

RESOLUTION NO. 2024-___

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL
AGREEMENT BETWEEN THE TOWN OF CASTLE ROCK AND THE
VILLAGES AT CASTLE ROCK METROPOLITAN DISTRICT NO. 4
FOR FINANCIAL CONTRIBUTION AND PROJECT MANAGEMENT
FOR THE PLUM CREEK PARKWAY FULL DEPTH RECLAMATION
PROJECT**

WHEREAS, The Villages at Castle Rock Metropolitan District No. 4 (the “District”) is a metropolitan district organized under the constitution and laws of the State of Colorado for the purpose of providing, financing, operating and maintaining certain public improvements to and for the benefit of the properties within and without the boundaries of the District; and

WHEREAS, the District plans to complete the construction of a sanitary sewer line underneath the west-bound lanes of Plum Creek Parkway in 2024 (the “District Project”); and

WHEREAS, the Town of Castle Rock (the “Town”) plans to conduct a full-depth reclamation project in 2025 to restore the roadway pavements along the same section of Plum Creek Parkway where the District Project is to take place (the “Town Improvements”); and

WHEREAS, The Town and the District both acknowledge that there is significant overlap in the scope of the District Project and the Town Improvements, and conducting these projects separately would result in unnecessary redundancy in work and extended disruption to the public; and

WHEREAS, the Parties acknowledge that incorporating the Town Improvements into the scope of the District Project would result in a combined savings of approximately \$500,000.00 and reduce construction time on Plum Creek Parkway from approximately two years to one year; and

WHEREAS, the Town and the District wish to enter into an intergovernmental agreement which incorporates the Town Improvements into the scope of the District Project (the “Combined Project”), and sets forth the terms and conditions by which the District will manage the design and construction of the Combined Project and the Town will fund the Town Improvements.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF CASTLE ROCK, COLORADO AS FOLLOWS:

Section 1. Approval. The Intergovernmental Agreement between the Town and the District (the “Agreement”) is hereby approved in substantially the same form as presented at tonight’s meeting, with such technical changes, additions, modifications, deletions, or amendments as the Town Manager may approve upon consultation with the Town Attorney. The Mayor and other proper Town officials are hereby authorized to execute the Agreement and any technical amendments thereto by and on behalf of the Town.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2024, by the Town Council of the Town of Castle Rock by a vote of ____ for and ____ against.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to form:

Approved as to content:

Michael J. Hyman, Town Attorney

Daniel Sailer, Director of Public Works

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF CASTLE ROCK AND THE VILLAGES AT CASTLE ROCK
METROPOLITAN DISTRICT NO. 4, REGARDING FINANCIAL
CONTRIBUTION AND PROJECT MANAGEMENT FOR THE PLUM CREEK
PARKWAY FULL DEPTH RECLAMATION PROJECT**

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement") is made and entered into this _____ day of _____ 2024, by and between the Town of Castle Rock, Colorado, a Colorado home rule municipality (the "Town"), and The Villages at Castle Rock Metropolitan District No. 4, a quasi-municipal corporation and political subdivision of the State of Colorado, (the "District"), hereinafter collectively referred to as the "Parties."

RECITALS

WHEREAS, the Parties are legally empowered under Section 29-1-201, et seq., C.R.S. to enter into this Agreement; and

WHEREAS, the District plans to complete the construction of a sanitary sewer line (the "Sewer Line") underneath the west-bound lanes of Plum Creek Parkway (also referred to as the "Right of Way") in early 2025 as generally described in the attached **Exhibit A** (the "District Project"); and

WHEREAS, the District Project includes sanitary sewer stub outs to undeveloped properties that are not currently in the Town or served by the Town; and

WHEREAS, the easterly segment of the Sewer Line will therefore not go into service upon completion of the District Project; and

WHEREAS, the Town plans to conduct a full-depth reclamation project in 2025 to restore the roadway pavements along the same stretch of Plum Creek Parkway where the District Project is to take place as generally described in attached **Exhibit B** (the "Town Improvements"); and

WHEREAS, the Town and the District both acknowledge that there is significant overlap in the scope of the District Project and the Town Improvements, and conducting these projects separately would result in unnecessary redundancy in work and extended roadway disruption to the public; and

