

(EXEMPLAR - NOT FOR EXECUTION)

MASTER  
INTERGOVERNMENTAL AGREEMENT  
BY AND BETWEEN  
THE TOWN OF CASTLE ROCK, COLORADO  
AND  
HILLSIDE AT CASTLE ROCK METROPOLITAN DISTRICT

This INTERGOVERNMENTAL AGREEMENT (the "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the TOWN OF CASTLE ROCK, COLORADO, a home rule municipal corporation of the State of Colorado (the "Town"), and HILLSIDE AT CASTLE ROCK METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), collectively referred to herein as the "Parties".

RECITALS

WHEREAS, the District was organized to finance certain public improvements, all as are more specifically set forth in the District's Service Plan, dated January 29, 2016, and approved by the Town on \_\_\_\_\_, 2016, by Resolution No. \_\_\_\_\_ (the "Service Plan"); and

WHEREAS, the Service Plan makes reference to and requires the execution of an intergovernmental agreement between the Town and the District; and

WHEREAS, the Town and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**ARTICLE I  
DEFINITIONS**

1.01 **DEFINED TERMS.** Unless the context expressly indicates the contrary, the following words when capitalized in the text herein shall the following meaning:

**Act.** Article 1, Title 32, C.R.S., the Special District Act.

**Agreement.** This Intergovernmental Agreement.

**Bonds.** Bonds, refunding bonds, notes, certificates, debentures, contract or other evidence of indebtedness or borrowing issued or incurred by the District pursuant to law.

**Charter.** The Home Rule Charter of the Town, as amended.

**Code.** The Castle Rock Municipal Code, as amended.

**C.R.S.** The Colorado Revised Statutes, as amended.

**Development Exactions.** The fees and charges imposed by the Town under Town Regulations on development, including per unit charges for capital plant investment, such as System Development fees.

**District.** The Hillside at Castle Rock Metropolitan District.

**Facilities.** The public infrastructure described in the Service Plan to serve the Project.

**Fees.** The fees, rates, tolls, penalties or charges that may be imposed by the District pursuant to the Act.

**Financial Plan.** The forecasted financial plan of the District; Exhibit \* of the Service Plan.

**Municipal Services.** Police and fire protection, water and wastewater, storm water drainage and detention, parks and recreation, transportation, street maintenance, general administrative services, including code enforcement, and any other service provided by the Town within its boundaries under its police powers.

**SDO.** Chapter 11.02 of the Code, Special District Oversight.

**Service Plan.** The approved Service Plan of the District.

**System Development Fees.** The charges imposed by the Town under Town Regulations as a condition to the right to connect to the municipal water or wastewater system, for the purpose of recovering the Town's pro rata capital cost of water or wastewater facilities dedicated to allow such connection, including the component charges currently imposed under 13.12.080 of the Code, but excluding therefrom any charge or fee imposed under Town Regulations exclusively for the purpose of the acquisition or development of renewable water resources or a cash payment in lieu of water rights dedication.

**Town.** The Town of Castle Rock, Colorado, a home rule municipal corporation.

**Town Regulations.** The Charter, ordinances, resolutions, rules and regulations of the Town, including the Code and the provisions of the zoning, subdivision, public works and building codes, as amended, applied on a Town-wide basis. Reference to Town Regulations shall mean those Town Regulation in effect at the time of application.

1.02 CROSS-REFERENCE. Any reference to a section or article number with or without further description shall mean such section or article in this Agreement.

## **ARTICLE II FACILITIES DEVELOPMENT AND MAINTENANCE**

2.01 CONSTRUCTION OF FACILITIES. The District shall have the authority to finance and construct at its expenses the public infrastructure described in the Service Plan (the "Facilities"). The Facilities shall be constructed pursuant to the standards and procedures set forth in the Service and the Town Regulations.

2.02 OWNERSHIP OF FACILITIES. Except as otherwise provided in the Service Plan or as otherwise approved by the Town, the District shall convey the Facilities to the Town upon completion.

2.03 MAINTENANCE OF FACILITIES. Upon acceptance of the Facilities by the Town, the Town shall be responsible for the Facilities' operation, maintenance, repair and



replacement, as necessary. Nothing herein shall restrict the Town from conveying Facilities to a regional authority, governmental, or quasi-governmental agency or authority provided an equivalent level of maintenance and operation of such Facilities is guaranteed by the Town and the Town obtains an opinion of a bond attorney with nationally-recognized expertise in the area of municipal bonds that the conveyance will not adversely affect the tax-exempt status of any outstanding Bonds of the District.

