

TRI-PARTY AGREEMENT FOR DESIGN SERVICES FOR THE HIGHWAY 85 WASTEWATER COLLECTION AND TREATMENT SYSTEM

This AGREEMENT made and entered into this 10th day of July, 2023 by and between Dominion Water & Sanitation District (“Dominion”) and the Town of Castle Rock (the “Town” and, together with Dominion, hereinafter “Owners”), and Carollo Engineers, Inc., (hereinafter “Engineer”). Owners and Engineer are referred to herein individually as a “Party” and collectively as the “Parties.”

WITNESSETH:

WHEREAS, C.R.S. § 29-1-203 authorizes the Owners to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide; and

WHEREAS, Dominion is a wholesale water and wastewater provider located in Northwest Douglas County organized in 2004 to provide service to Sterling Ranch Community Authority Board (“Sterling Ranch CAB”) and those existing communities as of 2009 on non-renewable groundwater located within Dominion’s service area; and

WHEREAS, the Town is a retail water and wastewater provider for the Town of Castle Rock and additional extra-territorial customers; and

WHEREAS, the Owners desire to engage the Engineer to perform certain services as are needed by the Owners to serve the property within and without their boundaries; and

WHEREAS, the Engineer has represented that it has the professional experience, skill and resources to perform the services, as set forth herein; and

WHEREAS, the Owners and the Engineer wish to enter into this Agreement for the furnishing of engineering and design services in connection with the Project, as defined herein.

NOW, THEREFORE, the Parties, in consideration of the mutual covenants and stipulations set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

TERMS AND CONDITIONS

Section 1 - DEFINITIONS.

Unless previously defined, the following terms, when capitalized, shall have the meanings indicated below:

- 1.1 **Chatfield Basin Water Reclamation Facility/CBWRF** shall mean a new mutually beneficial wastewater treatment plant located along the South Platte River (in the approximate location where the Roxborough Wastewater Treatment Facility was located) on property owned by Dominion, which upon completion, will be owned and operated by Dominion.

- 1.2 **CMAR** shall mean Construction Manager at Risk.
- 1.3 **County** shall mean Douglas County, Colorado.
- 1.4 **Collaborative Project Delivery (CPD) Team** shall consist of members of the Owners and the Engineer.
- 1.5 The **Contract Documents** consist of:
- a. Written amendments to this Agreement, including exhibits and appendices and amendments;
 - b. The Agreement;
 - c. Executed Task Orders;
 - d. The information provided by the Owner;

Except as specifically provided in this Agreement, in case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the order in which they are listed above. Among all the Contract Documents, the term or provision that is most specific or includes the latest date shall control. Information identified in one Contract Document and not identified in another shall not be considered to be a conflict or inconsistency.

- 1.6 The **Design Budget** is the Owners' total cost for design services required for the completion of this Project.
- 1.7 **E-85 Wastewater IGA** means E-85 Wastewater Intergovernmental Agreement Between the Town of Castle Rock Acting Through Its Water Enterprise and Dominion Water & Sanitation District Acting Through Its Sterling Ranch Water Activity Enterprise and the Sterling Ranch Community Advisory Board dated TBD, 2023. The E-85 Wastewater IGA is not incorporated herein by reference, except to the extent described in Section 5.1.
- 1.8 **Engineer** means Carollo Engineers, Inc. and its consultants and includes the Engineer's representative, licensed in the state where the Project is located.
- 1.9 **Existing Dominion and CAB Owned Infrastructure** shall mean the capacity in the CAB Gravity Sewer System, Titan Road Lift Station, Roxborough O-Line, Titan Road Forcemain and CBWRF.
- 1.10 **Louviers** shall mean the Louviers Water & Sanitation District.
- 1.11 **Louviers Forcemain** shall mean the forcemain accompanying the Louviers Lift Station that will connect from the Louviers Lift Station to the CAB Owned Infrastructure at the Moore Road and Waterton Road intersection which upon completion will be owned and operated by Dominion.