WHEREAS, the Parties acknowledge that incorporating the Town Improvements into the scope of the District Project would result in a combined estimated cost savings of approximately \$500,000.00; and

WHEREAS, incorporating the Town Improvements into the scope of the District Project would reduce construction time on Plum Creek Parkway from approximately two years to one year; and

WHEREAS, construction of the Sewer Line ahead of the Town Improvements provides the District with the benefit of constructing the Sewer Line within the existing public Right of Way and of not having to wait to construct the Sewer Line until all upstream sanitary users are ready to develop; and

WHEREAS, the Parties desire to include the Town Improvements in the scope of the District Project, as generally described in the attached **Exhibit C** (“the Combined Project”); and

WHEREAS, the Parties acknowledge that despite collaborating in this way, it is important to keep the scope of work and funding for each party’s portion of the Combined Project distinct and separate; and

WHEREAS, the Combined Project will serve the residents of the Town of Castle Rock and the residents of the District; and

WHEREAS, in accordance with the terms and conditions stated in this Agreement, the District shall manage the public bidding and construction of the Combined Project and the Town shall fulfill a funding role to pay for the Town Improvements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which are mutually acknowledged, the Parties hereto agree as follows:

1. **Acknowledgment and Incorporation of Recitals.** The foregoing recitals are hereby acknowledged by the Parties to be true and correct and are incorporated into this Agreement.
2. **Term.** This Agreement shall commence upon execution by both Parties and shall continue twelve (12) additional months following completion of the Combined Project except for the requirements contained in Section 7, which shall survive until all sections of the Sewer Line are in operation and are formally conveyed to and accepted by the Town. Completion of the Combined Project shall be determined as described in Section 6 of this Agreement.
3. **Combined Project Design and Development.** The District shall be responsible for all aspects of project design and project development. The District shall coordinate with the Town to establish the scope of work for the Combined Project by incorporating the Town Improvements into the District Project. The Town shall supply all plans for the Town Improvements to the District for this purpose. The resulting Combined Project design shall be used for the purposes of contractor bidding and construction. Both Parties must approve the final design for the Combined Project.
4. **Contractor Procurement.** The District shall be responsible for all aspects of public project bidding and contractor procurement. The District shall work collaboratively with the Town as described herein to select a contractor.

The District shall use a competitive bidding process to select the contractor. It will collaborate with the Town to develop the form and content of the bid documents. The bid documents must be in substantial conformance with the Town's purchasing policies and procedures. Both Parties must agree on and approve the bid forms and contract documents before the Combined Project is publicly advertised for contractor bids.

For the purpose of collecting meaningful bids from contractors, the Combined Project shall be divided into two schedules of work: Bid Schedule A and Bid Schedule B. Bid Schedule A shall include all work aspects of the District Project. Bid Schedule B shall include all work aspects of the Town Improvements.

The District will evaluate bids received in coordination with the Town prior to the award of the Combined Project to any contractor. The award of the Combined Project must be in the best interest of both the District and the Town, and shall be awarded to the lowest responsive and responsible bidder. The Parties together shall select and mutually agree on the contractor.

5. **Construction and Costs.** Following execution of this Agreement the District shall cause the Combined Project to be constructed in accordance with the approved design plans. The District, by and through its agents, employees, and the contractor(s) shall be responsible for all aspects of project permitting and day-to-day construction management of the Combined Project through completion. Any deviation from the agreed-upon scope of work for the Town Improvements shall require the written approval of the Town's engineering manager.

The Town Charter; ordinances, resolutions, rules and regulations of the Town; the Town Code; and other provisions of all zoning, subdivision and building codes, as may be amended from time to time, shall apply to the development and construction of the Combined Project.

The District (with District's funding participants) shall pay all costs of construction associated with Bid Schedule A, including permit fees. The District shall review and approve all pay applications for all work performed in Bid Schedule A.

The Town shall bear all costs of the construction of the Town Improvements. The Town, District and Land Title Guaranty Company shall enter into an Escrow Agreement, the form and account of which shall be approved by the Parties prior to public bidding ("Escrow Account"). The Town agrees to place the funds needed to pay for Bid Schedule B plus a 10% contingency into the Escrow Account mutually agreed upon by the Parties within thirty (30) days of the Combined Project being awarded to a contractor. The Town shall review and approve all pay applications for all work performed in Bid Schedule B.