### **ARTICLE III MILL LEVY AND FEES**

3.01 MILL LEVY LIMITATION. The District shall not exceed the Mill Levy Cap, as that term is defined in the Service Plan unless the Town approves a Service Plan amendment for that purpose.

3.02 CHARGES BY THE DISTRICT. The District shall have the right to impose Fees provided that the imposition of such Fees shall not in any manner impair or limit the imposition or collection by the Town of any Development Exactions, including System Development Fees, with the District. Nothing in this section shall preclude or impair the District's ability to collect *ad valorem* property taxes, or to collect and impose any other fee, rate, toll, penalty, charge, tax or other source of revenue that is allowed by the Act.

### **ARTICLE IV BOND ISSUANCE**

4.01 BONDS. The District shall not issue Bond, except upon compliance with the following:

a. The Bonds are issued in accordance with the applicable provisions and restrictions of the Service Plan, the Act, and other applicable provisions of the laws of the State of Colorado; and

b. There has not occurred a material modification of the Service Plan which would require the District to obtain a Service Plan amendment under either the Act or the SDO.

### **ARTICLE V SERVICE PLAN COMPLIANCE**

5.01 GENERALLY. The Service Plan contains certain responsibilities, restrictions and limitations on the District which shall not be separately set forth in this Agreement. Performance of the Service Plan obligations by the District shall be construed as a covenant of this Agreement, for which the default and remedies of Section 8.05 shall be applicable in the same manner as if expressly set forth in herein.

5.02 SERVICE PLAN AMENDMENT. The authorization of the District under the terms of the Service Plan and this Agreement is given by the Town in reliance upon certain development and financial assumptions and projections in the Service Plan. Although these

projections and assumptions are based upon the best information available at this time, such assumptions and projections may prove to be materially inaccurate. Accordingly, a Service Plan amendment shall be submitted by the District to the Town for the Town review and approval if required under the SDO and Special District Act.

5.03 TOWN REVIEW. Annually, but not later than the date the District is required to submit the annual report under the SDO, the District shall furnish to the Town an accounting of all actual revenues and expenses, and accumulated reserves for the preceding calendar year, in substantially the same format as the Financial Plan, such that the Town can compare the experience of the District with the projections in the Financial Plan. The Town shall have access to the District's financial statements, accounting records and other supporting documentation, upon written demand, and at such reasonable times, for the purpose of auditing the financial reports submitted by the District.

5.04 STATUTORY REVIEW. The review of the Service Plan and the approval of this Agreement shall constitute the first quinquennial review of the District's reasonable diligence. Nothing herein precludes the Town from initiating further quinquennial reviews per the Act.

## **ARTICLE VI LIMITATIONS ON DISTRICT**

6.01 RESTRICTIONS ON EXPANSION OF DISTRICT'S POWERS. The parties acknowledge that the District was approved by the Town for the purpose of acquiring, construction, installing and completing the Facilities and providing for the limited services described in the Service Plan. The District shall not engage in any activity, purpose, service or function except as stated in the Service Plan or in this Agreement or as reasonably required for the District to accomplish its purposes. The Town shall not interfere with the District's exercise of any of its lawful powers except as the exercise thereof is specifically limited by the Service Plan or this Agreement.

6.02 EXTRATERRITORIAL ACTIVITY. The District shall not engage in any service or activity outside its boundaries except as described or indicated in the Service Plan or with the prior approval of the Town.

6.03 CHANGE OF DISTRICT BOUNDARIES. The District shall not approve the inclusion or exclusion of property from its boundaries as initially approved in the Service Plan except with the approval of the Town.

6.04 WATER RIGHTS. The District is prohibited from owning, managing, acquiring or developing water rights.

## **ARTICLE VII TOWN RESERVED POWERS**

7.01 GENERALLY. As a general purpose municipal corporation, the Town adopts and administers policies, rules and regulations, principally through the Town Regulations. The



approval of the Service Plan or this Agreement shall in no manner restrict the Town Council from applying the Town Regulations within the District, even if the Town Regulations have an effect of limit development or making development more costly to the landowner and/or District, provided that the Town Regulations are a lawful exercise of the Town's legislative, quasi-legislative, administrative and/or police powers.

