shall be entitled to pursue the remedies set forth in Sections 6.3 or 6.4 above.

6.5. Notice. For purposes of notice pursuant to this IGA, the Parties’ representatives shall be:

For the Town:	Town of Castle Rock
	Utilities Department
	Attn: Utilities Director

175 Kellogg Court
Castle Rock, CO 80109

With a copy to: Town Attorney
Town of Castle Rock
100 Wilcox Street
Castle Rock, CO 80104

For Dominion: Dominion Water & Sanitation Dist.
Clifton Larson Allen, LLP
8390 E. Crescent Parkway, Suite 500
Greenwood Village, CO 80111

With a copy to: Dominion Water & Sanitation District
Attn: Secretary
1805 Shea Center Drive, Suite 210
Highlands Ranch, CO 80129

With a copy to: McGeady Becher P.C.
Attn: Mary Ann McGeady
450 E. 17th Avenue, Suite 400
Denver, Colorado 80203

Any notices required or permitted to be given hereunder shall be in writing and shall be deemed given when given personally or sent by certified or registered mail, return receipt requested, postage prepaid. Either party hereto may designate a new address by giving written notice thereof to the other party as provided herein. Notice shall be effective upon receipt.

6.6. Assignment. This IGA shall be assignable by Dominion to another governmental entity providing water service to the Dominion service area, provided that such assignment shall first be approved in writing by the Town, such approval not to be unreasonably withheld. Due to the unique nature of the services provided under this IGA, Town's rights or obligations may be assigned by Town only together with ownership and control of the Town's water system. Any assignment not in compliance with the terms hereof shall be void and of no force or effect. Notwithstanding the foregoing, the Town acknowledges that Dominion, as a wholesale water provider, will be providing service the Sterling Ranch Community Authority Board (the "CAB") which will in turn provide retail service to the residents and property owners within the Sterling Ranch development. The Town hereby agrees that no consent shall be required for Dominion's assignment of its obligations hereunder to the CAB and that the CAB shall be entitled to perform Dominion's obligations hereunder and the Town shall accept any performance by the CAB.

6.7. Successors and Assigns. The terms, conditions, and provisions of this IGA shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

6.8. Governing Law. The terms, conditions, and provisions of this IGA shall be governed by and construed in accordance with the laws of the State of Colorado.

6.9. Failure to Perform Due to Force Majeure. Subject to the terms and conditions of this paragraph, no party to this IGA shall be liable for any delay or failure to perform under this IGA due solely to conditions or events of force majeure, as that term is specifically defined herein; provided that: (i) the non-performing party gives the other party prompt written notice describing the particulars of the occurrence of the force majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure event or condition; and (iii) the non-performing party proceeds with all necessary diligence to remedy its inability to perform. As used herein, force majeure shall mean any delay or failure of a party to perform its obligations under this IGA caused by events beyond the party's reasonable control and without the fault or negligence of the party, including, without limitation, (a) acts of God, (b) sudden actions of the elements such as floods, earthquakes, rock slides, avalanches, or tornadoes, (c) sabotage, (d) vandalism beyond that which can be reasonably prevented by the party, (e) terrorism, (f) war, (g) riots, (h) fire, (i) explosion, (j) severe and unusually cold or hot weather, (k) extreme snow, (l) blockades, (m) insurrection, (n) strike, slowdown or other labor disruptions.

6.10. Defense Against Third Parties. In the event of litigation by any third party concerning this IGA, and to the extent permitted by law, the Parties agree to jointly defend any such third party action.

6.11. No Third Party Beneficiaries. Except as otherwise explicitly provided for herein, there are no third party beneficiaries of this IGA. No third party has any right to enforce this IGA.

6.12. Sole Obligation of Water Activity Enterprise.

6.12.1 This IGA shall never constitute a general obligation or other indebtedness of the Town or Dominion, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the Town or Dominion within the meaning of the Constitution and laws of the State of Colorado or of the service plan, rules or regulations of the Town or Dominion.