- 1.12 **Louviers Lift Station** shall mean a 0.2 MGD lift station, expandable to 1.0 MGD located at or near Louviers' existing sewer lagoon which upon completion will be owned and operated by Castle Rock.
- 1.13 **Owners** is defined as follows with the roles and responsibilities as detailed:
- a. Town of Castle Rock: Responsible for funding those portions of the Project related to the CRDC Capacity, as defined in the E-85 Wastewater IGA, and design of the Project, in collaboration with Dominion.
 - b. Dominion Water & Sanitation District: Responsible for funding those portions of the Project related to additional capacity creation, as set forth in Section 4.c. of the E-85 Wastewater IGA, and the design of the Project, in collaboration with the Town.
- 1.14 The **Owners' Program** is an initial description of the Owners' objectives, that may include budget and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems ad site requirements.
- 1.15 **Project** shall mean the design, construction and commissioning of the Reuse Pumping Facility, the CBWRF, connections and expansions to the Existing Dominion and CAB Infrastructure, the Roxborough Forcemain, the Louviers Lift Station, and the Louviers Forcemain collectively.
- 1.16 **Ravenna** shall mean Ravenna Metropolitan District.
- 1.17 **Reuse Pumping Facility** shall mean a pump station at the CBWRF to convey treated effluent or other raw water supplies from the South Platte or Chatfield Reservoir to the CRR Discharge Point, to the Moore WTP, or additional future location(s) as determined by Dominion, which will effectively capture Return Flows that can be delivered and used for reuse water by the Parties in addition to other raw water supplies.
- 1.18 **Roxborough** shall mean the Roxborough Water & Sanitation District.
- 1.19 **Roxborough Forcemain** shall mean the forcemain from the Roxborough Lift Station to the South Platte Renew Facility.
- 1.20 **Sedalia** shall mean Sedalia Water and Sanitation District.

SECTION 2 - COLLABORATIVE PRINCIPLES

- 2.1 **OBJECTIVES.** The objectives of this Agreement are to design the facilities and infrastructure of the Project, as set forth in the Owners' Program, within the Design Budget and the schedule developed.
- 2.2 **COLLABORATIVE PROJECT DELIVERY.** The Parties agree that the Project objectives can be best achieved through a relational contract that promotes and facilitates strategic planning, design, construction and commissioning of the Project, through the principles of collaboration and lean project delivery. This approach recognizes that each Party's success is tied directly to the success of all other members of the Collaborative Project Delivery

(CPD) Team and encourages and requires the Parties to organize and integrate their respective roles, responsibilities and expertise, to identify and align their respective expectations and objectives, to commit to open communications, transparent decision-making, proactive and non-adversarial interaction, problem-solving, the sharing of ideas, to continuously seek to improve the Project planning, design and construction processes, and to share both the risks and rewards associated with achieving the Project objectives.

- 2.3 **COLLABORATIVE PROJECT DELIVERY TEAM.** The Parties shall perform as a CPD Team to facilitate the design of the Project. CPD Team members shall share information and collaborate for the benefit of the Project. CPD Team members shall initially include the Owners, the Engineer and the County.
- 2.4 **COLLABORATIVE RELATIONSHIP.** The Parties each accept the relationship of mutual trust, good faith and fair dealing, but not a fiduciary duty, established by this Agreement and covenants with each other to cooperate and exercise their skill and judgement in furthering the interests of the Project.
- 2.5 **OWNERS RESPONSIBILITIES.** The Owners shall work with the Engineer to identify the Owners' Program, including budget and schedule, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements. The Owners shall provide information to the Engineer in a timely manner regarding requirements for the Project, including the Owners' Program and other relevant information.
 - a. **STAKEHOLDERS.** The Owners agree to engage with the following interested entities ("Stakeholders") in the relevant portions of the Project, as described below. Each Stakeholder's comments and review shall be limited to the portions of the Project in which such Stakeholder has a demonstrated interest, as agreed to by the Owners.
 - i The County shall be consulted regarding all phases of the Project. The Town shall be primarily responsible for securing approval from the County, if such approval is required pursuant to an outside agreement, rule, or regulation.
 - ii Roxborough shall be consulted regarding the design of the CBWRF, as related to those portions of the infrastructure and appurtenances that will be owned and operated by Roxborough. Dominion shall be primarily responsible for securing approval from Roxborough, if such approval is required pursuant to an outside agreement, rule, or regulation.
 - iii Louviers shall be consulted regarding the design of the Louviers Forcemain and Lift Station. The Town shall be primarily responsible for securing approval from Louviers, if such approval is required pursuant to an outside agreement, rule, or regulation.
 - iv South Platte Renew shall be consulted regarding those aspects of the design of the CBWRF related to the conveyance of solids, solids handling and emergency flows to the South Platte Renew Facility. Dominion shall be primarily responsible for securing approval from South Platte Renew,

if such approval is required pursuant to an outside agreement, rule, or regulation.