Payment for any pay application for the Town Improvements approved by the Town shall be posted from the escrow account and remitted to the District. The Escrow Agreement shall provide for the Town's timely review and approval of contractor pay applications and the timely release of escrow funds to the District to meet the payment

requirements and timelines in the construction contract documents. The District shall not be liable for failure of the Town to timely review and approve of such pay applications for work performed under Schedule B. The District shall then remit said payment to the contractor within ten (10) days of receipt of the escrow funds, for all work performed in Schedule A and Schedule B. Upon final completion of the Town Improvements, any remaining and unused funds in the Escrow Account shall be released in full to the Town.

6. **Project Completion.** The Parties shall determine together and agree upon the acceptability of the contractor's performance and conformance with the design for the Combined Project (the "Final Acceptance"). Defective materials, equipment or work shall be remedied immediately by the contractor before final payment. The date of the Final Acceptance shall be used to determine the expiration of the term of this Agreement as described in Section 2.

Upon expiration of the term of this Agreement, the Town shall assume ownership of the Town Improvements, the responsibility to maintain same, and release the District from all liability resulting from the construction of the Town Improvements.

7. **Sanitary Sewer.** The District shall retain ownership of all sections of the Sewer Line that are not conveyed to and accepted by the Town. The District shall maintain all sections of the Sewer Line owned by the District, and the District shall be responsible for meeting the Town Requirements for the Sewer Line at the time it is put in service.

The Town will not accept ownership or maintenance of the sections of the Sewer Line that are not in use until such time as the upstream properties are approved by the Town for connection to and use of this sanitary sewer. The District hereby represents and warrants to the Town all workmanship, equipment and materials on any sections of the Sewer Line that are not conveyed to and accepted by the Town for a period of two (2) years after such section of the sewer line goes into operation. The District shall not be required to provide a letter of credit, cash or other escrowed funds to warranty such operations under Section 15.48.060 of the Castle Rock Municipal Code, however the Parties agree that the Town may impose such security obligations upon upstream properties or developers who may be connecting to sections of the sewer line.

Once all sections of the Sewer Line are dedicated to the Town for ownership, operation, maintenance and replacement, all capacity in the Sewer Line shall belong to the Town. The Town may then use the Sewer Line's capacity for any purpose, however the Town shall ensure that the capacity required to serve the properties with approved development plans at the time of this Agreement is reserved for that purpose. The District shall not be entitled to any rebates of system development fees or costs.

The District acknowledges that only properties within the Town with approved development plans may connect to and utilize the Sewer Line upon the direct prior approval of the Town. The District further acknowledges that the Town is not committing or agreeing to any future sanitary sewer service by entering into this Agreement or participating in the Combined Project. Upstream properties shall be required to go through

the Town development process to request annexation and/or service from the Town to gain access to the Sewer Line. Decisions to serve these properties are at the sole determination of future Town Council actions, and are no way influenced by the construction of this sanitary sewer line.

8. **Time of Performance.** The District shall commence construction (issuance of Notice-to-Proceed) of the Combined Project no earlier than February 29, 2025 and no later than April 30, 2025. The District shall cause the Combined Project to be constructed in the year 2025 such that the Combined Project is completed within 180 calendar days from the Notice-to-Proceed.

Any delays or failure of performance by any party of the obligations under this Agreement shall be excused if such delays or failures are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

Should the District stop work on the Combined Project at any time for any reason not excused as described above, the Town has the right to assume management of the Combined Project and take any actions needed to ensure completion of the Combined Project. In no way shall the Town's assumption of project management duties in such an event affect the Parties' payment obligations as agreed to herein.

9. **Default and Remedies.** In the event either party should default in the performance of its obligations under this Agreement, and such default shall remain uncured for more than ten (10) days after notice of default is given to the defaulting Party, the non-defaulting Party shall have the right to take action at law or in equity that appears necessary or desirable to enforce performance and compliance with this Agreement. No Party will be entitled to incidental, consequential, punitive or exemplary damages in the event of a default.