7.02 NO CLAIMS. Without limiting the legal obligations of the Town to any other parties as to the property within the boundaries of the District, the District shall have no legal or equitable claim against the Town as a result of the Town imposing or changing the amount of Development Exactions; exercising its right of eminent domain to acquire private properties in the District for public purposes upon the payment of just compensation therefor, or; acquisition of properties for park, recreation, open space or other public purposes that are otherwise zoned for development in the District pursuant to agreement with the owner therefor.

## **ARTICLE VIII GENERAL PROVISIONS**

8.01 DISSOLUTION OF DISTRICTS. At such time as the District has completed construction of the improvements provided for in its Service Plan, upon arrangement for repayment of all of its outstanding debt, and upon arrangement for ongoing operations and maintenance of District improvements by another appropriate entity, the Board of Directors will place the question of dissolution of the District before its constituents and will exercise every reasonable effort to process the dissolution of the District in accordance with Colorado Statute.

8.02 INSTRUMENTS OF FURTHER ASSURANCE. The Town and the District covenant that they will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such acts, instruments and transfers as may be reasonably required for the performance of their obligations hereunder.

8.03 DEFAULT AND REMEDIES. In the event either party believes that the other party is in default of this Agreement, the initiating party shall be required before taking any other action to notify the alleged defaulting party in writing of such default. The writing shall specify the exact nature of the default. The alleged defaulting party shall have twenty (20) business days from receipt of such notice to cure such default or to notify the initiating party that no default has occurred. If a default has occurred, the initiating party may exercise any of its remedies after the twentieth business from receipt of notice unless: the default is incapable of being cured; or default is not capable of being cured in twenty (20) days but the defaulting party has commenced to cure such default with the twenty-day period and the defaulting party diligently prosecutes such cure to completion. If a default occurs and is not cured as described above, the initiating party shall have all rights at law or in equity as seems necessary or desirable to enforce performance and observance of the defaulted obligation or covenant. In the event of a claim is filed in the courts, the prevailing party shall be entitled to recover its reasonable attorney fees and litigation costs from the other party.

8.04 NOTICES. All notices and other communication shall be sufficiently given and shall be deemed given when mailed by registered or certified mail, postage prepaid, or when delivered by a nationally recognized overnight mail service, to:

Town: Town of Castle Rock  
Attn: Town Attorney  
100 N Wilcox Street  
Castle Rock Co 80104

District: Hillside at Castle Rock Metropolitan District  
c/o Miller & Associates Law Offices, LLC  
1641 California St Suite 300  
Denver CO 80202  
Attn: Dianne Miller

8.05 NO LIABILITY OF TOWN. The Town shall no obligation whatsoever to repay any debt or liability of the District, including Bonds.

8.06 NOTICE OF MEETINGS. The District shall provide notice of every regular or special meeting of the District to the Town Clerk at least three (3) days prior to each meeting.

8.07 ASSIGNMENT. No transfer or assignment of this Agreement or of any rights hereunder shall be made by either party without the prior written consent of the other, which consent shall not be unreasonably withheld.

8.08 AMENDMENT. This Agreement may be amended, modified, changed or terminated in whole or in part and without amendment of the Service Plan, but only if approved by resolution of the Town Council of the Town and by resolution of the Board of Directors of the District.

8.09 SEVERABILITY. If any portion of this Agreement is held invalid or unenforceable for any reason by a court of competent jurisdiction as to either party or as to both Parties, such portion shall be deemed severable and its invalidity or its unenforceability shall not cause the entire agreement to be terminated. Further, with respect to any portion so held invalid or unenforceable, the District and Town agree to take such actions as may be necessary to achieve to the greatest degree possible the intent of the affected portion.

8.10 NO WAVIER. The waiver or delay of enforcement of one or more terms of this Agreement shall not constitute a waiver of the remaining terms. The waiver or delay in enforcement regarding any default of this Agreement shall constitute a waiver of any terms of the Agreement.

8.11 ENTIRE AGREEMENT OF THE PARTIES. This written Agreement, together with the Service Plan, constitutes the entire agreement between the Parties and supersedes all

prior written or oral agreements, negotiations, or representations and understandings of the Parties with respect to the subject matter contained herein.

8.12 BENEFICIARIES. This Agreement is made solely for the benefit of the parties and no other parties or persons are intended beneficiaries.

**ATTEST:**

**TOWN OF CASTLE ROCK**

\_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor

**Approved as to form:**

\_\_\_\_\_  
Town attorney

**ATTEST:**

**HILLSIDE AT CASTLE ROCK  
METROPOLITAN DISTRICT**

\_\_\_\_\_  
District Secretary

\_\_\_\_\_  
District President