- v Ravenna shall be consulted as may be necessary to complete the community outreach process regarding the aesthetics and potential nuisance odor concerns related to the CBWRF. Dominion shall be primarily responsible for securing approval from Ravenna if such approval is required pursuant to an outside agreement, rule, or regulation.
 - vi Denver Water shall be consulted regarding the design of the CBWRF as it relates to the easement for the CBWRF discharge to the South Platte River. Dominion shall be primarily responsible for securing approval from Denver Water, if such approval is required pursuant to an outside agreement, rule, or regulation.
- b. DISPUTE RESOLUTION. If the Owners cannot reach resolution on a matter relating to or arising out of the Agreement, the Owners shall submit such matter to dispute resolution. If the Owners are unable to resolve their dispute informally, they shall submit the dispute to non-binding mediation before a mutually agreeable mediator. If the Owners remain unable to resolve their dispute within sixty (60) days of commencing mediation, the Owners may pursue any remedies lawfully available to them.
 - c. PROVISION OF DOCUMENTS. The Owners shall furnish the Engineer available studies, reports and other data pertinent to Engineer's services; obtain or authorize Engineer to obtain or provide additional reports and data as required; furnish to Engineer services of others required for the performance of Engineer's services hereunder, and Engineer shall be entitled to use and rely upon all such information and services provided by Owners or others in performing Engineer's services under this Agreement.
 - d. ACCESS FOR ENGINEER. The Owners shall arrange for access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services hereunder.

2.6 ENGINEER'S RESPONSIBILITIES. The Engineer shall furnish or provide all the design and engineering services necessary to design the Project in accordance with the Owners' objectives, as outlined in the Owners' Program, Task Orders, and other relevant information defining the Project. Consistent with the collaborative approach set forth in this Agreement, the Engineer shall draw upon the assistance of the Owners, the CMAR, and others in developing the Project design, but the Engineer shall retain overall responsibility for all design decisions as required by applicable state laws. The Engineer represents that it is an independent contractor and that in its performance of the Services it shall act as an independent contractor. The Engineer's duties, responsibilities and limitations of authority shall not be restricted, modified, or extended without written consent of the Owners.

- a. PROFESSIONAL RESPONSIBILITY. The Engineer shall be responsible for professional negligence, which is failure to exercise skill and ability as ordinarily required of engineers under the same or similar circumstances. The Engineer shall not

be responsible for acts and decisions of third parties, including governmental agencies, other than Engineer's subconsultants, that impact project completion and/or success.

- b. **PROVISION OF DOCUMENTS.** The Engineer's instruments of service hereunder are the printed hard copy drawings and specifications issued for the Project, whereas electronic media, including CADD files, are tools for their preparation. As a convenience to the Owners, the Engineer shall furnish to the Owners both printed hard copies and electronic media. In the event of a conflict in their content, the printed hard copies shall take precedence over the electronic media. Because data stored in electronic media form can be altered, inadvertently, it is agreed that the Owners shall, to the extent permitted by law, hold Engineer harmless from liability arising out of changes or modifications to Engineer's data in electronic media form in the Owners' possession or released to others by the Owners.