10. **Representations and Warranties.**

A. **Representations and Warranties by District.** The District represents and warrants as follows:

i. The District is a Metropolitan District, validly existing and in good standing under the laws of the State of Colorado and in good standing and authorized to do business in the State of Colorado and has the power and the authority to enter into and perform in a timely manner its obligations under this Agreement.

ii. The execution and delivery of this Agreement has been duly and validly authorized by all necessary action to make this Agreement and the Agreement is valid and binding upon the District.

iii. The execution and delivery of this Agreement will not (1) conflict with or contravene any law, order, rule or regulation applicable to the District or to the District's governing documents; (2) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the District is a party or by which it may be bound or affected, or (3) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the District.

iv. The District knows of no litigation, proceeding, initiative, referendum, or investigation or threat or any of the same contesting the powers of the District or any of its principals or officials with respect to the subject matter of this Agreement that has not been disclosed in writing to the other Parties.

v. This Agreement constitutes a valid and binding obligation of the District, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

B. Representations and Warranties by the Town. The Town represents and warrants as follows:

i. The Town is a body corporate and politic and a home rule municipality of the State of Colorado, and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations under this Agreement.

ii. The Town knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the Town or its officials with respect to this Agreement that has not been disclosed in writing to the Parties.

iii. The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not: (1) conflict with or contravene any law, order, rule or regulation applicable to the Town or to its governing documents; (2) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the Town is a party or by which it may be bound or affected; or (3) permit any party to terminate any such agreement or instruments or to accelerate the maturity of any indebtedness or other obligation of the Town.

iv. This Agreement constitutes a valid and binding obligation of the Town, enforceable according to its terms.

11. Notice. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom

such notice is to be given, at the address set forth below, or at such other address as has been previously furnished in writing, to the other Party. Such notice shall be deemed to have been given when deposited in the United States mail.

Town: Town of Castle Rock
100 N. Wilcox Street
Castle Rock, Colorado 80104
Attention: Dan Sailer, P.E., Public Works Director
Email: DSailer@crgov.com
With an electronic copy sent to legal@crgov.com

District: Villages at Castle Rock Metropolitan District No. 4
6551 S. Revere Pkwy. Suite 265
Centennial, CO 80111
Attn: O. Karl Kasch, District Manager
Email: vcrmetro4@cimarronla.com
With electronic copy sent to jnorris@cegrrlaw.com

11. **Appropriation.** Pursuant to section 29-1-110, C.R.S., any financial obligations of the Town contained herein that are payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted and otherwise made .appropriation of funds necessary for the performance thereof, which appropriations shall be made in the sole discretion of the District's Board of Directors. The Parties understand and agree that each are subject to Article X, Section 20 of the Colorado Constitution (TABOR) and that this Agreement does not create a multiple fiscal year direct or indirect debt or obligation within the meaning of TABOR and therefore, notwithstanding anything to the contrary, any payment obligation of the Town or of the District is expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal period.

12. **Additional Documents.** The Parties agree to execute any additional documents or take any additional action that is necessary to carry out the intent of this Agreement.

13. **Colorado Law.** The laws of the State of Colorado shall govern this Agreement. Venue for any action hereunder shall be in the District Court, County of Douglas, State of Colorado.

14. **Separate Entities.** The Parties enter into this Agreement as separate, independent governmental entities and shall maintain such status throughout.

15. **No Third-Party Beneficiaries.** The enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow

any such claim or right of action by any other or third person under such Agreement. Any beneficiary of the terms and conditions of this Agreement are not intended beneficiaries but are incidental beneficiaries only.

16. **No Waiver of Governmental Immunity Act.** The Parties hereto understand and agree that the Parties, their council members, board members, officials, officers, directors, agents and employees, are relying on, and do not waive or intend to waive by any provisions of this Agreement, the monetary limitations or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, sections 24-10-101 to 120, C.R.S., or otherwise available to the County and the Town.

17. **Waiver.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.

18. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

19. **Entirety.** This Agreement represents the entire agreement between the Parties. This Agreement may be amended only by an instrument in writing signed by the Parties. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such a holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.

(Remainder of page intentionally left blank; signature page to follow.)

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto as of the date first written above.