6.12.2 In the event of a default by either party of any of its obligations under this IGA, the non-defaulting party shall have no recourse for any amounts owed to it against any funds or revenues of the defaulting party except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of each party's water system and deposited in the respective party's Water Activity Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this IGA shall be construed as creating a lien upon any revenues of the Town or the Dominion Water Activity Enterprise.

6.12.3 The Town represents that this IGA has been duly authorized, executed and delivered by the Town and constitutes a valid and legally binding obligation of the Town, enforceable against the Town in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

6.12.4 Dominion represents that this IGA has been duly authorized, executed and delivered by Dominion and constitutes a valid and legally binding obligation of Dominion, enforceable against Dominion in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

6.13. Entire Agreement. This IGA represents the entire agreement of the parties and neither party has relied upon any fact or representation not expressly set forth herein.

6.14. Counterparts. This IGA may be executed in any number of counterparts, each of which shall be deemed original, but all of which constitute one and the same agreement.

6.15. Non-severability and Effect of Invalidity. Each provision of this IGA is integral to the others and is not severable from the others. If any portion of this IGA is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both parties, the parties will immediately attempt to negotiate either valid alternative portions that as near as possible give effect to any stricken portions or a valid replacement agreement.

6.16. No Attorney's Fees and Costs. In the event of any litigation arising out of this IGA, the parties agree that each will be responsible for their own attorney's fees and costs associated with any such legal action.

6.17. Joint Draft. The parties agree they drafted this IGA jointly with each having the advice of legal counsel and an equal opportunity to contribute to its content. Therefore, this IGA shall not be construed for or against a party on the basis of authorship.

6.18. Intent of IGA. This IGA is intended to describe the rights and responsibilities of and between the parties and is not intended to and shall not be deemed to confer rights upon any persons or entities not signatories hereto nor to limit, impair, or enlarge in any way the powers, regulatory authority and responsibilities of either party or any other governmental entity not a party hereto.

6.19. Non-Business Days. If any date for any action under this IGA falls on a Saturday, Sunday or Holiday, as such term is defined in Rule 6 of the Colorado Rules of Civil Procedure, then the relevant date shall be extended automatically until the next business day.

6.20 Payment Dates. Notwithstanding anything to the contrary contained herein, upon mutual agreement of the Director of Utilities for each of the Town and Dominion, any payments to be made hereunder may be scheduled for different dates than set forth herein, so long as they occur in the same fiscal year as contemplated herein, such that payments hereunder may align with payments to be made by Dominion pursuant to the 2014 Agreement.

IN WITNESS WHEREOF, the parties hereby executed this Agreement on the date first written above.

TOWN OF CASTLE ROCK

Paul Donahue, Mayor

ATTEST:

Sally A. Misare, Town Clerk

Approved as to form:

Robert J. Slentz, Town Attorney

Approved as to content:

Mark Marlowe, Director of Utilities

**DOMINION WATER & SANITATION
DISTRICT**

Harold Smethills, President

ATTEST:

Denise Denslow, Secretary

**APPENDIX A TO
INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICE
INFRASTRUCTURE**

**APPENDIX B TO
INTERGOVERNMENTAL AGREEMENT FOR WATER SERVICE
NONTRIBUTARY GROUND WATER DEDICATION AND RENEWABLE
REPLACEMENT REQUIREMENTS**

B-1. Delivery. Deliveries shall be according to Section 1 of this IGA.

B-2 Water Supply Conveyed to Castle Rock. Dominion shall provide a minimum of 400 acre feet/yr of Non Tributary Ground Water (“NTGW”). The NTGW will include a minimum of 2200 acre-feet of “banking” rights under Rule 8.A. of the Statewide Nontributary Ground Water Rules, 4 CCR 402-7 or an equivalent decree provision, or additional water supply to provide equivalent banking.

B-3 Conjunctive Use. Dominion shall take delivery of its prorated share (based on 700 acre feet) of WISE subscription water to the extent available to Dominion under the 2014 IGA and its South Metro WISE Authority subscription prior to taking delivery under this IGA. Town will deliver up to an average over the Ten-Year Block, as defined in the WDA, 700 acre feet of water per year to Dominion from a combination of reusable water sources, including WISE water. The 400 acre feet/yr dedicated water plus banking rights in this agreement serves as a firming component of Dominion’s variable yield of up to 700 acre feet of WISE water.