SECTION 3 - COMMUNICATION PROTOCOLS

- 3.1 **INITIAL MEETING.** Following execution of this Agreement, the CPD Team shall have an initial meeting to review the Owners' Program and establish the Project's goals and to begin initial Project planning. If no Owners' Program has been established, the Engineer shall meet for the purpose of assisting the Owners in the development of an Owners' Program.
- 3.2 **REGULAR MEETINGS.** The CPD Team shall establish a schedule for regular meetings for the purpose of reviewing and discussing the Project status and any issues impacting the progress of the Project including conflicts, delays, and their causes and potential claims.
- 3.3 **SPECIAL MEETINGS.** In the event a Project matter arises requiring immediate attention, any member of the CPD Team may call for a meeting on one (1) day's written notice. Such notice shall include a thorough description of the issues to be addressed.
- 3.4 **COMMUNICATIONS PROTOCOL.** The CPD Team shall meet, confer and agree upon a written protocol for all forms of Project communications, including Project meetings, written and electronic communications. The protocol shall:
 - a. Identify critical Project personnel and their contact information;
 - b. Provide a detailed Project meeting matrix with attendance requirements;
 - c. With the goal that there be no offline Project-related discussions among the Parties, allow for direct communication between specialty subcontractors and design consultants and the Owners or Engineer, as necessary, with contemporaneous notification of the context of such communication to the other Parties;
 - d. Establish a further protocol for the exchange of electronic Project documentation.

SECTION 4 - PROFESSIONAL SERVICES

- 4.1 **TASK ORDERS.** Engineer shall provide professional engineering services in all phases of the Project to which this Agreement applies. The services furnished by the Engineer will be defined by Task Orders which will set forth the Engineer's Scope of Services, Time of Performance, and Payment. It is intended that each Task Order, after execution by all Parties, shall become a supplement to and a part of this Agreement.
- a. The Owners may, through one or more written Task Orders, request the Engineer provide additional services. The terms and conditions of the provision of such services shall be subject to the mutual agreement of the Engineer and the Owners pursuant to a Task Order executed by authorized representatives of the Owners and Engineer. Authorization to proceed with additional services shall not be given unless the Owners have appropriated funds sufficient to cover the additional compensable amount. To the extent additional services are provided pursuant to this Section, the terms and conditions of this Agreement relating to Services shall also apply to any additional services rendered.
- 4.2 **PERFORMANCE STANDARDS.** The Engineer shall perform the services described in each Task Order, attached hereto and incorporated herein by this reference (the "**Services**"): (a) in a professional manner, to the satisfaction of the Owner, using the degree of skill and knowledge customarily employed by other professionals performing similar services and (b) within the Time of Performance and pursuant to the Scope of Services specified in said Task Order. Task Orders may take any form, including forms which may include price and payment terms. In the event of any conflict between terms set forth in the body of this Agreement and terms set forth in a Task Order, the terms in the body of this Agreement shall govern. Engineer shall have no right or authority, express or implied, to take any action, expend any sum, incur any obligation, or otherwise obligate the Owners in any manner whatsoever, except to the extent specifically provided in this Agreement (including any approved Task Orders) or through other authorization expressly delegated to or authorized by the Owners.
- 4.3 **DELAY IN PERFORMANCE.** The Engineer is not responsible for damage or delay in performance caused by events beyond the reasonable control of Engineer. In the event Engineer's services are suspended, delayed or interrupted for the convenience of the Owners or delays occur beyond the control of Engineer, an equitable adjustment in Engineer's time of performance and cost of Engineer's personnel and subcontractors shall be made.

SECTION 5 - PAYMENT TO ENGINEER

- 5.1 **PAYMENT FOR SERVICES.** As consideration for providing the services referred to in Section 1, the Owners shall pay Engineer on the basis to be established in the Task Order for Services. The Town shall be responsible for payment to Engineer for those portions of the Project related to the CRDC Capacity, as defined in the E-85 Wastewater IGA and Dominion shall be responsible for payment to Engineer for those portions of the Project related to additional capacity creation, as set forth in Section 4.c. of the E-85 Wastewater

IGA. The Parties acknowledge that funding for the Project is provided to the Town from the County and the Town must satisfy certain requirements to secure such funding pursuant to the Intergovernmental Agreement Between the Town of Castle Rock and Douglas County for the Highway 85 Wastewater Collection and Treatment System dated TBD, 2023, which is not incorporated herein by reference.