TOWN:

Attest:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

Approved as to Form:

Approved as to Content:

Michael J. Hyman, Town Attorney

Daniel Sailer, Director of Public Works

DISTRICT:

**VILLAGES AT CASTLE ROCK
METROPOLITAN DISTRICT NO. 4**

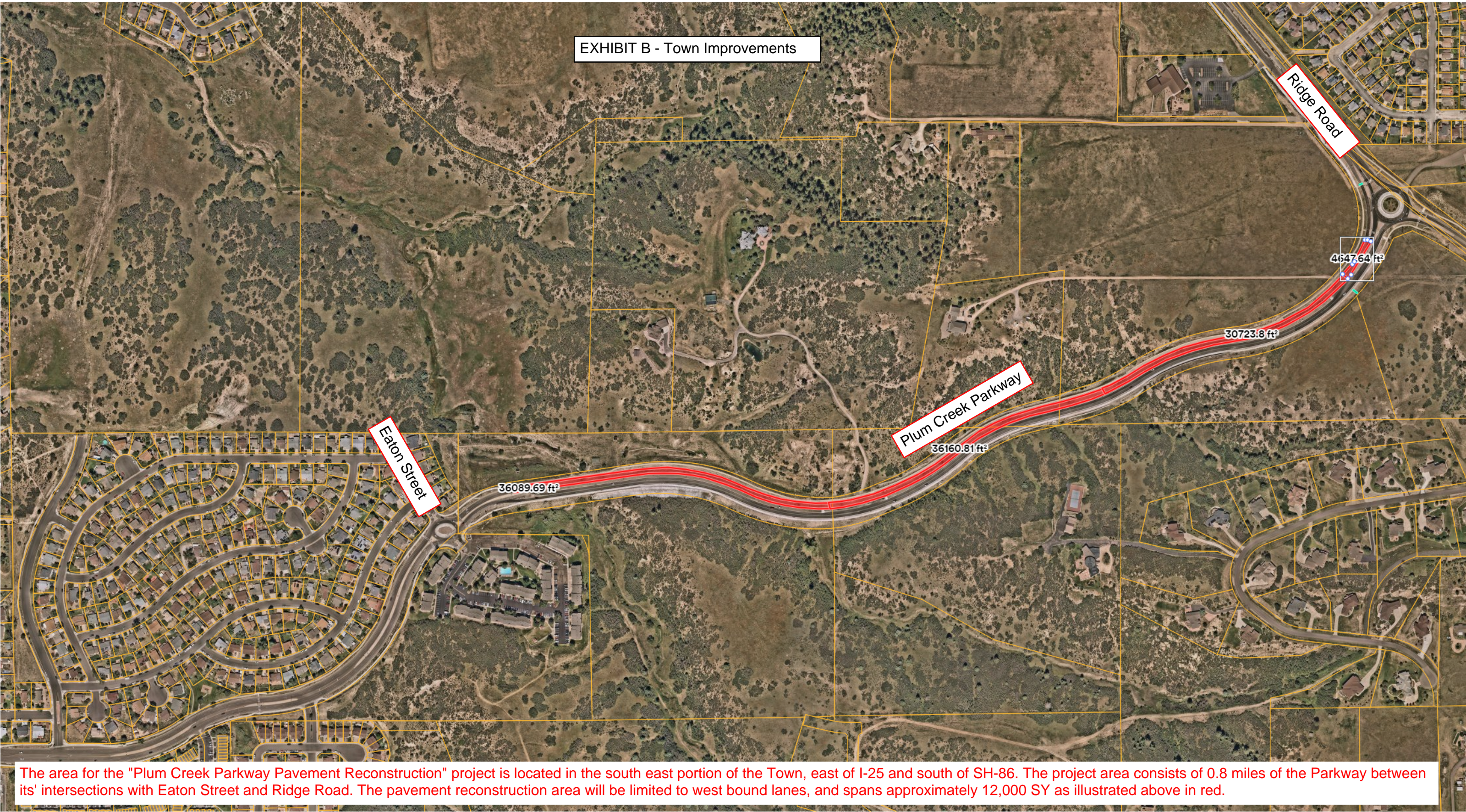
Jeremy Groves, President

Approved as to Form:

Joseph Norris, Esq. , General Counsel

Approved as to Content:

O. Karl Kasch, District 4 Manager




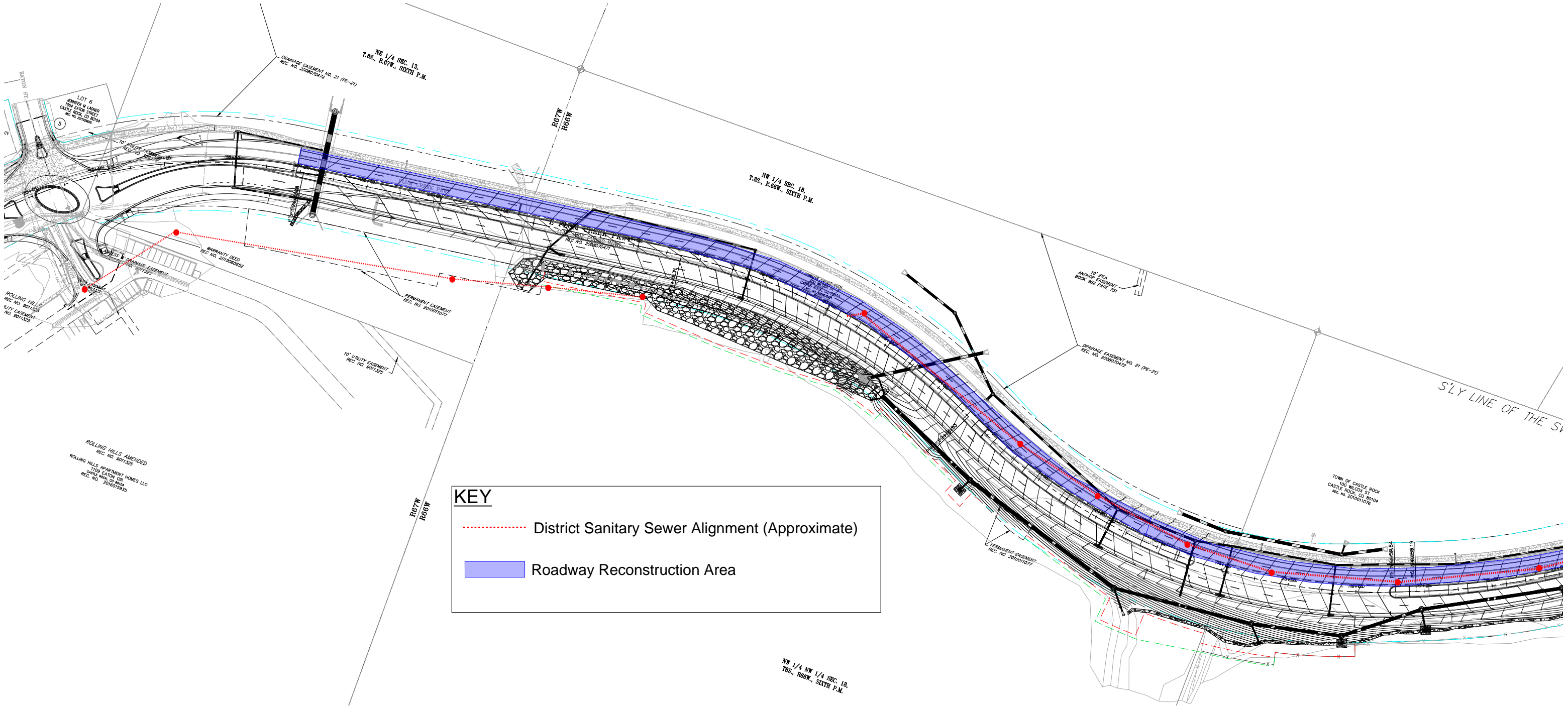
PROJECT INFORMATION		DRAWING INFORMATION				PUBLIC WORKS DEPARTMENT		R #	DATE	REVISIONS	BY	SHEET OF
Plum Creek Parkway Pavement Reconstruction		PROJECT LOCATION		4175 NORTH CASTLETON CT. CASTLE ROCK, CO 80109 PHONE: (720) 733-2462 FAX: (303) 660-1025								