B-4 Excess Supply. “Excess Supply” available to Castle Rock for other uses is banked water attributable to the 400 acre feet conveyed to Castle Rock that anytime exceeds 2200 acre feet. Current estimated banked water for 400 acre feet of Nontributary Ground Water associated with Division One Water Court case 03CW0116 is 4,800 acre feet, which calculates to a current banked excess supply of 2,600 acre feet as a benefit to Castle Rock.

By operating this as the conjunctive use system above, and utilizing the banked water in B-4, use will be limited to 315 af/yr out of the 400 dedicated NTGW supply on average during the Ten-Year Block as defined the WDA, resulting in 85 af of additional excess supply as a benefit to Castle Rock (unless otherwise agreed to by both parties).

B-5 ASR Infrastructure. Infrastructure to include the capabilities of aquifer storage, and recovery shall be considered as part of cost of infrastructure reasonably required by Town to implement this agreement, as described in Section 2.3.

B-6 Adjustment for Costs related to Declining Ground Water Levels. Dominion is responsible for compensating Castle Rock for delivery of renewable water supplies based on the following approach.

- (a) Town will calculate a system-wide average ground water level change using static water levels in all wells used for analysis in the Town’s annual water level decline memorandum;
- (b) a baseline water level will be determined based on a 5-year average at or about the date that Dominion receives deliveries are paid pursuant to section 2;

- (c) the saturated thickness will be calculated for each relevant aquifer as the system-wide average of the static ground water surface elevation minus the aquifer midpoint;
- (d) the ground water level change will be the difference between the baseline water level and the 5-year rolling average of ground water levels for the preceding 5 calculations;
- (e) the system-wide available saturated thickness and the ground water level change will be represented as percentages of the baseline thickness for each aquifer (where the percentage of ground water level change plus the percentage of saturated thickness equals 100%);
- (f) the system-wide water level changes in each aquifer will be prorated and combined by the following equation:
$$\text{Combined, system wide, percent water level decline} = (\text{Arapahoe Aquifer percent change} \times 0.7) + (\text{Denver Aquifer percent change} \times 0.3);$$
- (g) If the Town produces less than % 10 of their NTGW out of either aquifer, that aquifer will no longer be considered for system wide water level decline and the remaining aquifer water level decline will not be prorated;
- (h) the percentage of saturated thickness remaining shall be the maximum percentage of Dominion's demand met by Town's non-tributary system (NTGW %);
- (i) the percentage of ground water level change shall be the percentage of Dominion's demand met by additional Dominion sources and/or Town's renewable sources (Renewable %)
- (j) Starting the year that Dominion receives deliveries, and each year following until the Renewable % exceeds 100%, estimated groundwater level change and the resulting compensation requirements (See B-7) for use of Town's renewable water sources would be provided to Dominion on _____. Dominion will have 90 days to review, request additional information, and comment. Starting _____ of the following year, the annual renewable water replacement fee would be paid to Castle Rock by Dominion in monthly installments.

B-7 Surcharge for Use of Town Renewable Water. Dominion will provide payment for the renewable water in monthly increments as follows.:

$$((\text{Renewable \%} - \text{Previously paid Renewable \%}) * 400 \text{ acre feet} * \text{current renewable water replacement fee}) / 12 \text{ months}$$

Where the renewable replacement fee is the current Castle Rock renewable water fee for ¾-inch meter (in Castle Rock System Development Fees) / 0.45 acre feet/sfe.

i.e. currently $\$15,218 / 0.45 \times 1.25$ (25% surcharge) = \$42,272.50/ acre feet

B-8 Alternative to Adjustments for Costs for Declining Groundwater: In lieu of B-6, at Dominion's sole discretion, Dominion may elect to:

- (a) Provide additional water supply to Castle Rock as acceptable to Castle Rock, which will be reviewed by the same criteria as the Dedicated Water accepted under this Agreement, and for which approval will not be unreasonably withheld; or
- (b) Reduce the delivery agreement obligations.