- 5.2 REVISIONS TO SERVICES. Owners reserve the right to direct revision of Engineer's services as may be necessary. When Engineer is directed to make revisions under this section of the Agreement, Engineer shall advise Owners of the probable costs involved in completing engineering services and the time of performance for such completion. Extra services also include those that are required for defense of claims, in which event Engineer shall bill Owners on an hourly basis together with cost of material.
- 5.3 COMPENSATION FOR REVISED SERVICES. In the event Owners and Engineer cannot agree on equitable compensation for services rendered in making revisions, then, at Owners' option, Engineer shall either continue performance under the revised Agreement and an equitable adjustment in Engineer's time of performance and cost of Engineer's personnel shall be made at completion of the revised work or Engineer shall not be obligated to continue performance under this Agreement.
- 5.4 ERRORS OR OMISSIONS. If Engineer's work products require revisions prior to construction bidding due to Engineer's errors or omissions, the exclusive remedy will be limited to revisions made by Engineer without compensation.
- 5.5 INVOICING. The Engineer shall bill the Owners monthly indicating the services performed and the cost of such services.

The Town agrees to pay invoices within 45 days of their date. Payments not received by Engineer within 45 days shall be considered delinquent and subject to a finance charge of 1 percent per month for each month unpaid after the date of invoice. Engineer may suspend services should an invoice remain delinquent for 75 days from date of invoice.

All payments are to be mailed to:

Carollo Engineers, Inc.
P.O. Box 30835
Salt Lake City, UT 84130-0835

unless otherwise informed on the face of the invoice.

- 5.6 ASSIGNMENT.
 - a. Neither Party shall assign this Agreement or parts thereof, or its respective duties, without the express written consent of the other Party. Any attempted assignment of this Agreement in whole or in part with respect to which the other Party has not consented, in writing, shall be null and void and of no effect whatsoever.

SECTION 6 - MISCELLANEOUS

- 6.1 NOTICES. All notices shall be made in writing and may be given by personal delivery or by mail. Notices sent by mail shall be addressed to the designated responsible person or office:

TO OWNERS:

Dominion Water & Sanitation District
9250 E. Costilla Ave., Ste. 315
Greenwood Village, CO 80112
Attention: Andrea Cole, District Manager
Email: Andrea.Cole@Dominionwsd.com

With a Copy to:

WHITE BEAR ANKELE TANAKA & WALDRON
2154 E. Commons Ave., Suite 2000
Centennial, CO 80122
Attention: Blair M. Dickhoner
Phone: (303) 858-1800
E-mail: bdickhoner@wbapc.com

and

Town of Castle Rock
Attn: Director of Castle Rock Water
175 Kellogg Court
Castle Rock, CO 80109

with copy to: Town of Castle Rock
Attn: Town Attorney
100 N. Wilcox Street
Castle Rock, CO 80104

TO ENGINEER:

Carollo Engineers, Inc.
10822 West Toller Drive, Suite 200
Littleton, CO 80127
Attention: David Pier, PE, PMP
Phone: (720) 922-2462
Email: dpier@carollo.com

and when so addressed, shall be deemed given upon deposit in the United States Mail, postage prepaid. In all other instances, notices and invoices shall be deemed given at the time of actual delivery.

- 6.2 REUSE OF DOCUMENTS. Documents, including drawings and specifications, prepared by Engineer pursuant to this Agreement are not intended or represented to be suitable for reuse by Owners or others for this Project or on any other project. Any reuse of completed documents or use of partially completed documents without written verification or concurrence by Engineer for the specific purpose intended will be at Owners' sole risk and without liability or legal exposure to Engineer; and, to the extent permitted by law, Owners shall indemnify and hold harmless Engineer from all claims, damages, losses and expenses, including attorney's fees arising out of or resulting therefrom.
- 6.3 INSURANCE. Engineer must procure and maintain the following types and amounts of insurance, with each policy, except workers' compensation and professional liability, to be issued to include Owners and the County, its officers and employees, as and additional named insureds:
- a. Commercial General Liability Insurance, including coverage for bodily injury, broad form property damage (including for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations, with minimum combined single limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate.
 - b. Comprehensive Automobile Liability Insurance, including coverage for each of the contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services, with minimum combined single limits for bodily injury and property damage of not less than \$1,000,000 for each occurrence and \$1,000,000 aggregate.
 - c. Workers' Compensation Insurance to cover obligations imposed by the Workers Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of work under the contract, and Employer's Liability insurance with minimum limits of \$500,000 each accident, \$500,000 disease-policy limit, and \$500,000 disease-each employee.
 - d. Professional Liability Insurance, including coverage for damages or claims for damages arising out of the rendering, or failure to render, any professional services, with minimum combined single limits of \$1,000,000 for each occurrence and \$1,000,000 aggregate (for the design contract only).
- 6.4 INDEMNIFICATION. Owners and Engineer shall each, to the extent permitted by law, defend, indemnify and hold harmless the other and their respective principals, directors, officers and employees from and against claims, loss, liability, suits and damages, including attorney's fees, to the extent caused by either party's negligent acts, errors or omissions, willful misconduct or Owners' lawful responsibility respectively or, anyone directly or indirectly employed by either of them or anyone for whose acts they may be liable regardless of whether or not such claim, loss, liability or damage is caused in part by a party indemnified hereunder. In the event that both Owners' and Engineer's wrongful act or lawful responsibility is the proximate cause of any liability or damages, then in such event, each party shall be liable for a portion of the damages and claim costs resulting therefrom equal