EXHIBIT C - Combined Project




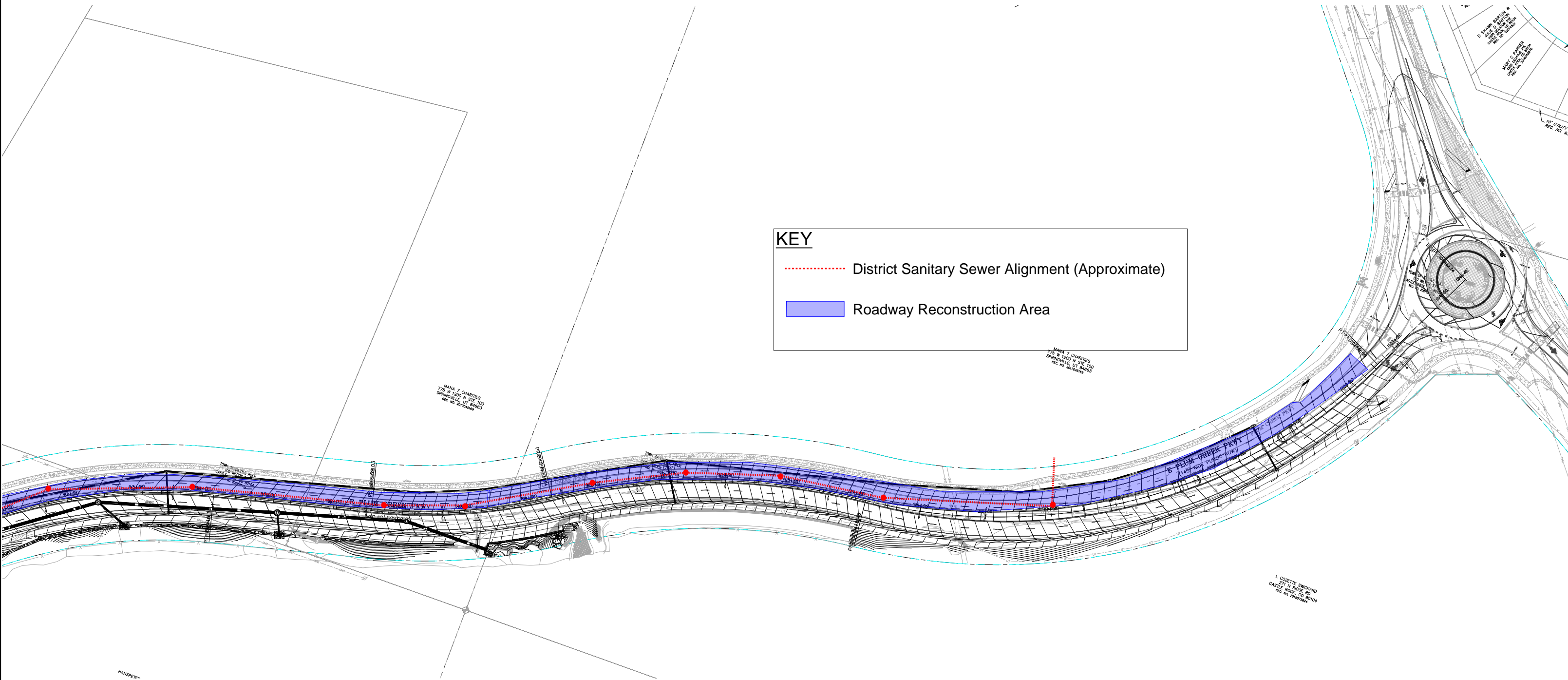
PROJECT INFORMATION		DRAWING INFORMATION		PUBLIC WORKS DEPARTMENT		R #	DATE	REVISIONS	BY	SHEET OF
Combined (IGA) Project		PROJECT LOCATION		 <div>4175 NORTH CASTLETON CT. CASTLE ROCK, CO 80109 PHONE: (720) 733-2462 FAX: (303) 660-1025</div>						
						DRAWN BY: CHECKED BY: DATE:				


EXHIBIT C - Combined Project

KEY

District Sanitary Sewer Alignment (Approximate)

Roadway Reconstruction Area



PROJECT INFORMATION		DRAWING INFORMATION		PUBLIC WORKS DEPARTMENT		R #	DATE	REVISIONS	BY	SHEET OF
Combined (IGA) Project		PROJECT LOCATION			4175 NORTH CASTLETON CT. CASTLE ROCK, CO 80109 PHONE: (720) 733-2462 FAX: (303) 660-1025					
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