to such party's comparative share of the total negligence or lawful responsibility for such damages and claim costs. Notwithstanding the foregoing, a party's defense obligation hereunder shall be limited to reimbursement of the other party's reasonable defense costs which are judicially determined to have been incurred as a result of the first party's negligence.

- a. **LIMITATION OF RESPONSIBILITY.** In providing opinions of cost, financial analyses, economic feasibility projections, schedules, and quantity and/or quality estimates for potential projects, Engineer has no control over cost or price of labor and material; unknown or latent conditions of existing equipment or structures that may affect operation and maintenance costs; competitive bidding procedures and market conditions; time or quality of performance of third parties; quality, type, management, or direction of operating personnel; the incoming water quality and/or quantity; the way the Owners' plant(s) and/or associated processes are operated and/or maintained; and other economic and operational factors that may materially affect the ultimate project elements, including, but not limited to, cost or schedule. Therefore, Engineer makes no warranty that the Owners' actual project costs, financial aspects, economic feasibility, schedules, and/or quantities or quality realized will not vary from Engineer's opinions, analyses, projections, or estimates.

6.5 **HAZARDOUS MATERIALS.** Hazardous materials or asbestos may exist at a site where there is no reason to believe they could or should be present. The Engineer and Owners agree that the discovery of unanticipated hazardous materials or asbestos constitutes a changed condition mandating a renegotiation of Engineer's services.

6.6 **TERMINATION.** This Agreement may be terminated for convenience by the Engineer upon delivery of thirty (30) days prior written notice to the Owners and jointly by the Owners by giving the Engineer thirty (30) days prior written notice. The Parties agree to provide an opportunity for good faith consultation prior to termination. If this Agreement is terminated, the Engineer shall be paid for all the Services satisfactorily performed prior to the designated termination date, including reimbursable expenses due. Said payment shall be made in the normal course of business. Should any Party to this Agreement be declared bankrupt, make a general assignment for the benefit of creditors or commit a substantial and material breach of this Agreement in the view of another Party, said other Party shall be excused from rendering or accepting any further performance under this Agreement. In the event of termination of this Agreement, the Engineer shall cooperate with the Owners to ensure a timely and efficient transition of all work and work product to the Owners or their designees. All time, fees and costs associated with such transition shall not be billed by the Engineer to the Owners.

6.7 **DEFAULT.** If any Party fails to perform in accordance with the terms, covenants and conditions of this Agreement, or is otherwise in default of any of the terms of this Agreement, a non-defaulting Party shall deliver written notice to the defaulting Party of the default, at the address specified in Section 5.7, and the defaulting Party will have ten (10) days from and after receipt of the notice to cure the default. If the default is not of a type which can be cured within such ten (10)-day period and the defaulting Party gives written

notice to the non-defaulting Parties within such ten (10)-day period that it is actively and diligently pursuing a cure, the defaulting Party will have a reasonable period of time given the nature of the default following the end of the ten (10)-day period to cure the default, provided that the defaulting Party is at all times within the additional time period actively and diligently pursuing the cure. If any default under this Agreement is not cured as described above, a non-defaulting Party will, in addition to any other legal or equitable remedy, have the right to terminate this Agreement and enforce the defaulting Party's obligations pursuant to this Agreement by an action for injunction or specific performance.


- 6.8 TIMING OF DISPUTE RESOLUTION. Disputes arising during the course of this Agreement shall be promptly addressed at completion of construction when professional services, together with construction evaluation can be reasonably and fully assessed. The Parties shall use best efforts to reach final resolution of disputes through meetings and negotiations required to resolve the dispute before any other forms of dispute resolution.
- 6.9 ENTIRE AGREEMENT. This Agreement, including attachments incorporated herein by reference, represents the entire Agreement and understanding between the parties and any negotiations, proposals or oral agreements are intended to be integrated herein and to be superseded by this written Agreement. Any supplement or amendment to this Agreement to be effective shall be in writing and signed by the Owners and Engineer.
- 6.10 GOVERNING LAW. This Agreement is to be governed by and construed in accordance with the laws of the State of Colorado.
- 6.11 VENUE. Venue for all actions arising from this Agreement shall be in the District Court in and for Douglas County. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, *forum non-conveniens* or otherwise.
- 6.12 SUBJECT TO ANNUAL APPROPRIATION. Owners do not intend hereby to create a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever. Engineer expressly understands and agrees that Owners' obligations under this Agreement shall extend only to monies appropriated for the purposes of this Agreement by Owners and shall not constitute a mandatory charge, requirement or liability in any ensuing fiscal year beyond the then-current fiscal year. No provision of this Agreement shall be construed or interpreted as a delegation of governmental powers by Owners, or as creating a multiple-fiscal year direct or indirect debt or other financial obligation whatsoever of Owners or statutory debt limitation, including, without limitation, Article X, Section 20 or Article XI, Section 6 of the Constitution of the State of Colorado. No provision of this Agreement shall be construed to pledge or to create a lien on any class or source of Owners' funds. The Owners' obligations under this Agreement exist subject to annual budgeting and appropriations and shall remain subject to the same for the entire term of this Agreement.
- 6.13 GOVERNMENTAL IMMUNITY. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to Owners, their respective officials, employees, contractors, or agents, or any other person acting on behalf of Owners and, in particular, governmental immunity

afforded or available to Owners pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

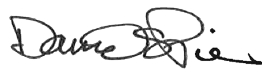
- 6.14 TAX EXEMPT STATUS. Owners are exempt from Colorado state sales and use taxes. Accordingly, taxes from which Owners are exempt shall not be included in any invoices submitted to Owners. Owners shall, upon request, furnish the Engineer with a copy of its certificate of tax exemption. The Engineer and subcontractors shall apply to the Colorado Department of Revenue, Sales Tax Division, for an Exemption Certificate and purchase materials tax free. The Engineer and subcontractors shall be liable for exempt taxes paid due to failure to apply for Exemption Certificates or for failure to use said certificate.
- 6.15 SEVERABILITY. If any portion of this Agreement is declared by any court of competent jurisdiction to be invalid, void or unenforceable, such decision shall not affect the validity of any other portion of this Agreement which shall remain in full force and effect, the intention being that such portions are severable. In addition, in lieu of such void or unenforceable provision, there shall automatically be added as part of this Agreement a provision similar in terms to such illegal, invalid or unenforceable provision so that the resulting reformed provision is legal, valid and enforceable.
- 6.16 NO THIRD-PARTY BENEFICIARIES. It is expressly understood and agreed that 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 third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.
- 6.17 OPEN RECORDS. The Parties understand that all material provided or produced under this Agreement may be subject to the Colorado Open Records Act, §§ 24-72-202, *et seq.*, C.R.S.

IN WITNESS WHEREOF, duly authorized representatives of the parties have signed in confirmation of this Agreement, with effective date the day and year first above written.

CAROLLO ENGINEERS, INC.

By: 

Kim Zulliger, Associate Vice President

By: 

David Pier, Vice President

OWNERS:

DISTRICT:

DOMINION WATER & SANITATION
DISTRICT, a quasi-municipal corporation and
political subdivision of the State of Colorado

Officer of the District

ATTEST:

ATTEST:

TOWN OF CASTLE ROCK

By: _____

By: _____
Jason Gray, Mayor

Approved as to form:

Approved as to content:

By: _____
Michael J. Hyman, Town Attorney

By: _____
Mark Marlowe, Director Castle Rock
Water